

Calendar No. 376

109TH CONGRESS
2^D SESSION**S. 2454**

To amend the Immigration and Nationality Act to provide for comprehensive reform and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 16 (legislative day, MARCH 15), 2006

Mr. FRIST introduced the following bill; which was read twice and ordered to be placed on the calendar

A BILL

To amend the Immigration and Nationality Act to provide for comprehensive reform 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 “Securing America’s Borders Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Reference to the Immigration and Nationality Act.
- Sec. 3. Definitions.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

- Sec. 101. Enforcement personnel.
- Sec. 102. Technological assets.
- Sec. 103. Infrastructure.
- Sec. 104. Border patrol checkpoints.
- Sec. 105. Ports of entry.
- Sec. 106. Construction of strategic border fencing and vehicle barriers.

Subtitle B—Border Security Plans, Strategies, and Reports

- Sec. 111. Surveillance plan.
- Sec. 112. National Strategy for Border Security.
- Sec. 113. Reports on improving the exchange of information on North American security.
- Sec. 114. Improving the security of Mexico's southern border.

Subtitle C—Other Border Security Initiatives

- Sec. 121. Biometric data enhancements.
- Sec. 122. Secure communication.
- Sec. 123. Border patrol training capacity review.
- Sec. 124. US-VISIT System.
- Sec. 125. Document fraud detection.
- Sec. 126. Improved document integrity.
- Sec. 127. Cancellation of visas.
- Sec. 128. Biometric entry-exit system.
- Sec. 129. Border study.
- Sec. 130. Secure Border Initiative financial accountability.

TITLE II—INTERIOR ENFORCEMENT

- Sec. 201. Removal and denial of benefits to terrorist aliens.
- Sec. 202. Detention and removal of aliens ordered removed.
- Sec. 203. Aggravated felony.
- Sec. 204. Terrorist bars.
- Sec. 205. Increased criminal penalties related to gang violence, removal, and alien smuggling.
- Sec. 206. Illegal entry or unlawful presence of an alien.
- Sec. 207. Illegal reentry.
- Sec. 208. Reform of passport, visa, and immigration fraud offenses.
- Sec. 209. Inadmissibility and removal for passport and immigration fraud offenses.
- Sec. 210. Incarceration of criminal aliens.
- Sec. 211. Encouraging aliens to depart voluntarily.
- Sec. 212. Deterring aliens ordered removed from remaining in the United States unlawfully.
- Sec. 213. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.
- Sec. 214. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.
- Sec. 215. Diplomatic security service.
- Sec. 216. Field agent allocation and background checks.
- Sec. 217. Denial of benefits to terrorists and criminals.
- Sec. 218. State criminal alien assistance program.

- Sec. 219. Transportation and processing of illegal aliens apprehended by State and local law enforcement officers.
- Sec. 220. State and local law enforcement of Federal immigration laws.
- Sec. 221. Reducing illegal immigration and alien smuggling on tribal lands.
- Sec. 222. Alternatives to detention.
- Sec. 223. Conforming amendment.
- Sec. 224. Reporting requirements.
- Sec. 225. Mandatory detention for aliens apprehended at or between ports of entry.
- Sec. 226. Removal of drunk drivers.
- Sec. 227. Expedited removal.
- Sec. 228. Protecting immigrants from convicted sex offenders
- Sec. 229. Law enforcement authority of States and political subdivisions and transfer to Federal custody.
- Sec. 230. Listing of immigration violators in the National Crime Information Center database.
- Sec. 231. Laundering of monetary instruments.
- Sec. 232. Severability.

TITLE III—UNLAWFUL EMPLOYMENT OF ALIENS

- Sec. 301. Unlawful employment of aliens.
- Sec. 302. Employer Compliance Fund.
- Sec. 303. Additional worksite enforcement and fraud detection agents.
- Sec. 304. Clarification of ineligibility for misrepresentation.

TITLE IV—BACKLOG REDUCTION AND VISAS FOR STUDENTS AND ALIENS WITH ADVANCED DEGREES

- Sec. 401. Elimination of existing backlogs.
- Sec. 402. Country limits.
- Sec. 403. Allocation of immigrant visas.
- Sec. 404. Relief for minor children.
- Sec. 405. Student visas.
- Sec. 406. Visas for individuals with advanced degrees.
- Sec. 407. Medical services in underserved areas.

TITLE V—IMMIGRATION LITIGATION REDUCTION

- Sec. 501. Consolidation of immigration appeals.
- Sec. 502. Additional immigration personnel.
- Sec. 503. Board of immigration appeals removal order authority.
- Sec. 504. Judicial review of visa revocation.
- Sec. 505. Reinstatement of removal orders.
- Sec. 506. Withholding of removal.
- Sec. 507. Certificate of reviewability.
- Sec. 508. Discretionary decisions on motions to reopen or reconsider.
- Sec. 509. Prohibition of attorney fee awards for review of final orders of removal.
- Sec. 510. Board of Immigration Appeals.

TITLE VI—MISCELLANEOUS

- Sec. 601. Technical and conforming amendments.

1 **SEC. 2. REFERENCE TO THE IMMIGRATION AND NATION-**
2 **ALITY ACT.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101 et seq.).

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

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

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

17 **TITLE I—BORDER**
18 **ENFORCEMENT**
19 **Subtitle A—Assets for Controlling**
20 **United States Borders**

21 **SEC. 101. ENFORCEMENT PERSONNEL.**

22 (a) ADDITIONAL PERSONNEL.—

23 (1) CUSTOMS AND BORDER PROTECTION OFFI-
24 CERS.—In each of the fiscal years 2007 through
25 2011, the Secretary shall, subject to the availability
26 of appropriations, increase by not less than 250 the

1 number of positions for full-time active duty Cus-
2 toms and Border Protection officers.

3 (2) PORT OF ENTRY INSPECTORS.—In each of
4 the fiscal years 2007 through 2011, the Secretary
5 shall, subject to the availability of appropriations, in-
6 crease by not less than 250 the number of positions
7 for full-time active duty port of entry inspectors and
8 provide appropriate training, equipment, and sup-
9 port to such additional inspectors.

10 (3) BORDER PATROL AGENT.—Section 5202 of
11 the Intelligence Reform and Terrorism Prevention
12 Act of 2004 (Public Law 108–458; 118 Stat. 3734)
13 is amended—

14 (A) by striking “2010” both places it ap-
15 pears and inserting “2011”; and

16 (B) by striking “2,000” and inserting
17 “2,400”.

18 (4) INVESTIGATIVE PERSONNEL.—

19 (A) IMMIGRATION AND CUSTOMS EN-
20 FORCEMENT INSPECTORS.—Section 5203 of the
21 Intelligence Reform and Terrorism Prevention
22 Act of 2004 (Public Law 108–458; 118 Stat.
23 3734) is amended by striking “800” and insert-
24 ing “1000”.

1 (B) ADDITIONAL PERSONNEL.—In addi-
2 tion to the positions authorized under section
3 5203 of the Intelligence Reform and Terrorism
4 Prevention Act of 2004, as amended by sub-
5 paragraph (A), during each of the fiscal years
6 2007 through 2011, the Secretary shall, subject
7 to the availability of appropriations, increase by
8 not less than 200 the number of positions for
9 personnel within the Department assigned to
10 investigate alien smuggling.

11 (b) AUTHORIZATION OF APPROPRIATIONS.—

12 (1) CUSTOMS AND BORDER PROTECTION OFFI-
13 CERS.—There are authorized to be appropriated to
14 the Secretary such sums as may be necessary for
15 each of the fiscal years 2007 through 2011 to carry
16 out paragraph (1) of subsection (a).

17 (2) PORT OF ENTRY INSPECTORS.—There are
18 authorized to be appropriated to the Secretary such
19 sums as may be necessary for each of the fiscal
20 years 2007 through 2011 to carry out paragraph (2)
21 of subsection (a).

22 (3) BORDER PATROL AGENTS.—There are au-
23 thorized to be appropriated to the Secretary such
24 sums as may be necessary for each of fiscal years
25 2007 through 2011 to carry out section 5202 of the

1 Intelligence Reform and Terrorism Prevention Act
2 of 2004 (Public Law 108–458; 118 Stat. 3734), as
3 amended by subsection (a)(3).

4 **SEC. 102. TECHNOLOGICAL ASSETS.**

5 (a) ACQUISITION.—Subject to the availability of ap-
6 propriations, the Secretary shall procure additional un-
7 manned aerial vehicles, cameras, poles, sensors, and other
8 technologies necessary to achieve operational control of the
9 international borders of the United States and to establish
10 a security perimeter known as a “virtual fence” along such
11 international borders to provide a barrier to illegal immi-
12 gration.

13 (b) INCREASED AVAILABILITY OF EQUIPMENT.—The
14 Secretary and the Secretary of Defense shall develop and
15 implement a plan to use authorities provided to the Sec-
16 retary of Defense under chapter 18 of title 10, United
17 States Code, to increase the availability and use of Depart-
18 ment of Defense equipment, including unmanned aerial
19 vehicles, tethered aerostat radars, and other surveillance
20 equipment, to assist the Secretary in carrying out surveil-
21 lance activities conducted at or near the international land
22 borders of the United States to prevent illegal immigra-
23 tion.

24 (c) REPORT.—Not later than 6 months after the date
25 of enactment of this Act, the Secretary and the Secretary

1 of Defense shall submit to Congress a report that con-
2 tains—

3 (1) a description of the current use of Depart-
4 ment of Defense equipment to assist the Secretary
5 in carrying out surveillance of the international land
6 borders of the United States and assessment of the
7 risks to citizens of the United States and foreign
8 policy interests associated with the use of such
9 equipment;

10 (2) the plan developed under subsection (b) to
11 increase the use of Department of Defense equip-
12 ment to assist such surveillance activities; and

13 (3) a description of the types of equipment and
14 other support to be provided by the Secretary of De-
15 fense under such plan during the 1-year period be-
16 ginning on the date of the submission of the report.

17 (d) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Secretary such
19 sums as may be necessary for each of the fiscal years 2007
20 through 2011 to carry out subsection (a).

21 (e) CONSTRUCTION.—Nothing in this section may be
22 construed as altering or amending the prohibition on the
23 use of any part of the Army or the Air Force as a posse
24 comitatus under section 1385 of title 18, United States
25 Code.

1 **SEC. 103. INFRASTRUCTURE.**

2 (a) CONSTRUCTION OF BORDER CONTROL FACILI-
3 TIES.—Subject to the availability of appropriations, the
4 Secretary shall construct all-weather roads and acquire
5 additional vehicle barriers and facilities necessary to
6 achieve operational control of the international borders of
7 the United States.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to the Secretary such
10 sums as may be necessary for each of the fiscal years 2007
11 through 2011 to carry out subsection (a).

12 **SEC. 104. BORDER PATROL CHECKPOINTS.**

13 The Secretary may maintain temporary or permanent
14 checkpoints on roadways in border patrol sectors that are
15 located in proximity to the international border between
16 the United States and Mexico.

17 **SEC. 105. PORTS OF ENTRY.**

18 The Secretary is authorized to—

19 (1) construct additional ports of entry along the
20 international land borders of the United States, at
21 locations to be determined by the Secretary; and

22 (2) make necessary improvements to the ports
23 of entry in existence on the date of the enactment
24 of this Act.

1 **SEC. 106. CONSTRUCTION OF STRATEGIC BORDER FENC-**
2 **ING AND VEHICLE BARRIERS.**

3 (a) TUCSON SECTOR.—The Secretary shall—

4 (1) replace all aged, deteriorating, or damaged
5 primary fencing in the Tucson Sector located proximi-
6 mate to population centers in Douglas, Nogales,
7 Naco, and Lukeville, Arizona with double- or triple-
8 layered fencing running parallel to the international
9 border between the United States and Mexico;

10 (2) extend the double- or triple-layered fencing
11 for a distance of not less than 2 miles beyond urban
12 areas, except that the double- or triple-layered fence
13 shall extend west of Naco, Arizona, for a distance of
14 25 miles; and

15 (3) construct not less than 150 miles of vehicle
16 barriers and all-weather roads in the Tucson Sector
17 running parallel to the international border between
18 the United States and Mexico in areas that are
19 known transit points for illegal cross-border traffic.

20 (b) YUMA SECTOR.—The Secretary shall—

21 (1) replace all aged, deteriorating, or damaged
22 primary fencing in the Yuma Sector located proximi-
23 mate to population centers in Yuma, Somerton, and
24 San Luis, Arizona with double- or triple-layered
25 fencing running parallel to the international border
26 between the United States and Mexico;

1 (2) extend the double- or triple-layered fencing
2 for a distance of not less than 2 miles beyond urban
3 areas in the Yuma Sector.

4 (3) construct not less than 50 miles of vehicle
5 barriers and all-weather roads in the Yuma Sector
6 running parallel to the international border between
7 the United States and Mexico in areas that are
8 known transit points for illegal cross-border traffic.

9 (c) CONSTRUCTION DEADLINE.—The Secretary shall
10 immediately commence construction of the fencing, bar-
11 riers, and roads described in subsections (a) and (b), and
12 shall complete such construction not later than 2 years
13 after the date of the enactment of this Act.

14 (d) REPORT.—Not later than 1 year after the date
15 of the enactment of this Act, the Secretary shall submit
16 a report to the Committee on the Judiciary of the Senate
17 and the Committee on the Judiciary of the House of Rep-
18 resentatives that describes the progress that has been
19 made in constructing the fencing, barriers, and roads de-
20 scribed in subsections (a) and (b).

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

1 **Subtitle B—Border Security Plans,**
2 **Strategies, and Reports**

3 **SEC. 111. SURVEILLANCE PLAN.**

4 (a) **REQUIREMENT FOR PLAN.**—The Secretary shall
5 develop a comprehensive plan for the systematic surveil-
6 lance of the international land and maritime borders of
7 the United States.

8 (b) **CONTENT.**—The plan required by subsection (a)
9 shall include the following:

10 (1) An assessment of existing technologies em-
11 ployed on the international land and maritime bor-
12 ders of the United States.

13 (2) A description of the compatibility of new
14 surveillance technologies with surveillance tech-
15 nologies in use by the Secretary on the date of the
16 enactment of this Act.

17 (3) A description of how the Commissioner of
18 the United States Customs and Border Protection of
19 the Department is working, or is expected to work,
20 with the Under Secretary for Science and Tech-
21 nology of the Department to identify and test sur-
22 veillance technology.

23 (4) A description of the specific surveillance
24 technology to be deployed.

1 (5) Identification of any obstacles that may im-
2 pede such deployment.

3 (6) A detailed estimate of all costs associated
4 with such deployment and with continued mainte-
5 nance of such technologies.

6 (7) A description of how the Secretary is work-
7 ing with the Administrator of the Federal Aviation
8 Administration on safety and airspace control issues
9 associated with the use of unmanned aerial vehicles.

10 (c) SUBMISSION TO CONGRESS.—Not later than 6
11 months after the date of the enactment of this Act, the
12 Secretary shall submit to Congress the plan required by
13 this section.

14 **SEC. 112. NATIONAL STRATEGY FOR BORDER SECURITY.**

15 (a) REQUIREMENT FOR STRATEGY.—The Secretary,
16 in consultation with the heads of other appropriate Fed-
17 eral agencies, shall develop a National Strategy for Border
18 Security that describes actions to be carried out to achieve
19 operational control over all ports of entry into the United
20 States and the international land and maritime borders
21 of the United States.

22 (b) CONTENT.—The National Strategy for Border
23 Security shall include the following:

1 (1) The implementation schedule for the com-
2 prehensive plan for systematic surveillance described
3 in section 111.

4 (2) An assessment of the threat posed by ter-
5 rorists and terrorist groups that may try to infiltrate
6 the United States at locations along the inter-
7 national land and maritime borders of the United
8 States.

9 (3) A risk assessment for all United States
10 ports of entry and all portions of the international
11 land and maritime borders of the United States that
12 includes a description of activities being under-
13 taken—

14 (A) to prevent the entry of terrorists, other
15 unlawful aliens, instruments of terrorism, nar-
16 cotics, and other contraband into the United
17 States; and

18 (B) to protect critical infrastructure at or
19 near such ports of entry or borders.

20 (4) An assessment of the legal requirements
21 that prevent achieving and maintaining operational
22 control over the entire international land and mari-
23 time borders of the United States.

24 (5) An assessment of the most appropriate,
25 practical, and cost-effective means of defending the

1 international land and maritime borders of the
2 United States against threats to security and illegal
3 transit, including intelligence capacities, technology,
4 equipment, personnel, and training needed to ad-
5 dress security vulnerabilities.

6 (6) An assessment of staffing needs for all bor-
7 der security functions, taking into account threat
8 and vulnerability information pertaining to the bor-
9 ders and the impact of new security programs, poli-
10 cies, and technologies.

11 (7) A description of the border security roles
12 and missions of Federal, State, regional, local, and
13 tribal authorities, and recommendations regarding
14 actions the Secretary can carry out to improve co-
15 ordination with such authorities to enable border se-
16 curity and enforcement activities to be carried out in
17 a more efficient and effective manner.

18 (8) An assessment of existing efforts and tech-
19 nologies used for border security and the effect of
20 the use of such efforts and technologies on civil
21 rights, personal property rights, and civil liberties,
22 including an assessment of efforts to take into ac-
23 count asylum seekers, trafficking victims, unaccom-
24 panied minor aliens, and other vulnerable popu-
25 lations.

1 (9) A prioritized list of research and develop-
2 ment objectives to enhance the security of the inter-
3 national land and maritime borders of the United
4 States.

5 (10) A description of ways to ensure that the
6 free flow of travel and commerce is not diminished
7 by efforts, activities, and programs aimed at secur-
8 ing the international land and maritime borders of
9 the United States.

10 (11) An assessment of additional detention fa-
11 cilities and beds that are needed to detain unlawful
12 aliens apprehended at United States ports of entry
13 or along the international land borders of the United
14 States.

15 (12) A description of the performance metrics
16 to be used to ensure accountability by the bureaus
17 of the Department in implementing such Strategy.

18 (13) A schedule for the implementation of the
19 security measures described in such Strategy, includ-
20 ing a prioritization of security measures, realistic
21 deadlines for addressing the security and enforce-
22 ment needs, an estimate of the resources needed to
23 carry out such measures, and a description of how
24 such resources should be allocated.

1 (c) CONSULTATION.—In developing the National
2 Strategy for Border Security, the Secretary shall consult
3 with representatives of—

4 (1) State, local, and tribal authorities with re-
5 sponsibility for locations along the international land
6 and maritime borders of the United States; and

7 (2) appropriate private sector entities, non-
8 governmental organizations, and affected commu-
9 nities that have expertise in areas related to border
10 security.

11 (d) COORDINATION.—The National Strategy for Bor-
12 der Security shall be consistent with the National Strategy
13 for Maritime Security developed pursuant to Homeland
14 Security Presidential Directive 13, dated December 21,
15 2004.

16 (e) SUBMISSION TO CONGRESS.—

17 (1) STRATEGY.—Not later than 1 year after the
18 date of the enactment of this Act, the Secretary
19 shall submit to Congress the National Strategy for
20 Border Security.

21 (2) UPDATES.—The Secretary shall submit to
22 Congress any update of such Strategy that the Sec-
23 retary determines is necessary, not later than 30
24 days after such update is developed.

1 (f) IMMEDIATE ACTION.—Nothing in this section or
2 section 111 may be construed to relieve the Secretary of
3 the responsibility to take all actions necessary and appro-
4 priate to achieve and maintain operational control over the
5 entire international land and maritime borders of the
6 United States.

7 **SEC. 113. REPORTS ON IMPROVING THE EXCHANGE OF IN-**
8 **FORMATION ON NORTH AMERICAN SECU-**
9 **RITY.**

10 (a) REQUIREMENT FOR REPORTS.—Not later than 1
11 year after the date of the enactment of this Act, and annu-
12 ally thereafter, the Secretary of State, in coordination with
13 the Secretary and the heads of other appropriate Federal
14 agencies, shall submit to Congress a report on improving
15 the exchange of information related to the security of
16 North America.

17 (b) CONTENTS.—Each report submitted under sub-
18 section (a) shall contain a description of the following:

19 (1) SECURITY CLEARANCES AND DOCUMENT IN-
20 TEGRITY.—The progress made toward the develop-
21 ment of common enrollment, security, technical, and
22 biometric standards for the issuance, authentication,
23 validation, and repudiation of secure documents, in-
24 cluding—

1 (A) technical and biometric standards
2 based on best practices and consistent with
3 international standards for the issuance, au-
4 thentication, validation, and repudiation of trav-
5 el documents, including—

6 (i) passports;

7 (ii) visas; and

8 (iii) permanent resident cards;

9 (B) working with Canada and Mexico to
10 encourage foreign governments to enact laws to
11 combat alien smuggling and trafficking, and
12 laws to forbid the use and manufacture of
13 fraudulent travel documents and to promote in-
14 formation sharing;

15 (C) applying the necessary pressures and
16 support to ensure that other countries meet
17 proper travel document standards and are com-
18 mitted to travel document verification before
19 the citizens of such countries travel internation-
20 ally, including travel by such citizens to the
21 United States; and

22 (D) providing technical assistance for the
23 development and maintenance of a national
24 database built upon identified best practices for

1 biometrics associated with visa and travel docu-
2 ments.

3 (2) IMMIGRATION AND VISA MANAGEMENT.—

4 The progress of efforts to share information regard-
5 ing high-risk individuals who may attempt to enter
6 Canada, Mexico, or the United States, including the
7 progress made—

8 (A) in implementing the Statement of Mu-
9 tual Understanding on Information Sharing,
10 signed by Canada and the United States in
11 February 2003; and

12 (B) in identifying trends related to immi-
13 gration fraud, including asylum and document
14 fraud, and to analyze such trends.

15 (3) VISA POLICY COORDINATION AND IMMIGRA-
16 TION SECURITY.—The progress made by Canada,
17 Mexico, and the United States to enhance the secu-
18 rity of North America by cooperating on visa policy
19 and identifying best practices regarding immigration
20 security, including the progress made—

21 (A) in enhancing consultation among offi-
22 cials who issue visas at the consulates or em-
23 bassies of Canada, Mexico, or the United States
24 throughout the world to share information,
25 trends, and best practices on visa flows;

1 (B) in comparing the procedures and poli-
2 cies of Canada and the United States related to
3 visitor visa processing, including—

- 4 (i) application process;
5 (ii) interview policy;
6 (iii) general screening procedures;
7 (iv) visa validity;
8 (v) quality control measures; and
9 (vi) access to appeal or review;

10 (C) in exploring methods for Canada, Mex-
11 ico, and the United States to waive visa re-
12 quirements for nationals and citizens of the
13 same foreign countries;

14 (D) in providing technical assistance for
15 the development and maintenance of a national
16 database built upon identified best practices for
17 biometrics associated with immigration viola-
18 tors;

19 (E) in developing and implementing an im-
20 migration security strategy for North America
21 that works toward the development of a com-
22 mon security perimeter by enhancing technical
23 assistance for programs and systems to support
24 advance automated reporting and risk targeting
25 of international passengers;

1 (F) in sharing information on lost and sto-
2 len passports on a real-time basis among immi-
3 gration or law enforcement officials of Canada,
4 Mexico, and the United States; and

5 (G) in collecting 10 fingerprints from each
6 individual who applies for a visa.

7 (4) NORTH AMERICAN VISITOR OVERSTAY PRO-
8 GRAM.—The progress made by Canada and the
9 United States in implementing parallel entry-exit
10 tracking systems that, while respecting the privacy
11 laws of both countries, share information regarding
12 third country nationals who have overstayed their
13 period of authorized admission in either Canada or
14 the United States.

15 (5) TERRORIST WATCH LISTS.—The progress
16 made in enhancing the capacity of the United States
17 to combat terrorism through the coordination of
18 counterterrorism efforts, including the progress
19 made—

20 (A) in developing and implementing bilat-
21 eral agreements between Canada and the
22 United States and between Mexico and the
23 United States to govern the sharing of terrorist
24 watch list data and to comprehensively enu-

1 merate the uses of such data by the govern-
2 ments of each country;

3 (B) in establishing appropriate linkages
4 among Canada, Mexico, and the United States
5 Terrorist Screening Center; and

6 (C) in exploring with foreign governments
7 the establishment of a multilateral watch list
8 mechanism that would facilitate direct coordina-
9 tion between the country that identifies an indi-
10 vidual as an individual included on a watch list,
11 and the country that owns such list, including
12 procedures that satisfy the security concerns
13 and are consistent with the privacy and other
14 laws of each participating country.

15 (6) MONEY LAUNDERING, CURRENCY SMUG-
16 GLING, AND ALIEN SMUGGLING.—The progress made
17 in improving information sharing and law enforce-
18 ment cooperation in combating organized crime, in-
19 cluding the progress made—

20 (A) in combating currency smuggling,
21 money laundering, alien smuggling, and traf-
22 ficking in alcohol, firearms, and explosives;

23 (B) in implementing the agreement be-
24 tween Canada and the United States known as
25 the Firearms Trafficking Action Plan;

1 (C) in determining the feasibility of formu-
2 lating a firearms trafficking action plan be-
3 tween Mexico and the United States;

4 (D) in developing a joint threat assessment
5 on organized crime between Canada and the
6 United States;

7 (E) in determining the feasibility of formu-
8 lating a joint threat assessment on organized
9 crime between Mexico and the United States;

10 (F) in developing mechanisms to exchange
11 information on findings, seizures, and capture
12 of individuals transporting undeclared currency;
13 and

14 (G) in developing and implementing a plan
15 to combat the transnational threat of illegal
16 drug trafficking.

17 (7) LAW ENFORCEMENT COOPERATION.—The
18 progress made in enhancing law enforcement co-
19 operation among Canada, Mexico, and the United
20 States through enhanced technical assistance for the
21 development and maintenance of a national database
22 built upon identified best practices for biometrics as-
23 sociated with known and suspected criminals or ter-
24 rorists, including exploring the formation of law en-
25 forcement teams that include personnel from the

1 United States and Mexico, and appropriate proce-
2 dures for such teams.

3 **SEC. 114. IMPROVING THE SECURITY OF MEXICO'S SOUTH-**
4 **ERN BORDER.**

5 (a) TECHNICAL ASSISTANCE.—The Secretary of
6 State, in coordination with the Secretary, shall work to
7 cooperate with the head of Foreign Affairs Canada and
8 the appropriate officials of the Government of Mexico to
9 establish a program—

10 (1) to assess the specific needs of Guatemala
11 and Belize in maintaining the security of the inter-
12 national borders of such countries;

13 (2) to use the assessment made under para-
14 graph (1) to determine the financial and technical
15 support needed by Guatemala and Belize from Can-
16 ada, Mexico, and the United States to meet such
17 needs;

18 (3) to provide technical assistance to Guatemala
19 and Belize to promote issuance of secure passports
20 and travel documents by such countries; and

21 (4) to encourage Guatemala and Belize—

22 (A) to control alien smuggling and traf-
23 ficking;

24 (B) to prevent the use and manufacture of
25 fraudulent travel documents; and

1 (C) to share relevant information with
2 Mexico, Canada, and the United States.

3 (b) BORDER SECURITY FOR BELIZE, GUATEMALA,
4 AND MEXICO.—The Secretary, in consultation with the
5 Secretary of State, shall work to cooperate—

6 (1) with the appropriate officials of the Govern-
7 ment of Guatemala and the Government of Belize to
8 provide law enforcement assistance to Guatemala
9 and Belize that specifically addresses immigration
10 issues to increase the ability of the Government of
11 Guatemala to dismantle human smuggling organiza-
12 tions and gain additional control over the inter-
13 national border between Guatemala and Belize; and

14 (2) with the appropriate officials of the Govern-
15 ment of Belize, the Government of Guatemala, the
16 Government of Mexico, and the governments of
17 neighboring contiguous countries to establish a pro-
18 gram to provide needed equipment, technical assist-
19 ance, and vehicles to manage, regulate, and patrol
20 the international borders between Mexico and Guate-
21 mala and between Mexico and Belize.

22 (c) TRACKING CENTRAL AMERICAN GANGS.—The
23 Secretary of State, in coordination with the Secretary and
24 the Director of the Federal Bureau of Investigation, shall
25 work to cooperate with the appropriate officials of the

1 Government of Mexico, the Government of Guatemala, the
2 Government of Belize, and the governments of other Cen-
3 tral American countries—

4 (1) to assess the direct and indirect impact on
5 the United States and Central America of deporting
6 violent criminal aliens;

7 (2) to establish a program and database to
8 track individuals involved in Central American gang
9 activities;

10 (3) to develop a mechanism that is acceptable
11 to the governments of Belize, Guatemala, Mexico,
12 the United States, and other appropriate countries
13 to notify such a government if an individual sus-
14 pected of gang activity will be deported to that coun-
15 try prior to the deportation and to provide support
16 for the reintegration of such deportees into that
17 country; and

18 (4) to develop an agreement to share all rel-
19 evant information related to individuals connected
20 with Central American gangs.

21 **Subtitle C—Other Border Security** 22 **Initiatives**

23 **SEC. 121. BIOMETRIC DATA ENHANCEMENTS.**

24 Not later than October 1, 2007, the Secretary shall—

1 (1) in consultation with the Attorney General,
2 enhance connectivity between the Automated Bio-
3 metric Fingerprint Identification System (IDENT)
4 of the Department and the Integrated Automated
5 Fingerprint Identification System (IAFIS) of the
6 Federal Bureau of Investigation to ensure more ex-
7 peditious data searches; and

8 (2) in consultation with the Secretary of State,
9 collect all fingerprints from each alien required to
10 provide fingerprints during the alien's initial enroll-
11 ment in the integrated entry and exit data system
12 described in section 110 of the Illegal Immigration
13 Reform and Immigrant Responsibility Act of 1996
14 (8 U.S.C. 1365a).

