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H. R. 994

To remove the incentives and loopholes that encourage illegal aliens to come to the United States to live and work, provide additional resources to local law enforcement and Federal border and immigration officers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2009

Mr. GARY G. MILLER of California (for himself, Mr. ROHRABACHER, Mr. BURTON of Indiana, Mr. BOOZMAN, Mr. CAMPBELL, Mr. DREIER, Mr. BILBRAY, Mr. FLEMING, Mr. GALLEGLY, and Mrs. MYRICK) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Oversight and Government Reform, Education and Labor, House Administration, Financial Services, Homeland Security, and Ways and Means, 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 remove the incentives and loopholes that encourage illegal aliens to come to the United States to live and work, provide additional resources to local law enforcement and Federal border and immigration officers, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Loophole Elimination
3 and Verification Enforcement Act” or the “LEAVE Act”.

4 **SEC. 2. PURPOSE.**

5 The purpose of this Act is to prohibit all activities
6 that assist, encourage, direct, or induce an alien to reside
7 in or remain in the United States or to attempt to reside
8 in the United States, knowing or in reckless disregard of
9 the fact that the alien is not authorized to be present in
10 the United States.

11 **SEC. 3. TABLE OF CONTENTS.**

12 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Purpose.

Sec. 3. Table of contents.

TITLE I—ALIEN SMUGGLING AND RELATED OFFENSES

Sec. 101. Alien smuggling and related offenses.

TITLE II—IDENTITY SECURITY

Subtitle A—Photo Identification

Sec. 201. Forms of acceptable identification for Federal Government purposes.

Sec. 202. Forms of acceptable identification for financial institutions.

Subtitle B—Prohibition on Driver’s Licenses for Unlawfully Present Aliens

Sec. 211. Prohibition on issuing driver’s licenses to illegal aliens.

Subtitle C—Stopping Social Security Number Abuse

Sec. 221. Effect of final regulation on “no-match” letters.

Subtitle D—Birth/Death Registry

Sec. 231. Establishment of electronic birth and death registration systems.

Subtitle E—Reform of Passport Fraud Offenses

Sec. 241. Trafficking in passports.

Sec. 242. False statement in an application for a passport.

Sec. 243. Forgery and unlawful production of a passport.

- Sec. 244. Misuse of a passport.
- Sec. 245. Schemes to defraud aliens.
- Sec. 246. Immigration and visa fraud.
- Sec. 247. Alternative imprisonment maximum for certain offenses.
- Sec. 248. Attempts, conspiracies, jurisdiction, and definitions.
- Sec. 249. Clerical amendment.

TITLE III—BIRTHRIGHT CITIZENSHIP

- Sec. 301. Citizenship at birth for certain persons born in the United States.

TITLE IV—HOUSING AND HOMEOWNERSHIP

- Sec. 401. Mortgages prohibited for principal residences of individuals who lack valid personal identification.
- Sec. 402. Prohibition on public housing and section 8 rental assistance for illegal aliens.
- Sec. 403. Prohibition on renting of dwelling units to illegal aliens.
- Sec. 404. Prohibition on Federal and government-sponsored enterprise support for mortgages for illegal aliens.

TITLE V—TAXES AND SOCIAL SECURITY

- Sec. 501. Prohibiting totalization agreements that benefit unlawfully present aliens.
- Sec. 502. No Social Security credit for work performed while unlawfully present.
- Sec. 503. Limited eligibility for credits.
- Sec. 504. Reducing individual taxpayer identification number abuse.

TITLE VI—EMPLOYEE VERIFICATION

Subtitle A—General Provisions

- Sec. 601. Mandatory employment authorization verification.
- Sec. 602. Mandatory notification of SSN mismatches and multiple uses and terminations of ineligibility for employment.
- Sec. 603. Penalty for failure to file correct information returns.
- Sec. 604. Authorization of appropriations.

Subtitle B—Self-Employed Subcontractors Loophole

- Sec. 611. Requiring self-employed subcontractors to participate in employment eligibility verification pilot program.

Subtitle C—Prohibition on Unlawful Employment of Aliens in Capitol

- Sec. 621. Requiring legislative branch contractors to participate in employment eligibility verification pilot program.
- Sec. 622. Capitol complex defined.
- Sec. 623. Effective date; transition for current contracts.

Subtitle D—Coordination Between SSA and IRS

- Sec. 631. Availability of information.

TITLE VII—PROHIBITING UNLAWFULLY PRESENT ALIENS FROM OBTAINING FINANCIAL SERVICES

- Sec. 701. Foreign-issued forms of identification prohibited as proof of identity to open accounts at financial institutions.
- Sec. 702. “Know your customer” regulations applied to certain transmitting businesses.
- Sec. 703. Requirements relating to the United States Postal Service.
- Sec. 704. Applicability of identification rules to certain transactions involving the Federal Reserve Board, including the Directo a México program.

TITLE VIII—BORDER AND LAW ENFORCEMENT

- Sec. 801. Construction of border fencing and security improvements.
- Sec. 802. Increase in full-time Border Patrol agents.
- Sec. 803. Increase in number of ICE agents.

TITLE IX—STATE AND LOCAL GOVERNMENT AUTHORITY

Subtitle A—General Provisions

- Sec. 901. State defined; severability.
- Sec. 902. Federal affirmation of assistance in the immigration law enforcement by States and political subdivisions of States.
- Sec. 903. State authorization for assistance in the enforcement of immigration laws encouraged.
- Sec. 904. Listing of immigration violators in the National Crime Information Center database.
- Sec. 905. State and local law enforcement provision of information about apprehended aliens.
- Sec. 906. Financial assistance to State and local police agencies that assist in the enforcement of immigration laws.
- Sec. 907. Increased Federal detention space.
- Sec. 908. Federal custody of aliens unlawfully present in the United States apprehended by State or local law enforcement.
- Sec. 909. Training of State and local law enforcement personnel relating to the enforcement of immigration laws.
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- Sec. 911. Institutional removal program (IRP).

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- Sec. 921. Eliminating sanctuary cities.

Subtitle C—Criminal Aliens

- Sec. 931. State criminal alien assistance program (SCAAP).
- Sec. 932. Authorization of appropriations.
- Sec. 933. Assistance for States incarcerating undocumented aliens charged with certain crimes.
- Sec. 934. Preemption.

TITLE X—PROHIBITING IN-STATE TUITION FOR UNLAWFULLY PRESENT ALIENS

- Sec. 1001. Ensuring enforceability.

1 **TITLE I—ALIEN SMUGGLING**
2 **AND RELATED OFFENSES**

3 **SEC. 101. ALIEN SMUGGLING AND RELATED OFFENSES.**

4 Section 274 of the Immigration and Nationality Act
5 (8 U.S.C. 1324) is amended to read as follows:

6 “ALIEN SMUGGLING AND RELATED OFFENSES

7 “SEC. 274. (a) CRIMINAL OFFENSES AND PEN-
8 ALTIES.—

9 “(1) PROHIBITED ACTIVITIES.—Whoever—

10 “(A) assists, encourages, directs, or in-
11 duces a person to come to or enter the United
12 States, or to attempt to come to or enter the
13 United States, knowing or in reckless disregard
14 of the fact that such person is an alien who
15 lacks lawful authority to come to or enter the
16 United States;

17 “(B) assists, encourages, directs, or in-
18 duces a person to come to or enter the United
19 States at a place other than a designated port
20 of entry or place other than as designated by
21 the Secretary of Homeland Security, regardless
22 of whether such person has official permission
23 or lawful authority to be in the United States,
24 knowing or in reckless disregard of the fact
25 that such person is an alien;

1 “(C) assists, encourages, directs, or in-
2 duces a person to reside in or remain in the
3 United States, or to attempt to reside in or re-
4 main in the United States, knowing or in reck-
5 less disregard of the fact that such person is an
6 alien who lacks lawful authority to reside in or
7 remain in the United States;

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

21 “(F) transports, moves, harbors, conceals,
22 or shields from detection a person outside of
23 the United States knowing or in reckless dis-
24 regard of the fact that such person is an alien
25 in unlawful transit from one country to another

1 or on the high seas, under circumstances in
2 which the person is in fact seeking to enter the
3 United States without official permission or
4 lawful authority; or

5 “(G) conspires or attempts to commit any
6 of the preceding acts,

7 shall be punished as provided in paragraph (2), re-
8 gardless of any official action which may later be
9 taken with respect to such alien.

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

12 “(A) except as provided in subparagraphs
13 (D) through (H), in the case where the offense
14 was not committed for commercial advantage,
15 profit, or private financial gain, be imprisoned
16 for not more than 5 years, or fined under title
17 18, United States Code, or both;

18 “(B) except as provided in subparagraphs
19 (C) through (H), where the offense was com-
20 mitted for commercial advantage, profit, or pri-
21 vate financial gain—

22 “(i) in the case of a first violation of
23 this subparagraph, be imprisoned for not
24 more than 20 years, or fined under title
25 18, United States Code, or both; and

1 “(ii) for any subsequent violation, be
2 imprisoned for not less than 3 years nor
3 more than 20 years, or fined under title
4 18, United States Code, or both;

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

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

19 “(E) in the case where any participant in
20 the offense created a substantial risk of death
21 or serious bodily injury to another person, in-
22 cluding—

23 “(i) transporting a person in an en-
24 gine compartment, storage compartment,
25 or other confined space;

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

4 “(iii) transporting or harboring a per-
5 son in a crowded, dangerous, or inhumane
6 manner,

7 be imprisoned not less than 5 nor more than 20
8 years, or fined under title 18, United States
9 Code, or both;

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

20 “(G) in the case where the offense involved
21 an alien who the offender knew or had reason
22 to believe was an alien—

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

1 “(ii) intending to engage in such ter-
2 rorist activity,
3 be imprisoned for not less than 10 nor more
4 than 30 years, or fined under title 18, United
5 States Code, or both; and

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

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

15 “(b) SEIZURE AND FORFEITURE.—

16 “(1) IN GENERAL.—Any property, real or per-
17 sonal, that has been used to commit or facilitate the
18 commission of a violation of this section, the gross
19 proceeds of such violation, and any property trace-
20 able to such property or proceeds, shall be subject
21 to forfeiture.

22 “(2) APPLICABLE PROCEDURES.—Seizures and
23 forfeitures under this subsection shall be governed
24 by the provisions of chapter 46 of title 18, United
25 States Code, relating to civil forfeitures, including

1 section 981(d) of such title, except that such duties
2 as are imposed upon the Secretary of the Treasury
3 under the customs laws described in that section
4 shall be performed by such officers, agents, and
5 other persons as may be designated for that purpose
6 by the Secretary of Homeland Security.

7 “(c) AUTHORITY TO ARREST.—No officer or person
8 shall have authority to make any arrests for a violation
9 of any provision of this section except officers and employ-
10 ees designated by the Secretary of Homeland Security, ei-
11 ther individually or as a member of a class, and all other
12 officers whose duty it is to enforce criminal laws.

