

109TH CONGRESS  
1ST SESSION

# S. 2061

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

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2005

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

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Border Security and Interior Enforcement Improvement  
6       Act of 2005”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Severability.

## TITLE I—SOUTHWEST BORDER SECURITY

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

## TITLE II—FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT

## Subtitle A—Additional Federal Resources

- Sec. 1. Necessary assets for controlling United States borders.
- Sec. 2. Additional immigration personnel.
- Sec. 3. Additional worksite enforcement and fraud detection agents.
- Sec. 4. Document fraud detection.

## Subtitle B—Maintaining Accurate Enforcement Data on Aliens

- Sec. 211. Entry-exit system.
- Sec. 212. State and local law enforcement provision of information regarding aliens.
- Sec. 213. Listing of immigration violators in the National Crime Information Center database.

## Subtitle C—Detention of Aliens and Reimbursement of Costs

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

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

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

## TITLE V—PENALTIES AND ENFORCEMENT

## Subtitle A—Criminal and Civil Penalties

- Sec. 501. Criminal penalties for alien smuggling.
- Sec. 502. Criminal and civil penalties for entry of aliens at improper time or place, avoidance of examination or inspection, unlawful presence and misrepresentation or concealment of facts.
- Sec. 503. Civil and criminal penalties for aliens unlawfully present in the United States.
- Sec. 504. Increased penalties for reentry of removed aliens.
- Sec. 505. Civil and criminal penalties for document fraud, benefit fraud, and false claims of citizenship.

- Sec. 506. Rendering inadmissible and deportable aliens participating in criminal street gangs.
- Sec. 507. Mandatory detention of suspected criminal street gang members.
- Sec. 508. Ineligibility from protection from removal and asylum.
- Sec. 509. Penalties for misusing social security numbers or filing false information with Social Security Administration.

#### Subtitle B—Detention, Removal and Departure

- Sec. 511. Voluntary departure.
- Sec. 512. Release of aliens in removal proceedings.
- Sec. 513. Expedited removal of criminal aliens.
- Sec. 514. Reinstatement of previous removal orders.
- Sec. 515. Cancellation of removal.
- Sec. 516. Detention of dangerous aliens.
- Sec. 517. Alternatives to detention.
- Sec. 518. Release of aliens from noncontiguous countries.
- Sec. 519. Curtailment of visas for aliens from countries denying or delaying repatriation of nationals.
- Sec. 520. Authorization of appropriations.

### 1 **SEC. 2. SEVERABILITY.**

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

## 9 **TITLE I—SOUTHWEST BORDER** 10 **SECURITY**

### 11 **SEC. 101. CONSTRUCTION OF FENCING AND SECURITY IM-** 12 **PROVEMENTS IN BORDER AREA FROM PA-** 13 **CIFIC OCEAN TO GULF OF MEXICO.**

14       Section 102(b) of the Illegal Immigration Reform and  
 15 Immigrant Responsibility Act of 1996 (8 U.S.C. 1103  
 16 note) is amended—

1 (1) in the heading by striking “NEAR SAN  
2 DIEGO, CALIFORNIA”;

3 (2) by amending paragraph (1) to read as fol-  
4 lows:

5 “(1) REINFORCED FENCING.—

6 “(A) IN GENERAL.—In carrying out sub-  
7 section (a), the Secretary of Homeland Security  
8 shall provide for—

9 “(i) the construction along the south-  
10 ern international land border of the United  
11 States, starting at the Pacific Ocean and  
12 extending eastward to the Gulf of Mexico,  
13 of at least 2 layers of reinforced fencing;  
14 and

15 “(ii) the installation of such additional  
16 physical barriers, roads, lighting, and sen-  
17 sors along such border as may be nec-  
18 essary to eliminate illegal crossings along  
19 such border.

20 “(B) PRIORITY AREAS.—With respect to  
21 the border described in subparagraph (A), the  
22 Secretary shall ensure that initial fence con-  
23 struction occurs in high traffic and smuggling  
24 areas along such border.

1           “(C) CONSULTATION.—Before installing  
 2           any fencing or other physical barriers, roads,  
 3           lighting, or sensors under subclause (A), the  
 4           Secretary shall consult with the Secretary of  
 5           Defense for purposes of mitigating or limiting  
 6           the impact of the fencing, barriers, roads, light-  
 7           ing, and sensors on military training and oper-  
 8           ations.”; and

9           (3) by striking “Attorney General” each place  
 10          it appears and inserting “Secretary of Homeland Se-  
 11          curity” .

12 **SEC. 102. BORDER PATROL AGENTS.**

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

16           (1) by striking “2010” each place it appears  
 17          and inserting “2011” ; and

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

19 **SEC. 103. INCREASED AVAILABILITY OF DEPARTMENT OF**  
 20 **DEFENSE EQUIPMENT TO ASSIST WITH SUR-**  
 21 **VEILLANCE OF SOUTHERN INTERNATIONAL**  
 22 **LAND BORDER OF THE UNITED STATES.**

23          (a) INCREASED AVAILABILITY OF EQUIPMENT.—The  
 24          Secretary of Defense and the Secretary of Homeland Se-  
 25          curity shall develop and implement a plan to use the au-

1   thorities provided to the Secretary of Defense under chap-  
2   ter 18 of title 10, United States Code, to increase the  
3   availability and use of Department of Defense equipment,  
4   including unmanned aerial vehicles, tethered aerostat ra-  
5   dars, and other surveillance equipment, to assist with De-  
6   partment of Homeland Security surveillance activities con-  
7   ducted at or near the southern international land border  
8   of the United States.

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

13           (1) a description of the current use of Depart-  
14       ment of Defense equipment to assist with Depart-  
15       ment of Homeland Security surveillance of the  
16       southern international land border of the United  
17       States;

18           (2) the plan developed under subsection (a) to  
19       increase the use of Department of Defense equip-  
20       ment to assist with such surveillance activities; and

21           (3) a description of the types of equipment and  
22       other support to be provided by Department of De-  
23       fense under such plan during the one-year period be-  
24       ginning after submission of the report.

1 **SEC. 104. PORTS OF ENTRY.**

2 The Secretary of Homeland Security is authorized  
3 to—

4 (1) construct additional ports of entry along the  
5 international land border of the United States, at lo-  
6 cations to be determined by the Secretary; and

7 (2) make necessary improvements to the ports  
8 of entry in existence on the date of enactment of this  
9 Act.

10 **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) IN GENERAL.—There are authorized to be appro-  
12 priated \$5,000,000,000 to carry out the amendment made  
13 by section 101 which shall be available until expended.

14 (b) BORDER PATROL AGENTS.—There are author-  
15 ized to be appropriated such sums as may be necessary  
16 to carry out the amendment made by section 102.

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

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

1 **TITLE II—FEDERAL, STATE, AND**  
2 **LOCAL LAW ENFORCEMENT**  
3 **Subtitle A—Additional Federal**  
4 **Resources**

5 **SEC. 1. NECESSARY ASSETS FOR CONTROLLING UNITED**  
6 **STATES BORDERS.**

7 (a) PERSONNEL.—

8 (1) CUSTOMS AND BORDER PROTECTION OFFI-  
9 CERS.—In each of the fiscal years 2007 through  
10 2011, the Secretary of Homeland Security shall in-  
11 crease by not less than 250 the number of positions  
12 for full-time active duty Customs and Border Pro-  
13 tection officers.

14 (2) AUTHORIZATION OF APPROPRIATIONS.—

15 (A) CUSTOMS AND BORDER PROTECTION  
16 OFFICERS.—There are authorized to be appro-  
17 priated such sums as may be necessary for each  
18 of fiscal years 2007 through 2011 to carry out  
19 paragraph (1).

20 (B) TRANSPORTATION OF ALIENS.—There  
21 are authorized to be appropriated \$25,000,000  
22 for each of fiscal years 2007 through 2011 for  
23 the transportation of aliens.

24 (b) TECHNOLOGICAL ASSETS.—



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

6           (2) AUTHORIZATION OF APPROPRIATIONS.—  
7       There are authorized to be appropriated  
8       \$500,000,000 for each of fiscal years 2007 through  
9       2011 to carry out paragraph (1).

10       (c) BORDER PATROL CHECKPOINTS.—Temporary or  
11      permanent checkpoints may be maintained on roadways  
12      in border patrol sectors close to the border between the  
13      United States and Mexico.

14      **SEC. 2. ADDITIONAL IMMIGRATION PERSONNEL.**

15       (a) DEPARTMENT OF HOMELAND SECURITY.—

16           (1) INVESTIGATIVE PERSONNEL.—In addition  
17      to the positions authorized under section 5203 of the  
18      Intelligence Reform and Terrorism Prevention Act  
19      of 2004 (Public Law 108–458; 118 Stat. 3734), for  
20      each of fiscal years 2007 through 2011, the Sec-  
21      retary of Homeland Security shall, subject to the  
22      availability of appropriations for such purpose, in-  
23      crease by not less than 200 the number of positions  
24      for investigative personnel within the Department of  
25      Homeland Security investigating alien smuggling

1 and immigration status violations above the number  
2 of such positions for which funds were made avail-  
3 able during the preceding fiscal year.

4 (2) TRIAL ATTORNEYS.—In each of fiscal years  
5 2007 through 2011, the Secretary of Homeland Se-  
6 curity shall, subject to the availability of appropria-  
7 tions for such purpose, increase the number of posi-  
8 tions for attorneys in the Office of General Counsel  
9 of the Department of Homeland Security who rep-  
10 resent the Department in immigration matters by  
11 not less than 100 above the number of such posi-  
12 tions for which funds were made available during  
13 each preceding fiscal year.

14 (3) AUTHORIZATION OF APPROPRIATIONS.—  
15 There are authorized to be appropriated to the De-  
16 partment of Homeland Security for each of fiscal  
17 years 2007 through 2011 such sums as may be nec-  
18 essary to carry out this subsection.

19 (b) DEPARTMENT OF JUSTICE.—

20 (1) ASSISTANT ATTORNEY GENERAL FOR IMMI-  
21 GRATION ENFORCEMENT.—

22 (A) ESTABLISHMENT.—There is estab-  
23 lished within the Department of Justice the po-  
24 sition of Assistant Attorney General for Immi-  
25 gration Enforcement. The Assistant Attorney

1 General shall coordinate and prioritize immigra-  
2 tion litigation and enforcement in the Federal  
3 courts, including—

4 (i) removal and deportation;

5 (ii) employer sanctions; and

6 (iii) alien smuggling and human traf-  
7 ficking.

8 (B) CONFORMING AMENDMENT.—Section  
9 506 of title 28, United States Code, is amended  
10 by striking “ten” and inserting “11”.

11 (2) LITIGATION ATTORNEYS.—In each of fiscal  
12 years 2007 through 2011, the Attorney General  
13 shall, subject to the availability of appropriations for  
14 such purpose, increase by not less than 50 the num-  
15 ber of positions for attorneys in the Office of Immi-  
16 gration Litigation of the Department of Justice  
17 above the number of such positions for which funds  
18 were made available during the preceding fiscal year.

19 (3) UNITED STATES ATTORNEYS.—In each of  
20 fiscal years 2007 through 2011, the Attorney Gen-  
21 eral shall, subject to the availability of appropria-  
22 tions for such purpose, increase by not less than 50  
23 the number of attorneys in the United States Attor-  
24 neys’ office to litigate immigration cases in the Fed-  
25 eral courts above the number of such positions for

1       which funds were made available during the pre-  
2       ceding fiscal year.

3           (4) IMMIGRATION JUDGES.—In each of fiscal  
4       years 2007 through 2011, the Attorney General  
5       shall, subject to the availability of appropriations for  
6       such purpose, increase by not less than 50 the num-  
7       ber of immigration judges above the number of such  
8       positions for which funds were made available during  
9       the preceding fiscal year.

10          (5) AUTHORIZATION OF APPROPRIATIONS.—  
11       There are authorized to be appropriated to the De-  
12       partment of Justice for each of fiscal years 2007  
13       through 2011 such sums as may be necessary to  
14       carry out this subsection, including the hiring of  
15       necessary support staff.

16 **SEC. 3. ADDITIONAL WORKSITE ENFORCEMENT AND**  
17 **FRAUD DETECTION AGENTS.**

18       (a) WORKSITE ENFORCEMENT.—The Secretary of  
19       Homeland Security shall, subject to the availability of ap-  
20       propriations for such purpose, annually increase, by not  
21       less than 2,000, the number of positions for investigators  
22       dedicated to enforcing compliance with sections 274 and  
23       274A of the Immigration and Nationality Act (8 U.S.C.  
24       1324, 1324a) during the 5-year period beginning on Octo-  
25       ber 1, 2006.

1 (b) FRAUD DETECTION.—The Secretary of Home-  
2 land Security shall, subject to the availability of appropria-  
3 tions for such purpose, increase by not less than 1,000  
4 the number of positions for Immigration Enforcement  
5 Agents dedicated to immigration fraud detection during  
6 the 5-year period beginning on October 1, 2006.

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
8 are authorized to be appropriated during each of fiscal  
9 years 2007 through 2011 such sums as may be necessary  
10 to carry out this section.

11 **SEC. 4. DOCUMENT FRAUD DETECTION.**

12 (a) TRAINING.—The Secretary of Homeland Security  
13 shall provide all customs and border protection officers  
14 with training in identifying and detecting fraudulent travel  
15 documents. Such training shall be developed in consulta-  
16 tion with the Forensic Document Laboratory of the Immi-  
17 gration and Customs Enforcement

18 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-  
19 retary of Homeland Security shall provide all customs and  
20 border protection officers with access to the Forensic Doc-  
21 ument Laboratory.

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

1     **Subtitle B—Maintaining Accurate**  
2             **Enforcement Data on Aliens**

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

4             (a) INTEGRATED ENTRY AND EXIT DATA SYSTEM.—

5     Section 110(b)(1) of the Illegal Immigration Reform and  
6     Immigrant Responsibility Act of 1996 (8 U.S.C.  
7     1365a(b)(1)) is amended to read as follows:

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

15            (b) CONSTRUCTION.—Section 110(c) of the Illegal  
16     Immigration Reform and Immigrant Responsibility Act of  
17     1996 (8 U.S.C. 1365a(c)) is amended to read as follows:

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

22            (c) DEADLINES.—Section 110(d) of the Illegal Immi-  
23     gration Reform and Immigrant Responsibility Act of 1996  
24     (8 U.S.C. 1365a(d)) is amended—

1 (1) in paragraph (1), by striking “December  
2 31, 2003” and inserting “October 1, 2006”; and

3 (2) by amending paragraph (2) to read as fol-  
4 lows:

5 “(2) LAND BORDER PORTS OF ENTRY.—Not  
6 later than October 1, 2006, the Secretary of Home-  
7 land Security shall implement the integrated entry  
8 and exit data system using the data described in  
9 paragraph (1) and available alien arrival and depart-  
10 ure data described in subsection (b)(1) pertaining  
11 to aliens arriving in, or departing from, the United  
12 States at all land border ports of entry. Such imple-  
13 mentation shall include ensuring that such data,  
14 when collected or created by an immigration officer  
15 at a port of entry, are entered into the system and  
16 can be accessed by immigration officers at airports,  
17 seaports, and other land border ports of entry.”.

18 (d) AUTHORITY TO PROVIDE ACCESS TO SYSTEM.—  
19 Section 110(f)(1) of the Illegal Immigration Reform and  
20 Immigrant Responsibility Act of 1996 (8 U.S.C.  
21 1365a(f)(1)) is amended by adding at the end the fol-  
22 lowing:

23 “The Secretary of Homeland Security shall ensure that  
24 any officer or employee of the Department of Homeland  
25 Security or the Department of State having need to access

1 the data contained in the integrated entry and exit data  
2 system for any lawful purpose under the Immigration and  
3 Nationality Act has such access, including access for pur-  
4 poses of representation of the Department of Homeland  
5 Security in removal proceedings under section 240 of such  
6 Act and adjudication of applications for benefits under  
7 such Act.”.

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

10 (a) VIOLATIONS OF FEDERAL LAW.—A statute, pol-  
11 icy, or practice that prohibits, or restricts in any manner,  
12 a law enforcement or administrative enforcement officer  
13 of a State or of a political subdivision therein, from enforce-  
14 ing Federal immigration laws or from assisting or cooper-  
15 ating with Federal immigration law enforcement in the  
16 course of carrying out the investigative or enforcement du-  
17 ties of the officer or from providing information to an offi-  
18 cial of the United States Government regarding the immi-  
19 gration status of an individual who is believed to be ille-  
20 gally present in the United States, is in violation of section  
21 642(a) of the Illegal Immigration Reform and Immigrant  
22 Responsibility Act of 1996 (8 U.S.C. 1373(a)) and section  
23 434 of the Personal Responsibility and Work Opportunity  
24 Reconciliation Act of 1996 (8 U.S.C. 1644).



1 (b) STATE AND LOCAL LAW ENFORCEMENT PROVI-  
2 SION OF INFORMATION ABOUT APPREHENDED ILLEGAL  
3 ALIENS.—

4 (1) PROVISION OF INFORMATION.—

5 (A) IN GENERAL.—Each law enforcement  
6 agency of a State or of a political subdivision  
7 therein shall provide to the Department of  
8 Homeland Security the information listed in  
9 paragraph (2) for each alien who is appre-  
10 hended in the jurisdiction of such agency.

11 (B) TIME LIMITATION.—Not later than 15  
12 days after an alien described in subparagraph  
13 (A) is apprehended, information required to be  
14 provided under paragraph (1) shall be provided  
15 in such form and in such manner as the Sec-  
16 retary of Homeland Security may, by regulation  
17 or guideline, require.

18 (C) EXCEPTION.—The reporting require-  
19 ment in paragraph (A) shall not apply in the  
20 case of any alien determined to be lawfully  
21 present in the United States.

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

24 (A) The alien's name.

1 (B) The alien's address or place of resi-  
2 dence.

3 (C) A physical description of the alien.

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

7 (E) If applicable—

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

10 (ii) the type of any other identification  
11 document issued to the alien, any designa-  
12 tion number contained on the identification  
13 document, and the issuing entity for the  
14 identification document;

15 (iii) the license number and descrip-  
16 tion of any vehicle registered to, or oper-  
17 ated by, the alien, and

18 (iv) a photo of the alien and the  
19 alien's fingerprints, if available or readily  
20 obtainable.

21 (3) REIMBURSEMENT.—The Secretary of  
22 Homeland Security shall reimburse such law en-  
23 forcement agencies for the costs, per a schedule de-  
24 termined by the Secretary, incurred by such agencies

1 in collecting and transmitting the information de-  
 2 scribed in paragraph (2).

3 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

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

6 (A) TECHNICAL AMENDMENT.—Section  
 7 642 of the Illegal Immigration Reform and Im-  
 8 migrant Responsibility Act of 1996 (8 U.S.C.  
 9 1373) is amended—

10 (i) in subsections (a), (b)(1), and (c),  
 11 by striking “Immigration and Naturaliza-  
 12 tion Service” each place it appears and in-  
 13 serting “Department of Homeland Secu-  
 14 rity”; and

15 (ii) in the heading by striking “**IMMI-**  
 16 **GRATION AND NATURALIZATION SERV-**  
 17 **ICE**” and inserting “**DEPARTMENT OF**  
 18 **HOMELAND SECURITY**”.

19 (B) CONFORMING AMENDMENT.—Section  
 20 1(d) of the Illegal Immigration Reform and Im-  
 21 migrant Responsibility Act of 1996 (division C  
 22 of Public Law 104–208; 110 Stat. 3009–546)  
 23 is amended by striking the item related to sec-  
 24 tion 642 and inserting the following:

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

1           (2) PERSONAL RESPONSIBILITY AND WORK OP-  
2           PORTUNITY RECONCILIATION ACT OF 1996.—

3           (A) IN GENERAL.—Section 434 of the Per-  
4           sonal Responsibility and Work Opportunity  
5           Reconciliation Act of 1996 (8 U.S.C. 1644) is  
6           amended—

7                   (i) by striking “Immigration and Nat-  
8                   uralization Service” and inserting “Depart-  
9                   ment of Homeland Security”; and

10                   (ii) in the heading by striking “**IMMI-**  
11                   **GRATION AND NATURALIZATION SERV-**  
12                   **ICE**” and inserting “**DEPARTMENT OF**  
13                   **HOMELAND SECURITY**”.

14           (B) CONFORMING AMENDMENT.—Section  
15           2 of the Personal Responsibility and Work Op-  
16           portunity Reconciliation Act of 1996 (8 U.S.C.  
17           1642) (Public Law 104–193; 110 Stat. 2105) is  
18           amended by striking the item related to section  
19           434 and inserting the following:

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

20           (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
21           authorized to be appropriated such sums as may be nec-  
22           essary to carry out the requirements of this section.

1 **SEC. 213. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**  
2 **TIONAL CRIME INFORMATION CENTER DATA-**  
3 **BASE.**

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

6 (1) IN GENERAL.—Not later than 180 days  
7 after the date of enactment of this Act, the Sec-  
8 retary of Homeland Security shall provide the Na-  
9 tional Crime Information Center of the Department  
10 of Justice with such information as the Department  
11 of Homeland Security may have in its possession of  
12 the Department related to—

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

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

19 (C) any alien detained by a Federal, State  
20 or local law enforcement agency whom a federal  
21 immigration officer has confirmed to be unlaw-  
22 fully present in the United States but, in the  
23 exercise of discretion, has been released from  
24 detention without transfer into the custody of a  
25 Federal immigration officer.

1           (2) REMOVAL OF INFORMATION.—If an indi-  
2       vidual is granted cancellation of removal under sec-  
3       tion 240A of the Immigration and Nationality Act  
4       (8 U.S.C. 1229b), or granted permission to legally  
5       enter the United States pursuant to the Immigration  
6       and Nationality Act after a voluntary departure  
7       under section 240B of the Immigration Nationality  
8       Act (8 U.S.C. 1229c), information entered into the  
9       National Crime Information Center in accordance  
10      with paragraph (1) of this section shall be promptly  
11      removed.

12      (b) INCLUSION OF INFORMATION IN THE NATIONAL  
13      CRIME INFORMATION CENTER DATABASE.—Section  
14      534(a) of title 28, United States Code, is amended—

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

17           (2) by redesignating paragraph (4) as para-  
18      graph (5); and

19           (3) by inserting after paragraph (3) the fol-  
20      lowing new paragraph:

21           “(4) acquire, collect, classify, and preserve  
22      records of violations of the immigration laws of the  
23      United States, regardless of whether the alien has  
24      received notice of the violation or the alien has al-  
25      ready been removed; and”.

1 (c) PERMISSION TO DEPART VOLUNTARILY.—Section  
 2 240b of the Immigration and Nationality Act (8 U.S.C.  
 3 1229c) is amended—

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

7 (2) in subsection (a)(2)(A), by striking “120”  
 8 and inserting “30”.

## 9 **Subtitle C—Detention of Aliens and** 10 **Reimbursement of Costs**

### 11 **SEC. 221. INCREASE OF FEDERAL DETENTION SPACE AND** 12 **THE UTILIZATION OF FACILITIES IDENTIFIED** 13 **FOR CLOSURES AS A RESULT OF THE DE-** 14 **FENSE BASE CLOSURE REALIGNMENT ACT** 15 **OF 1990.**

16 (a) CONSTRUCTION OR ACQUISITION OF DETENTION  
 17 FACILITIES.—

18 (1) IN GENERAL.—The Secretary of Homeland  
 19 Security shall construct or acquire, in addition to ex-  
 20 isting facilities for the detention of aliens, 20 deten-  
 21 tion facilities in the United States that have the ca-  
 22 pacity to detain a combined total of not less than  
 23 10,000 individuals at any time for aliens detained  
 24 pending removal or a decision on removal of such  
 25 alien from the United States.

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

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

19          (b) TECHNICAL AND CONFORMING AMENDMENT.—  
20          Section 241(g)(1) of the Immigration and Nationality Act  
21          (8 U.S.C. 1231(g)(1)) is amended by striking “may ex-  
22          pend” and inserting “shall expend”.

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



1 **SEC. 222. FEDERAL CUSTODY OF ILLEGAL ALIENS APPRE-**  
 2 **HENDED BY STATE OR LOCAL LAW ENFORCE-**  
 3 **MENT.**

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

7 “TRANSFER OF ILLEGAL ALIENS FROM STATE TO  
 8 FEDERAL CUSTODY

9 “SEC. 240D. (a) IN GENERAL.—If the head of a law  
 10 enforcement entity of a State (or, if appropriate, a polit-  
 11 ical subdivision of the State) exercising authority with re-  
 12 spect to the apprehension or arrest of an illegal alien sub-  
 13 mits a request to the Secretary of Homeland Security that  
 14 the alien be taken into Federal custody, the Secretary of  
 15 Homeland Security—

16 “(1) shall—

17 “(A) deem the request to include the in-  
 18 quiry to verify immigration status described in  
 19 section 642(c) of the Immigration Reform and  
 20 Immigrant Responsibility Act of 1996, and ex-  
 21 peditionally inform the requesting entity whether  
 22 such individual is an illegal alien; and

23 “(B) either—

24 “(i) not later than 72 hours after the  
 25 conclusion of the State charging process or  
 26 dismissal process, or if no State charging

1 or dismissal process is required, not later  
 2 than 72 hours after the illegal alien is ap-  
 3 prehended, take the illegal alien into the  
 4 custody of the Federal Government and in-  
 5 carcerate the alien; or

6 “(ii) request that the relevant State or  
 7 local law enforcement agency temporarily  
 8 detain or transport the illegal alien to a lo-  
 9 cation for transfer to Federal custody; and

10 “(2) shall designate at least 1 Federal, State,  
 11 or local prison or jail or a private contracted prison  
 12 or detention facility within each State as the central  
 13 facility for that State to transfer custody of criminal  
 14 or illegal aliens to the Department of Homeland Se-  
 15 curity.

16 “(b) REIMBURSEMENT.—

17 “(1) IN GENERAL.—The Secretary of Homeland  
 18 Security shall reimburse a State or a political sub-  
 19 division of a State for expenses, as verified by the  
 20 Secretary of Homeland Security, incurred by the  
 21 State or political subdivision in the detention and  
 22 transportation of a criminal or illegal alien as de-  
 23 scribed in subparagraphs (A) and (B) of subsection  
 24 (a)(1).

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

4                   “(A) the product of—

5                           “(i) the average daily cost of incarcer-  
 6                           ation of a prisoner in the relevant State, as  
 7                           determined by the chief executive officer of  
 8                           a State (or, as appropriate, a political sub-  
 9                           division of the State); multiplied by

10                           “(ii) the number of days that the alien  
 11                           was in the custody of the State or political  
 12                           subdivision; plus

13                           “(B) the cost of transporting the criminal  
 14                           or illegal alien from the point of apprehension  
 15                           or arrest to the location of detention, and if the  
 16                           location of detention and of custody transfer  
 17                           are different, to the custody transfer point; plus

18                           “(C) the cost of uncompensated emergency  
 19                           medical care provided to a detained illegal alien  
 20                           during the period between the time of trans-  
 21                           mittal of the request described in subsection (a)  
 22                           and the time of transfer into Federal custody.

23       “(c) REQUIREMENT FOR APPROPRIATE SECURITY.—  
 24       The Secretary of Homeland Security shall ensure that ille-  
 25       gal aliens incarcerated in a Federal facility pursuant to

1 this subsection are held in facilities which provide an ap-  
 2 propriate level of security, and that, where practicable,  
 3 aliens detained solely for civil violations of Federal immi-  
 4 gration law are separated within a facility or facilities.

5 “(d) REQUIREMENT FOR SCHEDULE.—In carrying  
 6 out this section, the Secretary of Homeland Security shall  
 7 establish a regular circuit and schedule for the prompt  
 8 transportation of apprehended illegal aliens from the cus-  
 9 tody of those States and political subdivisions of States  
 10 which routinely submit requests described in subsection  
 11 (a) into Federal custody.

12 “(e) AUTHORITY FOR CONTRACTS.—

13 “(1) IN GENERAL.—The Secretary of Homeland  
 14 Security may enter into contracts or cooperative  
 15 agreements with appropriate State and local law en-  
 16 forcement and detention agencies to implement this  
 17 section.

18 “(2) DETERMINATION BY SECRETARY.—Prior  
 19 to entering into a contract or cooperative agreement  
 20 with a State or political subdivision of a State under  
 21 paragraph (1), the Secretary shall determine wheth-  
 22 er the State, or where appropriate, the political sub-  
 23 division in which the agencies are located has in  
 24 place any formal or informal policy that violates sec-  
 25 tion 642 of the Illegal Immigration Reform and Im-

1 migrant Responsibility Act of 1996 (8 U.S.C. 1373).

2 The Secretary shall not allocate any of the funds  
3 made available under this section to any State or po-  
4 litical subdivision that has in place a policy that vio-  
5 lates such section.

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

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

11 “(2) was admitted as a nonimmigrant and who,  
12 at the time the alien was taken into custody by the  
13 State or a political subdivision of the State, had  
14 failed to—

15 “(A) maintain the nonimmigrant status in  
16 which the alien was admitted or to which it was  
17 changed under section 248; or

18 “(B) comply with the conditions of any  
19 such status;

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

23 “(4) failed to depart the United States under a  
24 voluntary departure agreement or under a final  
25 order of removal.”.

1 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE  
 2 DETENTION AND TRANSPORTATION TO FEDERAL CUS-  
 3 TODY OF ALIENS NOT LAWFULLY PRESENT.—There are  
 4 authorized to be appropriated \$850,000,000 for fiscal year  
 5 2007 and each subsequent fiscal year for the detention  
 6 and removal of aliens not lawfully present in the United  
 7 States under the Immigration and Nationality Act (8  
 8 U.S.C. 1101 et seq.).

9 **SEC. 223. INSTITUTIONAL REMOVAL PROGRAM.**

10 (a) INSTITUTIONAL REMOVAL PROGRAM.—

11 (1) CONTINUATION.—The Secretary of Home-  
 12 land Security shall continue to operate the Institu-  
 13 tional Removal Program or develop and implement  
 14 any other program to—

15 (A) identify removable criminal aliens in  
 16 Federal and State correctional facilities;

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

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

21 (2) EXPANSION.—the Secretary of Homeland  
 22 Security shall extend the institutional removal pro-  
 23 gram to all States. Each state should—

24 (A) cooperate with officials of the Federal  
 25 Institutional Removal Program;

1 (B) expeditiously and systematically iden-  
 2 tify criminal aliens in its prison and jail popu-  
 3 lations; and

4 (C) promptly convey the information col-  
 5 lected under subparagraph (B) to officials of  
 6 the Institutional Removal Program.

7 (b) IMPLEMENTATION OF COOPERATIVE INSTITU-  
 8 TIONAL REMOVAL PROGRAMS.—

9 (1) REDESIGNATION.—Section 642 of the Ille-  
 10 gal Immigration Reform and Immigrant Responsi-  
 11 bility Act of 1996 (8 U.S.C. 1373) is—

12 (A) redesignated as section 296 of the Im-  
 13 migration and Nationality Act; and

14 (B) inserted into such Act after section  
 15 295 of such Act.

16 (2) AMENDMENT.—Section 296 of the Immi-  
 17 gration and Nationality Act, as redesignated by  
 18 paragraph (1), is amended by adding at the end the  
 19 following:

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

24 “(1) hold an illegal alien for a period of up to  
 25 14 days after the alien has completed the alien’s

1 State prison sentence in order to effectuate the  
2 transfer of the alien to Federal custody when the  
3 alien is removable or not lawfully present in the  
4 United States; or

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

10 “(e) TECHNOLOGY USAGE.—Technology such as  
11 videoconferencing shall be used to the maximum extent  
12 practicable in order to make the Institutional Removal  
13 Program available in remote locations. Mobile access to  
14 Federal databases of aliens, such as IDENT, and live scan  
15 technology shall be used to the maximum extent prac-  
16 ticable in order to make these resources available to State  
17 and local law enforcement agencies in remote locations.

18 “(f) ENFORCEMENT.—

19 “(1) INELIGIBILITY FOR FEDERAL LAW EN-  
20 FORCEMENT AID.—Upon a determination that any  
21 person, or any Federal, State, or local government  
22 agency or entity, is in violation of subsection (a) or  
23 (b), the Attorney General shall not provide to such  
24 person, agency, or entity any grant amount pursuant  
25 to any law enforcement grant program carried out



1 by any element of the Department of Justice, includ-  
2 ing the program under section 241(i) of the Immi-  
3 gration and Nationality Act (8 U.S.C. 241(i)), or  
4 pursuant to any grant program authorized under  
5 title I of the Housing and Community Development  
6 Act of 1974 (42 U.S.C. 5301 et seq.), and shall en-  
7 sure that no such grant amounts are provided, di-  
8 rectly or indirectly, to such person, agency, or entity.  
9 In the case of grant amounts that otherwise would  
10 be provided to such person, agency, or entity pursu-  
11 ant to a formula, such amounts shall be reallocated  
12 among eligible recipients.

13 “(2) VIOLATIONS BY GOVERNMENT OFFI-  
14 CIALS.—In any case in which a Federal, State, or  
15 local government official is in violation of subsection  
16 (a) or (b), the government agency or entity that em-  
17 ploys (or, at the time of the violation, employed) the  
18 official shall be subject to the sanction described in  
19 paragraph (1).

20 “(3) DURATION.—The sanction described in  
21 paragraph (1) shall remain in effect until the Sec-  
22 retary of Homeland Security determines that the  
23 person, agency, or entity has ceased violating sub-  
24 sections (a) and (b).

1       “(g) PRIVATE RIGHT OF ACTION.—A citizen or na-  
 2       tional of the United States who is domiciled in a State  
 3       or in a political subdivision of a State shall have a right  
 4       of action in the United States district court of the State  
 5       in which such citizen or national is domiciled to obtain  
 6       declaratory and injunctive relief to remedy a violation of  
 7       subsection (a) or (b) by an agency, agent, or official of  
 8       the State or political subdivision.

9       “(h) REPORT TO CONGRESS.—The Secretary of  
 10      Homeland Security shall submit to Congress a report on  
 11      the participation of States in the Institutional Removal  
 12      Program and in any other program under subsection (a).

13      “(i) AUTHORIZATION OF APPROPRIATIONS.—There  
 14      are authorized to be appropriated to carry out the Institu-  
 15      tional Removal Program—

16               “(1) \$30,000,000 for fiscal year 2007;

17               “(2) \$40,000,000 for fiscal year 2008;

18               “(3) \$50,000,000 for fiscal year 2009;

19               “(4) \$60,000,000 for fiscal year 2010; and

20               “(5) \$70,000,000 for fiscal year 2011.”.

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

**3 SEC. 231. CONGRESSIONAL AFFIRMATION OF IMMIGRATION**  
**4 LAW ENFORCEMENT AUTHORITY BY STATES**  
**5 AND POLITICAL SUBDIVISIONS OF STATES.**

**6** Notwithstanding any other provision of law and re-  
**7** affirming the existing inherent authority of States, law en-  
**8** forcement personnel of a State or a political subdivision  
**9** of a State have the inherent authority of a sovereign entity  
**10** to investigate, identify, apprehend, arrest, detain, or  
**11** transfer to Federal custody aliens in the United States  
**12** (including the transportation of such aliens across State  
**13** lines to detention centers), for the purpose of assisting in  
**14** the enforcement of the immigration laws of the United  
**15** States in the normal course of carrying out the law en-  
**16** forcement duties of such personnel. This State authority  
**17** has never been displaced or preempted by a Federal law.

**18 SEC. 232. IMMIGRATION LAW ENFORCEMENT TRAINING OF**  
**19 STATE AND LOCAL LAW ENFORCEMENT PER-**  
**20 SONNEL.**

**21** (a) TRAINING FLEXIBILITY.—

**22** (1) IN GENERAL.—The Secretary of Homeland  
**23** Security shall make training of State and local law  
**24** enforcement officers available through as many  
**25** means as possible, including residential training at

1 the Center for Domestic Preparedness of the De-  
2 partment of Homeland Security, onsite training held  
3 at State or local police agencies or facilities, on-line  
4 training courses by computer, teleconferencing, and  
5 videotape, or the digital video display (DVD) of a  
6 training course or courses.

7 (2) ON-LINE TRAINING.—The head of the Dis-  
8 tributed Learning Program of the Federal Law En-  
9 forcement Training Center shall make training avail-  
10 able for State and local law enforcement personnel  
11 via the Internet through a secure, encrypted distrib-  
12 uted learning system that has all its servers based  
13 in the United States.

14 (3) FEDERAL PERSONNEL TRAINING.—The  
15 training of State and local law enforcement per-  
16 sonnel under this section shall not displace the train-  
17 ing of Federal personnel.

18 (b) COOPERATIVE ENFORCEMENT PROGRAMS.—The  
19 Secretary shall negotiate and execute, where practicable,  
20 a cooperative enforcement agreement described in section  
21 287(g) of the Immigration and Nationality Act (8 U.S.C.  
22 1375(g)) with at least 1 law enforcement agency in each  
23 State, to train law enforcement officers in the detection  
24 and apprehension of individuals engaged in transporting,

1 harboring, sheltering, or encouraging aliens in violation of  
2 section 274 of such Act (8 U.S.C. 1324).

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

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

15 **SEC. 233. IMMUNITY.**

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

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

11 **TITLE V—PENALTIES AND**  
 12 **ENFORCEMENT**  
 13 **Subtitle A—Criminal and Civil**  
 14 **Penalties**

15 **SEC. 501. CRIMINAL PENALTIES FOR ALIEN SMUGGLING.**

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

18 (1) in paragraph (1)(B)—

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

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

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

25 (2) in paragraph (2)—

1 (A) in subparagraph (A), by striking “one  
2 year, or both; or” and inserting “3 years, or  
3 both”;

4 (B) in subparagraph (B)—

5 (i) in clause (i), by adding at the end  
6 the following: “be fined under title 18,  
7 United States Code, and imprisoned not  
8 less than 5 years nor more than 25  
9 years,”;

10 (ii) in clause (ii), by striking “or” at  
11 the end and inserting the following: “be  
12 fined under title 18, United States Code,  
13 and imprisoned not less than 3 years not  
14 more than 20 years, or”; and

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

19 (iv) by striking the matter following  
20 clause (iii) and inserting the following new  
21 subparagraph:

22 “(C) in the case of a third or subsequent  
23 offense described in subparagraph (B) and for  
24 any other violation, shall be fined under title

1           18, United States Code, and imprisoned not  
2           less than 5 years nor more than 15 years.”;

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

5           (4) in paragraph (3)(B), by striking “brought  
6           into” and inserting “transported, harbored, shel-  
7           tered, or encouraged or induced to enter or reside  
8           in”; and

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

11 **SEC. 502. CRIMINAL AND CIVIL PENALTIES FOR ENTRY OF**  
12 **ALIENS AT IMPROPER TIME OR PLACE,**  
13 **AVOIDANCE OF EXAMINATION OR INSPEC-**  
14 **TION, UNLAWFUL PRESENCE AND MISREPRE-**  
15 **SENTATION OR CONCEALMENT OF FACTS.**

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

18 “ENTRY AT IMPROPER TIME OR PLACE; AVOIDANCE OF  
19 EXAMINATION OR INSPECTION; UNLAWFUL PRES-  
20 ENCE; MISREPRESENTATION OR CONCEALMENT OF  
21 FACTS

22 “SEC. 275. (a) IN GENERAL.—Any alien who—

23           “(1) enters or attempts to enter the United  
24           States at any time or place other than as designated  
25           by immigration officers;



7 shall, for the first commission of any such offense, be fined  
8 under title 18, United States Code, or imprisoned not  
9 more than 2 years, or both. For each subsequent unlawful  
10 entry or attempted entry in violation of this section, an  
11 alien shall be fined under title 18, United States Code,  
12 or imprisoned not more than 5 years, or both.

19 SEC. 503. CIVIL AND CRIMINAL PENALTIES FOR ALIENS UN-  
20 LAWFULLY PRESENT IN THE UNITED STATES.

•S 2061 IS

1 “CRIMINAL PENALTIES FOR UNLAWFUL PRESENCE IN  
2 THE UNITED STATES

3 “SEC. 275A. (a) IN GENERAL.—In addition to any  
4 other violation, an alien present in the United States in  
5 violation of this Act shall be guilty of a misdemeanor and  
6 shall be fined under title 18, United States Code, impris-  
7 oned not more than 1 year, or both. The assets of any  
8 alien present in the United States in violation of this Act  
9 shall be subject to forfeiture under title 19, United States  
10 Code.

11 “(b) AFFIRMATIVE DEFENSE.—It shall be an affirm-  
12 ative defense to a violation of subsection (a) that the alien  
13 overstayed the time allotted under the alien’s visa due to  
14 an exceptional and extremely unusual hardship or physical  
15 illness that prevented the alien from leaving the United  
16 States by the required date.”.

17 (b) INCREASE IN CRIMINAL PENALTIES FOR ILLEGAL  
18 ENTRY.—Section 275(a) of the Immigration and Nation-  
19 ality Act (8 U.S.C. 1325(a)) is amended by striking “6  
20 months,” and inserting “1 year,”.

21 (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
22 tion shall be construed to limit the authority of any State  
23 or political subdivision therein to enforce criminal trespass  
24 laws against aliens whom a law enforcement agency has

1 verified to be present in the United States in violation of  
2 this Act.

3 **SEC. 504. INCREASED PENALTIES FOR REENTRY OF RE-**  
4 **MOVED ALIENS.**

5 (a) IN GENERAL.—Subsection (a) of section 276 of  
6 the Immigration and Nationality Act (8 U.S.C. 1326) is  
7 amended to read as follows:

8 “(a) Subject to subsection (b), any alien shall be fined  
9 under title 18, United States Code, or imprisoned not  
10 more than 2 years, or both, who—

11 “(1) has been denied admission, excluded, de-  
12 ported, or removed or has departed the United  
13 States while an order of exclusion, deportation, or  
14 removal is outstanding; and

15 “(2) thereafter enters, attempts to enter, or is  
16 at any time found in, the United States, unless, in  
17 the case of an alien previously denied admission and  
18 removed, the alien establishes that the alien was not  
19 required to obtain from the Secretary of Homeland  
20 Security advance consent to reapply for admission  
21 under this Act or any prior Act.”.

22 (b) CRIMINAL PENALTIES FOR REENTRY OF CER-  
23 TAIN REMOVED ALIENS.—Subsection (b) of such section  
24 is amended—

1           (1) in paragraph (3), by striking “sentence.”  
 2           and inserting “sentence;”; and

3           (2) in paragraph (4), by striking “(unless the  
 4           Attorney General has expressly consented to such  
 5           alien’s reentry)”.

6           (c) REENTRY OF ALIENS REMOVED PRIOR TO COM-  
 7           PLETION OF IMPRISONMENT.—Subsection (c) of such sec-  
 8           tion is amended—

9           (1) by inserting “(as in effect before the effec-  
 10          tive date of the amendments made by section 305 of  
 11          the Illegal Immigration Reform and Immigrant Re-  
 12          sponsibility Act of 1996), or removed under section  
 13          241(a)(4),” after “242(h)(2)”;

14          (2) by striking “(unless the Attorney General  
 15          has expressly consented to such alien’s reentry)”;

16          (3) by inserting “or removal” after “time of de-  
 17          portation”; and

18          (4) by inserting “or removed” after “reentry of  
 19          deported”.

20          (d) CHALLENGE TO VALIDITY OF ORDER.—Sub-  
 21          section (d) of such section is amended—

22          (1) in the matter before paragraph (1), by  
 23          striking “deportation order” and inserting “deporta-  
 24          tion or removal order”; and

1 (2) in paragraph (2), by inserting “or removal”  
 2 after “deportation”.

3 (e) EFFECTIVE DATE.—The amendments made by  
 4 this section shall take effect on the date of enactment of  
 5 this Act and shall apply to criminal proceedings involving  
 6 aliens who enter, attempt to enter, or are found in the  
 7 United States, after such date.

8 **SEC. 505. CIVIL AND CRIMINAL PENALTIES FOR DOCUMENT**  
 9 **FRAUD, BENEFIT FRAUD, AND FALSE CLAIMS**  
 10 **OF CITIZENSHIP.**

11 (a) CIVIL PENALTIES FOR DOCUMENT FRAUD.—Sec-  
 12 tion 274C(d)(3) of the Immigration and Nationality Act  
 13 (8 U.S.C. 1324c(d)(3)) is amended—

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

17 (2) in subparagraph (B), by striking “\$2,000  
 18 and not more than \$5,000” and inserting “\$4,000  
 19 and not more than \$10,000”.

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

22 (1) in section 1015, by striking “not more than  
 23 5 years” and inserting “not more than 10 years”;  
 24 and

25 (2) in section 1028(b)—

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

3 (B) in paragraph (2), by striking “three  
4 years” and inserting “6 years”;

5 (C) in paragraph (3), by striking “20  
6 years” and inserting “25 years”; and

7 (D) in paragraph (6), by striking “one  
8 year” and inserting “2 years”.

9 (c) DOCUMENT FRAUD.—Section 1546 of title 18,  
10 United States Code, is amended—

11 (1) in subsection (a)—

12 (A) by striking “not more than 25 years”  
13 and inserting “not less than 25 years”

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

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

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

22 (E) by striking “15 years” and inserting  
23 “imprisoned not more than 25 years”; and

24 (2) in subsection (b), by striking “5 years” and  
25 inserting “10 years”.

1 (d) CRIMES OF VIOLENCE.—

2 (1) IN GENERAL.—Title 18, United States  
3 Code, is amended by inserting after chapter 51 the  
4 following:

5 **“CHAPTER 52—ILLEGAL ALIENS**

6 **“SEC. 1131. ENHANCED PENALTIES FOR CERTAIN CRIMES**

7 **COMMITTED BY ILLEGAL ALIENS.**

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

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

18 “(c) A sentence of imprisonment imposed under this  
19 section shall run consecutively to any other sentence of  
20 imprisonment imposed for any other crime.”.

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

**“CHAPTER 52—ILLEGAL ALIENS**

**“1131. Enhanced penalties for certain crimes committed by illegal aliens.”.**

1 **SEC. 506. RENDERING INADMISSIBLE AND DEPORTABLE**  
 2 **ALIENS PARTICIPATING IN CRIMINAL**  
 3 **STREET GANGS.**

4 (a) INADMISSIBLE.—Section 212(a)(2) of the Immi-  
 5 gration and Nationality Act (8 U.S.C. 1182(a)(2)) is  
 6 amended by adding at the end the following:

7 “(J) CRIMINAL STREET GANG PARTICIPA-  
 8 TION.—

9 “(i) IN GENERAL.—Any alien is inad-  
 10 missible if—

11 “(I) the alien has been removed  
 12 under section 237(a)(2)(F); or

13 “(II) the consular officer or the  
 14 Secretary of Homeland Security  
 15 knows, or has reasonable ground to  
 16 believe that the alien—

17 “(aa) is a member of a  
 18 criminal street gang and has  
 19 committed, conspired, or threat-  
 20 ened to commit, or seeks to enter  
 21 the United States to engage sole-  
 22 ly, principally, or incidentally in,  
 23 a gang crime or any other unlaw-  
 24 ful activity; or



1                   “(bb) is a member of a  
2                   criminal street gang designated  
3                   under section 219A.

4                   “(ii) DEFINITIONS.—In this subpara-  
5                   graph:

6                   “(I) CRIMINAL STREET GANG.—  
7                   The term ‘criminal street gang’ means  
8                   an ongoing group, club organization  
9                   or informal association of 5 or more  
10                  persons who engage, or have engaged  
11                  within the past 5 years in a con-  
12                  tinuing series of 3 or more gang  
13                  crimes (one of which is a crime of vio-  
14                  lence, as defined in section 16 of title  
15                  18, United States Code).

16                  “(II) GANG CRIME.—The term  
17                  ‘gang crime’ means conduct consti-  
18                  tuting any Federal or State crime,  
19                  punishable by imprisonment for 1  
20                  year or more, in any of the following  
21                  categories:

22                         “(aa) A crime of violence (as  
23                         defined in section 16 of title 18,  
24                         United States Code).

1 “(bb) A crime involving ob-  
2 struction of justice, tampering  
3 with or retaliating against a wit-  
4 ness, victim, or informant, or  
5 burglary.

6 “(cc) A crime involving the  
7 manufacturing, importing, dis-  
8 tributing, possessing with intent  
9 to distribute, or otherwise dealing  
10 in a controlled substance or listed  
11 chemical (as those terms are de-  
12 fined in section 102 of the Con-  
13 trolled Substances Act (21  
14 U.S.C. 802)).

15 “(dd) Any conduct punish-  
16 able under section 844 of title  
17 18, United States Code (relating  
18 to explosive materials), sub-  
19 section (d), (g)(1) (where the un-  
20 derlying conviction is a violent  
21 felony (as defined in section  
22 924(e)(2)(B) of such title) or is a  
23 serious drug offense (as defined  
24 in section 924(e)(2)(A)), (i), (j),  
25 (k), (o), (p), (q), (u), or (x) of

1 section 922 of such title (relating  
2 to unlawful acts), or subsection  
3 (b), (c), (g), (h), (k), (l), (m), or  
4 (n) of section 924 of such title  
5 (relating to penalties), section  
6 930 of such title (relating to pos-  
7 session of firearms and dan-  
8 gerous weapons in Federal facili-  
9 ties), section 931 of such title  
10 (relating to purchase, ownership,  
11 or possession of body armor by  
12 violent felons), sections 1028 and  
13 1029 of such title (relating to  
14 fraud and related activity in con-  
15 nection with identification docu-  
16 ments or access devices), section  
17 1952 of such title (relating to  
18 interstate and foreign travel or  
19 transportation in aid of racket-  
20 eering enterprises), section 1956  
21 of such title (relating to the laun-  
22 dering of monetary instruments),  
23 section 1957 of such title (relat-  
24 ing to engaging in monetary  
25 transactions in property derived

1 from specified unlawful activity),  
 2 or sections 2312 through 2315 of  
 3 such title (relating to interstate  
 4 transportation of stolen motor ve-  
 5 hicles or stolen property).

6 “(ee) Any conduct punish-  
 7 able under section 274 (relating  
 8 to bringing in and harboring cer-  
 9 tain aliens), section 277 (relating  
 10 to aiding or assisting certain  
 11 aliens to enter the United  
 12 States), or section 278 (relating  
 13 to importation of alien for im-  
 14 moral purpose) of this Act.”.

15 (b) DEPORTABLE.—Section 237(a)(2) of the Immi-  
 16 gration and Nationality Act (8 U.S.C. 1227(a)(2)) is  
 17 amended by adding at the end the following:

18 “(F) CRIMINAL STREET GANG PARTICIPA-  
 19 TION.—

20 “(i) IN GENERAL.—An alien is deport-  
 21 able if the alien—

22 “(I) is a member of a criminal  
 23 street gang and is convicted of com-  
 24 mitting, or conspiring, threatening, or

1 attempting to commit, a gang crime;  
 2 or

3 “(II) is determined by the Sec-  
 4 retary of Homeland Security to be a  
 5 member of a criminal street gang des-  
 6 ignated under section 219A.

7 “(ii) DEFINITIONS.—For purposes of  
 8 this subparagraph, the terms ‘criminal  
 9 street gang’ and ‘gang crime’ have the  
 10 meaning given such terms in section  
 11 212(a)(2)(J)(ii).”.

12 (c) DESIGNATION OF CRIMINAL STREET GANGS.—

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

16 “DESIGNATION OF CRIMINAL STREET GANGS  
 17 “SEC. 219A. (a) DESIGNATION.—

18 “(1) IN GENERAL.—The Attorney General is  
 19 authorized to designate a group or association as a  
 20 criminal street gang in accordance with this sub-  
 21 section if the Attorney General finds that the group  
 22 or association meets the criteria described in section  
 23 212(a)(2)(J)(ii)(I).

24 “(2) PROCEDURE.—

25 “(A) NOTICE.—

1           “(i) TO CONGRESSIONAL LEADERS.—  
2           Seven days before making a designation  
3           under this subsection, the Attorney Gen-  
4           eral shall, by classified communication, no-  
5           tify the Speaker and Minority Leader of  
6           the House of Representatives, the Presi-  
7           dent pro tempore, Majority Leader, and  
8           Minority Leader of the Senate, and the  
9           members of the relevant committees of the  
10          House of Representatives and the Senate,  
11          in writing, of the intent to designate a  
12          group or association under this subsection,  
13          together with the findings made under  
14          paragraph (1) with respect to that group  
15          or association, and the factual basis there-  
16          fore.

17           “(ii) PUBLICATION IN FEDERAL REG-  
18          ISTER.—The Attorney shall publish the  
19          designation in the Federal Register 7 days  
20          after providing the notification under  
21          clause (i).

22           “(B) EFFECT OF DESIGNATION.—

23           “(i) A designation under this sub-  
24          section shall take effect upon publication  
25          under subparagraph (A)(ii).

1                   “(ii) Any designation under this sub-  
2                   section shall cease to have effect upon an  
3                   Act of Congress disapproving such des-  
4                   ignation.

5                   “(3) RECORD.—In making a designation under  
6                   this subsection, the Attorney General shall create an  
7                   administrative record.

8                   “(4) PERIOD OF DESIGNATION.—

9                   “(A) IN GENERAL.—A designation under  
10                  this subsection shall be effective for all purposes  
11                  until revoked under paragraph (5) or (6) or set  
12                  aside pursuant to subsection (b).

13                  “(B) REVIEW OF DESIGNATION UPON PE-  
14                  TITION.—

15                  “(i) IN GENERAL.—The Attorney  
16                  General shall review the designation of a  
17                  criminal street gang under the procedures  
18                  set forth in clauses (iii) and (iv) if the des-  
19                  ignated gang or association files a petition  
20                  for revocation within the petition period  
21                  described in clause (ii).

22                  “(ii) PETITION PERIOD.—For pur-  
23                  poses of clause (i)—

24                         “(I) if the designated gang or as-  
25                         sociation has not previously filed a pe-

1           tition for revocation under this sub-  
2           paragraph, the petition period begins  
3           2 years after the date on which the  
4           designation was made; or

5           “(II) if the designated gang or  
6           association has previously filed a peti-  
7           tion for revocation under this sub-  
8           paragraph, the petition period begins  
9           2 years after the date of the deter-  
10          mination made under clause (iv) on  
11          that petition.

12          “(iii) PROCEDURES.—Any criminal  
13          street gang that submits a petition for rev-  
14          ocation under this subparagraph shall pro-  
15          vide evidence in that petition that the rel-  
16          evant circumstances described in para-  
17          graph (1) are sufficiently different from  
18          the circumstances that were the basis for  
19          the designation such that a revocation with  
20          respect to the gang is warranted.

21          “(iv) DETERMINATION.—

22                 “(I) IN GENERAL.—Not later  
23                 than 180 days after receiving a peti-  
24                 tion for revocation submitted under  
25                 this subparagraph, the Attorney Gen-



1           eral shall make a determination as to  
2           such revocation.

3                   “(II) PUBLICATION OF DETER-  
4           MINATION.—A determination made by  
5           the Attorney General under this  
6           clause shall be published in the Fed-  
7           eral Register.

8                   “(III) PROCEDURES.—Any rev-  
9           ocation by the Attorney General shall  
10          be made in accordance with para-  
11          graph (6).

12                   “(C) OTHER REVIEW OF DESIGNATION.—

13                   “(i) IN GENERAL.—If in a 4-year pe-  
14          riod no review has taken place under sub-  
15          paragraph (B), the Attorney General shall  
16          review the designation of the criminal  
17          street gang in order to determine whether  
18          such designation should be revoked pursu-  
19          ant to paragraph (6).

20                   “(ii) PROCEDURES.—If a review does  
21          not take place pursuant to subparagraph  
22          (B) in response to a petition for revocation  
23          that is filed in accordance with that sub-  
24          paragraph, then the review shall be con-  
25          ducted pursuant to procedures established

1 by the Attorney General. The results of  
2 such review and the applicable procedures  
3 shall not be reviewable in any court.

4 “(iii) PUBLICATION OF RESULTS OF  
5 REVIEW.—The Attorney General shall pub-  
6 lish any determination made pursuant to  
7 this subparagraph in the Federal Register.

8 “(5) REVOCATION BY ACT OF CONGRESS.—The  
9 Congress, by an Act of Congress, may block or re-  
10 voke a designation made under paragraph (1).

11 “(6) REVOCATION BASED ON CHANGE IN CIR-  
12 CUMSTANCES.—

13 “(A) IN GENERAL.—The Attorney General  
14 may revoke a designation made under para-  
15 graph (1) at any time, and shall revoke a des-  
16 ignation upon completion of a review conducted  
17 pursuant to subparagraphs (b) and (c) of para-  
18 graph (4) if the Attorney General finds that—

19 “(i) the circumstances that were the  
20 basis for the designation have changed in  
21 such a manner as to warrant revocation; or

22 “(ii) the national security of the  
23 United States warrants a revocation.

24 “(B) PROCEDURE.—The procedural re-  
25 quirements of paragraphs (2) and (3) shall

1           apply to a revocation under this paragraph. Any  
2           revocation shall take effect on the date specified  
3           in the revocation or upon publication in the  
4           Federal Register if no effective date is specified.

5           “(7) EFFECT OF REVOCATION.—The revocation  
6           of a designation under paragraph (5) or (6) shall  
7           not affect any action or proceeding based on conduct  
8           committed prior to the effective date of such revoca-  
9           tion.

10          “(8) USE OF DESIGNATION IN HEARING.—If a  
11          designation under this subsection has become effec-  
12          tive under paragraph (2)(B), an alien in a removal  
13          proceeding shall not be permitted to raise any ques-  
14          tion concerning the validity of the issuance of such  
15          designation as a defense or an objection at any hear-  
16          ing.

17          “(b) JUDICIAL REVIEW OF DESIGNATION.—

18                 “(1) IN GENERAL.—Not later than 60 days  
19                 after publication of the designation in the Federal  
20                 Register, a group or association designated as a  
21                 criminal street gang may seek judicial review of the  
22                 designation in the United States Court of Appeals  
23                 for the District of Columbia Circuit.

1           “(2) BASIS OF REVIEW.—Review under this  
2           subsection shall be based solely upon the administra-  
3           tive record.

4           “(3) SCOPE OF REVIEW.—The court shall hold  
5           unlawful and set aside a designation the court finds  
6           to be—

7                   “(A) arbitrary, capricious, an abuse of dis-  
8                   cretion, or otherwise not in accordance with  
9                   law;

10                   “(B) contrary to constitutional right,  
11                   power, privilege, or immunity;

12                   “(C) in excess of statutory jurisdiction, au-  
13                   thority, or limitation, or short of statutory  
14                   right;

15                   “(D) lacking substantial support in the ad-  
16                   ministrative record taken as a whole; or

17                   “(E) not in accord with the procedures re-  
18                   quired by law.

19           “(4) JUDICIAL REVIEW INVOKED.—The pend-  
20           ency of an action for judicial review of a designation  
21           shall not affect the application of this section, unless  
22           the court issues a final order setting aside the des-  
23           ignation.

24           “(c) RELEVANT COMMITTEE DEFINED.—As used in  
25           this section, the term ‘relevant committees’ means the

1 Committee on the Judiciary of the Senate and the Com-  
 2 mittee on the Judiciary of the House of Representatives.”.

3 (2) CLERICAL AMENDMENT.—The table of con-  
 4 tents for the Immigration and Nationality Act (8  
 5 U.S.C. 1101 et seq.) is amended by inserting after  
 6 the item relating to section 219 the following:

“Sec. 219A. Designation of criminal street gangs.”.

7 **SEC. 507. MANDATORY DETENTION OF SUSPECTED CRIMI-**  
 8 **NAL STREET GANG MEMBERS.**

9 (a) IN GENERAL.—Section 236(c)(1)(d) of the Immi-  
 10 gration and Nationality Act (8 U.S.C. 1226(c)(1)(d)) is  
 11 amended—

12 (1) by inserting “or 212(a)(2)(J)” after  
 13 “212(a)(3)(B)”; and

14 (2) by inserting “or 237(a)(2)(F)” before  
 15 “237(a)(4)(B)”.

16 (b) ANNUAL REPORT.—Not later than March 1 of  
 17 each year (beginning 1 year after the date of enactment  
 18 of this Act), the Secretary of Homeland Security, after  
 19 consultation with the appropriate Federal agencies, shall  
 20 submit a report to the Committee on the Judiciary of the  
 21 Senate and the Committee on the Judiciary of the House  
 22 of Representatives on the number of aliens detained under  
 23 the amendments made by subsection (a).

1 **SEC. 508. INELIGIBILITY FROM PROTECTION FROM RE-**  
 2 **MOVAL AND ASYLUM.**

3 (a) INAPPLICABILITY OF RESTRICTION ON REMOVAL  
 4 TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the  
 5 Immigration and Nationality Act (8 U.S.C.  
 6 1251(b)(3)(B)) is amended, in the matter preceding  
 7 clause (i), by inserting “who is described in section  
 8 212(a)(2)(J)(i) or section 237(a)(2)(F)(i) or who is” after  
 9 “to an alien”.

10 (b) INELIGIBILITY FOR ASYLUM.—Section  
 11 208(b)(2)(A) of such act (8 U.S.C. 1158(b)(2)(A)) is  
 12 amended—

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

14 (2) by redesignating clause (vi) as clause (vii);

15 and

16 (3) by inserting after clause (v) the following:

17 “(vi) the alien is described in section  
 18 212(a)(2)(J)(i) or section 237(a)(2)(F)(i)  
 19 (relating to participation in criminal street  
 20 gangs); or”.

21 (c) DENIAL OF REVIEW OF DETERMINATION OF IN-  
 22 ELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—  
 23 Section 244(c)(2) of such Act (8 U.S.C. 1254(c)(2)) is  
 24 amended by adding at the end the following:

25 “(C) LIMITATION ON JUDICIAL REVIEW.—

26 There shall be no judicial review of any finding

1 under subparagraph (B) that an alien is de-  
2 scribed in section 208(b)(2)(A)(vi).”.

3 **SEC. 509. PENALTIES FOR MISUSING SOCIAL SECURITY**  
4 **NUMBERS OR FILING FALSE INFORMATION**  
5 **WITH SOCIAL SECURITY ADMINISTRATION.**

6 (a) MISUSE OF SOCIAL SECURITY NUMBERS.—

7 (1) IN GENERAL.—Section 208(a) of the Social  
8 Security Act (42 U.S.C. 408(a)) is amended—

9 (A) in paragraph (7), by adding after sub-  
10 paragraph (C) the following:

11 “(D) with intent to deceive, discloses, sells,  
12 or transfers his own social security account  
13 number, assigned to him by the Commissioner  
14 of Social Security (in the exercise of the Com-  
15 missioner’s authority under section 205(c)(2) to  
16 establish and maintain records), to any person;  
17 or”;

18 (B) in paragraph (8), by adding “or” at  
19 the end; and

20 (C) by inserting after paragraph (8) the  
21 following:

22 “(9) without lawful authority, offers, for a fee,  
23 to acquire for any individual, or to assist in acquir-  
24 ing for any individual, an additional social security

1 account number or a number that purports to be a  
 2 social security account number;

3 “(10) willfully acts or fails to act so as to cause  
 4 a violation of section 205(c)(2)(C)(xii);

5 “(11) being an officer or employee of any execu-  
 6 tive, legislative, or judicial agency or instrumen-  
 7 tality of the Federal Government or of a State or  
 8 political subdivision thereof (or a person acting as  
 9 an agent of such an agency or instrumentality) in  
 10 possession of any individual’s social security account  
 11 number (or an officer or employee thereof or a per-  
 12 son acting as an agent thereof), willfully acts or fails  
 13 to act so as to cause a violation of clause (vi)(II),  
 14 (x), (xi), (xii), (xiii), or (xiv) of section 205(c)(2)(C);  
 15 or

16 “(12) being a trustee appointed in a case under  
 17 title 11, United States Code (or an officer or em-  
 18 ployee thereof or a person acting as an agent there-  
 19 of), willfully acts or fails to act so as to cause a vio-  
 20 lation of clause (x) or (xi) of section 205(c)(2)(C).”.

