

110TH CONGRESS
1ST SESSION

H. R. 4065

To amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2007

Mr. SENSENBRENNER (for himself, Mr. BILBRAY, Mr. DREIER, Mr. FEENEY, Mr. GALLEGLY, Mr. GOODLATTE, Mr. DANIEL E. LUNGREN of California, Mrs. MYRICK, Mr. PORTER, and Mr. COBLE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Border Enforcement, Employment Verification, and Ille-
6 gal Immigration Control Act”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. State defined.
- Sec. 3. Sense of Congress on setting a manageable level of immigration.

TITLE I—SECURING UNITED STATES BORDERS

- Sec. 101. Achieving operational control on the border.
- Sec. 102. National Strategy for Border Security.
- Sec. 103. Implementation of cross-border security agreements.
- Sec. 104. Biometric data enhancements.
- Sec. 105. One Face at the Border Initiative.
- Sec. 106. Secure communication.
- Sec. 107. Port of entry inspection personnel.
- Sec. 108. Canine detection teams.
- Sec. 109. Secure Border Initiative financial accountability.
- Sec. 110. Border Patrol training capacity review.
- Sec. 111. Airspace security mission impact review.
- Sec. 112. Repair of private infrastructure on border.
- Sec. 113. Border Patrol unit for Virgin Islands.
- Sec. 114. Report on progress in tracking travel of Central American gangs along international border.
- Sec. 115. Collection of data.
- Sec. 116. Deployment of radiation detection portal equipment at United States ports of entry.
- Sec. 117. Consultation with businesses and firms.
- Sec. 118. Sense of Congress regarding enforcement of immigration laws.
- Sec. 119. Securing access to Border Patrol uniforms.
- Sec. 120. US-VISIT.
- Sec. 121. Voluntary relocation program extension.
- Sec. 122. Completion of background and security checks.

TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY
AND PRESENCE

- Sec. 201. Definition of aggravated felony.
- Sec. 202. Alien smuggling and related offenses.
- Sec. 203. Improper entry by, or presence of, aliens.
- Sec. 204. Reentry of removed aliens.
- Sec. 205. Prohibiting carrying or using a firearm during and in relation to an alien smuggling crime.
- Sec. 206. Clarifying changes.
- Sec. 207. Voluntary departure reform.
- Sec. 208. Deterring aliens ordered removed from remaining in the United States unlawfully and from unlawfully returning to the United States after departing voluntarily.
- Sec. 209. Establishment of the Forensic Documents Laboratory.
- Sec. 210. Section 1546 amendments.
- Sec. 211. Motions to reopen or reconsider.
- Sec. 212. Reform of passport, visa, and immigration fraud offenses.
- Sec. 213. Criminal detention of aliens.
- Sec. 214. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.

- Sec. 215. Conforming amendment.
- Sec. 216. Inadmissibility for passport and immigration fraud.
- Sec. 217. Removal for passport and immigration fraud.
- Sec. 218. Reduction in immigration backlog.
- Sec. 219. Federal affirmation of assistance in the immigration law enforcement by States and political subdivisions of States.
- Sec. 220. Training of State and local law enforcement personnel relating to the enforcement of immigration laws.
- Sec. 221. Financial assistance to State and local police agencies that assist in the enforcement of immigration laws.
- Sec. 222. Institutional Removal Program (IRP).
- Sec. 223. State Criminal Alien Assistance Program (SCAAP).
- Sec. 224. State authorization for assistance in the enforcement of immigration laws encouraged.

TITLE III—BORDER SECURITY COOPERATION AND ENFORCEMENT

- Sec. 301. Joint strategic plan for United States border surveillance and support.
- Sec. 302. Border Security on protected land.
- Sec. 303. Border Security threat assessment and information sharing test and evaluation exercise.
- Sec. 304. Border Security Advisory Committee.
- Sec. 305. Permitted use of Homeland Security grant funds for Border Security activities.
- Sec. 306. Center of Excellence for Border Security.
- Sec. 307. Sense of Congress regarding cooperation with Indian Nations.
- Sec. 308. Communication between Government agencies and the Department of Homeland Security.
- Sec. 309. Red Zone Defense Border Intelligence Pilot program.

TITLE IV—DETENTION AND REMOVAL

- Sec. 401. Mandatory detention for aliens apprehended at or between ports of entry.
- Sec. 402. Expansion and effective management of detention facilities.
- Sec. 403. Enhancing transportation capacity for unlawful aliens.
- Sec. 404. Denial of admission to nationals of country denying or delaying accepting alien.
- Sec. 405. Report on financial burden of repatriation.
- Sec. 406. Training program.
- Sec. 407. Expedited removal.
- Sec. 408. Report on apprehension and detention of certain aliens.
- Sec. 409. Listing of immigration violators in the National Crime Information Center database.

TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

- Sec. 501. Enhanced Border Security coordination and management.
- Sec. 502. Office of Air and Marine Operations.
- Sec. 503. Shadow Wolves transfer.

TITLE VI—TERRORIST AND CRIMINAL ALIENS

- Sec. 601. Removal of terrorist aliens.

- Sec. 602. Detention of dangerous aliens.
- Sec. 603. Increase in criminal penalties.
- Sec. 604. Precluding admissibility of aggravated felons and other criminals.
- Sec. 605. Precluding refugee or asylee adjustment of status for aggravated felonies.
- Sec. 606. Removing drunk drivers.
- Sec. 607. Designated county law enforcement assistance program.
- Sec. 608. Rendering inadmissible and deportable aliens participating in criminal street gangs; detention; ineligibility from protection from removal and asylum.
- Sec. 609. Naturalization reform.
- Sec. 610. Expedited removal for aliens inadmissible on criminal or security grounds.
- Sec. 611. Technical correction for effective date in change in inadmissibility for terrorists under REAL ID Act.
- Sec. 612. Bar to good moral character.
- Sec. 613. Strengthening definitions of “aggravated felony” and “conviction”.
- Sec. 614. Deportability for criminal offenses.
- Sec. 615. Declaration of Congress.
- Sec. 616. Report on criminal alien prosecution.
- Sec. 617. Determination of immigration status of individuals charged with Federal offenses.
- Sec. 618. Increased criminal penalties for document fraud and crimes of violence.
- Sec. 619. Laundering of monetary instruments.

TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION

Subtitle A—Employment Eligibility Verification System

- Sec. 701. Employment eligibility verification system.
- Sec. 702. Employment eligibility verification process.
- Sec. 703. Expansion of employment eligibility verification system to previously hired individuals and recruiting and referring.
- Sec. 704. Basic pilot program.
- Sec. 705. Hiring halls.
- Sec. 706. Penalties.
- Sec. 707. Report on Social Security card-based employment eligibility verification.
- Sec. 708. Extension of preemption to required construction of day laborer shelters.
- Sec. 709. Effective date.
- Sec. 710. Limitation on verification responsibilities of Commissioner of Social Security.
- Sec. 711. Report on employment eligibility verification system.

Subtitle B—Employment Eligibility Verification and Anti-Identity Theft Act

- Sec. 721. Short title.
- Sec. 722. Requiring agencies to send “no-match” letters.
- Sec. 723. Requiring employers to take action upon receipt of a “no-match” letter.
- Sec. 724. Verification system.
- Sec. 725. Design and operation of system.
- Sec. 726. Extension of time.
- Sec. 727. Retention of proof of verification completion.

- Sec. 728. Termination of employment.
- Sec. 729. Final verification.
- Sec. 730. Employer violations.
- Sec. 731. Limitation on use.
- Sec. 732. Federal Tort Claims Act remedy.
- Sec. 733. Protection from liability for actions taken on the basis of information.

Subtitle C—Improved Security for Birth Certificates

- Sec. 741. Definitions.
- Sec. 742. Applicability of minimum standards to local governments.
- Sec. 743. Minimum standards for Federal recognition.
- Sec. 744. Establishment of electronic birth and death registration systems.
- Sec. 745. Electronic verification of vital events.
- Sec. 746. Grants to States.
- Sec. 747. Authority.
- Sec. 748. Repeal.

Subtitle D—Stop the Misuse of ITINs Act of 2007

- Sec. 751. Short title.
- Sec. 752. Notification of employment status of individuals not authorized to work in the United States.

Subtitle E—Miscellaneous

- Sec. 761. Sharing of social security data for immigration enforcement purposes.
- Sec. 762. Additional worksite enforcement and fraud detection agents.

TITLE VIII—IMMIGRATION LITIGATION ABUSE REDUCTION

- Sec. 801. Board of Immigration Appeals removal order authority.
- Sec. 802. Judicial review of visa revocation.
- Sec. 803. Reinstatement.
- Sec. 804. Withholding of removal.
- Sec. 805. Certificate of reviewability.
- Sec. 806. Waiver of rights in nonimmigrant visa issuance.
- Sec. 807. Clarification of jurisdiction on review.
- Sec. 808. Fees and expenses in judicial proceedings.

TITLE IX—PRESCREENING OF AIR PASSENGERS

- Sec. 901. Immediate International Passenger Prescreening Pilot program.

TITLE X—SECURITY AND FAIRNESS ENHANCEMENT

- Sec. 1001. Short Title.
- Sec. 1002. Elimination of diversity immigrant program.

TITLE XI—OATH OF RENUNCIATION AND ALLEGIANCE

- Sec. 1101. Oath of renunciation and allegiance.

TITLE XII—ELIMINATION OF CORRUPTION AND PREVENTION OF ACQUISITION OF IMMIGRATION BENEFITS THROUGH FRAUD

- Sec. 1201. Short Title.
- Sec. 1202. Findings.
- Sec. 1203. Structure of the Office of Security and Investigations.

- Sec. 1204. Authority of the Office of Security and Investigations to investigate internal corruption.
- Sec. 1205. Authority of the Office of Security and Investigations to detect and investigate immigration benefits fraud.
- Sec. 1206. Increase in full-time Office of Security and Investigations personnel.
- Sec. 1207. Annual report.
- Sec. 1208. Investigations of fraud to precede immigration benefits grant.
- Sec. 1209. Elimination of the Fraud Detection and National Security Office.
- Sec. 1210. Security fee.

TITLE XIII—TEMPORARY AGRICULTURAL WORKER PROGRAM

- Sec. 1301. Admission of temporary H-2A workers.
- Sec. 1302. Legal assistance provided by the legal services corporation.
- Sec. 1303. Effective date.

TITLE XIV—MISCELLANEOUS

- Sec. 1401. Prevention of congressional reapportionment distortions.
- Sec. 1402. Increase in H-1B visa numbers.

1 **SEC. 2. STATE DEFINED.**

2 In titles I, III, IV, and V of this Act, the term
3 “State” has the meaning given it in section 2(14) of the
4 Homeland Security Act of 2002 (6 U.S.C. 101(14)).

5 **SEC. 3. SENSE OF CONGRESS ON SETTING A MANAGEABLE** 6 **LEVEL OF IMMIGRATION.**

7 It is the sense of Congress that the immigration and
8 naturalization policy shall be designed to enhance the eco-
9 nomic, social and cultural well-being of the United States
10 of America.

11 **TITLE I—SECURING UNITED** 12 **STATES BORDERS**

13 **SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE** 14 **BORDER.**

15 (a) IN GENERAL.—Not later than 18 months after
16 the date of the enactment of this Act, the Secretary of

1 Homeland Security shall take all actions the Secretary de-
2 termines necessary and appropriate to achieve and main-
3 tain operational control over the entire international land
4 and maritime borders of the United States, to include the
5 following—

6 (1) systematic surveillance of the international
7 land and maritime borders of the United States
8 through more effective use of personnel and tech-
9 nology, such as unmanned aerial vehicles, ground-
10 based sensors, satellites, radar coverage, and cam-
11 eras;

12 (2) physical infrastructure enhancements to
13 prevent unlawful entry by aliens into the United
14 States and facilitate access to the international land
15 and maritime borders by United States Customs and
16 Border Protection, such as additional checkpoints,
17 all weather access roads, and vehicle barriers;

18 (3) hiring and training as expeditiously as pos-
19 sible additional Border Patrol agents authorized
20 under section 5202 of the Intelligence Reform and
21 Terrorism Prevention Act of 2004 (Public Law 108–
22 458); and

23 (4) increasing deployment of United States
24 Customs and Border Protection personnel to areas
25 along the international land and maritime borders of

1 the United States where there are high levels of un-
2 lawful entry by aliens and other areas likely to be
3 impacted by such increased deployment.

4 (b) OPERATIONAL CONTROL DEFINED.—In this sec-
5 tion, the term “operational control” means the prevention
6 of all unlawful entries into the United States, including
7 entries by terrorists, other unlawful aliens, instruments of
8 terrorism, narcotics, and other contraband.

9 (c) REPORT.—Not later than one year after the date
10 of the enactment of this Act and annually thereafter, the
11 Secretary shall submit to Congress a report on the
12 progress made toward achieving and maintaining oper-
13 ational control over the entire international land and mari-
14 time borders of the United States in accordance with this
15 section.

16 **SEC. 102. NATIONAL STRATEGY FOR BORDER SECURITY.**

17 (a) SURVEILLANCE PLAN.—Not later than six
18 months after the date of the enactment of this Act, the
19 Secretary of Homeland Security shall submit to the appro-
20 priate congressional committees a comprehensive plan for
21 the systematic surveillance of the international land and
22 maritime borders of the United States. The plan shall in-
23 clude the following:

24 (1) An assessment of existing technologies em-
25 ployed on such borders.

1 (2) A description of whether and how new sur-
2 veillance technologies will be compatible with exist-
3 ing surveillance technologies.

4 (3) A description of how the United States Cus-
5 toms and Border Protection is working, or is ex-
6 pected to work, with the Directorate of Science and
7 Technology of the Department of Homeland Secu-
8 rity to identify and test surveillance technology.

9 (4) A description of the specific surveillance
10 technology to be deployed.

11 (5) The identification of any obstacles that may
12 impede full implementation of such deployment.

13 (6) A detailed estimate of all costs associated
14 with the implementation of such deployment and
15 continued maintenance of such technologies.

16 (7) A description of how the Department of
17 Homeland Security is working with the Federal
18 Aviation Administration on safety and airspace con-
19 trol issues associated with the use of unmanned aer-
20 ial vehicles in the National Airspace System.

21 (b) NATIONAL STRATEGY FOR BORDER SECURITY.—

22 Not later than one year after the date of the enactment
23 of this Act, the Secretary of Homeland Security, in con-
24 sultation with the heads of other appropriate Federal
25 agencies, shall submit to the appropriate congressional

1 committees a National Strategy for Border Security to
2 achieve operational control over all ports of entry into the
3 United States and the international land and maritime
4 borders of the United States. The Secretary shall update
5 the Strategy as needed and shall submit to the appropriate
6 congressional committees, not later than 30 days after
7 each such update, the updated Strategy. The National
8 Strategy for Border Security shall include the following:

9 (1) The implementation timeline for the surveil-
10 lance plan described in subsection (a).

11 (2) An assessment of the threat posed by ter-
12 rorists and terrorist groups that may try to infiltrate
13 the United States at points along the international
14 land and maritime borders of the United States.

15 (3) A risk assessment of all ports of entry to
16 the United States and all portions of the inter-
17 national land and maritime borders of the United
18 States, except for ports of entry and facilities sub-
19 ject to vulnerability assessments under section
20 70102 or 70103 of title 46, United States Code,
21 with respect to—

22 (A) preventing the entry of terrorists,
23 other unlawful aliens, instruments of terrorism,
24 narcotics, and other contraband into the United
25 States; and

1 (B) protecting critical infrastructure at or
2 near such ports of entry or borders.

3 (4) An assessment of all legal requirements that
4 prevent achieving and maintaining operational con-
5 trol over the entire international land and maritime
6 borders of the United States.

7 (5) An assessment of the most appropriate,
8 practical, and cost-effective means of defending the
9 international land and maritime borders of the
10 United States against threats to security and illegal
11 transit, including intelligence capacities, technology,
12 equipment, personnel, and training needed to ad-
13 dress security vulnerabilities.

14 (6) An assessment of staffing needs for all bor-
15 der security functions, taking into account threat
16 and vulnerability information pertaining to the bor-
17 ders and the impact of new security programs, poli-
18 cies, and technologies.

19 (7) A description of the border security roles
20 and missions of Federal, State, regional, local, and
21 tribal authorities, and recommendations with respect
22 to how the Department of Homeland Security can
23 improve coordination with such authorities, to enable
24 border security enforcement to be carried out in an
25 efficient and effective manner.

1 (8) A prioritization of research and development
2 objectives to enhance the security of the inter-
3 national land and maritime borders of the United
4 States.

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

10 (10) An assessment of additional detention fa-
11 cilities and bed space 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 in accordance with the National Strategy for
15 Border Security required under this subsection and
16 the mandatory detention requirement described in
17 section 401 of this Act.

18 (11) A description of how the Secretary shall
19 ensure accountability and performance metrics with-
20 in the appropriate agencies of the Department of
21 Homeland Security responsible for implementing the
22 border security measures determined necessary upon
23 completion of the National Strategy for Border Se-
24 curity.

1 (12) A timeline for the implementation of the
2 additional security measures determined necessary
3 as part of the National Strategy for Border Secu-
4 rity, including a prioritization of security measures,
5 realistic deadlines for addressing the security and
6 enforcement needs, and resource estimates and allo-
7 cations.

8 (c) CONSULTATION.—In creating the National Strat-
9 egy for Border Security described in subsection (b), the
10 Secretary shall consult with—

11 (1) State, local, and tribal authorities along the
12 international land and maritime borders of the
13 United States; and

14 (2) an appropriate cross-section of private sec-
15 tor and nongovernmental organizations with relevant
16 expertise.

17 (d) COORDINATION.—The National Strategy for Bor-
18 der Security described in subsection (b) shall be consistent
19 with the National Strategy for Maritime Security devel-
20 oped pursuant to Homeland Security Presidential Direc-
21 tive 13.

22 (e) IMMEDIATE ACTION.—Nothing in this section
23 shall be construed to relieve the Secretary of the responsi-
24 bility to take all actions necessary and appropriate to
25 achieve and maintain operational control over the entire

1 international land and maritime borders of the United
2 States pursuant to section 101 of this Act or any other
3 provision of law.

4 (f) REPORTING OF IMPLEMENTING LEGISLATION.—
5 After submittal of the National Strategy for Border Secu-
6 rity described in subsection (b) to the appropriate congres-
7 sional committees, such committees shall promptly report
8 to their respective House legislation authorizing necessary
9 security measures based on its evaluation of the National
10 Strategy for Border Security.

11 (g) APPROPRIATE CONGRESSIONAL COMMITTEE.—
12 For purposes of this title and section 301(b), the term
13 “appropriate congressional committee” has the meaning
14 given it in section 2(2) of the Homeland Security Act of
15 2002 (6 U.S.C. 101(2)).

16 (h) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed to alter, impact, diminish, or in
18 any way undermine the authority of the Administrator of
19 the Federal Aviation Administration to oversee, regulate,
20 and control the safe and efficient use of the airspace of
21 the United States.

22 **SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY**
23 **AGREEMENTS.**

24 (a) IN GENERAL.—Not later than six months after
25 the date of the enactment of this Act, the Secretary of

1 Homeland Security shall submit to the appropriate con-
2 gressional committees (as defined in section 102(g)) a re-
3 port on the implementation of the cross-border security
4 agreements signed by the United States with Mexico and
5 Canada, including recommendations on improving co-
6 operation with such countries to enhance border security.

7 (b) UPDATES.—The Secretary shall regularly update
8 the Committee on Homeland Security of the House of
9 Representatives concerning such implementation.

10 **SEC. 104. BIOMETRIC DATA ENHANCEMENTS.**

11 Not later than October 1, 2008, the Secretary of
12 Homeland Security shall—

13 (1) in consultation with the Attorney General,
14 enhance connectivity between the IDENT and
15 IAFIS fingerprint databases to ensure more expedi-
16 tious data searches; and

17 (2) in consultation with the Secretary of State,
18 collect all fingerprints from each alien required to
19 provide fingerprints during the alien's initial enroll-
20 ment in the integrated entry and exit data system
21 described in section 110 of the Illegal Immigration
22 Reform and Immigrant Responsibility Act of 1996
23 (8 U.S.C. 1221 note).

1 **SEC. 105. ONE FACE AT THE BORDER INITIATIVE.**

2 Not later than 90 days after the date of the enact-
3 ment of this Act, the Secretary of Homeland Security shall
4 submit to Congress a report—

5 (1) describing the tangible and quantifiable
6 benefits of the One Face at the Border Initiative es-
7 tablished by the Department of Homeland Security;

8 (2) identifying goals for and challenges to in-
9 creased effectiveness of the One Face at the Border
10 Initiative;

11 (3) providing a breakdown of the number of in-
12 spectors who were—

13 (A) personnel of the United States Cus-
14 toms Service before the date of the establish-
15 ment of the Department of Homeland Security;

16 (B) personnel of the Immigration and Nat-
17 uralization Service before the date of the estab-
18 lishment of the Department;

19 (C) personnel of the Department of Agri-
20 culture before the date of the establishment of
21 the Department; or

22 (D) hired after the date of the establish-
23 ment of the Department;

24 (4) describing the training time provided to
25 each employee on an annual basis for the various

1 training components of the One Face at the Border
2 Initiative; and

3 (5) outlining the steps taken by the Department
4 to ensure that expertise is retained with respect to
5 customs, immigration, and agriculture inspection
6 functions under the One Face at the Border Initia-
7 tive.

8 **SEC. 106. SECURE COMMUNICATION.**

9 The Secretary of Homeland Security shall, as expedi-
10 tiously as practicable, develop and implement a plan to
11 ensure clear and secure two-way communication capabili-
12 ties, including the specific use of satellite communica-
13 tions—

14 (1) among all Border Patrol agents conducting
15 operations between ports of entry;

16 (2) between Border Patrol agents and their re-
17 spective Border Patrol stations;

18 (3) between Border Patrol agents and residents
19 in remote areas along the international land border
20 who do not have mobile communications, as the Sec-
21 retary determines necessary; and

22 (4) between all appropriate Department of
23 Homeland Security border security agencies and
24 State, local, and tribal law enforcement agencies.

1 **SEC. 107. PORT OF ENTRY INSPECTION PERSONNEL.**

2 In each of fiscal years 2009 through 2012, the Sec-
3 retary of Homeland Security shall, subject to the avail-
4 ability of appropriations, increase by not less than 250 the
5 number of positions for full-time active duty port of entry
6 inspectors. There are authorized to be appropriated to the
7 Secretary such sums as may be necessary for each such
8 fiscal year to hire, train, equip, and support such addi-
9 tional inspectors under this section.

10 **SEC. 108. CANINE DETECTION TEAMS.**

11 In each of fiscal years 2009 through 2013, the Sec-
12 retary of Homeland Security shall, subject to the avail-
13 ability of appropriations, increase by not less than 25 per-
14 cent above the number of such positions for which funds
15 were allotted for the preceding fiscal year the number of
16 trained detection canines for use at United States ports
17 of entry and along the international land and maritime
18 borders of the United States.

19 **SEC. 109. SECURE BORDER INITIATIVE FINANCIAL AC-**
20 **COUNTABILITY.**

21 (a) IN GENERAL.—The Inspector General of the De-
22 partment of Homeland Security shall review each contract
23 action related to the Department's Secure Border Initia-
24 tive having a value greater than \$20,000,000, to deter-
25 mine whether each such action fully complies with applica-
26 ble cost requirements, performance objectives, program

1 milestones, inclusion of small, minority, and women-owned
2 business, and timelines. The Inspector General shall com-
3 plete a review under this subsection with respect to a con-
4 tract action—

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

7 (2) upon the conclusion of the performance of
8 the contract.

9 (b) REPORT BY INSPECTOR GENERAL.—Upon com-
10 pletion of each review described in subsection (a), the In-
11 spector General shall submit to the Secretary of Homeland
12 Security a report containing the findings of the review,
13 including findings regarding any cost overruns, significant
14 delays in contract execution, lack of rigorous departmental
15 contract management, insufficient departmental financial
16 oversight, bundling that limits the ability of small business
17 to compete, or other high risk business practices.

18 (c) REPORT BY SECRETARY.—Not later than 30 days
19 after the receipt of each report required under subsection
20 (b), the Secretary of Homeland Security shall submit to
21 the appropriate congressional committees (as defined in
22 section 102(g)) a report on the findings of the report by
23 the Inspector General and the steps the Secretary has
24 taken, or plans to take, to address the problems identified
25 in such report.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
2 tion to amounts that are otherwise authorized to be appro-
3 priated to the Office of the Inspector General, an addi-
4 tional amount equal to at least five percent for fiscal year
5 2009, at least six percent for fiscal year 2010, and at least
6 seven percent for fiscal year 2011 of the overall budget
7 of the Office for each such fiscal year is authorized to be
8 appropriated to the Office to enable the Office to carry
9 out this section.

10 (e) ACTION BY INSPECTOR GENERAL.—In the event
11 the Inspector General becomes aware of any improper con-
12 duct or wrongdoing in accordance with the contract review
13 required under subsection (a), the Inspector General shall,
14 as expeditiously as practicable, refer information related
15 to such improper conduct or wrongdoing to the Secretary
16 of Homeland Security or other appropriate official in the
17 Department of Homeland Security for purposes of evalu-
18 ating whether to suspend or debar the contractor.

19 **SEC. 110. BORDER PATROL TRAINING CAPACITY REVIEW.**

20 (a) IN GENERAL.—The Comptroller General of the
21 United States shall conduct a review of the basic training
22 provided to Border Patrol agents by the Department of
23 Homeland Security to ensure that such training is pro-
24 vided as efficiently and cost-effectively as possible.

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

3 (1) An evaluation of the length and content of
4 the basic training curriculum provided to new Bor-
5 der Patrol agents by the Federal Law Enforcement
6 Training Center, including a description of how the
7 curriculum has changed since September 11, 2001.

8 (2) A review and a detailed breakdown of the
9 costs incurred by United States Customs and Border
10 Protection and the Federal Law Enforcement Train-
11 ing Center to train one new Border Patrol agent.

12 (3) A comparison, based on the review and
13 breakdown under paragraph (2) of the costs, effec-
14 tiveness, scope, and quality, including geographic
15 characteristics, with other similar law enforcement
16 training programs provided by State and local agen-
17 cies, non-profit organizations, universities, and the
18 private sector.

19 (4) An evaluation of whether and how utilizing
20 comparable non-Federal training programs, pro-
21 ficiency testing to streamline training, and long-dis-
22 tance learning programs may affect—

23 (A) the cost-effectiveness of increasing the
24 number of Border Patrol agents trained per

1 year and reducing the per agent costs of basic
2 training; and

3 (B) the scope and quality of basic training
4 needed to fulfill the mission and duties of a
5 Border Patrol agent.

6 **SEC. 111. AIRSPACE SECURITY MISSION IMPACT REVIEW.**

7 Not later than 120 days after the date of the enact-
8 ment of this Act, the Secretary of Homeland Security shall
9 submit to the appropriate congressional committees a re-
10 port detailing the impact the airspace security mission in
11 the National Capital Region (in this section referred to
12 as the “NCR”) will have on the ability of the Department
13 of Homeland Security to protect the international land
14 and maritime borders of the United States. Specifically,
15 the report shall address:

16 (1) The specific resources, including personnel,
17 assets, and facilities, devoted or planned to be de-
18 voted to the NCR airspace security mission, and
19 from where those resources were obtained or are
20 planned to be obtained.

21 (2) An assessment of the impact that diverting
22 resources to support the NCR mission has or is ex-
23 pected to have on the traditional missions in and
24 around the international land and maritime borders
25 of the United States.

1 **SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BOR-**
2 **DER.**

3 (a) IN GENERAL.—Subject to the amount appro-
4 priated in subsection (d) of this section, the Secretary of
5 Homeland Security shall reimburse property owners for
6 costs associated with repairing damages to the property
7 owners' private infrastructure constructed on a United
8 States Government right-of-way delineating the inter-
9 national land border when such damages are—

10 (1) the result of unlawful entry of aliens; and

11 (2) confirmed by the appropriate personnel of
12 the Department of Homeland Security and sub-
13 mitted to the Secretary for reimbursement.

14 (b) VALUE OF REIMBURSEMENTS.—Reimbursements
15 for submitted damages as outlined in subsection (a) shall
16 not exceed the value of the private infrastructure prior to
17 damage.

18 (c) REPORTS.—Not later than six months after the
19 date of the enactment of this Act and every subsequent
20 six months until the amount appropriated for this section
21 is expended in its entirety, the Secretary of Homeland Se-
22 curity shall submit to the Committee on Homeland Secu-
23 rity of the House of Representatives a report that details
24 the expenditures and circumstances in which those ex-
25 penditures were made pursuant to this section.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
2 shall be authorized to be appropriated an initial \$50,000
3 for each fiscal year to carry out this section.

4 **SEC. 113. BORDER PATROL UNIT FOR VIRGIN ISLANDS.**

5 Not later than September 30, 2008, the Secretary of
6 Homeland Security shall establish at least one Border Pa-
7 trol unit for the Virgin Islands of the United States.

8 **SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF**
9 **CENTRAL AMERICAN GANGS ALONG INTER-**
10 **NATIONAL BORDER.**

11 Not later than one year after the date of the enact-
12 ment of this Act, the Secretary of Homeland Security shall
13 report to the Committee on Homeland Security of the
14 House of Representatives on the progress of the Depart-
15 ment of Homeland Security in tracking the travel of Cen-
16 tral American gangs across the international land border
17 of the United States and Mexico.

18 **SEC. 115. COLLECTION OF DATA.**

19 Beginning on October 1, 2008, the Secretary of
20 Homeland Security shall annually compile data on the fol-
21 lowing categories of information:

22 (1) The number of unauthorized aliens who re-
23 quire medical care taken into custody by Border Pa-
24 trol officials.

1 (2) The number of unauthorized aliens with se-
2 rious injuries or medical conditions Border Patrol
3 officials encounter, and refer to local hospitals or
4 other health facilities.

5 (3) The number of unauthorized aliens with se-
6 rious injuries or medical conditions who arrive at
7 United States ports of entry and subsequently are
8 admitted into the United States for emergency med-
9 ical care, as reported by United States Customs and
10 Border Protection.

11 (4) The number of unauthorized aliens de-
12 scribed in paragraphs (2) and (3) who subsequently
13 are taken into custody by the Department of Home-
14 land Security after receiving medical treatment.

15 **SEC. 116. DEPLOYMENT OF RADIATION DETECTION POR-**
16 **TAL EQUIPMENT AT UNITED STATES PORTS**
17 **OF ENTRY.**

18 (a) DEPLOYMENT.—Not later than one year after the
19 date of the enactment of this Act, the Secretary of Home-
20 land Security shall deploy radiation portal monitors at all
21 United States ports of entry and facilities as determined
22 by the Secretary to facilitate the screening of all inbound
23 cargo for nuclear and radiological material.

24 (b) REPORT.—Not later than 180 days after the date
25 of the enactment of this Act, the Secretary shall submit

1 to the Committee on Homeland Security of the House of
2 Representatives and the Committee on Homeland Security
3 and Governmental Affairs of the Senate a report on the
4 Department's progress toward carrying out the deploy-
5 ment described in subsection (a).

6 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
7 authorized to be appropriated to the Secretary to carry
8 out subsection (a) such sums as may be necessary for each
9 of fiscal years 2008 and 2009.

10 **SEC. 117. CONSULTATION WITH BUSINESSES AND FIRMS.**

11 With respect to the Secure Border Initiative and for
12 the purposes of strengthening security along the inter-
13 national land and maritime borders of the United States,
14 the Secretary of Homeland Security shall conduct out-
15 reach to and consult with members of the private sector,
16 including business councils, associations, and small, mi-
17 nority-owned, women-owned, and disadvantaged busi-
18 nesses to—

19 (1) identify existing and emerging technologies,
20 best practices, and business processes;

21 (2) maximize economies of scale, cost-effective-
22 ness, systems integration, and resource allocation;
23 and

1 (3) identify the most appropriate contract
2 mechanisms to enhance financial accountability and
3 mission effectiveness of border security programs.

4 **SEC. 118. SENSE OF CONGRESS REGARDING ENFORCE-**
5 **MENT OF IMMIGRATION LAWS.**

6 (a) FINDINGS.—Congress finds the following:

7 (1) A primary duty of the Federal Government
8 is to secure the homeland and ensure the safety of
9 United States citizens and lawful residents.

10 (2) As a result of the terrorist attacks on Sep-
11 tember 11, 2001, perpetrated by al Qaida terrorists
12 on United States soil, the United States is engaged
13 in a Global War on Terrorism.

14 (3) According to the National Commission on
15 Terrorist Attacks Upon the United States, up to 15
16 of the 9/11 hijackers could have been intercepted or
17 deported through more diligent enforcement of im-
18 migration laws.

19 (4) Six years after those attacks, there is still
20 a failure to secure the borders of the United States
21 against illegal entry.

22 (5) The failure to enforce immigration laws in
23 the interior of the United States means that illegal
24 aliens face little or no risk of apprehension or re-
25 moval once they are in the country.

1 from articles, materials, or supplies mined, produced, or
2 manufactured, as the case may be, in the United States.

3 **SEC. 120. US-VISIT.**

4 Not later than one year after the date of the enact-
5 ment of this Act, the Secretary of Homeland Security, in
6 consultation with the heads of other appropriate Federal
7 agencies, shall submit to the appropriate congressional
8 committees a timeline for—

9 (1) equipping all land border ports of entry
10 with the US-VISIT system;

11 (2) developing and deploying at all land border
12 ports of entry the exit component of the US-VISIT
13 system; and

14 (3) making interoperable all immigration
15 screening systems operated by the Department of
16 Homeland Security.

17 **SEC. 121. VOLUNTARY RELOCATION PROGRAM EXTENSION.**

18 Section 5739(e) of title 5, United States Code, is
19 amended by striking “7” and inserting “12”.

20 **SEC. 122. COMPLETION OF BACKGROUND AND SECURITY**
21 **CHECKS.**

22 Section 103 of the Immigration and Nationality Act
23 (8 U.S.C. 1103) is amended by adding at the end the fol-
24 lowing:

1 “(i) Notwithstanding any other provision of law, the
2 Secretary of Homeland Security, the Attorney General,
3 and the courts may not—

4 “(1) grant or order the grant of adjustment of
5 status of an alien to that of an alien lawfully admit-
6 ted for permanent residence,

7 “(2) grant or order the grant of any other sta-
8 tus, relief, protection from removal, or other benefit
9 under the immigration laws, or

10 “(3) issue any documentation evidencing or re-
11 lated to such grant by the Secretary, the Attorney
12 General, or any court,

13 until an IBIS check on the alien has been initiated at a
14 Treasury Enforcement Communications System (TECS)
15 access level of no less than Level 3, results from the check
16 have been returned, and any derogatory information has
17 been obtained and assessed, and until any other such
18 background and security checks have been completed as
19 the Secretary may require.

20 “(j) Notwithstanding any other provision of law, the
21 Secretary of Homeland Security, the Attorney General,
22 and the courts may not—

23 “(1) grant or order the grant of adjustment of
24 status of an alien to that of an alien lawfully admit-
25 ted for permanent residence,

1 “(2) grant or order the grant of any other sta-
2 tus, relief, protection from removal, or other benefit
3 under the immigration laws, or

4 “(3) issue any documentation evidencing or re-
5 lated to such grant by the Secretary, the Attorney
6 General, or any court,

7 until any suspected or alleged fraud relating to the grant-
8 ing of any status (including the granting of adjustment
9 of status), relief, protection from removal, or other benefit
10 under this subsection has been fully investigated and
11 found to be unsubstantiated.”.

12 **TITLE II—COMBATTING ALIEN**
13 **SMUGGLING AND ILLEGAL**
14 **ENTRY AND PRESENCE**

15 **SEC. 201. DEFINITION OF AGGRAVATED FELONY.**

16 (a) IN GENERAL.—Section 101(a)(43) of the Immi-
17 gration and Nationality Act (8 U.S.C. 1101(a)(43)) is
18 amended—

19 (1) in subparagraph (N), by striking “para-
20 graph (1)(A) or (2) of section 274(a) (relating to
21 alien smuggling)” and inserting “section 274(a)”
22 and by adding a semicolon at the end;

23 (2) in subparagraph (O), by striking “section
24 275(a) or 276 committed by an alien who was pre-
25 viously deported on the basis of a conviction for an

1 offense described in another subparagraph of this
2 paragraph”, and inserting “section 275 or section
3 276 for which the term of imprisonment was at least
4 one year”; and

5 (3) by striking all that follows subparagraph
6 (U) and inserting the following:

7 “The term applies—

8 “(i) to an offense described in this para-
9 graph whether in violation of Federal or State
10 law and applies to such an offense in violation
11 of the law of a foreign country for which the
12 term of imprisonment was completed within the
13 previous 15 years;

14 “(ii) even if the length of the term of im-
15 prisonment is based on recidivist or other en-
16 hancements;

17 “(iii) to an offense described in this para-
18 graph even if the statute setting forth the of-
19 fense of conviction sets forth other offenses not
20 described in this paragraph, unless the alien af-
21 firmatively shows, by a preponderance of evi-
22 dence and using public records related to the
23 conviction, including court records, police
24 records and presentence reports, that the par-

1 ticular facts underlying the offense do not sat-
2 isfy the generic definition of that offense; and

3 “(iv) regardless of whether the conviction
4 was entered before, on, or after September 30,
5 1996, and notwithstanding any other provision
6 of law (including any effective date).”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) shall apply to offenses that occur before,
9 on, or after the date of the enactment of this Act.

10 **SEC. 202. ALIEN SMUGGLING AND RELATED OFFENSES.**

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

14 “ALIEN SMUGGLING AND RELATED OFFENSES

15 “SEC. 274. (a) CRIMINAL OFFENSES AND PEN-
16 ALTIES.—

17 “(1) PROHIBITED ACTIVITIES.—Whoever—

18 “(A) assists, encourages, directs, or in-
19 duces a person to come to or enter the United
20 States, or to attempt to come to or enter the
21 United States, knowing or in reckless disregard
22 of the fact that such person is an alien who
23 lacks lawful authority to come to or enter the
24 United States;

25 “(B) assists, encourages, directs, or in-
26 duces a person to come to or enter the United

1 States at a place other than a designated port
2 of entry or place other than as designated by
3 the Secretary of Homeland Security, regardless
4 of whether such person has official permission
5 or lawful authority to be in the United States,
6 knowing or in reckless disregard of the fact
7 that such person is an alien;

8 “(C) 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, where the transportation or
13 movement will aid or further in any manner the
14 person’s illegal entry into or illegal presence in
15 the United States;

16 “(D) transports, moves, harbors, conceals,
17 or shields from detection a person outside of
18 the United States knowing or in reckless dis-
19 regard of the fact that such person is an alien
20 in unlawful transit from one country to another
21 or on the high seas, under circumstances in
22 which the person is in fact seeking to enter the
23 United States without official permission or
24 lawful authority; or

1 “(E) conspires or attempts to commit any
2 of the preceding acts,
3 shall be punished as provided in paragraph (2), re-
4 gardless of any official action which may later be
5 taken with respect to such alien.

6 “(2) CRIMINAL PENALTIES.—A person who vio-
7 lates the provisions of paragraph (1) shall—

8 “(A) except as provided in subparagraphs
9 (D) through (H), in the case where the offense
10 was not committed for commercial advantage,
11 profit, or private financial gain, be imprisoned
12 for not more than 5 years, or fined under title
13 18, United States Code, or both;

14 “(B) except as provided in subparagraphs
15 (C) through (H), where the offense was com-
16 mitted for commercial advantage, profit, or pri-
17 vate financial gain—

18 “(i) in the case of a first violation of
19 this subparagraph, be imprisoned for not
20 more than 20 years, or fined under title
21 18, United States Code, or both; and

22 “(ii) for any subsequent violation, be
23 imprisoned for not less than 3 years nor
24 more than 20 years, or fined under title
25 18, United States Code, or both;

1 “(C) in the case where the offense was
2 committed for commercial advantage, profit, or
3 private financial gain and involved 2 or more
4 aliens other than the offender, be imprisoned
5 for not less than 3 nor more than 20 years, or
6 fined under title 18, United States Code, or
7 both;

8 “(D) in the case where the offense furthers
9 or aids the commission of any other offense
10 against the United States or any State, which
11 offense is punishable by imprisonment for more
12 than 1 year, be imprisoned for not less than 5
13 nor more than 20 years, or fined under title 18,
14 United States Code, or both;

15 “(E) in the case where any participant in
16 the offense created a substantial risk of death
17 or serious bodily injury to another person, in-
18 cluding—

19 “(i) transporting a person in an en-
20 gine compartment, storage compartment,
21 or other confined space;

22 “(ii) transporting a person at an ex-
23 cessive speed or in excess of the rated ca-
24 pacity of the means of transportation; or

1 “(iii) transporting or harboring a per-
2 son in a crowded, dangerous, or inhumane
3 manner,
4 be imprisoned not less than 5 nor more than 20
5 years, or fined under title 18, United States
6 Code, or both;

7 “(F) in the case where the offense caused
8 serious bodily injury (as defined in section 1365
9 of title 18, United States Code, including any
10 conduct that would violate sections 2241 or
11 2242 of title 18, United States Code, if the con-
12 duct occurred in the special maritime and terri-
13 torial jurisdiction of the United States) to any
14 person, be imprisoned for not less than 7 nor
15 more than 30 years, or fined under title 18,
16 United States Code, or both;

17 “(G) in the case where the offense involved
18 an alien who the offender knew or had reason
19 to believe was an alien—

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

22 “(ii) intending to engage in such ter-
23 rorist activity,

1 be imprisoned for not less than 10 nor more
2 than 30 years, or fined under title 18, United
3 States Code, or both; and

4 “(H) in the case where the offense caused
5 or resulted in the death of any person, be pun-
6 ished by death or imprisoned for not less than
7 10 years, or any term of years, or for life, or
8 fined under title 18, United States Code, or
9 both.

10 “(3) EXTRATERRITORIAL JURISDICTION.—

11 There is extraterritorial Federal jurisdiction over the
12 offenses described in this subsection.

13 “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

14 “(1) IN GENERAL.—Any person who, during
15 any 12-month period, knowingly hires for employ-
16 ment at least 10 individuals with actual knowledge
17 that the individuals are aliens described in para-
18 graph (2), shall be fined under title 18, United
19 States Code, imprisoned for not more than 5 years,
20 or both.

21 “(2) ALIEN DESCRIBED.—A alien described in
22 this paragraph is an alien who—

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

1 “(B) has been brought into the United
2 States in violation of subsection (a).

