

115TH CONGRESS  
2D SESSION

# H. R. 6204

To clarify standards of family detention and the treatment of unaccompanied alien children, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2018

Mr. SESSIONS (for himself, Mr. MEADOWS, Mr. GRIFFITH, Mr. FLORES, and Mr. POE of Texas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, 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

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## A BILL

To clarify standards of family detention and the treatment of unaccompanied alien children, and for other purposes.

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

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

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Families First Act of 2018”.

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

Sec. 1. Short title; table of contents.

TITLE I—UNACCOMPANIED ALIEN CHILDREN; INTERIOR  
IMMIGRATION ENFORCEMENT

- Sec. 1101. Repatriation of unaccompanied alien children.
- Sec. 1102. Clarification of standards for family detention.
- Sec. 1103. Detention of dangerous aliens.
- Sec. 1104. Definition of aggravated felony.
- Sec. 1105. Crime of violence.
- Sec. 1106. Grounds of inadmissibility and deportability for alien gang members.
- Sec. 1107. Special immigrant juvenile status for immigrants unable to reunite  
with either parent.
- Sec. 1108. Clarification of authority regarding determinations of convictions.
- Sec. 1109. Adding attempt and conspiracy to commit terrorism-related inadmis-  
sibility grounds acts to the definition of engaging in terrorist  
activity.
- Sec. 1110. Clarifying the authority of ice detainers.
- Sec. 1111. Department of Homeland Security access to crime information data-  
bases.
- Sec. 1112. Clarification of congressional intent.

TITLE II—ASYLUM REFORM

- Sec. 2101. Credible fear interviews.
- Sec. 2102. Jurisdiction of asylum applications.
- Sec. 2103. Recording expedited removal and credible fear interviews.
- Sec. 2104. Safe third country.
- Sec. 2105. Renunciation of asylum status pursuant to return to home country.
- Sec. 2106. Notice concerning frivolous asylum applications.
- Sec. 2107. Anti-fraud investigative work product.
- Sec. 2108. Penalties for asylum fraud.
- Sec. 2109. Statute of limitations for asylum fraud.
- Sec. 2110. Technical amendments.

TITLE III—IMMIGRATION JUDGES, FACILITIES, AND PERSONNEL

- Sec. 3101. Facilities for asylum applicants who retain custody of a child.
- Sec. 3102. Increasing the number of authorized immigration judges.
- Sec. 3103. Increasing the number of available Department of Homeland Secu-  
rity employees.

1 **TITLE I—UNACCOMPANIED**  
2 **ALIEN CHILDREN; INTERIOR**  
3 **IMMIGRATION ENFORCE-**  
4 **MENT**

5 **SEC. 1101. REPATRIATION OF UNACCOMPANIED ALIEN**  
6 **CHILDREN.**

7 (a) IN GENERAL.—Section 235 of the William Wil-  
8 berforce Trafficking Victims Protection Reauthorization  
9 Act of 2008 (8 U.S.C. 1232) is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (2)—

12 (i) by amending the heading to read  
13 as follows: “RULES FOR UNACCOMPANIED  
14 ALIEN CHILDREN.—”;

15 (ii) in subparagraph (A)—

16 (I) in the matter preceding clause  
17 (i), by striking “who is a national or  
18 habitual resident of a country that is  
19 contiguous with the United States”;

20 (II) in clause (i), by inserting  
21 “and” at the end;

22 (III) in clause (ii), by striking “;  
23 and” and inserting a period; and

24 (IV) by striking clause (iii);

25 (iii) in subparagraph (B)—

1 (I) in the matter preceding clause  
2 (i), by striking “(8 U.S.C. 1101 et  
3 seq.) may—” and inserting “(8  
4 U.S.C. 1101 et seq.)—”;

5 (II) in clause (i), by inserting be-  
6 fore “permit such child to withdraw”  
7 the following: “may”; and

8 (III) in clause (ii), by inserting  
9 before “return such child” the fol-  
10 lowing: “shall”; and

11 (iv) in subparagraph (C)—

12 (I) by amending the heading to  
13 read as follows: “AGREEMENTS WITH  
14 FOREIGN COUNTRIES.—”; and

15 (II) in the matter preceding  
16 clause (i), by striking “The Secretary  
17 of State shall negotiate agreements  
18 between the United States and coun-  
19 tries contiguous to the United States”  
20 and inserting “The Secretary of State  
21 may negotiate agreements between the  
22 United States and any foreign country  
23 that the Secretary determines appro-  
24 priate”;

1 (B) by redesignating paragraphs (3)  
2 through (5) as paragraphs (4) through (6), re-  
3 spectively, and inserting after paragraph (2) the  
4 following:

5 “(3) SPECIAL RULES FOR INTERVIEWING UNAC-  
6 COMPANIED ALIEN CHILDREN.—An unaccompanied  
7 alien child shall be interviewed by a dedicated U.S.  
8 Citizenship and Immigration Services immigration  
9 officer with specialized training in interviewing child  
10 trafficking victims. Such officer shall be in plain  
11 clothes and shall not carry a weapon. The interview  
12 shall occur in a private room.”; and

13 (C) in paragraph (6)(D) (as so redesign-  
14 nated)—

15 (i) in the matter preceding clause (i),  
16 by striking “, except for an unaccompanied  
17 alien child from a contiguous country sub-  
18 ject to exceptions under subsection (a)(2),”  
19 and inserting “who does not meet the cri-  
20 teria listed in paragraph (2)(A)”;

21 (ii) in clause (i), by inserting before  
22 the semicolon at the end the following: “,  
23 which shall include a hearing before an im-  
24 migration judge not later than 14 days  
25 after being screened under paragraph (4)”;

1 (2) in subsection (b)—

2 (A) in paragraph (2)—

3 (i) in subparagraph (A), by inserting  
4 before the semicolon the following: “be-  
5 lieved not to meet the criteria listed in sub-  
6 section (a)(2)(A)”;

7 (ii) in subparagraph (B), by inserting  
8 before the period the following: “and does  
9 not meet the criteria listed in subsection  
10 (a)(2)(A)”;

11 (B) in paragraph (3), by striking “an un-  
12 accompanied alien child in custody shall” and  
13 all that follows, and inserting the following: “an  
14 unaccompanied alien child in custody—

15 “(A) in the case of a child who does not  
16 meet the criteria listed in subsection (a)(2)(A),  
17 shall transfer the custody of such child to the  
18 Secretary of Health and Human Services not  
19 later than 30 days after determining that such  
20 child is an unaccompanied alien child who does  
21 not meet such criteria; or

22 “(B) in the case of child who meets the  
23 criteria listed in subsection (a)(2)(A), may  
24 transfer the custody of such child to the Sec-  
25 retary of Health and Human Services after de-

termining that such child is an unaccompanied alien child who meets such criteria.”; and

(3) in subsection (c)—

(A) in paragraph (3), by inserting at the end the following:

“(D) INFORMATION ABOUT INDIVIDUALS WITH WHOM CHILDREN ARE PLACED.—

“(i) INFORMATION TO BE PROVIDED TO HOMELAND SECURITY.—Before placing a child with an individual, the Secretary of Health and Human Services shall provide to the Secretary of Homeland Security, regarding the individual with whom the child will be placed, the following information:

“(I) The name of the individual.

“(II) The Social Security number of the individual, if available.

“(III) The date of birth of the individual.

“(IV) The location of the individual’s residence where the child will be placed.

“(V) The immigration status of the individual, if known.

1                   “(VI) Contact information for  
2                   the individual.

3                   “(ii) SPECIAL RULE.—In the case of a  
4                   child who was apprehended on or after the  
5                   effective date of this clause, and before the  
6                   date of the enactment of this subpara-  
7                   graph, who the Secretary of Health and  
8                   Human Services placed with an individual,  
9                   the Secretary shall provide the information  
10                  listed in clause (i) to the Secretary of  
11                  Homeland Security not later than 90 days  
12                  after such date of enactment.

13                  “(iii) ACTIVITIES OF SECRETARY OF  
14                  HOMELAND SECURITY.—Not later than 30  
15                  days after receiving the information listed  
16                  in clause (i), the Secretary of Homeland  
17                  Security shall—

18                         “(I) in the case that the immi-  
19                         gration status of an individual with  
20                         whom a child is placed is unknown,  
21                         investigate the immigration status of  
22                         that individual; and

23                         “(II) upon determining that an  
24                         individual with whom a child is placed  
25                         is unlawfully present in the United



1 States, initiate removal proceedings  
2 pursuant to chapter 4 of title II of the  
3 Immigration and Nationality Act (8  
4 U.S.C. 1221 et seq.).”; and

5 (B) in paragraph (5)—

6 (i) by inserting “(at no expense to the  
7 Government)” after “to the greatest extent  
8 practicable”; and

9 (ii) by striking “have counsel to rep-  
10 resent them” and inserting “have access to  
11 counsel to represent them”.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to any unauthorized alien child ap-  
14 prehended on or after the date of enactment.

15 **SEC. 1102. CLARIFICATION OF STANDARDS FOR FAMILY DE-**  
16 **TENTION.**

17 (a) IN GENERAL.—Section 235 of the William Wil-  
18 berforce Trafficking Victims Protection Reauthorization  
19 Act of 2008 (8 U.S.C. 1232) is amended by adding at  
20 the end the following:

21 “(j) CONSTRUCTION.—

22 “(1) IN GENERAL.—Notwithstanding any other  
23 provision of law, judicial determination, consent de-  
24 cree, or settlement agreement, the detention of any  
25 alien child who is not an unaccompanied alien child

1 shall be governed by sections 217, 235, 236, and  
2 241 of the Immigration and Nationality Act (8  
3 U.S.C. 1187, 1225, 1226, and 1231). There exists  
4 no presumption that an alien child who is not an un-  
5 accompanied alien child should not be detained, and  
6 all such determinations shall be in the discretion of  
7 the Secretary of Homeland Security.

8 “(2) RELEASE OF MINORS OTHER THAN UNAC-  
9 COMPANIED ALIENS.—In no circumstances shall an  
10 alien minor who is not an unaccompanied alien child  
11 be released by the Secretary of Homeland Security  
12 other than to a parent or legal guardian.

13 “(3) FAMILY DETENTION.—The Secretary of  
14 Homeland Security shall—

15 “(A) maintain the care and custody of an  
16 alien, during the period which the charges de-  
17 scribed in clause (i) are pending, who—

18 “(i) is charged only with a mis-  
19 demeanor offense under section 275(a) of  
20 the Immigration and Nationality Act (8  
21 U.S.C. 1325(a)); and

22 “(ii) entered the United States with  
23 the alien’s child who has not attained 18  
24 years of age; and

1 “(iii) detain the alien with the alien’s  
2 child.”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 subsection (a) shall take effect on the date of the enact-  
5 ment of this Act and shall apply to all actions that occur  
6 before, on, or after the date of the enactment of this Act.

7 (c) PREEMPTION OF STATE LICENSING REQUIRE-  
8 MENTS.—Notwithstanding any other provision of law, ju-  
9 dicial determination, consent decree, or settlement agree-  
10 ment, no State may require that an immigration detention  
11 facility used to detain children who have not attained 18  
12 years of age, families consisting of one or more such chil-  
13 dren and the parents or legal guardians of such children,  
14 that is located in that State, be licensed by the State or  
15 any political subdivision thereof.

16 **SEC. 1103. DETENTION OF DANGEROUS ALIENS.**

17 Section 241(a) of the Immigration and Nationality  
18 Act (8 U.S.C. 1231(a)) is amended—

19 (1) by striking “Attorney General” each place  
20 it appears, except for the first reference in para-  
21 graph (4)(B)(i), and inserting “Secretary of Home-  
22 land Security”;

23 (2) in paragraph (1), by amending subpara-  
24 graph (B) to read as follows:

1           “(B) BEGINNING OF PERIOD.—The re-  
2           moval period begins on the latest of the fol-  
3           lowing:

4                   “(i) The date the order of removal be-  
5                   comes administratively final.

