

Union Calendar No. 192

109TH CONGRESS
1ST SESSION

H. R. 4437

[Report No. 109-345, Part I]

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2005

Mr. SENSENBRENNER (for himself, Mr. KING of New York, Mr. SMITH of Texas, Ms. FOXX, Mr. DANIEL E. LUNGREN of California, Mr. ISSA, and Mr. GARY G. MILLER of California) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 13, 2005

Reported from the Committee on the Judiciary with an amendment
[Strike out all after the enacting clause and insert the part printed in italic]

DECEMBER 13, 2005

The Committee on Homeland Security discharged

DECEMBER 13, 2005

Referred to the Committee on Education and the Workforce for a period ending not later than December 14, 2005, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(e) rule X; and to the Committee on Ways and Means for a period ending not later than December 14, 2005, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(t) rule X

DECEMBER 14, 2005

Additional sponsors: Mr. FORBES, Mr. BURTON of Indiana, Mr. DREIER, Mr. STEARNS, Mr. COLE of Oklahoma, Mr. CULBERSON, Mr. BACHUS, Mrs. SCHMIDT, Mr. RAMSTAD, Mr. THORNBERRY, Mr. MCCAUL of Texas, Mr.

ISTOOK, Mr. PETERSON of Minnesota, Mr. GOODLATTE, Mr. ALEXANDER, Mr. FEENEY, Mr. PICKERING, Mr. BAKER, Mr. BURGESS, Mr. SHUSTER, Mr. WILSON of South Carolina, Mr. POE, Mr. KLINE, Mr. MCHUGH, Mr. LEWIS of California, Mrs. BONO, Mr. ROYCE, Mr. MURPHY, and Mr. RYUN of Kansas

DECEMBER 14, 2005

The Committees on Education and the Workforce and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on December 6, 2005]

A BILL

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,*

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

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“Border Protection, Antiterrorism, and Illegal Immigration*
 6 *Control Act of 2005”.*

7 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 8 *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.

**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 re-entering 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 a special task force for coordinating and distributing information on fraudulent immigration documents.

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.
Sec. 307. Sense of Congress regarding cooperation with Indian Nations.

TITLE IV—DETENTION AND REMOVAL

- Sec. 401. Mandatory detention for aliens apprehended at or between ports of entry.*
Sec. 402. Expansion and effective management of detention facilities.
Sec. 403. Enhancing transportation capacity for unlawful aliens.
Sec. 404. Denial of admission to nationals of country denying or delaying accepting alien.
Sec. 405. Report on financial burden of repatriation.
Sec. 406. Training program.
Sec. 407. Expedited removal.
Sec. 408. GAO study on deaths in custody.

*TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY
AGENCIES*

- Sec. 501. Enhanced border security coordination and management.*
Sec. 502. Office of Air and Marine Operations.
Sec. 503. Shadow Wolves transfer.

TITLE VI—TERRORIST AND CRIMINAL ALIENS

- Sec. 601. Removal of terrorist aliens.*
Sec. 602. Detention of dangerous aliens.
Sec. 603. Increase in criminal penalties.
Sec. 604. Precluding admissibility of aggravated felons and other criminals.
*Sec. 605. Precluding refugee or asylee adjustment of status for aggravated felo-
nias.*
Sec. 606. Removing drunk drivers.
Sec. 607. Designated county law enforcement assistance program.
*Sec. 608. Rendering inadmissible and deportable aliens participating in criminal
street gangs; detention; ineligibility from protection from re-
moval and asylum.*
Sec. 609. Naturalization reform.
*Sec. 610. Expedited removal for aliens inadmissible on criminal or security
grounds.*
*Sec. 611. Technical correction for effective date in change in inadmissibility for
terrorists under REAL ID Act.*
Sec. 612. Bar to good moral character.
Sec. 613. Strengthening definitions of “aggravated felony” and “conviction”.
Sec. 614. Deportability for criminal offenses.

TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION

- Sec. 701. Employment eligibility verification system.*
Sec. 702. Employment eligibility verification process.
*Sec. 703. Expansion of employment eligibility verification system to previously
hired individuals and recruiting and referring.*
Sec. 704. Basic pilot program.
Sec. 705. Hiring halls.
Sec. 706. Penalties.
*Sec. 707. Report on Social Security card-based employment eligibility
verification.*
Sec. 708. Effective date.

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.
Sec. 804. Withholding of removal.
Sec. 805. Certificate of reviewability.
Sec. 806. Waiver of rights in nonimmigrant visa issuance.

1 **SEC. 2. STATE DEFINED.**

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

5 **SEC. 3. SENSE OF CONGRESS ON SETTING A MANAGEABLE**
6 **LEVEL OF IMMIGRATION.**

7 *It is the sense of Congress that the immigration and*
8 *naturalization policy shall be designed to enhance the eco-*
9 *nomi, social and cultural well-being of the United States*
10 *of America.*

11 **TITLE I—SECURING UNITED**
12 **STATES BORDERS**

13 **SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE BOR-**
14 **DER.**

15 *(a) IN GENERAL.—The Secretary of Homeland Secu-*
16 *rity shall take all actions the Secretary determines nec-*
17 *essary and appropriate to achieve and maintain oper-*
18 *ational control over the entire international land and mari-*
19 *time borders of the United States, to include the following—*

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

25 *(2) physical infrastructure enhancements to pre-*
26 *vent unlawful entry by aliens into the United States*

1 *and facilitate access to the international land and*
2 *maritime borders by United States Customs and Bor-*
3 *der Protection, such as additional checkpoints, all*
4 *weather access roads, and vehicle barriers;*

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

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

16 *(b) OPERATIONAL CONTROL DEFINED.—In this sec-*
17 *tion, the term “operational control” means the prevention*
18 *of the entry into the United States of terrorists, other un-*
19 *lawful aliens, instruments of terrorism, narcotics, and other*
20 *contraband.*

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

22 *(a) SURVEILLANCE PLAN.—Not later than six months*
23 *after the date of the enactment of this Act, the Secretary*
24 *of Homeland Security shall submit to the appropriate con-*
25 *gressional committees a comprehensive plan for the system-*

1 *atic surveillance of the international land and maritime*
2 *borders of the United States. The plan shall include the fol-*
3 *lowing:*

4 (1) *An assessment of existing technologies em-*
5 *ployed on such borders.*

6 (2) *A description of whether and how new sur-*
7 *veillance technologies will be compatible with existing*
8 *surveillance technologies.*

9 (3) *A description of how the United States Cus-*
10 *toms and Border Protection is working, or is expected*
11 *to work, with the Directorate of Science and Tech-*
12 *nology of the Department of Homeland Security to*
13 *identify and test surveillance technology.*

14 (4) *A description of the specific surveillance tech-*
15 *nology to be deployed.*

16 (5) *The identification of any obstacles that may*
17 *impede full implementation of such deployment.*

18 (6) *A detailed estimate of all costs associated*
19 *with the implementation of such deployment and con-*
20 *tinued maintenance of such technologies.*

21 (7) *A description of how the Department of*
22 *Homeland Security is working with the Federal Avia-*
23 *tion Administration on safety and airspace control*
24 *issues associated with the use of unmanned aerial ve-*
25 *hicles in the National Airspace System.*

1 (b) *NATIONAL STRATEGY FOR BORDER SECURITY.*—
2 *Not later than one year after the date of the enactment of*
3 *this Act, the Secretary of Homeland Security, in consulta-*
4 *tion with the heads of other appropriate Federal agencies,*
5 *shall submit to the appropriate congressional committees a*
6 *National Strategy for Border Security to achieve oper-*
7 *ational control over all ports of entry into the United States*
8 *and the international land and maritime borders of the*
9 *United States. The Secretary shall update the Strategy as*
10 *needed and shall submit to the Committee on Homeland Se-*
11 *curity of the House of Representatives, not later than 30*
12 *days after each such update, the updated Strategy. The Na-*
13 *tional Strategy for Border Security shall include the fol-*
14 *lowing:*

15 (1) *The implementation timeline for the surveil-*
16 *lance plan described in subsection (a).*

17 (2) *An assessment of the threat posed by terror-*
18 *ists and terrorist groups that may try to infiltrate the*
19 *United States at points along the international land*
20 *and maritime borders of the United States.*

21 (3) *A risk assessment of all ports of entry to the*
22 *United States and all portions of the international*
23 *land and maritime borders of the United States with*
24 *respect to—*

1 (A) preventing the entry of terrorists, other
2 unlawful aliens, instruments of terrorism, nar-
3 cotics, and other contraband into the United
4 States; and

5 (B) protecting critical infrastructure at or
6 near such ports of entry or borders.

7 (4) An assessment of the most appropriate, prac-
8 tical, and cost-effective means of defending the inter-
9 national land and maritime borders of the United
10 States against threats to security and illegal transit,
11 including intelligence capacities, technology, equip-
12 ment, personnel, and training needed to address secu-
13 rity vulnerabilities.

14 (5) An assessment of staffing needs for all border
15 security functions, taking into account threat and
16 vulnerability information pertaining to the borders
17 and the impact of new security programs, policies,
18 and technologies.

19 (6) A description of the border security roles and
20 missions of Federal, State, regional, local, and tribal
21 authorities, and recommendations with respect to how
22 the Department of Homeland Security can improve
23 coordination with such authorities, to enable border
24 security enforcement to be carried out in an efficient
25 and effective manner.

1 (7) *A prioritization of research and development*
2 *objectives to enhance the security of the international*
3 *land and maritime borders of the United States.*

4 (8) *A description of ways to ensure that the free*
5 *flow of legitimate travel and commerce of the United*
6 *States is not diminished by efforts, activities, and*
7 *programs aimed at securing the international land*
8 *and maritime borders of the United States.*

9 (9) *An assessment of additional detention facili-*
10 *ties and bed space needed to detain unlawful aliens*
11 *apprehended at United States ports of entry or along*
12 *the international land borders of the United States in*
13 *accordance with the National Strategy for Border Se-*
14 *curity required under this subsection and the manda-*
15 *tory detention requirement described in section 401 of*
16 *this Act.*

17 (10) *A description of how the Secretary shall en-*
18 *sure accountability and performance metrics within*
19 *the appropriate agencies of the Department of Home-*
20 *land Security responsible for implementing the border*
21 *security measures determined necessary upon comple-*
22 *tion of the National Strategy for Border Security.*

23 (11) *A timeline for the implementation of the ad-*
24 *ditional security measures determined necessary as*
25 *part of the National Strategy for Border Security, in-*

1 *cluding a prioritization of security measures, realistic*
2 *deadlines for addressing the security and enforcement*
3 *needs, and resource estimates and allocations.*

4 *(c) CONSULTATION.—In creating the National Strat-*
5 *egy for Border Security described in subsection (b), the Sec-*
6 *retary shall consult with—*

7 *(1) State, local, and tribal authorities along the*
8 *international land and maritime borders of the*
9 *United States; and*

10 *(2) an appropriate cross-section of private sector*
11 *and nongovernmental organizations with relevant ex-*
12 *pertise.*

13 *(d) PRIORITY OF NATIONAL STRATEGY.—The National*
14 *Strategy for Border Security described in subsection (b)*
15 *shall be the controlling document for security and enforce-*
16 *ment efforts related to securing the international land and*
17 *maritime borders of the United States.*

18 *(e) IMMEDIATE ACTION.—Nothing in this section shall*
19 *be construed to relieve the Secretary of the responsibility*
20 *to take all actions necessary and appropriate to achieve and*
21 *maintain operational control over the entire international*
22 *land and maritime borders of the United States pursuant*
23 *to section 101 of this Act or any other provision of law.*

24 *(f) REPORTING OF IMPLEMENTING LEGISLATION.—*
25 *After submittal of the National Strategy for Border Secu-*

1 rity described in subsection (b) to the Committee on Home-
2 land Security of the House of Representatives, such Com-
3 mittee shall promptly report to the House legislation au-
4 thorizing necessary security measures based on its evalua-
5 tion of the National Strategy for Border Security.

6 (g) *APPROPRIATE CONGRESSIONAL COMMITTEE.*—For
7 purposes of this title, the term “appropriate congressional
8 committee” has the meaning given it in section 2(2) of the
9 Homeland Security Act of 2002 (6 U.S.C. 101(2)).

10 **SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY**
11 **AGREEMENTS.**

12 (a) *IN GENERAL.*—Not later than six months after the
13 date of the enactment of this Act, the Secretary of Homeland
14 Security shall submit to the appropriate congressional com-
15 mittees (as defined in section 102(g)) a report on the imple-
16 mentation of the cross-border security agreements signed by
17 the United States with Mexico and Canada, including rec-
18 ommendations on improving cooperation with such coun-
19 tries to enhance border security.

20 (b) *UPDATES.*—The Secretary shall regularly update
21 the Committee on Homeland Security of the House of Rep-
22 resentatives concerning such implementation.

23 **SEC. 104. BIOMETRIC DATA ENHANCEMENTS.**

24 Not later than October 1, 2006, the Secretary of Home-
25 land Security shall—

1 (1) *in consultation with the Attorney General,*
2 *enhance connectivity between the IDENT and IAFIS*
3 *fingerprint databases to ensure more expeditious data*
4 *searches; and*

5 (2) *in consultation with the Secretary of State,*
6 *collect all fingerprints from each alien required to*
7 *provide fingerprints during the alien’s initial enroll-*
8 *ment in the integrated entry and exit data system de-*
9 *scribed in section 110 of the Illegal Immigration Re-*
10 *form and Immigrant Responsibility Act of 1996 (8*
11 *U.S.C. 1221 note).*

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

13 *Not later than 90 days after the date of the enactment*
14 *of this Act, the Secretary of Homeland Security shall sub-*
15 *mit to Congress a report—*

16 (1) *describing the tangible and quantifiable bene-*
17 *fits of the One Face at the Border Initiative estab-*
18 *lished by the Department of Homeland Security;*

19 (2) *identifying goals for and challenges to in-*
20 *creased effectiveness of the One Face at the Border*
21 *Initiative;*

22 (3) *providing a breakdown of the number of in-*
23 *spectors who were—*

1 (A) personnel of the United States Customs
2 Service before the date of the establishment of the
3 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 the
9 Department; or

10 (D) hired after the date of the establishment
11 of the Department;

12 (4) describing the training time provided to each
13 employee on an annual basis for the various training
14 components of the One Face at the Border Initiative;
15 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 en-
24 sure clear and secure two-way communication capabili-
25 ties—

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

3 (2) between Border Patrol agents and their re-
4 spective Border Patrol stations;

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

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

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

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

21 **SEC. 108. CANINE DETECTION TEAMS.**

22 In each of fiscal years 2007 through 2011, the Sec-
23 retary of Homeland Security shall, subject to the avail-
24 ability of appropriations, increase by not less than 25 per-
25 cent above the number of such positions for which funds

1 *were allotted for the preceding fiscal year the number of*
2 *trained detection canines for use at United States ports of*
3 *entry and along the international land and maritime bor-*
4 *ders of the United States.*

5 **SEC. 109. SECURE BORDER INITIATIVE FINANCIAL AC-**
6 **COUNTABILITY.**

7 (a) *IN GENERAL.*—*The Inspector General of the De-*
8 *partment of Homeland Security shall review each contract*
9 *action related to the Department’s Secure Border Initiative*
10 *having a value greater than \$20,000,000, to determine*
11 *whether each such action fully complies with applicable cost*
12 *requirements, performance objectives, program milestones,*
13 *inclusion of small, minority, and women-owned business,*
14 *and timelines. The Inspector General shall complete a re-*
15 *view under this subsection with respect to a contract ac-*
16 *tion—*

17 (1) *not later than 60 days after the date of the*
18 *initiation of the action; and*

19 (2) *upon the conclusion of the performance of the*
20 *contract.*

21 (b) *REPORT BY INSPECTOR GENERAL.*—*Upon comple-*
22 *tion of each review described in subsection (a), the Inspector*
23 *General shall submit to the Secretary of Homeland Security*
24 *a report containing the findings of the review, including*
25 *findings regarding any cost overruns, significant delays in*

1 *contract execution, lack of rigorous departmental contract*
2 *management, insufficient departmental financial oversight,*
3 *bundling that limits the ability of small business to com-*
4 *pete, or other high risk business practices.*

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

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

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

22 (a) *IN GENERAL.*—*The Comptroller General of the*
23 *United States shall conduct a review of the basic training*
24 *provided to Border Patrol agents by the Department of*

1 *Homeland Security to ensure that such training is provided*
2 *as efficiently and cost-effectively as possible.*

3 (b) *COMPONENTS OF REVIEW.*—*The review under sub-*
4 *section (a) shall include the following components:*

5 (1) *An evaluation of the length and content of*
6 *the basic training curriculum provided to new Border*
7 *Patrol agents by the Federal Law Enforcement Train-*
8 *ing Center, including a description of how the cur-*
9 *riculum has changed since September 11, 2001.*

10 (2) *A review and a detailed breakdown of the*
11 *costs incurred by United States Customs and Border*
12 *Protection and the Federal Law Enforcement Train-*
13 *ing Center to train one new Border Patrol agent.*

14 (3) *A comparison, based on the review and*
15 *breakdown under paragraph (2) of the costs, effective-*
16 *ness, scope, and quality, including geographic charac-*
17 *teristics, with other similar law enforcement training*
18 *programs provided by State and local agencies, non-*
19 *profit organizations, universities, and the private sec-*
20 *tor.*

21 (4) *An evaluation of whether and how utilizing*
22 *comparable non-Federal training programs, pro-*
23 *ficiency testing to streamline training, and long-dis-*
24 *tance learning programs may affect—*

1 (A) *the cost-effectiveness of increasing the*
2 *number of Border Patrol agents trained per year*
3 *and reducing the per agent costs of basic train-*
4 *ing; and*

5 (B) *the scope and quality of basic training*
6 *needed to fulfill the mission and duties of a Bor-*
7 *der Patrol agent.*

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

9 *Not later than 120 days after the date of the enactment*
10 *of this Act, the Secretary of Homeland Security shall sub-*
11 *mit to the Committee on Homeland Security of the House*
12 *of Representatives a report detailing the impact the air-*
13 *space security mission in the National Capital Region (in*
14 *this section referred to as the “NCR”) will have on the abil-*
15 *ity of the Department of Homeland Security to protect the*
16 *international land and maritime borders of the United*
17 *States. Specifically, the report shall address:*

18 (1) *The specific resources, including personnel,*
19 *assets, and facilities, devoted or planned to be devoted*
20 *to the NCR airspace security mission, and from where*
21 *those resources were obtained or are planned to be ob-*
22 *tained.*

23 (2) *An assessment of the impact that diverting*
24 *resources to support the NCR mission has or is ex-*
25 *pected to have on the traditional missions in and*

1 *expenditures and circumstances in which those expenditures*
2 *were made pursuant to this section.*

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

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

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

10 **SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF**
11 **CENTRAL AMERICAN GANGS ALONG INTER-**
12 **NATIONAL BORDER.**

13 *Not later than one year after the date of the enactment*
14 *of this Act, the Secretary of Homeland Security shall report*
15 *to the Committee on Homeland Security of the House of*
16 *Representatives on the progress of the Department of Home-*
17 *land Security in tracking the travel of Central American*
18 *gangs across the international land border of the United*
19 *States and Mexico.*

20 **SEC. 115. COLLECTION OF DATA.**

21 *Beginning on October 1, 2006, the Secretary of Home-*
22 *land Security shall annually compile data on the following*
23 *categories of information:*

1 (1) *The number of unauthorized aliens who re-*
2 *quire medical care taken into custody by Border Pa-*
3 *trol officials.*

4 (2) *The number of unauthorized aliens with seri-*
5 *ous injuries or medical conditions Border Patrol offi-*
6 *cials encounter, and refer to local hospitals or other*
7 *health facilities.*

8 (3) *The number of unauthorized aliens with seri-*
9 *ous injuries or medical conditions who arrive at*
10 *United States ports of entry and subsequently are ad-*
11 *mitted into the United States for emergency medical*
12 *care, as reported by United States Customs and Bor-*
13 *der Protection.*

14 (4) *The number of unauthorized aliens described*
15 *in paragraphs (2) and (3) who subsequently are taken*
16 *into custody by the Department of Homeland Secu-*
17 *rity after receiving medical treatment.*

18 **SEC. 116. DEPLOYMENT OF RADIATION DETECTION PORTAL**
19 **EQUIPMENT AT UNITED STATES PORTS OF**
20 **ENTRY.**

21 (a) *DEPLOYMENT.*—*Not later than one year after the*
22 *date of the enactment of this Act, the Secretary of Homeland*
23 *Security shall deploy radiation portal monitors at all*
24 *United States ports of entry and facilities as determined*

1 *by the Secretary to facilitate the screening of all inbound*
2 *cargo for nuclear and radiological material.*

3 **(b) REPORT.**—*Not later than 180 days after the date*
4 *of the enactment of this Act, the Secretary shall submit to*
5 *the Committee on Homeland Security of the House of Rep-*
6 *resentatives and the Committee on Homeland Security and*
7 *Governmental Affairs of the Senate a report on the Depart-*
8 *ment’s progress toward carrying out the deployment de-*
9 *scribed in subsection (a).*

10 **(c) AUTHORIZATION OF APPROPRIATIONS.**—*There is*
11 *authorized to be appropriated to the Secretary to carry out*
12 *subsection (a) such sums as may be necessary for each of*
13 *fiscal years 2006 and 2007.*

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

15 *With respect to the Secure Border Initiative and for*
16 *the purposes of strengthening security along the inter-*
17 *national land and maritime borders of the United States,*
18 *the Secretary of Homeland Security shall conduct outreach*
19 *to and consult with members of the private sector, including*
20 *business councils, associations, and small, minority-owned,*
21 *women-owned, and disadvantaged businesses to—*

22 **(1)** *identify existing and emerging technologies,*
23 *best practices, and business processes;*

24 **(2)** *maximize economies of scale, cost-effective-*
25 *ness, systems integration, and resource allocation; and*

1 (3) identify the most appropriate contract mech-
2 anisms to enhance financial accountability and mis-
3 sion effectiveness of border security programs.

