

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

SECTION BY SECTION ANALYSIS:

**THE SECURE AMERICA THROUGH VERIFICATION AND ENFORCEMENT
ACT OF 2007 (“SAVE” ACT OF 2007)
H.R. 4088/ S. 2368**

TITLE I- SECURING AMERICA’S INTERNATIONAL BORDERS

SUBTITLE A- MANPOWER, TECHNOLOGY AND INFRASTRUCTURE IMPROVEMENTS

Sec. 101. Manpower.

Authorizes 8000 additional agents between 2008 and 2012, including 2,500 agents during the first year of enactment. Requires Border Patrol to allocate at least 80% of the new agents to the southern border and 20% to the northern border. At least 350 new Immigration and Customs Enforcement (ICE) hires must be assigned to investigate alien smuggling. Authorizes a 50% funding increase over the FY07 budget for the inter-agency Tunnel Task Force. Directs the Department of Homeland Security (DHS) and Department of Defense (DOD) to establish a program for the recruitment of former members of the Armed Services and National Guard to work for U.S. Customs and Border Protection (CBP). Requires a report to Congress about the use of incentives to encourage former military personnel to work for CBP. Changes current law to allow \$20,000 per year (\$80,000 throughout employment) in student loan repayment incentives and requires DHS to utilize relocation and retention bonuses to the fullest extent possible under current law.

Sec. 102. Technology.

Directs the DOD and DHS to develop a plan for sharing equipment including unmanned aerial vehicles, tethered aerostat radars and other surveillance equipment. Requires a report to Congress regarding current and future equipment-sharing programs. The Secretary shall develop and implement a plan to improve the use of satellite communications to ensure 2-way communications capabilities among Border Patrol agents and law enforcement agencies. Authorizes the purchase of new equipment and technology including drones, infrared cameras, sensors, mobile lighting units, radar, and infrared heat. Authorizes appropriations for 2008 through 2012.

Sec. 103. Infrastructure.

The Secretary shall construct or purchase office facilities, sport utility vehicles, all weather roads, fencing and vehicle barriers. Authorizes appropriations for 2008 through 2012.

Sec. 104. Aerial Vehicles and Surveillance Systems.

The Secretary shall conduct a pilot program to test unmanned aerial vehicles for border surveillance along the international border between Canada and the United States. The Secretary shall acquire and maintain unmanned aerial vehicles and related equipment. The Secretary shall develop and implement a program to fully integrate and utilize aerial surveillance technologies. The Secretary shall establish a program to procure other technologies necessary to achieve operational control and establish a 'virtual fence.' The Secretary shall develop standards to evaluate the performance of contractors providing services under the Integrated and Automated Surveillance Program and the Comptroller General shall review each new contract of more than \$5 million dollars. Requires an assessment and consultation with DOD and the FAA. Authorizes appropriations.

SUBTITLE B- STRATEGIES AND PROGRESS REPORTS FOR SECURING AMERICA'S BORDERS

Sec. 111. National Strategy to Secure the Borders.

The Secretary shall develop a national strategy to secure the borders that describes actions to be carried out to achieve operational control by December 2010. The strategy shall include an assessment of terrorist threats; a risk assessment for all ports of entry and the border; an assessment of cost-effective means of securing the border; staffing assessment; description of the roles of various federal and state agencies; an assessment of existing technologies used for border security; a list of research and development objectives related to the border; a description of ways to ensure commerce is not unreasonably impeded by the proposed strategy; an assessment of additional detention facilities and beds needed; performance metrics; and a schedule for implementation. The Secretary shall consult with state and local government authorities, private sector entities, non-governmental organizations and affected communities in developing the strategy. The National Strategy to Secure the Border must be submitted one year after enactment of this bill. The Secretary shall update Congress no later than 30 days after a change to the strategy has been made.

Sec 112. Accountable Financing of a Secure Border Initiative.

