Immigration Enforcement and Border Security Act of 2007
S.1984 (As Introduced, 110th Congress)
Section-by-Section Analysis

This sectional analysis was prepared September 13, 2007 by the Rights Working Group, National Immigration Forum, American Immigration Lawyers Association, and National Immigrant Justice Center. Contact information for the authors is listed on the final page. While this analysis is detailed, it provides a summary only and is not intended to be comprehensive.

TITLE I. BORDER SECURITY

Subtitle A – Assets for Controlling United States Borders

Section 101. Achieving Operational Control of the Borders.
Section 101 requires the Department of Homeland Security (DHS) Secretary to work to achieve operational control over the borders of the U.S. within two years by: 1) deploying physical infrastructure along the border including additional checkpoints, access roads and vehicle barriers; 2) requiring DHS to install 300 miles of vehicle barriers, 700 miles of fence, and 105 ground-based radar units; 3) requiring DHS to acquire four unmanned aerial vehicles; and 4) conducting systematic surveillance of the border using more efficient technology. The section defines 'operational control' to mean the prevention of all unlawful entries into the U.S.

Section 102. Enforcement Personnel.
Section 102 requires the DHS Secretary to hire the following immigration and border enforcement personnel: 500 U.S. Customs and Border Protection (CBP) officers per year from FY08-FY12; 200 additional CBP officers to be employed at international airports prior to September 30, 2008; 200 Immigration and Customs Enforcement (ICE) officers per year from FY08-FY12 for the purpose of human smuggling investigations; and 50 Deputy U.S. Marshals to assist in immigration enforcement per year from FY08-FY12. The section also requires the CBP Commissioner to establish an employment recruitment program for former members of the Armed Forces. In addition, Section 102 requires DHS to assign at least a 20% net increase in border patrol agents to the Canadian border in each year from FY08-FY12. This section requires the DHS Secretary to increase the number of border patrol agents by at least 2,400 agents per year from FY08-FY12 and requires the DHS Secretary to have adequate resources for training personnel. The section authorizes appropriations for the positions included in this section.

Section 103. Operation Jump Start.
Section 103 requires the Secretary of Defense to provide 6,000 National Guardsmen on the southern border to assist CBP. The section authorizes appropriations for this section for FY08-FY12.

Section 104. Technological Assets.
Section 104 requires the DHS Secretary to acquire additional unmanned aerial vehicles, cameras, poles, sensors, and other technologies necessary to obtain operational control of

the borders. The section also requires a plan to increase the availability and use of Department of Defense equipment (UAVs, tethered aerostat radars, etc.) for border surveillance and authorizes appropriations for this purpose for FY08-FY12.

Section 105. Infrastructure.
Section 105 requires the DHS Secretary to complete construction of second and third layer fencing in the San Diego Sector. The section requires the DHS Secretary to complete 370 miles of fencing in priority areas by December 31, 2008, and to build not less than 700 miles on the southern border. Section 105 also requires the DHS Secretary to consult with the Secretary of Agriculture, Secretary of the Interior, local governments, Indian tribes, and property owners to minimize the impact on quality of life and the environment. The section authorizes appropriations necessary under this section.

Section 106. Ports of Entry.
Section 106 authorizes the DHS Secretary to construct additional ports of entry and authorizes necessary improvements to existing ports of entry.

Subtitle B – Other Border Security Initiatives

Section 112. Unlawful Flight from Immigration or Customs Controls.
This section amends 18 U.S.C. 758 (relating to criminal penalties for evasion of a checkpoint) to provide that any person who, while operating a motor vehicle or vessel, knowingly evades a checkpoint operated by DHS or any other federal law enforcement agency and knowingly or recklessly disobeys a law enforcement officer's command shall be fined, imprisoned not more than five years, or both. Any person who while operating a motor vehicle, vessel or aircraft knowingly or recklessly disregards or disobeys the command of a DHS official engaged in the enforcement of immigration, customs or maritime law or the command of any law enforcement agent assisting such official shall be fined, imprisoned not more than two years, or both. The section heightens the penalties for these sections if the violation involved excessive speed, recklessness or the vehicle is over capacity (imprisonment up to 10 years); involved substantial and foreseeable risk of bodily injury or death (imprisonment up to 20 years); caused serious bodily injury (30 years); or resulted in the death of a person (up to life in prison.) Individuals who attempt or conspire to commit a crime in this section may receive the same penalty as an individual who completes the offense. The section includes a forfeiture provision.

Section 113. Catch and Return.
Section 113 requires the DHS Secretary to detain until removal every noncitizen who is a national of a non-contiguous country, has not been admitted or paroled into the U.S., and was apprehended within 100 miles of any international border of the U.S. If there are urgent humanitarian circumstances, the DHS Secretary may grant the noncitizen supervised release with conditions during a pending removal if the individual does not pose a flight risk or a danger to the community and pays a bond of not less than $5000.

Section 114. Seizure of Conveyance with Concealed Compartment.
Section 114 amends current law related to the forfeiture and seizure of vessels and vehicles involved in smuggling (19 U.S.C. 1703) (relating to criminal penalties for smuggling.) This section establishes conduct or vehicle design features that constitute prima facie evidence that a vessel or vehicle is engaged in smuggling, including that a vessel has become subject to pursuit or is hovering, does not display light as required, or includes equipment for smuggling.

Subtitle C – Other Measures

Section 121. Secure Communication.
Section 121 requires the DHS Secretary to develop and implement a plan to improve the use of satellite communications and other technologies for clear and secure two-way communication among DHS officers and between DHS and federal, state, local and tribal law enforcement officers.

Section 122. Unmanned Aircraft Systems.
Section 122 requires DHS to acquire and maintain unmanned aircraft systems for use on the border and authorizes appropriations of $178.4 million for FY08 and $276 million for FY09.

Section 123. Biometric Data Enhancements.
Section 123 requires the DHS Secretary in consultation with the Attorney General to enhance connectivity between the DHS and FBI fingerprint identification systems (IAFIS/IDENT) to ensure more expeditious data searches. DHS must collect all fingerprints from noncitizens enrolling in the entry/exit system. These changes must be implemented by October 1, 2008.

Section 124. US-VISIT System.
Section 124 requires the DHS Secretary to submit a schedule to Congress for equipping all ports of entry with the U.S. VISIT system, developing and deploying the exit component of U.S. VISIT, and making all screening systems interoperable. This section also requires deployment of U.S. VISIT at all ports of entry by December, 13, 2013, and authorizes appropriations for this purpose. Within 18 months, this section requires the DHS Secretary to capture exit information for noncitizens holding temporary non-immigrant visas. Subject to the availability of appropriations, the DHS Secretary shall promptly initiate removal proceedings against any noncitizen that overstays or otherwise violates the terms of admission and the Secretary shall prioritize those who pose a national security risk or have criminal convictions.

Within one year, the DHS Secretary shall submit a report on border security to the Governor of each border state and each Governor may then submit a response to the report to Congress within 60 days of receipt of that report.

This section authorizes DHS officials to collect biometric data from any noncitizen applying for admission or any lawful permanent resident who is not regarded as seeking

admission. Under this section, any noncitizen who fails to comply with a lawful request for biometric data is inadmissible.

The DHS Secretary may waive this ground of inadmissibility for an individual noncitizen or a group of noncitizens. The DHS Secretary shall require all noncitizens admitted on a temporary nonimmigrant visa to record their departure at a port of entry or consulate. If a noncitizen fails to report his departure, DHS must place his name in the National Crime Information Center (NCIC) database within 48 hours. The information in the NCIC database shall be made available to state and local law enforcement agents for the enforcement of immigration law.

Section 125. Listing of Immigration Violators in the National Crime Information Center Database.

Within 180 days of enactment, this section requires the inclusion of information about immigration violators in the NCIC database including any individual who has violated a voluntary departure agreement, has been confirmed to be unlawfully present in the U.S. by a federal immigration officer, whose visa has expired or been revoked, or who has a final order of removal. This section establishes a procedure for noncitizens to petition for the removal of erroneous information in the NCIC database. This procedure must be in place before information can be included in the NCIC database. The failure of the noncitizen to receive notice of removability does not constitute a reason for removal of information from the NCIC database. This section would allow DOJ to collect, acquire, classify and preserve information about immigration violations in the NCIC database.

Section 126. Document Fraud Detection.

DHS shall provide all Customs and Border Patrol (CBP) officers with training in identifying fraudulent travel documents and provide these officers with access to the Forensic Document Laboratory. This section authorizes appropriations for this purpose.

Section 127. Border Relief Grant Program.

From FY08-FY12, DHS shall award $250 million in border security grants to qualifying law enforcement agencies proximate to the border and will prioritize communities with populations below 50,000 that are within 100 miles of the border. The grants may be used for additional personnel, equipment, technology upgrades, and operational costs. Two-thirds of the funds will be set aside for the six states with the highest population of undocumented individuals and one-third will be set aside for high-impact areas as designated by the DHS Secretary. Grants will supplement and not supplant other state and local public funds.

Section 128. Combating Human Smuggling.

The DHS Secretary shall develop and implement a plan to improve coordination between Immigration and Customs Enforcement (ICE), CBP, and any other federal, state, local or tribal authorities to combat human smuggling. Not later than one year after implementation of the plan, the DHS Secretary shall submit a report to Congress.

Section 129. Increase of Federal Detention Space and the Utilization of Facilities Identified for Closures as a Result of the Defense Base Closure Realignment Act of 1990.

In addition to existing facilities, the DHS Secretary must construct or acquire at least 20 additional facilities with the capacity to detain at least 45,000 noncitizens in removal proceedings or awaiting removal. The DHS Secretary shall construct or acquire the additional beds required under the Intelligence Reform and Terrorism Protection Act. DHS shall use all available options to increase detention capacity and shall consider the use of military bases approved for closure under the Defense Base Closure and Realignment Act.

Section 130. Northern Border Prosecution Reimbursement.

The Attorney General shall provide funds through the Northern Border Prosecution Initiative to reimburse northern border entities for costs incurred handling criminal cases that are initiated by the federal government and then referred to state or local governments. Subsequent funding will be calculated on a per-case basis. This section authorizes appropriations of $28 million in FY08 and necessary sums for additional years.

Section 131. Use of Private Land by Border Patrol.

An owner of land within 100 miles of an international land border may seek reimbursement from the Department of Homeland Security for any adverse court judgment for negligence arising directly from the law enforcement activities of DHS officers related to border security. This section provides exceptions in cases where the landowner willfully failed to warn against a dangerous condition, maintained a nuisance, acted in gross negligence or directly interfered with law enforcement activity.

TITLE II. INTERIOR ENFORCEMENT

Subtitle A – Interior Security Measures

Section 201. Additional Immigration Personnel.

Section 201 requires the relevant agency heads to increase personnel in each of FY08-FY12, subject to availability of appropriations.

