

109TH CONGRESS
1ST SESSION

S. 2049

To improve the security of the United States borders and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2005

Mr. DOMENICI (for himself, Mr. DORGAN, and Mr. TALENT) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve the security of the United States borders 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 “Border Security and
5 Modernization Act of 2005”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) DEPARTMENT.—Except as otherwise pro-
9 vided, the term “Department” means the Depart-
10 ment of Homeland Security.

1 (2) SECRETARY.—Except as otherwise provided,
2 the term “Secretary” means the Secretary of Home-
3 land Security.

4 (3) STATE.—Except as otherwise provided, the
5 term “State” has the meaning given that term in
6 section 101(a)(36) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1101 (a)(36)).

8 **SEC. 3. CONSTRUCTION.**

9 Nothing in this Act may be construed to require law
10 enforcement personnel of a State or political subdivision
11 of a State to—

12 (1) report the identity of a victim of, or a wit-
13 ness to, a criminal offense to the Secretary for immi-
14 gration enforcement purposes;

15 (2) arrest such victim or witness for a violation
16 of the immigration laws of the United States; or

17 (3) enforce the immigration laws of the United
18 States.

19 **TITLE I—BORDER PROTECTION**
20 **Subtitle A—Personnel and**
21 **Training**

22 **SEC. 101. PERSONNEL OF THE DEPARTMENT OF HOME-**
23 **LAND SECURITY.**

24 (a) IN GENERAL.—

1 (1) CUSTOMS AND BORDER PROTECTION OFFI-
2 CERS.—During each of the fiscal years 2007
3 through 2011, the Secretary shall, subject to the
4 availability of appropriations for such purpose, in-
5 crease by not less than 1,000 the number of posi-
6 tions for full-time active duty officers of the Bureau
7 of Customs and Border Protection of the Depart-
8 ment for such fiscal year.

9 (2) IMMIGRATION AND CUSTOMS ENFORCEMENT
10 INSPECTORS.—Section 5203 of the Intelligence Re-
11 form and Terrorism Prevention Act of 2004 (Public
12 Law 108–458; 118 Stat. 3734) is amended by strik-
13 ing “800” and inserting “1000”.

14 (3) INVESTIGATIVE PERSONNEL.—In addition
15 to the positions authorized under section 5203 of the
16 Intelligence Reform and Terrorism Prevention Act
17 of 2004, as amended by paragraph (2), during each
18 of the fiscal years 2007 through 2011, the Secretary
19 shall, subject to the availability of appropriations for
20 such purpose, increase by not less than 100 the
21 number of positions for investigative personnel with-
22 in the Department to investigate alien smuggling
23 and immigration status violations for such fiscal
24 year.

1 (4) LEGAL PERSONNEL.—During each of the
2 fiscal years 2007 through 2011, the Secretary shall,
3 subject to the availability of appropriations for such
4 purpose, increase by not less than 100 the number
5 of positions for attorneys in the Office of General
6 Counsel of the Department who represent the De-
7 partment in immigration matters for such fiscal
8 year.

9 (5) WAIVER OF FTE LIMITATION.—The Sec-
10 retary is authorized to waive any limitation on the
11 number of full-time equivalent personnel employed
12 by the Department to fulfill the requirements of
13 paragraph (1) and the amendment made by para-
14 graph (2).

15 (b) TRAINING.—The Secretary shall provide appro-
16 priate training for the agents, officers, inspectors, and as-
17 sociated support staff of the Department on an ongoing
18 basis to utilize new technologies and techniques and to en-
19 sure that the proficiency levels of such personnel are ac-
20 ceptable to protect the international borders of the United
21 States.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Secretary for
24 each of fiscal years 2007 through 2011, such sums as may
25 be necessary to carry out this section.

1 **SEC. 102. PERSONNEL OF THE DEPARTMENT OF JUSTICE**
2 **AND OTHER ATTORNEYS.**

3 (a) LITIGATION ATTORNEYS.—During each of the
4 fiscal years 2007 through 2011, the Attorney General
5 shall, subject to the availability of appropriations for such
6 purpose, increase by not less than 50 the number of posi-
7 tions for attorneys in the Office of Immigration Litigation
8 of the Department of Justice for such fiscal year.

9 (b) UNITED STATES ATTORNEYS.—During each of
10 the fiscal years 2007 through 2011, the Attorney General
11 shall, subject to the availability of appropriations for such
12 purpose, increase by not less than 50 the number of
13 United States Attorneys to litigate immigration cases in
14 the Federal courts for such fiscal year.

15 (c) UNITED STATES MARSHALS.—During each of the
16 fiscal years 2007 through 2011, the Attorney General
17 shall, subject to the availability of appropriations for such
18 purpose, increase by not less than 50 the number of Dep-
19 uty United States Marshals to investigate criminal immi-
20 gration matters.

21 (d) IMMIGRATION JUDGES.—During each of fiscal
22 years 2007 through 2011, the Attorney General shall, sub-
23 ject to the availability of appropriations for such purpose,
24 increase by not less than 100 the number of immigration
25 judges for such fiscal year.

1 (e) DEFENSE ATTORNEYS.—During each of the fiscal
 2 years 2007 through 2011, the Director of the Administra-
 3 tive Office of the United States Courts shall, subject to
 4 the availability of appropriations for such purpose, in-
 5 crease by not less than 100 the number of attorneys in
 6 the Federal Defenders Program for such fiscal year.

7 (f) AUTHORIZATION OF APPROPRIATIONS.—There
 8 are authorized to be appropriated to the Attorney General
 9 for each of fiscal years 2007 through 2011 such sums as
 10 may be necessary to carry out this section, including the
 11 hiring of necessary support staff.