3 “(c) SEIZURE AND FORFEITURE.—

4 “(1) IN GENERAL.—Any property, real or per-
5 sonal, that has been used to commit or facilitate the
6 commission of a violation of this section, the gross
7 proceeds of such violation, and any property trace-
8 able to such property or proceeds, shall be subject
9 to forfeiture.

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

20 “(d) AUTHORITY TO ARREST.—No officer or person
21 shall have authority to make any arrests for a violation
22 of any provision of this section except officers and employ-
23 ees designated by the Secretary of Homeland Security, ei-
24 ther individually or as a member of a class, and all other
25 officers whose duty it is to enforce criminal laws.

1 “(e) ADMISSIBILITY OF EVIDENCE.—

2 “(1) PRIMA FACIE EVIDENCE IN DETERMINA-
3 TIONS OF VIOLATIONS.—Notwithstanding any provi-
4 sion of the Federal Rules of Evidence, in deter-
5 mining whether a violation of subsection (a) has oc-
6 curred, any of the following shall be prima facie evi-
7 dence that an alien involved in the violation lacks
8 lawful authority to come to, enter, reside, remain, or
9 be in the United States or that such alien had come
10 to, entered, resided, remained or been present in the
11 United States in violation of law:

12 “(A) Any order, finding, or determination
13 concerning the alien’s status or lack thereof
14 made by a Federal judge or administrative ad-
15 judicator (including an immigration judge or an
16 immigration officer) during any judicial or ad-
17 ministrative proceeding authorized under the
18 immigration laws or regulations prescribed
19 thereunder.

20 “(B) An official record of the Department
21 of Homeland Security, Department of Justice,
22 or the Department of State concerning the
23 alien’s status or lack thereof.

1 “(C) Testimony by an immigration officer
2 having personal knowledge of the facts con-
3 cerning the alien’s status or lack thereof.

4 “(2) VIDEOTAPED TESTIMONY.—Notwith-
5 standing any provision of the Federal Rules of Evi-
6 dence, the videotaped (or otherwise audiovisually
7 preserved) deposition of a witness to a violation of
8 subsection (a) who has been deported or otherwise
9 expelled from the United States, or is otherwise un-
10 available to testify, may be admitted into evidence in
11 an action brought for that violation if the witness
12 was available for cross examination at the deposition
13 and the deposition otherwise complies with the Fed-
14 eral Rules of Evidence.

15 “(f) DEFINITIONS.—For purposes of this section:

16 “(1) The term ‘lawful authority’ means permis-
17 sion, authorization, or license that is expressly pro-
18 vided for in the immigration laws of the United
19 States or the regulations prescribed thereunder.
20 Such term does not include any such authority se-
21 cured by fraud or otherwise obtained in violation of
22 law, nor does it include authority that has been
23 sought but not approved. No alien shall be deemed
24 to have lawful authority to come to, enter, reside, re-
25 main, or be in the United States if such coming to,

1 entry, residence, remaining, or presence was, is, or
2 would be in violation of law.

3 “(2) The term ‘unlawful transit’ means travel,
4 movement, or temporary presence that violates the
5 laws of any country in which the alien is present, or
6 any country from which or to which the alien is trav-
7 eling or moving.”.

8 (b) CLERICAL AMENDMENT.—The item relating to
9 section 274 in the table of contents of such Act is amended
10 to read as follows:

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

11 **SEC. 203. IMPROPER ENTRY BY, OR PRESENCE OF, ALIENS.**

12 Section 275 of the Immigration and Nationality Act
13 (8 U.S.C. 1325) is amended—

14 (1) in the section heading, by inserting “UN-
15 LAWFUL PRESENCE;” after “IMPROPER TIME OR
16 PLACE;”;

17 (2) in subsection (a)—

18 (A) by striking “Any alien” and inserting
19 “Except as provided in subsection (b), any
20 alien”;

21 (B) by striking “or” before (3); and

22 (C) by inserting after “concealment of a
23 material fact,” the following: “or (4) is other-
24 wise present in the United States in violation of

1 the immigration laws or the regulations pre-
2 scribed thereunder,”;

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

5 “(c)(1) Whoever—

6 “(A) knowingly enters into a marriage for the
7 purpose of evading any provision of the immigration
8 laws; or

9 “(B) knowingly misrepresents the existence or
10 circumstances of a marriage—

11 “(i) in an application or document arising
12 under or authorized by the immigration laws of
13 the United States or the regulations prescribed
14 thereunder, or

15 “(ii) during any immigration proceeding
16 conducted by an administrative adjudicator (in-
17 cluding an immigration officer or examiner, a
18 consular officer, an immigration judge, or a
19 member of the Board of Immigration Appeals);
20 shall be fined under title 18, United States Code, or
21 imprisoned not more than 10 years, or both.

22 “(2) Whoever—

23 “(A) knowingly enters into two or more mar-
24 riages for the purpose of evading any provision of
25 the immigration laws; or

1 “(B) knowingly arranges, supports, or facili-
2 tates two or more marriages designed or intended to
3 evade any provision of the immigration laws;
4 shall be fined under title 18, United States Code, impris-
5 oned not less than 2 years nor more than 20 years, or
6 both.

7 “(3) An offense under this subsection continues until
8 the fraudulent nature of the marriage or marriages is dis-
9 covered by an immigration officer.

10 “(4) For purposes of this section, the term ‘pro-
11 ceeding’ includes an adjudication, interview, hearing, or
12 review.”;

13 (4) in subsection (d)—

14 (A) by striking “5 years” and inserting
15 “10 years”;

16 (B) by adding at the end the following:
17 “An offense under this subsection continues
18 until the fraudulent nature of the commercial
19 enterprise is discovered by an immigration offi-
20 cer.”; and

21 (5) by adding at the end the following new sub-
22 sections:

23 “(e)(1) Any alien described in paragraph (2)—

24 “(A) shall be fined under title 18, United
25 States Code, imprisoned not more than 10 years, or

1 both, if the offense described in such paragraph was
2 committed subsequent to a conviction or convictions
3 for commission of three or more misdemeanors in-
4 volving drugs, crimes against the person, or both, or
5 a felony;

6 “(B) whose violation was subsequent to convic-
7 tion for a felony for which the alien received a sen-
8 tence of 30 months or more, shall be fined under
9 title 18, United States Code, imprisoned not more
10 than 10 years, or both; or

11 “(C) whose violation was subsequent to convic-
12 tion for a felony for which the alien received a sen-
13 tence of 60 months or more, shall be fined under
14 title 18, United States Code, imprisoned not more
15 than 20 years, or both.

16 “(2) An alien described in this paragraph is an alien
17 who—

18 “(A) enters or attempts to enter the
19 United States at any time or place other than
20 as designated by immigration officers;

21 “(B) eludes examination or inspection by
22 immigration officers;

23 “(C) attempts to enter or obtains entry to
24 the United States by a willfully false or mis-

1 leading representation or the willful conceal-
2 ment of a material fact; or

3 “(D) is otherwise present in the United
4 States in violation of the immigration laws or
5 the regulations prescribed thereunder.

6 “(3) The prior convictions in subparagraph (A), (B),
7 or (C) of paragraph (1) are elements of those crimes and
8 the penalties in those subparagraphs shall apply only in
9 cases in which the conviction (or convictions) that form
10 the basis for the additional penalty are alleged in the in-
11 dictment or information and are proven beyond a reason-
12 able doubt at trial or admitted by the defendant in plead-
13 ing guilty. Any admissible evidence may be used to show
14 that the prior conviction is a qualifying crime, and the
15 criminal trial for a violation of this section shall not be
16 bifurcated.

17 “(4) An offense under subsection (a) or paragraph
18 (1) of this subsection continues until the alien is discov-
19 ered within the United States by immigration officers.

20 “(f) For purposes of this section, the term ‘attempts
21 to enter’ refers to the general intent of the alien to enter
22 the United States and does not refer to the intent of the
23 alien to violate the law.”.

1 **SEC. 204. REENTRY OF REMOVED ALIENS.**

2 Section 276 of the Immigration and Nationality Act
3 (8 U.S.C. 1326) is amended—

4 (1) in subsection (a)—

5 (A) in paragraph (2), by striking all that
6 follows “United States” the first place it ap-
7 pears and inserting a comma;

8 (B) in the matter following paragraph (2),
9 by striking “imprisoned not more than 2
10 years,” and inserting “imprisoned for a term of
11 not less than 1 year and not more than 2
12 years,”;

13 (C) by adding at the end the following: “It
14 shall be an affirmative defense to an offense
15 under this subsection that (A) prior to an
16 alien’s reembarkation at a place outside the
17 United States or an alien’s application for ad-
18 mission from foreign contiguous territory, the
19 Secretary of Homeland Security has expressly
20 consented to the alien’s reapplying for admis-
21 sion; or (B) with respect to an alien previously
22 denied admission and removed, such alien was
23 not required to obtain such advance consent
24 under this Act or any prior Act.”;

25 (2) in subsection (b)—

1 (A) in paragraph (1), by striking “impris-
2 oned not more than 10 years,” and insert “im-
3 prisoned for a term of not less than 5 years and
4 not more than 10 years,”;

5 (B) in paragraph (2), by striking “impris-
6 oned not more than 20 years,” and insert “im-
7 prisoned for a term of not less than 10 years
8 and not more than 20 years,”;

9 (C) in paragraph (3), by striking “. or”
10 and inserting “; or”;

11 (D) in paragraph (4), by striking “impris-
12 oned for not more than 10 years,” and insert
13 “imprisoned for a term of not less than 5 years
14 and not more than 10 years,”; and

15 (E) by adding at the end the following:
16 “The prior convictions in paragraphs (1) and
17 (2) are elements of enhanced crimes and the
18 penalties under such paragraphs shall apply
19 only where the conviction (or convictions) that
20 form the basis for the additional penalty are al-
21 leged in the indictment or information and are
22 proven beyond a reasonable doubt at trial or
23 admitted by the defendant in pleading guilty.
24 Any admissible evidence may be used to show
25 that the prior conviction is a qualifying crime

1 and the criminal trial for a violation of either
2 such paragraph shall not be bifurcated.”;

3 (3) in subsections (b)(3), (b)(4), and (c), by
4 striking “Attorney General” and inserting “Sec-
5 retary of Homeland Security” each place it appears;

6 (4) in subsection (c), by striking “242(h)(2)”
7 and inserting “241(a)(4)”; and

8 (5) by adding at the end the following new sub-
9 section:

10 “(e) For purposes of this section, the term ‘attempts
11 to enter’ refers to the general intent of the alien to enter
12 the United States and does not refer to the intent of the
13 alien to violate the law.”.

14 **SEC. 205. PROHIBITING CARRYING OR USING A FIREARM**
15 **DURING AND IN RELATION TO AN ALIEN**
16 **SMUGGLING CRIME.**

17 Section 924(e) of title 18, United States Code, is
18 amended—

19 (1) in paragraphs (1)(A) and (1)(D)(ii), by in-
20 serting “, alien smuggling crime,” after “crime of vi-
21 olence” each place it appears; and

22 (2) by adding at the end the following new
23 paragraph:

24 “(6) For purposes of this subsection, the term ‘alien
25 smuggling crime’ means any felony punishable under sec-

1 tion 274(a), 277, or 278 of the Immigration and Nation-
2 ality Act (8 U.S.C. 1324(a), 1327, or 1328).”.

3 **SEC. 206. CLARIFYING CHANGES.**

4 (a) EXCLUSION BASED ON FALSE CLAIM OF NA-
5 TIONALITY.—

6 (1) IN GENERAL.—Section 212(a)(6)(C)(ii) of
7 the Immigration and Nationality Act (8 U.S.C.
8 1182(a)(6)(C)(ii)) is amended—

9 (A) in the heading, by inserting “OR NA-
10 TIONALITY” after “CITIZENSHIP”; and

11 (B) by inserting “or national” after “cit-
12 izen” each place it appears.

13 (2) EFFECTIVE DATE.—The amendments made
14 by paragraph (1) shall take effect on the date of the
15 enactment of this Act and shall apply to acts occur-
16 ring before, on, or after such date.

17 (b) SHARING OF INFORMATION.—Section 290(b) of
18 such Act (8 U.S.C. 1360(b)) is amended—

19 (1) by inserting “, or as to any person seeking
20 any benefit or privilege under the immigration
21 laws,” after “United States”;

22 (2) by striking “Service” and inserting “Sec-
23 retary of Homeland Security”; and

24 (3) by striking “Attorney General” and insert-
25 ing “Secretary”.

1 (c) EXCEPTIONS AUTHORITY.—Section
2 212(a)(3)(B)(ii) of such Act (8 U.S.C. 1182(a)(3)(B)(ii))
3 is amended by striking “Subclause (VII)” and inserting
4 “Subclause (IX)”.

5 **SEC. 207. VOLUNTARY DEPARTURE REFORM.**

6 (a) ENCOURAGING ALIENS TO DEPART VOLUN-
7 TARIPLY.—

8 (1) AUTHORITY.—Subsection (a) of section
9 240B of the Immigration and Nationality Act (8
10 U.S.C. 1229c) is amended—

11 (A) by amending paragraph (1) to read as
12 follows:

13 “(1) IN LIEU OF REMOVAL PROCEEDINGS.—The
14 Secretary of Homeland Security may permit an alien
15 voluntarily to depart the United States at the alien’s
16 own expense under this subsection, in lieu of being
17 subject to proceedings under section 240, if the alien
18 is not described in section 237(a)(2)(A)(iii) or sec-
19 tion 237(a)(4).”;

20 (B) by striking paragraph (3);

21 (C) by redesignating paragraph (2) as
22 paragraph (3);

23 (D) by inserting after paragraph (1) the
24 following new paragraph:

1 “(2) PRIOR TO THE CONCLUSION OF REMOVAL
2 PROCEEDINGS.—After removal proceedings under
3 section 240 are initiated, the Attorney General may
4 permit an alien voluntarily to depart the United
5 States at the alien’s own expense under this sub-
6 section, prior to the conclusion of such proceedings
7 before an immigration judge, if the alien is not de-
8 scribed in section 237(a)(2)(A)(iii) or section
9 237(a)(4).”; and

10 (E) in paragraph (4), by striking “para-
11 graph (1)” and inserting “paragraphs (1) and
12 (2)”.

13 (2) VOLUNTARY DEPARTURE PERIOD.—Such
14 section is further amended—

15 (A) in subsection (a)(3), as redesignated
16 by paragraph (1)(C)—

17 (i) by amending subparagraph (A) to
18 read as follows:

19 “(A) IN LIEU OF REMOVAL.—Subject to
20 subparagraph (C), permission to depart volun-
21 tarily under paragraph (1) shall not be valid for
22 a period exceeding 120 days. The Secretary of
23 Homeland Security may require an alien per-
24 mitted to depart voluntarily under paragraph
25 (1) to post a voluntary departure bond, to be

1 surrendered upon proof that the alien has de-
2 parted the United States within the time speci-
3 fied.”;

4 (ii) in subparagraph (B), by striking
5 “subparagraphs (C) and (D)(ii)” and in-
6 serting “subparagraphs (D) and (E)(ii)”;

7 (iii) in subparagraphs (C) and (D), by
8 striking “subparagraph (B)” and inserting
9 “subparagraph (C)” each place it appears;

10 (iv) by redesignating subparagraphs
11 (B), (C), and (D) as subparagraphs (C),
12 (D), and (E), respectively; and

13 (v) by inserting after subparagraph
14 (A) the following new subparagraph:

15 “(B) PRIOR TO THE CONCLUSION OF RE-
16 MOVAL PROCEEDINGS.—Permission to depart
17 voluntarily under paragraph (2) shall not be
18 valid for a period exceeding 60 days, and may
19 be granted only after a finding that the alien
20 has established that the alien has the means to
21 depart the United States and intends to do so.
22 An alien permitted to depart voluntarily under
23 paragraph (2) must post a voluntary departure
24 bond, in an amount necessary to ensure that
25 the alien will depart, to be surrendered upon

1 proof that the alien has departed the United
2 States within the time specified. An immigra-
3 tion judge may waive posting of a voluntary de-
4 parture bond in individual cases upon a finding
5 that the alien has presented compelling evidence
6 that the posting of a bond will be a serious fi-
7 nancial hardship and the alien has presented
8 credible evidence that such a bond is unneces-
9 sary to guarantee timely departure.”; and

10 (B) in subsection (b)(2), by striking “60
11 days” and inserting “45 days”.

12 (3) VOLUNTARY DEPARTURE AGREEMENTS.—

13 Subsection (c) of such section is amended to read as
14 follows:

15 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

16 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

17 Voluntary departure will be granted only as part of
18 an affirmative agreement by the alien. A voluntary
19 departure agreement under subsection (b) shall in-
20 clude a waiver of the right to any further motion,
21 appeal, application, petition, or petition for review
22 relating to removal or relief or protection from re-
23 moval.

24 “(2) CONCESSIONS BY THE SECRETARY.—In
25 connection with the alien’s agreement to depart vol-

1 untarily under paragraph (1), the Secretary of
2 Homeland Security in the exercise of discretion may
3 agree to a reduction in the period of inadmissibility
4 under subparagraph (A) or (B)(i) of section
5 212(a)(9).

6 “(3) FAILURE TO COMPLY WITH AGREEMENT
7 AND EFFECT OF FILING TIMELY APPEAL.—If an
8 alien agrees to voluntary departure under this sec-
9 tion and fails to depart the United States within the
10 time allowed for voluntary departure or fails to com-
11 ply with any other terms of the agreement (including
12 a failure to timely post any required bond), the alien
13 automatically becomes ineligible for the benefits of
14 the agreement, subject to the penalties described in
15 subsection (d), and subject to an alternate order of
16 removal if voluntary departure was granted under
17 subsection (a)(2) or (b). However, if an alien agrees
18 to voluntary departure but later files a timely appeal
19 of the immigration judge’s decision granting vol-
20 untary departure, the alien may pursue the appeal
21 instead of the voluntary departure agreement. Such
22 appeal operates to void the alien’s voluntary depart-
23 ure agreement and the consequences thereof, but
24 the alien may not again be granted voluntary depart-
25 ure while the alien remains in the United States.”.

1 (4) ELIGIBILITY.—Subsection (e) of such sec-
2 tion is amended to read as follows:

3 “(e) ELIGIBILITY.—

4 “ (1) PRIOR GRANT OF VOLUNTARY DEPART-
5 TURE.—An alien shall not be permitted to depart
6 voluntarily 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) ADDITIONAL LIMITATIONS.—The Sec-
10 retary of Homeland Security may by regulation limit
11 eligibility or impose additional conditions for vol-
12 untary departure under subsection (a)(1) for any
13 class or classes of aliens. The Secretary or Attorney
14 General may by regulation limit eligibility or impose
15 additional conditions for voluntary departure under
16 subsection (a)(2) or (b) for any class or classes of
17 aliens. Notwithstanding any other provision of law
18 (statutory or nonstatutory), including section 2241
19 of title 28, United States Code, or any other habeas
20 corpus provision, and section 1361 and 1651 of such
21 title, no court may review any regulation issued
22 under this subsection.”.

23 (b) AVOIDING DELAYS IN VOLUNTARY DEPART-
24 TURE.—

1 (1) ALIEN’S OBLIGATION TO DEPART WITHIN
2 THE TIME ALLOWED.—Subsection (c) of section
3 240B of the Immigration and Nationality Act (8
4 U.S.C. 1229c), as amended by subsection (a), is fur-
5 ther amended by adding at the end the following
6 new paragraph:

7 “(4) VOLUNTARY DEPARTURE PERIOD NOT AF-
8 FECTED.—Except as expressly agreed to by the Sec-
9 retary of Homeland Security in writing in the exer-
10 cise of the Secretary’s discretion before the expira-
11 tion of the period allowed for voluntary departure,
12 no motion, appeal, application, petition, or petition
13 for review shall affect, reinstate, enjoin, delay, stay,
14 or toll the alien’s obligation to depart from the
15 United States during the period agreed to by the
16 alien and the Secretary.”.

17 (2) NO TOLLING.—Subsection (f) of such sec-
18 tion is amended by adding at the end the following
19 new sentence: “Notwithstanding any other provision
20 of law (statutory or nonstatutory), including section
21 2241 of title 28, United States Code, or any other
22 habeas corpus provision, and section 1361 and 1651
23 of such title, no court shall have jurisdiction to af-
24 fect, reinstate, enjoin, delay, stay, or toll the period
25 allowed for voluntary departure under this section.”.

1 (c) PENALTIES FOR FAILURE TO DEPART VOLUN-
2 TARIPLY.—

3 (1) PENALTIES FOR FAILURE TO DEPART.—

4 Subsection (d) of section 240B of the Immigration
5 and Nationality Act (8 U.S.C. 229e) is amended to
6 read as follows:

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

13 “(1) CIVIL PENALTY.—

14 “(A) IN GENERAL.—The alien will be liable
15 for a civil penalty of \$3,000.

16 “(B) SPECIFICATION IN ORDER.—The
17 order allowing voluntary departure shall specify
18 the amount of the penalty, which shall be ac-
19 knowledged by the alien on the record.

20 “(C) COLLECTION.—If the Secretary of
21 Homeland Security thereafter establishes that
22 the alien failed to depart voluntarily within the
23 time allowed, no further procedure will be nec-
24 essary to establish the amount of the penalty,
25 and the Secretary may collect the civil penalty

1 at any time thereafter and by whatever means
2 provided by law.

3 “(D) INELIGIBILITY FOR BENEFITS.—An
4 alien will be ineligible for any benefits under
5 this title until any civil penalty under this sub-
6 section is paid.

7 “(2) INELIGIBILITY FOR RELIEF.—The alien
8 will be ineligible during the time the alien remains
9 in the United States and for a period of 10 years
10 after the alien’s departure for any further relief
11 under this section and sections 240A, 245, 248, and
12 249.

13 “(3) REOPENING.—

14 “(A) IN GENERAL.—Subject to subpara-
15 graph (B), the alien will be ineligible to reopen
16 a final order of removal which took effect upon
17 the alien’s failure to depart, or the alien’s viola-
18 tion of the conditions for voluntary departure,
19 during the period described in paragraph (2).

20 “(B) EXCEPTION.—Subparagraph (A)
21 does not preclude a motion to reopen to seek
22 withholding of removal under section 241(b)(3)
23 or protection against torture.

1 The order permitting the alien to depart voluntarily
2 under this section shall inform the alien of the pen-
3 alties under this subsection.”.

4 (2) IMPLEMENTATION OF EXISTING STATUTORY
5 PENALTIES.—The Secretary of Homeland Security
6 shall implement regulations to provide for the impo-
7 sition and collection of penalties for failure to depart
8 under section 240B(d) of the Immigration and Na-
9 tionality Act, as amended by paragraph (1).

10 (d) EFFECTIVE DATES.—

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

18 (2) EXCEPTION.—The amendment made by
19 subsection (b)(2) shall take effect on the date of the
20 enactment of this Act and shall apply with respect
21 to any petition for review which is entered on or
22 after such date.

1 **SEC. 208. DETERRING ALIENS ORDERED REMOVED FROM**
2 **REMAINING IN THE UNITED STATES UNLAW-**
3 **FULLY AND FROM UNLAWFULLY RETURNING**
4 **TO THE UNITED STATES AFTER DEPARTING**
5 **VOLUNTARILY.**

6 (a) INADMISSIBLE ALIENS.—Paragraph (9) of sec-
7 tion 212(a) of the Immigration and Nationality Act (8
8 U.S.C. 1182(a)) is amended—

9 (1) in subparagraph (A)(i), by striking “within
10 5 years of” and inserting “before, or within 5 years
11 of,”; and

12 (2) in subparagraph (A)(ii) by striking “within
13 10 years of” and inserting “before, or within 10
14 years of,”.

15 (b) FAILURE TO DEPART, APPLY FOR TRAVEL DOC-
16 UMENTS, OR APPEAR FOR REMOVAL OR CONSPIRACY TO
17 PREVENT OR HAMPER DEPARTURE.—Section 274D of
18 such Act (8 U.S.C. 1324d) is amended—

19 (1) in subsection (a), by striking “Commis-
20 sioner” and inserting “Secretary of Homeland Secu-
21 rity”; and

22 (2) by adding at the end the following new sub-
23 section:

24 “(c) INELIGIBILITY FOR RELIEF.—

25 “(1) IN GENERAL.—Subject to paragraph (2),
26 unless a timely motion to reopen is granted under

1 section 240(c)(6), an alien described in subsection
2 (a) shall be ineligible for any discretionary relief
3 from removal pursuant to a motion to reopen during
4 the time the alien remains in the United States and
5 for a period of 10 years after the alien's departure.

6 “(2) EXCEPTION.—Paragraph (1) does not pre-
7 clude a motion to reopen to seek withholding of re-
8 moval under section 241(b)(3) or protection against
9 torture.”.

10 (c) DETERRING ALIENS FROM UNLAWFULLY RE-
11 TURNING TO THE UNITED STATES AFTER DEPARTING
12 VOLUNTARILY.—Section 275(a) of such Act (8 U.S.C.
13 1325(a)) is amended by inserting “or following an order
14 of voluntary departure” after “a subsequent commission
15 of any such offense”.

16 (d) EFFECTIVE DATES.—

17 (1) IN GENERAL.—The amendments made by
18 subsections (a) and (b) shall take effect on the date
19 of the enactment of this Act with respect to aliens
20 who are subject to a final order of removal, whether
21 the removal order was entered before, on, or after
22 such date.

23 (2) VOLUNTARY DEPARTURE.—The amendment
24 made by subsection (c) shall take effect on the date

1 of the enactment of this Act and shall apply with re-
2 spect to conduct occurring on or after such date.

3 **SEC. 209. ESTABLISHMENT OF THE FORENSIC DOCUMENTS**

4 **LABORATORY.**

5 (a) IN GENERAL.—The Secretary of Homeland Secu-
6 rity shall establish a Fraudulent Documents Center (to be
7 known as the Forensic Document Laboratory) to carry out
8 the following:

9 (1) Collect information from Federal, State,
10 and local law enforcement agencies, and foreign gov-
11 ernments on the production, sale, distribution, and
12 use of fraudulent documents intended to be used to
13 enter, travel, or remain within the United States un-
14 lawfully.

15 (2) Maintain the information described in para-
16 graph (1) in a comprehensive database.

17 (3) Maintain a repository of genuine and fraud-
18 ulent travel and identity document exemplars.

19 (4) Convert the information collected into re-
20 ports that provide guidance to government officials
21 in identifying fraudulent documents being used to
22 enter into, travel within, or remain in the United
23 States.

1 (5) Develop a system for distributing these re-
2 ports on an ongoing basis to appropriate Federal,
3 State, and local law enforcement agencies.

4 (b) DISTRIBUTION OF INFORMATION.—The Forensic
5 Document Laboratory shall distribute its reports to appro-
6 priate Federal, State, and local law enforcement agencies
7 on an ongoing basis.

8 **SEC. 210. SECTION 1546 AMENDMENTS.**

9 (a) Section 1546(a) of title 18, United States Code,
10 is amended in the first paragraph by inserting “distributes
11 (or intends to distribute),” before “or falsely” the first
12 place it appears.

13 (b) Section 1546(a) of title 18, United States Code,
14 is amended in the first paragraph by inserting “distrib-
15 uted,” before “or falsely” the second place it appears.

16 **SEC. 211. MOTIONS TO REOPEN OR RECONSIDER.**

17 (a) EXERCISE OF DISCRETION.—Section 240(c) of
18 the Immigration and Nationality Act (8 U.S.C. 1229a(c))
19 is amended—

20 (1) by adding at the end of paragraph (5) the
21 following new subparagraph:

22 “(D) DISCRETION.—The decision to grant
23 or deny a motion to reconsider is committed to
24 the Attorney General’s discretion.”; and

1 (2) by adding at the end of paragraph (6) the
2 following new subparagraph:

3 “(D) DISCRETION.—The decision to grant
4 or deny a motion to reopen is committed to the
5 Attorney General’s discretion.”.

6 (b) PRIMA FACIE ELIGIBILITY FOR PROTECTION
7 FROM REMOVAL TO ALTERNATIVE COUNTRY OF RE-
8 MOVAL NOT PREVIOUSLY CONSIDERED.—Section 240(c)
9 of the Immigration and Nationality Act (8 U.S.C. 1229a)
10 is further amended by adding at the end of paragraph (6)
11 the following new subparagraph:

12 “(E) SPECIAL RULE FOR ALTERNATIVE
13 COUNTRIES OF REMOVAL.—The time and nu-
14 merical limitations specified in this paragraph
15 shall not apply if—

16 “(i) the Secretary seeks to remove the
17 alien to an alternative or additional coun-
18 try of removal under subparagraph (D) or
19 (E) of section 241(b)(2) that had not been
20 considered during the alien’s prior removal
21 proceedings;

22 “(ii) the alien’s motion to reopen is
23 filed within 30 days after the date the
24 alien receives notice of the Secretary’s in-

1 tention to remove the alien to that country;

2 and

3 “(iii) the alien establishes a prima
4 facie case that the alien is entitled by law
5 to withholding of removal under section
6 241(b)(3) or protection under the Conven-
7 tion Against Torture with respect to that
8 particular country.”.

9 (c) **EFFECTIVE DATE.**—This section, and the amend-
10 ments made by this section, shall apply to motions to re-
11 open and reconsider that are filed on or after the date
12 of the enactment of this Act in removal, deportation, or
13 exclusion proceedings, regardless of whether a final ad-
14 ministrative order is entered before, on, or after such date.

15 **SEC. 212. REFORM OF PASSPORT, VISA, AND IMMIGRATION**

16 **FRAUD OFFENSES.**

17 Chapter 75 of title 18, United States Code is amend-
18 ed to read as follows:

19 **“CHAPTER 75—PASSPORT, VISA, AND**
20 **IMMIGRATION FRAUD**

“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. Attempts and conspiracies.

“1548. Increased penalties for certain offenses.

“1549. Seizure and forfeiture.

“1550. Additional jurisdiction.

“1551. Additional venue.

“1552. Definitions.

“1553. Authorized law enforcement activities.

1 **“§ 1541. Trafficking in passports**

2 “(a) Whoever, during any three-year period—

3 “(1) knowingly and without lawful authority
4 produces, issues, or transfers 10 or more passports;
5 or

6 “(2) knowingly forges, counterfeits, alters, or
7 falsely makes 10 or more passports; or

8 “(3) knowingly secures, possesses, uses, re-
9 ceives, buys, or sells 10 or more passports, knowing
10 the passports to be forged, counterfeited, altered,
11 falsely made, stolen, procured by fraud, issued, or
12 designed for the use of another, or produced or
13 issued without lawful authority; or

14 “(4) knowingly completes, mails, prepares, pre-
15 sents, signs, or submits 10 or more applications for
16 a United States passport (including any supporting
17 documentation) knowing the applications to contain
18 any false statement or representation;

19 shall be fined under this title, imprisoned not less than
20 3 years nor more than 20 years, or both.

21 “(b) Whoever knowingly and without lawful authority
22 produces, counterfeits, secures, possesses, or uses any offi-
23 cial paper, seal, hologram, image, text, symbol, stamp, en-
24 graving, plate, or other material used to make a passport

1 shall be fined under this title, imprisoned not less than
2 3 years nor more than 20 years, or both.

3 **“§ 1542. False statement in an application for a pass-**
4 **port**

5 “Whoever knowingly—

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

9 “(2) completes, mails, prepares, presents, signs,
10 or submits an application for a United States pass-
11 port (including any supporting documentation)
12 knowing it to contain any false statement or rep-
13 resentation; or

14 “(3) causes or attempts to cause the production
15 of a passport by means of any fraud or false applica-
16 tion for a United States passport (including any
17 supporting documentation), when such production
18 occurs or would occur at a facility authorized by the
19 Secretary of State for the production of passports;
20 shall be fined under this title, imprisoned not more than
21 15 years, or both.

22 **“§ 1543. Forgery and unlawful production of a pass-**
23 **port**

24 “(a) Whoever—

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

3 “(2) knowingly transfers any passport knowing
4 it to be forged, counterfeited, altered, falsely made,
5 stolen, or to have been produced or issued without
6 lawful authority;

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

9 “(b) Whoever knowingly and without lawful author-
10 ity—

11 “(1) produces, issues, authorizes, or verifies a
12 passport in violation of the laws, regulations, or
13 rules governing the issuance of the passport; or

14 “(2) produces, issues, authorizes, or verifies a
15 United States passport for or to any person not
16 owing allegiance to the United States; or

17 “(3) transfers or furnishes a passport to a per-
18 son for use when such person is not the person for
19 whom the passport was issued or designed;

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

22 **“§ 1544. Misuse of a passport**

23 “(a) Whoever—

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

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

5 “(3) knowingly secures, possesses, uses, re-
6 ceives, buys, or sells any passport knowing it to be
7 forged, counterfeited, altered, falsely made, procured
8 by fraud, or produced or issued without lawful au-
9 thority; or

10 “(4) knowingly violates the terms and condi-
11 tions of any safe conduct duly obtained and issued
12 under the authority of the United States;

13 shall be fined under this title, imprisoned not more than
14 15 years, or both.

15 “(b) Whoever knowingly uses any passport—

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

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

20 knowing the passport to be forged, counterfeited, altered,
21 falsely made, procured by fraud, produced or issued with-
22 out lawful authority, or issued or designed for the use of
23 another, shall be fined under this title, imprisoned not less
24 than 6 months nor more than 15 years, or both.

1 **“§ 1545. Schemes to defraud aliens**

2 “(a) Whoever knowingly defrauds any person in con-
3 nection with—

4 “(1) any matter that is authorized by or arises
5 under the immigration laws of the United States, or

6 “(2) any matter the offender claims or rep-
7 resents is authorized by or arises under the immi-
8 gration laws of the United States,

9 shall be fined under this title, imprisoned not more than
10 15 years, or both.

11 “(b) Whoever knowingly and falsely represents him-
12 self to be an attorney in any matter authorized by or aris-
13 ing under the immigration laws of the United States shall
14 be fined under this title, imprisoned not more than 15
15 years, or both.

16 **“§ 1546. Immigration and visa fraud**

17 “(a) Whoever—

18 “(1) knowingly uses any immigration document
19 issued or designed for the use of another; or

20 “(2) knowingly forges, counterfeits, alters, or
21 falsely makes any immigration document; or

22 “(3) knowingly completes, mails, prepares, pre-
23 sents, signs, or submits any immigration document
24 knowing it to contain any materially false statement
25 or representation; or

1 “(4) knowingly secures, possesses, uses, trans-
2 fers, receives, buys, or sells any immigration docu-
3 ment knowing it to be forged, counterfeited, altered,
4 falsely made, stolen, procured by fraud, issued or de-
5 signed for another, or produced or issued without
6 lawful authority; or

7 “(5) knowingly adopts or uses a false or ficti-
8 tious name to evade or to attempt to evade the im-
9 migration laws; or

10 “(6) knowingly and without lawful authority
11 transfers or furnishes an immigration document to
12 a person for use when such person is not the person
13 for whom the immigration document was issued or
14 designed;

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

17 “(b) Whoever, during any three-year period—

18 “(1) knowingly and without lawful authority
19 produces, issues, or transfers 10 or more immigra-
20 tion documents; or

21 “(2) knowingly forges, counterfeits, alters, or
22 falsely makes 10 or more immigration documents; or

23 “(3) knowingly secures, possesses, uses, buys,
24 or sells 10 or more immigration documents, knowing
25 the immigration documents to be forged, counter-

1 feited, altered, stolen, falsely made, procured by
2 fraud, or issued or designed for the use of another,
3 or produced or issued without lawful authority; or

4 “(4) knowingly completes, mails, prepares, pre-
5 sents, signs, or submits 10 or more immigration doc-
6 uments knowing the documents to contain any mate-
7 rially false statement or representation;

8 shall be fined under this title, imprisoned not less than
9 2 years nor more than 20 years, or both.

10 “(c) Whoever knowingly and without lawful authority
11 produces, counterfeits, secures, possesses, or uses any offi-
12 cial paper, seal, hologram, image, text, symbol, stamp, en-
13 graving, plate, or other material used to make an immigra-
14 tion document shall be fined under this title, imprisoned
15 not less than 2 years nor more than 20 years, or both.

16 **“§ 1547. Attempts and conspiracies**

17 “Whoever attempts or conspires to violate any section
18 within this chapter shall be punished in the same manner
19 as a completed violation of that section. An attempt of-
20 fense under this chapter is a general intent crime.

21 **“§ 1548. Increased penalties for certain offenses**

22 “(a) Whoever violates any of the sections within this
23 chapter with the intent to facilitate an act of international
24 terrorism (as defined in section 2331 of this title) shall

1 be fined under this title, imprisoned not less than 7 years
2 nor more than 25 years, or both.

3 “(b) Whoever violates any section in this chapter with
4 the intent to facilitate the commission of any offense
5 against the United States (other than an offense in this
6 chapter) or against any State, which offense is punishable
7 by imprisonment for more than 1 year, shall be fined
8 under this title, imprisoned not less than 3 years nor more
9 than 20 years, or both.

10 **“§ 1549. Seizure and forfeiture**

11 “(a) Any property, real or personal, that has been
12 used to commit or facilitate the commission of a violation
13 of any section within this chapter, the gross proceeds of
14 such violation, and any property traceable to such prop-
15 erty or proceeds, shall be subject to forfeiture.

16 “(b) Seizures and forfeitures under this section shall
17 be governed by the provisions of chapter 46 of this title,
18 relating to civil forfeitures, including section 981(d) of
19 such title, except that such duties as are imposed upon
20 the Secretary of the Treasury under the customs laws de-
21 scribed in that section shall be performed by such officers,
22 agents, and other persons as may be designated for that
23 purpose by the Secretary of Homeland Security, the Sec-
24 retary of State, or the Attorney General.

1 **“§ 1550. Additional jurisdiction**

2 “(a) Whoever commits an offense under this chapter
3 within the special maritime and territorial jurisdiction of
4 the United States shall be punished as provided by that
5 offense.

6 “(b) Whoever commits an offense under this chapter
7 outside the United States shall be punished as provided
8 by that offense if—

9 “(1) the offense involves a United States immi-
10 gration document (or any document purporting to be
11 the same) or any matter, right, or benefit arising
12 under or authorized by the immigration laws of the
13 United States or the regulations prescribed there-
14 under; or

15 “(2) the offense is in or affects foreign com-
16 merce; or

17 “(3) the offense affects, jeopardizes, or poses a
18 significant risk to the lawful administration of the
19 immigration laws of the United States, or the na-
20 tional security of the United States; or

21 “(4) the offense is committed to facilitate an
22 act of international terrorism (as defined in section
23 2331 of this title) or a drug trafficking crime (as de-
24 fined in section 929(a) of this title) that affects or
25 would affect the national security of the United
26 States; or

1 “(5) an offender is a national of the United
2 States (as defined in section 101(a)(22) of the Im-
3 migration and Nationality Act (8 U.S.C.
4 1001(a)(22)) or an alien lawfully admitted for per-
5 manent residence in the United States (as defined in
6 section 101(a)(20) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1001(a)(20)); or

8 “(6) an offender is a stateless person whose ha-
9 bitual residence is in the United States.

10 **“§ 1551. Additional venue**

11 “An offense under section 1542 of this chapter may
12 be prosecuted in—

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

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

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

21 Nothing in this section limits the venue otherwise available
22 under sections 3237 and 3238 of this title.

23 **“§ 1552. Definitions**

24 “For purposes of this chapter:

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

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

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

8 “(C) otherwise fails to state a fact that is
9 material to the purpose for which the document
10 was created, designed, or submitted.

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

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

17 “(4) The term ‘immigration document’
18 means—

19 “(A) any passport or visa; or

20 “(B) any application, petition, affidavit,
21 declaration, attestation, form, identification
22 card, alien registration document, employment
23 authorization document, border crossing card,
24 certificate, permit, order, license, stamp, au-
25 thorization, grant of authority, or other evi-

1 dentiary document, arising under or authorized
2 by the immigration laws of the United States.
3 Such term includes any document, photograph, or
4 other piece of evidence attached to or submitted in
5 support of an immigration document.

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

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

10 “(B) the laws relating to the issuance and
11 use of passports; and

12 “(C) the regulations prescribed under the
13 authority of any law described in paragraphs
14 (1) and (2) of this subsection.

15 “(6) 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 “(7) 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 “(8) The term ‘produce’ means to make, pre-
25 pare, assemble, issue, print, authenticate, or alter.

1 “(9) The term ‘State’ means a State of the
2 United States, the District of Columbia, and any
3 commonwealth, territory, or possession of the United
4 States.

5 **“§ 1553. Authorized law enforcement activities**

6 “The sections in this chapter do not prohibit any law-
7 fully authorized investigative, protective, or intelligence ac-
8 tivity of a law enforcement agency of the United States,
9 a State, or a subdivision of a State, or of 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 (18 U.S.C. note prec. 3481).”.

13 **SEC. 213. CRIMINAL DETENTION OF ALIENS.**

14 (a) Section 3142(e) of title 18, United States Code,
15 is amended by inserting at the end the following:

16 “Subject to rebuttal by the person, it shall be presumed
17 that no condition or combination of conditions will reason-
18 ably assure the appearance of the person as required if
19 the judicial officer finds that there is probable cause to
20 believe that the person is an alien and that the person—

21 “(1) has no lawful immigration status in the
22 United States;

23 “(2) is the subject of a final order of removal;

24 or

1 “(3) has committed a felony offense under sec-
2 tion 911, 922(g)(5), 1015, 1028, 1425, or 1426 of
3 this title, or any section of chapters 75 and 77 of
4 this title, or section 243, 274, 275, 276, 277, or
5 278, of the Immigration and Nationality Act.”.

6 (b) Section 3142(g)(3) of title 18, United States
7 Code, is amended by striking “and” at the end of subpara-
8 graph (A) and by adding at the end the following new sub-
9 paragraph:

10 “(C) the person’s immigration status;
11 and”.

12 **SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
13 **TAIN IMMIGRATION, NATURALIZATION, AND**
14 **PEONAGE OFFENSES.**

15 Section 3291 of title 18, United States Code, is
16 amended to read as follows:

17 **“SEC. 3291. IMMIGRATION, NATURALIZATION, AND PEON-**
18 **AGE OFFENSES.**

19 “‘No person shall be prosecuted, tried, or punished
20 for a violation of any section of chapters 69 (relating to
21 nationality and citizenship offenses), 75 (relating to pass-
22 port, visa, and immigration offenses), or 77 (relating to
23 peonage, slavery, and trafficking in persons) of this title
24 (or for attempt or conspiracy to violate any such section),
25 or for a violation of any criminal provision of sections 243,

1 266, 274, 275, 276, 277, or 278 of the Immigration and
2 Nationality Act (or for attempt or conspiracy to violate
3 any such section), unless the indictment is returned or the
4 information filed within ten years after the commission of
5 the offense.”.

