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HOUSE OF REPRESENTATIVES

REPT. 113–678
Part 1

STRENGTHEN AND FORTIFY ENFORCEMENT ACT

DECEMBER 16, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2278]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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49–006

The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Strengthen and Fortify Enforcement Act" or the "SAFE Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

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

TITLE I—IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES

Sec. 101. Definitions and severability.
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.
Sec. 105. State and local law enforcement provision of information about apprehended aliens.
Sec. 106. Financial assistance to State and local police agencies that assist in the enforcement of immigration laws.
Sec. 107. Increased Federal detention space.
Sec. 108. Federal custody of inadmissible and deportable aliens in the United States apprehended by State or local law enforcement.
Sec. 109. Training of State and local law enforcement personnel relating to the enforcement of immigration laws.
Sec. 110. Immunity.
Sec. 111. Criminal alien identification program.
Sec. 112. Clarification of congressional intent.
Sec. 113. State criminal alien assistance program (SCAAP).
Sec. 114. State violations of enforcement of immigration laws.
Sec. 115. Clarifying the authority of ICE detainers.

TITLE II—NATIONAL SECURITY

Sec. 201. Removal of, and denial of benefits to, terrorist aliens.
Sec. 202. Terrorist bar to good moral character.
Sec. 203. Terrorist bar to naturalization.
Sec. 204. Denaturalization for terrorists.
Sec. 205. Use of 1986 IRCA legalization information for national security purposes.
Sec. 206. Background and security checks.
Sec. 207. Technical amendments relating to the Intelligence Reform and Terrorism Prevention Act of 2004.

TITLE III—REMOVAL OF CRIMINAL ALIENS

Sec. 301. Definition of aggravated felony.
Sec. 302. Precluding admissibility of aliens convicted of aggravated felonies or other serious offenses.
Sec. 303. Espionage clarification.
Sec. 304. Prohibition of the sale of firearms to, or the possession of firearms by, certain aliens.
Sec. 305. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.
Sec. 306. Conforming amendment to the definition of racketeering activity.
Sec. 307. Conforming amendments for the aggravated felony definition.
Sec. 308. Precluding refugee or asylee adjustment of status for aggravated felons.
Sec. 309. Inadmissibility, deportability, an detention of drunk drivers.
Sec. 310. Detention of dangerous aliens.
Sec. 311. Grounds of inadmissibility and deportability for alien gang members.
Sec. 312. Extension of identity theft offenses.
Sec. 313. Laundering of monetary instruments.
Sec. 314. Increased criminal penalties relating to alien smuggling and related offenses.
Sec. 315. Penalties for illegal entry or presence.
Sec. 316. Illegal reentry.
Sec. 317. Reform of passport, visa, and immigration fraud offenses.
Sec. 318. Forfeiture.
Sec. 319. Expedited removal for aliens inadmissible on criminal or security grounds.
Sec. 320. Increased penalties barring the admission of convicted sex offenders failing to register and requiring deportation of sex offenders failing to register.
Sec. 321. Protecting immigrants from convicted sex offenders.
Sec. 322. Clarification to crimes of violence and crimes involving moral turpitude.
Sec. 323. Penalties for failure to obey removal orders.
Sec. 324. Pardons.

TITLE IV—VISA SECURITY

Sec. 401. Cancellation of additional visas.
Sec. 402. Visa information sharing.
Sec. 403. Restricting waiver of visa interviews.
Sec. 404. Authorizing the Department of State to not interview certain ineligible visa applicants.
Sec. 405. Visa refusal and revocation.
Sec. 406. Funding for the visa security program.
Sec. 407. Expeditious expansion of visa security program to high-risk posts.
Sec. 408. Expedited clearance and placement of Department of Homeland Security personnel at overseas embassies and consular posts.
Sec. 409. Accreditation requirements.
Sec. 410. Visa fraud.
Sec. 411. Background checks.
Sec. 412. Number of designated school officials.
Sec. 413. Reporting requirement.

Sec. 414. Flight schools not certified by FAA.
Sec. 415. Revocation of accreditation.
Sec. 416. Report on risk assessment.
Sec. 417. Implementation of GAO recommendations.
Sec. 418. Implementation of SEVIS II.
Sec. 419. Definitions.

TITLE V—AID TO U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICERS

Sec. 501. ICE immigration enforcement agents.
Sec. 502. ICE detention enforcement officers.
Sec. 503. Ensuring the safety of ICE officers and agents.
Sec. 504. ICE Advisory Council.
Sec. 505. Pilot program for electronic field processing.
Sec. 506. Additional ICE deportation officers and support staff.
Sec. 507. Additional ICE prosecutors.

TITLE VI—MISCELLANEOUS ENFORCEMENT PROVISIONS

Sec. 601. Encouraging aliens to depart voluntarily.
Sec. 602. Deterring aliens ordered removed from remaining in the United States unlawfully.
Sec. 603. Reinstatement of removal orders.
Sec. 604. Clarification with respect to definition of admission.
Sec. 605. Reports to Congress on the exercise and abuse of prosecutorial discretion.
Sec. 606. Waiver of Federal laws with respect to border security actions on Department of the Interior and Department of Agriculture lands.
Sec. 607. Biometric entry and exit data system.
Sec. 608. Certain activities restricted.
Sec. 609. Border Patrol mobile and rapid response teams.
Sec. 610. GAO study on deaths in custody.

TITLE I—IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES

SEC. 101. DEFINITIONS AND SEVERABILITY.

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

(b) SECRETARY DEFINED.—For the purpose of this title, the term "Secretary" means the Secretary of Homeland Security.

(c) SEVERABILITY.—If any provision of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of this title, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

SEC. 102. IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES.

(a) IN GENERAL.—Subject to section 274A(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(2)), States, or political subdivisions of States, may enact, implement and enforce criminal penalties that penalize the same conduct that is prohibited in the criminal provisions of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))), as long as the criminal penalties do not exceed the relevant Federal criminal penalties (without regard to ancillary issues such as the availability of probation or pardon). States, or political subdivisions of States, may enact, implement and enforce civil penalties that penalize the same conduct that is prohibited in the civil provisions of immigration laws (as defined in such section 101(a)(17)), as long as the civil penalties do not exceed the relevant Federal civil penalties.

(b) LAW ENFORCEMENT PERSONNEL.—Law enforcement personnel of a State, or of a political subdivision of a State, may investigate, identify, apprehend, arrest, detain, or transfer to Federal custody aliens for the purposes of enforcing the immigration laws of the United States to the same extent as Federal law enforcement personnel. Law enforcement personnel of a State, or of a political subdivision of a State, may also investigate, identify, apprehend, arrest, or detain aliens for the purposes of enforcing the immigration laws of a State or of a political subdivision of State, as long as those immigration laws are permissible under this section. Law enforcement personnel of a State, or of a political subdivision of a State, may not remove aliens from the United States.

SEC. 103. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(a) PROVISION OF INFORMATION TO THE NCIC.—Not later than 180 days after the date of the enactment of this Act and periodically thereafter as updates may require, the Secretary shall provide the National Crime Information Center of the Department of Justice with all information that the Secretary may possess regarding any alien against whom a final order of removal has been issued, any alien who has entered into a voluntary departure agreement, any alien who has overstayed their

authorized period of stay, and any alien whose visa has been revoked. The National Crime Information Center shall enter such information into the Immigration Violators File of the National Crime Information Center database, regardless of whether—

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

(2) the alien has already been removed; or

(3) sufficient identifying information is available with respect to the alien.

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

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

(A) in paragraph (3), by striking "and" at the end;

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

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

"(4) acquire, collect, classify, and preserve records of violations by aliens of the immigration laws of the United States, regardless of whether any such alien has received notice of the violation or whether sufficient identifying information is available with respect to any such alien or whether any such alien has already been removed from the United States; and".

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

SEC. 104. TECHNOLOGY ACCESS.

States shall have access to Federal programs or technology directed broadly at identifying inadmissible or deportable aliens.

SEC. 105. STATE AND LOCAL LAW ENFORCEMENT PROVISION OF INFORMATION ABOUT APPREHENDED ALIENS.

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

(b) INFORMATION REQUIRED.—The information referred to in subsection (a) is as follows:

(1) The alien's name.

(2) The alien's address or place of residence.

(3) A physical description of the alien.

(4) The date, time, and location of the encounter with the alien and reason for stopping, detaining, apprehending, or arresting the alien.

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

(6) If applicable, the type of any other identification document issued to the alien, any designation number contained on the identification document, and the issuing entity for the identification document.

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

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

(9) The alien's fingerprints, if available or readily obtainable.

(c) ANNUAL REPORT ON REPORTING.—The Secretary shall maintain and annually submit to the Congress a detailed report listing the States, or the political subdivisions of States, that have provided information under subsection (a) in the preceding year.

(d) REIMBURSEMENT.—The Secretary shall reimburse States, and political subdivisions of a State, for all reasonable costs, as determined by the Secretary, incurred by the State, or the political subdivision of a State, as a result of providing information under subsection (a).

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

(f) CONSTRUCTION.—Nothing in this section shall require law enforcement officials of a State, or of a political subdivision of a State, to provide the Secretary with information related to a victim of a crime or witness to a criminal offense.

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

SEC. 106. FINANCIAL ASSISTANCE TO STATE AND LOCAL POLICE AGENCIES THAT ASSIST IN THE ENFORCEMENT OF IMMIGRATION LAWS.

(a) GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING AND PROCESSING CERTAIN ALIENS.—From amounts made available to make grants under this section, the Secretary shall make grants to States, and to political subdivisions of States, for procurement of equipment, technology, facilities, and other products that facilitate and are directly related to investigating, apprehending, arresting, detaining, or transporting aliens who are inadmissible or deportable, including additional administrative costs incurred under this title.

(b) ELIGIBILITY.—To be eligible to receive a grant under this section, a State, or a political subdivision of a State, must have the authority to, and shall have a written policy and a practice to, assist in the enforcement of the immigration laws of the United States in the course of carrying out the routine law enforcement duties of such State or political subdivision of a State. Entities covered under this section may not have any policy or practice that prevents local law enforcement from inquiring about a suspect's immigration status.

(c) FUNDING.—There is authorized to be appropriated for grants under this section such sums as may be necessary for fiscal year 2014 and each subsequent fiscal year.

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

SEC. 107. INCREASED FEDERAL DETENTION SPACE.

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(1) IN GENERAL.—The Secretary shall construct or acquire, in addition to existing facilities for the detention of aliens, detention facilities in the United States, for aliens detained pending removal from the United States or a decision regarding such removal. Each facility shall have a number of beds necessary to effectuate the purposes of this title.

(2) DETERMINATIONS.—The location of any detention facility built or acquired in accordance with this subsection shall be determined by the Secretary.

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

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 241(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1231(g)(1)) is amended by striking "may expend" and inserting "shall expend".

SEC. 108. FEDERAL CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS IN THE UNITED STATES APPREHENDED BY STATE OR LOCAL LAW ENFORCEMENT.

(a) STATE APPREHENSION.—

(1) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by inserting after section 240C the following:

"CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS PRESENT IN THE UNITED STATES

"SEC. 240D. (a) TRANSFER OF CUSTODY BY STATE AND LOCAL OFFICIALS.—If a State, or a political subdivision of the State, exercising authority with respect to the apprehension or arrest of an inadmissible or deportable alien submits to the Secretary of Homeland Security a request that the alien be taken into Federal custody, notwithstanding any other provision of law, regulation, or policy the Secretary—

"(1) shall take the alien into custody not later than 48 hours after the detainer has been issued following the conclusion of the State or local charging process or dismissal process, or if no State or local charging or dismissal process is required, the Secretary should issue a detainer and take the alien into custody not later than 48 hours after the alien is apprehended, in order to determine whether the alien should be detained, placed in removal proceedings, released, or removed; and

"(2) shall request that the relevant State or local law enforcement agency temporarily hold the alien in their custody or transport the alien for transfer to Federal custody.

"(b) POLICY ON DETENTION IN FEDERAL, CONTRACT, STATE, OR LOCAL DETENTION FACILITIES.—In carrying out section 241(g)(1), the Attorney General or Secretary of Homeland Security shall ensure that an alien arrested under this title shall be held in custody, pending the alien's examination under this section, in a Federal, contract, State, or local prison, jail, detention center, or other comparable facility. Notwithstanding any other provision of law, regulation or policy, such facility is adequate for detention, if—

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

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

"(3) the facility satisfies the standards for the housing, care, and security of persons held in custody by a United States Marshal.

"(c) REIMBURSEMENT.—The Secretary of Homeland Security shall reimburse a State, and a political subdivision of a State, for all reasonable expenses, as determined by the Secretary, incurred by the State, or political subdivision, as a result of the incarceration and transportation of an alien who is inadmissible or deportable as described in subsections (a) and (b). Compensation provided for costs incurred under such subsections shall be the average cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State, or of a political subdivision of a State, plus the cost of transporting the alien from the point of apprehension to the place of detention, and to the custody transfer point if the place of detention and place of custody are different.

"(d) SECURE FACILITIES.—The Secretary of Homeland Security shall ensure that aliens incarcerated pursuant to this title are held in facilities that provide an appropriate level of security.

"(e) TRANSFER.—

"(1) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transfer of apprehended aliens from the custody of States, and political subdivisions of a State, to Federal custody.

"(2) CONTRACTS.—The Secretary may enter into contracts, including appropriate private contracts, to implement this subsection.".

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 240C the following new item:

"Sec. 240D. Custody of inadmissible and deportable aliens present in the United States.".

(b) GAO AUDIT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an audit of compensation to States, and to political subdivisions of a State, for the incarceration of inadmissible or deportable aliens under section 240D(a) of the Immigration and Nationality Act (as added by subsection (a)(1)).

(c) EFFECTIVE DATE.—Section 240D of the Immigration and Nationality Act, as added by subsection (a), shall take effect on the date of the enactment of this Act, except that subsection (e) of such section shall take effect on the date that is 120 day after the date of the enactment of this Act.

SEC. 109. TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.

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

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

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

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

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

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

(e) TRAINING FLEXIBILITY.—

(1) IN GENERAL.—The Secretary shall make training of State and local law enforcement officers available through as many means as possible, including through residential training at the Center for Domestic Preparedness, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display (DVD) of a training course or courses. E-learning through a secure, encrypted distributed learning system that has all its servers based in the United States, is scalable, survivable, and can have a portal in place not later than 30 days after the date of the enactment of this Act, shall be made available by the Federal Law Enforcement Training Center Distributed Learning Program for State and local law enforcement personnel.

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

(3) CLARIFICATION.—Nothing in this title or any other provision of law shall be construed as making any immigration-related training a requirement for, or prerequisite to, any State or local law enforcement officer to assist in the enforcement of Federal immigration laws.

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

SEC. 110. IMMUNITY.

Notwithstanding any other provision of law, a law enforcement officer of a State or local law enforcement agency who is acting within the scope of the officer's official duties shall be immune, to the same extent as a Federal law enforcement officer, from personal liability arising out of the performance of any duty described in this title, including the authorities to investigate, identify, apprehend, arrest, detain, or transfer to Federal custody, an alien for the purposes of enforcing the immigration laws of the United States (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)) or the immigration laws of a State or a political subdivision of a State.

SEC. 111. CRIMINAL ALIEN IDENTIFICATION PROGRAM.

(a) CONTINUATION AND EXPANSION.—

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

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

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

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

(2) EXPANSION.—The program shall be extended to all States. Any State that receives Federal funds for the incarceration of criminal aliens (pursuant to the State Criminal Alien Assistance Program authorized under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) or other similar program) shall—

(A) cooperate with officials of the program;

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

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

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

(1) hold a criminal alien for a period of up to 14 days after the alien has completed the alien's sentence under State or local law in order to effectuate the transfer of the alien to Federal custody when the alien is inadmissible or deportable; or

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

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

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

SEC. 112. CLARIFICATION OF CONGRESSIONAL INTENT.

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

(1) in paragraph (1) by striking "may enter" and all that follows through the period at the end and inserting the following: "shall enter into a written agreement with a State, or any political subdivision of a State, upon request of the State or political subdivision, pursuant to which an officer or employee of the State or subdivision, who is determined by the Secretary to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such

function at the expense of the State or political subdivision and to extent consistent with State and local law. No request from a bona fide State or political subdivision or bona fide law enforcement agency shall be denied absent a compelling reason. No limit on the number of agreements under this subsection may be imposed. The Secretary shall process requests for such agreements with all due haste, and in no case shall take not more than 90 days from the date the request is made until the agreement is consummated.";

(2) by redesignating paragraph (2) as paragraph (5) and paragraphs (3) through (10) as paragraphs (7) through (14), respectively;

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

"(2) An agreement under this subsection shall accommodate a requesting State or political subdivision with respect to the enforcement model or combination of models, and shall accommodate a patrol model, task force model, jail model, any combination thereof, or any other reasonable model the State or political subdivision believes is best suited to the immigration enforcement needs of its jurisdiction.

"(3) No Federal program or technology directed broadly at identifying inadmissible or deportable aliens shall substitute for such agreements, including those establishing a jail model, and shall operate in addition to any agreement under this subsection.

"(4)(A) No agreement under this subsection shall be terminated absent a compelling reason.

"(B)(i) The Secretary shall provide a State or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination, and the notice shall fully explain the grounds for termination, along with providing evidence substantiating the Secretary's allegations.

"(ii) The State or political subdivision shall have the right to a hearing before an administrative law judge and, if the ruling is against the State or political subdivision, to appeal the ruling to the Federal Circuit Court of Appeals and, if the ruling is against the State or political subdivision, to the Supreme Court.

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

(4) by inserting after paragraph (5) (as redesignated) the following:

"(6) The Secretary of Homeland Security shall make training of State and local law enforcement officers available through as many means as possible, including through residential training at the Center for Domestic Preparedness and the Federal Law Enforcement Training Center, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display (DVD) of a training course or courses. Distance learning through a secure, encrypted distributed learning system that has all its servers based in the United States, is scalable, survivable, and can have a portal in place not later than 30 days after the date of the enactment of this Act, shall be made available by the COPS Office of the Department of Justice and the Federal Law Enforcement Training Center Distributed Learning Program for State and local law enforcement personnel. Preference shall be given to private sector-based web-based immigration enforcement training programs for which the Federal Government has already provided support to develop.".

SEC. 113. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP).

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

(1) by striking "Attorney General" the first place such term appears and inserting "Secretary of Homeland Security";

(2) by striking "Attorney General" each place such term appears thereafter and inserting "Secretary";

(3) in paragraph (3)(A), by inserting "charged with or" before "convicted"; and

(4) by amending paragraph (5) to read as follows:

"(5) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 2014 and each subsequent fiscal year.".

SEC. 114. STATE VIOLATIONS OF ENFORCEMENT OF IMMIGRATION LAWS.

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

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

(2) in subsection (a), by striking "may" and inserting "shall";

(3) in subsection (b)—

(A) by striking "no person or agency may" and inserting "a person or agency shall not";

(B) by striking "doing any of the following with respect to information" and inserting "undertaking any of the following law enforcement activities"; and

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

"(1) Notifying the Federal Government regarding the presence of inadmissible and deportable aliens who are encountered by law enforcement personnel of a State or political subdivision of a State.

"(2) Complying with requests for information from Federal law enforcement.

"(3) Complying with detainers issued by the Department of Homeland Security.

"(4) Issuing policies in the form of a resolutions, ordinances, administrative actions, general or special orders, or departmental policies that violate Federal law or restrict a State or political subdivision of a State from complying with Federal law or coordinating with Federal law enforcement."; and

(4) by adding at the end the following:

"(d) COMPLIANCE.—

"(1) IN GENERAL.—A State, or a political subdivision of a State, that has in effect a statute, policy, or practice that prohibits law enforcement officers of the State, or of a political subdivision of the State, from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers' routine law enforcement duties shall not be eligible to receive—

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

"(B) any other law enforcement or Department of Homeland Security grant.

"(2) ANNUAL DETERMINATION.—The Secretary shall determine annually which State or political subdivision of a State are not in compliance with this section and shall report such determinations to Congress on March 1 of each year.

"(3) REPORTS.—The Attorney General shall issue a report concerning the compliance of any particular State or political subdivision at the request of the House or Senate Judiciary Committee. Any jurisdiction that is found to be out of compliance shall be ineligible to receive Federal financial assistance as provided in paragraph (1) for a minimum period of 1 year, and shall only become eligible again after the Attorney General certifies that the jurisdiction is in compliance.

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, except that subsection (d) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373), as added by this section, shall take effect beginning one year after the date of the enactment of this Act.

SEC. 115. CLARIFYING THE AUTHORITY OF ICE DETAINERS.

Except as otherwise provided by Federal law or rule of procedure, the Secretary of Homeland Security shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute the Secretary's duties.

TITLE II—NATIONAL SECURITY

SEC. 201. REMOVAL OF, AND DENIAL OF BENEFITS TO, TERRORIST ALIENS.

(a) ASYLUM.—Section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)) is amended—

(1) by inserting "or the Secretary of Homeland Security" after "if the Attorney General"; and

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

"(v) the alien is described in subparagraph (B)(i) or (F) of section 212(a)(3), unless, in the case of an alien described in subparagraph (IV), (V), or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland

Security or the Attorney General determines, in the discretion of the Secretary or the Attorney General, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or".

(b) CANCELLATION OF REMOVAL.—Section 240A(c)(4) of such Act (8 U.S.C. 1229b(c)(4)) is amended—

(1) by striking "inadmissible under" and inserting "described in"; and

(2) by striking "deportable under" and inserting "described in".

(c) VOLUNTARY DEPARTURE.—Section 240B(b)(1)(C) of such Act (8 U.S.C. 1229c(b)(1)(C)) is amended by striking "deportable under section 237(a)(2)(A)(iii) or section 237(a)(4);" and inserting "described in paragraph (2)(A)(iii) or (4) of section 237(a);".

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

(1) by inserting "or the Secretary of Homeland Security" after "Attorney General" each place it appears;

(2) in clause (iii), by striking "or" at the end;

(3) in clause (iv), by striking the period at the end and inserting "; or";

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

"(v) the alien is described in subparagraph (B)(i) or (F) of section 212(a)(3), unless, in the case of an alien described in subparagraph (IV), (V), or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security or the Attorney General determines, in discretion of the Secretary or the Attorney General, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States."; and

(5) by striking the final sentence.

(e) RECORD OF ADMISSION.—

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

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

"SEC. 249. The Secretary of Homeland Security, in the discretion of the Secretary and under such regulations as the Secretary may prescribe, may enter a record of lawful admission for permanent residence in the case of any alien, if no such record is otherwise available and the alien—

"(1) entered the United States before January 1, 1972;

"(2) has continuously resided in the United States since such entry;

"(3) has been a person of good moral character since such entry;

"(4) is not ineligible for citizenship;

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

"(6) did not, at any time, without reasonable cause fail or refuse to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability.

Such recordation shall be effective as of the date of approval of the application or as of the date of entry if such entry occurred prior to July 1, 1924.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by amending the item 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.".

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

(1) all aliens in removal, deportation, or exclusion proceedings;

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

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

SEC. 202. TERRORIST BAR TO GOOD MORAL CHARACTER.

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

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

"(2) one who the Secretary of Homeland Security or Attorney General determines to have been at any time an alien described in section 212(a)(3) or 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information;";

(2) in paragraph (8), by inserting ", regardless whether the crime was classified as an aggravated felony at the time of conviction, except that the Secretary of Homeland Security or Attorney General may, in the unreviewable discretion of the Secretary or Attorney General, determine that this paragraph shall not apply in the case of a single aggravated felony conviction (other than murder, manslaughter, homicide, rape, or any sex offense when the victim of such sex offense was a minor) for which completion of the term of imprisonment or the sentence (whichever is later) occurred 10 or more years prior to the date of application" after "(as defined in subsection (a)(43))"; and

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

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

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

(c) TECHNICAL CORRECTION TO THE INTELLIGENCE REFORM ACT.—Section 5504(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is amended by striking "adding at the end" and inserting "inserting after paragraph (8)".

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

SEC. 203. TERRORIST BAR TO NATURALIZATION.

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

"(g) PERSONS ENDANGERING THE NATIONAL SECURITY.—No person shall be naturalized who the Secretary of Homeland Security determines to have been at any time an alien described in section 212(a)(3) or 237(a)(4). Such determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information.".

(b) CONCURRENT NATURALIZATION AND REMOVAL PROCEEDINGS.—Section 318 of the Immigration and Nationality Act (8 U.S.C. 1429) is amended by striking "other Act;" and inserting "other Act; and no application for naturalization shall be considered by the Secretary of Homeland Security or any court if there is pending against the applicant any removal proceeding or other proceeding to determine the applicant's inadmissibility or deportability, or to determine whether the applicant's lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced: *Provided*, That the findings of the Attorney General in terminating removal proceedings or in canceling the removal of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the Secretary of Homeland Security with respect to the question of whether such person has established his eligibility for naturalization as required by this title;".

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

(d) CONDITIONAL PERMANENT RESIDENTS.—Sections 216(e) and section 216A(e) of the Immigration and Nationality Act (8 U.S.C. 1186a(e) and 1186b(e)) are each amended by striking the period at the end and inserting ", if the alien has had the conditional basis removed pursuant to this section.".

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

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

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

(1) by inserting ", not later than the date that is 120 days after the Secretary of Homeland Security's final determination," after "seek"; and

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

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

SEC. 204. DENATURALIZATION FOR TERRORISTS.

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

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

(2) by inserting after subsection (e) the following:

"(f)(1) If a person who has been naturalized participates in any act described in paragraph (2), the Attorney General is authorized to find that, as of the date of such naturalization, such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and upon such finding shall set aside the order admitting such person to citizenship and cancel the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

"(2) The acts described in this paragraph are the following:

"(A) Any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.

"(B) Engaging in a terrorist activity (as defined in clauses (iii) and (iv) of section 212(a)(3)(B)).

"(C) Incitement of terrorist activity under circumstances indicating an intention to cause death or serious bodily harm.

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

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts that occur on or after such date.

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

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

(1) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security";

(2) in subparagraph (A), by striking "Department of Justice," and inserting "Department of Homeland Security,";

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

(4) by inserting after subparagraph (B) the following:

"(C) AUTHORIZED DISCLOSURES.—

"(i) CENSUS PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed under section 8 of title 13, United States Code.

"(ii) NATIONAL SECURITY PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing, use, publication, or release of information furnished under this section in any investigation, case, or matter, or for any purpose, relating to terrorism, national intelligence or the national security."; and

(5) in subparagraph (D), as redesignated, by striking "Service" and inserting "Department of Homeland Security".

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

(1) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security";

(2) in subparagraph (A), by striking "Department of Justice," and inserting "Department of Homeland Security,";

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

"(C) AUTHORIZED DISCLOSURES.—

"(i) CENSUS PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed under section 8 of title 13, United States Code.

"(ii) NATIONAL SECURITY PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing, use, publication, or release of information furnished under this section in any investigation, case, or matter, or for any purpose, relating to terrorism, national intelligence or the national security."; and

(4) in subparagraph (D)(i), striking "Service" and inserting "Department of Homeland Security".

SEC. 206. BACKGROUND AND SECURITY CHECKS.

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

"(h) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security, the Attorney General, nor any court may—

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

"(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws;

"(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition; or

"(4) issue or order the issuance of any documentation evidencing or related to any such grant, until such background and security checks as the Secretary may in his discretion require have been completed or updated to the satisfaction of the Secretary.

"(i) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security nor the Attorney General may be required to—

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

"(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws,

"(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition, or

"(4) issue or order the issuance of any documentation evidencing or related to any such grant, until any suspected or alleged materially false information, material misrepresentation or omission, concealment of a material fact, fraud or forgery, counterfeiting, or alteration, or falsification of a document, as determined by the Secretary, relating to the adjudication of an application or petition for any status (including the granting of adjustment of status), relief, protection from removal, or other benefit under this subsection has been investigated and resolved to the Secretary's satisfaction.

"(j) Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to require any of the acts in subsection (h) or (i) to be completed by a certain time or award any relief for failure to complete or delay in completing such acts.".

(b) CONSTRUCTION.—

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

"CONSTRUCTION

"SEC. 362. (a) IN GENERAL.—Nothing in this Act or any other law, except as provided in subsection (d), shall be construed to require the Secretary of Homeland Security, the Attorney General, the Secretary of State, the Secretary of Labor, or a consular officer to grant any application, approve any petition, or grant or continue any relief, protection from removal, employment authorization, or any other status or benefit under the immigration laws by, to, or on behalf of—

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

"(2) any alien with respect to whom a criminal or other proceeding or investigation is open or pending (including, but not limited to, issuance of an arrest warrant, detainer, or indictment), where such proceeding or investigation is deemed by the official described in subsection (a) to be material to the alien's eligibility for the status or benefit sought.

"(b) DENIAL OR WITHHOLDING OF ADJUDICATION.—An official described in subsection (a) may, in the discretion of the official, deny (with respect to an alien described in paragraph (1) or (2) of subsection (a)) or withhold adjudication of pending resolution of the investigation or case (with respect to an alien described in subsection (a)(2) of this section) any application, petition, relief, protection from removal, employment authorization, status or benefit.

"(c) JURISDICTION.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to review a decision to deny or withhold adjudication pursuant to subsection (b) of this section.

"(d) WITHHOLDING OF REMOVAL AND TORTURE CONVENTION.—This section does not limit or modify the applicability of section 241(b)(3) or the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277) with respect to an alien otherwise eligible for protection under such provisions.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 361 the following:

"Sec. 362. Construction.".

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

SEC. 207. TECHNICAL AMENDMENTS RELATING TO THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.

(a) TRANSIT WITHOUT VISA PROGRAM.—Section 7209(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1185 note) is amended by striking

"the Secretary, in conjunction with the Secretary of Homeland Security," and inserting "the Secretary of Homeland Security, in consultation with the Secretary of State,".

(b) TECHNOLOGY ACQUISITION AND DISSEMINATION PLAN.—Section 7201(c)(1) of such Act is amended by inserting "and the Department of State" after "used by the Department of Homeland Security".

TITLE III—REMOVAL OF CRIMINAL ALIENS

SEC. 301. DEFINITION OF AGGRAVATED FELONY.

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

(1) by striking "The term 'aggravated felony' means—" and inserting "Notwithstanding any other provision of law, the term 'aggravated felony' applies to an offense described in this paragraph, whether in violation of Federal or State law, or in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, even if the length of the term of imprisonment for the offense is based on recidivist or other enhancements and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—";

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

(3) in subparagraph (I), by striking "or 2252" and inserting "2252, or 2252A".

(4) in subparagraph (F), by striking "at least one year;" and inserting "is at least one year, except that if the conviction records do not conclusively establish whether a crime constitutes a crime of violence, the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime of violence;"

(5) in subparagraph (N)—

(A) by striking "paragraph (1)(A) or (2) of"; and

(B) by inserting a semicolon at the end;

(6) in subparagraph (O), by striking "section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph" and inserting "section 275 or 276 for which the term of imprisonment is at least 1 year";

(7) in subparagraph (U), by striking "an attempt or conspiracy to commit an offense described in this paragraph" and inserting "attempting or conspiring to commit an offense described in this paragraph, or aiding, abetting, counseling, procuring, commanding, inducing, or soliciting the commission of such an offense"; and

(8) by striking the undesignated matter following subparagraph (U).

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—

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

(A) shall take effect on the date of the enactment of this Act; and

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

(2) APPLICATION OF IIRIRA AMENDMENTS.—The amendments to section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) made by section 321 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009-627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.

SEC. 302. PRECLUDING ADMISSIBILITY OF ALIENS CONVICTED OF AGGRAVATED FELONIES OR OTHER SERIOUS OFFENSES.

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

(1) in subsection (a)(2)(A)(i)—

(A) in subclause (I), by striking "or" at the end;

(B) in subclause (II), by adding "or" at the end; and

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

"(III) a violation of (or a conspiracy or attempt to violate) an offense described in section 408 of title 42, United States Code (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and

related activity in connection with identification documents, authentication features, and information),".

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

"(J) PROCUREMENT OF CITIZENSHIP OR NATURALIZATION UNLAWFULLY.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of, or an attempt or a conspiracy to violate, subsection (a) or (b) of section 1425 of title 18, United States Code (relating to the procurement of citizenship or naturalization unlawfully) is inadmissible.

"(K) CERTAIN FIREARM OFFENSES.—Any alien who at any time has been convicted under any law of, or who admits having committed or admits committing acts which constitute the essential elements of, purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is inadmissible.

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

"(M) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDERS, CRIMES AGAINST CHILDREN.—

"(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who at any time is convicted of, or who admits having committed or admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is inadmissible. For purposes of this clause, the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

"(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is inadmissible. For purposes of this clause, the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a independent order in another proceeding.

"(iii) WAIVER AUTHORIZED.—The waiver authority available under section 237(a)(7) with respect to section 237(a)(2)(E)(i) shall be available on a comparable basis with respect to this subparagraph.

"(iv) CLARIFICATION.—If the conviction records do not conclusively establish whether a crime of domestic violence constitutes a crime of violence (as defined in section 16 of title 18, United States Code), the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime of violence."; and

(3) in subsection (h)—

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

(B) by striking "a criminal act involving torture." and inserting "a criminal act involving torture, or has been convicted of an aggravated felony.";

(C) by striking "if either since the date of such admission the alien has been convicted of an aggravated felony or the alien" and inserting "if since the date of such admission the alien"; and

(D) by inserting "or Secretary of Homeland Security" after "the Attorney General" each place it appears.

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

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

(2) in clause (iii), by inserting "or" at the end; and

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

"(iv) of a violation of, or an attempt or a conspiracy to violate, section 1425(a) or (b) of title 18 (relating to the procurement of citizenship or naturalization unlawfully),".

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

"(G) FRAUD AND RELATED ACTIVITY ASSOCIATED WITH SOCIAL SECURITY ACT BENEFITS AND IDENTIFICATION DOCUMENTS.—Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) section 208 of the Social Security Act (42 U.S.C. 408) (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and related activity in connection with identification) is deportable.".

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

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

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

(e) CONSTRUCTION.—The amendments made by subsection (a) shall not be construed to create eligibility for relief from removal under former section 212(c) of the Immigration and Nationality Act where such eligibility did not exist before these amendments became effective.

SEC. 303. ESPIONAGE CLARIFICATION.

Section 212(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(A)), is amended to read as follows:

"(A) IN GENERAL.—Any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in, or who is engaged in, or with respect to clauses (i) and (iii) of this subparagraph has engaged in—

"(i) any activity—

"(I) to violate any law of the United States relating to espionage or sabotage; or

"(II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information;

"(ii) any other unlawful activity; or

"(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means;

is inadmissible.".

SEC. 304. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY, CERTAIN ALIENS.

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

(1) in subsection (d)(5), in subparagraph (B), by striking "(y)(2)" and all that follows and inserting "(y), is in the United States not as an alien lawfully admitted for permanent residence;";

(2) in subsection (g)(5), in subparagraph (B), by striking "(y)(2)" and all that follows and inserting "(y), is in the United States not as an alien lawfully admitted for permanent residence;"; and

(3) in subsection (y)—

(A) in the header, by striking "ADMITTED UNDER NONIMMIGRANT VISAS.—" and inserting "NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—";

(B) in paragraph (1), by amending subparagraph (B) to read as follows:
"(B) the term 'lawfully admitted for permanent residence' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).".

(C) in paragraph (2), by striking "under a nonimmigrant visa" and inserting "but not lawfully admitted for permanent residence"; and

(D) in paragraph (3)(A), by striking "admitted to the United States under a nonimmigrant visa" and inserting "lawfully admitted to the United States but not as an alien lawfully admitted for permanent residence".

SEC. 305. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.

Section 3291 of title 18, United States Code, is amended by striking "No person" and all that follows through the period at the end and inserting the following: "No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses) and 75 (relating to passport, visa, and immigration offenses), or for a violation of any criminal provision of sections 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act, or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information is filed within ten years after the commission of the offense.".

SEC. 306. CONFORMING AMENDMENT TO THE DEFINITION OF RACKETEERING ACTIVITY.

Section 1961(1) of title 18, United States Code, is amended by striking "section 1542" through "section 1546 (relating to fraud and misuse of visas, permits, and other documents)" and inserting "sections 1541-1548 (relating to passports and visas)".

SEC. 307. CONFORMING AMENDMENTS FOR THE AGGRAVATED FELONY DEFINITION.

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

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

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

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

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

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

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

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

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

SEC. 309. INADMISSIBILITY, DEPORTABILITY, AND DETENTION OF DRUNK DRIVERS.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) (as amended by this Act) is further amended—

(1) in subparagraph (T), by striking "and";

(2) in subparagraph (U), by striking the period at the end and inserting "; and"; and

(3) by inserting after subparagraph (U) the following:

"(V) a second or subsequent conviction for driving while intoxicated (including a conviction for driving while under the influence of or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under State law.".

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

(1) in subparagraph (C), by striking "or" at the end;

(2) in subparagraph (D), by adding "or" at the end; and

(3) by inserting after subparagraph (D) the following:

"(E) is unlawfully present in the United States and has been convicted one or multiple times for driving while intoxicated (including a conviction for driving while under the influence or impaired by alcohol or drugs) with-

out regard to whether the conviction is classified as a misdemeanor or felony under State law,".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and apply to convictions entered on or after such date.

SEC. 310. DETENTION OF DANGEROUS ALIENS.

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

(1) by striking "Attorney General" each place it appears, except for the first reference in paragraph (4)(B)(i), and inserting "Secretary of Homeland Security";

(2) in paragraph (1), by amending subparagraph (B) to read as follows:

"(B) BEGINNING OF PERIOD.—The removal period begins on the latest of the following:

"(i) The date the order of removal becomes administratively final.

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

"(iii) If the alien is detained or confined (except under an immigration process) on the date the order of removal becomes administratively final, the date the alien is taken into the custody of the Secretary, after the alien is released from such detention or confinement.";

(3) in paragraph (1), by amending subparagraph (C) to read as follows:

"(C) SUSPENSION OF PERIOD.—

"(i) EXTENSION.—The removal period shall be extended beyond a period of 90 days and the Secretary may, in the Secretary's sole discretion, keep the alien in detention during such extended period if—

"(I) the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal that is subject to an order of removal;

"(II) a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administratively final order of removal;

"(III) the Secretary transfers custody of the alien pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency; or

"(IV) a court or the Board of Immigration Appeals orders a remand to an immigration judge or the Board of Immigration Appeals, during the time period when the case is pending a decision on remand (with the removal period beginning anew on the date that the alien is ordered removed on remand).

"(ii) RENEWAL.—If the removal period has been extended under clause (C)(i), a new removal period shall be deemed to have begun on the date—

"(I) the alien makes all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order;

"(II) the stay of removal is no longer in effect; or

"(III) the alien is returned to the custody of the Secretary.

"(iii) MANDATORY DETENTION FOR CERTAIN ALIENS.—In the case of an alien described in subparagraphs (A) through (D) of section 236(c)(1), the Secretary shall keep that alien in detention during the extended period described in clause (i).

"(iv) SOLE FORM OF RELIEF.—An alien may seek relief from detention under this subparagraph only by filing an application for a writ of habeas corpus in accordance with chapter 153 of title 28, United States Code. No alien whose period of detention is extended under this subparagraph shall have the right to seek release on bond.";

(4) in paragraph (3)—

(A) by adding after "If the alien does not leave or is not removed within the removal period" the following: "or is not detained pursuant to paragraph (6) of this subsection"; and

(B) by striking subparagraph (D) and inserting the following:

"(D) to obey reasonable restrictions on the alien's conduct or activities that the Secretary prescribes for the alien, in order to prevent the alien from absconding, for the protection of the community, or for other purposes related to the enforcement of the immigration laws.";

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

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

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

"(A) DETENTION REVIEW PROCESS FOR COOPERATIVE ALIENS ESTABLISHED.—For an alien who is not otherwise subject to mandatory detention, who has made all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary of Homeland Security's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, and who has not conspired or acted to prevent removal, the Secretary shall establish an administrative review process to determine whether the alien should be detained or released on conditions. The Secretary shall make a determination whether to release an alien after the removal period in accordance with subparagraph (B). The determination shall include consideration of any evidence submitted by the alien, and may include consideration of any other evidence, including any information or assistance provided by the Secretary of State or other Federal official and any other information available to the Secretary of Homeland Security pertaining to the ability to remove the alien.

"(B) AUTHORITY TO DETAIN BEYOND REMOVAL PERIOD.—

"(i) IN GENERAL.—The Secretary of Homeland Security, in the exercise of the Secretary's sole discretion, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in paragraph (1)(C)). An alien whose detention is extended under this subparagraph shall have no right to seek release on bond.

"(ii) SPECIFIC CIRCUMSTANCES.—The Secretary of Homeland Security, in the exercise of the Secretary's sole discretion, may continue to detain an alien beyond the 90 days authorized in clause (i)—

"(I) until the alien is removed, if the Secretary, in the Secretary's sole discretion, determines that there is a significant likelihood that the alien—

"(aa) will be removed in the reasonably foreseeable future; or

"(bb) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien's failure or refusal to make all reasonable efforts to comply with the removal order, or to cooperate fully with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspires or acts to prevent removal;

"(II) until the alien is removed, if the Secretary of Homeland Security certifies in writing—

"(aa) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

"(bb) after receipt of a written recommendation from the Secretary of State, that release of the alien is likely to have serious adverse foreign policy consequences for the United States;

"(cc) based on information available to the Secretary of Homeland Security (including classified, sensitive, or national security information, and without regard to the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States; or

"(dd) that the release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and either (AA) the alien has been convicted of one or more aggravated felonies (as defined in section 101(a)(43)(A)) or of one or more crimes identified by the Secretary of Homeland Security by regulation, or of one or more attempts or conspiracies to commit any such aggravated felonies or such identified crimes, if the aggregate term of impris-

onment for such attempts or conspiracies is at least 5 years; or (BB) the alien has committed one or more crimes of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future; or

"(III) pending a certification under subclause (II), so long as the Secretary of Homeland Security has initiated the administrative review process not later than 30 days after the expiration of the removal period (including any extension of the removal period, as provided in paragraph (1)(C)).

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

"(C) RENEWAL AND DELEGATION OF CERTIFICATION.—

"(i) RENEWAL.—The Secretary of Homeland Security may renew a certification under subparagraph (B)(ii)(II) every 6 months, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under subparagraph (B)(ii)(II).

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

"(iii) HEARING.—The Secretary of Homeland Security may request that the Attorney General or the Attorney General's designee provide for a hearing to make the determination described in item (dd)(BB) of subparagraph (B)(ii)(II).

"(D) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention by a Federal court, the Board of Immigration Appeals, or if an immigration judge orders a stay of removal, the Secretary of Homeland Security, in the exercise of the Secretary's discretion, may impose conditions on release as provided in paragraph (3).

"(E) REDETENTION.—The Secretary of Homeland Security, in the exercise of the Secretary's discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody, if removal becomes likely in the reasonably foreseeable future, the alien fails to comply with the conditions of release, or to continue to satisfy the conditions described in subparagraph (A), or if, upon reconsideration, the Secretary, in the Secretary's sole discretion, determines that the alien can be detained under subparagraph (B). This section shall apply to any alien returned to custody pursuant to this subparagraph, as if the removal period terminated on the day of the redetention.

"(F) REVIEW OF DETERMINATIONS BY SECRETARY.—A determination by the Secretary under this paragraph shall not be subject to review by any other agency.".

(b) DETENTION OF ALIENS DURING REMOVAL PROCEEDINGS.—

(1) CLERICAL AMENDMENT.—(A) Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended by striking "Attorney General" each place it appears (except in the second place that term appears in section 236(a)) and inserting "Secretary of Homeland Security".

(B) Section 236(a) of such Act (8 U.S.C. 1226(a)) is amended by inserting "the Secretary of Homeland Security or" before "the Attorney General—".

(C) Section 236(e) of such Act (8 U.S.C. 1226(e)) is amended by striking "Attorney General's" and inserting "Secretary of Homeland Security's".

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

"(f) LENGTH OF DETENTION.—

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

"(2) CONSTRUCTION.—The length of detention under this section shall not affect detention under section 241.".

(3) DETENTION OF CRIMINAL ALIENS.—Section 236(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)) (as added by section 309(b)(3)) is further amended, in the matter following subparagraph (E) to read as follows:

"any time after the alien is released, without regard to whether an alien is released related to any activity, offense, or conviction described in this paragraph; to whether the alien is released on parole, supervised release, or probation; or to whether the alien may be arrested or imprisoned again for the same offense. If the activity described in this paragraph does not result in the alien being taken into custody by any person other than the Secretary, then when the alien is brought to the attention of the Secretary or when the Secretary determines it is practical to take such alien into custody, the Secretary shall take such alien into custody.".

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

"(g) ADMINISTRATIVE REVIEW.—

"(1) IN GENERAL.—The Attorney General's review of the Secretary's custody determinations under subsection (a) for the following classes of aliens shall be limited to whether the alien may be detained, released on bond (of at least $1,500 with security approved by the Secretary), or released with no bond:

"(A) Aliens in exclusion proceedings.

"(B) Aliens described in section 212(a)(3) or 237(a)(4).

"(C) Aliens described in subsection (c).

"(2) SPECIAL RULE.—The Attorney General's review of the Secretary's custody determinations under subsection (a) for aliens in deportation proceedings subject to section 242(a)(2) of the Act (as in effect prior to April 1, 1997, and as amended by section 440(c) of Public Law 104–132) shall be limited to a determination of whether the alien is properly included in such category.

"(h) RELEASE ON BOND.—

"(1) IN GENERAL.—An alien detained under subsection (a) may seek release on bond. No bond may be granted except to an alien who establishes by clear and convincing evidence that the alien is not a flight risk or a risk to another person or the community.

"(2) CERTAIN ALIENS INELIGIBLE.—No alien detained under subsection (c) may seek release on bond.".

(5) CLERICAL AMENDMENTS.—(A) Section 236(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1226(a)(2)(B)) is amended by striking "conditional parole" and inserting "recognizance".

(B) Section 236(b) of such Act (8 U.S.C. 1226(b)) is amended by striking "parole" and inserting "recognizance".

(c) SEVERABILITY.—If any of the provisions of this section or any amendment by this section, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this section and of amendments made by this section, and the application of the provisions and of the amendments made by this section to any other person or circumstance shall not be affected by such holding.

(d) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall take effect upon the date of enactment of this Act, and section 241 of the Immigration and Nationality Act, as so amended, shall in addition apply to—

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

(B) acts and conditions occurring or existing before, on, or after such date.

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

SEC. 311. GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN GANG MEMBERS.

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

"(53)(A) The term 'criminal gang' means an ongoing group, club, organization, or association of 5 or more persons that has as one of its primary purposes the commission of 1 or more of the following criminal offenses and the members of which engage, or have engaged within the past 5 years, in a continuing series of such offenses, or that has been designated as a criminal gang by the Secretary of Homeland Security, in consultation with the Attorney General, as meeting these criteria. The offenses described, whether in violation of Federal or State law or foreign law

and regardless of whether the offenses occurred before, on, or after the date of the enactment of this paragraph, are the following:

"(i) A 'felony drug offense' (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

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

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

"(iv) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

"(v) Any conduct punishable under sections 1028 and 1029 of title 18, United States Code (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery and trafficking in persons), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

"(vi) A conspiracy to commit an offense described in clauses (i) through (v).

"(B) Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conduct occurred before, on, or after the date of the enactment of this paragraph.".

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

"(N) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien is inadmissible who a consular officer, the Secretary of Homeland Security, or the Attorney General knows or has reason to believe—

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

"(ii) to have participated in the activities of a criminal gang (as defined in section 101(a)(53)), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.".

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

"(H) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien is deportable who the Secretary of Homeland Security or the Attorney General knows or has reason to believe—

"(i) is or has been a member of a criminal gang (as defined in section 101(a)(53)); or

"(ii) has participated in the activities of a criminal gang (as so defined), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.".

(d) DESIGNATION.—

(1) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting after section 219 the following:

"DESIGNATION

"SEC. 220. (a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Attorney General, and the Secretary of State may designate a group or association as a criminal street gang if their conduct is described in section 101(a)(53) or if the group or association conduct poses a significant risk that threatens the security and the public safety of United States nationals or the national security, homeland security, foreign policy, or economy of the United States.

"(b) EFFECTIVE DATE.—Designations under subsection (a) shall remain in effect until the designation is revoked after consultation between the Secretary of Homeland Security, the Attorney General, and the Secretary of State or is terminated in accordance with Federal law.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 219 the following:

"220. Designation.".

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

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

(A) by inserting "or 212(a)(2)(N)" after "212(a)(3)(B)"; and

(B) by inserting "237(a)(2)(H) or" before "237(a)(4)(B)".

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

(f) ASYLUM CLAIMS BASED ON GANG AFFILIATION.—

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

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

(A) in clause (v), by striking "or" at the end;

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

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

"(vi) the alien is described in section 212(a)(2)(N)(i) or section 237(a)(2)(H)(i) (relating to participation in criminal street gangs); or".

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

(1) by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security";

(2) in subparagraph (c)(2)(B)—

(A) in clause (i), by striking "or" at the end;

(B) in clause (ii), by striking the period and inserting "; or"; and

(C) by adding at the end the following:

"(iii) the alien is, or at any time after admission has been, a member of a criminal gang (as defined in section 101(a)(53))."; and

(3) in subsection (d)—

(A) by striking paragraph (3); and

(B) in paragraph (4), by adding at the end the following: "The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision of law.".

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

SEC. 312. EXTENSION OF IDENTITY THEFT OFFENSES.

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

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

SEC. 313. LAUNDERING OF MONETARY INSTRUMENTS.

(a) ADDITIONAL PREDICATE OFFENSES.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

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

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

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

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

"(B) knowing that the transaction—

"(i) conceals or disguises, or is intended to conceal or disguise, the nature, source, location, ownership, or control of the proceeds of some form of unlawful activity; or

"(ii) avoids, or is intended to avoid, a transaction reporting requirement under State or Federal law,"; and

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

"(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity, and knowing that such transportation, transmission, or transfer—

"(i) conceals or disguises, or is intended to conceal or disguise, the nature, source, location, ownership, or control of the proceeds of some form of unlawful activity; or

"(ii) avoids, or is intended to avoid, a transaction reporting requirement under State or Federal law,".

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

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

"SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.

"(a) CRIMINAL OFFENSES AND PENALTIES.—

"(1) PROHIBITED ACTIVITIES.—Except as provided in paragraph (3), a person shall be punished as provided under paragraph (2), if the person—

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

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

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

"(D) encourages or induces a person to reside in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in the United States;

"(E) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, if the transportation or movement will further the alien's illegal entry into or illegal presence in the United States;

"(F) harbors, conceals, or shields from detection a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States; or

"(G) conspires or attempts to commit any of the acts described in subparagraphs (A) through (F).

"(2) CRIMINAL PENALTIES.—A person who violates any provision under paragraph (1) shall, for each alien in respect to whom a violation of paragraph (1) occurs—

"(A) except as provided in subparagraphs (C) through (G), if the violation was not committed for commercial advantage, profit, or private financial gain, be fined under title 18, United States Code, imprisoned for not more than 5 years, or both;

"(B) except as provided in subparagraphs (C) through (G), if the violation was committed for commercial advantage, profit, or private financial gain—

"(i) be fined under such title, imprisoned for not more than 20 years, or both, if the violation is the offender's first violation under this subparagraph; or

"(ii) be fined under such title, imprisoned for not less than 3 years or more than 20 years, or both, if the violation is the offender's second or subsequent violation of this subparagraph;

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

"(D) be fined under such title, imprisoned not less than 5 years or more than 20 years, or both, if the violation created a substantial and foreseeable risk of death, a substantial and foreseeable risk of serious bodily injury (as defined in section 2119(2) of title 18, United States Code), or inhumane conditions to another person, including—

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

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

"(iii) transporting the person in, harboring the person in, or otherwise subjecting the person to crowded or dangerous conditions;

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

"(F) be fined under such title and imprisoned for not less than 10 years or more than 30 years if the violation involved an alien who the offender knew or had reason to believe was—

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

"(ii) intending to engage in terrorist activity; or

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

"(3) LIMITATION.—It is not a violation of subparagraph (D), (E), or (F) of paragraph (1) for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least 1 year.

"(4) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

"(b) SEIZURE AND FORFEITURE.—

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

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

"(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, prima facie evidence that an alien involved in the alleged violation lacks lawful authority to come to, enter, reside in, remain in, or be in the United States or that such alien had come to, entered, resided in, remained in, or been present in the United States in violation of law may include:

"(A) any order, finding, or determination concerning the alien's status or lack of status made by a Federal judge or administrative adjudicator (including an immigration judge or immigration officer) during any judicial or administrative proceeding authorized under Federal immigration law;

"(B) official records of the Department of Homeland Security, the Department of Justice, or the Department of State concerning the alien's status or lack of status; and

"(C) testimony by an immigration officer having personal knowledge of the facts concerning the alien's status or lack of status.

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

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

"(2) other officers responsible for the enforcement of Federal criminal laws.

"(d) ADMISSIBILITY OF VIDEOTAPED WITNESS TESTIMONY.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped or otherwise audiovisually preserved deposition of a witness to a violation of subsection (a) who has

been deported or otherwise expelled from the United States, or is otherwise unavailable to testify, may be admitted into evidence in an action brought for that violation if:

"(1) the witness was available for cross examination at the deposition by the party, if any, opposing admission of the testimony; and

"(2) the deposition otherwise complies with the Federal Rules of Evidence.

"(e) DEFINITIONS.—In this section:

"(1) CROSS THE BORDER TO THE UNITED STATES.—The term 'cross the border' refers to the physical act of crossing the border, regardless of whether the alien is free from official restraint.

"(2) LAWFUL AUTHORITY.—The term 'lawful authority' means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or accompanying regulations. The term does not include any such authority secured by fraud or otherwise obtained in violation of law or authority sought, but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside in, remain in, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

"(3) PROCEEDS.—The term 'proceeds' includes any property or interest in property obtained or retained as a consequence of an act or omission in violation of this section.

"(4) UNLAWFUL TRANSIT.—The term 'unlawful transit' means travel, movement, or temporary presence that violates the laws of any country in which the alien is present or any country from which or to which the alien is traveling or moving.".

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

"Sec. 274. Alien smuggling and related offenses.".

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

(1) in paragraph (1)—

(A) in subparagraph (A)——

(i) by inserting ", alien smuggling crime," after "any crime of violence"; and

(ii) by inserting ", alien smuggling crime," after "such crime of violence"; and

(B) in subparagraph (D)(ii), by inserting ", alien smuggling crime," after "crime of violence"; and

(2) by adding at the end the following:

"(6) For purposes of this subsection, the term 'alien smuggling crime' means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, and 1328).".

SEC. 315. PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.

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

"ILLEGAL ENTRY OR PRESENCE

"SEC. 275. (a) IN GENERAL.—

"(1) ILLEGAL ENTRY.—An alien shall be subject to the penalties set forth in paragraph (2) if the alien:

"(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

"(B) knowingly eludes, at any time or place, examination or inspection by an authorized immigration, customs, or agriculture officer (including by failing to stop at the command of such officer);

"(C) knowingly enters or crosses the border to the United States and, upon examination or inspection, knowingly makes a false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws);

"(D) knowingly violates the terms or conditions of the alien's admission or parole into the United States; or

"(E) knowingly is unlawfully present in the United States (as defined in section 212(a)(9)(B)(ii) subject to the exceptions set for in section 212(a)(9)(B)(iii)).

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

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

"(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years (or not more than 6 months in the case of a second or subsequent violation of paragraph (1)(E)), or both;

"(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

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

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

"(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

"(A) alleged in the indictment or information; and

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

"(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is discovered within the United States by an immigration, customs, or agriculture officer.

"(5) ATTEMPT.—Whoever attempts to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

"(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

"(1) not less than $50 or more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

"(2) twice the amount specified in paragraph (1) if the alien had previously been subject to a civil penalty under this subsection.".

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

"Sec. 275. Illegal entry or presence.".

SEC. 316. ILLEGAL REENTRY.

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

"REENTRY OF REMOVED ALIEN

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

"(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection was convicted before such removal or departure—

"(1) for 3 or more misdemeanors or for a felony, the alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

"(2) for a felony for which the alien was sentenced to a term of imprisonment of not less than 30 months, the alien shall be fined under such title, imprisoned not less than 2 years and not more than 15 years, or both;

"(3) for a felony for which the alien was sentenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, imprisoned not less than 4 years and not more than 20 years, or both; or

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

"(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both.

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

"(1) alleged in the indictment or information; and

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

"(e) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to a violation of this section that—

"(1) prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States; or

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

"(A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act; and

"(B) had complied with all other laws and regulations governing the alien's admission into the United States.

"(f) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien.

"(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

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

"(1) CROSSES THE BORDER TO THE UNITED STATES.—The term 'crosses the border' refers to the physical act of crossing the border, regardless of whether the alien is free from official restraint.

"(2) FELONY.—The term 'felony' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

"(3) MISDEMEANOR.—The term 'misdemeanor' means any criminal offense punishable by a term of imprisonment of not more than 1 year under the applicable laws of the United States, any State, or a foreign government.

"(4) REMOVAL.—The term 'removal' includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

"(5) STATE.—The term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 317. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

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

"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.

"§ 1541. Issuance without authority

"(a) IN GENERAL.—Whoever—

"(1) acting or claiming to act in any office or capacity under the United States, or a State, without lawful authority grants, issues, or verifies any passport or other instrument in the nature of a passport to or for any person; or

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

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

"(b) DEFINITION.—In this section, the term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"§ 1542. False statement in application and use of passport

"Whoever knowingly—

"(1) makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

"(2) uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement;

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

"§ 1543. Forgery or false use of passport

"Whoever—

"(1) falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

"(2) knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same;

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

"§ 1544. Misuse of a passport

"Whoever knowingly—

"(1) uses any passport issued or designed for the use of another;

"(2) uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;

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

"(4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States;

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

"§ 1545. Schemes to defraud aliens

"Whoever inside the United States, or in or affecting interstate or foreign commerce, in connection with any matter that is authorized by or arises under the immigration laws of the United States or any matter the offender claims or represents is authorized by or arises under the immigration laws of the United States, knowingly executes a scheme or artifice—

"(1) to defraud any person, or

"(2) to obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, or promises;

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

"§ 1546. Immigration and visa fraud

"Whoever knowingly—

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

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

"(3) mails, prepares, presents, or signs any immigration document knowing it to contain any materially false statement or representation;

"(4) secures, possesses, uses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

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

"(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the immigration document was issued or designed; or

"(7) produces, issues, authorizes, or verifies, without lawful authority, an immigration document;

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

"§ 1547. Attempts and conspiracies

"Whoever attempts or conspires to violate this chapter shall be punished in the same manner as a person who completes that violation.

"§ 1548. Alternative penalties for certain offenses

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

"(b) DRUG TRAFFICKING OFFENSES.—Whoever violates any section in this chapter to facilitate a drug trafficking crime (as defined in section 929(a)) shall be fined under this title or imprisoned not more than 20 years, or both.

"§ 1549. Definitions

"In this chapter:

"(1) An 'application for a United States passport' includes any document, photograph, or other piece of evidence attached to or submitted in support of the application.

"(2) The term 'immigration document' means any instrument on which is recorded, by means of letters, figures, or marks, matters which may be used to fulfill any requirement of the Immigration and Nationality Act.".

SEC. 318. FORFEITURE.

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

"(I) Any property, real or personal, that has been used to commit or facilitate the commission of a violation of chapter 75, the gross proceeds of such violation, and any property traceable to any such property or proceeds.".

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

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

(1) in paragraph (1)—

(A) by striking "Attorney General" and inserting "Secretary of Homeland Security in the exercise of discretion"; and

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

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

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

(4) in paragraph (5)—

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

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

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

(6) by inserting after paragraph (2) the following new paragraph:

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

"(A) has not been admitted or paroled;

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

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

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

SEC. 320. INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER.

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

(1) in subclause (II), by striking "or" at the end;

(2) in subclause (III), by adding "or" at the end; and

(3) by inserting after subclause (III) the following:

"(IV) a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender),".

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

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

(2) by adding at the end the following:

"(I) FAILURE TO REGISTER AS A SEX OFFENDER.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender) is deportable.".

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

SEC. 321. PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS.

(a) IMMIGRANTS.—Section 204(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)), is amended—

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

"(viii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed."; and

(2) in subparagraph (B)(i)—

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

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

"(II) Subclause (I) shall not apply in the case of an alien admitted for permanent residence who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the alien lawfully admitted for permanent residence poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.".

(b) NONIMMIGRANTS.—Section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)), is amended by striking "204(a)(1)(A)(viii)(I))" each place such term appears and inserting "204(a)(1)(A)(viii))".

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

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

(a) INADMISSIBLE ALIENS.—Section 212(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)) is amended by adding at the end the following:

"(iii) CLARIFICATION.—If the conviction records do not conclusively establish whether a crime constitutes a crime involving moral turpitude, the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime involving moral turpitude.".

(b) DEPORTABLE ALIENS.—

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

"(v) CRIMES INVOLVING MORAL TURPITUDE.—If the conviction records do not conclusively establish whether a crime constitutes a crime involving moral turpitude, the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime involving moral turpitude.".

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

"(iii) CRIMES OF VIOLENCE.—If the conviction records do not conclusively establish whether a crime of domestic violence constitutes a crime of violence (as defined in section 16 of title 18, United States Code), the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime of violence.".

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

SEC. 323. PENALTIES FOR FAILURE TO OBEY REMOVAL ORDERS.

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

(1) in the matter preceding subparagraph (A) of paragraph (1), by inserting "212(a) or" before "237(a)," ; and

(2) by striking paragraph (3).

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

SEC. 324. PARDONS.

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

"(54) The term 'pardon' means a full and unconditional pardon granted by the President of the United States, Governor of any of the several States or constitutionally recognized body.".

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

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

(2) by adding at the end the following:

"(8) PARDONS.—In the case of an alien who has been convicted of a crime and is subject to removal due to that conviction, if the alien, subsequent to receiving the criminal conviction, is granted a pardon, the alien shall not be deportable by reason of that criminal conviction.".

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

TITLE IV—VISA SECURITY

SEC. 401. CANCELLATION OF ADDITIONAL VISAS.

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

(1) in paragraph (1)—

(A) by striking "Attorney General" and inserting "Secretary"; and

(B) by inserting "and any other nonimmigrant visa issued by the United States that is in the possession of the alien" after "such visa"; and

(2) in paragraph (2)(A), by striking "(other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality" and inserting "(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality or foreign residence".

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

SEC. 402. VISA INFORMATION SHARING.

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

(1) by striking "issuance or refusal" and inserting "issuance, refusal, or revocation";

(2) in paragraph (2), in the matter preceding subparagraph (A), by striking "and on the basis of reciprocity";

(3) in paragraph (2)(A)—

(A) by inserting "(i)" after "for the purpose of"; and

(B) by striking "illicit weapons; or" and inserting "illicit weapons, or (ii) determining a person's deportability or eligibility for a visa, admission, or other immigration benefit;";

(4) in paragraph (2)(B)—

(A) by striking "for the purposes" and inserting "for one of the purposes"; and

(B) by striking "or to deny visas to persons who would be inadmissible to the United States." and inserting "; or"; and

(5) in paragraph (2), by adding at the end the following:

"(C) with regard to any or all aliens in the database specified data elements from each record, if the Secretary of State determines that it is in the national interest to provide such information to a foreign government.".

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

SEC. 403. RESTRICTING WAIVER OF VISA INTERVIEWS.

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

(1) in paragraph (1)(C), by inserting ", in consultation with the Secretary of Homeland Security," after "if the Secretary";

(2) in paragraph (1)(C)(i), by inserting ", where such national interest shall not include facilitation of travel of foreign nationals to the United States, reduction of visa application processing times, or the allocation of consular resources" before the semicolon at the end;

(3) in paragraph (2)—

(A) by striking "or" at the end of subparagraph (E);

(B) by striking the period at the end of subparagraph (F) and inserting "; or"; and

(C) by adding at the end the following:

"(G) is an individual—

"(i) determined to be in a class of aliens determined by the Secretary of Homeland Security to be threats to national security;

"(ii) identified by the Secretary of Homeland Security as a person of concern; or

"(iii) applying for a visa in a visa category with respect to which the Secretary of Homeland Security has determined that a waiver of the visa interview would create a high risk of degradation of visa program integrity.".

SEC. 404. AUTHORIZING THE DEPARTMENT OF STATE TO NOT INTERVIEW CERTAIN INELIGIBLE VISA APPLICANTS.

(a) IN GENERAL.—Section 222(h)(1) of the Immigration and Nationality Act (8 U.S.C. 1202(h)(1)) is amended by inserting "the alien is determined by the Secretary of State to be ineligible for a visa based upon review of the application or" after "unless".

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

(c) REPORTS.—Not less frequently than once each quarter, the Secretary of State shall submit to the Congress a report on the denial of visa applications without interview, including—

(1) the number of such denials; and

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

SEC. 405. VISA REFUSAL AND REVOCATION.

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

(1) IN GENERAL.—Section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236) is amended by striking subsections (b) and (c) and inserting the following:

"(b) AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY.—

"(1) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as pro-

vided in subsection (c) and except for the authority of the Secretary of State under subparagraphs (A) and (G) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), the Secretary—

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

"(B) may refuse or revoke any visa to any alien or class of aliens if the Secretary, or designee, determines that such refusal or revocation is necessary or advisable in the security interests of the United States.

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

"(A) shall take effect immediately; and

"(B) shall automatically cancel any other valid visa that is in the alien's possession.

"(3) JUDICIAL REVIEW.—Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review a decision by the Secretary of Homeland Security to refuse or revoke a visa, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a refusal or revocation.

"(c) AUTHORITY OF THE SECRETARY OF STATE.—

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

"(2) LIMITATION.—No decision by the Secretary of State to approve a visa may override a decision by the Secretary of Homeland Security under subsection (b).".

(2) CONFORMING AMENDMENT.—Section 237(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(B)) is amended by striking "under section 221(i)".

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to visa refusals and revocations occurring before, on, or after such date.

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

(1) striking "subsection" and inserting "section"; and

(2) striking "consular office" and inserting "consular officer".

SEC. 406. FUNDING FOR THE VISA SECURITY PROGRAM.

(a) IN GENERAL.—The Department of State and Related Agency Appropriations Act, 2005 (title IV of division B of Public Law 108–447) is amended, in the fourth paragraph under the heading "Diplomatic and Consular Programs", by striking "Beginning" and all that follows through the period at the end and inserting the following: "Beginning in fiscal year 2005 and thereafter, the Secretary of State is authorized to charge surcharges related to consular services in support of enhanced border security that are in addition to the immigrant visa fees in effect on January 1, 2004: Provided, That funds collected pursuant to this authority shall be credited to the appropriation for U.S. Immigration and Customs Enforcement for the fiscal year in which the fees were collected, and shall be available until expended for the funding of the Visa Security Program established by the Secretary of Homeland Security under section 428(e) of the Homeland Security Act of 2002 (Public Law 107–296): Provided further, That such surcharges shall be 10 percent of the fee assessed on immigrant visa applications.".

(b) REPAYMENT OF APPROPRIATED FUNDS.—Twenty percent of the funds collected each fiscal year under the heading "Diplomatic and Consular Programs" in the Department of State and Related Agency Appropriations Act, 2005 (title IV of division B of Public Law 108–447), as amended by subsection (a), shall be deposited into the general fund of the Treasury as repayment of funds appropriated pursuant to section 407(c) of this Act until the entire appropriated sum has been repaid.

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

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

"(i) VISA ISSUANCE AT DESIGNATED HIGH-RISK POSTS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall conduct an on-site review of all visa applications and supporting documentation before adjudication at the top 30 visa-issuing posts designated jointly by the Secretaries of State and Homeland Security as high-risk posts.".

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

(c) APPROPRIATIONS.—There is authorized to be appropriated $60,000,000 for each of the fiscal years 2014 and 2015, which shall be used to expedite the implementation of section 428(i) of the Homeland Security Act, as amended by this section.

SEC. 408. EXPEDITED CLEARANCE AND PLACEMENT OF DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT OVERSEAS EMBASSIES AND CONSULAR POSTS.

Section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236) is amended by adding at the end the following:

"(j) EXPEDITED CLEARANCE AND PLACEMENT OF DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT OVERSEAS EMBASSIES AND CONSULAR POSTS.—Notwithstanding any other provision of law, and the processes set forth in National Security Defense Directive 38 (dated June 2, 1982) or any successor Directive, the Chief of Mission of a post to which the Secretary of Homeland Security has assigned personnel under subsection (e) or (i) shall ensure, not later than one year after the date on which the Secretary of Homeland Security communicates such assignment to the Secretary of State, that such personnel have been stationed and accommodated at post and are able to carry out their duties.".

SEC. 409. ACCREDITATION REQUIREMENTS.

(a) COLLEGES, UNIVERSITIES, AND LANGUAGE TRAINING PROGRAMS.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended—

(1) in paragraph (15)(F)(i)—

(A) by striking "section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States" and inserting "section 214(m) at an accredited college, university, or language training program, or at an established seminary, conservatory, academic high school, elementary school, or other academic institution in the United States";

(B) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security"; and

(C) by striking "and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn," and inserting "and if any such institution of learning of place of study fails to make reports promptly or fails to comply with any accreditation requirement (including deadlines for submitting accreditation applications or obtaining accreditation) the approval shall be withdrawn,"; and

(2) by amending paragraph (52) to read as follows:

"(52) Except as provided in section 214(m)(4), the term 'accredited college, university, or language training program' means a college, university, or language training program that is accredited by an accrediting agency recognized by the Secretary of Education.".

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

"(3) The Secretary of Homeland Security shall require accreditation of an academic institution (except for seminaries or other religious institutions) for purposes of section 101(a)(15)(F) if—

"(A) that institution is not already required to be accredited under section 101(a)(15)(F)(i); and

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

"(4) The Secretary of Homeland Security, in the Secretary's discretion, may waive the accreditation requirement in paragraph (3) or section 101(a)(15)(F)(i) with respect to an institution if such institution—

"(A) is otherwise in compliance with the requirements of section 101(a)(15)(F)(i); and

"(B) has been a candidate for accreditation for at least 1 year and continues to progress toward accreditation by an accrediting agency recognized by the Secretary of Education.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall—

(A) take effect on the date that is 180 days after the date of enactment of this Act; and

(B) apply with respect to applications for nonimmigrant visas that are filed on or after the effective date described in subparagraph (A).

(2) TEMPORARY EXCEPTION.—During the 3-year period beginning on the effective date described in paragraph (1)(A), an institution that is newly required to be accredited under this section may continue to participate in the Student and Exchange Visitor Program notwithstanding the institution's lack of accreditation if the institution—

(A) was certified under the Student and Exchange Visitor Program on such date;

(B) submitted an application for accreditation to an accrediting agency recognized by the Secretary of Education during the 6-month period ending on such date; and

(C) continues to progress toward accreditation by such accrediting agency.

SEC. 410. VISA FRAUD.

(a) TEMPORARY SUSPENSION OF SEVIS ACCESS.—Section 641(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)) is amended—

(1) in paragraph (1)(A), by striking "institution,," and inserting "institution,"; and

(2) by adding at the end the following:

"(3) EFFECT OF REASONABLE SUSPICION OF FRAUD.—If the Secretary of Homeland Security has reasonable suspicion that an owner of, or a designated school official at, an approved institution of higher education, an other approved educational institution, or a designated exchange visitor program has committed fraud or attempted to commit fraud relating to any aspect of the Student and Exchange Visitor Program, the Secretary may immediately suspend, without notice, such official's or such school's access to the Student and Exchange Visitor Information System (SEVIS), including the ability to issue Form I–20s, pending a final determination by the Secretary with respect to the institution's certification under the Student and Exchange Visitor Program.".

(b) EFFECT OF CONVICTION FOR VISA FRAUD.—Such section 641(d), as amended by subsection (a)(2), is further amended by adding at the end the following:

"(4) PERMANENT DISQUALIFICATION FOR FRAUD.—A designated school official at, or an owner of, an approved institution of higher education, an other approved educational institution, or a designated exchange visitor program who is convicted for fraud relating to any aspect of the Student and Exchange Visitor Program shall be permanently disqualified from filing future petitions and from having an ownership interest or a management role, including serving as a principal, owner, officer, board member, general partner, designated school official, or any other position of substantive authority for the operations or management of the institution, in any United States educational institution that enrolls nonimmigrant alien students described in subparagraph (F) or (M) of section 101(a)(15) the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).".

SEC. 411. BACKGROUND CHECKS.

(a) IN GENERAL.—Section 641(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)), as amended by section 411(b) of this Act, is further amended by adding at the end the following:

"(5) BACKGROUND CHECK REQUIREMENT.—

"(A) IN GENERAL.—An individual may not serve as a designated school official or be granted access to SEVIS unless the individual is a national of the United States or an alien lawfully admitted for permanent residence and during the most recent 3-year period—

"(i) the Secretary of Homeland Security has—

"(I) conducted a thorough background check on the individual, including a review of the individual's criminal and sex offender history and the verification of the individual's immigration status; and

"(II) determined that the individual has not been convicted of any violation of United States immigration law and is not a risk to national security of the United States; and

"(ii) the individual has successfully completed an on-line training course on SEVP and SEVIS, which has been developed by the Secretary.

"(B) INTERIM DESIGNATED SCHOOL OFFICIAL.—

"(i) IN GENERAL.—An individual may serve as an interim designated school official during the period that the Secretary is conducting the background check required by subparagraph (A)(i)(I).

"(ii) REVIEWS BY THE SECRETARY.—If an individual serving as an interim designated school official under clause (i) does not successfully

complete the background check required by subparagraph (A)(i)(I), the Secretary shall review each Form I–20 issued by such interim designated school official.

"(6) FEE.—The Secretary is authorized to collect a fee from an approved school for each background check conducted under paragraph (6)(A)(i). The amount of such fee shall be equal to the average amount expended by the Secretary to conduct such background checks.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 1 year after the date of the enactment of this Act.

SEC. 412. NUMBER OF DESIGNATED SCHOOL OFFICIALS.

Section 641(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)), as amended by section 412(a) of this Act, is further amended by adding at the end the following:

"(7) NUMBER OF DESIGNATED SCHOOL OFFICIALS.—School officials may nominate as many Designated School Officials (DSOs) in addition to the school's Principal Designated School Official (PDSO) as they determine necessary to adequately provide recommendations to students enrolled at the school regarding maintenance of nonimmigrant status under subparagraph (F) or (M) of section 101(a)(15) and to support timely and complete recordkeeping and reporting to the Secretary of Homeland Security, as required by this section, except that a school may not have less than one DSO per every 200 students who have nonimmigrant status pursuant to subparagraph (F), (J), or (M) of such section. School officials shall not permit a DSO or PDSO nominee access to SEVIS until the Secretary approves the nomination.".

SEC. 413. REPORTING REQUIREMENT.

Section 442(a) of the Homeland Security Act of 2002 (6 U.S.C. 252(a)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

"(5) STUDENT AND EXCHANGE VISITOR PROGRAM.—In administering the program under paragraph (4), the Secretary shall, not later than one year after the date of the enactment of this paragraph, prescribe regulations to require an institution or exchange visitor program sponsor participating in the Student Exchange Visitor Program to ensure that each student or exchange visitor who has nonimmigrant status pursuant to subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) enrolled at the institution or attending the exchange visitor program is reported to the Department within 10 days of—

"(A) transferring to another institution or program;

"(B) changing academic majors; or

"(C) any other changes to information required to be maintained in the system described in paragraph (4).".

SEC. 414. FLIGHT SCHOOLS NOT CERTIFIED BY FAA.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of Homeland Security shall prohibit any flight school in the United States from accessing SEVIS or issuing a Form I–20 to an alien seeking a student visa pursuant to subparagraph (F)(i) or (M)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) if the flight school has not been certified to the satisfaction of the Secretary and by the Federal Aviation Administration pursuant to part 141 or part 142 of title 14, Code of Federal Regulations (or similar successor regulations).

(b) TEMPORARY EXCEPTION.—During the 5-year period beginning on the date of the enactment of this Act, the Secretary may waive the requirement under subsection (a) that a flight school be certified by the Federal Aviation Administration if such flight school—

(1) was certified under the Student and Exchange Visitor Program on the date of the enactment of this Act;

(2) submitted an application for certification with the Federal Aviation Administration during the 1-year period beginning on such date; and

(3) continues to progress toward certification by the Federal Aviation Administration.

SEC. 415. REVOCATION OF ACCREDITATION.

At the time an accrediting agency or association is required to notify the Secretary of Education and the appropriate State licensing or authorizing agency of the final denial, withdrawal, suspension, or termination of accreditation of an institution pursuant to section 496 of the Higher Education Act of 1965 (20 U.S.C. 1099b), such accrediting agency or association shall notify the Secretary of Homeland Security of such determination and the Secretary of Homeland Security shall imme-

diately withdraw the school from the SEVP and prohibit the school from accessing SEVIS.

SEC. 416. REPORT ON RISK ASSESSMENT.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that contains the risk assessment strategy that will be employed by the Secretary to identify, investigate, and take appropriate action against schools and school officials that are facilitating the issuance of Form I–20 and the maintenance of student visa status in violation of the immigration laws of the United States.

SEC. 417. IMPLEMENTATION OF GAO RECOMMENDATIONS.

Not later than 180 days after the date of the enactment of this act, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that describes—

(1) the process in place to identify and assess risks in the SEVP;

(2) a risk assessment process to allocate SEVP's resources based on risk;

(3) the procedures in place for consistently ensuring a school's eligibility, including consistently verifying in lieu of letters;

(4) how SEVP identified and addressed missing school case files;

(5) a plan to develop and implement a process to monitor state licensing and accreditation status of all SEVP-certified schools;

(6) whether all flight schools that have not been certified to the satisfaction of the Secretary and by the Federal Aviation Administration have been removed from the program and have been restricted from accessing SEVIS;

(7) the standard operating procedures that govern coordination among SEVP, Counterterrorism and Criminal Exploitation Unit, and U.S. Immigration and Customs Enforcement field offices; and

(8) the established criteria for referring cases of a potentially criminal nature from SEVP to the counterterrorism and intelligence community.

SEC. 418. IMPLEMENTATION OF SEVIS II.

Not later than 2 years after the date of the enactment of this Act, the Secretary of Homeland Security shall complete the deployment of both phases of the 2nd generation Student and Exchange Visitor Information System (commonly known as "SEVIS II").

SEC. 419. DEFINITIONS.

(a) DEFINITIONS.—For purposes of this title:

(1) SEVIS.—The term "SEVIS" means the Student and Exchange Visitor Information System of the Department of Homeland Security.

(2) SEVP.—The term "SEVP" means the Student and Exchange Visitor Program of the Department of Homeland Security.

TITLE V—AID TO U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICERS

SEC. 501. ICE IMMIGRATION ENFORCEMENT AGENTS.

(a) IN GENERAL.—The Secretary of Homeland Security shall authorize all immigration enforcement agents and deportation officers of the Department of Homeland Security who have successfully completed basic immigration law enforcement training to exercise the powers conferred by—

(1) section 287(a)(5)(A) of the Immigration and Nationality Act to arrest for any offense against the United States;

(2) section 287(a)(5)(B) of such Act to arrest for any felony;

(3) section 274(a) of such Act to arrest for bringing in, transporting, or harboring certain aliens, or inducing them to enter;

(4) section 287(a) of such Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States; and

(5) section 287(a) of such Act to carry firearms, provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force.

(b) ARREST POWERS.—Section 287(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(2)) is amended by striking "regulation and is likely to escape before a warrant can be obtained for his arrest," and inserting "regulation,".

(c) PAY.—Immigration enforcement agents shall be paid on the same scale as Immigration and Customs Enforcement deportation officers and shall receive the same benefits.

SEC. 502. ICE DETENTION ENFORCEMENT OFFICERS.

(a) AUTHORIZATION.—The Secretary of Homeland Security is authorized to hire 2,500 Immigration and Customs Enforcement detention enforcement officers.

(b) DUTIES.—Immigration and Customs Enforcement detention enforcement officers who have successfully completed detention enforcement officers' basic training shall be responsible for—

(1) taking and maintaining custody of any person who has been arrested by an immigration officer;

(2) transporting and guarding immigration detainees;

(3) securing Department of Homeland Security detention facilities; and

(4) assisting in the processing of detainees.

SEC. 503. ENSURING THE SAFETY OF ICE OFFICERS AND AGENTS.

(a) BODY ARMOR.—The Secretary of Homeland Security shall ensure that every Immigration and Customs Enforcement deportation officer and immigration enforcement agent on duty is issued high-quality body armor that is appropriate for the climate and risks faced by the agent. Enough body armor must be purchased to cover every agent in the field.

(b) WEAPONS.—Such Secretary shall ensure that Immigration and Customs Enforcement deportation officers and immigration enforcement agents are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and innocent third parties from the threats posed by armed criminals. Such weapons shall include, at a minimum, standard-issue handguns, M–4 (or equivalent) rifles, and Tasers.

(c) EFFECTIVE DATE.—This section shall take effect 90 days after the date of the enactment of this Act.

SEC. 504. ICE ADVISORY COUNCIL.

(a) ESTABLISHMENT.—An ICE Advisory Council shall be established not later than 3 months after the date of the enactment of this Act.

(b) MEMBERSHIP.—The ICE Advisor Council shall be comprised of 7 members.

(c) APPOINTMENT.—Members shall to be appointed in the following manner:

(1) One member shall be appointed by the President;

(2) One member shall be appointed by the Chairman of the Judiciary Committee of the House of Representatives;

(3) One member shall be appointed by the Chairman of the Judiciary Committee of the Senate;

(4) One member shall be appointed by the Local 511, the ICE prosecutor's union; and

(5) Three members shall be appointed by the National Immigration and Customs Enforcement Council.

(d) TERM.—Members shall serve renewable, 2-year terms.

(e) VOLUNTARY.—Membership shall be voluntary and non-remunerated, except that members will receive reimbursement from the Secretary of Homeland Security for travel and other related expenses.

(f) RETALIATION PROTECTION.—Members who are employed by the Secretary of Homeland Security shall be protected from retaliation by their supervisors, managers, and other Department of Homeland Security employees for their participation on the Council.

(g) PURPOSE.—The purpose of the Council is to advise the Congress and the Secretary of Homeland Security on issues including the following:

(1) The current status of immigration enforcement efforts, including prosecutions and removals, the effectiveness of such efforts, and how enforcement could be improved;

(2) The effectiveness of cooperative efforts between the Secretary of Homeland Security and other law enforcement agencies, including additional types of enforcement activities that the Secretary should be engaged in, such as State and local criminal task forces;

(3) Personnel, equipment, and other resource needs of field personnel;

(4) Improvements that should be made to the organizational structure of the Department of Homeland Security, including whether the position of immigration enforcement agent should be merged into the deportation officer position; and

(5) The effectiveness of specific enforcement policies and regulations promulgated by the Secretary of Homeland Security, and whether other enforcement priorities should be considered.

(h) REPORTS.—The Council shall provide quarterly reports to the Chairmen and Ranking Members of the Judiciary Committees of the Senate and the House of Representatives and to the Secretary of Homeland Security. The Council members shall meet directly with the Chairmen and Ranking Members (or their designated representatives) and with the Secretary to discuss their reports every 6 months.

SEC. 505. PILOT PROGRAM FOR ELECTRONIC FIELD PROCESSING.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a pilot program in at least five of the 10 Immigration and Customs Enforcement field offices with the largest removal caseloads to allow Immigration and Customs deportation officers and immigration enforcement agents to—

(1) electronically process and serve charging documents, including Notices to Appear, while in the field; and

(2) electronically process and place detainers while in the field.

(b) DUTIES.—The pilot program described in subsection (a) shall be designed to allow deportation officers and immigration enforcement agents to use handheld or vehicle-mounted computers to—

(1) enter any required data, including personal information about the alien subject and the reason for issuing the document;

(2) apply the electronic signature of the issuing officer or agent;

(3) set the date the alien is required to appear before an immigration judge, in the case of Notices to Appear;

(4) print any documents the alien subject may be required to sign, along with additional copies of documents to be served on the alien; and

(5) interface with the ENFORCE database so that all data is stored and retrievable.

(c) CONSTRUCTION.—The pilot program described in subsection (a) shall be designed to replace, to the extent possible, the current paperwork and data-entry process used for issuing such charging documents and detainers.

(d) DEADLINE.—The Secretary shall initiate the pilot program described in subsection (a) within 6 months of the date of enactment of this Act.

(e) REPORT.—The Government Accountability Office shall report to the Judiciary Committee of the Senate and the House of Representatives no later than 18 months after the date of enactment of this Act on the effectiveness of the pilot program and provide recommendations for improving it.

(f) ADVISORY COUNCIL.—The ICE Advisory Council established by section 504 shall include an recommendations on how the pilot program should work in the first quarterly report of the Council, and shall include assessments of the program and recommendations for improvement in each subsequent report.

(g) EFFECTIVE DATE.—This section shall take effect 180 days after the date of the enactment of this Act.

SEC. 506. ADDITIONAL ICE DEPORTATION OFFICERS AND SUPPORT STAFF.

(a) IN GENERAL.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active-duty Immigration and Customs Enforcement deportation officers by 5,000 above the number of full-time positions for which funds were appropriated for fiscal year 2013. The Secretary will determine the rate at which the additional officers will be added with due regard to filling the positions as expeditiously as possible without making any compromises in the selection or the training of the additional officers.

(b) SUPPORT STAFF.—The Secretary shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time support staff for Immigration and Customs Enforcement deportation officers by 700 above the number of full-time positions for which funds were appropriated for fiscal year 2013.

SEC. 507. ADDITIONAL ICE PROSECUTORS.

The Secretary of Homeland Security shall increase by 60 the number of full-time trial attorneys working for the Immigration and Customs Enforcement Office of the Principal Legal Advisor.

TITLE VI—MISCELLANEOUS ENFORCEMENT PROVISIONS

SEC. 601. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

(a) IN GENERAL.—Section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) is amended—

(1) in subsection (a)—

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

"(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240.";

(B) by striking paragraph (3);

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

(D) by adding after paragraph (1) the following:

"(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.";

(E) in paragraph (3), as redesignated—

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

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

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

(iii) by adding after subparagraph (A) the following:

"(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.";

(iv) in subparagraph (C), as redesignated, by striking "subparagraphs (C) and (D)(ii)" and inserting "subparagraphs (D) and (E)(ii)";

(v) in subparagraph (D), as redesignated, by striking "subparagraph (B)" each place that term appears and inserting "subparagraph (C)"; and

(vi) in subparagraph (E), as redesignated, by striking "subparagraph (B)" each place that term appears and inserting "subparagraph (C)"; and

(F) in paragraph (4), by striking "paragraph (1)" and inserting "paragraphs (1) and (2)";

(2) in subsection (b)(2), by striking "a period exceeding 60 days" and inserting "any period in excess of 45 days";

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

"(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

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

"(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Se-

curity may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

"(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement before accepting such agreement.

"(4) FAILURE TO COMPLY WITH AGREEMENT.—

"(A) IN GENERAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is—

"(i) ineligible for the benefits of the agreement;

"(ii) subject to the penalties described in subsection (d); and

"(iii) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b).

"(B) EFFECT OF FILING TIMELY APPEAL.—If, after agreeing to voluntary departure, the alien files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences of such agreement, but precludes the alien from another grant of voluntary departure while the alien remains in the United States.

"(5) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.";

(4) by amending subsection (d) to read as follows:

"(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:

"(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify this amount, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

"(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien's departure for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

"(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal that took effect upon the alien's failure to depart, or upon the alien's other violations of the conditions for voluntary departure, during the period described in paragraph (2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.";

(5) by amending subsection (e) to read as follows:

"(e) ELIGIBILITY.—

"(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

"(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsections (a)(2) or (b) of this section for any class or classes of aliens."; and

(6) in subsection (f), by adding at the end the following: "Notwithstanding section 242(a)(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory or nonstatutory), no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.".

(b) RULEMAKING.—The Secretary shall within one year of the date of enactment of this Act promulgate regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

(c) EFFECTIVE DATES.—

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

(2) EXCEPTION.—The amendment made by subsection (a)(6) shall take effect on the date of the enactment of this Act and shall apply with respect to any petition for review which is filed on or after such date.

SEC. 602. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.

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

(1) in clause (i), by striking "seeks admission within 5 years of the date of such removal (or within 20 years" and inserting "seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal"; and

(2) in clause (ii), by striking "seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of" and inserting "seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after".

(b) BAR ON DISCRETIONARY RELIEF.—Section 274D of such Act (8 U.S.C. 324d) is amended—

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

(2) by adding at the end the following:

"(c) INELIGIBILITY FOR RELIEF.—

"(1) IN GENERAL.—Unless a timely motion to reopen is granted under section 240(c)(6), an alien described in subsection (a) shall be ineligible for any discretionary relief from removal (including cancellation of removal and adjustment of status) during the time the alien remains in the United States and for a period of 10 years after the alien's departure from the United States.

"(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the final order of removal in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.".

(c) EFFECTIVE DATES.—The amendments made by this section shall take effect on the date of the enactment of this Act with respect to aliens who are subject to a final order of removal entered before, on, or after such date.

SEC. 603. REINSTATEMENT OF REMOVAL ORDERS.

(a) IN GENERAL.—Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:

"(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed, deported, or excluded or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

"(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed notwithstanding section 242(a)(2)(D);

"(B) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application or request for such relief may have been filed or made; and

"(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not require proceedings under section 240 or other proceedings before an immigration judge.".

(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following:

"(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—

"(1) REVIEW OF REINSTATEMENT.—Judicial review of determinations under section 241(a)(5) is available in an action under subsection (a).

"(2) NO REVIEW OF ORIGINAL ORDER.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, any other habeas corpus provision, or sections 1361 and 1651 of such title, no court shall have jurisdiction to review any cause or claim, arising from, or relating to, any challenge to the original order.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on April 1, 1997, and shall apply to all orders reinstated or after that date by the Secretary of Homeland Security (or by the Attorney General prior to March 1, 2003), regardless of the date of the original order.

SEC. 604. CLARIFICATION WITH RESPECT TO DEFINITION OF ADMISSION.

Section 101(a)(13)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(A)) is amended by adding at the end the following: "An alien's adjustment of status to that of lawful permanent resident status under any provision of this Act, or under any other provision of law, shall be considered an 'admission' for any purpose under this Act, even if the adjustment of status occurred while the alien was present in the United States.".

SEC. 605. REPORTS TO CONGRESS ON THE EXERCISE AND ABUSE OF PROSECUTORIAL DISCRETION.

(a) IN GENERAL.—Not later than 180 days after the end of each fiscal year, the Secretary of Homeland Security and the Attorney General shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the following:

(1) Aliens apprehended or arrested by State or local law enforcement agencies who were identified by the Department of Homeland Security in the previous fiscal year and for whom the Department of Homeland Security did not issue detainers and did not take into custody despite the Department of Homeland Security's findings that the aliens were inadmissible or deportable.

(2) Aliens who were applicants for admission in the previous fiscal year but not clearly and beyond a doubt entitled to be admitted by an immigration officer and who were not detained as required pursuant to section 235(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(2)(A)).

(3) Aliens who in the previous fiscal year were found by Department of Homeland Security officials performing duties related to the adjudication of applications for immigration benefits or the enforcement of the immigration laws to be inadmissible or deportable who were not issued notices to appear pursuant to section 239 of such Act (8 U.S.C. 1229) or placed into removal proceedings pursuant to section 240 (8 U.S.C. 1229a), unless the aliens were placed into expedited removal proceedings pursuant to section 235(b)(1)(A)(i) (8 U.S.C. 1225(b)(1)(A)(5)) or section 238 (8 U.S.C. 1228), were granted voluntary departure pursuant to section 240B, were granted relief from removal pursuant to statute, were granted legal nonimmigrant or immigrant status pursuant to statute, or were determined not to be inadmissible or deportable.

(4) Aliens issued notices to appear that were cancelled in the previous fiscal year despite the Department of Homeland Security's findings that the aliens were inadmissible or deportable, unless the aliens were granted relief from removal pursuant to statute, were granted voluntary departure pursuant to section 240B of such Act (8 U.S.C. 1229c), or were granted legal nonimmigrant or immigrant status pursuant to statute.

(5) Aliens who were placed into removal proceedings, whose removal proceedings were terminated in the previous fiscal year prior to their conclusion, unless the aliens were granted relief from removal pursuant to statute, were granted voluntary departure pursuant to section 240B, were granted legal nonimmigrant or immigrant status pursuant to statute, or were determined not to be inadmissible or deportable.

(6) Aliens granted parole pursuant to section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

(7) Aliens granted deferred action, extended voluntary departure or any other type of relief from removal not specified in the Immigration and Nationality Act or where determined not to be inadmissible or deportable.

(b) CONTENTS OF REPORT.—The report shall include a listing of each alien described in each paragraph of subsection (a), including when in the possession of the Department of Homeland Security their names, fingerprint identification numbers, alien registration numbers, and reason why each was granted the type of prosecutorial discretion received. The report shall also include current criminal histories on each alien from the Federal Bureau of Investigation.

SEC. 606. WAIVER OF FEDERAL LAWS WITH RESPECT TO BORDER SECURITY ACTIONS ON DEPARTMENT OF THE INTERIOR AND DEPARTMENT OF AGRICULTURE LANDS.

(a) PROHIBITION ON SECRETARIES OF THE INTERIOR AND AGRICULTURE.—The Secretary of the Interior or the Secretary of Agriculture shall not impede, prohibit, or restrict activities of U.S. Customs and Border Protection on Federal land located within 100 miles of an international land border that is under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture, to execute search and rescue operations and to prevent all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband through the international land borders of the United States.

(b) AUTHORIZED ACTIVITIES OF U.S. CUSTOMS AND BORDER PROTECTION.—U.S. Customs and Border Protection shall have immediate access to Federal land within 100 miles of the international land border under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture for purposes of conducting the following activities on such land that prevent all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband through the international land borders of the United States:

(1) Construction and maintenance of roads.

(2) Construction and maintenance of barriers.

(3) Use of vehicles to patrol, apprehend, or rescue.

(4) Installation, maintenance, and operation of communications and surveillance equipment and sensors.

(5) Deployment of temporary tactical infrastructure.

(c) CLARIFICATION RELATING TO WAIVER AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law (including any termination date relating to the waiver referred to in this subsection), the waiver by the Secretary of Homeland Security on April 1, 2008, under section 102(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note; Public Law 104–208) of the laws described in paragraph (2) with respect to certain sections of the international border between the United States and Mexico and between the United States and Canada shall be considered to apply to all Federal land under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture within 100 miles of the international land borders of the United States for the activities of U.S. Customs and Border Protection described in subsection (c).

(2) DESCRIPTION OF LAWS WAIVED.—The laws referred to in paragraph (1) are limited to the Wilderness Act (16 U.S.C. 1131 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), Public Law 86–523 (16 U.S.C. 469 et seq.), the Act of June 8, 1906 (commonly known as the "Antiquities Act of 1906"; 16 U.S.C. 431 et seq.), the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the "Administrative Procedure Act"), the National Park Service Organic Act (16 U.S.C. 1 et seq.), the General Authorities Act of 1970 (Public Law 91–383) (16 U.S.C. 1a–1 et seq.), sections 401(7), 403, and 404 of the National Parks and Recreation Act of 1978 (Public Law 95–625, 92 Stat. 3467), and the Arizona Desert Wilderness Act of 1990 (16 U.S.C. 1132 note; Public Law 101–628).

(d) PROTECTION OF LEGAL USES.—This section shall not be construed to provide—

(1) authority to restrict legal uses, such as grazing, hunting, mining, or public-use recreational and backcountry airstrips on land under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture; or

(2) any additional authority to restrict legal access to such land.

(e) EFFECT ON STATE AND PRIVATE LAND.—This Act shall—

(1) have no force or effect on State or private lands; and

(2) not provide authority on or access to State or private lands.

(f) TRIBAL SOVEREIGNTY.—Nothing in this section supersedes, replaces, negates, or diminishes treaties or other agreements between the United States and Indian tribes.

(g) REPORT.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Homeland Security shall submit to the appropriate committees of Congress a report describing the extent to which implementation of this section has affected the operations of U.S. Customs and Border Protection in the year preceding the report.

SEC. 607. BIOMETRIC ENTRY AND EXIT DATA SYSTEM.

(a) IN GENERAL.—Not later than two years after the date of the enactment of this Act, the Secretary of Homeland Security shall establish the biometric entry and exit data system required by section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b).

(b) REQUIREMENTS.—In addition to the features required by such section 7208, the Secretary shall ensure that the biometric entry and exit data system is established and in operation at each port of entry to the United States.

SEC. 608. CERTAIN ACTIVITIES RESTRICTED.

(a) IN GENERAL.—The Secretary of Homeland Security may not finalize, implement, administer, or enforce the documents described in subsection (b).

(b) DOCUMENTS DESCRIBED.—For purposes of this section, the documents described in this subsection are the following:

(1) Policy Number 10072.1, published on March 2, 2011.

(2) Policy Number 10075.1, published on June 17, 2011.

(3) Policy Number 10076,1, published on June 17, 2011.

(4) The Memorandum of November 17, 2011, from the Principal Legal Advisor of United States Immigration and Customs Enforcement pertaining to "Case-by-Case Review of Incoming and Certain Pending Cases".

(5) The Memorandum of June 15, 2012, from the Secretary of Homeland Security pertaining to "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children".

(6) The Memorandum of December 21, 2012, from the Director of United States Immigration and Customs Enforcement pertaining to "Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems".

(7) The Memorandum of June 15, 2012, from the Director of United States Immigration and Customs Enforcement pertaining to "Secretary Napolitano's Memorandum Concerning the Exercise of Prosecutorial Discretion for Certain Removable Individuals Who Entered the United States as a Child".

SEC. 609. BORDER PATROL MOBILE AND RAPID RESPONSE TEAMS.

(a) FINDINGS.—The Congress finds as follows:

(1) It is possible for agents of U.S. Immigration and Customs Enforcement to use mobile rapid response teams.

(2) If such agents are in the field near the border and encounter trouble, they should be able to call a mobile response team if they cannot get help quickly enough by other means.

(b) PLAN.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a plan for developing and deploying mobile rapid response teams to achieve the following objectives, and submit progress reports on the program every 90 days after it has been implemented:

(1) Expand the Border Control Tactical Team program to make emergency assistance available to law enforcement officers in border areas along the Mexican border that are not designated as high traffic locations, including officers who operate on Tribal land.

(2) Provide helicopters and other military transports to ensure that the teams can deploy quickly to where they are needed.

(3) Maintain airborne patrols of these units to facilitate quick deployment when they are called.

(4) Provide a similar airborne force of regular border patrol officers who will provide the same emergency response service for ranchers, farmers, and other people who live or work in these border areas.

(c) IMPLEMENTATION.—The Secretary of Homeland Security shall implement the plan described in subsection (a) not later than 120 days after the date on which the plan is submitted.

SEC. 610. GAO STUDY ON DEATHS IN CUSTODY.

The Comptroller General of the United States shall submit to Congress within 6 months after the date of the enactment of this Act, a report on the deaths in custody

of detainees held by the Department of Homeland Security. The report shall include the following information with respect to any such deaths and in connection therewith:

(1) Whether any such deaths could have been prevented by the delivery of medical treatment administered while the detainee is in the custody of the Department of Homeland Security.

(2) Whether Department practice and procedures were properly followed and obeyed.

(3) Whether such practice and procedures are sufficient to protect the health and safety of such detainees.

(4) Whether reports of such deaths were made to the Deaths in Custody Reporting Program.

Purpose and Summary

To improve and ensure enforcement of U.S. immigration laws within the interior of the United States.

Background and Need for the Legislation

THE STRENGTHEN AND FORTIFY ENFORCEMENT ACT (THE SAFE ACT)

On June 6, 2013, Immigration and Border Security Subcommittee Chairman Trey Gowdy introduced a bill to improve the interior enforcement of our immigration laws and strengthen national security. The Strengthen and Fortify Enforcement Act (H.R. 2278), also known as the SAFE Act, grants states and localities the authority to enforce Federal immigration laws and their own immigration laws, makes it more difficult for foreign nationals who pose a national security risk to enter and remain in the U.S., improves visa security, protects American communities from dangerous criminal aliens, strengthens border security, and equips our immigration enforcement officers to better do their jobs. H.R. 2278 is designed to end the current state of affairs in which the nation's immigration laws go largely unenforced because the President has directed his administration to simply not enforce them. The bill responds to the Supreme Court's decision in *Arizona v. U.S.* [1] by granting States and localities specific Congressional authorization to enact and enforce criminal and civil penalties that penalize conduct prohibited by criminal and civil provisions of Federal immigration law, as long as the criminal penalties do not exceed the relevant Federal penalties and Federal law does not otherwise prohibit such laws.[2] In addition, law enforcement personnel of states and localities may investigate, identify, apprehend, detain, or transfer to Federal custody aliens in the United States for the purposes of enforcing the immigration laws of the United States.[3] The bill includes provisions to facilitate assistance of State and local enforcement of immigration laws while penalizing sanctuary jurisdictions that are already acting in violation of Federal law.[4]

Second, the bill makes it more difficult for foreign terrorists and other foreign nationals who pose national security concerns to enter and remain in the United States.[5] Of note, the bill bars foreign terrorists and other immigrants who threaten national security from receiving immigration benefits, such as naturalization and discre-

[1] 132 S. Ct. 2492 (2012).
[2] *See* H.R. 2278, sec. 102.
[3] *See id.*
[4] *See id.* at Title I.
[5] *See id.* at Title II.

tionary relief from removal.[6] The bill also requires that no immigration benefits can be provided to immigrants until all required background and security checks are completed.[7]

Next, the bill protects American communities from dangerous aliens.[8] The bill facilitates and expedites the removal of criminal aliens and the removal of sex offenders, drunk drivers and alien members of criminal gangs.[9] When a dangerous criminal alien cannot be removed from the U.S., the bill allows the Department of Homeland Security (DHS) to detain them. The bill strengthens Federal criminal provisions regarding those who defraud aliens seeking immigration benefits, and regarding immigration and visa fraud, alien smuggling and illegal entry.[10] The bill clarifies existing law so persons who use false identification documents can be prosecuted under identity theft statutes, regardless of whether they knew the documents belonged to another person. The bill also clarifies the Federal money laundering provisions.[11]

Under current law, illegal entry into the United States is a misdemeanor, while no criminal violations attach to an alien who is illegally present, i.e. enters legally but violates the terms of their visa and overstays. This bill makes illegal presence in the U.S. a Federal misdemeanor, just as is illegal entry.[12]

The bill improves visa security by strengthening our nation's first line of defense, the visa issuance process. The bill expands the Visa Security Program to additional high risk posts, strengthens the integrity of the student visa program, and authorizes the Department of Homeland Security and State Department to revoke visas to foreign nationals if in the security or foreign policy interests of the U.S.[13]

The bill helps U.S. Immigration and Customs Enforcement (ICE) officers to better accomplish their jobs of enforcing Federal immigration laws by ensuring they have the tools needed to do so. The bill also ensures the safety of these agents by allowing them to carry firearms and provides them body armor.[14]

Finally, the bill strengthens border security by prohibiting the Departments of Interior and Agriculture from denying Border Patrol agents access to Federal lands within 100 miles of the border. This will better enable Border Patrol agents to secure our border and prevent illegal activity, such as illegal immigration, smuggling, and drug trafficking. It also prohibits these agencies from interfering with Border Patrol activities such as construction and maintenance of roads and barriers, use of patrol vehicles and deployment of tactical infrastructure.[15]

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[6] *See id.*
[7] *See id.*
[8] *See id.* at Title III.
[9] *See id.*
[10] *See id.*
[11] *See id.*
[12] *See id.*
[13] *See id.* at Title IV.
[14] *See id.* at Title V.
[15] *See id.* at Title VI.

THE NEED FOR STRENGTHENED INTERIOR IMMIGRATION ENFORCEMENT

Administrative Legalization

A. Prosecutorial Discretion

Under the current administration, ICE, whose job it is to enforce Federal immigration laws in the interior of the country, focuses its resources for removals on those removable aliens who are considered "high priority." To advise agents, attorneys, and field personnel on which removals are high priority, ICE and the former U.S. Immigration and Naturalization Service (INS) have issued a series of internal memoranda. These memoranda explain the ICE view of "prosecutorial discretion," which is the inherent authority of an agency charged with enforcing a law to decide whether to devote resources to enforce the law in particular instances.

In 2000, Clinton Administration INS Commissioner Doris Meissner issued a memo on exercising prosecutorial discretion in which she wrote that:

> "Prosecutorial discretion" is the authority of an agency charged with enforcing a law to decide whether to enforce, or not to enforce, the law against someone. The INS, like other law enforcement agencies, has prosecutorial discretion and exercises it every day. In the immigration context, the term applies not only to the decision to issue, serve, or file a Notice to Appear (NTA), but also to a broad range of other discretionary enforcement decisions, including among others: focusing investigative resources on particular offenses or conduct; deciding whom to stop, question, and arrest; maintaining an alien in custody; seeking expedited removal or other forms of removal by means other than a removal proceeding; settling or dismissing a proceeding; granting deferred action or staying a final order; agreeing to voluntary departure, withdrawal of an application for admission, or other action in lieu of removing the alien; pursuing an appeal; and executing a removal order. . . . The "favorable exercise of prosecutorial discretion" means a discretionary decision not to assert the full scope of the INS's enforcement authority as permitted under the law.[16]

However, Commissioner Meissner was careful to point out that prosecutorial discretion "is a powerful tool that must be used responsibly" and that "exercising prosecutorial discretion does not lessen the INS's commitment to enforce the immigration laws to the best of our ability. It is not an invitation to violate or ignore the law."[17] Former Commissioner Meissner has reiterated that "[p]rosecutorial discretion should be exercised on a case-by-case basis, and should not be used to immunize entire categories of noncitizens from immigration enforcement."[18]

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[16] Memo from Doris Meissner to Regional Directors, District Directors, Chief Patrol Agents, and Regional and District Counsel at 2 (Nov. 7, 2000).

[17] *Id.* at 3–4.

[18] Donald Kerwin, Doris Meissner & Margie McHugh, Executive Action on Immigration: Six Ways to Make the System Work Better, 2011 Migration Policy Institute at 15.

In 2010, top U.S. Citizenship and Immigration Services (USCIS) political and career agency officials wrote a draft memo to the Director of USCIS.[19] The memo suggested that DHS take steps to legalize millions of illegal immigrants through its administrative powers. For instance, the memo indicated that DHS could "grant deferred action to an unrestricted number of unlawfully present individuals" and suggested that it grant deferred action to illegal immigrants "who would be eligible for relief under the DREAM Act" (those aliens brought to the U.S. illegally by their parents while they were minors) or those who have lived in the U.S. since some particular date.

According to ICE, "deferred action" is "not a specific form of relief but rather a term used to describe the decision-making authority of ICE to allocate resources in the best possible manner to focus on high priority cases, potentially deferring action on [removal] cases with a lower priority," "such as [by] not placing an individual in removal proceedings."[20]

However, USCIS can grant work authorization to unlawful and removable aliens who have received deferred action—making it in essence a grant of administrative legalization.[21] In addition, DHS has determined that aliens do not accrue "unlawful presence" (which can result in their becoming inadmissible in the future) beginning on the date they are granted deferred action and ending when it is terminated.[22] Deferred action is not based on any specific statutory authority.[23]

The 2010 USCIS memo also suggested that parole (which allows aliens to enter the U.S. without being formally admitted or subject to grounds of inadmissibility, or, if already in the U.S., to be "paroled-in-place") be used to legalize unlawful aliens "who entered the U.S. as minors without inspection" or who have "lived for many years in the U.S." But in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress limited the administration's parole authority to use "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit."[24] The House Report stated that this limitation was "intended to end the use of parole authority to create an ad hoc immigration policy or to supplement current immigration categories without Congressional approval."[25]

In 2010, USCIS told Committee staff that it had rejected many of the suggestions in the memo. Subsequently, however, a seemingly authentic draft DHS memo was disseminated. It proposed the grant of deferred action to "the entire potential legalization population"—and if that was not possible, then to DREAM Act-eligible aliens or to unlawful aliens who claim to have worked in agriculture. In addition, the memo proposed to use parole authority to

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[19] *See* Memo from Denise Vanison, Policy and Strategy, Roxana Bacon, Office of the Chief Counsel, Debra Rogers, Field Operations, and Donald Neufeld, Service Center Operations, to Alejandro Mayorkas, Director (undated).

[20] ICE, DHS, Toolkit for Prosecutors at 4 (2011) and ICE, DHS, Continued Presence: Temporary Immigration Status for Victims of Human Trafficking (2010).

[21] *See* 8 C.F.R. sec. 274a.12(c)(14).

[22] *See* memo from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, USCIS, Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, USCIS & Pearl Chang, Acing Chief, Office of Policy and Strategy, USCIS, DHS, at 42 (May 6, 2009).

[23] *See* Toolkit for Prosecutors at 4.

[24] *See* sec. 602 of division C of title IV of Pub. L. No. 104–208 (sec. 212(d)(5)(A) of the INA).

[25] *See* H. Rept. No. 104–469, part 1, at 175 (1996).

allow the over three million immigrants on extended family immigrant visa waiting lists to enter the United States.

These memos were drafted in the context of great political pressure on the Obama Administration to legalize illegal immigrants through administrative action.[26]

On June 30, 2010, ICE Director John Morton issued a memo entitled "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens," which set forth new enforcement prioritization objectives. The memo outlines civil immigration enforcement priorities as they relate to the apprehension, detention, and removal of immigrants. The memo sets forth a three-tiered priority system:

Priority 1: Non-citizens who pose a danger to national security or a risk to public safety, including those suspected of terrorism, convicted of violent crimes, and gang members. Within Priority 1, these crimes are further ranked as Level 1, 2, or 3, with Level 1 being the most serious crimes. Level 1 and 2 offenders are of the greatest priority:

- **Level 1 offenders:** aliens convicted of "aggravated felonies," as defined in section 101(a)(43) of the Immigration and Nationality Act, or two or more crimes each punishable by more than 1 year's incarceration, commonly referred to as "felonies." (ICE notes that the definition of aggravated felony includes serious, violent offenses as well as less serious, nonviolent offenses, and that ICE personnel should prioritize the former within Level 1 offenses.)
- **Level 2 offenders:** aliens convicted of any felony or three or more crimes each punishable by less than 1 year's incarceration, commonly referred to as "misdemeanors;" and
- **Level 3 offenders:** aliens convicted of crimes punishable by less than 1 year's incarceration.

A footnote states that "some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license."

Priority 2: Non-citizens who recently crossed the border or a port of entry illegally, or through the knowing abuse of a visa or the visa waiver program.

Priority 3: Noncitizens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls.

On June 17, 2011, Director Morton issued two memos laying out the scope of DHS's prosecutorial discretion. These memos were explicit expressions of DHS policy.

Director Morton's memo entitled "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" gives instructions to ICE agents in the field, telling agency officials how to exercise prosecutorial discretion by actions such

[26] *See, e.g.,* letter from Senator Harry Reid and 21 other senators to President Obama (April 13, 2011) (The letter asked that DHS grant deferred action to all unlawful aliens who would qualify for amnesty under the DREAM Act.).

as granting deferred action, "deciding whom to stop, question, or arrest", deciding "whom to detain", and "dismissing" a removal proceeding.[27] According to the memo, "[w]hen weighing whether an exercise of prosecutorial discretion may be warranted for a given alien, ICE officers, agents and attorneys should consider all relevant factors," such as:

- ICE's "immigration enforcement priorities" (ICE has expressed little interest in deporting unlawful aliens who have not yet been convicted of "serious" crimes.[28]);
- the person's "pursuit of education in the United States;"
- "[w]hether the person has a U.S. citizen or permanent resident spouse, child or parent. . . . ;"
- "[w]hether the person or the person's spouse is pregnant . . . ;"
- the person's length of presence in the U.S.;
- whether the person is a long-time lawful permanent resident; and
- whether the person has a serious health condition.[29]

The second memo issued by Director Morton that day, "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs," urges the exercise of prosecutorial discretion in the case of unlawful aliens who are plaintiffs in civil rights lawsuits or who have disputes "with an employer, landlord, or contractor."

Following the release of these memos, DHS announced it would initiate a "case-by-case review" of about 300,000 cases of aliens already in removal proceedings and ensure that "appropriate discretionary consideration" be given to "compelling cases with final orders of removal."[30] According to information provided by DHS to the Judiciary Committee, the purpose of these changes was to limit cases initiated for removal in the future. Specifically, DHS indicated to the Committee that one of its main reasons for the new procedures is to "tweak who we are putting in the removal process in the first place."

The memo allows for administrative closure for cases in proceedings. Like deferred action, administrative closure was never meant to be used for the mass abandonment of viable cases. Specifically, the Board of Immigration Appeals (BIA) has encouraged DHS to administratively close cases in appropriate circumstances where there is a pending visa petition that is prima facie approvable—when an alien is eligible for statutory immigration relief.[31] For instance, DHS previously utilized administrative closure where the respondent was prima facie eligible for temporary protected

[27] *See* memo from John Morton, Director, ICE, DHS, to all Field Office Directors, all Special Agents in Charge, and all Chief Counsels, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens at 2–3 (June 17, 2011).

[28] *See* memo from John Morton, Director, ICE, DHS, to all ICE employees (March 2, 2011).

[29] *See* Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens at 4–5.

[30] Letter from DHS Secretary Janet Napolitano to Senator Harry Reid (August 19, 2011).

[31] *See* Matter of Rajah, 25 I&N Dec. 127 (BIA 2009).

status.[32] This new policy fails to take into account the large appellate body that is available to determine whether an alien is correctly in removal proceedings. The BIA has nationwide jurisdiction to review decisions of Immigration Judges.[33] Furthermore, pursuant to section 242 of the Immigration and Nationality Act, aliens can appeal adverse decisions to a Federal appeals court. From October 1, 2011 to September 30, 2012, ICE attorneys reviewed for prosecutorial discretion a total of 407,329 cases which were pending before Immigration Judges and the BIA.[34] As of October 1, 2012, ICE had filed motions to administratively close or dismiss 10,082 cases, and declined to file 568 Notices to Appear.[35]

Unfortunately, ICE stopped tracking prosecutorial discretion statistics on October 1, 2012, although, "ICE attorneys continue to exercise prosecutorial discretion with each and every case."[36] Countless others may have received prosecutorial discretion and not been placed in removal proceedings from the onset.[37]

B. Deferred Action for Childhood Arrivals

On June 15, 2012, Secretary Napolitano issued a memo providing, and the President announced, that beginning on August 15, 2012, DHS would grant deferred action to unlawful aliens who:[38]

- came to the United States under the age of sixteen;
- have continuously resided in the United States for a least 5 years preceding June 15, 2012, and were present in the United States on that date;
- are currently in school, have graduated from high school, have obtained a general education development certificate, or are honorably discharged veterans of the Coast Guard or Armed Forces of the United States;
- have not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise do not pose a threat to national security or public safety; and
- are not above the age of thirty.

USCIS first granted DACA benefits in September 2012. Since the DACA term is 2 years, the first grants began expiring in September 2014. In May 2014, USCIS announced renewal procedures for initial DACA recipients.

The policy, which became known as Deferred Action for Childhood Arrivals (DACA), was put in place despite the prior assurances that the USCIS memos outlining such a policy had been rejected, and despite President Obama's own March 28, 2011, admission that:

> With respect to the notion that I can just suspend deportations through executive order, that's just not the case, be-

[32] *See* Memo, Carpenter, Deputy Gen. Co. HQCOU 120/12.2 (Feb. 7, 2002), reported in 79 Interpreter Releases 524, 530–38.
[33] *See* 8 C.F.R. sec. 1003.1.
[34] Information provided by ICE.
[35] *See id.*
[36] *Id.*
[37] *See id.*
[38] *See* Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (2012).

> cause there are laws on the books that Congress has passed. . . . The executive branch's job is to enforce and implement those laws. . . . There are enough laws on the books by Congress that are very clear in terms of how we have to enforce our immigration system that for me to simply through executive order ignore those congressional mandates would not conform with my appropriate role as President.

DHS officials told Committee staff that DHS received a legal opinion from the U.S. Department of Justice affirming the legality of DACA.[39] Committee staff requested a copy of that opinion, but DHS refused to provide it. In any event, at a hearing of the Subcommittee on Immigration Policy and Enforcement in October 2011, former Justice Department official David Rivkin testified that:

> [When] the President has, in effect, suspended operation of [immigration] laws with regard to a very large identifiable class of offenders. . . . it clearly exceeds his constitutional authority and sets an extremely unfortunate record.
>
> Now we have heard a lot about enforcement priorities; and, of course, we all recognize that Federal agencies do . . . exercise prosecutorial discretion and the President can properly inform the exercise of such discretion. But that authority is not boundless.
>
> . . . .
>
> The President is entitled to establish enforcement priorities, but his ultimate goal must be the implementation of a law enacted by Congress. If a President disagrees with this law, his sole recourse is to convince Congress to change it.[40]

In his testimony, Mr. Rivkin referenced the 1838 decision in *Kendall v. U.S.*, in which the Supreme Court stated that "[t]o contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the Constitution, and entirely inadmissible."[41]

After the Napolitano announcement, it became clear that there was little if any planning in place regarding the actual implementation of DACA and processing of DACA applications. On the morning of June 15, 2012, DHS released Secretary Napolitano's memo regarding the administrative order. Later that morning, President Obama announced the new policy. The following Monday, USCIS Director Ali Mayorkas, ICE Director John Morton and U.S. Customs and Border Protection (CBP) Commissioner David Aguilar held a "stakeholder" conference call which Mayorkas began by stating that the three of them were "not in the position to answer many questions about the process."

[39] Briefing for House Judiciary Committee Staff by John Sandweg, Counselor to the Secretary of DHS, July 13, 2012.

[40] U.S. Immigration and Customs Enforcement: Priorities and the Rule of Law: Hearing Before the Subcomm. on Immigration Policy and Enforcement of the House Comm. on the Judiciary, 112th Cong. 58–59 (2011).

[41] 37 U.S. 524, 613 (1838). *See* U.S. Const. art. II, sec. 3 & H.R Rep. No. 113–377, at 3–7 (2014).

And even a month later at a July 13, 2012, briefing by John Sandweg, Counselor to the Secretary of DHS, Sandweg told Committee staff that there were "a lot of questions for which we are not going to be able to give detailed answers today." Sandweg indicated that the Committee would be informed of the specifics of the implementation plan well in advance of August 15 (the date on which USCIS was supposed to start accepting applications)—which did not turn out to be the case.

To apply for DACA, an unlawful alien must complete three USCIS forms—the I–821D (DACA consideration), the I–765 (application for employment authorization) and the I–765WS (worksheet to determine DACA applicants' economic need for employment authorization). The alien must submit the completed forms along with a fee of $465 ($380 for the work authorization and $85 for the fingerprint submission fee), and evidence of the following: 1) identity, 2) entry to the U.S. prior to age 16, 3) immigration status (if ever possessed), 4) presence in the U.S. prior to June 15, 2012, 5) continuous presence in the U.S. since June 15, 2007, 6) student status (if applicable), and 7) honorable discharge from the U.S. military (if applicable).[42]

As of July 31, 2014, USCIS had approved 591,555 DACA applications. As of August 31, 2014, USCIS had rejected 42,906 DACA applications (A rejection does not represent a denial. An application is rejected because it was not properly completed by the applicant). As of July 31, 2014, USCIS had denied 26,130 DACA applications.[43]

Strong fraud concerns exist regarding DACA. USCIS lists the types of documents that will be accepted as proof of each of the requirements a DACA applicant must meet. For instance, as proof of identity, USCIS will accept (among other things) a passport, national identity document from the applicant's home country, birth certificate with photo identification, school or military ID with photo or any U.S. government immigration document with a name and photo. And as evidence that a DACA applicant came to the U.S. prior to their 16th birthday, USCIS will accept (among other things) a school record from a U.S. school, travel records or medical records.[44]

Unfortunately, many of the accepted documents can be easily forged. In addition, DHS does not have the resources to check with foreign countries to determine whether a "national identity document for the country of origin" is authentic.

Fraud in legalization processing is nothing new. Professor Philip Martin of the University of California at Davis estimated that up to two-thirds of the applications for amnesty for unlawful alien farmworkers under the 1986 Special Agricultural Worker (SAW) legalization program were fraudulent.[45] The Commission on Agricul-

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[42] *See* USCIS website, "Consideration of Deferred Action for Childhood Arrivals Process," http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid =f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnextchannel=f2ef2f19470f7310VgnVCM10 0000082ca60aRCRD.

[43] Information provided by USCIS.

[44] *See* USCIS website, "Consideration of Deferred Action for Childhood Arrivals Process," http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid =f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnextchannel=f2ef2f19470f7310VgnVCM10 0000082ca60aRCRD.

[45] *See* Philip Martin, Harvest of Confusion: Immigration Reform and California Agriculture, 24 Inter. Migration Rev. 69, 83 (1990).

tural Workers found that "[w]ith some luck, eventual U.S. permanent resident status could be gained through the purchase of a single fraudulent affidavit and the ability to maintain one's composure in an interview."[46] The Commission noted that "the Government was sorely taxed by its burden of disproving the evidence presented in each application."[47] Two commentators have also noted that:

> [T]he documentation required in the application process for SAWs was substantially less rigorous than it was for general legalization applicants. . . . The extremely large number of SAW applicants surprised Congress, the INS (who processed the applications), and almost all observers of farm labor in the United States. To explain the large number, most persons involved in the legalization process assume high rates of fraud in the SAW program.[48]

The type of adjudicatory steps that USCIS indicates it takes for DACA application processing include many of the same adjudicatory steps that were required to process applications for SAW. For instance, DHS must determine continuous presence as of a certain date, lack of criminal convictions and proof of a certain activity (for SAW it was farmwork and for deferred action it is school attendance).

DHS has indicated that no in-person interviews of DACA applicants will be conducted. In addition, according to DHS, the documents required as evidence of eligibility for immigration relief must be "independently verifiable." However, this process must be "cost neutral", so fraud prevention and detection actions that are expensive or time consuming, or that "unduly" impact USCIS's other responsibilities, may not be utilized.[49]

If individuals are caught committing fraud in the application process, DHS retains the "flexibility" to decide whether or not to prosecute them for fraud. Requests to DHS for statistics about the fraud found in DACA applications have gone unanswered.

Perhaps most concerning, however, is that with its updated DACA Frequently Asked Questions ("FAQs"), issued on May 15, 2014, USCIS essentially broadcast its intention not to check the validity of documents submitted in support of a DACA application. Specifically the question and answer to FAQ 21 states:[50]

> Q21: Will USCIS verify documents or statements that I provide in support of a request for DACA?
>
> A21: USCIS has the authority to verify documents, facts, and statements that are provided in support of requests for DACA. USCIS may contact education institutions, other government agencies, employers, or other entities in order to verify information.

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[46] Commission on Agricultural Workers, Report of the Commission on Agricultural Workers 63 (1992).

[47] *Id.* at 64.

[48] Monica Heppel & Sandra Amendola, Immigration Reform and Perishable Crop Agriculture: Compliance or Circumvention? 20–24 (1992).

[49] Briefing for House Judiciary Committee Staff by John Sandweg, Counselor to the Secretary of DHS, July 13, 2012.

[50] USCIS Frequently Asked Questions, updated June 5, 2014, http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions#DACA%20process.

Another concern is that the DACA application fee of $465 is not enough to cover the cost of DACA processing. It is no more than what USCIS already charges to adjudicate an application for work authorization and a biometric submission (both of which are done for DACA applicants). Thus, it is clear that there is no fee charged to actually cover the cost of adjudicating the DACA application itself.

USCIS continues to process SAW applications with the form I–687. And the current required fee to file an I–687 is $1,130. Clearly, USCIS charges nothing to process a deferred action application that has substantially the same adjudicatory requirements as a SAW application.

Historically, the refusal of USCIS to charge enough in application/processing fees to cover the actual costs of processing those applications resulted in an enormous backlog of legal immigration benefits applications and in very long processing wait times for legal immigrants and aspiring U.S. citizens. Per USICS request, Congress provided funds to USCIS specifically to hire personnel to reduce that backlog. USCIS's decision not to charge a fee for form I–821D processing did in fact result in enormous backlogs for processing of immediate relatives petition for lawful permanent residence. In fact, the New York Times has reported that:

> Many thousands of Americans seeking green cards for foreign spouses or other immediate relatives have been separated from them for a year or more because of swelling bureaucratic delays at a Federal immigration agency in recent months. The long waits came when [USCIS] shifted attention and resources to a program President Obama started in 2012 to give deportation deferrals to young undocumented immigrants, according to administration officials and official data.[51]

The issue of a "fee exemption" is also a concern. In July 2012, Secretary Napolitano testified that fee waivers would only be granted for "very deserving cases."[52] USCIS materials note that "fee exemptions are available in very limited circumstances."[53] Unfortunately, USCIS declines to tell Committee staff how many fee exemptions have been granted.

The Administration claims that DACA provides no path to citizenship. However, Secretary Napolitano testified that there may be cases in which advance parole is granted.[54] Advance parole is permission to foreign nationals to allow them to re-enter the United States after temporarily traveling abroad. Once granted advance parole, a DACA recipient can adjust immigration status to lawful permanent residence status (if otherwise eligible) either through a

[51] Julie Preston, Program Benefiting Some Immigrants Extends Visa Waits for Others, New York Times, Feb. 8, 2014.

[52] Oversight of the Department of Homeland Security: Hearing Before the House Comm. on the Judiciary, 112th Cong. 69 (2012).

[53] USCIS website, "Consideration of Deferred Action for Childhood Arrivals Process," http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f2ef2f19470f7310VgnVCM100000082ca60aRCRD&vgnextchannel=f2ef2f19470f7310VgnVCM100000082ca60aRCRD.

[54] *See* Oversight of the Department of Homeland Security: Hearing Before the House Comm. on the Judiciary at 25.

family or employment-based petition, and would not be subject to the 3- and 10-year bars to admissibility for unlawful presence.[55]

ICE agents and prosecutors and CBP officers have been forced to modify the carrying out of their enforcement duties under the DACA program. In most cases, when CBP officers encounter an unlawful alien who claims to qualify for DACA at a CBP checkpoint, the CBP officer cannot take the individual into custody and must give them a letter outlining DACA and stating that the individual should contact USCIS to apply for relief. In most cases, if an ICE agent in the field encounters an unlawful alien who claims to qualify for DACA, the ICE agent is prohibited from taking the individual into custody and must notify the individual either verbally or in writing that the individual should contact USCIS to apply for relief. And ICE prosecutors have been required to comb their pending case files for unlawful aliens who could qualify for DACA. If they find someone who may be eligible, they must notify the unlawful alien that they are DACA eligible.

Also of concern is the weakening of standards for DACA eligibility. One way an individual can satisfy the education-related DACA requirement is by being "currently in school. . . ."[56] FAQ33 addresses what is considered "currently in school" and the updated procedures STATE that the individual can be "enrolled in" an "alternative program."[57] There is no definition of what "alternative program" means and internal USCIS sources indicate that this was discussed as a way to specifically ensure that more individuals would meet the education requirement. Committee staff repeatedly requested the definition of "alternative program" and was told that a definition existed and that it would be provided to the Committee, but USCIS has not as of yet provided it.

Finally, unlawful aliens found to be ineligible for DACA will not be placed in removal proceedings unless they meet ICE's enforcement priorities.

C. Parole-in-Place

Section 212(d)(5)(A) of the Immigration and Nationality Act allows the Secretary of DHS in his or her discretion to "parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States. . . ." However, the section makes clear that the parole is temporary, stating "such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary, have been served the alien shall forthwith return or be returned to the custody from which he was paroled. . . ." This limitation on use only on a case-by-case basis for urgent humanitarian reasons or significant public benefit was added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.[58] The House Report stated that this limitation was "intended to end the use of parole

[55] *See* INA sec. 212(a)(9)(B)(i).
[56] USCIS Frequently Asked Questions, updated June 5, 2014.
[57] *Id.* at FAQ 33.
[58] *See* sec. 602 of division C of title IV of Pub. L. No. 104–208.

authority to create an ad hoc immigration policy or to supplement current immigration categories without Congressional approval."[59]

On November 15, 2013, then USCIS Director Ali Mayorkas issued a memo regarding the grant of parole to unlawful alien spouses, children and parents of active duty and former Armed Services and Ready Reserve service members.[60] Specifically, the memo provided that these relatives of anyone who has ever served in the U.S. Armed Forces for any period of time (and without regard to whether discharge was honorable or dishonorable) are eligible to receive parole on a categorical basis.[61]

The memo also provides that despite entering the United States without inspection, these relatives of individuals who have served in the Armed Forces or Ready Reserve are allowed to adjust status to that of lawful permanent residence should they otherwise qualify for an immigrant visa. These individuals would not have to follow the normal statutory procedures for such adjustment of traveling abroad for consular processing, and would not be subject to the 3- and 10-year bars to admissibility for unlawful presence.[62]

D. ICE Agents in the Field

Following the release of the first round of ICE prosecutorial discretion memos in 2010, the ICE union issued a press release stating that:

> On June 11, 2010, ICE Union leaders around the nation issued a unanimous no confidence vote in ICE Director John Morton on behalf of ICE officers, agents and employees nationwide citing gross mismanagement within the Agency as well as efforts within ICE to create backdoor amnesty through agency policy. ICE Union leaders say that since the no confidence vote was released problems within the Agency have increased, citing the Director's latest Discretionary Memo as just one example.

On July 26, 2011, ICE Union head Chris Crane testified before the Immigration Policy and Enforcement Subcommittee.[63] Mr. Crane not only represents ICE agents, but is also an ICE immigration enforcement agent and has worked as part of the Criminal Alien Program and the fugitive operations team. He reiterated the union's no-confidence vote in Director Morton, based upon membership's beliefs that "ICE is broken" and that "politics are the priority at ICE" under the current Director's leadership. Mr. Crane went on to describe a culture where ICE agents and officers are excluded from pre-decisional policy development while immigrant advocacy groups are routinely brought in to help write security and law enforcement protocols.

Furthermore, Mr. Crane stated that "[t]he prosecutorial discretion memorandum issued by ICE Director John Morton on June 17th, 2011 cannot be effectively applied in the field and has the potential to either completely overwhelm ICE's limited manpower re-

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[59] *See* H.R. Rep. No. 104–469, part 1, at 175 (1996).

[60] *See* USCIS Policy Memorandum, PM–602–009, Nov. 15, 2013.

[61] *See id*.

[62] *See* INA sec. 212(a)(9)(B)(i).

[63] *See* Hinder the Administration's Legalization Temptation Act: Hearing Before the Immigration Policy and Enforcement Subcomm. of the House Judiciary Comm., 111th Congress 17 (2011).

sources or result in the indiscriminate and large scale release of aliens encountered in all ICE law enforcement operations, not just the ICE Secure Communities Program."

According to Mr. Crane and other agents who communicated with Committee staff, ICE Headquarters (HQ) refused to put many directives in writing to supervisors, agents, and officers in the field in order to prevent them from becoming known to the general public. In conversations with agents, they have been able to provide three emails that can be summarized as such:

Email 1:

This is an email from a local manager to his officers describing comments by ICE HQ Leadership during a teleconference regarding Operation Crosscheck. One Deputy Associate Director (DAD) is reported to have said "[t]his is not a fugitive operation. This is an operation targeting criminal aliens. If the aliens you encounter are not criminal, they will not be arrested. . . . Am I telling you to walk away from a non-criminal fugitive or a non-criminal reinstate? Yes!" Another DAD is reported to have said "Only targets will be arrested. There will be no collateral arrests of any kind with this op. . . . no enforcement activities, including surveillance will take place near sensitive locations. . . ."

Email 2:

This email is from local managers to their subordinate managers and emphasizes only criminal arrests. "[A]s of right now, they only want targets arrested unless you come across a collateral that is a confirmed convicted criminal alien. . . . [I]f you see your target, you should arrest your target and leave the scene w/o anyone else being interviewed. . . . I will not be able to enter any information in the database if it relates to a non-convicted, non-criminal alien."

Email 3:

This email string begins with a manager giving officers direction on a related matter, but one officer begins to question other orders not to arrest aliens subject to reinstatements of removal orders. The officer is told that only reinstatements with other criminal convictions may be arrested. The officer is told that officers in the field are to "walk away . . . with no one" if the target is not located.

A number of ICE deportation officers and immigration enforcement agents and the state of Mississippi filed a Federal lawsuit challenging the constitutional and statutory validity of the memo issued by ICE Director Morton on June 17, 2011, on prosecutorial discretion and the directive issued by DHS Secretary Napolitano on June 15, 2012 as to DACA.[64] They "challenge the portions of the Directive and Morton Memorandum that require ICE officers to exercise prosecutorial discretion and defer action against aliens who satisfy the Directive's critieria" and "the portion of the Directive that permits USCIS to issue employment authorization to Directive-eligible aliens during the period of deferred action."[65] Allegedly, the ICE agent plaintiffs' "supervisors have instructed them that an alien only needs to claim he is covered by the Directive to

[64] *See Crane v. Napolitano,* 920 F. Supp.2d 724, 731 (N.D. Texas 2013) (memorandum opinion and order).

[65] *Id.*

be released and offered the benefits of the Directive" and they are "prohibited from demanding proof that an alien meets the Directive's criteria." [66]

The basis of the lawsuit is the ICE agent plaintiffs' contention "that the Directive commands ICE officers to violate Federal law and to violate their oaths to uphold and support Federal law" and that "they believe they will be disciplined or suffer other adverse employment consequences if they arrest or issue a Notice to Appear in removal proceedings . . . to an alien who satisfies the factors for deferred action set out in the Directive." [67] As the court stated:

> The ICE Agent Plaintiffs allege that compliance with the Directive and Morton Memorandum would require them to violate their statutory obligations under the Immigration and Nationality Act. . . . The [Act] provides that "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." . . . All applicants for admission "shall be inspected by immigration officers." . . . "[I]f the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding. . . ." The ICE Agent Plaintiffs assert that these statutory provisions require them to arrest or issue a[Notice to Appear] to illegal aliens whenever those aliens "are not clearly and beyond a doubt entitled to be admitted" to the United States. . . . Because Directive-eligible aliens may not be "clearly and beyond a doubt entitled to be admitted," Plaintiffs allege that Federal law requires them to arrest those aliens or issue a [Notice to Appear].[68]

DHS asked the court to dismiss the lawsuit on a number of bases, including that the plaintiffs did not have standing to sue. The court ruled that the ICE agents, though not the state of Mississippi, did have standing to sue on a number of their causes of action.[69] On April 23, 2013, the judge denied the Government's motion for summary judgment but deferred ruling on Plaintiffs' Application for Preliminary Injunction until the parties have provided the Court with additional briefing on certain legal issues.[70] Importantly, the court ruled that the Immigration and Nationality Act "imposes a mandatory duty on immigration officers to initiate removal proceedings" in the circumstances set forth above and that "DHS does not have discretion to refuse to initiate removal proceedings when the requirements [of the INA set forth above] are satisfied." [71] On July 31, 2013, the lawsuit was dismissed, but only because the court had no subject matter jurisdiction because the judge found that the agents' only remedy was pursuant to the scheme provided by the Civil Service Reform Act.[72] The judge still believed that the agents were "likely to succeed on the merits of

[66] *Id.*
[67] *Id.* (footnotes omitted).
[68] *Id.* at 738 (citations omitted).
[69] *See id.* at 741.
[70] *See Crane v. Napolitano*, Civil Action No. 3:12–cv–03247–O, 2013 WL 1744422 (N.D. Texas April 23, 2013).
[71] *Id.* at 11, 13.
[72] *See Crane v. Napolitano*, Civil Action No. 3:12–cv–03247–O (N.D. Texas July 31, 2013) (order).

their claim challenging the Directive and Morton Memorandum as contrary to the provisions of the Immigration and Nationality Act. . . ." [73]

E. ICE Removal Numbers

Over the past few years, ICE had been claiming to have removed record numbers of unlawful or otherwise removable aliens from the United States—389,834 in fiscal year 2009, 392,862 in fiscal year 2010, 396,906 in fiscal year 2011, and 409,849 in fiscal year 2012. However, ICE has since admitted to a 10% drop in removals in fiscal year 2013 (to 368,644), and the Center for Immigration Studies (CIS) has reported that internal ICE documents indicate that the number will fall to little more than 300,000 in fiscal year 2014.[74]

Of course, to the extent these numbers are reflective of actual removals, they indicate the vast increase in enforcement resources provided by Congress in recent years. ICE's budget has increased from approximately $3 billion in fiscal year 2005 to over $5.6 billion in fiscal year 2014.[75] However, in reality, ICE's supposed removal numbers are not reflective of actual removals.

The Judiciary Committee learned that beginning in fiscal year 2011, ICE started to include the Alien Transfer Exit Program (ATEP) in its removal numbers. ATEP is a joint effort by ICE and CBP that transfers unlawful aliens apprehended at the U.S.-Mexico border to another point along the Southwest border for removal.[76] It is not appropriate to count aliens apprehended by the Border Patrol along the border as ICE removals. These are not removals of aliens who were actually residing in the U.S. (the primary responsibility of ICE, as opposed to CBP), and removal orders are not always placed against the aliens. In such cases, there are no penalties or bars attached when they are sent back across the border. They can simply attempt reentry without being subject to the criminal penalties that apply to aliens who reenter after being officially removed. If the ATEP removals of 36,587 in 2011 and 85,550 in 2012 are removed from the ICE removal totals, ICE removals for 2011 fall to 360,319 and removals for 2012 fall to 324,299.[77] This represents a drop in ICE removals of 17% from 2010.

However, it has become apparent that ICE's counting of aliens apprehended by the Border Patrol along the border as ICE removals has been far more extensive than even indicated above. CIS obtained ICE data contained in two editions of the "Weekly Departures and Detention Report" prepared by ICE's Enforcement and Removal Operations and data that was made available as part of the discovery process in the lawsuit against DHS by ICE deportation officers and immigration enforcement agents and the state of

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[73] *Id.*, slip op. at 6.

[74] *See* Jessica Vaughan, ICE Enforcement Collapses Further in 2014, 2014 Center for Immigration Studies at 1.

[75] *See* DHS and ICE budget documents.

[76] In May 2013, ICE suspended operation of ATEP due to the high costs of the program. However, in June 2013, the Administration reinstated limited routes via busing. The ATEP program had involved detaining aliens encountered at one port of entry and flying them to another port of entry in order to remove them. Both the detention and flights were costly to maintain, particularly where similarly situated aliens were previously bused back across the border.

[77] Information obtained by the Judiciary Committee.

Mississippi.[78] The data reveals that more than half of the removals claimed by ICE originate as aliens apprehended by the Border Patrol along the border or by CBP at ports-of-entry—in fiscal year 2012, of 409,849 claimed ICE removals, 228,879 (or 56%) originated along the border while the number of true ICE removals from the interior was only 180,970.[79] Following the release of this data by CIS, ICE itself began to report the relevant information.[80] ICE's report indicates that the situation deteriorated even further in 2013, when almost two-thirds of all removals claimed by ICE (235,093 out of 368,644) involved aliens apprehended by the Border Patrol along the border or intercepted by inspectors at ports-of-entry.[81] These aliens were not actually residing in the U.S.—unlawfully working or committing crimes—and cannot be legitimately counted as ICE removals. As mentioned above, removal orders have not been placed against all these aliens. The number of true ICE removals of aliens apprehended in the interior has fallen 43% from fiscal year 2008 to fiscal year 2013—from 234,770 to 133,551.[82] CIS has reported that internal ICE documents indicate that the number will fall to little more than 100,000 in fiscal year 2014.[83]

Even worse, the number of removals attributable to ICE's Homeland Security Investigations fell from 41,494 in 2009 to 7,584 in 2012; the Center for Immigration Studies notes that "this is the division of ICE that is responsible for work site enforcement, combatting transnational gangs, overstay enforcement, anti-smuggling and trafficking activities, and busting document and identity theft rings. . . ."[84]

President Obama may have been referring to these manipulations when he stated that ICE's removal numbers were "deceptive":

> President Obama said statistics that show his administration is on track to deport more illegal immigrants than the Bush administration are misleading. "The statistics are a little deceptive," he said Wednesday. . . . Obama explained that enhanced border security has led to Border Patrol agents arresting more people as they cross into the country illegally. Those people are quickly sent back to their countries, but are counted as deported illegal immigrants.[85]

Furthermore, according to a study conducted by Transactional Records Access Clearinghouse (TRAC) at Syracuse University, data obtained under the Freedom of Information Act from ICE shows that the immigration "detainers" issued by the agency are declining.[86] Detainers are notices issued by ICE and other DHS units that ask local, State and Federal law enforcement agencies not to release suspected removable aliens held at their facilities in order to give ICE an opportunity to take them into its custody. Detainers,

[78] *See* Jessica Vaughan, Deportation Numbers Unwrapped: Raw Statistics Reveal the Real Story of ICE Enforcement in Decline, 2013 Center for Immigration Studies.
[79] *See id.* at 6 (table 3).
[80] *See* ICE, DHS, FY 2013 ICE Immigration Removals.
[81] *See id.* at 1, 3.
[82] *See id.* at 3; and information provided by ICE.
[83] *See* ICE Enforcement Collapses Further in 2014 at 7 (figure 5).
[84] Deportation Numbers Unwrapped at 6.
[85] Brendan Sasso, Obama: Deportation Statistics "Deceptive," the Hill, Sept. 28, 2011.
[86] *See* Transactional Records Access Clearinghouse, Number of ICE Detainers Drops by 19 Percent, July 25, 2013.

often called "immigration holds," are a primary tool that ICE uses to apprehend the suspects it is seeking.

The ICE data covering the first 4 months of fiscal year 2013 indicate that the agency issued an average of 18,427 detainers each month in this recent period—down 19% from the average monthly number of 22,832 during 2012.[87] Corroborating TRAC, ICE data uncovered by CIS indicates the agency issued 176,901 detainers during the first 10 months of fiscal year 2013—down 25% from the same period in fiscal year 2012 (about 236,087).[88] CIS later indicated that internal ICE reports project that the number of detainer issued will fall by an additional 24% from fiscal year 2013 to 2014.[89] This shows that ICE is attempting to remove fewer and fewer of the removable aliens that it encounters. Additionally, according to agency sources, ICE officers are simply not issuing detainers to aliens who they know will subsequently be released under ICE's new enforcement "priorities."

Additionally, the data uncovered by CIS indicates that the number of charging documents issued by ICE to removable aliens declined from 208,728 in the first 10 months of fiscal year 2012 to 162,610 in the same time period in 2013—a drop of 22%.[90] In this period in 2013, ICE issued charging documents to only 27% of the removable aliens it encountered—down from 35% in the same period in 2012.[91] CIS later indicated that internal ICE reports project that the number of charging documents issued will decline by 25% from fiscal year 2013 to 2014.[92]

F. Conclusion

President Obama has sought to rewrite immigration laws passed by Congress by taking administrative action via policy memoranda. And he plans to go much further. In the spring of 2014, he asked Secretary of Homeland Security Jeh Johnson to perform an "inventory" of the Department of Homeland Security's current immigration enforcement practices "to see how it can conduct enforcement more humanely within the confines of the law." The Administration has since announced administrative amnesty and work authorization for millions of unlawful aliens in the U.S.

In our constitutional system, however, it is Congress that has plenary constitutional authority to establish U.S. immigration policy.[93] Fundamental reform requires legislative action. The President cannot simply change immigration laws on his own, and the Administration's effort to do so, by announcing that it will essentially seek deportation only for unlawful aliens who have com-

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[87] *See id*.
[88] *See* Deportation Numbers Unwrapped at 8 (table 4).
[89] *See* ICE Enforcement Collapses Further in 2014 at 3.
[90] *See id.*
[91] *See id.* at 8.
[92] *See* ICE Enforcement Collapses Further in 2014 at 3.
[93] *See* U.S. Const. art. I, sec. 8, cl. 4 (Congress shall have power to "establish an uniform Rule of Naturalization."). The Supreme Court has long found that this provision of the Constitution grants Congress plenary power over immigration policy. As the Court found in *Galvan v. Press*, 347 U.S. 522, 531 (1954), "that the formulation of policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government." And, as the Court found in *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (quoting *Boutilier v. INS*, 387 U.S. 118, 123 (1967)), "[t]he Court without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.'"

mitted "serious" crimes in the United States, violates the rule of law.

It is unlikely that any President could expel each and every unlawful alien in the United States—perhaps more than 11 million individuals. Resources to identify, apprehend, process, and promptly deport millions of unlawful aliens have been lacking for years and, arguably, so has been the political will to do so. But President Obama's current policy is fundamentally different from the flawed immigration enforcement records of previous presidents. The Administration has stated that deportation efforts will be focused almost solely on aliens with "serious" criminal records and enforcement action will rarely be taken on other types of cases. Aliens who have avoided apprehension at the border and not been convicted of a serious enough offense since arriving to the United States will no longer face any prospect of deportation, the most basic means of immigration enforcement.

Far from simply prioritizing the use of limited resources, the administration's policy effectively rewrites the law. It means that the vast majority of illegal immigrants and "low-level" criminal aliens need no longer fear any immigration law enforcement. Limiting the possibility of deportation in this manner eliminates entirely any deterrent effect the immigration laws have, and also states plainly that those laws can be ignored with impunity. The President has, in effect, suspended operation of those laws with respect to a very large and identifiable class of offenders. This clearly exceeds his authority.

As the Committee has recently stated:

> Although the President can, for example, legitimately decide that, in the post-9/11 environment, most of the Federal Bureau of Investigation's resources should be dedicated to the investigation and prosecution of terrorism cases, he cannot decree that no enforcement assets whatsoever will be allocated to securities fraud or counterfeiting cases. Because the Constitution gives the Executive Branch the exclusive power to enforce Federal laws, this would effectively decriminalize securities fraud and counterfeiting, derogating from the Federal statutes that prescribed such activities.[94]

Removals are down so dramatically because the Obama Administration is twisting the concept of "prosecutorial discretion" beyond all recognition—all in an unprecedented effort to create immigration enforcement-free zones. Removal is discouraged, if not outright prohibited, for millions of unlawful and criminal aliens not considered "priorities."

As George Washington University Law School Professor Jonathan Turley has told the House Judiciary Committee, in so abusing the concept of prosecutorial discretion:

> President Obama [is] nullifying part of a law that he simply disagree[s] with. . . . It is difficult to discern any definition of the faithful execution of the laws that would include the blanket suspension or nullification of key provisions. . . . If a president can claim sweeping discretion to

[94] *See* H.R. Rep. 113–377 at 8.

suspend key Federal laws, the entire legislative process becomes little more than a pretense.[95]

The Identification of Immigrant Criminals

Enforcement and Removal Operations (ERO) within ICE identifies and apprehends removable aliens, detains these individuals when necessary and removes aliens ordered removed from the U.S.

A. The Criminal Alien Program (CAP)

ICE's criminal alien program within ERO identifies, processes and removes immigrant criminals serving their criminal sentences in federal, State and local prisons and jails throughout the U.S. The program was created to prevent immigrant criminals from being released after serving their sentences. The goal of the program is to secure a final removal order prior to the termination of immigrant criminals' sentences whenever possible.[96] ERO officers and agents assigned to the CAP program in federal, State and local prisons and jails screen inmates and place detainers on immigrant criminals to process them for removal before they are released to the general public. After the screening process and interviews, ERO initiates proceedings to remove the immigrant criminals from the United States.[97]

B. Secure Communities

Through the Secure Communities strategy, ICE leverages an existing information sharing capability between DHS and the Department of Justice (DOJ) to quickly and accurately identify aliens who are arrested for a crime and booked into local law enforcement custody. With this capability, the fingerprints of everyone arrested and booked are checked against FBI criminal history records and are also checked against DHS immigration records. If fingerprints match DHS records, ICE determines if immigration enforcement action is appropriate.[98]

Congress created Secure Communities in 2008 as a pilot program to establish the capability to identify all immigrant criminals or potential immigrant criminals at the time of arrest. Since the program was activated, it has led to the removal of more than 135,000 convicted criminals.[99] Unfortunately, the Administration has since announced that it is ending the Secure Communities program.

Once an alien is brought to the attention of DHS by Secure Communities, ICE may issue a "detainer" to a local jail or correctional facility when it seeks to take custody of an individual in that facility.[100] Generally, an immigration detainer is a request to a local law enforcement agency to detain a named individual for up to 48 hours after that person would otherwise be released (excluding Saturdays, Sundays, and holidays), in order to provide ICE an opportunity to assume custody of that individual. The 48-hour period begins to run when the named individual is no longer subject to de-

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[95] The President's Constitutional Duty to Faithfully Execute the Laws: Hearing Before the House Comm. on the Judiciary, 113th Cong. (2013).
[96] *See* ICE Website, http://www.ice.gov/criminal-alien-program.
[97] *See id.*
[98] *See* ICE website, http://www.ice.gov/secure_communities.
[99] ICE Website (accessed March 8, 2013).
[100] *See* ICE website, available at http://www.ice.gov/secure_communities/.

tention by the local law enforcement agency—that is, after the individual has posted bond or completed a jail or prison sentence.[101]

If a detainer is placed pretrial against an individual and they post bail, ICE must assume custody of him or her within 48 hours.[102] If ICE fails to assume custody of the individual during the 48-hour period, the individual may be released. The local jail or correctional facility no longer has the authority to detain an individual once the detainer has expired.

Despite the ramping up of Secure Communities in 2013, the data uncovered by the Center for Immigration Studies reveals that the number of removals originating with Secure Communities has fallen from 83,815 in fiscal year 2012 to a projected 69,189 in 2013—a decrease of 17%—and that the overall number of alien convicted criminals arrested by ICE declined from 143,598 in the first 10 months of 2012 to 128,441 in the same period in 2013.[103]

Secure Communities has sparked controversy amongst immigrants' rights advocates. In 2011, advocates persuaded the governors of Massachusetts, Illinois and New York, along with municipal leaders in Los Angeles, San Francisco, and Boston, to "opt out." Boston Mayor Thomas Menino declared that contrary to its stated goal, Secure Communities "is negatively impacting public safety" complaining that numerous immigrants have been deported after committing only minor traffic violations. Furthermore, he has claimed that the program is hurting community policing efforts.[104]

In June 2011, in response to criticisms regarding the enforcement actions taken under Secure Communities, the administration established a Task Force on Secure Communities. The task force was comprised of leaders from State and local government, first responder agencies, the private sector, and academia.[105] The task force was specifically charged with making recommendations on how ICE could improve the Secure Communities program and address concerns about its impact on community policing and unlawful aliens arrested or convicted of "minor crimes." The task force membership was more heavily made up of advocacy groups rather than law enforcement officials and had no advocates for immigration law enforcement. It issued a report making several recommendations. The ICE union was originally a part of the task force but removed itself after deciding that its views were being ignored. The report, which was submitted to ICE for review, was not unanimously agreed to by its members. Some refused to sign the report because it failed to urge suspension or termination of the program, while others objected because it recommended major changes that would weaken the program's enforcement value.

The task force report included many recommendations. Specifically, it asked for ICE to clarify the goals and objectives of the Secure Communities program, as well as the parameters and functioning of the program, and accurately relay this information to participating jurisdictions, future participating jurisdictions, and

[101] *See id.*
[102] *See id.*
[103] *See* Deportation Numbers Unwrapped: Raw Statistics Reveal the Real Story of ICE Enforcement in Decline at 10–11 (tables 6 and 7).
[104] Julia Preston, Resistance Widens to Obama Initiative on Criminal Immigrants, The New York Times, August 13, 2011.
[105] *See* Task Force on Secure Communities Findings and Recommendations (2011), http://www.dhs.gov/xlibrary/assets/hsac-task-force-on-secure-communities-findings-and-recommendations-report.pdf.

the communities they serve. The report also recommended improving the transparency of the program and implementing systematic mechanisms to ensure that Secure Communities adheres to its stated enforcement objective of prioritizing those who pose a risk to public safety or national security.[106]

On April 27, 2011, ICE Director John Morton issued a response to the task force recommendations. He commended the task force for its work and indicated that ICE had already begun to implement changes in response to the findings and recommendations included in the report. ICE agreed with all of the recommendation made by the task force save one. ICE disagreed with the need to establishing a pilot initiative in a selected jurisdiction, where an independent, multi-disciplinary panel would review specific cases.[107]

Prior to the task force's issuance of recommendations, on August 5, 2011, ICE Director John Morton announced that ICE had decided to terminate all existing Memoranda of Agreement (MOA) that it had entered into with the states regarding the operation of Secure Communities. In his letter to Governors, Director Morton stated that the MOAs had resulted in "substantial confusion" regarding whether a State was required to enter into such an agreement in order for Secure Communities to operate in that state. In his letter, Morton revealed that ICE had determined that an MOA is not required to activate or operate Secure Communities in any jurisdiction. Once a State or local law enforcement agency voluntarily submits fingerprint data to the Federal Government (normally to the FBI for a criminal history record check), no agreement with the state is legally necessary for one part of the Federal Government to share it with another part.[108]

A number of local law enforcement agencies have refused to recognize ICE detainers.[109] Commissioners in Cook County, Illinois, adopted a law that orders the sheriff to decline all Federal requests to detain immigrants after they complete their sentences or post bail unless there is a written agreement with the Federal Government that all of Cook County's costs were to be reimbursed.[110] Other jurisdictions have taken similar steps, but Cook County's ordinance was the first to forbid a sheriff from holding suspected felons as well as those accused of misdemeanors.[111]

Also in October 2011, it was announced that District of Columbia police would not enforce ICE detainers or warrant issued against

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[106] *Id.*

[107] *See* ICE, DHS, ICE Response to the Task Force on Secure Communities Findings and Recommendations (April 27, 2011), http://www.ice.gov/doclib/secure-communities/pdf/hsac-sc-taskforce-report.pdf.

[108] *See* letter from John Morton, Director, ICE, DHS, to State governors (August 5, 2011).

[109] Federal courts have come to different conclusions as to whether the current detainer regulation is a mandatory demand or simply a request to keep an alien in custody. The Third Circuit Court of Appeals has construed the detainer regulation as a request, arguing that if a detainer was "a command to detain an individual on behalf of the Federal Government, [this] would violate the anti-commandeering doctrine of the Tenth Amendment. *Galarza v. Szalczyk*, 745 F.3d 634, 644 (3rd Cir. 2014). However, the dissent noted that "the United States has not been heard on [this] seminal issue in this appeal, an issue that goes to the heart of the enforcement of our nation's immigration laws." *Id.* at 645–46 (dissenting opinion).

[110] *See* Don Babwin, Cook County Defies Government On Immigration Detainers, Huffington Post, October 4, 2011, http://www.huffingtonpost.com/2011/10/05/cook-county-defies-govern_0_n_995869.html.

[111] *Id.*

aliens who has not committed another crime.[112] In addition, for "less-serious" crimes, such as violating the city's open alcohol container law, the District will no longer collects fingerprints, inhibiting the Federal Government's ability to determine immigration status.[113]

Last year, California Governor Jerry Brown signed the TRUST Act into law. "Under the so-called Trust Act, immigrants in this country illegally would have to be charged with or convicted of a serious offense to be eligible for a 48-hour hold and transfer to U.S. immigration authorities for possible deportation." [114]

A Federal district court has ruled that if an ICE detainer does not demonstrate probable cause to hold an alien, the jurisdiction honoring the detainer, deemed by the court to be merely a request, is liable for damages for an unreasonable seizure under the Fourth Amendment.[115] This was based on the fact that the detainer stated only "that an investigation 'has been initiated' to determine whether [the alien] was subject to removal from the United States." [116] Detainers no longer include such a statement. They now state that DHS has "[d]etermined that there is reason to believe the individual is an alien subject to removal from the United States." The threat of lawsuits has convinced some jurisdictions to no longer honor ICE detainers.[117]

In June 2011, Dennis McCann of Chicago was killed in a hit-and-run incident by an unlawful alien and habitual drunk driver who was driving without a license.[118] Mr. McCann was hit as he was crossing the street but the driver of the vehicle refused to stop. Instead, he sped up, dragging Mr. McCann's body down the road. Saul Chavez, the driver, had been previously convicted of an aggravated drunk driving offense and had just finished a sentence of 2 years' probation. He also had five prior drunk driving arrests.

Chavez was arrested at the scene of the crime and ICE issued a detainer. However, Cook County, a sanctuary jurisdiction, ignored the detainer because of the County's law requiring the police to ignore detainers, barring ICE from using County facilities for immigration enforcement, and banning County personnel from responding to inquiries from ICE. Chavez was released on bail before he could be tried for Dennis McCann's death and was never tried.

Chavez had a prior criminal record, which rendered him deportable even under current law. Under the SAFE Act, he would have been detained after his first offense because section 309 the bill provides for mandatory detention of unlawful aliens convicted of DUI.

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[112] *See* Tim Craig, D.C. Won't Cooperate with Federal Immigration Enforcement, Washington Post, October 19, 2011.

[113] *See id.*

[114] *See* Patrick McGreevy, Signing TRUST Act is another illegal-immigration milestone for Brown, Los Angeles Times, Oct. 5, 2013.

[115] *See Miranda-Olivares v. Clackamas County,* No. 3:12–cv–02317–ST, slip op. at 11 (D. Or., April 11, 2014).

[116] *Id. See also Morales v. Chadbourne*, 996 F.Supp.2d 19 (D. R.I. 2014).

[117] *See*, e.g., Lee Hermiston, The Immigrant Experience: Debate on ICE Holds Continues, the Gazette, Sept. 21, 2014 (Twenty-five Iowa county sheriffs will no longer honor detainers after the American Civil Liberties Union sent them a letter saying "complying with [detainers] could set up the counties for additional lawsuits." *Id.*).

[118] *See* The Scott Gardner Act, HR, 3808, Hearing Before the Subcomm. on Immigration Policy and Enforcement of the House Judiciary Committee 112th Cong. (testimony of Brian McCann).

At a House Committee on Homeland Security, Subcommittee on Border and Maritime Security hearing on July 10, 2012, ICE Director John Morton testified that:

> With regard to Illinois, as you note, it is a little more of a difficult situation there. Cook County, which is the largest county and has one of the largest detention systems in the country, has adopted an ordinance that essentially prohibits all cooperation with ICE, even with regard to very serious and violent offenders. I have written a number of public letters to the county. I am very much opposed to their approach. I think it is the wrong way to approach public safety in Cook County. I am quite confident that their approach is ultimately going to lead to additional crimes in Cook County that would have been prevented had we been able to enforce the law as the law is presently written.
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> Just to give you some sense of it, in very large jurisdictions in the United States, the rate of recidivism for criminal offenders can be as high as 50 percent or more. When ICE can come in and remove offenders from a given community so that they can't re-offend, well, guess what, we take that recidivism rate to zero. So, for example, if you have 100 criminal offenders and we are able to root them, that is 50 crimes that will not happen over the next 3 years as a result of our enforcement efforts. That is ultimately the power of Secure Communities. It is a direct way to support public safety in a very thoughtful manner.
>
> What are we trying to do to resolve the situation in Illinois? We have been working with the county to see if there isn't some solution. I won't sugarcoat it. I don't think that that approach is going to work in full. We are going to need the help of others. We have been exploring, as the Secretary has said, our options under Federal law with the Department of Justice. We will see where that goes. Then with regard to the annual request by Cook County to be reimbursed for the costs of detaining individuals who are here unlawfully and have committed crimes, obviously I find that position to be completely inconsistent with [them] not allowing us access to and removing those very same individuals, and we will be taking a very hard look at their SCAAP request. That is the part of the law that allows the Federal Government to reimburse for those costs this year. My own position is going to be that if we do not have access to those individuals, we will not be able to verify their request for the year. . . .
>
> . . . .
>
> I would say that we are going to give it a very good effort to try to resolve the situation directly with Cook County and with Illinois and with the Department of Justice. If we can't do that, I think we would be happy to come back and explore further options with the committee. From our perspective, Federal law is very clear on the question of cooperation with Federal authorities in immigration. We do

> think that the ordinance is inconsistent with the terms of Federal law. Ultimately, I think we share the same aims, I would assume, with the authorities in Cook County, and that is public safety for the people that live there. It just does not make sense to release to the streets serious criminal offenders who shouldn't be in the country in the first place given the rate of recidivism. . . .
>
> . . . .
>
> So we are in discussions with the Department of Justice to see what we can do on many fronts to come to a better resolution in Secure Communities in Cook County, because I think we all agree that the present approach is not a good one. I don't know if you heard my answer before, but that both the question of can we work with the Department of Justice to look at any legal options we may have to get to a better place with the county, but also to look at the county's annual request for reimbursement under the Federal SCAAP program for the individuals that they detain that are there unlawfully. . . .[119]

In an effort to appease the opponents of Secure Communities, on December 21, 2012, ICE Director John Morton issued a new detainer policy.[120] Under the new policy, where ICE has been notified that an unlawful alien has been encountered by local law enforcement and there is a hit on the Secure Communities database, detainers may only be issued when:

- The individual has a prior felony conviction or had been charged with a felony offense;
- The individual has three or more prior misdemeanors;
- The individual has a prior misdemeanor conviction or has been charged with a misdemeanor offense if the misdemeanor conviction or pending charge involves—
  - violence, threats, or assault;
  - sexual abuse or exploitation;
  - driving under the influence of alcohol or a controlled substance;
  - unlawful flight from the scene of an accident;
  - unlawful possession or use of a firearm or other deadly weapon;
  - the distribution or trafficking of a controlled substance; or other significant threat to public safety;
- The individual has been convicted of illegal entry pursuant to 8 U.S.C. § 1325;

[119] Building A Secure Community: How Can DHS Better Leverage State and Local Partnerships? Hearing Before the Subcomm. on Border and Maritime Security of the House Comm. on Homeland Security, 112th Cong. 14, 15, 22 (2012) (testimony of John Morton).

[120] *See* memo re: Civil Immigration Enforcement: Guidance on the use of detainers in the Federal, State, Local, and Tribal Criminal Justice Systems (December 21, 2012), https://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf.

- The individual has illegally re-entered the country after a previous removal or return;
- The individual has an outstanding order of removal;
- The individual has been found by an immigration officer or an immigration judge to have knowingly committed immigration fraud; or
- The individual otherwise poses a significant risk to national security, border security, or public safety.[121]

The memo states the goal of the guidance is to ensure that the issuance of detainers is consistent with the Administration's enforcement priorities.[122]

C. Committee Subpoena Relating to Secure Communities

On August 22, 2011, Chairman Lamar Smith made a formal request of DHS for information about removable immigrants and immigrant criminals who were brought to the attention of ICE via Secure Communities or other means but whom ICE did not take custody of and declined to remove. It was necessary for the Immigration Policy and Enforcement Subcommittee to issue a subpoena on November 4, 2011, for the Committee to receive the information.

In December 2011, DHS produced documents to the Committee that were in compliance with the Immigration Subcommittee's subpoena. The Congressional Research Service (CRS) then crosschecked the subpoenaed data to determine if the unlawful and criminal aliens released by ICE had gone on to commit more crimes. Of note, CRS found the following facts in its research:

- The data provided to the House Judiciary Committee by DHS includes 276,412 records of charges against unlawful and criminal aliens identified by Secure Communities between October 27, 2008 and July 31, 2011. There were 159,286 unique individuals in the database and 205,101 unique arrest incidents.
- Of those released, CRS found that about 17% of unlawful and criminal aliens, or 26,412, were rearrested on criminal charges within 3 years of release. These recidivists accounted for a total of 42,827 arrests and 57,763 alleged violations.
- The categories of crimes charged include nearly 8,500 DUI (14.6%), over 6,000 drug violations (10.9%), more than 4,000 major criminal offenses (7.1%), which includes murder, assault, battery, rape, and kidnapping, nearly 3,000 thefts (4.9%), and over 1,000 other violent crimes (2.1%), which includes carjacking, child cruelty, child molestation, domestic abuse, lynching, stalking, and torture.
- The crimes committed by both unlawful and legal aliens include 59 murders, 21 attempted murders, and 542 sex crimes.

[121] *See id.*
[122] *See id.*

- Of those rearrested, nearly 30%, or 7,283, were unlawful aliens. Since 46,734 unlawful aliens were released, indicating a recidivism rate of 16%.
- The crimes charged against unlawful aliens included nearly 2,000 DUIs (11.9%), over 1,400 drug violations (8.8%), and more than 1,000 major criminal offenses and violent crimes (6.9%), including murder, assault, battery, rape, kidnapping, child molestation, domestic abuse, lynching, stalking, and torture.
- The crimes committed by unlawful aliens included 19 murders, 3 attempted murders, and 142 sex crimes.
- In researching one of the identified murder cases, the Judiciary Committee found one case where an unlawful alien was flagged by Secure Communities under the Obama Administration's watch—for vehicle theft in June 2010—and was arrested again for an attempt to commit grand theft just 5 months later. After this unlawful alien was released by DHS, he and another unlawful alien were arrested on suspicion of killing a man who was chasing individuals who had robbed his 68-year-old grandfather.

D. Release of Detainees

DHS under the Obama Administration has opposed the inclusion of statutory language mandating ICE to maintain a level of not less than 34,000 detention beds. DHS claimed that this language obstructs ICE' s ability to satisfy its stated enforcement priorities and accomplish detention reform.[123]

According to the Administration, mandating a pre-set number of detention beds is contrary to the government's interest in reforming the detention system and targeting its use for only those individuals who it deems to require detention.[124] The Administration says that in an environment of fiscal restraint, Congress should not be telling a Federal agency that it is not permitted to spend less than a certain amount if the same objective can be achieved at a savings to the taxpayer.[125] Current DHS Secretary Jeh Johnson shares these views, stating that a level of 34,000 beds is too high and "not the best and highest use of our resources, given our current estimates of who we need to detain, who we regard as public safety, national security, border security threats."[126]

However, the Center for Immigration Studies has found, based on ICE data, that there are now 882,943 non-detained aliens with final orders of removal who have not been removed.[127] "The vast majority of [these aliens] have simply absconded. . . ."[128] In 2003, the Department of Justice Inspector General issued a report that found that the former INS had successfully carried out removal orders with respect to only 13 percent of non-detained aliens who were subject to final removal orders—and was able to remove only

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[123] *See* H.R. Rep. No. 112–091 (2011), H.R. Rep. No. 112–492 (2012).
[124] *See id.*
[125] *See id.*
[126] Department of Homeland Security Budget for Fiscal Year 2015: Hearing Before the Subcomm. on Homeland Security of the House Appropriations Comm., 113th Cong (2014).
[127] *See* ICE Enforcement Collapses Further in 2014 at 3.
[128] *See* Deportation Numbers Unwrapped at 12–13 (table 8).

3 percent of non-detained aliens who had unsuccessfully sought asylum.[129]

On March 14, 2013, ICE Director Morton testified before the House Appropriations Committee, Homeland Security Subcommittee.[130] Director Morton stated that:

> As the Committee knows, we are coming to the end of a Continuing Resolution (CR). This CR funded ICE to maintain a yearly average daily population of approximately 34,000 individuals. In early February, ICE was maintaining an average daily population in excess of 35,000 individuals, including many who did not require detention by law.
>
> These detention levels exceeded Congressional appropriations, and with the strong possibility of sequestration, ICE officials managed the detention population in order to ensure that ICE could operate within the appropriations provided by Congress. Notably, these budget constraints are now further compounded by the reductions required by sequestration, which represents a nearly $300 million cut to our budget that we must absorb over the remaining 7 months of the fiscal year.
>
> In reducing detention levels, we took careful steps to ensure that national security and public safety were not compromised by the releases. All release decisions were made by career law enforcement officials following a careful examination of the individual's criminal and immigration history ensuring that the focus remains on detaining serious criminal offenders and others who pose a threat to the national security or public safety. Every individual released was placed on an alternative form of ICE's supervision, and all released individuals remain in removal proceedings.

During oral testimony, Director Morton disclosed that the agency had released 2,228 detainees from detention. Of these, 629 were convicted criminals and 1,599 had been charged with crimes.

Director Morton testified before House Judiciary Committee on March 19, 2013.[131] The hearing reflected the concerns the Committee had with the release of criminal aliens by DHS, and the impact of the release on public safety. Some of the information provided to the Committee during testimony was inconsistent with statements made by the Director during the House Appropriations Committee's Subcommittee on Homeland Security's hearing just a few days earlier. At that hearing, Director Morton testified that out of 2,228 released unlawful and criminal alien detainees, ten Level 1 offenders (the most serious criminals as defined in a March 2, 2011, memo on ICE priorities) had been released. However, during the Committee's hearing less than 1 week later on March 19, Director Morton testified, under oath, that only eight Level 1 offenders had been released after a "review" of the cases. Director Morton

[129] *See* U.S. Department of Justice Office of the Inspector General, Evaluation and Inspections Division, The Immigration and Naturalization Services Removal of Aliens Issued Final Orders (I–2003–004) at i, ii (2003).

[130] Hearing on Immigration Enforcement.

[131] The Release of Criminal Detainees by U.S. Immigrations and Customs Enforcement: Policy or Politics?

also stated some of these offenders had been "reclassified." Additionally, a transmittal from ICE to the Judiciary Committee on March 14, 2013, entitled "Detention Releases Solely for Budget Reasons by Field Office" states that ten level 1 offenders were released.

On May 6, 2013, Senators Levin and McCain were provided with information contrary to what information provided the Judiciary Committee and the Appropriations Committee.[132] ICE informed the Senators that there were 32 level 1 offenders, not ten or eight. The Committee was also told that there were 629 criminal aliens released, but the Senators were informed that there were 622 criminal aliens released. Additionally, ICE indicated that there were 159 Level 2 detainees. In the letter ICE provided to the Senators, it indicated that there were 80 Level 2 offenders. Furthermore, ICE informed the Senators it had to re-apprehend 58 released detainees. At the time of the Judiciary Committee hearing, there were barely a handful of re-apprehensions.

The Senators were informed that among the 32 detainees, ICE's Phoenix District Office released a detainee who had a felony second degree robbery prior conviction and countless convictions for prostitution and solicitation for lewd conduct. The Phoenix office releases also included an individual who had been convicted of DUI and harassment and having caused criminal damage to property, as well as a detainee who had prior convictions for carrying a loaded firearm, DUI with a controlled substance, felony possession of drugs, second degree burglary, vandalism, and trespassing. The San Francisco Field Office released an alien with a prior felony conviction for manufacturing fake identification documents as well as an alien with two DUIs and two stalking convictions. The Houston office deemed a person convicted of felony possession of marijuana of up to 2,000 pounds acceptable for release.

Sanctuary Cities

On December 19, 2002, a 42-year-old mother of two was abducted and forced by her assailants into a hideout near some railroad tracks in Queens, New York. She was brutally assaulted before being rescued by a New York Police Department unit. The NYPD arrested five immigrants in connection with that assault. According to records that the Judiciary Committee received from the INS, four of those immigrants entered the United States illegally. Three of them had extensive arrest histories in New York City. The fifth immigrant, a lawful permanent resident, also had a criminal history prior to the December 2002 attack. Despite the criminal histories of the four immigrants, however, it did not appear from the records that the Committee received that the NYPD told the INS about these immigrants until after the December attack.

These crimes prompted extensive public discussion of whether New York City police were barred from disclosing immigration information to the INS, a policy that may have prevented the removal of these aliens prior to the December 19 attack. Some suggested that the only reason that the three illegal immigrants were in the United States, despite their extensive arrest histories, was

[132] *See* Senators McCain And Levin: New Information Regarding Ice Detainee Release (May 16, 2013), *available at* http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=ade7dd17-dd54-d5e7-aa20-270a8c91410d.

because the NYPD officers who arrested these aliens previously were barred by a ”sanctuary” policy from contacting the INS. That policy prevented NYPD officers from contacting the INS when they arrested an unlawful alien. New York City's Executive Order 124 barred line officers from communicating directly with the INS about criminal aliens. That executive order was issued by Mayor Ed Koch in 1989.

In June 2008, Tony Bologna and his two sons were murdered by an unlawful alien who had previously committed felony attempted robbery and assault, but who was not deported because of San Francisco's sanctuary policy.

Sanctuary policies are in direct violation of Federal law. Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that no federal, State, or local government entity or official may prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, DHS information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

By some estimates, there are over 100 U.S. states and localities that have sanctuary policies in place. In some cases, victims of crimes committed by unlawful aliens have filed claims against the cities. For instance, in 2008, Tony Bologna's widow filed a claim against San Francisco, asserting that the city's sanctuary policy was a “substantial factor” in the death of her husband and two sons since the policy kept the unlawful alien from being deported. She later filed a wrongful death lawsuit against the city (which was later dismissed).[133] Margaret Rains and Haley Tepe sued the city Denver after they were injured by an unlawful alien who drove his car into an ice cream shop in September 2008 (and who had a long history of arrests but was never reported, or turned over, to ICE).[134]

In order to deal with the problems created by sanctuary cities, the SAFE Act requires information sharing between States and localities and the Federal Government regarding removable aliens, provides grants to local law enforcement agencies that assist in immigration law enforcement, requires that State and local law enforcement agencies honor Federal detainers for removable aliens so that Federal agents can assume custody of the aliens and withholds State Criminal Alien Assistance Program grants, law enforcement grants, and DHS grants from States and localities that violate Federal immigration law by being sanctuary jurisdictions.[135]

Illegal Immigrant Drunk Drivers

There have been many other tragic incidents involving drunk drivers in addition to the death of Dennis McCann. On November 24, 2010, ICE issued a report on Carlos Martinelly Montano.[136] This report provided the results of the inquiry into the case of Montano, an unlawful alien, who was charged in Prince William

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[133] *See* Jaxon Van Derbeken, Family Blames Sanctuary Policy in 3 Slayings, San Francisco Chronicle, Aug. 23, 2008.

[134] *See* Valerie Richardson, Lawsuits Challenge, Sanctuary Policies, The Washington Times, Feb. 25, 2009.

[135] *See* HR. 2278, secs. 105, 106, 113, 114, and 115.

[136] *See* ICE, DHS, Carlos Martnelly Montano Inquiry (2010).

County, Virginia, with involuntary manslaughter after the death of a nun in a drunk driving accident.

According to the report, Montano was first arrested on December 7, 2007, by Prince William police and convicted of drunk driving. He was sentenced to serve 30 days. A judge suspended his sentence. Law enforcement officials did not check his immigration status at that time. Thereafter, Montano was charged in October 4, 2008, with another DUI in Prince William County. This time local authorities determined that Montano was in the country illegally and ICE lodged an immigration detainer against him and placed him in removal proceedings. ICE later decided that Montano was a candidate for alternatives to detention. He was released and his whereabouts were monitored with a GPS system. In March 2009, while he was in deportation proceedings, Montano was charged in Fairfax County with misdemeanor failure to appear related to driving without a license. Local officials dismissed those charges. On April 2010, Montano was cited in Manassas Park with misdemeanor reckless driving. There is no record that Manassas Park police contacted ICE or booked and fingerprinted Montano, the report showed.

The report found that Montano's youth, family ties, letters from family and others and the fact that he had completed an alcohol rehabilitation program contributed to his release by ICE. The report claims that Montano would have been detained under subsequent ICE guidelines because he was a repeat offender and he demonstrated himself to be a danger to public safety.

On June 16, 2013, Father's Day, an illegal alien driving drunk crashed into a car driven by Jorge DeLeon with his two small children.[137] Jorge was killed instantly, while his two children were seriously injured. His 4-year-old daughter subsequently died of her injuries.[138]

The driver of the other car, Manuel Vazquez, was in the country illegally and has never possessed a U.S. driver's license. He was arrested for drunk driving in Texas just a few weeks earlier. When he hit Jorge and his children, Vasquez was driving on the wrong side of the road and collided with them head on.

On May 19, 2013, police in Houston arrested Andres Munos-Munos, age 23, after he ran a red light, crashing into a pickup truck driven by Harris County Deputy Sheriff Dwayne Polk.[139] Deputy Polk died at the scene. Polk had been with the Sheriff's office for 16 years, reaching the rank of sergeant.

The unlawful alien charged with his death has a serious criminal record. He was arrested on June 10, 2012, for driving while intoxicated. He also was charged with the unlawful carrying of a weapon.

On the same day that Deputy Polk was killed, Officer Daryl Raetz was struck at sobriety check point in Phoenix, AZ. The driver of the vehicle fled the scene. Later, police officers stopped an SUV matching the description of the vehicle that struck the officer.

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[137] *See* Illegal alien charged with killing man and his 4-year-old daughter in NJ, Examiner, http://www.examiner.com/article/illegal-alien-charged-with-killing-man-and-his-4-year-old-daughter-nj (June 22, 2013).

[138] *Id.*

[139] *See* Houston-area sheriff's deputy killed in crash with DWI suspect, KENS Channel 5 San Antonio, May 20, 2013.

Phoenix filed manslaughter charges against Jesus Cabrera Molina, who was already in custody on drug and immigration violations.[140]

Molina, who was 24, has admitted he was drunk and high on cocaine the night his SUV struck and killed Officer Daryl Raetz, but he denies he was behind the wheel. When he was arrested, Cabrera Molina had a small bag of cocaine in his pocket. Federal immigration officials also issued a detainer to take custody of Cabrera Molina because he was in the country illegally. He absconded after being released when he posted a $5,000 bond.

In IIRIRA, Congress mandated that the Federal Government detain aliens who are deportable on the basis of having committed aggravated felonies.[141] The INA provides that a crime of violence for which the term of imprisonment is at least 1 year is considered an aggravated felony.[142] However, the Supreme Court ruled in 2004 that a criminal conviction for driving under the influence of alcohol absent a malicious mental state is not a crime of violence for immigration purposes.[143] Thus, current law does not require ICE to detain unlawful aliens who have committed drunk driving offenses. However, there is nothing preventing ICE from detaining such unlawful aliens in its discretionary authority.

The National Highway Traffic Safety Administration has found that on average someone dies in the U.S. in a motor vehicle crash involving an alcohol-impaired driver every 45 minutes—amounting to 11,773 deaths in 2008.[144] The annual cost to the nation of alcohol-related crashes totals more than $51 billion.[145] As the BIA realized, there is "incontrovertible evidence that drunk driving is an inherently reckless act, which exacts a high societal toll in the forms of death, injury, and property damage." [146] In addition, drunk driving involves a high degree of recidivism.

Chairman Smith wrote a letter to Secretary Napolitano urging that "ICE launch removal proceedings against all illegal immigrants it comes in contact with who have had prior convictions for drunk driving—and that ICE detain all such aliens during their removal proceedings." [147] DHS did not honor his request.[148]

In order to deal with the problem of immigrant drunk drivers and ensure deportation of the those who violate our immigration laws, H.R. 2278 makes two or more convictions of driving drunk an aggravated felony and requires the detention of unlawful aliens who have been convicted for driving while intoxicated.[149]

Immigrant Gangs

The threat posed by immigrant criminal gangs is becoming more and more severe. ICE has stated that "[i]n the last decade, the United States has experienced a dramatic increase in the number

[140] *See* Phoenix Cop Daryl Raetz's Alleged Killer Admits Being Drunk, High on Cocaine on Night of Crash, the Phoenix New Times (June 4, 2013).
[141] *See* section 236(c)(1)(B) of the INA.
[142] *See* section 101(a)(43)(F) of the INA.
[143] *See Leocal v. Ashcroft*, 543 U.S. 1 (2004).
[144] *See* National Highway Traffic Safety Administration, Traffic Safety Facts 2008 Data: Alcohol-Impaired Driving 1.
[145] *See* Centers for Disease Control and Prevention Impaired Driving Fact Sheet.
[146] In re Carlos Istalin Magallanes-Garcia, 22 I. & N. Dec. 1 (BIA 1998).
[147] Letter from Lamar Smith to Janet Napolitano, Secretary, DHS (August 9, 2010).
[148] *See* letter from John Morton, Director, ICE, DHS, to Lamar Smith (September 10, 2010).
[149] *See* H.R. 2278, sec. 309.

and size of transnational street gangs"[150] and that these gangs "have grown to become a serious threat in American communities across the nation—not only in cities, but increasingly in suburban and even rural areas."[151]

As ICE has found, "[e]ntire neighborhoods and sometimes whole communities are held hostage by and subjected to the violence of street gangs."[152] An example is Mara Salvatrucha-13, which was formed by Salvadorans who entered the U.S. during the civil war in El Salvador in the 1980's. ICE believes that MS–13 is "one of the most violent and rapidly growing transnational street gangs."[153] The National Gang Intelligence Center estimates that there are about 8–10,000 members of MS–13 in the United States (and 30–50,000 worldwide).[154] The Center for Immigration Studies reports that members have been convicted of such crimes as "murder, murder for hire, assault, extortion, kidnapping, theft, retail drug dealing, prostitution, rape, home invasion, robbery, burglary, and numerous other crimes."[155]

ICE has found that "membership of these violent transnational gangs [is] comprised largely of foreign-born nationals."[156] The most effective mechanism to protect Americans from these gangs is to deport their members. ICE can currently deport alien gang members who are unlawful aliens without having to wait for them to be convicted of crimes. However, it cannot do so for legally present gang members. In addition, those unlawful aliens who have received asylum or temporary protected status cannot be deported until conviction. Unfortunately, many members of transnational gangs in the U.S. have received temporary protected status. ICE revealed in an Immigration Subcommittee hearing in 2005 that of 5,000 gang members in an ICE database, 291 El Salvadoran nationals, 43 Hondurans, and one Nicaraguan had been granted TPS.[157] This is problematic for two reasons. First, prosecution of alien gang members is difficult because witnesses and victims of gang crime have proven reluctant to testify for fear of retaliation. Thus, many gang members have never been convicted of the crimes they have committed. Second, this presupposes waiting until an alien gang member has committed a deportable crime. Why not deport them before they have had a chance to victimize innocent Americans?

In order to deal with this problem, the SAFE Act contains provisions designed to make alien criminal gang members deportable and inadmissible.[158]

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[150] MS–13 and Counting: Gang Activity in Northern Virginia: Hearing Before the Comm. on Government Reform, 109th Cong. (2006) (statement of James Spero, Acting Assistant Special Agent in Charge, Washington, D.C., ICE).

[151] ICE, DHS, ICE Fiscal Year 2008 Annual Report 18 (2009).

[152] MS–13 and Counting (statement of James Spero).

[153] DHS, Office of Investigations, Operation Community Shield Fact Sheet (2008).

[154] *See* National Gang Intelligence Center, National Gang Threat Assessment 2009 26 (2009).

[155] Jon Feere & Jessica Vaughan, Taking Back the Streets: ICE and Local Law Enforcement Target Immigrant Gangs, 2008 Center for Immigration Studies.

[156] ICE, DHS, ICE Fiscal Year 2007 Annual Report 18 (2008).

[157] *See* Immigration and the Alien Gang Epidemic: Problems and Solutions: Hearing Before the Subcomm. On Immigration, Border Security, and Claims of the House Comm. on the Judiciary, 109th Cong. 29 (2005) (statement of Michael Garcia, Assistant Secretary for Immigration and Customs Enforcement, DHS).

[158] *See* H.R. 2278, sec. 311.

The Enforcement of Immigration Laws by States and Localities

About 5,000 ICE agents have the duty of enforcing our nation's immigration laws. These agents have to deal with at least 11 million unlawful aliens in the United States and many thousands of aliens, both legal and illegal, who have committed deportable crimes. This number is clearly insufficient if we ever hope to enforce our immigration laws. It pales in comparison to the New York City police department, which has over 34,000 officers.

There are over 730,000 State and local law enforcement officers in the United States. If State and local law enforcement agencies could assist ICE in enforcing immigration laws—on a totally voluntary basis—this would represent a significant force multiplier for ICE.

Consider the case of the 9/11 hijackers. Four of them were pulled over for traffic infractions during the months before September 2001. Unfortunately, police officers did not check their immigration status. They all had violated Federal immigration laws and could have been detained by State or local officers.[159] Tragedy on a massive scale could have been averted if local law enforcement in these instances had cooperated in the enforcement of Federal immigration laws.

If we can trust local law enforcement to enforce laws against homicide, drugs, and robbery, we can trust them to enforce immigration laws.

A. The Section 287(g) Program

Section 287(g) of the INA provides express statutory authority for DHS to enter into agreements with States and localities under which State and local law enforcement officers who have been trained by DHS can assist in the investigation, apprehension and detention of removable aliens.

At one point ICE had 68 working agreements. It trained more than 1,474 State and local officers to help enforce immigration law, and more than 309,283 unlawful aliens have been identified for possible deportation since 2006.[160]

The statute grants significant discretion to ICE in setting up and managing the program. ICE had organized the program in two primary formats, a jail model and a task force model:

- Jail Model: This option allows for correctional officers to screen those arrested or convicted of crimes by accessing Federal databases to determine a person's immigration status. When a removable alien is detected, officers have the authority to issue an immigration detainer and notify ICE to arrange transportation to a Federal detention facility prior to deportation.
- Task Force Model: This option allows law enforcement officers participating in criminal task forces, such as drug or gang task forces, to screen arrested individuals using Federal databases to assess their immigration status. Most jurisdictions applying this model allow 287(g)-designated offi-

[159] *See* Kris Kobach, The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests, 69 Albany Law Review at 183 (2006).
[160] Information provided by ICE.

cers to check immigration status when they encounter someone through their normal duties and they have reasonable suspicion that person may be a removable alien.

ICE officials have recognized the value of the 287(g) program with statements such as, "each law enforcement agency that signs on to the 287(g) program represents a force multiplier to help combat crime in local communities,"[161] Until recently, ICE touted the success of 287(g) on their website with figures showing the number of unlawful aliens who have been identified for possible removal through the program, and it even had a web page entitled "287(g) Success Stories."[162]

Also, according to ICE, "since January 2006, the 287(g) program is credited with identifying more than 185,000 individuals . . . who are suspected of being in the country illegally."[163] A *Human Events* article by Jessica Vaughan and Jim Edwards stated, "[a]ccording to ICE documents we obtained through the Freedom of Information Act . . . 287(g) arrests represented about one-fifth of all ICE criminal alien arrests in 2008. All of the removable aliens were identified by trained officers in the regular course of their duties in corrections, highway patrol, or criminal investigations. They include murderers, rapists, gangsters, drunk drivers, and even a few suspected terrorists."[164]

Some argue that this program should only be used to detain and remove criminals who commit "serious" crimes. However the statute says nothing to this effect, and it is beneficial to remove immigrant criminals who commit "minor" offenses before they can commit more serious crimes.

Opponents of 287(g) generally also argue that the program promotes ethnic profiling and abuses of power. However, Government Accountability Office official Rich Stana stated during a House Homeland Security Committee hearing on March 4, 2009, that, "[w]e didn't see any complaints in the files of any jurisdiction or in the OPR about any jurisdiction. . . . And I don't quite know how to reconcile that with media reports about problems with these programs in certain jurisdictions."[165]

The Obama Administration decided to "reform" the 287(g) program in 2009, responding to criticism of the program from groups opposed to state and local law enforcement officials helping to enforce Federal immigration laws. The administration has virtually wiped out the task force model of 287(g). According to ICE, the reforms included:

- Implementing comprehensive guidelines for ICE field offices that supervise 287(g) partnerships, prioritizing the arrest and detention of immigrant criminals;
- Requiring 287(g) officers to maintain comprehensive alien arrest, detention, and removal data in order to ensure operations focused on immigrant criminals;

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[161] ICE News Release, 26 Law Enforcement Officers Trained by ICE to Enforce Immigration Law (2012), http://www.ice.gov/news/releases/1007/100723charleston.htm.

[162] ICE Website, 287(g) Success Stories, http://www.ice.gov/287g/success-stories.htm.

[163] *Id.*

[164] Enforcement Pays, Human Events, March 19, 2009.

[165] Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law: Hearing Before the House Comm. on Homeland Security, 111th Cong. (2009).

- Strengthening the 287(g) basic training course and creating a refresher training course, providing detailed instruction on the terms of the new MOA and the responsibilities of a 287(g) officer;
- Deploying additional supervisors to the field to ensure greater oversight over 287(g) operations; and
- Establishing an Internal Advisory Committee, which includes DOJ's Office of Civil Rights and Civil Liberties, to review and assess ICE field office recommendations about pending 287(g) applications.

And according to ICE, the revised 287(g) MOA:

- Requires local law enforcement agencies to pursue all criminal charges that originally caused the offender to be taken into custody;
- Requires all 287(g) officer candidates be confirmed as eligible and qualified before gaining access to ICE databases;
- Requires participating agencies to inform ICE of all complaints regarding their 287(g) officers, as well as the outcome of those complaints; and
- Provides flexibility to address issues of local concern, such as state and local laws or other specific needs of a particular agency.[166]

According to the Center for Immigration Studies:

> In general, the new MOA tries to constrict local officers' use of the immigration enforcement authority for investigative purposes to situations that the ICE supervisors can monitor more easily, a move clearly intended to discourage use of the authority for "random street stops" (which were non-existent anyway). It asks jurisdictions to align their use of 287(g) authority with ICE's priorities for the removal of illegal aliens, which give priority to the most serious offenders. It spells out more specifically the level of ICE supervision expected for each local program. It requires local agencies to pick up some of the technology and equipment costs for database access, which could turn out to be a hardship for some agencies, especially the smaller ones ICE would like to discourage. It requires local agencies to track the nature of the offenses committed by aliens arrested, but forbids them from disclosing this information to the public unless ICE approves. The release of all information related to 287(g) programs will be controlled by ICE. This last provision has been particularly controversial, as some states have strict open records laws, and many participating agencies have invited public scrutiny of their programs to help defuse criticism from opponents.[167]

[166] ICE, DHS, Updated Facts on ICE's 287(g) Program, http://www.ice.gov/pi/news/factsheets/section287_g-reform.htm.

[167] Jessica Vaughn and Jim Edwards, The 287(g) Program: Protecting Home Towns and Homeland, 2009 Center for Immigration Studies.

There have been no MOAs signed since August 2010, and that was the only one signed in 2010. There were only five signed in 2009.

Currently, ICE only has 287(g) agreements with 36 law enforcement agencies in 19 states.[168] As discussed below, despite that success and the accolades from ICE officials, on June 25, 2012, ICE suspended the seven 287(g) agreements it had with Arizona law enforcement agencies.[169] ICE stated that it did so "in light of the Supreme Court's decision to uphold" the provision of Arizona law that required State and local law enforcement officers to make a reasonable attempt to determine the immigration status of an individual encountered in certain circumstances. ICE went on to say, "ICE has determined that 287(g) Task Force agreements are not useful in States that have adopted immigration enforcement laws like SB1070." [170]

B. Arizona Immigration Enforcement Law

Background

On April 23, 2010, Arizona Governor Jan Brewer signed into law SB1070, the "Support Our Law Enforcement and Safe Neighborhoods Act." On July 6, 2010, the Obama Administration filed a complaint in the U.S. District Court for the District of Arizona, challenging SB1070's constitutionality (specifically, that SB1070 violated the Supremacy Clause on the grounds that it was preempted by the INA and that it violated the Commerce Clause, and requesting that the court enjoin the State from enforcing the law until the court makes a final determination as to constitutionality).[171] On July 28, 2011, the district court enjoined SB1070's provisions:[172]

- requiring that a State or local law enforcement officer make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is a reasonable suspicion that the person is unlawfully present in the United States;
- requiring verification of the immigration status of any person arrested prior to releasing that person;
- creating a crime for the failure to apply for or carry alien registration papers;
- creating a crime for an unauthorized alien to solicit, apply for, or perform work; and
- authorizing the warrantless arrest of a person where there is probable cause to believe the person has committed an offense that makes the person removable from the United States.

[168] *Id.*
[169] *See* ICE Congressional Relations Notice, ICE 287(g) Task Force Agreements With Arizona State and Local Law Enforcement Agencies, Jun., 25, 2012.
[170] *Id.*
[171] *See U.S. v. State of Arizona,* 703 F. Supp. 2d 980, 986–987 (D. Ariz. 2010).
[172] *Id.*

Arizona appealed to the Ninth Circuit, arguing that the enjoined sections were not preempted by Federal law. On April 11, 2011, the Ninth Circuit affirmed the District Court's ruling.[173]

The Supreme Court Decision

In August 2011, the State of Arizona filed a writ of certiorari with the U.S. Supreme Court. The Supreme Court granted certiorari and issued its decision on June 25, 2012.[174] In its decision, the Supreme Court described the three ways in which Federal law may preempt state and local law pursuant to the Supremacy Clause of the U.S. Constitution. First, "[t]here is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision."[175] In addition, "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance."[176] This is called "field preemption." Lastly, "state laws are preempted when they conflict with Federal law. This includes cases where 'compliance with both Federal and state regulations is a physical impossibility,' . . . and those instances where the challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress[.]'"[177] This is called "conflict preemption."

The Supreme Court struck down three provisions of the Arizona law. The first was a state misdemeanor that forbid "willful failure to complete or carry an alien registration document . . . in violation of 8 United States Code section 1304(e) or 1306(a)."[178] As the Court found "[i]n effect, [this provision] add[ed] a state-law penalty for conduct proscribed by Federal law."[179] The Court ruled that:

> Where Congress occupies an entire field, as it has in the field of alien registration, even complementary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to Federal standards. . . . [T]he Court now concludes that, with respect to the subject of alien registration, Congress intended to preclude States from "complement[ing] the Federal law, or enfor[cing] additional or auxiliary regulations."[180]

H.R. 2278 provides the explicit Congressional authorization that the Supreme Court requires for State and local laws that penalize conduct proscribed by Federal immigration law. Section 102 of the bill states that "States, or political subdivisions of States, may enact, implement and enforce criminal [and civil] penalties that penalize the same conduct that is prohibited in the criminal [and civil] provisions of immigration laws . . . as long as the criminal [and civil] penalties do not exceed the relevant Federal criminal [and civil] penalties." In these instances, the bill clearly and without question indicates that Congress intends to allow States and lo-

[173] *See U.S. v. State of Arizona,* 641 F.3d 339 (9th Cir. 2011).
[174] *See Arizona v. United States*, 132 S.Ct. at 2492.
[175] *Id.* at 2500–01.
[176] *Id.* at 2501.
[177] *Id.* (internal citations omitted).
[178] Ariz. Rev. Stat. Ann. § 11–150(A) (West Supp. 2011).
[179] *Arizona v. United States,* 132 S.Ct. at 2501.
[180] *Id.* at 2502–03 (citations omitted).

calities to complement Federal immigration law with their own laws and enforce the provisions of their laws. Thus, under H.R. 2278, the registration provision of Arizona law would be a permissible and constitutional exercise of state power. The ruling by the Supreme Court that it is preempted by Federal law is no longer valid, because of the bill's provision of explicit congressional authorization.

The second provision of Arizona law struck down by the Supreme Court made it a state misdemeanor for "an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor."[181] In this case, there is no similar Federal law. In fact, as the Supreme Court noted, Federal immigration law "does not impose Federal criminal sanctions" on unauthorized aliens who work—and "Congress made a deliberate choice not to impose criminal penalties on aliens who . . . engage in . . . unauthorized employment."[182] The Supreme Court ruled that the Arizona law was preempted under the doctrine of conflict preemption. This Arizona law would still be preempted under H.R. 2278, as the Arizona law is not reflective of Federal law.

The third provision of Arizona law struck down by the Supreme Court provided that a state officer "without a warrant, may arrest a person if the officer has probable cause to believe . . . [the person] has committed any public offense that makes [him] removable from the United States."[183] The Supreme Court ruled that the law was preempted under the doctrine of conflict preemption because:

> Congress has put in place a system in which state officers may not make warrantless arrests of aliens based on possible removability except in specific, limited circumstances [such as pursuant to "287(g)" agreements between their law enforcement agencies and DHS]. By nonetheless authorizing state and local officers to engage in these enforcement activities as a general matter, [the provision] creates an obstacle to the full purposes and objectives of Congress.[184]

Section 102 of H.R. 2278 provides that "[l]aw enforcement personnel of a State, or of a political subdivision of a State, may investigate, identify, apprehend, arrest, detain, or transfer to Federal custody aliens for the purposes of enforcing the immigration laws of the United States to the same extent as Federal law enforcement personnel." The section clearly and without question indicates that Congress intends to allow State and local law enforcement to engage in these activities, and with absolutely no need for State and local law enforcement to have "any input from the Federal Government about whether an arrest is warranted in a particular case", which input the Supreme Court considered necessary under current law because of perceived congressional intent. The Supreme Court believed that such authorization would allow a State to "achieve its own immigration policy."[185] To the contrary, such authorization—as provided by H.R. 2278—allows States to further the

[181] Ariz. Rev. Stat. Ann. § 13–2928 (C) (West Supp. 2011).
[182] *Arizona v, United States*, 132 S.Ct. at 2503–04.
[183] Ariz. Rev. Stat. Ann. § 13–3883 (A)(5) (West Supp. 2011).
[184] *Arizona v. United States*, 132 S.Ct. at 2507.
[185] *Id.* at 2506.

overarching congressional goal that the Federal immigration laws be enforced, regardless of the policies of immigration law non-enforcement of any particular administration. As Justice Scalia remarked in dissent, the government's complaint that state officials might not heed Federal "priorities" is a good thing:

> Indeed they might not, particularly if those priorities include willful blindness or deliberate inattention to the presence of removable aliens in Arizona. . . . What I do fear—and what Arizona and the States that support it fear—is that "federal policies" of nonenforcement will leave the States helpless before those evil effects of illegal immigration that the Court's opinion dutifully recites in its prologue.[186]

H.R. 2278 would make the Arizona warrantless arrest provision as written a permissible and constitutional exercise of state power. The Supreme Court had noted that this provision "provide[d] state officers even greater authority to arrest aliens on the basis of possible removability than Congress has given to . . . Federal immigration officers."[187] It came to this conclusion because under Federal law, where no warrant has been issued, Federal officers "may arrest an alien for being 'in violation of any [immigration] law or regulation,' . . . only where the alien 'is likely to escape before a warrant can be obtained.'"[188] However, section 501 of H.R. 2278 allows Federal officers to make such arrests without the alien having to be likely to escape. The Arizona provision would be a permissible and constitutional exercise of state power pursuant to H.R. 2278, because state officers would have no more arrest authority than do Federal immigration officers.

The Supreme Court did not strike down a fourth provision of Arizona law that requires State officers to make a "'reasonable attempt . . . to determine the immigration status' of any person they stop, detain, or arrest on some other legitimate basis if 'reasonable suspicion exists that the person is an alien and is unlawfully present in the United States.'"[189] The Supreme Court ruled that:

> There is a basic uncertainty about what the law means and how it will be enforced. At this stage, without the benefit of a definitive interpretation from the state courts, it would be inappropriate to assume [the provision] will be construed in a way that creates a conflict with Federal law. . . .[190]

The Court noted that while "[d]etaining individuals solely to verify their immigration status would raise constitutional concerns . . . [, the provision] could be read to avoid those concerns."[191]

The Court stated that:

> [I]t would disrupt the Federal framework to put state officers in the position of holding aliens in custody for possible unlawful presence without Federal direction and supervision. . . . The program put in place by Congress does

[186] *Id.* at 2517–19 (Scalia, J., dissenting).
[187] *Id.* at 2506.
[188] *Id.*
[189] *Id.* at 2507.
[190] *Id.* at 2510.
[191] *Id.* at 2509.

> not allow state or local officers to adopt this enforcement mechanism. But [the provision] could be read to avoid these concerns.
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> [If the provision] only requires state officers to conduct a status check during the course of an authorized, lawful detention or after a detainee has been released, the provision likely would survive preemption—at least absent some showing that it has other consequences that are adverse to Federal law and its objectives. There is no need in this case to address whether reasonable suspicion of illegal entry or another immigration crime would be a legitimate basis for prolonging a detention, or whether this too would be preempted by Federal law.
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> [I]t would be inappropriate to assume [that the provision] will be construed in a way that creates a conflict with Federal law. . . . As a result, the United States cannot prevail in its current challenge. . . . This opinion does not foreclose other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect.[192]

However, it is the clear congressional intent of H.R. 2278 that it would most decidedly not disrupt the Federal framework to put state officers in the position of holding aliens in custody for possible unlawful presence without Federal direction and supervision. Thus, after enactment of H.R. 2278, the Arizona provision would be a permissible and constitutional exercise of state power if in practice it put state officers in the position of holding aliens in custody for possible unlawful presence without Federal direction and supervision. Again, the congressional intent embodied in H.R. 2278 is to allow States to further the overarching congressional goal that the Federal immigration laws be enforced, regardless of the policies of immigration law non-enforcement of any particular administration. Of course, after enactment of H.R. 2278, this provision of Arizona law would have to be implemented in a fashion that did not violate relevant constitutional provisions, such as the bar against unreasonable searches and seizures under the Fourth Amendment.

The Administration's Response

As discussed in the prior section on 287(g) agreements, ICE responded to the Supreme Court's decision partially upholding Arizona's law by rescinding its 287(g) agreements with Arizona law enforcement agencies. ICE cited the Supreme Court's decision to uphold the provision of Arizona law that requires a reasonable attempt to be made when practicable to determine the immigration status of a person during any lawful stop, detention or arrest.

Specifically, 287(g) Task Force agreements were rescinded with the Arizona Department of Public Safety, the City of Mesa Police Department, the Florence Police Department, the Pima County

[192] *Id.* at 2509–10 (citations omitted).

Sheriff's Office, the Pinal County Sheriff's Office, the Yavapai County Sheriff's Office and the Phoenix Police Department.[193]

Section 112 of H.R. 2278 requires that DHS accept a request for 287(g) applications absent a compelling reason not to. No limit on the number of agreements can be imposed. The Secretary shall process requests for such agreements with all due haste, and in no case shall take more than 90 days from the date the request is made until the agreement is consummated. Any such agreement under this section shall accommodate a requesting State or political subdivision with respect to the enforcement model of their choosing. Furthermore, no agreement can be terminated absent a compelling reason to do so. DHS shall provide a State or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination.

C. The SAFE Act

President Reagan signed the Immigration Reform and Control Act, or IRCA, into law on November 6, 1986.[194] The bill provided for three main reforms: legalizing many of the millions of unlawful aliens already in the country, increasing border enforcement, and instituting penalties for employers who hired unauthorized workers and requiring that they check the identity and work authorization documents of new hires in order to stop the flow of new unlawful aliens. These reforms were based on the realization that if Congress passed only a legalization program, it would simply be encouraging future illegal immigration. The Select Commission on Immigration had warned just a few years earlier that "[w]ithout more effective enforcement than the United States has had in the past, legalization could serve as a stimulus to further illegal entry." [195] Unfortunately, IRCA's enforcement measures were never adequately enforced and the Commission's fears were realized. Border security barely improved. Employer penalties weren't enforced. Now, 28 years later, immigration reform efforts are haunted by the legacy of IRCA's failure.

The primary reason why our immigration system is broken today is because the present and past administrations have largely ignored the enforcement of our immigration laws. Any enforcement provisions Congress passes are now subject to implementation by the Obama Administration, which fails to enforce the laws already on the books. DHS has released thousands of unlawful and criminal alien detainees. DHS is forbidding ICE officers from enforcing the laws they are bound to uphold. One Federal judge has already ruled DHS's actions are likely in violation of Federal law. DHS is placing whole classes of unlawful aliens in enforcement free zones. DHS has claimed to be removing more aliens than any other administration, but has to generate misleading numbers in order to do so. If we want to avoid the mistakes of the past, we cannot allow the President to continue shutting down Federal immigration enforcement efforts unilaterally. Real immigration reform needs to have mechanisms to ensure that the President cannot simply turn off the switch on immigration enforcement.

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[193] Information provided by ICE.
[194] Pub. L. No. 99–603.
[195] Select Commission on Immigration and Refugee Policy, U.S. Immigration Policy and the National Interest 82 (1981).

The SAFE Act is designed to end the current state of affairs in which the nation's immigration laws go largely unenforced because the President has directed his administration to simply not enforce them. As indicated, it grants States and localities the specific congressional authorization the Supreme Court requires to enact and enforce their own immigration laws as long as they are consistent with Federal law and to play a role in the enforcement of Federal law.

However, a decision by the U.S. District Court for the District of Arizona imperils the reforms contained in the bill. On May 24, 2013, the court enjoined Maricopa County, Arizona, from engaging in a number of immigration enforcement efforts.[196] In its opinion, the court ruled that Maricopa County law enforcement officers can no longer detain persons who they believe to be unlawful aliens. The court noted that unlawful presence is not in itself a Federal crime, and ruled that the county policy's "focus on removable alien as opposed to aliens who have committed criminal offenses violates the strictures against unreasonable seizures set forth in the Fourth Amendment."[197] Additionally, the court ruled that when Maricopa County "detains a vehicle's occupant(s) because a deputy believes that the occupants are not legally present in the country, but has no probable cause to detain them for any other reason, the deputy violates the Fourth Amendment rights of the occupants."[198]

Courts that adopt this analysis will bar State and local law enforcement officers from detaining unlawful aliens even if the congressional authorization provisions become law. The courts will claim that the provisions are unconstitutional and therefore prevent the immigration laws from being enforced by States and localities that want to enforce them.

There is a simple way to shut these courts down and to allow States and localities to assist in the enforcement of our immigration laws. Illegal entry to the U.S. is already a Federal misdemeanor offense for a first offense (with maximum imprisonment of 6 months) and a felony for a subsequent offence (with maximum imprisonment of 2 years).[199] Section 315 of the bill simply provides that illegal presence in the U.S. will be a Federal misdemeanor, making State and local law enforcement actions against aliens who are unlawfully present consistent with the Fourth Amendment under the analysis of the U.S. District Court for the District of Arizona. The majority of unlawfully present aliens in the U.S. entered the U.S. illegally or have committed document fraud and therefore have already violated Federal criminal law. Aliens who have abused our hospitality and overstayed their visas in order to work illegally are just as culpable as aliens who enter the U.S. illegally.

Law professors Gabriel Chin and Marc Miller argue that States cannot constitutionally "enact and enforce criminal immigration

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[196] *See Melendres v. Arpaio*, (D. Ariz.) (2013 WL 2297173).

[197] *Id.* at 63 (footnote omitted).

[198] *Id.*

[199] *See* INA sec. 275. Former Secretary of Homeland Security Janet Napolitano testified before the Senate that "Operation Streamline, a DHS partnership with the Department of Justice, is a geographically focused operation that aims to increase the consequences for illegally crossing the border by criminally prosecuting illegal border-crossers. In the twelve months from April 1, 2010 to March 31, 2011, there were more than 30,000 prosecutions under Operation Streamline. . . ." Securing the Border: Progress at the Federal Level: Hearing Before the Senate Comm. On Homeland Security and Governmental Affairs, 112th Cong. (2011).

laws that are based on Federal statutes"—even if explicitly authorized by Congress.[200] They posit that:

> [S]tate enforcement would be unconstitutional even if it were explicitly authorized by Congress. First, the Federal immigration power is exclusive and nondelegable. Second, criminal prosecution and immigration enforcement are executive powers that Congress cannot remove from the president and share with non-executive-branch officials. Finally, the Supreme Court has held that states cannot prosecute crimes that affect only the sovereign interests of the United States. Accordingly, state immigration prosecutions are irremediably unconstitutional.
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> Congress has no power to delegate regulatory authority in areas within its exclusive jurisdiction. Further, Congress has no power to delegate the president's duty to carry out the laws to state officers who are wholly outside of presidential control. Accordingly, even if Congress invited the states to legislate in the immigration sphere, the resulting state laws would still be unconstitutional.[201]

At the outset, it should be noted that States (and localities) cannot constitutionally take over the role of admitting, excluding, or removing aliens. Courts have made this clear over many decades. As the Supreme Court of Arizona has stated, "[t]he Federal power over aliens is exclusive and supreme in matters of their deportation and entry into the United States.[202] And the Supreme Court has found that:

> The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. . . . Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived Federal power to regulate immigration, and have accordingly been held invalid.[203]

Chin and Miller thus argue that "only Congress can create crimes involving the admission, exclusion, and removal of noncitizens."[204] However, the SAFE Act does no such thing. In fact, section 102(b) of the Act provides that "[l]aw enforcement personnel

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[200] Gabriel Chin & Marc Miller, The Unconstitutionality of State Regulation of Immigration through Criminal Law, 61 Duke L.J. 251 (2011).
[201] *Id.* at 252, 261.
[202] *State v. Camargo,* 537 P.2d 920, 922 (Ariz. 1975).
[203] *Takahashi v. Fish and Game Commission,* 334 U.S. 410, 419 (1948) (citation and footnote omitted).
[204] The Unconstitutionality of State Regulation of Immigration through Criminal Law at 305.

of a State, or of a political subdivision of a State, may not remove aliens from the United States."

However, the professors' main argument seems entirely at odds with the district court and Supreme Court decisions in *Arizona v. U.S.* The Arizona statute at issue instituted a number of new State crimes based on Federal crimes in the immigration sphere. The United States District Court for the District of Arizona ruled constitutional that portion of the Arizona law:

> which makes it illegal for a person who is in violation of a criminal offense to: (1) transport or move or attempt to transport or move an alien in Arizona in furtherance of the alien's unlawful presence in the United States; (2) conceal, harbor, or shield or attempt to conceal, harbor, or shield an alien from detection in Arizona; and (3) encourage or induce an alien to come to or live in Arizona.[205]

This language is derived from Federal criminal law.[206]

The district court found that the Arizona provision "does not attempt to regulate who should or should not be admitted into the United States, and it does not regulate the conditions under which legal entrants may remain in the United States. . . . Therefore, the Court concludes that the United States is not likely to succeed on its claim that [the provision] is an impermissible regulation of immigration."[207] In fact, the court specifically stated that the provision "does not attempt to prohibit entry into Arizona, but rather criminalizes specific conduct already prohibited by Federal law."[208] Thus, the district court found nothing unconstitutional in a State criminal law regarding immigration mirroring Federal criminal law. The United States chose not to even appeal this matter to the 9th Circuit.[209] Professors Chin and Miller even admit that "[t]o some extent . . . the district court's decision can be read as an affirmation of the mirror-image theory [that State criminal law can "mirror" Federal criminal immigration law] because of the parts of the Arizona law it did not enjoin."[210]

The 9th Circuit later ruled in the context of a request for a preliminary injunction against this statutory provision by private plaintiffs that the statute was likely unconstitutional—but on completely separate grounds (void for vagueness and preempted by Federal law).[211] The court nowhere mentions Professor Chin and Miller's theory that Federal immigration power is "exclusive and nondelegable."

The Supreme Court ruling found portions of the Arizona law constitutional and portions unconstitutional. Strikingly, the Court ruled solely on preemption grounds, even when considering the constitutionality of a provision of Arizona law mirroring a Federal criminal statute requiring aliens to carry registration documents.[212]

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[205] *U.S. v. Arizona,* 703 F. Supp.2d 980, 1002 (D. Ariz. 2010).
[206] *See* section 274 of the Immigration and Nationality Act.
[207] 703 F. Supp.2d at 1003.
[208] *Id.* at 1003 n.19.
[209] *See U.S. v. Arizona,* 641 F. 3d 339, 344 (9th Cir. 2011) ("[T]he United States did not cross-appeal the partial denial of injunctive relief.").
[210] The Unconstitutionality of State Regulation of Immigration through Criminal Law at 257.
[211] *See Valle del Sol Inc. v. Whiting,* 732 F.3d 1006, 1029 (9th Cir. 2013).
[212] *See U.S. v. Arizona,* 132 S.Ct. at 2503.

If Professor Chin and Miller's theory that Federal immigration power is "exclusive and nondelegable" were plausible, it would be exceedingly odd for the Supreme Court to not even mention it when declaring unconstitutional a provision of Arizona criminal law mirroring Federal criminal immigration law.

The Supreme Court has of course acknowledged many times that "[p]ower to regulate immigration is unquestionably exclusively a Federal power."[213] But, at the same time, in *DeCanas v. Bica* in 1976, the Court ruled in the case of a state statute criminalizing the knowing employment of an unlawful alien (if such employment would have an adverse effect on lawful resident workers)[214] that:

> [T]he Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted by this constitutional power, whether latent or exercised. . . . [S]tanding alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain. Indeed, there would have been no need, in cases such as *Graham*, *Takahashi*, or *Hines v. Davidowitz* . . . , even to discuss the relevant congressional enactments in finding pre-emption of state regulation if all state regulation of aliens was ipso facto regulation of immigration, for the existence vel non of Federal regulation is wholly irrelevant if the Constitution of its own force requires pre-emption of such state regulation. In this case, California has sought to strengthen its economy by adopting Federal standards in imposing criminal sanctions against state employers who knowingly employ aliens who have no Federal right to employment within the country; even if such local regulation has some purely speculative and indirect impact on immigration, it does not thereby become a constitutionally proscribed regulation of immigration that Congress itself would be powerless to authorize or approve. Thus, absent congressional action, S 2805 would not be an invalid state incursion on Federal power.[215]

DeCanas v. Bica also seems quite inconsistent with the thrust of Chin and Miller's argument. The Supreme Court upheld as constitutional a State criminal statute explicitly dealing with illegal immigration (of course, not in the context of their deportation and entry into the United States).

And, in *Plyler v. Doe*, in a case not dealing with a State criminal statute but with the ability of a State to deny public education to unlawful alien children, the Court stated that:

> As we recognized in *DeCanas v. Bica*. . . . the States do have some authority to act with respect to illegal aliens, at least where such action mirrors Federal objectives and furthers a legitimate state goal. In *DeCanas,* the State's program reflected Congress' intention to bar from employ-

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[213] *DeCanas v. Bica*, 96 S.Ct. 933, 936 (1976) (citations omitted).
[214] *See DeCanas v. Bica,* 40 Cal.App.3d. 976, 978 (Cal. Ct. App. 1974).
[215] *DeCanas v. Bica,* 96 S.Ct at 936.

ment all aliens except those possessing a grant of permission to work in this country. . . .

. . . .

Although the State has no direct interest in controlling entry into this country, that interest being one reserved by the Constitution to the Federal Government, unchecked unlawful migration might impair the State's economy generally, or the State's ability to provide some important service. Despite the exclusive Federal control of this Nation's borders, we cannot conclude that the States are without any power to deter the influx of persons entering the United States against Federal law, and whose numbers might have a discernible impact on traditional state concerns.[216]

In fact, the Court in *Arizona v. U.S.* actually emphasized the legitimate and traditional state interests and concerns implicated by illegal immigration:

The pervasiveness of Federal regulation does not diminish the importance of immigration policy to the States. Arizona bears many of the consequences of unlawful immigration. Hundreds of thousands of deportable aliens are apprehended in Arizona each year. . . . Unauthorized aliens who remain in the State comprise, by one estimate, almost 6 percent of the population. . . . And in the State's most populous county, these aliens are reported to be responsible for a disproportionate share of serious crime. . . . [citing a report] (estimating that unauthorized aliens comprise 8.9% of the population and are responsible for 21.8% of the felonies in Maricopa County, which includes Phoenix).

Statistics alone do not capture the full extent of Arizona's concerns. Accounts in the record suggest there is an "epidemic of crime, safety risks, serious property damage, and environmental problems" associated with the influx of illegal migration across private land near the Mexican border. . . . Phoenix is a major city of the United States, yet signs along an interstate highway 30 miles to the south warn the public to stay away. One reads, "DANGER—PUBLIC WARNING—TRAVEL NOT RECOMMENDED/Active Drug and Human Smuggling Area/Visitors May Encounter Armed Criminals and Smuggling Vehicles Traveling at High Rates of Speed." . . . The problems posed to the State by illegal immigration must not be underestimated.[217]

Thus, recent Supreme Court precedent is wholly consistent with section 102(a) of the SAFE Act. States have legitimate and traditional state interests and concerns implicated by illegal immigration, and thus can enact and enforce State criminal legislation mirroring Federal criminal immigration statutes (of course, not in the context of the entry into the U.S. or deportation of aliens).

[216] 102 S.Ct. 2382, 2399, 2400 n.23 (1982) (citation omitted).
[217] 132 S.Ct. at 2500 (citations omitted).

D. Community Policing

Many advocacy groups claim that community policing would be undermined if local law enforcement authorities were permitted to enforce Federal immigration laws or their own immigration laws. Community policing is based on trust and collaborative partnerships between local law enforcement and the individuals and organizations they serve. The SAFE Act maintains standards of community policing by providing local law enforcement with the tools they need to implement consistent law enforcement and foster safe communities, as well as leaving communication channels open between law enforcement and those that they serve.

As a general matter, local communities tend to trust local law enforcement more than they trust unknown Federal authorities. Hence, community policing would be enhanced under the SAFE Act. Community trust of law enforcement is eroded when police willfully ignore entire areas of law-breaking (such as unlicensed driving, identity theft, drunk driving, gang membership, "low level" crimes, immigration violations) or pick and choose which laws to enforce.

Additionally, trust can be built by conveying the message that victims and witnesses are not targets for immigration law enforcement. In fact, they are eligible for immigration benefits such as T visas for trafficking victims and U visas for crime victims.[218] Advocacy groups can work with immigrant communities and ethnic media to advance reliable information about Federal immigration policies and the resources that may be available to assist aliens, even those that are unlawful, with respect to law enforcement investigations. Sheriff Page has conveyed this message to immigrant communities in Rockingham, NC.[219] He has engaged in frequent interviews with Spanish language media outlets as well as jail ministry programs.[220] This has allowed him to forge connections with faith leaders who help him communicate with the immigrant community to explain his activities and how law enforcement protects law-abiding residents of the county.[221] He has even gone so far as to meet with the Mexican consul. Creating relationships and effective communication with the immigrant community fosters trust in local and Federal law enforcement.[222]

Members of immigrant communities are the primary victims of alien criminals and are equally as interested in getting criminals off the streets and creating safe communities as anyone else. The SAFE Act will provide for safer communities and could inspire increased collaboration between local law enforcement and immigrant populations.

The idea of the "chilling effect" holds that if local agencies become involved in immigration enforcement, immigrants in their jurisdictions will be so intimidated and fearful of the local authorities that they will not report crimes or assist in investigations. The origins of this theory are unclear and hard evidence is non-existent.

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[218] *See* INA sec. 101(a)(15)(T), (U).

[219] *See* Jessica Vaughan, Sheriffs Skeptical of "Chilling Effect" from Secure Communities, Center for Immigration Studies blog (July 11, 2012).

[220] *Id.*

[221] *Id.*

[222] *Id.*

Data does not support that a chilling effect exists. National crime statistics show no pattern of difference in crime reporting rates by ethnicity, and the most reliable academic research available, based on surveys of immigrants, have found that when immigrants do not report crimes, they say it is because of language and cultural factors, not because of fear of immigration law enforcement.[223] There is little evidence that cooperation between Federal and local law enforcement will cause immigrants, even unlawful aliens, to stop reporting crimes.[224]

According to the Bureau of Justice Statistics' Annual Criminal Victimization Study, only about 50% of all crimes are ever reported to police and these rates have remained unchanged over the last decade. Additionally, there are no significant differences in crime reporting rates by males across ethnic groups.[225] For females, Hispanic females are slightly more likely than whites and blacks to report violent crime; and they are less likely to report property crime.[226] The report is consistent with academic research findings that Hispanic females to be more trusting of police.

According to a survey on "why immigrants don't report crime", 47% cited language barrier, 22% cited cultural differences, 15% cited a lack of understanding of the US criminal justice system, and 3% cited a belief that the authorities would do nothing.[227] Only 10% cited fear of authorities based on their home country experience or deportation, while only 3% cited fear of retaliation.[228]

Academic studies on attitudes and trust among immigrants find that it is impossible to generalize because of differences according to nationality. Others find that the most important factor is socioeconomic status and feelings of empowerment within the community. Neither of which would be at all negatively affected by the SAFE Act.

Two studies of local law enforcement agencies, one in Prince William County, Virginia, conducted by the University of Virginia and one in Collier County, Florida, are instructive. After Prince William County implemented mandatory screening and entered the 287(g) program, there was no significant change in calls for service among Hispanics. There was also no significant difference between Hispanics and non-Hispanic after the implementation of their immigration enforcement initiatives.[229] In Collier County, again, no difference was found between immigrant and native communities after 287(g) was implemented.[230] There were also no substantiated cases of crime victims being removed after reporting a crime, unless the victim was also a criminal. Even though Collier County

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[223] *See* U.S. Department of Justice, Criminal Victimization Statistics, http://www.ojp.usdoj.gov/bjs/abstract/cv05.htm.

[224] Robert Davis & Edna Erez, Immigrant Populations as Victims: Toward a Multicultural Criminal Justice System, National Institute of Justice: Research in Brief, May 1998, and Robert Davis, Edna Erez & Nancy Avitable, Access to Justice for Immigrants Who Are Victimized: The Perspective of Police and Prosecutors, Criminal Justice Policy Review 12:3, September 2001.

[225] *See* Criminal Victimization Statistics.

[226] *Id.*

[227] *Id.*

[228] *Id.*

[229] Thomas M. Guterbock et al., Evaluation Study of Prince William County Police Illegal Immigration Enforcement Policy: Interim Report 2009, Center for Survey Research, University of Virginia and Police Executive Research Forum, August 2009, at 51–52, http://www.pwcgov.org/docLibrary/PDF/10636.pdf.

[230] *See* Michael J. Williams, Commander, Legal Affairs, Collier County, Florida Sheriff's Department, Local Enforcement of Federal Immigration Law and 287(g), Law Enforcement and Public Safety TV (LEAPS–TV) broadcast on July 28, 2009.

consists of several diverse jurisdictions, some with largely native-born populations and some with largely immigrant populations, calls for service between immigrant and native communities showed no difference after the program was launched.

Lt. Wes Lynch, of Whitfield County, Georgia, found that "[s]ince starting the 287(g) program at our jail, we have had more communication with the immigrant community, not less."[231] The Sheriff has included the Mexican consulate and advocates for the immigrant community in discussing the program.[232] Lynch says that immigrants now approach officers at the jail much more regularly and have assisted in locating criminals.[233]

For example, one individual suspected of being an unlawful alien came to the jail to report the return to the community of a drug dealer who had already been removed once before as an aggravated felon, enabling his prosecution for illegal re-entry.[234] Another community member, a naturalized citizen, came forward after the 287(g) program was launched to report a case of immigration-related marriage fraud. Through its partnership between Federal and local law enforcement, the SAFE Act is likely to have a similar outcome in the area of immigration enforcement.

Immigrants coming forward to report crimes is one of the main ways local law enforcement agencies and ICE are able to launch investigations against criminal aliens. Victims and witnesses to crimes are not targets for immigration law enforcement, and this is repeatedly emphasized by ICE and local law enforcement in outreach to immigrant communities.

Training by Federal authorities as mandated under the SAFE Act increases local officers' awareness of when they should consider the immigration status of crime victims—not for the purpose of removal, but to access the various special protections available to victims, witnesses, and informants under immigration law. For example, an illegal alien who is a victim of a crime might be needed to testify or otherwise assist in the prosecution of the perpetrator. The local agency can work with Federal authorities to arrange special status until the case is resolved.[235] These tools have proven to be a much more powerful way to encourage cooperation from the immigrant community than non-cooperation or sanctuary policies.

The Detention of Dangerous Aliens

H.R. 2278 allows for the continued detention of dangerous aliens who cannot be removed and strengthens the Department of Homeland Security's ability to detain criminal aliens in removal proceedings.[236] The Supreme Court's decisions in *Zadvydas v. Davis*[237] and *Clark v. Martinez*[238] have interpreted current immigration law to limit the length of detention of aliens who have received orders of removal but who cannot be removed. As a result of these decisions, each year the Department of Homeland Security must release thousands of criminal aliens into communities in the

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[231] *Id.*
[232] *See id.*
[233] *See id.*
[234] *See id.*
[235] *See* INA sec. 101(a)(15)(T), (U).
[236] *See* H.R. 2278, sec. 310.
[237] *See* 533 U.S. 678 (2001).
[238] *See* 543 U.S. 371 (2005).

United States. The relevant provisions of H.R. 2278 are similar to the provisions contained in H.R. 1932, which was reported by the Judiciary Committee in the 112th Congress. For a full explanation of the Committee's rationale for these earlier provisions (and an explanation of the provisions in the SAFE Act to the extent they are similar), the Committee Report for H.R. 1932 should be considered incorporated into this report.[239]

VISA INTEGRITY

Background

H.R. 2278 helps ensure security of the visa issuance process through the establishment of Visa Security Units (VSUs) at all high risk consular posts and ensures that national security threats are not able to enter and remain in the United States.

The 9/11 hijackers demonstrated the relative ease of obtaining a U.S. visa and gaining admission to the United States.[240] The 19 hijackers applied for 23 visas and obtained 22. They began the process of obtaining visas almost two and half years before the attack. At the time, consular officers were unaware of the potential indications of a security threat posed by these visa applicants who were in reality terrorists, had no information about fraudulent travel stamps that are associated with Al Qaeda, and were not trained in terrorist travel tactics generally.[241]

Most of the operatives selected were Saudis, who had little difficulty obtaining visas. The mastermind of the operation, Khalid Sheikh Mohammed, used a travel facilitator to acquire a visa on July 23, 2001, in Jeddah, Saudi Arabia, using an alias.

Thereafter, other terrorists including the Christmas Day Bomber have attempted to enter this country by legal means.

The State Department (DOS) receives applications for entry into the United States by aliens and issues visas for those approved to emigrate or visit. Before traveling to the United States, a citizen of a foreign country who seeks to enter the U.S. generally must first obtain a U.S. visa, which is placed in the traveler's passport. A citizen of a foreign country must generally obtain a nonimmigrant visa for temporary stay (unless the country participates in the visa waiver program) or an immigrant visa for permanent residence. The type of visa needed depends on the purpose of the travel.

Having a U.S visa allows an alien to travel to a port of entry, airport or land border crossing, and request permission of a CBP inspector to enter the U.S. While having a visa does not guarantee entry to the U.S., it does indicate that a consular officer at a U.S. embassy or consulate abroad has determined that an alien is eligible to seek entry for a specific purpose. CBP inspectors, guardians of the nation's borders, are responsible for admission of travelers to the U.S., for a specified status and period of time.

Following the 9/11 attacks, Congress gave serious consideration to removing the visa issuance function from DOS and placing it under the authority of the newly established DHS. Such an ar-

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[239] *See* H.R. Rep. No 112–255 (2011).

[240] *See generally*, 9/11 and Terrorist Travel, Staff Report on the National Commission on Terrorist Attacks upon the United States (2004).

[241] *Id.* at 2.

rangement would have placed this immigration-related function in the agency with primary authority over immigration matters, and it would have addressed the many serious concerns (which pre-dated 9/11) about DOS's penchant for treating the consular visa-issuance function more as a public diplomacy and foreign relations tool than as a function fundamentally about law enforcement and immigration compliance. As a result of a compromise reached in the 2002 Homeland Security Act, DOS retained its consular visa-issuance function, while Section 428 of the Act gave DHS authority to "to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law." [242]

The Visa Security Program (VSP) created by section 428 authorizes DHS "to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security."

In practice, however, ICE must obtain the approval not only from DHS headquarters to establish new overseas presences, but also from the chief of mission at each diplomatic post and DOS headquarters. One of the major obstacles has often been the local embassy leadership, who may see ICE presence as an invasion of the jurisdiction that traditionally belonged to Consular Affairs or to DOS's Regional Security Officer who is tasked with reviewing visa applications and screening applicants to prevent fraud and to avoid issuance of visas to criminals or terrorists. For example, DHS wanted to expand the VSP to Turkey but DOS denied the request.

With an average office size of two employees, VSP units, also known as Visa Security Units, screen all visa applicants submitted at the Consular Office through DHS databases and conduct targeted reviews of those applicants considered high-risk. According to information provided by ICE, it costs approximately $2.2 million to open a new VSP unit, covering two to three employees, technology, and vehicles.

To date, DHS has established VSP posts at only 19 locations with a presence in 15 countries. However, there is a list of over 50 designated "high-risk" posts. The opposition from DOS is particularly objectionable, since the Homeland Security Act does not give it any power to veto or resist DHS's choice of posts at which VSP officers would "promote homeland security."

Opposition from DOS or from parochial interests in individual embassies has not been the only obstacle to implementation of VSP. In fact, DHS has left VSU requests pending for several months in the past. For instance, a request from ICE in September 2008 was sent to the Secretary of Homeland Security for approval to create a VSP office in Yemen, but that request was not approved by Secretary Napolitano until January 15, 2010, and finally on February 16, 2010, by the Secretary of State. And it was approved only when it came to light that the Christmas Day bomber had ties to Yemen.

[242] Pub. L. No. 107–296.

Additionally, on February 10, 2010, DOS notified ICE that its request for a VSU in Jerusalem was denied due to "the principles of rightsizing," and explained that DOS believed its personnel onsite could perform the visa-screening function.[243] Congress was notified of this decision on February 16, 2010, and 2 days later a revised cable from the American Consulate in Jerusalem was delivered reversing the decision and approving the conditional establishment of the VSU.

The existing memorandum of understanding between DOS and DHS states that a consular officer will not issue a visa over the objection of the VSP unit until the objection has been resolved.[244] Thus, the Secretary of Homeland Security does have the authority to prevent a Consular Office from issuing a visa if an objection cannot be resolved. According to ICE, the Secretary has only used this authority once—in 2005.

Section 405 of the SAFE Act clarifies that both the Secretary of Homeland Security and the Secretary of State can refuse or revoke visas to aliens if in the security interests of the United States. Sections 406 and 407 of the SAFE Act also provide for funding and the expeditious expansion of visa security units.

Visa Revocation

After a visa has been issued, a consular officer has the discretionary authority to revoke a visa at any time. In fact, in his January 20, 2010, testimony before the Senate Judiciary Committee, Department of State Undersecretary for Management Patrick Kennedy stated, "since 2001 we have revoked over 51,000 visas . . . including over 1,700 for suspected ties to terrorism."[245]

Under DOS procedures, when derogatory information about an individual comes to light after a visa is issued, consideration is given to whether it would be prudent to revoke the visa. DOS officials sometimes prudentially revoke visas, i.e., they revoke a visa as a safety precaution to ensure that all relevant or potentially relevant facts about the applicant are thoroughly explored. Prudential revocations are precautionary actions that can be taken when the alien's admissibility is deemed to raise national security concerns. Although DOS has previously testified to Congress about this being a "low threshold," they have recently indicated they would not prudentially revoke a visa for security reasons unless there was an "immediate threat."[246]

While DHS has clear authority over the policies to grant or deny visas, its statutory role in the visa revocation process is unclear. The law specifically provides that after a visa has been issued, a consular officer has the discretionary authority to revoke a visa at

[243] *See* American Consulate in Jerusalem unclassified cable to Secretary of State, February 10, 2010.

[244] *See* Memorandum of Understanding Among U.S. Immigration and Customs Enforcement of the Department of Homeland Security and the Bureau of Consular Affairs and Diplomatic Security of the Department of State on Roles, Responsibilities, and Collaboration at Visa Security Units Abroad (January 11, 2011).

[245] Securing America's Safety: Improving the Effectiveness of Anti-Terrorism Tools and Inter-Agency Communication, Hearing Before the Senate Judiciary Comm. 111th Cong (2010) (statement of Patrick F. Kennedy).

[246] Visa Issuance, Information Sharing and Enforcement in a Post-9/11 Environment: Are We Ready Yet?: Hearing Before the Senate Comm. on the Judiciary's Subcomm. on Immigration, Border Security and Citizenship 103rd Cong (2003) (testimony of Janice L. Jacobs, Deputy Assistant Secretary of State for Visa Services).

any time.[247] The statute makes no mention of DHS, and there is no explicit grant of authority DHS in section 428 of the Homeland Security Act to revoke a visa.

Nonetheless, it could be argued that DHS, through the broad language of section 428, is granted the ability to revoke as it is a matter "relating to the functions of consular officers of the United States in connection with the granting or refusal of visas." Furthermore, the MOU between DOS and DHS on the implementation of section 428 provides that "if the Secretary of Homeland Security decides to exercise the authority to refuse a visa in accordance with law, *or to revoke a visa,* the Secretary of Homeland Security *shall request* the Secretary of State to instruct the relevant consular officer to refuse or revoke the visa."[248] This language appears to acknowledge the authority of the Secretary of Homeland Security to revoke a visa; however, it also seems to indicate that the Secretary of State has final say over the revocation.

