

113TH CONGRESS
1ST SESSION

H. R. 2278

To amend the Immigration and Nationality Act to improve immigration law enforcement within the interior of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2013

Mr. GOWDY (for himself, Mr. GOODLATTE, Mr. SMITH of Texas, Mr. FORBES, Mrs. BLACKBURN, Mr. BISHOP of Utah, Mr. COBLE, Mr. POE of Texas, Mr. WESTMORELAND, Mr. CHAFFETZ, Mr. SENSENBRENNER, Mrs. BACHMANN, Mr. COLLINS of Georgia, Mr. WOODALL, Mr. MULVANEY, Mr. FRANKS of Arizona, Mr. PEARCE, Mr. DESANTIS, Mr. CHABOT, and Mr. LABRADOR) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security, Agriculture, and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to improve immigration law enforcement within the interior of the United States, 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.**

4 This Act may be cited as the “Strengthen and Fortify
5 Enforcement Act” or the “SAFE Act”.

1 SEC. 2. TABLE OF CONTENTS.

2 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

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- Sec. 102. Immigration law enforcement by States and localities.
- Sec. 103. Listing of immigration violators in the national crime information center database.
- Sec. 104. Technology access.
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- Sec. 106. Financial assistance to State and local police agencies that assist in the enforcement of immigration laws.
- Sec. 107. Increased Federal detention space.
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- Sec. 110. Immunity.
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- Sec. 301. Definition of aggravated felony and conviction.
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1 **TITLE I—IMMIGRATION LAW EN-**
 2 **FORCEMENT BY STATES AND**
 3 **LOCALITIES**

4 **SEC. 101. DEFINITIONS AND SEVERABILITY.**

5 (a) STATE DEFINED.—For the purposes of this title,
 6 the term “State” has the meaning given to such term in
 7 section 101(a)(36) of the Immigration and Nationality Act
 8 (8 U.S.C. 1101(a)(36)).

9 (b) SECRETARY DEFINED.—For the purpose of this
 10 title, the term “Secretary” means the Secretary of Home-
 11 land Security.

12 (c) SEVERABILITY.—If any provision of this title, or
 13 the application of such provision to any person or cir-
 14 cumstance, is held invalid, the remainder of this title, and
 15 the application of such provision to other persons not simi-
 16 larly situated or to other circumstances, shall not be af-
 17 fected by such invalidation.

1 **SEC. 102. IMMIGRATION LAW ENFORCEMENT BY STATES**
2 **AND LOCALITIES.**

3 (a) IN GENERAL.—Subject to section 274A(h)(2) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1324a(h)(2)), States, or political subdivisions of States,
6 may enact, implement and enforce criminal penalties that
7 penalize the same conduct that is prohibited in the crimi-
8 nal provisions of immigration laws (as defined in section
9 101(a)(17) of the Immigration and Nationality Act (8
10 U.S.C. 1101(a)(17))), as long as the criminal penalties do
11 not exceed the relevant Federal criminal penalties. States,
12 or political subdivisions of States, may enact, implement
13 and enforce civil penalties that penalize the same conduct
14 that is prohibited in the civil violations of immigration
15 laws (as defined in such section 101(a)(17)), as long as
16 the civil penalties do not exceed the relevant Federal civil
17 penalties.

18 (b) LAW ENFORCEMENT PERSONNEL.—Law enforce-
19 ment personnel of a State, or of a political subdivision of
20 a State, may investigate, identify, apprehend, arrest, de-
21 tain, or transfer to Federal custody aliens for the purposes
22 of enforcing the immigration laws of the United States
23 to the same extent as Federal law enforcement personnel.
24 Law enforcement personnel of a State, or of a political
25 subdivision of a State, may also investigate, identify, ap-
26 prehend, arrest, or detain aliens for the purposes of en-

1 forcing the immigration laws of a State or of a political
2 subdivision of State, as long as those immigration laws
3 are permissible under this section. Law enforcement per-
4 sonnel of a State, or of a political subdivision of a State,
5 may not remove aliens from the United States.

6 **SEC. 103. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
7 **TIONAL CRIME INFORMATION CENTER DATA-**
8 **BASE.**

9 (a) PROVISION OF INFORMATION TO THE NCIC.—
10 Not later than 180 days after the date of the enactment
11 of this Act and periodically thereafter as updates may re-
12 quire, the Secretary shall provide the National Crime In-
13 formation Center of the Department of Justice with all
14 information that the Secretary may possess regarding any
15 alien against whom a final order of removal has been
16 issued, any alien who has entered into a voluntary depar-
17 ture agreement, any alien who has overstayed their au-
18 thorized period of stay, and any alien whose visas has been
19 revoked. The National Crime Information Center shall
20 enter such information into the Immigration Violators File
21 of the National Crime Information Center database, re-
22 gardless of whether—

23 (1) the alien received notice of a final order of
24 removal;

25 (2) the alien has already been removed; or

1 (3) sufficient identifying information is avail-
2 able with respect to the alien.

3 (b) INCLUSION OF INFORMATION IN THE NCIC
4 DATABASE.—

5 (1) IN GENERAL.—Section 534(a) of title 28,
6 United States Code, is amended—

7 (A) in paragraph (3), by striking “and” at
8 the end;

9 (B) by redesignating paragraph (4) as
10 paragraph (5); and

11 (C) by inserting after paragraph (3) the
12 following:

13 “(4) acquire, collect, classify, and preserve
14 records of violations by aliens of the immigration
15 laws of the United States, regardless of whether any
16 such alien has received notice of the violation or
17 whether sufficient identifying information is avail-
18 able with respect to any such alien or whether any
19 such alien has already been removed from the
20 United States; and”.

21 (2) EFFECTIVE DATE.—The Attorney General
22 and the Secretary shall ensure that the amendment
23 made by paragraph (1) is implemented by not later
24 than 6 months after the date of the enactment of
25 this Act.

1 **SEC. 104. TECHNOLOGY ACCESS.**

2 States shall have access to Federal programs or tech-
3 nology directed broadly at identifying inadmissible or de-
4 portable aliens.

5 **SEC. 105. STATE AND LOCAL LAW ENFORCEMENT PROVI-**
6 **SION OF INFORMATION ABOUT APPRE-**
7 **HENDED ALIENS.**

8 (a) **PROVISION OF INFORMATION.**—In compliance
9 with section 642(a) of the Illegal Immigration Reform and
10 Immigrant Responsibility Act of 1996 (8 U.S.C. 1373)
11 and section 434 of the Personal Responsibility and Work
12 Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644),
13 each State, and each political subdivision of a State, shall
14 provide the Secretary of Homeland Security in a timely
15 manner with the information specified in subsection (b)
16 with respect to each alien apprehended in the jurisdiction
17 of the State, or in the political subdivision of the State,
18 who is believed to be inadmissible or deportable.

19 (b) **INFORMATION REQUIRED.**—The information re-
20 ferred to in subsection (a) is as follows:

- 21 (1) The alien's name.
- 22 (2) The alien's address or place of residence.
- 23 (3) A physical description of the alien.
- 24 (4) The date, time, and location of the encoun-
25 ter with the alien and reason for stopping, detaining,
26 apprehending, or arresting the alien.

1 (5) If applicable, the alien's driver's license
2 number and the State of issuance of such license.

3 (6) If applicable, the type of any other identi-
4 fication document issued to the alien, any designa-
5 tion number contained on the identification docu-
6 ment, and the issuing entity for the identification
7 document.

8 (7) If applicable, the license plate number,
9 make, and model of any automobile registered to, or
10 driven by, the alien.

11 (8) A photo of the alien, if available or readily
12 obtainable.

13 (9) The alien's fingerprints, if available or read-
14 ily obtainable.

15 (c) ANNUAL REPORT ON REPORTING.—The Sec-
16 retary shall maintain and annually submit to the Congress
17 a detailed report listing the States, or the political subdivi-
18 sions of States, that have provided information under sub-
19 section (a) in the preceding year.

20 (d) REIMBURSEMENT.—The Secretary shall reim-
21 burse States, and political subdivisions of a State, for all
22 reasonable costs, as determined by the Secretary, incurred
23 by the State, or the political subdivision of a State, as
24 a result of providing information under subsection (a).

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section.

4 (f) CONSTRUCTION.—Nothing in this section shall re-
5 quire law enforcement officials of a State, or of a political
6 subdivision of a State, to provide the Secretary with infor-
7 mation related to a victim of a crime or witness to a crimi-
8 nal offense.

9 (g) EFFECTIVE DATE.—This section shall take effect
10 on the date that is 120 days after the date of the enact-
11 ment of this Act and shall apply with respect to aliens
12 apprehended on or after such date.

13 **SEC. 106. FINANCIAL ASSISTANCE TO STATE AND LOCAL**
14 **POLICE AGENCIES THAT ASSIST IN THE EN-**
15 **FORCEMENT OF IMMIGRATION LAWS.**

16 (a) GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING
17 AND PROCESSING CERTAIN ALIENS.—From amounts
18 made available to make grants under this section, the Sec-
19 retary shall make grants to States, and to political subdivi-
20 sions of States, for procurement of equipment, technology,
21 facilities, and other products that facilitate and are di-
22 rectly related to investigating, apprehending, arresting,
23 detaining, or transporting aliens who are inadmissible or
24 deportable, including additional administrative costs in-
25 curred under this title.

1 (b) ELIGIBILITY.—To be eligible to receive a grant
2 under this section, a State, or a political subdivision of
3 a State, must have the authority to, and shall have a writ-
4 ten policy and a practice to, assist in the enforcement of
5 the immigration laws of the United States in the course
6 of carrying out the routine law enforcement duties of such
7 State or political subdivision of a State. Entities covered
8 under this section may not have any policy or practice that
9 prevents local law enforcement from inquiring about a sus-
10 pect’s immigration status.

11 (c) FUNDING.—There is authorized to be appro-
12 priated for grants under this section such sums as may
13 be necessary for fiscal year 2014 and each subsequent fis-
14 cal year.

15 (d) GAO AUDIT.—Not later than 3 years after the
16 date of the enactment of this Act, the Comptroller General
17 of the United States shall conduct an audit of funds dis-
18 tributed to States, and to political subdivisions of a State,
19 under subsection (a).

20 **SEC. 107. INCREASED FEDERAL DETENTION SPACE.**

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

23 (1) IN GENERAL.—The Secretary shall con-
24 struct or acquire, in addition to existing facilities for
25 the detention of aliens, detention facilities in the

1 United States, for aliens detained pending removal
2 from the United States or a decision regarding such
3 removal. Each facility shall have a number of beds
4 necessary to effectuate this purposes of this title.

5 (2) DETERMINATIONS.—The location of any de-
6 tention facility built or acquired in accordance with
7 this subsection shall be determined by the Secretary.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated such sums as may be
10 necessary to carry out this section.

11 (c) TECHNICAL AND CONFORMING AMENDMENT.—
12 Section 241(g)(1) of the Immigration and Nationality Act
13 (8 U.S.C. 1231(g)(1)) is amended by striking “may ex-
14 pend” and inserting “shall expend”.

15 **SEC. 108. FEDERAL CUSTODY OF INADMISSIBLE AND DE-**
16 **PORTABLE ALIENS IN THE UNITED STATES**
17 **APPREHENDED BY STATE OR LOCAL LAW EN-**
18 **FORCEMENT.**

19 (a) STATE APPREHENSION.—

20 (1) IN GENERAL.—Title II of the Immigration
21 and Nationality Act (8 U.S.C. 1151 et seq.) is
22 amended by inserting after section 240C the fol-
23 lowing:

1 “CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS
2 PRESENT IN THE UNITED STATES

3 “SEC. 240D. (a) TRANSFER OF CUSTODY BY STATE
4 AND LOCAL OFFICIALS.—If a State, or a political subdivi-
5 sion of the State, exercising authority with respect with
6 respect to the apprehension or arrest of an inadmissible
7 or deportable alien submits to the Secretary of Homeland
8 Security a request that the alien be taken into Federal
9 custody, notwithstanding any other provision of law, regu-
10 lation, or policy the Secretary—

11 “(1) shall take the alien into custody not later than
12 48 hours after the detainer has been issued following the
13 conclusion of the State or local charging process or dis-
14 missal process, or if no State or local charging or dismissal
15 process is required, the Secretary should issue a detainer
16 and take the alien into custody not later than 48 hours
17 after the alien is apprehended; and

18 “(2) shall request that the relevant State or local law
19 enforcement agency temporarily hold the alien in their
20 custody or transport the alien for transfer to Federal cus-
21 tody.

22 “(b) POLICY ON DETENTION IN FEDERAL, CON-
23 TRACT, STATE, OR LOCAL DETENTION FACILITIES.—In
24 carrying out section 241(g)(1), the Attorney General or
25 Secretary of Homeland Security shall ensure that an alien

1 arrested under this title shall be held in custody, pending
2 the alien's examination under this section, in a Federal,
3 contract, State, or local prison, jail, detention center, or
4 other comparable facility. Notwithstanding any other pro-
5 vision of law, regulation or policy, such facility is adequate
6 for detention, if—

7 “(1) such a facility is the most suitably located
8 Federal, contract, State, or local facility available for
9 such purpose under the circumstances;

10 “(2) an appropriate arrangement for such use
11 of the facility can be made; and

12 “(3) the facility satisfies the standards for the
13 housing, care, and security of persons held in cus-
14 tody by a United States Marshal.

15 “(c) REIMBURSEMENT.—The Secretary of Homeland
16 Security shall reimburse a State, and a political subdivi-
17 sion of a State, for all reasonable expenses, as determined
18 by the Secretary, incurred by the State, or political sub-
19 division, as a result of the incarceration and transpor-
20 tation of an alien who is inadmissible or deportable as de-
21 scribed in subsections (a) and (b). Compensation provided
22 for costs incurred under such subsections shall be the av-
23 erage cost of incarceration of a prisoner in the relevant
24 State, as determined by the chief executive officer of a
25 State, or of a political subdivision of a State, plus the cost

1 of transporting the alien from the point of apprehension
2 to the place of detention, and to the custody transfer point
3 if the place of detention and place of custody are different.

4 “(d) SECURE FACILITIES.—The Secretary of Home-
5 land Security shall ensure that aliens incarcerated pursu-
6 ant to this title are held in facilities that provide an appro-
7 priate level of security.

8 “(e) TRANSFER.—

9 “(1) IN GENERAL.—In carrying out this sec-
10 tion, the Secretary of Homeland Security shall es-
11 tablish a regular circuit and schedule for the prompt
12 transfer of apprehended aliens from the custody of
13 States, and political subdivisions of a State, to Fed-
14 eral custody.

15 “(2) CONTRACTS.—The Secretary may enter
16 into contracts, including appropriate private con-
17 tracts, to implement this subsection.”.

18 (2) CLERICAL AMENDMENT.—The table of con-
19 tents of such Act is amended by inserting after the
20 item relating to section 240C the following new item:

“Sec. 240D. Custody of aliens unlawfully present in the United States.”.

21 (b) GAO AUDIT.—Not later than 3 years after the
22 date of the enactment of this Act, the Comptroller General
23 of the United States shall conduct an audit of compensa-
24 tion to States, and to political subdivisions of a State, for
25 the incarceration of inadmissible or deportable aliens

1 under section 240D(a) of the Immigration and Nationality
2 Act (as added by subsection (a)(1)).

3 (c) EFFECTIVE DATE.—Section 240D of the Immi-
4 gration and Nationality Act, as added by subsection (a),
5 shall take effect on the date of the enactment of this Act,
6 except that subsection (e) of such section shall take effect
7 on the date that is 120 day after the date of the enactment
8 of this Act.

9 **SEC. 109. TRAINING OF STATE AND LOCAL LAW ENFORCE-**
10 **MENT PERSONNEL RELATING TO THE EN-**
11 **FORCEMENT OF IMMIGRATION LAWS.**

12 (a) ESTABLISHMENT OF TRAINING MANUAL AND
13 POCKET GUIDE.—Not later than 180 days after the date
14 of the enactment of this Act, the Secretary shall estab-
15 lish—

16 (1) a training manual for law enforcement per-
17 sonnel of a State, or of a political subdivision of a
18 State, to train such personnel in the investigation,
19 identification, apprehension, arrest, detention, and
20 transfer to Federal custody of inadmissible and de-
21 portable aliens in the United States (including the
22 transportation of such aliens across State lines to
23 detention centers and the identification of fraudulent
24 documents); and

1 (2) an immigration enforcement pocket guide
2 for law enforcement personnel of a State, or of a po-
3 litical subdivision of a State, to provide a quick ref-
4 erence for such personnel in the course of duty.

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

9 (c) APPLICABILITY.—Nothing in this section shall be
10 construed to require State or local law enforcement per-
11 sonnel to carry the training manual or pocket guide with
12 them while on duty.

13 (d) COSTS.—The Secretary shall be responsible for
14 any costs incurred in establishing the training manual and
15 pocket guide.

16 (e) TRAINING FLEXIBILITY.—

17 (1) IN GENERAL.—The Secretary shall make
18 training of State and local law enforcement officers
19 available through as many means as possible, includ-
20 ing through residential training at the Center for
21 Domestic Preparedness, onsite training held at State
22 or local police agencies or facilities, online training
23 courses by computer, teleconferencing, and video-
24 tape, or the digital video display (DVD) of a train-
25 ing course or courses. E-learning through a secure,

1 encrypted distributed learning system that has all its
2 servers based in the United States, is scalable, sur-
3 vivable, and can have a portal in place not later than
4 30 days after the date of the enactment of this Act,
5 shall be made available by the Federal Law Enforce-
6 ment Training Center Distributed Learning Pro-
7 gram for State and local law enforcement personnel.

8 (2) 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 (3) CLARIFICATION.—Nothing in this title or
13 any other provision of law shall be construed as
14 making any immigration-related training a require-
15 ment for, or prerequisite to, any State or local law
16 enforcement officer to assist in the enforcement of
17 Federal immigration laws.

18 (4) PRIORITY.—In carrying out this subsection,
19 priority funding shall be given for existing web-based
20 immigration enforcement training systems.

21 **SEC. 110. IMMUNITY.**

22 Notwithstanding any other provision of law, a law en-
23 forcement officer of a State or local law enforcement agen-
24 cy who is acting within the scope of the officer's official
25 duties shall be immune, to the same extent as a Federal

1 law enforcement officer, from personal liability arising out
2 of the performance of any duty described in this title, in-
3 cluding the authorities to investigate, identify, apprehend,
4 arrest, detain, or transfer to Federal custody, an alien for
5 the purposes of enforcing the immigration laws of the
6 United States (as defined in section 101(a)(17) of the Im-
7 migration and Nationality Act (8 U.S.C. 1101(a)(17)) or
8 the immigration laws of a State or a political subdivision
9 of a State.

10 **SEC. 111. CRIMINAL ALIEN IDENTIFICATION PROGRAM.**

11 (a) CONTINUATION AND EXPANSION.—

12 (1) IN GENERAL.—The Secretary shall continue
13 to operate and implement a program that—

14 (A) identifies removable criminal aliens in
15 Federal and State correctional facilities;

16 (B) ensures such aliens are not released
17 into the community; and

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

20 (2) EXPANSION.—The program shall be ex-
21 tended to all States. Any State that receives Federal
22 funds for the incarceration of criminal aliens (pursu-
23 ant to the State Criminal Alien Assistance Program
24 authorized under section 241(i) of the Immigration

1 and Nationality Act (8 U.S.C. 1231(i)) or other
2 similar program) shall—

3 (A) cooperate with officials of the program;

4 (B) expeditiously and systematically iden-
5 tify criminal aliens in its prison and jail popu-
6 lations; and

7 (C) promptly convey such information to
8 officials of such program as a condition of re-
9 ceiving such funds.

10 (b) AUTHORIZATION FOR DETENTION AFTER COM-
11 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
12 enforcement officers of a State, or of a political subdivision
13 of a State, are authorized to—

14 (1) hold a criminal alien for a period of up to
15 14 days after the alien has completed the alien’s
16 sentence under State or local law in order to effec-
17 tuate the transfer of the alien to Federal custody
18 when the alien is inadmissible or deportable; or

19 (2) issue a detainer that would allow aliens who
20 have served a prison sentence under State or local
21 law to be detained by the State or local prison or jail
22 until the Secretary can take the alien into custody.

23 (c) TECHNOLOGY USAGE.—Technology, such as video
24 conferencing, shall be used to the maximum extent prac-
25 ticable in order to make the program available in remote

1 locations. Mobile access to Federal databases of aliens and
2 live scan technology shall be used to the maximum extent
3 practicable in order to make these resources available to
4 State and local law enforcement agencies in remote loca-
5 tions.

6 (d) EFFECTIVE DATE.—This section shall take effect
7 of the date of the enactment of this Act, except that sub-
8 section (a)(2) shall take effect on the date that is 180 days
9 after such date.

10 **SEC. 112. CLARIFICATION OF CONGRESSIONAL INTENT.**

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

13 (1) in paragraph (1) by striking “may enter”
14 and all that follows through the period at the end
15 and inserting the following: “shall enter into a writ-
16 ten agreement with a State, or any political subdivi-
17 sion of a State, upon request of the State or political
18 subdivision, pursuant to which an officer or em-
19 ployee of the State or subdivision, who is determined
20 by the Secretary to be qualified to perform a func-
21 tion of an immigration officer in relation to the in-
22 vestigation, apprehension, or detention of aliens in
23 the United States (including the transportation of
24 such aliens across State lines to detention centers),
25 may carry out such function at the expense of the

1 State or political subdivision and to extent consistent
2 with State and local law. No request from a bona
3 fide State or political subdivision or bona fide law
4 enforcement agency shall be denied absent good
5 cause. No limit on the number of agreements under
6 this subsection may be imposed. The Secretary shall
7 process requests for such agreements with all due
8 haste, and in no case shall take not more than 90
9 days from the date the request is made until the
10 agreement is consummated.”;

11 (2) by redesignating paragraph (2) as para-
12 graph (5) and paragraphs (3) through (10) as para-
13 graphs (7) through (14), respectively;

14 (3) by inserting after paragraph (1) the fol-
15 lowing:

16 “(2) An agreement under this subsection shall accom-
17 modate a requesting State or political subdivision with re-
18 spect to the enforcement model or combination of models,
19 and shall accommodate a patrol model, task force model,
20 jail model, any combination thereof, or any other reason-
21 able model the State or political subdivision believes is best
22 suited to the immigration enforcement needs of its juris-
23 diction.

24 “(3) No Federal program or technology directed
25 broadly at identifying inadmissible or deportable aliens

1 shall substitute for such agreements, including those es-
2 tablishing a jail model, and shall operate in addition to
3 any agreement under this subsection.

4 “(4)(A) No agreement under this subsection shall be
5 terminated without good cause.

6 “(B)(i) The Secretary shall provide a State or polit-
7 ical subdivision written notice of intent to terminate at
8 least 180 days prior to date of intended termination, and
9 the notice shall fully explain the grounds for termination,
10 along with providing evidence substantiating the Sec-
11 retary’s allegations.

12 “(ii) The State or political subdivision shall have the
13 right to a hearing before an administrative law judge and,
14 if the ruling is against the State or political subdivision,
15 to appeal the ruling to the Federal Circuit Court of Ap-
16 peals and, if the ruling is against the State or political
17 subdivision, to the Supreme Court.