With respect to the Department of Homeland Security, Section 201 increases personnel in the following manner (a) trial attorneys, attorney advisors, and USCIS adjudicators, by not fewer than 100 compared to the number of such positions for which funds were made available in the preceding year; (b) forensic auditors in the Forensic Document Laboratory by not fewer than 25 compared to the number during the preceding fiscal year; (c) by not fewer than 2000, the number of positions for active duty intelligence research specialists, agents, officers and investigators in USCBP enforcement and Fraud Detection and Nationality Security Division of USCIS to i) carry out removal of inadmissible or removable noncitizens; ii) investigate immigration fraud; and iii) enforce workplace violations.

With respect to the Department of Justice, Section 201 increases immigration personnel in the following manner (a) *litigation attorneys* by not fewer than 50 compared to the number of such positions for which funds were made available in the preceding year; (b) *U.S. attorneys* by not fewer than 100 compared to the number of such positions for which funds were made available in the preceding fiscal year; (c) *Criminal Division Attorneys* as appropriate; (d) *law clerks* for immigration judges and BIA members by not fewer than one per judge and member; (e) *immigration judges* by not fewer than 20 and increases their *support personnel* by not fewer than 80 compared to the number of such positions for which funds were made available during the preceding fiscal year; (f) *staff attorneys* in the BIA by not fewer than 20 and the number of *support personnel* by not fewer than 10 compared to the number of such positions for which funds were made available during the preceding fiscal year.

Section 201 also increases personnel in the Administrative Office of the U.S. Courts by adding attorneys in the Federal Defenders Program by not fewer than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.

This section also requires the U.S. President with consent of the U.S. Senate to appoint 31 new District Court Judges (and 7 temporary Judges) in Border States of Arizona, California, Florida, Minnesota, New Mexico, New York, Texas, and Washington.

Finally, Section 201 includes a section that requires the Director of the Executive Office for Immigration Review to continue to operate a legal orientation program that provides basic information about immigration court procedures for detainees to detainees and to expand the program to provide such information nationally. Appropriations are authorized.

Section 202. Detention and Removal of Aliens Ordered Removed or Aliens Who Overstay.

Section 202 amends INA §241(a) relating to the detention, release and removal of noncitizens ordered removed.

When a court, the Board of Immigration Appeals or an immigration judge orders a stay of removal, the removal period starts on the date when the stay is no longer in effect.

When a noncitizen is not in DHS custody at the time that a noncitizen is ordered removed, the removal period begins when the noncitizen is taken into custody. If custody is transferred to another agency, the removal period is tolled and begins anew when the noncitizen is taken into DHS custody.

The removal period shall be extended beyond a period of 90 days and the noncitizen may continue to be detained if: 1) the noncitizen fails to make reasonable efforts to comply with the removal order or cooperate with DHS' efforts to carry out the removal order or 2) conspires or acts to prevent such removal.

When a court issues a stay of removal for a noncitizen who is subject to a final order of removal, the DHS Secretary may in the exercise of discretion continue to detain the noncitizen.

When a noncitizen is not removed within the 90 day removal period, the noncitizen is required to obey restrictions placed on his or her conduct by the DHS Secretary to prevent the noncitizen from absconding, for the protection of the community or for other enforcement purposes.

Noncitizens who are inadmissible, removable under certain national security related provisions or are determined to be a risk to the community or unlikely to comply with the order of removal may be detained beyond the 90 day removal period at the discretion of the DHS Secretary without any limitations other than those specified in this section, until the noncitizen is removed.

Section 202 provides that, regardless of whether the facilities are operated by the federal government, private companies, or state, county, or local agencies, if an individual detained under the above paragraph is applying for admission, the DHS Secretary, in his or her discretion, may parole the noncitizen under section 212(d)(5) (relating to parole for urgent humanitarian reasons or significant public benefit) and may provide that the noncitizen shall not be returned to custody unless either the alien violates the conditions of the parole or the removal of the alien becomes reasonably foreseeable. In no circumstance shall such noncitizen be considered admitted.

In addition, Section 202 creates additional rules for noncitizens that have made an entry and provides for an administrative review process to determine if a noncitizen will be detained or released on conditions. This provision only applies to noncitizens who make reasonable efforts to comply with a removal order; who fully cooperate with DHS' efforts to establish identity and carry out the removal order; and to noncitizens who have not conspired or acted to prevent their removal. In making a determination about whether to release a noncitizen after the removal period, the DHS Secretary must consider any evidence submitted by the noncitizen in addition to any other evidence or information provided by the Department of State or other Federal agency and any other information available to the Secretary pertaining to the ability to remove the noncitizen. This section does not apply to noncitizens who have been paroled into the U.S.

Section 202 provides the DHS Secretary may continue to detain a noncitizen for 90 days beyond the initial 90 day removal period at the DHS Secretary's discretion, without any limitations other than those specified under this section.

DHS may continue to detain a noncitizen beyond 180 days until the noncitizen is removed if the Secretary determines there is a significant likelihood that the noncitizen will be removed in the reasonably foreseeable future or would have been removed but for the noncitizen's failure to make reasonable efforts to comply with the removal order or to cooperate with related efforts. The DHS Secretary may also continue to detain a noncitizen beyond 180 days if the DHS Secretary certifies in writing: 1) that the person

has a highly contagious disease that poses a threat to public safety; 2) that the noncitizen's release is likely to have serious adverse foreign policy consequences; 3) that there is reason to believe the noncitizen will threaten national security based on secret evidence or other evidence; or 4) that the noncitizen's release will threaten the safety of the community, and the noncitizen was convicted of one or more of the following crimes: a felony under section INA §101(a)(43)(A) (defining the aggravated felony) or conspiracy or attempt to commit such a crime, provided that the aggregate term of imprisonment for such attempts or conspiracies is at least 5 years or the noncitizen was convicted of a crime of violence and because of a mental condition or personality disorder, is likely to engage in such acts in the future. The DHS Secretary may also continue to detain a noncitizen who has been convicted of at least one aggravated felony as defined under INA §101(a)(43) if release will threaten the safety of the community. The DHS Secretary may also continue to detain an individual beyond 180 days if DHS has initiated the administrative review process not later than 30 days after the expiration of the noncitizen's removal period.

This section allows DHS to renew such certification of non-release every 180 days, without limitation, after providing the noncitizen an opportunity to request reconsideration. If DHS does not renew such a certification, it may continue to detain the noncitizen. The DHS Secretary may not delegate the authority to make or renew a certification below the level of Assistant Secretary for ICE. The Secretary may request that the AG or a designee of the AG provide for a hearing to make the determination. If a noncitizen is released, the DHS Secretary may impose conditions on release. Noncitizens released from custody can be re-detained without any limitation for failure to comply or satisfy the conditions of release or if the DHS secretary determines, upon reconsideration, that the noncitizen may be detained. This applies to any noncitizen returned to custody under this section as if the removal period terminated on the day that the alien was returned to custody.

Section 202 also authorizes the DHS Secretary to continue to detain a noncitizen beyond 180 days, without any limitation, if a noncitizen effected an entry; the noncitizen had not been lawfully admitted; and had not been physically present continuously for the two year period immediately prior to the commencement of removal proceedings.

Regardless of where a noncitizen is detained, judicial review is only available in a habeas corpus proceeding in a U.S. District Court for the District of Columbia and only if the noncitizen exhausted all administrative remedies.

The effective date under section 202 relating to the detention and removal of noncitizens takes effect on the date of enactment of the Act and applies to (A) all noncitizens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act; and (B) acts and conditions occurring or existing before, on, or after the date of the enactment of this Act.

Section 202 also amends INA §235 (relating to expedited removal) by adding a section which allows a noncitizen to be detained indefinitely, without limitation until the

noncitizen is subject to a final order of removal. Judicial review is only available in a habeas corpus proceeding in a U.S. District Court for the District of Columbia. The effective date of this provision and sections 235 and 236 of the Act, as amended, shall take effect on the date of enactment of this Act and shall apply to any alien in detention on or after the date of the enactment of this Act.

Section 202 also amends INA §236 (relating to the apprehension and detention of noncitizens) and requires the DHS Secretary to arrest and take into custody all noncitizens who knowingly or with reason to know, exceed by 30 days or more, the period of authorized admission into the United States. Noncitizens are deemed to have reason to know if the passport is stamped with the expected departure date or if the law under which the visa was issued contains a length of time for which the visa was issued. Judicial review is only available in a habeas corpus proceeding in a U.S. District Court for the District of Columbia.

A waiver is available if the noncitizen overstayed their authorized admission or parole as a result of exceptional circumstances beyond the noncitizen's control or is necessary for humanitarian reasons as defined in the INA. This new section applies to all noncitizens granted or issued a non immigrant visa on or after the date of enactment.

Section 202 also amends 18 USC §3142 (relating to the detention in criminal proceedings) and provides for the criminal detention of noncitizens prior to trial if a judicial officer determines that their appearance and the safety of the community cannot be reasonably assured. Where there has been a recent conviction, a rebuttable presumption is created that no conditions exist to reasonably assure the safety of any other person or the community if the person has been convicted of certain offenses, the offense was committed while the person was on release pending trial and a period of not more than five years has elapsed since the conviction. A rebuttable presumption is created that no conditions exist to assure the safety of the community if the judicial officer finds that there is probable cause that the individual has committed a serious offense as defined by this section including certain crimes involving controlled substances and minor victims.

This section also creates a rebuttable presumption that no conditions exist to reasonably assure the appearance of a person if a judicial officer finds that there is probable cause to believe that the person is a noncitizen with no lawful immigration status in the U.S.; or is the subject of a final order of removal; or has committed a felony offense under various sections in title 18 of the USC or the INA. In determining whether there are conditions of release that will reasonably assure the individual's appearance, the officer shall consider the individual's immigration status.

Section 203. Aggravated Felony.

Section 203 amends the definition of aggravated felony as defined under INA §101(a)(43)(a) (relating to the definition of aggravated felony). The amended definition shall apply to any offense, whether in violation of Federal or State law, or in violation of the laws of a foreign country for which the term of imprisonment was completed within

the previous 15 years, even if the term of imprisonment for the offense is based on recidivist or other enhancements, and regardless of whether the conviction was entered before, on, or after September 30, 1996.

Section 203 also adds manslaughter and homicide to the list of aggravated felonies in subparagraph (A); and adds to the list a second conviction for driving while intoxicated or impaired by alcohol or drugs, regardless of whether the conviction is classified as a felony or misdemeanor under Federal or State law, for which the term of imprisonment is at least one year.

Section 203 makes all offenses under INA §274(a) (relating to criminal penalties for bringing in or harboring certain noncitizens), aggravated felonies, except for a first offense where the noncitizen can show it was to assist the spouse, child or parent of the noncitizen. It also makes all offenses under INA §275 (relating to the improper entry by a noncitizen) or INA §276 (relating to the reentry of a removed noncitizen) aggravated felonies, for which the term of imprisonment is at least one year.