The MOU also bars the Secretary of Homeland Security from delegating the visa refusal or revocation decision outside DHS headquarters, effectively making it impossible for the Secretary to pass this responsibility to the Assistant Secretary for ICE, who has direct authority for the DHS program that monitors visa issuance and identifies security or fraud threats. Section 405 of the SAFE Act specifically authorizes the Secretary of Homeland Security or a designee to refuse or revoke visas to aliens if in the security or foreign policy interests of the United States.

Removal Predicated on Visa Revocation Decisions

The then-Government Accounting Office (GAO) issued a report in 2003 finding that "30 individuals whose visas were revoked on terrorism grounds entered the United States either before or after revocation and may still remain in the country" and that "INS and the FBI were not routinely taking actions to investigate, locate, or resolve the cases of individuals who remained in the United States after their visas were revoked."[249] It found that this was because of the difficulty of removing such aliens. GAO expressed concern that "there is heightened risk that suspected terrorists could enter the country with revoked visas or be allowed to remain after their visas are revoked without undergoing investigation or monitoring."[250]

There were two underlying factors which contributed to this state of affairs. First, DOS revocation certificates state that in the case of aliens present in the United States, revocation are not effective until after the aliens' departure from the United States.[251] Second, it is unclear as to whether the fact of revocation in and of itself is a ground for removing an alien who had been admitted to the U.S.—"A visa revocation by itself [was] not a stated grounds for removal under the Immigration and Nationality Act"[252] and INS

[247] *See* INA sec. 221(i)
[248] Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002, Sept. 26, 2003, at 8 (emphasis added).
[249] U.S. General Accounting Office, Border Security: New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process (GAO–03–798) 4 (2003) (footnotes omitted).
[250] *Id.* at 27.
[251] *Id.* at 25.
[252] *Id.* at 5 (footnote omitted)

investigators "believed that under the INA, the visa revocation itself does not affect the alien's legal status in the United States."[253] The GAO found that "[the] issue of whether a visa revocation, after an alien is admitted on that visa, has the effect of rendering the individual out-of-status is unresolved legally. . . ."[254]

While the INS could have initiated deportation proceedings against an alien on the basis of other grounds of removal—such as terrorist activity, this was problematic. The burden of proof is on the government in deportation proceedings against admitted aliens. Compounding this fact:

> INS officials stated that the State Department provides very little information or evidence relating to the terrorist activities when it sends the revocation notice to INS. Without sufficient evidence linking the alien to any terrorist-related activities, INS cannot institute removal proceedings on the basis of that charge. [E]ven if there is evidence, INS officials said, sometimes the agency that is the source of the information will not authorize the release of that information because it could jeopardize ongoing investigations or reveal sources and methods. . . . INS officials state that sometimes the evidence that is used to support a discretionary revocation from the Secretary of State is not sufficient to support a charge of removing an alien in immigration proceedings before an immigration judge. [State Department officials] said that most of the time, the information on which these revocations is based is classified.
>
> . . . .
>
> At some point in the proceedings . . . in establishing that the alien is removable . . . the government could be called on to disclose any classified or law enforcement sensitive information that serves as the basis of the charges against the alien. According to INS attorneys, this can be challenging since many times the law enforcement or intelligence agencies that are the source of the information may not authorize the release of that information because it could jeopardize ongoing investigations or reveal sources and methods.[255]

After the GAO report was issued, DHS and DOS entered into an agreement whereby DOS agreed to revoke visas retroactive to the time of issuance on a case-by-case basis if requested by DHS.[256] DOS, however, had concerns regarding "the litigation risks involved in removing aliens based on visa revocations", wanting to "avoid steps that will weaken our ability to use revocations flexibly and aggressively to protect homeland security" and to avoid "a situation in which courts start second-guessing our revocation decisions."[257]

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[253] *Id.* at 25.
[254] *Id.*
[255] *Id.* at 25, 35.
[256] *See* Hearing before the House Comm. on Government Reform's Subcomm. on National Security, Emerging Threats, and International Relations, 108th Cong. (2004) (statement of Tony Edson, Managing Director (Acting), Office of Visa Services, U.S. Department of State).
[257] *Id.*

The House of Representatives included in the legislation to implement the recommendations of the 9/11 Commission a provision explicitly making revocation of a nonimmigrant visa a grounds for removal. The only factor an immigration judge could consider in a deportation proceeding was whether in fact DOS had revoked the visa. In addition, the House provided that there would be no means of judicial review of a visa revocation or a deportation action based on the revocation.[258]

However, in the conference committee, the Senate inserted a modification providing that a removal based on visa revocation was judicially reviewable if revocation was the sole basis for the order of removal.[259] The Senate language has made the use of the visa revocation section problematic. Judicial review could force the release to the alien and the public of the sensitive information that the revocation ground of removal was intended to protect. It could also undermine the consular non-reviewability doctrine and open the door to judicial second-guessing of all visa denial decisions.

Section 405 of the SAFE Act ensures that there shall be no judicial review of any visa revocation decision in order to safeguard national security. The SAFE Act "will prevent an alien whose visa has been revoked [from being able] to challenge the underlying revocation in court, where the government might again be placed in a position of either exposing its sources or permitting potentially dangerous alien to remain in the U.S." [260]

Hearings

The Committee on the Judiciary's Subcommittee on Immigration and Border Security held 1 day of hearings on H.R. 2278 on June 13, 2013. Testimony was received from Sheriff Paul Babeu, Pinal County, AZ; Chris Crane, President of the National Immigration and Customs Enforcement Council 118; Sherriff Sam Page, Rockingham County, NC; Jamiel Shaw, The Committee to Pass Jamiel's Law; The Honorable Randy Krantz, Commonwealth's Attorney, Bedford County, VA; Sabine Durden, mother of Dominic Durden; Karen Tumlin, National Immigration Law Center; Clarissa Martinez De Castro, Director of Civic Engagement and Immigration, National Council of La Raza.

Committee Consideration

On June 18, 2013, the Committee met in open session and ordered the bill H.R. 2278 favorably reported, with an amendment, by a vote of 20 to 15, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 2278.

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[258] *See* section 3009 of S. 2845 (engrossed amendment as agreed to by House) (108th Congress, 2004).

[259] "There shall be no means of judicial review . . . of a revocation [of a visa or other documentation] under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title." *See* section 5304 of Pub. L. No. 108–458.

[260] H.R. Rep. No. 108–724, part V, at 189 (2004).

1) A second-degree amendment to the Manager's Amendment offered by Mr. Bachus that delayed the effective date of the illegal entry and unlawful presence penalties for 1 year. Defeated 10–24.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)			
Mr. Chabot (OH)		X	
Mr. Bachus (AL)	X		
Mr. Issa (CA)			
Mr. Forbes (VA)			
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)			
Mr. Jordan (OH)	X		
Mr. Poe (TX)	X		
Mr. Chaffetz (UT)	X		
Mr. Marino (PA)	X		
Mr. Gowdy (SC)	X		
Mr. Amodei (NV)	X		
Mr. Labrador (ID)	X		
Ms. Farenthold (TX)	X		
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	
Mr. Scott (VA)		X	
Mr. Watt (NC)			
Ms. Lofgren (CA)		X	
Ms. Jackson Lee (TX)		X	
Mr. Cohen (TN)		X	
Mr. Johnson (GA)		X	
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)		X	
Mr. Deutch (FL)		X	
Mr. Gutierrez (IL)		X	
Ms. Bass (CA)		X	
Mr. Richmond (LA)		X	
Ms. DelBene (WA)			
Mr. Garcia (FL)		X	
Mr. Jeffries (NY)		X	
Total	10	24	

2) A Manager's amendment offered by Mr. Goodlatte to strengthen the enforcement of immigration laws by amending various provisions in the bill. Passed 21–16.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)	X		
Mr. Coble (NC)	X		
Mr. Smith (TX)	X		
Mr. Chabot (OH)	X		
Mr. Bachus (AL)	X		
Mr. Issa (CA)			
Mr. Forbes (VA)			
Mr. King (IA)	X		
Mr. Franks (AZ)	X		
Mr. Gohmert (TX)	X		
Mr. Jordan (OH)	X		
Mr. Poe (TX)	X		
Mr. Chaffetz (UT)	X		
Mr. Marino (PA)	X		
Mr. Gowdy (SC)	X		
Mr. Amodei (NV)	X		
Mr. Labrador (ID)	X		
Ms. Farenthold (TX)	X		
Mr. Holding (NC)	X		
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Mr. Smith (MO)	X		
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	
Mr. Scott (VA)		X	
Mr. Watt (NC)			
Ms. Lofgren (CA)		X	
Ms. Jackson Lee (TX)		X	
Mr. Cohen (TN)		X	
Mr. Johnson (GA)		X	
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)		X	
Mr. Deutch (FL)		X	
Mr. Gutierrez (IL)		X	
Ms. Bass (CA)		X	
Mr. Richmond (LA)		X	
Ms. DelBene (WA)		X	
Mr. Garcia (FL)		X	
Mr. Jeffries (NY)		X	
Total	21	16	

3) An amendment offered by Mr. Bachus to clarify that the bill does not modify DHS's existing authority not to pursue removal of an alien after a detainer is issued. Passed 17–7.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)	X		
Mr. Coble (NC)	X		
Mr. Smith (TX)			
Mr. Chabot (OH)	X		
Mr. Bachus (AL)	X		
Mr. Issa (CA)	X		
Mr. Forbes (VA)	X		
Mr. King (IA)	X		
Mr. Franks (AZ)			
Mr. Gohmert (TX)			
Mr. Jordan (OH)	X		
Mr. Poe (TX)			
Mr. Chaffetz (UT)	X		
Mr. Marino (PA)	X		
Mr. Gowdy (SC)	X		
Mr. Amodei (NV)			
Mr. Labrador (ID)	X		
Ms. Farenthold (TX)			
Mr. Holding (NC)	X		
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Mr. Smith (MO)	X		
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	
Mr. Scott (VA)		X	
Mr. Watt (NC)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)			
Mr. Johnson (GA)			
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)		X	
Mr. Deutch (FL)		X	
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)		X	
Mr. Garcia (FL)			
Mr. Jeffries (NY)			
Total	17	7	

4) An amendment offered by Mr. Conyers to strike Title I (allowing for immigration law enforcement by States and localities, among other things). Defeated 12–18.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)			
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)			
Mr. Gohmert (TX)			
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)			
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)			
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)			
Total	12	18	

5) An amendment offered by Mr. King to prohibit the implementation of certain DHS memos regarding DHS's prosecutorial discretion/administrative legalization policies including Deferred Action for Childhood Arrivals. Passed 19–17.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)	X		
Mr. Coble (NC)	X		
Mr. Smith (TX)	X		
Mr. Chabot (OH)	X		
Mr. Bachus (AL)		X	
Mr. Issa (CA)	X		
Mr. Forbes (VA)	X		
Mr. King (IA)	X		
Mr. Franks (AZ)	X		
Mr. Gohmert (TX)	X		
Mr. Jordan (OH)	X		
Mr. Poe (TX)			
Mr. Chaffetz (UT)	X		
Mr. Marino (PA)			
Mr. Gowdy (SC)	X		
Mr. Amodei (NV)	X		
Mr. Labrador (ID)	X		
Ms. Farenthold (TX)	X		
Mr. Holding (NC)			
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Mr. Smith (MO)	X		
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	
Mr. Scott (VA)		X	
Mr. Watt (NC)			
Ms. Lofgren (CA)		X	
Ms. Jackson Lee (TX)		X	
Mr. Cohen (TN)		X	
Mr. Johnson (GA)		X	
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)		X	
Mr. Deutch (FL)		X	
Mr. Gutierrez (IL)		X	
Ms. Bass (CA)		X	
Mr. Richmond (LA)		X	
Ms. DelBene (WA)		X	
Mr. Garcia (FL)		X	
Mr. Jeffries (NY)		X	
Total	19	17	

6) An amendment offered by Ms. Lofgren to strike section 102 of the bill (allowing State and localities to enforce Federal, State and local immigration laws). Defeated 13–21.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)			
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)			
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)			
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)			
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	13	21	

7) An amendment offered by Ms. Chu to eliminate the 287(g) program and bar racial profiling. Defeated 16–20.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	

ROLLCALL NO. 7—Continued

	Ayes	Nays	Present
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)			
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)			
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	16	20	

8) An amendment offered by Mr. Watt to bar racial profiling in the 287(g) program. Defeated 16–19.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	

ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Coble (NC)			
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)			
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)			
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	16	19	

9) An amendment offered by Ms. Jackson Lee to strike section 307 (amending the aggravated felony definition). Defeated 16–20.

ROLLCALL NO. 9

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)			

ROLLCALL NO. 9—Continued

	Ayes	Nays	Present
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)			
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	16	20	

10) An amendment offered by Mr. Richmond to eliminate penalties for aliens smuggling not committed for profit. Defeated 16–20.

ROLLCALL NO. 10

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)			

ROLLCALL NO. 10—Continued

	Ayes	Nays	Present
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)			
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	16	20	

11) An amendment offered by Ms. Jackson Lee to strike section 601 (amending the voluntary return statute). Defeated 15–19.

ROLLCALL NO. 11

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)			
Mr. Smith (TX)		X	

ROLLCALL NO. 11—Continued

	Ayes	Nays	Present
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)			
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	15	19	

12) A vote on final passage of H.R. 2278. Reported favorably out of Committee 20–15.

ROLLCALL NO. 12

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)	X		
Mr. Coble (NC)			
Mr. Smith (TX)	X		
Mr. Chabot (OH)	X		

ROLLCALL NO. 12—Continued

	Ayes	Nays	Present
Mr. Bachus (AL)	X		
Mr. Issa (CA)			
Mr. Forbes (VA)	X		
Mr. King (IA)	X		
Mr. Franks (AZ)	X		
Mr. Gohmert (TX)			
Mr. Jordan (OH)	X		
Mr. Poe (TX)	X		
Mr. Chaffetz (UT)	X		
Mr. Marino (PA)	X		
Mr. Gowdy (SC)	X		
Mr. Amodei (NV)	X		
Mr. Labrador (ID)	X		
Ms. Farenthold (TX)	X		
Mr. Holding (NC)	X		
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Mr. Smith (MO)	X		
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	
Mr. Scott (VA)		X	
Mr. Watt (NC)			
Ms. Lofgren (CA)		X	
Ms. Jackson Lee (TX)		X	
Mr. Cohen (TN)		X	
Mr. Johnson (GA)		X	
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)		X	
Mr. Deutch (FL)		X	
Mr. Gutierrez (IL)		X	
Ms. Bass (CA)		X	
Mr. Richmond (LA)			
Ms. DelBene (WA)		X	
Mr. Garcia (FL)		X	
Mr. Jeffries (NY)		X	
Total	20	15	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2278, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 5, 2013.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2278, the Strengthen and Fortify Enforcement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 2278—Strengthen and Fortify Enforcement Act.

As ordered reported by the House Committee on the Judiciary on June 18, 2013.

SUMMARY

H.R. 2278 would authorize the appropriation of funds for: additional personnel and equipment for the Department of Homeland Security (DHS); grants to state and local governments to cover costs relating to inadmissible aliens; certain activities of the Department of State; and other programs to improve enforcement of U.S. immigration laws. The bill also would increase penalties and fines for certain violations of immigration law.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2278 would cost $22.9 billion over the 2014–2018 period. CBO estimates that enacting the bill would increase direct spending by $8 million and increase revenues by $17 million over the 2014–2023 period, thereby decreasing the deficit through those changes by $9 million. Because the legislation would affect direct spending and revenues, pay-as-you-go procedures apply.

H.R. 2278 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) on educational institutions by requiring background checks and training under some circumstances. In addition, the bill would impose intergovernmental mandates on state and local governments by requiring information sharing. The bill would impose other mandates on entities in the private sector that include flight schools, educational accrediting associations, foreign students, and other individuals. CBO estimates that the aggregate costs of the mandates would fall below the annual thresholds for intergovernmental and private-sector mandates established in UMRA ($75 million and $150 million in 2013, respectively, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2278 is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs) and 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	2014	2015	20165	2017	2018	2014-2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Additional DHS Personnel, Equipment, and Compensation						
Estimated Authorization Level	418	929	1,328	1,365	1,403	5,442
Estimated Outlays	391	929	1,328	1,369	1,403	5,417
Grants to State and Local Governments						
Estimated Authorization Level	3,594	4,226	4,226	4,226	4,226	20,497
Estimated Outlays	791	2,008	3,276	4,112	4,226	14,412
Department of State						
Estimated Authorization Level	432	592	609	628	648	2,909
Estimated Outlays	432	592	609	628	648	2,909
Expand Visa Security Program						
Estimated Authorization Level	60	60	0	0	0	120
Estimated Outlays	48	60	12	0	0	120
Other Programs						
Estimated Authorization Level	5	0	0	0	0	5
Estimated Outlays	3	2	0	0	0	5
Total Changes						
Estimated Authorization Level	4,509	5,807	6,162	6,218	6,277	28,973
Estimated Outlays	1,665	3,592	5,224	6,105	6,277	22,863
CHANGES IN DIRECT SPENDING[a]						
Estimated Budget Authority	*	1	1	1	1	4
Estimated Outlays	*	*	1	1	1	3
CHANGES IN REVENUES[a]						
Estimated Revenues	*	1	2	2	2	7
NET DECREASE (-) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES[a]						
Impact on the Deficit	*	-1	-1	-1	-1	-4

Notes: DHS = Department of Homeland Security; * = less than $500,000.

Components may not sum to totals because of rounding.

a. Over the 2014-2023 period, CBO estimates that enacting H.R. 2278 would increase direct spending by $8 million, increase revenues by
$17 million, and thus decrease the deficit by $9 million.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the end of 2013, that the necessary amounts will be provided each year, and that spending will follow historical spending patterns for activities related to the enforcement of immigration laws.

Spending Subject to Appropriation

Additional DHS Personnel, Equipment, and Compensation. H.R. 2278 would direct Immigration and Customs Enforcement (ICE) in DHS to hire the following additional personnel:

- 5,000 deportation officers;

- 700 support staff; and
- 60 trial attorneys in the Office of the Principal Legal Advisor.

The legislation would require ICE to provide handguns, rifles, and tasers for its deportation officers and immigration enforcement agents. The bill also would increase salaries and benefits for immigration enforcement agents to match those paid to deportation officers. Based on information from DHS about the costs of equipment and additional personnel, including salaries, benefits, training, and support activities, CBO estimates that implementing those provisions would cost about $5.4 billion (primarily for salaries) over the 2014–2018 period.

Grants to State and Local Governments. CBO estimates that the grants to state and local governments authorized by H.R. 2278 would require additional appropriations of about $3.6 billion for the remainder of fiscal year 2014 and about $4.2 billion annually thereafter. We estimate that spending of those appropriations would sum to $14.4 billion over the 2014–2018 period.

State Criminal Alien Assistance Program (SCAAP) Grants. H.R. 2278 would authorize the appropriation of the necessary amounts for fiscal year 2014 and subsequent years for the SCAAP program, which makes grants to state and local governments to cover the portion of salaries of state and local correctional officers related to the incarceration of undocumented aliens *convicted* of certain crimes. The legislation also would transfer the program from the Department of Justice (DOJ) to DHS and would expand it to cover costs of detaining aliens *charged* with certain crimes.

In recent years, the amounts appropriated for SCAAP have fallen far short of the amounts requested by states. In fiscal year 2013, $250 million was appropriated for SCAAP although DOJ anticipates that state and local governments will request about $1.4 billion for costs incurred that year. Based on that expected request, CBO estimates that appropriations of $1.2 billion would be needed for the remainder of fiscal year 2014 and around $1.6 billion annually thereafter would be required to extend and expand the program as provided by H.R. 2278.

Grants for Incarceration and Transportation Costs. The bill would permit states and localities to seek reimbursement from DHS for any costs relating to the incarceration and transportation of inadmissible or deportable aliens. The SCAAP program currently covers only the costs of state and local correctional officers, and we estimate that DHS would need additional appropriations of $1.9 billion for the remainder of fiscal year 2014 and $2.5 billion annually thereafter to reimburse state and local governments for all incarceration and transportation expenses. This estimate is based on a 2004 DOJ study on the costs of operating state detention facilities (including personnel, food, supplies, health care, and utilities) that indicates that expenses for correctional officers represent roughly 40 percent of total detention costs.

Grants for Equipment, Technology, Facilities, and Other Costs. In addition, H.R. 2278 would authorize DHS to make grants to certain state and local governments to procure equipment, technology, facilities, and other items related to investigating, arresting, detaining, and transporting inadmissible or deportable aliens. Based on

the costs of similar programs that award grants for multiple purposes to jurisdictions across the country (such as DOJ's Byrne program), we estimate that DHS would require funding of $500 million in 2014 and $100 million annually thereafter to make grants to hundreds of state and local entities that would be eligible for such assistance under the bill's provisions. This estimate assumes that most procurement costs would be initiated in 2014.

Department of State. H.R. 2278 would amend current law authorizing the Department of State to collect and retain surcharges on passports and immigrant visas to cover the costs of certain border security functions. Under the bill, the department would no longer have the authority to collect or retain surcharges on passports, and the surcharge on immigrant visas would instead be retained by ICE and spent on the Visa Security Program.

Based on information from the Department of State, CBO estimates that the department would be unable to raise other consular fees to compensate for the lost collections under the bill and the department would require additional appropriations of $432 million in 2014. After adjusting for anticipated inflation, CBO estimates that the department would spend about $2.9 billion over the 2014–2018 period on border security functions that are currently offset by fee collections, assuming appropriation of the necessary amounts.

Expand Visa Security Program. H.R. 2278 would specifically authorize the appropriation of $60 million for each of fiscal years 2014 and 2015 for DHS to review visa applications at designated overseas locations. We estimate that implementing this provision would cost $120 million over the 2014–2016 period.

Other Programs. H.R. 2278 would direct DHS to carry out several other activities, including a pilot program to test electronic processing of deportation documents and an effort to increase states' access to Federal program information to identify inadmissible aliens. Based on the cost of similar activities, CBO estimates that it would cost about $5 million over the 2014–2015 period to carry out those provisions.

Direct Spending

H.R. 2278 would establish new criminal penalties for being unlawfully present in the United States. Any collections of criminal fines under this provision (which are recorded in the budget as revenues and discussed below) would later be spent from the Crime Victims Fund by DOJ. CBO estimates that spending from the fund would increase by $9 million over the 2014–2023 period (about $1 million each year).

Revenues

CBO estimates that enacting H.R. 2278 would increase collections of criminal and civil fines by $17 million over the 2014–2023 period. About half of the additional revenue would result from changes made to the process for imposing civil penalties for violations of voluntary departure orders. The remainder would result from new criminal penalties imposed on individuals who knowingly are unlawfully present in the United States. Collections of criminal fines are recorded in the budget as revenues, deposited in the

Crime Victims Fund, and subsequently spent without further appropriation (discussed above under Direct Spending).

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for H.R. 2278 as ordered reported by the House Committee on the Judiciary on June 18, 2013

	By Fiscal Year, in Millions of Dollars											
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2014-2018	2014-2023
NET INCREASE OR DECREASE (-) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-9
Memorandum:												
Changes in Outlays	0	0	1	1	1	1	1	1	1	1	3	8
Changes in Revenues	0	1	2	2	2	2	2	2	2	2	7	17

INTERGOVERNMENTAL AND PRIVATE–SECTOR IMPACT

H.R. 2278 would impose intergovernmental and private-sector mandates as defined in UMRA. CBO estimates that the aggregate costs of the mandates would fall below the annual thresholds for intergovernmental and private-sector mandates established in UMRA ($75 million and $150 million in 2013, respectively, adjusted annually for inflation).

Mandates that Apply to Both Public and Private Entities

The bill would require educational institutions that participate in the Student and Exchange Visitor Program (SEVP) to conduct background checks and training for individuals serving as designated school officials and others who have been granted access to the Student and Exchange Visitor Information System (SEVIS). Information from the Department of Homeland Security indicates that approximately 35,000 individuals would be required to complete background checks in the first year of implementation at a cost of $100 to $250 per background check. Based on that information, CBO estimates that the cost for both public and private entities to comply with this mandate would total between $3.5 million and $8.8 million in the first year. The cost in the following years would depend on the turnover of designated school officials. Based on information from DHS, CBO estimates that the cost for the online SEVP training would be small.

In addition, educational institutions would be required to report any changes to specific information about those foreign students to SEVIS within 10 days and to have at least one designated school official for every 200 students who have nonimmigrant status. Currently, institutions have 21 days to report any such change or modification and most schools meet the requirement for the num-

ber of school officials. CBO estimates that the cost to comply with those mandates would be minimal.

Mandates that Apply to Public Entities Only

The bill would require state and local governments to provide DHS information about apprehended individuals whom law enforcement officials believe are inadmissible or deportable. Governments would have to provide DHS the individual's name and address, a physical description, details of apprehension, identification documents and vehicle information (if applicable), and a photo and fingerprints (if readily available). Based on information from public entities, CBO expects that the number of individuals about whom information would need to be sent would be small. We also expect that states would collect the required information during the normal apprehension process and that the cost to transmit the data would be minimal. The bill would require DHS to reimburse state and local governments for the cost of providing the information.

Mandates that Apply to Private Entities Only

Flight Schools. The bill would require flight schools in the United States to be certified by the Federal Aviation Administration (FAA) in order to participate in the SEVP program and enroll foreign students. Foreign students interested in studying in the United States must first be admitted to a school or university before applying for a visa at a U.S. embassy or consulate overseas. According to information from the FAA and DHS, most flight schools interested in participating in SEVP either already have an FAA certification or are in the process of obtaining one. Therefore, CBO expects that the cost to comply with this mandate would be minimal.

Educational Accrediting Associations. In addition, the bill would require an agency or association that accredits certain higher-education institutions to notify DHS if an educational institution is denied accreditation or if accreditation is suspended, withdrawn, or terminated. CBO estimates that the cost to comply with this notification requirement would be small.

Individuals. The bill would impose additional mandates on foreign students and other individuals in the private sector, including the following:

- Certain students with F-visas who are currently in the United States would be required to attend accredited institutions;
- Foreign-born individuals in the United States would be prohibited from seeking judicial review if their visa is revoked, which would eliminate an existing right of action;
- Individuals in the United States who have been convicted of certain sex offenses would be prohibited from petitioning for relatives to be granted a U.S. visa.

On the basis of information from DHS, the Department of State, and representatives of an education association about the limited costs of complying with each of those mandates, CBO expects that the total cost of compliance would be small.

Other Impacts

Assuming appropriation of the authorized and estimated amounts, state and local governments would receive about $35 billion over the 2014–2023 period for costs related to investigating, detaining, transporting, and incarcerating inadmissible or deportable aliens.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (DHS)
Sunita D'Monte (Department of State)
Mark Booth (Revenues)
Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

Duplication of Federal Programs

No provision of H.R. 2278 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 2278 specifically directs to be completed one specific rule making within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2278 improves and ensures enforcement of U.S. immigration law enforcement within the interior of the United States.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2278 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title. Section 1 sets forth the short title of the bill as the "Strengthen and Fortify Enforcement Act" or the "SAFE Act."

Sec. 2. Table of Contents. This section sets forth the table of contents of the bill.

Title 1. Immigration Law Enforcement by States and Localities

Sec. 101. Definitions and Severability. Provides definitions and severability should any portion of this Act be held unconstitutional.

Sec. 102. Immigration Law Enforcement by States and Localities. This section grants States and localities specific Congressional authorization to enact and enforce their own immigration laws as long as they are consistent with Federal law. This section grants States and localities specific Congressional authorization to assist in the enforcement of Federal immigration law.

Sec. 103. Listing of Immigration Violators in the National Crime Information Center database. This section mandates inclusion of immigration status information in the NCIC database.

Sec. 104. Technology Access. This section ensures that States have access to Federal programs or technology directed broadly at identifying inadmissible and deportable aliens.

Sec. 105. State and Local Law Enforcement Provision of Information about Apprehended Aliens. This section mandates that States and localities provide DHS in a timely manner with information on each alien they apprehend who is believed to be in violation of the immigration laws of the United States. The section mandates an annual report by DHS on the information it received from States and includes a provision for reimbursement for reasonable costs States incur with respect to providing such information.

Sec. 106. Financial Assistance to State and Local Police Agencies that Assist in the Enforcement of Immigration Laws. This section provides grants to States and local police agencies for procurement of equipment, technology, facilities, and other products that facilitate and are directly related to investigating, apprehending, arresting, detaining, or transporting aliens who have violated the immigration law of the United States. Within 3 years, GAO shall conduct audits of funds distributed to States and localities.

Sec. 107. Increased Federal Detention Space. This section mandates the Federal Government to construct or acquire, in addition to existing detention facilities for aliens, new detention facilities for aliens detained pending removal or a decision regarding such removal.

Sec. 108. Federal Custody of Inadmissible and Deportable Aliens in the United States Apprehended by State or Local Law Enforcement. Under this section, if a State or a locality requests the Secretary of Homeland Security to take an alien into Federal custody, the Secretary must take the alien in custody not later than 48 hours after the detainer has been issued following the conclusion of the State or locality charging process or dismissal process, or if no state or locality charging or dismissal process is required, the Secretary must issue a detainer and take the alien into custody not later than 48 hours after the alien is apprehended, to determine whether the alien should be detained, placed into removal proceedings, released, or removed (and also request that the relevant State or local law enforcement agency temporarily hold the alien in their custody or transport the alien for transfer to Federal custody and provide reimbursement accordingly).

Sec. 109. Training of State and Local Law Enforcement Personnel Relating to the Enforcement of Immigration Laws. This section requires DHS to create training manuals and guides for the training

of State and local officials in immigration laws and procedures. DHS would be responsible for any costs incurred.

Sec. 110. Immunity. This section provides that a law enforcement officer of a State or local law enforcement agency that is acting within the scope of the officer's official duties shall be immune, to the same extent as a Federal law enforcement officer, from personal liability arising out of their assistance in the enforcement of the immigration laws.

Sec. 111. Criminal Alien Identification Program. This section mandates DHS to continue to operate and implement a program which: 1) identifies removable criminal aliens in Federal and State correctional facilities; 2) ensures such aliens are not released into the community; and 3) removes such aliens from the United States after the completion of their sentences. Additionally, this program is extended to all States and requires participation by States that accept Federal funds for the incarceration of aliens.

Section 111(b) allows detainers to be issued by State and local law enforcement after a convicted criminal alien has served their sentence. This provision simply allows State and local law enforcement to issue post-sentence detainers for criminal aliens and allows State and local law enforcement to hold criminal aliens for a limited amount of time (14 days) until they can be transferred to Federal law enforcement.

Sec. 112. Clarification of Congressional Intent. This section amends section 287(g) of the Immigration and Nationality Act (which allows DHS to enter into cooperative agreements with States and localities to assist in the enforcement of the immigration laws). It requires DHS to accept a request from a State or locality to enter into a 287(g) agreement absent a compelling reason not to. No limit on the number of agreements under this subsection can be imposed. The Secretary shall process requests for such agreements with all due haste, and in no case shall take more than 90 days from the date the request is made until the agreement is consummated. Any such agreement under this section shall accommodate a requesting State or political subdivision with respect to the enforcement model of their choosing. This section clarifies that no Federal program or technology directed broadly at identifying unlawful and criminal aliens in jail substitutes for such agreements, including those establishing a jail model, and shall operate in addition to any agreement under this section.

No agreement can be terminated absent a compelling reason to do so. DHS shall provide a state or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination, and the notice shall fully explain the grounds for termination, along with providing evidence substantiating the Secretary's allegations and the State or locality shall have the right to a hearing before an administrative law judge. The agreement shall remain in full effect during the course of any and all legal proceedings. States may seek judicial relief if DHS terminates an agreement.

Sec. 113. State Criminal Alien Assistance Program (SCAAP). This section provides reimbursements to states that house in their jails unlawful aliens who are charged with or convicted of criminal offenses. Additionally, this program moves the SCAAP program to

DHS as that is the agency charged with identifying, detaining, and removing unlawful and criminal aliens.

Sec. 114. State Violations of the Enforcement of Immigration Laws. This section bars sanctuary cities, States and localities from receiving SCAAP, law enforcement, and DHS grants.

Sec. 115. Clarifying the Authority of ICE Detainers. This section clarifies that States and localities must honor Federal detainers. ICE detainers (requests to local law enforcement agencies to detain named individuals for up to 48 hours after they would otherwise be released in order to provide ICE an opportunity to assume custody) have sometimes been interpreted to not be binding on local authorities who receive the detainers.

Title II. National Security

Sec. 201. Removal of, and Denial of Benefits to, Terrorist Aliens. This section expands the class of aliens ineligible for certain forms of relief (cancellation of removal, voluntary departure) if they are aliens described in the INA's security-related and/or terrorist grounds of removal. This section extends the grounds that trigger a statutory bar to asylum and withholding of removal based on terrorist activities. The section also provides that a person convicted of an aggravated felony is ineligible for voluntary departure.

As the Committee has previously found:

> Withholding of removal is a form of protection that, while similar to asylum, differs in two important respects: (1) it is nondiscretionary; and (2) to receive this benefit, the alien must meet a higher standard of proof than asylum. Although aliens who pose a danger to the national security generally are barred from withholding of removal, aliens deportable on terrorist grounds are not expressly barred from such relief. This section bars aliens deportable on terrorist grounds from receiving withholding of removal.
>
> As the 9/11 Commission's staff report on terrorist travel makes clear, terrorist aliens have abused our humanitarian benefits to remain in the United States.[261] First World Trade Center bomber Ramzi Yousef, the Blind Sheikh, and Mir Kansi, who killed two in front of the headquarters of the CIA, all made claims to asylum to remain in the United States. Congress has barred terrorist aliens from receiving asylum, but the bars to terrorist aliens receiving withholding of removal, are less clear. Under the INA, aliens are currently only barred from withholding if there are reasonable grounds to believe that they are a danger to the security of the United States. While the INA states that aliens, who are described in the provision that renders aliens deportable who have engaged in any terrorist activity, "shall be considered to be . . . alien[s] with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States," aliens with terrorist ties have made claims

[261] *See* 9–11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States at 47, 99 (2004).

that they are not a danger to the security of the U.S., and thus eligible for withholding.[262]

Sec. 202. Terrorist Bar to Good Moral Character. Applicants for certain immigration benefits, including naturalization, voluntary departure, and cancellation of removal, must demonstrate "good moral character," as defined in the Immigration and Nationality Act. At present, although the definition excludes (among others) "habitual drunkards" and gamblers, the definition does not expressly exclude aliens who are terrorists or aiders or supporters of terrorism. This section accordingly makes a number of changes to the good moral character provision to exclude any alien who has at the time been described in the terrorism and national security related grounds of removal. The bill also clarifies that the good moral character bar applies regardless of when a crime was classified as an aggravated felony; clarifies that a finding on good moral character is a discretionary finding and that an adverse finding can be applied even if an express statutory bar does not apply.

Sec. 203. Terrorist Bar to Naturalization. This provision expressly bars the naturalization of terrorists and other aliens described in the national security grounds of removal, clarifies that a Federal district court nor the Secretary of Homeland Security may consider a naturalization application while any proceeding to determine inadmissibility, deportability, or eligibility for lawful permanent residence (i.e., revocation) is pending, clarifies that conditional lawful permanent residents must have the condition removed before applying for naturalization, establishes that review of denied applications for naturalization must reflect the required judicial deference to national security determinations of the Secretary and certain other determinations related to good moral character, and clarifies the availability of Federal district court review for pending naturalization applications.

Sec. 204 Denaturalization for Terrorists. This provision authorizes the Secretary of Homeland Security to revoke the naturalization of terrorists.

Sec. 205. Use of 1986 IRCA Legalization Information for National Security Purposes. This section amends the Immigration Reform and Control Act of 1986's IRCA's legalization provisions relating to the confidentiality of information provided by applicants for the Special Agricultural Worker SAW program, and applicants for adjustment of status. These provisions do not currently authorize the use of information provided in the legalization applications for terrorism or national security cases or investigations, even if relevant to such cases.

Sec. 206 Background and Security Checks. This section ensures that all necessary background and security checks be completed before any benefit under the immigration laws is provided to any person, whether by DHS, the Executive Office for Immigration Review or judicially. The provision clarifies that courts may not order the grant of benefits to any person until the necessary checks have been completed. It also provides for the investigation of suspected fraud before any benefit is required to be granted.

Sec. 207 Technical Amendments to the Intelligence Reform and Terrorism Prevention Act of 2004. Section 7209(d) of the Intel-

[262] H.R. Rep. No. 109–345, part I, at 67–68 (2005).

ligence Reform and Terrorism Prevention Act of 2004 (P.L. 108–454) assigns the Secretary of State responsibility for securing transit passage areas at ports of entry within the United States. This function more appropriately resides with the Secretary of Homeland Security, who is generally responsible for security at ports of entry within the United States. This section amends section 7209(d) to assign this function to the Secretary of Homeland Security. Additionally, the section provides that systems deployed pursuant to the plan to detect fraudulent documents must be compatible with those of both DHS and DOS.

Title III. Removal of Criminal Aliens

Sec. 301. The Definition of Aggravated Felony. This section modifies the definition of the term "aggravated felony" to clarify that the term applies to offenses whether in violation of Federal or State law and to offenses in foreign countries if the term of imprisonment was completed within the last 15 years.

This section also adds manslaughter, certain harboring of aliens crimes, felony convictions for marriage fraud, and immigration-related entrepreneurship fraud, in addition to offenses for improper entry and reentry where the alien was sentenced to 1 year or more of incarceration, as aggravated felonies. Further, it includes the acts of soliciting, aiding, abetting, counseling, commanding, inducing, or procuring another to commit one of the crimes listed already in the definition, and clarifies that extrinsic evidence can be used to establish the minority of a victim in cases of sexual abuse of a minor.

As the Committee has previously found:

> This change is needed to reverse a Ninth Circuit precedent that has had the effect of requiring Federal prosecutors in criminal cases seeking sentencing enhancements to prove that prior convictions were *not* based on aiding and abetting.[263] This is often impossible to prove, because in Federal court, and in almost every State jurisdiction, a defendant can be convicted of aiding and abetting a substantive offense, even if aiding and abetting is not specifically charged in the indictment.[264]

Sec. 302. Precluding Admissibility of Aliens Convicted of Aggravated Felonies or Other Serious Offenses. Aggravated felony conviction only renders an alien who was admitted to the United States deportable. Therefore, an aggravated felony conviction does not render an alien who entered without inspection inadmissible under the law unless the conviction also falls within one of the existing specified criminal grounds of inadmissibility, such as a crime involving moral turpitude, or a controlled substance or money laundering offense. Certain additional grounds of deportability, such as serious firearms offenses and crimes of domestic violence, are not currently grounds of inadmissibility. This section clarifies that conviction of an aggravated felony is an independent ground of inadmissibility for those who entered without inspection. It also adds inadmissibility grounds for certain offenses that are currently only grounds of deportability (e.g., certain firearms offenses and crimes

[263] *See U.S. v. Corona-Sanchez,* 291 F. 3d 1208 (9th Cir. 2002) (en banc).

[264] H.R. Rep. No. 109–345, part I, at 59.

of domestic violence), making both positions consistent. Further, this section amends the inadmissibility and deportability grounds to allow for the removal of aliens who have committed or been convicted of crimes relating to Social Security fraud or the unlawful procurement of citizenship. The section also clarifies that an alien convicted of an aggravated felony is ineligible for a discretionary waiver of certain criminal inadmissibility grounds.

Section 303. Espionage Clarification. Currently, the inadmissibility provision governing espionage, sabotage, unlawful exportation of technology and sensitive information, and wishing to overthrow the United States Government, refers only to future activities, not past activities. This section modifies the provision to include both past and future espionage and related activities.

Sec. 304. Prohibition of the Sale of Firearms to, or the Possession of Firearms By, Certain Aliens. This section clarifies existing criminal law provisions which bar sales and transfers of firearms and munitions to unlawful aliens and temporary visa holders so that there is consistency with provisions in the INA.

Section 305. Uniform Statute of Limitations for Certain Immigration, Naturalization, and Peonage Offenses. This section provides a statute of limitations of 10 years for most immigration crimes under the INA and title 18.

Sec. 306. Conforming Amendment to the Definition of Racketeering Activity. This section is a conforming amendment that makes all passport and visa fraud a racketeering activity for purposes of Federal criminal law.

Sec. 307 Conforming Amendments for the Aggravated Felony Definition. This section amends the definition of "aggravated felony" so that it covers all penalties for passport, visa, and immigration fraud under chapter 75 of title 18.

Sec. 308. Precluding Refugee or Asylee Adjustment of Status for Aggravated Felons.

As the Committee has previously found:

> In various statutory enactments since 1988, Congress has attached a series of stringent restrictions upon the eligibility of aliens to obtain almost all forms of discretionary immigration relief after they have been convicted of an aggravated felony. In particular, under the asylum provisions, an alien convicted of an aggravated felony is conclusively barred from being granted asylum, and a grant of asylum may be terminated if it is determined that the alien has become subject to one of the mandatory bars to asylum, including an asylee being convicted of an aggravated felony. However, the provision governing asylee and refugee adjustment to permanent resident status does not expressly bar an applicant from obtaining adjustment where the alien has been convicted of an aggravated felony after obtaining refugee or asylee status. Not only is this inconsistent with statutory bars on almost all discretionary immigration relief for aggravated felons, it is also inconsistent with the treatment that the asylee or refugee would be accorded after adjustment. Specifically, an alien who has been granted refugee or asylee adjustment is barred from obtaining cancellation of removal, a waiver under section 212(h) of the INA, or section 212(c) relief

from removal if the alien is convicted of an aggravated felony after attaining such status.[265]

Section 605 ends this discrepancy by barring asylees and refugees convicted of aggravated felonies from adjustming status to permanent residence.

Sec. 309. Inadmissibility, Deportability and Detention of Drunk Drivers. This section makes a second or subsequent conviction for driving while intoxicated grounds an aggravated felony and requires the detention of unlaw aliens who have been convicted of driving while intoxicated.

Sec. 310. Detention of Dangerous Aliens. This section provides a statutory basis for DHS to detain as long as necessary specified dangerous immigrants under orders of removal who cannot be removed. It authorizes DHS to detain non-removable aliens beyond 6 months, if the alien will be removed in the reasonably foreseeable future; the alien would have been removed but for the alien's refusal to make all reasonable efforts to comply and cooperate with the Homeland Security Secretary's efforts to remove them; the alien has a highly contagious disease; release would have serious adverse foreign policy consequences; release would threaten national security; or release would threaten the safety of the community and the alien either is an aggravated felon or has committed certain other crimes. These aliens may be detained for periods of 6 months at a time, and the period of detention may be renewed.

Sec. 311. Grounds of Inadmissibility and Deportability for Alien Gang Members. This section is designed to make alien criminal gang members deportable from the United States and inadmissible to the United States. The section includes a definition of the term "criminal gang". An alien who is, or was, a member of a criminal gang is inadmissible and deportable. An alien who is, or was, a criminal gang member is ineligible for asylum and temporary protected status. Additionally, the relevant agencies can designate specified gangs, membership in which would render an alien inadmissable/deportable.

Sec. 312. Extension of Identity Theft Amendments. This section clarifies the existing identify theft statute so that a person who fraudulently uses identification documents can be prosecuted, as long as they knew the documents were not their own.

Sec. 313. Laundering of Monetary Instruments. Pursuant to case law, current laundering statutes required proof that transportation of laundered funds was "designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control" of the funds. This provision clarifies current law so the Government is not required to prove that a defendant knew the purpose and plan behind the transportation and closes the loophole allowing transport of ill-gotten gains with impunity. Additionally, this section adds 18 U.S.C. sec. 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor) and section 274(a) of the INA (relating to bringing in and harboring certain aliens) as specified unlawful activity under 18 U.S.C. sec. 1956(c)(7)(D).

Sec. 314. Increased Criminal Penalties Relating to Alien Smuggling and Related Offenses. This section clarifies the definition of

[265] *Id.* at 70.

alien smuggling crimes and creates new charges for transporting or harboring aliens en route to illegally entering the United States. The proposal dispenses with the current penalty scheme for alien smuggling and provides increasing penalties depending on whether the offense was committed for profit and, if so, based upon the number of prior convictions for alien smuggling, and the level of risk or harm to victims. The section also provides for criminal penalties for possession of firearms during or in relation to an alien smuggling crime.

Sec. 315. Penalties for Illegal Entry or Presence. The section makes illegal presence a Federal misdemeanor.

Sec. 316. Illegal Re-entry. This section provides strengthened penalties for aliens convicted of illegal reentry who have a serious criminal record. In addition, this section makes a narrow affirmative defense available to aliens previously denied admission and removed who have nevertheless complied with the governing laws and regulations relating to admission.

Sec. 317. Reform of Passport, Visa, and Immigration Fraud Offenses. This section revises chapter 75 of title 18 of the United States Code to clarify and improve the existing criminal provisions governing passport, visa, and immigration fraud.

- *Issuance without authority:* The section revises section 1541 of title 18 of the United States Code to clarify the existing criminal provisions governing passport issuance and related fraud. The section sets a 15-year maximum penalty for any such conviction.
- *False statement in an application for a passport:* The section revises section 1542 of title 18 of the United States Code to clarify the existing criminal provisions governing false statements in passport and related fraud. This section sets a 15-year maximum penalty for any such conviction.
- *Forgery and unlawful production of a passport:* The section revises section 1543 of title 18 of the United States Code to clarify the existing criminal provisions governing false statements in passport and related fraud. This section sets a 15-year maximum penalty for any such conviction.
- *Misuse of a passport:* The section revises section 1544 of title 18 of the United States Code to clarify the existing criminal provisions governing false statements in passport and related fraud. This section sets a 15-year maximum penalty for any such.
- *Schemes to defraud aliens:* The section makes it a Federal crime to pursue immigration schemes designed to defraud aliens. Under existing law, it is difficult for Federal prosecutors to bring charges against those who defraud immigrants in connection with Federal immigration benefits but who do not actually file applications or petitions with Federal immigration authorities. The provision rectifies this problem by making it a Federal crime—punishable up to 15 years—to defraud an alien in connection with an immigration benefit, regardless of whether any benefit is actually sought or received.

- *Immigration and visa fraud:* The section simplifies and strengthens the existing penalties governing immigration and visa fraud. The revised provision (1) expands the kinds of immigration fraud subject to prosecution, (2) raises the maximum sentence for base offenses to 15 years, and (3) adds a new offense prohibiting trafficking in immigration documents that is punishable by a mandatory minimum sentence of 2 years.
- *Attempts and conspiracies:* The section clarifies that any attempt or conspiracy to violate any offense within chapter 75 (passport and visa offenses) is also an offense subject to equal punishment.
- *Alternative penalties for certain offenses:* The section provides a sentencing enhancement for offenses under chapter 75 that facilitate international terrorism or the commission of other felonies and heightens maximum penalties.

Sec. 318. Forfeiture. The section provides for civil forfeiture regarding chapter 75 crimes.

Sec. 319. Expedited Removal for Aliens Inadmissible on Criminal or Security Grounds.

The section authorizes the Secretary to use expedited removal proceedings with respect to an alien inadmissible on criminal grounds who: (1) has not been admitted or paroled; (2) has not been found to have a credible fear of persecution; and (3) is not eligible for a waiver of inadmissibility or relief from removal.

Sec. 320. Increased Penalties Barring the Admission of Convicted Sex Offenders Failing to Register and Requiring Deportation of Sex Offenders Failing to Register. The section renders an alien inadmissable or deportable where the alien is a convicted sex offender who has failed to register as required by law.

Sec. 321. Protecting Immigrants from Convicted Sex Offenders. The section bars convicted sex offenders from petitioning for relatives for permanent residency status under Section 245(a) of the INA unless DHS determines the petitioner poses no risk to the alien with respect to whom a petition is filed. The provision also applies to fiancée visa applicants.

Sec. 322. Clarification to Crimes of Violence and Crimes Involving Moral Turpitude. The section clarifies that Immigration Judges may consider extrinsic evidence in determining whether a crime is a crime or violence or a crime involving moral turpitude.

Sec. 323. Penalties for Failure to Obey Removal Orders. The section extends to inadmissible aliens ordered removed the criminal penalties for deportable aliens ordered removed who fail to deport.

Sec. 324 Pardons. Under the INA, when aliens are pardoned for some crimes, the immigration consequences are removed, but not for other crimes. This provision provides consistent treatment of all pardons, removing the immigration consequences of the crimes.

Title IV. Visa Security

Sec. 401. Cancellation of Additional Visas. This section amends the INA to clarify that all visas held by an alien are void if that alien has overstayed any such visas by remaining in the U.S. beyond the period of authorized stay, or otherwise violated any of the

terms of the nonimmigrant classification in which the alien was admitted.

Sec. 402. Visa Information Sharing. This section amends the INA to provide the Federal Government with additional flexibility to release certain data in visa records, such as biographic information, to foreign governments. Current law provides that visa records relating to the issuance or refusal of visas to enter the United States must be considered confidential and may be used only for specified purposes—namely, the formulation, amendment, administration or enforcement of the immigration, nationality, and other laws of the United States—with certain limited exceptions. The section would clarify that DOS may share visa records with a foreign government on a case-by-case basis for the purpose of determining removability or eligibility for a visa, admission, or other immigration benefits or when the sharing is in the U.S. national interest. In addition, the section ensures that visa revocation records can be disclosed pursuant to the same standards as records concerning visa issuance and refusal.

Sec. 403. Restricting Waiver of Visa Interviews. The section ensures that the "national interest" waiver authority for required visa interviews (i) can be exercised only in consultation with the Secretary of Homeland Security; (2) cannot be used to waive interviews for persons of national security concern or where such waiver would create a high risk of degradation of visa program integrity; and (3) cannot be based on mere travel facilitation or reducing the workload of consular officers.

Sec. 404. Authorizing the Department of State to Not Interview Certain Ineligible Visa Applicants. Currently, the State Department must conduct in-person interviews of nonimmigrant visa applicants even if it is evident to the consular officer, based solely on the content of the individual's application, that the applicant is ineligible for a visa. In order to avoid wasting limited consular resources and making a clearly ineligible visa applicant travel a potentially long distance to the consulate, this provisions clarifies that DOS does not have to conduct interviews of visa applicants in these instances.

Sec. 405. Visa Refusal and Revocation. This section authorizes the Secretary of Homeland Security and the Secretary of State to refuse or revoke visas to aliens if in the security interests of the United States and provides that there is no judicial review of visa revocations (including of admitted aliens).

Sec. 406. Funding for the Visa Security Program. This section requires DOS to impose surcharges on immigrant use fees to support enhanced border security through funding of the VSP and repay funds appropriated for this purpose.

Sec. 407. Expeditious Expansion of Visa Security Program to High-Risk Posts. This section provides for the expansion of the VSP to the top 30 high-risk posts.

Sec. 408. Expedited Clearance and Placement of the Department of Homeland Security Personnel at Overseas Embassies and Consular Posts. The section provides expedited clearance and placement of DOS personnel at overseas embassies and consular posts.

Sec. 409. Accreditation Requirements. This section requires that colleges and universities be accredited in order to host foreign students seeking to study in the U.S. It also expands the current defi-

nition of "accredited language training program," requiring that all such institutions be accredited by an accrediting agency recognized by the Secretary of Education. And it gives the Secretary of Homeland Security the discretion to require accreditation of other academic institutions (except for seminaries or other religious institutions) if 1) the institution is not already required to be accredited and 2) an appropriate accrediting agency recognized by the Secretary of Education is able to provide such accreditation. The Secretary of Homeland Security can waive the accreditation requirement if a college, university or language training program is otherwise in compliance with the requirements of the INA and is making a good faith effort to satisfy the accreditation requirement. It provides that during the 3-year period beginning on the date of enactment, foreign students can continue to receive student visas to attend an unaccredited college or university so long as such institution (1) is certified by the Student and Exchange Visitor Program (SEVP—the DHS program that manages schools and foreign students), (2) submits an application for accreditation within 6 months after the date of enactment and (3) continues to comply with the applicable accrediting requirements of the accrediting agency.

Sec. 410. Visa Fraud. This section allows the Secretary of Homeland Security to suspend SEVP access and participation if the Secretary has reasonable suspicion that the owner or SEVP designee at an educational institution has committed or attempted to commit fraud relating to SEVP. This section prohibits a person convicted of a fraud offense relating to SEVP from ever being able to have an ownership or managerial role in an educational institution that enrolls foreign students holding F or M visas.

Sec. 411. Background Checks. This section requires that an educational institution's individuals designated to access SEVIS (the foreign student tracking system) to be U.S. citizens or lawful permanent residents and within 3 years have undergone a background check and successfully complete SEVIS training. This section also authorizes the Secretary of Homeland Security to collect a fee to cover the cost of the background check.

Sec. 412. Number of Designated School Officials. This section allows a school the flexibility to permit as many Designated School Officials (DSO) to place information into the SEVIS system as necessary, in addition to the required Principal Designated School Official. However the school must not have fewer DSOs than one for every 200 student visa holders.

Sec. 413. Reporting Requirement. This section requires schools to report in SEVIS any changes in required information regarding foreign students within 10 days. Currently, a school has 21 days to report any such change or modification.

Sec. 414. Flight Schools Not Certified by FAA. This section requires that in order to sponsor students for F or M visas, flight schools in the U.S. must be certified by the Federal Aviation Administration. The section also allows a waiver of this requirement for 5 years in order to give flight schools time to become certified as long as a flight school is SEVP certified, submits a certification application within 1 year of enactment and continues to progress toward certification.

Sec. 415. Revocation of Accreditation. This section requires that an accrediting agency or association notify the Secretary of Home-

land Security if an educational institution is denied accreditation or if accreditation is suspended withdrawn or terminated. The Secretary shall immediately terminate SEVIS access.

Sec. 416. Report on Risk Assessment. This section requires the Secretary of Homeland Security to submit to Congress a report on a risk assessment strategy to be deployed by the Secretary to identify, investigate and take action against schools and school officials committing or facilitating student visa fraud.

Sec. 417. Implementation of GAO Recommendations. This section requires the Secretary of Homeland Security to submit to Congress a plan for implementation of several fraud and misuse-related recommendations by GAO.

Sec. 418. Implementation of SEVIS II. This section requires the Secretary of Homeland Security to implement SEVIS II, the updated foreign student-tracking database, within 2 years of the date of enactment.

Sec. 419. Definitions.

Title V. Aid to U.S. Immigration and Customs Enforcement Officers

Sec. 501. ICE Immigration Enforcement Agents. The section authorizes all ICE immigration enforcement agents and deportation officers while they are enforcing Federal immigration laws to make arrests for immigration violations, Federal felonies, Federal criminal offenses for bringing in and harboring aliens, and offenses against the U.S., and to carry firearms.

Sec. 502. ICE Detention Enforcement Officers. The section provides for additional ICE detention officers.

Sec. 503. Ensuring Safety of ICE Officers and Agents. The section requires that ICE immigration enforcement agents and deportation officers be issued body armor and weapons.

Sec. 504. ICE Advisory Council. The section establishes an ICE Advisory Council, including members appointed by the ICE officers' and prosecutors' unions, to advise Congress and ICE on improving immigration enforcement efforts, the resource needs of ICE personnel, and the effectiveness of ICE enforcement policies.

Sec. 505. Pilot Program for Electronic Field Processing. This provision establishes a pilot program allowing ICE agents to electronically process and serve charging documents and detainers.

Sec. 506. Additional ICE Deportation Officers and Support Staff. This provision authorizes the hiring of additional ICE agents.

Sec. 507. Additional ICE Prosecutors. The provision authorizes the hiring of additional ICE prosecutors.

Title VI. Miscellaneous Enforcement Provisions

Sec. 601. Encouraging Aliens to Depart Voluntarily.

As the Committee has previously found:

> "Voluntary departure" is a benefit in removal proceedings that allows deportable aliens to agree to leave the United States within a specified time period of their own volition rather than facing a formal order of removal, while avoiding the adverse legal consequences of a final order of removal. Ideally, the Government should also benefit from this practice, as it is spared the expense of initiating removal proceedings, extensively litigating the aliens' cases, and, ultimately, removing the aliens. The Government

> may not realize such benefits in practice, however, because few aliens granted voluntary departure actually depart from the country expeditiously. In all too many cases, a grant of voluntary departure is merely a prelude to years of further litigation in which the alien continues to benefit from delay of removal.[266]

This section strengthens the requirements for voluntary departure in lieu of formal removal. It adds violators of security and related grounds of removal to the class of aliens ineligible for voluntary departure and clarifies the ineligibility category by including all those "described in" (rather than "deportable under") all prohibited categories. The section also allows for less time to complete departure following a grant of voluntary departure at the conclusion of removal proceedings. The section requires a bond to ensure departure. The current penalties for an alien's failure to timely depart after agreeing to voluntary departure are inadequate to ensure the alien's departure. This section strengthens the penalties an alien will be subject to for failing to timely depart the United States. This section restricts the ability of an alien to reopen their case or receive a future immigration benefit if the alien fails to timely depart.

Sec. 602. Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully.

As the Committee has previously found:

> A major barrier to effective removal of alien absconders is the fact that there are currently few effective administrative sanctions available under the law against absconders who have been apprehended beyond the mere execution of the same removal order that they had been successfully evaded for months or years. Even if such absconding aliens are unsuccessful in obtaining the reopening of their previous final order, they may simply launch a new round of litigation before the Board of Immigration Appeals (BIA) and the courts.[267]

Section 602 "provides more effective administrative tools to deter absconders from remaining in this country illegally and to prevent them from obtaining any further advantages after flouting their removal orders."[268] The section amends the bar on admissibility for aliens removed from the United States to "not later than" 5 years (or 10, or 20, depending on the circumstance) after the date of removal, in contrast to the current law which bars aliens seeking admission "within" 5 years (or 10, or 20) of the date of removal. This closes a loophole allowing removed aliens to avoid the bar on reentry by unlawfully remaining in the United States. The language also renders any alien who absconds after receiving a final order of removal ineligible for future discretionary immigration relief until 10 years after the alien leaves the United States (except in narrow circumstances).