13 “(d) ADMISSIBILITY OF EVIDENCE.—

14 “(1) PRIMA FACIE EVIDENCE IN DETERMINA-
15 TIONS OF VIOLATIONS.—Notwithstanding any provi-
16 sion of the Federal Rules of Evidence, in deter-
17 mining whether a violation of subsection (a) has oc-
18 curred, any of the following shall be prima facie evi-
19 dence that an alien involved in the violation lacks
20 lawful authority to come to, enter, reside, remain, or
21 be in the United States or that such alien had come
22 to, entered, resided, remained or been present in the
23 United States in violation of law:

24 “(A) Any order, finding, or determination
25 concerning the alien’s status or lack thereof

1 made by a federal judge or administrative adju-
2 dicator (including an immigration judge or an
3 immigration officer) during any judicial or ad-
4 ministrative proceeding authorized under the
5 immigration laws or regulations prescribed
6 thereunder.

7 “(B) An official record of the Department
8 of Homeland Security, Department of Justice,
9 or the Department of State concerning the
10 alien’s status or lack thereof.

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

14 “(2) VIDEOTAPED TESTIMONY.—Notwith-
15 standing any provision of the Federal Rules of Evi-
16 dence, the videotaped (or otherwise audiovisually
17 preserved) deposition of a witness to a violation of
18 subsection (a) who has been deported or otherwise
19 expelled from the United States, or is otherwise un-
20 available to testify, may be admitted into evidence in
21 an action brought for that violation if the witness
22 was available for cross examination at the deposition
23 and the deposition otherwise complies with the Fed-
24 eral Rules of Evidence.

25 “(e) DEFINITIONS.—For purposes of this section:

1 “(1) The term ‘lawful authority’ means permis-
2 sion, authorization, or license that is expressly pro-
3 vided for in the immigration laws of the United
4 States or the regulations prescribed thereunder.
5 Such term does not include any such authority se-
6 cured by fraud or otherwise obtained in violation of
7 law, nor does it include authority that has been
8 sought but not approved. No alien shall be deemed
9 to have lawful authority to come to, enter, reside, re-
10 main, or be in the United States if such coming to,
11 entry, residence, remaining, or presence was, is, or
12 would be in violation of law.

13 “(2) The term ‘unlawful transit’ means travel,
14 movement, or temporary presence that violates the
15 laws of any country in which the alien is present, or
16 any country from which or to which the alien is trav-
17 eling or moving.”.

18 **TITLE II—IDENTITY SECURITY**

19 **Subtitle A—Photo Identification**

20 **SEC. 201. FORMS OF ACCEPTABLE IDENTIFICATION FOR** 21 **FEDERAL GOVERNMENT PURPOSES.**

22 (a) FORMS OF ACCEPTABLE IDENTIFICATION.—A
23 Federal agency may not accept, for any official purpose,
24 including for Federal benefits and for individual taxpayer

1 identification numbers, any form of identification of an in-
2 dividual other than the following:

3 (1) SOCIAL SECURITY CARD WITH PHOTO IDEN-
4 TIFICATION CARD OR REAL ID ACT IDENTIFICA-
5 TION.—

6 (A) A Social Security card accompanied by
7 a photo identification card issued by the Fed-
8 eral Government or a State Government; or

9 (B) a driver's license or identification card
10 issued by a State in the case of a State that is
11 in compliance with title II of the REAL ID Act
12 of 2005 (title II of division B of Public Law
13 109–13; 49 U.S.C. 30301 note).

14 (2) PASSPORT.—A passport issued by the
15 United States or a foreign government.

16 (3) USCIS PHOTO IDENTIFICATION CARD.—A
17 photo identification card issued by the Secretary of
18 Homeland Security (acting through the Director of
19 the United States Citizenship and Immigration Serv-
20 ices).

21 (b) EFFECTIVE DATE.—The requirements of sub-
22 section (a) shall take effect six months after the date of
23 the enactment of this Act.

1 **SEC. 202. FORMS OF ACCEPTABLE IDENTIFICATION FOR FI-**
2 **NANCIAL INSTITUTIONS.**

3 (a) IN GENERAL.—Section 5318(l) of title 31, United
4 States Code (relating to identification and verification of
5 accountholders) is amended by striking paragraph (6) and
6 inserting the following new paragraph:

7 “(6) FORMS OF ACCEPTABLE IDENTIFICA-
8 TION.—A financial institution may not accept, for
9 the purpose of verifying the identity of an individual
10 seeking to open an account in accordance with this
11 subsection, any form of identification of the indi-
12 vidual other than the following:

13 “(A) SOCIAL SECURITY CARD WITH PHOTO
14 IDENTIFICATION CARD OR REAL ID ACT IDENTI-
15 FICATION.—

16 “(i) A Social Security card accom-
17 panied by a photo identification card
18 issued by the Federal Government or a
19 State Government; or

20 “(ii) a driver’s license or identification
21 card issued by a State in the case of a
22 State that is in compliance with title II of
23 the REAL ID Act of 2005 (title II of divi-
24 sion B of Public Law 109–13; 49 U.S.C.
25 30301 note).

1 “(B) PASSPORT.—A passport issued by the
2 United States or a foreign government.

3 “(C) USCIS PHOTO IDENTIFICATION
4 CARD.—A photo identification card issued by
5 the Secretary of Homeland Security (acting
6 through the Director of the U.S. Citizenship
7 and Immigration Services).”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) shall take effect six months after the date
10 of the enactment of this Act.

11 **Subtitle B—Prohibition on Driver’s**
12 **Licenses for Unlawfully Present**
13 **Aliens**

14 **SEC. 211. PROHIBITION ON ISSUING DRIVER’S LICENSES TO**
15 **ILLEGAL ALIENS.**

16 Section 202 of the REAL ID Act of 2005 (49 U.S.C.
17 30301 note) is amended—

18 (1) in subsection (d), by striking paragraph
19 (11) and redesignating paragraphs (12) and (13) as
20 paragraphs (11) and (12), respectively; and

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

22 “(e) PROHIBITION.—A State is prohibited from
23 issuing any driver’s license or identification card to any
24 individual unless the State satisfies the requirements of
25 subsection (c)(2)(B).”.

1 **Subtitle C—Stopping Social**
2 **Security Number Abuse**

3 **SEC. 221. EFFECT OF FINAL REGULATION ON “NO-MATCH”**
4 **LETTERS.**

5 The Congress approves the final rule promulgated by
6 the Department of Homeland Security entitled “Safe-Har-
7 bor Procedures for Employers Who Receive a No-Match
8 Letter” (August 15, 2007; 72 Fed. Reg. 45611), and such
9 rule shall have the force and effect of enacted law until
10 changed by such law.

11 **Subtitle D—Birth/Death Registry**

12 **SEC. 231. ESTABLISHMENT OF ELECTRONIC BIRTH AND**
13 **DEATH REGISTRATION SYSTEMS.**

14 (a) In consultation with the Secretary of Health and
15 Human Services and the Commissioner of Social Security,
16 the Secretary shall take the following actions:

17 (1) Work with the States to establish a common
18 data set and common data exchange protocol for
19 electronic birth registration systems and death reg-
20 istration systems.

21 (2) Coordinate requirements for such systems
22 to align with a national model.

23 (3) Ensure that fraud prevention is built into
24 the design of electronic vital registration systems in
25 the collection of vital event data, the issuance of

1 birth certificates, and the exchange of data among
2 government agencies.

3 (4) Ensure that electronic systems for issuing
4 birth certificates, in the form of printed abstracts of
5 birth records or digitized images, employ a common
6 format of the certified copy, so that those requiring
7 such documents can quickly confirm their validity.

8 (5) Establish uniform field requirements for
9 State birth registries.

10 (6) Not later than 1 year after the date of the
11 enactment of this Act, establish a process with the
12 Department of Defense that will result in the shar-
13 ing of data, with the States and the Social Security
14 Administration, regarding deaths of United States
15 military personnel and the birth and death of their
16 dependents.

17 (7) Not later than 1 year after the date of the
18 enactment of this Act, establish a process with the
19 Department of State to improve registration, notifi-
20 cation, and the sharing of data with the States and
21 the Social Security Administration, regarding births
22 and deaths of United States citizens abroad.

23 (8) Not later than 3 years after the date of es-
24 tablishment of databases provided for under this sec-
25 tion, require States to record and retain electronic

1 records of pertinent identification information col-
2 lected from requestors who are not the registrants.

3 (9) Not later than 6 months after the date of
4 the enactment of this Act, submit to Congress a re-
5 port on whether there is a need for Federal laws to
6 address penalties for fraud and misuse of vital
7 records and whether violations are sufficiently en-
8 forced.

9 **Subtitle E—Reform of Passport** 10 **Fraud Offenses**

11 **SEC. 241. TRAFFICKING IN PASSPORTS.**

12 Section 1541 of title 18, United States Code, is
13 amended to read as follows:

14 **“§ 1541. Trafficking in passports**

15 “(a) MULTIPLE PASSPORTS.—Any person who, dur-
16 ing any period of 3 years or less, knowingly—

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

19 “(2) forges, counterfeits, alters, or falsely
20 makes 10 or more passports;

21 “(3) secures, possesses, uses, receives, buys,
22 sells, or distributes 10 or more passports, knowing
23 the passports to be forged, counterfeited, altered,
24 falsely made, stolen, procured by fraud, or produced
25 or issued without lawful authority; or

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

7 “(b) PASSPORT MATERIALS.—Any person who know-
8 ingly and without lawful authority produces, buys, sells,
9 possesses, or uses any official material (or counterfeit of
10 any official material) used to make a passport, including
11 any distinctive paper, seal, hologram, image, text, symbol,
12 stamp, engraving, or plate, shall be fined under this title,
13 imprisoned not more than 20 years, or both.”.

14 **SEC. 242. FALSE STATEMENT IN AN APPLICATION FOR A**
15 **PASSPORT.**

16 Section 1542 of title 18, United States Code, is
17 amended to read as follows:

18 **“§ 1542. False statement in an application for a pass-**
19 **port**

20 “(a) IN GENERAL.—Whoever knowingly makes any
21 false statement or representation in an application for a
22 United States passport, or mails, prepares, presents, or
23 signs an application for a United States passport knowing
24 the application to contain any false statement or represen-

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

3 “(b) VENUE.—

4 “(1) IN GENERAL.—An offense under sub-
5 section (a) may be prosecuted in any district—

6 “(A) in which the false statement or rep-
7 resentation was made or the application for a
8 United States passport was prepared or signed;
9 or

10 “(B) in which or to which the application
11 was mailed or presented.

12 “(2) ACTS OCCURRING OUTSIDE THE UNITED
13 STATES.—An offense under subsection (a) involving
14 an application for a United States passport prepared
15 and adjudicated outside the United States may be
16 prosecuted in the district in which the resultant
17 passport was or would have been produced.

18 “(c) SAVINGS CLAUSE.—Nothing in this section may
19 be construed to limit the venue otherwise available under
20 sections 3237 and 3238 of this title.”.

