

109TH CONGRESS
2D SESSION

S. 2368

To amend the Immigration and Nationality Act and other Acts to provide for border security and interior enforcement improvements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2006

Mr. NELSON of Nebraska (for himself, Mr. SESSIONS, and Mr. COBURN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Immigration and Nationality Act and other Acts to provide for border security and interior enforcement improvements, 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 Security and Interior Enforcement Improvement
6 Act of 2006”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Severability.

TITLE I—SOUTHWEST BORDER SECURITY

- Sec. 101. Construction of fencing and security improvements in border area from Pacific Ocean to Gulf of Mexico.
- Sec. 102. Border patrol agents.
- Sec. 103. Increased availability of Department of Defense equipment to assist with surveillance of southern international land border of the United States.
- Sec. 104. Ports of entry.
- Sec. 105. Authorization of appropriations.

TITLE II—FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT

Subtitle A—Additional Federal Resources

- Sec. 201. Necessary assets for controlling United States borders.
- Sec. 202. Additional immigration personnel.
- Sec. 203. Additional worksite enforcement and fraud detection agents.
- Sec. 204. Document fraud detection.
- Sec. 205. Powers of immigration officers and employees.

Subtitle B—Maintaining Accurate Enforcement Data on Aliens

- Sec. 211. Entry-exit system.
- Sec. 212. State and local law enforcement provision of information regarding aliens.
- Sec. 213. Listing of immigration violators in the National Crime Information Center database.
- Sec. 214. Determination of immigration status of individuals charged with Federal offenses.

Subtitle C—Detention of Aliens and Reimbursement of Costs

- Sec. 221. Increase of Federal detention space and the utilization of facilities identified for closures as a result of the Defense Base Closure Realignment Act of 1990.
- Sec. 222. Federal custody of illegal aliens apprehended by State or local law enforcement.
- Sec. 223. Institutional Removal Program.

Subtitle D—State, Local, and Tribal Enforcement of Immigration Laws

- Sec. 231. Congressional affirmation of immigration law enforcement authority by States and political subdivisions of States.
- Sec. 232. Immigration law enforcement training of State and local law enforcement personnel.
- Sec. 233. Immunity.

TITLE III—VISA REFORM AND ALIEN STATUS

Subtitle A—Limitations on Visa Issuance and Validity

- Sec. 301. Curtailment of visas for aliens from countries denying or delaying repatriation of nationals.
- Sec. 302. Judicial review of visa revocation.
- Sec. 303. Elimination of diversity immigrant program.

- Sec. 304. Completion of background and security checks.
- Sec. 305. Naturalization and good moral character.
- Sec. 306. Denial of benefits to terrorists and criminals.
- Sec. 307. Repeal of adjustment of status of certain aliens physically present in United States under section 245(i).
- Sec. 308. Grounds of Inadmissibility and Removability for Persecutors.
- Sec. 309. Technical Corrections to SEVIS Reporting Requirements.

TITLE IV—WORKPLACE ENFORCEMENT AND IDENTIFICATION INTEGRITY

Subtitle A—In General

- Sec. 401. Short title.
- Sec. 402. Findings.

Subtitle B—Employment Eligibility Verification System

- Sec. 411. Employment Eligibility Verification System.
- Sec. 412. Employment eligibility verification process.
- Sec. 413. Expansion of employment eligibility verification system to previously hired individuals and recruiting and referring.
- Sec. 414. Extension of preemption to required construction of day laborer shelters.
- Sec. 415. Basic pilot program.
- Sec. 416. Protection for United States workers and individuals reporting immigration law violations.
- Sec. 417. Penalties.

Subtitle C—Work Eligibility Verification Reform in the Social Security Administration

- Sec. 421. Verification responsibilities of the Commissioner of Social Security.
- Sec. 422. Notification by commissioner of failure to correct social security information.
- Sec. 423. Restriction on access and use.
- Sec. 424. Sharing of information with the commissioner of Internal Revenue Service.
- Sec. 425. Sharing of information with the Secretary of Homeland Security.

Subtitle D—Employment Eligibility Verification System Reform in the Internal Revenue Agency

- Sec. 431. Sharing of information with the Secretary of Homeland Security and the Commissioner of Social Security.
- Sec. 432. Ineligibility for nonresident alien tax status and the Earned Income Tax Credit for unauthorized work.
- Sec. 433. Lawful use of individual taxpayer identification numbers.
- Sec. 434. No deduction allowed for compensation paid to unauthorized workers.

Subtitle E—Identification Document Integrity

- Sec. 441. Consular identification documents.
- Sec. 442. Machine-readable tamper-resistant immigration documents.

Subtitle F—Limitations on Illegal Alien Collection of Social Security

- Sec. 451. Exclusion of unauthorized employment from employment upon which creditable wages may be based.
- Sec. 452. Exclusion of unauthorized functions and services from trade or business from which creditable self-employment income may be derived.
- Sec. 453. Effective date.

Subtitle G—Effective Date; Authorization of Appropriations

- Sec. 461. Effective date.
- Sec. 462. Authorization of appropriations.

TITLE V—PENALTIES AND ENFORCEMENT

Subtitle A—Criminal and Civil Penalties

- Sec. 501. Alien smuggling and related offenses.
- Sec. 502. Evasion of inspection or violation of arrival, reporting, entry, or clearance requirements.
- Sec. 503. Improper entry by, or presence of, aliens.
- Sec. 504. Fees and Employer Compliance Fund.
- Sec. 505. Reentry of removed alien.
- Sec. 506. Civil and criminal penalties for document fraud, benefit fraud, and false claims of citizenship.
- Sec. 507. Rendering inadmissible and deportable aliens participating in criminal street gangs.
- Sec. 508. Mandatory detention of suspected criminal street gang members.
- Sec. 509. Ineligibility for asylum and protection from removal.
- Sec. 510. Penalties for misusing social security numbers or filing false information with Social Security Administration.
- Sec. 511. Technical and clarifying amendments.

Subtitle B—Detention, Removal, and Departure

- Sec. 521. Voluntary departure reform.
- Sec. 522. Release of aliens in removal proceedings.
- Sec. 523. Expedited removal.
- Sec. 524. Reinstatement of previous removal orders.
- Sec. 525. Cancellation of removal.
- Sec. 526. Detention of dangerous alien.
- Sec. 527. Alternatives to detention.
- Sec. 528. Authorization of appropriations.

1 SEC. 2. SEVERABILITY.

2 If any provision of this Act, any amendment made
 3 by this Act, or the application of such provision or amend-
 4 ment to any person or circumstance is held to be unconsti-
 5 tutional, the remainder of this Act, and the application
 6 of such provision to other persons not similarly situated

1 or to other circumstances, shall not be affected by such
 2 holding.

3 **TITLE I—SOUTHWEST BORDER** 4 **SECURITY**

5 **SEC. 101. CONSTRUCTION OF FENCING AND SECURITY IM-** 6 **PROVEMENTS IN BORDER AREA FROM PA-** 7 **CIFIC OCEAN TO GULF OF MEXICO.**

8 (a) IN GENERAL.—Section 102(b)(1) of the Illegal
 9 Immigration Reform and Immigrant Responsibility Act of
 10 1996 (Public Law 104–208; 8 U.S.C. 1103 note) is
 11 amended to read as follows—

12 “(1) BORDER SECURITY IMPROVEMENTS.—

13 “(A) BORDER ZONE CREATION.—

14 “(i) IN GENERAL.—In carrying out
 15 subsection (a), the Secretary of Homeland
 16 Security shall create and control a border
 17 zone, along the international land border
 18 between the United States and Mexico,
 19 subject to the following conditions:

20 “(I) SIZE.—The border zone
 21 shall consist of the United States land
 22 area within 100 yards of such inter-
 23 national land border, except that with
 24 respect to areas of the border zone
 25 that are contained within an orga-

1 nized subdivision of a State or local
2 government, the Secretary may adjust
3 the area included in the border zone
4 to accommodate existing public and
5 private structures.

6 “(II) FEDERAL LAND.—Not later
7 than 30 days after the date of the en-
8 actment of the Border Security and
9 Interior Enforcement Improvement
10 Act of 2006, the head of each Federal
11 agency having jurisdiction over Fed-
12 eral land included in the border zone
13 shall transfer such land, without reim-
14 bursement, to the administrative ju-
15 risdiction of the Secretary of Home-
16 land Security.

17 “(III) CONSULTATION.—Before
18 installing any fencing or other phys-
19 ical barriers, roads, lighting, or sen-
20 sors under subparagraph (B) on land
21 transferred by the Secretary of De-
22 fense under subclause (II), the Sec-
23 retary of Homeland Security shall
24 consult with the Secretary of Defense
25 for purposes of mitigating or limiting

1 the impact of the fencing, barriers,
2 roads, lighting, and sensors on mili-
3 tary training and operations.

4 “(ii) OTHER USES.—The Secretary
5 may authorize the use of land included in
6 the border zone for other purposes so long
7 as such use does not impede the operation
8 or effectiveness of the security features in-
9 stalled under subparagraph (B) or the abil-
10 ity of the Secretary to carry out subsection
11 (a).

12 “(B) REINFORCED FENCING.—In carrying
13 out subsection (a), the Secretary of Homeland
14 Security shall provide for—

15 “(i) the construction along the south-
16 ern international land border between the
17 United States and Mexico, starting at the
18 Pacific Ocean and extending eastward to
19 the Gulf of Mexico, of at least 2 layers of
20 reinforced fencing; and

21 “(ii) the installation of such additional
22 physical barriers, roads, lighting, ditches,
23 and sensors along such border as may be
24 necessary to eliminate illegal crossings and
25 facilitate legal crossings along such border.

1 “(C) PRIORITY AREAS.—With respect to
 2 the border described in subparagraph (B), the
 3 Secretary shall ensure that initial fence con-
 4 struction occurs in high traffic and smuggling
 5 areas along such border.”.

6 (b) CONFORMING AMENDMENTS.—Section 102 of the
 7 Illegal Immigration Reform and Immigrant Responsibility
 8 Act of 1996 (Public Law 104–208; 8 U.S.C. 1103 note)
 9 as amended by subsection (a) is further amended—

10 (1) in subsection (a), by striking “Attorney
 11 General, in consultation with the Commissioner of
 12 Immigration and Naturalization,” and inserting
 13 “Secretary of Homeland Security”;

14 (2) in subsection (b), by striking the heading
 15 and inserting “BORDER ZONE CREATION AND REIN-
 16 FORCED FENDING—”; and

17 (3) by striking “Attorney General” each place
 18 it appears and inserting “Secretary of Homeland Se-
 19 curity”.

20 **SEC. 102. BORDER PATROL AGENTS.**

21 Section 5202 of the Intelligence Reform and Ter-
 22 rorism Prevention Act of 2004 (Public Law 108–458; 118
 23 Stat. 3734) is amended—

24 (1) by striking “2010” both places it appears
 25 and inserting “2011”; and

1 (2) by striking “2,000” and inserting “3,000”.

2 **SEC. 103. INCREASED AVAILABILITY OF DEPARTMENT OF**
3 **DEFENSE EQUIPMENT TO ASSIST WITH SUR-**
4 **VEILLANCE OF SOUTHERN INTERNATIONAL**
5 **LAND BORDER OF THE UNITED STATES.**

6 (a) INCREASED AVAILABILITY OF EQUIPMENT.—The
7 Secretary of Defense and the Secretary of Homeland Se-
8 curity shall develop and implement a plan to use the au-
9 thorities provided to the Secretary of Defense under chap-
10 ter 18 of title 10, United States Code, to increase the
11 availability and use of Department of Defense equipment,
12 including unmanned aerial vehicles, tethered aerostat ra-
13 dars, and other surveillance equipment, to assist with De-
14 partment of Homeland Security surveillance activities con-
15 ducted at or near the southern international land border
16 of the United States.

17 (b) REPORT.—Not later than 6 months after the date
18 of the enactment of this Act, the Secretary of Defense and
19 the Secretary of Homeland Security shall submit a report
20 to Congress that contains—

21 (1) a description of the current use of Depart-
22 ment of Defense equipment to assist with Depart-
23 ment of Homeland Security surveillance of the
24 southern international land border of the United
25 States;

- 1 (2) the plan developed under subsection (a) to
2 increase the use of Department of Defense equip-
3 ment to assist with such surveillance activities; and
4 (3) a description of the types of equipment and
5 other support to be provided by Department of De-
6 fense under such plan during the 1-year period be-
7 ginning after submission of the report.

8 **SEC. 104. PORTS OF ENTRY.**

9 To facilitate legal trade, commerce, tourism, and
10 legal immigration, the Secretary of Homeland Security is
11 authorized to—

- 12 (1) construct additional ports of entry along the
13 international land border of the United States, at lo-
14 cations to be determined by the Secretary; and
15 (2) make necessary improvements to the ports
16 of entry in existence on the date of the enactment
17 of this Act.

18 **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) IN GENERAL.—There are authorized to be appro-
20 priated \$5,000,000,000 to carry out section 102(b)(1) of
21 the Illegal Immigration Reform and Immigrant Responsi-
22 bility Act of 1996 (Public Law 104–208; 8 U.S.C. 1103),
23 as amended by section 101. Such sums shall be available
24 until expended.

1 (b) BORDER PATROL AGENTS.—There are author-
2 ized to be appropriated \$3,000,000,000 to carry out sec-
3 tion 5202 of the Intelligence Reform and Terrorism Pre-
4 vention Act of 2004 (Public Law 108–458; 118 Stat.
5 3734), as amended by section 102.

6 (c) PORTS OF ENTRY.—There are authorized to be
7 appropriated \$125,000,000 to carry out section 104.

8 (d) CONFORMING AMENDMENT.—Section 102(b)(4)
9 of the Illegal Immigration Reform and Immigrant Respon-
10 sibility Act of 1996 (8 U.S.C. 1103 note) is repealed.

11 **TITLE II—FEDERAL, STATE, AND**
12 **LOCAL LAW ENFORCEMENT**
13 **Subtitle A—Additional Federal**
14 **Resources**

15 **SEC. 201. NECESSARY ASSETS FOR CONTROLLING UNITED**
16 **STATES BORDERS.**

17 (a) PERSONNEL.—

18 (1) CUSTOMS AND BORDER PROTECTION OFFI-
19 CERS.—In each of the fiscal years 2007 through
20 2011, the Secretary of Homeland Security shall in-
21 crease by not less than 250 the number of positions
22 for full-time active duty Customs and Border Pro-
23 tection officers.

24 (2) AUTHORIZATION OF APPROPRIATIONS.—

25 There are authorized to be appropriated such sums

1 as may be necessary for each of fiscal years 2007
2 through 2011 to carry out paragraph (1).

3 (b) TECHNOLOGICAL ASSETS.—

4 (1) ACQUISITION.—The Secretary of Homeland
5 Security shall procure unmanned aerial vehicles,
6 cameras, poles, sensors, and other technologies nec-
7 essary to achieve operational control of the borders
8 of the United States.

9 (2) AUTHORIZATION OF APPROPRIATIONS.—

10 There are authorized to be appropriated
11 \$500,000,000 for each of fiscal years 2007 through
12 2011 to carry out paragraph (1).

13 (c) BORDER PATROL CHECKPOINTS.—Notwith-
14 standing any other provision of law or regulation, tem-
15 porary or permanent checkpoints may be maintained on
16 roadways in border patrol sectors close to the international
17 land borders of the United States in such locations and
18 for such time period durations as the Secretary of Home-
19 land Security, in the Secretary's sole discretion, deter-
20 mines necessary.

21 **SEC. 202. ADDITIONAL IMMIGRATION PERSONNEL.**

22 (a) DEPARTMENT OF HOMELAND SECURITY.—

23 (1) INVESTIGATIVE PERSONNEL.—In addition
24 to the positions authorized under section 5203 of the
25 Intelligence Reform and Terrorism Prevention Act

1 of 2004 (Public Law 108–458; 118 Stat. 3734), for
2 each of fiscal years 2007 through 2011, the Sec-
3 retary of Homeland Security shall, subject to the
4 availability of appropriations for such purpose, in-
5 crease by not less than 200 the number of positions
6 for investigative personnel within the Department of
7 Homeland Security investigating alien smuggling
8 and immigration status violations above the number
9 of such positions for which funds were made avail-
10 able during the preceding fiscal year.

11 (2) TRIAL ATTORNEYS.—In each of fiscal years
12 2007 through 2011, the Secretary of Homeland Se-
13 curity shall, subject to the availability of appropria-
14 tions for such purpose, increase the number of posi-
15 tions for attorneys in the Office of General Counsel
16 of the Department of Homeland Security who rep-
17 resent the Department in immigration matters by
18 not less than 100 above the number of such posi-
19 tions for which funds were made available during
20 each preceding fiscal year.

21 (3) AUTHORIZATION OF APPROPRIATIONS.—
22 There are authorized to be appropriated to the De-
23 partment of Homeland Security for each of fiscal
24 years 2007 through 2011 such sums as may be nec-
25 essary to carry out this subsection.

1 (b) DEPARTMENT OF JUSTICE.—

2 (1) ASSISTANT ATTORNEY GENERAL FOR IMMI-
3 GRATION ENFORCEMENT.—

4 (A) ESTABLISHMENT.—There is estab-
5 lished within the Department of Justice the po-
6 sition of Assistant Attorney General for Immi-
7 gration Enforcement. The Assistant Attorney
8 General for Immigration Enforcement shall co-
9 ordinate and prioritize immigration litigation
10 and enforcement in the Federal courts, includ-
11 ing—

12 (i) removal and deportation;

13 (ii) employer sanctions; and

14 (iii) alien smuggling and human traf-
15 ficking.

16 (B) CONFORMING AMENDMENT.—Section
17 506 of title 28, United States Code, is amended
18 by striking “ten” and inserting “11”.

19 (2) LITIGATION ATTORNEYS.—In each of fiscal
20 years 2007 through 2011, the Attorney General
21 shall, subject to the availability of appropriations for
22 such purpose, increase by not less than 50 the num-
23 ber of positions for attorneys in the Office of Immi-
24 gration Litigation of the Department of Justice

1 above the number of such positions for which funds
2 were made available during the preceding fiscal year.

3 (3) ASSISTANT UNITED STATES ATTORNEYS.—

4 In each of fiscal years 2007 through 2011, the At-
5 torney General shall, subject to the availability of
6 appropriations for such purpose, increase by not less
7 than 50 the number of Assistant United States At-
8 torneys to litigate immigration cases in the Federal
9 courts above the number of such positions for which
10 funds were made available during the preceding fis-
11 cal year.

12 (4) IMMIGRATION JUDGES.—In each of fiscal
13 years 2007 through 2011, the Attorney General
14 shall, subject to the availability of appropriations for
15 such purpose, increase by not less than 50 the num-
16 ber of immigration judges above the number of such
17 positions for which funds were made available during
18 the preceding fiscal year.

19 (5) AUTHORIZATION OF APPROPRIATIONS.—

20 There are authorized to be appropriated to the De-
21 partment of Justice for each of fiscal years 2007
22 through 2011 such sums as may be necessary to
23 carry out this subsection, including the hiring of
24 necessary support staff.

1 **SEC. 203. ADDITIONAL WORKSITE ENFORCEMENT AND**
2 **FRAUD DETECTION AGENTS.**

3 (a) WORKSITE ENFORCEMENT.—In each of fiscal
4 years 2007 through 2011, the Secretary of Homeland Se-
5 curity shall, subject to the availability of appropriations
6 for such purpose, increase by not less than 2,000, the
7 number of positions for investigators dedicated to enforce-
8 ing compliance with sections 274 and 274A of the Immi-
9 gration and Nationality Act (8 U.S.C. 1324, 1324a) above
10 the number of such positions in which funds were made
11 available during the preceding fiscal year.

12 (b) FRAUD DETECTION.—In each of fiscal years
13 2007 through 2011, the Secretary of Homeland Security
14 shall, subject to the availability of appropriations for such
15 purpose, increase by not less than 1,000 the number of
16 positions for Immigration Enforcement Agents dedicated
17 to immigration fraud detection above the number of such
18 positions in which funds were made available during the
19 preceding fiscal year.

20 (c) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated during each of fiscal
22 years 2007 through 2011 such sums as may be necessary
23 to carry out this section.

24 **SEC. 204. DOCUMENT FRAUD DETECTION.**

25 (a) TRAINING.—The Secretary of Homeland Security
26 shall provide all customs and border protection officers

1 with training in identifying and detecting fraudulent travel
 2 documents. Such training shall be developed in consulta-
 3 tion with the Forensic Document Laboratory of the Bu-
 4 reau of Immigration and Customs Enforcement of the De-
 5 partment of Homeland Security.

6 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-
 7 retary of Homeland Security shall provide all officers of
 8 the Bureau of Customs and Border Protection with access
 9 to the Forensic Document Laboratory.

10 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 11 are authorized to be appropriated \$5,000,000 for each of
 12 fiscal years 2007 through 2011 to carry out this section.

13 **SEC. 205. POWERS OF IMMIGRATION OFFICERS AND EM-**
 14 **PLOYEES.**

15 Section 287(a) of the Immigration and Nationality
 16 Act (8 U.S.C. 1357(a)) is amended—

17 (1) by striking paragraph (5) and the 2 undes-
 18 ignated paragraphs following paragraph (5);

19 (2) in the material preceding paragraph (1)—

20 (A) by striking “(a) Any” and inserting
 21 “(a)(1) Any”; and

22 (B) by striking “Service” and inserting
 23 “Department of Homeland Security”;

1 (3) by redesignating paragraphs (1), (2), (3),
 2 and (4) as subparagraphs (A), (B), (C), and (D), re-
 3 spectively; and

4 (4) by inserting after subparagraph (D), as re-
 5 designated by paragraph (3), the following:

6 “(E) to make arrests—

7 “(i) for any offense against the United
 8 States, if the offense is committed in the offi-
 9 cer’s or employee’s presence; or

10 “(ii) for any felony cognizable under the
 11 laws of the United States, if the officer or em-
 12 ployee has reasonable grounds to believe that
 13 the person to be arrested has committed or is
 14 committing such a felony.

15 “(2) Under regulations prescribed by the Attorney
 16 General or the Secretary of Homeland Security, an officer
 17 or employee of the Service may carry a firearm and may
 18 execute and serve any order, warrant, subpoena, sum-
 19 mons, or other process issued under the authority of the
 20 United States.”.

21 **Subtitle B—Maintaining Accurate** 22 **Enforcement Data on Aliens**

23 **SEC. 211. ENTRY-EXIT SYSTEM.**

24 (a) INTEGRATED ENTRY AND EXIT DATA SYSTEM.—
 25 Section 110(b)(1) of the Illegal Immigration Reform and

1 Immigrant Responsibility Act of 1996 (8 U.S.C.
2 1365a(b)(1)) is amended to read as follows:

3 “(1) provides access to, and integrates, arrival
4 and departure data of all aliens who arrive and de-
5 part at ports of entry, in an electronic format and
6 in a database of the Department of Homeland Secu-
7 rity or the Department of State (including those cre-
8 ated or used at ports of entry and at consular of-
9 fices);”.