603. Reinstatement of Removal Orders. As the Committee has previously found:

[266] *Id.* at 64.
[267] *Id.* at 65.
[268] *Id.*

> [T]he Ninth Circuit has . . . held that aliens are entitled to have their reinstatement cases adjudicated by immigration judges.[269] In fiscal year 2004, prior to the Ninth Circuit's decision, DHS removed 42,886 aliens in that circuit through reinstatement. Under the Ninth Circuit's decision, immigration judges now must hear tens of thousands of additional cases annually from aliens ineligible for relief. This is a waste of extremely limited resources. . . .[270]

This section "is meant to preserve judicial resources, and to close the revolving door of illegal reentry by allowing DHS to summarily deport aliens who have reentered after removal, without having to obtain a new removal order from an immigration judge."[271] It provides that if aliens with a prior removal order against them have subsequently illegally reentered the United States, the prior removal order is reinstated without the need for proceedings before an Immigration Judge. Judicial review of the reinstatement is limited, and the court does not have jurisdiction to review the original order of removal.

Sec. 604. Clarification with Respect to Definition of Admission. This provision clarifies that adjustment of status to legal permanent residency is an admission under the INA.

Sec. 605. Reports to Congress on the Exercise and Abuse of Prosecutorial Discretion. The section requires that a report be made to Congress each year on the number of inadmissible and removable aliens encountered and not processed for removal or granted immigration benefits under "prosecutorial discretion." Criminal histories of all such aliens must be provided.

Sec. 606. Waiver of Federal Laws with Respect to Border Security Actions on Department of the Interior and Department of Agriculture Lands. This section prohibits the Department of Interior and Department of Agriculture from denying CBP agents access to certain Federal lands within 100 miles of an international land border, for purposes of search and rescue operations and preventing drug and human smuggling and illegal border crossings.

Sec. 607. Biometric Entry and Exit Data System.

Various laws requiring exit controls have been implemented by Congress since 1996. Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 required the Attorney General (now the DHS Secretary) to create, within 2 years of the date of enactment, an automated system to track the entry and exit of all travelers to and from the United States. In 2000, two separate laws were passed, one that reaffirmed an exit system and one that tied it to the Visa Waiver Program. In 2001, the USA Patriot Act again required an exit system, as did legislation in 2002. In 2003, DHS initiated the US–VISIT program to develop a comprehensive entry system to collect biometric data from aliens traveling through United States ports of entry. In 2004, US–VISIT initiated the first step of this program by collecting biometric data on aliens entering the United States at 115 airports and 14 sea-

[269] *See Morales-Izquierdo v. Ashcroft,* 388 F. 3d 1299 (9th Cir. 2004).

[270] H.R. Rep. No. 109–345, part I, at 77.

[271] *Id.*

ports.[272] The Intelligence Reform and Terrorism Prevention Act of 2004 required the Secretary of Homeland Security to develop a plan to accelerate full implementation of an automated biometric entry and exit data system that matches available information provided by foreign nationals upon their arrival in and departure from the United States.[273] Beginning in 2004, and until 2007, pilot programs for exit were undertaken at the demand of Congress.[274] But to date, an exit system has never been implemented.

While many people who are illegally present in the U.S. entered the country in violation of law, roughly 40 percent first arrived in the U.S. lawfully—with, say a tourist visa or a student visa, or in a situation where no visa was required—and then overstayed their welcome. An effective exit tracking program would help identify all of those who arrived lawfully but remain in the U.S. in violation of the law.

To compound matters, terrorist overstays are also a significant issue which under the current system can be tracked down only through difficult, tedious, and time-consuming investigations. Recent terrorist overstays include Hosan Smadi, a Jordanian national who plotted to blow up a Dallas skyscraper in 2009, and Amine El Khalifi, a Moroccan whose visa expired in 1999, who was arrested in an attempt to bomb the U.S. Capitol in 2012.

Little has changed on progress to implement an exit program since the 9/11 Commission's staff found in its "9/11 and Terrorist Travel" monograph:

> On August 23, 2001, the CIA provided biographical identification information about two of the hijackers to border and law enforcement authorities. The CIA and FBI considered the case important, but there was no way of knowing whether either hijacker was still in the country, because a border exit system Congress authorized in 1996 was never implemented.[275]

Not having an exit system in place led the 9/11 commissioners to conclude in 2011 that our border system must include data about who is leaving and when, with the following recommendation:

> The Department of Homeland Security, properly supported by the Congress, 0should complete, as quickly as possible, a biometric entry-exit screening system. As important as it is to know when foreign nationals arrive, it is also important to know when they leave. Full deployment of the biometric exit should be a high priority. Such a capability would have assisted law enforcement and intelligence officials in August and September 2001 in conducting a search for two of the 9/11 hijackers that were in the United States on expired visas.[276]

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[272] *See* Government Accountability Office, GAO–13–683, Additional Actions Needed to Assess DHS's Data and Improve Planning for a Biometric Air Exit Program at 10–11 (2013).

[273] *Id*.

[274] *See* Janice Kephart, Biometric Exit Tracking: A Feasible and Cost-Effective Solution for Foreign Visitors Traveling by Air and Sea, 2013 Center for Immigration Studies at 4.

[275] National Commission on Terrorist Attacks Upon the United States, 9/11 and Terrorist Travel 4 (2004).

[276] Lee Hamilton & Thomas Kean, Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations, 2011 Bipartisan Policy Center.

More recent experiences with terrorist threats and attempts reiterates the commissioners' point. In the wake of the Christmas Bomb Plot and the near-getaway by would-be Times Square bomber Faisal Shahzad (who had already boarded a flight to leave the United States when he was arrested), we are once again reminded that a biometric exit system would be useful to prevent a terrorist from fooling the system and getting away.

Instant, verified overstay data would give CBP and DOS better information to determine who should be allowed to visit the United States again, and ICE better information about who has illegally overstayed. Exit data would also support all current customers of US–VISIT biometric data, and may even give Joint Terrorism Task Forces the ability to curtail terrorist absconders who slip out of the United States unnoticed based on verified watch list hits. For instance, the Times Square bomber was on the jetway when he was apprehended, having bypassed TSA security.

There have been discussions, policy platforms, even pilot programs, but to this day, despite statutory mandates, we do not have a functioning exit system. There aren't even any operating pilot programs. Conversely, US–VISIT's entry program was able to get up and running within a few years after 9/11.

Thirteen years after the attack on September 11, one of the few unfilled recommendations of the 9/11 Commission is the failure of DHS to establish a biometric exit system. This section requires that no later than 2 years after the date of enactment, DHS shall establish the biometric entry and exit system at each port of entry in the United States as required by the Intelligence Reform and Terrorism Prevention Act of 2004.

Sec. 608. Certain Activities Restricted. This section rescinds internal memoranda issued by DHS on prosecutorial discretion and Deferred Action for Childhood Arrivals.

Sec. 609 Border Patrol Mobile and Rapid Response Teams. This section requires the deployment of ICE mobile rapid response teams to achieve the objectives of making emergency assistance available, ensuring and facilitating quick deployment as needed, and providing emergency assistance to those who reside and work close to the border.

610. GAO Study on Deaths in Custody. This section requires a report on the causes of death of individuals who die while in ICE custody.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 534 OF TITLE 28, UNITED STATES CODE

§ 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials

(a) The Attorney General shall—

(1) * * *

* * * * * * *

(3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin); ⟦and⟧

(4) acquire, collect, classify, and preserve records of violations by aliens of the immigration laws of the United States, regardless of whether any such alien has received notice of the violation or whether sufficient identifying information is available with respect to any such alien or whether any such alien has already been removed from the United States; and

⟦(4)⟧ *(5)* exchange such records and information with, and for the official use of, authorized officials of the Federal Government, including the United States Sentencing Commission, the States, including State sentencing commissions, Indian tribes, cities, and penal and other institutions.

IMMIGRATION AND NATIONALITY ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act".

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—
(1) * * *

* * * * * * *

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer. *An alien's adjustment of status to that of lawful permanent resident status under any provision of this Act, or under any other provision of law, shall be considered an "admission" for any purpose under this Act, even if the adjustment of status occurred while the alien was present in the United States.*

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—
(A) * * *

* * * * * * *

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with [section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States] *section 214(m) at an accredited college, university, or language training program, or at an established seminary, conservatory, academic high school, elemen-*

tary school, or other academic institution in the United States, particularly designated by him and approved by the [Attorney General] *Secretary of Homeland Security* after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the [Attorney General] *Secretary of Homeland Security* the termination of attendance of each nonimmigrant student, [and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn,] *and if any such institution of learning of place of study fails to make reports promptly or fails to comply with any accreditation requirement (including deadlines for submitting accreditation applications or obtaining accreditation) the approval shall be withdrawn,* (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

* * * * * * *

(K) subject to subsections (d) and (p) of section 214, an alien who—

(i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section [204(a)(1)(A)(viii)(I))] *204(a)(1)(A)(viii))* and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section [204(a)(1)(A)(viii)(I))] *204(a)(1)(A)(viii))* who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

* * * * * * *

(43) [The term "aggravated felony" means—] *Notwithstanding any other provision of law, the term "aggravated felony" applies to an offense described in this paragraph, whether in violation of Federal or State law, or in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, even if the length of the term of imprisonment for the offense is based on recidivist or other enhancements and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—*

(A) [murder, rape, or sexual abuse of a minor;] *murder, manslaughter, homicide, rape (whether the victim was conscious or unconscious), or any offense of a sexual nature involving a victim under the age of 18 years;*

* * * * * * *

(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment [at least one year;] *is at least one year, except that if the conviction records do not conclusively establish whether a crime constitutes a crime of violence, the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime of violence;*

* * * * * * *

(I) an offense described in section 2251, 2251A, [or 2252] *2252, or 2252A* of title 18, United States Code (relating to child pornography);

* * * * * * *

(N) an offense described in [paragraph (1)(A) or (2) of] section 274(a) (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act*;*

(O) an offense described in [section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph] *section 275 or 276 for which the term of imprisonment is at least 1 year*;

(P) an offense [(i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii)] *which is described in any section of chapter 75 of title 18, United States Code,* for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 12 months, except in the case of a first offense *(i) that is not described in section 1548 of such title (relating to increased penalties), and (ii)* for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

* * * * * * *

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; [and]

(U) [an attempt or conspiracy to commit an offense described in this paragraph.] *attempting or conspiring to commit an offense described in this paragraph, or aiding, abetting, counseling, procuring, commanding, inducing, or soliciting the commission of such an offense; and*

(V) a second or subsequent conviction for driving while intoxicated (including a conviction for driving while under the influence of or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under State law.

[The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.]

* * * * * * *

[(52) The term "accredited language training program" means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.]

(52) Except as provided in section 214(m)(4), the term "accredited college, university, or language training program" means a college, university, or language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(53)(A) The term "criminal gang" means an ongoing group, club, organization, or association of 5 or more persons that has as one of its primary purposes the commission of 1 or more of the following criminal offenses and the members of which engage, or have engaged within the past 5 years, in a continuing series of such offenses, or that has been designated as a criminal gang by the Secretary of Homeland Security, in consultation with the Attorney General, as meeting these criteria. The offenses described, whether in violation of Federal or State law or foreign law and regardless of whether the offenses occurred before, on, or after the date of the enactment of this paragraph, are the following:

(i) A "felony drug offense" (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

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

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

(iv) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

(v) Any conduct punishable under sections 1028 and 1029 of title 18, United States Code (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery and trafficking in persons), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

(vi) A conspiracy to commit an offense described in clauses (i) through (v).

(B) Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conduct

occurred before, on, or after the date of the enactment of this paragraph.

(54) The term "pardon" means a full and unconditional pardon granted by the President of the United States, Governor of any of the several States or constitutionally recognized body.

* * * * * * *

(f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) * * *

(2) one who the Secretary of Homeland Security or Attorney General determines to have been at any time an alien described in section 212(a)(3) or 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information;

* * * * * * *

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43))*, regardless whether the crime was classified as an aggravated felony at the time of conviction, except that the Secretary of Homeland Security or Attorney General may, in the unreviewable discretion of the Secretary or Attorney General, determine that this paragraph shall not apply in the case of a single aggravated felony conviction (other than murder, manslaughter, homicide, rape, or any sex offense when the victim of such sex offense was a minor) for which completion of the term of imprisonment or the sentence (whichever is later) occurred 10 or more years prior to the date of application*; or

(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) (relating to severe violations of religious freedom).

[The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.] *The fact that any person is not within any of the foregoing classes shall not preclude a discretionary finding for other reasons that such a person is or was not of good moral character. The Secretary or the Attorney General shall not be limited to the applicant's conduct during the period for which good moral character is required, but may take into consideration as a basis for determination the applicant's conduct and acts at any time.* In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim,

or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

* * * * * * *

POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL

SEC. 103. (a) * * *

* * * * * * *

(h) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security, the Attorney General, nor any court may—

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

(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws;

(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition; or

(4) issue or order the issuance of any documentation evidencing or related to any such grant, until such background and security checks as the Secretary may in his discretion require have been completed or updated to the satisfaction of the Secretary.

(i) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security nor the Attorney General may be required to—

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

(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws,

(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition, or

(4) issue or order the issuance of any documentation evidencing or related to any such grant, until any suspected or alleged materially false information, material misrepresentation or omission, concealment of a material fact, fraud or forgery, counterfeiting, or alteration, or falsification of a document, as determined by the Secretary, relating to the adjudication of an application or petition for any status (including the granting of adjustment of status), relief, protection from removal, or other benefit under this subsection has been investigated and resolved to the Secretary's satisfaction.

(j) Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to require any of the acts in subsection (h) or (i) to be completed by a certain time or award any relief for failure to complete or delay in completing such acts.

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

* * * * * * *

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a)(1)(A)(i) * * *

* * * * * * *

[(viii)(I) Clause (i) shall not apply to a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed.

[(II) For purposes of subclause (I), the term "specified offense against a minor" is defined as in section 111 of the Adam Walsh Child Protection and Safety Act of 2006.]

(viii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed.

(B)(i)(I) * * *

[(I) Subclause (I) shall not apply in the case of an alien lawfully admitted for permanent residence who has been convicted of a specified offense against a minor (as defined in subparagraph (A)(viii)(II)), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that such person poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.]

(II) Subclause (I) shall not apply in the case of an alien admitted for permanent residence who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the alien lawfully admitted for permanent residence poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.

* * * * * * *

(b) After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 203(b)(2) or 203(b)(3), the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status. *No petition shall be approved pursuant to this section if there is any administrative or judicial proceeding (whether civil or criminal) pending against the petitioner that could (whether directly or indirectly) result in the petitioner's denaturalization or the loss of the petitioner's lawful permanent resident status.*

* * * * * * *

ASYLUM

SEC. 208. (a) * * *

(b) CONDITIONS FOR GRANTING ASYLUM.—

(1) * * *

(2) EXCEPTIONS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to an alien if the Attorney General *or the Secretary of Homeland Security* determines that—

(i) * * *

* * * * * * *

[(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 212(a)(3)(B)(i) or section 237(a)(4)(B) (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of section 212(a)(3)(B)(i), the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or]

(v) the alien is described in subparagraph (B)(i) or (F) of section 212(a)(3), unless, in the case of an alien described in subparagraph (IV), (V), or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security or the Attorney General determines, in the discretion of the Secretary or the Attorney General, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States;

(vi) the alien is described in section 212(a)(2)(N)(i) or section 237(a)(2)(H)(i) (relating to participation in criminal street gangs); or

[(vi)] *(vii)* the alien was firmly resettled in another country prior to arriving in the United States.

* * * * * * *

ADJUSTMENT OF STATUS OF REFUGEES

SEC. 209. (a) * * *

* * * * * * *

(c) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. *However, an alien who is convicted of an aggravated felony is not eligible for a waiver or for adjustment of status under this section.*

SPECIAL AGRICULTURAL WORKERS

SEC. 210. (a) * * *

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) * * *

* * * * * * *

(6) CONFIDENTIALITY OF INFORMATION.—

(A) IN GENERAL.—Except as provided in this paragraph, neither the [Attorney General] *Secretary of Homeland Security*, nor any other official or employee of the [Department of Justice,] *Department of Homeland Security,* or bureau or agency thereof, may—

(i) * * *

* * * * * * *

(B) REQUIRED DISCLOSURES.—The [Attorney General] *Secretary of Homeland Security* shall provide information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) AUTHORIZED DISCLOSURES.—

(i) CENSUS PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed under section 8 of title 13, United States Code.

(ii) NATIONAL SECURITY PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing, use, publication, or release of information furnished under this section in any investigation, case, or matter, or for any purpose, relating to terrorism, national intelligence or the national security.

[(C)] *(D)* CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the [Service] *Department of Homeland Security* pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

* * * * * * *

[(D)] *(E)* CRIME.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than $10,000.

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

(2) CRIMINAL AND RELATED GROUNDS.—

(A) CONVICTION OF CERTAIN CRIMES.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, [or]

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)),

(III) a violation of (or a conspiracy or attempt to violate) an offense described in section 408 of title 42, United States Code (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and related activity in connection with identification documents, authentication features, and information), or

(IV) a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender),

is inadmissible.

* * * * * * *

(iii) CLARIFICATION.—If the conviction records do not conclusively establish whether a crime constitutes a crime involving moral turpitude, the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime involving moral turpitude.

* * * * * * *

(J) PROCUREMENT OF CITIZENSHIP OR NATURALIZATION UNLAWFULLY.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of, or an attempt or a conspiracy to violate, subsection (a) or (b) of section 1425 of title 18, United States Code (relating to the procurement of citizenship or naturalization unlawfully) is inadmissible.

(K) CERTAIN FIREARM OFFENSES.—Any alien who at any time has been convicted under any law of, or who admits having committed or admits committing acts which constitute the essential elements of, purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is inadmissible.

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

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

(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who at any time is convicted of, or who admits having committed or admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is inadmissible. For purposes of this clause, the term “crime of domestic violence” means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual’s acts under the domestic or family violence laws of the United States or any State,

Indian tribal government, or unit of local or foreign government.

(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is inadmissible. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a independent order in another proceeding.

(iii) WAIVER AUTHORIZED.—The waiver authority available under section 237(a)(7) with respect to section 237(a)(2)(E)(i) shall be available on a comparable basis with respect to this subparagraph.

(iv) CLARIFICATION.—If the conviction records do not conclusively establish whether a crime of domestic violence constitutes a crime of violence (as defined in section 16 of title 18, United States Code), the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime of violence.

(N) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien is inadmissible who a consular officer, the Secretary of Homeland Security, or the Attorney General knows or has reason to believe—

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

(ii) to have participated in the activities of a criminal gang (as defined in section 101(a)(53)), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.

(3) SECURITY AND RELATED GROUNDS.—

⟦(A) IN GENERAL.—Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

⟦(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

⟦(ii) any other unlawful activity, or

⟦(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is inadmissible.]

(A) IN GENERAL.—Any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in, or who is engaged in, or with respect to clauses (i) and (iii) of this subparagraph has engaged in—

(i) any activity—

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

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

(ii) any other unlawful activity; or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means;

is inadmissible.

* * * * * * *

(9) ALIENS PREVIOUSLY REMOVED.—

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.—

(i) ARRIVING ALIENS.—Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again [seeks admission within 5 years of the date of such removal (or within 20 years] *seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal* in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) OTHER ALIENS.—Any alien not described in clause (i) who—

(I) * * *

* * * * * * *

and who [seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of] *seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after* such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

* * * * * * *

(h) [The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)] *The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or the Secretary, waive the application of subparagraphs (A)(i)(I), (III), (B), (D), (E), (K), and (M) of subsection (a)(2)* and subparagraph (A)(i)(II) of such

subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General *or Secretary of Homeland Security* that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General *or Secretary of Homeland Security* that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or

(C) the alien is a VAWA self-petitioner; and

(2) the Attorney General *or Secretary of Homeland Security*, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or [a criminal act involving torture.] *a criminal act involving torture, or has been convicted of an aggravated felony.* No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence [if either since the date of such admission the alien has been convicted of an aggravated felony or the alien] *if since the date of such admission the alien* has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General *or Secretary of Homeland Security* to grant or deny a waiver under this subsection.

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * * * *

(m)(1) * * *

* * * * * * *

(3) The Secretary of Homeland Security shall require accreditation of an academic institution (except for seminaries or other religious institutions) for purposes of section 101(a)(15)(F) if—

(A) that institution is not already required to be accredited under section 101(a)(15)(F)(i); and

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

(4) The Secretary of Homeland Security, in the Secretary's discretion, may waive the accreditation requirement in paragraph (3) or section 101(a)(15)(F)(i) with respect to an institution if such institution—

(A) is otherwise in compliance with the requirements of section 101(a)(15)(F)(i); and

(B) has been a candidate for accreditation for at least 1 year and continues to progress toward accreditation by an accrediting agency recognized by the Secretary of Education.

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216. (a) * * *

* * * * * * *

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence[.]*, if the alien has had the conditional basis removed pursuant to this section.*

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN

SEC. 216A. (a) * * *

* * * * * * *

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence[.]*, if the alien has had the conditional basis removed pursuant to this section.*

* * * * * * *

DESIGNATION

SEC. 220. (a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Attorney General, and the Secretary of State may designate a group or association as a criminal street gang if their conduct is described in section 101(a)(53) or if the

group or association conduct poses a significant risk that threatens the security and the public safety of United States nationals or the national security, homeland security, foreign policy, or economy of the United States.

(b) EFFECTIVE DATE.—Designations under subsection (a) shall remain in effect until the designation is revoked after consultation between the Secretary of Homeland Security, the Attorney General, and the Secretary of State or is terminated in accordance with Federal law.

CHAPTER 3—ISSUANCE OF ENTRY DOCUMENTS

* * * * * * *

APPLICATIONS FOR VISAS

SEC. 222. (a) * * *

* * * * * * *

(f) The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the ⟦issuance or refusal⟧ *issuance, refusal, or revocation* of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that—

(1) * * *

(2) the Secretary of State, in the Secretary's discretion ⟦and on the basis of reciprocity⟧, may provide to a foreign government information in the Department of State's computerized visa lookout database and, when necessary and appropriate, other records covered by this section related to information in the database—

(A) with regard to individual aliens, at any time on a case-by-case basis for the purpose of *(i)* preventing, investigating, or punishing acts that would constitute a crime in the United States, including, but not limited to, terrorism or trafficking in controlled substances, persons, or ⟦illicit weapons; or⟧ *illicit weapons, or (ii) determining a person's deportability or eligibility for a visa, admission, or other immigration benefit;*

(B) with regard to any or all aliens in the database, pursuant to such conditions as the Secretary of State shall establish in an agreement with the foreign government in which that government agrees to use such information and records ⟦for the purposes⟧ *for one of the purposes* described in subparagraph (A) ⟦or to deny visas to persons who would be inadmissible to the United States.⟧*; or*

(C) with regard to any or all aliens in the database specified data elements from each record, if the Secretary of State determines that it is in the national interest to provide such information to a foreign government.

(g)(1) In the case of an alien who has been admitted on the basis of a nonimmigrant visa and remained in the United States beyond the period of stay authorized by the ⟦Attorney General⟧ *Secretary*, such visa *and any other nonimmigrant visa issued by the*

United States that is in the possession of the alien shall be void beginning after the conclusion of such period of stay.

(2) An alien described in paragraph (1) shall be ineligible to be readmitted to the United States as a nonimmigrant, except—

(A) on the basis of a visa [(other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality] *(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality or foreign residence* (or, if there is no office in such country, in such other consular office as the Secretary of State shall specify); or

* * * * * * *

(h) Notwithstanding any other provision of this Act, the Secretary of State shall require every alien applying for a nonimmigrant visa—

(1) who is at least 14 years of age and not more than 79 years of age to submit to an in person interview with a consular officer unless *the alien is determined by the Secretary of State to be ineligible for a visa based upon review of the application or* the requirement for such interview is waived—

(A) * * *

* * * * * * *

(C) by the Secretary of State if the Secretary*, in consultation with the Secretary of Homeland Security,* determines that such waiver is—

(i) in the national interest of the United States*, where such national interest shall not include facilitation of travel of foreign nationals to the United States, reduction of visa application processing times, or the allocation of consular resources*; or

* * * * * * *

(2) notwithstanding paragraph (1), to submit to an in person interview with a consular officer if such alien—

(A) * * *

* * * * * * *

(E) requires a security advisory opinion or other Department of State clearance, unless such alien is—

(i) * * *

* * * * * * *

(iv) an alien who qualifies for a diplomatic or official visa, or its equivalent; [or]

(F) is identified as a member of a group or sector that the Secretary of State determines—

(i) * * *

* * * * * * *

(iii) poses a security threat to the United States[.]*; or*

(G) is an individual—

(i) determined to be in a class of aliens determined by the Secretary of Homeland Security to be threats to national security;

(ii) identified by the Secretary of Homeland Security as a person of concern; or

(iii) applying for a visa in a visa category with respect to which the Secretary of Homeland Security has determined that a waiver of the visa interview would create a high risk of degradation of visa program integrity.

* * * * * * *

CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * * * *

APPREHENSION AND DETENTION OF ALIENS

SEC. 236. (a) ARREST, DETENTION, AND RELEASE.—On a warrant issued by the [Attorney General] *Secretary of Homeland Security*, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, *the Secretary of Homeland Security or* the Attorney General—

(1) * * *

(2) may release the alien on—

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the [Attorney General] *Secretary of Homeland Security*; or

(B) [conditional parole] *recognizance*; but

* * * * * * *

(b) REVOCATION OF BOND OR PAROLE.—The [Attorney General] *Secretary of Homeland Security* at any time may revoke a bond or [parole] *recognizance* authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

(c) DETENTION OF CRIMINAL ALIENS.—

(1) CUSTODY.—The [Attorney General] *Secretary of Homeland Security* shall take into custody any alien who—

(A) * * *

* * * * * * *

(C) is deportable under section 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentence to a term of imprisonment of at least 1 year, [or]

(D) is inadmissible under section 212(a)(3)(B) *or 212(a)(2)(N)* or deportable under section *237(a)(2)(H) or* 237(a)(4)(B), *or*

(E) is unlawfully present in the United States and has been convicted one or multiple times for driving while intoxicated (including a conviction for driving while under the influence or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under State law,

[when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.]

any time after the alien is released, without regard to whether an alien is released related to any activity, offense, or conviction described in this paragraph; to whether the alien is released on parole, supervised release, or probation; or to whether the alien may be arrested or imprisoned again for the same offense. If the activity described in this paragraph does not result in the alien being taken into custody by any person other than the Secretary, then when the alien is brought to the attention of the Secretary or when the Secretary determines it is practical to take such alien into custody, the Secretary shall take such alien into custody.

(2) RELEASE.—The ⟦Attorney General⟧ *Secretary of Homeland Security* may release an alien described in paragraph (1) only if the ⟦Attorney General⟧ *Secretary of Homeland Security* decides pursuant to section 3521 of title 18, United States Code, that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the ⟦Attorney General⟧ *Secretary of Homeland Security* that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) IDENTIFICATION OF CRIMINAL ALIENS.—(1) The ⟦Attorney General⟧ *Secretary of Homeland Security* shall devise and implement a system—

(A) * * *

* * * * * * *

(e) JUDICIAL REVIEW.—The ⟦Attorney General's⟧ *Secretary of Homeland Security's* discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the ⟦Attorney General⟧ *Secretary of Homeland Security* under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

(f) LENGTH OF DETENTION.—

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

(2) CONSTRUCTION.—The length of detention under this section shall not affect detention under section 241.

(g) ADMINISTRATIVE REVIEW.—

(1) IN GENERAL.—The Attorney General's review of the Secretary's custody determinations under subsection (a) for the following classes of aliens shall be limited to whether the alien may be detained, released on bond (of at least $1,500 with security approved by the Secretary), or released with no bond:

(A) Aliens in exclusion proceedings.

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

(C) Aliens described in subsection (c).

(2) SPECIAL RULE.—The Attorney General's review of the Secretary's custody determinations under subsection (a) for aliens in deportation proceedings subject to section 242(a)(2) of the Act (as in effect prior to April 1, 1997, and as amended by section 440(c) of Public Law 104–132) shall be limited to a determination of whether the alien is properly included in such category.

(h) RELEASE ON BOND.—

(1) IN GENERAL.—An alien detained under subsection (a) may seek release on bond. No bond may be granted except to an alien who establishes by clear and convincing evidence that the alien is not a flight risk or a risk to another person or the community.

(2) CERTAIN ALIENS INELIGIBLE.—No alien detained under subsection (c) may seek release on bond.

* * * * * * *

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 237. (a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) INADMISSIBLE AT TIME OF ENTRY OR OF ADJUSTMENT OF STATUS OR VIOLATES STATUS.—

(A) * * *

(B) PRESENT IN VIOLATION OF LAW.—Any alien who is present in the United States in violation of this Act or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked ⟦under section 221(i)⟧, is deportable.

* * * * * * *

(2) CRIMINAL OFFENSES.—

(A) GENERAL CRIMES.—

(i) * * *

* * * * * * *

⟦(v) FAILURE TO REGISTER AS A SEX OFFENDER.—Any alien who is convicted under section 2250 of title 18, United States Code, is deportable.

⟦(vi) WAIVER AUTHORIZED.—Clauses (i), (ii), and (iii) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.⟧

(v) CRIMES INVOLVING MORAL TURPITUDE.—If the conviction records do not conclusively establish whether a crime constitutes a crime involving moral turpitude, the Attorney General may consider other evidence related to the conviction that clearly establishes that

the conduct for which the alien was engaged constitutes a crime involving moral turpitude.

* * * * * * *

(E) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDER, CRIMES AGAINST CHILDREN AND .—

(i) * * *

* * * * * * *

(iii) CRIMES OF VIOLENCE.—If the conviction records do not conclusively establish whether a crime of domestic violence constitutes a crime of violence (as defined in section 16 of title 18, United States Code), the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime of violence.

* * * * * * *

(G) FRAUD AND RELATED ACTIVITY ASSOCIATED WITH SOCIAL SECURITY ACT BENEFITS AND IDENTIFICATION DOCUMENTS.—Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) section 208 of the Social Security Act (42 U.S.C. 408) (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and related activity in connection with identification) is deportable.

(H) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien is deportable who the Secretary of Homeland Security or the Attorney General knows or has reason to believe—

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

(ii) has participated in the activities of a criminal gang (as so defined), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.

(I) FAILURE TO REGISTER AS A SEX OFFENDER.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender) is deportable.

(3) FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—

(A) * * *

(B) FAILURE TO REGISTER OR FALSIFICATION OF DOCUMENTS.—Any alien who at any time has been convicted—

(i) * * *

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), **[**or**]**

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18, United States Code

(relating to fraud and misuse of visas, permits, and other entry documents), *or*

(iv) of a violation of, or an attempt or a conspiracy to violate, section 1425(a) or (b) of title 18 (relating to the procurement of citizenship or naturalization unlawfully),

is deportable.

* * * * * * *

(8) PARDONS.—In the case of an alien who has been convicted of a crime and is subject to removal due to that conviction, if the alien, subsequent to receiving the criminal conviction, is granted a pardon, the alien shall not be deportable by reason of that criminal conviction.

* * * * * * *

EXPEDITED REMOVAL OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES

SEC. 238. (a) * * *

(b) REMOVAL OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

(1) The ⟦Attorney General⟧ *Secretary of Homeland Security in the exercise of discretion* may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 237(a)(2)(A)(iii) (relating to conviction of an aggravated felony) and issue an order of removal pursuant to the procedures ⟦set forth in this subsection or⟧ *set forth in this subsection, in lieu of removal proceedings under* section 240.

* * * * * * *

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

(A) has not been admitted or paroled;

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

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

⟦(3)⟧ *(4)* The ⟦Attorney General⟧ *Secretary of Homeland Security* may not execute any order described in ⟦paragraph (1) until 14 calendar days⟧ *paragraph (1) or (3) until 7 calendar days* have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 242.

⟦(4)⟧ *(5)* Proceedings before the ⟦Attorney General⟧ *Secretary of Homeland Security* under this subsection shall be in accordance with such regulations as the ⟦Attorney General⟧ *Secretary of Homeland Security* shall prescribe. The ⟦Attorney General⟧ *Secretary of Homeland Security* shall provide that—

(A) * * *

* * * * * * *

⟦(5)⟧ *(6)* No alien ⟦described in this section⟧ *described in paragraph (1) or (2)* shall be eligible for any relief from removal that ⟦the Attorney General may grant in the Attorney General's discretion⟧ *the Secretary of Homeland Security or the Attorney General may grant, in the discretion of the Secretary or Attorney General, in any proceeding*.

* * * * * * *

CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS

SEC. 240A. (a) * * *

* * * * * * *

(c) ALIENS INELIGIBLE FOR RELIEF.—The provisions of subsections (a) and (b)(1) shall not apply to any of the following aliens:

(1) * * *

* * * * * * *

(4) An alien who is ⟦inadmissible under⟧ *described in* section 212(a)(3) or ⟦deportable under⟧ *described in* section 237(a)(4).

* * * * * * *

VOLUNTARY DEPARTURE

SEC. 240B. (a) CERTAIN CONDITIONS.—

⟦(1) IN GENERAL.—The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240 or prior to the completion of such proceedings, if the alien is not deportable under section 237(a)(2)(A)(iii) or section 237(a)(4)(B).⟧

(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240.

(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.

⟦(2)⟧ *(3)* PERIOD.—

⟦(A) IN GENERAL.—Subject to subparagraph (B), permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days.⟧

(A) INSTEAD OF REMOVAL.—Subject to subparagraph (C), permission to voluntarily depart under paragraph (1) shall not be valid for any period in excess of 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1) to post a voluntary departure

bond, to be surrendered upon proof that the alien has departed the United States within the time specified.

(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.

[(B)] *(C)* THREE-YEAR PILOT PROGRAM WAIVER.—During the period October 1, 2000, through September 30, 2003, and subject to [subparagraphs (C) and (D)(ii)] *subparagraphs (D) and (E)(ii)*, the Attorney General may, in the discretion of the Attorney General for humanitarian purposes, waive application of subparagraph (A) in the case of an alien—

(i) * * *

* * * * * * *

[(C)] *(D)* WAIVER LIMITATIONS.—

(i) Waivers under subparagraph [(B)] *(C)* may be granted only upon a request submitted by a Service district office to Service headquarters.

(ii) Not more than 300 waivers may be granted for any fiscal year for a principal alien under subparagraph [(B)] *(C)*(i).

(iii)(I) Except as provided in subclause (II), in the case of each principal alien described in subparagraph [(B)] *(C)*(i) not more than one adult may be granted a waiver under subparagraph [(B)] *(C)*(ii).

(II) Not more than two adults may be granted a waiver under subparagraph [(B)] *(C)*(ii) in a case in which—

(aa) the principal alien described in subparagraph [(B)] *(C)*(i) is a dependent under the age of 18; or

* * * * * * *

[(D)] *(E)* REPORT TO CONGRESS; SUSPENSION OF WAIVER AUTHORITY.—

(i) Not later than March 30 of each year, the Commissioner shall submit to the Congress an annual report regarding all waivers granted under [subparagraph (B)] *subparagraph (C)* during the preceding fiscal year.

(ii) Notwithstanding any other provision of law, the authority of the Attorney General under [subpara-

graph (B)] *subparagraph (C)* shall be suspended during any period in which an annual report under clause (i) is past due and has not been submitted.

[(3) BOND.—The Attorney General may require an alien permitted to depart voluntarily under this subsection to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.]

(4) TREATMENT OF ALIENS ARRIVING IN THE UNITED STATES.—In the case of an alien who is arriving in the United States and with respect to whom proceedings under section 240 are (or would otherwise be) initiated at the time of such alien's arrival, [paragraph (1)] *paragraphs (1) and (2)* shall not apply. Nothing in this paragraph shall be construed as preventing such an alien from withdrawing the application for admission in accordance with section 235(a)(4).

(b) AT CONCLUSION OF PROCEEDINGS.—

(1) IN GENERAL.—The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if, at the conclusion of a proceeding under section 240, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) * * *

* * * * * * *

(C) the alien is not [deportable under section 237(a)(2)(A)(iii) or section 237(a)(4);] *described in paragraph (2)(A)(iii) or (4) of section 237(a);* and

* * * * * * *

(2) PERIOD.—Permission to depart voluntarily under this subsection shall not be valid for [a period exceeding 60 days] *any period in excess of 45 days*.

* * * * * * *

[(c) ALIENS NOT ELIGIBLE.—The Attorney General shall not permit an alien to depart voluntarily under this section if the alien was previously permitted to so depart after having been found inadmissible under section 212(a)(6)(A).

[(d) CIVIL PENALTY FOR FAILURE TO DEPART.—

[(1) IN GENERAL.—Subject to paragraph (2), if an alien is permitted to depart voluntarily under this section and voluntarily fails to depart the United States within the time period specified, the alien—

[(A) shall be subject to a civil penalty of not less than $1,000 and not more than $5,000; and

[(B) shall be ineligible, for a period of 10 years, to receive any further relief under this section and sections 240A, 245, 248, and 249.

[(2) APPLICATION OF VAWA PROTECTIONS.—The restrictions on relief under paragraph (1) shall not apply to relief under section 240A or 245 on the basis of a petition filed by a VAWA self-petitioner, or a petition filed under section 240A(b)(2), or under section 244(a)(3) (as in effect prior to March 31, 1997), if the extreme cruelty or battery was at least one central rea-

son for the alien's overstaying the grant of voluntary departure.

[(3) NOTICE OF PENALTIES.—The order permitting an alien to depart voluntarily shall inform the alien of the penalties under this subsection.

[(e) ADDITIONAL CONDITIONS.—The Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens. No court may review any regulation issued under this subsection.]

(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

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

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

(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement before accepting such agreement.

(4) FAILURE TO COMPLY WITH AGREEMENT.—

(A) IN GENERAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is—

(i) ineligible for the benefits of the agreement;

(ii) subject to the penalties described in subsection (d); and

(iii) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b).

(B) EFFECT OF FILING TIMELY APPEAL.—If, after agreeing to voluntary departure, the alien files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences of such agreement, but precludes the alien from another grant of voluntary departure while the alien remains in the United States.

(5) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the

United States during the period agreed to by the alien and the Secretary.

(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:

(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify this amount, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien's departure for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal that took effect upon the alien's failure to depart, or upon the alien's other violations of the conditions for voluntary departure, during the period described in paragraph (2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and

(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.

(e) ELIGIBILITY.—

(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsections (a)(2) or (b) of this section for any class or classes of aliens.

(f) JUDICIAL REVIEW.—No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under subsection (b), nor shall any court order a stay of an alien's removal pending consideration of any claim with respect to voluntary departure. *Notwithstanding section 242(a)(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any*

other habeas corpus provision, and any other provision of law (statutory or nonstatutory), no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.

* * * * * * *

CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS PRESENT IN THE UNITED STATES

SEC. 240D. (a) TRANSFER OF CUSTODY BY STATE AND LOCAL OFFICIALS.—If a State, or a political subdivision of the State, exercising authority with respect to the apprehension or arrest of an inadmissible or deportable alien submits to the Secretary of Homeland Security a request that the alien be taken into Federal custody, notwithstanding any other provision of law, regulation, or policy the Secretary—

(1) shall take the alien into custody not later than 48 hours after the detainer has been issued following the conclusion of the State or local charging process or dismissal process, or if no State or local charging or dismissal process is required, the Secretary should issue a detainer and take the alien into custody not later than 48 hours after the alien is apprehended, in order to determine whether the alien should be detained, placed in removal proceedings, released, or removed; and

(2) shall request that the relevant State or local law enforcement agency temporarily hold the alien in their custody or transport the alien for transfer to Federal custody.

(b) POLICY ON DETENTION IN FEDERAL, CONTRACT, STATE, OR LOCAL DETENTION FACILITIES.—In carrying out section 241(g)(1), the Attorney General or Secretary of Homeland Security shall ensure that an alien arrested under this title shall be held in custody, pending the alien's examination under this section, in a Federal, contract, State, or local prison, jail, detention center, or other comparable facility. Notwithstanding any other provision of law, regulation or policy, such facility is adequate for detention, if—

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

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

(3) the facility satisfies the standards for the housing, care, and security of persons held in custody by a United States Marshal.

(c) REIMBURSEMENT.—The Secretary of Homeland Security shall reimburse a State, and a political subdivision of a State, for all reasonable expenses, as determined by the Secretary, incurred by the State, or political subdivision, as a result of the incarceration and transportation of an alien who is inadmissible or deportable as described in subsections (a) and (b). Compensation provided for costs incurred under such subsections shall be the average cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State, or of a political subdivision of a State, plus the cost of transporting the alien from the point of apprehension to the place of detention, and to the custody transfer point if the place of detention and place of custody are different.

(d) SECURE FACILITIES.—The Secretary of Homeland Security shall ensure that aliens incarcerated pursuant to this title are held in facilities that provide an appropriate level of security.

(e) TRANSFER.—

(1) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transfer of apprehended aliens from the custody of States, and political subdivisions of a State, to Federal custody.

(2) CONTRACTS.—The Secretary may enter into contracts, including appropriate private contracts, to implement this subsection.

DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED

SEC. 241. (a) DETENTION, RELEASE, AND REMOVAL OF ALIENS ORDERED REMOVED.—

(1) REMOVAL PERIOD.—

(A) IN GENERAL.—Except as otherwise provided in this section, when an alien is ordered removed, the [Attorney General] *Secretary of Homeland Security* shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

[(B) BEGINNING OF PERIOD.—The removal period begins on the latest of the following:

[(i) The date the order of removal becomes administratively final.

[(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

[(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

[(C) SUSPENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.]

(B) BEGINNING OF PERIOD.—The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

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

(iii) If the alien is detained or confined (except under an immigration process) on the date the order of removal becomes administratively final, the date the alien is taken into the custody of the Secretary, after the alien is released from such detention or confinement.

(C) SUSPENSION OF PERIOD.—

(i) EXTENSION.—The removal period shall be extended beyond a period of 90 days and the Secretary may, in the Secretary's sole discretion, keep the alien in detention during such extended period if—

(I) the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal that is subject to an order of removal;

(II) a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administratively final order of removal;

(III) the Secretary transfers custody of the alien pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency; or

(IV) a court or the Board of Immigration Appeals orders a remand to an immigration judge or the Board of Immigration Appeals, during the time period when the case is pending a decision on remand (with the removal period beginning anew on the date that the alien is ordered removed on remand).

(ii) RENEWAL.—If the removal period has been extended under clause (C)(i), a new removal period shall be deemed to have begun on the date—

(I) the alien makes all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order;

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

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

(iii) MANDATORY DETENTION FOR CERTAIN ALIENS.—In the case of an alien described in subparagraphs (A) through (D) of section 236(c)(1), the Secretary shall keep that alien in detention during the extended period described in clause (i).

(iv) SOLE FORM OF RELIEF.—An alien may seek relief from detention under this subparagraph only by filing an application for a writ of habeas corpus in accordance with chapter 153 of title 28, United States Code. No alien whose period of detention is extended under this subparagraph shall have the right to seek release on bond.

(2) DETENTION.—During the removal period, the [Attorney General] *Secretary of Homeland Security* shall detain the alien. Under no circumstance during the removal period shall the [Attorney General] *Secretary of Homeland Security* release

an alien who has been found inadmissible under section 212(a)(2) or 212(a)(3)(B) or deportable under section 237(a)(2) or 237(a)(4)(B).

(3) SUPERVISION AFTER 90-DAY PERIOD.—If the alien does not leave or is not removed within the removal period *or is not detained pursuant to paragraph (6) of this subsection*, the alien, pending removal, shall be subject to supervision under regulations prescribed by the ⟦Attorney General⟧ *Secretary of Homeland Security*. The regulations shall include provisions requiring the alien—

(A) * * *

* * * * * * *

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the ⟦Attorney General⟧ *Secretary of Homeland Security* considers appropriate; and

⟦(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.⟧

(D) to obey reasonable restrictions on the alien's conduct or activities that the Secretary prescribes for the alien, in order to prevent the alien from absconding, for the protection of the community, or for other purposes related to the enforcement of the immigration laws.

(4) ALIENS IMPRISONED, ARRESTED, OR ON PAROLE, SUPERVISED RELEASE, OR PROBATION.—

(A) IN GENERAL.—Except as provided in section 343(a) of the Public Health Service Act (42 U.S.C. 259(a)) and ⟦paragraph (2)⟧ *subparagraph (B)*, the ⟦Attorney General⟧ *Secretary of Homeland Security* may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) EXCEPTION FOR REMOVAL OF NONVIOLENT OFFENDERS PRIOR TO COMPLETION OF SENTENCE OF IMPRISONMENT.—The ⟦Attorney General⟧ *Secretary of Homeland Security* is authorized to remove an alien in accordance with applicable procedures under this Act before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the ⟦Attorney General⟧ *Secretary of Homeland Security* determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 101(a)(43)(B), (C), (E), (I), or (L) and (II) the removal of the alien is appropriate and in the best interest of the United States; or

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section

101(a)(43)(C) or (E)), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the ⟦Attorney General⟧ *Secretary of Homeland Security* that such alien be so removed.

* * * * * * *

⟦(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

⟦(6) INADMISSIBLE OR CRIMINAL ALIENS.—An alien ordered removed who is inadmissible under section 212, removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).⟧

(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed, deported, or excluded or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed notwithstanding section 242(a)(2)(D);

(B) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application or request for such relief may have been filed or made; and

(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not require proceedings under section 240 or other proceedings before an immigration judge.

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

(A) DETENTION REVIEW PROCESS FOR COOPERATIVE ALIENS ESTABLISHED.—For an alien who is not otherwise subject to mandatory detention, who has made all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary of Homeland Security's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, and who has not conspired or acted to prevent removal, the Secretary shall establish an administrative review process to determine whether the alien should be detained or released on conditions. The Secretary shall make

a determination whether to release an alien after the removal period in accordance with subparagraph (B). The determination shall include consideration of any evidence submitted by the alien, and may include consideration of any other evidence, including any information or assistance provided by the Secretary of State or other Federal official and any other information available to the Secretary of Homeland Security pertaining to the ability to remove the alien.

(B) AUTHORITY TO DETAIN BEYOND REMOVAL PERIOD.—

(i) IN GENERAL.—The Secretary of Homeland Security, in the exercise of the Secretary's sole discretion, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in paragraph (1)(C)). An alien whose detention is extended under this subparagraph shall have no right to seek release on bond.

(ii) SPECIFIC CIRCUMSTANCES.—The Secretary of Homeland Security, in the exercise of the Secretary's sole discretion, may continue to detain an alien beyond the 90 days authorized in clause (i)—

(I) until the alien is removed, if the Secretary, in the Secretary's sole discretion, determines that there is a significant likelihood that the alien—

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

(bb) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien's failure or refusal to make all reasonable efforts to comply with the removal order, or to cooperate fully with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspires or acts to prevent removal;

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

(aa) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

(bb) after receipt of a written recommendation from the Secretary of State, that release of the alien is likely to have serious adverse foreign policy consequences for the United States;

(cc) based on information available to the Secretary of Homeland Security (including classified, sensitive, or national security information, and without regard to the grounds upon which the alien was ordered removed), that there is reason to believe that the release

of the alien would threaten the national security of the United States; or

(dd) that the release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and either (AA) the alien has been convicted of one or more aggravated felonies (as defined in section 101(a)(43)(A)) or of one or more crimes identified by the Secretary of Homeland Security by regulation, or of one or more attempts or conspiracies to commit any such aggravated felonies or such identified crimes, if the aggregate term of imprisonment for such attempts or conspiracies is at least 5 years; or (BB) the alien has committed one or more crimes of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future; or

(III) pending a certification under subclause (II), so long as the Secretary of Homeland Security has initiated the administrative review process not later than 30 days after the expiration of the removal period (including any extension of the removal period, as provided in paragraph (1)(C)).

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

(C) RENEWAL AND DELEGATION OF CERTIFICATION.—

(i) RENEWAL.—The Secretary of Homeland Security may renew a certification under subparagraph (B)(ii)(II) every 6 months, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under subparagraph (B)(ii)(II).

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

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

(D) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention by a Federal

court, the Board of Immigration Appeals, or if an immigration judge orders a stay of removal, the Secretary of Homeland Security, in the exercise of the Secretary's discretion, may impose conditions on release as provided in paragraph (3).

(E) REDETENTION.—The Secretary of Homeland Security, in the exercise of the Secretary's discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody, if removal becomes likely in the reasonably foreseeable future, the alien fails to comply with the conditions of release, or to continue to satisfy the conditions described in subparagraph (A), or if, upon reconsideration, the Secretary, in the Secretary's sole discretion, determines that the alien can be detained under subparagraph (B). This section shall apply to any alien returned to custody pursuant to this subparagraph, as if the removal period terminated on the day of the redetention.

(F) REVIEW OF DETERMINATIONS BY SECRETARY.—A determination by the Secretary under this paragraph shall not be subject to review by any other agency.

(7) EMPLOYMENT AUTHORIZATION.—No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the [Attorney General] *Secretary of Homeland Security* makes a specific finding that—

(A) * * *

* * * * * * *

(b) COUNTRIES TO WHICH ALIENS MAY BE REMOVED.—

(1) * * *

* * * * * * *

(3) RESTRICTION ON REMOVAL TO A COUNTRY WHERE ALIEN'S LIFE OR FREEDOM WOULD BE THREATENED.—

(A) * * *

(B) EXCEPTION.—Subparagraph (A) does not apply to an alien *who is described in section 212(a)(2)(N)(i) or section 237(a)(2)(H)(i) or who is* deportable under section 237(a)(4)(D) or if the Attorney General *or the Secretary of Homeland Security* decides that—

(i) * * *

* * * * * * *

(iii) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; [or]

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States[.]*; or*

(v) the alien is described in subparagraph (B)(i) or (F) of section 212(a)(3), unless, in the case of an alien described in subparagraph (IV), (V), or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security or the Attorney General determines, in discretion of the Secretary or the Attorney General, that there are not

reasonable grounds for regarding the alien as a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General *or the Secretary of Homeland Security* from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime. ⟦For purposes of clause (iv), an alien who is described in section 237(a)(4)(B) shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.⟧

* * * * * * *

(g) PLACES OF DETENTION.—

(1) IN GENERAL.—The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal. When United States Government facilities are unavailable or facilities adapted or suitably located for detention are unavailable for rental, the Attorney General ⟦may expend⟧ *shall expend* from the appropriation "Immigration and Naturalization Service—Salaries and Expenses", without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities (including living quarters for immigration officers if not otherwise available) necessary for detention.

* * * * * * *

(i) INCARCERATION.—

(1) If the chief executive officer of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the incarceration of an undocumented criminal alien submits a written request to the ⟦Attorney General⟧ *Secretary of Homeland Security*, the ⟦Attorney General⟧ *Secretary* shall, as determined by the ⟦Attorney General⟧ *Secretary*—

(A) * * *

* * * * * * *

(2) Compensation under paragraph (1)(A) shall be the average cost of incarceration of a prisoner in the relevant State as determined by the ⟦Attorney General⟧ *Secretary*.

(3) For purposes of this subsection, the term "undocumented criminal alien" means an alien who—

(A) has been *charged with or* convicted of a felony or two or more misdemeanors; and

(B)(i) entered the United States without inspection or at any time or place other than as designated by the ⟦Attorney General⟧ *Secretary*;

* * * * * * *

(4)(A) In carrying out paragraph (1), the ⟦Attorney General⟧ *Secretary* shall give priority to the Federal incarceration

of undocumented criminal aliens who have committed aggravated felonies.

(B) The [Attorney General] *Secretary* shall ensure that undocumented criminal aliens incarcerated in Federal facilities pursuant to this subsection are held in facilities which provide a level of security appropriate to the crimes for which they were convicted.

[(5) There are authorized to be appropriated to carry out this subsection—

[(A) $750,000,000 for fiscal year 2006;

[(B) $850,000,000 for fiscal year 2007; and

[(C) $950,000,000 for each of the fiscal years 2008 through 2011.]

(5) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 2014 and each subsequent fiscal year.

* * * * * * *

JUDICIAL REVIEW OF ORDERS OF REMOVAL

SEC. 242. (a) * * *

* * * * * * *

(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—

(1) REVIEW OF REINSTATEMENT.—Judicial review of determinations under section 241(a)(5) is available in an action under subsection (a).

(2) NO REVIEW OF ORIGINAL ORDER.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, any other habeas corpus provision, or sections 1361 and 1651 of such title, no court shall have jurisdiction to review any cause or claim, arising from, or relating to, any challenge to the original order.

PENALTIES RELATED TO REMOVAL

SEC. 243. (a) PENALTY FOR FAILURE TO DEPART.—

(1) IN GENERAL.—Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section *212(a) or* 237(a), who—

(A) * * *

* * * * * * *

[(3) SUSPENSION.—The court may for good cause suspend the sentence of an alien under this subsection and order the alien's release under such conditions as the court may prescribe. In determining whether good cause has been shown to justify releasing the alien, the court shall take into account such factors as—

[(A) the age, health, and period of detention of the alien;

[(B) the effect of the alien's release upon the national security and public peace or safety;

[(C) the likelihood of the alien's resuming or following a course of conduct which made or would make the alien deportable;

[(D) the character of the efforts made by such alien himself and by representatives of the country or countries to which the alien's removal is directed to expedite the alien's departure from the United States;

[(E) the reason for the inability of the Government of the United States to secure passports, other travel documents, or removal facilities from the country or countries to which the alien has been ordered removed; and

[(F) the eligibility of the alien for discretionary relief under the immigration laws.]

* * * * * * *

TEMPORARY PROTECTED STATUS

SEC. 244. (a) GRANTING OF STATUS.—

(1) IN GENERAL.—In the case of an alien who is a national of a foreign state designated under subsection (b) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c), the [Attorney General] *Secretary of Homeland Security*, in accordance with this section—

(A) * * *

* * * * * * *

(3) NOTICE.—

(A) Upon the granting of temporary protected status under this section, the [Attorney General] *Secretary of Homeland Security* shall provide the alien with information concerning such status under this section.

(B) If, at the time of initiation of a removal proceeding against an alien, the foreign state (of which the alien is a national) is designated under subsection (b), the [Attorney General] *Secretary of Homeland Security* shall promptly notify the alien of the temporary protected status that may be available under this section.

(C) If, at the time of designation of a foreign state under subsection (b), an alien (who is a national of such state) is in a removal proceeding under this title, the [Attorney General] *Secretary of Homeland Security* shall promptly notify the alien of the temporary protected status that may be available under this section.

* * * * * * *

(4) TEMPORARY TREATMENT FOR ELIGIBLE ALIENS.—

(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the [Attorney General] *Secretary of Homeland Security* shall provide for the benefits of paragraph (1).

* * * * * * *

(5) CLARIFICATION.—Nothing in this section shall be construed as authorizing the [Attorney General] *Secretary of*

Homeland Security to deny temporary protected status to an alien based on the alien's immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this Act. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this Act.

(b) DESIGNATIONS.—

(1) IN GENERAL.—The [Attorney General] *Secretary of Homeland Security*, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

(A) the [Attorney General] *Secretary of Homeland Security* finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the [Attorney General] *Secretary of Homeland Security* finds that—

(i) * * *

* * * * * * *

(C) the [Attorney General] *Secretary of Homeland Security* finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Attorney General] *Secretary of Homeland Security* finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the [Attorney General] *Secretary of Homeland Security* shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) EFFECTIVE PERIOD OF DESIGNATION FOR FOREIGN STATES.—The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the [Attorney General] *Secretary of Homeland Security* may specify in the notice published under such paragraph, and

* * * * * * *

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the [Attorney General] *Secretary of Home-*

land Security, of not less than 6 months and not more than 18 months.

(3) PERIODIC REVIEW, TERMINATIONS, AND EXTENSIONS OF DESIGNATIONS.—

(A) PERIODIC REVIEW.—At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the [Attorney General] *Secretary of Homeland Security*, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The [Attorney General] *Secretary of Homeland Security* shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) TERMINATION OF DESIGNATION.—If the [Attorney General] *Secretary of Homeland Security* determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the [Attorney General] *Secretary of Homeland Security* shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

(C) EXTENSION OF DESIGNATION.—If the [Attorney General] *Secretary of Homeland Security* does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the [Attorney General] *Secretary of Homeland Security*, a period of 12 or 18 months).

(4) INFORMATION CONCERNING PROTECTED STATUS AT TIME OF DESIGNATIONS.—At the time of a designation of a foreign state under this subsection, the [Attorney General] *Secretary of Homeland Security* shall make available information respecting the temporary protected status made available to aliens who are nationals of such designated foreign state.

(5) REVIEW.—

(A) DESIGNATIONS.—There is no judicial review of any determination of the [Attorney General] *Secretary of Homeland Security* with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

(B) APPLICATION TO INDIVIDUALS.—The [Attorney General] *Secretary of Homeland Security* shall establish an administrative procedure for the review of the denial of benefits to aliens under this subsection. Such procedure shall not prevent an alien from asserting protection under this section in removal proceedings if the alien demonstrates that the alien is a national of a state designated under paragraph (1).

(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.—

(1) IN GENERAL.—

(A) NATIONALS OF DESIGNATED FOREIGN STATES.—Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(1) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state), meets the requirements of this paragraph only if—

(i) * * *

(ii) the alien has continuously resided in the United States since such date as the [Attorney General] *Secretary of Homeland Security* may designate;

* * * * * * *

(iv) to the extent and in a manner which the [Attorney General] *Secretary of Homeland Security* establishes, the alien registers for the temporary protected status under this section during a registration period of not less than 180 days.

(B) REGISTRATION FEE.—The [Attorney General] *Secretary of Homeland Security* may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an "employment authorized" endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed $50. In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the [Attorney General] *Secretary of Homeland Security* may impose a separate, additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of title 31, United States Code, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.