18 “(C) The agreement shall remain in full effect during
19 the course of any and all legal proceedings.”; and

20 (4) by inserting after paragraph (5) (as redesign-
21 nated) the following:

22 “(6) The Secretary of Homeland Security shall make
23 training of State and local law enforcement officers avail-
24 able through as many means as possible, including
25 through residential training at the Center for Domestic

1 Preparedness and the Federal Law Enforcement Training
2 Center, onsite training held at State or local police agen-
3 cies or facilities, online training courses by computer, tele-
4 conferencing, and videotape, or the digital video display
5 (DVD) of a training course or courses. Distance learning
6 through a secure, encrypted distributed learning system
7 that has all its servers based in the United States, is scal-
8 able, survivable, and can have a portal in place not later
9 than 30 days after the date of the enactment of this Act,
10 shall be made available by the COPS Office of the Depart-
11 ment of Justice and the Federal Law Enforcement Train-
12 ing Center Distributed Learning Program for State and
13 local law enforcement personnel. Preference shall be given
14 to private sector-based web-based immigration enforce-
15 ment training programs for which the Federal Govern-
16 ment has already provided support to develop.”.

17 **SEC. 113. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM**
18 **(SCAAP).**

19 Section 241(i) of the Immigration and Nationality
20 Act (8 U.S.C. 1231(i)) is amended—

21 (1) by striking “Attorney General” the first
22 place such term appears and inserting “Secretary of
23 Homeland Security”;

1 (2) by striking “Attorney General” each place
2 such term appears thereafter and inserting “Sec-
3 retary”;

4 (3) in paragraph (3)(A), by inserting “charged
5 with or” before “convicted”; and

6 (4) by amending paragraph (5) to read as fol-
7 lows:

8 “(5) There are authorized to be appropriated to
9 carry out this subsection such sums as may be nec-
10 essary for fiscal year 2014 and each subsequent fis-
11 cal year.”.

12 **SEC. 114. STATE VIOLATIONS OF ENFORCEMENT OF IMMI-**
13 **GRATION LAWS.**

14 (a) IN GENERAL.—Section 642 of the Illegal Immi-
15 gration Reform and Immigrant Responsibility Act of 1996
16 (8 U.S.C. 1373) is amended—

17 (1) by striking “Immigration and Naturaliza-
18 tion Service” in each place it appears and inserting
19 “Department of Homeland Security”;

20 (2) in subsection (a), by striking “may” and in-
21 serting “shall”;

22 (3) in subsection (b)—

23 (A) by striking “no person or agency may”
24 and inserting “a person or agency shall not”;

1 (B) by striking “doing any of the following
2 with respect to information” and inserting “un-
3 dertaking any of the following law enforcement
4 activities”; and

5 (C) by striking paragraphs (1) through (3)
6 and inserting the following:

7 “(1) Notifying the Federal Government regard-
8 ing the presence of inadmissible and deportable
9 aliens who are encountered by law enforcement per-
10 sonnel of a State or political subdivision of a State.

11 “(2) Complying with requests for information
12 from Federal law enforcement.

13 “(3) Complying with detainers issued by the
14 Department of Homeland Security.

15 “(4) Issuing policies in the form of a resolu-
16 tions, ordinances, administrative actions, general or
17 special orders, or departmental policies that violate
18 Federal law or restrict a State or political subdivi-
19 sion of a State from complying with Federal law or
20 coordinating with Federal law enforcement.”; and

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

22 “(d) COMPLIANCE.—

23 “(1) IN GENERAL.—A State, or a political sub-
24 division of a State, that has in effect a statute, pol-
25 icy, or practice that prohibits law enforcement offi-

1 cers of the State, or of a political subdivision of the
2 State, from assisting or cooperating with Federal
3 immigration law enforcement in the course of car-
4 rying out the officers' routine law enforcement du-
5 ties shall not be eligible to receive—

6 “(A) any of the funds that would otherwise
7 be allocated to the State or political subdivision
8 under section 241(i) of the Immigration and
9 Nationality Act (8 U.S.C. 1231(i)) or the ‘Cops
10 on the Beat’ program under part Q of title I of
11 the Omnibus Crime Control and Safe Streets
12 Act of 1968 (42 U.S.C. 3796dd et seq.); or

13 “(B) any other law enforcement or Depart-
14 ment of Homeland Security grant.

15 “(2) ANNUAL DETERMINATION.—The Secretary
16 shall determine annually which State or political
17 subdivision of a State are not in compliance with
18 section and shall report such determinations to Con-
19 gress on March 1 of each year.

20 “(3) REPORTS.—The Attorney General shall
21 issue a report concerning the compliance of any par-
22 ticular State or political subdivision at the request of
23 the House or Senate Judiciary Committee. Any ju-
24 risdiction that is found to be out of compliance shall
25 be ineligible to receive Federal financial assistance

1 as provided in paragraph (1) for a minimum period
2 of 1 year, and shall only become eligible again after
3 the Attorney General certifies that the jurisdiction is
4 in compliance.

5 “(4) REALLOCATION.—Any funds that are not
6 allocated to a State or to a political subdivision of
7 a State, due to the failure of the State, or of the po-
8 litical subdivision of the State, to comply with sub-
9 section (c) shall be reallocated to States, or to polit-
10 ical subdivisions of States, that comply with such
11 subsection.

12 “(e) CONSTRUCTION.—Nothing in this section shall
13 require law enforcement officials from States, or from po-
14 litical subdivisions of States, to report or arrest victims
15 or witnesses of a criminal offense.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on the date of the enactment
18 of this Act, except that subsection (d) of section 642 of
19 the Illegal Immigration Reform and Immigrant Responsi-
20 bility Act of 1996 (8 U.S.C. 1373), as added by this sec-
21 tion, shall take effect beginning one year after the date
22 of the enactment of this Act.

23 **SEC. 115. CLARIFYING THE AUTHORITY OF ICE DETAINERS.**

24 Except as otherwise provided by Federal law or rule
25 of procedure, the Secretary of Homeland Security shall

1 execute all lawful writs, process, and orders issued under
2 the authority of the United States, and shall command
3 all necessary assistance to execute the Secretary's duties.

4 **TITLE II—NATIONAL SECURITY**

5 **SEC. 201. REMOVAL OF, AND DENIAL OF BENEFITS TO, TER-** 6 **RORIST ALIENS.**

7 (a) ASYLUM.—Section 208(b)(2)(A) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1158(b)(2)(A)) is
9 amended—

10 (1) by inserting “or the Secretary of Homeland
11 Security” after “if the Attorney General”; and

12 (2) by amending clause (v) to read as follows:

13 “(v) the alien is described in subpara-
14 graph (B)(i) or (F) of section 212(a)(3),
15 unless, in the case of an alien described in
16 subparagraph (IV), (V), or (IX) of section
17 212(a)(3)(B)(i), the Secretary of Home-
18 land Security or the Attorney General de-
19 termines, in the discretion of the Secretary
20 or the Attorney General, that there are not
21 reasonable grounds for regarding the alien
22 as a danger to the security of the United
23 States; or”.

1 (b) CANCELLATION OF REMOVAL.—Section
2 240A(c)(4) of such Act (8 U.S.C. 1229b(c)(4)) is amend-
3 ed—

4 (1) by striking “inadmissible under” and insert-
5 ing “described in”; and

6 (2) by striking “deportable under” and insert-
7 ing “described in”.

8 (c) VOLUNTARY DEPARTURE.—Section
9 240B(b)(1)(C) of such Act (8 U.S.C. 1229c(b)(1)(C)) is
10 amended by striking “deportable under section
11 237(a)(2)(A)(iii) or section 237(a)(4);” and inserting “de-
12 scribed in paragraph (2)(A)(iii) or (4) of section 237(a);”.

13 (d) RESTRICTION ON REMOVAL.—Section
14 241(b)(3)(B) of such Act (8 U.S.C. 1231(b)(3)(B)) is
15 amended—

16 (1) by inserting “or the Secretary of Homeland
17 Security” after “Attorney General” wherever that
18 term appears;

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

20 (3) in clause (iv), by striking the period at the
21 end and inserting “; or”;

22 (4) by inserting after clause (iv) the following:

23 “(v) the alien is described in subpara-
24 graph (B)(i) or (F) of section 212(a)(3),
25 unless, in the case of an alien described in

1 subparagraph (IV), (V), or (IX) of section
2 212(a)(3)(B)(i), the Secretary of Home-
3 land Security or the Attorney General de-
4 termines, in discretion of the Secretary or
5 the Attorney General, that there are not
6 reasonable grounds for regarding the alien
7 as a danger to the security of the United
8 States.”; and

9 (5) by striking the final sentence.

10 (e) RECORD OF ADMISSION.—

11 (1) IN GENERAL.—Section 249 of such Act (8
12 U.S.C. 1259) is amended to read as follows:

13 “RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN
14 THE CASE OF CERTAIN ALIENS WHO ENTERED THE
15 UNITED STATES PRIOR TO JANUARY 1, 1972

16 “SEC. 249. The Secretary of Homeland Security, in
17 the discretion of the Secretary and under such regulations
18 as the Secretary may prescribe, may enter a record of law-
19 ful admission for permanent residence in the case of any
20 alien, if no such record is otherwise available and the
21 alien—

22 “(1) entered the United States before January
23 1, 1972;

24 “(2) has continuously resided in the United
25 States since such entry;

1 “(3) has been a person of good moral character
2 since such entry;

3 “(4) is not ineligible for citizenship;

4 “(5) is not described in paragraph (1)(A)(iv),
5 (2), (3), (6)(C), (6)(E), or (8) of section 212(a); and

6 “(6) did not, at any time, without reasonable
7 cause fail or refuse to attend or remain in attend-
8 ance at a proceeding to determine the alien’s inad-
9 missibility or deportability.

10 Such recordation shall be effective as of the date of ap-
11 proval of the application or as of the date of entry if such
12 entry occurred prior to July 1, 1924.”.

13 (2) CLERICAL AMENDMENT.—The table of con-
14 tents for such Act is amended by amending the item
15 relating to section 249 to read as follows:

“Sec. 249. Record of admission for permanent residence in the case of certain
aliens who entered the United States prior to January 1,
1972.”.

16 (f) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on the date of enactment of
18 this Act and sections 208(b)(2)(A), 212(a), 240A, 240B,
19 241(b)(3), and 249 of the Immigration and Nationality
20 Act, as so amended, shall apply to—

21 (1) all aliens in removal, deportation, or exclu-
22 sion proceedings;

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

1 (3) with respect to aliens and applications de-
2 scribed in paragraph (1) or (2) of this subsection,
3 acts and conditions constituting a ground for exclu-
4 sion, deportation, or removal occurring or existing
5 before, on, or after the date of the enactment of this
6 Act.

7 **SEC. 202. TERRORIST BAR TO GOOD MORAL CHARACTER.**

8 (a) DEFINITION OF GOOD MORAL CHARACTER.—
9 Section 101(f) of the Immigration and Nationality Act (8
10 U.S.C. 1101(f)) is amended—

11 (1) by redesignating paragraphs (1) through
12 (9) as paragraphs (2) through (10), respectively;

13 (2) by inserting after paragraph (1) the fol-
14 lowing:

15 “(2) one who the Secretary of Homeland Secu-
16 rity or Attorney General determines to have been at
17 any time an alien described in section 212(a)(3) or
18 237(a)(4), which determination may be based upon
19 any relevant information or evidence, including clas-
20 sified, sensitive, or national security information;”;

21 (3) in paragraph (9) (as redesignated), by in-
22 serting “, regardless whether the crime was classi-
23 fied as an aggravated felony at the time of convic-
24 tion, except that the Secretary of Homeland Security
25 or Attorney General may, in the unreviewable discre-

1 tion of the Secretary or Attorney General, determine
2 that this paragraph shall not apply in the case of a
3 single aggravated felony conviction (other than mur-
4 der, manslaughter, homicide, rape, or any sex of-
5 fense when the victim of such sex offense was a
6 minor) for which completion of the term of imprison-
7 ment or the sentence (whichever is later) occurred
8 10 or more years prior to the date of application”
9 after “(as defined in subsection (a)(43))”; and

10 (4) by striking the first sentence the follows
11 paragraph (10) (as redesignated) and inserting fol-
12 lowing: “The fact that any person is not within any
13 of the foregoing classes shall not preclude a discre-
14 tionary finding for other reasons that such a person
15 is or was not of good moral character. The Secretary
16 or the Attorney General shall not be limited to the
17 applicant’s conduct during the period for which good
18 moral character is required, but may take into con-
19 sideration as a basis for determination the appli-
20 cant’s conduct and acts at any time.”

21 (b) AGGRAVATED FELONS.—Section 509(b) of the
22 Immigration Act of 1990 (8 U.S.C. 1101 note) is amended
23 to read as follows:

24 “(b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall take effect on November 29, 1990,

1 and shall apply to convictions occurring before, on or after
2 such date.”.

3 (c) TECHNICAL CORRECTION TO THE INTELLIGENCE
4 REFORM ACT.—Section 5504(2) of the Intelligence Re-
5 form and Terrorism Prevention Act of 2004 (Public Law
6 108–458) is amended by striking “adding at the end” and
7 inserting “inserting after paragraph (8)”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 subsections (a) and (b) shall take effect on the date of
10 enactment of this Act, shall apply to any act that occurred
11 before, on, or after such date and shall apply to any appli-
12 cation for naturalization or any other benefit or relief, or
13 any other case or matter under the immigration laws
14 pending on or filed after such date. The amendments
15 made by subsection (c) shall take effect as if enacted in
16 the Intelligence Reform and Terrorism Prevention Act of
17 2004 (Public Law 108–458).

18 **SEC. 203. TERRORIST BAR TO NATURALIZATION.**

19 (a) NATURALIZATION OF PERSONS ENDANGERING
20 THE NATIONAL SECURITY.—Section 316 of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1426) is amended by
22 adding at the end the following:

23 “(g) PERSONS ENDANGERING THE NATIONAL SECUR-
24 ITY.—No person shall be naturalized who the Secretary
25 of Homeland Security determines to have been at any time

1 an alien described in section 212(a)(3) or 237(a)(4). Such
2 determination may be based upon any relevant informa-
3 tion or evidence, including classified, sensitive, or national
4 security information.”.

5 (b) CONCURRENT NATURALIZATION AND REMOVAL
6 PROCEEDINGS.—Section 318 of the Immigration and Na-
7 tionality Act (8 U.S.C. 1429) is amended by striking
8 “other Act;” and inserting “other Act; and no application
9 for naturalization shall be considered by the Secretary of
10 Homeland Security or any court if there is pending
11 against the applicant any removal proceeding or other pro-
12 ceeding to determine the applicant’s inadmissibility or de-
13 portability, or to determine whether the applicant’s lawful
14 permanent resident status should be rescinded, regardless
15 of when such proceeding was commenced: *Provided*, That
16 the findings of the Attorney General in terminating re-
17 moval proceedings or in canceling the removal of an alien
18 pursuant to the provisions of this Act, shall not be deemed
19 binding in any way upon the Secretary of Homeland Secu-
20 rity with respect to the question of whether such person
21 has established his eligibility for naturalization as required
22 by this title;”.

23 (c) PENDING DENATURALIZATION OR REMOVAL
24 PROCEEDINGS.—Section 204(b) of the Immigration and
25 Nationality Act (8 U.S.C. 1154(b)) is amended by adding

1 at the end the following: “No petition shall be approved
2 pursuant to this section if there is any administrative or
3 judicial proceeding (whether civil or criminal) pending
4 against the petitioner that could (whether directly or indi-
5 rectly) result in the petitioner’s denaturalization or the
6 loss of the petitioner’s lawful permanent resident status.”.

7 (d) **CONDITIONAL PERMANENT RESIDENTS.**—Sec-
8 tions 216(e) and section 216A(e) of the Immigration and
9 Nationality Act (8 U.S.C. 1186a(e) and 1186b(e)) are
10 each amended by striking the period at the end and insert-
11 ing “, if the alien has had the conditional basis removed
12 pursuant to this section.”.

13 (e) **DISTRICT COURT JURISDICTION.**—Subsection
14 336(b) of the Immigration and Nationality Act, 8 U.S.C.
15 1447(b), is amended to read as follows:

16 “(b) If there is a failure to render a final administra-
17 tive decision under section 335 before the end of the 180-
18 day period after the date on which the Secretary of Home-
19 land Security completes all examinations and interviews
20 conducted under such section, as such terms are defined
21 by the Secretary of Homeland Security pursuant to regu-
22 lations, the applicant may apply to the district court for
23 the district in which the applicant resides for a hearing
24 on the matter. Such court shall only have jurisdiction to
25 review the basis for delay and remand the matter to the

1 Secretary of Homeland Security for the Secretary’s deter-
2 mination on the application.”.

3 (f) CONFORMING AMENDMENT.—Section 310(c) of
4 the Immigration and Nationality Act (8 U.S.C. 1421(c))
5 is amended—

6 (1) by inserting “, not later than the date that
7 is 120 days after the Secretary of Homeland Secu-
8 rity’s final determination,” after “seek”; and

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

1 whether an alien is well disposed to the good order
2 and happiness of the United States.”.

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

9 **SEC. 204. DENATURALIZATION FOR TERRORISTS.**

10 (a) **IN GENERAL.**—Section 340 of the Immigration
11 and Nationality Act is amended—

12 (1) by redesignating subsections (f) through (h)
13 as subsections (g) through (i), respectively; and

14 (2) by inserting after subsection (e) the fol-
15 lowing:

16 “(f)(1) If a person who has been naturalized partici-
17 pates in any act described in paragraph (2), the Attorney
18 General is authorized to find that, as of the date of such
19 naturalization, such person was not attached to the prin-
20 ciples of the Constitution of the United States and was
21 not well disposed to the good order and happiness of the
22 United States at the time of naturalization, and upon such
23 finding shall set aside the order admitting such person to
24 citizenship and cancel the certificate of naturalization as
25 having been obtained by concealment of a material fact

1 or by willful misrepresentation, and such revocation and
2 setting aside of the order admitting such person to citizen-
3 ship and such canceling of certificate of naturalization
4 shall be effective as of the original date of the order and
5 certificate, respectively.

6 “(2) The acts described in this paragraph are the fol-
7 lowing:

8 “(A) Any activity a purpose of which is the op-
9 position to, or the control or overthrow of, the Gov-
10 ernment of the United States by force, violence, or
11 other unlawful means.

12 “(B) Engaging in a terrorist activity (as de-
13 fined in clauses (iii) and (iv) of section
14 212(a)(3)(B)).

15 “(C) Incitement of terrorist activity under cir-
16 cumstances indicating an intention to cause death or
17 serious bodily harm.

18 “(D) Receiving military-type training (as de-
19 fined in section 2339D(c)(1) of title 18, United
20 States Code) from or on behalf of any organization
21 that, at the time the training was received, was a
22 terrorist organization (as defined in section
23 212(a)(3)(B)(vi)).”.

24 (b) EFFECTIVE DATE.—The amendments made by
25 subsection (a) shall take effect on the date of the enact-

1 ment of this Act and shall apply to acts that occur on
2 or after such date.

3 **SEC. 205. USE OF 1986 IRCA LEGALIZATION INFORMATION**
4 **FOR NATIONAL SECURITY PURPOSES.**

5 (a) SPECIAL AGRICULTURAL WORKERS.—Section
6 210(b)(6) of the Immigration and Nationality Act (8
7 U.S.C. 1160(b)(6)) is amended—

8 (1) by striking “Attorney General” each place
9 such term appears and inserting “Secretary of
10 Homeland Security”;

11 (2) in subparagraph (A), by striking “Depart-
12 ment of Justice,” and inserting “Department of
13 Homeland Security,”;

14 (3) by redesignating subparagraphs (C) and
15 (D) as subparagraphs (D) and (E), respectively;

16 (4) by inserting after subparagraph (B) the fol-
17 lowing:

18 “(C) AUTHORIZED DISCLOSURES.—

19 “(i) CENSUS PURPOSE.—The Sec-
20 retary of Homeland Security may provide,
21 in his discretion, for the furnishing of in-
22 formation furnished under this section in
23 the same manner and circumstances as
24 census information may be disclosed under
25 section 8 of title 13, United States Code.

1 “(ii) NATIONAL SECURITY PUR-
2 POSE.—The Secretary of Homeland Secu-
3 rity may provide, in his discretion, for the
4 furnishing, use, publication, or release of
5 information furnished under this section in
6 any investigation, case, or matter, or for
7 any purpose, relating to terrorism, national
8 intelligence or the national security.”; and

9 (5) in subparagraph (D), as redesignated, by
10 striking “Service” and inserting “Department of
11 Homeland Security”.

12 (b) ADJUSTMENT OF STATUS UNDER THE IMMIGRA-
13 TION REFORM AND CONTROL ACT OF 1986.—Section
14 245A(c)(5) of the Immigration and Nationality Act (8
15 U.S.C. 1255a(c)(5)), is amended—

16 (1) by striking “Attorney General” each place
17 such term appears and inserting “Secretary of
18 Homeland Security”;

19 (2) in subparagraph (A), by striking “Depart-
20 ment of Justice,” and inserting “Department of
21 Homeland Security,”;

22 (3) by amending subparagraph (C) to read as
23 follows:

24 “(C) AUTHORIZED DISCLOSURES.—

1 “(i) CENSUS PURPOSE.—The Sec-
2 retary of Homeland Security may provide,
3 in his discretion, for the furnishing of in-
4 formation furnished under this section in
5 the same manner and circumstances as
6 census information may be disclosed under
7 section 8 of title 13, United States Code.

8 “(ii) NATIONAL SECURITY PUR-
9 POSE.—The Secretary of Homeland Secu-
10 rity may provide, in his discretion, for the
11 furnishing, use, publication, or release of
12 information furnished under this section in
13 any investigation, case, or matter, or for
14 any purpose, relating to terrorism, national
15 intelligence or the national security.”; and

16 (4) in subparagraph (D), striking “Service”
17 and inserting “Department of Homeland Security”.

18 **SEC. 206. BACKGROUND AND SECURITY CHECKS.**

19 (a) REQUIREMENT TO COMPLETE BACKGROUND AND
20 SECURITY CHECKS.—Section 103 of the Immigration and
21 Nationality Act (8 U.S.C. 1103) is amended by adding
22 at the end the following:

23 “(h) Notwithstanding any other provision of law
24 (statutory or nonstatutory), including but not limited to
25 section 309 of Public Law 107–173, sections 1361 and

1 1651 of title 28, United States Code, and section 706(1)
2 of title 5, United States Code, neither the Secretary of
3 Homeland Security, the Attorney General, nor any court
4 may—

5 “(1) grant, or order the grant of or adjudica-
6 tion of an application for adjustment of status to
7 that of an alien lawfully admitted for permanent res-
8 idence;

9 “(2) grant, or order the grant of or adjudica-
10 tion of an application for United States citizenship
11 or any other status, relief, protection from removal,
12 employment authorization, or other benefit under
13 the immigration laws;

14 “(3) grant, or order the grant of or adjudica-
15 tion of, any immigrant or nonimmigrant petition; or

16 “(4) issue or order the issuance of any docu-
17 mentation evidencing or related to any such grant,
18 until such background and security checks as the
19 Secretary may in his discretion require have been
20 completed or updated to the satisfaction of the Sec-
21 retary.

