

H.R. 4830— Border Tunnel Prevention Act of 2006

Sec. 1: Short Title

This act may be cited as the “Border Tunnel Prevention Act of 2006.”

Sec. 2: Construction of Border Tunnel or Passage

Section 2 would amend Chapter 27 of Title 18 of the USC to provide that any person who knowingly constructs or finances the construction of a cross-border tunnel, other than a lawfully authorized tunnel, will be imprisoned for up to 20 years. In addition, any person who recklessly permits the construction or use of such a tunnel on land owned or controlled by that person will be imprisoned for up to 10 years. Any person who uses such a tunnel to unlawfully smuggle an alien, goods, controlled substances, weapons of mass destruction, or a member of a terrorist organization (as defined in INA §212(a)(3)(B)(vi)) will be subject to a maximum term of imprisonment that is twice the maximum term of imprisonment that would have otherwise been applicable had the unlawful activity not made use of such a tunnel.

These provisions also would amend 18 USC, § 982(a)(6) to add the construction of a cross-border tunnel to the list of crimes for which criminal forfeiture will be imposed if the violation was committed in connection with passport or visa issuance or use.

Sec. 3: Directive to the United States Sentencing Commission

Section 3 would direct the U.S. Sentencing Commission to promulgate or amend sentencing guidelines to provide for increased penalties for persons convicted of the offenses described in this title.

Provisions similar to those in this title (the language has been tweaked a bit) previously passed the Senate as sections 142 and 143 of S. 2611.

H.R. 6094—Community Protection Act of 2006

Sec. 1: Short Title

This act may be cited as the “Community Protection Act of 2006.”

Title 1—Dangerous Alien Detention Act of 2006

Sec. 101: Detention of Dangerous Aliens

Section 101 would amend INA § 241 (“Detention and Removal of Aliens Ordered Removed”) to create a new “dangerous aliens” detention ground permitting indefinite detention for aliens who cannot be removed. Among other things, section 101 would:

- Suspend the count-down on the statutory removal period of 90 days if the DHS Secretary alleges that the alien is not cooperating with a removal order, including failing to apply for travel documents or otherwise conspiring to prevent his or her removal;
- Delay the removal period if the DHS Secretary transfers custody of the alien to another federal, state or local agency;
- Allow the DHS Secretary to detain broad classes of aliens beyond the removal period and until they are removed in certain situations set forth in this section;
- Grant the DHS Secretary unlimited discretion to certify that an alien should be detained in unlimited 6-month renewal periods;
- Allow the DHS Secretary to detain indefinitely any alien who has effected an entry but has neither been lawfully admitted nor physically present in the U.S. for the 2-year period prior to the commencement of removal proceedings; and
- Limit judicial review of these provisions to habeas proceedings in the U.S. District Court for the District of D.C.

Section 101 is similar to provisions that passed the House as section 602 of H.R. 4437. Section 202 of S. 2611 also contains elements of section 101, but is substantively different in some respects.

Sec. 102: Detention of Aliens During Removal Proceedings

Section 102 would amend INA § 235 and 236 to permit the DHS to detain an alien during removal proceedings until he or she is subject to an administratively final order of removal. Judicial review of actions or decisions made pursuant to this section would be available only in a habeas corpus proceeding instituted in the U.S. District Court for the District of D.C (regardless of where the alien is detained) and only if the alien has exhausted all administrative remedies.

Sec. 103: Severability

Section 103 provides that if any provision of this title, or any amendment made by this title, or the application of any such provision to any person or circumstance is held to be invalid for any reason, the remainder of the title will not be affected by such a holding.

Sec. 104: Effective Dates

The amendments made by section 101 would take effect on the date of enactment and would apply to: (1) all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of enactment, and (2) acts and conditions occurring or existing before, on or after enactment.

The amendments made by section 102 would take effect on the date of enactment and INA §§ 235 and 236, as amended above, would apply to any alien in detention under the provisions of such sections on or after the date of enactment.

Title II—Criminal Alien Removal Act

Sec. 201: Expedited Removal for Aliens Inadmissible on Criminal Grounds

Section 201 would amend INA § 238(b) by authorizing the Secretary of Homeland Security to use expedited removal proceedings to determine inadmissibility under INA § 212(a)(2) and issue an order of removal with respect to an alien who has not been admitted or paroled, has not been found to have a credible fear of persecution pursuant to the procedures set forth in § 235, and is not eligible for a waiver of inadmissibility or relief from removal. In addition, it would cut from 14 to 7 days the prohibition on executing such a removal order. Section 201 would become effective upon enactment but would not apply to aliens who are in section 240 removal proceedings on that date.

Section 201 previously passed the House as section 610 of H.R. 4437.

Title III—Alien Gang Removal Act of 2006

Sec. 301: Rendering Inadmissible and Deportable Aliens Participating in Criminal Street Gangs

Section 301 would render inadmissible and deportable aliens alleged to be members of a “criminal street gang” (defined as a “formal or informal group or association of 3 or more individuals, who commit 2 or more gang crimes (one of which is a crime of violence, as defined in section 16 of 18 USC) in 2 or more separate criminal episodes in relation to the group or association”). A “gang crime” is defined as “conduct constituting any federal or state crime, punishable by imprisonment for one year or more,” in any of several broad categories set forth in section 301.

Section 301(c) adds a new INA § 219A that would adopt procedures similar to those used by the State Department to designate foreign terrorist organizations (under INA § 219), to enable the Attorney General to designate criminal street gangs.

Sec. 302: Mandatory Detention of Suspected Criminal Street Gang Members

Section 302 would amend INA § 236(c)(1)(D) to require the mandatory detention of alleged gang members, and an annual report to Congress on the number of aliens detained under this section.

Sec. 303: Ineligibility from Protection from Removal and Asylum

Section 303 would render alleged gang members ineligible for asylum, withholding of removal, and temporary protected status.

This title previously passed the House as section 608 of H.R. 4437.

H.R. 6095—Immigration Law Enforcement Act of 2006

Sec. 1: Short Title

This act may be cited as the “Immigration Law Enforcement Act of 2006.”

Title I—State and Local Law Enforcement Cooperation in the Enforcement of Immigration Law Act

Sec. 101: Federal Affirmation of Assistance in Immigration Law Enforcement by States and Political Subdivisions of States

Section 101 would “reaffirm the existing inherent authority” of states and localities to investigate, identify, apprehend, arrest, detain, or transfer to federal custody aliens in the U.S. for the purposes of assisting in the enforcement of immigration laws in the course of carrying out routine duties. Section 101 also would provide that nothing in the section may be construed to require law enforcement personnel of a state or locality to report the identity of a victim of, or a witness to, a criminal offense to the Secretary of Homeland Security for immigration enforcement purposes or to arrest such victim or witness for a violation of U.S. immigration laws.

This title previously passed the House as section 220 H.R. 4437.

Title II—Alien Smuggler Prosecution Act

Sec. 201: Effective Prosecution of Alien Smugglers

Section 201 sets forth various congressional findings regarding alien smuggling, and includes a Sense of Congress that the Attorney General should adopt, within three months of enactment, uniform guidelines for the prosecution of smuggling cases. Section 201 also authorizes (“subject to the availability of appropriations”), in each of fiscal years 2008 through 2013, an increase over the previous fiscal year of at least 20 attorneys in the offices of the United States attorneys to prosecute cases under INA § 274 (“Bringing in and Harboring Certain Aliens”).

Title III—Ending Catch and Release Act of 2006

Sec. 301: Appropriate Remedies for Immigration Litigation

Section 301(a) provides that if a court determines that prospective relief should be ordered against the government in any civil action pertaining to the enforcement or administration of immigration law, the court must:

- Limit the relief to the minimum necessary to correct the violation of law;
- Adopt the least intrusive means to correct the violation of law;
- Minimize the adverse impact on national security, border security, immigration administration and enforcement, and public safety; and
- Provide for the expiration of the relief on the earliest specific date necessary for the government to remedy the violation.

Section 301 further provides that the requirements described above must be discussed and explained in writing in sufficient detail to allow review by another court. In addition, any preliminary injunction in an immigration case will automatically expire in 90 days unless the court grants permanent relief in the case. The rules set forth above will apply to any order denying the government's motion to vacate, modify, dissolve, or otherwise terminate an order granting prospective relief.

Section 301(b)(1) requires courts to promptly rule on any government motion to vacate, modify, dissolve, or otherwise terminate an order granting prospective relief in any civil action pertaining to the enforcement or administration of immigration law.

Section 301(b)(2) provides that such a motion by the government will automatically stay the order granting prospective relief 15 days after the government files such a motion. The automatic stay continues until the court acts on the motion. In addition, the court may postpone the automatic stay for up to 15 days for good cause. Other than such a postponement, any order staying, suspending, delaying or otherwise barring the effective date of the automatic stay is immediately appealable.

Section 301(c) precludes courts from entering, approving or continuing any consent decree in civil immigration actions (the terms of which are subject to court enforcement) that does not comply with the requirements of subsection (a) above.

Section 301(d) requires courts to expedite the disposition of any action of motion considered under this section.

Section 301(e) defines "consent decree," "good cause," "government," "permanent relief," "private settlement agreement," and "prospective relief" for purposes of section 101.

Sec. 302: Effective Date

Section 102 provides that this title will apply to all orders granting prospective relief regardless of when the relief was ordered. A motion to vacate, modify, dissolve, or otherwise terminate an order granting relief that is pending on the date of enactment will be treated as if filed on the date of enactment. An automatic stay that is the subject of such a motion will take effect without further court action 10 days after the date of enactment if the motion was pending for 45 days as of the date of enactment and is still pending 10 days thereafter. Such an automatic stay will remain in effect until the court acts, and any court order staying, suspending, delaying, or otherwise barring the effective date of the automatic stay will be immediately appealable.

This title, also known as the Fairness in Immigration Litigation Act, passed the Senate as sections 422 and 423 of S. 2611. It was not included in H.R. 4437.

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