15 **SEC. 122. SECURE COMMUNICATION.**

16 The Secretary shall, as expeditiously as practicable,
17 develop and implement a plan to improve the use of sat-
18 ellite communications and other technologies to ensure
19 clear and secure 2-way communication capabilities—

20 (1) among all Border Patrol agents conducting
21 operations between ports of entry;

22 (2) between Border Patrol agents and their re-
23 spective Border Patrol stations;

1 (3) between Border Patrol agents and residents
2 in remote areas along the international land borders
3 of the United States; and

4 (4) between all appropriate border security
5 agencies of the Department and State, local, and
6 tribal law enforcement agencies.

7 **SEC. 123. BORDER PATROL TRAINING CAPACITY REVIEW.**

8 (a) IN GENERAL.—The Comptroller General of the
9 United States shall conduct a review of the basic training
10 provided to Border Patrol agents by the Secretary to en-
11 sure that such training is provided as efficiently and cost-
12 effectively as possible.

13 (b) COMPONENTS OF REVIEW.—The review under
14 subsection (a) shall include the following components:

15 (1) An evaluation of the length and content of
16 the basic training curriculum provided to new Bor-
17 der Patrol agents by the Federal Law Enforcement
18 Training Center, including a description of how such
19 curriculum has changed since September 11, 2001,
20 and an evaluation of language and cultural diversity
21 training programs provided within such curriculum.

22 (2) A review and a detailed breakdown of the
23 costs incurred by the Bureau of Customs and Bor-
24 der Protection and the Federal Law Enforcement
25 Training Center to train 1 new Border Patrol agent.

1 (3) A comparison, based on the review and
2 breakdown under paragraph (2), of the costs, effec-
3 tiveness, scope, and quality, including geographic
4 characteristics, with other similar training programs
5 provided by State and local agencies, nonprofit orga-
6 nizations, universities, and the private sector.

7 (4) An evaluation of whether utilizing com-
8 parable non-Federal training programs, proficiency
9 testing, and long-distance learning programs may af-
10 fect—

11 (A) the cost-effectiveness of increasing the
12 number of Border Patrol agents trained per
13 year;

14 (B) the per agent costs of basic training;
15 and

16 (C) the scope and quality of basic training
17 needed to fulfill the mission and duties of a
18 Border Patrol agent.

19 **SEC. 124. US-VISIT SYSTEM.**

20 Not later than 6 months after the date of the enact-
21 ment of this Act, the Secretary, in consultation with the
22 heads of other appropriate Federal agencies, shall submit
23 to Congress a schedule for—

24 (1) equipping all land border ports of entry of
25 the United States with the U.S.-Visitor and Immi-

1 grant Status Indicator Technology (US–VISIT) sys-
2 tem implemented under section 110 of the Illegal
3 Immigration Reform and Immigrant Responsibility
4 Act of 1996 (8 U.S.C. 1365a);

5 (2) developing and deploying at such ports of
6 entry the exit component of the US–VISIT system;
7 and

8 (3) making interoperable all immigration
9 screening systems operated by the Secretary.

10 **SEC. 125. DOCUMENT FRAUD DETECTION.**

11 (a) TRAINING.—Subject to the availability of appro-
12 priations, the Secretary shall provide all Customs and
13 Border Protection officers with training in identifying and
14 detecting fraudulent travel documents. Such training shall
15 be developed in consultation with the head of the Forensic
16 Document Laboratory of the Bureau of Immigration and
17 Customs Enforcement.

18 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-
19 retary shall provide all Customs and Border Protection of-
20 ficers with access to the Forensic Document Laboratory.

21 (c) ASSESSMENT.—

22 (1) REQUIREMENT FOR ASSESSMENT.—The In-
23 spector General of the Department shall conduct an
24 independent assessment of the accuracy and reli-
25 ability of the Forensic Document Laboratory.

1 (2) REPORT TO CONGRESS.—Not later than 6
2 months after the date of the enactment of this Act,
3 the Inspector General shall submit to Congress the
4 findings of the assessment required by paragraph
5 (1).

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

10 **SEC. 126. IMPROVED DOCUMENT INTEGRITY.**

11 (a) IN GENERAL.—Section 303 of the Enhanced Bor-
12 der Security and Visa Entry Reform Act of 2002 (8
13 U.S.C. 1732) is amended—

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

17 (2) in the heading, by striking “**ENTRY AND**
18 **EXIT DOCUMENTS**” and inserting “**TRAVEL AND**
19 **ENTRY DOCUMENTS AND EVIDENCE OF STA-**
20 **TUS**”;

21 (3) in subsection (b)(1)—

22 (A) by striking “Not later than October
23 26, 2004, the” and inserting “The”; and

1 (B) by striking “visas and” both places it
2 appears and inserting “visas, evidence of status,
3 and”;

4 (4) by redesignating subsection (d) as sub-
5 section (e); and

6 (5) by inserting after subsection (c) the fol-
7 lowing:

8 “(d) OTHER DOCUMENTS.—Not later than October
9 26, 2007, every document, other than an interim docu-
10 ment, issued by the Secretary of Homeland Security,
11 which may be used as evidence of an alien’s status as an
12 immigrant, nonimmigrant, parolee, asylee, or refugee,
13 shall be machine-readable and tamper-resistant, and shall
14 incorporate a biometric identifier to allow the Secretary
15 of Homeland Security to verify electronically the identity
16 and status of the alien.”.

17 **SEC. 127. CANCELLATION OF VISAS.**

18 Section 222(g) (8 U.S.C. 1202(g)) is amended—

19 (1) in paragraph (1)—

20 (A) by striking “Attorney General” and in-
21 serting “Secretary of Homeland Security”; and

22 (B) by inserting “and any other non-
23 immigrant visa issued by the United States that
24 is in the possession of the alien” after “such
25 visa”; and

1 (2) in paragraph (2)(A), by striking “(other
2 than the visa described in paragraph (1)) issued in
3 a consular office located in the country of the alien’s
4 nationality” and inserting “(other than a visa de-
5 scribed in paragraph (1)) issued in a consular office
6 located in the country of the alien’s nationality or
7 foreign residence”.

8 **SEC. 128. BIOMETRIC ENTRY-EXIT SYSTEM.**

9 (a) COLLECTION OF BIOMETRIC DATA FROM ALIENS
10 DEPARTING THE UNITED STATES.—Section 215 (8
11 U.S.C. 1185) is amended—

12 (1) by redesignating subsection (c) as sub-
13 section (g);

14 (2) by moving subsection (g), as redesignated
15 by paragraph (1), to the end; and

16 (3) by inserting after subsection (b) the fol-
17 lowing:

18 “(c) The Secretary of Homeland Security is author-
19 ized to require aliens departing the United States to pro-
20 vide biometric data and other information relating to their
21 immigration status.”.

22 (b) INSPECTION OF APPLICANTS FOR ADMISSION.—
23 Section 235(d) (8 U.S.C. 1225(d)) is amended by adding
24 at the end the following:

1 “(5) AUTHORITY TO COLLECT BIOMETRIC
2 DATA.—In conducting inspections under subsection
3 (b), immigration officers are authorized to collect bi-
4 ometric data from—

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

7 “(B) any lawful permanent resident who is
8 entering the United States and who is not re-
9 garded as seeking admission pursuant to sec-
10 tion 101(a)(13)(C).”.

11 (c) COLLECTION OF BIOMETRIC DATA FROM ALIEN
12 CREWMEN.—Section 252 (8 U.S.C. 1282) is amended by
13 adding at the end the following:

14 “(d) An immigration officer is authorized to collect
15 biometric data from an alien crewman seeking permission
16 to land temporarily in the United States.”.

17 (d) GROUNDS OF INADMISSIBILITY.—Section 212 (8
18 U.S.C. 1182) is amended—

19 (1) in subsection (a)(7), by adding at the end
20 the following:

21 “(C) WITHHOLDERS OF BIOMETRIC
22 DATA.—Any alien who knowingly fails to com-
23 ply with a lawful request for biometric data
24 under section 215(c) or 235(d) is inadmis-
25 sible.”; and

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

3 “(2) The Secretary of Homeland Security shall
4 determine whether a ground for inadmissibility ex-
5 ists with respect to an alien described in subpara-
6 graph (C) of subsection (a)(7) and may waive the
7 application of such subparagraph for an individual
8 alien or a class of aliens, at the discretion of the
9 Secretary.”.

10 (e) IMPLEMENTATION.—Section 7208 of the 9/11
11 Commission Implementation Act of 2004 (8 U.S.C.
12 1365b) is amended—

13 (1) in subsection (c), by adding at the end the
14 following:

15 “(3) IMPLEMENTATION.—In fully implementing
16 the automated biometric entry and exit data system
17 under this section, the Secretary is not required to
18 comply with the requirements of chapter 5 of title 5,
19 United States Code (commonly referred to as the
20 Administrative Procedure Act) or any other law re-
21 lating to rulemaking, information collection, or pub-
22 lication in the Federal Register.”; and

23 (2) in subsection (l)—

24 (A) by striking “There are authorized”
25 and inserting the following:

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

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

3 “(2) IMPLEMENTATION AT ALL LAND BORDER

4 PORTS OF ENTRY.—There are authorized to be ap-

5 propriated such sums as may be necessary for each

6 of fiscal years 2007 and 2008 to implement the

7 automated biometric entry and exit data system at

8 all land border ports of entry.”.

9 **SEC. 129. BORDER STUDY.**

10 (a) SOUTHERN BORDER STUDY.—The Secretary, in

11 consultation with the Attorney General, the Secretary of

12 the Interior, the Secretary of Agriculture, the Secretary

13 of Defense, the Secretary of Commerce, and the Adminis-

14 trator of the Environmental Protection Agency, shall con-

15 duct a study on the construction of a system of physical

16 barriers along the southern international land and mari-

17 time border of the United States. The study shall in-

18 clude—

19 (1) an assessment of the necessity of con-

20 structing such a system, including the identification

21 of areas of high priority for the construction of such

22 a system determined after consideration of factors

23 including the amount of narcotics trafficking and

24 the number of illegal immigrants apprehended in

25 such areas;

1 (2) an assessment of the feasibility of con-
2 structing such a system;

3 (3) an assessment of the international, national,
4 and regional environmental impact of such a system,
5 including the impact on zoning, global climate
6 change, ozone depletion, biodiversity loss, and
7 transboundary pollution;

8 (4) an assessment of the necessity for ports of
9 entry along such a system;

10 (5) an assessment of the impact such a system
11 would have on international trade, commerce, and
12 tourism;

13 (6) an assessment of the effect of such a system
14 on private property rights including issues of emi-
15 nent domain and riparian rights;

16 (7) an estimate of the costs associated with
17 building a barrier system, including costs associated
18 with excavation, construction, and maintenance; and

19 (8) an assessment of the effect of such a system
20 on Indian reservations and units of the National
21 Park System.

22 (b) REPORT.—Not later than 9 months after the date
23 of the enactment of this Act, the Secretary shall submit
24 to Congress a report on the study described in subsection
25 (a).

1 **SEC. 130. SECURE BORDER INITIATIVE FINANCIAL AC-**
2 **COUNTABILITY.**

3 (a) IN GENERAL.—The Inspector General of the De-
4 partment shall review each contract action relating to the
5 Secure Border Initiative having a value of more than
6 \$20,000,000, to determine whether each such action fully
7 complies with applicable cost requirements, performance
8 objectives, program milestones, inclusion of small, minor-
9 ity, and women-owned business, and time lines. The In-
10 spector General shall complete a review under this sub-
11 section with respect to each contract action—

12 (1) not later than 60 days after the date of the
13 initiation of the action; and

14 (2) upon the conclusion of the performance of
15 the contract.

16 (b) INSPECTOR GENERAL.—

17 (1) ACTION.—If the Inspector General becomes
18 aware of any improper conduct or wrongdoing in the
19 course of conducting a contract review under sub-
20 section (a), the Inspector General shall, as expedi-
21 tiously as practicable, refer information relating to
22 such improper conduct or wrongdoing to the Sec-
23 retary, or to another appropriate official of the De-
24 partment, who shall determine whether to tempo-
25 rarily suspend the contractor from further participa-
26 tion in the Secure Border Initiative.

1 (2) REPORT.—Upon the completion of each re-
2 view described in subsection (a), the Inspector Gen-
3 eral shall submit to the Secretary of Homeland Se-
4 curity a report containing the findings of the review,
5 including findings regarding—

6 (A) cost overruns;

7 (B) significant delays in contract execu-
8 tion;

9 (C) lack of rigorous departmental contract
10 management;

11 (D) insufficient departmental financial
12 oversight;

13 (E) bundling that limits the ability of
14 small businesses to compete; or

15 (F) other high risk business practices.

16 (c) REPORTS BY THE SECRETARY.—

17 (1) IN GENERAL.—Not later than 30 days after
18 the receipt of each report required under subsection
19 (b)(2), the Secretary shall submit a report, to the
20 Committee on the Judiciary of the Senate and the
21 Committee on the Judiciary of the House of Rep-
22 resentatives, that describes—

23 (A) the findings of the report received
24 from the Inspector General; and

1 (B) the steps the Secretary has taken, or
2 plans to take, to address the problems identified
3 in such report.

4 (2) CONTRACTS WITH FOREIGN COMPANIES.—
5 Not later than 60 days after the initiation of each
6 contract action with a company whose headquarters
7 is not based in the United States, the Secretary
8 shall submit a report to the Committee on the Judi-
9 ciary of the Senate and the Committee on the Judi-
10 ciary of the House of Representatives, regarding the
11 Secure Border Initiative.

12 (d) REPORTS ON UNITED STATES PORTS.—Not later
13 that 30 days after receiving information regarding a pro-
14 posed purchase of a contract to manage the operations of
15 a United States port by a foreign entity, the Committee
16 on Foreign Investment in the United States shall submit
17 a report to Congress that describes—

18 (1) the proposed purchase;

19 (2) any security concerns related to the pro-
20 posed purchase; and

21 (3) the manner in which such security concerns
22 have been addressed.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—In addi-
24 tion to amounts that are otherwise authorized to be appro-
25 priated to the Office of the Inspector General of the De-

1 partment, there are authorized to be appropriated to the
2 Office, to enable the Office to carry out this section—

3 (1) for fiscal year 2007, not less than 5 percent
4 of the overall budget of the Office for such fiscal
5 year;

6 (2) for fiscal year 2008, not less than 6 percent
7 of the overall budget of the Office for such fiscal
8 year; and

9 (3) for fiscal year 2009, not less than 7 percent
10 of the overall budget of the Office for such fiscal
11 year.

12 **TITLE II—INTERIOR**

13 **ENFORCEMENT**

14 **SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TER-** 15 **RORIST ALIENS.**

16 (a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C.
17 1158(b)(2)(A)(v)) is amended by striking “or (VI)” and
18 inserting “(V), (VI), (VII), or (VIII)”.

19 (b) CANCELLATION OF REMOVAL.—Section
20 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

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

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

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

6 (d) RESTRICTION ON REMOVAL.—Section
7 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

8 (1) in clause (iii), by striking “or” at the end;

9 (2) in clause (iv) by striking the period at the
10 end and inserting “; or”;

11 (3) by inserting after clause (iv) the following:

12 “(v) the alien is described in section
13 237(a)(4)(B) (other than an alien de-
14 scribed in section 212(a)(3)(B)(i)(IV) if
15 the Secretary of Homeland Security deter-
16 mines that there are not reasonable
17 grounds for regarding the alien as a dan-
18 ger to the security of the United States).”;

19 and

20 (4) in the undesignated paragraph, by striking
21 “For purposes of clause (iv), an alien who is de-
22 scribed in section 237(a)(4)(B) shall be considered
23 to be an alien with respect to whom there are rea-
24 sonable grounds for regarding as a danger to the se-
25 curity of the United States.”.

1 (e) RECORD OF ADMISSION.—Section 249 (8 U.S.C.
2 1259) is amended to read as follows:

3 **“SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESI-**
4 **DENCE IN THE CASE OF CERTAIN ALIENS**
5 **WHO ENTERED THE UNITED STATES PRIOR**
6 **TO JANUARY 1, 1972.**

7 “A record of lawful admission for permanent resi-
8 dence may be made, in the discretion of the Secretary of
9 Homeland Security and under such regulations as the Sec-
10 retary may prescribe, for any alien, as of the date of the
11 approval of the alien’s application or, if entry occurred be-
12 fore July 1, 1924, as of the date of such entry if no such
13 record is otherwise available, if the alien establishes that
14 the alien—

15 “(1) is not described in section 212(a)(3)(E) or
16 in section 212(a) (insofar as it relates to criminals,
17 procurers, other immoral persons, subversives, viola-
18 tors of the narcotics laws, or smugglers of aliens);

19 “(2) entered the United States before January
20 1, 1972;

21 “(3) has resided in the United States continu-
22 ously since such entry;

23 “(4) is a person of good moral character;

24 “(5) is not ineligible for citizenship; and

25 “(6) is not described in section 237(a)(4)(B).”.

1 (f) EFFECTIVE DATE AND APPLICATION.—The
2 amendments made by this section shall—

3 (1) take effect on the date of the enactment of
4 this Act; and

5 (2) apply to—

6 (A) any aliens in a removal, deportation,
7 or exclusion proceeding pending on or after the
8 date of the enactment of this Act; and

9 (B) any act or condition constituting a
10 ground for inadmissibility, excludability, or re-
11 moval occurring or existing before, on, or after
12 the date of the enactment of this Act.

13 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**
14 **REMOVED.**

15 (a) IN GENERAL.—

16 (1) AMENDMENTS.—Section 241(a) (8 U.S.C.
17 1231(a)) is amended—

18 (A) by striking “Attorney General” the
19 first place it appears and inserting “Secretary
20 of Homeland Security”;

21 (B) by striking “Attorney General” any
22 other place it appears and inserting “Sec-
23 retary”;

24 (C) in paragraph (1)—

1 (i) in subparagraph (B), by amending
2 clause (ii) to read as follows:

3 “(ii) If a court, the Board of Immi-
4 gration Appeals, or an immigration judge
5 orders a stay of the removal of the alien,
6 the expiration date of the stay of re-
7 moval.”.

8 (ii) by amending subparagraph (C) to
9 read as follows:

10 “(C) EXTENSION OF PERIOD.—The re-
11 moval period shall be extended beyond a period
12 of 90 days and the alien may remain in deten-
13 tion during such extended period if the alien
14 fails or refuses to—

15 “(i) make all reasonable efforts to
16 comply with the removal order; or

17 “(ii) fully cooperate with the Sec-
18 retary’s efforts to establish the alien’s
19 identity and carry out the removal order,
20 including failing to make timely application
21 in good faith for travel or other documents
22 necessary to the alien’s departure, or con-
23 spiring or acting to prevent the alien’s re-
24 moval.”; and

1 (iii) by adding at the end the fol-
2 lowing:

3 “(D) TOLLING OF PERIOD.—If, at the
4 time described in subparagraph (B), the alien is
5 not in the custody of the Secretary under the
6 authority of this Act, the removal period shall
7 not begin until the alien is taken into such cus-
8 tody. If the Secretary lawfully transfers custody
9 of the alien during the removal period to an-
10 other Federal agency or to a State or local gov-
11 ernment agency in connection with the official
12 duties of such agency, the removal period shall
13 be tolled, and shall recommence on the date on
14 which the alien is returned to the custody of the
15 Secretary.”;

16 (D) in paragraph (2), by adding at the end
17 the following: “If a court, the Board of Immi-
18 gration Appeals, or an immigration judge or-
19 ders a stay of removal of an alien who is sub-
20 ject to an administrative final order of removal,
21 the Secretary, in the exercise of discretion, may
22 detain the alien during the pendency of such
23 stay of removal.”;

24 (E) in paragraph (3), by amending sub-
25 paragraph (D) to read as follows:

1 “(D) to obey reasonable restrictions on the
2 alien’s conduct or activities, or to perform af-
3 firmative acts, that the Secretary prescribes for
4 the alien—

5 “(i) to prevent the alien from ab-
6 sconding;

7 “(ii) for the protection of the commu-
8 nity; or

9 “(iii) for other purposes related to the
10 enforcement of the immigration laws.”;

11 (F) in paragraph (6), by striking “removal
12 period and, if released,” and inserting “removal
13 period, in the discretion of the Secretary, with-
14 out any limitations other than those specified in
15 this section, until the alien is removed. If an
16 alien is released, the alien”;

17 (G) by redesignating paragraph (7) as
18 paragraph (10); and

19 (H) by inserting after paragraph (6) the
20 following:

21 “(7) PAROLE.—If an alien detained pursuant to
22 paragraph (6) is an applicant for admission, the
23 Secretary of Homeland Security, in the Secretary’s
24 discretion, may parole the alien under section
25 212(d)(5) and may provide, notwithstanding section

1 212(d)(5), that the alien shall not be returned to
2 custody unless either the alien violates the conditions
3 of the alien’s parole or the alien’s removal becomes
4 reasonably foreseeable, provided that in no cir-
5 cumstance shall such alien be considered admitted.

6 “(8) ADDITIONAL RULES FOR DETENTION OR
7 RELEASE OF ALIENS.—The following procedures
8 shall apply to an alien detained under this section:

9 “(A) DETENTION REVIEW PROCESS FOR
10 ALIENS WHO HAVE EFFECTED AN ENTRY AND
11 FULLY COOPERATE WITH REMOVAL.—The Sec-
12 retary of Homeland Security shall establish an
13 administrative review process to determine
14 whether an alien described in subparagraph (B)
15 should be detained or released after the removal
16 period in accordance with subparagraphs (C)
17 and (E).

18 “(B) ALIEN DESCRIBED.—An alien is de-
19 scribed in this subparagraph if the alien—

20 “(i) has effected an entry into the
21 United States;

22 “(ii) has made all reasonable efforts
23 to comply with the alien’s removal order;

24 “(iii) has cooperated fully with the
25 Secretary’s efforts to establish the alien’s

1 identity and to carry out the removal
2 order, including making timely application
3 in good faith for travel or other documents
4 necessary for the alien's departure; and

5 “(iv) has not conspired or acted to
6 prevent removal.

7 “(C) EVIDENCE.—In making a determina-
8 tion under subparagraph (A), the Secretary—

9 “(i) shall consider any evidence sub-
10 mitted by the alien;

11 “(ii) may consider any other evidence,
12 including—

13 “(I) any information or assist-
14 ance provided by the Department of
15 State or other Federal agency; and

16 “(II) any other information avail-
17 able to the Secretary pertaining to the
18 ability to remove the alien.

19 “(D) AUTHORITY TO DETAIN FOR 90 DAYS
20 BEYOND REMOVAL PERIOD.—The Secretary, in
21 the exercise of the Secretary's discretion and
22 without any limitations other than those speci-
23 fied in this section, may detain an alien for 90
24 days beyond the removal period (including any

1 extension of the removal period under para-
2 graph (1)(C)).

3 “(E) AUTHORITY TO DETAIN FOR ADDI-
4 TIONAL PERIOD.—The Secretary, in the exer-
5 cise of the Secretary’s discretion and without
6 any limitations other than those specified in
7 this section, may detain an alien beyond the 90-
8 day period authorized under subparagraph (D)
9 until the alien is removed, if the Secretary—

10 “(i) determines that there is a signifi-
11 cant likelihood that the alien will be re-
12 moved in the reasonably foreseeable future;
13 or

14 “(ii) certifies in writing—

15 “(I) in consultation with the Sec-
16 retary of Health and Human Services,
17 that the alien has a highly contagious
18 disease that poses a threat to public
19 safety;

20 “(II) after receipt of a written
21 recommendation from the Secretary of
22 State, that the release of the alien
23 would likely have serious adverse for-
24 eign policy consequences for the
25 United States;

1 “(III) based on information avail-
2 able to the Secretary (including classi-
3 fied, sensitive, or national security in-
4 formation, and regardless of the
5 grounds upon which the alien was or-
6 dered removed), that there is reason
7 to believe that the release of the alien
8 would threaten the national security
9 of the United States;

10 “(IV) that—

11 “(aa) the release of the alien
12 would threaten the safety of the
13 community or any person, and
14 conditions of release cannot rea-
15 sonably be expected to ensure the
16 safety of the community or any
17 person; and

18 “(bb) the alien—

19 “(AA) has been con-
20 victed of 1 or more aggra-
21 vated felonies (as defined in
22 section 101(a)(43)(A)), or of
23 1 or more attempts or con-
24 spiracies to commit any such
25 aggravated felonies or such

1 crimes, for an aggregate
2 term of imprisonment of at
3 least 5 years; or

4 “(BB) has committed a
5 crime of violence (as defined
6 in section 16 of title 18,
7 United States Code, but not
8 including a purely political
9 offense) and, because of a
10 mental condition or person-
11 ality disorder and behavior
12 associated with that condi-
13 tion or disorder, is likely to
14 engage in acts of violence in
15 the future; or

16 “(V) that—

17 “(aa) the release of the alien
18 would threaten the safety of the
19 community or any person, not-
20 withstanding conditions of release
21 designed to ensure the safety of
22 the community or any person;
23 and

24 “(bb) the alien has been
25 convicted of 1 or more aggra-

1 vated felonies (as defined in sec-
2 tion 101(a)(43)) for which the
3 alien was sentenced to an aggre-
4 gate term of imprisonment of not
5 less than 1 year.

6 “(F) ADMINISTRATIVE REVIEW PROC-
7 ESS.—The Secretary, without any limitations
8 other than those specified in this section, may
9 detain an alien pending a determination under
10 subparagraph (E)(ii), if the Secretary has initi-
11 ated the administrative review process identified
12 in subparagraph (A) not later than 30 days
13 after the expiration of the removal period (in-
14 cluding any extension of the removal period
15 under paragraph (1)(C)).

16 “(G) RENEWAL AND DELEGATION OF CER-
17 TIFICATION.—

18 “(i) RENEWAL.—The Secretary may
19 renew a certification under subparagraph
20 (E)(ii) every 6 months, without limitation,
21 after providing the alien with an oppor-
22 tunity to request reconsideration of the
23 certification and to submit documents or
24 other evidence in support of that request.
25 If the Secretary does not renew such cer-

1 tification, the Secretary shall release the
2 alien, pursuant to subparagraph (H).

3 “(ii) DELEGATION.—Notwithstanding
4 any other provision of law, the Secretary
5 may not delegate the authority to make or
6 renew a certification described in subclause
7 (II), (III), or (V) of subparagraph (E)(ii)
8 to any employee reporting to the Assistant
9 Secretary for Immigration and Customs
10 Enforcement.

11 “(iii) HEARING.—The Secretary may
12 request that the Attorney General, or a
13 designee of the Attorney General, provide
14 for a hearing to make the determination
15 described in subparagraph
16 (E)(ii)(IV)(bb)(BB).

17 “(H) RELEASE ON CONDITIONS.—If it is
18 determined that an alien should be released
19 from detention, the Secretary may, in the Sec-
20 retary’s discretion, impose conditions on release
21 in accordance with the regulations prescribed
22 pursuant to paragraph (3).

23 “(I) REDETENTION.—The Secretary, with-
24 out any limitations other than those specified in
25 this section, may detain any alien subject to a

1 final removal order who has previously been re-
2 leased from custody if—

3 “(i) the alien fails to comply with the
4 conditions of release;

5 “(ii) the alien fails to continue to sat-
6 isfy the conditions described in subpara-
7 graph (B); or

8 “(iii) upon reconsideration, the Sec-
9 retary determines that the alien can be de-
10 tained under subparagraph (E).

11 “(J) APPLICABILITY.—This paragraph and
12 paragraphs (6) and (7) shall apply to any alien
13 returned to custody under subparagraph (I) as
14 if the removal period terminated on the day of
15 the redetention.

16 “(K) DETENTION REVIEW PROCESS FOR
17 ALIENS WHO HAVE EFFECTED AN ENTRY AND
18 FAIL TO COOPERATE WITH REMOVAL.—The
19 Secretary shall detain an alien until the alien
20 makes all reasonable efforts to comply with a
21 removal order and to cooperate fully with the
22 Secretary’s efforts, if the alien—

23 “(i) has effected an entry into the
24 United States; and

1 “(ii)(I) and the alien faces a signifi-
2 cant likelihood that the alien will be re-
3 moved in the reasonably foreseeable future,
4 or would have been removed if the alien
5 had not—

6 “(aa) failed or refused to make
7 all reasonable efforts to comply with a
8 removal order;

9 “(bb) failed or refused to fully
10 cooperate with the Secretary’s efforts
11 to establish the alien’s identity and
12 carry out the removal order, including
13 the failure to make timely application
14 in good faith for travel or other docu-
15 ments necessary to the alien’s depar-
16 ture; or

17 “(cc) conspired or acted to pre-
18 vent removal; or

19 “(II) the Secretary makes a certifi-
20 cation as specified in subparagraph (E), or
21 the renewal of a certification specified in
22 subparagraph (G).

23 “(L) DETENTION REVIEW PROCESS FOR
24 ALIENS WHO HAVE NOT EFFECTED AN
25 ENTRY.—Except as otherwise provided in this

1 subparagraph, the Secretary shall follow the
2 guidelines established in section 241.4 of title 8,
3 Code of Federal Regulations, when detaining
4 aliens who have not effected an entry. The Sec-
5 retary may decide to apply the review process
6 outlined in this paragraph.

7 “(9) JUDICIAL REVIEW.—Without regard to the
8 place of confinement, judicial review of any action or
9 decision made pursuant to paragraph (6), (7), or (8)
10 shall be available exclusively in a habeas corpus pro-
11 ceeding instituted in the United States District
12 Court for the District of Columbia and only if the
13 alien has exhausted all administrative remedies
14 (statutory and nonstatutory) available to the alien as
15 of right.”.

16 (2) EFFECTIVE DATE.—The amendments made
17 by paragraph (1)—

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

20 (B) shall apply to—

21 (i) any alien subject to a final admin-
22 istrative removal, deportation, or exclusion
23 order that was issued before, on, or after
24 the date of the enactment of this Act; and

1 (ii) any act or condition occurring or
2 existing before, on, or after the date of the
3 enactment of this Act.

