

109TH CONGRESS
1ST SESSION

H. R. 4437

AN ACT

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

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Border Protection, Antiterrorism, and Illegal Immigra-
 4 tion Control Act of 2005”.

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

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

TITLE I—SECURING UNITED STATES BORDERS

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

TITLE II—COMBATting ALIEN SMUGGLING AND ILLEGAL ENTRY
AND PRESENCE

- Sec. 201. Definition of aggravated felony.
- Sec. 202. Alien smuggling and related offenses.
- Sec. 203. Improper entry by, or presence of, aliens.
- Sec. 204. Reentry of removed aliens.
- Sec. 205. Mandatory sentencing ranges for persons aiding or assisting certain
reentering aliens.
- Sec. 206. Prohibiting carrying or using a firearm during and in relation to an
alien smuggling crime.
- Sec. 207. Clarifying changes.

- Sec. 208. Voluntary departure reform.
- Sec. 209. Deterring aliens ordered removed from remaining in the United States unlawfully and from unlawfully returning to the United States after departing voluntarily.
- Sec. 210. Establishment of the Forensic Documents Laboratory.
- Sec. 211. Section 1546 amendments.
- Sec. 212. Motions to reopen or reconsider.
- Sec. 213. Reform of passport, visa, and immigration fraud offenses.
- Sec. 214. Criminal detention of aliens.
- Sec. 215. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.
- Sec. 216. Conforming amendment.
- Sec. 217. Inadmissibility for passport and immigration fraud.
- Sec. 218. Removal for passport and immigration fraud.
- Sec. 219. Reduction in immigration backlog.
- Sec. 220. Federal affirmation of assistance in the immigration law enforcement by States and political subdivisions of States.
- Sec. 221. Training of State and local law enforcement personnel relating to the enforcement of immigration laws.
- Sec. 222. Financial assistance to State and local police agencies that assist in the enforcement of immigration laws.
- Sec. 223. Institutional Removal Program (IRP).
- Sec. 224. State Criminal Alien Assistance Program (SCAAP).
- Sec. 225. State authorization for assistance in the enforcement of immigration laws encouraged.

TITLE III—BORDER SECURITY COOPERATION AND ENFORCEMENT

- Sec. 301. Joint strategic plan for United States border surveillance and support.
- Sec. 302. Border security on protected land.
- Sec. 303. Border security threat assessment and information sharing test and evaluation exercise.
- Sec. 304. Border Security Advisory Committee.
- Sec. 305. Permitted use of Homeland Security grant funds for border security activities.
- Sec. 306. Center of excellence for border security.
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- Sec. 309. Red Zone Defense Border Intelligence Pilot program.

TITLE IV—DETENTION AND REMOVAL

- Sec. 401. Mandatory detention for aliens apprehended at or between ports of entry.
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- Sec. 403. Enhancing transportation capacity for unlawful aliens.
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TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION

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 Sec. 703. Expansion of employment eligibility verification system to previously hired individuals and recruiting and referring.
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TITLE VIII—IMMIGRATION LITIGATION ABUSE REDUCTION

- Sec. 801. Board of Immigration Appeals removal order authority.
- Sec. 802. Judicial review of visa revocation.
- Sec. 803. Reinstatement.
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- Sec. 807. Clarification of jurisdiction on review.
- Sec. 808. Fees and expenses in judicial proceedings.

TITLE IX—PRESCREENING OF AIR PASSENGERS

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

TITLE X—FENCING AND OTHER BORDER SECURITY
IMPROVEMENTS

- Sec. 1001. Findings.
- Sec. 1002. Construction of fencing and security improvements in border area
from Pacific Ocean to Gulf of Mexico.
- Sec. 1003. Northern border study.
- Sec. 1004. Sense of the Congress.

TITLE XI—SECURITY AND FAIRNESS ENHANCEMENT

- Sec. 1101. Short title.
- Sec. 1102. Elimination of diversity immigrant program.

TITLE XII—OATH OF RENUNCIATION AND ALLEGIANCE

- Sec. 1201. Oath of renunciation and allegiance.

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

- Sec. 1301. Short title.
- Sec. 1302. Findings.
- Sec. 1303. Structure of the Office of Security and Investigations.
- Sec. 1304. Authority of the Office of Security and Investigations to investigate
internal corruption.
- Sec. 1305. Authority of the Office of Security and Investigations to detect and
investigate immigration benefits fraud.
- Sec. 1306. Increase in full-time Office of Security and Investigations personnel.
- Sec. 1307. Annual report.
- Sec. 1308. Investigations of fraud to precede immigration benefits grant.
- Sec. 1309. Elimination of the Fraud Detection and National Security Office.
- Sec. 1310. Security fee.

1 SEC. 2. STATE DEFINED.

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

1 **SEC. 3. SENSE OF CONGRESS ON SETTING A MANAGEABLE**
2 **LEVEL OF IMMIGRATION.**

3 It is the sense of Congress that the immigration and
4 naturalization policy shall be designed to enhance the eco-
5 nomic, social and cultural well-being of the United States
6 of America.

7 **TITLE I—SECURING UNITED**
8 **STATES BORDERS**

9 **SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE**
10 **BORDER.**

11 (a) IN GENERAL.—Not later than 18 months after
12 the date of the enactment of this Act, the Secretary of
13 Homeland Security shall take all actions the Secretary de-
14 termines necessary and appropriate to achieve and main-
15 tain operational control over the entire international land
16 and maritime borders of the United States, to include the
17 following—

18 (1) systematic surveillance of the international
19 land and maritime borders of the United States
20 through more effective use of personnel and tech-
21 nology, such as unmanned aerial vehicles, ground-
22 based sensors, satellites, radar coverage, and cam-
23 eras;

24 (2) physical infrastructure enhancements to
25 prevent unlawful entry by aliens into the United
26 States and facilitate access to the international land

1 and maritime borders by United States Customs and
2 Border Protection, such as additional checkpoints,
3 all weather access roads, and vehicle barriers;

4 (3) hiring and training as expeditiously as possible
5 additional Border Patrol agents authorized
6 under section 5202 of the Intelligence Reform and
7 Terrorism Prevention Act of 2004 (Public Law 108–
8 458); and

9 (4) increasing deployment of United States
10 Customs and Border Protection personnel to areas
11 along the international land and maritime borders of
12 the United States where there are high levels of un-
13 lawful entry by aliens and other areas likely to be
14 impacted by such increased deployment.

15 (b) OPERATIONAL CONTROL DEFINED.—In this sec-
16 tion, the term “operational control” means the prevention
17 of all unlawful entries into the United States, including
18 entries by terrorists, other unlawful aliens, instruments of
19 terrorism, narcotics, and other contraband.

20 (c) REPORT.—Not later than one year after the date
21 of the enactment of this Act and annually thereafter, the
22 Secretary shall submit to Congress a report on the
23 progress made toward achieving and maintaining oper-
24 ational control over the entire international land and mari-

1 time borders of the United States in accordance with this
2 section.

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

4 (a) SURVEILLANCE PLAN.—Not later than six
5 months after the date of the enactment of this Act, the
6 Secretary of Homeland Security shall submit to the appro-
7 priate congressional committees a comprehensive plan for
8 the systematic surveillance of the international land and
9 maritime borders of the United States. The plan shall in-
10 clude the following:

11 (1) An assessment of existing technologies em-
12 ployed on such borders.

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

16 (3) A description of how the United States Cus-
17 toms and Border Protection is working, or is ex-
18 pected to work, with the Directorate of Science and
19 Technology of the Department of Homeland Secu-
20 rity to identify and test surveillance technology.

21 (4) A description of the specific surveillance
22 technology to be deployed.

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

1 (6) A detailed estimate of all costs associated
2 with the implementation of such deployment and
3 continued maintenance of such technologies.

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

9 (b) NATIONAL STRATEGY FOR BORDER SECURITY.—
10 Not later than one year after the date of the enactment
11 of this Act, the Secretary of Homeland Security, in con-
12 sultation with the heads of other appropriate Federal
13 agencies, shall submit to the appropriate congressional
14 committees a National Strategy for Border Security to
15 achieve operational control over all ports of entry into the
16 United States and the international land and maritime
17 borders of the United States. The Secretary shall update
18 the Strategy as needed and shall submit to the appropriate
19 congressional committees, not later than 30 days after
20 each such update, the updated Strategy. The National
21 Strategy for Border Security shall include the following:

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

24 (2) An assessment of the threat posed by ter-
25 rorists and terrorist groups that may try to infiltrate

1 the United States at points along the international
2 land and maritime borders of the United States.

3 (3) A risk assessment of all ports of entry to
4 the United States and all portions of the inter-
5 national land and maritime borders of the United
6 States, except for ports of entry and facilities sub-
7 ject to vulnerability assessments under section
8 70102 or 70103 of title 46, United States Code,
9 with respect to—

10 (A) preventing the entry of terrorists,
11 other unlawful aliens, instruments of terrorism,
12 narcotics, and other contraband into the United
13 States; and

14 (B) protecting critical infrastructure at or
15 near such ports of entry or borders.

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

20 (5) An assessment of the most appropriate,
21 practical, and cost-effective means of defending the
22 international land and maritime borders of the
23 United States against threats to security and illegal
24 transit, including intelligence capacities, technology,

1 equipment, personnel, and training needed to ad-
2 dress security vulnerabilities.

3 (6) An assessment of staffing needs for all bor-
4 der security functions, taking into account threat
5 and vulnerability information pertaining to the bor-
6 ders and the impact of new security programs, poli-
7 cies, and technologies.

8 (7) A description of the border security roles
9 and missions of Federal, State, regional, local, and
10 tribal authorities, and recommendations with respect
11 to how the Department of Homeland Security can
12 improve coordination with such authorities, to enable
13 border security enforcement to be carried out in an
14 efficient and effective manner.

15 (8) A prioritization of research and development
16 objectives to enhance the security of the inter-
17 national land and maritime borders of the United
18 States.

19 (9) A description of ways to ensure that the
20 free flow of legitimate travel and commerce of the
21 United States is not diminished by efforts, activities,
22 and programs aimed at securing the international
23 land and maritime borders of the United States.

24 (10) An assessment of additional detention fa-
25 cilities and bed space needed to detain unlawful

1 aliens apprehended at United States ports of entry
2 or along the international land borders of the United
3 States in accordance with the National Strategy for
4 Border Security required under this subsection and
5 the mandatory detention requirement described in
6 section 401 of this Act.

7 (11) A description of how the Secretary shall
8 ensure accountability and performance metrics with-
9 in the appropriate agencies of the Department of
10 Homeland Security responsible for implementing the
11 border security measures determined necessary upon
12 completion of the National Strategy for Border Se-
13 curity.

14 (12) A timeline for the implementation of the
15 additional security measures determined necessary
16 as part of the National Strategy for Border Secu-
17 rity, including a prioritization of security measures,
18 realistic deadlines for addressing the security and
19 enforcement needs, and resource estimates and allo-
20 cations.

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

1 (1) State, local, and tribal authorities along the
2 international land and maritime borders of the
3 United States; and

4 (2) an appropriate cross-section of private sec-
5 tor and nongovernmental organizations with relevant
6 expertise.

7 (d) COORDINATION.—The National Strategy for Bor-
8 der Security described in subsection (b) shall be consistent
9 with the National Strategy for Maritime Security devel-
10 oped pursuant to Homeland Security Presidential Direc-
11 tive 13.

12 (e) IMMEDIATE ACTION.—Nothing in this section
13 shall be construed to relieve the Secretary of the responsi-
14 bility to take all actions necessary and appropriate to
15 achieve and maintain operational control over the entire
16 international land and maritime borders of the United
17 States pursuant to section 101 of this Act or any other
18 provision of law.

19 (f) REPORTING OF IMPLEMENTING LEGISLATION.—
20 After submittal of the National Strategy for Border Secu-
21 rity described in subsection (b) to the appropriate congres-
22 sional committees, such committees shall promptly report
23 to their respective House legislation authorizing necessary
24 security measures based on its evaluation of the National
25 Strategy for Border Security.

1 (g) APPROPRIATE CONGRESSIONAL COMMITTEE.—
2 For purposes of this title and section 301(b), the term
3 “appropriate congressional committee” has the meaning
4 given it in section 2(2) of the Homeland Security Act of
5 2002 (6 U.S.C. 101(2)).

6 (h) RULE OF CONSTRUCTION.—Nothing in this sec-
7 tion shall be construed to alter, impact, diminish, or in
8 any way undermine the authority of the Administrator of
9 the Federal Aviation Administration to oversee, regulate,
10 and control the safe and efficient use of the airspace of
11 the United States.

12 **SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY**
13 **AGREEMENTS.**

14 (a) IN GENERAL.—Not later than six months after
15 the date of the enactment of this Act, the Secretary of
16 Homeland Security shall submit to the appropriate con-
17 gressional committees (as defined in section 102(g)) a re-
18 port on the implementation of the cross-border security
19 agreements signed by the United States with Mexico and
20 Canada, including recommendations on improving co-
21 operation with such countries to enhance border security.

22 (b) UPDATES.—The Secretary shall regularly update
23 the Committee on Homeland Security of the House of
24 Representatives concerning such implementation.

1 **SEC. 104. BIOMETRIC DATA ENHANCEMENTS.**

2 Not later than October 1, 2006, the Secretary of
3 Homeland Security shall—

4 (1) in consultation with the Attorney General,
5 enhance connectivity between the IDENT and
6 IAFIS fingerprint databases to ensure more expedi-
7 tious data searches; and

8 (2) in consultation with the Secretary of State,
9 collect all fingerprints from each alien required to
10 provide fingerprints during the alien's initial enroll-
11 ment in the integrated entry and exit data system
12 described in section 110 of the Illegal Immigration
13 Reform and Immigrant Responsibility Act of 1996
14 (8 U.S.C. 1221 note).

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

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

19 (1) describing the tangible and quantifiable
20 benefits of the One Face at the Border Initiative es-
21 tablished by the Department of Homeland Security;

22 (2) identifying goals for and challenges to in-
23 creased effectiveness of the One Face at the Border
24 Initiative;

25 (3) providing a breakdown of the number of in-
26 spectors who were—

1 (A) personnel of the United States Cus-
2 toms Service before the date of the establish-
3 ment of the Department of Homeland Security;

4 (B) personnel of the Immigration and Nat-
5 uralization Service before the date of the estab-
6 lishment of the Department;

7 (C) personnel of the Department of Agri-
8 culture before the date of the establishment of
9 the Department; or

10 (D) hired after the date of the establish-
11 ment of the Department;

12 (4) describing the training time provided to
13 each employee on an annual basis for the various
14 training components of the One Face at the Border
15 Initiative; and

16 (5) outlining the steps taken by the Department
17 to ensure that expertise is retained with respect to
18 customs, immigration, and agriculture inspection
19 functions under the One Face at the Border Initia-
20 tive.

21 **SEC. 106. SECURE COMMUNICATION.**

22 The Secretary of Homeland Security shall, as expedi-
23 tiously as practicable, develop and implement a plan to
24 ensure clear and secure two-way communication capabili-

1 ties, including the specific use of satellite communica-
2 tions—

3 (1) among all Border Patrol agents conducting
4 operations between ports of entry;

5 (2) between Border Patrol agents and their re-
6 spective Border Patrol stations;

7 (3) between Border Patrol agents and residents
8 in remote areas along the international land border
9 who do not have mobile communications, as the Sec-
10 retary determines necessary; and

11 (4) between all appropriate Department of
12 Homeland Security border security agencies and
13 State, local, and tribal law enforcement agencies.

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

15 In each of fiscal years 2007 through 2010, the Sec-
16 retary of Homeland Security shall, subject to the avail-
17 ability of appropriations, increase by not less than 250 the
18 number of positions for full-time active duty port of entry
19 inspectors. There are authorized to be appropriated to the
20 Secretary such sums as may be necessary for each such
21 fiscal year to hire, train, equip, and support such addi-
22 tional inspectors under this section.

23 **SEC. 108. CANINE DETECTION TEAMS.**

24 In each of fiscal years 2007 through 2011, the Sec-
25 retary of Homeland Security shall, subject to the avail-

1 ability of appropriations, increase by not less than 25 per-
2 cent above the number of such positions for which funds
3 were allotted for the preceding fiscal year the number of
4 trained detection canines for use at United States ports
5 of entry and along the international land and maritime
6 borders of the United States.

7 **SEC. 109. SECURE BORDER INITIATIVE FINANCIAL AC-**
8 **COUNTABILITY.**

9 (a) IN GENERAL.—The Inspector General of the De-
10 partment of Homeland Security shall review each contract
11 action related to the Department’s Secure Border Initia-
12 tive having a value greater than \$20,000,000, to deter-
13 mine whether each such action fully complies with applica-
14 ble cost requirements, performance objectives, program
15 milestones, inclusion of small, minority, and women-owned
16 business, and timelines. The Inspector General shall com-
17 plete a review under this subsection with respect to a con-
18 tract action—

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

21 (2) upon the conclusion of the performance of
22 the contract.

23 (b) REPORT BY INSPECTOR GENERAL.—Upon com-
24 pletion of each review described in subsection (a), the In-
25 spector General shall submit to the Secretary of Homeland

1 Security a report containing the findings of the review,
2 including findings regarding any cost overruns, significant
3 delays in contract execution, lack of rigorous departmental
4 contract management, insufficient departmental financial
5 oversight, bundling that limits the ability of small business
6 to compete, or other high risk business practices.

7 (c) REPORT BY SECRETARY.—Not later than 30 days
8 after the receipt of each report required under subsection
9 (b), the Secretary of Homeland Security shall submit to
10 the appropriate congressional committees (as defined in
11 section 102(g)) a report on the findings of the report by
12 the Inspector General and the steps the Secretary has
13 taken, or plans to take, to address the problems identified
14 in such report.

15 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
16 tion to amounts that are otherwise authorized to be appro-
17 priated to the Office of the Inspector General, an addi-
18 tional amount equal to at least five percent for fiscal year
19 2007, at least six percent for fiscal year 2008, and at least
20 seven percent for fiscal year 2009 of the overall budget
21 of the Office for each such fiscal year is authorized to be
22 appropriated to the Office to enable the Office to carry
23 out this section.

24 (e) ACTION BY INSPECTOR GENERAL.—In the event
25 the Inspector General becomes aware of any improper con-

1 duct or wrongdoing in accordance with the contract review
2 required under subsection (a), the Inspector General shall,
3 as expeditiously as practicable, refer information related
4 to such improper conduct or wrongdoing to the Secretary
5 of Homeland Security or other appropriate official in the
6 Department of Homeland Security for purposes of evalu-
7 ating whether to suspend or debar the contractor.

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

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

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

16 (1) An evaluation of the length and content of
17 the basic training curriculum provided to new Bor-
18 der Patrol agents by the Federal Law Enforcement
19 Training Center, including a description of how the
20 curriculum has changed since September 11, 2001.

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

1 (3) A comparison, based on the review and
2 breakdown under paragraph (2) of the costs, effec-
3 tiveness, scope, and quality, including geographic
4 characteristics, with other similar law enforcement
5 training programs provided by State and local agen-
6 cies, non-profit organizations, universities, and the
7 private sector.

8 (4) An evaluation of whether and how utilizing
9 comparable non-Federal training programs, pro-
10 ficiency testing to streamline training, and long-dis-
11 tance learning programs may affect—

12 (A) the cost-effectiveness of increasing the
13 number of Border Patrol agents trained per
14 year and reducing the per agent costs of basic
15 training; and

16 (B) the scope and quality of basic training
17 needed to fulfill the mission and duties of a
18 Border Patrol agent.

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

20 Not later than 120 days after the date of the enact-
21 ment of this Act, the Secretary of Homeland Security shall
22 submit to the appropriate congressional committees a re-
23 port detailing the impact the airspace security mission in
24 the National Capital Region (in this section referred to
25 as the “NCR”) will have on the ability of the Department

1 of Homeland Security to protect the international land
2 and maritime borders of the United States. Specifically,
3 the report shall address:

4 (1) The specific resources, including personnel,
5 assets, and facilities, devoted or planned to be de-
6 voted to the NCR airspace security mission, and
7 from where those resources were obtained or are
8 planned to be obtained.

9 (2) An assessment of the impact that diverting
10 resources to support the NCR mission has or is ex-
11 pected to have on the traditional missions in and
12 around the international land and maritime borders
13 of the United States.

14 **SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BOR-**
15 **DER.**

16 (a) IN GENERAL.—Subject to the amount appro-
17 priated in subsection (d) of this section, the Secretary of
18 Homeland Security shall reimburse property owners for
19 costs associated with repairing damages to the property
20 owners’ private infrastructure constructed on a United
21 States Government right-of-way delineating the inter-
22 national land border when such damages are—

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

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

4 (b) VALUE OF REIMBURSEMENTS.—Reimbursements
5 for submitted damages as outlined in subsection (a) shall
6 not exceed the value of the private infrastructure prior to
7 damage.

8 (c) REPORTS.—Not later than six months after the
9 date of the enactment of this Act and every subsequent
10 six months until the amount appropriated for this section
11 is expended in its entirety, the Secretary of Homeland Se-
12 curity shall submit to the Committee on Homeland Secu-
13 rity of the House of Representatives a report that details
14 the expenditures and circumstances in which those ex-
15 penditures were made pursuant to this section.

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

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

20 Not later than September 30, 2006, the Secretary of
21 Homeland Security shall establish at least one Border Pa-
22 trol unit for the Virgin Islands of the United States.

1 **SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF**
2 **CENTRAL AMERICAN GANGS ALONG INTER-**
3 **NATIONAL BORDER.**

4 Not later than one year after the date of the enact-
5 ment of this Act, the Secretary of Homeland Security shall
6 report to the Committee on Homeland Security of the
7 House of Representatives on the progress of the Depart-
8 ment of Homeland Security in tracking the travel of Cen-
9 tral American gangs across the international land border
10 of the United States and Mexico.

11 **SEC. 115. COLLECTION OF DATA.**

12 Beginning on October 1, 2006, the Secretary of
13 Homeland Security shall annually compile data on the fol-
14 lowing categories of information:

15 (1) The number of unauthorized aliens who re-
16 quire medical care taken into custody by Border Pa-
17 trol officials.

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

22 (3) The number of unauthorized aliens with se-
23 rious injuries or medical conditions who arrive at
24 United States ports of entry and subsequently are
25 admitted into the United States for emergency med-

1 ical care, as reported by United States Customs and
2 Border Protection.

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

7 **SEC. 116. DEPLOYMENT OF RADIATION DETECTION POR-**
8 **TAL EQUIPMENT AT UNITED STATES PORTS**
9 **OF ENTRY.**

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

16 (b) REPORT.—Not later than 180 days after the date
17 of the enactment of this Act, the Secretary shall submit
18 to the Committee on Homeland Security of the House of
19 Representatives and the Committee on Homeland Security
20 and Governmental Affairs of the Senate a report on the
21 Department's progress toward carrying out the deploy-
22 ment described in subsection (a).

23 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated to the Secretary to carry

1 out subsection (a) such sums as may be necessary for each
2 of fiscal years 2006 and 2007.

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

4 With respect to the Secure Border Initiative and for
5 the purposes of strengthening security along the inter-
6 national land and maritime borders of the United States,
7 the Secretary of Homeland Security shall conduct out-
8 reach to and consult with members of the private sector,
9 including business councils, associations, and small, mi-
10 nority-owned, women-owned, and disadvantaged busi-
11 nesses to—

12 (1) identify existing and emerging technologies,
13 best practices, and business processes;

14 (2) maximize economies of scale, cost-effective-
15 ness, systems integration, and resource allocation;
16 and

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

20 **SEC. 118. SENSE OF CONGRESS REGARDING ENFORCE-**
21 **MENT OF IMMIGRATION LAWS.**

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

23 (1) A primary duty of the Federal Government
24 is to secure the homeland and ensure the safety of
25 United States citizens and lawful residents.

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

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

10 (4) Four years after those attacks, there is still
11 a failure to secure the borders of the United States
12 against illegal entry.

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

17 (6) If illegal aliens can enter and remain in the
18 United States with impunity, so, too, can terrorists
19 enter and remain while they plan, rehearse, and then
20 carry out their attacks.

21 (7) The failure to control and to prevent illegal
22 immigration into the United States increases the
23 likelihood that terrorists will succeed in launching
24 catastrophic or harmful attacks on United States
25 soil.

