

109TH CONGRESS
1ST SESSION

H. R. 4437

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

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 Immigra-
6 tion Control Act of 2005”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. State defined.

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
 reentering aliens.
 Sec. 206. Prohibiting carrying or using a firearm during and in relation to an
 alien smuggling crime.
 Sec. 207. Clarifying changes.
 Sec. 208. Voluntary departure reform.
 Sec. 209. Deterring aliens ordered removed from remaining in the United
 States unlawfully and from unlawfully returning to the United
 States after departing voluntarily.

TITLE III—BORDER SECURITY COOPERATION AND
 ENFORCEMENT

- Sec. 301. Joint strategic plan for United States border surveillance and sup-
 port.
 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.

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 felonies.
- 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 removal 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
3 “State” has the meaning given it in section 2(14) of the
4 Homeland Security Act of 2002 (6 U.S.C. 101(14)).

5 **TITLE I—SECURING UNITED**
6 **STATES BORDERS**

7 **SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE**
8 **BORDER.**

9 (a) IN GENERAL.—The Secretary of Homeland Secu-
10 rity shall take all actions the Secretary determines nec-
11 essary and appropriate to achieve and maintain oper-
12 ational control over the entire international land and mari-
13 time borders of the United States, to include the fol-
14 lowing—

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

1 (2) physical infrastructure enhancements to
2 prevent unlawful entry by aliens into the United
3 States and facilitate access to the international land
4 and maritime borders by United States Customs and
5 Border Protection, such as additional checkpoints,
6 all weather access roads, and vehicle barriers;

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

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

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

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

24 (a) SURVEILLANCE PLAN.—Not later than six
25 months after the date of the enactment of this Act, the

1 Secretary of Homeland Security shall submit to the appro-
2 priate congressional committees a comprehensive plan for
3 the systematic surveillance of the international land and
4 maritime borders of the United States. The plan shall in-
5 clude the following:

6 (1) An assessment of existing technologies em-
7 ployed on such borders.

8 (2) A description of whether and how new sur-
9 veillance technologies will be compatible with exist-
10 ing surveillance technologies.

11 (3) A description of how the United States Cus-
12 toms and Border Protection is working, or is ex-
13 pected to work, with the Directorate of Science and
14 Technology of the Department of Homeland Secu-
15 rity to identify and test surveillance technology.

16 (4) A description of the specific surveillance
17 technology to be deployed.

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

20 (6) A detailed estimate of all costs associated
21 with the implementation of such deployment and
22 continued maintenance of such technologies.

23 (7) A description of how the Department of
24 Homeland Security is working with the Federal
25 Aviation Administration on safety and airspace con-

1 control issues associated with the use of unmanned aer-
2 ial vehicles in the National Airspace System.

3 (b) NATIONAL STRATEGY FOR BORDER SECURITY.—

4 Not later than one year after the date of the enactment
5 of this Act, the Secretary of Homeland Security, in con-
6 sultation with the heads of other appropriate Federal
7 agencies, shall submit to the appropriate congressional
8 committees a National Strategy for Border Security to
9 achieve operational control over all ports of entry into the
10 United States and the international land and maritime
11 borders of the United States. The Secretary shall update
12 the Strategy as needed and shall submit to the Committee
13 on Homeland Security of the House of Representatives,
14 not later than 30 days after each such update, the updated
15 Strategy. The National Strategy for Border Security shall
16 include the following:

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

19 (2) An assessment of the threat posed by ter-
20 rorists and terrorist groups that may try to infiltrate
21 the United States at points along the international
22 land and maritime borders of the United States.

23 (3) A risk assessment of all ports of entry to
24 the United States and all portions of the inter-

1 national land and maritime borders of the United
2 States with respect to—

3 (A) preventing the entry of terrorists,
4 other unlawful aliens, instruments of terrorism,
5 narcotics, and other contraband into the United
6 States; and

7 (B) protecting critical infrastructure at or
8 near such ports of entry or borders.

9 (4) An assessment of the most appropriate,
10 practical, and cost-effective means of defending the
11 international land and maritime borders of the
12 United States against threats to security and illegal
13 transit, including intelligence capacities, technology,
14 equipment, personnel, and training needed to ad-
15 dress security vulnerabilities.

16 (5) An assessment of staffing needs for all bor-
17 der security functions, taking into account threat
18 and vulnerability information pertaining to the bor-
19 ders and the impact of new security programs, poli-
20 cies, and technologies.

21 (6) A description of the border security roles
22 and missions of Federal, State, regional, local, and
23 tribal authorities, and recommendations with respect
24 to how the Department of Homeland Security can
25 improve coordination with such authorities, to enable

1 border security enforcement to be carried out in an
2 efficient and effective manner.

3 (7) A prioritization of research and development
4 objectives to enhance the security of the inter-
5 national land and maritime borders of the United
6 States.

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

12 (9) An assessment of additional detention facili-
13 ties and bed space needed to detain unlawful aliens
14 apprehended at United States ports of entry or
15 along the international land borders of the United
16 States in accordance with the National Strategy for
17 Border Security required under this subsection and
18 the mandatory detention requirement described in
19 section 301 of this Act.

20 (10) A description of how the Secretary shall
21 ensure accountability and performance metrics with-
22 in the appropriate agencies of the Department of
23 Homeland Security responsible for implementing the
24 border security measures determined necessary upon

1 completion of the National Strategy for Border Se-
2 curity.

3 (11) A timeline for the implementation of the
4 additional security measures determined necessary
5 as part of the National Strategy for Border Secu-
6 rity, including a prioritization of security measures,
7 realistic deadlines for addressing the security and
8 enforcement needs, and resource estimates and allo-
9 cations.

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

13 (1) State, local, and tribal authorities along the
14 international land and maritime borders of the
15 United States; and

16 (2) an appropriate cross-section of private sec-
17 tor and nongovernmental organizations with relevant
18 expertise.

19 (d) PRIORITY OF NATIONAL STRATEGY.—The Na-
20 tional Strategy for Border Security described in subsection
21 (b) shall be the controlling document for security and en-
22 forcement efforts related to securing the international land
23 and maritime borders of the United States.

24 (e) IMMEDIATE ACTION.—Nothing in this section
25 shall be construed to relieve the Secretary of the responsi-

1 bility to take all actions necessary and appropriate to
2 achieve and maintain operational control over the entire
3 international land and maritime borders of the United
4 States pursuant to section 101 of this Act or any other
5 provision of law.

6 (f) REPORTING OF IMPLEMENTING LEGISLATION.—
7 After submittal of the National Strategy for Border Secu-
8 rity described in subsection (b) to the Committee on
9 Homeland Security of the House of Representatives, such
10 Committee shall promptly report to the House legislation
11 authorizing necessary security measures based on its eval-
12 uation of the National Strategy for Border Security.

13 (g) APPROPRIATE CONGRESSIONAL COMMITTEE.—
14 For purposes of this title, the term “appropriate congres-
15 sional committee” has the meaning given it in section 2(2)
16 of the Homeland Security Act of 2002 (6 U.S.C. 101(2)).

17 **SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY**
18 **AGREEMENTS.**

19 (a) IN GENERAL.—Not later than six months after
20 the date of the enactment of this Act, the Secretary of
21 Homeland Security shall submit to the appropriate con-
22 gressional committees (as defined in section 102(g)) a re-
23 port on the implementation of the cross-border security
24 agreements signed by the United States with Mexico and

1 Canada, including recommendations on improving co-
2 operation with such countries to enhance border security.

3 (b) UPDATES.—The Secretary shall regularly update
4 the Committee on Homeland Security of the House of
5 Representatives concerning such implementation.

6 **SEC. 104. BIOMETRIC DATA ENHANCEMENTS.**

7 Not later than October 1, 2006, the Secretary of
8 Homeland Security shall—

9 (1) in consultation with the Attorney General,
10 enhance connectivity between the IDENT and
11 IAFIS fingerprint databases to ensure more expedi-
12 tious data searches; and

13 (2) in consultation with the Secretary of State,
14 collect ten fingerprints from each alien required to
15 provide fingerprints during the alien's initial enroll-
16 ment in the integrated entry and exit data system
17 described in section 110 of the Illegal Immigration
18 Reform and Immigrant Responsibility Act of 1996
19 (8 U.S.C. 1221 note).

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

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

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

4 (2) identifying goals for and challenges to in-
5 creased effectiveness of the One Face at the Border
6 Initiative;

7 (3) providing a breakdown of the number of in-
8 spectors who were—

9 (A) personnel of the United States Cus-
10 toms Service before the date of the establish-
11 ment of the Department of Homeland Security;

12 (B) personnel of the Immigration and Nat-
13 uralization Service before the date of the estab-
14 lishment of the Department;

15 (C) personnel of the Department of Agri-
16 culture before the date of the establishment of
17 the Department; or

18 (D) hired after the date of the establish-
19 ment of the Department;

20 (4) describing the training time provided to
21 each employee on an annual basis for the various
22 training components of the One Face at the Border
23 Initiative; and

24 (5) outlining the steps taken by the Department
25 to ensure that expertise is retained with respect to

1 customs, immigration, and agriculture inspection
2 functions under the One Face at the Border Initia-
3 tive.

4 **SEC. 106. SECURE COMMUNICATION.**

5 The Secretary of Homeland Security shall, as expedi-
6 tiously as practicable, develop and implement a plan to
7 ensure clear and secure two-way communication capabili-
8 ties—

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

11 (2) between Border Patrol agents and their re-
12 spective Border Patrol stations;

13 (3) between Border Patrol agents and residents
14 in remote areas along the international land border
15 who do not have mobile communications, as the Sec-
16 retary determines necessary; and

17 (4) between all appropriate Department of
18 Homeland Security border security agencies and
19 State, local, and tribal law enforcement agencies.

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

21 In each of fiscal years 2007 through 2010, the Sec-
22 retary of Homeland Security shall, subject to the avail-
23 ability of appropriations, increase by not less than 250 the
24 number of positions for full-time active duty port of entry
25 inspectors. There are authorized to be appropriated to the

1 Secretary such sums as may be necessary for each such
2 fiscal year to hire, train, equip, and support such addi-
3 tional inspectors under this section.

4 **SEC. 108. CANINE DETECTION TEAMS.**

5 In each of fiscal years 2007 through 2011, the Sec-
6 retary of Homeland Security shall, subject to the avail-
7 ability of appropriations, increase by not less than 25 per-
8 cent above the number of such positions for which funds
9 were allotted for the preceding fiscal year the number of
10 trained detection canines for use at United States ports
11 of entry and along the international land and maritime
12 borders of the United States.

13 **SEC. 109. SECURE BORDER INITIATIVE FINANCIAL AC-**
14 **COUNTABILITY.**

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

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

3 (2) upon the conclusion of the performance of
4 the contract.

5 (b) REPORT BY INSPECTOR GENERAL.—Upon com-
6 pletion of each review described in subsection (a), the In-
7 spector General shall submit to the Secretary of Homeland
8 Security a report containing the findings of the review,
9 including findings regarding any cost overruns, significant
10 delays in contract execution, lack of rigorous departmental
11 contract management, insufficient departmental financial
12 oversight, bundling that limits the ability of small business
13 to compete, or other high risk business practices.

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

22 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
23 tion to amounts that are otherwise authorized to be appro-
24 priated to the Office of the Inspector General, an addi-
25 tional amount equal to at least five percent for fiscal year

1 2007, at least six percent for fiscal year 2008, and at least
2 seven percent for fiscal year 2009 of the overall budget
3 of the Office for each such fiscal year is authorized to be
4 appropriated to the Office to enable the Office to carry
5 out this section.

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

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

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

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

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

23 (3) A comparison, based on the review and
24 breakdown under paragraph (2) of the costs, effec-
25 tiveness, scope, and quality, including geographic

1 characteristics, with other similar law enforcement
2 training programs provided by State and local agen-
3 cies, non-profit organizations, universities, and the
4 private sector.

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

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

13 (B) the scope and quality of basic training
14 needed to fulfill the mission and duties of a
15 Border Patrol agent.

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

17 Not later than 120 days after the date of the enact-
18 ment of this Act, the Secretary of Homeland Security shall
19 submit to the Committee on Homeland Security of the
20 House of Representatives a report detailing the impact the
21 airspace security mission in the National Capital Region
22 (in this section referred to as the “NCR”) will have on
23 the ability of the Department of Homeland Security to
24 protect the international land and maritime borders of the
25 United States. Specifically, the report shall address:

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

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

11 **SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BOR-**
12 **DER.**

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

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

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

24 (b) VALUE OF REIMBURSEMENTS.—Reimbursements
25 for submitted damages as outlined in subsection (a) shall

1 not exceed the value of the private infrastructure prior to
2 damage.

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

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

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

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

18 **SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF**
19 **CENTRAL AMERICAN GANGS ALONG INTER-**
20 **NATIONAL BORDER.**

21 Not later than one year after the date of the enact-
22 ment of this Act, the Secretary of Homeland Security shall
23 report to the Committee on Homeland Security of the
24 House of Representatives on the progress of the Depart-
25 ment of Homeland Security in tracking the travel of Cen-

1 tral American gangs across the international land border
2 of the United States and Mexico.

3 **SEC. 115. COLLECTION OF DATA.**

4 Beginning on October 1, 2006, the Secretary of
5 Homeland Security shall annually compile data on the fol-
6 lowing categories of information:

7 (1) The number of unauthorized aliens who re-
8 quire medical care taken into custody by Border Pa-
9 trol officials.

10 (2) The number of unauthorized aliens with se-
11 rious injuries or medical conditions Border Patrol
12 officials encounter, and refer to local hospitals or
13 other health facilities.

14 (3) The number of unauthorized aliens with se-
15 rious injuries or medical conditions who arrive at
16 United States ports of entry and subsequently are
17 admitted into the United States for emergency med-
18 ical care, as reported by United States Customs and
19 Border Protection.

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

1 **SEC. 116. DEPLOYMENT OF RADIATION DETECTION POR-**
2 **TAL EQUIPMENT AT UNITED STATES PORTS**
3 **OF ENTRY.**

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

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

17 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
18 authorized to be appropriated to the Secretary to carry
19 out subsection (a) such sums as may be necessary for each
20 of fiscal years 2006 and 2007.

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

22 With respect to the Secure Border Initiative and for
23 the purposes of strengthening security along the inter-
24 national land and maritime borders of the United States,
25 the Secretary of Homeland Security shall conduct out-
26 reach to and consult with members of the private sector,

1 including business councils, associations, and small, mi-
2 nority-owned, women-owned, and disadvantaged busi-
3 nesses to—

4 (1) identify existing and emerging technologies,
5 best practices, and business processes;

6 (2) maximize economies of scale, cost-effective-
7 ness, systems integration, and resource allocation;
8 and

9 (3) identify the most appropriate contract
10 mechanisms to enhance financial accountability and
11 mission effectiveness of border security programs.

12 **TITLE II—COMBATTING ALIEN** 13 **SMUGGLING AND ILLEGAL** 14 **ENTRY AND PRESENCE**

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

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

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

23 (2) in subparagraph (O), by striking “section
24 275(a) or 276 committed by an alien who was pre-
25 viously deported on the basis of a conviction for an

1 offense described in another subparagraph of this
2 paragraph”, and inserting “section 275 or section
3 276 for which the term of imprisonment was at least
4 one year”;

5 (3) in subparagraph (U), by inserting before
6 “an attempt” the following: “soliciting, aiding, abet-
7 ting, counseling, commanding, inducing, procuring
8 or”; and

9 (4) by striking all that follows subparagraph
10 (U) and inserting the following:

11 “The term applies—

12 “(i) to an offense described in this para-
13 graph whether in violation of Federal or State
14 law and applies to such an offense in violation
15 of the law of a foreign country for which the
16 term of imprisonment was completed within the
17 previous 15 years;

18 “(ii) even if the length of the term of im-
19 prisonment is based on recidivist or other en-
20 hancements;

21 “(iii) to an offense described in this para-
22 graph even if the statute setting forth the of-
23 fense of conviction sets forth other offenses not
24 described in this paragraph, unless the alien af-
25 firmatively shows, by a preponderance of evi-

1 dence and using public records related to the
2 conviction, including court records, police
3 records and presentence reports, that the par-
4 ticular facts underlying the offense do not sat-
5 isfy the generic definition of that offense; and

6 “(iv) regardless of whether the conviction
7 was entered before, on, or after September 30,
8 1996, and notwithstanding any other provision
9 of law (including any effective date).”.