Section 203 expands what constitutes a conspiracy as defined in INA §101(a)(43)(U) to include aiding and abetting, counseling, procuring, commanding, inducing, or soliciting the commission of offenses defined as aggravated felonies under INA §101(a)(43).

With respect to convictions, section 203 clarifies that convictions remain convictions, notwithstanding a reversal, a court decision to vacate, expunge, or to modify a sentence or conviction or record of conviction, that was granted to ameliorate the consequences of a conviction or if granted for rehabilitative purposes; or as the result of failing to advise a noncitizen of the immigration consequences of entering a guilty plea.

This section applies retroactively.

Section 204. Inadmissibility and Deportability of Gang Members.
Section 204 amends INA §101(a) (relating to definitions) and adds a new paragraph (51) which defines “criminal gang” as an ongoing group, club, organization, or association of 5 or more persons that has as one of its primary purposes, the commission of 1 or more specifically defined offenses; and whose members either engage or have engaged within the past 5 years in a continuing series of those defined offenses.

This section applies regardless of whether the conduct occurred before, on, or after the date of enactment; and regardless of whether the offense is in violation of Federal or State law or the law in a foreign country; and regardless of whether the noncitizens are charged. The defined offenses include a) felony drug offenses; b) felony offenses involving firearms or explosives; c) offenses relating to the smuggling and harboring of noncitizens under INA §274 (relating to the bringing in and harboring of noncitizens), under INA §277 (relating to aiding or assisting certain noncitizens to enter the U.S., or INA §278 (relating to the importation of a noncitizen for immoral purposes); d) felony crimes of violence; e) crimes involving the obstruction of justice or tampering with or retaliating against witnesses or victims and f) conduct punishable under 18 USC §1028

and 1029 (relating to fraud in connection to identification documents and numerous other Title 18 sections relating to peonage, slavery, trafficking, racketeering, money laundering, and interstate transportation of stolen motor vehicles or other stolen property.

Section 204 creates new immigration bars by amending INA §212(a)(2) (relating to criminal grounds of inadmissibility) and INA §237(a)(2) (relating to removability for criminal offenses) to include gang members. Under this section, these bars also apply to noncitizens, who are not criminal gang members, but who are deemed to have associated with criminal gangs by participating in their activities, knowing or having reason to know that those activities promote, further, aid, or support the illegal activities of the criminal gang. A limited waiver is available to gang members or those associated with gang members if the noncitizen can establish that his removal would result in extreme hardship to a United States citizen parent, spouse or child.

Section 204 also amends INA §244 (relating to temporary protected status) and would make gang members and noncitizens who participated in the illegal activities of a criminal gang ineligible for temporary protected status. Under this section, the DHS Secretary has the power to detain any noncitizen granted TPS status "whenever appropriate under any other provision". The paragraph relating to the effective date of terminations of TPS status at INA §244(d)(3) is deleted in its entirety under Section 204.

Section 204 adds a new ground of inadmissibility under INA §212(a)(2)(A) (relating to inadmissibility on criminal grounds), making noncitizens who are convicted of serious criminal offenses and domestic violence, stalking, child abuse and violation of protection orders, inadmissible.

Section 204 amends the waiver provisions at INA §212(h) (relating to waivers for crimes involving moral turpitude under INA §212(a)(2)(A)(i)(I); for multiple criminal convictions under INA §212(a)(2)(B); for prostitution and commercialized vice under INA §212(a)(2)(D); for noncitizens involved in serious criminal activity who assert immunity under INA §212(a)(2)(E); and for controlled substance violations but only as they relate to a single offense of simple possession of 30 grams or less of marijuana under INA §212(a)(2)(A)(i)(II) and §212(a)(2)M by authorizing the Attorney General to grant these waivers, but takes away the Attorney General's discretion to do so. This section makes clear that this amendment to §212(h) is not to be construed to create eligibility under INA §212(c) if such eligibility did not exist before the amendment became effective.

Finally, section 204 adds aggravated felonies to the list of crimes for which a 212(h) waiver is unavailable.

Section 205. Grounds of Inadmissibility and Deportability Relating to Removal and Firearms Offenses.

Section 205 expands INA §243(a)(1) (relating to penalties for failure to depart) and states that the penalties for failure to depart apply to noncitizens against whom a final order of removal is outstanding by reason of being a member of any class described in either INA

§237(a) (relating to grounds of removability) or INA §212(a) (relating to grounds of inadmissibility) and increases the term of imprisonment from 4 to 5 years. If a noncitizen knowingly gives false information in response to an inquiry or fails to comply with the requirements of INA §241(a)(3) (relating to supervision after the 90 day removal period), the noncitizen may be fined under title 18 USC and imprisoned for not more than 5 years (or 10 years if the noncitizen is a smuggler, removable for criminal offenses, or security and related grounds).

Section 205 amends 18 USC §924(c) (relating to penalties for crimes of violence and drug trafficking, where a firearm is used in furtherance of the crime) by adding alien smuggling as one of the crimes for which enhanced penalties may be imposed. For these purposes, an "alien smuggling" crime relates to any felony punishable under INA §274(a) (relating to the bringing in and harboring of noncitizens); INA §277 (relating to aiding or assisting noncitizens to enter); or INA §278 (relating to the importation of noncitizens for immoral purposes).

This section also adds a new immigration bar under INA §212(a)(2) (relating to inadmissibility based on criminal grounds) for convictions of firearms offenses, such as purchasing, selling, offering for sale, possessing, or owning.

Section 206. Alien Smuggling and Related Offenses.
Section 206 amends INA §274(a) (relating to criminal offenses and penalties for bringing in and harboring noncitizens) and applies to a person who a) facilitates, encourages, directs, or induces a person to cross the border in reckless disregard of the fact that such person is a noncitizen who is not authorized to enter the U.S.; or b) induces someone to enter at a place other than a designated port of entry knowing or in reckless disregard that the person is a noncitizen that does not have permission to be in the U.S.; or c) transports, harbors or shields a person from detection outside the U.S. in reckless disregard of the fact that a noncitizen is in unlawful transit from 1 country to another, or otherwise furthers their illegal entry into the U.S; or d) encourages a noncitizen outside the U.S. to enter in reckless disregard of whether the noncitizen has such permission; or e) harbors, conceals or shields from detection a person in the U.S. knowing or in reckless disregard of the fact that such person is here illegally. Conspiracies or attempts to commit any of these acts are also prohibited.

This section states that criminal penalties for these offenses differ for each offense. If the offense was not committed for profit, the penalties include a fine under title 18 USC, imprisonment for not more than five years or both. If the offense was committed for commercial advantage, the penalty is a fine, imprisonment for not less than 3 years or more than 15 years, or both for a first violation. The penalties increase for second or subsequent offenses.

Under section 206, enhanced, differing, penalties are imposed, depending on the offense, as follows: a) if the violation furthered the commission of any other offense against the U.S.; b) if the violation created a foreseeable and substantial risk of death or serious bodily injury, or inhumane conditions; c) if the violation caused serious bodily injury to

any person; d) if the violation involved a noncitizen that the offender knew or had reason to believe was engaged in terrorist activity; or e) if the offense causes the death of any person.

An exception is made for bona fide, non-profit religious organizations that encourage, call, allow, or enable noncitizens who are present in the U.S. to perform the vocation of a minister or missionary for a denomination in the United States as a volunteer, as long the noncitizen has been a member of the denomination for at least one year.

Section 205 also establishes the procedures for the seizure and forfeiture of any real or personal property used to commit or facilitate the commission of a violation under that section. Seizures are to be governed pursuant to chapter 46 of title 18 USC. Evidence that can be used to establish whether the noncitizen involved in the alleged violation lacks lawful authority to enter the U.S. include: DHS official records, testimony of an immigration officer with personal knowledge of the facts, or records from judicial or administrative proceedings. Officers and employees designated by the DHS Secretary are authorized to arrest individuals under this section, in addition to those other officers responsible for the enforcement of federal criminal laws. Under certain conditions, videotaped witness testimony is admissible if a witness is otherwise unavailable.

Section 207. Illegal Entry.

Section 207 amends INA §275 (relating to illegal entry) and expands the criminal penalties against noncitizens who knowingly enter or cross the border illegally, elude inspection, knowingly make a false or misleading representation or concealment of a material fact; knowingly exceed their period of admission for 90 days or more; or are found in the United States after having violated any of the above. Criminal penalties include being fined, imprisoned not more than 6 months for a first offense or both. For a second or subsequent violation or following an order of voluntary departure, a noncitizen may be fined, imprisoned for not more than 2 years or both. If the violation occurred after the noncitizen was convicted of three or more misdemeanors or a felony, the noncitizen may be fined, imprisoned for not more than 10 years or both. There are increased penalties for violations after felony convictions depending on the term of imprisonment the noncitizen received and for prior convictions.

Under section 207, illegal entry offenses continue until the noncitizen is discovered within the U.S. by an immigration officer. Attempts to commit any of the above offenses are treated the same as the offense.

Noncitizens who are apprehended while entering or attempting to enter the U.S. at a time or place other than as designated by immigration officers, are subject to a civil penalty in addition to any criminal or civil penalties that may be imposed under any other provision of law.

This section applies to offenses committed on or after the effective date of enactment of the Act.

Section 208. Criminal Penalties for Aliens Unlawfully Present in the United States.
Section 208 amends INA §275 (relating to improper entry) by making noncitizens who are unlawfully present in the U.S. guilty of a misdemeanor, for which they can be fined under title 18 USC, imprisoned for not more than a year, or both. An affirmative defense is allowed for noncitizens who overstayed their visa due to exceptionally and extremely unusual hardship or physical illness that prevented them from leaving by the required date.

Section 209. Illegal Reentry.
Section 209 amends INA §276 (relating to reentry of a removed alien) and imposes fines under title 18 USC, and imprisonment of not less than 60 days and not more than 2 years, for any noncitizen who has been denied admission, or who was excluded, removed or who left while an order of removal or exclusion was outstanding and who subsequently attempts to enter or crosses the border or is at any time found in the U.S.

Penalties for the reentry of criminal offenders depend on the underlying conviction or convictions. Individuals who were convicted of 3 or more misdemeanors or a felony before being removed from the U.S., shall be fined, imprisoned not more than 10 years or both. Individuals who are convicted of felonies for which the term of imprisonment was not less than 24 months prior to removal, shall be fined and imprisoned not more than 15 years, or both. The penalties continue to increase depending on the term of imprisonment of the prior conviction as well as for reentries after repeat removals. The prior convictions are elements of the crimes described in this section and the penalties in this subsection shall apply only if the conviction that formed the basis for the additional penalty is alleged in the indictment or information and proven beyond a reasonable doubt at trial or admitted by the defendant.