1 (8) There are numerous immigration laws that
2 are currently not being enforced.

3 (9) Law enforcement officers are often discour-
4 aged from enforcing the law by superiors.

5 (b) SENSE OF CONGRESS.—It is the sense of Con-
6 gress that the President, the Attorney General, Secretary
7 of State, Secretary of Homeland Security, and other De-
8 partment Secretaries should immediately use every tool
9 available to them to enforce the immigration laws of the
10 United States, as enacted by Congress.

11 **SEC. 119. SECURING ACCESS TO BORDER PATROL UNI-**
12 **FORMS.**

13 Notwithstanding any other provision of law, all uni-
14 forms procured for the use of Border Patrol agents shall
15 be manufactured in the United States substantially all
16 from articles, materials, or supplies mined, produced, or
17 manufactured, as the case may be, in the United States.

18 **SEC. 120. US-VISIT.**

19 Not later than one year after the date of the enact-
20 ment of this Act, the Secretary of Homeland Security, in
21 consultation with the heads of other appropriate Federal
22 agencies, shall submit to the appropriate congressional
23 committees a timeline for—

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

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

4 (3) making interoperable all immigration
5 screening systems operated by the Department of
6 Homeland Security.

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

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

10 **SEC. 122. COMPLETION OF BACKGROUND AND SECURITY**
11 **CHECKS.**

12 Section 103 of the Immigration and Nationality Act
13 (8 U.S.C. 1103) is amended by adding at the end the fol-
14 lowing:

15 “(i) Notwithstanding any other provision of law, the
16 Secretary of Homeland Security, the Attorney General,
17 and the courts may not—

18 “(1) grant or order the grant of adjustment of
19 status of an alien to that of an alien lawfully admit-
20 ted for permanent residence,

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

1 “(3) issue any documentation evidencing or re-
2 lated to such grant by the Secretary, the Attorney
3 General, or any court,
4 until an IBIS check on the alien has been initiated at a
5 Treasury Enforcement Communications System (TECS)
6 access level of no less than Level 3, results from the check
7 have been returned, and any derogatory information has
8 been obtained and assessed, and until any other such
9 background and security checks have been completed as
10 the Secretary may require.

11 “(j) Notwithstanding any other provision of law, the
12 Secretary of Homeland Security, the Attorney General,
13 and the courts may not—

14 “(1) grant or order the grant of adjustment of
15 status of an alien to that of an alien lawfully admit-
16 ted for permanent residence,

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

20 “(3) issue any documentation evidencing or re-
21 lated to such grant by the Secretary, the Attorney
22 General, or any court,
23 until any suspected or alleged fraud relating to the grant-
24 ing of any status (including the granting of adjustment
25 of status), relief, protection from removal, or other benefit

1 under this subsection has been fully investigated and
2 found to be unsubstantiated.”.

3 **TITLE II—COMBATTING ALIEN**
4 **SMUGGLING AND ILLEGAL**
5 **ENTRY AND PRESENCE**

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

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

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

14 (2) in subparagraph (O), by striking “section
15 275(a) or 276 committed by an alien who was pre-
16 viously deported on the basis of a conviction for an
17 offense described in another subparagraph of this
18 paragraph”, and inserting “section 275 or section
19 276 for which the term of imprisonment was at least
20 one year”;

21 (3) in subparagraph (U), by inserting before
22 “an attempt” the following: “soliciting, aiding, abet-
23 ting, counseling, commanding, inducing, procuring
24 or”; and

1 (4) by striking all that follows subparagraph
2 (U) and inserting the following:

3 “The term applies—

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

10 “(ii) even if the length of the term of im-
11 prisonment is based on recidivist or other en-
12 hancements;

13 “(iii) to an offense described in this para-
14 graph even if the statute setting forth the of-
15 fense of conviction sets forth other offenses not
16 described in this paragraph, unless the alien af-
17 firmatively shows, by a preponderance of evi-
18 dence and using public records related to the
19 conviction, including court records, police
20 records and presentence reports, that the par-
21 ticular facts underlying the offense do not sat-
22 isfy the generic definition of that offense; and

23 “(iv) regardless of whether the conviction
24 was entered before, on, or after September 30,

1 1996, and notwithstanding any other provision
2 of law (including any effective date).”.

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

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

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

10 “ALIEN SMUGGLING AND RELATED OFFENSES

11 “SEC. 274. (a) CRIMINAL OFFENSES AND PEN-
12 ALTIES.—

13 “(1) PROHIBITED ACTIVITIES.—Whoever—

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

21 “(B) assists, encourages, directs, or in-
22 duces a person to come to or enter the United
23 States at a place other than a designated port
24 of entry or place other than as designated by
25 the Secretary of Homeland Security, regardless
26 of whether such person has official permission

1 or lawful authority to be in the United States,
2 knowing or in reckless disregard of the fact
3 that such person is an alien;

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

11 “(D) transports or moves a person in the
12 United States, knowing or in reckless disregard
13 of the fact that such person is an alien who
14 lacks lawful authority to enter or be in the
15 United States, where the transportation or
16 movement will aid or further in any manner the
17 person’s illegal entry into or illegal presence in
18 the United States;

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

24 “(F) transports, moves, harbors, conceals,
25 or shields from detection a person outside of

1 the United States knowing or in reckless dis-
2 regard of the fact that such person is an alien
3 in unlawful transit from one country to another
4 or on the high seas, under circumstances in
5 which the person is in fact seeking to enter the
6 United States without official permission or
7 lawful authority; or

8 “(G) conspires or attempts to commit any
9 of the preceding acts,

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

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

15 “(A) except as provided in subparagraphs
16 (D) through (H), in the case where the offense
17 was not committed for commercial advantage,
18 profit, or private financial gain, be imprisoned
19 for not more than 5 years, or fined under title
20 18, United States Code, or both;

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

1 “(i) in the case of a first violation of
2 this subparagraph, be imprisoned for not
3 more than 20 years, or fined under title
4 18, United States Code, or both; and

5 “(ii) for any subsequent violation, be
6 imprisoned for not less than 3 years nor
7 more than 20 years, or fined under title
8 18, United States Code, or both;

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

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

23 “(E) in the case where any participant in
24 the offense created a substantial risk of death

1 or serious bodily injury to another person, in-
2 cluding—

3 “(i) transporting a person in an en-
4 gine compartment, storage compartment,
5 or other confined space;

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

9 “(iii) transporting or harboring a per-
10 son in a crowded, dangerous, or inhumane
11 manner,

12 be imprisoned not less than 5 nor more than 20
13 years, or fined under title 18, United States
14 Code, or both;

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

1 “(G) in the case where the offense involved
2 an alien who the offender knew or had reason
3 to believe was an alien—

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

6 “(ii) intending to engage in such ter-
7 rorist activity,

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

11 “(H) in the case where the offense caused
12 or resulted in the death of any person, be pun-
13 ished by death or imprisoned for not less than
14 10 years, or any term of years, or for life, or
15 fined under title 18, United States Code, or
16 both.

17 “(3) EXTRATERRITORIAL JURISDICTION.—

18 There is extraterritorial Federal jurisdiction over the
19 offenses described in this subsection.

20 “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

21 “(1) IN GENERAL.—Any person who, during
22 any 12-month period, knowingly hires for employ-
23 ment at least 10 individuals with actual knowledge
24 that the individuals are aliens described in para-
25 graph (2), shall be fined under title 18, United

1 States Code, imprisoned for not more than 5 years,
2 or both.

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

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

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

9 “(c) SEIZURE AND FORFEITURE.—

10 “(1) IN GENERAL.—Any property, real or per-
11 sonal, that has been used to commit or facilitate the
12 commission of a violation of this section, the gross
13 proceeds of such violation, and any property trace-
14 able to such property or proceeds, shall be subject
15 to forfeiture.

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

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

7 “(e) ADMISSIBILITY OF EVIDENCE.—

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

18 “(A) Any order, finding, or determination
19 concerning the alien’s status or lack thereof
20 made by a federal judge or administrative adju-
21 dicator (including an immigration judge or an
22 immigration officer) during any judicial or ad-
23 ministrative proceeding authorized under the
24 immigration laws or regulations prescribed
25 thereunder.

1 “(B) An official record of the Department
2 of Homeland Security, Department of Justice,
3 or the Department of State concerning the
4 alien’s status or lack thereof.

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

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

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

20 “(1) The term ‘lawful authority’ means permis-
21 sion, authorization, or license that is expressly pro-
22 vided for in the immigration laws of the United
23 States or the regulations prescribed thereunder.
24 Such term does not include any such authority se-
25 cured by fraud or otherwise obtained in violation of

1 law, nor does it include authority that has been
2 sought but not approved. No alien shall be deemed
3 to have lawful authority to come to, enter, reside, re-
4 main, or be in the United States if such coming to,
5 entry, residence, remaining, or presence was, is, or
6 would be in violation of law.

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

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

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

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

16 Section 275 of the Immigration and Nationality Act
17 (8 U.S.C. 1325) is amended—

18 (1) in the section heading, by inserting “UN-
19 LAWFUL PRESENCE;” after “IMPROPER TIME OR
20 PLACE;”;

21 (2) in subsection (a)—

22 (A) by striking “Any alien” and inserting
23 “Except as provided in subsection (b), any
24 alien”;

25 (B) by striking “or” before (3);

1 (C) by inserting after “concealment of a
2 material fact,” the following: “or (4) is other-
3 wise present in the United States in violation of
4 the immigration laws or the regulations pre-
5 scribed thereunder,”; and

6 (D) by striking “6 months” and inserting
7 “one year and a day”;

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

10 “(c)(1) Whoever—

11 “(A) knowingly enters into a marriage for the
12 purpose of evading any provision of the immigration
13 laws; or

14 “(B) knowingly misrepresents the existence or
15 circumstances of a marriage—

16 “(i) in an application or document arising
17 under or authorized by the immigration laws of
18 the United States or the regulations prescribed
19 thereunder, or

20 “(ii) during any immigration proceeding
21 conducted by an administrative adjudicator (in-
22 cluding an immigration officer or examiner, a
23 consular officer, an immigration judge, or a
24 member of the Board of Immigration Appeals);

1 shall be fined under title 18, United States Code, or
2 imprisoned not more than 10 years, or both.

3 “(2) Whoever—

4 “(A) knowingly enters into two or more mar-
5 riages for the purpose of evading any provision of
6 the immigration laws; or

7 “(B) knowingly arranges, supports, or facili-
8 tates two or more marriages designed or intended to
9 evade any provision of the immigration laws;

10 shall be fined under title 18, United States Code, impris-
11 oned not less than 2 years nor more than 20 years, or
12 both.

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

16 “(4) For purposes of this section, the term ‘pro-
17 ceeding’ includes an adjudication, interview, hearing, or
18 review.”

19 (4) in subsection (d)—

20 (A) by striking “5 years” and inserting
21 “10 years”;

22 (B) by adding at the end the following:

23 “An offense under this subsection continues
24 until the fraudulent nature of the commercial

1 enterprise is discovered by an immigration offi-
2 cer.”; and

3 (5) by adding at the end the following new sub-
4 sections:

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

6 “(A) shall be fined under title 18, United
7 States Code, imprisoned not more than 10 years, or
8 both, if the offense described in such paragraph was
9 committed subsequent to a conviction or convictions
10 for commission of three or more misdemeanors in-
11 volving drugs, crimes against the person, or both, or
12 a felony;

13 (B) whose violation was subsequent to con-
14 viction for a felony for which the alien received
15 a sentence of 30 months or more, shall be fined
16 under title 18, United States Code, imprisoned
17 not more than 10 years, or both; or

18 (C) whose violation was subsequent to con-
19 viction for a felony for which the alien received
20 a sentence of 60 months or more, shall be fined
21 under title 18, United States Code, imprisoned
22 not more than 20 years, or both.

23 “(2) An alien described in this paragraph is an alien
24 who—

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

4 “(B) eludes examination or inspection by immi-
5 gration officers;

6 “(C) attempts to enter or obtains entry to the
7 United States by a willfully false or misleading rep-
8 resentation or the willful concealment of a material
9 fact; or

10 “(D) is otherwise present in the United States
11 in violation of the immigration laws or the regula-
12 tions prescribed thereunder.

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

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

4 “(f) For purposes of this section, the term ‘attempts
5 to enter’ refers to the general intent of the alien to enter
6 the United States and does not refer to the intent of the
7 alien to violate the law.”.

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

9 Section 276 of the Immigration and Nationality Act
10 (8 U.S.C. 1326) is amended—

11 (1) in subsection (a)—

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

15 (B) in the matter following paragraph (2),
16 by striking “imprisoned not more than 2
17 years,” and inserting “imprisoned for a term of
18 not less than 1 year and not more than 2
19 years,”;

20 (C) by adding at the end the following: “It
21 shall be an affirmative defense to an offense
22 under this subsection that (A) prior to an
23 alien’s reembarkation at a place outside the
24 United States or an alien’s application for ad-
25 mission from foreign contiguous territory, the

1 Secretary of Homeland Security has expressly
2 consented to the alien’s reapplying for admis-
3 sion; or (B) with respect to an alien previously
4 denied admission and removed, such alien was
5 not required to obtain such advance consent
6 under this Act or any prior Act.”;

7 (2) in subsection (b)—

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

12 (B) in paragraph (2), by striking “impris-
13 oned not more than 20 years,” and insert “im-
14 prisoned for a term of not less than 10 years
15 and not more than 20 years,”;

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

18 (D) in paragraph (4), by striking “impris-
19 oned for not more than 10 years,” and insert
20 “imprisoned for a term of not less than 5 years
21 and not more than 10 years,”; and

22 (E) by adding at the end the following:
23 “The prior convictions in paragraphs (1) and
24 (2) are elements of enhanced crimes and the
25 penalties under such paragraphs shall apply

1 only where the conviction (or convictions) that
2 form the basis for the additional penalty are al-
3 leged in the indictment or information and are
4 proven beyond a reasonable doubt at trial or
5 admitted by the defendant in pleading guilty.
6 Any admissible evidence may be used to show
7 that the prior conviction is a qualifying crime
8 and the criminal trial for a violation of either
9 such paragraph shall not be bifurcated.”;

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

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

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

17 “(e) For purposes of this section, the term ‘attempts
18 to enter’ refers to the general intent of the alien to enter
19 the United States and does not refer to the intent of the
20 alien to violate the law.”.

21 **SEC. 205. MANDATORY SENTENCING RANGES FOR PERSONS**

22 **AIDING OR ASSISTING CERTAIN REENTERING**
23 **ALIENS.**

24 Section 277 of the Immigration and Nationality Act
25 (8 U.S.C. 1327) is amended—

1 (1) by striking “Any person” and inserting “(a)
2 Subject to subsection (b), any person”; and

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

4 “(b)(1) Any person who knowingly aids or assists any
5 alien violating section 276(b) to reenter the United States,
6 or who connives or conspires with any person or persons
7 to allow, procure, or permit any such alien to reenter the
8 United States, shall be fined under title 18, United States
9 Code, imprisoned for a term imposed under paragraph (2),
10 or both.

11 “(2) The term of imprisonment imposed under para-
12 graph (1) shall be within the range to which the reentering
13 alien is subject under section 276(b).”.

14 **SEC. 206. PROHIBITING CARRYING OR USING A FIREARM**
15 **DURING AND IN RELATION TO AN ALIEN**
16 **SMUGGLING CRIME.**

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

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

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

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

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

3 **SEC. 207. CLARIFYING CHANGES.**

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

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

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

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

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

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

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

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

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

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

5 **SEC. 208. VOLUNTARY DEPARTURE REFORM.**

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

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

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

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

20 (B) by striking paragraph (3);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (3) VOLUNTARY DEPARTURE AGREEMENTS.—

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

15 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

16 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

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

24 “(2) CONCESSIONS BY THE SECRETARY.—In

25 connection with the alien’s agreement to depart vol-

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

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

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

3 “(e) ELIGIBILITY.—

4 “ (1) PRIOR GRANT OF VOLUNTARY DEPART-
5 TURE.—An alien shall not be permitted to depart
6 voluntarily under this section if the Secretary of
7 Homeland Security or the Attorney General pre-
8 viously permitted the alien to depart voluntarily.

9 “(2) ADDITIONAL LIMITATIONS.—The Sec-
10 retary of Homeland Security may by regulation limit
11 eligibility or impose additional conditions for vol-
12 untary departure under subsection (a)(1) for any
13 class or classes of aliens. The Secretary or Attorney
14 General may by regulation limit eligibility or impose
15 additional conditions for voluntary departure under
16 subsection (a)(2) or (b) for any class or classes of
17 aliens. Notwithstanding any other provision of law
18 (statutory or nonstatutory), including section 2241
19 of title 28, United States Code, or any other habeas
20 corpus provision, and section 1361 and 1651 of such
21 title, no court may review any regulation issued
22 under this subsection.”.

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

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

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

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

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

3 (1) PENALTIES FOR FAILURE TO DEPART.—

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

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

13 “(1) CIVIL PENALTY.—

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

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

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

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

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

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

13 “(3) REOPENING.—

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

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

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

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

10 (d) EFFECTIVE DATES.—

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

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

1 **SEC. 209. DETERRING ALIENS ORDERED REMOVED FROM**
2 **REMAINING IN THE UNITED STATES UNLAW-**
3 **FULLY AND FROM UNLAWFULLY RETURNING**
4 **TO THE UNITED STATES AFTER DEPARTING**
5 **VOLUNTARILY.**

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

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

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

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

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

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

24 “(c) INELIGIBILITY FOR RELIEF.—

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

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

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

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

16 (d) EFFECTIVE DATES.—

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

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

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

3 **SEC. 210. ESTABLISHMENT OF THE FORENSIC DOCUMENTS**

4 **LABORATORY.**

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

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

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

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

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

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

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

8 **SEC. 211. SECTION 1546 AMENDMENTS.**

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

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

16 **SEC. 212. MOTIONS TO REOPEN OR RECONSIDER.**

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

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

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

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

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

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

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

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

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

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

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

15 **SEC. 213. REFORM OF PASSPORT, VISA, AND IMMIGRATION**
 16 **FRAUD OFFENSES.**

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

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

- “1541. Trafficking in passports.
- “1542. False statement in an application for a passport.
- “1543. Forgery and unlawful production of a passport.
- “1544. Misuse of a passport.
- “1545. Schemes to defraud aliens.
- “1546. Immigration and visa fraud.
- “1547. Attempts and conspiracies.
- “1548. Increased penalties for certain offenses.
- “1549. Seizure and forfeiture.
- “1550. Additional jurisdiction.

“1551. Additional venue.

“1552. Definitions.

“1553. Authorized law enforcement activities.

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

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

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

5 or

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

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

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

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

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

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

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

5 “Whoever knowingly—

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

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

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

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

24 “(a) Whoever—

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

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

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

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

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

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

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

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

22 **“§ 1544. Misuse of a passport**

23 “(a) Whoever—

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

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

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

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

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

15 “(b) Whoever knowingly uses any passport—

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

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

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

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

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

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

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

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

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

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

17 “(a) Whoever—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **“§ 1550. Additional jurisdiction**

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

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

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

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

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

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

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

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

10 **“§ 1551. Additional venue**

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

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

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

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

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

23 **“§ 1552. Definitions**

24 “For purposes of this chapter:

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

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

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

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

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

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

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

19 “(A) any passport or visa; or

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

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

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

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

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

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

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

18 “(7) The term ‘passport’ means a travel docu-
19 ment attesting to the identity and nationality of the
20 bearer that is issued under the authority of the Sec-
21 retary of State, a foreign government, or an inter-
22 national organization; or any instrument purporting
23 to be the same.

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

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

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

6 “The sections in this chapter do not prohibit any law-
7 fully authorized investigative, protective, or intelligence ac-
8 tivity of a law enforcement agency of the United States,
9 a State, or a subdivision of a State, or of an intelligence
10 agency of the United States, or any activity authorized
11 under title V of the Organized Crime Control Act of 1970
12 (18 U.S.C. note prec. 3481).”.

13 **SEC. 214. CRIMINAL DETENTION OF ALIENS.**

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

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

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

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

24 or

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

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

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

12 **SEC. 215. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
13 **TAIN IMMIGRATION, NATURALIZATION, AND**
14 **PEONAGE OFFENSES.**

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

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

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

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

6 **SEC. 216. CONFORMING AMENDMENT.**

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

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

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

20 **SEC. 217. INADMISSIBILITY FOR PASSPORT AND IMMIGRA-**
21 **TION FRAUD.**

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

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

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

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

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

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

12 **SEC. 218. REMOVAL FOR PASSPORT AND IMMIGRATION**
13 **FRAUD.**

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

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

23 **SEC. 219. REDUCTION IN IMMIGRATION BACKLOG.**

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

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

6 (b) PILOT PROGRAM INITIATIVES.—

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

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

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

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

20 **SEC. 220. FEDERAL AFFIRMATION OF ASSISTANCE IN THE**
21 **IMMIGRATION LAW ENFORCEMENT BY**
22 **STATES AND POLITICAL SUBDIVISIONS OF**
23 **STATES.**

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

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

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

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

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

20 **SEC. 221. TRAINING OF STATE AND LOCAL LAW ENFORCE-**
21 **MENT PERSONNEL RELATING TO THE EN-**
22 **FORCEMENT OF IMMIGRATION LAWS.**

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

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

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

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

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

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

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

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

3 (e) TRAINING FLEXIBILITY.—

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

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

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

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

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

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

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

15 **SEC. 222. FINANCIAL ASSISTANCE TO STATE AND LOCAL**
16 **POLICE AGENCIES THAT ASSIST IN THE EN-**
17 **FORCEMENT OF IMMIGRATION LAWS.**

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

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

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

9 (c) FUNDING.—There is authorized to be appro-
10 priated for grants under this section \$250,000,000 for
11 each fiscal year.

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

17 **SEC. 223. INSTITUTIONAL REMOVAL PROGRAM (IRP).**

18 (a) CONTINUATION AND EXPANSION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (1) \$100,000,000 for fiscal year 2007;

20 (2) \$115,000,000 for fiscal year 2008;

21 (3) \$130,000,000 for fiscal year 2009;

22 (4) \$145,000,000 for fiscal year 2010; and

23 (5) \$160,000,000 for fiscal year 2011.

1 **SEC. 224. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM**
2 **(SCAAP).**

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

7 **SEC. 225. STATE AUTHORIZATION FOR ASSISTANCE IN THE**
8 **ENFORCEMENT OF IMMIGRATION LAWS EN-**
9 **COURAGED.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (2) Community representatives from such
5 States.

6 (3) Tribal authorities in such States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 It is the sense of Congress that—

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

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

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

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

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

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

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

19 “(d) ENFORCEMENT.—

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

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

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

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

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

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

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

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

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

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

1 Department of Homeland Security from other
2 sources;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (h) DEFINITIONS.—In this section:

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

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

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

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

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

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

10 (a) IN GENERAL.—Beginning on October 1, 2006, an
11 alien who is attempting to illegally enter the United States
12 and who is apprehended at a United States port of entry
13 or along the international land and maritime border of the
14 United States shall be detained until removed or a final
15 decision granting admission has been determined, unless
16 the alien—

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

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

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

3 (b) REQUIREMENTS DURING INTERIM PERIOD.—Be-
4 ginning 60 days after the date of the enactment of this
5 Act and before October 1, 2006, an alien described in sub-
6 section (a) may be released with a notice to appear only
7 if—

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

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

14 (c) RULES OF CONSTRUCTION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **SEC. 408. GAO STUDY ON DEATHS IN CUSTODY.**

12 The Comptroller General of the United States, within
13 6 months after the date of the enactment of this Act, shall
14 submit to Congress a report on the deaths in custody of
15 detainees held on immigration violations by the Secretary
16 of Homeland Security. The report shall include the fol-
17 lowing information with respect to any such deaths and
18 in connection therewith:

19 (1) Whether any crimes were committed by per-
20 sonnel of the Department of Homeland Security.

21 (2) Whether any such deaths were caused by
22 negligence or deliberate indifference by such per-
23 sonnel.

24 (3) Whether Department practice and proce-
25 dures were properly followed and obeyed.

1 (4) Whether such practice and procedures are
2 sufficient to protect the health and safety of such
3 detainees.

4 (5) Whether reports of such deaths were made
5 under the Deaths in Custody Act.

6 **SEC. 409. REPORT ON APPREHENSION AND DETENTION OF**
7 **CERTAIN ALIENS.**

8 (a) REPORT REQUIRED.—Not later than two years
9 after the date of the enactment of this Act, the Secretary
10 of Homeland Security shall submit to Congress a report
11 on—

12 (1) the number of illegal aliens from noncontig-
13 uous countries who are apprehended at or between
14 ports of entry since the date of enactment of this
15 Act;

16 (2) the number of such aliens who have been
17 deported since the date of enactment of this Act;
18 and

19 (3) the number of such aliens from countries
20 the governments of which the Secretary of State has
21 determined, for purposes section 6(j)(1)(A) of the
22 Export Administration Act of 1979 (as in effect pur-
23 suant to the International Emergency Economic
24 Powers Act; 50 U.S.C. 1701 et seq.), section 40(d)
25 of the Arms Export Control Act (22 U.S.C.

1 2780(d)), section 620A of the Foreign Assistance
2 Act of 1961 (22 U.S.C. 2371), or other provision of
3 law, are governments that have repeatedly provided
4 support for acts of international terrorism.

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

11 **SEC. 410. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
12 **TIONAL CRIME INFORMATION CENTER DATA-**
13 **BASE.**

14 (a) PROVISION OF INFORMATION TO THE NCIC.—
15 Not later than 180 days after the date of the enactment
16 of this Act, the Under Secretary for Border and Transpor-
17 tation Security of the Department of Homeland Security
18 shall provide the National Crime Information Center of
19 the Department of Justice with such information as the
20 Under Secretary may have on any and all aliens against
21 whom a final order of removal has been issued, any and
22 all aliens who have signed a voluntary departure agree-
23 ment, any and all aliens who have overstayed their author-
24 ized period of stay, and any and all aliens whose visas
25 have been revoked. Such information shall be provided to

1 the National Crime Information Center, and the National
2 Crime Information Center shall enter such information
3 into the Immigration Violators File of the National Crime
4 Information Center database, regardless of whether—

5 (1) the alien received notice of a final order of
6 removal;

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

8 (3) sufficient identifying information is avail-
9 able on the alien.

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

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

15 (2) by redesignating paragraph (4) as para-
16 graph (5); and

17 (3) by inserting after paragraph (3) the fol-
18 lowing:

19 “(4) acquire, collect, classify, and preserve
20 records of violations of the immigration laws of the
21 United States, regardless of whether the alien has
22 received notice of the violation or whether sufficient
23 identifying information is available on the alien and
24 even if the alien has already been removed; and”.

1 **TITLE V—EFFECTIVE ORGANIZA-**
2 **TION OF BORDER SECURITY**
3 **AGENCIES**

4 **SEC. 501. ENHANCED BORDER SECURITY COORDINATION**
5 **AND MANAGEMENT.**

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

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

17 (2) establish a mechanism for sharing and co-
18 ordinating intelligence information and analysis at
19 the headquarters and field office levels pertaining to
20 counter-terrorism, border enforcement, customs and
21 trade, immigration, human smuggling, human traf-
22 ficking, and other issues of concern to both United
23 States Immigration and Customs Enforcement and
24 United States Customs and Border Protection;

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

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

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

21 (6) establish measures and metrics for deter-
22 mining the effectiveness of coordinated border en-
23 forcement efforts; and

24 (7) develop and implement a comprehensive
25 plan to protect the northern and southern land bor-

1 ders of the United States and address the different
2 challenges each border faces by—

3 (A) coordinating all Federal border secu-
4 rity activities;

5 (B) improving communications and data
6 sharing capabilities within the Department and
7 with other Federal, State, local, tribal, and for-
8 eign law enforcement agencies on matters relat-
9 ing to border security; and

10 (C) providing input to relevant bilateral
11 agreements to improve border functions, includ-
12 ing ensuring security and promoting trade and
13 tourism.

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

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

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

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

22 “(b) ASSISTANT SECRETARY.—The Office shall be
23 headed by an Assistant Secretary for Air and Marine Op-
24 erations who shall be appointed by the President, by and
25 with the advice and consent of the Senate, and who shall

1 report directly to the Secretary. The Assistant Secretary
2 shall be responsible for all functions and operations of the
3 Office.

4 “(c) MISSIONS.—

5 “(1) PRIMARY MISSION.—The primary mission
6 of the Office shall be the prevention of the entry of
7 terrorists, other unlawful aliens, instruments of ter-
8 rorism, narcotics, and other contraband into the
9 United States.

10 “(2) SECONDARY MISSION.—The secondary
11 mission of the Office shall be to assist other agencies
12 to prevent the entry of terrorists, other unlawful
13 aliens, instruments of terrorism, narcotics, and other
14 contraband into the United States.

15 “(d) AIR AND MARINE OPERATIONS CENTER.—

16 “(1) IN GENERAL.—The Office shall operate
17 and maintain the Air and Marine Operations Center
18 in Riverside, California, or at such other facility of
19 the Office as is designated by the Secretary.

20 “(2) DUTIES.—The Center shall provide com-
21 prehensive radar, communications, and control serv-
22 ices to the Office and to eligible Federal, State, or
23 local agencies (as determined by the Assistant Sec-
24 retary for Air and Marine Operations), in order to
25 identify, track, and support the interdiction and ap-

1 prehension of individuals attempting to enter United
2 States airspace or coastal waters for the purpose of
3 narcotics trafficking, trafficking of persons, or other
4 terrorist or criminal activity.

5 “(e) ACCESS TO INFORMATION.—The Office shall en-
6 sure that other agencies within the Department of Home-
7 land Security, the Department of Defense, the Depart-
8 ment of Justice, the Department of Transportation, and
9 such other Federal, State, or local agencies, as may be
10 determined by the Secretary, shall have access to the in-
11 formation gathered and analyzed by the Center.

12 “(f) REQUIREMENT.—Beginning not later than 180
13 days after the date of the enactment of this Act, the Sec-
14 retary shall require that all information concerning all
15 aviation activities, including all airplane, helicopter, or
16 other aircraft flights, that are undertaken by the either
17 the Office, United States Immigration and Customs En-
18 forcement, United States Customs and Border Protection,
19 or any subdivisions thereof, be provided to the Air and
20 Marine Operations Center. Such information shall include
21 the identifiable transponder, radar, and electronic emis-
22 sions and codes originating and resident aboard the air-
23 craft or similar asset used in the aviation activity.

24 “(g) TIMING.—The Secretary shall require the infor-
25 mation described in subsection (f) to be provided to the

1 Air and Marine Operations Center in advance of the avia-
2 tion activity whenever practicable for the purpose of timely
3 coordination and conflict resolution of air missions by the
4 Office, United States Immigration and Customs Enforce-
5 ment, and United States Customs and Border Protection.

6 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
7 tion shall be construed to alter, impact, diminish, or in
8 any way undermine the authority of the Administrator of
9 the Federal Aviation Administration to oversee, regulate,
10 and control the safe and efficient use of the airspace of
11 the United States.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

13 (1) ADDITIONAL ASSISTANT SECRETARY.—Sec-
14 tion 103(a)(9) of the Homeland Security Act of
15 2002 (6 U.S.C. 113(a)(9)) is amended by striking
16 “12” and inserting “13”.

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

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

21 **SEC. 503. SHADOW WOLVES TRANSFER.**

22 (a) TRANSFER OF EXISTING UNIT.—Not later than
23 90 days after the date of the enactment of this Act, the
24 Secretary of Homeland Security shall transfer to United
25 States Immigration and Customs Enforcement all func-

1 tions (including the personnel, assets, and liabilities attrib-
2 utable to such functions) of the Customs Patrol Officers
3 unit operating on the Tohono O’odham Indian reservation
4 (commonly known as the “Shadow Wolves” unit).

5 (b) ESTABLISHMENT OF NEW UNITS.—The Sec-
6 retary is authorized to establish within United States Im-
7 migration and Customs Enforcement additional units of
8 Customs Patrol Officers in accordance with this section,
9 as appropriate.

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

16 (d) BASIC PAY FOR JOURNEYMAN OFFICERS.—A
17 Customs Patrol Officer in a unit described in this section
18 shall receive equivalent pay as a special agent with similar
19 competencies within United States Immigration and Cus-
20 toms Enforcement pursuant to the Department of Home-
21 land Security’s Human Resources Management System
22 established under section 841 of the Homeland Security
23 Act (6 U.S.C. 411).

24 (e) SUPERVISORS.—Each unit described in this sec-
25 tion shall be supervised by a Chief Customs Patrol Officer,

1 who shall have the same rank as a resident agent-in-
2 charge of the Office of Investigations within United States
3 Immigration and Customs Enforcement.

4 **TITLE VI—TERRORIST AND**
5 **CRIMINAL ALIENS**

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

7 (a) EXPANSION OF REMOVAL.—

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

10 (A) in subparagraph (A)—

11 (i) by striking “Attorney General may
12 not” and inserting “Secretary of Home-
13 land Security may not”;

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

16 (B) in subparagraph (B)—

17 (i) by inserting “or the Secretary of
18 Homeland Security” after “if the Attorney
19 General”;

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

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

23 (iv) by inserting after clause (iv) the
24 following new clause:

1 “(v) the alien is described in any sub-
2 clause of section 212(a)(3)(B)(i) or section
3 212(a)(3)(F), unless, in the case only of an
4 alien described in subclause (IV) or (IX) of
5 section 212(a)(3)(B)(i), the Secretary of
6 Homeland Security determines, in the Sec-
7 retary’s discretion, that there are not rea-
8 sonable grounds for regarding the alien as
9 a danger to the security of the United
10 States.”; and

11 (v) in the third sentence, by inserting
12 “or the Secretary of Homeland Security”
13 after “Attorney General”; and

14 (vi) by striking the last sentence and
15 inserting the following: “The Secretary of
16 Homeland Security shall waive the applica-
17 tion of clause (v) in the case of removal of
18 an alien who is a native or citizen of a
19 country in the Western Hemisphere with
20 whose government the United States does
21 not have full diplomatic relations.

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

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

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

3 (C) by inserting “or (IX)” after “subclause
4 (IV)”.

5 (3) Section 240A(c)(4) of such Act (8 U.S.C.
6 1229b(c)(4)) is amended—

7 (A) by striking “inadmissible under” and
8 inserting “described in”; and

9 (B) by striking “deportable under” and in-
10 sserting “described in”.

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

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

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

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

20 (b) RETROACTIVE APPLICATION.—The amendments
21 made by this section shall take effect on the date of enact-
22 ment of this Act and sections 208(b)(2)(A), 240A, 240B,
23 241(b)(3), and 249 of the Immigration and Nationality
24 Act, as so amended, shall apply to—

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

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

5 (3) with respect to aliens and applications de-
6 scribed in paragraph (1) or (2), acts and conditions
7 constituting a ground for inadmissibility, exclud-
8 ability, deportation, or removal occurring or existing
9 before, on, or after the date of the enactment of this
10 Act.

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

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

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

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

19 “If, at that time, the alien is not in the custody
20 of the Secretary (under the authority of this
21 Act), the Secretary shall take the alien into cus-
22 tody for removal, and the removal period shall
23 not begin until the alien is taken into such cus-
24 tody. If the Secretary transfers custody of the
25 alien during the removal period pursuant to law

1 to another Federal agency or a State or local
2 government agency in connection with the offi-
3 cial duties of such agency, the removal period
4 shall be tolled, and shall begin anew on the date
5 of the alien's return to the custody of the Sec-
6 retary.”;

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

9 “(ii) If a court, the Board of Immi-
10 gration Appeals, or an immigration judge
11 orders a stay of the removal of the alien,
12 the date the stay of removal is no longer
13 in effect.”;

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

16 “(C) SUSPENSION OF PERIOD.—The re-
17 moval period shall be extended beyond a period
18 of 90 days and the alien may remain in deten-
19 tion during such extended period if the alien
20 fails or refuses to make all reasonable efforts to
21 comply with the removal order, or to fully co-
22 operate with the Secretary's efforts to establish
23 the alien's identity and carry out the removal
24 order, including making timely application in
25 good faith for travel or other documents nec-

1 essary to the alien’s departure, or conspires or
2 acts to prevent the alien’s removal subject to an
3 order of removal.”;

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

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

12 “(D) to obey reasonable restrictions on the
13 alien’s conduct or activities, or perform affirma-
14 tive acts, that the Secretary prescribes for the
15 alien, in order to prevent the alien from ab-
16 sconding, or for the protection of the commu-
17 nity, or for other purposes related to the en-
18 forcement of the immigration laws.”;

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

1 (8) by redesignating paragraph (7) of sub-
2 section (a) as paragraph (10) and inserting after
3 paragraph (6) of such subsection the following new
4 paragraphs:

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

15 “(8) APPLICATION OF ADDITIONAL RULES FOR
16 DETENTION OR RELEASE OF CERTAIN ALIENS WHO
17 HAVE MADE AN ENTRY.—The rules set forth in sub-
18 section (j) shall only apply with respect to an alien
19 who was lawfully admitted the most recent time the
20 alien entered the United States or has otherwise ef-
21 fected an entry into the United States.

22 “(9) JUDICIAL REVIEW.—Without regard to the
23 place of confinement, judicial review of any action or
24 decision pursuant to paragraphs (6), (7), or (8) or
25 subsection (j) shall be available exclusively in habeas

1 corpus proceedings instituted in the United States
2 District Court for the District of Columbia, and only
3 if the alien has exhausted all administrative rem-
4 edies (statutory and regulatory) available to the
5 alien as of right.”; and

6 (9) by adding at the end the following new sub-
7 section:

8 “(j) ADDITIONAL RULES FOR DETENTION OR RE-
9 LEASE OF CERTAIN ALIENS WHO HAVE MADE AN
10 ENTRY.—

11 “(1) APPLICATION.—The rules set forth in this
12 subsection apply in the case of an alien described in
13 subsection (a)(8).

14 “(2) ESTABLISHMENT OF A DETENTION RE-
15 VIEW PROCESS FOR ALIENS WHO FULLY COOPERATE
16 WITH REMOVAL.—

17 “(A) IN GENERAL.—The Secretary shall
18 establish an administrative review process to
19 determine whether the aliens should be detained
20 or released on conditions for aliens who—

21 “(i) have made all reasonable efforts
22 to comply with their removal orders;

23 “(ii) have complied with the Sec-
24 retary’s efforts to carry out the removal
25 orders, including making timely application

1 in good faith for travel or other documents
2 necessary to the alien's departure, and

3 “(iii) have not conspired or acted to
4 prevent removal.

5 “(B) DETERMINATION.—The Secretary
6 shall make a determination whether to release
7 an alien after the removal period in accordance
8 with paragraphs (3) and (4). The determina-
9 tion—

10 “(i) shall include consideration of any
11 evidence submitted by the alien and the
12 history of the alien's efforts to comply with
13 the order of removal, and

14 “(ii) may include any information or
15 assistance provided by the Department of
16 State or other Federal agency and any
17 other information available to the Sec-
18 retary pertaining to the ability to remove
19 the alien.

20 “(3) AUTHORITY TO DETAIN BEYOND THE RE-
21 MOVAL PERIOD .—

22 “(A) INITIAL 90 DAY PERIOD.—The Sec-
23 retary in the exercise of discretion, without any
24 limitations other than those specified in this
25 section, may continue to detain an alien for 90

1 days beyond the removal period (including any
2 extension of the removal period as provided in
3 subsection (a)(1)(C)).

4 “(B) EXTENSION.—

5 “(i) IN GENERAL.—The Secretary in
6 the exercise of discretion, without any limi-
7 tations other than those specified in this
8 section, may continue to detain an alien
9 beyond the 90 days authorized in subpara-
10 graph (A)—

11 “(I) until the alien is removed if
12 the conditions described in subpara-
13 graph (A) or (B) of paragraph (4)
14 apply; or

15 “(II) pending a determination as
16 provided in subparagraph (C) of para-
17 graph (4).”

18 “(ii) RENEWAL.—The Secretary may
19 renew a certification under paragraph
20 (4)(B) every six months without limitation,
21 after providing an opportunity for the alien
22 to request reconsideration of the certifi-
23 cation and to submit documents or other
24 evidence in support of that request. If the
25 Secretary does not renew a certification,

1 the Secretary may not continue to detain
2 the alien under such paragraph.

3 “(iii) DELEGATION.—Notwithstanding
4 section 103, the Secretary may not dele-
5 gate the authority to make or renew a cer-
6 tification described in clause (ii), (iii), or
7 (v) of paragraph (4)(B) below the level of
8 the Assistant Secretary for Immigration
9 and Customs Enforcement.

10 “(iv) HEARING.—The Secretary may
11 request that the Attorney General provide
12 for a hearing to make the determination
13 described in clause (iv)(II) of paragraph
14 (4)(B).

15 “(4) CONDITIONS FOR EXTENSION.—The condi-
16 tions for continuation of detention are any of the fol-
17 lowing:

18 “(A) The Secretary determines that there
19 is a significant likelihood that the alien—

20 “(i) will be removed in the reasonably
21 foreseeable future; or

22 “(ii) would be removed in the reason-
23 ably foreseeable future, or would have been
24 removed, but for the alien’s failure or re-
25 fusal to make all reasonable efforts to com-

1 ply with the removal order, or to fully co-
2 operate with the Secretary's efforts to es-
3 tablish the alien's identity and carry out
4 the removal order, including making timely
5 application in good faith for travel or other
6 documents necessary to the alien's depar-
7 ture, or conspiracies or acts to prevent re-
8 moval.

9 “(B) The Secretary certifies in writing any
10 of the following:

11 “(i) In consultation with the Secretary
12 of Health and Human Services, the alien
13 has a highly contagious disease that poses
14 a threat to public safety.

15 “(ii) After receipt of a written rec-
16 ommendation from the Secretary of State,
17 the release of the alien is likely to have se-
18 rious adverse foreign policy consequences
19 for the United States.

20 “(iii) Based on information available
21 to the Secretary (including available infor-
22 mation from the intelligence community,
23 and without regard to the grounds upon
24 which the alien was ordered removed),
25 there is reason to believe that the release

1 of the alien would threaten the national se-
2 curity of the United States.

3 “(iv) The release of the alien will
4 threaten the safety of the community or
5 any person, the conditions of release can-
6 not reasonably be expected to ensure the
7 safety of the community or any person,
8 and—

9 “(I) the alien has been convicted
10 of one or more aggravated felonies de-
11 scribed in section 101(a)(43)(A) or of
12 one or more crimes identified by the
13 Secretary by regulation, or of one or
14 more attempts or conspiracies to com-
15 mit any such aggravated felonies or
16 such crimes, for an aggregate term of
17 imprisonment of at least five years; or

18 “(II) the alien has committed one
19 or more crimes of violence and, be-
20 cause of a mental condition or person-
21 ality disorder and behavior associated
22 with that condition or disorder, the
23 alien is likely to engage in acts of vio-
24 lence in the future.

1 “(v) The release of the alien will
2 threaten the safety of the community or
3 any person, conditions of release cannot
4 reasonably be expected to ensure the safety
5 of the community or any person, and the
6 alien has been convicted of at least one ag-
7 gravated felony.

8 “(C) Pending a determination under sub-
9 paragraph (B), so long as the Secretary has ini-
10 tiated the administrative review process no later
11 than 30 days after the expiration of the removal
12 period (including any extension of the removal
13 period as provided in subsection (a)(1)(C)).

14 “(5) RELEASE ON CONDITIONS.—If it is deter-
15 mined that an alien should be released from deten-
16 tion, the Secretary in the exercise of discretion may
17 impose conditions on release as provided in sub-
18 section (a)(3).

19 “(6) REDETENTION.—The Secretary in the ex-
20 ercise of discretion, without any limitations other
21 than those specified in this section, may again de-
22 tain any alien subject to a final removal order who
23 is released from custody if the alien fails to comply
24 with the conditions of release or to cooperate in the
25 alien’s removal from the United States, or if, upon

1 reconsideration, the Secretary determines that the
2 alien can be detained under paragraph (1). Para-
3 graphs (6) through (8) of subsection (a) shall apply
4 to any alien returned to custody pursuant to this
5 paragraph, as if the removal period terminated on
6 the day of the redetention.

7 “(7) CERTAIN ALIENS WHO EFFECTED
8 ENTRY.—If an alien has effected an entry into the
9 United States but has neither been lawfully admitted
10 nor physically present in the United States continu-
11 ously for the 2-year period immediately prior to the
12 commencement of removal proceedings under this
13 Act or deportation proceedings against the alien, the
14 Secretary in the exercise of discretion may decide
15 not to apply subsection (a)(8) and this subsection
16 and may detain the alien without any limitations ex-
17 cept those imposed by regulation.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 subsection (a) shall take effect upon the date of enactment
20 of this Act, and section 241 of the Immigration and Na-
21 tionality Act, as amended, shall apply to—

22 (1) all aliens subject to a final administrative
23 removal, deportation, or exclusion order that was
24 issued before, on, or after the date of enactment of
25 this Act; and

1 (2) acts and conditions occurring or existing be-
2 fore, on, or after the date of enactment of this Act.

3 **SEC. 603. INCREASE IN CRIMINAL PENALTIES.**

4 Section 243 of the Immigration and Nationality Act
5 (8 U.S.C. 1253) is amended—

6 (1) in subsection (a)(1)—

7 (A) in the matter before subparagraph (A),
8 by inserting “or 212(a)” after “section
9 237(a)”; and

10 (B) by striking “imprisoned not more than
11 four years” and inserting “imprisoned for not
12 less than six months or more than five years”;
13 and

14 (2) in subsection (b)—

15 (A) by striking “not more than \$1,000”
16 and inserting “under title 18, United States
17 Code”; and

18 (B) by striking “for not more than one
19 year” and inserting “for not less than six
20 months or more than five years (or 10 years if
21 the alien is a member of any class described in
22 paragraph (1)(E), (2), (3), or (4) of section
23 237(a)”.

1 **SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED**
2 **FELONS AND OTHER CRIMINALS.**

3 (a) **EXCLUSION BASED ON FRAUDULENT DOCU-**
4 **MENTATION.**—Section 212(a)(2)(A)(i) of the Immigration
5 and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amend-
6 ed—

7 (1) in subclause (I), by striking “or” at the
8 end;

9 (2) in subclause (II), by adding “or” at the
10 end; and

11 (3) by inserting after subclause (II) the fol-
12 lowing new subclause:

13 “(III) a violation (or a conspiracy
14 or attempt to violate) an offense de-
15 scribed in section 208 of the Social
16 Security Act or section 1028 of title
17 18, United States Code,”.

18 (b) **EXCLUSION BASED ON AGGRAVATED FELONY,**
19 **UNLAWFUL PROCUREMENT OF CITIZENSHIP, AND**
20 **CRIMES OF DOMESTIC VIOLENCE.**—Section 212(a)(2) of
21 such Act (8 U.S.C. 1182(a)(2)) is amended by adding at
22 the end the following new subparagraphs:

23 “(J) **AGGRAVATED FELONY.**—Any alien
24 who is convicted of an aggravated felony at any
25 time is inadmissible.

1 “(K) UNLAWFUL PROCUREMENT OF CITI-
2 ZENSHIP.—Any alien convicted of, or who ad-
3 mits having committed, or who admits commit-
4 ting acts which constitute the essential elements
5 of, a violation of (or a conspiracy or attempt to
6 violate) subsection (a) or (b) of section 1425 of
7 title 18, United States Code is inadmissible.

8 “(L) CRIMES OF DOMESTIC VIOLENCE,
9 STALKING, OR VIOLATION OF PROTECTION OR-
10 DERS; CRIMES AGAINST CHILDREN.—

11 “(i) DOMESTIC VIOLENCE, STALKING,
12 OR CHILD ABUSE.—

13 “(I) IN GENERAL.—Subject to
14 subclause (II), any alien who at any
15 time is convicted of, or who admits
16 having committed, or who admits
17 committing acts which constitute the
18 essential elements of, a crime of do-
19 mestic violence, a crime of stalking, or
20 a crime of child abuse, child neglect,
21 or child abandonment is inadmissible.

22 “(II) WAIVER FOR VICTIMS OF
23 DOMESTIC VIOLENCE.—Subclause (I)
24 shall not apply to any alien described
25 in section 237(a)(7)(A).

1 “(III) CRIME OF DOMESTIC VIO-
2 LENCE DEFINED.—For purposes of
3 subclause (I), the term ‘crime of do-
4 mestic violence’ means any crime of
5 violence (as defined in section 16 of
6 title 18, United States Code) against
7 a person committed by a current or
8 former spouse of the person, by an in-
9 dividual with whom the person shares
10 a child in common, by an individual
11 who is cohabiting with or has
12 cohabited with the person as a spouse,
13 by an individual similarly situated to
14 a spouse of the person under the do-
15 mestic or family violence laws of the
16 jurisdiction where the offense occurs,
17 or by any other individual against a
18 person who is protected from that in-
19 dividual’s acts under the domestic or
20 family violence laws of the United
21 States or any State, Indian tribal gov-
22 ernment, or unit of local or foreign
23 government.

24 “(ii) VIOLATORS OF PROTECTION OR-
25 DERS.—

1 “(I) IN GENERAL.—Any alien
2 who at any time is enjoined under a
3 protection order issued by a court and
4 whom the court determines has en-
5 gaged in conduct that violates the por-
6 tion of a protection order that involves
7 protection against credible threats of
8 violence, repeated harassment, or bod-
9 ily injury to the person or person for
10 whom the protection order was issued
11 is inadmissible.

12 “(II) PROTECTION ORDER DE-
13 FINED.—For purposes of subclause
14 (I), the term ‘protection order’ means
15 any injunction issued for the purpose
16 of preventing violent or threatening
17 acts of domestic violence, including
18 temporary or final orders issued by
19 civil or criminal courts (other than
20 support or child custody orders or
21 provisions) whether obtained by filing
22 an independent action or as an inde-
23 pendent order in another pro-
24 ceeding.”.

1 (c) WAIVER AUTHORITY.—Section 212(h) of such
2 Act (8 U.S.C. 1182(h)) is amended—

3 (1) by striking “The Attorney General may, in
4 his discretion, waive the application of subpara-
5 graphs (A)(i)(I), (B), (D), and (E) of subsection
6 (a)(2)” and inserting “The Attorney General or the
7 Secretary of Homeland Security may, in the discre-
8 tion of the Attorney General or such Secretary,
9 waive the application of subparagraph (A)(i)(I),
10 (A)(i)(III), (B), (D), (E), (K), and (L) of subsection
11 (a)(2)”;

12 (2) in paragraphs (1)(A) and (1)(B) and the
13 last sentence, by inserting “or the Secretary” after
14 “Attorney General” each place it appears;

15 (3) in paragraph (2), by striking “Attorney
16 General, in his discretion,” and inserting “Attorney
17 General or the Secretary of Homeland Security, in
18 the discretion of the Attorney General or such Sec-
19 retary,”;

20 (4) in paragraph (2), by striking “as he” and
21 inserting “as the Attorney General or the Sec-
22 retary”;

23 (5) in the second sentence, by striking “crimi-
24 nal acts involving torture” and inserting “criminal
25 acts involving torture, or an aggravated felony”; and

1 (6) in the third sentence, by striking “if either
2 since the date of such admission the alien has been
3 convicted of an aggravated felony or the alien” and
4 inserting “if since the date of such admission the
5 alien”.

6 (d) CONSTRUCTION.—The amendments made by this
7 section shall not be construed to create eligibility for relief
8 from removal under section 212(c) of the Immigration and
9 Nationality Act, as in effect before its repeal by section
10 304(b) of the Immigration Reform and Immigrant Re-
11 sponsibility Act of 1996 (division C of Public Law 104–
12 208), where such eligibility did not exist before these
13 amendments became effective.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to—

16 (1) any act that occurred before, on, or after
17 the date of the enactment of this Act; and

18 (2) to all aliens who are required to establish
19 admissibility on or after the such date, and in all re-
20 moval, deportation, or exclusion proceedings that are
21 filed, pending, or reopened, on or after such date.

22 **SEC. 605. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT**
23 **OF STATUS FOR AGGRAVATED FELONIES.**

24 (a) IN GENERAL.—Section 209(c) of the Immigration
25 and Nationality Act (8 U.S.C. 1159(c)) is amended by

1 adding at the end the following: “However, an alien who
2 is convicted of an aggravated felony is not eligible for a
3 waiver or for adjustment of status under this section.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply—

6 (1) to any act that occurred before, on, or after
7 the date of the enactment of this Act; and

8 (2) to all aliens who are required to establish
9 admissibility on or after such date, and in all re-
10 moval, deportation, or exclusion proceedings that are
11 filed, pending, or reopened, on or after such date.

12 **SEC. 606. REMOVING DRUNK DRIVERS.**

13 (a) IN GENERAL.—Section 236 of the Immigration
14 and Nationality Act (8 U.S.C. 1226) is amended—

15 (1) in subsection (c)(1)—

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

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

20 (C) by inserting after subparagraph (D)
21 the following new subparagraph:

22 “(E) is unlawfully present in the United
23 States and who is deportable on any grounds
24 and is apprehended for any offense described in
25 section 237(a)(2)(F) by a State or local law en-

1 forcement officer covered under an agreement
2 under section 287(g),”;

3 (2) by redesignating subsection (e) as sub-
4 section (f); and

5 (3) by inserting after subsection (d) the fol-
6 lowing new subsection:

7 “(e) DRIVING WHILE INTOXICATED.—If a State or
8 local law enforcement officer apprehends an individual for
9 an offense described in section 237(a)(2)(F) and the offi-
10 cer has reasonable ground to believe that the individual
11 is an alien—

12 “(1) the officer shall verify with the databases
13 of the Federal Government, including the National
14 Criminal Information Center and the Law Enforce-
15 ment Support Center, whether the individual is an
16 alien and whether such alien is unlawfully present in
17 the United States; and

18 “(2) if any such database—

19 “(A) indicates that the individual is an
20 alien unlawfully present in the United States—

21 “(i) an officer covered under an agree-
22 ment under section 287(g) is authorized to
23 issue a Federal detainer to maintain the
24 alien in custody in accordance with such
25 agreement until the alien is convicted for

1 such offense or the alien is transferred to
2 Federal custody;

3 “(ii) the officer is authorized to trans-
4 port the alien to a location where the alien
5 can be transferred to Federal custody and
6 shall be removed from the United States in
7 accordance with applicable law; and

8 “(iii) the Secretary of Homeland Se-
9 curity shall reimburse the State and local
10 law enforcement agencies involved for the
11 costs of transporting aliens when such
12 transportation is not done in the course of
13 their normal duties; or

14 “(B) indicates that the individual is an
15 alien but is not unlawfully present in the
16 United States, the officer shall take the alien
17 into custody for such offense in accordance with
18 State law and shall promptly notify the Sec-
19 retary of Homeland Security of such apprehen-
20 sion and maintain the alien in custody pending
21 a determination by the Secretary with respect
22 to any action to be taken by the Secretary
23 against such alien.”.

24 (b) DEPORTATION FOR DWI.—

1 (1) IN GENERAL.—Section 237(a)(2) of such
2 Act (8 U.S.C. 1227(a)(2)) is amended by adding at
3 the end the following new subparagraph:

4 “(F) DRIVING WHILE INTOXICATED AND
5 WHILE UNLAWFULLY PRESENT IN THE UNITED
6 STATES.—An alien—

7 “(i) who at the time the alien is un-
8 lawfully present in the United States and
9 who commits the offense of driving while
10 intoxicated, driving under the influence, or
11 similar violation of State law (as deter-
12 mined by the Secretary of Homeland Secu-
13 rity) and who is convicted of such offense,
14 or

15 “(ii) who is unlawfully present in the
16 United States and who commits an offense
17 by refusing in violation of State law to
18 submit to a Breathalyzer test or other test
19 for the purpose of determining blood alco-
20 hol content,

21 is deportable and shall be deported.”.

22 (2) EFFECTIVE DATE.—The amendment made
23 by paragraph (1) shall apply to violations or refusals
24 occurring after the date of the enactment of this
25 Act.

1 (c) SHARING OF INFORMATION BY MOTOR VEHICLE
2 ADMINISTRATORS REGARDING DWI CONVICTIONS AND
3 REFUSALS.—Each State motor vehicle administrator
4 shall—

5 (1) share with the Secretary of Homeland Secu-
6 rity information relating to any alien who has a con-
7 viction or refusal described in section 237(a)(2)(F)
8 of the Immigration and Nationality Act;

9 (2) share such information with other State
10 motor vehicle administrators through the Drivers Li-
11 cense Agreement of the American Association of
12 Motor Vehicle Administrators; and

13 (3) enter such information into the NCIC in a
14 timely manner.

15 (d) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall take effect on the date of the enact-
17 ment of this Act and shall apply to convictions entered
18 before, on, or after such date.

19 **SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT AS-**
20 **SISTANCE PROGRAM.**

21 (a) DESIGNATED COUNTIES ADJACENT TO THE
22 SOUTHERN BORDER OF THE UNITED STATES DE-
23 FINED.—In this section, the term “designated counties
24 adjacent to the southern international border of the
25 United States” includes a county any part of which is

1 within 25 miles of the southern international border of the
2 United States.

3 (b) AUTHORITY.—

4 (1) IN GENERAL.—Any Sheriff or coalition or
5 group of Sheriffs from designated counties adjacent
6 to the southern international border of the United
7 States may transfer aliens detained or in the custody
8 of the Sheriff who are not lawfully present in the
9 United States to appropriate Federal law enforce-
10 ment officials, and shall be promptly paid for the
11 costs of performing such transfers by the Attorney
12 General for any local or State funds previously ex-
13 pended or proposed to be spent by that Sheriff or
14 coalition or group of Sheriffs.

15 (2) PAYMENT OF COSTS.—Payment of costs
16 under paragraph (1) shall include payment for costs
17 of detaining, housing, and transporting aliens who
18 are not lawfully present in the United States or who
19 have unlawfully entered the United States at a loca-
20 tion other than a port of entry and who are taken
21 into custody by the Sheriff.

22 (3) LIMITATION TO FUTURE COSTS.—In no
23 case shall payment be made under this section for
24 costs incurred before the date of the enactment of
25 this Act.

1 (4) ADVANCE PAYMENT OF COSTS.—The Attor-
2 ney General shall make an advance payment under
3 this section upon a certification of anticipated costs
4 for which payment may be made under this section,
5 but in no case shall such an advance payment cover
6 a period of costs of longer than 3 months.

7 (c) DESIGNATED COUNTY LAW ENFORCEMENT AC-
8 COUNT.—

9 (1) SEPARATE ACCOUNT.—Reimbursement or
10 pre-payment under subsection (b) shall be made
11 promptly from funds deposited into a separate ac-
12 count in the Treasury of the United States to be en-
13 titled the “Designated County Law Enforcement Ac-
14 count”.

15 (2) AVAILABILITY OF FUNDS.—All deposits into
16 the Designated County Law Enforcement Account
17 shall remain available until expended to the Attorney
18 General to carry out the provisions of this section.

19 (3) PROMPTLY DEFINED.—For purposes of this
20 section, the term “promptly” means within 60 days.

21 (d) FUNDS FOR THE DESIGNATED COUNTY LAW EN-
22 FORCEMENT ACCOUNT.—Only funds designated, author-
23 ized, or appropriated by Congress may be deposited or
24 transferred to the Designated County Law Enforcement
25 Account. The Designated County Law Enforcement Ac-

1 count is authorized to receive up to \$100,000,000 per
2 year.

3 (e) USE OF FUNDS.—

4 (1) IN GENERAL.—Funds provided under this
5 section shall be payable directly to participating
6 Sheriff's offices and may be used for the transfers
7 described in subsection (b)(1), including the costs of
8 personnel (such as overtime pay and costs for re-
9 serve deputies), costs of training of such personnel,
10 equipment, and, subject to paragraph (2), the con-
11 struction, maintenance, and operation of detention
12 facilities to detain aliens who are unlawfully present
13 in the United States. For purposes of this section,
14 an alien who is unlawfully present in the United
15 States shall be deemed to be a Federal prisoner be-
16 ginning upon determination by Federal law enforce-
17 ment officials that such alien is unlawfully present
18 in the United States, and such alien shall, upon such
19 determination, be deemed to be in Federal custody.
20 In order for costs to be eligible for payment, the
21 Sheriff making such application shall personally cer-
22 tify under oath that all costs submitted in the appli-
23 cation for reimbursement or advance payment meet
24 the requirements of this section and are reasonable
25 and necessary, and such certification shall be subject

1 to all State and Federal laws governing statements
2 made under oath, including the penalties of perjury,
3 removal from office, and prosecution under State
4 and Federal law.

5 (2) LIMITATION.—Not more than 20 percent of
6 the amount of funds provided under this section may
7 be used for the construction or renovation of deten-
8 tion or similar facilities.

9 (f) DISPOSITION AND DELIVERY OF DETAINED
10 ALIENS.—All aliens detained or taken into custody by a
11 Sheriff under this section and with respect to whom Fed-
12 eral law enforcement officials determine are unlawfully
13 present in the United States, shall be immediately deliv-
14 ered to Federal law enforcement officials. In accordance
15 with subsection (e)(1), an alien who is in the custody of
16 a Sheriff shall be deemed to be a Federal prisoner and
17 in Federal custody.

18 (g) REGULATIONS.—The Attorney General shall
19 issue, on an interim final basis, regulations not later than
20 60 days after the date of the enactment of this Act—

21 (1) governing the distribution of funds under
22 this section for all reasonable and necessary costs
23 and other expenses incurred or proposed to be in-
24 curred by a Sheriff or coalition or group of Sheriffs
25 under this section; and

1 (2) providing uniform standards that all other
2 Federal law enforcement officials shall follow to co-
3 operate with such Sheriffs and to otherwise imple-
4 ment the requirements of this section.

5 (h) EFFECTIVE DATE.—The provisions of this sec-
6 tion shall take effect on its enactment. The promulgation
7 of any regulations under subsection (g) is not a necessary
8 precondition to the immediate deployment or work of
9 Sheriffs personnel or corrections officers as authorized by
10 this section. Any reasonable and necessary expenses or
11 costs authorized by this section and incurred by such
12 Sheriffs after the date of the enactment of this Act but
13 prior to the date of the promulgation of such regulations
14 are eligible for reimbursement under the terms and condi-
15 tions of this section.

16 (i) AUDIT.—All funds paid out under this section are
17 subject to audit by the Inspector General of the Depart-
18 ment of Justice and abuse or misuse of such funds shall
19 be vigorously investigated and prosecuted to the full extent
20 of Federal law.

21 (j) SUPPLEMENTAL FUNDING.—All funds paid out
22 under this section must supplement, and may not sup-
23 plant, State or local funds used for the same or similar
24 purposes.

1 **SEC. 608. RENDERING INADMISSIBLE AND DEPORTABLE**
2 **ALIENS PARTICIPATING IN CRIMINAL**
3 **STREET GANGS; DETENTION; INELIGIBILITY**
4 **FROM PROTECTION FROM REMOVAL AND**
5 **ASYLUM.**

6 (a) INADMISSIBLE.—Section 212(a)(2) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1182(a)(2)), as
8 amended by section 604(b), is further amended by adding
9 at the end the following:

10 “(M) CRIMINAL STREET GANG PARTICIPA-
11 TION.—

12 “(i) IN GENERAL.—Any alien is inad-
13 missible if the alien has been removed
14 under section 237(a)(2)(F), or if the con-
15 sular officer or the Secretary of Homeland
16 Security knows, or has reasonable ground
17 to believe that the alien—

18 “(I) is a member of a criminal
19 street gang and has committed, con-
20 spired, or threatened to commit, or
21 seeks to enter the United States to
22 engage solely, principally, or inciden-
23 tally in, a gang crime or any other un-
24 lawful activity; or

1 “(II) is a member of a criminal
2 street gang designated under section
3 219A.

4 “(ii) CRIMINAL STREET GANG DE-
5 FINED.—For purposes of this subpara-
6 graph, the term ‘criminal street gang’
7 means a formal or informal group or asso-
8 ciation of 3 or more individuals, who com-
9 mit 2 or more gang crimes (one of which
10 is a crime of violence, as defined in section
11 16 of title 18, United States Code) in 2 or
12 more separate criminal episodes in relation
13 to the group or association.

14 “(iii) GANG CRIME DEFINED.—For
15 purposes of this subparagraph, the term
16 ‘gang crime’ means conduct constituting
17 any Federal or State crime, punishable by
18 imprisonment for one year or more, in any
19 of the following categories:

20 “(I) A crime of violence (as de-
21 fined in section 16 of title 18, United
22 States Code).

23 “(II) A crime involving obstruc-
24 tion of justice, tampering with or re-

1 taliating against a witness, victim, or
2 informant, or burglary.

3 “(III) A crime involving the man-
4 ufacturing, importing, distributing,
5 possessing with intent to distribute, or
6 otherwise dealing in a controlled sub-
7 stance or listed chemical (as those
8 terms are defined in section 102 of
9 the Controlled Substances Act (21
10 U.S.C. 802)).

11 “(IV) Any conduct punishable
12 under section 844 of title 18, United
13 States Code (relating to explosive ma-
14 terials), subsection (d), (g)(1) (where
15 the underlying conviction is a violent
16 felony (as defined in section
17 924(e)(2)(B) of such title) or is a se-
18 rious drug offense (as defined in sec-
19 tion 924(e)(2)(A)), (i), (j), (k), (o),
20 (p), (q), (u), or (x) of section 922 of
21 such title (relating to unlawful acts),
22 or subsection (b), (c), (g), (h), (k), (l),
23 (m), or (n) of section 924 of such title
24 (relating to penalties), section 930 of
25 such title (relating to possession of

1 firearms and dangerous weapons in
2 Federal facilities), section 931 of such
3 title (relating to purchase, ownership,
4 or possession of body armor by violent
5 felons), sections 1028 and 1029 of
6 such title (relating to fraud and re-
7 lated activity in connection with iden-
8 tification documents or access de-
9 vices), section 1952 of such title (re-
10 lating to interstate and foreign travel
11 or transportation in aid of racket-
12 eering enterprises), section 1956 of
13 such title (relating to the laundering
14 of monetary instruments), section
15 1957 of such title (relating to engag-
16 ing in monetary transactions in prop-
17 erty derived from specified unlawful
18 activity), or sections 2312 through
19 2315 of such title (relating to inter-
20 state transportation of stolen motor
21 vehicles or stolen property).

22 “(V) Any conduct punishable
23 under section 274 (relating to bring-
24 ing in and harboring certain aliens),
25 section 277 (relating to aiding or as-

1 sisting certain aliens to enter the
2 United States), or section 278 (relat-
3 ing to importation of alien for im-
4 moral purpose) of this Act.”.

5 (b) DEPORTABLE.—Section 237(a)(2) of such Act (8
6 U.S.C. 1227(a)(2)) is amended by adding at the end the
7 following:

8 “(G) CRIMINAL STREET GANG PARTICIPA-
9 TION.—

10 “(i) IN GENERAL.—Any alien is de-
11 portable who—

12 “(I) is a member of a criminal
13 street gang and is convicted of com-
14 mitting, or conspiring, threatening, or
15 attempting to commit, a gang crime;
16 or

17 “(II) is determined by the Sec-
18 retary of Homeland Security to be a
19 member of a criminal street gang des-
20 ignated under section 219A.

21 “(ii) DEFINITIONS.—For purposes of
22 this subparagraph, the terms ‘criminal
23 street gang’ and ‘gang crime’ have the
24 meaning given such terms in section
25 212(a)(2)(M).”.

1 (c) DESIGNATION OF CRIMINAL STREET GANGS.—

2 (1) IN GENERAL.—Chapter 2 of title II of the
3 Immigration and Nationality Act (8 U.S.C. 1181 et
4 seq.) is amended by adding at the end the following:

5 “DESIGNATION OF CRIMINAL STREET GANGS

6 “SEC. 219A. (a) DESIGNATION.—

7 “(1) IN GENERAL.—The Attorney General is
8 authorized to designate a group or association as a
9 criminal street gang in accordance with this sub-
10 section if the Attorney General finds that the group
11 or association meets the criteria described in section
12 212(a)(2)(M)(ii)(I).

13 “(2) PROCEDURE.—

14 “(A) NOTICE.—

15 “(i) TO CONGRESSIONAL LEADERS.—

16 Seven days before making a designation
17 under this subsection, the Attorney Gen-
18 eral shall notify the Speaker and Minority
19 Leader of the House of Representatives
20 and the Majority Leader and Minority
21 Leader of the Senate, and the members of
22 the relevant committees of the House of
23 Representatives and the Senate, in writing,
24 of the intent to designate a group or asso-
25 ciation under this subsection, together with
26 the findings made under paragraph (1)

1 with respect to that group or association,
2 and the factual basis therefor.

3 “(ii) PUBLICATION IN FEDERAL REG-
4 ISTER.—The Attorney shall publish the
5 designation in the Federal Register seven
6 days after providing the notification under
7 clause (i).

8 “(B) EFFECT OF DESIGNATION.—

9 “(i) A designation under this sub-
10 section shall take effect upon publication
11 under subparagraph (A)(ii).

12 “(ii) Any designation under this sub-
13 section shall cease to have effect upon an
14 Act of Congress disapproving such des-
15 ignation.

16 “(3) RECORD.—In making a designation under
17 this subsection, the Attorney General shall create an
18 administrative record.

19 “(4) PERIOD OF DESIGNATION.—

20 “(A) IN GENERAL.—A designation under
21 this subsection shall be effective for all purposes
22 until revoked under paragraph (5) or (6) or set
23 aside pursuant to subsection (b).

24 “(B) REVIEW OF DESIGNATION UPON PE-
25 TITION.—

1 “(i) IN GENERAL.—The Attorney
2 General shall review the designation of a
3 criminal street gang under the procedures
4 set forth in clauses (iii) and (iv) if the des-
5 ignated gang or association files a petition
6 for revocation within the petition period
7 described in clause (ii).

8 “(ii) PETITION PERIOD.—For pur-
9 poses of clause (i)—

10 “(I) if the designated gang or as-
11 sociation has not previously filed a pe-
12 tition for revocation under this sub-
13 paragraph, the petition period begins
14 2 years after the date on which the
15 designation was made; or

16 “(II) if the designated gang or
17 association has previously filed a peti-
18 tion for revocation under this sub-
19 paragraph, the petition period begins
20 2 years after the date of the deter-
21 mination made under clause (iv) on
22 that petition.

23 “(iii) PROCEDURES.—Any criminal
24 street gang that submits a petition for rev-
25 ocation under this subparagraph must pro-

1 vide evidence in that petition that the rel-
2 evant circumstances described in para-
3 graph (1) are sufficiently different from
4 the circumstances that were the basis for
5 the designation such that a revocation with
6 respect to the gang is warranted.

7 “(iv) DETERMINATION.—

8 “(I) IN GENERAL.—Not later
9 than 180 days after receiving a peti-
10 tion for revocation submitted under
11 this subparagraph, the Attorney Gen-
12 eral shall make a determination as to
13 such revocation.

14 “(II) PUBLICATION OF DETER-
15 MINATION.—A determination made by
16 the Attorney General under this
17 clause shall be published in the Fed-
18 eral Register.

19 “(III) PROCEDURES.—Any rev-
20 ocation by the Attorney General shall
21 be made in accordance with para-
22 graph (6).

23 “(C) OTHER REVIEW OF DESIGNATION.—

24 “(i) IN GENERAL.—If in a 5-year pe-
25 riod no review has taken place under sub-

1 paragraph (B), the Attorney General shall
2 review the designation of the criminal
3 street gang in order to determine whether
4 such designation should be revoked pursu-
5 ant to paragraph (6).

6 “(ii) PROCEDURES.—If a review does
7 not take place pursuant to subparagraph
8 (B) in response to a petition for revocation
9 that is filed in accordance with that sub-
10 subparagraph, then the review shall be con-
11 ducted pursuant to procedures established
12 by the Attorney General. The results of
13 such review and the applicable procedures
14 shall not be reviewable in any court.

15 “(iii) PUBLICATION OF RESULTS OF
16 REVIEW.—The Attorney General shall pub-
17 lish any determination made pursuant to
18 this subparagraph in the Federal Register.

19 “(5) REVOCATION BY ACT OF CONGRESS.—The
20 Congress, by an Act of Congress, may block or re-
21 voke a designation made under paragraph (1).