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

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

14 Section 274 of the Immigration and Nationality Act
15 (8 U.S.C. 1324) is amended to read as follows:

16 “ALIEN SMUGGLING AND RELATED OFFENSES

17 “SEC. 274. (a) **CRIMINAL OFFENSES AND PEN-**
18 **ALTIES.**—

19 “(1) **PROHIBITED ACTIVITIES.**—Whoever—

20 “(A) assists, encourages, directs, or in-
21 duces a person to come to or enter the United
22 States, or to attempt to come to or enter the
23 United States, knowing or in reckless disregard
24 of the fact that such person is an alien who
25 lacks lawful authority to come to or enter the
26 United States;

1 “(B) assists, encourages, directs, or in-
2 duces a person to come to or enter the United
3 States at a place other than a designated port
4 of entry or place other than as designated by
5 the Secretary of Homeland Security, regardless
6 of whether such person has official permission
7 or lawful authority to be in the United States,
8 knowing or in reckless disregard of the fact
9 that such person is an alien;

10 “(C) assists, encourages, directs, or in-
11 duces a person to reside in or remain in the
12 United States, or to attempt to reside in or re-
13 main in the United States, knowing or in reck-
14 less disregard of the fact that such person is an
15 alien who lacks lawful authority to reside in or
16 remain in the United States;

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

1 “(E) harbors, conceals, or shields from de-
2 tection a person in the United States knowing
3 or in reckless disregard of the fact that such
4 person is an alien who lacks lawful authority to
5 be in the United States;

6 “(F) transports, moves, harbors, conceals,
7 or shields from detection a person outside of
8 the United States knowing or in reckless dis-
9 regard of the fact that such person is an alien
10 in unlawful transit from one country to another
11 or on the high seas, under circumstances in
12 which the person is in fact seeking to enter the
13 United States without official permission or
14 lawful authority; or

15 “(G) conspires or attempts to commit any
16 of the preceding acts,
17 shall be punished as provided in paragraph (2), re-
18 gardless of any official action which may later be
19 taken with respect to such alien.

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

22 “(A) except as provided in subparagraphs
23 (D) through (H), in the case where the offense
24 was not committed for commercial advantage,
25 profit, or private financial gain, be imprisoned

1 for not more than 5 years, or fined under title
2 18, United States Code, or both;

3 “(B) except as provided in subparagraphs
4 (C) through (H), where the offense was com-
5 mitted for commercial advantage, profit, or pri-
6 vate financial gain—

7 “(i) in the case of a first violation of
8 this subparagraph, be imprisoned for not
9 more than 20 years, or fined under title
10 18, United States Code, or both; and

11 “(ii) for any subsequent violation, be
12 imprisoned for not less than 3 years nor
13 more than 20 years, or fined under title
14 18, United States Code, or both;

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

22 “(D) in the case where the offense furthers
23 or aids the commission of any other offense
24 against the United States or any State, which
25 offense is punishable by imprisonment for more

1 than 1 year, be imprisoned for not less than 5
2 nor more than 20 years, or fined under title 18,
3 United States Code, or both;

4 “(E) in the case where any participant in
5 the offense created a substantial risk of death
6 or serious bodily injury to another person, in-
7 cluding—

8 “(i) transporting a person in an en-
9 gine compartment, storage compartment,
10 or other confined space;

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

14 “(iii) transporting or harboring a per-
15 son in a crowded, dangerous, or inhumane
16 manner,

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

20 “(F) in the case where the offense caused
21 serious bodily injury (as defined in section 1365
22 of title 18, United States Code, including any
23 conduct that would violate sections 2241 or
24 2242 of title 18, United States Code, if the con-
25 duct occurred in the special maritime and terri-

1 torial jurisdiction of the United States) to any
2 person, be imprisoned for not less than 7 nor
3 more than 30 years, or fined under title 18,
4 United States Code, or both;

5 “(G) in the case where the offense involved
6 an alien who the offender knew or had reason
7 to believe was an alien—

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

10 “(ii) intending to engage in such ter-
11 rorist activity,

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

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

21 “(3) EXTRATERRITORIAL JURISDICTION.—

22 There is extraterritorial Federal jurisdiction over the
23 offenses described in this subsection.

24 “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

1 “(1) IN GENERAL.—Any person who, during
2 any 12-month period, knowingly hires for employ-
3 ment at least 10 individuals with actual knowledge
4 that the individuals are aliens described in para-
5 graph (2), shall be fined under title 18, United
6 States Code, imprisoned for not more than 5 years,
7 or both.

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

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

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

14 “(c) SEIZURE AND FORFEITURE.—

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

21 “(2) APPLICABLE PROCEDURES.—Seizures and
22 forfeitures under this subsection shall be governed
23 by the provisions of chapter 46 of title 18, United
24 States Code, relating to civil forfeitures, including
25 section 981(d) of such title, except that such duties

1 as are imposed upon the Secretary of the Treasury
2 under the customs laws described in that section
3 shall be performed by such officers, agents, and
4 other persons as may be designated for that purpose
5 by the Secretary of Homeland Security.

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

12 “(e) **ADMISSIBILITY OF EVIDENCE.**—

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

23 “(A) Any order, finding, or determination
24 concerning the alien’s status or lack thereof
25 made by a federal judge or administrative adju-

1 dicator (including an immigration judge or an
2 immigration officer) during any judicial or ad-
3 ministrative proceeding authorized under the
4 immigration laws or regulations prescribed
5 thereunder.

6 “(B) An official record of the Department
7 of Homeland Security, Department of Justice,
8 or the Department of State concerning the
9 alien’s status or lack thereof.

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

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

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

1 “(1) The term ‘lawful authority’ means permis-
2 sion, authorization, or license that is expressly pro-
3 vided for in the immigration laws of the United
4 States or the regulations prescribed thereunder.
5 Such term does not include any such authority se-
6 cured by fraud or otherwise obtained in violation of
7 law, nor does it include authority that has been
8 sought but not approved. No alien shall be deemed
9 to have lawful authority to come to, enter, reside, re-
10 main, or be in the United States if such coming to,
11 entry, residence, remaining, or presence was, is, or
12 would be in violation of law.

13 “(2) The term ‘unlawful transit’ means travel,
14 movement, or temporary presence that violates the
15 laws of any country in which the alien is present, or
16 any country from which or to which the alien is trav-
17 eling or moving.”.

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

19 Section 275 of the Immigration and Nationality Act
20 (8 U.S.C. 1325) is amended—

21 (1) in the section heading, by inserting “UN-
22 LAWFUL PRESENCE;” after “IMPROPER TIME OR
23 PLACE;”;

1 (2) in subsection (a), by striking “Any alien”
2 and inserting “Except as provided in subsection (b),
3 any alien”;

4 (3) in subsection (a), by striking “or” before
5 (3) and by inserting after “concealment of a mate-
6 rial fact,” the following: “or (4) is otherwise present
7 in the United States in violation of the immigration
8 laws or the regulations prescribed thereunder.”;

9 (4) in subsection (a), by striking “6 months”
10 and inserting “one year and a day”;

11 (5) in subsection (c)—

12 (A) by striking “5 years” and inserting
13 “10 years”; and

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

18 (6) in subsection (d)—

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

21 (B) by adding at the end the following:
22 “An offense under this subsection continues
23 until the fraudulent nature of the commercial
24 enterprise is discovered by an immigration offi-
25 cer”; and

1 (7) by adding at the end the following new sub-
2 sections:

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

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

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

15 “(2) An alien described in this paragraph is an alien
16 who—

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

20 “(B) eludes examination or inspection by immi-
21 gration officers;

22 “(C) attempts to enter or obtains entry to the
23 United States by a willfully false or misleading rep-
24 resentation or the willful concealment of a material
25 fact; or

1 “(D) is otherwise present in the United States
2 in violation of the immigration laws or the regula-
3 tions prescribed thereunder.

4 “(3) The prior convictions in subparagraph (A) or
5 (B) of paragraph (1) are elements of those crimes and
6 the penalties in those subparagraphs shall apply only in
7 cases in which the conviction (or convictions) that form
8 the basis for the additional penalty are alleged in the in-
9 dictment or information and are proven beyond a reason-
10 able doubt at trial or admitted by the defendant in plead-
11 ing guilty. Any admissible evidence may be used to show
12 that the prior conviction is an aggravated felony or other
13 qualifying crime, and the criminal trial for a violation of
14 this section shall not be bifurcated.

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

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

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

23 Section 276 of the Immigration and Nationality Act
24 (8 U.S.C. 1326) is amended—

25 (1) in subsection (a)—

1 (A) in paragraph (2), by striking all that
2 follows “United States” and inserting a comma;

3 (B) in the matter following paragraph (2),
4 by striking “imprisoned not more than 2
5 years,” and insert “imprisoned for a term of
6 not less than 1 year and not more than 2
7 years,”;

8 (C) by adding at the end the following: “It
9 shall be an affirmative defense to an offense
10 under this subsection that (A) prior to an
11 alien’s reembarkation at a place outside the
12 United States or an alien’s application for ad-
13 mission from foreign contiguous territory, the
14 Secretary of Homeland Security has expressly
15 consented to the alien’s reapplying for admis-
16 sion; or (B) with respect to an alien previously
17 denied admission and removed, such alien was
18 not required to obtain such advance consent
19 under this Act or any prior Act.”;

20 (2) in subsection (b)—

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

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

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

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

11 (E) by adding at the end the following:
12 “The prior convictions in paragraphs (1) and
13 (2) are elements of enhanced crimes and the
14 penalties under such paragraphs shall apply
15 only where the conviction (or convictions) that
16 form the basis for the additional penalty are al-
17 leged in the indictment or information and are
18 proven beyond a reasonable doubt at trial or
19 admitted by the defendant in pleading guilty.
20 Any admissible evidence may be used to show
21 that the prior conviction is a qualifying crime
22 and the criminal trial for a violation of either
23 such paragraph shall not be bifurcated.”;

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

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

6 (5) by adding at the end the following new sub-
7 section:

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

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

13 **AIDING OR ASSISTING CERTAIN REENTERING**
14 **ALIENS.**

15 Section 277 of the Immigration and Nationality Act
16 (8 U.S.C. 1327) is amended—

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

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

20 “(b)(1) Any person who knowingly aids or assists any
21 alien violating section 276(b) to reenter the United States,
22 or who connives or conspires with any person or persons
23 to allow, procure, or permit any such alien to reenter the
24 United States, shall be fined under title 18, United States

1 Code, imprisoned for a term imposed under paragraph (2),
2 or both.

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

6 **SEC. 206. PROHIBITING CARRYING OR USING A FIREARM**
7 **DURING AND IN RELATION TO AN ALIEN**
8 **SMUGGLING CRIME.**

9 Section 924(c) of title 18, United States Code, is
10 amended—

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

14 (2) by redesignating paragraph (4) as subpara-
15 graph (5); and

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

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

22 **SEC. 207. CLARIFYING CHANGES.**

23 (a) **EXCLUSION BASED ON FALSE CLAIM OF NA-**
24 **TIONALITY.—**

1 (1) IN GENERAL.—Section 212(a)(6)(C)(ii) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1182(a)(6)(C)(ii)) is amended—

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

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

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

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

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

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

19 (3) by striking “Attorney General” and insert-
20 ing “Secretary”.

21 (c) EXCEPTIONS AUTHORITY.—Section
22 212(a)(3)(B)(ii) of such Act (8 U.S.C. 1182(a)(3)(B)(ii))
23 is amended by striking “Subclause (VII)” and inserting
24 “Subclause (IX)”.

1 **SEC. 208. VOLUNTARY DEPARTURE REFORM.**

2 (a) ENCOURAGING ALIENS TO DEPART VOLUN-
3 TARIPLY.—

4 (1) AUTHORITY.—Subsection (a) of section
5 240B of the Immigration and Nationality Act (8
6 U.S.C. 1229c) is amended—

7 (A) by amending paragraph (1) to read as
8 follows:

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

16 (B) by striking paragraph (3);

17 (C) by redesignating paragraph (2) as
18 paragraph (3);

19 (D) by inserting after paragraph (1) the
20 following new paragraph:

21 “(2) PRIOR TO THE CONCLUSION OF REMOVAL
22 PROCEEDINGS.—After removal proceedings under
23 section 240 are initiated, the Attorney General may
24 permit an alien voluntarily to depart the United
25 States at the alien’s own expense under this sub-
26 section, prior to the conclusion of such proceedings

1 before an immigration judge, if the alien is not de-
2 scribed in section 237(a)(2)(A)(iii) or section
3 237(a)(4).”; and

4 (E) in paragraph (4), by striking “para-
5 graph (1)” and inserting “paragraphs (1) and
6 (2)”.

7 (2) VOLUNTARY DEPARTURE PERIOD.—Such
8 section is further amended—

9 (A) in subsection (a)(3), as redesignated
10 by paragraph (1)(C)—

11 (i) by amending subparagraph (A) to
12 read as follows:

13 “(A) IN LIEU OF REMOVAL.—Subject to
14 subparagraph (C), permission to depart volun-
15 tarily under paragraph (1) shall not be valid for
16 a period exceeding 120 days. The Secretary of
17 Homeland Security may require an alien per-
18 mitted to depart voluntarily under paragraph
19 (1) to post a voluntary departure bond, to be
20 surrendered upon proof that the alien has de-
21 parted the United States within the time speci-
22 fied.”;

23 (ii) in subparagraph (B), by striking
24 “subparagraphs (C) and (D)(ii)” and in-
25 serting “subparagraphs (D) and (E)(ii)”;

1 (iii) in subparagraphs (C) and (D), by
2 striking “subparagraph (B)” and inserting
3 “subparagraph (C)” each place it appears;

4 (iv) by redesignating subparagraphs
5 (B), (C), and (D) as subparagraphs (C),
6 (D), and (E), respectively; and

7 (v) by inserting after subparagraph
8 (A) the following new subparagraph:

9 “(B) PRIOR TO THE CONCLUSION OF RE-
10 MOVAL PROCEEDINGS.—Permission to depart
11 voluntarily under paragraph (2) shall not be
12 valid for a period exceeding 60 days, and may
13 be granted only after a finding that the alien
14 has established that the alien has the means to
15 depart the United States and intends to do so.
16 An alien permitted to depart voluntarily under
17 paragraph (2) must post a voluntary departure
18 bond, in an amount necessary to ensure that
19 the alien will depart, to be surrendered upon
20 proof that the alien has departed the United
21 States within the time specified. An immigra-
22 tion judge may waive posting of a voluntary de-
23 parture bond in individual cases upon a finding
24 that the alien has presented compelling evidence
25 that the posting of a bond will be a serious fi-

1 nancial hardship and the alien has presented
2 credible evidence that such a bond is unneces-
3 sary to guarantee timely departure.”; and

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

6 (3) VOLUNTARY DEPARTURE AGREEMENTS.—

7 Subsection (c) of such section is amended to read as
8 follows:

9 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

10 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

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

18 “(2) CONCESSIONS BY THE SECRETARY.—In
19 connection with the alien’s agreement to depart vol-
20 untarily under paragraph (1), the Secretary of
21 Homeland Security in the exercise of discretion may
22 agree to a reduction in the period of inadmissibility
23 under subparagraph (A) or (B)(i) of section
24 212(a)(9).

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

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

23 “(e) ELIGIBILITY.—

24 “(1) PRIOR GRANT OF VOLUNTARY DEPART-
25 TURE.—An alien shall not be permitted to depart

1 voluntarily under this section if the Secretary of
2 Homeland Security or the Attorney General pre-
3 viously permitted the alien to depart voluntarily.