Under section 209, noncitizens who have been denied admission, excluded, deported or removed 3 or more times and thereafter enter or attempt to enter or are found in the U.S., may be fined, imprisoned not fewer than 2 years and not more than 10 years, or both.

This section includes an affirmative defense if 1) a noncitizen's application for readmission was granted by the DHS Secretary; or 2) if the noncitizen was not required to reapply for admission and otherwise complied with all other laws.

Section 209 clarifies that a felony means any criminal offense punishable by term of imprisonment of more than 1 year under the laws of the U.S., any State, or foreign government. A misdemeanor means any criminal offense punishable by a term of imprisonment of not more than 1 year under the applicable laws of the U.S., any State, or a foreign government.

In a criminal proceeding under this section, a person may not challenge the validity of any prior removal order concerning the alien unless the person demonstrates by clear and convincing evidence that the person exhausted all administrative remedies that may have been available to seek relief against the order; the removal proceedings at which the order

was issued improperly deprived the person of the opportunity for judicial review; and the entry of the order was fundamentally unfair.

Section 210. Reform of Passport, Visa, and Immigration Fraud Defenses.
This section rewrites 18 USC Chapter 75 (relating to passport fraud). The proposed revision to the criminal code would include—

Section 1541. Trafficking in Passports.
Section 1541 is amended imposes a penalty of a fine, imprisonment for not less than 2 years and not more than 20 years, or both to anyone who uses official materials to make fraudulent passports or who during any 3 year period, knowingly produces, issues or transfers 10 or more passports; or who forges, counterfeits, alters or falsely makes 10 or more passports; or who possesses, uses, buys, sells or distributes 10 or more passports knowing them to be forged, counterfeited, altered, stolen, falsely made or procured by fraud; or completes, mails, signs, presents or submits 10 or more passports knowing that they contain false statements or representations.

Section 1542. False Statement in an Application for a Passport.
Section 1542 is amended and imposes a fine, or imprisonment for not more than 15 years, or both to anyone who knowingly makes any false statement or representation in a passport application knowing the application contains a false statement or representation. Prosecution may take place in any district where the false representation was made or where the application was signed; or to wherever the application was mailed. If the application was prepared or adjudicated outside the U.S., it may be prosecuted in the district where the passport was produced or would have been produced. Venue is not limited under this section, if it would have otherwise been available under other sections.

Section 1543. Forgery and Unlawful Production of a Passport.
Section 1543 is amended and imposes a fine, imprisonment for not more 15 years or both to any person who knowingly forges, counterfeits, alters or falsely makes any passport or transfers such a passport knowing it to be forged; to any person who knowingly and without lawful authority produces, issues, authorizes or verifies a passport contrary to law; or to any person who produces, issues or verifies such a passport for or to anyone knowing or in reckless disregard that such person is not entitled to receive a passport; or to anyone who transfers or furnishes a passport to any person other than the person for whom the passport was issued.

Section 1544. Misuse of a Passport.
Section 1544 is amended and imposes a fine, imprisonment for not more than 15 years, or both to any person who knowingly 1) uses any passport issued or designed for another; 2) uses any passport in violation of the law or the conditions or restrictions for which it was issued; 3) secures, possesses, uses, receives, buys, sells or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, or produced or issued without lawful authority; or 4)

violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the U.S.

Section 1545. Schemes to Defraud Aliens.
Section 1545 is amended and imposes fines, imprisonment for not more than 15 years, or both to anyone who knowingly executes a scheme or artifice in connection with any matter authorized under Federal immigration laws or in any matter the offender claims is authorized under immigration laws, to defraud any person, or to obtain or receive money or anything of value from any person by means of false pretenses, promises or representations. The same penalties apply to any person who knowingly or falsely represents to be an attorney or accredited representative in any matter arising under Federal immigration laws.

Section 1546. Immigration and Visa Fraud.
Section 1546 is amended and imposes a fine, imprisonment for not more than 15 years, or both to any person who knowingly 1) uses anyone else's immigration document; 2) forges, counterfeits, alters, or falsely makes any immigration document; 3) completes, mails, prepares, presents, signs, or submits any immigration document knowing it contains a materially false statement or representation; 4) secures, possesses, uses, buys, transfers, receives, buys, sells, or distributes any immigration document knowing it is forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without authority; 5) adopts or uses a false or fictitious name to evade or attempt to evade immigration laws; or 6) unlawfully transfers or furnishes an immigration document for use to another person other than the person for whom it was intended.

A person shall be fined, imprisoned for not more than 20 years or both if such person knowingly and unlawfully produces, buys, sells or possesses any official material to make an immigration document or who during any 3-year period, either knowingly and unlawfully issues or transfers 10 or more immigration documents; or forges, counterfeits, alters or falsely makes 10 or more such documents; or secures, possesses, uses, transfers, receives, buys, sells, or distributes 10 or more such documents knowing they were forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without authority; or completes, mails, prepares, presents, signs, or submits 10 or more immigration documents knowing they contain any materially false statement or representation.

The penalty for anyone who uses an identification document for purposes of satisfying INA §274A(b) (relating to employment verification) knowing or having reason to know it was not issued lawfully to the possessor or knowing that the document is false; or who uses a false attestation is punishable by a fine, imprisonment for not more than 5 years, or both.

Section 1547. Marriage Fraud.
Section 1547 is amended and imposes a fine, imprisonment for not more than 10 years, or both to anyone who knowingly enters into a marriage for the purpose of

evading immigration laws or who knowingly misrepresents the existence or circumstances of a marriage in an application or document authorized by immigration laws; or during any immigration proceeding by an administrative adjudicator (including a USCIS examiner or officer, a consular officer, an immigration judge, or a member of the BIA.)

A person who enters into 2 or more marriages for the purpose of evading immigration laws or who arranges for such marriages shall be fined, imprisoned for not more than 20 years, or both. A fine, imprisonment for not more than 10 years, or both shall be imposed to a person who knowingly establishes a commercial enterprise for these purposes.

Section 1547 clarifies that the offense continues until the fraudulent nature of the marriage is discovered by an immigration officer and in the case of a commercial enterprise, until it is discovered by an immigration or other law enforcement officer.

Section 210 penalizes anyone who attempts or conspires to violate §1541-1547 of 18 USC Chapter 75 (relating to passport fraud) as amended and described above.

Also included are provisions related to seizure and forfeiture.

Section 210 increases the alternative maximum term of imprisonment for certain offenses that relate to terrorist acts or offenses against the government and creates a new chapter of definitions in the criminal code as it relates to passport, visa and document related fraud. This section contains new definitions for "false statement or representation" "immigration document," "immigration laws," "passport" and "use" of a passport, among others. For example, the term "false statement or representation" includes a personation or an omission.

Section 210 includes a section titled as "Protection for Legitimate Refugees and Asylum Seekers" which requires the Attorney General (in consultation with the DHS Secretary) to develop binding prosecution guidelines for Federal prosecutors to ensure that any prosecution of an noncitizen seeking entry into the U.S. by fraud is consistent with U.S. treaty obligations. This subsection makes clear that there is no private right of action and that the guidelines (and any internal office procedures related to such guidelines) are intended solely for the guidance of U.S. attorneys.

Section 211. Inadmissibility and Removal for Passport and Immigration Fraud Offenses.

Section 211 creates new grounds of inadmissibility and removal for anyone who violates any of the passport, visa or immigration fraud offenses listed in Section 210. This section applies to proceedings, applications and adjudications pending on or after the date of the bill's enactment.

Section 212. Incarceration of Criminal Aliens.
Section 212 mandates the DHS Secretary to "improve" the Institutional Removal Program (IRP) to a) identify the total criminal noncitizen population in Federal, State and local facilities by making use of analytical information technology tools; b) ensure that such noncitizens are not released into the community; and c) remove such noncitizens from the U.S. after the completion of their sentences. This section permits the DHS Secretary to expand the IRP to all 50 states. Technology must be used to the maximum extent possible so that the IRP can be made available in remote locations. The DHS Secretary is required to submit a related report to Congress not later than 6 months after the bill's enactment. Appropriations are authorized in "such sums as may be necessary in each of the fiscal years 2008 through 2012". A portion of these funds shall be reserved for the Criminal Alien Program to implement a pilot project on technologies related to analysis of prison populations and identification of jailed illegal immigrants.

Section 213. Encouraging Aliens to Depart Voluntarily.
Section 213 modifies INA §240B (relating to voluntary departure) and spells out new requirements, conditions and penalties for voluntary departure, a benefit a qualified noncitizen can be granted in lieu of a removal order. A person can be granted voluntary departure at three stages: 1) in lieu of removal; 2) while in removal proceedings but before the conclusion of such proceedings; or 3) at the end of removal proceedings.

Under this section, a noncitizen who is not an aggravated felon or removable under security grounds, may be permitted to depart voluntarily at his own expense instead of removal proceedings, in which case the departure period shall be valid for 120 days. The DHS Secretary may also require the individual to post a bond.

The Attorney General may also permit a qualified person to leave under voluntary departure at his own expense after removal proceedings have started but before such proceedings have concluded, if he can prove he has the means to depart, in which case the departure period is limited to 60 days. The individual is required to post a bond, but an immigration judge may waive this requirement if he presents compelling evidence that the posting of the bond will pose serious financial hardship and that such a bond is unnecessary to guarantee departure.

Under this section, the Attorney General may also permit a qualified person to leave under voluntary departure at his own expense at the end of his removal proceeding, in which case the departure period shall be limited to 45 days. The individual is required to post a bond.

Section 213 conditions every voluntary departure grant on an affirmative agreement from the noncitizen, where he must waive his right to any further motion, appeal, application, petition or petition for review relating to removal or relief from protection from removal. In exchange for the noncitizen's agreement to depart voluntarily prior to the commencement of proceedings, the DHS Secretary may agree to a reduction in the period of inadmissibility for noncitizens under INA §212(a)(9)(A) or (B)(i) (relating to aliens previously removed or unlawfully present). Agreements made by a noncitizen during

removal proceedings or at the conclusion of proceedings, must be part of the record before the immigration judge and the judge must advise the noncitizen of the noncitizen of the voluntary departure agreement before accepting it.

Under this section, an individual who fails to depart timely or comply with a term of his voluntary departure agreement (including the posting of bond) becomes ineligible for all benefits under the agreement, subject to certain penalties and subject to an order of removal. An individual's timely appeal of the immigration judge's decision granting voluntary departure automatically voids his voluntary departure agreement and prevents him from receiving such a grant in the future. Except as expressly agreed to and in the discretion of the DHS Secretary before the expiration of a departure period, no motions, appeal, application, appeal, petition or petitions for review shall affect, reinstate, enjoin, delay, stay or toll the noncitizen's obligations to depart from the U.S.

Under section 213, an individual who violates his voluntary departure agreement is subject to the following penalties: 1) $3000 civil penalty and ineligibility for any benefits under this section until the penalty is paid; 2) ineligible for voluntary departure, adjustment of status, cancellation of removal, change in nonimmigrant classification, or registry for the time that he remains in the U.S. plus an additional ten years after the noncitizens departure from the U.S.; 3) bar from reopening a final order of removal based on his voluntary departure agreement. There is a very limited safety valve for individuals seeking to reopen their cases to seek refugee-related relief. Individuals who previously received a grant of voluntary departure are not eligible for voluntary departure. Section 213 bars all forms of judicial review, including habeas, on decisions related to voluntary departure.

The rules under section 213 apply to all orders of voluntary departure made on or after 180 days of the bill's enactment, excepting the bar on judicial review, which shall apply on the date of the bill's enactment.

Section 214. Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully.

Section 214 modifies INA §212(a)(9)(A) (relating to inadmissibility grounds for certain aliens previously removed) by stating that certain noncitizens previously removed who seek admission not later than five years after the date of removal (or not later than 20 years after the noncitizen's second or subsequent removal) are inadmissible. Other individuals who were ordered removed under §240 (relating to removal proceedings) or who left the U.S. when an order of removal was outstanding, and who seeks admission not later than 10 years after that date, are inadmissible.

Section 214 enhances penalties for individuals who fail to depart the U.S. after a removal order. Unless the individual files a timely motion to reopen or reconsider his case, he is barred from any discretionary relief from removal during the time he remains in the U.S. plus an additional 10 years after his departure. This section includes a limited savings provision for those seeking to apply for refugee-related relief.

The rules under section 214 apply to all removal orders entered on or after the date of the bill's enactment.

Section 215. Prohibition of the Sale of Firearms to, or the Possession of Firearms by Certain Aliens.
Section 215 modifies the criminal code to prohibit the sale or possession of firearms for individuals in the U.S. who are not lawfully admitted for permanent residence or lawfully admitted but not as a noncitizen lawfully admitted for permanent resident.

Section 216. Uniform Statute of Limitations for Certain Immigration, Passport, and Naturalization Offenses.
Section 216 creates a 10-year a statute of limitations for violating, attempting to violate or conspiring to violate immigration crimes listed in the INA and criminal code.

Section 217. Diplomatic Security Service.
Section 217 expands the authority of special agents of the Department of State and the Foreign Service to investigate identity theft and document fraud relating to the programs of the Department of State, peonage and slavery and federal offenses committed in the special maritime and territorial jurisdiction of the U.S.

Section 218. Streamlined Processing of Background Checks Conducted for Immigration Benefits.
Section 218 requires the DHS Secretary and Attorney General to establish a taskforce to resolve cases where an immigration petition or application has been delayed for more than 2 years due to an outstanding background check. This section identifies the membership for this taskforce and also authorizes appropriations to the FBI for the purpose of improving existing processes for background and security checks.

Section 219. State Criminal Alien Assistance Program.
Section 219 permits the DHS Secretary to reimburse States and units of the local government for costs associated with processing undocumented criminal noncitizens through the criminal justice system such as indigent defense, prosecution, autopsies, translators and interpreters, and court costs. Appropriations are authorized for these costs and for compensation upon request.

Section 220. Reducing Illegal Immigration and Alien Smuggling on Tribal Lands.
Section 220 authorizes the DHS Secretary to award grants to Indian tribes with land adjacent to an international border that may have been adversely affected by illegal immigration. The grants may be used for law enforcement, health care, environmental restoration and preserving cultural resources. Section 220 also describes reporting and appropriations requirements.

Section 221. Alternatives to Detention.
Section 221 requires the DHS Secretary to conduct a study on the 1) effectiveness of alternatives to detention (including electronic monitoring and intensive supervision programs) in ensuring court appearances and compliance with removal orders; 2)

effectiveness of the Intensive Supervision Appearance Program and the costs and benefits of expanding the program to the all states; and 3) other alternatives to detention such as release on an order of recognizance, appearance bonds and electronic monitoring devices.

Section 222. State and Local Enforcement of Federal Immigration Laws.
Section 222 amends INA §287(g) (authorizing voluntary written agreements between a State or political subdivision of the state and the Attorney General for the purpose of enforcing federal immigration laws) by adding a paragraph that requires DHS to reimburse state and local governments for related training and equipment; and limits training to the longer of 14 days or 80 hours. This section requires the DHS Secretary to make training on immigration laws more "flexible" for state and local law enforcement officers. Section 222 includes a savings provision stating that nothing may be construed to require a training mandate for a state or local law enforcement officer exercising his "inherent authority" to enforce federal immigration laws during the normal course of their duties. Related appropriations are authorized.

Section 223. Protecting Immigrants from Convicted Sex Offenders.
Section 223 modifies the INA §204(a)(1) (relating to the petitioning procedure of family members) and bars U.S. citizen or lawful permanent resident petitioners from filing petitions for qualifying family members if they have been convicted of sex offenses under INA §101(a)(43)(A), (I) and (K) (select provisions in the "aggravated felony" definition) unless the DHS Secretary finds in his sole and unreviewable discretion that the U.S. citizen poses no risk to the beneficiary of the petition. A similar bar applies to foreign spouses seeking legal status through a U.S. citizen as described above.

Section 224. Law Enforcement Authority of States and Political Subdivisions and Transfer to Federal Custody.
Section 224 adds a new section to the INA "clarifying" that the authority under INA §287(g) (authorizing voluntary written agreements between a State or political subdivision of the state and the Attorney General for the purpose of enforcing federal immigration laws) does not limit the "existing authority" of a state or locality to investigate, apprehend, arrest, detain or transfer unlawfully present or removable noncitizens for the purpose of assisting in the enforcement of the immigration laws, including laws related to visa overstay, in the normal course of carrying out the law enforcement duties of such personnel.

This section describes the steps the DHS Secretary must take if a state or local law enforcement head, exercising authority with respect to apprehension or arrest of a noncitizen, submits a request to the DHS Secretary that a noncitizen be taken into Federal custody. This section requires the DHS Secretary to reimburse a state or political subdivision of the state for related detention and transportation costs and details a cost computation formula to be followed.

Section 224 requires that the DHS Secretary ensure that detained noncitizens under this section are held in facilities that provide an appropriate level of security and that, if

possible, those held in custody solely for civil violations of Federal immigration law are separated within a facility or facilities.

This section requires the DHS Secretary to establish a schedule and circuit for the prompt transportation of apprehended noncitizens from local custody and authorizes him to enter into contracts with appropriate State and local law enforcement and detention agencies to implement this section. Prior to entering into a contract or cooperative agreement, the DHS Secretary must determine if the State or political subdivision has a policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (relating to communication between government agencies and DHS). The DHS Secretary is barred from allocating funds to any State or political subdivision that has in place a policy that violates the aforementioned section.

Section 224 includes a provision on the detention and transportation of unlawfully present noncitizens to Federal Custody. This section also authorizes a State or political subdivision to hold noncitizens for up to 14 days; issue a detainer that would allow a state prison to hold noncitizens that have completed their sentence in state prison until ICE takes them into custody; or to transport such noncitizens following completion of their state or local criminal sentences. Related appropriations are authorized.

Section 225. Laundering of Monetary Instruments.
Section 225 expands the criminal code related to money laundering to include the financial proceeds derived from trafficking and alien smuggling crimes.

Section 226. Cooperative Enforcement Programs.
Section 226 requires the DHS Secretary to negotiate and execute, where practicable, at least one cooperative enforcement agreement under INA §287(g) (authorizing voluntary written agreements between a State or political subdivision of the state and the Attorney General for the purpose of enforcing federal immigration laws) in each State, to train law enforcement officers in the detection and apprehension of individuals engaged in transporting, harboring, sheltering, or encouraging noncitizens in violation of INA §274 (related to alien smuggling).

Section 227. Expansion of the Justice Prisoner and Alien Transfer System.
Section 227 requires the Attorney General to issue a directive to expand the Justice Prisoner and Alien Transfer System (JPATS) no later than 60 days after the bill's enactment to provide additional services to noncitizens unlawfully present in the U.S. This section describes what this expansion should include.

Section 228. Directive to the United States Sentencing Commission.
Section 228 requires the U.S. Sentencing Commission to issue or amend sentencing guidelines, policy statements and official commentaries related to immigration related offenses, including document, visa and passport fraud offenses.

Section 229. Cancellation of Visas.
Section 229 expands visa cancellation to individuals who "otherwise violated any of the terms of the nonimmigrant classification in which the alien was admitted" or "any other nonimmigrant visa issued in the U.S. in possession of the alien."

Section 230. Judicial Review of Visa Revocation.
Section 230 bars judicial review (including habeas) over a decision to revoke a visa under INA §221(i) (relating to revocation of visas or documents) so long as the revocation is executed by the DHS Secretary. The effective date for this section is the date of the bill's enactment and shall apply to all revocations made on or after such date.

Section 231. Terrorist Bar to Good Moral Character.
Section 231 extends the bar to "good moral character" to any person whom the Attorney General or DHS Secretary determines is "described in" INA §§212(a)(3) or 237(a)(4) (removal bars based on terrorist and security-related grounds). The section allows this finding to be based upon any relevant information, including classified information and mandates that this finding shall be binding on any court regardless of the applicable standard of review.

Section 231 expands the good moral character bar to all aggravated felonies even if the "crime" was not classified by the immigration law as an "aggravated felony" at the time of conviction. A very limited discretionary exception applies to select aggravated felonies occurring 10 or more years before the date of application to be considered for purposes of such bar.

This section permits the DHS Secretary or Attorney General to make a *discretionary* finding that a person is not of good moral character and further allows for conduct that occurred outside the statutory time period for which good moral character may be required.

Section 231 modifies a section of the Immigration and Nationality Act of 1990 to extend the "aggravated felony" bar on naturalization applications to all convictions (current law limits this bar to convictions occurring on or after November 29, 1990, assuming that the applicant can show the five-year good moral character requirement).

The effective date for all of the above-mentioned changes applies retroactively to all acts and to any application or case pending on or filed after the date of the bill's enactment.

Section 231 amends INA §316 (relating to requirements for naturalization) to add a paragraph specifically barring individuals from citizenship if the DHS Secretary determines they are "described in" INA §§212(a)(3) or 237(a)(4) (removal bars based on terrorist and security-related grounds). The section allows this finding to be based upon any relevant information, including classified information and mandates that this finding shall be binding on any court regardless of the applicable standard of review.

This section also bars a naturalization application from consideration by the DHS Secretary if the applicant is in removal proceedings or other proceeding to determine the applicant's admissibility or deportability or to determine whether the lawful permanent resident status should be rescinded, without regard to when the proceeding commenced.

This section precludes approval of an immigrant petition while in removal proceedings if the person faces any type of proceeding that could directly or indirectly result in her denaturalization or loss of green card status.

This section clarifies that for naturalization purposes, individuals who are in the U.S. as an LPR on a conditional basis shall be treated as an LPR "if the alien has had the conditional basis removed…"

Section 231 amends the law to impose rigid bars on a federal district court to render decisions on naturalization applications that are delayed by DHS. Under a section titled "conforming amendment" section 231 places an absolute bar on federal court review for naturalization applications that were denied based on a finding by the DHS Secretary that the applicant lacked good moral character, understands and is attached to the Constitution, or is well disposed to the good order and happiness of the U.S.

The effective date for this section: 1) date of the bill's enactment, 2) retroactively to any act, and 3) any application for naturalization or any other case or matter under Federal immigration law that is pending on or filed after the bill's enactment.

Section 232. Precluding Admissibility of Aliens Convicted of Aggravated Felonies or other Serious Offenses.

Section 232 amends INA §212(a)(2) (relating to criminal-based inadmissibility grounds) to include a violation of (or a conspiracy or attempt to violate) an offense described in §208 of the Social Security Act (relating to social security account numbers or social security cards) or 18 USC §1028 (relating to fraud and related activity in connection with identification documents, authentication features, and information).

This section also creates two new grounds of criminal-related inadmissibility: 1) any noncitizen convicted of (or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of, or an attempt or conspiracy to violate) 18 USC §1428 (relating to the procurement of citizenship or naturalization unlawfully) or 2) any noncitizen convicted of an aggravated felony at any time.

Section 232 adds a violation of, or an attempt or conspiracy to violate, portions of the criminal code relating to the unlawful procurement of citizenship or naturalization to the list of noncitizens deportable pursuant under INA §237(3)(B) (relating to failure to register and falsification of documents).

This section also creates a new class of deportable noncitizens under §237(a)(2) (relating to criminal offenses) called "Identification Fraud" and applies to any noncitizen convicted of a violation of (or a conspiracy or attempt to violate) an offense described in

§208 of the Social Security Act (relating to social security account numbers or social security cards) or 18 USC §1028 (relating to fraud and related activity in connection with identification).

The effective date for this section: 1) retroactively to any act, 2) any noncitizen required to establish admissibility on or after the date of the bill's enactment, and 3) all removal-related proceedings filed, pending, or reopened, on or after such date.

Section 233. Removal and Denial of Benefits to Terrorist Aliens.
Section 233 amends the INA to deny immigration benefits such as asylum, cancellation of removal, voluntary departure, and withholding of removal to noncitizens whom the DHS Secretary or Attorney General suspect have engaged in "terrorist activity" or fall within other security-related grounds.

Section 234. Use of 1986 IRCA Legalization Information for National Security Purposes.
Section 234 authorizes the DHS Secretary to disclose information on previous legalization applications for census or national security purposes which under this bill is defined as information that supports "any investigation, case, or matter, or for any purposes, relating to terrorism, national intelligence, or the national security."

Section 235. Definition of Racketeering Activity.
Section 235 expands the definition of racketeering activity under the criminal code to capture additional conduct related to document and passport fraud.

Section 236. Sanctions for Countries that Delay or Prevent Repatriation of their Nationals.
Section 236 modifies INA §243(d) (relating to discontinuance of visas to nationals of a country denying or delaying acceptance of a noncitizen) by expanding the instances in which the U.S. government may deny admission or impose limitations on the issuance of visas or travel for people from a country whose government denies or unreasonably delays accepting individuals from such country. Specifically, if the DHS Secretary determines that a foreign government denies or unreasonably delays accepting individuals from its country after asking the government whether it will accept the noncitizen under this section or after determining that the individual is inadmissible under INA §212(a)(6) (relating to illegal entrants and immigration violators) or (7) (relating to documentation) then 1) the Secretary of State, upon notification from the DHS Secretary of such denial or delay to accept noncitizens, must order consular officers in that foreign country to discontinue granting visas to individuals of that country until the DHS Secretary notifies the Secretary of State that the country has accepted the noncitizens; 2) the DHS Secretary may deny admission to individuals from that country; and 3) the DHS Secretary may impose limitations, conditions or more fees on the issuance of visas or travel from that country and any other sanctions authorized by law.

Section 237. Appropriate Remedies for Immigration Legislation.
Section 237(a) precludes a court from certifying a class action lawsuit in any civil action pertaining to the administration or enforcement of the U.S. immigration laws that is filed after the date of the bill's enactment.

Section 237(b) creates more restrictive guidelines for relief ordered against the Government in any civil action related to U.S. immigration law. Specifically, the court shall 1) limit relief to the minimum necessary to correct the violation of law; 2) adopt the least intrusive means to correct the violation of law; 3) minimize to the greatest extent possible the adverse impact of such relief on national security, border security, immigration administration and enforcement, and public safety; and 4) provide for an expiration date of such relief on a date which allows for the minimum practical time needed to remedy the violation. A court's order granting relief shall be explained in writing and sufficiently detailed to allow review by another court. Unless a court grants permanent relief as described above, preliminary injunctive relief shall automatically expire in 90 days after the date on which the relief is entered. This subsection applies to any order denying the Government's motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any civil action pertaining to immigration law.

Section 237(c) spells out a procedure for motions affecting orders granting relief against the government. Generally, the section requires a court to promptly rule on the Government's motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any civil action pertaining to immigration law, and mandates an automatic stay of such relief for 15 days (unless the court has previously granted or denied this motion). Automatic stays continue until the court makes a ruling on the motion. The automatic stay may be postponed for not longer than 15 days for good cause. Orders granting relief against the government shall be automatically stayed during remand from a higher court until the district court enters an order granting or denying the motion. Orders that block or delay an automatic stay described in this section (other than above postponement of 15 days) are to be treated as orders refusing to terminate or modify the injunction and are immediately appealable. This section applies retroactively to motions pending for less than 45 days on the date of the bill's enactment. For motions pending more than 45 days on the date of the bill's enactment, such motions shall be automatically stayed and continue until the court rules on the motion.

Section 237(d) lays out additional rules pertaining to relief affecting "expedited removal." No court has jurisdiction to grant or continue an order affecting implementation of the existing expedited removal statute. Upon a motion by the government, the court shall determine whether the court has jurisdiction over the matter, as determined by the previous paragraph, and vacate any order not within the jurisdiction of the court. The above provisions shall not apply if the order is necessary to protect a constitutional right. Section 237(e) precludes courts from entering, approving or continuing any consent decree in civil immigration actions that does not comply with the requirements of subsection (b). Nothing in this section prevents parties from entering into a private settlement that does not comply with (b) if the terms of the agreement are not

subject to court enforcement other than reinstatement of the civil proceedings that the agreement settled.

Section 237(f) includes a set of definitions for terms used in this section. For example, it clarifies that "good cause" does not include discovery or congestion of the court's calendar. Section 237(g) requires every court to expedite any motion or civil action considered under this section. Section 237(h) clarifies that rules made under this section apply to every order granting relief in any civil action pertaining to immigration laws regardless of whether relief was ordered before, on or after the date of the bill's enactment.

Finally, section 237(i) makes a note about severability, stating that if any subsection described above is deemed as unconstitutional, the remainder of this section and its application shall not be affected.

Section 238. Reporting Requirements.

Section 238 amends INA §265 (relating to notices of change of address) by enhancing reporting requirements and related penalties. This section codifies that any noncitizen involved in a proceeding before an immigration judge or related appeal shall submit his current contact information to the Attorney General. Section 238 states that a noncitizen's address must be a current residential mailing address and may not be a post office box, another non-residential mailing address, or the address of an attorney, representative, labor organization, or employer.

The DHS Secretary may provide special requirements for designated classes of noncitizens, such as those employed in remote locations and those incarcerated. Under this section, a noncitizen is not required to report his address while under DHS custody but must notify DHS of such address when released.

Under section 238, the DHS Secretary may coordinate and cross reference a noncitizen's address information with other information related to the noncitizen's address under Federal programs such as: 1) pending motions and applications filed with the DHS Secretary, Secretary of State or Secretary of Labor; 2) information available to the Attorney General pertaining to administrative or judicial proceedings; 3) any information collected under the foreign student exchange program under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; and 4) information collected from States and localities under the State Criminal Alien Assistance Program.

Section 238 affirms that the DHS Secretary may rely on the address provided by the noncitizen to send forms, notices, documents, or other materials related to Federal immigration laws, including the service of a notice to appear. The Attorney General and DHS Secretary may rely on the most recent address provided by the noncitizen under INA §239(a)(1)(F) (relating to the notice to appear and removal proceedings) to contact him about pending removal proceedings.

Section 238 enhances the penalties associated with a noncitizen's noncompliance with this section. Specifically: 1) anyone who fails to notify the DHS Secretary of his current address in accordance with INA §265 shall be fined under the criminal code, imprisoned for not more than 6 months, or both; 2) anyone who violates INA §265 and does not establish that such failure was reasonably excusable or was not willful shall be taken into custody and placed into removal proceedings; 3) a noncitizen who has not been inspected or admitted, or failed on more than 1 occasion to report his address under INA §265 may be presumed to be flight risk. This section also allows the Attorney General or DHS Secretary to take into account a noncitizen's noncompliance with INA §265 as a separate negative factor when considering any form of relief from removal for such individual. Similarly, when considering a discretionary motion for reopening or reconsideration of a removal order, a noncitizen's failure to comply with the address requirements shall be considered as a strongly negative factor.

Section 239. Withholding of Removal.
Section 239 amends INA §241(b)(3)(relating to a restriction on removal to a country where noncitizen's life or freedom would be threatened) by stating that an applicant has the burden proof to show that his "life or freedom would be threatened in such country and that race, religion, nationality, membership in a particular social group or political opinion would be *at least 1 central reason* for such threat.' This section is effective retroactive to the date of the REAL ID Act's passage into law (May 11, 2005).

Section 240. Precluding Refugees and Asylees who have been Convicted of Aggravated Felonies from Adjustment to Legal Permanent Resident Status.
Section 240 amends INA §209(c) (pertaining to adjustment of status for refugees and the applicability of other federal statutory requirements) to bar asylees and refugees convicted of an aggravated felony from adjustment of status. The effective date for this section: 1) applies retroactively with respect to acts by the applicant; 2) applicants required to establish admissibility on or after the date of the bill's enactment; and 3) all removal proceedings filed, pending or removed on or after the date of the bill's enactment.

Section 241. Judicial Review of Discretionary Determinations and Removal Orders Relating to Criminal Aliens.
Section 241 amends INA §242(a)(2)(B) (pertaining to judicial review of discretionary denials of relief) to bar judicial review of removal orders for certain criminal noncitizens as well as discretionary decisions by the Attorney General or DHS Secretary.

Section 242. Information Sharing between Federal and Local Law Enforcement Officers.
Section 242 creates a requirement that no person or agency may prohibit a Federal, State or local government entity from acquiring information regarding the immigration status of any individual if the entity seeking the information has probable cause to believe that the person is removable or not lawfully present in the U.S. This section includes a construction clause to clarify that nothing in this section may be read to limit the acquisition of information as provided by the law or to require a person to disclose

information regarding her immigration states before receiving medical services or seeking law enforcement assistance.

Section 243. Fraud Prevention Program.
Subject to Appropriations, section 243 requires the head of each department responsible for providing an immigration benefit, status or relief to create an administrative program to prevent fraud that provides training and other measures.

Subtitle B -- Worksite Enforcement

Section 251. Unlawful Employment of Aliens.
This section rewrites INA §274A (relating to unlawful employment of noncitizens). Because of the length of this section, it is broken down below as in the proposed rewrite of the section of the INA:

The proposed revision to INA §274A would include—

(a) Making Employment of Unauthorized Aliens Unlawful.
This subsection would make it unlawful for an employer to hire, recruit, or refer for a fee a noncitizen for employment knowing or with reckless disregard that the noncitizen is unauthorized to work in the U.S. It would be unlawful to continue to employ such a noncitizen knowing or with reckless disregard that the noncitizen is unauthorized to work in the U.S. It would also be unlawful to hire, recruit, or refer for a fee without complying with document verification and employment eligibility verification system (EEVS) requirements.

If an employer uses a contract or subcontract to obtain noncitizen labor, knowing the noncitizen to be unauthorized, the employer is treated as if he had hired the noncitizen directly. The DHS Secretary is authorized to promulgate regulations to allow employers to require contractors to adhere to immigration laws including registering and using the EEVS.

An employer who can establish good faith compliance with document verification and EEVS requirements would have an affirmative defense to allegations of unlawful conduct. An employer is presumed to have acted with knowledge or reckless disregard if the employer fails to comply with written standards from the DHS Secretary. Standards, procedures or instructions must be "objective and verifiable."

This subsection preempts any state or local law that conflicts with federal policy procedure, or timetable; that requires employers to verify whether an individual is authorized to work in the U.S.; or that imposes civil or criminal sanctions on a person that employs, recruits, or refers for a fee for employment an unauthorized alien. This section also preempts any state or local law that requires a business entity to build or maintain day laborer sites.

(b) Definitions.
This subsection defines the terms "critical infrastructure," "employer" (including "franchised businesses"), and "unauthorized alien."

(c) Document Verification Requirements.
This subsection requires an employer to take all reasonable steps to verify employment eligibility, including using the EEVS, and to attest under penalty of perjury that the employer has verified identity and work authorization status of employees. Employers must either verify one document that proves identity *and* employment eligibility or one document that proves identity and a second document that proves employment eligibility. Acceptable documents for both identity and work authorization include a passport or passport card; a permanent resident card ("green card") containing photo, biometric data, and security features; or a Social Security card containing a photo and the security enhancements to be instituted in accordance with this Act. (See section 253 below).

Documents establishing identity include a REAL-ID compliant drivers' license or identity card; a non-REAL ID compliant drivers' license or identity card if it contains a photo, the person's name, date of birth, gender, height, eye color and address and is presented with a U.S. birth certificate, certificate of citizenship, or certificate of naturalization (or other documents prescribed by DHS); or any other documents defined by the DHS Secretary with notice in the Federal Register. The DHS Secretary may define what forms of identification will be acceptable for individuals under 16 years of age.

Documents establishing work authorization include a social security card as described above or any other documents defined by the DHS Secretary with notice in the Federal Register. The DHS Secretary may also designate certain documents are not reliable in establishing identity or work authorization. The individual must attest by penalty of perjury that he is eligible to work in the U.S.

The employer must retain a hard or electronic copy of the form completed by the employer verifying employment authorization for a period of seven years after hiring an employee or for two years after employment is terminated. The employer is required to copy and retain the identity and work authorization documents presented by an employee to comply with this section as well as any correspondence with the Social Security Administration relating to "no-match" letters and/or efforts to resolve discrepancies in the employee's identity or work authorization.

(d) Employment Eligibility Verification System (EEVS).
The DHS Secretary, in consultation with the Secretary of State, Commissioner of Social Security, and the states, is required to implement and specify the procedures for the EEVS. Participating employers are required to register with and use EEVS.

As of the date of enactment, and after notice in the Federal Register providing 30 days notice, the DHS Secretary may require any employer engaged in critical

infrastructure, federal contracting, or national or homeland security work to participate in the EEVS system. The DHS Secretary may require the EEVS to apply to current and newly hired employees of these employers.

Six months after enactment, the DHS Secretary shall extend the EEVS requirements to a wider array of employers and industries, based upon risks to critical infrastructure, national or homeland security, and immigration enforcement. This requirement will apply to newly-hired employees and current employees subject to employment eligibility reverification requirements. Eighteen months after enactment, the EEVS shall apply to all employers with respect to newly hired employees and current employees subject to employment eligibility reverification requirements. Three years after enactment, EEVS shall apply to all employers for all employees, including newly hired and any employees who have not previously been subject to EEVS. The Secretary has the discretion to specify earlier dates for participation in the EEVS for some or all classes of employer or employee. For reverification of an employee with a limited period of work authorization, the reverification process must be completed prior to the expiration date of the work authorization period.

The DHS Secretary may permit employers that are not required to participate in EEVS to participate on a voluntary basis. The DHS may also require an employer that is required to participate in EEVS with respect to newly hired employers to participate with regard to all employees if the Secretary has reasonable cause to believe that the employer has violated any immigration law.

Employers are required to register with EEVS and conform to its requirements. Employers are also required to training in compliance with EEVS as the DHS Secretary prescribes.

The GAO is charged with auditing certain aspects of the EEVS nine months after enactment and 24 months after enactment, and submitting the results to Congress.

Employers who fail to comply with EEVS are in violation of the prohibition on unlawful employment of aliens (described above). Such employers are subject to a rebuttable presumption that they acted with knowledge or reckless disregard if the employer is shown by clear and convincing evidence to have materially failed to comply with written standards issued by DHS.

EEVS shall return a confirmation, nonconfirmation, or further action notice at the time of the initial inquiry, or at most within 2 days of an inquiry from an employer. If the employer receives a further action notice, it must inform the employee immediately. The employee has 5 business days to contest to the appropriate agency. If the employee does not contest the further action notice, a final nonconfirmation notice will be issued. If the employee contests the further action notice, EEVS must provide a final confirmation or nonconfirmation notice within 10 business days. The DHS Secretary must extend the period of investigation if the employee is taking the steps required by the Secretary and another appropriate agency to resolve the matter.

An employer may not terminate an employee solely based on a further action notice until a nonconfirmation notice becomes final. At such time, an employer must terminate the employee or be subject to a rebuttable presumption that it violated this section.

An employer may not make the starting date of employment contingent upon a confirmation of employment authorization from EEVS. An employer may not verify a potential employee's status through EEVS prior to extending an offer of employment. An employer may not reduce the salary, or suspend or reduce the hours of an employee who receives a further action notice.

The DHS Secretary is required to develop policies and procedures to monitor the use of the EEVS system and compliance by employers with the requirements above. Employers are required to comply with monitoring, audits, or investigations by DHS. Employers must also respond to queries from DHS regarding current and former employees that relate to the EEVS system and/or investigations of suspected fraud or identity theft.

The DHS Secretary, in consultation with the Labor Secretary, shall establish a process by which an employee or prospective employee may file a complaint against an employer. An employer in violation of this section shall pay a civil fine of up to $10,000 for each violation. A violation of the EEVS creates no right or benefit enforceable at law or equity against the U.S. or any person and does not create a right to judicial review.

The DHS Secretary, in consultation with the Commissioner of Social Security, shall develop a secure procedure for an individual to verify his own employment eligibility and to correct any inaccurate information reported by the EEVS.

(e) Protection from Liability.
An employer who relies in good faith upon information supplied to him by the EEVS may not be held liable under any law for any employment-related action taken in good faith reliance on information provided through the EEVS.

(f) Administrative Review.
An employee who receives a final nonconfirmation notice has 15 days after receipt to file an administrative appeal. An individual who claims to be a U.S. national must file an appeal with the Commissioner of Social Security. An individual who claims to be a noncitizen who is authorized to work in the U.S. must file an appeal with DHS Secretary. Such appeals must be resolved by the respective agencies within 30 days.

Administrative relief is limited to an administrative order upholding, reversing, or modifying, the final nonconfirmation. No money damages, fees, or costs may be awarded in the administrative review process and no court will have jurisdiction to award damages related to an administrative review process.

(g) Judicial Review.
Mandamus claims under 28 USC §1361 and petitions for writs under 28 USC §1651 are specifically barred from consideration. A final confirmation notice may be challenged only in the U.S. Court of Appeals for the circuit in which the petitioner resided upon receipt of the nonconfirmation notice. The court may review only the administrative record. The petitioner bears the burden of showing that the nonconfirmation was arbitrary, capricious, or not supported by substantial evidence. Administrative remedies must be exhausted prior to the filing of any claim in federal court. Only the U.S. Supreme Court will have jurisdiction to enjoin or restrain the operation of this section.

(h) Management of EEVS.
This subsection requires the DHS Secretary to establish the EEVS and manage it, to maintain records, respond accurately to inquiries, maintain safeguards to secure information, and allow for regular auditing of the system to detect fraud or identity theft.

The DHS Secretary is authorized to gain access to Social Security records, birth and death records maintained by states or other U.S. jurisdictions, passport and visa records, and state drivers' license information from the EEVS for the purpose of enforcing employer verification requirements and preventing fraud and identity theft. A state that does not provide access to such information will be barred from federal grants or assistance administered by the DHS Secretary.

The DHS Secretary is required to establish the EEVS system such that photographs may be electronically confirmed and to include photographs on acceptable documents. Exceptions are provided for a circumstance in which a photograph is not available from the issuer.

The DHS Secretary is required to develop policies to protect the privacy and security of information and to conduct trainings for federal and state employees accessing the records in EEVS. The DHS Secretary and the DHS Chief Privacy Office are both charged with conducting regular privacy audits. The DHS Secretary is also required to conduct regular audits and to use the information gained to improve immigration enforcement.

The DHS Secretary is charged with providing access to the EEVS system to employers who would be otherwise unable to access it by providing access to federal government facilities or public facilities.

The Secretary of State is required to share passport and visa information upon request from the DHS Secretary to verify identity.

(i) Limitation on Use of EEVS.
No agency is permitted to use information or records in the EEVS for any purpose other than for enforcement of immigration, antiterrorism, and federal criminal law related to EEVS, including prohibition on forgery, fraud, and identity theft.

(j) Unauthorized Use or Disclosure of Information.
An employee of DHS or any other federal or state agency who knowingly uses or discloses information other than for the reasons permitted in subsection (i) (above) is subject to a fine of between $5,000 and $50,000 for each violation.

(k) Funds.
In addition to appropriated funds the DHS Secretary may use funds collected as per INA §286(m) and (n) (relating to the Immigration Examinations Fee Account) for the maintenance and operation of EEVS.

(l) Scope.
Employers are required to use EEVS for all employees without regard to national origin or citizenship status.

(m) Conforming Amendment.
This section repeals Title IV of IIRIRA, codified at 8 USC §1324a note (relating to enforcement of restrictions against employment).

(n) Complaints.
The DHS Secretary is required to establish a complaint process relating to employer violations of the EEVS verification process described in subsection (a) (above) or the administrative review process described in subsection (f)(1) (above). Immigration officers investigating such complaints may compel evidence by subpoena. The DHS Secretary will issue a pre-penalty notice to an employer and give the employer a reasonable opportunity to justify why a monetary or other penalty should not be imposed. The employer may, within 15 days of receiving a pre-penalty notice, petition for remission or mitigation of penalties or for termination of proceedings, any of which may be granted at the discretion of the DHS Secretary. If the DHS Secretary determines there was a violation and does not exercise discretion in the employer's favor, the Secretary must issue a final written determination setting forth findings of fact and conclusions of law upon which the finding is based.

Civil penalties include $5,000 for each unauthorized noncitizen employed in violation of this section. A second offense is $10,000 for each unauthorized noncitizen. A third or greater offense is $25,000 for each unauthorized noncitizen. An employer fined more than twice under this scheme can be fined $75,000 for each unauthorized noncitizen and an additional $75,000 for noncompliance with final orders under this section.

Am employer who fails to comply with recordkeeping requirements is fined at $1,000 for each violation. Second offense is $2,000 per violation. Three of more offenses

are fined at $5,000. An employer who has been fined more than twice shall pay a civil fine of $15,000 and an additional $15,000 for any previous order not complied with.

If the DHS Secretary believes that an employer is not in compliance with EEVS, the Secretary may require such employer to certify that it is in compliance or has instituted a program to come into compliance.

No court shall have jurisdiction to consider a final determination or penalty claim except by petition to the circuit court in which the employer resided within 30 days of the final determination or penalty claim issued. Mandamus claims under 28 USC §1361 and petitions for writs under 28 USC §1651 are specifically barred from consideration. This subsection details requirements for venue, service, briefing schedules, scope and standard of review. A petitioner must exhaust administrative resources prior to filing a claim. Only the U.S. Supreme Court will have jurisdiction to enjoin the provisions of this section. A lien may be filed against any employer who fails to pay fees or penalties under this section.

(o) Criminal Penalties and Injunctions for Pattern or Practice Violations.
An employer that engages in a pattern or practice of knowing violations of the EEVS system shall be fined up to $75,000 for each unauthorized alien, imprisoned for up to 6 months for the entire pattern or practice, or both. The DHS Secretary or the Attorney General may bring a civil action for injunctive relief against any employer for which there is reasonable cause to believe is engaged in such a pattern or practice.

(p) Prohibition of Indemnity Bonds.
It is unlawful for an employer to require an individual to post a bond or other financial guarantee against any potential liability relating to hiring, recruiting or referring of the individual. Violation of this prohibition is subject to a $10,000 fine per violation and return of the funds received by the individual.

(q) Government Contracts.
An employer that is a repeat violator of or convicted of a crime under this section shall be disbarred from receipt of federal contracts or grants for up to two years. Such employers may also be subject to a $10,000 civil fine. The DHS Secretary has discretion to waive such disbarment.

(r) Documentation.
The DHS Secretary is required to state any limitations with respect to the period or type of employment are displayed in a conspicuous manner on employment authorization documents.

(s) Deposit of Amounts Received.
Civil penalties collected under this section are to be deposited in the general fund of the U.S. Treasury.

(t) No Match Notice.
A no-match notice is defined as a written notice from the Social Security Administration (SSA) to an employer that an employee's name or other information fails to match SSA records. The DHS Secretary is required to establish by regulation a reasonable period by which an employee who is subject to a no-match notice will have the opportunity to resolve the situation with no adverse consequences.

(u) Challenges to Validity.
Challenges not otherwise barred in this section may be brought in the U.S. District Court for the District of Columbia. Such challenges are limited to constitutional challenges or claims that provisions of this section are in violation of chapter 5 of title 5 of the U.S. Code (relating to administrative procedure). Class actions are barred as is the awarding of attorneys fees.

(v) Notification of Expiration of Admission.
An employer or educational institution is required to notify a noncitizen in writing at least 14 days prior to the expiration of the noncitizen's period of authorized admission.

Section 252. Disclosure of Certain Taxpayer Information to Assist in Immigration Enforcement.
This section amends the Internal Revenue Code §6103 (26 USC §6103) (relating to information and returns) by adding a new paragraph, 26 USC §6103(l)(21), authorizing the disclosure of certain taxpayer identity information to DHS. The paragraph would require the Commissioner of Social Security to disclose to the DHS Secretary certain information contained in W-2 forms filed by employers. Such disclosure must be requested by the DHS Secretary in writing. Information must be disclosed by the Commissioner in the case of taxpayer identity information of a person whose taxpayer identification number (which is supplied to the employer by the employee and included on the W-2 form) does not match the records maintained by Social Security. Information must be disclosed where any two or more names with the same taxpayer identification number are reported, or for the taxpayer identity of a person who is under the age of 14, deceased, whose name appears in more than one return, or who is not authorized to work in the U.S.

Contractors to DHS must protect the security and confidentiality of records and conduct on-site reviews every three years to ensure compliance. Contractors must submit the findings of such reviews to the DHS Secretary and certify compliance. Certification is required beginning calendar year 2007.

This section expands the INA §212(a)(6)(C)(ii)(I) (relating to inadmissibility based upon false claims of citizenship) to include any alien who falsely represents himself to be a national of the U.S.

This section repeals two annual reports currently due to Congress. One reports on the aggregate numbers of Social Security numbers issued to individuals who are not

authorized to work in the U.S. but for whom Social Security earnings were reported. (See INA §290(c) (8 USC §1360)). The second report repealed by this section details the extent to which Social Security numbers are used for fraudulent purposes. (See Division C of P.L. 104-208; 8 USC 1360 note).

Section 253. Increasing Security and Integrity of Social Security Cards.
This section requires that the Commissioner of Social Security begin to issue fraud- and tamper-resistant Social Security cards bearing a photo by the first day of the second year in which funds are appropriated. By the seventh year, the Commissioner must issue only fraud- and tamper-resistant Social Security cards bearing photographs. After ten years of appropriated funds, all Social Security cards that are not fraud-and tamper-resistant and that do not bear photographs shall be invalid. This section contains exceptions for individuals under 16 years of age. The Commissioner, in consultation with the DHS Secretary, is required to issue regulations specifying security and identification features.

Annual reports to Congress from the Commissioner must be submitted. Ten years after appropriated funds are received, the DHS Secretary must recommend to Congress which documents should continue to be valid for establishing identity and employment authorization.

This section amends the Social Security Act §205 (42 USC §405) to require the Commissioner of Social Security to provide to the DHS Secretary access to any photo, feature or other information included in a Social Security card as part of the EEVS system established in section 251 (above).

Section 254. Increasing Security and Integrity of Identity Documents.
This section requires the DHS Secretary to establish a State Records Improvement Grant Program under which the Secretary may award grants to assist states in issuing drivers' licenses that are compliant with the requirements of section 202 of the REAL ID Act of 2005 (Division B of P.L. 109-13; 49 USC §30301 note). States that do not certify their intent to comply with the REAL ID Act may not receive grants under this program. Drivers' licenses or state-issued identification cards that are not REAL ID compliant will not be accepted as proof of identity under the EEVS system established in section 251 (above). This section defines the grant program to be established and authorizes $300 million for each of the years FY 08 to FY 12 to carry out this program.

Amounts authorized under this section may also be used to facilitate the sharing of information between states and DHS at the discretion of the DHS Secretary.

Section 255. Voluntary Advanced Verification Program to Combat Identity Theft.
Within 18 months of enactment, the DHS Secretary is required to establish a voluntary program, titled the Voluntary Advanced Verification Program to Combat Identity Theft, to enable employers to submit an employee's fingerprints to establish identity and verify work authorization status. The DHS Secretary may only retain fingerprints of a U.S. citizen submitted to this program for ten business days, after which time the fingerprint records must be purged from the EEVS system. A U.S. citizen may request that his

fingerprints be retained in the EEVS system. Fingerprints in the EEVS system may be used solely to determine identity and work authorization.

Section 256. Responsibilities of the Social Security Administration.
This section requires the Commissioner of Social Security to establish a secure and reliable method of comparing name, Social Security number, and citizenship information through the EEVS system. The Commissioner must take steps to prevent identity theft and correct errors.

Section 257. Immigration Enforcement Support by the Internal Revenue Service and the Social Security Administration.
The waiver defined in the Internal Revenue Code §6724(a) (26 USC §6724(a)) (related to failures to comply with information reporting requirements based upon reasonable cause) will not be available under this section if an employer issues 50 or more W-2 forms without a Social Security number or with an incorrect Social Security number. The waiver will also be unavailable to any employer who receives 10 or more no-match letters in three years.

Within 90 days of enactment, the Secretary of the Treasury is required to establish a unit within the Criminal Investigation Office of the IRS to investigate violations of the Internal Revenue Code related to unauthorized employment. The unit is required to report to Congress annually. This section increases the penalties under the Internal Revenue Code §6721 (26 USC §6721) (relating to failure to file correct returns) and is applicable as of January 1, 2007.

Section 258. Additional Criminal Penalties for Misuse of Social Security Account Numbers.
This section modifies the Social Security Act §208(a) (42 USC §408(a)) (relating to penalties for misuse of a Social Security number or card) by lowering the standard of proof for fraudulent possession or use of a Social Security card to "knowingly." Under this section, the "knowing" standard would apply to possession or use knowing the Social Security number was obtained by means of fraud; false representation of the number; or buying or selling such numbers. The "knowing" standard would also apply to altering, counterfeiting, or forging Social Security cards or possessing, using or distributing such cards. The term of maximum imprisonment is increased from five years to ten. Conspiracy and attempt of the above are also criminalized.

The Commissioner of Social Security is required to disclose identity, address, location or financial institution accounts of the holder of a Social Security number to any federal law enforcement agency for the purpose of investigating crimes described in this section. However, the Commissioner may not disclose tax return information except as authorized by the Internal Revenue Code §6103 (42 USC §6103) (relating to confidentiality and disclosure of returns and return information).

Section 259. Authorization of Appropriations.
This section authorizes such sums as are required to carry out the provisions of this Act.

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