21 (2) EFFECTIVE DATES.—Paragraphs (7)(D)  
 22 and (9) of section 208(a) of the Social Security Act,  
 23 as added by paragraph (1), shall apply with respect  
 24 to each violation occurring after the date of enact-  
 25 ment of this Act. Paragraphs (10), (11), and (12)



1 of section 208(a) of such Act, as added by para-  
 2 graph (1)(C), shall apply with respect to each viola-  
 3 tion occurring on or after the effective date of this  
 4 Act.

5 (b) REPORT ON ENFORCEMENT EFFORTS CON-  
 6 CERNING EMPLOYERS FILING FALSE INFORMATION RE-  
 7 TURNS.—The Commissioner of Internal Revenue and the  
 8 Commissioner of Social Security shall submit an annual  
 9 report to the appropriate congressional committees on ef-  
 10 forts taken to identify and enforce penalties against em-  
 11 ployers that file incorrect information returns.

## 12 **Subtitle B—Detention, Removal** 13 **and Departure**

### 14 **SEC. 511. VOLUNTARY DEPARTURE.**

15 (a) IN GENERAL.—Section 240B of the Immigration  
 16 and Nationality Act (8 U.S.C. 1229c) is amended to read  
 17 as follows:

18 “VOLUNTARY DEPARTURE

19 “SEC. 240B. (a) IN LIEU OF PROCEEDINGS.—The  
 20 Secretary of Homeland Security may permit an alien vol-  
 21 untarily to depart the United States at the alien’s own  
 22 expense under this subsection, in lieu of being subject to  
 23 proceedings under section 240 and in lieu of applying for  
 24 another form of relief from removal, if the alien is not  
 25 deportable under paragraph (2)(A)(iii) or (4)(B) of section  
 26 237(a). Permission to depart voluntarily under this sub-

1 section shall not be valid for a period exceeding 90 days  
2 and cannot be extended. The Secretary of Homeland Secu-  
3 rity shall require an alien permitted to depart voluntarily  
4 under this subsection to post a voluntary departure bond,  
5 in an amount necessary to ensure that the alien will de-  
6 part, to be surrendered upon proof that the alien has de-  
7 parted the United States within the time specified.

8 “(b) PRIOR TO SCHEDULING MERITS HEARING.—  
9 The Secretary of Homeland Security may permit an alien  
10 voluntarily to depart the United States at the alien’s own  
11 expense under this subsection prior to the scheduling of  
12 the first merits hearing, in lieu of applying for another  
13 form of relief from removal, if the alien is not deportable  
14 under paragraph (2)(A)(iii) or (4)(B) of section 237(a).  
15 Permission to depart voluntarily under this subsection  
16 shall not be valid for a period exceeding 60 days and can-  
17 not be extended. The Secretary shall require an alien per-  
18 mitted to depart voluntarily under this subsection to post  
19 a voluntary departure bond, in an amount necessary to  
20 ensure that the alien will depart, to be surrendered upon  
21 proof that the alien has departed the United States within  
22 the time specified.

23 “(c) ONCE FIRST MERITS HEARING SCHEDULED.—

24 “(1) IN GENERAL.—Once the first merits hear-  
25 ing has been scheduled under section 240, the Sec-

1       retary of Homeland Security may permit an alien  
2       voluntarily to depart the United States at the alien's  
3       own expense under this subsection, in lieu of pur-  
4       suing another form of relief from removal, if the im-  
5       migration judge enters an order granting voluntary  
6       departure in lieu of removal and finds that—

7               “(A) the alien has been physically present  
8       in the United States for a period of at least 1  
9       year immediately preceding the date the notice  
10      to appear was served under section 239(a);

11              “(B) the alien is, and has been, a person  
12      of good moral character for at least 5 years im-  
13      mediately preceding the alien's application for  
14      voluntary departure;

15              “(C) the alien is not deportable under  
16      paragraph (2)(A)(iii) or (4)(B) of section  
17      237(a); and

18              “(D) the alien has established by clear and  
19      convincing evidence that the alien has the  
20      means to depart the United States and intends  
21      to do so.

22              “(2) PERIOD.—Permission to depart voluntarily  
23      under this subsection shall not be valid for a period  
24      exceeding 45 days and cannot be extended.

1           “(3) BOND.—The Secretary of Homeland Secu-  
2           rity shall require an alien permitted to depart volun-  
3           tarily under this subsection to post a voluntary de-  
4           parture bond, in an amount necessary to ensure that  
5           the alien will depart, to be surrendered upon proof  
6           that the alien has departed the United States within  
7           the time specified.

8           “(d) ALIENS NOT ELIGIBLE.—The Secretary of  
9           Homeland Security shall not permit an alien to depart vol-  
10          untarily under this section if the alien was previously per-  
11          mitted to depart voluntarily under section 244(e) or this  
12          section, or to voluntarily return, at any time.

13          “(e) CIVIL PENALTY FOR FAILURE TO DEPART.—If  
14          an alien is permitted to depart voluntarily under this sec-  
15          tion and fails voluntarily to depart the United States with-  
16          in the time period specified, the alien shall be subject to  
17          a civil penalty of not less than \$1,000 and not more than  
18          \$5,000, and be ineligible for a period of 10 years for any  
19          further relief under this section and sections 240A, 245,  
20          248, and 249. The order permitting the alien to depart  
21          voluntarily shall inform the alien of the penalties under  
22          this subsection.

23          “(f) ADDITIONAL CONDITIONS.—The Secretary of  
24          Homeland Security may by regulation limit eligibility for  
25          voluntary departure under this section for any class or

1 classes of aliens. No court may review any regulation  
2 issued under this subsection.

3 “(g) TREATMENT OF ALIENS ARRIVING IN THE  
4 UNITED STATES.—In the case of an alien who is arriving  
5 in the United States and with respect to whom pro-  
6 ceedings under section 240 are (or would otherwise be)  
7 initiated at the time of such alien’s arrival, subsections  
8 (a) through (c) shall not apply. Nothing in this paragraph  
9 shall be construed as preventing such an alien from with-  
10 drawing the application for admission in accordance with  
11 section 235(a)(4).

12 “(h) REVIEW.—There shall be no administrative or  
13 judicial review of a denial of a request for an order of  
14 voluntary departure. No court or agency shall order a stay  
15 of an alien’s removal pending consideration of any claim  
16 with respect to voluntary departure. The order permitting  
17 the alien to depart voluntarily shall inform the alien that  
18 the alien has no right to appeal any issue relating to the  
19 removal proceeding.

20 “(i) VOLUNTARY DEPARTURE AGREEMENTS NEGOTIATED BY STATE OR LOCAL COURTS.—

22 “(1) IN GENERAL.—The Secretary of Homeland  
23 Security may permit an alien voluntarily to depart  
24 the United States at the alien’s own expense under  
25 this subsection at any time prior to the scheduling

1 of the first merits hearing, in lieu of applying for an-  
2 other form of relief from removal, if the alien—

3 “(A) is deportable under section 237(a)(1);

4 “(B) is charged in a criminal proceeding in  
5 a State or local court for which conviction  
6 would subject the alien to deportation under  
7 paragraphs (2) through (6) of section 237(a);  
8 and

9 “(C) has accepted a plea bargain in such  
10 proceeding which stipulates that the alien, after  
11 consultation with counsel in such proceeding—

12 “(i) voluntarily waives application for  
13 another form of relief from removal;

14 “(ii) consents to transportation, under  
15 custody of a law enforcement officer of the  
16 State or local court, to an appropriate  
17 international port of entry where departure  
18 from the United States will occur;

19 “(iii) possesses or will promptly obtain  
20 travel documents issued by the foreign  
21 state of which the alien is a national or  
22 legal resident; and

23 “(iv) possesses the means to purchase  
24 transportation from the port of entry to

1                   the foreign state to which the alien will de-  
2                   part from the United States.

3                   “(2) REVIEW.—The Secretary shall promptly  
4                   review an application for voluntary departure for  
5                   compliance with the requirements of paragraph (1).  
6                   The Secretary shall permit voluntary departure  
7                   under this subsection unless the State or local juris-  
8                   diction is informed in writing not later than 30 days  
9                   after such application is filed, that the Secretary in-  
10                  tends to seek removal under section 240.”.

11                  (b) EFFECTIVE DATE.—The amendment made by  
12                  subsection (a) shall take effect on the date of enactment  
13                  of this Act and shall apply to aliens who are in proceedings  
14                  under the Immigration and Nationality Act on or after  
15                  such date if those proceedings have not resulted in a final  
16                  administrative order before such date.

17   **SEC. 512. RELEASE OF ALIENS IN REMOVAL PROCEEDINGS.**

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

21                         “(2) subject to section 241(a)(8), may release  
22                         the alien on bond of at least \$10,000, with security  
23                         approved by, and containing conditions prescribed  
24                         by, the Secretary of Homeland Security, but the  
25                         Secretary shall not release the alien on or to his own

1       recognizance unless an order of an immigration  
 2       judge expressly finds that the alien is not a flight  
 3       risk and is not a threat to the United States; and”.

4       (b) EFFECTIVE DATE.—The amendment made by  
 5       subsection (a) shall take effect on the date of enactment  
 6       of this Act.

7       **SEC. 513. EXPEDITED REMOVAL OF CRIMINAL ALIENS.**

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

10           (1) by amending the section heading to read as  
 11       follows: “EXPEDITED REMOVAL OF CRIMINAL  
 12       ALIENS”

13           (2) in subsection (a), by amending the sub-  
 14       section heading to read as follows: “EXPEDITED RE-  
 15       MOVAL FROM CORRECTIONAL FACILITIES”;

16           (3) in subsection (b), by amending the sub-  
 17       section heading to read as follows: “REMOVAL OF  
 18       CRIMINAL ALIENS”;

19           (4) in subsection (b), by striking paragraphs  
 20       (1) and (2) and inserting the following:

21           “(1) IN GENERAL.—The Secretary may, in the  
 22       case of an alien described in paragraph (2), deter-  
 23       mine the deportability of such alien and issue an  
 24       order of removal pursuant to the procedures set  
 25       forth in this subsection or section 240.



1           “(2) ALIENS DESCRIBED.—An alien is de-  
 2       scribed in this paragraph if the alien, whether or not  
 3       admitted into the United States, was convicted of  
 4       any criminal offense described in subparagraph  
 5       (A)(iii), (C), or (D) of section 237(a)(2).”;

6           (5) in the first subsection (c) (relating to pre-  
 7       sumption of deportability), by striking “convicted of  
 8       an aggravated felony” and inserting “described in  
 9       paragraph (b)(2)”;

10          (6) by redesignating the second subsection (c)  
 11       (relating to judicial removal) as subsection (d); and

12          (7) in subsection (d)(5) (as so redesignated), by  
 13       striking “, who is deportable under this Act,”.

14       (b) LIMIT ON INJUNCTIVE RELIEF.—Section  
 15       242(f)(2) of such Act (8 U.S.C. 1252(f)(2)) is amended  
 16       by inserting “or stay, whether temporarily or otherwise,”  
 17       after “enjoin”.

18       **SEC. 514. REINSTATEMENT OF PREVIOUS REMOVAL OR-**  
 19       **DERS.**

20       Section 241(a)(5) of the Immigration and Nationality  
 21       Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:

22           “(5) REINSTATEMENT OF PREVIOUS REMOVAL  
 23       ORDERS.—

24           “(A) REMOVAL.—The Secretary of Home-  
 25       land Security shall remove an alien who is an

1 applicant for admission (other than an admis-  
2 sible alien presenting himself or herself for in-  
3 spection at a port of entry or an alien paroled  
4 into the United States under section  
5 212(d)(5)), after having been, on or after Sep-  
6 tember 30, 1996, excluded, deported, or re-  
7 moved, or having departed voluntarily under an  
8 order of exclusion, deportation, or removal.

9 “(B) JUDICIAL REVIEW.—The removal de-  
10 scribed in subparagraph (A) shall not require  
11 any proceeding before an immigration judge,  
12 and shall be under the prior order of exclusion,  
13 deportation, or removal, which is not subject to  
14 reopening or review. The alien is not eligible  
15 and may not apply for or receive any immigra-  
16 tion relief or benefit under this Act or any other  
17 law, with the exception of sections 208 or  
18 241(b)(3) or the United Nations Convention  
19 Against Torture and Other Cruel, Inhuman, or  
20 Degrading Treatment or Punishment in the  
21 case of an alien who indicates either an inten-  
22 tion to apply for asylum under section 208 or  
23 a fear of persecution or torture.”.

1 **SEC. 515. CANCELLATION OF REMOVAL.**

2 Section 240A(c) of the Immigration and Nationality  
3 Act (8 U.S.C. 1229b(c)) is amended by adding at the end  
4 the following:

5 “(7) An alien who is inadmissible under section  
6 212(a)(9)(B)(i).”.

7 **SEC. 516. DETENTION OF DANGEROUS ALIENS.**

8 (a) REMOVAL OF TERRORIST ALIENS.—

9 (1) IN GENERAL.—Title II of the Immigration  
10 and Nationality Act (8 U.S.C. 1151 et seq.) is  
11 amended—

12 (A) in section 208(b)(2)(A) (8 U.S.C.  
13 1158(b)(2)(A)), by amending clause (v) to read  
14 as follows:

15 “(v) the alien is described in section  
16 212(a)(3)(B), 212(a)(3)(F), or  
17 237(a)(4)(B) unless, in the case only of an  
18 alien described in section  
19 212(a)(3)(B)(i)(IV), the Secretary of  
20 Homeland Security or the Attorney Gen-  
21 eral determines that there are not reason-  
22 able grounds for regarding the alien as a  
23 danger to the security of the United  
24 States; or”;

1 (B) in section 240A(c) (8 U.S.C.  
2 1229b(c)), by amending paragraph (4) to read  
3 as follows:

4 “(4) An alien described in section 212(a)(3) or  
5 237(a)(4).”;

6 (C) in section 240B(b)(1)(C) (8 U.S.C.  
7 1229c(b)(1)(C)), by striking “deportable  
8 under” and inserting “described in”;

9 (D) in section 241(b)(3)(B) (8 U.S.C.  
10 1251(b)(3)(B))—

11 (i) in clause (iii), by striking “or” at  
12 the end;

13 (ii) in clause (iv), by striking the pe-  
14 riod at the end and inserting “; or”;

15 (iii) by inserting after clause (iv) the  
16 following:

17 “(v) the alien is described in section  
18 212(a)(3)(B), 212(a)(3)(F), or  
19 237(a)(4)(B), unless, in the case only of  
20 an alien described in section  
21 212(a)(3)(B)(i)(IV), the Secretary of  
22 Homeland Security or the Attorney Gen-  
23 eral determines that there are not reason-  
24 able grounds for regarding the alien as a

1 danger to the security of the United  
2 States.”; and

3 (iv) by striking “For purposes of  
4 clause (iv)” and all that follows; and  
5 (E) in section 249 (8 U.S.C. 1259)—

6 (i) by striking “inadmissible under  
7 section 212(a)(3)(E) or under section” and  
8 inserting “described in section  
9 212(a)(3)(E) or”; and

10 (ii) in subsection (d), by striking “to  
11 citizenship and is not deportable under”  
12 and inserting “for citizenship and is not  
13 described in”.

14 (2) EFFECTIVE DATE.—The amendments made  
15 by paragraph (1) shall take effect on the date of en-  
16 actment of this Act and shall apply to—

17 (A) all aliens subject to removal, deporta-  
18 tion, or exclusion at any time; and

19 (B) acts and conditions constituting a  
20 ground for inadmissibility, excludability, depor-  
21 tation, or removal occurring or existing before,  
22 on, or after such effective date.

23 (b) DETENTION OF DANGEROUS ALIENS.—

1           (1) IN GENERAL.—Section 241(a) of the Immi-  
2           gration and Nationality Act (8 U.S.C. 1231(a)) is  
3           amended—

4                   (A) by striking “Attorney General” and in-  
5                   serting “Secretary of Homeland Security” each  
6                   place it appears ;

7                   (B) in paragraph (2), by inserting “If a  
8                   court orders a stay of removal of an alien who  
9                   is subject to an order of removal that is admin-  
10                  istratively final, the Secretary of Homeland Se-  
11                  curity, in the exercise of the Secretary’s discre-  
12                  tion, may detain the alien during the pendency  
13                  of such stay of removal, before the beginning of  
14                  the removal period, as provided in paragraph  
15                  (1)(B)(ii).” after “detain the alien.”; and

16                  (C) in paragraph (6), by striking “removal  
17                  period and, if released,” and inserting “removal  
18                  period, in the discretion of the Secretary, with-  
19                  out any limitations other than those specified  
20                  by the Secretary of Homeland Security by regu-  
21                  lation, until the alien is removed. If an alien is  
22                  released, the alien”.

23           (2) EFFECTIVE DATE.—The amendments made  
24           by paragraph (1) shall take effect upon the date of  
25           enactment of this Act, and shall apply to cases in

1       which the final administrative removal order was  
2       issued before, on, or after such date.

3   **SEC. 517. ALTERNATIVES TO DETENTION.**

4       The Secretary of Homeland Security shall implement  
5   pilot programs in 6 States with the largest estimated pop-  
6   ulations of deportable aliens to study the effectiveness of  
7   alternatives to detention, including electronic monitoring  
8   devices and intensive supervision programs, in ensuring  
9   alien appearance at court and compliance with removal or-  
10   ders.

11   **SEC. 518. RELEASE OF ALIENS FROM NONCONTIGUOUS**  
12                   **COUNTRIES.**

13       (a) MINIMUM BOND.—Section 236(a)(2) of the Im-  
14   migration and Nationality Act (8 U.S.C. 1226(a)(2)) is  
15   amended—

16           (1) by striking “on”;

17           (2) in subparagraph (a)—

18               (A) by inserting “except as provided under  
19       subparagraph (B), upon the giving of a” before  
20       “bond”; and

21               (B) by striking “or” at the end;

22           (3) by redesignating subparagraph (B) as sub-  
23   paragraph (C); and

24           (4) by inserting after subparagraph (A) the fol-  
25   lowing:

1           “(B) if the alien is a national of a non-  
 2           contiguous country, has not been admitted or  
 3           paroled into the United States, and was appre-  
 4           hended within 100 miles of the international  
 5           border of the United States or presents a flight  
 6           risk, as determined by the Secretary of Home-  
 7           land Security, upon the giving of a bond of at  
 8           least \$5,000 with security approved by, and  
 9           containing conditions prescribed by, the Sec-  
 10          retary of Homeland Security or the Attorney  
 11          General; or.”

12          (b) REPORT.—Two years after the effective date of  
 13          this Act, the Secretary of Homeland Security shall submit  
 14          a report to Congress on the number of aliens from non-  
 15          contiguous countries who are apprehended between land  
 16          border ports of entry.

17      **SEC. 519. CURTAILMENT OF VISAS FOR ALIENS FROM**  
 18                              **COUNTRIES DENYING OR DELAYING REPA-**  
 19                              **TRIATION OF NATIONALS.**

20          Section 244 of the Immigration and Nationality Act  
 21          (8 U.S.C. 1253) is amended by adding at the end the fol-  
 22          lowing new subsection:

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



1           “(1) IN GENERAL.—The Secretary of Homeland  
2       Security shall establish and maintain a public listing  
3       of every alien who is subject to a final order of re-  
4       moval and with respect to whom the Secretary or  
5       any Federal court has determined that there is no  
6       significant likelihood of removal in the reasonably  
7       foreseeable future due to the refusal, or unreason-  
8       able delay, of all countries designated by the alien  
9       under this section to receive the alien. The public  
10      listing shall indicate whether such alien has been re-  
11      leased from Federal custody, and the city and State  
12      in which such alien resides.

13           “(2) DISCONTINUATION OF VISAS.—If 24 or  
14      more of the citizens, subjects, or nationals of any  
15      foreign state remain on the public listing described  
16      in paragraph (1) throughout any month—

17           “(A) such foreign state shall be deemed to  
18      have denied or unreasonably delayed the accept-  
19      ance of such aliens;

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

24           “(C) the Secretary of State shall dis-  
25      continue the issuance of nonimmigrant visas to

1 citizens, subjects, or nationals of such foreign  
2 state until such time as the number of aliens on  
3 the public listing from such foreign state has—  
4 “(i) declined to fewer than 6; or  
5 “(ii) remained below 25 for at least  
6 30 days.”.

7 **SEC. 520. AUTHORIZATION OF APPROPRIATIONS.**

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

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