22 “(6) REVOCATION BASED ON CHANGE IN CIR-
23 CUMSTANCES.—

24 “(A) IN GENERAL.—The Attorney General
25 may revoke a designation made under para-

1 graph (1) at any time, and shall revoke a des-
2 gnation upon completion of a review conducted
3 pursuant to subparagraphs (B) and (C) of
4 paragraph (4) if the Attorney General finds
5 that the circumstances that were the basis for
6 the designation have changed in such a manner
7 as to warrant revocation.

8 “(B) PROCEDURE.—The procedural re-
9 quirements of paragraphs (2) and (3) shall
10 apply to a revocation under this paragraph. Any
11 revocation shall take effect on the date specified
12 in the revocation or upon publication in the
13 Federal Register if no effective date is specified.

14 “(7) EFFECT OF REVOCATION.—The revocation
15 of a designation under paragraph (5) or (6) shall
16 not affect any action or proceeding based on conduct
17 committed prior to the effective date of such revoca-
18 tion.

19 “(8) USE OF DESIGNATION IN HEARING.—If a
20 designation under this subsection has become effec-
21 tive under paragraph (2)(B) an alien in a removal
22 proceeding shall not be permitted to raise any ques-
23 tion concerning the validity of the issuance of such
24 designation as a defense or an objection at any hear-
25 ing.

1 “(b) JUDICIAL REVIEW OF DESIGNATION.—

2 “(1) IN GENERAL.—Not later than 30 days
3 after publication of the designation in the Federal
4 Register, a group or association designated as a
5 criminal street gang may seek judicial review of the
6 designation in the United States Court of Appeals
7 for the District of Columbia Circuit.

8 “(2) BASIS OF REVIEW.—Review under this
9 subsection shall be based solely upon the administra-
10 tive record.

11 “(3) SCOPE OF REVIEW.—The Court shall hold
12 unlawful and set aside a designation the court finds
13 to be—

14 “(A) arbitrary, capricious, an abuse of dis-
15 cretion, or otherwise not in accordance with
16 law;

17 “(B) contrary to constitutional right,
18 power, privilege, or immunity;

19 “(C) in excess of statutory jurisdiction, au-
20 thority, or limitation, or short of statutory
21 right;

22 “(D) lacking substantial support in the ad-
23 ministrative record taken as a whole; or

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

1 “(4) JUDICIAL REVIEW INVOKED.—The pend-
2 ency of an action for judicial review of a designation
3 shall not affect the application of this section, unless
4 the court issues a final order setting aside the des-
5 ignation.

6 “(c) RELEVANT COMMITTEE DEFINED.—As used in
7 this section, the term ‘relevant committees’ means the
8 Committees on the Judiciary of the House of Representa-
9 tives and of the Senate.”.

10 (2) CLERICAL AMENDMENT.—The table of con-
11 tents of such Act (8 U.S.C. 1101 et seq.) is amend-
12 ed by inserting after the item relating to section 219
13 the following:

“Sec. 219A. Designation of criminal street gangs.”.

14 (d) MANDATORY DETENTION OF CRIMINAL STREET
15 GANG MEMBERS.—

16 (1) IN GENERAL.—Section 236(c)(1)(D) of the
17 Immigration and Nationality Act (8 U.S.C.
18 1226(c)(1)(D)) is amended—

19 (A) by inserting “or 212(a)(2)(M)” after
20 “212(a)(3)(B)”; and

21 (B) by inserting “237(a)(2)(F) or” before
22 “237(a)(4)(B)”.

23 (2) ANNUAL REPORT.—Not later than March 1
24 of each year (beginning 1 year after the date of the
25 enactment of this Act), the Secretary of Homeland

1 Security, after consultation with the appropriate
2 Federal agencies, shall submit a report to the Com-
3 mittees on the Judiciary of the House of Represent-
4 atives and of the Senate on the number of aliens de-
5 tained under the amendments made by paragraph
6 (1).

7 (3) EFFECTIVE DATE.—This subsection and the
8 amendments made by this subsection are effective as
9 of the date of enactment of this Act and shall apply
10 to aliens detained on or after such date.

11 (e) INELIGIBILITY OF ALIEN STREET GANG MEM-
12 BERS FROM PROTECTION FROM REMOVAL AND ASY-
13 LUM.—

14 (1) INAPPLICABILITY OF RESTRICTION ON RE-
15 MOVAL TO CERTAIN COUNTRIES.—Section
16 241(b)(3)(B) of the Immigration and Nationality
17 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
18 matter preceding clause (i), by inserting “who is de-
19 scribed in section 212(a)(2)(M)(i) or section
20 237(a)(2)(F)(i) or who is” after “to an alien”.

21 (2) INELIGIBILITY FOR ASYLUM.—Section
22 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))
23 is amended—

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

1 (B) by redesignating clause (vi) as clause
2 (vii); and

3 (C) by inserting after clause (v) the fol-
4 lowing:

5 “(vi) the alien is described in section
6 212(a)(2)(M)(i) or section 237(a)(2)(F)(i)
7 (relating to participation in criminal street
8 gangs); or”.

9 (3) DENIAL OF REVIEW OF DETERMINATION OF
10 INELIGIBILITY FOR TEMPORARY PROTECTED STA-
11 TUS.—Section 244(c)(2) of such Act (8 U.S.C.
12 1254(c)(2)) is amended by adding at the end the fol-
13 lowing:

14 “(C) LIMITATION ON JUDICIAL REVIEW.—
15 There shall be no judicial review of any finding
16 under subparagraph (B) that an alien is in de-
17 scribed in section 208(b)(2)(A)(vi).”.

18 (4) EFFECTIVE DATE.—The amendments made
19 by this subsection are effective on the date of enact-
20 ment of this Act and shall apply to all applications
21 pending on or after such date.

22 (f) EFFECTIVE DATE.—Except as otherwise pro-
23 vided, the amendments made by this section are effective
24 as of the date of enactment and shall apply to all pending

1 cases in which no final administrative action has been en-
2 tered.

3 **SEC. 609. NATURALIZATION REFORM.**

4 (a) BARRING TERRORISTS FROM NATURALIZA-
5 TION.—Section 316 of the Immigration and Nationality
6 Act (8 U.S.C. 1427) is amended by adding at the end the
7 following new subsection:

8 “(g) No person shall be naturalized who the Sec-
9 retary of Homeland Security determines, in the Sec-
10 retary’s discretion, to have been at any time an alien de-
11 scribed in section 212(a)(3) or 237(a)(4). Such determina-
12 tion may be based upon any relevant information or evi-
13 dence, including classified, sensitive, or national security
14 information, and shall be binding upon, and unreviewable
15 by, any court exercising jurisdiction under the immigra-
16 tion laws over any application for naturalization, regard-
17 less whether such jurisdiction to review a decision or ac-
18 tion of the Secretary is de novo or otherwise.”

19 (b) CONCURRENT NATURALIZATION AND REMOVAL
20 PROCEEDINGS.—The last sentence of section 318 of such
21 Act (8 U.S.C. 1429) is amended—

22 (1) by striking “shall be considered by the At-
23 torney General” and inserting “shall be considered
24 by the Secretary of Homeland Security or any
25 court”;

1 (2) by striking “pursuant to a warrant of arrest
2 issued under the provisions of this or any other
3 Act:” and inserting “or other proceeding to deter-
4 mine the applicant’s inadmissibility or deportability,
5 or to determine whether the applicant’s lawful per-
6 manent resident status should be rescinded, regard-
7 less of when such proceeding was commenced.”; and

8 (3) by striking “upon the Attorney General”
9 and inserting “upon the Secretary of Homeland Se-
10 curity”.

11 (c) PENDING DENATURALIZATION OR REMOVAL
12 PROCEEDINGS.—Section 204(b) of such Act (8 U.S.C.
13 1154(b)) is amended by adding at the end the following:
14 “No petition shall be approved pursuant to this section
15 if there is any administrative or judicial proceeding
16 (whether civil or criminal) pending against the petitioner
17 that could (whether directly or indirectly) result in the pe-
18 titioner’s denaturalization or the loss of the petitioner’s
19 lawful permanent resident status.”.

20 (d) CONDITIONAL PERMANENT RESIDENTS.—Sec-
21 tion 216(e) and section 216A(e) of such Act (8 U.S.C.
22 1186a(e), 1186b(e)) are each amended by inserting before
23 the period at the end the following: “, if the alien has had
24 the conditional basis removed under this section”.

1 (e) DISTRICT COURT JURISDICTION.—Section 336(b)
2 of such Act (8 U.S.C. 1447(b)) is amended to read as
3 follows:

4 “(b) If there is a failure to render a final administra-
5 tive decision under section 335 before the end of the 180-
6 day period after the date on which the Secretary of Home-
7 land Security completes all examinations and interviews
8 conducted under such section, as such terms are defined
9 by the Secretary pursuant to regulations, the applicant
10 may apply to the district court for the district in which
11 the applicant resides for a hearing on the matter. Such
12 court shall only have jurisdiction to review the basis for
13 delay and remand the matter to the Secretary for the Sec-
14 retary’s determination on the application.”.

15 (f) CONFORMING AMENDMENTS.—Section 310(c) of
16 such Act (8 U.S.C. 1421(c)) is amended—

17 (1) by inserting “, no later than the date that
18 is 120 days after the Secretary’s final determina-
19 tion” before “seek”; and

20 (2) by striking the second sentence and insert-
21 ing the following: “The burden shall be upon the pe-
22 titioner to show that the Secretary’s denial of the
23 application was not supported by facially legitimate
24 and bona fide reasons. Except in a proceeding under
25 section 340, notwithstanding any other provision of

1 law (statutory or nonstatutory), including section
2 2241 of title 28, United States Code, or any other
3 habeas corpus provision, and sections 1361 and
4 1651 of such title, no court shall have jurisdiction
5 to determine, or to review a determination of the
6 Secretary made at any time regarding, for purposes
7 of an application for naturalization, whether an alien
8 is a person of good moral character, whether an
9 alien understands and is attached to the principles
10 of the Constitution of the United States, or whether
11 an alien is well disposed to the good order and hap-
12 piness of the United States.”.

13 (g) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date of the enactment
15 of this Act, shall apply to any act that occurred before,
16 on, or after such date, and shall apply to any application
17 for naturalization or any other case or matter under the
18 immigration laws pending on, or filed on or after, such
19 date.

20 **SEC. 610. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE**
21 **ON CRIMINAL OR SECURITY GROUNDS.**

22 (a) IN GENERAL.—Section 238(b) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1228(b)) is amended—
24 (1) in paragraph (1)—

1 (A) by striking “Attorney General” and in-
2 serting “Secretary of Homeland Security in the
3 exercise of discretion”; and

4 (B) by striking “set forth in this sub-
5 section or” and inserting “set forth in this sub-
6 section, in lieu of removal proceedings under”;

7 (2) in paragraph (3), by striking “paragraph
8 (1) until 14 calendar days” and inserting “para-
9 graph (1) or (3) until 7 calendar days”;

10 (3) by striking “Attorney General” each place
11 it appears in paragraphs (3) and (4) and inserting
12 “Secretary of Homeland Security”;

13 (4) in paragraph (5)—

14 (A) by striking “described in this section”
15 and inserting “described in paragraph (1) or
16 (2)”; and

17 (B) by striking “the Attorney General may
18 grant in the Attorney General’s discretion” and
19 inserting “the Secretary of Homeland Security
20 or the Attorney General may grant, in the dis-
21 cretion of the Secretary or Attorney General, in
22 any proceeding”;

23 (5) by redesignating paragraphs (3), (4), and
24 (5) as paragraphs (4), (5), and (6), respectively; and

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

3 “(3) The Secretary of Homeland Security in
4 the exercise of discretion may determine inadmis-
5 sibility under section 212(a)(2) (relating to criminal
6 offenses) and issue an order of removal pursuant to
7 the procedures set forth in this subsection, in lieu of
8 removal proceedings under section 240, with respect
9 to an alien who

10 “(A) has not been admitted or paroled;

11 “(B) has not been found to have a credible
12 fear of persecution pursuant to the procedures
13 set forth in section 235(b)(1)(B); and

14 “(C) is not eligible for a waiver of inadmis-
15 sibility or relief from removal.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall take effect on the date of the enact-
18 ment of this Act but shall not apply to aliens who are
19 in removal proceedings under section 240 of the Immigra-
20 tion and Nationality Act as of such date

21 **SEC. 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE**
22 **IN CHANGE IN INADMISSIBILITY FOR TER-**
23 **RORISTS UNDER REAL ID ACT.**

24 Effective as if included in the enactment of Public
25 Law 109–13, sections 103(d)(1) and 105(a)(2)(A) of the

1 REAL ID Act of 2005 (division B of such Public Law)
2 are each amended by inserting “, deportation, and exclu-
3 sion” after “removal”.

4 **SEC. 612. BAR TO GOOD MORAL CHARACTER.**

5 (a) IN GENERAL.—Section 101(f) of the Immigration
6 and Nationality Act (8 U.S.C. 1101(f)) is amended—

7 (1) by inserting after paragraph (1) the fol-
8 lowing new paragraph:

9 “(2) one who the Secretary of Homeland Secu-
10 rity or the Attorney General determines, in the
11 unreviewable discretion of the Secretary or the At-
12 torney General, to have been at any time an alien
13 described in section 212(a)(3) or section 237(a)(4),
14 which determination may be based upon any rel-
15 evant information or evidence, including classified,
16 sensitive, or national security information, and which
17 shall be binding upon any court regardless of the ap-
18 plicable standard of review;”;

19 (2) in paragraph (8), by inserting “, regardless
20 whether the crime was classified as an aggravated
21 felony at the time of conviction” after “(as defined
22 in subsection (a)(43))”; and

23 (3) by striking the sentence following paragraph
24 (9) and inserting the following: “The fact that any
25 person is not within any of the foregoing classes

1 shall not preclude a discretionary finding for other
2 reasons that such a person is or was not of good
3 moral character. The Secretary and the Attorney
4 General shall not be limited to the applicant's con-
5 duct during the period for which good moral char-
6 acter is required, but may take into consideration as
7 a basis for determination the applicant's conduct
8 and acts at any time.”.

9 (b) AGGRAVATED FELONY EFFECTIVE DATE.—Sec-
10 tion 509(b) of the Immigration Act of 1990 (Public Law
11 101–649), as amended by section 306(a)(7) of the Mis-
12 cellaneous and Technical Immigration and Naturalization
13 Amendments of 1991 (Public Law 102–232) is amended
14 to read as follows:

15 “(b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall take effect on November 29, 1990,
17 and shall apply to convictions occurring before, on, or
18 after such date.”.

19 (c) TECHNICAL CORRECTION TO THE INTELLIGENCE
20 REFORM ACT.—Effective as if included in the enactment
21 of the Intelligence Reform and Terrorism Prevention Act
22 of 2004 (Public Law 108–458), section 5504(2) of such
23 Act is amended by striking “adding at the end” and in-
24 serting “inserting immediately after paragraph (8)”.

1 (d) EFFECTIVE DATES.—The amendments made by
2 subsections (a) and (b) shall take effect on the date of
3 the enactment of this Act, shall apply to any act that oc-
4 curred before, on, or after such date, and shall apply to
5 any application for naturalization or any other benefit or
6 relief or any other case or matter under the immigration
7 laws pending on, or filed on or after, such date.

8 **SEC. 613. STRENGTHENING DEFINITIONS OF “AGGRAVATED**
9 **FELONY” AND “CONVICTION”.**

10 (a) IN GENERAL.—Section 101(a) of the Immigra-
11 tion and Nationality Act (8 U.S.C. 1101(a)) is amended—

12 (1) by amending subparagraph (A) of para-
13 graph (43) to read as follows:

14 “(A) murder, manslaughter, homicide,
15 rape, or any sexual abuse of a minor, whether
16 or not the minority of the victim is established
17 by evidence contained in the record of convic-
18 tion or by evidence extrinsic to the record of
19 conviction;” and

20 (2) in paragraph (48)(A), by inserting after and
21 below clause (ii) the following:

22 “Any reversal, vacatur, expungement, or modification to
23 a conviction, sentence, or conviction record that was grant-
24 ed to ameliorate the consequences of the conviction, sen-
25 tence, or conviction record, or was granted for rehabilita-

1 tive purposes, or for failure to advise the alien of the immi-
2 gration consequences of a guilty plea or a determination
3 of guilt, shall have no effect on the immigration con-
4 sequences resulting from the original conviction. The alien
5 shall have the burden of demonstrating that the reversal,
6 vacatur, expungement, or modification was not granted to
7 ameliorate the consequences of the conviction, sentence,
8 or conviction record, for rehabilitative purposes, or for fail-
9 ure to advise the alien of the immigration consequences
10 of a guilty plea or a determination of guilt.”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 subsection (a) shall apply to any act that occurred before,
13 on, or after the date of the enactment of this Act and
14 shall apply to any matter under the immigration laws
15 pending on, or filed on or after, such date.

16 **SEC. 614. DEPORTABILITY FOR CRIMINAL OFFENSES.**

17 (a) **IN GENERAL.**—Section 237(a)(3)(B) of the Im-
18 migration and Nationality Act (8 U.S.C. 1227(a)(3)(B))
19 is amended—

20 (1) in clause (ii), by striking “or” at the end;

21 (2) in clause (iii), by inserting “or” at the end;

22 and

23 (3) by inserting after clause (iii) the following
24 new clause:

1 “(iv) of a violation of, or an attempt
2 or a conspiracy to violate, subsection (a) or
3 (b) of section 1425 of title 18, United
4 States Code.”.

5 (b) DEPORTABILITY; CRIMINAL OFFENSES.—Section
6 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended
7 by section 608(b), is amended by adding at the end the
8 following new subparagraph:

9 “(G) SOCIAL SECURITY AND IDENTIFICA-
10 TION FRAUD.—Any alien who at any time after
11 admission is convicted of a violation of (or a
12 conspiracy or attempt to violate) an offense de-
13 scribed in section 208 of the Social Security Act
14 or section 1028 of title 18, United States Code
15 is deportable.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to any act that occurred before,
18 on, or after the date of the enactment of this Act, and
19 to all aliens who are required to establish admissibility on
20 or after such date and in all removal, deportation, or ex-
21 clusion proceedings that are filed, pending, or reopened,
22 on or after such date.

23 **SEC. 615. DECLARATION OF CONGRESS.**

24 Congress condemns rapes by smugglers along the
25 international land border of the United States and urges

1 in the strongest possible terms the Government of Mexico
2 to work in coordination with United States Customs and
3 Border Protection of the Department of Homeland Secu-
4 rity take immediate action to prevent such rapes from oc-
5 ccurring.

6 **SEC. 616. REPORT ON CRIMINAL ALIEN PROSECUTION.**

7 Not later than one year after the date of the enact-
8 ment of this Act and annually thereafter, the Attorney
9 General shall submit to the Committee on the Judiciary
10 of the House of Representatives and the Committee on
11 the Judiciary of the Senate a report on the status of crimi-
12 nal alien prosecutions, including prosecutions of human
13 smugglers.

14 **SEC. 617. DETERMINATION OF IMMIGRATION STATUS OF**
15 **INDIVIDUALS CHARGED WITH FEDERAL OF-**
16 **FENSES.**

17 (a) RESPONSIBILITY OF UNITED STATES ATTOR-
18 NEYS.—Beginning 2 years after the date of the enactment
19 of this Act, the office of the United States attorney that
20 is prosecuting a criminal case in a Federal court—

21 (1) shall determine, not later than 30 days
22 after filing the initial pleadings in the case, whether
23 each defendant in the case is lawfully present in the
24 United States (subject to subsequent legal pro-
25 ceedings to determine otherwise);

1 (2)(A) if the defendant is determined to be an
2 alien lawfully present in the United States, shall no-
3 tify the court in writing of the determination and
4 the current status of the alien under the Immigra-
5 tion and Nationality Act; and

6 (B) if the defendant is determined not to be
7 lawfully present in the United States, shall notify
8 the court in writing of the determination, the de-
9 fendant's alien status, and, to the extent possible,
10 the country of origin or legal residence of the de-
11 fendant; and

12 (3) ensure that the information described in
13 paragraph (2) is included in the case file and the
14 criminal records system of the office of the United
15 States attorney.

16 The determination under paragraph (1) shall be made in
17 accordance with guidelines of the Executive Office for Im-
18 migration Review of the Department of Justice.

19 (b) RESPONSIBILITIES OF FEDERAL COURTS.—

20 (1) MODIFICATIONS OF RECORDS AND CASE
21 MANAGERMENTS SYSTEMS.—Not later than 2 years
22 after the date of the enactment of this Act, all Fed-
23 eral courts that hear criminal cases, or appeals of
24 criminal cases, shall modify their criminal records
25 and case management systems, in accordance with

1 guidelines which the Director of the Administrative
2 Office of the United States Courts shall establish, so
3 as to enable accurate reporting of information de-
4 scribed in paragraph (2) of subsection (a).

5 (2) DATA ENTRIES.—Beginning 2 years after
6 the date of the enactment of this Act, each Federal
7 court described in paragraph (1) shall enter into its
8 electronic records the information contained in each
9 notification to the court under subsection (a)(2).

10 (c) ANNUAL REPORT TO CONGRESS.—The Director
11 of the Administrative Office of the United States Courts
12 shall include, in the annual report filed with the Congress
13 under section 604 of title 28, United States Code—

14 (1) statistical information on criminal trials of
15 aliens in the courts and criminal convictions of
16 aliens in the lower courts and upheld on appeal, in-
17 cluding the type of crime in each case and including
18 information on the legal status of the aliens; and

19 (2) recommendations on whether additional
20 court resources are needed to accommodate the vol-
21 ume of criminal cases brought against aliens in the
22 Federal courts.

23 (d) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated for each of fiscal years
25 2007 through 2012, such sums as may be necessary to

1 carry out this Act. Funds appropriated pursuant to this
2 subsection in any fiscal year shall remain available until
3 expended.

4 **SEC. 618. INCREASED CRIMINAL PENALTIES FOR DOCU-**
5 **MENT FRAUD AND CRIMES OF VIOLENCE.**

6 (a) DOCUMENT FRAUD.—Section 1546 of title 18,
7 United States Code, is amended—

8 (1) in subsection (a)—

9 (A) by striking “not more than 25 years”
10 and inserting “not less than 25 years”

11 (B) by inserting “and if the terrorism of-
12 fense resulted in the death of any person, shall
13 be punished by death or imprisoned for life,”
14 after “section 2331 of this title)),”;

15 (C) by striking “20 years” and inserting
16 “imprisoned not more than 40 years”;

17 (D) by striking “10 years” and inserting
18 “imprisoned not more than 20 years”; and

19 (E) by striking “15 years” and inserting
20 “imprisoned not more than 25 years”; and

21 (2) in subsection (b), by striking “5 years” and
22 inserting “10 years”.

23 (b) CRIMES OF VIOLENCE.—

1 (1) IN GENERAL.—Title 18, United States
2 Code, is amended by inserting after chapter 51 the
3 following:

4 **“CHAPTER 52—ILLEGAL ALIENS**

“Sec.
“1131. Enhanced penalties for certain crimes committed by illegal aliens.

5 **“§ 1131. Enhanced penalties for certain crimes com-**
6 **mitted by illegal aliens**

7 “(a) Any alien unlawfully present in the United
8 States, who commits, or conspires or attempts to commit,
9 a crime of violence or a drug trafficking offense (as de-
10 fined in section 924), shall be fined under this title and
11 sentenced to not less than 5 years in prison.

12 “(b) If an alien who violates subsection (a) was pre-
13 viously ordered removed under the Immigration and Na-
14 tionality Act (8 U.S.C. 1101 et seq.) on the grounds of
15 having committed a crime, the alien shall be sentenced to
16 not less than 15 years in prison.

17 “(c) A sentence of imprisonment imposed under this
18 section shall run consecutively to any other sentence of
19 imprisonment imposed for any other crime.”.

20 (2) CLERICAL AMENDMENT.—The table of
21 chapters at the beginning of part I of title 18,
22 United States Code, is amended by inserting after
23 the item relating to chapter 51 the following:

“52. Illegal aliens 1131”.