4 (b) CRIMINAL DETENTION OF ALIENS.—Section
5 3142 of title 18, United States Code, is amended—

6 (1) in subsection (e)—

7 (A) by redesignating paragraphs (1), (2),
8 and (3) as subparagraphs (A), (B), and (C), re-
9 spectively;

10 (B) by inserting “(1)” before “If, after a
11 hearing”;

12 (C) in subparagraphs (B) and (C), as re-
13 designated, by striking “paragraph (1)” and in-
14 serting “subparagraph (A)”; and

15 (D) by adding after subparagraph (C), as
16 redesignated, the following:

17 “(2) Subject to rebuttal by the person, it shall be pre-
18 sumed that no condition or combination of conditions will
19 reasonably assure the appearance of the person as re-
20 quired if the judicial officer finds that there is probable
21 cause to believe that the person—

22 “(A) is an alien; and

23 “(B)(i) has no lawful immigration status in the
24 United States;

1 “(ii) is the subject of a final order of removal;

2 or

3 “(iii) has committed a felony offense under sec-
4 tion 911, 922(g)(5), 1015, 1028, 1425, or 1426 of
5 this title, chapter 75 or 77 of this title, or section
6 243, 274, 275, 276, 277, or 278 of the Immigration
7 and Nationality Act (8 U.S.C. 1253, 1324, 1325,
8 1326, 2327, and 1328).”; and

9 (2) in subsection (g)(3)—

10 (A) in subparagraph (A), by striking

11 “and” at the end; and

12 (B) by adding at the end the following:

13 “(C) the person’s immigration status;
14 and”.

15 **SEC. 203. AGGRAVATED FELONY.**

16 Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amend-
17 ed—

18 (1) by striking “The term ‘aggravated felony’
19 means—” and inserting “Notwithstanding any other
20 provision of law (including any provision providing
21 an effective date), the term ‘aggravated felony’ ap-
22 plies to an offense described in this paragraph,
23 whether in violation of Federal or State law and to
24 such an offense in violation of the law of a foreign
25 country, for which the term of imprisonment was

1 completed within the previous 15 years, even if the
2 length of the term of imprisonment is based on re-
3 cidivist or other enhancements and regardless of
4 whether the conviction was entered before, on, or
5 after September 30, 1996, and means—”;

6 (2) in subparagraph (N), by striking “para-
7 graph (1)(A) or (2) of”;

8 (3) in subparagraph (O), by striking “section
9 275(a) or 276 committed by an alien who was pre-
10 viously deported on the basis of a conviction for an
11 offense described in another subparagraph of this
12 paragraph” and inserting “section 275 or 276 for
13 which the term of imprisonment is at least 1 year”;

14 (4) in subparagraph (U), by striking “an at-
15 tempt or conspiracy to commit an offense described
16 in this paragraph” and inserting “aiding or abetting
17 an offense described in this paragraph, or soliciting,
18 counseling, procuring, commanding, or inducing an-
19 other, attempting, or conspiring to commit such an
20 offense”; and

21 (5) by striking the undesignated matter fol-
22 lowing subparagraph (U).

23 **SEC. 204. TERRORIST BARS.**

24 (a) DEFINITION OF GOOD MORAL CHARACTER.—
25 Section 101(f) (8 U.S.C. 1101(f)) is amended—

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

3 “(2) an alien described in section 212(a)(3) or
4 237(a)(4), as determined by the Secretary of Home-
5 land Security or Attorney General based upon any
6 relevant information or evidence, including classified,
7 sensitive, or national security information;”;

8 (2) in paragraph (8), by striking “(as defined
9 in subsection (a)(43))” and inserting the following:
10 “, regardless of whether the crime was defined as an
11 aggravated felony under subsection (a)(43) at the
12 time of the conviction, unless—

13 “(A) the person completed the term of im-
14 prisonment and sentence not later than 10
15 years before the date of application; and

16 “(B) the Secretary of Homeland Security
17 or the Attorney General waives the application
18 of this paragraph; or”;

19 (3) in the undesignated matter following para-
20 graph (9), by striking “a finding that for other rea-
21 sons such person is or was not of good moral char-
22 acter” and inserting the following: “a discretionary
23 finding for other reasons that such a person is or
24 was not of good moral character. In determining an
25 applicant’s moral character, the Secretary of Home-

1 land Security and the Attorney General may take
2 into consideration the applicant's conduct and acts
3 at any time and are not limited to the period during
4 which good moral character is required.”.

5 (b) PENDING PROCEEDINGS.—Section 204(b) (8
6 U.S.C. 1154(b)) is amended by adding at the end the fol-
7 lowing: “A petition may not be approved under this section
8 if there is any administrative or judicial proceeding
9 (whether civil or criminal) pending against the petitioner
10 that could directly or indirectly result in the petitioner's
11 denaturalization or the loss of the petitioner's lawful per-
12 manent resident status.”.

13 (c) CONDITIONAL PERMANENT RESIDENT STATUS.—

14 (1) IN GENERAL.—Section 216(e) (8 U.S.C.
15 1186a(e)) is amended by inserting “if the alien has
16 had the conditional basis removed pursuant to this
17 section” before the period at the end.

18 (2) CERTAIN ALIEN ENTREPRENEURS.—Section
19 216A(e) (8 U.S.C. 1186b(e)) is amended by insert-
20 ing “if the alien has had the conditional basis re-
21 moved pursuant to this section” before the period at
22 the end.

23 (d) JUDICIAL REVIEW OF NATURALIZATION APPLI-
24 CATIONS.—Section 310(c) (8 U.S.C. 1421(c)) is amend-
25 ed—

1 (1) by inserting “, not later than 120 days after
2 the Secretary of Homeland Security’s final deter-
3 mination,” after “may”; and

4 (2) by adding at the end the following: “The
5 petitioner shall have the burden of showing that the
6 Secretary’s denial of the application was contrary to
7 law. Except in a proceeding under section 340, and
8 notwithstanding any other provision of law, no court
9 shall have jurisdiction to determine, or to review a
10 determination of the Secretary regarding, whether,
11 for purposes of an application for naturalization, an
12 alien—

13 “(1) is a person of good moral character;

14 “(2) understands and is attached to the prin-
15 ciples of the Constitution of the United States; or

16 “(3) is well disposed to the good order and hap-
17 piness of the United States.”.

18 (e) PERSONS ENDANGERING NATIONAL SECURITY.—
19 Section 316 (8 U.S.C. 1427) is amended by adding at the
20 end the following:

21 “(g) PERSONS ENDANGERING THE NATIONAL SECU-
22 RITY.—A person may not be naturalized if the Secretary
23 of Homeland Security determines, based upon any rel-
24 evant information or evidence, including classified, sen-
25 sitive, or national security information, that the person

1 was once an alien described in section 212(a)(3) or
2 237(a)(4).”.

3 (f) CONCURRENT NATURALIZATION AND REMOVAL
4 PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended
5 by striking “the Attorney General if” and all that follows
6 and inserting: “the Secretary of Homeland Security or any
7 court if there is pending against the applicant any removal
8 proceeding or other proceeding to determine the appli-
9 cant’s inadmissibility or deportability, or to determine
10 whether the applicant’s lawful permanent resident status
11 should be rescinded, regardless of when such proceeding
12 was commenced. The findings of the Attorney General in
13 terminating removal proceedings or canceling the removal
14 of an alien under this Act shall not be deemed binding
15 in any way upon the Secretary of Homeland Security with
16 respect to the question of whether such person has estab-
17 lished eligibility for naturalization in accordance with this
18 title.”.

19 (g) DISTRICT COURT JURISDICTION.—Section
20 336(b) (8 U.S.C. 1447(b)) is amended to read as follows:

21 “(b) REQUEST FOR HEARING BEFORE DISTRICT
22 COURT.—If there is a failure to render a final administra-
23 tive decision under section 335 before the end of the 180-
24 day period beginning on the date on which the Secretary
25 of Homeland Security completes all examinations and

1 interviews required under such section, the applicant may
 2 apply to the district court for the district in which the
 3 applicant resides for a hearing on the matter. Such district
 4 court shall only have jurisdiction to review the basis for
 5 delay and remand the matter to the Secretary of Home-
 6 land Security for the Secretary's determination on the ap-
 7 plication.".

8 (h) EFFECTIVE DATE.—The amendments made by
 9 this section—

10 (1) shall take effect on the date of the enact-
 11 ment of this Act;

12 (2) shall apply to any act that occurred before,
 13 on, or after such date of enactment; and

14 (3) shall apply to any application for natu-
 15 ralization or any other case or matter under the im-
 16 migration laws pending on, or filed after, such date
 17 of enactment.

18 **SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO**
 19 **GANG VIOLENCE, REMOVAL, AND ALIEN**
 20 **SMUGGLING.**

21 (a) CRIMINAL STREET GANGS.—

22 (1) INADMISSIBILITY.—Section 212(a)(2) (8
 23 U.S.C. 1182(a)(2)) is amended—

24 (A) by redesignating subparagraph (F) as
 25 subparagraph (J); and

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

3 “(F) MEMBERS OF CRIMINAL STREET
4 GANGS.—Unless the Secretary of Homeland Se-
5 curity or the Attorney General waives the appli-
6 cation of this subparagraph, any alien who a
7 consular officer, the Attorney General, or the
8 Secretary of Homeland Security knows or has
9 reason to believe—

10 “(i) is, or has been, a member of a
11 criminal street gang (as defined in section
12 521(a) of title 18, United States Code); or

13 “(ii) has participated in the activities
14 of a criminal street gang, knowing or hav-
15 ing reason to know that such activities pro-
16 moted, furthered, aided, or supported the
17 illegal activity of the criminal gang,
18 is inadmissible.”.

19 (2) DEPORTABILITY.—Section 237(a)(2) (8
20 U.S.C. 1227(a)(2)) is amended by adding at the end
21 the following:

22 “(F) MEMBERS OF CRIMINAL STREET
23 GANGS.—Unless the Secretary of Homeland Se-
24 curity or the Attorney General waives the appli-
25 cation of this subparagraph, any alien who the

1 Secretary of Homeland Security or the Attorney
2 General knows or has reason to believe—

3 “(i) is, or at any time after admission
4 has been, a member of a criminal street
5 gang (as defined in section 521(a) of title
6 18, United States Code); or

7 “(ii) has participated in the activities
8 of a criminal street gang, knowing or hav-
9 ing reason to know that such activities pro-
10 moted, furthered, aided, or supported the
11 illegal activity of the criminal gang,

12 is deportable.”.

13 (3) TEMPORARY PROTECTED STATUS.—Section
14 244 (8 U.S.C. 1254a) is amended—

15 (A) by striking “Attorney General” each
16 place it appears and inserting “Secretary of
17 Homeland Security”;

18 (B) in subsection (b)(3)—

19 (i) in subparagraph (B), by striking
20 the last sentence and inserting the fol-
21 lowing: “Notwithstanding any other provi-
22 sion of this section, the Secretary of
23 Homeland Security may, for any reason
24 (including national security), terminate or
25 modify any designation under this section.

1 Such termination or modification is effective upon publication in the Federal Register, or after such time as the Secretary may designate in the Federal Register.”;

2
3
4
5 (ii) in subparagraph (C), by striking
6 “a period of 12 or 18 months” and inserting
7 “any other period not to exceed 18
8 months”;

9 (C) in subsection (c)—

10 (i) in paragraph (1)(B), by striking
11 “The amount of any such fee shall not exceed \$50.”;

12
13 (ii) in paragraph (2)(B)—

14 (I) in clause (i), by striking “,
15 or” at the end;

16 (II) in clause (ii), by striking the
17 period at the end and inserting “; or”;
18 and

19 (III) by adding at the end the
20 following:

21 “(iii) the alien is, or at any time after
22 admission has been, a member of a criminal
23 street gang (as defined in section
24 521(a) of title 18, United States Code).”;
25 and

1 (D) in subsection (d)—

2 (i) by striking paragraph (3); and

3 (ii) in paragraph (4), by adding at the
4 end the following: “The Secretary of
5 Homeland Security may detain an alien
6 provided temporary protected status under
7 this section whenever appropriate under
8 any other provision of law.”.

9 (b) PENALTIES RELATED TO REMOVAL.—Section
10 243 (8 U.S.C. 1253) is amended—

11 (1) in subsection (a)(1)—

12 (A) in the matter preceding subparagraph
13 (A), by inserting “212(a) or” after “section”;
14 and

15 (B) in the matter following subparagraph
16 (D)—

17 (i) by striking “or imprisoned not
18 more than four years” and inserting “and
19 imprisoned for not less than 6 months or
20 more than 5 years”; and

21 (ii) by striking “, or both”;

22 (2) in subsection (b), by striking “not more
23 than \$1000 or imprisoned for not more than one
24 year, or both” and inserting “under title 18, United
25 States Code, and imprisoned for not less than 6

1 months or more than 5 years (or for not more than
 2 10 years if the alien is a member of any of the class-
 3 es described in paragraphs (1)(E), (2), (3), and (4)
 4 of section 237(a)”; and

5 (3) by amending subsection (d) to read as fol-
 6 lows:

7 “(d) DENYING VISAS TO NATIONALS OF COUNTRY
 8 DENYING OR DELAYING ACCEPTING ALIEN.—The Sec-
 9 retary of Homeland Security, after making a determina-
 10 tion that the government of a foreign country has denied
 11 or unreasonably delayed accepting an alien who is a cit-
 12 izen, subject, national, or resident of that country after
 13 the alien has been ordered removed, and after consultation
 14 with the Secretary of State, may instruct the Secretary
 15 of State to deny a visa to any citizen, subject, national,
 16 or resident of that country until the country accepts the
 17 alien that was ordered removed.”.

18 (e) ALIEN SMUGGLING AND RELATED OFFENSES.—

19 (1) IN GENERAL.—Section 274 (8 U.S.C.
 20 1324), is amended to read as follows:

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

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

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

1 “(A) facilitates, encourages, directs, or in-
2 duces a person to come to or enter the United
3 States, or to cross the border to the United
4 States, knowing or in reckless disregard of the
5 fact that such person is an alien who lacks law-
6 ful authority to come to, enter, or cross the bor-
7 der to the United States;

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

18 “(C) transports, moves, harbors, conceals,
19 or shields from detection a person outside of
20 the United States knowing or in reckless dis-
21 regard of the fact that such person is an alien
22 in unlawful transit from 1 country to another
23 or on the high seas, under circumstances in
24 which the alien is seeking to enter the United

1 States without official permission or legal au-
2 thority;

3 “(D) encourages or induces a person to re-
4 side or remain in the United States, knowing or
5 in reckless disregard of the fact that such per-
6 son is an alien who lacks lawful authority to re-
7 side in or remain in the United States;

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

15 “(F) harbors, conceals, or shields from de-
16 tection a person in the United States, knowing
17 or in reckless disregard of the fact that such
18 person is an alien who lacks lawful authority to
19 be in the United States; or

20 “(G) conspires or attempts to commit any
21 of the acts described in subparagraphs (A)
22 through (F).

23 “(2) CRIMINAL PENALTIES.—A person who vio-
24 lates any provision under paragraph (1)—

1 “(A) except as provided in subparagraphs
2 (C) through (G), if the offense was not com-
3 mitted for commercial advantage, profit, or pri-
4 vate financial gain, shall be fined under title 18,
5 United States Code, imprisoned for not more
6 than 5 years, or both;

7 “(B) except as provided in subparagraphs
8 (C) through (G), if the offense was committed
9 for commercial advantage, profit, or private fi-
10 nancial gain—

11 “(i) if the violation is the offender’s
12 first violation under this subparagraph,
13 shall be fined under such title, imprisoned
14 for not more than 20 years, or both; or

15 “(ii) if the violation is the offender’s
16 second or subsequent violation of this sub-
17 paragraph, shall be fined under such title,
18 imprisoned for not less than 3 years or
19 more than 20 years, or both;

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

1 “(D) shall be fined under such title, im-
2 prisoned not less than 5 years or more than 20
3 years, or both, if the offense created a substan-
4 tial and foreseeable risk of death, a substantial
5 and foreseeable risk of serious bodily injury (as
6 defined in section 2119(2) of title 18, United
7 States Code), or inhumane conditions to an-
8 other person, including—

9 “(i) transporting the person in an en-
10 gine compartment, storage compartment,
11 or other confined space;

12 “(ii) transporting the person at an ex-
13 cessive speed or in excess of the rated ca-
14 pacity of the means of transportation; or

15 “(iii) transporting the person in, har-
16 boring the person in, or otherwise sub-
17 jecting the person to crowded or dangerous
18 conditions;

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

24 “(F) shall be fined under such title and
25 imprisoned for not less than 10 years or more

1 than 30 years if the offense involved an alien
2 who the offender knew or had reason to believe
3 was—

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

6 “(ii) intending to engage in terrorist
7 activity;

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

13 “(3) LIMITATION.—It is not a violation of sub-
14 paragraph (D), (E), or (F) of paragraph (1)—

15 “(A) for a religious denomination having a
16 bona fide nonprofit, religious organization in
17 the United States, or the agents or officers of
18 such denomination or organization, to encour-
19 age, invite, call, allow, or enable an alien who
20 is present in the United States to perform the
21 vocation of a minister or missionary for the de-
22 nomination or organization in the United States
23 as a volunteer who is not compensated as an
24 employee, notwithstanding the provision of
25 room, board, travel, medical assistance, and

1 other basic living expenses, provided the min-
2 ister or missionary has been a member of the
3 denomination for at least 1 year; or

4 “(B) for an individual to provide an alien
5 with emergency humanitarian assistance, in-
6 cluding emergency medical care and food, or to
7 transport the alien to a location where such as-
8 sistance can be rendered, provided that such as-
9 sistance is rendered without compensation or
10 the expectation of compensation.

11 “(4) EXTRATERRITORIAL JURISDICTION.—
12 There is extraterritorial Federal jurisdiction over the
13 offenses described in this subsection.

14 “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

15 “(1) CRIMINAL OFFENSE AND PENALTIES.—
16 Any person who, during any 12-month period, know-
17 ingly employs 10 or more individuals with actual
18 knowledge or in reckless disregard of the fact that
19 the individuals are aliens described in paragraph (2),
20 shall be fined under title 18, United States Code,
21 imprisoned for not more than 10 years, or both.

22 “(2) DEFINITION.—An alien described in this
23 paragraph is an alien who—

24 “(A) is an unauthorized alien (as defined
25 in section 274A(h)(3));

1 “(B) is present in the United States with-
2 out lawful authority; and

3 “(C) has been brought into the United
4 States in violation of this subsection.

5 “(c) SEIZURE AND FORFEITURE.—

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

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

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

1 such alien had come to, entered, resided in, re-
2 mained in, or been present in the United States in
3 violation of law shall include—

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

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

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

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

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

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

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

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

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

14 “(f) OUTREACH PROGRAM.—

15 “(1) IN GENERAL.—The Secretary of Homeland
16 Security, in consultation with the Attorney General
17 and the Secretary of State, as appropriate, shall—

18 “(A) develop and implement an outreach
19 program to educate people in and out of the
20 United States about the penalties for bringing
21 in and harboring aliens in violation of this sec-
22 tion; and

23 “(B) establish the American Local and In-
24 terior Enforcement Needs (ALIEN) Task Force
25 to identify and respond to the use of Federal,

1 State, and local transportation infrastructure to
2 further the trafficking of unlawful aliens within
3 the United States.

4 “(2) FIELD OFFICES.—The Secretary of Home-
5 land Security, after consulting with State and local
6 government officials, shall establish such field offices
7 as may be necessary to carry out this subsection.

8 “(3) AUTHORIZATION OF APPROPRIATIONS.—
9 There are authorized to be appropriated such sums
10 are necessary for the fiscal years 2007 through 2011
11 to carry out this subsection.

12 “(g) DEFINITIONS.—In this section:

13 “(1) CROSSED THE BORDER INTO THE UNITED
14 STATES.—An alien is deemed to have crossed the
15 border into the United States regardless of whether
16 the alien is free from official restraint.

17 “(2) LAWFUL AUTHORITY.—The term ‘lawful
18 authority’ means permission, authorization, or li-
19 cense that is expressly provided for in the immigra-
20 tion laws of the United States or accompanying reg-
21 ulations. The term does not include any such au-
22 thority secured by fraud or otherwise obtained in
23 violation of law or authority sought, but not ap-
24 proved. No alien shall be deemed to have lawful au-
25 thority to come to, enter, reside in, remain in, or be

1 in the United States if such coming to, entry, resi-
2 dence, remaining, or presence was, is, or would be
3 in violation of law.

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

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

13 (2) CLERICAL AMENDMENT.—The table of con-
14 tents is amended by striking the item relating to sec-
15 tion 274 and inserting the following:

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

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

20 (1) in paragraph (1)—

21 (A) in subparagraph (A), by inserting “,
22 alien smuggling crime,” after “any crime of vio-
23 lence”;

1 (B) in subparagraph (A), by inserting “,
2 alien smuggling crime,” after “such crime of vi-
3 olence”;

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

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

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

12 **SEC. 206. ILLEGAL ENTRY OR UNLAWFUL PRESENCE OF AN**
13 **ALIEN.**

14 (a) IN GENERAL.—Section 275 (8 U.S.C. 1325) is
15 amended to read as follows:

16 **“SEC. 275. ILLEGAL ENTRY OR UNLAWFUL PRESENCE OF**
17 **AN ALIEN.**

18 “(a) IN GENERAL.—

19 “(1) CRIMINAL OFFENSES.—An alien shall be
20 subject to the penalties set forth in paragraph (2) if
21 the alien—

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

1 “(B) knowingly eludes examination or in-
2 spection by an immigration officer;

3 “(C) knowingly enters or crosses the bor-
4 der to the United States by means of a know-
5 ingly false or misleading representation or the
6 knowing concealment of a material fact; or

7 “(D) is otherwise present in the United
8 States, knowing that such presence violates the
9 terms and conditions of any admission, parole,
10 immigration status, or authorized stay granted
11 the alien under this Act.

12 “(2) CRIMINAL PENALTIES.—Any alien who
13 violates any provision under paragraph (1)—

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

17 “(B) shall, for a second or subsequent vio-
18 lation, or following an order of voluntary depar-
19 ture, be fined under such title, imprisoned not
20 more than 2 years, or both;

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

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

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

13 “(3) PRIOR CONVICTIONS.—The prior convic-
14 tions described in subparagraphs (C) through (E) of
15 paragraph (2) are elements of the offenses described
16 in that paragraph and the penalties in such subpara-
17 graphs shall apply only in cases in which the convic-
18 tion or convictions that form the basis for the addi-
19 tional penalty are—

20 “(A) alleged in the indictment or informa-
21 tion; and

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

24 “(4) DURATION OF OFFENSE.—An offense
25 under this subsection continues until the alien is dis-

1 covered within the United States by an immigration
2 officer.

3 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
4 ALTIES.—

5 “(1) IN GENERAL.—Any alien who is appre-
6 hended while entering, attempting to enter, or know-
7 ingly crossing or attempting to cross the border to
8 the United States at a time or place other than as
9 designated by immigration officers shall be subject
10 to a civil penalty, in addition to any criminal or
11 other civil penalties that may be imposed under any
12 other provision of law, in an amount equal to—

13 “(A) not less than \$50 or more than \$250
14 for each such entry, crossing, attempted entry,
15 or attempted crossing; or

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

19 “(2) CROSSED THE BORDER DEFINED.—In this
20 section, an alien is deemed to have crossed the bor-
21 der if the act was voluntary, regardless of whether
22 the alien was under observation at the time of the
23 crossing.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 is amended by striking the item relating to section 275
3 and inserting the following:

“Sec. 275. Illegal entry or unlawful presence of an alien.”.

4 **SEC. 207. ILLEGAL REENTRY.**

5 Section 276 (8 U.S.C. 1326) is amended to read as
6 follows:

7 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

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

17 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
18 withstanding the penalty provided in subsection (a), if an
19 alien described in that subsection—

20 “(1) was convicted for 3 or more misdemeanors
21 or a felony before such removal or departure, the
22 alien shall be fined under title 18, United States
23 Code, imprisoned not more than 10 years, or both;

24 “(2) was convicted for a felony before such re-
25 moval or departure for which the alien was sen-

1 tenced to a term of imprisonment of not less than
2 30 months, the alien shall be fined under such title,
3 imprisoned not more than 15 years, or both;

4 “(3) was convicted for a felony before such re-
5 moval or departure for which the alien was sen-
6 tenced to a term of imprisonment of not less than
7 60 months, the alien shall be fined under such title,
8 imprisoned not more than 20 years, or both;

9 “(4) was convicted for 3 felonies before such re-
10 moval or departure, the alien shall be fined under
11 such title, imprisoned not more than 20 years, or
12 both; or

13 “(5) was convicted, before such removal or de-
14 parture, for murder, rape, kidnaping, or a felony of-
15 fense described in chapter 77 (relating to peonage
16 and slavery) or 113B (relating to terrorism) of such
17 title, the alien shall be fined under such title, impris-
18 oned not more than 20 years, or both.

19 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
20 alien who has been denied admission, excluded, deported,
21 or removed 3 or more times and thereafter enters, at-
22 tempts to enter, crosses the border to, attempts to cross
23 the border to, or is at any time found in the United States,
24 shall be fined under title 18, United States Code, impris-
25 oned not more than 10 years, or both.

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

7 “(1) alleged in the indictment or information;

8 and

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

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

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

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

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

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

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

7 “(1) the alien exhausted all administrative rem-
8 edies that may have been available to seek relief
9 against the order;

10 “(2) the removal proceedings at which the order
11 was issued improperly deprived the alien of the op-
12 portunity for judicial review; and

13 “(3) the entry of the order was fundamentally
14 unfair.

15 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
16 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
17 moved pursuant to section 241(a)(4) who enters, attempts
18 to enter, crosses the border to, attempts to cross the bor-
19 der to, or is at any time found in, the United States shall
20 be incarcerated for the remainder of the sentence of im-
21 prisonment which was pending at the time of deportation
22 without any reduction for parole or supervised release un-
23 less the alien affirmatively demonstrates that the Sec-
24 retary of Homeland Security has expressly consented to
25 the alien’s reentry. Such alien shall be subject to such

1 other penalties relating to the reentry of removed aliens
2 as may be available under this section or any other provi-
3 sion of law.

4 “(h) LIMITATION.—It is not aiding and abetting a
5 violation of this section for an individual to provide an
6 alien with emergency humanitarian assistance, including
7 emergency medical care and food, or to transport the alien
8 to a location where such assistance can be rendered, pro-
9 vided that such assistance is rendered without compensa-
10 tion or the expectation of compensation.

11 “(i) DEFINITIONS.—In this section:

12 “(1) CROSSES THE BORDER.—The term
13 ‘crosses the border’ applies if an alien acts volun-
14 tarily, regardless of whether the alien was under ob-
15 servation at the time of the crossing.

16 “(2) FELONY.—Term ‘felony’ means any crimi-
17 nal offense punishable by a term of imprisonment of
18 more than 1 year under the laws of the United
19 States, any State, or a foreign government.

20 “(3) MISDEMEANOR.—The term ‘misdemeanor’
21 means any criminal offense punishable by a term of
22 imprisonment of not more than 1 year under the ap-
23 plicable laws of the United States, any State, or a
24 foreign government.

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

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

9 **SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION**

10 **FRAUD OFFENSES.**

11 (a) IN GENERAL.—Chapter 75 of title 18, United
12 States Code, is amended to read as follows:

13 **“CHAPTER 75—PASSPORT, VISA, AND**
14 **IMMIGRATION FRAUD**

“Sec.

“1541. Trafficking in passports.

“1542. False statement in an application for a passport.

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Marriage fraud.

“1548. Attempts and conspiracies.

“1549. Alternative penalties for certain offenses.

“1550. Seizure and forfeiture.

“1551. Additional jurisdiction.

“1552. Additional venue.

“1553. Definitions.

“1554. Authorized law enforcement activities.

15 **“§ 1541. Trafficking in passports**

16 “(a) MULTIPLE PASSPORTS.—Any person who, dur-
17 ing any 3-year period, knowingly—

1 “(1) and without lawful authority produces,
2 issues, or transfers 10 or more passports;

3 “(2) forges, counterfeits, alters, or falsely
4 makes 10 or more passports;

5 “(3) secures, possesses, uses, receives, buys,
6 sells, or distributes 10 or more passports, knowing
7 the passports to be forged, counterfeited, altered,
8 falsely made, stolen, procured by fraud, or produced
9 or issued without lawful authority; or

10 “(4) completes, mails, prepares, presents, signs,
11 or submits 10 or more applications for a United
12 States passport (including any supporting docu-
13 mentation), knowing the applications to contain any
14 false statement or representation,

15 shall be fined under this title, imprisoned not more than
16 20 years, or both.

17 “(b) PASSPORT MATERIALS.—Any person who know-
18 ingly and without lawful authority produces, counterfeits,
19 secures, possesses, or uses any official paper, seal,
20 hologram, image, text, symbol, stamp, engraving, plate, or
21 other material used to make a passport shall be fined
22 under this title, imprisoned not more than 20 years, or
23 both.

1 **“§ 1542. False statement in an application for a pass-**
2 **port**

3 “Any person who knowingly—

4 “(1) makes any false statement or representa-
5 tion in an application for a United States passport
6 (including any supporting documentation);

7 “(2) completes, mails, prepares, presents, signs,
8 or submits an application for a United States pass-
9 port (including any supporting documentation)
10 knowing the application to contain any false state-
11 ment or representation; or

12 “(3) causes or attempts to cause the production
13 of a passport by means of any fraud or false applica-
14 tion for a United States passport (including any
15 supporting documentation), if such production oc-
16 curs or would occur at a facility authorized by the
17 Secretary of State for the production of passports,
18 shall be fined under this title, imprisoned not more than
19 15 years, or both.

20 **“§ 1543. Forgery and unlawful production of a pass-**
21 **port**

22 “(a) FORGERY.—Any person who—

23 “(1) knowingly forges, counterfeits, alters, or
24 falsely makes any passport; or

25 “(2) knowingly transfers any passport knowing
26 it to be forged, counterfeited, altered, falsely made,

1 stolen, or to have been produced or issued without
2 lawful authority,
3 shall be fined under this title, imprisoned not more than
4 15 years, or both.