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

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

8 (a) *IN GENERAL.*—Section 101(a)(43) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1101(a)(43)) is amend-
10 ed—

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

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

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

1 (4) by striking all that follows subparagraph (U)
2 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 offense*
15 *of conviction sets forth other offenses not de-*
16 *scribed 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 satisfy*
22 *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 sub-
4 section (a) shall apply to offenses that occur before, on, or
5 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 induces*
15 *a person to come to or enter the United States,*
16 *or to attempt to come to or enter the United*
17 *States, knowing or in reckless disregard of the*
18 *fact that such person is an alien who lacks law-*
19 *ful authority to come to or enter the United*
20 *States;*

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

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

4 “(C) *assists, encourages, directs, or induces*
5 *a person to reside in or remain in the United*
6 *States, or to attempt to reside in or remain in*
7 *the United States, knowing or in reckless dis-*
8 *regard of the fact that such person is an alien*
9 *who lacks lawful authority to reside in or re-*
10 *main 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 lacks*
14 *lawful authority to enter or be in the United*
15 *States, where the transportation or movement*
16 *will aid or further in any manner the person’s*
17 *illegal entry into or illegal presence in the*
18 *United States;*

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

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

1 *United States knowing or in reckless disregard of*
2 *the fact that such person is an alien in unlawful*
3 *transit from one country to another or on the*
4 *high seas, under circumstances in which the per-*
5 *son is in fact seeking to enter the United States*
6 *without official permission or lawful authority;*
7 *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 18,
4 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 18,
8 United States Code, or both;

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

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

22 “(E) in the case where any participant in
23 the offense created a substantial risk of death or
24 serious bodily injury to another person, includ-
25 ing—

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

4 “(ii) transporting a person at an ex-
5 cessive speed or in excess of the rated capac-
6 ity of the means of transportation; or

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

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

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

23 “(G) in the case where the offense involved
24 an alien who the offender knew or had reason to
25 believe was an alien—

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

3 “(ii) intending to engage in such ter-
4 rorist activity,

5 be imprisoned for not less than 10 nor more than
6 30 years, or fined under title 18, United States
7 Code, or both; and

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

13 “(3) *EXTRATERRITORIAL JURISDICTION.*—There
14 is extraterritorial Federal jurisdiction over the of-
15 fenses described in this subsection.

16 “(b) *EMPLOYMENT OF UNAUTHORIZED ALIENS.*—

17 “(1) *IN GENERAL.*—Any person who, during any
18 12-month period, knowingly hires for employment at
19 least 10 individuals with actual knowledge that the
20 individuals are aliens described in paragraph (2),
21 shall be fined under title 18, United States Code, im-
22 prisoned for not more than 5 years, or both.

23 “(2) *ALIEN DESCRIBED.*—A alien described in
24 this paragraph is an alien who—

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

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

5 “(c) SEIZURE AND FORFEITURE.—

6 “(1) IN GENERAL.—Any property, real or per-
7 sonal, that has been used to commit or facilitate the
8 commission of a violation of this section, the gross
9 proceeds of such violation, and any property traceable
10 to such property or proceeds, shall be subject to for-
11 feiture.

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

22 “(d) AUTHORITY TO ARREST.—No officer or person
23 shall have authority to make any arrests for a violation
24 of any provision of this section except officers and employees
25 designated by the Secretary of Homeland Security, either

1 *individually or as a member of a class, and all other officers*
2 *whose duty it is to enforce criminal laws.*

3 “(e) *ADMISSIBILITY OF EVIDENCE.*—

4 “(1) *PRIMA FACIE EVIDENCE IN DETERMINA-*
5 *TIONS OF VIOLATIONS.*—*Notwithstanding any provi-*
6 *sion of the Federal Rules of Evidence, in determining*
7 *whether a violation of subsection (a) has occurred,*
8 *any of the following shall be prima facie evidence that*
9 *an alien involved in the violation lacks lawful author-*
10 *ity to come to, enter, reside, remain, or be in the*
11 *United States or that such alien had come to, entered,*
12 *resided, remained or been present in the United*
13 *States in violation of law:*

14 “(A) *Any order, finding, or determination*
15 *concerning the alien’s status or lack thereof made*
16 *by a federal judge or administrative adjudicator*
17 *(including an immigration judge or an immi-*
18 *gration officer) during any judicial or adminis-*
19 *trative proceeding authorized under the immi-*
20 *gration laws or regulations prescribed there-*
21 *under.*

22 “(B) *An official record of the Department of*
23 *Homeland Security, Department of Justice, or*
24 *the Department of State concerning the alien’s*
25 *status or lack thereof.*

1 “(C) *Testimony by an immigration officer*
2 *having personal knowledge of the facts con-*
3 *cerning the alien’s status or lack thereof.*

4 “(2) *VIDEOTAPED TESTIMONY.—Notwithstanding*
5 *any provision of the Federal Rules of Evidence, the*
6 *videotaped (or otherwise audiovisually preserved) dep-*
7 *osition of a witness to a violation of subsection (a)*
8 *who has been deported or otherwise expelled from the*
9 *United States, or is otherwise unavailable to testify,*
10 *may be admitted into evidence in an action brought*
11 *for that violation if the witness was available for*
12 *cross examination at the deposition and the deposi-*
13 *tion otherwise complies with the Federal Rules of Evi-*
14 *dence.*

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

16 “(1) *The term ‘lawful authority’ means permis-*
17 *sion, authorization, or license that is expressly pro-*
18 *vided for in the immigration laws of the United*
19 *States or the regulations prescribed thereunder. Such*
20 *term does not include any such authority secured by*
21 *fraud or otherwise obtained in violation of law, nor*
22 *does it include authority that has been sought but not*
23 *approved. No alien shall be deemed to have lawful au-*
24 *thority to come to, enter, reside, remain, or be in the*
25 *United States if such coming to, entry, residence, re-*

1 *maintaining, or presence was, is, or would be in violation*
2 *of law.*

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

8 *(b) CLERICAL AMENDMENT.—The item relating to sec-*
9 *tion 274 in the table of contents of such Act is amended*
10 *to read as follows:*

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

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

12 *Section 275 of the Immigration and Nationality Act*
13 *(8 U.S.C. 1325) is amended—*

14 *(1) in the section heading, by inserting “UNLAW-*
15 *FUL PRESENCE;” after “IMPROPER TIME OR PLACE;”;*

16 *(2) in subsection (a)—*

17 *(A) by striking “Any alien” and inserting*
18 *“Except as provided in subsection (b), any*
19 *alien”;*

20 *(B) by striking “or” before (3);*

21 *(C) by inserting after “concealment of a*
22 *material fact,” the following: “or (4) is otherwise*
23 *present in the United States in violation of the*
24 *immigration laws or the regulations prescribed*
25 *thereunder;” and*

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

3 (3) in subsection (c)—

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

6 (B) by adding at the end the following: “An
7 offense under this subsection continues until the
8 fraudulent nature of the marriage is discovered
9 by an immigration officer.”;

10 (4) in subsection (d)—

11 (A) by striking “5 years” and inserting “10
12 years”;

13 (B) by adding at the end the following: “An
14 offense under this subsection continues until the
15 fraudulent nature of the commercial enterprise is
16 discovered by an immigration officer.”; and

17 (5) by adding at the end the following new sub-
18 sections:

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

20 “(A) shall be fined under title 18, United States
21 Code, imprisoned not more than 10 years, or both, if
22 the offense described in such paragraph was com-
23 mitted subsequent to a conviction or convictions for
24 commission of three or more misdemeanors involving

1 *drugs, crimes against the person, or both, or a felony*
2 *(other than an aggravated felony); or*

3 *“(B) shall be fined under title 18, United States*
4 *Code, imprisoned not more than 20 years, or both, if*
5 *such offense was committed subsequent to a conviction*
6 *for commission of an aggravated felony.*

7 *“(2) An alien described in this paragraph is an alien*
8 *who—*

9 *“(A) enters or attempts to enter the United*
10 *States at any time or place other than as designated*
11 *by immigration officers;*

12 *“(B) eludes examination or inspection by immi-*
13 *gration officers;*

14 *“(C) attempts to enter or obtains entry to the*
15 *United States by a willfully false or misleading rep-*
16 *resentation or the willful concealment of a material*
17 *fact; or*

18 *“(D) is otherwise present in the United States in*
19 *violation of the immigration laws or the regulations*
20 *prescribed thereunder.*

21 *“(3) The prior convictions in subparagraph (A) or (B)*
22 *of paragraph (1) are elements of those crimes and the pen-*
23 *alties in those subparagraphs shall apply only in cases in*
24 *which the conviction (or convictions) that form the basis*
25 *for the additional penalty are alleged in the indictment or*

1 *information and are proven beyond a reasonable doubt at*
2 *trial or admitted by the defendant in pleading guilty. Any*
3 *admissible evidence may be used to show that the prior con-*
4 *viction is an aggravated felony or other qualifying crime,*
5 *and the criminal trial for a violation of this section shall*
6 *not be bifurcated.*

7 “(4) *An offense under subsection (a) or paragraph (1)*
8 *of this subsection continues until the alien is discovered*
9 *within the United States by immigration officers.*

10 “(f) *For purposes of this section, the term ‘attempts*
11 *to enter’ refers to the general intent of the alien to enter*
12 *the United States and does not refer to the intent of the*
13 *alien to violate the law.’”.*

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

15 *Section 276 of the Immigration and Nationality Act*
16 *(8 U.S.C. 1326) is amended—*

17 *(1) in subsection (a)—*

18 *(A) in paragraph (2), by striking all that*
19 *follows “United States” the first place it appears*
20 *and inserting a comma;*

21 *(B) in the matter following paragraph (2),*
22 *by striking “imprisoned not more than 2 years,”*
23 *and inserting “imprisoned for a term of not less*
24 *than 1 year and not more than 2 years,”;*

1 (C) by adding at the end the following: “It
2 shall be an affirmative defense to an offense
3 under this subsection that (A) prior to an alien’s
4 reembarkation at a place outside the United
5 States or an alien’s application for admission
6 from foreign contiguous territory, the Secretary
7 of Homeland Security has expressly consented to
8 the alien’s reapplying for admission; or (B) with
9 respect to an alien previously denied admission
10 and removed, such alien was not required to ob-
11 tain such advance consent under this Act or any
12 prior Act.”;

13 (2) in subsection (b)—

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

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

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

24 (D) in paragraph (4), by striking “impris-
25 oned for not more than 10 years,” and insert

1 *“imprisoned for a term of not less than 5 years*
2 *and not more than 10 years,”; and*

3 *(E) by adding at the end the following:*

4 *“The prior convictions in paragraphs (1) and*
5 *(2) are elements of enhanced crimes and the pen-*
6 *alties under such paragraphs shall apply only*
7 *where the conviction (or convictions) that form*
8 *the basis for the additional penalty are alleged*
9 *in the indictment or information and are proven*
10 *beyond a reasonable doubt at trial or admitted*
11 *by the defendant in pleading guilty. Any admis-*
12 *sible evidence may be used to show that the prior*
13 *conviction is a qualifying crime and the crimi-*
14 *nal trial for a violation of either such paragraph*
15 *shall not be bifurcated.”;*

16 *(3) in subsections (b)(3), (b)(4), and (c), by*
17 *striking “Attorney General” and inserting “Secretary*
18 *of Homeland Security” each place it appears;*

19 *(4) in subsection (c), by striking “242(h)(2)”*
20 *and inserting “241(a)(4)”;* and

21 *(5) by adding at the end the following new sub-*
22 *section:*

23 *“(e) For purposes of this section, the term ‘attempts*
24 *to enter’ refers to the general intent of the alien to enter*

1 *the United States and does not refer to the intent of the*
2 *alien to violate the law.”.*

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

4 **AIDING OR ASSISTING CERTAIN REENTERING**
5 **ALIENS.**

6 *Section 277 of the Immigration and Nationality Act*
7 *(8 U.S.C. 1327) is amended—*

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

10 *(2) by adding at the end the following:*

11 *“(b)(1) Any person who knowingly aids or assists any*
12 *alien violating section 276(b) to reenter the United States,*
13 *or who connives or conspires with any person or persons*
14 *to allow, procure, or permit any such alien to reenter the*
15 *United States, shall be fined under title 18, United States*
16 *Code, imprisoned for a term imposed under paragraph (2),*
17 *or both.*

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

21 **SEC. 206. PROHIBITING CARRYING OR USING A FIREARM**

22 **DURING AND IN RELATION TO AN ALIEN**
23 **SMUGGLING CRIME.**

24 *Section 924(c) of title 18, United States Code, is*
25 *amended—*

1 (1) *in paragraphs (1)(A) and (1)(D)(ii), by in-*
2 *serting “, alien smuggling crime,” after “crime of vio-*
3 *lence” each place it appears; and*

4 (2) *by adding at the end the following new para-*
5 *graph:*

6 “(6) *For purposes of this subsection, the term ‘alien*
7 *smuggling crime’ means any felony punishable under sec-*
8 *tion 274(a), 277, or 278 of the Immigration and Nation-*
9 *ality Act (8 U.S.C. 1324(a), 1327, or 1328).”.*

10 **SEC. 207. CLARIFYING CHANGES.**

11 (a) *EXCLUSION BASED ON FALSE CLAIM OF NATION-*
12 *ALITY.—*

13 (1) *IN GENERAL.—Section 212(a)(6)(C)(ii) of the*
14 *Immigration and Nationality Act (8 U.S.C.*
15 *1182(a)(6)(C)(ii)) is amended—*

16 (A) *in the heading, by inserting “OR NA-*
17 *TIONALITY” after “CITIZENSHIP”; and*

18 (B) *by inserting “or national” after “cit-*
19 *izen” each place it appears.*

20 (2) *EFFECTIVE DATE.—The amendments made*
21 *by paragraph (1) shall take effect on the date of the*
22 *enactment of this Act and shall apply to acts occur-*
23 *ring before, on, or after such date.*

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

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

4 (2) *by striking “Service” and inserting “Sec-*
 5 *retary of Homeland Security”;* and

6 (3) *by striking “Attorney General” and inserting*
 7 *“Secretary”.*

8 (c) *EXCEPTIONS AUTHORITY.—Section*
 9 *212(a)(3)(B)(ii) of such Act (8 U.S.C. 1182(a)(3)(B)(ii))*
 10 *is amended by striking “Subclause (VII)” and inserting*
 11 *“Subclause (IX)”.*

12 **SEC. 208. VOLUNTARY DEPARTURE REFORM.**

13 (a) *ENCOURAGING ALIENS TO DEPART VOLUN-*
 14 *TARILY.—*

15 (1) *AUTHORITY.—Subsection (a) of section 240B*
 16 *of the Immigration and Nationality Act (8 U.S.C.*
 17 *1229c) is amended—*

18 (A) *by amending paragraph (1) to read as*
 19 *follows:*

20 *“(1) IN LIEU OF REMOVAL PROCEEDINGS.—The*
 21 *Secretary of Homeland Security may permit an alien*
 22 *voluntarily to depart the United States at the alien’s*
 23 *own expense under this subsection, in lieu of being*
 24 *subject to proceedings under section 240, if the alien*

1 *is not described in section 237(a)(2)(A)(iii) or section*
2 *237(a)(4).”;*

3 *(B) by striking paragraph (3);*

4 *(C) by redesignating paragraph (2) as*
5 *paragraph (3);*

6 *(D) by inserting after paragraph (1) the fol-*
7 *lowing new paragraph:*

8 *“(2) PRIOR TO THE CONCLUSION OF REMOVAL*
9 *PROCEEDINGS.—After removal proceedings under sec-*
10 *tion 240 are initiated, the Attorney General may per-*
11 *mit an alien voluntarily to depart the United States*
12 *at the alien’s own expense under this subsection, prior*
13 *to the conclusion of such proceedings before an immi-*
14 *gration judge, if the alien is not described in section*
15 *237(a)(2)(A)(iii) or section 237(a)(4).”;* and

16 *(E) in paragraph (4), by striking “para-*
17 *graph (1)” and inserting “paragraphs (1) and*
18 *(2)”.*

19 *(2) VOLUNTARY DEPARTURE PERIOD.—Such sec-*
20 *tion is further amended—*

21 *(A) in subsection (a)(3), as redesignated by*
22 *paragraph (1)(C)—*

23 *(i) by amending subparagraph (A) to*
24 *read as follows:*

1 “(A) *IN LIEU OF REMOVAL.*—Subject to sub-
2 paragraph (C), permission to depart voluntarily
3 under paragraph (1) shall not be valid for a pe-
4 riod exceeding 120 days. The Secretary of Home-
5 land Security may require an alien permitted to
6 depart voluntarily under paragraph (1) to post
7 a voluntary departure bond, to be surrendered
8 upon proof that the alien has departed the
9 United States within the time specified.”;

10 (ii) in subparagraph (B), by striking
11 “subparagraphs (C) and (D)(ii)” and in-
12 serting “subparagraphs (D) and (E)(ii)”;

13 (iii) in subparagraphs (C) and (D), by
14 striking “subparagraph (B)” and inserting
15 “subparagraph (C)” each place it appears;

16 (iv) by redesignating subparagraphs
17 (B), (C), and (D) as subparagraphs (C),
18 (D), and (E), respectively; and

19 (v) by inserting after subparagraph
20 (A) the following new subparagraph:

21 “(B) *PRIOR TO THE CONCLUSION OF RE-*
22 *MOVAL PROCEEDINGS.*—Permission to depart
23 voluntarily under paragraph (2) shall not be
24 valid for a period exceeding 60 days, and may
25 be granted only after a finding that the alien has

1 *established that the alien has the means to de-*
2 *part the United States and intends to do so. An*
3 *alien permitted to depart voluntarily under*
4 *paragraph (2) must post a voluntary departure*
5 *bond, in an amount necessary to ensure that the*
6 *alien will depart, to be surrendered upon proof*
7 *that the alien has departed the United States*
8 *within the time specified. An immigration judge*
9 *may waive posting of a voluntary departure*
10 *bond in individual cases upon a finding that the*
11 *alien has presented compelling evidence that the*
12 *posting of a bond will be a serious financial*
13 *hardship and the alien has presented credible*
14 *evidence that such a bond is unnecessary to*
15 *guarantee timely departure.”; and*

16 *(B) in subsection (b)(2), by striking “60*
17 *days” and inserting “45 days”.*

18 (3) *VOLUNTARY DEPARTURE AGREEMENTS.—*

19 *Subsection (c) of such section is amended to read as*
20 *follows:*

21 “(c) *CONDITIONS ON VOLUNTARY DEPARTURE.—*

22 “(1) *VOLUNTARY DEPARTURE AGREEMENT.—Vol-*
23 *untary departure will be granted only as part of an*
24 *affirmative agreement by the alien. A voluntary de-*
25 *parture agreement under subsection (b) shall include*

1 *a waiver of the right to any further motion, appeal,*
2 *application, petition, or petition for review relating*
3 *to removal or relief or protection from removal.*

4 “(2) *CONCESSIONS BY THE SECRETARY.*—*In con-*
5 *nection with the alien’s agreement to depart volun-*
6 *tarily under paragraph (1), the Secretary of Home-*
7 *land Security in the exercise of discretion may agree*
8 *to a reduction in the period of inadmissibility under*
9 *subparagraph (A) or (B)(i) of section 212(a)(9).*