6 **SEC. 215. CONFORMING AMENDMENT.**

7 Subparagraph (P) of section 101(a)(43) of the Immi-
8 gration and Nationality Act (8 U.S.C. 1101(a)(43)) is
9 amended—

10 (1) by striking “(i) which either is falsely mak-
11 ing, forging, counterfeiting, mutilating, or altering a
12 passport or instrument in violation of section 1543
13 of title 18 or is described in section 1546(a) of such
14 title (relating to document fraud) and (ii)” and in-
15 serting “which is described in any section of chapter
16 75 of title 18, United States Code,”; and

17 (2) by inserting after “first offense” the fol-
18 lowing: “(i) that is not described in section 1548 (re-
19 lating to increased penalties), and (ii)”.

20 **SEC. 216. INADMISSIBILITY FOR PASSPORT AND IMMIGRA-**
21 **TION FRAUD.**

22 (a) IN GENERAL.—Section 212(a)(2)(A)(i) of the Im-
23 migration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i))
24 is amended—

25 (1) by striking “or” at the end of subclause (I);

1 (2) by inserting “or” at the end of subclause
2 (II); and

3 (3) by inserting the following new subpara-
4 graph:

5 “(III) a violation of (or a con-
6 spiracy or attempt to violate) any sec-
7 tion of chapter 75 of title 18, United
8 States Code,”.

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

12 **SEC. 217. REMOVAL FOR PASSPORT AND IMMIGRATION**
13 **FRAUD.**

14 (a) **IN GENERAL.**—Clause (iii) of section
15 237(a)(3)(B) of the Immigration and Nationality Act (8
16 U.S.C.1227(a)(3)(B)) is amended to read as follows “(iii)
17 of a violation of, or an attempt or a conspiracy to violate,
18 any section of chapter 75 of title 18, United States
19 Code,”.

20 (b) **EFFECTIVE DATE.**—This amendment made by
21 subsection (a) shall apply to proceedings pending on or
22 after the date of the enactment of this Act.

23 **SEC. 218. REDUCTION IN IMMIGRATION BACKLOG.**

24 (a) **IN GENERAL.**—The Secretary of Homeland Secu-
25 rity shall require that, not later than six months after the

1 date of the enactment of this Act, the Director of United
2 States Citizenship and Immigration Services (in this sec-
3 tion referred to as “USCIS”) undertake maximum efforts
4 to reduce to the greatest extent practicable the backlog
5 in the processing and adjudicative functions of USCIS.

6 (b) PILOT PROGRAM INITIATIVES.—

7 (1) IN GENERAL.—The Director is authorized
8 to implement a pilot program for the purposes of, to
9 the greatest extent practicable—

10 (A) reducing the backlog in the processing
11 of immigration benefit applications; and

12 (B) preventing such backlog from recur-
13 ring.

14 (2) INITIATIVES.—To carry out paragraph (1),
15 initiatives may include measures such as increasing
16 personnel, transferring personnel to focus on areas
17 with the largest potential for backlog, streamlining
18 paperwork processes, and increasing information
19 technology and service centers.

20 **SEC. 219. FEDERAL AFFIRMATION OF ASSISTANCE IN THE**
21 **IMMIGRATION LAW ENFORCEMENT BY**
22 **STATES AND POLITICAL SUBDIVISIONS OF**
23 **STATES.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of law and reaffirming the existing inherent authority

1 of States, law enforcement personnel of a State or a polit-
2 ical subdivision of a State have the inherent authority of
3 a sovereign entity to investigate, identify, apprehend, ar-
4 rest, detain, or transfer to Federal custody aliens in the
5 United States (including the transportation of such aliens
6 across State lines to detention centers), for the purposes
7 of assisting in the enforcement of the immigration laws
8 of the United States in the course of carrying out routine
9 duties. This State authority has never been displaced or
10 preempted by Congress.

11 (b) CONSTRUCTION.—Nothing in this section may be
12 construed to require law enforcement personnel of a State
13 or political subdivision of a State to—

14 (1) report the identity of a victim of, or a wit-
15 ness to, a criminal offense to the Secretary of Home-
16 land Security for immigration enforcement purposes;
17 or

18 (2) arrest such victim or witness for a violation
19 of the immigration laws of the United States.

20 **SEC. 220. TRAINING OF STATE AND LOCAL LAW ENFORCE-**
21 **MENT PERSONNEL RELATING TO THE EN-**
22 **FORCEMENT OF IMMIGRATION LAWS.**

23 (a) ESTABLISHMENT OF TRAINING MANUAL AND
24 POCKET GUIDE.—Not later than 180 days after the date

1 of the enactment of this Act, the Secretary of Homeland
2 Security shall establish—

3 (1) a training manual for law enforcement per-
4 sonnel of a State or political subdivision of a State
5 to train such personnel in the investigation, identi-
6 fication, apprehension, arrest, detention, and trans-
7 fer to Federal custody of aliens in the United States
8 (including the transportation of such aliens across
9 State lines to detention centers and the identifica-
10 tion of fraudulent documents); and

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

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

19 (c) APPLICABILITY.—Nothing in this section shall be
20 construed to require State or local law enforcement per-
21 sonnel to carry the training manual or pocket guide estab-
22 lished under subsection (a)(2) with them while on duty.

23 (d) COSTS.—The Secretary of Homeland Security
24 shall be responsible for any and all costs incurred in estab-

1 lishing the training manual and pocket guide under sub-
2 section (a).

3 (e) TRAINING FLEXIBILITY.—

4 (1) IN GENERAL.—The Secretary of Homeland
5 Security shall make training of State and local law
6 enforcement officers available through as many
7 means as possible, including residential training at
8 the Center for Domestic Preparedness, onsite train-
9 ing held at State or local police agencies or facilities,
10 online training courses by computer, teleconfer-
11 encing, and videotape, or the digital video display
12 (DVD) of a training course or courses. E-learning
13 through a secure, encrypted distributed learning sys-
14 tem that has all its servers based in the United
15 States, is sealable, survivable, and can have a portal
16 in place within 30 days, shall be made available by
17 the Federal Law Enforcement Training Center Dis-
18 tributed Learning Program for State and local law
19 enforcement personnel.

20 (2) FEDERAL PERSONNEL TRAINING.—The
21 training of State and local law enforcement per-
22 sonnel under this section shall not displace the train-
23 ing of Federal personnel.

24 (3) CLARIFICATION.—Nothing in this Act or
25 any other provision of law shall be construed as

1 making any immigration-related training a require-
2 ment for, or prerequisite to, any State or local law
3 enforcement officer to assist in the enforcement of
4 Federal immigration laws in the normal course of
5 carrying out their normal law enforcement duties.

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

9 (1) by striking “Attorney General” and insert-
10 ing “Secretary of Homeland Security” each place it
11 appears; and

12 (2) in paragraph (2), by adding at the end the
13 following: “Such training shall not exceed 14 days or
14 80 hours, whichever is longer.”.

15 **SEC. 221. FINANCIAL ASSISTANCE TO STATE AND LOCAL**
16 **POLICE AGENCIES THAT ASSIST IN THE EN-**
17 **FORCEMENT OF IMMIGRATION LAWS.**

18 (a) GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING
19 AND PROCESSING ILLEGAL ALIENS.—From amounts
20 made available to make grants under this section, the Sec-
21 retary of Homeland Security shall make grants to States
22 and political subdivisions of States for procurement of
23 equipment, technology, facilities, and other products that
24 facilitate and are directly related to investigating, appre-
25 hending, arresting, detaining, or transporting immigration

1 law violators, including additional administrative costs in-
2 curred under this Act.

3 (b) ELIGIBILITY.—To be eligible to receive a grant
4 under this section, a State or political subdivision of a
5 State must have the authority to, and have in effect the
6 policy and practice to, assist in the enforcement of the
7 immigration laws of the United States in the course of
8 carrying out such agency’s routine law enforcement duties.

9 (c) FUNDING.—There is authorized to be appro-
10 priated for grants under this section \$300,000,000 for
11 each fiscal year.

12 (d) GAO AUDIT.—Not later than 3 years after the
13 date of the enactment of this Act, the Comptroller General
14 of the United States shall conduct an audit of funds dis-
15 tributed to States and political subdivisions of States
16 under subsection (a).

17 **SEC. 222. INSTITUTIONAL REMOVAL PROGRAM (IRP).**

18 (a) CONTINUATION AND EXPANSION.—

19 (1) IN GENERAL.—The Department of Home-
20 land Security shall continue to operate and imple-
21 ment the program known as the Institutional Re-
22 moval Program (IRP) which—

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

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

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

5 (2) EXPANSION.—The institutional removal
6 program shall be extended to all States. Any State
7 that receives Federal funds for the incarceration of
8 criminal aliens shall—

9 (A) cooperate with officials of the institu-
10 tional removal program;

11 (B) expeditiously and systematically iden-
12 tify criminal aliens in its prison and jail popu-
13 lations; and

14 (C) promptly convey such information to
15 officials of such program as a condition for re-
16 ceiving such funds.

17 (b) AUTHORIZATION FOR DETENTION AFTER COM-
18 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
19 enforcement officers of a State or political subdivision of
20 a State have the authority to—

21 (1) hold an illegal alien for a period of up to
22 14 days after the alien has completed the alien's
23 State prison sentence in order to effectuate the
24 transfer of the alien to Federal custody when the

1 alien is removable or not lawfully present in the
2 United States; or

3 (2) issue a detainer that would allow aliens who
4 have served a State prison sentence to be detained
5 by the State prison until personnel from United
6 States Immigration and Customs Enforcement can
7 take the alien into custody.

8 (c) TECHNOLOGY USAGE.—Technology such as video
9 conferencing shall be used to the maximum extent possible
10 in order to make the Institutional Removal Program
11 (IRP) available in remote locations. Mobile access to Fed-
12 eral databases of aliens, such as IDENT, and live scan
13 technology shall be used to the maximum extent prac-
14 ticable in order to make these resources available to State
15 and local law enforcement agencies in remote locations.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
17 authorized to be appropriated to carry out the institutional
18 removal program—

19 (1) \$100,000,000 for fiscal year 2009;

20 (2) \$115,000,000 for fiscal year 2010;

21 (3) \$130,000,000 for fiscal year 2011;

22 (4) \$145,000,000 for fiscal year 2012; and

23 (5) \$160,000,000 for fiscal year 2013.

1 **SEC. 223. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM**
2 **(SCAAP).**

3 Section 241(i)(5) of the Immigration and Nationality
4 Act (8 U.S.C. 1231(i)) is amended by inserting before the
5 period at the end the following: “and \$1,000,000,000 for
6 each subsequent fiscal year”.

7 **SEC. 224. STATE AUTHORIZATION FOR ASSISTANCE IN THE**
8 **ENFORCEMENT OF IMMIGRATION LAWS EN-**
9 **COURAGED.**

10 (a) **IN GENERAL.**—Effective 2 years after the date
11 of the enactment of this Act, a State (or political subdivi-
12 sion of a State) that has in effect a statute, policy, or
13 practice that prohibits law enforcement officers of the
14 State, or of a political subdivision within the State, from
15 assisting or cooperating with Federal immigration law en-
16 forcement in the course of carrying out the officers’ rou-
17 tine law enforcement duties shall not receive any of the
18 funds that would otherwise be allocated to the State under
19 section 241(i) of the Immigration and Nationality Act (8
20 U.S.C. 1231(i)).

21 (b) **CONSTRUCTION.**—Nothing in this section shall
22 require law enforcement officials from States or political
23 subdivisions of States to report or arrest victims or wit-
24 nesses of a criminal offense.

25 (c) **REALLOCATION OF FUNDS.**—Any funds that are
26 not allocated to a State or political subdivision of a State

1 due to the failure of the State to comply with subsection
2 (a) shall be reallocated to States that comply with such
3 subsection.

4 **TITLE III—BORDER SECURITY**
5 **COOPERATION AND EN-**
6 **FORCEMENT**

7 **SEC. 301. JOINT STRATEGIC PLAN FOR UNITED STATES**
8 **BORDER SURVEILLANCE AND SUPPORT.**

9 (a) IN GENERAL.—The Secretary of Homeland Secu-
10 rity and the Secretary of Defense shall develop a joint
11 strategic plan to use the authorities provided to the Sec-
12 retary of Defense under chapter 18 of title 10, United
13 States Code, to increase the availability and use of Depart-
14 ment of Defense equipment, including unmanned aerial
15 vehicles, tethered aerostat radars, and other surveillance
16 equipment, to assist with the surveillance activities of the
17 Department of Homeland Security conducted at or near
18 the international land and maritime borders of the United
19 States.

20 (b) REPORT.—Not later than six months after the
21 date of the enactment of this Act, the Secretary of Home-
22 land Security and the Secretary of Defense shall submit
23 to appropriate congressional committees (as defined in
24 section 102(g)) a report containing—

1 (1) a description of the use of Department of
2 Defense equipment to assist with the surveillance by
3 the Department of Homeland Security of the inter-
4 national land and maritime borders of the United
5 States;

6 (2) the joint strategic plan developed pursuant
7 to subsection (a);

8 (3) a description of the types of equipment and
9 other support to be provided by the Department of
10 Defense under the joint strategic plan during the
11 one-year period beginning after submission of the re-
12 port under this subsection; and

13 (4) a description of how the Department of
14 Homeland Security and the Department of Defense
15 are working with the Department of Transportation
16 on safety and airspace control issues associated with
17 the use of unmanned aerial vehicles in the National
18 Airspace System.

19 (c) RULES OF CONSTRUCTION.—(1) Nothing in this
20 section shall be construed as altering or amending the pro-
21 hibition on the use of any part of the Army or the Air
22 Force as a posse comitatus under section 1385 of title 18,
23 United States Code.

24 (2) Nothing in this section shall be construed to alter,
25 impact, diminish, or in any way undermine the authority

1 of the Administrator of the Federal Aviation Administra-
2 tion to oversee, regulate, and control the safe and efficient
3 use of the airspace of the United States.

4 **SEC. 302. BORDER SECURITY ON PROTECTED LAND.**

5 (a) IN GENERAL.—The Secretary of Homeland Secu-
6 rity, in consultation with the Secretary of the Interior,
7 shall evaluate border security vulnerabilities on land di-
8 rectly adjacent to the international land border of the
9 United States under the jurisdiction of the Department
10 of the Interior related to the prevention of the entry of
11 terrorists, other unlawful aliens, narcotics, and other con-
12 traband into the United States.

13 (b) SUPPORT FOR BORDER SECURITY NEEDS.—
14 Based on the evaluation conducted pursuant to subsection
15 (a), the Secretary of Homeland Security shall provide ap-
16 propriate border security assistance on land directly adja-
17 cent to the international land border of the United States
18 under the jurisdiction of the Department of the Interior,
19 its bureaus, and tribal entities.

20 **SEC. 303. BORDER SECURITY THREAT ASSESSMENT AND IN-**
21 **FORMATION SHARING TEST AND EVALUA-**
22 **TION EXERCISE.**

23 Not later than one year after the date of the enact-
24 ment of this Act, the Secretary of Homeland Security shall

1 design and carry out a national border security exercise
2 for the purposes of—

3 (1) involving officials from Federal, State, terri-
4 torial, local, tribal, and international governments
5 and representatives from the private sector;

6 (2) testing and evaluating the capacity of the
7 United States to anticipate, detect, and disrupt
8 threats to the integrity of United States borders;
9 and

10 (3) testing and evaluating the information shar-
11 ing capability among Federal, State, territorial,
12 local, tribal, and international governments.

13 **SEC. 304. BORDER SECURITY ADVISORY COMMITTEE.**

14 (a) ESTABLISHMENT OF COMMITTEE.—Not later
15 than one year after the date of the enactment of this Act,
16 the Secretary of Homeland Security shall establish an ad-
17 visory committee to be known as the Border Security Ad-
18 visory Committee (in this section referred to as the “Com-
19 mittee”).

20 (b) DUTIES.—The Committee shall advise the Sec-
21 retary on issues relating to border security and enforce-
22 ment along the international land and maritime border of
23 the United States.

24 (c) MEMBERSHIP.—The Secretary shall appoint
25 members to the Committee from the following:

1 (1) State and local government representatives
2 from States located along the international land and
3 maritime borders of the United States.

4 (2) Community representatives from such
5 States.

6 (3) Tribal authorities in such States.

7 **SEC. 305. PERMITTED USE OF HOMELAND SECURITY**
8 **GRANT FUNDS FOR BORDER SECURITY AC-**
9 **TIVITIES.**

10 (a) REIMBURSEMENT.—The Secretary of Homeland
11 Security may allow the recipient of amounts under a cov-
12 ered grant to use those amounts to reimburse itself for
13 costs it incurs in carrying out any terrorism prevention
14 or deterrence activity that—

15 (1) relates to the enforcement of Federal laws
16 aimed at preventing the unlawful entry of persons or
17 things into the United States, including activities
18 such as detecting or responding to such an unlawful
19 entry or providing support to another entity relating
20 to preventing such an unlawful entry;

21 (2) is usually a Federal duty carried out by a
22 Federal agency; and

23 (3) is carried out under agreement with a Fed-
24 eral agency.

1 (b) USE OF PRIOR YEAR FUNDS.—Subsection (a)
2 shall apply to all covered grant funds received by a State,
3 local government, or Indian tribe at any time on or after
4 October 1, 2001.

5 (c) COVERED GRANTS.—For purposes of subsection
6 (a), the term “covered grant” means grants provided by
7 the Department of Homeland Security to States, local gov-
8 ernments, or Indian tribes administered under the fol-
9 lowing programs:

10 (1) STATE HOMELAND SECURITY GRANT PRO-
11 GRAM.—The State Homeland Security Grant Pro-
12 gram of the Department, or any successor to such
13 grant program.

14 (2) URBAN AREA SECURITY INITIATIVE.—The
15 Urban Area Security Initiative of the Department,
16 or any successor to such grant program.

17 (3) LAW ENFORCEMENT TERRORISM PREVEN-
18 TION PROGRAM.—The Law Enforcement Terrorism
19 Prevention Program of the Department, or any suc-
20 cessor to such grant program.

21 **SEC. 306. CENTER OF EXCELLENCE FOR BORDER SECUR-**
22 **RITY.**

23 (a) ESTABLISHMENT.—The Secretary of Homeland
24 Security shall establish a university-based Center of Excel-
25 lence for Border Security following the merit-review proc-

1 esses and procedures and other limitations that have been
2 established for selecting and supporting University Pro-
3 grams Centers of Excellence.

4 (b) ACTIVITIES OF THE CENTER.—The Center shall
5 prioritize its activities on the basis of risk to address the
6 most significant threats, vulnerabilities, and consequences
7 posed by United States borders and border control sys-
8 tems. The activities shall include the conduct of research,
9 the examination of existing and emerging border security
10 technology and systems, and the provision of education,
11 technical, and analytical assistance for the Department of
12 Homeland Security to effectively secure the borders.

13 **SEC. 307. SENSE OF CONGRESS REGARDING COOPERATION**
14 **WITH INDIAN NATIONS.**

15 It is the sense of Congress that—

16 (1) the Department of Homeland Security
17 should strive to include as part of a National Strat-
18 egy for Border Security recommendations on how to
19 enhance Department cooperation with sovereign In-
20 dian Nations on securing our borders and preventing
21 terrorist entry, including, specifically, the Depart-
22 ment should consider whether a Tribal Smart Bor-
23 der working group is necessary and whether further
24 expansion of cultural sensitivity training, as exists in

1 Arizona with the Tohono O’odham Nation, should be
2 expanded elsewhere; and

3 (2) as the Department of Homeland Security
4 develops a National Strategy for Border Security, it
5 should take into account the needs and missions of
6 each agency that has a stake in border security and
7 strive to ensure that these agencies work together
8 cooperatively on issues involving Tribal lands.

9 **SEC. 308. COMMUNICATION BETWEEN GOVERNMENT AGEN-**
10 **CIES AND THE DEPARTMENT OF HOMELAND**
11 **SECURITY.**

12 (a) IN GENERAL.—Section 642 of the Illegal Immi-
13 gration Reform and Immigrant Responsibility Act of 1996
14 (8 U.S.C. 1373) is amended—

15 (1) by striking “Immigration and Naturaliza-
16 tion Service” and inserting “Department of Home-
17 land Security” each place it appears; and

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

19 “(d) ENFORCEMENT.—

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

1 to any law enforcement grant program carried out
2 by any element of the Department of Justice, includ-
3 ing the program under section 241(i) of the Immig-
4 ration and Nationality Act (8 U.S.C. 241(i)), and
5 shall ensure that no such grant amounts are pro-
6 vided, directly or indirectly, to such person, agency,
7 or entity. In the case of grant amounts that other-
8 wise would be provided to such person, agency, or
9 entity pursuant to a formula, such amounts shall be
10 reallocated among eligible recipients.

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

18 “(3) DURATION.—The sanction under para-
19 graph (1) shall remain in effect until the Attorney
20 General determines that the person, agency, or enti-
21 ty has ceased violating subsections (a) and (b).”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall apply to grant requests pending on
24 or after the date of the enactment of this Act.

1 **SEC. 309. RED ZONE DEFENSE BORDER INTELLIGENCE**
2 **PILOT PROGRAM.**

3 (a) **ESTABLISHMENT.**—The Secretary of Homeland
4 Security and the Director of National Intelligence shall
5 jointly establish a pilot program to improve the coordina-
6 tion and management of intelligence and homeland secu-
7 rity information provided to or utilized by the Department
8 of Homeland Security relating to the southwest inter-
9 national land and maritime border of the United States.

10 (b) **PILOT AREA.**—The Secretary of Homeland Secu-
11 rity and the Director of National Intelligence shall des-
12 ignate a geographic area along the southwest international
13 land and maritime border of the United States centered
14 on Cochise County, Arizona, to be the pilot area for the
15 pilot program established pursuant to subsection (a).

16 (c) **PROGRAM.**—The pilot program established pursu-
17 ant to subsection (a) shall—

18 (1) coordinate and facilitate the sharing of in-
19 telligence and homeland security information related
20 to border security within the pilot area designated
21 pursuant to subsection (b) among Federal, State,
22 local, and tribal governments, including relevant in-
23 telligence and homeland security information pro-
24 vided to the Department of Homeland Security by
25 the intelligence community and relevant intelligence
26 and homeland security information gathered by the

1 Department of Homeland Security from other
2 sources;

3 (2) to the maximum extent possible, provide for
4 persistent surveillance of such pilot area;

5 (3) to the maximum extent possible, utilize air-
6 ships, aerostats, and existing unmanned aerial vehi-
7 cles to provide for surveillance of such pilot area;

8 (4) to the maximum extent possible, fully utilize
9 the capabilities of underutilized assets currently
10 available to conduct surveillance of such pilot area;

11 (5) where practicable, utilize the capabilities of
12 existing operational and analytical centers that ana-
13 lyze intelligence and homeland security information
14 relating to such pilot area from multiple sources and
15 improve the interoperability of such centers;

16 (6) consistent with applicable security require-
17 ments, disseminate actionable intelligence and home-
18 land security information relating to border security
19 within such pilot area to the appropriate Federal,
20 State, local, tribal, and foreign governments to sup-
21 port operational activities relating to border security
22 within such pilot area;

23 (7) provide for direct transmission of such ac-
24 tionable intelligence and homeland security informa-

1 tion to operational and analytical centers included in
2 the pilot program;

3 (8) provide for a representative of the Depart-
4 ment of Homeland Security to be assigned to each
5 operational and analytical center to facilitate the im-
6 mediate utilization, where practicable, of such ac-
7 tionable intelligence and homeland security informa-
8 tion; and

9 (9) develop metrics to assess the capability of
10 such pilot program to improve border security.

11 (d) STRATEGY COORDINATION.—In establishing the
12 pilot program under subsection (a), the Director of Na-
13 tional Intelligence shall coordinate the intelligence activi-
14 ties of the pilot program with the relevant activities and
15 programs of other elements of the intelligence community.

16 (e) HEADQUARTERS.—The Secretary of Homeland
17 Security and the Director of National Intelligence may es-
18 tablish a headquarters for the pilot program established
19 pursuant to subsection (a) within the area designated as
20 the pilot area pursuant to subsection (b).

21 (f) DURATION.—The pilot program established pur-
22 suant to subsection (a) shall last a minimum of two years.

23 (g) REPORT.—Not later than one year after the es-
24 tablishment of the pilot program pursuant to subsection
25 (a), the Secretary of Homeland Security and the Director

1 of National Intelligence shall submit to Congress a report
2 containing—

3 (1) the lessons learned from such pilot program
4 based on the metrics developed pursuant to sub-
5 section (c)(9);

6 (2) recommendations for enhancing the provi-
7 sion and sharing of intelligence and homeland secu-
8 rity information relating to border security under
9 the National Strategy for Border Security submitted
10 pursuant to section 102(b) and with other programs
11 of the intelligence community relating to border se-
12 curity; and

13 (3) an identification of any provisions of law
14 that may impede effective coordination of intel-
15 ligence and homeland security information relating
16 to the southwest international land and maritime
17 border of the United States.

18 (h) DEFINITIONS.—In this section:

19 (1) HOMELAND SECURITY INFORMATION.—The
20 term “homeland security information” has the
21 meaning given the term in section 892(f)(1) of the
22 Homeland Security Act of 2002 (6 U.S.C.
23 482(f)(1)).

24 (2) INTELLIGENCE COMMUNITY.—The term
25 “intelligence community” has the meaning given the

1 term in section 3(4) of the National Security Act of
2 1947 (50 U.S.C. 401a(4)).

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

6 **TITLE IV—DETENTION AND**
7 **REMOVAL**

8 **SEC. 401. MANDATORY DETENTION FOR ALIENS APPRE-**
9 **HENDED AT OR BETWEEN PORTS OF ENTRY.**

10 (a) IN GENERAL.—Beginning on October 1, 2008, an
11 alien who is attempting to illegally enter the United States
12 and who is apprehended at a United States port of entry
13 or along the international land and maritime border of the
14 United States shall be detained until removed or a final
15 decision granting admission has been determined, unless
16 the alien—

17 (1) is permitted to withdraw an application for
18 admission under section 235(a)(4) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1225(a)(4)) and
20 immediately departs from the United States pursu-
21 ant to such section; or

22 (2) is paroled into the United States by the
23 Secretary of Homeland Security for urgent humani-
24 tarian reasons or significant public benefit in accord-

1 ance with section 212(d)(5)(A) of such Act (8
2 U.S.C. 1182(d)(5)(A)).

3 (b) REQUIREMENTS DURING INTERIM PERIOD.—Be-
4 ginning 60 days after the date of the enactment of this
5 Act and before October 1, 2008, an alien described in sub-
6 section (a) may be released with a notice to appear only
7 if—

8 (1) the Secretary of Homeland Security deter-
9 mines, after conducting all appropriate background
10 and security checks on the alien, that the alien does
11 not pose a national security risk; and

12 (2) the alien provides a bond of not less than
13 \$5,000.

14 (c) RULES OF CONSTRUCTION.—

15 (1) ASYLUM AND REMOVAL.—Nothing in this
16 section shall be construed as limiting the right of an
17 alien to apply for asylum or for relief or deferral of
18 removal based on a fear of persecution.

19 (2) TREATMENT OF CERTAIN ALIENS.—The
20 mandatory detention requirement in subsection (a)
21 does not apply to any alien who is a native or citizen
22 of a country in the Western Hemisphere with whose
23 government the United States does not have full dip-
24 lomatic relations.

1 (3) DISCRETION.—Nothing in this section shall
2 be construed as limiting the authority of the Sec-
3 retary of Homeland Security, in the Secretary’s sole
4 unreviewable discretion, to determine whether an
5 alien described in clause (ii) of section 235(b)(1)(B)
6 of the Immigration and Nationality Act shall be de-
7 tained or released after a finding of a credible fear
8 of persecution (as defined in clause (v) of such sec-
9 tion).

10 **SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF**
11 **DETENTION FACILITIES.**

12 Subject to the availability of appropriations, the Sec-
13 retary of Homeland Security shall fully utilize—

14 (1) all available detention facilities operated or
15 contracted by the Department of Homeland Secu-
16 rity; and

17 (2) all possible options to cost effectively in-
18 crease available detention capacities, including the
19 use of temporary detention facilities, the use of
20 State and local correctional facilities, private space,
21 and secure alternatives to detention.

22 **SEC. 403. ENHANCING TRANSPORTATION CAPACITY FOR**
23 **UNLAWFUL ALIENS.**

24 (a) IN GENERAL.—The Secretary of Homeland Secu-
25 rity is authorized to enter into contracts with private enti-

1 ties for the purpose of providing secure domestic transport
2 of aliens who are apprehended at or along the inter-
3 national land or maritime borders from the custody of
4 United States Customs and Border Protection to deten-
5 tion facilities and other locations as necessary.

6 (b) CRITERIA FOR SELECTION.—Notwithstanding
7 any other provision of law, to enter into a contract under
8 paragraph (1), a private entity shall submit an application
9 to the Secretary at such time, in such manner, and con-
10 taining such information as the Secretary may require.
11 The Secretary shall select from such applications those en-
12 tities which offer, in the determination of the Secretary,
13 the best combination of service, cost, and security.

14 **SEC. 404. DENIAL OF ADMISSION TO NATIONALS OF COUN-**
15 **TRY DENYING OR DELAYING ACCEPTING**
16 **ALIEN.**

17 Section 243(d) of the Immigration and Nationality
18 Act (8 U.S.C. 1253(d)) is amended to read as follows:

19 “(d) DENIAL OF ADMISSION TO NATIONALS OF
20 COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—
21 Whenever the Secretary of Homeland Security determines
22 that the government of a foreign country has denied or
23 unreasonably delayed accepting an alien who is a citizen,
24 subject, national, or resident of that country after the
25 alien has been ordered removed, the Secretary, after con-

1 sultation with the Secretary of State, may deny admission
2 to any citizen, subject, national, or resident of that coun-
3 try until the country accepts the alien who was ordered
4 removed.”.

5 **SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRI-**
6 **ATION.**

7 Not later than October 31 of each year, the Secretary
8 of Homeland Security shall submit to the Secretary of
9 State and Congress a report that details the cost to the
10 Department of Homeland Security of repatriation of un-
11 lawful aliens to their countries of nationality or last habit-
12 ual residence, including details relating to cost per coun-
13 try. The Secretary shall include in each such report the
14 recommendations of the Secretary to more cost effectively
15 repatriate such aliens.

16 **SEC. 406. TRAINING PROGRAM.**

17 Not later than six months after the date of the enact-
18 ment of this Act, the Secretary of Homeland Security—

19 (1) review and evaluate the training provided to
20 Border Patrol agents and port of entry inspectors
21 regarding the inspection of aliens to determine
22 whether an alien is referred for an interview by an
23 asylum officer for a determination of credible fear;

24 (2) based on the review and evaluation de-
25 scribed in paragraph (1), take necessary and appro-

1 appropriate measures to ensure consistency in referrals by
2 Border Patrol agents and port of entry inspectors to
3 asylum officers for determinations of credible fear.

4 **SEC. 407. EXPEDITED REMOVAL.**

5 (a) IN GENERAL.—Section 235(b)(1)(A)(iii) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1225(b)(1)(A)(iii)) is amended—

8 (1) in subclause (I), by striking “Attorney Gen-
9 eral” and inserting “Secretary of Homeland Secu-
10 rity” each place it appears; and

11 (2) by adding at the end the following new sub-
12 clause:

13 “(III) EXCEPTION.—Notwith-
14 standing subclauses (I) and (II), the
15 Secretary of Homeland Security shall
16 apply clauses (i) and (ii) of this sub-
17 paragraph to any alien (other than an
18 alien described in subparagraph (F))
19 who is not a national of a country
20 contiguous to the United States, who
21 has not been admitted or paroled into
22 the United States, and who is appre-
23 hended within 100 miles of an inter-
24 national land border of the United
25 States and within 14 days of entry.”.

1 (b) EXCEPTIONS.—Section 235(b)(1)(F) of the Im-
2 migration and Nationality Act (8 U.S.C. 1225(b)(1)(F))
3 is amended by striking “who arrives by aircraft at a port
4 of entry” and inserting “, and who arrives by aircraft at
5 a port of entry or who is present in the United States
6 and arrived in any manner at or between a port of entry”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date of the enactment
9 of this Act and shall apply to all aliens apprehended on
10 or after such date.

11 **SEC. 408. REPORT ON APPREHENSION AND DETENTION OF**
12 **CERTAIN ALIENS.**

13 (a) REPORT REQUIRED.—Not later than two years
14 after the date of the enactment of this Act, the Secretary
15 of Homeland Security shall submit to Congress a report
16 on—

17 (1) the number of illegal aliens from noncontig-
18 uous countries who are apprehended at or between
19 ports of entry since the date of enactment of this
20 Act;

21 (2) the number of such aliens who have been
22 deported since the date of enactment of this Act;
23 and

24 (3) the number of such aliens from countries
25 the governments of which the Secretary of State has

1 determined, for purposes section 6(j)(1)(A) of the
2 Export Administration Act of 1979 (as in effect pur-
3 suant to the International Emergency Economic
4 Powers Act; 50 U.S.C. 1701 et seq.), section 40(d)
5 of the Arms Export Control Act (22 U.S.C.
6 2780(d)), section 620A of the Foreign Assistance
7 Act of 1961 (22 U.S.C. 2371), or other provision of
8 law, are governments that have repeatedly provided
9 support for acts of international terrorism.

10 (b) SENSE OF CONGRESS.—It is the sense of Con-
11 gress that the Secretary of Homeland Security should de-
12 velop a strategy for entering into appropriate security
13 screening watch lists the appropriate background informa-
14 tion of illegal aliens from countries described in paragraph
15 (3) of subsection (a).

16 **SEC. 409. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
17 **TIONAL CRIME INFORMATION CENTER DATA-**
18 **BASE.**

19 (a) PROVISION OF INFORMATION TO THE NCIC.—
20 Not later than 180 days after the date of the enactment
21 of this Act, the Under Secretary for Border and Transpor-
22 tation Security of the Department of Homeland Security
23 shall provide the National Crime Information Center of
24 the Department of Justice with such information as the
25 Under Secretary may have on any and all aliens against

1 whom a final order of removal has been issued, any and
2 all aliens who have signed a voluntary departure agree-
3 ment, any and all aliens who have overstayed their author-
4 ized period of stay, and any and all aliens whose visas
5 have been revoked. Such information shall be provided to
6 the National Crime Information Center, and the National
7 Crime Information Center shall enter such information
8 into the Immigration Violators File of the National Crime
9 Information Center database, regardless of whether—

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

12 (2) the alien has already been removed; or

13 (3) sufficient identifying information is avail-
14 able on the alien.

15 (b) INCLUSION OF INFORMATION IN THE NCIC
16 DATABASE.—Section 534(a) of title 28, United States
17 Code, is amended—

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

20 (2) by redesignating paragraph (4) as para-
21 graph (5); and

22 (3) by inserting after paragraph (3) the fol-
23 lowing:

24 “(4) acquire, collect, classify, and preserve
25 records of violations of the immigration laws of the

1 United States, regardless of whether the alien has
2 received notice of the violation or whether sufficient
3 identifying information is available on the alien and
4 even if the alien has already been removed; and”.

5 **TITLE V—EFFECTIVE ORGANIZA-**
6 **TION OF BORDER SECURITY**
7 **AGENCIES**

8 **SEC. 501. ENHANCED BORDER SECURITY COORDINATION**
9 **AND MANAGEMENT.**

10 The Secretary of Homeland Security shall ensure full
11 coordination of border security efforts among agencies
12 within the Department of Homeland Security, including
13 United States Immigration and Customs Enforcement,
14 United States Customs and Border Protection, and
15 United States Citizenship and Immigration Services, and
16 shall identify and remedy any failure of coordination or
17 integration in a prompt and efficient manner. In par-
18 ticular, the Secretary of Homeland Security shall—

19 (1) oversee and ensure the coordinated execu-
20 tion of border security operations and policy;

21 (2) establish a mechanism for sharing and co-
22 ordinating intelligence information and analysis at
23 the headquarters and field office levels pertaining to
24 counter-terrorism, border enforcement, customs and
25 trade, immigration, human smuggling, human traf-

1 ficking, and other issues of concern to both United
2 States Immigration and Customs Enforcement and
3 United States Customs and Border Protection;

4 (3) establish Department of Homeland Security
5 task forces (to include other Federal, State, Tribal
6 and local law enforcement agencies as appropriate)
7 as necessary to better coordinate border enforcement
8 and the disruption and dismantling of criminal orga-
9 nizations engaged in cross-border smuggling, money
10 laundering, and immigration violations;

11 (4) enhance coordination between the border se-
12 curity and investigations missions within the Depart-
13 ment by requiring that, with respect to cases involv-
14 ing violations of the customs and immigration laws
15 of the United States, United States Customs and
16 Border Protection coordinate with and refer all such
17 cases to United States Immigration and Customs
18 Enforcement;

19 (5) examine comprehensively the proper alloca-
20 tion of the Department's border security related re-
21 sources, and analyze budget issues on the basis of
22 Department-wide border enforcement goals, plans,
23 and processes;

1 (6) establish measures and metrics for deter-
2 mining the effectiveness of coordinated border en-
3 forcement efforts; and

4 (7) develop and implement a comprehensive
5 plan to protect the northern and southern land bor-
6 ders of the United States and address the different
7 challenges each border faces by—

8 (A) coordinating all Federal border secu-
9 rity activities;

10 (B) improving communications and data
11 sharing capabilities within the Department and
12 with other Federal, State, local, tribal, and for-
13 eign law enforcement agencies on matters relat-
14 ing to border security; and

15 (C) providing input to relevant bilateral
16 agreements to improve border functions, includ-
17 ing ensuring security and promoting trade and
18 tourism.

19 **SEC. 502. OFFICE OF AIR AND MARINE OPERATIONS.**

20 (a) **ESTABLISHMENT.**—Subtitle C of title IV of the
21 Homeland Security Act of 2002 (6 U.S.C. 201 et seq.)
22 is amended by adding at the end the following new section:

1 **“SEC. 431. OFFICE OF AIR AND MARINE OPERATIONS.**

2 “(a) **ESTABLISHMENT.**—There is established in the
3 Department an Office of Air and Marine Operations (re-
4 ferred to in this section as the ‘Office’).

5 “(b) **ASSISTANT SECRETARY.**—The Office shall be
6 headed by an Assistant Secretary for Air and Marine Op-
7 erations who shall be appointed by the President, by and
8 with the advice and consent of the Senate, and who shall
9 report directly to the Secretary. The Assistant Secretary
10 shall be responsible for all functions and operations of the
11 Office.

12 “(c) **MISSIONS.**—

13 “(1) **PRIMARY MISSION.**—The primary mission
14 of the Office shall be the prevention of the entry of
15 terrorists, other unlawful aliens, instruments of ter-
16 rorism, narcotics, and other contraband into the
17 United States.

18 “(2) **SECONDARY MISSION.**—The secondary
19 mission of the Office shall be to assist other agencies
20 to prevent the entry of terrorists, other unlawful
21 aliens, instruments of terrorism, narcotics, and other
22 contraband into the United States.

23 “(d) **AIR AND MARINE OPERATIONS CENTER.**—

24 “(1) **IN GENERAL.**—The Office shall operate
25 and maintain the Air and Marine Operations Center

1 in Riverside, California, or at such other facility of
2 the Office as is designated by the Secretary.

3 “(2) DUTIES.—The Center shall provide com-
4 prehensive radar, communications, and control serv-
5 ices to the Office and to eligible Federal, State, or
6 local agencies (as determined by the Assistant Sec-
7 retary for Air and Marine Operations), in order to
8 identify, track, and support the interdiction and ap-
9 prehension of individuals attempting to enter United
10 States airspace or coastal waters for the purpose of
11 narcotics trafficking, trafficking of persons, or other
12 terrorist or criminal activity.

13 “(e) ACCESS TO INFORMATION.—The Office shall en-
14 sure that other agencies within the Department of Home-
15 land Security, the Department of Defense, the Depart-
16 ment of Justice, the Department of Transportation, and
17 such other Federal, State, or local agencies, as may be
18 determined by the Secretary, shall have access to the in-
19 formation gathered and analyzed by the Center.

20 “(f) REQUIREMENT.—Beginning not later than 180
21 days after the date of the enactment of this Act, the Sec-
22 retary shall require that all information concerning all
23 aviation activities, including all airplane, helicopter, or
24 other aircraft flights, that are undertaken by the either
25 the Office, United States Immigration and Customs En-

1 enforcement, United States Customs and Border Protection,
2 or any subdivisions thereof, be provided to the Air and
3 Marine Operations Center. Such information shall include
4 the identifiable transponder, radar, and electronic emis-
5 sions and codes originating and resident aboard the air-
6 craft or similar asset used in the aviation activity.

7 “(g) TIMING.—The Secretary shall require the infor-
8 mation described in subsection (f) to be provided to the
9 Air and Marine Operations Center in advance of the avia-
10 tion activity whenever practicable for the purpose of timely
11 coordination and conflict resolution of air missions by the
12 Office, United States Immigration and Customs Enforce-
13 ment, and United States Customs and Border Protection.

14 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to alter, impact, diminish, or in
16 any way undermine the authority of the Administrator of
17 the Federal Aviation Administration to oversee, regulate,
18 and control the safe and efficient use of the airspace of
19 the United States.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) ADDITIONAL ASSISTANT SECRETARY.—Sec-
22 tion 103(a)(9) of the Homeland Security Act of
23 2002 (6 U.S.C. 113(a)(9)) is amended by striking
24 “12” and inserting “13”.

1 (2) CLERICAL AMENDMENT.—The table of con-
2 tents in section 1(b) of such Act (6 U.S.C. 101) is
3 amended by inserting after the item relating to sec-
4 tion 430 the following new item:

“Sec. 431. Office of Air and Marine Operations.”.

5 **SEC. 503. SHADOW WOLVES TRANSFER.**

6 (a) TRANSFER OF EXISTING UNIT.—Not later than
7 90 days after the date of the enactment of this Act, the
8 Secretary of Homeland Security shall transfer to United
9 States Immigration and Customs Enforcement all func-
10 tions (including the personnel, assets, and liabilities attrib-
11 utable to such functions) of the Customs Patrol Officers
12 unit operating on the Tohono O’odham Indian reservation
13 (commonly known as the “Shadow Wolves” unit).

14 (b) ESTABLISHMENT OF NEW UNITS.—The Sec-
15 retary is authorized to establish within United States Im-
16 migration and Customs Enforcement additional units of
17 Customs Patrol Officers in accordance with this section,
18 as appropriate.

19 (c) DUTIES.—The Customs Patrol Officer unit trans-
20 ferred pursuant to subsection (a), and additional units es-
21 tablished pursuant to subsection (b), shall operate on In-
22 dian lands by preventing the entry of terrorists, other un-
23 lawful aliens, instruments of terrorism, narcotics, and
24 other contraband into the United States.