6                   “(ii) If the alien is not in the custody  
7                   of the Secretary on the date the order of  
8                   removal becomes administratively final, the  
9                   date the alien is taken into such custody.

10                  “(iii) If the alien is detained or con-  
11                  fined (except under an immigration proc-  
12                  ess) on the date the order of removal be-  
13                  comes administratively final, the date the  
14                  alien is taken into the custody of the Sec-  
15                  retary, after the alien is released from such  
16                  detention or confinement.”;

17           (3) in paragraph (1), by amending subpara-  
18           graph (C) to read as follows:

19                   “(C) SUSPENSION OF PERIOD.—

20                   “(i) EXTENSION.—The removal period  
21                   shall be extended beyond a period of 90  
22                   days and the Secretary may, in the Sec-  
23                   retary’s sole discretion, keep the alien in  
24                   detention during such extended period if—

1 “(I) the alien fails or refuses to  
2 make all reasonable efforts to comply  
3 with the removal order, or to fully co-  
4 operate with the Secretary’s efforts to  
5 establish the alien’s identity and carry  
6 out the removal order, including mak-  
7 ing timely application in good faith  
8 for travel or other documents nec-  
9 essary to the alien’s departure or con-  
10 spires or acts to prevent the alien’s  
11 removal that is subject to an order of  
12 removal;

13 “(II) a court, the Board of Immi-  
14 gration Appeals, or an immigration  
15 judge orders a stay of removal of an  
16 alien who is subject to an administra-  
17 tively final order of removal;

18 “(III) the Secretary transfers  
19 custody of the alien pursuant to law  
20 to another Federal agency or a State  
21 or local government agency in connec-  
22 tion with the official duties of such  
23 agency; or

24 “(IV) a court or the Board of  
25 Immigration Appeals orders a remand

1 to an immigration judge or the Board  
2 of Immigration Appeals, during the  
3 time period when the case is pending  
4 a decision on remand (with the re-  
5 moval period beginning anew on the  
6 date that the alien is ordered removed  
7 on remand).

8 “(ii) RENEWAL.—If the removal pe-  
9 riod has been extended under subpara-  
10 graph (C)(i), a new removal period shall be  
11 deemed to have begun on the date—

12 “(I) the alien makes all reason-  
13 able efforts to comply with the re-  
14 moval order, or to fully cooperate with  
15 the Secretary’s efforts to establish the  
16 alien’s identity and carry out the re-  
17 moval order;

18 “(II) the stay of removal is no  
19 longer in effect; or

20 “(III) the alien is returned to the  
21 custody of the Secretary.

22 “(iii) MANDATORY DETENTION FOR  
23 CERTAIN ALIENS.—In the case of an alien  
24 described in subparagraphs (A) through  
25 (D) of section 236(c)(1), the Secretary

1           shall keep that alien in detention during  
2           the extended period described in clause (i).

3           “(iv) SOLE FORM OF RELIEF.—An  
4           alien may seek relief from detention under  
5           this subparagraph only by filing an appli-  
6           cation for a writ of habeas corpus in ac-  
7           cordance with chapter 153 of title 28,  
8           United States Code. No alien whose period  
9           of detention is extended under this sub-  
10          paragraph shall have the right to seek re-  
11          lease on bond.”;

12          (4) in paragraph (3)—

13                (A) by adding after “If the alien does not  
14                leave or is not removed within the removal pe-  
15                riod” the following: “or is not detained pursu-  
16                ant to paragraph (6) of this subsection”; and

17                (B) by striking subparagraph (D) and in-  
18                serting the following:

19                “(D) to obey reasonable restrictions on the  
20                alien’s conduct or activities that the Secretary  
21                prescribes for the alien, in order to prevent the  
22                alien from absconding, for the protection of the  
23                community, or for other purposes related to the  
24                enforcement of the immigration laws.”;

1 (5) in paragraph (4)(A), by striking “paragraph  
2 (2)” and inserting “subparagraph (B)”; and

3 (6) by striking paragraph (6) and inserting the  
4 following:

5 “(6) ADDITIONAL RULES FOR DETENTION OR  
6 RELEASE OF CERTAIN ALIENS.—

7 “(A) DETENTION REVIEW PROCESS FOR  
8 COOPERATIVE ALIENS ESTABLISHED.—For an  
9 alien who is not otherwise subject to mandatory  
10 detention, who has made all reasonable efforts  
11 to comply with a removal order and to cooper-  
12 ate fully with the Secretary of Homeland Secu-  
13 rity’s efforts to establish the alien’s identity and  
14 carry out the removal order, including making  
15 timely application in good faith for travel or  
16 other documents necessary to the alien’s depar-  
17 ture, and who has not conspired or acted to  
18 prevent removal, the Secretary shall establish  
19 an administrative review process to determine  
20 whether the alien should be detained or released  
21 on conditions. The Secretary shall make a de-  
22 termination whether to release an alien after  
23 the removal period in accordance with subpara-  
24 graph (B). The determination shall include con-  
25 sideration of any evidence submitted by the



1 alien, and may include consideration of any  
2 other evidence, including any information or as-  
3 sistance provided by the Secretary of State or  
4 other Federal official and any other information  
5 available to the Secretary of Homeland Security  
6 pertaining to the ability to remove the alien.

7 “(B) AUTHORITY TO DETAIN BEYOND RE-  
8 MOVAL PERIOD.—

9 “(i) IN GENERAL.—The Secretary of  
10 Homeland Security, in the exercise of the  
11 Secretary’s sole discretion, may continue to  
12 detain an alien for 90 days beyond the re-  
13 moval period (including any extension of  
14 the removal period as provided in para-  
15 graph (1)(C)). An alien whose detention is  
16 extended under this subparagraph shall  
17 have no right to seek release on bond.

18 “(ii) SPECIFIC CIRCUMSTANCES.—The  
19 Secretary of Homeland Security, in the ex-  
20 ercise of the Secretary’s sole discretion,  
21 may continue to detain an alien beyond the  
22 90 days authorized in clause (i)—

23 “(I) until the alien is removed, if  
24 the Secretary, in the Secretary’s sole

1 discretion, determines that there is a  
2 significant likelihood that the alien—

3 “(aa) will be removed in the  
4 reasonably foreseeable future; or

5 “(bb) would be removed in  
6 the reasonably foreseeable future,  
7 or would have been removed, but  
8 for the alien’s failure or refusal  
9 to make all reasonable efforts to  
10 comply with the removal order,  
11 or to cooperate fully with the  
12 Secretary’s efforts to establish  
13 the alien’s identity and carry out  
14 the removal order, including  
15 making timely application in  
16 good faith for travel or other doc-  
17 uments necessary to the alien’s  
18 departure, or conspires or acts to  
19 prevent removal;

20 “(II) until the alien is removed,  
21 if the Secretary of Homeland Security  
22 certifies in writing—

23 “(aa) in consultation with  
24 the Secretary of Health and  
25 Human Services, that the alien

1 has a highly contagious disease  
2 that poses a threat to public safe-  
3 ty;

4 “(bb) after receipt of a writ-  
5 ten recommendation from the  
6 Secretary of State, that release  
7 of the alien is likely to have seri-  
8 ous adverse foreign policy con-  
9 sequences for the United States;

10 “(cc) based on information  
11 available to the Secretary of  
12 Homeland Security (including  
13 classified, sensitive, or national  
14 security information, and without  
15 regard to the grounds upon  
16 which the alien was ordered re-  
17 moved), that there is reason to  
18 believe that the release of the  
19 alien would threaten the national  
20 security of the United States; or

21 “(dd) that the release of the  
22 alien will threaten the safety of  
23 the community or any person,  
24 conditions of release cannot rea-  
25 sonably be expected to ensure the

1 safety of the community or any  
2 person, and either (AA)—

3 “(AA) the alien has  
4 been convicted of (aaa) one  
5 or more aggravated felonies  
6 (as defined in section  
7 101(a)(43)(A)), (bbb) one or  
8 more crimes identified by  
9 the Secretary of Homeland  
10 Security by regulation, if the  
11 aggregate term of imprison-  
12 ment for such crimes is at  
13 least 5 years, or (ccc) one or  
14 more attempts or conspir-  
15 acies to commit any such  
16 aggravated felonies or such  
17 identified crimes, if the ag-  
18 gregate term of imprison-  
19 ment for such attempts or  
20 conspiracies is at least 5  
21 years; or

22 “(BB) the alien has  
23 committed one or more vio-  
24 lent crimes (as referred to in  
25 section 101(a)(43)(F), but

1 not including a purely polit-  
2 ical offense) and, because of  
3 a mental condition or per-  
4 sonality disorder and behav-  
5 ior associated with that con-  
6 dition or disorder, the alien  
7 is likely to engage in acts of  
8 violence in the future; or

9 “(III) pending a certification  
10 under subclause (II), so long as the  
11 Secretary of Homeland Security has  
12 initiated the administrative review  
13 process not later than 30 days after  
14 the expiration of the removal period  
15 (including any extension of the re-  
16 moval period, as provided in para-  
17 graph (1)(C)).

18 “(iii) NO RIGHT TO BOND HEARING.—  
19 An alien whose detention is extended under  
20 this subparagraph shall have no right to  
21 seek release on bond, including by reason  
22 of a certification under clause (ii)(II).

23 “(C) RENEWAL AND DELEGATION OF CER-  
24 TIFICATION.—

1           “(i) RENEWAL.—The Secretary of  
2 Homeland Security may renew a certifi-  
3 cation under subparagraph (B)(ii)(II)  
4 every 6 months, after providing an oppor-  
5 tunity for the alien to request reconsider-  
6 ation of the certification and to submit  
7 documents or other evidence in support of  
8 that request. If the Secretary does not  
9 renew a certification, the Secretary may  
10 not continue to detain the alien under sub-  
11 paragraph (B)(ii)(II).

12           “(ii) DELEGATION.—Notwithstanding  
13 section 103, the Secretary of Homeland  
14 Security may not delegate the authority to  
15 make or renew a certification described in  
16 item (bb), (cc), or (dd) of subparagraph  
17 (B)(ii)(II) below the level of the Director  
18 of Immigration and Customs Enforcement.

19           “(iii) HEARING.—The Secretary of  
20 Homeland Security may request that the  
21 Attorney General or the Attorney General’s  
22 designee provide for a hearing to make the  
23 determination described in item (dd)(BB)  
24 of subparagraph (B)(ii)(II).

1           “(D) RELEASE ON CONDITIONS.—If it is  
2           determined that an alien should be released  
3           from detention by a Federal court, the Board of  
4           Immigration Appeals, or if an immigration  
5           judge orders a stay of removal, the Secretary of  
6           Homeland Security, in the exercise of the Sec-  
7           retary’s discretion, may impose conditions on  
8           release as provided in paragraph (3).

9           “(E) REDETENTION.—The Secretary of  
10          Homeland Security, in the exercise of the Sec-  
11          retary’s discretion, without any limitations  
12          other than those specified in this section, may  
13          again detain any alien subject to a final re-  
14          moval order who is released from custody, if re-  
15          moval becomes likely in the reasonably foresee-  
16          able future, the alien fails to comply with the  
17          conditions of release, or to continue to satisfy  
18          the conditions described in subparagraph (A),  
19          or if, upon reconsideration, the Secretary, in  
20          the Secretary’s sole discretion, determines that  
21          the alien can be detained under subparagraph  
22          (B). This section shall apply to any alien re-  
23          turned to custody pursuant to this subpara-  
24          graph, as if the removal period terminated on  
25          the day of the redetention.

1                   “(F) REVIEW OF DETERMINATIONS BY  
2                   SECRETARY.—A determination by the Secretary  
3                   under this paragraph shall not be subject to re-  
4                   view by any other agency.”.

5 **SEC. 1104. DEFINITION OF AGGRAVATED FELONY.**

6           (a) IN GENERAL.—Section 101(a)(43) of the Immi-  
7           gration and Nationality Act (8 U.S.C. 1101(a)(43)) is  
8           amended to read as follows:

9                   “(43) Notwithstanding any other provision of  
10           law, the term ‘aggravated felony’ means any offense,  
11           whether in violation of Federal, State, or foreign  
12           law, that is described in this paragraph. An offense  
13           described in this paragraph is—

14                   “(A) homicide (including murder in any  
15           degree, manslaughter, and vehicular man-  
16           slaughter), rape (whether the victim was con-  
17           scious or unconscious), statutory rape, sexual  
18           assault or battery, or any offense of a sexual  
19           nature involving an intended victim under the  
20           age of 18 years (including offenses in which the  
21           intended victim was a law enforcement officer);

22                   “(B)(i) illicit trafficking in a controlled  
23           substance (as defined in section 102 of the Con-  
24           trolled Substances Act), including a drug traf-



1           ficking crime (as defined in section 924(c) of  
2           title 18, United States Code); or

3           “(ii) any offense under State law relating  
4           to a controlled substance (as so classified under  
5           State law) which is classified as a felony in that  
6           State regardless of whether the substance is  
7           classified as a controlled substance under sec-  
8           tion 102 of the Controlled Substances Act (21  
9           U.S.C. 802);

10          “(C) illicit trafficking in firearms or de-  
11          structive devices (as defined in section 921 of  
12          title 18, United States Code) or in explosive  
13          materials (as defined in section 841(c) of that  
14          title);

15          “(D) an offense described in section 1956  
16          of title 18, United States Code (relating to  
17          laundering of monetary instruments) or section  
18          1957 of that title (relating to engaging in mon-  
19          etary transactions in property derived from spe-  
20          cific unlawful activity) if the amount of the  
21          funds exceeded \$10,000;

22          “(E) an offense described in—

23               “(i) section 842 or 844 of title 18,  
24               United States Code (relating to explosive  
25               materials offenses);

1 “(ii) section 922 or 924 of title 18,  
2 United States Code (relating to firearms  
3 offenses); or

4 “(iii) section 5861 of the Internal  
5 Revenue Code of 1986 (relating to fire-  
6 arms offenses);

7 “(F) a violent crime for which the term of  
8 imprisonment is at least 1 year, including—

9 “(i) any offense that has an element  
10 the use, attempted use, or threatened use  
11 of physical force against the person or  
12 property of another; or

13 “(ii) any other offense in which the  
14 record of conviction establishes that the of-  
15 fender used physical force against the per-  
16 son or property of another in the course of  
17 committing the offense;

18 “(G)(i) theft (including theft by deceit,  
19 theft by fraud, embezzlement, motor vehicle  
20 theft, unauthorized use of a vehicle, or receipt  
21 of stolen property), regardless of whether the  
22 intended deprivation was temporary or perma-  
23 nent, for which the term of imprisonment is at  
24 least 1 year; or

1           “(ii) burglary for which the term of impris-  
2           onment is at least 1 year;

3           “(H) an offense described in section 875,  
4           876, 877, or 1202 of title 18, United States  
5           Code (relating to the demand for or receipt of  
6           ransom);

7           “(I) an offense involving child pornography  
8           or sexual exploitation of a minor (including any  
9           offense described in section 2251, 2251A, or  
10          2252 of title 18, United States Code);

11          “(J) an offense described in section 1962  
12          of title 18, United States Code (relating to  
13          racketeer influenced corrupt organizations), or  
14          an offense described in section 1084 (if it is a  
15          second or subsequent offense) or 1955 of that  
16          title (relating to gambling offenses);

17          “(K) an offense that—

18                 “(i) relates to the owning, controlling,  
19                 managing, or supervising of a prostitution  
20                 business;

21                 “(ii) is described in section 2421,  
22                 2422, or 2423 of title 18, United States  
23                 Code (relating to transportation for the  
24                 purpose of prostitution) if committed for  
25                 commercial advantage; or

1 “(iii) is described in any of sections  
2 1581–1585 or 1588–1591 of title 18,  
3 United States Code (relating to peonage,  
4 slavery, involuntary servitude, and traf-  
5 ficking in persons);

6 “(L) an offense described in—

7 “(i) section 793 (relating to gathering  
8 or transmitting national defense informa-  
9 tion), 798 (relating to disclosure of classi-  
10 fied information), 2153 (relating to sabo-  
11 tage) or 2381 or 2382 (relating to treason)  
12 of title 18, United States Code;

13 “(ii) section 601 of the National Secu-  
14 rity Act of 1947 (50 U.S.C. 421) (relating  
15 to protecting the identity of undercover in-  
16 telligence agents);

17 “(iii) section 601 of the National Se-  
18 curity Act of 1947 (relating to protecting  
19 the identity of undercover agents);

20 “(iv) section 175 (relating to biologi-  
21 cal weapons) of title 18, United States  
22 Code;

23 “(v) sections 792 (harboring or con-  
24 cealing persons who violated sections 793  
25 or 794 of title 18, United States Code),

1 794 (gathering or delivering defense infor-  
2 mation to aid foreign government), 795  
3 (photographing and sketching defense in-  
4 stallations), 796 (use of aircraft for  
5 photographing defense installations), 797  
6 (publication and sale of photographs of de-  
7 fense installations), 799 (violation of  
8 NASA regulations for protection of facili-  
9 ties) of title 18, United States Code;

10 “(vi) sections 831 (prohibited trans-  
11 actions involving nuclear materials) and  
12 832 (participation in nuclear and weapons  
13 of mass destruction threats to the United  
14 States) of title 18, United States Code;

15 “(vii) sections 2332a–d, f–h (relating  
16 to terrorist activities) of title 18, United  
17 States Code;

18 “(viii) sections 2339 (relating to har-  
19 boring or concealing terrorists), 2339A (re-  
20 lating to material support to terrorists),  
21 2339B (relating to material support or re-  
22 sources to designated foreign terrorist or-  
23 ganizations), 2339C (relating to financing  
24 of terrorism), 2339D (relating to receiving

1 military-type training from a terrorist or-  
2 ganization) of title 18, United States Code;

3 “(ix) section 1705 of the International  
4 Emergency Economic Powers Act (50  
5 U.S.C. 1705); or

6 “(x) section 38 of the Arms Export  
7 Control Act (22 U.S.C. 2778);

8 “(M) an offense that—

9 “(i) involves fraud or deceit in which  
10 the loss to the victim or victims exceeds  
11 \$10,000; or

12 “(ii) is described in section 7201 of  
13 the Internal Revenue Code of 1986 (relat-  
14 ing to tax evasion) in which the revenue  
15 loss to the Government exceeds \$10,000;

16 “(N) an offense described in section 274(a)  
17 (relating to alien smuggling);

18 “(O) an offense described in section 275 or  
19 276 for which the term of imprisonment is at  
20 least 1 year;

21 “(P) an offense which is described in chap-  
22 ter 75 of title 18, United States Code, and for  
23 which the term of imprisonment is at least 1  
24 year;

1           “(Q) an offense relating to a failure to ap-  
2           pear by a defendant for service of sentence if  
3           the underlying offense is punishable by impris-  
4           onment for a term of 5 years or more;

5           “(R) an offense relating to commercial  
6           bribery, counterfeiting, forgery, or trafficking in  
7           vehicles the identification numbers of which  
8           have been altered for which the term of impris-  
9           onment is at least one year;

10          “(S) an offense relating to obstruction of  
11          justice, perjury or subornation of perjury, or  
12          bribery of a witness;

13          “(T) an offense relating to a failure to ap-  
14          pear before a court pursuant to a court order  
15          to answer to or dispose of a charge of a felony  
16          for which a sentence of 2 years’ imprisonment  
17          or more may be imposed;

18          “(U) any offense for which the term of im-  
19          prisonment imposed was 2 years or more;

20          “(V) an offense relating to terrorism or  
21          national security (including a conviction for a  
22          violation of any provision of chapter 113B of  
23          title 18, United States Code); or

24          “(W)(i) a single conviction for driving  
25          while intoxicated (including a conviction for

1 driving while under the influence of or impair-  
2 ment by alcohol or drugs), when such impaired  
3 driving was a cause of the serious bodily injury  
4 or death of another person; or

5 “(ii) a second or subsequent conviction for  
6 driving while intoxicated (including a conviction  
7 for driving under the influence of or impaired  
8 by alcohol or drugs); or

9 “(X) an attempt or conspiracy to commit  
10 an offense described in this paragraph or aid-  
11 ing, abetting, counseling, procuring, command-  
12 ing, inducing, facilitating, or soliciting the com-  
13 mission of such an offense.

14 Any determinations under this paragraph shall be  
15 made on the basis of the record of conviction. For  
16 purposes of this paragraph, a person shall be consid-  
17 ered to have committed an aggravated felony if that  
18 person has been convicted for 3 or more mis-  
19 demeanors not arising out the traffic laws (except  
20 for any conviction for driving under the influence or  
21 an offense that results in the death or serious bodily  
22 injury of another person) or felonies for which the  
23 aggregate term of imprisonment imposed was 3  
24 years or more, regardless of whether the convictions  
25 were all entered pursuant to a single trial or the of-



1       fenses arose from a single pattern or scheme of con-  
2       duct.”.

3       (b) EFFECTIVE DATE; APPLICATION OF AMEND-  
4       MENTS.—

5           (1) IN GENERAL.—The amendments made by  
6       subsection (a)—

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

9           (B) shall apply to any act or conviction  
10       that occurred before, on, or after such date.

11       (2) APPLICATION OF IIRIRA AMENDMENTS.—

12       The amendments to section 101(a)(43) of the Immi-  
13       gration and Nationality Act (8 U.S.C. 1101(a)(43))  
14       made by section 321 of the Illegal Immigration Re-  
15       form and Immigrant Responsibility Act of 1996 (di-  
16       vision C of Public Law 104–208; 110 Stat. 3009–  
17       627) shall continue to apply, whether the conviction  
18       was entered before, on, or after September 30, 1996.

19       **SEC. 1105. CRIME OF VIOLENCE.**

20       Section 16 of title 18, United States Code, is amend-  
21       ed to read as follows:

22       **“§ 16. Crime of violence defined**

23       “(a) The term ‘crime of violence’ means an offense  
24       that—

1           “(1)(A) is murder, voluntary manslaughter, as-  
2           sault, sexual abuse or aggravated sexual abuse, abu-  
3           sive sexual contact, child abuse, kidnapping, robbery,  
4           carjacking, firearms use, burglary, arson, extortion,  
5           communication of threats, coercion, unauthorized  
6           use of a vehicle, fleeing, interference with flight crew  
7           members and attendants, domestic violence, hostage  
8           taking, stalking, human trafficking, or using weap-  
9           ons of mass destruction; or

10           “(B) involves use or unlawful possession of ex-  
11           plosives or destructive devices described in 5845(f)  
12           of the Internal Revenue Code of 1986;

13           “(2) has as an element the use, attempted use,  
14           or threatened use of physical force against the per-  
15           son or property of another; or

16           “(3) is an attempt to commit, conspiracy to  
17           commit, solicitation to commit, or aiding and abet-  
18           ting any of the offenses set forth in paragraphs (1)  
19           and (2).

20           “(b) In this section:

21           “(1) The term ‘abusive sexual contact’ means  
22           conduct described in section 2244(a)(1) and (a)(2).

23           “(2) The terms ‘aggravated sexual abuse’ and  
24           ‘sexual abuse’ mean conduct described in sections  
25           2241 and 2242. For purposes of such conduct, the

1 term ‘sexual act’ means conduct described in section  
2 2246(2), or the knowing and lewd exposure of geni-  
3 talia or masturbation, to any person, with an intent  
4 to abuse, humiliate, harass, degrade, or arouse or  
5 gratify the sexual desire of any person.

6 “(3) The term ‘assault’ means conduct de-  
7 scribed in section 113(a), and includes conduct com-  
8 mitted recklessly, knowingly, or intentionally.