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

18 (b) AVOIDING DELAYS IN VOLUNTARY DEPAR-
19 TURE.—

20 (1) ALIEN’S OBLIGATION TO DEPART WITHIN
21 THE TIME ALLOWED.—Subsection (c) of section
22 240B of the Immigration and Nationality Act (8
23 U.S.C. 1229c), as amended by subsection (a), is fur-
24 ther amended by adding at the end the following
25 new paragraph:

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

11 (2) NO TOLLING.—Subsection (f) of such sec-
12 tion is amended by adding at the end the following
13 new sentence: “Notwithstanding any other provision
14 of law (statutory or nonstatutory), including section
15 2241 of title 28, United States Code, or any other
16 habeas corpus provision, and section 1361 and 1651
17 of such title, no court shall have jurisdiction to af-
18 fect, reinstate, enjoin, delay, stay, or toll the period
19 allowed for voluntary departure under this section.”.

20 (c) PENALTIES FOR FAILURE TO DEPART VOLUN-
21 TARILY.—

22 (1) PENALTIES FOR FAILURE TO DEPART.—
23 Subsection (d) of section 240B of the Immigration
24 and Nationality Act (8 U.S.C. 229c) is amended to
25 read as follows:

1 “(d) PENALTIES FOR FAILURE TO DEPART.—If an
2 alien is permitted to depart voluntarily under this section
3 and fails voluntarily to depart from the United States
4 within the time period specified or otherwise violates the
5 terms of a voluntary departure agreement, the following
6 provisions apply:

7 “(1) CIVIL PENALTY.—

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

10 “(B) SPECIFICATION IN ORDER.—The
11 order allowing voluntary departure shall specify
12 the amount of the penalty, which shall be ac-
13 knowledged by the alien on the record.

14 “(C) COLLECTION.—If the Secretary of
15 Homeland Security thereafter establishes that
16 the alien failed to depart voluntarily within the
17 time allowed, no further procedure will be nec-
18 essary to establish the amount of the penalty,
19 and the Secretary may collect the civil penalty
20 at any time thereafter and by whatever means
21 provided by law.

22 “(D) INELIGIBILITY FOR BENEFITS.—An
23 alien will be ineligible for any benefits under
24 this title until any civil penalty under this sub-
25 section is paid.

1 “(2) INELIGIBILITY FOR RELIEF.—The alien
2 will be ineligible during the time the alien remains
3 in the United States and for a period of 10 years
4 after the alien’s departure for any further relief
5 under this section and sections 240A, 245, 248, and
6 249.

7 “(3) REOPENING.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graph (B), the alien will be ineligible to reopen
10 a final order of removal which took effect upon
11 the alien’s failure to depart, or the alien’s viola-
12 tion of the conditions for voluntary departure,
13 during the period described in paragraph (2).

14 “(B) EXCEPTION.—Subparagraph (A)
15 does not preclude a motion to reopen to seek
16 withholding of removal under section 241(b)(3)
17 or protection against torture.

18 The order permitting the alien to depart voluntarily
19 under this section shall inform the alien of the pen-
20 alties under this subsection.”.

21 (2) IMPLEMENTATION OF EXISTING STATUTORY
22 PENALTIES.—The Secretary of Homeland Security
23 shall implement regulations to provide for the im-
24 position and collection of penalties for failure to depart

1 under section 240B(d) of the Immigration and Na-
2 tionality Act, as amended by paragraph (1).

3 (d) EFFECTIVE DATES.—

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

11 (2) EXCEPTION.—The amendment made by
12 subsection (b)(2) shall take effect on the date of the
13 enactment of this Act and shall apply with respect
14 to any petition for review which is entered on or
15 after such date.

16 **SEC. 209. DETERRING ALIENS ORDERED REMOVED FROM**
17 **REMAINING IN THE UNITED STATES UNLAW-**
18 **FULLY AND FROM UNLAWFULLY RETURNING**
19 **TO THE UNITED STATES AFTER DEPARTING**
20 **VOLUNTARILY.**

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

1 (1) in subparagraph (A)(i), by striking “within
2 5 years of” and inserting “before, or within 5 years
3 of,”; and

4 (2) in subparagraph (A)(ii) by striking “within
5 10 years of” and inserting “before, or within 10
6 years of,”.

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

11 (1) in subsection (a), by striking “Commis-
12 sioner” and inserting “Secretary of Homeland Secu-
13 rity”; and

14 (2) by adding at the end the following new sub-
15 section:

16 “(c) INELIGIBILITY FOR RELIEF.—

17 “(1) IN GENERAL.—Subject to paragraph (2),
18 unless a timely motion to reopen is granted under
19 section 240(c)(6), an alien described in subsection
20 (a) shall be ineligible for any discretionary relief
21 from removal pursuant to a motion to reopen during
22 the time the alien remains in the United States and
23 for a period of 10 years after the alien’s departure.

24 “(2) EXCEPTION.—Paragraph (1) does not pre-
25 clude a motion to reopen to seek withholding of re-

1 removal under section 241(b)(3) or protection against
2 torture.”.

3 (c) DETERRING ALIENS FROM UNLAWFULLY RE-
4 TURNING TO THE UNITED STATES AFTER DEPARTING
5 VOLUNTARILY.—Section 275(a) of such Act (8 U.S.C.
6 1325(a)) is amended by inserting “or following an order
7 of voluntary departure” after “a subsequent commission
8 of any such offense”.

9 (d) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by
11 subsections (a) and (b) shall take effect on the date
12 of the enactment of this Act with respect to aliens
13 who are subject to a final order of removal, whether
14 the removal order was entered before, on, or after
15 such date.

16 (2) VOLUNTARY DEPARTURE.—The amendment
17 made by subsection (c) shall take effect on the date
18 of the enactment of this Act and shall apply with re-
19 spect to conduct occurring on or after such date.

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
8 strategic plan to use the authorities provided to the Sec-
9 retary of Defense under chapter 18 of title 10, United
10 States Code, to increase the availability and use of Depart-
11 ment of Defense equipment, including unmanned aerial
12 vehicles, tethered aerostat radars, and other surveillance
13 equipment, to assist with the surveillance activities of the
14 Department of Homeland Security conducted at or near
15 the international land and maritime borders of the United
16 States.

17 (b) REPORT.—Not later than six months after the
18 date of the enactment of this Act, the Secretary of Home-
19 land Security and the Secretary of Defense shall submit
20 to Congress a report containing—

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

1 (2) the joint strategic plan developed pursuant
2 to 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
6 one-year period beginning after submission of the re-
7 port 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 sec-
15 tion shall be construed as altering or amending the prohi-
16 bition on the use of any part of the Army or the Air Force
17 as a posse comitatus under section 1385 of title 18,
18 United 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,
22 shall evaluate border security vulnerabilities on land di-
23 rectly adjacent to the international land border of the
24 United States under the jurisdiction of the Department
25 of the Interior related to the prevention of the entry of

1 terrorists, other unlawful aliens, narcotics, and other con-
2 traband into the United States.

3 (b) SUPPORT FOR BORDER SECURITY NEEDS.—

4 Based on the evaluation conducted pursuant to subsection
5 (a), the Secretary of Homeland Security shall provide ap-
6 propriate border security assistance on land directly adja-
7 cent to the international land border of the United States
8 under the jurisdiction of the Department of the Interior,
9 its bureaus, 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 enact-
14 ment of this Act, the Secretary of Homeland Security shall
15 design and carry out a national border security exercise
16 for the 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;
23 and

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

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

5 (a) ESTABLISHMENT OF COMMITTEE.—Not later
6 than one year after the date of the enactment of this Act,
7 the Secretary of Homeland Security shall establish an ad-
8 visory committee to be known as the Border Security Ad-
9 visory Committee (in this section referred to as the “Com-
10 mittee”).

11 (b) DUTIES.—The Committee shall advise the Sec-
12 retary on issues relating to border security and enforce-
13 ment along the international land and maritime border of
14 the United States.

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

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

20 (2) Community representatives from such
21 States.

22 (3) Tribal authorities in such States.

1 **SEC. 305. PERMITTED USE OF HOMELAND SECURITY**
2 **GRANT FUNDS FOR BORDER SECURITY AC-**
3 **TIVITIES.**

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

8 (1) relates to the enforcement of Federal laws
9 aimed at preventing the unlawful entry of persons or
10 things into the United States, including activities
11 such as detecting or responding to such an unlawful
12 entry or providing support to another entity relating
13 to preventing such an unlawful entry;

14 (2) is usually a Federal duty carried out by a
15 Federal agency; and

16 (3) is carried out under agreement with a Fed-
17 eral agency.

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

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

1 technology and systems, and the provision of education,
2 technical, and analytical assistance for the Department of
3 Homeland Security to effectively secure the borders.

4 **SEC. 307. SENSE OF CONGRESS REGARDING COOPERATION**
5 **WITH INDIAN NATIONS.**

6 It is the sense of Congress that—

7 (1) the Department of Homeland Security
8 should strive to include as part of a National Strat-
9 egy for Border Security recommendations on how to
10 enhance Department cooperation with sovereign In-
11 dian Nations on securing our borders and preventing
12 terrorist entry, including, specifically, the Depart-
13 ment should consider whether a Tribal Smart Bor-
14 der working group is necessary and whether further
15 expansion of cultural sensitivity training, as exists in
16 Arizona with the Tohono O’odham Nation, should be
17 expanded elsewhere; and

18 (2) as the Department of Homeland Security
19 develops a National Strategy for Border Security, it
20 should take into account the needs and missions of
21 each agency that has a stake in border security and
22 strive to ensure that these agencies work together
23 cooperatively on issues involving Tribal lands.

1 **TITLE IV—DETENTION AND**
2 **REMOVAL**

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

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

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

17 (2) is paroled into the United States by the
18 Secretary of Homeland Security for urgent humani-
19 tarian reasons or significant public benefit in accord-
20 ance with section 212(d)(5)(A) of such Act (8
21 U.S.C. 1182(d)(5)(A)).

22 (b) **REQUIREMENTS DURING INTERIM PERIOD.**—Be-
23 ginning 60 days after the date of the enactment of this
24 Act and before October 1, 2006, an alien described in sub-

1 section (a) may be released with a notice to appear only
2 if—

3 (1) the Secretary of Homeland Security deter-
4 mines, after conducting all appropriate background
5 and security checks on the alien, that the alien does
6 not pose a national security risk; and

7 (2) the alien provides a bond of not less than
8 \$5,000.

9 (c) RULES OF CONSTRUCTION.—

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

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

20 **SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF**
21 **DETENTION FACILITIES.**

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

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

4 (2) all possible options to cost effectively in-
5 crease available detention capacities, including the
6 use of temporary detention facilities, the use of
7 State and local correctional facilities, private space,
8 and secure alternatives to detention.

9 **SEC. 403. ENHANCING TRANSPORTATION CAPACITY FOR**
10 **UNLAWFUL ALIENS.**

11 (a) **IN GENERAL.**—The Secretary of Homeland Secu-
12 rity is authorized to enter into contracts with private enti-
13 ties for the purpose of providing secure domestic transport
14 of aliens who are apprehended at or along the inter-
15 national land or maritime borders from the custody of
16 United States Customs and Border Protection to deten-
17 tion facilities and other locations as necessary.

18 (b) **CRITERIA FOR SELECTION.**—Notwithstanding
19 any other provision of law, to enter into a contract under
20 paragraph (1), a private entity shall submit an application
21 to the Secretary at such time, in such manner, and con-
22 taining such information as the Secretary may require.
23 The Secretary shall select from such applications those en-
24 tities which offer, in the determination of the Secretary,
25 the best combination of service, cost, and security.

1 **SEC. 404. DENIAL OF ADMISSION TO NATIONALS OF COUN-**
2 **TRY DENYING OR DELAYING ACCEPTING**
3 **ALIEN.**

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

6 “(d) DENIAL OF ADMISSION TO NATIONALS OF
7 COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—
8 Whenever the Secretary of Homeland Security determines
9 that the government of a foreign country has denied or
10 unreasonably delayed accepting an alien who is a citizen,
11 subject, national, or resident of that country after the
12 alien has been ordered removed, the Secretary, after con-
13 sultation with the Secretary of State, may deny admission
14 to any citizen, subject, national, or resident of that coun-
15 try until the country accepts the alien who was ordered
16 removed.”.

17 **SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRI-**
18 **ATION.**

19 Not later than October 31 of each year, the Secretary
20 of Homeland Security shall submit to the Secretary of
21 State and Congress a report that details the cost to the
22 Department of Homeland Security of repatriation of un-
23 lawful aliens to their countries of nationality or last habit-
24 ual residence, including details relating to cost per coun-
25 try. The Secretary shall include in each such report the

1 recommendations of the Secretary to more cost effectively
2 repatriate such aliens.

3 **SEC. 406. TRAINING PROGRAM.**

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

6 (1) review and evaluate the training provided to
7 Border Patrol agents and port of entry inspectors
8 regarding the inspection of aliens to determine
9 whether an alien is referred for an interview by an
10 asylum officer for a determination of credible fear;

11 (2) based on the review and evaluation de-
12 scribed in paragraph (1), take necessary and appro-
13 priate measures to ensure consistency in referrals by
14 Border Patrol agents and port of entry inspectors to
15 asylum officers for determinations of credible fear.

16 **SEC. 407. EXPEDITED REMOVAL.**

17 (a) IN GENERAL.—Section 235(b)(1)(A)(iii) of the
18 Immigration and Nationality Act (8 U.S.C.
19 1225(b)(1)(A)(iii)) is amended—

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

23 (2) by adding at the end the following new sub-
24 clause:

1 “(III) EXCEPTION.—Notwith-
2 standing subclauses (I) and (II), the
3 Secretary of Homeland Security shall
4 apply clauses (i) and (ii) of this sub-
5 paragraph to any alien (other than an
6 alien described in subparagraph (F))
7 who is not a national of a country
8 contiguous to the United States, who
9 has not been admitted or paroled into
10 the United States, and who is appre-
11 hended within 100 miles of an inter-
12 national land border of the United
13 States and within 14 days of entry.”.

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

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on the date of the enactment
22 of this Act and shall apply to all aliens apprehended on
23 or after such date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(c) MISSIONS.—

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

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

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

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

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

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

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

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

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

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

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

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (a) EXPANSION OF REMOVAL.—

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

10 (A) in subparagraph (A)—

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

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

16 (B) in subparagraph (B)—

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

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

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

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

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

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

14 (vi) by striking the last sentence.

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

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

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

21 (C) by inserting “or (IX)” after “subclause
22 (IV)”.

23 (3) Section 240A(c)(4) of such Act (8 U.S.C.
24 1229b(c)(4)) is amended—

1 (A) by striking “inadmissible under” and
2 inserting “described in”; and

3 (B) by striking “deportable under” and in-
4 sserting “described in”.

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

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

10 (A) by striking “inadmissible under” and
11 inserting “described in”; and

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

14 (b) RETROACTIVE APPLICATION.—The amendments
15 made by this section shall take effect on the date of enact-
16 ment of this Act and sections 208(b)(2)(A), 240A, 240B,
17 241(b)(3), and 249 of the Immigration and Nationality
18 Act, as so amended, shall apply to—

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

21 (2) all applications pending on or filed after the
22 date of the enactment of this Act; and

23 (3) with respect to aliens and applications de-
24 scribed in paragraph (1) or (2), acts and conditions
25 constituting a ground for inadmissibility, exclud-

1 ability, deportation, or removal occurring or existing
2 before, on, or after the date of the enactment of this
3 Act.