10 (b) CONSTRUCTION.—Section 110(c) of the Illegal
11 Immigration Reform and Immigrant Responsibility Act of
12 1996 (8 U.S.C. 1365a(c)) is amended to read as follows:

13 “(c) CONSTRUCTION.—Nothing in this section shall
14 be construed to reduce or curtail any authority of the Sec-
15 retary of Homeland Security or the Secretary of State
16 under any other provision of law.”.

17 (c) DEADLINES.—Section 110(d) of the Illegal Immi-
18 gration Reform and Immigrant Responsibility Act of 1996
19 (8 U.S.C. 1365a(d)) is amended—

20 (1) in paragraph (1), by striking “December
21 31, 2003” and inserting “October 1, 2006”; and

22 (2) by amending paragraph (2) to read as fol-
23 lows:

24 “(2) LAND BORDER PORTS OF ENTRY.—Not
25 later than October 1, 2006, the Secretary of Home-

1 land Security shall implement the integrated entry
2 and exit data system using the data described in
3 paragraph (1) and available alien arrival and depart-
4 ture data described in subsection (b)(1) pertaining
5 to aliens arriving in, or departing from, the United
6 States at all land border ports of entry. Such imple-
7 mentation shall include ensuring that such data,
8 when collected or created by an immigration officer
9 at a port of entry, are entered into the system and
10 can be accessed by immigration officers at airports,
11 seaports, and other land border ports of entry.”.

12 (d) AUTHORITY TO PROVIDE ACCESS TO SYSTEM.—
13 Section 110(f)(1) of the Illegal Immigration Reform and
14 Immigrant Responsibility Act of 1996 (8 U.S.C.
15 1365a(f)(1)) is amended by adding at the end: “The Sec-
16 retary of Homeland Security shall ensure that any officer
17 or employee of the Department of Homeland Security or
18 the Department of State having need to access the data
19 contained in the integrated entry and exit data system for
20 any lawful purpose under the Immigration and Nationality
21 Act has such access, including access for purposes of rep-
22 resentation of the Department of Homeland Security in
23 removal proceedings under section 240 of such Act and
24 adjudication of applications for benefits under such Act.”.

1 (e) BIOMETRIC DATA ENHANCEMENTS.—Not later
 2 than October 1, 2006, the Secretary of Homeland Security
 3 shall—

4 (1) in consultation with the Attorney General,
 5 enhance connectivity between the automated biomet-
 6 ric fingerprint identification system (IDENT) of the
 7 Department of Homeland Security and the inte-
 8 grated automated fingerprint identification system
 9 (IAFIS) of the Federal Bureau of Investigation fin-
 10 gerprint databases to ensure more expeditious data
 11 searches; and

12 (2) in consultation with the Secretary of State,
 13 collect all 10 fingerprints during the alien’s initial
 14 enrollment in the integrated entry and exit data sys-
 15 tem described in section 110 of the Illegal Immigra-
 16 tion Reform and Immigrant Responsibility Act of
 17 1996 (8 U.S.C. 1365a), as amended by this section.

18 **SEC. 212. STATE AND LOCAL LAW ENFORCEMENT PROVI-**
 19 **SION OF INFORMATION REGARDING ALIENS.**

20 (a) VIOLATIONS OF FEDERAL LAW.—A statute, pol-
 21 icy, or practice that prohibits, or restricts in any manner,
 22 a law enforcement or administrative enforcement officer
 23 of a State or of a political subdivision therein, from enforce-
 24 ing Federal immigration laws or from assisting or cooper-
 25 ating with Federal immigration law enforcement in the

1 course of carrying out the investigative or enforcement du-
 2 ties of the officer or from providing information to an offi-
 3 cial of the United States Government regarding the immi-
 4 gration status of an individual who is believed to be ille-
 5 gally present in the United States, is in violation of section
 6 642(a) of the Illegal Immigration Reform and Immigrant
 7 Responsibility Act of 1996 (8 U.S.C. 1373(a)) and section
 8 434 of the Personal Responsibility and Work Opportunity
 9 Reconciliation Act of 1996 (8 U.S.C. 1644).

10 (b) STATE AND LOCAL LAW ENFORCEMENT PROVI-
 11 SION OF INFORMATION ABOUT APPREHENDED ILLEGAL
 12 ALIENS.—

13 (1) PROVISION OF INFORMATION.—

14 (A) IN GENERAL.—In compliance with sec-
 15 tion 642(a) of the Illegal Immigration Reform
 16 and Immigrant Responsibility Act of 1996 (8
 17 U.S.C. 1373(a)) and section 434 of the Per-
 18 sonal Responsibility and Work Opportunity
 19 Reconciliation Act of 1996 (8 U.S.C. 1644),
 20 each law enforcement agency of a State or of a
 21 political subdivision therein shall provide to the
 22 Department of Homeland Security the informa-
 23 tion listed in paragraph (2) for each alien who
 24 is apprehended in the jurisdiction of such agen-
 25 cy and who cannot produce the valid certificate

1 of alien registration or alien registration receipt
2 card described in section 264(d) of the Immi-
3 gration and Nationality Act (8 U.S.C. 1304(d)).

4 (B) TIME LIMITATION.—Not later than 15
5 days after an alien described in subparagraph
6 (A) is apprehended, information required to be
7 provided under subparagraph (A) shall be pro-
8 vided in such form and in such manner as the
9 Secretary of Homeland Security may, by regu-
10 lation or guideline, require.

11 (C) EXCEPTION.—The reporting require-
12 ment in paragraph (A) shall not apply in the
13 case of any alien determined to be lawfully
14 present in the United States.

15 (2) INFORMATION REQUIRED.—The information
16 listed in this subsection is as follows:

17 (A) The alien's name.

18 (B) The alien's address or place of resi-
19 dence.

20 (C) A physical description of the alien.

21 (D) The date, time, and location of the en-
22 counter with the alien and reason for stopping,
23 detaining, apprehending, or arresting the alien.

24 (E) If applicable—

1 (i) the alien's driver's license number
 2 and the State of issuance of such license;

3 (ii) the type of any other identification
 4 document issued to the alien, any designa-
 5 tion number contained on the identification
 6 document, and the issuing entity for the
 7 identification document;

8 (iii) the license number and descrip-
 9 tion of any vehicle registered to, or oper-
 10 ated by, the alien; and

11 (iv) a photo of the alien and a full set
 12 of the alien's 10 rolled fingerprints, if
 13 available or readily obtainable.

14 (3) REIMBURSEMENT.—The Secretary of
 15 Homeland Security shall reimburse such law en-
 16 forcement agencies for the costs, per a schedule de-
 17 termined by the Secretary, incurred by such agencies
 18 in collecting and transmitting the information de-
 19 scribed in paragraph (2).

20 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) ILLEGAL IMMIGRATION REFORM AND IMMI-
 22 GRANT RESPONSIBILITY ACT OF 1996.—

23 (A) TECHNICAL AMENDMENT.—Section
 24 642 of the Illegal Immigration Reform and Im-

migrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended—

(i) in subsections (a), (b)(1), and (c), by striking “Immigration and Naturalization Service” each place it appears and inserting “Department of Homeland Security”; and

(ii) in the heading by striking “**IMMIGRATION AND NATURALIZATION SERVICE**” and inserting “**DEPARTMENT OF HOMELAND SECURITY**”.

(B) CONFORMING AMENDMENT.—Section 1(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–546) is amended by striking the item related to section 642 and inserting the following:

“Sec. 642. Communication between government agencies and the Department of Homeland Security.”.

(2) PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.—

(A) IN GENERAL.—Section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644) is amended—

(i) by striking “Immigration and Naturalization Service” and inserting “Department of Homeland Security”; and

(ii) in the heading by striking “**IMMIGRATION AND NATURALIZATION SERVICE**” and inserting “**DEPARTMENT OF HOMELAND SECURITY**”.

(B) CONFORMING AMENDMENT.—Section 2 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1642) is amended by striking the item related to section 434 and inserting the following:

“Sec. 434. Communication between State and local government agencies and the Department of Homeland Security.”.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out the requirements of this section.

SEC. 213. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(a) PROVISION OF INFORMATION TO THE NATIONAL CRIME INFORMATION CENTER.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall provide to the head of the National Crime Information Center of

1 the Department of Justice the information that the
2 Secretary of Homeland Security has or maintains re-
3 lated to any alien—

4 (A) against whom a final order of removal
5 has been issued;

6 (B) who enters into a voluntary departure
7 agreement, or is granted voluntary departure by
8 an immigration judge, whose period for depar-
9 ture has expired under subsection (a)(2) or
10 (b)(2) of section 240B of the Immigration and
11 Nationality Act (8 U.S.C. 1229c) or who has
12 violated a condition of a voluntary departure
13 agreement under such section 240B;

14 (C) detained by a Federal, State, or local
15 law enforcement agency whom a Federal immi-
16 gration officer has confirmed to be unlawfully
17 present in the United States but, in the exercise
18 of discretion, has been released from detention
19 without transfer into the custody of a Federal
20 immigration officer;

21 (D) who has remained in the United States
22 beyond the alien's authorized period of stay;
23 and

24 (E) whose visa has been revoked.

1 (2) REMOVAL OF INFORMATION.—The head of
 2 the National Crime Information Center should
 3 promptly remove any information provided by the
 4 Secretary of Homeland Security under paragraph
 5 (1) related to an alien who is granted lawful author-
 6 ity to enter or remain legally in the United States.

7 (b) INCLUSION OF INFORMATION IN THE NATIONAL
 8 CRIME INFORMATION CENTER DATABASE.—Section
 9 534(a) of title 28, United States Code, is amended—

10 (1) in paragraph (3), by striking “and” at the
 11 end;

12 (2) by redesignating paragraph (4) as para-
 13 graph (5); and

14 (3) by inserting after paragraph (3) the fol-
 15 lowing new paragraph:

16 “(4) acquire, collect, classify, and preserve
 17 records of violations of the immigration laws of the
 18 United States, regardless of whether the alien has
 19 received notice of the violation or the alien has al-
 20 ready been removed; and”.

21 **SEC. 214. DETERMINATION OF IMMIGRATION STATUS OF**
 22 **INDIVIDUALS CHARGED WITH FEDERAL OF-**
 23 **FENSES.**

24 (a) RESPONSIBILITY OF UNITED STATES ATTOR-
 25 NEYS.—Beginning 2 years after the date of the enactment

1 of this Act, the office of the United States attorney that
2 is prosecuting a criminal case in a Federal court—

3 (1) shall determine, not later than 30 days
4 after filing the initial pleadings in the case, whether
5 each defendant in the case is lawfully present in the
6 United States (subject to subsequent legal pro-
7 ceedings to determine otherwise);

8 (2)(A) if the defendant is determined to be an
9 alien lawfully present in the United States, shall no-
10 tify the court in writing of the determination and
11 the current status of the alien under the Immigra-
12 tion and Nationality Act (8 U.S.C. 1101 et seq.);
13 and

14 (B) if the defendant is determined not to be
15 lawfully present in the United States, shall notify
16 the court in writing of the determination, the de-
17 fendant's alien status, and, to the extent possible,
18 the country of origin or legal residence of the de-
19 fendant; and

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

24 (b) GUIDELINES.—A determination made under sub-
25 section (a)(1) shall be made in accordance with guidelines

1 of the Executive Office for Immigration Review of the De-
2 partment of Justice.

3 (c) RESPONSIBILITIES OF FEDERAL COURTS.—

4 (1) MODIFICATIONS OF RECORDS AND CASE
5 MANAGERMENTS SYSTEMS.—Not later than 2 years
6 after the date of the enactment of this Act, all Fed-
7 eral courts that hear criminal cases, or appeals of
8 criminal cases, shall modify their criminal records
9 and case management systems, in accordance with
10 guidelines which the Director of the Administrative
11 Office of the United States Courts shall establish, so
12 as to enable accurate reporting of information de-
13 scribed in subsection (a)(2).

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

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

23 (1) statistical information on criminal trials of
24 aliens in the courts and criminal convictions of
25 aliens in the lower courts and upheld on appeal, in-

1 including the type of crime in each case and including
 2 information on the legal status of the aliens; and

3 (2) recommendations on whether additional
 4 court resources are needed to accommodate the vol-
 5 ume of criminal cases brought against aliens in the
 6 Federal courts.

7 (e) AUTHORIZATION OF APPROPRIATIONS.—There
 8 are authorized to be appropriated for each of fiscal years
 9 2007 through 2012, such sums as may be necessary to
 10 carry out this Act. Funds appropriated pursuant to this
 11 subsection in any fiscal year shall remain available until
 12 expended.

13 **Subtitle C—Detention of Aliens and** 14 **Reimbursement of Costs**

15 **SEC. 221. INCREASE OF FEDERAL DETENTION SPACE AND** 16 **THE UTILIZATION OF FACILITIES IDENTIFIED** 17 **FOR CLOSURES AS A RESULT OF THE DE-** 18 **FENSE BASE CLOSURE REALIGNMENT ACT** 19 **OF 1990.**

20 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
 21 FACILITIES.—

22 (1) IN GENERAL.—The Secretary of Homeland
 23 Security shall construct or acquire, in addition to ex-
 24 isting facilities for the detention of aliens, 20 deten-
 25 tion facilities in the United States that have the ca-

1 capacity to detain a combined total of not less than
2 10,000 individuals at any time for aliens detained
3 pending removal or a decision on removal of such
4 aliens from the United States.

5 (2) DETERMINATION OF LOCATION.—The loca-
6 tion of any detention facility built or acquired in ac-
7 cordance with this subsection shall be determined
8 with the concurrence of the Secretary by the senior
9 officer responsible for Detention and Removal Oper-
10 ations in the Department of Homeland Security.
11 The detention facilities shall be located so as to en-
12 able the Department to increase to the maximum ex-
13 tent practicable the annual rate and level of remov-
14 als of illegal aliens from the United States.

15 (3) USE OF INSTALLATIONS UNDER BASE CLO-
16 SURE LAWS.—In acquiring detention facilities under
17 this subsection, the Secretary of Homeland Security
18 shall consider the transfer of appropriate portions of
19 military installations approved for closure or realign-
20 ment under the Defense Base Closure and Realign-
21 ment Act of 1990 (10 U.S.C. 2687 note) for use in
22 accordance with paragraph (1).

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
24 Section 241(g)(1) of the Immigration and Nationality Act

1 (8 U.S.C. 1231(g)(1)) is amended by striking “may ex-
 2 pend” and inserting “shall expend”.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 4 are authorized to be appropriated such sums as may be
 5 necessary to carry out this section.

6 **SEC. 222. FEDERAL CUSTODY OF ILLEGAL ALIENS APPRE-**
 7 **HENDED BY STATE OR LOCAL LAW ENFORCE-**
 8 **MENT.**

9 (a) IN GENERAL.—Title II of the Immigration and
 10 Nationality Act (8 U.S.C. 1151 et seq.) is amended by
 11 adding after section 240C the following new section:

12 **“SEC. 240D. TRANSFER OF ILLEGAL ALIENS FROM STATE**
 13 **TO FEDERAL CUSTODY.**

14 “(a) IN GENERAL.—If the head of a law enforcement
 15 entity of a State (or, if appropriate, a political subdivision
 16 of the State) exercising authority with respect to the ap-
 17 prehension or arrest of an illegal alien submits a request
 18 to the Secretary of Homeland Security that the alien be
 19 taken into Federal custody, the Secretary of Homeland
 20 Security—

21 “(1) shall—

22 “(A) deem the request to include the in-
 23 quiry to verify immigration status described in
 24 section 642(c) of the Illegal Immigration Re-
 25 form and Immigrant Responsibility Act of 1996

1 (8 U.S.C. 1373(c)), and expeditiously inform
2 the requesting entity whether such individual is
3 an illegal alien; and

4 “(B) if the individual is an illegal alien, ei-
5 ther—

6 “(i) not later than 72 hours after the
7 conclusion of the State charging process or
8 dismissal process, or if no State charging
9 or dismissal process is required, not later
10 than 72 hours after the illegal alien is ap-
11 prehended, take the illegal alien into the
12 custody of the Federal Government and in-
13 carcerate the alien; or

14 “(ii) request that the relevant State or
15 local law enforcement agency temporarily
16 detain or transport the illegal alien to a lo-
17 cation for transfer to Federal custody; and

18 “(2) shall designate at least 1 Federal, State,
19 or local prison or jail or a private contracted prison
20 or detention facility within each State as the central
21 facility for that State to transfer custody of criminal
22 or illegal aliens to the Department of Homeland Se-
23 curity.

24 “(b) REIMBURSEMENT.—

1 “(1) IN GENERAL.—The Secretary of Homeland
 2 Security shall reimburse a State or a political sub-
 3 division of a State for expenses, as verified by the
 4 Secretary of Homeland Security, incurred by the
 5 State or political subdivision in the detention and
 6 transportation of a criminal or illegal alien as de-
 7 scribed in subparagraphs (A) and (B) of subsection
 8 (a)(1).

9 “(2) COST COMPUTATION.—Compensation pro-
 10 vided for costs incurred under subparagraphs (A)
 11 and (B) of subsection (a)(1) shall be—

12 “(A) the product of—

13 “(i) the average daily cost of incarcer-
 14 ation of a prisoner in the relevant State, as
 15 determined by the chief executive officer of
 16 a State (or, as appropriate, a political sub-
 17 division of the State); multiplied by

18 “(ii) the number of days that the alien
 19 was in the custody of the State or political
 20 subdivision; plus

21 “(B) the cost of transporting the criminal
 22 or illegal alien from the point of apprehension
 23 or arrest to the location of detention, and if the
 24 location of detention and of custody transfer
 25 are different, to the custody transfer point; plus

1 “(C) the cost of uncompensated emergency
2 medical care provided to a detained illegal alien
3 during the period between the time of trans-
4 mittal of the request described in subsection (a)
5 and the time of transfer into Federal custody.

6 “(c) REQUIREMENT FOR APPROPRIATE SECURITY.—
7 The Secretary of Homeland Security shall ensure that ille-
8 gal aliens incarcerated in a Federal facility pursuant to
9 this subsection are held in facilities which provide an ap-
10 propriate level of security, and that, where practicable,
11 aliens detained solely for civil violations of Federal immi-
12 gration law are separated within a facility or facilities.

13 “(d) REQUIREMENT FOR SCHEDULE.—In carrying
14 out this section, the Secretary of Homeland Security shall
15 establish a regular circuit and schedule for the prompt
16 transportation of apprehended illegal aliens from the cus-
17 tody of those States and political subdivisions of States
18 which routinely submit requests described in subsection
19 (a) into Federal custody.

20 “(e) AUTHORITY FOR CONTRACTS.—

21 “(1) IN GENERAL.—The Secretary of Homeland
22 Security may enter into contracts or cooperative
23 agreements with appropriate State and local law en-
24 forcement and detention agencies to implement this
25 section.

1 “(2) DETERMINATION BY SECRETARY.—Prior
 2 to entering into a contract or cooperative agreement
 3 with a State or political subdivision of a State under
 4 paragraph (1), the Secretary shall determine wheth-
 5 er the State, or where appropriate, the political sub-
 6 division in which the agencies are located has in
 7 place any formal or informal policy that violates sec-
 8 tion 642 of the Illegal Immigration Reform and Im-
 9 migrant Responsibility Act of 1996 (8 U.S.C. 1373).
 10 The Secretary shall not allocate any of the funds
 11 made available under this section to any State or po-
 12 litical subdivision that has in place a policy that vio-
 13 lates such section.

14 “(f) ILLEGAL ALIEN DEFINED.—In this section, the
 15 term ‘illegal alien’ means an alien who—

16 “(1) entered the United States without inspec-
 17 tion or at any time or place other than that des-
 18 ignated by the Secretary of Homeland Security;

19 “(2) was admitted as a nonimmigrant and who,
 20 at the time the alien was taken into custody by the
 21 State or a political subdivision of the State, had
 22 failed to—

23 “(A) maintain the nonimmigrant status in
 24 which the alien was admitted or to which it was
 25 changed under section 248; or

1 “(B) comply with the conditions of any
2 such status;

3 “(3) was admitted as an immigrant and has
4 subsequently failed to comply with the requirements
5 of that status; or

6 “(4) failed to depart the United States under a
7 voluntary departure agreement or under a final
8 order of removal.”.

9 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
10 DETENTION AND TRANSPORTATION TO FEDERAL CUS-
11 TODY OF ALIENS NOT LAWFULLY PRESENT.—There are
12 authorized to be appropriated \$850,000,000 for fiscal year
13 2007 and each subsequent fiscal year for the detention
14 and removal of aliens not lawfully present in the United
15 States under the Immigration and Nationality Act (8
16 U.S.C. 1101 et seq.).

17 **SEC. 223. INSTITUTIONAL REMOVAL PROGRAM.**

18 (a) INSTITUTIONAL REMOVAL PROGRAM.—

19 (1) CONTINUATION.—The Secretary of Home-
20 land Security shall continue to operate the Institu-
21 tional Removal Program or develop and implement
22 any other program to—

23 (A) identify removable criminal aliens in
24 Federal and State correctional facilities;

1 (B) ensure that such aliens are not re-
 2 leased into the community; and

3 (C) remove such aliens from the United
 4 States after the completion of their sentences.

5 (2) EXPANSION.—The Secretary of Homeland
 6 Security shall extend the institutional removal pro-
 7 gram to all States. Each State should—

8 (A) cooperate with officials of the Federal
 9 Institutional Removal Program;

10 (B) expeditiously and systematically iden-
 11 tify criminal aliens in its prison and jail popu-
 12 lations; and

13 (C) promptly convey the information col-
 14 lected under subparagraph (B) to officials of
 15 the Institutional Removal Program.

16 (b) IMPLEMENTATION OF COOPERATIVE INSTITU-
 17 TIONAL REMOVAL PROGRAMS.—Section 642 of the Illegal
 18 Immigration Reform and Immigrant Responsibility Act of
 19 1996 (8 U.S.C. 1373), is amended by adding at the end
 20 the following:

21 “(d) AUTHORIZATION FOR DETENTION AFTER COM-
 22 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
 23 enforcement officers of a State or political subdivision of
 24 a State are authorized to—

1 “(1) hold an illegal alien for a period of up to
2 14 days after the alien has completed the alien’s
3 State prison sentence in order to effectuate the
4 transfer of the alien to Federal custody when the
5 alien is removable or not lawfully present in the
6 United States; or

7 “(2) issue a detainer that would allow aliens
8 who have served a State prison sentence to be de-
9 tained by the State prison until personnel from the
10 Bureau of Immigration and Customs Enforcement
11 can take the alien into custody.

12 “(e) TECHNOLOGY USAGE.—Technology such as
13 videoconferencing shall be used to the maximum extent
14 practicable in order to make the Institutional Removal
15 Program available in remote locations. Mobile access to
16 Federal databases of aliens, such as the automated bio-
17 metric fingerprint identification system (IDENT) of the
18 Department of Homeland Security, and live scan tech-
19 nology shall be used to the maximum extent practicable
20 in order to make these resources available to State and
21 local law enforcement agencies in remote locations.

22 “(f) REPORT TO CONGRESS.—Not later than 1 year
23 after the date of the enactment of the Border Security
24 and Interior Enforcement Improvement Act of 2006, the
25 Secretary of Homeland Security shall submit to Congress

1 a report on the participation of States in the Institutional
 2 Removal Program and in any other program carried out
 3 under subsection (a).

4 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
 5 are authorized to be appropriated to carry out the Institu-
 6 tional Removal Program—

7 “(1) \$30,000,000 for fiscal year 2007;

8 “(2) \$40,000,000 for fiscal year 2008;

9 “(3) \$50,000,000 for fiscal year 2009;

10 “(4) \$60,000,000 for fiscal year 2010; and

11 “(5) \$70,000,000 for fiscal year 2011 and each
 12 fiscal year thereafter.”.

13 **Subtitle D—State, Local, and Tribal** 14 **Enforcement of Immigration Laws**

15 **SEC. 231. CONGRESSIONAL AFFIRMATION OF IMMIGRATION** 16 **LAW ENFORCEMENT AUTHORITY BY STATES** 17 **AND POLITICAL SUBDIVISIONS OF STATES.**

18 Notwithstanding any other provision of law and re-
 19 affirming the existing inherent authority of States, law en-
 20 forcement personnel of a State or a political subdivision
 21 of a State have the inherent authority of a sovereign entity
 22 to investigate, identify, apprehend, arrest, detain, or
 23 transfer to Federal custody aliens in the United States
 24 (including the transportation of such aliens across State
 25 lines to detention centers), for the purpose of assisting in

1 the enforcement of the immigration laws of the United
 2 States in the normal course of carrying out the law en-
 3 forcement duties of such personnel. This State authority
 4 has never been displaced or preempted by a Federal law.

5 **SEC. 232. IMMIGRATION LAW ENFORCEMENT TRAINING OF**
 6 **STATE AND LOCAL LAW ENFORCEMENT PER-**
 7 **SONNEL.**

8 (a) TRAINING MANUAL AND POCKET GUIDE.—

9 (1) ESTABLISHMENT.—Not later than 180 days
 10 after the date of the enactment of this Act, the Sec-
 11 retary of Homeland Security shall establish—

12 (A) a training manual for law enforcement
 13 personnel of a State or political subdivision of
 14 a State to train such personnel in the investiga-
 15 tion, identification, apprehension, arrest, deten-
 16 tion, and transfer to Federal custody of aliens
 17 in the United States (including the transpor-
 18 tation of such aliens across State lines to deten-
 19 tion centers and the identification of fraudulent
 20 documents); and

21 (B) an immigration enforcement pocket
 22 guide for law enforcement personnel of a State
 23 or political subdivision of a State to provide a
 24 quick reference for such personnel in the course
 25 of duty.

1 (2) AVAILABILITY.—The training manual and
2 pocket guide established in accordance with para-
3 graph (1) shall be made available to all State and
4 local law enforcement personnel.

5 (3) APPLICABILITY.—Nothing in this sub-
6 section shall be construed to require State or local
7 law enforcement personnel to carry the training
8 manual or pocket guide established in accordance
9 with paragraph (1) with them while on duty.

10 (4) COSTS.—The Secretary of Homeland Secu-
11 rity shall be responsible for any and all costs in-
12 curred in establishing the training manual and pock-
13 et guide under this subsection.

14 (b) TRAINING FLEXIBILITY.—

15 (1) IN GENERAL.—The Secretary of Homeland
16 Security shall make training of State and local law
17 enforcement officers available through as many
18 means as possible, including residential training at
19 the Center for Domestic Preparedness of the De-
20 partment of Homeland Security, on-site training
21 held at State or local police agencies or facilities, on-
22 line training courses by computer, teleconferencing,
23 and videotape, or the digital video display (DVD) of
24 a training course or courses.

1 (2) ONLINE TRAINING.—The head of the Dis-
2 tributed Learning Program of the Federal Law En-
3 forcement Training Center shall make training avail-
4 able for State and local law enforcement personnel
5 via the Internet through a secure, encrypted distrib-
6 uted learning system that has all its servers based
7 in the United States.

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

12 (c) COOPERATIVE ENFORCEMENT PROGRAMS.—Not
13 later than 2 years after the date of the enactment of this
14 Act, the Secretary shall negotiate and execute, where prac-
15 ticable, a cooperative enforcement agreement described in
16 section 287(g) of the Immigration and Nationality Act (8
17 U.S.C. 1357(g)) with at least 1 law enforcement agency
18 in each State, to train law enforcement officers in the de-
19 tection and apprehension of individuals engaged in trans-
20 porting, harboring, sheltering, or encouraging aliens in
21 violation of section 274 of such Act (8 U.S.C. 1324).

22 (d) DURATION OF TRAINING.—Section 287(g)(2) of
23 the Immigration and Nationalization Act (8 U.S.C.
24 1357(g)(2)) is amended by adding at the end “Such train-

1 ing may not exceed 14 days or 80 hours of classroom
2 training.”.

3 (e) CLARIFICATION.—Nothing in this Act or any
4 other provision of law shall be construed as making any
5 immigration-related training a requirement for, or pre-
6 requisite to, any State or local law enforcement officer ex-
7 ercising the inherent authority of the officer to investigate,
8 identify, apprehend, arrest, detain, or transfer to Federal
9 custody illegal aliens during the normal course of carrying
10 out the law enforcement duties of the officer.

11 (f) TECHNICAL AMENDMENTS.—Section 287(g) of
12 the Immigration and Nationality Act (8 U.S.C. 1357(g))
13 is amended by striking “Attorney General” each place it
14 appears and inserting “Secretary of Homeland Security”.

15 **SEC. 233. IMMUNITY.**

16 (a) PERSONAL IMMUNITY.—Notwithstanding any
17 other provision of law, a law enforcement officer of a
18 State, or of a political subdivision of a State, shall be im-
19 mune, to the same extent as a Federal law enforcement
20 officer, from personal liability arising out of the enforce-
21 ment of any immigration law. The immunity provided by
22 this subsection shall only apply to an officer of a State,
23 or of a political subdivision of a State, who is acting within
24 the scope of such officer’s official duties.

1 (b) AGENCY IMMUNITY.—Notwithstanding any other
 2 provision of law, a law enforcement agency of a State, or
 3 of a political subdivision of a State, shall be immune from
 4 any claim for money damages based on Federal, State,
 5 or local civil rights law for an incident arising out of the
 6 enforcement of any immigration law, except to the extent
 7 that the law enforcement officer of such agency, whose ac-
 8 tion the claim involves, committed a violation of Federal,
 9 State, or local criminal law in the course of enforcing such
 10 immigration law.

11 **TITLE III—VISA REFORM AND** 12 **ALIEN STATUS**

13 **Subtitle A—Limitations on Visa** 14 **Issuance and Validity**

15 **SEC. 301. CURTAILMENT OF VISAS FOR ALIENS FROM** 16 **COUNTRIES DENYING OR DELAYING REPA-** 17 **TRIATION OF NATIONALS.**

18 (a) IN GENERAL.—Section 243 of the Immigration
 19 and Nationality Act (8 U.S.C. 1253) is amended by add-
 20 ing at the end the following new subsection:

21 “(e) PUBLIC LISTING OF ALIENS WITH NO SIGNIFI-
 22 CANT LIKELIHOOD OF REMOVAL.—

23 “(1) IN GENERAL.—The Secretary of Homeland
 24 Security shall establish and maintain a public listing
 25 of every alien who is subject to a final order of re-

1 removal and with respect to whom the Secretary or
 2 any Federal court has determined that there is no
 3 significant likelihood of removal in the reasonably
 4 foreseeable future due to the refusal, or unreason-
 5 able delay, of all countries designated by the alien
 6 under this section to receive the alien. The public
 7 listing shall indicate whether such alien has been re-
 8 leased from Federal custody, and the city and State
 9 in which such alien resides.

10 “(2) DISCONTINUATION OF VISAS.—If 25 or
 11 more of the citizens, subjects, or nationals of any
 12 foreign state remain on the public listing described
 13 in paragraph (1) throughout any month—

14 “(A) such foreign state shall be deemed to
 15 have denied or unreasonably delayed the accept-
 16 ance of such aliens;

17 “(B) the Secretary of Homeland Security
 18 shall make the notification to the Secretary of
 19 State prescribed in subsection (d) of this sec-
 20 tion; and

21 “(C) the Secretary of State shall dis-
 22 continue the issuance of nonimmigrant visas to
 23 citizens, subjects, or nationals of such foreign
 24 state until such time as the number of aliens on
 25 the public listing from such foreign state has—

1 “(i) declined to fewer than 6; or
 2 “(ii) remained below 25 for at least
 3 30 days.”.

4 (b) TECHNICAL AMENDMENT.—Section 243 of the
 5 Immigration and Nationality Act (8 U.S.C. 1253) is
 6 amended—

7 (1) in subsection (a)(1)(D), by inserting “or the
 8 Secretary of Homeland Security” after “Attorney
 9 General”;

10 (2) in subsection (c)—

11 (A) by striking “Attorney General” each
 12 place it appears and inserting “Secretary of
 13 Homeland Security”; and

14 (B) by striking “Commissioner” and in-
 15 serting “Secretary”; and

16 (3) in subsection (d)—

17 (A) by striking “Attorney General” each
 18 place it appears and inserting “Secretary of
 19 Homeland Security”; and

20 (B) by inserting “of State” after “notifies
 21 the Secretary”.

22 **SEC. 302. JUDICIAL REVIEW OF VISA REVOCATION.**

23 Section 221(i) of the Immigration and Nationality
 24 Act (8 U.S.C. 1201(i)) is amended by striking “, except
 25 in the context of a removal proceeding if such revocation

1 provides the sole ground for removal under section
2 237(a)(1)(B)’’.

3 **SEC. 303. ELIMINATION OF DIVERSITY IMMIGRANT PRO-**
4 **GRAM.**

5 (a) WORLDWIDE LEVEL OF DIVERSITY IMMI-
6 GRANTS.—Section 201 of the Immigration and Nation-
7 ality Act (8 U.S.C. 1151) is amended—

8 (1) in subsection (a)—

9 (A) by inserting “and” at the end of para-
10 graph (1);

11 (B) by striking “; and” at the end of para-
12 graph (2) and inserting a period; and

13 (C) by striking paragraph (3); and

14 (2) by striking subsection (e).

15 (b) ALLOCATION OF DIVERSITY IMMIGRANT VISAS.—
16 Section 203 of such Act (8 U.S.C. 1153) is amended—

17 (1) by striking subsection (c);

18 (2) in subsection (d), by striking “(a), (b), or
19 (c),” and inserting “(a) or (b),”;

20 (3) in subsection (e), by striking paragraph (2)
21 and redesignating paragraph (3) as paragraph (2);

22 (4) in subsection (f), by striking “(a), (b), or
23 (c)” and inserting “(a) or (b)”;

24 (5) in subsection (g), by striking “(a), (b), and
25 (c)” and inserting “(a) and (b)”.

1 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
 2 TUS.—Section 204 of such Act (8 U.S.C. 1154) is amend-
 3 ed—

4 (1) by striking subsection (a)(1)(I); and

5 (2) in subsection (e), by striking “(a), (b), or
 6 (c)” and inserting “(a) or (b)”.

7 (d) EFFECTIVE DATE.—The amendments made by
 8 this section shall take effect on October 1, 2006.

9 **SEC. 304. COMPLETION OF BACKGROUND AND SECURITY**
 10 **CHECKS.**

11 Section 103 of the Immigration and Nationality Act
 12 (8 U.S.C. 1103) is amended by adding at the end the fol-
 13 lowing new subsection:

14 “(i) Notwithstanding any other provision of law, the
 15 Secretary of Homeland Security, the Attorney General, or
 16 any court shall not—

17 “(1) grant or order the grant of adjustment of
 18 status to that of an alien lawfully admitted for per-
 19 manent residence;

20 “(2) grant or order the grant of any other sta-
 21 tus, relief, protection from removal, or other benefit
 22 under the immigration laws; or

23 “(3) issue any documentation evidencing or re-
 24 lated to such grant by the Attorney General, the
 25 Secretary, or any court,

1 until such background and security checks as the Sec-
 2 retary may in his discretion require have been completed
 3 to the satisfaction of the Secretary.”.

4 **SEC. 305. NATURALIZATION AND GOOD MORAL CHAR-**
 5 **ACTER.**

6 (a) NATURALIZATION REFORM.—

7 (1) BARRING TERRORISTS FROM NATURALIZA-
 8 TION.—Section 316 of the Immigration and Nation-
 9 ality Act (8 U.S.C. 1427) is amended by adding at
 10 the end the following new subsection:

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

22 (2) CONCURRENT NATURALIZATION AND RE-
 23 MOVAL PROCEEDINGS.—The last sentence of section
 24 318 of such Act (8 U.S.C. 1429) is amended—

(A) by striking “shall be considered by the Attorney General” and inserting “shall be considered by the Secretary of Homeland Security or any court”;

(B) by striking “pursuant to a warrant of arrest issued under the provisions of this or any other Act:” and inserting “or other proceeding to determine the applicants inadmissibility or deportability, or to determine whether the applicants lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced:”; and

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

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

1 (4) CONDITIONAL PERMANENT RESIDENTS.—

2 Section 216(e) of such Act (8 U.S.C. 1186a(e)) and
3 section 216A(e) of such Act (8 U.S.C. 1186b(e)) are
4 each amended by inserting before the period at the
5 end of each such section “, if the alien has had the
6 conditional basis removed under this section”.

7 (5) DISTRICT COURT JURISDICTION.—Section
8 336(b) of such Act (8 U.S.C. 1447(b)) is amended
9 to read as follows:

10 “(b) If there is a failure to render a final administra-
11 tive decision under section 335 before the end of the 180-
12 day period after the date on which the Secretary of Home-
13 land Security completes all examinations and interviews
14 conducted under such section (as such terms are defined
15 in regulations issued by the Secretary), the applicant may
16 apply to the district court for the district in which the
17 applicant resides for a hearing on the matter. Such court
18 shall only have jurisdiction to review the basis for delay
19 and remand the matter to the Secretary for the Sec-
20 retary’s determination on the application.”.

21 (6) CONFORMING AMENDMENTS.—Section
22 310(c) of such Act (8 U.S.C. 1421(c)) is amended—

23 (A) by inserting “, not later than 120 days
24 after the date of the Secretary’s final deter-
25 mination” before “seek”; and

1 (B) by striking the second sentence and in-
2 serting “The burden shall be upon the peti-
3 tioner to show that the Secretary’s denial of the
4 application was not supported by facially legiti-
5 mate and bona fide reasons. Except in a pro-
6 ceeding under section 340, notwithstanding any
7 other provision of law, including section 2241 of
8 title 28, United States Code, or any other ha-
9 beas corpus provision, and sections 1361 and
10 1651 of such title, no court shall have jurisdic-
11 tion to determine, or to review a determination
12 of the Secretary made at any time regarding,
13 for purposes of an application for naturaliza-
14 tion, whether an alien is a person of good moral
15 character, whether an alien understands and is
16 attached to the principles of the Constitution of
17 the United States, or whether an alien is well
18 disposed to the good order and happiness of the
19 United States.”.

20 (7) EFFECTIVE DATE.—The amendments made
21 by this subsection shall take effect on the date of the
22 enactment of this Act, shall apply to any act that oc-
23 curred before, on, or after such date, and shall apply
24 to any application for naturalization or any other

1 case or matter under the immigration laws pending
2 on, or filed on or after, such date.

3 (b) BAR TO GOOD MORAL CHARACTER.—

4 (1) IN GENERAL.—Section 101(f) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1101(f)) is
6 amended—

7 (A) by inserting after paragraph (1) the
8 following new paragraph:

9 “(2) one who the Secretary of Homeland Secu-
10 rity or the Attorney General determines, in the
11 unreviewable discretion of the Secretary or the At-
12 torney General, to have been at any time an alien
13 described in section 212(a)(3) or section 237(a)(4),
14 which determination may be based upon any rel-
15 evant information or evidence, including classified,
16 sensitive, or national security information, and which
17 shall be binding upon any court regardless of the ap-
18 plicable standard of review;”;

19 (B) in paragraph (8), by inserting “, re-
20 gardless whether the crime was classified as an
21 aggravated felony at the time of conviction”
22 after “(as defined in subsection (a)(43))”; and

23 (C) by striking the first sentence in the
24 undesignated paragraph following paragraph
25 (9) and inserting “The fact that any person is

1 not within any of the foregoing classes shall not
2 preclude a discretionary finding for other rea-
3 sons that such a person is or was not of good
4 moral character. The Secretary and the Attor-
5 ney General shall not be limited to the appli-
6 cant's conduct during the period for which good
7 moral character is required, but may take into
8 consideration as a basis for determination the
9 applicant's conduct and acts at any time.”.

10 (2) AGGRAVATED FELONY EFFECTIVE DATE.—

11 Section 509(b) of the Immigration Act of 1990
12 (Public Law 101–649), as amended by section
13 306(a)(7) of the Miscellaneous and Technical Immi-
14 gration and Naturalization Amendments of 1991
15 (Public Law 102–232)), is amended to read as fol-
16 lows:

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

21 (3) TECHNICAL CORRECTION TO THE INTEL-

22 LIGENCE REFORM ACT.—Section 5504(2) of the In-
23 telligence Reform and Terrorism Prevention Act of
24 2004 (Public Law 108–458; 118 Stat. 3741) is
25 amended by striking “adding at the end” and insert-

ing “inserting after paragraph (8) and before the undesignated paragraph at the end”.

(4) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by paragraphs (1) and (2) shall take effect on the date of the enactment of this Act, shall apply to any act that occurred before, on, or after such date, and shall apply to any application for naturalization or any other benefit or relief or any other case or matter under the immigration laws pending on, or filed on or after, such date; or

(B) INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.—The amendments made by paragraph (3) shall take effect as if included in the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3638).

SEC. 306. DENIAL OF BENEFITS TO TERRORISTS AND CRIMINALS.

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

1 **“SEC. 219A. PROHIBITION ON PROVIDING IMMIGRATION**
 2 **BENEFITS TO CERTAIN ALIENS.**

3 “Nothing in this Act or any other provision of law
 4 shall permit the Secretary of Homeland Security, the At-
 5 torney General, the Secretary of State, the Secretary of
 6 Labor, or any other authorized head of any agency to
 7 grant any application, approve any petition, or grant or
 8 continue any status or benefit under the immigration laws
 9 by, to, or on behalf of—

10 “(1) any alien described in subparagraphs
 11 (A)(i), (A)(iii), (B), or (F) of sections 212(a)(3) or
 12 subparagraphs (A)(i), (A)(iii), or (B) of section
 13 237(a)(4);

14 “(2) any alien with respect to whom a criminal
 15 or other investigation or case is pending that is ma-
 16 terial to the alien’s inadmissibility, deportability, or
 17 eligibility for the status or benefit sought; or

18 “(3) any alien for whom all law enforcement
 19 checks, as deemed appropriate by such authorized
 20 official, have not been conducted and resolved.”.

21 (b) INADMISSIBILITY ON SECURITY AND RELATED
 22 GROUNDS.—Section 212(a)(3)(B)(ii)(I) of the Immigra-
 23 tion and Nationality Act (8 U.S.C. 1182(a)(3)(B)(ii)(I))
 24 is amended by inserting “is able to demonstrate, by clear
 25 and convincing evidence, that such spouse or child” after
 26 “who”.

1 **SEC. 307. REPEAL OF ADJUSTMENT OF STATUS OF CERTAIN**
 2 **ALIENS PHYSICALLY PRESENT IN UNITED**
 3 **STATES UNDER SECTION 245(i).**

4 Section 245(i) of the Immigration and Nationality
 5 Act (8 U.S.C. 1255(i)) is repealed.

6 **SEC. 308. GROUNDS OF INADMISSIBILITY AND REMOV-**
 7 **ABILITY FOR PERSECUTORS.**

8 (a) GENERAL CLASSES OF ALIENS INELIGIBLE TO
 9 RECEIVE VISAS AND INELIGIBLE FOR ADMISSION.—

10 (1) PERSECUTION.—Section 212(a)(3)(E) of
 11 the Immigration and Nationality Act (8 U.S.C.
 12 1182(a)(3)(E)) is amended—

13 (A) in the header, by striking “NAZI”; and
 14 (B) by inserting after clause (iii) the fol-
 15 lowing new clause:

16 “(iv) PARTICIPATION IN OTHER PER-
 17 SECUTION.—Any alien who ordered, in-
 18 cited, assisted, or otherwise participated in
 19 the persecution of any person on account
 20 of race, religion, nationality, membership
 21 in a particular social group, or political
 22 opinion is inadmissible.”.

23 (2) RECOMMENDATIONS BY CONSULAR OFFI-
 24 CERS.—Section 212(d)(3)(A) of the Immigration
 25 and Nationality Act (8 U.S.C. 1182(d)(3)(A)) by
 26 striking “and clauses (i) and (ii) of paragraph

1 (3)(E)” both places it appears and inserting “or
2 3(E)”.

3 (b) GENERAL CLASSES OF DEPORTABLE ALIENS.—
4 Section 237(a)(4)(D) of the Immigration and Nationality
5 Act (8 U.S.C. 1227(a)(4)(D)) is amended—

6 (1) in the header, by striking “NAZI”; and

7 (2) by striking “or (iii)” and inserting “(iii), or
8 (iv)”.

9 (c) BAR TO GOOD MORAL CHARACTER.—Section
10 101(f) of the Immigration and Nationality Act (8 U.S.C.
11 1101(f)) is amended—

12 (1) in paragraph (8), by striking “or”;

13 (2) in paragraph (9), as added by section
14 5504(2) of the Intelligence Reform and Terrorism
15 Prevention Act of 2004 (Public Law 108–458; 118
16 Stat. 3741), as amended by section 305(b)(3) of this
17 Act, by striking the period at the end and inserting
18 a semicolon and “or”; and

19 (3) inserting after paragraph (9), as added by
20 section 5504(2) of the Intelligence Reform and Ter-
21 rorism Prevention Act of 2004 (Public Law 108–
22 458; 118 Stat. 3741), as amended by section
23 305(b)(3) of this Act, and before the undesignated
24 paragraph at the end the following new paragraph:

1 “(10) one who at any time has ordered, incited,
 2 assisted, or otherwise participated in the persecution
 3 of any person on account of race, religion, nation-
 4 ality, membership in a particular social group, or po-
 5 litical opinion.”.

6 (d) VOLUNTARY DEPARTURE.—Section 240B of the
 7 Immigration and Nationality Act (8 U.S.C. 1229c) is
 8 amended—

9 (1) in subsection (a)(1), by striking “deportable
 10 under section 237(a)(2)(A)(iii) or section
 11 237(a)(4)(B)” and inserting “removable under sec-
 12 tion 237(a)(2)(A)(iii), subparagraph (B) or (D) or
 13 section 237(a)(4), or section 212(a)(3)(E).”; and

14 (2) in subsection (b)(1)(C), by striking “deport-
 15 able under section 237(a)(2)(A)(iii) or section
 16 237(a)(4)(B)” and inserting “removable under sec-
 17 tion 237(a)(2)(A)(iii), subparagraph (B) or (D) of
 18 section 237(a)(4), or section 212(a)(3)(E).”.

19 (e) AIDING OR ASSISTING CERTAIN ALIENS TO
 20 ENTER THE UNITED STATES.—Section 277 of such Act
 21 (8 U.S.C. 1327) is amended by striking “or 212(a)(3)
 22 (other than subparagraph (E) thereof)” and inserting “,
 23 section 212(a)(3)”.

1 **SEC. 309. TECHNICAL CORRECTIONS TO SEVIS REPORTING**
2 **REQUIREMENTS.**

3 (a) PROGRAM TO COLLECT INFORMATION RELATING
4 TO NONIMMIGRANT FOREIGN STUDENTS.—

5 (1) IN GENERAL.—Section 641(a)(4) of the Il-
6 legal Immigration Reform and Immigrant Responsi-
7 bility Act of 1996 (8 U.S.C. 1372(a)(4)) is amend-
8 ed—

9 (A) by striking “Not later than 30 days
10 after the deadline for registering for classes for
11 an academic term” and inserting “Not later
12 than the program start date (for new students)
13 or the next session start date (for continuing
14 students) of an academic term”; and

15 (B) by striking “shall report to the Immi-
16 gration and Naturalization Service any failure
17 of the alien to enroll or to commence participa-
18 tion.” and inserting “shall report to the Sec-
19 retary of Homeland Security any failure to en-
20 roll or to commence participation by the pro-
21 gram start date or next session start date, as
22 applicable.”.

23 (2) TECHNICAL AND CONFORMING AMEND-
24 MENTS.—

25 (A) AUTHORITY OF THE SECRETARY OF
26 HOMELAND SECURITY.—Except as provided in

subparagraph (B), section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is amended by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”.

(B) EXCEPTIONS.—Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is amended—

(i) in subsections (b), (c)(4)(A), (c)(4)(B), (e)(1), (e)(6), and (g) by inserting “Secretary of Homeland Security or the” before “Attorney General” each place that term appears;

(ii) by striking the heading of section (c)(4)(B) and inserting “SECRETARY OF HOMELAND SECURITY AND ATTORNEY GENERAL”; and

(iii) in subsection (f), by inserting “the Secretary of Homeland Security,” before “the Attorney General”.

(b) CLARIFICATION OF RELEASE OF INFORMATION.—Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C.

1 1372), as amended by subsection (a), is further amend-
2 ed—

3 (1) in subsection (c)(1)—

4 (A) in subparagraph (G), by striking
5 “and” at the end;

6 (B) in subparagraph (H), by striking the
7 period and inserting a semicolon and “and”;
8 and

9 (C) by adding at the end the following new
10 subparagraph:

11 “(I) any other information the Secretary of
12 Homeland Security determines is necessary.”;
13 and

14 (2) in subsection (c)(2), by adding at the end
15 “Approved institutions of higher education or other
16 approved educational institutions shall release infor-
17 mation regarding alien students referred to in this
18 section to the Secretary of Homeland Security as
19 part of such information collection program or upon
20 request.”.

1 **TITLE IV—WORKPLACE EN-**
2 **FORCEMENT AND IDENTI-**
3 **FICATION INTEGRITY**

4 **Subtitle A—In General**

5 **SEC. 401. SHORT TITLE.**

6 This title may be cited as the “Employment Security
7 Act of 2006”.

8 **SEC. 402. FINDINGS.**

9 Congress makes the following findings:

10 (1) The failure of Federal, State, and local gov-
11 ernments to control and sanction the unauthorized
12 employment and unlawful exploitation of illegal alien
13 workers is a primary cause of illegal immigration.

14 (2) The use of modern technology not available
15 in 1986, when the Immigration Reform and Control
16 Act of 1986 (Public Law 99–603; 100 Stat. 3359)
17 created the I–9 worker verification system, will en-
18 able employers to rapidly and accurately verify the
19 identity and work authorization of their employees
20 and independent contractors.

21 (3) The Government and people of the United
22 States share a compelling interest in protection of
23 United States employment authorization, income tax
24 withholding, and social security accounting systems,
25 against unauthorized access by illegal aliens.

1 (4) Limited data sharing between the Depart-
 2 ment of Homeland Security, the Internal Revenue
 3 Service, and the Social Security Administration is
 4 essential to the integrity of these vital programs,
 5 which protect the employment and retirement secu-
 6 rity of all working Americans.

7 (5) The Federal judiciary must be open to pri-
 8 vate United States citizens, legal foreign workers,
 9 and law-abiding enterprises that seek judicial protec-
 10 tion against injury to their wages and working con-
 11 ditions due to unlawful employment of illegal alien
 12 workers and the United States enterprises that uti-
 13 lize the labor or services provided by illegal aliens,
 14 especially where lack of resources constrains enforce-
 15 ment of Federal immigration law by Federal immi-
 16 gration officials.

17 **Subtitle B—Employment Eligibility** 18 **Verification System**

19 **SEC. 411. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-** 20 **TEM.**

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

24 “(7) EMPLOYMENT ELIGIBILITY VERIFICATION
 25 SYSTEM.—

1 “(A) IN GENERAL.—The Secretary of
2 Homeland Security shall establish and admin-
3 ister a verification system, known as the Em-
4 ployment Eligibility Verification System,
5 through which the Secretary—

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

12 “(ii) maintains records of the inquir-
13 ies that were made, of verifications pro-
14 vided (or not provided), and of the codes
15 provided to inquirers as evidence of their
16 compliance with their obligations under
17 this section.

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

1 “(C) SECONDARY VERIFICATION PROCESS
2 IN CASE OF TENTATIVE NONVERIFICATION.—In
3 cases of tentative nonverification, the Secretary
4 shall specify, in consultation with the Commis-
5 sioner of Social Security, an available secondary
6 verification process to confirm the validity of in-
7 formation provided and to provide a final
8 verification or nonverification within 10 working
9 days after the date of the tentative
10 nonverification. When final verification or
11 nonverification is provided, the verification sys-
12 tem shall provide an appropriate code indicating
13 such verification or nonverification.

14 “(D) DESIGN AND OPERATION OF SYS-
15 TEM.—The verification system shall be designed
16 and operated—

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

22 “(ii) to respond to all inquiries made
23 by such persons and entities on whether
24 individuals are authorized to be employed

1 and to register all times when such inquir-
2 ies are not received;

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

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

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

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

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

21 “(E) RESPONSIBILITIES OF THE COMMIS-
22 SIONER OF SOCIAL SECURITY.—As part of the
23 verification system, the Commissioner of Social
24 Security, in consultation with the Secretary of
25 Homeland Security (and any designee of the

1 Secretary selected to establish and administer
2 the verification system), shall establish a reli-
3 able, secure method, which, within the time pe-
4 riods specified under subparagraphs (B) and
5 (C), compares the name and social security ac-
6 count number provided in an inquiry against
7 such information maintained by the Commis-
8 sioner in order to validate (or not validate) the
9 information provided regarding an individual
10 whose identity and employment eligibility must
11 be confirmed, the correspondence of the name
12 and number, and whether the individual has
13 presented a social security account number that
14 is not valid for employment. The Commissioner
15 shall not disclose or release social security infor-
16 mation (other than such verification or
17 nonverification) except as provided for in this
18 section or section 205(c)(2)(I) of the Social Se-
19 curity Act.

20 “(F) RESPONSIBILITIES OF THE SEC-
21 RETARY OF HOMELAND SECURITY.—(i) As part
22 of the verification system, the Secretary of
23 Homeland Security (in consultation with any
24 designee of the Secretary selected to establish
25 and administer the verification system), shall

1 establish a reliable, secure method, which, with-
2 in the time periods specified under subpara-
3 graphs (B) and (C), compares the name and
4 alien identification or authorization number
5 which are provided in an inquiry against such
6 information maintained by the Secretary in
7 order to validate (or not validate) the informa-
8 tion provided, the correspondence of the name
9 and number, and whether the alien is author-
10 ized to be employed in the United States.

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

1 the verification system, the designee shall notify
2 the Secretary when a single employer has sub-
3 mitted to the verification system pursuant to
4 paragraph (3)(A) the identical social security
5 account number in more than one instance, or
6 when multiple employers have submitted to the
7 verification system pursuant to such paragraph
8 the identical social security account number, in
9 a manner which indicates the possible fraudu-
10 lent use of that number. The designee shall also
11 provide the Secretary with all pertinent infor-
12 mation, including the name and address of the
13 employer or employers who submitted the rel-
14 evant social security account number, the rel-
15 evant social security account number submitted
16 by the employer or employers, and the relevant
17 name and date of birth of the employee sub-
18 mitted by the employer or employers.

19 “(G) UPDATING INFORMATION.—The
20 Commissioner of Social Security and the Sec-
21 retary of Homeland Security shall update their
22 information in a manner that promotes max-
23 imum accuracy and shall provide a process for
24 the prompt correction of erroneous information,
25 including instances in which it is brought to

1 their attention in the secondary verification
2 process described in subparagraph (C).

3 “(H) LIMITATION ON USE OF THE
4 VERIFICATION SYSTEM AND ANY RELATED SYS-
5 TEMS.—Notwithstanding any other provision of
6 law, nothing in this subsection shall be con-
7 strued to permit or allow any department, bu-
8 reau, or other agency of the United States Gov-
9 ernment to utilize any information, database, or
10 other records assembled under this subsection
11 for any purpose other than the enforcement and
12 administration of the immigration laws, the So-
13 cial Security Act, or any provision of Federal
14 criminal law.

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

24 “(J) PROTECTION FROM LIABILITY FOR
25 ACTIONS TAKEN ON THE BASIS OF INFORMA-

1 TION.—No person or entity shall be civilly or
 2 criminally liable for any action taken in good
 3 faith reliance on information provided through
 4 the employment eligibility verification mecha-
 5 nism established under this paragraph.”.

6 (b) REPEAL OF PROVISION RELATING TO EVALUA-
 7 TIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—
 8 Section 274A(d) (8 U.S.C. 1324a(d)) is repealed.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall take effect 2 years after the date of the
 11 enactment of this Act.

12 **SEC. 412. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**
 13 **ESS.**

14 (a) IN GENERAL.—Section 274A of the Immigration
 15 and Nationality Act (8 U.S.C. 1324a) is amended—

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

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

24 “(i) FAILURE TO SEEK VERIFICATION.—

1 “(I) IN GENERAL.—If the person or
2 entity has not made an inquiry, under the
3 mechanism established under subsection
4 (b)(7), seeking verification of the identity
5 and work eligibility of the individual, by
6 not later than the end of 3 working days
7 (as specified by the Secretary of Homeland
8 Security) after the date of the hiring, the
9 date specified in subsection (b)(8)(B) for
10 previously hired individuals, or before the
11 recruiting or referring commences, the de-
12 fense under subparagraph (A) shall not be
13 considered to apply with respect to any
14 employment, except as provided in sub-
15 clause (II).

16 “(II) SPECIAL RULE FOR FAILURE OF
17 VERIFICATION MECHANISM.—If such a per-
18 son or entity in good faith attempts to
19 make an inquiry in order to qualify for the
20 defense under subparagraph (A) and the
21 verification mechanism has registered that
22 not all inquiries were responded to during
23 the relevant time, the person or entity can
24 make an inquiry until the end of the first
25 subsequent working day in which the

1 verification mechanism registers no non-
2 responses and qualify for such defense.

3 “(ii) FAILURE TO OBTAIN
4 VERIFICATION.—If the person or entity has
5 made the inquiry described in clause (i)(I) but
6 has not received an appropriate verification of
7 such identity and work eligibility under such
8 mechanism within the time period specified
9 under subsection (b)(7)(B) after the time the
10 verification inquiry was received, the defense
11 under subparagraph (A) shall not be considered
12 to apply with respect to any employment after
13 the end of such time period.”;

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

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

21 “(i) obtaining from the individual the
22 individual’s social security account number
23 and recording the number on the form (if
24 the individual claims to have been issued
25 such a number), and, if the individual does

1 not attest to United States citizenship
2 under paragraph (2), obtaining such iden-
3 tification or authorization number estab-
4 lished by the Department of Homeland Se-
5 curity for the alien as the Secretary of
6 Homeland Security may specify, and re-
7 cording such number on the form; and

8 “(ii)(I) examining a document de-
9 scribed in subparagraph (B); or

10 “(II) examining a document described
11 in subparagraph (C) and a document de-
12 scribed in subparagraph (D).

13 A person or entity has complied with the re-
14 quirement of this paragraph with respect to ex-
15 amination of a document if the document rea-
16 sonably appears on its face to be genuine, rea-
17 sonably appears to pertain to the individual
18 whose identity and work eligibility is being
19 verified, and, if the document bears an expira-
20 tion date, that expiration date has not elapsed.
21 If an individual provides a document (or com-
22 bination of documents) that reasonably appears
23 on its face to be genuine, reasonably appears to
24 pertain to the individual whose identity and
25 work eligibility is being verified, and is suffi-

1 cient to meet the first sentence of this para-
2 graph, nothing in this paragraph shall be con-
3 strued as requiring the person or entity to so-
4 licit the production of any other document or as
5 requiring the individual to produce another doc-
6 ument.”;

7 (3) in subsection (b)(1)(D)—

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

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

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

1 (5) by amending paragraph (3) of subsection
2 (b) to read as follows:

3 “(3) RETENTION OF VERIFICATION FORM AND
4 VERIFICATION.—

5 “(A) IN GENERAL.—After completion of
6 such form in accordance with paragraphs (1)
7 and (2), the person or entity shall—

8 “(i) retain a paper, microfiche, micro-
9 film, or electronic version of the form and
10 make it available for inspection by officers
11 of the Department of Homeland Security,
12 the Special Counsel for Immigration-Related
13 Unfair Employment Practices, or the
14 Department of Labor during a period be-
15 ginning on the date of the hiring, recruit-
16 ing, or referral of the individual or the
17 date of the completion of verification of a
18 previously hired individual and ending—

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

23 “(II) in the case of the hiring of
24 an individual, the later of—

1 “(aa) three years after the
2 date of such hiring; or

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

6 “(III) in the case of the
7 verification of a previously hired indi-
8 vidual, the later of—

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

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

15 “(ii) make an inquiry, as provided in
16 paragraph (7), using the verification sys-
17 tem to seek verification of the identity and
18 employment eligibility of an individual, by
19 not later than the end of 3 working days
20 (as specified by the Secretary of Homeland
21 Security) after the date of the hiring or in
22 the case of previously hired individuals, the
23 date specified in subsection (b)(8)(B), or
24 before the recruiting or referring com-
25 mences; and

1 “(iii) not commence recruitment or re-
2 ferral of the individual until the person or
3 entity receives verification under subpara-
4 graph (B)(i) or (B)(iii).

5 “(B) VERIFICATION.—

6 “(i) VERIFICATION RECEIVED.—If the
7 person or other entity receives an appro-
8 priate verification of an individual’s iden-
9 tity and work eligibility under the
10 verification system within the time period
11 specified, the person or entity shall record
12 on the form an appropriate code that is
13 provided under the system and that indi-
14 cates a final verification of such identity
15 and work eligibility of the individual.

16 “(ii) TENTATIVE NONVERIFICATION
17 RECEIVED.—If the person or other entity
18 receives a tentative nonverification of an
19 individual’s identity or work eligibility
20 under the verification system within the
21 time period specified, the person or entity
22 shall so inform the individual for whom the
23 verification is sought. If the individual does
24 not contest the nonverification within the
25 time period specified, the nonverification

1 shall be considered final. The person or en-
2 tity shall then record on the form an ap-
3 propriate code which has been provided
4 under the system to indicate a tentative
5 nonverification. If the individual does con-
6 test the nonverification, the individual shall
7 utilize the process for secondary
8 verification provided under paragraph (7).
9 The nonverification will remain tentative
10 until a final verification or nonverification
11 is provided by the verification system with-
12 in the time period specified. In no case
13 shall an employer terminate employment of
14 an individual because of a failure of the in-
15 dividual to have identity and work eligi-
16 bility confirmed under this section until a
17 nonverification becomes final. Nothing in
18 this clause shall apply to a termination of
19 employment for any reason other than be-
20 cause of such a failure.

21 “(iii) FINAL VERIFICATION OR
22 NONVERIFICATION RECEIVED.—If a final
23 verification or nonverification is provided
24 by the verification system regarding an in-
25 dividual, the person or entity shall record

1 on the form an appropriate code that is
2 provided under the system and that indi-
3 cates a verification or nonverification of
4 identity and work eligibility of the indi-
5 vidual.

6 “(iv) EXTENSION OF TIME.—If the
7 person or other entity in good faith at-
8 tempts to make an inquiry during the time
9 period specified and the verification system
10 has registered that not all inquiries were
11 received during such time, the person or
12 entity may make an inquiry in the first
13 subsequent working day in which the
14 verification system registers that it has re-
15 ceived all inquiries. If the verification sys-
16 tem cannot receive inquiries at all times
17 during a day, the person or entity merely
18 has to assert that the entity attempted to
19 make the inquiry on that day for the pre-
20 vious sentence to apply to such an inquiry,
21 and does not have to provide any addi-
22 tional proof concerning such inquiry.

23 “(v) CONSEQUENCES OF
24 NONVERIFICATION.—

1 “(I) TERMINATION OR NOTIFICA-
2 TION OF CONTINUED EMPLOYMENT.—

3 If the person or other entity has re-
4 ceived a final nonverification regard-
5 ing an individual, the person or entity
6 may terminate employment of the in-
7 dividual (or decline to recruit or refer
8 the individual). If the person or entity
9 does not terminate employment of the
10 individual or proceeds to recruit or
11 refer the individual, the person or en-
12 tity shall notify the Secretary of
13 Homeland Security of such fact
14 through the verification system or in
15 such other manner as the Secretary
16 may specify.

17 “(II) FAILURE TO NOTIFY.—If
18 the person or entity fails to provide
19 notice with respect to an individual as
20 required under subclause (I), the fail-
21 ure is deemed to constitute a violation
22 of subsection (a)(1)(A) with respect to
23 that individual.

24 “(vi) CONTINUED EMPLOYMENT
25 AFTER FINAL NONVERIFICATION.—If the

1 person or other entity continues to employ
2 (or to recruit or refer) an individual after
3 receiving final nonverification, a rebuttable
4 presumption is created that the person or
5 entity has violated subsection (a)(1)(A).”;

6 (6) by amending paragraph (4) of subsection
7 (b) to read as follows:

8 “(4) COPYING AND RECORD KEEPING OF DOCU-
9 MENTATION REQUIRED.—

10 “(A) LAWFUL EMPLOYMENT DOCU-
11 MENTS.—Notwithstanding any other provision
12 of law, a person or entity shall retain a copy of
13 each document presented by an individual to
14 the individual or entity pursuant to this sub-
15 section. Such copy may only be used (except as
16 otherwise permitted under law) for the purposes
17 of complying with the requirements of this sub-
18 section and shall be maintained for a time pe-
19 riod to be determined by the Secretary of
20 Homeland Security.

21 “(B) SOCIAL SECURITY CORRESPOND-
22 ENCE.—A person or entity shall maintain
23 records of correspondence from the Commis-
24 sioner of Social Security regarding name and
25 number mismatches or no-matches and the

1 steps taken to resolve such mismatches or no-
2 matches. The employer shall maintain such
3 records for a time period to be determined by
4 the Secretary.

5 “(C) OTHER DOCUMENTS.—The Secretary
6 may, by regulation, require additional docu-
7 ments to be copied and maintained.”; and

8 (7) by amending paragraph (5) of subsection
9 (b) to read as follows:

10 “(5) USE OF ATTESTATION FORM.—A form
11 designated by the Secretary to be used for compli-
12 ance with this subsection, and any information con-
13 tained in or appended to such form, may not be used
14 for purposes other than for enforcement of this
15 chapter or of title 18, United States Code.”.

16 (b) INVESTIGATION NOT A WARRANTLESS ENTRY.—
17 Section 287(e) of the Immigration and Nationality Act (8
18 U.S.C. 1357(e)) is amended by adding at the end the fol-
19 lowing: “An investigation authorized pursuant to sub-
20 sections (b)(7) or (e) of section 274A is not a warrantless
21 entry.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect 2 years after the date of the
24 enactment of this Act.

1 **SEC. 413. 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
 22 inserting “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

1 411(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 Employment Security Act of
 9 2006 and until the date specified in subpara-
 10 graph (B)(iii), a person or entity may make an
 11 inquiry, as provided in paragraph (7), using the
 12 verification system to seek verification of the
 13 identity and employment eligibility of any indi-
 14 vidual employed by the person or entity, as long
 15 as it is done on a nondiscriminatory basis.

16 “(B) ON A MANDATORY BASIS.—

17 “(i) INITIAL COMPLIANCE.—A person
 18 or entity described in clause (ii) shall make
 19 an inquiry as provided in paragraph (7),
 20 using the verification system to seek
 21 verification of the identity and employment
 22 eligibility of all individuals employed by the
 23 person or entity who have not been pre-
 24 viously subject to an inquiry by the person
 25 or entity by the date 3 years after the date

1 of the enactment of the Employment Secu-
2 rity Act of 2006.

3 “(ii) PERSON OR ENTITY COVERED.—

4 A person or entity is described in this
5 clause if it is a Federal, State, or local gov-
6 ernmental body (including the Armed
7 Forces of the United States), or if it em-
8 ploys individuals working in a location that
9 is a Federal, State, or local government
10 building, a military base, a nuclear energy
11 site, a weapon site, an airport, or that con-
12 tains critical infrastructure (as defined in
13 section 1016(e) of the Critical Infrastruc-
14 ture Protection Act of 2001 (42 U.S.C.
15 5195c(e))), but only to the extent of such
16 individuals.