12 **SEC. 103. USE OF THE NATIONAL GUARD FOR BORDER PRO-**
 13 **TECTION ACTIVITIES.**

14 (a) IN GENERAL.—Section 112 of title 32, United
 15 States Code, is amended—

16 (1) by striking “drug interdiction and counter-
 17 drug activities” each place it appears and inserting
 18 “drug interdiction, counter drug, and border activi-
 19 ties”; and

20 (2) in subparagraphs (A) and (B) of subsection
 21 (e)(1), by striking “drug interdiction or counter-
 22 drug activities” each place it appears and inserting
 23 “drug interdiction, counter-drug, or border activi-
 24 ties”.

1 (b) DEFINITION OF DRUG INTERDICTION, COUNTER-
2 DRUG, AND BORDER ACTIVITIES.—Subsection (h)(1) of
3 such section is amended to read as follows:

4 “(1) The term ‘drug interdiction, counter-drug,
5 and border activities’, with respect to the National
6 Guard of a State, means the use of National Guard
7 personnel in—

8 “(A) drug interdiction and counter-drug
9 law enforcement activities, including drug de-
10 mand reduction activities authorized by the law
11 of the State and requested by the Governor of
12 the State; or

13 “(B) activities conducted in cooperation
14 with personnel of the Department of Homeland
15 Security to secure the international borders of
16 the United States, including constructing roads,
17 fencing, and vehicle barriers, assisting in search
18 and rescue operations conducted by personnel
19 of the Department of Homeland Security, and
20 monitoring international borders, and excluding
21 any law enforcement activities conducted by
22 personnel of the Department of Homeland Se-
23 curity.”.

1 **SEC. 104. DEPUTY BORDER PATROL AGENT PROGRAM.**

2 (a) **AUTHORITY TO ESTABLISH.**—The Secretary may
3 establish a Deputy Border Patrol Agent Program (in this
4 section referred to as the “Program”) in the Office of Bor-
5 der Patrol.

6 (b) **PURPOSE.**—The purpose of the Program shall be
7 to establish a volunteer force of trained, retired law en-
8 forcement officers to assist the Secretary in carrying out
9 the mission of the Department to achieve operational con-
10 trol of the borders of the United States.

11 (c) **QUALIFICATIONS.**—An individual may participate
12 as a volunteer in the Program only if such individual is
13 a retired law enforcement officer, who is or was previously
14 licensed by a Federal or State authority to enforce Fed-
15 eral, State, or local penal offenses.

16 (d) **UTILIZATION OF VOLUNTEERS.**—The Secretary
17 may utilize an individual who participates as a volunteer
18 in the Program to provide such border security functions
19 that the Secretary determines are appropriate.

20 (e) **TRAINING AND OTHER REQUIREMENTS.**—The
21 Secretary may require an individual who participates as
22 a volunteer in the Program to participate in such training,
23 testing, and other requirements that the Secretary deter-
24 mines are appropriate.

25 (f) **SWEARING IN.**—Upon completion of any training,
26 testing, or other procedures required by the Secretary, an

1 individual who participates in the Program shall be sworn
2 in and assigned to the Office of Border Patrol.

3 (g) ASSIGNMENT OF VOLUNTEERS.—The Secretary
4 may assign individuals participating in the Program to
5 provide patrol services at facilities and locations along the
6 international borders of the United States.

7 (h) OVERSIGHT OF AGENTS.—The Secretary, acting
8 through the Commissioner of the Bureau of Customs and
9 Border Protection of the Department, shall have oversight
10 of all individuals participating in the Program. Such vol-
11 unteers shall serve at the pleasure of the Secretary, acting
12 through the Commissioner of the Bureau of Customs and
13 Border Protection.

14 (i) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated \$10,000,000 for each
16 of the fiscal years 2007 through 2011 to carry out this
17 section.

18 **SEC. 105. DOCUMENT FRAUD DETECTION.**

19 (a) TRAINING.—The Secretary shall provide appro-
20 priate officers of the Bureau of Customs and Border Pro-
21 tection of the Department with training in identifying and
22 detecting fraudulent travel documents. Such training shall
23 be developed in consultation with the Forensic Document
24 Laboratory of the Bureau of Immigration and Customs
25 Enforcement of such Department.

1 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-
 2 retary shall provide all officers of the Bureau of Customs
 3 and Border Protection with access to the Forensic Docu-
 4 ment Laboratory.

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

9 **Subtitle B—Infrastructure**

10 **SEC. 111. MODERNIZATION OF BORDER INFRASTRUCTURE.**

11 (a) DEFINITIONS.—In this section:

12 (1) COMMISSIONER.—The term “Commis-
 13 sioner” means the Commissioner of the Bureau of
 14 Customs and Border Protection of the Department.

15 (2) MAQUILADORA.—The term “maquiladora”
 16 means an entity located in Mexico that assembles
 17 and produces goods from imported parts for export
 18 to the United States.

19 (3) NORTHERN BORDER.—The term “northern
 20 border” means the international border between the
 21 United States and Canada.

22 (4) SOUTHERN BORDER.—The term “southern
 23 border” means the international border between the
 24 United States and Mexico.

1 (b) BORDER TECHNOLOGIES, ASSETS, AND CON-
2 STRUCTION.—

3 (1) ACQUISITION.—The Secretary shall procure
4 technologies necessary to support the mission of the
5 Department to achieve operational control of the
6 international borders of the United States. In deter-
7 mining what technologies to procure, the Secretary
8 shall consult with the Secretary of Defense and the
9 head of the National Laboratories and Technology
10 Centers of the Department of Energy.

11 (2) CONSTRUCTION OF BORDER CONTROL FA-
12 CILITIES.—The Secretary shall construct roads, ac-
13 quire vehicle barriers, and construct fencing nec-
14 essary to support such mission.

15 (3) ASSETS.—The Secretary shall acquire un-
16 manned aerial vehicles, police-type vehicles, heli-
17 copters, all terrain vehicles, interoperable commu-
18 nications equipment, firearms, sensors, cameras,
19 lighting and such other equipment and assets as
20 may be necessary to support such mission.