22 “(i) Notwithstanding any other provision of law (stat-
23 utory or nonstatutory), including but not limited to section
24 309 of Public Law 107–173, sections 1361 and 1651 of
25 title 28, United States Code, and section 706(1) of title

1 5, United States Code, neither the Secretary of Homeland
2 Security nor the Attorney General may be required to—

3 “(1) grant, or order the grant of or adjudica-
4 tion of an application for adjustment of status to
5 that of an alien lawfully admitted for permanent res-
6 idence,

7 “(2) grant, or order the grant of or adjudica-
8 tion of an application for United States citizenship
9 or any other status, relief, protection from removal,
10 employment authorization, or other benefit under
11 the immigration laws,

12 “(3) grant, or order the grant of or adjudica-
13 tion of, any immigrant or nonimmigrant petition, or

14 “(4) issue or order the issuance of any docu-
15 mentation evidencing or related to any such grant,
16 until any suspected or alleged materially false infor-
17 mation, material misrepresentation or omission, con-
18 cealment of a material fact, fraud or forgery, coun-
19 terfeiting, or alteration, or falsification of a docu-
20 ment, as determined by the Secretary, relating to
21 the adjudication of an application or petition for any
22 status (including the granting of adjustment of sta-
23 tus), relief, protection from removal, or other benefit
24 under this subsection has been investigated and re-
25 solved to the Secretary’s satisfaction.

1 “(j) Notwithstanding any other provision of law (stat-
2 utory or nonstatutory), including section 309 of the En-
3 hanced Border Security and Visa Entry Reform Act (8
4 U.S.C. 1738), sections 1361 and 1651 of title 28, United
5 States Code, and section 706(1) of title 5, United States
6 Code, no court shall have jurisdiction to require any of
7 the acts in subsection (h) or (i) to be completed by a cer-
8 tain time or award any relief for failure to complete or
9 delay in completing such acts.”.

10 (b) CONSTRUCTION.—

11 (1) IN GENERAL.—Chapter 4 of title III of the
12 Immigration and Nationality Act (8 U.S.C. 1501 et
13 seq.) is amended by adding at the end the following:

14 “CONSTRUCTION
15 “SEC. 362. (a) IN GENERAL.—Nothing in this Act
16 or any other law, except as provided in subsection (d),
17 shall be construed to require the Secretary of Homeland
18 Security, the Attorney General, the Secretary of State, the
19 Secretary of Labor, or a consular officer to grant any ap-
20 plication, approve any petition, or grant or continue any
21 relief, protection from removal, employment authorization,
22 or any other status or benefit under the immigration laws
23 by, to, or on behalf of—

24 “(1) any alien deemed by the Secretary to be
25 described in section 212(a)(3) or section 237(a)(4);
26 or

1 “(2) any alien with respect to whom a criminal
2 or other proceeding or investigation is open or pend-
3 ing (including, but not limited to, issuance of an ar-
4 rest warrant, detainer, or indictment), where such
5 proceeding or investigation is deemed by the official
6 described in subsection (a) to be material to the
7 alien’s eligibility for the status or benefit sought.

8 “(b) DENIAL OR WITHHOLDING OF ADJUDICA-
9 TION.—An official described in subsection (a) may, in the
10 discretion of the official, deny (with respect to an alien
11 described in paragraph (1) or (2) of subsection (a)) or
12 withhold adjudication of pending resolution of the inves-
13 tigation or case (with respect to an alien described in sub-
14 section (a)(2) of this section) any application, petition, re-
15 lief, protection from removal, employment authorization,
16 status or benefit.

17 “(c) JURISDICTION.—Notwithstanding any other pro-
18 vision of law (statutory or nonstatutory), including section
19 309 of the Enhanced Border Security and Visa Entry Re-
20 form Act (8 U.S.C. 1738), sections 1361 and 1651 of title
21 28, United States Code, and section 706(1) of title 5,
22 United States Code, no court shall have jurisdiction to re-
23 view a decision to deny or withhold adjudication pursuant
24 to subsection (b) of this section.

1 “(d) WITHHOLDING OF REMOVAL AND TORTURE
2 CONVENTION.—This section does not limit or modify the
3 applicability of section 241(b)(3) or the United Nations
4 Convention Against Torture and Other Cruel, Inhuman or
5 Degrading Treatment or Punishment, subject to any res-
6 ervations, understandings, declarations and provisos con-
7 tained in the United States Senate resolution of ratifica-
8 tion of the Convention, as implemented by section 2242
9 of the Foreign Affairs Reform and Restructuring Act of
10 1998 (Public Law 105–277) with respect to an alien oth-
11 erwise eligible for protection under such provisions.”.

12 (2) CLERICAL AMENDMENT.—The table of con-
13 tents for such Act is amended by inserting after the
14 item relating to section 361 the following:

“362. Construction.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the date of the enactment
17 of this Act and shall apply to applications for immigration
18 benefits pending on or after such date.

19 **SEC. 207. TECHNICAL AMENDMENTS RELATING TO THE IN-**
20 **TELLIGENCE REFORM AND TERRORISM PRE-**
21 **VENTION ACT OF 2004.**

22 (a) TRANSIT WITHOUT VISA PROGRAM.—Section
23 7209(d) of the Intelligence Reform and Terrorism Preven-
24 tion Act of 2004 (8 U.S.C. 1185 note) is amended by
25 striking “the Secretary, in conjunction with the Secretary

1 of Homeland Security,” and inserting “the Secretary of
2 Homeland Security, in consultation with the Secretary of
3 State,”.

4 (b) TECHNOLOGY ACQUISITION AND DISSEMINATION
5 PLAN.—Section 7201(c)(1) of such Act is amended by in-
6 serting “and the Department of State” after “used by the
7 Department of Homeland Security”.

8 **TITLE III—REMOVAL OF** 9 **CRIMINAL ALIENS**

10 **SEC. 301. DEFINITION OF AGGRAVATED FELONY AND CON-** 11 **VICTION.**

12 (a) DEFINITION OF AGGRAVATED FELONY.—Section
13 101(a)(43) of the Immigration and Nationality Act (8
14 U.S.C. 1101(a)(43)) is amended—

15 (1) by striking “The term ‘aggravated felony’
16 means—” and inserting “Notwithstanding any other
17 provision of law, the term ‘aggravated felony’ applies
18 to an offense described in this paragraph, whether in
19 violation of Federal or State law, or in violation of
20 the law of a foreign country for which the term of
21 imprisonment was completed within the previous 15
22 years, even if the length of the term of imprisonment
23 for the offense is based on recidivist or other en-
24 hancements and regardless of whether the conviction

1 was entered before, on, or after September 30, 1996,
2 and means—”;

3 (2) in subparagraph (A), by striking “murder,
4 rape, or sexual abuse of a minor;” and inserting
5 “murder, manslaughter, homicide, rape (whether the
6 victim was conscious or unconscious), or any offense
7 of a sexual nature involving a victim under the age
8 of 18 years;”;

9 (3) in subparagraph (I), by striking “or 2252”
10 and inserting “2252, or 2252A”.

11 (4) in subparagraph (F), by striking “at least
12 one year;” and inserting “is at least one year, except
13 that if the conviction records do not conclusively es-
14 tablish whether a crime constitutes a crime of vio-
15 lence, the Attorney General may consider other evi-
16 dence related to the conviction that clearly estab-
17 lishes that the conduct for which the alien was en-
18 gaged constitutes a crime of violence;”

19 (5) in subparagraph (N), by striking paragraph
20 “(1)(A) or (2) of”;

21 (6) in subparagraph (O), by striking “section
22 275(a) or 276 committed by an alien who was pre-
23 viously deported on the basis of a conviction for an
24 offense described in another subparagraph of this

1 paragraph” and inserting “section 275 or 276 for
2 which the term of imprisonment is at least 1 year”;

3 (7) in subparagraph (U), by striking “an at-
4 tempt or conspiracy to commit an offense described
5 in this paragraph” and inserting “attempting or
6 conspiring to commit an offense described in this
7 paragraph, or aiding, abetting, counseling, pro-
8 curing, commanding, inducing, or soliciting the com-
9 mission of such an offense.”; and

10 (8) by striking the undesignated matter fol-
11 lowing subparagraph (U).

12 (b) DEFINITION OF CONVICTION.—Section
13 101(a)(48) of such Act (8 U.S.C. 1101(a)(48)) is amend-
14 ed by adding at the end the following:

15 “(C) Any reversal, vacatur, expungement, or modi-
16 fication to a conviction, sentence, or conviction record that
17 was granted to ameliorate the consequences of the convic-
18 tion, sentence, or conviction record, or was granted for re-
19 habilitative purposes, or for failure to advise the alien of
20 the immigration consequences of a guilty plea or a deter-
21 mination of guilt, shall have no effect on the immigration
22 consequences resulting from the original conviction. The
23 alien shall have the burden of demonstrating that any re-
24 versal, vacatur, expungement, or modification was not
25 granted to ameliorate the consequences of the conviction,

1 sentence, or conviction record, for rehabilitative purposes,
2 or for failure to advise the alien of the immigration con-
3 sequences of a guilty plea or a determination of guilt, ex-
4 cept where the alien establishes a pardon consistent with
5 section 237(a)(2)(A)(vi).”.

6 (c) EFFECTIVE DATE; APPLICATION OF AMEND-
7 MENTS.—

8 (1) IN GENERAL.—The amendments made by
9 subsection (a)—

10 (A) shall take effect on the date of the en-
11 actment of this Act; and

12 (B) shall apply to any act or conviction
13 that occurred before, on, or after such date.

14 (2) APPLICATION OF IIRIRA AMENDMENTS.—

15 The amendments to section 101(a)(43) of the Immi-
16 gration and Nationality Act (8 U.S.C. 1101(a)(43))
17 made by section 321 of the Illegal Immigration Re-
18 form and Immigrant Responsibility Act of 1996 (di-
19 vision C of Public Law 104-208; 110 Stat. 3009-
20 627) shall continue to apply, whether the conviction
21 was entered before, on, or after September 30, 1996.

1 **SEC. 302. PRECLUDING ADMISSIBILITY OF ALIENS CON-**
2 **VICTED OF AGGRAVATED FELONIES OR**
3 **OTHER SERIOUS OFFENSES.**

4 (a) INADMISSIBILITY ON CRIMINAL AND RELATED
5 GROUNDS; WAIVERS.—Section 212 of the Immigration
6 and Nationality Act (8 U.S.C. 1182) is amended—

7 (1) in subparagraph (a)(2)(A)(i)—

8 (A) in subclause (I), by striking “or” at
9 the end;

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

12 (C) by inserting after subclause (II) the
13 following:

14 “(III) a violation of (or a con-
15 spiracy or attempt to violate) an of-
16 fense described in section 408 of title
17 42, United States Code (relating to
18 social security account numbers or so-
19 cial security cards) or section 1028 of
20 title 18, United States Code (relating
21 to fraud and related activity in con-
22 nection with identification documents,
23 authentication features, and informa-
24 tion);”.

25 (2) by adding at the end of subsection (a)(2)
26 the following:

1 “(J) PROCUREMENT OF CITIZENSHIP OR
2 NATURALIZATION UNLAWFULLY.—Any alien
3 convicted of, or who admits having committed,
4 or who admits committing acts which constitute
5 the essential elements of, a violation of, or an
6 attempt or a conspiracy to violate, subsection
7 (a) or (b) of section 1425 of title 18, United
8 States Code (relating to the procurement of
9 citizenship or naturalization unlawfully) is inad-
10 missible.

11 “(K) CERTAIN FIREARM OFFENSES.—Any
12 alien who at any time has been convicted under
13 any law of, or who admits having committed or
14 admits committing acts which constitute the es-
15 sential elements of, purchasing, selling, offering
16 for sale, exchanging, using, owning, possessing,
17 or carrying, or of attempting or conspiring to
18 purchase, sell, offer for sale, exchange, use,
19 own, possess, or carry, any weapon, part, or ac-
20 cessory which is a firearm or destructive device
21 (as defined in section 921(a) of title 18, United
22 States Code) in violation of any law is inadmis-
23 sible.

1 “(L) AGGRAVATED FELONS.—Any alien
2 who has been convicted of an aggravated felony
3 at any time is inadmissible.

4 “(M) CRIMES OF DOMESTIC VIOLENCE,
5 STALKING, OR VIOLATION OF PROTECTION OR-
6 DERS, CRIMES AGAINST CHILDREN.—

7 “(i) DOMESTIC VIOLENCE, STALKING,
8 AND CHILD ABUSE.—Any alien who at any
9 time is convicted of, or who admits having
10 committed or admits committing acts
11 which constitute the essential elements of,
12 a crime of domestic violence, a crime of
13 stalking, or a crime of child abuse, child
14 neglect, or child abandonment is inadmis-
15 sible. For purposes of this clause, the term
16 ‘crime of domestic violence’ means any
17 crime of violence (as defined in section 16
18 of title 18, United States Code) against a
19 person committed by a current or former
20 spouse of the person, by an individual with
21 whom the person shares a child in com-
22 mon, by an individual who is cohabiting
23 with or has cohabited with the person as a
24 spouse, by an individual similarly situated
25 to a spouse of the person under the domes-

1 tie or family violence laws of the jurisdic-
2 tion where the offense occurs, or by any
3 other individual against a person who is
4 protected from that individual's acts under
5 the domestic or family violence laws of the
6 United States or any State, Indian tribal
7 government, or unit of local or foreign gov-
8 ernment.

9 “(ii) VIOLATORS OF PROTECTION OR-
10 DERS.—Any alien who at any time is en-
11 joined under a protection order issued by
12 a court and whom the court determines
13 has engaged in conduct that violates the
14 portion of a protection order that involves
15 protection against credible threats of vio-
16 lence, repeated harassment, or bodily in-
17 jury to the person or persons for whom the
18 protection order was issued is inadmissible.
19 For purposes of this clause, the term ‘pro-
20 tection order’ means any injunction issued
21 for the purpose of preventing violent or
22 threatening acts of domestic violence, in-
23 cluding temporary or final orders issued by
24 civil or criminal courts (other than support
25 or child custody orders or provisions)

1 whether obtained by filing an independent
2 action or as a independent order in an-
3 other proceeding.

4 “(iii) WAIVER AUTHORIZED.—The
5 waiver authority available under section
6 237(a)(7) with respect to section
7 237(a)(2)(E)(i) shall be available on a
8 comparable basis with respect to this sub-
9 paragraph.

10 “(iv) CLARIFICATION.—If the convic-
11 tion records do not conclusively establish
12 whether a crime of domestic violence con-
13 stitutes a crime of violence (as defined in
14 section 16 of title 18, United States Code),
15 the Attorney General may consider other
16 evidence related to the conviction that
17 clearly establishes that the conduct for
18 which the alien was engaged constitutes a
19 crime of violence.”; and

20 (3) in subsection (h)—

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

1 may, in the discretion of the Attorney General
2 or the Secretary, waive the application of sub-
3 paragraphs (A)(i)(I), (III), (B), (D), (E), (K),
4 and (M) of subsection (a)(2)”;

5 (B) by striking “a criminal act involving
6 torture.” and inserting “a criminal act involving
7 torture, or has been convicted of an aggravated
8 felony.”;

9 (C) by striking “if either since the date of
10 such admission the alien has been convicted of
11 an aggravated felony or the alien” and inserting
12 “if since the date of such admission the alien”;
13 and

14 (D) by inserting “or Secretary of Home-
15 land Security” after “the Attorney General”
16 wherever that phrase appears.

17 (b) DEPORTABILITY; CRIMINAL OFFENSES.—Section
18 237(a)(3)(B) of the Immigration and Nationality Act (8
19 U.S.C. 1227(a)(3)(B)) is amended—

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

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

22 and

23 (3) by inserting after clause (iii) the following:

24 “(iv) of a violation of, or an attempt
25 or a conspiracy to violate, section 1425(a)

1 or (b) of Title 18 (relating to the procure-
2 ment of citizenship or naturalization un-
3 lawfully),”.

4 (c) DEPORTABILITY; CRIMINAL OFFENSES.—Section
5 237(a)(2) of the Immigration and Nationality Act (8
6 U.S.C. 1227(a)(2)) is amended by adding at the end the
7 following:

8 “(G) Any alien who at any time after ad-
9 mission has been convicted of a violation of (or
10 a conspiracy or attempt to violate) section 408
11 of title 42, United States Code (relating to so-
12 cial security account numbers or social security
13 cards) or section 1028 of title 18, United States
14 Code (relating to fraud and related activity in
15 connection with identification) is deportable.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply—

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

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

24 (e) CONSTRUCTION.—The amendments made by sub-
25 section (a) shall not be construed to create eligibility for

1 relief from removal under former section 212(c) of the Im-
2 migration and Nationality Act where such eligibility did
3 not exist before these amendments became effective.

4 **SEC. 303. ESPIONAGE CLARIFICATION.**

5 Section 212(a)(3)(A) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1182(a)(3)(A)), is amended to read
7 as follows:

8 “(A) Any alien who a consular officer, the
9 Attorney General, or the Secretary of Home-
10 land Security knows, or has reasonable ground
11 to believe, seeks to enter the United States to
12 engage solely, principally, or incidentally in, or
13 who is engaged in, or with respect to clauses (i)
14 and (iii) of this subparagraph has engaged in—

15 “(i) any activity—

16 “(I) to violate any law of the
17 United States relating to espionage or
18 sabotage; or

19 “(II) to violate or evade any law
20 prohibiting the export from the
21 United States of goods, technology, or
22 sensitive information;

23 “(ii) any other unlawful activity; or

24 “(iii) any activity a purpose of which
25 is the opposition to, or the control or over-

1 throw of, the Government of the United
2 States by force, violence, or other unlawful
3 means;
4 is inadmissible.”.

5 **SEC. 304. PROHIBITION OF THE SALE OF FIREARMS TO, OR**
6 **THE POSSESSION OF FIREARMS BY, CERTAIN**
7 **ALIENS.**

8 Section 922 of title 18, United States Code, is
9 amended—

10 (1) in subsection (d)(5), in subparagraph (B),
11 by striking “(y)(2)” and all that follows and insert-
12 ing “(y), is in the United States not as an alien law-
13 fully admitted for permanent residence”;

14 (2) in subsection (g)(5), in subparagraph (B),
15 by striking “(y)(2)” and all that follows and insert-
16 ing “(y), is in the United States not as an alien law-
17 fully admitted for permanent residence”; and

18 (3) in subsection (y)—

19 (A) in the header, by striking “ADMITTED
20 UNDER NONIMMIGRANT VISAS.—” and insert-
21 ing “NOT LAWFULLY ADMITTED FOR PERMA-
22 NENT RESIDENCE”;

23 (B) in paragraph (1), by amending sub-
24 paragraph (B) to read as follows:

1 “(B) the term ‘lawfully admitted for per-
2 manent residence’ has the same meaning as in
3 section 101(a)(20) of the Immigration and Na-
4 tionality Act (8 U.S.C. 1101(a)(20)).”

5 (C) in paragraph (2), by striking “under a
6 nonimmigrant visa” and inserting “but not law-
7 fully admitted for permanent residence”; and

8 (D) in paragraph (3)(A), by striking “ad-
9 mitted to the United States under a non-
10 immigrant visa” and inserting “lawfully admit-
11 ted to the United States but not as an alien
12 lawfully admitted for permanent residence”.

13 **SEC. 305. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
14 **TAIN IMMIGRATION, NATURALIZATION, AND**
15 **PEONAGE OFFENSES.**

16 Section 3291 of title 18, United States Code, is
17 amended by striking “No person” through the period at
18 the end and inserting the following: “No person shall be
19 prosecuted, tried, or punished for a violation of any section
20 of chapters 69 (relating to nationality and citizenship of-
21 fenses) and 75 (relating to passport, visa, and immigration
22 offenses), or for a violation of any criminal provision of
23 sections 243, 266, 274, 275, 276, 277, or 278 of the Im-
24 migration and Nationality Act, or for an attempt or con-
25 spiracy to violate any such section, unless the indictment

1 is returned or the information is filed within ten years
2 after the commission of the offense.”.

3 **SEC. 306. CONFORMING AMENDMENT TO THE DEFINITION**
4 **OF RACKETEERING ACTIVITY.**

5 Section 1961(1) of title 18, United States Code, is
6 amended by striking “section 1542” through “section
7 1546 (relating to fraud and misuse of visas, permits, and
8 other documents)” and inserting “sections 1541-1548 (re-
9 lating to passports and visas)”.

10 **SEC. 307. CONFORMING AMENDMENTS FOR THE AGGRA-**
11 **VATED FELONY DEFINITION.**

12 (a) IN GENERAL.—Subparagraph (P) of section
13 101(a)(43) of the Immigration and Nationality Act (8
14 U.S.C. 1101(a)(43)) is amended—

15 (1) by striking “(i) which either is falsely mak-
16 ing, forging, counterfeiting, mutilating, or altering a
17 passport or instrument in violation of section 1543
18 of title 18, United States Code, or is described in
19 section 1546(a) of such title (relating to document
20 fraud) and (ii)” and inserting “which is described in
21 any section of chapter 75 of title 18, United States
22 Code,”; and

23 (2) by inserting after “first offense” the fol-
24 lowing: “(i) that is not described in section 1548 of
25 such title (relating to increased penalties), and (ii)”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect on the date of the enact-
3 ment of this Act and shall apply to acts that occur before,
4 on, or after the date of the enactment of this Act.

5 **SEC. 308. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT**
6 **OF STATUS FOR AGGRAVATED FELONS.**

7 (a) IN GENERAL.—Section 209(c) of the Immigration
8 and Nationality Act (8 U.S.C. 1159(c)) is amended by
9 adding at the end thereof the following: “However, an
10 alien who is convicted of an aggravated felony is not eligi-
11 ble for a waiver or for adjustment of status under this
12 section.”.

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

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

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

21 **SEC. 309. INADMISSIBILITY AND DEPORTABILITY OF**
22 **DRUNK DRIVERS.**

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

1 (1) in subparagraph (T), by striking “and”;

2 (2) in subparagraph (U); by striking the period
3 at the end and inserting “; and”; and

4 (3) by inserting after subparagraph (U) the fol-
5 lowing:.

6 “(V) A second conviction for driving while in-
7 toxicated (including a conviction for driving while
8 under the influence of or impaired by alcohol or
9 drugs) without regard to whether the conviction is
10 classified as a misdemeanor or felony under State
11 law.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 subsection (a) shall take effect on the date of the enact-
14 ment of this Act and apply to convictions entered on or
15 after such date.

16 **SEC. 310. DETENTION OF DANGEROUS ALIENS.**

17 (a) IN GENERAL.—Section 241(a) of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1231(a)) is amended—

19 (1) by striking “Attorney General” each place
20 it appears, except for the first reference in para-
21 graph (4)(B)(i), and inserting “Secretary of Home-
22 land Security”;

23 (2) in paragraph (1), by amending subpara-
24 graph (B) to read as follows:

1 “(B) BEGINNING OF PERIOD.—The re-
2 moval period begins on the latest of the fol-
3 lowing:

4 “(i) The date the order of removal be-
5 comes administratively final.

6 “(ii) If the alien is not in the custody
7 of the Secretary on the date the order of
8 removal becomes administratively final, the
9 date the alien is taken into such custody.

10 “(iii) If the alien is detained or con-
11 fined (except under an immigration proc-
12 ess) on the date the order of removal be-
13 comes administratively final, the date the
14 alien is taken into the custody of the Sec-
15 retary, after the alien is released from such
16 detention or confinement.”;

17 (3) in paragraph (1), by amending subpara-
18 graph (C) to read as follows:

19 “(C) SUSPENSION OF PERIOD.—

20 “(i) EXTENSION.—The removal period
21 shall be extended beyond a period of 90
22 days and the Secretary may, in the Sec-
23 retary’s sole discretion, keep the alien in
24 detention during such extended period if—

1 “(I) the alien fails or refuses to
2 make all reasonable efforts to comply
3 with the removal order, or to fully co-
4 operate with the Secretary’s efforts to
5 establish the alien’s identity and carry
6 out the removal order, including mak-
7 ing timely application in good faith
8 for travel or other documents nec-
9 essary to the alien’s departure or con-
10 spires or acts to prevent the alien’s
11 removal that is subject to an order of
12 removal;

13 “(II) a court, the Board of Immi-
14 gration Appeals, or an immigration
15 judge orders a stay of removal of an
16 alien who is subject to an administra-
17 tively final order of removal;

18 “(III) the Secretary transfers
19 custody of the alien pursuant to law
20 to another Federal agency or a State
21 or local government agency in connec-
22 tion with the official duties of such
23 agency; or

24 “(IV) a court or the Board of
25 Immigration Appeals orders a remand

1 to an immigration judge or the Board
2 of Immigration Appeals, during the
3 time period when the case is pending
4 a decision on remand (with the re-
5 moval period beginning anew on the
6 date that the alien is ordered removed
7 on remand).

8 “(ii) RENEWAL.—If the removal pe-
9 riod has been extended under clause (C)(i),
10 a new removal period shall be deemed to
11 have begun on the date—

12 “(I) the alien makes all reason-
13 able efforts to comply with the re-
14 moval order, or to fully cooperate with
15 the Secretary’s efforts to establish the
16 alien’s identity and carry out the re-
17 moval order;

18 “(II) the stay of removal is no
19 longer in effect; or

20 “(III) the alien is returned to the
21 custody of the Secretary.

22 “(iii) MANDATORY DETENTION FOR
23 CERTAIN ALIENS.—In the case of an alien
24 described in subparagraphs (A) through
25 (D) of section 236(c)(1), the Secretary

1 shall keep that alien in detention during
2 the extended period described in clause (i).

3 “(iv) SOLE FORM OF RELIEF.—An
4 alien may seek relief from detention under
5 this subparagraph only by filing an appli-
6 cation for a writ of habeas corpus in ac-
7 cordance with chapter 153 of title 28,
8 United States Code. No alien whose period
9 of detention is extended under this sub-
10 paragraph shall have the right to seek re-
11 lease on bond.”;

12 (4) in paragraph (3)—

13 (A) by adding after “If the alien does not
14 leave or is not removed within the removal pe-
15 riod” the following: “or is not detained pursu-
16 ant to paragraph (6) of this subsection”; and

17 (B) by striking subparagraph (D) and in-
18 serting the following:

19 “(D) to obey reasonable restrictions on the
20 alien’s conduct or activities that the Secretary
21 prescribes for the alien, in order to prevent the
22 alien from absconding, for the protection of the
23 community, or for other purposes related to the
24 enforcement of the immigration laws.”;

1 (5) in paragraph (4)(A), by striking “paragraph
2 (2)” and inserting “subparagraph (B)”; and

3 (6) by striking paragraph (6) and inserting the
4 following:

5 “(6) ADDITIONAL RULES FOR DETENTION OR
6 RELEASE OF CERTAIN ALIENS.—

7 “(A) DETENTION REVIEW PROCESS FOR
8 COOPERATIVE ALIENS ESTABLISHED.—For an
9 alien who is not otherwise subject to mandatory
10 detention, who has made all reasonable efforts
11 to comply with a removal order and to cooper-
12 ate fully with the Secretary of Homeland Secu-
13 rity’s efforts to establish the alien’s identity and
14 carry out the removal order, including making
15 timely application in good faith for travel or
16 other documents necessary to the alien’s depar-
17 ture, and who has not conspired or acted to
18 prevent removal, the Secretary shall establish
19 an administrative review process to determine
20 whether the alien should be detained or released
21 on conditions. The Secretary shall make a de-
22 termination whether to release an alien after
23 the removal period in accordance with subpara-
24 graph (B). The determination shall include con-
25 sideration of any evidence submitted by the

1 alien, and may include consideration of any
2 other evidence, including any information or as-
3 sistance provided by the Secretary of State or
4 other Federal official and any other information
5 available to the Secretary of Homeland Security
6 pertaining to the ability to remove the alien.

7 “(B) AUTHORITY TO DETAIN BEYOND RE-
8 MOVAL PERIOD.—

9 “(i) IN GENERAL.—The Secretary of
10 Homeland Security, in the exercise of the
11 Secretary’s sole discretion, may continue to
12 detain an alien for 90 days beyond the re-
13 moval period (including any extension of
14 the removal period as provided in para-
15 graph (1)(C)). An alien whose detention is
16 extended under this subparagraph shall
17 have no right to seek release on bond.

18 “(ii) SPECIFIC CIRCUMSTANCES.—The
19 Secretary of Homeland Security, in the ex-
20 ercise of the Secretary’s sole discretion,
21 may continue to detain an alien beyond the
22 90 days authorized in clause (i)—

23 “(I) until the alien is removed, if
24 the Secretary, in the Secretary’s sole

1 discretion, determines that there is a
2 significant likelihood that the alien—

3 “(aa) will be removed in the
4 reasonably foreseeable future; or

5 “(bb) would be removed in
6 the reasonably foreseeable future,
7 or would have been removed, but
8 for the alien’s failure or refusal
9 to make all reasonable efforts to
10 comply with the removal order,
11 or to cooperate fully with the
12 Secretary’s efforts to establish
13 the alien’s identity and carry out
14 the removal order, including
15 making timely application in
16 good faith for travel or other doc-
17 uments necessary to the alien’s
18 departure, or conspires or acts to
19 prevent removal;

20 “(II) until the alien is removed,
21 if the Secretary of Homeland Security
22 certifies in writing—

23 “(aa) in consultation with
24 the Secretary of Health and
25 Human Services, that the alien

1 has a highly contagious disease
2 that poses a threat to public safe-
3 ty;

4 “(bb) after receipt of a writ-
5 ten recommendation from the
6 Secretary of State, that release
7 of the alien is likely to have seri-
8 ous adverse foreign policy con-
9 sequences for the United States;

10 “(cc) based on information
11 available to the Secretary of
12 Homeland Security (including
13 classified, sensitive, or national
14 security information, and without
15 regard to the grounds upon
16 which the alien was ordered re-
17 moved), that there is reason to
18 believe that the release of the
19 alien would threaten the national
20 security of the United States; or

21 “(dd) that the release of the
22 alien will threaten the safety of
23 the community or any person,
24 conditions of release cannot rea-
25 sonably be expected to ensure the

1 safety of the community or any
2 person, and either (AA) the alien
3 has been convicted of one or
4 more aggravated felonies (as de-
5 fined in section 101(a)(43)(A))
6 or of one or more crimes identi-
7 fied by the Secretary of Home-
8 land Security by regulation, or of
9 one or more attempts or conspir-
10 acies to commit any such aggra-
11 vated felonies or such identified
12 crimes, if the aggregate term of
13 imprisonment for such attempts
14 or conspiracies is at least 5
15 years; or (BB) the alien has com-
16 mitted one or more crimes of vio-
17 lence (as defined in section 16 of
18 title 18, United States Code, but
19 not including a purely political
20 offense) and, because of a mental
21 condition or personality disorder
22 and behavior associated with that
23 condition or disorder, the alien is
24 likely to engage in acts of vio-
25 lence in the future; or

1 “(III) pending a certification
2 under subclause (II), so long as the
3 Secretary of Homeland Security has
4 initiated the administrative review
5 process not later than 30 days after
6 the expiration of the removal period
7 (including any extension of the re-
8 moval period, as provided in para-
9 graph (1)(C)).

10 “(iii) NO RIGHT TO BOND HEARING.—
11 An alien whose detention is extended under
12 this subparagraph shall have no right to
13 seek release on bond, including by reason
14 of a certification under clause (ii)(II).

15 “(C) RENEWAL AND DELEGATION OF CER-
16 TIFICATION.—

17 “(i) RENEWAL.—The Secretary of
18 Homeland Security may renew a certifi-
19 cation under subparagraph (B)(ii)(II)
20 every 6 months, after providing an oppor-
21 tunity for the alien to request reconsider-
22 ation of the certification and to submit
23 documents or other evidence in support of
24 that request. If the Secretary does not
25 renew a certification, the Secretary may

1 not continue to detain the alien under sub-
2 paragraph (B)(ii)(II).

3 “(ii) DELEGATION.—Notwithstanding
4 section 103, the Secretary of Homeland
5 Security may not delegate the authority to
6 make or renew a certification described in
7 item (bb), (cc), or (dd) of subparagraph
8 (B)(ii)(II) below the level of the Assistant
9 Secretary for Immigration and Customs
10 Enforcement.

11 “(iii) HEARING.—The Secretary of
12 Homeland Security may request that the
13 Attorney General or the Attorney General’s
14 designee provide for a hearing to make the
15 determination described in item (dd)(BB)
16 of subparagraph (B)(ii)(II).

17 “(D) RELEASE ON CONDITIONS.—If it is
18 determined that an alien should be released
19 from detention by a Federal court, the Board of
20 Immigration Appeals, or if an immigration
21 judge orders a stay of removal, the Secretary of
22 Homeland Security, in the exercise of the Sec-
23 retary’s discretion, may impose conditions on
24 release as provided in paragraph (3).

1 “(E) REDETENTION.—The Secretary of
2 Homeland Security, in the exercise of the Sec-
3 retary’s discretion, without any limitations
4 other than those specified in this section, may
5 again detain any alien subject to a final re-
6 moval order who is released from custody, if re-
7 moval becomes likely in the reasonably foresee-
8 able future, the alien fails to comply with the
9 conditions of release, or to continue to satisfy
10 the conditions described in subparagraph (A),
11 or if, upon reconsideration, the Secretary, in
12 the Secretary’s sole discretion, determines that
13 the alien can be detained under subparagraph
14 (B). This section shall apply to any alien re-
15 turned to custody pursuant to this subpara-
16 graph, as if the removal period terminated on
17 the day of the redetention.

18 “(F) REVIEW OF DETERMINATIONS BY
19 SECRETARY.—A determination by the Secretary
20 under this paragraph shall not be subject to re-
21 view by any other agency.”.

22 (b) DETENTION OF ALIENS DURING REMOVAL PRO-
23 CEEDINGS.—

24 (1) CLERICAL AMENDMENT.—(A) Section 236
25 of the Immigration and Nationality Act (8 U.S.C.

1 1226) is amended by striking “Attorney General”
2 each place it appears (except in the second place
3 that term appears in section 236(a)) and inserting
4 “Secretary of Homeland Security”.

5 (B) Section 236(a) of such Act (8 U.S.C.
6 1226(a)) is amended by inserting “the Secretary of
7 Homeland Security or” before “the Attorney Gen-
8 eral—”.

9 (C) Section 236(e) of such Act (8 U.S.C.
10 1226(e)) is amended by striking “Attorney Gen-
11 eral’s” and inserting “Secretary of Homeland Secu-
12 rity’s”.

13 (2) LENGTH OF DETENTION.—Section 236 of
14 such Act (8 U.S.C. 1226) is amended by adding at
15 the end the following:

16 “(f) LENGTH OF DETENTION.—

17 “(1) IN GENERAL.—Notwithstanding any other
18 provision of this section, an alien may be detained
19 under this section for any period, without limitation,
20 except as provided in subsection (h), until the alien
21 is subject to a final order of removal.

22 “(2) CONSTRUCTION.—The length of detention
23 under this section shall not affect detention under
24 section 241.”.

1 (3) DETENTION OF CRIMINAL ALIENS.—Section
2 236(c)(1) of the Immigration and Nationality Act (8
3 U.S.C. 1226(c)(1)) is amended, in the matter fol-
4 lowing subparagraph (D) to read as follows:

5 “any time after the alien is released, without regard
6 to whether an alien is released related to any activ-
7 ity, offense, or conviction described in this para-
8 graph; to whether the alien is released on parole, su-
9 pervised release, or probation; or to whether the
10 alien may be arrested or imprisoned again for the
11 same offense. If the activity described in this para-
12 graph does not result in the alien being taken into
13 custody by any person other than the Secretary,
14 then when the alien is brought to the attention of
15 the Secretary or when the Secretary determines it is
16 practical to take such alien into custody, the Sec-
17 retary shall take such alien into custody.”.

18 (4) ADMINISTRATIVE REVIEW.—Section 236 of
19 the Immigration and Nationality Act (8 U.S.C.
20 1226), as amended by paragraph (2), is further
21 amended by adding at the end the following:

22 “(g) ADMINISTRATIVE REVIEW.—

23 “(1) IN GENERAL.—The Attorney General’s re-
24 view of the Secretary’s custody determinations under
25 subsection (a) for the following classes of aliens shall

1 be limited to whether the alien may be detained, re-
2 leased on bond (of at least \$1,500 with security ap-
3 proved by the Secretary), or released with no bond:

4 “(A) Aliens in exclusion proceedings.

5 “(B) Aliens described in section 212(a)(3)
6 or 237(a)(4).

7 “(C) Aliens described in subsection (c).

8 “(2) SPECIAL RULE.—The Attorney General’s
9 review of the Secretary’s custody determinations
10 under subsection (a) for aliens in deportation pro-
11 ceedings subject to section 242(a)(2) of the Act (as
12 in effect prior to April 1, 1997, and as amended by
13 section 440(c) of Public Law 104–132) shall be lim-
14 ited to a determination of whether the alien is prop-
15 erly included in such category.

16 “(h) RELEASE ON BOND.—

17 “(1) IN GENERAL.—An alien detained under
18 subsection (a) may seek release on bond. No bond
19 may be granted except to an alien who establishes
20 by clear and convincing evidence that the alien is not
21 a flight risk or a risk to another person or the com-
22 munity.

23 “(2) CERTAIN ALIENS INELIGIBLE.—No alien
24 detained under subsection (c) may seek release on
25 bond.”.

1 (5) CLERICAL AMENDMENTS.—(A) Section
2 236(a)(2)(B) of the Immigration and Nationality
3 Act (8 U.S.C. 1226(a)(2)(B)) is amended by strik-
4 ing “conditional parole” and inserting “recog-
5 nizance”.

6 (B) Section 236(b) of such Act (8 U.S.C.
7 1226(b)) is amended by striking “parole” and in-
8 serting “recognizance”.

9 (c) SEVERABILITY.—If any of the provisions of this
10 section or any amendment by this section, or the applica-
11 tion of any such provision to any person or circumstance,
12 is held to be invalid for any reason, the remainder of this
13 section and of amendments made by this section, and the
14 application of the provisions and of the amendments made
15 by this section to any other person or circumstance shall
16 not be affected by such holding.

17 (d) EFFECTIVE DATES.—

18 (1) The amendments made by subsection (a)
19 shall take effect upon the date of enactment of this
20 Act, and section 241 of the Immigration and Na-
21 tionality Act, as so amended, shall in addition apply
22 to—

23 (A) all aliens subject to a final administra-
24 tive removal, deportation, or exclusion order

1 that was issued before, on, or after the date of
2 the enactment of this Act; and

3 (B) acts and conditions occurring or exist-
4 ing before, on, or after such date.

5 (2) The amendments made by subsection (b)
6 shall take effect upon the date of the enactment of
7 this Act, and section 236 of the Immigration and
8 Nationality Act, as so amended, shall in addition
9 apply to any alien in detention under provisions of
10 such section on or after such date.

11 **SEC. 311. GROUNDS OF INADMISSIBILITY AND DEPORT-**
12 **ABILITY FOR ALIEN GANG MEMBERS.**

13 (a) DEFINITION OF GANG MEMBER.—Section 101(a)
14 of the Immigration and Nationality Act (8 U.S.C.
15 1101(a)) is amended by adding at the end the following:

16 “(53)(A) The term ‘criminal gang’ means an ongoing
17 group, club, organization, or association of 5 or more per-
18 sons that has as one of its primary purposes the commis-
19 sion of 1 or more of the following criminal offenses and
20 the members of which engage, or have engaged within the
21 past 5 years, in a continuing series of such offenses, or
22 that has been designated as a criminal gang by the Sec-
23 retary of Homeland Security, in consultation with the At-
24 torney General, as meeting these criteria. The offenses de-
25 scribed, whether in violation of Federal or State law or

1 foreign law and regardless of whether the offenses oc-
2 curred before, on, or after the date of the enactment of
3 this paragraph, are the following:

4 “(i) A ‘felony drug offense’ (as defined in sec-
5 tion 102 of the Controlled Substances Act (21
6 U.S.C. 802)).

7 “(ii) An offense under section 274 (relating to
8 bringing in and harboring certain aliens), section
9 277 (relating to aiding or assisting certain aliens to
10 enter the United States), or section 278 (relating to
11 importation of alien for immoral purpose).

12 “(iii) A crime of violence (as defined in section
13 16 of title 18, United States Code).

14 “(iv) A crime involving obstruction of justice,
15 tampering with or retaliating against a witness, vic-
16 tim, or informant, or burglary.

17 “(v) Any conduct punishable under sections
18 1028 and 1029 of title 18, United States Code (re-
19 lating to fraud and related activity in connection
20 with identification documents or access devices), sec-
21 tions 1581 through 1594 of such title (relating to
22 peonage, slavery and trafficking in persons), section
23 1952 of such title (relating to interstate and foreign
24 travel or transportation in aid of racketeering enter-
25 prises), section 1956 of such title (relating to the

1 laundering of monetary instruments), section 1957
2 of such title (relating to engaging in monetary trans-
3 actions in property derived from specified unlawful
4 activity), or sections 2312 through 2315 of such title
5 (relating to interstate transportation of stolen motor
6 vehicles or stolen property).

7 “(vi) A conspiracy to commit an offense de-
8 scribed in clauses (i) through (v).

9 “(B) Notwithstanding any other provision of law (in-
10 cluding any effective date), the term applies regardless of
11 whether the conduct occurred before, on, or after the date
12 of the enactment of this paragraph.”.

13 (b) INADMISSIBILITY.—Section 212(a)(2) of such Act
14 (8 U.S.C. 1182(a)(2)), as amended by section 302(a)(2)
15 of this Act, is further amended by adding at the end the
16 following:

17 “(N) ALIENS ASSOCIATED WITH CRIMINAL
18 GANGS.—Any alien is inadmissible who a con-
19 sular officer, the Secretary of Homeland Secu-
20 rity, or the Attorney General knows or has rea-
21 son to believe—

22 “(i) to be or to have been a member
23 of a criminal gang (as defined in section
24 101(a)(53)); or

1 “(ii) to have participated in the activi-
2 ties of a criminal gang (as defined in sec-
3 tion 101(a)(53)), knowing or having reason
4 to know that such activities will promote,
5 further, aid, or support the illegal activity
6 of the criminal gang.”.

7 (c) DEPORTABILITY.—Section 237(a)(2) of the Im-
8 migration and Nationality Act (8 U.S.C. 1227(a)(2)), as
9 amended by section 302(c) of this Act, is further amended
10 by adding at the end the following:

11 “(H) ALIENS ASSOCIATED WITH CRIMINAL
12 GANGS.—Any alien is deportable who the Sec-
13 retary of Homeland Security or the Attorney
14 General knows or has reason to believe—

15 “(i) is or has been a member of a
16 criminal gang (as defined in section
17 101(a)(53)); or

18 “(ii) has participated in the activities
19 of a criminal gang (as so defined), knowing
20 or having reason to know that such activi-
21 ties will promote, further, aid, or support
22 the illegal activity of the criminal gang.”.

23 (d) DESIGNATION.—

24 (1) IN GENERAL.—Chapter 2 of title II of the
25 Immigration and Nationality Act (8 U.S.C. 1182) is

1 amended by inserting after section 219 the fol-
2 lowing:

3 “DESIGNATION

4 “SEC. 220. (a) IN GENERAL.—The Secretary of
5 Homeland Security, in consultation with the Attorney
6 General, and the Secretary of State may designate a
7 groups or association as a criminal street gangs if their
8 conduct is described in section 101(a)(53) or if the group
9 or association conduct poses a significant risk that threat-
10 ens the security and the public safety of United States
11 nationals or the national security, homeland security, for-
12 eign policy, or economy of the United States.

13 “(b) EFFECTIVE DATE.—Designations under sub-
14 section (a) shall remain in effect until the designation is
15 revoked after consultation between the Secretary of Home-
16 land Security, the Attorney General, and the Secretary of
17 State or is terminated in accordance with Federal law.”.

18 (2) CLERICAL AMENDMENT.—The table of con-
19 tents for such Act is amended by inserting after the
20 item relating to section 219 the following:

“220. Designation.”.

21 (e) MANDATORY DETENTION OF CRIMINAL STREET
22 GANG MEMBERS.—

23 (1) IN GENERAL.—Section 236(c)(1)(D) of the
24 Immigration and Nationality Act (8 U.S.C.
25 1226(c)(1)(D)) is amended—

1 (A) by inserting “or 212(a)(2)(N)” after
2 “212(a)(3)(B)”;

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

5 (2) ANNUAL REPORT.—Not later than March 1
6 of each year (beginning 1 year after the date of the
7 enactment of this Act), the Secretary of Homeland
8 Security, after consultation with the appropriate
9 Federal agencies, shall submit a report to the Com-
10 mittees on the Judiciary of the House of Represent-
11 atives and of the Senate on the number of aliens de-
12 tained under the amendments made by paragraph
13 (1).

14 (f) ASYLUM CLAIMS BASED ON GANG AFFILI-
15 ATION.—

16 (1) INAPPLICABILITY OF RESTRICTION ON RE-
17 MOVAL TO CERTAIN COUNTRIES.—Section
18 241(b)(3)(B) of the Immigration and Nationality
19 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
20 matter preceding clause (i), by inserting “who is de-
21 scribed in section 212(a)(2)(N)(i) or section
22 237(a)(2)(H)(i) or who is” after “to an alien”.

23 (2) INELIGIBILITY FOR ASYLUM.—Section
24 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))
25 is amended—

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

3 (B) by redesignating clause (vi) as clause
4 (vii); and

5 (C) by inserting after clause (v) the fol-
6 lowing:

7 “(vi) the alien is described in section
8 212(a)(2)(N)(i) or section 237(a)(2)(H)(i)
9 (relating to participation in criminal street
10 gangs); or”.

11 (g) TEMPORARY PROTECTED STATUS.—Section 244
12 of such Act (8 U.S.C. 1254a) is amended—

13 (1) by striking “Attorney General” each place
14 it appears and inserting “Secretary of Homeland Se-
15 curity”;

16 (2) in subparagraph (c)(2)(B), by adding at the
17 end the following:

18 “(iii) the alien is, or at any time after
19 admission has been, a member of a crimi-
20 nal gang (as defined in section
21 101(a)(53)).”; and

22 (3) in subsection (d)—

23 (A) by striking paragraph (3); and

24 (B) in paragraph (4), by adding at the end
25 the following: “The Secretary of Homeland Se-

1 curity may detain an alien provided temporary
2 protected status under this section whenever
3 appropriate under any other provision of law.”.

4 (h) **EFFECTIVE DATE.**—The amendments made by
5 this section shall take effect on the date of the enactment
6 of this Act and shall apply to acts that occur before, on,
7 or after the date of the enactment of this Act.

8 **SEC. 312. EXTENSION OF IDENTITY THEFT OFFENSES.**

9 (a) **FRAUD AND RELATED ACTIVITIES RELATING TO**
10 **IDENTIFICATION DOCUMENTS.**—Section 1028 of title 18,
11 United States Code, is amended in subsection (a)(7), by
12 striking “of another person” and inserting “that is not
13 his or her own”.

14 (b) **AGGRAVATED IDENTITY THEFT.**—Section
15 1028A(a) of title 18, United States Code, is amended by
16 striking “of another person” both places it appears and
17 inserting “that is not his or her own”.

18 **SEC. 313. LAUNDERING OF MONETARY INSTRUMENTS.**

19 (a) **ADDITIONAL PREDICATE OFFENSES.**—Section
20 1956(c)(7)(D) of title 18, United States Code, is amend-
21 ed—

22 (1) by inserting “section 1590 (relating to traf-
23 ficking with respect to peonage, slavery, involuntary
24 servitude, or forced labor),” after “section 1363 (re-

1 lating to destruction of property within the special
2 maritime and territorial jurisdiction),”; and

3 (2) by inserting “section 274(a) of the Immi-
4 gration and Nationality Act (8 U.S.C.1324(a)) (re-
5 lating to bringing in and harboring certain aliens),”
6 after “section 590 of the Tariff Act of 1930 (19
7 U.S.C. 1590) (relating to aviation smuggling),”.

8 (b) INTENT TO CONCEAL OR DISGUISE.—Section
9 1956(a) of title 18, United States Code, is amended—

10 (1) in paragraph (1) so that subparagraph (B)
11 reads as follows:

12 “(B) knowing that the transaction—

13 “(i) conceals or disguises, or is in-
14 tended to conceal or disguise, the nature,
15 source, location, ownership, or control of
16 the proceeds of some form of unlawful ac-
17 tivity; or

18 “(ii) avoids, or is intended to avoid, a
19 transaction reporting requirement under
20 State or Federal law,”; and

21 (2) in paragraph (2) so that subparagraph (B)
22 reads as follows:

23 “(B) knowing that the monetary instru-
24 ment or funds involved in the transportation,
25 transmission, or transfer represent the proceeds

1 of some form of unlawful activity, and knowing
2 that such transportation, transmission, or
3 transfer—

4 “(i) conceals or disguises, or is in-
5 tended to conceal or disguise, the nature,
6 source, location, ownership, or control of
7 the proceeds of some form of unlawful ac-
8 tivity; or

9 “(ii) avoids, or is intended to avoid, a
10 transaction reporting requirement under
11 State or Federal law,”.

12 **SEC. 314. INCREASED CRIMINAL PENALTIES RELATING TO**
13 **ALIEN SMUGGLING AND RELATED OFFENSES.**

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

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

18 **“(a) CRIMINAL OFFENSES AND PENALTIES.—**

19 **“(1) PROHIBITED ACTIVITIES.—**Except as pro-
20 vided in paragraph (3), a person shall be punished
21 as provided under paragraph (2), if the person—

22 **“(A) facilitates, encourages, directs, or in-**
23 **duces a person to come to or enter the United**
24 **States, or to cross the border to the United**
25 **States, knowing or in reckless disregard of the**

1 fact that such person is an alien who lacks law-
2 ful authority to come to, enter, or cross the bor-
3 der to the United States;

4 “(B) facilitates, encourages, directs, or in-
5 duces a person to come to or enter the United
6 States, or to cross the border to the United
7 States, at a place other than a designated port
8 of entry or place other than as designated by
9 the Secretary of Homeland Security, knowing
10 or in reckless disregard of the fact that such
11 person is an alien and regardless of whether
12 such alien has official permission or lawful au-
13 thority to be in the United States;

14 “(C) transports, moves, harbors, conceals,
15 or shields from detection a person outside of
16 the United States knowing or in reckless dis-
17 regard of the fact that such person is an alien
18 in unlawful transit from one country to another
19 or on the high seas, under circumstances in
20 which the alien is seeking to enter the United
21 States without official permission or lawful au-
22 thority;

23 “(D) encourages or induces a person to re-
24 side in the United States, knowing or in reck-
25 less disregard of the fact that such person is an

1 alien who lacks lawful authority to reside in the
2 United States;

3 “(E) transports or moves a person in the
4 United States, knowing or in reckless disregard
5 of the fact that such person is an alien who
6 lacks lawful authority to enter or be in the
7 United States, if the transportation or move-
8 ment will further the alien’s illegal entry into or
9 illegal presence in the United States;

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

15 “(G) conspires or attempts to commit any
16 of the acts described in subparagraphs (A)
17 through (F).

18 “(2) CRIMINAL PENALTIES.—A person who vio-
19 lates any provision under paragraph (1) shall, for
20 each alien in respect to whom a violation of para-
21 graph (1) occurs—

22 “(A) except as provided in subparagraphs
23 (C) through (G), if the violation was not com-
24 mitted for commercial advantage, profit, or pri-
25 vate financial gain, be fined under title 18,

1 United States Code, imprisoned for not more
2 than 5 years, or both;

3 “(B) except as provided in subparagraphs
4 (C) through (G), if the violation was committed
5 for commercial advantage, profit, or private fi-
6 nancial gain—

7 “(i) be fined under such title, impris-
8 oned for not more than 20 years, or both,
9 if the violation is the offender’s first viola-
10 tion under this subparagraph; or

11 “(ii) be fined under such title, impris-
12 oned for not less than 3 years or more
13 than 20 years, or both, if the violation is
14 the offender’s second or subsequent viola-
15 tion of this subparagraph;

16 “(C) if the violation furthered or aided the
17 commission of any other offense against the
18 United States or any State that is punishable
19 by imprisonment for more than 1 year, be fined
20 under such title, imprisoned for not less than 5
21 years or more than 20 years, or both;

22 “(D) be fined under such title, imprisoned
23 not less than 5 years or more than 20 years, or
24 both, if the violation created a substantial and
25 foreseeable risk of death, a substantial and

1 foreseeable risk of serious bodily injury (as de-
2 fined in section 2119(2) of title 18, United
3 States Code), or inhumane conditions to an-
4 other person, including—

5 “(i) transporting the person in an en-
6 gine compartment, storage compartment,
7 or other confined space;

8 “(ii) transporting the person at an ex-
9 cessive speed or in excess of the rated ca-
10 pacity of the means of transportation; or

11 “(iii) transporting the person in, har-
12 boring the person in, or otherwise sub-
13 jecting the person to crowded or dangerous
14 conditions;

15 “(E) if the violation caused serious bodily
16 injury (as defined in section 2119(2) of title 18,
17 United States Code) to any person, be fined
18 under such title, imprisoned for not less than 7
19 years or more than 30 years, or both;

20 “(F) be fined under such title and impris-
21 oned for not less than 10 years or more than
22 30 years if the violation involved an alien who
23 the offender knew or had reason to believe
24 was—

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

3 “(ii) intending to engage in terrorist
4 activity;

5 “(G) if the violation caused or resulted in
6 the death of any person, be punished by death
7 or imprisoned for a term of years not less than
8 10 years and up to life, and fined under title
9 18, United States Code.

10 “(3) LIMITATION.—It is not a violation of sub-
11 paragraph (D), (E), or (F) of paragraph (1) for a
12 religious denomination having a bona fide nonprofit,
13 religious organization in the United States, or the
14 agents or officers of such denomination or organiza-
15 tion, to encourage, invite, call, allow, or enable an
16 alien who is present in the United States to perform
17 the vocation of a minister or missionary for the de-
18 nomination or organization in the United States as
19 a volunteer who is not compensated as an employee,
20 notwithstanding the provision of room, board, travel,
21 medical assistance, and other basic living expenses,
22 provided the minister or missionary has been a
23 member of the denomination for at least 1 year.

1 “(4) EXTRATERRITORIAL JURISDICTION.—

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

4 “(b) SEIZURE AND FORFEITURE.—

5 “(1) IN GENERAL.—Any real or personal prop-
6 erty used to commit or facilitate the commission of
7 a violation of this section, the gross proceeds of such
8 violation, and any property traceable to such prop-
9 erty or proceeds, shall be subject to forfeiture.

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

19 “(3) PRIMA FACIE EVIDENCE IN DETERMINA-
20 TIONS OF VIOLATIONS.—In determining whether a
21 violation of subsection (a) has occurred, prima facie
22 evidence that an alien involved in the alleged viola-
23 tion lacks lawful authority to come to, enter, reside
24 in, remain in, or be in the United States or that
25 such alien had come to, entered, resided in, re-

1 mained in, or been present in the United States in
2 violation of law may include:

3 “(A) any order, finding, or determination
4 concerning the alien’s status or lack of status
5 made by a Federal judge or administrative ad-
6 judicator (including an immigration judge or
7 immigration officer) during any judicial or ad-
8 ministrative proceeding authorized under Fed-
9 eral immigration law;

10 “(B) official records of the Department of
11 Homeland Security, the Department of Justice,
12 or the Department of State concerning the
13 alien’s status or lack of status; and

14 “(C) testimony by an immigration officer
15 having personal knowledge of the facts con-
16 cerning the alien’s status or lack of status.

17 “(c) **AUTHORITY TO ARREST.**—No officer or person
18 shall have authority to make any arrests for a violation
19 of any provision of this section except:

20 “(1) officers and employees designated by the
21 Secretary of Homeland Security, either individually
22 or as a member of a class; and

23 “(2) other officers responsible for the enforce-
24 ment of Federal criminal laws.

1 “(d) ADMISSIBILITY OF VIDEOTAPED WITNESS TES-
2 TIMONY.—Notwithstanding any provision of the Federal
3 Rules of Evidence, the videotaped or otherwise audio-
4 visually preserved deposition of a witness to a violation
5 of subsection (a) who has been deported or otherwise ex-
6 pelled from the United States, or is otherwise unavailable
7 to testify, may be admitted into evidence in an action
8 brought for that violation if:

9 “(1) the witness was available for cross exam-
10 ination at the deposition by the party, if any, oppos-
11 ing admission of the testimony; and

12 “(2) the deposition otherwise complies with the
13 Federal Rules of Evidence.

14 “(e) DEFINITIONS.—In this section:

15 “(1) CROSS THE BORDER TO THE UNITED
16 STATES.—The term ‘cross the border’ refers to the
17 physical act of crossing the border, regardless of
18 whether the alien is free from official restraint.

19 “(2) LAWFUL AUTHORITY.—The term ‘lawful
20 authority’ means permission, authorization, or li-
21 cense that is expressly provided for in the immigra-
22 tion laws of the United States or accompanying reg-
23 ulations. The term does not include any such au-
24 thority secured by fraud or otherwise obtained in
25 violation of law or authority sought, but not ap-

1 proved. No alien shall be deemed to have lawful au-
2 thority to come to, enter, reside in, remain in, or be
3 in the United States if such coming to, entry, resi-
4 dence, remaining, or presence was, is, or would be
5 in violation of law.

6 “(3) PROCEEDS.—The term ‘proceeds’ includes
7 any property or interest in property obtained or re-
8 tained as a consequence of an act or omission in vio-
9 lation of this section.

10 “(4) UNLAWFUL TRANSIT.—The term ‘unlawful
11 transit’ means travel, movement, or temporary pres-
12 ence that violates the laws of any country in which
13 the alien is present or any country from which or to
14 which the alien is traveling or moving.”.

15 (b) CLERICAL AMENDMENT.—The table of contents
16 for the Immigration and Nationality Act is amended by
17 striking the item relating to section 274 and inserting the
18 following:

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

19 (c) PROHIBITING CARRYING OR USING A FIREARM
20 DURING AND IN RELATION TO AN ALIEN SMUGGLING
21 CRIME.—Section 924(c) of title 18, United States Code,
22 is amended—

23 (1) in paragraph (1)—

24 (A) in subparagraph (A)——

1 (i) by inserting “, alien smuggling
2 crime,” after “any crime of violence”; and

3 (ii) by inserting “, alien smuggling
4 crime,” after “such crime of violence”; and

5 (B) in subparagraph (D)(ii), by inserting
6 “, alien smuggling crime,” after “crime of vio-
7 lence”; and

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

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

14 **SEC. 315. PENALTIES FOR ILLEGAL ENTRY.**

15 (a) IN GENERAL.—Section 275 of the Immigration
16 and Nationality Act (8 U.S.C. 1325) is amended to read
17 as follows:

18 “ILLEGAL ENTRY

19 “SEC. 275. (a) IN GENERAL.—

20 “(1) ILLEGAL ENTRY.—An alien shall be sub-
21 ject to the penalties set forth in paragraph (2) if the
22 alien:

23 “(A) knowingly enters or crosses the bor-
24 der into the United States at any time or place
25 other than as designated by the Secretary of
26 Homeland Security;

1 “(B) knowingly eludes, at any time or
2 place, examination or inspection by an author-
3 ized immigration, customs, or agriculture offi-
4 cer (including by failing to stop at the com-
5 mand of such officer);

6 “(C) knowingly enters or crosses the bor-
7 der to the United States and, upon examination
8 or inspection, knowingly makes a false or mis-
9 leading representation or the knowing conceal-
10 ment of a material fact (including such rep-
11 resentation or concealment in the context of ar-
12 rival, reporting, entry, or clearance require-
13 ments of the customs laws, immigration laws,
14 agriculture laws, or shipping laws); or

15 “(D) knowingly violates for a period of 90
16 days or more the terms or conditions of the
17 alien’s admission or parole into the United
18 States.

19 “(2) CRIMINAL PENALTIES.—Any alien who
20 violates any provision under paragraph (1):

21 “(A) shall, for the first violation, be fined
22 under title 18, United States Code, imprisoned
23 not more than 6 months, or both;

24 “(B) shall, for a second or subsequent vio-
25 lation, or following an order of voluntary depar-

1 ture, be fined under such title, imprisoned not
2 more than 2 years, or both;

3 “(C) if the violation occurred after the
4 alien had been convicted of 3 or more mis-
5 demeanors or for a felony, shall be fined under
6 such title, imprisoned not more than 10 years,
7 or both;

8 “(D) if the violation occurred after the
9 alien had been convicted of a felony for which
10 the alien received a term of imprisonment of
11 not less than 30 months, shall be fined under
12 such title, imprisoned not more than 15 years,
13 or both; and

14 “(E) if the violation occurred after the
15 alien had been convicted of a felony for which
16 the alien received a term of imprisonment of
17 not less than 60 months, such alien shall be
18 fined under such title, imprisoned not more
19 than 20 years, or both.

20 “(3) PRIOR CONVICTIONS.—The prior convic-
21 tions described in subparagraphs (C) through (E) of
22 paragraph (2) are elements of the offenses described
23 and the penalties in such subparagraphs shall apply
24 only in cases in which the conviction or convictions
25 that form the basis for the additional penalty are—

1 “(A) alleged in the indictment or informa-
2 tion; and

3 “(B) proven beyond a reasonable doubt at
4 trial or admitted by the defendant.

5 “(4) DURATION OF OFFENSE.—An offense
6 under this subsection continues until the alien is dis-
7 covered within the United States by an immigration,
8 customs, or agriculture officer.

9 “(5) ATTEMPT.—Whoever attempts to commit
10 any offense under this section shall be punished in
11 the same manner as for a completion of such of-
12 fense.

13 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
14 ALTIES.—

15 “(1) IN GENERAL.—Any alien who is appre-
16 hended while entering, attempting to enter, or know-
17 ingly crossing or attempting to cross the border to
18 the United States at a time or place other than as
19 designated by immigration officers shall be subject
20 to a civil penalty, in addition to any criminal or
21 other civil penalties that may be imposed under any
22 other provision of law, in an amount equal to—

23 “(A) not less than \$50 or more than \$250
24 for each such entry, crossing, attempted entry,
25 or attempted crossing; or

1 “(B) twice the amount specified in para-
2 graph (1) if the alien had previously been sub-
3 ject to a civil penalty under this subsection.”.

4 (b) CLERICAL AMENDMENT.—The table of contents
5 for the Immigration and Nationality Act is amended by
6 striking the item relating to section 275 and inserting the
7 following:

“275. Illegal entry.”.

8 **SEC. 316. ILLEGAL REENTRY.**

9 Section 276 of the Immigration and Nationality Act
10 (8 U.S.C. 1326) is amended to read as follows:

11 “REENTRY OF REMOVED ALIEN

12 “SEC. 276. (a) REENTRY AFTER REMOVAL.—Any
13 alien who has been denied admission, excluded, deported,
14 or removed, or who has departed the United States while
15 an order of exclusion, deportation, or removal is out-
16 standing, and subsequently enters, attempts to enter,
17 crosses the border to, attempts to cross the border to, or
18 is at any time found in the United States, shall be fined
19 under title 18, United States Code, imprisoned not more
20 than 2 years, or both.

21 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
22 withstanding the penalty provided in subsection (a), if an
23 alien described in that subsection was convicted before
24 such removal or departure:

1 “(1) for 3 or more misdemeanors or for a fel-
2 ony, the alien shall be fined under title 18, United
3 States Code, imprisoned not more than 10 years, or
4 both;

5 “(2) for a felony for which the alien was sen-
6 tenced to a term of imprisonment of not less than
7 30 months, the alien shall be fined under such title,
8 imprisoned not less than 2 years and not more than
9 15 years, or both;

10 “(3) for a felony for which the alien was sen-
11 tenced to a term of imprisonment of not less than
12 60 months, the alien shall be fined under such title,
13 imprisoned not less than 4 years and not more than
14 20 years, or both;

15 “(4) for murder, rape, kidnapping, or a felony
16 offense described in chapter 77 (relating to peonage
17 and slavery) or 113B (relating to terrorism) of such
18 title, or for 3 or more felonies of any kind, the alien
19 shall be fined under such title, imprisoned not less
20 than 5 years and not more than 25 years, or both.

21 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
22 alien who has been denied admission, excluded, deported,
23 or removed 3 or more times and thereafter enters, at-
24 tempts to enter, crosses the border to, attempts to cross
25 the border to, or is at any time found in the United States,

1 shall be fined under title 18, United States Code, impris-
2 oned not more than 10 years, or both.

3 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
4 convictions described in subsection (b) are elements of the
5 crimes described, and the penalties in that subsection shall
6 apply only in cases in which the conviction or convictions
7 that form the basis for the additional penalty are—

8 “(1) alleged in the indictment or information;
9 and

10 “(2) proven beyond a reasonable doubt at trial
11 or admitted by the defendant.

12 “(e) AFFIRMATIVE DEFENSES.—It shall be an af-
13 firmative defense to a violation of this section that—

14 “(1) prior to the alleged violation, the alien had
15 sought and received the express consent of the Sec-
16 retary of Homeland Security to reapply for admis-
17 sion into the United States; or

18 “(2) with respect to an alien previously denied
19 admission and removed, the alien—

20 “(A) was not required to obtain such ad-
21 vance consent under the Immigration and Na-
22 tionality Act or any prior Act; and

23 “(B) had complied with all other laws and
24 regulations governing the alien’s admission into
25 the United States.

1 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
2 DERLYING REMOVAL ORDER.—In a criminal proceeding
3 under this section, an alien may not challenge the validity
4 of any prior removal order concerning the alien.

5 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
6 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
7 moved pursuant to section 241(a)(4) who enters, attempts
8 to enter, crosses the border to, attempts to cross the bor-
9 der to, or is at any time found in, the United States shall
10 be incarcerated for the remainder of the sentence of im-
11 prisonment which was pending at the time of deportation
12 without any reduction for parole or supervised release un-
13 less the alien affirmatively demonstrates that the Sec-
14 retary of Homeland Security has expressly consented to
15 the alien’s reentry. Such alien shall be subject to such
16 other penalties relating to the reentry of removed aliens
17 as may be available under this section or any other provi-
18 sion of law.

19 “(h) DEFINITIONS.—For purposes of this section and
20 section 275, the following definitions shall apply:

21 “(1) CROSSES THE BORDER TO THE UNITED
22 STATES.—The term ‘crosses the border’ refers to the
23 physical act of crossing the border, regardless of
24 whether the alien is free from official restraint.

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

5 “(3) MISDEMEANOR.—The term ‘misdemeanor’
6 means any criminal offense punishable by a term of
7 imprisonment of not more than 1 year under the ap-
8 plicable laws of the United States, any State, or a
9 foreign government.

10 “(4) REMOVAL.—The term ‘removal’ includes
11 any denial of admission, exclusion, deportation, or
12 removal, or any agreement by which an alien stipu-
13 lates or agrees to exclusion, deportation, or removal.

14 “(5) STATE.—The term ‘State’ means a State
15 of the United States, the District of Columbia, and
16 any commonwealth, territory, or possession of the
17 United States.”.

18 **SEC. 317. REFORM OF PASSPORT, VISA, AND IMMIGRATION**

19 **FRAUD OFFENSES.**

20 Chapter 75 of title 18, United States Code, is amend-
21 ed to read as follows:

22 **“CHAPTER 75—PASSPORTS AND VISAS**

“Sec.

“1541. Issuance without authority.

“1542. False statement in application and use of passport.

“1543. Forgery or false use of passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Attempts and conspiracies.

“1548. Alternative penalties for certain offenses.

“1549. Definitions.

1 **“§ 1541. Issuance without authority**

2 “(a) IN GENERAL.—Whoever—

3 “(1) acting or claiming to act in any office or
4 capacity under the United States, or a State, with-
5 out lawful authority grants, issues, or verifies any
6 passport or other instrument in the nature of a
7 passport to or for any person; or

8 “(2) being a consular officer authorized to
9 grant, issue, or verify passports, knowingly grants,
10 issues, or verifies any such passport to or for any
11 person not owing allegiance, to the United States,
12 whether a citizen or not;

13 shall be fined under this title or imprisoned not more than
14 15 years, or both.

15 “(b) DEFINITION.—In this section, the term ‘State’
16 means a State of the United States, the District of Colum-
17 bia, and any commonwealth, territory, or possession of the
18 United States.

19 **“§ 1542. False statement in application and use of**
20 **passport**

21 “Whoever knowingly—

22 “(1) makes any false statement in an applica-
23 tion for passport with intent to induce or secure the
24 issuance of a passport under the authority of the

1 United States, either for his own use or the use of
2 another, contrary to the laws regulating the issuance
3 of passports or the rules prescribed pursuant to such
4 laws; or

5 “(2) uses or attempts to use, or furnishes to
6 another for use any passport the issue of which was
7 secured in any way by reason of any false statement;
8 shall be fined under this title or imprisoned not more than
9 15 years, or both.