10 “(3) *FAILURE TO COMPLY WITH AGREEMENT AND*
11 *EFFECT OF FILING TIMELY APPEAL.*—*If an alien*
12 *agrees to voluntary departure under this section and*
13 *fails to depart the United States within the time al-*
14 *lowed for voluntary departure or fails to comply with*
15 *any other terms of the agreement (including a failure*
16 *to timely post any required bond), the alien auto-*
17 *matically becomes ineligible for the benefits of the*
18 *agreement, subject to the penalties described in sub-*
19 *section (d), and subject to an alternate order of re-*
20 *moval if voluntary departure was granted under sub-*
21 *section (a)(2) or (b). However, if an alien agrees to*
22 *voluntary departure but later files a timely appeal of*
23 *the immigration judge’s decision granting voluntary*
24 *departure, the alien may pursue the appeal instead of*
25 *the voluntary departure agreement. Such appeal oper-*

1 *ates to void the alien’s voluntary departure agreement*
2 *and the consequences thereof, but the alien may not*
3 *again be granted voluntary departure while the alien*
4 *remains in the United States.”.*

5 (4) *ELIGIBILITY.—Subsection (e) of such section*
6 *is amended to read as follows:*

7 “(e) *ELIGIBILITY.—*

8 (1) *PRIOR GRANT OF VOLUNTARY DEPART-*
9 *TURE.—An alien shall not be permitted to depart vol-*
10 *untarily under this section if the Secretary of Home-*
11 *land Security or the Attorney General previously per-*
12 *mitted the alien to depart voluntarily.*

13 (2) *ADDITIONAL LIMITATIONS.—The Secretary*
14 *of Homeland Security may by regulation limit eligi-*
15 *bility or impose additional conditions for voluntary*
16 *departure under subsection (a)(1) for any class or*
17 *classes of aliens. The Secretary or Attorney General*
18 *may by regulation limit eligibility or impose addi-*
19 *tional conditions for voluntary departure under sub-*
20 *section (a)(2) or (b) for any class or classes of aliens.*
21 *Notwithstanding any other provision of law (statu-*
22 *tory or nonstatutory), including section 2241 of title*
23 *28, United States Code, or any other habeas corpus*
24 *provision, and section 1361 and 1651 of such title, no*

1 *court may review any regulation issued under this*
2 *subsection.”.*

3 *(b) AVOIDING DELAYS IN VOLUNTARY DEPARTURE.—*

4 *(1) ALIEN’S OBLIGATION TO DEPART WITHIN*
5 *THE TIME ALLOWED.—Subsection (c) of section 240B*
6 *of the Immigration and Nationality Act (8 U.S.C.*
7 *1229c), as amended by subsection (a), is further*
8 *amended by adding at the end the following new*
9 *paragraph:*

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

20 *(2) NO TOLLING.—Subsection (f) of such section*
21 *is amended by adding at the end the following new*
22 *sentence: “Notwithstanding any other provision of*
23 *law (statutory or nonstatutory), including section*
24 *2241 of title 28, United States Code, or any other ha-*
25 *beas corpus provision, and section 1361 and 1651 of*

1 *such title, no court shall have jurisdiction to affect,*
2 *reinstate, enjoin, delay, stay, or toll the period al-*
3 *lowed for voluntary departure under this section.”.*

4 *(c) PENALTIES FOR FAILURE TO DEPART VOLUN-*
5 *TARILY.—*

6 *(1) PENALTIES FOR FAILURE TO DEPART.—Sub-*
7 *section (d) of section 240B of the Immigration and*
8 *Nationality Act (8 U.S.C. 229c) is amended to read*
9 *as follows:*

10 *“(d) PENALTIES FOR FAILURE TO DEPART.—If an*
11 *alien is permitted to depart voluntarily under this section*
12 *and fails voluntarily to depart from the United States with-*
13 *in the time period specified or otherwise violates the terms*
14 *of a voluntary departure agreement, the following provi-*
15 *sions apply:*

16 *“(1) CIVIL PENALTY.—*

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

19 *“(B) SPECIFICATION IN ORDER.—The order*
20 *allowing voluntary departure shall specify the*
21 *amount of the penalty, which shall be acknowl-*
22 *edged by the alien on the record.*

23 *“(C) COLLECTION.—If the Secretary of*
24 *Homeland Security thereafter establishes that the*
25 *alien failed to depart voluntarily within the time*

1 *allowed, no further procedure will be necessary to*
2 *establish the amount of the penalty, and the Sec-*
3 *retary may collect the civil penalty at any time*
4 *thereafter and by whatever means provided by*
5 *law.*

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

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

15 “(3) *REOPENING.*—

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

22 “(B) *EXCEPTION.*—*Subparagraph (A) does*
23 *not preclude a motion to reopen to seek with-*
24 *holding of removal under section 241(b)(3) or*
25 *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 imposi-*
7 *tion 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 shall*
13 *apply with respect to all orders granting voluntary*
14 *departure under section 240B of the Immigration and*
15 *Nationality Act (8 U.S.C. 1229c) made on or after*
16 *the date that is 180 days after the date of the enact-*
17 *ment of this Act.*

18 (2) *EXCEPTION.—The amendment made by sub-*
19 *section (b)(2) shall take effect on the date of the enact-*
20 *ment of this Act and shall apply with respect to any*
21 *petition for review which is entered on or after such*
22 *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 section
7 212(a) of the Immigration and Nationality Act (8 U.S.C.
8 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 years
14 of,”.

15 (b) *FAILURE TO DEPART, APPLY FOR TRAVEL DOCU-*
16 *MENTS, OR APPEAR FOR REMOVAL OR CONSPIRACY TO PRE-*
17 *VENT OR HAMPER DEPARTURE.*—Section 274D of such Act
18 (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 (a)*
2 *shall be ineligible for any discretionary relief from re-*
3 *moval pursuant to a motion to reopen during the*
4 *time the alien remains in the United States and for*
5 *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 RETURN-*
11 *ING TO THE UNITED STATES AFTER DEPARTING VOLUN-*
12 *TARILY.—Section 275(a) of such Act (8 U.S.C. 1325(a)) is*
13 *amended by inserting “or following an order of voluntary*
14 *departure” after “a subsequent commission of any such of-*
15 *fense”.*

16 *(d) EFFECTIVE DATES.—*

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

22 *(2) VOLUNTARY DEPARTURE.—The amendment*
23 *made by subsection (c) shall take effect on the date of*
24 *the enactment of this Act and shall apply with respect*
25 *to conduct occurring on or after such date.*

1 **SEC. 210. ESTABLISHMENT OF A SPECIAL TASK FORCE FOR**
2 **COORDINATING AND DISTRIBUTING INFOR-**
3 **MATION ON FRAUDULENT IMMIGRATION**
4 **DOCUMENTS.**

5 (a) *IN GENERAL.*—*The Secretary of Homeland Secu-*
6 *riety shall establish a task force (to be known as the Task*
7 *Force on Fraudulent Immigration Documents) to carry out*
8 *the following:*

9 (1) *Collect information from Federal, State, and*
10 *local law enforcement agencies, and Foreign govern-*
11 *ments on the production, sale, and distribution of*
12 *fraudulent documents intended to be used to enter or*
13 *to remain in the United States unlawfully.*

14 (2) *Maintain that information in a comprehen-*
15 *sive database.*

16 (3) *Convert the information into reports that*
17 *will provide guidance for government officials on*
18 *identifying fraudulent documents being used to enter*
19 *or to remain in the United States unlawfully.*

20 (4) *Develop a system for distributing these re-*
21 *ports on an ongoing basis to appropriate Federal,*
22 *State, and local law enforcement agencies.*

23 (b) *DISTRIBUTION OF INFORMATION.*—*Distribute the*
24 *reports to appropriate Federal, State, and local law enforce-*
25 *ment agencies on an ongoing basis.*

1 **TITLE III—BORDER SECURITY**
2 **COOPERATION AND EN-**
3 **FORCEMENT**

4 **SEC. 301. JOINT STRATEGIC PLAN FOR UNITED STATES**
5 **BORDER SURVEILLANCE AND SUPPORT.**

6 (a) *IN GENERAL.*—The Secretary of Homeland Secu-
7 rity and the Secretary of Defense shall develop a joint stra-
8 tegic plan to use the authorities provided to the Secretary
9 of Defense under chapter 18 of title 10, United States Code,
10 to increase the availability and use of Department of De-
11 fense equipment, including unmanned aerial vehicles, teth-
12 ered aerostat radars, and other surveillance equipment, to
13 assist with the surveillance activities of the Department of
14 Homeland Security conducted at or near the international
15 land and maritime borders of the United States.

16 (b) *REPORT.*—Not later than six months after the date
17 of the enactment of this Act, the Secretary of Homeland Se-
18 curity and the Secretary of Defense shall submit to Congress
19 a report containing—

20 (1) a description of the use of Department of De-
21 fense equipment to assist with the surveillance by the
22 Department of Homeland Security of the inter-
23 national land and maritime borders of the United
24 States;

1 (2) *the joint strategic plan developed pursuant to*
2 *subsection (a);*

3 (3) *a description of the types of equipment and*
4 *other support to be provided by the Department of*
5 *Defense under the joint strategic plan during the one-*
6 *year period beginning after submission of the report*
7 *under this subsection; and*

8 (4) *a description of how the Department of*
9 *Homeland Security and the Department of Defense*
10 *are working with the Department of Transportation*
11 *on safety and airspace control issues associated with*
12 *the use of unmanned aerial vehicles in the National*
13 *Airspace System.*

14 (c) *RULE OF CONSTRUCTION.—Nothing in this section*
15 *shall be construed as altering or amending the prohibition*
16 *on the use of any part of the Army or the Air Force as*
17 *a posse comitatus under section 1385 of title 18, United*
18 *States Code.*

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

20 (a) *IN GENERAL.—The Secretary of Homeland Secu-*
21 *rity, in consultation with the Secretary of the Interior, shall*
22 *evaluate border security vulnerabilities on land directly ad-*
23 *acent to the international land border of the United States*
24 *under the jurisdiction of the Department of the Interior re-*
25 *lated to the prevention of the entry of terrorists, other un-*

1 *lawful aliens, narcotics, and other contraband into the*
2 *United States.*

3 **(b) SUPPORT FOR BORDER SECURITY NEEDS.**—*Based*
4 *on the evaluation conducted pursuant to subsection (a), the*
5 *Secretary of Homeland Security shall provide appropriate*
6 *border security assistance on land directly adjacent to the*
7 *international land border of the United States under the*
8 *jurisdiction of the Department of the Interior, its bureaus,*
9 *and tribal entities.*

10 **SEC. 303. BORDER SECURITY THREAT ASSESSMENT AND IN-**
11 **FORMATION SHARING TEST AND EVALUA-**
12 **TION EXERCISE.**

13 *Not later than one year after the date of the enactment*
14 *of this Act, the Secretary of Homeland Security shall design*
15 *and carry out a national border security exercise for the*
16 *purposes of—*

17 **(1) involving officials from Federal, State, terri-**
18 *torial, local, tribal, and international governments*
19 *and representatives from the private sector;*

20 **(2) testing and evaluating the capacity of the**
21 *United States to anticipate, detect, and disrupt*
22 *threats to the integrity of United States borders; and*

23 **(3) testing and evaluating the information shar-**
24 *ing capability among Federal, State, territorial, local,*
25 *tribal, and international governments.*

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

2 (a) *ESTABLISHMENT OF COMMITTEE.*—Not later than
3 one year after the date of the enactment of this Act, the
4 Secretary of Homeland Security shall establish an advisory
5 committee to be known as the Border Security Advisory
6 Committee (in this section referred to as the “Committee”).

7 (b) *DUTIES.*—The Committee shall advise the Sec-
8 retary on issues relating to border security and enforcement
9 along the international land and maritime border of the
10 United States.

11 (c) *MEMBERSHIP.*—The Secretary shall appoint mem-
12 bers to the Committee from the following:

13 (1) *State and local government representatives*
14 *from States located along the international land and*
15 *maritime borders of the United States.*

16 (2) *Community representatives from such States.*

17 (3) *Tribal authorities in such States.*

18 **SEC. 305. PERMITTED USE OF HOMELAND SECURITY GRANT**
19 **FUNDS FOR BORDER SECURITY ACTIVITIES.**

20 (a) *REIMBURSEMENT.*—The Secretary of Homeland
21 Security may allow the recipient of amounts under a cov-
22 ered grant to use those amounts to reimburse itself for costs
23 it incurs in carrying out any activity that—

24 (1) *relates to the enforcement of Federal laws*
25 *aimed at preventing the unlawful entry of persons or*
26 *things into the United States, including activities*

1 *such as detecting or responding to such an unlawful*
2 *entry or providing support to another entity relating*
3 *to preventing such an unlawful entry;*

4 (2) *is usually a Federal duty carried out by a*
5 *Federal agency; and*

6 (3) *is carried out under agreement with a Fed-*
7 *eral agency.*

8 (b) *USE OF PRIOR YEAR FUNDS.*—*Subsection (a) shall*
9 *apply to all covered grant funds received by a State, local*
10 *government, or Indian tribe at any time on or after October*
11 *1, 2001.*

12 (c) *COVERED GRANTS.*—*For purposes of subsection*
13 *(a), the term “covered grant” means grants provided by the*
14 *Department of Homeland Security to States, local govern-*
15 *ments, or Indian tribes administered under the following*
16 *programs:*

17 (1) *STATE HOMELAND SECURITY GRANT PRO-*
18 *GRAM.*—*The State Homeland Security Grant Pro-*
19 *gram of the Department, or any successor to such*
20 *grant program.*

21 (2) *URBAN AREA SECURITY INITIATIVE.*—*The*
22 *Urban Area Security Initiative of the Department, or*
23 *any successor to such grant program.*

24 (3) *LAW ENFORCEMENT TERRORISM PREVENTION*
25 *PROGRAM.*—*The Law Enforcement Terrorism Preven-*

1 *tion Program of the Department, or any successor to*
2 *such grant program.*

3 **SEC. 306. CENTER OF EXCELLENCE FOR BORDER SECURITY.**

4 (a) *ESTABLISHMENT.*—*The Secretary of Homeland*
5 *Security shall establish a university-based Center of Excel-*
6 *lence for Border Security following the merit-review proc-*
7 *esses and procedures and other limitations that have been*
8 *established for selecting and supporting University Pro-*
9 *grams Centers of Excellence.*

10 (b) *ACTIVITIES OF THE CENTER.*—*The Center shall*
11 *prioritize its activities on the basis of risk to address the*
12 *most significant threats, vulnerabilities, and consequences*
13 *posed by United States borders and border control systems.*
14 *The activities shall include the conduct of research, the ex-*
15 *amination of existing and emerging border security tech-*
16 *nology and systems, and the provision of education, tech-*
17 *nical, and analytical assistance for the Department of*
18 *Homeland Security to effectively secure the borders.*

19 **SEC. 307. SENSE OF CONGRESS REGARDING COOPERATION**
20 **WITH INDIAN NATIONS.**

21 *It is the sense of Congress that—*

22 (1) *the Department of Homeland Security should*
23 *strive to include as part of a National Strategy for*
24 *Border Security recommendations on how to enhance*
25 *Department cooperation with sovereign Indian Na-*

1 *tions on securing our borders and preventing terrorist*
2 *entry, including, specifically, the Department should*
3 *consider whether a Tribal Smart Border working*
4 *group is necessary and whether further expansion of*
5 *cultural sensitivity training, as exists in Arizona*
6 *with the Tohono O’odham Nation, should be expanded*
7 *elsewhere; and*

8 *(2) as the Department of Homeland Security de-*
9 *velops a National Strategy for Border Security, it*
10 *should take into account the needs and missions of*
11 *each agency that has a stake in border security and*
12 *strive to ensure that these agencies work together co-*
13 *operatively on issues involving Tribal lands.*

14 ***TITLE IV—DETENTION AND***
15 ***REMOVAL***

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

18 *(a) IN GENERAL.—Beginning on October 1, 2006, an*
19 *alien who is attempting to illegally enter the United States*
20 *and who is apprehended at a United States port of entry*
21 *or along the international land and maritime border of the*
22 *United States shall be detained until removed or a final*
23 *decision granting admission has been determined, unless the*
24 *alien—*

1 (1) is permitted to withdraw an application for
2 admission under section 235(a)(4) of the Immigration
3 and Nationality Act (8 U.S.C. 1225(a)(4)) and im-
4 mediately departs from the United States pursuant to
5 such section; or

6 (2) is paroled into the United States by the Sec-
7 retary of Homeland Security for urgent humani-
8 tarian reasons or significant public benefit in accord-
9 ance with section 212(d)(5)(A) of such Act (8 U.S.C.
10 1182(d)(5)(A)).

11 (b) *REQUIREMENTS DURING INTERIM PERIOD.*—Be-
12 ginning 60 days after the date of the enactment of this Act
13 and before October 1, 2006, an alien described in subsection
14 (a) may be released with a notice to appear only if—

15 (1) the Secretary of Homeland Security deter-
16 mines, after conducting all appropriate background
17 and security checks on the alien, that the alien does
18 not pose a national security risk; and

19 (2) the alien provides a bond of not less than
20 \$5,000.

21 (c) *RULES OF CONSTRUCTION.*—

22 (1) *ASYLUM AND REMOVAL.*—Nothing in this sec-
23 tion shall be construed as limiting the right of an
24 alien to apply for asylum or for relief or deferral of
25 removal based on a fear of persecution.

1 (2) *TREATMENT OF CERTAIN ALIENS.*—*The man-*
2 *datory detention requirement in subsection (a) does*
3 *not apply to any alien who is a native or citizen of*
4 *a country in the Western Hemisphere with whose gov-*
5 *ernment the United States does not have full diplo-*
6 *matic relations.*

7 **SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF**
8 **DETENTION FACILITIES.**

9 *Subject to the availability of appropriations, the Sec-*
10 *retary of Homeland Security shall fully utilize—*

11 (1) *all available detention facilities operated or*
12 *contracted by the Department of Homeland Security;*
13 *and*

14 (2) *all possible options to cost effectively increase*
15 *available detention capacities, including the use of*
16 *temporary detention facilities, the use of State and*
17 *local correctional facilities, private space, and secure*
18 *alternatives to detention.*

19 **SEC. 403. ENHANCING TRANSPORTATION CAPACITY FOR**
20 **UNLAWFUL ALIENS.**

21 (a) *IN GENERAL.*—*The Secretary of Homeland Secu-*
22 *rity is authorized to enter into contracts with private enti-*
23 *ties for the purpose of providing secure domestic transport*
24 *of aliens who are apprehended at or along the international*
25 *land or maritime borders from the custody of United States*

1 *Customs and Border Protection to detention facilities and*
2 *other locations as necessary.*

3 **(b) CRITERIA FOR SELECTION.**—*Notwithstanding any*
4 *other provision of law, to enter into a contract under para-*
5 *graph (1), a private entity shall submit an application to*
6 *the Secretary at such time, in such manner, and containing*
7 *such information as the Secretary may require. The Sec-*
8 *retary shall select from such applications those entities*
9 *which offer, in the determination of the Secretary, the best*
10 *combination of service, cost, and security.*

11 **SEC. 404. DENIAL OF ADMISSION TO NATIONALS OF COUN-**
12 **TRY DENYING OR DELAYING ACCEPTING**
13 **ALIEN.**

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

16 “(d) **DENIAL OF ADMISSION TO NATIONALS OF COUN-**
17 **TRY DENYING OR DELAYING ACCEPTING ALIEN.**—*Whenever*
18 *the Secretary of Homeland Security determines that the*
19 *government of a foreign country has denied or unreasonably*
20 *delayed accepting an alien who is a citizen, subject, na-*
21 *tional, or resident of that country after the alien has been*
22 *ordered removed, the Secretary, after consultation with the*
23 *Secretary of State, may deny admission to any citizen, sub-*
24 *ject, national, or resident of that country until the country*
25 *accepts the alien who was ordered removed.”.*

1 **SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRI-**
2 **ATION.**

3 *Not later than October 31 of each year, the Secretary*
4 *of Homeland Security shall submit to the Secretary of State*
5 *and Congress a report that details the cost to the Depart-*
6 *ment of Homeland Security of repatriation of unlawful*
7 *aliens to their countries of nationality or last habitual resi-*
8 *dence, including details relating to cost per country. The*
9 *Secretary shall include in each such report the rec-*
10 *ommendations of the Secretary to more cost effectively repa-*
11 *triate such aliens.*

12 **SEC. 406. TRAINING PROGRAM.**

13 *Not later than six months after the date of the enact-*
14 *ment of this Act, the Secretary of Homeland Security—*

15 *(1) review and evaluate the training provided to*
16 *Border Patrol agents and port of entry inspectors re-*
17 *garding the inspection of aliens to determine whether*
18 *an alien is referred for an interview by an asylum of-*
19 *ficer for a determination of credible fear;*

20 *(2) based on the review and evaluation described*
21 *in paragraph (1), take necessary and appropriate*
22 *measures to ensure consistency in referrals by Border*
23 *Patrol agents and port of entry inspectors to asylum*
24 *officers for determinations of credible fear.*

1 **SEC. 407. EXPEDITED REMOVAL.**

2 (a) *IN GENERAL.*—Section 235(b)(1)(A)(iii) of the Im-
3 migration and Nationality Act (8 U.S.C.
4 1225(b)(1)(A)(iii)) is amended—

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

8 (2) by adding at the end the following new sub-
9 clause:

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

23 (b) *EXCEPTIONS.*—Section 235(b)(1)(F) of the Immi-
24 gration and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is
25 amended by striking “who arrives by aircraft at a port of
26 entry” and inserting “, and who arrives by aircraft at a

1 port of entry or who is present in the United States and
2 arrived in any manner at or between a port of entry”.

