

109TH CONGRESS
1ST SESSION

H. R. 4497

To establish terms and conditions for delivery bonds in immigration cases,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2005

Mr. SESSIONS (for himself, Mr. POE, Mr. SULLIVAN, Mr. TANCREDO, and Mr. HAYWORTH) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish terms and conditions for delivery bonds in
immigration cases, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bringing Overstay
5 Numbers Down Act of 2005” or the “BOND Act of
6 2005”.

7 **SEC. 2. DELIVERY BONDS.**

8 (a) DEFINITIONS.—For purposes of this section:

9 (1) BONDING AGENT.—The term “bonding
10 agent” means any individual properly licensed, ap-

1 proved, and appointed by power of attorney issued
2 by a qualified surety to execute or countersign sur-
3 ety bonds in connection with any matter governed by
4 the Immigration and Nationality Act (8 U.S.C.
5 1101, et seq.), and who receives a premium for exe-
6 cuting or countersigning such surety bonds.

7 (2) DELIVERY BOND.—The term “delivery
8 bond” means a written suretyship undertaking for
9 the surrender of an individual against whom the De-
10 partment of Homeland Security has issued an order
11 to show cause or a notice to appear, the performance
12 of which is guaranteed by an acceptable surety on
13 Federal bonds.

14 (3) PRINCIPAL.—The term “principal” means
15 an individual who is the subject of a delivery bond.

16 (4) SECRETARY.—The term “Secretary” refers
17 to the Secretary of Homeland Security.

18 (5) SURETY.—The term “surety” means an en-
19 tity, as defined by, and that is in compliance with,
20 sections 9304 through 9308 of title 31, United
21 States Code, that agrees—

22 (A) to guarantee the performance, where
23 appropriate, of the principal under a delivery
24 bond;

25 (B) to perform the bond as required; and

1 (C) to pay the face amount of the bond as
2 a penalty for failure to perform.

3 (6) SURETYSHIP UNDERTAKING.—The term
4 “suretyship undertaking” means a written agree-
5 ment, executed by a bonding agent on behalf of a
6 surety, which binds all parties to its certain terms
7 and conditions and which provides obligations for
8 the principal and the surety while under the delivery
9 bond and penalties for forfeiture to ensure the obli-
10 gations of the principal and the surety under the
11 agreement.

12 (b) VALIDITY, AGENT NOT CO-OBLIGOR, EXPIRA-
13 TION, RENEWAL, AND CANCELLATION OF BONDS.—

14 (1) VALIDITY.—A delivery bond, for purposes
15 of surrendering an individual against whom the De-
16 partment of Homeland Security has issued an order
17 to show cause or a notice to appear, is valid if—

18 (A) the bond states the full, correct, and
19 proper name of the alien principal;

20 (B) the bond states the amount of the
21 bond;

22 (C) the bond is guaranteed by a surety and
23 countersigned by an agent who is properly ap-
24 pointed;

1 (D) the bond documents are properly exe-
2 cuted; and

3 (E) relevant bond documents are properly
4 filed with the Secretary of Homeland Security.

5 (2) BONDING AGENT NOT CO-OBLIGOR, PARTY,
6 OR GUARANTOR IN INDIVIDUAL CAPACITY, AND NO
7 REFUSAL IF ACCEPTABLE SURETY.—Section
8 9304(b) of title 31, United States Code, is amended
9 by adding at the end the following: “Notwith-
10 standing any other provision of law, no bonding
11 agent of a corporate surety shall be required to exe-
12 cute surety bonds as a co-obligor, party, or guar-
13 antor in an individual capacity on bonds provided by
14 the corporate surety, nor shall a corporate surety
15 bond be refused, if the corporate surety appears on
16 the current Treasury Department Circular 570 as a
17 company holding a certificate of authority as an ac-
18 ceptable surety on Federal bonds and attached to
19 the bond is a currently valid instrument showing the
20 authority of the bonding agent of the surety com-
21 pany to execute the bond.”.

22 (3) EXPIRATION.—A delivery bond shall expire
23 at the earliest of—

24 (A) one year from the date of issue;

1 (B) at the cancellation of the bond or sur-
2 render of the principal; or

3 (C) immediately upon nonpayment of the
4 renewal premium.

5 The Secretary of Homeland Security shall cause all
6 expired delivery bonds to be canceled.

7 (4) RENEWAL.—Delivery bonds may be re-
8 newed annually, with payment of proper premium to
9 the surety, if there have been no breach of condi-
10 tions, default, claim, or forfeiture of the bond. Not-
11 withstanding any renewal, when the alien is surren-
12 dered to the Secretary for removal, the Secretary
13 shall cause the bond to be canceled.