17 “(iii) SUBSEQUENT COMPLIANCE.—All

18 persons and entities other than a person or
19 entity described in clause (ii) shall make
20 an inquiry, as provided in paragraph (7),
21 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 that have not been pre-
25 viously subject to an inquiry by the person

1 or entity by the date 6 years after the date
 2 of the enactment of the Employment Secu-
 3 rity Act of 2006.”.

4 **SEC. 414. EXTENSION OF PREEMPTION TO REQUIRED CON-**
 5 **STRUCTION OF DAY LABORER SHELTERS.**

6 Paragraph 274A(h)(2) of the Immigration and Na-
 7 tionality Act (8 U.S.C. 1324a(h)(2)) is amended—

8 (1) by striking “imposing”, and inserting a
 9 dash and “(A) imposing”;

10 (2) by striking the period at the end and insert-
 11 ing “; and”; and

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

13 “(B) Requiring as a condition of con-
 14 ducting, continuing, or expanding a business
 15 that a business entity—

16 “(i) provide, build, fund, or maintain
 17 a shelter, structure, or designated area for
 18 use by day laborers at or near its place of
 19 business; or

20 “(ii) take other steps that facilitate
 21 the employment of day laborers by oth-
 22 ers.”.

23 **SEC. 415. BASIC PILOT PROGRAM.**

24 Section 401(b) of the Illegal Immigration Reform and
 25 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a

1 note) is amended by striking “at the end of the 11-year
 2 period beginning on the first day the pilot program is in
 3 effect” and inserting “2 years after the date of the enact-
 4 ment of the Employment Security Act of 2006”.

5 **SEC. 416. PROTECTION FOR UNITED STATES WORKERS AND**
 6 **INDIVIDUALS REPORTING IMMIGRATION LAW**
 7 **VIOLATIONS.**

8 Section 274B(a) of the Immigration and Nationality
 9 Act (8 U.S.C. 1324b(a)) is amended by adding at the end
 10 the following:

11 “(7) PROTECTION OF RIGHT TO REPORT.—Not-
 12 withstanding any other provision of law, the rights
 13 protected by this subsection include the right of any
 14 individual to report a violation or suspected violation
 15 of any immigration law to the Secretary of Home-
 16 land Security or a law enforcement agency.”.

17 **SEC. 417. PENALTIES.**

18 (a) CIVIL AND CRIMINAL PENALTIES.—Section
 19 274A(e)(4) of the Immigration and Nationality Act (8
 20 U.S.C. 1324a(e)(4)) is amended to read:

21 “(4) CIVIL AND CRIMINAL PENALTIES.—

22 “(A) KNOWINGLY HIRING UNAUTHORIZED
 23 ALIENS.—Any person or entity that violates
 24 subsection (a)(1)(A) shall—

1 “(i) in the case of a first offense, be
2 fined \$10,000 for each unauthorized alien;

3 “(ii) (in the case of a second offense,
4 be fined \$50,000 for each unauthorized
5 alien; and

6 “(iii) in the case of a third or subse-
7 quent offense, be fined in accordance with
8 title 18, United States Code, imprisoned
9 not less than 1 year and not more than 3
10 years, or both.

11 “(B) CONTINUING EMPLOYMENT OF UNAU-
12 THORIZED ALIENS.—Any person or entity that
13 violates subsection (a)(2) shall be fined in ac-
14 cordance of title 18, United States Code, im-
15 prisoned not less than 1 year and not more
16 than 3 years, or both.”.

17 (b) PAPERWORK OR VERIFICATION VIOLATIONS.—
18 Section 274A(e)(5) of the Immigration and Nationality
19 Act (8 U.S.C. 1324a) is amended to read:

20 “(5) PAPERWORK OR VERIFICATION VIOLA-
21 TIONS.—Any person or entity that violates sub-
22 section (a)(1)(B) shall—

23 “(A) in the case of a first offense, be fined
24 \$1,000 for each violation;

1 “(B) in the case of a second violation, be
2 fined \$5,000 for each violation; and

3 “(C) in the case of a third and subsequent
4 violation, be fined \$10,000 for each such viola-
5 tion.”.

6 (c) GOVERNMENT CONTRACTS.—Section 274A(e) of
7 the Immigration and Nationality Act (8 U.S.C. 1324a(e))
8 is amended by adding at the end the following new para-
9 graph:

10 “(10) GOVERNMENT CONTRACTS.—

11 “(A) EMPLOYERS.—

12 “(i) IN GENERAL.—If the Secretary of
13 Homeland Secretary determines that a
14 person or entity that employs an alien is a
15 repeat violator of this section or is con-
16 victed of a crime under this section, such
17 person or entity shall be debarred from the
18 receipt of a Federal contract, grant, or co-
19 operative agreement for a period of 2
20 years. The Secretary of Homeland Security
21 or the Attorney General shall advise the
22 Administrator of General Services of such
23 a debarment, and the Administrator of
24 General Services shall list the employer on
25 the List of Parties Excluded from Federal

1 Procurement and Nonprocurement Pro-
2 grams for a 2-year period.

3 “(ii) WAIVER.—The Administrator of
4 General Services, in consultation with the
5 Secretary of Homeland Security and Attor-
6 ney General, may waive the application of
7 this subparagraph or may limit the dura-
8 tion or scope of the debarment imposed
9 under it.

10 “(iii) PROHIBITION ON JUDICIAL RE-
11 VIEW.—Any proposed debarment that is
12 predicated on an administrative determina-
13 tion of liability for civil penalty by the Sec-
14 retary of Homeland Security or the Attor-
15 ney General may not be reviewable in any
16 debarment proceeding. The decision of
17 whether to debar or take alternation may
18 not be reviewed by any court.

19 “(B) CONTRACTORS AND RECIPIENTS.—

20 “(i) IN GENERAL.—If the Secretary of
21 Homeland Security determines that a per-
22 son or entity that employs an alien and
23 holds a Federal contract, grant, or cooper-
24 ative agreement is a repeat violator of this
25 section or is convicted of a crime under

1 this section, such person or entity shall be
2 debarred from the receipt of a Federal
3 contract, grant, or cooperative agreement
4 for a period of 2 years. Prior to debarring
5 the employer, the Secretary of Homeland
6 Security, in cooperation with the Adminis-
7 trator of General Services, shall advise the
8 head of each agency holding such a con-
9 tract, grant, or cooperative agreement with
10 person or entity of the Government's inten-
11 tion to debar the employer from the receipt
12 of new Federal contracts, grants, or coop-
13 erative agreements for a period of 2 years.

14 “(ii) WAIVER.—After consideration of
15 the views of the head of each such agency,
16 the Secretary of Homeland Security may,
17 in lieu of debarring the employer from the
18 receipt of new a Federal contract, grant,
19 or cooperative agreement for a period of 2
20 years, waive application of this subpara-
21 graph, limit the duration or scope of the
22 debarment, or may refer to an appropriate
23 lead agency the decision of whether to
24 debar the employer, for what duration, and
25 under what scope in accordance with the

1 procedures and standards prescribed by
2 the Federal Acquisition Regulation.

3 “(iii) PROHIBITION ON REVIEW.—Any
4 proposed debarment that is predicated on
5 an administrative determination of liability
6 for civil penalty by the Secretary of Home-
7 land Security or the Attorney General may
8 not be reviewable in any debarment pro-
9 ceeding. The decision of whether to debar
10 or take alternation may not be reviewed by
11 any court.

12 “(C) CAUSE FOR SUSPENSION.—Indict-
13 ments for violations of this section or adequate
14 evidence of actions that could form the basis for
15 debarment under this paragraph shall be con-
16 sidered a cause for suspension under the proce-
17 dures and standards for suspension prescribed
18 by the Federal Acquisition Regulation.

19 “(D) APPLICABILITY.—The provisions of
20 this paragraph shall apply to any Federal con-
21 tract, grant, or cooperative agreement that is
22 effective on or after the date of the enactment
23 of the Employment Security Act of 2006.”.

24 (d) CRIMINAL PENALTIES FOR PATTERN OR PRAC-
25 TICE VIOLATIONS.—Section 274A(f)(1) of the Immigra-

1 tion and Nationality Act (8 U.S.C. 1324a(f)(1)) is amend-
2 ed to read as follows:

3 “(1) CRIMINAL PENALTY.—Any person or enti-
4 ty engages in a pattern or practice of violations of
5 subsection (a)(1) or (2) shall be fined not more than
6 \$50,000 for each unauthorized alien with respect to
7 which such a violation occurs, imprisoned for not
8 less than 3 years and not more than 5 years, or
9 both, notwithstanding the provisions of any other
10 Federal law relating to fine levels. The amount of
11 the gross proceeds of such violation, and any prop-
12 erty traceable to such proceeds, shall be seized and
13 subject to forfeiture under title 18, United States
14 Code.”.

15 (e) AUTHORITY OF THE SECRETARY OF HOMELAND
16 SECURITY.—Subsections (b)(2) and (f)(2) of section 274A
17 of the Immigration and Nationality Act (8 U.S.C. 1324a)
18 are amended by striking “Attorney General” each place
19 it appears and inserting “Secretary of Homeland Secu-
20 rity”.

1 **Subtitle C—Work Eligibility**
 2 **Verification Reform in the So-**
 3 **cial Security Administration**

4 **SEC. 421. VERIFICATION RESPONSIBILITIES OF THE COM-**
 5 **MISSIONER OF SOCIAL SECURITY.**

6 The Commissioner of Social Security is authorized to
 7 perform activities with respect to carrying out the Com-
 8 missioner's responsibilities in this title or the amendments
 9 made by this title, however in no case shall funds from
 10 the Federal Old-Age and Survivors Insurance Trust Fund
 11 or the Federal Disability Insurance Trust Fund be used
 12 to carry out such responsibilities.

13 **SEC. 422. NOTIFICATION BY COMMISSIONER OF FAILURE**
 14 **TO CORRECT SOCIAL SECURITY INFORMA-**
 15 **TION.**

16 The Commissioner of Social Security shall promptly
 17 notify the Secretary of Homeland Security of the failure
 18 of any individual to provide, upon any request of the Com-
 19 missioner made pursuant to section 205(c)(2) of the Social
 20 Security Act (42 U.S.C. 405(c)(2)), evidence necessary,
 21 under such section to—

- 22 (1) establish the age, citizenship, immigration
 23 or work eligibility status of the individual;
 24 (2) establish such individual's true identity; or

1 (3) determine which (if any) social security ac-
2 count number has previously been assigned to such
3 individual.

4 **SEC. 423. RESTRICTION ON ACCESS AND USE.**

5 Section 205(c)(2) of the Social Security Act (42
6 U.S.C. 405(c)(2)) is amended by adding at the end the
7 following new subparagraph:

8 “(I)(i) Access to any information contained in the
9 Employment Eligibility Verification System established
10 section 274A(b)(7) of the Immigration and Nationality
11 Act, shall be prohibited for any purpose other than the
12 administration or enforcement of Federal immigration, so-
13 cial security, and tax laws, any provision of title 18,
14 United States Code, or as otherwise authorized by Federal
15 law.

16 “(ii) No person or entity may use the information in
17 such Employment Eligibility Verification System for any
18 purpose other than as permitted by Federal law.

19 “(iii) Whoever knowingly uses, discloses, publishes, or
20 permits the unauthorized use of information in such Em-
21 ployment Eligibility Verification System in violation of
22 clause (i) or (ii) shall be fined not more than \$10,000 per
23 individual injured by such violation. The Commissioner of
24 Social Security shall establish procedure to ensure that 60

1 percent of any fine imposed under this clause is awarded
 2 to the individual injured by such violation.”.

3 **SEC. 424. SHARING OF INFORMATION WITH THE COMMIS-**
 4 **SIONER OF INTERNAL REVENUE SERVICE.**

5 Section 205(c)(2)(H) of the Social Security Act (42
 6 U.S.C. 405(c)(2)(H)) is amended to read as follows:

7 “(H) The Commissioner of Social Security shall
 8 share with the Secretary of the Treasury—

9 “(i) the information obtained by the Commis-
 10 sioner pursuant to the second sentence of subpara-
 11 graph (B)(ii) and to subparagraph (C)(ii) for the
 12 purpose of administering those sections of the Inter-
 13 nal Revenue Code of 1986 that grant tax benefits
 14 based on support or residence of children; and

15 “(ii) information relating to the detection of
 16 wages or income from self-employment of unauthor-
 17 ized aliens (as defined by section 274A of the Immi-
 18 gration and Nationality Act (8 U.S.C. 1324a)), or
 19 the investigation of false statements or fraud by
 20 such persons incident to the administration of immi-
 21 gration, social security, or tax laws of the United
 22 States.

23 Information disclosed under this subparagraph shall be
 24 solely for the use of the officers and employees to whom

1 such information is disclosed in such response or inves-
 2 tigation.”.

3 **SEC. 425. SHARING OF INFORMATION WITH THE SEC-**
 4 **RETARY OF HOMELAND SECURITY.**

5 (a) AMENDMENT TO THE SOCIAL SECURITY ACT.—
 6 Section 205(c)(2) of the Social Security Act (42 U.S.C.
 7 405(c)(2)), as amended by section 423, is amended by
 8 adding at the end the following new subparagraph:

9 “(J) Upon the issuance of a social security account
 10 number under subparagraph (B) to any individual or the
 11 issuance of a Social Security card under subparagraph (G)
 12 to any individual, the Commissioner of social security shall
 13 transmit to the Secretary of Homeland Security such in-
 14 formation received by the Commissioner in the individual’s
 15 application for such number or such card as the Secretary
 16 of Homeland Security determines necessary and appro-
 17 priate for administration of the immigration laws of the
 18 United States.”.

19 (b) AMENDMENTS TO THE IMMIGRATION AND NA-
 20 TIONALITY ACT.—

21 (1) FORMS AND PROCEDURES.—Section 264(f)
 22 of the Immigration and Nationality Act (8 U.S.C.
 23 1304(f)) is amended to read as follows:

24 “(f) Notwithstanding any other provision of law (in-
 25 cluding section 6103 of title 26, United States Code), the

1 Secretary of Homeland Security, Secretary of Labor and
2 the Attorney General are authorized to require any indi-
3 vidual to provide the individual's own social security ac-
4 count number for purposes of inclusion in any record of
5 the individual maintained by any of any such Secretary
6 or the Attorney General, or for inclusion on any applica-
7 tion, document, or form provided under or required by the
8 immigration laws.”.

9 (2) CENTRAL FILE.—Section 290(c) of the Im-
10 migration and Nationality Act (8 U.S.C. 1360(c)) is
11 amended by striking paragraph (2) and inserting the
12 following new paragraphs:

13 “(2) Notwithstanding any other provision of law (in-
14 cluding section 6103 of title 26, United States Code) if
15 earnings are reported on or after January 1, 1997, to the
16 Commissioner of Social Security on a social security ac-
17 count number issued to an alien who is not authorized to
18 work in the United States, the Commissioner shall provide
19 the Secretary of Homeland Security with information re-
20 garding the name, date of birth, and address of the alien,
21 the name and address of the person reporting the earn-
22 ings, and the amount of the earnings. The information
23 shall be provided in an electronic form agreed upon by
24 the Commissioner and the Secretary.

1 “(3) Notwithstanding any other provision of law (in-
2 cluding section 6103 of title 26, United States Code), the
3 Commissioner of Social Security shall provide the Sec-
4 retary of Homeland Security information regarding the
5 name, date of birth, and address of an individual, as well
6 as the name and address of the person reporting the earn-
7 ings, in any case where a social security account number
8 does not match the name in the Social Security Adminis-
9 tration record. The information shall be provided in an
10 electronic form agreed upon by the Commissioner and the
11 Secretary for the sole purpose of enforcing the immigra-
12 tion laws. The Secretary, in consultation with the Commis-
13 sioner, may limit or modify these requirements as appro-
14 priate to identify those cases posing the highest possibility
15 of fraudulent use of social security account numbers re-
16 lated to violation of the immigration laws.

17 “(4) Notwithstanding any other provision of law (in-
18 cluding section 6103 of title 26, United States Code), the
19 Commissioner of Social Security shall provide the Sec-
20 retary of Homeland Security information regarding the
21 name, date of birth, and address of an individual, as well
22 as the name and address of the person reporting the earn-
23 ings, in any case where the individual has more than one
24 person reporting earnings for the individual during a sin-
25 gle tax year and where a social security number was used

1 with multiple names. The information shall be provided
2 in an electronic form agreed upon by the Commissioner
3 and the Secretary for the sole purpose of enforcing the
4 immigration laws. The Secretary, in consultation with the
5 Commissioner, may limit or modify these requirements as
6 appropriate to identify those cases posing the highest pos-
7 sibility of fraudulent use of social security account num-
8 bers related to violation of the immigration laws.

9 “(5)(A) The Commissioner of Social Security shall
10 perform, at the request of the Secretary of Homeland Se-
11 curity, any search or manipulation of records held by the
12 Commissioner, so long as the Secretary certifies that the
13 purpose of the search or manipulation is to obtain infor-
14 mation likely to assist in identifying individuals (and their
15 employers) who—

16 “(i) are using false names or social security
17 numbers; who are sharing among multiple individ-
18 uals a single valid name and social security number;

19 “(ii) are using the social security number of
20 persons who are deceased, too young to work or not
21 authorized to work; or

22 “(iii) are otherwise engaged in a violation of the
23 immigration laws.

24 “(B) The Commissioner shall provide the results of
25 such search or manipulation to the Secretary, notwith-

1 standing any other provision of law (including section
 2 6103 of title 26, United States Code). The Secretary shall
 3 transfer to the Commissioner the funds necessary to cover
 4 the additional cost directly incurred by the Commissioner
 5 in carrying out the searches or manipulations reported by
 6 the Secretary.”.

7 **Subtitle D—Employment Eligibility**
 8 **Verification System Reform in**
 9 **the Internal Revenue Agency**

10 **SEC. 431. SHARING OF INFORMATION WITH THE SEC-**
 11 **RETARY OF HOMELAND SECURITY AND THE**
 12 **COMMISSIONER OF SOCIAL SECURITY.**

13 (a) AMENDMENT TO THE INTERNAL REVENUE CODE
 14 OF 1986.—Section 6103(i) of the Internal Revenue Code
 15 of 1986 is amended by adding at the end the following
 16 new paragraph:

17 “(9) DISCLOSURE OF INFORMATION RELATING
 18 TO VIOLATIONS OF FEDERAL IMMIGRATION LAW.—

19 “(A) Upon receipt by the Secretary of the
 20 Treasury of a written request, by the Secretary
 21 of Homeland Security or Commissioner of So-
 22 cial Security, the Secretary of the Treasury
 23 shall disclose return information to officers and
 24 employees of the Department of Homeland Se-

1 curity and the Social Security Administration
2 who are personally and directly engaged in—

3 “(i) preparation for any judicial or ad-
4 ministrative civil or criminal enforcement
5 proceeding against an alien under the Im-
6 migration and Nationality Act (8 U.S.C.
7 1101 et seq.), other than the adjudication
8 of any application for a change in immi-
9 gration status or other benefit by such
10 alien, or

11 “(ii) preparation for a civil or criminal
12 enforcement proceeding against a citizen or
13 national of the United States under section
14 274, 274A, or 274C of the Immigration
15 and Nationality Act (8 U.S.C. 1324,
16 1324a, or 1324c), or

17 “(iii) any investigation which may re-
18 sult in the proceedings enumerated in
19 clauses (i) and (ii) above.

20 “(B) LIMITATION ON USE AND RETENTION
21 OF TAX RETURN INFORMATION.—

22 “(i) Information disclosed under this
23 paragraph shall be solely for the use of the
24 officers and employees to whom such infor-

1 mation is disclosed in such response or in-
2 vestigation.

3 “(ii) Should the proceeding for which
4 such information has been disclosed not
5 commence within 3 years after the date on
6 which the information has been disclosed
7 by the Secretary, the information shall be
8 returned to the Secretary in its entirety,
9 and shall not be retained in any form by
10 the requestor, unless the taxpayer is noti-
11 fied in writing as to the information that
12 has been retained.”.

13 (b) AMENDMENT TO THE IMMIGRATION AND NA-
14 TIONALITY ACT.—Section 274A of the Immigration and
15 Nationality Act (8 U.S.C. 1324a) is amended by adding
16 at the end the following new subsection:

17 “(i) NO-MATCH NOTICE.—

18 “(1) NO-MATCH NOTICE DEFINED.—In this
19 subsection, the term ‘no-match notice’ means a writ-
20 ten notice from the Commissioner of Social Security
21 to an employer reporting earnings on a Form W-2
22 that an employee name or corresponding social secu-
23 rity account number fail to match records main-
24 tained by the Commissioner.

25 “(2) PROVISION OF INFORMATION.—

1 “(A) REQUIREMENT TO PROVIDE.—Not-
2 withstanding any other provision of law (includ-
3 ing section 6103 of title 26, United States
4 Code), the Commissioner shall provide the Sec-
5 retary of Homeland Security with information
6 relating to employers who have received no-
7 match notices and, upon request, with such ad-
8 ditional information as the Secretary certifies is
9 necessary to administer or enforce the immigra-
10 tion laws.

11 “(B) FORM OF INFORMATION.—The infor-
12 mation shall be provided in an electronic form
13 agreed upon by the Commissioner and the Sec-
14 retary.

15 “(C) USE OF INFORMATION.—A no-match
16 notice received by the Secretary from the Com-
17 missioner may be used as evidence in any civil
18 or criminal proceeding.

19 “(3) OTHER AUTHORITIES.—

20 “(A) VERIFICATION REQUIREMENT.—The
21 Secretary, in consultation with the Commis-
22 sioner, is authorized to establish by regulation
23 requirements for verifying the identity and work
24 authorization of an employee who is the subject
25 of a no-match notice.

1 “(B) PENALTIES.—The Secretary is au-
 2 thorized to establish by regulation penalties for
 3 failure to comply with this subsection.

4 “(C) LIMITATION ON AUTHORITIES.—This
 5 authority in this subsection is provided in aid of
 6 the Secretary’s authority to administer and en-
 7 force the immigration laws, and nothing in this
 8 subsection shall be construed to authorize the
 9 Secretary to establish any regulation regarding
 10 the administration or enforcement of laws oth-
 11 erwise relating to taxation or the Social Secu-
 12 rity system.”.

13 **SEC. 432. INELIGIBILITY FOR NONRESIDENT ALIEN TAX**
 14 **STATUS AND THE EARNED INCOME TAX**
 15 **CREDIT FOR UNAUTHORIZED WORK.**

16 Section 7701(b)(1) of the Internal Revenue Code of
 17 1986 is amended by adding at the end the following new
 18 subparagraph:

19 “(C)(i) An alien who is present in the
 20 United States while working in any capacity in
 21 violation of section 274A of the Immigration
 22 and Nationality Act (8 U.S.C. 1324a) during
 23 any portion of a calendar year shall be treated
 24 as an unauthorized alien with respect to such
 25 calendar year.

1 “(ii) Such an unauthorized alien shall not
2 be eligible for nonresident alien tax status dur-
3 ing such calendar year.

4 “(iii) The Secretary shall provide the Sec-
5 retary of Homeland Security and the Commis-
6 sioner of Social Security with information suffi-
7 cient to establish the identity and last known
8 address of any unauthorized alien identified by
9 the Secretary.”.

10 **SEC. 433. LAWFUL USE OF INDIVIDUAL TAXPAYER IDENTI-**
11 **FICATION NUMBERS.**

12 Chapter 75 of the Internal Revenue Code of 1986 is
13 amended by inserting after section 7217 the following:

14 **“SEC. 7218. PERMITTED USES OF TAXPAYER IDENTIFICA-**
15 **TION NUMBERS.**

16 “(a) Resident aliens, described in section
17 7701(b)(1)(A), may use the taxpayer identification num-
18 ber (TIN) assigned to them for any lawful purpose. Non-
19 resident aliens may only use the TIN assigned to them
20 for the administration of the tax laws, or for other pur-
21 poses required by Federal regulation.

22 “(b) Any person who willfully violates this section
23 shall be guilty of a misdemeanor and, upon conviction
24 thereof, shall be punished by a fine of not more than

1 \$2,000 or imprisonment for not more than 1 year, or
2 both.”.

3 **SEC. 434. NO DEDUCTION ALLOWED FOR COMPENSATION**
4 **PAID TO UNAUTHORIZED WORKERS.**

5 (a) IN GENERAL.—Section 162(c) of the Internal
6 Revenue Code of 1986 is amended by adding at the end
7 the following new paragraph:

8 “(4) WAGES PAID TO OR ON BEHALF OF UNAU-
9 THORIZED ALIENS.—

10 “(A) IN GENERAL.—No deduction shall be
11 allowed under subsection (a) for any recruiting
12 expense or wage paid to or on behalf of an un-
13 authorized alien, as defined under section
14 274A(h)(3) of the Immigration and Nationality
15 Act (8 U.S.C. 1324a(h)(3)), unless the alien’s
16 eligibility for employment was first verified
17 through the Interim Work Eligibility
18 Verification Program carried out pursuant to
19 subtitle A of title IV of the Illegal Immigration
20 Reform and Immigrant Responsibility Act of
21 1996 (division C of Public Law 104–208; 8
22 U.S.C. 1324a note) or the Work Eligibility
23 Verification System, carried out under section
24 274A of the Immigration and Nationality Act
25 (8 U.S.C. 1324a(a)).

1 “(B) DEFINITIONS.—For purposes of this
2 paragraph:

3 “(i) The term ‘recruiting expense’
4 means any payment made to a third party
5 to identify, recruit, or prepare an indi-
6 vidual for employment.

7 “(ii) The term ‘wages’ means all re-
8 muneration for employment, including the
9 cash value of all remuneration (to include
10 benefits) paid in any medium other than
11 cash.”.

12 (b) 7-YEAR LIMITATION ON ASSESSMENT AND COL-
13 LECTION.—Subsection (c) of section 6501 of such Code
14 (relating to exceptions) is amended by adding at the end
15 the following new paragraph:

16 “(11) DEDUCTION CLAIMED FOR RECRUITING
17 EXPENSE OR WAGES OF UNAUTHORIZED ALIENS.—
18 In the case of a return of tax on which a deduction
19 is shown in violation of section 162(c)(4), any tax
20 under chapter 1 may be assessed, or a proceeding
21 for the collection of such tax may be begun without
22 assessment, at any time during the 7-year period be-
23 ginning on the date the return was filed.”.

24 (c) AVAILABILITY OF INFORMATION.—The Commis-
25 sioner of Social Security shall make available to the Com-

1 missioner of Internal Revenue any information related to
 2 the investigation and enforcement of section 162(c)(4) of
 3 the Internal Revenue Code of 1986, including any no-
 4 match letter and any information in the suspense earnings
 5 file.

6 (d) EFFECTIVE DATE.—The amendments made by
 7 subsections (a) and (b) shall apply to taxable years begin-
 8 ning with the first taxable year that begins at least 365
 9 days after enactment of this Act.

10 **Subtitle E—Identification**

11 **Document Integrity**

12 **SEC. 441. CONSULAR IDENTIFICATION DOCUMENTS.**

13 (a) ACCEPTANCE OF FOREIGN IDENTIFICATION DOC-
 14 UMENTS.—

15 (1) IN GENERAL.—Subject to paragraph (3),
 16 for purposes of personal identification, no agency,
 17 commission, entity, or agent of the executive or leg-
 18 islative branches of the Federal Government may ac-
 19 cept, acknowledge, recognize, or rely on any identi-
 20 fication document issued by the government of a for-
 21 eign country, unless otherwise mandated by Federal
 22 law.

23 (2) AGENT DEFINED.—In this section, the term
 24 “agent” shall include the following:

25 (A) A Federal contractor or grantee.

1 (B) An institution or entity exempted from
2 Federal income taxation under the Internal
3 Revenue Code of 1986.

4 (C) A financial institution required to ask
5 for identification under section 5318(l) of title
6 31, United States Code.

7 (3) EXCEPTIONS.—

8 (A) IN GENERAL.—An individual who is
9 not a citizen or national of the United States
10 may present for purposes of personal identifica-
11 tion an official identification document issued
12 by the government of a foreign country or other
13 foreign identification document recognized pur-
14 suant to a treaty entered into by the United
15 States, if—

16 (i) such individual simultaneously pre-
17 sents valid verifiable documentation of law-
18 ful presence in the United States issued by
19 the appropriate agency of the Federal Gov-
20 ernment;

21 (ii) reporting a violation of law or
22 seeking government assistance in an emer-
23 gency;

24 (iii) the document presented is a pass-
25 port issued to a citizen or national of a

1 country that participates in the visa waiver
2 program established under section 217 of
3 the Immigration and Nationality Act (8
4 U.S.C. 1187) by the government of such
5 country; or

6 (iv) such use is expressly permitted
7 another provision of Federal law.

8 (B) NONAPPLICATION.—The provisions of
9 paragraph (1) shall not apply to—

10 (i) inspections of alien applicants for
11 admission to the United States; or

12 (ii) verification of personal identifica-
13 tion of persons outside the United States.

14 (4) LISTING OF ACCEPTABLE DOCUMENTS.—

15 The Secretary of Homeland Security shall issue and
16 maintain an updated public listing, compiled in con-
17 sultation with the Secretary of State, and including
18 sample facsimiles, of all acceptable Federal docu-
19 ments that satisfy the requirements of paragraph
20 (3)(A).

21 (b) ESTABLISHMENT OF PERSONAL IDENTITY.—Sec-
22 tion 274C(a) of the Immigration and Nationality Act (8
23 U.S.C. 1324c(a)) is amended—

24 (1) in paragraph (5), by striking “or” at the
25 end;

1 (2) in paragraph (6), by striking the period at
2 the end and inserting a comma and “or”; and

3 (3) by inserting after paragraph (6) the fol-
4 lowing new paragraph:

5 “(7) to use to establish personal identity, before
6 any agent of the Federal Government, or before any
7 agency of the Federal Government or of a State or
8 any political subdivision therein, a travel or identi-
9 fication document issued by a foreign government
10 that is not accepted by the Secretary of Homeland
11 Security to establish personal identity for purposes
12 of admission to the United States at a port of entry,
13 except—

14 “(A) in the case of a person who is not a
15 citizen of the United States—

16 “(i) the person simultaneously pre-
17 sents valid verifiable documentation of law-
18 ful presence in the United States issued by
19 an agency of the Federal Government;

20 “(ii) the person is reporting a viola-
21 tion of law or seeking government assist-
22 ance in an emergency; or

23 “(iii) such use is expressly permitted
24 by Federal law.”.

1 **SEC. 442. MACHINE-READABLE TAMPER-RESISTANT IMMI-**
 2 **GRATION DOCUMENTS.**

3 (a) IN GENERAL.—Section 303 of the Enhanced Bor-
 4 der Security and Visa Entry Reform Act of 2002 (8
 5 U.S.C. 1732) is amended—

6 (1) in the heading, by striking “**ENTRY AND**
 7 **EXIT DOCUMENTS**” and inserting “**TRAVEL,**
 8 **ENTRY, AND EVIDENCE OF STATUS DOCU-**
 9 **MENTS**”;

10 (2) in subsection (b)(1)—

11 (A) by striking “Not later than October
 12 26, 2004, the Attorney General” and inserting
 13 “The Secretary of Homeland Security”; and

14 (B) by striking “visas and” each place it
 15 appears and inserting “visas, evidence of status,
 16 and”;

17 (3) by striking subsection (d) and inserting the
 18 following:

19 “(d) OTHER DOCUMENTS.—Not later than October
 20 26, 2007, every document, other than an interim docu-
 21 ment, issued by the Secretary of Homeland Security,
 22 which may be used as evidence of immigrant, non-
 23 immigrant, parole, asylee, or refugee status, shall be ma-
 24 chine-readable, tamper-resistant, and incorporate a bio-
 25 metric identifier to allow the Secretary of Homeland Secu-

1 rity to electronically verify the identity and status of the
2 alien.

3 “(e) FUNDING.—

4 “(1) AUTHORIZATION OF APPROPRIATION.—

5 There are authorized to be appropriated such sums
6 as may be necessary to carry out this section, in-
7 cluding reimbursements to international and domes-
8 tic standards organizations.

9 “(2) FEE.—During any fiscal year for which
10 appropriations sufficient to issue documents de-
11 scribed in subsection (d) are not made pursuant to
12 law, the Secretary of Homeland Security is author-
13 ized to implement and collect a fee sufficient to
14 cover the direct cost of issuance of such document
15 from the alien to whom the document will be issued.

16 “(3) EXCEPTION.—The fee described in para-
17 graph (2) may not be levied against nationals of a
18 foreign country if the Secretary of Homeland has de-
19 termined that the total estimated population of such
20 country who are unlawfully present in the United
21 States does not exceed 3,000 aliens.”.

22 (b) TECHNICAL AMENDMENT.—The table of contents
23 in section 1(b) of the Enhanced Border Security and Visa
24 Entry Reform Act of 2002 (Public Law 107–173; 116

1 Stat. 543) is amended by striking the item relating to sec-
 2 tion 303 and inserting the following:

“Sec. 303. Machine-readable, tamper-resistant travel, entry, and evidence
 of status documents.”.

3 **Subtitle F—Limitations on Illegal** 4 **Alien Collection of Social Security**

5 **SEC. 451. EXCLUSION OF UNAUTHORIZED EMPLOYMENT** 6 **FROM EMPLOYMENT UPON WHICH CRED-** 7 **ITABLE WAGES MAY BE BASED.**

8 Section 210(a)(19) of the Social Security Act (42
 9 U.S.C. 410(a)(19)) is amended by inserting: “(except that
 10 any such service shall not include work performed by an
 11 alien while employed in the United States for any period
 12 during which the alien is not authorized to be employed)”
 13 after “may be”.

14 **SEC. 452. EXCLUSION OF UNAUTHORIZED FUNCTIONS AND** 15 **SERVICES FROM TRADE OR BUSINESS FROM** 16 **WHICH CREDITABLE SELF-EMPLOYMENT IN-** 17 **COME MAY BE DERIVED.**

18 Section 211(c) of the Social Security Act (42 U.S.C.
 19 411(c)) is amended by inserting after paragraph (6) the
 20 following new paragraph:

21 “(7) The performance of a function or service
 22 in the United States by an alien during any period
 23 for which the alien is not authorized to perform such
 24 function or service in the United States.”.

1 **SEC. 453. EFFECTIVE DATE.**

2 The amendments made by this subtitle shall apply
3 with respect to wages earned, and self-employment income
4 derived on or after the date of the enactment of this Act.
5 Notwithstanding section 215(f)(1) of the Social Security
6 Act (42 U.S.C. 415(f)(1)), as soon as practicable after the
7 date of the enactment of this Act, the Commissioner of
8 Social Security shall recompute all primary insurance
9 amounts to the extent necessary to carry out such amend-
10 ments. Such amendments shall affect benefits payable only
11 for months after the date of the enactment of this Act.

12 **Subtitle G—Effective Date;**
13 **Authorization of Appropriations**

14 **SEC. 461. EFFECTIVE DATE.**

15 Except as otherwise specially provided in this Act, the
16 provisions of this title shall take effect not later than 45
17 days after the date of the enactment of this Act.

18 **SEC. 462. AUTHORIZATION OF APPROPRIATIONS.**

19 In addition to amounts otherwise authorized to be ap-
20 propriated, there are authorized to be appropriated such
21 sums as may be necessary for each of fiscal years 2007
22 through 2011 to carry out this title.

1 **TITLE V—PENALTIES AND**
2 **ENFORCEMENT**
3 **Subtitle A—Criminal and Civil**
4 **Penalties**

5 **SEC. 501. ALIEN SMUGGLING AND RELATED OFFENSES.**

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

9 **“SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.**

10 “(a) CRIMINAL OFFENSES AND PENALTIES.—

11 “(1) PROHIBITED ACTIVITIES.—Whoever—

12 “(A) assists, encourages, directs, or in-
13 duces a person to come to or enter the United
14 States, or to attempt to come to or enter the
15 United States, knowing or in reckless disregard
16 of the fact that such person is an alien who
17 lacks lawful authority to come to or enter the
18 United States;

19 “(B) assists, encourages, directs, or in-
20 duces a person to come to or enter the United
21 States at a place other than a designated port
22 of entry or place other than as designated by
23 the Secretary of Homeland Security, regardless
24 of whether such person has official permission
25 or lawful authority to be in the United States,

1 knowing or in reckless disregard of the fact
2 that such person is an alien;

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

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

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

23 “(F) transports, moves, harbors, conceals,
24 or shields from detection a person outside of
25 the United States knowing or in reckless dis-

1 regard of the fact that such person is an alien
2 in unlawful transit from one country to another
3 or on the high seas, under circumstances in
4 which the person is in fact seeking to enter the
5 United States without official permission or
6 lawful authority; or

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

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

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

14 “(A) except as provided in subparagraphs
15 (D) through (H), in the case where the offense
16 was not committed for commercial advantage,
17 profit, or private financial gain, be imprisoned
18 for not more than 5 years, or fined under title
19 18, United States Code, or both;

20 “(B) except as provided in subparagraphs
21 (C) through (H), where the offense was com-
22 mitted for commercial advantage, profit, or pri-
23 vate financial gain—

24 “(i) in the case of a first violation of
25 this subparagraph, be imprisoned for not

1 more than 20 years, or fined under title
2 18, United States Code, or both; and

3 “(ii) for any subsequent violation, be
4 imprisoned for not less than 3 years nor
5 more than 20 years, or fined under title
6 18, United States Code, or both;

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

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

21 “(E) in the case where any participant in
22 the offense created a substantial risk of death
23 or serious bodily injury to another person, in-
24 cluding—

1 “(i) transporting a person in an en-
2 gine compartment, storage compartment,
3 or other confined space;

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

7 “(iii) transporting or harboring a per-
8 son in a crowded, dangerous, or inhumane
9 manner,
10 be imprisoned not less than 5 nor more than 20
11 years, or fined under title 18, United States
12 Code, or both;

13 “(F) in the case where the offense caused
14 serious bodily injury (as defined in section 1365
15 of title 18, United States Code, including any
16 conduct that would violate sections 2241 or
17 2242 of title 18, United States Code, if the con-
18 duct occurred in the special maritime and terri-
19 torial jurisdiction of the United States) to any
20 person, be imprisoned for not less than 7 nor
21 more than 30 years, or fined under title 18,
22 United States Code, or both;

23 “(G) in the case where the offense involved
24 an alien who the offender knew or had reason
25 to believe was an alien—

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

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

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

8 “(H) in the case where the offense caused
9 or resulted in the death of any person, be pun-
10 ished by death or imprisoned for not less than
11 10 years, or any term of years, or for life, or
12 fined under title 18, United States Code, or
13 both.

14 “(3) EXTRATERRITORIAL JURISDICTION.—
15 There is extraterritorial Federal jurisdiction over the
16 offenses described in this subsection.

17 “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

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

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

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

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

7 “(c) SEIZURE AND FORFEITURE.—

8 “(1) IN GENERAL.—Any property, real or per-
9 sonal, that has been used to commit or facilitate the
10 commission of a violation of this section, the gross
11 proceeds of such violation, and any property trace-
12 able to such property or proceeds, shall be subject
13 to forfeiture.

14 “(2) APPLICABLE PROCEDURES.—Seizures and
15 forfeitures under this subsection shall be governed
16 by the provisions of chapter 46 of title 18, United
17 States Code, relating to civil forfeitures, including
18 section 981(d) of such title, except that such duties
19 as are imposed upon the Secretary of the Treasury
20 under the customs laws described in that section
21 shall be performed by such officers, agents, and
22 other persons as may be designated for that purpose
23 by the Secretary of Homeland Security.

24 “(d) AUTHORITY TO ARREST.—No officer or person
25 shall have authority to make any arrests for a violation

1 of any provision of this section except officers and employ-
2 ees designated by the Secretary of Homeland Security, ei-
3 ther individually or as a member of a class, and all other
4 officers whose duty it is to enforce criminal laws.

5 “(e) ADMISSIBILITY OF EVIDENCE.—

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

16 “(A) Any order, finding, or determination
17 concerning the alien’s status or lack thereof
18 made by a federal judge or administrative adju-
19 dicator (including an immigration judge or an
20 immigration officer) during any judicial or ad-
21 ministrative proceeding authorized under the
22 immigration laws or regulations prescribed
23 thereunder.

24 “(B) An official record of the Department
25 of Homeland Security, Department of Justice,

1 or the Department of State concerning the
2 alien's status or lack thereof.

3 “(C) Testimony by an immigration officer
4 having personal knowledge of the facts con-
5 cerning the alien's status or lack thereof.

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

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

18 “(1) The term ‘lawful authority’ means permis-
19 sion, authorization, or license that is expressly pro-
20 vided for in the immigration laws of the United
21 States or the regulations prescribed thereunder.
22 Such term does not include any such authority se-
23 cured by fraud or otherwise obtained in violation of
24 law, nor does it include authority that has been
25 sought but not approved. No alien shall be deemed

1 to have lawful authority to come to, enter, reside, re-
 2 main, or be in the United States if such coming to,
 3 entry, residence, remaining, or presence was, is, or
 4 would be in violation of law.

5 “(2) The term ‘unlawful transit’ means travel,
 6 movement, or temporary presence that violates the
 7 laws of any country in which the alien is present, or
 8 any country from which or to which the alien is trav-
 9 eling or moving.”.

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

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

13 **SEC. 502. EVASION OF INSPECTION OR VIOLATION OF AR-**
 14 **RIVAL, REPORTING, ENTRY, OR CLEARANCE**
 15 **REQUIREMENTS.**

16 (a) PROHIBITION.—

17 (1) IN GENERAL.—Chapter 27 of title 18,
 18 United States Code, is amended by adding at the
 19 end a new section as follows:

20 **“§ 554. Evasion of inspection or during violation of**
 21 **arrival, reporting, entry, or clearance re-**
 22 **quirements**

23 “(a) PROHIBITION.—A person shall be punished as
 24 described in subsection (b) if such person—

1 “(1) attempts to elude or eludes customs, immi-
 2 gration, or agriculture inspection or fails to stop at
 3 the command of an officer or employee of the United
 4 States charged with enforcing the immigration, cus-
 5 toms, or other laws of the United States at a port
 6 of entry or customs or immigration checkpoint; or

7 “(2) intentionally violates an arrival, reporting,
 8 entry, or clearance requirement of—

9 “(A) section 107 of the Federal Plant Pest
 10 Act (7 U.S.C. 105ff);

11 “(B) section 10 of the Act of August 20,
 12 1912 (7 U.S.C. 164(a));

13 “(C) section 7 of the Federal Noxious
 14 Weed Act of 1974 (7 U.S.C. 2806);

15 “(D) the Agriculture and Food Act of
 16 1981 (Public Law 97–98; 95 Stat. 1213);

17 “(E) section 431, 433, 434, or 459 of the
 18 Tariff Act of 1930 (19 U.S.C. 1431, 1433,
 19 1434, and 1459);

20 “(F) section 10 of the Act of August 20,
 21 1890 (21 U.S.C. 105);

22 “(G) section 2 of the Act of February 2,
 23 1903 (21 U.S.C. 111);

24 “(H) section 4197 of the Revised Statutes
 25 (46 U.S.C. App. 91); or

1 “(I) the Immigration and Nationality Act
2 (8 U.S.C. 1101 et seq.).

3 “(b) PENALTIES.—A person who commits an offense
4 described in subsection (a) shall be—

5 “(1) fined under this title;

6 “(2)(A) imprisoned for not more than 5 years,
7 or both;

8 “(B) imprisoned for not more than 10 years, or
9 both, if in commission of this violation, attempts to
10 inflict or inflicts bodily injury (as defined in section
11 1365(g) of this title); or

12 “(C) imprisoned for any term of years or for
13 life, or both, if death results, and may be sentenced
14 to death; or

15 “(3) both fined and imprisoned under this sub-
16 section.

17 “(c) CONSPIRACY.—If 2 or more persons conspire to
18 commit an offense described in subsection (a), and 1 or
19 more of such persons do any act to effect the object of
20 the conspiracy, each shall be punishable as a principal, ex-
21 cept that the sentence of death may not be imposed.

22 “(d) PRIMA FACIE EVIDENCE.—For the purposes of
23 seizure and forfeiture under applicable law, in the case of
24 use of a vehicle or other conveyance in the commission
25 of this offense, or in the case of disregarding or disobeying

1 the lawful authority or command of any officer or em-
 2 ployee of the United States under section 111(b) of this
 3 title, such conduct shall constitute prima facie evidence of
 4 smuggling aliens or merchandise.”.

5 (2) CONFORMING AMENDMENT.—The table of
 6 sections for chapter 27 of title 18, United States
 7 Code, is amended by inserting at the end:

“554. Evasion of inspection or during violation of arrival, reporting, entry, or
 clearance requirements.”.

8 (b) FAILURE TO OBEY BORDER ENFORCEMENT OF-
 9 FICERS.—Section 111 of title 18, United States Code, is
 10 amended by inserting after subsection (b) the following:

11 “(c) FAILURE TO OBEY LAWFUL ORDERS OF BOR-
 12 DER ENFORCEMENT OFFICERS.—Whoever willfully dis-
 13 regards or disobeys the lawful authority or command of
 14 any officer or employee of the United States charged with
 15 enforcing the immigration, customs, or other laws of the
 16 United States while engaged in, or on account of, the per-
 17 formance of official duties shall be fined under this title
 18 or imprisoned for not more than 5 years, or both.”.

19 **SEC. 503. IMPROPER ENTRY BY, OR PRESENCE OF, ALIENS.**

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

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

1 (2) in subsection (a)—

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

5 (B) by striking “or” before (3);

6 (C) by inserting after “concealment of a
7 material fact,” the following: “or (4) is other-
8 wise present in the United States in violation of
9 the immigration laws or the regulations pre-
10 scribed thereunder,”; and

11 (D) by striking “6 months” and inserting
12 “one year”;

13 (3) by amending subsection (c) to read as fol-
14 lows:

15 “(c)(1) Whoever—

16 “(A) knowingly enters into a marriage for the
17 purpose of evading any provision of the immigration
18 laws; or

19 “(B) knowingly misrepresents the existence or
20 circumstances of a marriage—

21 “(i) in an application or document arising
22 under or authorized by the immigration laws of
23 the United States or the regulations prescribed
24 thereunder, or

1 “(ii) during any immigration proceeding
2 conducted by an administrative adjudicator (in-
3 cluding an immigration officer or examiner, a
4 consular officer, an immigration judge, or a
5 member of the Board of Immigration Appeals);
6 shall be fined under title 18, United States Code, or
7 imprisoned not more than 10 years, or both.

8 “(2) Whoever—

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

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

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

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

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

24 (4) in subsection (d)—

1 (A) by striking “5 years” and inserting
2 “10 years”;

3 (B) by adding at the end the following:
4 “An offense under this subsection continues
5 until the fraudulent nature of the commercial
6 enterprise is discovered by an immigration offi-
7 cer.”; and

8 (5) by adding at the end the following new sub-
9 sections:

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

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

18 “(B) whose violation was subsequent to
19 conviction for a felony for which the alien re-
20 ceived a sentence of 30 months or more, shall
21 be fined under title 18, United States Code, im-
22 prisoned not more than 10 years, or both; or

23 “(C) whose violation was subsequent to
24 conviction for a felony for which the alien re-
25 ceived a sentence of 60 months or more, shall

1 be fined under title 18, United States Code, im-
2 prisoned not more than 20 years, or both.

3 “(2) An alien described in this paragraph is an alien
4 who—

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

8 “(B) eludes examination or inspection by immi-
9 gration officers;

10 “(C) attempts to enter or obtains entry to the
11 United States by a willfully false or misleading rep-
12 resentation or the willful concealment of a material
13 fact; or

14 “(D) is otherwise present in the United States
15 in violation of the immigration laws or the regula-
16 tions prescribed thereunder.

17 “(3) The prior convictions in subparagraph (A), (B),
18 or (C) of paragraph (1) are elements of those crimes and
19 the penalties in those subparagraphs shall apply only in
20 cases in which the conviction (or convictions) that form
21 the basis for the additional penalty are alleged in the in-
22 dictment or information and are proven beyond a reason-
23 able doubt at trial or admitted by the defendant in plead-
24 ing guilty. Any admissible evidence may be used to show
25 that the prior conviction is a qualifying crime, and the

1 criminal trial for a violation of this section shall not be
2 bifurcated.

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

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

10 (b) RULE OF CONSTRUCTION.—Nothing in the
11 amendment made by subsection (a) may be construed to
12 limit the authority of any State or political subdivision
13 therein to enforce criminal trespass laws against aliens
14 whom a law enforcement agency has verified to be present
15 in the United States in violation of this Act or the Immi-
16 gration and Nationality Act (8 U.S.C. 1101 et seq.).

17 **SEC. 504. FEES AND EMPLOYER COMPLIANCE FUND.**

18 (a) EQUAL ACCESS TO JUSTICE FEES.—Section 286
19 of the Immigration and Nationality Act (8 U.S.C. 1356)
20 is amended by adding at the end the following new sub-
21 section:

22 “(w) FEES AND COSTS.—The provisions of section
23 2412, title 28, United States Code, shall not apply to civil
24 actions arising under or related to the immigration laws,
25 including any action under—

1 “(1) any provision of title 5, United States
2 Code;

3 “(2) any application for a writ of habeas corpus
4 under section 2241 of title 28, United States Code,
5 or any other habeas corpus provision; or

6 “(3) any action under section 1361 or 1651 of
7 title 28, United States Code, that involves or is re-
8 lated to the enforcement or administration of the im-
9 migration laws with respect to any person or enti-
10 ty.”.

11 (b) EMPLOYER COMPLIANCE FUND.—

12 (1) ESTABLISHMENT.—Section 286 of the Im-
13 migration and Nationality Act (8 U.S.C. 1356), as
14 amended by subsection (a), is further amended by
15 adding at the end the following new subsection:

16 “(x) EMPLOYER COMPLIANCE FUND.—

17 “(1) IN GENERAL.—There is established in the
18 general fund of the Treasury, a separate account
19 which shall be known as the ‘Employer Compliance
20 Fund’ (referred to in this subsection as the ‘Fund’)

21 “(2) DEPOSITS.—There shall be deposited as
22 offsetting receipts into the Fund all monetary pen-
23 alties collected by the Secretary of Homeland Secu-
24 rity under section 274A.

1 “(3) USE OF FUNDS.—Amounts deposited into
 2 the Fund shall be used by the Secretary of Home-
 3 land Security for the purposes of enhancing em-
 4 ployer compliance with section 274A, compliance
 5 training, and outreach.

6 “(4) AVAILABILITY OF FUNDS.—Amounts de-
 7 posited into the Fund shall remain available until
 8 expended and shall be refunded out of the Fund by
 9 the Secretary of the Treasury, at least on a quar-
 10 terly basis, to the Secretary of Homeland Security.”.

11 (2) CONFORMING AMENDMENT.—Section 274A
 12 of the Immigration and Nationality Act (8 U.S.C.
 13 1324a), as amended by section 431(b), is further
 14 amended by adding at the end the following new
 15 subsection:

16 “(j) DEPOSITS OF AMOUNTS RECEIVED.—Amounts
 17 collected under this section shall be deposited by the Sec-
 18 retary of Homeland Security into the Employer Compli-
 19 ance Fund established under section 286(x).”.

20 **SEC. 505. REENTRY OF REMOVED ALIEN.**

21 (a) IN GENERAL.—Section 276 of the Immigration
 22 and Nationality Act (8 U.S.C. 1326) is amended—

23 (1) in subsection (a)—

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

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

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

21 (2) in subsection (b)—

22 (A) in paragraph (1), by striking “impris-
23 oned not more than 10 years,” and insert “im-
24 prisoned for a term of not less than 5 years and
25 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.”;

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

(4) in subsection (c)—

(A) by inserting “(as in effect before the effective date of the amendments made by section 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–597)), or removed under section 241(a)(4),” after “242(h)(2)”;

(B) by striking “(unless the Attorney General has expressly consented to such alien’s re-entry)”;

(C) by inserting “or removal” after “time of deportation”; and

(D) by inserting “or removed” after “re-entry of deported”;

(5) in subsection (d)—

(A) in the matter before paragraph (1), by striking “deportation order” and inserting “deportation or removal order”; and

(B) in paragraph (2), by inserting “or removal” after “deportation”; and

1 (6) by adding at the end the following new sub-
2 section:

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

7 (b) **EFFECTIVE DATE.**—The amendments made by
8 this section shall take effect on the date of the enactment
9 of this Act and shall apply to criminal proceedings involv-
10 ing aliens who enter, attempt to enter, or are found in
11 the United States, after such date.

12 **SEC. 506. CIVIL AND CRIMINAL PENALTIES FOR DOCUMENT**
13 **FRAUD, BENEFIT FRAUD, AND FALSE CLAIMS**
14 **OF CITIZENSHIP.**

15 (a) **CIVIL PENALTIES FOR DOCUMENT FRAUD.**—Sec-
16 tion 274C(d)(3) of the Immigration and Nationality Act
17 (8 U.S.C. 1324c(d)(3)) is amended—

18 (1) in subparagraph (A), by striking “\$250 and
19 not more than \$2,000” and inserting “\$500 and not
20 more than \$4,000”; and

21 (2) in subparagraph (B), by striking “\$2,000
22 and not more than \$5,000” and inserting “\$4,000
23 and not more than \$10,000”.

24 (b) **FRAUD AND FALSE STATEMENTS.**—Chapter 47
25 of title 18, United States Code, is amended—

1 (1) in section 1015, by striking “not more than
2 5 years” and inserting “not more than 10 years”;
3 and

4 (2) in section 1028(b)—

5 (A) in paragraph (1), by striking “15
6 years” and inserting “20 years”;

7 (B) in paragraph (2), by striking “5
8 years” and inserting “6 years”;

9 (C) in paragraph (3), by striking “20
10 years” and inserting “25 years”; and

11 (D) in paragraph (6), by striking “one
12 year” and inserting “2 years”.

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

15 (1) in subsection (a)—

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

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

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

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

1 (E) by striking “15 years” and inserting
 2 “imprisoned not more than 25 years”; and
 3 (2) in subsection (b), by striking “5 years” and
 4 inserting “10 years”.

5 (d) CRIMES OF VIOLENCE.—

6 (1) IN GENERAL.—Title 18, United States
 7 Code, is amended by inserting after chapter 51 the
 8 following:

9 **“CHAPTER 52—ILLEGAL ALIENS**

“Sec.

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

10 **“§ 1131. Enhanced penalties for certain crimes com-**
 11 **mitted by illegal aliens**

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

17 “(b) If an alien who violates subsection (a) was pre-
 18 viously ordered removed under the Immigration and Na-
 19 tionality Act (8 U.S.C. 1101 et seq.) on the grounds of
 20 having committed a crime, the alien shall be sentenced to
 21 not less than 15 years in prison.

22 “(c) A sentence of imprisonment imposed under this
 23 section shall run consecutively to any other sentence of
 24 imprisonment imposed for any other crime.”.

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

“52. Illegal aliens 1131”.

5 **SEC. 507. RENDERING INADMISSIBLE AND DEPORTABLE**
 6 **ALIENS PARTICIPATING IN CRIMINAL**
 7 **STREET GANGS.**

8 (a) INADMISSIBLE.—Section 212(a)(2) of the Immi-
 9 gration and Nationality Act (8 U.S.C. 1182(a)(2)) is
 10 amended by adding at the end the following:

11 **“(J) CRIMINAL STREET GANG PARTICIPA-**
 12 **TION.—**

13 **“(i) IN GENERAL.—Any alien is inad-**
 14 **missible if—**

15 **“(I) the alien has been removed**
 16 **under section 237(a)(2)(F); or**

17 **“(II) the consular officer or the**
 18 **Secretary of Homeland Security**
 19 **knows, or has reasonable ground to**
 20 **believe that the alien—**

21 **“(aa) is a member of a**
 22 **criminal street gang and has**
 23 **committed, conspired, or threat-**
 24 **ened to commit, or seeks to enter**
 25 **the United States to engage sole-**

ly, principally, or incidentally in,
a gang crime or any other unlaw-
ful activity; or

“(bb) is a member of a
criminal street gang designated
under section 219A.

“(ii) DEFINITIONS.—In this subpara-
graph:

“(I) CRIMINAL STREET GANG.—

The term ‘criminal street gang’ means
an ongoing group, club organization
or informal association of 5 or more
persons who engage, or have engaged
within the past 5 years in a con-
tinuing series of 3 or more gang
crimes (1 of which is a crime of vio-
lence, as defined in section 16 of title
18, United States Code).

“(II) GANG CRIME.—The term

‘gang crime’ means conduct consti-
tuting any Federal or State crime,
punishable by imprisonment for 1
year or more, in any of the following
categories:

1 “(aa) A crime of violence (as
2 defined in section 16 of title 18,
3 United States Code).

4 “(bb) A crime involving ob-
5 struction of justice, tampering
6 with or retaliating against a wit-
7 ness, victim, or informant, or
8 burglary.

9 “(cc) A crime involving the
10 manufacturing, importing, dis-
11 tributing, possessing with intent
12 to distribute, or otherwise dealing
13 in a controlled substance or listed
14 chemical (as those terms are de-
15 fined in section 102 of the Con-
16 trolled Substances Act (21
17 U.S.C. 802)).

18 “(dd) Any conduct punish-
19 able under section 844 of title
20 18, United States Code (relating
21 to explosive materials), sub-
22 section (d), (g)(1) (where the un-
23 derlying conviction is a violent
24 felony (as defined in section
25 924(e)(2)(B) of such title) or is a

1 serious drug offense (as defined
2 in section 924(e)(2)(A)), (i), (j),
3 (k), (o), (p), (q), (u), or (x) of
4 section 922 of such title (relating
5 to unlawful acts), or subsection
6 (b), (c), (g), (h), (k), (l), (m), or
7 (n) of section 924 of such title
8 (relating to penalties), section
9 930 of such title (relating to pos-
10 session of firearms and dan-
11 gerous weapons in Federal facili-
12 ties), section 931 of such title
13 (relating to purchase, ownership,
14 or possession of body armor by
15 violent felons), sections 1028 and
16 1029 of such title (relating to
17 fraud and related activity in con-
18 nection with identification docu-
19 ments or access devices), section
20 1952 of such title (relating to
21 interstate and foreign travel or
22 transportation in aid of racket-
23 teering enterprises), section 1956
24 of such title (relating to the laun-
25 dering of monetary instruments),

1 section 1957 of such title (relat-
 2 ing to engaging in monetary
 3 transactions in property derived
 4 from specified unlawful activity),
 5 or sections 2312 through 2315 of
 6 such title (relating to interstate
 7 transportation of stolen motor ve-
 8 hicles or stolen property).

9 “(ee) Any conduct punish-
 10 able under section 274 (relating
 11 to bringing in and harboring cer-
 12 tain aliens), section 277 (relating
 13 to aiding or assisting certain
 14 aliens to enter the United
 15 States), or section 278 (relating
 16 to importation of alien for im-
 17 moral purpose) of this Act.”.

18 (b) DEPORTABLE.—Section 237(a)(2) of the Immi-
 19 gration and Nationality Act (8 U.S.C. 1227(a)(2)) is
 20 amended by adding at the end the following:

21 “(F) CRIMINAL STREET GANG PARTICIPA-
 22 TION.—

23 “(i) IN GENERAL.—An alien is deport-
 24 able if the alien—

1 “(I) is a member of a criminal
 2 street gang and is convicted of com-
 3 mitting, or conspiring, threatening, or
 4 attempting to commit, a gang crime;
 5 or

6 “(II) is determined by the Sec-
 7 retary of Homeland Security to be a
 8 member of a criminal street gang des-
 9 ignated under section 219A.

10 “(ii) DEFINITIONS.—For purposes of
 11 this subparagraph, the terms ‘criminal
 12 street gang’ and ‘gang crime’ have the
 13 meaning given such terms in section
 14 212(a)(2)(J)(ii).”.

15 (c) DESIGNATION OF CRIMINAL STREET GANGS.—

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

19 **“SEC. 219A. DESIGNATION OF CRIMINAL STREET GANGS.**

20 “(a) DESIGNATION.—

21 “(1) IN GENERAL.—The Attorney General is
 22 authorized to designate a group or association as a
 23 criminal street gang in accordance with this sub-
 24 section if the Attorney General finds that the group

1 or association meets the criteria described in section
2 212(a)(2)(J)(ii)(I).

3 “(2) PROCEDURE.—

4 “(A) NOTICE.—

5 “(i) TO CONGRESSIONAL LEADERS.—

6 Seven days before making a designation
7 under this subsection, the Attorney Gen-
8 eral shall, by classified communication, no-
9 tify the Speaker and Minority Leader of
10 the House of Representatives, the Presi-
11 dent pro tempore, Majority Leader, and
12 Minority Leader of the Senate, and the
13 members of the relevant committees, in
14 writing, of the intent to designate a group
15 or association under this subsection, to-
16 gether with the findings made under para-
17 graph (1) with respect to that group or as-
18 sociation, and the factual basis therefore.

19 “(ii) PUBLICATION IN FEDERAL REG-
20 ISTER.—The Attorney General shall pub-
21 lish the designation in the Federal Register
22 7 days after providing the notification
23 under clause (i).

1 “(B) EFFECT OF DESIGNATION.—A des-
 2 ignation under this subsection shall take effect
 3 upon publication under subparagraph (A)(ii).

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

7 “(4) PERIOD OF DESIGNATION.—

8 “(A) IN GENERAL.—A designation under
 9 this subsection shall be effective for all purposes
 10 until revoked under paragraph (5) or (6) or set
 11 aside pursuant to subsection (b).

12 “(B) REVIEW OF DESIGNATION UPON PE-
 13 TITION.—

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

21 “(ii) PETITION PERIOD.—For pur-
 22 poses of clause (i)—

23 “(I) if the designated gang or as-
 24 sociation has not previously filed a pe-
 25 tition for revocation under this sub-

1 paragraph, the petition period begins
2 2 years after the date on which the
3 designation was made; or

4 “(II) if the designated gang or
5 association has previously filed a peti-
6 tion for revocation under this sub-
7 paragraph, the petition period begins
8 2 years after the date of the deter-
9 mination made under clause (iv) on
10 that petition.

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

20 “(iv) DETERMINATION.—

21 “(I) IN GENERAL.—Not later
22 than 180 days after receiving a peti-
23 tion for revocation submitted under
24 this subparagraph, the Attorney Gen-

1 eral shall make a determination as to
2 such revocation.

3 “(II) PUBLICATION OF DETER-
4 MINATION.—A determination made by
5 the Attorney General under this
6 clause shall be published in the Fed-
7 eral Register.

8 “(III) PROCEDURES.—Any rev-
9 ocation by the Attorney General shall
10 be made in accordance with para-
11 graph (6).

12 “(C) OTHER REVIEW OF DESIGNATION.—

13 “(i) IN GENERAL.—If in a 4-year pe-
14 riod no review has taken place under sub-
15 paragraph (B), the Attorney General shall
16 review the designation of the criminal
17 street gang in order to determine whether
18 such designation should be revoked pursu-
19 ant to paragraph (6).

20 “(ii) PROCEDURES.—If a review does
21 not take place pursuant to subparagraph
22 (B) in response to a petition for revocation
23 that is filed in accordance with that sub-
24 paragraph, then the review shall be con-
25 ducted pursuant to procedures established

1 by the Attorney General. The results of
2 such review and the applicable procedures
3 shall not be reviewable in any court.

4 “(iii) PUBLICATION OF RESULTS OF
5 REVIEW.—The Attorney General shall pub-
6 lish any determination made pursuant to
7 this subparagraph in the Federal Register.

8 “(5) REVOCATION BASED ON CHANGE IN CIR-
9 CUMSTANCES.—

10 “(A) IN GENERAL.—The Attorney General
11 may revoke a designation made under para-
12 graph (1) at any time, and shall revoke a des-
13 ignation upon completion of a review conducted
14 pursuant to subparagraphs (b) and (c) of para-
15 graph (4) if the Attorney General finds that—

16 “(i) the circumstances that were the
17 basis for the designation have changed in
18 such a manner as to warrant revocation; or

19 “(ii) the national security of the
20 United States warrants a revocation.

21 “(B) PROCEDURE.—The procedural re-
22 quirements of paragraphs (2) and (3) shall
23 apply to a revocation under this paragraph. Any
24 revocation shall take effect on the date specified

1 in the revocation or upon publication in the
2 Federal Register if no effective date is specified.

3 “(6) EFFECT OF REVOCATION.—The revocation
4 of a designation under paragraph (5) shall not affect
5 any action or proceeding based on conduct com-
6 mitted prior to the effective date of such revocation.

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

14 “(b) JUDICIAL REVIEW OF DESIGNATION.—

15 “(1) IN GENERAL.—Not later than 60 days
16 after publication of the designation in the Federal
17 Register, a group or association designated as a
18 criminal street gang may seek judicial review of the
19 designation in the United States Court of Appeals
20 for the District of Columbia Circuit.

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

1 “(3) SCOPE OF REVIEW.—The court shall hold
2 unlawful and set aside a designation the court finds
3 to be—

4 “(A) arbitrary, capricious, an abuse of dis-
5 cretion, or otherwise not in accordance with
6 law;

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

9 “(C) in excess of statutory jurisdiction, au-
10 thority, or limitation, or short of statutory
11 right;

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

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

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

21 “(c) RELEVANT COMMITTEE DEFINED.—As used in
22 this section, the term ‘relevant committees’ means the
23 Committee on the Judiciary of the Senate and the Com-
24 mittee on the Judiciary of the House of Representatives.”.

1 (2) CLERICAL AMENDMENT.—The table of con-
 2 tents for the Immigration and Nationality Act (8
 3 U.S.C. 1101 et seq.) is amended by inserting after
 4 the item relating to section 219 the following:

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

5 **SEC. 508. MANDATORY DETENTION OF SUSPECTED CRIMI-**
 6 **NAL STREET GANG MEMBERS.**

7 (a) IN GENERAL.—Section 236(c)(1)(D) of the Im-
 8 migration and Nationality Act (8 U.S.C. 1226(c)(1)(D))
 9 is amended—

10 (1) by inserting “or 212(a)(2)(J)” after
 11 “212(a)(3)(B)”; and

12 (2) by inserting “or 237(a)(2)(F)” before
 13 “237(a)(4)(B)”.

14 (b) ANNUAL REPORT.—Not later than March 1
 15 2007, and annually thereafter, the Secretary of Homeland
 16 Security, after consultation with the appropriate Federal
 17 agencies, shall submit a report to the Committee on the
 18 Judiciary of the Senate and the Committee on the Judici-
 19 ary of the House of Representatives on the number of
 20 aliens detained under the amendments made by subsection
 21 (a).

22 **SEC. 509. INELIGIBILITY FOR ASYLUM AND PROTECTION**
 23 **FROM REMOVAL.**

24 (a) INAPPLICABILITY OF RESTRICTION ON REMOVAL
 25 TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the

1 Immigration and Nationality Act (8 U.S.C.
 2 1231(b)(3)(B)) is amended, in the matter preceding
 3 clause (i), by inserting “who is described in section
 4 212(a)(2)(J)(i) or section 237(a)(2)(F)(i) or who is” after
 5 “to an alien”.