1 (d) BASIC PAY FOR JOURNEYMAN OFFICERS.—A
2 Customs Patrol Officer in a unit described in this section
3 shall receive equivalent pay as a special agent with similar
4 competencies within United States Immigration and Customs
5 Enforcement pursuant to the Department of Homeland
6 Security’s Human Resources Management System
7 established under section 841 of the Homeland Security
8 Act (6 U.S.C. 411).

9 (e) SUPERVISORS.—Each unit described in this section
10 shall be supervised by a Chief Customs Patrol Officer,
11 who shall have the same rank as a resident agent-in-
12 charge of the Office of Investigations within United States
13 Immigration and Customs Enforcement.

14 **TITLE VI—TERRORIST AND**
15 **CRIMINAL ALIENS**

16 **SEC. 601. REMOVAL OF TERRORIST ALIENS.**

17 (a) EXPANSION OF REMOVAL.—

18 (1) Section 241(b)(3) of the Immigration and
19 Nationality Act (8 U.S.C. 1231(b)(3)) is amended—

20 (A) in subparagraph (A)—

21 (i) by striking “Attorney General may
22 not” and inserting “Secretary of Home-
23 land Security may not”;

24 (ii) by inserting “or the Secretary”
25 after “if the Attorney General”; and

1 (B) in subparagraph (B)—

2 (i) by inserting “or the Secretary of
3 Homeland Security” after “if the Attorney
4 General”;

5 (ii) by striking “or” in clause (iii);

6 (iii) by striking the period at the end
7 of clause (iv) and inserting “; or”;

8 (iv) by inserting after clause (iv) the
9 following new clause:

10 “(v) the alien is described in any sub-
11 clause of section 212(a)(3)(B)(i) or section
12 212(a)(3)(F), unless, in the case only of an
13 alien described in subclause (IV) or (IX) of
14 section 212(a)(3)(B)(i), the Secretary of
15 Homeland Security determines, in the Sec-
16 retary’s discretion, that there are not rea-
17 sonable grounds for regarding the alien as
18 a danger to the security of the United
19 States.”; and

20 (v) in the third sentence, by inserting
21 “or the Secretary of Homeland Security”
22 after “Attorney General”; and

23 (vi) by striking the last sentence and
24 inserting the following: “The Secretary of
25 Homeland Security shall waive the applica-

1 tion of clause (v) in the case of removal of
2 an alien who is a native or citizen of a
3 country in the Western Hemisphere with
4 whose government the United States does
5 not have full diplomatic relations.

6 (2) Section 208(b)(2)(A)(v) of such Act (8
7 U.S.C. 1158(b)(2)(A)(v)) is amended—

8 (A) by striking “subclause (I), (II), (III),
9 (IV), or (VI)” and inserting “any subclause”;

10 (B) by striking “237(a)(4)(B)” and insert-
11 ing “212(a)(3)(F)”; and

12 (C) by inserting “or (IX)” after “subclause
13 (IV)”.

14 (3) Section 240A(c)(4) of such Act (8 U.S.C.
15 1229b(c)(4)) is amended—

16 (A) by striking “inadmissible under” and
17 inserting “described in”; and

18 (B) by striking “deportable under” and in-
19 serting “described in”.

20 (4) Section 240B(b)(1)(C) of such Act (8
21 U.S.C. 1229c(b)(1)(C)) is amended by striking “de-
22 portable under” and inserting “described in”.

23 (5) Section 249 of such Act (8 U.S.C. 1259))
24 is amended—

1 (A) by striking “inadmissible under” and
2 inserting “described in”; and

3 (B) in paragraph (d), by striking “deport-
4 able under” and inserting “described in”.

5 (b) **RETROACTIVE APPLICATION.**—The amendments
6 made by this section shall take effect on the date of enact-
7 ment of this Act and sections 208(b)(2)(A), 240A, 240B,
8 241(b)(3), and 249 of the Immigration and Nationality
9 Act, as so amended, shall apply to—

10 (1) all aliens in removal, deportation, or exclu-
11 sion proceedings;

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

14 (3) with respect to aliens and applications de-
15 scribed in paragraph (1) or (2), acts and conditions
16 constituting a ground for inadmissibility, exclud-
17 ability, deportation, or removal occurring or existing
18 before, on, or after the date of the enactment of this
19 Act.

20 **SEC. 602. DETENTION OF DANGEROUS ALIENS.**

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

23 (1) in subsection (a), by striking “Attorney
24 General” and inserting “Secretary of Homeland Se-
25 curity” each place it appears;

1 (2) in subsection (a)(1)(B), by adding after and
2 below clause (iii) the following:

3 “If, at that time, the alien is not in the custody
4 of the Secretary (under the authority of this
5 Act), the Secretary shall take the alien into cus-
6 tody for removal, and the removal period shall
7 not begin until the alien is taken into such cus-
8 tody. If the Secretary transfers custody of the
9 alien during the removal period pursuant to law
10 to another Federal agency or a State or local
11 government agency in connection with the offi-
12 cial duties of such agency, the removal period
13 shall be tolled, and shall begin anew on the date
14 of the alien’s return to the custody of the Sec-
15 retary.”;

16 (3) by amending clause (ii) of subsection
17 (a)(1)(B) to read as follows:

18 “(ii) If a court, the Board of Immi-
19 gration Appeals, or an immigration judge
20 orders a stay of the removal of the alien,
21 the date the stay of removal is no longer
22 in effect.”;

23 (4) by amending subparagraph (C) of sub-
24 section (a)(1) to read as follows:

1 “(C) SUSPENSION OF PERIOD.—The re-
2 removal period shall be extended beyond a period
3 of 90 days and the alien may remain in deten-
4 tion during such extended period if the alien
5 fails or refuses to make all reasonable efforts to
6 comply with the removal order, or to fully co-
7 operate with the Secretary’s efforts to establish
8 the alien’s identity and carry out the removal
9 order, including making timely application in
10 good faith for travel or other documents nec-
11 essary to the alien’s departure, or conspires or
12 acts to prevent the alien’s removal subject to an
13 order of removal.”;

14 (5) in subsection (a)(2), by adding at the end
15 the following: “If a court orders a stay of removal
16 of an alien who is subject to an administratively
17 final order of removal, the Secretary in the exercise
18 of discretion may detain the alien during the pend-
19 ency of such stay of removal.”;

20 (6) in subsection (a)(3), by amending subpara-
21 graph (D) to read as follows:

22 “(D) to obey reasonable restrictions on the
23 alien’s conduct or activities, or perform affirma-
24 tive acts, that the Secretary prescribes for the
25 alien, in order to prevent the alien from ab-

1 scending, or for the protection of the commu-
2 nity, or for other purposes related to the en-
3 forcement of the immigration laws.”;

4 (7) in subsection (a)(6), by striking “removal
5 period and, if released,” and inserting “removal pe-
6 riod, in the discretion of the Secretary, without any
7 limitations other than those specified in this section,
8 until the alien is removed. If an alien is released, the
9 alien”;

10 (8) by redesignating paragraph (7) of sub-
11 section (a) as paragraph (10) and inserting after
12 paragraph (6) of such subsection the following new
13 paragraphs:

14 “(7) PAROLE.—If an alien detained pursuant to
15 paragraph (6) is an applicant for admission, the
16 Secretary, in the Secretary’s discretion, may parole
17 the alien under section 212(d)(5) of this Act and
18 may provide, notwithstanding section 212(d)(5), that
19 the alien shall not be returned to custody unless ei-
20 ther the alien violates the conditions of the alien’s
21 parole or the alien’s removal becomes reasonably
22 foreseeable, provided that in no circumstance shall
23 such alien be considered admitted.

24 “(8) APPLICATION OF ADDITIONAL RULES FOR
25 DETENTION OR RELEASE OF CERTAIN ALIENS WHO

1 HAVE MADE AN ENTRY.—The rules set forth in sub-
2 section (j) shall only apply with respect to an alien
3 who was lawfully admitted the most recent time the
4 alien entered the United States or has otherwise ef-
5 fected an entry into the United States.

6 “(9) JUDICIAL REVIEW.—Without regard to the
7 place of confinement, judicial review of any action or
8 decision pursuant to paragraphs (6), (7), or (8) or
9 subsection (j) shall be available exclusively in habeas
10 corpus proceedings instituted in the United States
11 District Court for the District of Columbia, and only
12 if the alien has exhausted all administrative rem-
13 edies (statutory and regulatory) available to the
14 alien as of right.”; and

15 (9) by adding at the end the following new sub-
16 section:

17 “(j) ADDITIONAL RULES FOR DETENTION OR RE-
18 LEASE OF CERTAIN ALIENS WHO HAVE MADE AN
19 ENTRY.—

20 “(1) APPLICATION.—The rules set forth in this
21 subsection apply in the case of an alien described in
22 subsection (a)(8).

23 “(2) ESTABLISHMENT OF A DETENTION RE-
24 VIEW PROCESS FOR ALIENS WHO FULLY COOPERATE
25 WITH REMOVAL.—

1 “(A) IN GENERAL.—The Secretary shall
2 establish an administrative review process to
3 determine whether the aliens should be detained
4 or released on conditions for aliens who—

5 “(i) have made all reasonable efforts
6 to comply with their removal orders;

7 “(ii) have complied with the Sec-
8 retary’s efforts to carry out the removal
9 orders, including making timely application
10 in good faith for travel or other documents
11 necessary to the alien’s departure, and

12 “(iii) have not conspired or acted to
13 prevent removal.

14 “(B) DETERMINATION.—The Secretary
15 shall make a determination whether to release
16 an alien after the removal period in accordance
17 with paragraphs (3) and (4). The determina-
18 tion—

19 “(i) shall include consideration of any
20 evidence submitted by the alien and the
21 history of the alien’s efforts to comply with
22 the order of removal, and

23 “(ii) may include any information or
24 assistance provided by the Department of
25 State or other Federal agency and any

1 other information available to the Sec-
2 retary pertaining to the ability to remove
3 the alien.

4 “(3) AUTHORITY TO DETAIN BEYOND THE RE-
5 MOVAL PERIOD.—

6 “(A) INITIAL 90 DAY PERIOD.—The Sec-
7 retary in the exercise of discretion, without any
8 limitations other than those specified in this
9 section, may continue to detain an alien for 90
10 days beyond the removal period (including any
11 extension of the removal period as provided in
12 subsection (a)(1)(C)).

13 “(B) EXTENSION.—

14 “(i) IN GENERAL.—The Secretary in
15 the exercise of discretion, without any limi-
16 tations other than those specified in this
17 section, may continue to detain an alien
18 beyond the 90 days authorized in subpara-
19 graph (A)—

20 “(I) until the alien is removed if
21 the conditions described in subpara-
22 graph (A) or (B) of paragraph (4)
23 apply; or

1 “(II) pending a determination as
2 provided in subparagraph (C) of para-
3 graph (4).

4 “(ii) RENEWAL.—The Secretary may
5 renew a certification under paragraph
6 (4)(B) every six months without limitation,
7 after providing an opportunity for the alien
8 to request reconsideration of the certifi-
9 cation and to submit documents or other
10 evidence in support of that request. If the
11 Secretary does not renew a certification,
12 the Secretary may not continue to detain
13 the alien under such paragraph.

14 “(iii) DELEGATION.—Notwithstanding
15 section 103, the Secretary may not dele-
16 gate the authority to make or renew a cer-
17 tification described in clause (ii), (iii), or
18 (v) of paragraph (4)(B) below the level of
19 the Assistant Secretary for Immigration
20 and Customs Enforcement.

21 “(iv) HEARING.—The Secretary may
22 request that the Attorney General provide
23 for a hearing to make the determination
24 described in clause (iv)(II) of paragraph
25 (4)(B).

1 “(4) CONDITIONS FOR EXTENSION.—The condi-
2 tions for continuation of detention are any of the fol-
3 lowing:

4 “(A) The Secretary determines that there
5 is a significant likelihood that the alien—

6 “(i) will be removed in the reasonably
7 foreseeable future; or

8 “(ii) would be removed in the reason-
9 ably foreseeable future, or would have been
10 removed, but for the alien’s failure or re-
11 fusal to make all reasonable efforts to com-
12 ply with the removal order, or to fully co-
13 operate with the Secretary’s efforts to es-
14 tablish the alien’s identity and carry out
15 the removal order, including making timely
16 application in good faith for travel or other
17 documents necessary to the alien’s depart-
18 ture, or conspiracies or acts to prevent re-
19 moval.

20 “(B) The Secretary certifies in writing any
21 of the following:

22 “(i) In consultation with the Secretary
23 of Health and Human Services, the alien
24 has a highly contagious disease that poses
25 a threat to public safety.

1 “(ii) After receipt of a written rec-
2 ommendation from the Secretary of State,
3 the release of the alien is likely to have se-
4 rious adverse foreign policy consequences
5 for the United States.

6 “(iii) Based on information available
7 to the Secretary (including available infor-
8 mation from the intelligence community,
9 and without regard to the grounds upon
10 which the alien was ordered removed),
11 there is reason to believe that the release
12 of the alien would threaten the national se-
13 curity of the United States.

14 “(iv) The release of the alien will
15 threaten the safety of the community or
16 any person, the conditions of release can-
17 not reasonably be expected to ensure the
18 safety of the community or any person,
19 and—

20 “(I) the alien has been convicted
21 of one or more aggravated felonies de-
22 scribed in section 101(a)(43)(A) or of
23 one or more crimes identified by the
24 Secretary by regulation, or of one or
25 more attempts or conspiracies to com-

1 mit any such aggravated felonies or
2 such crimes, for an aggregate term of
3 imprisonment of at least five years; or

4 “(II) the alien has committed one
5 or more crimes of violence and, be-
6 cause of a mental condition or person-
7 ality disorder and behavior associated
8 with that condition or disorder, the
9 alien is likely to engage in acts of vio-
10 lence in the future.

11 “(v) The release of the alien will
12 threaten the safety of the community or
13 any person, conditions of release cannot
14 reasonably be expected to ensure the safety
15 of the community or any person, and the
16 alien has been convicted of at least one ag-
17 gravated felony.

18 “(C) Pending a determination under sub-
19 paragraph (B), so long as the Secretary has ini-
20 tiated the administrative review process no later
21 than 30 days after the expiration of the removal
22 period (including any extension of the removal
23 period as provided in subsection (a)(1)(C)).

24 “(5) RELEASE ON CONDITIONS.—If it is deter-
25 mined that an alien should be released from deten-

1 tion, the Secretary in the exercise of discretion may
2 impose conditions on release as provided in sub-
3 section (a)(3).

4 “(6) REDETENTION.—The Secretary in the ex-
5 ercise of discretion, without any limitations other
6 than those specified in this section, may again de-
7 tain any alien subject to a final removal order who
8 is released from custody if the alien fails to comply
9 with the conditions of release or to cooperate in the
10 alien’s removal from the United States, or if, upon
11 reconsideration, the Secretary determines that the
12 alien can be detained under paragraph (1). Para-
13 graphs (6) through (8) of subsection (a) shall apply
14 to any alien returned to custody pursuant to this
15 paragraph, as if the removal period terminated on
16 the day of the redetention.

17 “(7) CERTAIN ALIENS WHO EFFECTED
18 ENTRY.—If an alien has effected an entry into the
19 United States but has neither been lawfully admitted
20 nor physically present in the United States continu-
21 ously for the 2-year period immediately prior to the
22 commencement of removal proceedings under this
23 Act or deportation proceedings against the alien, the
24 Secretary in the exercise of discretion may decide
25 not to apply subsection (a)(8) and this subsection

1 and may detain the alien without any limitations ex-
2 cept those imposed by regulation.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 subsection (a) shall take effect upon the date of enactment
5 of this Act, and section 241 of the Immigration and Na-
6 tionality Act, as amended, shall apply to—

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

11 (2) acts and conditions occurring or existing be-
12 fore, on, or after the date of enactment of this Act.

13 **SEC. 603. INCREASE IN CRIMINAL PENALTIES.**

14 Section 243 of the Immigration and Nationality Act
15 (8 U.S.C. 1253) is amended—

16 (1) in subsection (a)(1)—

17 (A) in the matter before subparagraph (A),
18 by inserting “or 212(a)” after “section
19 237(a)”; and

20 (B) by striking “imprisoned not more than
21 four years” and inserting “imprisoned for not
22 less than six months or more than five years”;
23 and

24 (2) in subsection (b)—

1 (A) by striking “not more than \$1,000”
2 and inserting “under title 18, United States
3 Code”; and

4 (B) by striking “for not more than one
5 year” and inserting “for not less than six
6 months or more than five years (or 10 years if
7 the alien is a member of any class described in
8 paragraph (1)(E), (2), (3), or (4) of section
9 237(a)”.

10 **SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED**
11 **FELONS AND OTHER CRIMINALS.**

12 (a) **EXCLUSION BASED ON FRAUDULENT DOCU-**
13 **MENTATION.**—Section 212(a)(2)(A)(i) of the Immigration
14 and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amend-
15 ed—

16 (1) in subclause (I), by striking “or” at the
17 end;

18 (2) in subclause (II), by adding “or” at the
19 end; and

20 (3) by inserting after subclause (II) the fol-
21 lowing new subclause:

22 “(III) a violation (or a conspiracy
23 or attempt to violate) an offense de-
24 scribed in section 208 of the Social

1 Security Act or section 1028 of title
2 18, United States Code,”.

3 (b) EXCLUSION BASED ON AGGRAVATED FELONY,
4 UNLAWFUL PROCUREMENT OF CITIZENSHIP, AND
5 CRIMES OF DOMESTIC VIOLENCE.—Section 212(a)(2) of
6 such Act (8 U.S.C. 1182(a)(2)) is amended by adding at
7 the end the following new subparagraphs:

8 “(J) AGGRAVATED FELONY.—Any alien
9 who is convicted of an aggravated felony at any
10 time is inadmissible.

11 “(K) UNLAWFUL PROCUREMENT OF CITI-
12 ZENSHIP.—Any alien convicted of, or who ad-
13 mits having committed, or who admits commit-
14 ting acts which constitute the essential elements
15 of, a violation of (or a conspiracy or attempt to
16 violate) subsection (a) or (b) of section 1425 of
17 title 18, United States Code is inadmissible.

18 “(L) CRIMES OF DOMESTIC VIOLENCE,
19 STALKING, OR VIOLATION OF PROTECTION OR-
20 DERS; CRIMES AGAINST CHILDREN.—

21 “(i) DOMESTIC VIOLENCE, STALKING,
22 OR CHILD ABUSE.—

23 “(I) IN GENERAL.—Subject to
24 subclause (II), any alien who at any
25 time is convicted of, or who admits

1 having committed, or who admits
2 committing acts which constitute the
3 essential elements of, a crime of do-
4 mestic violence, a crime of stalking, or
5 a crime of child abuse, child neglect,
6 or child abandonment is inadmissible.

7 “(II) WAIVER FOR VICTIMS OF
8 DOMESTIC VIOLENCE.—Subclause (I)
9 shall not apply to any alien described
10 in section 237(a)(7)(A).

11 “(III) CRIME OF DOMESTIC VIO-
12 LENCE DEFINED.—For purposes of
13 subclause (I), the term ‘crime of do-
14 mestic violence’ means any crime of
15 violence (as defined in section 16 of
16 title 18, United States Code) against
17 a person committed by a current or
18 former spouse of the person, by an in-
19 dividual with whom the person shares
20 a child in common, by an individual
21 who is cohabiting with or has
22 cohabited with the person as a spouse,
23 by an individual similarly situated to
24 a spouse of the person under the do-
25 mestic or family violence laws of the

1 jurisdiction where the offense occurs,
2 or by any other individual against a
3 person who is protected from that in-
4 dividual's acts under the domestic or
5 family violence laws of the United
6 States or any State, Indian tribal gov-
7 ernment, or unit of local or foreign
8 government.

9 “(ii) VIOLATORS OF PROTECTION OR-
10 DERS.—

11 “(I) IN GENERAL.—Any alien
12 who at any time is enjoined under a
13 protection order issued by a court and
14 whom the court determines has en-
15 gaged in conduct that violates the por-
16 tion of a protection order that involves
17 protection against credible threats of
18 violence, repeated harassment, or bod-
19 ily injury to the person or person for
20 whom the protection order was issued
21 is inadmissible.

22 “(II) PROTECTION ORDER DE-
23 FINED.—For purposes of subclause
24 (I), the term ‘protection order’ means
25 any injunction issued for the purpose

1 of preventing violent or threatening
2 acts of domestic violence, including
3 temporary or final orders issued by
4 civil or criminal courts (other than
5 support or child custody orders or
6 provisions) whether obtained by filing
7 an independent action or as an inde-
8 pendent order in another pro-
9 ceeding.”.

10 (c) WAIVER AUTHORITY.—Section 212(h) of such
11 Act (8 U.S.C. 1182(h)) is amended—

12 (1) by striking “The Attorney General may, in
13 his discretion, waive the application of subpara-
14 graphs (A)(i)(I), (B), (D), and (E) of subsection
15 (a)(2)” and inserting “The Attorney General or the
16 Secretary of Homeland Security may, in the discre-
17 tion of the Attorney General or such Secretary,
18 waive the application of subparagraph (A)(i)(I),
19 (A)(i)(III), (B), (D), (E), (K), and (L) of subsection
20 (a)(2)”;

21 (2) in paragraphs (1)(A) and (1)(B) and the
22 last sentence, by inserting “or the Secretary” after
23 “Attorney General” each place it appears;

24 (3) in paragraph (2), by striking “Attorney
25 General, in his discretion,” and inserting “Attorney

1 General or the Secretary of Homeland Security, in
2 the discretion of the Attorney General or such Sec-
3 retary,”;

4 (4) in paragraph (2), by striking “as he” and
5 inserting “as the Attorney General or the Sec-
6 retary”;

7 (5) in the second sentence, by striking “crimi-
8 nal acts involving torture” and inserting “criminal
9 acts involving torture, or an aggravated felony”; and

10 (6) in the third sentence, by striking “if either
11 since the date of such admission the alien has been
12 convicted of an aggravated felony or the alien” and
13 inserting “if since the date of such admission the
14 alien”.

15 (d) CONSTRUCTION.—The amendments made by this
16 section shall not be construed to create eligibility for relief
17 from removal under section 212(c) of the Immigration and
18 Nationality Act, as in effect before its repeal by section
19 304(b) of the Immigration Reform and Immigrant Re-
20 sponsibility Act of 1996 (division C of Public Law 104–
21 208), where such eligibility did not exist before these
22 amendments became effective.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to—

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

3 (2) to all aliens who are required to establish
4 admissibility on or after the such date, and in all re-
5 moval, deportation, or exclusion proceedings that are
6 filed, pending, or reopened, on or after such date.

7 **SEC. 605. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT**
8 **OF STATUS FOR AGGRAVATED FELONIES.**

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

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

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

18 (2) to all aliens who are required to establish
19 admissibility on or after such date, and in all re-
20 moval, deportation, or exclusion proceedings that are
21 filed, pending, or reopened, on or after such date.

22 **SEC. 606. REMOVING DRUNK DRIVERS.**

23 (a) IN GENERAL.—Section 236 of the Immigration
24 and Nationality Act (8 U.S.C. 1226) is amended—

25 (1) in subsection (c)(1)—

1 (A) in subparagraph (C), by striking “or”
2 at the end;

3 (B) in subparagraph (D), by inserting
4 “or” at the end; and

5 (C) by inserting after subparagraph (D)
6 the following new subparagraph:

7 “(E) is unlawfully present in the United
8 States and who is deportable on any grounds
9 and is apprehended for any offense described in
10 section 237(a)(2)(F) by a State or local law en-
11 forcement officer covered under an agreement
12 under section 287(g),”;

13 (2) by redesignating subsection (e) as sub-
14 section (f); and

15 (3) by inserting after subsection (d) the fol-
16 lowing new subsection:

17 “(e) DRIVING WHILE INTOXICATED.—If a State or
18 local law enforcement officer apprehends an individual for
19 an offense described in section 237(a)(2)(F) and the offi-
20 cer has reasonable ground to believe that the individual
21 is an alien—

22 “(1) the officer shall verify with the databases
23 of the Federal Government, including the National
24 Criminal Information Center and the Law Enforce-
25 ment Support Center, whether the individual is an

1 alien and whether such alien is unlawfully present in
2 the United States; and

3 “(2) if any such database—

4 “(A) indicates that the individual is an
5 alien unlawfully present in the United States—

6 “(i) an officer covered under an agree-
7 ment under section 287(g) is authorized to
8 issue a Federal detainer to maintain the
9 alien in custody in accordance with such
10 agreement until the alien is convicted for
11 such offense or the alien is transferred to
12 Federal custody;

13 “(ii) the officer is authorized to trans-
14 port the alien to a location where the alien
15 can be transferred to Federal custody and
16 shall be removed from the United States in
17 accordance with applicable law; and

18 “(iii) the Secretary of Homeland Se-
19 curity shall reimburse the State and local
20 law enforcement agencies involved for the
21 costs of transporting aliens when such
22 transportation is not done in the course of
23 their normal duties; or

24 “(B) indicates that the individual is an
25 alien but is not unlawfully present in the

1 United States, the officer shall take the alien
2 into custody for such offense in accordance with
3 State law and shall promptly notify the Sec-
4 retary of Homeland Security of such apprehen-
5 sion and maintain the alien in custody pending
6 a determination by the Secretary with respect
7 to any action to be taken by the Secretary
8 against such alien.”.

9 (b) DEPORTATION FOR DWI.—

10 (1) IN GENERAL.—Section 237(a)(2) of such
11 Act (8 U.S.C. 1227(a)(2)) is amended by adding at
12 the end the following new subparagraph:

13 “(F) DRIVING WHILE INTOXICATED AND
14 WHILE UNLAWFULLY PRESENT IN THE UNITED
15 STATES.—An alien—

16 “(i) who at the time the alien is un-
17 lawfully present in the United States and
18 who commits the offense of driving while
19 intoxicated, driving under the influence, or
20 similar violation of State law (as deter-
21 mined by the Secretary of Homeland Secu-
22 rity) and who is convicted of such offense,
23 or

24 “(ii) who is unlawfully present in the
25 United States and who commits an offense

1 by refusing in violation of State law to
2 submit to a Breathalyzer test or other test
3 for the purpose of determining blood alco-
4 hol content,
5 is deportable and shall be deported.”.

6 (2) EFFECTIVE DATE.—The amendment made
7 by paragraph (1) shall apply to violations or refusals
8 occurring after the date of the enactment of this
9 Act.

10 (c) SHARING OF INFORMATION BY MOTOR VEHICLE
11 ADMINISTRATORS REGARDING DWI CONVICTIONS AND
12 REFUSALS.—Each State motor vehicle administrator
13 shall—

14 (1) share with the Secretary of Homeland Secu-
15 rity information relating to any alien who has a con-
16 viction or refusal described in section 237(a)(2)(F)
17 of the Immigration and Nationality Act;

18 (2) share such information with other State
19 motor vehicle administrators through the Drivers Li-
20 cense Agreement of the American Association of
21 Motor Vehicle Administrators; and

22 (3) enter such information into the NCIC in a
23 timely manner.

24 (d) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall take effect on the date of the enact-

1 ment of this Act and shall apply to convictions entered
2 before, on, or after such date.

3 **SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT AS-**
4 **SISTANCE PROGRAM.**

5 (a) DESIGNATED COUNTIES ADJACENT TO THE
6 SOUTHERN BORDER OF THE UNITED STATES DE-
7 FINED.—In this section, the term “designated counties
8 adjacent to the southern international border of the
9 United States” includes a county any part of which is
10 within 25 miles of the southern international border of the
11 United States.

12 (b) AUTHORITY.—

13 (1) IN GENERAL.—Any Sheriff or coalition or
14 group of Sheriffs from designated counties adjacent
15 to the southern international border of the United
16 States may transfer aliens detained or in the custody
17 of the Sheriff who are not lawfully present in the
18 United States to appropriate Federal law enforce-
19 ment officials, and shall be promptly paid for the
20 costs of performing such transfers by the Attorney
21 General for any local or State funds previously ex-
22 pended or proposed to be spent by that Sheriff or
23 coalition or group of Sheriffs.

24 (2) PAYMENT OF COSTS.—Payment of costs
25 under paragraph (1) shall include payment for costs

1 of detaining, housing, and transporting aliens who
2 are not lawfully present in the United States or who
3 have unlawfully entered the United States at a loca-
4 tion other than a port of entry and who are taken
5 into custody by the Sheriff.

6 (3) LIMITATION TO FUTURE COSTS.—In no
7 case shall payment be made under this section for
8 costs incurred before the date of the enactment of
9 this Act.

10 (4) ADVANCE PAYMENT OF COSTS.—The Attor-
11 ney General shall make an advance payment under
12 this section upon a certification of anticipated costs
13 for which payment may be made under this section,
14 but in no case shall such an advance payment cover
15 a period of costs of longer than 3 months.

16 (c) DESIGNATED COUNTY LAW ENFORCEMENT AC-
17 COUNT.—

18 (1) SEPARATE ACCOUNT.—Reimbursement or
19 pre-payment under subsection (b) shall be made
20 promptly from funds deposited into a separate ac-
21 count in the Treasury of the United States to be en-
22 titled the “Designated County Law Enforcement Ac-
23 count”.

24 (2) AVAILABILITY OF FUNDS.—All deposits into
25 the Designated County Law Enforcement Account

1 shall remain available until expended to the Attorney
2 General to carry out the provisions of this section.

3 (3) PROMPTLY DEFINED.—For purposes of this
4 section, the term “promptly” means within 60 days.

5 (d) FUNDS FOR THE DESIGNATED COUNTY LAW EN-
6 FORCEMENT ACCOUNT.—Only funds designated, author-
7 ized, or appropriated by Congress may be deposited or
8 transferred to the Designated County Law Enforcement
9 Account. The Designated County Law Enforcement Ac-
10 count is authorized to receive up to \$100,000,000 per
11 year.

12 (e) USE OF FUNDS.—

13 (1) IN GENERAL.—Funds provided under this
14 section shall be payable directly to participating
15 Sheriff’s offices and may be used for the transfers
16 described in subsection (b)(1), including the costs of
17 personnel (such as overtime pay and costs for re-
18 serve deputies), costs of training of such personnel,
19 equipment, and, subject to paragraph (2), the con-
20 struction, maintenance, and operation of detention
21 facilities to detain aliens who are unlawfully present
22 in the United States. For purposes of this section,
23 an alien who is unlawfully present in the United
24 States shall be deemed to be a Federal prisoner be-
25 ginning upon determination by Federal law enforce-

1 ment officials that such alien is unlawfully present
2 in the United States, and such alien shall, upon such
3 determination, be deemed to be in Federal custody.
4 In order for costs to be eligible for payment, the
5 Sheriff making such application shall personally cer-
6 tify under oath that all costs submitted in the appli-
7 cation for reimbursement or advance payment meet
8 the requirements of this section and are reasonable
9 and necessary, and such certification shall be subject
10 to all State and Federal laws governing statements
11 made under oath, including the penalties of perjury,
12 removal from office, and prosecution under State
13 and Federal law.

14 (2) LIMITATION.—Not more than 20 percent of
15 the amount of funds provided under this section may
16 be used for the construction or renovation of deten-
17 tion or similar facilities.

18 (f) DISPOSITION AND DELIVERY OF DETAINED
19 ALIENS.—All aliens detained or taken into custody by a
20 Sheriff under this section and with respect to whom Fed-
21 eral law enforcement officials determine are unlawfully
22 present in the United States, shall be immediately deliv-
23 ered to Federal law enforcement officials. In accordance
24 with subsection (e)(1), an alien who is in the custody of

1 a Sheriff shall be deemed to be a Federal prisoner and
2 in Federal custody.

3 (g) REGULATIONS.—The Attorney General shall
4 issue, on an interim final basis, regulations not later than
5 60 days after the date of the enactment of this Act—

6 (1) governing the distribution of funds under
7 this section for all reasonable and necessary costs
8 and other expenses incurred or proposed to be in-
9 curred by a Sheriff or coalition or group of Sheriffs
10 under this section; and

11 (2) providing uniform standards that all other
12 Federal law enforcement officials shall follow to co-
13 operate with such Sheriffs and to otherwise imple-
14 ment the requirements of this section.

15 (h) EFFECTIVE DATE.—The provisions of this sec-
16 tion shall take effect on its enactment. The promulgation
17 of any regulations under subsection (g) is not a necessary
18 precondition to the immediate deployment or work of
19 Sheriffs personnel or corrections officers as authorized by
20 this section. Any reasonable and necessary expenses or
21 costs authorized by this section and incurred by such
22 Sheriffs after the date of the enactment of this Act but
23 prior to the date of the promulgation of such regulations
24 are eligible for reimbursement under the terms and condi-
25 tions of this section.

1 (i) AUDIT.—All funds paid out under this section are
2 subject to audit by the Inspector General of the Depart-
3 ment of Justice and abuse or misuse of such funds shall
4 be vigorously investigated and prosecuted to the full extent
5 of Federal law.

6 (j) SUPPLEMENTAL FUNDING.—All funds paid out
7 under this section must supplement, and may not sup-
8 plant, State or local funds used for the same or similar
9 purposes.

10 **SEC. 608. RENDERING INADMISSIBLE AND DEPORTABLE**
11 **ALIENS PARTICIPATING IN CRIMINAL**
12 **STREET GANGS; DETENTION; INELIGIBILITY**
13 **FROM PROTECTION FROM REMOVAL AND**
14 **ASYLUM.**

15 (a) INADMISSIBLE.—Section 212(a)(2) of the Immi-
16 gration and Nationality Act (8 U.S.C. 1182(a)(2)), as
17 amended by section 604(b), is further amended by adding
18 at the end the following:

19 “(M) CRIMINAL STREET GANG PARTICIPA-
20 TION.—

21 “(i) IN GENERAL.—Any alien is inad-
22 missible if the alien has been removed
23 under section 237(a)(2)(F), or if the con-
24 sular officer or the Secretary of Homeland

1 Security knows, or has reasonable ground
2 to believe that the alien—

3 “(I) is a member of a criminal
4 street gang and has committed, con-
5 spired, or threatened to commit, or
6 seeks to enter the United States to
7 engage solely, principally, or inciden-
8 tally in, a gang crime or any other un-
9 lawful activity; or

10 “(II) is a member of a criminal
11 street gang designated under section
12 219A.

13 “(ii) CRIMINAL STREET GANG DE-
14 FINED.—For purposes of this subpara-
15 graph, the term ‘criminal street gang’
16 means a formal or informal group or asso-
17 ciation of 3 or more individuals, who com-
18 mit 2 or more gang crimes (one of which
19 is a crime of violence, as defined in section
20 16 of title 18, United States Code) in 2 or
21 more separate criminal episodes in relation
22 to the group or association.

23 “(iii) GANG CRIME DEFINED.—For
24 purposes of this subparagraph, the term
25 ‘gang crime’ means conduct constituting

1 any Federal or State crime, punishable by
2 imprisonment for one year or more, in any
3 of the following categories:

4 “(I) A crime of violence (as de-
5 fined in section 16 of title 18, United
6 States Code).

7 “(II) A crime involving obstruc-
8 tion of justice, tampering with or re-
9 taliating against a witness, victim, or
10 informant, or burglary.

11 “(III) A crime involving the man-
12 ufacturing, importing, distributing,
13 possessing with intent to distribute, or
14 otherwise dealing in a controlled sub-
15 stance or listed chemical (as those
16 terms are defined in section 102 of
17 the Controlled Substances Act (21
18 U.S.C. 802)).

19 “(IV) Any conduct punishable
20 under section 844 of title 18, United
21 States Code (relating to explosive ma-
22 terials), subsection (d), (g)(1) (where
23 the underlying conviction is a violent
24 felony (as defined in section
25 924(e)(2)(B) of such title) or is a se-

1 rious drug offense (as defined in sec-
2 tion 924(e)(2)(A)), (i), (j), (k), (o),
3 (p), (q), (u), or (x) of section 922 of
4 such title (relating to unlawful acts),
5 or subsection (b), (c), (g), (h), (k), (l),
6 (m), or (n) of section 924 of such title
7 (relating to penalties), section 930 of
8 such title (relating to possession of
9 firearms and dangerous weapons in
10 Federal facilities), section 931 of such
11 title (relating to purchase, ownership,
12 or possession of body armor by violent
13 felons), sections 1028 and 1029 of
14 such title (relating to fraud and re-
15 lated activity in connection with iden-
16 tification documents or access de-
17 vices), section 1952 of such title (re-
18 lating to interstate and foreign travel
19 or transportation in aid of racket-
20 eering enterprises), section 1956 of
21 such title (relating to the laundering
22 of monetary instruments), section
23 1957 of such title (relating to engag-
24 ing in monetary transactions in prop-
25 erty derived from specified unlawful

1 activity), or sections 2312 through
2 2315 of such title (relating to inter-
3 state transportation of stolen motor
4 vehicles or stolen property).

5 “(V) Any conduct punishable
6 under section 274 (relating to bring-
7 ing in and harboring certain aliens),
8 section 277 (relating to aiding or as-
9 sisting certain aliens to enter the
10 United States), or section 278 (relat-
11 ing to importation of alien for im-
12 moral purpose) of this Act.”.

13 (b) DEPORTABLE.—Section 237(a)(2) of such Act (8
14 U.S.C. 1227(a)(2)) is amended by adding at the end the
15 following:

16 “(G) CRIMINAL STREET GANG PARTICIPA-
17 TION.—

18 “(i) IN GENERAL.—Any alien is de-
19 portable who—

20 “(I) is a member of a criminal
21 street gang and is convicted of com-
22 mitting, or conspiring, threatening, or
23 attempting to commit, a gang crime;
24 or

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

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

10 (c) DESIGNATION OF CRIMINAL STREET GANGS.—

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

14 “DESIGNATION OF CRIMINAL STREET GANGS

15 “SEC. 219A. (a) DESIGNATION.—

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

22 “(2) PROCEDURE.—

23 “(A) NOTICE.—

24 “(i) TO CONGRESSIONAL LEADERS.—
25 Seven days before making a designation
26 under this subsection, the Attorney Gen-

1 eral shall notify the Speaker and minority
2 leader of the House of Representatives and
3 the majority leader and minority leader of
4 the Senate, and the members of the rel-
5 evant committees of the House of Rep-
6 resentatives and the Senate, in writing, of
7 the intent to designate a group or associa-
8 tion under this subsection, together with
9 the findings made under paragraph (1)
10 with respect to that group or association,
11 and the factual basis therefor.

12 “(ii) PUBLICATION IN FEDERAL REG-
13 ISTER.—The Attorney shall publish the
14 designation in the Federal Register seven
15 days after providing the notification under
16 clause (i).

17 “(B) EFFECT OF DESIGNATION.—

18 “(i) A designation under this sub-
19 section shall take effect upon publication
20 under subparagraph (A)(ii).

21 “(ii) Any designation under this sub-
22 section shall cease to have effect upon an
23 Act of Congress disapproving such des-
24 ignation.

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

4 “(4) PERIOD OF DESIGNATION.—

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

9 “(B) REVIEW OF DESIGNATION UPON PE-
10 TITION.—

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

18 “(ii) PETITION PERIOD.—For pur-
19 poses of clause (i)—

20 “(I) if the designated gang or as-
21 sociation has not previously filed a pe-
22 tition for revocation under this sub-
23 paragraph, the petition period begins
24 2 years after the date on which the
25 designation was made; or

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

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

17 “(iv) DETERMINATION.—

18 “(I) IN GENERAL.—Not later
19 than 180 days after receiving a peti-
20 tion for revocation submitted under
21 this subparagraph, the Attorney Gen-
22 eral shall make a determination as to
23 such revocation.

24 “(II) PUBLICATION OF DETER-
25 MINATION.—A determination made by

1 the Attorney General under this
2 clause shall be published in the Fed-
3 eral Register.

4 “(III) PROCEDURES.—Any rev-
5 ocation by the Attorney General shall
6 be made in accordance with para-
7 graph (6).

8 “(C) OTHER REVIEW OF DESIGNATION.—

9 “(i) IN GENERAL.—If in a 5-year pe-
10 riod no review has taken place under sub-
11 paragraph (B), the Attorney General shall
12 review the designation of the criminal
13 street gang in order to determine whether
14 such designation should be revoked pursu-
15 ant to paragraph (6).

16 “(ii) PROCEDURES.—If a review does
17 not take place pursuant to subparagraph
18 (B) in response to a petition for revocation
19 that is filed in accordance with that sub-
20 paragraph, then the review shall be con-
21 ducted pursuant to procedures established
22 by the Attorney General. The results of
23 such review and the applicable procedures
24 shall not be reviewable in any court.

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

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

8 “(6) REVOCATION BASED ON CHANGE IN CIR-
9 CUMSTANCES.—

10 “(A) IN GENERAL.—The Attorney General
11 may revoke a designation made under para-
12 graph (1) at any time, and shall revoke a des-
13 ignation upon completion of a review conducted
14 pursuant to subparagraphs (B) and (C) of
15 paragraph (4) if the Attorney General finds
16 that the circumstances that were the basis for
17 the designation have changed in such a manner
18 as to warrant revocation.

19 “(B) PROCEDURE.—The procedural re-
20 quirements of paragraphs (2) and (3) shall
21 apply to a revocation under this paragraph. Any
22 revocation shall take effect on the date specified
23 in the revocation or upon publication in the
24 Federal Register if no effective date is specified.

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

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

13 “(b) JUDICIAL REVIEW OF DESIGNATION.—

14 “(1) IN GENERAL.—Not later than 30 days
15 after publication of the designation in the Federal
16 Register, a group or association designated as a
17 criminal street gang may seek judicial review of the
18 designation in the United States Court of Appeals
19 for the District of Columbia Circuit.

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

23 “(3) SCOPE OF REVIEW.—The Court shall hold
24 unlawful and set aside a designation the court finds
25 to be—

1 “(A) arbitrary, capricious, an abuse of dis-
2 cretion, or otherwise not in accordance with
3 law;

4 “(B) contrary to constitutional right,
5 power, privilege, or immunity;

6 “(C) in excess of statutory jurisdiction, au-
7 thority, or limitation, or short of statutory
8 right;

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

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

13 “(4) JUDICIAL REVIEW INVOKED.—The pend-
14 ency of an action for judicial review of a designation
15 shall not affect the application of this section, unless
16 the court issues a final order setting aside the des-
17 ignation.

18 “(c) RELEVANT COMMITTEE DEFINED.—As used in
19 this section, the term ‘relevant committees’ means the
20 Committees on the Judiciary of the House of Representa-
21 tives and of the Senate.”.