21 (4) FACILITIES.—The Secretary shall construct
22 such facilities as may be necessary to support the
23 number of employees of the Department who are
24 hired pursuant to any provision of this Act or of
25 subtitle B of title V of the Intelligence Reform and

1 Terrorism Prevention Act of 2004 (Public Law 108–
2 458; 118 Stat. 3733).

3 (5) CHECKPOINTS.—The Secretary may con-
4 struct and maintain temporary or permanent check-
5 points on roadways located in close proximity to the
6 northern border or the southern border to support
7 such mission.

8 (c) PORT OF ENTRY INFRASTRUCTURE ASSESSMENT
9 STUDY.—

10 (1) REQUIREMENT TO UPDATE.—In order to
11 carry out the mission of the Department to achieve
12 operational control of the international borders of
13 the United States, not later than January 31 of
14 each year, the Administrator of General Services
15 shall update the Port of Entry Infrastructure As-
16 sessment Study prepared by the United States Cus-
17 toms Service, the Immigration and Naturalization
18 Service, and the General Services Administration in
19 accordance with the matter relating to the ports of
20 entry infrastructure assessment that is set out in the
21 joint explanatory statement in the conference report
22 accompanying H.R. 2490 of the 106th Congress, 1st
23 session (House of Representatives Rep. No. 106–
24 319, page 67) and submit such updated study to
25 Congress.

1 (2) CONSULTATION.—In preparing the updated
 2 studies required by paragraph (1), the Administrator
 3 of General Services shall consult with the Director
 4 of the Office of Management and Budget, the Sec-
 5 retary, and the Commissioner.

6 (3) CONTENT.—Each updated study required
 7 by paragraph (1) shall—

8 (A) identify port of entry infrastructure
 9 and technology improvement projects that
 10 would enhance border security and facilitate the
 11 flow of legitimate commerce if implemented;

12 (B) include the projects identified in the
 13 National Land Border Security Plan required
 14 by subsection (d); and

15 (C) prioritize each project described in
 16 subparagraph (A) or (B) based on the likeli-
 17 hood that the project will—

18 (i) fulfill immediate security require-
 19 ments; and

20 (ii) facilitate trade across the borders
 21 of the United States.

22 (4) PROJECT IMPLEMENTATION.—

23 (A) IN GENERAL.—The Commissioner
 24 shall implement the infrastructure and tech-
 25 nology improvement projects described in each

1 updated study required by paragraph (1) in the
2 order of priority assigned to each project under
3 paragraph (3)(C).

4 (B) EXCEPTION.—The Commissioner may
5 diverge from the priority order if the Commis-
6 sioner determines that significantly changed cir-
7 cumstances, such as immediate security needs
8 or changes in infrastructure in Mexico or Can-
9 ada, compellingly alter the need for a project in
10 the United States.

11 (d) NATIONAL LAND BORDER SECURITY PLAN.—

12 (1) REQUIREMENT FOR PLAN.—In order to
13 carry out the mission of the Department to achieve
14 operational control of the international borders of
15 the United States, not later than January 31 of
16 each year, the Secretary shall prepare a National
17 Land Border Security Plan and submit such plan to
18 Congress.

19 (2) CONSULTATION.—In preparing the plan re-
20 quired by paragraph (1), the Secretary shall consult
21 with the Under Secretary for Information Analysis
22 and Infrastructure Protection and the Federal,
23 State, and local law enforcement agencies and pri-
24 vate entities that are involved in international trade
25 across the northern border or the southern border.

1 (3) VULNERABILITY ASSESSMENT.—

2 (A) IN GENERAL.—The plan required by
3 paragraph (1) shall include a vulnerability as-
4 sessment of each port of entry located on the
5 northern border or the southern border.

6 (B) PORT SECURITY COORDINATORS.—The
7 Secretary may establish 1 or more port security
8 coordinators at each port of entry located on
9 the northern border or the southern border—

10 (i) to assist in conducting a vulner-
11 ability assessment at such port; and

12 (ii) to provide other assistance with
13 the preparation of the plan required by
14 paragraph (1).

15 (e) EXPANSION OF TRADE SECURITY PROGRAMS.—

16 (1) CUSTOMS-TRADE PARTNERSHIP AGAINST
17 TERRORISM.—

18 (A) IN GENERAL.—Not later than 180
19 days after the date of enactment of this Act,
20 the Commissioner, in consultation with the Sec-
21 retary, shall develop a plan to expand the size
22 and scope (including personnel needs) of the
23 Customs-Trade Partnership Against Terrorism
24 programs along the northern border and south-
25 ern border, including—

- 1 (i) the Business Anti-Smuggling Coa-
2 lition;
3 (ii) the Carrier Initiative Program;
4 (iii) the Americas Counter Smuggling
5 Initiative;
6 (iv) the Free and Secure Trade Initia-
7 tive; and
8 (v) other Industry Partnership Pro-
9 grams administered by the Commissioner.

10 (2) MAQUILADORA DEMONSTRATION PRO-
11 GRAM.—Not later than 180 days after the date of
12 enactment of this Act, the Commissioner shall estab-
13 lish a demonstration program to develop a coopera-
14 tive trade security system with maquiladoras to im-
15 prove supply chain security.

16 (f) PORT OF ENTRY TECHNOLOGY DEMONSTRATION
17 PROGRAM.—

18 (1) ESTABLISHMENT.—In order to carry out
19 the mission of the Department to achieve operational
20 control of the international borders of the United
21 States, the Secretary shall carry out a technology
22 demonstration program to test and evaluate new
23 port of entry technologies, refine port of entry tech-
24 nologies and operational concepts, and train per-
25 sonnel under realistic conditions. The Commissioner

1 of the Bureau of Customs and Border Protection
2 shall oversee the program in consultation and co-
3 operation with other divisions of the Department.