14 (5) CANCELLATION.—Delivery bonds shall be
15 canceled and the surety exonerated—

16 (A) for nonrenewal after the alien has been
17 surrendered to the Department of Homeland
18 Security for removal;

19 (B) if the surety or bonding agent provides
20 reasonable evidence that there was misrepresen-
21 tation or fraud in the application for the bond;

22 (C) upon the death or incarceration of the
23 principal, or the inability of the surety to
24 produce the principal for medical reasons;

1 (D) if the principal is detained by any law
2 enforcement agency of any State, county, city,
3 or any political subdivision thereof;

4 (E) if it can be established that the alien
5 departed the United States for any reason with-
6 out permission of the Secretary, the surety, or
7 the bonding agent;

8 (F) if the foreign state of which the prin-
9 cipal is a national is designated for temporary
10 protected status pursuant to section 244 of the
11 Immigration and Nationality Act (8 U.S.C.
12 1254a) after the bond is posted; or

13 (G) if the principal is surrendered to the
14 Department of Homeland Security for removal
15 by the surety or the bonding agent.

16 (6) SURRENDER OF PRINCIPAL; FORFEITURE
17 OF BOND PREMIUM.—

18 (A) SURRENDER.—At any time before a
19 breach of any of the delivery bond conditions, if
20 in the opinion of the surety or bonding agent
21 the principal becomes a flight risk, the principal
22 may be surrendered to the Department of
23 Homeland Security for removal.

24 (B) FORFEITURE OF BOND PREMIUM.—A
25 principal may be surrendered without the re-

1 turn of any delivery bond premium if the prin-
2 cipal—

3 (i) changes address without notifying
4 the surety, the bonding agent, and the Sec-
5 retary in writing prior to such change;

6 (ii) hides or is concealed from a sur-
7 ety, a bonding agent, or the Secretary;

8 (iii) fails to report to the Secretary as
9 required at least annually; or

10 (iv) violates the contract with the
11 bonding agent or surety, commits any act
12 that may lead to a breach of the bond, or
13 otherwise violates any other obligation or
14 condition of the bond established by the
15 Secretary.

16 (7) CERTIFIED COPY OF BOND AND ARREST
17 WARRANT TO ACCOMPANY SURRENDER.—

18 (A) IN GENERAL.—A bonding agent or
19 surety desiring to surrender the principal of a
20 delivery bond—

21 (i) shall have the right to petition the
22 Secretary or any Federal court, without
23 having to pay any fees or court costs, for
24 an arrest warrant for the arrest of the
25 principal;

1 (ii) shall forthwith be provided two
2 certified copies each of the arrest warrant
3 and the bond, without having to pay any
4 fees or courts costs; and

5 (iii) shall have the right to pursue, ap-
6 prehend, detain, and surrender the prin-
7 cipal, together with the certified copies of
8 the arrest warrant and the bond, to any
9 one of ten Department of Homeland Secu-
10 rity designated “turn-in” centers or any
11 detention facility authorized to detain
12 aliens ordered removed from the United
13 States.

14 (B) EFFECTS OF DELIVERY.—Upon sur-
15 render of a principal under subparagraph
16 (A)(iii)—

17 (i) the official to whom the principal
18 is surrendered shall detain the principal in
19 custody and issue a written certificate of
20 surrender; and

21 (ii) based on the certificate of sur-
22 render the Secretary shall immediately ex-
23 onerate the surety from any further liabil-
24 ity on the bond.

1 (8) FORM OF BOND.—Delivery bonds shall in
2 all cases state the information described in sub-
3 section (c) and be secured by a corporate surety that
4 is certified as an acceptable surety on Federal bonds
5 and whose name appears on the current Treasury
6 Department Circular 570.

7 (c) INFORMATION ON DELIVERY BONDS.—The fol-
8 lowing shall be stated on each delivery bond:

9 “(1) BREACH OF DELIVERY BOND; PROCEDURE,
10 FORFEITURE, NOTICE.—

11 “(A) If a principal violates any conditions
12 of the delivery bond, or the principal is or be-
13 comes subject to a final administrative order of
14 deportation or removal, the Secretary of Home-
15 land Security shall—

16 “(i) immediately issue a warrant for
17 the principal’s arrest and enter that arrest
18 warrant into the National Crime Informa-
19 tion Center (NCIC) computerized informa-
20 tion database;

21 “(ii) order the bonding agent and sur-
22 ety to take the principal into custody and
23 surrender the principal to any one of ten
24 designated Department of Homeland Secu-
25 rity ‘turn-in’ centers located nationwide in

1 the areas of greatest need, at any time of
2 day during 15 months after mailing the ar-
3 rest warrant and the order to the bonding
4 agent and the surety as required by clause
5 (iii), and immediately enter that order into
6 the National Crime Information Center
7 (NCIC) computerized information data-
8 base; and

9 “(iii) mail two certified copies each of
10 the arrest warrant issued pursuant to
11 clause (i) and two certified copies of the
12 final administrative order of deportation
13 and removal issued pursuant to clause (ii)
14 only to the bonding agent and surety via
15 certified mail return receipt to their last
16 known addresses.