1 **SEC. 619. LAUNDERING OF MONETARY INSTRUMENTS.**

2 Section 1956(c)(7)(D) of title 18, United States
3 Code, is amended—

4 (1) by inserting “section 1590 (relating to traf-
5 ficking with respect to peonage, slavery, involuntary
6 servitude, or forced labor),” after “section 1363 (re-
7 lating to destruction of property within the special
8 maritime and territorial jurisdiction),”; and

9 (2) by inserting “section 274(a) of the Immi-
10 gration and Nationality Act (8 U.S.C.1324(a)) (re-
11 lating to bringing in and harboring certain aliens),”
12 after “section 590 of the Tariff Act of 1930 (19
13 U.S.C. 1590) (relating to aviation smuggling),”.

14 **TITLE VII—EMPLOYMENT**
15 **ELIGIBILITY VERIFICATION**

16 **SEC. 701. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
17 **TEM.**

18 (a) **IN GENERAL.**—Section 274A(b) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1324a(b)) is amended
20 by adding at the end the following:

21 “(7) **EMPLOYMENT ELIGIBILITY VERIFICATION**
22 **SYSTEM.**—

23 “(A) **IN GENERAL.**—The Secretary of
24 Homeland Security shall establish and admin-
25 ister a verification system through which the

1 Secretary (or a designee of the Secretary, which
2 may be a nongovernmental entity)—

3 “(i) responds to inquiries made by
4 persons at any time through a toll-free
5 telephone line and other toll-free electronic
6 media concerning an individual’s identity
7 and whether the individual is authorized to
8 be employed; and

9 “(ii) maintains records of the inquir-
10 ies that were made, of verifications pro-
11 vided (or not provided), and of the codes
12 provided to inquirers as evidence of their
13 compliance with their obligations under
14 this section.

15 “(B) INITIAL RESPONSE.—The verification
16 system shall provide verification or a tentative
17 nonverification of an individual’s identity and
18 employment eligibility within 3 working days of
19 the initial inquiry. If providing verification or
20 tentative nonverification, the verification system
21 shall provide an appropriate code indicating
22 such verification or such nonverification.

23 “(C) SECONDARY VERIFICATION PROCESS
24 IN CASE OF TENTATIVE NONVERIFICATION.—In
25 cases of tentative nonverification, the Secretary

1 shall specify, in consultation with the Commis-
2 sioner of Social Security, an available secondary
3 verification process to confirm the validity of in-
4 formation provided and to provide a final
5 verification or nonverification within 10 working
6 days after the date of the tentative
7 nonverification. When final verification or
8 nonverification is provided, the verification sys-
9 tem shall provide an appropriate code indicating
10 such verification or nonverification.

11 “(D) DESIGN AND OPERATION OF SYS-
12 TEM.—The verification system shall be designed
13 and operated—

14 “(i) to maximize its reliability and
15 ease of use by persons and other entities
16 consistent with insulating and protecting
17 the privacy and security of the underlying
18 information;

19 “(ii) to respond to all inquiries made
20 by such persons and entities on whether
21 individuals are authorized to be employed
22 and to register all times when such inquir-
23 ies are not received;

24 “(iii) with appropriate administrative,
25 technical, and physical safeguards to pre-

1 vent unauthorized disclosure of personal
2 information; and

3 “(iv) to have reasonable safeguards
4 against the system’s resulting in unlawful
5 discriminatory practices based on national
6 origin or citizenship status, including—

7 “(I) the selective or unauthorized
8 use of the system to verify eligibility;

9 “(II) the use of the system prior
10 to an offer of employment; or

11 “(III) the exclusion of certain in-
12 dividuals from consideration for em-
13 ployment as a result of a perceived
14 likelihood that additional verification
15 will be required, beyond what is re-
16 quired for most job applicants.

17 “(E) RESPONSIBILITIES OF THE COMMIS-
18 SIONER OF SOCIAL SECURITY.—As part of the
19 verification system, the Commissioner of Social
20 Security, in consultation with the Secretary of
21 Homeland Security (and any designee of the
22 Secretary selected to establish and administer
23 the verification system), shall establish a reli-
24 able, secure method, which, within the time pe-
25 riods specified under subparagraphs (B) and

1 (C), compares the name and social security ac-
2 count number provided in an inquiry against
3 such information maintained by the Commis-
4 sioner in order to validate (or not validate) the
5 information provided regarding an individual
6 whose identity and employment eligibility must
7 be confirmed, the correspondence of the name
8 and number, and whether the individual has
9 presented a social security account number that
10 is not valid for employment. The Commissioner
11 shall not disclose or release social security infor-
12 mation (other than such verification or
13 nonverification) except as provided for in this
14 section or section 205(c)(2)(I) of the Social Se-
15 curity Act.

16 “(F) RESPONSIBILITIES OF THE SEC-
17 RETARY OF HOMELAND SECURITY.—(i) As part
18 of the verification system, the Secretary of
19 Homeland Security (in consultation with any
20 designee of the Secretary selected to establish
21 and administer the verification system), shall
22 establish a reliable, secure method, which, with-
23 in the time periods specified under subpara-
24 graphs (B) and (C), compares the name and
25 alien identification or authorization number

1 which are provided in an inquiry against such
2 information maintained by the Secretary in
3 order to validate (or not validate) the informa-
4 tion provided, the correspondence of the name
5 and number, and whether the alien is author-
6 ized to be employed in the United States.

7 “(ii) When a single employer has sub-
8 mitted to the verification system pursuant to
9 paragraph (3)(A) the identical social security
10 account number in more than one instance, or
11 when multiple employers have submitted to the
12 verification system pursuant to such paragraph
13 the identical social security account number, in
14 a manner which indicates the possible fraudu-
15 lent use of that number, the Secretary of
16 Homeland Security shall conduct an investiga-
17 tion, within the time periods specified in sub-
18 paragraphs (B) and (C), in order to ensure that
19 no fraudulent use of a social security account
20 number has taken place. If the Secretary has
21 selected a designee to establish and administer
22 the verification system, the designee shall notify
23 the Secretary when a single employer has sub-
24 mitted to the verification system pursuant to
25 paragraph (3)(A) the identical social security

1 account number in more than one instance, or
2 when multiple employers have submitted to the
3 verification system pursuant to such paragraph
4 the identical social security account number, in
5 a manner which indicates the possible fraudu-
6 lent use of that number. The designee shall also
7 provide the Secretary with all pertinent infor-
8 mation, including the name and address of the
9 employer or employers who submitted the rel-
10 evant social security account number, the rel-
11 evant social security account number submitted
12 by the employer or employers, and the relevant
13 name and date of birth of the employee sub-
14 mitted by the employer or employers.

15 “(G) UPDATING INFORMATION.—The
16 Commissioner of Social Security and the Sec-
17 retary of Homeland Security shall update their
18 information in a manner that promotes the
19 maximum accuracy and shall provide a process
20 for the prompt correction of erroneous informa-
21 tion, including instances in which it is brought
22 to their attention in the secondary verification
23 process described in subparagraph (C).

1 “(H) LIMITATION ON USE OF THE
2 VERIFICATION SYSTEM AND ANY RELATED SYS-
3 TEMS.—

4 “(i) IN GENERAL.—Notwithstanding
5 any other provision of law, nothing in this
6 paragraph shall be construed to permit or
7 allow any department, bureau, or other
8 agency of the United States Government to
9 utilize any information, data base, or other
10 records assembled under this paragraph
11 for any other purpose other than as pro-
12 vided for.

13 “(ii) NO NATIONAL IDENTIFICATION
14 CARD.—Nothing in this paragraph shall be
15 construed to authorize, directly or indi-
16 rectly, the issuance or use of national iden-
17 tification cards or the establishment of a
18 national identification card.

19 “(I) FEDERAL TORT CLAIMS ACT.—If an
20 individual alleges that the individual would not
21 have been dismissed from a job but for an error
22 of the verification mechanism, the individual
23 may seek compensation only through the mech-
24 anism of the Federal Tort Claims Act, and in-
25 junctive relief to correct such error. No class

1 action may be brought under this subpara-
2 graph.

3 “(J) PROTECTION FROM LIABILITY FOR
4 ACTIONS TAKEN ON THE BASIS OF INFORMA-
5 TION.—No person or entity shall be civilly or
6 criminally liable for any action taken in good
7 faith reliance on information provided through
8 the employment eligibility verification mecha-
9 nism established under this paragraph.”.

10 (b) REPEAL OF PROVISION RELATING TO EVALUA-
11 TIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—
12 Section 274A(d) (8 U.S.C. 1324a(d)) is repealed.

13 **SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**
14 **ESS.**

15 Section 274A of the Immigration and Nationality Act
16 (8 U.S.C. 1324a) is amended—

17 (1) in subsection (a)(3), by inserting “(A)”
18 after “DEFENSE.—”, and by adding at the end the
19 following:

20 “(B) FAILURE TO SEEK AND OBTAIN
21 VERIFICATION.—In the case of a person or entity in
22 the United States that hires, or continues to employ,
23 an individual, or recruits or refers an individual for
24 employment, the following requirements apply:

25 “(i) FAILURE TO SEEK VERIFICATION.—

1 “(I) IN GENERAL.—If the person or
2 entity has not made an inquiry, under the
3 mechanism established under subsection
4 (b)(7), seeking verification of the identity
5 and work eligibility of the individual, by
6 not later than the end of 3 working days
7 (as specified by the Secretary of Homeland
8 Security) after the date of the hiring, the
9 date specified in subsection (b)(8)(B) for
10 previously hired individuals, or before the
11 recruiting or referring commences, the de-
12 fense under subparagraph (A) shall not be
13 considered to apply with respect to any
14 employment, except as provided in sub-
15 clause (II).

16 “(II) SPECIAL RULE FOR FAILURE OF
17 VERIFICATION MECHANISM.—If such a per-
18 son or entity in good faith attempts to
19 make an inquiry in order to qualify for the
20 defense under subparagraph (A) and the
21 verification mechanism has registered that
22 not all inquiries were responded to during
23 the relevant time, the person or entity can
24 make an inquiry until the end of the first
25 subsequent working day in which the

1 verification mechanism registers no non-
2 responses and qualify for such defense.

3 “(ii) FAILURE TO OBTAIN
4 VERIFICATION.—If the person or entity has
5 made the inquiry described in clause (i)(I) but
6 has not received an appropriate verification of
7 such identity and work eligibility under such
8 mechanism within the time period specified
9 under subsection (b)(7)(B) after the time the
10 verification inquiry was received, the defense
11 under subparagraph (A) shall not be considered
12 to apply with respect to any employment after
13 the end of such time period.”;

14 (2) by amending subparagraph (A) of sub-
15 section (b)(1) to read as follows:

16 “(A) IN GENERAL.—The person or entity
17 must attest, under penalty of perjury and on a
18 form designated or established by the Secretary
19 by regulation, that it has verified that the indi-
20 vidual is not an unauthorized alien by—

21 “(i) obtaining from the individual the
22 individual’s social security account number
23 and recording the number on the form (if
24 the individual claims to have been issued
25 such a number), and, if the individual does

1 not attest to United States citizenship
2 under paragraph (2), obtaining such iden-
3 tification or authorization number estab-
4 lished by the Department of Homeland Se-
5 curity for the alien as the Secretary of
6 Homeland Security may specify, and re-
7 cording such number on the form; and

8 “(ii)(I) examining a document de-
9 scribed in subparagraph (B); or (II) exam-
10 ining a document described in subpara-
11 graph (C) and a document described in
12 subparagraph (D).

13 A person or entity has complied with the re-
14 quirement of this paragraph with respect to ex-
15 amination of a document if the document rea-
16 sonably appears on its face to be genuine, rea-
17 sonably appears to pertain to the individual
18 whose identity and work eligibility is being
19 verified, and, if the document bears an expira-
20 tion date, that expiration date has not elapsed.
21 If an individual provides a document (or com-
22 bination of documents) that reasonably appears
23 on its face to be genuine, reasonably appears to
24 pertain to the individual whose identity and
25 work eligibility is being verified, and is suffi-

1 cient to meet the first sentence of this para-
2 graph, nothing in this paragraph shall be con-
3 strued as requiring the person or entity to so-
4 licit the production of any other document or as
5 requiring the individual to produce another doc-
6 ument.”;

7 (3) in subsection (b)(1)(D)—

8 (A) in clause (i), by striking “or such other
9 personal identification information relating to
10 the individual as the Attorney General finds, by
11 regulation, sufficient for purposes of this sec-
12 tion”; and

13 (B) in clause (ii), by inserting before the
14 period “and that contains a photograph of the
15 individual”;

16 (4) in subsection (b)(2), by adding at the end
17 the following: “The individual must also provide that
18 individual’s social security account number (if the
19 individual claims to have been issued such a num-
20 ber), and, if the individual does not attest to United
21 States citizenship under this paragraph, such identi-
22 fication or authorization number established by the
23 Department of Homeland Security for the alien as
24 the Secretary may specify.”; and

1 (5) by amending paragraph (3) of subsection
2 (b) to read as follows:

3 “(3) RETENTION OF VERIFICATION FORM AND
4 VERIFICATION.—

5 “(A) IN GENERAL.—After completion of
6 such form in accordance with paragraphs (1)
7 and (2), the person or entity must—

8 “(i) retain a paper, microfiche, micro-
9 film, or electronic version of the form and
10 make it available for inspection by officers
11 of the Department of Homeland Security,
12 the Special Counsel for Immigration-Related
13 Unfair Employment Practices, or the
14 Department of Labor during a period be-
15 ginning on the date of the hiring, recruit-
16 ing, or referral of the individual or the
17 date of the completion of verification of a
18 previously hired individual and ending—

19 “(I) in the case of the recruiting
20 or referral of an individual, three
21 years after the date of the recruiting
22 or referral;

23 “(II) in the case of the hiring of
24 an individual, the later of—

1 “(aa) three years after the
2 date of such hiring; or

3 “(bb) one year after the
4 date the individual’s employment
5 is terminated; and

6 “(III) in the case of the
7 verification of a previously hired indi-
8 vidual, the later of—

9 “(aa) three years after the
10 date of the completion of
11 verification; or

12 “(bb) one year after the
13 date the individual’s employment
14 is terminated;

15 “(ii) make an inquiry, as provided in
16 paragraph (7), using the verification sys-
17 tem to seek verification of the identity and
18 employment eligibility of an individual, by
19 not later than the end of 3 working days
20 (as specified by the Secretary of Homeland
21 Security) after the date of the hiring or in
22 the case of previously hired individuals, the
23 date specified in subsection (b)(8)(B), or
24 before the recruiting or referring com-
25 mences; and

1 “(iii) may not commence recruitment
2 or referral of the individual until the per-
3 son or entity receives verification under
4 subparagraph (B)(i) or (B)(iii).

5 “(B) VERIFICATION.—

6 “(i) VERIFICATION RECEIVED.—If the
7 person or other entity receives an appro-
8 priate verification of an individual’s iden-
9 tity and work eligibility under the
10 verification system within the time period
11 specified, the person or entity shall record
12 on the form an appropriate code that is
13 provided under the system and that indi-
14 cates a final verification of such identity
15 and work eligibility of the individual.

16 “(ii) TENTATIVE NONVERIFICATION
17 RECEIVED.—If the person or other entity
18 receives a tentative nonverification of an
19 individual’s identity or work eligibility
20 under the verification system within the
21 time period specified, the person or entity
22 shall so inform the individual for whom the
23 verification is sought. If the individual does
24 not contest the nonverification within the
25 time period specified, the nonverification

1 shall be considered final. The person or en-
2 tity shall then record on the form an ap-
3 propriate code which has been provided
4 under the system to indicate a tentative
5 nonverification. If the individual does con-
6 test the nonverification, the individual shall
7 utilize the process for secondary
8 verification provided under paragraph (7).
9 The nonverification will remain tentative
10 until a final verification or nonverification
11 is provided by the verification system with-
12 in the time period specified. In no case
13 shall an employer terminate employment of
14 an individual because of a failure of the in-
15 dividual to have identity and work eligi-
16 bility confirmed under this section until a
17 nonverification becomes final. Nothing in
18 this clause shall apply to a termination of
19 employment for any reason other than be-
20 cause of such a failure.

21 “(iii) FINAL VERIFICATION OR
22 NONVERIFICATION RECEIVED.—If a final
23 verification or nonverification is provided
24 by the verification system regarding an in-
25 dividual, the person or entity shall record

1 on the form an appropriate code that is
2 provided under the system and that indi-
3 cates a verification or nonverification of
4 identity and work eligibility of the indi-
5 vidual.

6 “(iv) EXTENSION OF TIME.—If the
7 person or other entity in good faith at-
8 tempts to make an inquiry during the time
9 period specified and the verification system
10 has registered that not all inquiries were
11 received during such time, the person or
12 entity may make an inquiry in the first
13 subsequent working day in which the
14 verification system registers that it has re-
15 ceived all inquiries. If the verification sys-
16 tem cannot receive inquiries at all times
17 during a day, the person or entity merely
18 has to assert that the entity attempted to
19 make the inquiry on that day for the pre-
20 vious sentence to apply to such an inquiry,
21 and does not have to provide any addi-
22 tional proof concerning such inquiry.

23 “(v) CONSEQUENCES OF
24 NONVERIFICATION.—

1 “(I) TERMINATION OR NOTIFICA-
2 TION OF CONTINUED EMPLOYMENT.—
3 If the person or other entity has re-
4 ceived a final nonverification regard-
5 ing an individual, the person or entity
6 may terminate employment of the in-
7 dividual (or decline to recruit or refer
8 the individual). If the person or entity
9 does not terminate employment of the
10 individual or proceeds to recruit or
11 refer the individual, the person or en-
12 tity shall notify the Secretary of
13 Homeland Security of such fact
14 through the verification system or in
15 such other manner as the Secretary
16 may specify.

17 “(II) FAILURE TO NOTIFY.—If
18 the person or entity fails to provide
19 notice with respect to an individual as
20 required under subclause (I), the fail-
21 ure is deemed to constitute a violation
22 of subsection (a)(1)(A) with respect to
23 that individual.

24 “(vi) CONTINUED EMPLOYMENT
25 AFTER FINAL NONVERIFICATION.—If the

1 person or other entity continues to employ
2 (or to recruit or refer) an individual after
3 receiving final nonverification, a rebuttable
4 presumption is created that the person or
5 entity has violated subsection (a)(1)(A).”.

6 **SEC. 703. EXPANSION OF EMPLOYMENT ELIGIBILITY**
7 **VERIFICATION SYSTEM TO PREVIOUSLY**
8 **HIRED INDIVIDUALS AND RECRUITING AND**
9 **REFERRING.**

10 (a) APPLICATION TO RECRUITING AND REFER-
11 RING.—Section 274A of the Immigration and Nationality
12 Act (8 U.S.C. 1324a) is amended—

13 (1) in subsection (a)(1)(A), by striking “for a
14 fee”;

15 (2) in subsection (a)(1), by amending subpara-
16 graph (B) to read as follows:

17 “(B) to hire, continue to employ, or to re-
18 cruit or refer for employment in the United
19 States an individual without complying with the
20 requirements of subsection (b).”;

21 (3) in subsection (a)(2) by striking “after hir-
22 ing an alien for employment in accordance with
23 paragraph (1),” and inserting “after complying with
24 paragraph (1),”; and

1 (4) in subsection (a)(3), as amended by section
2 702, is further amended by striking “hiring,” and
3 inserting “hiring, employing,” each place it appears.

4 (b) EMPLOYMENT ELIGIBILITY VERIFICATION FOR
5 PREVIOUSLY HIRED INDIVIDUALS.—Section 274A(b) of
6 such Act (8 U.S.C. 1324a(b)), as amended by section
7 701(a), is amended by adding at the end the following new
8 paragraph:

9 “(8) USE OF EMPLOYMENT ELIGIBILITY
10 VERIFICATION SYSTEM FOR PREVIOUSLY HIRED IN-
11 DIVIDUALS.—

12 “(A) ON A VOLUNTARY BASIS.—Beginning
13 on the date that is 2 years after the date of the
14 enactment of the Border Protection,
15 Antiterrorism, and Illegal Immigration Control
16 Act of 2005 and until the date specified in sub-
17 paragraph (B)(iii), a person or entity may make
18 an inquiry, as provided in paragraph (7), using
19 the verification system to seek verification of
20 the identity and employment eligibility of any
21 individual employed by the person or entity, as
22 long as it is done on a nondiscriminatory basis.

23 “(B) ON A MANDATORY BASIS.—

24 “(i) A person or entity described in
25 clause (ii) must make an inquiry as pro-

1 vided in paragraph (7), using the
2 verification system to seek verification of
3 the identity and employment eligibility of
4 all individuals employed by the person or
5 entity who have not been previously subject
6 to an inquiry by the person or entity by
7 the date three years after the date of en-
8 actment of the Border Protection,
9 Antiterrorism, and Illegal Immigration
10 Control Act of 2005.

11 “(ii) A person or entity is described in
12 this clause if it is a Federal, State, or local
13 governmental body (including the Armed
14 Forces of the United States), or if it em-
15 ploys individuals working in a location that
16 is a Federal, State, or local government
17 building, a military base, a nuclear energy
18 site, a weapon site, an airport, or that con-
19 tains critical infrastructure (as defined in
20 section 1016(e) of the Critical Infrastruc-
21 ture Protection Act of 2001 (42 U.S.C.
22 5195c(e))), but only to the extent of such
23 individuals.

24 “(iii) All persons and entities other
25 than those described in clause (ii) must

1 make an inquiry, as provided in paragraph
2 (7), using the verification system to seek
3 verification of the identity and employment
4 eligibility of all individuals employed by the
5 person or entity who have not been pre-
6 viously subject to an inquiry by the person
7 or entity by the date six years after the
8 date of enactment of the Border Protec-
9 tion, Antiterrorism, and Illegal Immigra-
10 tion Control Act of 2005.”.

11 **SEC. 704. BASIC PILOT PROGRAM.**

12 Section 401(b) of the Illegal Immigration Reform and
13 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
14 note) is amended by striking “at the end of the 11-year
15 period beginning on the first day the pilot program is in
16 effect” and inserting “two years after the enactment of
17 the Border Protection, Antiterrorism, and Illegal Immi-
18 gration Control Act of 2005”.

19 **SEC. 705. HIRING HALLS.**

20 Section 274A(h) of the Immigration and Nationality
21 Act (8 U.S.C. 1324a(h)) is amended by adding at the end
22 the following new paragraph:

23 “(4) RECRUITMENT AND REFERRAL.—As used
24 in this section, the term ‘refer’ means the act of
25 sending or directing a person or transmitting docu-

1 mentation or information to another, directly or in-
2 directly, with the intent of obtaining employment in
3 the United States for such person. Generally, only
4 persons or entities referring for remuneration
5 (whether on a retainer or contingency basis) are in-
6 cluded in the definition. However, labor service agen-
7 cies, whether public, private, for-profit, or nonprofit,
8 that refer, dispatch, or otherwise facilitate the hiring
9 of workers for any period of time by a third party
10 are included in the definition whether or not they re-
11 ceive remuneration. As used in this section the term
12 ‘recruit’ means the act of soliciting a person, directly
13 or indirectly, and referring the person to another
14 with the intent of obtaining employment for that
15 person. Generally, only persons or entities recruiting
16 for remunerations (whether on a retainer or contin-
17 gency basis) are included in the definition. However,
18 labor service agencies, whether public, private, for-
19 profit, or nonprofit that refer, dispatch, or otherwise
20 facilitate the hiring of workers for any period of
21 time by a third party are included in the definition
22 whether or not they receive remuneration.”.

23 **SEC. 706. PENALTIES.**

24 Section 274A of the Immigration and Nationality Act
25 (8 U.S.C. 1324a) is amended—

1 (1) in subsection (e)(4)—

2 (A) in subparagraph (A), in the matter be-
3 fore clause (i), by inserting “, subject to para-
4 graphs (10) through (12),” after “in an
5 amount”;

6 (B) in subparagraph (A)(i), by striking
7 “not less than \$250 and not more than
8 \$2,000” and inserting “not less than \$5,000
9 and not more than \$7,500”;

10 (C) in subparagraph (A)(ii), by striking
11 “not less than \$2,000 and not more than
12 \$5,000” and inserting “not less than \$10,000
13 and not more than \$15,000”;

14 (D) in subparagraph (A)(iii), by striking
15 “not less than \$3,000 and not more than
16 \$10,000” and inserting “not less than \$25,000
17 and not more than \$40,000”; and

18 (E) by amending subparagraph (B) to read
19 as follows:

20 “(B) may require the person or entity to
21 take such other remedial action as is appro-
22 priate.”;

23 (2) in subsection (e)(5)—

24 (A) by inserting “, subject to paragraphs
25 (10) through (12),” after “in an amount”;

1 (B) by striking “\$100” and inserting
2 “\$1,000”;

3 (C) by striking “\$1,000” and inserting
4 “\$25,000”;

5 (D) by striking “the size of the business of
6 the employer being charged, the good faith of
7 the employer” and inserting “the good faith of
8 the employer being charged”; and

9 (E) by adding at the end the following sen-
10 tence: “Failure by a person or entity to utilize
11 the employment eligibility verification system as
12 required by law, or providing information to the
13 system that the person or entity knows or rea-
14 sonably believes to be false, shall be treated as
15 a violation of subsection (a)(1)(A).”;

16 (3) by adding at the end of subsection (e) the
17 following new paragraphs:

18 “(10) MITIGATION OF CIVIL MONEY PENALTIES
19 FOR SMALLER EMPLOYERS.—In the case of imposi-
20 tion of a civil penalty under paragraph (4)(A) with
21 respect to a violation of subsection (a)(1)(A) or
22 (a)(2) for hiring or continuation of employment by
23 an employer and in the case of imposition of a civil
24 penalty under paragraph (5) for a violation of sub-
25 section (a)(1)(B) for hiring by an employer, the dol-

1 lar amounts otherwise specified in the respective
2 paragraph shall be reduced as follows:

3 “(A) In the case of an employer with an
4 average of fewer than 26 full-time equivalent
5 employees (as defined by the Secretary of
6 Homeland Security), the amounts shall be re-
7 duced by 60 percent.

8 “(B) In the case of an employer with an
9 average of at least 26, but fewer than 101, full-
10 time equivalent employees (as so defined), the
11 amounts shall be reduced by 40 percent.

12 “(C) In the case of an employer with an
13 average of at least 101, but fewer than 251,
14 full-time equivalent employees (as so defined),
15 the amounts shall be reduced by 20 percent.

16 The last sentence of paragraph (4) shall apply under
17 this paragraph in the same manner as it applies
18 under such paragraph.”.

19 “(11) EXEMPTION FROM PENALTY FOR INITIAL
20 GOOD FAITH VIOLATION.—In the case of imposition
21 of a civil penalty under paragraph (4)(A) with re-
22 spect to a violation of subsection (a)(1)(A) or (a)(2)
23 for hiring or continuation of employment or recruit-
24 ment or referral by person or entity and in the case
25 of imposition of a civil penalty under paragraph (5)

1 for a violation of subsection (a)(1)(B) for hiring or
2 recruitment or referral by a person or entity, the
3 penalty otherwise imposed shall be waived if the vio-
4 lator establishes that it was the first such violation
5 of such provision by the violator and the violator
6 acted in good faith.

7 “(12) SAFE HARBOR FOR CONTRACTORS.—A
8 person or other entity shall not be liable for a pen-
9 alty under paragraph (4)(A) with respect to the vio-
10 lation of subsection (a)(1)(A), (a)(1)(B), or (a)(2)
11 with respect to the hiring or continuation of employ-
12 ment of an unauthorized alien by a subcontractor of
13 that person or entity unless the person or entity
14 knew that the subcontractor hired or continued to
15 employ such alien in violation of such subsection.

16 (4) by amending paragraph (1) of subsection (f)
17 to read as follows:

18 “(1) CRIMINAL PENALTY.—Any person or enti-
19 ty which engages in a pattern or practice of viola-
20 tions of subsection (a)(1) or (2) shall be fined not
21 more than \$50,000 for each unauthorized alien with
22 respect to which such a violation occurs, imprisoned
23 for not less than one year, or both, notwithstanding
24 the provisions of any other Federal law relating to
25 fine levels.”; and

1 (5) in subsection (f)(2), by striking “Attorney
2 General” each place it appears and inserting “Sec-
3 retary of Homeland Security”.

4 **SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EM-**
5 **PLOYMENT ELIGIBILITY VERIFICATION.**

6 (a) REPORT.—

7 (1) IN GENERAL.—Not later than 9 months
8 after the date of the enactment of this Act, the
9 Commissioner of Social Security, in consultation
10 with the Secretary of Treasury, the Secretary of
11 Homeland Security, and the Attorney General, shall
12 submit a report to Congress that includes an evalua-
13 tion of the following requirements and changes:

14 (A) A requirement that social security
15 cards that are made of a durable plastic or
16 similar material and that include an encrypted,
17 machine-readable electronic identification strip
18 and a digital photograph of the individual to
19 whom the card is issued, be issued to each indi-
20 vidual (whether or not a United States citizen)
21 who—

22 (i) is authorized to be employed in the
23 United States;

24 (ii) is seeking employment in the
25 United States; and

1 (iii) files an application for such card,
2 whether as a replacement of an existing so-
3 cial security card or as a card issued in
4 connection with the issuance of a new so-
5 cial security account number.

6 (B) The creation of a unified database to
7 be maintained by the Department of Homeland
8 Security and comprised of data from the Social
9 Security Administration and the Department of
10 Homeland Security specifying the work author-
11 ization of individuals (including both United
12 States citizens and noncitizens) for the purpose
13 of conducting employment eligibility
14 verification.

15 (C) A requirement that all employers verify
16 the employment eligibility of all new hires using
17 the social security cards described in subpara-
18 graph (A) and a phone, electronic card-reading,
19 or other mechanism to seek verification of em-
20 ployment eligibility through the use of the uni-
21 fied database described in subparagraph (B).

22 (2) ITEMS INCLUDED IN REPORT.—The report
23 under paragraph (1) shall include an evaluation of
24 each of the following:

1 (A) Projected cost, including the cost to
2 the Federal government, State and local govern-
3 ments, and the private sector.

4 (B) Administrability.

5 (C) Potential effects on—

6 (i) employers;

7 (ii) employees, including employees
8 who are United States citizens as well as
9 those that are not citizens;

10 (iii) tax revenue; and

11 (iv) privacy.

12 (D) The extent to which employer and em-
13 ployee compliance with immigration laws would
14 be expected to improve.

15 (E) Any other relevant information.

16 (3) ALTERNATIVES.—The report under para-
17 graph (1) also shall examine any alternatives to
18 achieve the same goals as the requirements and
19 changes described in paragraph (1) but that involve
20 lesser cost, lesser burden on those affected, or great-
21 er ease of administration.

22 (b) INSPECTOR GENERAL REVIEW.—Not later than
23 3 months after the report is submitted under subsection
24 (a), the Inspector General of the Social Security Adminis-
25 tration, in consultation with the Inspectors General of the

1 Department of Treasury, the Department of Homeland
2 Security, and the Department of Justice, shall send to the
3 Congress an evaluation of the such report.

4 **SEC. 708. EXTENSION OF PREEMPTION TO REQUIRED CON-**
5 **STRUCTION OF DAY LABORER SHELTERS.**

6 Paragraph 274A(h)(2) of the Immigration and Na-
7 tionality Act (8 U.S.C. 1324a(h)(2)) is amended—

8 (1) by striking “imposing”, and inserting a
9 dash and “(A) imposing”;

10 (2) by striking the period at the end and insert-
11 ing “; and”; and

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

13 “(B) Requiring as a condition of con-
14 ducting, continuing, or expanding a business
15 that a business entity—

16 “(i) provide, build, fund, or maintain
17 a shelter, structure, or designated area for
18 use by day laborers at or near its place of
19 business; or

20 “(ii) take other steps that facilitate
21 the employment of day laborers by others.”

22 **SEC. 709. EFFECTIVE DATE.**

23 This title and the amendments made by this title
24 shall take effect on the date of enactment of this Act, ex-
25 cept that the requirements of persons and entities to com-

1 ply with the employment eligibility verification process
2 takes effect on the date that is two years after such date.

3 **SEC. 710. LIMITATION ON VERIFICATION RESPONSIBIL-**
4 **ITIES OF COMMISSIONER OF SOCIAL SECU-**
5 **RITY.**

6 The Commissioner of Social Security is authorized to
7 perform activities with respect to carrying out the Com-
8 missioner's responsibilities in this title or the amendments
9 made by this title, but only to the extent (except for the
10 purpose of carrying out section 707) the Secretary of
11 Homeland Security has provided, in advance, funds to
12 cover the Commissioner's full costs in carrying out such
13 responsibilities. In no case shall funds from the Federal
14 Old-Age and Survivors Insurance Trust Fund or the Fed-
15 eral Disability Insurance Trust Fund be used to carry out
16 such responsibilities.

17 **SEC. 711. REPORT ON EMPLOYMENT ELIGIBILITY**
18 **VERIFICATION SYSTEM.**

19 Not later than one year after the implementation of
20 the employment eligibility verification system and one year
21 thereafter, the Secretary of Homeland Security shall sub-
22 mit to Congress a report on the progress and problems
23 associated with implementation of the system, including
24 information relating to the most efficient use of the system
25 by small businesses.

1 **TITLE VIII—IMMIGRATION**
2 **LITIGATION ABUSE REDUCTION**

3 **SEC. 801. BOARD OF IMMIGRATION APPEALS REMOVAL**
4 **ORDER AUTHORITY.**

5 (a) IN GENERAL.—Section 101(a)(47) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1101(a)(47)) is
7 amended to read as follows:

8 “(47)(A) The term ‘order of removal’ means the
9 order of the immigration judge, the Board of Immigration
10 Appeals, or other administrative officer to whom the At-
11 torney General or the Secretary of Homeland Security has
12 delegated the responsibility for determining whether an
13 alien is removable, concluding that the alien is removable
14 or ordering removal.

15 “(B) The order described under subparagraph (A)
16 shall become final upon the earliest of—

17 “(i) a determination by the Board of Immigra-
18 tion Appeals affirming such order;

19 “(ii) the entry by the Board of Immigration Ap-
20 peals of such order;

21 “(iii) the expiration of the period in which any
22 party is permitted to seek review of such order by
23 the Board of Immigration Appeals;

24 “(iv) the entry by an immigration judge of such
25 order, if appeal is waived by all parties; or

1 “(v) the entry by another administrative officer
2 of such order, at the conclusion of a process as au-
3 thorized by law other than under section 240.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall take effect on the date of the enact-
6 ment of this Act and shall apply to ordered entered before,
7 on, or after such date.

8 **SEC. 802. JUDICIAL REVIEW OF VISA REVOCATION.**

9 (a) IN GENERAL.—Section 221(i) of the Immigration
10 and Nationality Act (8 U.S.C. 1201(i)) is amended by
11 amending the last sentence to read as follows: “Notwith-
12 standing any other provision of law (statutory or non-
13 statutory), including section 2241 of title 28, United
14 States Code, or any other habeas corpus provision, and
15 sections 1361 and 1651 of such title, a revocation under
16 this subsection may not be reviewed by any court, and no
17 court shall have jurisdiction to hear any claim arising
18 from, or any challenge to, such a revocation.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall take effect on the date of the enact-
21 ment of this Act and shall apply to visa revocations ef-
22 fected before, on, or after such date.

1 **SEC. 803. REINSTATEMENT.**

2 (a) IN GENERAL.—Section 241(a)(5) of the Immi-
3 gration and Nationality Act (8 U.S.C. 1231(a)(5)) is
4 amended to read as follows:

5 “(5) REINSTATEMENT OF REMOVAL ORDERS
6 AGAINST ALIENS ILLEGALLY REENTERING.—If the
7 Secretary of Homeland Security finds that an alien
8 has entered the United States illegally after having
9 been removed or having departed voluntarily, under
10 an order of removal, deportation, or exclusion, re-
11 gardless of the date of the original order or the date
12 of the illegal entry—

13 “(A) the order of removal, deportation, or
14 exclusion is reinstated from its original date
15 and is not subject to being reopened or re-
16 viewed;

17 “(B) the alien is not eligible and may not
18 apply for any relief under this Act, regardless
19 of the date that an application for such relief
20 may have been filed; and

21 “(C) the alien shall be removed under the
22 order of removal, deportation, or exclusion at
23 any time after the illegal entry.

24 Reinstatement under this paragraph shall not re-
25 quire proceedings before an immigration judge under
26 section 240 or otherwise.”.

1 (b) JUDICIAL REVIEW.—Section 242 of the Immigra-
2 tion and Nationality Act (8 U.S.C. 1252) is amended by
3 adding at the end the following new subsection:

4 “(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER
5 SECTION 241(a)(5).—

6 “(1) IN GENERAL.—Notwithstanding any other
7 provision of law (statutory or nonstatutory), includ-
8 ing section 2241 of title 28, United States Code, or
9 any other habeas corpus provision, sections 1361
10 and 1651 of such title, or subsection (a)(2)(D) of
11 this section, no court shall have jurisdiction to re-
12 view any cause or claim arising from or relating to
13 any reinstatement under section 241(a)(5) (includ-
14 ing any challenge to the reinstated order), except as
15 provided in paragraph (2) or (3).

16 “(2) CHALLENGES IN COURT OF APPEALS FOR
17 DISTRICT OF COLUMBIA TO VALIDITY OF THE SYS-
18 TEM, ITS IMPLEMENTATION, AND RELATED INDI-
19 VIDUAL DETERMINATIONS.—

20 “(A) IN GENERAL.—Judicial review of de-
21 terminations under section 241(a)(5) and its
22 implementation is available in an action insti-
23 tuted in the United States Court of Appeals for
24 the District of Columbia Circuit, but shall be

1 limited, except as provided in subparagraph
2 (B), to the following determinations:

3 “(i) Whether such section, or any reg-
4 ulation issued to implement such section, is
5 constitutional.

6 “(ii) Whether such a regulation, or a
7 written policy directive, written policy
8 guideline, or written procedure issued by
9 or under the authority of the Attorney
10 General or the Secretary of Homeland Se-
11 curity to implement such section, is not
12 consistent with applicable provisions of this
13 Act or is otherwise in violation of a statute
14 or the Constitution.

15 “(B) RELATED INDIVIDUAL DETERMINA-
16 TIONS.—If a person raises an action under sub-
17 paragraph (A), the person may also raise in the
18 same action the following issues:

19 “(i) Whether the petitioner is an
20 alien.

21 “(ii) Whether the petitioner was pre-
22 viously ordered removed or deported, or ex-
23 cluded.

24 “(iii) Whether the petitioner has since
25 illegally entered the United States.

1 “(C) DEADLINES FOR BRINGING AC-
2 TIONS.—Any action instituted under this para-
3 graph must be filed no later than 60 days after
4 the date the challenged section, regulation, di-
5 rective, guideline, or procedure described in
6 clause (i) or (ii) of subparagraph (A) is first
7 implemented.

8 “(3) INDIVIDUAL DETERMINATIONS UNDER
9 SECTION 242(a).—Judicial review of determinations
10 under section 241(a)(5) is available in an action
11 under subsection (a) of this section, but shall be lim-
12 ited to determinations of—

13 “(A) whether the petitioner is an alien;

14 “(B) whether the petitioner was previously
15 ordered removed, deported, or excluded; and

16 “(C) whether the petitioner has since ille-
17 gally entered the United States.

18 “(4) SINGLE ACTION.—A person who files an
19 action under paragraph (2) may not file a separate
20 action under paragraph (3). A person who files an
21 action under paragraph (3) may not file an action
22 under paragraph (2).”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 subsections (a) and (b) shall take effect as if enacted on
25 April 1, 1997, and shall apply to all orders reinstated on

1 or after that date by the Secretary of Homeland Security
2 (or by the Attorney General prior to March 1, 2003), re-
3 gardless of the date of the original order.

4 **SEC. 804. WITHHOLDING OF REMOVAL.**

5 (a) **IN GENERAL.**—Section 241(b)(3) of the Immi-
6 gration and Nationality Act (8 U.S.C 1231(b)(3)) is
7 amended—

8 (1) in subparagraph (A), by adding at the end
9 the following: “The burden of proof is on the alien
10 to establish that the alien’s life or freedom would be
11 threatened in that country, and that race, religion,
12 nationality, membership in a particular social group,
13 or political opinion would be at least one central rea-
14 son for such threat.”; and

15 (2) in subparagraph (C), by striking “In deter-
16 mining whether an alien has demonstrated that the
17 alien’s life or freedom would be threatened for a rea-
18 son described in subparagraph (A)” and inserting
19 “For purposes of this paragraph”.

20 (b) **EFFECTIVE DATE.**—The amendments made by
21 subsection (a) shall take effect as if included in the enact-
22 ment of section 101(c) of the REAL ID Act of 2005 (divi-
23 sion B of Public Law 109–13).

1 **SEC. 805. CERTIFICATE OF REVIEWABILITY.**

2 (a) ALIEN'S BRIEF.—Section 242(b)(3)(C) of the
3 Immigration and Nationality Act (8 U.S.C.
4 1252(b)(3)(C)) is amended to read as follows:

5 “(C) ALIEN'S BRIEF.—The alien shall
6 serve and file a brief in connection with a peti-
7 tion for judicial review not later than 40 days
8 after the date on which the administrative
9 record is available. The court may not extend
10 this deadline except upon motion for good cause
11 shown. If an alien fails to file a brief within the
12 time provided in this paragraph, the court shall
13 dismiss the appeal unless a manifest injustice
14 would result.”.

15 (b) CERTIFICATE OF REVIEWABILITY.—Section
16 242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended
17 by adding at the end the following new subparagraphs:

18 “(D) CERTIFICATE.—

19 “(i) After the alien has filed the
20 alien's brief, the petition for review shall be
21 assigned to a single court of appeals judge.

22 “(ii) Unless that court of appeals
23 judge or a circuit justice issues a certifi-
24 cate of reviewability, the petition for review
25 shall be denied and the government shall
26 not file a brief.

1 “(iii) A certificate of reviewability may
2 issue under clause (ii) only if the alien has
3 made a substantial showing that the peti-
4 tion for review is likely to be granted.

5 “(iv) The court of appeals judge or
6 circuit justice shall complete all action on
7 such certificate, including rendering judg-
8 ment, not later than 60 days after the date
9 on which the judge or circuit justice was
10 assigned the petition for review, unless an
11 extension is granted under clause (v).

12 “(v) The judge or circuit justice may
13 grant, on the judge’s or justice’s own mo-
14 tion or on the motion of a party, an exten-
15 sion of the 60-day period described in
16 clause (iv) if—

17 “(I) all parties to the proceeding
18 agree to such extension; or

19 “(II) such extension is for good
20 cause shown or in the interests of jus-
21 tice, and the judge or circuit justice
22 states the grounds for the extension
23 with specificity.

24 “(vi) If no certificate of reviewability
25 is issued before the end of the period de-

1 scribed in clause (iv), including any exten-
2 sion under clause (v), the petition for re-
3 view shall be deemed denied, any stay or
4 injunction on petitioner’s removal shall be
5 dissolved without further action by the
6 court or the government, and the alien
7 may be removed.

8 “(vii) If a certificate of reviewability is
9 issued under clause (ii), the Government
10 shall be afforded an opportunity to file a
11 brief in response to the alien’s brief. The
12 alien may serve and file a reply brief not
13 later than 14 days after service of the Gov-
14 ernment’s brief, and the court may not ex-
15 tend this deadline except upon motion for
16 good cause shown.

17 “(E) NO FURTHER REVIEW OF THE COURT
18 OF APPEALS JUDGE’S DECISION NOT TO ISSUE
19 A CERTIFICATE OF REVIEWABILITY.—The sin-
20 gle court of appeals judge’s decision not to
21 issue a certificate of reviewability, or the denial
22 of a petition under subparagraph (D)(vi), shall
23 be the final decision for the court of appeals
24 and shall not be reconsidered, reviewed, or re-

1 versed by the court of appeals through any
2 mechanism or procedure.”.

3 (c) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to petitions filed on or after the
5 date that is 60 days after the date of the enactment of
6 this Act.

7 **SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA**
8 **ISSUANCE.**

9 (a) **IN GENERAL.**—Section 221(a) of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1201(a)) is amended
11 by adding at the end the following new paragraph:

12 “(3) An alien may not be issued a nonimmigrant visa
13 unless the alien has waived any right—

14 “(A) to review or appeal under this Act of an
15 immigration officer’s determination as to the inad-
16 missibility of the alien at the port of entry into the
17 United States; or

18 “(B) to contest, other than on the basis of an
19 application for asylum, any action for removal of the
20 alien.”.

21 (b) **EFFECTIVE DATE.**—The amendment made by
22 subsection (a) shall apply to visas issued on or after the
23 date that is 90 days after the date of the enactment of
24 this Act.

1 **SEC. 807. CLARIFICATION OF JURISDICTION ON REVIEW.**

2 (a) REVIEW OF DISCRETIONARY DETERMINA-
3 TIONS.—Section 242(a)(2)(B) of the Immigration and
4 Nationality Act (8 U.S.C. 1252(a)(2)(B)) is amended—

5 (1) by inserting before “no court” the following:
6 “and regardless of whether the individual determina-
7 tion, decision, or action is made in removal pro-
8 ceedings,”;

9 (2) in clause (i), by striking “any judgment”
10 and inserting “any individual determination”; and

11 (3) in clause (ii)—

12 (A) by inserting “discretionary” after “any
13 other”;

14 (B) by striking “the authority for which is
15 specified under this title to be in the discretion
16 of the Attorney General or the Secretary of
17 Homeland Security,” and inserting “under this
18 title or the regulations promulgated here-
19 under,”; and

20 (C) by striking the period at the end and
21 inserting the following: “, irrespective of wheth-
22 er such decision or action is guided or informed
23 by standards, regulatory or otherwise.”.

24 (b) REVIEW OF ORDERS AGAINST CRIMINAL
25 ALIENS.—Section 242(a)(2)(C) of the Immigration and
26 Nationality Act (8 U.S.C. 1252(a)(2)(C)) is amended by

1 inserting after “of removal” the following: “(irrespective
2 of whether relief or protection was denied on the basis of
3 the alien’s having committed a criminal offense)”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to petitions for review that are
6 pending on or after the date of the enactment of this Act.

7 **SEC. 808. FEES AND EXPENSES IN JUDICIAL PROCEEDINGS.**

8 (a) IN GENERAL.—Section 242 of the Immigration
9 and Nationality Act (8 U.S.C. 1252) is amended by add-
10 ing at the end the following new subsection:

11 “(i) Notwithstanding any other provision of law, a
12 court shall not award fees or other expenses to an alien
13 based upon the alien’s status as a prevailing party in any
14 proceedings relating to an order of removal issued under
15 this Act, unless the court of appeals concludes that the
16 Attorney General’s determination that the alien was re-
17 movable under section 212 or 237 was not substantially
18 justified.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall apply to fees or other expenses award-
21 ed on or after the date of the enactment of this Act.

1 **TITLE IX—PRESCREENING OF**
2 **AIR PASSENGERS**

3 **SEC. 901. IMMEDIATE INTERNATIONAL PASSENGER**
4 **PRESCREENING PILOT PROGRAM.**

5 (a) PILOT PROGRAM.—Not later than 90 days after
6 the date of enactment of this Act, the Secretary of Home-
7 land Security shall initiate a pilot program to evaluate the
8 use of automated systems for the immediate prescreening
9 of passengers on flights in foreign air transportation, as
10 defined by section 40102 of title 49, United States Code,
11 that are bound for the United States.

12 (b) REQUIREMENTS.—At a minimum, with respect to
13 a passenger on a flight described in subsection (a) oper-
14 ated by an air carrier or foreign air carrier, the automated
15 systems evaluated under the pilot program shall—

16 (1) compare the passenger’s information
17 against the integrated and consolidated terrorist
18 watchlist maintained by the Federal Government
19 and provide the results of the comparison to the air
20 carrier or foreign air carrier before the passenger is
21 permitted to board the flight;

22 (2) provide functions similar to the advanced
23 passenger information system established under sec-
24 tion 431 of the Tariff Act of 1930 (19 U.S.C.
25 1431); and

1 (3) make use of machine-readable data ele-
2 ments on passports and other travel and entry docu-
3 ments in a manner consistent with international
4 standards.

5 (c) OPERATION.—The pilot program shall be con-
6 ducted—

7 (1) in not fewer than 2 foreign airports; and

8 (2) in collaboration with not fewer than one air
9 carrier at each airport participating in the pilot pro-
10 gram.

11 (d) EVALUATION OF AUTOMATED SYSTEMS.—In con-
12 ducting the pilot program, the Secretary shall evaluate not
13 more than 3 automated systems. One or more of such sys-
14 tems shall be commercially available and currently in use
15 to prescreen passengers.

16 (e) PRIVACY PROTECTION.—The Secretary shall en-
17 sure that the passenger data is collected under the pilot
18 program in a manner consistent with the standards estab-
19 lished under section 552a of title 5, United States Code.

20 (f) DURATION.—The Secretary shall conduct the
21 pilot program for not fewer than 90 days.

22 (g) PASSENGER DEFINED.—In this section, the term
23 “passenger” includes members of the flight crew.

24 (h) REPORT.—Not later than 30 days after the date
25 of completion of the pilot program, the Secretary shall

1 submit to the Committee on Homeland Security of the
2 House of Representatives and the Committee on Com-
3 merce, Science, and Transportation of the Senate a report
4 containing the following:

5 (1) An assessment of the technical performance
6 of each of the tested systems, including the system's
7 accuracy, scalability, and effectiveness with respect
8 to measurable factors, including, at a minimum, pas-
9 senger throughput, the rate of flight diversions, and
10 the rate of false negatives and positives.

11 (2) A description of the provisions of each test-
12 ed system to protect the civil liberties and privacy
13 rights of passengers, as well as a description of the
14 adequacy of an immediate redress or appeals process
15 for passengers denied authorization to travel.

16 (3) Cost projections for implementation of each
17 tested system, including—

18 (A) projected costs to the Department of
19 Homeland Security; and

20 (B) projected costs of compliance to air
21 carriers operating flights described in sub-
22 section (a).

23 (4) A determination as to which tested system
24 is the best-performing and most efficient system to
25 ensure immediate prescreening of international pas-

1 sengers. Such determination shall be made after con-
2 sultation with individuals in the private sector hav-
3 ing expertise in airline industry, travel, tourism, pri-
4 vacy, national security, and computer security
5 issues.

6 (5) A plan to fully deploy the best-performing
7 and most efficient system tested by not later than
8 January 1, 2007.

9 **TITLE X—FENCING AND OTHER**
10 **BORDER SECURITY IMPROVE-**
11 **MENTS**

12 **SEC. 1001. FINDINGS.**

13 The Congress finds the following:

14 (1) Hundreds of people die crossing our inter-
15 national border with Mexico every year.

16 (2) Illegal narcotic smuggling along the South-
17 west border of the United States is both dangerous
18 and prolific.

19 (3) Over 155,000 non-Mexican individuals were
20 apprehended trying to enter the United States along
21 the Southwest border in fiscal year 2005.

22 (4) The number of illegal entrants into the
23 United States through the Southwest border is esti-
24 mated to exceed one million people a year.

1 **SEC. 1002. CONSTRUCTION OF FENCING AND SECURITY IM-**
2 **PROVEMENTS IN BORDER AREA FROM PA-**
3 **CIFIC OCEAN TO GULF OF MEXICO.**

4 Section 102(b) of the Illegal Immigration Reform and
5 Immigrant Responsibility Act of 1996 (Public Law 104–
6 208; 8 U.S.C. 1103 note) is amended—

7 (1) in the subsection heading by striking
8 “NEAR SAN DIEGO, CALIFORNIA”; and

9 (2) by amending paragraph (1) to read as fol-
10 lows:

11 “(1) SECURITY FEATURES.—

12 “(A) REINFORCED FENCING.—In carrying
13 out subsection (a), the Secretary of Homeland
14 Security shall provide for least 2 layers of rein-
15 forced fencing, the installation of additional
16 physical barriers, roads, lighting, cameras, and
17 sensors—

18 “(i) extending from 10 miles west of
19 the Tecate, California, port of entry to 10
20 miles east of the Tecate, California, port of
21 entry;

22 “(ii) extending from 10 miles west of
23 the Calexico, California, port of entry to 5
24 miles east of the Douglas, Arizona, port of
25 entry;

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

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

8 “(v) extending 15 miles northwest of
9 the Laredo, Texas, port of entry to the
10 Brownsville, Texas, port of entry.

11 “(B) PRIORITY AREAS.—With respect to
12 the border described—

13 “(i) in subparagraph (A)(ii), the Sec-
14 retary shall ensure that an interlocking
15 surveillance camera system is installed
16 along such area by May 30, 2006 and that
17 fence construction is completed by May 30,
18 2007; and

19 “(ii) in subparagraph (A)(v), the Sec-
20 retary shall ensure that fence construction
21 from 15 miles northwest of the Laredo,
22 Texas port of entry to 15 southeast of the
23 Laredo, Texas port of entry is completed
24 by December 31, 2006.

1 “(C) EXCEPTION.—If the topography of a
2 specific area has an elevation grade that ex-
3 ceeds 10%, the Secretary may use other means
4 to secure such area, including the use of sur-
5 veillance and barrier tools.”.

6 **SEC. 1003. NORTHERN BORDER STUDY.**

7 (a) IN GENERAL.—The Secretary of Homeland Secu-
8 rity shall conduct a study on the construction of a state-
9 of-the-art barrier system along the northern international
10 land and maritime border of the United States and shall
11 include in the study—

12 (1) the necessity of constructing such a system;

13 and

14 (2) the feasibility of constructing the system.

15 (b) REPORT.—Not later than one year after the date
16 of the enactment of this Act, the Secretary of Homeland
17 Security shall report to the Congress on the study de-
18 scribed in subsection (a).

19 **SEC. 1004. SENSE OF THE CONGRESS.**

20 It is the sense of the Congress that the Secretary of
21 Homeland Security shall take all necessary steps to secure
22 the Southwest international border for the purpose of sav-
23 ing lives, stopping illegal drug trafficking, and halting the
24 flow of illegal entrants into the United States.

1 **TITLE XI—SECURITY AND**
2 **FAIRNESS ENHANCEMENT**

3 **SEC. 1101. SHORT TITLE.**

4 This title may be cited as—

5 (1) the “Security and Fairness Enhancement
6 for America Act of 2005”; or

7 (2) the “SAFE for America Act”.

8 **SEC. 1102. ELIMINATION OF DIVERSITY IMMIGRANT PRO-**
9 **GRAM.**

10 (a) **WORLDWIDE LEVEL OF DIVERSITY IMMI-**
11 **GRANTS.**—Section 201 of the Immigration and Nation-
12 ality Act (8 U.S.C. 1151) is amended—

13 (1) in subsection (a)—

14 (A) by inserting “and” at the end of para-
15 graph (1);

16 (B) by striking “; and” at the end of para-
17 graph (2) and inserting a period; and

18 (C) by striking paragraph (3); and

19 (2) by striking subsection (e).

20 (b) **ALLOCATION OF DIVERSITY IMMIGRANT VISAS.**—
21 Section 203 of such Act (8 U.S.C. 1153) is amended—

22 (1) by striking subsection (e);

23 (2) in subsection (d), by striking “(a), (b), or
24 (c),” and inserting “(a) or (b),”;

1 (3) in subsection (e), by striking paragraph (2)
2 and redesignating paragraph (3) as paragraph (2);
3 (4) in subsection (f), by striking “(a), (b), or
4 (c)” and inserting “(a) or (b)”; and
5 (5) in subsection (g), by striking “(a), (b), and
6 (c)” and inserting “(a) and (b)”.

7 (c) PROCEDURE FOR GRANTING IMMIGRANT STA-
8 TUS.—Section 204 of such Act (8 U.S.C. 1154) is amend-
9 ed—

10 (1) by striking subsection (a)(1)(I); and
11 (2) in subsection (e), by striking “(a), (b), or
12 (c)” and inserting “(a) or (b)”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on October 1, 2006.

15 **TITLE XII—OATH OF RENUNCI-** 16 **ATION AND ALLEGIANCE**

17 **SEC. 1201. OATH OF RENUNCIATION AND ALLEGIANCE.**

18 (a) IN GENERAL.—Section 337(a) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1448(a)) is amended
20 by inserting after the fourth sentence the following: “The
21 oath referred to in this section shall be the oath provided
22 for in paragraph (a) or (b) of section 337.1 of title 8, Code
23 of Federal Regulations, as in effect on April 1, 2005.”.

24 (b) NOTICE TO FOREIGN EMBASSIES.—Upon the
25 naturalization of a new citizen, the Secretary of Homeland

1 Security, in cooperation with the Secretary of State, shall
2 notify the embassy of the country of which the new citizen
3 was a citizen or subject that such citizen has—

4 (1) renounced allegiance to that foreign coun-
5 try; and

6 (2) sworn allegiance to the United States.

7 (c) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall take effect on the date that is 6
9 months after the date of the enactment of this Act.

10 **TITLE XIII—ELIMINATION OF**
11 **CORRUPTION AND PREVEN-**
12 **TION OF ACQUISITION OF IM-**
13 **MIGRATION BENEFITS**
14 **THROUGH FRAUD**

15 **SEC. 1301. SHORT TITLE.**

16 This title may be cited as the “Taking Action to Keep
17 Employees Accountable in Immigration Matters Act of
18 2005” or the “TAKE AIM Act of 2005”.

19 **SEC. 1302. FINDINGS.**

20 Congress finds the following:

21 (1) The mission of United States Citizenship
22 and Immigration Services (USCIS) is to faithfully
23 execute the immigration laws enacted by Congress
24 and to ensure that only those aliens who are eligible
25 under such laws and who do not pose a risk to the

1 United States or its citizens or lawful residents are
2 able to obtain permission to remain in the United
3 States.

4 (2) Only United States citizens have an abso-
5 lute right to be in the United States; for all others,
6 permission to enter and reside here, either as non-
7 immigrants or immigrants, is a privilege that is con-
8 ditioned on following the rules of one's admission
9 and stay.

10 (3) It is important that United States Citizen-
11 ship and Immigration Services, like all other Federal
12 agencies that come into close contact with the public
13 their customers.

14 (4) Immigration benefits fraud has become en-
15 demic. It undermines the rule of law and threatens
16 national security, and so must be addressed aggres-
17 sively and consistently.

18 (5) Internal corruption also threatens national
19 security and erodes the integrity of the immigration
20 system. In order to restore integrity and credibility
21 to the system, the backlog of complaints against
22 United States Citizenship and Immigration Services
23 employees must be cleared by experienced investiga-
24 tors as expeditiously as possible without compro-
25 mising the quality of investigations.

1 (1) to receive, process, dispose of administra-
2 tively, and investigate any criminal or noncriminal
3 violations of the Immigration and Nationality Act or
4 title 18, United States Code, that are alleged to have
5 been committed by any officer, agent, employee, or
6 contract worker of United States Citizenship and
7 Immigration Services, and that are referred to
8 United States Citizenship and Immigration Services
9 by the Office of the Inspector General of the Depart-
10 ment of Homeland Security;

11 (2) to ensure that all complaints alleging such
12 violations are handled and stored in the same man-
13 ner as sensitive but unclassified materials;

14 (3) to have access to all records, reports, audits,
15 reviews, documents, papers, recommendations, or
16 other material available to United States Citizenship
17 and Immigration Services which relate to programs
18 and operations with respect to which the Director
19 has responsibilities under this title;

20 (4) to request such information or assistance as
21 may be necessary for carrying out the duties and re-
22 sponsibilities of the Office from any Federal, State,
23 or local governmental agency or unit thereof;

24 (5) to require by subpoena the production of all
25 information, documents, reports, answers, records,

1 accounts, papers, and other data and documentary
2 evidence necessary in the performance of the func-
3 tions assigned to the Office of Security and Inves-
4 tigation, which subpoena, in the case of contumacy
5 or refusal to obey, shall be enforceable by order of
6 any appropriate United States district court (except
7 that procedures other than subpoenas shall be used
8 by the Director to obtain documents and information
9 from Federal agencies);

10 (6) to administer to or take from any person an
11 oath, affirmation, or affidavit, whenever necessary in
12 the performance of the functions assigned to the Of-
13 fice of Security and Investigations, which oath, affir-
14 mation, or affidavit when administered or taken by
15 or before an agent of the Office of Security and In-
16 vestigation designated by the Director shall have
17 the same force and effect as if administered or taken
18 by or before an officer having a seal;

19 (7) to have direct and prompt access to the
20 head of United States Citizenship and Immigration
21 Services when necessary for any purpose pertaining
22 to the performance of functions and responsibilities
23 of the Office of Security and Investigations;

24 (8) to select, appoint, and employ such officers
25 and employees as may be necessary for carrying out

1 the functions, powers, and duties of the Office of Se-
2 curity and Investigations subject to the provisions of
3 title 5, United States Code, governing appointments
4 in the competitive service, and the provisions of
5 chapter 51 and subchapter III of chapter 53 of such
6 title relating to classification and General Schedule
7 pay rates;

8 (9) to obtain services as authorized by section
9 3109 of title 5, United States Code, at daily rates
10 not to exceed the equivalent rate prescribed for
11 grade GS-15 of the General Schedule by section
12 5332 of title 5, United States Code; and

13 (10) to the extent and in such amounts as may
14 be provided in advance by immigration fee accounts
15 or appropriations Acts, to enter into contracts and
16 other arrangements for audits, studies, analyses, and
17 other services with public agencies and with private
18 persons, and to make such payments as may be nec-
19 essary to carry out the provisions of this title.

20 (b)(1) Upon request of the Director for information
21 or assistance under subsection (a)(4), the head of any
22 Federal agency involved shall, insofar as is practicable and
23 not in contravention of any existing statutory restriction
24 or regulation of the Federal agency from which the infor-

1 mation is requested, furnish to such Director, or to an
2 authorized designee, such information or assistance.

3 (2) Whenever information or assistance requested
4 under subsection (a)(3) or (a)(4) is, in the judgment of
5 the Director, unreasonably refused or not provided, the
6 Director shall report the circumstances to the Director of
7 United States Citizenship and Immigration Services with-
8 out delay.

9 (c) The Director of United States Citizenship and
10 Immigration Services shall provide the Office of Security
11 and Investigations with appropriate and adequate office
12 space at central and field office locations of United States
13 Citizenship and Immigration Services, together with such
14 equipment, office supplies, and communications facilities
15 and services as may be necessary for the operation of such
16 offices, and shall provide necessary maintenance services
17 for such offices and the equipment and facilities located
18 therein.

19 (d)(1) In addition to the authority otherwise provided
20 by this title, the Director, the Deputy Director, the Assist-
21 ant Director of Security Operations, the Assistant Direc-
22 tor of Special Investigations, all 1811-series criminal in-
23 vestigators, certain 1801-series investigative management
24 specialists, and security specialists supervised by such as-

1 sistant directors may be authorized by the Secretary of
2 Homeland Security to—

3 (A) carry a firearm while engaged in official du-
4 ties as authorized under this title or other statute,
5 or as expressly authorized by the Secretary;

6 (B) make an arrest without a warrant while en-
7 gaged in official duties as authorized under this title
8 or other statute, or as expressly authorized by the
9 Secretary, for any offense against the United States
10 committed in the presence of such Director, Assist-
11 ant Director, or designee, or for any felony cog-
12 nizable under the laws of the United States if such
13 Director, Assistant Director, or designee has reason-
14 able grounds to believe that the person to be ar-
15 rested has committed or is committing such felony;
16 and

17 (C) seek and execute warrants for arrest,
18 search of a premises, or seizure of evidence issued
19 under the authority of the United States upon prob-
20 able cause to believe that a violation has been com-
21 mitted.

22 (2) The Secretary shall promulgate, and revise as ap-
23 propriate, guidelines which shall govern the exercise of the
24 law enforcement powers established under paragraph (1).

1 (3)(A) Powers authorized for the Director under
2 paragraph (1) may be rescinded or suspended upon a de-
3 termination by the Secretary that the exercise of author-
4 ized powers by that Director has not complied with the
5 guidelines promulgated by the Secretary under paragraph
6 (2).

7 (B) Powers authorized to be exercised by any indi-
8 vidual under paragraph (1) may be rescinded or suspended
9 with respect to that individual upon a determination by
10 the Secretary that such individual has not complied with
11 guidelines promulgated by the Secretary under paragraph
12 (2).

13 (4) A determination by the Secretary under para-
14 graph (3) shall not be reviewable in or by any court.

15 (5) No provision of this subsection shall limit the ex-
16 ercise of law enforcement powers established under any
17 other statutory authority.

18 **SEC. 1305. AUTHORITY OF THE OFFICE OF SECURITY AND**
19 **INVESTIGATIONS TO DETECT AND INVES-**
20 **TIGATE IMMIGRATION BENEFITS FRAUD.**

21 The Office of Security and Investigations of United
22 States Citizenship and Immigration Services shall have
23 authority—

24 (1) to conduct fraud detection operations, in-
25 cluding data mining and analysis;

1 (2) to investigate any criminal or noncriminal
2 allegations of violations of the Immigration and Na-
3 tionality Act or title 18, United States Code, that
4 Immigration and Customs Enforcement declines to
5 investigate;

6 (3) to turn over to a United States Attorney for
7 prosecution evidence that tends to establish such vio-
8 lations; and

9 (4) to engage in information sharing, partner-
10 ships, and other collaborative efforts with any—

11 (A) Federal, State, or local law enforce-
12 ment entity;

13 (B) foreign partners; or

14 (C) entity within the intelligence commu-
15 nity (as defined in section 3(4) of the National
16 Security Act of 1947 (50 U.S.C. 401a(4)).

17 **SEC. 1306. INCREASE IN FULL-TIME OFFICE OF SECURITY**
18 **AND INVESTIGATIONS PERSONNEL.**

19 (a) INCREASE IN GS-1811 SERIES CRIMINAL INVES-
20 TIGATORS.—(1) In each of fiscal years 2007 through
21 2010, the Director of the Office of Security and Investiga-
22 tions shall, subject to the availability of security fees de-
23 scribed in section 910 of this title, increase by not less
24 than 100 the number of full-time, active-duty GS-1811
25 series criminal Discussion draft 10 investigators, along

1 with support personnel and equipment, within the Office
2 of Security and Investigations above the number of such
3 positions for which funds were made available during the
4 preceding fiscal year.

5 (2) DIVISION OF DUTIES.—

6 (A) INTERNAL AFFAIRS.—No fewer than one-
7 third of the criminal investigators, and support per-
8 sonnel, hired under paragraph (1) shall be assigned
9 to investigate allegations described in paragraph (1)
10 of section 904(a) of this title;

11 (B) BENEFITS FRAUD.—The remaining crimi-
12 nal investigators, and support personnel, hired under
13 paragraph (1) shall be assigned to investigate allega-
14 tions described in section 905 of this title.

15 (b) INCREASE IN GS-1801 SERIES INVESTIGATION
16 AND COMPLIANCE OFFICERS.—(1) Subject to the avail-
17 ability of security fees described in section 910 of this title,
18 the Director of the Office of Security and Investigations
19 shall by fiscal year 2008 increase by not less than 150
20 the number of full-time, active-duty GS-1801 series inves-
21 tigation and compliance officers, along with support per-
22 sonnel and equipment, within the Office of Security and
23 Investigations above the number of such positions for
24 which funds were made available during fiscal year 2006.

25 (2) DIVISION OF DUTIES.—

1 (A) INTERNAL AFFAIRS.—No fewer than one-
2 third of the investigation and compliance officers,
3 and support personnel, hired under paragraph (1)
4 shall be assigned to investigate allegations described
5 in paragraph (1) of section 904(a) of this title;

6 (B) BENEFITS FRAUD.—The remaining inves-
7 tigation and compliance officers, and support per-
8 sonnel, hired under paragraph (1) shall be assigned
9 to investigate allegations described in section 905 of
10 this title.

11 (c) INCREASE IN GS-0132 SERIES INTELLIGENCE
12 RESEARCH SPECIALISTS.—(1) Subject to the availability
13 of security fees described in section 910 of this title, the
14 Director of the Office of Security and Investigations shall
15 by fiscal year 2008 increase by not less than 150 the num-
16 ber of full-time, active-duty GS-0132 series intelligence
17 research specialists, along with support personnel and
18 equipment, within the Office of Security and Investiga-
19 tions above the number of such positions for which funds
20 were made available during fiscal year 2006.

21 (2) DIVISION OF DUTIES.—

22 (A) INTERNAL AFFAIRS.—No fewer than one-
23 third of the investigation and compliance officers,
24 and support personnel, hired under paragraph (1)

1 shall be assigned to investigate allegations described
2 in paragraph (1) of section 904(a) of this title;

3 (B) BENEFITS FRAUD.—The remaining inves-
4 tigation and compliance officers, and support per-
5 sonnel, hired under paragraph (1) shall be assigned
6 to investigate allegations described in section 905 of
7 this title.

8 **SEC. 1307. ANNUAL REPORT.**

9 The Director of the Office of Security and Investiga-
10 tions shall annually submit to Congress a report detailing
11 the activities of the Office. The report shall include data
12 on the following:

13 (1) The number of investigations the Office of
14 Security and Investigations began, completed, and
15 turned over to a United States Attorney for prosecu-
16 tion during the past 12 months.

17 (2) The types of allegations investigated by the
18 Office of Security and Investigations during the past
19 12 months, including both the allegations of mis-
20 conduct by employees of United States Citizenship
21 and Immigration Services and allegations of immi-
22 gration benefits fraud.

23 (3) The disposition of all investigations con-
24 ducted by the Office of Security and Investigations
25 during the past 12 months.

1 (4) The number, if any, of allegations pending
2 at the end of the 12-month period according to the
3 type of allegation, the grade level of the employee,
4 if applicable, along with an assessment of the re-
5 sources the Office of Security and Investigations
6 would need, if any, to remain current with new alle-
7 gations received.

8 **SEC. 1308. INVESTIGATIONS OF FRAUD TO PRECEDE IMMI-**
9 **GRATION BENEFITS GRANT.**

10 Section 103 of the Immigration and Nationality Act
11 (8 U.S.C. 1103) is amended by adding at the end the fol-
12 lowing:

13 “(j) Notwithstanding any other provision of law, the
14 Secretary of Homeland Security, the Attorney General, or
15 any court may not—

16 “(1) grant or order the grant of adjustment of
17 status to that of an alien lawfully admitted for per-
18 manent residence,

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

22 “(3) issue any documentation evidencing or re-
23 lated to such grant by the Attorney General, the
24 Secretary, or any court,

1 until any suspected or alleged fraud relating to the benefit
2 application has been fully investigated and found to be un-
3 substantiated.”.

4 **SEC. 1309. ELIMINATION OF THE FRAUD DETECTION AND**
5 **NATIONAL SECURITY OFFICE.**

6 Not later than 30 days following the date of enact-
7 ment of this title, the Secretary of Homeland Security
8 shall eliminate the Fraud Detection and National Security
9 Office of United States Citizenship and Immigration Serv-
10 ices and transfer all authority of such office to the Office
11 of Security and Investigations.

12 **SEC. 1310. SECURITY FEE.**

13 Section 286(d) of the Immigration and Nationality
14 Act (8 U.S.C. 1356(d)) is amended by inserting “(1)” be-
15 fore “monies” and adding at the end the following:

16 “(2) In addition to any other fee authorized by law,
17 the Secretary of Homeland Security shall charge each
18 alien who files an application for adjustment of status or
19 an extension of stay a security fee of \$10, which shall be
20 made available to the Office of Security and Investigations
21 to conduct investigations into allegations of internal cor-
22 ruption and benefits fraud.

23 “(3) In addition to any other fee authorized by law,
24 the Secretary of State shall charge each alien who files
25 an application for an immigrant or nonimmigrant visa a

1 security fee of \$10, which shall be made available to the
2 Office of Security and Investigations to conduct investiga-
3 tions into allegations of internal corruption and benefits
4 fraud.

5 “(4) Any fees collected under paragraphs (2) and (3)
6 that are in excess of the operating budget of the Office
7 of Security and Investigations shall be made available to
8 Immigration and Customs Enforcement for the sole pur-
9 pose of investigating immigration benefits fraud referred
10 to it by United States Citizenship and Immigration Serv-
11 ices.”.

Passed the House of Representatives December 16,
2005.

Attest:

Clerk.

109TH CONGRESS
1ST SESSION

H. R. 4437

AN ACT

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