4 (2) TECHNOLOGY AND FACILITIES.—

5 (A) TECHNOLOGY TESTED.—Under the
6 demonstration program, the Secretary shall test
7 technologies that enhance port of entry oper-
8 ations, including those related to inspections,
9 communications, port tracking, identification of
10 persons and cargo, sensory devices, personal de-
11 tection, decision support, and the detection and
12 identification of weapons of mass destruction.

13 (B) FACILITIES DEVELOPED.—At a dem-
14 onstration site selected pursuant to paragraph
15 (3)(B), the Secretary shall develop facilities to
16 provide appropriate training to law enforcement
17 personnel who have responsibility for border se-
18 curity, including cross-training among agencies,
19 advanced law enforcement training, and equip-
20 ment orientation.

21 (3) DEMONSTRATION SITES.—

22 (A) NUMBER.—The Secretary shall carry
23 out the demonstration program at not less than
24 3 sites and not more than 5 sites.

1 (B) SELECTION CRITERIA.—To ensure
2 that at least 1 of the facilities selected as a port
3 of entry demonstration site for the demonstra-
4 tion program has the most up-to-date design,
5 contains sufficient space to conduct the dem-
6 onstration program, has a traffic volume low
7 enough to easily incorporate new technologies
8 without interrupting normal processing activity,
9 and can efficiently carry out demonstration and
10 port of entry operations, at least 1 port of entry
11 selected as a demonstration site shall—

12 (i) have been established not more
13 than 15 years before the date of enactment
14 of this Act;

15 (ii) consist of not less than 65 acres,
16 with the possibility of expansion onto not
17 less than 25 adjacent acres; and

18 (iii) have serviced an average of not
19 more than 50,000 vehicles per month in
20 the 12 full months preceding the date of
21 enactment of this Act.

22 (4) RELATIONSHIP WITH OTHER AGENCIES.—

23 The Secretary shall permit personnel from an appro-
24 priate Federal or State agency to utilize a dem-
25 onstration site described in paragraph (3) to test

1 technologies that enhance port of entry operations,
2 including those related to inspections, communica-
3 tions, port tracking, identification of persons and
4 cargo, sensory devices, personal detection, decision
5 support, and the detection and identification of
6 weapons of mass destruction.

7 (5) REPORT.—

8 (A) REQUIREMENT.—Not later than 1
9 year after the date of enactment of this Act,
10 and annually thereafter, the Secretary shall
11 submit to Congress a report on the activities
12 carried out at each demonstration site under
13 the technology demonstration program estab-
14 lished under this subsection.

15 (B) CONTENT.—Each report submitted
16 pursuant to subparagraph (A) shall include an
17 assessment by the Secretary of the feasibility of
18 incorporating any demonstrated technology for
19 use throughout the Bureau of Customs and
20 Border Protection.

21 (g) BORDER PATROL TECHNOLOGY DEMONSTRA-
22 TION PROGRAM.—

23 (1) ESTABLISHMENT.—In order to carry out
24 the mission of the Department to achieve operational
25 control of the international borders of the United

1 States, the Secretary shall carry out a technology
2 demonstration program to test and evaluate new
3 border security technologies and train personnel
4 under realistic conditions.

5 (2) TECHNOLOGY AND FACILITIES.—

6 (A) TECHNOLOGY TESTED.—Under the
7 demonstration program, the Secretary shall test
8 technologies that enhance border security, in-
9 cluding those related to communications, sen-
10 sory devices, personal detection, and decision
11 support.

12 (B) FACILITIES DEVELOPMENT.—At a site
13 where border patrol agents participate in law
14 enforcement training, the Secretary shall de-
15 velop facilities to carry out the demonstration
16 program, including providing appropriate train-
17 ing to law enforcement personnel who have re-
18 sponsibility for border security, including cross-
19 training among agencies, advanced law enforce-
20 ment training, and equipment orientation.

21 (3) RELATIONSHIP WITH OTHER AGENCIES.—

22 The Secretary shall permit personnel from an appro-
23 priate Federal or State agency to utilize the dem-
24 onstration site described in this subsection to test
25 technologies that enhance border security, including

1 those related to communications, sensory devices,
2 personal detection, and decision support.

3 (4) REPORT.—

4 (A) REQUIREMENT.—Not later than 1
5 year after the date of enactment of this Act,
6 and annually thereafter, the Secretary shall
7 submit to Congress a report on the activities
8 carried out at the demonstration site under the
9 technology demonstration program established
10 under this subsection.

11 (B) CONTENT.—Each report submitted
12 pursuant to subparagraph (A) shall include an
13 assessment by the Secretary of the feasibility of
14 incorporating any demonstrated technology for
15 use throughout the Department.

16 (h) INTERNATIONAL AGREEMENTS.—Funds author-
17 ized in this Act may be used for the implementation of
18 projects described in the Declaration on Embracing Tech-
19 nology and Cooperation to Promote the Secure and Effi-
20 cient Flow of People and Commerce across our Shared
21 Border between the United States and Mexico, agreed to
22 March 22, 2002, Monterrey, Mexico (commonly known as
23 the Border Partnership Action Plan) or the Smart Border
24 Declaration between the United States and Canada,

1 agreed to December 12, 2001, Ottawa, Canada that are
2 consistent with the provisions of this Act.

3 (i) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated the following:

5 (1) For each of the fiscal years 2007 through
6 2011, \$1,000,000,000 to carry out subsection (b).

7 (2) For each of the fiscal years 2007 through
8 2011, such sums as may be necessary to carry out
9 paragraph (1) of subsection (c).

10 (3) For each of the fiscal years 2007 through
11 2011, \$100,000,000 to carry out paragraph (4) of
12 subsection (c).

13 (4) For each of the fiscal years 2007 through
14 2011, such sums as may be necessary to carry out
15 subsection (d).

16 (5)(A) For fiscal year 2007, \$30,000,000 to
17 carry out paragraph (1) of subsection (e); and

18 (B) For each of the fiscal years 2008 through
19 2011, such sums as may be necessary to carry out
20 such paragraph.

21 (6)(A) For fiscal year 2007, \$5,000,000 to
22 carry out paragraph (2) of subsection (e); and

23 (B) For each of the fiscal years 2008 through
24 2011, such sums as may be necessary to carry out
25 such paragraph.

1 (7)(A) For fiscal year 2007, \$50,000,000 to
 2 carry out subsection (f), and not more than
 3 \$10,000,000 of such amount may be expended for
 4 technology demonstration program activities at any
 5 1 port of entry demonstration site during such fiscal
 6 year.

7 (B) For each of the fiscal years 2008 through
 8 2011, such sums as may be necessary to carry out
 9 subsection (f), and not more than \$10,000,000 may
 10 be expended for technology demonstration program
 11 activities at any 1 port of entry demonstration site
 12 in any such fiscal year.

13 (8) For each of the fiscal years 2007 through
 14 2011, \$10,000,000 to carry out subsection (g).

15 **SEC. 112. DETENTION SPACE AND REMOVAL CAPACITY.**

16 Section 5204(a) of the Intelligence Reform and Ter-
 17 rorism Protection Act of 2004 (Public Law 108-458; 118
 18 Stat. 3734) is amended by striking “8,000” and inserting
 19 “15,000”.

20 **SEC. 113. INCREASE OF FEDERAL DETENTION SPACE AND**
 21 **THE UTILIZATION OF FEDERAL FACILITIES**
 22 **IDENTIFIED FOR CLOSURE.**

23 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
 24 FACILITIES.—

1 (1) IN GENERAL.—The Secretary shall con-
2 struct or acquire additional detention facilities in the
3 United States.

4 (2) DETERMINATION OF LOCATION.—The loca-
5 tion of any detention facility built or acquired in ac-
6 cordance with this subsection shall be determined by
7 the Deputy Assistant Director of the Office of De-
8 tention and Removal Operations within the Bureau
9 of Immigration and Customs Enforcement of the
10 Department.

11 (3) USE OF FEDERAL FACILITIES IDENTIFIED
12 FOR CLOSURE.—In acquiring detention facilities
13 under this subsection, the Secretary shall, to the
14 maximum extent practical, request the transfer of
15 appropriate portions of military installations ap-
16 proved for closure or realignment and any other
17 Federal facilities identified for closure.

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

21 **SEC. 114. ALTERNATIVES TO DETENTION.**

22 The Secretary shall implement demonstration pro-
23 grams in each State located along the international border
24 between the United States and Canada or along the inter-
25 national border between the United States and Mexico to

1 study the effectiveness of alternatives to the detention of
2 aliens, including electronic monitoring devices and inten-
3 sive supervision programs, that ensure that alien’s appear-
4 ance at court and compliance with removal orders.

5 **Subtitle C—Grants for States**

6 **SEC. 121. BORDER LAW ENFORCEMENT GRANTS.**

7 (a) LAW ENFORCEMENT AGENCY DEFINED.—In this
8 section, the term “law enforcement agency” means a Trib-
9 al, State, or local law enforcement agency.

10 (b) AUTHORITY TO AWARD GRANTS.—The Secretary
11 is authorized to award grants to an eligible law enforce-
12 ment agency to provide assistance with costs associated
13 with State border security efforts, including efforts to
14 combat criminal activity that occurs in the jurisdiction of
15 such agency by virtue of such agency’s proximity to an
16 international border of the United States.

17 (c) CRITERIA.—The Secretary shall award grants
18 under subsection (b) on a competitive basis, considering
19 criteria including—

- 20 (1) the law enforcement agency’s distance from
21 the international border, with communities closer to
22 the border given priority because of their proximity;
23 (2) population, with smaller communities given
24 priority;

1 (3) the criminal caseload of the law enforce-
2 ment agency, based upon the number of felony
3 criminal cases filed per judge in the United States
4 district court located in the district that the law en-
5 forcement agency has jurisdiction over, with priority
6 given to those with higher caseloads;

7 (4) the percentage of undocumented aliens re-
8 siding in the law enforcement agency's State com-
9 pared to the total number of such aliens residing in
10 all States, based on the most recent decennial cen-
11 sus; and

12 (5) the percentage of undocumented alien ap-
13 prehensions in the law enforcement agency's State in
14 that fiscal year compared to the total of such appre-
15 hensions for all such States for that fiscal year.

16 (d) USE OF FUNDS.—Grants awarded under sub-
17 section (b) shall be used to provide additional resources
18 for a law enforcement agency to address criminal activity
19 occurring near an international border of the United
20 States, including—

21 (1) law enforcement technologies;

22 (2) equipment such as police-type vehicles, all
23 terrain vehicles, firearms, sensors, cameras, and
24 lighting; and

1 (3) such other resources as are available to as-
2 sist the law enforcement agency.

3 (e) APPLICATION.—The head of a law enforcement
4 agency seeking to apply for a grant under this section
5 shall submit an application to the Secretary at such time,
6 in such manner, and with such information as the Sec-
7 retary may require.

8 (f) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated \$500,000,000 for each
10 of the fiscal years 2007 through 2011 to carry out this
11 section.

12 **TITLE II—IMMIGRATION** 13 **PROVISIONS**

14 **SEC. 201. EXPEDITED REMOVAL BETWEEN PORTS OF** 15 **ENTRY.**

16 (a) IN GENERAL.—Section 235 of the Immigration
17 and Nationality Act (8 U.S.C. 1225) is amended—

18 (1) in subsection (b)(1)(A)(i), by striking “the
19 officer” and inserting “a supervisory officer”; and

20 (2) in subsection (c), by adding at the end the
21 following:

22 “(4) EXPANSION.—The Secretary of Homeland
23 Security shall make the expedited removal proce-
24 dures under this subsection available in all border

1 patrol sectors on the southern border of the United
 2 States as soon as operationally possible.

3 “(5) TRAINING.—The Secretary of Homeland
 4 Security shall provide employees of the Department
 5 of Homeland Security with comprehensive training
 6 on the procedures authorized under this sub-
 7 section.”.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 9 are authorized to be appropriated \$20,000,000 for each
 10 of fiscal years 2007 through 2011 to carry out the amend-
 11 ments made by this section.

12 **SEC. 202. CANCELLATION OF VISAS.**

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

15 (1) in paragraph (1), by inserting “and any
 16 other nonimmigrant visa issued by the United States
 17 that is in the possession of the alien” after “such
 18 visa”; and

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

1 **SEC. 203. BIOMETRIC ENTRY-EXIT SYSTEM.**

2 (a) GROUNDS OF INADMISSIBILITY.—Section 212 of
3 the Immigration and Nationality Act (8 U.S.C. 1182) is
4 amended—

5 (1) in subsection (a)(7), by adding at the end
6 the following:

7 “(C) WITHHOLDERS OF BIOMETRIC DATA.—
8 Any alien who fails to comply with a lawful request
9 for biometric data is inadmissible.”; and

10 (2) in subsection (d), by inserting after para-
11 graph (1) the following:

12 “(2) The Secretary of Homeland Security may
13 waive the application of subparagraph (C) of sub-
14 section (a)(7) for an individual alien or a class of
15 aliens, at the discretion of the Secretary.”.

16 (b) COLLECTION OF BIOMETRIC DATA FROM ALIENS
17 DEPARTING THE UNITED STATES.—Section 215 of the
18 Immigration and Nationality Act (8 U.S.C. 1185) is
19 amended—

20 (1) by redesignating subsection (c) as sub-
21 section (g); and

22 (2) by inserting after subsection (b) the fol-
23 lowing:

24 “(c) The Secretary of Homeland Security is author-
25 ized to require aliens departing the United States to pro-

1 vide biometric data and other information relating to their
 2 immigration status.”.

3 (c) INSPECTION OF APPLICANTS FOR ADMISSION.—
 4 Section 235(d) of the Immigration and Nationality Act (8
 5 U.S.C. 1185(d)) is amended by adding at the end the fol-
 6 lowing:

7 “(5) AUTHORITY TO COLLECT BIOMETRIC
 8 DATA.—In conducting inspections under subsection
 9 (b), immigration officers are authorized to collect bi-
 10 ometric data from—

11 “(A) any applicant for admission or alien
 12 seeking to transit through the United States; or

13 “(B) any lawful permanent resident who
 14 is—

15 “(i) entering the United States; and

16 “(ii) not regarded as seeking an ad-
 17 mission into the United States pursuant to
 18 section 101(a)(13)(C).”.

19 (d) COLLECTION OF BIOMETRIC DATA FROM ALIEN
 20 CREWMAN.—Section 252 of the Immigration and Nation-
 21 ality Act (8 U.S.C. 1282) is amended by inserting “Immi-
 22 gration officers are authorized to collect biometric data
 23 from any alien crewman seeking permission to land tempo-
 24 rarily in the United States.” after “this title”.

1 (e) IMPLEMENTATION.—Section 7208 of the 9/11
 2 Commission Implementation Act of 2004 (8 U.S.C.
 3 1365b) is amended in subsection (l)—

4 (1) by striking “There are authorized” and in-
 5 serting the following:

6 “(1) IN GENERAL.—There are authorized”; and

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

8 “(2) IMPLEMENTATION AT ALL LAND BORDER
 9 PORTS OF ENTRY.—There are authorized to be ap-
 10 propriated such sums as may be necessary for each
 11 of fiscal years 2008, 2009, and 2010 to implement
 12 the automated biometric entry and exit data system
 13 at all land border ports of entry.”.

14 **SEC. 204. REIMBURSEMENT FOR STATES.**

15 (a) INCARCERATION COSTS.—Section 241(i)(5) of
 16 the Immigration and Nationality Act (8 U.S.C.
 17 1231(i)(5)) is amended to read as follows:

18 “(5) There are authorized to be appropriated to
 19 carry out this subsection—

20 “(A) \$750,000,000 for fiscal year 2007;

21 “(B) \$850,000,000 for fiscal year 2008;

22 and

23 “(C) \$950,000,000 for each of the fiscal
 24 years 2009 through 2011.”.

1 (b) REIMBURSEMENT FOR COSTS ASSOCIATED WITH
 2 PROCESSING CRIMINAL ILLEGAL ALIENS.—

3 (1) IN GENERAL.—The Secretary shall reim-
 4 burse States and units of local government for costs
 5 associated with processing illegal aliens through the
 6 criminal justice system, including—

7 (A) indigent defense;

8 (B) criminal prosecution;

9 (C) autopsies;

10 (D) translators and interpreters; and

11 (E) courts costs.

12 (2) AUTHORIZATION OF APPROPRIATIONS.—

13 There are authorized to be appropriated
 14 \$500,000,000 for each of the fiscal years 2007
 15 through 2011 to carry out paragraph (1).

16 **SEC. 205. COMPLETION OF BACKGROUND AND SECURITY**
 17 **CHECKS.**

18 Section 103 of the Immigration and Nationality Act
 19 (8 U.S.C. 1103) is amended by adding at the end the fol-
 20 lowing:

21 “(i) Notwithstanding any other provision of law, the
 22 Secretary of Homeland Security, the Attorney General, or
 23 any court may not—

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

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

7 “(3) issue any documentation evidencing or re-
 8 lated to such grant by the Attorney General, the
 9 Secretary, or any court,
 10 until such background and security checks as the Sec-
 11 retary may in his discretion require have been completed
 12 to the satisfaction of the Secretary.”.

13 **SEC. 206. RELEASE OF ALIENS FROM NONCONTIGUOUS**
 14 **COUNTRIES.**

15 Section 236(a)(2) of the Immigration and Nationality
 16 Act (8 U.S.C. 1226(a)(2)) is amended to read as follows:

17 “(2) may release the alien on bond of not less
 18 than \$5,000 with security approved by, and con-
 19 taining conditions prescribed by, the Secretary of
 20 Homeland Security; but”.

21 **SEC. 207. COUNTRIES THAT DO NOT ACCEPT RETURN OF**
 22 **NATIONALS.**

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

1 (1) by striking “On being notified” and insert-
 2 ing the following:

3 “(1) IN GENERAL.—Upon notification”; and

4 (2) by striking “Attorney General” each place
 5 it appears and inserting “Secretary of Homeland Se-
 6 curity”; and

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

8 “(2) DENIAL OF ADMISSION.—The Secretary of
 9 Homeland Security, after making a determination
 10 that the government of a foreign country has denied
 11 or unreasonably delayed accepting an alien who is a
 12 citizen, subject, national, or resident of that country
 13 after the alien has been ordered removed, and after
 14 consultation with the Secretary of State, may deny
 15 admission to any citizen, subject, national or resi-
 16 dent of that country until the country accepts the
 17 alien that was ordered removed.”.

18 **TITLE III—PENALTIES**

19 **SEC. 301. INCREASED CRIMINAL PENALTIES FOR ALIEN** 20 **SMUGGLING.**

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

23 (1) in paragraph (1)(B)—

24 (A) in clause (i), by striking “10 years”
 25 and inserting “15 years”;

1 (B) in clause (ii), by striking “5 years”
2 and inserting “10 years”; and

3 (C) in clause (iii), by striking “20 years”
4 and inserting “40 years”;

5 (2) in paragraph (2)—

6 (A) in subparagraph (A), by striking “one
7 year, or both; or” and inserting “3 years, or
8 both”;

9 (B) in subparagraph (B)—

10 (i) in clause (i), by adding at the end
11 the following: “be fined under title 18,
12 United States Code, and imprisoned not
13 less than 5 years nor more than 25
14 years;”;

15 (ii) in clause (ii), by striking “or” at
16 the end and inserting the following: “be
17 fined under title 18, United States Code,
18 and imprisoned not less than 3 years nor
19 more than 20 years; or”; and

20 (iii) in clause (iii), by adding at the
21 end the following: “be fined under title 18,
22 United States Code, and imprisoned not
23 more than 15 years; or”; and

24 (C) by striking the matter following clause
25 (iii) and inserting the following:

1 “(C) in the case of a third or subsequent
 2 offense described in subparagraph (B) and for
 3 any other violation, shall be fined under title
 4 18, United States Code, and imprisoned not
 5 less than 5 years nor more than 15 years.”;

6 (3) in paragraph (3)(A), by striking “5 years”
 7 and inserting “10 years”; and

8 (4) in paragraph (4), by striking “10 years”
 9 and inserting “20 years”.

10 **SEC. 302. INCREASED CRIMINAL PENALTIES FOR DOCU-**
 11 **MENT FRAUD.**

12 Section 1546 of title 18, United States Code, is
 13 amended—

14 (1) in subsection (a)—

15 (A) by striking “not more than 25 years”
 16 and inserting “not less than 25 years”;

17 (B) by inserting “and if the terrorism of-
 18 fense resulted in the death of any person, shall
 19 be punished by death or imprisoned for life,”
 20 after “section 2331 of this title)),”;

21 (C) by striking “20 years” and inserting
 22 “imprisoned not more than 40 years”;

23 (D) by striking “10 years” and inserting
 24 “imprisoned not more than 20 years”; and

1 (E) by striking “15 years” and inserting
 2 “imprisoned not more than 30 years”; and
 3 (2) in subsection (b), by striking “5 years” and
 4 inserting “10 years”.

5 **SEC. 303. INCREASED CRIMINAL PENALTIES FOR CERTAIN**
 6 **CRIMES.**

7 (a) IN GENERAL.—Title 18, United States Code, is
 8 amended by inserting after chapter 51 the following:

9 **“CHAPTER 52—ILLEGAL ALIENS**

10 **“SEC. 1131. ENHANCED PENALTIES FOR CERTAIN CRIMES**
 11 **COMMITTED BY ILLEGAL ALIENS.**

12 “(a) Any alien unlawfully present in the United
 13 States, who commits, or conspires or attempts to commit,
 14 a crime of violence or a drug trafficking offense (as de-
 15 fined in section 924), shall be fined under this title and
 16 sentenced to not less than 5 years in prison.

17 “(b) If an alien who violates subsection (a) was pre-
 18 viously ordered removed under the Immigration and Na-
 19 tionality Act (8 U.S.C. 1101 et seq.) on the grounds of
 20 having committed a crime, the alien shall be sentenced to
 21 not less than 15 years in prison.

22 “(c) A sentence of imprisonment imposed under this
 23 section shall run consecutively to any other sentence of
 24 imprisonment imposed for any other crime.”.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 51 the following:

52. Illegal aliens 1131

SEC. 304. INCREASED CRIMINAL PENALTIES FOR CRIMINAL STREET GANGS.

(a) INADMISSIBILITY.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended—

(1) by redesignating subparagraph (F) as subparagraph (J); and

(2) by inserting after subparagraph (E) the following:

“(F) ALIENS WHO ARE MEMBERS OF CRIMINAL STREET GANGS.—Any alien who is determined by a court to be a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code) is inadmissible.”.