(2) ELIGIBILITY STANDARDS.—

(A) WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.—In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—

(i) * * *

(ii) except as provided in clause (iii), the [Attorney General] *Secretary of Homeland Security* may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but

(iii) the [Attorney General] *Secretary of Homeland Security* may not waive—

(I) * * *

* * * * * * *

(B) ALIENS INELIGIBLE.—An alien shall not be eligible for temporary protected status under this section if the [Attorney General] *Secretary of Homeland Security* finds that—

(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, [or]

(ii) the alien is described in section 208(b)(2)(A)[.]*; or*

(iii) the alien is, or at any time after admission has been, a member of a criminal gang (as defined in section 101(a)(53)).

(3) WITHDRAWAL OF TEMPORARY PROTECTED STATUS.—The [Attorney General] *Secretary of Homeland Security* shall withdraw temporary protected status granted to an alien under this section if—

(A) the [Attorney General] *Secretary of Homeland Security* finds that the alien was not in fact eligible for such status under this section,

* * * * * * *

(C) the alien fails, without good cause, to register with the [Attorney General] *Secretary of Homeland Security* annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the [Attorney General] *Secretary of Homeland Security*.

(4) TREATMENT OF BRIEF, CASUAL, AND INNOCENT DEPARTURES AND CERTAIN OTHER ABSENCES.—

(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the [Attorney General] *Secretary of Homeland Security*.

* * * * * * *

(6) CONFIDENTIALITY OF INFORMATION.—The [Attorney General] *Secretary of Homeland Security* shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) DOCUMENTATION.—

(1) INITIAL ISSUANCE.—Upon the granting of temporary protected status to an alien under this section, the [Attorney General] *Secretary of Homeland Security* shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(2) PERIOD OF VALIDITY.—Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The [Attorney General] *Secretary of Homeland Security* may stagger the periods of validity of the documentation and authorization in order to provide for an or-

derly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

⟦(3) EFFECTIVE DATE OF TERMINATIONS.—If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).⟧

(4) DETENTION OF THE ALIEN.—An alien provided temporary protected status under this section shall not be detained by the ⟦Attorney General⟧ *Secretary of Homeland Security* on the basis of the alien's immigration status in the United States. *The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision of law.*

(e) RELATION OF PERIOD OF TEMPORARY PROTECTED STATUS TO CANCELLATION OF REMOVAL.—With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 240A(a), unless the ⟦Attorney General⟧ *Secretary of Homeland Security* determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

(f) BENEFITS AND STATUS DURING PERIOD OF TEMPORARY PROTECTED STATUS.—During a period in which an alien is granted temporary protected status under this section—

(1) * * *

* * * * * * *

(3) the alien may travel abroad with the prior consent of the ⟦Attorney General⟧ *Secretary of Homeland Security*; and

* * * * * * *

(g) EXCLUSIVE REMEDY.—Except as otherwise specifically provided, this section shall constitute the exclusive authority of the ⟦Attorney General⟧ *Secretary of Homeland Security* under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

* * * * * * *

(i) ANNUAL REPORT AND REVIEW.—

(1) ANNUAL REPORT.—Not later than March 1 of each year (beginning with 1992), the ⟦Attorney General⟧ *Secretary of Homeland Security*, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and

of the Senate on the operation of this section during the previous year. Each report shall include—

(A) * * *

* * * * * * *

CHAPTER 5—ADJUSTMENT AND CHANGE OF STATUS

* * * * * * *

ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

SEC. 245A. (a) * * *

* * * * * * *

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) * * *

* * * * * * *

(5) CONFIDENTIALITY OF INFORMATION.—

(A) IN GENERAL.—Except as provided in this paragraph, neither the [Attorney General] *Secretary of Homeland Security*, nor any other official or employee of the [Department of Justice,] *Department of Homeland Security,* or bureau or agency thereof, may—

(i) * * *

* * * * * * *

(B) REQUIRED DISCLOSURES.—The [Attorney General] *Secretary of Homeland Security* shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

[(C) AUTHORIZED DISCLOSURES.—The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.]

(C) AUTHORIZED DISCLOSURES.—

(i) CENSUS PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed under section 8 of title 13, United States Code.

(ii) NATIONAL SECURITY PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing, use, publication, or release of information furnished under this section in any investigation, case, or matter, or for any purpose, relating to terrorism, national intelligence or the national security.

(D) CONSTRUCTION.—

(i) IN GENERAL.—Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the [Service] *Department of Homeland Security* pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

* * * * * * *

[RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JULY 1, 1924 OR JANUARY 1, 1972

[SEC. 249. A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 212(a)(3)(E) or under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

[(a) entered the United States prior to January 1, 1972;

[(b) has had his residence in the United States continuously since such entry;

[(c) is a person of good moral character; and

[(d) is not ineligible to citizenship and is not deportable under section 237(a)(4)(B).]

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

SEC. 249. The Secretary of Homeland Security, in the discretion of the Secretary and under such regulations as the Secretary may prescribe, may enter a record of lawful admission for permanent residence in the case of any alien, if no such record is otherwise available and the alien—

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

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

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

(4) is not ineligible for citizenship;

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

(6) did not, at any time, without reasonable cause fail or refuse to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability.

Such recordation shall be effective as of the date of approval of the application or as of the date of entry if such entry occurred prior to July 1, 1924.

* * * * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

* * * * * * *

[BRINGING IN AND HARBORING CERTAIN ALIENS

[SEC. 274. (a) CRIMINAL PENALTIES.—(1)(A) Any person who—

[(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

[(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

[(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

[(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

[(v)(I) engages in any conspiracy to commit any of the preceding acts, or

[(II) aids or abets the commission of any of the preceding acts,

shall be punished as provided in subparagraph (B).

[(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

[(i) in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

[(ii) in the case of a violation of subparagraph (A) (ii), (iii), (iv), or (v)(II) be fined under title 18, United States Code, imprisoned not more than 5 years, or both;

[(iii) in the case of a violation of subparagraph (A) (i), (ii), (iii), (iv), or (v) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18, United States Code) to, or places in jeopardy the life of, any

person, be fined under title 18, United States Code, imprisoned not more than 20 years, or both; and

⟦(iv) in the case of a violation of subparagraph (A) (i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, United States Code, or both.

⟦(C) It is not a violation of clauses (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

⟦(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs—

⟦(A) be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both; or

⟦(B) in the case of—

⟦(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

⟦(ii) an offense done for the purpose of commercial advantage or private financial gain, or

⟦(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined under title 18, United States Code, and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

⟦(3)(A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

⟦(B) An alien described in this subparagraph is an alien who—

⟦(i) is an unauthorized alien (as defined in section 274A(h)(3)), and

⟦(ii) has been brought into the United States in violation of this subsection.

⟦(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

⟦(A) the offense was part of an ongoing commercial organization or enterprise;

⟦(B) aliens were transported in groups of 10 or more; and

⟦(C)(i) aliens were transported in a manner that endangered their lives; or

⟦(ii) the aliens presented a life-threatening health risk to people in the United States.

⟦(b) SEIZURE AND FORFEITURE.—

⟦(1) IN GENERAL.—Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

⟦(2) APPLICABLE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

⟦(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

⟦(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

⟦(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

⟦(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

⟦(c) No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

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

⟦(e) OUTREACH PROGRAM.—The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.sections 274A to 285; footnotes 206-227; 1/15/95 & 2/16 #216a; 3/14/95: notes on §283..⟧

SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.

(a) CRIMINAL OFFENSES AND PENALTIES.—

(1) PROHIBITED ACTIVITIES.—Except as provided in paragraph (3), a person shall be punished as provided under paragraph (2), if the person—

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

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

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

(D) encourages or induces a person to reside in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in the United States;

(E) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, if the transportation or movement will further the alien's illegal entry into or illegal presence in the United States;

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

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

(2) CRIMINAL PENALTIES.—A person who violates any provision under paragraph (1) shall, for each alien in respect to whom a violation of paragraph (1) occurs—

(A) except as provided in subparagraphs (C) through (G), if the violation was not committed for commercial advantage, profit, or private financial gain, be fined under title 18, United States Code, imprisoned for not more than 5 years, or both;

(B) except as provided in subparagraphs (C) through (G), if the violation was committed for commercial advantage, profit, or private financial gain—

(i) be fined under such title, imprisoned for not more than 20 years, or both, if the violation is the offender's first violation under this subparagraph; or

(ii) be fined under such title, imprisoned for not less than 3 years or more than 20 years, or both, if the violation is the offender's second or subsequent violation of this subparagraph;

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

(D) be fined under such title, imprisoned not less than 5 years or more than 20 years, or both, if the violation created a substantial and foreseeable risk of death, a substantial and foreseeable risk of serious bodily injury (as defined in section 2119(2) of title 18, United States Code), or inhumane conditions to another person, including—

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

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

(iii) transporting the person in, harboring the person in, or otherwise subjecting the person to crowded or dangerous conditions;

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

(F) be fined under such title and imprisoned for not less than 10 years or more than 30 years if the violation involved an alien who the offender knew or had reason to believe was—

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

(ii) intending to engage in terrorist activity; or

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

(3) LIMITATION.—It is not a violation of subparagraph (D), (E), or (F) of paragraph (1) for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least 1 year.

(4) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

(b) SEIZURE AND FORFEITURE.—

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

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

(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, prima facie evidence that an alien involved in the alleged violation lacks lawful authority to come to, enter, reside in, remain in, or be in the United States or that such alien had come to, entered, resided in, remained in, or been present in the United States in violation of law may include:

(A) any order, finding, or determination concerning the alien's status or lack of status made by a Federal judge or administrative adjudicator (including an immigration judge or immigration officer) during any judicial or administrative proceeding authorized under Federal immigration law;

(B) official records of the Department of Homeland Security, the Department of Justice, or the Department of State concerning the alien's status or lack of status; and

(C) testimony by an immigration officer having personal knowledge of the facts concerning the alien's status or lack of status.

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

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

(2) other officers responsible for the enforcement of Federal criminal laws.

(d) ADMISSIBILITY OF VIDEOTAPED WITNESS TESTIMONY.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped or otherwise audiovisually preserved deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unavailable to testify, may be admitted into evidence in an action brought for that violation if:

(1) the witness was available for cross examination at the deposition by the party, if any, opposing admission of the testimony; and

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

(e) DEFINITIONS.—In this section:

(1) CROSS THE BORDER TO THE UNITED STATES.—The term "cross the border" refers to the physical act of crossing the border, regardless of whether the alien is free from official restraint.

(2) LAWFUL AUTHORITY.—The term "lawful authority" means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or accompanying regulations. The term does not include any such authority secured by fraud or otherwise obtained in violation of law or authority sought, but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside in, remain in, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

(3) PROCEEDS.—The term "proceeds" includes any property or interest in property obtained or retained as a consequence of an act or omission in violation of this section.

(4) UNLAWFUL TRANSIT.—The term "unlawful transit" means travel, movement, or temporary presence that violates the laws of any country in which the alien is present or any country from which or to which the alien is traveling or moving.

* * * * * * *

CIVIL PENALTIES FOR FAILURE TO DEPART

SEC. 274D. (a) IN GENERAL.—Any alien subject to a final order of removal who—

(1) * * *

* * * * * * *

shall pay a civil penalty of not more than $500 to the [Commissioner] *Secretary of Homeland Security* for each day the alien is in violation of this section.

* * * * * * *

(c) INELIGIBILITY FOR RELIEF.—

(1) IN GENERAL.—Unless a timely motion to reopen is granted under section 240(c)(6), an alien described in subsection (a) shall be ineligible for any discretionary relief from removal (including cancellation of removal and adjustment of status) during the time the alien remains in the United States

and for a period of 10 years after the alien's departure from the United States.

(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

(A) presents material evidence of changed country conditions arising after the date of the final order of removal in the country to which the alien would be removed; and

(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.

[ENTRY OF ALIEN AT IMPROPER TIME OR PLACE; MISREPRESENTATION AND CONCEALMENT OF FACTS

[SEC. 275. (a) Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

[(b) Any alien who is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty of—

[(1) at least $50 and not more than $250 for each such entry (or attempted entry); or

[(2) twice the amount specified in paragraph (1) in the case of an alien who has been previously subject to a civil penalty under this subsection.

Civil penalties under this subsection are in addition to, and not in lieu of, any criminal or other civil penalties that may be imposed.

[(c) An individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.

[(d) Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, United States Code, or both.

[REENTRY OF REMOVED ALIEN

[SEC. 276. (a) Subject to subsection (b), any alien who—

[(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

[(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has ex-

pressly consented to such alien's reapplying for admission; or
(B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this or any prior Act,

shall be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

⟦(b) Notwithstanding subsection (a), in the case of any alien described in such subsection—

⟦(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

⟦(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

⟦(3) who has been excluded from the United States pursuant to section 235(c) because the alien was excludable under section 212(a)(3)(B) or who has been removed from the United States pursuant to the provisions of title V, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence. or

⟦(4) who was removed from the United States pursuant to section 241(a)(4)(B) who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

⟦(c) Any alien deported pursuant to section 242(h)(2) who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

⟦(d) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

⟦(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

⟦(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

⟦(3) the entry of the order was fundamentally unfair.⟧

ILLEGAL ENTRY OR PRESENCE

SEC. 275. (a) IN GENERAL.—

(1) ILLEGAL ENTRY.—An alien shall be subject to the penalties set forth in paragraph (2) if the alien:

(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

(B) knowingly eludes, at any time or place, examination or inspection by an authorized immigration, customs, or agriculture officer (including by failing to stop at the command of such officer);

(C) knowingly enters or crosses the border to the United States and, upon examination or inspection, knowingly makes a false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws);

(D) knowingly violates the terms or conditions of the alien's admission or parole into the United States; or

(E) knowingly is unlawfully present in the United States (as defined in section 212(a)(9)(B)(ii) subject to the exceptions set for in section 212(a)(9)(B)(iii)).

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

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

(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years (or not more than 6 months in the case of a second or subsequent violation of paragraph (1)(E)), or both;

(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

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

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

(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

(A) alleged in the indictment or information; and

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

(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is discovered within the United States by an immigration, customs, or agriculture officer.

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

(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

(1) not less than $50 or more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

(2) twice the amount specified in paragraph (1) if the alien had previously been subject to a civil penalty under this subsection.

REENTRY OF REMOVED ALIEN

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

(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection was convicted before such removal or departure—

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

(2) for a felony for which the alien was sentenced to a term of imprisonment of not less than 30 months, the alien shall be fined under such title, imprisoned not less than 2 years and not more than 15 years, or both;

(3) for a felony for which the alien was sentenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, imprisoned not less than 4 years and not more than 20 years, or both; or

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

(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both.

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

(1) alleged in the indictment or information; and

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

(e) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to a violation of this section that—

(1) prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States; or

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

(A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act; and

(B) had complied with all other laws and regulations governing the alien's admission into the United States.

(f) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien.

(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

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

(1) CROSSES THE BORDER TO THE UNITED STATES.—The term "crosses the border" refers to the physical act of crossing the border, regardless of whether the alien is free from official restraint.

(2) FELONY.—The term "felony" means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

(3) MISDEMEANOR.—The term "misdemeanor" means any criminal offense punishable by a term of imprisonment of not more than 1 year under the applicable laws of the United States, any State, or a foreign government.

(4) REMOVAL.—The term "removal" includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

(5) STATE.—The term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

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CHAPTER 9—MISCELLANEOUS

* * * * * * *

POWERS OF IMMIGRATION OFFICERS AND EMPLOYEES

SEC. 287. (a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

(1) * * *

(2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or [regulation and is likely to escape before a warrant can be obtained for his arrest,] *regulation,* but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

* * * * * * *

(g)(1) Notwithstanding section 1342 of title 31, United States Code, the Attorney General [may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.] *shall enter into a written agreement with a State, or any political subdivision of a State, upon request of the State or political subdivision, pursuant to which an officer or employee of the State or subdivision, who is determined by the Secretary to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to extent consistent with State and local law. No request from a bona fide State or political subdivision or bona fide law enforcement agency shall be denied absent a compelling reason. No limit on the number of agreements under this subsection may be imposed. The Secretary shall process requests for such agreements with all due haste, and in no case shall take not more than 90 days from the date the request is made until the agreement is consummated.*

(2) An agreement under this subsection shall accommodate a requesting State or political subdivision with respect to the enforcement model or combination of models, and shall accommodate a patrol model, task force model, jail model, any combination thereof, or any other reasonable model the State or political subdivision believes is best suited to the immigration enforcement needs of its jurisdiction.

(3) No Federal program or technology directed broadly at identifying inadmissible or deportable aliens shall substitute for such agreements, including those establishing a jail model, and shall operate in addition to any agreement under this subsection.

(4)(A) No agreement under this subsection shall be terminated absent a compelling reason.

(B)(i) The Secretary shall provide a State or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination, and the notice shall fully explain the grounds for termination, along with providing evidence substantiating the Secretary's allegations.

(ii) The State or political subdivision shall have the right to a hearing before an administrative law judge and, if the ruling is against the State or political subdivision, to appeal the ruling to the Federal Circuit Court of Appeals and, if the ruling is against the State or political subdivision, to the Supreme Court.

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

【(2)】 *(5)* An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(6) The Secretary of Homeland Security shall make training of State and local law enforcement officers available through as many means as possible, including through residential training at the Center for Domestic Preparedness and the Federal Law Enforcement Training Center, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display (DVD) of a training course or courses. Distance learning through a secure, encrypted distributed learning system that has all its servers based in the United States, is scalable, survivable, and can have a portal in place not later than 30 days after the date of the enactment of this Act, shall be made available by the COPS Office of the Department of Justice and the Federal Law Enforcement Training Center Distributed Learning Program for State and local law enforcement personnel. Preference shall be given to private sector-based web-based immigration enforcement training programs for which the Federal Government has already provided support to develop.

【(3)】 *(7)* In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.

【(4)】 *(8)* In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may

use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

[(5)] *(9)* With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

[(6)] *(10)* The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.

[(7)] *(11)* Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code (relating to compensation for injury), and sections 2671 through 2680 of title 28, United States Code (relating to tort claims).

[(8)] *(12)* An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

[(9)] *(13)* Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

[(10)] *(14)* Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

(A) * * *

* * * * * * *

TITLE III—NATIONALITY AND NATURALIZATION

* * * * * * *

CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

NATURALIZATION AUTHORITY

SEC. 310. (a) * * *

* * * * * * *

(c) JUDICIAL REVIEW.—A person whose application for naturalization under this title is denied, after a hearing before an immigration officer under section 336(a), may seek*, not later than the date that is 120 days after the Secretary of Homeland Security's final determination,* review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of title 5, United States Code. [Such review shall be de novo, and the court shall make its own findings of fact and conclusions of law and shall, at the request of the peti-

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

* * * * * * *

REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION, AND FAVORABLE DISPOSITION TO THE UNITED STATES

SEC. 316. (a) * * *

* * * * * * *

(g) PERSONS ENDANGERING THE NATIONAL SECURITY.—No person shall be naturalized who the Secretary of Homeland Security determines to have been at any time an alien described in section 212(a)(3) or 237(a)(4). Such determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information.

* * * * * * *

PREREQUISITE TO NATURALIZATION; BURDEN OF PROOF

SEC. 318. Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405(b), and except as provided in sections 328 and 329 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any [other Act;] *other Act; and no application for naturalization shall be considered by the Secretary of Homeland Security or any court if there is pending against the applicant any removal proceeding or other proceeding to determine the applicant's inadmissibility or deportability, or to determine whether the applicant's lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced: Provided, That the findings of the Attorney General in terminating removal proceedings or in canceling the removal of an alien pursuant to the provisions*

of this Act, shall not be deemed binding in any way upon the Secretary of Homeland Security with respect to the question of whether such person has established his eligibility for naturalization as required by this title; and no application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: *Provided,* That the findings of the Attorney General in terminating removal proceedings or in canceling the removal of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the Attorney General with respect to the question of whether such person has established his eligibility for naturalization as required by this title.

* * * * * * *

HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

SEC. 336. (a) * * *

[(b) If there is a failure to make a determination under section 335 before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.]

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

* * * * * * *

REVOCATION OF NATURALIZATION

SEC. 340. (a) * * *

* * * * * * *

(f)(1) If a person who has been naturalized participates in any act described in paragraph (2), the Attorney General is authorized to find that, as of the date of such naturalization, such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and upon such finding shall set aside the order admitting such person to citizenship and cancel the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

(2) The acts described in this paragraph are the following:

(A) Any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.

(B) Engaging in a terrorist activity (as defined in clauses (iii) and (iv) of section 212(a)(3)(B)).

(C) Incitement of terrorist activity under circumstances indicating an intention to cause death or serious bodily harm.

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

⟦(f)⟧ *(g)* Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate and shall send a certified copy of such order to the Attorney General. The clerk of court shall transmit a copy of such order and judgment to the Attorney General. A person holding a certificate of naturalization or citizenship which has been canceled as provided by this section shall upon notice by the court by which the decree of cancellation was made, or by the Attorney General, surrender the same to the Attorney General.

⟦(g)⟧ *(h)* The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this title, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court, or by a designated representative of the Commissioner under the provisions of section 702 of the Nationality Act of 1940, as amended, or by such designated representative under any other Act.

⟦(h)⟧ *(i)* Nothing contained in this section shall be regarded as limiting, denying, or restricting the power of the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person.

* * * * * * *

CHAPTER 4—MISCELLANEOUS

* * * * * * *

CONSTRUCTION

SEC. 362. (a) IN GENERAL.—Nothing in this Act or any other law, except as provided in subsection (d), shall be construed to require the Secretary of Homeland Security, the Attorney General, the Secretary of State, the Secretary of Labor, or a consular officer to grant any application, approve any petition, or grant or continue any relief, protection from removal, employment authorization, or any other status or benefit under the immigration laws by, to, or on behalf of—

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

(2) any alien with respect to whom a criminal or other proceeding or investigation is open or pending (including, but not limited to, issuance of an arrest warrant, detainer, or indictment), where such proceeding or investigation is deemed by the official described in subsection (a) to be material to the alien's eligibility for the status or benefit sought.

(b) DENIAL OR WITHHOLDING OF ADJUDICATION.—An official described in subsection (a) may, in the discretion of the official, deny (with respect to an alien described in paragraph (1) or (2) of subsection (a)) or withhold adjudication of pending resolution of the investigation or case (with respect to an alien described in subsection (a)(2) of this section) any application, petition, relief, protection from removal, employment authorization, status or benefit.

(c) JURISDICTION.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to review a decision to deny or withhold adjudication pursuant to subsection (b) of this section.

(d) WITHHOLDING OF REMOVAL AND TORTURE CONVENTION.—This section does not limit or modify the applicability of section 241(b)(3) or the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277) with respect to an alien otherwise eligible for protection under such provisions.

* * * * * * *

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

SEC. 641. PROGRAM TO COLLECT INFORMATION RELATING TO NONIMMIGRANT FOREIGN STUDENTS AND OTHER EXCHANGE PROGRAM PARTICIPANTS.

(a) * * *

* * * * * * *

(d) PARTICIPATION BY INSTITUTIONS OF HIGHER EDUCATION AND EXCHANGE VISITOR PROGRAMS.—

(1) CONDITION.—The information described in subsection (c) shall be provided by institutions of higher education, other approved educational institutions, or exchange visitor programs as a condition of—

(A) in the case of an approved institution of higher education, or other approved educational [institution,,] *institution,* the continued approval of the institution under subparagraph (F) or (M) of section 101(a)(15) of the Immigration and Nationality Act; and

* * * * * * *

(3) EFFECT OF REASONABLE SUSPICION OF FRAUD.—If the Secretary of Homeland Security has reasonable suspicion that an owner of, or a designated school official at, an approved institution of higher education, an other approved educational institution, or a designated exchange visitor program has committed fraud or attempted to commit fraud relating to any aspect of the Student and Exchange Visitor Program, the Secretary may immediately suspend, without notice, such official's or such school's access to the Student and Exchange Visitor Information System (SEVIS), including the ability to issue Form I–20s, pending a final determination by the Secretary with respect to the institution's certification under the Student and Exchange Visitor Program.

(4) PERMANENT DISQUALIFICATION FOR FRAUD.—A designated school official at, or an owner of, an approved institution of higher education, an other approved educational institution, or a designated exchange visitor program who is convicted for fraud relating to any aspect of the Student and Exchange Visitor Program shall be permanently disqualified from filing future petitions and from having an ownership interest or a management role, including serving as a principal, owner, officer, board member, general partner, designated school official, or any other position of substantive authority for the operations or management of the institution, in any United States educational institution that enrolls nonimmigrant alien students described in subparagraph (F) or (M) of section 101(a)(15) the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

(5) BACKGROUND CHECK REQUIREMENT.—

(A) IN GENERAL.—An individual may not serve as a designated school official or be granted access to SEVIS unless the individual is a national of the United States or an alien lawfully admitted for permanent residence and during the most recent 3-year period—

(i) the Secretary of Homeland Security has—

(I) conducted a thorough background check on the individual, including a review of the individual's criminal and sex offender history and the verification of the individual's immigration status; and

(II) determined that the individual has not been convicted of any violation of United States immigration law and is not a risk to national security of the United States; and

(ii) the individual has successfully completed an on-line training course on SEVP and SEVIS, which has been developed by the Secretary.

(B) INTERIM DESIGNATED SCHOOL OFFICIAL.—

(i) IN GENERAL.—An individual may serve as an interim designated school official during the period that the Secretary is conducting the background check required by subparagraph (A)(i)(I).

(ii) REVIEWS BY THE SECRETARY.—If an individual serving as an interim designated school official under clause (i) does not successfully complete the background check required by subparagraph (A)(i)(I), the

Secretary shall review each Form I–20 issued by such interim designated school official.

(6) FEE.—The Secretary is authorized to collect a fee from an approved school for each background check conducted under paragraph (6)(A)(i). The amount of such fee shall be equal to the average amount expended by the Secretary to conduct such background checks.

(7) NUMBER OF DESIGNATED SCHOOL OFFICIALS.—School officials may nominate as many Designated School Officials (DSOs) in addition to the school's Principal Designated School Official (PDSO) as they determine necessary to adequately provide recommendations to students enrolled at the school regarding maintenance of nonimmigrant status under subparagraph (F) or (M) of section 101(a)(15) and to support timely and complete recordkeeping and reporting to the Secretary of Homeland Security, as required by this section, except that a school may not have less than one DSO per every 200 students who have nonimmigrant status pursuant to subparagraph (F), (J), or (M) of such section. School officials shall not permit a DSO or PDSO nominee access to SEVIS until the Secretary approves the nomination.

* * * * * * *

SEC. 642. COMMUNICATION BETWEEN GOVERNMENT AGENCIES AND THE IMMIGRATION AND NATURALIZATION SERVICE

(a) IN GENERAL.— Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official ⟦may⟧ *shall* not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the ⟦Immigration and Naturalization Service⟧ *Department of Homeland Security* information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.— Notwithstanding any other provision of Federal, State, or local law, ⟦no person or agency may⟧ *a person or agency shall not* prohibit, or in any way restrict, a Federal, State, or local government entity from ⟦doing any of the following with respect to information ⟧ *undertaking any of the following law enforcement activities* regarding the immigration status, lawful or unlawful, of any individual:

⟦(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

⟦(2) Maintaining such information.

⟦(3) Exchanging such information with any other Federal, State, or local government entity.⟧

(1) Notifying the Federal Government regarding the presence of inadmissible and deportable aliens who are encountered by law enforcement personnel of a State or political subdivision of a State.

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

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

(4) Issuing policies in the form of a resolutions, ordinances, administrative actions, general or special orders, or depart-

mental policies that violate Federal law or restrict a State or political subdivision of a State from complying with Federal law or coordinating with Federal law enforcement.

(c) OBLIGATION TO RESPOND TO INQUIRIES.—The [Immigration and Naturalization Service] *Department of Homeland Security* shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

(d) COMPLIANCE.—

(1) IN GENERAL.—A State, or a political subdivision of a State, that has in effect a statute, policy, or practice that prohibits law enforcement officers of the State, or of a political subdivision of the State, from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers' routine law enforcement duties shall not be eligible to receive—

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

(B) any other law enforcement or Department of Homeland Security grant.

(2) ANNUAL DETERMINATION.—The Secretary shall determine annually which State or political subdivision of a State are not in compliance with this section and shall report such determinations to Congress on March 1 of each year.

(3) REPORTS.—The Attorney General shall issue a report concerning the compliance of any particular State or political subdivision at the request of the House or Senate Judiciary Committee. Any jurisdiction that is found to be out of compliance shall be ineligible to receive Federal financial assistance as provided in paragraph (1) for a minimum period of 1 year, and shall only become eligible again after the Attorney General certifies that the jurisdiction is in compliance.

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

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

*   *   *   *   *   *   *

IMMIGRATION ACT OF 1990

*   *   *   *   *   *   *

TITLE V—ENFORCEMENT

Subtitle A—Criminal Aliens

* * * * * * *

SEC. 509. GOOD MORAL CHARACTER DEFINITION.

(a) * * *

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to convictions occurring on or after such date, except with respect to conviction for murder which shall be considered a bar to good moral character regardless of the date of the conviction.]

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

* * * * * * *

INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

* * * * * * *

TITLE V—BORDER PROTECTION, IMMIGRATION, AND VISA MATTERS

Subtitle E—Treatment of Aliens Who Commit Acts of Torture, Extrajudicial Killings, or Other Atrocities Abroad

* * * * * * *

SEC. 5504. BAR TO GOOD MORAL CHARACTER FOR ALIENS WHO HAVE COMMITTED ACTS OF TORTURE, EXTRAJUDICIAL KILLINGS, OR SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.

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

(1) by striking the period at the end of paragraph (8) and inserting "; or"; and

(2) by [adding at the end] *inserting after paragraph (8)* the following:

"(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) (relating to severe violations of religious freedom).".

* * * * * * *

TITLE VII—IMPLEMENTATION OF 9/11 COMMISSION RECOMMENDATIONS

* * * * * * *

Subtitle B—Terrorist Travel and Effective Screening

SEC. 7201. COUNTERTERRORIST TRAVEL INTELLIGENCE.

(a) * * *

* * * * * * *

(c) FRONTLINE COUNTERTERRORIST TRAVEL TECHNOLOGY AND TRAINING.—

(1) TECHNOLOGY ACQUISITION AND DISSEMINATION PLAN.— Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in conjunction with the Secretary of State, shall submit to Congress a plan describing how the Department of Homeland Security and the Department of State can acquire and deploy, to the maximum extent feasible, to all consulates, ports of entry, and immigration benefits offices, technologies that facilitate document authentication and the detection of potential terrorist indicators on travel documents. To the extent possible, technologies acquired and deployed under this plan shall be compatible with systems used by the Department of Homeland Security *and the Department of State* to detect fraudulent documents and identify genuine documents.

* * * * * * *

SEC. 7209. TRAVEL DOCUMENTS.

(a) * * *

* * * * * * *

(d) TRANSIT WITHOUT VISA PROGRAM.—The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act until [the Secretary, in conjunction with the Secretary of Homeland Security,] *the Secretary of Homeland Security, in consultation with the Secretary of State,* completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.

* * * * * * *

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAPTER 44—FIREARMS

* * * * * * *

§ 922. Unlawful acts

(a) * * *

* * * * * * *

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) * * *

* * * * * * *

(5) who, being an alien—

(A) * * *

(B) except as provided in subsection ❲(y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));❳ *(y), is in the United States not as an alien lawfully admitted for permanent residence;*

* * * * * * *

(g) It shall be unlawful for any person—

(1) * * *

* * * * * * *

(5) who, being an alien—

(A) * * *

(B) except as provided in subsection ❲(y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));❳ *(y), is in the United States not as an alien lawfully admitted for permanent residence;*

* * * * * * *

(y) PROVISIONS RELATING TO ALIENS ❲ADMITTED UNDER NONIMMIGRANT VISAS.—❳ *NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—*

(1) DEFINITIONS.—In this subsection—

(A) * * *

❲(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).❳

(B) the term "lawfully admitted for permanent residence" has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(2) EXCEPTIONS.—Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States ❲under a nonimmigrant visa❳ *but not lawfully admitted for permanent residence*, if that alien is—

(A) * * *

* * * * * * *

(3) WAIVER.—

(A) CONDITIONS FOR WAIVER.—Any individual who has been [admitted to the United States under a nonimmigrant visa] *lawfully admitted to the United States but not as an alien lawfully admitted for permanent residence* may receive a waiver from the requirements of subsection (g)(5), if—

(i) * * *

* * * * * * *

§ 924. Penalties

(a) * * *

* * * * * * *

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence*, alien smuggling crime,* or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence*, alien smuggling crime,* or drug trafficking crime—

(i) * * *

* * * * * * *

(D) Notwithstanding any other provision of law—

(i) * * *

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence*, alien smuggling crime,* or drug trafficking crime during which the firearm was used, carried, or possessed.

* * * * * * *

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

* * * * * * *

CHAPTER 46—FORFEITURE

§ 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) * * *

* * * * * * *

(I) Any property, real or personal, that has been used to commit or facilitate the commission of a violation of chapter 75,

the gross proceeds of such violation, and any property traceable to any such property or proceeds.

* * * * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

* * * * * * *

§ 1028. Fraud and related activity in connection with identification documents, authentication features, and information

(a) Whoever, in a circumstance described in subsection (c) of this section—

(1) * * *

* * * * * * *

(7) knowingly transfers, posseses, or uses, without lawful authority, a means of identification ⟦of another person⟧ *that is not his or her own* with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law; or

* * * * * * *

§ 1028A. Aggravated identity theft

(a) OFFENSES.—

(1) IN GENERAL.—Whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification ⟦of another person⟧ *that is not his or her own* shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years.

(2) TERRORISM OFFENSE.—Whoever, during and in relation to any felony violation enumerated in section 2332b(g)(5)(B), knowingly transfers, possesses, or uses, without lawful authority, a means of identification ⟦of another person⟧ *that is not his or her own* or a false identification document shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 5 years.

* * * * * * *

⟦CHAPTER 75—PASSPORTS AND VISAS

⟦Sec.
⟦1541. Issuance without authority.
⟦1542. False statement in application and use of passport.
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⟦1545. Safe conduct violation.
⟦1546. Fraud and misuse of visas, permits, and other documents.
⟦1547. Alternative imprisonment maximum for certain offenses.

⟦§ 1541. Issuance without authority

⟦Whoever, acting or claiming to act in any office or capacity under the United States, or a State, without lawful authority grants, issues, or verifies any passport or other instrument in the nature of a passport to or for any person whomsoever; or

[Whoever, being a consular officer authorized to grant, issue, or verify passports, knowingly and willfully grants, issues, or verifies any such passport to or for any person not owing allegiance, to the United States, whether a citizen or not—

[Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

[For purposes of this section, the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

[§ 1542. False statement in application and use of passport

[Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

[Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement—

[Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

[§ 1543. Forgery or false use of passport

[Whoever falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

[Whoever willfully and knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same—

[Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug

trafficking crime), or 15 years (in the case of any other offense), or both.

[§ 1544. Misuse of passport

[Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; or

[Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports; or

[Whoever willfully and knowingly furnishes, disposes of, or delivers a passport to any person, for use by another than the person for whose use it was originally issued and designed—

[Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

[§ 1545. Safe conduct violation

[Whoever violates any safe conduct or passport duly obtained and issued under authority of the United States shall be fined under this title, imprisoned not more than 10 years, or both.

[§ 1546. Fraud and misuse of visas, permits, and other documents

[(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

[Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

⟦Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

⟦Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact—

⟦Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.

⟦(b) Whoever uses—

⟦(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

⟦(2) an identification document knowing (or having reason to know) that the document is false, or

⟦(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

⟦(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481). For purposes of this section, the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

⟦§ 1547. Alternative imprisonment maximum for certain offenses

⟦Notwithstanding any other provision of this title, the maximum term of imprisonment that may be imposed for an offense under this chapter (other than an offense under section 1545)—

⟦(1) if committed to facilitate a drug trafficking crime (as defined in 929(a)) is 15 years; and

⟦(2) if committed to facilitate an act of international terrorism (as defined in section 2331) is 20 years.⟧

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.

§ 1541. Issuance without authority

(a) IN GENERAL.—Whoever—

(1) acting or claiming to act in any office or capacity under the United States, or a State, without lawful authority grants, issues, or verifies any passport or other instrument in the nature of a passport to or for any person; or

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

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

(b) DEFINITION.—In this section, the term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

§ 1542. False statement in application and use of passport

Whoever knowingly—

(1) makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

(2) uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement;

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

§ 1543. Forgery or false use of passport

Whoever—

(1) falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

(2) knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same;

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

§ 1544. Misuse of a passport

Whoever knowingly—

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

(2) uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;

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

(4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States;

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

§ 1545. Schemes to defraud aliens

Whoever inside the United States, or in or affecting interstate or foreign commerce, in connection with any matter that is authorized by or arises under the immigration laws of the United States or any matter the offender claims or represents is authorized by or arises under the immigration laws of the United States, knowingly executes a scheme or artifice—

(1) to defraud any person, or

(2) to obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, or promises;

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

§ 1546. Immigration and visa fraud

Whoever knowingly—

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

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

(3) mails, prepares, presents, or signs any immigration document knowing it to contain any materially false statement or representation;

(4) secures, possesses, uses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

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

(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the immigration document was issued or designed; or

(7) produces, issues, authorizes, or verifies, without lawful authority, an immigration document;

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

§ 1547. Attempts and conspiracies

Whoever attempts or conspires to violate this chapter shall be punished in the same manner as a person who completes that violation.

§ 1548. Alternative penalties for certain offenses

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

(b) DRUG TRAFFICKING OFFENSES.—Whoever violates any section in this chapter to facilitate a drug trafficking crime (as defined in section 929(a)) shall be fined under this title or imprisoned not more than 20 years, or both.

§ 1549. Definitions

In this chapter:

(1) An "application for a United States passport" includes any document, photograph, or other piece of evidence attached to or submitted in support of the application.

(2) The term "immigration document" means any instrument on which is recorded, by means of letters, figures, or marks, matters which may be used to fulfill any requirement of the Immigration and Nationality Act.

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CHAPTER 95—RACKETEERING

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§ 1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A) * * *

[(B) knowing that the transaction is designed in whole or in part—

[(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

[(ii) to avoid a transaction reporting requirement under State or Federal law,]

(B) knowing that the transaction—

(i) conceals or disguises, or is intended to conceal or disguise, the nature, source, location, ownership, or control of the proceeds of some form of unlawful activity; or

(ii) avoids, or is intended to avoid, a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful

activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) * * *

[(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

[(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

[(ii) to avoid a transaction reporting requirement under State or Federal law,]

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity, and knowing that such transportation, transmission, or transfer—

(i) conceals or disguises, or is intended to conceal or disguise, the nature, source, location, ownership, or control of the proceeds of some form of unlawful activity; or

(ii) avoids, or is intended to avoid, a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

* * * * * * *

(c) As used in this section—

(1) * * *

* * * * * * *

(7) the term "specified unlawful activity" means—

(A) * * *

* * * * * * *

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer as-

sassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 555 (relating to border tunnels), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006(relating to fraudulent Federal credit institution entries), 1007(relating to Federal Deposit Insurance transactions), 1014(relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032(relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), *section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor),* section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section

2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), *section 274(a) of the Immigration and Nationality Act (8 U.S.C.1324(a)) (relating to bringing in and harboring certain aliens),* section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)

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CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification doc-

uments), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), **[**section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents)**]** *sections 1541-1548 (relating to passports and visas)*, sections 1581-1592 (relating to peonage, slavery, and trafficking in persons)., section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-F (relating to chemical weapons), section 831 (relating to nuclear materials),(C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case

under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

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PART II—CRIMINAL PROCEDURE

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CHAPTER 213—LIMITATIONS

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§ 3291. Nationality, citizenship and passports

[No person shall be prosecuted, tried, or punished for violation of any provision of sections 1423 to 1428, inclusive, of chapter 69 and sections 1541 to 1544, inclusive, of chapter 75 of title 18 of the United States Code, or for conspiracy to violate any of such sections, unless the indictment is found or the information is instituted within ten years after the commission of the offense.] *No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses) and 75 (relating to passport, visa, and immigration offenses), or for a violation of any criminal provision of sections 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act, or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information is filed within ten years after the commission of the offense.*

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HOMELAND SECURITY ACT OF 2002

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TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

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Subtitle C—Miscellaneous Provisions

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SEC. 428. VISA ISSUANCE.

(a) DEFINITION.—In this [subsection] *section*, the term "[consular office] *consular officer*" has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

[(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

[(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

[(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

[(c) AUTHORITY OF THE SECRETARY OF STATE.—

[(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

[(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

[(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

[(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

[(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

[(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

[(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

⟦(F) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

⟦(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

⟦(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

⟦(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

⟦(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

⟦(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

⟦(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

⟦(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

⟦(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

⟦(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

⟦(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).⟧

(b) AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY.—

(1) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) and except for the authority of the Secretary of State under subparagraphs (A) and (G) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), the Secretary—

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

(B) may refuse or revoke any visa to any alien or class of aliens if the Secretary, or designee, determines that such refusal or revocation is necessary or advisable in the security interests of the United States.

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

(A) shall take effect immediately; and

(B) shall automatically cancel any other valid visa that is in the alien's possession.

(3) JUDICIAL REVIEW.—Notwithstanding any other provision of law, including section 2241 of title 28, United States

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

(c) AUTHORITY OF THE SECRETARY OF STATE.—

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

(2) LIMITATION.—No decision by the Secretary of State to approve a visa may override a decision by the Secretary of Homeland Security under subsection (b).

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[(i) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.]

(i) VISA ISSUANCE AT DESIGNATED HIGH-RISK POSTS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall conduct an on-site review of all visa applications and supporting documentation before adjudication at the top 30 visa-issuing posts designated jointly by the Secretaries of State and Homeland Security as high-risk posts.

(j) EXPEDITED CLEARANCE AND PLACEMENT OF DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT OVERSEAS EMBASSIES AND CONSULAR POSTS.—Notwithstanding any other provision of law, and the processes set forth in National Security Defense Directive 38 (dated June 2, 1982) or any successor Directive, the Chief of Mission of a post to which the Secretary of Homeland Security has assigned personnel under subsection (e) or (i) shall ensure, not later than one year after the date on which the Secretary of Homeland Security communicates such assignment to the Secretary of State, that such personnel have been stationed and accommodated at post and are able to carry out their duties.

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Subtitle D—Immigration Enforcement Functions

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SEC. 442. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) ESTABLISHMENT OF BUREAU.—

(1) * * *

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(5) STUDENT AND EXCHANGE VISITOR PROGRAM.—In administering the program under paragraph (4), the Secretary shall, not later than one year after the date of the enactment of this paragraph, prescribe regulations to require an institution or ex-

change visitor program sponsor participating in the Student Exchange Visitor Program to ensure that each student or exchange visitor who has nonimmigrant status pursuant to subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) enrolled at the institution or attending the exchange visitor program is reported to the Department within 10 days of—

(A) transferring to another institution or program;

(B) changing academic majors; or

(C) any other changes to information required to be maintained in the system described in paragraph (4).

[(5)] *(6)* MANAGERIAL ROTATION PROGRAM.—

(A) * * *

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DEPARTMENT OF STATE AND RELATED AGENCY APPROPRIATIONS ACT, 2005

(Title IV of division B of Public Law 108–447)

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DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005

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TITLE IV—DEPARTMENT OF STATE AND RELATED AGENCY

DEPARTMENT OF STATE

* * * * * * *

ADMINISTRATION OF FOREIGN AFFAIRS

DIPLOMATIC AND CONSULAR PROGRAMS

For necessary expenses of the Department of State and the Foreign Service not otherwise provided for, including employment, without regard to civil service and classification laws, of persons on a temporary basis (not to exceed $700,000 of this appropriation), as authorized by section 801 of the United States Information and Educational Exchange Act of 1948; representation to certain international organizations in which the United States participates pursuant to treaties ratified pursuant to the advice and consent of the Senate or specific Acts of Congress; arms control, nonproliferation and disarmament activities as authorized; acquisition by exchange or purchase of passenger motor vehicles as authorized by law; and for expenses of general administration, $3,570,000,000: *Provided,* That not to exceed 71 permanent positions shall be for the Bureau of Legislative Affairs: *Provided further,* That none of the funds made available under this heading may be used to transfer any full-time equivalent employees into or out of the Bureau of Legislative Affairs: *Provided further*, That, of the amount made available

under this heading, not to exceed $4,000,000 may be transferred to, and merged with, funds in the "Emergencies in the Diplomatic and Consular Service" appropriations account, to be available only for emergency evacuations and terrorism rewards: *Provided further*, That, of the amount made available under this heading, $319,994,000 shall be available only for public diplomacy international information programs: *Provided further,* That of the amount made available under this heading, $3,000,000 shall be available only for the operations of the Office on Right-Sizing the United States Government Overseas Presence: *Provided further,* That funds available under this heading may be available for a United States Government interagency task force to examine, coordinate and oversee United States participation in the United Nations headquarters renovation project: *Provided further*, That no funds may be obligated or expended for processing licenses for the export of satellites of United States origin (including commercial satellites and satellite components) to the People's Republic of China unless, at least 15 days in advance, the Committees on Appropriations of the House of Representatives and the Senate are notified of such proposed action: *Provided further,* That of the amount made available under this heading, $185,128,000 is for Near Eastern Affairs, $80,234,000 is for South Asian Affairs, and $251,706,000 is for African Affairs: *Provided further,* That, of the amount made available under this heading, $2,000,000 shall be available for a grant to conduct an international conference on the human rights situation in North Korea: *Provided further,* That of the amount made available under this heading, $200,000 is for a grant to the Center for the Study of the Presidency and $1,900,000 is for a grant to Shared Hope International to combat international sex tourism: *Provided further,* That the Intellectual Property Division shall be elevated to office-level status and shall be renamed the Office of International Intellectual Property Enforcement within 60 days of enactment of this Act.

In addition, not to exceed $1,426,000 shall be derived from fees collected from other executive agencies for lease or use of facilities located at the International Center in accordance with section 4 of the International Center Act; in addition, as authorized by section 5 of such Act, $490,000, to be derived from the reserve authorized by that section, to be used for the purposes set out in that section; in addition, as authorized by section 810 of the United States Information and Educational Exchange Act, not to exceed $6,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from English teaching, library, motion pictures, and publication programs and from fees from educational advising and counseling and exchange visitor programs; and, in addition, not to exceed $15,000, which shall be derived from reimbursements, surcharges, and fees for use of Blair House facilities.

In addition, for the costs of worldwide security upgrades, $658,702,000, to remain available until expended: *Provided,* That of the amounts made available under this paragraph, $5,000,000 is for the Center for Antiterrorism and Security Training.

[Beginning in fiscal year 2005 and thereafter, the Secretary of State is authorized to charge surcharges related to consular services in support of enhanced border security that are in addition to

the passport and immigrant visa fees in effect on January 1, 2004: *Provided,* That funds collected pursuant to this authority shall be credited to this account, and shall be available until expended for the purposes of such account: *Provided further,* That such surcharges shall be $12 on passport fees, and $45 on immigrant visa fees.] *Beginning in fiscal year 2005 and thereafter, the Secretary of State is authorized to charge surcharges related to consular services in support of enhanced border security that are in addition to the immigrant visa fees in effect on January 1, 2004: Provided, That funds collected pursuant to this authority shall be credited to the appropriation for U.S. Immigration and Customs Enforcement for the fiscal year in which the fees were collected, and shall be available until expended for the funding of the Visa Security Program established by the Secretary of Homeland Security under section 428(e) of the Homeland Security Act of 2002 (Public Law 107–296): Provided further, That such surcharges shall be 10 percent of the fee assessed on immigrant visa applications.*

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Dissenting Views

H.R. 2278, the "Strengthen and Fortify Enforcement Act" or the "SAFE Act," takes a dangerous approach to a complicated problem and will harm communities across the United States. Like other enforcement-only immigration bills that we have seen over the years, the SAFE Act does nothing to fix our broken immigration system and will have far reaching negative consequences. Overnight, the bill would turn millions of undocumented immigrants into criminals and would delegate to all state and local law enforcement officers complete authority to enforce Federal immigration laws. The bill additionally authorizes all states and localities to enact their own immigration laws, imposing civil and criminal penalties that are harsher than penalties provided under Federal law. Together, these and other provisions in the bill would result in widespread discrimination based on race, ethnicity, and national origin, decreased public safety in communities around the country, and unconstitutional denials of due process to persons subjected to enforcement actions, including prolonged and indefinite detention.

Pursuing this misguided strategy comes at a tremendous cost. According to an estimate prepared by the nonpartisan Congressional Budget Office, implementing the SAFE Act would cost $22.9 billion over the first 5 years.[1] The bill additionally squanders limited immigration enforcement resources by letting individual state and local law enforcement personnel decide where Federal enforcement resources will be spent and affirmatively preventing Federal authorities from setting sensible immigration enforcement priorities that focus on the timely apprehension and removal of people who pose a danger to the public.

At a time when the country is demanding a commonsense approach to fixing our broken immigration system, H.R. 2278 takes us in the wrong direction. The SAFE Act is opposed by a broad cross-section of constituencies. The Major Cities Chiefs Association ("MCCA"), the Police Executive Research Forum, the National Or-

[1] Congressional Budget Office, Cost Estimate, H.R. 2278 (Dec. 5, 2013), *available at* http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr2278.pdf.

ganization of Black Law Enforcement Executives, as well as police chiefs, sheriffs, and district attorneys across the country warn that the bill will make communities less safe and undermine community policing efforts.[2] Faith leaders, including the National Association of Evangelicals, the U.S. Conference of Catholic Bishops, and the Episcopal Church oppose the bill because it will harm people fleeing persecution, expand the prolonged or indefinite detention of stateless persons, criminalize religious leaders and houses of worship that provide humanitarian assistance without regard for lawful immigration status, and lead to increased racial profiling and discrimination.[3] Civil liberties groups, including the American Civil Liberties Union, the Leadership Conference for Civil and Human Rights, and the National Hispanic Leadership Agenda all strongly oppose the bill for its promotion of unnecessary and ineffective immigration enforcement efforts, including the expansion of mandatory, prolonged, or indefinite detention, and its significant attacks on due process.[4] Finally, the bill is opposed by advocates for top-to-bottom reform of our immigration laws, including the AFL-CIO, the American Immigration Lawyers Association, United We Dream, the National Immigration Forum, the National Immigration Law Center, and others.[5]

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[2] *See, e.g.,* Richard S. Biehl, Police Chief of Dayton, Ohio, *Here's How Not to Jump-Start Immigration Reform in House,* Roll Call, Jan. 24, 2014, *available at* http://www.rollcall.com/news/heres_how_not_to_jump_start_immigration_reform_in_house_commentary-230343-1.html; Letter from Law Enforcement Associations, Chiefs of Police, and Sheriffs, to Hon. John Boehner, Speaker, and Hon. Nancy Pelosi, Minority Leader (Oct. 1, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff); Remarks of Riverside Police Chief Sergio Diaz, June 17, 2013, CAMBIO Press Conference on SAFE Act, www.nilc.org/document.html?id=938; Major Cities Chiefs Police Association, *Police Chiefs From Nation's Major Cities Object to Legislative Proposals Requiring Local Police to Enforce Federal Immigration Law,* June 2013, http://nilc.org/document.html?id=934; Statement of Tucson Police Chief Roberto Villaseñor, *Congress Should Drop Unfunded Mandates on Law Enforcement,* June 26, 2013, at http://www.nilc.org/nr062613.html; Statement of San Francisco District Attorney George Gascon, *Police Officers Already Overburdened,* June 20, 2013, at http://www.nilc.org/nr062013.html; Statement of Salt Lake City Police Chief Chris Burbank, *Law Enforcement Leaders Speak Out Against House and Senate Anti-Immigrant Proposals,* June 18, 2013 (on file with the H. Comm. on the Judiciary, Democratic Staff); Statement of Austin Police Chief Art Acevedo, *Congress Should Consider Good Policy, Not Politics, When Dealing with Immigration,* June 25, 2013, at http://www.nilc.org/nr062513_a.html.

[3] Letter from National, State, Regional, and Local Faith Organizations and Leaders to Hon. John Boehner, Speaker (Aug. 21, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff); Letter from José H. Gomez, Archbishop of Los Angeles, Chairman of the U.S. Conference of Catholic Bishops Committee on Migration, to Members of Congress (June 18, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff); *Strengthen and Fortify Enforcement (SAFE) Act: Hearing Before the H. Comm. on the Judiciary,* 113th Cong. (June 13, 2013) [hereinafter "SAFE Act Hrg."] (statement of Church World Service, The Episcopal Church, Hebrew Immigrant Aid Society, Lutheran Immigration and Refugee Services, National Association of Evangelicals, Organization for Refuge, Asylum, and Migration, U.S. Conference of Catholic Bishops, and World Relief) (on file with the H. Comm. on the Judiciary, Democratic Staff); SAFE Act Hrg. at 117 (statement of the Lutheran Immigration and Refugee Service); SAFE Act Hrg. at 116 (statement of NETWORK).

[4] Letter from Thomas A. Saenz, President and General Counsel, MALDEF, National Hispanic Leadership Agenda (NHLA) Immigration Committee Co-Chair, and Jose Calderón, President, Hispanic Foundation, NHLA Immigration Committee Co-Chair, to United States House of Representatives (Jan. 7, 2014) (on file with the H. Comm. on the Judiciary, Democratic Staff); Letter from 104 National, Regional, State, and Local Organizations in the Campaign for an Accountable, Moral, and Balanced Immigration Overhaul, to Hon. John Boehner, Speaker, and Hon. Nancy Pelosi, Minority Leader (Oct. 9, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff); SAFE Act Hrg. at 85 (statement of the American Civil Liberties Union); Letter from Wade Henderson, President & CEO, and Nancy Zirkin, Executive Vice President, The Leadership Conference on Civil and Human Rights, to Members of Congress (Aug. 20, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff); SAFE Act Hrg. at 65 (statement of Clarissa Martinez-De-Castro, Director, Immigration and Civic Engagement, National Council of La Raza).

[5] Letter from William Samuel, Director, Government Affairs, AFL-CIO, to Hon. Robert Goodlatte, Chairman, and Hon. John Conyers, Jr. (June 18, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff); Letter from Laura Lichter, President, and Crystal Williams, Executive Director, American Immigration Lawyers Association, to Hon. John Boehner, Speaker, and

For these reasons, as well as those discussed below, we respectfully dissent and urge our colleagues to reject this short-sighted and dangerous legislation.

DESCRIPTION AND BACKGROUND

H.R. 2278 is a comprehensive immigration enforcement-only bill that would turn millions of undocumented immigrants into criminals overnight and delegate unchecked authority to state and local law enforcement officers to enforce Federal immigration laws. The bill additionally authorizes states and localities to enact and enforce their own immigration laws, expands the mandatory, prolonged, and indefinite detention of persons who are in removal proceedings or are attempting unsuccessfully to cooperate in their own removal. The bill rewrites various criminal provisions in immigration law to expand the number of persons subject to mandatory minimum terms of imprisonment and to penalize family members who merely drive their undocumented loved ones to work or to the doctor. The bill additionally strips deferred action from approximately 610,000 young people brought to the country as children, making them once more vulnerable to deportation from the country that they have long called home. The Committee voted to report the bill to the full House by a party-line vote of 20–15. A brief summary of the most troubling sections of the bill follows.

SECTION-BY-SECTION ANALYSIS

Sec. 102. IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES.

Sec. 102(a)—In General. Subsection (a) allows states and localities to enact civil or criminal immigration violations that mirror provisions in the Immigration and Nationality Act (INA). This provision would overturn portions of the Supreme Court's decision in *Arizona v. United States,* 132 S. Ct. 2492 (2012), which invalidated the provisions in an Arizona law (SB 1070) creating a state alien registration criminal penalty scheme and imposing criminal penalties for work or attempts to work by undocumented immigrants. As amended during markup, subsection (a) now allows states and localities to impose criminal penalties that exceed those provided under Federal law.

Sec. 102(b)—Law Enforcement Personnel. Subsection (b) gives state and local law enforcement officers the ability to investigate, apprehend, arrest, and detain individuals for violations of any Federal immigration law or any state or local mirroring law. It also authorizes state and local officers to transfer individuals arrested on any of these immigration violations to Federal immigration officials. This is an unprecedented delegation of authority to state and local personnel to enforce Federal immigration laws. Under current law, outside of very limited circumstances such officers have the

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Hon. Nancy Pelosi, Minority Leader (June 17, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff); SAFE Act Hrg. at 111 (statement of the National Immigration Forum); SAFE Act Hrg. at 53 (testimony of Karen C. Tumlin, Managing Attorney, National Immigration Law Center); Letter from Warren David, President, American-Arab Anti Discrimination Committee, to Hon. John Conyers, Jr. (June 17, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff); SAFE Act Hrg. at 105 (Statement of Angelica Salas, Executive Director, Coalition for Humane Immigrant Rights of Los Angeles); SAFE Act Hrg. at 114 (statement of the Immigrant Justice Network); SAFE Act Hrg. at 107 (statement of Mary Meg McCarthy, Executive Director, National Immigrant Justice Center).

ability to arrest for only certain violations of Federal criminal immigration law. The breadth of this provision is made clear by the fact that the only limitation imposed by the text on the authority of local officers pertains to the actual removal of persons from the country.

Sec. 103. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE

Requires that non-criminal information pertaining to non-citizens who have overstayed visas, had their visas revoked, or received voluntary departure or final orders of removal (even if those orders are on appeal) be added to the National Crime Information Center (NCIC) database.

Sec. 104. TECHNOLOGY ACCESS.

Grants states access without any limitation on its use to any "Federal programs or technology directed broadly at identifying inadmissible or deportable aliens." This means that states could have access to Federal databases regarding immigration status information to serve any purpose—including enforcing bans on private landlords renting housing to undocumented immigrants or for the purpose of branding undocumented immigrants who are detained and appear in state court with a scarlet letter by posting their identifying information online.

Sec. 108. FEDERAL CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS IN THE UNITED STATES APPREHENDED BY STATE OR LOCAL LAW ENFORCEMENT.

Requires the Federal Government to assume custody of any person following a request by a state or local law enforcement officer who believes the individual to be inadmissible or deportable. Such individuals must then be held in a detention facility (i.e., a Federal, contract, state or local prison or jail) that meets the standards of custody established by the United States Marshals Service. Nothing in the text limits the amount of time the individual may spend in Federal custody or gives the Federal Government the ability not to assume custody in the first place. The language referencing standards of custody established by the United States Marshals Service essentially overrides efforts in recent years to develop and enforce Performance-Based National Detention Standards for immigration detention that are appropriate for a civil (i.e., non-criminal) population.

Sec. 111. CRIMINAL ALIEN IDENTIFICATION PROGRAM.

Permits state and local law enforcement officials to hold a person who has finished a prison or jail sentence and who the official believes to be inadmissible or deportable for an additional 14 days in order to effectuate transfer to Federal immigration officials. Section 111 contains an even more expansive detention authorization allowing states and localities to issue their own detainers to hold individuals, without any specified time limit, until the Federal Government assumes custody. This second provision does not even require the local law enforcement officers to make a determination that the individual is inadmissible or deportable.

Sec. 112. CLARIFICATION OF CONGRESSIONAL INTENT.

Section 287(g) of the INA authorizes Federal officials to enter into cooperative agreements with state and local law enforcement agencies, whereby state and local officials are essentially deputized to perform immigration enforcement functions. Section 112 requires the Federal Government to enter such an agreement based upon a request by any state or local entity unless there is a "compelling reason" not to do so and allows the local jurisdiction, not the Federal Government, to decide on the type of agreement given—whether the authority granted under the 287(g) agreement is limited to jailhouse application or whether the locality also has authority to form task forces or go on roving patrols to enforce immigration laws at checkpoints and out in the community. This provision also requires the Federal Government to establish "a compelling reason" for canceling a 287(g) agreement and grants the local jurisdiction the right to a hearing on the cancellation as well as appeal rights in the Federal circuit courts and to the U.S. Supreme Court. During any of these appeals, the 287(g) agreement must remain in place. Under current law, either party to the 287(g) agreement has the right to cancel the agreement at any time.

Sec. 114. STATE VIOLATIONS OF IMMIGRATION ENFORCEMENT LAWS.

Prohibits states and localities from taking any actions that interfere with compliance with detainer requests issued by Federal immigration officials or from issuing any policies that restrict a state or locality from coordinating with Federal law enforcement in any way. Section 114 makes the granting of Federal law enforcement funds or any Department of Homeland Security (DHS) grant, including funds under the "Cops on the Beat" program to enhance public safety by facilitating community policing, contingent on localities not having any policies limiting cooperation with Federal immigration law enforcement during the course of carrying out the officers' routine duties.

Sec. 115. CLARIFYING THE AUTHORITY OF ICE DETAINERS.

Requires the Secretary of Homeland Security to execute all lawful writs, process, and orders issued under the authority of the United States and to command all necessary assistance to execute the Secretary's duties. The bill's supporters in Committee described this provision as clarifying that detainers issued by ICE to state and local law enforcement agencies are mandatory and must be honored by such agencies. But because section 115 requires the Secretary and not state and local law enforcement agencies to take certain actions it is unclear how the language achieves that goal. It is important to note that a statute commanding states and localities to honor Federal detainers would almost certainly run afoul of the anti-commandeering principles of the Tenth Amendment to the United States Constitution.[6]

Sec. 202. TERRORIST BAR TO GOOD MORAL CHARACTER.

Bars all persons determined to have ever been inadmissible or deportable on security-related grounds from a finding of good moral

[6] *Cf.* Printz v. United States, 521 U.S. 898 (1996).

character. Because the definition of "terrorist activity" in the INA and the government's interpretation of "material support" are overly broad,[7] thousands of bona fide refugees and asylum seekers in recent years have been inappropriately deemed inadmissible on security grounds. This includes persons who have acted under duress, medical professionals who have provided medical care pursuant to the Hippocratic Oath, and persons who have engaged in routine commercial transactions with a terrorist, as in the actual case of a florist who was deemed inadmissible on account of the material support bar. Under section 202, such refugees—even if they have lived in the United States for decades as lawful permanent residents and even if they were previously granted an exemption from such an inadmissibility ground—could be prevented from establishing good moral character and would be unable to ever naturalize.

Sec. 310. DETENTION OF DANGEROUS ALIENS.

Section 310(a)—In General. Authorizes the indefinite, and possibly permanent, detention of persons who have been ordered removed and have cooperated with efforts to remove them with no meaningful due process. This provision is specifically designed to overturn the Supreme Court's decision in *Zadvydas v. Davis,* 33 U.S. 678 (2001), where the Court held that indefinite detention of a noncitizen who has been ordered removed, but whose removal is not significantly likely to occur in the reasonably foreseeable future, would raise serious constitutional concerns and that preventive detention is only justified when an individual is especially dangerous and there are strong procedural protections accompanying any such determination.

Section 310(b)—Detention of Aliens During Removal Proceedings. For persons who remain in removal proceedings, section 310(b) denies bond hearings for persons subject to mandatory detention, no matter how long they have been detained. It further imposes a nearly insurmountable burden for getting bond hearings for noncitizens in removal proceedings who are not subject to mandatory detention. Such persons can be released on bond only if they establish "by clear and convincing evidence" that they are "not a flight risk or a risk to another person or the community."

While section 310 purports to be about the "Detention of Dangerous Aliens," the bill authorizes indefinite detention for persons who have been convicted of a single aggravated felony, which can include minor, nonviolent offenses, and prolonged detention for persons with no criminal histories who pose no danger to the public whatsoever. And, rather than providing the strong procedural protections that the Supreme Court requires for prolonged, preventive

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[7] *Cf.* INA § 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B). As prominent faith groups point out in a statement opposing the SAFE Act, the current interpretation of the law means that "even survivors of the Warsaw Ghetto uprising are considered 'terrorists,' as are Iraqis who rose up against Saddam Hussein and fought alongside Coalition forces, Afghan groups that fought the Soviet invasion of Afghanistan with U.S. support, democratic opposition parties in Sudan and the South Sudanese opposition movement (that is now the ruling party of South Sudan), nearly all Ethiopian and Eritrean political parties and movements, religious and other minority groups that fought the ruling military junta in Burma, and any group that has used armed force against the regime in Iran since the 1979 revolution." SAFE Act Hrg. (statement of Church World Service, The Episcopal Church, Hebrew Immigrant Aid Society, Lutheran Immigration and Refugee Services, National Association of Evangelicals, Organization for Refuge, Asylum, and Migration, U.S. Conference of Catholic Bishops, and World Relief) (on file with the H. Comm. on the Judiciary, Democratic Staff).

detention, the bill requires nothing more than a discretionary certification of dangerousness by the Secretary of Homeland Security accompanied by periodic administrative review.

Sec. 311. GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN GANG MEMBERS.

Establishes new grounds of inadmissibility and deportability for persons who are, or once were, members of a criminal gang. Such persons also are subject to mandatory detention, barred from receiving asylum or Temporary Protected Status, and allowed to be deported even if the Secretary of Homeland Security determines that such person's life or freedom would be threatened in her home country on account of her race, religion, political opinion, nationality, or membership in a particular social group. These provisions apply regardless of whether there is a finding that the person is currently in a criminal gang or that the person poses any danger to the community; past association alone would be sufficient even if the person never participated in any criminal activities as a part of the gang and never was convicted of any criminal offense.

Sec. 312. EXTENSION OF IDENTITY THEFT OFFENSES.

Applies the crimes of identity theft and aggravated identity theft to persons who use an identification document that is not his or her own, even if the document belongs to no one else and was not stolen. The change would subject such persons convicted of aggravated identity theft to 2-year mandatory minimum sentences in prison and would further criminalize undocumented immigrants working to support their families.

Sec. 314. INCREASED CRIMINAL PENALTIES RELATING TO ALIEN SMUGGLING AND RELATED OFFENSES.

Expands current law to criminalize persons who transport undocumented immigrants inside of the United States without the specific intent of furthering the person's unlawful presence. As drafted, the provision would criminalize a U.S. citizen driving her undocumented mother or husband to the doctor and a member of the clergy providing undocumented immigrants with transportation to and from religious services so long as that transportation somehow furthered the person's ability to remain in the country without authorization.

Sec. 315. PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.

Makes, for the first time, unlawful presence in the country a misdemeanor or felony offense. Section 315 achieves this result most directly by making it a crime to knowingly be unlawfully present in the United States even for 1 day. This section additionally makes it a crime for a person to overstay a visa for even a single day. Finally, this section rewrites Section 274 of the INA, which defines the criminal offense of illegal entry, to make all offenses continuing offenses until the day an individual is discovered by Federal immigration officers within the country. Together, these changes in the law would mean that a person who originally entered the United States on a visitor visa 20 years ago, but overstayed that visa, could be criminally prosecuted twice—once for overstaying a visa and once for being unlawfully present in the

country. Similarly, a mother who entered the United States without inspection 25 years ago and raised a family here could be subject to criminal prosecution for that initial entry if she is detected by immigration officers while on her way home from a church service. She could additionally be prosecuted under Federal law (or under any state or local mirroring statute) for being unlawfully present in the country.

Although a simple violation of the new criminal provision would be a misdemeanor, a second or subsequent violation could lead to a 2-year term of imprisonment. For a person with a previous criminal history, even a single conviction for unlawful presence could result in a term of imprisonment as high as 20 years.

Sec. 405. VISA REFUSAL AND REVOCATION.

Allows a person living in the United States on a visa to be deported based on the discretionary decision to revoke that visa without allowing any judicial review of the revocation decision. Under current law, judicial review is available when revocation of a visa is the sole basis for removal from the country. INA § 221(i), 8 U.S.C. § 1201(i). This section reverses this limited judicial review available in instances of visa revocation.

Sec. 605. REPORTS TO CONGRESS ON THE EXERCISE AND ABUSE OF PROSECUTORIAL DISCRETION.

Requires the Secretary to file annual reports on the use of prosecutorial discretion that include identifying information (e.g., names, fingerprint identification numbers, alien registration numbers) for any individual for whom prosecutorial discretion has been exercised.

Sec. 608. CERTAIN ACTIVITIES RESTRICTED.

Eliminates the Deferred Action for Childhood Arrivals program initiated in June 2012 to provide temporary protection from removal to certain noncitizens brought here as children. Additionally bars the Secretary from enforcing a set of policies that established sensible civil immigration enforcement priorities, provided guidance on the proper use of prosecutorial discretion, and directed ICE personnel to use immigration detainers only where appropriate.

CONCERNS WITH H.R. 2278

As a comprehensive enforcement-only bill, H.R. 2278 raises many more concerns than can be addressed in these dissenting views. Below are some of the most significant concerns raised by the bill.

I. H.R. 2278 WOULD TURN MILLIONS OF UNDOCUMENTED IMMIGRANTS INTO CRIMINALS OVERNIGHT

The SAFE Act would turn millions of undocumented immigrants into criminals overnight. The bill accomplishes this first by making it a crime for a person to be unlawfully present in the United States. This provision was added to the bill as part of the manager's amendment offered by Judiciary Committee Chairman Bob Goodlatte (R-VA). The manager's amendment also expanded another criminal provision embedded in the underlying bill by making it a Federal crime to overstay a visa by even a single day. The manager's amendment was adopted on a party-line vote with 21

Republicans voting in favor of the amendment and 16 Democrats voting against.[8]

The SAFE Act further criminalizes the undocumented by turning all of the offenses in Section 274 of the INA into continuing offenses. Under the bill, if a person illegally entered the country or overstayed a visa 15 years ago, every day that person remains in the U.S. undetected by immigration officials is a day that the person continues to commit the offense of illegal entry or overstaying a visa.

During the markup, Representative Spencer Bachus (R-AL) offered a second-degree amendment to the manager's amendment to delay implementation of the bill's provisions criminalizing the undocumented until January 1, 2015. Representative Bachus argued that by that date, Congress would likely have enacted a reform of our immigration laws permitting a large number of undocumented immigrants to begin the process of earning permanent legal status in the country. Although the amendment was well-intentioned, Democratic Members opposed the measure because it was based on pure speculation that a legalization plan would be enacted into law before the criminal provisions took effect. Moreover, as Representative Zoe Lofgren (D-CA) explained, "being alive and breathing in the country hasn't been a crime before, and I don't think it should become a crime."[9] The second-degree amendment to the manager's amendment failed by a vote of 10–24.[10]

Representative Joe Garcia (D-FL) offered a similar amendment to delay implementation of various provisions in the bill, including the provisions criminalizing undocumented immigrants, until the Secretary of Homeland Security certifies that there are sufficient lawful methods for undocumented immigrants in the country on the date of enactment to adjust their status to lawful permanent residence. The amendment failed by voice vote.[11]

Finally, Representative Luis Gutierrez (D-IL) offered an amendment exempting certain categories of people from the provisions in the bill that expand existing criminal provisions or create new crimes related to unlawful presence or overstaying a visa. The amendment would have created exceptions for the spouses, parents, and children of U.S. citizens and lawful permanent residents; young people who were brought to the country at 15 years of age or younger; people who have resided continuously in the country for 10 years or longer; people who serve as the primary caretaker of a child or an elderly or disabled relative; parents of Dreamers; people fleeing persecution; and victims of domestic violence. The purpose of the amendment was to highlight the fact that the vast majority of people who would be turned into criminals in this bill fall into one of these categories. After Members discussed the issue and the point was made, Representative Gutierrez withdrew the amendment.[12]

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[8] Tr. of Markup of H.R. 2278, the Strengthen and Fortify Enforcement Act, by the H. Comm. on Judiciary, 113th Cong. 80 (2013) [hereinafter Markup Tr.], *available at* http://judiciary.house.gov/hearings/Markups%202013/mark__06182013/061813%20Markup%20Transcript%20HR2278.pdf.

[9] *Id.* at 38.

[10] *Id.* at 74.

[11] *Id.* at 374.

[12] *Id.* at 308–15.

The country recognizes that our immigration system is broken and that it needs to be fixed. The country has also considered and rejected enforcement-only approaches that rely upon mass deportation or fantasies about self-deportation. But while the American people have turned the corner and support in poll after poll the idea that undocumented immigrants should be permitted to come out of the shadows and earn permanent legal status, the SAFE Act doubles down on the failed enforcement-only approach by criminalizing these working parents and other immigrants simply for being in the country without papers. While nearly everyone accepts that it would be impossible, unjust, and financially disastrous to deport 11 million people, the solution presented by the SAFE Act is that before we deport such people we should first arrest them, imprison them, and then detain them for prolonged periods of time. It makes no sense.

This is not the first time we have seen House Republicans support a bill that would turn undocumented immigrants into criminals. In 2005, the House passed H.R. 4437, the "Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005," which similarly made unlawful presence in the country a criminal offense. Months later, the Senate passed by a vote of 62–36 the bipartisan S. 2611, the "Comprehensive Immigration Reform Act." While House Republicans stood by their enforcement-only approach, millions of people took to the streets in peaceful protests around the country.[13] On March 10, 2006, 100,000 people in Chicago demonstrated against H.R. 4437.[14] Two weeks later, more than 500,000 people turned out in Los Angeles to march against the bill and in support of comprehensive immigration reform.[15] These protests coincided with an effort led by Cardinal Roger Mahony of the Roman Catholic Archdiocese of Los Angeles, who stated that if H.R. 4437 became law he would urge priests and parishioners to defy the provisions of the law that could make it a crime to assist undocumented immigrants through volunteer work in a soup kitchen or by driving a friend to a bus stop.[16]

These marches did not occur in isolation but rather were accompanied by school walkouts and work stoppages. On March 24, 2006, tens of thousands of workers in Georgia opposed to H.R. 4437 did not show up to their jobs.[17] Three days later, nearly 40,000 students across Southern California staged walkouts to protest H.R. 4437.[18] Months of public protests around the country reached a peak on May 1st when demonstrators staged "A Day Without Immigrants."[19] On that 1 day, marches, work stoppages, and school

[13] *See* Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement,* Harv. Civ. Rights-Civ. Liberties Law Rev. 42 (2007), *available at* http://www.law.harvard.edu/students/orgs/crcl/vol42__1/johnhing.pdf.

[14] Oscar Avila & Antonio Olivo, *A Show of Strength,* Chicago Tribune, Mar. 11, 2006, *available at* http://articles.chicagotribune.com/2006-03-11/news/0603110130__1__immigration-debate-pro-immigrant-illegal-immigrants.

[15] Teresa Watanabe & Hector Becerra, *500,000 Pack Streets to Protest Immigration Bills,* Los Angeles Times, Mar. 26, 2006, *available at* http://articles.latimes.com/2006/mar/26/local/me-immig26.

[16] *The Gospel vs. H.R. 4437,* N.Y. Times, Mar. 3, 2006, *available at* http://www.nytimes.com/2006/03/03/opinion/03fri1.html?__r=0/.

[17] Associated Press, *20,000 in Phoenix Rally for Immigrant Rights,* N.Y. Times, Mar. 25, 2006, *available at* http://www.nytimes.com/2006/03/25/politics/25protest.html?__r=0.

[18] Cynthia H. Cho & Anna Gorman, *Massive Student Walkout Spreads Across Southland,* L.A. Times, Mar. 28, 2006, *available at* http://articles.latimes.com/2006/mar/28/local/me-protests28.

[19] *Thousands March for Immigrant Rights,* CNN.com, May 1, 2006, http://www.cnn.com/2006/US/05/01/immigrant.day/.

walkouts occurred in cities across the nation, including New York, Washington, Las Vegas, Miami, Chicago, Los Angeles, San Francisco, Atlanta, Denver, Phoenix, New Orleans and Milwaukee.[20]

By rejecting sensible, bipartisan legislation to reform our broken immigration system and pursuing an enforcement-only approach that turns undocumented immigrants into criminals, the SAFE Act repeats the mistakes made in H.R. 4437 and dares millions of American citizens and immigrants to return to the streets once more.

II. THE BILL GRANTS STATES AND LOCALITIES UNFETTERED AUTHORITY TO CREATE, IMPLEMENT, AND ENFORCE THEIR OWN CRIMINAL AND CIVIL PENALTIES FOR IMMIGRATION LAW VIOLATIONS

Over the past few years, states and localities have enacted a wave of statutes attempting to create their own civil and criminal immigration penalties. Virtually all of these laws have been blocked by Federal courts because they are preempted by Federal law.[21] Section 102(a) of the SAFE Act would legislatively overturn these decisions, including the Supreme Court's 2012 ruling invalidating Arizona's effort in SB 1070 to create its own state alien registration and solicitation of work criminal penalties.[22]

The devolution of authority in H.R. 2278 would not result in a patchwork of 50 different state immigration schemes, but rather thousands of different schemes as each locality in a state would be permitted to create its own laws. This is a recipe for chaos. Such a fractured immigration scheme would undermine the ability of the nation to speak with one voice on immigration, which would adversely impact our nation's relations with other countries. As the Supreme Court reminded us in the *Arizona* decision, "It is fundamental that foreign countries concerned about the status, safety, and security of their nationals in the United States must be able to confer and communicate on this subject with one national sovereign, not the 50 separate States."[23]

Giving this authority to states and localities would also result in widely varying interpretations of the kind of immigration conduct that can be punished, and could result in enforcement decisions by local actors that stand in opposition to our shared ideals. For example, Arizona's human smuggling statute has been interpreted by state courts to permit the prosecution of persons who smuggled themselves.[24] In fact, 75 percent of the individuals charged for smuggling under the Arizona statute have been charged with conspiracy to smuggle themselves—a charge that is not cognizable under Federal immigration law.[25] Enforcement of that criminal statute by Maricopa County was enjoined last year by a Federal court.[26]

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[20] *Id.*

[21] Melissa S. Keaney and Alvaro Huerta, *Restrictionist States Rebuked: How Arizona v. United States Reigns States in on Immigration,* Wake Forest Journal of Law & Policy, Vol. 3:2 (2013).

[22] Arizona v. United States, 132 S. Ct. 2492 (2012).

[23] *Id.* at 2498.

[24] *Arizona County Forced to Halt Smuggling Prosecutions,* Associated Press, Oct. 1, 2013, http://www.foxnews.com/us/2013/10/01/arizona-county-forced-to-halt-smuggling-prosecutions.

[25] Jacques Billeaud, *Suit Targets Human Smuggling-Law Prosecutions,* Associated Press, Nov. 24, 2012, http://www.azcentral.com/news/politics/free/20121124arizona-human-smuggling-law-lawsuit.html.

[26] *Arizona County Forced to Halt Smuggling Prosecutions, supra* note 24.

Similarly, when Georgia passed a law attempting to criminalize the harboring and transporting of undocumented immigrants, the state initially professed that the law was only meant to mirror Federal law, but later argued in court that the law could be used to charge a U.S. citizen teenage child for driving his undocumented mother to the grocery store.[27] The provision was preliminarily enjoined as preempted by Federal law by the district court and the Eleventh Circuit Court of Appeals and was struck down last year.[28]

One of the major reasons that the public came out in such strong opposition to H.R. 4437 was that it put good Samaritans and religious organizations in danger of criminal charges for alien smuggling. According to an editorial in the New York Times, Cardinal Roger Mahony of the Roman Catholic Archdiocese of Los Angeles said that if H.R. 4437 became law and people could be criminally prosecuted for volunteering at a soup kitchen, offering emergency assistance, or giving a friend or loved one a ride, he would he would "instruct his priests—and faithful lay Catholics—to defy the law."[29]

Section 314 of the SAFE Act raises this concern once more by making it a Federal crime to transport a person in the United States, knowing or in reckless disregard of the fact that the person is unlawfully present, if such transportation furthers the person's unlawful presence in the country. Current law only criminalizes such transportation when it is undertaken with the specific intent of furthering the person's unlawful presence in the country. Combined with the delegation of authority to states and localities to enact their own immigration statutes, this provision significantly increases the likelihood that husbands will be prosecuted for driving their wives to work, children will be prosecuted for driving their parents to the doctor, and people of faith will be prosecuted for driving undocumented immigrants to religious services. As dozens of national, state, regional, and local faith organizations and leaders wrote to Speaker Boehner in August 2013, "People of faith commonly accept into their congregations and communities all newcomers and those in need without checking immigration paperwork. Providing transportation in particular would criminalize ordinary acts of kindness and would even criminalize members of mixed status families traveling together."[30]

In order to ameliorate this concern, Representative Cedric Richmond (D-LA) offered an amendment to focus the SAFE Act's provisions criminalizing alien smuggling on persons who act for commercial advantage or profit. In the debate that followed, Republican Members who spoke in opposition to the amendment spoke only about the role that transnational criminal organizations play in smuggling persons across our borders and the use of violence by such persons when confronted by Border Patrol agents.[31] Because

[27] Tr. of Preliminary Injunction Hearing at 29–30, Georgia Latino Alliance for Human Rights v. Nathan Deal, et., al., 2011 WL 6002751 (N.D. G.A. 2007); Dave Williams, *Federal Judge Questions Ga. Immigration Law,* Atlanta Business Chronicle, June 20, 2011, http://www.bizjournals.com/atlanta/news/2011/06/20/federal-judge-questions-ga.html?page=all.

[28] Kate Brumback, *Judge Strikes Down Part of Ga. Law on Harboring, Transporting, Illegal Immigrants,* Associated Press, Mar. 20, 2013, http://chronicle.augusta.com/news/metro/2013-03-20/judge-strikes-down-part-ga-law-harboring-transporting-illegal-immigrants.

[29] *The Gospel vs. H.R. 4437,* N.Y. Times, Mar. 3, 2006, http://www.nytimes.com/2006/03/03/opinion/03fri1.html?__r=0.

[30] Letter from National, State, Regional, and Local Faith Organizations and Leaders to Hon. John Boehner, Speaker, 1 (Aug. 21, 2013), *supra* note 3.

[31] Markup Tr. at 329–30, 335–39

such organizations unquestionably engage in this practice for profit and the use of violence against Border Patrol agents is already prohibited by numerous criminal laws, the amendment would have done nothing to prevent us from prosecuting such organizations for smuggling and related offenses. Nevertheless, the amendment failed on a party-line vote of 16–20.[32]

III. RATHER THAN MAKING COMMUNITIES SAFER, THE "SAFE ACT" WILL DECREASE PUBLIC SAFETY

A. Turning State and Local Police into Immigration Agents will Damage Community Policing Efforts

Notwithstanding the short title of the bill, the "SAFE Act" will actually make communities less safe by undermining trust in law enforcement and damaging community policing efforts. Local law enforcement leaders have spoken out forcefully and repeatedly against proposals like that contained in section 102(b) to turn police officers into immigration agents. As Sergio Diaz, the Police Chief for Riverside, California said, "You might have noticed that these kinds of laws, like [H.R.] 2278 and Arizona's 1070, don't originate with police chiefs. We're not asking for this kind of direction from legislators. We know that these laws will make crime worse and not better."[33]

Local law enforcement leaders know that directing their agents to enforce immigration laws will only alienate them from the very communities they have sworn to protect and defend. Recent research shows that 28 percent of U.S.-born Latinos reported that they would not provide information to local police about crimes they witnessed out of fear that it could lead to questioning of their family's immigration status.[34] The figure jumps to 70 percent among Latinos who are in the country without status.[35] Speaking out in opposition to the SAFE Act, Chief Diaz explained:

> [W]hen law enforcement officers are perceived to be an arm of immigration, there are people in the immigrant community who would avoid contact with the police and anybody else in the criminal justice system. They don't report crimes, they don't identify criminals, and they don't give testimony to the police nor do they do so in court. This is an advantage only for criminals.[36]

According to Richard Biehl, the Police Chief for Dayton, Ohio, since the city's police department instructed its officers not to check the immigration status of witnesses and victims or to question immigration status during minor traffic stops, "our crime rates have significantly declined. In the past 3 years, serious violent crime has dropped nearly 22 percent while serious property crime has gone down almost 15 percent."[37] In the long term, Chief Diaz continued, "placing police in the role of immigration enforcers ensures that the

[32] *Id.* at 349.
[33] Remarks of Riverside Police Chief Sergio Diaz, June 17, 2013, CAMBIO Press Conference on SAFE Act, www.nilc.org/document.html?id=938.
[34] Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigrant Enforcement,* Department of Urban Planning and Policy, University of Illinois at Chicago (2013).
[35] *Id.*
[36] Remarks of Chief Diaz, *supra* note 33.
[37] *Here's How Not to Jump-Start Immigration Reform in House, supra* note 2.

children of immigrants, and many of these children are American citizens, will grow up fearing and distrusting the police."[38]

Similarly, following this Committee's markup of the SAFE Act, the MCCA noted its strong opposition to the legislation because it "would undermine the trust and cooperation between police officers and immigrant communities, which are essential elements of community policing."[39] The MCCA went on to state that proposals like the SAFE Act "would result in fear and distrust of local police, damaging our efforts to prevent crime and weakening our ability to apprehend those who prey upon the public. Moreover, they would divert scarce and critical resources away from the core mission of local police—to create safer communities."[40] This concern was echoed by Roberto Villaseñor, Chief of Police for Tucson, Arizona, who explained in opposition to the SAFE Act that "[l]egislation that would take laws like SB 1070 and make them law in communities across the nation are not just misguided, they could make all our communities less safe by requiring local law enforcement to assume a responsibility they are not able to meet, and that is inconsistent with their primary mission."[41]

Not only would the SAFE Act decrease public safety by diminishing trust in the police, it would also obstruct the ability of law enforcement agencies to focus on crimes that pose an actual danger to the community. San Francisco's District Attorney, George Gascon, who was formerly the Chief of Police for Mesa, Arizona and San Francisco, California, explained that the SAFE Act would "add to an already overburdened police officer's to-do list, potentially limiting his or her ability to investigate or prevent crime."[42]

Art Acevedo, the Chief of Police for Austin, Texis, also has come out against the SAFE Act. Chief Acevedo stated that although proposals like the SAFE Act "are being billed as law enforcement measures, . . . what they will actually do is create fear instead of trust. Victims and witnesses do not come to the police for help and protection when they fear it will result in deportation. The public we serve should expect protection from their police—not deportation."[43] Instead, Chief Acevedo believes that:

> [i]mmigration enforcement must remain solely a Federal responsibility because immigrants will never help their local police to fight crime once they fear we have become immigration officers. For these reasons, I and my colleagues on the Major Cities Chiefs Association oppose the so-called SAFE Act now pending in the House of Representatives as well as similar provisions proposed in the Senate. These measures would force local cops to investigate and detain persons based upon their immigration status and impose many burdensome new requirements

[38] Remarks of Chief Diaz, *supra* note 33.

[39] Major Cities Chiefs Police Association, *Police Chiefs From Nation's Major Cities Object to Legislative Proposals Requiring Local Police to Enforce Federal Immigration Law,* June 2013, http://nilc.org/document.html?id=934.

[40] *Id.*

[41] Statement of Tucson Police Chief Roberto Villaseñor, *Congress Should Drop Unfunded Mandates on Law Enforcement,* June 26, 2013, at http://www.nilc.org/nr062613.html.

[42] Statement of San Francisco District Attorney George Gascon, *Police Officers Already Overburdened,* June 20, 2013, at http://www.nilc.org/nr062013.html.

[43] Statement of Austin Police Chief Art Acevedo, *Congress Should Consider Good Policy, Not Politics, When Dealing with Immigration,* June 25, 2013, at http://www.nilc.org/nr062513__a.html.

> that are inappropriate. It's no surprise that this legislation is opposed by every major city police agency in the nation.[44]

Local law enforcement opposition to the idea that their officers should be required to enforce civil immigration laws is nothing new. Given the damage this does to their ability to achieve their central mission—protecting communities against crime—such agencies have long opposed being vested with Federal immigration responsibilities. For example, when Arizona's SB 1070 was challenged in the Supreme Court, 18 current or former police chiefs and sheriffs as well as three police associations joined an *amicus curiae* brief arguing that local law enforcement should not be in the business of enforcing Federal immigration law.[45] Their opposition to the law was based on their concern that it makes communities distrustful of the police, diverts valuable law enforcement resources, and ultimately makes it more difficult for police to keep their communities safe.

B. Flooding the NCIC Database with Civil Immigration Records Will Endanger Police Officers and Make it Harder for Them to Do Their Jobs

Section 103 of the bill would require millions of non-criminal immigration records to be added to the NCIC database. As Representative Robert C. "Bobby" Scott (D-VA) explained in support of his amendment to strike this section from the bill, "local police rely on NCIC to determine whether or not an individual they pulled over and detained has a warrant or has serious criminal charges by another jurisdiction. . . . [W]e do not want to open up the floodgates for new information, which would make it more difficult to get the information that you actually need."[46]

Speaking in opposition to the amendment, Chairman Goodlatte explained that "[i]ncluding this information in NCIC is crucial in allowing State and local law enforcement officers to assist in the enforcement of our immigration laws. This information is crucial to inform local law enforcement that they have encountered aliens who have violated our immigration laws."[47] Importantly, not only do law enforcement associations and leaders generally reject efforts by state and Federal governments to foist immigration enforcement duties onto them, they have spoken out specifically against Section 103 of this bill. District Attorney Gascon explains that the:

> proposal to add extraneous civil immigration information to the NCIC database doesn't just add unnecessary clutter, it could make a police officer's job more dangerous. The NCIC is a valuable tool that can tell an officer whether the person the officer has stopped is a threat to the community or to the officer himself. The value of NCIC is lost when we throw in thousands of civil immigration records that local police are not trained or equipped to analyze. We shouldn't force an officer to wade through civil immigra-

[44] *Id.*
[45] Brief of State and Local Law Enforcement Officials as Amici Curiae, Arizona v. United States, March 2012, http://www.nilc.org/document.html?id=647.
[46] Markup Tr. at 302.
[47] *Id.* at 304–05.

> tion information during these potentially dangerous moments in an officer's day.[48]

Chris Burbank, the Police Chief for Salt Lake City, Utah, similarly opposes this provision, explaining that:

> An NCIC check can inform law enforcement officers within minutes whether the person he or she has detained is a threat to the officer or the community. Adding complicated, and unnecessary, immigration information will only hinder an officer's ability to do his job effectively and will lead to unconstitutionally extended detentions of individuals.[49]

Over the strong opposition of these law enforcement leaders, the amendment offered by Representative Scott failed by voice vote.[50]

IV. THE SAFE ACT WILL DIRECTLY LEAD TO UNLAWFUL DETENTIONS

A. *Authorizing States and Localities to Detain Persons for Weeks or Longer without Due Process and Based on Suspicions of Inadmissibility or Deportability is Unlawful and Unamerican*

One of the most breathtaking overreaches in the SAFE Act is a provision that purports to allow state and local law enforcement personnel to detain a person, beyond the time allowed by any underlying state or local criminal charge, for 14 days or longer without any due process. As written, section 111 of the bill allows a state or local law enforcement officer to hold such a person for 14 days in order to facilitate the person's transfer to DHS custody based merely on suspicion that the person is inadmissible or deportable. Separately, section 111 permits a state or local law enforcement officer to issue an immigration detainer against such a person seemingly without even requiring the officer to make the determination that the person is inadmissible or deportable. Once such a detainer has been lodged, the bill appears to authorize further detention without any limit in time. Under current law, DHS is permitted to issue detainer requests to states and localities under certain circumstances. Jurisdictions participating in 287(g) programs may be authorized to issue detainers, but they do so pursuant to a written agreement with the Federal Government, only after receiving training on the enforcement of Federal immigration laws, and only under the direction and supervision of DHS.

Local law enforcement officers are not adequately trained in the complexities of immigration law to accurately determine who is inadmissible or deportable. Immigration status is fluid and individuals who lack status today may nevertheless become or already be entitled to immigration relief to remain in the country. Conversely those who currently have status may violate the terms of their admission, jeopardizing that status. In addition, the types of criminal offenses that render a person deportable are often difficult to determine, and cannot be fully assessed without looking at detailed information on the statute a person was charged under. As a result, section 111 will undoubtedly lead to the unjustified and prolonged detention of U.S. citizens and lawful permanent residents and such

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[48] Statement of San Francisco District Attorney George Gascon, *supra* note 42.

[49] Statement of Salt Lake City Policy Chief Chris Burbank, *Law Enforcement Leaders Speak Out Against House and Senate Anti-Immigrant Proposals,* June 18, 2013 (on file with the H. Comm. on the Judiciary, Democratic Staff).

[50] Markup Tr. at 306.

detentions will disproportionately affect foreign-born persons and those who may appear "foreign." Notably, the bill places no limits on the use of this state detention authority such as requiring that officers have probable cause to extend the detention of an individual otherwise slated for release. There is also no requirement that a judicial officer review the state or local officer's decision to detain the person.

During markup, Representative Hank Johnson (D-GA) offered an amendment to strike this unprecedented and unwise grant of authority to state and local personnel. The amendment sparked a lively discussion in the Committee, as Representative Bachus questioned whether there was sufficient justification to hold persons for 14 days based only upon the state or local law enforcement officer's belief that the person might be inadmissible or deportable and without any due process. After speaking about mistakes that can happen in immigration proceedings—including the detention and removal of persons who are, in fact, U.S. citizens—Representative Bachus explained that under this bill, state or local law enforcement officers would "hold them 14 days before they even determine whether or not it is reasonable to even hold them for 1 day." [51] In response, Chairman Goodlatte stated that "I would argue that they are inadmissible or deportable. The amount of time does not matter." [52] The Fifth Amendment to the U.S. Constitution, which guarantees due process to all "persons" within the United States, would beg to differ.[53] In response to an offer from the Chairman to work with Committee staff to resolve the concern the amendment was withdrawn.[54]

B. H.R. 2278 Would Unconstitutionally Authorize Indefinite Detention of Broad Categories of Immigrants with Virtually No Procedural Protections

The Supreme Court has stated clearly that preventive detention is constitutional only where limited to special circumstances and only when accompanied by strong procedural protections. The indefinite detention provisions of the SAFE Act are unconstitutional because they fall far short of both of those requirements.

Specifically, section 310 of the bill authorizes the indefinite, and possibly permanent, detention of persons who have been ordered removed and who have cooperated with efforts to remove them. In *Zadvydas v. Davis,* the Supreme Court held that indefinite detention of a non-citizen who has been ordered removed, but whose removal is not significantly likely to occur in the reasonably foreseeable future, would raise serious constitutional concerns.[55] The Court noted that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent," and that "[f]reedom from imprisonment—from government custody, deten-

[51] Markup Tr. at 204.

[52] *Id.*

[53] U.S. Const. amend. V. *Cf.* Zadvydas v. Davis, 33 U.S. 678, 693, 690 (2001) (noting that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent," and that "[f]reedom from imprisonment—from government custody, detention or other forms of physical restraint—lies at the heart of the liberty that Clause protects.").

[54] Markup Tr. at 219.

[55] Zadvydas v. Davis, 33 U.S. 678 (2001).

tion or other forms of physical restraint—lies at the heart of the liberty that Clause protects."[56]

The Supreme Court has "upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections."[57] In *United States v. Salerno,* the Supreme Court approved preventive detention of pretrial criminal detainees under the Bail Reform Act because it involved stringent time limits, was reserved for the most serious of crimes, and required the government to prove dangerousness by clear and convincing evidence at a hearing before a Federal district court judge.[58] Moreover, where preventive detention based on dangerousness may be indefinite in duration, the Court has required more than just special dangerousness; the Court has required proof of an additional factor, such as mental illness that makes it difficult, or impossible, for the person to control his dangerous behavior.[59]

Section 310 is unconstitutional because it authorizes indefinite detention for a broad set of persons without regard for special dangerousness. The bill permits DHS to indefinitely detain a person convicted of a single "aggravated felony." As defined in the INA, a crime can be an aggravated felony even if it was neither aggravated, nor a felony.[60] Nearly any drug offense (including most drug possession) is an aggravated felony, and the term can include petty offenses, such as passing a bad check as well as shoplifting, with a prior conviction. Although indefinite detention on such a ground also requires the Secretary of Homeland Security to certify that release will "threaten the safety of the community or any person" and that "conditions of release cannot reasonably be expected to ensure the safety of the community or any person," the language is so broadly written that it could unconstitutionally authorize the detention of persons who are not "specially dangerous." Moreover, the language does not require that any additional factor, such as mental illness, be present, notwithstanding the fact that such detention may be indefinite in duration.

The bill also falls woefully short of the constitutional requirements for "strong procedural protections."[61] Under H.R. 2278, a person could be held indefinitely based upon a mere certification by a government official. The person is not entitled to a hearing before an Immigration Judge or even a personal interview. And although approximately 84 percent of immigration detainees are unrepresented in removal proceedings,[62] there is no requirement of appointment of counsel in connection with this preventive detention decision.

Importantly, while H.R. 2278 contains no procedural protections whatsoever, current Federal law offers comparatively robust procedural protections for persons suffering from mental illness who

[56] *Id.* at 693, 690.
[57] *Id.* at 691.
[58] United States v. Salerno, 481 U.S. 739, 747 (1987). In *Foucha v. Louisiana,* the Court invalidated a civil commitment statute placing the burden on the detainee to prove nondangerousness at a hearing. Foucha v. Louisiana, 504 U.S. 71, 81–82 (1992).
[59] Kansas v. Hendricks, 521 U.S. 346, 358–60 (1997).
[60] *See* INA § 101(a)(43).
[61] Zadvydas, 533 U.S. at 691.
[62] *The Executive Office for Immigration Review: Hearing Before the H. Subcomm. on Immigration, Citizenship, Refugees, Border Security and International Law of the H. Comm. on the Judiciary,* 111th Cong. 36 (June 17, 2010) (statement of Karen T. Grisez, Chair, Commission on Immigration, American Bar Association).

may be involuntarily hospitalized at the end of their Federal prison sentences on the ground that they present a danger to the public that cannot be mitigated.[63] The law provides for the appointment of counsel, requires the government to prove its case by clear and convincing evidence before a Federal district court judge, and mandates treatment if detention is warranted. Similarly, states have procedures for civil commitment and involuntary hospitalization and those procedures generally are available for persons being released from immigration detention. Finally, existing immigration regulations provide for further detention in these limited circumstances, but they require ICE to demonstrate to an Immigration Judge by clear and convincing evidence the appropriateness of further detention.[64] The total absence of procedural safeguards contained in this bill is without precedent.

V. THE SAFE ACT WILL LEAD TO INCREASED RACIAL PROFILING AND UNCONSTITUTIONAL DISCRIMINATION

H.R. 2278 turns state and local law enforcement officers into immigration agents in two important and largely overlapping ways. First, section 102(b) grants such officers the ability to investigate, apprehend, arrest, and detain individuals for violations of any Federal immigration law. Second, section 112 requires that any locality requesting a 287(g) agreement with the Federal Government be awarded one except in very limited circumstances. As 287(g) agreements essentially deputize state and local officers to perform immigration enforcement functions—a power directly granted to such officials in section 102(b)—it is not altogether clear what additional purpose section 112 serves.

A. Turning State and Local Law Enforcement Officers into Immigration Police will Lead to Serious Abuses

Granting local law enforcement officers the ability to arrest and detain based on mere suspicion of unlawful presence raises serious constitutional concerns about racial profiling and prolonged detentions. We know that this delegation of authority will result in pretextual and unlawful stops targeting people on the basis of race, ethnicity, and national origin because of the mounting evidence from jurisdictions that have been delegated this authority under the 287(g) program and from the handful of states that have attempted to seize this authority by passing and implementing their own immigration laws. As Police Chief Chris Burbank explained when speaking out against the SAFE Act, "There is no way we can do immigration enforcement without interjecting bias. . . . No one is going to ask me as a white male in Salt Lake City, 'Am I documented, and do I have the proper paperwork to show it?' But individuals who encounter anyone of color who looks differently, who acts or speaks differently, is going to be asked."[65] The pattern is clear: turning local law enforcement officers into immigration

[63] 18 U.S.C. § 4246.

[64] 8 C.F.R. § 241.14.

[65] Lee Davidson, *SLC Police Chief Burbank Blasts Alternative Immigration Bill,* The Salt Lake Tribune, Oct. 1, 2013, http://www.sltrib.com/sltrib/politics/56945828-90/act-alternative-bill-burbank.html.csp.

agents leads to patterns of unlawful detentions and increased racial profiling against Latinos and others who appear "foreign." [66]

Last year, a Federal district court in Arizona issued a stinging 142-page opinion finding unequivocally that the Maricopa County Sheriff's Office (MCSO) under Joe Arpaio, the self-styled "toughest sheriff in America," has engaged in a pattern of racial profiling, unjustified detentions, and discriminatory police practices during its attempts to enforce immigration laws.[67] After analyzing years of Maricopa County arrest records, the Court found that the MCSO engaged in a pattern of racially profiling Latinos under the guise of implementing immigration law. The court analyzed arrest records and found that "71% of all persons arrested, had Hispanic surnames." [68] As the Court noted, this high "arrest rate occurred in a county where between 30 and 32% of the population is Hispanic, and where, as the MCSO's expert report acknowledges, the rates of Hispanic stops by the MCSO are normally slightly less than the percentage of the population that they comprise." [69] The court found even more stark patterns of racial profiling when considering the arrests of Latino passengers.[70] The court found that between 81 and 95 percent of passengers arrested had Latino surnames.[71]

Remarkably, it was in response to the Arizona court's findings against Maricopa County that Chairman Goodlatte decided in his manager's amendment to create a new Federal crime of being unlawfully present in the country. Ignoring the court's highly-detailed factual findings of racial profiling and unlawful discrimination, Chairman Goodlatte criticized the court for enjoining Maricopa County's immigration enforcement efforts and explained that creating the crime of unlawful presence would be "a simple way to shut these courts down and to allow States and localities to assist in the enforcement of our immigration laws." [72]

Importantly, Maricopa County is not an outlier when it comes to jurisdictions where systematic profiling and the unconstitutional detention of Latinos has been documented under the guise of immigration enforcement. The Department of Homeland Security terminated its 287(g) agreement with Alamance County, North Carolina after the Department of Justice (DOJ) found that the county's Sheriff's Office engaged in a pattern of racial profiling, arrests without probable cause, and unconstitutional detentions of Latinos.[73] DOJ concluded that Alamance County deputies regularly arrested Latino drivers for minor infractions while issuing only citations or warnings to non-Latinos, and that the Sheriff's Office leadership explicitly instructed deputies to target Latinos for discriminatory enforcement, including the targeted use of jail booking

[66] Immigration Policy Center, *The 287(g) Agreement: A Flawed and Obsolete Method of Immigration Enforcement,* Nov. 29, 2012, http://immigrationpolicy.org/just-facts/2878g-program-flawed-and-obsolete-method-immigration-enforcement.

[67] Ortega-Melendres, et al. v. Arpaio. No. PHX–CV–07–02513–GMS, 2013 WL 2297173 (May 24, 2013).

[68] *Id.* at 73.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] Markup Tr. at 27–29.

[73] Department of Justice, *Justice Department Releases Investigative Findings on the Alamance County, N.C., Sheriff's Office,* Sept. 18, 2012, http://www.justice.gov/opa/pr/2012/September/12-crt-1125.html.

and detention practices. A lawsuit filed by the Justice Department is pending in Federal court.

Similarly, following the implementation of Alabama's state law mandating that local law enforcement verify the immigration status of anyone they have reasonable suspicion to believe to be undocumented, there were scores of reports of racial profiling and unjustified stops by local law enforcement officers.[74] People from all walks of life have been targeted for this increased profiling, from visiting foreign business executives to mothers and fathers.[75] These kinds of violations will multiply exponentially under the SAFE Act.

Such violations have even occurred in the absence of 287(g) agreements or anti-immigrant state laws. In 2012, the DOJ entered into a settlement agreement with East Haven, Connecticut, following an investigation into widespread racial discrimination and abuse against Latino residents that also involved Federal criminal arrests of police officers on charges such as excessive force, false arrest, obstruction, and conspiracy.[76]

B. Expanding the 287(g) Program and Weakening Existing Protections is a Dangerous Idea

The completely unchecked delegation of immigration enforcement to state and local law enforcement personnel in section 102 is problematic enough, but the changes made to the 287(g) program raise still more concerns. Even before courts and the DOJ identified clear problems with the 287(g) program, Federal studies had repeatedly noted the Federal Government's inability to maintain adequate oversight over the localities granted agreements.[77]

Changes made to the program in section 112 will only further undermine the ability of the Federal Government to appropriately train and direct 287(g)-deputized officers and to oversee these programs to prevent abuses. In addition, because the Federal Government incurs significant costs under the 287(g) program, making these agreements available on demand will impose significant costs on the Federal Government. Then-Secretary of Homeland Security Janet Napolitano testified before Congress that an arrest secured

[74] *See* Southern Poverty Law Center, *Alabama's Shame,* http://www.splcenter.org/alabamas-shame-hb56-and-the-war-on-immigrants/a-traffic-arrest-a-mother-s-nightmare#.UbTo-JV3yfQ; National Immigration Law Center, *Racial Profiling After HB 56: Stories from the Alabama Hotline,* http://www.nilc.org/document.html?id=800.

[75] John Voelcker, *Alabama Nabs Honda Exec a Week After Jailing Mercedes Manager Under Immigration Law,* Dec. 4, 2011, at http://www.thecarconnection.com/news/1070170__alabama-nabs-honda-exec-a-week-after-jailing-mercedes-manager-under-immigration-law.

[76] Jennifer Swift, *East Haven Signs Police Reform Deal; Maturo: 'Should You Put a Whip Behind Me?,'* New Haven Register, Nov. 16, 2012, *at* http://nhregister.com/articles/2012/11/16/news/metro/doc50a59775abd2a598392964.txt?viewmode=fullstory; Mark Zaretsky, *'Cancerous Cadre': FBI Arrest 4 East Haven Cops in Profiling Probe; Chief Not Charged, but Labeled as 'Co-conspirator',* New Haven Register, Jan. 25, 2012, *at* http://www.nhregister.com/articles/2012/01/25/news/metro/doc4f1ea3fe7c1fe446073143.txt?viewmode=fullstory.

[77] In the Spring of 2009, the DHS Office of the Inspector General (OIG) undertook an audit of the program, which culminated in a lengthy report with 33 recommendations. DHS OIG, *The Performance of 287(g) Agreements,* Mar. 2010, http://www.oig.dhs.gov/assets/Mgmt/OIG__10-63__Mar10.pdf. The OIG updated this report in September 2010 and again in September 2012 and found that DHS had not solved the extensive problems identified in the previous report despite purported "reforms" to the program. DHS OIG, *The Performance of 287(g) Agreements FY 2012, Follow-Up,* Sept. 2012, http://www.oig.dhs.gov/assets/Mgmt/2012/OIG__12-130__Sep12.pdf. The initial report described the targeting of innocent people, a lack of state and local supervision, and insufficient training of 287(g) officers. In addition, a 2009 report by the General Accountability Office found that the program lacked key internal controls and adequate oversight mechanisms. U.S. Government Accountability Office, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws,* Jan. 30, 2009, http://www.gao.gov/products/GAO-09-109. In the intervening years this lack of control likely helped to facilitate the documented abuses that have occurred under the program.

through a 287(g) agreement can cost up to 10 times more than an arrest secured through Secure Communities, the Department's jail-based program that depends upon an examination of fingerprints submitted by persons booked into jails and prisons.[78]

The bill also erects significant barriers to the Federal Government's ability to terminate 287(g) agreements where appropriate. An agreement may be terminated only for "a compelling reason" and must remain in force while the locality exercises its right under the law for judicial review up to the Supreme Court. This provision would have kept the Federal Government from terminating the 287(g) agreements with Maricopa and Alamance counties in a timely manner even after the Department of Justice had entered findings of constitutional violations against these programs. It would tie the hands of the Federal Government to terminate contracts even in the face of documented abuses. It is worth noting that while the SAFE Act would grant jurisdictions an automatic stay of the contract termination decision during Federal appeals, immigrants who are appealing their administratively final orders of removal to the Federal courts are not automatically entitled to such a stay and are often forced to pursue such appeals from outside of the country while separated from their families and communities.

In light of the well-documented abuses that have taken place through 287(g) agreements and the unnecessary costs that such agreements impose on the Federal Government, Representative Judy Chu (D-CA) offered an amendment eliminating the 287(g) program from the INA and replacing it with a comprehensive ban on racial profiling applicable to all law enforcement authorities enforcing immigration law. Speaking in support of her amendment, Representative Chu explained that "The robust and multi-tiered approach to ending racial profiling advanced in this amendment is integral to protecting all communities in America against racial and religious profiling."[79] The amendment was defeated on a party-line vote of 16–20.[80]

After the defeat of Representative Chu's amendment, Representative Mel Watt (D-NC) offered a compromise amendment that would neither eliminate the 287(g) program, nor expand it in the dangerous way proposed in the SAFE Act. Rather, Representative Watt's amendment improved the existing 287(g) program by creating a strong prohibition against unlawful profiling in the exercise of immigration enforcement authority under 287(g) agreements and erecting robust protections against such profiling and other unlawful, discriminatory behavior by 287(g) jurisdictions. The purpose of the amendment was to help fix the 287(g) program if ending it altogether was not possible. Representative Watt's amendment was rejected by a party-line vote of 16–19.[81]

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[78] Mickey McCarter, *Napolitano Explains How DHS Would Save Money in 2013 Budget,* Feb. 16, 2013, http://hstoday.us/focused-topics/customs-immigration/single-article-page/napolitano-explains-how-dhs-would-save-money-in-2013-budget.html.
[79] Markup Tr. at 268.
[80] *Id.* at 287.
[81] *Id.* at 299.

VI. ELIMINATING PROTECTIONS FROM DEPORTATION FOR DREAMERS AND PREVENTING DHS FROM PRIORITIZING THE REMOVAL OF SERIOUS CRIMINALS AND REPEAT OFFENDERS IS INCONSISTENT WITH AMERICAN VALUES

During Floor consideration of H.R. 2217, the "Department of Homeland Security Appropriations Act of 2014," Representative Steve King (R-IA) offered an amendment to prevent continued implementation of the Deferred Action for Childhood Arrivals (DACA) effort. Under DACA, hundreds of thousands of undocumented youth have been able to come out of the shadows to live, work and study without fear of deportation—already more than 610,000 young people brought to the country years ago as children have been granted deferred action.[82] The King amendment would require these young people to be stripped of the protections they have been given and would prevent potentially hundreds of thousands of others from receiving similar protections. The King amendment also would prevent DHS and U.S. Immigration and Customs Enforcement from implementing agency guidance regarding the use of their prosecutorial discretion authorities. The guidance aims to set sensible civil immigration enforcement priorities for the agency to focus limited resources on criminals and repeat immigration violators, rather than non-criminals and parents working to support their children. The "poison pill" King amendment was adopted by a largely party-line vote of 224–201 with only 6 Republicans voting against the amendment and just 3 Democrats supporting the amendment.[83]

During the Committee's consideration of the SAFE Act, Representative King offered a similar amendment. Speaking in opposition to the amendment and in support of the young people who have received and will continue to receive deferred action under the DACA initiative, Representative Gutierrez said:

> I wish we would all go to a classroom and watch [Dreamers] day in and day out put their hands over their heart and pledge allegiance to the same flag that each and every one of us pledges allegiance to every day before we start a session of the Congress of the United States. All we are trying to do is have the paperwork catch up to who they really are. They are really American in everything but that piece of paper. They came here as children. This is the only country they know. And you want to know something? This is the country they love.[84]

The King amendment was adopted by a vote of 19–17.[85] The only Republican Member to vote against the amendment was Representative Bachus, who also was one of the 6 Republican Members to

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[82] *See* U.S. Citizenship and Immigration Services, *Number of I–821D, Consideration of Deferred Action for Childhood Arrivals by Fiscal Year, Quarter, Intake, Biometrics and Case Status: 2012–2014,* http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20'studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA__fy2014__qtr4.pdf.

[83] 159 Cong. Rec. H3222 (daily ed. June 6, 2013).

[84] Markup Tr. at 142–43.

[85] *Id.* at 156 (announcing in error that the amendment was adopted by a vote of 20–15) *but see* amendment vote count at http://judiciary.house.gov/hearings/Markups%202013/mark__06182013/HR%202278/Votes/061813%20RC5%20Amdt%206%20King.pdf.

vote against the amendment offered by Representative King to the DHS Appropriations Act.[86]

VIII. ELIMINATING JUDICIAL REVIEW FOR PERSONS IN REMOVAL PROCEEDINGS DENIES DUE PROCESS

Section 405 of the legislation entirely eliminates judicial review when the government seeks to revoke a person's nonimmigrant visa and deport that person from the country. It is already the case that nearly all visa revocations or denials are insulated from judicial review. The sole exception to this general rule was created when Congress enacted the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). In IRTPA, Congress made it a deportable offense to be present in the U.S. after revocation of a nonimmigrant visa.[87] As a result, if a person in the U.S. on a nonimmigrant visa has that visa revoked by the State Department on any ground (or by the Secretary of Homeland Security on security grounds, according to this legislation), that person may be placed in removal proceedings and charged with being deportable. In that same Act, Congress stated that if the revocation provides the sole grounds for removing such a person from the country, judicial review shall be permitted.[88]

By eliminating judicial review of such removal proceedings, section 405 would mean that people who have resided lawfully in the United States for many years and who have U.S. citizen spouses and children would face the prospect of being permanently separated from their loved ones without the opportunity for any judicial review. Because of the important liberty interests at stake, the Supreme Court has held that "some judicial intervention in deportation cases is unquestionably required by the Constitution."[89] Judicial review provides a critical check on mistakes by immigration authorities and on overzealous government behavior. The court-stripping provision in section 405 is both cruel and unnecessary.

It is worth noting that during the 112th Congress the Committee considered a bill that similarly eliminated judicial review in this way. When the Committee filed its report for H.R. 1741, the "Secure Visas Act," bill sponsor Representative Lamar Smith (R-TX), Ranking Member Conyers, and Representative Lofgren filed additional views memorializing an agreement to amend the language in the bill to "preserve the right to . . . judicial review but add special provisions for cases that raise national security concerns."[90] The SAFE Act's reversion to the original language eliminating judicial review outright represents a step backward.

CONCLUSION

H.R. 2278 does nothing to address the long-standing problems with our current immigration system. Like the enforcement-only proposals that we have seen year after year, the bill simply calls for more of the same failed policies that bring us no closer to a solution. An important reason that there are an estimated 11.7 mil-

[86] *Id.;* 159 Cong. Rec. H3222 (daily ed. June 6, 2013).
[87] IRTPA § 5304(b), Pub. L. No. 108–458, 118 Stat. 3736 (2004) (codified as amended at INA § 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B)).
[88] IRTPA § 5304(a) (codified as amended at INA § 221(i), 8 U.S.C. § 1201(i)).
[89] Immigration and Naturalization Services v. St. Cyr, 533 U.S. 289, 300 (2001) (internal quotation marks omitted).
[90] H. Comm. on the Judiciary, Secure Visas Act, H.R. Rep. No. 112–411, at 28 (2012).

lion undocumented immigrants living in our country today is that our immigration system is so poorly designed that it can be easier for families, workers, and businesses to go around the system than to go through the system. In fact, American businesses, American families, entire industries, and our economy as a whole have largely depended on this inconvenient truth.

The SAFE Act ignores this fact and operates on the premise that more enforcement will lead to a better immigration system overall. It recycles old and rejected ideas about criminalizing undocumented immigrants and whittles away at important values enshrined in our Constitution, such as the rights to due process and to be protected from discrimination. The bill would also threaten public safety in communities around the country by turning local police into immigration agents and making community policing all but impossible.

The direct cost of implementing this misguided and dangerous law would not be small. According to the Congressional Budget Office, the SAFE Act would cost an estimated $22.9 billion to implement over the next 5 years.[91]

For all of these reasons, we respectfully dissent and urge our colleagues to reject this legislation.

JOHN CONYERS, JR.
JERROLD NADLER.
ROBERT C. "BOBBY" SCOTT.
ZOE LOFGREN.
SHEILA JACKSON LEE.
STEVE COHEN.
HENRY C. "HANK" JOHNSON, JR.
PEDRO R. PIERLUISI.
JUDY CHU.
TED DEUTCH.
LUIS V. GUTIERREZ.
KAREN BASS.
CEDRIC RICHMOND.
SUZAN DELBENE
JOE GARCIA.
HAKEEM JEFFRIES.
DAVID N. CICILLINE.

[91] Congressional Budget Office, Cost Estimate, H.R. 2278 (Dec. 5, 2013), *supra* note 1.