3 (c) *EFFECTIVE DATE.*—*The amendments made by this*
4 *section shall take effect on the date of the enactment of this*
5 *Act and shall apply to all aliens apprehended on or after*
6 *such date.*

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

8 *The Comptroller General of the United States, within*
9 *6 months after the date of the enactment of this Act, shall*
10 *submit to Congress a report on the deaths in custody of de-*
11 *tainees held on immigration violations by the Secretary of*
12 *Homeland Security. The report shall include the following*
13 *information with respect to any such deaths and in connec-*
14 *tion therewith:*

15 (1) *Whether any crimes were committed by per-*
16 *sonnel of the Department of Homeland Security.*

17 (2) *Whether any such deaths were caused by neg-*
18 *ligence or deliberate indifference by such personnel.*

19 (3) *Whether Department practice and procedures*
20 *were properly followed and obeyed.*

21 (4) *Whether such practice and procedures are*
22 *sufficient to protect the health and safety of such de-*
23 *tainees.*

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

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 with-*
8 *in the Department of Homeland Security, including United*
9 *States Immigration and Customs Enforcement, United*
10 *States Customs and Border Protection, and United States*
11 *Citizenship and Immigration Services, and shall identify*
12 *and remedy any failure of coordination or integration in*
13 *a prompt and efficient manner. In particular, the Secretary*
14 *of Homeland Security shall—*

15 *(1) oversee and ensure the coordinated execution*
16 *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) as*
4 *necessary to better coordinate border enforcement and*
5 *the disruption and dismantling of criminal organiza-*
6 *tions engaged in cross-border smuggling, money laun-*
7 *dering, 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 Bor-*
13 *der Protection coordinate with and refer all such*
14 *cases to United States Immigration and Customs En-*
15 *forcement;*

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 De-*
19 *partment-wide border enforcement goals, plans, and*
20 *processes;*

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

24 (7) *develop and implement a comprehensive plan*
25 *to protect the northern and southern land borders of*

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

3 *(A) coordinating all Federal border security*
4 *activities;*

5 *(B) improving communications and data*
6 *sharing capabilities within the Department and*
7 *with other Federal, State, local, tribal, and for-*
8 *foreign 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.) is*
17 *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 De-*
20 *partment an Office of Air and Marine Operations (referred*
21 *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 Oper-*
24 *ations who shall be appointed by the President, by and with*
25 *the advice and consent of the Senate, and who shall report*

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

3 “(c) *MISSIONS.*—

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

9 “(2) *SECONDARY MISSION.*—*The secondary mis-*
10 *sion of the Office shall be to assist other agencies to*
11 *prevent the entry of terrorists, other unlawful aliens,*
12 *instruments of terrorism, narcotics, and other contra-*
13 *band into the United States.*

14 “(d) *AIR AND MARINE OPERATIONS CENTER.*—

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

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

1 *States airspace or coastal waters for the purpose of*
2 *narcotics trafficking, trafficking of persons, or other*
3 *terrorist or criminal activity.*

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

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

22 “(g) *TIMING.*—*The Secretary shall require the infor-*
23 *mation described in subsection (f) to be provided to the Air*
24 *and Marine Operations Center in advance of the aviation*
25 *activity whenever practicable for the purpose of timely co-*

1 *ordination and conflict resolution of air missions by the*
 2 *Office, United States Immigration and Customs Enforce-*
 3 *ment, and United States Customs and Border Protection.*

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

10 (b) *TECHNICAL AND CONFORMING AMENDMENTS.*—

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

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

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

19 **SEC. 503. SHADOW WOLVES TRANSFER.**

20 (a) *TRANSFER OF EXISTING UNIT.*—*Not later than 90*
 21 *days after the date of the enactment of this Act, the Sec-*
 22 *retary of Homeland Security shall transfer to United States*
 23 *Immigration and Customs Enforcement all functions (in-*
 24 *cluding the personnel, assets, and liabilities attributable to*
 25 *such functions) of the Customs Patrol Officers unit oper-*

1 *ating on the Tohono O’odham Indian reservation (com-*
2 *monly known as the “Shadow Wolves” unit).*

3 (b) *ESTABLISHMENT OF NEW UNITS.—The Secretary*
4 *is authorized to establish within United States Immigration*
5 *and Customs Enforcement additional units of Customs Pa-*
6 *trol Officers in accordance with this section, as appropriate.*

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

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

21 (e) *SUPERVISORS.—Each unit described in this section*
22 *shall be supervised by a Chief Customs Patrol Officer, who*
23 *shall have the same rank as a resident agent-in-charge of*
24 *the Office of Investigations within United States Immigra-*
25 *tion and Customs Enforcement.*

1 **TITLE VI—TERRORIST AND**
2 **CRIMINAL ALIENS**

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

4 (a) *EXPANSION OF REMOVAL.*—

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

7 (A) *in subparagraph (A)—*

8 (i) *by striking “Attorney General may*
9 *not” and inserting “Secretary of Homeland*
10 *Security may not”;*

11 (ii) *by inserting “or the Secretary”*
12 *after “if the Attorney General”; and*

13 (B) *in subparagraph (B)—*

14 (i) *by inserting “or the Secretary of*
15 *Homeland Security” after “if the Attorney*
16 *General”;*

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

18 (iii) *by striking the period at the end*
19 *of clause (iv) and inserting “; or”;*

20 (iv) *by inserting after clause (iv) the*
21 *following new clause:*

22 “*(v) the alien is described in any sub-*
23 *clause of section 212(a)(3)(B)(i) or section*
24 *212(a)(3)(F), unless, in the case only of an*
25 *alien described in subclause (IV) or (IX) of*

1 *section 212(a)(3)(B)(i), the Secretary of*
2 *Homeland Security determines, in the Sec-*
3 *retary’s discretion, that there are not rea-*
4 *sonable grounds for regarding the alien as*
5 *a danger to the security of the United*
6 *States.”; and*

7 *(v) in the third sentence, by inserting*
8 *“or the Secretary of Homeland Security”*
9 *after “Attorney General”; and*

10 *(vi) by striking the last sentence.*

11 *(2) Section 208(b)(2)(A)(v) of such Act (8 U.S.C.*
12 *1158(b)(2)(A)(v)) is amended—*

13 *(A) by striking “subclause (I), (II), (III),*
14 *(IV), or (VI)” and inserting “any subclause”;*

15 *(B) by striking “237(a)(4)(B)” and insert-*
16 *ing “212(a)(3)(F)”;* and

17 *(C) by inserting “or (IX)” after “subclause*
18 *(IV)”.*

19 *(3) Section 240A(c)(4) of such Act (8 U.S.C.*
20 *1229b(c)(4)) is amended—*

21 *(A) by striking “inadmissible under” and*
22 *inserting “described in”; and*

23 *(B) by striking “deportable under” and in-*
24 *serting “described in”.*

1 (4) *Section 240B(b)(1)(C) of such Act (8 U.S.C.*
2 *1229c(b)(1)(C)) is amended by striking “deportable*
3 *under” and inserting “described in”.*

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

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

8 (B) *in paragraph (d), by striking “deport-*
9 *able under” and inserting “described in”.*

10 (b) *RETROACTIVE APPLICATION.—The amendments*
11 *made by this section shall take effect on the date of enact-*
12 *ment of this Act and sections 208(b)(2)(A), 240A, 240B,*
13 *241(b)(3), and 249 of the Immigration and Nationality Act,*
14 *as so amended, shall apply to—*

15 (1) *all aliens in removal, deportation, or exclu-*
16 *sion proceedings;*

17 (2) *all applications pending on or filed after the*
18 *date of the enactment of this Act; and*

19 (3) *with respect to aliens and applications de-*
20 *scribed in paragraph (1) or (2), acts and conditions*
21 *constituting a ground for inadmissibility, exclud-*
22 *ability, deportation, or removal occurring or existing*
23 *before, on, or after the date of the enactment of this*
24 *Act.*

1 **SEC. 602. DETENTION OF DANGEROUS ALIENS.**

2 (a) *IN GENERAL.*—Section 241 of the Immigration
3 and Nationality Act (8 U.S.C. 1231) is amended—

4 (1) in subsection (a), by striking “Attorney Gen-
5 eral” and inserting “Secretary of Homeland Secu-
6 rity” each place it appears;

7 (2) in subsection (a)(1)(B), by adding after and
8 below clause (iii) the following:

9 “If, at that time, the alien is not in the custody
10 of the Secretary (under the authority of this
11 Act), the Secretary shall take the alien into cus-
12 tody for removal, and the removal period shall
13 not begin until the alien is taken into such cus-
14 tody. If the Secretary transfers custody of the
15 alien during the removal period pursuant to law
16 to another Federal agency or a State or local
17 government agency in connection with the offi-
18 cial duties of such agency, the removal period
19 shall be tolled, and shall begin anew on the date
20 of the alien’s return to the custody of the Sec-
21 retary.”;

22 (3) by amending clause (ii) of subsection
23 (a)(1)(B) to read as follows:

24 “(ii) If a court, the Board of Immigra-
25 tion Appeals, or an immigration judge or-
26 ders a stay of the removal of the alien, the

1 *date the stay of removal is no longer in ef-*
2 *fect.”;*

3 *(4) by amending subparagraph (C) of subsection*
4 *(a)(1) to read as follows:*

5 “*(C) SUSPENSION OF PERIOD.—The re-*
6 *moval period shall be extended beyond a period*
7 *of 90 days and the alien may remain in deten-*
8 *tion during such extended period if the alien*
9 *fails or refuses to make all reasonable efforts to*
10 *comply with the removal order, or to fully co-*
11 *operate with the Secretary’s efforts to establish*
12 *the alien’s identity and carry out the removal*
13 *order, including making timely application in*
14 *good faith for travel or other documents nec-*
15 *essary to the alien’s departure, or conspires or*
16 *acts to prevent the alien’s removal subject to an*
17 *order of removal.”;*

18 *(5) in subsection (a)(2), by adding at the end the*
19 *following: “If a court orders a stay of removal of an*
20 *alien who is subject to an administratively final*
21 *order of removal, the Secretary in the exercise of dis-*
22 *cretion may detain the alien during the pendency of*
23 *such stay of removal.”;*

24 *(6) in subsection (a)(3), by amending subpara-*
25 *graph (D) to read as follows:*

1 “(D) to obey reasonable restrictions on the
2 alien’s conduct or activities, or perform affirma-
3 tive acts, that the Secretary prescribes for the
4 alien, in order to prevent the alien from abscond-
5 ing, or for the protection of the community, or
6 for other purposes related to the enforcement of
7 the immigration laws.”;

8 (7) in subsection (a)(6), by striking “removal pe-
9 riod and, if released,” and inserting “removal period,
10 in the discretion of the Secretary, without any limita-
11 tions other than those specified in this section, until
12 the alien is removed. If an alien is released, the
13 alien”;

14 (8) by redesignating paragraph (7) of subsection
15 (a) as paragraph (10) and inserting after paragraph
16 (6) of such subsection the following new paragraphs:

17 “(7) PAROLE.—If an alien detained pursuant to
18 paragraph (6) is an applicant for admission, the Sec-
19 retary, in the Secretary’s discretion, may parole the
20 alien under section 212(d)(5) of this Act and may
21 provide, notwithstanding section 212(d)(5), that the
22 alien shall not be returned to custody unless either the
23 alien violates the conditions of the alien’s parole or
24 the alien’s removal becomes reasonably foreseeable,

1 *provided that in no circumstance shall such alien be*
2 *considered admitted.*

3 “(8) *APPLICATION OF ADDITIONAL RULES FOR*
4 *DETENTION OR RELEASE OF CERTAIN ALIENS WHO*
5 *HAVE MADE AN ENTRY.—The procedures described in*
6 *subsection (j) shall only apply with respect to an*
7 *alien who—*

8 “(A) *was lawfully admitted the most recent*
9 *time the alien entered the United States or has*
10 *otherwise effected an entry into the United*
11 *States, and*

12 “(B) *is not detained under paragraph (6).*

13 “(9) *JUDICIAL REVIEW.—Without regard to the*
14 *place of confinement, judicial review of any action or*
15 *decision pursuant to paragraphs (6), (7), or (8) or*
16 *subsection (j) shall be available exclusively in habeas*
17 *corpus proceedings instituted in the United States*
18 *District Court for the District of Columbia, and only*
19 *if the alien has exhausted all administrative remedies*
20 *(statutory and regulatory) available to the alien as of*
21 *right.”; and*

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

24 “(j) *ADDITIONAL RULES FOR DETENTION OR RELEASE*
25 *OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—*

1 “(1) *APPLICATION.*—*The procedures described in*
2 *this subsection apply in the case of an alien described*
3 *in subsection (a)(8).*

4 “(2) *ESTABLISHMENT OF A DETENTION REVIEW*
5 *PROCESS FOR ALIENS WHO FULLY COOPERATE WITH*
6 *REMOVAL.*—

7 “(A) *IN GENERAL.*—*The Secretary shall es-*
8 *tablish an administrative review process to de-*
9 *termine whether the aliens should be detained or*
10 *released on conditions for aliens who—*

11 “(i) *have made all reasonable efforts to*
12 *comply with their removal orders;*

13 “(ii) *have complied with the Sec-*
14 *retary’s efforts to carry out the removal or-*
15 *ders, including making timely application*
16 *in good faith for travel or other documents*
17 *necessary to the alien’s departure, and*

18 “(iii) *have not conspired or acted to*
19 *prevent removal.*

20 “(B) *DETERMINATION.*—*The Secretary shall*
21 *make a determination whether to release an*
22 *alien after the removal period in accordance*
23 *with paragraphs (3) and (4). The determina-*
24 *tion—*

1 “(i) shall include consideration of any
2 evidence submitted by the alien and the his-
3 tory of the alien’s efforts to comply with the
4 order of removal, and

5 “(ii) may include any information or
6 assistance provided by the Department of
7 State or other Federal agency and any other
8 information available to the Secretary per-
9 taining to the ability to remove the alien.

10 “(3) *AUTHORITY TO DETAIN BEYOND THE RE-*
11 *MOVAL PERIOD .—*

12 “(A) *INITIAL 90 DAY PERIOD.—The Sec-*
13 *retary in the exercise of discretion, without any*
14 *limitations other than those specified in this sec-*
15 *tion, may continue to detain an alien for 90*
16 *days beyond the removal period (including any*
17 *extension of the removal period as provided in*
18 *subsection (a)(1)(C)).*

19 “(B) *EXTENSION.—*

20 “(i) *IN GENERAL.—The Secretary in*
21 *the exercise of discretion, without any limi-*
22 *tations other than those specified in this sec-*
23 *tion, may continue to detain an alien be-*
24 *yond the 90 days authorized in subpara-*
25 *graph (A) if the conditions described in sub-*

1 paragraph (A), (B), or (C) of paragraph (4)
2 apply.

3 “(ii) *RENEWAL.*—The Secretary may
4 renew a certification under paragraph
5 (4)(A) every six months without limitation,
6 after providing an opportunity for the alien
7 to request reconsideration of the certifi-
8 cation and to submit documents or other
9 evidence in support of that request. If the
10 Secretary does not renew a certification, the
11 Secretary may not continue to detain the
12 alien under such paragraph.

13 “(iii) *DELEGATION.*—Notwithstanding
14 section 103, the Secretary may not delegate
15 the authority to make or renew a certifi-
16 cation described in clause (ii), (iii), or (v)
17 of paragraph (4)(B) below the level of the
18 Assistant Secretary for Immigration and
19 Customs Enforcement.

20 “(iv) *HEARING.*—The Secretary may
21 request that the Attorney General provide
22 for a hearing to make the determination de-
23 scribed in clause (iv)(II) of paragraph
24 (4)(B).

1 “(4) *CONDITIONS FOR EXTENSION.*—*The condi-*
2 *tions for continuation of detention are any of the fol-*
3 *lowing:*

4 “(A) *The Secretary determines that there is*
5 *a significant likelihood that the alien—*

6 “(i) *will be removed in the reasonably*
7 *foreseeable future; or*

8 “(ii) *would be removed in the reason-*
9 *ably foreseeable future, or would have been*
10 *removed, but for the alien’s failure or re-*
11 *fusal to make all reasonable efforts to com-*
12 *ply with the removal order, or to fully co-*
13 *operate with the Secretary’s efforts to estab-*
14 *lish the alien’s identity and carry out the*
15 *removal order, including making timely ap-*
16 *plication in good faith for travel or other*
17 *documents necessary to the alien’s depar-*
18 *ture, or conspiracies or acts to prevent re-*
19 *moval.*

20 “(B) *The Secretary certifies in writing any*
21 *of the following:*

22 “(i) *In consultation with the Secretary*
23 *of Health and Human Services, the alien*
24 *has a highly contagious disease that poses a*
25 *threat to public safety.*

1 “(ii) After receipt of a written rec-
2 ommendation from the Secretary of State,
3 the release of the alien is likely to have seri-
4 ous adverse foreign policy consequences for
5 the United States.

6 “(iii) Based on information available
7 to the Secretary (including available infor-
8 mation from the intelligence community,
9 and without regard to the grounds upon
10 which the alien was ordered removed), there
11 is reason to believe that the release of the
12 alien would threaten the national security
13 of the United States.

14 “(iv) The release of the alien will
15 threaten the safety of the community or any
16 person, the conditions of release cannot rea-
17 sonably be expected to ensure the safety of
18 the community or any person, and—

19 “(I) the alien has been convicted
20 of one or more aggravated felonies de-
21 scribed in section 101(a)(43)(A) or of
22 one or more crimes identified by the
23 Secretary by regulation, or of one or
24 more attempts or conspiracies to com-
25 mit any such aggravated felonies or

1 *such crimes, for an aggregate term of*
2 *imprisonment of at least five years; or*

3 “(II) *the alien has committed one*
4 *or more crimes of violence and, because*
5 *of a mental condition or personality*
6 *disorder and behavior associated with*
7 *that condition or disorder, the alien is*
8 *likely to engage in acts of violence in*
9 *the future.*

10 “(v) *The release of the alien will*
11 *threaten the safety of the community or any*
12 *person, conditions of release cannot reason-*
13 *ably be expected to ensure the safety of the*
14 *community or any person, and the alien*
15 *has been convicted of at least one aggra-*
16 *vated felony.*

17 “(C) *Pending a determination under sub-*
18 *paragraph (B), so long as the Secretary has ini-*
19 *tiated the administrative review process no later*
20 *than 30 days after the expiration of the removal*
21 *period (including any extension of the removal*
22 *period as provided in subsection (a)(1)(C)).*

23 “(5) *RELEASE ON CONDITIONS.—If it is deter-*
24 *mined that an alien should be released from deten-*
25 *tion, the Secretary in the exercise of discretion may*

1 *impose conditions on release as provided in subsection*
2 *(a)(3).*

3 “(6) *REDETENTION.*—*The Secretary in the exer-*
4 *cise of discretion, without any limitations other than*
5 *those specified in this section, may again detain any*
6 *alien subject to a final removal order who is released*
7 *from custody if the alien fails to comply with the con-*
8 *ditions of release or to cooperate in the alien’s re-*
9 *moval from the United States, or if, upon reconsider-*
10 *ation, the Secretary determines that the alien can be*
11 *detained under paragraph (1). Paragraphs (6)*
12 *through (8) of subsection (a) shall apply to any alien*
13 *returned to custody pursuant to this paragraph, as if*
14 *the removal period terminated on the day of the re-*
15 *detention.*

16 “(7) *CERTAIN ALIENS WHO EFFECTED ENTRY.*—
17 *If an alien has effected an entry into the United*
18 *States but has neither been lawfully admitted nor*
19 *physically present in the United States continuously*
20 *for the 2-year period immediately prior to the com-*
21 *mencement of removal proceedings under this Act or*
22 *deportation proceedings against the alien, the Sec-*
23 *retary in the exercise of discretion may decide not to*
24 *apply subsection (a)(8) and this subsection and may*

1 *detain the alien without any limitations except those*
2 *imposed by regulation.”.*

3 **(b) EFFECTIVE DATE.**—*The amendments made by sub-*
4 *section (a) shall take effect upon the date of enactment of*
5 *this Act, and section 241 of the Immigration and Nation-*
6 *ality Act, as amended, shall apply to—*

7 *(1) all aliens subject to a final administrative*
8 *removal, deportation, or exclusion order that was*
9 *issued before, on, or after the date of enactment of this*
10 *Act; and*

11 *(2) acts and conditions occurring or existing be-*
12 *fore, on, or after the date of enactment of this Act.*

13 **SEC. 603. INCREASE IN CRIMINAL PENALTIES.**

14 *Section 243 of the Immigration and Nationality Act*
15 *(8 U.S.C. 1253) is amended—*

16 *(1) in subsection (a)(1)—*

17 *(A) in the matter before subparagraph (A),*
18 *by inserting “or 212(a)” after “section 237(a)”;*
19 *and*

20 *(B) by striking “imprisoned not more than*
21 *four years” and inserting “imprisoned for not*
22 *less than six months or more than five years”;*
23 *and*

24 *(2) in subsection (b)—*

1 (A) by striking “not more than \$1,000” and
2 inserting “under title 18, United States Code”;
3 and

4 (B) by striking “for not more than one
5 year” and inserting “for not less than six
6 months or more than five years (or 10 years if
7 the alien is a member of any class described in
8 paragraph (1)(E), (2), (3), or (4) of section
9 237(a)”.