(b) DEPORTABILITY.—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:

“(F) ALIENS WHO ARE MEMBERS OF CRIMINAL STREET GANGS.—Any alien who is determined by a court to be a member of a

1 criminal street gang (as defined in section
 2 521(a) of title 18, United States Code) is de-
 3 portable.”.

4 (c) TEMPORARY PROTECTED STATUS.—Section
 5 244(c)(2)(B) of the Immigration and Nationality Act (8
 6 U.S.C. 1254a(c)(2)(B)) is amended—

7 (1) in clause (i), by striking “or” at the end;

8 (2) in clause (ii), by striking the period at the
 9 end and inserting “; or”; and

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

11 “(iii) the alien is determined by a
 12 court to be a member of a criminal street
 13 gang (as defined in section 521(a) of title
 14 18, United States Code).”.

15 **TITLE IV—REMOVAL AND** 16 **VIOLATION TRACKING**

17 **SEC. 401. INSTITUTIONAL REMOVAL PROGRAM.**

18 (a) INSTITUTIONAL REMOVAL PROGRAM.—

19 (1) CONTINUATION.—The Secretary shall con-
 20 tinue to operate the Institutional Removal Program
 21 of the Department to—

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

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

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

3 (2) EXPANSION.—Not later than 5 years after
4 the date of the enactment of this Act, the Secretary
5 shall expand the Institutional Removal Program to
6 every State.

7 (3) STATE PARTICIPATION.—The appropriate
8 officials of each State in which the Secretary is oper-
9 ating the Institutional Removal Program should—

10 (A) cooperate with Federal officials car-
11 rying out the Institutional Removal Program;

12 (B) expeditiously and systematically iden-
13 tify criminal aliens in the prison and jail popu-
14 lations of the State; and

15 (C) promptly convey the information de-
16 scribed in subparagraph (B) to the appropriate
17 officials carrying out the Institutional Removal
18 Program.

19 (b) REPORT TO CONGRESS.—Not later than 2 years
20 after of the date of the enactment of this Act, the Sec-
21 retary shall submit a report to Congress on the participa-
22 tion of the States in the Institutional Removal Program.

23 (c) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated \$50,000,000 to carry

1 out the expanded Institutional Removal Program author-
2 ized under subsection (a).

3 **SEC. 402. AUTHORIZATION FOR DETENTION AFTER COM-**
4 **PLETION OF STATE OR LOCAL PRISON SEN-**
5 **TENCE.**

6 (a) IN GENERAL.—Law enforcement officers of a
7 State or political subdivision of a State are authorized
8 to—

9 (1) hold an illegal alien for a period of up to
10 14 days after the alien has completed the alien’s
11 State or local prison sentence in order to effectuate
12 the transfer of the alien to Federal custody when the
13 alien is removable or not lawfully present in the
14 United States; or

15 (2) issue a detainer that would allow aliens who
16 have served a State or local prison sentence to be
17 detained by an appropriate prison until personnel
18 from the Bureau of Immigration and Customs En-
19 forcement can take the alien into Federal custody.

20 (b) REIMBURSEMENT.—

21 (1) IN GENERAL.—The Secretary shall reim-
22 burse a State or a political subdivision of a State for
23 all reasonable expenses incurred by the State or the
24 political subdivision for the detention of an alien as
25 described in subsection (a).

1 (2) COST COMPUTATION.—The amount of reim-
 2 bursement provided for costs incurred carrying out
 3 subsection (a) shall be determined pursuant to a for-
 4 mula determined by the Secretary.

5 (c) TECHNOLOGY USAGE.—Technology such as
 6 videoconferencing shall be used to the maximum extent
 7 possible in order to make the Institutional Removal Pro-
 8 gram available in remote locations. Mobile access to Fed-
 9 eral databases of aliens and live scan technology shall be
 10 used to the maximum extent practicable in order to make
 11 these resources available to State and local law enforce-
 12 ment agencies in remote locations.

13 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 14 are authorized to be appropriated such sums as may be
 15 necessary to reimburse a State or political subdivision of
 16 a State for the detention of an illegal alien pursuant to
 17 subsection (b).

18 **SEC. 403. USE OF THE NATIONAL CRIME INFORMATION**
 19 **CENTER DATABASE TO TRACK VIOLATIONS**
 20 **OF IMMIGRATION LAW.**

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

23 (1) IN GENERAL.—Not later than 1 year after
 24 the date of enactment of this Act, the Secretary
 25 shall provide the National Crime Information Center

1 of the Department of Justice with such information
2 as the Director may have related to—

3 (A) any alien against whom a final order
4 of removal has been issued;

5 (B) any alien who is subject to a voluntary
6 departure agreement that has become invalid
7 under section 240B(a)(2) of the Immigration
8 and Nationality Act (8 U.S.C. 1229c); and

9 (C) any alien whose visa has been revoked.

10 (2) REQUIREMENT TO PROVIDE AND USE IN-
11 FORMATION.—The information described in para-
12 graph (1) shall be provided to the National Crime
13 Information Center, and the Center shall enter the
14 information into the Immigration Violators File of
15 the National Crime Information Center database if
16 the name and date of birth are available for the indi-
17 vidual, regardless of whether the alien received no-
18 tice of a final order of removal or the alien has al-
19 ready been removed.

20 (3) REMOVAL OF INFORMATION.—Should an in-
21 dividual be granted cancellation of removal under
22 section 240A of the Immigration and Nationality
23 Act (8 U.S.C. 1229b), or granted permission to le-
24 gally enter the United States pursuant to the Immi-
25 gration and Nationality Act after a voluntary depar-

1 ture under section 240B of the Immigration and
2 Nationality Act (8 U.S.C. 1229c), information en-
3 tered into the National Crime Information Center in
4 accordance with paragraph (1) of this section shall
5 be promptly removed.

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

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

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

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

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

○