10 **“§ 1543. Forgery or false use of passport**

11 “Whoever—

12 “(1) falsely makes, forges, counterfeits, muti-
13 lates, or alters any passport or instrument pur-
14 porting to be a passport, with intent that the same
15 may be used; or

16 “(2) knowingly uses, or attempts to use, or fur-
17 nishes to another for use any such false, forged,
18 counterfeited, mutilated, or altered passport or in-
19 strument purporting to be a passport, or any pass-
20 port validly issued which has become void by the oc-
21 currence of any condition therein prescribed invali-
22 dating the same;

23 shall be fined under this title or imprisoned not more than
24 15 years, or both.

1 **“§ 1544. Misuse of a passport**

2 “Whoever knowingly—

3 “(1) uses any passport issued or designed for
4 the use of another;

5 “(2) uses any passport in violation of the condi-
6 tions or restrictions therein contained, or in violation
7 of the laws, regulations, or rules governing the
8 issuance and use of the passport;

9 “(3) secures, possesses, uses, receives, buys,
10 sells, or distributes any passport knowing it to be
11 forged, counterfeited, altered, falsely made, procured
12 by fraud, stolen, or produced or issued without law-
13 ful authority; or

14 “(4) violates the terms and conditions of any
15 safe conduct duly obtained and issued under the au-
16 thority of the United States;

17 shall be fined under this title, imprisoned not more than
18 15 years, or both.

19 **“§ 1545. Schemes to defraud aliens**

20 “Whoever inside the United States, or in or affecting
21 interstate or foreign commerce, in connection with any
22 matter that is authorized by or arises under the immigra-
23 tion laws of the United States or any matter the offender
24 claims or represents is authorized by or arises under the
25 immigration laws of the United States, knowingly executes
26 a scheme or artifice—

1 “(1) to defraud any person, or

2 “(2) to obtain or receive money or anything else
3 of value from any person by means of false or fraud-
4 ulent pretenses, representations, or promises;

5 shall be fined under this title, imprisoned not more than
6 15 years, or both.

7 **“§ 1546. Immigration and visa fraud**

8 “Whoever knowingly—

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

11 “(2) forges, counterfeits, alters, or falsely
12 makes any immigration document;

13 “(3) mails, prepares, presents, or signs any im-
14 migration document knowing it to contain any mate-
15 rially false statement or representation;

16 “(4) secures, possesses, uses, transfers, re-
17 ceives, buys, sells, or distributes any immigration
18 document knowing it to be forged, counterfeited, al-
19 tered, falsely made, stolen, procured by fraud, or
20 produced or issued without lawful authority;

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

23 “(6) transfers or furnishes, without lawful au-
24 thority, an immigration document to another person
25 for use by a person other than the person for whom

1 the immigration document was issued or designed;
2 or

3 “(7) produces, issues, authorizes, or verifies,
4 without lawful authority, an immigration document;
5 shall be fined under this title, imprisoned not more than
6 15 years, or both.

7 **“§ 1547. Attempts and conspiracies**

8 “Whoever attempts or conspires to violate this chap-
9 ter shall be punished in the same manner as a person who
10 completes that violation.

11 **“§ 1548. Alternative penalties for certain offenses**

12 “(a) **TERRORISM.**—Whoever violates any section in
13 this chapter to facilitate an act of international terrorism
14 or domestic terrorism (as such terms are defined in section
15 2331), shall be fined under this title or imprisoned not
16 more than 25 years, or both.

17 “(b) **DRUG TRAFFICKING OFFENSES.**—Whoever vio-
18 lates any section in this chapter to facilitate a drug traf-
19 ficking crime (as defined in section 929(a)) shall be fined
20 under this title or imprisoned not more than 20 years, or
21 both.

22 **“§ 1549. Definitions**

23 “In this chapter:

24 “(1) An ‘application for a United States pass-
25 port’ includes any document, photograph, or other

1 piece of evidence attached to or submitted in support
2 of the application.

3 “(2) The term ‘immigration document’ means
4 any instrument on which is recorded, by means of
5 letters, figures, or marks, matters which may be
6 used to fulfill any requirement of the Immigration
7 and Nationality Act.”.

8 **SEC. 318. FORFEITURE.**

9 Section 981(a)(1) of title 18, United States Code, is
10 amended by adding at the end the following:

11 “(I) Any property, real or personal, that has
12 been used to commit or facilitate the commission of
13 a violation of chapter 75, the gross proceeds of such
14 violation, and any property traceable to any such
15 property or proceeds.”.

16 **SEC. 319. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE**
17 **ON CRIMINAL OR SECURITY GROUNDS.**

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

20 (1) in paragraph (1)—

21 (A) by striking “Attorney General” and in-
22 sserting “Secretary of Homeland Security in the
23 exercise of discretion”; and

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

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

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

10 (4) in paragraph (5)—

11 (A) by striking “described in this section”
12 and inserting “described in paragraph (1) or
13 (2)”;

14 (B) by striking “the Attorney General may
15 grant in the Attorney General’s discretion” and
16 inserting “the Secretary of Homeland Security
17 or the Attorney General may grant, in the dis-
18 cretion of the Secretary or Attorney General, in
19 any proceeding”;

20 (5) by redesignating paragraphs (3), (4), and
21 (5) as paragraphs (4), (5), and (6), respectively; and

22 (6) by inserting after paragraph (2) the fol-
23 lowing new paragraph:

24 “(3) The Secretary of Homeland Security in
25 the exercise of discretion may determine inadmis-

1 sibility under section 212(a)(2) (relating to criminal
2 offenses) and issue an order of removal pursuant to
3 the procedures set forth in this subsection, in lieu of
4 removal proceedings under section 240, with respect
5 to an alien who

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

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

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

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

17 **SEC. 320. INCREASED PENALTIES BARRING THE ADMIS-**
18 **SION OF CONVICTED SEX OFFENDERS FAIL-**
19 **ING TO REGISTER AND REQUIRING DEPORTA-**
20 **TION OF SEX OFFENDERS FAILING TO REG-**
21 **ISTER.**

22 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) of
23 the Immigration and Nationality Act (8 U.S.C.
24 1182(a)(2)(A)(i)), as amended by section 302(a) of this
25 Act, is further amended—

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

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

5 (3) by inserting after subclause (III) the fol-
6 lowing:

7 “(IV) a violation of section 2250
8 of title 18, United States Code (relat-
9 ing to failure to register as a sex of-
10 fender);”.

11 (b) DEPORTABILITY.—Section 237(a)(2) of such Act
12 (8 U.S.C. 1227(a)(2)), as amended by sections 302(c) and
13 311(c) of this Act, is further amended—

14 (1) in subparagraph (A), by striking clause (v);
15 and

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

17 “(I) Any alien convicted of, or who admits
18 having committed, or who admits committing
19 acts which constitute the essential elements of
20 a violation of section 2250 of title 18, United
21 States Code (relating to failure to register as a
22 sex offender) is deportable.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date of the enactment

1 of this Act and shall apply to acts that occur before, on,
2 or after the date of the enactment of this Act.

3 **SEC. 321. PROTECTING IMMIGRANTS FROM CONVICTED**
4 **SEX OFFENDERS.**

5 (a) IMMIGRANTS.—Section 204(a)(1) of the Immigra-
6 tion and Nationality Act (8 U.S.C. 1154(a)(1)), is amend-
7 ed—

8 (1) in subparagraph (A), by amending clause
9 (viii) to read as follows:

10 “(viii) Clause (i) shall not apply to a citizen of the
11 United States who has been convicted of an offense de-
12 scribed in subparagraph (A), (I), or (K) of section
13 101(a)(43), unless the Secretary of Homeland Security,
14 in the Secretary’s sole and unreviewable discretion, deter-
15 mines that the citizen poses no risk to the alien with re-
16 spect to whom a petition described in clause (i) is filed.”;
17 and

18 (2) in subparagraph (B)(i)—

19 (A) by redesignating the second subclause
20 (I) as subclause (II); and

21 (B) by amending such subclause (II) to
22 read as follows:

23 “(II) Subclause (I) shall not apply in the case of an
24 alien admitted for permanent residence who has been con-
25 victed of an offense described in subparagraph (A), (I),

1 or (K) of section 101(a)(43), unless the Secretary of
2 Homeland Security, in the Secretary's sole and
3 unreviewable discretion, determines that the alien lawfully
4 admitted for permanent residence poses no risk to the
5 alien with respect to whom a petition described in sub-
6 clause (I) is filed.”.

7 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) of
8 such Act (8 U.S.C. 1101(a)(15)(K)), is amended by strik-
9 ing “204(a)(1)(A)(viii)(I)” each place such term appears
10 and inserting “204(a)(1)(A)(viii)”.

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

15 **SEC. 322. CLARIFICATION TO CRIMES OF VIOLENCE AND**
16 **CRIMES INVOLVING MORAL TURPITUDE.**

17 (a) INADMISSIBLE ALIENS.—Section 212(a)(2)(A) of
18 the Immigration and Nationality Act (8 U.S.C.
19 1182(a)(2)(A)) is amended by adding at the end the fol-
20 lowing:

21 “(iii) CLARIFICATION.—If the convic-
22 tion records do not conclusively establish
23 whether a crime constitutes a crime involv-
24 ing moral turpitude, the Attorney General
25 may consider other evidence related to the

1 conviction that clearly establishes that the
2 conduct for which the alien was engaged
3 constitutes a crime involving moral turpi-
4 tude.”.

5 (b) DEPORTABLE ALIENS.—

6 (1) GENERAL CRIMES.—Section 237(a)(2)(A)
7 of such Act (8 U.S.C. 1227(a)(2)(A)), as amended
8 by section 320(b) of this Act, is further amended by
9 inserting after clause (iv) the following:

10 “(v) CRIMES INVOLVING MORAL TUR-
11 PITUDE.—If the conviction records do not
12 conclusively establish whether a crime con-
13 stitutes a crime involving moral turpitude,
14 the Attorney General may consider other
15 evidence related to the conviction that
16 clearly establishes that the conduct for
17 which the alien was engaged constitutes a
18 crime involving moral turpitude.”.

19 (2) DOMESTIC VIOLENCE.—Section
20 237(a)(2)(E) of such Act (8 U.S.C. 1227(a)(2)(E))
21 is amended by adding at the end the following:

22 “(iii) CRIMES OF VIOLENCE.—If the
23 conviction records do not conclusively es-
24 tablish whether a crime of domestic vio-
25 lence constitutes a crime of violence (as de-

1 fined in section 16 of title 18, United
2 States Code), the Attorney General may
3 consider other evidence related to the con-
4 viction that clearly establishes that the
5 conduct for which the alien was engaged
6 constitutes a crime of violence.”.

7 (c) 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 acts that occur before, on,
10 or after the date of the enactment of this Act.

11 **SEC. 323. PENALTIES FOR FAILURE TO OBEY REMOVAL OR-**
12 **DERS.**

13 (a) IN GENERAL.—Section 243(a)(1) of the Immi-
14 gration and Nationality Act (8 U.S.C. 1253(a)(1)) is
15 amended—

16 (1) by inserting “212(a) or” before “237(a),” ;
17 and

18 (2) by striking paragraph (3).

19 (b) EFFECTIVE DATE.—The amendments made by
20 subsection (a) shall take effect on the date of the enact-
21 ment of this Act and shall apply to acts that are described
22 in subparagraphs (A) through (D) of section 243(a)(1) of
23 the Immigration and Nationality Act (8 U.S.C.
24 1253(a)(1)) that occur on or after the date of the enact-
25 ment of this Act.

1 **SEC. 324. PARDONS.**

2 (a) DEFINITION.—Section 101(a) of the Immigration
3 and Nationality Act (8 U.S.C. 1101(a)), as amended by
4 section 311(a) of this Act, is further amended by adding
5 at the end the following:

6 “(54) The term ‘pardon’ means a full and uncondi-
7 tional pardon granted by the President of the United
8 States, Governor of any of the several States or constitu-
9 tionally recognized body.”.

10 (b) DEPORTABILITY.—Section 237(a) of such Act (8
11 U.S.C. 1227(a)) is amended—

12 (1) in paragraph (2)(A), by striking clause (vi);

13 and

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

15 “(8) PARDONS.—

16 “(A) IN GENERAL.—In the case of an alien
17 who has been convicted of a crime and is sub-
18 ject to removal due to that conviction, if the
19 alien, subsequent to receiving the criminal con-
20 viction, is granted a pardon, the alien shall not
21 be deportable by reason of that criminal convic-
22 tion.

23 “(B) EXCEPTION.—Subparagraph (A)
24 shall not apply in the case of an alien granted
25 a pardon if the pardon is granted in whole or

1 in part to eliminate that alien’s condition of de-
2 portability.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act and shall apply to a pardon granted before,
6 on, or after such date.

7 **TITLE IV—VISA SECURITY**

8 **SEC. 401. CANCELLATION OF ADDITIONAL VISAS.**

9 (a) IN GENERAL.—Section 222(g) of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1202(g)) is amended—

11 (1) in paragraph (1)—

12 (A) by striking “Attorney General” and in-
13 serting “Secretary”; and

14 (B) by inserting “and any other non-
15 immigrant visa issued by the United States that
16 is in the possession of the alien” after “such
17 visa”; and

18 (2) in paragraph (2)(A), by striking “(other
19 than the visa described in paragraph (1)) issued in
20 a consular office located in the country of the alien’s
21 nationality” and inserting “(other than a visa de-
22 scribed in paragraph (1)) issued in a consular office
23 located in the country of the alien’s nationality or
24 foreign residence”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect on the date of the enact-
3 ment of this Act and shall apply to a visa issued before,
4 on, or after such date.

5 **SEC. 402. VISA INFORMATION SHARING.**

6 (a) IN GENERAL.—Section 222(f) of the Immigration
7 and Nationality Act (8 U.S.C. 1202(f)(2)) is amended—

8 (1) by striking “issuance or refusal” and insert-
9 ing “issuance, refusal, or revocation”;

10 (2) in paragraph (2), by striking “and on the
11 basis of reciprocity”;

12 (3) in paragraph (2)(A)—

13 (A) by inserting “ (i)” after “for the pur-
14 pose of”; and

15 (B) by striking “illicit weapons; or” and
16 inserting “illicit weapons, or (ii) determining a
17 person’s deportability or eligibility for a visa,
18 admission, or other immigration benefit;”;

19 (4) in paragraph (2)(B)—

20 (A) by striking “for the purposes” and in-
21 serting “for one of the purposes”; and

22 (B) by striking “or to deny visas to per-
23 sons who would be inadmissible to the United
24 States” and inserting “; or”; and

1 (5) by adding before the period at the end the
2 following:

3 “(C) with regard to any or all aliens in the
4 database specified data elements from each
5 record, if the Secretary of State determines that
6 it is in the national interest to provide such in-
7 formation to a foreign government.”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 subsection (a) shall take effect 60 days after the date of
10 the enactment of the Act.

11 **SEC. 403. RESTRICTING WAIVER OF VISA INTERVIEWS.**

12 Section 222(h) of the Immigration and Nationality
13 Act (8 U.S.C. 1202(h)(1)(B)) is amended—

14 (1) in paragraph (1)(C), by inserting “, in con-
15 sultation with the Secretary of Homeland Security,”
16 after “if the Secretary”;

17 (2) in paragraph (1)(C)(i), by inserting “,
18 where such national interest shall not include facili-
19 tation of travel of foreign nationals to the United
20 States, reduction of visa application processing
21 times, or the allocation of consular resources”;

22 (3) in paragraph (2)—

23 (A) by striking “or” at the end of subpara-
24 graph (E);

1 (B) by striking the period at the end of
2 subparagraph (F) and inserting “; or”; and

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

4 “(G) is an individual—

5 “(i) determined to be in a class of
6 aliens determined by the Secretary of
7 Homeland Security to be threats to na-
8 tional security;

9 “(ii) identified by the Secretary of
10 Homeland Security as a person of concern;

11 or

12 “(iii) applying for a visa in a visa cat-
13 egory with respect to which the Secretary
14 of Homeland Security has determined that
15 a waiver of the visa interview would create
16 a high risk of degradation of visa program
17 integrity.”.

18 **SEC. 404. AUTHORIZING THE DEPARTMENT OF STATE TO**
19 **NOT INTERVIEW CERTAIN INELIGIBLE VISA**
20 **APPLICANTS.**

21 (a) IN GENERAL.—Section 222(h)(1) of the Immi-
22 gration and Nationality Act (8 U.S.C. 1202(h)(1)) is
23 amended by inserting “ the alien is determined by the Sec-
24 retary of State to be ineligible for a visa based upon review
25 of the application or” after “unless”.

1 (b) GUIDANCE.—Not later than 90 days after the
2 date of the enactment of this Act, the Secretary of State
3 shall issue guidance to consular officers on the standards
4 and processes for implementing the authority to deny visa
5 applications without interview in cases where the alien is
6 determined by the Secretary of State to be ineligible for
7 a visa based upon review of the application.

8 (c) REPORTS.—Not less frequently than once each
9 quarter, the Secretary of State shall submit to the Con-
10 gress a report on the denial of visa applications without
11 interview, including—

12 (1) the number of such denials; and

13 (2) a post-by-post breakdown of such denials.

14 **SEC. 405. VISA REFUSAL AND REVOCATION.**

15 (a) AUTHORITY OF THE SECRETARY OF HOMELAND
16 SECURITY AND THE SECRETARY OF STATE.—

17 (1) IN GENERAL.—Section 428 of the Home-
18 land Security Act of 2002 (6 U.S.C. 236) is amend-
19 ed by striking subsections (b) and (c) and inserting
20 the following:

21 “(b) AUTHORITY OF THE SECRETARY OF HOMELAND
22 SECURITY.—

23 “(1) IN GENERAL.—Notwithstanding section
24 104(a) of the Immigration and Nationality Act (8
25 U.S.C. 1104(a)) or any other provision of law, and

1 except as provided in subsection (c) and except for
2 the authority of the Secretary of State under sub-
3 paragraphs (A) and (G) of section 101(a)(15) of the
4 Immigration and Nationality Act (8 U.S.C.
5 1101(a)(15)), the Secretary—

6 “(A) shall have exclusive authority to issue
7 regulations, establish policy, and administer and
8 enforce the provisions of the Immigration and
9 Nationality Act (8 U.S.C. 1101 et seq.) and all
10 other immigration or nationality laws relating
11 to the functions of consular officers of the
12 United States in connection with the granting
13 and refusal of a visa; and

14 “(B) may refuse or revoke any visa to any
15 alien or class of aliens if the Secretary, or des-
16 ignee, determines that such refusal or revoca-
17 tion is necessary or advisable in the security in-
18 terests of the United States.

19 “(2) EFFECT OF REVOCATION.—The revocation
20 of any visa under paragraph (1)(B)—

21 “(A) shall take effect immediately; and

22 “(B) shall automatically cancel any other
23 valid visa that is in the alien’s possession.

24 “(3) JUDICIAL REVIEW.—Notwithstanding any
25 other provision of law, including section 2241 of title

1 28, United States Code, or any other habeas corpus
2 provision, and sections 1361 and 1651 of such title,
3 no court shall have jurisdiction to review a decision
4 by the Secretary of Homeland Security to refuse or
5 revoke a visa, and no court shall have jurisdiction to
6 hear any claim arising from, or any challenge to,
7 such a refusal or revocation.

8 “(c) AUTHORITY OF THE SECRETARY OF STATE.—

9 “(1) IN GENERAL.—The Secretary of State may
10 direct a consular officer to refuse a visa requested
11 by an alien if the Secretary of State determines such
12 refusal to be necessary or advisable in the interests
13 of the United States.

14 “(2) LIMITATION.—No decision by the Sec-
15 retary of State to approve a visa may override a de-
16 cision by the Secretary of Homeland Security under
17 subsection (b).”.

18 (2) CONFORMING AMENDMENT.—Section
19 237(a)(1)(B) of the Immigration and Nationality
20 Act (8 U.S.C. 1227(a)(1)(B)) is amended by strik-
21 ing “under section 221(i)”.

22 (3) EFFECTIVE DATE.—The amendment made
23 by paragraph (1) shall take effect on the date of the
24 enactment of this Act and shall apply to visa refus-

1 als and revocations occurring before, on, or after
2 such date.

3 (b) TECHNICAL CORRECTIONS TO THE HOMELAND
4 SECURITY ACT.—Section 428(a) of the Homeland Secu-
5 rity Act of 2002 (6 U.S.C. 236) is amended by—

6 (1) striking “subsection” and inserting “sec-
7 tion”; and

8 (2) striking “consular office” and inserting
9 “consular officer”.

10 **SEC. 406. FUNDING FOR THE VISA SECURITY PROGRAM.**

11 (a) IN GENERAL.—The Department of State and Re-
12 lated Agency Appropriations Act, 2005 (title IV of division
13 B of Public Law 108–447) is amended, in the fourth para-
14 graph under the heading “Diplomatic and Consular Pro-
15 grams”, by striking “Beginning” through the period at
16 the end and inserting the following: “Beginning in fiscal
17 year 2005 and thereafter, the Secretary of State is author-
18 ized to charge surcharges related to consular services in
19 support of enhanced border security that are in addition
20 to the immigrant visa fees in effect on January 1, 2004:
21 Provided, That funds collected pursuant to this authority
22 shall be credited to the appropriation for U.S. Immigra-
23 tion and Customs Enforcement for the fiscal year in which
24 the fees were collected, and shall be available until ex-
25 pended for the funding of the Visa Security Program es-

1 tablished by the Secretary of Homeland Security under
2 section 428(e) of the Homeland Security Act of 2002
3 (Public Law 107–296): Provided further, That such sur-
4 charges shall be 10 percent of the fee assessed on immi-
5 grant visa applications.”.

6 (b) REPAYMENT OF APPROPRIATED FUNDS.—Twen-
7 ty percent of the funds collected each fiscal year under
8 the heading “Diplomatic and Consular Programs” in the
9 Department of State and Related Agency Appropriations
10 Act, 2005 (title IV of division B of Public Law 108–447),
11 as amended by subsection (a), shall be deposited into the
12 general fund of the Treasury as repayment of funds ap-
13 propriated pursuant to section 407(c) of this Act until the
14 entire appropriated sum has been repaid.

15 **SEC. 407. EXPEDITIOUS EXPANSION OF VISA SECURITY**
16 **PROGRAM TO HIGH-RISK POSTS.**

17 (a) IN GENERAL.—Section 428(i) of the Homeland
18 Security Act of 2002 (6 U.S.C. 236(i)) is amended to read
19 as follows:

20 “(i) VISA ISSUANCE AT DESIGNATED HIGH-RISK
21 POSTS.—Notwithstanding any other provision of law, the
22 Secretary of Homeland Security shall conduct an on-site
23 review of all visa applications and supporting documenta-
24 tion before adjudication at the top 30 visa-issuing posts

1 designated jointly by the Secretaries of State and Home-
2 land Security as high-risk posts.”.