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

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

7 (1) in subsection (a), by striking “Attorney
8 General” and inserting “Secretary of Homeland Se-
9 curity” each place it appears;

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

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

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

3 “(ii) If a court, the Board of Immi-
4 gration Appeals, or an immigration judge
5 orders a stay of the removal of the alien,
6 the date the stay of removal is no longer
7 in effect.”;

8 (4) by amending subparagraph (C) of sub-
9 section (a)(1) to read as follows:

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

23 (5) in subsection (a)(2), by adding at the end
24 the following: “If a court orders a stay of removal
25 of an alien who is subject to an administratively

1 final order of removal, the Secretary in the exercise
2 of discretion may detain the alien during the pend-
3 ency of such stay of removal.”;

4 (6) in subsection (a)(3), by amending subpara-
5 graph (D) to read as follows:

6 “(D) to obey reasonable restrictions on the
7 alien’s conduct or activities, or perform affirma-
8 tive acts, that the Secretary prescribes for the
9 alien, in order to prevent the alien from ab-
10 scending, or for the protection of the commu-
11 nity, or for other purposes related to the en-
12 forcement of the immigration laws.”;

13 (7) in subsection (a)(6), by striking “removal
14 period and, if released,” and inserting “removal pe-
15 riod, in the discretion of the Secretary, without any
16 limitations other than those specified in this section,
17 until the alien is removed. If an alien is released, the
18 alien”;

19 (8) by redesignating paragraph (7) of sub-
20 section (a) as paragraph (10) and inserting after
21 paragraph (6) of such subsection the following new
22 paragraphs:

23 “(7) PAROLE.—If an alien detained pursuant to
24 paragraph (6) is an applicant for admission, the
25 Secretary, in the Secretary’s discretion, may parole

1 the alien under section 212(d)(5) of this Act and
2 may provide, notwithstanding section 212(d)(5), that
3 the alien shall not be returned to custody unless ei-
4 ther the alien violates the conditions of the alien's
5 parole or the alien's removal becomes reasonably
6 foreseeable, provided that in no circumstance shall
7 such alien be considered admitted.

8 “(8) APPLICATION OF ADDITIONAL RULES FOR
9 DETENTION OR RELEASE OF CERTAIN ALIENS WHO
10 HAVE MADE AN ENTRY.—The procedures described
11 in subsection (j) shall only apply with respect to an
12 alien who—

13 “(A) was lawfully admitted the most recent
14 time the alien entered the United States or has
15 otherwise effected an entry into the United
16 States, and

17 “(B) is not detained under paragraph (6).

18 “(9) JUDICIAL REVIEW.—Without regard to the
19 place of confinement, judicial review of any action or
20 decision pursuant to paragraphs (6), (7), or (8) or
21 subsection (j) shall be available exclusively in habeas
22 corpus proceedings instituted in the United States
23 District Court for the District of Columbia, and only
24 if the alien has exhausted all administrative rem-

1 edies (statutory and regulatory) available to the
2 alien as of right.”; and

3 (9) by adding at the end the following new sub-
4 section:

5 “(j) ADDITIONAL RULES FOR DETENTION OR RE-
6 LEASE OF CERTAIN ALIENS WHO HAVE MADE AN
7 ENTRY.—

8 “(1) APPLICATION.—The procedures described
9 in this subsection apply in the case of an alien de-
10 scribed in subsection (a)(8).

11 “(2) ESTABLISHMENT OF A DETENTION RE-
12 VIEW PROCESS FOR ALIENS WHO FULLY COOPERATE
13 WITH REMOVAL.—

14 “(A) IN GENERAL.—The Secretary shall
15 establish an administrative review process to
16 determine whether the aliens should be detained
17 or released on conditions for aliens who—

18 “(i) have made all reasonable efforts
19 to comply with their removal orders;

20 “(ii) have complied with the Sec-
21 retary’s efforts to carry out the removal
22 orders, including making timely application
23 in good faith for travel or other documents
24 necessary to the alien’s departure, and

1 “(iii) have not conspired or acted to
2 prevent removal.

3 “(B) DETERMINATION.—The Secretary
4 shall make a determination whether to release
5 an alien after the removal period in accordance
6 with paragraphs (3) and (4). The determina-
7 tion—

8 “(i) shall include consideration of any
9 evidence submitted by the alien and the
10 history of the alien’s efforts to comply with
11 the order of removal, and

12 “(ii) may include any information or
13 assistance provided by the Department of
14 State or other Federal agency and any
15 other information available to the Sec-
16 retary pertaining to the ability to remove
17 the alien.

18 “(3) AUTHORITY TO DETAIN BEYOND THE RE-
19 MOVAL PERIOD .—

20 “(A) INITIAL 90 DAY PERIOD.—The Sec-
21 retary in the exercise of discretion, without any
22 limitations other than those specified in this
23 section, may continue to detain an alien for 90
24 days beyond the removal period (including any

1 extension of the removal period as provided in
2 subsection (a)(1)(C)).

3 “(B) EXTENSION.—

4 “(i) IN GENERAL.—The Secretary in
5 the exercise of discretion, without any limi-
6 tations other than those specified in this
7 section, may continue to detain an alien
8 beyond the 90 days authorized in subpara-
9 graph (A) if the conditions described in
10 subparagraph (A), (B), or (C) of para-
11 graph (4) apply.

12 “(ii) RENEWAL.—The Secretary may
13 renew a certification under paragraph
14 (4)(A) every six months without limitation,
15 after providing an opportunity for the alien
16 to request reconsideration of the certifi-
17 cation and to submit documents or other
18 evidence in support of that request. If the
19 Secretary does not renew a certification,
20 the Secretary may not continue to detain
21 the alien under such paragraph.

22 “(iii) DELEGATION.—Notwithstanding
23 section 103, the Secretary may not dele-
24 gate the authority to make or renew a cer-
25 tification described in clause (ii), (iii), or

1 (v) of paragraph (4)(B) below the level of
2 the Assistant Secretary for Immigration
3 and Customs Enforcement.

4 “(iv) HEARING.—The Secretary may
5 request that the Attorney General provide
6 for a hearing to make the determination
7 described in clause (iv)(II) of paragraph
8 (4)(B).

9 “(4) CONDITIONS FOR EXTENSION.—The condi-
10 tions for continuation of detention are any of the fol-
11 lowing:

12 “(A) The Secretary determines that there
13 is a significant likelihood that the alien—

14 “(i) will be removed in the reasonably
15 foreseeable future; or

16 “(ii) would be removed in the reason-
17 ably foreseeable future, or would have been
18 removed, but for the alien’s failure or re-
19 fusal to make all reasonable efforts to com-
20 ply with the removal order, or to fully co-
21 operate with the Secretary’s efforts to es-
22 tablish the alien’s identity and carry out
23 the removal order, including making timely
24 application in good faith for travel or other
25 documents necessary to the alien’s depar-

1 ture, or conspiracies or acts to prevent re-
2 moval.

3 “(B) The Secretary certifies in writing any
4 of the following:

5 “(i) In consultation with the Secretary
6 of Health and Human Services, the alien
7 has a highly contagious disease that poses
8 a threat to public safety.

9 “(ii) After receipt of a written rec-
10 ommendation from the Secretary of State,
11 the release of the alien is likely to have se-
12 rious adverse foreign policy consequences
13 for the United States.

14 “(iii) Based on information available
15 to the Secretary (including available infor-
16 mation from the intelligence community,
17 and without regard to the grounds upon
18 which the alien was ordered removed),
19 there is reason to believe that the release
20 of the alien would threaten the national se-
21 curity of the United States.

22 “(iv) The release of the alien will
23 threaten the safety of the community or
24 any person, the conditions of release can-
25 not reasonably be expected to ensure the

1 safety of the community or any person,
2 and—

3 “(I) the alien has been convicted
4 of one or more aggravated felonies de-
5 scribed in section 101(a)(43)(A) or of
6 one or more crimes identified by the
7 Secretary by regulation, or of one or
8 more attempts or conspiracies to com-
9 mit any such aggravated felonies or
10 such crimes, for an aggregate term of
11 imprisonment of at least five years; or

12 “(II) the alien has committed one
13 or more crimes of violence and, be-
14 cause of a mental condition or person-
15 ality disorder and behavior associated
16 with that condition or disorder, the
17 alien is likely to engage in acts of vio-
18 lence in the future.

19 “(v) The release of the alien will
20 threaten the safety of the community or
21 any person, conditions of release cannot
22 reasonably be expected to ensure the safety
23 of the community or any person, and the
24 alien has been convicted of at least one ag-
25 gravated felony.

1 “(C) Pending a determination under sub-
2 paragraph (B), so long as the Secretary has ini-
3 tiated the administrative review process no later
4 than 30 days after the expiration of the removal
5 period (including any extension of the removal
6 period as provided in subsection (a)(1)(C)).

7 “(5) RELEASE ON CONDITIONS.—If it is deter-
8 mined that an alien should be released from deten-
9 tion, the Secretary in the exercise of discretion may
10 impose conditions on release as provided in sub-
11 section (a)(3).

12 “(6) REDETENTION.—The Secretary in the ex-
13 ercise of discretion, without any limitations other
14 than those specified in this section, may again de-
15 tain any alien subject to a final removal order who
16 is released from custody if the alien fails to comply
17 with the conditions of release or to cooperate in the
18 alien’s removal from the United States, or if, upon
19 reconsideration, the Secretary determines that the
20 alien can be detained under paragraph (1). Para-
21 graphs (6) through (8) of subsection (a) shall apply
22 to any alien returned to custody pursuant to this
23 paragraph, as if the removal period terminated on
24 the day of the redetention.

1 “(7) CERTAIN ALIENS WHO EFFECTED
2 ENTRY.—If an alien has effected an entry into the
3 United States but has neither been lawfully admitted
4 nor physically present in the United States continu-
5 ously for the 2-year period immediately prior to the
6 commencement of removal proceedings under this
7 Act or deportation proceedings against the alien, the
8 Secretary in the exercise of discretion may decide
9 not to apply subsection (a)(8) and this subsection
10 and may detain the alien without any limitations ex-
11 cept those imposed by regulation.”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 subsection (a) shall take effect upon the date of enactment
14 of this Act, and section 241 of the Immigration and Na-
15 tionality Act, as amended, shall apply to—

16 (1) all aliens subject to a final administrative
17 removal, deportation, or exclusion order that was
18 issued before, on, or after the date of enactment of
19 this Act; and

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

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

23 Section 243 of the Immigration and Nationality Act
24 (8 U.S.C. 1253) is amended—

25 (1) in subsection (a)(1)—

1 (A) in the matter before subparagraph (A),
2 by inserting “or 212(a)” after “section
3 237(a)”; and

4 (B) by striking “imprisoned not more than
5 four years” and inserting “imprisoned for not
6 less than six months or more than five years”;
7 and

8 (2) in subsection (b)—

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

12 (B) by striking “for not more than one
13 year” and inserting “for not less than six
14 months or more than five years (or 10 years if
15 the alien is a member of any class described in
16 paragraph (1)(E), (2), (3), or (4) of section
17 237(a)”.

18 **SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED**

19 **FELONS AND OTHER CRIMINALS.**

20 (a) **EXCLUSION BASED ON FRAUDULENT DOCU-**
21 **MENTATION.**—Section 212(a)(2)(A)(i) of the Immigration
22 and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amend-
23 ed—

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

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

3 (3) by inserting after subclause (II) the fol-
4 lowing new subclause:

5 “(III) a violation (or a conspiracy
6 or attempt to violate) an offense de-
7 scribed in section 208 of the Social
8 Security Act or section 1028 of title
9 18, United States Code,”.

10 (b) EXCLUSION BASED ON AGGRAVATED FELONY,
11 UNLAWFUL PROCUREMENT OF CITIZENSHIP, AND
12 CRIMES OF DOMESTIC VIOLENCE.—Section 212(a)(2) of
13 such Act (8 U.S.C. 1182(a)(2)) is amended by adding at
14 the end the following new subparagraphs:

15 “(J) AGGRAVATED FELONY.—Any alien
16 who is convicted of an aggravated felony at any
17 time is inadmissible.

18 “(K) UNLAWFUL PROCUREMENT OF CITI-
19 ZENSHIP.—Any alien convicted of, or who ad-
20 mits having committed, or who admits commit-
21 ting acts which constitute the essential elements
22 of, a violation of (or a conspiracy or attempt to
23 violate) subsection (a) or (b) of section 1425 of
24 title 18, United States Code is inadmissible.

1 “(L) CRIMES OF DOMESTIC VIOLENCE,
2 STALKING, OR VIOLATION OF PROTECTION OR-
3 DERS; CRIMES AGAINST CHILDREN.—

4 “(i) DOMESTIC VIOLENCE, STALKING,
5 OR CHILD ABUSE.—

6 “(I) IN GENERAL.—Subject to
7 subclause (II), any alien who at any
8 time is convicted of, or who admits
9 having committed, or who admits
10 committing acts which constitute the
11 essential elements of, a crime of do-
12 mestic violence, a crime of stalking, or
13 a crime of child abuse, child neglect,
14 or child abandonment is inadmissible.

15 “(II) WAIVER FOR VICTIMS OF
16 DOMESTIC VIOLENCE.—Subclause (I)
17 shall not apply to any alien described
18 in section 237(a)(7)(A).

19 “(III) CRIME OF DOMESTIC VIO-
20 LENCE DEFINED.—For purposes of
21 subclause (I), the term ‘crime of do-
22 mestic violence’ means any crime of
23 violence (as defined in section 16 of
24 title 18, United States Code) against
25 a person committed by a current or

1 former spouse of the person, by an in-
2 dividual with whom the person shares
3 a child in common, by an individual
4 who is cohabiting with or has
5 cohabited with the person as a spouse,
6 by an individual similarly situated to
7 a spouse of the person under the do-
8 mestic or family violence laws of the
9 jurisdiction where the offense occurs,
10 or by any other individual against a
11 person who is protected from that in-
12 dividual's acts under the domestic or
13 family violence laws of the United
14 States or any State, Indian tribal gov-
15 ernment, or unit of local or foreign
16 government.

17 “(ii) VIOLATORS OF PROTECTION OR-
18 DERS.—

19 “(I) IN GENERAL.—Any alien
20 who at any time is enjoined under a
21 protection order issued by a court and
22 whom the court determines has en-
23 gaged in conduct that violates the por-
24 tion of a protection order that involves
25 protection against credible threats of

1 violence, repeated harassment, or bod-
2 ily injury to the person or person for
3 whom the protection order was issued
4 is inadmissible.

5 “(II) PROTECTION ORDER DE-
6 FINED.—For purposes of subclause
7 (I), the term ‘protection order’ means
8 any injunction issued for the purpose
9 of preventing violent or threatening
10 acts of domestic violence, including
11 temporary or final orders issued by
12 civil or criminal courts (other than
13 support or child custody orders or
14 provisions) whether obtained by filing
15 an independent action or as an inde-
16 pendent order in another pro-
17 ceeding.”.

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

20 (1) by striking “Attorney General may, in his
21 discretion, waive the application of subparagraphs
22 (A)(i)(I), (B), (D), and (E) of subsection (a)(2)”
23 and inserting “The Attorney General or the Sec-
24 retary of Homeland Security may, in the discretion
25 of the Attorney General or such Secretary, waive the

1 application of subparagraph (A)(i)(I), (A)(i)(III),
2 (B), (D), (E), (K), and (L) of subsection (a)(2)”;

3 (2) in paragraphs (1)(A) and (1)(B) and the
4 last sentence, by inserting “or the Secretary” after
5 “Attorney General” each place it appears;

6 (3) in paragraph (2), by striking “Attorney
7 General may, in his discretion” and “as he” and in-
8 serting “Attorney General or the Secretary of Home-
9 land Security, in the discretion of the Attorney Gen-
10 eral or such Secretary,” and “as the Attorney Gen-
11 eral or the Secretary”, respectively;

12 (4) in the second sentence, by striking “crimi-
13 nal acts involving torture” and inserting “criminal
14 acts involving torture, or an aggravated felony”; and

15 (5) in the third sentence, by striking “if either
16 since the date of such admission the alien has been
17 convicted of an aggravated felony or the alien” and
18 inserting “if since the date of such admission the
19 alien”.

20 (d) CONSTRUCTION.—The amendments made by this
21 section shall not be construed to create eligibility for relief
22 from removal under section 212(c) of the Immigration and
23 Nationality Act, as in effect before its repeal by section
24 304(b) of the Immigration Reform and Immigrant Re-
25 sponsibility Act of 1996 (division C of Public Law 104—

1 208), where such eligibility did not exist before these
2 amendments became effective.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to—

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

7 (2) to all aliens who are required to establish
8 admissibility on or after the such date, and in all re-
9 moval, deportation, or exclusion proceedings that are
10 filed, pending, or reopened, on or after such date.

11 **SEC. 605. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT**
12 **OF STATUS FOR AGGRAVATED FELONIES.**

13 (a) IN GENERAL.—Section 209(c) of the Immigration
14 and Nationality Act (8 U.S.C. 1159(c)) is amended by
15 adding at the end the following: “However, an alien who
16 is convicted of an aggravated felony is not eligible for a
17 waiver or for adjustment of status under this section.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall apply—

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

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

1 **SEC. 606. REMOVING DRUNK DRIVERS.**

2 (a) IN GENERAL.—Section 101(a)(43)(F) of the Im-
3 migration and Nationality Act (8 U.S.C. 1101(a)(43)(F))
4 is amended by inserting “, including a third drunk driving
5 conviction, regardless of the States in which the convic-
6 tions occurred, and regardless of whether the offenses are
7 deemed to be misdemeanors or felonies under State or
8 Federal law,” after “offense”).

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall take effect on the date of the enact-
11 ment of this Act and shall apply to convictions entered
12 before, on, or after such date.

13 **SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT AS-**
14 **SISTANCE PROGRAM.**

15 (a) DESIGNATED COUNTIES ADJACENT TO THE
16 SOUTHERN BORDER OF THE UNITED STATES DE-
17 FINED.—In this section, the term “designated counties
18 adjacent to the southern international border of the
19 United States” includes a county any part of which is
20 within 25 miles of the southern international border of the
21 United States.

22 (b) AUTHORITY.—

23 (1) IN GENERAL.—Any Sheriff or coalition or
24 group of Sheriffs from designated counties adjacent
25 to the southern international border of the United
26 States may transfer aliens detained or in the custody

1 of the Sheriff who are not lawfully present in the
2 United States to appropriate Federal law enforce-
3 ment officials, and shall be promptly paid for the
4 costs of performing such transfers by the Attorney
5 General for any local or State funds previously ex-
6 pended or proposed to be spent by that Sheriff or
7 coalition or group of Sheriffs.

8 (2) PAYMENT OF COSTS.—Payment of costs
9 under paragraph (1) shall include payment for costs
10 of detaining, housing, and transporting aliens who
11 are not lawfully present in the United States or who
12 have unlawfully entered the United States at a loca-
13 tion other than a port of entry and who are taken
14 into custody by the Sheriff.

15 (3) LIMITATION TO FUTURE COSTS.—In no
16 case shall payment be made under this section for
17 costs incurred before the date of the enactment of
18 this Act.

19 (4) ADVANCE PAYMENT OF COSTS.—The Attor-
20 ney General shall make an advance payment under
21 this section upon a certification of anticipated costs
22 for which payment may be made under this section,
23 but in no case shall such an advance payment cover
24 a period of costs of longer than 3 months.

1 (c) DESIGNATED COUNTY LAW ENFORCEMENT AC-
2 COUNT.—

3 (1) SEPARATE ACCOUNT.—Reimbursement or
4 pre-payment under subsection (b) shall be made
5 promptly from funds deposited into a separate ac-
6 count in the Treasury of the United States to be en-
7 titled the “Designated County Law Enforcement Ac-
8 count”.

9 (2) AVAILABILITY OF FUNDS.—All deposits into
10 the Designated County Law Enforcement Account
11 shall remain available until expended to the Attorney
12 General to carry out the provisions of this section.

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

15 (d) FUNDS FOR THE DESIGNATED COUNTY LAW EN-
16 FORCEMENT ACCOUNT.—Only funds designated, author-
17 ized, or appropriated by Congress may be deposited or
18 transferred to the Designated County Law Enforcement
19 Account. The Designated County Law Enforcement Ac-
20 count is authorized to receive up to \$100,000,000 per
21 year.

22 (e) USE OF FUNDS.—

23 (1) IN GENERAL.—Funds provided under this
24 section shall be payable directly to participating
25 Sheriff’s offices and may be used for the transfers

1 described in subsection (b)(1), including the costs of
2 personnel (such as overtime pay and costs for re-
3 serve deputies), costs of training of such personnel,
4 equipment, and, subject to paragraph (2), the con-
5 struction, maintenance, and operation of detention
6 facilities to detain aliens who are unlawfully present
7 in the United States. For purposes of this section,
8 an alien who is unlawfully present in the United
9 States shall be deemed to be a Federal prisoner be-
10 ginning upon determination by Federal law enforce-
11 ment officials that such alien is unlawfully present
12 in the United States, and such alien shall, upon such
13 determination, be deemed to be in Federal custody.
14 In order for costs to be eligible for payment, the
15 Sheriff making such application shall personally cer-
16 tify under oath that all costs submitted in the appli-
17 cation for reimbursement or advance payment meet
18 the requirements of this section and are reasonable
19 and necessary, and such certification shall be subject
20 to all State and Federal laws governing statements
21 made under oath, including the penalties of perjury,
22 removal from office, and prosecution under State
23 and Federal law.

24 (2) LIMITATION.—Not more than 20 percent of
25 the amount of funds provided under this section may

1 be used for the construction or renovation of deten-
2 tion or similar facilities.

3 (f) DISPOSITION AND DELIVERY OF DETAINED
4 ALIENS.—All aliens detained or taken into custody by a
5 Sheriff under this section and with respect to whom Fed-
6 eral law enforcement officials determine are unlawfully
7 present in the United States, shall be immediately deliv-
8 ered to Federal law enforcement officials. In accordance
9 with subsection (e)(1), an alien who is in the custody of
10 a Sheriff shall be deemed to be a Federal prisoner and
11 in Federal custody.

12 (g) REGULATIONS.—The Attorney General shall
13 issue, on an interim final basis, regulations not later than
14 60 days after the date of the enactment of this Act—

15 (1) governing the distribution of funds under
16 this section for all reasonable and necessary costs
17 and other expenses incurred or proposed to be in-
18 curred by a Sheriff or coalition or group of Sheriffs
19 under this section; and

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

24 (h) EFFECTIVE DATE.—The provisions of this sec-
25 tion shall take effect on its enactment. The promulgation

1 of any regulations under subsection (g) is not a necessary
2 precondition to the immediate deployment or work of
3 Sheriffs personnel or corrections officers as authorized by
4 this section. Any reasonable and necessary expenses or
5 costs authorized by this section and incurred by such
6 Sheriffs after the date of the enactment of this Act but
7 prior to the date of the promulgation of such regulations
8 are eligible for reimbursement under the terms and condi-
9 tions of this section.

10 (i) AUDIT.—All funds paid out under this section are
11 subject to audit by the Inspector General of the Depart-
12 ment of Justice and abuse or misuse of such funds shall
13 be vigorously investigated and prosecuted to the full extent
14 of Federal law.

15 (j) SUPPLEMENTAL FUNDING.—All funds paid out
16 under this section must supplement, and may not sup-
17 plant, State or local funds used for the same or similar
18 purposes.

19 **SEC. 608. RENDERING INADMISSIBLE AND DEPORTABLE**
20 **ALIENS PARTICIPATING IN CRIMINAL**
21 **STREET GANGS; DETENTION; INELIGIBILITY**
22 **FROM PROTECTION FROM REMOVAL AND**
23 **ASYLUM.**

24 (a) INADMISSIBLE.—Section 212(a)(2) of the Immi-
25 gration and Nationality Act (8 U.S.C. 1182(a)(2)), as

1 amended by section 604(b), is further amended by adding
2 at the end the following:

3 “(M) CRIMINAL STREET GANG PARTICIPA-
4 TION.—

5 “(i) IN GENERAL.—Any alien is inad-
6 missible if the alien has been removed
7 under section 237(a)(2)(F), or if the con-
8 sular officer or the Secretary of Homeland
9 Security knows, or has reasonable ground
10 to believe that the alien—

11 “(I) is a member of a criminal
12 street gang and has committed, con-
13 spired, or threatened to commit, or
14 seeks to enter the United States to
15 engage solely, principally, or inciden-
16 tally in, a gang crime or any other un-
17 lawful activity; or

18 “(II) is a member of a criminal
19 street gang designated under section
20 219A.

21 “(ii) CRIMINAL STREET GANG DE-
22 FINED.—For purposes of this subpara-
23 graph, the term ‘criminal street gang’
24 means a formal or informal group or asso-
25 ciation of 3 or more individuals, who com-

1 mit 2 or more gang crimes (one of which
2 is a crime of violence, as defined in section
3 16 of title 18, United States Code) in 2 or
4 more separate criminal episodes in relation
5 to the group or association.

6 “(iii) GANG CRIME DEFINED.—For
7 purposes of this subparagraph, the term
8 ‘gang crime’ means conduct constituting
9 any Federal or State crime, punishable by
10 imprisonment for one year or more, in any
11 of the following categories:

12 “(I) A crime of violence (as de-
13 fined in section 16 of title 18, United
14 States Code).

15 “(II) A crime involving obstruc-
16 tion of justice, tampering with or re-
17 taliating against a witness, victim, or
18 informant, or burglary.

19 “(III) A crime involving the man-
20 ufacturing, importing, distributing,
21 possessing with intent to distribute, or
22 otherwise dealing in a controlled sub-
23 stance or listed chemical (as those
24 terms are defined in section 102 of

1 the Controlled Substances Act (21
2 U.S.C. 802)).

3 “(IV) Any conduct punishable
4 under section 844 of title 18, United
5 States Code (relating to explosive ma-
6 terials), subsection (d), (g)(1) (where
7 the underlying conviction is a violent
8 felony (as defined in section
9 924(e)(2)(B) of such title) or is a se-
10 rious drug offense (as defined in sec-
11 tion 924(e)(2)(A)), (i), (j), (k), (o),
12 (p), (q), (u), or (x) of section 922 of
13 such title (relating to unlawful acts),
14 or subsection (b), (c), (g), (h), (k), (l),
15 (m), or (n) of section 924 of such title
16 (relating to penalties), section 930 of
17 such title (relating to possession of
18 firearms and dangerous weapons in
19 Federal facilities), section 931 of such
20 title (relating to purchase, ownership,
21 or possession of body armor by violent
22 felons), sections 1028 and 1029 of
23 such title (relating to fraud and re-
24 lated activity in connection with iden-
25 tification documents or access de-

1 vices), section 1952 of such title (re-
2 lating to interstate and foreign travel
3 or transportation in aid of racket-
4 eering enterprises), section 1956 of
5 such title (relating to the laundering
6 of monetary instruments), section
7 1957 of such title (relating to engag-
8 ing in monetary transactions in prop-
9 erty derived from specified unlawful
10 activity), or sections 2312 through
11 2315 of such title (relating to inter-
12 state transportation of stolen motor
13 vehicles or stolen property).

14 “(V) Any conduct punishable
15 under section 274 (relating to bring-
16 ing in and harboring certain aliens),
17 section 277 (relating to aiding or as-
18 sisting certain aliens to enter the
19 United States), or section 278 (relat-
20 ing to importation of alien for im-
21 moral purpose) of this Act.”.

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

1 “(F) CRIMINAL STREET GANG PARTICIPA-
2 TION.—

3 “(i) IN GENERAL.—Any alien is de-
4 portable who—

5 “(I) is a member of a criminal
6 street gang and is convicted of com-
7 mitting, or conspiring, threatening, or
8 attempting to commit, a gang crime;
9 or

10 “(II) is determined by the Sec-
11 retary of Homeland Security to be a
12 member of a criminal street gang des-
13 ignated under section 219A.

14 “(ii) DEFINITIONS.—For purposes of
15 this subparagraph, the terms ‘criminal
16 street gang’ and ‘gang crime’ have the
17 meaning given such terms in section
18 212(a)(2)(M).”.

19 (c) DESIGNATION OF CRIMINAL STREET GANGS.—

20 (1) IN GENERAL.—Chapter 2 of title II of the
21 Immigration and Nationality Act (8 U.S.C. 1181 et
22 seq.) is amended by adding at the end the following:

23 “DESIGNATION OF CRIMINAL STREET GANGS

24 “SEC. 219A. (a) DESIGNATION.—

25 “(1) IN GENERAL.—The Attorney General is
26 authorized to designate a group or association as a

1 criminal street gang in accordance with this sub-
2 section if the Attorney General finds that the group
3 or association meets the criteria described in section
4 212(a)(2)(M)(ii)(I).

5 “(2) PROCEDURE.—

6 “(A) NOTICE.—

7 “(i) TO CONGRESSIONAL LEADERS.—

8 Seven days before making a designation
9 under this subsection, the Attorney Gen-
10 eral shall notify the Speaker and Minority
11 Leader of the House of Representatives
12 and the Majority Leader and Minority
13 Leader of the Senate, and the members of
14 the relevant committees of the House of
15 Representatives and the Senate, in writing,
16 of the intent to designate a group or asso-
17 ciation under this subsection, together with
18 the findings made under paragraph (1)
19 with respect to that group or association,
20 and the factual basis therefor.

21 “(ii) PUBLICATION IN FEDERAL REG-
22 ISTER.—The Attorney shall publish the
23 designation in the Federal Register seven
24 days after providing the notification under
25 clause (i).

1 “(B) EFFECT OF DESIGNATION.—

2 “(i) A designation under this sub-
3 section shall take effect upon publication
4 under subparagraph (A)(ii).

5 “(ii) Any designation under this sub-
6 section shall cease to have effect upon an
7 Act of Congress disapproving such des-
8 ignation.

9 “(3) RECORD.—In making a designation under
10 this subsection, the Attorney General shall create an
11 administrative record.

12 “(4) PERIOD OF DESIGNATION.—

13 “(A) IN GENERAL.—A designation under
14 this subsection shall be effective for all purposes
15 until revoked under paragraph (5) or (6) or set
16 aside pursuant to subsection (b).

17 “(B) REVIEW OF DESIGNATION UPON PE-
18 TITION.—

19 “(i) IN GENERAL.—The Attorney
20 General shall review the designation of a
21 criminal street gang under the procedures
22 set forth in clauses (iii) and (iv) if the des-
23 igned gang or association files a petition
24 for revocation within the petition period
25 described in clause (ii).

1 “(ii) PETITION PERIOD.—For pur-
2 poses of clause (i)—

3 “(I) if the designated gang or as-
4 sociation has not previously filed a pe-
5 tition for revocation under this sub-
6 paragraph, the petition period begins
7 2 years after the date on which the
8 designation was made; or

9 “(II) if the designated gang or
10 association has previously filed a peti-
11 tion for revocation under this sub-
12 paragraph, the petition period begins
13 2 years after the date of the deter-
14 mination made under clause (iv) on
15 that petition.

16 “(iii) PROCEDURES.—Any criminal
17 street gang that submits a petition for rev-
18 ocation under this subparagraph must pro-
19 vide evidence in that petition that the rel-
20 evant circumstances described in para-
21 graph (1) are sufficiently different from
22 the circumstances that were the basis for
23 the designation such that a revocation with
24 respect to the gang is warranted.

25 “(iv) DETERMINATION.—

1 “(I) IN GENERAL.—Not later
2 than 180 days after receiving a peti-
3 tion for revocation submitted under
4 this subparagraph, the Attorney Gen-
5 eral shall make a determination as to
6 such revocation.

7 “(II) PUBLICATION OF DETER-
8 MINATION.—A determination made by
9 the Attorney General under this
10 clause shall be published in the Fed-
11 eral Register.

12 “(III) PROCEDURES.—Any rev-
13 ocation by the Attorney General shall
14 be made in accordance with para-
15 graph (6).

16 “(C) OTHER REVIEW OF DESIGNATION.—

17 “(i) IN GENERAL.—If in a 5-year pe-
18 riod no review has taken place under sub-
19 paragraph (B), the Attorney General shall
20 review the designation of the criminal
21 street gang in order to determine whether
22 such designation should be revoked pursu-
23 ant to paragraph (6).

24 “(ii) PROCEDURES.—If a review does
25 not take place pursuant to subparagraph

1 (B) in response to a petition for revocation
2 that is filed in accordance with that sub-
3 paragraph, then the review shall be con-
4 ducted pursuant to procedures established
5 by the Attorney General. The results of
6 such review and the applicable procedures
7 shall not be reviewable in any court.

8 “(iii) PUBLICATION OF RESULTS OF
9 REVIEW.—The Attorney General shall pub-
10 lish any determination made pursuant to
11 this subparagraph in the Federal Register.

12 “(5) REVOCATION BY ACT OF CONGRESS.—The
13 Congress, by an Act of Congress, may block or re-
14 voke a designation made under paragraph (1).

15 “(6) REVOCATION BASED ON CHANGE IN CIR-
16 CUMSTANCES.—

17 “(A) IN GENERAL.—The Attorney General
18 may revoke a designation made under para-
19 graph (1) at any time, and shall revoke a des-
20 ignation upon completion of a review conducted
21 pursuant to subparagraphs (B) and (C) of
22 paragraph (4) if the Attorney General finds
23 that the circumstances that were the basis for
24 the designation have changed in such a manner
25 as to warrant revocation.

1 “(B) PROCEDURE.—The procedural re-
2 quirements of paragraphs (2) and (3) shall
3 apply to a revocation under this paragraph. Any
4 revocation shall take effect on the date specified
5 in the revocation or upon publication in the
6 Federal Register if no effective date is specified.

7 “(7) EFFECT OF REVOCATION.—The revocation
8 of a designation under paragraph (5) or (6) shall
9 not affect any action or proceeding based on conduct
10 committed prior to the effective date of such revoca-
11 tion.

12 “(8) USE OF DESIGNATION IN HEARING.—If a
13 designation under this subsection has become effec-
14 tive under paragraph (2)(B) an alien in a removal
15 proceeding shall not be permitted to raise any ques-
16 tion concerning the validity of the issuance of such
17 designation as a defense or an objection at any hear-
18 ing.

19 “(b) JUDICIAL REVIEW OF DESIGNATION.—

20 “(1) IN GENERAL.—Not later than 30 days
21 after publication of the designation in the Federal
22 Register, a group or association designated as a
23 criminal street gang may seek judicial review of the
24 designation in the United States Court of Appeals
25 for the District of Columbia Circuit.

1 “(2) BASIS OF REVIEW.—Review under this
2 subsection shall be based solely upon the administra-
3 tive record.

4 “(3) SCOPE OF REVIEW.—The Court shall hold
5 unlawful and set aside a designation the court finds
6 to be—

7 “(A) arbitrary, capricious, an abuse of dis-
8 cretion, or otherwise not in accordance with
9 law;

10 “(B) contrary to constitutional right,
11 power, privilege, or immunity;

12 “(C) in excess of statutory jurisdiction, au-
13 thority, or limitation, or short of statutory
14 right;

15 “(D) lacking substantial support in the ad-
16 ministrative record taken as a whole; or

17 “(E) not in accord with the procedures re-
18 quired by law.

19 “(4) JUDICIAL REVIEW INVOKED.—The pend-
20 ency of an action for judicial review of a designation
21 shall not affect the application of this section, unless
22 the court issues a final order setting aside the des-
23 ignation.

24 “(c) RELEVANT COMMITTEE DEFINED.—As used in
25 this section, the term ‘relevant committees’ means the

1 Committees on the Judiciary of the House of Representa-
2 tives and of the Senate.”.

3 (2) CLERICAL AMENDMENT.—The table of con-
4 tents of such Act (8 U.S.C. 1101 et seq.) is amend-
5 ed by inserting after the item relating to section 219
6 the following:

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

7 (d) MANDATORY DETENTION OF CRIMINAL STREET
8 GANG MEMBERS.—

9 (1) IN GENERAL.—Section 236(c)(1)(D) of the
10 Immigration and Nationality Act (8 U.S.C.
11 1226(c)(1)(D)) is amended—

12 (A) by inserting “or 212(a)(2)(M)” after
13 “212(a)(3)(B)”; and

14 (B) by inserting “or 237(a)(2)(F)” before
15 “237(a)(4)(B)”.

16 (2) ANNUAL REPORT.—Not later than March 1
17 of each year (beginning 1 year after the date of the
18 enactment of this Act), the Secretary of Homeland
19 Security, after consultation with the appropriate
20 Federal agencies, shall submit a report to the Com-
21 mittees on the Judiciary of the House of Represent-
22 atives and of the Senate on the number of aliens de-
23 tained under the amendments made by paragraph
24 (1).

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

5 (e) INELIGIBILITY OF ALIEN STREET GANG MEM-
6 BERS FROM PROTECTION FROM REMOVAL AND ASY-
7 LUM.—

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

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

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

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

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

24 “(vi) the alien is described in section
25 212(a)(2)(M)(i) or section 237(a)(2)(F)(i)

1 (relating to participation in criminal street
2 gangs); or”.

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

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

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

16 (f) EFFECTIVE DATE.—Except as otherwise pro-
17 vided, the amendments made by this section are effective
18 as of the date of enactment and shall apply to all pending
19 cases in which no final administrative action has been en-
20 tered.

21 **SEC. 609. NATURALIZATION REFORM.**

22 (a) BARRING TERRORISTS FROM NATURALIZA-
23 TION.—Section 316 of the Immigration and Nationality
24 Act (8 U.S.C. 1427) is amended by adding at the end the
25 following new subsection:

1 “(g) No person shall be naturalized who the Sec-
2 retary of Homeland Security determines, in the Sec-
3 retary’s discretion, to have been at any time an alien de-
4 scribed in section 212(a)(3) or 237(a)(4). Such determina-
5 tion may be based upon any relevant information or evi-
6 dence, including classified, sensitive, or national security
7 information, and shall be binding upon, and unreviewable
8 by, any court exercising jurisdiction under the immigra-
9 tion laws over any application for naturalization, regard-
10 less whether such jurisdiction to review a decision or ac-
11 tion of the Secretary is de novo or otherwise.”.

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

15 (1) by striking “shall be considered by the At-
16 torney General” and inserting “shall be considered
17 by the Secretary of Homeland Security or any
18 court”;

19 (2) by striking “pursuant to a warrant of arrest
20 issued under the provisions of this or any other
21 Act:” and inserting “or other proceeding to deter-
22 mine the applicant’s inadmissibility or deportability,
23 or to determine whether the applicant’s lawful per-
24 manent resident status should be rescinded, regard-
25 less of when such proceeding was commenced:”; and

1 (3) by striking “upon the Attorney General”
2 and inserting “upon the Secretary of Homeland Se-
3 curity”.

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

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

18 (e) DISTRICT COURT JURISDICTION.—Section 336(b)
19 of such Act (8 U.S.C. 1447(b)) is amended to read as
20 follows:

21 “(b) If there is a failure to render a final administra-
22 tive decision under section 335 before the end of the 180-
23 day period after the date on which the Secretary of Home-
24 land Security completes all examinations and interviews
25 conducted under such section, as such terms are defined

1 by the Secretary pursuant to regulations, the applicant
2 may apply to the district court for the district in which
3 the applicant resides for a hearing on the matter. Such
4 court shall only have jurisdiction to review the basis for
5 delay and remand the matter to the Secretary for the Sec-
6 retary's determination on the application."

7 (f) CONFORMING AMENDMENTS.—Section 310(e) of
8 such Act (8 U.S.C. 1421(e)) is amended—

9 (1) by inserting “, no later than the date that
10 is 120 days after the Secretary's final determina-
11 tion” before “seek”; and

12 (2) by striking the second sentence and insert-
13 ing the following: “The burden shall be upon the pe-
14 titioner to show that the Secretary's denial of the
15 application was not supported by facially legitimate
16 and bona fide reasons. Except in a proceeding under
17 section 340, notwithstanding any other provision of
18 law (statutory or nonstatutory), including section
19 2241 of title 28, United States Code, or any other
20 habeas corpus provision, and sections 1361 and
21 1651 of such title, no court shall have jurisdiction
22 to determine, or to review a determination of the
23 Secretary made at any time regarding, for purposes
24 of an application for naturalization, whether an alien
25 is a person of good moral character, whether an

1 alien understands and is attached to the principles
2 of the Constitution of the United States, or whether
3 an alien is well disposed to the good order and hap-
4 piness of the United States.”.

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

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

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

16 (1) in paragraph (1)—

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

20 (B) by striking “set forth in this sub-
21 section or” and inserting “set forth in this sub-
22 section, in lieu of removal proceedings under”;

23 (2) in paragraph (3), by striking “paragraph
24 (1) until 14 calendar days” and inserting “para-
25 graph (1) or (3) until 7 calendar days”;

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

4 (4) in paragraph (5)—

5 (A) by striking “described in this section”
6 and inserting “described in paragraph (1) or
7 (2)”; and

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

14 (5) by redesignating paragraphs (3), (4), and
15 (5) as paragraphs (4), (5), and (6), respectively; and

16 (6) by inserting after paragraph (2) the fol-
17 lowing new paragraph:

18 “(3) The Secretary of Homeland Security in
19 the exercise of discretion may determine inadmis-
20 sibility under section 212(a)(2) (relating to criminal
21 offenses) and issue an order of removal pursuant to
22 the procedures set forth in this subsection, in lieu of
23 removal proceedings under section 240, with respect
24 to an alien who

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

1 torney General, to have been at any time an alien
2 described in section 212(a)(3) or section 237(a)(4),
3 which determination may be based upon any rel-
4 evant information or evidence, including classified,
5 sensitive, or national security information, and which
6 shall be binding upon any court regardless of the ap-
7 plicable standard of review;”;

8 (2) in paragraph (8), by inserting “, regardless
9 whether the crime was classified as an aggravated
10 felony at the time of conviction,” after “(as defined
11 in subsection (a)(43))”; and

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

23 (b) AGGRAVATED FELONY EFFECTIVE DATE.—Sec-
24 tion 509(b) of the Immigration Act of 1990 (Public Law
25 101–649), as amended by section 306(a)(7) of the Mis-

1 cellaneous and Technical Immigration and Naturalization
2 Amendments of 1991 (Public Law 102–232) is amended
3 to read as follows:

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

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

14 (d) EFFECTIVE DATES.—The amendments made by
15 subsections (a) and (b) shall take effect on the date of
16 the enactment of this Act, shall apply to any act that oc-
17 curred before, on, or after such date, and shall apply to
18 any application for naturalization or any other benefit or
19 relief or any other case or matter under the immigration
20 laws pending on, or filed on or after, such date.

21 **SEC. 613. STRENGTHENING DEFINITIONS OF “AGGRAVATED**
22 **FELONY” AND “CONVICTION”.**

23 (a) IN GENERAL.—Section 101(a) of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1101(a)) is amended—

1 (1) by amending subparagraph (A) of para-
2 graph (43) to read as follows:

3 “(A) murder, manslaughter, homicide,
4 rape, or any sexual abuse of a minor, whether
5 or not the minority of the victim is established
6 by evidence contained in the record of convic-
7 tion or by evidence extrinsic to the record of
8 conviction;” and

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

11 “Any reversal, vacatur, expungement, or modification to
12 a conviction, sentence, or conviction record that was grant-
13 ed to ameliorate the consequences of the conviction, sen-
14 tence, or conviction record, or was granted for rehabilita-
15 tive purposes, or for failure to advise the alien of the immi-
16 gration consequences of a guilty plea or a determination
17 of guilt, shall have no effect on the immigration con-
18 sequences resulting from the original conviction. The alien
19 shall have the burden of demonstrating that the reversal,
20 vacatur, expungement, or modification was not granted to
21 ameliorate the consequences of the conviction, sentence,
22 or conviction record, for rehabilitative purposes, or for fail-
23 ure to advise the alien of the immigration consequences
24 of a guilty plea or a determination of guilt.”.

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

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

7 (a) IN GENERAL.—Section 237(a)(3)(B) of the Im-
8 migration and Nationality Act (8 U.S.C. 1227(a)(3)(B))
9 is amended—

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

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

12 and

13 (3) by inserting after clause (iii) the following

14 new clause:

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

19 (b) DEPORTABILITY; CRIMINAL OFFENSES.—Section
20 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended
21 by section 608(b), is amended by adding at the end the
22 following new subparagraph:

23 “(G) SOCIAL SECURITY AND IDENTIFICA-
24 TION FRAUD.—Any alien who at any time after
25 admission is convicted of a violation of (or a

1 conspiracy or attempt to violate) an offense de-
 2 scribed in section 208 of the Social Security Act
 3 or section 1028 of title 18, United States Code
 4 is deportable.”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to any act that occurred before,
 7 on, or after the date of the enactment of this Act, and
 8 to all aliens who are required to establish admissibility on
 9 or after such date and in all removal, deportation, or ex-
 10 clusion proceedings that are filed, pending, or reopened,
 11 on or after such date.

12 **TITLE VII—EMPLOYMENT**

13 **ELIGIBILITY VERIFICATION**

14 **SEC. 701. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**

15 **TEM.**

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

19 “(7) EMPLOYMENT ELIGIBILITY VERIFICATION
 20 SYSTEM.—

21 “(A) IN GENERAL.—The Secretary of
 22 Homeland Security shall establish and admin-
 23 ister a verification system through which the
 24 Secretary (or a designee of the Secretary, which
 25 may be a nongovernmental entity)—

1 “(i) responds to inquiries made by
2 persons at any time through a toll-free
3 telephone line and other toll-free electronic
4 media concerning an individual’s identity
5 and whether the individual is authorized to
6 be employed; and

7 “(ii) maintains records of the inquir-
8 ies that were made, of verifications pro-
9 vided (or not provided), and of the codes
10 provided to inquirers as evidence of their
11 compliance with their obligations under
12 this section.

13 “(B) INITIAL RESPONSE.—The verification
14 system shall provide verification or a tentative
15 nonverification of an individual’s identity and
16 employment eligibility within 3 working days of
17 the initial inquiry. If providing verification or
18 tentative nonverification, the verification system
19 shall provide an appropriate code indicating
20 such verification or such nonverification.

21 “(C) SECONDARY VERIFICATION PROCESS
22 IN CASE OF TENTATIVE NONVERIFICATION.—In
23 cases of tentative nonverification, the Secretary
24 shall specify, in consultation with the Commis-
25 sioner of Social Security, an available secondary

1 verification process to confirm the validity of in-
2 formation provided and to provide a final
3 verification or nonverification within 10 working
4 days after the date of the tentative
5 nonverification. When final verification or
6 nonverification is provided, the verification sys-
7 tem shall provide an appropriate code indicating
8 such verification or nonverification.

9 “(D) DESIGN AND OPERATION OF SYS-
10 TEM.—The verification system shall be designed
11 and operated—

12 “(i) to maximize its reliability and
13 ease of use by persons and other entities
14 consistent with insulating and protecting
15 the privacy and security of the underlying
16 information;

17 “(ii) to respond to all inquiries made
18 by such persons and entities on whether
19 individuals are authorized to be employed
20 and to register all times when such inquir-
21 ies are not received;

22 “(iii) with appropriate administrative,
23 technical, and physical safeguards to pre-
24 vent unauthorized disclosure of personal
25 information; and

1 “(iv) to have reasonable safeguards
2 against the system’s resulting in unlawful
3 discriminatory practices based on national
4 origin or citizenship status, including—

5 “(I) the selective or unauthorized
6 use of the system to verify eligibility;

7 “(II) the use of the system prior
8 to an offer of employment; or

9 “(III) the exclusion of certain in-
10 dividuals from consideration for em-
11 ployment as a result of a perceived
12 likelihood that additional verification
13 will be required, beyond what is re-
14 quired for most job applicants.