22 (2) CLERICAL AMENDMENT.—The table of con-
23 tents of such Act (8 U.S.C. 1101 et seq.) is amend-
24 ed by inserting after the item relating to section 219
25 the following:

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

1 (d) MANDATORY DETENTION OF CRIMINAL STREET
2 GANG MEMBERS.—

3 (1) IN GENERAL.—Section 236(c)(1)(D) of the
4 Immigration and Nationality Act (8 U.S.C.
5 1226(c)(1)(D)) is amended—

6 (A) by inserting “or 212(a)(2)(M)” after
7 “212(a)(3)(B)”; and

8 (B) by inserting “237(a)(2)(F) or” before
9 “237(a)(4)(B)”.

10 (2) ANNUAL REPORT.—Not later than March 1
11 of each year (beginning 1 year after the date of the
12 enactment of this Act), the Secretary of Homeland
13 Security, after consultation with the appropriate
14 Federal agencies, shall submit a report to the Com-
15 mittees on the Judiciary of the House of Represent-
16 atives and of the Senate on the number of aliens de-
17 tained under the amendments made by paragraph
18 (1).

19 (3) EFFECTIVE DATE.—This subsection and the
20 amendments made by this subsection are effective as
21 of the date of enactment of this Act and shall apply
22 to aliens detained on or after such date.

23 (e) INELIGIBILITY OF ALIEN STREET GANG MEM-
24 BERS FROM PROTECTION FROM REMOVAL AND ASY-
25 LUM.—

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

8 (2) INELIGIBILITY FOR ASYLUM.—Section
9 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))
10 is amended—

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

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

15 (C) by inserting after clause (v) the fol-
16 lowing:

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

21 (3) DENIAL OF REVIEW OF DETERMINATION OF
22 INELIGIBILITY FOR TEMPORARY PROTECTED STA-
23 TUS.—Section 244(c)(2) of such Act (8 U.S.C.
24 1254(c)(2)) is amended by adding at the end the fol-
25 lowing:

1 “(C) LIMITATION ON JUDICIAL REVIEW.—
2 There shall be no judicial review of any finding
3 under subparagraph (B) that an alien is in de-
4 scribed in section 208(b)(2)(A)(vi).”.

5 (4) EFFECTIVE DATE.—The amendments made
6 by this subsection are effective on the date of enact-
7 ment of this Act and shall apply to all applications
8 pending on or after such date.

9 (f) EFFECTIVE DATE.—Except as otherwise pro-
10 vided, the amendments made by this section are effective
11 as of the date of enactment and shall apply to all pending
12 cases in which no final administrative action has been en-
13 tered.

14 **SEC. 609. NATURALIZATION REFORM.**

15 (a) BARRING TERRORISTS FROM NATURALIZA-
16 TION.—Section 316 of the Immigration and Nationality
17 Act (8 U.S.C. 1427) is amended by adding at the end the
18 following new subsection:

19 “(g) No person shall be naturalized who the Sec-
20 retary of Homeland Security determines, in the Sec-
21 retary’s discretion, to have been at any time an alien de-
22 scribed in section 212(a)(3) or 237(a)(4). Such determina-
23 tion may be based upon any relevant information or evi-
24 dence, including classified, sensitive, or national security
25 information, and shall be binding upon, and unreviewable

1 by, any court exercising jurisdiction under the immigra-
2 tion laws over any application for naturalization, regard-
3 less whether such jurisdiction to review a decision or ac-
4 tion of the Secretary is de novo or otherwise.”.

5 (b) CONCURRENT NATURALIZATION AND REMOVAL
6 PROCEEDINGS.—The last sentence of section 318 of such
7 Act (8 U.S.C. 1429) is amended—

8 (1) by striking “shall be considered by the At-
9 torney General” and inserting “shall be considered
10 by the Secretary of Homeland Security or any
11 court”;

12 (2) by striking “pursuant to a warrant of arrest
13 issued under the provisions of this or any other
14 Act:” and inserting “or other proceeding to deter-
15 mine the applicant’s inadmissibility or deportability,
16 or to determine whether the applicant’s lawful per-
17 manent resident status should be rescinded, regard-
18 less of when such proceeding was commenced:”; and

19 (3) by striking “upon the Attorney General”
20 and inserting “upon the Secretary of Homeland Se-
21 curity”.

22 (c) PENDING DENATURALIZATION OR REMOVAL
23 PROCEEDINGS.—Section 204(b) of such Act (8 U.S.C.
24 1154(b)) is amended by adding at the end the following:
25 “No petition shall be approved pursuant to this section

1 if there is any administrative or judicial proceeding
2 (whether civil or criminal) pending against the petitioner
3 that could (whether directly or indirectly) result in the pe-
4 titioner’s denaturalization or the loss of the petitioner’s
5 lawful permanent resident status.”.

6 (d) **CONDITIONAL PERMANENT RESIDENTS.**—Sec-
7 tion 216(e) and section 216A(e) of such Act (8 U.S.C.
8 1186a(e), 1186b(e)) are each amended by inserting before
9 the period at the end the following: “, if the alien has had
10 the conditional basis removed under this section”.

11 (e) **DISTRICT COURT JURISDICTION.**—Section 336(b)
12 of such Act (8 U.S.C. 1447(b)) is amended to read as
13 follows:

14 “(b) If there is a failure to render a final administra-
15 tive decision under section 335 before the end of the 180-
16 day period after the date on which the Secretary of Home-
17 land Security completes all examinations and interviews
18 conducted under such section, as such terms are defined
19 by the Secretary pursuant to regulations, the applicant
20 may apply to the district court for the district in which
21 the applicant resides for a hearing on the matter. Such
22 court shall only have jurisdiction to review the basis for
23 delay and remand the matter to the Secretary for the Sec-
24 retary’s determination on the application.”.

1 (f) CONFORMING AMENDMENTS.—Section 310(e) of
2 such Act (8 U.S.C. 1421(e)) is amended—

3 (1) by inserting “, no later than the date that
4 is 120 days after the Secretary’s final determina-
5 tion” before “seek”; and

6 (2) by striking the second sentence and insert-
7 ing the following: “The burden shall be upon the pe-
8 titioner to show that the Secretary’s denial of the
9 application was not supported by facially legitimate
10 and bona fide reasons. Except in a proceeding under
11 section 340, notwithstanding any other provision of
12 law (statutory or nonstatutory), including section
13 2241 of title 28, United States Code, or any other
14 habeas corpus provision, and sections 1361 and
15 1651 of such title, no court shall have jurisdiction
16 to determine, or to review a determination of the
17 Secretary made at any time regarding, for purposes
18 of an application for naturalization, whether an alien
19 is a person of good moral character, whether an
20 alien understands and is attached to the principles
21 of the Constitution of the United States, or whether
22 an alien is well disposed to the good order and hap-
23 piness of the United States.”.

24 (g) EFFECTIVE DATE.—The amendments made by
25 this section shall take effect on the date of the enactment

1 of this Act, shall apply to any act that occurred before,
2 on, or after such date, and shall apply to any application
3 for naturalization or any other case or matter under the
4 immigration laws pending on, or filed on or after, such
5 date.

6 **SEC. 610. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE**
7 **ON CRIMINAL OR SECURITY GROUNDS.**

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

10 (1) in paragraph (1)—

11 (A) by striking “Attorney General” and in-
12 serting “Secretary of Homeland Security in the
13 exercise of discretion”; and

14 (B) by striking “set forth in this sub-
15 section or” and inserting “set forth in this sub-
16 section, in lieu of removal proceedings under”;

17 (2) in paragraph (3), by striking “paragraph
18 (1) until 14 calendar days” and inserting “para-
19 graph (1) or (3) until 7 calendar days”;

20 (3) by striking “Attorney General” each place
21 it appears in paragraphs (3) and (4) and inserting
22 “Secretary of Homeland Security”;

23 (4) in paragraph (5)—

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

4 (B) by striking “the Attorney General may
5 grant in the Attorney General’s discretion” and
6 inserting “the Secretary of Homeland Security
7 or the Attorney General may grant, in the dis-
8 cretion of the Secretary or Attorney General, in
9 any proceeding”;

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

12 (6) by inserting after paragraph (2) the fol-
13 lowing new paragraph:

14 “(3) The Secretary of Homeland Security in
15 the exercise of discretion may determine inadmis-
16 sibility under section 212(a)(2) (relating to criminal
17 offenses) and issue an order of removal pursuant to
18 the procedures set forth in this subsection, in lieu of
19 removal proceedings under section 240, with respect
20 to an alien who—

21 “(A) has not been admitted or paroled;

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

1 “(C) is not eligible for a waiver of inadmiss-
2 sibility or relief from removal.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 subsection (a) shall take effect on the date of the enact-
5 ment of this Act but shall not apply to aliens who are
6 in removal proceedings under section 240 of the Immigra-
7 tion and Nationality Act as of such date.

8 **SEC. 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE**
9 **IN CHANGE IN INADMISSIBILITY FOR TER-**
10 **RORISTS UNDER REAL ID ACT.**

11 Effective as if included in the enactment of Public
12 Law 109–13, sections 103(d)(1) and 105(a)(2)(A) of the
13 REAL ID Act of 2005 (division B of such Public Law)
14 are each amended by inserting “, deportation, and exclu-
15 sion” after “removal”.

16 **SEC. 612. BAR TO GOOD MORAL CHARACTER.**

17 (a) **IN GENERAL.**—Section 101(f) of the Immigration
18 and Nationality Act (8 U.S.C. 1101(f)) is amended—

19 (1) by inserting after paragraph (1) the fol-
20 lowing new paragraph:

21 “(2) one who the Secretary of Homeland Secu-
22 rity or the Attorney General determines, in the
23 unreviewable discretion of the Secretary or the At-
24 torney General, to have been at any time an alien
25 described in section 212(a)(3) or section 237(a)(4),

1 which determination may be based upon any rel-
2 evant information or evidence, including classified,
3 sensitive, or national security information, and which
4 shall be binding upon any court regardless of the ap-
5 plicable standard of review;”;

6 (2) in paragraph (8), by inserting “, regardless
7 whether the crime was classified as an aggravated
8 felony at the time of conviction” after “(as defined
9 in subsection (a)(43))”; and

10 (3) by striking the sentence following paragraph
11 (9) and inserting the following: “The fact that any
12 person is not within any of the foregoing classes
13 shall not preclude a discretionary finding for other
14 reasons that such a person is or was not of good
15 moral character. The Secretary and the Attorney
16 General shall not be limited to the applicant’s con-
17 duct during the period for which good moral char-
18 acter is required, but may take into consideration as
19 a basis for determination the applicant’s conduct
20 and acts at any time.”.

21 (b) AGGRAVATED FELONY EFFECTIVE DATE.—Sec-
22 tion 509(b) of the Immigration Act of 1990 (Public Law
23 101–649), as amended by section 306(a)(7) of the Mis-
24 cellaneous and Technical Immigration and Naturalization

1 Amendments of 1991 (Public Law 102–232) is amended
2 to read as follows:

3 “(b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall take effect on November 29, 1990,
5 and shall apply to convictions occurring before, on, or
6 after such date.”.

7 (c) **TECHNICAL CORRECTION TO THE INTELLIGENCE**
8 **REFORM ACT.**—Effective as if included in the enactment
9 of the Intelligence Reform and Terrorism Prevention Act
10 of 2004 (Public Law 108–458), section 5504(2) of such
11 Act is amended by striking “adding at the end” and in-
12 serting “inserting immediately after paragraph (8)”.

13 (d) **EFFECTIVE DATES.**—The amendments made by
14 subsections (a) and (b) shall take effect on the date of
15 the enactment of this Act, shall apply to any act that oc-
16 curred before, on, or after such date, and shall apply to
17 any application for naturalization or any other benefit or
18 relief or any other case or matter under the immigration
19 laws pending on, or filed on or after, such date.

20 **SEC. 613. STRENGTHENING DEFINITIONS OF “AGGRAVATED**
21 **FELONY” AND “CONVICTION”.**

22 (a) **IN GENERAL.**—Section 101(a) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1101(a)) is amended—

24 (1) by amending subparagraph (A) of para-
25 graph (43) to read as follows:

1 “(A) murder, manslaughter, homicide,
2 rape, or any sexual abuse of a minor, whether
3 or not the minority of the victim is established
4 by evidence contained in the record of conviction
5 or by evidence extrinsic to the record of
6 conviction;” and

7 (2) in paragraph (48)(A), by inserting after and
8 below clause (ii) the following:

9 “Any reversal, vacatur, expungement, or modification
10 to a conviction, sentence, or conviction
11 record that was granted to ameliorate the consequences
12 of the conviction, sentence, or conviction
13 record, or was granted for rehabilitative
14 purposes, or for failure to advise the alien of
15 the immigration consequences of a guilty plea
16 or a determination of guilt, shall have no effect
17 on the immigration consequences resulting from
18 the original conviction. The alien shall have the
19 burden of demonstrating that the reversal,
20 vacatur, expungement, or modification was not
21 granted to ameliorate the consequences of the
22 conviction, sentence, or conviction record, for
23 rehabilitative purposes, or for failure to advise
24 the alien of the immigration consequences of a
25 guilty plea or a determination of guilt.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply to any act that occurred before,
3 on, or after the date of the enactment of this Act and
4 shall apply to any matter under the immigration laws
5 pending on, or filed on or after, such date.

6 **SEC. 614. DEPORTABILITY FOR CRIMINAL OFFENSES.**

7 (a) IN GENERAL.—Section 237(a)(3)(B) of the Im-
8 migration and Nationality Act (8 U.S.C. 1227(a)(3)(B))
9 is amended—

10 (1) in clause (ii), by striking “or” at the end;

11 (2) in clause (iii), by inserting “or” at the end;

12 and

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

14 new clause:

15 “(iv) of a violation of, or an attempt
16 or a conspiracy to violate, subsection (a) or
17 (b) of section 1425 of title 18, United
18 States Code,”.

19 (b) DEPORTABILITY; CRIMINAL OFFENSES.—Section
20 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended
21 by section 608(b), is amended by adding at the end the
22 following new subparagraph:

23 “(G) SOCIAL SECURITY AND IDENTIFICA-
24 TION FRAUD.—Any alien who at any time after
25 admission is convicted of a violation of (or a

1 conspiracy or attempt to violate) an offense de-
2 scribed in section 208 of the Social Security Act
3 or section 1028 of title 18, United States Code
4 is deportable.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to any act that occurred before,
7 on, or after the date of the enactment of this Act, and
8 to all aliens who are required to establish admissibility on
9 or after such date and in all removal, deportation, or ex-
10 clusion proceedings that are filed, pending, or reopened,
11 on or after such date.

12 **SEC. 615. DECLARATION OF CONGRESS.**

13 Congress condemns rapes by smugglers along the
14 international land border of the United States and urges
15 in the strongest possible terms the Government of Mexico
16 to work in coordination with United States Customs and
17 Border Protection of the Department of Homeland Secu-
18 rity take immediate action to prevent such rapes from oc-
19 ccurring.

20 **SEC. 616. REPORT ON CRIMINAL ALIEN PROSECUTION.**

21 Not later than one year after the date of the enact-
22 ment of this Act and annually thereafter, the Attorney
23 General shall submit to the Committee on the Judiciary
24 of the House of Representatives and the Committee on
25 the Judiciary of the Senate a report on the status of crimi-

1 nal alien prosecutions, including prosecutions of human
2 smugglers.

3 **SEC. 617. DETERMINATION OF IMMIGRATION STATUS OF**
4 **INDIVIDUALS CHARGED WITH FEDERAL OF-**
5 **FENSES.**

6 (a) RESPONSIBILITY OF UNITED STATES ATTOR-
7 NEYS.—Beginning 2 years after the date of the enactment
8 of this Act, the office of the United States attorney that
9 is prosecuting a criminal case in a Federal court—

10 (1) shall determine, not later than 30 days
11 after filing the initial pleadings in the case, whether
12 each defendant in the case is lawfully present in the
13 United States (subject to subsequent legal pro-
14 ceedings to determine otherwise);

15 (2)(A) if the defendant is determined to be an
16 alien lawfully present in the United States, shall no-
17 tify the court in writing of the determination and
18 the current status of the alien under the Immigra-
19 tion and Nationality Act; and

20 (B) if the defendant is determined not to be
21 lawfully present in the United States, shall notify
22 the court in writing of the determination, the de-
23 fendant's alien status, and, to the extent possible,
24 the country of origin or legal residence of the de-
25 fendant; and

1 (3) ensure that the information described in
2 paragraph (2) is included in the case file and the
3 criminal records system of the office of the United
4 States attorney.

5 The determination under paragraph (1) shall be made in
6 accordance with guidelines of the Executive Office for Im-
7 migration Review of the Department of Justice.

8 (b) RESPONSIBILITIES OF FEDERAL COURTS.—

9 (1) MODIFICATIONS OF RECORDS AND CASE
10 MANAGERMENTS SYSTEMS.—Not later than 2 years
11 after the date of the enactment of this Act, all Fed-
12 eral courts that hear criminal cases, or appeals of
13 criminal cases, shall modify their criminal records
14 and case management systems, in accordance with
15 guidelines which the Director of the Administrative
16 Office of the United States Courts shall establish, so
17 as to enable accurate reporting of information de-
18 scribed in paragraph (2) of subsection (a).

19 (2) DATA ENTRIES.—Beginning 2 years after
20 the date of the enactment of this Act, each Federal
21 court described in paragraph (1) shall enter into its
22 electronic records the information contained in each
23 notification to the court under subsection (a)(2).

24 (c) ANNUAL REPORT TO CONGRESS.—The Director
25 of the Administrative Office of the United States Courts

1 shall include, in the annual report filed with the Congress
2 under section 604 of title 28, United States Code—

3 (1) statistical information on criminal trials of
4 aliens in the courts and criminal convictions of
5 aliens in the lower courts and upheld on appeal, in-
6 cluding the type of crime in each case and including
7 information on the legal status of the aliens; and

8 (2) recommendations on whether additional
9 court resources are needed to accommodate the vol-
10 ume of criminal cases brought against aliens in the
11 Federal courts.

12 (d) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated for each of fiscal years
14 2009 through 2014, such sums as may be necessary to
15 carry out this Act. Funds appropriated pursuant to this
16 subsection in any fiscal year shall remain available until
17 expended.

18 **SEC. 618. INCREASED CRIMINAL PENALTIES FOR DOCU-**
19 **MENT FRAUD AND CRIMES OF VIOLENCE.**

20 (a) DOCUMENT FRAUD.—Section 1546 of title 18,
21 United States Code, is amended—

22 (1) in subsection (a)—

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

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

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

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

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

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

13 (b) CRIMES OF VIOLENCE.—

14 (1) IN GENERAL.—Title 18, United States
 15 Code, is amended by inserting after chapter 51 the
 16 following:

17 **“CHAPTER 52—ILLEGAL ALIENS**

“Sec.

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

18 **“§ 1131. Enhanced penalties for certain crimes com-**
 19 **mitted by illegal aliens**

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

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

6 “(c) A sentence of imprisonment imposed under this
 7 section shall run consecutively to any other sentence of
 8 imprisonment imposed for any other crime.”.

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

“52. Illegal aliens 1131”.

13 **SEC. 619. LAUNDERING OF MONETARY INSTRUMENTS.**

14 Section 1956(c)(7)(D) of title 18, United States
 15 Code, is amended—

16 (1) by inserting “section 1590 (relating to traf-
 17 ficking with respect to peonage, slavery, involuntary
 18 servitude, or forced labor),” after “section 1363 (re-
 19 lating to destruction of property within the special
 20 maritime and territorial jurisdiction),”; and

21 (2) by inserting “section 274(a) of the Immi-
 22 gration and Nationality Act (8 U.S.C.1324(a)) (re-
 23 lating to bringing in and harboring certain aliens),”
 24 after “section 590 of the Tariff Act of 1930 (19
 25 U.S.C. 1590) (relating to aviation smuggling),”.

1 **TITLE VII—EMPLOYMENT**
2 **ELIGIBILITY VERIFICATION**
3 **Subtitle A—Employment Eligibility**
4 **Verification System**

5 **SEC. 701. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
6 **TEM.**

7 (a) IN GENERAL.—Section 274A(b) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1324a(b)) is amended
9 by adding at the end the following:

10 “(7) EMPLOYMENT ELIGIBILITY VERIFICATION
11 SYSTEM.—

12 “(A) IN GENERAL.—The Secretary of
13 Homeland Security shall establish and admin-
14 ister a verification system through which the
15 Secretary (or a designee of the Secretary, which
16 may be a nongovernmental entity)—

17 “(i) responds to inquiries made by
18 persons at any time through a toll-free
19 telephone line and other toll-free electronic
20 media concerning an individual’s identity
21 and whether the individual is authorized to
22 be employed; and

23 “(ii) maintains records of the inquir-
24 ies that were made, of verifications pro-
25 vided (or not provided), and of the codes

1 provided to inquirers as evidence of their
2 compliance with their obligations under
3 this section.

4 “(B) INITIAL RESPONSE.—The verification
5 system shall provide verification or a tentative
6 nonverification of an individual’s identity and
7 employment eligibility within 3 working days of
8 the initial inquiry. If providing verification or
9 tentative nonverification, the verification system
10 shall provide an appropriate code indicating
11 such verification or such nonverification.

12 “(C) SECONDARY VERIFICATION PROCESS
13 IN CASE OF TENTATIVE NONVERIFICATION.—In
14 cases of tentative nonverification, the Secretary
15 shall specify, in consultation with the Commis-
16 sioner of Social Security, an available secondary
17 verification process to confirm the validity of in-
18 formation provided and to provide a final
19 verification or nonverification within 10 working
20 days after the date of the tentative
21 nonverification. When final verification or
22 nonverification is provided, the verification sys-
23 tem shall provide an appropriate code indicating
24 such verification or nonverification.

1 “(D) DESIGN AND OPERATION OF SYS-
2 TEM.—The verification system shall be designed
3 and operated—

4 “(i) to maximize its reliability and
5 ease of use by persons and other entities
6 consistent with insulating and protecting
7 the privacy and security of the underlying
8 information;

9 “(ii) to respond to all inquiries made
10 by such persons and entities on whether
11 individuals are authorized to be employed
12 and to register all times when such inquir-
13 ies are not received;

14 “(iii) with appropriate administrative,
15 technical, and physical safeguards to pre-
16 vent unauthorized disclosure of personal
17 information; and

18 “(iv) to have reasonable safeguards
19 against the system’s resulting in unlawful
20 discriminatory practices based on national
21 origin or citizenship status, including—

22 “(I) the selective or unauthorized
23 use of the system to verify eligibility;

24 “(II) the use of the system prior
25 to an offer of employment; or

1 “(III) the exclusion of certain in-
2 dividuals from consideration for em-
3 ployment as a result of a perceived
4 likelihood that additional verification
5 will be required, beyond what is re-
6 quired for most job applicants.

7 “(E) RESPONSIBILITIES OF THE COMMIS-
8 SIONER OF SOCIAL SECURITY.—As part of the
9 verification system, the Commissioner of Social
10 Security, in consultation with the Secretary of
11 Homeland Security (and any designee of the
12 Secretary selected to establish and administer
13 the verification system), shall establish a reli-
14 able, secure method, which, within the time pe-
15 riods specified under subparagraphs (B) and
16 (C), compares the name and social security ac-
17 count number provided in an inquiry against
18 such information maintained by the Commis-
19 sioner in order to validate (or not validate) the
20 information provided regarding an individual
21 whose identity and employment eligibility must
22 be confirmed, the correspondence of the name
23 and number, and whether the individual has
24 presented a social security account number that
25 is not valid for employment. The Commissioner

1 shall not disclose or release social security infor-
2 mation (other than such verification or
3 nonverification) except as provided for in this
4 section or section 205(c)(2)(I) of the Social Se-
5 curity Act.

6 “(F) RESPONSIBILITIES OF THE SEC-
7 RETARY OF HOMELAND SECURITY.—(i) As part
8 of the verification system, the Secretary of
9 Homeland Security (in consultation with any
10 designee of the Secretary selected to establish
11 and administer the verification system), shall
12 establish a reliable, secure method, which, with-
13 in the time periods specified under subpara-
14 graphs (B) and (C), compares the name and
15 alien identification or authorization number
16 which are provided in an inquiry against such
17 information maintained by the Secretary in
18 order to validate (or not validate) the informa-
19 tion provided, the correspondence of the name
20 and number, and whether the alien is author-
21 ized to be employed in the United States.

22 “(ii) When a single employer has sub-
23 mitted to the verification system pursuant to
24 paragraph (3)(A) the identical social security
25 account number in more than one instance, or

1 when multiple employers have submitted to the
2 verification system pursuant to such paragraph
3 the identical social security account number, in
4 a manner which indicates the possible fraudu-
5 lent use of that number, the Secretary of
6 Homeland Security shall conduct an investiga-
7 tion, within the time periods specified in sub-
8 paragraphs (B) and (C), in order to ensure that
9 no fraudulent use of a social security account
10 number has taken place. If the Secretary has
11 selected a designee to establish and administer
12 the verification system, the designee shall notify
13 the Secretary when a single employer has sub-
14 mitted to the verification system pursuant to
15 paragraph (3)(A) the identical social security
16 account number in more than one instance, or
17 when multiple employers have submitted to the
18 verification system pursuant to such paragraph
19 the identical social security account number, in
20 a manner which indicates the possible fraudu-
21 lent use of that number. The designee shall also
22 provide the Secretary with all pertinent infor-
23 mation, including the name and address of the
24 employer or employers who submitted the rel-
25 evant social security account number, the rel-

1 evant social security account number submitted
2 by the employer or employers, and the relevant
3 name and date of birth of the employee sub-
4 mitted by the employer or employers.

5 “(G) UPDATING INFORMATION.—The
6 Commissioner of Social Security and the Sec-
7 retary of Homeland Security shall update their
8 information in a manner that promotes the
9 maximum accuracy and shall provide a process
10 for the prompt correction of erroneous informa-
11 tion, including instances in which it is brought
12 to their attention in the secondary verification
13 process described in subparagraph (C).

14 “(H) LIMITATION ON USE OF THE
15 VERIFICATION SYSTEM AND ANY RELATED SYS-
16 TEMS.—

17 “(i) IN GENERAL.—Notwithstanding
18 any other provision of law, nothing in this
19 paragraph shall be construed to permit or
20 allow any department, bureau, or other
21 agency of the United States Government to
22 utilize any information, data base, or other
23 records assembled under this paragraph
24 for any other purpose other than as pro-
25 vided for.

1 “(ii) NO NATIONAL IDENTIFICATION
2 CARD.—Nothing in this paragraph shall be
3 construed to authorize, directly or indi-
4 rectly, the issuance or use of national iden-
5 tification cards or the establishment of a
6 national identification card.

7 “(I) FEDERAL TORT CLAIMS ACT.—If an
8 individual alleges that the individual would not
9 have been dismissed from a job but for an error
10 of the verification mechanism, the individual
11 may seek compensation only through the mech-
12 anism of the Federal Tort Claims Act, and in-
13 junctive relief to correct such error. No class
14 action may be brought under this subpara-
15 graph.

16 “(J) PROTECTION FROM LIABILITY FOR
17 ACTIONS TAKEN ON THE BASIS OF INFORMA-
18 TION.—No person or entity shall be civilly or
19 criminally liable for any action taken in good
20 faith reliance on information provided through
21 the employment eligibility verification mecha-
22 nism established under this paragraph.”.

23 (b) REPEAL OF PROVISION RELATING TO EVALUA-
24 TIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—
25 Section 274A(d) (8 U.S.C. 1324a(d)) is repealed.

1 **SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**
2 **ESS.**

3 Section 274A of the Immigration and Nationality Act
4 (8 U.S.C. 1324a) is amended—

5 (1) in subsection (a)(3), by inserting “(A)”
6 after “DEFENSE.—”, and by adding at the end the
7 following:

8 “(B) FAILURE TO SEEK AND OBTAIN
9 VERIFICATION.—In the case of a person or entity in
10 the United States that hires, or continues to employ,
11 an individual, or recruits or refers an individual for
12 employment, the following requirements apply:

13 “(i) FAILURE TO SEEK
14 VERIFICATION.—

15 “(I) IN GENERAL.—If the person
16 or entity has not made an inquiry,
17 under the mechanism established
18 under subsection (b)(7), seeking
19 verification of the identity and work
20 eligibility of the individual, by not
21 later than the end of 3 working days
22 (as specified by the Secretary of
23 Homeland Security) after the date of
24 the hiring, the date specified in sub-
25 section (b)(8)(B) for previously hired
26 individuals, or before the recruiting or

1 referring commences, the defense
2 under subparagraph (A) shall not be
3 considered to apply with respect to
4 any employment, except as provided in
5 subclause (II).

6 “(II) SPECIAL RULE FOR FAIL-
7 URE OF VERIFICATION MECHANISM.—
8 If such a person or entity in good
9 faith attempts to make an inquiry in
10 order to qualify for the defense under
11 subparagraph (A) and the verification
12 mechanism has registered that not all
13 inquiries were responded to during the
14 relevant time, the person or entity can
15 make an inquiry until the end of the
16 first subsequent working day in which
17 the verification mechanism registers
18 no nonresponses and qualify for such
19 defense.

20 “(ii) FAILURE TO OBTAIN
21 VERIFICATION.—If the person or entity
22 has made the inquiry described in clause
23 (i)(I) but has not received an appropriate
24 verification of such identity and work eligi-
25 bility under such mechanism within the

1 time period specified under subsection
2 (b)(7)(B) after the time the verification in-
3 quiry was received, the defense under sub-
4 paragraph (A) shall not be considered to
5 apply with respect to any employment after
6 the end of such time period.”;

7 (2) by amending subparagraph (A) of sub-
8 section (b)(1) to read as follows:

9 “(A) IN GENERAL.—The person or entity
10 must attest, under penalty of perjury and on a
11 form designated or established by the Secretary
12 by regulation, that it has verified that the indi-
13 vidual is not an unauthorized alien by—

14 “(i) obtaining from the individual the
15 individual’s social security account number
16 and recording the number on the form (if
17 the individual claims to have been issued
18 such a number), and, if the individual does
19 not attest to United States citizenship
20 under paragraph (2), obtaining such iden-
21 tification or authorization number estab-
22 lished by the Department of Homeland Se-
23 curity for the alien as the Secretary of
24 Homeland Security may specify, and re-
25 cording such number on the form; and

1 “(ii)(I) examining a document de-
2 scribed in subparagraph (B); or (II) exam-
3 ining a document described in subpara-
4 graph (C) and a document described in
5 subparagraph (D).

6 A person or entity has complied with the re-
7 quirement of this paragraph with respect to ex-
8 amination of a document if the document rea-
9 sonably appears on its face to be genuine, rea-
10 sonably appears to pertain to the individual
11 whose identity and work eligibility is being
12 verified, and, if the document bears an expira-
13 tion date, that expiration date has not elapsed.
14 If an individual provides a document (or com-
15 bination of documents) that reasonably appears
16 on its face to be genuine, reasonably appears to
17 pertain to the individual whose identity and
18 work eligibility is being verified, and is suffi-
19 cient to meet the first sentence of this para-
20 graph, nothing in this paragraph shall be con-
21 strued as requiring the person or entity to so-
22 licit the production of any other document or as
23 requiring the individual to produce another doc-
24 ument.”;

25 (3) in subsection (b)(1)(D)—

1 (A) in clause (i), by striking “or such other
2 personal identification information relating to
3 the individual as the Attorney General finds, by
4 regulation, sufficient for purposes of this sec-
5 tion”; and

6 (B) in clause (ii), by inserting before the
7 period “and that contains a photograph of the
8 individual”;

9 (4) in subsection (b)(2), by adding at the end
10 the following: “The individual must also provide that
11 individual’s social security account number (if the
12 individual claims to have been issued such a num-
13 ber), and, if the individual does not attest to United
14 States citizenship under this paragraph, such identi-
15 fication or authorization number established by the
16 Department of Homeland Security for the alien as
17 the Secretary may specify.”; and

18 (5) by amending paragraph (3) of subsection
19 (b) to read as follows:

20 “(3) RETENTION OF VERIFICATION FORM AND
21 VERIFICATION.—

22 “(A) IN GENERAL.—After completion of
23 such form in accordance with paragraphs (1)
24 and (2), the person or entity must—

1 “(i) retain a paper, microfiche, micro-
2 film, or electronic version of the form and
3 make it available for inspection by officers
4 of the Department of Homeland Security,
5 the Special Counsel for Immigration-Related
6 Unfair Employment Practices, or the
7 Department of Labor during a period be-
8 ginning on the date of the hiring, recruit-
9 ing, or referral of the individual or the
10 date of the completion of verification of a
11 previously hired individual and ending—

12 “(I) in the case of the recruiting
13 or referral of an individual, three
14 years after the date of the recruiting
15 or referral;

16 “(II) in the case of the hiring of
17 an individual, the later of—

18 “(aa) three years after the
19 date of such hiring; or

20 “(bb) one year after the
21 date the individual’s employment
22 is terminated; and

23 “(III) in the case of the
24 verification of a previously hired indi-
25 vidual, the later of—

1 “(aa) three years after the
2 date of the completion of
3 verification; or

4 “(bb) one year after the
5 date the individual’s employment
6 is terminated;

7 “(ii) make an inquiry, as provided in
8 paragraph (7), using the verification sys-
9 tem to seek verification of the identity and
10 employment eligibility of an individual, by
11 not later than the end of 3 working days
12 (as specified by the Secretary of Homeland
13 Security) after the date of the hiring or in
14 the case of previously hired individuals, the
15 date specified in subsection (b)(8)(B), or
16 before the recruiting or referring com-
17 mences; and

18 “(iii) may not commence recruitment
19 or referral of the individual until the per-
20 son or entity receives verification under
21 subparagraph (B)(i) or (B)(iii).

22 “(B) VERIFICATION.—

23 “(i) VERIFICATION RECEIVED.—If the
24 person or other entity receives an appro-
25 priate verification of an individual’s iden-

1 tity and work eligibility under the
2 verification system within the time period
3 specified, the person or entity shall record
4 on the form an appropriate code that is
5 provided under the system and that indi-
6 cates a final verification of such identity
7 and work eligibility of the individual.

8 “(ii) TENTATIVE NONVERIFICATION
9 RECEIVED.—If the person or other entity
10 receives a tentative nonverification of an
11 individual’s identity or work eligibility
12 under the verification system within the
13 time period specified, the person or entity
14 shall so inform the individual for whom the
15 verification is sought. If the individual does
16 not contest the nonverification within the
17 time period specified, the nonverification
18 shall be considered final. The person or en-
19 tity shall then record on the form an ap-
20 propriate code which has been provided
21 under the system to indicate a tentative
22 nonverification. If the individual does con-
23 test the nonverification, the individual shall
24 utilize the process for secondary
25 verification provided under paragraph (7).

1 The nonverification will remain tentative
2 until a final verification or nonverification
3 is provided by the verification system with-
4 in the time period specified. In no case
5 shall an employer terminate employment of
6 an individual because of a failure of the in-
7 dividual to have identity and work eligi-
8 bility confirmed under this section until a
9 nonverification becomes final. Nothing in
10 this clause shall apply to a termination of
11 employment for any reason other than be-
12 cause of such a failure.

13 “(iii) FINAL VERIFICATION OR
14 NONVERIFICATION RECEIVED.—If a final
15 verification or nonverification is provided
16 by the verification system regarding an in-
17 dividual, the person or entity shall record
18 on the form an appropriate code that is
19 provided under the system and that indi-
20 cates a verification or nonverification of
21 identity and work eligibility of the indi-
22 vidual.

23 “(iv) EXTENSION OF TIME.—If the
24 person or other entity in good faith at-
25 tempts to make an inquiry during the time

1 period specified and the verification system
2 has registered that not all inquiries were
3 received during such time, the person or
4 entity may make an inquiry in the first
5 subsequent working day in which the
6 verification system registers that it has re-
7 ceived all inquiries. If the verification sys-
8 tem cannot receive inquiries at all times
9 during a day, the person or entity merely
10 has to assert that the entity attempted to
11 make the inquiry on that day for the pre-
12 vious sentence to apply to such an inquiry,
13 and does not have to provide any addi-
14 tional proof concerning such inquiry.

15 “(v) CONSEQUENCES OF
16 NONVERIFICATION.—

17 “(I) TERMINATION OR NOTIFICA-
18 TION OF CONTINUED EMPLOYMENT.—

19 If the person or other entity has re-
20 ceived a final nonverification regard-
21 ing an individual, the person or entity
22 may terminate employment of the in-
23 dividual (or decline to recruit or refer
24 the individual). If the person or entity
25 does not terminate employment of the

1 individual or proceeds to recruit or
2 refer the individual, the person or en-
3 tity shall notify the Secretary of
4 Homeland Security of such fact
5 through the verification system or in
6 such other manner as the Secretary
7 may specify.

8 “(II) FAILURE TO NOTIFY.—If
9 the person or entity fails to provide
10 notice with respect to an individual as
11 required under subclause (I), the fail-
12 ure is deemed to constitute a violation
13 of subsection (a)(1)(A) with respect to
14 that individual.

15 “(vi) CONTINUED EMPLOYMENT
16 AFTER FINAL NONVERIFICATION.—If the
17 person or other entity continues to employ
18 (or to recruit or refer) an individual after
19 receiving final nonverification, a rebuttable
20 presumption is created that the person or
21 entity has violated subsection (a)(1)(A).”.

1 **SEC. 703. EXPANSION OF EMPLOYMENT ELIGIBILITY**
2 **VERIFICATION SYSTEM TO PREVIOUSLY**
3 **HIRED INDIVIDUALS AND RECRUITING AND**
4 **REFERRING.**

5 (a) APPLICATION TO RECRUITING AND REFER-
6 RING.—Section 274A of the Immigration and Nationality
7 Act (8 U.S.C. 1324a) is amended—

8 (1) in subsection (a)(1)(A), by striking “for a
9 fee”;

10 (2) in subsection (a)(1), by amending subpara-
11 graph (B) to read as follows:

12 “(B) to hire, continue to employ, or to re-
13 cruit or refer for employment in the United
14 States an individual without complying with the
15 requirements of subsection (b).”;

16 (3) in subsection (a)(2) by striking “after hir-
17 ing an alien for employment in accordance with
18 paragraph (1),” and inserting “after complying with
19 paragraph (1),”; and

20 (4) in subsection (a)(3), as amended by section
21 702, is further amended by striking “hiring,” and
22 inserting “hiring, employing,” each place it appears.

23 (b) EMPLOYMENT ELIGIBILITY VERIFICATION FOR
24 PREVIOUSLY HIRED INDIVIDUALS.—Section 274A(b) of
25 such Act (8 U.S.C. 1324a(b)), as amended by section

1 701(a), is amended by adding at the end the following new
2 paragraph:

3 “(8) USE OF EMPLOYMENT ELIGIBILITY
4 VERIFICATION SYSTEM FOR PREVIOUSLY HIRED IN-
5 DIVIDUALS.—

6 “(A) ON A VOLUNTARY BASIS.—Beginning
7 on the date that is 2 years after the date of the
8 enactment of the Border Enforcement, Employ-
9 ment Verification, and Illegal Immigration Con-
10 trol Act and until the date specified in subpara-
11 graph (B)(iii), a person or entity may make an
12 inquiry, as provided in paragraph (7), using the
13 verification system to seek verification of the
14 identity and employment eligibility of any indi-
15 vidual employed by the person or entity, as long
16 as it is done on a nondiscriminatory basis.

17 “(B) ON A MANDATORY BASIS.—

18 “(i) A person or entity described in
19 clause (ii) must make an inquiry as pro-
20 vided in paragraph (7), using the
21 verification system to seek verification of
22 the identity and employment eligibility of
23 all individuals employed by the person or
24 entity who have not been previously subject
25 to an inquiry by the person or entity by

1 the date three years after the date of en-
2 actment of the Border Enforcement, Em-
3 ployment Verification, and Illegal Immigra-
4 tion Control Act.

5 “(ii) A person or entity is described in
6 this clause if it is a Federal, State, or local
7 governmental body (including the Armed
8 Forces of the United States), or if it em-
9 ploys individuals working in a location that
10 is a Federal, State, or local government
11 building, a military base, a nuclear energy
12 site, a weapon site, an airport, or that con-
13 tains critical infrastructure (as defined in
14 section 1016(e) of the Critical Infrastruc-
15 ture Protection Act of 2001 (42 U.S.C.
16 5195c(e))), but only to the extent of such
17 individuals.

18 “(iii) All persons and entities other
19 than those described in clause (ii) must
20 make an inquiry, as provided in paragraph
21 (7), using the verification system to seek
22 verification of the identity and employment
23 eligibility of all individuals employed by the
24 person or entity who have not been pre-
25 viously subject to an inquiry by the person

1 or entity by the date six years after the
2 date of enactment of the Border Enforce-
3 ment, Employment Verification, and Illegal
4 Immigration Control Act.”.

5 **SEC. 704. BASIC PILOT PROGRAM.**

6 Section 401(b) of the Illegal Immigration Reform and
7 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
8 note) is amended by striking “at the end of the 11-year
9 period beginning on the first day the pilot program is in
10 effect” and inserting “two years after the enactment of
11 the Border Enforcement, Employment Verification, and
12 Illegal Immigration Control Act”.

13 **SEC. 705. HIRING HALLS.**

14 Section 274A(h) of the Immigration and Nationality
15 Act (8 U.S.C. 1324a(h)) is amended by adding at the end
16 the following new paragraph:

17 “(4) RECRUITMENT AND REFERRAL.—As used
18 in this section, the term ‘refer’ means the act of
19 sending or directing a person or transmitting docu-
20 mentation or information to another, directly or in-
21 directly, with the intent of obtaining employment in
22 the United States for such person. Generally, only
23 persons or entities referring for remuneration
24 (whether on a retainer or contingency basis) are in-
25 cluded in the definition. However, labor service agen-

1 cies, whether public, private, for-profit, or nonprofit,
2 that refer, dispatch, or otherwise facilitate the hiring
3 of workers for any period of time by a third party
4 are included in the definition whether or not they re-
5 ceive remuneration. As used in this section the term
6 ‘recruit’ means the act of soliciting a person, directly
7 or indirectly, and referring the person to another
8 with the intent of obtaining employment for that
9 person. Generally, only persons or entities recruiting
10 for remunerations (whether on a retainer or contin-
11 gency basis) are included in the definition. However,
12 labor service agencies, whether public, private, for-
13 profit, or nonprofit that refer, dispatch, or otherwise
14 facilitate the hiring of workers for any period of
15 time by a third party are included in the definition
16 whether or not they receive remuneration.”.