5 “(b) UNLAWFUL PRODUCTION.—Any person who
6 knowingly and without lawful authority—

7 “(1) produces, issues, authorizes, or verifies a
8 passport in violation of the laws, regulations, or
9 rules governing the issuance of the passport;

10 “(2) produces, issues, authorizes, or verifies a
11 United States passport for or to any person not
12 owing allegiance to the United States; or

13 “(3) transfers or furnishes a passport to a per-
14 son for use when such person is not the person for
15 whom the passport was issued or designed,

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

18 **“§ 1544. Misuse of a passport**

19 “(a) IN GENERAL.—Any person who—

20 “(1) knowingly uses any passport issued or de-
21 signed for the use of another;

22 “(2) knowingly uses any passport in violation of
23 the conditions or restrictions therein contained, or in
24 violation of the laws, regulations, or rules governing
25 the issuance and use of the passport;

1 “(3) knowingly secures, possesses, uses, re-
2 ceives, buys, sells, or distributes any passport know-
3 ing it to be forged, counterfeited, altered, falsely
4 made, procured by fraud, or produced or issued
5 without lawful authority; or

6 “(4) knowingly violates the terms and condi-
7 tions of any safe conduct duly obtained and issued
8 under the authority of the United States,
9 shall be fined under this title, imprisoned not more than
10 15 years, or both.

11 “(b) ENTRY; FRAUD.—Any person who knowingly
12 uses any passport, knowing the passport to be forged,
13 counterfeited, altered, falsely made, procured by fraud,
14 produced or issued without lawful authority, or issued or
15 designed for the use of another—

16 “(1) to enter or to attempt to enter the United
17 States; or

18 “(2) to defraud the United States, a State, or
19 a political subdivision of a State,

20 shall be fined under this title, imprisoned not more than
21 15 years, or both.

22 **“§ 1545. Schemes to defraud aliens**

23 “(a) IN GENERAL.—Any person who knowingly exe-
24 cutes a scheme or artifice, in connection with any matter
25 that is authorized by or arises under Federal immigration

1 laws, or any matter the offender claims or represents is
2 authorized by or arises under Federal immigration laws—

3 “(1) to defraud any person, or

4 “(2) to obtain or receive from any person, by
5 means of false or fraudulent pretenses, representa-
6 tions, promises, money or anything else of value,

7 shall be fined under this title, imprisoned not more than
8 15 years, or both.

9 “(b) MISREPRESENTATION.—Any person who know-
10 ingly and falsely represents himself to be an attorney in
11 any matter arising under Federal immigration laws shall
12 be fined under this title, imprisoned not more than 15
13 years, or both.

14 **“§ 1546. Immigration and visa fraud**

15 “(a) IN GENERAL.—Any person who knowingly—

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

18 “(2) forges, counterfeits, alters, or falsely
19 makes any immigration document;

20 “(3) completes, mails, prepares, presents, signs,
21 or submits any immigration document knowing it to
22 contain any materially false statement or representa-
23 tion;

24 “(4) secures, possesses, uses, transfers, re-
25 ceives, buys, sells, or distributes any immigration

1 document knowing it to be forged, counterfeited, al-
2 tered, falsely made, stolen, procured by fraud, or
3 produced or issued without lawful authority;

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

7 “(6) transfers or furnishes an immigration docu-
8 ment to a person without lawful authority for use
9 if such person is not the person for whom the immi-
10 gration document was issued or designed,

11 shall be fined under this title, imprisoned not more than
12 15 years, or both.

13 “(b) MULTIPLE VIOLATIONS.—Any person who, dur-
14 ing any 3-year period, knowingly—

15 “(1) and without lawful authority produces,
16 issues, or transfers 10 or more immigration docu-
17 ments;

18 “(2) forges, counterfeits, alters, or falsely
19 makes 10 or more immigration documents;

20 “(3) secures, possesses, uses, buys, sells, or dis-
21 tributes 10 or more immigration documents, know-
22 ing the immigration documents to be forged, coun-
23 terfeited, altered, stolen, falsely made, procured by
24 fraud, or produced or issued without lawful author-
25 ity; or

1 “(4) completes, mails, prepares, presents, signs,
2 or submits 10 or more immigration documents
3 knowing the documents to contain any materially
4 false statement or representation,
5 shall be fined under this title, imprisoned not more than
6 20 years, or both.

7 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
8 person who knowingly and without lawful authority pro-
9 duces, counterfeits, secures, possesses, or uses any official
10 paper, seal, hologram, image, text, symbol, stamp, engrav-
11 ing, plate, or other material, used to make an immigration
12 document shall be fined under this title, imprisoned not
13 more than 20 years, or both.

14 **“§ 1547. Marriage fraud**

15 “(a) EVASION OR MISREPRESENTATION.—Any per-
16 son who—

17 “(1) knowingly enters into a marriage for the
18 purpose of evading any provision of the immigration
19 laws; or

20 “(2) knowingly misrepresents the existence or
21 circumstances of a marriage—

22 “(A) in an application or document author-
23 ized by the immigration laws; or

24 “(B) during any immigration proceeding
25 conducted by an administrative adjudicator (in-

1 including an immigration officer or examiner, a
2 consular officer, an immigration judge, or a
3 member of the Board of Immigration Appeals),
4 shall be fined under this title, imprisoned not more than
5 10 years, or both.

6 “(b) MULTIPLE MARRIAGES.—Any person who—

7 “(1) knowingly enters into 2 or more marriages
8 for the purpose of evading any immigration law; or

9 “(2) knowingly arranges, supports, or facilitates
10 2 or more marriages designed or intended to evade
11 any immigration law,

12 shall be fined under this title, imprisoned not more than
13 20 years, or both.

14 “(c) COMMERCIAL ENTERPRISE.—Any person who
15 knowingly establishes a commercial enterprise for the pur-
16 pose of evading any provision of the immigration laws
17 shall be fined under this title, imprisoned for not more
18 than 10 years, or both.

19 “(d) DURATION OF OFFENSE.—

20 “(1) IN GENERAL.—An offense under sub-
21 section (a) or (b) continues until the fraudulent na-
22 ture of the marriage or marriages is discovered by
23 an immigration officer.

24 “(2) COMMERCIAL ENTERPRISE.—An offense
25 under subsection (c) continues until the fraudulent

1 nature of commercial enterprise is discovered by an
2 immigration officer or other law enforcement officer.

3 **“§ 1548. Attempts and conspiracies**

4 “Any person who attempts or conspires to violate any
5 section of this chapter shall be punished in the same man-
6 ner as a person who completed a violation of that section.

7 **“§ 1549. Alternative penalties for certain offenses**

8 “(a) **TERRORISM.**—Any person who violates any sec-
9 tion of this chapter—

10 “(1) knowing that such violation will facilitate
11 an act of international terrorism or domestic ter-
12 rorism (as those terms are defined in section 2331);
13 or

14 “(2) with the intent to facilitate an act of inter-
15 national terrorism or domestic terrorism,
16 shall be fined under this title, imprisoned not more than
17 25 years, or both.

18 “(b) **OFFENSE AGAINST GOVERNMENT.**—Any person
19 who violates any section of this chapter—

20 “(1) knowing that such violation will facilitate
21 the commission of any offense against the United
22 States (other than an offense in this chapter) or
23 against any State, which offense is punishable by
24 imprisonment for more than 1 year; or

1 “(2) with the intent to facilitate the commission
2 of any offense against the United States (other than
3 an offense in this chapter) or against any State,
4 which offense is punishable by imprisonment for
5 more than 1 year,
6 shall be fined under this title, imprisoned not more than
7 20 years, or both.

8 **“§ 1550. Seizure and forfeiture**

9 “(a) FORFEITURE.—Any property, real or personal,
10 used to commit or facilitate the commission of a violation
11 of any section of this chapter, the gross proceeds of such
12 violation, and any property traceable to such property or
13 proceeds, shall be subject to forfeiture.

14 “(b) APPLICABLE LAW.—Seizures and forfeitures
15 under this section shall be governed by the provisions of
16 chapter 46 relating to civil forfeitures, except that such
17 duties as are imposed upon the Secretary of the Treasury
18 under the customs laws described in section 981(d) shall
19 be performed by such officers, agents, and other persons
20 as may be designated for that purpose by the Secretary
21 of Homeland Security, the Secretary of State, or the At-
22 torney General.

23 **“§ 1551. Additional jurisdiction**

24 “(a) IN GENERAL.—Any person who commits an of-
25 fense under this chapter within the special maritime and

1 territorial jurisdiction of the United States shall be pun-
2 ished as provided under this chapter.

3 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-
4 son who commits an offense under this chapter outside
5 the United States shall be punished as provided under this
6 chapter if—

7 “(1) the offense involves a United States immi-
8 gration document (or any document purporting to be
9 such a document) or any matter, right, or benefit
10 arising under or authorized by Federal immigration
11 laws;

12 “(2) the offense is in or affects foreign com-
13 merce;

14 “(3) the offense affects, jeopardizes, or poses a
15 significant risk to the lawful administration of Fed-
16 eral immigration laws, or the national security of the
17 United States;

18 “(4) the offense is committed to facilitate an
19 act of international terrorism (as defined in section
20 2331) or a drug trafficking crime (as defined in sec-
21 tion 929(a)(2)) that affects or would affect the na-
22 tional security of the United States;

23 “(5) the offender is a national of the United
24 States (as defined in section 101(a)(22) of the Im-
25 migration and Nationality Act (8 U.S.C.

1 1101(a)(22))) or an alien lawfully admitted for per-
2 manent residence in the United States (as defined in
3 section 101(a)(20) of such Act); or

4 “(6) the offender is a stateless person whose
5 habitual residence is in the United States.

6 **“§ 1552. Additional venue**

7 “(a) IN GENERAL.—An offense under section 1542
8 may be prosecuted in—

9 “(1) any district in which the false statement or
10 representation was made;

11 “(2) any district in which the passport applica-
12 tion was prepared, submitted, mailed, received, proc-
13 essed, or adjudicated; or

14 “(3) in the case of an application prepared and
15 adjudicated outside the United States, in the district
16 in which the resultant passport was produced.

17 “(b) SAVINGS CLAUSE.—Nothing in this section lim-
18 its the venue otherwise available under sections 3237 and
19 3238.

20 **“§ 1553. Definitions**

21 “As used in this chapter:

22 “(1) The term ‘falsely make’ means to prepare
23 or complete an immigration document with knowl-
24 edge or in reckless disregard of the fact that the
25 document—

1 “(A) contains a statement or representa-
2 tion that is false, fictitious, or fraudulent;

3 “(B) has no basis in fact or law; or

4 “(C) otherwise fails to state a fact which
5 is material to the purpose for which the docu-
6 ment was created, designed, or submitted.

7 “(2) The term a ‘false statement or representa-
8 tion’ includes a personation or an omission.

9 “(3) The term ‘felony’ means any criminal of-
10 fense punishable by a term of imprisonment of more
11 than 1 year under the laws of the United States, any
12 State, or a foreign government.

13 “(4) The term ‘immigration document’—

14 “(A) means—

15 “(i) any passport or visa; or

16 “(ii) any application, petition, affi-
17 davit, declaration, attestation, form, identi-
18 fication card, alien registration document,
19 employment authorization document, bor-
20 der crossing card, certificate, permit,
21 order, license, stamp, authorization, grant
22 of authority, or other evidentiary docu-
23 ment, arising under or authorized by the
24 immigration laws of the United States; and

1 “(B) includes any document, photograph,
2 or other piece of evidence attached to or sub-
3 mitted in support of an immigration document.

4 “(5) The term ‘immigration laws’ includes—

5 “(A) the laws described in section
6 101(a)(17) of the Immigration and Nationality
7 Act (8 U.S.C. 1101(a)(17));

8 “(B) the laws relating to the issuance and
9 use of passports; and

10 “(C) the regulations prescribed under the
11 authority of any law described in paragraphs
12 (1) and (2).

13 “(6) The term ‘immigration proceeding’ in-
14 cludes an adjudication, interview, hearing, or review.

15 “(7) A person does not exercise ‘lawful author-
16 ity’ if the person abuses or improperly exercises law-
17 ful authority the person otherwise holds.

18 “(8) The term ‘passport’ means a travel docu-
19 ment attesting to the identity and nationality of the
20 bearer that is issued under the authority of the Sec-
21 retary of State, a foreign government, or an inter-
22 national organization; or any instrument purporting
23 to be the same.

24 “(9) The term ‘produce’ means to make, pre-
25 pare, assemble, issue, print, authenticate, or alter.

1 “(10) The term ‘State’ means a State of the
2 United States, the District of Columbia, or any com-
3 monwealth, territory, or possession of the United
4 States.

5 **“§ 1554. Authorized law enforcement activities**

6 “Nothing in this chapter shall prohibit any lawfully
7 authorized investigative, protective, or intelligence activity
8 of a law enforcement agency of the United States, a State,
9 or a political subdivision of a State, or an intelligence
10 agency of the United States, or any activity authorized
11 under title V of the Organized Crime Control Act of 1970
12 (84 Stat. 933).”.

13 (b) CLERICAL AMENDMENT.—The table of chapters
14 in title 18, United States Code, is amended by striking
15 the item relating to chapter 75 and inserting the following:

“75. Passport, visa, and immigration fraud 1541”.

16 **SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT**
17 **AND IMMIGRATION FRAUD OFFENSES.**

18 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
19 U.S.C. 1182(a)(2)(A)(i)) is amended—

20 (1) in subclause (I), by striking “, or” at the
21 end and inserting a semicolon;

22 (2) in subclause (II), by striking the comma at
23 the end and inserting “; or”; and

24 (3) by inserting after subclause (II) the fol-
25 lowing:

1 “(III) a violation of (or a con-
2 spiracy or attempt to violate) any pro-
3 vision of chapter 75 of title 18,
4 United States Code,”.

5 (b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C.
6 1227(a)(3)(B)(iii)) is amended to read as follows:

7 “(iii) of a violation of any provision of
8 chapter 75 of title 18, United States
9 Code,”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 subsections (a) and (b) shall apply to proceedings pending
12 on or after the date of the enactment of this Act.

13 **SEC. 210. INCARCERATION OF CRIMINAL ALIENS.**

14 (a) INSTITUTIONAL REMOVAL PROGRAM.—

15 (1) CONTINUATION.—The Secretary shall con-
16 tinue to operate the Institutional Removal Program
17 (referred to in this section as the “Program”) or
18 shall develop and implement another program to—

19 (A) identify removable criminal aliens in
20 Federal and State correctional facilities;

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

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

1 (2) EXPANSION.—The Secretary may extend
2 the scope of the Program to all States.

3 (b) AUTHORIZATION FOR DETENTION AFTER COM-
4 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
5 enforcement officers of a State or political subdivision of
6 a State may—

7 (1) hold an illegal alien for a period not to ex-
8 ceed 14 days after the completion of the alien’s
9 State prison sentence to effectuate the transfer of
10 the alien to Federal custody if the alien is removable
11 or not lawfully present in the United States; or

12 (2) issue a detainer that would allow aliens who
13 have served a State prison sentence to be detained
14 by the State prison until authorized employees of the
15 Bureau of Immigration and Customs Enforcement
16 can take the alien into custody.

17 (c) TECHNOLOGY USAGE.—Technology, such as
18 videoconferencing, shall be used to the maximum extent
19 practicable to make the Program available in remote loca-
20 tions. Mobile access to Federal databases of aliens, such
21 as IDENT, and live scan technology shall be used to the
22 maximum extent practicable to make these resources
23 available to State and local law enforcement agencies in
24 remote locations.

1 (d) REPORT TO CONGRESS.—Not later than 6
2 months after the date of the enactment of this Act, and
3 annually thereafter, the Secretary shall submit a report
4 to Congress on the participation of States in the Program
5 and in any other program authorized under subsection (a).

6 (e) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated such sums as may be
8 necessary in each of the fiscal years 2007 through 2011
9 to carry out the Program.

10 **SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUN-**
11 **TARILY.**

12 (a) IN GENERAL.—Section 240B (8 U.S.C. 1229c)
13 is amended—

14 (1) in subsection (a)—

15 (A) by amending paragraph (1) to read as
16 follows:

17 “(1) INSTEAD OF REMOVAL PROCEEDINGS.—If
18 an alien is not described in paragraph (2)(A)(iii) or
19 (4) of section 237(a), the Secretary of Homeland Se-
20 curity may permit the alien to voluntarily depart the
21 United States at the alien’s own expense under this
22 subsection instead of being subject to proceedings
23 under section 240.”;

24 (B) by striking paragraph (3);

1 (C) by redesignating paragraph (2) as
2 paragraph (3);

3 (D) by adding after paragraph (1) the fol-
4 lowing:

5 “(2) BEFORE THE CONCLUSION OF REMOVAL
6 PROCEEDINGS.—If an alien is not described in para-
7 graph (2)(A)(iii) or (4) of section 237(a), the Attor-
8 ney General may permit the alien to voluntarily de-
9 part the United States at the alien’s own expense
10 under this subsection after the initiation of removal
11 proceedings under section 240 and before the con-
12 clusion of such proceedings before an immigration
13 judge.”;

14 (E) in paragraph (3), as redesignated—

15 (i) by amending subparagraph (A) to
16 read as follows:

17 “(A) INSTEAD OF REMOVAL.—Subject to
18 subparagraph (C), permission to voluntarily de-
19 part under paragraph (1) shall not be valid for
20 any period in excess of 120 days. The Secretary
21 may require an alien permitted to voluntarily
22 depart under paragraph (1) to post a voluntary
23 departure bond, to be surrendered upon proof
24 that the alien has departed the United States
25 within the time specified.”;

1 (ii) by redesignating subparagraphs
2 (B), (C), and (D) as paragraphs (C), (D),
3 and (E), respectively;

4 (iii) by adding after subparagraph (A)
5 the following:

6 “(B) BEFORE THE CONCLUSION OF RE-
7 MOVAL PROCEEDINGS.—Permission to volun-
8 tarily depart under paragraph (2) shall not be
9 valid for any period in excess of 60 days, and
10 may be granted only after a finding that the
11 alien has the means to depart the United States
12 and intends to do so. An alien permitted to vol-
13 untarily depart under paragraph (2) shall post
14 a voluntary departure bond, in an amount nec-
15 essary to ensure that the alien will depart, to be
16 surrendered upon proof that the alien has de-
17 parted the United States within the time speci-
18 fied. An immigration judge may waive the re-
19 quirement to post a voluntary departure bond
20 in individual cases upon a finding that the alien
21 has presented compelling evidence that the
22 posting of a bond will pose a serious financial
23 hardship and the alien has presented credible
24 evidence that such a bond is unnecessary to
25 guarantee timely departure.”;

1 (iv) in subparagraph (C), as redesignated,
2 nated, by striking “subparagraphs (C)
3 and(D)(ii)” and inserting “subparagraphs
4 (D) and (E)(ii)”;

5 (v) in subparagraph (D), as redesignated,
6 nated, by striking “subparagraph (B)”
7 each place that term appears and inserting
8 “subparagraph (C)”;

9 (vi) in subparagraph (E), as redesignated,
10 nated, by striking “subparagraph (B)”
11 each place that term appears and inserting
12 “subparagraph (C)”;

13 (F) in paragraph (4), by striking “para-
14 graph (1)” and inserting “paragraphs (1) and
15 (2)”;

16 (2) in subsection (b)(2), by striking “a period
17 exceeding 60 days” and inserting “any period in ex-
18 cess of 45 days”;

19 (3) by amending subsection (c) to read as fol-
20 lows:

21 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

22 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

23 Voluntary departure may only be granted as part of
24 an affirmative agreement by the alien. A voluntary
25 departure agreement under subsection (b) shall in-

1 clude a waiver of the right to any further motion,
2 appeal, application, petition, or petition for review
3 relating to removal or relief or protection from re-
4 moval.

5 “(2) CONCESSIONS BY THE SECRETARY.—In
6 connection with the alien’s agreement to depart vol-
7 untarily under paragraph (1), the Secretary of
8 Homeland Security may agree to a reduction in the
9 period of inadmissibility under subparagraph (A) or
10 (B)(i) of section 212(a)(9).

11 “(3) ADVISALS.—Agreements relating to vol-
12 untary departure granted during removal pro-
13 ceedings under section 240, or at the conclusion of
14 such proceedings, shall be presented on the record
15 before the immigration judge. The immigration
16 judge shall advise the alien of the consequences of
17 a voluntary departure agreement before accepting
18 such agreement.

19 “(4) FAILURE TO COMPLY WITH AGREE-
20 MENT.—

21 “(A) IN GENERAL.—If an alien agrees to
22 voluntary departure under this section and fails
23 to depart the United States within the time al-
24 lowed for voluntary departure or fails to comply
25 with any other terms of the agreement (includ-

1 ing failure to timely post any required bond),
2 the alien is—

3 “(i) ineligible for the benefits of the
4 agreement;

5 “(ii) subject to the penalties described
6 in subsection (d); and

7 “(iii) subject to an alternate order of
8 removal if voluntary departure was granted
9 under subsection (a)(2) or (b).

10 “(B) EFFECT OF FILING TIMELY AP-
11 PEAL.—If, after agreeing to voluntary depart-
12 ture, the alien files a timely appeal of the immi-
13 gration judge’s decision granting voluntary de-
14 parture, the alien may pursue the appeal in-
15 stead of the voluntary departure agreement.
16 Such appeal operates to void the alien’s vol-
17 untary departure agreement and the con-
18 sequences of such agreement, but precludes the
19 alien from another grant of voluntary departure
20 while the alien remains in the United States.

21 “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-
22 FECTED.—Except as expressly agreed to by the Sec-
23 retary in writing in the exercise of the Secretary’s
24 discretion before the expiration of the period allowed
25 for voluntary departure, no motion, appeal, applica-

1 tion, petition, or petition for review shall affect, rein-
2 state, enjoin, delay, stay, or toll the alien’s obligation
3 to depart from the United States during the period
4 agreed to by the alien and the Secretary.”;

5 (4) by amending subsection (d) to read as fol-
6 lows:

7 “(d) PENALTIES FOR FAILURE TO DEPART.—If an
8 alien is permitted to voluntarily depart under this section
9 and fails to voluntarily depart from the United States
10 within the time period specified or otherwise violates the
11 terms of a voluntary departure agreement, the alien will
12 be subject to the following penalties:

13 “(1) CIVIL PENALTY.—The alien shall be liable
14 for a civil penalty of \$3,000. The order allowing vol-
15 untary departure shall specify the amount of the
16 penalty, which shall be acknowledged by the alien on
17 the record. If the Secretary thereafter establishes
18 that the alien failed to depart voluntarily within the
19 time allowed, no further procedure will be necessary
20 to establish the amount of the penalty, and the Sec-
21 retary may collect the civil penalty at any time
22 thereafter and by whatever means provided by law.
23 An alien will be ineligible for any benefits under this
24 chapter until this civil penalty is paid.

1 “(2) INELIGIBILITY FOR RELIEF.—The alien
2 shall be ineligible during the time the alien remains
3 in the United States and for a period of 10 years
4 after the alien’s departure for any further relief
5 under this section and sections 240A, 245, 248, and
6 249. The order permitting the alien to depart volun-
7 tarily shall inform the alien of the penalties under
8 this subsection.

9 “(3) REOPENING.—The alien shall be ineligible
10 to reopen the final order of removal that took effect
11 upon the alien’s failure to depart, or upon the alien’s
12 other violations of the conditions for voluntary de-
13 parture, during the period described in paragraph
14 (2). This paragraph does not preclude a motion to
15 reopen to seek withholding of removal under section
16 241(b)(3) or protection against torture, if the mo-
17 tion—

18 “(A) presents material evidence of changed
19 country conditions arising after the date of the
20 order granting voluntary departure in the coun-
21 try to which the alien would be removed; and

22 “(B) makes a sufficient showing to the sat-
23 isfaction of the Attorney General that the alien
24 is otherwise eligible for such protection.”; and

1 (5) by amending subsection (e) to read as fol-
2 lows:

3 “(e) ELIGIBILITY.—

4 “(1) PRIOR GRANT OF VOLUNTARY DEPART-
5 TURE.—An alien shall not be permitted to volun-
6 tarily depart under this section if the Secretary of
7 Homeland Security or the Attorney General pre-
8 viously permitted the alien to depart voluntarily.

9 “(2) RULEMAKING.—The Secretary may pro-
10 mulgate regulations to limit eligibility or impose ad-
11 ditional conditions for voluntary departure under
12 subsection (a)(1) for any class of aliens. The Sec-
13 retary or Attorney General may by regulation limit
14 eligibility or impose additional conditions for vol-
15 untary departure under subsections (a)(2) or (b) of
16 this section for any class or classes of aliens.”; and

17 (6) in subsection (f), by adding at the end the
18 following: “Notwithstanding section 242(a)(2)(D) of
19 this Act, sections 1361, 1651, and 2241 of title 28,
20 United States Code, any other habeas corpus provi-
21 sion, and any other provision of law (statutory or
22 nonstatutory), no court shall have jurisdiction to af-
23 fect, reinstate, enjoin, delay, stay, or toll the period
24 allowed for voluntary departure under this section.”.

1 (b) RULEMAKING.—The Secretary shall promulgate
2 regulations to provide for the imposition and collection of
3 penalties for failure to depart under section 240B(d) of
4 the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

5 (c) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendments made by this section
8 shall apply with respect to all orders granting vol-
9 untary departure under section 240B of the Immi-
10 gration and Nationality Act (8 U.S.C. 1229c) made
11 on or after the date that is 180 days after the enact-
12 ment of this Act.

13 (2) EXCEPTION.—The amendment made by
14 subsection (a)(6) shall take effect on the date of the
15 enactment of this Act and shall apply with respect
16 to any petition for review which is filed on or after
17 such date.

18 **SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM**
19 **REMAINING IN THE UNITED STATES UNLAW-**
20 **FULLY.**

21 (a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) (8
22 U.S.C. 1182(a)(9)(A)) is amended—

23 (1) in clause (i), by striking “seeks admission
24 within 5 years of the date of such removal (or within
25 20 years” and inserting “seeks admission not later

1 than 5 years after the date of the alien’s removal (or
2 not later than 20 years after the alien’s removal”;
3 and

4 (2) in clause (ii), by striking “seeks admission
5 within 10 years of the date of such alien’s departure
6 or removal (or within 20 years of” and inserting
7 “seeks admission not later than 10 years after the
8 date of the alien’s departure or removal (or not later
9 than 20 years after”.

10 (b) BAR ON DISCRETIONARY RELIEF.—Section 274D
11 (9 U.S.C. 324d) is amended—

12 (1) in subsection (a), by striking “Commis-
13 sioner” and inserting “Secretary of Homeland Secu-
14 rity”; and

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

16 “(c) INELIGIBILITY FOR RELIEF.—

17 “(1) IN GENERAL.—Unless a timely motion to
18 reopen is granted under section 240(c)(6), an alien
19 described in subsection (a) shall be ineligible for any
20 discretionary relief from removal (including cancella-
21 tion of removal and adjustment of status) during the
22 time the alien remains in the United States and for
23 a period of 10 years after the alien’s departure from
24 the United States.

1 “(2) SAVINGS PROVISION.—Nothing in para-
2 graph (1) shall preclude a motion to reopen to seek
3 withholding of removal under section 241(b)(3) or
4 protection against torture, if the motion—

5 “(A) presents material evidence of changed
6 country conditions arising after the date of the
7 final order of removal in the country to which
8 the alien would be removed; and

9 “(B) makes a sufficient showing to the sat-
10 isfaction of the Attorney General that the alien
11 is otherwise eligible for such protection.”.

12 (c) EFFECTIVE DATES.—The amendments made by
13 this section shall take effect on the date of the enactment
14 of this Act with respect to aliens who are subject to a final
15 order of removal, whether the removal order was entered
16 before, on, or after such date.

17 **SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR**
18 **THE POSSESSION OF FIREARMS BY CERTAIN**
19 **ALIENS.**

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

22 (1) in subsection (d)(5)—

23 (A) in subparagraph (A), by striking “or”
24 at the end;

1 (B) in subparagraph (B), by striking
2 “(y)(2)” and all that follows and inserting “(y),
3 is in a nonimmigrant classification; or”; and

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

5 “(C) has been paroled into the United
6 States under section 212(d)(5) of the Immigra-
7 tion and Nationality Act (8 U.S.C.
8 1182(d)(5));”; and
9 (2) in subsection (g)(5)—

10 (A) in subparagraph (A), by striking “or”
11 at the end;

12 (B) in subparagraph (B), by striking
13 “(y)(2)” and all that follows and inserting “(y),
14 is in a nonimmigrant classification; or”; and

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

16 “(C) has been paroled into the United
17 States under section 212(d)(5) of the Immigra-
18 tion and Nationality Act (8 U.S.C.
19 1182(d)(5));”.

20 (3) in subsection (y)—

21 (A) in the header, by striking “ADMITTED
22 UNDER NONIMMIGRANT VISAS” and inserting
23 “IN A NONIMMIGRANT CLASSIFICATION”;

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

1 “(B) the term ‘nonimmigrant classifica-
2 tion’ includes all classes of nonimmigrant aliens
3 described in section 101(a)(15) of the Immigra-
4 tion and Nationality Act (8 U.S.C.
5 1101(a)(15)), or otherwise described in the im-
6 migration laws (as defined in section
7 101(a)(17) of such Act).”;

8 (C) in paragraph (2), by striking “has
9 been lawfully admitted to the United States
10 under a nonimmigrant visa” and inserting “is
11 in a nonimmigrant classification”; and

12 (D) in paragraph (3)(A), by striking “Any
13 individual who has been admitted to the United
14 States under a nonimmigrant visa may receive
15 a waiver from the requirements of subsection
16 (g)(5)” and inserting “Any alien in a non-
17 immigrant classification may receive a waiver
18 from the requirements of subsection (g)(5)(B)”.

19 **SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
20 **TAIN IMMIGRATION, NATURALIZATION, AND**
21 **PEONAGE OFFENSES.**

22 (a) IN GENERAL.—Section 3291 of title 18, United
23 States Code, is amended to read as follows:

1 **“§ 3291. Immigration, naturalization, and peonage of-**
2 **fenses**

3 “No person shall be prosecuted, tried, or punished
4 for a violation of any section of chapters 69 (relating to
5 nationality and citizenship offenses), 75 (relating to pass-
6 port, visa, and immigration offenses), or 77 (relating to
7 peonage, slavery, and trafficking in persons), for an at-
8 tempt or conspiracy to violate any such section, for a viola-
9 tion of any criminal provision under section 243, 266, 274,
10 275, 276, 277, or 278 of the Immigration and Nationality
11 Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and
12 1328), or for an attempt or conspiracy to violate any such
13 section, unless the indictment is returned or the informa-
14 tion filed not later than 10 years after the commission
15 of the offense.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 for chapter 213 of title 18, United States Code, is amend-
18 ed by striking the item relating to section 3291 and insert-
19 ing the following:

“3291. Immigration, naturalization, and peonage offenses.”.

20 **SEC. 215. DIPLOMATIC SECURITY SERVICE.**

21 Section 2709(a)(1) of title 22, United States Code,
22 is amended to read as follows:

23 “(1) conduct investigations concerning—

24 “(A) illegal passport or visa issuance or
25 use;

1 “(B) identity theft or document fraud af-
2 fecting or relating to the programs, functions,
3 and authorities of the Department of State;

4 “(C) violations of chapter 77 of title 18,
5 United States Code; and

6 “(D) Federal offenses committed within
7 the special maritime and territorial jurisdiction
8 of the United States (as defined in section 7(9)
9 of title 18, United States Code);”.

10 **SEC. 216. FIELD AGENT ALLOCATION AND BACKGROUND**

11 **CHECKS.**

12 (a) IN GENERAL.—Section 103 (8 U.S.C. 1103) is
13 amended—

14 (1) by amending subsection (f) to read as fol-
15 lows:

16 “(f) MINIMUM NUMBER OF AGENTS IN STATES.—

17 “(1) IN GENERAL.—The Secretary of Homeland
18 Security shall allocate to each State—

19 “(A) not fewer than 40 full-time active
20 duty agents of the Bureau of Immigration and
21 Customs Enforcement to—

22 “(i) investigate immigration viola-
23 tions; and

24 “(ii) ensure the departure of all re-
25 movable aliens; and

1 “(B) not fewer than 15 full-time active
2 duty agents of the Bureau of Citizenship and
3 Immigration Services to carry out immigration
4 and naturalization adjudication functions.

5 “(2) WAIVER.—The Secretary may waive the
6 application of paragraph (1) for any State with a
7 population of less than 2,000,000, as most recently
8 reported by the Bureau of the Census”; and

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

10 “(i) Notwithstanding any other provision of law, ap-
11 propriate background and security checks, as determined
12 by the Secretary of Homeland Security, shall be completed
13 and assessed and any suspected or alleged fraud relating
14 to the granting of any status (including the granting of
15 adjustment of status), relief, protection from removal, or
16 other benefit under this Act shall be investigated and re-
17 solved before the Secretary or the Attorney General may—

18 “(1) grant or order the grant of adjustment of
19 status of an alien to that of an alien lawfully admit-
20 ted for permanent residence;

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

1 terial to the alien’s inadmissibility, deportability, or
2 eligibility for the status or benefit sought; or

3 “(3) any alien for whom all law enforcement
4 checks, as deemed appropriate by such authorized
5 official, have not been conducted and resolved.

6 “(b) DENIAL; WITHHOLDING.—An official described
7 in subsection (a) may deny or withhold (with respect to
8 an alien described in subsection (a)(1)) or withhold pend-
9 ing resolution of the investigation, case, or law enforce-
10 ment checks (with respect to an alien described in para-
11 graph (2) or (3) of subsection (a)) any such application,
12 petition, status, or benefit on such basis.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 is amended by inserting after the item relating to section
15 361 the following:

 “Sec. 362. Construction.”.

16 **SEC. 218. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

17 (a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH
18 PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary
19 of Homeland Security shall reimburse States and units of
20 local government for costs associated with processing un-
21 documented criminal aliens through the criminal justice
22 system, including—

- 23 (1) indigent defense;
- 24 (2) criminal prosecution;
- 25 (3) autopsies;

1 (4) translators and interpreters; and

2 (5) courts costs.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—

4 (1) PROCESSING CRIMINAL ILLEGAL ALIENS.—

5 There are authorized to be appropriated
6 \$400,000,000 for each of the fiscal years 2007
7 through 2012 to carry out subsection (a).

8 (2) COMPENSATION UPON REQUEST.—Section
9 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as
10 follows:

11 “(5) There are authorized to be appropriated to
12 carry this subsection—

13 “(A) such sums as may be necessary for
14 fiscal year 2007;

15 “(B) \$750,000,000 for fiscal year 2008;

16 “(C) \$850,000,000 for fiscal year 2009;

17 and

18 “(D) \$950,000,000 for each of the fiscal
19 years 2010 through 2012.”.

20 (c) TECHNICAL AMENDMENT.—Section 501 of the
21 Immigration Reform and Control Act of 1986 (8 U.S.C.
22 1365) is amended by striking “Attorney General” each
23 place it appears and inserting “Secretary of Homeland Se-
24 curity”.

1 **SEC. 219. TRANSPORTATION AND PROCESSING OF ILLEGAL**
2 **ALIENS APPREHENDED BY STATE AND LOCAL**
3 **LAW ENFORCEMENT OFFICERS.**

4 (a) IN GENERAL.—The Secretary of Homeland Secu-
5 rity shall provide sufficient transportation and officers to
6 take illegal aliens apprehended by State and local law en-
7 forcement officers into custody for processing at a Depart-
8 ment of Homeland Security detention facility.

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

12 **SEC. 220. STATE AND LOCAL ENFORCEMENT OF FEDERAL**
13 **IMMIGRATION LAWS.**

14 (a) IN GENERAL.—Section 287(g) (8 U.S.C.
15 1357(g)) is amended—

16 (1) in paragraph (2), by adding at the end the
17 following: “If such training is provided by a State or
18 political subdivision of a State to an officer or em-
19 ployee of such State or political subdivision of a
20 State, the cost of such training (including applicable
21 overtime costs) shall be reimbursed by the Secretary
22 of Homeland Security.”; and

23 (2) in paragraph (4), by adding at the end the
24 following: “The cost of any equipment required to be
25 purchased under such written agreement and nec-
26 essary to perform the functions under this sub-

1 section shall be reimbursed by the Secretary of
2 Homeland Security.”.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Secretary such
5 sums as may be necessary to carry out this section and
6 the amendments made by this section.

7 **SEC. 221. REDUCING ILLEGAL IMMIGRATION AND ALIEN**
8 **SMUGGLING ON TRIBAL LANDS.**

9 (a) GRANTS AUTHORIZED.—The Secretary may
10 award grants to Indian tribes with lands adjacent to an
11 international border of the United States that have been
12 adversely affected by illegal immigration.

13 (b) USE OF FUNDS.—Grants awarded under sub-
14 section (a) may be used for—

- 15 (1) law enforcement activities;
- 16 (2) health care services;
- 17 (3) environmental restoration; and
- 18 (4) the preservation of cultural resources.

19 (c) REPORT.—Not later than 180 days after the date
20 of the enactment of this Act, the Secretary shall submit
21 a report to the Committee on the Judiciary of the Senate
22 and the Committee on the Judiciary of the House of Rep-
23 resentatives that—

- 24 (1) describes the level of access of Border Pa-
25 trol agents on tribal lands;

1 (2) describes the extent to which enforcement of
2 immigration laws may be improved by enhanced ac-
3 cess to tribal lands;

4 (3) contains a strategy for improving such ac-
5 cess through cooperation with tribal authorities; and

6 (4) identifies grants provided by the Depart-
7 ment for Indian tribes, either directly or through
8 State or local grants, relating to border security ex-
9 penses.

10 (d) **AUTHORIZATION OF APPROPRIATIONS.**—There
11 are authorized to be appropriated such sums as may be
12 necessary for each of the fiscal years 2007 through 2011
13 to carry out this section.

14 **SEC. 222. ALTERNATIVES TO DETENTION.**

15 The Secretary shall conduct a study of—

16 (1) the effectiveness of alternatives to detention,
17 including electronic monitoring devices and intensive
18 supervision programs, in ensuring alien appearance
19 at court and compliance with removal orders;

20 (2) the effectiveness of the Intensive Super-
21 vision Appearance Program and the costs and bene-
22 fits of expanding that program to all States; and

23 (3) other alternatives to detention, including—

24 (A) release on an order of recognizance;

25 (B) appearance bonds; and

1 (C) electronic monitoring devices.

2 **SEC. 223. CONFORMING AMENDMENT.**

3 Section 101(a)(43)(P) (8 U.S.C. 1101(a)(43)(P)) is
4 amended—

5 (1) by striking “(i) which either is falsely mak-
6 ing, forging, counterfeiting, mutilating, or altering a
7 passport or instrument in violation of section 1543
8 of title 18, United States Code, or is described in
9 section 1546(a) of such title (relating to document
10 fraud) and (ii)” and inserting “which is described in
11 chapter 75 of title 18, United States Code, and”;
12 and

13 (2) by inserting the following: “that is not de-
14 scribed in section 1548 of such title (relating to in-
15 creased penalties), and” after “first offense”.

16 **SEC. 224. REPORTING REQUIREMENTS.**

17 (a) CLARIFYING ADDRESS REPORTING REQUIRE-
18 MENTS.—Section 265 (8 U.S.C. 1305) is amended—

19 (1) in subsection (a)—

20 (A) by striking “notify the Attorney Gen-
21 eral in writing” and inserting “submit written
22 or electronic notification to the Secretary of
23 Homeland Security, in a manner approved by
24 the Secretary,”;

1 (B) by striking “the Attorney General may
2 require by regulation” and inserting “the Sec-
3 retary may require”; and

4 (C) by adding at the end the following: “If
5 the alien is involved in proceedings before an
6 immigration judge or in an administrative ap-
7 peal of such proceedings, the alien shall submit
8 to the Attorney General the alien’s current ad-
9 dress and a telephone number, if any, at which
10 the alien may be contacted.”;

11 (2) in subsection (b), by striking “Attorney
12 General” each place such term appears and inserting
13 “Secretary”;

14 (3) in subsection (c), by striking “given to such
15 parent” and inserting “given by such parent”; and

16 (4) by inserting at the end the following:

17 “(d) ADDRESS TO BE PROVIDED.—

18 “(1) IN GENERAL.—Except as otherwise pro-
19 vided by the Secretary under paragraph (2), an ad-
20 dress provided by an alien under this section shall
21 be the alien’s current residential mailing address,
22 and shall not be a post office box or other non-resi-
23 dential mailing address or the address of an attor-
24 ney, representative, labor organization, or employer.

1 “(2) SPECIFIC REQUIREMENTS.—The Secretary
2 may provide specific requirements with respect to—

3 “(A) designated classes of aliens and spe-
4 cial circumstances, including aliens who are em-
5 ployed at a remote location; and

6 “(B) the reporting of address information
7 by aliens who are incarcerated in a Federal,
8 State, or local correctional facility.

9 “(3) DETENTION.—An alien who is being de-
10 tained by the Secretary under this Act is not re-
11 quired to report the alien’s current address under
12 this section during the time the alien remains in de-
13 tention, but shall be required to notify the Secretary
14 of the alien’s address under this section at the time
15 of the alien’s release from detention.

16 “(e) USE OF MOST RECENT ADDRESS PROVIDED BY
17 THE ALIEN.—

18 “(1) IN GENERAL.—Notwithstanding any other
19 provision of law, the Secretary may provide for the
20 appropriate coordination and cross referencing of
21 address information provided by an alien under this
22 section with other information relating to the alien’s
23 address under other Federal programs, including—

24 “(A) any information pertaining to the
25 alien, which is submitted in any application, pe-

1 tition, or motion filed under this Act with the
2 Secretary of Homeland Security, the Secretary
3 of State, or the Secretary of Labor;

4 “(B) any information available to the At-
5 torney General with respect to an alien in a
6 proceeding before an immigration judge or an
7 administrative appeal or judicial review of such
8 proceeding;

9 “(C) any information collected with respect
10 to nonimmigrant foreign students or exchange
11 program participants under section 641 of the
12 Illegal Immigration Reform and Immigrant Re-
13 sponsibility Act of 1996 (8 U.S.C. 1372); and

14 “(D) any information collected from State
15 or local correctional agencies pursuant to the
16 State Criminal Alien Assistance Program.

17 “(2) RELIANCE.—The Secretary may rely on
18 the most recent address provided by the alien under
19 this section or section 264 to send to the alien any
20 notice, form, document, or other matter pertaining
21 to Federal immigration laws, including service of a
22 notice to appear. The Attorney General and the Sec-
23 retary may rely on the most recent address provided
24 by the alien under section 239(a)(1)(F) to contact
25 the alien about pending removal proceedings.

1 “(3) OBLIGATION.—The alien’s provision of an
2 address for any other purpose under the Federal im-
3 migration laws does not excuse the alien’s obligation
4 to submit timely notice of the alien’s address to the
5 Secretary under this section (or to the Attorney
6 General under section 239(a)(1)(F) with respect to
7 an alien in a proceeding before an immigration judge
8 or an administrative appeal of such proceeding).”.

9 (b) CONFORMING CHANGES WITH RESPECT TO REG-
10 ISTRATION REQUIREMENTS.—Chapter 7 of title II (8
11 U.S.C. 1301 et seq.) is amended—

12 (1) in section 262(c), by striking “Attorney
13 General” and inserting “Secretary of Homeland Se-
14 curity”;

15 (2) in section 263(a), by striking “Attorney
16 General” and inserting “Secretary of Homeland Se-
17 curity”; and

18 (3) in section 264—

19 (A) in subsections (a), (b), (c), and (d), by
20 striking “Attorney General” each place it ap-
21 pears and inserting “Secretary of Homeland
22 Security”; and

23 (B) in subsection (f)—

24 (i) by striking “Attorney General is
25 authorized” and inserting “Secretary of

1 Homeland Security and Attorney General
2 are authorized”; and

3 (ii) by striking “Attorney General or
4 the Service” and inserting “Secretary or
5 the Attorney General”.

6 (c) PENALTIES.—Section 266 (8 U.S.C. 1306) is
7 amended—

8 (1) by amending subsection (b) to read as fol-
9 lows:

10 “(b) FAILURE TO PROVIDE NOTICE OF ALIEN’S
11 CURRENT ADDRESS.—

12 “(1) CRIMINAL PENALTIES.—Any alien or any
13 parent or legal guardian in the United States of any
14 minor alien who fails to notify the Secretary of
15 Homeland Security of the alien’s current address in
16 accordance with section 265 shall be fined under
17 title 18, United States Code, imprisoned for not
18 more than 6 months, or both.

19 “(2) EFFECT ON IMMIGRATION STATUS.—Any
20 alien who violates section 265 (regardless of whether
21 the alien is punished under paragraph (1)) and does
22 not establish to the satisfaction of the Secretary that
23 such failure was reasonably excusable or was not
24 willful shall be taken into custody in connection with
25 removal of the alien. If the alien has not been in-

1 spected or admitted, or if the alien has failed on
2 more than 1 occasion to submit notice of the alien’s
3 current address as required under section 265, the
4 alien may be presumed to be a flight risk. The Sec-
5 retary or the Attorney General, in considering any
6 form of relief from removal which may be granted
7 in the discretion of the Secretary or the Attorney
8 General, may take into consideration the alien’s fail-
9 ure to comply with section 265 as a separate nega-
10 tive factor. If the alien failed to comply with the re-
11 quirements of section 265 after becoming subject to
12 a final order of removal, deportation, or exclusion,
13 the alien’s failure shall be considered as a strongly
14 negative factor with respect to any discretionary mo-
15 tion for reopening or reconsideration filed by the
16 alien.”;

17 (2) in subsection (c), by inserting “or a notice
18 of current address” before “containing statements”;
19 and

20 (3) in subsections (c) and (d), by striking “At-
21 torney General” each place it appears and inserting
22 “Secretary”.

23 (d) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the amendments made by this section

1 shall apply to proceedings initiated on or after the
2 date of the enactment of this Act.

3 (2) CONFORMING AND TECHNICAL AMEND-
4 MENTS.—The amendments made by paragraphs
5 (1)(A), (1)(B), (2) and (3) of subsection (a) are ef-
6 fective as if enacted on March 1, 2003.

7 **SEC. 225. MANDATORY DETENTION FOR ALIENS APPRE-**
8 **HENDED AT OR BETWEEN PORTS OF ENTRY.**

9 (a) IN GENERAL.—Beginning on October 1, 2006, an
10 alien who is attempting to illegally enter the United States
11 and who is apprehended at a United States port of entry
12 or along the international land or maritime border of the
13 United States shall be detained until removed or a final
14 decision granting admission has been determined, unless
15 the alien—

16 (1) is permitted to withdraw an application for
17 admission under section 235(a)(4) of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1225(a)(4)) and
19 immediately departs from the United States pursu-
20 ant to such section; or

21 (2) is paroled into the United States by the
22 Secretary for urgent humanitarian reasons or sig-
23 nificant public benefit in accordance with section
24 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

1 (b) REQUIREMENTS DURING INTERIM PERIOD.—Be-
2 ginning 60 days after the date of the enactment of this
3 Act and before October 1, 2006, an alien described in sub-
4 section (a) may be released with a notice to appear only
5 if—

6 (1) the Secretary determines, after conducting
7 all appropriate background and security checks on
8 the alien, that the alien does not pose a national se-
9 curity risk; and

10 (2) the alien provides a bond of not less than
11 \$5,000.

12 (c) RULES OF CONSTRUCTION.—

13 (1) ASYLUM AND REMOVAL.—Nothing in this
14 section shall be construed as limiting the right of an
15 alien to apply for asylum or for relief or deferral of
16 removal based on a fear of persecution.

17 (2) TREATMENT OF CERTAIN ALIENS.—The
18 mandatory detention requirement in subsection (a)
19 shall not apply to any alien who is a native or citizen
20 of a country in the Western Hemisphere with whose
21 government the United States does not have full dip-
22 lomatic relations.

23 (3) DISCRETION.—Nothing in this section shall
24 be construed as limiting the authority of the Sec-
25 retary, in the Secretary's sole unreviewable discre-

1 tion, to determine whether an alien described in
2 clause (ii) of section 235(b)(1)(B) of the Immigra-
3 tion and Nationality Act shall be detained or re-
4 leased after a finding of a credible fear of persecu-
5 tion (as defined in clause (v) of such section).

6 **SEC. 226. REMOVAL OF DRUNK DRIVERS.**

7 (a) IN GENERAL.—Section 101(a)(43)(F) of the Im-
8 migration and Nationality Act (8 U.S.C. 1101(a)(43)(F))
9 is amended by inserting “, including a third drunk driving
10 conviction, regardless of the States in which the convic-
11 tions occurred or whether the offenses are classified as
12 misdemeanors or felonies under State or Federal law,”
13 after “offense)”.

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

16 (1) take effect on the date of the enactment of
17 this Act; and

18 (2) apply to convictions entered before, on, or
19 after such date.

20 **SEC. 227. EXPEDITED REMOVAL.**

21 (a) IN GENERAL.—Section 238 (8 U.S.C. 1228) is
22 amended—

23 (1) by striking the section heading and insert-
24 ing “EXPEDITED REMOVAL OF CRIMINAL ALIENS”;

1 (2) in subsection (a), by striking the subsection
2 heading and inserting: “EXPEDITED REMOVAL
3 FROM CORRECTIONAL FACILITIES.—”;

4 (3) in subsection (b), by striking the subsection
5 heading and inserting: “REMOVAL OF CRIMINAL
6 ALIENS.—”;

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

9 “(1) IN GENERAL.—The Secretary of Homeland
10 Security may, in the case of an alien described in
11 paragraph (2), determine the deportability of such
12 alien and issue an order of removal pursuant to the
13 procedures set forth in this subsection or section
14 240.

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

20 (5) in the subsection (c) that relates to pre-
21 sumption of deportability, by striking “convicted of
22 an aggravated felony” and inserting “described in
23 subsection (b)(2)”;

24 (6) by redesignating the subsection (c) that re-
25 lates to judicial removal as subsection (d); and

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

3 (b) APPLICATION TO CERTAIN ALIENS.—

4 (1) IN GENERAL.—Section 235(b)(1)(A)(iii) (8
5 U.S.C. 1225(b)(1)(A)(iii)) is amended—

6 (A) in subclause (I), by striking “Attorney
7 General” and inserting “Secretary of Homeland
8 Security” each place it appears; and

9 (B) by adding at the end the following new
10 subclause:

11 “(III) EXCEPTION.—Notwith-
12 standing subclauses (I) and (II), the
13 Secretary of Homeland Security shall
14 apply clauses (i) and (ii) of this sub-
15 paragraph to any alien (other than an
16 alien described in subparagraph (F))
17 who is not a national of a country
18 contiguous to the United States, who
19 has not been admitted or paroled into
20 the United States, and who is appre-
21 hended within 100 miles of an inter-
22 national land border of the United
23 States and within 14 days of entry.”.

1 (2) EXCEPTIONS.—Section 235(b)(1)(F) of the
2 Immigration and Nationality Act (8 U.S.C.
3 1225(b)(1)(F)) is amended—

4 (A) by striking “and who arrives by air-
5 craft at a port of entry” and inserting “and—
6 ”; and

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

8 “(i) who arrives by aircraft at a port
9 of entry; or

10 “(ii) who is present in the United
11 States and arrived in any manner at or be-
12 tween a port of entry.”.

13 (c) LIMIT ON INJUNCTIVE RELIEF.—Section
14 242(f)(2) (8 U.S.C. 1252(f)(2)) is amended by inserting
15 “or stay, whether temporarily or otherwise,” after “en-
16 join”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect on the date of the enactment
19 of this Act and shall apply to all aliens apprehended or
20 convicted on or after such date.

21 **SEC. 228. PROTECTING IMMIGRANTS FROM CONVICTED**
22 **SEX OFFENDERS.**

23 (a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C.
24 1154(a)(1)), is amended—

1 (1) in subparagraph (A)(i) by striking “Any”
2 and inserting “Except as provided in clause (viii),
3 any”;

4 (2) in subparagraph (A) by inserting after
5 clause (vii) the following:

6 “(viii) Clause (i) shall not apply to a citizen of the
7 United States who has been convicted of an offense de-
8 scribed in section 101(a)(43)(A), section 101(a)(43)(I), or
9 section 101(a)(43)(K), unless the Secretary of Homeland
10 Security, in the Secretary’s sole and unreviewable discre-
11 tion, determines that the citizen poses no risk to the alien
12 with respect to whom a petition described in clause (i) is
13 filed.”; and

14 (3) in subparagraph (B)(i)—

15 (A) by striking “Any alien” and inserting
16 the following: “(I) Except as provided in sub-
17 clause (II), any alien”; and

18 (B) by adding at the end the following:

19 “(II) Subclause (I) shall not apply in the case of an
20 alien admitted for permanent residence who has been con-
21 victed of an offense described in section 101(a)(43)(A),
22 section 101(a)(43)(I), or section 101(a)(43)(K), unless
23 the Secretary of Homeland Security, in the Secretary’s
24 sole and unreviewable discretion, determines that the alien
25 lawfully admitted for permanent residence poses no risk

1 to the alien with respect to whom a petition described in
2 subclause (I) is filed.”.

3 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8
4 U.S.C. 1101(a)(15)(K)), is amended by inserting “(other
5 than a citizen described in section 204(a)(1)(A)(viii))”
6 after “citizen of the United States” each place that phrase
7 appears.

8 **SEC. 229. LAW ENFORCEMENT AUTHORITY OF STATES AND**
9 **POLITICAL SUBDIVISIONS AND TRANSFER TO**
10 **FEDERAL CUSTODY.**

11 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
12 is amended by adding after section 240C the following new
13 section:

14 **“SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES**
15 **AND POLITICAL SUBDIVISIONS AND TRANS-**
16 **FER OF ALIENS TO FEDERAL CUSTODY.**

17 “(a) AUTHORITY.—Notwithstanding any other provi-
18 sion of law, law enforcement personnel of a State or a
19 political subdivision of a State have the inherent authority
20 of a sovereign entity to investigate, apprehend, arrest, de-
21 tain, or transfer to Federal custody (including the trans-
22 portation across State lines to detention centers) an alien
23 for the purpose of assisting in the enforcement of the
24 criminal provisions of the immigration laws of the United
25 States in the normal course of carrying out the law en-

1 enforcement duties of such personnel. This State authority
2 has never been displaced or preempted by a Federal law.

3 “(b) CONSTRUCTION.—Nothing in this subsection
4 shall be construed to require law enforcement personnel
5 of a State or a political subdivision to assist in the enforce-
6 ment of the immigration laws of the United States.

7 “(c) TRANSFER.—If the head of a law enforcement
8 entity of a State (or, if appropriate, a political subdivision
9 of the State) exercising authority with respect to the ap-
10 prehension or arrest of an alien submits a request to the
11 Secretary of Homeland Security that the alien be taken
12 into Federal custody, the Secretary of Homeland Secu-
13 rity—

14 “(1) shall—

15 “(A) deem the request to include the in-
16 quiry to verify immigration status described in
17 section 642(c) of the Illegal Immigration Re-
18 form and Immigrant Responsibility Act of 1996
19 (8 U.S.C. 1373(c)), and expeditiously inform
20 the requesting entity whether such individual is
21 an alien lawfully admitted to the United States
22 or is otherwise lawfully present in the United
23 States; and

24 “(B) if the individual is an alien who is not
25 lawfully admitted to the United States or other-

1 wise is not lawfully present in the United
2 States, either—

3 “(i) not later than 72 hours after the
4 conclusion of the State charging process or
5 dismissal process, or if no State charging
6 or dismissal process is required, not later
7 than 72 hours after the illegal alien is ap-
8 prehended, take the illegal alien into the
9 custody of the Federal Government; or

10 “(ii) request that the relevant State or
11 local law enforcement agency temporarily
12 detain or transport the alien to a location
13 for transfer to Federal custody; and

14 “(2) shall designate at least 1 Federal, State,
15 or local prison or jail or a private contracted prison
16 or detention facility within each State as the central
17 facility for that State to transfer custody of aliens
18 to the Department of Homeland Security.

19 “(d) REIMBURSEMENT.—

20 “(1) IN GENERAL.—The Secretary of Homeland
21 Security shall reimburse a State or a political sub-
22 division of a State for expenses, as verified by the
23 Secretary of Homeland Security, incurred by the
24 State or political subdivision in the detention and

1 transportation of an alien as described in subpara-
2 graphs (A) and (B) of subsection (c)(1).

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

6 “(A) the product of—

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

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

15 “(B) the cost of transporting the alien
16 from the point of apprehension or arrest to the
17 location of detention, and if the location of de-
18 tention and of custody transfer are different, to
19 the custody transfer point; plus

20 “(C) The cost of uncompensated emer-
21 gency medical care provided to a detained alien
22 during the period between the time of trans-
23 mittal of the request described in subsection (c)
24 and the time of transfer into Federal custody.

1 “(e) REQUIREMENT FOR APPROPRIATE SECURITY.—

2 The Secretary of Homeland Security shall ensure that
3 aliens incarcerated in a Federal facility pursuant to this
4 subsection are held in facilities which provide an appro-
5 priate level of security, and that, where practicable, aliens
6 detained solely for civil violations of Federal immigration
7 law are separated within a facility or facilities.

8 “(f) REQUIREMENT FOR SCHEDULE.—In carrying

9 out this section, the Secretary of Homeland Security shall
10 establish a regular circuit and schedule for the prompt
11 transportation of apprehended aliens from the custody of
12 those States and political subdivisions of States which rou-
13 tinely submit requests described in subsection (c) into
14 Federal custody.

15 “(g) AUTHORITY FOR CONTRACTS.—

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

21 “(2) DETERMINATION BY SECRETARY.—Prior

22 to entering into a contract or cooperative agreement
23 with a State or political subdivision of a State under
24 paragraph (1), the Secretary shall determine wheth-
25 er the State, or where appropriate, the political sub-

1 division in which the agencies are located has in
2 place any formal or informal policy that violates sec-
3 tion 642 of the Illegal Immigration Reform and Im-
4 migrant Responsibility Act of 1996 (8 U.S.C. 1373).
5 The Secretary shall not allocate any of the funds
6 made available under this section to any State or po-
7 litical subdivision that has in place a policy that vio-
8 lates such section.”.

9 (b) **AUTHORIZATION OF APPROPRIATIONS FOR THE**
10 **DETENTION AND TRANSPORTATION TO FEDERAL CUS-**
11 **TODY OF ALIENS NOT LAWFULLY PRESENT.**—There are
12 authorized to be appropriated \$850,000,000 for fiscal year
13 2007 and each subsequent fiscal year for the detention
14 and removal of aliens not lawfully present in the United
15 States under the Immigration and Nationality Act (8
16 U.S.C. 1101 et seq.).

17 **SEC. 230. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
18 **TIONAL CRIME INFORMATION CENTER DATA-**
19 **BASE.**

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

22 (1) **IN GENERAL.**—Except as provided in para-
23 graph (3), not later than 180 days after the date of
24 the enactment of this Act, the Secretary shall pro-
25 vide to the head of the National Crime Information

1 Center of the Department of Justice the information
2 that the Secretary has or maintains related to any
3 alien—

4 (A) against whom a final order of removal
5 has been issued;

6 (B) who enters into a voluntary departure
7 agreement, or is granted voluntary departure by
8 an immigration judge, whose period for depar-
9 ture has expired under subsection (a)(3) of sec-
10 tion 240B of the Immigration and Nationality
11 Act (8 U.S.C. 1229e) (as amended by section
12 211(a)(1)(C)), subsection (b)(2) of such section
13 240B, or who has violated a condition of a vol-
14 untary departure agreement under such section
15 240B;

16 (C) whom a Federal immigration officer
17 has confirmed to be unlawfully present in the
18 United States; or

19 (D) whose visa has been revoked.

20 (2) REMOVAL OF INFORMATION.—The head of
21 the National Crime Information Center should
22 promptly remove any information provided by the
23 Secretary under paragraph (1) related to an alien
24 who is granted lawful authority to enter or remain
25 legally in the United States.

1 (3) PROCEDURE FOR REMOVAL OF ERRONEOUS
2 INFORMATION.—The Secretary, in consultation with
3 the head of the National Crime Information Center
4 of the Department of Justice, shall develop and im-
5 plement a procedure by which an alien may petition
6 the Secretary or head of the National Crime Infor-
7 mation Center, as appropriate, to remove any erro-
8 neous information provided by the Secretary under
9 paragraph (1) related to such alien. Under such pro-
10 cedures, failure by the alien to receive notice of a
11 violation of the immigration laws shall not constitute
12 cause for removing information provided by the Sec-
13 retary under paragraph (1) related to such alien, un-
14 less such information is erroneous. Notwithstanding
15 the 180 time period set forth in paragraph (1), the
16 Secretary shall not provide the information required
17 under paragraph (1) until the procedures required
18 by this paragraph are developed and implemented.

19 (b) INCLUSION OF INFORMATION IN THE NATIONAL
20 CRIME INFORMATION CENTER DATABASE.—Section
21 534(a) of title 28, United States Code, is amended—

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

24 (2) by redesignating paragraph (4) as para-
25 graph (5); and

1 (3) by inserting after paragraph (3) the fol-
2 lowing new paragraph:

3 “(4) acquire, collect, classify, and preserve
4 records of violations of the immigration laws of the
5 United States; and”.

6 **SEC. 231. LAUNDERING OF MONETARY INSTRUMENTS.**

7 Section 1956(c)(7)(D) of title 18, United States
8 Code, is amended—

9 (1) by inserting “section 1590 (relating to traf-
10 ficking with respect to peonage, slavery, involuntary
11 servitude, or forced labor),” after “section 1363 (re-
12 lating to destruction of property within the special
13 maritime and territorial jurisdiction),”; and

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

19 **SEC. 232. SEVERABILITY.**

20 If any provision of this title, any amendment made
21 by this title, or the application of such provision or amend-
22 ment to any person or circumstance is held to be invalid
23 for any reason, the remainder of this title, the amend-
24 ments made by this title, and the application of the provi-

1 sions of such to any other person or circumstance shall
 2 not be affected by such holding.

3 **TITLE III—UNLAWFUL**
 4 **EMPLOYMENT OF ALIENS**

5 **SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.**

6 (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)
 7 is amended to read as follows:

8 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

9 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
 10 ALIENS UNLAWFUL.—

11 “(1) IN GENERAL.—It is unlawful for an em-
 12 ployer—

13 “(A) to hire, or to recruit or refer for a
 14 fee, an alien for employment in the United
 15 States knowing, or with reason to know, that
 16 the alien is an unauthorized alien with respect
 17 to such employment; or

18 “(B) to hire, or to recruit or refer for a
 19 fee, for employment in the United States an in-
 20 dividual unless such employer meets the re-
 21 quirements of subsections (c) and (d).

22 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
 23 ful for an employer, after lawfully hiring an alien for
 24 employment, to continue to employ the alien in the
 25 United States knowing or with reason to know that

1 the alien is (or has become) an unauthorized alien
2 with respect to such employment.

3 “(3) USE OF LABOR THROUGH CONTRACT.—In
4 this section, an employer who uses a contract, sub-
5 contract, or exchange, entered into, renegotiated, or
6 extended after the date of the enactment of the Se-
7 curing America’s Borders Act, to obtain the labor of
8 an alien in the United States knowing, or with rea-
9 son to know, that the alien is an unauthorized alien
10 with respect to performing such labor, shall be con-
11 sidered to have hired the alien for employment in
12 the United States in violation of paragraph (1)(A).

13 “(4) REBUTTABLE PRESUMPTION OF UNLAW-
14 FUL HIRING.—If the Secretary determines that an
15 employer has hired more than 10 unauthorized
16 aliens during a calendar year, a rebuttable presump-
17 tion is created for the purpose of a civil enforcement
18 proceeding, that the employer knew or had reason to
19 know that such aliens were unauthorized.

20 “(5) DEFENSE.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B), an employer that establishes that
23 the employer has complied in good faith with
24 the requirements of subsections (c) and (d) has
25 established an affirmative defense that the em-

1 employer has not violated paragraph (1)(A) with
2 respect to such hiring, recruiting, or referral.

3 “(B) EXCEPTION.—Until the date that an
4 employer is required to participate in the Elec-
5 tronic Employment Verification System under
6 subsection (d) or is permitted to participate in
7 such System on a voluntary basis, the employer
8 may establish an affirmative defense under sub-
9 paragraph (A) without a showing of compliance
10 with subsection (d).

11 “(b) ORDER OF INTERNAL REVIEW AND CERTIFI-
12 CATION OF COMPLIANCE.—

13 “(1) AUTHORITY TO REQUIRE CERTIFI-
14 CATION.—If the Secretary has reasonable cause to
15 believe that an employer has failed to comply with
16 this section, the Secretary is authorized, at any time,
17 to require that the employer certify that the em-
18 ployer is in compliance with this section, or has in-
19 stituted a program to come into compliance.

20 “(2) CONTENT OF CERTIFICATION.—Not later
21 than 60 days after the date an employer receives a
22 request for a certification under paragraph (1) the
23 chief executive officer or similar official of the em-
24 ployer shall certify under penalty of perjury that—

1 “(A) the employer is in compliance with
2 the requirements of subsections (c) and (d); or

3 “(B) that the employer has instituted a
4 program to come into compliance with such re-
5 quirements.

6 “(3) EXTENSION.—The 60-day period referred
7 to in paragraph (2), may be extended by the Sec-
8 retary for good cause, at the request of the em-
9 ployer.

10 “(4) PUBLICATION.—The Secretary is author-
11 ized to publish in the Federal Register standards or
12 methods for certification and for specific record
13 keeping practices with respect to such certification,
14 and procedures for the audit of any records related
15 to such certification.

16 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
17 An employer hiring, or recruiting or referring for a fee,
18 an individual for employment in the United States shall
19 take all reasonable steps to verify that the individual is
20 eligible for such employment. Such steps shall include
21 meeting the requirements of subsection (d) and the fol-
22 lowing paragraphs:

23 “(1) ATTESTATION BY EMPLOYER.—

24 “(A) REQUIREMENTS.—

1 “(i) IN GENERAL.—The employer
2 shall attest, under penalty of perjury and
3 on a form prescribed by the Secretary, that
4 the employer has verified the identity and
5 eligibility for employment of the individual
6 by examining—

7 “(I) a document described in
8 subparagraph (B); or

9 “(II) a document described in
10 subparagraph (C) and a document de-
11 scribed in subparagraph (D).

12 “(ii) SIGNATURE REQUIREMENTS.—
13 An attestation required by clause (i) may
14 be manifested by a handwritten or elec-
15 tronic signature.

16 “(iii) STANDARDS FOR EXAMINA-
17 TION.—An employer has complied with the
18 requirement of this paragraph with respect
19 to examination of documentation if, based
20 on the totality of the circumstances, a rea-
21 sonable person would conclude that the
22 document examined is genuine and estab-
23 lishes the individual’s identity and eligi-
24 bility for employment in the United States.

1 “(iv) REQUIREMENTS FOR EMPLOY-
2 MENT ELIGIBILITY SYSTEM PARTICI-
3 PANTS.—A participant in the Electronic
4 Employment Verification System estab-
5 lished under subsection (d), regardless of
6 whether such participation is voluntary or
7 mandatory, shall be permitted to utilize
8 any technology that is consistent with this
9 section and with any regulation or guid-
10 ance from the Secretary to streamline the
11 procedures to comply with the attestation
12 requirement, and to comply with the em-
13 ployment eligibility verification require-
14 ments contained in this section.

15 “(B) DOCUMENTS ESTABLISHING BOTH
16 EMPLOYMENT ELIGIBILITY AND IDENTITY.—A
17 document described in this subparagraph is an
18 individual’s—

19 “(i) United States passport; or

20 “(ii) permanent resident card or other
21 document designated by the Secretary, if
22 the document—

23 “(I) contains a photograph of the
24 individual and such other personal
25 identifying information relating to the

1 individual that the Secretary pro-
2 scribes in regulations is sufficient for
3 the purposes of this subparagraph;

4 “(II) is evidence of eligibility for
5 employment in the United States; and

6 “(III) contains security features
7 to make the document resistant to
8 tampering, counterfeiting, and fraudu-
9 lent use.

10 “(C) DOCUMENTS EVIDENCING EMPLOY-
11 MENT ELIGIBILITY.—A document described in
12 this subparagraph is an individual’s—

13 “(i) social security account number
14 card issued by the Commissioner of Social
15 Security (other than a card which specifies
16 on its face that the issuance of the card
17 does not authorize employment in the
18 United States); or

19 “(ii) any other documents evidencing
20 eligibility of employment in the United
21 States, if—

22 “(I) the Secretary has published
23 a notice in the Federal Register stat-
24 ing that such document is acceptable

1 for purposes of this subparagraph;
2 and

3 “(II) contains security features
4 to make the document resistant to
5 tampering, counterfeiting, and fraudu-
6 lent use.

7 “(D) DOCUMENTS ESTABLISHING IDEN-
8 TITY OF INDIVIDUAL.—A document described in
9 this subparagraph is an individual’s—

10 “(i) driver’s license or identity card
11 issued by a State, the Commonwealth of
12 the Northern Mariana Islands, or an out-
13 lying possession of the United States that
14 complies with the requirements of the
15 REAL ID Act of 2005 (division B of Pub-
16 lic Law 109–13; 119 Stat. 302);

17 “(ii) driver’s license or identity card
18 issued by a State, the Commonwealth of
19 the Northern Mariana Islands, or an out-
20 lying possession of the United States that
21 is not in compliance with the requirements
22 of the REAL ID Act of 2005, if the license
23 or identity card—

1 “(I) is not required by the Sec-
2 retary to comply with such require-
3 ments; and

4 “(II) contains the individual’s
5 photograph or information, including
6 the individual’s name, date of birth,
7 gender, and address; and

8 “(iii) identification card issued by a
9 Federal agency or department, including a
10 branch of the Armed Forces, or an agency,
11 department, or entity of a State, or a Na-
12 tive American tribal document, provided
13 that such card or document—

14 “(I) contains the individual’s
15 photograph or information including
16 the individual’s name, date of birth,
17 gender, eye color, and address; and

18 “(II) contains security features
19 to make the card resistant to tam-
20 pering, counterfeiting, and fraudulent
21 use; or

22 “(iv) in the case of an individual who
23 is under 16 years of age who is unable to
24 present a document described in clause (i),

1 (ii), or (iii) a document of personal identity
2 of such other type that—

3 “(I) the Secretary determines is
4 a reliable means of identification; and

5 “(II) contains security features
6 to make the document resistant to
7 tampering, counterfeiting, and fraudu-
8 lent use.

9 “(E) AUTHORITY TO PROHIBIT USE OF
10 CERTAIN DOCUMENTS.—

11 “(i) AUTHORITY.—If the Secretary
12 finds that a document or class of docu-
13 ments described in subparagraph (B), (C),
14 or (D) is not reliable to establish identity
15 or eligibility for employment (as the case
16 may be) or is being used fraudulently to an
17 unacceptable degree, the Secretary is au-
18 thorized to prohibit, or impose conditions,
19 on the use of such document or class of
20 documents for purposes of this subsection.

21 “(ii) REQUIREMENT FOR PUBLICA-
22 TION.—The Secretary shall publish notice
23 of any findings under clause (i) in the Fed-
24 eral Register.

25 “(2) ATTESTATION OF EMPLOYEE.—

1 “(A) REQUIREMENTS.—

2 “(i) IN GENERAL.—The individual
3 shall attest, under penalty of perjury on
4 the form prescribed by the Secretary, that
5 the individual is a national of the United
6 States, an alien lawfully admitted for per-
7 manent residence, or an alien who is au-
8 thorized under this Act or by the Secretary
9 to be hired, recruited or referred for a fee,
10 in the United States.

11 “(ii) SIGNATURE FOR EXAMINA-
12 TION.—An attestation required by clause
13 (i) may be manifested by a handwritten or
14 electronic signature.

15 “(B) PENALTIES.—An individual who
16 falsely represents that the individual is eligible
17 for employment in the United States in an at-
18 testation required by subparagraph (A) shall,
19 for each such violation, be subject to a fine of
20 not more than \$5,000, a term of imprisonment
21 not to exceed 3 years, or both.

22 “(3) RETENTION OF ATTESTATION.—An em-
23 ployer shall retain a paper, microfiche, microfilm, or
24 electronic version of an attestation submitted under
25 paragraph (1) or (2) for an individual and make

1 such attestations available for inspection by an offi-
2 cer of the Department of Homeland Security, any
3 other person designated by the Secretary, the Spe-
4 cial Counsel for Immigration-Related Unfair Em-
5 ployment Practices of the Department of Justice, or
6 the Secretary of Labor during a period beginning on
7 the date of the hiring, or recruiting or referring for
8 a fee, of the individual and ending—

9 “(A) in the case of the recruiting or refer-
10 ral for a fee (without hiring) of an individual,
11 7 years after the date of the recruiting or refer-
12 ral; or

13 “(B) in the case of the hiring of an indi-
14 vidual the later of—

15 “(i) 7 years after the date of such hir-
16 ing;

17 “(ii) 1 year after the date the individ-
18 ual’s employment is terminated; or

19 “(iii) in the case of an employer or
20 class of employers, a period that is less
21 than the applicable period described in
22 clause (i) or (ii) if the Secretary reduces
23 such period for such employer or class of
24 employers.

1 “(4) DOCUMENT RETENTION AND RECORD
2 KEEPING REQUIREMENTS.—

3 “(A) RETENTION OF DOCUMENTS.—An
4 employer shall retain, for the applicable period
5 described in paragraph (3), the following docu-
6 ments:

7 “(i) IN GENERAL.—Notwithstanding
8 any other provision of law, the employer
9 shall copy all documents presented by an
10 individual pursuant to this subsection and
11 shall retain paper, microfiche, microfilm,
12 or electronic copies of such documents.
13 Such copies shall reflect the signature of
14 the employer and the individual and the
15 date of receipt of such documents.

16 “(ii) USE OF RETAINED DOCU-
17 MENTS.—An employer shall use copies re-
18 tained under clause (i) only for the pur-
19 poses of complying with the requirements
20 of this subsection, except as otherwise per-
21 mitted under law.

22 “(B) RETENTION OF SOCIAL SECURITY
23 CORRESPONDENCE.—The employer shall main-
24 tain records related to an individual of any no-
25 match notice from the Commissioner of Social

1 Security regarding the individual's name or cor-
2 responding social security account number and
3 the steps taken to resolve each issue described
4 in the no-match notice.

5 “(C) RETENTION OF CLARIFICATION DOC-
6 UMENTS.—The employer shall maintain records
7 of any actions and copies of any correspondence
8 or action taken by the employer to clarify or re-
9 solve any issue that raises reasonable doubt as
10 to the validity of the individual's identity or eli-
11 gibility for employment in the United States.

12 “(D) RETENTION OF OTHER RECORDS.—
13 The Secretary may require that an employer re-
14 tain copies of additional records related to the
15 individual for the purposes of this section.

16 “(5) PENALTIES.—An employer that fails to
17 comply with the requirement of this subsection shall
18 be subject to the penalties described in subsection
19 (e)(4)(B).

20 “(6) NO AUTHORIZATION OF NATIONAL IDENTI-
21 FICATION CARDS.—Nothing in this section may be
22 construed to authorize, directly or indirectly, the
23 issuance, use, or establishment of a national identi-
24 fication card.

1 “(d) ELECTRONIC EMPLOYMENT VERIFICATION SYS-
2 TEM.—

3 “(1) REQUIREMENT FOR SYSTEM.—The Sec-
4 retary, in cooperation with the Commissioner of So-
5 cial Security, shall implement an Electronic Employ-
6 ment Verification System (referred to in this sub-
7 section as the ‘System’) as described in this sub-
8 section.

9 “(2) MANAGEMENT OF SYSTEM.—

10 “(A) IN GENERAL.—The Secretary shall,
11 through the System—

12 “(i) provide a response to an inquiry
13 made by an employer through the Internet
14 or other electronic media or over a tele-
15 phone line regarding an individual’s iden-
16 tity and eligibility for employment in the
17 United States;

18 “(ii) establish a set of codes to be pro-
19 vided through the System to verify such
20 identity and authorization; and

21 “(iii) maintain a record of each such
22 inquiry and the information and codes pro-
23 vided in response to such inquiry.

24 “(B) INITIAL RESPONSE.—Not later than
25 3 days after an employer submits an inquire to

1 the System regarding an individual, the Sec-
2 retary shall provide, through the System, to the
3 employer—

4 “(i) if the System is able to confirm
5 the individual’s identity and eligibility for
6 employment in the United States, a con-
7 firmation notice, including the appropriate
8 codes on such confirmation notice; or

9 “(ii) if the System is unable to con-
10 firm the individual’s identity or eligibility
11 for employment in the United States, a
12 tentative nonconfirmation notice, including
13 the appropriate codes for such noncon-
14 firmation notice.

15 “(C) VERIFICATION PROCESS IN CASE OF A
16 TENTATIVE NONCONFIRMATION NOTICE.—

17 “(i) IN GENERAL.—If a tentative non-
18 confirmation notice is issued under sub-
19 paragraph (B)(ii), not later than 10 days
20 after the date an individual submits infor-
21 mation to contest such notice under para-
22 graph (7)(C)(ii)(III), the Secretary,
23 through the System, shall issue a final con-
24 firmation notice or a final nonconfirmation

1 notice to the employer, including the ap-
2 propriate codes for such notice.

3 “(ii) DEVELOPMENT OF PROCESS.—

4 The Secretary shall consult with the Com-
5 missioner of Social Security to develop a
6 verification process to be used to provide a
7 final confirmation notice or a final noncon-
8 firmation notice under clause (i).

9 “(D) DESIGN AND OPERATION OF SYS-

10 TEM.—The Secretary, in consultation with the
11 Commissioner of Social Security, shall design
12 and operate the System—

13 “(i) to maximize reliability and ease of
14 use by employers in a manner that pro-
15 tects and maintains the privacy and secu-
16 rity of the information maintained in the
17 System;

18 “(ii) to respond to each inquiry made
19 by an employer; and

20 “(iii) to track and record any occur-
21 rence when the System is unable to receive
22 such an inquiry;

23 “(iv) to include appropriate adminis-
24 trative, technical, and physical safeguards

1 to prevent unauthorized disclosure of per-
2 sonal information;

3 “(v) to allow for monitoring of the use
4 of the System and provide an audit capa-
5 bility; and

6 “(vi) to have reasonable safeguards,
7 developed in consultation with the Attorney
8 General, to prevent employers from engag-
9 ing in unlawful discriminatory practices,
10 based on national origin or citizenship sta-
11 tus.

12 “(E) RESPONSIBILITIES OF THE COMMIS-
13 SIONER OF SOCIAL SECURITY.—The Commis-
14 sioner of Social Security shall establish a reli-
15 able, secure method to provide through the Sys-
16 tem, within the time periods required by sub-
17 paragraphs (B) and (C)—

18 “(i) a determination of whether the
19 name and social security account number
20 provided in an inquiry by an employer
21 match such information maintained by the
22 Commissioner in order to confirm the va-
23 lidity of the information provided;

1 “(ii) a determination of whether such
2 social security account number was issued
3 to the named individual;

4 “(iii) determination of whether such
5 social security account number is valid for
6 employment in the United States; and

7 “(iv) a confirmation notice or a non-
8 confirmation notice under subparagraph
9 (B) or (C), in a manner that ensures that
10 other information maintained by the Com-
11 missioner is not disclosed or released to
12 employers through the System.

13 “(F) RESPONSIBILITIES OF THE SEC-
14 RETARY.—The Secretary shall establish a reli-
15 able, secure method to provide through the Sys-
16 tem, within the time periods required by sub-
17 paragraphs (B) and (C)—

18 “(i) a determination of whether the
19 name and alien identification or authoriza-
20 tion number provided in an inquiry by an
21 employer match such information main-
22 tained by the Secretary in order to confirm
23 the validity of the information provided;

1 “(ii) a determination of whether such
2 number was issued to the named indi-
3 vidual;

4 “(iii) a determination of whether the
5 individual is authorized to be employed in
6 the United States; and

7 “(iv) any other related information
8 that the Secretary may require.

9 “(G) UPDATING INFORMATION.—The
10 Commissioner of Social Security and the Sec-
11 retary shall update the information maintained
12 in the System in a manner that promotes max-
13 imum accuracy and shall provide a process for
14 the prompt correction of erroneous information.

15 “(3) REQUIREMENTS FOR PARTICIPATION.—
16 Except as provided in paragraphs (4) and (5), the
17 Secretary shall require employers to participate in
18 the System as follows:

19 “(A) CRITICAL EMPLOYERS.—

20 “(i) REQUIRED PARTICIPATION.—As
21 of the date that is 180 days after the date
22 of the enactment of the Securing America’s
23 Borders Act, the Secretary shall require
24 any employer or class of employers to par-
25 ticipate in the System, with respect to em-

1 employees hired by the employer prior to, on,
2 or after such date of enactment, if the Sec-
3 retary determines, in the Secretary's sole
4 and unreviewable discretion, such employer
5 or class of employer is—

6 “(I) part of the critical infra-
7 structure of the United States; or

8 “(II) directly related to the na-
9 tional security or homeland security of
10 the United States.

11 “(ii) DISCRETIONARY PARTICIPA-
12 TION.—As of the date that is 180 days
13 after the date of the enactment of the Se-
14 curing America's Borders Act, the Sec-
15 retary may require additional any employer
16 or class of employers to participate in the
17 System with respect to employees hired on
18 or after such date if the Secretary des-
19 ignates such employer or class of employ-
20 ers, in the Secretary's sole and
21 unreviewable discretion, as a critical em-
22 ployer based on immigration enforcement
23 or homeland security needs.

24 “(B) LARGE EMPLOYERS.—Not later than
25 2 years after the date of the enactment of the

1 Securing America’s Borders Act, Secretary
2 shall require an employer with more than 5,000
3 employees in the United States to participate in
4 the System, with respect to all employees hired
5 by the employer after the date the Secretary re-
6 quires such participation.

7 “(C) MID-SIZED EMPLOYERS.—Not later
8 than 3 years after the date of enactment of the
9 Securing America’s Borders Act, the Secretary
10 shall require an employer with less than 5,000
11 employees and with more than 1,000 employees
12 in the United States to participate in the Sys-
13 tem, with respect to all employees hired by the
14 employer after the date the Secretary requires
15 such participation.

16 “(D) SMALL EMPLOYERS.—Not later than
17 4 years after the date of the enactment of the
18 Securing America’s Borders Act, the Secretary
19 shall require all employers with less than 1,000
20 employees and with more than 250 employees
21 in the United States to participate in the Sys-
22 tem, with respect to all employees hired by the
23 employer after the date the Secretary requires
24 such participation.

1 “(E) REMAINING EMPLOYERS.—Not later
2 than 5 years after the date of the enactment of
3 the Securing America’s Borders Act, the Sec-
4 retary shall require all employers in the United
5 States to participate in the System, with re-
6 spect to all employees hired by an employer
7 after the date the Secretary requires such par-
8 ticipation.

9 “(F) REQUIREMENT TO PUBLISH.—The
10 Secretary shall publish in the Federal Register
11 the requirements for participation in the Sys-
12 tem as described in subparagraphs (A), (B),
13 (C), (D), and (E) prior to the effective date of
14 such requirements.

15 “(4) OTHER PARTICIPATION IN SYSTEM.—Not-
16 withstanding paragraph (3), the Secretary has the
17 authority, in the Secretary’s sole and unreviewable
18 discretion—

19 “(A) to permit any employer that is not re-
20 quired to participate in the System under para-
21 graph (3) to participate in the System on a vol-
22 untary basis; and

23 “(B) to require any employer that is re-
24 quired to participate in the System under para-
25 graph (3) with respect to newly hired employees

1 to participate in the System with respect to all
2 employees hired by the employer prior to, on, or
3 after the date of the enactment of the Securing
4 America’s Borders Act, if the Secretary has
5 reasonable causes to believe that the employer
6 has engaged in violations of the immigration
7 laws.

8 “(5) WAIVER.—The Secretary is authorized to
9 waive or delay the participation requirements of
10 paragraph (3) respect to any employer or class of
11 employers if the Secretary provides notice to Con-
12 gress of such waiver prior to the date such waiver
13 is granted.

14 “(6) CONSEQUENCE OF FAILURE TO PARTICI-
15 PATE.—If an employer is required to participate in
16 the System and fails to comply with the require-
17 ments of the System with respect to an individual—

18 “(A) such failure shall be treated as a vio-
19 lation of subsection (a)(1)(B) of this section
20 with respect to such individual; and

21 “(B) a rebuttable presumption is created
22 that the employer has violated subsection
23 (a)(1)(A) of this section, however such pre-
24 sumption may not apply to a prosecution under
25 subsection (f)(1).

1 “(7) SYSTEM REQUIREMENTS.—

2 “(A) IN GENERAL.—An employer that par-
3 ticipates in the System shall, with respect to the
4 hiring, or recruiting or referring for a fee, any
5 individual for employment in the United States,
6 shall—

7 “(i) obtain from the individual and
8 record on the form designated by the Sec-
9 retary—

10 “(I) the individual’s social secu-
11 rity account number; and

12 “(II) in the case of an individual
13 who does not attest that the indi-
14 vidual is a national of the United
15 States under subsection (c)(2), such
16 identification or authorization number
17 that the Secretary shall require; and

18 “(ii) retain the original of such form
19 and make such form available for inspec-
20 tion for the periods and in the manner de-
21 scribed in subsection (c)(3).

22 “(B) SEEKING VERIFICATION.—The em-
23 ployer shall submit an inquiry through the Sys-
24 tem to seek confirmation of the individual’s

1 identity and eligibility for employment in the
2 United States—

3 “(i) not later than 3 working days (or
4 such other reasonable time as may be spec-
5 ified by the Secretary of Homeland Secu-
6 rity) after the date of the hiring, or re-
7 cruiting or referring for a fee, of the indi-
8 vidual (as the case may be); or

9 “(ii) in the case of an employee hired
10 prior to the date of enactment of the Se-
11 curing America’s Borders Act, at such
12 time as the Secretary shall specify.

13 “(C) CONFIRMATION OR NONCONFIRMA-
14 TION.—

15 “(i) CONFIRMATION UPON INITIAL IN-
16 QUIRY.—If an employer receives a con-
17 firmation notice under paragraph (2)(B)(i)
18 for an individual, the employer shall
19 record, on the form specified by the Sec-
20 retary, the appropriate code provided in
21 such notice.

22 “(ii) NONCONFIRMATION AND
23 VERIFICATION.—

24 “(I) NONCONFIRMATION.—If an
25 employer receives a tentative noncon-

1 firmation notice under paragraph
2 (2)(B)(ii) for an individual, the em-
3 ployer shall inform such individual of
4 the issuances of such notice in writing
5 and the individual may contest such
6 nonconfirmation notice.

7 “(II) NO CONTEST.—If the indi-
8 vidual does not contest the tentative
9 nonconfirmation notice under sub-
10 clause (I) within 10 days of receiving
11 notice from the individual’s employer,
12 the notice shall become final and the
13 employer shall record on the form
14 specified by the Secretary, the appro-
15 priate code provided in the noncon-
16 firmation notice.

17 “(III) CONTEST.—If the indi-
18 vidual contests the tentative noncon-
19 firmation notice under subclause (I),
20 the individual shall submit appro-
21 priate information to contest such no-
22 tice to the System within 10 days of
23 receiving notice from the individual’s
24 employer and shall utilize the

1 verification process developed under
2 paragraph (2)(C)(ii).

3 “(IV) EFFECTIVE PERIOD OF
4 TENTATIVE NONCONFIRMATION.—A
5 tentative nonconfirmation notice shall
6 remain in effect until a final such no-
7 tice becomes final under clause (II) or
8 a final confirmation notice or final
9 nonconfirmation notice is issued by
10 the System.

11 “(V) PROHIBITION ON TERMI-
12 NATION.—An employer may not ter-
13 minate the employment of an indi-
14 vidual based on a tentative noncon-
15 firmation notice until such notice be-
16 comes final under clause (II) or a
17 final nonconfirmation notice is issued
18 for the individual by the System.
19 Nothing in this clause shall apply to a
20 termination of employment for any
21 reason other than because of such a
22 failure.

23 “(VI) RECORDING OF CONCLU-
24 SION ON FORM.—If a final confirma-
25 tion or nonconfirmation is provided by

1 the System regarding an individual,
2 the employer shall record on the form
3 designated by the Secretary the ap-
4 propriate code that is provided under
5 the System to indicate a confirmation
6 or nonconfirmation of the identity and
7 employment eligibility of the indi-
8 vidual.

9 “(D) CONSEQUENCES OF NONCONFIRMA-
10 TION.—

11 “(i) TERMINATION OF CONTINUED
12 EMPLOYMENT.—If the employer has re-
13 ceived a final nonconfirmation regarding
14 an individual, the employer shall terminate
15 the employment, recruitment, or referral of
16 the individual. Such employer shall provide
17 to the Secretary any information relating
18 to the nonconfirmed individual that the
19 Secretary determines would assist the Sec-
20 retary in enforcing or administering the
21 immigration laws. If the employer con-
22 tinues to employ, recruit, or refer the indi-
23 vidual after receiving final nonconfirma-
24 tion, a rebuttable presumption is created
25 that the employer has violated subsections

1 (a)(1)(A) and (a)(2). Such presumption
2 may not apply to a prosecution under sub-
3 section (f)(1).

4 “(8) PROTECTION FROM LIABILITY.—No em-
5 ployer that participates in the System shall be liable
6 under any law for any employment-related action
7 taken with respect to an individual in good faith reli-
8 ance on information provided by the System.

9 “(9) LIMITATION ON USE OF THE SYSTEM.—
10 Notwithstanding any other provision of law, nothing
11 in this subsection shall be construed to permit or
12 allow any department, bureau, or other agency of
13 the United States to utilize any information, data-
14 base, or other records used in the System for any
15 purpose other than as provided for under this sub-
16 section.