The Comptroller General shall report any improper conduct by organizations that have been contracted for work related to border security to the Secretary of Homeland Security, who shall determine whether to temporarily suspend the contractor from further participation in the Secure Border Initiative. The Comptroller General and Government Accountability Office will report to the Secretary of Homeland Security a report containing the findings of the review including cost-overruns; lack of rigorous contract management; insufficient oversight; the need for competition in the contract process; and high risk business practices of the contracting process and organizations. The Secretary will report to Congress the findings of the Comptroller General and the steps the Secretary has taken to address any problems identified in that report. The Secretary will report contracts with foreign companies related to the Secure Border Initiative to Congress. Proposals to purchase ports within the United States by foreign entities must be submitted in a

report to Congress and be open to public scrutiny, including any security concerns and how those concerns would be addressed.

SUBTITLE C- RAPID RESPONSE MEASURES

Sec. 121. Deployment of Border Patrol Agents.

If the Governor of a Border State declares an international border security emergency, the Secretary of Homeland Security may provide up to 1000 additional Border Patrol agents. The Secretary shall grant the request and supply the agents to the extent it will not significantly impair the Department's ability to provide border security for another State as determined by the Secretary in consultation with the President. The Secretary shall ensure that agents are not precluded from performing patrol duties not from apprehending violators of law, except in unusual circumstances.

Sec. 122. Border Patrol Major Assets.

DHS shall have exclusive administrative and operational control over all of the assets used in carrying out its mission, including aircraft and watercraft, vehicles, detention space, and associated personnel. The Secretary shall increase the number of helicopters and power boats under DHS control. The Secretary shall establish a fleet of motor vehicles and ensure there are sufficient vehicles to support CBP's mission. Requires a minimum of one police-type vehicle for every four Border Patrol agents. Mandates that all newly-acquired vehicles be outfitted with safety glass, global positioning (GPS) equipment and other protections.

Sec. 123. Electronic Equipment.

The Secretary shall ensure that each police-type motor vehicle in the fleet is outfitted with portable computers with access to all necessary law enforcement databases. DHS shall augment its radio communications system to ensure that all law enforcement personnel on duty have clear and encrypted 2-way radio communications equipment outfitted with GPS devices for emergency use, and handheld GPS devices for navigational purposes. The Secretary shall ensure that sufficient quantities of night-vision equipment is acquired and maintained to equip each agent working during the nighttime.

Sec. 124. Personal Equipment.

Directs the Secretary to ensure that every agent on duty is equipped with reliable and effective weapons; high-quality and risk and climate-appropriate uniforms; and body armor. Requires the provision and replacement of such equipment at no cost to the Border Patrol agents.

Sec. 125. Authorization of Appropriations.

Authorizes appropriations from 2008 through 2012.

SUBTITLE D- BORDER INFRASTRUCTURE AND TECHNOLOGY MODERNIZATION

Sec. 131. Definitions.

Defines the terms "Commissioner," "northern border," and "southern border".

Sec. 132. Expansion of Commerce Security Programs.

Within 180 days of enactment, the Commissioner, in consultation with the Secretary, shall develop a plan to expand the programs of the Customs-Trade Partnership Against Terrorism, which includes, among other things, additional personnel along the northern and southern border, and the following programs: the Business Anti-Smuggling Coalition; the Carrier Initiative Program; the Americas Counter Smuggling Initiative; the Container Security Initiative under Sec. 205 of the SAFE Port Act and the Free and Secure Trade Initiative. Within 180 days, the Commission shall establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

SUBTITLE E- OTHER BORDER SECURITY INITIATIVES

Sec. 141. Alien Smuggling and Terrorism Prevention.

DHS shall check alien smugglers and smuggled individuals against all terrorism watch lists. Changes the title of Immigration and Nationality Act Section 274(a) to “Smuggling of Unlawful and Terrorist Aliens.” Rewrites current law in the Immigration and Nationality Act regarding alien smuggling crimes to include anyone who knowing or in reckless disregard of the fact that the alien lacked lawful authority to enter: i) brings that individual to the U.S. in any manner whatsoever; ii) recruits, encourages, or induces that individual to come to, enter, or reside in the U.S.; iii) transports or moves that individual in the U.S. in furtherance of their unlawful presence; or iv) harbors, conceals or shields from detention the individual in any place in the U.S. including any building or any means of transportation or attempts to do so. Anyone who knowing that an individual is an alien brings that individual to the U.S. in any manner whatsoever at a place other than a designated port of entry regardless of whether such alien has received prior authorization to enter the U.S. and regardless of any future action is guilty of alien smuggling.

A violator under this paragraph shall be fined and imprisoned for not more than 5 years or both. If the offense involved a spouse, child, sibling, parent, grandparent, niece, or nephew, the violator shall be fined or imprisoned not more than one year or both. If the offense was committed for the purpose of profit, commercial advantage, or private financial gain, the violator shall be fined or imprisoned not more than 10 years or both. If the offense resulted in serious bodily injury or places in jeopardy the life of a person, the violator shall be fined or imprisoned not more than 20 years or both. If the offense involved an individual engaged in terrorist activity, the individual shall be fined or imprisoned up to 30 years or both. If the offense involves kidnapping, aggravated sexual abuse or an attempt to kill, the individual shall be fined, imprisoned for any term of years or life or both. There is extraterritorial jurisdiction over the offenses. (Amends INA Sec. 274(a).)

In a prosecution for a violation occurring on the high seas, no defense based on necessity can be raised unless the Defendant reported to the Coast Guard the circumstances of the necessity and information about the vessel engaged in the rescue and did not bring or attempt to bring or intentionally facilitate the entry of any alien without lawful authority unless exigent circumstances existed placing that alien in danger in which case, the reporting requirement is

satisfied if the Coast Guard is notified as soon as possible after delivering the alien to emergency personnel. Narrows the existing religious worker exception under current law by changing the provision from an 'exception' to a 'defense' and excluding religious organizations from the 'defense' who encourage or induce religious workers to reside in the United States.

Amends the penalties for alien smuggling under 18 U.S.C. 2237. A violation shall result in a fine and up to 5 years imprisonment. If the offense is committed in violation of laws related to smuggling, peonage, slavery, trafficking, shipping, interference with vessels, stolen property, transportation for illegal sexual activity, or maritime drug enforcement, the offender shall be fined and/or imprisoned up to 15 years. If the offense results in death or involves kidnapping, aggravated sexual abuse, or an attempt to commit such abuse or kill, the offender shall be fined or imprisoned for any term of years or life or both. No defense based on necessity can be raised unless the defendant reported to the Coast Guard the circumstances of the necessity and information about the vessel engaged in the rescue and did not bring or attempt to bring or intentionally facilitate the entry of any alien without lawful authority unless exigent circumstances existed placing that alien in danger in which case the reporting requirement is satisfied if the Coast Guard is notified as soon as possible after delivering the alien to emergency personnel. The Sentencing Commission shall consider enhancements for offenses that involve a pattern of violations; on-going commercial organization or enterprise; involve aliens transported in groups of 10 or more; involve transportation or abandonment that endangers lives; or facilitates terrorist activity.

Section 142. Border Security on Certain Federal Land.

The Secretary of DHS, the Secretary of the Interior and the Secretary of Agriculture shall jointly develop a border protection strategy that supports the border security needs of the United States in a manner that best protects units of the National Park System, National Forest System, land under the jurisdiction of the U.S. Fish and Wildlife Service and Bureau of Land Management and other relevant land under the jurisdiction of the Secretary of the Interior or Agriculture. Authorizes appropriations for employment of uniformed law enforcement officers and special agents including specific numbers of agents for the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, and the Bureau of Indian Affairs. Authorizes funding for an additional United States Attorney.

SUBTITLE F- BORDER LAW ENFORCEMENT

Sec. 151. Short Title.

This Act may be cited as the Border Law Enforcement Act.

Sec. 152. Findings.

Congress finds the following: 1) it is an obligation to adequately secure the borders; 2) currently there are an estimated 11 million undocumented immigrants in the U.S.; 3) the border is a major corridor for the shipment of drugs; 4) border communities incur significant costs due to lack of security; 5) New Mexico and Arizona declared states of emergency in order to provide local law enforcement immediate assistance in addressing criminal activity along the border; 6) local law enforcement are not provided with assistance in covering their expenses; 7) these counties lack

the necessary resources to address this activity; and 8) federal assistance is required to help local law enforcement agencies working along the border.

Sec. 153. Border Relief Grant Program.

This section authorizes the Secretary to award a grant to an eligible law enforcement agency located in a county that is not more than 25 miles from the U.S.-Mexico border. Funds may be used to conduct law enforcement operations to enforce criminal laws and protect security; transfer detained aliens to federal officials; and enforce Federal and State laws related to drug trafficking or other criminal laws. Funds may be used for payment for costs of hiring, equipping, training, and otherwise controlling the operations and deployment of law enforcement officials; paying overtime to such officials; and detaining, housing, and transporting aliens who are not lawfully present in the United States, and who are taken into custody by the grant recipient, until the aliens are transferred to appropriate Federal law enforcement officials. Grant funds may be used for the construction, maintenance, and operation of detention facilities.

Sec. 154. Authorization of Appropriations.

Authorizes \$200 million for fiscal year 2008 and each succeeding fiscal year to carry out this Act.

Sec. 155. Regulations.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall issue regulations to carry out this Act.

TITLE II- ENDING UNLAWFUL EMPLOYMENT

SUBTITLE A- EMPLOYEE VERIFICATION

Sec. 201. Mandatory Employment Authorization Verification.

Requires all American employers to verify employees' eligibility to work in the United States through the E-Verify program established as the Basic Pilot in 1996. Federal agencies, federal contractors, and employers with more than 250 employees in the U.S must verify the eligibility of new employees within 1 year of enactment. Employers with more than 100 employees must verify the eligibility of new employees within 2 years of enactment. Employers with more than 30 employees must verify the eligibility of new employees within 3 years of enactment. All employers must verify new hires and current employees within 4 years of enactment. Establishes a toll-free number as an option for employers to verify information in order to comply with the program.

An employer shall not be liable for hiring an unauthorized alien if three conditions are met: 1) the hiring occurred due to an error in the E-Verify program; 2) the employer has no knowledge of the error at the time of hiring; and 3) the employer terminates the alien's employment upon learning of the error. The failure of an employer to comply with the requirements shall be treated as a violation of INA Sec. 274(a)(1)(B) and shall create a rebuttable presumption that the

employer has violated the law. No State may prohibit a person from using E-verify and nothing in this section shall be construed as limiting the voluntary participation of any employer.

Sec. 202. Mandatory Notification of Social Security Number Mismatches and Multiple Uses.

The Commissioner of the Social Security Administration (SSA) shall notify each U.S. employer with one or more employees whose social security account number does not match the employees name or date of birth in the Commissioner's records. The notice shall instruct employers that they have 10 days to correct the mismatch. Employers may not terminate the employee during the 10 day period. Prior to crediting earnings from more than one employer, SSA shall notify the individual that earnings from two or more employers are being credited under the individual's social security number. Not later than 180 days after enactment, SSA shall promulgate regulations to require that information regarding all unresolved mismatch notifications and all multiple use notifications be shared with DHS on a timely basis.

Sec. 203. Establishment of Electronic Birth and Death Registration Systems. The Secretary of DHS shall work with the States to establish a common data set and common data exchange for electronic birth and death registration; coordinate requirements for the systems to align with a national model; ensure fraud prevention is built into the system; ensure the system for issuing birth records can confirm their validity; establish uniform requirements for State birth registries; establish a process with DOD that will result in the sharing of information about military personnel within 1 year; establish a process with the Department of State (DOS) that will improve information-sharing with SSA regarding births and deaths of citizens abroad within 1 year; require States to record and retain electronic records of identification information collected by requestors who are not the registrants within 3 years; and submit a report to Congress about whether laws are needed regarding fraud and misuse of vital records within 6 months.

Sec. 204. Penalty for Failure to File Correct Information Returns. The Secretary shall assess the maximum allowable penalties on 100 percent of the employers designated in any tax year by the Social Security Administration as the most egregious noncompliant employers. Establishes the following penalties for employment of unauthorized persons: \$2,500 - \$5,000 for the first offense; \$7,500 - \$10,000 fine for the second offense and 25,000 - \$40,000 for the third offense.

SUBTITLE B- NONDEDUCTIBILITY OF WAGES PAID TO UNAUTHORIZED ALIENS

Sec. 211. Clarification that Wages Paid to Unauthorized Aliens May Not Be Deducted from Gross Income.

No deduction shall be allowed for any wage paid to or on behalf of an unauthorized alien. If a person or other entity is participating in the basic pilot program and obtains confirmation of identity and employment eligibility in compliance with the terms of the program with respect to hiring, the provision preventing deductions shall not apply to wages paid to that employee. Deductions in violation of this provision may be collected through an assessment or a court proceeding without assessment at any time within 6 years after the return was filed. SSA and DHS shall make available to the Internal Revenue Service (IRS) any information related to the

investigation and enforcement of these sections including any no-match letter and information in the earnings suspense file.

TITLE III- ENHANCING AND FULLY UTILIZING CURRENT METHODS OF INTERIOR ENFORCEMENT

Section 301. Increase Investigate Efforts.

Authorizes appropriations for 1,150 additional Immigrations and Customs Enforcement Agents (ICE). Provides for 140 additional Criminal Alien Program (CAP) officers to identify and remove criminal aliens encountered in Federal, State and local detention facilities. Directs the Secretary of Homeland Security to take necessary steps to train a minimum of 250 State and local law enforcement officers in federal immigration law enforcement procedure.

Section 302. Increased Oversight of Agents.

Authorizes DHS to hire five additional Special Agents in the Office of Professional Responsibility.

Section 303. Rewards Programs.

Establishes a program in the Department of Homeland Security that rewards assistance in eliminating the commercial production or sale of fraudulent documents to be used to enter or remain in the United States unlawfully, or for assistance in the investigation, prosecution or disruption of a commercial alien smuggling operation. Gives the Secretary of Homeland Security sole discretion, in consultation with the Department of Justice and Department of State, to pay a reward to any individual who furnishes information or testimony leading to any of the following: 1) the arrest or conviction of an individual who conspires or attempts to produce or sell fraudulent documents; 2) the arrest or conviction of an individual who commits such acts; 3) the arrest or conviction of an individual who aids and abets such acts; 4) the prevention or frustration of efforts to produce fraudulent documents, in whole or to a significant extent; or 5) the identification or location of a key leader in an operation to produce or sell fraudulent documents for use in entering or remaining in the U.S. unlawfully. A federal officer or employee shall not be eligible for a reward for furnishing information while performing his or her official duties. The Secretary of Homeland Security, the Secretary of State, and Attorney General may take any necessary lawful action to protect an individual, and the family of an individual, who furnishes information or testimony. Limits awards to \$100,000. Any award above \$50,000 must be approved by the Secretary. All awards must be certified for payment by the Secretary. DHS shall implement an advertising strategy to publicize rewards. (Amends Immigration and Nationality Act Section 274)

Section 304. Increased Detention Facilities for Aliens Apprehended for Illegal Entry.

DHS shall make arrangements for 8,000 additional beds for aliens detained by immigration officials. Efforts shall be made to contract private facilities and whenever possible to utilize State and local facilities and Defense Base Closure and Realignment Commission facilities or active duty facilities. DHS shall construct facilities to supply the remainder of the 8000 beds. Requires at least 500 beds in a family detention facility “similar to the T. Don Hutton Family Residential Facility.” The Secretary of Homeland Security shall be responsible for providing humane

conditions, health care, psychological services and education for minors. Authorizes appropriations.

Section 305. Findings and Purpose.

Adopts the recommendations of the 2007 Judicial Conference of the United States concerning the establishment of additional judgeships in districts courts that have a high criminal immigration caseload.

Section 306. Additional District Court Judgeships.

Provides for 13 additional Federal district court judges, allocated as follows: 4 for the District of Arizona; 5 for the Southern District of California; 1 for the District of New Mexico; 2 for the Southern District of Texas; and 1 for the Western District of Texas. Provides for 1 additional district judge for the district of Arizona and 1 for the district of New Mexico. After 10 years, vacancies in these positions shall not be filled.

Section 307. Media Campaign.

The Secretaries of Labor and Homeland Security shall develop strategies to inform the public of changes in immigration policies resulting from this legislation. The Secretary of Labor shall employ a combination of print, television, internet, and radio media to notify employers of changes to the employment verification process and guest worker program. The Secretary of Homeland Security shall develop a media campaign explaining the scope of this legislation, the associated timelines, and the penalties for noncompliance. Announcements should be targeted toward undocumented aliens and should emphasize border security and interior enforcement; the benefits associated with voluntary removal; punishments associated with apprehension or forced removal of undocumented aliens; and the legal methods of reentering the U.S. The Secretary of Homeland Security shall cooperate with the Government of Mexico in implementing the character of multilingual media campaign described above.