3 (b) ASSIGNMENT OF PERSONNEL.—Not later than
4 one year after the date of enactment of this section, the
5 Secretary of Homeland Security shall assign personnel to
6 the visa-issuing posts referenced in section 428(i) of the
7 Homeland Security Act of 2002 (6 U.S.C. 236(i)), as
8 amended by this section, and communicate such assign-
9 ments to the Secretary of State.

10 (c) APPROPRIATIONS.—There is authorized to be ap-
11 propriated \$60,000,000 for each of the fiscal years 2014
12 and 2015, which shall be used to expedite the implementa-
13 tion of section 428(i) of the Homeland Security Act, as
14 amended by this section.

15 **SEC. 408. EXPEDITED CLEARANCE AND PLACEMENT OF DE-**
16 **PARTMENT OF HOMELAND SECURITY PER-**
17 **SONNEL AT OVERSEAS EMBASSIES AND CON-**
18 **SULAR POSTS.**

19 Section 428 of the Homeland Security Act of 2002
20 (6 U.S.C. 236) is amended by adding at the end the fol-
21 lowing:

22 “(j) EXPEDITED CLEARANCE AND PLACEMENT OF
23 DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT
24 OVERSEAS EMBASSIES AND CONSULAR POSTS.—Notwith-
25 standing any other provision of law, and the processes set

1 forth in National Security Defense Directive 38 (dated
2 June 2, 1982) or any successor Directive, the Chief of
3 Mission of a post to which the Secretary of Homeland Se-
4 curity has assigned personnel under subsection (e) or (i)
5 shall ensure, not later than one year after the date on
6 which the Secretary of Homeland Security communicates
7 such assignment to the Secretary of State, that such per-
8 sonnel have been stationed and accommodated at post and
9 are able to carry out their duties.”.

10 **SEC. 409. INCREASED CRIMINAL PENALTIES FOR STUDENT**
11 **VISA INTEGRITY.**

12 Section 1546 of title 18, United States Code, is
13 amended by striking “10 years” and inserting “15 years
14 (if the offense was committed by an owner, official, or em-
15 ployee of an educational institution with respect to such
16 institution’s participation in the Student and exchange
17 Visitor Program), 10 years”.

18 **SEC. 410. ACCREDITATION REQUIREMENTS.**

19 (a) COLLEGES, UNIVERSITIES, AND LANGUAGE
20 TRAINING PROGRAMS.—Section 101(a) of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1101(a)) is amended—

22 (1) in paragraph (15)(F)(i)—

23 (A) by striking “section 214(1) at an es-
24 tablished college, university, seminary, conserv-
25 atory or in an accredited language training pro-

1 gram in the United States” and inserting “sec-
2 tion 214(m) at an accredited college, university,
3 or language training program, or at an estab-
4 lished seminary, conservatory, academic high
5 school, elementary school, or other academic in-
6 stitution in the United States”; and

7 (B) by striking “Attorney General” each
8 place such term appears and inserting “Sec-
9 retary of Homeland Security”; and

10 (C) by amending paragraph (52) to read
11 as follows:

12 “(52) Except as provided in section 214(m)(4),
13 the term ‘accredited college, university, or language
14 training program’ means a college, university, or
15 language training program that is accredited by an
16 accrediting agency recognized by the Secretary of
17 Education.”.

18 (b) OTHER ACADEMIC INSTITUTIONS.—Section
19 214(m) of the Immigration and Nationality Act (8 U.S.C.
20 1184(m)) is amended by adding at the end the following:

21 “(3) The Secretary of Homeland Security shall
22 require accreditation of an academic institution (ex-
23 cept for seminaries or other religious institutions)
24 for purposes of section 101(a)(15)(F) if—

1 “(A) that institution is not already re-
2 quired to be accredited under section
3 101(a)(15)(F)(i); and

4 “(B) an appropriate accrediting agency
5 recognized by the Secretary of Education is
6 able to provide such accreditation.

7 “(4) The Secretary of Homeland Security, in
8 the Secretary’s discretion, may waive the accredita-
9 tion requirement in paragraph (3) or section
10 101(a)(15)(F)(i) with respect to an institution if
11 such institution—

12 “(A) is otherwise in compliance with the
13 requirements of section 101(a)(15)(F)(i); and

14 “(B) has been a candidate for accredita-
15 tion for at least 1 year and continues to
16 progress toward accreditation by an accrediting
17 agency recognized by the Secretary of Edu-
18 cation.”.

19 (c) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendments made by this section
22 shall—

23 (A) take effect on the date that is 180
24 days after the date of enactment of this Act;
25 and

1 (B) apply with respect to applications for
2 nonimmigrant visas that are filed on or after
3 the effective date described in subparagraph
4 (A).

5 (2) TEMPORARY EXCEPTION.—During the 3-
6 year period beginning on the effective date described
7 in paragraph (1)(A), an institution that is newly re-
8 quired to be accredited under this section may con-
9 tinue to participate in the Student and Exchange
10 Visitor Program notwithstanding the institution’s
11 lack of accreditation if the institution—

12 (A) was certified under the Student and
13 Exchange Visitor Program on such date;

14 (B) submitted an application for accredita-
15 tion to an accrediting agency recognized by the
16 Secretary of Education during the 6-month pe-
17 riod ending on such date; and

18 (C) continues to progress toward accredita-
19 tion by such accrediting agency.

20 **SEC. 411. VISA FRAUD.**

21 (a) TEMPORARY SUSPENSION OF SEVIS ACCESS.—
22 Section 641(d) of the Illegal Immigration Reform and Im-
23 migrant Responsibility Act of 1996 (8 U.S.C. 1372(d)) is
24 amended—

1 (1) in paragraph (1)(A), by striking “institu-
2 tion,” and inserting “institution,”; and

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

4 “(3) EFFECT OF REASONABLE SUSPICION OF
5 FRAUD.—If the Secretary of Homeland Security has
6 reasonable suspicion that an owner of, or a des-
7 ignated school official at, an approved institution of
8 higher education, an other approved educational in-
9 stitution, or a designated exchange visitor program
10 has committed fraud or attempted to commit fraud
11 relating to any aspect of the Student and Exchange
12 Visitor Program, the Secretary may immediately
13 suspend, without notice, such official’s or such
14 school’s access to the Student and Exchange Visitor
15 Information System (SEVIS), including the ability
16 to issue Form I–20s, pending a final determination
17 by the Secretary with respect to the institution’s cer-
18 tification under the Student and Exchange Visitor
19 Program.”.

20 (b) EFFECT OF CONVICTION FOR VISA FRAUD.—

21 Such section 641(d), as amended by subsection (a)(2), is
22 further amended by adding at the end the following:

23 “(4) PERMANENT DISQUALIFICATION FOR
24 FRAUD.—A designated school official at, or an owner
25 of, an approved institution of higher education, an

1 other approved educational institution, or a des-
2 ignated exchange visitor program who is convicted
3 for fraud relating to any aspect of the Student and
4 Exchange Visitor Program shall be permanently dis-
5 qualified from filing future petitions and from hav-
6 ing an ownership interest or a management role, in-
7 cluding serving as a principal, owner, officer, board
8 member, general partner, designated school official,
9 or any other position of substantive authority for the
10 operations or management of the institution, in any
11 United States educational institution that enrolls
12 nonimmigrant alien students described in subpara-
13 graph (F) or (M) of section 101(a)(15) the Immi-
14 gration and Nationality Act (8 U.S.C.
15 1101(a)(15)).”.

16 **SEC. 412. BACKGROUND CHECKS.**

17 (a) IN GENERAL.—Section 641(d) of the Illegal Im-
18 migration Reform and Immigrant Responsibility Act of
19 1996 (8 U.S.C. 1372(d)), as amended by section 411(b)
20 of this Act, is further amended by adding at the end the
21 following:

22 “(5) BACKGROUND CHECK REQUIREMENT.—

23 “(A) IN GENERAL.—An individual may not
24 serve as a designated school official or be grant-
25 ed access to SEVIS unless the individual is a

1 national of the United States or an alien law-
2 fully admitted for permanent residence and dur-
3 ing the most recent 3-year period—

4 “(i) the Secretary of Homeland Secu-
5 rity has—

6 “(I) conducted a thorough back-
7 ground check on the individual, in-
8 cluding a review of the individual’s
9 criminal and sex offender history and
10 the verification of the individual’s im-
11 migration status; and

12 “(II) determined that the indi-
13 vidual has not been convicted of any
14 violation of United States immigration
15 law and is not a risk to national secu-
16 rity of the United States; and

17 “(ii) the individual has successfully
18 completed an on-line training course on
19 SEVP and SEVIS, which has been devel-
20 oped by the Secretary.

21 “(B) INTERIM DESIGNATED SCHOOL OFFI-
22 CIAL.—

23 “(i) IN GENERAL.—An individual may
24 serve as an interim designated school offi-
25 cial during the period that the Secretary is

1 conducting the background check required
2 by subparagraph (A)(i)(I).

3 “(ii) **REVIEWS BY THE SECRETARY.**—

4 If an individual serving as an interim des-
5 ignated school official under clause (i) does
6 not successfully complete the background
7 check required by subparagraph (A)(i)(I),
8 the Secretary shall review each Form I-20
9 issued by such interim designated school
10 official.

11 “(6) **FEE.**—The Secretary is authorized to col-
12 lect a fee from an approved school for each back-
13 ground check conducted under paragraph (6)(A)(i).
14 The amount of such fee shall be equal to the average
15 amount expended by the Secretary to conducted
16 such background checks.”.

17 (b) **EFFECTIVE DATE.**—The amendment made by
18 subsection (a) shall take effect on the date that is 1 year
19 after the date of the enactment of this Act.

20 **SEC. 413. FLIGHT SCHOOLS NOT CERTIFIED BY FAA.**

21 (a) **IN GENERAL.**—Except as provided in subsection
22 (b), the Secretary of Homeland Security shall prohibit any
23 flight school in the United States from accessing SEVIS
24 or issuing a Form I-20 to an alien seeking a student visa
25 pursuant to subparagraph (F)(i) or (M)(i) of section

1 101(a)(15) of the Immigration and Nationality Act (8
2 U.S.C. 1101(a)(15)) if the flight school has not been cer-
3 tified to the satisfaction of the Secretary and by the Fed-
4 eral Aviation Administration pursuant to part 141 or part
5 142 of title 14, Code of Federal Regulations (or similar
6 successor regulations).

7 (b) TEMPORARY EXCEPTION.—During the 5-year pe-
8 riod beginning on the date of the enactment of this Act,
9 the Secretary may waive the requirement under subsection
10 (a) that a flight school be certified by the Federal Aviation
11 Administration if such flight school—

12 (1) was certified under the Student and Ex-
13 change Visitor Program on the date of the enact-
14 ment of this Act;

15 (2) submitted an application for certification
16 with the Federal Aviation Administration during the
17 1-year period beginning on such date; and

18 (3) continues to progress toward certification by
19 the Federal Aviation Administration.

20 **SEC. 414. REVOCATION OF ACCREDITATION.**

21 At the time an accrediting agency or association is
22 required to notify the Secretary of Education and the ap-
23 propriate State licensing or authorizing agency of the final
24 denial, withdrawal, suspension, or termination of accredi-
25 tation of an institution pursuant to section 496 of the

1 Higher Education Act of 1965 (20 U.S.C. 1099b), such
2 accrediting agency or association shall notify the Secretary
3 of Homeland Security of such determination and the Sec-
4 retary of Homeland Security shall immediately withdraw
5 the school from the SEVP and prohibit the school from
6 accessing SEVIS.

7 **SEC. 415. REPORT ON RISK ASSESSMENT.**

8 Not later than 180 days after the date of the enact-
9 ment of this Act, the Secretary of Homeland Security shall
10 submit to the Committee on the Judiciary of the Senate
11 and the Committee on the Judiciary of the House of Rep-
12 resentatives a report that contains the risk assessment
13 strategy that will be employed by the Secretary to identify,
14 investigate, and take appropriate action against schools
15 and school officials that are facilitating the issuance of
16 Form I-20 and the maintenance of student visa status
17 in violation of the immigration laws of the United States.

18 **SEC. 416. IMPLEMENTATION OF GAO RECOMMENDATIONS.**

19 Not later than 180 days after the date of the enact-
20 ment of this act, the Secretary of Homeland Security shall
21 submit to the Committee on the Judiciary of the Senate
22 and the Committee on the Judiciary of the House of Rep-
23 resentatives a report that describes—

24 (1) the process in place to identify and assess
25 risks in the SEVP;

1 (2) a risk assessment process to allocate
2 SEVP's resources based on risk;

3 (3) the procedures in place for consistently en-
4 suring a school's eligibility, including consistently
5 verifying in lieu of letters;

6 (4) how SEVP identified and addressed missing
7 school case files;

8 (5) a plan to develop and implement a process
9 to monitor state licensing and accreditation status of
10 all SEVP-certified schools;

11 (6) whether all flight schools that have not been
12 certified to the satisfaction of the Secretary and by
13 the Federal Aviation Administration have been re-
14 moved from the program and have been restricted
15 from accessing SEVIS;

16 (7) the standard operating procedures that gov-
17 ern coordination among SEVP, Counterterrorism
18 and Criminal Exploitation Unit, and U.S. Immigra-
19 tion and Customs Enforcement field offices; and

20 (8) the established criteria for referring cases of
21 a potentially criminal nature from SEVP to the
22 counterterrorism and intelligence community.

23 **SEC. 417. IMPLEMENTATION OF SEVIS II.**

24 Not later than 2 years after the date of the enact-
25 ment of this Act, the Secretary of Homeland Security shall

1 complete the deployment of both phases of the 2nd genera-
2 tion Student and Exchange Visitor Information System
3 (commonly known as “SEVIS II”).

4 **SEC. 418. DEFINITIONS.**

5 (a) DEFINITIONS.—For purposes of this title:

6 (1) SEVIS.—The term “SEVIS” means the
7 Student and Exchange Visitor Information System
8 of the Department of Homeland Security.

9 (2) SEVP.—The term “SEVP” means the Stu-
10 dent and Exchange Visitor Program of the Depart-
11 ment of Homeland Security.

12 **TITLE V—AID TO U.S. IMMIGRA-**
13 **TION AND CUSTOMS EN-**
14 **FORCEMENT OFFICERS**

15 **SEC. 501. ICE IMMIGRATION ENFORCEMENT AGENTS.**

16 (a) IN GENERAL.—The Secretary of Homeland Secu-
17 rity shall authorize all immigration enforcement agents
18 and deportation officers of the Department of Homeland
19 Security who have successfully completed basic immigra-
20 tion law enforcement training to exercise the powers con-
21 ferred by—

22 (1) section 287(a)(5)(A) of the Immigration
23 and Nationality Act to arrest for any offense against
24 the United States;

1 (2) section 287(a)(5)(B) of such Act to arrest
2 for any felony;

3 (3) section 274(a) of such Act to arrest for
4 bringing in, transporting, or harboring certain
5 aliens, or inducing them to enter;

6 (4) section 287(a) of such Act to execute war-
7 rants of arrest for administrative immigration viola-
8 tions issued under section 236 of the Act or to exe-
9 cute warrants of criminal arrest issued under the
10 authority of the United States; and

11 (5) section 287(a) of such Act to carry fire-
12 arms, provided that they are individually qualified by
13 training and experience to handle and safely operate
14 the firearms they are permitted to carry, maintain
15 proficiency in the use of such firearms, and adhere
16 to the provisions of the enforcement standard gov-
17 erning the use of force.

18 (b) PAY.—Immigration enforcement agents shall be
19 paid on the same scale as Immigration and Customs En-
20 forcement deportation officers and shall receive the same
21 benefits.

22 **SEC. 502. ICE DETENTION ENFORCEMENT OFFICERS.**

23 (a) AUTHORIZATION.—The Secretary of Homeland
24 Security is authorized to hire 2,500 Immigration and Cus-
25 toms Enforcement detention enforcement officers.

1 (b) DUTIES.—Immigration and Customs Enforce-
2 ment detention enforcement officers who have successfully
3 completed detention enforcement officers’ basic training
4 shall be responsible for—

5 (1) taking and maintaining custody of any per-
6 son who has been arrested by an immigration offi-
7 cer;

8 (2) transporting and guarding immigration de-
9 tainees;

10 (3) securing Department of Homeland Security
11 detention facilities; and

12 (4) assisting in the processing of detainees.

13 **SEC. 503. ENSURING THE SAFETY OF ICE OFFICERS AND**
14 **AGENTS.**

15 (a) BODY ARMOR.—The Secretary of Homeland Se-
16 curity shall ensure that every Immigration and Customs
17 Enforcement deportation officer and immigration enforce-
18 ment agent on duty is issued high-quality body armor that
19 is appropriate for the climate and risks faced by the agent.
20 Enough body armor must be purchased to cover every
21 agent in the field.

22 (b) WEAPONS.—Such Secretary shall ensure that Im-
23 migration and Customs Enforcement deportation officers
24 and immigration enforcement agents are equipped with
25 weapons that are reliable and effective to protect them-

1 selves, their fellow agents, and innocent third parties from
2 the threats posed by armed criminals. Such weapons shall
3 include, at a minimum, standard-issue handguns, M-4 (or
4 equivalent) rifles, and Tasers.

5 (c) EFFECTIVE DATE.—This section shall take effect
6 90 days after the date of the enactment of this Act.

7 **SEC. 504. ICE ADVISORY COUNCIL.**

8 (a) ESTABLISHMENT.—An ICE Advisory Council
9 shall be established not later than 3 months after the date
10 of the enactment of this Act.

11 (b) MEMBERSHIP.—The ICE Advisor Council shall
12 be comprised of 7 members.

13 (c) APPOINTMENT.—Members shall to be appointed
14 in the following manner:

15 (1) One member shall be appointed by the
16 President;

17 (2) One member shall be appointed by the
18 Chairman of the Judiciary Committee of the House
19 of Representatives;

20 (3) One member shall be appointed by the
21 Chairman of the Judiciary Committee of the Senate;

22 (4) One member shall be appointed by the
23 Local 511, the ICE prosecutor's union; and

1 (5) Three members shall be appointed by the
2 National Immigration and Customs Enforcement
3 Council.

4 (d) TERM.—Members shall serve renewable, 2-year
5 terms.

6 (e) VOLUNTARY.—Membership shall be voluntary and
7 non-remunerated, except that members will receive reim-
8 bursement from the Secretary of Homeland Security for
9 travel and other related expenses.

10 (f) RETALIATION PROTECTION.—Members who are
11 employed by the Secretary of Homeland Security shall be
12 protected from retaliation by their supervisors, managers,
13 and other Department of Homeland Security employees
14 for their participation on the Council.

15 (g) PURPOSE.—The purpose of the Council is to ad-
16 vise the Congress and the Secretary of Homeland Security
17 on issues including the following:

18 (1) The current status of immigration enforce-
19 ment efforts, including prosecutions and removals,
20 the effectiveness of such efforts, and how enforce-
21 ment could be improved;

22 (2) The effectiveness of cooperative efforts be-
23 tween the Secretary of Homeland Security and other
24 law enforcement agencies, including additional types
25 of enforcement activities that the Secretary should

1 be engaged in, such as State and local criminal task
2 forces;

3 (3) Personnel, equipment, and other resource
4 needs of field personnel;

5 (4) Improvements that should be made to the
6 organizational structure of the Department of
7 Homeland Security, including whether the position
8 of immigration enforcement agent should be merged
9 into the deportation officer position; and

10 (5) The effectiveness of specific enforcement
11 policies and regulations promulgated by the Sec-
12 retary of Homeland Security, and whether other en-
13 forcement priorities should be considered.

14 (h) REPORTS.—The Council shall provide quarterly
15 reports to the Chairmen and Ranking Members of the Ju-
16 diciary Committees of the Senate and the House of Rep-
17 resentatives and to the Secretary of Homeland Security.
18 The Council members shall meet directly with the Chair-
19 men and Ranking Members (or their designated represent-
20 atives) and with the Secretary to discuss their reports
21 every 6 months.

22 **SEC. 505. PILOT PROGRAM FOR ELECTRONIC FIELD PROC-**
23 **ESSING.**

24 (a) IN GENERAL.—The Secretary of Homeland Secu-
25 rity shall establish a pilot program in at least five of the

1 10 Immigration and Customs Enforcement field offices
2 with the largest removal caseloads to allow Immigration
3 and Customs deportation officers and immigration en-
4 forcement agents to—

5 (1) electronically process and serve charging
6 documents, including Notices to Appear, while in the
7 field; and

8 (2) electronically process and place detainers
9 while in the field.

10 (b) DUTIES.—The pilot program described in sub-
11 section (a) shall be designed to allow deportation officers
12 and immigration enforcement agents to use handheld or
13 vehicle-mounted computers to—

14 (1) enter any required data, including personal
15 information about the alien subject and the reason
16 for issuing the document;

17 (2) apply the electronic signature of the issuing
18 officer or agent;

19 (3) set the date the alien is required to appear
20 before an immigration judge, in the case of Notices
21 to Appear;

22 (4) print any documents the alien subject may
23 be required to sign, along with additional copies of
24 documents to be served on the alien; and

1 (5) interface with the ENFORCE database so
2 that all data is stored and retrievable.

3 (c) CONSTRUCTION.—The pilot program described in
4 subsection (a) shall be designed to replace, to the extent
5 possible, the current paperwork and data-entry process
6 used for issuing such charging documents and detainers.

7 (d) DEADLINE.—The Secretary shall initiate the pilot
8 program described in subsection (a) within 6 months of
9 the date of enactment of this Act.

10 (e) REPORT.—The Government Accountability Office
11 shall report to the Judiciary Committee of the Senate and
12 the House of Representatives no later than 18 months
13 after the date of enactment of this Act on the effectiveness
14 of the pilot program and provide recommendations for im-
15 proving it.

16 (f) ADVISORY COUNCIL.—The ICE Advisory Council
17 established by section 504 shall include an recommenda-
18 tions on how the pilot program should work in the first
19 quarterly report of the Council, and shall include assess-
20 ments of the program and recommendations for improve-
21 ment in each subsequent report.

22 (g) EFFECTIVE DATE.—This section shall take effect
23 180 days after the date of the enactment of this Act.

1 **SEC. 506. ADDITIONAL ICE DEPORTATION OFFICERS AND**
2 **SUPPORT STAFF.**

3 (a) IN GENERAL.—The Secretary of Homeland Secu-
4 rity shall, subject to the availability of appropriations for
5 such purpose, increase the number of positions for full-
6 time active-duty Immigration and Customs Enforcement
7 deportation officers by 5,000 above the number of full-
8 time positions for which funds were appropriated for fiscal
9 year 2013.

10 (b) SUPPORT STAFF.—The Secretary shall, subject
11 to the availability of appropriations for such purpose, in-
12 crease the number of positions for full-time support staff
13 for Immigration and Customs Enforcement deportation
14 officers by 700 above the number of full-time positions for
15 which funds were appropriated for fiscal year 2013.

16 **SEC. 507. ADDITIONAL ICE PROSECUTORS.**

17 The Secretary of Homeland Security shall increase
18 by 60 the number of full-time trial attorneys working for
19 the Immigration and Customs Enforcement Office of the
20 Principal Legal Advisor.

21 **TITLE VI—MISCELLANEOUS**
22 **ENFORCEMENT PROVISIONS**

23 **SEC. 601. ENCOURAGING ALIENS TO DEPART VOLUN-**
24 **TARILY.**

25 (a) IN GENERAL.—Section 240B of the Immigration
26 and Nationality Act (8 U.S.C. 1229c) is amended—

1 (1) in subsection (a)—

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

4 “(1) INSTEAD OF REMOVAL PROCEEDINGS.—If
5 an alien is not described in paragraph (2)(A)(iii) or
6 (4) of section 237(a), the Secretary of Homeland Se-
7 curity may permit the alien to voluntarily depart the
8 United States at the alien’s own expense under this
9 subsection instead of being subject to proceedings
10 under section 240.”;

11 (B) by striking paragraph (3);

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

14 (D) by adding after paragraph (1) the fol-
15 lowing:

16 “(2) BEFORE THE CONCLUSION OF REMOVAL
17 PROCEEDINGS.—If an alien is not described in para-
18 graph (2)(A)(iii) or (4) of section 237(a), the Attor-
19 ney General may permit the alien to voluntarily de-
20 part the United States at the alien’s own expense
21 under this subsection after the initiation of removal
22 proceedings under section 240 and before the con-
23 clusion of such proceedings before an immigration
24 judge.”;

25 (E) in paragraph (3), as redesignated—

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

3 “(A) INSTEAD OF REMOVAL.—Subject to
4 subparagraph (C), permission to voluntarily de-
5 part under paragraph (1) shall not be valid for
6 any period in excess of 120 days. The Secretary
7 may require an alien permitted to voluntarily
8 depart under paragraph (1) to post a voluntary
9 departure bond, to be surrendered upon proof
10 that the alien has departed the United States
11 within the time specified.”;

12 (ii) by redesignating subparagraphs
13 (B), (C), and (D) as paragraphs (C), (D),
14 and (E), respectively;

15 (iii) by adding after subparagraph (A)
16 the following:

17 “(B) BEFORE THE CONCLUSION OF RE-
18 MOVAL PROCEEDINGS.—Permission to volun-
19 tarily depart under paragraph (2) shall not be
20 valid for any period in excess of 60 days, and
21 may be granted only after a finding that the
22 alien has the means to depart the United States
23 and intends to do so. An alien permitted to vol-
24 untarily depart under paragraph (2) shall post
25 a voluntary departure bond, in an amount nec-

1 essary to ensure that the alien will depart, to be
2 surrendered upon proof that the alien has de-
3 parted the United States within the time speci-
4 fied. An immigration judge may waive the re-
5 quirement to post a voluntary departure bond
6 in individual cases upon a finding that the alien
7 has presented compelling evidence that the
8 posting of a bond will pose a serious financial
9 hardship and the alien has presented credible
10 evidence that such a bond is unnecessary to
11 guarantee timely departure.”;

12 (iv) in subparagraph (C), as redesign-
13 nated, by striking “subparagraphs (C)
14 and(D)(ii)” and inserting “subparagraphs
15 (D) and (E)(ii)”;

16 (v) in subparagraph (D), as redesign-
17 nated, by striking “subparagraph (B)”
18 each place that term appears and inserting
19 “subparagraph (C)”;

20 (vi) in subparagraph (E), as redesign-
21 nated, by striking “subparagraph (B)”
22 each place that term appears and inserting
23 “subparagraph (C)”;

1 (F) in paragraph (4), by striking “para-
2 graph (1)” and inserting “paragraphs (1) and
3 (2)”;

4 (2) in subsection (b)(2), by striking “a period
5 exceeding 60 days” and inserting “any period in ex-
6 cess of 45 days”;

7 (3) by amending subsection (c) to read as fol-
8 lows:

9 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

10 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

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

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

24 “(3) ADVISALS.—Agreements relating to vol-
25 untary departure granted during removal pro-

1 proceedings under section 240, or at the conclusion of
2 such proceedings, shall be presented on the record
3 before the immigration judge. The immigration
4 judge shall advise the alien of the consequences of
5 a voluntary departure agreement before accepting
6 such agreement.

7 “(4) FAILURE TO COMPLY WITH AGREE-
8 MENT.—

9 “(A) IN GENERAL.—If an alien agrees to
10 voluntary departure under this section and fails
11 to depart the United States within the time al-
12 lowed for voluntary departure or fails to comply
13 with any other terms of the agreement (includ-
14 ing failure to timely post any required bond),
15 the alien is—

16 “(i) ineligible for the benefits of the
17 agreement;

18 “(ii) subject to the penalties described
19 in subsection (d); and

20 “(iii) subject to an alternate order of
21 removal if voluntary departure was granted
22 under subsection (a)(2) or (b).

23 “(B) EFFECT OF FILING TIMELY AP-
24 PEAL.—If, after agreeing to voluntary depart-
25 ure, the alien files a timely appeal of the immi-

1 gration judge’s decision granting voluntary de-
2 parture, the alien may pursue the appeal in-
3 stead of the voluntary departure agreement.
4 Such appeal operates to void the alien’s vol-
5 untary departure agreement and the con-
6 sequences of such agreement, but precludes the
7 alien from another grant of voluntary departure
8 while the alien remains in the United States.

9 “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-
10 FFECTED.—Except as expressly agreed to by the Sec-
11 retary in writing in the exercise of the Secretary’s
12 discretion before the expiration of the period allowed
13 for voluntary departure, no motion, appeal, applica-
14 tion, petition, or petition for review shall affect, rein-
15 state, enjoin, delay, stay, or toll the alien’s obligation
16 to depart from the United States during the period
17 agreed to by the alien and the Secretary.”;

18 (4) by amending subsection (d) to read as fol-
19 lows:

20 “(d) PENALTIES FOR FAILURE TO DEPART.—If an
21 alien is permitted to voluntarily depart under this section
22 and fails to voluntarily depart from the United States
23 within the time period specified or otherwise violates the
24 terms of a voluntary departure agreement, the alien will
25 be subject to the following penalties:

1 “(1) CIVIL PENALTY.—The alien shall be liable
2 for a civil penalty of \$3,000. The order allowing vol-
3 untary departure shall specify the amount of the
4 penalty, which shall be acknowledged by the alien on
5 the record. If the Secretary thereafter establishes
6 that the alien failed to depart voluntarily within the
7 time allowed, no further procedure will be necessary
8 to establish the amount of the penalty, and the Sec-
9 retary may collect the civil penalty at any time
10 thereafter and by whatever means provided by law.
11 An alien will be ineligible for any benefits under this
12 chapter until this civil penalty is paid.

13 “(2) INELIGIBILITY FOR RELIEF.—The alien
14 shall be ineligible during the time the alien remains
15 in the United States and for a period of 10 years
16 after the alien’s departure for any further relief
17 under this section and sections 240A, 245, 248, and
18 249. The order permitting the alien to depart volun-
19 tarily shall inform the alien of the penalties under
20 this subsection.

21 “(3) REOPENING.—The alien shall be ineligible
22 to reopen the final order of removal that took effect
23 upon the alien’s failure to depart, or upon the alien’s
24 other violations of the conditions for voluntary de-
25 parture, during the period described in paragraph

1 (2). This paragraph does not preclude a motion to
2 reopen to seek withholding of removal under section
3 241(b)(3) or protection against torture, if the mo-
4 tion—

5 “(A) presents material evidence of changed
6 country conditions arising after the date of the
7 order granting voluntary departure in the coun-
8 try to which the alien would be removed; and

9 “(B) makes a sufficient showing to the sat-
10 isfaction of the Attorney General that the alien
11 is otherwise eligible for such protection.”;

12 (5) by amending subsection (e) to read as fol-
13 lows:

14 “(e) ELIGIBILITY.—

15 “(1) PRIOR GRANT OF VOLUNTARY DEPART-
16 TURE.—An alien shall not be permitted to volun-
17 tarily depart under this section if the Secretary of
18 Homeland Security or the Attorney General pre-
19 viously permitted the alien to depart voluntarily.

20 “(2) RULEMAKING.—The Secretary may pro-
21 mulgate regulations to limit eligibility or impose ad-
22 ditional conditions for voluntary departure under
23 subsection (a)(1) for any class of aliens. The Sec-
24 retary or Attorney General may by regulation limit
25 eligibility or impose additional conditions for vol-

1 untary departure under subsections (a)(2) or (b) of
2 this section for any class or classes of aliens.”; and

3 (6) in subsection (f), by adding at the end the
4 following: “Notwithstanding section 242(a)(2)(D) of
5 this Act, sections 1361, 1651, and 2241 of title 28,
6 United States Code, any other habeas corpus provi-
7 sion, and any other provision of law (statutory or
8 nonstatutory), no court shall have jurisdiction to af-
9 fect, reinstate, enjoin, delay, stay, or toll the period
10 allowed for voluntary departure under this section.”.

11 (b) RULEMAKING.—The Secretary shall within one
12 year of the date of enactment of this Act promulgate regu-
13 lations to provide for the imposition and collection of pen-
14 alties for failure to depart under section 240B(d) of the
15 Immigration and Nationality Act (8 U.S.C. 1229c(d)).

16 (c) EFFECTIVE DATES.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), the amendments made by this section
19 shall apply with respect to all orders granting vol-
20 untary departure under section 240B of the Immi-
21 gration and Nationality Act (8 U.S.C. 1229c) made
22 on or after the date that is 180 days after the enact-
23 ment of this Act.

24 (2) EXCEPTION.—The amendment made by
25 subsection (a)(6) shall take effect on the date of the

1 enactment of this Act and shall apply with respect
2 to any petition for review which is filed on or after
3 such date.

4 **SEC. 602. DETERRING ALIENS ORDERED REMOVED FROM**
5 **REMAINING IN THE UNITED STATES UNLAW-**
6 **FULLY.**

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

10 (1) in clause (i), by striking “seeks admission
11 within 5 years of the date of such removal (or within
12 20 years” and inserting “seeks admission not later
13 than 5 years after the date of the alien’s removal (or
14 not later than 20 years after the alien’s removal”;
15 and

16 (2) in clause (ii), by striking “seeks admission
17 within 10 years of the date of such alien’s departure
18 or removal (or within 20 years of” and inserting
19 “seeks admission not later than 10 years after the
20 date of the alien’s departure or removal (or not later
21 than 20 years after”.

22 (b) BAR ON DISCRETIONARY RELIEF.—Section 274D
23 of such Act (8 U.S.C. 324d) is amended—

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

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

5 “(c) INELIGIBILITY FOR RELIEF.—

6 “(1) IN GENERAL.—Unless a timely motion to
7 reopen is granted under section 240(c)(6), an alien
8 described in subsection (a) shall be ineligible for any
9 discretionary relief from removal (including cancella-
10 tion of removal and adjustment of status) during the
11 time the alien remains in the United States and for
12 a period of 10 years after the alien’s departure from
13 the United States.

14 “(2) SAVINGS PROVISION.—Nothing in para-
15 graph (1) shall preclude a motion to reopen to seek
16 withholding of removal under section 241(b)(3) or
17 protection against torture, if the motion—

18 “(A) presents material evidence of changed
19 country conditions arising after the date of the
20 final order of removal in the country to which
21 the alien would be removed; and

22 “(B) makes a sufficient showing to the sat-
23 isfaction of the Attorney General that the alien
24 is otherwise eligible for such protection.”.

1 (c) EFFECTIVE DATES.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act with respect to aliens who are subject to a final
4 order of removal entered before, on, or after such date.

5 **SEC. 603. REINSTATEMENT OF REMOVAL ORDERS.**

6 (a) IN GENERAL.—Section 241(a)(5) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1231(a)(5)) is
8 amended to read as follows:

9 “(5) REINSTATEMENT OF REMOVAL ORDERS
10 AGAINST ALIENS ILLEGALLY REENTERING.—If the
11 Secretary of Homeland Security finds that an alien
12 has entered the United States illegally after having
13 been removed, deported, or excluded or having de-
14 parted voluntarily, under an order of removal, depor-
15 tation, or exclusion, regardless of the date of the
16 original order or the date of the illegal entry—

17 “(A) the order of removal, deportation, or
18 exclusion is reinstated from its original date
19 and is not subject to being reopened or reviewed
20 notwithstanding section 242(a)(2)(D);

21 “(B) the alien is not eligible and may not
22 apply for any relief under this Act, regardless
23 of the date that an application or request for
24 such relief may have been filed or made; and

1 “(C) the alien shall be removed under the
2 order of removal, deportation, or exclusion at
3 any time after the illegal entry.

4 Reinstatement under this paragraph shall not re-
5 quire proceedings under section 240 or other pro-
6 ceedings before an immigration judge”.

7 (b) JUDICIAL REVIEW.—Section 242 of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1252) is amended by
9 adding at the end the following:

10 “(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER
11 SECTION 241(a)(5).—

12 “(1) REVIEW OF REINSTATEMENT.—Judicial
13 review of determinations under section 241(a)(5) is
14 available in an action under subsection (a).

15 “(2) NO REVIEW OF ORIGINAL ORDER.—Not-
16 withstanding any other provision of law (statutory or
17 nonstatutory), including section 2241 of title 28,
18 United States Code, any other habeas corpus provi-
19 sion, or sections 1361 and 1651 of such title, no
20 court shall have jurisdiction to review any cause or
21 claim, arising from, or relating to, any challenge to
22 the original order.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 subsections (a) and (b) shall take effect as if enacted on
25 April 1, 1997, and shall apply to all orders reinstated or

1 after that date by the Secretary of Homeland Security (or
2 by the Attorney General prior to March 1, 2003), regard-
3 less of the date of the original order.

4 **SEC. 604. CLARIFICATION WITH RESPECT TO DEFINITION**
5 **OF ADMISSION.**

6 Section 101(a)(13)(A) of the Immigration and Na-
7 tionality Act (8 U.S.C. 1101(a)(13)(A)) is amended by
8 adding at the end the following: “An alien’s adjustment
9 of status to that of lawful permanent resident status under
10 any provision of this Act, or under any other provision
11 of law, shall be considered an ‘admission’ for any purpose
12 under this Act, even if the adjustment of status occurred
13 while the alien was present in the United States.”.

14 **SEC. 605. REPORTS TO CONGRESS ON THE EXERCISE AND**
15 **ABUSE OF PROSECUTORIAL DISCRETION.**

16 (a) IN GENERAL.—Not later than 180 days after the
17 end of each fiscal year, the Secretary of Homeland Secu-
18 rity and the Attorney General shall each provide to the
19 Committees on the Judiciary of the House of Representa-
20 tives and of the Senate a report on the following:

21 (1) Aliens apprehended or arrested by State or
22 local law enforcement agencies who were identified
23 by the Department of Homeland Security in the pre-
24 vious fiscal year and for whom the Department of
25 Homeland Security did not issue detainers and did

1 not take into custody despite the Department of
2 Homeland Security's findings that the aliens were
3 inadmissible or deportable.

4 (2) Aliens who were applicants for admission in
5 the previous fiscal year but not clearly and beyond
6 a doubt entitled to be admitted by an immigration
7 officer and who were not detained as required pursu-
8 ant to section 235(b)(2)(A) of the Immigration and
9 Nationality Act (8 U.S.C. 1225(b)(2)(A)).

10 (3) Aliens who in the previous fiscal year were
11 found by Department of Homeland Security officials
12 performing duties related to the adjudication of ap-
13 plications for immigration benefits or the enforce-
14 ment of the immigration laws to be inadmissible or
15 deportable who were not issued notices to appear
16 pursuant to section 239 of such Act (8 U.S.C. 1229)
17 or placed into removal proceedings pursuant to sec-
18 tion 240 (8 U.S.C. 1229a), unless the aliens were
19 placed into expedited removal proceedings pursuant
20 to section 235(b)(1)(A)(i) (8 U.S.C.
21 1225(b)(1)(A)(5)) or section 238 (8 U.S.C. 1228),
22 were granted voluntary departure pursuant to sec-
23 tion 240B, were granted relief from removal pursu-
24 ant to statute, were granted legal nonimmigrant or

1 immigrant status pursuant to statute, or were deter-
2 mined not to be inadmissible or deportable.

3 (4) Aliens issued notices to appear that were
4 cancelled in the previous fiscal year despite the De-
5 partment of Homeland Security's findings that the
6 aliens were inadmissible or deportable, unless the
7 aliens were granted relief from removal pursuant to
8 statute, were granted voluntary departure pursuant
9 to section 240B of such Act (8 U.S.C. 1229e), or
10 were granted legal nonimmigrant or immigrant sta-
11 tus pursuant to statute.

12 (5) Aliens who were placed into removal pro-
13 ceedings, whose removal proceedings were termi-
14 nated in the previous fiscal year prior to their con-
15 clusion, unless the aliens were granted relief from
16 removal pursuant to statute, were granted voluntary
17 departure pursuant to section 240B, were granted
18 legal nonimmigrant or immigrant status pursuant to
19 statute, or were determined not to be inadmissible or
20 deportable.

21 (6) Aliens granted parole pursuant to section
22 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

23 (7) Aliens granted deferred action, extended
24 voluntary departure or any other type of relief from
25 removal not specified in the Immigration and Na-

1 tionality Act or where determined not to be inadmis-
2 sible or deportable.

3 (b) CONTENTS OF REPORT.—The report shall include
4 a listing of each alien described in each paragraph of sub-
5 section (a), including when in the possession of the De-
6 partment of Homeland Security their names, fingerprint
7 identification numbers, alien registration numbers, and
8 reason why each was granted the type of prosecutorial dis-
9 cretion received. The report shall also include current
10 criminal histories on each alien from the Federal Bureau
11 of Investigation.

12 **SEC. 606. WAIVER OF FEDERAL LAWS WITH RESPECT TO**
13 **BORDER SECURITY ACTIONS ON DEPART-**
14 **MENT OF THE INTERIOR AND DEPARTMENT**
15 **OF AGRICULTURE LANDS.**

16 (a) PROHIBITION ON SECRETARIES OF THE INTE-
17 RIOR AND AGRICULTURE.—The Secretary of the Interior
18 or the Secretary of Agriculture shall not impede, prohibit,
19 or restrict activities of U.S. Customs and Border Protec-
20 tion on Federal land located within 100 miles of an inter-
21 national land border that is under the jurisdiction of the
22 Secretary of the Interior or the Secretary of Agriculture,
23 to execute search and rescue operations and to prevent
24 all unlawful entries into the United States, including en-
25 tries by terrorists, other unlawful aliens, instruments of

1 terrorism, narcotics, and other contraband through the
2 international land borders of the United States.

3 (b) AUTHORIZED ACTIVITIES OF U.S. CUSTOMS AND
4 BORDER PROTECTION.—U.S. Customs and Border Pro-
5 tection shall have immediate access to Federal land within
6 100 miles of the international land border under the juris-
7 diction of the Secretary of the Interior or the Secretary
8 of Agriculture for purposes of conducting the following ac-
9 tivities on such land that prevent all unlawful entries into
10 the United States, including entries by terrorists, other
11 unlawful aliens, instruments of terrorism, narcotics, and
12 other contraband through the international land borders
13 of the United States:

14 (1) Construction and maintenance of roads.

15 (2) Construction and maintenance of barriers.

16 (3) Use of vehicles to patrol, apprehend, or res-
17 cue.

18 (4) Installation, maintenance, and operation of
19 communications and surveillance equipment and sen-
20 sors.

21 (5) Deployment of temporary tactical infra-
22 structure.

23 (c) CLARIFICATION RELATING TO WAIVER AUTHOR-
24 ITY.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law (including any termination date re-
3 lating to the waiver referred to in this subsection),
4 the waiver by the Secretary of Homeland Security
5 on April 1, 2008, under section 102(e)(1) of the Ille-
6 gal Immigration Reform and Immigrant Responsi-
7 bility Act of 1996 (8 U.S.C. 1103 note; Public Law
8 104–208) of the laws described in paragraph (2)
9 with respect to certain sections of the international
10 border between the United States and Mexico and
11 between the United States and Canada shall be con-
12 sidered to apply to all Federal land under the juris-
13 diction of the Secretary of the Interior or the Sec-
14 retary of Agriculture within 100 miles of the inter-
15 national land borders of the United States for the
16 activities of U.S. Customs and Border Protection de-
17 scribed in subsection (c).

18 (2) DESCRIPTION OF LAWS WAIVED.—The laws
19 referred to in paragraph (1) are limited to the Wil-
20 derness Act (16 U.S.C. 1131 et seq.), the National
21 Environmental Policy Act of 1969 (42 U.S.C. 4321
22 et seq.), the Endangered Species Act of 1973 (16
23 U.S.C. 1531 et seq.), the National Historic Preser-
24 vation Act (16 U.S.C. 470 et seq.), Public Law 86–
25 523 (16 U.S.C. 469 et seq.), the Act of June 8,

1 1906 (commonly known as the “Antiquities Act of
2 1906”; 16 U.S.C. 431 et seq.), the Wild and Scenic
3 Rivers Act (16 U.S.C. 1271 et seq.), the Federal
4 Land Policy and Management Act of 1976 (43
5 U.S.C. 1701 et seq.), the National Wildlife Refuge
6 System Administration Act of 1966 (16 U.S.C.
7 668dd et seq.), the Fish and Wildlife Act of 1956
8 (16 U.S.C. 742a et seq.), the Fish and Wildlife Co-
9 ordination Act (16 U.S.C. 661 et seq.), subchapter
10 II of chapter 5, and chapter 7, of title 5, United
11 States Code (commonly known as the “Administra-
12 tive Procedure Act”), the National Park Service Or-
13 ganic Act (16 U.S.C. 1 et seq.), the General Au-
14 thorities Act of 1970 (Public Law 91–383) (16
15 U.S.C. 1a–1 et seq.), sections 401(7), 403, and 404
16 of the National Parks and Recreation Act of 1978
17 (Public Law 95–625, 92 Stat. 3467), and the Ari-
18 zona Desert Wilderness Act of 1990 (16 U.S.C.
19 1132 note; Public Law 101–628).

20 (d) PROTECTION OF LEGAL USES.—This section
21 shall not be construed to provide—

22 (1) authority to restrict legal uses, such as
23 grazing, hunting, mining, or public-use recreational
24 and backcountry airstrips on land under the jurisdic-

1 tion of the Secretary of the Interior or the Secretary
2 of Agriculture; or

3 (2) any additional authority to restrict legal ac-
4 cess to such land.

5 (e) EFFECT ON STATE AND PRIVATE LAND.—This
6 Act shall—

7 (1) have no force or effect on State or private
8 lands; and

9 (2) not provide authority on or access to State
10 or private lands.

11 (f) TRIBAL SOVEREIGNTY.—Nothing in this section
12 supersedes, replaces, negates, or diminishes treaties or
13 other agreements between the United States and Indian
14 tribes.

15 (g) REPORT.—Not later than 1 year after the date
16 of the enactment of this Act, and annually thereafter, the
17 Secretary of Homeland Security shall submit to the appro-
18 priate committees of Congress a report describing the ex-
19 tent to which implementation of this section has affected
20 the operations of U.S. Customs and Border Protection in
21 the year preceding the report.

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