17 **SEC. 706. PENALTIES.**

18 Section 274A of the Immigration and Nationality Act
19 (8 U.S.C. 1324a) is amended—

20 (1) in subsection (e)(4)—

21 (A) in subparagraph (A), in the matter be-
22 fore clause (i), by inserting “, subject to para-
23 graphs (10) through (12),” after “in an
24 amount”;

1 (B) in subparagraph (A)(i), by striking
2 “not less than \$250 and not more than
3 \$2,000” and inserting “not less than \$5,000
4 and not more than \$7,500”;

5 (C) in subparagraph (A)(ii), by striking
6 “not less than \$2,000 and not more than
7 \$5,000” and inserting “not less than \$10,000
8 and not more than \$15,000”;

9 (D) in subparagraph (A)(iii), by striking
10 “not less than \$3,000 and not more than
11 \$10,000” and inserting “not less than \$25,000
12 and not more than \$40,000”; and

13 (E) by amending subparagraph (B) to read
14 as follows:

15 “(B) may require the person or entity to
16 take such other remedial action as is appro-
17 priate.”;

18 (2) in subsection (e)(5)—

19 (A) by inserting “, subject to paragraphs
20 (10) through (12),” after “in an amount”;

21 (B) by striking “\$100” and inserting
22 “\$1,000”;

23 (C) by striking “\$1,000” and inserting
24 “\$25,000”;

1 (D) by striking “the size of the business of
2 the employer being charged, the good faith of
3 the employer” and inserting “the good faith of
4 the employer being charged”; and

5 (E) by adding at the end the following sen-
6 tence: “Failure by a person or entity to utilize
7 the employment eligibility verification system as
8 required by law, or providing information to the
9 system that the person or entity knows or rea-
10 sonably believes to be false, shall be treated as
11 a violation of subsection (a)(1)(A).”;

12 (3) by adding at the end of subsection (e) the
13 following new paragraphs:

14 “(10) MITIGATION OF CIVIL MONEY PENALTIES
15 FOR SMALLER EMPLOYERS.—In the case of imposi-
16 tion of a civil penalty under paragraph (4)(A) with
17 respect to a violation of subsection (a)(1)(A) or
18 (a)(2) for hiring or continuation of employment by
19 an employer and in the case of imposition of a civil
20 penalty under paragraph (5) for a violation of sub-
21 section (a)(1)(B) for hiring by an employer, the dol-
22 lar amounts otherwise specified in the respective
23 paragraph shall be reduced as follows:

24 “(A) In the case of an employer with an
25 average of fewer than 26 full-time equivalent

1 employees (as defined by the Secretary of
2 Homeland Security), the amounts shall be re-
3 duced by 60 percent.

4 “(B) In the case of an employer with an
5 average of at least 26, but fewer than 101, full-
6 time equivalent employees (as so defined), the
7 amounts shall be reduced by 40 percent.

8 “(C) In the case of an employer with an
9 average of at least 101, but fewer than 251,
10 full-time equivalent employees (as so defined),
11 the amounts shall be reduced by 20 percent.

12 The last sentence of paragraph (4) shall apply under
13 this paragraph in the same manner as it applies
14 under such paragraph.

15 “(11) EXEMPTION FROM PENALTY FOR INITIAL
16 GOOD FAITH VIOLATION.—In the case of imposition
17 of a civil penalty under paragraph (4)(A) with re-
18 spect to a violation of subsection (a)(1)(A) or (a)(2)
19 for hiring or continuation of employment or recruit-
20 ment or referral by person or entity and in the case
21 of imposition of a civil penalty under paragraph (5)
22 for a violation of subsection (a)(1)(B) for hiring or
23 recruitment or referral by a person or entity, the
24 penalty otherwise imposed shall be waived if the vio-
25 lator establishes that it was the first such violation

1 of such provision by the violator and the violator
2 acted in good faith.

3 “(12) SAFE HARBOR FOR CONTRACTORS.—A
4 person or other entity shall not be liable for a pen-
5 alty under paragraph (4)(A) with respect to the vio-
6 lation of subsection (a)(1)(A), (a)(1)(B), or (a)(2)
7 with respect to the hiring or continuation of employ-
8 ment of an unauthorized alien by a subcontractor of
9 that person or entity unless the person or entity
10 knew that the subcontractor hired or continued to
11 employ such alien in violation of such subsection.”.

12 (4) by amending paragraph (1) of subsection (f)
13 to read as follows:

14 “(1) CRIMINAL PENALTY.—Any person or enti-
15 ty which engages in a pattern or practice of viola-
16 tions of subsection (a)(1) or (2) shall be fined not
17 more than \$50,000 for each unauthorized alien with
18 respect to which such a violation occurs, imprisoned
19 for not less than one year, or both, notwithstanding
20 the provisions of any other Federal law relating to
21 fine levels.”; and

22 (5) in subsection (f)(2), by striking “Attorney
23 General” each place it appears and inserting “Sec-
24 retary of Homeland Security”.

1 **SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EM-**
2 **PLOYMENT ELIGIBILITY VERIFICATION.**

3 (a) REPORT.—

4 (1) IN GENERAL.—Not later than 9 months
5 after the date of the enactment of this Act, the
6 Commissioner of Social Security, in consultation
7 with the Secretary of Treasury, the Secretary of
8 Homeland Security, and the Attorney General, shall
9 submit a report to Congress that includes an evalua-
10 tion of the following requirements and changes:

11 (A) A requirement that social security
12 cards that are made of a durable plastic or
13 similar material and that include an encrypted,
14 machine-readable electronic identification strip
15 and a digital photograph of the individual to
16 whom the card is issued, be issued to each indi-
17 vidual (whether or not a United States citizen)
18 who—

19 (i) is authorized to be employed in the
20 United States;

21 (ii) is seeking employment in the
22 United States; and

23 (iii) files an application for such card,
24 whether as a replacement of an existing so-
25 cial security card or as a card issued in

1 connection with the issuance of a new so-
2 cial security account number.

3 (B) The creation of a unified database to
4 be maintained by the Department of Homeland
5 Security and comprised of data from the Social
6 Security Administration and the Department of
7 Homeland Security specifying the work author-
8 ization of individuals (including both United
9 States citizens and noncitizens) for the purpose
10 of conducting employment eligibility
11 verification.

12 (C) A requirement that all employers verify
13 the employment eligibility of all new hires using
14 the social security cards described in subpara-
15 graph (A) and a phone, electronic card-reading,
16 or other mechanism to seek verification of em-
17 ployment eligibility through the use of the uni-
18 fied database described in subparagraph (B).

19 (2) ITEMS INCLUDED IN REPORT.—The report
20 under paragraph (1) shall include an evaluation of
21 each of the following:

22 (A) Projected cost, including the cost to
23 the Federal Government, State and local gov-
24 ernments, and the private sector.

25 (B) Administrability.

1 (C) Potential effects on—

2 (i) employers;

3 (ii) employees, including employees
4 who are United States citizens as well as
5 those that are not citizens;

6 (iii) tax revenue; and

7 (iv) privacy.

8 (D) The extent to which employer and em-
9 ployee compliance with immigration laws would
10 be expected to improve.

11 (E) Any other relevant information.

12 (3) ALTERNATIVES.—The report under para-
13 graph (1) also shall examine any alternatives to
14 achieve the same goals as the requirements and
15 changes described in paragraph (1) but that involve
16 lesser cost, lesser burden on those affected, or great-
17 er ease of administration.

18 (b) INSPECTOR GENERAL REVIEW.—Not later than
19 3 months after the report is submitted under subsection
20 (a), the Inspector General of the Social Security Adminis-
21 tration, in consultation with the Inspectors General of the
22 Department of Treasury, the Department of Homeland
23 Security, and the Department of Justice, shall send to the
24 Congress an evaluation of the such report.

1 **SEC. 708. EXTENSION OF PREEMPTION TO REQUIRED CON-**
2 **STRUCTION OF DAY LABORER SHELTERS.**

3 Paragraph 274A(h)(2) of the Immigration and Na-
4 tionality Act (8 U.S.C. 1324a(h)(2)) is amended—

5 (1) by striking “imposing”, and inserting a
6 dash and “(A) imposing”;

7 (2) by striking the period at the end and insert-
8 ing “; and”; and

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

10 “(B) Requiring as a condition of con-
11 ducting, continuing, or expanding a business
12 that a business entity—

13 “(i) provide, build, fund, or maintain
14 a shelter, structure, or designated area for
15 use by day laborers at or near its place of
16 business; or

17 “(ii) take other steps that facilitate
18 the employment of day laborers by others.”

19 **SEC. 709. EFFECTIVE DATE.**

20 This title and the amendments made by this title
21 shall take effect on the date of enactment of this Act, ex-
22 cept that the requirements of persons and entities to com-
23 ply with the employment eligibility verification process
24 takes effect on the date that is two years after such date.

1 **SEC. 710. LIMITATION ON VERIFICATION RESPONSIBIL-**
2 **ITIES OF COMMISSIONER OF SOCIAL SECUR-**
3 **RITY.**

4 The Commissioner of Social Security is authorized to
5 perform activities with respect to carrying out the Com-
6 missioner's responsibilities in this title or the amendments
7 made by this title, but only to the extent (except for the
8 purpose of carrying out section 707) the Secretary of
9 Homeland Security has provided, in advance, funds to
10 cover the Commissioner's full costs in carrying out such
11 responsibilities. In no case shall funds from the Federal
12 Old-Age and Survivors Insurance Trust Fund or the Fed-
13 eral Disability Insurance Trust Fund be used to carry out
14 such responsibilities.

15 **SEC. 711. REPORT ON EMPLOYMENT ELIGIBILITY**
16 **VERIFICATION SYSTEM.**

17 Not later than one year after the implementation of
18 the employment eligibility verification system and one year
19 thereafter, the Secretary of Homeland Security shall sub-
20 mit to Congress a report on the progress and problems
21 associated with implementation of the system, including
22 information relating to the most efficient use of the system
23 by small businesses.

1 **Subtitle B—Employment Eligibility**
2 **Verification and Anti-Identity**
3 **Theft Act**

4 **SEC. 721. SHORT TITLE.**

5 This subtitle may be cited as the “Employment Eligi-
6 bility Verification and Anti-Identity Theft Act”.

7 **SEC. 722. REQUIRING AGENCIES TO SEND “NO-MATCH” LET-**
8 **TERS.**

9 (a) SOCIAL SECURITY ADMINISTRATION.—The Com-
10 missioner of the Social Security Administration shall send
11 a written notice to a person or entity each time that the
12 combination of name and Social Security account number
13 submitted by the person or entity for an individual does
14 not match Social Security Administration records.

15 (b) DEPARTMENT OF HOMELAND SECURITY.—The
16 Secretary of Homeland Security shall send a written no-
17 tice to a person or entity each time that such Secretary
18 determines that an immigration status document or em-
19 ployment authorization document presented or referenced
20 by an individual during the process of completing the at-
21 testations required by the person or entity for employment
22 eligibility verification was assigned to another person, or
23 that there is no agency record that the document was as-
24 signed to any person.

1 **SEC. 723. REQUIRING EMPLOYERS TO TAKE ACTION UPON**
2 **RECEIPT OF A “NO-MATCH” LETTER.**

3 Beginning on the date that is 6 months after the date
4 of the enactment of this Act, a person or entity that has
5 received a written notice under section 312 shall, within
6 3 business days of receiving such notice, verify the individ-
7 ual’s employment authorization and identity through the
8 verification system established under section 314.

9 **SEC. 724. VERIFICATION SYSTEM.**

10 Not later than 6 months after the date of enactment
11 of this Act, the Secretary of Homeland Security, in con-
12 sultation with the Commissioner of the Social Security Ad-
13 ministration, as appropriate, shall establish and admin-
14 ister a verification system through which persons or enti-
15 ties that have received written notice under section 312
16 shall verify an individual’s employment authorization and
17 identity.

18 **SEC. 725. DESIGN AND OPERATION OF SYSTEM.**

19 The verification system established under section 314
20 shall be designed and operated—

21 (1) to maximize its reliability and ease of use,
22 consistent with insulating and protecting the privacy
23 and security of the underlying information;

24 (2) to respond to all required inquiries under
25 this subtitle regarding whether individuals are au-

1 thorized to be employed and to register all times
2 when such inquiries are not received;

3 (3) with appropriate administrative, technical,
4 and physical safeguards to prevent unauthorized dis-
5 closure of personal information; and

6 (4) to have reasonable safeguards against the
7 system's resulting in unlawful discriminatory prac-
8 tices based on national origin or citizenship status,
9 including—

10 (A) the selective or unauthorized use of the
11 system to verify eligibility;

12 (B) the use of the system prior to an offer
13 of employment; or

14 (C) the exclusion of certain individuals
15 from consideration for employment as a result
16 of a perceived likelihood that additional
17 verification will be required, beyond what is re-
18 quired for most job applicants.

19 **SEC. 726. EXTENSION OF TIME.**

20 If a person or entity in good faith attempts to make
21 an inquiry during the time period specified and the
22 verification system established under section 314 has reg-
23 istered that not all inquiries were received during such
24 time, the person or entity may make an inquiry on the
25 first subsequent working day in which the verification sys-

1 tem registers that it has received all inquiries. If the
2 verification system cannot receive inquiries at all times
3 during a day, the person or entity merely has to assert
4 that the entity attempted to make the inquiry on that day
5 for the previous sentence to apply to such an inquiry, and
6 does not have to provide any additional proof concerning
7 such inquiry.

8 **SEC. 727. RETENTION OF PROOF OF VERIFICATION COM-**
9 **PLETION.**

10 After completion of the verification process estab-
11 lished under section 314, a person or entity shall retain
12 a paper, microfiche, microfilm, or electronic version of the
13 form received through the verification process (or, in the
14 case of a telephonic verification, a paper, microfiche,
15 microfilm, or electronic record of the telephonic
16 verification code number) and make it available for inspec-
17 tion by officers of the Department of Homeland Security,
18 the Special Counsel for Immigration-Related Unfair Em-
19 ployment Practices, or the Department of Labor for 3
20 years after the date on which the form or telephonic
21 verification code number was received.

22 **SEC. 728. TERMINATION OF EMPLOYMENT.**

23 (a) BURDEN ON INDIVIDUAL TO RESOLVE ER-
24 RORS.—If a person or entity has received an initial
25 nonverification regarding an individual from the

1 verification system established under section 315, the per-
2 son or entity shall notify the individual in writing within
3 1 business day of such receipt. In such notice, the person
4 or entity shall advise the individual that the burden is on
5 the individual to resolve any error in the verification mech-
6 anism not later than 30 days after the date on which the
7 notice is issued. Such notice shall also state that the per-
8 son or entity shall be required to verify once again the
9 individual's employment authorization and identity
10 through the verification system established under section
11 315, and to terminate any employment in the United
12 States, and any recruitment, hiring, or referral for em-
13 ployment in the United States, of the individual, if a final
14 nonverification is received.

15 (b) **ADDITIONAL VERIFICATION.**—A person or entity
16 that has issued a notice under subsection (a) shall, within
17 33 business days of such issuance, verify once again the
18 individual's employment authorization and identity
19 through the verification system established under section
20 314. Sections 316 and 317 shall apply to such final
21 verification in the same manner as such sections applied
22 to the initial verification.

23 **SEC. 729. FINAL VERIFICATION.**

24 (a) Within 7 days of receiving final nonverification
25 for an individual, the person or entity issued a notice

1 under section 312(a) of this Act shall provide the Commis-
2 sioner of Social Security with a copy of such individual's
3 verification form as described in section 274A(b)(3) of the
4 Immigration and Nationality Act (8 U.S.C. 1324a(b)(3))
5 in addition to any other information regarding the last
6 known name, address, and location of such individual.

7 (b) Within 3 business days of receiving such notifica-
8 tion, the Commissioner of Social Security shall provide
9 such information to the Secretary of Homeland Security.

10 **SEC. 730. EMPLOYER VIOLATIONS.**

11 A person or entity shall be considered to have violated
12 section 274A(a)(1)(A) of the Immigration and Nationality
13 Act (8 U.S.C. 1324a(a)(1)(A)) if the person or entity—

14 (1) continues to employ in the United States, or
15 recruits, hires, or refers for employment in the
16 United States, an individual after receiving a final
17 nonverification regarding an individual from the
18 verification system established under section 314; or

19 (2) otherwise fails to take an action required
20 under this subtitle.

21 **SEC. 731. LIMITATION ON USE.**

22 (a) IN GENERAL.—Notwithstanding any other provi-
23 sion of law, nothing in this subtitle shall be construed to
24 permit or allow any department, bureau, or other agency
25 of the United States Government to utilize any informa-

1 tion, data base, or other records assembled under this sub-
2 title for any other purpose other than as provided for
3 under this subtitle.

4 (b) NO NATIONAL IDENTIFICATION CARD.—Nothing
5 in this subtitle shall be construed to authorize, directly or
6 indirectly, the issuance or use of national identification
7 cards or the establishment of a national identification
8 card.

9 **SEC. 732. FEDERAL TORT CLAIMS ACT REMEDY.**

10 If an individual alleges that the individual would not
11 have been dismissed from a job but for an error of the
12 verification mechanism, the individual may seek com-
13 pensation only through the mechanism of chapter 171 of
14 title 28, United States Code (popularly known as the Fed-
15 eral Tort Claims Act), and injunctive relief to correct such
16 error. No class action may be brought under this subtitle.

17 **SEC. 733. PROTECTION FROM LIABILITY FOR ACTIONS**
18 **TAKEN ON THE BASIS OF INFORMATION.**

19 No person or entity shall be civilly or criminally liable
20 for any action taken in good faith reliance on information
21 provided through the employment eligibility verification
22 mechanism established under this subtitle.

1 **Subtitle C—Improved Security for**
2 **Birth Certificates**

3 **SEC. 741. DEFINITIONS.**

4 (a) **APPLICABILITY OF DEFINITIONS.**—Except as
5 otherwise specifically provided, the definitions contained in
6 section 201 of the REAL ID Act of 2005 (division B of
7 Public Law 109–13) apply to this subtitle.

8 (b) **OTHER DEFINITIONS.**—In this subtitle, the fol-
9 lowing definitions apply:

10 (1) **BIRTH CERTIFICATE.**—The term “birth cer-
11 tificate” means a certificate of birth—

12 (A) for an individual (regardless of where
13 born)—

14 (i) who is a citizen or national of the
15 United States at birth; and

16 (ii) whose birth is registered in the
17 United States; and

18 (B) that—

19 (i) is issued by a Federal, State, or
20 local government agency or authorized cus-
21 todian of record and produced from birth
22 records maintained by such agency or cus-
23 todian of record; or

24 (ii) is an authenticated copy, issued
25 by a Federal, State, or local government

1 agency or authorized custodian of record,
2 of an original certificate of birth issued by
3 such agency or custodian of record.

4 (2) FULL LEGAL NAME.—The term “full legal
5 name” means the complete name of the person, in-
6 cluding the birth name as recorded in the state and
7 or nation of birth, as applicable, and any suffixes or
8 names appended through lawful action through mar-
9 riage, adoption or lawful name change.

10 (3) REGISTRANT.—The term “registrant”
11 means, with respect to a birth certificate, the person
12 whose birth is registered on the certificate.

13 (4) STATE.—The term “State” has the the
14 meaning given such term in section 201 of the
15 REAL ID Act of 2005 (division B of Public Law
16 109–13), except that New York City shall be treated
17 as a State separate from New York.

18 **SEC. 742. APPLICABILITY OF MINIMUM STANDARDS TO**
19 **LOCAL GOVERNMENTS.**

20 The minimum standards in this subtitle applicable to
21 birth certificates issued by a State shall also apply to birth
22 certificates issued by a local government in the State. It
23 shall be the responsibility of the State to ensure that local
24 governments in the State comply with the minimum stand-
25 ards.

1 **SEC. 743. MINIMUM STANDARDS FOR FEDERAL RECOGNITION.**
2 **TION.**

3 (a) MINIMUM STANDARDS FOR FEDERAL USE.—

4 (1) IN GENERAL.—Beginning 3 years after the
5 date of the enactment of this Act, a Federal agency
6 may not accept, for any official purpose, a birth cer-
7 tificate issued by a State to any person unless the
8 State is meeting the requirements of this section.

9 (2) STATE CERTIFICATIONS.—The Secretary
10 shall determine whether a State is meeting the re-
11 quirements of this section based on certifications
12 made by the State to the Secretary. Such certifi-
13 cations shall be made at such times and in such
14 manner as the Secretary, in consultation with the
15 Secretary of Health and Human Services, may pre-
16 scribe by regulation.

17 (b) MINIMUM DOCUMENT STANDARDS.—To meet the
18 requirements of this section, a State shall include, on each
19 birth certificate issued to a person by the State, the use
20 of safety paper, the seal of the issuing custodian of record,
21 and such other features as the Secretary may determine
22 necessary to prevent tampering, counterfeiting, and other-
23 wise duplicating the birth certificate for fraudulent pur-
24 poses. The Secretary may not require a single design to
25 which birth certificates issued by all States must conform.
26 However, the Secretary shall require a minimum standard

1 set of security features incorporated into birth certificates
2 issued by all States, such as digital watermarks, so that
3 validation of such security features can be affordably made
4 be law enforcement officials, by motor vehicle administra-
5 tors, and State and Federal officials.

6 (c) MINIMUM ISSUANCE STANDARDS.—

7 (1) IN GENERAL.—To meet the requirements of
8 this section, a State shall require and verify the fol-
9 lowing information from the requestor before issuing
10 an authenticated copy of a birth certificate:

11 (A) The name on the birth certificate.

12 (B) The date and location of the birth.

13 (C) The mother's maiden name.

14 (D) Substantial proof of the requestor's
15 identity.

16 (E) Where available, authentication of
17 identity through comparison with a biometric
18 identifier.

19 (2) ISSUANCE TO PERSONS NOT NAMED ON
20 BIRTH CERTIFICATE.—To meet the requirements of
21 this section, in the case of a request by a person who
22 is not named on the birth certificate, a State must
23 require the presentation of legal authorization to re-
24 quest the birth certificate before issuance.

1 (3) ISSUANCE TO FAMILY MEMBERS.—Not later
2 than one year after the date of the enactment of this
3 Act, the Secretary, in consultation with the Sec-
4 retary of Health and Human Services and the
5 States, shall establish minimum standards for
6 issuance of a birth certificate to specific family
7 members, their authorized representatives, and oth-
8 ers who demonstrate that the certificate is needed
9 for the protection of the requestor’s personal or
10 property rights.

11 (4) WAIVERS.—A State may waive the require-
12 ments set forth in subparagraphs (A) through (C) of
13 subsection (c)(1) in exceptional circumstances, such
14 as the incapacitation of the registrant.

15 (5) APPLICATIONS BY ELECTRONIC MEANS.—
16 To meet the requirements of this section, for appli-
17 cations by electronic means, through the mail or by
18 phone or fax, a State shall employ third party
19 verification, or equivalent verification, of the identity
20 of the requestor.

21 (6) VERIFICATION OF DOCUMENTS.—To meet
22 the requirements of this section, a State shall verify
23 the documents used to provide proof of identity of
24 the requestor.

1 (d) OTHER REQUIREMENTS.—To meet the require-
2 ments of this section, a State shall adopt, at a minimum,
3 the following practices in the issuance and administration
4 of birth certificates:

5 (1) Establish and implement minimum building
6 security standards for State and local vital record
7 offices.

8 (2) Restrict public access to birth certificates
9 and information gathered in the issuance process to
10 ensure that access is restricted to entities with which
11 the State has a binding privacy protection agree-
12 ment.

13 (3) Subject all persons with access to vital
14 records to appropriate security clearance require-
15 ments.

16 (4) Establish fraudulent document recognition
17 training programs for appropriate employees en-
18 gaged in the issuance process.

19 (5) Establish and implement internal operating
20 system standards for paper and for electronic sys-
21 tems.

22 (6) Establish a central electronic database
23 that—

1 (A) is maintained in a physically secure en-
2 vironment so that unauthorized access can be
3 prevented;

4 (B) is linked through the Electronic
5 Verification of Vital Event System (EVVES)
6 established under section 345 or an equivalent
7 system to provide interoperative data exchange
8 with other States and with Federal agencies,
9 subject to privacy restrictions and confirmation
10 of the authority and identity of the requestor;
11 and

12 (C) incorporates within its records, to en-
13 sure process integrity, the full legal name of
14 any authorized requestor, the date of the re-
15 quest, and the relationship to the person whose
16 birth is recorded on the birth certificate.

17 (7) Ensure that birth and death records are
18 matched in a comprehensive and timely manner, and
19 that all electronic birth records and paper birth cer-
20 tificates of decedents are marked “deceased”.

21 (8) Cooperate with the Secretary in the imple-
22 mentation of electronic verification of vital events
23 under section 345.

1 **SEC. 744. ESTABLISHMENT OF ELECTRONIC BIRTH AND**
2 **DEATH REGISTRATION SYSTEMS.**

3 In consultation with the Secretary of Health and
4 Human Services and the Commissioner of Social Security,
5 the Secretary shall take the following actions:

6 (1) Work with the States to establish a common
7 data set and common data exchange protocol for
8 electronic birth registration systems and death reg-
9 istration systems.

10 (2) Coordinate requirements for such systems
11 to align with a national model.

12 (3) Ensure that fraud prevention is built into
13 the design of electronic vital registration systems in
14 the collection of vital event data, the issuance of
15 birth certificates, and the exchange of data among
16 government agencies.

17 (4) Ensure that electronic systems for issuing
18 birth certificates, in the form of printed abstracts of
19 birth records or digitized images, employ a common
20 format of the certified copy, so that those requiring
21 such documents can quickly confirm their validity.

22 (5) Establish uniform field requirements for
23 State birth registries.

24 (6) Not later than 1 year after the date of the
25 enactment of this Act, establish a process with the
26 Department of Defense that will result in the shar-

1 ing of data, with the States and the Social Security
2 Administration, regarding deaths of United States
3 military personnel and the birth and death of their
4 dependents.

5 (7) Not later than 1 year after the date of the
6 enactment of this Act, establish a process with the
7 Department of State to improve registration, notifi-
8 cation, and the sharing of data with the States and
9 the Social Security Administration, regarding births
10 and deaths of United States citizens abroad.

11 (8) Not later than 3 years after the date of es-
12 tablishment of databases provided for under this sec-
13 tion, require States to record and retain electronic
14 records of pertinent identification information col-
15 lected from requestors who are not the registrants.

16 (9) Not later than 6 months after the date of
17 the enactment of this Act, submit to Congress, a re-
18 port on whether there is a need for Federal laws to
19 address penalties for fraud and misuse of vital
20 records and whether violations are sufficiently en-
21 forced.

22 **SEC. 745. ELECTRONIC VERIFICATION OF VITAL EVENTS.**

23 (a) LEAD AGENCY.—The Secretary shall lead the im-
24 plementation of the Electronic Verification of Vital Events

1 System for the purpose of verifying a person's birth and
2 death.

3 (b) REGULATIONS.—In carrying out subsection (a),
4 the Secretary shall issue regulations to establish a means
5 by which authorized Federal and State agency users with
6 a single interface will be able to generate an electronic
7 query to any participating vital records jurisdiction
8 throughout the Nation to verify the contents of a paper
9 birth certificate. Pursuant to the regulations, an electronic
10 response from the participating vital records jurisdiction
11 as to whether there is a birth record in their database that
12 matches the paper birth certificate will be returned to the
13 user, along with an indication if the matching birth record
14 has been flagged “deceased”. The regulations shall take
15 effect not later than 5 years after the date of the enact-
16 ment of this Act.

17 **SEC. 746. GRANTS TO STATES.**

18 (a) IN GENERAL.—The Secretary is authorized to
19 award grants to States to modernize State birth and death
20 certificate records and otherwise to satisfy the require-
21 ments of this subtitle. On an expedited basis, the Sec-
22 retary shall award grants or contracts for the purpose of
23 improving the accuracy and electronic availability of
24 States' records of births, deaths, and of other records nec-
25 essary for implementation of the Electronic Verification

1 of Vital Events System established in section 345, and as
2 otherwise necessary to advance the purposes of this sub-
3 title.

4 (b) REGULATION COMPLIANCE.—A State that does
5 fails to certify the State’s intent to comply with the regula-
6 tions issued to implement this subtitle not later than De-
7 cember 31, 2013, or that does not submit a compliance
8 plan acceptable to the Secretary is not eligible for a grant
9 under subsection (a).

10 (c) DURATION.—Grants may be awarded under this
11 section during fiscal years 2009 through 2017.

12 (d) ELIGIBLE RECIPIENTS.—If the Secretary of
13 Homeland Security determines that compliance with this
14 subtitle can best be achieved by awarding grants or con-
15 tracts to a State, a group of States, a government agency,
16 a chartered nonprofit organization, or a private entity, the
17 Secretary may utilize funds under this section to award
18 such grants or contracts.

19 (e) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Secretary for
21 each of the fiscal years 2009 through 2013 such sums as
22 may be necessary to carry out this chapter.

23 **SEC. 747. AUTHORITY.**

24 (a) PARTICIPATION WITH FEDERAL AGENCIES AND
25 STATES.—All authority to issue regulations, certify stand-

1 ards, and issue grants under this chapter shall be carried
2 out by the Secretary, with the concurrence of the Sec-
3 retary of Health and Human Services and in consultation
4 with State vital statistics offices and appropriate Federal
5 agencies.

6 (b) EXTENSIONS OF DEADLINES.—The Secretary
7 may grant to a State an extension of time to meet the
8 requirements of section 329(a)(1) if the State provides
9 adequate justification for noncompliance.

10 **SEC. 748. REPEAL.**

11 Section 7211 of Public Law 108–458 is repealed.

12 **Subtitle D—Stop the Misuse of**
13 **ITINs Act of 2007**

14 **SEC. 751. SHORT TITLE.**

15 This subtitle may be cited as the “Stop the Misuse
16 of ITINs Act of 2007”.

17 **SEC. 752. NOTIFICATION OF EMPLOYMENT STATUS OF INDI-**

18 **VIDUALS NOT AUTHORIZED TO WORK IN THE**

19 **UNITED STATES.**

20 (a) IN GENERAL.—Subsection (i) of section 6103 of
21 the Internal Revenue Code of 1986 (relating to confiden-
22 tiality and disclosure of returns and return information)
23 is amended by adding at the end the following new para-
24 graph:

1 “(9) DISCLOSURE TO SECRETARY OF HOME-
2 LAND SECURITY OF EMPLOYMENT INFORMATION OF
3 EMPLOYEES NOT AUTHORIZED TO BE EMPLOYED IN
4 UNITED STATES.—

5 “(A) IN GENERAL.—If—

6 “(i) the Secretary receives a return
7 from any person or entity (hereafter in this
8 paragraph referred to as the ‘employer’)
9 showing wages (as defined in section
10 3121(a)) paid to any employee, and

11 “(ii) the TIN of such employee, as
12 shown on such return, indicates that such
13 employee is not authorized to be employed
14 in the United States,

15 the Secretary shall provide electronically to the
16 Secretary of Homeland Security the following
17 information as shown on such return: the name,
18 address, and TIN of such employee and the
19 name, address, and employer identification
20 number of the employer.

21 “(B) NOTICE TO EMPLOYER AND EM-
22 PLOYEE.—Whenever the Secretary sends a no-
23 tice under subparagraph (A) with respect to
24 any employer and employee, the Secretary also
25 shall notify the employer and the employee in

1 writing that such employee is not authorized to
2 be employed in the United States and that the
3 employee's employment with the employer
4 should be terminated not later than the 30th
5 day after the date of the notice. Such notice
6 shall also describe—

7 “(i) the employer's obligations under
8 this paragraph,

9 “(ii) the employee's right under this
10 paragraph to contest the determination
11 that the employee is not authorized to be
12 employed in the United States, and

13 “(iii) the procedure under this para-
14 graph for contesting such determination.

15 “(C) EMPLOYEE'S RIGHT TO CONTEST.—

16 “(i) NOTICE TO EMPLOYEE.—If any
17 employer receives such a notice from the
18 Secretary with respect to an employee, the
19 employer shall, within 3 business days
20 after the date the employer received such
21 notice, provide a copy of such notice to the
22 employee.

23 “(ii) RIGHT TO CONTEST.—An em-
24 ployee may contest the accuracy of such
25 notice during the 30-day period beginning

1 on the date that the employer provided the
2 notice under clause (i) to the employee.

3 “(iii) CONTEST PROCEDURE.—If, dur-
4 ing such 30-day period, the employee pro-
5 vides the employer with information sub-
6 stantiating such employee’s claimed au-
7 thorization to be employed in the United
8 States, the employer shall, in such form
9 and manner as the Secretary shall pre-
10 scribe, provide to the Secretary—

11 “(I) the employee’s name, ad-
12 dress, and taxpayer identification
13 number,

14 “(II) the employer’s name, ad-
15 dress, telephone number, and em-
16 ployer identification number, and

17 “(III) the information provided
18 by the employee to the employer sub-
19 stantiating such employee’s authoriza-
20 tion to be employed in the United
21 States.

22 “(D) VERIFICATION FROM DEPARTMENT
23 OF HOMELAND SECURITY.—

24 “(i) TRANSMITTAL OF INQUIRY.—
25 Within 3 business days after receiving the

1 information described in subparagraph
2 (C)(iii), the Secretary shall provide such
3 information electronically to the Secretary
4 of Homeland Security.

5 “(ii) RESPONSE.—Within 7 business
6 days after receiving such information, the
7 Secretary of Homeland Security shall elec-
8 tronically notify the Secretary, and shall
9 notify the employer and employee in writ-
10 ing, as to whether the employee is author-
11 ized to be employed in the United States.

12 “(E) SUSPENSION OF OBLIGATION TO TER-
13 MINATE EMPLOYMENT UNTIL RESPONSE RE-
14 CEIVED.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), if the employee meets
17 the requirement of subparagraph (C)(iii),
18 the employer’s obligation to terminate the
19 employment of such employee shall be sus-
20 pended until the employer receives the no-
21 tice described in subparagraph (D)(ii).

22 “(ii) TIMELY RESPONSE NOT RE-
23 CEIVED.—If the employer does not receive
24 such notice before the 30th day after the

1 close such 30-day period, the employer
2 shall so notify the Secretary.

3 “(F) REBUTTABLE PRESUMPTION OF VIO-
4 LATION OF THE IMMIGRATION AND NATION-
5 ALITY ACT.—

6 “(i) IN GENERAL.—A rebuttable pre-
7 sumption is created that the employer has
8 violated section 274A(a)(1)(A) of the Im-
9 migration and Nationality Act if—

10 “(I) the employer employs an in-
11 dividual with respect to whom a notice
12 is received under subparagraph (B)
13 after the 30 days described in such
14 subparagraph,

15 “(II) the employer fails to notify
16 the Secretary as required by subpara-
17 graph (E)(ii) and employs such indi-
18 vidual, or

19 “(III) the employer refers the in-
20 dividual for employment after receiv-
21 ing a notice under subparagraph (B)
22 with respect to such individual.

23 “(ii) EXCEPTIONS.—

24 “(I) SUSPENSION PERIOD.—
25 Clause (i)(I) shall not apply during

1 the suspension period described in
2 subparagraph (E)(i).

3 “(II) NOTICE FROM SECRETARY
4 OF HOMELAND SECURITY.—Clause (i)
5 shall cease to apply with respect to an
6 individual after the date that the em-
7 ployer is notified by the Secretary of
8 Homeland Security that such indi-
9 vidual is authorized to be employed in
10 the United States.

11 “(G) REFUNDS DENIED.—No refund of
12 any tax imposed by this shall be made to any
13 individual for any taxable year during any por-
14 tion of which such individual is employed in the
15 United States without being authorized to be so
16 employed.

17 “(H) SPECIAL RULES.—

18 “(i) PROTECTION FROM LIABILITY.—
19 No employer shall be civilly or criminally
20 liable under any law for any action taken
21 in good faith reliance on information pro-
22 vided by the Secretary or the Secretary of
23 Homeland Security with respect to any in-
24 dividual’s eligibility to be employed in the
25 United States.

1 “(ii) **TIMELY MAILING TREATED AS**
2 **TIMELY NOTICE.**—Rules similar to the
3 rules of section 7502 shall apply for pur-
4 poses of this section.

5 “(iii) **LAST KNOWN ADDRESS OF EM-**
6 **PLOYEE.**—Any notice required to be pro-
7 vided to an employee under this section
8 shall be sufficient if mailed to the employee
9 at the last known address of the em-
10 ployee.”.

11 (b) **CONFORMING AMENDMENT.**—Paragraph (4) of
12 section 6103(p) of such Code is amended by striking “(5)
13 or (7)” each place it appears and inserting “(5), (7), or
14 (9)”.

15 (c) **EFFECTIVE DATE.**—The amendments made by
16 this section shall apply to returns received more than 180
17 days after the date of the enactment of this Act.

18 **Subtitle E—Miscellaneous**

19 **SEC. 761. SHARING OF SOCIAL SECURITY DATA FOR IMMI-** 20 **GRATION ENFORCEMENT PURPOSES.**

21 (a) **SOCIAL SECURITY ACCOUNT NUMBERS.**—Section
22 264(f) of the Immigration and Nationality Act (8 U.S.C.
23 1304(f)) is amended to read as follows:

24 “(f) Notwithstanding any other provision of law (in-
25 cluding section 6103 of the Internal Revenue Code of

1 1986), the Secretary of Homeland Security, the Secretary
2 of Labor, and the Attorney General are authorized to re-
3 quire an individual to provide the individual's social secu-
4 rity account number for purposes of inclusion in any
5 record of the individual maintained by either such Sec-
6 retary or the Attorney General, or of inclusion in any ap-
7 plication, document, or form provided under or required
8 by the immigration laws.”.

9 (b) EXCHANGE OF INFORMATION.—Section 290(c) of
10 the Immigration and Nationality Act (8 U.S.C. 1360(c))
11 is amended by striking paragraph (2) and inserting the
12 following new paragraphs:

13 “(2)(A) Notwithstanding any other provision of
14 law (including section 6103 of the Internal Revenue
15 Code of 1986), if earnings are reported on or after
16 January 1, 1997, to the Social Security Administra-
17 tion on a social security account number issued to
18 an alien not authorized to work in the United
19 States, the Commissioner of Social Security shall
20 provide the Secretary of Homeland Security with in-
21 formation regarding the name, date of birth, and ad-
22 dress of the alien, the name and address of the per-
23 son reporting the earnings, and the amount of the
24 earnings.

1 “(B) The information described in subpara-
2 graph (A) shall be provided in an electronic form
3 agreed upon by the Commissioner and the Secretary.

4 “(3)(A) Notwithstanding any other provision of
5 law (including section 6103 of the Internal Revenue
6 Code of 1986), if a social security account number
7 was used with multiple names, the Commissioner of
8 Social Security shall provide the Secretary of Home-
9 land Security with information regarding the name,
10 date of birth, and address of each individual who
11 used that social security account number, and the
12 name and address of the person reporting the earn-
13 ings for each individual who used that social security
14 account number.

15 “(B) The information described in subpara-
16 graph (A) shall be provided in an electronic form
17 agreed upon by the Commissioner and the Secretary
18 for the sole purpose of enforcing the immigration
19 laws.

20 “(C) The Secretary, in consultation with the
21 Commissioner, may limit or modify the requirements
22 of this paragraph, as appropriate, to identify the
23 cases posing the highest possibility of fraudulent use
24 of social security account numbers related to viola-
25 tion of the immigration laws.

1 “(4)(A) Notwithstanding any other provision of
2 law (including section 6103 of the Internal Revenue
3 Code of 1986), if more than one person reports
4 earnings for an individual during a single tax year,
5 the Commissioner of Social Security shall provide
6 the Secretary of Homeland Security information re-
7 garding the name, date of birth, and address of the
8 individual, and the name and address of the each
9 person reporting earnings for that individual.

10 “(B) The information described in subpara-
11 graph (A) shall be provided in an electronic form
12 agreed upon by the Commissioner and the Secretary
13 for the sole purpose of enforcing the immigration
14 laws.

15 “(C) The Secretary, in consultation with the
16 Commissioner, may limit or modify the requirements
17 of this paragraph, as appropriate, to identify the
18 cases posing the highest possibility of fraudulent use
19 of social security account numbers related to viola-
20 tion of the immigration laws.

21 “(5)(A) The Commissioner of Social Security
22 shall perform, at the request of the Secretary of
23 Homeland Security, a search or manipulation of
24 records held by the Commissioner if the Secretary
25 certifies that the purpose of the search or manipula-

1 tion is to obtain information that is likely to assist
2 in identifying individuals (and their employers) who
3 are using false names or social security account
4 numbers, who are sharing a single valid name and
5 social security account number among multiple indi-
6 viduals, who are using the social security account
7 number of a person who is deceased, too young to
8 work, or not authorized to work, or who are other-
9 wise engaged in a violation of the immigration laws.
10 The Commissioner shall provide the results of such
11 search or manipulation to the Secretary, notwith-
12 standing any other provision law (including section
13 6103 of the Internal Revenue Code of 1986).

14 “(B) The Secretary shall transfer to the Com-
15 missioner the funds necessary to cover the costs di-
16 rectly incurred by the Commissioner in carrying out
17 each search or manipulation requested by the Sec-
18 retary under subparagraph (A).”.

19 (c) FALSE CLAIMS OF CITIZENSHIP BY NATIONALS
20 OF THE UNITED STATES.—Section 212(a)(6)(C)(ii)(I) of
21 the Immigration and Nationality Act (8 U.S.C.
22 1182(a)(6)(C)(ii)(I)) is amended by inserting “or na-
23 tional” after “citizen”.

1 **SEC. 762. ADDITIONAL WORKSITE ENFORCEMENT AND**
2 **FRAUD DETECTION AGENTS.**

3 (a) **WORKSITE ENFORCEMENT.**—The Secretary of
4 Homeland Security shall, subject to the availability of ap-
5 propriations for such purpose, annually increase, by not
6 fewer than 2,000, the number of positions dedicated to
7 enforcing compliance with sections 274 and 274A of the
8 Immigration and Nationality Act (8 U.S.C. 1324 and
9 1324a) during the five year period beginning on October
10 1, 2008.

11 (b) **FRAUD DETECTION.**—The Secretary of Home-
12 land Security shall, subject to the availability of appropria-
13 tions for such purpose, increase by not fewer than 1,000
14 the number of positions for Immigration Enforcement
15 Agents dedicated to immigration fraud detection during
16 the five year period beginning on October 1, 2008.

17 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
18 are authorized to be appropriated to the Secretary of
19 Homeland Security for each of fiscal years 2008 through
20 2012 such sums as may be necessary to carry out this
21 section.

1 **TITLE VIII—IMMIGRATION**
2 **LITIGATION ABUSE REDUCTION**

3 **SEC. 801. BOARD OF IMMIGRATION APPEALS REMOVAL**
4 **ORDER AUTHORITY.**

5 (a) IN GENERAL.—Section 101(a)(47) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1101(a)(47)) is
7 amended to read as follows:

8 “(47)(A) The term ‘order of removal’ means the
9 order of the immigration judge, the Board of Immigration
10 Appeals, or other administrative officer to whom the At-
11 torney General or the Secretary of Homeland Security has
12 delegated the responsibility for determining whether an
13 alien is removable, concluding that the alien is removable
14 or ordering removal.