17 “(B) Bonding agents and sureties shall im-
18 mediately notify the Secretary of Homeland Se-
19 curity of their changes of address and of their
20 changes of telephone numbers.

21 “(C) The Secretary of Homeland Security
22 shall establish, disseminate to bonding agents
23 and sureties, and maintain on a current basis
24 a secure nationwide toll-free list of telephone
25 numbers of Department of Homeland Security

1 officials, including the names of such officials,
2 that bonding agents, sureties, and their employ-
3 ees may immediately contact at any time to dis-
4 cuss and resolve any issue regarding any prin-
5 cipal or bond, to be known as ‘Points of Con-
6 tact’.

7 “(D) A bonding agent or surety shall have
8 full and complete access, free of charge, to any
9 and all information, electronic or otherwise, in
10 the care, custody, and control of the United
11 States Government or any State or local gov-
12 ernment or any subsidiary or police agency
13 thereof regarding the principal that may be
14 helpful in complying with section 2 of the
15 BOND Act of 2005 that the Secretary of
16 Homeland Security, by regulations, determines
17 may be helpful in locating or surrendering the
18 principal. Beyond the principal, a bonding
19 agent or surety shall not be required to disclose
20 any information, including an arrest warrant
21 and order, received from any governmental
22 source, any person, firm, corporation, or other
23 entity.

24 “(E) If the principal is later arrested, de-
25 tained, or otherwise located outside the United

1 States and the outlying possessions of the
2 United States (as defined in section 101(a) of
3 the Immigration and Nationality Act), the Sec-
4 retary of Homeland Security shall immediately
5 order that the surety is completely exonerated,
6 and the bond canceled. If the Secretary of
7 Homeland Security has issued an order under
8 subparagraph (A), the surety may request, by
9 written, properly filed motion, reinstatement of
10 the bond. This subparagraph shall not be con-
11 strued to prevent the Secretary of Homeland
12 Security from revoking or resetting a bond at a
13 higher amount.

14 “(F) The bonding agent or surety must—

15 “(i) during the 15 months after the
16 date of the arrest warrant and final ad-
17 ministrative order of removal or deporta-
18 tion were mailed pursuant to subparagraph
19 (A)(iii) surrender the principal one time;
20 or

21 “(ii)(I) provide reasonable evidence
22 that producing the principal was pre-
23 vented—

24 “(II) by the principal’s illness or
25 death;

1 “(III) because the principal is de-
2 tained in custody in any city, State, coun-
3 try, or any political subdivision thereof;

4 “(IV) because the principal has left
5 the United States or its outlying posses-
6 sions (as defined in section 101(a) of the
7 Immigration and Nationality Act (8 U.S.C.
8 1101(a)); or

9 “(V) because required notice was not
10 given to the bonding agent or surety; and

11 “(VI) establish by affidavit that the
12 inability to produce the principal was not
13 with the consent or connivance of the
14 bonding agent or surety.

15 “(G) If compliance with the surrender
16 order occurs—

17 “(i) more than 15 months but no
18 more than 18 months after the mailing of
19 the arrest warrant and the removal or de-
20 portation order to the bonding agent and
21 the surety required under subparagraph
22 (A)(iii), an amount equal to 25 percent of
23 the face amount of the bond shall be as-
24 sessed as a penalty against the surety;

1 “(ii) more than 18 months but no
2 more than 21 months after the mailing of
3 the arrest warrant and the removal or de-
4 portation order to the bonding agent and
5 the surety required under subparagraph
6 (A)(iii), an amount equal to 50 percent of
7 the face amount of the bond shall be as-
8 sessed as a penalty against the surety;

9 “(iii) more than 21 months but no
10 more than 24 months after the mailing of
11 the arrest warrant and the removal or de-
12 portation order to the bonding agent and
13 the surety required under subparagraph
14 (A)(iii), an amount equal to 75 percent of
15 the face amount of the bond shall be as-
16 sessed as a penalty against the surety; and

17 “(iv) 24 months or more after the
18 mailing of the arrest warrant and the re-
19 moval or deportation order to the bonding
20 agent and the surety required under sub-
21 paragraph (A)(iii), an amount equal to 100
22 percent of the face amount of the bond
23 shall be assessed as a penalty against the
24 surety.