6 (b) INELIGIBILITY FOR ASYLUM.—Section
 7 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is
 8 amended—

9 (1) in clause (v), by striking “or” at the end;
 10 (2) by redesignating clause (vi) as clause (vii);
 11 and

12 (3) by inserting after clause (v) the following:
 13 “(vi) the alien is described in section
 14 212(a)(2)(J)(i) or section 237(a)(2)(F)(i)
 15 (relating to participation in criminal street
 16 gangs); or”.

17 (c) DENIAL OF REVIEW OF DETERMINATION OF IN-
 18 ELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—
 19 Section 244(c)(2) of such Act (8 U.S.C. 1254a(c)(2)) is
 20 amended by adding at the end the following:

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

1 **SEC. 510. PENALTIES FOR MISUSING SOCIAL SECURITY**
2 **NUMBERS OR FILING FALSE INFORMATION**
3 **WITH SOCIAL SECURITY ADMINISTRATION.**

4 (a) MISUSE OF SOCIAL SECURITY NUMBERS.—

5 (1) IN GENERAL.—Section 208(a) of the Social
6 Security Act (42 U.S.C. 408(a)) is amended—

7 (A) in paragraph (7), by adding after sub-
8 paragraph (C) the following:

9 “(D) with intent to deceive, discloses, sells,
10 or transfers his own social security account
11 number, assigned to him by the Commissioner
12 of Social Security (in the exercise of the Com-
13 missioner’s authority under section 205(c)(2) to
14 establish and maintain records), to any person;
15 or”;

16 (B) in paragraph (8), by adding “or” at
17 the end; and

18 (C) by inserting after paragraph (8) the
19 following:

20 “(9) without lawful authority, offers, for a fee,
21 to acquire for any individual, or to assist in acquir-
22 ing for any individual, an additional social security
23 account number or a number that purports to be a
24 social security account number;

25 “(10) willfully acts or fails to act so as to cause
26 a violation of section 205(c)(2)(C)(xii);

1 “(11) being an officer or employee of any execu-
 2 utive, legislative, or judicial agency or instrumen-
 3 tality of the Federal Government or of a State or
 4 political subdivision thereof, or a person acting as an
 5 agent of such an agency or instrumentality (or an
 6 officer or employee thereof or a person acting as an
 7 agent thereof) in possession of any individual’s social
 8 security account number, willfully acts or fails to act
 9 so as to cause a violation of clause (vi)(II), (x), (xi),
 10 (xii), (xiii), or (xiv) of section 205(c)(2)(C); or

11 “(12) being a trustee appointed in a case under
 12 title 11, United States Code (or an officer or em-
 13 ployee thereof or a person acting as an agent there-
 14 of), willfully acts or fails to act so as to cause a vio-
 15 lation of clause (x) or (xi) of section 205(c)(2)(C).”.

16 (2) EFFECTIVE DATES.—Paragraphs (7)(D)
 17 and (9) of section 208(a) of the Social Security Act,
 18 as added by paragraph (1), shall apply with respect
 19 to each violation occurring after the date of the en-
 20 actment of this Act. Paragraphs (10), (11), and (12)
 21 of section 208(a) of such Act, as added by para-
 22 graph (1)(C), shall apply with respect to each viola-
 23 tion occurring on or after the effective date of this
 24 Act.

1 (b) REPORT ON ENFORCEMENT EFFORTS CON-
 2 CERNING EMPLOYERS FILING FALSE INFORMATION RE-
 3 TURNS.—The Commissioner of Internal Revenue and the
 4 Commissioner of Social Security shall submit to Congress
 5 an annual report on efforts taken to identify and enforce
 6 penalties against employers that file incorrect information
 7 returns.

8 **SEC. 511. TECHNICAL AND CLARIFYING AMENDMENTS.**

9 (a) TERRORIST ACTIVITIES.—Section 212
 10 (a)(3)(B)(ii) of the Immigration and Nationality Act (8
 11 U.S.C. 1182(a)(3)(B)(ii)) is amended—

12 (1) by striking “Subclause (VII) of clause (i)”
 13 and inserting “Subclause (IX) of clause (i)”; and

14 (2) in subclause (II), by striking “consular offi-
 15 cer or Attorney General” and inserting “consular of-
 16 ficer, Attorney General, or Secretary of Homeland
 17 Security”.

18 (b) CLARIFICATION OF INELIGIBILITY FOR MIS-
 19 REPRESENTATION.—Section 212(a)(6)(C)(ii)(I) (8 U.S.C.
 20 1182(a)(6)(C)(ii)(I)), is amended by striking “citizen”
 21 and inserting “national”.

1 **Subtitle B—Detention, Removal,**
 2 **and Departure**

3 **SEC. 521. VOLUNTARY DEPARTURE REFORM.**

4 (a) ENCOURAGING ALIENS TO DEPART VOLUN-
 5 TARILY.—

6 (1) AUTHORITY.—Subsection (a) of section
 7 240B of the Immigration and Nationality Act (8
 8 U.S.C. 1229c) is amended—

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

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

18 (B) by striking paragraph (3);

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

21 (D) by inserting after paragraph (1) the
 22 following new paragraph:

23 “(2) PRIOR TO THE CONCLUSION OF REMOVAL
 24 PROCEEDINGS.—After removal proceedings under
 25 section 240 are initiated, the Attorney General may

1 permit an alien voluntarily to depart the United
 2 States at the alien's own expense under this sub-
 3 section, prior to the conclusion of such proceedings
 4 before an immigration judge, if the alien is not de-
 5 scribed in section 237(a)(2)(A)(iii) or section
 6 237(a)(4)."; and

7 (E) in paragraph (4), by striking "para-
 8 graph (1)" and inserting "paragraphs (1) and
 9 (2)".

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

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

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

16 "(A) IN LIEU OF REMOVAL.—Subject to
 17 subparagraph (C), permission to depart volun-
 18 tarily under paragraph (1) shall not be valid for
 19 a period exceeding 90 days. The Secretary of
 20 Homeland Security may require an alien per-
 21 mitted to depart voluntarily under paragraph
 22 (1) to post a voluntary departure bond, to be
 23 surrendered upon proof that the alien has de-
 24 parted the United States within the time speci-
 25 fied.";

- 1 (ii) in subparagraph (B), by striking
2 “subparagraphs (C) and (D)(ii)” and in-
3 serting “subparagraphs (D) and (E)(ii)”;
- 4 (iii) in subparagraphs (C) and (D), by
5 striking “subparagraph (B)” and inserting
6 “subparagraph (C)” each place it appears;
- 7 (iv) by redesignating subparagraphs
8 (B), (C), and (D) as subparagraphs (C),
9 (D), and (E), respectively; and
- 10 (v) by inserting after subparagraph
11 (A) the following new subparagraph:
- 12 “(B) PRIOR TO THE CONCLUSION OF RE-
13 MOVAL PROCEEDINGS.—Permission to depart
14 voluntarily under paragraph (2) shall not be
15 valid for a period exceeding 60 days, and may
16 be granted only after a finding that the alien
17 has established that the alien has the means to
18 depart the United States and intends to do so.
19 An alien permitted to depart voluntarily under
20 paragraph (2) must post a voluntary departure
21 bond, in an amount necessary to ensure that
22 the alien will depart, to be surrendered upon
23 proof that the alien has departed the United
24 States within the time specified. An immigra-
25 tion judge may waive posting of a voluntary de-

parture bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will be a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.”; and

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

(3) VOLUNTARY DEPARTURE AGREEMENTS.—

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

“(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

“(1) VOLUNTARY DEPARTURE AGREEMENT.—

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

“(2) CONCESSIONS BY THE SECRETARY.—In

connection with the alien’s agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security in the exercise of discretion may agree to a reduction in the period of inadmissibility

1 under subparagraph (A) or (B)(i) of section
2 212(a)(9).

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

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

25 “(e) ELIGIBILITY.—

1 “(1) PRIOR GRANT OF VOLUNTARY DEPAR-
2 TURE.—An alien shall not be permitted to depart
3 voluntarily under this section if the Secretary of
4 Homeland Security or the Attorney General pre-
5 viously permitted the alien to depart voluntarily.

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

20 (b) AVOIDING DELAYS IN VOLUNTARY DEPAR-
21 TURE.—

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

1 ther amended by adding at the end the following
2 new paragraph:

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

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

22 (c) PENALTIES FOR FAILURE TO DEPART VOLUN-
23 TARILY.—

24 (1) PENALTIES FOR FAILURE TO DEPART.—
25 Subsection (d) of section 240B of the Immigration

1 and Nationality Act (8 U.S.C. 1229c) is amended to
2 read as follows:

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

9 “(1) CIVIL PENALTY.—

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

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

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

24 “(D) INELIGIBILITY FOR BENEFITS.—An
25 alien will be ineligible for any benefits under

1 this title until any civil penalty under this sub-
2 section is paid.

3 “(2) INELIGIBILITY FOR RELIEF.—The alien
4 will be ineligible during the time the alien remains
5 in the United States and for a period of 10 years
6 after the alien’s departure for any further relief
7 under this section and sections 240A, 245, 248, and
8 249.

9 “(3) REOPENING.—

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

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

20 “The order permitting the alien to depart vol-
21 untarily under this section shall inform the alien of
22 the penalties under this subsection.”.

23 “(2) IMPLEMENTATION OF EXISTING STATUTORY
24 PENALTIES.—The Secretary of Homeland Security
25 shall implement regulations to provide for the im-

1 sition and collection of penalties for failure to depart
 2 under section 240B(d) of the Immigration and Na-
 3 tionality Act, as amended by paragraph (1).

4 (d) VOLUNTARY DEPARTURE AGREEMENTS NEGO-
 5 TIATED BY STATE OR LOCAL COURTS.—Section 240B of
 6 the Immigration and Nationality Act (8 U.S.C. 1229c) is
 7 amended by adding at the end the following new sub-
 8 section:

9 “(g) VOLUNTARY DEPARTURE AGREEMENTS NEGO-
 10 TIATED BY STATE OR LOCAL COURTS.—

11 “(1) IN GENERAL.—The Secretary of Homeland
 12 Security may permit an alien voluntarily to depart
 13 the United States at the alien’s own expense under
 14 this subsection at any time prior to the scheduling
 15 of the first merits hearing, in lieu of applying for an-
 16 other form of relief from removal, if the alien—

17 “(A) is deportable under section 237(a)(1);

18 “(B) is charged in a criminal proceeding in
 19 a State or local court for which conviction
 20 would subject the alien to deportation under
 21 paragraphs (2) through (6) of section 237(a);
 22 and

23 “(C) has accepted a plea bargain in such
 24 proceeding which stipulates that the alien, after
 25 consultation with counsel in such proceeding—

1 “(i) voluntarily waives application for
2 another form of relief from removal;

3 “(ii) consents to transportation, under
4 custody of a law enforcement officer of the
5 State or local court, to an appropriate
6 international port of entry where departure
7 from the United States will occur;

8 “(iii) possesses or will promptly obtain
9 travel documents issued by the foreign
10 state of which the alien is a national or
11 legal resident; and

12 “(iv) possesses the means to purchase
13 transportation from the port of entry to
14 the foreign state to which the alien will de-
15 part from the United States.

16 “(2) REVIEW.—The Secretary shall promptly
17 review an application for voluntary departure for
18 compliance with the requirements of paragraph (1).
19 The Secretary shall permit voluntary departure
20 under this subsection unless the State or local juris-
21 diction is informed in writing not later than 30 days
22 after such application is filed, that the Secretary in-
23 tends to seek removal under section 240.”.

24 (e) EFFECTIVE DATES.—

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

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

13 **SEC. 522. RELEASE OF ALIENS IN REMOVAL PROCEEDINGS.**

14 (a) IN GENERAL.—

15 (1) BONDS.—Section 236(a)(2) of the Immigra-
 16 tion and Nationality Act (8 U.S.C. 1226(a)(2)) is
 17 amended to read as follows:

18 “(2) may, upon an express finding by an immi-
 19 gration judge, that the alien is not a flight risk and
 20 is not a threat to the United States, release the alien
 21 on a bond—

22 “(A) of not less than \$5,000 release an
 23 alien; or

24 “(B) if the alien is a national of Canada
 25 or Mexico, of not less than \$3,000; or.”.

1 (2) CONFORMING AMENDMENT.—Section
2 236(a) of the Immigration and Nationality Act (8
3 U.S.C. 1226) is amended by inserting “or the Sec-
4 retary of Homeland Security” after the “Attorney
5 General” each place it appears.

6 (3) REPORT.—Not later than 2 years after the
7 enactment of this Act, the Secretary of Homeland
8 Security shall submit to Congress a report on the
9 number of aliens who are citizens or nationals of a
10 country other than Canada or Mexico who are ap-
11 prehended along an international land border of the
12 United States between ports of entry.

13 (b) DETENTION OF ALIENS DELIVERED BY BONDS-
14 MEN.—Section 241(a) of the Immigration and Nationality
15 Act (8 U.S.C. 1231(a)) is amended by adding at the end
16 the following new paragraph:

17 “(8) EFFECT OF PRODUCTION OF ALIEN BY
18 BONDSMAN.—Notwithstanding any other provision
19 of law, the Secretary of Homeland Security shall
20 take into custody any alien subject to a final order
21 of removal, and cancel any bond previously posted
22 for the alien, if the alien is produced within the pre-
23 scribed time limit by the obligor on the bond. The
24 obligor on the bond shall be deemed to have substan-
25 tially performed all conditions imposed by the terms

1 of the bond, and shall be released from liability on
 2 the bond, if the alien is produced within such time
 3 limit.”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 subsection (a) and (b) shall take effect on the date of the
 6 enactment of this Act and the amendment made by sub-
 7 section (b) shall apply to all immigration bonds posted be-
 8 fore, on, or after such date.

9 **SEC. 523. EXPEDITED REMOVAL.**

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

12 (1) by striking the section heading and insert-
 13 ing “EXPEDITED REMOVAL OF CRIMINAL ALIENS”;

14 (2) in subsection (a), by striking the subsection
 15 heading and inserting: “EXPEDITED REMOVAL
 16 FROM CORRECTIONAL FACILITIES.—”;

17 (3) in subsection (b), by striking the subsection
 18 heading and inserting: “REMOVAL OF CRIMINAL
 19 ALIENS.—”;

20 (4) in subsection (b), by striking paragraphs
 21 (1) and (2) and inserting the following:

22 “(1) IN GENERAL.—The Secretary of Homeland
 23 Security may, in the case of an alien described in
 24 paragraph (2), determine the deportability of such
 25 alien and issue an order of removal pursuant to the

1 procedures set forth in this subsection or section
2 240.

3 “(2) ALIENS DESCRIBED.—An alien is de-
4 scribed in this paragraph if the alien, whether or not
5 admitted into the United States, was convicted of
6 any criminal offense described in subparagraph
7 (A)(iii), (C), or (D) of section 237(a)(2).”;

8 (5) in the subsection (c) that relates to pre-
9 sumption of deportability, by striking “convicted of
10 an aggravated felony” and inserting “described in
11 paragraph (b)(2)”;

12 (6) by redesignating the subsection (c) that re-
13 lates to judicial removal as subsection (d); and

14 (7) in subsection (d)(5) (as so redesignated), by
15 striking “, who is deportable under this Act,”.

16 (b) APPLICATION TO CERTAIN ALIENS.—

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

20 (A) in subclause (I), by striking “Attorney
21 General” and inserting “Secretary of Homeland
22 Security” each place it appears; and

23 (B) by adding at the end the following new
24 subclause:

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 (2) EXCEPTIONS.—Section 235(b)(1)(F) of the
 15 Immigration and Nationality Act (8 U.S.C.
 16 1225(b)(1)(F)) is amended—

17 (A) by striking “and who arrives by air-
 18 craft at a port of entry” and inserting “and—
 19 ”; and

20 (B) by adding at the end the following:

21 “(i) who arrives by aircraft at a port
 22 of entry; or

23 “(ii) who is present in the United
 24 States and arrived in any manner at or be-
 25 tween a port of entry.”.

1 (c) LIMIT ON INJUNCTIVE RELIEF.—Section
 2 242(f)(2) of such Act (8 U.S.C. 1252(f)(2)) is amended
 3 by inserting “or stay, whether temporarily or otherwise,”
 4 after “enjoin”.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall take effect on the date of the enactment
 7 of this Act and shall apply to all aliens apprehended or
 8 convicted on or after such date.

9 **SEC. 524. REINSTATEMENT OF PREVIOUS REMOVAL OR-**
 10 **DERS.**

11 Section 241(a)(5) of the Immigration and Nationality
 12 Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:

13 “(5) REINSTATEMENT OF PREVIOUS REMOVAL
 14 ORDERS.—

15 “(A) REMOVAL.—The Secretary of Home-
 16 land Security shall remove an alien who is an
 17 applicant for admission (other than an admis-
 18 sible alien presenting himself or herself for in-
 19 spection at a port of entry or an alien paroled
 20 into the United States under section
 21 212(d)(5)), after having been, on or after Sep-
 22 tember 30, 1996, excluded, deported, or re-
 23 moved, or having departed voluntarily under an
 24 order of exclusion, deportation, or removal.

1 “(B) JUDICIAL REVIEW.—The removal de-
 2 scribed in subparagraph (A) shall not require
 3 any proceeding before an immigration judge,
 4 and shall be under the prior order of exclusion,
 5 deportation, or removal, which is not subject to
 6 reopening or review. The alien is not eligible
 7 and may not apply for or receive any immigra-
 8 tion relief or benefit under this Act or any other
 9 law, with the exception of sections 208 or
 10 241(b)(3) or the Convention Against Torture
 11 and Other Cruel, Inhuman or Degrading Treat-
 12 ment or Punishment, done at New York De-
 13 cember 10, 1984, in the case of an alien who
 14 indicates either an intention to apply for asylum
 15 under section 208 or a fear of persecution or
 16 torture.”.

17 **SEC. 525. CANCELLATION OF REMOVAL.**

18 Section 240A(c) of the Immigration and Nationality
 19 Act (8 U.S.C. 1229b(c)) is amended by adding at the end
 20 the following:

21 “(7) An alien who is inadmissible under section
 22 212(a)(9)(B)(i).”.

23 **SEC. 526. DETENTION OF DANGEROUS ALIEN.**

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

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

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

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

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

21 “(ii) If a court, the Board of Immi-
22 gration Appeals, or an immigration judge
23 orders a stay of the removal of the alien,
24 the date the stay of removal is no longer
25 in effect.”;

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

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

16 (5) in subsection (a)(2), by adding at the end
17 “‘If a court orders a stay of removal of an alien who
18 is subject to an administratively final order of re-
19 moval, the Secretary in the exercise of discretion
20 may detain the alien during the pendency of such
21 stay of removal.’”;

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

24 “(D) to obey reasonable restrictions on the
25 alien’s conduct or activities, or perform affirma-

1 tive acts, that the Secretary prescribes for the
2 alien, in order to prevent the alien from ab-
3 sconding, or for the protection of the commu-
4 nity, or for other purposes related to the en-
5 forcement of the immigration laws.”;

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

12 (8) by redesignating paragraph (7) of sub-
13 section (a) as paragraph (10) and inserting after
14 paragraph (6) of such subsection the following new
15 paragraphs:

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

1 “(8) APPLICATION OF ADDITIONAL RULES FOR
 2 DETENTION OR RELEASE OF CERTAIN ALIENS WHO
 3 HAVE MADE AN ENTRY.—The rules set forth in sub-
 4 section (j) shall only apply with respect to an alien
 5 who was lawfully admitted the most recent time the
 6 alien entered the United States or has otherwise ef-
 7 fected an entry into the United States.

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

17 (9) by adding at the end the following new sub-
 18 section:

19 “(j) ADDITIONAL RULES FOR DETENTION OR RE-
 20 LEASE OF CERTAIN ALIENS WHO HAVE MADE AN
 21 ENTRY.—

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

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

4 “(A) IN GENERAL.—The Secretary of
5 Homeland Security shall establish an adminis-
6 trative review process to determine whether the
7 aliens should be detained or released on condi-
8 tions for aliens who—

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

11 “(ii) have complied with the Sec-
12 retary’s efforts to carry out the removal
13 orders, including making timely application
14 in good faith for travel or other documents
15 necessary to the alien’s departure; and

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

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

23 “(i) shall include consideration of any
24 evidence submitted by the alien and the

1 history of the alien's efforts to comply with
2 the order of removal; and

3 “(ii) may include any information or
4 assistance provided by the Secretary of
5 State or other Federal agency and any
6 other information available to the Sec-
7 retary of Homeland Security pertaining to
8 the ability to remove the alien.

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

11 “(A) INITIAL 90-DAY PERIOD.—The Sec-
12 retary of Homeland Security in the exercise of
13 discretion, without any limitations other than
14 those specified in this section, may continue to
15 detain an alien for 90 days beyond the removal
16 period (including any extension of the removal
17 period as provided in subsection (a)(1)(C)).

18 “(B) EXTENSION.—

19 “(i) IN GENERAL.—The Secretary in
20 the exercise of discretion, without any limi-
21 tations other than those specified in this
22 section, may continue to detain an alien
23 beyond the 90-day period authorized in
24 subparagraph (A)—

1 “(I) until the alien is removed if
2 the conditions described in subpara-
3 graph (A) or (B) of paragraph (4)
4 apply; or

5 “(II) pending a determination as
6 provided in subparagraph (C) of para-
7 graph (4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(C) Pending a determination under sub-
25 paragraph (B), if the Secretary has initiated

1 the administrative review process no later than
2 30 days after the expiration of the removal pe-
3 riod (including any extension of the removal pe-
4 riod as provided in subsection (a)(1)(C)).

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

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

23 “(7) CERTAIN ALIENS WHO EFFECTED
24 ENTRY.—If an alien has effected an entry into the
25 United States but has neither been lawfully admitted

1 nor physically present in the United States continu-
2 ously for the 2-year period immediately prior to the
3 commencement of removal proceedings under this
4 Act or deportation proceedings against the alien, the
5 Secretary in the exercise of discretion may decide
6 not to apply subsection (a)(8) and this subsection
7 and may detain the alien without any limitations ex-
8 cept those imposed by regulation.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall take effect upon the date of the enact-
11 ment of this Act, and section 241 of the Immigration and
12 Nationality Act, as amended, shall apply to—

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

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

20 **SEC. 527. ALTERNATIVES TO DETENTION.**

21 The Secretary of Homeland Security shall implement
22 pilot programs in the 6 States with the largest estimated
23 populations of deportable aliens to study the effectiveness
24 of alternatives to detention, including electronic moni-
25 toring devices and intensive supervision programs, in en-

1 suring alien appearance at court and compliance with re-
2 moval orders.

3 **SEC. 528. AUTHORIZATION OF APPROPRIATIONS.**

4 In addition to amounts otherwise authorized to be ap-
5 propriated, there are authorized to be appropriated such
6 sums as may be necessary for each of fiscal years 2007
7 through 2011 to carry out this title.

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