17 “(10) MODIFICATION AUTHORITY.—The Sec-
18 retary, after notice is submitted to Congress and
19 provided to the public in the Federal Register, is au-
20 thorized to modify the requirements of this sub-
21 section, including requirements with respect to com-
22 pletion of forms, method of storage, attestations,
23 copying of documents, signatures, methods of trans-
24 mitting information, and other operational and tech-

1 nical aspects to improve the efficiency, accuracy, and
2 security of the System.

3 “(11) FEES.—The Secretary is authorized to
4 require any employer participating in the System to
5 pay a fee or fees for such participation. The fees
6 may be set at a level that will recover the full cost
7 of providing the System to all participants. The fees
8 shall be deposited and remain available as provided
9 in subsection (m) and (n) of section 286 and the
10 System is providing an immigration adjudication
11 and naturalization service for purposes of section
12 286(n).

13 “(12) REPORT.—Not later than 1 year after
14 the date of the enactment of the Securing America’s
15 Borders Act, the Secretary shall submit to Congress
16 a report on the capacity, systems integrity, and ac-
17 curacy of the System.

18 “(e) COMPLIANCE.—

19 “(1) COMPLAINTS AND INVESTIGATIONS.—The
20 Secretary shall establish procedures—

21 “(A) for individuals and entities to file
22 complaints regarding potential violations of sub-
23 section (a);

1 “(B) for the investigation of those com-
2 plaints that the Secretary deems it appropriate
3 to investigate; and

4 “(C) for the investigation of such other
5 violations of subsection (a), as the Secretary de-
6 termines are appropriate.

7 “(2) AUTHORITY IN INVESTIGATIONS.—

8 “(A) IN GENERAL.—In conducting inves-
9 tigations and hearings under this subsection, of-
10 ficers and employees of the Department of
11 Homeland Security—

12 “(i) shall have reasonable access to
13 examine evidence of any employer being in-
14 vestigated; and

15 “(ii) if designated by the Secretary of
16 Homeland Security, may compel by sub-
17 poena the attendance of witnesses and the
18 production of evidence at any designated
19 place in an investigation or case under this
20 subsection.

21 “(B) FAILURE TO COOPERATE.—In case of
22 refusal to obey a subpoena lawfully issued
23 under subparagraph (A)(ii), the Secretary may
24 request that the Attorney General apply in an
25 appropriate district court of the United States

1 for an order requiring compliance with such
2 subpoena, and any failure to obey such order
3 may be punished by such court as contempt.

4 “(C) DEPARTMENT OF LABOR.—The Sec-
5 retary of Labor shall have the investigative au-
6 thority provided under section 11(a) of the Fair
7 Labor Standards Act of 1938 (29 U.S.C.
8 211(a)) to ensure compliance with the provi-
9 sions of this title, or any regulation or order
10 issued under this title.

11 “(3) COMPLIANCE PROCEDURES.—

12 “(A) PRE-PENALTY NOTICE.—If the Sec-
13 retary has reasonable cause to believe that
14 there has been a violation of a requirement of
15 this section and determines that further pro-
16 ceedings related to such violation are war-
17 ranted, the Secretary shall issue to the em-
18 ployer concerned a written notice of the Sec-
19 retary’s intention to issue a claim for a fine or
20 other penalty. Such notice shall—

21 “(i) describe the violation;

22 “(ii) specify the laws and regulations
23 allegedly violated;

24 “(iii) disclose the material facts which
25 establish the alleged violation; and

1 “(iv) inform such employer that the
2 employer shall have a reasonable oppor-
3 tunity to make representations as to why a
4 claim for a monetary or other penalty
5 should not be imposed.

6 “(B) REMISSION OR MITIGATION OF PEN-
7 ALTIES.—

8 “(i) PETITION BY EMPLOYER.—When-
9 ever any employer receives written notice
10 of a fine or other penalty in accordance
11 with subparagraph (A), the employer may
12 file within 30 days from receipt of such no-
13 tice, with the Secretary a petition for the
14 remission or mitigation of such fine or
15 penalty, or a petition for termination of
16 the proceedings. The petition may include
17 any relevant evidence or proffer of evidence
18 the employer wishes to present, and shall
19 be filed and considered in accordance with
20 procedures to be established by the Sec-
21 retary.

22 “(ii) REVIEW BY SECRETARY.—If the
23 Secretary finds that such fine or other
24 penalty was incurred erroneously, or finds
25 the existence of such mitigating cir-

1 cumstances as to justify the remission or
2 mitigation of such fine or penalty, the Sec-
3 retary may remit or mitigate such fine or
4 other penalty on the terms and conditions
5 as the Secretary determines are reasonable
6 and just, or order termination of any pro-
7 ceedings related to the notice. Such miti-
8 gating circumstances may include good
9 faith compliance and participation in, or
10 agreement to participate in, the System, if
11 not otherwise required.

12 “(iii) APPLICABILITY.—This subpara-
13 graph may not apply to an employer that
14 has or is engaged in a pattern or practice
15 of violations of paragraph (1)(A), (1)(B),
16 or (2) of subsection (a) or of any other re-
17 quirements of this section.

18 “(C) PENALTY CLAIM.—After considering
19 evidence and representations offered by the em-
20 ployer pursuant to subparagraph (B), the Sec-
21 retary shall determine whether there was a vio-
22 lation and promptly issue a written final deter-
23 mination setting forth the findings of fact and
24 conclusions of law on which the determination
25 is based and the appropriate penalty.

1 “(4) CIVIL PENALTIES.—

2 “(A) HIRING OR CONTINUING TO EMPLOY
3 UNAUTHORIZED ALIENS.—Any employer that
4 violates any provision of paragraph (1)(A) or
5 (2) of subsection (a) shall pay civil penalties as
6 follows:

7 “(i) Pay a civil penalty of not less
8 than \$500 and not more than \$4,000 for
9 each unauthorized alien with respect to
10 each such violation.

11 “(ii) If the employer has previously
12 been fined 1 time under this subparagraph,
13 pay a civil penalty of not less than \$4,000
14 and not more than \$10,000 for each unau-
15 thorized alien with respect to each such
16 violation.

17 “(iii) If the employer has previously
18 been fined more than 1 time under this
19 subparagraph or has failed to comply with
20 a previously issued and final order related
21 to any such provision, pay a civil penalty
22 of not less than \$6,000 and not more than
23 \$20,000 for each unauthorized alien with
24 respect to each such violation.

1 “(B) RECORD KEEPING OR VERIFICATION
2 PRACTICES.—Any employer that violates or fails
3 to comply with the requirements of the sub-
4 section (b), (c), and (d), shall pay a civil pen-
5 alty as follows:

6 “(i) Pay a civil penalty of not less
7 than \$200 and not more than \$2,000 for
8 each such violation.

9 “(ii) If the employer has previously
10 been fined 1 time under this subparagraph,
11 pay a civil penalty of not less than \$400
12 and not more than \$4,000 for each such
13 violation.

14 “(iii) If the employer has previously
15 been fined more than 1 time under this
16 subparagraph or has failed to comply with
17 a previously issued and final order related
18 to such requirements, pay a civil penalty of
19 \$6,000 for each such violation.

20 “(C) OTHER PENALTIES.—Notwith-
21 standing subparagraphs (A) and (B), the Sec-
22 retary may impose additional penalties for vio-
23 lations, including cease and desist orders, spe-
24 cially designed compliance plans to prevent fur-
25 ther violations, suspended fines to take effect in

1 the event of a further violation, and in appro-
2 priate cases, the civil penalty described in sub-
3 section (g)(2).

4 “(D) REDUCTION OF PENALTIES.—Not-
5 withstanding subparagraphs (A), (B), and (C),
6 the Secretary is authorized to reduce or miti-
7 gate penalties imposed upon employers, based
8 upon factors including the employer’s hiring
9 volume, compliance history, good-faith imple-
10 mentation of a compliance program, participa-
11 tion in a temporary worker program, and vol-
12 untary disclosure of violations of this subsection
13 to the Secretary.

14 “(E) ADJUSTMENT FOR INFLATION.—All
15 penalties in this section may be adjusted every
16 4 years to account for inflation, as provided by
17 law.

18 “(5) JUDICIAL REVIEW.—An employer ad-
19 versely affected by a final determination may, within
20 45 days after the date the final determination is
21 issued, file a petition in the Court of Appeals for the
22 appropriate circuit for review of the order. The filing
23 of a petition as provided in this paragraph shall stay
24 the Secretary’s determination until entry of judg-
25 ment by the court. The burden shall be on the em-

1 ployer to show that the final determination was not
2 supported by substantial evidence. The Secretary is
3 authorized to require that the petitioner provide,
4 prior to filing for review, security for payment of
5 fines and penalties through bond or other guarantee
6 of payment acceptable to the Secretary.

7 “(6) ENFORCEMENT OF ORDERS.—If an em-
8 ployer fails to comply with a final determination
9 issued against that employer under this subsection,
10 and the final determination is not subject to review
11 as provided in paragraph (5), the Attorney General
12 may file suit to enforce compliance with the final de-
13 termination in any appropriate district court of the
14 United States. In any such suit, the validity and ap-
15 propriateness of the final determination shall not be
16 subject to review.

17 “(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR
18 PATTERN OR PRACTICE VIOLATIONS.—

19 “(1) CRIMINAL PENALTY.—An employer that
20 engages in a pattern or practice of knowing viola-
21 tions of subsection (a)(1)(A) or (a)(2) shall be fined
22 not more than \$20,000 for each unauthorized alien
23 with respect to whom such a violation occurs, im-
24 prisoned for not more than 6 months for the entire
25 pattern or practice, or both.

1 “(2) ENJOINING OF PATTERN OR PRACTICE
2 VIOLATIONS.—If the Secretary or the Attorney Gen-
3 eral has reasonable cause to believe that an employer
4 is engaged in a pattern or practice of employment,
5 recruitment, or referral in violation of paragraph
6 (1)(A) or (2) of subsection (a), the Attorney General
7 may bring a civil action in the appropriate district
8 court of the United States requesting such relief, in-
9 cluding a permanent or temporary injunction, re-
10 straining order, or other order against the employer,
11 as the Secretary deems necessary.

12 “(g) PROHIBITION OF INDEMNITY BONDS.—

13 “(1) PROHIBITION.—It is unlawful for an em-
14 ployer, in the hiring, recruiting, or referring for a
15 fee, of an individual, to require the individual to post
16 a bond or security, to pay or agree to pay an
17 amount, or otherwise to provide a financial guar-
18 antee or indemnity, against any potential liability
19 arising under this section relating to such hiring, re-
20 cruiting, or referring of the individual.

21 “(2) CIVIL PENALTY.—Any employer which is
22 determined, after notice and opportunity for mitiga-
23 tion of the monetary penalty under subsection (e), to
24 have violated paragraph (1) of this subsection shall
25 be subject to a civil penalty of \$10,000 for each vio-

1 lation and to an administrative order requiring the
2 return of any amounts received in violation of such
3 paragraph to the employee or, if the employee can-
4 not be located, to the Employer Compliance Fund
5 established under section 286(w).

6 “(h) PROHIBITION ON AWARD OF GOVERNMENT
7 CONTRACTS, GRANTS, AND AGREEMENTS.—

8 “(1) EMPLOYERS WITH NO CONTRACTS,
9 GRANTS OR AGREEMENTS.—

10 “(A) IN GENERAL.—If an employer who
11 does not hold a Federal contract, grant, or co-
12 operative agreement is determined by the Sec-
13 retary to be a repeat violator of this section or
14 is convicted of a crime under this section, the
15 employer shall be debarred from the receipt of
16 a Federal contract, grant, or cooperative agree-
17 ment for a period of 2 years. The Secretary or
18 the Attorney General shall advise the Adminis-
19 trator of General Services of such a debarment,
20 and the Administrator of General Services shall
21 list the employer on the List of Parties Ex-
22 cluded from Federal Procurement and Non-
23 procurement Programs for a period of 2 years.

24 “(B) WAIVER.—The Administrator of Gen-
25 eral Services, in consultation with the Secretary

1 and the Attorney General, may waive operation
2 of this subsection or may limit the duration or
3 scope of the debarment.

4 “(2) EMPLOYERS WITH CONTRACTS, GRANTS,
5 OR AGREEMENTS.—

6 “(A) IN GENERAL.—An employer who
7 holds a Federal contract, grant, or cooperative
8 agreement and is determined by the Secretary
9 of Homeland Security to be a repeat violator
10 of this section or is convicted of a crime under
11 this section, shall be debarred from the receipt
12 of Federal contracts, grants, or cooperative
13 agreements for a period of 2 years.

14 “(B) NOTICE TO AGENCIES.—Prior to de-
15 barring the employer under subparagraph (A),
16 the Secretary, in cooperation with the Adminis-
17 trator of General Services, shall advise any
18 agency or department holding a contract, grant,
19 or cooperative agreement with the employer of
20 the Government’s intention to debar the em-
21 ployer from the receipt of new Federal con-
22 tracts, grants, or cooperative agreements for a
23 period of 2 years.

24 “(C) WAIVER.—After consideration of the
25 views of any agency or department that holds

1 a contract, grant, or cooperative agreement
2 with the employer, the Secretary may, in lieu of
3 debarring the employer from the receipt of new
4 Federal contracts, grants, or cooperative agree-
5 ments for a period of 2 years, waive operation
6 of this subsection, limit the duration or scope of
7 the debarment, or may refer to an appropriate
8 lead agency the decision of whether to debar the
9 employer, for what duration, and under what
10 scope in accordance with the procedures and
11 standards prescribed by the Federal Acquisition
12 Regulation. However, any proposed debarment
13 predicated on an administrative determination
14 of liability for civil penalty by the Secretary or
15 the Attorney General shall not be reviewable in
16 any debarment proceeding. The decision of
17 whether to debar or take alternation shall not
18 be judicially reviewed.

19 “(3) SUSPENSION.—Indictments for violations
20 of this section or adequate evidence of actions that
21 could form the basis for debarment under this sub-
22 section shall be considered a cause for suspension
23 under the procedures and standards for suspension
24 prescribed by the Federal Acquisition Regulation.

25 “(i) MISCELLANEOUS PROVISIONS.—

1 “(1) DOCUMENTATION.—In providing docu-
2 mentation or endorsement of authorization of aliens
3 (other than aliens lawfully admitted for permanent
4 residence) eligible to be employed in the United
5 States, the Secretary shall provide that any limita-
6 tions with respect to the period or type of employ-
7 ment or employer shall be conspicuously stated on
8 the documentation or endorsement.

9 “(2) PREEMPTION.—The provisions of this sec-
10 tion preempt any State or local law—

11 “(A) imposing civil or criminal sanctions
12 (other than through licensing and similar laws)
13 upon those who employ, or recruit or refer for
14 a fee for employment, unauthorized aliens; or

15 “(B) requiring as a condition of con-
16 ducting, continuing, or expanding a business
17 that a business entity—

18 “(i) provide, build, fund, or maintain
19 a shelter, structure, or designated area for
20 use by day laborers at or near its place of
21 business; or

22 “(ii) take other steps that facilitate
23 the employment of day laborers by others.

24 “(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as
25 otherwise specified, civil penalties collected under this sec-

1 tion shall be deposited by the Secretary into the Employer
2 Compliance Fund established under section 286(w).

3 “(k) DEFINITIONS.—In this section:

4 “(1) EMPLOYER.—The term ‘employer’ means
5 any person or entity, including any entity of the
6 Government of the United States, hiring, recruiting,
7 or referring an individual for employment in the
8 United States.

9 “(2) NO-MATCH NOTICE.—The term ‘no-match
10 notice’ means written notice from the Commissioner
11 of Social Security to an employer reporting earnings
12 on a Form W-2 that an employee name or cor-
13 responding social security account number fail to
14 match records maintained by the Commissioner.

15 “(3) SECRETARY.—Except as otherwise pro-
16 vided, the term ‘Secretary’ means the Secretary of
17 Homeland Security.

18 “(4) UNAUTHORIZED ALIEN.—The term ‘unau-
19 thorized alien’ means, with respect to the employ-
20 ment of an alien at a particular time, that the alien
21 is not at that time either—

22 “(A) an alien lawfully admitted for perma-
23 nent residence; or

24 “(B) authorized to be so employed by this
25 Act or by the Secretary.”.

1 (b) CONFORMING AMENDMENT.—

2 (1) AMENDMENT.—Sections 401, 402, 403,
3 404, and 405 of the Illegal Immigration Reform and
4 Immigrant Responsibility Act of 1996 (division C of
5 Public Law 104–208; 8 U.S.C. 1324a) are repealed.

6 (2) CONSTRUCTION.—Nothing in this sub-
7 section or in subsection (d) of section 274A, as
8 amended by subsection (a), may be construed to
9 limit the authority of the Secretary to allow or con-
10 tinue to allow the participation of employers who
11 participated in the basic pilot program under such
12 sections 401, 402, 403, 404, and 405 in the Elec-
13 tronic Employment Verification System established
14 pursuant to such subsection (d).

15 (c) TECHNICAL AMENDMENTS.—

16 (1) DEFINITION OF UNAUTHORIZED ALIEN.—
17 Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8)
18 (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C.
19 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C.
20 1324b(a)(1)) are amended by striking “274A(h)(3)”
21 and inserting “274A”.

22 (2) DOCUMENT REQUIREMENTS.—Section 274B
23 (8 U.S.C. 1324b) is amended—

1 (A) in subsections (a)(6) and (g)(2)(B), by
2 striking “274A(b)” and inserting “274A(d)”;
3 and

4 (B) in subsection (g)(2)(B)(ii), by striking
5 “274A(b)(5)” and inserting “274A(d)(9)”.

6 (d) EFFECTIVE DATE.—The amendments made by
7 subsections (a), (b), and (c) shall take effect on the date
8 that is 180 days after the date of the enactment of this
9 Act.

10 **SEC. 302. EMPLOYER COMPLIANCE FUND.**

11 Section 286 (8 U.S.C. 1356) is amended by adding
12 at the end the following new subsection:

13 “(w) EMPLOYER COMPLIANCE FUND.—

14 “(1) IN GENERAL.—There is established in the
15 general fund of the Treasury, a separate account,
16 which shall be known as the ‘Employer Compliance
17 Fund’ (referred to in this subsection as the ‘Fund’).

18 “(2) DEPOSITS.—There shall be deposited as
19 offsetting receipts into the Fund all civil monetary
20 penalties collected by the Secretary of Homeland Se-
21 curity under section 274A.

22 “(3) PURPOSE.—Amounts refunded to the Sec-
23 retary from the Fund shall be used for the purposes
24 of enhancing and enforcing employer compliance
25 with section 274A.

1 each of the fiscal years 2007 through 2011 such sums as
 2 may be necessary to carry out this section.

3 **SEC. 304. CLARIFICATION OF INELIGIBILITY FOR MIS-**
 4 **REPRESENTATION.**

5 Section 212(a)(6)(C)(ii)(I) (8 U.S.C.
 6 1182(a)(6)(C)(ii)(I)), is amended by striking “citizen”
 7 and inserting “national”.

8 **TITLE IV—BACKLOG REDUCTION**
 9 **AND VISAS FOR STUDENTS,**
 10 **MEDICAL PROVIDERS, AND**
 11 **ALIENS WITH ADVANCED DE-**
 12 **GREES**

13 **SEC. 401. ELIMINATION OF EXISTING BACKLOGS.**

14 (a) FAMILY-SPONSORED IMMIGRANTS.—Section
 15 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

16 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
 17 IMMIGRANTS.—The worldwide level of family-sponsored
 18 immigrants under this subsection for a fiscal year is equal
 19 to the sum of—

20 “(1) 480,000;

21 “(2) the difference between the maximum num-
 22 ber of visas authorized to be issued under this sub-
 23 section during the previous fiscal year and the num-
 24 ber of visas issued during the previous fiscal year;

25 “(3) the difference between—

1 “(A) the maximum number of visas au-
2 thorized to be issued under this subsection dur-
3 ing fiscal years 2001 through 2005 minus the
4 number of visas issued under this subsection
5 during those fiscal years; and

6 “(B) the number of visas calculated under
7 subparagraph (A) that were issued after fiscal
8 year 2005.”.

9 (b) EMPLOYMENT-BASED IMMIGRANTS.—Section
10 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

11 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
12 IMMIGRANTS.—

13 “(1) IN GENERAL.—Subject to paragraph (2),
14 the worldwide level of employment-based immigrants
15 under this subsection for a fiscal year is equal to the
16 sum of—

17 “(A) 290,000;

18 “(B) the difference between the maximum
19 number of visas authorized to be issued under
20 this subsection during the previous fiscal year
21 and the number of visas issued during the pre-
22 vious fiscal year; and

23 “(C) the difference between—

24 “(i) the maximum number of visas au-
25 thorized to be issued under this subsection

1 during fiscal years 2001 through 2005 and
2 the number of visa numbers issued under
3 this subsection during those fiscal years;
4 and

5 “(ii) the number of visas calculated
6 under clause (i) that were issued after fis-
7 cal year 2005.

8 “(2) VISAS FOR SPOUSES AND CHILDREN.—Im-
9 migrant visas issued on or after October 1, 2004, to
10 spouses and children of employment-based immi-
11 grants shall not be counted against the numerical
12 limitation set forth in paragraph (1).”.

13 **SEC. 402. COUNTRY LIMITS.**

14 Section 202(a) (8 U.S.C. 1152(a)) is amended—

15 (1) in paragraph (2)—

16 (A) by striking “, (4), and (5)” and insert-
17 ing “and (4)”; and

18 (B) by striking “7 percent (in the case of
19 a single foreign state) or 2 percent” and insert-
20 ing “10 percent (in the case of a single foreign
21 state) or 5 percent”; and

22 (2) by striking paragraph (5).

1 **SEC. 403. ALLOCATION OF IMMIGRANT VISAS.**

2 (a) PREFERENCE ALLOCATION FOR FAMILY-SPON-
3 SORED IMMIGRANTS.—Section 203(a) (8 U.S.C. 1153(a))
4 is amended to read as follows:

5 “(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPON-
6 SORED IMMIGRANTS.—Aliens subject to the worldwide
7 level specified in section 201(c) for family-sponsored immi-
8 grants shall be allocated visas as follows:

9 “(1) UNMARRIED SONS AND DAUGHTERS OF
10 CITIZENS.—Qualified immigrants who are the un-
11 married sons or daughters of citizens of the United
12 States shall be allocated visas in a quantity not to
13 exceed the sum of—

14 “(A) 10 percent of such worldwide level;
15 and

16 “(B) any visas not required for the class
17 specified in paragraph (4).

18 “(2) SPOUSES AND UNMARRIED SONS AND
19 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—

20 “(A) IN GENERAL.—Visas in a quantity
21 not to exceed 50 percent of such worldwide level
22 plus any visas not required for the class speci-
23 fied in paragraph (1) shall be allocated to quali-
24 fied immigrants who are—

1 “(i) the spouses or children of an
2 alien lawfully admitted for permanent resi-
3 dence; or

4 “(ii) the unmarried sons or daughters
5 of an alien lawfully admitted for perma-
6 nent residence.

7 “(B) MINIMUM PERCENTAGE.—Visas allo-
8 cated to individuals described in subparagraph
9 (A)(i) shall constitute not less than 77 percent
10 of the visas allocated under this paragraph.

11 “(3) MARRIED SONS AND DAUGHTERS OF CITI-
12 ZENS.—Qualified immigrants who are the married
13 sons and daughters of citizens of the United States
14 shall be allocated visas in a quantity not to exceed
15 the sum of—

16 “(A) 10 percent of such worldwide level;
17 and

18 “(B) any visas not required for the classes
19 specified in paragraphs (1) and (2).

20 “(4) BROTHERS AND SISTERS OF CITIZENS.—
21 Qualified immigrants who are the brothers or sisters
22 of a citizen of the United States who is at least 21
23 years of age shall be allocated visas in a quantity
24 not to exceed 30 percent of the worldwide level.”.

1 (b) PREFERENCE ALLOCATION FOR EMPLOYMENT-
2 BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b))
3 is amended—

4 (1) in paragraph (1), by striking “28.6 per-
5 cent” and inserting “15 percent”;

6 (2) in paragraph (2)(A), by striking “28.6 per-
7 cent” and inserting “15 percent”;

8 (3) in paragraph (3)(A)—

9 (A) by striking “28.6 percent” and insert-
10 ing “35 percent”; and

11 (B) by striking clause (iii);

12 (4) by striking paragraph (4);

13 (5) by redesignating paragraph (5) as para-
14 graph (4);

15 (6) in paragraph (4)(A), as redesignated, by
16 striking “7.1 percent” and inserting “5 percent”;

17 (7) by inserting after paragraph (4), as redesi-
18 gnated, the following:

19 “(5) OTHER WORKERS.—Visas shall be made
20 available, in a number not to exceed 30 percent of
21 such worldwide level, plus any visa numbers not re-
22 quired for the classes specified in paragraphs (1)
23 through (4), to qualified immigrants who are capa-
24 ble, at the time of petitioning for classification under
25 this paragraph, of performing unskilled labor that is

1 not of a temporary or seasonal nature, for which
2 qualified workers are determined to be unavailable in
3 the United States.”; and

4 (8) by striking paragraph (6).

5 (c) CONFORMING AMENDMENTS.—

6 (1) DEFINITION OF SPECIAL IMMIGRANT.—Sec-
7 tion 101(a)(27)(M) (8 U.S.C. 1101(a)(27)(M)) is
8 amended by striking “subject to the numerical limi-
9 tations of section 203(b)(4),”.

10 (2) REPEAL OF TEMPORARY REDUCTION IN
11 WORKERS’ VISAS.—Section 203(e) of the Nicaraguan
12 Adjustment and Central American Relief Act (Public
13 Law 105–100; 8 U.S.C. 1153 note) is repealed.

14 **SEC. 404. RELIEF FOR MINOR CHILDREN.**

15 (a) IN GENERAL.—Section 201(b)(2) (8 U.S.C.
16 1151(b)(2)) is amended to read as follows:

17 “(2)(A)(i) Aliens admitted under section 211(a)
18 on the basis of a prior issuance of a visa under sec-
19 tion 203(a) to their accompanying parent who is an
20 immediate relative.

21 “(ii) In this subparagraph, the term ‘immediate
22 relative’ means a child, spouse, or parent of a citizen
23 of the United States (and each child of such child,
24 spouse, or parent who is accompanying or following
25 to join the child, spouse, or parent), except that, in

1 the case of parents, such citizens shall be at least 21
2 years of age.

3 “(iii) An alien who was the spouse of a citizen
4 of the United States for not less than 2 years at the
5 time of the citizen’s death and was not legally sepa-
6 rated from the citizen at the time of the citizen’s
7 death, and each child of such alien, shall be consid-
8 ered, for purposes of this subsection, to remain an
9 immediate relative after the date of the citizen’s
10 death if the spouse files a petition under section
11 204(a)(1)(A)(ii) before the earlier of—

12 “(I) 2 years after such date; or

13 “(II) the date on which the spouse remar-
14 ries.

15 “(iv) In this clause, an alien who has filed a pe-
16 tition under clause (iii) or (iv) of section
17 204(a)(1)(A) remains an immediate relative if the
18 United States citizen spouse or parent loses United
19 States citizenship on account of the abuse.

20 “(B) Aliens born to an alien lawfully admitted
21 for permanent residence during a temporary visit
22 abroad.”.

23 (b) PETITION.—Section 204(a)(1)(A)(ii) (8 U.S.C.
24 1154 (a)(1)(A)(ii)) is amended by striking “in the second
25 sentence of section 201(b)(2)(A)(i) also” and inserting “in

1 section 201(b)(2)(A)(iii) or an alien child or alien parent
2 described in the 201(b)(2)(A)(iv)”.

3 **SEC. 405. STUDENT VISAS.**

4 (a) IN GENERAL.—Section 101(a)(15)(F) (8 U.S.C.
5 1101(a)(15)(F)) is amended—

6 (1) in clause (i)—

7 (A) by striking “he has no intention of
8 abandoning, who is” and inserting the fol-
9 lowing: “except in the case of an alien described
10 in clause (iv), the alien has no intention of
11 abandoning, who is—

12 “(I);

13 (B) by striking “consistent with section
14 214(l)” and inserting “(except for a graduate
15 program described in clause (iv)) consistent
16 with section 214(m)”;

17 (C) by striking the comma at the end and
18 inserting the following: “; or

19 “(II) engaged in temporary employment
20 for optional practical training related to the
21 alien’s area of study, which practical training
22 shall be authorized for a period or periods of up
23 to 24 months;”;

24 (2) in clause (ii)—

1 (A) by inserting “or (iv)” after “clause
2 (i)”; and

3 (B) by striking “, and” and inserting a
4 semicolon;

5 (3) in clause (iii), by adding “and” at the end;
6 and

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

8 “(iv) an alien described in clause (i)
9 who has been accepted and plans to attend
10 an accredited graduate program in mathe-
11 matics, engineering, technology, or the
12 sciences in the United States for the pur-
13 pose of obtaining an advanced degree.”.

14 (b) ADMISSION OF NONIMMIGRANTS.—Section
15 214(b) (8 U.S.C. 1184(b)) is amended by striking “sub-
16 paragraph (L) or (V)” and inserting “subparagraph
17 (F)(iv), (L), or (V)”.

18 (c) REQUIREMENTS FOR F-4 VISA.—Section 214(m)
19 (8 U.S.C. 1184(m)) is amended—

20 (1) by inserting before paragraph (1) the fol-
21 lowing:

22 “(m) NONIMMIGRANT ELEMENTARY, SECONDARY,
23 AND POST-SECONDARY SCHOOL STUDENTS.—”; and

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

1 “(3) A visa issued to an alien under section
2 101(a)(15)(F)(iv) shall be valid—

3 “(A) during the intended period of study in a
4 graduate program described in such section;

5 “(B) for an additional period, not to exceed 1
6 year after the completion of the graduate program,
7 if the alien is actively pursuing an offer of employ-
8 ment related to the knowledge and skills obtained
9 through the graduate program; and

10 “(C) for the additional period necessary for the
11 adjudication of any application for labor certifi-
12 cation, employment-based immigrant petition, and
13 application under section 245(a)(2) to adjust such
14 alien’s status to that of an alien lawfully admitted
15 for permanent residence, if such application for
16 labor certification or employment-based immigrant
17 petition has been filed not later than 1 year after
18 the completion of the graduate program.”.

19 (d) OFF CAMPUS WORK AUTHORIZATION FOR FOR-
20 EIGN STUDENTS.—

21 (1) IN GENERAL.—Aliens admitted as non-
22 immigrant students described in section
23 101(a)(15)(F) of the Immigration and Nationality
24 Act (8 U.S.C. 1101(a)(15)(F)) may be employed in

1 an off-campus position unrelated to the alien's field
2 of study if—

3 (A) the alien has enrolled full time at the
4 educational institution and is maintaining good
5 academic standing;

6 (B) the employer provides the educational
7 institution and the Secretary of Labor with an
8 attestation that the employer—

9 (i) has spent at least 21 days recruit-
10 ing United States citizens to fill the posi-
11 tion; and

12 (ii) will pay the alien and other simi-
13 larly situated workers at a rate equal to
14 not less than the greater of—

15 (I) the actual wage level for the
16 occupation at the place of employ-
17 ment; or

18 (II) the prevailing wage level for
19 the occupation in the area of employ-
20 ment; and

21 (C) the alien will not be employed more
22 than—

23 (i) 20 hours per week during the aca-
24 demic term; or

1 (ii) 40 hours per week during vacation
2 periods and between academic terms.

3 (2) DISQUALIFICATION.—If the Secretary of
4 Labor determines that an employer has provided an
5 attestation under paragraph (1)(B) that is materi-
6 ally false or has failed to pay wages in accordance
7 with the attestation, the employer, after notice and
8 opportunity for a hearing, shall be disqualified from
9 employing an alien student under paragraph (1).

10 (e) ADJUSTMENT OF STATUS.—Section 245(a) (8
11 U.S.C. 1255(a)) is amended to read as follows:

12 “(a) AUTHORIZATION.—

13 “(1) IN GENERAL.—The status of an alien, who
14 was inspected and admitted or paroled into the
15 United States, or who has an approved petition for
16 classification under subparagraph (A)(iii), (A)(iv),
17 (B)(ii), or (B)(iii) of section 204(a)(1), may be ad-
18 justed by the Secretary of Homeland Security or the
19 Attorney General, under such regulations as the Sec-
20 retary or the Attorney General may prescribe, to
21 that of an alien lawfully admitted for permanent res-
22 idence if—

23 “(A) the alien makes an application for
24 such adjustment;

1 “(B) the alien is eligible to receive an im-
2 migrant visa;

3 “(C) the alien is admissible to the United
4 States for permanent residence; and

5 “(D) an immigrant visa is immediately
6 available to the alien at the time the application
7 is filed.

8 “(2) STUDENT VISAS.—Notwithstanding the re-
9 quirement under paragraph (1)(C), an alien may file
10 an application for adjustment of status under this
11 section if—

12 “(A) the alien has been issued a visa or
13 otherwise provided nonimmigrant status under
14 section 101(a)(15)(F)(iv), or would have quali-
15 fied for such nonimmigrant status if section
16 101(a)(15)(F)(iv) had been enacted before such
17 alien’s graduation;

18 “(B) the alien has earned an advanced de-
19 gree in the sciences, technology, engineering, or
20 mathematics;

21 “(C) the alien is the beneficiary of a peti-
22 tion filed under subparagraph (E) or (F) of sec-
23 tion 204(a)(1); and

24 “(D) a fee of \$1,000 is remitted to the
25 Secretary on behalf of the alien.

1 “(3) LIMITATION.—An application for adjust-
2 ment of status filed under this section may not be
3 approved until an immigrant visa number becomes
4 available.”.

5 (f) USE OF FEES.—

6 (1) JOB TRAINING; SCHOLARSHIPS.—Section
7 286(s)(1) (8 U.S.C. 1356(s)(1)) is amended by in-
8 serting “and 80 percent of the fees collected under
9 section 245(a)(2)(D)” before the period at the end.

10 (2) FRAUD PREVENTION AND DETECTION.—
11 Section 286(v)(1) (8 U.S.C. 1356(v)(1)) is amended
12 by inserting “and 20 percent of the fees collected
13 under section 245(a)(2)(D)” before the period at the
14 end.

15 **SEC. 406. VISAS FOR INDIVIDUALS WITH ADVANCED DE-**
16 **GREES.**

17 (a) ALIENS WITH CERTAIN ADVANCED DEGREES
18 NOT SUBJECT TO NUMERICAL LIMITATIONS ON EMPLOY-
19 MENT BASED IMMIGRANTS.—

20 (1) IN GENERAL.—Section 201(b)(1) (8 U.S.C.
21 1151(b)(1)) is amended by adding at the end the
22 following:

23 “(F) Aliens who have earned an advanced
24 degree in science, technology, engineering, or
25 math and have been working in a related field

1 in the United States under a nonimmigrant visa
2 during the 3-year period preceding their appli-
3 cation for an immigrant visa under section
4 203(b).

5 “(G) Aliens described in subparagraph (A)
6 or (B) of section 203(b)(1)(A) or who have re-
7 ceived a national interest waiver under section
8 203(b)(2)(B).

9 “(H) The spouse and minor children of an
10 alien who is admitted as an employment-based
11 immigrant under section 203(b).”.

12 (2) APPLICABILITY.—The amendment made by
13 paragraph (1) shall apply to any visa application—

14 (A) pending on the date of the enactment
15 of this Act; or

16 (B) filed on or after such date of enact-
17 ment.

18 (b) LABOR CERTIFICATION.—Section
19 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amend-
20 ed—

21 (1) in subclause (I), by striking “or” at the
22 end;

23 (2) in subclause (II), by striking the period at
24 the end and inserting “; or”; and

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

1 “(III) has an advanced degree in
2 the sciences, technology, engineering,
3 or mathematics from an accredited
4 university in the United States and is
5 employed in a field related to such de-
6 gree.”.

7 (c) TEMPORARY WORKERS.—Section 214(g) (8
8 U.S.C. 1184(g)) is amended—

9 (1) in paragraph (1)—

10 (A) by striking “(beginning with fiscal year
11 1992)”; and

12 (B) in subparagraph (A)—

13 (i) in clause (vii), by striking “each
14 succeeding fiscal year; or” and inserting
15 “each of fiscal years 2004, 2005, and
16 2006;”; and

17 (ii) by adding after clause (vii) the
18 following:

19 “(viii) 115,000 in the first fiscal year
20 beginning after the date of the enactment
21 of this clause; and

22 “(ix) the number calculated under
23 paragraph (9) in each fiscal year after the
24 year described in clause (viii); or”;

25 (2) in paragraph (5)—

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

3 (B) in subparagraph (C), by striking the
4 period at the end and inserting “; or”; and

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

6 “(D) has earned an advanced degree in
7 science, technology, engineering, or math.”;

8 (3) by redesignating paragraphs (9), (10), and
9 (11) as paragraphs (10), (11), and (12), respec-
10 tively; and

11 (4) by inserting after paragraph (8) the fol-
12 lowing:

13 “(9) If the numerical limitation in paragraph
14 (1)(A)—

15 “(A) is reached during a given fiscal year,
16 the numerical limitation under paragraph
17 (1)(A)(ix) for the subsequent fiscal year shall
18 be equal to 120 percent of the numerical limita-
19 tion of the given fiscal year; or

20 “(B) is not reached during a given fiscal
21 year, the numerical limitation under paragraph
22 (1)(A)(ix) for the subsequent fiscal year shall
23 be equal to the numerical limitation of the given
24 fiscal year.”.

1 (d) APPLICABILITY.—The amendment made by sub-
 2 section (c)(2) shall apply to any visa application—

3 (1) pending on the date of the enactment of
 4 this Act; or

5 (2) filed on or after such date of enactment.

6 **SEC. 407. MEDICAL SERVICES IN UNDERSERVED AREAS.**

7 Section 220(c) of the Immigration and Nationality
 8 Technical Corrections Act of 1994 (8 U.S.C. 1182 note;
 9 Public Law 103–416) is amended by striking “Act and
 10 before June 1, 2006.” and inserting “Act.”.

11 **TITLE V—IMMIGRATION**
 12 **LITIGATION REDUCTION**

13 **SEC. 501. CONSOLIDATION OF IMMIGRATION APPEALS.**

14 (a) REAPPORTIONMENT OF CIRCUIT COURT
 15 JUDGES.—The table in section 44(a) of title 28, United
 16 States Code, is amended in the item relating to the Fed-
 17 eral Circuit by striking “12” and inserting “15”.

18 (b) REVIEW OF ORDERS OF REMOVAL.—Section
 19 242(b) (8 U.S.C. 1252(b)) is amended—

20 (1) in paragraph (2), by striking the first sen-
 21 tence and inserting “The petition for review shall be
 22 filed with the United States Court of Appeals for the
 23 Federal Circuit.”;

24 (2) in paragraph (5)(B), by adding at the end
 25 the following: “Any appeal of a decision by the dis-

1 trict court under this paragraph shall be filed with
2 the United States Court of Appeals for the Federal
3 Circuit.”; and

4 (3) in paragraph (7), by amending subpara-
5 graph (C) to read as follows:

6 “(C) CONSEQUENCE OF INVALIDATION
7 AND VENUE OF APPEALS.—

8 “(i) INVALIDATION.—If the district
9 court rules that the removal order is in-
10 valid, the court shall dismiss the indict-
11 ment for violation of section 243(a).

12 “(ii) APPEALS.—The United States
13 Government may appeal a dismissal under
14 clause (i) to the United States Court of
15 Appeals for the Federal Circuit within 30
16 days after the date of the dismissal. If the
17 district court rules that the removal order
18 is valid, the defendant may appeal the dis-
19 trict court decision to the United States
20 Court of Appeals for the Federal Circuit
21 within 30 days after the date of completion
22 of the criminal proceeding.”.

23 (c) REVIEW OF ORDERS REGARDING INADMISSABLE
24 ALIENS.—Section 242(e) (8 U.S.C. 1252(e)) is amended
25 by adding at the end the following new paragraph:

1 “(6) VENUE.—The petition to appeal any deci-
2 sion by the district court pursuant to this subsection
3 shall be filed with the United States Court of Ap-
4 peals for the Federal Circuit.”.

5 (d) EXCLUSIVE JURISDICTION.—Section 242(g) (8
6 U.S.C. 1252(g)) is amended—

7 (1) by striking “Except”; and inserting the fol-
8 lowing:

9 “(1) IN GENERAL.—Except”; and

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

11 “(2) APPEALS.—Notwithstanding any other
12 provision of law, the United States Court of Appeals
13 for the Federal Circuit shall have exclusive jurisdic-
14 tion to review a district court order arising from any
15 action taken, or proceeding brought, to remove or
16 exclude an alien from the United States, including
17 a district court order granting or denying a petition
18 for writ of habeas corpus.”.

19 (e) JURISDICTION OF THE UNITED STATES COURT
20 OF APPEALS FOR THE FEDERAL CIRCUIT.—

21 (1) EXCLUSIVE JURISDICTION.—Section
22 1295(a) of title 28, United States Code, is amended
23 by adding at the end the following new paragraph:

24 “(15) of an appeal to review a final administra-
25 tive order or a district court decision arising from

1 any action taken, or proceeding brought, to remove
2 or exclude an alien from the United States.”.

3 (2) CONFORMING AMENDMENTS.—Such section
4 1295(a) is further amended—

5 (A) in paragraph (13), by striking “and”;
6 and

7 (B) in paragraph (14), by striking the pe-
8 riod at the end and inserting a semicolon and
9 “and”.

10 (f) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the United States
12 Court of Appeals for the Federal Circuit for each of the
13 fiscal years 2007 through 2011 such sums as may be nec-
14 essary to carry out this subsection, including the hiring
15 of additional attorneys for the such Court.

16 (g) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect upon the date of enactment
18 of this Act and shall apply to any final agency order or
19 district court decision entered on or after the date of en-
20 actment of this Act.

21 **SEC. 502. ADDITIONAL IMMIGRATION PERSONNEL.**

22 (a) DEPARTMENT OF HOMELAND SECURITY.—

23 (1) TRIAL ATTORNEYS.—In each of fiscal years
24 2007 through 2011, the Secretary shall, subject to
25 the availability of appropriations for such purpose,

1 increase the number of positions for attorneys in the
2 Office of General Counsel of the Department who
3 represent the Department in immigration matters by
4 not less than 100 above the number of such posi-
5 tions for which funds were made available during
6 each preceding fiscal year.

7 (2) AUTHORIZATION OF APPROPRIATIONS.—

8 There are authorized to be appropriated to the Sec-
9 retary for each of fiscal years 2007 through 2011
10 such sums as may be necessary to carry out this
11 subsection.

12 (b) DEPARTMENT OF JUSTICE.—

13 (1) LITIGATION ATTORNEYS.—In each of fiscal
14 years 2007 through 2011, the Attorney General
15 shall, subject to the availability of appropriations for
16 such purpose, increase by not less than 50 the num-
17 ber of positions for attorneys in the Office of Immi-
18 gration Litigation of the Department of Justice.

19 (2) 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.

1 (3) IMMIGRATION JUDGES.—In each of fiscal
2 years 2007 through 2011, the Attorney General
3 shall, subject to the availability of appropriations for
4 such purpose—

5 (A) increase by not less than 20 the num-
6 ber of full-time immigration judges compared to
7 the number of such positions for which funds
8 were made available during the preceding fiscal
9 year; and

10 (B) increase by not less than 80 the num-
11 ber of positions for personnel to support the im-
12 migration judges described in subparagraph (A)
13 compared to the number of such positions for
14 which funds were made available during the
15 preceding fiscal year.

16 (4) STAFF ATTORNEYS.—In each of fiscal years
17 2007 through 2011, the Attorney General shall, sub-
18 ject to the availability of appropriations for such
19 purpose—

20 (A) increase by not less than 10 the num-
21 ber of positions for full-time staff attorneys in
22 the Board of Immigration Appeals compared to
23 the number of such positions for which funds
24 were made available during the preceding fiscal
25 year; and

1 “(47)(A)(i) The term ‘order of removal’ means
2 the order of the immigration judge, the Board of
3 Immigration Appeals, or other administrative officer
4 to whom the Attorney General or the Secretary of
5 Homeland Security has delegated the responsibility
6 for determining whether an alien is removable, con-
7 cluding that the alien is removable, or ordering re-
8 moval.

9 “(ii) The term ‘order of deportation’ means the
10 order of the special inquiry officer, immigration
11 judge, the Board of Immigration Appeals, or other
12 such administrative officer to whom the Attorney
13 General has delegated the responsibility for deter-
14 mining whether an alien is deportable, concluding
15 that the alien is deportable, or ordering deportation.

16 “(B) An order described under subparagraph
17 (A) shall become final upon the earlier of—

18 “(i) a determination by the Board of Im-
19 migration Appeals affirming such order;

20 “(ii) the entry by the Board of Immigra-
21 tion Appeals of such order;

22 “(iii) the expiration of the period in which
23 any party is permitted to seek review of such
24 order by the Board of Immigration Appeals;

1 “(iv) the entry by an immigration judge of
2 such order, if appeal is waived by all parties; or

3 “(v) the entry by another administrative
4 officer of such order, at the conclusion of a
5 process authorized by law other than under sec-
6 tion 240.”.

7 (b) CONFORMING AMENDMENTS.—The Immigration
8 and Nationality Act is amended—

9 (1) in section 212(d)(12)(A) (8 U.S.C.
10 1182(d)(12)(A)), by inserting “an order of” before
11 “removal”; and

12 (2) in section 245A(g)(2)(B) (8 U.S.C.
13 1255a(g)(2)(B))—

14 (A) in the heading, by inserting “, RE-
15 MOVAL,” after “DEPORTATION”; and

16 (B) in clause (i), by striking “deporta-
17 tion,” and inserting “deportation or an order of
18 removal,”.

19 **SEC. 504. JUDICIAL REVIEW OF VISA REVOCATION.**

20 Section 221(i) (8 U.S.C. 1201(i)) is amended by
21 striking the last sentence and inserting “Notwithstanding
22 any other provision of law (statutory or nonstatutory), in-
23 cluding section 2241 of title 28, United States Code, or
24 any other habeas corpus provision, and sections 1361 and
25 1651 of such title, a revocation under this subsection may

1 not be reviewed by any court, and no court shall have ju-
2 risdiction to hear any claim arising from, or any challenge
3 to, such a revocation.”.

4 **SEC. 505. REINSTATEMENT OF REMOVAL ORDERS.**

5 (a) REINSTATEMENT.—

6 (1) IN GENERAL.—Section 241(a)(5) (8 U.S.C.
7 1231(a)(5)) is amended to read as follows:

8 “(5) REINSTATEMENT OF REMOVAL ORDERS
9 AGAINST ALIENS ILLEGALLY REENTERING.—

10 “(A) IN GENERAL.—If the Secretary of
11 Homeland Security finds that an alien has en-
12 tered the United States illegally after having
13 been removed, deported, or excluded or having
14 departed voluntarily, under an order of removal,
15 deportation, or exclusion, regardless of the date
16 of the original order or the date of the illegal
17 entry—

18 “(i) the order of removal, deportation,
19 or exclusion is reinstated from its original
20 date and is not subject to being reopened
21 or reviewed notwithstanding section
22 242(a)(2)(D);

23 “(ii) the alien is not eligible and may
24 not apply for any relief under this Act, re-
25 gardless of the date that an application or

1 request for such relief may have been filed
2 or made; and

3 “(iii) the alien shall be removed under
4 the order of removal, deportation, or exclu-
5 sion at any time after the illegal entry.

6 “(B) NO OTHER PROCEEDINGS.—Rein-
7 statement under this paragraph shall not re-
8 quire proceedings under section 240 or other
9 proceedings before an immigration judge.”.

10 (2) CONFORMING AMENDMENT.—Section
11 242(a)(2)(D) (8 U.S.C. 1252(a)(2)(D)) is amended
12 by striking “section)” and inserting “section or sec-
13 tion 241(a)(5))”.

14 (b) JUDICIAL REVIEW.—Section 242 (8 U.S.C. 1252)
15 is amended by adding at the end the following new sub-
16 section:

17 “(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER
18 SECTION 241(a)(5).—

19 “(1) REVIEW OF REINSTATEMENT.—Judicial
20 review of a determination under section 241(a)(5) is
21 available under subsection (a) of this section.

22 “(2) NO REVIEW OF ORIGINAL ORDER.—Not-
23 withstanding any other provision of law (statutory or
24 nonstatutory), including section 2241 of title 28,
25 United States Code, or any other habeas corpus pro-

1 vision, and sections 1361 and 1651 of such title, no
2 court shall have jurisdiction to review any cause or
3 claim, arising from or relating to any challenge to
4 the original order.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 subsections (a) and (b) shall take effect as if enacted on
7 April 1, 1997, and shall apply to all orders reinstated on
8 or after that date by the Secretary (or by the Attorney
9 General prior to March 1, 2003), regardless of the date
10 of the original order.

11 **SEC. 506. WITHHOLDING OF REMOVAL.**

12 (a) IN GENERAL.—Section 241(b)(3) (8 U.S.C.
13 1231(b)(3)) is amended—

14 (1) in subparagraph (A), by adding at the end
15 “The burden of proof is on the alien to establish
16 that the alien’s life or freedom would be threatened
17 in that country, and that race, religion, nationality,
18 membership in a particular social group, or political
19 opinion would be at least one central reason for such
20 threat.”; and

21 (2) in subparagraph (C), by striking “In deter-
22 mining whether an alien has demonstrated that the
23 alien’s life or freedom would be threatened for a rea-
24 son described in subparagraph (A)” and inserting
25 “For purposes of this paragraph,”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take effect as if enacted on May 11,
3 2005, and shall apply to applications for withholding of
4 removal made on or after such date.

5 **SEC. 507. CERTIFICATE OF REVIEWABILITY.**

6 (a) BRIEFS.—Section 242(b)(3)(C) (8 U.S.C.
7 1252(b)(3)(C)) is amended to read as follows:

8 “(C) BRIEFS.—

9 “(i) ALIEN’S BRIEF.—The alien shall
10 serve and file a brief in connection with a
11 petition for judicial review not later than
12 40 days after the date on which the admin-
13 istrative record is available. The court may
14 not extend this deadline except upon mo-
15 tion for good cause shown. If an alien fails
16 to file a brief within the time provided in
17 this subparagraph, the court shall dismiss
18 the appeal unless a manifest injustice
19 would result.

20 “(ii) UNITED STATES BRIEF.—The
21 United States shall not be afforded an op-
22 portunity to file a brief in response to the
23 alien’s brief until a judge issues a certifi-
24 cate of reviewability as provided in sub-
25 paragraph (D), unless the court requests

1 the United States to file a reply brief prior
2 to issuing such certification.”.

3 (b) CERTIFICATE OF REVIEWABILITY.—Section
4 242(b)(3) (8 U.S.C. 1252 (b)(3)) is amended by adding
5 at the end the following new subparagraphs:

6 “(D) CERTIFICATE OF REVIEWABILITY.—

7 “(i) After the alien has filed a brief,
8 the petition for review shall be assigned to
9 one judge on the Federal Circuit Court of
10 Appeals.

11 “(ii) Unless such judge issues a cer-
12 tificate of reviewability, the petition for re-
13 view shall be denied and the United States
14 may not file a brief.

15 “(iii) Such judge may not issue a cer-
16 tificate of reviewability under clause (ii)
17 unless the petitioner establishes a prima
18 facie case that the petition for review
19 should be granted.

20 “(iv) Such judge shall complete all ac-
21 tion on such certificate, including ren-
22 dering judgment, not later than 60 days
23 after the date on which the judge is as-
24 signed the petition for review, unless an
25 extension is granted under clause (v).

1 “(v) Such judge may grant, on the
2 judge’s own motion or on the motion of a
3 party, an extension of the 60-day period
4 described in clause (iv) if—

5 “(I) all parties to the proceeding
6 agree to such extension; or

7 “(II) such extension is for good
8 cause shown or in the interests of jus-
9 tice, and the judge states the grounds
10 for the extension with specificity.

11 “(vi) If no certificate of reviewability
12 is issued before the end of the period de-
13 scribed in clause (iv), including any exten-
14 sion under clause (v), the petition for re-
15 view shall be denied, any stay or injunction
16 on petitioner’s removal shall be dissolved
17 without further action by the court or the
18 Government, and the alien may be re-
19 moved.

20 “(vii) If such judge issues a certificate
21 of reviewability under clause (ii), the Gov-
22 ernment shall be afforded an opportunity
23 to file a brief in response to the alien’s
24 brief. The alien may serve and file a reply
25 brief not later than 14 days after service of

1 the Government brief, and the court may
2 not extend this deadline except upon mo-
3 tion for good cause shown.

4 “(E) NO FURTHER REVIEW OF DECISION
5 NOT TO ISSUE A CERTIFICATE OF
6 REVIEWABILITY.—The decision of a judge on
7 the Federal Circuit Court of Appeals not to
8 issue a certificate of reviewability or to deny a
9 petition for review, shall be the final decision
10 for the Federal Circuit Court of Appeals and
11 may not be reconsidered, reviewed, or reversed
12 by the such Court through any mechanism or
13 procedure.”.

14 **SEC. 508. DISCRETIONARY DECISIONS ON MOTIONS TO RE-**
15 **OPEN OR RECONSIDER.**

16 (a) EXERCISE OF DISCRETION.—Section 240(c) (8
17 U.S.C. 1229a(c)) is amended—

18 (1) in paragraph (6), by adding at the end the
19 following new subparagraph:

20 “(D) DISCRETION.—The decision to grant
21 or deny a motion to reconsider is committed to
22 the Attorney General’s discretion.”; and

23 (2) in paragraph (7), by adding at the end the
24 following new subparagraph:

1 “(D) DISCRETION.—The decision to grant
2 or deny a motion to reopen is committed to the
3 Attorney General’s discretion.”.

4 (b) ELIGIBILITY FOR PROTECTION FROM REMOVAL
5 TO ALTERNATIVE COUNTRY.—Section 240(c) (8 U.S.C.
6 1229a(c)), as amended by subsection (a), is further
7 amended by adding at the end of paragraph (7)(C) the
8 following new clause:

9 “(v) SPECIAL RULE FOR ALTER-
10 NATIVE COUNTRIES OF REMOVAL.—The re-
11 quirements of this paragraph may not
12 apply if—

13 “(I) the Secretary of Homeland
14 Security is seeking to remove the alien
15 to an alternative or additional country
16 of removal under paragraph (1)(C),
17 2(D), or 2(E) of section 241(b) that
18 was not considered during the alien’s
19 prior removal proceedings;

20 “(II) the alien’s motion to reopen
21 is filed within 30 days after receiving
22 notice of the Secretary’s intention to
23 remove the alien to that country; and

24 “(III) the alien establishes a
25 prima facie case that the alien is enti-

1 tled by law to withholding of removal
2 under section 241(b)(3) or protection
3 under the Convention Against Torture
4 and Other Cruel, Inhuman or Degrad-
5 ing Treatment or Punishment, done
6 at New York December 10, 1984,
7 with respect to that particular coun-
8 try.”.

9 (c) EFFECTIVE DATE.—This amendment made by
10 this section shall apply to motions to reopen or reconsider
11 which are filed on or after the date of the enactment of
12 this Act in removal, deportation, or exclusion proceedings,
13 whether a final administrative order is entered before, on,
14 or after the date of the enactment of this Act.

15 **SEC. 509. PROHIBITION OF ATTORNEY FEE AWARDS FOR**
16 **REVIEW OF FINAL ORDERS OF REMOVAL.**

17 (a) IN GENERAL.—Section 242 (8 U.S.C. 1252), as
18 amended by section 505(b), is further amended by adding
19 at the end the following new subsection:

20 “(i) PROHIBITION ON ATTORNEY FEE AWARDS.—
21 Notwithstanding any other provision of law, a court may
22 not award fees or other expenses to an alien based upon
23 the alien’s status as a prevailing party in any proceedings
24 relating to an order of removal issued under this Act, un-
25 less the court of appeals concludes that the determination

1 of the Attorney General or the Secretary of Homeland Se-
2 curity that the alien was removable under sections 212
3 and 237 was not substantially justified.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply to proceedings relating to an
6 order of removal issued on or after the date of the enact-
7 ment of this Act, regardless of the date that such fees
8 or expenses were incurred.

9 **SEC. 510. BOARD OF IMMIGRATION APPEALS.**

10 (a) REQUIREMENT TO HEAR CASES IN 3-MEMBER
11 PANELS.—

12 (1) IN GENERAL.—Except as provided in para-
13 graphs (2) and (3), cases before the Board of Immi-
14 gration Appeals of the Department of Justice shall
15 be heard by 3-member panels of such Board.

16 (2) HEARING BY A SINGLE MEMBER.—A 3-
17 member panel of the Board of Immigration Appeals
18 or a member of such Board alone may—

19 (A) summarily dismiss any appeal or por-
20 tion of any appeal in any case which—

21 (i) the party seeking the appeal fails
22 to specify the reasons for the appeal;

23 (ii) the only reason for the appeal
24 specified by such party involves a finding

1 of fact or a conclusion of law that was con-
2 ceded by that party at a prior proceeding;

3 (iii) the appeal is from an order that
4 granted such party the relief that had been
5 requested;

6 (iv) the appeal is determined to be
7 filed for an improper purpose, such as to
8 cause unnecessary delay; or

9 (v) the appeal lacks an arguable basis
10 in fact or in law and is not supported by
11 a good faith argument for extension, modi-
12 fication, or reversal of existing law;

13 (B) grant an unopposed motion or a mo-
14 tion to withdraw an appeal pending before the
15 Board; or

16 (C) adjudicate a motion to remand any ap-
17 peal—

18 (i) from the decision of an officer of
19 the Department if the appropriate official
20 of the Department requests that the mat-
21 ter be remanded back for further consider-
22 ation;

23 (ii) if remand is required because of a
24 defective or missing transcript; or

1 (iii) if remand is required for any
2 other procedural or ministerial issue.

3 (3) HEARING EN BANC.—The Board of Immi-
4 gration Appeals may, by a majority vote of the
5 Board members—

6 (A) consider any case as the full Board en
7 banc; or

8 (B) reconsider as the full Board en banc
9 any case that has been considered or decided by
10 a 3-member panel.

11 (b) AFFIRMANCE WITHOUT OPINION.—Upon individ-
12 ualized review of a case, the Board of Immigration Ap-
13 peals may affirm the decision of an immigration judge
14 without opinion only if—

15 (1) the decision of the immigration judge re-
16 solved all issues in the case;

17 (2) the issue on appeal is squarely controlled by
18 existing Board or Federal court precedent and does
19 not involve the application of precedent to a novel
20 fact situation;

21 (3) the factual and legal questions raised on ap-
22 peal are so insubstantial that the case does not war-
23 rant the issuance of a written opinion in the case;
24 and

1 (4) the Board approves both the result reached
2 in the decision below and all of the reasoning of that
3 decision.

4 (c) REQUIREMENT FOR REGULATIONS.—Not later
5 than 180 days after the date of the enactment of this Act,
6 the Attorney General shall promulgate regulations to carry
7 out this section.

8 **TITLE VI—MISCELLANEOUS**

9 **SEC. 601. TECHNICAL AND CONFORMING AMENDMENTS.**

10 The Attorney General, in consultation with the Sec-
11 retary, shall, as soon as practicable but not later than 90
12 days after the date of the enactment of this Act, submit
13 to Congress a draft of any technical and conforming
14 changes in the Immigration and Nationality Act which are
15 necessary to reflect the changes in the substantive provi-
16 sions of law made by the Homeland Security Act of 2002,
17 this Act, or any other provision of law.

Calendar No. 376

109TH CONGRESS
2^D SESSION

S. 2454

A BILL

To amend the Immigration and Nationality Act to provide for comprehensive reform and for other purposes.

MARCH 16 (legislative day, MARCH 15), 2006

Read twice and ordered to be placed on the calendar