10 **SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED**
11 **FELONS AND OTHER CRIMINALS.**

12 (a) *EXCLUSION BASED ON FRAUDULENT DOCUMENTA-*
13 *TION.*—Section 212(a)(2)(A)(i) of the Immigration and Na-
14 *tionality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amended—*

15 (1) in subclause (I), by striking “or” at the end;

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

17 and

18 (3) by inserting after subclause (II) the following
19 new subclause:

20 “(III) a violation (or a con-
21 spiracy or attempt to violate) an of-
22 fense described in section 208 of the
23 Social Security Act or section 1028 of
24 title 18, United States Code,”.

1 **(b) EXCLUSION BASED ON AGGRAVATED FELONY, UN-**
2 **LAWFUL PROCUREMENT OF CITIZENSHIP, AND CRIMES OF**
3 **DOMESTIC VIOLENCE.**—Section 212(a)(2) of such Act (8
4 U.S.C. 1182(a)(2)) is amended by adding at the end the
5 following new subparagraphs:

6 **“(J) AGGRAVATED FELONY.**—Any alien who
7 is convicted of an aggravated felony at any time
8 is inadmissible.

9 **“(K) UNLAWFUL PROCUREMENT OF CITI-**
10 **ZENSHIP.**—Any alien convicted of, or who ad-
11 mits having committed, or who admits commit-
12 ting acts which constitute the essential elements
13 of, a violation of (or a conspiracy or attempt to
14 violate) subsection (a) or (b) of section 1425 of
15 title 18, United States Code is inadmissible.

16 **“(L) CRIMES OF DOMESTIC VIOLENCE,**
17 **STALKING, OR VIOLATION OF PROTECTION OR-**
18 **DERS; CRIMES AGAINST CHILDREN.**—

19 **“(i) DOMESTIC VIOLENCE, STALKING,**
20 **OR CHILD ABUSE.**—

21 **“(I) IN GENERAL.**—Subject to
22 subclause (II), any alien who at any
23 time is convicted of, or who admits
24 having committed, or who admits com-
25 mitting acts which constitute the essen-

1 *tial elements of, a crime of domestic vi-*
2 *olence, a crime of stalking, or a crime*
3 *of child abuse, child neglect, or child*
4 *abandonment is inadmissible.*

5 “(II) *WAIVER FOR VICTIMS OF*
6 *DOMESTIC VIOLENCE.*—*Subclause (I)*
7 *shall not apply to any alien described*
8 *in section 237(a)(7)(A).*

9 “(III) *CRIME OF DOMESTIC VIO-*
10 *LENCE DEFINED.*—*For purposes of sub-*
11 *clause (I), the term ‘crime of domestic*
12 *violence’ means any crime of violence*
13 *(as defined in section 16 of title 18,*
14 *United States Code) against a person*
15 *committed by a current or former*
16 *spouse of the person, by an individual*
17 *with whom the person shares a child in*
18 *common, by an individual who is co-*
19 *habiting with or has cohabited with the*
20 *person as a spouse, by an individual*
21 *similarly situated to a spouse of the*
22 *person under the domestic or family*
23 *violence laws of the jurisdiction where*
24 *the offense occurs, or by any other in-*
25 *dividual against a person who is pro-*

1 *tected from that individual’s acts*
2 *under the domestic or family violence*
3 *laws of the United States or any State,*
4 *Indian tribal government, or unit of*
5 *local or foreign government.*

6 “(ii) *VIOLATORS OF PROTECTION OR-*
7 *DERS.—*

8 “(I) *IN GENERAL.—Any alien who*
9 *at any time is enjoined under a protec-*
10 *tion order issued by a court and whom*
11 *the court determines has engaged in*
12 *conduct that violates the portion of a*
13 *protection order that involves protec-*
14 *tion against credible threats of vio-*
15 *lence, repeated harassment, or bodily*
16 *injury to the person or person for*
17 *whom the protection order was issued*
18 *is inadmissible.*

19 “(II) *PROTECTION ORDER DE-*
20 *FINED.—For purposes of subclause (I),*
21 *the term ‘protection order’ means any*
22 *injunction issued for the purpose of*
23 *preventing violent or threatening acts*
24 *of domestic violence, including tem-*
25 *porary or final orders issued by civil*

1 or criminal courts (other than support
2 or child custody orders or provisions)
3 whether obtained by filing an inde-
4 pendent action or as an independent
5 order in another proceeding.”.

6 (c) *WAIVER AUTHORITY*.—Section 212(h) of such Act
7 (8 U.S.C. 1182(h)) is amended—

8 (1) by striking “The Attorney General may, in
9 his discretion, waive the application of subparagraphs
10 (A)(i)(I), (B), (D), and (E) of subsection (a)(2)” and
11 inserting “The Attorney General or the Secretary of
12 Homeland Security may, in the discretion of the At-
13 torney General or such Secretary, waive the applica-
14 tion of subparagraph (A)(i)(I), (A)(i)(III), (B), (D),
15 (E), (K), and (L) of subsection (a)(2)”;

16 (2) in paragraphs (1)(A) and (1)(B) and the last
17 sentence, by inserting “or the Secretary” after “Attor-
18 ney General” each place it appears;

19 (3) in paragraph (2), by striking “Attorney Gen-
20 eral, in his discretion,” and inserting “Attorney Gen-
21 eral or the Secretary of Homeland Security, in the
22 discretion of the Attorney General or such Sec-
23 retary,”;

24 (4) in paragraph (2), by striking “as he” and
25 inserting “as the Attorney General or the Secretary”;

1 (5) *in the second sentence, by striking “criminal*
2 *acts involving torture” and inserting “criminal acts*
3 *involving torture, or an aggravated felony”; and*

4 (6) *in the third sentence, by striking “if either*
5 *since the date of such admission the alien has been*
6 *convicted of an aggravated felony or the alien” and*
7 *inserting “if since the date of such admission the*
8 *alien”.*

9 (d) *CONSTRUCTION.—The amendments made by this*
10 *section shall not be construed to create eligibility for relief*
11 *from removal under section 212(c) of the Immigration and*
12 *Nationality Act, as in effect before its repeal by section*
13 *304(b) of the Immigration Reform and Immigrant Respon-*
14 *sibility Act of 1996 (division C of Public Law 104–208),*
15 *where such eligibility did not exist before these amendments*
16 *became effective.*

17 (e) *EFFECTIVE DATE.—The amendments made by this*
18 *section shall apply to—*

19 (1) *any act that occurred before, on, or after the*
20 *date of the enactment of this Act; and*

21 (2) *to all aliens who are required to establish ad-*
22 *missibility on or after the such date, and in all re-*
23 *moval, deportation, or exclusion proceedings that are*
24 *filed, pending, or reopened, on or after such date.*

1 **SEC. 605. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT**
2 **OF STATUS FOR AGGRAVATED FELONIES.**

3 (a) *IN GENERAL.*—Section 209(c) of the Immigration
4 and Nationality Act (8 U.S.C. 1159(c)) is amended by add-
5 ing at the end the following: “However, an alien who is
6 convicted of an aggravated felony is not eligible for a waiver
7 or for adjustment of status under this section.”.

8 (b) *EFFECTIVE DATE.*—The amendment made by sub-
9 section (a) shall apply—

10 (1) to any act that occurred before, on, or after
11 the date of the enactment of this Act; and

12 (2) to all aliens who are required to establish ad-
13 missibility on or after such date, and in all removal,
14 deportation, or exclusion proceedings that are filed,
15 pending, or reopened, on or after such date.

16 **SEC. 606. REMOVING DRUNK DRIVERS.**

17 (a) *IN GENERAL.*—Section 101(a)(43)(F) of the Immi-
18 gration and Nationality Act (8 U.S.C. 1101(a)(43)(F)) is
19 amended by inserting “, including a third drunk driving
20 conviction, regardless of the States in which the convictions
21 occurred, and regardless of whether the offenses are deemed
22 to be misdemeanors or felonies under State or Federal law,”
23 after “offense”).

24 (b) *EFFECTIVE DATE.*—The amendment made by sub-
25 section (a) shall take effect on the date of the enactment

1 *of this Act and shall apply to convictions entered before,*
2 *on, or after such date.*

3 **SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT AS-**
4 **SISTANCE PROGRAM.**

5 *(a) DESIGNATED COUNTIES ADJACENT TO THE*
6 *SOUTHERN BORDER OF THE UNITED STATES DEFINED.—*
7 *In this section, the term “designated counties adjacent to*
8 *the southern international border of the United States” in-*
9 *cludes a county any part of which is within 25 miles of*
10 *the southern international border of the United States.*

11 *(b) AUTHORITY.—*

12 *(1) IN GENERAL.—Any Sheriff or coalition or*
13 *group of Sheriffs from designated counties adjacent to*
14 *the southern international border of the United States*
15 *may transfer aliens detained or in the custody of the*
16 *Sheriff who are not lawfully present in the United*
17 *States to appropriate Federal law enforcement offi-*
18 *cial, and shall be promptly paid for the costs of per-*
19 *forming such transfers by the Attorney General for*
20 *any local or State funds previously expended or pro-*
21 *posed to be spent by that Sheriff or coalition or group*
22 *of Sheriffs.*

23 *(2) PAYMENT OF COSTS.—Payment of costs*
24 *under paragraph (1) shall include payment for costs*
25 *of detaining, housing, and transporting aliens who*

1 *are not lawfully present in the United States or who*
2 *have unlawfully entered the United States at a loca-*
3 *tion other than a port of entry and who are taken*
4 *into custody by the Sheriff.*

5 (3) *LIMITATION TO FUTURE COSTS.—In no case*
6 *shall payment be made under this section for costs in-*
7 *curring before the date of the enactment of this Act.*

8 (4) *ADVANCE PAYMENT OF COSTS.—The Attorney*
9 *General shall make an advance payment under this*
10 *section upon a certification of anticipated costs for*
11 *which payment may be made under this section, but*
12 *in no case shall such an advance payment cover a pe-*
13 *riod of costs of longer than 3 months.*

14 (c) *DESIGNATED COUNTY LAW ENFORCEMENT AC-*
15 *COUNT.—*

16 (1) *SEPARATE ACCOUNT.—Reimbursement or*
17 *pre-payment under subsection (b) shall be made*
18 *promptly from funds deposited into a separate ac-*
19 *count in the Treasury of the United States to be enti-*
20 *tled the “Designated County Law Enforcement Ac-*
21 *count”.*

22 (2) *AVAILABILITY OF FUNDS.—All deposits into*
23 *the Designated County Law Enforcement Account*
24 *shall remain available until expended to the Attorney*
25 *General to carry out the provisions of this section.*

1 (3) *PROMPTLY DEFINED.*—For purposes of this
2 section, the term “promptly” means within 60 days.

3 (d) *FUNDS FOR THE DESIGNATED COUNTY LAW EN-*
4 *FORCEMENT ACCOUNT.*—Only funds designated, authorized,
5 or appropriated by Congress may be deposited or trans-
6 ferred to the Designated County Law Enforcement Account.
7 The Designated County Law Enforcement Account is au-
8 thorized to receive up to \$100,000,000 per year.

9 (e) *USE OF FUNDS.*—

10 (1) *IN GENERAL.*—Funds provided under this
11 section shall be payable directly to participating
12 Sheriff’s offices and may be used for the transfers de-
13 scribed in subsection (b)(1), including the costs of per-
14 sonnel (such as overtime pay and costs for reserve
15 deputies), costs of training of such personnel, equip-
16 ment, and, subject to paragraph (2), the construction,
17 maintenance, and operation of detention facilities to
18 detain aliens who are unlawfully present in the
19 United States. For purposes of this section, an alien
20 who is unlawfully present in the United States shall
21 be deemed to be a Federal prisoner beginning upon
22 determination by Federal law enforcement officials
23 that such alien is unlawfully present in the United
24 States, and such alien shall, upon such determina-
25 tion, be deemed to be in Federal custody. In order for

1 *costs to be eligible for payment, the Sheriff making*
2 *such application shall personally certify under oath*
3 *that all costs submitted in the application for reim-*
4 *bursement or advance payment meet the requirements*
5 *of this section and are reasonable and necessary, and*
6 *such certification shall be subject to all State and*
7 *Federal laws governing statements made under oath,*
8 *including the penalties of perjury, removal from of-*
9 *fice, and prosecution under State and Federal law.*

10 (2) *LIMITATION.*—*Not more than 20 percent of*
11 *the amount of funds provided under this section may*
12 *be used for the construction or renovation of detention*
13 *or similar facilities.*

14 (f) *DISPOSITION AND DELIVERY OF DETAINED*
15 *ALIENS.*—*All aliens detained or taken into custody by a*
16 *Sheriff under this section and with respect to whom Federal*
17 *law enforcement officials determine are unlawfully present*
18 *in the United States, shall be immediately delivered to Fed-*
19 *eral law enforcement officials. In accordance with sub-*
20 *section (e)(1), an alien who is in the custody of a Sheriff*
21 *shall be deemed to be a Federal prisoner and in Federal*
22 *custody.*

23 (g) *REGULATIONS.*—*The Attorney General shall issue,*
24 *on an interim final basis, regulations not later than 60*
25 *days after the date of the enactment of this Act—*

1 (1) governing the distribution of funds under
2 this section for all reasonable and necessary costs and
3 other expenses incurred or proposed to be incurred by
4 a Sheriff or coalition or group of Sheriffs under this
5 section; and

6 (2) providing uniform standards that all other
7 Federal law enforcement officials shall follow to co-
8 operate with such Sheriffs and to otherwise imple-
9 ment the requirements of this section.

10 (h) *EFFECTIVE DATE.*—The provisions of this section
11 shall take effect on its enactment. The promulgation of any
12 regulations under subsection (g) is not a necessary pre-
13 condition to the immediate deployment or work of Sheriffs
14 personnel or corrections officers as authorized by this sec-
15 tion. Any reasonable and necessary expenses or costs au-
16 thorized by this section and incurred by such Sheriffs after
17 the date of the enactment of this Act but prior to the date
18 of the promulgation of such regulations are eligible for reim-
19 bursement under the terms and conditions of this section.

20 (i) *AUDIT.*—All funds paid out under this section are
21 subject to audit by the Inspector General of the Department
22 of Justice and abuse or misuse of such funds shall be vigor-
23 ously investigated and prosecuted to the full extent of Fed-
24 eral law.

1 (j) *SUPPLEMENTAL FUNDING.*—*All funds paid out*
 2 *under this section must supplement, and may not supplant,*
 3 *State or local funds used for the same or similar purposes.*

4 **SEC. 608. RENDERING INADMISSIBLE AND DEPORTABLE**
 5 **ALIENS PARTICIPATING IN CRIMINAL STREET**
 6 **GANGS; DETENTION; INELIGIBILITY FROM**
 7 **PROTECTION FROM REMOVAL AND ASYLUM.**

8 (a) *INADMISSIBLE.*—*Section 212(a)(2) of the Immi-*
 9 *gration and Nationality Act (8 U.S.C. 1182(a)(2)), as*
 10 *amended by section 604(b), is further amended by adding*
 11 *at the end the following:*

12 “(M) *CRIMINAL STREET GANG PARTICIPA-*
 13 *TION.*—

14 “(i) *IN GENERAL.*—*Any alien is inad-*
 15 *missible if the alien has been removed under*
 16 *section 237(a)(2)(F), or if the consular offi-*
 17 *cer or the Secretary of Homeland Security*
 18 *knows, or has reasonable ground to believe*
 19 *that the alien—*

20 “(I) *is a member of a criminal*
 21 *street gang and has committed, con-*
 22 *spired, or threatened to commit, or*
 23 *seeks to enter the United States to en-*
 24 *gage solely, principally, or incidentally*

1 *in, a gang crime or any other unlawful*
2 *activity; or*

3 “*(II) is a member of a criminal*
4 *street gang designated under section*
5 *219A.*

6 “*(ii) CRIMINAL STREET GANG DE-*
7 *FINED.—For purposes of this subparagraph,*
8 *the term ‘criminal street gang’ means a for-*
9 *mal or informal group or association of 3*
10 *or more individuals, who commit 2 or more*
11 *gang crimes (one of which is a crime of vio-*
12 *lence, as defined in section 16 of title 18,*
13 *United States Code) in 2 or more separate*
14 *criminal episodes in relation to the group*
15 *or association.*

16 “*(iii) GANG CRIME DEFINED.—For*
17 *purposes of this subparagraph, the term*
18 *‘gang crime’ means conduct constituting*
19 *any Federal or State crime, punishable by*
20 *imprisonment for one year or more, in any*
21 *of the following categories:*

22 “*(I) A crime of violence (as de-*
23 *finied in section 16 of title 18, United*
24 *States Code).*

1 “(II) *A crime involving obstruc-*
2 *tion of justice, tampering with or re-*
3 *taliating against a witness, victim, or*
4 *informant, or burglary.*

5 “(III) *A crime involving the man-*
6 *ufacturing, importing, distributing,*
7 *possessing with intent to distribute, or*
8 *otherwise dealing in a controlled sub-*
9 *stance or listed chemical (as those*
10 *terms are defined in section 102 of the*
11 *Controlled Substances Act (21 U.S.C.*
12 *802)).*

13 “(IV) *Any conduct punishable*
14 *under section 844 of title 18, United*
15 *States Code (relating to explosive ma-*
16 *terials), subsection (d), (g)(1) (where*
17 *the underlying conviction is a violent*
18 *felony (as defined in section*
19 *924(e)(2)(B) of such title) or is a seri-*
20 *ous drug offense (as defined in section*
21 *924(e)(2)(A)), (i), (j), (k), (o), (p), (q),*
22 *(u), or (x) of section 922 of such title*
23 *(relating to unlawful acts), or sub-*
24 *section (b), (c), (g), (h), (k), (l), (m), or*
25 *(n) of section 924 of such title (relating*

1 to penalties), section 930 of such title
2 (relating to possession of firearms and
3 dangerous weapons in Federal facili-
4 ties), section 931 of such title (relating
5 to purchase, ownership, or possession of
6 body armor by violent felons), sections
7 1028 and 1029 of such title (relating to
8 fraud and related activity in connec-
9 tion with identification documents or
10 access devices), section 1952 of such
11 title (relating to interstate and foreign
12 travel or transportation in aid of rack-
13 eteering enterprises), section 1956 of
14 such title (relating to the laundering of
15 monetary instruments), section 1957 of
16 such title (relating to engaging in
17 monetary transactions in property de-
18 rived from specified unlawful activity),
19 or sections 2312 through 2315 of such
20 title (relating to interstate transpor-
21 tation of stolen motor vehicles or stolen
22 property).