15 “(B) The order described under subparagraph (A)
16 shall become final upon the earliest of—

17 “(i) a determination by the Board of
18 Immigration Appeals affirming such order;

19 “(ii) the entry by the Board of Immi-
20 gration Appeals of such order;

21 “(iii) the expiration of the period in
22 which any party is permitted to seek re-
23 view of such order by the Board of Immi-
24 gration Appeals;

1 “(iv) the entry by an immigration
2 judge of such order, if appeal is waived by
3 all parties; or

4 “(v) the entry by another administra-
5 tive officer of such order, at the conclusion
6 of a process as authorized by law other
7 than under section 240.”.

8 (b) **EFFECTIVE DATE.**—The amendment made by
9 subsection (a) shall take effect on the date of the enact-
10 ment of this Act and shall apply to ordered entered before,
11 on, or after such date.

12 **SEC. 802. JUDICIAL REVIEW OF VISA REVOCATION.**

13 (a) **IN GENERAL.**—Section 221(i) of the Immigration
14 and Nationality Act (8 U.S.C. 1201(i)) is amended by
15 amending the last sentence to read as follows: “Notwith-
16 standing any other provision of law (statutory or non-
17 statutory), including section 2241 of title 28, United
18 States Code, or any other habeas corpus provision, and
19 sections 1361 and 1651 of such title, a revocation under
20 this subsection may not be reviewed by any court, and no
21 court shall have jurisdiction to hear any claim arising
22 from, or any challenge to, such a revocation.”.

23 (b) **EFFECTIVE DATE.**—The amendment made by
24 subsection (a) shall take effect on the date of the enact-

1 ment of this Act and shall apply to visa revocations ef-
2 fected before, on, or after such date.

3 **SEC. 803. REINSTATEMENT.**

4 (a) IN GENERAL.—Section 241(a)(5) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1231(a)(5)) is
6 amended to read as follows:

7 “(5) REINSTATEMENT OF REMOVAL ORDERS
8 AGAINST ALIENS ILLEGALLY REENTERING.—If the
9 Secretary of Homeland Security finds that an alien
10 has entered the United States illegally after having
11 been removed or having departed voluntarily, under
12 an order of removal, deportation, or exclusion, re-
13 gardless of the date of the original order or the date
14 of the illegal entry—

15 “(A) the order of removal, deportation, or
16 exclusion is reinstated from its original date
17 and is not subject to being reopened or re-
18 viewed;

19 “(B) the alien is not eligible and may not
20 apply for any relief under this Act, regardless
21 of the date that an application for such relief
22 may have been filed; and

23 “(C) the alien shall be removed under the
24 order of removal, deportation, or exclusion at
25 any time after the illegal entry.

1 Reinstatement under this paragraph shall not re-
2 quire proceedings before an immigration judge under
3 section 240 or otherwise.”.

4 (b) JUDICIAL REVIEW.—Section 242 of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1252) is amended by
6 adding at the end the following new subsection:

7 “(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER
8 SECTION 241(a)(5).—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of law (statutory or nonstatutory), includ-
11 ing section 2241 of title 28, United States Code, or
12 any other habeas corpus provision, sections 1361
13 and 1651 of such title, or subsection (a)(2)(D) of
14 this section, no court shall have jurisdiction to re-
15 view any cause or claim arising from or relating to
16 any reinstatement under section 241(a)(5) (includ-
17 ing any challenge to the reinstated order), except as
18 provided in paragraph (2) or (3).

19 “(2) CHALLENGES IN COURT OF APPEALS FOR
20 DISTRICT OF COLUMBIA TO VALIDITY OF THE SYS-
21 TEM, ITS IMPLEMENTATION, AND RELATED INDI-
22 VIDUAL DETERMINATIONS.—

23 “(A) IN GENERAL.—Judicial review of de-
24 terminations under section 241(a)(5) and its
25 implementation is available in an action insti-

1 tuted in the United States Court of Appeals for
2 the District of Columbia Circuit, but shall be
3 limited, except as provided in subparagraph
4 (B), to the following determinations:

5 “(i) Whether such section, or any reg-
6 ulation issued to implement such section, is
7 constitutional.

8 “(ii) Whether such a regulation, or a
9 written policy directive, written policy
10 guideline, or written procedure issued by
11 or under the authority of the Attorney
12 General or the Secretary of Homeland Se-
13 curity to implement such section, is not
14 consistent with applicable provisions of this
15 Act or is otherwise in violation of a statute
16 or the Constitution.

17 “(B) RELATED INDIVIDUAL DETERMINA-
18 TIONS.—If a person raises an action under sub-
19 paragraph (A), the person may also raise in the
20 same action the following issues:

21 “(i) Whether the petitioner is an
22 alien.

23 “(ii) Whether the petitioner was pre-
24 viously ordered removed or deported, or ex-
25 cluded.

1 “(iii) Whether the petitioner has since
2 illegally entered the United States.

3 “(C) DEADLINES FOR BRINGING AC-
4 TIONS.—Any action instituted under this para-
5 graph must be filed no later than 60 days after
6 the date the challenged section, regulation, di-
7 rective, guideline, or procedure described in
8 clause (i) or (ii) of subparagraph (A) is first
9 implemented.

10 “(3) INDIVIDUAL DETERMINATIONS UNDER
11 SECTION 242(a).—Judicial review of determinations
12 under section 241(a)(5) is available in an action
13 under subsection (a) of this section, but shall be lim-
14 ited to determinations of—

15 “(A) whether the petitioner is an alien;

16 “(B) whether the petitioner was previously
17 ordered removed, deported, or excluded; and

18 “(C) whether the petitioner has since ille-
19 gally entered the United States.

20 “(4) SINGLE ACTION.—A person who files an
21 action under paragraph (2) may not file a separate
22 action under paragraph (3). A person who files an
23 action under paragraph (3) may not file an action
24 under paragraph (2).”.

1 (c) **EFFECTIVE DATE.**—The amendments made by
2 subsections (a) and (b) shall take effect as if enacted on
3 April 1, 1997, and shall apply to all orders reinstated on
4 or after that date by the Secretary of Homeland Security
5 (or by the Attorney General prior to March 1, 2003), re-
6 gardless of the date of the original order.

7 **SEC. 804. WITHHOLDING OF REMOVAL.**

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

11 (1) in subparagraph (A), by adding at the end
12 the following: “The burden of proof is on the alien
13 to establish that the alien’s life or freedom would be
14 threatened in that country, and that race, religion,
15 nationality, membership in a particular social group,
16 or political opinion would be at least one central rea-
17 son for such threat.”; and

18 (2) in subparagraph (C), by striking “In deter-
19 mining whether an alien has demonstrated that the
20 alien’s life or freedom would be threatened for a rea-
21 son described in subparagraph (A)” and inserting
22 “For purposes of this paragraph”.

23 (b) **EFFECTIVE DATE.**—The amendments made by
24 subsection (a) shall take effect as if included in the enact-

1 ment of section 101(c) of the REAL ID Act of 2005 (divi-
2 sion B of Public Law 109–13).

3 **SEC. 805. CERTIFICATE OF REVIEWABILITY.**

4 (a) ALIEN’S BRIEF.—Section 242(b)(3)(C) of the
5 Immigration and Nationality Act (8 U.S.C.
6 1252(b)(3)(C)) is amended to read as follows:

7 “(C) ALIEN’S BRIEF.—The alien shall
8 serve and file a brief in connection with a peti-
9 tion for judicial review not later than 40 days
10 after the date on which the administrative
11 record is available. The court may not extend
12 this deadline except upon motion for good cause
13 shown. If an alien fails to file a brief within the
14 time provided in this paragraph, the court shall
15 dismiss the appeal unless a manifest injustice
16 would result.”.

17 (b) CERTIFICATE OF REVIEWABILITY.—Section
18 242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended
19 by adding at the end the following new subparagraphs:

20 “(D) CERTIFICATE.—

21 “(i) After the alien has filed the
22 alien’s brief, the petition for review shall be
23 assigned to a single court of appeals judge.

24 “(ii) Unless that court of appeals
25 judge or a circuit justice issues a certifi-

1 cate of reviewability, the petition for review
2 shall be denied and the government shall
3 not file a brief.

4 “(iii) A certificate of reviewability may
5 issue under clause (ii) only if the alien has
6 made a substantial showing that the peti-
7 tion for review is likely to be granted.

8 “(iv) The court of appeals judge or
9 circuit justice shall complete all action on
10 such certificate, including rendering judg-
11 ment, not later than 60 days after the date
12 on which the judge or circuit justice was
13 assigned the petition for review, unless an
14 extension is granted under clause (v).

15 “(v) The judge or circuit justice may
16 grant, on the judge’s or justice’s own mo-
17 tion or on the motion of a party, an exten-
18 sion of the 60-day period described in
19 clause (iv) if—

20 “(I) all parties to the proceeding
21 agree to such extension; or

22 “(II) such extension is for good
23 cause shown or in the interests of jus-
24 tice, and the judge or circuit justice

1 states the grounds for the extension
2 with specificity.

3 “(vi) If no certificate of reviewability
4 is issued before the end of the period de-
5 scribed in clause (iv), including any exten-
6 sion under clause (v), the petition for re-
7 view shall be deemed denied, any stay or
8 injunction on petitioner’s removal shall be
9 dissolved without further action by the
10 court or the government, and the alien
11 may be removed.

12 “(vii) If a certificate of reviewability is
13 issued under clause (ii), the Government
14 shall be afforded an opportunity to file a
15 brief in response to the alien’s brief. The
16 alien may serve and file a reply brief not
17 later than 14 days after service of the Gov-
18 ernment’s brief, and the court may not ex-
19 tend this deadline except upon motion for
20 good cause shown.

21 “(E) NO FURTHER REVIEW OF THE COURT
22 OF APPEALS JUDGE’S DECISION NOT TO ISSUE
23 A CERTIFICATE OF REVIEWABILITY.—The sin-
24 gle court of appeals judge’s decision not to
25 issue a certificate of reviewability, or the denial

1 of a petition under subparagraph (D)(vi), shall
2 be the final decision for the court of appeals
3 and shall not be reconsidered, reviewed, or re-
4 versed by the court of appeals through any
5 mechanism or procedure.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to petitions filed on or after the
8 date that is 60 days after the date of the enactment of
9 this Act.

10 **SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA**
11 **ISSUANCE.**

12 (a) IN GENERAL.—Section 221(a) of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1201(a)) is amended
14 by adding at the end the following new paragraph:

15 “(3) An alien may not be issued a nonimmigrant visa
16 unless the alien has waived any right—

17 “(A) to review or appeal under this Act of
18 an immigration officer’s determination as to the
19 inadmissibility of the alien at the port of entry
20 into the United States; or

21 “(B) to contest, other than on the basis of
22 an application for asylum, any action for re-
23 moval of the alien.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to visas issued on or after the

1 date that is 90 days after the date of the enactment of
2 this Act.

3 **SEC. 807. CLARIFICATION OF JURISDICTION ON REVIEW.**

4 (a) REVIEW OF DISCRETIONARY DETERMINA-
5 TIONS.—Section 242(a)(2)(B) of the Immigration and
6 Nationality Act (8 U.S.C. 1252(a)(2)(B)) is amended—

7 (1) by inserting before “no court” the following:
8 “and regardless of whether the individual determina-
9 tion, decision, or action is made in removal pro-
10 ceedings,”;

11 (2) in clause (i), by striking “any judgment”
12 and inserting “any individual determination”; and

13 (3) in clause (ii)—

14 (A) by inserting “discretionary” after “any
15 other”;

16 (B) by striking “the authority for which is
17 specified under this title to be in the discretion
18 of the Attorney General or the Secretary of
19 Homeland Security,” and inserting “under this
20 title or the regulations promulgated here-
21 under,”; and

22 (C) by striking the period at the end and
23 inserting the following: “, irrespective of wheth-
24 er such decision or action is guided or informed
25 by standards, regulatory or otherwise.”.

1 (b) REVIEW OF ORDERS AGAINST CRIMINAL
2 ALIENS.—Section 242(a)(2)(C) of the Immigration and
3 Nationality Act (8 U.S.C. 1252(a)(2)(C)) is amended by
4 inserting after “of removal” the following: “(irrespective
5 of whether relief or protection was denied on the basis of
6 the alien’s having committed a criminal offense)”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to petitions for review that are
9 pending on or after the date of the enactment of this Act.

10 **SEC. 808. FEES AND EXPENSES IN JUDICIAL PROCEEDINGS.**

11 (a) IN GENERAL.—Section 242 of the Immigration
12 and Nationality Act (8 U.S.C. 1252) is amended by add-
13 ing at the end the following new subsection:

14 “(i) Notwithstanding any other provision of law, a
15 court shall not award fees or other expenses to an alien
16 based upon the alien’s status as a prevailing party in any
17 proceedings relating to an order of removal issued under
18 this Act, unless the court of appeals concludes that the
19 Attorney General’s determination that the alien was re-
20 movable under section 212 or 237 was not substantially
21 justified.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall apply to fees or other expenses award-
24 ed on or after the date of the enactment of this Act.

1 **TITLE IX—PRESCREENING OF**
2 **AIR PASSENGERS**

3 **SEC. 901. IMMEDIATE INTERNATIONAL PASSENGER**
4 **PRESCREENING PILOT PROGRAM.**

5 (a) PILOT PROGRAM.—Not later than 90 days after
6 the date of enactment of this Act, the Secretary of Home-
7 land Security shall initiate a pilot program to evaluate the
8 use of automated systems for the immediate prescreening
9 of passengers on flights in foreign air transportation, as
10 defined by section 40102 of title 49, United States Code,
11 that are bound for the United States.

12 (b) REQUIREMENTS.—At a minimum, with respect to
13 a passenger on a flight described in subsection (a) oper-
14 ated by an air carrier or foreign air carrier, the automated
15 systems evaluated under the pilot program shall—

16 (1) compare the passenger’s information
17 against the integrated and consolidated terrorist
18 watchlist maintained by the Federal Government
19 and provide the results of the comparison to the air
20 carrier or foreign air carrier before the passenger is
21 permitted to board the flight;

22 (2) provide functions similar to the advanced
23 passenger information system established under sec-
24 tion 431 of the Tariff Act of 1930 (19 U.S.C.
25 1431); and

1 (3) make use of machine-readable data ele-
2 ments on passports and other travel and entry docu-
3 ments in a manner consistent with international
4 standards.

5 (c) OPERATION.—The pilot program shall be con-
6 ducted—

7 (1) in not fewer than 2 foreign airports; and

8 (2) in collaboration with not fewer than one air
9 carrier at each airport participating in the pilot pro-
10 gram.

11 (d) EVALUATION OF AUTOMATED SYSTEMS.—In con-
12 ducting the pilot program, the Secretary shall evaluate not
13 more than 3 automated systems. One or more of such sys-
14 tems shall be commercially available and currently in use
15 to prescreen passengers.

16 (e) PRIVACY PROTECTION.—The Secretary shall en-
17 sure that the passenger data is collected under the pilot
18 program in a manner consistent with the standards estab-
19 lished under section 552a of title 5, United States Code.

20 (f) DURATION.—The Secretary shall conduct the
21 pilot program for not fewer than 90 days.

22 (g) PASSENGER DEFINED.—In this section, the term
23 “passenger” includes members of the flight crew.

24 (h) REPORT.—Not later than 30 days after the date
25 of completion of the pilot program, the Secretary shall

1 submit to the Committee on Homeland Security of the
2 House of Representatives and the Committee on Com-
3 merce, Science, and Transportation of the Senate a report
4 containing the following:

5 (1) An assessment of the technical performance
6 of each of the tested systems, including the system's
7 accuracy, scalability, and effectiveness with respect
8 to measurable factors, including, at a minimum, pas-
9 senger throughput, the rate of flight diversions, and
10 the rate of false negatives and positives.

11 (2) A description of the provisions of each test-
12 ed system to protect the civil liberties and privacy
13 rights of passengers, as well as a description of the
14 adequacy of an immediate redress or appeals process
15 for passengers denied authorization to travel.

16 (3) Cost projections for implementation of each
17 tested system, including—

18 (A) projected costs to the Department of
19 Homeland Security; and

20 (B) projected costs of compliance to air
21 carriers operating flights described in sub-
22 section (a).

23 (4) A determination as to which tested system
24 is the best-performing and most efficient system to
25 ensure immediate prescreening of international pas-

1 sengers. Such determination shall be made after con-
2 sultation with individuals in the private sector hav-
3 ing expertise in airline industry, travel, tourism, pri-
4 vacy, national security, and computer security
5 issues.

6 (5) A plan to fully deploy the best-performing
7 and most efficient system tested by not later than
8 January 1, 2009.

9 **TITLE X—SECURITY AND**
10 **FAIRNESS ENHANCEMENT**

11 **SEC. 1001. SHORT TITLE.**

12 This title may be cited as—

13 (1) the “Security and Fairness Enhancement
14 for America Act of 2007”; or

15 (2) the “SAFE for America Act”.

16 **SEC. 1002. ELIMINATION OF DIVERSITY IMMIGRANT PRO-**
17 **GRAM.**

18 (a) WORLDWIDE LEVEL OF DIVERSITY IMMI-
19 GRANTS.—Section 201 of the Immigration and Nation-
20 ality Act (8 U.S.C. 1151) is amended—

21 (1) in subsection (a)—

22 (A) by inserting “and” at the end of para-
23 graph (1);

24 (B) by striking “; and” at the end of para-
25 graph (2) and inserting a period; and

1 (C) by striking paragraph (3); and

2 (2) by striking subsection (e).

3 (b) ALLOCATION OF DIVERSITY IMMIGRANT VISAS.—

4 Section 203 of such Act (8 U.S.C. 1153) is amended—

5 (1) by striking subsection (e);

6 (2) in subsection (d), by striking “(a), (b), or
7 (c),” and inserting “(a) or (b),”;

8 (3) in subsection (e), by striking paragraph (2)
9 and redesignating paragraph (3) as paragraph (2);

10 (4) in subsection (f), by striking “(a), (b), or
11 (c)” and inserting “(a) or (b)”; and

12 (5) in subsection (g), by striking “(a), (b), and
13 (c)” and inserting “(a) and (b)”.

14 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
15 TUS.—Section 204 of such Act (8 U.S.C. 1154) is amend-
16 ed—

17 (1) by striking subsection (a)(1)(I); and

18 (2) in subsection (e), by striking “(a), (b), or
19 (c)” and inserting “(a) or (b)”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on October 1, 2008.

1 **TITLE XI—OATH OF RENUNCI-**
2 **ATION AND ALLEGIANCE**

3 **SEC. 1101. OATH OF RENUNCIATION AND ALLEGIANCE.**

4 (a) IN GENERAL.—Section 337(a) of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1448(a)) is amended
6 by inserting after the fourth sentence the following: “The
7 oath referred to in this section shall be the oath provided
8 for in paragraph (a) or (b) of section 337.1 of title 8, Code
9 of Federal Regulations, as in effect on April 1, 2005.”.

10 (b) NOTICE TO FOREIGN EMBASSIES.—Upon the
11 naturalization of a new citizen, the Secretary of Homeland
12 Security, in cooperation with the Secretary of State, shall
13 notify the embassy of the country of which the new citizen
14 was a citizen or subject that such citizen has—

15 (1) renounced allegiance to that foreign coun-
16 try; and

17 (2) sworn allegiance to the United States.

18 (c) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall take effect on the date that is 6
20 months after the date of the enactment of this Act.

1 **TITLE XII—ELIMINATION OF**
2 **CORRUPTION AND PREVEN-**
3 **TION OF ACQUISITION OF IM-**
4 **MIGRATION BENEFITS**
5 **THROUGH FRAUD**

6 **SEC. 1201. SHORT TITLE.**

7 This title may be cited as the “Taking Action to Keep
8 Employees Accountable in Immigration Matters Act of
9 2007” or the “TAKE AIM Act of 2007”.

10 **SEC. 1202. FINDINGS.**

11 Congress finds the following:

12 (1) The mission of United States Citizenship
13 and Immigration Services (USCIS) is to faithfully
14 execute the immigration laws enacted by Congress
15 and to ensure that only those aliens who are eligible
16 under such laws and who do not pose a risk to the
17 United States or its citizens or lawful residents are
18 able to obtain permission to remain in the United
19 States.

20 (2) Only United States citizens have an abso-
21 lute right to be in the United States; for all others,
22 permission to enter and reside here, either as non-
23 immigrants or immigrants, is a privilege that is con-
24 ditioned on following the rules of one’s admission
25 and stay.

1 (3) It is important that United States Citizen-
2 ship and Immigration Services, like all other Federal
3 agencies that come into close contact with the public
4 their customers.

5 (4) Immigration benefits fraud has become en-
6 demic. It undermines the rule of law and threatens
7 national security, and so must be addressed aggres-
8 sively and consistently.

9 (5) Internal corruption also threatens national
10 security and erodes the integrity of the immigration
11 system. In order to restore integrity and credibility
12 to the system, the backlog of complaints against
13 United States Citizenship and Immigration Services
14 employees must be cleared by experienced investiga-
15 tors as expeditiously as possible without compro-
16 mising the quality of investigations.

17 (6) In separating customs and border protec-
18 tion and immigration and customs enforcement from
19 United States Citizenship and Immigration Services,
20 Congress did not intend to wholly eliminate all law
21 enforcement functions within the latter, nor is it
22 possible for United States citizenship and immigra-
23 tion services to achieve its mission without a law en-
24 forcement function. the attempt to do so has pro-
25 duced the current abysmal results. Thus, it is imper-

1 ative that United States Citizenship and Immigra-
2 tion Services embrace the critical law enforcement
3 function especially the internal audit function.

4 **SEC. 1203. STRUCTURE OF THE OFFICE OF SECURITY AND**
5 **INVESTIGATIONS.**

6 The Director of the Office of Security and Investiga-
7 tions shall report directly to the Director of United States
8 Citizenship and Immigration Services.

9 **SEC. 1204. AUTHORITY OF THE OFFICE OF SECURITY AND**
10 **INVESTIGATIONS TO INVESTIGATE INTERNAL**
11 **CORRUPTION.**

12 (a) **AUTHORITY.**—In addition to the authority other-
13 wise provided by this title, the Director of the Office of
14 Security and Investigations, in carrying out the duties of
15 the Office, has sole authority—

16 (1) to receive, process, dispose of administra-
17 tively, and investigate any criminal or noncriminal
18 violations of the Immigration and Nationality Act or
19 title 18, United States Code, that are alleged to have
20 been committed by any officer, agent, employee, or
21 contract worker of United States Citizenship and
22 Immigration Services, and that are referred to
23 United States Citizenship and Immigration Services
24 by the Office of the Inspector General of the Depart-
25 ment of Homeland Security;

1 (2) to ensure that all complaints alleging such
2 violations are handled and stored in the same man-
3 ner as sensitive but unclassified materials;

4 (3) to have access to all records, reports, audits,
5 reviews, documents, papers, recommendations, or
6 other material available to United States Citizenship
7 and Immigration Services which relate to programs
8 and operations with respect to which the Director
9 has responsibilities under this title;

10 (4) to request such information or assistance as
11 may be necessary for carrying out the duties and re-
12 sponsibilities of the Office from any Federal, State,
13 or local governmental agency or unit thereof;

14 (5) to require by subpoena the production of all
15 information, documents, reports, answers, records,
16 accounts, papers, and other data and documentary
17 evidence necessary in the performance of the func-
18 tions assigned to the Office of Security and Inves-
19 tigation, which subpoena, in the case of contumacy
20 or refusal to obey, shall be enforceable by order of
21 any appropriate United States district court (except
22 that procedures other than subpoenas shall be used
23 by the Director to obtain documents and information
24 from Federal agencies);

1 (6) to administer to or take from any person an
2 oath, affirmation, or affidavit, whenever necessary in
3 the performance of the functions assigned to the Of-
4 fice of Security and Investigations, which oath, affir-
5 mation, or affidavit when administered or taken by
6 or before an agent of the Office of Security and In-
7 vestigations designated by the Director shall have
8 the same force and effect as if administered or taken
9 by or before an officer having a seal;

10 (7) to have direct and prompt access to the
11 head of United States Citizenship and Immigration
12 Services when necessary for any purpose pertaining
13 to the performance of functions and responsibilities
14 of the Office of Security and Investigations;

15 (8) to select, appoint, and employ such officers
16 and employees as may be necessary for carrying out
17 the functions, powers, and duties of the Office of Se-
18 curity and Investigations subject to the provisions of
19 title 5, United States Code, governing appointments
20 in the competitive service, and the provisions of
21 chapter 51 and subchapter III of chapter 53 of such
22 title relating to classification and General Schedule
23 pay rates;

24 (9) to obtain services as authorized by section
25 3109 of title 5, United States Code, at daily rates

1 not to exceed the equivalent rate prescribed for
2 grade GS-15 of the General Schedule by section
3 5332 of title 5, United States Code; and

4 (10) to the extent and in such amounts as may
5 be provided in advance by immigration fee accounts
6 or appropriations Acts, to enter into contracts and
7 other arrangements for audits, studies, analyses, and
8 other services with public agencies and with private
9 persons, and to make such payments as may be nec-
10 essary to carry out the provisions of this title.

11 (b)(1) Upon request of the Director for information
12 or assistance under subsection (a)(4), the head of any
13 Federal agency involved shall, insofar as is practicable and
14 not in contravention of any existing statutory restriction
15 or regulation of the Federal agency from which the infor-
16 mation is requested, furnish to such Director, or to an
17 authorized designee, such information or assistance.

18 (2) Whenever information or assistance requested
19 under subsection (a)(3) or (a)(4) is, in the judgment of
20 the Director, unreasonably refused or not provided, the
21 Director shall report the circumstances to the Director of
22 United States Citizenship and Immigration Services with-
23 out delay.

24 (c) The Director of United States Citizenship and
25 Immigration Services shall provide the Office of Security

1 and Investigations with appropriate and adequate office
2 space at central and field office locations of United States
3 Citizenship and Immigration Services, together with such
4 equipment, office supplies, and communications facilities
5 and services as may be necessary for the operation of such
6 offices, and shall provide necessary maintenance services
7 for such offices and the equipment and facilities located
8 therein.

9 (d)(1) In addition to the authority otherwise provided
10 by this title, the Director, the Deputy Director, the Assist-
11 ant Director of Security Operations, the Assistant Direc-
12 tor of Special Investigations, all 1811-series criminal in-
13 vestigators, certain 1801-series investigative management
14 specialists, and security specialists supervised by such as-
15 sistant directors may be authorized by the Secretary of
16 Homeland Security to—

17 (A) carry a firearm while engaged in official du-
18 ties as authorized under this title or other statute,
19 or as expressly authorized by the Secretary;

20 (B) make an arrest without a warrant while en-
21 gaged in official duties as authorized under this title
22 or other statute, or as expressly authorized by the
23 Secretary, for any offense against the United States
24 committed in the presence of such Director, Assist-
25 ant Director, or designee, or for any felony cog-

1 nizable under the laws of the United States if such
2 Director, Assistant Director, or designee has reason-
3 able grounds to believe that the person to be ar-
4 rested has committed or is committing such felony;
5 and

6 (C) seek and execute warrants for arrest,
7 search of a premises, or seizure of evidence issued
8 under the authority of the United States upon prob-
9 able cause to believe that a violation has been com-
10 mitted.

11 (2) The Secretary shall promulgate, and revise as ap-
12 propriate, guidelines which shall govern the exercise of the
13 law enforcement powers established under paragraph (1).

14 (3)(A) Powers authorized for the Director under
15 paragraph (1) may be rescinded or suspended upon a de-
16 termination by the Secretary that the exercise of author-
17 ized powers by that Director has not complied with the
18 guidelines promulgated by the Secretary under paragraph
19 (2).

20 (B) Powers authorized to be exercised by any indi-
21 vidual under paragraph (1) may be rescinded or suspended
22 with respect to that individual upon a determination by
23 the Secretary that such individual has not complied with
24 guidelines promulgated by the Secretary under paragraph
25 (2).

1 (4) A determination by the Secretary under para-
2 graph (3) shall not be reviewable in or by any court.

3 (5) No provision of this subsection shall limit the ex-
4 ercise of law enforcement powers established under any
5 other statutory authority.

6 **SEC. 1205. AUTHORITY OF THE OFFICE OF SECURITY AND**
7 **INVESTIGATIONS TO DETECT AND INVES-**
8 **TIGATE IMMIGRATION BENEFITS FRAUD.**

9 The Office of Security and Investigations of United
10 States Citizenship and Immigration Services shall have
11 authority—

12 (1) to conduct fraud detection operations, in-
13 cluding data mining and analysis;

14 (2) to investigate any criminal or noncriminal
15 allegations of violations of the Immigration and Na-
16 tionality Act or title 18, United States Code, that
17 Immigration and Customs Enforcement declines to
18 investigate;

19 (3) to turn over to a United States Attorney for
20 prosecution evidence that tends to establish such vio-
21 lations; and

22 (4) to engage in information sharing, partner-
23 ships, and other collaborative efforts with any—

24 (A) Federal, State, or local law enforce-
25 ment entity;

1 (B) foreign partners; or

2 (C) entity within the intelligence commu-
3 nity (as defined in section 3(4) of the National
4 Security Act of 1947 (50 U.S.C. 401a(4)).

5 **SEC. 1206. INCREASE IN FULL-TIME OFFICE OF SECURITY**
6 **AND INVESTIGATIONS PERSONNEL.**

7 (a) INCREASE IN GS-1811 SERIES CRIMINAL INVES-
8 TIGATORS.—(1) In each of fiscal years 2009 through
9 2012, the Director of the Office of Security and Investiga-
10 tions shall, subject to the availability of security fees de-
11 scribed in section 910 of this title, increase by not less
12 than 100 the number of full-time, active-duty GS-1811
13 series criminal Discussion draft 10 investigators, along
14 with support personnel and equipment, within the Office
15 of Security and Investigations above the number of such
16 positions for which funds were made available during the
17 preceding fiscal year.

18 (2) DIVISION OF DUTIES.—

19 (A) INTERNAL AFFAIRS.—No fewer than
20 one-third of the criminal investigators, and sup-
21 port personnel, hired under paragraph (1) shall
22 be assigned to investigate allegations described
23 in paragraph (1) of section 904(a) of this title;

24 (B) BENEFITS FRAUD.—The remaining
25 criminal investigators, and support personnel,

1 hired under paragraph (1) shall be assigned to
2 investigate allegations described in section 905
3 of this title.

4 (b) INCREASE IN GS-1801 SERIES INVESTIGATION
5 AND COMPLIANCE OFFICERS.—(1) Subject to the avail-
6 ability of security fees described in section 910 of this title,
7 the Director of the Office of Security and Investigations
8 shall by fiscal year 2008 increase by not less than 150
9 the number of full-time, active-duty GS-1801 series inves-
10 tigation and compliance officers, along with support per-
11 sonnel and equipment, within the Office of Security and
12 Investigations above the number of such positions for
13 which funds were made available during fiscal year 2006.

14 (2) DIVISION OF DUTIES.—

15 (A) INTERNAL AFFAIRS.—No fewer than
16 one-third of the investigation and compliance
17 officers, and support personnel, hired under
18 paragraph (1) shall be assigned to investigate
19 allegations described in paragraph (1) of section
20 904(a) of this title;

21 (B) BENEFITS FRAUD.—The remaining in-
22 vestigation and compliance officers, and support
23 personnel, hired under paragraph (1) shall be
24 assigned to investigate allegations described in
25 section 905 of this title.

1 (c) INCREASE IN GS-0132 SERIES INTELLIGENCE
2 RESEARCH SPECIALISTS.—(1) Subject to the availability
3 of security fees described in section 910 of this title, the
4 Director of the Office of Security and Investigations shall
5 by fiscal year 2010 increase by not less than 150 the num-
6 ber of full-time, active-duty GS-0132 series intelligence
7 research specialists, along with support personnel and
8 equipment, within the Office of Security and Investiga-
9 tions above the number of such positions for which funds
10 were made available during fiscal year 2006.

11 (2) DIVISION OF DUTIES.—

12 (A) INTERNAL AFFAIRS.—No fewer than
13 one-third of the investigation and compliance
14 officers, and support personnel, hired under
15 paragraph (1) shall be assigned to investigate
16 allegations described in paragraph (1) of section
17 904(a) of this title;

18 (B) BENEFITS FRAUD.—The remaining in-
19 vestigation and compliance officers, and support
20 personnel, hired under paragraph (1) shall be
21 assigned to investigate allegations described in
22 section 905 of this title.

23 **SEC. 1207. ANNUAL REPORT.**

24 The Director of the Office of Security and Investiga-
25 tions shall annually submit to Congress a report detailing

1 the activities of the Office. The report shall include data
2 on the following:

3 (1) The number of investigations the Office of
4 Security and Investigations began, completed, and
5 turned over to a United States Attorney for prosecu-
6 tion during the past 12 months.

7 (2) The types of allegations investigated by the
8 Office of Security and Investigations during the past
9 12 months, including both the allegations of mis-
10 conduct by employees of United States Citizenship
11 and Immigration Services and allegations of immi-
12 gration benefits fraud.

13 (3) The disposition of all investigations con-
14 ducted by the Office of Security and Investigations
15 during the past 12 months.

16 (4) The number, if any, of allegations pending
17 at the end of the 12-month period according to the
18 type of allegation, the grade level of the employee,
19 if applicable, along with an assessment of the re-
20 sources the Office of Security and Investigations
21 would need, if any, to remain current with new alle-
22 gations received.

1 **SEC. 1208. INVESTIGATIONS OF FRAUD TO PRECEDE IMMI-**
2 **GRATION BENEFITS GRANT.**

3 Section 103 of the Immigration and Nationality Act
4 (8 U.S.C. 1103) is amended by adding at the end the fol-
5 lowing:

6 “(j) Notwithstanding any other provision of law, the
7 Secretary of Homeland Security, the Attorney General, or
8 any court may not—

9 “(1) grant or order the grant of adjustment of
10 status to that of an alien lawfully admitted for per-
11 manent residence,

12 “(2) grant or order the grant of any other sta-
13 tus, relief, protection from removal, or other benefit
14 under the immigration laws, or

15 “(3) issue any documentation evidencing or re-
16 lated to such grant by the Attorney General, the
17 Secretary, or any court, until any suspected or al-
18 leged fraud relating to the benefit application has
19 been fully investigated and found to be unsubstan-
20 tiated.”.

21 **SEC. 1209. ELIMINATION OF THE FRAUD DETECTION AND**
22 **NATIONAL SECURITY OFFICE.**

23 Not later than 30 days following the date of enact-
24 ment of this title, the Secretary of Homeland Security
25 shall eliminate the Fraud Detection and National Security
26 Office of United States Citizenship and Immigration Serv-

1 ices and transfer all authority of such office to the Office
2 of Security and Investigations.

3 **SEC. 1210. SECURITY FEE.**

4 Section 286(d) of the Immigration and Nationality
5 Act (8 U.S.C. 1356(d)) is amended by inserting “(1)” be-
6 fore “monies” and adding at the end the following:

7 “(2) In addition to any other fee authorized by law,
8 the Secretary of Homeland Security shall charge each
9 alien who files an application for adjustment of status or
10 an extension of stay a security fee of \$10, which shall be
11 made available to the Office of Security and Investigations
12 to conduct investigations into allegations of internal cor-
13 ruption and benefits fraud.

14 “(3) In addition to any other fee authorized by law,
15 the Secretary of State shall charge each alien who files
16 an application for an immigrant or nonimmigrant visa a
17 security fee of \$10, which shall be made available to the
18 Office of Security and Investigations to conduct investiga-
19 tions into allegations of internal corruption and benefits
20 fraud.

21 “(4) Any fees collected under paragraphs (2) and (3)
22 that are in excess of the operating budget of the Office
23 of Security and Investigations shall be made available to
24 Immigration and Customs Enforcement for the sole pur-
25 pose of investigating immigration benefits fraud referred

1 to it by United States Citizenship and Immigration Serv-
2 ices.”.

3 **TITLE XIII—TEMPORARY AGRI-**
4 **CULTURAL WORKER PRO-**
5 **GRAM**

6 **SEC. 1301. ADMISSION OF TEMPORARY H-2A WORKERS.**

7 (a) PROCEDURE FOR ADMISSION.—Section 218 of
8 the Immigration and Nationality Act (8 U.S.C. 1188) is
9 amended to read as follows:

10 “ADMISSION OF TEMPORARY H-2A WORKERS

11 “SEC. 218. (a) DEFINITIONS.—In this section:

12 “(1) AREA OF EMPLOYMENT.—The term ‘area
13 of employment’ means the area within normal com-
14 muting distance of the worksite or physical location
15 where the work of the H-2A worker is or will be
16 performed. If such work site or location is within a
17 Metropolitan Statistical Area, any place within such
18 area shall be considered to be within the area of em-
19 ployment.

20 “(2) DISPLACE.—The term ‘displace’ means to
21 lay off a worker from a job that is essentially equiv-
22 alent to the job for which an H-2A worker is
23 sought. A job shall not be considered to be ‘essen-
24 tially equivalent’ to another job unless the job—

25 “(A) involves essentially the same respon-
26 sibilities as such other job;

1 “(B) was held by a United States worker
2 with substantially equivalent qualifications and
3 experience; and

4 “(C) is located in the same area of employ-
5 ment as the other job.

6 “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible
7 individual’ means an individual who is not an unau-
8 thorized alien (as defined in section 274A(h)(3))
9 with respect to the employment of the individual.

10 “(4) EMPLOYER.—The term ‘employer’ means
11 an employer who hires workers to perform agricul-
12 tural employment.

13 “(5) H-2A WORKER.—The term ‘H-2A worker’
14 means a nonimmigrant described in section
15 101(a)(15)(H)(ii)(a).

16 “(6) LAY OFF.—

17 “(A) IN GENERAL.—The term ‘lay off’—

18 “(i) means to cause a worker’s loss of
19 employment, other than through a dis-
20 charge for inadequate performance, viola-
21 tion of workplace rules, cause, voluntary
22 departure, voluntary retirement, or the ex-
23 piration of a grant or contract (other than
24 a temporary employment contract entered
25 into in order to evade a condition described

1 in paragraph (3) or (7) of subsection (b));

2 and

3 “(ii) does not include any situation in
4 which the worker is offered, as an alter-
5 native to such loss of employment, a simi-
6 lar employment opportunity with the same
7 employer (or, in the case of a placement of
8 a worker with another employer under sub-
9 section (h)(2), with either employer de-
10 scribed in such subsection) at equivalent or
11 higher compensation and benefits than the
12 position from which the employee was dis-
13 charged, regardless of whether or not the
14 employee accepts the offer.

15 “(B) CONSTRUCTION.—Nothing in this
16 paragraph is intended to limit an employee’s
17 rights under a collective bargaining agreement
18 or other employment contract.

19 “(7) PREVAILING WAGE.—The term ‘prevailing
20 wage’ means the wage rate that includes the 51st
21 percentile of employees with similar experience and
22 qualifications in the agricultural occupation in the
23 area of intended employment, calculated using the
24 same methodology used by the Department of Labor
25 to determine prevailing wage for the purpose of the

1 program described in section 101(a)(15)(H)(ii)(b)
2 during 2007, and expressed in terms of the pre-
3 vailing method of pay for the occupation in the area
4 of intended employment.

5 “(8) UNITED STATES WORKER.—The term
6 ‘United States worker’ means any worker who is—

7 “(A) a national of the United States; or

8 “(B) a person admitted for permanent
9 resident status under section 245 of the Immi-
10 gration and Nationality Act (8 U.S.C. 1255).

11 “(b) PETITION.—An alien may not be admitted as
12 an H-2A worker unless an employer has filed with the
13 Secretary of Homeland Security a petition attesting to the
14 following:

15 “(1) TEMPORARY WORK OR SERVICES.—

16 “(A) IN GENERAL.—The employer is seek-
17 ing to employ a specific number of agricultural
18 workers on a temporary basis and will provide
19 compensation to such workers at a specified
20 wage rate and under specified conditions.

21 “(B) DEFINITION.—For purposes of this
22 paragraph, a worker is employed on a tem-
23 porary basis if the employer intends to employ
24 the worker for no longer than 10 months dur-
25 ing any contract period.

1 “(2) BENEFITS, WAGES, AND WORKING CONDI-
2 TIONS.—The employer will provide, at a minimum,
3 the benefits, wages, and working conditions required
4 by subsection (j) to all workers employed in the jobs
5 for which the H-2A worker is sought and to all
6 other temporary workers in the same occupation at
7 the place of employment.

8 “(3) NONDISPLACEMENT OF UNITED STATES
9 WORKERS.—The employer did not displace and will
10 not displace a United States worker employed by the
11 employer during the period of employment of the H-
12 2A worker and during the 30-day period imme-
13 diately preceding such period of employment in the
14 occupation at the place of employment for which the
15 employer seeks approval to employ H-2A workers.

16 “(4) RECRUITMENT.—

17 “(A) IN GENERAL.—The employer—

18 “(i) conducted adequate recruitment
19 in the area of intended employment before
20 filing the attestation; and

21 “(ii) was unsuccessful in locating a
22 qualified United States worker for the job
23 opportunity for which the H-2A worker is
24 sought.

1 “(B) OTHER REQUIREMENTS.—The re-
2 cruitment requirement under subparagraph (A)
3 is satisfied if the employer places—

4 “(i) a local job order with the State
5 workforce agency serving the local area
6 where the work will be performed, except
7 that nothing in this clause shall require the
8 employer to file an interstate job order
9 under section 653 of title 20, Code of Fed-
10 eral Regulations; and

11 “(ii) a Sunday advertisement in a
12 newspaper of general circulation in the
13 area of intended employment.

14 “(C) ADVERTISEMENT REQUIREMENT.—
15 The advertisement requirement under subpara-
16 graph (B)(ii) is satisfied if the advertisement—

17 “(i) names the employer;

18 “(ii) directs applicants to contact the
19 employer;

20 “(iii) provides a description of the va-
21 cancy that is specific enough to apprise
22 United States workers of the job oppor-
23 tunity for which certification is sought;

24 “(iv) describes the geographic area
25 with enough specificity to apprise appli-

1 cants of any travel requirements and where
2 applicants will likely have to reside to per-
3 form the job; and

4 “(v) states the rate of pay, which
5 shall not be less than the wage paid for the
6 occupation in the area of intended employ-
7 ment.

8 “(D) END OF RECRUITMENT REQUIRE-
9 MENT.—The requirement to recruit United
10 States workers shall terminate on the first day
11 of the contract period that work begins.