21 **SEC. 243. FORGERY AND UNLAWFUL PRODUCTION OF A**
22 **PASSPORT.**

23 Section 1543 of title 18, United States Code, is
24 amended to read as follows:

1 **“§ 1543. Forgery and unlawful production of a pass-**
2 **port**

3 “(a) FORGERY.—Any person who knowingly—

4 “(1) forges, counterfeits, alters, or falsely
5 makes any passport; or

6 “(2) transfers any passport knowing it to be
7 forged, counterfeited, altered, falsely made, stolen,
8 or to have been produced or issued without lawful
9 authority,

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

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

14 “(1) produces, issues, authorizes, or verifies a
15 passport in violation of the laws, regulations, or
16 rules governing the issuance of the passport;

17 “(2) produces, issues, authorizes, or verifies a
18 United States passport for or to any person knowing
19 or in reckless disregard of the fact that such person
20 is not entitled to receive a passport; or

21 “(3) transfers or furnishes a passport to any
22 person for use by any person other than the person
23 for whom the passport was issued or designed,
24 shall be fined under this title, imprisoned not more than
25 15 years, or both.”.

1 **SEC. 244. MISUSE OF A PASSPORT.**

2 Section 1544 of title 18, United States Code, is
3 amended to read as follows:

4 **“§ 1544. Misuse of a passport**

5 “Any person who knowingly—

6 “(1) uses any passport issued or designed for
7 the use of another;

8 “(2) uses any passport in violation of the condi-
9 tions or restrictions therein contained, or in violation
10 of the laws, regulations, or rules governing the
11 issuance and use of the passport;

12 “(3) secures, possesses, uses, receives, buys,
13 sells, or distributes any passport knowing it to be
14 forged, counterfeited, altered, falsely made, procured
15 by fraud, or produced or issued without lawful au-
16 thority; or

17 “(4) violates the terms and conditions of any
18 safe conduct duly obtained and issued under the au-
19 thority of the United States,

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

22 **SEC. 245. SCHEMES TO DEFRAUD ALIENS.**

23 Section 1545 of title 18, United States Code, is
24 amended to read as follows:

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

2 “(a) IN GENERAL.—Any person who knowingly exe-
3 cutes a scheme or artifice, in connection with any matter
4 that is authorized by or arises under Federal immigration
5 laws or any matter the offender claims or represents is
6 authorized by or arises under Federal immigration laws,
7 to—

8 “(1) defraud any person; or

9 “(2) obtain or receive money or anything else of
10 value from any person by means of false or fraudu-
11 lent pretenses, representations, promises,
12 shall be fined under this title, imprisoned not more than
13 15 years, or both.

14 “(b) MISREPRESENTATION.—Any person who know-
15 ingly and falsely represents that such person is an attor-
16 ney or an accredited representative (as that term is de-
17 fined in section 1292.1 of title 8, Code of Federal Regula-
18 tions (or any successor regulation to such section)) in any
19 matter arising under Federal immigration laws shall be
20 fined under this title, imprisoned not more than 15 years,
21 or both.”.

22 **SEC. 246. IMMIGRATION AND VISA FRAUD.**

23 Section 1546 of title 18, United States Code, is
24 amended to read as follows:

25 **“§ 1546. Immigration and visa fraud**

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

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

3 “(2) forges, counterfeits, alters, or falsely
4 makes any immigration document;

5 “(3) completes, mails, prepares, presents, signs,
6 or submits any immigration document knowing it to
7 contain any materially false statement or representa-
8 tion;

9 “(4) secures, possesses, uses, transfers, re-
10 ceives, buys, sells, or distributes any immigration
11 document knowing it to be forged, counterfeited, al-
12 tered, falsely made, stolen, procured by fraud, or
13 produced or issued without lawful authority;

14 “(5) adopts or uses a false or fictitious name to
15 evade or to attempt to evade the immigration laws;
16 or

17 “(6) transfers or furnishes, without lawful au-
18 thority, an immigration document to another person
19 for use by a person other than the person for whom
20 the passport was issued or designed,

21 shall be fined under this title, imprisoned not more than
22 15 years, or both.

23 “(b) TRAFFICKING.—Any person who, during any pe-
24 riod of 3 years or less, knowingly—

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

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

6 “(3) secures, possesses, uses, buys, sells, or dis-
7 tributes 10 or more immigration documents, know-
8 ing the immigration documents to be forged, coun-
9 terfeited, altered, stolen, falsely made, procured by
10 fraud, or produced or issued without lawful author-
11 ity; or

12 “(4) completes, mails, prepares, presents, signs,
13 or submits 10 or more immigration documents
14 knowing the documents to contain any materially
15 false statement or representation,

16 shall be fined under this title, imprisoned not more than
17 20 years, or both.

18 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
19 person who knowingly and without lawful authority pro-
20 duces, buys, sells, possesses, or uses any official material
21 (or counterfeit of any official material) used to make im-
22 migration documents, including any distinctive paper, seal,
23 hologram, image, text, symbol, stamp, engraving, or plate,
24 shall be fined under this title, imprisoned not more than
25 20 years, or both.

1 “(d) EMPLOYMENT DOCUMENTS.—Whoever uses—

2 “(1) an identification document, knowing (or
3 having reason to know) that the document was not
4 issued lawfully for the use of the possessor;

5 “(2) an identification document knowing (or
6 having reason to know) that the document is false;
7 or

8 “(3) a false attestation,
9 for the purpose of satisfying a requirement of section
10 274A(b) of the Immigration and Nationality Act (8 U.S.C.
11 1324a(b)), shall be fined under this title, imprisoned not
12 more than 5 years, or both.”.

13 **SEC. 247. ALTERNATIVE IMPRISONMENT MAXIMUM FOR**
14 **CERTAIN OFFENSES.**

15 Section 1547 of title 18, United States Code, is
16 amended—

17 (1) in the matter preceding paragraph (1), by
18 striking “(other than an offense under section
19 1545)”;

20 (2) in paragraph (1), by striking “15” and in-
21 serting “20”; and

22 (3) in paragraph (2), by striking “20” and in-
23 serting “25”.

1 **SEC. 248. ATTEMPTS, CONSPIRACIES, JURISDICTION, AND**
2 **DEFINITIONS.**

3 Chapter 75 of title 18, United States Code, is amend-
4 ed by adding after section 1547 the following new sections:

5 **“§ 1548. Attempts and conspiracies**

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

9 **“§ 1549. Additional jurisdiction**

10 “(a) IN GENERAL.—Any person who commits an of-
11 fense under this chapter within the special maritime and
12 territorial jurisdiction of the United States shall be pun-
13 ished as provided under this chapter.

14 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-
15 son who commits an offense under this chapter outside
16 the United States shall be punished as provided under this
17 chapter if—

18 “(1) the offense involves a United States pass-
19 port or immigration document (or any document
20 purporting to be such a document) or any matter,
21 right, or benefit arising under or authorized by Fed-
22 eral immigration laws;

23 “(2) the offense is in or affects foreign com-
24 merce;

25 “(3) the offense affects, jeopardizes, or poses a
26 significant risk to the lawful administration of Fed-

1 eral immigration laws, or the national security of the
2 United States;

3 “(4) the offense is committed to facilitate an
4 act of international terrorism (as defined in section
5 2331) or a drug trafficking crime (as defined in sec-
6 tion 929(a)(2)) that affects or would affect the na-
7 tional security of the United States;

8 “(5) the offender is a national of the United
9 States or an alien lawfully admitted for permanent
10 residence (as those terms are defined in section
11 101(a) of the Immigration and Nationality Act (8
12 U.S.C. 1101(a))); or

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

15 **“§ 1550. Authorized law enforcement activities**

16 “Nothing in this chapter shall prohibit any lawfully
17 authorized investigative, protective, or intelligence activity
18 of a law enforcement agency of the United States, a State,
19 or a political subdivision of a State, or an intelligence
20 agency of the United States, or any activity authorized
21 under title V of the Organized Crime Control Act of 1970
22 (Public Law 91–452; 84 Stat. 933).

23 **“§ 1551. Definitions**

24 “As used in this chapter:

1 “(1) The term ‘application for a United States
2 passport’ includes any document, photograph, or
3 other piece of evidence submitted in support of an
4 application for a United States passport.

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

7 “(3) The term ‘immigration document’—

8 “(A) means any application, petition, affi-
9 davit, declaration, attestation, form, visa, iden-
10 tification card, alien registration document, em-
11 ployment authorization document, border cross-
12 ing card, certificate, permit, order, license,
13 stamp, authorization, grant of authority, or
14 other official document, arising under or au-
15 thorized by the immigration laws of the United
16 States; and

17 “(B) includes any document, photograph,
18 or other piece of evidence attached to or sub-
19 mitted in support of an immigration document
20 described in subparagraph (A).

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

22 “(A) the laws described in section
23 101(a)(17) of the Immigration and Nationality
24 Act (8 U.S.C. 1101(a)(17));

1 “(B) the laws relating to the issuance and
2 use of passports; and

3 “(C) the regulations prescribed under the
4 authority of any law described in subparagraph
5 (A) or (B).

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

9 “(6) The term ‘passport’ means—

10 “(A) a travel document attesting to the
11 identity and nationality of the bearer that is
12 issued under the authority of the Secretary of
13 State, a foreign government, or an international
14 organization; or

15 “(B) any instrument purporting to be a
16 document described in subparagraph (A).

17 “(7) The term ‘produce’ means to make, pre-
18 pare, assemble, issue, print, authenticate, or alter.

19 “(8) The term ‘to present’ means to offer or
20 submit for official processing, examination, or adju-
21 dication. Any such presentation continues until the
22 official processing, examination, or adjudication is
23 complete.

24 “(9) The ‘use’ of a passport or an immigration
25 document referred to in section 1541(a), 1543(b),

1 1544, 1546(a), and 1546(b) of this chapter in-
 2 cludes—

3 “(A) any officially authorized use;

4 “(B) use to travel;

5 “(C) use to demonstrate identity, resi-
 6 dence, nationality, citizenship, or immigration
 7 status;

8 “(D) use to seek or maintain employment;

9 or

10 “(E) use in any matter within the jurisdic-
 11 tion of the Federal government or of a State
 12 government.”.

13 **SEC. 249. CLERICAL AMENDMENT.**

14 The table of sections for chapter 75 of title 18,
 15 United States Code, is amended to read as follows:

“Sec.

“1541. Trafficking in passports.

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

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Alternative imprisonment maximum for certain offenses.

“1548. Attempts and conspiracies.

“1549. Additional jurisdiction.

“1550. Authorized law enforcement activities.

“1551. Definitions.”.

TITLE III—BIRTHRIGHT CITIZENSHIP

SEC. 301. CITIZENSHIP AT BIRTH FOR CERTAIN PERSONS BORN IN THE UNITED STATES.

(a) IN GENERAL.—Section 301 of the Immigration and Nationality Act (8 U.S.C. 1401) is amended—

(1) by inserting “(a) IN GENERAL.—” before “The following”;

(2) by redesignating paragraphs (a) through (h) as paragraphs (1) through (8); and

(3) by adding at the end the following:

“(b) DEFINITION.—Acknowledging the right of birthright citizenship established by section 1 of the 14th amendment to the Constitution, a person born in the United States shall be considered ‘subject to the jurisdiction’ of the United States for purposes of subsection (a)(1) if the person is born in the United States of parents, one of whom is—

“(1) a citizen or national of the United States;

“(2) an alien lawfully admitted for permanent residence in the United States whose residence is in the United States; or

“(3) an alien performing active service in the Armed Forces (as defined in section 101 of title 10, United States Code).”.

1 (b) APPLICABILITY.—The amendment made by sub-
 2 section (a)(3) shall not be construed to affect the citizen-
 3 ship or nationality status of any person born before the
 4 date of the enactment of this Act.

5 **TITLE IV—HOUSING AND** 6 **HOMEOWNERSHIP**

7 **SEC. 401. MORTGAGES PROHIBITED FOR PRINCIPAL RESI-**
 8 **DENCES OF INDIVIDUALS WHO LACK VALID**
 9 **PERSONAL IDENTIFICATION.**

10 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 11 ing Act (15 U.S.C. 1631 et seq.) is amended by adding
 12 at the end the following new section:

13 **“§ 140. Mortgages prohibited for principal residences**
 14 **of individuals who lack valid personal**
 15 **identification**

16 “Notwithstanding any provision of State law, no
 17 credit may be extended by any creditor to any consumer
 18 in any consumer credit transaction in which a security in-
 19 terest, including any such interest arising by operation of
 20 law, is or will be retained or acquired in any property lo-
 21 cated within the United States which is or, upon the com-
 22 pletion of the transaction, will be used as the principal
 23 residence of such consumer unless the creditor has verified
 24 that the consumer is a citizen or national of the United
 25 States or is lawfully present in the United States, by re-

1 quiring the consumer to provide to the creditor valid per-
 2 sonal identification in one of the forms specified in the
 3 amendment made by section 202(a) of the Loophole Elimination and Verification Enforcement Act.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
 6 for chapter 2 of the Truth in Lending Act is amended
 7 by inserting after the item relating to section 139 the following new item:

“140. Mortgages prohibited for principal residences of individuals who lack valid personal identification.”.

9 **SEC. 402. PROHIBITION ON PUBLIC HOUSING AND SECTION**
 10 **8 RENTAL ASSISTANCE FOR ILLEGAL ALIENS.**

11 Occupancy in public housing assisted under the
 12 United States Housing Act of 1937 (42 U.S.C. 1437 et
 13 seq.) may not be provided to any individual or household,
 14 and rental assistance under section 8 of such Act (42
 15 U.S.C. 1437f) may not be provided to or on behalf of any
 16 individual or household, unless the public housing agency
 17 or owner of housing assisted under section 8, as applicable,
 18 verifies that the individual, or in the case of a household,
 19 all adult members of the household, are citizens or
 20 nationals of the United States or are lawfully present in
 21 the United States, by requiring such individual, or in the
 22 case of a household, all adult members of the household,
 23 to provide to the public housing agency or owner of housing
 24 assisted under such section 8, as applicable, valid per-

1 sonal identification in one of the forms specified in section
2 201(a) of this Act.

3 **SEC. 403. PROHIBITION ON RENTING OF DWELLING UNITS**
4 **TO ILLEGAL ALIENS.**

5 It is the sense of the Congress that renting a dwelling
6 unit to an individual who is unlawfully present in the
7 United States, or to any household that includes such an
8 individual, should be considered an act of harboring an
9 illegal alien or assisting an illegal alien to reside in the
10 United States and therefore illegal.

11 **SEC. 404. PROHIBITION ON FEDERAL AND GOVERNMENT-**
12 **SPONSORED ENTERPRISE SUPPORT FOR**
13 **MORTGAGES FOR ILLEGAL ALIENS.**

14 (a) **FEDERAL AGENCIES.**—No Federal agency, de-
15 partment, office, or other instrumentality may make, in-
16 sure, or guarantee any mortgage or loan for the purchase
17 of, or secured by, a residential property unless the mort-
18 gagee under such mortgage, or the lender under such loan,
19 as the case may be, has verified that the mortgagor under
20 the mortgage or borrower under the loan, as the case may
21 be, is a citizen or national of the United States or is law-
22 fully present in the United States, by requiring such mort-
23 gator or borrower to provide to such lender under such
24 mortgage or loan valid personal identification in one of
25 the forms specified in section 201(a) of this Act.

1 (b) FANNIE MAE AND FREDDIE MAC.—The Federal
2 National Mortgage Association and the Federal Home
3 Loan Mortgage Corporation may not purchase, securitize,
4 service, sell, lend on the security of, or otherwise deal in
5 any mortgage or loan unless the mortgagee under such
6 mortgage has verified that the mortgagor under the mort-
7 gage is a citizen or national of the United States or is
8 lawfully present in the United States, by requiring such
9 mortgagor to provide to such mortgagee under such mort-
10 gage valid personal identification in one of the forms speci-
11 fied in section 201(a) of this Act.

12 **TITLE V—TAXES AND SOCIAL**
13 **SECURITY**

14 **SEC. 501. PROHIBITING TOTALIZATION AGREEMENTS THAT**
15 **BENEFIT UNLAWFULLY PRESENT ALIENS.**

16 It is the sense of the House of Representatives that
17 the totalization agreement establishing totalization ar-
18 rangements between the Social Security system estab-
19 lished by title II of such Act and the Social Security sys-
20 tem of Mexico, signed by the Commissioner of Social Secu-
21 rity and the Director General, Mexican Social Security In-
22 stitute, on June 29, 2004, is inappropriate public policy
23 and should not take effect.

1 **SEC. 502. NO SOCIAL SECURITY CREDIT FOR WORK PER-**
2 **FORMED WHILE UNLAWFULLY PRESENT.**

3 (a) DETERMINATIONS OF INSURED STATUS.—Sec-
4 tion 214(c)(1) of the Social Security Act (42 U.S.C.
5 414(c)(1)) is amended by striking “at the time of assign-
6 ment,” and all that follows through “any later time,” and
7 inserting “at the time any such quarters of coverage are
8 earned,”.

9 (b) ENTITLEMENT TO DISABILITY INSURANCE BEN-
10 EFITS.—Section 223(a)(1)(C)(i) of such Act (42 U.S.C.
11 423(a)(1)(C)(i)) is amended by striking “at the time of
12 assignment,” and all that follows through “any later
13 time,” and inserting “at the time any such quarters of
14 coverage are earned,”.

15 **SEC. 503. LIMITED ELIGIBILITY FOR CREDITS.**

16 Notwithstanding any other provision of law, an indi-
17 vidual who makes a return with respect to Federal income
18 tax and includes on such return an individual taxpayer
19 identification number in lieu of a Social Security account
20 number shall not be eligible for any refund of or credit
21 against Federal income tax, including the earned income
22 tax credit under section 32 of the Internal Revenue Code
23 of 1986.

1 **SEC. 504. REDUCING INDIVIDUAL TAXPAYER IDENTIFICA-**
2 **TION NUMBER ABUSE.**

3 (a) MODIFIED ITIN FORMAT AND LAWFUL PRES-
4 ENCE REQUIREMENT.—

5 (1) IN GENERAL.—Section 6109(c) of the Inter-
6 nal Revenue Code of 1986 (26 U.S.C. 6109(c)) is
7 amended to read as follows:

8 “(c) REQUIREMENT OF INFORMATION.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, the Secretary is authorized to require such in-
11 formation of any person as may be necessary to as-
12 sign an identifying number.

13 “(2) SEPARATE FROM SOCIAL SECURITY AC-
14 COUNT NUMBERS.—Any identifying number assigned
15 by the Secretary shall be comprised of a sequence of
16 numerals and dashes that is visually distinguishable
17 from and will not be mistaken for a Social Security
18 account number.

19 “(3) VERIFICATION OF STATUS FOR ALIENS.—
20 Prior to issuing any identifying number to an indi-
21 vidual who is physically present in the United
22 States, the Secretary shall verify with the Depart-
23 ment of Homeland Security that the applicant for
24 such number is lawfully present in the United
25 States.”.

1 (2) EFFECTIVE DATE.—Section 6109(c)(2) of
2 the Internal Revenue Code of 1986, as added by
3 paragraph (1), shall take effect no later than 30
4 days after the date of enactment of this Act.

5 (b) INFORMATION SHARING.—

6 (1) IN GENERAL.—Section 6103(i)(3) of the In-
7 ternal Revenue Code of 1986 is amended by adding
8 at the end the following new subparagraph:

9 “(D) POSSIBLE VIOLATIONS OF FEDERAL
10 IMMIGRATION LAW.—The Secretary shall dis-
11 close in electronic format to the Secretary of
12 Homeland Security the taxpayer identity (as de-
13 fined in subsection (b)(6)) of each taxpayer who
14 has been assigned an individual taxpayer identi-
15 fication number. The Secretary of Homeland
16 Security may disclose such information to offi-
17 cers and employees of the Department to the
18 extent necessary to enforce Federal immigration
19 laws.”.

20 (2) EFFECTIVE DATE.—The Secretary of the
21 Treasury shall disclose information under the
22 amendment made by paragraph (1) not later than
23 60 days after the date of the enactment of this Act.

1 **TITLE VI—EMPLOYEE**
2 **VERIFICATION**
3 **Subtitle A—General Provisions**

4 **SEC. 601. MANDATORY EMPLOYMENT AUTHORIZATION**
5 **VERIFICATION.**

6 (a) MAKING BASIC PILOT PROGRAM PERMANENT.—
7 Section 401(b) of the Illegal Immigration Reform and Im-
8 migrant Responsibility Act of 1996 (8 U.S.C. 1324a note)
9 is amended by adding before the period at the end of the
10 last sentence the following “, except that the basic pilot
11 program described in section 403(a) shall be a permanent
12 program”.

13 (b) MANDATORY USE OF E-VERIFY SYSTEM.—

14 (1) IN GENERAL.—Subject to paragraphs (2)
15 and (3), every person or other entity that hires one
16 or more individuals for employment in the United
17 States shall verify through the E-Verify program, es-
18 tablished as the basic pilot program by section
19 403(a) of the Illegal Immigration Reform and Immi-
20 grant Responsibility Act of 1996 (division C of Pub-
21 lic Law 104–208; 8 U.S.C. 1324a note), that each
22 such individual is authorized to work in the United
23 States. The Secretary of Homeland Security shall
24 ensure that verification by means of a toll-free tele-

1 phone line is an available option in complying with
2 the preceding sentence.

3 (2) SELECT ENTITIES REQUIRED TO USE E-
4 VERIFY PROGRAM IMMEDIATELY.—The following en-
5 tities must satisfy the requirement in paragraph (1)
6 by not later than one year after the date of the en-
7 actment of this Act:

8 (A) FEDERAL AGENCIES.—Each depart-
9 ment and agency of the Federal Government.

10 (B) FEDERAL CONTRACTORS.—A con-
11 tractor that—

12 (i) has entered into a contract with
13 the Federal Government to which section
14 2(b)(1) of the Service Contract Act of
15 1965 (41 U.S.C. 351(b)(1)) applies, and
16 any subcontractor under such contract; or

17 (ii) has entered into a contract ex-
18 empted from the application of such Act by
19 section 6 of such Act (41 U.S.C. 356), and
20 any subcontractor under such contract;
21 and

22 (C) LARGE EMPLOYERS.—An employer
23 that employs more than 250 individuals in the
24 United States.

25 (3) PHASING-IN FOR OTHER EMPLOYERS.—

1 (A) 2 YEARS FOR EMPLOYERS OF 100 OR
2 MORE.—Entities that employ 100 or more indi-
3 viduals in the United States must satisfy the
4 requirement in paragraph (1) by not later than
5 two years after the date of the enactment of
6 this Act.

7 (B) 3 YEARS FOR EMPLOYERS WITH 30 OR
8 MORE EMPLOYEES.—All entities that employ 30
9 or more individuals in the United States must
10 satisfy the requirement in paragraph (1) by not
11 later than three years after the date of the en-
12 actment of this Act.

13 (C) 4 YEARS FOR ALL EMPLOYERS.—All
14 entities that employ one or more individuals in
15 the United States must satisfy the requirement
16 in paragraph (1) by not later than four years
17 after the date of the enactment of this Act.

18 (4) VERIFYING EMPLOYMENT AUTHORIZATION
19 OF CURRENT EMPLOYEES.—Every person or other
20 entity that employs one or more persons in the
21 United States shall verify through the E-Verify pro-
22 gram by not later than four years after the date of
23 the enactment of this Act that each employee is au-
24 thorized to work in the United States.

1 (5) DEFENSE.—An employer who has complied
2 with the requirements in paragraphs (1) and (4)
3 shall not be liable for hiring an unauthorized alien,
4 if—

5 (A) such hiring occurred due to an error in
6 the E-Verify program that was unknown to the
7 employer at the time of such hiring; and

8 (B) the employer terminates the employ-
9 ment of the alien upon being informed of the
10 error.

11 (6) SANCTIONS FOR NONCOMPLIANCE.—The
12 failure of an employer to comply with the require-
13 ments in paragraphs (1) or (4) shall—

14 (A) be treated as a violation of section
15 274A(a)(1)(B) with respect to each offense; and

16 (B) create a rebuttable presumption that
17 the employer has violated section
18 274A(a)(1)(A).

19 (7) VOLUNTARY PARTICIPATION OF EMPLOYERS
20 NOT IMMEDIATELY SUBJECT TO REQUIREMENT.—
21 Nothing in this subsection shall be construed as pre-
22 venting a person or other entity that is not imme-
23 diately subject to the requirement of paragraph (1)
24 pursuant to paragraph (2) or (3) from voluntarily
25 using the E-Verify program to verify the employ-

1 ment authorization of new hires or current employ-
2 ees.

3 (8) STATE INTERFERENCE.—No State may
4 prohibit a person or other entity from using the E-
5 verify program to verify the employment authoriza-
6 tion of new hires or current employees.

7 **SEC. 602. MANDATORY NOTIFICATION OF SSN MISMATCHES**
8 **AND MULTIPLE USES AND DETERMINATIONS**
9 **OF INELIGIBILITY FOR EMPLOYMENT.**

10 (a) NOTIFICATION OF MULTIPLE USES OF INDI-
11 VIDUAL SOCIAL SECURITY ACCOUNT NUMBERS.—

12 (1) PERIODIC REVIEW OF RECORDS REGARDING
13 INDIVIDUALS FOR MATERIAL EMPLOYMENT-BASED
14 INFORMATION.—The Commissioner of Social Secu-
15 rity shall review, on at least an annual basis, the
16 records of the Commissioner to determine whether
17 there is included in such records any material em-
18 ployment-based information in connection with any
19 individual with respect to whom such records are
20 maintained.

21 (2) NOTIFICATION OF INDIVIDUALS REGARDING
22 MATERIAL EMPLOYMENT-BASED INFORMATION.—

23 (A) IN GENERAL.—In any case in which
24 the Commissioner determines, on the basis of
25 any review pursuant to paragraph (1), that

1 there is any material employment-based infor-
2 mation included in such records relating to any
3 individual, the Commissioner shall notify such
4 individual of the existence of such information
5 and that such information may be evidence of
6 the occurrence of identity theft.

7 (B) REQUIREMENTS.—The notification
8 shall be sent by letter to the individual's ad-
9 dress maintained in the Commissioner's records
10 and shall include—

11 (i) the name and location of each per-
12 son listed in such records as such individ-
13 ual's employer involved,

14 (ii) a statement that, if the listing re-
15 garding each such employer so identified in
16 the notification is in fact an accurate rep-
17 resentation of persons who have been em-
18 ployers of such individual, there is no prob-
19 lem and no response to the notification is
20 required, and

21 (iii) a statement that, if the listing is
22 in any respect not in fact an accurate rep-
23 resentation of persons who have been em-
24 ployers of such individual, such individual
25 is requested to notify the Department of

1 Homeland Security or the Social Security
2 Administration of the inaccuracy by tele-
3 phone or by Internet communication at a
4 telephone number or website which shall be
5 specified in the notification.

6 (b) MATERIAL EMPLOYMENT-BASED INFORMA-
7 TION.—For purposes of this section, the term “material
8 employment-based information” means, in relation to any
9 individual, evidence determined, on the basis of any review
10 conducted pursuant to subsection (a)(1), that—

11 (1) such individual has had concurrent earnings
12 from more than one employer over an extended pe-
13 riod,

14 (2) such individual has received benefits under
15 title II of the Social Security Act while engaged in
16 employment, or

17 (3) such individual has been engaged in employ-
18 ment while under the age of 16.

19 (c) IDENTIFICATION AND TREATMENT OF UNAU-
20 THORIZED ALIENS.—

21 (1) IDENTIFICATION OF SUSPECT EMPLOYERS
22 AND EMPLOYEES AND ISSUANCE OF TENTATIVE DE-
23 TERMINATION OF UNAUTHORIZED ALIEN STATUS.—

24 In any case in which the Social Security Administra-
25 tion receives a notification from an individual pursu-

1 ant to subsection (a)(2)(B)(iii), the Commissioner of
2 Social Security shall identify each employer involved
3 and the employee of such employer actually em-
4 ployed in lieu of such individual, share with the Sec-
5 retary of Homeland Security the identity of each
6 such employer and such employee, and issue a ten-
7 tative determination that such employee is an unau-
8 thorized alien (as defined in section 274A(h) of the
9 Immigration and Nationality Act (8 U.S.C.
10 1324a(h))) with respect to the employment. Upon
11 the issuance of such tentative determination, the
12 Commissioner shall notify each such employer and
13 such employee that a potential identity fraud has oc-
14 curred in connection with the employment of such
15 employee by such employer, and that such employee
16 has been tentatively determined to be such an unau-
17 thorized alien.

18 (2) ISSUANCE OF CONCLUSIVE DETERMINA-
19 TION.—If, during the period of 30 business days fol-
20 lowing the date on which such employee receives
21 such notification, such employee fails to offer to the
22 Commissioner evidence of the employee's correct
23 identity and that such employee is not an unauthor-
24 ized alien (as defined in section 274A(h) of the Im-
25 migration and Nationality Act (8 U.S.C. 1324a(h)))

1 with respect to the employment, the Commissioner
2 shall issue to such employer and such employee a
3 conclusive determination that such employee is such
4 an unauthorized alien.

5 (3) MANDATORY TERMINATION OF EMPLOY-
6 MENT.—The failure of such employer to immediately
7 terminate such employment of such employee upon
8 receipt of such conclusive determination shall be
9 treated as a violation of section 274a(a)(2) of the
10 Immigration and Nationality Act (8 U.S.C.
11 1324a(a)(2)).

12 (d) NOTIFICATION OF MISMATCHED NAME AND SO-
13 CIAL SECURITY NUMBER.—The Commissioner of Social
14 Security shall notify on an annual basis each United
15 States employer with one or more employees whose Social
16 Security account number does not match the employees
17 name or date of birth in the records of the Commissioner.
18 Such notification shall instruct employers to notify listed
19 employees that they have 30 business days to correct the
20 mismatch with the Social Security Administration or the
21 employer will be required to terminate their employment.
22 The notification also shall inform employers that they may
23 not terminate listed employees prior to the close of the
24 30-day period.

1 (e) INFORMATION SHARING WITH THE DEPARTMENT
2 OF HOMELAND SECURITY.—

3 (1) Not later than 180 days following the date
4 of enactment of this Act, the Commissioner of Social
5 Security shall promulgate regulations in accordance
6 with section 1106 of the Social Security Act (42
7 U.S.C. 1306) to require that information regarding
8 all unresolved mismatch notifications and regarding
9 all multiple use notifications that lead to the identi-
10 fication of an unauthorized user of a Social Security
11 account number be shared with the Secretary of
12 Homeland Security on a timely basis.

13 (2) Information to be shared with the Secretary
14 shall include, at a minimum, the name and mailing
15 address of all employees who are the subject of an
16 unresolved mismatch notification or who are unau-
17 thorized users of another individual's Social Security
18 account number.

19 **SEC. 603. PENALTY FOR FAILURE TO FILE CORRECT INFOR-**
20 **MATION RETURNS.**

21 Section 6721 of the Internal Revenue Code of 1986
22 (26 U.S.C. 6721) is amended by adding at the end the
23 following:

24 “(f) The Secretary shall assess the maximum allow-
25 able penalties on 100 percent of the employers designated

1 in any tax year by the Social Security Administration as
 2 the most egregious noncompliant employers.

3 “(g) Notwithstanding any other provision in this sec-
 4 tion, in the case of a failure described in subsection (a)(2)
 5 with respect to any person employing an alien not author-
 6 ized to be so employed, the penalty under this section shall
 7 be determined in accordance with the following table:

“In the case of—	Not less than—	Not more than—
The first offense	\$2,500	\$5,000
The second offense	\$7,500	\$10,000
The third offense	\$25,000	\$40,000.”.

8 **SEC. 604. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated such sums
 10 as may be required to carry out this subtitle.

11 **Subtitle B—Self-Employed**
 12 **Subcontractors Loophole**

13 **SEC. 611. REQUIRING SELF-EMPLOYED SUBCONTRACTORS**
 14 **TO PARTICIPATE IN EMPLOYMENT ELIGI-**
 15 **BILITY VERIFICATION PILOT PROGRAM.**

16 Beginning with fiscal year 2010, none of the funds
 17 authorized to be appropriated for the Department of
 18 Homeland Security or the Department of Justice may be
 19 made available to those departments unless each State and
 20 local government in the United States requires, as condi-
 21 tion on acquisition of a business license, that the applicant
 22 demonstrate that the applicant has verified through the

1 E-Verify program, established as the basic pilot program
 2 by section 403(a) of the Illegal Immigration Reform and
 3 Immigrant Responsibility Act of 1996 (division C of Pub-
 4 lic Law 104–208; 8 U.S.C. 1324a note), that the appli-
 5 cant, and each individual employed by the applicant, is
 6 authorized to work in the United States.

7 **Subtitle C—Prohibition on Unlaw-**
 8 **ful Employment of Aliens in**
 9 **Capitol**

10 **SEC. 621. REQUIRING LEGISLATIVE BRANCH CONTRAC-**
 11 **TORS TO PARTICIPATE IN EMPLOYMENT ELI-**
 12 **GIBILITY VERIFICATION PILOT PROGRAM.**

13 An office of the legislative branch may not enter into
 14 a contract for the provision of goods or services within
 15 the Capitol Complex with any contractor who employs in-
 16 dividuals unless the contractor—

17 (1) elects to participate in the basic pilot pro-
 18 gram described in section 403(a) of the Illegal Im-
 19 migration Reform and Immigrant Responsibility Act
 20 of 1996 (8 U.S.C. 1324a note), and is in compliance
 21 with the terms and conditions of such election, with
 22 respect to all of its employees as well as those pro-
 23 viding goods or services under the contract; and

24 (2) certifies that each of its subcontractors pro-
 25 viding goods or services under the contract has elect-

1 ed to participate in such program, and is in compli-
2 ance with the terms and conditions of such election,
3 with respect to all of its employees as well as those
4 providing goods or services under the subcontract.

5 **SEC. 622. CAPITOL COMPLEX DEFINED.**

6 For purposes of this subtitle, the “Capitol Complex”
7 consists of the following facilities together with their
8 grounds:

9 (1) The United States Capitol (including the
10 Capitol Visitor Center) and the Capitol Grounds.

11 (2) The Cannon, Longworth, Rayburn, and
12 Ford House Office Buildings.

13 (3) The Russell, Dirksen, and Hart Senate Of-
14 fice Buildings.

15 (4) The House of Representatives Child Care
16 Center and the Senate Employee Child Care Center.

17 (5) Any facility serving as a dormitory resi-
18 dence for Congressional pages.

19 (6) The United States Botanic Garden.

20 (7) The Jefferson, Madison, and Adams Build-
21 ings of the Library of Congress.

22 (8) The Capitol Power Plant.

23 (9) The United States Capitol Police Head-
24 quarters Building.

1 **SEC. 623. EFFECTIVE DATE; TRANSITION FOR CURRENT**
2 **CONTRACTS.**

3 (a) IN GENERAL.—This subtitle shall apply with re-
4 spect to contracts entered into after the expiration of the
5 30-day period which begins on the date of the enactment
6 of this Act.

7 (b) TRANSITION FOR CURRENT CONTRACTS.—Upon
8 the enactment of this Act, each office of the legislative
9 branch with a contract in effect on the date of the enact-
10 ment of this Act which is described in section 621 shall
11 obtain assurances from the contractor involved that the
12 contractor will meet the requirements of such section prior
13 to the expiration of the period described in subsection (a).

14 **Subtitle D—Coordination Between**
15 **SSA and IRS**

16 **SEC. 631. AVAILABILITY OF INFORMATION.**

17 The Commissioner of Social Security shall make
18 available to the Commissioner of Internal Revenue any in-
19 formation related to the investigation and enforcement of
20 section 162(c)(4) of the Internal Revenue Code of 1986,
21 including any no-match letter and any information in the
22 earnings suspense file.

1 **TITLE VII—PROHIBITING UN-**
2 **LAWFULLY PRESENT ALIENS**
3 **FROM OBTAINING FINANCIAL**
4 **SERVICES**

5 **SEC. 701. FOREIGN-ISSUED FORMS OF IDENTIFICATION**
6 **PROHIBITED AS PROOF OF IDENTITY TO**
7 **OPEN ACCOUNTS AT FINANCIAL INSTITU-**
8 **TIONS.**

9 Section 5318(l) of title 31, United States Code (relat-
10 ing to identification and verification of accountholders) is
11 inserting after paragraph (6) (as added by section 202)
12 the following new paragraph:

13 “(7) PROHIBITION ON USE OF IDENTIFICATION
14 ISSUED BY A FOREIGN GOVERNMENT.—A financial
15 institution may not accept any form of identification
16 that was issued by a foreign government, other than
17 a passport that meets the requirement of paragraph
18 (6), for use in verifying the identity of a person in
19 connection with the opening of an account by such
20 person at the financial institution, including a
21 matricula consular issued in the United States by a
22 duly authorized consular officer of the Government
23 of Mexico.”.

1 **SEC. 702. “KNOW YOUR CUSTOMER” REGULATIONS AP-**
2 **PLIED TO CERTAIN TRANSMITTING BUSI-**
3 **NESSES.**

4 Section 5318(m) of title 31, United States Code, is
5 amended by striking “promulgated pursuant to the au-
6 thority contained in” and inserting “prescribed under
7 paragraph (1) of subsection (l) (notwithstanding para-
8 graph (5) of such subsection) or”.

9 **SEC. 703. REQUIREMENTS RELATING TO THE UNITED**
10 **STATES POSTAL SERVICE.**

11 (a) IN GENERAL.—The United States Postal Service
12 shall take such measures as may be necessary to ensure
13 that in the administration of any international wire trans-
14 fer service, no transfer may be made unless the sender
15 presents an acceptable form of identification, as deter-
16 mined in accordance with section 201.

17 (b) DEFINITION.—For purposes of this section, the
18 term “international wire transfer service” means any pro-
19 gram or service, administered by the United States Postal
20 Service, which provides for the international electronic
21 transfer of money.

22 (c) EFFECTIVE DATE.—The requirements of this sec-
23 tion shall take effect six months after the date of the en-
24 actment of this Act.

1 **SEC. 704. APPLICABILITY OF IDENTIFICATION RULES TO**
2 **CERTAIN TRANSACTIONS INVOLVING THE**
3 **FEDERAL RESERVE BOARD, INCLUDING THE**
4 **DIRECTO A MÉXICO PROGRAM.**

5 (a) IN GENERAL.—The Board of Governors of the
6 Federal Reserve System shall take such measures as may
7 be necessary to ensure that in the administration of any
8 international wire transfer service or settlement services,
9 including any automated clearing house transaction such
10 as the Directo a México™ program, no transfer may be
11 made unless the financial institution involved has certified
12 that the sender has presented an acceptable form of identi-
13 fication, as determined in accordance with section 202(a).

14 (b) DEFINITION.—For purposes of this section, the
15 term “international wire transfer service or settlement”
16 means any program or service, administered by the Board
17 of Governors of the Federal Reserve System directly or
18 through any Federal reserve bank, including the Fedwire
19 Funds Service, which provides for the international elec-
20 tronic transfer of funds.

21 (c) EFFECTIVE DATE.—The requirements of this sec-
22 tion shall take effect six months after the date of the en-
23 actment of this Act.

1 **TITLE VIII—BORDER AND LAW**
2 **ENFORCEMENT**

3 **SEC. 801. CONSTRUCTION OF BORDER FENCING AND SECU-**
4 **RITY IMPROVEMENTS.**

5 (a) IN GENERAL.—Section 102(b)(1) of the Illegal
6 Immigration Reform and Immigrant Responsibility Act of
7 1996 (8 U.S.C. 1103 note) is amended to read as follows:

8 “(1) SECURITY FEATURES.—

9 “(A) REINFORCED FENCING.—In carrying
10 out subsection (a), the Secretary of Homeland
11 Security shall provide for at least 2 layers of re-
12 inforced fencing, the installation of additional
13 physical barriers, roads, lighting, cameras, and
14 sensors—

15 “(i) extending from 10 miles west of
16 the Tecate, California, port of entry to 10
17 miles east of the Tecate, California, port of
18 entry;

19 “(ii) extending from 10 miles west of
20 the Calexico, California, port of entry to 5
21 miles east of the Douglas, Arizona, port of
22 entry;

23 “(iii) extending from 5 miles west of
24 the Columbus, New Mexico, port of entry
25 to 10 miles east of El Paso, Texas;

1 “(iv) extending from 5 miles north-
2 west of the Del Rio, Texas, port of entry
3 to 5 miles southeast of the Eagle Pass,
4 Texas, port of entry; and

5 “(v) extending 15 miles northwest of
6 the Laredo, Texas, port of entry to the
7 Brownsville, Texas, port of entry.

8 “(B) COMPLETION DATES.—With respect
9 to the border area described in subparagraph
10 (A), the Secretary shall ensure that the duties
11 required under such subparagraph are com-
12 pleted by not later than July 31, 2010.

13 “(C) EXCEPTION.—If the topography of a
14 specific area has an elevation grade that ex-
15 ceeds 10 percent, the Secretary may use other
16 means to secure such area, including the use of
17 surveillance and barrier tools.”.

18 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
19 authorized to be appropriated to the Secretary of Home-
20 land Security such sums as may be necessary to carry out
21 the amendment made by subsection (a).

22 (c) REPEALS.—Subsection (b) of section 564 of divi-
23 sion E of the Consolidated Appropriations Act, 2008
24 (Public Law 110–161) is repealed. The amendment made
25 by subsection (a)(2)(A) of such section is repealed.

1 **SEC. 802. INCREASE IN FULL-TIME BORDER PATROL**
2 **AGENTS.**

3 Section 5202 of the Intelligence Reform and Ter-
4 rorism Prevention Act of 2004 (Public Law 108–458; 118
5 Stat. 3734) is amended to read as follows:

6 **“SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL**
7 **AGENTS.**

8 “(a) ANNUAL INCREASES.—The Secretary of Home-
9 land Security shall, subject to the availability of appropria-
10 tions for such purpose, increase the number of positions
11 for full-time active-duty Border Patrol agents within the
12 Department of Homeland Security (above the number of
13 positions for which funds were appropriated for the pre-
14 ceding fiscal year), by—

15 “(1) 2,500 in fiscal year 2010;

16 “(2) 2,000 in fiscal year 2011;

17 “(3) 1,500 in fiscal year 2012;

18 “(4) 1,000 in fiscal year 2013; and

19 “(5) 1,000 in fiscal year 2014.

20 “(b) ALLOCATIONS.—Of the Border Patrol agents
21 hired under subsection (a), 80 percent shall be deployed
22 along the southern border of the United States and 20
23 percent shall be deployed along the northern border of the
24 United States.

25 “(c) AUTHORIZATION OF APPROPRIATIONS.—The
26 necessary funds are authorized to be appropriated for each

1 of fiscal years 2010 through 2014 to carry out this sec-
2 tion.”.

3 **SEC. 803. INCREASE IN NUMBER OF ICE AGENTS.**

4 Section 5203 of the Intelligence Reform and Ter-
5 rorism Prevention Act of 2004 (Public Law 108–458; 118
6 Stat. 3734) is amended to read as follows:

7 **“SEC. 5203. INCREASE IN FULL-TIME IMMIGRATION AND**
8 **CUSTOMS ENFORCEMENT INVESTIGATORS.**

9 “(a) IN GENERAL.—By not later than September 30,
10 2013, the Secretary of Homeland Security shall, subject
11 to the availability of appropriations for such purpose, in-
12 crease by 3,000 the number of positions for full-time ac-
13 tive-duty investigators within the Department of Home-
14 land Security investigating violations of immigration laws
15 (as defined in section 101(a)(17) of the Immigration and
16 Nationality Act (8 U.S.C. 1101(a)(17))) above the number
17 of such positions for which funds were made available dur-
18 ing the preceding fiscal year.

19 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to the Secretary to carry
21 out this section such sums as may be necessary for each
22 fo fiscal years 2010 through 2013.”.

1 **TITLE IX—STATE AND LOCAL**
2 **GOVERNMENT AUTHORITY**
3 **Subtitle A—General Provisions**

4 **SEC. 901. STATE DEFINED; SEVERABILITY.**

5 (a) STATE DEFINED.—For purposes of this title the
6 term “State” has the meaning given such term in section
7 101(a)(36) of the Immigration and Nationality Act (8
8 U.S.C. 1101(a)(36)).

9 (b) SEVERABILITY.—If any provision of this title, or
10 the application of such provision to any person or cir-
11 cumstance, is held invalid, the remainder of this title and
12 the application of such provision to other persons not simi-
13 larly situated or to other circumstances, shall not be af-
14 fected by such invalidation.

15 **SEC. 902. FEDERAL AFFIRMATION OF ASSISTANCE IN THE**
16 **IMMIGRATION LAW ENFORCEMENT BY**
17 **STATES AND POLITICAL SUBDIVISIONS OF**
18 **STATES.**

19 Notwithstanding any other provision of law and re-
20 affirming the existing inherent authority of States, law en-
21 forcement personnel of a State, or of a political subdivision
22 of a State, have the inherent authority of a sovereign enti-
23 ty to investigate, identify, apprehend, arrest, detain, or
24 transfer to Federal custody aliens in the United States
25 (including the transportation of such aliens across State

1 lines to detention centers), for the purposes of assisting
2 in the enforcement of the immigration laws of the United
3 States in the course of carrying out routine duties. This
4 State authority has never been displaced or preempted by
5 Congress.

6 **SEC. 903. STATE AUTHORIZATION FOR ASSISTANCE IN THE**
7 **ENFORCEMENT OF IMMIGRATION LAWS EN-**
8 **COURAGED.**

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

20 (b) CONSTRUCTION.—Nothing in this section shall
21 require law enforcement officials from States, or from po-
22 litical subdivisions of States, to report or arrest victims
23 or witnesses of a criminal offense.

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

1 a State, due to the failure of the State, or of the political
2 subdivision of the State, to comply with subsection (a)
3 shall be reallocated to States, or to political subdivisions
4 of States, that comply with such subsection.

5 **SEC. 904. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
6 **TIONAL CRIME INFORMATION CENTER DATA-**
7 **BASE.**

8 (a) PROVISION OF INFORMATION TO THE NCIC.—
9 Not later than 180 days after the date of the enactment
10 of this Act and periodically thereafter as updates may re-
11 quire, the Under Secretary for Border and Transportation
12 Security of the Department of Homeland Security shall
13 provide the National Crime Information Center of the De-
14 partment of Justice with such information as the Under
15 Secretary may possess regarding any aliens against whom
16 a final order of removal has been issued, any aliens who
17 have signed a voluntary departure agreement, any aliens
18 who have overstayed their authorized period of stay, and
19 any aliens whose visas have been revoked. The National
20 Crime Information Center shall enter such information
21 into the Immigration Violators File of the National Crime
22 Information Center database, regardless of whether—
23 (1) the alien concerned received notice of a final
24 order of removal;

1 (2) the alien concerned has already been re-
2 moved; or

3 (3) sufficient identifying information is avail-
4 able with respect to the alien concerned.

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

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

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

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

14 “(4) acquire, collect, classify, and preserve
15 records of violations by aliens of the immigration
16 laws of the United States, regardless of whether any
17 such alien has received notice of the violation or
18 whether sufficient identifying information is avail-
19 able with respect to any such alien and even if any
20 such alien has already been removed from the
21 United States; and”.

1 **SEC. 905. STATE AND LOCAL LAW ENFORCEMENT PROVI-**
2 **SION OF INFORMATION ABOUT APPRE-**
3 **HENDED ALIENS.**

4 (a) PROVISION OF INFORMATION.—In compliance
5 with section 642(a) of the Illegal Immigration Reform and
6 Immigrant Responsibility Act of 1996 (8 U.S.C. 1373)
7 and section 434 of the Personal Responsibility and Work
8 Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644),
9 each State, and each political subdivision of a State, shall
10 provide the Secretary of Homeland Security in a timely
11 manner with the information specified in subsection (b)
12 with respect to each alien apprehended in the jurisdiction
13 of the State, or in the political subdivision of the State,
14 who is believed to be in violation of the immigration laws
15 of the United States.

16 (b) INFORMATION REQUIRED.—The information re-
17 ferred to in subsection (a) is as follows:

- 18 (1) The alien's name.
- 19 (2) The alien's address or place of residence.
- 20 (3) A physical description of the alien.
- 21 (4) The date, time, and location of the encoun-
22 ter with the alien and reason for stopping, detaining,
23 apprehending, or arresting the alien.
- 24 (5) If applicable, the alien's driver's license
25 number and the State of issuance of such license.

1 (6) If applicable, the type of any other identi-
2 fication document issued to the alien, any designa-
3 tion number contained on the identification docu-
4 ment, and the issuing entity for the identification
5 document.

6 (7) If applicable, the license plate number,
7 make, and model of any automobile registered to, or
8 driven by, the alien.

9 (8) A photo of the alien, if available or readily
10 obtainable.

11 (9) The alien's fingerprints, if available or read-
12 ily obtainable.

13 (c) ANNUAL REPORT ON REPORTING.—The Sec-
14 retary shall maintain and annually submit to Congress a
15 detailed report listing the States, or the political subdivi-
16 sions of States, that have provided information under sub-
17 section (a) in the preceding year.

18 (d) REIMBURSEMENT.—The Secretary of Homeland
19 Security shall reimburse States, and political subdivisions
20 of a State, for all reasonable costs, as determined by the
21 Secretary, incurred by the State, or the political subdivi-
22 sion of a State, as a result of providing information under
23 subsection (a).

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to the Secretary such sums
3 as are necessary to carry out this section.

4 (f) CONSTRUCTION.—Nothing in this section shall re-
5 quire law enforcement officials of a State, or of a political
6 subdivision of a State, to provide the Secretary of Home-
7 land Security with information related to a victim of a
8 crime or witness to a criminal offense.

9 **SEC. 906. FINANCIAL ASSISTANCE TO STATE AND LOCAL**
10 **POLICE AGENCIES THAT ASSIST IN THE EN-**
11 **FORCEMENT OF IMMIGRATION LAWS.**

12 (a) GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING
13 AND PROCESSING CERTAIN ALIENS.—From amounts
14 made available to make grants under this section, the Sec-
15 retary of Homeland Security shall make grants to States,
16 and to political subdivisions of States, for procurement of
17 equipment, technology, facilities, and other products that
18 facilitate and are directly related to investigating, appre-
19 hending, arresting, detaining, or transporting aliens who
20 have violated the immigration law of the United States,
21 including additional administrative costs incurred under
22 this title.

23 (b) ELIGIBILITY.—To be eligible to receive a grant
24 under this section, a State, or a political subdivision of
25 a State, must have the authority to, and shall have a writ-

1 ten policy and a practice to, assist in the enforcement of
2 the immigration laws of the United States in the course
3 of carrying out the routine law enforcement duties of such
4 State or political subdivision of a State. Entities covered
5 under this section may not have any policy or practice that
6 prevents local law enforcement from inquiring about a sus-
7 pect's immigration status.

8 (c) FUNDING.—There is authorized to be appro-
9 priated to the Secretary for grants under this section such
10 sums as may be necessary for fiscal year 2010 and each
11 subsequent fiscal year.

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

17 **SEC. 907. INCREASED FEDERAL DETENTION SPACE.**

18 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
19 FACILITIES.—

20 (1) IN GENERAL.—The Secretary of Homeland
21 Security shall construct or acquire, in addition to ex-
22 isting facilities for the detention of aliens, 20 deten-
23 tion facilities in the United States, with at least 500
24 beds per facility, for aliens detained pending removal

1 from the United States or a decision regarding such
2 removal.

3 (2) DETERMINATIONS.—The location of any de-
4 tention facility built or acquired in accordance with
5 this subsection shall be determined by the Deputy
6 Assistant Director of the Detention Management Di-
7 vision of the Immigration and Customs Enforcement
8 Office of Detention and Removal within United
9 States Immigration and Customs Enforcement.

10 (3) USE OF INSTALLATIONS UNDER BASE CLO-
11 SURE LAWS.—In acquiring detention facilities under
12 this subsection, the Secretary of Homeland Security
13 shall consider the transfer of appropriate portions of
14 military installations approved for closure or realign-
15 ment under the Defense Base Closure and Realign-
16 ment Act of 1990 (part A of title XXIX of Public
17 Law 101–510; 10 U.S.C. 2687 note) for use in ac-
18 cordance with paragraph (1).

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

22 (c) TECHNICAL AND CONFORMING AMENDMENT.—
23 Section 241(g)(1) of the Immigration and Nationality Act
24 (8 U.S.C. 1231(g)(1)) is amended by striking “may ex-
25 pend” and inserting “shall expend”.

1 **SEC. 908. FEDERAL CUSTODY OF ALIENS UNLAWFULLY**
2 **PRESENT IN THE UNITED STATES APPRE-**
3 **HENDED BY STATE OR LOCAL LAW ENFORCE-**
4 **MENT.**

5 (a) STATE APPREHENSION.—

6 (1) IN GENERAL.—Title II of the Immigration
7 and Nationality Act (8 U.S.C. 1151 et seq.) is
8 amended by inserting after section 240C the fol-
9 lowing:

10 “CUSTODY OF ALIENS UNLAWFULLY PRESENT IN THE
11 UNITED STATES

12 “SEC. 240D. (a) TRANSFER OF CUSTODY BY STATE
13 AND LOCAL OFFICIALS.—If a State, or a political subdivi-
14 sion of the State, exercising authority with respect to the
15 apprehension or arrest of an alien who is unlawfully
16 present in the United States submits to the Secretary of
17 Homeland Security a request that the alien be taken into
18 Federal custody, the Secretary—

19 “(1) shall—

20 “(A) not later than 48 hours after the con-
21 clusion of the State, or the political subdivision
22 of a State, charging process or dismissal proc-
23 ess, or if no State or political subdivision charg-
24 ing or dismissal process is required, not later
25 than 48 hours after the alien is apprehended,

1 take the alien into the custody of the Federal
2 Government and incarcerate the alien; or

3 “(B) request that the relevant State or
4 local law enforcement agency temporarily incar-
5 cerate or transport the alien for transfer to
6 Federal custody; and

7 “(2) shall designate at least one Federal, State,
8 or local prison or jail or a private contracted prison
9 or detention facility within each State as the central
10 facility for that State to transfer custody of aliens
11 to the Department of Homeland Security.

12 “(b) POLICY ON DETENTION IN STATE AND LOCAL
13 DETENTION FACILITIES.—In carrying out section
14 241(g)(1), the Attorney General or Secretary of Homeland
15 Security shall ensure that an alien arrested under this Act
16 shall be detained, pending the alien’s being taken for the
17 examination under this section, in a State or local prison,
18 jail, detention center, or other comparable facility. Not-
19 withstanding any other provision of law or regulation,
20 such facility is adequate for detention, if—

21 “(1) such a facility is the most suitably located
22 Federal, State, or local facility available for such
23 purpose under the circumstances;

24 “(2) an appropriate arrangement for such use
25 of the facility can be made; and

1 “(3) such facility satisfies the standards for the
2 housing, care, and security of persons held in cus-
3 tody of a United States marshal.

4 “(c) REIMBURSEMENT.—The Secretary of Homeland
5 Security shall reimburse States, and political subdivisions
6 of a State, for all reasonable expenses, as determined by
7 the Secretary, incurred by the State, or political subdivi-
8 sion, as a result of the incarceration and transportation
9 of an alien who is unlawfully present in the United States
10 as described in subparagraphs (A) and (B) of subsection
11 (a)(1). Compensation provided for costs incurred under
12 such subparagraphs shall be the average cost of incarcer-
13 ation of a prisoner in the relevant State, as determined
14 by the chief executive officer of a State, or of a political
15 subdivision of a State, plus the cost of transporting the
16 alien from the point of apprehension to the place of deten-
17 tion, and to the custody transfer point if the place of de-
18 tention and place of custody are different.

19 “(d) SECURE FACILITIES.—The Secretary of Home-
20 land Security shall ensure that aliens incarcerated in Fed-
21 eral facilities pursuant to this Act are held in facilities
22 that provide an appropriate level of security.

23 “(e) TRANSFER.—

24 “(1) IN GENERAL.—In carrying out this sec-
25 tion, the Secretary of Homeland Security shall es-

1 tablish a regular circuit and schedule for the prompt
2 transfer of apprehended aliens from the custody of
3 States, and political subdivisions of a State, to Fed-
4 eral custody.

5 “(2) CONTRACTS.—The Secretary may enter
6 into contracts, including appropriate private con-
7 tracts, to implement this subsection.

8 “(f) DEFINITION.—For purposes of this section, the
9 term ‘alien who is unlawfully present in the United States’
10 means an alien who—

11 “(1) entered the United States without inspec-
12 tion or at any time, manner or place other than that
13 designated by the Secretary of Homeland Security;

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

18 “(A) maintain the nonimmigrant status in
19 which the alien was admitted or to which it was
20 changed under section 248; or

21 “(B) comply with the conditions of any
22 such status;

23 “(3) was admitted as an immigrant and has
24 subsequently failed to comply with the requirements
25 of that status; or

1 “(4) failed to depart the United States under a
2 voluntary departure agreement or under a final
3 order of removal.”.

4 (2) CLERICAL AMENDMENT.—The table of con-
5 tents of such Act is amended by inserting after the
6 item relating to section 240C the following new item:

“Sec. 240D. Custody of aliens unlawfully present in the United States.”.

7 (b) GAO AUDIT.—Not later than three years after
8 the date of the enactment of this Act, the Comptroller
9 General of the United States shall conduct an audit of
10 compensation to States, and to political subdivisions of a
11 State, for the incarceration of aliens unlawfully present
12 in the United States under section 240D(a) of the Immi-
13 gration and Nationality Act (as added by subsection
14 (a)(1)).

15 **SEC. 909. TRAINING OF STATE AND LOCAL LAW ENFORCE-**
16 **MENT PERSONNEL RELATING TO THE EN-**
17 **FORCEMENT OF IMMIGRATION LAWS.**

18 (a) ESTABLISHMENT OF TRAINING MANUAL AND
19 POCKET GUIDE.—Not later than 180 days after the date
20 of the enactment of this Act, the Secretary of Homeland
21 Security shall establish—

22 (1) a training manual for law enforcement per-
23 sonnel of a State, or of a political subdivision of a
24 State, to train such personnel in the investigation,
25 identification, apprehension, arrest, detention, and

1 transfer to Federal custody of aliens unlawfully
2 present in the United States (including the transpor-
3 tation of such aliens across State lines to detention
4 centers and the identification of fraudulent docu-
5 ments); and

6 (2) an immigration enforcement pocket guide
7 for law enforcement personnel of a State, or of a po-
8 litical subdivision of a State, to provide a quick ref-
9 erence for such personnel in the course of duty.

10 (b) AVAILABILITY.—The training manual and pocket
11 guide established in accordance with subsection (a) shall
12 be made available to all State and local law enforcement
13 personnel.

14 (c) APPLICABILITY.—Nothing in this section shall be
15 construed to require State or local law enforcement per-
16 sonnel to carry the training manual or pocket guide with
17 them while on duty.

18 (d) COSTS.—The Secretary of Homeland Security
19 shall be responsible for any costs incurred in establishing
20 the training manual and pocket guide.

21 (e) TRAINING FLEXIBILITY.—

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

1 training at the Center for Domestic Preparedness,
2 onsite training held at State or local police agencies
3 or facilities, online training courses by computer,
4 teleconferencing, and videotape, or the digital video
5 display (DVD) of a training course or courses. E-
6 learning through a secure, encrypted distributed
7 learning system that has all its servers based in the
8 United States, is scalable, survivable, and can have
9 a portal in place not later than 30 days after the
10 date of the enactment of this Act, shall be made
11 available by the Federal Law Enforcement Training
12 Center Distributed Learning Program for State and
13 local law enforcement personnel.

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

18 (3) CLARIFICATION.—Nothing in this title or
19 any other provision of law shall be construed as
20 making any immigration-related training a require-
21 ment for, or prerequisite to, any State or local law
22 enforcement officer to assist in the enforcement of
23 Federal immigration laws in the normal course of
24 carrying out the normal law enforcement duties of
25 such officers.

1 In carrying out this section, priority funding shall be given
2 for existing web-based immigration enforcement training
3 systems.

4 **SEC. 910. IMMUNITY.**

5 (a) **PERSONAL IMMUNITY.**—Notwithstanding any
6 other provision of law, a law enforcement officer of a State
7 or local law enforcement agency who is acting within the
8 scope of the officer’s official duties shall be immune, to
9 the same extent as a Federal law enforcement officer,
10 from personal liability arising out of the performance of
11 any duty described in this title.

12 (b) **AGENCY IMMUNITY.**—Notwithstanding any other
13 provision of law, a State or local law enforcement agency
14 shall be immune from any claim for money damages based
15 on Federal, State, or local civil rights law for an incident
16 arising out of the enforcement of any immigration law,
17 except to the extent a law enforcement officer of such
18 agency committed a violation of Federal, State, or local
19 criminal law in the course of enforcing such immigration
20 law.

21 **SEC. 911. INSTITUTIONAL REMOVAL PROGRAM (IRP).**

22 (a) **CONTINUATION AND EXPANSION.**—

23 (1) **IN GENERAL.**—The Secretary of Homeland
24 Security shall continue to operate and implement the

1 program known as the Institutional Removal Pro-
2 gram (IRP) which—

3 (A) identifies removable criminal aliens in
4 Federal and State correctional facilities;

5 (B) ensures such aliens are not released
6 into the community; and

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

9 (2) EXPANSION.—The Institutional Removal
10 Program shall be extended to all States. Any State
11 that receives Federal funds for the incarceration of
12 criminal aliens shall—

13 (A) cooperate with officials of the Institu-
14 tional Removal Program;

15 (B) expeditiously and systematically iden-
16 tify criminal aliens in its prison and jail popu-
17 lations; and

18 (C) promptly convey such information to
19 officials of such Program as a condition of re-
20 ceiving such funds.

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

1 (1) hold a criminal alien for a period of up to
2 14 days after the alien has completed the alien's
3 State prison sentence in order to effectuate the
4 transfer of the alien to Federal custody when the
5 alien is removable or not lawfully present in the
6 United States; or

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

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

20 **Subtitle B—Eliminating Sanctuary** 21 **Cities**

22 **SEC. 921. ELIMINATING SANCTUARY CITIES.**

23 None of the funds made available for the Department
24 of Homeland Security or the Department of Justice may
25 be provided to any State or unit of local government that

1 has in effect any law, policy, or procedure in contravention
 2 of subsection (a) or (b) of section 642 of the Illegal Immi-
 3 gration Reform and Immigrant Responsibility Act of 1996
 4 (8 U.S.C. 1373).

5 **Subtitle C—Criminal Aliens**

6 **SEC. 931. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM** 7 **(SCAAP).**

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

10 “(5) There are authorized to be appropriated to
 11 carry out this subsection such sums as may be nec-
 12 essary for fiscal year 2010 and each subsequent fis-
 13 cal year.”.

14 **SEC. 932. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated to the Sec-
 16 retary for fiscal year 2010 and each subsequent fiscal year
 17 such sums as may be necessary to carry out this title.

18 **SEC. 933. ASSISTANCE FOR STATES INCARCERATING UN-** 19 **DOCUMENTED ALIENS CHARGED WITH CER-** 20 **TAIN CRIMES.**

21 Section 241(i)(3)(A) of the Immigration and Nation-
 22 ality Act (8 U.S.C. 1231(a)(3)(A)) is amended by insert-
 23 ing “charged with or” before “convicted”.

1 **SEC. 934. PREEMPTION.**

2 It is the sense of the Congress that States and local
3 political subdivisions are not preempted from the enact-
4 ment and enforcement of immigration-related laws and or-
5 dinances that do not directly conflict with Federal immi-
6 gration laws.

7 **TITLE X—PROHIBITING IN-**
8 **STATE TUITION FOR UNLAW-**
9 **FULLY PRESENT ALIENS**

10 **SEC. 1001. ENSURING ENFORCEABILITY.**

11 Section 505 of the Illegal Immigration Reform and
12 Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is
13 amended—

14 (1) in subsection (a)—

15 (A) by striking “on the basis of residence
16 within a State (or a political subdivision)”; and

17 (B) by striking “unless a citizen” and all
18 that follows through the period at the end and
19 inserting “unless every citizen or national of the
20 United States is entitled to such a benefit (in
21 no less an amount, duration, and scope) with-
22 out regard to whether the citizen or national is
23 a resident of the State or has attended or grad-
24 uated from a school in the State.”;

25 (2) by redesignating subsection (b) as sub-
26 section (c); and

1 (3) by inserting the following after subsection

2 (a):

3 “(b) ENFORCEMENT THROUGH CIVIL ACTION.—

4 “(1) IN GENERAL.—Any citizen or national of
5 the United States who is attending or is enrolled to
6 attend a postsecondary educational institution al-
7 leged to be in violation of subsection (a) may com-
8 mence a civil action on his own behalf against any
9 official of the State entity that governs such postsec-
10 ondary educational institutions or of the educational
11 institution itself to enforce the terms of subsection
12 (a).

13 “(2) RELIEF.—The court shall provide all ap-
14 propriate relief, including damages equal to the
15 monetary value of any benefit provided to an illegal
16 alien but denied to the citizen or national of the
17 United States, and shall award attorneys’ fees and
18 costs to a citizen or national of the United States
19 who establishes a violation of subsection (a) to the
20 satisfaction of the court.

21 “(3) AUTHORITY.—This subsection is enacted
22 pursuant to section 5 of the 14th amendment to the
23 Constitution of the United States.”.

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