23 “(V) Any conduct punishable
24 under section 274 (relating to bringing
25 in and harboring certain aliens), sec-

1 *tion 277 (relating to aiding or assist-*
2 *ing certain aliens to enter the United*
3 *States), or section 278 (relating to im-*
4 *portation of alien for immoral pur-*
5 *pose) of this Act.”.*

6 *(b) DEPORTABLE.—Section 237(a)(2) of such Act (8*
7 *U.S.C. 1227(a)(2)) is amended by adding at the end the*
8 *following:*

9 *“(F) CRIMINAL STREET GANG PARTICIPA-*
10 *TION.—*

11 *“(i) IN GENERAL.—Any alien is de-*
12 *portable who—*

13 *“(I) is a member of a criminal*
14 *street gang and is convicted of commit-*
15 *ting, or conspiring, threatening, or at-*
16 *tempting to commit, a gang crime; 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 au-
8 *thorized 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 General*
18 *shall notify the Speaker and Minority*
19 *Leader of the House of Representatives and*
20 *the Majority Leader and Minority Leader of*
21 *the Senate, and the members of the relevant*
22 *committees of the House of Representatives*
23 *and the Senate, in writing, of the intent to*
24 *designate a group or association under this*
25 *subsection, together with the findings made*
26 *under paragraph (1) with respect to that*

1 *group or association, and the factual basis*
2 *therefor.*

3 “(ii) *PUBLICATION IN FEDERAL REG-*
4 *ISTER.—The Attorney shall publish the des-*
5 *ignation in the Federal Register seven days*
6 *after providing the notification under clause*
7 *(i).*

8 “(B) *EFFECT OF DESIGNATION.—*

9 “(i) *A designation under this sub-*
10 *section shall take effect upon publication*
11 *under subparagraph (A)(i).*

12 “(ii) *Any designation under this sub-*
13 *section shall cease to have effect upon an*
14 *Act of Congress disapproving such designa-*
15 *tion.*

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 PETI-*
25 *TION.—*

1 “(i) *IN GENERAL.*—*The Attorney Gen-*
2 *eral shall review the designation of a crimi-*
3 *nal street gang under the procedures set*
4 *forth in clauses (iii) and (iv) if the des-*
5 *ignated gang or association files a petition*
6 *for revocation within the petition period de-*
7 *scribed in clause (ii).*

8 “(ii) *PETITION PERIOD.*—*For purposes*
9 *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 2*
14 *years after the date on which the des-*
15 *ignation was made; or*

16 “(II) *if the designated gang or as-*
17 *sociation has previously filed a peti-*
18 *tion for revocation under this subpara-*
19 *graph, the petition period begins 2*
20 *years after the date of the determina-*
21 *tion made under clause (iv) on that pe-*
22 *tition.*

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 paragraph*
3 *(1) are sufficiently different from the cir-*
4 *cumstances that were the basis for the des-*
5 *ignation such that a revocation with respect*
6 *to the gang is warranted.*

7 “(iv) *DETERMINATION.*—

8 “(I) *IN GENERAL.*—*Not later than*
9 *180 days after receiving a petition for*
10 *revocation submitted under this sub-*
11 *paragraph, the Attorney General shall*
12 *make a determination as to such rev-*
13 *ocation.*

14 “(II) *PUBLICATION OF DETER-*
15 *MINATION.*—*A determination made by*
16 *the Attorney General under this clause*
17 *shall be published in the Federal Reg-*
18 *ister.*

19 “(III) *PROCEDURES.*—*Any rev-*
20 *ocation by the Attorney General shall*
21 *be made in accordance with paragraph*
22 *(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 street*
3 *gang in order to determine whether such*
4 *designation should be revoked pursuant to*
5 *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 *paragraph, then the review shall be con-*
11 *ducted pursuant to procedures established*
12 *by the Attorney General. The results of such*
13 *review and the applicable procedures shall*
14 *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) *REVOCAION BY ACT OF CONGRESS.*—*The*
20 *Congress, by an Act of Congress, may block or revoke*
21 *a designation made under paragraph (1).*

22 “(6) *REVOCAION BASED ON CHANGE IN CIR-*
23 *CUMSTANCES.*—

24 “(A) *IN GENERAL.*—*The Attorney General*
25 *may revoke a designation made under paragraph*

1 (1) *at any time, and shall revoke a designation*
2 *upon completion of a review conducted pursuant*
3 *to subparagraphs (B) and (C) of paragraph (4)*
4 *if the Attorney General finds that the cir-*
5 *cumstances that were the basis for the designa-*
6 *tion have changed in such a manner as to war-*
7 *rant revocation.*

8 “(B) *PROCEDURE.*—*The procedural require-*
9 *ments of paragraphs (2) and (3) shall apply to*
10 *a revocation under this paragraph. Any revoca-*
11 *tion shall take effect on the date specified in the*
12 *revocation or upon publication in the Federal*
13 *Register if no effective date is specified.*

14 “(7) *EFFECT OF REVOCATION.*—*The revocation*
15 *of a designation under paragraph (5) or (6) shall not*
16 *affect any action or proceeding based on conduct com-*
17 *mitted prior to the effective date of such revocation.*

18 “(8) *USE OF DESIGNATION IN HEARING.*—*If a*
19 *designation under this subsection has become effective*
20 *under paragraph (2)(B) an alien in a removal pro-*
21 *ceeding shall not be permitted to raise any question*
22 *concerning the validity of the issuance of such des-*
23 *ignation as a defense or an objection at any hearing.*

24 “(b) *JUDICIAL REVIEW OF DESIGNATION.*—

1 “(1) *IN GENERAL.*—Not later than 30 days after
2 *publication of the designation in the Federal Register,*
3 *a group or association designated as a criminal street*
4 *gang may seek judicial review of the designation in*
5 *the United States Court of Appeals for the District of*
6 *Columbia Circuit.*

7 “(2) *BASIS OF REVIEW.*—Review under this sub-
8 *section shall be based solely upon the administrative*
9 *record.*

10 “(3) *SCOPE OF REVIEW.*—The Court shall hold
11 *unlawful and set aside a designation the court finds*
12 *to be—*

13 “(A) *arbitrary, capricious, an abuse of dis-*
14 *cretion, or otherwise not in accordance with law;*

15 “(B) *contrary to constitutional right,*
16 *power, privilege, or immunity;*

17 “(C) *in excess of statutory jurisdiction, au-*
18 *thority, or limitation, or short of statutory right;*

19 “(D) *lacking substantial support in the ad-*
20 *ministrative record taken as a whole; or*

21 “(E) *not in accord with the procedures re-*
22 *quired by law.*

23 “(4) *JUDICIAL REVIEW INVOKED.*—The pendency
24 *of an action for judicial review of a designation shall*
25 *not affect the application of this section, unless the*

1 *court issues a final order setting aside the designa-*
 2 *tion.*

3 “(c) *RELEVANT COMMITTEE DEFINED.*—*As used in*
 4 *this section, the term ‘relevant committees’ means the Com-*
 5 *mittees on the Judiciary of the House of Representatives*
 6 *and of the Senate.”.*

7 (2) *CLERICAL AMENDMENT.*—*The table of con-*
 8 *tents of such Act (8 U.S.C. 1101 et seq.) is amended*
 9 *by inserting after the item relating to section 219 the*
 10 *following:*

“Sec. 219A. Designation of criminal street gangs.”.

11 (d) *MANDATORY DETENTION OF CRIMINAL STREET*
 12 *GANG MEMBERS.*—

13 (1) *IN GENERAL.*—*Section 236(c)(1)(D) of the*
 14 *Immigration and Nationality Act (8 U.S.C.*
 15 *1226(c)(1)(D)) is amended—*

16 (A) *by inserting “or 212(a)(2)(M)” after*
 17 *“212(a)(3)(B)”;* *and*

18 (B) *by inserting “237(a)(2)(F) or” before*
 19 *“237(a)(4)(B)”.*

20 (2) *ANNUAL REPORT.*—*Not later than March 1 of*
 21 *each year (beginning 1 year after the date of the en-*
 22 *actment of this Act), the Secretary of Homeland Secu-*
 23 *rity, after consultation with the appropriate Federal*
 24 *agencies, shall submit a report to the Committees on*
 25 *the Judiciary of the House of Representatives and of*

1 *the Senate on the number of aliens detained under the*
2 *amendments made by paragraph (1).*

3 (3) *EFFECTIVE DATE.*—*This subsection and the*
4 *amendments made by this subsection are effective as*
5 *of the date of enactment of this Act and shall apply*
6 *to aliens detained on or after such date.*

7 (e) *INELIGIBILITY OF ALIEN STREET GANG MEMBERS*
8 *FROM PROTECTION FROM REMOVAL AND ASYLUM.*—

9 (1) *INAPPLICABILITY OF RESTRICTION ON RE-*
10 *MOVAL TO CERTAIN COUNTRIES.*—*Section*
11 *241(b)(3)(B) of the Immigration and Nationality Act*
12 *(8 U.S.C. 1251(b)(3)(B)) is amended, in the matter*
13 *preceding clause (i), by inserting “who is described in*
14 *section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) or*
15 *who is” after “to an alien”.*

16 (2) *INELIGIBILITY FOR ASYLUM.*—*Section*
17 *208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is*
18 *amended—*

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

21 (B) *by redesignating clause (vi) as clause*
22 *(vii); and*

23 (C) *by inserting after clause (v) the fol-*
24 *lowing:*

1 “(vi) the alien is described in section
2 212(a)(2)(M)(i) or section 237(a)(2)(F)(i)
3 (relating to participation in criminal street
4 gangs); or”.

5 (3) *DENIAL OF REVIEW OF DETERMINATION OF*
6 *INELIGIBILITY FOR TEMPORARY PROTECTED STA-*
7 *TUS.—Section 244(c)(2) of such Act (8 U.S.C.*
8 *1254(c)(2)) is amended by adding at the end the fol-*
9 *lowing:*

10 “(C) *LIMITATION ON JUDICIAL REVIEW.—*
11 *There shall be no judicial review of any finding*
12 *under subparagraph (B) that an alien is in de-*
13 *scribed in section 208(b)(2)(A)(vi).”.*

14 (4) *EFFECTIVE DATE.—The amendments made*
15 *by this subsection are effective on the date of enact-*
16 *ment of this Act and shall apply to all applications*
17 *pending on or after such date.*

18 (f) *EFFECTIVE DATE.—Except as otherwise provided,*
19 *the amendments made by this section are effective as of the*
20 *date of enactment and shall apply to all pending cases in*
21 *which no final administrative action has been entered.*

22 **SEC. 609. NATURALIZATION REFORM.**

23 (a) *BARRING TERRORISTS FROM NATURALIZATION.—*
24 *Section 316 of the Immigration and Nationality Act (8*

1 *U.S.C. 1427) is amended by adding at the end the following*
2 *new subsection:*

3 “(g) *No person shall be naturalized who the Secretary*
4 *of Homeland Security determines, in the Secretary’s discre-*
5 *tion, to have been at any time an alien described in section*
6 *212(a)(3) or 237(a)(4). Such determination may be based*
7 *upon any relevant information or evidence, including clas-*
8 *sified, sensitive, or national security information, and shall*
9 *be binding upon, and unreviewable by, any court exercising*
10 *jurisdiction under the immigration laws over any applica-*
11 *tion for naturalization, regardless whether such jurisdiction*
12 *to review a decision or action of the Secretary is de novo*
13 *or otherwise.”.*

14 (b) *CONCURRENT NATURALIZATION AND REMOVAL*
15 *PROCEEDINGS.—The last sentence of section 318 of such Act*
16 *(8 U.S.C. 1429) is amended—*

17 (1) *by striking “shall be considered by the Attor-*
18 *ney General” and inserting “shall be considered by*
19 *the Secretary of Homeland Security or any court”;*

20 (2) *by striking “pursuant to a warrant of arrest*
21 *issued under the provisions of this or any other Act:”*
22 *and inserting “or other proceeding to determine the*
23 *applicant’s inadmissibility or deportability, or to de-*
24 *termine whether the applicant’s lawful permanent*

1 *resident status should be rescinded, regardless of when*
2 *such proceeding was commenced.”; and*

3 *(3) by striking “upon the Attorney General” and*
4 *inserting “upon the Secretary of Homeland Secu-*
5 *rity”.*

6 *(c) PENDING DENATURALIZATION OR REMOVAL PRO-*
7 *CEEDINGS.—Section 204(b) of such Act (8 U.S.C. 1154(b))*
8 *is amended by adding at the end the following: “No petition*
9 *shall be approved pursuant to this section if there is any*
10 *administrative or judicial proceeding (whether civil or*
11 *criminal) pending against the petitioner that could (wheth-*
12 *er directly or indirectly) result in the petitioner’s*
13 *denaturalization or the loss of the petitioner’s lawful per-*
14 *manent resident status.”.*

15 *(d) CONDITIONAL PERMANENT RESIDENTS.—Section*
16 *216(e) and section 216A(e) of such Act (8 U.S.C. 1186a(e),*
17 *1186b(e)) are each amended by inserting before the period*
18 *at the end the following: “, if the alien has had the condi-*
19 *tional basis removed under this section”.*

20 *(e) DISTRICT COURT JURISDICTION.—Section 336(b)*
21 *of such Act (8 U.S.C. 1447(b)) is amended to read as fol-*
22 *lows:*

23 *“(b) If there is a failure to render a final administra-*
24 *tive decision under section 335 before the end of the 180-*
25 *day period after the date on which the Secretary of Home-*

1 *land Security completes all examinations and interviews*
2 *conducted under such section, as such terms are defined by*
3 *the Secretary pursuant to regulations, the applicant may*
4 *apply to the district court for the district in which the ap-*
5 *plicant resides for a hearing on the matter. Such court shall*
6 *only have jurisdiction to review the basis for delay and re-*
7 *mand the matter to the Secretary for the Secretary's deter-*
8 *mination on the application."*

9 (f) *CONFORMING AMENDMENTS.—Section 310(c) of*
10 *such Act (8 U.S.C. 1421(c)) is amended—*

11 (1) *by inserting “, no later than the date that is*
12 *120 days after the Secretary's final determination”*
13 *before “seek”; and*

14 (2) *by striking the second sentence and inserting*
15 *the following: “The burden shall be upon the peti-*
16 *tioner to show that the Secretary's denial of the appli-*
17 *cation was not supported by facially legitimate and*
18 *bona fide reasons. Except in a proceeding under sec-*
19 *tion 340, notwithstanding any other provision of law*
20 *(statutory or nonstatutory), including section 2241 of*
21 *title 28, United States Code, or any other habeas cor-*
22 *pus provision, and sections 1361 and 1651 of such*
23 *title, no court shall have jurisdiction to determine, or*
24 *to review a determination of the Secretary made at*
25 *any time regarding, for purposes of an application*

1 *for naturalization, whether an alien is a person of*
2 *good moral character, whether an alien understands*
3 *and is attached to the principles of the Constitution*
4 *of the United States, or whether an alien is well dis-*
5 *posed to the good order and happiness of the United*
6 *States.”.*

7 *(g) EFFECTIVE DATE.—The amendments made by this*
8 *section shall take effect on the date of the enactment of this*
9 *Act, shall apply to any act that occurred before, on, or after*
10 *such date, and shall apply to any application for natu-*
11 *ralization or any other case or matter under the immigra-*
12 *tion laws pending on, or filed on or after, such date.*

13 **SEC. 610. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE**
14 **ON CRIMINAL OR SECURITY GROUNDS.**

15 *(a) IN GENERAL.—Section 238(b) of the Immigration*
16 *and Nationality Act (8 U.S.C. 1228(b)) is amended—*

17 *(1) in paragraph (1)—*

18 *(A) by striking “Attorney General” and in-*
19 *serting “Secretary of Homeland Security in the*
20 *exercise of discretion”; and*

21 *(B) by striking “set forth in this subsection*
22 *or” and inserting “set forth in this subsection, in*
23 *lieu of removal proceedings under”;*

1 (2) in paragraph (3), by striking “paragraph (1)
2 until 14 calendar days” and inserting “paragraph
3 (1) or (3) until 7 calendar days”;

4 (3) by striking “Attorney General” each place it
5 appears in paragraphs (3) and (4) and inserting
6 “Secretary of Homeland Security”;

7 (4) in paragraph (5)—

8 (A) by striking “described in this section”
9 and inserting “described in paragraph (1) or
10 (2)”; and

11 (B) by striking “the Attorney General may
12 grant in the Attorney General’s discretion” and
13 inserting “the Secretary of Homeland Security
14 or the Attorney General may grant, in the dis-
15 cretion of the Secretary or Attorney General, in
16 any proceeding”;

17 (5) by redesignating paragraphs (3), (4), and (5)
18 as paragraphs (4), (5), and (6), respectively; and

19 (6) by inserting after paragraph (2) the fol-
20 lowing new paragraph:

21 “(3) The Secretary of Homeland Security in the
22 exercise of discretion may determine inadmissibility
23 under section 212(a)(2) (relating to criminal offenses)
24 and issue an order of removal pursuant to the proce-
25 dures set forth in this subsection, in lieu of removal

1 proceedings under section 240, with respect to an
2 alien who

3 “(A) has not been admitted or paroled;

4 “(B) has not been found to have a credible
5 fear of persecution pursuant to the procedures set
6 forth in section 235(b)(1)(B); and

7 “(C) is not eligible for a waiver of inadmis-
8 sibility or relief from removal.”.

9 (b) *EFFECTIVE DATE.*—The amendments made by sub-
10 section (a) shall take effect on the date of the enactment
11 of this Act but shall not apply to aliens who are in removal
12 proceedings under section 240 of the Immigration and Na-
13 tionality Act as of such date

14 **SEC. 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE**
15 **IN CHANGE IN INADMISSIBILITY FOR TER-**
16 **RORISTS UNDER REAL ID ACT.**

17 *Effective as if included in the enactment of Public Law*
18 109–13, section 103(d)(1) of the *REAL ID Act of 2005* (di-
19 vision B of such Public Law) is amended by inserting “,
20 deportation, and exclusion” after “removal”.

21 **SEC. 612. BAR TO GOOD MORAL CHARACTER.**

22 (a) *IN GENERAL.*—Section 101(f) of the Immigration
23 and Nationality Act (8 U.S.C. 1101(f)) is amended—

24 (1) by inserting after paragraph (1) the fol-
25 lowing new paragraph:

1 “(2) one who the Secretary of Homeland Secu-
2 rity or the Attorney General determines, in the
3 unreviewable discretion of the Secretary or the Attor-
4 ney General, to have been at any time an alien de-
5 scribed in section 212(a)(3) or section 237(a)(4),
6 which determination may be based upon any relevant
7 information or evidence, including classified, sen-
8 sitive, or national security information, and which
9 shall be binding upon any court regardless of the ap-
10 plicable standard of review;”;

11 (2) in paragraph (8), by inserting “, regardless
12 whether the crime was classified as an aggravated fel-
13 ony at the time of conviction” after “(as defined in
14 subsection (a)(43))”; and

15 (3) by striking the sentence following paragraph
16 (9) and inserting the following: “The fact that any
17 person is not within any of the foregoing classes shall
18 not preclude a discretionary finding for other reasons
19 that such a person is or was not of good moral char-
20 acter. The Secretary and the Attorney General shall
21 not be limited to the applicant’s conduct during the
22 period for which good moral character is required, but
23 may take into consideration as a basis for determina-
24 tion the applicant’s conduct and acts at any time.”.

1 (b) *AGGRAVATED FELONY EFFECTIVE DATE.*—Section
2 509(b) of the Immigration Act of 1990 (Public Law 101–
3 649), as amended by section 306(a)(7) of the Miscellaneous
4 and Technical Immigration and Naturalization Amend-
5 ments of 1991 (Public Law 102–232) is amended to read
6 as follows:

7 “(b) *EFFECTIVE DATE.*—The amendment made by
8 subsection (a) shall take effect on November 29, 1990, and
9 shall apply to convictions occurring before, on, or after such
10 date.”.

11 (c) *TECHNICAL CORRECTION TO THE INTELLIGENCE*
12 *REFORM ACT.*—Effective as if included in the enactment
13 of the Intelligence Reform and Terrorism Prevention Act
14 of 2004 (Public Law 108–458), section 5504(2) of such Act
15 is amended by striking “adding at the end” and inserting
16 “inserting immediately after paragraph (8)”.

17 (d) *EFFECTIVE DATES.*—The amendments made by
18 subsections (a) and (b) shall take effect on the date of the
19 enactment of this Act, shall apply to any act that occurred
20 before, on, or after such date, and shall apply to any appli-
21 cation for naturalization or any other benefit or relief or
22 any other case or matter under the immigration laws pend-
23 ing on, or filed on or after, such date.