1 “(H) If any surety surrenders any prin-
2 cipal to the Secretary of Homeland Security at
3 any time and place after the period for compli-
4 ance has passed, the Secretary of Homeland Se-
5 curity shall cause to be issued to that surety an
6 amount equal to 50 percent of the face amount
7 of the bond. If a surety owes any penalties on
8 bonds to the United States Government, the
9 amount that surety would otherwise receive
10 shall be offset by and applied as a credit
11 against the amount of penalties on bonds it
12 owes the United States, and then that surety
13 shall receive the remainder of the amount to
14 which it is entitled under this subparagraph, if
15 any.

16 “(I) All penalties assessed against a surety
17 on a bond, if any, shall be paid by the surety
18 no more than 27 months after the mailing of
19 the arrest warrant and order to the bonding
20 agent and the surety required under subpara-
21 graph (A)(iii).

22 “(2) WAIVER OF PENALTIES.—The Secretary of
23 Homeland Security may waive penalties or extend
24 the period for payment or both, if—

1 “(A) a written request is filed with the
2 Secretary of Homeland Security; and

3 “(B) the bonding agent or surety provides
4 an affidavit that diligent efforts were made to
5 effect compliance of the principal.

6 “(3) COMPLIANCE; EXONERATION; LIMITATION
7 OF LIABILITY.—

8 “(A) COMPLIANCE.—A bonding agent or
9 surety shall have the absolute right to locate,
10 apprehend, arrest, detain, and surrender any
11 principal, wherever the principal may be found,
12 who violates any of the terms and conditions of
13 the bond involved.

14 “(B) EXONERATION.—Upon satisfying any
15 of the requirements of the bond, the surety
16 shall be completely exonerated.

17 “(C) LIMITATION OF LIABILITY.—Notwith-
18 standing any other provision of law, the total li-
19 ability on any suretyship undertaking shall not
20 exceed the face amount of the bond.”.

21 (d) EFFECTIVE DATE.—The provisions of this sec-
22 tion shall take effect on the date of the enactment of this
23 Act and shall apply to delivery bonds executed before, on,
24 or after the date of the enactment of this Act.

1 **SEC. 3. RELEASE OF ALIENS IN REMOVAL PROCEEDINGS.**

2 (a) IN GENERAL.—Section 236(a)(2) of the Immi-
3 gration and Nationality Act (8 U.S.C. 1226(a)(2)) is
4 amended to read as follows:

5 “(2) subject to such reasonable regulations as
6 the Secretary of Homeland Security may prescribe,
7 shall permit agents, servants, and employees of cor-
8 porate sureties to visit in person with individuals de-
9 tained by the Secretary and, subject to section
10 241(a)(8), may release the alien on a delivery bond
11 of at least \$10,000, with security approved by the
12 Secretary, and containing conditions and procedures
13 prescribed by section 2 of the BOND Act of 2005
14 and by the Secretary, but the Secretary shall not re-
15 lease the alien on or to the alien’s own recognizance
16 unless an order of an immigration judge expressly
17 finds and states in a signed order to release the
18 alien to the alien’s own recognizance that the alien
19 is not a flight risk and is not a threat to the United
20 States; but”.

21 (b) BREACHED BOND/DETENTION FUND.—Section
22 286(r) of the Immigration and Nationality Act (8 U.S.C.
23 1356(r)) is amended in paragraph (2), by striking
24 \$8,000,000 and inserting \$80,000,000.

1 (c) EFFECTIVE DATE.—The amendment made by
2 subsection (a) and (b) shall take effect on the date of the
3 enactment of this Act.

4 **SEC. 4. DETENTION OF ALIENS DELIVERED BY BONDSMEN.**

5 (a) IN GENERAL.—Section 241(a) of the Immigra-
6 tion and Nationality Act (8 U.S.C. 1231(a)) is amended
7 by adding at the end the following:

8 “(8) EFFECT OF PRODUCTION OF ALIEN BY
9 BONDSMAN.—Notwithstanding any other provision
10 of law, the Secretary of Homeland Security shall
11 take into custody any alien subject to a final order
12 of removal, and cancel any bond previously posted
13 for the alien, if the alien is produced within the pre-
14 scribed time limit by the obligor on the bond wheth-
15 er or not the Department of Homeland Security ac-
16 cepts custody of the alien. The obligor on the bond
17 shall be deemed to have substantially performed all
18 conditions imposed by the terms of the bond, and
19 shall be released from liability on the bond, if the
20 alien is produced within such time limit.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect on the date of the enact-
23 ment of this Act and shall apply to all immigration bonds
24 posted before, on, or after such date.

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