9 “(4) The term ‘arson’ means conduct described  
10 in section 844(i) or unlawfully or willfully damaging  
11 or destroying any building, inhabited structure, vehi-  
12 cle, vessel, or real property by means of fire or ex-  
13 plosive.

14 “(5) The term ‘burglary’ means an unlawful or  
15 unprivileged entry into, or remaining in, a building  
16 or structure, including any nonpermanent or mobile  
17 structure that is adapted or used for overnight ac-  
18 commodation or for the ordinary carrying on of busi-  
19 ness, and, either before or after entering, the per-  
20 son—

21 “(A) forms the intent to commit a crime;

22 or

23 “(B) commits or attempts to commit a  
24 crime.

1           “(6) The term ‘carjacking’ means conduct de-  
2       scribed in section 2119, or the unlawful taking of a  
3       motor vehicle from the immediate actual possession  
4       of a person against his will, by means of actual or  
5       threatened force, or violence or intimidation, or by  
6       sudden or stealthy seizure or snatching, or fear of  
7       injury.

8           “(7) The term ‘child abuse’ means the unlawful  
9       infliction of physical injury or the commission of any  
10      sexual act against a child under fourteen by any per-  
11      son eighteen years of age or older.

12          “(8) The term ‘communication of threats’  
13      means conduct described in section 844(e), or the  
14      transmission of any communications containing any  
15      threat of use of violence to—

16           “(A) demand or request for a ransom or  
17           reward for the release of any kidnapped person;  
18           or

19           “(B) threaten to kidnap or injure the per-  
20           son of another.

21          “(9) The term ‘coercion’ means causing the  
22      performance or non-performance of any act by an-  
23      other person which under such other person has a  
24      legal right to do or to abstain from doing, through  
25      fraud or by the use of actual or threatened force, vi-

1       olence, or fear thereof, including the use, or an ex-  
2       press or implicit threat of use, of violence to cause  
3       harm, or threats to cause injury to the person, rep-  
4       utation or property of any person.

5               “(10) The term ‘domestic violence’ means any  
6       assault committed by a current or former spouse,  
7       parent, or guardian of the victim, by a person with  
8       whom the victim shares a child in common, by a per-  
9       son who is cohabiting with or has cohabited with the  
10      victim as a spouse, parent, or guardian, or by a per-  
11      son similarly situated to a spouse, parent, or guard-  
12      ian of the victim.

13              “(11) The term ‘extortion’ means conduct de-  
14      scribed in section 1951(b)(2)), but not extortion  
15      under color of official right or fear of economic loss.

16              “(12) The term ‘firearms use’ means conduct  
17      described in section 924(c) or 929(a), if the firearm  
18      was brandished, discharged, or otherwise possessed,  
19      carried, or used as a weapon and the crime of vio-  
20      lence or drug trafficking crime during and in rela-  
21      tion to which the firearm was possessed, carried, or  
22      used was subject to prosecution in any court of the  
23      United States, State court, military court or tri-  
24      bunal, or tribal court. Such term also includes un-  
25      lawfully possessing a firearm described in section

1       5845(a) of the Internal Revenue Code of 1986 (such  
2       as a sawed-off shotgun or sawed-off rifle, silencer,  
3       bomb, or machine gun), possession of a firearm de-  
4       scribed in section 922(g)(1), 922(g)(2) and  
5       922(g)(4), possession of a firearm with the intent to  
6       use such firearm unlawfully, or reckless discharge of  
7       a firearm at a dwelling.

8               “(13) The term ‘fleeing’ means knowingly oper-  
9       ating a motor vehicle and, following a law enforce-  
10      ment officer’s signal to bring the motor vehicle to a  
11      stop—

12                   “(A) failing or refusing to comply; or

13                   “(B) fleeing or attempting to elude a law  
14      enforcement officer.

15               “(14) The term ‘force’ means the level of force  
16      needed or intended to overcome resistance.

17               “(15) The term ‘hostage taking’ means conduct  
18      described in section 1203.

19               “(16) The term ‘human trafficking’ means con-  
20      duct described in section 1589, 1590, and 1591.

21               “(17) The term ‘interference with flight crew  
22      members and attendants’ means conduct described  
23      in section 46504 of title 49, United States Code.

24               “(18) The term ‘kidnapping’ means conduct de-  
25      scribed in section 1201(a)(1) or seizing, confining,

1        inveigling, decoying, abducting, or carrying away  
2        and holding for ransom or reward or otherwise any  
3        person.

4            “(19) The term ‘murder’ means conduct de-  
5        scribed as murder in the first degree or murder in  
6        the second degree described in section 1111.

7            “(20) The term ‘robbery’ means conduct de-  
8        scribed in section 1951(b)(1), or the unlawful taking  
9        or obtaining of personal property from the person or  
10       in the presence of another, against his will, by  
11       means of actual or threatened force, or violence or  
12       intimidation, or by sudden or stealthy seizure or  
13       snatching, or fear of injury, immediate or future, to  
14       his person or property, or property in his custody or  
15       possession, or the person or property of a relative or  
16       member of his family or of anyone in his company  
17       at the time of the taking or obtaining.

18           “(21) The term ‘stalking’ means conduct de-  
19       scribed in section 2261A.

20           “(22) The term ‘unauthorized use of a motor  
21       vehicle’ means the intentional or knowing operation  
22       of another person’s boat, airplane, or motor vehicle  
23       without the consent of the owner.

24           “(23) The term ‘using weapons of mass de-  
25       struction’ means conduct described in section 2332a.

1           “(24) The term ‘voluntary manslaughter’  
2           means conduct described in section 1112(a).

3           “(c) For purposes of this section, in the case of any  
4 reference in subsection (b) to an offense under this title,  
5 such reference shall include conduct that constitutes an  
6 offense under State or tribal law or under the Uniform  
7 Code of Military Justice, if such conduct would be an of-  
8 fense under this title if a circumstance giving rise to Fed-  
9 eral jurisdiction had existed.”.

10 **SEC. 1106. GROUNDS OF INADMISSIBILITY AND DEPORT-**  
11 **ABILITY FOR ALIEN GANG MEMBERS.**

12           (a) DEFINITION OF GANG MEMBER.—Section 101(a)  
13 of the Immigration and Nationality Act (8 U.S.C.  
14 1101(a)) is amended by inserting after paragraph (52) the  
15 following:

16           “(53)(A) The term ‘criminal gang’ means an ongoing  
17 group, club, organization, or association of 5 or more per-  
18 sons—

19           “(i) that has as one of its primary purposes the  
20 commission of 1 or more of the criminal offenses de-  
21 scribed in subparagraph (B) and the members of  
22 which engage, or have engaged within the past 5  
23 years, in a continuing series of such offenses; or

24           “(ii) that has been designated as a criminal  
25 gang by the Secretary of Homeland Security, in con-



1 sultation with the Attorney General, as meeting  
2 these criteria.

3 “(B) The offenses described, whether in violation of  
4 Federal or State law or foreign law and regardless of  
5 whether the offenses occurred before, on, or after the date  
6 of the enactment of this paragraph, are the following:

7 “(i) A ‘felony drug offense’ (as defined in sec-  
8 tion 102 of the Controlled Substances Act (21  
9 U.S.C. 802)).

10 “(ii) A felony offense involving firearms or ex-  
11 plosives or in violation of section 931 of title 18,  
12 United States Code (relating to purchase, ownership,  
13 or possession of body armor by violent felons).

14 “(iii) An offense under section 274 (relating to  
15 bringing in and harboring certain aliens), section  
16 277 (relating to aiding or assisting certain aliens to  
17 enter the United States), or section 278 (relating to  
18 importation of alien for immoral purpose), except  
19 that this clause does not apply in the case of an or-  
20 ganization described in section 501(c)(3) of the In-  
21 ternal Revenue Code of 1986 (26 U.S.C. 501(c)(3))  
22 which is exempt from taxation under section 501(a)  
23 of such Code.

24 “(iv) A violent crime described in section  
25 101(a)(43)(F).

1           “(v) A crime involving obstruction of justice,  
2           tampering with or retaliating against a witness, vic-  
3           tim, or informant, or perjury or subornation of per-  
4           jury.

5           “(vi) Any conduct punishable under sections  
6           1028A and 1029 of title 18, United States Code (re-  
7           lating to aggravated identity theft or fraud and re-  
8           lated activity in connection with identification docu-  
9           ments or access devices), sections 1581 through  
10          1594 of such title (relating to peonage, slavery, and  
11          trafficking in persons), section 1951 of such title  
12          (relating to interference with commerce by threats or  
13          violence), section 1952 of such title (relating to  
14          interstate and foreign travel or transportation in aid  
15          of racketeering enterprises), section 1956 of such  
16          title (relating to the laundering of monetary instru-  
17          ments), section 1957 of such title (relating to engag-  
18          ing in monetary transactions in property derived  
19          from specified unlawful activity), or sections 2312  
20          through 2315 of such title (relating to interstate  
21          transportation of stolen motor vehicles or stolen  
22          property).

23          “(vii) An attempt or conspiracy to commit an  
24          offense described in this paragraph or aiding, abet-  
25          ting, counseling, procuring, commanding, inducing,

1       facilitating, or soliciting the commission of an of-  
2       fense described in clauses (i) through (vi).”.

3       (b) INADMISSIBILITY.—Section 212(a)(2) of such Act  
4       (8 U.S.C. 1182(a)(2)) is amended—

5               (1) in subparagraph (A)(i)—

6                       (A) in subclause (I), by striking “or” at  
7                       the end; and

8                       (B) by inserting after subclause (II) the  
9                       following:

10                               “(III) a violation of (or a con-  
11                               spiracy or attempt to violate) any law  
12                               or regulation of a State, the United  
13                               States, or a foreign country relating  
14                               to participation or membership in a  
15                               criminal gang, or

16                               “(IV) any felony or misdemeanor  
17                               offense for which the alien received a  
18                               sentencing enhancement predicated on  
19                               gang membership or conduct that pro-  
20                               moted, furthered, aided, or supported  
21                               the illegal activity of the criminal  
22                               gang,”; and

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

24                       “(N) ALIENS ASSOCIATED WITH CRIMINAL  
25                       GANGS.—

1                   “(i)   ALIENS   NOT   PHYSICALLY  
2                   PRESENT IN THE UNITED STATES.—In the  
3                   case of an alien who is not physically  
4                   present in the United States:

5                   “(I) That alien is inadmissible if  
6                   a consular officer, an immigration of-  
7                   ficer, the Secretary of Homeland Se-  
8                   curity, or the Attorney General knows  
9                   or has reason to believe—

10                   “(aa) to be or to have been  
11                   a member of a criminal gang (as  
12                   defined in section 101(a)(53)); or

13                   “(bb) to have participated in  
14                   the activities of a criminal gang  
15                   (as    defined    in    section  
16                   101(a)(53)), knowing or having  
17                   reason to know that such activi-  
18                   ties will promote, further, aid, or  
19                   support the illegal activity of the  
20                   criminal gang.

21                   “(II) That alien is inadmissible if  
22                   a consular officer, an immigration of-  
23                   ficer, the Secretary of Homeland Se-  
24                   curity, or the Attorney General has  
25                   reasonable grounds to believe the alien

1 has participated in, been a member of,  
2 promoted, or conspired with a crimi-  
3 nal gang, either inside or outside of  
4 the United States.

5 “(III) That alien is inadmissible  
6 if a consular officer, an immigration  
7 officer, the Secretary of Homeland Se-  
8 curity, or the Attorney General has  
9 reasonable grounds to believe seeks to  
10 enter the United States or has en-  
11 tered the United States in furtherance  
12 of the activities of a criminal gang, ei-  
13 ther inside or outside of the United  
14 States.

15 “(ii) ALIENS PHYSICALLY PRESENT IN THE  
16 UNITED STATES.—In the case of an alien who  
17 is physically present in the United States, that  
18 alien is inadmissible if the alien—

19 “(I) is a member of a criminal gang  
20 (as defined in section 101(a)(53)); or

21 “(II) has participated in the activities  
22 of a criminal gang (as defined in section  
23 101(a)(53)), knowing or having reason to  
24 know that such activities will promote, fur-

1                   ther, aid, or support the illegal activity of  
2                   the criminal gang.”.

3           (c) DEPORTABILITY.—Section 237(a)(2) of the Im-  
4 migration and Nationality Act (8 U.S.C. 1227(a)(2)) is  
5 amended by adding at the end the following:

6                   “(H) ALIENS ASSOCIATED WITH CRIMINAL  
7 GANGS.—Any alien is deportable who—

8                   “(i) is or has been a member of a  
9 criminal gang (as defined in section  
10 101(a)(53));

11                   “(ii) has participated in the activities  
12 of a criminal gang (as so defined), knowing  
13 or having reason to know that such activi-  
14 ties will promote, further, aid, or support  
15 the illegal activity of the criminal gang;

16                   “(iii) has been convicted of a violation  
17 of (or a conspiracy or attempt to violate)  
18 any law or regulation of a State, the  
19 United States, or a foreign country relat-  
20 ing to participation or membership in a  
21 criminal gang; or

22                   “(iv) any felony or misdemeanor of-  
23 fense for which the alien received a sen-  
24 tencing enhancement predicated on gang  
25 membership or conduct that promoted,

1 furthered, aided, or supported the illegal  
2 activity of the criminal gang.”.

3 (d) DESIGNATION.—

4 (1) IN GENERAL.—Chapter 2 of title II of the  
5 Immigration and Nationality Act (8 U.S.C. 1182) is  
6 amended by inserting after section 219 the fol-  
7 lowing:

8 “DESIGNATION OF CRIMINAL GANG

9 “SEC. 220.

10 “(a) DESIGNATION.—

11 “(1) IN GENERAL.—The Secretary of Homeland Se-  
12 curity, in consultation with the Attorney General, may  
13 designate a group, club, organization, or association of 5  
14 or more persons as a criminal gang if the Secretary finds  
15 that their conduct is described in section 101(a)(53).

16 “(2) PROCEDURE.—

17 “(A) NOTIFICATION.—Seven days before mak-  
18 ing a designation under this subsection, the Sec-  
19 retary shall, by classified communication, notify the  
20 Speaker and Minority Leader of the House of Rep-  
21 resentatives, the President pro tempore, Majority  
22 Leader, and Minority Leader of the Senate, and the  
23 members of the relevant committees of the House of  
24 Representatives and the Senate, in writing, of the  
25 intent to designate a group, club, organization, or

1       association of 5 or more persons under this sub-  
2       section and the factual basis therefor.

3               “(B) PUBLICATION IN THE FEDERAL REG-  
4       ISTER.—The Secretary shall publish the designation  
5       in the Federal Register seven days after providing  
6       the notification under subparagraph (A).

7       “(3) RECORD.—

8               “(A) IN GENERAL.—In making a designation  
9       under this subsection, the Secretary shall create an  
10       administrative record.

11              “(B) CLASSIFIED INFORMATION.—The Sec-  
12       retary may consider classified information in making  
13       a designation under this subsection. Classified infor-  
14       mation shall not be subject to disclosure for such  
15       time as it remains classified, except that such infor-  
16       mation may be disclosed to a court ex parte and in  
17       camera for purposes of judicial review under sub-  
18       section (c).

19       “(4) PERIOD OF DESIGNATION.—

20              “(A) IN GENERAL.—A designation under this  
21       subsection shall be effective for all purposes until re-  
22       voked under paragraph (5) or (6) or set aside pursu-  
23       ant to subsection (c).

24              “(B) REVIEW OF DESIGNATION UPON PETI-  
25       TION.—



1           “(i) IN GENERAL.—The Secretary shall re-  
2           view the designation of a criminal gang under  
3           the procedures set forth in clauses (iii) and (iv)  
4           if the designated group, club, organization, or  
5           association of 5 or more persons files a petition  
6           for revocation within the petition period de-  
7           scribed in clause (ii).

8           “(ii) PETITION PERIOD.—For purposes of  
9           clause (i)—

10           “(I) if the designated group, club, or-  
11           ganization, or association of 5 or more per-  
12           sons has not previously filed a petition for  
13           revocation under this subparagraph, the  
14           petition period begins 2 years after the  
15           date on which the designation was made;  
16           or

17           “(II) if the designated group, club, or-  
18           ganization, or association of 5 or more per-  
19           sons has previously filed a petition for rev-  
20           ocation under this subparagraph, the peti-  
21           tion period begins 2 years after the date of  
22           the determination made under clause (iv)  
23           on that petition.

24           “(iii) PROCEDURES.—Any group, club, or-  
25           ganization, or association of 5 or more persons

1           that submits a petition for revocation under  
2           this subparagraph of its designation as a crimi-  
3           nal gang must provide evidence in that petition  
4           that it is not described in section 101(a)(53).

5           “(iv) DETERMINATION.—

6                   “(I) IN GENERAL.—Not later than  
7                   180 days after receiving a petition for rev-  
8                   ocation submitted under this subpara-  
9                   graph, the Secretary shall make a deter-  
10                  mination as to such revocation.

11                  “(II) CLASSIFIED INFORMATION.—

12                  The Secretary may consider classified in-  
13                  formation in making a determination in re-  
14                  sponse to a petition for revocation. Classi-  
15                  fied information shall not be subject to dis-  
16                  closure for such time as it remains classi-  
17                  fied, except that such information may be  
18                  disclosed to a court ex parte and in camera  
19                  for purposes of judicial review under sub-  
20                  section (c).

21                  “(III) PUBLICATION OF DETERMINA-  
22                  TION.—A determination made by the Sec-  
23                  retary under this clause shall be published  
24                  in the Federal Register.

1                   “(IV) PROCEDURES.—Any revocation  
2                   by the Secretary shall be made in accord-  
3                   ance with paragraph (6).

4                   “(C) OTHER REVIEW OF DESIGNATION.—

5                   “(i) IN GENERAL.—If in a 5-year period no  
6                   review has taken place under subparagraph (B),  
7                   the Secretary shall review the designation of the  
8                   criminal gang in order to determine whether  
9                   such designation should be revoked pursuant to  
10                  paragraph (6).

11                  “(ii) PROCEDURES.—If a review does not  
12                  take place pursuant to subparagraph (B) in re-  
13                  sponse to a petition for revocation that is filed  
14                  in accordance with that subparagraph, then the  
15                  review shall be conducted pursuant to proce-  
16                  dures established by the Secretary. The results  
17                  of such review and the applicable procedures  
18                  shall not be reviewable in any court.

19                  “(iii) PUBLICATION OF RESULTS OF RE-  
20                  VIEW.—The Secretary shall publish any deter-  
21                  mination made pursuant to this subparagraph  
22                  in the Federal Register.

23                  “(5) REVOCATION BY ACT OF CONGRESS.—The Con-  
24                  gress, by an Act of Congress, may block or revoke a des-  
25                  ignation made under paragraph (1).

1       “(6) REVOCATION BASED ON CHANGE IN CIR-  
2 CUMSTANCES.—

3               “(A) IN GENERAL.—The Secretary may revoke  
4 a designation made under paragraph (1) at any  
5 time, and shall revoke a designation upon completion  
6 of a review conducted pursuant to subparagraphs  
7 (B) and (C) of paragraph (4) if the Secretary finds  
8 that—

9               “(i) the group, club, organization, or asso-  
10 ciation of 5 or more persons that has been des-  
11 ignated as a criminal gang is no longer de-  
12 scribed in section 101(a)(53); or

13               “(ii) the national security or the law en-  
14 forcement interests of the United States war-  
15 rants a revocation.

16               “(B) PROCEDURE.—The procedural require-  
17 ments of paragraphs (2) and (3) shall apply to a  
18 revocation under this paragraph. Any revocation  
19 shall take effect on the date specified in the revoca-  
20 tion or upon publication in the Federal Register if  
21 no effective date is specified.

22       “(7) EFFECT OF REVOCATION.—The revocation of a  
23 designation under paragraph (5) or (6) shall not affect  
24 any action or proceeding based on conduct committed  
25 prior to the effective date of such revocation.

1       “(8) USE OF DESIGNATION IN TRIAL OR HEAR-  
2     ING.—If a designation under this subsection has become  
3     effective under paragraph (2), an alien in a removal pro-  
4     ceeding shall not be permitted to raise any question con-  
5     cerning the validity of the issuance of such designation  
6     as a defense or an objection.

7       “(b) AMENDMENTS TO A DESIGNATION.—

8           “(1) IN GENERAL.—The Secretary may amend  
9     a designation under this subsection if the Secretary  
10    finds that the group, club, organization, or associa-  
11    tion of 5 or more persons has changed its name,  
12    adopted a new alias, dissolved and then reconsti-  
13    tuted itself under a different name or names, or  
14    merged with another group, club, organization, or  
15    association of 5 or more persons.

16          “(2) PROCEDURE.—Amendments made to a  
17    designation in accordance with paragraph (1) shall  
18    be effective upon publication in the Federal Register.  
19    Paragraphs (2), (4), (5), (6), (7), and (8) of sub-  
20    section (a) shall also apply to an amended designa-  
21    tion.

22          “(3) ADMINISTRATIVE RECORD.—The adminis-  
23    trative record shall be corrected to include the  
24    amendments as well as any additional relevant infor-  
25    mation that supports those amendments.

1           “(4) CLASSIFIED INFORMATION.—The Sec-  
2       retary may consider classified information in amend-  
3       ing a designation in accordance with this subsection.  
4       Classified information shall not be subject to disclo-  
5       sure for such time as it remains classified, except  
6       that such information may be disclosed to a court ex  
7       parte and in camera for purposes of judicial review  
8       under subsection (c) of this section.

9       “(c) JUDICIAL REVIEW OF DESIGNATION.—

10           “(1) IN GENERAL.—Not later than 30 days  
11       after publication in the Federal Register of a des-  
12       ignation, an amended designation, or a determina-  
13       tion in response to a petition for revocation, the des-  
14       ignated group, club, organization, or association of 5  
15       or more persons may seek judicial review in the  
16       United States Court of Appeals for the District of  
17       Columbia Circuit.

18           “(2) BASIS OF REVIEW.—Review under this  
19       subsection shall be based solely upon the administra-  
20       tive record, except that the Government may submit,  
21       for ex parte and in camera review, classified infor-  
22       mation used in making the designation, amended  
23       designation, or determination in response to a peti-  
24       tion for revocation.

1           “(3) SCOPE OF REVIEW.—The Court shall hold  
2           unlawful and set aside a designation, amended des-  
3           ignation, or determination in response to a petition  
4           for revocation the court finds to be—

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

8                   “(B) contrary to constitutional right,  
9                   power, privilege, or immunity;

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

13                   “(D) lacking substantial support in the ad-  
14                   ministrative record taken as a whole or in clas-  
15                   sified information submitted to the court under  
16                   paragraph (2); or

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

19           “(4) JUDICIAL REVIEW INVOKED.—The pend-  
20           ency of an action for judicial review of a designation,  
21           amended designation, or determination in response  
22           to a petition for revocation shall not affect the appli-  
23           cation of this section, unless the court issues a final  
24           order setting aside the designation, amended des-

1       ignation, or determination in response to a petition  
2       for revocation.

3       “(d) DEFINITIONS.—As used in this section—

4               “(1) the term ‘classified information’ has the  
5       meaning given that term in section 1(a) of the Clas-  
6       sified Information Procedures Act (18 U.S.C. App.);

7               “(2) the term ‘national security’ means the na-  
8       tional defense, foreign relations, or economic inter-  
9       ests of the United States;

10              “(3) the term ‘relevant committees’ means the  
11       Committees on the Judiciary of the Senate and of  
12       the House of Representatives; and

13              “(4) the term ‘Secretary’ means the Secretary  
14       of Homeland Security, in consultation with the At-  
15       torney General.”.

16              (2) CLERICAL AMENDMENT.—The table of con-  
17       tents for such Act is amended by inserting after the  
18       item relating to section 219 the following:

“Sec. 220. Designation.”.

19       (e) MANDATORY DETENTION OF CRIMINAL GANG  
20 MEMBERS.—

21              (1) IN GENERAL.—Section 236(c)(1) of the Im-  
22       migration and Nationality Act (8 U.S.C. 1226(c)(1))  
23       is amended—

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



1 (B) in subparagraph (D), by inserting  
 2 “or” at the end; and

3 (C) by inserting after subparagraph (D)  
 4 the following:

5 “(E) is inadmissible under section  
 6 212(a)(2)(N) or deportable under section  
 7 237(a)(2)(H),”.

8 (2) ANNUAL REPORT.—Not later than March 1  
 9 of each year (beginning 1 year after the date of the  
 10 enactment of this Act), the Secretary of Homeland  
 11 Security, after consultation with the appropriate  
 12 Federal agencies, shall submit a report to the Com-  
 13 mittees on the Judiciary of the House of Represent-  
 14 atives and of the Senate on the number of aliens de-  
 15 tained under the amendments made by paragraph  
 16 (1).

17 (f) ASYLUM CLAIMS BASED ON GANG AFFILI-  
 18 ATION.—

19 (1) INAPPLICABILITY OF RESTRICTION ON RE-  
 20 MOVAL TO CERTAIN COUNTRIES.—Section  
 21 241(b)(3)(B) of the Immigration and Nationality  
 22 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the  
 23 matter preceding clause (i), by inserting “who is de-  
 24 scribed in section 212(a)(2)(N)(i) or section  
 25 237(a)(2)(H)(i) or who is” after “to an alien”.

1           (2) INELIGIBILITY FOR ASYLUM.—Section  
2       208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))  
3       is amended—

4           (A) in clause (v), by striking “or” at the  
5       end;

6           (B) by redesignating clause (vi) as clause  
7       (vii); and

8           (C) by inserting after clause (v) the fol-  
9       lowing:

10           “(vi) the alien is described in section  
11       212(a)(2)(N)(i) or section 237(a)(2)(H)(i);  
12       or”.

13       (g) TEMPORARY PROTECTED STATUS.—Section 244  
14       of such Act (8 U.S.C. 1254a) is amended—

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

18           (2) in subparagraph (c)(2)(B)—

19           (A) in clause (i), by striking “or” at the  
20       end;

21           (B) in clause (ii), by striking the period  
22       and inserting “; or”; and

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

1 “(iii) the alien is, or at any time has  
2 been, described in section 212(a)(2)(N) or  
3 section 237(a)(2)(H).”; and

4 (3) in subsection (d)—

5 (A) by striking paragraph (3); and

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

11 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section  
12 101(a)(27)(J)(iii) of the Immigration and Nationality Act  
13 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

14 (1) in subclause (I), by striking “and”;

15 (2) in subclause (II), by adding “and” at the  
16 end; and

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

18 “(III) no alien who is, or at any  
19 time has been, described in section  
20 212(a)(2)(N) or section 237(a)(2)(H)  
21 shall be eligible for any immigration  
22 benefit under this subparagraph;”.

23 (i) PAROLE.—An alien described in section  
24 212(a)(2)(N) of the Immigration and Nationality Act, as

1 added by subsection (b), shall not be eligible for parole  
2 under section 212(d)(5)(A) of such Act unless—

3 (1) the alien is assisting or has assisted the  
4 United States Government in a law enforcement  
5 matter, including a criminal investigation; and

6 (2) the alien’s presence in the United States is  
7 required by the Government with respect to such as-  
8 sistance.

9 (j) EFFECTIVE DATE.—The amendments made by  
10 this section shall take effect on the date of the enactment  
11 of this Act and shall apply to acts that occur before, on,  
12 or after the date of the enactment of this Act.

13 **SEC. 1107. SPECIAL IMMIGRANT JUVENILE STATUS FOR IM-**  
14 **MIGRANTS UNABLE TO REUNITE WITH EI-**  
15 **THER PARENT.**

16 Section 101(a)(27)(J)(i) of the Immigration and Na-  
17 tionality Act (8 U.S.C. 1101(a)(27)(J)(i)) is amended by  
18 striking “1 or both of the immigrant’s parents” and in-  
19 serting “either of the immigrant’s parents”.

20 **SEC. 1108. CLARIFICATION OF AUTHORITY REGARDING DE-**  
21 **TERMINATIONS OF CONVICTIONS.**

22 Section 101(a)(48) of the Immigration and National  
23 Act (8 U.S.C. 1101(a)(48)) is amended by adding at the  
24 end the following:

1           “(C) In making a determination as to  
2 whether a conviction is for—

3                   “(i) a crime under section 212(a)(2);

4                   or

5                   “(ii) a crime under 237(a)(2),

6 such determination shall be determined on the  
7 basis of the record of conviction and any facts  
8 established within the record of conviction.

9           “(D) Any reversal, vacatur, expungement,  
10 or modification to a conviction, sentence, or  
11 conviction record that was granted to amelio-  
12 rate the immigration consequences of the con-  
13 viction, sentence, or conviction record, or was  
14 granted for rehabilitative purposes shall have no  
15 effect on the immigration consequences result-  
16 ing from the original conviction. The alien shall  
17 have the burden of proving that the reversal,  
18 vacatur, expungement, or modification was not  
19 for such purposes. In no case in which a rever-  
20 sal, vacatur, expungement, or modification was  
21 granted for a procedural or substantive defect  
22 in the criminal proceedings. Whether an alien  
23 has been convicted of a crime for which a sen-  
24 tence of one year or longer may be imposed or  
25 whether the alien has been convicted for a

crime where the maximum penalty possible did not exceed one year shall be determined based on the maximum penalty allowed by the statute of conviction as of the date the offense was committed. Subsequent changes in State or Federal law which increase or decrease the sentence that may be imposed for a given crime shall not be considered.”.

**SEC. 1109. ADDING ATTEMPT AND CONSPIRACY TO COMMIT  
TERRORISM-RELATED INADMISSIBILITY  
GROUNDS ACTS TO THE DEFINITION OF EN-  
GAGING IN TERRORIST ACTIVITY.**

Section 212(a)(3)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iv)) is amended—

(1) in subclause (VI), by striking the period and inserting “; or”; and

(2) by adding at the end the following:

“(VII) an attempt or conspiracy to do any of the foregoing.”.

**SEC. 1110. CLARIFYING THE AUTHORITY OF ICE DETAINERS.**

(a) IN GENERAL.—Section 287(d) of the Immigration and Nationality Act (8 U.S.C. 1357(d)) is amended to read as follows:

1       “(d) DETAINER OF INADMISSIBLE OR DEPORTABLE  
2 ALIENS.—

3               “(1) IN GENERAL.—In the case of an individual  
4 who is arrested by any Federal, State, or local law  
5 enforcement official or other personnel for the al-  
6 leged violation of any criminal or motor vehicle law  
7 relating to driving while intoxicated or driving under  
8 the influence (including driving while under the in-  
9 fluence of or impairment by alcohol or drugs), the  
10 Secretary may issue a detainer regarding the indi-  
11 vidual to any Federal, State, or local law enforce-  
12 ment entity, official, or other personnel if the Sec-  
13 retary has probable cause to believe that the indi-  
14 vidual is an inadmissible or deportable alien.

15               “(2) PROBABLE CAUSE.—Probable cause is  
16 deemed to be established if—

17                       “(A) the individual who is the subject of  
18 the detainer matches, pursuant to biometric  
19 confirmation or other Federal database records,  
20 the identity of an alien who the Secretary has  
21 reasonable grounds to believe to be inadmissible  
22 or deportable;

23                       “(B) the individual who is the subject of  
24 the detainer is the subject of ongoing removal

1 proceedings, including matters where a charg-  
2 ing document has already been served;

3 “(C) the individual who is the subject of  
4 the detainer has previously been ordered re-  
5 moved from the United States and such an  
6 order is administratively final;

7 “(D) the individual who is the subject of  
8 the detainer has made voluntary statements or  
9 provided reliable evidence that indicate that  
10 they are an inadmissible or deportable alien; or

11 “(E) the Secretary otherwise has reason-  
12 able grounds to believe that the individual who  
13 is the subject of the detainer is an inadmissible  
14 or deportable alien.

15 “(3) TRANSFER OF CUSTODY.—If the Federal,  
16 State, or local law enforcement entity, official, or  
17 other personnel to whom a detainer is issued com-  
18 plies with the detainer and detains for purposes of  
19 transfer of custody to the Department of Homeland  
20 Security the individual who is the subject of the de-  
21 tainer, the Department may take custody of the in-  
22 dividual within 48 hours (excluding weekends and  
23 holidays), but in no instance more than 96 hours,  
24 following the date that the individual is otherwise to



1 be released from the custody of the relevant Federal,  
2 State, or local law enforcement entity.”.

3 (b) IMMUNITY.—

4 (1) IN GENERAL.—A State or a political sub-  
5 division of a State (and the officials and personnel  
6 of the State or subdivision acting in their official ca-  
7 pacities), and a nongovernmental entity (and its per-  
8 sonnel) contracted by the State or political subdivi-  
9 sion for the purpose of providing detention, acting in  
10 compliance with a Department of Homeland Secu-  
11 rity detainer issued pursuant to this section who  
12 temporarily holds an alien in its custody pursuant to  
13 the terms of a detainer so that the alien may be  
14 taken into the custody of the Department of Home-  
15 land Security, shall be considered to be acting under  
16 color of Federal authority for purposes of deter-  
17 mining their liability and shall be held harmless for  
18 their compliance with the detainer in any suit seek-  
19 ing any punitive, compensatory, or other monetary  
20 damages.

21 (2) FEDERAL GOVERNMENT AS DEFENDANT.—

22 In any civil action arising out of the compliance with  
23 a Department of Homeland Security detainer by a  
24 State or a political subdivision of a State (and the  
25 officials and personnel of the State or subdivision

1 acting in their official capacities), or a nongovern-  
2 mental entity (and its personnel) contracted by the  
3 State or political subdivision for the purpose of pro-  
4 viding detention, the United States Government  
5 shall be the proper party named as the defendant in  
6 the suit in regard to the detention resulting from  
7 compliance with the detainer.

8 (3) BAD FAITH EXCEPTION.—Paragraphs (1)  
9 and (2) shall not apply to any mistreatment of an  
10 individual by a State or a political subdivision of a  
11 State (and the officials and personnel of the State  
12 or subdivision acting in their official capacities), or  
13 a nongovernmental entity (and its personnel) con-  
14 tracted by the State or political subdivision for the  
15 purpose of providing detention.

16 (c) PRIVATE RIGHT OF ACTION.—

17 (1) CAUSE OF ACTION.—Any individual, or a  
18 spouse, parent, or child of that individual (if the in-  
19 dividual is deceased), who is the victim of a murder,  
20 rape, or any felony, as defined by the State, for  
21 which an alien (as defined in section 101(a)(3) of  
22 the Immigration and Nationality Act (8 U.S.C.  
23 1101(a)(3))) has been convicted and sentenced to a  
24 term of imprisonment of at least 1 year, may bring  
25 an action against a State or political subdivision of

1 a State or public official acting in an official capac-  
2 ity in the appropriate Federal court if the State or  
3 political subdivision, except as provided in paragraph  
4 (3)—

5 (A) released the alien from custody prior  
6 to the commission of such crime as a con-  
7 sequence of the State or political subdivision's  
8 declining to honor a detainer issued pursuant to  
9 section 287(d)(1) of the Immigration and Na-  
10 tionality Act (8 U.S.C. 1357(d)(1));

11 (B) has in effect a statute, policy, or prac-  
12 tice not in compliance with section 642 of the  
13 Illegal Immigration Reform and Immigrant Re-  
14 sponsibility Act of 1996 (8 U.S.C. 1373) as  
15 amended, and as a consequence of its statute,  
16 policy, or practice, released the alien from cus-  
17 tody prior to the commission of such crime; or

18 (C) has in effect a statute, policy, or prac-  
19 tice requiring a subordinate political subdivision  
20 to decline to honor any or all detainers issued  
21 pursuant to section 287(d)(1) of the Immigra-  
22 tion and Nationality Act (8 U.S.C. 1357(d)(1)),  
23 and, as a consequence of its statute, policy or  
24 practice, the subordinate political subdivision  
25 declined to honor a detainer issued pursuant to

1           such section, and as a consequence released the  
2           alien from custody prior to the commission of  
3           such crime.

4           (2) LIMITATIONS ON BRINGING ACTION.—An  
5           action may not be brought under this subsection  
6           later than 10 years following the occurrence of the  
7           crime, or death of a person as a result of such  
8           crime, whichever occurs later.

9           (3) PROPER DEFENDANT.—If a political sub-  
10          division of a State declines to honor a detainer  
11          issued pursuant to section 287(d)(1) of the Immi-  
12          gration and Nationality Act (8 U.S.C. 1357(d)) as  
13          a consequence of the State or another political sub-  
14          division with jurisdiction over the subdivision prohib-  
15          iting the subdivision through a statute or other legal  
16          requirement of the State or other political subdivi-  
17          sion—

18                       (A) from honoring the detainer; or

19                       (B) fully complying with section 642 of the  
20          Illegal Immigration Reform and Immigrant Re-  
21          sponsibility Act of 1996 (8 U.S.C. 1373),

22          and, as a consequence of the statute or other legal  
23          requirement of the State or other political subdivi-  
24          sion, the subdivision released the alien referred to in  
25          paragraph (1) from custody prior to the commission

1 of the crime referred to in that paragraph, the State  
2 or other political subdivision that enacted the statute  
3 or other legal requirement, shall be deemed to be the  
4 proper defendant in a cause of action under this  
5 subsection, and no such cause of action may be  
6 maintained against the political subdivision which  
7 declined to honor the detainer.

8 (4) ATTORNEY’S FEE AND OTHER COSTS.—In  
9 any action or proceeding under this subsection the  
10 court shall allow a prevailing plaintiff a reasonable  
11 attorneys fee as part of the costs, and include expert  
12 fees as part of the attorneys fee.

13 **SEC. 1111. DEPARTMENT OF HOMELAND SECURITY ACCESS**  
14 **TO CRIME INFORMATION DATABASES.**

15 Section 105(b) of the Immigration and Nationality  
16 Act (8 U.S.C. 1105(b)) is amended—

17 (1) in paragraph (1)—

18 (A) by striking “the Service” and inserting  
19 “the Department of Homeland Security”; and

20 (B) by striking “visa applicant or applicant  
21 for admission” and inserting “visa applicant,  
22 applicant for admission, applicant for adjust-  
23 ment of status, or applicant for any other ben-  
24 efit under the immigration laws”; and

1           (2) by inserting after paragraph (4) the fol-  
2       lowing:

3           “(5) The Secretary of Homeland Security shall  
4       receive, upon request, access to the information de-  
5       scribed in paragraph (1) by means of extracts of the  
6       records for placement in the appropriate database  
7       without any fee or charge.”.

8       **SEC. 1112. CLARIFICATION OF CONGRESSIONAL INTENT.**

9       Section 287(g) of the Immigration and Nationality  
10   Act (8 U.S.C. 1357(g)) is amended—

11           (1) in paragraph (1) by striking “may enter”  
12       and all that follows through the period at the end  
13       and inserting the following: “shall enter into a writ-  
14       ten agreement with a State, or any political subdivi-  
15       sion of a State, upon request of the State or political  
16       subdivision, pursuant to which officers or employees  
17       of the State or subdivision, who are determined by  
18       the Secretary to be qualified to perform a function  
19       of an immigration officer in relation to the investiga-  
20       tion, apprehension, or detention of aliens in the  
21       United States (including the transportation of such  
22       aliens across State lines to detention centers), may  
23       carry out such function at the expense of the State  
24       or political subdivision and to the extent consistent  
25       with State and local law. No request from a bona

1        fide State or political subdivision or bona fide law  
2        enforcement agency shall be denied absent a compel-  
3        ling reason. No limit on the number of agreements  
4        under this subsection may be imposed. The Sec-  
5        retary shall process requests for such agreements  
6        with all due haste, and in no case shall take not  
7        more than 90 days from the date the request is  
8        made until the agreement is consummated.”;

9            (2) by redesignating paragraph (2) as para-  
10        graph (5) and paragraphs (3) through (10) as para-  
11        graphs (7) through (14), respectively;

12           (3) by inserting after paragraph (1) the fol-  
13        lowing:

14        “(2) An agreement under this subsection shall accom-  
15        modate a requesting State or political subdivision with re-  
16        spect to the enforcement model or combination of models,  
17        and shall accommodate a patrol model, task force model,  
18        jail model, any combination thereof, or any other reason-  
19        able model the State or political subdivision believes is best  
20        suited to the immigration enforcement needs of its juris-  
21        diction.

22        “(3) No Federal program or technology directed  
23        broadly at identifying inadmissible or deportable aliens  
24        shall substitute for such agreements, including those es-

1 tablishing a jail model, and shall operate in addition to  
2 any agreement under this subsection.

3 “(4)(A) No agreement under this subsection shall be  
4 terminated absent a compelling reason.

5 “(B)(i) The Secretary shall provide a State or polit-  
6 ical subdivision written notice of intent to terminate at  
7 least 180 days prior to date of intended termination, and  
8 the notice shall fully explain the grounds for termination,  
9 along with providing evidence substantiating the Sec-  
10 retary’s allegations.

11 “(ii) The State or political subdivision shall have the  
12 right to a hearing before an administrative law judge and,  
13 if the ruling is against the State or political subdivision,  
14 to appeal the ruling to the Federal Circuit Court of Ap-  
15 peals and, if the ruling is against the State or political  
16 subdivision, to petition the Supreme Court for certeriori.

17 “(C) The agreement shall remain in full effect during  
18 the course of any and all legal proceedings.”; and

19 (4) by inserting after paragraph (5) (as redesign-  
20 nated) the following:

21 “(6) The Secretary of Homeland Security shall make  
22 training of State and local law enforcement officers avail-  
23 able through as many means as possible, including  
24 through residential training at the Center for Domestic  
25 Preparedness and the Federal Law Enforcement Training



1 Center, onsite training held at State or local police agen-  
 2 cies or facilities, online training courses by computer, tele-  
 3 conferencing, and videotape, or the digital video display  
 4 (DVD) of a training course or courses. Distance learning  
 5 through a secure, encrypted, distributed learning system  
 6 that has all its servers based in the United States, is scal-  
 7 able, survivable, and can have a portal in place not later  
 8 than 30 days after the date of the enactment of the Secur-  
 9 ing America’s Future Act of 2018, shall be made available  
 10 by the COPS Office of the Department of Justice and the  
 11 Federal Law Enforcement Training Center Distributed  
 12 Learning Program for State and local law enforcement  
 13 personnel. Preference shall be given to private sector-  
 14 based, web-based immigration enforcement training pro-  
 15 grams for which the Federal Government has already pro-  
 16 vided support to develop.”.

## 17 **TITLE II—ASYLUM REFORM**

### 18 **SEC. 2101. CREDIBLE FEAR INTERVIEWS.**

19 Section 235(b)(1)(B)(v) of the Immigration and Na-  
 20 tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by  
 21 striking “claim” and all that follows, and inserting “claim,  
 22 as determined pursuant to section 208(b)(1)(B)(iii), and  
 23 such other facts as are known to the officer, that the alien  
 24 could establish eligibility for asylum under section 208,  
 25 and it is more probable than not that the statements made

1 by, and on behalf of, the alien in support of the alien's  
2 claim are true.”.

3 **SEC. 2102. JURISDICTION OF ASYLUM APPLICATIONS.**

4 Section 208(b)(3) of the Immigration and Nationality  
5 Act (8 U.S.C. 1158) is amended by striking subparagraph  
6 (C).

7 **SEC. 2103. RECORDING EXPEDITED REMOVAL AND CRED-**  
8 **IBLE FEAR INTERVIEWS.**

9 (a) IN GENERAL.—The Secretary of Homeland Secu-  
10 rity shall establish quality assurance procedures and take  
11 steps to effectively ensure that questions by employees of  
12 the Department of Homeland Security exercising expe-  
13 dited removal authority under section 235(b) of the Immi-  
14 gration and Nationality Act (8 U.S.C. 1225(b)) are asked  
15 in a uniform manner, to the extent possible, and that both  
16 these questions and the answers provided in response to  
17 them are recorded in a uniform fashion.

18 (b) FACTORS RELATING TO SWORN STATEMENTS.—  
19 Where practicable, any sworn or signed written statement  
20 taken of an alien as part of the record of a proceeding  
21 under section 235(b)(1)(A) of the Immigration and Na-  
22 tionality Act (8 U.S.C. 1225(b)(1)(A)) shall be accom-  
23 panied by a recording of the interview which served as the  
24 basis for that sworn statement.

1       (c) INTERPRETERS.—The Secretary shall ensure that  
2 a competent interpreter, not affiliated with the govern-  
3 ment of the country from which the alien may claim asy-  
4 lum, is used when the interviewing officer does not speak  
5 a language understood by the alien.

6       (d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—  
7 There shall be an audio or audio visual recording of inter-  
8 views of aliens subject to expedited removal. The recording  
9 shall be included in the record of proceeding and shall be  
10 considered as evidence in any further proceedings involv-  
11 ing the alien.

12       (e) NO PRIVATE RIGHT OF ACTION.—Nothing in this  
13 section shall be construed to create any right, benefit,  
14 trust, or responsibility, whether substantive or procedural,  
15 enforceable in law or equity by a party against the United  
16 States, its departments, agencies, instrumentalities, enti-  
17 ties, officers, employees, or agents, or any person, nor does  
18 this section create any right of review in any administra-  
19 tive, judicial, or other proceeding.

20 **SEC. 2104. SAFE THIRD COUNTRY.**

21       Section 208(a)(2)(A) of the Immigration and Nation-  
22 ality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

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

1           (2) by striking “removed, pursuant to a bilat-  
2           eral or multilateral agreement, to” and inserting  
3           “removed to”.

4   **SEC. 2105. RENUNCIATION OF ASYLUM STATUS PURSUANT**  
5           **TO RETURN TO HOME COUNTRY.**

6           (a) IN GENERAL.—Section 208(c) of the Immigration  
7   and Nationality Act (8 U.S.C. 1158(c)) is amended by  
8   adding at the end the following new paragraph:

9           “(4) RENUNCIATION OF STATUS PURSUANT TO  
10          RETURN TO HOME COUNTRY.—

11           “(A) IN GENERAL.—Except as provided in  
12          subparagraph (B), any alien who is granted  
13          asylum status under this Act, who, absent  
14          changed country conditions, subsequently re-  
15          turns to the country of such alien’s nationality  
16          or, in the case of an alien having no nationality,  
17          returns to any country in which such alien last  
18          habitually resided, and who applied for such  
19          status because of persecution or a well-founded  
20          fear of persecution in that country on account  
21          of race, religion, nationality, membership in a  
22          particular social group, or political opinion,  
23          shall have his or her status terminated.

24           “(B) WAIVER.—The Secretary has discre-  
25          tion to waive subparagraph (A) if it is estab-

1           lished to the satisfaction of the Secretary that  
 2           the alien had a compelling reason for the re-  
 3           turn. The waiver may be sought prior to depar-  
 4           ture from the United States or upon return.”.

5           (b) CONFORMING AMENDMENT.—Section 208(c)(3)  
 6 of the Immigration and Nationality Act (8 U.S.C.  
 7 1158(c)(3)) is amended by inserting after “paragraph  
 8 (2)” the following: “or (4)”.

9   **SEC. 2106. NOTICE CONCERNING FRIVOLOUS ASYLUM AP-**  
 10                           **PLICATIONS.**

11           (a) IN GENERAL.—Section 208(d)(4) of the Immi-  
 12 gration and Nationality Act (8 U.S.C. 1158(d)(4)) is  
 13 amended—

14           (1) in the matter preceding subparagraph (A),  
 15           by inserting “the Secretary of Homeland Security  
 16           or” before “the Attorney General”;

17           (2) in subparagraph (A), by striking “and of  
 18           the consequences, under paragraph (6), of knowingly  
 19           filing a frivolous application for asylum; and” and  
 20           inserting a semicolon;

21           (3) in subparagraph (B), by striking the period  
 22           and inserting “; and”; and

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

24                   “(C) ensure that a written warning ap-  
 25           pears on the asylum application advising the

1 alien of the consequences of filing a frivolous  
2 application and serving as notice to the alien of  
3 the consequence of filing a frivolous applica-  
4 tion.”.

5 (b) CONFORMING AMENDMENT.—Section 208(d)(6)  
6 of the Immigration and Nationality Act (8 U.S.C.  
7 1158(d)(6)) is amended by striking “If the” and all that  
8 follows and inserting:

9 “(A) If the Secretary of Homeland Secu-  
10 rity or the Attorney General determines that an  
11 alien has knowingly made a frivolous applica-  
12 tion for asylum and the alien has received the  
13 notice under paragraph (4)(C), the alien shall  
14 be permanently ineligible for any benefits under  
15 this chapter, effective as the date of the final  
16 determination of such an application.

17 “(B) An application is frivolous if the Sec-  
18 retary of Homeland Security or the Attorney  
19 General determines, consistent with subpara-  
20 graph (C), that—

21 “(i) it is so insufficient in substance  
22 that it is clear that the applicant know-  
23 ingly filed the application solely or in part  
24 to delay removal from the United States,  
25 to seek employment authorization as an

1 applicant for asylum pursuant to regula-  
2 tions issued pursuant to paragraph (2), or  
3 to seek issuance of a Notice to Appeal in  
4 order to pursue Cancellation of Removal  
5 under section 240A(b); or

6 “(ii) any of the material elements are  
7 knowingly fabricated.

8 “(C) In determining that an application is  
9 frivolous, the Secretary or the Attorney Gen-  
10 eral, must be satisfied that the applicant, dur-  
11 ing the course of the proceedings, has had suffi-  
12 cient opportunity to clarify any discrepancies or  
13 implausible aspects of the claim.

14 “(D) For purposes of this section, a find-  
15 ing that an alien filed a frivolous asylum appli-  
16 cation shall not preclude the alien from seeking  
17 withholding of removal under section 241(b)(3)  
18 or protection pursuant to the Convention  
19 Against Torture.”.

20 **SEC. 2107. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.**

21 (a) ASYLUM CREDIBILITY DETERMINATIONS.—Sec-  
22 tion 208(b)(1)(B)(iii) of the Immigration and Nationality  
23 Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting  
24 after “all relevant factors” the following: “, including

1 statements made to, and investigative reports prepared by,  
2 immigration authorities and other government officials”.

3 (b) RELIEF FOR REMOVAL CREDIBILITY DETER-  
4 MINATIONS.—Section 240(c)(4)(C) of the Immigration  
5 and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended  
6 by inserting after “all relevant factors” the following: “,  
7 including statements made to, and investigative reports  
8 prepared by, immigration authorities and other govern-  
9 ment officials”.

10 **SEC. 2108. PENALTIES FOR ASYLUM FRAUD.**

11 Section 1001 of title 18 is amended by inserting at  
12 the end of the paragraph—

13 “(d) Whoever, in any matter before the Secretary of  
14 Homeland Security or the Attorney General pertaining to  
15 asylum under section 208 of the Immigration and Nation-  
16 ality Act or withholding of removal under section  
17 241(b)(3) of such Act, knowingly and willfully—

18 “(1) makes any materially false, fictitious, or  
19 fraudulent statement or representation; or

20 “(2) makes or uses any false writings or docu-  
21 ment knowing the same to contain any materially  
22 false, fictitious, or fraudulent statement or entry,  
23 shall be fined under this title or imprisoned not more than  
24 10 years, or both.”.



1 **SEC. 2109. STATUTE OF LIMITATIONS FOR ASYLUM FRAUD.**

2 Section 3291 of title 18 is amended—

3 (1) by striking “1544,” and inserting “1544,  
4 and section 1546,”; and

5 (2) by striking “offense.” and inserting “of-  
6 fense or within 10 years after the fraud is discov-  
7 ered.”.

8 **SEC. 2110. TECHNICAL AMENDMENTS.**

9 Section 208 of the Immigration and Nationality Act  
10 (8 U.S.C. 1158) is amended—

11 (1) in subsection (a)—

12 (A) in paragraph (2)(D), by inserting  
13 “Secretary of Homeland Security or the” before  
14 “Attorney General”; and

15 (B) in paragraph (3), by inserting “Sec-  
16 retary of Homeland Security or the” before  
17 “Attorney General”;

18 (2) in subsection (b)(2), by inserting “Secretary  
19 of Homeland Security or the” before “Attorney Gen-  
20 eral” each place such term appears;

21 (3) in subsection (c)—

22 (A) in paragraph (1), by striking “Attor-  
23 ney General” each place such term appears and  
24 inserting “Secretary of Homeland Security”;

25 (B) in paragraph (2), in the matter pre-  
26 ceding subparagraph (A), by by inserting “Sec-

1           retary of Homeland Security or the” before  
2           “Attorney General”; and

3           (C) in paragraph (3), by inserting “Sec-  
4           retary of Homeland Security or the” before  
5           “Attorney General”; and  
6           (4) in subsection (d)—

7           (A) in paragraph (1), by inserting “Sec-  
8           retary of Homeland Security or the” before  
9           “Attorney General” each place such term ap-  
10          pears;

11          (B) in paragraph (2), by striking “Attor-  
12          ney General” and inserting “Secretary of  
13          Homeland Security”; and

14          (C) in paragraph (5)—

15           (i) in subparagraph (A), by striking  
16           “Attorney General” and inserting “Sec-  
17           retary of Homeland Security”; and

18           (ii) in subparagraph (B), by inserting  
19           “Secretary of Homeland Security or the”  
20           before “Attorney General”.

1 **TITLE** **III—IMMIGRATION**  
2 **JUDGES, FACILITIES, AND**  
3 **PERSONNEL**

4 **SEC. 3101. FACILITIES FOR ASYLUM APPLICANTS WHO RE-**  
5 **TAIN CUSTODY OF A CHILD.**

6 (a) The designated agencies shall maintain facilities  
7 for the joint detention of Asylum Applicants who retain  
8 custody of a child and the child. These facilities shall only  
9 contain individuals who are under the age of 18 or are  
10 the parents or legal guardians of individuals under the age  
11 of 18.

12 (b) **FUNDING.**—There are authorized to be appro-  
13 priated for each of fiscal years 2019, 2020, and 2021 such  
14 sums as may be necessary to carry out this section.

15 **SEC. 3102. INCREASING THE NUMBER OF AUTHORIZED IM-**  
16 **MIGRATION JUDGES.**

17 (a) **INCREASE IN IMMIGRATION JUDGES.**—The Attor-  
18 ney General of the United States shall increase the total  
19 number of immigration judges to adjudicate pending cases  
20 and efficiently process future cases by 375 judges.

21 (b) **NECESSARY SUPPORT STAFF FOR IMMIGRATION**  
22 **JUDGES.**—To address the shortage of support staff for  
23 immigration judges, the Attorney General shall ensure  
24 that each immigration judge has sufficient support staff,

1 adequate technological and security resources, and appro-  
 2 priate courtroom facilities.

3 (c) INCREASE IN BOARD OF IMMIGRATION APPEALS  
 4 ATTORNEYS.—The Attorney General shall increase the  
 5 number of Board of Immigration Appeals staff attorneys  
 6 by sixty attorneys.

7 (d) NECESSARY SUPPORT STAFF FOR BOARD OF IM-  
 8 MIGRATION APPEALS.—To address the shortage of sup-  
 9 port staff for the Board of Immigration appeals, the At-  
 10 torney General shall ensure that the Board of Immigration  
 11 Appeals and its staff attorneys has sufficient support staff  
 12 and adequate technological and security resources.

13 (e) PRIORITIZATION OF ASYLUM APPLICANTS.—Any  
 14 immigration judges, Board of Immigration Appeals staff  
 15 attorneys, and support staff hired under the authority of  
 16 this section shall prioritize asylum applications that are  
 17 filed by Asylum Applicants.

18 (f) FUNDING.—There are authorized to be appro-  
 19 priated for each of fiscal years 2019, 2020, and 2021 such  
 20 sums as may be necessary to carry out this section.

21 **SEC. 3103. INCREASING THE NUMBER OF AVAILABLE DE-**  
 22 **PARTMENT OF HOMELAND SECURITY EM-**  
 23 **PLOYEES.**

24 (a) INCREASE IN DEPARTMENT OF HOMELAND SE-  
 25 CURITY PERSONNEL.—The Secretary of Homeland Secu-

1 rity shall increase the total number of Department per-  
2 sonnel to that are responsible for processing asylum appli-  
3 cations filed by Asylum Applicants by 200 individuals. Po-  
4 sitions authorized before the date of the enactment of this  
5 Act and any existing officer vacancies within the Depart-  
6 ment of Homeland Security on such date of enactment  
7 shall not count towards the increase mandated by this  
8 paragraph.

9 (b) INCREASE IN DEPARTMENT OF HOMELAND SE-  
10 CURITY PERSONNEL.—The Secretary is authorized to pro-  
11 cure space, temporary facilities, and to hire the required  
12 administrative and legal support staff, on an expedited  
13 basis, to accommodate the additional positions authorized  
14 under this section.

15 (c) FUNDING.—There are authorized to be appro-  
16 priated for each of fiscal years 2019, 2020, and 2021 such  
17 sums as may be necessary to carry out this section.

18 **SEC. 3104. DEFINITIONS.**

19 In this title:

20 (1) ASYLUM APPLICANT.—The term “Asylum  
21 Applicant” means an alien who (a) has no perma-  
22 nent immigration status; (b) is detained by the  
23 United States government at or near a port of entry  
24 or within 100 miles of the border of the United  
25 States while having custody of and being in the pres-

1       ence of a child for whom the alien is a parent or  
2       legal guardian; and (c) seeks, within 48 hours of de-  
3       tention, asylum pursuant to section 208 of the Im-  
4       migration and Nationality Act, withholding of re-  
5       moval pursuant to section 241(b)(3) of the Immigra-  
6       tion and Nationality Act, or withholding of removal  
7       pursuant to the Convention Against Torture.

8               (2) ASYLUM APPLICATION.—The term “asylum  
9       application” means an application for asylum pursu-  
10      ant to section 208 of the Immigration and Nation-  
11      ality Act, an application for withholding of removal  
12      under section 241(b)(3) of the Immigration and Na-  
13      tionality Act, and/or an application for withholding  
14      of removal pursuant to the Convention Against Tor-  
15      ture.

16              (3) CHILD.—The term “child” means an indi-  
17      vidual who—

18                      (A) has not reached the age of 18;

19                      (B) has no permanent immigration status;

20              and

21                      (C) was in the custody and presence of a  
22      parent or legal guardian when the parent or  
23      legal guardian was detained for illegally enter-  
24      ing into the United States at or near a port of

1 entry or within 100 miles of the border of the  
2 United States.

3 (4) DESIGNATED AGENCY.—The term “des-  
4 ignated agency” means—

5 (A) the Department of Homeland Security;

6 (B) the Department of Justice; and

7 (C) the Department of Health and Human  
8 Services.

9 (5) SECRETARY.—Unless otherwise specified,  
10 the term “Secretary” means the Secretary of Home-  
11 land Security.

○