12 “(5) OFFERS TO UNITED STATES WORKERS.—
13 The employer has offered or will offer the job for
14 which the H-2A worker is sought to any eligible
15 United States worker who—

16 “(A) applies;

17 “(B) is qualified for the job; and

18 “(C) will be available at the time and place
19 of need.

20 “(6) PROVISION OF INSURANCE.—If the job for
21 which the H-2A worker is sought is not covered by
22 State workers’ compensation law, the employer will
23 provide, at no cost to the worker, insurance covering
24 injury and disease arising out of, and in the course
25 of, the worker’s employment, which will provide ben-

1 efits at least equal to those provided under the State
2 workers' compensation law for comparable employ-
3 ment.

4 “(7) REQUIREMENTS FOR PLACEMENT OF H-2A
5 WORKERS WITH OTHER EMPLOYERS.—A non-
6 immigrant who is admitted into the United States as
7 an H-2A worker may be transferred to another em-
8 ployer that has certified to the Secretary of Home-
9 land Security that it has filed a petition under this
10 subsection and is in compliance with this section.
11 The Secretary of Homeland Security shall establish
12 a process for the approval and reissuance of visas
13 for such transferred H-2A workers as necessary.

14 “(8) STRIKE OR LOCKOUT.—There is not a
15 strike or lockout in the course of a labor dispute
16 which, under regulations promulgated by the Sec-
17 retary of Labor, precludes the hiring of H-2A work-
18 ers.

19 “(9) PREVIOUS VIOLATIONS.—The employer
20 has not, during the previous two-year period, em-
21 ployed H-2A workers and knowingly violated a ma-
22 terial term or condition of approval with respect to
23 the employment of domestic or nonimmigrant work-
24 ers, as determined by the Secretary of Labor after
25 notice and opportunity for a hearing.

1 “(c) PUBLIC EXAMINATION.—Not later than 1 work-
2 ing day after the date on which a petition under this sec-
3 tion is filed, the employer shall make a copy of each such
4 petition available for public examination, at the employer’s
5 principal place of business or worksite.

6 “(d) LIST.—

7 “(1) IN GENERAL.—The Secretary of Homeland
8 Security shall maintain a list of the petitions filed
9 under subsection (b), which shall—

10 “(A) be sorted by employer; and

11 “(B) include the number of H–2A workers
12 sought, the wage rate, the period of intended
13 employment, and the date of need for each
14 alien.

15 “(2) AVAILABILITY.—The Secretary of Home-
16 land Security shall, at least monthly, submit a copy
17 of the list described in paragraph (1) to the Sec-
18 retary of Labor, who shall make the list available for
19 public examination.

20 “(e) PETITIONING FOR ADMISSION.—

21 “(1) IN GENERAL.—An employer, or an asso-
22 ciation acting as an agent or joint employer for its
23 members, that seeks the admission into the United
24 States of an H–2A worker shall file with the Sec-

1 retary of Homeland Security a petition that includes
2 the attestations described in subsection (b).

3 “(2) CONSIDERATION OF PETITIONS.—For each
4 petition filed and considered under this subsection—

5 “(A) the Secretary of Homeland Security
6 may not require such petition to be filed more
7 than 28 days before the first date the employer
8 requires the labor or services of the H-2A
9 worker; and

10 “(B) unless the Secretary of Homeland Se-
11 curity determines that the petition is incomplete
12 or obviously inaccurate, the Secretary, not later
13 than 7 days after the date on which such peti-
14 tion was filed, shall either approve or reject the
15 petition.

16 “(3) EXPEDITED ADJUDICATION.—The Sec-
17 retary of Homeland Security shall—

18 “(A) establish a procedure for expedited
19 adjudication of petitions filed under this sub-
20 section; and

21 “(B) not later than 7 working days after
22 such filing, transmit, by fax, cable, or other
23 means assuring expedited delivery, a copy of no-
24 tice of action on the petition—

1 “(i) in the case of approved petitions,
2 to the petitioner, the Secretary of Labor,
3 and to the appropriate immigration officer
4 at the port of entry or United States con-
5 sulate where the petitioner has indicated
6 that the alien beneficiary or beneficiaries
7 will apply for a visa or admission to the
8 United States; and

9 “(ii) in the case of denied petitions, to
10 the petitioner, including reasons for the de-
11 nial and instructions on how to appeal
12 such denial.

13 “(4) PETITION AGREEMENTS.—By filing an H-
14 2A petition, a petitioner and each employer consents
15 to allow access to the site where the labor is being
16 performed to the Department of Labor, the Depart-
17 ment of Homeland Security, or a State agency for
18 the purpose of investigations to determine compli-
19 ance with H-2A requirements.

20 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

21 “(1) PERMITTING FILING BY AGRICULTURAL
22 ASSOCIATIONS.—A petition to hire an alien as a
23 temporary agricultural worker may be filed by an as-
24 sociation of agricultural employers which use agri-
25 cultural services.

1 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
2 EMPLOYERS.—If an association is a joint or sole em-
3 ployer of temporary agricultural workers, such work-
4 ers may be transferred among its members to per-
5 form agricultural services of a temporary nature for
6 which the petition was approved.

7 “(3) TREATMENT OF VIOLATIONS.—

8 “(A) INDIVIDUAL MEMBER.—If an indi-
9 vidual member of a joint employer association
10 violates any condition for approval with respect
11 to the member’s petition, the Secretary of
12 Homeland Security shall deny such petition
13 only with respect to that member of the associa-
14 tion unless the Secretary of Labor determines
15 that the association or other member partici-
16 pated in, had knowledge of, or had reason to
17 know of the violation.

18 “(B) ASSOCIATION OF AGRICULTURAL EM-
19 PLOYERS.—

20 “(i) JOINT EMPLOYER.—If an associa-
21 tion representing agricultural employers as
22 a joint employer violates any condition for
23 approval with respect to the association’s
24 petition, the Secretary of Homeland Secu-
25 rity shall deny such petition only with re-

1 spect to the association and may not apply
2 the denial to any individual member of the
3 association, unless the Secretary of Labor
4 determines that the member participated
5 in, had knowledge of, or had reason to
6 know of the violation.

7 “(ii) SOLE EMPLOYER.—If an associa-
8 tion of agricultural employers approved as
9 a sole employer violates any condition for
10 approval with respect to the association’s
11 petition, no individual member of such as-
12 sociation may be the beneficiary of the
13 services of temporary alien agricultural
14 workers admitted under this section in the
15 occupation in which such aliens were em-
16 ployed by the association which was denied
17 approval during the period such denial is
18 in force, unless such member employs such
19 aliens in the occupation in question di-
20 rectly or through an association which is a
21 joint employer of such workers with the
22 member.

23 “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The
24 Secretary of Homeland Security shall promulgate regula-
25 tions to provide for an expedited procedure—

1 “(1) for the review of a denial of a petition
2 under this section by the Secretary; or

3 “(2) at the petitioner’s request, for a de novo
4 administrative hearing respecting the denial.

5 “(h) MISCELLANEOUS PROVISIONS.—

6 “(1) ENDORSEMENT OF DOCUMENTS.—The
7 Secretary of Homeland Security shall provide for the
8 endorsement of entry and exit documents of H-2A
9 workers as may be necessary to carry out this sec-
10 tion and to provide notice for purposes of section
11 274A.

12 “(2) PREEMPTION OF STATE LAWS.—The pro-
13 visions of subsections (a) and (c) of section 214 and
14 the provisions of this section preempt any State or
15 local law regulating admissibility of nonimmigrant
16 workers.

17 “(3) FEES.—

18 “(A) IN GENERAL.—The Secretary of
19 Homeland Security may require, as a condition
20 of approving the petition, the payment of a fee,
21 in accordance with subparagraph (B), to re-
22 cover the reasonable cost of processing peti-
23 tions.

24 “(B) FEE BY TYPE OF EMPLOYEE.—

1 “(i) SINGLE EMPLOYER.—An em-
2 ployer whose petition for temporary alien
3 agricultural workers is approved shall, for
4 each approved petition, pay a fee that—

5 “(I) subject to subclause (II), is
6 equal to \$100 plus \$10 for each ap-
7 proved H-2A worker; and

8 “(II) does not exceed \$1,000.

9 “(ii) ASSOCIATION.—Each employ-
10 member of a joint employer association
11 whose petition for H-2A workers is ap-
12 proved shall, for each such approved peti-
13 tion, pay a fee that—

14 “(I) subject to subclause (II), is
15 equal to \$100 plus \$10 for each ap-
16 proved H-2A worker; and

17 “(II) does not exceed \$1,000.

18 “(iii) LIMITATION ON ASSOCIATION
19 FEES.—A joint employer association under
20 clause (ii) shall not be charged a separate
21 fee.

22 “(C) METHOD OF PAYMENT.—The fees
23 collected under this paragraph shall be paid by
24 check or money order to the Department of
25 Homeland Security. In the case of employers of

1 H-2A workers that are members of a joint em-
2 ployer association petitioning applying on their
3 behalf, the aggregate fees for all employers of
4 H-2A workers under the petition may be paid
5 by 1 check or money order.

6 “(4) EMPLOYMENT VERIFICATION PROGRAM.—

7 “(A) IN GENERAL.—Not later than 12
8 months after the date of enactment of this
9 paragraph, the Secretary of Homeland Security
10 shall establish a mandatory employment
11 verification program for all employers of H-2A
12 workers to verify the eligibility of all individuals
13 hired by each such employer, including those
14 who present an H-2A visa to work in the
15 United States.

16 “(B) EMPLOYER COMPLIANCE.—Each em-
17 ployer of an H-2A worker shall comply with the
18 requirements promulgated by the Secretary of
19 Homeland Security to verify the identity and
20 employment eligibility of all individuals hired.

21 “(C) REGULATIONS.—In carrying out the
22 program under this paragraph, the Secretary of
23 Homeland Security shall promulgate regulations
24 to require each employer to verify the employ-

1 ment eligibility of each employee hired
2 through—

3 “(i) a secure Internet site;

4 “(ii) a machine capable of reading the
5 H-2A visa, which shall serve as the identi-
6 fication and employment eligibility docu-
7 ment for each H-2A alien; or

8 “(iii) a toll-free telephone number to
9 check the accuracy of any social security
10 number presented to the employer.

11 “(i) ENFORCEMENT.—

12 “(1) INVESTIGATIONS AND AUDITS.—The Sec-
13 retary of Labor shall be responsible for conducting
14 investigations and random audits of employer work
15 sites to ensure compliance with the requirements of
16 the H-2A program and all other requirements under
17 this Act. All monetary fines levied against violating
18 employers shall be paid to the Department of Labor
19 and used to enhance the Department of Labor’s in-
20 vestigatory and auditing power.

21 “(2) FAILURE TO MEET CONDITIONS.—If the
22 Secretary of Labor finds, after notice and oppor-
23 tunity for a hearing, a failure to meet a condition
24 of subsection (a), or a material misrepresentation of
25 fact in a petition under subsection (a)—

1 “(A) the Secretary of Labor—

2 “(i) shall notify the Secretary of
3 Homeland Security of such finding; and

4 “(ii) may, in addition, impose such
5 other administrative remedies (including
6 civil money penalties in an amount not to
7 exceed \$1,000 per violation) as the Sec-
8 retary of Labor determines to be appro-
9 priate; and

10 “(B) the Secretary of Homeland Security
11 may disqualify the employer from the employ-
12 ment of H-2A workers for a period of 1 year.

13 “(3) PENALTIES FOR WILLFUL FAILURE.—If
14 the Secretary of Labor finds, after notice and oppor-
15 tunity for a hearing, a willful failure to meet a mate-
16 rial condition of subsection (a), or a willful misrepre-
17 sentation of a material fact in a petition under sub-
18 section (a)—

19 “(A) the Secretary of Labor—

20 “(i) shall notify the Secretary of
21 Homeland Security of such finding; and

22 “(ii) may, in addition, impose such
23 other administrative remedies (including
24 civil money penalties in an amount not to
25 exceed \$5,000 per violation) as the Sec-

1 retary of Labor determines to be appro-
2 priate;

3 “(B) the Secretary of Homeland Security
4 may—

5 “(i) disqualify the employer from the
6 employment of H–2A workers for a period
7 of 2 years;

8 “(ii) for a second violation, the Sec-
9 retary of Homeland Security may dis-
10 qualify the employer from the employment
11 of H–2A workers for a period of 5 years;
12 and

13 “(iii) for a third violation, the Sec-
14 retary of Homeland Security may perma-
15 nently disqualify the employer from the
16 employment of H–2A workers.

17 “(4) PENALTIES FOR DISPLACEMENT OF
18 UNITED STATES WORKERS.—If the Secretary of
19 Labor finds, after notice and opportunity for a hear-
20 ing, a willful failure to meet a material condition of
21 subsection (a) or a willful misrepresentation of a
22 material fact in a petition under subsection (a), in
23 the course of which failure or misrepresentation the
24 employer displaced a United States worker employed
25 by the employer during the period of employment on

1 the employer’s petition under subsection (a) or dur-
2 ing the period of 30 days preceding such period of
3 employment—

4 “(A) the Secretary of Labor—

5 “(i) shall notify the Secretary of
6 Homeland Security of such finding; and

7 “(ii) may, in addition, impose such
8 other administrative remedies (including
9 civil money penalties in an amount not to
10 exceed \$15,000 per violation) as the Sec-
11 retary of Labor determines to be appro-
12 priate; and

13 “(B) the Secretary of Homeland Security
14 may—

15 “(i) disqualify the employer from the
16 employment of H-2A workers for a period
17 of 5 years; and

18 “(ii) for a second violation, perma-
19 nently disqualify the employer from the
20 employment of H-2A workers.

21 “(5) LIMITATIONS ON CIVIL MONEY PEN-
22 ALTIES.—The Secretary of Labor may not impose
23 total civil money penalties with respect to a petition
24 under subsection (b) in excess of \$90,000.

1 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-
2 FITS.—

3 “(1) ASSESSMENT.—If the Secretary of Labor
4 finds, after notice and opportunity for a hearing,
5 that the employer has failed to pay the wages, trans-
6 portation, subsistence reimbursement, or guarantee
7 of employment attested by the employer under sub-
8 section (b)(2), the Secretary of Labor shall assess
9 payment of back wages, or other required benefits,
10 due any United States worker or H-2A worker em-
11 ployed by the employer in the specific employment in
12 question.

13 “(2) AMOUNT.—The back wages or other re-
14 quired benefits described in paragraph (1)—

15 “(A) shall be equal to the difference be-
16 tween the amount that should have been paid
17 and the amount that was paid to such worker;
18 and

19 “(B) shall be distributed to the worker to
20 whom such wages are due.

21 “(k) MINIMUM WAGES, BENEFITS, AND WORKING
22 CONDITIONS.—

23 “(1) PREFERENTIAL TREATMENT OF ALIENS
24 PROHIBITED.—

1 “(A) IN GENERAL.—Each employer seek-
2 ing to hire United States workers shall offer
3 such workers not less than the same benefits,
4 wages, and working conditions that the em-
5 ployer is offering, intends to offer, or will pro-
6 vide to H-2A workers. No job offer may impose
7 on United States workers any restrictions or
8 obligations which will not be imposed on the
9 employer’s H-2A workers.

10 “(B) INTERPRETATION.—Every interpreta-
11 tion and determination made under this section
12 or under any other law, regulation, or interpre-
13 tative provision regarding the nature, scope,
14 and timing of the provision of these and any
15 other benefits, wages, and other terms and con-
16 ditions of employment shall be made so that—

17 “(i) the services of workers to their
18 employers and the employment opportuni-
19 ties afforded to workers by the employers,
20 including those employment opportunities
21 that require United States workers or H-
22 2A workers to travel or relocate in order to
23 accept or perform employment—

1 “(I) mutually benefit such work-
2 ers, as well as their families, and em-
3 ployers; and

4 “(II) principally benefit neither
5 employer nor employee; and

6 “(ii) employment opportunities within
7 the United States benefit the United
8 States economy.

9 “(2) REQUIRED WAGES.—

10 “(A) IN GENERAL.—Each employer peti-
11 tioning for workers under subsection (b) shall
12 pay not less than the greater of—

13 “(i) the prevailing wage to all workers
14 in the occupation for which the employer
15 has petitioned for workers; or

16 “(ii) the applicable State minimum
17 wage.

18 “(B) DETERMINATION OF WAGES.—An
19 employer seeking to comply with subparagraph
20 (A) may—

21 “(i) request and obtain a prevailing
22 wage determination from the State employ-
23 ment agency; or

24 “(ii) rely on other wage information,
25 including a survey of the prevailing wages

1 of workers in the occupation in the area of
2 employment that has been conducted or
3 funded by the employer or a group of em-
4 ployers, using the methodology used by the
5 Secretary of Labor to establish Occupa-
6 tional Employment and Wage estimate, or
7 another methodology approved by the Sec-
8 retary of Labor for the purpose of deter-
9 mining H-2A wages.

10 “(C) COMPLIANCE.—An employer shall be
11 considered to have complied with the require-
12 ment under subparagraph (A) if the employer—

13 “(i)(I) obtains a prevailing wage de-
14 termination under subparagraph (C)(i); or

15 “(II) relies on a qualifying survey of
16 prevailing wages; and

17 “(ii) pays such prevailing wage.

18 “(3) REIMBURSEMENT OF TRANSPORTATION
19 COSTS.—

20 “(A) REQUIREMENT FOR REIMBURSE-
21 MENT.—An H-2A worker who completes 50
22 percent of the period of employment of the job
23 for which the worker was hired, beginning on
24 the first day of such employment, shall be reim-

1 bursed by the employer for the cost of the
2 worker's transportation and subsistence from—

3 “(i) the place from which the H-2A
4 worker was approved to enter the United
5 States to the location at which the work
6 for the employer is performed; or

7 “(ii) if the H-2A worker traveled
8 from a place in the United States at which
9 the H-2A worker was last employed, from
10 such place of last employment to the loca-
11 tion at which the work for the employer is
12 performed.

13 “(B) TIMING OF REIMBURSEMENT.—Reim-
14 bursement to the worker of expenses for the
15 cost of the worker's transportation and subsist-
16 ence to the place of employment under subpara-
17 graph (A) shall be considered timely if such re-
18 imbursement is made not later than the work-
19 er's first regular payday after a worker com-
20 pletes 50 percent of the period of employment
21 of the job opportunity as provided under this
22 paragraph.

23 “(C) ADDITIONAL REIMBURSEMENT.—A
24 worker who completes the period of employment
25 for the job opportunity involved shall be reim-

1 bursed by the employer for the cost of the
2 worker's transportation and subsistence from
3 the work site to the place where the worker was
4 approved to enter the United States to work for
5 the employer. If the worker has contracted with
6 a subsequent employer, the previous and subse-
7 quent employer shall share the cost of the work-
8 er's transportation and subsistence from work
9 site to work site.

10 “(D) LIMITATION.—

11 “(i) AMOUNT OF REIMBURSEMENT.—

12 The amount of reimbursement provided to
13 a worker or alien under this paragraph
14 shall be equal to the lesser of—

15 “(I) the actual cost to the worker

16 or alien of the transportation and sub-
17 sistence involved; or

18 “(II) the most economical and
19 reasonable common carrier transpor-
20 tation charges and subsistence costs
21 for the distance involved.

22 “(ii) DISTANCE TRAVELED.—No reim-
23 bursement under subparagraph (A) or (B)
24 shall be required if the distance traveled is
25 100 miles or less.

1 “(E) REIMBURSEMENT FOR LAID OFF
2 WORKERS.—If the worker is laid off or employ-
3 ment is terminated for contract impossibility
4 (as described in paragraph (5)(D)) before the
5 anticipated ending date of employment, the em-
6 ployer shall provide—

7 “(i) the transportation and subsist-
8 ence required under subparagraph (C); and

9 “(ii) notwithstanding whether the
10 worker has completed 50 percent of the pe-
11 riod of employment, the transportation re-
12 imbursement required under subparagraph
13 (A).

14 “(F) CONSTRUCTION.—Nothing in this
15 paragraph shall be construed to require an em-
16 ployer to reimburse visa, passport, consular, or
17 international bordercrossing fees or any other
18 fees associated with the H-2A worker’s lawful
19 admission into the United States to perform
20 employment that may be incurred by the work-
21 er.

22 “(4) EMPLOYMENT GUARANTEE.—

23 “(A) IN GENERAL.—

24 “(i) REQUIREMENT.—Each employer
25 petitioning for workers under subsection

1 (b) shall guarantee to offer the worker em-
2 ployment for the hourly equivalent of not
3 less than 75 percent of the work hours
4 during the total anticipated period of em-
5 ployment, beginning with the first work
6 day after the arrival of the worker at the
7 place of employment and ending on the ex-
8 piration date specified in the job offer.

9 “(ii) FAILURE TO MEET GUAR-
10 ANTEE.—If the employer affords the
11 United States worker or the H-2A worker
12 less employment than that required under
13 this subparagraph, the employer shall pay
14 such worker the amount which the worker
15 would have earned if the worker had
16 worked for the guaranteed number of
17 hours.

18 “(iii) PERIOD OF EMPLOYMENT.—For
19 purposes of this subparagraph, the term
20 ‘period of employment’ means the total
21 number of anticipated work hours and
22 workdays described in the job offer and
23 shall exclude the worker’s Sabbath and
24 Federal holidays.

1 “(B) CALCULATION OF HOURS.—Any
2 hours which the worker fails to work, up to a
3 maximum of the number of hours specified in
4 the job offer for a work day, when the worker
5 has been offered an opportunity to do so, and
6 all hours of work actually performed (including
7 voluntary work in excess of the number of
8 hours specified in the job offer in a work day,
9 on the worker’s Sabbath, or on Federal holi-
10 days) may be counted by the employer in calcu-
11 lating whether the period of guaranteed employ-
12 ment has been met.

13 “(C) LIMITATION.—If the worker volun-
14 tarily abandons employment before the end of
15 the contract period, or is terminated for cause,
16 the worker is not entitled to the 75 percent
17 guarantee described in subparagraph (A).

18 “(D) TERMINATION OF EMPLOYMENT.—
19 “(i) IN GENERAL.—If, before the expi-
20 ration of the period of employment speci-
21 fied in the job offer, the services of the
22 worker are no longer required due to any
23 form of natural disaster, including flood,
24 hurricane, freeze, earthquake, fire,
25 drought, plant or animal disease, pest in-

1 festation, regulatory action, or any other
2 reason beyond the control of the employer
3 before the employment guarantee in sub-
4 paragraph (A) is fulfilled, the employer
5 may terminate the worker’s employment.

6 “(ii) REQUIREMENTS.—If a worker’s
7 employment is terminated under clause (i),
8 the employer shall—

9 “(I) fulfill the employment guar-
10 antee in subparagraph (A) for the
11 work days that have elapsed during
12 the period beginning on the first work
13 day after the arrival of the worker
14 and ending on the date on which such
15 employment is terminated; and

16 “(II) make efforts to transfer the
17 United States worker to other com-
18 parable employment acceptable to the
19 worker.

20 “(l) EXPEDITED ADJUDICATION BY THE SEC-
21 RETARY.—The Secretary of Homeland Security—

22 “(1) shall establish a procedure for expedited
23 adjudication of petitions filed under subsection (e);
24 and

1 “(2) not later than 7 working days after such
2 filing shall, by fax, cable, or other means assuring
3 expedited delivery transmit a copy of notice of action
4 on the petition—

5 “(A) to the petitioner; and

6 “(B) in the case of approved petitions, to
7 the appropriate immigration officer at the port
8 of entry or United States consulate (as the case
9 may be) where the petitioner has indicated that
10 the alien beneficiary (or beneficiaries) will apply
11 for a visa or admission to the United States.

12 “(m) PERIOD OF ADMISSION.—

13 “(1) IN GENERAL.—An H-2A worker shall be
14 admitted for a period of employment, not to exceed
15 10 months, that includes—

16 “(A) a period of not more than 7 days
17 prior to the beginning of the period of employ-
18 ment for the purpose of travel to the work site;
19 and

20 “(B) a period of not more than 14 days
21 following the period of employment for the pur-
22 pose of departure or extension based on a sub-
23 sequent offer of employment.

24 “(2) EMPLOYMENT LIMITATION.—An alien may
25 not be employed during the 14-day period described

1 in paragraph (1)(B) except in the employment for
2 which the alien was previously authorized.

3 “(3) CONSTRUCTION.—Nothing in this sub-
4 section shall limit the authority of the Secretary of
5 Homeland Security to extend the stay of an alien
6 under any other provision of this Act.

7 “(n) ABANDONMENT OF EMPLOYMENT.—

8 “(1) IN GENERAL.—An alien admitted or pro-
9 vided status under section 101(a)(15)(H)(ii)(a) who
10 abandons the employment which was the basis for
11 such admission or status—

12 “(A) shall have failed to maintain non-
13 immigrant status as an H-2A worker; and

14 “(B) shall depart the United States or be
15 subject to removal under section
16 237(a)(1)(C)(i).

17 “(2) REPORT BY EMPLOYER.—Not later than
18 24 hours after the abandonment of employment by
19 an H-2A worker, the employer or association acting
20 as an agent for the employer, shall notify the Sec-
21 retary of Homeland Security of such abandonment.

22 “(3) REMOVAL.—The Secretary of Homeland
23 Security shall promptly remove from the United
24 States any H-2A worker who violates any term or
25 condition of the worker’s nonimmigrant status.

1 “(4) VOLUNTARY TERMINATION.—Notwith-
2 standing paragraph (1), an alien may voluntarily
3 terminate the alien’s employment if the alien
4 promptly departs the United States upon termi-
5 nation of such employment.

6 “(o) REPLACEMENT OF ALIEN.—

7 “(1) IN GENERAL.—Upon notification under
8 subsection (p)(2)—

9 “(A) the Secretary of State shall promptly
10 issue a visa to, and the Secretary of Homeland
11 Security shall admit into the United States, an
12 eligible alien designated by the employer to re-
13 place an H–2A worker who abandons or pre-
14 maturely terminates employment; and

15 “(B) the Secretary of Homeland Security
16 shall admit such alien into the United States.

17 “(2) CONSTRUCTION.—Nothing in this sub-
18 section shall limit any preference for which United
19 States workers are eligible under this Act.

20 “(p) IDENTIFICATION DOCUMENT.—

21 “(1) IN GENERAL.—The Secretary of Homeland
22 Security shall provide each authorized H–2A worker
23 with a single machine-readable, tamper-resistant,
24 and counterfeit-resistant document that—

1 “(A) authorizes the alien’s entry into the
2 United States;

3 “(B) serves, for the appropriate period, as
4 an employment eligibility document; and

5 “(C) verifies the identity of the alien.

6 “(2) FORM.—

7 “(A) The document shall be—

8 “(i) in a form that is resistant to
9 counterfeiting and to tampering; and

10 “(ii) compatible with—

11 “(I) other databases of the Sec-
12 retary of Homeland Security for the
13 purpose of excluding an alien from
14 benefits for which an alien is not eligi-
15 ble and determining whether the alien
16 is unlawfully present in the United
17 States; and

18 “(II) law enforcement databases
19 for the purpose of determining if an
20 alien has been convicted of criminal
21 offenses.

22 “(B) As soon as practicable, the document
23 shall include a biometric identifier. The deter-
24 mination of a biometric identifier to be used for
25 such purposes shall take into account factors

1 such as efficiency, accuracy, the technology
2 available, economic considerations, and storage
3 requirements.

4 “(q) EXTENSION OF STAY OF H-2A WORKERS IN
5 THE UNITED STATES.—

6 “(1) EXTENSION OF STAY.—If an employer
7 seeks approval to employ an H-2A worker who is
8 lawfully present in the United States, the petition
9 filed by the employer or an association pursuant to
10 subsection (p) shall request an extension of the
11 alien’s stay and, if applicable, a change in the alien’s
12 employment.

13 “(2) LIMITATION ON FILING PETITION FOR EX-
14 TENSION OF STAY.—A petition may not be filed for
15 an extension of an alien’s stay for a period of more
16 than 10 months.

17 “(3) WORK AUTHORIZATION UPON FILING PE-
18 TITION FOR EXTENSION OF STAY.—

19 “(A) IN GENERAL.—An alien who is law-
20 fully present in the United States on the date
21 of the filing of a petition to extend the stay of
22 the alien may commence or continue the em-
23 ployment described in a petition under para-
24 graph (1). The employer shall provide a copy of
25 the employer’s petition for extension of stay to

1 the alien. The alien shall keep the petition with
2 the alien's identification and employment eligi-
3 bility document, as evidence that the petition
4 has been filed and that the alien is authorized
5 to work in the United States.

6 “(B) EMPLOYMENT ELIGIBILITY DOCU-
7 MENT.—Upon approval of a petition for an ex-
8 tension of stay or change in the alien's author-
9 ized employment, the Secretary of Homeland
10 Security shall provide a new or updated employ-
11 ment eligibility document to the alien indicating
12 the new validity date, after which the alien is
13 not required to retain a copy of the petition.

14 “(C) FILE DEFINED.—In this paragraph,
15 the term ‘file’ means sending the petition by
16 certified mail via the United States Postal Serv-
17 ice, return receipt requested, or delivering by
18 guaranteed commercial delivery which will pro-
19 vide the employer with a documented acknowl-
20 edgment of the date of receipt of the petition
21 for an extension of stay.

22 “(4) LIMITATION ON AN INDIVIDUAL'S STAY IN
23 STATUS.—

24 “(A) MAXIMUM PERIOD.—The maximum
25 continuous period of authorized status as an

1 H-2A worker (including any extensions) is 20
2 months.

3 “(B) REQUIREMENT TO REMAINS OUTSIDE
4 THE UNITED STATES.—

5 “(i) IN GENERAL.—Subject to clause
6 (ii), in the case of an alien outside the
7 United States whose period of authorized
8 status as an H-2A worker (including any
9 extensions) has expired, the alien may not
10 again apply for admission to the United
11 Stats as an H-2A worker unless the alien
12 has remained outside the United States for
13 a continuous period equal to at least $\frac{1}{5}$
14 the duration of the alien’s previous period
15 of authorized status as an H-2A worker
16 (including any extensions).

17 “(ii) EXCEPTION.—Clause (i) shall
18 not apply in the case of an alien if the
19 alien’s period of authorized status as an
20 H-2A worker (including any extensions)
21 was for a period of not more than 10
22 months and such alien has been outside
23 the United States for at least 2 months
24 during the 12 months preceding the date

1 the alien again is applying for admission to
2 the United States as an H-2A worker.

3 “(r) TRUST FUND TO ASSURE WORKER RETURN.—

4 “(1) ESTABLISHMENT.—There is established in
5 the Treasury of the United States a trust fund (in
6 this section referred to as the ‘Trust Fund’) for the
7 purpose of providing a monetary incentive for H-2A
8 nonimmigrants to return to their country of origin
9 upon expiration of their visas.

10 “(2) WITHHOLDING OF WAGES; PAYMENT INTO
11 THE TRUST FUND.—Employers of H-2A non-
12 immigrants shall withhold from the wages of work-
13 ers an amount equivalent to 25 percent of the wages
14 of each worker and pay such withheld amount into
15 the Trust Fund in accordance with paragraph (3).
16 Amounts withheld under the preceding sentence
17 shall be maintained in such interest bearing account
18 with such a financial institution as the Secretary of
19 Homeland Security shall specify.

20 “(3) DISTRIBUTION OF FUNDS.—Amounts paid
21 into the Trust Fund on behalf of an H-2A non-
22 immigrant, and held pursuant to paragraph
23 (2)(A)(i) and interest earned thereon, shall be paid
24 by the Secretary of State to the worker if—

1 “(A) the worker applies to the Secretary of
2 State (or the designee of such Secretary) for
3 payment within 30 days of the expiration of the
4 alien’s last authorized stay in the United States
5 as an H–2A nonimmigrant at a United States
6 embassy or consulate in the worker’s home
7 country;

8 “(B) in such application the worker estab-
9 lishes that the worker has complied with the
10 terms and conditions of the H–2A program;
11 and

12 “(C) in connection with the application,
13 the worker tenders the identification and em-
14 ployment authorization card issued to the work-
15 er pursuant to subsection (p) and establishes
16 that the worker is identified as the person to
17 whom the card was issued based on the biomet-
18 ric identification information contained on the
19 card.

20 “(4) ADMINISTRATIVE EXPENSES.—The
21 amounts paid into the Trust Fund and held pursu-
22 ant to paragraph (2)(A)(ii), and interest earned
23 thereon, shall be paid to the Secretary of State, the
24 Secretary of Labor, and the Secretary of Homeland
25 Security in amounts equivalent to the expenses in-

1 curred by such officials in the administration of the
2 H-2A program.

3 “(s) INVESTMENT OF TRUST FUND.—

4 “(1) IN GENERAL.—It shall be the duty of the
5 Secretary of the Treasury to invest such portion of
6 the Trust Fund as is not, in the Secretary’s judg-
7 ment, required to meet current withdrawals. Such
8 investments may be made only in interest-bearing
9 obligations of the United States or in obligations
10 guaranteed as to both principal and interest by the
11 United States. For such purpose, such obligations
12 may be acquired—

13 “(A) on original issue at the price; or

14 “(B) by purchase of outstanding obliga-
15 tions at the market price.

16 The purposes for which obligations of the United
17 States may be issued under chapter 31 of title 31,
18 United States Code, are hereby extended to author-
19 ize the issuance at par of special obligations exclu-
20 sively to the Trust Fund. Such special obligations
21 shall bear interest at a rate equal to the average
22 rate of interest, computed as to the end of the cal-
23 endar month next preceding the date of such issue,
24 borne by all marketable interest-bearing obligations
25 of the United States then forming a part of the pub-

1 lic debt, except that where such average rate is not
2 a multiple of one-eighth of 1 percent next lower than
3 such average rate. Such special obligations shall be
4 issued only if the Secretary of the Treasury deter-
5 mines that the purchase of other interest-bearing ob-
6 ligations of the United States, or of obligations
7 guaranteed as to both principal and interest by the
8 United States on original issue or at the market
9 price, is not in the public interest.

10 “(2) SALE OF OBLIGATION.—Any obligation ac-
11 quired by the Trust Fund (except special obligations
12 issued exclusively to the Trust Fund) may be sold by
13 the Secretary of the Treasury at the market price,
14 and such special obligations may be redeemed at par
15 plus accrued interest.

16 “(3) CREDITS TO TRUST FUND.—The interest
17 on, and the proceeds from the sale or redemption of,
18 any obligations held in the Trust Fund shall be
19 credited to and form a part of the Trust Fund.

20 “(4) REPORT TO CONGRESS.—It shall be the
21 duty of the Secretary of the Treasury to hold the
22 Trust Fund, and (after consultation with the Sec-
23 retary of Homeland Security) to report to the Con-
24 gress each year on the financial condition and the
25 results of the operations of the Trust Fund during

1 the preceding fiscal year and on its expected condi-
2 tion and operations during the next fiscal year. Such
3 report shall be printed as both a House and a Sen-
4 ate document of the session of the Congress to
5 which the report is made.

6 “(t) SPECIAL RULE FOR ALIENS EMPLOYED AS
7 SHEEPHERDERS, GOATHERDERS, OR DAIRY WORKERS.—
8 Notwithstanding any other provision of this section, an
9 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
10 ployment as a shepherd, goatherder, or dairy worker—

11 “(1) may be admitted for a period of 12
12 months; and

13 “(2) shall not be subject to the requirements of
14 subsection (r)(4)(B).”.

15 (b) PROHIBITION ON FAMILY MEMBERS.—Section
16 101(a)(15)(H) of the Immigration and Nationality Act (8
17 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at
18 the end and inserting “him, except that no spouse or child
19 may be admitted under clause (ii)(a);”.

20 (c) REGULATIONS.—Not later than 180 days after
21 the date of the enactment of this Act, the Secretary of
22 Homeland Security shall promulgate regulations, in ac-
23 cordance with the notice and comment provisions of sec-
24 tion 553 of title 5, United States Code, to provide for the
25 uniform procedures for the issuance of visas to non-

1 immigrants described in section 101(a)(15)(H)(ii)(a) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1101(a)(15)(H)(ii)(a)) by visa-issuing United States con-
4 sulates and consular officers.

5 (d) CONFORMING AMENDMENT.—Section
6 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
7 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by strik-
8 ing “of a temporary or seasonal nature” and inserting
9 “and with respect to whom the intending employer or as-
10 sociation has filed with the Secretary a petition under sec-
11 tion 218(a)”.

12 **SEC. 1302. LEGAL ASSISTANCE PROVIDED BY THE LEGAL**
13 **SERVICES CORPORATION.**

14 (a) IN GENERAL.—Section 305 of the Immigrant Re-
15 form and Control Act of 1986 (8 U.S.C. 1101 note) is
16 amended—

17 (1) by striking “A nonimmigrant” and inserting
18 “(a) IN GENERAL.—A nonimmigrant”; and

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

20 “(b) LEGAL ASSISTANCE.—The Legal Services Cor-
21 poration may not provide legal assistance for or on behalf
22 of any alien, and may not provide financial assistance to
23 any person or entity that provides legal assistance for or
24 on behalf of any alien, unless the alien—

1 “(1) is present in the United States at the time
2 the legal assistance is provided; and

3 “(2) is an alien to whom subsection (a) ap-
4 plies.”.

5 (b) MEDIATION.—Section 305 of the Immigrant Re-
6 form and Control Act of 1986 (8 U.S.C. 1101 note), as
7 amended by subsection (a), is further amended by adding
8 at the end the following:

9 “(c) REQUIRED MEDIATION.—The Legal Services
10 Corporation may not bring a civil action for damages on
11 behalf of a nonimmigrant described in section
12 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
13 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), unless at least 90
14 days prior to bringing the action a request has been made
15 to the Federal Mediation and Conciliation Service to assist
16 the parties in reaching a satisfactory resolution of all
17 issues involving all parties to the dispute and mediation
18 has been attempted.”.

19 (c) CONDITION FOR ENTRY ONTO PROPERTY FOR
20 LEGAL SERVICES CORPORATION REPRESENTATION.—
21 Section 305 of the Immigrant Reform and Control Act
22 of 1986 (8 U.S.C. 1101 note), as amended by subsection
23 (b), is further amended by adding at the end the following:

24 “(d) CONDITION FOR ENTRY ONTO EMPLOYER’S
25 PROPERTY FOR LEGAL SERVICES CORPORATION REP-

1 RESENTATION.—No employer of a nonimmigrant having
2 status under section 101(a)(15)(H)(ii)(a) of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a))
4 shall be required to permit any recipient of a grant or con-
5 tract under section 1007 of the Legal Services Corpora-
6 tion Act (42 U.S.C. 2996f), or any employee of such a
7 recipient, to enter upon the employer’s property, unless
8 such recipient or employee has a pre-arranged appoint-
9 ment with a specific nonimmigrant having such status.”.

10 **SEC. 1303. EFFECTIVE DATE.**

11 The amendments made by this title shall take effect
12 on the date that is 180 days after the date of the enact-
13 ment of this Act and shall apply to petitions approved
14 after such date.

15 **TITLE XIV—MISCELLANEOUS**

16 **SEC. 1401. PREVENTION OF CONGRESSIONAL REAPPOR-**
17 **TIONMENT DISTORTIONS.**

18 (a) FINDINGS.—Congress finds that—

19 (1) in recent years, millions of aliens have en-
20 tered the United States in violation of immigration
21 laws and are now residing illegally in the United
22 States and are subject to deportation;

23 (2) the established policy of the Bureau of the
24 Census is to make a concerted effort to count the
25 foreign born population within the United States

1 without making a separate computation for illegal
2 aliens; and

3 (3) by including the millions of illegal aliens in
4 the reapportionment base for the House of Rep-
5 resentatives, many States will lose congressional rep-
6 resentation which such States would not have other-
7 wise lost, thereby violating the constitutional prin-
8 ciple of “one man, one vote”.

9 (b) ADJUSTMENTS TO PREVENT DISTORTIONS.—

10 Section 141 of title 13, United States Code, is amended—

11 (1) by redesignating subsection (g) as sub-
12 section (h); and

13 (2) by inserting after subsection (f) the fol-
14 lowing:

15 “(g) The Secretary shall make such adjustments in
16 total population figures as may be necessary, using such
17 methods and procedures as the Secretary determines fea-
18 sible and appropriate, in order that aliens who are in the
19 United States in violation of the immigration laws of the
20 United States are not counted in tabulating total popu-
21 lation by States under subsection (a) for purposes of ap-
22 portionment of Representatives in Congress among the
23 several States. Nothing in this subsection shall be con-
24 strued to supersede section 195.”.

1 (c) CONFORMING AMENDMENT.—Section 22(a) of
2 the Act entitled “An Act to provide for the fifteenth and
3 subsequent decennial censuses and to provide for appor-
4 tionment of Representatives in Congress”, approved June
5 18, 1929 (2 U.S.C. 2a(a)) is amended by striking “as
6 ascertained under the seventeenth and each subsequent
7 decennial census of the population” and inserting “as
8 ascertained and reported under section 141 of title 13,
9 United States Code, for each decennial census of popu-
10 lation”.

11 **SEC. 1402. INCREASE IN H-1B VISA NUMBERS.**

12 (a) INCREASE.—Section 214(g)(1)(A) of the Immi-
13 gration and Nationality Act (8 U.S.C. 1184(g)(1)(A)) is
14 amended to read as follows:

15 “(A) under section 101(a)(15)(H)(i)(b), may
16 not exceed—

17 “(i) 65,000 in each fiscal year before fiscal
18 year 1999;

19 “(ii) 115,000 in fiscal years 1999 and
20 2000;

21 “(iii) 195,000 in fiscal years 2001 through
22 2003;

23 “(iv) 65,000 in fiscal years 2004 through
24 2007; and

1 “(v) 130,000 in each succeeding fiscal
2 year, except as provided in paragraph (7)(B);
3 and”.

4 (b) RECAPTURE OF UNUSED H-1B NONIMMIGRANT
5 VISAS.—Section 214(g)(7) of such Act (8 U.S.C.
6 1184(g)(7)) is amended—

7 (1) by striking “(7)” and inserting “(7)(A)”;
8 and

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

10 “(B) Beginning in fiscal year 2009, the number of
11 aliens who may be issued visas or otherwise provided non-
12 immigrant status under section 101(a)(15)(H)(i)(b) dur-
13 ing any fiscal year shall be increased by the difference be-
14 tween 130,000 and the number of aliens who actually were
15 provided such status during the preceding fiscal year. The
16 preceding sentence shall not cause the number of aliens
17 who may be issued visas or otherwise provided non-
18 immigrant status under section 101(a)(15)(H)(i)(b) dur-
19 ing any fiscal year to exceed 195,000, but any recaptured
20 unused numbers that are not available by reason of this
21 limitation during any fiscal year shall be available for use
22 in future years.”.

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