15 “(E) RESPONSIBILITIES OF THE COMMIS-
16 SIONER OF SOCIAL SECURITY.—As part of the
17 verification system, the Commissioner of Social
18 Security, in consultation with the Secretary of
19 Homeland Security (and any designee of the
20 Secretary selected to establish and administer
21 the verification system), shall establish a reli-
22 able, secure method, which, within the time pe-
23 riods specified under subparagraphs (B) and
24 (C), compares the name and social security ac-
25 count number provided in an inquiry against

1 such information maintained by the Commis-
2 sioner in order to validate (or not validate) the
3 information provided regarding an individual
4 whose identity and employment eligibility must
5 be confirmed, the correspondence of the name
6 and number, and whether the individual has
7 presented a social security account number that
8 is not valid for employment. The Commissioner
9 shall not disclose or release social security infor-
10 mation (other than such verification or
11 nonverification) except as provided for in this
12 section or section 205(c)(2)(I) of the Social Se-
13 curity Act.

14 “(F) RESPONSIBILITIES OF THE SEC-
15 RETARY OF HOMELAND SECURITY.—(i) As part
16 of the verification system, the Secretary of
17 Homeland Security (in consultation with any
18 designee of the Secretary selected to establish
19 and administer the verification system), shall
20 establish a reliable, secure method, which, with-
21 in the time periods specified under subpara-
22 graphs (B) and (C), compares the name and
23 alien identification or authorization number
24 which are provided in an inquiry against such
25 information maintained by the Secretary in

1 order to validate (or not validate) the informa-
2 tion provided, the correspondence of the name
3 and number, and whether the alien is author-
4 ized to be employed in the United States.

5 “(ii) When a single employer has sub-
6 mitted to the verification system pursuant to
7 paragraph (3)(A) the identical social security
8 account number in more than one instance, or
9 when multiple employers have submitted to the
10 verification system pursuant to such paragraph
11 the identical social security account number, in
12 a manner which indicates the possible fraudu-
13 lent use of that number, the Secretary of
14 Homeland Security shall conduct an investiga-
15 tion in order to ensure that no fraudulent use
16 of a social security account number has taken
17 place. If the Secretary has selected a designee
18 to establish and administer the verification sys-
19 tem, the designee shall notify the Secretary
20 when a single employer has submitted to the
21 verification system pursuant to paragraph
22 (3)(A) the identical social security account
23 number in more than one instance, or when
24 multiple employers have submitted to the
25 verification system pursuant to such paragraph

1 the identical social security account number, in
2 a manner which indicates the possible fraudu-
3 lent use of that number. The designee shall also
4 provide the Secretary with all pertinent infor-
5 mation, including the name and address of the
6 employer or employers who submitted the rel-
7 evant social security account number, the rel-
8 evant social security account number submitted
9 by the employer or employers, and the relevant
10 name and date of birth of the employee sub-
11 mitted by the employer or employers.

12 “(G) UPDATING INFORMATION.—The
13 Commissioner of Social Security and the Sec-
14 retary of Homeland Security shall update their
15 information in a manner that promotes the
16 maximum accuracy and shall provide a process
17 for the prompt correction of erroneous informa-
18 tion, including instances in which it is brought
19 to their attention in the secondary verification
20 process described in subparagraph (C).

21 “(H) LIMITATION ON USE OF THE
22 VERIFICATION SYSTEM AND ANY RELATED SYS-
23 TEMS.—

24 “(i) IN GENERAL.—Notwithstanding
25 any other provision of law, nothing in this

1 paragraph shall be construed to permit or
2 allow any department, bureau, or other
3 agency of the United States Government to
4 utilize any information, data base, or other
5 records assembled under this paragraph
6 for any other purpose other than as pro-
7 vided for.

8 “(ii) NO NATIONAL IDENTIFICATION
9 CARD.—Nothing in this paragraph shall be
10 construed to authorize, directly or indi-
11 rectly, the issuance or use of national iden-
12 tification cards or the establishment of a
13 national identification card.

14 “(I) FEDERAL TORT CLAIMS ACT.—If an
15 individual alleges that the individual would not
16 have been dismissed from a job but for an error
17 of the verification mechanism, the individual
18 may seek compensation only through the mech-
19 anism of the Federal Tort Claims Act, and in-
20 junctive relief to correct such error. No class
21 action may be brought under this subpara-
22 graph.

23 “(J) PROTECTION FROM LIABILITY FOR
24 ACTIONS TAKEN ON THE BASIS OF INFORMA-
25 TION.—No person or entity shall be civilly or

1 criminally liable for any action taken in good
2 faith reliance on information provided through
3 the employment eligibility verification mecha-
4 nism established under this paragraph.”.

5 (b) REPEAL OF PROVISION RELATING TO EVALUA-
6 TIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—

7 Section 274A(d) (8 U.S.C. 1324a(d)) is repealed.

8 **SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**
9 **ESS.**

10 Section 274A of the Immigration and Nationality Act
11 (8 U.S.C. 1324a) is amended—

12 (1) in subsection (a)(3), by inserting “(A)”
13 after “DEFENSE.—”, and by adding at the end the
14 following:

15 “(B) FAILURE TO SEEK AND OBTAIN
16 VERIFICATION.—In the case of a person or entity in
17 the United States that hires, or continues to employ,
18 an individual, or recruits or refers an individual for
19 employment, the following requirements apply:

20 “(i) FAILURE TO SEEK VERIFICATION.—

21 “(I) IN GENERAL.—If the person or
22 entity has not made an inquiry, under the
23 mechanism established under subsection
24 (b)(7), seeking verification of the identity
25 and work eligibility of the individual, by

1 not later than the end of 3 working days
2 (as specified by the Secretary of Homeland
3 Security) after the date of the hiring, the
4 date specified in subsection (b)(8)(B) for
5 previously hired individuals, or before the
6 recruiting or referring commences, the de-
7 fense under subparagraph (A) shall not be
8 considered to apply with respect to any
9 employment, except as provided in sub-
10 clause (II).

11 “(II) SPECIAL RULE FOR FAILURE OF
12 VERIFICATION MECHANISM.—If such a per-
13 son or entity in good faith attempts to
14 make an inquiry in order to qualify for the
15 defense under subparagraph (A) and the
16 verification mechanism has registered that
17 not all inquiries were responded to during
18 the relevant time, the person or entity can
19 make an inquiry until the end of the first
20 subsequent working day in which the
21 verification mechanism registers no non-
22 responses and qualify for such defense.

23 “(ii) FAILURE TO OBTAIN
24 VERIFICATION.—If the person or entity has
25 made the inquiry described in clause (i)(I) but

1 has not received an appropriate verification of
2 such identity and work eligibility under such
3 mechanism within the time period specified
4 under subsection (b)(7)(B) after the time the
5 verification inquiry was received, the defense
6 under subparagraph (A) shall not be considered
7 to apply with respect to any employment after
8 the end of such time period.”;

9 (2) by amending subparagraph (A) of sub-
10 section (b)(1) to read as follows:

11 “(A) IN GENERAL.—The person or entity
12 must attest, under penalty of perjury and on a
13 form designated or established by the Secretary
14 by regulation, that it has verified that the indi-
15 vidual is not an unauthorized alien by—

16 “(i) obtaining from the individual the
17 individual’s social security account number
18 and recording the number on the form (if
19 the individual claims to have been issued
20 such a number), and, if the individual does
21 not attest to United States citizenship
22 under paragraph (2), obtaining such iden-
23 tification or authorization number estab-
24 lished by the Department of Homeland Se-
25 curity for the alien as the Secretary of

1 Homeland Security may specify, and re-
2 cording such number on the form; and

3 “(ii)(I) examining a document de-
4 scribed in subparagraph (B); or (II) exam-
5 ining a document described in subpara-
6 graph (C) and a document described in
7 subparagraph (D).

8 A person or entity has complied with the re-
9 quirement of this paragraph with respect to ex-
10 amination of a document if the document rea-
11 sonably appears on its face to be genuine, rea-
12 sonably appears to pertain to the individual
13 whose identity and work eligibility is being
14 verified, and, if the document bears an expira-
15 tion date, that expiration date has not elapsed.
16 If an individual provides a document (or com-
17 bination of documents) that reasonably appears
18 on its face to be genuine, reasonably appears to
19 pertain to the individual whose identity and
20 work eligibility is being verified, and is suffi-
21 cient to meet the first sentence of this para-
22 graph, nothing in this paragraph shall be con-
23 strued as requiring the person or entity to so-
24 licit the production of any other document or as

1 requiring the individual to produce another doc-
2 ument.”;

3 (3) in subsection (b)(1)(D)—

4 (A) in clause (i), by striking “or such other
5 personal identification information relating to
6 the individual as the Secretary finds, by regula-
7 tion, sufficient for purposes of this section”;
8 and

9 (B) in clause (ii), by inserting before the
10 period “and that contains a photograph of the
11 individual”;

12 (4) in subsection (b)(2), by adding at the end
13 the following: “The individual must also provide that
14 individual’s social security account number (if the
15 individual claims to have been issued such a num-
16 ber), and, if the individual does not attest to United
17 States citizenship under this paragraph, such identi-
18 fication or authorization number established by the
19 Department of Homeland Security for the alien as
20 the Secretary may specify.”; and

21 (5) by amending paragraph (3) of subsection
22 (b) to read as follows:

23 “(3) RETENTION OF VERIFICATION FORM AND
24 VERIFICATION.—

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

4 “(i) retain the form and make it avail-
5 able for inspection by officers of the De-
6 partment of Homeland Security, the Spe-
7 cial Counsel for Immigration-Related Un-
8 fair Employment Practices, or the Depart-
9 ment of Labor during a period beginning
10 on the date of the hiring, recruiting, or re-
11 ferral of the individual or the date of the
12 completion of verification of a previously
13 hired individual and ending—

14 “(I) in the case of the recruiting
15 or referral of an individual, three
16 years after the date of the recruiting
17 or referral;

18 “(II) in the case of the hiring of
19 an individual, the later of—

20 “(aa) three years after the
21 date of such hiring; or

22 “(bb) one year after the
23 date the individual’s employment
24 is terminated; and

1 “(III) in the case of the
2 verification of a previously hired indi-
3 vidual, the later of—

4 “(aa) three years after the
5 date of the completion of
6 verification; or

7 “(bb) one year after the
8 date the individual’s employment
9 is terminated;

10 “(ii) make an inquiry, as provided in
11 paragraph (7), using the verification sys-
12 tem to seek verification of the identity and
13 employment eligibility of an individual, by
14 not later than the end of 3 working days
15 (as specified by the Secretary of Homeland
16 Security) after the date of the hiring or in
17 the case of previously hired individuals, the
18 date specified in subsection (b)(8)(B), or
19 before the recruiting or referring com-
20 mences; and

21 “(iii) may not commence recruitment
22 or referral of the individual until the per-
23 son or entity receives verification under
24 subparagraph (B)(i) or (B)(iii).

25 “(B) VERIFICATION.—

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

11 “(ii) TENTATIVE NONVERIFICATION
12 RECEIVED.—If the person or other entity
13 receives a tentative nonverification of an
14 individual’s identity or work eligibility
15 under the verification system within the
16 time period specified, the person or entity
17 shall so inform the individual for whom the
18 verification is sought. If the individual does
19 not contest the nonverification within the
20 time period specified, the nonverification
21 shall be considered final. The person or en-
22 tity shall then record on the form an ap-
23 propriate code which has been provided
24 under the system to indicate a tentative
25 nonverification. If the individual does con-

1 test the nonverification, the individual shall
2 utilize the process for secondary
3 verification provided under paragraph (7).
4 The nonverification will remain tentative
5 until a final verification or nonverification
6 is provided by the verification system with-
7 in the time period specified. In no case
8 shall an employer terminate employment of
9 an individual because of a failure of the in-
10 dividual to have identity and work eligi-
11 bility confirmed under this section until a
12 nonverification becomes final. Nothing in
13 this clause shall apply to a termination of
14 employment for any reason other than be-
15 cause of such a failure.

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

1 “(iv) EXTENSION OF TIME.—If the
2 person or other entity in good faith at-
3 tempts to make an inquiry during the time
4 period specified and the verification system
5 has registered that not all inquiries were
6 received during such time, the person or
7 entity may make an inquiry in the first
8 subsequent working day in which the
9 verification system registers that it has re-
10 ceived all inquiries. If the verification sys-
11 tem cannot receive inquiries at all times
12 during a day, the person or entity merely
13 has to assert that the entity attempted to
14 make the inquiry on that day for the pre-
15 vious sentence to apply to such an inquiry,
16 and does not have to provide any addi-
17 tional proof concerning such inquiry.

18 “(v) CONSEQUENCES OF
19 NONVERIFICATION.—

20 “(I) TERMINATION OR NOTIFICA-
21 TION OF CONTINUED EMPLOYMENT.—

22 If the person or other entity has re-
23 ceived a final nonverification regard-
24 ing an individual, the person or entity
25 may terminate employment of the in-

1 dividual (or decline to recruit or refer
2 the individual). If the person or entity
3 does not terminate employment of the
4 individual or proceeds to recruit or
5 refer the individual, the person or en-
6 tity shall notify the Secretary of
7 Homeland Security of such fact
8 through the verification system or in
9 such other manner as the Secretary
10 may specify.

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

18 “(vi) CONTINUED EMPLOYMENT
19 AFTER FINAL NONVERIFICATION.—If the
20 person or other entity continues to employ
21 (or to recruit or refer) an individual after
22 receiving final nonverification, a rebuttable
23 presumption is created that the person or
24 entity has violated subsection (a)(1)(A).”.

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

5 (a) APPLICATION TO RECRUITING AND REFER-
6 RING.—Section 274A of the Immigration and Nationality
7 Act (8 U.S.C. 1324a) is amended—

8 (1) in subsection (a)(1)(A), by striking “for a
9 fee”;

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

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

16 (3) in subsection (a)(2) by striking “after hir-
17 ing an alien for employment in accordance with
18 paragraph (1),” and inserting “after complying with
19 paragraph (1),”; and

20 (4) in subsection (a)(3), as amended by section
21 702, is further amended by striking “hiring” and in-
22 serting “hiring, employing,” each place it appears.

23 (b) EMPLOYMENT ELIGIBILITY VERIFICATION FOR
24 PREVIOUSLY HIRED INDIVIDUALS.—Section 274A(b) of
25 such Act (8 U.S.C. 1324a(b)), as amended by section

1 701(a), is amended by adding at the end the following new
2 paragraph:

3 “(8) USE OF EMPLOYMENT ELIGIBILITY
4 VERIFICATION SYSTEM FOR PREVIOUSLY HIRED IN-
5 DIVIDUALS.—

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

17 “(B) ON A MANDATORY BASIS.—

18 “(i) A person or entity described in
19 clause (ii) must make an inquiry as pro-
20 vided in paragraph (7), using the
21 verification system to seek verification of
22 the identity and employment eligibility of
23 all individuals employed by the person or
24 entity who have not been previously subject
25 to an inquiry by the person or entity by

1 the date three years after the date of en-
2 actment of the Border Protection,
3 Antiterrorism, and Illegal Immigration
4 Control Act of 2005.

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

18 “(iii) All persons and entities other
19 than those described in clause (ii) must
20 make an inquiry, as provided in paragraph
21 (7), using the verification system to seek
22 verification of the identity and employment
23 eligibility of all individuals employed by the
24 person or entity who have not been pre-
25 viously subject to an inquiry by the person

1 or entity by the date six years after the
2 date of enactment of the Border Protec-
3 tion, Antiterrorism, and Illegal Immigra-
4 tion Control Act of 2005.”.

5 **SEC. 704. BASIC PILOT PROGRAM.**

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

13 **SEC. 705. HIRING HALLS.**

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

17 “(4) DEFINITION OF RECRUIT OR REFER.—As
18 used in this section, the term ‘refer’ means the act
19 of sending or directing a person or transmitting doc-
20 umentation or information to another, directly or in-
21 directly, with the intent of obtaining employment in
22 the United States for such person. Generally, only
23 persons or entities referring for remuneration
24 (whether on a retainer or contingency basis) are in-
25 cluded in the definition. However, union hiring halls

1 that refer union members or nonunion individuals
2 who pay union membership dues are included in the
3 definition whether or not they receive remuneration,
4 as are labor service agencies, whether public, private,
5 for-profit, or nonprofit, that refer, dispatch, or oth-
6 erwise facilitate the hiring of laborers for any period
7 of time by a third party. As used in this section the
8 term ‘recruit’ means the act of soliciting a person,
9 directly or indirectly, and referring the person to an-
10 other with the intent of obtaining employment for
11 that person. Generally, only persons or entities re-
12 cruiting for remunerations (whether on a retainer or
13 contingency basis) are included in the definition.
14 However, union hiring halls that refer union mem-
15 bers or nonunion individuals who pay union member-
16 ship dues are included in this definition whether or
17 not they receive remuneration, as are labor service
18 agencies, whether public, private, for-profit, or non-
19 profit that recruit, dispatch, or otherwise facilitate
20 the hiring of laborers for any period of time by a
21 third party.”.

22 **SEC. 706. PENALTIES.**

23 Section 274A of the Immigration and Nationality Act
24 (8 U.S.C. 1324a) is amended—

25 (1) in subsection (e)(4)—

1 (A) in subparagraph (A), in the matter be-
2 fore clause (i), by inserting “, subject to para-
3 graph (10),” after “in an amount”;

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

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

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

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

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

19 (2) in subsection (e)(5)—

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

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

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

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

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

12 (3) by adding at the end of subsection (e) the
13 following new paragraph:

14 “(10) MITIGATION OF CIVIL MONEY PENALTIES
15 FOR SMALLER EMPLOYERS.—In the case of imposi-
16 tion of a civil penalty under paragraph (4)(A) with
17 respect to a violation of subsection (a)(1)(A) or
18 (a)(2) for hiring or continuation of employment by
19 an employer and in the case of imposition of a civil
20 penalty under paragraph (5) for a violation of sub-
21 section (a)(1)(B) for hiring by an employer, the dol-
22 lar amounts otherwise specified in the respective
23 paragraph shall be reduced as follows:

24 “(A) In the case of an employer with an
25 average of fewer than 26 full-time equivalent

1 employees (as defined by the Secretary of
2 Homeland Security), the amounts shall be re-
3 duced by 60 percent.

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

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

12 The last sentence of paragraph (4) shall apply under
13 this paragraph in the same manner as it applies
14 under such paragraph.”.

15 (4) by amending paragraph (1) of subsection (f)
16 to read as follows:

17 “(1) CRIMINAL PENALTY.—Any person or enti-
18 ty which engages in a pattern or practice of viola-
19 tions of subsection (a)(1) or (2) shall be fined not
20 more than \$50,000 for each unauthorized alien with
21 respect to which such a violation occurs, imprisoned
22 for not less than one year, or both, notwithstanding
23 the provisions of any other Federal law relating to
24 fine levels.”; and

1 (5) in subsection (f)(2), by striking “Attorney
2 General” each place it appears and inserting “Sec-
3 retary of Homeland Security”.

4 **SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EM-**
5 **PLOYMENT ELIGIBILITY VERIFICATION.**

6 (a) REPORT.—

7 (1) IN GENERAL.—Not later than than 9
8 months after the date of the enactment of this Act,
9 the Commissioner of Social Security, in consultation
10 with the Secretary of Treasury, the Secretary of
11 Homeland Security, and the Attorney General, shall
12 submit a report to Congress that includes an evalua-
13 tion of the following requirements and changes:

14 (A) A requirement that social security
15 cards that are made of a durable plastic or
16 similar material and that include an encrypted,
17 machine-readable electronic identification strip
18 and a digital photograph of the individual to
19 whom the card is issued, be issued to each indi-
20 vidual (whether or not a United States citizen)
21 who—

22 (i) is authorized to be employed in the
23 United States;

24 (ii) is seeking employment in the
25 United States; and

1 (iii) files an application for such card,
2 whether as a replacement of an existing so-
3 cial security card or as a card issued in
4 connection with the issuance of a new so-
5 cial security account number.

6 (B) The creation of a unified database to
7 be maintained by the Department of Homeland
8 Security and comprised of data from the Social
9 Security Administration and the Department of
10 Homeland Security specifying the work author-
11 ization of individuals (including both United
12 States citizens and noncitizens) for the purpose
13 of conducting employment eligibility
14 verification.

15 (C) A requirement that all employers verify
16 the employment eligibility of all new hires using
17 the social security cards described in subpara-
18 graph (A) and a phone, electronic card-reading,
19 or other mechanism to seek verification of em-
20 ployment eligibility through the use of the uni-
21 fied database described in subparagraph (B).

22 (2) ITEMS INCLUDED IN REPORT.—The report
23 under paragraph (1) shall include an evaluation of
24 each of the following:

1 (A) Projected cost, including the cost to
2 the Federal government, State and local govern-
3 ments, and the private sector.

4 (B) Administrability.

5 (C) Potential effects on—

6 (i) employers;

7 (ii) employees, including employees
8 who are United States citizens as well as
9 those that are not citizens;

10 (iii) tax revenue; and

11 (iv) privacy.

12 (D) The extent to which employer and em-
13 ployee compliance with immigration laws would
14 be expected to improve.

15 (E) Any other relevant information.

16 (3) ALTERNATIVES.—The report under para-
17 graph (1) also shall examine any alternatives to
18 achieve the same goals as the requirements and
19 changes described in paragraph (1) but that involve
20 lesser cost, lesser burden on those affected, or great-
21 er ease of administration.

22 (b) INSPECTOR GENERAL REVIEW.—Not later than
23 3 months after the report is submitted under subsection
24 (a), the Inspector General of the Social Security Adminis-
25 tration, in consultation with the Inspectors General of the

1 Department of Treasury, the Department of Homeland
2 Security, and the Department of Justice, shall send to the
3 Congress an evaluation of the such report.

4 **SEC. 708. EFFECTIVE DATE.**

5 This title and the amendments made by this title
6 shall take effect on the date of enactment of this Act, ex-
7 cept that the requirements of persons and entities to com-
8 ply with the employment eligibility verification process
9 takes effect on 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 Immi-
15 gration and Nationality Act (8 U.S.C. 1101(a)(47)) is
16 amended to read as follows:

17 “(47)(A) The term ‘order of removal’ means the
18 order of the immigration judge, the Board of Immigration
19 Appeals, or other administrative officer to whom the At-
20 torney General or the Secretary of Homeland Security has
21 delegated the responsibility for determining whether an
22 alien is removable, concluding that the alien is removable
23 or ordering removal.

24 “(B) The order described under subparagraph (A)
25 shall 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
7 the 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 au-
12 thorized by law other than under section 240.”.

13 (b) **EFFECTIVE DATE.**—The amendment made by
14 subsection (a) shall take effect on the date of the enact-
15 ment of this Act and shall apply to ordered entered before,
16 on, 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 non-
22 statutory), including section 2241 of title 28, United
23 States Code, or any other habeas corpus provision, and
24 sections 1361 and 1651 of such title, a revocation under
25 this subsection may not be reviewed by any court, and no

1 court shall have jurisdiction to hear any claim arising
2 from, or any challenge to, such a revocation.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall take effect on the date of the enact-
5 ment of this Act and shall apply to visa revocations ef-
6 fected before, on, or after such date.

7 **SEC. 803. REINSTATEMENT.**

8 (a) **IN GENERAL.**—Section 241(a)(5) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1231(a)(5)) is
10 amended 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, re-
17 gardless of the date of the original order or the date
18 of the illegal entry—

19 “(A) the order of removal, deportation, or
20 exclusion is reinstated from its original date
21 and is not subject to being reopened or re-
22 viewed;

23 “(B) the alien is not eligible and may not
24 apply for any relief under this Act, regardless

1 of the date that an application for such relief
2 may have been filed; and

3 “(C) the alien shall be removed under the
4 order of removal, deportation, or exclusion at
5 any time after the illegal entry.

6 Reinstatement under this paragraph shall not re-
7 quire proceedings before an immigration judge under
8 section 240 or otherwise.”.

9 (b) JUDICIAL REVIEW.—Section 242 of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1252) is amended by
11 adding at the end the following new subsection:

12 “(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER
13 SECTION 241(a)(5).—

14 “(1) IN GENERAL.—Notwithstanding any other
15 provision of law (statutory or nonstatutory), includ-
16 ing section 2241 of title 28, United States Code, or
17 any other habeas corpus provision, sections 1361
18 and 1651 of such title, or subsection (a)(2)(D) of
19 this section, no court shall have jurisdiction to re-
20 view any cause or claim arising from or relating to
21 any reinstatement under section 241(a)(5) (includ-
22 ing any challenge to the reinstated order), except as
23 provided in paragraph (2) or (3).

24 “(2) CHALLENGES IN COURT OF APPEALS FOR
25 DISTRICT OF COLUMBIA TO VALIDITY OF THE SYS-

1 TEM, ITS IMPLEMENTATION, AND RELATED INDI-
2 VIDUAL DETERMINATIONS.—

3 “(A) IN GENERAL.—Judicial review of de-
4 terminations under section 241(a)(5) and its
5 implementation is available in an action insti-
6 tuted in the United States Court of Appeals for
7 the District of Columbia Circuit, but shall be
8 limited, except as provided in subparagraph
9 (B), to the following determinations:

10 “(i) Whether such section, or any reg-
11 ulation issued to implement such section, is
12 constitutional.

13 “(ii) Whether such a regulation, or a
14 written policy directive, written policy
15 guideline, or written procedure issued by
16 or under the authority of the Attorney
17 General or the Secretary of Homeland Se-
18 curity to implement such section, is not
19 consistent with applicable provisions of this
20 Act or is otherwise in violation of a statute
21 or the Constitution.

22 “(B) RELATED INDIVIDUAL DETERMINA-
23 TIONS.—If a person raises an action under sub-
24 paragraph (A), the person may also raise in the
25 same action the following issues:

1 “(i) Whether the petitioner is an
2 alien.

3 “(ii) Whether the petitioner was pre-
4 viously ordered removed or deported, or ex-
5 cluded.

6 “(iii) Whether the petitioner has since
7 illegally entered the United States.

8 “(C) DEADLINES FOR BRINGING AC-
9 TIONS.—Any action instituted under this para-
10 graph must be filed no later than 60 days after
11 the date the challenged section, regulation, di-
12 rective, guideline, or procedure described in
13 clause (i) or (ii) of subparagraph (A) is first
14 implemented.

15 “(3) INDIVIDUAL DETERMINATIONS UNDER
16 SECTION 242(a).—Judicial review of determinations
17 under section 241(a)(5) is available in an action
18 under subsection (a) of this section, but shall be lim-
19 ited to determinations of—

20 “(A) whether the petitioner is an alien;

21 “(B) whether the petitioner was previously
22 ordered removed, deported, or excluded; and

23 “(C) whether the petitioner has since ille-
24 gally entered the United States.

1 “(4) SINGLE ACTION.—A person who files an
2 action under paragraph (2) may not file a separate
3 action under paragraph (3). A person who files an
4 action under paragraph (3) may not file an action
5 under paragraph (2).”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 subsections (a) and (b) shall take effect as if enacted on
8 April 1, 1997, and shall apply to all orders reinstated on
9 or after that date by the Secretary of Homeland Security
10 (or by the Attorney General prior to March 1, 2003), re-
11 gardless of the date of the original order.

12 **SEC. 804. WITHHOLDING OF REMOVAL.**

13 (a) IN GENERAL.—Section 241(b)(3) of the Immi-
14 gration and Nationality Act (8 U.S.C 1231(b)(3)) is
15 amended—

16 (1) in subparagraph (A), by adding at the end
17 the following: “The burden of proof is on the alien
18 to establish that the alien’s life or freedom would be
19 threatened in that country, and that race, religion,
20 nationality, membership in a particular social group,
21 or political opinion would be at least one central rea-
22 son for such threat.”; and

23 (2) in subparagraph (C), by striking “In deter-
24 mining whether an alien has demonstrated that the
25 alien’s life or freedom would be threatened for a rea-

1 son described in subparagraph (A)” and inserting
2 “For purposes of this paragraph”

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall take effect as if included in the enact-
5 ment of section 101(c) of the REAL ID Act of 2005 (divi-
6 sion B of Public Law 109–13).

7 **SEC. 805. CERTIFICATE OF REVIEWABILITY.**

8 (a) ALIEN’S BRIEF.—Section 242(b)(3)(C) of the
9 Immigration and Nationality Act (8 U.S.C.
10 1252(b)(3)(C)) is amended to read as follows:

11 “(C) ALIEN’S BRIEF.—The alien shall
12 serve and file a brief in connection with a peti-
13 tion for judicial review not later than 40 days
14 after the date on which the administrative
15 record is available. The court may not extend
16 this deadline except upon motion for good cause
17 shown. If an alien fails to file a brief within the
18 time provided in this paragraph, the court shall
19 dismiss the appeal unless a manifest injustice
20 would result.”.

21 (b) CERTIFICATE OF REVIEWABILITY.—Section
22 242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended
23 by adding at the end the following new subparagraphs:

24 “(D) CERTIFICATE .—

1 “(i) After the alien has filed the
2 alien’s brief, the petition for review shall be
3 assigned to a single court of appeals judge.

4 “(ii) Unless that court of appeals
5 judge or a circuit justice issues a certifi-
6 cate of reviewability, the petition for review
7 shall be denied and the government shall
8 not file a brief.

9 “(iii) A certificate of reviewability may
10 issue under clause (ii) only if the alien has
11 made a substantial showing that the peti-
12 tion for review is likely to be granted.

13 “(iv) The court of appeals judge or
14 circuit justice shall complete all action on
15 such certificate, including rendering judg-
16 ment, not later than 60 days after the date
17 on which the judge or circuit justice was
18 assigned the petition for review, unless an
19 extension is granted under clause (v).

20 “(v) The judge or circuit justice may
21 grant, on the judge’s or justice’s own mo-
22 tion or on the motion of a party, an exten-
23 sion of the 60-day period described in
24 clause (iv) if—

1 “(I) all parties to the proceeding
2 agree to such extension; or

3 “(II) such extension is for good
4 cause shown or in the interests of jus-
5 tice, and the judge or circuit justice
6 states the grounds for the extension
7 with specificity.

8 “(vi) If no certificate of reviewability
9 is issued before the end of the period de-
10 scribed in clause (iv), including any exten-
11 sion under clause (v), the petition for re-
12 view shall be deemed denied, any stay or
13 injunction on petitioner’s removal shall be
14 dissolved without further action by the
15 court or the government, and the alien
16 may be removed.

17 “(vii) If a certificate of reviewability is
18 issued under clause (ii), the Government
19 shall be afforded an opportunity to file a
20 brief in response to the alien’s brief. The
21 alien may serve and file a reply brief not
22 later than 14 days after service of the Gov-
23 ernment’s brief, and the court may not ex-
24 tend this deadline except upon motion for
25 good cause shown.

1 “(E) NO FURTHER REVIEW OF THE COURT
2 OF APPEALS JUDGE’S DECISION NOT TO ISSUE
3 A CERTIFICATE OF REVIEWABILITY.—The sin-
4 gle court of appeals judge’s decision not to
5 issue a certificate of reviewability, or the denial
6 of a petition under subparagraph (D)(vi), shall
7 be the final decision for the court of appeals
8 and shall not be reconsidered, reviewed, or re-
9 versed by the court of appeals through any
10 mechanism or procedure.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to petitions filed on or after the
13 date that is 60 days after the date of the enactment of
14 this Act.

15 **SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA**
16 **ISSUANCE.**

17 (a) IN GENERAL.—Section 221(a) of the Immigra-
18 tion and Nationality Act (8 U.S.C. 1201(a)) is amended
19 by adding at the end the following new paragraph:

20 “(3) An alien may not be issued a nonimmigrant visa
21 unless the alien has waived any right—

22 “(A) to review or appeal under this Act of an
23 immigration officer’s determination as to the inad-
24 missibility of the alien at the port of entry into the
25 United States; or

1 “(B) to contest, other than on the basis of an
2 application for asylum, any action for removal of the
3 alien.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall apply to visas issued on or after the
6 date that is 90 days after the date of the enactment of
7 this Act.

○