1 **SEC. 613. STRENGTHENING DEFINITIONS OF “AGGRAVATED**
2 **FELONY” AND “CONVICTION”.**

3 (a) *IN GENERAL.*—Section 101(a) of the Immigration
4 and Nationality Act (8 U.S.C. 1101(a)) is amended—

5 (1) by amending subparagraph (A) of paragraph
6 (43) to read as follows:

7 “(A) murder, manslaughter, homicide, rape,
8 or any sexual abuse of a minor, whether or not
9 the minority of the victim is established by evi-
10 dence contained in the record of conviction or by
11 evidence extrinsic to the record of conviction;”;
12 and

13 (2) in paragraph (48)(A), by inserting after and
14 below clause (ii) the following:

15 “Any reversal, vacatur, expungement, or modification to a
16 conviction, sentence, or conviction record that was granted
17 to ameliorate the consequences of the conviction, sentence,
18 or conviction record, or was granted for rehabilitative pur-
19 poses, or for failure to advise the alien of the immigration
20 consequences of a guilty plea or a determination of guilt,
21 shall have no effect on the immigration consequences result-
22 ing from the original conviction. The alien shall have the
23 burden of demonstrating that the reversal, vacatur,
24 expungement, or modification was not granted to amelio-
25 rate the consequences of the conviction, sentence, or convic-
26 tion record, for rehabilitative purposes, or for failure to ad-

1 *visé the alien of the immigration consequences of a guilty*
2 *plea or a determination of guilt.”.*

3 (b) *EFFECTIVE DATE.*—*The amendments made by sub-*
4 *section (a) shall apply to any act that occurred before, on,*
5 *or after the date of the enactment of this Act and shall apply*
6 *to any matter under the immigration laws pending on, or*
7 *filed on or after, such date.*

8 **SEC. 614. DEPORTABILITY FOR CRIMINAL OFFENSES.**

9 (a) *IN GENERAL.*—*Section 237(a)(3)(B) of the Immi-*
10 *gration and Nationality Act (8 U.S.C. 1227(a)(3)(B)) is*
11 *amended—*

12 (1) *in clause (ii), by striking “or” at the end;*

13 (2) *in clause (iii), by inserting “or” at the end;*

14 *and*

15 (3) *by inserting after clause (iii) the following*
16 *new clause:*

17 “(iv) *of a violation of, or an attempt*
18 *or a conspiracy to violate, subsection (a) or*
19 *(b) of section 1425 of title 18, United States*
20 *Code,”.*

21 (b) *DEPORTABILITY; CRIMINAL OFFENSES.*—*Section*
22 *237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended*
23 *by section 608(b), is amended by adding at the end the fol-*
24 *lowing new subparagraph:*

1 “(G) *SOCIAL SECURITY AND IDENTIFICA-*
 2 *TION FRAUD.*—*Any alien who at any time after*
 3 *admission is convicted of a violation of (or a*
 4 *conspiracy or attempt to violate) an offense de-*
 5 *scribed in section 208 of the Social Security Act*
 6 *or section 1028 of title 18, United States Code*
 7 *is deportable.”.*

8 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 9 *section shall apply to any act that occurred before, on, or*
 10 *after the date of the enactment of this Act, and to all aliens*
 11 *who are required to establish admissibility on or after such*
 12 *date and in all removal, deportation, or exclusion pro-*
 13 *ceedings that are filed, pending, or reopened, on or after*
 14 *such date.*

15 **TITLE VII—EMPLOYMENT**
 16 **ELIGIBILITY VERIFICATION**

17 **SEC. 701. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
 18 **TEM.**

19 (a) *IN GENERAL.*—*Section 274A(b) of the Immigra-*
 20 *tion and Nationality Act (8 U.S.C. 1324a(b)) is amended*
 21 *by adding at the end the following:*

22 “(7) *EMPLOYMENT ELIGIBILITY VERIFICATION*
 23 *SYSTEM.*—

24 “(A) *IN GENERAL.*—*The Secretary of Home-*
 25 *land Security shall establish and administer a*

1 *verification system through which the Secretary*
2 *(or a designee of the Secretary, which may be a*
3 *nongovernmental entity)—*

4 *“(i) responds to inquiries made by per-*
5 *sons at any time through a toll-free tele-*
6 *phone line and other toll-free electronic*
7 *media concerning an individual’s identity*
8 *and whether the individual is authorized to*
9 *be employed; and*

10 *“(ii) maintains records of the inquiries*
11 *that were made, of verifications provided*
12 *(or not provided), and of the codes provided*
13 *to inquirers as evidence of their compliance*
14 *with their obligations under 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 IN*
24 *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 work-*
6 *ing 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 in-*
21 *dividuals are authorized to be employed and*
22 *to register all times when such inquiries are*
23 *not received;*

24 “(iii) *with appropriate administrative,*
25 *technical, and physical safeguards to pre-*

1 *vent unauthorized disclosure of personal in-*
2 *formation; 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 the*
23 *verification system), shall establish a reliable, se-*
24 *cure method, which, within the time periods*
25 *specified under subparagraphs (B) and (C), com-*

1 *compares the name and social security account num-*
2 *ber provided in an inquiry against such infor-*
3 *mation maintained by the Commissioner in*
4 *order to validate (or not validate) the informa-*
5 *tion provided regarding an individual whose*
6 *identity and employment eligibility must be con-*
7 *firmed, the correspondence of the name and*
8 *number, and whether the individual has pre-*
9 *sented a social security account number that is*
10 *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 Secu-*
15 *rity Act.*

16 *“(F) RESPONSIBILITIES OF THE SECRETARY*
17 *OF HOMELAND SECURITY.—(i) As part of the*
18 *verification system, the Secretary of Homeland*
19 *Security (in consultation with any designee of*
20 *the Secretary selected to establish and administer*
21 *the verification system), shall establish a reliable,*
22 *secure method, which, within the time periods*
23 *specified under subparagraphs (B) and (C), com-*
24 *pare the name and alien identification or au-*
25 *thorization number which are provided in an in-*

1 *quiry against such information maintained by*
2 *the Secretary in order to validate (or not vali-*
3 *date) the information provided, the correspond-*
4 *ence of the name and number, and whether the*
5 *alien is authorized to be employed in the United*
6 *States.*

7 “(ii) *When a single employer has submitted*
8 *to the verification system pursuant to paragraph*
9 *(3)(A) the identical social security account num-*
10 *ber in more than one instance, or when multiple*
11 *employers have submitted to the verification sys-*
12 *tem pursuant to such paragraph the identical so-*
13 *cial security account number, in a manner*
14 *which indicates the possible fraudulent use of*
15 *that number, the Secretary of Homeland Secu-*
16 *rity shall conduct an investigation, within the*
17 *time periods specified in subparagraphs (B) and*
18 *(C), in order to ensure that no fraudulent use of*
19 *a social security account number has taken*
20 *place. If the Secretary has selected a designee to*
21 *establish and administer the verification system,*
22 *the designee shall notify the Secretary when a*
23 *single employer has submitted to the verification*
24 *system pursuant to paragraph (3)(A) the iden-*
25 *tical social security account number in more*

1 *than one instance, or when multiple employers*
2 *have submitted to the verification system pursu-*
3 *ant to such paragraph the identical social secu-*
4 *rity account number, in a manner which indi-*
5 *icates the possible fraudulent use of that number.*
6 *The designee shall also provide the Secretary*
7 *with all pertinent information, including the*
8 *name and address of the employer or employers*
9 *who submitted the relevant social security ac-*
10 *count number, the relevant social security ac-*
11 *count number submitted by the employer or em-*
12 *ployers, and the relevant name and date of birth*
13 *of the employee submitted by the employer or*
14 *employers.*

15 “(G) *UPDATING INFORMATION.*—*The Com-*
16 *missioner of Social Security and the Secretary of*
17 *Homeland Security shall update their informa-*
18 *tion in a manner that promotes the maximum*
19 *accuracy and shall provide a process for the*
20 *prompt correction of erroneous information, in-*
21 *cluding instances in which it is brought to their*
22 *attention in the secondary verification process*
23 *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 for*
11 *any other purpose other than as provided*
12 *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 in-*
20 *dividual 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 mecha-*
24 *nism of the Federal Tort Claims Act, and in-*

1 *junctive relief to correct such error. No class ac-*
 2 *tion may be brought under this subparagraph.*

3 “(J) *PROTECTION FROM LIABILITY FOR AC-*
 4 *TIONS TAKEN ON THE BASIS OF INFORMATION.—*
 5 *No person or entity shall be civilly or criminally*
 6 *liable for any action taken in good faith reliance*
 7 *on information provided through the employment*
 8 *eligibility verification mechanism established*
 9 *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)” after*
 18 *“DEFENSE.—”, and by adding at the end the fol-*
 19 *lowing:*

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 en-*
2 *tity 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 (as*
7 *specified by the Secretary of Homeland Se-*
8 *curity) after the date of the hiring, the date*
9 *specified in subsection (b)(8)(B) for pre-*
10 *viously hired individuals, or before the re-*
11 *cruiting or referring commences, the defense*
12 *under subparagraph (A) shall not be consid-*
13 *ered to apply with respect to any employ-*
14 *ment, except as provided in subclause (II).*

15 “(II) *SPECIAL RULE FOR FAILURE OF*
16 *VERIFICATION MECHANISM.*—*If such a per-*
17 *son or entity in good faith attempts to make*
18 *an inquiry in order to qualify for the de-*
19 *fense under subparagraph (A) and the*
20 *verification mechanism has registered that*
21 *not all inquiries were responded to during*
22 *the relevant time, the person or entity can*
23 *make an inquiry until the end of the first*
24 *subsequent working day in which the*

1 *verification mechanism registers no non-*
2 *responses and qualify for such defense.*

3 “(i) *FAILURE TO OBTAIN VERIFICATION.*—

4 *If the person or entity has made the inquiry de-*
5 *scribed in clause (i)(I) but has not received an*
6 *appropriate verification of such identity and*
7 *work eligibility under such mechanism within*
8 *the time period specified under subsection*
9 *(b)(7)(B) after the time the verification inquiry*
10 *was received, the defense under subparagraph*
11 *(A) shall not be considered to apply with respect*
12 *to any employment after the end of such time pe-*
13 *riod.”;*

14 (2) *by amending subparagraph (A) of subsection*
15 *(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 identi-*
3 *fication or authorization number established*
4 *by the Department of Homeland Security*
5 *for the alien as the Secretary of Homeland*
6 *Security may specify, and recording such*
7 *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 sub-*
12 *paragraph (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 paragraph,*
2 *nothing in this paragraph shall be construed as*
3 *requiring the person or entity to solicit the pro-*
4 *duction of any other document or as requiring*
5 *the individual to produce another document.”;*

6 *(3) in subsection (b)(1)(D)—*

7 *(A) in clause (i), by striking “or such other*
8 *personal identification information relating to*
9 *the individual as the Attorney General finds, by*
10 *regulation, sufficient for purposes of this sec-*
11 *tion”;* and

12 *(B) in clause (ii), by inserting before the*
13 *period “and that contains a photograph of the*
14 *individual”;*

15 *(4) in subsection (b)(2), by adding at the end the*
16 *following: “The individual must also provide that in-*
17 *dividual’s social security account number (if the indi-*
18 *vidual claims to have been issued such a number),*
19 *and, if the individual does not attest to United States*
20 *citizenship under this paragraph, such identification*
21 *or authorization number established by the Depart-*
22 *ment of Homeland Security for the alien as the Sec-*
23 *retary may specify.”;* and

24 *(5) by amending paragraph (3) of subsection (b)*
25 *to read as follows:*

1 “(3) *RETENTION OF VERIFICATION FORM AND*
2 *VERIFICATION.—*

3 “(A) *IN GENERAL.—After completion of*
4 *such form in accordance with paragraphs (1)*
5 *and (2), the person or entity must—*

6 “(i) *retain a paper, microfiche, micro-*
7 *film, or electronic version of the form and*
8 *make it available for inspection by officers*
9 *of the Department of Homeland Security,*
10 *the Special Counsel for Immigration-Related*
11 *Unfair Employment Practices, or the*
12 *Department of Labor during a period be-*
13 *ginning on the date of the hiring, recruit-*
14 *ing, or referral of the individual or the date*
15 *of the completion of verification of a pre-*
16 *viously hired individual and ending—*

17 “(I) *in the case of the recruiting*
18 *or referral of an individual, three*
19 *years after the date of the recruiting or*
20 *referral;*

21 “(II) *in the case of the hiring of*
22 *an individual, the later of—*

23 “(aa) *three years after the*
24 *date of such hiring; or*

1 “(bb) one year after the date
2 the individual’s employment is
3 terminated; and

4 “(III) in the case of the
5 verification of a previously hired indi-
6 vidual, the later of—

7 “(aa) three years after the
8 date of the completion of
9 verification; or

10 “(bb) one year after the date
11 the individual’s employment is
12 terminated;

13 “(ii) make an inquiry, as provided in
14 paragraph (7), using the verification system
15 to seek verification of the identity and em-
16 ployment eligibility of an individual, by
17 not later than the end of 3 working days (as
18 specified by the Secretary of Homeland Se-
19 curity) after the date of the hiring or in the
20 case of previously hired individuals, the
21 date specified in subsection (b)(8)(B), or be-
22 fore the recruiting or referring commences;
23 and

24 “(iii) may not commence recruitment
25 or referral of the individual until the person

1 *or entity receives verification under sub-*
2 *paragraph (B)(i) or (B)(iii).*

3 “(B) VERIFICATION.—

4 “(i) VERIFICATION RECEIVED.—If the
5 *person or other entity receives an appro-*
6 *propriate verification of an individual’s iden-*
7 *tity and work eligibility under the*
8 *verification system within the time period*
9 *specified, the person or entity shall record*
10 *on the form an appropriate code that is*
11 *provided under the system and that indi-*
12 *cates a final verification of such identity*
13 *and work eligibility of the individual.*

14 “(ii) TENTATIVE NONVERIFICATION RE-
15 *CEIVED.—If the person or other entity re-*
16 *ceives a tentative nonverification of an in-*
17 *dividual’s identity or work eligibility under*
18 *the verification system within the time pe-*
19 *riod specified, the person or entity shall so*
20 *inform the individual for whom the*
21 *verification is sought. If the individual does*
22 *not contest the nonverification within the*
23 *time period specified, the nonverification*
24 *shall be considered final. The person or en-*
25 *tity shall then record on the form an appro-*

1 *priate code which has been provided under*
2 *the system to indicate a tentative*
3 *nonverification. If the individual does con-*
4 *test the nonverification, the individual shall*
5 *utilize the process for secondary verification*
6 *provided under paragraph (7). The*
7 *nonverification will remain tentative until*
8 *a final verification or nonverification is*
9 *provided by the verification system within*
10 *the time period specified. In no case shall*
11 *an employer terminate employment of an*
12 *individual because of a failure of the indi-*
13 *vidual to have identity and work eligibility*
14 *confirmed under this section until a*
15 *nonverification becomes final. Nothing in*
16 *this clause shall apply to a termination of*
17 *employment for any reason other than be-*
18 *cause of such a failure.*

19 *“(iii) FINAL VERIFICATION OR*
20 *NONVERIFICATION RECEIVED.—If a final*
21 *verification or nonverification is provided*
22 *by the verification system regarding an in-*
23 *dividual, the person or entity shall record*
24 *on the form an appropriate code that is*
25 *provided under the system and that indi-*

1 *cates a verification or nonverification of*
2 *identity and work eligibility of the indi-*
3 *vidual.*

4 “(iv) *EXTENSION OF TIME.—If the per-*
5 *son or other entity in good faith attempts to*
6 *make an inquiry during the time period*
7 *specified and the verification system has*
8 *registered that not all inquiries were re-*
9 *ceived during such time, the person or enti-*
10 *ty may make an inquiry in the first subse-*
11 *quent working day in which the verification*
12 *system registers that it has received all in-*
13 *quiries. If the verification system cannot re-*
14 *ceive inquiries at all times during a day,*
15 *the person or entity merely has to assert*
16 *that the entity attempted to make the in-*
17 *quiry on that day for the previous sentence*
18 *to apply to such an inquiry, and does not*
19 *have to provide any additional proof con-*
20 *cerning such inquiry.*

21 “(v) *CONSEQUENCES OF*
22 *NONVERIFICATION.—*

23 “(I) *TERMINATION OR NOTIFICA-*
24 *TION OF CONTINUED EMPLOYMENT.—If*
25 *the person or other entity has received*

1 a final nonverification regarding an
2 individual, the person or entity may
3 terminate employment of the indi-
4 vidual (or decline to recruit or refer
5 the individual). If the person or entity
6 does not terminate employment of the
7 individual or proceeds to recruit or
8 refer the individual, the person or enti-
9 ty shall notify the Secretary of Home-
10 land Security of such fact through the
11 verification system or in such other
12 manner as the Secretary may specify.

13 “(II) FAILURE TO NOTIFY.—If the
14 person or entity fails to provide notice
15 with respect to an individual as re-
16 quired under subclause (I), the failure
17 is deemed to constitute a violation of
18 subsection (a)(1)(A) with respect to
19 that individual.

20 “(vi) CONTINUED EMPLOYMENT AFTER
21 FINAL NONVERIFICATION.—If the person or
22 other entity continues to employ (or to re-
23 cruit or refer) an individual after receiving
24 final nonverification, a rebuttable presump-

1 tion is created that the person or entity has
2 violated subsection (a)(1)(A).”.

3 **SEC. 703. EXPANSION OF EMPLOYMENT ELIGIBILITY**
4 **VERIFICATION SYSTEM TO PREVIOUSLY**
5 **HIRED INDIVIDUALS AND RECRUITING AND**
6 **REFERRING.**

7 (a) *APPLICATION TO RECRUITING AND REFERRING.*—
8 Section 274A of the Immigration and Nationality Act (8
9 U.S.C. 1324a) is amended—

10 (1) in subsection (a)(1)(A), by striking “for a
11 fee”;

12 (2) in subsection (a)(1), by amending subpara-
13 graph (B) to read as follows:

14 “(B) to hire, continue to employ, or to re-
15 cruit or refer for employment in the United
16 States an individual without complying with the
17 requirements of subsection (b).”;

18 (3) in subsection (a)(2) by striking “after hiring
19 an alien for employment in accordance with para-
20 graph (1),” and inserting “after complying with
21 paragraph (1),”; and

22 (4) in subsection (a)(3), as amended by section
23 702, is further amended by striking “hiring,” and in-
24 serting “hiring, employing,” each place it appears.

1 (b) *EMPLOYMENT ELIGIBILITY VERIFICATION FOR*
2 *PREVIOUSLY HIRED INDIVIDUALS.*—Section 274A(b) of
3 *such Act (8 U.S.C. 1324a(b)), as amended by section*
4 *701(a), is amended by adding at the end the following new*
5 *paragraph:*

6 “(8) *USE OF EMPLOYMENT ELIGIBILITY*
7 *VERIFICATION SYSTEM FOR PREVIOUSLY HIRED INDI-*
8 *VIDUALS.*—

9 “(A) *ON A VOLUNTARY BASIS.*—Beginning
10 *on the date that is 2 years after the date of the*
11 *enactment of the Border Protection,*
12 *Antiterrorism, and Illegal Immigration Control*
13 *Act of 2005 and until the date specified in sub-*
14 *paragraph (B)(iii), a person or entity may make*
15 *an inquiry, as provided in paragraph (7), using*
16 *the verification system to seek verification of the*
17 *identity and employment eligibility of any indi-*
18 *vidual employed by the person or entity, as long*
19 *as it is done on a nondiscriminatory basis.*

20 “(B) *ON A MANDATORY BASIS.*—

21 “(i) *A person or entity described in*
22 *clause (ii) must make an inquiry as pro-*
23 *vided in paragraph (7), using the*
24 *verification system to seek verification of the*
25 *identity and employment eligibility of all*

1 *individuals employed by the person or enti-*
2 *ty who have not been previously subject to*
3 *an inquiry by the person or entity by the*
4 *date three years after the date of enactment*
5 *of the Border Protection, Antiterrorism, and*
6 *Illegal Immigration Control Act of 2005.*

7 *“(ii) A person or entity is described in*
8 *this clause if it is a Federal, State, or local*
9 *governmental body (including the Armed*
10 *Forces of the United States), or if it em-*
11 *plloys individuals working in a location*
12 *that is a Federal, State, or local government*
13 *building, a military base, a nuclear energy*
14 *site, a weapon site, an airport, or that con-*
15 *tains critical infrastructure (as defined in*
16 *section 1016(e) of the Critical Infrastruc-*
17 *ture Protection Act of 2001 (42 U.S.C.*
18 *5195c(e))), but only to the extent of such in-*
19 *dividuals.*

20 *“(iii) All persons and entities other*
21 *than those described in clause (ii) must*
22 *make an inquiry, as provided in paragraph*
23 *(7), using the verification system to seek*
24 *verification of the identity and employment*
25 *eligibility of all individuals employed by*

1 *the person or entity who have not been pre-*
2 *viously subject to an inquiry by the person*
3 *or entity by the date six years after the date*
4 *of enactment of the Border Protection,*
5 *Antiterrorism, and Illegal Immigration*
6 *Control Act of 2005.”.*

7 **SEC. 704. BASIC PILOT PROGRAM.**

8 *Section 401(b) of the Illegal Immigration Reform and*
9 *Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a*
10 *note) is amended by striking “at the end of the 11-year pe-*
11 *riod beginning on the first day the pilot program is in ef-*
12 *fect” and inserting “two years after the enactment of the*
13 *Border Protection, Antiterrorism, and Illegal Immigration*
14 *Control Act of 2005”.*

15 **SEC. 705. HIRING HALLS.**

16 *Section 274A(h) of the Immigration and Nationality*
17 *Act (8 U.S.C. 1324a(h)) is amended by adding at the end*
18 *the following new paragraph:*

19 “(4) *DEFINITION OF RECRUIT OR REFER.—As*
20 *used in this section, the term ‘refer’ means the act of*
21 *sending or directing a person or transmitting docu-*
22 *mentation or information to another, directly or indi-*
23 *rectly, with the intent of obtaining employment in the*
24 *United States for such person. Generally, only persons*
25 *or entities referring for remuneration (whether on a*

1 *retainer or contingency basis) are included in the def-*
2 *inition. However, union hiring halls that refer union*
3 *members or nonunion individuals who pay union*
4 *membership dues are included in the definition*
5 *whether or not they receive remuneration, as are labor*
6 *service agencies, whether public, private, for-profit, or*
7 *nonprofit, that refer, dispatch, or otherwise facilitate*
8 *the hiring of laborers for any period of time by a*
9 *third party. As used in this section the term ‘recruit’*
10 *means the act of soliciting a person, directly or indi-*
11 *rectly, and referring the person to another with the*
12 *intent of obtaining employment for that person. Gen-*
13 *erally, only persons or entities recruiting for remu-*
14 *nerations (whether on a retainer or contingency*
15 *basis) are included in the definition. However, union*
16 *hiring halls that refer union members or nonunion*
17 *individuals who pay union membership dues are in-*
18 *cluded in this definition whether or not they receive*
19 *remuneration, as are labor service agencies, whether*
20 *public, private, for-profit, or nonprofit that recruit,*
21 *dispatch, or otherwise facilitate the hiring of laborers*
22 *for any period of time by a third party.”.*

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 *graph (10),” after “in an amount”;*

5 (B) *in subparagraph (A)(i), by striking*
6 *“not less than \$250 and not more than \$2,000”*
7 *and inserting “not less than \$5,000”;*

8 (C) *in subparagraph (A)(ii), by striking*
9 *“not less than \$2,000 and not more than \$5,000”*
10 *and inserting “not less than \$10,000”;*

11 (D) *in subparagraph (A)(iii), by striking*
12 *“not less than \$3,000 and not more than*
13 *\$10,000” and inserting “not less than \$25,000”;*
14 *and*

15 (E) *by amending subparagraph (B) to read*
16 *as follows:*

17 *“(B) may require the person or entity to*
18 *take such other remedial action as is appro-*
19 *priate.”;*

20 (2) *in subsection (e)(5)—*

21 (A) *by inserting “, subject to paragraph*
22 *(10),” after “in an amount”;*

23 (B) *by striking “\$100” and inserting*
24 *“\$1,000”;*

1 (C) by striking “\$1,000” and inserting
2 “\$25,000”;

3 (D) by striking “the size of the business of
4 the employer being charged, the good faith of the
5 employer” and inserting “the good faith of the
6 employer being charged”; and

7 (E) by adding at the end the following sen-
8 tence: “Failure by a person or entity to utilize
9 the employment eligibility verification system as
10 required by law, or providing information to the
11 system that the person or entity knows or reason-
12 ably believes to be false, shall be treated as a vio-
13 lation of subsection (a)(1)(A).”;

14 (3) by adding at the end of subsection (e) the fol-
15 lowing new paragraph:

16 “(10) MITIGATION OF CIVIL MONEY PENALTIES
17 FOR SMALLER EMPLOYERS.—In the case of imposition
18 of a civil penalty under paragraph (4)(A) with re-
19 spect to a violation of subsection (a)(1)(A) or (a)(2)
20 for hiring or continuation of employment by an em-
21 ployer and in the case of imposition of a civil penalty
22 under paragraph (5) for a violation of subsection
23 (a)(1)(B) for hiring by an employer, the dollar
24 amounts otherwise specified in the respective para-
25 graph shall be reduced as follows:

1 “(A) *In the case of an employer with an av-*
2 *erage of fewer than 26 full-time equivalent em-*
3 *ployees (as defined by the Secretary of Homeland*
4 *Security), the amounts shall be reduced by 60*
5 *percent.*

6 “(B) *In the case of an employer with an av-*
7 *erage of at least 26, but fewer than 101, full-time*
8 *equivalent employees (as so defined), the*
9 *amounts shall be reduced by 40 percent.*

10 “(C) *In the case of an employer with an av-*
11 *erage of at least 101, but fewer than 251, full-*
12 *time equivalent employees (as so defined), the*
13 *amounts shall be reduced by 20 percent.*

14 *The last sentence of paragraph (4) shall apply under*
15 *this paragraph in the same manner as it applies*
16 *under such paragraph.”.*

17 (4) *by amending paragraph (1) of subsection (f)*
18 *to read as follows:*

19 “(1) *CRIMINAL PENALTY.—Any person or entity*
20 *which engages in a pattern or practice of violations*
21 *of subsection (a)(1) or (2) shall be fined not more*
22 *than \$50,000 for each unauthorized alien with respect*
23 *to which such a violation occurs, imprisoned for not*
24 *less than one year, or both, notwithstanding the pro-*

1 *visions of any other Federal law relating to fine lev-*
2 *els.”; and*

3 *(5) in subsection (f)(2), by striking “Attorney*
4 *General” each place it appears and inserting “Sec-*
5 *retary of Homeland Security”.*

6 **SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EM-**
7 **PLOYMENT ELIGIBILITY VERIFICATION.**

8 *(a) REPORT.—*

9 *(1) IN GENERAL.—Not later than than 9 months*
10 *after the date of the enactment of this Act, the Com-*
11 *missioner of Social Security, in consultation with the*
12 *Secretary of Treasury, the Secretary of Homeland Se-*
13 *curity, and the Attorney General, shall submit a re-*
14 *port to Congress that includes an evaluation of the*
15 *following requirements and changes:*

16 *(A) A requirement that social security cards*
17 *that are made of a durable plastic or similar*
18 *material and that include an encrypted, ma-*
19 *chine-readable electronic identification strip and*
20 *a digital photograph of the individual to whom*
21 *the card is issued, be issued to each individual*
22 *(whether or not a United States citizen) who—*

23 *(i) is authorized to be employed in the*
24 *United States;*

1 (ii) is seeking employment in the
2 United States; and

3 (iii) files an application for such card,
4 whether as a replacement of an existing so-
5 cial security card or as a card issued in
6 connection with the issuance of a new social
7 security account number.

8 (B) The creation of a unified database to be
9 maintained by the Department of Homeland Se-
10 curity and comprised of data from the Social Se-
11 curity Administration and the Department of
12 Homeland Security specifying the work author-
13 ization of individuals (including both United
14 States citizens and noncitizens) for the purpose
15 of conducting employment eligibility verification.

16 (C) A requirement that all employers verify
17 the employment eligibility of all new hires using
18 the social security cards described in subpara-
19 graph (A) and a phone, electronic card-reading,
20 or other mechanism to seek verification of em-
21 ployment eligibility through the use of the uni-
22 fied database described in subparagraph (B).

23 (2) *ITEMS INCLUDED IN REPORT.*—The report
24 under paragraph (1) shall include an evaluation of
25 each of the following:

1 (A) *Projected cost, including the cost to the*
2 *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 greater*
21 *ease of administration.*

22 (b) *INSPECTOR GENERAL REVIEW.—Not later than 3*
23 *months after the report is submitted under subsection (a),*
24 *the Inspector General of the Social Security Administra-*
25 *tion, in consultation with the Inspectors General of the De-*

1 *partment of Treasury, the Department of Homeland Secu-*
2 *rity, and the Department of Justice, shall send to the Con-*
3 *gress an evaluation of the such report.*

4 **SEC. 708. EFFECTIVE DATE.**

5 *This title and the amendments made by this title shall*
6 *take effect on the date of enactment of this Act, except that*
7 *the requirements of persons and entities to comply with the*
8 *employment eligibility verification process takes effect on*
9 *the date that is two years after such date.*

10 **TITLE VIII—IMMIGRATION**
11 **LITIGATION ABUSE REDUCTION**

12 **SEC. 801. BOARD OF IMMIGRATION APPEALS REMOVAL**
13 **ORDER AUTHORITY.**

14 *(a) IN GENERAL.—Section 101(a)(47) of the Immigra-*
15 *tion and Nationality Act (8 U.S.C. 1101(a)(47)) is amend-*
16 *ed to read as follows:*

17 *“(47)(A) The term ‘order of removal’ means the order*
18 *of the immigration judge, the Board of Immigration Ap-*
19 *peals, or other administrative officer to whom the Attorney*
20 *General or the Secretary of Homeland Security has dele-*
21 *gated the responsibility for determining whether an alien*
22 *is removable, concluding that the alien is removable or or-*
23 *dering removal.*

24 *“(B) The order described under subparagraph (A) shall*
25 *become final upon the earliest of—*

1 “(i) a determination by the Board of Immigra-
2 tion Appeals affirming such order;

3 “(ii) the entry by the Board of Immigration Ap-
4 peals of such order;

5 “(iii) the expiration of the period in which any
6 party is permitted to seek review of such order by the
7 Board of Immigration Appeals;

8 “(iv) the entry by an immigration judge of such
9 order, if appeal is waived by all parties; or

10 “(v) the entry by another administrative officer
11 of such order, at the conclusion of a process as author-
12 ized by law other than under section 240.”.

13 (b) *EFFECTIVE DATE.*—The amendment made by sub-
14 section (a) shall take effect on the date of the enactment
15 of this Act and shall apply to ordered entered before, on,
16 or after such date.

17 **SEC. 802. JUDICIAL REVIEW OF VISA REVOCATION.**

18 (a) *IN GENERAL.*—Section 221(i) of the Immigration
19 and Nationality Act (8 U.S.C. 1201(i)) is amended by
20 amending the last sentence to read as follows: “Notwith-
21 standing any other provision of law (statutory or nonstatu-
22 tory), including section 2241 of title 28, United States Code,
23 or any other habeas corpus provision, and sections 1361
24 and 1651 of such title, a revocation under this subsection
25 may not be reviewed by any court, and no court shall have

1 *jurisdiction to hear any claim arising from, or any chal-*
2 *lenge to, such a revocation.”.*

3 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
4 *section (a) shall take effect on the date of the enactment*
5 *of this Act and shall apply to visa revocations effected be-*
6 *fore, on, or after such date.*

7 **SEC. 803. REINSTATEMENT.**

8 (a) *IN GENERAL.*—*Section 241(a)(5) of the Immigra-*
9 *tion and Nationality Act (8 U.S.C. 1231(a)(5)) is amended*
10 *to read as follows:*

11 “(5) *REINSTATEMENT OF REMOVAL ORDERS*
12 *AGAINST ALIENS ILLEGALLY REENTERING.*—*If the*
13 *Secretary of Homeland Security finds that an alien*
14 *has entered the United States illegally after having*
15 *been removed or having departed voluntarily, under*
16 *an order of removal, deportation, or exclusion, regard-*
17 *less of the date of the original order or the date of the*
18 *illegal entry—*

19 “(A) *the order of removal, deportation, or*
20 *exclusion is reinstated from its original date and*
21 *is not subject to being reopened or reviewed;*

22 “(B) *the alien is not eligible and may not*
23 *apply for any relief under this Act, regardless of*
24 *the date that an application for such relief may*
25 *have been filed; and*

1 “(C) *the alien shall be removed under the*
2 *order of removal, deportation, or exclusion at*
3 *any time after the illegal entry.*

4 *Reinstatement under this paragraph shall not require*
5 *proceedings before an immigration judge under sec-*
6 *tion 240 or otherwise.”.*

7 **(b) JUDICIAL REVIEW.**—*Section 242 of the Immigra-*
8 *tion and Nationality Act (8 U.S.C. 1252) is amended by*
9 *adding at the end the following new subsection:*

10 **“(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER**
11 **SECTION 241(a)(5).**—

12 **“(1) IN GENERAL.**—*Notwithstanding any other*
13 *provision of law (statutory or nonstatutory), includ-*
14 *ing section 2241 of title 28, United States Code, or*
15 *any other habeas corpus provision, sections 1361 and*
16 *1651 of such title, or subsection (a)(2)(D) of this sec-*
17 *tion, no court shall have jurisdiction to review any*
18 *cause or claim arising from or relating to any rein-*
19 *statement under section 241(a)(5) (including any*
20 *challenge to the reinstated order), except as provided*
21 *in paragraph (2) or (3).*

22 **“(2) CHALLENGES IN COURT OF APPEALS FOR**
23 **DISTRICT OF COLUMBIA TO VALIDITY OF THE SYSTEM,**
24 **ITS IMPLEMENTATION, AND RELATED INDIVIDUAL DE-**
25 **TERMINATIONS.**—

1 “(A) *IN GENERAL.*—*Judicial review of de-*
2 *terminations under section 241(a)(5) and its im-*
3 *plementation is available in an action instituted*
4 *in the United States Court of Appeals for the*
5 *District of Columbia Circuit, but shall be lim-*
6 *ited, except as provided in subparagraph (B), to*
7 *the following determinations:*

8 “(i) *Whether such section, or any regu-*
9 *lation issued to implement such section, is*
10 *constitutional.*

11 “(ii) *Whether such a regulation, or a*
12 *written policy directive, written policy*
13 *guideline, or written procedure issued by or*
14 *under the authority of the Attorney General*
15 *or the Secretary of Homeland Security to*
16 *implement such section, is not consistent*
17 *with applicable provisions of this Act or is*
18 *otherwise in violation of a statute or the*
19 *Constitution.*

20 “(B) *RELATED INDIVIDUAL DETERMINA-*
21 *TIONS.*—*If a person raises an action under sub-*
22 *paragraph (A), the person may also raise in the*
23 *same action the following issues:*

24 “(i) *Whether the petitioner is an alien.*

1 “(ii) Whether the petitioner was pre-
2 viously ordered removed or deported, or ex-
3 cluded.

4 “(iii) Whether the petitioner has since
5 illegally entered the United States.

6 “(C) DEADLINES FOR BRINGING ACTIONS.—
7 Any action instituted under this paragraph
8 must be filed no later than 60 days after the date
9 the challenged section, regulation, directive,
10 guideline, or procedure described in clause (i) or
11 (ii) of subparagraph (A) is first implemented.

12 “(3) INDIVIDUAL DETERMINATIONS UNDER SEC-
13 TION 242(a).—Judicial review of determinations
14 under section 241(a)(5) is available in an action
15 under subsection (a) of this section, but shall be lim-
16 ited to determinations of—

17 “(A) whether the petitioner is an alien;

18 “(B) whether the petitioner was previously
19 ordered removed, deported, or excluded; and

20 “(C) whether the petitioner has since ille-
21 gally entered the United States.

22 “(4) SINGLE ACTION.—A person who files an ac-
23 tion under paragraph (2) may not file a separate ac-
24 tion under paragraph (3). A person who files an ac-

1 *tion under paragraph (3) may not file an action*
2 *under paragraph (2).”.*

3 *(c) EFFECTIVE DATE.—The amendments made by sub-*
4 *sections (a) and (b) shall take effect as if enacted on April*
5 *1, 1997, and shall apply to all orders reinstated on or after*
6 *that date by the Secretary of Homeland Security (or by*
7 *the Attorney General prior to March 1, 2003), regardless*
8 *of the date of the original order.*

9 **SEC. 804. WITHHOLDING OF REMOVAL.**

10 *(a) IN GENERAL.—Section 241(b)(3) of the Immigra-*
11 *tion and Nationality Act (8 U.S.C 1231(b)(3)) is amend-*
12 *ed—*

13 *(1) in subparagraph (A), by adding at the end*
14 *the following: “The burden of proof is on the alien to*
15 *establish that the alien’s life or freedom would be*
16 *threatened in that country, and that race, religion,*
17 *nationality, membership in a particular social group,*
18 *or political opinion would be at least one central rea-*
19 *son for such threat.”; and*

20 *(2) in subparagraph (C), by striking “In deter-*
21 *mining whether an alien has demonstrated that the*
22 *alien’s life or freedom would be threatened for a rea-*
23 *son described in subparagraph (A)” and inserting*
24 *“For purposes of this paragraph”.*

1 (b) *EFFECTIVE DATE.*—*The amendments made by sub-*
2 *section (a) shall take effect as if included in the enactment*
3 *of section 101(c) of the REAL ID Act of 2005 (division B*
4 *of Public Law 109–13).*

5 **SEC. 805. CERTIFICATE OF REVIEWABILITY.**

6 (a) *ALIEN’S BRIEF.*—*Section 242(b)(3)(C) of the Im-*
7 *migration and Nationality Act (8 U.S.C. 1252(b)(3)(C)) is*
8 *amended to read as follows:*

9 “(C) *ALIEN’S BRIEF.*—*The alien shall serve*
10 *and file a brief in connection with a petition for*
11 *judicial review not later than 40 days after the*
12 *date on which the administrative record is avail-*
13 *able. The court may not extend this deadline ex-*
14 *cept upon motion for good cause shown. If an*
15 *alien fails to file a brief within the time pro-*
16 *vided in this paragraph, the court shall dismiss*
17 *the appeal unless a manifest injustice would re-*
18 *sult.”.*

19 (b) *CERTIFICATE OF REVIEWABILITY.*—*Section*
20 *242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended*
21 *by adding at the end the following new subparagraphs:*

22 “(D) *CERTIFICATE.*—

23 “(i) *After the alien has filed the alien’s*
24 *brief, the petition for review shall be as-*
25 *signed to a single court of appeals judge.*

1 “(ii) Unless that court of appeals judge
2 or a circuit justice issues a certificate of
3 reviewability, the petition for review shall
4 be denied and the government shall not file
5 a brief.

6 “(iii) A certificate of reviewability
7 may issue under clause (ii) only if the alien
8 has made a substantial showing that the pe-
9 tition for review is likely to be granted.

10 “(iv) The court of appeals judge or cir-
11 cuit justice shall complete all action on such
12 certificate, including rendering judgment,
13 not later than 60 days after the date on
14 which the judge or circuit justice was as-
15 signed the petition for review, unless an ex-
16 tension is granted under clause (v).

17 “(v) The judge or circuit justice may
18 grant, on the judge’s or justice’s own motion
19 or on the motion of a party, an extension
20 of the 60-day period described in clause (iv)
21 if—

22 “(I) all parties to the proceeding
23 agree to such extension; or

24 “(II) such extension is for good
25 cause shown or in the interests of jus-

1 *tice, and the judge or circuit justice*
2 *states the grounds for the extension*
3 *with specificity.*

4 “(vi) *If no certificate of reviewability*
5 *is issued before the end of the period de-*
6 *scribed in clause (iv), including any exten-*
7 *sion under clause (v), the petition for re-*
8 *view shall be deemed denied, any stay or in-*
9 *junction on petitioner’s removal shall be*
10 *dissolved without further action by the court*
11 *or the government, and the alien may be re-*
12 *moved.*

13 “(vii) *If a certificate of reviewability is*
14 *issued under clause (ii), the Government*
15 *shall be afforded an opportunity to file a*
16 *brief in response to the alien’s brief. The*
17 *alien may serve and file a reply brief not*
18 *later than 14 days after service of the Gov-*
19 *ernment’s brief, and the court may not ex-*
20 *tend this deadline except upon motion for*
21 *good cause shown.*

22 “(E) *NO FURTHER REVIEW OF THE COURT*
23 *OF APPEALS JUDGE’S DECISION NOT TO ISSUE A*
24 *CERTIFICATE OF REVIEWABILITY.—The single*
25 *court of appeals judge’s decision not to issue a*

1 *certificate of reviewability, or the denial of a pe-*
2 *tion under subparagraph (D)(vi), shall be the*
3 *final decision for the court of appeals and shall*
4 *not be reconsidered, reviewed, or reversed by the*
5 *court of appeals through any mechanism or pro-*
6 *cedure.”.*

7 *(c) EFFECTIVE DATE.—The amendments made by this*
8 *section shall apply to petitions filed on or after the date*
9 *that is 60 days after the date of the enactment of this Act.*

10 **SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA**
11 **ISSUANCE.**

12 *(a) IN GENERAL.—Section 221(a) of the Immigration*
13 *and Nationality Act (8 U.S.C. 1201(a)) is amended by add-*
14 *ing at the end the following new paragraph:*

15 *“(3) An alien may not be issued a nonimmigrant visa*
16 *unless the alien has waived any right—*

17 *“(A) to review or appeal under this Act of an*
18 *immigration officer’s determination as to the inad-*
19 *missibility of the alien at the port of entry into the*
20 *United States; or*

21 *“(B) to contest, other than on the basis of an ap-*
22 *plication for asylum, any action for removal of the*
23 *alien.”.*

1 **(b) EFFECTIVE DATE.**—*The amendment made by sub-*
2 *section (a) shall apply to visas issued on or after the date*
3 *that is 90 days after the date of the enactment of this Act.*

Union Calendar No. 192

109TH CONGRESS
1ST Session

H. R. 4437

[Report No. 109-345, Part I]

A BILL

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

DECEMBER 14, 2005

The Committees on Education and the Workforce and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed