

that illegal behavior. If we are not able to make those distinctions and stand with clarity on those kinds of questions, I suggest we are not able to take a stand on most any principle of law. So that worries me.

Senator CORNYN, who spoke earlier and very effectively, asked me to make this note for the record; that his modification corrected—he stated in his remarks that he made a modification to his amendment to correct the page number. He also wanted to make clear that he did also include a technical correction beyond that, and he didn't want to mislead anyone. He asked that I clarify that for him so that there would be no dispute about that.

Also, some people have suggested that the CORNYN amendment would amount to an unconstitutional *ex post facto* rule because of its retroactive application. Now, that is a pretty harsh thing to say about Judge CORNYN. Senator CORNYN served on the Supreme Court of the State of Texas and he would just suggest this: In order for any immigration provision to have immediate effect, it is imperative that they apply to the conduct and convictions that occurred before enactment.

The PRESIDING OFFICER. The Senator has used his 15 minutes.

Mr. SESSIONS. Mr. President, I ask unanimous consent for 1 more minute, and I will wrap up.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. So, also, I would note on behalf of Senator CORNYN's amendment that if prior conduct and convictions were not covered, you would have an immigration regime that essentially welcomes the following people, and this is not how the immigration system should operate. For example, as recently as 2005—I see my time is up, and I won't go into that. I will just note that Senator CORNYN's amendment as he offered it will meet constitutional muster, and it is not subject to the criticism some have suggested, and please do support it.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask unanimous consent that I be able to proceed for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, all of the men and women who would become legal residents of the United States under the terms of this legislation are required to pay income tax like every other worker in America. What the Sessions amendment would do is really quite extraordinary and grossly unfair. It would arbitrarily deny those immigrants who have become legal residents one of the tax benefits available to every taxpayer under the Internal Revenue Code. That provision is the earned-income tax credit, a provision designed to reduce the I tax burden on low income families with children.

It is fundamentally wrong to subject immigrant workers to a different, harsher Tax Code than the one that applies to everyone else in the country. An immigrant worker should pay exactly the same income tax that every other worker earning the same pay and supporting the same size family pays—no less and no more. We should not be designing a special punitive Tax Code for immigrants that makes them more than everyone else. Yet that is exactly what the Sessions amendment seeks to do.

The Session amendment would result in highly inconsistent treatment of legal immigrant residents, and would drastically increase the amount of tax that many of these families had to pay. They would be subject to income and payroll taxes in the same manner as other workers but would be denied the use of a key element of the Tax Code that is intended to offset the relatively heavy tax burdens that low-income working families, especially those with children, otherwise would face.

Most of the EITC is simply a tax credit for the payment of other taxes, especially regressive payroll taxes. The EITC was specifically designed to offset the payroll tax burden on low-income working parents. The Treasury Department has estimated that a large majority of the EITC merely compensates for a portion of the federal income, payroll, and excise taxes paid by the low-income tax filers who qualify to receive it.

A significant share of families that receive the EITC owe federal income tax before the EITC is applied, in addition to paying payroll taxes. Low-income working immigrant families in this category who would be denied the EITC under the Sessions Amendment would consequently face a dramatic increase in their income tax bill, requiring them to pay much higher taxes than other taxpayers with similar earnings.

Other families with even less income would not receive a refund to offset the disproportionately large payroll taxes they paid, unlike other workers with comparable wages and dependents.

To qualify for the EITC, under current law, a taxpayer must satisfy the following criteria: 1., Be a US citizen or legal resident; 2., have a valid Social Security number for both the worker and any qualifying children; 3., have earned income from employment or self-employment; 4., have total income that falls below a certain level, and; 5., file an income tax return.

Current law already clearly prohibits illegal immigrants from receiving the EITC. No immigrant can receive the earned income tax credit unless he or she is a legal resident who is a low wage worker paying payroll taxes and filing an income tax return. These are men and women who are conscientiously fulfilling their responsibilities to their adopted country and they deserve to be treated like all other workers in America.

This amendment would hurt children. The United States has more children living in poverty than any other industrialized country. We need to help children, not hurt them. And they should not have to pay for the sins of their parents.

#### SUPPLEMENTAL APPROPRIATIONS

Mr. President, this so-called compromise doesn't do nearly enough to end the war, and I intend to vote against it. I support our troops. They have fought bravely and with great courage under extraordinarily difficult circumstances. But it is wrong for the President to send our troops to war without a plan to win the peace, and it is wrong for Congress to keep them in harm's way on the current failed course.

The best way to protect our troops is to bring this war to an end, not to pour more American lives into this endless black hole our Iraq policy has become. It is wrong for Congress to continue to defer to a Presidential decision that we know is fatally flawed.

The American people know this war is wrong. It is wrong to abdicate our responsibilities by allowing this war to drag on and on and on while our casualties mount higher and higher. The President was wrong to get us into this war, wrong to conduct it so poorly, wrong to ignore the views of the American people, and wrong to stubbornly refuse to sign legislation requiring a timetable for the orderly and responsible withdrawal of our combat troops from Iraq.

It is time to end this continuing tragic loss of American lives and begin to bring our soldiers home.

For the sake of our troops, we cannot repeat the mistakes of Vietnam and allow this war to drag on long after the American people know it is a profound mistake.

Mr. President, how much time do I have?

The PRESIDING OFFICER. There is 3 minutes 20 seconds.

Mr. KENNEDY. Mr. President, before yielding so we can have a vote on the amendment of the Senator from Vermont, I would like to respond to my friend from Alabama regarding the earned-income tax credit.

The earned-income tax credit is to help children—help children. Of all the industrialized nations of the world, we have more children living in poverty than any other Nation in the world. The earned-income tax credit is to help the children. They are not the lawbreakers; the parents are the lawbreakers. Yet this amendment will take it out on the children.

We don't do it for those who have committed murder and gone to prison. We don't do it for those who have committed aggravated assault. We don't do it for those who commit burglary, but we are going to do it for those who have been adjusted in terms of their status of being illegal. That is what the

Sessions amendment does. We don't do it for murderers, we don't do it for burglars, we don't do it for those who have committed the most egregious crimes, but we are going to do it in terms of those whose positions we are changing and altering in terms of their adjustment of status.

The people who are affected by it are the children. It doesn't seem to be the way we ought to go. But we will have a longer period of time to debate this at another time.

AMENDMENT NO. 1223

I believe now we are prepared to vote, and I suggest that we get to it as quickly as we can so that we don't have other interference.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. SANDERS. Mr. President, I will be very brief. I thank Senator DURBIN and Senator KENNEDY for their support. This amendment has been modified. The H-1B program would increase from \$1,500 to \$5,000, a \$3,500 increase. The new revenue, as I mentioned earlier, would be used to establish a scholarship program so we can begin to see young Americans get the education they need for these professions so that we do not have to go abroad to bring people in to do the jobs that American workers should be doing.

I would appreciate support for this amendment.

Mr. KENNEDY. I ask unanimous consent for 1 more minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. I want to commend the Senator from Vermont for this amendment. I intend to support it. Years ago I thought we ought to have it at \$3,000. It went down to \$1,000, and it has come back up to \$1,500. The Senator has brought this up to a much more reasonable amount. I think he has made a very strong case for it. These funds will be used to make sure we get Americans being able to do those jobs. That is what the purpose is: to see we have Americans able to do those jobs, those H-1B jobs. It makes a great deal of sense. I commend the Senator.

There is one provision in here on the public hospitals, and I know he will work with us to try to address that in the conference, and I thank him for it. I hope the Senate will support his amendment.

I think we are prepared to vote on this amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, just a word or two. I think it is a good amendment. I commend the Senator from Vermont. I urge my colleagues to support it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll. Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHN-SON) and the Senator from New York (Mr. SCHUMER) are necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Utah (Mr. HATCH), the Senator from Arizona (Mr. MCCAIN), and the Senator from Wyoming (Mr. THOMAS).

Further, if present and voting, the Senator from Utah (Mr. HATCH) would have voted: "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 35, as follows:

[Rollcall Vote No. 179 Leg.]

YEAS—59

Akaka	Grassley	Murray
Alexander	Harkin	Nelson (FL)
Biden	Inouye	Obama
Bingaman	Kennedy	Pryor
Boxer	Kerry	Reed
Brown	Klobuchar	Reid
Byrd	Kohl	Rockefeller
Cantwell	Kyl	Salazar
Cardin	Landrieu	Sanders
Carper	Lautenberg	Sessions
Casey	Leahy	Shelby
Clinton	Levin	Snowe
Cochran	Lieberman	Specter
Conrad	Lincoln	Stabenow
Dodd	Lugar	Stevens
Dorgan	Martinez	Tester
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Mikulski	Wyden
Graham	Murkowski	

NAYS—35

Allard	Cornyn	Isakson
Baucus	Craig	Lott
Bayh	Crapo	McConnell
Bennett	DeMint	Nelson (NE)
Bond	Dole	Roberts
Bunning	Domenici	Smith
Burr	Ensign	Sununu
Chambliss	Enzi	Thune
Coburn	Gregg	Vitter
Coleman	Hagel	Voinovich
Collins	Hutchison	Warner
Corker	Inhofe	

NOT VOTING—6

Brownback	Johnson	Schumer
Hatch	McCain	Thomas

The amendment (No. 1223), as modified, was agreed to.

Mr. DURBIN. I move to reconsider the vote.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we are anticipating a vote in the next 2 or 3 minutes. We will inform the Members about that decision. We are checking with the leadership at the present time.

Mrs. BOXER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, the Senator from Connecticut wishes to propound a unanimous consent request, and then I will propound a unanimous consent request that we will have 2 minutes evenly divided between the Senator from Louisiana and myself, and then I expect we will have a roll-call vote up or down on the Vitter amendment.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent to set aside the pending amendment so I might call up an amendment and then set it aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1191 TO AMENDMENT NO. 1150  
(Purpose: To provide safeguards against faulty asylum procedures and to improve conditions of detention)

Mr. LIEBERMAN. Mr. President, I call up amendment No. 1191.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN] proposes an amendment numbered 1191 to amendment No. 1150.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. LIEBERMAN. Mr. President, I have come to the floor to speak about my amendment to improve our Nation's treatment of asylum seekers.

This amendment would implement the key recommendations of the congressionally established U.S. Commission on International Religious Freedom, which 2 years ago issued a report raising serious concerns about the protections offered asylum seekers arriving in this country.

I think it is worth noting that the Commission that issued this report was established by Congress in 1998 as a result of legislation first introduced by Senator SPECTER, in concert with the efforts of Senators NICKLES, BROWNBACK, myself, and several others. Senator SPECTER should be proud of that work and accomplishment. I hope we can see this amendment as one of the fruits of that labor.

The Commission reported an unacceptable risk that genuine asylum seekers were being turned away because their fears—and the real dangers—of being returned to their home countries were not fully considered.

The Commission also found that while asylum seekers are having their applications considered, they are often detained for months in maximum security prisons and jails, without ever having been fairly considered for release on bond. The Commission described conditions of detention that are completely unacceptable for a just nation to impose on people who are trying to escape war, oppression, religious persecution, even torture.

Since the Commission's report was issued, I have routinely asked officials from the Department of Homeland Security what is being done about the problems the Commission identified. I have been assured that the Department was reviewing the report's findings. The time for review is over. The time for Congress to act is now.

My amendment will implement the Commission's most important recommendations. It calls for sensible reforms that will safeguard the Nation's security, improve the efficiency of our immigration detention system, and ensure that people fleeing persecution are treated in accordance with this Nation's most basic values.

My amendment would implement quality assurance procedures to ensure that DHS officers carefully and accurately record the statements of people who may have a legitimate fear of returning to their countries.

Asylum seekers not subject to mandatory detention would be entitled to a hearing to determine if they could be released. Providing bond hearings for those asylum seekers who are low-risk will free up detention beds.

At an average cost of \$90 per person per day, often much higher, detention beds have always been scarce. Provisions in the Senate legislation before us would vastly increase the numbers of aliens being held in detention. Our immigration system should prioritize available space for aliens who pose a risk of flight, a threat to public safety or are subject to mandatory detention.

The amendment also promotes secure alternatives to detention of the type DHS has already begun to implement.

For those who must remain detained, we are obliged as a compassionate society to provide humane conditions at immigration facilities and jails used by DHS. My amendment includes modest requirements to ensure decent conditions, especially for asylum seekers, families with children, and other vulnerable populations. It requires improvements in key areas, such as access to medical care and limitations on the use of solitary confinement. And it creates a more effective system within DHS for overseeing and inspecting facilities.

The origin of the United States is that of a land of refuge. Many of our Nation's founders fled here to escape persecution for their political opinions, their ethnicity, and their religion. Since that time, the United States has honored its history and founding values by standing against persecution around the world, offering refuge to those who flee from oppression, and welcoming them as contributors to a democratic society.

I hope this amendment will be viewed as a noncontroversial way the Nation can continue to honor that history.

Mr. President, I ask unanimous consent that my amendment be set aside and that the Senate return to the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1157

Mr. KENNEDY. Mr. President, we have 1 minute each side. This will be the final vote on the immigration bill this week. We have had great cooperation. We are enormously grateful to all the Members.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, my amendment is very simple, it is very straightforward, and it is very important. It strikes title VI from the bill, which is the very controversial Z visa provision.

In my opinion, and the opinion of many people, many Americans, this is amnesty purely and simply, and that conclusion is important not because of a brand, not because of the word but because of what it means and what it will create.

It will create a magnet to increase illegal activity into the country, to encourage more of the same, more of the problem and not solve the problem. That is why we must remove this title from the bill.

The key question in this debate is will this bill fundamentally repeat the horrible mistakes of 1986 when we did amnesty but not nearly enough enforcement. I believe this bill, as it stands now, repeats that horrible mistake.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, legalization is good for national security. We need to know the names of everyone living here. That is why the Department of Homeland Security supports earned legalization. All of title VI was written with the close cooperation of Secretary Chertoff and his staff.

Legalization is good for our economic prosperity. We need every worker in this country to join the formal economy and pay their taxes. That's why the Department of Commerce supports earned legalization. All of title VI was written with the close cooperation of Secretary Gutierrez and his staff.

Legalization is consistent with American family values. Would opponents of legalization deport children and divide families?

More than 1.6 million undocumented children live in the United States.

More than 3.1 million U.S.-citizen children have at least one undocumented parent.

Legalization supports our broader reform effort. We must break America's cycle of illegality. Enforcement at the worksite and elsewhere will fail if 12 million Americans and 5 percent of U.S. workers remain in the shadows.

The American people support earned legalization. Poll after poll find that large majorities of Americans want undocumented immigrants who have lived and worked in the United States to have a chance to keep their jobs and earn legal status.

This support spans political parties and crosses demographics.

Americans understand that this is a complex problem that requires a comprehensive solution.

Mr. President, this is not 1986; 1986 was amnesty. This is not amnesty. Let's be very clear about it. Not only do you have to have a background check, but you pay fees of \$5,500, you have to learn English, you have to demonstrate you paid your taxes, you have to work for the next 8 years and demonstrate that you have worked in the past if you are ever going to get a green card. You have to return home in order to get your application for a green card, and you have to go to the back of the line. None of that was 1986.

Legalization is important for our national security. We have to know who is in the United States of America. Legalization is important in terms of our economic prosperity so our economy can function well, and legalization is important for the families. Do we think we are going to deport 3.5 million American children who have parents who are undocumented? Are we going to send those people overseas?

This amendment will undermine the legislation. I hope it will be rejected by the Senate.

I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 1157. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHN-SON) and the Senator from New York (Mr. SCHUMER) are necessarily absent.

Mr. LOTT. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Utah (Mr. HATCH), and the Senator from Wyoming (Mr. THOMAS).

The PRESIDING OFFICER (Mr. NELSON of Florida). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 29, nays 66, as follows:

[Rollcall Vote No. 180 Leg.]

## YEAS—29

Alexander	DeMint	Pryor
Allard	Dole	Roberts
Baucus	Dorgan	Rockefeller
Bond	Enzi	Sessions
Bunning	Grassley	Shelby
Byrd	Inhofe	Sununu
Coburn	Landrieu	Tester
Cochran	McCaskill	Thune
Corker	McConnell	Vitter
Crapo	Nelson (NE)	

## NAYS—66

Akaka	Casey	Ensign
Bayh	Chambliss	Feingold
Bennett	Clinton	Feinstein
Biden	Coleman	Graham
Bingaman	Collins	Gregg
Boxer	Conrad	Hagel
Brown	Cornyn	Harkin
Burr	Craig	Hutchison
Cantwell	Dodd	Inouye
Cardin	Domenici	Isakson
Carper	Durbin	Kennedy

Kerry	Martinez	Sanders
Klobuchar	McCain	Smith
Kohl	Menendez	Snowe
Kyl	Mikulski	Specter
Lautenberg	Murkowski	Stabenow
Leahy	Murray	Stevens
Levin	Nelson (FL)	Voinovich
Lieberman	Obama	Warner
Lincoln	Reed	Webb
Lott	Reid	Whitehouse
Lugar	Salazar	Wyden

## NOT VOTING—5

Brownback	Johnson	Thomas
Hatch	Schumer	

The amendment (No. 1157) was rejected.

Mr. KENNEDY. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

# TEXT OF AMENDMENT SUBMITTED MONDAY, MAY 21, 2007

**SA 1150.** Mr. REID (for Mr. KENNEDY (for himself and Mr. SPECTER)) proposed an amendment to the bill S. 1348, to provide for comprehensive immigration reform and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

## SECTION 1. EFFECTIVE DATE TRIGGERS.

(a) With the exception of the probationary benefits conferred by section 601(h), the provisions of subtitle C of title IV, and the admission of aliens under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), as amended by title IV,

(1) the programs established by title IV of this Act; and

(2) the programs established by title VI of this Act that grant legal status to any individual or adjust the current status of any individual who is unlawfully present in the United States to that of an alien lawfully admitted for permanent residence, shall become effective on the date that the Secretary submits a written certification to the President and the Congress that the following border security and other measures are funded, in place, and in operation:

(1) **STAFF ENHANCEMENTS FOR BORDER PATROL.**—The U.S. Customs and Border Protection (CBP) Border Patrol has, in its continued effort to increase the number of agents and support staff, hired 18,000 agents;

(2) **STRONG BORDER BARRIERS.**—Have installed at least 200 miles of vehicle barriers, 370 miles of fencing, and 70 ground-based radar and camera towers along the southern land border of the United States, and have deployed 4 Unmanned Aerial Vehicles and supporting systems;

(3) **CATCH AND RETURN.**—The Department of Homeland Security is detaining all removable aliens apprehended crossing the southern border, except as specifically mandated by law or humanitarian circumstances, and U.S. Immigration and Customs Enforcement (ICE) has the resources to maintain this practice, including resources to detain up to 27,500 aliens per day on an annual basis;

(4) **WORKPLACE ENFORCEMENT TOOLS.**—As required through all the provisions of Title III of this Act, the Department of Homeland Security has established and is using secure and effective identification tools to prevent unauthorized workers from obtaining jobs in the United States. These tools shall include, but not be limited to, establishing—

(A) strict standards for identification documents that must be presented in the hiring process, including the use of secure documentation that contains a photograph, bio-

metrics, and/or complies with the requirements for such documentation under the REAL ID Act; and

(B) an electronic employment eligibility verification system that queries federal and state databases to restrict fraud, identity theft, and use of false social security numbers in the hiring process by electronically providing a digitized version of the photograph on the employee's original federal or state issued document or documents for verification of the employee's identity and work eligibility; and

(5) **PROCESSING APPLICATIONS OF ALIENS.**—The Department of Homeland Security has received and is processing and adjudicating in a timely manner applications for Z non-immigrant status under Title VI of this Act, including conducting all necessary background and security checks.

(b) It is the sense of Congress that the border security and other measures described in such subsection can be completed within 18 months of enactment, subject to the necessary appropriations.

(c) The President shall submit a report to Congress detailing the progress made in funding, appropriating, contractual agreements reached, and specific progress on each of the measures included in (a)(1)–(5):

(1) 90 days after the date of enactment; and

(2) every 90 days thereafter until the terms of this section have been met.

If the President determines that sufficient progress is not being made, the President shall include in the report specific funding recommendations, authorization needed, or other actions that are being undertaken by the Department.

## TITLE I—BORDER ENFORCEMENT

### SUBTITLE A—ASSETS FOR CONTROLLING UNITED STATES BORDERS.

#### SEC. 101. ENFORCEMENT PERSONNEL.

##### (A) ADDITIONAL PERSONNEL.—

(1) **U.S. CUSTOMS AND BORDER PROTECTION OFFICERS.**—In each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 500 the number of positions for full-time active duty CBP officers and provide appropriate training, equipment, and support to such additional CBP officers.

##### (2) INVESTIGATIVE PERSONNEL.—

(A) **IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.**—Section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 118 Stat. 3734) is amended by striking “800” and inserting “1000”.

(B) **ADDITIONAL PERSONNEL.**—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by subparagraph (A), during each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for personnel within the Department assigned to investigate alien smuggling.

(3) **DEPUTY UNITED STATES MARSHALS.**—In each of the fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for full-time active duty Deputy United States Marshals that assist in matters related to immigration.

##### (4) RECRUITMENT OF FORMER MILITARY PERSONNEL.—

(A) **IN GENERAL.**—The Commissioner of United States Customs and Border Protection, in conjunction with the Secretary of Defense or a designee of the Secretary of Defense, shall establish a program to actively recruit members of the Army, Navy, Air Force, Marine Corps, and Coast Guard who have elected to separate from active duty.

(B) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, the Commissioner shall submit a report on the implementation of the recruitment program

established pursuant to subparagraph (A) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

##### (b) AUTHORIZATION OF APPROPRIATIONS.—

(1) **U.S. CUSTOMS AND BORDER PROTECTION OFFICERS.**—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out paragraph (1) of subsection (a).

(2) **DEPUTY UNITED STATES MARSHALS.**—There are authorized to be appropriated to the Attorney General such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out subsection (a)(3).

(3) **BORDER PATROL AGENTS.**—Section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004. (118 Stat. 3734) is amended to read as follows:

#### “SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

“(a) **ANNUAL INCREASES.**—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active duty border patrol agents within the Department of Homeland Security (above the number of such positions for which funds were appropriated for the preceding fiscal year), by not less than—

“(1) 2,000 in fiscal year 2007;

“(2) 2,400 in fiscal year 2008;

“(3) 2,400 in fiscal year 2009;

“(4) 2,400 in fiscal year 2010;

“(5) 2,400 in fiscal year 2011; and

“(6) 2,400 in fiscal year 2012.

“(b) **NORTHERN BORDER.**—In each of the fiscal years 2008 through 2012, in addition to the border patrol agents assigned along the northern border of the United States during the previous fiscal year, the Secretary shall assign a number of border patrol agents equal to not less than 20 percent of the net increase in border patrol agents during each such fiscal year.

“(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.”.

#### SEC. 102. TECHNOLOGICAL ASSETS.

(a) **ACQUISITION.**—Subject to the availability of appropriations for such purpose, the Secretary shall procure additional unmanned aerial vehicles, cameras, poles, sensors, and other technologies necessary to achieve operational control of the borders of the United States.

(b) **INCREASED AVAILABILITY OF EQUIPMENT.**—The Secretary and the Secretary of Defense shall develop and implement a plan to use authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist the Secretary in carrying out surveillance activities conducted at or near the international land borders of the United States to prevent illegal immigration.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out subsection (a).

#### SEC. 103. INFRASTRUCTURE.

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

(1) in subsection (a), by striking “Attorney General, in consultation with the Commissioner of Immigration and Naturalization,” and inserting “Secretary of Homeland Security”; and

(2) in subsection (b)—

(A) by redesignating paragraphs (1), (2), (3), and (4) as paragraphs (2), (3), (4), and (5), respectively;

(B) by inserting before paragraph (2), as redesignated, the following: