AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

109TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
109–345, Part I

BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 4437

together with

ADDITIONAL AND DISSENTING VIEWS

DECEMBER 13, 2005.—Ordered to be printed

BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

109TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
109–345, Part I

BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 4437

together with

ADDITIONAL AND DISSENTING VIEWS

DECEMBER 13, 2005.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

24–989 WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

109TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 109–345, Part I

BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

DECEMBER 13, 2005.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 4437]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
The Amendment	2
Purpose and Summary	44
Background and Need for the Legislation	45
Hearings	46
Committee Consideration	46
Vote of the Committee	46
Committee Oversight Findings	49
New Budget Authority and Tax Expenditures	49
Congressional Budget Office Cost Estimate	49
Performance Goals and Objectives	57
Constitutional Authority Statement	58
Section-by-Section Analysis and Discussion	58
Changes in Existing Law Made by the Bill, as Reported	78
Committee Jurisdiction Letters	141
Markup Transcript	146
Additional Views	457
Dissenting Views	459

THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005".

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

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

TITLE I—SECURING UNITED STATES BORDERS

Sec. 101. Achieving operational control on the border.
Sec. 102. National strategy for border security.
Sec. 103. Implementation of cross-border security agreements.
Sec. 104. Biometric data enhancements.
Sec. 105. One face at the border initiative.
Sec. 106. Secure communication.
Sec. 107. Port of entry inspection personnel.
Sec. 108. Canine detection teams.
Sec. 109. Secure border initiative financial accountability.
Sec. 110. Border patrol training capacity review.
Sec. 111. Airspace security mission impact review.
Sec. 112. Repair of private infrastructure on border.
Sec. 113. Border Patrol unit for Virgin Islands.
Sec. 114. Report on progress in tracking travel of Central American gangs along international border.
Sec. 115. Collection of data.
Sec. 116. Deployment of radiation detection portal equipment at United States ports of entry.
Sec. 117. Consultation with businesses and firms.

TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE

Sec. 201. Definition of aggravated felony.
Sec. 202. Alien smuggling and related offenses.
Sec. 203. Improper entry by, or presence of, aliens.
Sec. 204. Reentry of removed aliens.
Sec. 205. Mandatory sentencing ranges for persons aiding or assisting certain reentering aliens.
Sec. 206. Prohibiting carrying or using a firearm during and in relation to an alien smuggling crime.
Sec. 207. Clarifying changes.
Sec. 208. Voluntary departure reform.
Sec. 209. Deterring aliens ordered removed from remaining in the United States unlawfully and from unlawfully returning to the United States after departing voluntarily.
Sec. 210. Establishment of a special task force for coordinating and distributing information on fraudulent immigration documents.

TITLE III—BORDER SECURITY COOPERATION AND ENFORCEMENT

Sec. 301. Joint strategic plan for United States border surveillance and support.
Sec. 302. Border security on protected land.
Sec. 303. Border security threat assessment and information sharing test and evaluation exercise.
Sec. 304. Border Security Advisory Committee.
Sec. 305. Permitted use of Homeland Security grant funds for border security activities.
Sec. 306. Center of excellence for border security.
Sec. 307. Sense of Congress regarding cooperation with Indian Nations.

TITLE IV—DETENTION AND REMOVAL

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

TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

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

TITLE VI—TERRORIST AND CRIMINAL ALIENS

Sec. 601. Removal of terrorist aliens.
Sec. 602. Detention of dangerous aliens.
Sec. 603. Increase in criminal penalties.
Sec. 604. Precluding admissibility of aggravated felons and other criminals.
Sec. 605. Precluding refugee or asylee adjustment of status for aggravated 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.

SEC. 2. STATE DEFINED.

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

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

It is the sense of Congress that the immigration and naturalization policy shall be designed to enhance the economic, social and cultural well-being of the United States of America.

TITLE I—SECURING UNITED STATES BORDERS

SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE BORDER.

(a) IN GENERAL.—The Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States, to include the following—

(1) systematic surveillance of the international land and maritime borders of the United States through more effective use of personnel and technology, such as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras;

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

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

(4) increasing deployment of United States Customs and Border Protection personnel to areas along the international land and maritime borders of the United States where there are high levels of unlawful entry by aliens and other areas likely to be impacted by such increased deployment.

(b) OPERATIONAL CONTROL DEFINED.—In this section, the term "operational control" means the prevention of the entry into the United States of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

SEC. 102. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) SURVEILLANCE PLAN.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States. The plan shall include the following:

(1) An assessment of existing technologies employed on such borders.

(2) A description of whether and how new surveillance technologies will be compatible with existing surveillance technologies.

(3) A description of how the United States Customs and Border Protection is working, or is expected to work, with the Directorate of Science and Technology of the Department of Homeland Security to identify and test surveillance technology.

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

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

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

(7) A description of how the Department of Homeland Security is working with the Federal Aviation Administration on safety and airspace control issues associated with the use of unmanned aerial vehicles in the National Airspace System.

(b) NATIONAL STRATEGY FOR BORDER SECURITY.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall submit to the appropriate congressional committees a National Strategy for Border Security to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States. The Secretary shall update the Strategy as needed and shall submit to the Committee on Homeland Security of the House of Representatives, not later than 30 days after each such update, the updated Strategy. The National Strategy for Border Security shall include the following:

(1) The implementation timeline for the surveillance plan described in subsection (a).

(2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States at points along the international land and maritime borders of the United States.

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

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

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

(4) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

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

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

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

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

(9) An assessment of additional detention facilities and bed space needed to detain unlawful aliens apprehended at United States ports of entry or along the international land borders of the United States in accordance with the National Strategy for Border Security required under this subsection and the mandatory detention requirement described in section 401 of this Act.

(10) A description of how the Secretary shall ensure accountability and performance metrics within the appropriate agencies of the Department of Homeland Security responsible for implementing the border security measures determined necessary upon completion of the National Strategy for Border Security.

(11) A timeline for the implementation of the additional security measures determined necessary as part of the National Strategy for Border Security, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, and resource estimates and allocations.

(c) CONSULTATION.—In creating the National Strategy for Border Security described in subsection (b), the Secretary shall consult with—

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

(2) an appropriate cross-section of private sector and nongovernmental organizations with relevant expertise.

(d) PRIORITY OF NATIONAL STRATEGY.—The National Strategy for Border Security described in subsection (b) shall be the controlling document for security and

enforcement efforts related to securing the international land and maritime borders of the United States.

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

(f) REPORTING OF IMPLEMENTING LEGISLATION.—After submittal of the National Strategy for Border Security described in subsection (b) to the Committee on Homeland Security of the House of Representatives, such Committee shall promptly report to the House legislation authorizing necessary security measures based on its evaluation of the National Strategy for Border Security.

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

SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY AGREEMENTS.

(a) IN GENERAL.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees (as defined in section 102(g)) a report on the implementation of the cross-border security agreements signed by the United States with Mexico and Canada, including recommendations on improving cooperation with such countries to enhance border security.

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

SEC. 104. BIOMETRIC DATA ENHANCEMENTS.

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

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

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

SEC. 105. ONE FACE AT THE BORDER INITIATIVE.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report—

(1) describing the tangible and quantifiable benefits of the One Face at the Border Initiative established by the Department of Homeland Security;

(2) identifying goals for and challenges to increased effectiveness of the One Face at the Border Initiative;

(3) providing a breakdown of the number of inspectors who were—

(A) personnel of the United States Customs Service before the date of the establishment of the Department of Homeland Security;

(B) personnel of the Immigration and Naturalization Service before the date of the establishment of the Department;

(C) personnel of the Department of Agriculture before the date of the establishment of the Department; or

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

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

(5) outlining the steps taken by the Department to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions under the One Face at the Border Initiative.

SEC. 106. SECURE COMMUNICATION.

The Secretary of Homeland Security shall, as expeditiously as practicable, develop and implement a plan to ensure clear and secure two-way communication capabilities—

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

(2) between Border Patrol agents and their respective Border Patrol stations;

(3) between Border Patrol agents and residents in remote areas along the international land border who do not have mobile communications, as the Secretary determines necessary; and

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

SEC. 107. PORT OF ENTRY INSPECTION PERSONNEL.

In each of fiscal years 2007 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations, increase by not less than 250 the number of positions for full-time active duty port of entry inspectors. There are authorized to be appropriated to the Secretary such sums as may be necessary for each such fiscal year to hire, train, equip, and support such additional inspectors under this section.

SEC. 108. CANINE DETECTION TEAMS.

In each of fiscal years 2007 through 2011, the Secretary of Homeland Security shall, subject to the availability of appropriations, increase by not less than 25 percent above the number of such positions for which funds were allotted for the preceding fiscal year the number of trained detection canines for use at United States ports of entry and along the international land and maritime borders of the United States.

SEC. 109. SECURE BORDER INITIATIVE FINANCIAL ACCOUNTABILITY.

(a) IN GENERAL.—The Inspector General of the Department of Homeland Security shall review each contract action related to the Department's Secure Border Initiative having a value greater than $20,000,000, to determine whether each such action fully complies with applicable cost requirements, performance objectives, program milestones, inclusion of small, minority, and women-owned business, and timelines. The Inspector General shall complete a review under this subsection with respect to a contract action—

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

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

(b) REPORT BY INSPECTOR GENERAL.—Upon completion of each review described in subsection (a), the Inspector General shall submit to the Secretary of Homeland Security a report containing the findings of the review, including findings regarding any cost overruns, significant delays in contract execution, lack of rigorous departmental contract management, insufficient departmental financial oversight, bundling that limits the ability of small business to compete, or other high risk business practices.

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

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts that are otherwise authorized to be appropriated to the Office of the Inspector General, an additional amount equal to at least five percent for fiscal year 2007, at least six percent for fiscal year 2008, and at least seven percent for fiscal year 2009 of the overall budget of the Office for each such fiscal year is authorized to be appropriated to the Office to enable the Office to carry out this section.

SEC. 110. BORDER PATROL TRAINING CAPACITY REVIEW.

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

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

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

(2) A review and a detailed breakdown of the costs incurred by United States Customs and Border Protection and the Federal Law Enforcement Training Center to train one new Border Patrol agent.

(3) A comparison, based on the review and breakdown under paragraph (2) of the costs, effectiveness, scope, and quality, including geographic characteristics, with other similar law enforcement training programs provided by State and local agencies, non-profit organizations, universities, and the private sector.

(4) An evaluation of whether and how utilizing comparable non-Federal training programs, proficiency testing to streamline training, and long-distance learning programs may affect—

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

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

SEC. 111. AIRSPACE SECURITY MISSION IMPACT REVIEW.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives a report detailing the impact the airspace security mission in the National Capital Region (in this section referred to as the "NCR") will have on the ability of the Department of Homeland Security to protect the international land and maritime borders of the United States. Specifically, the report shall address:

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

(2) An assessment of the impact that diverting resources to support the NCR mission has or is expected to have on the traditional missions in and around the international land and maritime borders of the United States.

SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BORDER.

(a) IN GENERAL.—Subject to the amount appropriated in subsection (d) of this section, the Secretary of Homeland Security shall reimburse property owners for costs associated with repairing damages to the property owners' private infrastructure constructed on a United States Government right-of-way delineating the international land border when such damages are—

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

(2) confirmed by the appropriate personnel of the Department of Homeland Security and submitted to the Secretary for reimbursement.

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

(c) REPORTS.—Not later than six months after the date of the enactment of this Act and every subsequent six months until the amount appropriated for this section is expended in its entirety, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives a report that details the expenditures and circumstances in which those expenditures were made pursuant to this section.

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

SEC. 113. BORDER PATROL UNIT FOR VIRGIN ISLANDS.

Not later than September 30, 2006, the Secretary of Homeland Security shall establish at least one Border Patrol unit for the Virgin Islands of the United States.

SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF CENTRAL AMERICAN GANGS ALONG INTERNATIONAL BORDER.

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

SEC. 115. COLLECTION OF DATA.

Beginning on October 1, 2006, the Secretary of Homeland Security shall annually compile data on the following categories of information:

(1) The number of unauthorized aliens who require medical care taken into custody by Border Patrol officials.

(2) The number of unauthorized aliens with serious injuries or medical conditions Border Patrol officials encounter, and refer to local hospitals or other health facilities.

(3) The number of unauthorized aliens with serious injuries or medical conditions who arrive at United States ports of entry and subsequently are admitted into the United States for emergency medical care, as reported by United States Customs and Border Protection.

(4) The number of unauthorized aliens described in paragraphs (2) and (3) who subsequently are taken into custody by the Department of Homeland Security after receiving medical treatment.

SEC. 116. DEPLOYMENT OF RADIATION DETECTION PORTAL EQUIPMENT AT UNITED STATES PORTS OF ENTRY.

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

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

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

SEC. 117. CONSULTATION WITH BUSINESSES AND FIRMS.

With respect to the Secure Border Initiative and for the purposes of strengthening security along the international land and maritime borders of the United States, the Secretary of Homeland Security shall conduct outreach to and consult with members of the private sector, including business councils, associations, and small, minority-owned, women-owned, and disadvantaged businesses to—

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

(2) maximize economies of scale, cost-effectiveness, systems integration, and resource allocation; and

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

TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE

SEC. 201. DEFINITION OF AGGRAVATED FELONY.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—

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

(2) in subparagraph (O), by striking "section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph", and inserting "section 275 or section 276 for which the term of imprisonment was at least one year";

(3) in subparagraph (U), by inserting before "an attempt" the following: "soliciting, aiding, abetting, counseling, commanding, inducing, procuring or"; and

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

"The term applies—

"(i) to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years;

"(ii) even if the length of the term of imprisonment is based on recidivist or other enhancements;

"(iii) to an offense described in this paragraph even if the statute setting forth the offense of conviction sets forth other offenses not described in this paragraph, unless the alien affirmatively shows, by a preponderance of evidence and using public records related to the conviction, including court records, police records and presentence reports, that the particular facts underlying the offense do not satisfy the generic definition of that offense; and

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

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

SEC. 202. ALIEN SMUGGLING AND RELATED OFFENSES.

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

"ALIEN SMUGGLING AND RELATED OFFENSES

"SEC. 274. (a) CRIMINAL OFFENSES AND PENALTIES.—

"(1) PROHIBITED ACTIVITIES.—Whoever—

"(A) assists, encourages, directs, or induces a person to come to or enter the United States, or to attempt to come to or enter the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to or enter the United States;

"(B) assists, encourages, directs, or induces a person to come to or enter the United States at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, regardless of whether such person has official permission or lawful authority to be in the United States, knowing or in reckless disregard of the fact that such person is an alien;

"(C) assists, encourages, directs, or induces a person to reside in or remain in the United States, or to attempt to reside in or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States;

"(D) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, where the transportation or movement will aid or further in any manner the person's illegal entry into or illegal presence in the United States;

"(E) harbors, conceals, or shields from detection a person in the United States knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States;

"(F) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from one country to another or on the high seas, under circumstances in which the person is in fact seeking to enter the United States without official permission or lawful authority; or

"(G) conspires or attempts to commit any of the preceding acts,

shall be punished as provided in paragraph (2), regardless of any official action which may later be taken with respect to such alien.

"(2) CRIMINAL PENALTIES.—A person who violates the provisions of paragraph (1) shall—

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

"(B) except as provided in subparagraphs (C) through (H), where the offense was committed for commercial advantage, profit, or private financial gain—

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

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

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

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

"(E) in the case where any participant in the offense created a substantial risk of death or serious bodily injury to another person, including—

"(i) transporting a person in an engine compartment, storage compartment, or other confined space;

"(ii) transporting a person at an excessive speed or in excess of the rated capacity of the means of transportation; or

"(iii) transporting or harboring a person in a crowded, dangerous, or inhumane manner,

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

"(F) in the case where the offense caused serious bodily injury (as defined in section 1365 of title 18, United States Code, including any conduct that would violate sections 2241 or 2242 of title 18, United States Code, if the conduct occurred in the special maritime and territorial jurisdiction of the United States) to any person, be imprisoned for not less than 7 nor more than 30 years, or fined under title 18, United States Code, or both;

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

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

"(ii) intending to engage in such terrorist activity,

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

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

"(3) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

"(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

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

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

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

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

"(c) SEIZURE AND FORFEITURE.—

"(1) IN GENERAL.—Any property, real or personal, that has been used to commit or facilitate the commission of a violation of this section, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

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

"(d) AUTHORITY TO ARREST.—No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees designated by the Secretary of Homeland Security, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

"(e) ADMISSIBILITY OF EVIDENCE.—

"(1) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—Notwithstanding any provision of the Federal Rules of Evidence, in determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the violation lacks lawful authority to come to, enter, reside, remain, or be in the United States or that such alien had come to, entered, resided, remained or been present in the United States in violation of law:

"(A) Any order, finding, or determination concerning the alien's status or lack thereof made by a federal judge or administrative adjudicator (including an immigration judge or an immigration officer) during any judicial or administrative proceeding authorized under the immigration laws or regulations prescribed thereunder.

"(B) An official record of the Department of Homeland Security, Department of Justice, or the Department of State concerning the alien's status or lack thereof.

"(C) Testimony by an immigration officer having personal knowledge of the facts concerning the alien's status or lack thereof.

"(2) VIDEOTAPED TESTIMONY.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unavailable to testify, may

be admitted into evidence in an action brought for that violation if the witness was available for cross examination at the deposition and the deposition otherwise complies with the Federal Rules of Evidence.

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

"(1) The term 'lawful authority' means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or the regulations prescribed thereunder. Such term does not include any such authority secured by fraud or otherwise obtained in violation of law, nor does it include authority that has been sought but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside, remain, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

"(2) The term 'unlawful transit' means travel, movement, or temporary presence that violates the laws of any country in which the alien is present, or any country from which or to which the alien is traveling or moving.".

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

"Sec. 274. Alien smuggling and related offenses.".

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

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

(1) in the section heading, by inserting "UNLAWFUL PRESENCE;" after "IMPROPER TIME OR PLACE;";

(2) in subsection (a)—

(A) by striking "Any alien" and inserting "Except as provided in subsection (b), any alien";

(B) by striking "or" before (3);

(C) by inserting after "concealment of a material fact," the following: "or (4) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder,"; and

(D) by striking "6 months" and inserting "one year and a day";

(3) in subsection (c)—

(A) by striking "5 years" and inserting "10 years"; and

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

(4) in subsection (d)—

(A) by striking "5 years" and inserting "10 years";

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

(5) by adding at the end the following new subsections:

"(e)(1) Any alien described in paragraph (2)—

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

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

"(2) An alien described in this paragraph is an alien who—

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

"(B) eludes examination or inspection by immigration officers;

"(C) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact; or

"(D) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder.

"(3) The prior convictions in subparagraph (A) or (B) of paragraph (1) are elements of those crimes and the penalties in those subparagraphs shall apply only in cases in which the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is an aggravated felony or other qualifying crime, and the criminal trial for a violation of this section shall not be bifurcated.

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

"(f) For purposes of this section, the term 'attempts to enter' refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.".

SEC. 204. REENTRY OF REMOVED ALIENS.

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

(1) in subsection (a)—

(A) in paragraph (2), by striking all that follows "United States" the first place it appears and inserting a comma;

(B) in the matter following paragraph (2), by striking "imprisoned not more than 2 years," and inserting "imprisoned for a term of not less than 1 year and not more than 2 years,";

(C) by adding at the end the following: "It shall be an affirmative defense to an offense under this subsection that (A) prior to an alien's reembarkation at a place outside the United States or an alien's application for admission from foreign contiguous territory, the Secretary of Homeland Security has expressly consented to the alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, such alien was not required to obtain such advance consent under this Act or any prior Act.";

(2) in subsection (b)—

(A) in paragraph (1), by striking "imprisoned not more than 10 years," and insert "imprisoned for a term of not less than 5 years and not more than 10 years,";

(B) in paragraph (2), by striking "imprisoned not more than 20 years," and insert "imprisoned for a term of not less than 10 years and not more than 20 years,";

(C) in paragraph (3), by striking ". or" and inserting "; or";

(D) in paragraph (4), by striking "imprisoned for not more than 10 years," and insert "imprisoned for a term of not less than 5 years and not more than 10 years,"; and

(E) by adding at the end the following: "The prior convictions in paragraphs (1) and (2) are elements of enhanced crimes and the penalties under such paragraphs shall apply only where the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is a qualifying crime and the criminal trial for a violation of either such paragraph shall not be bifurcated.";

(3) in subsections (b)(3), (b)(4), and (c), by striking "Attorney General" and inserting "Secretary of Homeland Security" each place it appears;

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

(5) by adding at the end the following new subsection:

"(e) For purposes of this section, the term 'attempts to enter' refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.".

SEC. 205. MANDATORY SENTENCING RANGES FOR PERSONS AIDING OR ASSISTING CERTAIN REENTERING ALIENS.

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

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

(2) by adding at the end the following:

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

"(2) The term of imprisonment imposed under paragraph (1) shall be within the range to which the reentering alien is subject under section 276(b).".

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

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

(1) in paragraphs (1)(A) and (1)(D)(ii), by inserting ", alien smuggling crime," after "crime of violence" each place it appears; and

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

"(6) For purposes of this subsection, the term 'alien smuggling crime' means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, or 1328).".

SEC. 207. CLARIFYING CHANGES.

(a) EXCLUSION BASED ON FALSE CLAIM OF NATIONALITY.—

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

(A) in the heading, by inserting "OR NATIONALITY" after "CITIZENSHIP"; and

(B) by inserting "or national" after "citizen" each place it appears.

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

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

(1) by inserting ", or as to any person seeking any benefit or privilege under the immigration laws," after "United States";

(2) by striking "Service" and inserting "Secretary of Homeland Security"; and

(3) by striking "Attorney General" and inserting "Secretary".

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

SEC. 208. VOLUNTARY DEPARTURE REFORM.

(a) ENCOURAGING ALIENS TO DEPART VOLUNTARILY.—

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

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

"(1) IN LIEU OF REMOVAL PROCEEDINGS.—The Secretary of Homeland Security may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4).";

(B) by striking paragraph (3);

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

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

"(2) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—After removal proceedings under section 240 are initiated, the Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, prior to the conclusion of such proceedings before an immigration judge, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4)."; and

(E) in paragraph (4), by striking "paragraph (1)" and inserting "paragraphs (1) and (2)".

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

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

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

"(A) IN LIEU OF REMOVAL.—Subject to subparagraph (C), permission to depart voluntarily under paragraph (1) shall not be valid for a period exceeding 120 days. The Secretary of Homeland Security may require an alien permitted to depart voluntarily under paragraph (1) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.";

(ii) in subparagraph (B), by striking "subparagraphs (C) and (D)(ii)" and inserting "subparagraphs (D) and (E)(ii)";

(iii) in subparagraphs (C) and (D), by striking "subparagraph (B)" and inserting "subparagraph (C)" each place it appears;

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

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

"(B) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to depart voluntarily under paragraph (2) shall not be valid for a period exceeding 60 days, and may be granted only after a finding that the alien has established that the alien has the means to depart the United States and intends to do so. An alien permitted to depart voluntarily under paragraph (2) must post a voluntary departure bond, in an amount necessary to en-

sure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive posting of a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will be a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure."; and

(B) in subsection (b)(2), by striking "60 days" and inserting "45 days".

(3) VOLUNTARY DEPARTURE AGREEMENTS.—Subsection (c) of such section is amended to read as follows:

"(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

"(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure will be granted only as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall include a waiver of the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal.

"(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security in the exercise of discretion may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

"(3) FAILURE TO COMPLY WITH AGREEMENT AND EFFECT OF FILING TIMELY APPEAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including a failure to timely post any required bond), the alien automatically becomes ineligible for the benefits of the agreement, subject to the penalties described in subsection (d), and subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b). However, if an alien agrees to voluntary departure but later files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences thereof, but the alien may not again be granted voluntary departure while the alien remains in the United States.".

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

"(e) ELIGIBILITY.—

"(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to depart voluntarily under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

"(2) ADDITIONAL LIMITATIONS.—The Secretary of Homeland Security may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class or classes of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(2) or (b) for any class or classes of aliens. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court may review any regulation issued under this subsection.".

(b) AVOIDING DELAYS IN VOLUNTARY DEPARTURE.—

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

"(4) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary of Homeland Security in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.".

(2) NO TOLLING.—Subsection (f) of such section is amended by adding at the end the following new sentence: "Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.".

(c) PENALTIES FOR FAILURE TO DEPART VOLUNTARILY.—

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

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

"(1) CIVIL PENALTY.—

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

"(B) SPECIFICATION IN ORDER.—The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record.

"(C) COLLECTION.—If the Secretary of Homeland Security thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law.

"(D) INELIGIBILITY FOR BENEFITS.—An alien will be ineligible for any benefits under this title until any civil penalty under this subsection is paid.

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

"(3) REOPENING.—

"(A) IN GENERAL.—Subject to subparagraph (B), the alien will be ineligible to reopen a final order of removal which took effect upon the alien's failure to depart, or the alien's violation of the conditions for voluntary departure, during the period described in paragraph (2).

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

The order permitting the alien to depart voluntarily under this section shall inform the alien of the penalties under this subsection.".

(2) IMPLEMENTATION OF EXISTING STATUTORY PENALTIES.—The Secretary of Homeland Security shall implement regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act, as amended by paragraph (1).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the date of the enactment of this Act.

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

SEC. 209. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY AND FROM UNLAWFULLY RETURNING TO THE UNITED STATES AFTER DEPARTING VOLUNTARILY.

(a) INADMISSIBLE ALIENS.—Paragraph (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended—

(1) in subparagraph (A)(i), by striking "within 5 years of" and inserting "before, or within 5 years of,"; and

(2) in subparagraph (A)(ii) by striking "within 10 years of" and inserting "before, or within 10 years of,".

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

(1) in subsection (a), by striking "Commissioner" and inserting "Secretary of Homeland Security"; and

(2) by adding at the end the following new subsection:

"(c) INELIGIBILITY FOR RELIEF.—

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

"(2) EXCEPTION.—Paragraph (1) does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture.".

(c) DETERRING ALIENS FROM UNLAWFULLY RETURNING TO THE UNITED STATES AFTER DEPARTING VOLUNTARILY.—Section 275(a) of such Act (8 U.S.C. 1325(a)) is amended by inserting "or following an order of voluntary departure" after "a subsequent commission of any such offense".

(d) EFFECTIVE DATES.—

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

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

SEC. 210. ESTABLISHMENT OF A SPECIAL TASK FORCE FOR COORDINATING AND DISTRIBUTING INFORMATION ON FRAUDULENT IMMIGRATION DOCUMENTS.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a task force (to be known as the Task Force on Fraudulent Immigration Documents) to carry out the following:

(1) Collect information from Federal, State, and local law enforcement agencies, and Foreign governments on the production, sale, and distribution of fraudulent documents intended to be used to enter or to remain in the United States unlawfully.

(2) Maintain that information in a comprehensive database.

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

(4) Develop a system for distributing these reports on an ongoing basis to appropriate Federal, State, and local law enforcement agencies.

(b) DISTRIBUTION OF INFORMATION.—Distribute the reports to appropriate Federal, State, and local law enforcement agencies on an ongoing basis.

TITLE III—BORDER SECURITY COOPERATION AND ENFORCEMENT

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

(a) IN GENERAL.—The Secretary of Homeland Security and the Secretary of Defense shall develop a joint strategic plan to use the authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist with the surveillance activities of the Department of Homeland Security conducted at or near the international land and maritime borders of the United States.

(b) REPORT.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Defense shall submit to Congress a report containing—

(1) a description of the use of Department of Defense equipment to assist with the surveillance by the Department of Homeland Security of the international land and maritime borders of the United States;

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

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

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

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

SEC. 302. BORDER SECURITY ON PROTECTED LAND.

(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of the Interior, shall evaluate border security vulnerabilities on land directly adjacent to the international land border of the United States under the juris-

diction of the Department of the Interior related to the prevention of the entry of terrorists, other unlawful aliens, narcotics, and other contraband into the United States.

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

SEC. 303. BORDER SECURITY THREAT ASSESSMENT AND INFORMATION SHARING TEST AND EVALUATION EXERCISE.

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

(1) involving officials from Federal, State, territorial, local, tribal, and international governments and representatives from the private sector;

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

(3) testing and evaluating the information sharing capability among Federal, State, territorial, local, tribal, and international governments.

SEC. 304. BORDER SECURITY ADVISORY COMMITTEE.

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

(b) DUTIES.—The Committee shall advise the Secretary on issues relating to border security and enforcement along the international land and maritime border of the United States.

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

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

(2) Community representatives from such States.

(3) Tribal authorities in such States.

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

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

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

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

(3) is carried out under agreement with a Federal agency.

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

(c) COVERED GRANTS.—For purposes of subsection (a), the term "covered grant" means grants provided by the Department of Homeland Security to States, local governments, or Indian tribes administered under the following programs:

(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.

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

(3) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—The Law Enforcement Terrorism Prevention Program of the Department, or any successor to such grant program.

SEC. 306. CENTER OF EXCELLENCE FOR BORDER SECURITY.

(a) ESTABLISHMENT.—The Secretary of Homeland Security shall establish a university-based Center of Excellence for Border Security following the merit-review processes and procedures and other limitations that have been established for selecting and supporting University Programs Centers of Excellence.

(b) ACTIVITIES OF THE CENTER.—The Center shall prioritize its activities on the basis of risk to address the most significant threats, vulnerabilities, and consequences posed by United States borders and border control systems. The activities shall include the conduct of research, the examination of existing and emerging bor-

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

SEC. 307. SENSE OF CONGRESS REGARDING COOPERATION WITH INDIAN NATIONS.

It is the sense of Congress that—

(1) the Department of Homeland Security should strive to include as part of a National Strategy for Border Security recommendations on how to enhance Department cooperation with sovereign Indian Nations on securing our borders and preventing terrorist entry, including, specifically, the Department should consider whether a Tribal Smart Border working group is necessary and whether further expansion of cultural sensitivity training, as exists in Arizona with the Tohono O'odham Nation, should be expanded elsewhere; and

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

TITLE IV—DETENTION AND REMOVAL

SEC. 401. MANDATORY DETENTION FOR ALIENS APPREHENDED AT OR BETWEEN PORTS OF ENTRY.

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

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

(2) is paroled into the United States by the Secretary of Homeland Security for urgent humanitarian reasons or significant public benefit in accordance with section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

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

(1) the Secretary of Homeland Security determines, after conducting all appropriate background and security checks on the alien, that the alien does not pose a national security risk; and

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

(c) RULES OF CONSTRUCTION.—

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

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

SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.

Subject to the availability of appropriations, the Secretary of Homeland Security shall fully utilize—

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

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

SEC. 403. ENHANCING TRANSPORTATION CAPACITY FOR UNLAWFUL ALIENS.

(a) IN GENERAL.—The Secretary of Homeland Security is authorized to enter into contracts with private entities for the purpose of providing secure domestic transport of aliens who are apprehended at or along the international land or maritime borders from the custody of United States Customs and Border Protection to detention facilities and other locations as necessary.

(b) CRITERIA FOR SELECTION.—Notwithstanding any other provision of law, to enter into a contract under paragraph (1), a private entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The Secretary shall select from such applications

those entities which offer, in the determination of the Secretary, the best combination of service, cost, and security.

SEC. 404. DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.

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

"(d) DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—Whenever the Secretary of Homeland Security determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, the Secretary, after consultation with the Secretary of State, may deny admission to any citizen, subject, national, or resident of that country until the country accepts the alien who was ordered removed.".

SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRIATION.

Not later than October 31 of each year, the Secretary of Homeland Security shall submit to the Secretary of State and Congress a report that details the cost to the Department of Homeland Security of repatriation of unlawful aliens to their countries of nationality or last habitual residence, including details relating to cost per country. The Secretary shall include in each such report the recommendations of the Secretary to more cost effectively repatriate such aliens.

SEC. 406. TRAINING PROGRAM.

Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security—

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

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

SEC. 407. EXPEDITED REMOVAL.

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

(1) in subclause (I), by striking "Attorney General" and inserting "Secretary of Homeland Security" each place it appears; and

(2) by adding at the end the following new subclause:

"(III) EXCEPTION.—Notwithstanding subclauses (I) and (II), the Secretary of Homeland Security shall apply clauses (i) and (ii) of this subparagraph to any alien (other than an alien described in subparagraph (F)) who is not a national of a country contiguous to the United States, who has not been admitted or paroled into the United States, and who is apprehended within 100 miles of an international land border of the United States and within 14 days of entry.".

(b) EXCEPTIONS.—Section 235(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is amended by striking "who arrives by aircraft at a port of entry" and inserting ", and who arrives by aircraft at a port of entry or who is present in the United States and arrived in any manner at or between a port of entry".

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

SEC. 408. GAO STUDY ON DEATHS IN CUSTODY.

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

(1) Whether any crimes were committed by personnel of the Department of Homeland Security.

(2) Whether any such deaths were caused by negligence or deliberate indifference by such personnel.

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

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

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

TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

SEC. 501. ENHANCED BORDER SECURITY COORDINATION AND MANAGEMENT.

The Secretary of Homeland Security shall ensure full coordination of border security efforts among agencies within the Department of Homeland Security, including United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services, and shall identify and remedy any failure of coordination or integration in a prompt and efficient manner. In particular, the Secretary of Homeland Security shall—

(1) oversee and ensure the coordinated execution of border security operations and policy;

(2) establish a mechanism for sharing and coordinating intelligence information and analysis at the headquarters and field office levels pertaining to counter-terrorism, border enforcement, customs and trade, immigration, human smuggling, human trafficking, and other issues of concern to both United States Immigration and Customs Enforcement and United States Customs and Border Protection;

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

(4) enhance coordination between the border security and investigations missions within the Department by requiring that, with respect to cases involving violations of the customs and immigration laws of the United States, United States Customs and Border Protection coordinate with and refer all such cases to United States Immigration and Customs Enforcement;

(5) examine comprehensively the proper allocation of the Department's border security related resources, and analyze budget issues on the basis of Department-wide border enforcement goals, plans, and processes;

(6) establish measures and metrics for determining the effectiveness of coordinated border enforcement efforts; and

(7) develop and implement a comprehensive plan to protect the northern and southern land borders of the United States and address the different challenges each border faces by—

(A) coordinating all Federal border security activities;

(B) improving communications and data sharing capabilities within the Department and with other Federal, State, local, tribal, and foreign law enforcement agencies on matters relating to border security; and

(C) providing input to relevant bilateral agreements to improve border functions, including ensuring security and promoting trade and tourism.

SEC. 502. OFFICE OF AIR AND MARINE OPERATIONS.

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

"SEC. 431. OFFICE OF AIR AND MARINE OPERATIONS.

"(a) ESTABLISHMENT.—There is established in the Department an Office of Air and Marine Operations (referred to in this section as the 'Office').

"(b) ASSISTANT SECRETARY.—The Office shall be headed by an Assistant Secretary for Air and Marine Operations who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report directly to the Secretary. The Assistant Secretary shall be responsible for all functions and operations of the Office.

"(c) MISSIONS.—

"(1) PRIMARY MISSION.—The primary mission of the Office shall be the prevention of the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

"(2) SECONDARY MISSION.—The secondary mission of the Office shall be to assist other agencies to prevent the entry of terrorists, other unlawful aliens,

instruments of terrorism, narcotics, and other contraband into the United States.

"(d) AIR AND MARINE OPERATIONS CENTER.—

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

"(2) DUTIES.—The Center shall provide comprehensive radar, communications, and control services to the Office and to eligible Federal, State, or local agencies (as determined by the Assistant Secretary for Air and Marine Operations), in order to identify, track, and support the interdiction and apprehension of individuals attempting to enter United States airspace or coastal waters for the purpose of narcotics trafficking, trafficking of persons, or other terrorist or criminal activity.

"(e) ACCESS TO INFORMATION.—The Office shall ensure that other agencies within the Department of Homeland Security, the Department of Defense, the Department of Justice, and such other Federal, State, or local agencies, as may be determined by the Secretary, shall have access to the information gathered and analyzed by the Center.

"(f) REQUIREMENT.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary shall require that all information concerning all aviation activities, including all airplane, helicopter, or other aircraft flights, that are undertaken by the either the Office, United States Immigration and Customs Enforcement, United States Customs and Border Protection, or any subdivisions thereof, be provided to the Air and Marine Operations Center. Such information shall include the identifiable transponder, radar, and electronic emissions and codes originating and resident aboard the aircraft or similar asset used in the aviation activity.

"(g) TIMING.—The Secretary shall require the information described in subsection (f) to be provided to the Air and Marine Operations Center in advance of the aviation activity whenever practicable for the purpose of timely coordination and conflict resolution of air missions by the Office, United States Immigration and Customs Enforcement, and United States Customs and Border Protection.

"(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter, impact, diminish, or in any way undermine the authority of the Administrator of the Federal Aviation Administration to oversee, regulate, and control the safe and efficient use of the airspace of the United States.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) ADDITIONAL ASSISTANT SECRETARY.—Section 103(a)(9) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)(9)) is amended by striking "12" and inserting "13".

(2) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act (6 U.S.C. 101) is amended by inserting after the item relating to section 430 the following new item:

"Sec. 431. Office of Air and Marine Operations.".

SEC. 503. SHADOW WOLVES TRANSFER.

(a) TRANSFER OF EXISTING UNIT.—Not later that 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall transfer to United States Immigration and Customs Enforcement all functions (including the personnel, assets, and liabilities attributable to such functions) of the Customs Patrol Officers unit operating on the Tohono O'odham Indian reservation (commonly known as the "Shadow Wolves" unit).

(b) ESTABLISHMENT OF NEW UNITS.—The Secretary is authorized to establish within United States Immigration and Customs Enforcement additional units of Customs Patrol Officers in accordance with this section, as appropriate.

(c) DUTIES.—The Customs Patrol Officer unit transferred pursuant to subsection (a), and additional units established pursuant to subsection (b), shall operate on Indian lands by preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

(d) BASIC PAY FOR JOURNEYMAN OFFICERS.—A Customs Patrol Officer in a unit described in this section shall receive equivalent pay as a special agent with similar competencies within United States Immigration and Customs Enforcement pursuant to the Department of Homeland Security's Human Resources Management System established under section 841 of the Homeland Security Act (6 U.S.C. 411).

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

TITLE VI—TERRORIST AND CRIMINAL ALIENS

SEC. 601. REMOVAL OF TERRORIST ALIENS.

(a) EXPANSION OF REMOVAL.—

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

(A) in subparagraph (A)—

(i) by striking "Attorney General may not" and inserting "Secretary of Homeland Security may not";

(ii) by inserting "or the Secretary" after "if the Attorney General"; and

(B) in subparagraph (B)—

(i) by inserting "or the Secretary of Homeland Security" after "if the Attorney General";

(ii) by striking "or" in clause (iii);

(iii) by striking the period at the end of clause (iv) and inserting "; or";

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

"(v) the alien is described in any subclause of section 212(a)(3)(B)(i) or section 212(a)(3)(F), unless, in the case only of an alien described in subclause (IV) or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security determines, in the Secretary's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States."; and

(v) in the third sentence, by inserting "or the Secretary of Homeland Security" after "Attorney General"; and

(vi) by striking the last sentence.

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

(A) by striking "subclause (I), (II), (III), (IV), or (VI)" and inserting "any subclause";

(B) by striking "237(a)(4)(B)" and inserting "212(a)(3)(F)"; and

(C) by inserting "or (IX)" after "subclause (IV)".

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

(A) by striking "inadmissible under" and inserting "described in"; and

(B) by striking "deportable under" and inserting "described in".

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

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

(A) by striking "inadmissible under" and inserting "described in"; and

(B) in paragraph (d), by striking "deportable under" and inserting "described in".

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

(1) all aliens in removal, deportation, or exclusion proceedings;

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

(3) with respect to aliens and applications described in paragraph (1) or (2), acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after the date of the enactment of this Act.

SEC. 602. DETENTION OF DANGEROUS ALIENS.

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

(1) in subsection (a), by striking "Attorney General" and inserting "Secretary of Homeland Security" each place it appears;

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

"If, at that time, the alien is not in the custody of the Secretary (under the authority of this Act), the Secretary shall take the alien into custody for removal, and the removal period shall not begin until the alien is taken into such custody. If the Secretary transfers custody of the alien during the removal period pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency, the

removal period shall be tolled, and shall begin anew on the date of the alien's return to the custody of the Secretary.";

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

"(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the date the stay of removal is no longer in effect.";

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

"(C) SUSPENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspires or acts to prevent the alien's removal subject to an order of removal.";

(5) in subsection (a)(2), by adding at the end the following: "If a court orders a stay of removal of an alien who is subject to an administratively final order of removal, the Secretary in the exercise of discretion may detain the alien during the pendency of such stay of removal.";

(6) in subsection (a)(3), by amending subparagraph (D) to read as follows:

"(D) to obey reasonable restrictions on the alien's conduct or activities, or perform affirmative acts, that the Secretary prescribes for the alien, in order to prevent the alien from absconding, or for the protection of the community, or for other purposes related to the enforcement of the immigration laws.";

(7) in subsection (a)(6), by striking "removal period and, if released," and inserting "removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien";

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

"(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary, in the Secretary's discretion, may parole the alien under section 212(d)(5) of this Act and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien's parole or the alien's removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

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

"(A) was lawfully admitted the most recent time the alien entered the United States or has otherwise effected an entry into the United States, and

"(B) is not detained under paragraph (6).

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

(9) by adding at the end the following new subsection:

"(j) ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—

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

"(2) ESTABLISHMENT OF A DETENTION REVIEW PROCESS FOR ALIENS WHO FULLY COOPERATE WITH REMOVAL.—

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

"(i) have made all reasonable efforts to comply with their removal orders;

"(ii) have complied with the Secretary's efforts to carry out the removal orders, including making timely application in good faith for travel or other documents necessary to the alien's departure, and

"(iii) have not conspired or acted to prevent removal.

"(B) DETERMINATION.—The Secretary shall make a determination whether to release an alien after the removal period in accordance with paragraphs (3) and (4). The determination—

"(i) shall include consideration of any evidence submitted by the alien and the history of the alien's efforts to comply with the order of removal, and

"(ii) may include any information or assistance provided by the Department of State or other Federal agency and any other information available to the Secretary pertaining to the ability to remove the alien.

"(3) AUTHORITY TO DETAIN BEYOND THE REMOVAL PERIOD .—

"(A) INITIAL 90 DAY PERIOD.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).

"(B) EXTENSION.—

"(i) IN GENERAL.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien beyond the 90 days authorized in subparagraph (A) if the conditions described in subparagraph (A), (B), or (C) of paragraph (4) apply.

"(ii) RENEWAL.—The Secretary may renew a certification under paragraph (4)(A) every six months without limitation, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under such paragraph.

"(iii) DELEGATION.—Notwithstanding section 103, the Secretary may not delegate the authority to make or renew a certification described in clause (ii), (iii), or (v) of paragraph (4)(B) below the level of the Assistant Secretary for Immigration and Customs Enforcement.

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

"(4) CONDITIONS FOR EXTENSION.—The conditions for continuation of detention are any of the following:

"(A) The Secretary determines that there is a significant likelihood that the alien—

"(i) will be removed in the reasonably foreseeable future; or

"(ii) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien's failure or refusal to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspiracies or acts to prevent removal.

"(B) The Secretary certifies in writing any of the following:

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

"(ii) After receipt of a written recommendation from the Secretary of State, the release of the alien is likely to have serious adverse foreign policy consequences for the United States.

"(iii) Based on information available to the Secretary (including available information from the intelligence community, and without regard to the grounds upon which the alien was ordered removed), there is reason to believe that the release of the alien would threaten the national security of the United States.

"(iv) The release of the alien will threaten the safety of the community or any person, the conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and—

"(I) the alien has been convicted of one or more aggravated felonies described in section 101(a)(43)(A) or of one or more crimes identified by the Secretary by regulation, or of one or more attempts or conspiracies to commit any such aggravated felonies or such crimes, for an aggregate term of imprisonment of at least five years; or

"(II) the alien has committed one or more crimes of violence and, because of a mental condition or personality disorder and be-

havior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future.

"(v) The release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and the alien has been convicted of at least one aggravated felony.

"(C) Pending a determination under subparagraph (B), so long as the Secretary has initiated the administrative review process no later than 30 days after the expiration of the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).

"(5) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary in the exercise of discretion may impose conditions on release as provided in subsection (a)(3).

"(6) REDETENTION.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody if the alien fails to comply with the conditions of release or to cooperate in the alien's removal from the United States, or if, upon reconsideration, the Secretary determines that the alien can be detained under paragraph (1). Paragraphs (6) through (8) of subsection (a) shall apply to any alien returned to custody pursuant to this paragraph, as if the removal period terminated on the day of the redetention.

"(7) CERTAIN ALIENS WHO EFFECTED ENTRY.—If an alien has effected an entry into the United States but has neither been lawfully admitted nor physically present in the United States continuously for the 2-year period immediately prior to the commencement of removal proceedings under this Act or deportation proceedings against the alien, the Secretary in the exercise of discretion may decide not to apply subsection (a)(8) and this subsection and may detain the alien without any limitations except those imposed by regulation.".

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

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

(2) acts and conditions occurring or existing before, on, or after the date of enactment of this Act.

SEC. 603. INCREASE IN CRIMINAL PENALTIES.

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

(1) in subsection (a)(1)—

(A) in the matter before subparagraph (A), by inserting "or 212(a)" after "section 237(a)"; and

(B) by striking "imprisoned not more than four years" and inserting "imprisoned for not less than six months or more than five years"; and

(2) in subsection (b)—

(A) by striking "not more than $1,000" and inserting "under title 18, United States Code"; and

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

SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED FELONS AND OTHER CRIMINALS.

(a) EXCLUSION BASED ON FRAUDULENT DOCUMENTATION.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amended—

(1) in subclause (I), by striking "or" at the end;

(2) in subclause (II), by adding "or" at the end; and

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

"(III) a violation (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code,".

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

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

"(K) UNLAWFUL PROCUREMENT OF CITIZENSHIP.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of (or a conspiracy or attempt to violate) subsection (a) or (b) of section 1425 of title 18, United States Code is inadmissible.

"(L) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDERS; CRIMES AGAINST CHILDREN.—

"(i) DOMESTIC VIOLENCE, STALKING, OR CHILD ABUSE.—

"(I) IN GENERAL.—Subject to subclause (II), any alien who at any time is convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is inadmissible.

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

"(III) CRIME OF DOMESTIC VIOLENCE DEFINED.—For purposes of subclause (I), the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

"(ii) VIOLATORS OF PROTECTION ORDERS.—

"(I) IN GENERAL.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or person for whom the protection order was issued is inadmissible.

"(II) PROTECTION ORDER DEFINED.—For purposes of subclause (I), the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.".

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

(1) by striking "The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)" and inserting "The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or such Secretary, waive the application of subparagraph (A)(i)(I), (A)(i)(III), (B), (D), (E), (K), and (L) of subsection (a)(2)";

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

(3) in paragraph (2), by striking "Attorney General, in his discretion," and inserting "Attorney General or the Secretary of Homeland Security, in the discretion of the Attorney General or such Secretary,";

(4) in paragraph (2), by striking "as he" and inserting "as the Attorney General or the Secretary";

(5) in the second sentence, by striking "criminal acts involving torture" and inserting "criminal acts involving torture, or an aggravated felony"; and

(6) in the third sentence, by striking "if either since the date of such admission the alien has been convicted of an aggravated felony or the alien" and inserting "if since the date of such admission the alien".

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

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

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

(2) to all aliens who are required to establish admissibility on or after the such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

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

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

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

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

(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

SEC. 606. REMOVING DRUNK DRIVERS.

(a) IN GENERAL.—Section 101(a)(43)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(F)) is amended by inserting ", including a third drunk driving conviction, regardless of the States in which the convictions occurred, and regardless of whether the offenses are deemed to be misdemeanors or felonies under State or Federal law," after "offense)".

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

SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT ASSISTANCE PROGRAM.

(a) DESIGNATED COUNTIES ADJACENT TO THE SOUTHERN BORDER OF THE UNITED STATES DEFINED.—In this section, the term "designated counties adjacent to the southern international border of the United States" includes a county any part of which is within 25 miles of the southern international border of the United States.

(b) AUTHORITY.—

(1) IN GENERAL.—Any Sheriff or coalition or group of Sheriffs from designated counties adjacent to the southern international border of the United States may transfer aliens detained or in the custody of the Sheriff who are not lawfully present in the United States to appropriate Federal law enforcement officials, and shall be promptly paid for the costs of performing such transfers by the Attorney General for any local or State funds previously expended or proposed to be spent by that Sheriff or coalition or group of Sheriffs.

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

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

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

(c) DESIGNATED COUNTY LAW ENFORCEMENT ACCOUNT.—

(1) SEPARATE ACCOUNT.—Reimbursement or pre-payment under subsection (b) shall be made promptly from funds deposited into a separate account in the Treasury of the United States to be entitled the "Designated County Law Enforcement Account".

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

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

(d) FUNDS FOR THE DESIGNATED COUNTY LAW ENFORCEMENT ACCOUNT.—Only funds designated, authorized, or appropriated by Congress may be deposited or transferred to the Designated County Law Enforcement Account. The Designated County Law Enforcement Account is authorized to receive up to $100,000,000 per year.

(e) USE OF FUNDS.—

(1) IN GENERAL.—Funds provided under this section shall be payable directly to participating Sheriff's offices and may be used for the transfers described in subsection (b)(1), including the costs of personnel (such as overtime pay and costs for reserve deputies), costs of training of such personnel, equipment, and, subject to paragraph (2), the construction, maintenance, and operation of detention facilities to detain aliens who are unlawfully present in the United States. For purposes of this section, an alien who is unlawfully present in the United States shall be deemed to be a Federal prisoner beginning upon determination by Federal law enforcement officials that such alien is unlawfully present in the United States, and such alien shall, upon such determination, be deemed to be in Federal custody. In order for costs to be eligible for payment, the Sheriff making such application shall personally certify under oath that all costs submitted in the application for reimbursement or advance payment meet the requirements of this section and are reasonable and necessary, and such certification shall be subject to all State and Federal laws governing statements made under oath, including the penalties of perjury, removal from office, and prosecution under State and Federal law.

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

(f) DISPOSITION AND DELIVERY OF DETAINED ALIENS.—All aliens detained or taken into custody by a Sheriff under this section and with respect to whom Federal law enforcement officials determine are unlawfully present in the United States, shall be immediately delivered to Federal law enforcement officials. In accordance with subsection (e)(1), an alien who is in the custody of a Sheriff shall be deemed to be a Federal prisoner and in Federal custody.

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

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

(2) providing uniform standards that all other Federal law enforcement officials shall follow to cooperate with such Sheriffs and to otherwise implement the requirements of this section.

(h) EFFECTIVE DATE.—The provisions of this section shall take effect on its enactment. The promulgation of any regulations under subsection (g) is not a necessary precondition to the immediate deployment or work of Sheriffs personnel or corrections officers as authorized by this section. Any reasonable and necessary expenses or costs authorized by this section and incurred by such Sheriffs after the date of the enactment of this Act but prior to the date of the promulgation of such regulations are eligible for reimbursement under the terms and conditions of this section.

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

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

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

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

"(M) CRIMINAL STREET GANG PARTICIPATION.—

"(i) IN GENERAL.—Any alien is inadmissible if the alien has been removed under section 237(a)(2)(F), or if the consular officer or the Secretary of Homeland Security knows, or has reasonable ground to believe that the alien—

"(I) is a member of a criminal street gang and has committed, conspired, or threatened to commit, or seeks to enter the United States to engage solely, principally, or incidentally in, a gang crime or any other unlawful activity; or

"(II) is a member of a criminal street gang designated under section 219A.

"(ii) CRIMINAL STREET GANG DEFINED.—For purposes of this subparagraph, the term 'criminal street gang' means a formal or informal group or association of 3 or more individuals, who commit 2 or more gang crimes (one of which is a crime of violence, as defined in section

16 of title 18, United States Code) in 2 or more separate criminal episodes in relation to the group or association.

"(iii) GANG CRIME DEFINED.—For purposes of this subparagraph, the term 'gang crime' means conduct constituting any Federal or State crime, punishable by imprisonment for one year or more, in any of the following categories:

"(I) A crime of violence (as defined in section 16 of title 18, United States Code).

"(II) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

"(III) A crime involving the manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemical (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(IV) Any conduct punishable under section 844 of title 18, United States Code (relating to explosive materials), subsection (d), (g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of such title) or is a serious drug offense (as defined in section 924(e)(2)(A)), (i), (j), (k), (o), (p), (q), (u), or (x) of section 922 of such title (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 of such title (relating to penalties), section 930 of such title (relating to possession of firearms and dangerous weapons in Federal facilities), section 931 of such title (relating to purchase, ownership, or possession of body armor by violent felons), sections 1028 and 1029 of such title (relating to fraud and related activity in connection with identification documents or access devices), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

"(V) Any conduct punishable under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) of this Act.".

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

"(F) CRIMINAL STREET GANG PARTICIPATION.—

"(i) IN GENERAL.—Any alien is deportable who—

"(I) is a member of a criminal street gang and is convicted of committing, or conspiring, threatening, or attempting to commit, a gang crime; or

"(II) is determined by the Secretary of Homeland Security to be a member of a criminal street gang designated under section 219A.

"(ii) DEFINITIONS.—For purposes of this subparagraph, the terms 'criminal street gang' and 'gang crime' have the meaning given such terms in section 212(a)(2)(M).".

(c) DESIGNATION OF CRIMINAL STREET GANGS.—

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

"DESIGNATION OF CRIMINAL STREET GANGS

"SEC. 219A. (a) DESIGNATION.—

"(1) IN GENERAL.—The Attorney General is authorized to designate a group or association as a criminal street gang in accordance with this subsection if the Attorney General finds that the group or association meets the criteria described in section 212(a)(2)(M)(ii)(I).

"(2) PROCEDURE.—

"(A) NOTICE.—

"(i) TO CONGRESSIONAL LEADERS.—Seven days before making a designation under this subsection, the Attorney General shall notify the Speaker and Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate, and the members

of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group or association under this subsection, together with the findings made under paragraph (1) with respect to that group or association, and the factual basis therefor.

"(ii) PUBLICATION IN FEDERAL REGISTER.—The Attorney shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

"(B) EFFECT OF DESIGNATION.—

"(i) A designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

"(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

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

"(4) PERIOD OF DESIGNATION.—

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

"(B) REVIEW OF DESIGNATION UPON PETITION.—

"(i) IN GENERAL.—The Attorney General shall review the designation of a criminal street gang under the procedures set forth in clauses (iii) and (iv) if the designated gang or association files a petition for revocation within the petition period described in clause (ii).

"(ii) PETITION PERIOD.—For purposes of clause (i)—

"(I) if the designated gang or association has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

"(II) if the designated gang or association has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

"(iii) PROCEDURES.—Any criminal street gang that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the gang is warranted.

"(iv) DETERMINATION.—

"(I) IN GENERAL.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Attorney General shall make a determination as to such revocation.

"(II) PUBLICATION OF DETERMINATION.—A determination made by the Attorney General under this clause shall be published in the Federal Register.

"(III) PROCEDURES.—Any revocation by the Attorney General shall be made in accordance with paragraph (6).

"(C) OTHER REVIEW OF DESIGNATION.—

"(i) IN GENERAL.—If in a 5-year period no review has taken place under subparagraph (B), the Attorney General shall review the designation of the criminal street gang in order to determine whether such designation should be revoked pursuant to paragraph (6).

"(ii) PROCEDURES.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Attorney General. The results of such review and the applicable procedures shall not be reviewable in any court.

"(iii) PUBLICATION OF RESULTS OF REVIEW.—The Attorney General shall publish any determination made pursuant to this subparagraph in the Federal Register.

"(5) REVOCATION BY ACT OF CONGRESS.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

"(6) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

"(A) IN GENERAL.—The Attorney General may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Attorney General finds that the circumstances that

were the basis for the designation have changed in such a manner as to warrant revocation.

"(B) PROCEDURE.—The procedural requirements of paragraphs (2) and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

"(7) EFFECT OF REVOCATION.—The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

"(8) USE OF DESIGNATION IN HEARING.—If a designation under this subsection has become effective under paragraph (2)(B) an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any hearing.

"(b) JUDICIAL REVIEW OF DESIGNATION.—

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

"(2) BASIS OF REVIEW.—Review under this subsection shall be based solely upon the administrative record.

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

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(B) contrary to constitutional right, power, privilege, or immunity;

"(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

"(D) lacking substantial support in the administrative record taken as a whole; or

"(E) not in accord with the procedures required by law.

"(4) JUDICIAL REVIEW INVOKED.—The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order setting aside the designation.

"(c) RELEVANT COMMITTEE DEFINED.—As used in this section, the term 'relevant committees' means the Committees on the Judiciary of the House of Representatives and of the Senate.".

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

"Sec. 219A. Designation of criminal street gangs.".

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

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

(A) by inserting "or 212(a)(2)(M)" after "212(a)(3)(B)"; and

(B) by inserting "237(a)(2)(F) or" before "237(a)(4)(B)".

(2) ANNUAL REPORT.—Not later than March 1 of each year (beginning 1 year after the date of the enactment of this Act), the Secretary of Homeland Security, after consultation with the appropriate Federal agencies, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the number of aliens detained under the amendments made by paragraph (1).

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

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

(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the matter preceding clause (i), by inserting "who is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) or who is" after "to an alien".

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

(A) in clause (v), by striking "or" at the end;

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

(C) by inserting after clause (v) the following:

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

(3) DENIAL OF REVIEW OF DETERMINATION OF INELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—Section 244(c)(2) of such Act (8 U.S.C. 1254(c)(2)) is amended by adding at the end the following:

"(C) LIMITATION ON JUDICIAL REVIEW.—There shall be no judicial review of any finding under subparagraph (B) that an alien is in described in section 208(b)(2)(A)(vi).".

(4) EFFECTIVE DATE.—The amendments made by this subsection are effective on the date of enactment of this Act and shall apply to all applications pending on or after such date.

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

SEC. 609. NATURALIZATION REFORM.

(a) BARRING TERRORISTS FROM NATURALIZATION.—Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end the following new subsection:

"(g) No person shall be naturalized who the Secretary of Homeland Security determines, in the Secretary's discretion, to have been at any time an alien described in section 212(a)(3) or 237(a)(4). Such determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and shall be binding upon, and unreviewable by, any court exercising jurisdiction under the immigration laws over any application for naturalization, regardless whether such jurisdiction to review a decision or action of the Secretary is de novo or otherwise.".

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

(1) by striking "shall be considered by the Attorney General" and inserting "shall be considered by the Secretary of Homeland Security or any court";

(2) by striking "pursuant to a warrant of arrest issued under the provisions of this or any other Act:" and inserting "or other proceeding to determine the applicant's inadmissibility or deportability, or to determine whether the applicant's lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced:"; and

(3) by striking "upon the Attorney General" and inserting "upon the Secretary of Homeland Security".

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

(d) CONDITIONAL PERMANENT RESIDENTS.—Section 216(e) and section 216A(e) of such Act (8 U.S.C. 1186a(e), 1186b(e)) are each amended by inserting before the period at the end the following: ", if the alien has had the conditional basis removed under this section".

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

"(b) If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period after the date on which the Secretary of Homeland Security completes all examinations and interviews conducted under such section, as such terms are defined by the Secretary pursuant to regulations, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. Such court shall only have jurisdiction to review the basis for delay and remand the matter to the Secretary for the Secretary's determination on the application.".

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

(1) by inserting ", no later than the date that is 120 days after the Secretary's final determination" before "seek"; and

(2) by striking the second sentence and inserting the following: "The burden shall be upon the petitioner to show that the Secretary's denial of the application was not supported by facially legitimate and bona fide reasons. Except in a proceeding under section 340, notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to determine, or to review a determination of the Secretary made at any time regarding, for purposes of an application for naturalization, whether an alien is a person of good moral character, whether

an alien understands and is attached to the principles of the Constitution of the United States, or whether an alien is well disposed to the good order and happiness of the United States.".

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

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

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

(1) in paragraph (1)—

(A) by striking "Attorney General" and inserting "Secretary of Homeland Security in the exercise of discretion"; and

(B) by striking "set forth in this subsection or" and inserting "set forth in this subsection, in lieu of removal proceedings under";

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

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

(4) in paragraph (5)—

(A) by striking "described in this section" and inserting "described in paragraph (1) or (2)"; and

(B) by striking "the Attorney General may grant in the Attorney General's discretion" and inserting "the Secretary of Homeland Security or the Attorney General may grant, in the discretion of the Secretary or Attorney General, in any proceeding";

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

(6) by inserting after paragraph (2) the following new paragraph:

"(3) The Secretary of Homeland Security in the exercise of discretion may determine inadmissibility under section 212(a)(2) (relating to criminal offenses) and issue an order of removal pursuant to the procedures set forth in this subsection, in lieu of removal proceedings under section 240, with respect to an alien who

"(A) has not been admitted or paroled;

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

"(C) is not eligible for a waiver of inadmissibility or relief from removal.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act but shall not apply to aliens who are in removal proceedings under section 240 of the Immigration and Nationality Act as of such date

SEC. 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE IN CHANGE IN INADMISSIBILITY FOR TERRORISTS UNDER REAL ID ACT.

Effective as if included in the enactment of Public Law 109–13, section 103(d)(1) of the REAL ID Act of 2005 (division B of such Public Law) is amended by inserting ", deportation, and exclusion" after "removal".

SEC. 612. BAR TO GOOD MORAL CHARACTER.

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

(1) by inserting after paragraph (1) the following new paragraph:

"(2) one who the Secretary of Homeland Security or the Attorney General determines, in the unreviewable discretion of the Secretary or the Attorney General, to have been at any time an alien described in section 212(a)(3) or section 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and which shall be binding upon any court regardless of the applicable standard of review;";

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

(3) by striking the sentence following paragraph (9) and inserting the following: "The fact that any person is not within any of the foregoing classes shall not preclude a discretionary finding for other reasons that such a person is or

was not of good moral character. The Secretary and the Attorney General shall not be limited to the applicant's conduct during the period for which good moral character is required, but may take into consideration as a basis for determination the applicant's conduct and acts at any time.".

(b) AGGRAVATED FELONY EFFECTIVE DATE.—Section 509(b) of the Immigration Act of 1990 (Public Law 101–649), as amended by section 306(a)(7) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Public Law 102–232) is amended to read as follows:

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

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

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

SEC. 613. STRENGTHENING DEFINITIONS OF "AGGRAVATED FELONY" AND "CONVICTION".

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

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

"(A) murder, manslaughter, homicide, rape, or any sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;"; and

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

"Any reversal, vacatur, expungement, or modification to a conviction, sentence, or conviction record that was granted to ameliorate the consequences of the conviction, sentence, or conviction record, or was granted for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that the reversal, vacatur, expungement, or modification was not granted to ameliorate the consequences of the conviction, sentence, or conviction record, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt.".

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

SEC. 614. DEPORTABILITY FOR CRIMINAL OFFENSES.

(a) IN GENERAL.—Section 237(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(3)(B)) is amended—

(1) in clause (ii), by striking "or" at the end;

(2) in clause (iii), by inserting "or" at the end; and

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

"(iv) of a violation of, or an attempt or a conspiracy to violate, subsection (a) or (b) of section 1425 of title 18, United States Code,".

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

"(G) SOCIAL SECURITY AND IDENTIFICATION FRAUD.—Any alien who at any time after admission is convicted of a violation of (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code is deportable.".

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

TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION

SEC. 701. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

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

"(7) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the Secretary, which may be a nongovernmental entity)—

"(i) responds to inquiries made by persons at any time through a toll-free telephone line and other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed; and

"(ii) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.

"(B) INITIAL RESPONSE.—The verification system shall provide verification or a tentative nonverification of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing verification or tentative nonverification, the verification system shall provide an appropriate code indicating such verification or such nonverification.

"(C) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONVERIFICATION.—In cases of tentative nonverification, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final verification or nonverification within 10 working days after the date of the tentative nonverification. When final verification or nonverification is provided, the verification system shall provide an appropriate code indicating such verification or nonverification.

"(D) DESIGN AND OPERATION OF SYSTEM.—The verification system shall be designed and operated—

"(i) to maximize its reliability and ease of use by persons and other entities consistent with insulating and protecting the privacy and security of the underlying information;

"(ii) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

"(iii) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

"(iv) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

"(I) the selective or unauthorized use of the system to verify eligibility;

"(II) the use of the system prior to an offer of employment; or

"(III) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.

"(E) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—As part of the verification system, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security (and any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such verification or nonverification) except as provided for in this section or section 205(c)(2)(I) of the Social Security Act.

"(F) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—(i) As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C), compares the name and alien identification or authorization number which are provided in an inquiry against such information maintained by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

"(ii) When a single employer has submitted to the verification system pursuant to paragraph (3)(A) the identical social security account number in more than one instance, or when multiple employers have submitted to the verification system pursuant to such paragraph the identical social security account number, in a manner which indicates the possible fraudulent use of that number, the Secretary of Homeland Security shall conduct an investigation, within the time periods specified in subparagraphs (B) and (C), in order to ensure that no fraudulent use of a social security account number has taken place. If the Secretary has selected a designee to establish and administer the verification system, the designee shall notify the Secretary when a single employer has submitted to the verification system pursuant to paragraph (3)(A) the identical social security account number in more than one instance, or when multiple employers have submitted to the verification system pursuant to such paragraph the identical social security account number, in a manner which indicates the possible fraudulent use of that number. The designee shall also provide the Secretary with all pertinent information, including the name and address of the employer or employers who submitted the relevant social security account number, the relevant social security account number submitted by the employer or employers, and the relevant name and date of birth of the employee submitted by the employer or employers.

"(G) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subparagraph (C).

"(H) LIMITATION ON USE OF THE VERIFICATION SYSTEM AND ANY RELATED SYSTEMS.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, nothing in this paragraph shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this paragraph for any other purpose other than as provided for.

"(ii) NO NATIONAL IDENTIFICATION CARD.—Nothing in this paragraph shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

"(I) FEDERAL TORT CLAIMS ACT.—If an individual alleges that the individual would not have been dismissed from a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of the Federal Tort Claims Act, and injunctive relief to correct such error. No class action may be brought under this subparagraph.

"(J) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION.—No person or entity shall be civilly or criminally liable for any action taken in good faith reliance on information provided through the employment eligibility verification mechanism established under this paragraph.".

(b) REPEAL OF PROVISION RELATING TO EVALUATIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—Section 274A(d) (8 U.S.C. 1324a(d)) is repealed.

SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

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

(1) in subsection (a)(3), by inserting "(A)" after "DEFENSE.—", and by adding at the end the following:

"(B) FAILURE TO SEEK AND OBTAIN VERIFICATION.—In the case of a person or entity in the United States that hires, or continues to employ, an individual,

or recruits or refers an individual for employment, the following requirements apply:

"(i) FAILURE TO SEEK VERIFICATION.—

"(I) IN GENERAL.—If the person or entity has not made an inquiry, under the mechanism established under subsection (b)(7), seeking verification of the identity and work eligibility of the individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring, the date specified in subsection (b)(8)(B) for previously hired individuals, or before the recruiting or referring commences, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

"(II) SPECIAL RULE FOR FAILURE OF VERIFICATION MECHANISM.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no nonresponses and qualify for such defense.

"(ii) FAILURE TO OBTAIN VERIFICATION.—If the person or entity has made the inquiry described in clause (i)(I) but has not received an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (b)(7)(B) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.";

(2) by amending subparagraph (A) of subsection (b)(1) to read as follows:

"(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Secretary by regulation, that it has verified that the individual is not an unauthorized alien by—

"(i) obtaining from the individual the individual's social security account number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under paragraph (2), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

"(ii)(I) examining a document described in subparagraph (B); or (II) examining a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and, if the document bears an expiration date, that expiration date has not elapsed. If an individual provides a document (or combination of documents) that reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and is sufficient to meet the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce another document.";

(3) in subsection (b)(1)(D)—

(A) in clause (i), by striking "or such other personal identification information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section"; and

(B) in clause (ii), by inserting before the period "and that contains a photograph of the individual";

(4) in subsection (b)(2), by adding at the end the following: "The individual must also provide that individual's social security account number (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under this paragraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify."; and

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

"(3) RETENTION OF VERIFICATION FORM AND VERIFICATION.—

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

"(i) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual or the date of the completion of verification of a previously hired individual and ending—

"(I) in the case of the recruiting or referral of an individual, three years after the date of the recruiting or referral;

"(II) in the case of the hiring of an individual, the later of—

"(aa) three years after the date of such hiring; or

"(bb) one year after the date the individual's employment is terminated; and

"(III) in the case of the verification of a previously hired individual, the later of—

"(aa) three years after the date of the completion of verification; or

"(bb) one year after the date the individual's employment is terminated;

"(ii) make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring or in the case of previously hired individuals, the date specified in subsection (b)(8)(B), or before the recruiting or referring commences; and

"(iii) may not commence recruitment or referral of the individual until the person or entity receives verification under subparagraph (B)(i) or (B)(iii).

"(B) VERIFICATION.—

"(i) VERIFICATION RECEIVED.—If the person or other entity receives an appropriate verification of an individual's identity and work eligibility under the verification system within the time period specified, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a final verification of such identity and work eligibility of the individual.

"(ii) TENTATIVE NONVERIFICATION RECEIVED.—If the person or other entity receives a tentative nonverification of an individual's identity or work eligibility under the verification system within the time period specified, the person or entity shall so inform the individual for whom the verification is sought. If the individual does not contest the nonverification within the time period specified, the nonverification shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under the system to indicate a tentative nonverification. If the individual does contest the nonverification, the individual shall utilize the process for secondary verification provided under paragraph (7). The nonverification will remain tentative until a final verification or nonverification is provided by the verification system within the time period specified. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonverification becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

"(iii) FINAL VERIFICATION OR NONVERIFICATION RECEIVED.—If a final verification or nonverification is provided by the verification system regarding an individual, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a verification or nonverification of identity and work eligibility of the individual.

"(iv) EXTENSION OF TIME.—If the person or other entity in good faith attempts to make an inquiry during the time period specified and the verification system has registered that not all inquiries were received during such time, the person or entity may make an inquiry in the first subsequent working day in which the verification system registers that it has received all inquiries. If the verification system cannot receive inquiries at all times during a day, the person or entity merely

has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

"(v) CONSEQUENCES OF NONVERIFICATION.—

"(I) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonverification regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

"(II) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under subclause (I), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.

"(vi) CONTINUED EMPLOYMENT AFTER FINAL NONVERIFICATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonverification, a rebuttable presumption is created that the person or entity has violated subsection (a)(1)(A).".

SEC. 703. EXPANSION OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM TO PREVIOUSLY HIRED INDIVIDUALS AND RECRUITING AND REFERRING.

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

(1) in subsection (a)(1)(A), by striking "for a fee";

(2) in subsection (a)(1), by amending subparagraph (B) to read as follows:

"(B) to hire, continue to employ, or to recruit or refer for employment in the United States an individual without complying with the requirements of subsection (b).";

(3) in subsection (a)(2) by striking "after hiring an alien for employment in accordance with paragraph (1)," and inserting "after complying with paragraph (1),"; and

(4) in subsection (a)(3), as amended by section 702, is further amended by striking "hiring," and inserting "hiring, employing," each place it appears.

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

"(8) USE OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM FOR PREVIOUSLY HIRED INDIVIDUALS.—

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

"(B) ON A MANDATORY BASIS.—

"(i) A person or entity described in clause (ii) must make an inquiry as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date three years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

"(ii) A person or entity is described in this clause if it is a Federal, State, or local governmental body (including the Armed Forces of the United States), or if it employs individuals working in a location that is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, an airport, or that contains critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))), but only to the extent of such individuals.

"(iii) All persons and entities other than those described in clause (ii) must make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the

date six years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.".

SEC. 704. BASIC PILOT PROGRAM.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking "at the end of the 11-year period beginning on the first day the pilot program is in effect" and inserting "two years after the enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005".

SEC. 705. HIRING HALLS.

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

"(4) DEFINITION OF RECRUIT OR REFER.—As used in this section, the term 'refer' means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person. Generally, only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition. However, union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section the term 'recruit' means the act of soliciting a person, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Generally, only persons or entities recruiting for remunerations (whether on a retainer or contingency basis) are included in the definition. However, union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service agencies, whether public, private, for-profit, or nonprofit that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.".

SEC. 706. PENALTIES.

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

(1) in subsection (e)(4)—

(A) in subparagraph (A), in the matter before clause (i), by inserting ", subject to paragraph (10)," after "in an amount";

(B) in subparagraph (A)(i), by striking "not less than $250 and not more than $2,000" and inserting "not less than $5,000";

(C) in subparagraph (A)(ii), by striking "not less than $2,000 and not more than $5,000" and inserting "not less than $10,000";

(D) in subparagraph (A)(iii), by striking "not less than $3,000 and not more than $10,000" and inserting "not less than $25,000"; and

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

"(B) may require the person or entity to take such other remedial action as is appropriate.";

(2) in subsection (e)(5)—

(A) by inserting ", subject to paragraph (10)," after "in an amount";

(B) by striking "$100" and inserting "$1,000";

(C) by striking "$1,000" and inserting "$25,000";

(D) by striking "the size of the business of the employer being charged, the good faith of the employer" and inserting "the good faith of the employer being charged"; and

(E) by adding at the end the following sentence: "Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).";

(3) by adding at the end of subsection (e) the following new paragraph:

"(10) MITIGATION OF CIVIL MONEY PENALTIES FOR SMALLER EMPLOYERS.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring by an employer, the dollar amounts otherwise specified in the respective paragraph shall be reduced as follows:

"(A) In the case of an employer with an average of fewer than 26 full-time equivalent employees (as defined by the Secretary of Homeland Security), the amounts shall be reduced by 60 percent.

"(B) In the case of an employer with an average of at least 26, but fewer than 101, full-time equivalent employees (as so defined), the amounts shall be reduced by 40 percent.

"(C) In the case of an employer with an average of at least 101, but fewer than 251, full-time equivalent employees (as so defined), the amounts shall be reduced by 20 percent.

The last sentence of paragraph (4) shall apply under this paragraph in the same manner as it applies under such paragraph.".

(4) by amending paragraph (1) of subsection (f) to read as follows:

"(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1) or (2) shall be fined not more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year, or both, notwithstanding the provisions of any other Federal law relating to fine levels."; and

(5) in subsection (f)(2), by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security".

SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EMPLOYMENT ELIGIBILITY VERIFICATION.

(a) REPORT.—

(1) IN GENERAL.—Not later than than 9 months after the date of the enactment of this Act, the Commissioner of Social Security, in consultation with the Secretary of Treasury, the Secretary of Homeland Security, and the Attorney General, shall submit a report to Congress that includes an evaluation of the following requirements and changes:

(A) A requirement that social security cards that are made of a durable plastic or similar material and that include an encrypted, machine-readable electronic identification strip and a digital photograph of the individual to whom the card is issued, be issued to each individual (whether or not a United States citizen) who—

(i) is authorized to be employed in the United States;

(ii) is seeking employment in the United States; and

(iii) files an application for such card, whether as a replacement of an existing social security card or as a card issued in connection with the issuance of a new social security account number.

(B) The creation of a unified database to be maintained by the Department of Homeland Security and comprised of data from the Social Security Administration and the Department of Homeland Security specifying the work authorization of individuals (including both United States citizens and noncitizens) for the purpose of conducting employment eligibility verification.

(C) A requirement that all employers verify the employment eligibility of all new hires using the social security cards described in subparagraph (A) and a phone, electronic card-reading, or other mechanism to seek verification of employment eligibility through the use of the unified database described in subparagraph (B).

(2) ITEMS INCLUDED IN REPORT.—The report under paragraph (1) shall include an evaluation of each of the following:

(A) Projected cost, including the cost to the Federal government, State and local governments, and the private sector.

(B) Administrability.

(C) Potential effects on—

(i) employers;

(ii) employees, including employees who are United States citizens as well as those that are not citizens;

(iii) tax revenue; and

(iv) privacy.

(D) The extent to which employer and employee compliance with immigration laws would be expected to improve.

(E) Any other relevant information.

(3) ALTERNATIVES.—The report under paragraph (1) also shall examine any alternatives to achieve the same goals as the requirements and changes described in paragraph (1) but that involve lesser cost, lesser burden on those affected, or greater ease of administration.

(b) INSPECTOR GENERAL REVIEW.—Not later than 3 months after the report is submitted under subsection (a), the Inspector General of the Social Security Administration, in consultation with the Inspectors General of the Department of Treas-

ury, the Department of Homeland Security, and the Department of Justice, shall send to the Congress an evaluation of the such report.

SEC. 708. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of enactment of this Act, except that the requirements of persons and entities to comply with the employment eligibility verification process takes effect on the date that is two years after such date.

TITLE VIII—IMMIGRATION LITIGATION ABUSE REDUCTION

SEC. 801. BOARD OF IMMIGRATION APPEALS REMOVAL ORDER AUTHORITY.

(a) IN GENERAL.—Section 101(a)(47) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(47)) is amended to read as follows:

"(47)(A) The term 'order of removal' means the order of the immigration judge, the Board of Immigration Appeals, or other administrative officer to whom the Attorney General or the Secretary of Homeland Security has delegated the responsibility for determining whether an alien is removable, concluding that the alien is removable or ordering removal.

"(B) The order described under subparagraph (A) shall become final upon the earliest of—

"(i) a determination by the Board of Immigration Appeals affirming such order;

"(ii) the entry by the Board of Immigration Appeals of such order;

"(iii) the expiration of the period in which any party is permitted to seek review of such order by the Board of Immigration Appeals;

"(iv) the entry by an immigration judge of such order, if appeal is waived by all parties; or

"(v) the entry by another administrative officer of such order, at the conclusion of a process as authorized by law other than under section 240.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to ordered entered before, on, or after such date.

SEC. 802. JUDICIAL REVIEW OF VISA REVOCATION.

(a) IN GENERAL.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by amending the last sentence to read as follows: "Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to visa revocations effected before, on, or after such date.

SEC. 803. REINSTATEMENT.

(a) IN GENERAL.—Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:

"(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

"(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed;

"(B) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application for such relief may have been filed; and

"(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not require proceedings before an immigration judge under section 240 or otherwise.".

(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

"(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—

"(1) IN GENERAL.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, or subsection (a)(2)(D) of this section, no court shall have jurisdiction to review any cause or claim arising from or relating to any reinstatement under section 241(a)(5) (including any challenge to the reinstated order), except as provided in paragraph (2) or (3).

"(2) CHALLENGES IN COURT OF APPEALS FOR DISTRICT OF COLUMBIA TO VALIDITY OF THE SYSTEM, ITS IMPLEMENTATION, AND RELATED INDIVIDUAL DETERMINATIONS.—

"(A) IN GENERAL.—Judicial review of determinations under section 241(a)(5) and its implementation is available in an action instituted in the United States Court of Appeals for the District of Columbia Circuit, but shall be limited, except as provided in subparagraph (B), to the following determinations:

"(i) Whether such section, or any regulation issued to implement such section, is constitutional.

"(ii) Whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General or the Secretary of Homeland Security to implement such section, is not consistent with applicable provisions of this Act or is otherwise in violation of a statute or the Constitution.

"(B) RELATED INDIVIDUAL DETERMINATIONS.—If a person raises an action under subparagraph (A), the person may also raise in the same action the following issues:

"(i) Whether the petitioner is an alien.

"(ii) Whether the petitioner was previously ordered removed or deported, or excluded.

"(iii) Whether the petitioner has since illegally entered the United States.

"(C) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

"(3) INDIVIDUAL DETERMINATIONS UNDER SECTION 242(a).—Judicial review of determinations under section 241(a)(5) is available in an action under subsection (a) of this section, but shall be limited to determinations of—

"(A) whether the petitioner is an alien;

"(B) whether the petitioner was previously ordered removed, deported, or excluded; and

"(C) whether the petitioner has since illegally entered the United States.

"(4) SINGLE ACTION.—A person who files an action under paragraph (2) may not file a separate action under paragraph (3). A person who files an action under paragraph (3) may not file an action under paragraph (2).".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on April 1, 1997, and shall apply to all orders reinstated on or after that date by the Secretary of Homeland Security (or by the Attorney General prior to March 1, 2003), regardless of the date of the original order.

SEC. 804. WITHHOLDING OF REMOVAL.

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

(1) in subparagraph (A), by adding at the end the following: "The burden of proof is on the alien to establish that the alien's life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for such threat."; and

(2) in subparagraph (C), by striking "In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A)" and inserting "For purposes of this paragraph".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of section 101(c) of the REAL ID Act of 2005 (division B of Public Law 109–13).

SEC. 805. CERTIFICATE OF REVIEWABILITY.

(a) ALIEN'S BRIEF.—Section 242(b)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)(C)) is amended to read as follows:

"(C) ALIEN'S BRIEF.—The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on

which the administrative record is available. The court may not extend this deadline except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.".

(b) CERTIFICATE OF REVIEWABILITY.—Section 242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended by adding at the end the following new subparagraphs:

"(D) CERTIFICATE.—

"(i) After the alien has filed the alien's brief, the petition for review shall be assigned to a single court of appeals judge.

"(ii) Unless that court of appeals judge or a circuit justice issues a certificate of reviewability, the petition for review shall be denied and the government shall not file a brief.

"(iii) A certificate of reviewability may issue under clause (ii) only if the alien has made a substantial showing that the petition for review is likely to be granted.

"(iv) The court of appeals judge or circuit justice shall complete all action on such certificate, including rendering judgment, not later than 60 days after the date on which the judge or circuit justice was assigned the petition for review, unless an extension is granted under clause (v).

"(v) The judge or circuit justice may grant, on the judge's or justice's own motion or on the motion of a party, an extension of the 60-day period described in clause (iv) if—

"(I) all parties to the proceeding agree to such extension; or

"(II) such extension is for good cause shown or in the interests of justice, and the judge or circuit justice states the grounds for the extension with specificity.

"(vi) If no certificate of reviewability is issued before the end of the period described in clause (iv), including any extension under clause (v), the petition for review shall be deemed denied, any stay or injunction on petitioner's removal shall be dissolved without further action by the court or the government, and the alien may be removed.

"(vii) If a certificate of reviewability is issued under clause (ii), the Government shall be afforded an opportunity to file a brief in response to the alien's brief. The alien may serve and file a reply brief not later than 14 days after service of the Government's brief, and the court may not extend this deadline except upon motion for good cause shown.

"(E) NO FURTHER REVIEW OF THE COURT OF APPEALS JUDGE'S DECISION NOT TO ISSUE A CERTIFICATE OF REVIEWABILITY.—The single court of appeals judge's decision not to issue a certificate of reviewability, or the denial of a petition under subparagraph (D)(vi), shall be the final decision for the court of appeals and shall not be reconsidered, reviewed, or reversed by the court of appeals through any mechanism or procedure.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to petitions filed on or after the date that is 60 days after the date of the enactment of this Act.

SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA ISSUANCE.

(a) IN GENERAL.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1201(a)) is amended by adding at the end the following new paragraph:

"(3) An alien may not be issued a nonimmigrant visa unless the alien has waived any right—

"(A) to review or appeal under this Act of an immigration officer's determination as to the inadmissibility of the alien at the port of entry into the United States; or

"(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to visas issued on or after the date that is 90 days after the date of the enactment of this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 4437, the "Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005," is to ensure the proper enforcement of the current immigration laws, create additional mechanisms to prevent illegal immigration, assist in the prohibition of hiring illegal immigrants, and to enhance border security.

BACKGROUND AND NEED FOR THE LEGISLATION

The number of resident illegal aliens in the United States is estimated to be about 11 million,[1] and approximately 500,000 illegal aliens enter the country unlawfully each year.[2] The United States has experienced a drastic increase in crime committed by illegal aliens, particularly by illegal aliens that are members of criminal gangs. These criminal alien gangs are becoming increasingly prevalent throughout the country.[3] This disturbing trend is evidenced by the growing number of Federal inmates who are non-citizens, which is rapidly approaching 25 percent of the prison population.[4]

Despite the enactment of the Immigration Reform and Control Act of 1986,[5] which made it unlawful for an employer to knowingly employ illegal aliens and established an employment eligibility verification system for new hires, illegal aliens comprise a significant portion of the employed population. Estimates of the number of illegal immigrants employed in various industries include: 17 percent of workers in building cleaning and maintenance occupations; 14 percent of private household workers; 13 percent of accommodation industry workers; 13 percent of food manufacturing industry workers; 12 percent of the workers in construction and extractive occupations (and 10 percent of workers in the construction industry); 11 percent of workers in food preparation and serving occupations (and 10 percent of workers in the food service industry); 8 percent of workers in production occupations (and 6 percent of workers in the manufacturing industry); and 4.3 percent of workers in the overall workforce.[6]

The presence of large numbers of illegal aliens in the United States demonstrates that America's immigration laws are not being effectively enforced. A contributing factor to this lack of enforcement has been deficient resources. Congress responded to this inadequacy by including provisions in the Intelligence Reform and Terrorism Prevention Act of 2004[7] that authorized over a 5-year period an additional 10,000 Border Patrol agents, an increase of 40,000 immigration detention beds, and an additional 4,000 immigration investigators. Another factor that has contributed to the large number of illegal aliens within the United States is a lack of strong enforcement priorities by current and past administrations.[8]

---

[1] *See Steven Camarota, Immigrants at Mid-Decade: A Snapshot of America's Foreign-Born Population in 2005,* 2005 Center for Immigration Studies 23 (nearly 11 million in March 2005); Jeffrey Passel, *Estimates of the Size and Characteristics of the Undocumented Population,* 2005 Pew Hispanic Center 1 (10.3 million in March 2004, estimate of nearly 11 million in March 2005).

[2] *See Immigrants at Mid-Decade* at 4 (the total resident illegal alien population increased by about 2.5 to 2.7 million between March 2000 and March 2005; new illegal alien arrivals comprised 3.6 to 3.8 million persons).

[3] *See, e.g., Immigration and the Alien Gang Epidemic: Problems and Solutions: Hearing Before the Subcomm. on Immigration, Border Security and Claims of the House Comm. on the Judiciary,* 109th Cong. (2005); Heather MacDonald, *The Immigrant Gang Plague, the City Journal, Summer 2004; Heather MacDonald, The Illegal-Alien Crime Wave,* The City Journal, Winter 2004.

[4] *See* Paige Harrison and Jennifer Karberg, *Prison and Jail Inmates at Midyear 2003,* Bureau of Justice Statistics Bulletin at 5 (May 2004)(23.5 percent of all Federal inmates were noncitizens as of June 30, 2003).

[5] Pub. L. No. 99–603.

[6] *See* Jeffrey Passel, *Unauthorized Migrants: Numbers and Characteristics,* 2005 Pew Hispanic Center 27, 29 (2004 figures).

[7] Pub. L. No. 108–458.

[8] Enforcement of "employer sanctions," while always spotty, declined in the latter years of the Clinton Administration after a 1999 interior enforcement strategy delegated it to the lowest

Continued

In addition, the incoherent organizational structure of immigration enforcement offices within the Department of Homeland Security has played a role in the lack of enforcement.[9] Despite the great strides over the last decade that resulted from the enactment of legislation such as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,[10] and the REAL ID Act of 2005,[11] significant changes to current immigration law are necessary to restore accountability for those who violate immigration laws, ensure the prevention of future illegal immigration, and to combat the rising prevalence of criminal behavior by illegal aliens. The "Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005" contains measures that address these important concerns.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 4437.

COMMITTEE CONSIDERATION

On December 8, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 4437 with an amendment by a recorded vote of 23–15, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth the following rollcall votes that occurred during the Committee's consideration of H.R. 4437:

1. Rollcall number one was an amendment offered by Rep. Scott (VA) to strike the mandatory minimum sentences contained in the bill. This amendment was not agreed to by a rollcall vote of 12 ayes to 20 nays.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			

rung of priority. Enforcement has since plummeted still further. The total hours worked by investigators on employer sanctions cases fell from almost 714,000 in 1997 to 135,000 in 2004, a drop of 81 percent. The number of notices of intent to fine employers for violations fell from 1461 in 1992 to 3 in 2004, a drop of 99 percent. The number of arrests of illegal alien employees fell from 17,552 in 1997 to 445 in 2003, a drop of 97 percent. *See Lack of Worksite Enforcement and Employer Sanctions: Hearing Before the Subcomm. on Immigration, Border Security and Claims of the House Comm. on the Judiciary,* 109th Cong. (2005).

[9] In the Homeland Security Act of 2002, Congress created a Bureau of Border Security that was to carry out the five immigration enforcement functions—the Border Patrol, detention and removal, intelligence, investigations, and inspections at ports-of-entry—and not suffer from the INS's mission overload. *See* sections 441 and 442 of Pub. Law. No. 107–296. When the Department of Homeland Security was created, however, immigration functions were split into border-related functions to be carried out by the Bureau of Customs and Border Protections and interior-related functions to be carried out by the Bureau of Immigration and Customs Enforcement. In addition, each of these two agencies was also burdened with carrying out customs law enforcement and other responsibilities. The result has been devastating for immigration enforcement. Most leadership positions, both in Washington and in local offices, were given to legacy Customs Bureau officials, and, not surprisingly, immigration enforcement has been relegated to the lowest rung of priority and has been deprived of requisite resources and organizational unity. Dedicated and experienced immigration enforcement professionals have left in droves. *See New "Dual Missions" of the Immigration Enforcement Agencies: Hearing Before the Subcomm. on Immigration, Border Security and Claims of the House Comm. on the Judiciary,* 109th Cong. (2005).

[10] Division C of title III of Pub. L. No. 104–208.

[11] Division B of Pub. L. No. 109–13.

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus			
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes			
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz			
Mr. Sensenbrenner, Chairman		X	
Total	12	20	

2. Rollcall number two was an amendment offered by Rep. Berman to create an H-5A "essential worker" temporary work visa program, to create an H-5B temporary work visa program for aliens unlawfully present and employed in the United States on the date of enactment, and to provide for the adjustment of status to permanent residence for such aliens upon the meeting of certain conditions. This amendment was not agreed to by a rollcall vote of 13 ayes to 22 nays and one member voting present.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake			X
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Van Hollen	X		
Ms. Wasserman Schultz			
Mr. Sensenbrenner, Chairman		X	
Total	13	22	1

3. Rollcall number three was a vote on final passage of the bill as amended. The bill was reported favorably, as amended, by a rollcall vote of 23 ayes to 15 nays.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus	X		
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Gohmert	X		
Mr. Conyers		X	
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler		X	
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Van Hollen		X	
Ms. Wasserman Schultz		X	
Mr. Sensenbrenner, Chairman	X		
Total	23	15	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because the provisions of this legislation within the jurisdiction of the Judiciary Committee do not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4437, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 13, 2005.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has completed the enclosed cost estimate for H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 4437—Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

SUMMARY

H.R. 4437 would direct the Department of Homeland Security (DHS) and the Social Security Administration (SSA) to extend and expand a system to verify the eligibility of certain people for employment in the United States. The bill also would require DHS to reimburse counties along the southern U.S. border for costs relating to the detention of illegal aliens, increase the number of border inspection personnel, deploy radiation portal monitors at ports of entry, and establish an Office of Air and Marine Operations within DHS. The bill would establish mandatory minimum prison sentences for a number of offenses relating to illegal entry into the United States and would establish civil and criminal penalties for such crimes. Finally, H.R. 4437 would make many other amendments to current law and changes to existing DHS procedures that aim to increase the security of U.S. borders.

CBO estimates that implementing H.R. 4437 would cost about $1.9 billion over the 2006–2010 period, assuming appropriation of the necessary amounts. Such costs would continue and grow significantly after 2010 as additional requirements of the bill would be implemented. Enacting the bill could affect direct spending and revenues, but we estimate that any such effects would not be significant.

H.R. 4437 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on employers and other entities that hire, recruit, or refer individuals for employment. CBO expects that the aggregate direct costs to comply with those mandates would exceed the annual threshold for both intergovernmental and private-sector mandates ($62 million for intergovernmental mandates in 2005 and $123 million for private-sector mandates in 2005, adjusted annually for inflation) in at least one of the first five years the bill is in effect.

Other provisions of the bill contain no intergovernmental or private-sector mandates; some would benefit local governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4437 is shown in the following table. The cost of this legislation falls within budget functions 650 (Social Security) and 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars				
	2006	2007	2008	2009	2010
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Employment Eligibility Verification System					
Estimated Authorization Level	19	108	58	134	95
Estimated Outlays	17	99	63	128	99
Payments to Counties Along Southern U.S. Border					
Estimated Authorization Level	0	100	100	100	100
Estimated Outlays	0	25	65	100	100
Federal Prison System					
Estimated Authorization Level	0	17	151	46	183
Estimated Outlays	0	17	48	92	131
Additional Port of Entry Inspectors and Canine					
Estimated Authorization Level	0	24	73	128	193
Estimated Outlays	0	22	70	126	190
Radiation Portal Monitors at Ports of Entry					
Estimated Authorization Level	277	20	20	20	20
Estimated Outlays	139	158	20	20	20
Office of Air and Marine Operations					
Estimated Authorization Level	0	20	16	17	17
Estimated Outlays	0	19	17	17	17
Additional Funding for Inspector General					
Estimated Authorization Level	0	4	5	6	0
Estimated Outlays	0	4	5	6	0
Other Programs					
Estimated Authorization Level	0	7	5	5	5
Estimated Outlays	0	5	5	5	5
Total Changes					
Estimated Authorization Level	296	299	428	457	613
Estimated Outlays	156	349	293	493	563

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the start of calendar year 2006 and that the amounts necessary to implement the bill will be appropriated for each year. CBO estimates that implementing H.R. 4437 would cost about $1.9 billion over the 2006–2010 period, assuming appropriation of the necessary funds. Enacting the bill also could affect direct spending and revenues, but we estimate that any such effects would not be significant.

Spending Subject to Appropriation

We assume that the necessary amounts will be appropriated by the start of each fiscal year after 2006, that supplemental appropriations will be provided early in calendar year 2006 for initial program needs, and that spending will follow the historical spending patterns for these or similar activities.

Employment Eligibility Verification System. H.R. 4437 would direct DHS, within two years of the bill's enactment, to ex-

tend and expand a system to verify the eligibility of persons for employment in the United States. CBO estimates that this would cost about $405 million over the 2006–2010 period, including $185 million for DHS, $200 million for SSA, and $20 million for other Federal agencies.

Requirements of H.R. 4437. DHS and SSA currently operate an employment eligibility verification system known as the basic pilot. This system is available to employers nationwide, but its use is voluntary and is restricted to checking the status of new hires. All inquiries to that system are handled through the Internet, and the pilot program expires in late 2008. H.R. 4437 would require DHS to set up a toll-free telephone line or other toll-free electronic media to respond within three working days to inquiries from employers seeking verification of employment eligibility and would require the department to maintain records of all inquiries and responses.

The bill would require all employers to use the new system for newly hired employees upon its establishment. Within three years of the bill's enactment (in 2009), Federal, State, and local governments, as well as certain other private employers, would have to use the system to check the eligibility of all of their employees (i.e., both new hires and the existing workforce). Within six years of enactment (in 2012), all other employers would have to do so for all of their workforces.

Number of Inquiries Expected. According to the Bureau of Labor Statistics (BLS), new hires at nonfarm establishments average about 4.6 million each month, or about 50 million to 55 million at an annual rate. (That does not mean that 50 million people change jobs every year because some people change jobs several times in a year. Nevertheless, each new hire would—after mid-2008—go through the employment verification system proposed in H.R. 4437.) The annual volume of new hires will equal about 55 million to 60 million in 2008 through 2015, CBO assumes. Employees of Federal, State, and local governments and certain other sectors—chiefly, nongovernment employees who work at Government installations, airports, nuclear power facilities, and "critical infrastructure" facilities—would become subject to verification in 2009; CBO estimates that would be about 25 million people. Finally, all other employees would become subject to verification under the bill in 2012, six years after enactment. CBO estimates that about 120 million employees would need to have their eligibility to work in the U.S. verified by 2012, although many of those people would have been newly hired after 2008 and would thus represent repeat cases. Those figures represent lower-bound estimates of the total volume of verifications because the BLS data on which they are based omit agricultural employment.

Costs to DHS. Under the bill, DHS would have primary responsibility for establishing and maintaining the system. Based on information from DHS, CBO estimates that it would cost the department about $100 million over the 2006–2008 period for upgrades to the basic pilot system to handle the huge increase in inquiries that would result from H.R. 4437. This one-time cost would include enhancements of software, hardware, databases, and other technological components of the new employment eligibility system.

In addition, DHS would have to hire personnel to respond to inquiries within three working days (as required by the bill), staff the

toll-free telephone line, and maintain records of the inquiries and responses. Based on information from DHS, CBO expects that staff would be hired during 2008 and costs would reach $35 million annually, beginning in fiscal year 2009. Under the bill, the agency's cost to process employment verification inquiries would increase substantially after 2010 when all private employers would be required to check the eligibility of their entire workforce by 2012.

Costs to SSA. The SSA's responsibilities under the bill would include providing DHS with continued, secure access to its database of Social Security numbers and handling phone inquiries, personal visits, and requests for replacement cards from people seeking to clear a "nonverified" response to their current or prospective employer. Based on information from the agency, CBO estimates SSA's costs at $9 million in 2006, about $200 million over the 2006–2010 period, and about $640 million over the 2006–2015 period. Under the bill, the agency's cost to process employment verification inquiries would increase substantially after 2010 when all private employers would be required to check the eligibility of their entire workforce by 2012.

Costs to Other Federal Agencies. Finally, Federal agencies themselves would be among the employers required to verify the legal status of their workforce in 2009, three years after the bill's enactment. There are slightly over 4 million Federal Government employees, including military personnel on active duty. CBO assumes that it would cost agencies an average of $4 per employee to comply with the verification requirement. (The requirement would apply even if agencies had previously performed a security clearance or other exhaustive check.) That cost, incurred by agencies' personnel offices, consists of assembling the data for initial submission and following up the relatively few, but labor-intensive, cases that the automated system would initially fail to match. CBO estimates that Federal agencies would spend approximately $18 million in 2009 to submit their employees' basic data to the DHS system and to reconcile the new cases that would be returned as "nonverifiable." The Federal Government would also spend an estimated $1 million annually to verify its new hires through the automated system.

Payments to Counties Along Southern U.S. Border. H.R. 4437 would direct DHS to reimburse counties within 25 miles of the southern U.S. border for the costs of detaining, housing, and transporting illegal aliens. The bill would authorize funding of up to $100 million annually for such reimbursements. Based on the costs reported by these counties in recent years for the detention and housing of illegal aliens, CBO estimates that implementing this provision would cost $100 million for each of fiscal years 2007 through 2010.

Federal Prison System. H.R. 4437 would establish mandatory minimum prison sentences for a wide range of offenses involving illegal entry into the United States. The U.S. Sentencing Commission analyzed the bill's impact on the Federal prison population. Based on this analysis, CBO estimates that the longer sentences required under the bill would increase the prison population by about 7,000 person-years over the 2006–2010 period. According to the Bureau of Prisons, for an increase in the Federal prison population of this magnitude, it would spend about $24,000 a year (at

2005 prices) to house each additional prisoner. CBO estimates that the cost to support those additional prisoners would total $170 million over the 2006–2010 period.

In addition, according to the Bureau of Prisons, construction of a new prison would be required when the annual increase in the prison population exceeds 1,150. Based on the anticipated increase in the cumulative prison population over the 2006–2010 period, we estimate that this annual threshold would be exceeded in 2008 and 2010. Thus, CBO expects two new prisons would need to be built to accommodate the additional prisoners resulting from enactment of H.R. 4437. We estimate that each facility would cost $115 million, construction would begin in 2008, and some spending would occur after 2010.

Additional Port-of-Entry Inspectors and Canine Detection Teams. H.R. 4437 would direct DHS to increase the number of port-of-entry inspectors by 250 in each of fiscal years 2007 through 2010. Currently, there are about 19,000 inspectors, so this would represent an increase of just over 1 percent annually. In addition, for each of fiscal years 2007 through 2011, the bill would require DHS to increase the number of canine detection teams by at least 25 percent over the number of such positions for the preceding year. (Currently, there are a total of 647 canine detection teams, each consisting of one officer and one dog.)

Based on information from DHS, CBO estimates that it costs about $100,000 a year to hire an additional inspector and $130,000 a year for each new canine detection team, including salaries, benefits, training, and support costs. Assuming that each annual cohort required by the bill would be hired over the course of a year, we estimate that implementing this provision would cost $400 million over the 2007–2010 period, with spending split evenly between the inspectors and the canine detection teams.

Radiation Portal Monitors at Ports of Entry. H.R. 4437 would direct DHS, within one year of the bill's enactment, to deploy radiation portal monitors at U.S. ports of entry selected by the agency to facilitate the screening of inbound cargo for concealed nuclear and radiological material. Based on information from DHS, we expect that the agency would implement the bill by deploying such monitors at all U.S. ports.

According to DHS, there are 613 radiation portal monitors currently deployed at 110 points of entry in 85 U.S. ports, leaving a total of 270 points of entry that lack these devices. Because the unmonitored ports generally experience lesser volumes of inbound cargo, CBO assumes that remaining points of entry would need, on average, four monitors. The radiation portal monitors that are currently used cost $280,000 each, but a more effective device is now available at a cost of $470,000 per unit.

Assuming that the roughly 1,000 additional monitors required to implement H.R. 4437 would include approximately equal numbers of monitors of each type ($280,000 and $470,000 models), the costs to deploy the monitors at the remaining ports would be about $400 million. However, because $125 million has already been appropriated for fiscal year 2006 for monitors, we estimate that implementing H.R. 4437 would cost about $280 million over the 2006–2007 period.

In addition, we expect that there would be some maintenance and replacement costs for those monitors in subsequent years. CBO estimates that such costs would probably be no more than 10 percent of the initial cost of the new monitors, or about $20 million annually.

Office of Air and Marine Operations. H.R. 4437 would establish an Office of Air and Marine Operations within DHS that would be headed by an Assistant Secretary who would report directly to the Secretary of Homeland Security. We expect that this office would consist of about 1,200 personnel currently in the Bureau of Customs and Border Protection who direct and carry out aviation and marine operations.

As a new agency within DHS, the Office of Air and Marine Operations would need its own human resources, legal, finance, technical support, and other administrative offices. Based on the number of support personnel at other Federal agencies that employ between 1,000 and 2,000 persons, CBO estimates that it would cost about $16 million annually for these functions, beginning in fiscal year 2007. This estimated annual cost represents about 10 percent of current spending for the transferred personnel and assumes that some existing administrative staff would be transferred to the new office. In addition, we estimate that there would be one-time costs of about $4 million to relocate personnel and carry out other activities necessary to establish a new agency within DHS.

Additional Funding for Inspector General. H.R. 4437 would authorize the appropriation of sums necessary to increase funding above the current level for the DHS Office of the Inspector General (IG) by 5 percent for fiscal year 2007, 6 percent for 2008, and 7 percent for 2009. For fiscal year 2006, $83 million was appropriated for the IG. We estimate that implementing this provision for increases in IG funding would cost $4 million in 2007, $5 million in 2008, and $6 million in 2009.

Other Programs. H.R. 4437 would direct DHS to establish a university-based Center of Excellence for Border Security. Based on spending for similar university programs already established by DHS, we estimate that implementing this provision would require funding of about $5 million annually, beginning in fiscal year 2007.

In addition, the bill would require DHS and the Government Accountability Office to prepare various reports relating to improving border security. The bill would also direct SSA to study possible enhancements to Social Security cards, such as making them of durable plastic and adding a machine-readable identification strip and a digital photograph of the holder. (An earlier SSA study, published in 1997, estimated total costs of $5 billion to $10 billion, depending on the features chosen, for replacing the 277 million cards then in circulation.) CBO estimates that the costs to prepare these reports would total about $2 million.

Border Patrol in Virgin Islands. H.R. 4312 would direct DHS, by September 30, 2006, to establish at least one border patrol unit for the U.S. Virgin Islands. However, the Department of Homeland Security Appropriations Act, 2006 (Public Law 109–90) already directs DHS to determine whether or not a border patrol unit in the Virgin Islands is necessary and, if deemed necessary, to establish such a unit by March 1, 2006. CBO cannot predict whether this unit will be established under Public Law 109–90. Based on infor-

mation from DHS, however, CBO expects that a unit in the Virgin Islands would probably cost no more than $1 million annually.

Direct Spending and Receipts

H.R. 4437 would establish new and increased civil and criminal penalties for various crimes involving illegal immigration. Thus, the Federal Government might collect additional fines if the bill is enacted. Collections of civil fines are recorded in the budget as revenues. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4437 would impose intergovernmental and private-sector mandates, as defined in UMRA, on employers and other entities that hire, recruit, or refer individuals for employment. CBO expects that the aggregate direct costs to comply with those mandates would exceed the annual threshold for both intergovernmental and private-sector mandates ($62 million for intergovernmental mandates in 2005 and $123 million for private-sector mandates in 2005, adjusted annually for inflation) in at least one of the first five years the bill is in effect.

Verification When Hiring, Recruiting, or Referring Individuals

The bill would require State and local governments, private-sector employers, and other entities that recruit or refer employees, to submit names, Social Security numbers, and other identifying information of the individuals they hire, recruit, or refer to the employee verification system administered by DHS. Verification information would have to be submitted by the end of three working days after the date of hire or before recruiting or referring a potential employee. Such employers and entities also would be required to maintain a record of the verification for a specific amount of time in a form that would be available for Government inspection. The bill would require that the mandatory inquiry about employment eligibility and recordkeeping for new employees begin two years after the date of enactment of this bill.

Verification of Previously Hired Employees

All Government employers, certain private employers that are part of the critical infrastructure of the United States, and entities that employ persons in Government buildings, would be required within three years after the date of enactment to verify the identity and employment eligibility of all individuals employed by that entity who have not been previously subject to such an inquiry. Other private-sector employers would be required within six years after enactment to verify the identity and employment eligibility of all individuals employed by the entity who have not been previously subject to such an inquiry. A record of the verification for those previously hired employees also would have to be maintained by the employers for a specific amount of time in a form that would be available for Government inspection.

Current law requires employers to attest that they have verified that the individual they are hiring, recruiting, or referring for employment in the United States is not an unauthorized alien by ex-

amining certain documents. Some employers voluntarily use the employment verification system to confirm the name and Social Security number of individuals. Requiring all employers and other entities to do such inquiries would impose new intergovernmental and private-sector mandates on employers. The direct cost of the mandates would be the incremental cost to prepare and verify the employment eligibility of an individual through a toll-free telephone number or Web-based system and to maintain records.

Based on information from State and local employers and representatives from personnel offices, the requirement to verify previously hired employees would be costly. Some employers with modern personnel systems would need to purchase software patches to enable their computer systems to compile and transmit the data. Smaller employers would need to manually submit the data through a toll-free phone number or Web-based system. Because of the large number of entities that would be required to prepare and submit information on previously hired individuals, however, CBO expects that the aggregate direct costs to comply with those mandates would exceed the annual threshold for both intergovernmental and private-sector mandates in at least one of the first five years the bill is in effect.

This bill would create a new program to reimburse the costs incurred by some county sheriffs' offices to detain and transport aliens who are not lawfully present in the United States. Those governments would benefit from up to $100 million annually for this program and any costs would be incurred voluntarily as conditions of receiving Federal assistance.

PREVIOUS CBO ESTIMATE

On December 6, 2005, CBO transmitted a cost estimate for H.R. 4312, the "Border Security and Terrorism Prevention Act of 2005," as ordered reported by the House Committee on Homeland Security on November 17, 2005. We estimated that implementing that bill would cost $870 million over the 2006–2010 period, assuming appropriation of the necessary amounts. Several of the provisions in H.R. 4437 are identical to provisions in H.R. 4312, and CBO's estimates for those provisions are unchanged.

ESTIMATE PREPARED BY:

Federal Costs:
DHS and Federal Prisons—Mark Grabowicz (226–2860)
Social Security Administration—Kathy Ruffing (226–2820)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2960)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 4437 will

strengthen enforcement of the immigration laws and enhance border security.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. 1, § 8, cl. 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following section-by-section analysis contains a description of principal provisions contained in H.R. 4437 as reported within the jurisdiction of the Committee on the Judiciary. H.R. 4437 incorporates the border security provisions contained in H.R. 4312, which was reported from the Committee on Homeland Security on December 6, 2005. For a discussion of these border security provisions, please see H.R. Rept. 109–329, Part I.

Section 3. Sense of Congress on setting a manageable level of immigration.

Section 3 provides a sense of Congress that the Nation's immigration policy shall be designed to enhance the economic, social and cultural well-being of the United States.

TITLE I—SECURING UNITED STATES BORDERS

Section 104. Biometric data enhancements.

This section requires that by October 1, 2006, the Secretary of the Department of Homeland Security (DHS) enhance the connectivity between the Automated Biometric Identification System (ABIS) and Integrated Automated Fingerprint Identification System (IAFIS) biometric databases and collect ten fingerprints from individuals through the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program during their initial enrollment.

TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE

Section 201. Definition of aggravated felony.

This section amends the definition of aggravated felony contained in the Immigration and Nationality Act (INA) to include all smuggling offenses, illegal entry, and reentry crimes with a sentence of a year or more. It also makes the aggravated felony definition consistent with Federal criminal law by expanding it to include solicitation and assistance in specified offenses.

This section is necessary to combat alien smuggling and criminal aliens illegally reentering the United States. The INA broadly defines the term "aggravated felony" in over 20 sub-paragraphs. If an alien has been convicted of such an offense, the alien will be ineligible for most forms of relief and for release from detention. Illegal reentry after such an offense will also subject the alien to serious criminal penalties. The aggravated felony definition does not effectively deter, however, many dangerous aliens from repeatedly reentering the United States illegally. Specifically, the definition only includes illegal entry and illegal reentry violations of the INA in

circumstances in which the alien was previously deported for having committed another aggravated felony. The current definition is unduly restrictive in several respects. First, this definition does not reach aliens who previously committed various other felonies, even though those felonies may have been serious crimes. Second, it does not reach aggravated felon aliens who were previously deported, but who were not deported on the basis of their aggravated felony convictions. Section 201 would address this problem by including within the definition of aggravated felony a felony illegal entry or reentry offense under section 275(a) or section 276 of the INA, without regard to whether the alien had been previously deported subsequent to conviction of an aggravated felony. Given their prior felony immigration convictions, such criminal aliens are well aware of the immigration laws. Their decision to reenter the United States should warrant the same immigration restrictions and a sentence at least equal to those who commit non-immigration felony offenses.

In addition to these changes, section 201 will also make all smuggling convictions aggravated felonies with the exception of smuggling related to an alien's immediate family. Recent experience shows that alien smuggling is flourishing, is increasingly violent, and highly profitable.[12] Alien smuggling operations also present terrorist and criminal organizations with opportunities to smuggle their members into the United States practically at will. This section will impose the most serious sanctions under the immigration laws upon aliens who engage in alien smuggling.

Finally, this section makes clear that the definition of aggravated felony includes "soliciting, aiding, abetting, counseling, commanding, inducing, procuring" or a conspiracy to commit any of the offenses listed in section 101(a)(43) of the INA, by incorporating the aiding and abetting language from Federal law. This change is needed to reverse a Ninth Circuit precedent that has had the effect of requiring Federal prosecutors in criminal cases seeking sentencing enhancements to prove that prior convictions were *not* based on aiding and abetting.[13] This is often impossible to prove, because in Federal court, and in almost every State jurisdiction, a defendant can be convicted of aiding and abetting a substantive offense, even if aiding and abetting is not specifically charged in the indictment.

Section 202. Alien smuggling and related offenses.

This section amends the alien smuggling provisions of the INA to include offenses in circumstances in which the offender acts in reckless disregard of the fact that the smuggled person is an alien not allowed to enter the United States, places mandatory minimum sentences on smuggling convictions, and facilitates DHS efforts to seize smugglers' property.

In recent years, more and more illegal aliens are utilizing the services of alien smugglers and the cost of their services has increased dramatically. Alien smuggling not only facilitates illegal immigration, but subjects smuggled aliens to inhumane treatment.

---

[12] *See The Deadly Consequences of Illegal Alien Smuggling: Hearing of the Subcomm. on Immigration, Border Security and Claims of the House Comm. on the Judiciary,* 108th Cong. (2003).

[13] *See U.S. v. Corona-Sanchez ,* 291 F. 3d 1208 (9th Cir. 2002)(en banc).

Migrants are frequently abused or exploited, both during their journey and upon reaching the United States. There are many recent examples—aliens abandoned by their smugglers in the desert, without food or water, and aliens who have died or suffered serious injuries when locked by smugglers into trucks and cargo containers. Consequently, aliens smuggled into the United States are at significant risk of physical injury, abuse, and death. In addition, smuggled aliens must often pay back their debts through long periods of indentured servitude in sweatshop conditions in places like New York City's Chinatown, and smugglers often coerce indebted aliens into drug trafficking, prostitution, and other illegal activities. Aliens who fail to cooperate with smugglers suffer severe penalties. The Committee believes that it is vital to establish clear penalties to deter and prevent the cruel and inhumane trafficking of human beings. Smuggling also poses a national security risk, as terrorists and criminals can utilize the same smugglers that economic migrants use.

However, under current law, individuals convicted of alien smuggling crimes often receive lenient sentences, which have contributed to the upsurge in alien smuggling. Organized crime syndicates realize that the risk of punishment for smuggling aliens is far less than the risk for smuggling drugs or committing other serious crimes. In addition, lenient sentences and the lack of serious penalties in current criminal law toward alien smuggling may act to dissuade U.S. Attorneys from bringing cases.

Under existing law, the offenses and penalties for unlawfully bringing aliens into the United States are set forth in two separate provisions, sections 274(a)(1) and 274(a)(2) of the INA. For historical reasons, those provisions were implemented and developed separately. As a result, the two provisions contain inconsistent *mens rea* elements, and provide disparate sentences for identical or substantially similar conduct. Accordingly, the successful prosecution of virtually identical conduct can lead to different results under current law, depending upon whether a violation of section 274(a)(1)(A)(i) or (a)(2) is charged. Section 202 creates a uniform *mens rea* standard for alien smuggling and related offenses, and sets uniform sentences for violations of those offenses.

Unlike current law, the penalties for those charged will be based on the factual circumstances of the offense and the danger that the smuggling posed to the alien and to the community rather than on the code section charged. As a result, offenses that were committed for commercial profit will be punished more severely than offenses that are not. Offenses that are committed to further other criminal acts are subject to even more serious mandatory sentences, as are offenses that result in injury or death. Consistent with existing law, offenses in which death results will be eligible for the death penalty. This section will increase the criminal penalties for certain alien smuggling offenses and establish mandatory minimum sentences for serious and repeat offenders. In addition, it increases penalties where the smuggling posed a risk to individuals or the Nation.

This section also expands the scope of the alien smuggling statute to reach conduct that is not covered by existing law. The section reaches conduct relating to facilitating the smuggling of aliens to the United States by persons who willfully participate in alien

smuggling ventures, but where the Government cannot demonstrate beyond a reasonable doubt that the smugglers knew the aliens were en route to the United States. Rather than forming centralized, tightly controlled hierarchies, alien smugglers often favor loose, short- or long-term associations. These global networks often match smugglers who specialize in illegally transporting particular nationals or have special knowledge of specific routes. Under existing law, however, smugglers who play an integral role in facilitating the illegal movement of aliens to the United States cannot be prosecuted unless the Government can prove that the smuggler knew or recklessly disregarded the fact that the aliens intended to travel to the United States. This section eliminates this loophole.

This section will also help to reduce the profits derived from alien smuggling. Under existing law, civil forfeiture is limited to any conveyance used in smuggling. Section 202 will permit civil forfeiture of any property, real or personal, used to commit or facilitate the commission of a violation of amended subsection (a)(1), the gross proceeds of such violation, and property traceable to such property or proceeds. This amendment is necessary to deprive smugglers of the property they use to coordinate and undertake their smuggling operations and to deny them the financial gains they have obtained through smuggling.

Section 203. Improper entry by, or presence of, aliens.

This section makes illegal presence in the United States a Federal crime, and expands the penalties for aliens who illegally enter the U.S., are present illegally, or are present illegally and have been convicted of certain crimes. It also expands the penalties for marriage and immigration-related entrepreneurship fraud.

Section 203 is intended to bring section 275 of the INA, which criminalizes illegal entry into the United States, into harmony with section 276, which prohibits illegal entry after removal. Section 276 makes it a crime to be "found in" the United States after removal. Section 203 of the bill amends section 275 to state that it is a crime for an alien to be "present in the United States in violation of the immigration laws or regulations prescribed thereunder." This section establishes consistency between section 275 and section 276.

Section 203 also removes incentives for aliens, having entered legally, to remain in the United States in violation of the terms of their visa or entry. Currently, "visa overstay" is not a criminal offense, and, as a practical matter, there are often not negative consequences associated with visa overstay. This is likely one of the reasons that the overstay problem is significant. According to the *2000 Statistical Yearbook of the Immigration and Naturalization Service,* "About 2.1 million, or 41 percent, of the total undocumented population in 1996 [were] non-immigrant overstays. That is, they entered legally on a temporary basis and failed to depart." Because overstaying a visa is not currently a criminal offense, in many cases an alien is no worse off for having remained in the United States past the expiration of an authorized stay than they would have been had they departed on time. On the contrary, in some cases aliens have sought relief based on factors that develop during the time they were out of status. In making overstaying a visa a Federal crime, section 203 will encourage aliens to depart at

the end of their authorized stay. This penalty will increase respect for the immigration system by deterring aliens who remain in the United States out of the mistaken belief that their visa overstay is merely a technical violation. It will also ensure that illegal aliens do not labor under the impression that simply eluding authorities for long enough will provide relief from deportation based on acquired equities.

Section 203 also contains sentence enhancements for illegal alien criminal offenders who remain in the United States after conviction. This will protect the American people by encouraging serious criminal illegal aliens to leave the United States after imprisonment. Such self-deportation is more effective, and cost-effective, than removal by the Government.

Finally, this section increases the penalties for marriage and immigration-related entrepreneurship fraud. Enhanced penalties are necessary to deter an increasing level of immigration fraud, particularly by criminal organizations that utilize, promote, or derive financial benefit from immigration fraud. Increasing the maximum sentences under these subsections will serve to deter and punish organizations and individuals who engage in these crimes.

Section 204. Reentry of removed aliens.

This section, based on Representative Darrell Issa's "Criminal Alien Accountability Act" (H.R. 3150), sets mandatory minimum sentences for aliens convicted of reentry after removal. Section 276 of the INA criminalizes attempted or successful entry into the United States by illegal aliens who have been previously excluded, deported, removed, or denied admission. Unfortunately, this provision has proven ineffective at deterring the reentry of aliens after removal from the United States. As a result of this frequent abuse, United States Attorneys Offices have set thresholds for the number of reentries aliens must commit before they will be prosecuted. This problem is particularly troublesome given the examples of those illegal aliens who go on to commit serious crimes.

For example, Rafael Resendez-Ramirez, the so-called "Railway Killer" who killed at least eight people over a 3-year period in the late 1990s, had an extensive criminal record in the United States beginning in 1976, including convictions for burglary and aggravated assault. He also had an extensive immigration record, having been arrested for illegal entry on seven occasions in 1998 alone. As the Department of Justice's Inspector General (IG) found, however: "[B]ecause Resendez had not reached the threshold number of prior apprehensions for prosecution established in each of the stations where he was apprehended, he was not detained for prosecution,"[14] but instead was returned to Mexico. The IG found that "after each return to Mexico, he reentered the United States illegally and continued his criminal activities," including the December 1998 murder of Dr. Claudia Benton in Houston. Section 204 will shut the revolving door that allows criminal aliens to reenter the United States to prey on residents of the United States. By setting mandatory minimum sentences for these offenses, we will both deter alien

[14] Office of the Inspector General, U.S. Department of Justice, *Special Report—the Rafael Resendez-Ramirez Case: A Review of the INS's Actions and Operation of Its IDENT Automated Fingerprint System* (2000).

criminals from reentering illegally and encourage their effective prosecution when they do.

This section also resolves an issue that has arisen in numerous prosecutions under section 276 of the INA. At present, to prove a violation of section 276, the Government is required to show that the Secretary of Homeland Security did not consent to the alien applying for readmission to the United States or that the alien is not required to obtain such consent. Thus, in order to convict an alien of reentering the United States after removal, the Government must prove a negative, *i.e.,* that the Attorney has not "expressly consented to such alien's reapplying for admission." Each case therefore requires the Government to perform an intensive search of its records, and to then issue a certificate of nonexistence to certify that the search was done and no application from the specific alien-defendant was found. Despite the fact that aliens rarely apply for the Secretary's consent, DHS must nevertheless make an exhaustive search in each case. Section 204 converts permission to reenter into an affirmative defense to an illegal reentry charge. Because few aliens apply for the consent of the Secretary of DHS, and the defendant-alien is in the best position to know whether he applied for such permission, this change will properly apportion the burden with respect to consent to reenter and eliminate the need for the Government to prove that the Secretary did not consent in its case-in-chief.

Section 205. Mandatory sentencing ranges for persons aiding or assisting certain reentering aliens.

Also based on the "Criminal Alien Accountability Act," this section seeks to deter the smuggling of removed aliens by imposing on smugglers the same sentences that the aliens they have smuggled would receive.

Section 206. Prohibiting carrying or using a firearm during and in relation to an alien smuggling crime.

18 U.S.C. § 924(c) criminalizes the carrying or use of firearms in the commission of violent or drug trafficking crimes. Presently, current law does not address alien smugglers who use firearms to further their crimes. Increasing numbers of alien smugglers are utilizing firearms to facilitate their smuggling, and a greater number are expected to arm themselves as their livelihood is disrupted by U.S. agents patrolling America's borders. The willingness of smugglers to use and carry firearms endangers the lives of Border Patrol agents, the aliens who are being smuggled, and innocent bystanders. The use of weapons also aids smugglers and aliens in escaping apprehension, as it allows them to forcibly resist border patrol officers. Given these facts, stronger punishment of smugglers who use weapons in the commission of their crimes is warranted. Section 206 will provide for such punishment by subjecting alien smugglers to the same penalties faced by criminals who carry firearms when they traffic in narcotics and commit Federal crimes of violence.

Section 207. Clarifying changes.

This section clarifies that the provision barring entry to aliens who have made false claims to U.S. citizenship also applies to aliens who have made false claims to U.S. nationality. It also pro-

vides that DHS shall have access to any information kept by any Federal agency with regard to any person seeking a benefit or privilege under the immigration law.

Section 208. Voluntary departure reform.

"Voluntary departure" is a benefit in removal proceedings that allows deportable aliens to agree to leave the United States within a specified time period of their own volition rather than facing a formal order of removal, while avoiding the adverse legal consequences of a final order of removal. Ideally, the Government should also benefit from this practice, as it is spared the expense of initiating removal proceedings, extensively litigating the aliens' cases, and, ultimately, removing the aliens. The Government may not realize such benefits in practice, however, because few aliens granted voluntary departure actually depart from the country expeditiously. In all too many cases, a grant of voluntary departure is merely a prelude to years of further litigation in which the alien continues to benefit from delay of removal. Under current law, an alien who receives voluntary departure may appeal his immigration case first to the Board of Immigration Appeals, and then to the Court of Appeals. Many circuit courts will toll the voluntary departure period pending review. At the end of this process, perhaps years after the original voluntary departure grant, and after denial of every appeal, the alien can then leave the United States in accordance with the original voluntary departure grant.

Section 208 changes this process to encourage aliens to depart under the terms of the voluntary departure order. The section amends the INA to offer clear advantages for aliens who agree to voluntary departure and then actually depart. It also forecloses future litigation in the alien's case. Under this section, an alien may only be granted voluntary departure pursuant to an agreement in which the alien agrees to waive appeal. This will not preclude the alien opting to take an appeal in lieu of voluntary departure, however, such an action would void any voluntary departure agreement. Section 208 also contains penalties in the event that the alien fails to depart in accordance with the voluntary departure agreement. Failure to depart will subject the alien to a $3,000 fine, and the alien will be barred from certain forms of relief for as long as the alien remains in the country and for 10 years thereafter. An alien who violates a voluntary departure agreement by failing to depart may not reopen his removal proceedings, except to apply for withholding of removal or protection under the Convention Against Torture. Taken together, these provisions will ensure the effective use of the Government's limited judicial, litigation, and removal resources. They will also provide the alien with incentives to depart the United States as agreed. In addition, the maximum period of voluntary departure before the end of proceedings is reduced from 120 to 60 days, and aliens receiving such benefit must post bond or show that such a bond would create a hardship or is unnecessary.

Section 209. Deterring aliens ordered removed from remaining in the United States unlawfully and from unlawfully returning to the United States after departing voluntarily.

DHS estimates that some 480,000 absconders—aliens who are under final orders of removal but have evaded apprehension and removal by DHS—are currently present in the United States, and that approximately 40,000 new absconders are added to these ranks each year. In 2003, the Department of Justice Inspector General issued a report that found that the former INS had successfully carried out removal orders with respect to only 13 percent of non-detained aliens who were subject to final removal orders—and was able to remove only 3 percent of non-detained aliens who had unsuccessfully sought asylum.[15] A major barrier to effective removal of alien absconders is the fact that there are currently few effective administrative sanctions available under the law against absconders who have been apprehended beyond the mere execution of the same removal order that they had been successfully evaded for months or years. Even if such absconding aliens are unsuccessful in obtaining the reopening of their previous final order, they may simply launch a new round of litigation before the Board of Immigration Appeals (BIA) and the courts. Section 209 provides more effective administrative tools to deter absconders from remaining in this country illegally and to prevent them from obtaining any further advantages after flouting their removal orders. This section improves the bars on reentry by aliens ordered removed by closing a loophole allowing aliens to avoid these penalties by unlawfully remaining in the United States. Under section 209, the bars on admissibility will apply once the alien is ordered removed—even if that alien has not yet departed. Similarly, the section bars aliens from future discretionary relief if they have absconded after receiving a final order of removal until they have left the United States and for 10 years thereafter. It also bars the granting of motions to reopen to aliens who have flouted their legal duty to depart from the United States under the final order of removal. Taken together, these changes will diminish the likelihood that aliens will remain in the United States unlawfully with the hope of becoming eligible for some other form of relief in the future. By foreclosing future relief for aliens who fail to depart, the changes in section 209 will increase the incentive for aliens to seek and to comply with removal orders.

Section 210. Establishment of a special task force for coordinating and distributing information on fraudulent immigration documents.

This section requires the Secretary of Homeland Security to establish a task force to collect information on the production, sale, and distribution of fraudulent documents to be used to enter or remain in the U.S. unlawfully, to maintain that information in a database, to convert the information into reports to provide guidance to Government officials, and to develop a system for distributing these reports to appropriate law enforcement agencies.

---

[15] *See* U.S. Department of Justice Office of the Inspector General, Evaluation and Inspections Division, *The Immigration and Naturalization Services Removal of Aliens Issued Final Orders* (I–2003–004) at i, ii (2003).

TITLE IV—DETENTION AND REMOVAL

Section 401. Mandatory detention for aliens apprehended at or between ports of entry.

This section requires the Department of Homeland Security by October 1, 2006, to detain all aliens apprehended at ports of entry or along the international land and maritime borders of the United States until they are removed from the United States or a final decision granting their admission has been determined. The only exceptions to mandatory detention are if the alien departs immediately, such as Mexican nationals who are voluntarily returned across the border, and those paroled due to urgent humanitarian reasons or significant public benefit.

This will end the present "revolving door" whereby illegal aliens from countries other than Mexico are caught trying to illegally enter the U.S. and promptly released (because of a lack of detention space) with the hope that they will appear for their immigration court hearing months hence. As noted earlier, the Department of Justice's Office of the Inspector General found that the INS was only able to remove 13 percent of nondetained aliens with final orders of removal. In 2004, 120,000 of the 160,000 "other-than-Mexicans" apprehended along the border were released.

Section 402. Expansion and effective management of detention facilities.

This section requires the Secretary of Homeland Security to fully utilize all bed space owned and operated by the Department and to utilize all other possible options to cost-effectively increase detention capacity, including temporary facilities, contracting with State and local jails, and establishing secure alternatives to detention.

Section 403. Enhancing transportation capacity for unlawful aliens.

This section authorizes the Secretary of DHS to enter into contracts with private entities to provide secure domestic transportation of aliens apprehended at or between ports of entry from the custody of the Border Patrol to a detention facility.

Section 404. Denial of admission to nationals of country denying or delaying accepting alien.

Current law requires the Secretary of State to discontinue granting visas to nationals of countries that deny or unreasonably delay accepting the return of their nationals subject to deportation by the U.S. Because this punishment is so draconian—barring all nationals of a country from receiving visas—it is almost never used, despite the fact that a number of countries continue to refuse to accept the return of their nationals. This section would add a more measured punishment that is more likely to be used—authorizing the Secretary of Homeland Security to deny admission to any national of a country that declines to accept the prompt repatriation of its nationals.

Section 405. Report on financial burden of repatriation.

This section requires the Secretary of DHS to submit an annual report to the Secretary of State and the Committee on Homeland

Security that details the costs to the Department of Homeland Security for repatriating aliens and provides recommendations to more cost effectively repatriate such aliens.

Section 407. Expedited removal

By the mid-1990's, tens of thousands of aliens were arriving at U.S. airports each year without valid documents and making meritless asylum claims, knowing that they would be released into the community pending asylum hearings because of a lack of detention space. Few were ever heard from again. In response, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) created the mechanism of "expedited removal."[16] Under expedited removal, a DHS officer at a port-of-entry can immediately return an alien lacking proper documents to his or her country of origin unless the alien asks for asylum and can establish a "credible fear" of persecution. By fiscal year 2003, the INS was making over 43,000 expedited removals per year and our airports were no longer being deluged.

IIRIRA provided the Administration with the authority to utilize expedited removal in the case of any alien who had entered the U.S. illegally and had not been present here for 2 years.[17] Until recently, the INS and DHS never made use of this power. Recently, the administration has begun using expedited removal along the southern border because of the large numbers of non-Mexican aliens who have been caught by the Border Patrol and then released into the United States because of a lack of detention space. Under the discretionary authority provided by IIRIRA, the administration has been utilizing expedited removal against non-Mexican aliens who are apprehended within 100 miles of the border and 14 days of unauthorized entry. Section 407 would mandate the use of expedited removal in these instances.

Section 408. GAO Study on deaths in custody.

This section requires the Government Accountability Office (GAO) to submit within 6 months of enactment a report to Congress on the deaths in custody of detainees held on immigration violations by the Department of Homeland Security.

TITLE VI—TERRORIST AND CRIMINAL ALIENS

Section 601. Removal of terrorist aliens.

Withholding of removal is a form of protection that, while similar to asylum, differs in two important respects: (1) it is nondiscretionary; and (2) to receive this benefit, the alien must meet a higher standard of proof than asylum. Although aliens who pose a danger to the national security generally are barred from withholding of removal, aliens deportable on terrorist grounds are not expressly barred from such relief. This section bars aliens deportable on terrorist grounds from receiving withholding of removal.

As the 9/11 Commission's staff report on terrorist travel makes clear, terrorist aliens have abused our humanitarian benefits to re-

[16] *See* INA section 235(b).
[17] *See* INA section 235(b)(1)(A)(iii).

main in the United States.[18] First World Trade Center bomber Ramzi Yousef, the Blind Sheikh, and Mir Kansi, who killed two in front of headquarters of the CIA, all made claims to asylum to remain in the United States. Congress has barred terrorist aliens from receiving asylum, but the bars to terrorist aliens receiving withholding of removal, are less clear. Under the INA, aliens are currently only barred from withholding if there are reasonable grounds to believe that they are a danger to the security of the United States. While the INA states that aliens, who are described in the provision that renders aliens deportable who have engaged in any terrorist activity, "shall be considered to be . . . alien[s] with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States," aliens with terrorist ties have made claims that they are not a danger to the security of the U.S., and thus eligible for withholding.

Section 601 bars all aliens described in the terrorist grounds of inadmissibility from eligibility for withholding of removal, with two exceptions. The exceptions give DHS the sole discretion to determine that representatives of terrorist groups, and the spouses and children of aliens who would themselves be barred on terrorist grounds, are not a danger to the national security and are not barred from such relief. The terrorist representative exception provision is already contained in the asylum provision, and the spouse or child exception was added at the request of DHS. The amendments to section 601 will ensure that the same standards apply in assessing whether aliens are eligible for the two primary forms of humanitarian relief, asylum and withholding of removal.

Section 602. Detention of dangerous aliens.

In the 2001 decision of *Zadvydas v. Davis,*[19] the Supreme Court ruled that under current law, aliens who had been admitted to the U.S. and then ordered removed could not be detained for more than 6 months if for some reason they could not be removed. Then, in *Clark v. Martinez,*[20] the Court dealt with two Cubans who came to the U.S. during the Mariel boatlift and later committed crimes including assault with a deadly weapon, attempted sexual assault, and armed robbery. The Court expanded its decision in *Zadvydas* to apply to such non-admitted aliens. Based on these two decisions, the Justice Department and the Department of Homeland Security have had no choice but to release back onto the streets many hundreds of criminal aliens. Jonathan Cohn, Deputy Assistant Attorney General, has testified that "the Government is [now] required to release numerous rapists, child molesters, murderers, and other dangerous illegal aliens into our streets. . . . [V]icious criminal aliens are now being set free within the U.S."[21] Cohn referenced the release of aliens including murderers, a schizophrenic sex offender and pedophiles. Many of these aliens were Mariel Cubans released from Cuban jails or aliens who have received relief from removal pursuant to the Convention Against Torture (CAT), which

[18] *See 9-11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States* at pgs. 47, 99 (2004).
[19] 533 U.S. 678 (2001).
[20] 543 U.S. 371 (2005).
[21] *Strengthening Immigration Enforcement, Hearing Before the Subcomm. on Immigration, Border Security and Citizenship and the Subcomm. on Terrorism, Technology and Homeland Security of the Senate Comm. on the Judiciary,* 109th Cong. (2005).

prohibits the return of an alien to a country where there are substantial grounds for believing that he or she would be in danger of being tortured. Almost 900 criminal aliens ordered removed have received CAT relief and have subsequently been released into our communities pursuant to these decisions. This includes at least one alien who was implicated in a mob-related quintuple homicide in Uzbekistan.[22] Also, one alien removable on terrorism grounds has been released after receiving CAT protection. One of the aliens released has subsequently been arrested for shooting a New York State trooper in the head.

Section 602 allows DHS to detain specified dangerous aliens under orders of removal who cannot be removed. The section would authorize DHS to detain aliens who are stopped at the border beyond 6 months. The section would also authorize DHS to detain aliens who effected an entry beyond 6 months, but only if: (1) the alien will be removed in the reasonably foreseeable future; (2) the alien would have been removed but for the alien's refusal to make all reasonable efforts to comply and cooperate with the Secretary of DHS' efforts to remove him; (3) the alien has a highly contagious disease; (4) release would have serious adverse foreign policy consequences; (5) release would threaten national security; or (6) release would threaten the safety of the community and the alien either is an aggravated felon or is mentally ill and has committed a crime of violence. Such aliens may be detained for periods of 6 months at a time, and the period of detention may be renewed. This section also provides for judicial review of detention decisions in the United States District Court for the District of Columbia.

Section 603. Increase in criminal penalties.

This section increases penalties and sets mandatory minimum sentences for aliens who fail to depart when ordered removed or obstruct their removal, or who fail to comply with the terms of release pending removal.

Section 604. Precluding admissibility of aggravated felons and other criminals.

In the Immigration and Nationality Act, the most serious criminal offenses are deemed aggravated felonies. A conviction for an aggravated felony can have significant consequences for an alien. Such an offense requires the removal of an admitted alien and bars him from most forms of relief, and also subjects an alien to an increased sentence for certain crimes. However, under current law a conviction for an aggravated felony is not, *per se,* a ground of inadmissibility. For this reason, an aggravated felony conviction will not render an alien inadmissible under section 212(a)(2) of the INA unless the conviction also falls within one of the existing criminal grounds of inadmissibility, such as a crime involving moral turpitude, or a controlled substance or money laundering offense. Section 604 bars aggravated felons from admission and from receiving discretionary waivers of inadmissibility under section 212(h) of the INA. This corrects an anomaly under current law by which aliens with aggravated felony convictions who are present illegally may

[22] *See Immigration Relief Under the Convention Against Torture for Serious Criminals and Human Rights Violators: Hearing Before the Subcomm. on Immigration, Border Security and Claims of the House Comm. on the Judiciary,* 108th Cong. (2003).

receive waivers under that provision, while lawful permanent resident aliens may not.

Section 604 also applies the domestic violence ground of deportability to inadmissibility. This will prevent aliens who have been convicted of crimes of domestic violence, stalking, child abuse and child neglect from entering and remaining in the United States. Finally, section 604 amends the inadmissibility grounds to bar the admission of aliens who have committed or been convicted of crimes relating to Social Security fraud or the unlawful procurement of citizenship.

Section 605. Precluding refugee or asylee adjustment of status for aggravated felonies.

In various statutory enactments since 1988, Congress has attached a series of stringent restrictions upon the eligibility of aliens to obtain almost all forms of discretionary immigration relief after they have been convicted of an aggravated felony. In particular, under the asylum provisions, an alien convicted of an aggravated felony is conclusively barred from being granted asylum, and a grant of asylum may be terminated if it is determined that the alien has become subject to one of the mandatory bars to asylum, including an asylee being convicted of an aggravated felony. However, the provision governing asylee and refugee adjustment to permanent resident status does not expressly bar an applicant from obtaining adjustment where the alien has been convicted of an aggravated felony after obtaining refugee or asylee status. Not only is this inconsistent with statutory bars on almost all discretionary immigration relief for aggravated felons, it is also inconsistent with the treatment that the asylee or refugee would be accorded after adjustment. Specifically, an alien who has been granted refugee or asylee adjustment is barred from obtaining cancellation of removal, a waiver under section 212(h) of the INA, or section 212(c) relief from removal if the alien is convicted of an aggravated felony after attaining such status. Section 605 corrects this discrepancy by barring asylees and refugees convicted of aggravated felonies from adjustment.

Section 606. Removing drunk drivers.

Recent news reports have underscored the tragic cost inflicted by aliens who have taken lives while driving under the influence of alcohol. Two cases from North Carolina underscore this problem. In each, the alien driver has been charged with drinking and killing another driver. Authorities have alleged that a Gaston County teacher was killed in July by an illegal Mexican national with five previous charges of Driving While Intoxicated (DWI). That alien has been charged with DWI and second degree murder. The police have also reported that a University of North Carolina-Charlotte student was killed in November by an illegal Mexican national who reportedly had two prior impaired-driving arrests and had drunk six beers before the accident. That alien, who had previously been sent back to Mexico 17 times, was also charged with second-degree murder. Despite the risks posed by drunk drivers, this offense is not currently a ground of removal. This section renders aliens convicted of three or more drunk driving offenses deportable.

Section 607. Designated county law enforcement assistance program.

Section 607, based on Representative Culberson's "Border Law Enforcement Act of 2005," (H.R. 4360) authorizes local sheriffs in the 29 counties along the southern border to transfer illegal aliens they have arrested to Federal custody. It also specifically reimburses those sheriffs for costs associated with detaining illegal aliens they arrest until they are able to hand them over to Federal authorities. The section deems aliens in sheriffs' custody to be in Federal custody once determined to be unlawfully present.

Section 608. Rendering inadmissible and deportable aliens participating in criminal street gangs; detention; ineligibility from protection from removal and asylum.

Crime by alien members of criminal street gangs is drastically increasing. Former ICE Assistant Secretary Mike Garcia has stated: "In the last decade, the United States has experienced a dramatic increase in the number and size of transnational street gangs. . . . These gangs have a significant, often a majority, foreign-born membership. . . ."[23] He also stated, "[E]ntire neighborhoods and sometimes whole communities are held hostage by and subjected to the violence of street gangs." Currently, however, aliens who are members of criminal street gangs are not deportable or inadmissible, and can receive asylum and temporary protected status (TPS), until they are convicted of a specific criminal act. Many of the members in the United States of these gangs are present in the U.S. under TPS.[24] One of the most violent and fastest-growing gangs, Mara Salvatrucha-13 (MS-13), was formed by Salvadorans who entered the U.S. during the civil war in El Salvador in the 1980's. There are an estimated 8,000 to 10,000 members in 31 States. The gang is estimated to have as many as 50,000 members internationally. There have been 18 MS-13-related killings in North Carolina, 11 in Northern Virginia, and at least eight in Los Angeles in the past 2 years.

Section 608, based on Representative Forbes's "Alien Gang Removal Act of 2005," (H.R. 2933) renders alien gang members deportable and inadmissible, mandates their detention, and bars them from receiving asylum or TPS. This section adopts procedures similar to those used by the State Department to designate foreign terrorist organizations to enable the Attorney General to designate criminal street gangs for purposes of the immigration laws. "Criminal street gangs" are defined as "a formal or informal group or association of three or more individuals, who commit two or more gang crimes (one of which is a crime of violence . . .) in two or more separate criminal episodes, in relation to the group or association." "Gang crime" is defined in that subsection as "conduct constituting any Federal or State crime, punishable by imprisonment for 1 year or more" in various categories, including crimes of vio-

[23] *Immigration and the Alien Gang Epidemic: Problems and Solutions: Hearing Before the Subcomm. on Immigration, Border Security and Claims of the House Comm. on the Judiciary,* 109th Cong. (2005).

[24] *Id.* (Of 5,000 gang members in a database that ICE compiled for Operation Community Shield, 291 El Salvadoran nationals, 43 Hondurans, and one Nicaraguan had been granted TPS, 6.7 percent of the total).

lence, obstruction of justice, witness tampering, burglary, and drug trafficking.

Section 609. Naturalization reform.

Alien terrorists are deportable and are also barred from admission and most other forms of immigration relief. However, there are no express bars for terrorists from being naturalized, the most significant benefit that the United States can bestow on an alien. Section 609 would close this loophole and bar alien terrorists from naturalization.

Section 609 would also correct other discrepancies in the naturalization provisions. When INS was given authority to grant naturalization, INS was precluded from granting that benefit as long the applicant was in removal proceedings. That preclusion did not, however, apply to district courts, which retained part of their historic authority over naturalization. Section 609 corrects this incongruity by barring district court consideration of naturalization applications while the applicant is in removal proceedings. Section 609 also holds in abeyance petitions to grant status for relatives filed by individuals who are, themselves, facing denaturalization or removal. Needless to say, if these individuals are in jeopardy of losing the status that makes their relatives eligible for benefits, it makes no sense to grant those benefits until the petitioner's status is clarified.

Currently, aliens can go to district court if their naturalization applications have been pending with DHS for more than 120 days. Section 209 gives DHS 180 days to adjudicate these applications, and limits District Court relief to remand for adjudication by DHS, making the provision more in line with traditional mandamus actions. Finally, the section limits court review of DHS's findings with respect to whether a naturalization applicant has good moral character, whether the alien understands and is attached to the principles of the Constitution, and is well disposed to the good order and happiness of the United States. These findings are similar to other discretionary determinations that are precluded from judicial review.

Section 610. Expedited removal for aliens inadmissible on criminal or security grounds.

This section will allow DHS to use the same expedited procedures that are available for the removal of aggravated felons to remove other inadmissible criminal aliens who entered illegally and who are otherwise ineligible for relief. At the present time, these aliens must be placed in removal proceedings before an immigration judge despite the fact that they are not eligible for any relief. Those proceedings can be rescheduled multiple times and take several weeks before the alien is eventually deported.

Section 611. Technical correction for effective date in change in inadmissibility for terrorists under REAL ID Act.

Section 103 of the REAL ID Act was designed to ensure the removal of aliens tied to terrorist organizations. However, aliens currently in deportation proceedings initiated before the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 have claimed that the REAL ID Act does not apply to

them. Section 611 clarifies that the amendments in the terrorist grounds of removal in the REAL ID Act are to be applied to aliens in all removal, deportation, and exclusion cases, regardless of when those cases were initiated.

Section 612. Bar to good moral character.

Applicants for certain immigration benefits, including naturalization, voluntary departure, and cancellation of removal, must demonstrate "good moral character," as defined in the INA. At present, although the definition excludes (among others) "habitual drunkards" and gamblers, it does not expressly exclude aliens who are terrorists or those who aid or support terrorism. Section 612 corrects this discrepancy by barring terrorist aliens from showing good moral character. In addition, because the definition of "good moral character" in the INA does not, and could never, cover all situations in which applicants could be shown not to have good moral character, this provision gives the Secretary of Homeland Security and the Attorney General discretionary authority to make a good moral character determination in situations not specifically set forth by the definition. The section clarifies that the aggravated felony bar to good moral character applies regardless of when the crime was classified as an aggravated felony and clarifies the discretionary authority of DHS to find an alien not to be of good moral character may be based upon actions that did not occur within the requisite period of time for which good moral character must be established.

Section 613. Strengthening definitions of "aggravated felony" and "conviction."

The "aggravated felony" definition in the INA covers both murder and crimes of violence for which the term of imprisonment is at least a year, but significantly, it does not specifically include manslaughter and homicide. Many aliens accused of murder, however, will plead to these lesser offenses. Section 613 will ensure that all aliens who have taken the life of another are covered by the "aggravated felony" definition. In addition, while the sexual abuse of a minor is an aggravated felony, proof in such cases can be limited where the victim was a minor, but the offense does not list the alien's minority as an element. Section 613 allows extrinsic evidence to be offered to establish the minority of the victim in a sexual abuse case. The section also prevents State courts from interfering in Federal immigration law by reversing or vacating convictions after they have been entered in order to forestall removal. Some State courts have granted requests by criminal aliens to revise their sentences and convictions to allow them to avoid the immigration consequences of their acts, and have even granted these requests after aliens have served their sentences. Section 613 makes it clear that immigration consequences will continue to attach to convictions that have been the subject of post-judicial amendment unless that amendment occurred because the alien was not guilty of the offense.

Section 614. Deportability for criminal offenses.

This section renders removable aliens who have unlawfully procured citizenship as well as aliens convicted of offenses relating to

misuse of Social Security numbers and cards and fraud in connection with identification documents.

Sections 701–708. Employment Eligibility Verification

The Immigration Reform and Control Act of 1986 (IRCA) made it unlawful for employers to knowingly hire or employ aliens not eligible to work and required employers to check the identity and work eligibility documents of all new employees. The Act was designed to end the "job magnet" that draws the vast majority of illegal aliens to the United States. Under IRCA, if the documents provided by an employee reasonably appear on their face to be genuine, an employer has met its document review obligation. Unfortunately, the easy availability of counterfeit documents has made a mockery of IRCA. Fake documents are produced by the millions and can be obtained cheaply. Thus, the current system both benefits unscrupulous employers who do not mind hiring illegal aliens but want to show that they have met legal requirements and harms employers who do not want to hire illegal aliens but have no choice but to accept documents they know have a good likelihood of being counterfeit.

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress responded to the deficiencies of IRCA by establishing three employment eligibility verification pilot programs for volunteer employers in selected States. Under the basic pilot program, the Social Security numbers and alien identification numbers of new hires are checked against Social Security Administration and Department of Homeland Security records in order to identify fraudulent numbers and thus to ensure that new hires are genuinely eligible to work. A 2001 report on the basic pilot program found that "an overwhelming majority of employers participating found the basic pilot program to be an effective and reliable tool for employment verification"[25]—96 percent of employers found it to be an effective tool for employment verification; and 94 percent of employers believed it to be more reliable than the IRCA-required document check.[26] In 2003, Congress extended the basic pilot program for another 5 years and made it available to employers Nationwide.[27]

A basic description of the basic pilot works is detailed below.

- An employer has 3 days from the date of hire to make an inquiry by phone or other electronic means to the confirmation office. If the new hire claims to be a citizen, the employer will transmit his or her name and Social Security number. If the new hire claims to be a non-citizen, the employer will transmit his or her name, alien identification number and Social Security number.
- The confirmation office will compare the name and Social Security number provided against information contained in Social Security Administration records and, if necessary, will compare the name and DHS-issued number provided against information contained in DHS records.

[25] Institute for Survey Research & Westat, *INS Basic Pilot Summary Report* at v.
[26] *See id.* at 16.
[27] Pub. L. No. 108–156.

- If in checking the records, the confirmation office ascertains that the new hire is eligible to work, the operator will within 3 days so inform the employer. If the confirmation office cannot confirm the work eligibility of the new hire, it will within 3 days so inform the employer of a tentative nonconfirmation.
- If a new hire does not contest the tentative nonconfirmation, it shall be considered a final nonconfirmation. If a new hire wishes to contest the tentative nonconfirmation, secondary verification will be undertaken. Secondary verification is an expedited procedure set up to confirm the validity of information contained in the Government records and provided by the new hire. Under this process, the new hire will typically contact or visit the Social Security Administration and/or DHS to see why the Government records disagree with the information he or she has provided. If the new hire requests secondary verification, he or she cannot be fired on the basis of the tentative nonconfirmation.
- If the discrepancy can be reconciled within 10 days, then confirmation of work eligibility will be given to the employer by the end of this period. If the discrepancy cannot be reconciled within 10 days, final denial of confirmation will be given by the end of this period. The employer then has two options. It can dismiss the new hire as being ineligible to work in the United States or it can continue to employ the new hire. If the employer continues to employ the new hire, it must notify DHS of this decision or be subject to penalty. If legal action is brought by the Government subsequent to such notification, the employer is then subject to a rebuttable presumption that it has knowingly hired an illegal alien.

Title VII will make participation in the basic pilot program mandatory for all employers within 2 years of enactment. It will also expand the system to provide for verification of previously-hired employees. Employers will be able to use the system to verify previously-hired employees on a voluntary basis (as long as they do not do so in a discriminatory manner) 2 years after enactment. By 3 years after enactment, Federal, State, and local governments and the military must verify the employment eligibility of all workers who have not been previously subject to verification under the system, as must other employers for those employees working at Federal, State or local Government buildings, military bases, nuclear energy sites, weapons sites, airports, and critical infrastructure sites. By 6 years after enactment, all employers must verify the employment eligibility of all workers who have not been previously subject to verification under the system.

The title requires DHS to investigate situations in which a Social Security number is submitted more than once by the same employer, or where a Social Security number is submitted by multiple employers, in a manner that suggests fraud. The title exempts employers from liability who rely in good faith on information provided by the verification system. The title also applies employment eligibility verification requirements to day labor sites and other hiring halls.

The title establishes civil penalties for failure to comply with the employment eligibility verification requirements and increases civil penalties for knowingly hiring or employing aliens ineligible to work or for failing to comply with the I-9 process.

The title requires the Social Security Administration (SSA) to conduct a study on the cost and administrability of the elements of Representative David Dreier's "Illegal Immigration Enforcement and Social Security Protection Act of 2005" (H.R. 98). This proposal requires: hardened, secure Social Security cards with an electronic strip and digital photograph; the creation of a unified database between SSA and DHS for employment eligibility verification; and a requirement that employers verify employment eligibility verification of new hires by swiping the secure Social Security card through an electronic card-reader.

Section 801. Board of Immigration Appeals removal order authority.

The Ninth Circuit has given aliens additional opportunities to needlessly hinder their removal by requiring the Board of Immigration Appeals (BIA) to remand cases in which it has reversed an immigration judge decision granting an alien relief back to the immigration judge for entry of the order of removal. Section 801 expressly provides the BIA authority to reverse an immigration judge decision and enter an order of removal without remanding to the immigration judge.

Section 802. Judicial review of visa revocation.

The INA allows consular officers to revoke visas after they have been issued. However, prior to enactment of the Intelligence Reform and Terrorism Prevention Act of 2004, if a visa was revoked after an alien entered the United States, the alien was allowed to remain in the United States under the terms of admission since there existed no ground of removal for visa revocation. Section 5304 of the Intelligence Reform Act created a ground of removal for aliens whose visas were revoked after entry. This was spurred by a Government Accountability Office (GAO) investigation that revealed that the absence of such a ground of removal posed a risk to the American people. In October 2002, GAO reported that the State Department had revoked 105 visas that had been erroneously issued to aliens, about whom there were questions about possible terror ties, before their background checks had been completed.[28] GAO found that immigration agents did not attempt to track down those aliens whose visas had been revoked because of the difficulty in removing those aliens from the United States. DHS' inability to remove aliens after their visas were revoked was especially problematic in terrorism cases, because information linking an alien to terrorism is often classified, but classified information cannot be used to prove deportability. The House acted to close this loophole in the Intelligence Reform Act by adding a provision to make visa revocation a freestanding ground of removal. However, in conference a modification was added stating that visa revocation decisions would be judicially reviewable if revocation was the sole basis

[28] *See* U.S. General Accounting Office, *Border Security—New Policies and Procedures Are Needed to Fill Gaps in the Visa Revocation Process* at 12, GAO-03-798 (2003).

for the order of removal under review. This change has rendered the revocation ground of removal worthless as a removal tool. Not only could such review disclose the sensitive information that the revocation ground of removal is intended to protect, but it would also undermine the consular nonreviewability doctrine, and allow courts to second-guess all visa denial decisions. Accordingly, section 802 removes the judicial review provision added in the conference.

Section 803. Reinstatement.

Section 241 of the INA provides that the Government may remove an alien who has reentered the country illegally after being removed, pursuant to the prior order of removal. This provision is meant to preserve judicial resources, and to close the revolving door of illegal reentry by allowing DHS to summarily deport aliens who have reentered after removal, without having to obtain a new removal order from an immigration judge. In accordance with section 241, DHS has promulgated a regulation that permits reinstatement of removal orders by DHS officers. However, the Ninth Circuit has recently invalidated DHS's regulation and held that aliens are entitled to have their reinstatement cases adjudicated by immigration judges.[29] In fiscal year 2004, prior to the Ninth Circuit's decision, DHS removed 42,886 aliens in that circuit through reinstatement. Under the Ninth Circuit's decision, immigration judges now must hear tens of thousands of additional cases annually from aliens ineligible for relief. This is a waste of extremely limited resources. Section 803 overrules the Ninth Circuit decision, validates DHS's regulation, and allows the department to deport an alien who reentered illegally after being removed without having to place the alien in removal proceedings again.

Section 804. Withholding of removal.

Section 101(a)(3) of the REAL ID Act requires an asylum applicant to show that one of the five protected characteristics—race, religion, political opinion, nationality, or membership in a particular social group—"was or will be at least one *central reason*" why the alien was persecuted or fears persecution and thereby is eligible for asylum. Section 804 clarifies that the REAL ID motivation standard for asylum applies to withholding of removal. Unless this clarification is made, applicants for withholding, who have traditionally borne a higher burden than applicants for asylum, now will be found to have a lesser burden.

Section 805. Certificate of reviewability.

There has been a drastic increase in the number of petitions for review filed in the courts of appeals from immigration decisions in the past few years. In fiscal year 2001, there were 1,654 such petitions filed. By 2004, 10,681 immigration petitions for review were filed. The vast majority of these petitions, once reviewed, are denied. In 2004, for example, the Board of Immigration Appeals' determinations were sustained by the courts in over 90 percent of the cases decided, a rate that has actually increased since the Board adopted its "streamlining" reforms in 2002. Section 805 responds to the filing of meritless appeals of removal orders by establishing a

[29] *See Morales-Izquierdo v. Ashcroft,* 388 F. 3d 1299 (9th Cir. 2004).

screening process for aliens' appeals of BIA decisions. Under this provision, appeals will be referred to a single circuit court judge for initial review. If that judge decides that the alien has made a substantial showing that the alien's petition for review is likely to be granted, the judge will issue a "certificate of reviewability" allowing the case to proceed to a three-judge panel. The provision focuses limited judicial resources on those petitions for review with the greatest likelihood of proving meritorious.

Section 806. Waiver of rights in nonimmigrant visa issuance.

Currently, aliens seeking to enter the United States under the visa waiver program must waive access to the Immigration Court to challenge removal by any means other than asylum. No similar restriction is placed on the other nonimmigrants who are admitted annually. Section 806 would impose the same review conditions on all nonimmigrant visas that now apply only to visa waiver admissions, and require aliens seeking to enter temporarily to waive their ability to contest, other than through asylum, any action to deny them admission or remove them.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TABLE OF CONTENTS

* * * * * * *

TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

Sec. 219A. Designation of criminal street gangs.

* * * * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

* * * * * * *

[Sec. 274. Bringing in and harboring certain aliens.]
Sec. 274. Alien smuggling and related offenses.

* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—
(1) * * *

* * * * * * *

(43) The term "aggravated felony" means—

[(A) murder, rape, or sexual abuse of a minor;]

(A) murder, manslaughter, homicide, rape, or any sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;

* * * * * * *

(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense*, including a third drunk driving conviction, regardless of the States in which the convictions occurred, and regardless of whether the offenses are deemed to be misdemeanors or felonies under State or Federal law,*) for which the term of imprisonment at least one year;

* * * * * * *

(N) an offense described in [paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling)] *section 274(a)*, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act*;*

(O) an offense described in [section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph] *section 275 or section 276 for which the term of imprisonment was at least one year*;

* * * * * * *

(U) *soliciting, aiding, abetting, counseling, commanding, inducing, procuring or* an attempt or conspiracy to commit an offense described in this paragraph.

[The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.] *The term applies—*

(i) to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years;

(ii) even if the length of the term of imprisonment is based on recidivist or other enhancements;

(iii) to an offense described in this paragraph even if the statute setting forth the offense of conviction sets forth other offenses not described in this paragraph, unless the alien affirmatively shows, by a preponderance of evidence and using public records related to the conviction, including court records, police records and presentence reports,

that the particular facts underlying the offense do not satisfy the generic definition of that offense; and

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

* * * * * * *

[(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

[(B) The order described under subparagraph (A) shall become final upon the earlier of—

[(i) a determination by the Board of Immigration Appeals affirming such order; or

[(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.]

(47)(A) The term "order of removal" means the order of the immigration judge, the Board of Immigration Appeals, or other administrative officer to whom the Attorney General or the Secretary of Homeland Security has delegated the responsibility for determining whether an alien is removable, concluding that the alien is removable or ordering removal.

(B) The order described under subparagraph (A) shall become final upon the earliest of—

(i) a determination by the Board of Immigration Appeals affirming such order;

(ii) the entry by the Board of Immigration Appeals of such order;

(iii) the expiration of the period in which any party is permitted to seek review of such order by the Board of Immigration Appeals;

(iv) the entry by an immigration judge of such order, if appeal is waived by all parties; or

(v) the entry by another administrative officer of such order, at the conclusion of a process as authorized by law other than under section 240.

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

(i) * * *

* * * * * * *

Any reversal, vacatur, expungement, or modification to a conviction, sentence, or conviction record that was granted to ameliorate the consequences of the conviction, sentence, or conviction record, or was granted for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that the reversal, vacatur, expungement, or modification was not granted to ameliorate the consequences of the conviction, sentence, or conviction record, for rehabilitative purposes, or

for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt.

* * * * * * *

(f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) * * *

(2) one who the Secretary of Homeland Security or the Attorney General determines, in the unreviewable discretion of the Secretary or the Attorney General, to have been at any time an alien described in section 212(a)(3) or section 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and which shall be binding upon any court regardless of the applicable standard of review;

* * * * * * *

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)), *regardless whether the crime was classified as an aggravated felony at the time of conviction*; or

* * * * * * *

[The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.**]** *The fact that any person is not within any of the foregoing classes shall not preclude a discretionary finding for other reasons that such a person is or was not of good moral character. The Secretary and the Attorney General shall not be limited to the applicant's conduct during the period for which good moral character is required, but may take into consideration as a basis for determination the applicant's conduct and acts at any time.* In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

* * * * * * *

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a) * * *

(b) After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 203(b)(2) or 203(b)(3), the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status. *No petition shall be approved pursuant to this section if there is any administrative or judicial proceeding (whether civil or criminal) pending against the petitioner that could (whether directly or indirectly) result in the petitioner's denaturalization or the loss of the petitioner's lawful permanent resident status.*

* * * * * * *

ASYLUM

SEC. 208. (a) * * *

(b) CONDITIONS FOR GRANTING ASYLUM.—

(1) * * *

(2) EXCEPTIONS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to an alien if the Attorney General determines that—

(i) * * *

* * * * * * *

(v) the alien is described in ⟦subclause (I), (II), (III), (IV), or (VI)⟧ *any subclause* of section 212(a)(3)(B)(i) or section ⟦237(a)(4)(B)⟧ *212(a)(3)(F)* (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) *or (IX)* of section 212(a)(3)(B)(i), the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; ⟦or⟧

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

⟦(vi)⟧ *(vii)* the alien was firmly resettled in another country prior to arriving in the United States.

* * * * * * *

ADJUSTMENT OF STATUS OF REFUGEES

SEC. 209. (a) * * *

* * * * * * *

(c) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in

the public interest. *However, an alien who is convicted of an aggravated felony is not eligible for a waiver or for adjustment of status under this section.*

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

(2) CRIMINAL AND RELATED GROUNDS.—

(A) CONVICTION OF CERTAIN CRIMES.—

(i) IN GENERAL.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, [or]

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), *or*

(III) a violation (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code,

* * * * * * *

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

(K) UNLAWFUL PROCUREMENT OF CITIZENSHIP.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of (or a conspiracy or attempt to violate) subsection (a) or (b) of section 1425 of title 18, United States Code is inadmissible.

(L) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDERS; CRIMES AGAINST CHILDREN.—

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

(I) IN GENERAL.—Subject to subclause (II), any alien who at any time is convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or

a crime of child abuse, child neglect, or child abandonment is inadmissible.

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

(III) CRIME OF DOMESTIC VIOLENCE DEFINED.—For purposes of subclause (I), the term "crime of domestic violence" means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

(ii) VIOLATORS OF PROTECTION ORDERS.—

(I) IN GENERAL.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or person for whom the protection order was issued is inadmissible.

(II) PROTECTION ORDER DEFINED.—For purposes of subclause (I), the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.

(M) CRIMINAL STREET GANG PARTICIPATION.—

(i) IN GENERAL.—Any alien is inadmissible if the alien has been removed under section 237(a)(2)(F), or if the consular officer or the Secretary of Homeland Security knows, or has reasonable ground to believe that the alien—

(I) is a member of a criminal street gang and has committed, conspired, or threatened to commit, or seeks to enter the United States to engage solely, principally, or incidentally in, a gang crime or any other unlawful activity; or

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

(ii) CRIMINAL STREET GANG DEFINED.—For purposes of this subparagraph, the term "criminal street

gang" means a formal or informal group or association of 3 or more individuals, who commit 2 or more gang crimes (one of which is a crime of violence, as defined in section 16 of title 18, United States Code) in 2 or more separate criminal episodes in relation to the group or association.

(iii) GANG CRIME DEFINED.—For purposes of this subparagraph, the term "gang crime" means conduct constituting any Federal or State crime, punishable by imprisonment for one year or more, in any of the following categories:

(I) A crime of violence (as defined in section 16 of title 18, United States Code).

(II) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

(III) A crime involving the manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemical (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(IV) Any conduct punishable under section 844 of title 18, United States Code (relating to explosive materials), subsection (d), (g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of such title) or is a serious drug offense (as defined in section 924(e)(2)(A)), (i), (j), (k), (o), (p), (q), (u), or (x) of section 922 of such title (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 of such title (relating to penalties), section 930 of such title (relating to possession of firearms and dangerous weapons in Federal facilities), section 931 of such title (relating to purchase, ownership, or possession of body armor by violent felons), sections 1028 and 1029 of such title (relating to fraud and related activity in connection with identification documents or access devices), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

(V) Any conduct punishable under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) of this Act.

(3) SECURITY AND RELATED GROUNDS.—

(A) * * *

(B) TERRORIST ACTIVITIES.—

(i) * * *

(ii) EXCEPTION.—[Subclause (VII)] *Subclause (IX)* of clause (i) does not apply to a spouse or child—

(I) * * *

* * * * * * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.—

(A) * * *

* * * * * * *

(C) MISREPRESENTATION.—

(i) * * *

(ii) FALSELY CLAIMING CITIZENSHIP *OR NATIONALITY*.—

(I) IN GENERAL.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen *or national* of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION.—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen *or national* (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen *or national*, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

* * * * * * *

(9) ALIENS PREVIOUSLY REMOVED.—

(A) CERTAIN ALIENS PREVIOUSLY REMOVED.—

(i) ARRIVING ALIENS.—Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission [within 5 years of] *before, or within 5 years of,* the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) OTHER ALIENS.—Any alien not described in clause (i) who—

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding,

and who seeks admission [within 10 years of] *before, or within 10 years of,* the date of such alien's departure or removal (or within 20 years of such date in the

case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

* * * * * * *

(h) [The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)] *The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or such Secretary, waive the application of subparagraph (A)(i)(I), (A)(i)(III), (B), (D), (E), (K), and (L) of subsection (a)(2)* and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General *or the Secretary* that—

(i) * * *

* * * * * * *

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General *or the Secretary* that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; or

* * * * * * *

(2) the [Attorney General, in his discretion,] *Attorney General or the Secretary of Homeland Security, in the discretion of the Attorney General or such Secretary,* and pursuant to such terms, conditions and procedures [as he] *as the Attorney General or the Secretary* may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or [criminal acts involving torture] *criminal acts involving torture, or an aggravated felony*, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence [if either since the date of such admission the alien has been convicted of an aggravated felony or the alien] *if since the date of such admission the alien* has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General *or the Secretary* to grant or deny a waiver under this subsection.

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216. (a) * * *

* * * * * * *

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence*, if the alien has had the conditional basis removed under this section*.

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN

SEC. 216A. (a) * * *

* * * * * * *

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence*, if the alien has had the conditional basis removed under this section*.

* * * * * * *

DESIGNATION OF CRIMINAL STREET GANGS

SEC. 219A. (a) DESIGNATION.—

(1) IN GENERAL.—The Attorney General is authorized to designate a group or association as a criminal street gang in accordance with this subsection if the Attorney General finds that the group or association meets the criteria described in section 212(a)(2)(M)(ii)(I).

(2) PROCEDURE.—

(A) NOTICE.—

(i) TO CONGRESSIONAL LEADERS.—Seven days before making a designation under this subsection, the Attorney General shall notify the Speaker and Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group or association under this subsection, together with the findings made under paragraph (1) with respect to that group or association, and the factual basis therefor.

(ii) PUBLICATION IN FEDERAL REGISTER.—The Attorney shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

(B) EFFECT OF DESIGNATION.—

(i) A designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

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

(4) PERIOD OF DESIGNATION.—

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

(B) REVIEW OF DESIGNATION UPON PETITION.—

(i) IN GENERAL.—The Attorney General shall review the designation of a criminal street gang under the procedures set forth in clauses (iii) and (iv) if the designated gang or association files a petition for revocation within the petition period described in clause (ii).

(ii) PETITION PERIOD.—For purposes of clause (i)—

(I) if the designated gang or association has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

(II) if the designated gang or association has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

(iii) PROCEDURES.—Any criminal street gang that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the gang is warranted.

(iv) DETERMINATION.—

(I) IN GENERAL.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Attorney General shall make a determination as to such revocation.

(II) PUBLICATION OF DETERMINATION.—A determination made by the Attorney General under this clause shall be published in the Federal Register.

(III) PROCEDURES.—Any revocation by the Attorney General shall be made in accordance with paragraph (6).

(C) OTHER REVIEW OF DESIGNATION.—

(i) IN GENERAL.—If in a 5-year period no review has taken place under subparagraph (B), the Attorney General shall review the designation of the criminal

street gang in order to determine whether such designation should be revoked pursuant to paragraph (6).

(ii) PROCEDURES.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Attorney General. The results of such review and the applicable procedures shall not be reviewable in any court.

(iii) PUBLICATION OF RESULTS OF REVIEW.—The Attorney General shall publish any determination made pursuant to this subparagraph in the Federal Register.

(5) REVOCATION BY ACT OF CONGRESS.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

(6) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

(A) IN GENERAL.—The Attorney General may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Attorney General finds that the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation.

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

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

(8) USE OF DESIGNATION IN HEARING.—If a designation under this subsection has become effective under paragraph (2)(B) an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any hearing.

(b) JUDICIAL REVIEW OF DESIGNATION.—

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

(2) BASIS OF REVIEW.—Review under this subsection shall be based solely upon the administrative record.

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

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

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

(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) lacking substantial support in the administrative record taken as a whole; or

(E) not in accord with the procedures required by law.

(4) JUDICIAL REVIEW INVOKED.—The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order setting aside the designation.

(c) RELEVANT COMMITTEE DEFINED.—As used in this section, the term "relevant committees" means the Committees on the Judiciary of the House of Representatives and of the Senate.

* * * * * * *

CHAPTER 3—ISSUANCE OF ENTRY DOCUMENTS

ISSUANCE OF VISAS

SEC. 221. (a)(1) * * *

* * * * * * *

(3) An alien may not be issued a nonimmigrant visa unless the alien has waived any right—

(A) to review or appeal under this Act of an immigration officer's determination as to the inadmissibility of the alien at the port of entry into the United States; or

(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

* * * * * * *

(i) After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other documentation. Notice of such revocation shall be communicated to the Attorney General, and such revocation shall invalidate the visa or other documentation from the date of issuance: *Provided,* That carriers or transportation companies, and masters, commanding officers, agents, owners, charterers, or consignees, shall not be penalized under section 273(b) for action taken in reliance on such visas or other documentation, unless they received due notice of such revocation prior to the alien's embarkation. ⟦There shall be no means of judicial review (including review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 237(a)(1)(B).⟧ *Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation.*

* * * * * * *

CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * * * *

INSPECTION BY IMMIGRATION OFFICERS; EXPEDITED REMOVAL OF INADMISSIBLE ARRIVING ALIENS; REFERRAL FOR HEARING

SEC. 235. (a) * * *

(b) INSPECTION OF APPLICANTS FOR ADMISSION.—

(1) INSPECTION OF ALIENS ARRIVING IN THE UNITED STATES AND CERTAIN OTHER ALIENS WHO HAVE NOT BEEN ADMITTED OR PAROLED.—

(A) SCREENING.—

(i) * * *

* * * * * * *

(iii) APPLICATION TO CERTAIN OTHER ALIENS.—

(I) IN GENERAL.—The [Attorney General] *Secretary of Homeland Security* may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the [Attorney General] *Secretary of Homeland Security*. Such designation shall be in the sole and unreviewable discretion of the [Attorney General] *Secretary of Homeland Security* and may be modified at any time.

* * * * * * *

(III) EXCEPTION.—Notwithstanding subclauses (I) and (II), the Secretary of Homeland Security shall apply clauses (i) and (ii) of this subparagraph to any alien (other than an alien described in subparagraph (F)) who is not a national of a country contiguous to the United States, who has not been admitted or paroled into the United States, and who is apprehended within 100 miles of an international land border of the United States and within 14 days of entry.

* * * * * * *

(F) EXCEPTION.—Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and [who arrives by aircraft at a port of entry]*, and who arrives by aircraft at a port of entry or who is present in the United States and arrived in any manner at or between a port of entry*.

* * * * * * *

APPREHENSION AND DETENTION OF ALIENS

SEC. 236. (a) * * *

* * * * * * *

(c) DETENTION OF CRIMINAL ALIENS.—

(1) CUSTODY.—The Attorney General shall take into custody any alien who—

(A) * * *

* * * * * * *

(D) is inadmissible under section 212(a)(3)(B) *or 212(a)(2)(M)* or deportable under section *237(a)(2)(F) or* 237(a)(4)(B),

* * * * * * *

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 237. (a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) * * *

(2) CRIMINAL OFFENSES.—

(A) * * *

* * * * * * *

(F) CRIMINAL STREET GANG PARTICIPATION.—

(i) IN GENERAL.—Any alien is deportable who—

(I) is a member of a criminal street gang and is convicted of committing, or conspiring, threatening, or attempting to commit, a gang crime; or

(II) is determined by the Secretary of Homeland Security to be a member of a criminal street gang designated under section 219A.

(ii) DEFINITIONS.—For purposes of this subparagraph, the terms "criminal street gang" and "gang crime" have the meaning given such terms in section 212(a)(2)(M).

(G) SOCIAL SECURITY AND IDENTIFICATION FRAUD.—Any alien who at any time after admission is convicted of a violation of (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code is deportable.

(3) FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—

(A) * * *

(B) FAILURE TO REGISTER OR FALSIFICATION OF DOCUMENTS.—Any alien who at any time has been convicted—

(i) * * *

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), [or]

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18, United States Code (relating to fraud and misuse of visas, permits, and other entry documents), *or*

(iv) of a violation of, or an attempt or a conspiracy to violate, subsection (a) or (b) of section 1425 of title 18, United States Code,

* * * * * * *

EXPEDITED REMOVAL OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES

SEC. 238. (a) * * *

(b) REMOVAL OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

(1) The [Attorney General] *Secretary of Homeland Security in the exercise of discretion* may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 237(a)(2)(A)(iii) (relating to conviction of an aggravated felony) and issue an order of removal pursuant to the procedures [set forth in this subsection or] *set forth in this subsection, in lieu of removal proceedings under* section 240.

* * * * * * *

(3) The Secretary of Homeland Security in the exercise of discretion may determine inadmissibility under section 212(a)(2) (relating to criminal offenses) and issue an order of removal pursuant to the procedures set forth in this subsection, in lieu of removal proceedings under section 240, with respect to an alien who

(A) has not been admitted or paroled;

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

(C) is not eligible for a waiver of inadmissibility or relief from removal.

[(3)] *(4)* The [Attorney General] *Secretary of Homeland Security* may not execute any order described in [paragraph (1) until 14 calendar days] *paragraph (1) or (3) until 7 calendar days* have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 242.

[(4)] *(5)* Proceedings before the [Attorney General] *Secretary of Homeland Security* under this subsection shall be in accordance with such regulations as the [Attorney General] *Secretary of Homeland Security* shall prescribe. The [Attorney General] *Secretary of Homeland Security* shall provide that—

(A) * * *

* * * * * * *

[(5)] *(6)* No alien [described in this section] *described in paragraph (1) or (2)* shall be eligible for any relief from removal that [the Attorney General may grant in the Attorney General's discretion] *the Secretary of Homeland Security or the Attorney General may grant, in the discretion of the Secretary or Attorney General, in any proceeding*.

* * * * * * *

CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS

SEC. 240A. (a) * * *

* * * * * * *

(c) ALIENS INELIGIBLE FOR RELIEF.—The provisions of subsections (a) and (b)(1) shall not apply to any of the following aliens:

(1) * * *

* * * * * * *

(4) An alien who is [inadmissible under] *described in* section 212(a)(3) or [deportable under] *described in* section 237(a)(4).

* * * * * * *

VOLUNTARY DEPARTURE

SEC. 240B. (a) CERTAIN CONDITIONS.—

[(1) IN GENERAL.—The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240 or prior to the completion of such proceedings, if the alien is not deportable under section 237(a)(2)(A)(iii) or section 237(a)(4)(B).]

(1) IN LIEU OF REMOVAL PROCEEDINGS.—The Secretary of Homeland Security may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4).

(2) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—After removal proceedings under section 240 are initiated, the Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, prior to the conclusion of such proceedings before an immigration judge, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4).

[(2)] *(3)* PERIOD.—

[(A) IN GENERAL.—Subject to subparagraph (B), permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days.]

(A) IN LIEU OF REMOVAL.—Subject to subparagraph (C), permission to depart voluntarily under paragraph (1) shall not be valid for a period exceeding 120 days. The Secretary of Homeland Security may require an alien permitted to depart voluntarily under paragraph (1) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.

(B) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to depart voluntarily under paragraph (2) shall not be valid for a period exceeding 60 days, and may be granted only after a finding that the alien has established that the alien has the means to depart the United States and intends to do so. An alien permitted to depart voluntarily under paragraph (2) must post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive posting of a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will be a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.

[(B)] *(C)* Three YEAR PILOT PROGRAM WAIVER.—During the period October 1, 2000, through September 30, 2003, and subject to [subparagraphs (C) and (D)(ii)] *subparagraphs (D) and (E)(ii)*, the Attorney General may, in the discretion of the Attorney General for humanitarian purposes, waive application of subparagraph (A) in the case of an alien—

(i) * * *

* * * * * * *

[(C)] *(D)* WAIVER LIMITATIONS.—

(i) Waivers under [subparagraph (B)] *subparagraph (C)* may be granted only upon a request submitted by a Service district office to Service headquarters.

(ii) Not more than 300 waivers may be granted for any fiscal year for a principal alien under [subparagraph (B)] *subparagraph (C)*(i).

(iii)(I) Except as provided in subclause (II), in the case of each principal alien described in [subparagraph (B)] *subparagraph (C)*(i) not more than one adult may be granted a waiver under [subparagraph (B)] *subparagraph (C)*(ii).

(II) Not more than two adults may be granted a waiver under [subparagraph (B)] *subparagraph (C)*(ii) in a case in which—

(aa) the principal alien described in [subparagraph (B)] *subparagraph (C)*(i) is a dependent under the age of 18; or

(bb) one such adult is age 55 or older or is physically handicapped.

[(D)] *(E)* REPORT TO CONGRESS; SUSPENSION OF WAIVER AUTHORITY.—

(i) Not later than March 30 of each year, the Commissioner shall submit to the Congress an annual report regarding all waivers granted under [subparagraph (B)] *subparagraph (C)* during the preceding fiscal year.

(ii) Notwithstanding any other provision of law, the authority of the Attorney General under [subparagraph (B)] *subparagraph (C)* shall be suspended during any period in which an annual report under clause (i) is past due and has not been submitted.

[(3) BOND.—The Attorney General may require an alien permitted to depart voluntarily under this subsection to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.]

(4) TREATMENT OF ALIENS ARRIVING IN THE UNITED STATES.—In the case of an alien who is arriving in the United States and with respect to whom proceedings under section 240 are (or would otherwise be) initiated at the time of such alien's arrival, [paragraph (1)] *paragraphs (1) and (2)* shall not apply. Nothing in this paragraph shall be construed as preventing such an alien from withdrawing the application for admission in accordance with section 235(a)(4).

(b) AT CONCLUSION OF PROCEEDINGS.—

(1) IN GENERAL.—The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if, at the conclusion of a proceeding under section 240, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) * * *

* * * * * * *

(C) the alien is not [deportable under] *described in* section 237(a)(2)(A)(iii) or section 237(a)(4); and

* * * * * * *

(2) PERIOD.—Permission to depart voluntarily under this subsection shall not be valid for a period exceeding [60] *45* days.

* * * * * * *

[(c) ALIENS NOT ELIGIBLE.—The Attorney General shall not permit an alien to depart voluntarily under this section if the alien was previously permitted to so depart after having been found inadmissible under section 212(a)(6)(A).]

(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure will be granted only as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall include a waiver of the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal.

(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security in the exercise of discretion may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

(3) FAILURE TO COMPLY WITH AGREEMENT AND EFFECT OF FILING TIMELY APPEAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including a failure to timely post any required bond), the alien automatically becomes ineligible for the benefits of the agreement, subject to the penalties described in subsection (d), and subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b). However, if an alien agrees to voluntary departure but later files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences thereof, but the alien may not again be granted voluntary departure while the alien remains in the United States.

(4) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary of Homeland Security in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall

affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.

[(d) CIVIL PENALTY FOR FAILURE TO DEPART.—If an alien is permitted to depart voluntarily under this section and fails voluntarily to depart the United States within the time period specified, the alien shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and be ineligible for a period of 10 years for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

[(e) ADDITIONAL CONDITIONS.—The Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens. No court may review any regulation issued under this subsection.]

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

(1) CIVIL PENALTY.—

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

(B) SPECIFICATION IN ORDER.—The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record.

(C) COLLECTION.—If the Secretary of Homeland Security thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law.

(D) INELIGIBILITY FOR BENEFITS.—An alien will be ineligible for any benefits under this title until any civil penalty under this subsection is paid.

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

(3) REOPENING.—

(A) IN GENERAL.—Subject to subparagraph (B), the alien will be ineligible to reopen a final order of removal which took effect upon the alien's failure to depart, or the alien's violation of the conditions for voluntary departure, during the period described in paragraph (2).

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

The order permitting the alien to depart voluntarily under this section shall inform the alien of the penalties under this subsection.

(e) ELIGIBILITY.—

(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to depart voluntarily under this section

if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

(2) ADDITIONAL LIMITATIONS.—The Secretary of Homeland Security may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class or classes of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(2) or (b) for any class or classes of aliens. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court may review any regulation issued under this subsection.

(f) JUDICIAL REVIEW.—No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under subsection (b), nor shall any court order a stay of an alien's removal pending consideration of any claim with respect to voluntary departure. *Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.*

DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED

SEC. 241. (a) DETENTION, RELEASE, AND REMOVAL OF ALIENS ORDERED REMOVED.—

(1) REMOVAL PERIOD.—

(A) IN GENERAL.—Except as otherwise provided in this section, when an alien is ordered removed, the ⟦Attorney General⟧ *Secretary of Homeland Security* shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) BEGINNING OF PERIOD.—The removal period begins on the latest of the following:

(i) * * *

⟦(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.⟧

(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the date the stay of removal is no longer in effect.

* * * * * * *

If, at that time, the alien is not in the custody of the Secretary (under the authority of this Act), the Secretary shall take the alien into custody for removal, and the removal period shall not begin until the alien is taken into such custody. If the Secretary transfers custody of the alien during the removal period pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled, and shall begin anew on the date of the alien's return to the custody of the Secretary.

[(C) SUSPENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.]

(C) SUSPENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspires or acts to prevent the alien's removal subject to an order of removal.

(2) DETENTION.—During the removal period, the [Attorney General] *Secretary of Homeland Security* shall detain the alien. Under no circumstance during the removal period shall the [Attorney General] *Secretary of Homeland Security* release an alien who has been found inadmissible under section 212(a)(2) or 212(a)(3)(B) or deportable under section 237(a)(2) or 237(a)(4)(B). *If a court orders a stay of removal of an alien who is subject to an administratively final order of removal, the Secretary in the exercise of discretion may detain the alien during the pendency of such stay of removal.*

(3) SUPERVISION AFTER 90-DAY PERIOD.—If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the [Attorney General] *Secretary of Homeland Security*. The regulations shall include provisions requiring the alien—

(A) * * *

* * * * * * *

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the [Attorney General] *Secretary of Homeland Security* considers appropriate; and

[(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.]

(D) to obey reasonable restrictions on the alien's conduct or activities, or perform affirmative acts, that the Secretary prescribes for the alien, in order to prevent the alien from absconding, or for the protection of the community, or for other purposes related to the enforcement of the immigration laws.

(4) ALIENS IMPRISONED, ARRESTED, OR ON PAROLE, SUPERVISED RELEASE, OR PROBATION.—

(A) IN GENERAL.—Except as provided in section 343(a) of the Public Health Service Act (42 U.S.C. 259(a)) and paragraph (2), the [Attorney General] *Secretary of Homeland Security* may not remove an alien who is sentenced to imprisonment until the alien is released from imprison-

ment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) EXCEPTION FOR REMOVAL OF NONVIOLENT OFFENDERS PRIOR TO COMPLETION OF SENTENCE OF IMPRISONMENT.—The [Attorney General] *Secretary of Homeland Security* is authorized to remove an alien in accordance with applicable procedures under this Act before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the [Attorney General] *Secretary of Homeland Security*, if the [Attorney General] *Secretary of Homeland Security* determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 101(a)(43)(B), (C), (E), (I), or (L) and (II) the removal of the alien is appropriate and in the best interest of the United States; or

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 101(a)(43)(C) or (E)), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the [Attorney General] *Secretary of Homeland Security* that such alien be so removed.

* * * * * * *

[(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.]

(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed;

(B) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application for such relief may have been filed; and

(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not require proceedings before an immigration judge under section 240 or otherwise.

(6) INADMISSIBLE OR CRIMINAL ALIENS.—An alien ordered removed who is inadmissible under section 212, removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) or who has been determined by the [Attorney General] *Secretary of Homeland Security* to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the [removal period and, if released,] *removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien* shall be subject to the terms of supervision in paragraph (3).

(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary, in the Secretary's discretion, may parole the alien under section 212(d)(5) of this Act and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien's parole or the alien's removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

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

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

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

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

[(7)] *(10)* EMPLOYMENT AUTHORIZATION.—No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the [Attorney General] *Secretary of Homeland Security* makes a specific finding that—

(A) * * *

* * * * * * *

(b) COUNTRIES TO WHICH ALIENS MAY BE REMOVED.—

(1) * * *

* * * * * * *

(3) RESTRICTION ON REMOVAL TO A COUNTRY WHERE ALIEN'S LIFE OR FREEDOM WOULD BE THREATENED.—

(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), the [Attorney General] *Secretary of Homeland Security* may not remove an alien to a country if the Attorney General *or the Secretary* decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a par-

ticular social group, or political opinion. *The burden of proof is on the alien to establish that the alien's life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for such threat.*

(B) EXCEPTION.—Subparagraph (A) does not apply to an alien *who is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) or who is* deportable under section 237(a)(4)(D) or if the Attorney General *or the Secretary of Homeland Security* decides that—

(i) * * *

* * * * * * *

(iii) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; **[**or**]**

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States**[**.**]***; or*

(v) the alien is described in any subclause of section 212(a)(3)(B)(i) or section 212(a)(3)(F), unless, in the case only of an alien described in subclause (IV) or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security determines, in the Secretary's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General *or the Secretary of Homeland Security* from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime. **[**For purposes of clause (iv), an alien who is described in section 237(a)(4)(B) shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.**]**

(C) SUSTAINING BURDEN OF PROOF; CREDIBILITY DETERMINATIONS.—**[**In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A)**]** *For purposes of this paragraph*, the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 208(b)(1)(B).

* * * * * * *

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

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

(2) ESTABLISHMENT OF A DETENTION REVIEW PROCESS FOR ALIENS WHO FULLY COOPERATE WITH REMOVAL.—

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

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

(ii) have complied with the Secretary's efforts to carry out the removal orders, including making timely application in good faith for travel or other documents necessary to the alien's departure, and

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

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

(i) shall include consideration of any evidence submitted by the alien and the history of the alien's efforts to comply with the order of removal, and

(ii) may include any information or assistance provided by the Department of State or other Federal agency and any other information available to the Secretary pertaining to the ability to remove the alien.

(3) AUTHORITY TO DETAIN BEYOND THE REMOVAL PERIOD .—

(A) INITIAL 90 DAY PERIOD.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).

(B) EXTENSION.—

(i) IN GENERAL.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien beyond the 90 days authorized in subparagraph (A) if the conditions described in subparagraph (A), (B), or (C) of paragraph (4) apply.

(ii) RENEWAL.—The Secretary may renew a certification under paragraph (4)(A) every six months without limitation, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under such paragraph.

(iii) DELEGATION.—Notwithstanding section 103, the Secretary may not delegate the authority to make or renew a certification described in clause (ii), (iii), or (v) of paragraph (4)(B) below the level of the Assistant Secretary for Immigration and Customs Enforcement.

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

(4) CONDITIONS FOR EXTENSION.—The conditions for continuation of detention are any of the following:

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

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

(ii) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien's failure or refusal to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspiracies or acts to prevent removal.

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

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

(ii) After receipt of a written recommendation from the Secretary of State, the release of the alien is likely to have serious adverse foreign policy consequences for the United States.

(iii) Based on information available to the Secretary (including available information from the intelligence community, and without regard to the grounds upon which the alien was ordered removed), there is reason to believe that the release of the alien would threaten the national security of the United States.

(iv) The release of the alien will threaten the safety of the community or any person, the conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and—

(I) the alien has been convicted of one or more aggravated felonies described in section 101(a)(43)(A) or of one or more crimes identified by the Secretary by regulation, or of one or more attempts or conspiracies to commit any such aggravated felonies or such crimes, for an aggregate term of imprisonment of at least five years; or

(II) the alien has committed one or more crimes of violence and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future.

(v) The release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and the alien has been convicted of at least one aggravated felony.

(C) Pending a determination under subparagraph (B), so long as the Secretary has initiated the administrative review process no later than 30 days after the expiration of the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).

(5) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary in the exercise of discretion may impose conditions on release as provided in subsection (a)(3).

(6) REDETENTION.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody if the alien fails to comply with the conditions of release or to cooperate in the alien's removal from the United States, or if, upon reconsideration, the Secretary determines that the alien can be detained under paragraph (1). Paragraphs (6) through (8) of subsection (a) shall apply to any alien returned to custody pursuant to this paragraph, as if the removal period terminated on the day of the redetention.

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

JUDICIAL REVIEW OF ORDERS OF REMOVAL

SEC. 242. (a) * * *

* * * * * * *

(b) REQUIREMENTS FOR REVIEW OF ORDERS OF REMOVAL.—With respect to review of an order of removal under subsection (a)(1), the following requirements apply:

(1) * * *

* * * * * * *

(3) SERVICE.—

(A) * * *

* * * * * * *

[(C) ALIEN'S BRIEF.—The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the Attorney General, and the court may not extend these deadlines except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.]

(C) ALIEN'S BRIEF.—The alien shall serve and file a brief in connection with a petition for judicial review not

later than 40 days after the date on which the administrative record is available. The court may not extend this deadline except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(D) CERTIFICATE.—

(i) After the alien has filed the alien's brief, the petition for review shall be assigned to a single court of appeals judge.

(ii) Unless that court of appeals judge or a circuit justice issues a certificate of reviewability, the petition for review shall be denied and the government shall not file a brief.

(iii) A certificate of reviewability may issue under clause (ii) only if the alien has made a substantial showing that the petition for review is likely to be granted.

(iv) The court of appeals judge or circuit justice shall complete all action on such certificate, including rendering judgment, not later than 60 days after the date on which the judge or circuit justice was assigned the petition for review, unless an extension is granted under clause (v).

(v) The judge or circuit justice may grant, on the judge's or justice's own motion or on the motion of a party, an extension of the 60-day period described in clause (iv) if—

(I) all parties to the proceeding agree to such extension; or

(II) such extension is for good cause shown or in the interests of justice, and the judge or circuit justice states the grounds for the extension with specificity.

(vi) If no certificate of reviewability is issued before the end of the period described in clause (iv), including any extension under clause (v), the petition for review shall be deemed denied, any stay or injunction on petitioner's removal shall be dissolved without further action by the court or the government, and the alien may be removed.

(vii) If a certificate of reviewability is issued under clause (ii), the Government shall be afforded an opportunity to file a brief in response to the alien's brief. The alien may serve and file a reply brief not later than 14 days after service of the Government's brief, and the court may not extend this deadline except upon motion for good cause shown.

(E) NO FURTHER REVIEW OF THE COURT OF APPEALS JUDGE'S DECISION NOT TO ISSUE A CERTIFICATE OF REVIEWABILITY.—The single court of appeals judge's decision not to issue a certificate of reviewability, or the denial of a petition under subparagraph (D)(vi), shall be the final decision for the court of appeals and shall not be reconsid-

ered, reviewed, or reversed by the court of appeals through any mechanism or procedure.

* * * * * * *

(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—

(1) IN GENERAL.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, or subsection (a)(2)(D) of this section, no court shall have jurisdiction to review any cause or claim arising from or relating to any reinstatement under section 241(a)(5) (including any challenge to the reinstated order), except as provided in paragraph (2) or (3).

(2) CHALLENGES IN COURT OF APPEALS FOR DISTRICT OF COLUMBIA TO VALIDITY OF THE SYSTEM, ITS IMPLEMENTATION, AND RELATED INDIVIDUAL DETERMINATIONS.—

(A) IN GENERAL.—Judicial review of determinations under section 241(a)(5) and its implementation is available in an action instituted in the United States Court of Appeals for the District of Columbia Circuit, but shall be limited, except as provided in subparagraph (B), to the following determinations:

(i) Whether such section, or any regulation issued to implement such section, is constitutional.

(ii) Whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General or the Secretary of Homeland Security to implement such section, is not consistent with applicable provisions of this Act or is otherwise in violation of a statute or the Constitution.

(B) RELATED INDIVIDUAL DETERMINATIONS.—If a person raises an action under subparagraph (A), the person may also raise in the same action the following issues:

(i) Whether the petitioner is an alien.

(ii) Whether the petitioner was previously ordered removed or deported, or excluded.

(iii) Whether the petitioner has since illegally entered the United States.

(C) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(3) INDIVIDUAL DETERMINATIONS UNDER SECTION 242(a).—Judicial review of determinations under section 241(a)(5) is available in an action under subsection (a) of this section, but shall be limited to determinations of—

(A) whether the petitioner is an alien;

(B) whether the petitioner was previously ordered removed, deported, or excluded; and

(C) whether the petitioner has since illegally entered the United States.

(4) SINGLE ACTION.—A person who files an action under paragraph (2) may not file a separate action under paragraph

(3). A person who files an action under paragraph (3) may not file an action under paragraph (2).

PENALTIES RELATED TO REMOVAL

SEC. 243. (a) PENALTY FOR FAILURE TO DEPART.—

(1) IN GENERAL.—Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 237(a) *or 212(a)*, who—

(A) * * *

* * * * * * *

shall be fined under title 18, United States Code, or [imprisoned not more than four years] *imprisoned for not less than six months or more than five years* (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 237(a)), or both.

* * * * * * *

(b) WILLFUL FAILURE TO COMPLY WITH TERMS OF RELEASE UNDER SUPERVISION.—An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 241(a)(3) or knowingly give false information in response to an inquiry under such section shall be fined [not more than $1,000] *under title 18, United States Code* or imprisoned [for not more than one year] *for not less than six months or more than five years (or 10 years if the alien is a member of any class described in paragraph (1)(E), (2), (3), or (4) of section 237(a)*, or both.

* * * * * * *

[(d) DISCONTINUING GRANTING VISAS TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.]

(d) DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—Whenever the Secretary of Homeland Security determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, the Secretary, after consultation with the Secretary of State, may deny admission to any citizen, subject, national, or resident of that country until the country accepts the alien who was ordered removed.

TEMPORARY PROTECTED STATUS

SEC. 244. (a) * * *

* * * * * * *

(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.—

(1) * * *

(2) ELIGIBILITY STANDARDS.—

(A) * * *

* * * * * * *

(C) LIMITATION ON JUDICIAL REVIEW.—There shall be no judicial review of any finding under subparagraph (B) that an alien is in described in section 208(b)(2)(A)(vi).

* * * * * * *

RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JULY 1, 1924 OR JANUARY 1, 1972

SEC. 249. A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not [inadmissible under] *described in* section 212(a)(3)(E) or under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) * * *

* * * * * * *

(d) is not ineligible to citizenship and is not [deportable under] *described in* section 237(a)(4)(B).

* * * * * * *

[BRINGING IN AND HARBORING CERTAIN ALIENS

[SEC. 274. (a) CRIMINAL PENALTIES.—(1)(A) Any person who—

[(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

[(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

[(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

[(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard

of the fact that such coming to, entry, or residence is or will be in violation of law; or

[(v)(I) engages in any conspiracy to commit any of the preceding acts, or

[(II) aids or abets the commission of any of the preceding acts,

shall be punished as provided in subparagraph (B).

[(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

[(i) in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

[(ii) in the case of a violation of subparagraph (A) (ii), (iii), (iv), or (v)(II) be fined under title 18, United States Code, imprisoned not more than 5 years, or both;

[(iii) in the case of a violation of subparagraph (A) (i), (ii), (iii), (iv), or (v) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18, United States Code) to, or places in jeopardy the life of, any person, be fined under title 18, United States Code, imprisoned not more than 20 years, or both; and

[(iv) in the case of a violation of subparagraph (A) (i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, United States Code, or both.

[(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs—

[(A) be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both; or

[(B) in the case of—

[(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

[(ii) an offense done for the purpose of commercial advantage or private financial gain, or

[(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined under title 18, United States Code, and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

[(3)(A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

[(B) An alien described in this subparagraph is an alien who—

[(i) is an unauthorized alien (as defined in section 274A(h)(3)), and

[(ii) has been brought into the United States in violation of this subsection.

[(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

[(A) the offense was part of an ongoing commercial organization or enterprise;

[(B) aliens were transported in groups of 10 or more; and

[(C)(i) aliens were transported in a manner that endangered their lives; or

[(ii) the aliens presented a life-threatening health risk to people in the United States.

[(b) SEIZURE AND FORFEITURE.—

[(1) IN GENERAL.—Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

[(2) APPLICABLE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

[(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

[(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

[(B) Official records of the Service or of the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

[(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization

to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

[(c) No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

[(d) Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination and the deposition otherwise complies with the Federal Rules of Evidence.

[(e) OUTREACH PROGRAM.—The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.]

ALIEN SMUGGLING AND RELATED OFFENSES

SEC. 274. (a) CRIMINAL OFFENSES AND PENALTIES.—

(1) PROHIBITED ACTIVITIES.—Whoever—

(A) assists, encourages, directs, or induces a person to come to or enter the United States, or to attempt to come to or enter the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to or enter the United States;

(B) assists, encourages, directs, or induces a person to come to or enter the United States at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, regardless of whether such person has official permission or lawful authority to be in the United States, knowing or in reckless disregard of the fact that such person is an alien;

(C) assists, encourages, directs, or induces a person to reside in or remain in the United States, or to attempt to reside in or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States;

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

(E) harbors, conceals, or shields from detection a person in the United States knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States;

(F) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from one country to another or on the high seas, under circumstances in which the person is in fact seeking to enter the United States without official permission or lawful authority; or

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

shall be punished as provided in paragraph (2), regardless of any official action which may later be taken with respect to such alien.

(2) CRIMINAL PENALTIES.—A person who violates the provisions of paragraph (1) shall—

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

(B) except as provided in subparagraphs (C) through (H), where the offense was committed for commercial advantage, profit, or private financial gain—

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

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

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

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

(E) in the case where any participant in the offense created a substantial risk of death or serious bodily injury to another person, including—

(i) transporting a person in an engine compartment, storage compartment, or other confined space;

(ii) transporting a person at an excessive speed or in excess of the rated capacity of the means of transportation; or

(iii) transporting or harboring a person in a crowded, dangerous, or inhumane manner,

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

(F) in the case where the offense caused serious bodily injury (as defined in section 1365 of title 18, United States Code, including any conduct that would violate sections 2241 or 2242 of title 18, United States Code, if the conduct

occurred in the special maritime and territorial jurisdiction of the United States) to any person, be imprisoned for not less than 7 nor more than 30 years, or fined under title 18, United States Code, or both;

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

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

(ii) intending to engage in such terrorist activity,

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

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

(3) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

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

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

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

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

(c) SEIZURE AND FORFEITURE.—

(1) IN GENERAL.—Any property, real or personal, that has been used to commit or facilitate the commission of a violation of this section, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

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

(d) AUTHORITY TO ARREST.—No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees designated by the Secretary of Homeland Security, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(e) ADMISSIBILITY OF EVIDENCE.—

(1) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—Notwithstanding any provision of the Federal Rules of Evidence, in determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the violation lacks lawful authority to

come to, enter, reside, remain, or be in the United States or that such alien had come to, entered, resided, remained or been present in the United States in violation of law:

(A) Any order, finding, or determination concerning the alien's status or lack thereof made by a federal judge or administrative adjudicator (including an immigration judge or an immigration officer) during any judicial or administrative proceeding authorized under the immigration laws or regulations prescribed thereunder.

(B) An official record of the Department of Homeland Security, Department of Justice, or the Department of State concerning the alien's status or lack thereof.

(C) Testimony by an immigration officer having personal knowledge of the facts concerning the alien's status or lack thereof.

(2) VIDEOTAPED TESTIMONY.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unavailable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination at the deposition and the deposition otherwise complies with the Federal Rules of Evidence.

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

(1) The term "lawful authority" means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or the regulations prescribed thereunder. Such term does not include any such authority secured by fraud or otherwise obtained in violation of law, nor does it include authority that has been sought but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside, remain, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

(2) The term "unlawful transit" means travel, movement, or temporary presence that violates the laws of any country in which the alien is present, or any country from which or to which the alien is traveling or moving.

UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

(1) IN GENERAL.—It is unlawful for a person or other entity—

(A) to hire, or to recruit or refer **[**for a fee**]**, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

[(B)(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to re-

cruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b).]

(B) to hire, continue to employ, or to recruit or refer for employment in the United States an individual without complying with the requirements of subsection (b).

(2) CONTINUING EMPLOYMENT.—It is unlawful for a person or other entity, [after hiring an alien for employment in accordance with paragraph (1),] *after complying with paragraph (1),* to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) DEFENSE.—*(A)* A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the [hiring,] *hiring, employing,* recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such [hiring,] *hiring, employing,* recruiting, or referral.

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

(i) FAILURE TO SEEK VERIFICATION.—

(I) IN GENERAL.—If the person or entity has not made an inquiry, under the mechanism established under subsection (b)(7), seeking verification of the identity and work eligibility of the individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring, employing, the date specified in subsection (b)(8)(B) for previously hired individuals, or before the recruiting or referring commences, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

(II) SPECIAL RULE FOR FAILURE OF VERIFICATION MECHANISM.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no nonresponses and qualify for such defense.

(ii) FAILURE TO OBTAIN VERIFICATION.—If the person or entity has made the inquiry described in clause (i)(I) but has not received an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (b)(7)(B) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.

(b) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

[(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

[(i) a document described in subparagraph (B), or

[(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.]

(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Secretary by regulation, that it has verified that the individual is not an unauthorized alien by—

(i) obtaining from the individual the individual's social security account number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under paragraph (2), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

(ii)(I) examining a document described in subparagraph (B); or (II) examining a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and, if the document bears an expiration date, that expiration date has not elapsed. If an individual provides a document (or combination of documents) that reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and is sufficient to meet the first sentence of this paragraph, nothing in this paragraph shall be construed as

requiring the person or entity to solicit the production of any other document or as requiring the individual to produce another document.

* * * * * * *

(D) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is an individual's—

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual [or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section]; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification *and that contains a photograph of the individual*.

* * * * * * *

(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment. *The individual must also provide that individual's social security account number (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under this paragraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.*

[(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

[(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

[(B) in the case of the hiring of an individual—

[(i) three years after the date of such hiring, or

[(ii) one year after the date the individual's employment is terminated,

whichever is later.]

(3) RETENTION OF VERIFICATION FORM AND VERIFICATION.—

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

(i) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual or the date of the completion of verification of a previously hired individual and ending—

(I) in the case of the recruiting or referral of an individual, three years after the date of the recruiting or referral;

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

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

(bb) one year after the date the individual's employment is terminated; and

(III) in the case of the verification of a previously hired individual, the later of—

(aa) three years after the date of the completion of verification; or

(bb) one year after the date the individual's employment is terminated;

(ii) make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring or in the case of previously hired individuals, the date specified in subsection (b)(8)(B), or before the recruiting or referring commences; and

(iii) may not commence recruitment or referral of the individual until the person or entity receives verification under subparagraph (B)(i) or (B)(iii).

(B) VERIFICATION.—

(i) VERIFICATION RECEIVED.—If the person or other entity receives an appropriate verification of an individual's identity and work eligibility under the verification system within the time period specified, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a final verification of such identity and work eligibility of the individual.

(ii) TENTATIVE NONVERIFICATION RECEIVED.—If the person or other entity receives a tentative nonverification of an individual's identity or work eligibility under the verification system within the time period specified, the person or entity shall so inform the individual for whom the verification is sought. If the individual does not contest the nonverification within the time period specified, the nonverification shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under the system to indicate a tentative

nonverification. If the individual does contest the nonverification, the individual shall utilize the process for secondary verification provided under paragraph (7). The nonverification will remain tentative until a final verification or nonverification is provided by the verification system within the time period specified. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonverification becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

(iii) FINAL VERIFICATION OR NONVERIFICATION RECEIVED.—If a final verification or nonverification is provided by the verification system regarding an individual, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a verification or nonverification of identity and work eligibility of the individual.

(iv) EXTENSION OF TIME.—If the person or other entity in good faith attempts to make an inquiry during the time period specified and the verification system has registered that not all inquiries were received during such time, the person or entity may make an inquiry in the first subsequent working day in which the verification system registers that it has received all inquiries. If the verification system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

(v) CONSEQUENCES OF NONVERIFICATION.—

(I) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonverification regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

(II) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under subclause (I), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.

(vi) CONTINUED EMPLOYMENT AFTER FINAL NONVERIFICATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonverification, a rebuttable pre-

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

* * * * * * *

(7) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

(A) IN GENERAL.—The Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the Secretary, which may be a nongovernmental entity)—

(i) responds to inquiries made by persons at any time through a toll-free telephone line and other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed; and

(ii) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.

(B) INITIAL RESPONSE.—The verification system shall provide verification or a tentative nonverification of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing verification or tentative nonverification, the verification system shall provide an appropriate code indicating such verification or such nonverification.

(C) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONVERIFICATION.—In cases of tentative nonverification, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final verification or nonverification within 10 working days after the date of the tentative nonverification. When final verification or nonverification is provided, the verification system shall provide an appropriate code indicating such verification or nonverification.

(D) DESIGN AND OPERATION OF SYSTEM.—The verification system shall be designed and operated—

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

(ii) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

(iii) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

(iv) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

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

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

(III) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.

(E) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—As part of the verification system, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security (and any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such verification or nonverification) except as provided for in this section or section 205(c)(2)(I) of the Social Security Act.

(F) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—(i) As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C), compares the name and alien identification or authorization number which are provided in an inquiry against such information maintained by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

(ii) When a single employer has submitted to the verification system pursuant to paragraph (3)(A) the identical social security account number in more than one instance, or when multiple employers have submitted to the verification system pursuant to such paragraph the identical social security account number, in a manner which indicates the possible fraudulent use of that number, the Secretary of Homeland Security shall conduct an investigation, within the time periods specified in subparagraphs (B) and (C), in order to ensure that no fraudulent use of a social security account number has taken place. If the Secretary has selected a designee to establish and administer the verification system, the designee shall notify the Secretary when a single employer has submitted to the verification system pursuant to paragraph (3)(A) the identical social security account number in more than one instance, or when

multiple employers have submitted to the verification system pursuant to such paragraph the identical social security account number, in a manner which indicates the possible fraudulent use of that number. The designee shall also provide the Secretary with all pertinent information, including the name and address of the employer or employers who submitted the relevant social security account number, the relevant social security account number submitted by the employer or employers, and the relevant name and date of birth of the employee submitted by the employer or employers.

(G) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subparagraph (C).

(H) LIMITATION ON USE OF THE VERIFICATION SYSTEM AND ANY RELATED SYSTEMS.—

(i) IN GENERAL.—Notwithstanding any other provision of law, nothing in this paragraph shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this paragraph for any other purpose other than as provided for.

(ii) NO NATIONAL IDENTIFICATION CARD.—Nothing in this paragraph shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(I) FEDERAL TORT CLAIMS ACT.—If an individual alleges that the individual would not have been dismissed from a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of the Federal Tort Claims Act, and injunctive relief to correct such error. No class action may be brought under this subparagraph.

(J) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION.—No person or entity shall be civilly or criminally liable for any action taken in good faith reliance on information provided through the employment eligibility verification mechanism established under this paragraph.

(8) USE OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM FOR PREVIOUSLY HIRED INDIVIDUALS.—

(A) ON A VOLUNTARY BASIS.—Beginning on the date that is 2 years after the date of the enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 and until the date specified in subparagraph (B)(iii), a person or entity may make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility

of any individual employed by the person or entity, as long as it is done on a nondiscriminatory basis.

(B) ON A MANDATORY BASIS.—

(i) A person or entity described in clause (ii) must make an inquiry as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date three years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

(ii) A person or entity is described in this clause if it is a Federal, State, or local governmental body (including the Armed Forces of the United States), or if it employs individuals working in a location that is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, an airport, or that contains critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))), but only to the extent of such individuals.

(iii) All persons and entities other than those described in clause (ii) must make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date six years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

* * * * * * *

[(d) EVALUATION AND CHANGES IN EMPLOYMENT VERIFICATION SYSTEM.—

[(1) PRESIDENTIAL MONITORING AND IMPROVEMENTS IN SYSTEM.—

[(A) MONITORING.—The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

[(B) IMPROVEMENTS TO ESTABLISH SECURE SYSTEM.—To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system

may be implemented only if the changes conform to the requirements of paragraph (2).

[(2) RESTRICTIONS ON CHANGES IN SYSTEM.—Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

[(A) RELIABLE DETERMINATION OF IDENTITY.—The system must be capable of reliably determining whether—

[(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

[(ii) the employee or prospective employee is claiming the identity of another individual.

[(B) USING OF COUNTERFEIT-RESISTANT DOCUMENTS.—If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

[(C) LIMITED USE OF SYSTEM.—Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

[(D) PRIVACY OF INFORMATION.—The system must protect the privacy and security of personal information and identifiers utilized in the system.

[(E) LIMITED DENIAL OF VERIFICATION.—A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

[(F) LIMITED USE FOR LAW ENFORCEMENT PURPOSES.—The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

[(G) RESTRICTION ON USE OF NEW DOCUMENTS.—If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

[(3) NOTICE TO CONGRESS BEFORE IMPLEMENTING CHANGES.—

[(A) IN GENERAL.—The President may not implement any change under paragraph (1) unless at least—

[(i) 60 days,

[(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

[(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the

Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

[(B) CONTENTS OF REPORT.—In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

[(C) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—

[(i) HEARINGS AND REVIEW.—The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

[(ii) CONGRESSIONAL ACTION.—No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

[(D) MAJOR CHANGES DEFINED.—As used in this paragraph, the term "major change" means a change which would—

[(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

[(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

[(iii) require any change in any card used for accounting purposes under the Social Security Act, including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

[(E) GENERAL REVENUE FUNDING OF SOCIAL SECURITY CARD CHANGES.—Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act.

[(4) DEMONSTRATION PROJECTS.—

[(A) AUTHORITY.—The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than five years.

[(B) REPORTS ON PROJECTS.—The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.]

(e) COMPLIANCE.—

(1) * * *

* * * * * * *

(4) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTY FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection—

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount*, subject to paragraph (10),* of—

(i) [not less than $250 and not more than $2,000] *not less than $5,000* for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) [not less than $2,000 and not more than $5,000] *not less than $10,000* for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) [not less than $3,000 and not more than $10,000] *not less than $25,000* for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

[(B) may require the person or entity—

[(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

[(ii) to take such other remedial action as is appropriate.]

(B) may require the person or entity to take such other remedial action as is appropriate.

* * * * * * *

(5) ORDER FOR CIVIL MONEY PENALTY FOR PAPERWORK VIOLATIONS.—With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount*, subject to paragraph (10),* of not less than [$100] *$1,000* and not more than [$1,000] *$25,000* for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to [the size of the business of the employer being charged, the good faith of the employer] *the good faith of the employer being charged*, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations. *Failure by a person or entity to utilize the employment eligibility*

verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).

* * * * * * *

(10) MITIGATION OF CIVIL MONEY PENALTIES FOR SMALLER EMPLOYERS.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring by an employer, the dollar amounts otherwise specified in the respective paragraph shall be reduced as follows:

(A) In the case of an employer with an average of fewer than 26 full-time equivalent employees (as defined by the Secretary of Homeland Security), the amounts shall be reduced by 60 percent.

(B) In the case of an employer with an average of at least 26, but fewer than 101, full-time equivalent employees (as so defined), the amounts shall be reduced by 40 percent.

(C) In the case of an employer with an average of at least 101, but fewer than 251, full-time equivalent employees (as so defined), the amounts shall be reduced by 20 percent.

The last sentence of paragraph (4) shall apply under this paragraph in the same manner as it applies under such paragraph.

(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

[(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.]

(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1) or (2) shall be fined not more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the [Attorney General] *Secretary of Homeland Security* has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the [Attorney General] *Secretary of Homeland Security* may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the [Attorney General] *Secretary of Homeland Security* deems necessary.

* * * * * * *

(h) MISCELLANEOUS PROVISIONS.—

(1) * * *

* * * * * * *

(4) DEFINITION OF RECRUIT OR REFER.—As used in this section, the term "refer" means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person. Generally, only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition. However, union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section the term "recruit" means the act of soliciting a person, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Generally, only persons or entities recruiting for remunerations (whether on a retainer or contingency basis) are included in the definition. However, union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service agencies, whether public, private, for-profit, or nonprofit that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.

* * * * * * *

CIVIL PENALTIES FOR FAILURE TO DEPART

SEC. 274D. (a) IN GENERAL.—Any alien subject to a final order of removal who—

(1) * * *

* * * * * * *

shall pay a civil penalty of not more than $500 to the [Commissioner] *Secretary of Homeland Security* for each day the alien is in violation of this section.

* * * * * * *

(c) INELIGIBILITY FOR RELIEF.—

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

(2) EXCEPTION.—Paragraph (1) does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture.

* * * * * * *

ENTRY OF ALIEN AT IMPROPER TIME OR PLACE; *UNLAWFUL PRESENCE*; MISREPRESENTATION AND CONCEALMENT OF FACTS

SEC. 275. (a) [Any alien] *Except as provided in subsection (b), any alien* who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, [or] (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, *or (4) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder,* shall, for the first commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than [6 months] *one year and a day*, or both, and, for a subsequent commission of any such offense *or following an order of voluntary departure*, be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

* * * * * * *

(c) An individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than [5] *10* years, or fined not more than $250,000, or both. *An offense under this subsection continues until the fraudulent nature of the marriage is discovered by an immigration officer.*

(d) Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than [5] *10* years, fined in accordance with title 18, United States Code, or both. *An offense under this subsection continues until the fraudulent nature of the commercial enterprise is discovered by an immigration officer.*

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

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

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

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

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

(B) eludes examination or inspection by immigration officers;

(C) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact; or

(D) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder.

(3) The prior convictions in subparagraph (A) or (B) of paragraph (1) are elements of those crimes and the penalties in those subparagraphs shall apply only in cases in which the conviction (or convictions) that form the basis for the additional penalty are al-

leged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is an aggravated felony or other qualifying crime, and the criminal trial for a violation of this section shall not be bifurcated.

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

(f) For purposes of this section, the term "attempts to enter" refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.

REENTRY OF REMOVED ALIEN

SEC. 276. (a) Subject to subsection (b), any alien who—

(1) * * *

(2) enters, attempts to enter, or is at any time found in, the United States**[**, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this or any prior Act,**]**,

shall be fined under title 18, United States Code, or **[**imprisoned not more than 2 years,**]** *imprisoned for a term of not less than 1 year and not more than 2 years,* or both. *It shall be an affirmative defense to an offense under this subsection that (A) prior to an alien's reembarkation at a place outside the United States or an alien's application for admission from foreign contiguous territory, the Secretary of Homeland Security has expressly consented to the alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, such alien was not required to obtain such advance consent under this Act or any prior Act.*

(b) Notwithstanding subsection (a), in the case of any alien described in such subsection—

(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, United States Code, **[**imprisoned not more than 10 years,**]** *imprisoned for a term of not less than 5 years and not more than 10 years,* or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, **[**imprisoned not more than 20 years,**]** *imprisoned for a term of not less than 10 years and not more than 20 years,* or both;

(3) who has been excluded from the United States pursuant to section 235(c) because the alien was excludable under section 212(a)(3)(B) or who has been removed from the United States pursuant to the provisions of title V, and who thereafter, without the permission of the **[**Attorney General**]** *Secretary of Homeland Security*, enters the United States, or at-

tempts to do so, shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence[. or]*; or*

(4) who was removed from the United States pursuant to section 241(a)(4)(B) who thereafter, without the permission of the [Attorney General] *Secretary of Homeland Security*, enters, attempts to enter, or is at any time found in, the United States (unless the [Attorney General] *Secretary of Homeland Security* has expressly consented to such alien's reentry) shall be fined under title 18, United States Code, [imprisoned for not more than 10 years,] *imprisoned for a term of not less than 5 years and not more than 10 years,* or both.

For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law. *The prior convictions in paragraphs (1) and (2) are elements of enhanced crimes and the penalties under such paragraphs shall apply only where the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is a qualifying crime and the criminal trial for a violation of either such paragraph shall not be bifurcated.*

(c) Any alien deported pursuant to section [242(h)(2)] *241(a)(4)* who enters, attempts to enter, or is at any time found in, the United States (unless the [Attorney General] *Secretary of Homeland Security* has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

* * * * * * *

(e) For purposes of this section, the term "attempts to enter" refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.

AIDING OR ASSISTING CERTAIN ALIENS TO ENTER THE UNITED STATES

SEC. 277. [Any person] *(a) Subject to subsection (b), any person* who knowingly aids or assists any alien inadmissible under section 212(a)(2) (insofar as an alien inadmissible under such section has been convicted of an aggravated felony) or 212(a)(3) (other than subparagraph (E) thereof) to enter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to enter the United States, shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both.

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

(2) The term of imprisonment imposed under paragraph (1) shall be within the range to which the reentering alien is subject under section 276(b).

* * * * * * *

CENTRAL FILE; INFORMATION FROM OTHER DEPARTMENTS AND AGENCIES

SEC. 290. (a) * * *

(b) Any information in any records kept by any department or agency of the Government as to the identity and location of aliens in the United States*, or as to any person seeking any benefit or privilege under the immigration laws,* shall be made available to the [Service] *Secretary of Homeland Security* upon request made by the [Attorney General] *Secretary* to the head of any such department or agency.

* * * * * * *

TITLE III—NATIONALITY AND NATURALIZATION

* * * * * * *

CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

* * * * * * *

NATURALIZATION AUTHORITY

SEC. 310. (a) * * *

* * * * * * *

(c) JUDICIAL REVIEW.—A person whose application for naturalization under this title is denied, after a hearing before an immigration officer under section 336(a), may*, no later than the date that is 120 days after the Secretary's final determination* seek review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of title 5, United States Code. [Such review shall be de novo, and the court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application.] *The burden shall be upon the petitioner to show that the Secretary's denial of the application was not supported by facially legitimate and bona fide reasons. Except in a proceeding under section 340, notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to determine, or to review a determination of the Secretary made at any time regarding, for purposes of an application for naturalization, whether an alien is a person of good moral character, whether an alien understands and is attached to the principles of the Constitution of the United States, or whether an alien is well disposed to the good order and happiness of the United States.*

* * * * * * *

REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION, AND FAVORABLE DISPOSITION TO THE UNITED STATES

SEC. 316. (a) * * *

* * * * * * *

(g) No person shall be naturalized who the Secretary of Homeland Security determines, in the Secretary's discretion, to have been at any time an alien described in section 212(a)(3) or 237(a)(4). Such determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and shall be binding upon, and unreviewable by, any court exercising jurisdiction under the immigration laws over any application for naturalization, regardless whether such jurisdiction to review a decision or action of the Secretary is de novo or otherwise.

* * * * * * *

PREREQUISITE TO NATURALIZATION; BURDEN OF PROOF

SEC. 318. Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405(b), and except as provided in sections 328 and 329 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no application for naturalization [shall be considered by the Attorney General] *shall be considered by the Secretary of Homeland Security or any court* if there is pending against the applicant a removal proceeding [pursuant to a warrant of arrest issued under the provisions of this or any other Act:] *or other proceeding to determine the applicant's inadmissibility or deportability, or to determine whether the applicant's lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced: Provided,* That the findings of the Attorney General in terminating removal proceedings or in canceling the removal of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way [upon the Attorney General] *upon the Secretary of Homeland Security* with respect to the question of whether such person has established his eligibility for naturalization as required by this title.

* * * * * * *

HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

SEC. 336. (a) * * *

[(b) If there is a failure to make a determination under section 335 before the end of the 120-day period after the date on which

the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.]

(b) If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period after the date on which the Secretary of Homeland Security completes all examinations and interviews conducted under such section, as such terms are defined by the Secretary pursuant to regulations, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. Such court shall only have jurisdiction to review the basis for delay and remand the matter to the Secretary for the Secretary's determination on the application.

* * * * * * *

SECTION 924 OF TITLE 18, UNITED STATES CODE

§ 924. Penalties

(a) * * *

* * * * * * *

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence*, alien smuggling crime,* or drug trafficking crime (including a crime of violence*, alien smuggling crime,* or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence*, alien smuggling crime,* or drug trafficking crime—

(i) * * *

* * * * * * *

(D) Notwithstanding any other provision of law—

(i) * * *

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence*, alien smuggling crime,* or drug trafficking crime during which the firearm was used, carried, or possessed.

* * * * * * *

(6) For purposes of this subsection, the term "alien smuggling crime" means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, or 1328).

* * * * * * *

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. Short title; table of contents.

* * * * * * *

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

* * * * * * *

Subtitle C—Miscellaneous Provisions

Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.

* * * * * * *

Sec. 431. Office of Air and Marine Operations.

* * * * * * *

TITLE I—DEPARTMENT OF HOMELAND SECURITY

* * * * * * *

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) * * *

* * * * * * *

(9) Not more than [12] *13* Assistant Secretaries.

* * * * * * *

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

* * * * * * *

Subtitle C—Miscellaneous Provisions

* * * * * * *

SEC. 431. OFFICE OF AIR AND MARINE OPERATIONS.

(a) ESTABLISHMENT.—There is established in the Department an Office of Air and Marine Operations (referred to in this section as the "Office").

(b) ASSISTANT SECRETARY.—The Office shall be headed by an Assistant Secretary for Air and Marine Operations who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report directly to the Secretary. The Assistant Secretary shall be responsible for all functions and operations of the Office.

(c) MISSIONS.—

(1) PRIMARY MISSION.—The primary mission of the Office shall be the prevention of the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

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

(d) AIR AND MARINE OPERATIONS CENTER.—

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

(2) DUTIES.—The Center shall provide comprehensive radar, communications, and control services to the Office and to eligible Federal, State, or local agencies (as determined by the Assistant Secretary for Air and Marine Operations), in order to identify, track, and support the interdiction and apprehension of individuals attempting to enter United States airspace or coastal waters for the purpose of narcotics trafficking, trafficking of persons, or other terrorist or criminal activity.

(e) ACCESS TO INFORMATION.—The Office shall ensure that other agencies within the Department of Homeland Security, the Department of Defense, the Department of Justice, and such other Federal, State, or local agencies, as may be determined by the Secretary, shall have access to the information gathered and analyzed by the Center.

(f) REQUIREMENT.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary shall require that all information concerning all aviation activities, including all airplane, helicopter, or other aircraft flights, that are undertaken by the either the Office, United States Immigration and Customs Enforcement, United States Customs and Border Protection, or any subdivisions thereof, be provided to the Air and Marine Operations Center. Such information shall include the identifiable transponder, radar, and electronic emissions and codes originating and resident aboard the aircraft or similar asset used in the aviation activity.

(g) TIMING.—The Secretary shall require the information described in subsection (f) to be provided to the Air and Marine Operations Center in advance of the aviation activity whenever practicable for the purpose of timely coordination and conflict resolution of air missions by the Office, United States Immigration and Customs Enforcement, and United States Customs and Border Protection.

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

* * * * * * *

SECTION 103 OF THE REAL ID Act of 2005

(Division B of Public Law 109–13)

SEC. 103. INADMISSIBILITY DUE TO TERRORIST AND TERRORIST-RELATED ACTIVITIES.

(a) * * *

* * * * * * *

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this division, and these amendments, and section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)), as amended by this section, shall apply to—

(1) removal*, deportation, and exclusion* proceedings instituted before, on, or after the date of the enactment of this division; and

* * * * * * *

SECTION 509 OF THE IMMIGRATION ACT OF 1990

SEC. 509. GOOD MORAL CHARACTER DEFINITION.

(a) * * *

[(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to convictions occurring on or after such date, except with respect to conviction for murder which shall be considered a bar to good moral character regardless of the date of the conviction.]

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

SECTION 5504 OF THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

SEC. 5504. BAR TO GOOD MORAL CHARACTER FOR ALIENS WHO HAVE COMMITTED ACTS OF TORTURE, EXTRAJUDICIAL KILLINGS, OR SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.

Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended—

(1) * * *

(2) by [adding at the end] *inserting immediately after paragraph (8)* the following:

"(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) (relating to severe violations of religious freedom).".

SECTION 401 OF THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

SEC. 401. ESTABLISHMENT OF PROGRAMS.

(a) * * *

(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Secretary of Homeland Security shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act. Unless the Congress otherwise provides, the Secretary of Homeland Security shall terminate a pilot program [at the end of the 11-year period beginning on the first day the pilot program is in effect] *two years after the enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005*.

* * * * * * *

COMMITTEE JURISDICTION LETTERS

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

Don Young
Chairman

Lloyd A. Jones, Chief of Staff
Elizabeth Megginson, Chief Counsel

James L. Oberstar
Ranking Democratic Member

David Heymsfeld, Democratic Chief of Staff

December 13, 2005

The Honorable F. James Sensenbrenner, Jr., Chairman
Committee on the Judiciary
2138 Rayburn Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to you concerning the jurisdictional interest of the Transportation and Infrastructure Committee in matters being considered in H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

Our Committee recognizes the importance of H.R. 4437 and the need for the legislation to move expeditiously. Therefore, while we have a valid claim to jurisdiction over a number of provisions of the bill, I do not intend to request referral. This, of course, is conditional on our mutual understanding that nothing in this legislation or my decision to forego the referral waives, reduces or otherwise affects the jurisdiction of the Transportation and Infrastructure Committee.

The Committee on Transportation and Infrastructure also asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House-Senate conference. I would appreciate it if you would include a copy of this letter and of your response acknowledging our jurisdictional interest in the Committee Report and as part of the *Congressional Record* during consideration of the bill by the House.

Thank you for your cooperation in this matter and your leadership in border security and immigration.

Sincerely,

DON YOUNG
Chairman

cc: Hon. James L. Oberstar
Hon. John V. Sullivan

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
BOB INGLIS, South Carolina
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL ISSA, California
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas

ONE HUNDRED NINTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951
http://www.house.gov/judiciary

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California
ADAM SMITH, Washington
CHRIS VAN HOLLEN, Maryland

December 13, 2005

The Honorable Don Young
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C.

Dear Chairman Young:

Thank you for your letter expressing the Committee on Transportation and Infrastructure's jurisdictional interest in H.R. 4437. I agree that the legislation may contain provisions within the subject matter jurisdiction of the Committee on Transportation and Infrastructure. However, I appreciate your willingness to waive further consideration of the bill in order to expedite its consideration. I will support appropriate representation from the Committee on Transportation and Infrastructure for any provisions within its jurisdiction in the event of a House-Senate conference. In addition, I will include this exchange of correspondence in the Committee on the Judiciary's report to accompany H.R. 4437 and in the Congressional Record on the House floor.

Thank you for your willingness to work with the Committee on the Judiciary on this vital and timely legislation.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable James L. Oberstar
The Honorable John V. Sullivan

FJS/rt

PETER T. KING, NEW YORK
CHAIRMAN

BENNIE G. THOMPSON, MISSISSIPPI
RANKING MEMBER

One Hundred Ninth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

December 13, 2005

The Honorable F. James Sensenbrenner, Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to you concerning the jurisdictional interest of the Committee on Homeland Security in H.R. 4437, the "Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005." This legislation – which incorporates the border security provisions of H.R. 4312 as reported favorably to the House by the Committee on Homeland Security – was introduced on December 6, 2005, and referred to the Committee on the Judiciary and to the Committee on Homeland Security. On December 8, 2005, the Committee on the Judiciary ordered H.R. 4437 to be favorably reported to the House as amended.

The Committee on Homeland Security recognizes the importance of H.R.4437, and the need for this collaborative measure to move expeditiously for consideration on the floor. Because of our prior markup of the border security provisions of H.R. 4312, which have been included in H.R. 4437, further consideration of the bill by the Committee on Homeland Security is unnecessary. Therefore, while we have a recognized claim to jurisdiction over H.R. 4437, the Committee on Homeland Security agrees to waive further consideration. This agreement to discharge is conditional on our mutual understanding that nothing in this legislation or my decision to waive further consideration reduces or otherwise affects the jurisdiction of the Committee on Homeland Security over provisions of the bill. Nor does this waiver affect the right of the Committee on Homeland Security to have its members named as conferees in the event of a conference with the Senate on this bill.

In recognition of the work of the Committee on Homeland Security in the development of border security provisions contained in this combined bill, I reiterate our understanding that your report on H.R. 4312 will include appropriate cross-references to H. Rept. 109-329, Part I – the report of the Committee on Homeland Security on H.R. 4312 – and that our report will serve as the legislative history for those provisions over which the Committee on Homeland Security has jurisdiction. I understand that not all provisions contained in H.R. 4312 are within the exclusive jurisdiction of the Committee on Homeland Security, and that the Committee on the Judiciary report to accompany H.R. 4437 will thus include legislative history for some provisions contained in H.R. 4312. I also want to confirm the agreement that our respective committees will share equal control over the time allotted for general debate on H.R. 4437 during consideration of the measure on the House floor.

The Honorable F. James Sensenbrenner
December 13, 2005
Page 2

Finally, I ask that you please include in your Committee's report on H.R. 4437 a copy of this letter and a copy of your response acknowledging our jurisdictional interest in the bill, your agreement to support our right to the appointment of conferees, and a commitment to share equally the time for general debate on the measure during consideration on the floor. I appreciate your willingness to work with us on this important effort to promote the goal of enhancing border security and strengthening enforcement of the immigration laws.

Sincerely,

PETER T. KING
Chairman

cc: The Honorable J. Dennis Hastert, Speaker
The Honorable Bennie Thompson, Ranking Member
The Honorable John Conyers, Jr., Ranking Member
Committee on the Judiciary
The Honorable John V. Sullivan, Parliamentarian

F. JAMES SENSENBRENNER, JR., Wisconsin
CHAIRMAN

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR S. SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
BOB INGLIS, South Carolina
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL ISSA, California
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas

ONE HUNDRED NINTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951
http://www.house.gov/judiciary

JOHN CONYERS, JR., Michigan
RANKING MINORITY MEMBER

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SANCHEZ, California
ADAM SMITH, Washington
CHRIS VAN HOLLEN, Maryland

December 13, 2005

The Honorable Peter F. King
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C.

Dear Chairman King:

Thank you for your letter of December 12, 2005, concerning H.R. 4437, the "Border Security, Antiterrorism, and Illegal Immigration Control Act of 2005." I agree that H.R. 4437, as reported by the Committee on the Judiciary, implicates the jurisdiction of the Committee on Homeland Security under rule X. However, I appreciate your willingness to waive further consideration of the bill in order to expedite its consideration on the House floor.

I wish to confirm our mutual understanding concerning further consideration of this bill. I will support appropriate representation from the Committee on Homeland Security in the event of a House-Senate conference, and support the allocation of equal time for general debate during the consideration of H.R. 4437 on the House floor. I also acknowledge that because this legislation incorporates the border security provisions contained in H.R. 4312, the Committee on the Judiciary report for H.R. 4437 will cross-reference the Committee on Homeland Security's legislative report for H.R. 4312 (H.R. Rept. 109-329, Part I). I also will include this exchange of correspondence in the Committee on the Judiciary's report for H.R. 4437. Finally, I make these commitments with the mutual understanding that nothing shall be construed to limit or impair the jurisdiction of the Committee on the Judiciary on this or other legislation.

Thank you for your willingness to work with the Committee on the Judiciary on this vital and timely legislation.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

cc: The Honorable J. Dennis Hastert, Speaker
The Honorable John Conyers, Jr.
The Honorable Bennie Thompson
The Honorable John V. Sullivan, Parliamentarian

FJS/rt

MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, DECEMBER 8, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee), presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

[Intervening business.]

Chairman SENSENBRENNER. Now, pursuant to notice, I call up the bill, H.R. 4437, the "Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005" for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered open for amendment by title, then each title will be considered as read.

[The bill, H.R. 4337, follows:]

I

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Border Protection, Antiterrorism, and Illegal Immigration 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 support.
Sec. 302. Border security on protected land.
Sec. 303. Border security threat assessment and information sharing test and evaluation exercise.
Sec. 304. Border Security Advisory Committee.

Sec. 305. Permitted use of Homeland Security grant funds for border security activities.
Sec. 306. Center of excellence for border security.
Sec. 307. Sense of Congress regarding cooperation with Indian Nations.

TITLE IV—DETENTION AND REMOVAL

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

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.

SEC. 2. STATE DEFINED.

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

TITLE I—SECURING UNITED STATES BORDERS

SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE BORDER.

(a) IN GENERAL.—The Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States, to include the following—

(1) systematic surveillance of the international land and maritime borders of the United States through more effective use of personnel and technology, such as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras;

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

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

(4) increasing deployment of United States Customs and Border Protection personnel to areas along the international land and maritime borders of the United States where there are high levels of unlawful entry by aliens and other areas likely to be impacted by such increased deployment.

(b) OPERATIONAL CONTROL DEFINED.—In this section, the term ''operational control'' means the prevention of the entry into the United States of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

SEC. 102. NATIONAL STRATEGY FOR BORDER SECURITY.

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

Secretary of Homeland Security shall submit to the appropriate congressional committees a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States. The plan shall include the following:

(1) An assessment of existing technologies employed on such borders.

(2) A description of whether and how new surveillance technologies will be compatible with existing surveillance technologies.

(3) A description of how the United States Customs and Border Protection is working, or is expected to work, with the Directorate of Science and Technology of the Department of Homeland Security to identify and test surveillance technology.

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

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

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

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

trol issues associated with the use of unmanned aerial vehicles in the National Airspace System.

(b) NATIONAL STRATEGY FOR BORDER SECURITY.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall submit to the appropriate congressional committees a National Strategy for Border Security to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States. The Secretary shall update the Strategy as needed and shall submit to the Committee on Homeland Security of the House of Representatives, not later than 30 days after each such update, the updated Strategy. The National Strategy for Border Security shall include the following:

(1) The implementation timeline for the surveillance plan described in subsection (a).

(2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States at points along the international land and maritime borders of the United States.

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

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

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

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

(4) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

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

(6) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations with respect to how the Department of Homeland Security can 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

completion of the National Strategy for Border Security.

(11) A timeline for the implementation of the additional security measures determined necessary as part of the National Strategy for Border Security, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, and resource estimates and allocations.

(c) CONSULTATION.—In creating the National Strategy for Border Security described in subsection (b), the Secretary shall consult with—

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

(2) an appropriate cross-section of private sector and nongovernmental organizations with relevant expertise.

(d) PRIORITY OF NATIONAL STRATEGY.—The National Strategy for Border Security described in subsection (b) shall be the controlling document for security and enforcement efforts related to securing the international land and maritime borders of the United States.

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

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

(f) REPORTING OF IMPLEMENTING LEGISLATION.—After submittal of the National Strategy for Border Security described in subsection (b) to the Committee on Homeland Security of the House of Representatives, such Committee shall promptly report to the House legislation authorizing necessary security measures based on its evaluation of the National Strategy for Border Security.

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

SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY AGREEMENTS.

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

Canada, including recommendations on improving cooperation with such countries to enhance border security.

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

SEC. 104. BIOMETRIC DATA ENHANCEMENTS.

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

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

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

SEC. 105. ONE FACE AT THE BORDER INITIATIVE.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report—

(1) describing the tangible and quantifiable benefits of the One Face at the Border Initiative established by the Department of Homeland Security;

(2) identifying goals for and challenges to increased effectiveness of the One Face at the Border Initiative;

(3) providing a breakdown of the number of inspectors who were—

(A) personnel of the United States Customs Service before the date of the establishment of the Department of Homeland Security;

(B) personnel of the Immigration and Naturalization Service before the date of the establishment of the Department;

(C) personnel of the Department of Agriculture before the date of the establishment of the Department; or

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

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

(5) outlining the steps taken by the Department 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
8 capabilities—

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

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

(b) REPORT BY INSPECTOR GENERAL.—Upon completion of each review described in subsection (a), the Inspector General shall submit to the Secretary of Homeland Security a report containing the findings of the review, including findings regarding any cost overruns, significant delays in contract execution, lack of rigorous departmental contract management, insufficient departmental financial oversight, bundling that limits the ability of small business to compete, or other high risk business practices.

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

(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts that are otherwise authorized to be appropriated to the Office of the Inspector General, an additional amount equal to at least five percent for fiscal year

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

SEC. 110. BORDER PATROL TRAINING CAPACITY REVIEW.

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

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

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

(2) A review and a detailed breakdown of the costs incurred by United States Customs and Border Protection and the Federal Law Enforcement Training Center to train one new Border Patrol agent.

(3) A comparison, based on the review and breakdown under paragraph (2) of the costs, effectiveness, scope, and quality, including geographic

characteristics, with other similar law enforcement training programs provided by State and local agencies, non-profit organizations, universities, and the private sector.

(4) An evaluation of whether and how utilizing comparable non-Federal training programs, proficiency testing to streamline training, and long-distance learning programs may affect—

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

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

SEC. 111. AIRSPACE SECURITY MISSION IMPACT REVIEW.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives a report detailing the impact the airspace security mission in the National Capital Region (in this section referred to as the ''NCR'') will have on the ability of the Department of Homeland Security to protect the international land and maritime borders of the United States. Specifically, the report shall address:

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

(2) An assessment of the impact that diverting resources to support the NCR mission has or is expected to have on the traditional missions in and around the international land and maritime borders of the United States.

SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BORDER.

(a) IN GENERAL.—Subject to the amount appropriated in subsection (d) of this section, the Secretary of Homeland Security shall reimburse property owners for costs associated with repairing damages to the property owners' private infrastructure constructed on a United States Government right-of-way delineating the international land border when such damages are—

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

(2) confirmed by the appropriate personnel of the Department of Homeland Security and submitted to the Secretary for reimbursement.

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

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

(c) REPORTS.—Not later than six months after the date of the enactment of this Act and every subsequent six months until the amount appropriated for this section is expended in its entirety, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives a report that details the expenditures and circumstances in which those expenditures were made pursuant to this section.

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

SEC. 113. BORDER PATROL UNIT FOR VIRGIN ISLANDS.

Not later than September 30, 2006, the Secretary of Homeland Security shall establish at least one Border Patrol unit for the Virgin Islands of the United States.

SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF CENTRAL AMERICAN GANGS ALONG INTERNATIONAL BORDER.

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall report to the Committee on Homeland Security of the House of Representatives on the progress of the Department of Homeland Security in tracking the travel of Cen-

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

SEC. 115. COLLECTION OF DATA.

Beginning on October 1, 2006, the Secretary of Homeland Security shall annually compile data on the following categories of information:

(1) The number of unauthorized aliens who require medical care taken into custody by Border Patrol officials.

(2) The number of unauthorized aliens with serious injuries or medical conditions Border Patrol officials encounter, and refer to local hospitals or other health facilities.

(3) The number of unauthorized aliens with serious injuries or medical conditions who arrive at United States ports of entry and subsequently are admitted into the United States for emergency medical care, as reported by United States Customs and Border Protection.

(4) The number of unauthorized aliens described in paragraphs (2) and (3) who subsequently are taken into custody by the Department of Homeland Security after receiving medical treatment.

SEC. 116. DEPLOYMENT OF RADIATION DETECTION PORTAL EQUIPMENT AT UNITED STATES PORTS OF ENTRY.

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

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

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

SEC. 117. CONSULTATION WITH BUSINESSES AND FIRMS.

With respect to the Secure Border Initiative and for the purposes of strengthening security along the international land and maritime borders of the United States, the Secretary of Homeland Security shall conduct outreach to and consult with members of the private sector,

including business councils, associations, and small, minority-owned, women-owned, and disadvantaged businesses to—

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

(2) maximize economies of scale, cost-effectiveness, systems integration, and resource allocation; and

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

TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE

SEC. 201. DEFINITION OF AGGRAVATED FELONY.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—

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

(2) in subparagraph (O), by striking ''section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an

offense described in another subparagraph of this paragraph'', and inserting ''section 275 or section 276 for which the term of imprisonment was at least one year'';

(3) in subparagraph (U), by inserting before ''an attempt'' the following: ''soliciting, aiding, abetting, counseling, commanding, inducing, procuring or''; and

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

''The term applies—

''(i) to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years;

''(ii) even if the length of the term of imprisonment is based on recidivist or other enhancements;

''(iii) to an offense described in this paragraph even if the statute setting forth the offense of conviction sets forth other offenses not described in this paragraph, unless the alien affirmatively shows, by a preponderance of evi-

dence and using public records related to the conviction, including court records, police records and presentence reports, that the particular facts underlying the offense do not satisfy the generic definition of that offense; and

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

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

SEC. 202. ALIEN SMUGGLING AND RELATED OFFENSES.

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

"ALIEN SMUGGLING AND RELATED OFFENSES

"SEC. 274. (a) CRIMINAL OFFENSES AND PENALTIES.—

"(1) PROHIBITED ACTIVITIES.—Whoever—

"(A) assists, encourages, directs, or induces a person to come to or enter the United States, or to attempt to come to or enter the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to or enter the United States;

"(B) assists, encourages, directs, or induces a person to come to or enter the United States at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, regardless of whether such person has official permission or lawful authority to be in the United States, knowing or in reckless disregard of the fact that such person is an alien;

"(C) assists, encourages, directs, or induces a person to reside in or remain in the United States, or to attempt to reside in or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States;

"(D) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, where the transportation or movement will aid or further in any manner the person's illegal entry into or illegal presence in the United States;

"(E) harbors, conceals, or shields from detection a person in the United States knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States;

"(F) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from one country to another or on the high seas, under circumstances in which the person is in fact seeking to enter the United States without official permission or lawful authority; or

"(G) conspires or attempts to commit any of the preceding acts,

shall be punished as provided in paragraph (2), regardless of any official action which may later be taken with respect to such alien.

"(2) CRIMINAL PENALTIES.—A person who violates the provisions of paragraph (1) shall—

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

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

"(B) except as provided in subparagraphs (C) through (H), where the offense was committed for commercial advantage, profit, or private financial gain—

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

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

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

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

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

"(E) in the case where any participant in the offense created a substantial risk of death or serious bodily injury to another person, including—

"(i) transporting a person in an engine compartment, storage compartment, or other confined space;

"(ii) transporting a person at an excessive speed or in excess of the rated capacity of the means of transportation; or

"(iii) transporting or harboring a person in a crowded, dangerous, or inhumane manner,

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

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

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

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

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

"(ii) intending to engage in such terrorist activity,

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

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

"(3) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

"(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

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

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

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

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

"(c) SEIZURE AND FORFEITURE.—

"(1) IN GENERAL.—Any property, real or personal, that has been used to commit or facilitate the commission of a violation of this section, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

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

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

"(d) AUTHORITY TO ARREST.—No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees designated by the Secretary of Homeland Security, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

"(e) ADMISSIBILITY OF EVIDENCE.—

"(1) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—Notwithstanding any provision of the Federal Rules of Evidence, in determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the violation lacks lawful authority to come to, enter, reside, remain, or be in the United States or that such alien had come to, entered, resided, remained or been present in the United States in violation of law:

"(A) Any order, finding, or determination concerning the alien's status or lack thereof 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) The term 'lawful authority' means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or the regulations prescribed thereunder. Such term does not include any such authority secured by fraud or otherwise obtained in violation of law, nor does it include authority that has been sought but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside, remain, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

"(2) The term 'unlawful transit' means travel, movement, or temporary presence that violates the laws of any country in which the alien is present, or any country from which or to which the alien is traveling or moving.".

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

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

(1) in the section heading, by inserting "UNLAWFUL PRESENCE;" after "IMPROPER TIME OR PLACE;";

(2) in subsection (a), by striking ''Any alien'' and inserting ''Except as provided in subsection (b), any alien'';

(3) in subsection (a), by striking ''or'' before (3) and by inserting after ''concealment of a material fact,'' the following: ''or (4) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder,'';

(4) in subsection (a), by striking ''6 months'' and inserting ''one year and a day'';

(5) in subsection (c)—

(A) by striking ''5 years'' and inserting ''10 years''; and

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

(6) in subsection (d)—

(A) by striking ''5 years'' and inserting ''10 years'';

(B) by adding at the end the following: ''An offense under this subsection continues until the fraudulent nature of the commercial enterprise is discovered by an immigration officer''; and

(7) by adding at the end the following new subsections:

"(e)(1) Any alien described in paragraph (2)—

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

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

"(2) An alien described in this paragraph is an alien who—

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

"(B) eludes examination or inspection by immigration officers;

"(C) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact; or

"(D) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder.

"(3) The prior convictions in subparagraph (A) or (B) of paragraph (1) are elements of those crimes and the penalties in those subparagraphs shall apply only in cases in which the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is an aggravated felony or other qualifying crime, and the criminal trial for a violation of this section shall not be bifurcated.

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

"(f) For purposes of this section, the term 'attempts to enter' refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.".

SEC. 204. REENTRY OF REMOVED ALIENS.

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

(1) in subsection (a)—

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

(B) in the matter following paragraph (2), by striking ''imprisoned not more than 2 years,'' and insert ''imprisoned for a term of not less than 1 year and not more than 2 years,'';

(C) by adding at the end the following: ''It shall be an affirmative defense to an offense under this subsection that (A) prior to an alien's reembarkation at a place outside the United States or an alien's application for admission from foreign contiguous territory, the Secretary of Homeland Security has expressly consented to the alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, such alien was not required to obtain such advance consent under this Act or any prior Act.'';

(2) in subsection (b)—

(A) in paragraph (1), by striking ''imprisoned not more than 10 years,'' and insert ''imprisoned for a term of not less than 5 years and not more than 10 years,'';

(B) in paragraph (2), by striking ''imprisoned not more than 20 years,'' and insert ''imprisoned for a term of not less than 10 years and not more than 20 years,'';

(C) in paragraph (3), by striking ''. or'' and inserting ''; or'';

(D) in paragraph (4), by striking ''imprisoned for not more than 10 years,'' and insert ''imprisoned for a term of not less than 5 years and not more than 10 years,''; and

(E) by adding at the end the following: ''The prior convictions in paragraphs (1) and (2) are elements of enhanced crimes and the penalties under such paragraphs shall apply only where the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is a qualifying crime and the criminal trial for a violation of either such paragraph shall not be bifurcated.'';

(3) in subsections (b)(3), (b)(4), and (c), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'' each place it appears;

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

(5) by adding at the end the following new subsection:

''(e) For purposes of this section, the term 'attempts to enter' refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.''.

SEC. 205. MANDATORY SENTENCING RANGES FOR PERSONS AIDING OR ASSISTING CERTAIN REENTERING ALIENS.

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

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

(2) by adding at the end the following:

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

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

"(2) The term of imprisonment imposed under paragraph (1) shall be within the range to which the reentering alien is subject under section 276(b).".

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

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

(1) in paragraphs (1)(A) and (1)(D)(ii), by inserting ", alien smuggling crime," after "crime of violence" each place it appears;

(2) by redesignating paragraph (4) as subparagraph (5); and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) For purposes of this subsection, the term 'alien smuggling crime' means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, or 1328).".

SEC. 207. CLARIFYING CHANGES.

(a) EXCLUSION BASED ON FALSE CLAIM OF NATIONALITY.—

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

(A) in the heading, by inserting ''OR NATIONALITY'' after ''CITIZENSHIP''; and

(B) by inserting ''or national'' after ''citizen'' each place it appears.

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

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

(1) by inserting '', or as to any person seeking any benefit or privilege under the immigration laws,'' after ''United States'';

(2) by striking ''Service'' and inserting ''Secretary of Homeland Security''; and

(3) by striking ''Attorney General'' and inserting ''Secretary''.

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

SEC. 208. VOLUNTARY DEPARTURE REFORM.

(a) ENCOURAGING ALIENS TO DEPART VOLUNTARILY.—

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

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

"(1) IN LIEU OF REMOVAL PROCEEDINGS.—The Secretary of Homeland Security may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4).";

(B) by striking paragraph (3);

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

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

"(2) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—After removal proceedings under section 240 are initiated, the Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, prior to the conclusion of such proceedings

before an immigration judge, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4).''; and

(E) in paragraph (4), by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (2)''.

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

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

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

''(A) IN LIEU OF REMOVAL.—Subject to subparagraph (C), permission to depart voluntarily under paragraph (1) shall not be valid for a period exceeding 120 days. The Secretary of Homeland Security may require an alien permitted to depart voluntarily under paragraph (1) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.'';

(ii) in subparagraph (B), by striking ''subparagraphs (C) and (D)(ii)'' and inserting ''subparagraphs (D) and (E)(ii)'';

(iii) in subparagraphs (C) and (D), by striking ''subparagraph (B)'' and inserting ''subparagraph (C)'' each place it appears;

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

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

''(B) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to depart voluntarily under paragraph (2) shall not be valid for a period exceeding 60 days, and may be granted only after a finding that the alien has established that the alien has the means to depart the United States and intends to do so. An alien permitted to depart voluntarily under paragraph (2) must post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive posting of a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will be a serious fi-

nancial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.''; and

(B) in subsection (b)(2), by striking ''60 days'' and inserting ''45 days''.

(3) VOLUNTARY DEPARTURE AGREEMENTS.—Subsection (c) of such section is amended to read as follows:

''(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

''(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure will be granted only as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall include a waiver of the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal.

''(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security in the exercise of discretion may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

"(3) FAILURE TO COMPLY WITH AGREEMENT AND EFFECT OF FILING TIMELY APPEAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including a failure to timely post any required bond), the alien automatically becomes ineligible for the benefits of the agreement, subject to the penalties described in subsection (d), and subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b). However, if an alien agrees to voluntary departure but later files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences thereof, but the alien may not again be granted voluntary departure while the alien remains in the United States.".

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

"(e) ELIGIBILITY.—

"(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to depart

voluntarily under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

"(2) ADDITIONAL LIMITATIONS.—The Secretary of Homeland Security may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class or classes of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(2) or (b) for any class or classes of aliens. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court may review any regulation issued under this subsection.".

(b) AVOIDING DELAYS IN VOLUNTARY DEPARTURE.—

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

"(4) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary of Homeland Security in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary."

(2) NO TOLLING.—Subsection (f) of such section is amended by adding at the end the following new sentence: "Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.".

(c) PENALTIES FOR FAILURE TO DEPART VOLUNTARILY.—

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

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

"(1) CIVIL PENALTY.—

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

"(B) SPECIFICATION IN ORDER.—The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record.

"(C) COLLECTION.—If the Secretary of Homeland Security thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law.

"(D) INELIGIBILITY FOR BENEFITS.—An alien will be ineligible for any benefits under this title until any civil penalty under this subsection is paid.

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

"(3) REOPENING.—

"(A) IN GENERAL.—Subject to subparagraph (B), the alien will be ineligible to reopen a final order of removal which took effect upon the alien's failure to depart, or the alien's violation of the conditions for voluntary departure, during the period described in paragraph (2).

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

The order permitting the alien to depart voluntarily under this section shall inform the alien of the penalties under this subsection.".

(2) IMPLEMENTATION OF EXISTING STATUTORY PENALTIES.—The Secretary of Homeland Security shall implement regulations to provide for the imposition and collection of penalties for failure to depart

under section 240B(d) of the Immigration and Nationality Act, as amended by paragraph (1).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the date of the enactment of this Act.

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

SEC. 209. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY AND FROM UNLAWFULLY RETURNING TO THE UNITED STATES AFTER DEPARTING VOLUNTARILY.

(a) INADMISSIBLE ALIENS.—Paragraph (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended—

(1) in subparagraph (A)(i), by striking ''within 5 years of'' and inserting ''before, or within 5 years of,''; and

(2) in subparagraph (A)(ii) by striking ''within 10 years of'' and inserting ''before, or within 10 years of,''.

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

(1) in subsection (a), by striking ''Commissioner'' and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following new subsection:

''(c) INELIGIBILITY FOR RELIEF.—

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

''(2) EXCEPTION.—Paragraph (1) does not preclude a motion to reopen to seek withholding of re-

1 moval 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.

TITLE III—BORDER SECURITY COOPERATION AND ENFORCEMENT

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

(a) IN GENERAL.—The Secretary of Homeland Security and the Secretary of Defense shall develop a joint strategic plan to use the authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist with the surveillance activities of the Department of Homeland Security conducted at or near the international land and maritime borders of the United States.

(b) REPORT.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Defense shall submit to Congress a report containing—

(1) a description of the use of Department of Defense equipment to assist with the surveillance by the Department of Homeland Security of the international land and maritime borders of the United States;

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

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

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

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

SEC. 302. BORDER SECURITY ON PROTECTED LAND.

(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of the Interior, shall evaluate border security vulnerabilities on land directly adjacent to the international land border of the United States under the jurisdiction of the Department of the Interior related to the prevention of the entry of

terrorists, other unlawful aliens, narcotics, and other contraband into the United States.

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

SEC. 303. BORDER SECURITY THREAT ASSESSMENT AND INFORMATION SHARING TEST AND EVALUATION EXERCISE.

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

(1) involving officials from Federal, State, territorial, local, tribal, and international governments and representatives from the private sector;

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

(3) testing and evaluating the information sharing capability among Federal, State, territorial, local, tribal, and international governments.

SEC. 304. BORDER SECURITY ADVISORY COMMITTEE.

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

(b) DUTIES.—The Committee shall advise the Secretary on issues relating to border security and enforcement along the international land and maritime border of the United States.

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

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

(2) Community representatives from such States.

(3) Tribal authorities in such States.

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

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

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

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

(3) is carried out under agreement with a Federal agency.

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

(c) COVERED GRANTS.—For purposes of subsection (a), the term ''covered grant'' means grants provided by the Department of Homeland Security to States, local governments, or Indian tribes administered under the following programs:

(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.

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

(3) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—The Law Enforcement Terrorism Prevention Program of the Department, or any successor to such grant program.

SEC. 306. CENTER OF EXCELLENCE FOR BORDER SECURITY.

(a) ESTABLISHMENT.—The Secretary of Homeland Security shall establish a university-based Center of Excellence for Border Security following the merit-review processes and procedures and other limitations that have been established for selecting and supporting University Programs Centers of Excellence.

(b) ACTIVITIES OF THE CENTER.—The Center shall prioritize its activities on the basis of risk to address the most significant threats, vulnerabilities, and consequences posed by United States borders and border control systems. The activities shall include the conduct of research, the examination of existing and emerging border security

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

SEC. 307. SENSE OF CONGRESS REGARDING COOPERATION WITH INDIAN NATIONS.

It is the sense of Congress that—

(1) the Department of Homeland Security should strive to include as part of a National Strategy for Border Security recommendations on how to enhance Department cooperation with sovereign Indian Nations on securing our borders and preventing terrorist entry, including, specifically, the Department should consider whether a Tribal Smart Border working group is necessary and whether further expansion of cultural sensitivity training, as exists in Arizona with the Tohono O'odham Nation, should be expanded elsewhere; and

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

TITLE IV—DETENTION AND REMOVAL

SEC. 401. MANDATORY DETENTION FOR ALIENS APPREHENDED AT OR BETWEEN PORTS OF ENTRY.

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

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

(2) is paroled into the United States by the Secretary of Homeland Security for urgent humanitarian reasons or significant public benefit in accordance with section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

(b) REQUIREMENTS DURING INTERIM PERIOD.—Beginning 60 days after the date of the enactment of this 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) all available detention facilities operated or contracted by the Department of Homeland Security; and

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

SEC. 403. ENHANCING TRANSPORTATION CAPACITY FOR UNLAWFUL ALIENS.

(a) IN GENERAL.—The Secretary of Homeland Security is authorized to enter into contracts with private entities for the purpose of providing secure domestic transport of aliens who are apprehended at or along the international land or maritime borders from the custody of United States Customs and Border Protection to detention facilities and other locations as necessary.

(b) CRITERIA FOR SELECTION.—Notwithstanding any other provision of law, to enter into a contract under paragraph (1), a private entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The Secretary shall select from such applications those entities which offer, in the determination of the Secretary, the best combination of service, cost, and security.

SEC. 404. DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.

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

"(d) DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—Whenever the Secretary of Homeland Security determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, the Secretary, after consultation with the Secretary of State, may deny admission to any citizen, subject, national, or resident of that country until the country accepts the alien who was ordered removed.".

SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRIATION.

Not later than October 31 of each year, the Secretary of Homeland Security shall submit to the Secretary of State and Congress a report that details the cost to the Department of Homeland Security of repatriation of unlawful aliens to their countries of nationality or last habitual residence, including details relating to cost per country. The Secretary shall include in each such report the

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

SEC. 406. TRAINING PROGRAM.

Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security—

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

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

SEC. 407. EXPEDITED REMOVAL.

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

(1) in subclause (I), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'' each place it appears; and

(2) by adding at the end the following new subclause:

"(III) EXCEPTION.—Notwithstanding subclauses (I) and (II), the Secretary of Homeland Security shall apply clauses (i) and (ii) of this subparagraph to any alien (other than an alien described in subparagraph (F)) who is not a national of a country contiguous to the United States, who has not been admitted or paroled into the United States, and who is apprehended within 100 miles of an international land border of the United States and within 14 days of entry.".

(b) EXCEPTIONS.—Section 235(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is amended by striking "who arrives by aircraft at a port of entry" and inserting ", and who arrives by aircraft at a port of entry or who is present in the United States and arrived in any manner at or between a port of entry".

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

TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

SEC. 501. ENHANCED BORDER SECURITY COORDINATION AND MANAGEMENT.

The Secretary of Homeland Security shall ensure full coordination of border security efforts among agencies within the Department of Homeland Security, including United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services, and shall identify and remedy any failure of coordination or integration in a prompt and efficient manner. In particular, the Secretary of Homeland Security shall—

(1) oversee and ensure the coordinated execution of border security operations and policy;

(2) establish a mechanism for sharing and coordinating intelligence information and analysis at the headquarters and field office levels pertaining to counter-terrorism, border enforcement, customs and trade, immigration, human smuggling, human trafficking, and other issues of concern to both United States Immigration and Customs Enforcement and United States Customs and Border Protection;

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

(4) enhance coordination between the border security and investigations missions within the Department by requiring that, with respect to cases involving violations of the customs and immigration laws of the United States, United States Customs and Border Protection coordinate with and refer all such cases to United States Immigration and Customs Enforcement;

(5) examine comprehensively the proper allocation of the Department's border security related resources, and analyze budget issues on the basis of Department-wide border enforcement goals, plans, and processes;

(6) establish measures and metrics for determining the effectiveness of coordinated border enforcement efforts; and

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

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

(A) coordinating all Federal border security activities;

(B) improving communications and data sharing capabilities within the Department and with other Federal, State, local, tribal, and foreign law enforcement agencies on matters relating to border security; and

(C) providing input to relevant bilateral agreements to improve border functions, including ensuring security and promoting trade and tourism.

SEC. 502. OFFICE OF AIR AND MARINE OPERATIONS.

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

"SEC. 431. OFFICE OF AIR AND MARINE OPERATIONS.

"(a) ESTABLISHMENT.—There is established in the Department an Office of Air and Marine Operations (referred to in this section as the 'Office').

"(b) ASSISTANT SECRETARY.—The Office shall be headed by an Assistant Secretary for Air and Marine Operations who shall be appointed by the President, by and 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-

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

"(e) ACCESS TO INFORMATION.—The Office shall ensure that other agencies within the Department of Homeland Security, the Department of Defense, the Department of Justice, and such other Federal, State, or local agencies, as may be determined by the Secretary, shall have access to the information gathered and analyzed by the Center.

"(f) REQUIREMENT.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary shall require that all information concerning all aviation activities, including all airplane, helicopter, or other aircraft flights, that are undertaken by the either the Office, United States Immigration and Customs Enforcement, United States Customs and Border Protection, or any subdivisions thereof, be provided to the Air and Marine Operations Center. Such information shall include the identifiable transponder, radar, and electronic emissions and codes originating and resident aboard the aircraft or similar asset used in the aviation activity.

"(g) TIMING.—The Secretary shall require the information described in subsection (f) to be provided to the

Air and Marine Operations Center in advance of the aviation activity whenever practicable for the purpose of timely coordination and conflict resolution of air missions by the Office, United States Immigration and Customs Enforcement, and United States Customs and Border Protection.

"(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter, impact, diminish, or in any way undermine the authority of the Administrator of the Federal Aviation Administration to oversee, regulate, and control the safe and efficient use of the airspace of the United States.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) ADDITIONAL ASSISTANT SECRETARY.—Section 103(a)(9) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)(9)) is amended by striking "12" and inserting "13".

(2) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act (6 U.S.C. 101) is amended by inserting after the item relating to section 430 the following new item:

"Sec. 431. Office of Air and Marine Operations".

SEC. 503. SHADOW WOLVES TRANSFER.

(a) TRANSFER OF EXISTING UNIT.—Not later that 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall transfer to United 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,

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

TITLE VI—TERRORIST AND CRIMINAL ALIENS

SEC. 601. REMOVAL OF TERRORIST ALIENS.

(a) EXPANSION OF REMOVAL.—

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

(A) in subparagraph (A)—

(i) by striking ''Attorney General may not'' and inserting ''Secretary of Homeland Security may not'';

(ii) by inserting ''or the Secretary'' after ''if the Attorney General''

(B) in subparagraph (B)—

(i) by inserting ''or the Secretary of Homeland Security'' after ''if the Attorney General'';

(ii) by striking ''or'' in clause (iii);

(iii) by striking the period at the end of clause (iv) and inserting ''; or'';

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

"(v) the alien is described in any subclause of section 212(a)(3)(B)(i) or section 212(a)(3)(F)", unless, in the case only of an alien described in subclause (IV) or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security determines, in the Secretary's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States."; and

(v) in the third sentence, by inserting "or the Secretary of Homeland Security" after "Attorney General"; and

(vi) by striking the last sentence.

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

(A) by striking "subclause (I), (II), (III), (IV), or (VI)" and inserting "any subclause";

(B) by striking "237(a)(4)(B)" and inserting "212(a)(3)(F)"; and

(C) by inserting "or (IX)" after "subclause (IV)".

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

(A) by striking ''inadmissible under'' and inserting ''described in''; and

(B) by striking ''deportable under'' and inserting ''described in''.

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

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

(A) by striking ''inadmissible under'' and inserting ''described in''; and

(B) in paragraph (d), by striking ''deportable under'' and inserting ''described in''.

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

(1) all aliens in removal, deportation, or exclusion proceedings;

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

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

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

SEC. 602. DETENTION OF DANGEROUS ALIENS.

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

(1) in subsection (a), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'' each place it appears;

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

''If, at that time, the alien is not in the custody of the Secretary (under the authority of this Act), the Secretary shall take the alien into custody for removal, and the removal period shall not begin until the alien is taken into such custody. If the Secretary transfers custody of the alien during the removal period pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled, and shall begin anew on the date of the alien's return to the custody of the Secretary.'';

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

"(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the date the stay of removal is no longer in effect.";

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

"(C) SUSPENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspires or acts to prevent the alien's removal subject to an order of removal.";

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

final order of removal, the Secretary in the exercise of discretion may detain the alien during the pendency of such stay of removal.'';

(6) in subsection (a)(3), by amending subparagraph (D) to read as follows:

''(D) to obey reasonable restrictions on the alien's conduct or activities, or perform affirmative acts, that the Secretary prescribes for the alien, in order to prevent the alien from absconding, or for the protection of the community, or for other purposes related to the enforcement of the immigration laws.'';

(7) in subsection (a)(6), by striking ''removal period and, if released,'' and inserting ''removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien'';

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

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

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

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

"(A) was lawfully admitted the most recent time the alien entered the United States or has otherwise effected an entry into the United States, and

"(B) is not detained under paragraph (6).

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

edies (statutory and regulatory) available to the alien as of right.''; and

(9) by adding at the end the following new subsection:

''(j) ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—

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

''(2) ESTABLISHMENT OF A DETENTION REVIEW PROCESS FOR ALIENS WHO FULLY COOPERATE WITH REMOVAL.—

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

''(i) have made all reasonable efforts to comply with their removal orders;

''(ii) have complied with the Secretary's efforts to carry out the removal orders, including making timely application in good faith for travel or other documents necessary to the alien's departure, and

"(iii) have not conspired or acted to prevent removal.

"(B) DETERMINATION.—The Secretary shall make a determination whether to release an alien after the removal period in accordance with paragraphs (3) and (4). The determination—

"(i) shall include consideration of any evidence submitted by the alien and the history of the alien's efforts to comply with the order of removal, and

"(ii) may include any information or assistance provided by the Department of State or other Federal agency and any other information available to the Secretary pertaining to the ability to remove the alien.

"(3) AUTHORITY TO DETAIN BEYOND THE REMOVAL PERIOD .—

"(A) INITIAL 90 DAY PERIOD.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien for 90 days beyond the removal period (including any

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

"(B) EXTENSION.—

"(i) IN GENERAL.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien beyond the 90 days authorized in subparagraph (A) if the conditions described in subparagraph (A), (B), or (C) of paragraph (4) apply.

"(ii) RENEWAL.—The Secretary may renew a certification under paragraph (4)(A) every six months without limitation, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under such paragraph.

"(iii) DELEGATION.—Notwithstanding section 103, the Secretary may not delegate the authority to make or renew a certification described in clause (ii), (iii), or

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

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

"(4) CONDITIONS FOR EXTENSION.—The conditions for continuation of detention are any of the following:

"(A) The Secretary determines that there is a significant likelihood that the alien—

"(i) will be removed in the reasonably foreseeable future; or

"(ii) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien's failure or refusal to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's depar-

ture, or conspiracies or acts to prevent removal.

''(B) The Secretary certifies in writing any of the following:

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

''(ii) After receipt of a written recommendation from the Secretary of State, the release of the alien is likely to have serious adverse foreign policy consequences for the United States.

''(iii) Based on information available to the Secretary (including available information from the intelligence community, and without regard to the grounds upon which the alien was ordered removed), there is reason to believe that the release of the alien would threaten the national security of the United States.

''(iv) The release of the alien will threaten the safety of the community or any person, the conditions of release cannot reasonably be expected to ensure the

safety of the community or any person, and—

"(I) the alien has been convicted of one or more aggravated felonies described in section 101(a)(43)(A) or of one or more crimes identified by the Secretary by regulation, or of one or more attempts or conspiracies to commit any such aggravated felonies or such crimes, for an aggregate term of imprisonment of at least five years; or

"(II) the alien has committed one or more crimes of violence and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future.

"(v) The release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and the alien has been convicted of at least one aggravated felony.

"(C) Pending a determination under subparagraph (B), so long as the Secretary has initiated the administrative review process no later than 30 days after the expiration of the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).

"(5) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary in the exercise of discretion may impose conditions on release as provided in subsection (a)(3).

"(6) REDETENTION.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody if the alien fails to comply with the conditions of release or to cooperate in the alien's removal from the United States, or if, upon reconsideration, the Secretary determines that the alien can be detained under paragraph (1). Paragraphs (6) through (8) of subsection (a) shall apply to any alien returned to custody pursuant to this paragraph, as if the removal period terminated on the day of the redetention.

"(7) CERTAIN ALIENS WHO EFFECTED ENTRY.—If an alien has effected an entry into the United States but has neither been lawfully admitted nor physically present in the United States continuously for the 2-year period immediately prior to the commencement of removal proceedings under this Act or deportation proceedings against the alien, the Secretary in the exercise of discretion may decide not to apply subsection (a)(8) and this subsection and may detain the alien without any limitations except those imposed by regulation.".

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

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

(2) acts and conditions occurring or existing before, on, or after the date of enactment of this Act.

SEC. 603. INCREASE IN CRIMINAL PENALTIES.

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

(1) in subsection (a)(1)—

(A) in the matter before subparagraph (A), by inserting ''or 212(a)'' after ''section 237(a)''; and

(B) by striking ''imprisoned not more than four years'' and inserting ''imprisoned for not less than six months or more than five years''; and

(2) in subsection (b)—

(A) by striking ''not more than $1,000'' and inserting ''under title 18, United States Code''; and

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

SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED FELONS AND OTHER CRIMINALS.

(a) EXCLUSION BASED ON FRAUDULENT DOCUMENTATION.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amended—

(1) in subclause (I), by striking ''or'' at the end;

(2) in subclause (II), by adding ''or'' at the end; and

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

''(III) a violation (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code,''.

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

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

''(K) UNLAWFUL PROCUREMENT OF CITIZENSHIP.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of (or a conspiracy or attempt to violate) subsection (a) or (b) of section 1425 of title 18, United States Code is inadmissible.

"(L) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDERS; CRIMES AGAINST CHILDREN.—

"(i) DOMESTIC VIOLENCE, STALKING, OR CHILD ABUSE.—

"(I) IN GENERAL.—Subject to subclause (II), any alien who at any time is convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is inadmissible.

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

"(III) CRIME OF DOMESTIC VIOLENCE DEFINED.—For purposes of subclause (I), the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or

former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

''(ii) VIOLATORS OF PROTECTION ORDERS.—

''(I) IN GENERAL.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of

violence, repeated harassment, or bodily injury to the person or person for whom the protection order was issued is inadmissible.

"(II) PROTECTION ORDER DEFINED.—For purposes of subclause (I), the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.".

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

(1) by striking "Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)" and inserting "The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or such Secretary, waive the

application of subparagraph (A)(i)(I), (A)(i)(III), (B), (D), (E), (K), and (L) of subsection (a)(2)''; (2) in paragraphs (1)(A) and (1)(B) and the last sentence, by inserting ''or the Secretary'' after ''Attorney General'' each place it appears; (3) in paragraph (2), by striking ''Attorney General may, in his discretion'' and ''as he'' and inserting ''Attorney General or the Secretary of Homeland Security, in the discretion of the Attorney General or such Secretary,'' and ''as the Attorney General or the Secretary'', respectively; (4) in the second sentence, by striking ''criminal acts involving torture'' and inserting ''criminal acts involving torture, or an aggravated felony''; and (5) in the third sentence, by striking ''if either since the date of such admission the alien has been convicted of an aggravated felony or the alien'' and inserting ''if since the date of such admission the alien''.

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

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

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

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

(2) to all aliens who are required to establish admissibility on or after the such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

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

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

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

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

(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

SEC. 606. REMOVING DRUNK DRIVERS.

(a) IN GENERAL.—Section 101(a)(43)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(F)) is amended by inserting ", including a third drunk driving conviction, regardless of the States in which the convictions occurred, and regardless of whether the offenses are deemed to be misdemeanors or felonies under State or Federal law," after "offense)".

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

SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT ASSISTANCE PROGRAM.

(a) DESIGNATED COUNTIES ADJACENT TO THE SOUTHERN BORDER OF THE UNITED STATES DEFINED.—In this section, the term "designated counties adjacent to the southern international border of the United States" includes a county any part of which is within 25 miles of the southern international border of the United States.

(b) AUTHORITY.—

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

of the Sheriff who are not lawfully present in the United States to appropriate Federal law enforcement officials, and shall be promptly paid for the costs of performing such transfers by the Attorney General for any local or State funds previously expended or proposed to be spent by that Sheriff or coalition or group of Sheriffs.

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

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

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

(c) DESIGNATED COUNTY LAW ENFORCEMENT ACCOUNT.—

(1) SEPARATE ACCOUNT.—Reimbursement or pre-payment under subsection (b) shall be made promptly from funds deposited into a separate account in the Treasury of the United States to be entitled the ''Designated County Law Enforcement Account''.

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

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

(d) FUNDS FOR THE DESIGNATED COUNTY LAW ENFORCEMENT ACCOUNT.—Only funds designated, authorized, or appropriated by Congress may be deposited or transferred to the Designated County Law Enforcement Account. The Designated County Law Enforcement Account is authorized to receive up to $100,000,000 per year.

(e) USE OF FUNDS.—

(1) IN GENERAL.—Funds provided under this section shall be payable directly to participating 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

be used for the construction or renovation of detention or similar facilities.

(f) DISPOSITION AND DELIVERY OF DETAINED ALIENS.—All aliens detained or taken into custody by a Sheriff under this section and with respect to whom Federal law enforcement officials determine are unlawfully present in the United States, shall be immediately delivered to Federal law enforcement officials. In accordance with subsection (e)(1), an alien who is in the custody of a Sheriff shall be deemed to be a Federal prisoner and in Federal custody.

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

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

(2) providing uniform standards that all other Federal law enforcement officials shall follow to cooperate with such Sheriffs and to otherwise implement the requirements of this section.

(h) EFFECTIVE DATE.—The provisions of this section shall take effect on its enactment. The promulgation

of any regulations under subsection (g) is not a necessary precondition to the immediate deployment or work of Sheriffs personnel or corrections officers as authorized by this section. Any reasonable and necessary expenses or costs authorized by this section and incurred by such Sheriffs after the date of the enactment of this Act but prior to the date of the promulgation of such regulations are eligible for reimbursement under the terms and conditions of this section.

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

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

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

(a) INADMISSIBLE.—Section 212(a)(2) of the Immigration 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

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

"(IV) Any conduct punishable under section 844 of title 18, United States Code (relating to explosive materials), subsection (d), (g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of such title) or is a serious drug offense (as defined in section 924(e)(2)(A)), (i), (j), (k), (o), (p), (q), (u), or (x) of section 922 of such title (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 of such title (relating to penalties), section 930 of such title (relating to possession of firearms and dangerous weapons in Federal facilities), section 931 of such title (relating to purchase, ownership, or possession of body armor by violent felons), sections 1028 and 1029 of such title (relating to fraud and related activity in connection with identification documents or access de-

vices), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

"(V) Any conduct punishable under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) of this Act.".

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

"(F) CRIMINAL STREET GANG PARTICIPATION.—

"(i) IN GENERAL.—Any alien is deportable who—

"(I) is a member of a criminal street gang and is convicted of committing, or conspiring, threatening, or attempting to commit, a gang crime; or

"(II) is determined by the Secretary of Homeland Security to be a member of a criminal street gang designated under section 219A.

"(ii) DEFINITIONS.—For purposes of this subparagraph, the terms 'criminal street gang' and 'gang crime' have the meaning given such terms in section 212(a)(2)(M).".

(c) DESIGNATION OF CRIMINAL STREET GANGS.—

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

"DESIGNATION OF CRIMINAL STREET GANGS

"SEC. 219A. (a) DESIGNATION.—

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

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

"(2) PROCEDURE.—

"(A) NOTICE.—

"(i) TO CONGRESSIONAL LEADERS.—Seven days before making a designation under this subsection, the Attorney General shall notify the Speaker and Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group or association under this subsection, together with the findings made under paragraph (1) with respect to that group or association, and the factual basis therefor.

"(ii) PUBLICATION IN FEDERAL REGISTER.—The Attorney shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

"(B) EFFECT OF DESIGNATION.—

"(i) A designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

"(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

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

"(4) PERIOD OF DESIGNATION.—

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

"(B) REVIEW OF DESIGNATION UPON PETITION.—

"(i) IN GENERAL.—The Attorney General shall review the designation of a criminal street gang under the procedures set forth in clauses (iii) and (iv) if the designated gang or association files a petition for revocation within the petition period described in clause (ii).

"(ii) PETITION PERIOD.—For purposes of clause (i)—

"(I) if the designated gang or association has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

"(II) if the designated gang or association has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

"(iii) PROCEDURES.—Any criminal street gang that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the gang is warranted.

"(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

(B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Attorney General. The results of such review and the applicable procedures shall not be reviewable in any court.

"(iii) PUBLICATION OF RESULTS OF REVIEW.—The Attorney General shall publish any determination made pursuant to this subparagraph in the Federal Register.

"(5) REVOCATION BY ACT OF CONGRESS.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

"(6) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

"(A) IN GENERAL.—The Attorney General may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Attorney General finds that the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation.

"(B) PROCEDURE.—The procedural requirements of paragraphs (2) and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

"(7) EFFECT OF REVOCATION.—The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

"(8) USE OF DESIGNATION IN HEARING.—If a designation under this subsection has become effective under paragraph (2)(B) an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any hearing.

"(b) JUDICIAL REVIEW OF DESIGNATION.—

"(1) IN GENERAL.—Not later than 30 days after publication of the designation in the Federal Register, a group or association designated as a criminal street gang may seek judicial review of the designation in the United States Court of Appeals 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).

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

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

(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the matter preceding clause (i), by inserting ''who is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) or who is'' after ''to an alien''.

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

(A) in clause (v), by striking ''or'' at the end;

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

(C) by inserting after clause (v) the following:

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

(relating to participation in criminal street gangs); or''.

(3) DENIAL OF REVIEW OF DETERMINATION OF INELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—Section 244(c)(2) of such Act (8 U.S.C. 1254(c)(2)) is amended by adding at the end the following:

''(C) LIMITATION ON JUDICIAL REVIEW.—There shall be no judicial review of any finding under subparagraph (B) that an alien is in described in section 208(b)(2)(A)(vi).''.

(4) EFFECTIVE DATE.—The amendments made by this subsection are effective on the date of enactment of this Act and shall apply to all applications pending on or after such date.

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

SEC. 609. NATURALIZATION REFORM.

(a) BARRING TERRORISTS FROM NATURALIZATION.—Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end the 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

(3) by striking ''upon the Attorney General'' and inserting ''upon the Secretary of Homeland Security''.

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

(d) CONDITIONAL PERMANENT RESIDENTS.—Section 216(e) and section 216A(e) of such Act (8 U.S.C. 1186a(e), 1186b(e)) are each amended by inserting before the period at the end the following: '', if the alien has had the conditional basis removed under this section''.

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

''(b) If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period after the date on which the Secretary of Homeland Security completes all examinations and interviews conducted under such section, as such terms are defined

by the Secretary pursuant to regulations, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. Such court shall only have jurisdiction to review the basis for delay and remand the matter to the Secretary for the Secretary's determination on the application.''.

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

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

(2) by striking the second sentence and inserting the following: ''The burden shall be upon the petitioner to show that the Secretary's denial of the application was not supported by facially legitimate and bona fide reasons. Except in a proceeding under section 340, notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to determine, or to review a determination of the Secretary made at any time regarding, for purposes of an application for naturalization, whether an alien is a person of good moral character, whether an

alien understands and is attached to the principles of the Constitution of the United States, or whether an alien is well disposed to the good order and happiness of the United States.''.

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

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

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

(1) in paragraph (1)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security in the exercise of discretion''; and

(B) by striking ''set forth in this subsection or'' and inserting ''set forth in this subsection, in lieu of removal proceedings under'';

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

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

(4) in paragraph (5)—

(A) by striking ''described in this section'' and inserting ''described in paragraph (1) or (2)''; and

(B) by striking ''the Attorney General may grant in the Attorney General's discretion'' and inserting ''the Secretary of Homeland Security or the Attorney General may grant, in the discretion of the Secretary or Attorney General, in any proceeding'';

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

(6) by inserting after paragraph (2) the following new paragraph:

''(3) The Secretary of Homeland Security in the exercise of discretion may determine inadmissibility under section 212(a)(2) (relating to criminal offenses) and issue an order of removal pursuant to the procedures set forth in this subsection, in lieu of removal proceedings under section 240, with respect to an alien who

''(A) has not been admitted or paroled;

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

"(C) is not eligible for a waiver of inadmissibility or relief from removal.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act but shall not apply to aliens who are in removal proceedings under section 240 of the Immigration and Nationality Act as of such date

SEC. 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE IN CHANGE IN INADMISSIBILITY FOR TERRORISTS UNDER REAL ID ACT.

Effective as if included in the enactment of Public Law 109–13, section 103(d)(1) of the REAL ID Act of 2005 (division B of such Public Law) is amended by inserting ", deportation, and exclusion" after "removal".

SEC. 612. BAR TO GOOD MORAL CHARACTER.

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

(1) by inserting after paragraph (1) the following new paragraph:

"(2) one who the Secretary of Homeland Security or the Attorney General determines, in the unreviewable discretion of the Secretary or the At-

torney General, to have been at any time an alien described in section 212(a)(3) or section 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and which shall be binding upon any court regardless of the applicable standard of review;'';

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

(3) by striking the sentence following paragraph (9) and inserting the following: ''The fact that any person is not within any of the foregoing classes shall not preclude a discretionary finding for other reasons that such a person is or was not of good moral character. The Secretary and the Attorney General shall not be limited to the applicant's conduct during the period for which good moral character is required, but may take into consideration as a basis for determination the applicant's conduct and acts at any time.''.

(b) AGGRAVATED FELONY EFFECTIVE DATE.—Section 509(b) of the Immigration Act of 1990 (Public Law 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) by amending subparagraph (A) of paragraph (43) to read as follows:

''(A) murder, manslaughter, homicide, rape, or any sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;''; and

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

''Any reversal, vacatur, expungement, or modification to a conviction, sentence, or conviction record that was granted to ameliorate the consequences of the conviction, sentence, or conviction record, or was granted for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that the reversal, vacatur, expungement, or modification was not granted to ameliorate the consequences of the conviction, sentence, or conviction record, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt.''.

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

SEC. 614. DEPORTABILITY FOR CRIMINAL OFFENSES.

(a) IN GENERAL.—Section 237(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(3)(B)) is amended—

(1) in clause (ii), by striking ''or'' at the end;

(2) in clause (iii), by inserting ''or'' at the end; and

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

''(iv) of a violation of, or an attempt or a conspiracy to violate, subsection (a) or (b) of section 1425 of title 18, United States Code,''.

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

''(G) SOCIAL SECURITY AND IDENTIFICATION FRAUD.—Any alien who at any time after admission is convicted of a violation of (or a

conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code is deportable.''.

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

TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION

SEC. 701. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

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

''(7) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

''(A) IN GENERAL.—The Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the Secretary, which 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 ver-
3 ification or nonverification within 10 working
4 days after the date of the tentative nonverifica-
5 tion. When final verification or nonverification
6 is provided, the verification system shall provide
7 an appropriate code indicating such verification
8 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 nonver-
11 ification) except as provided for in this section
12 or section 205(c)(2)(I) of the Social Security
13 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

order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

"(ii) When a single employer has submitted to the verification system pursuant to paragraph (3)(A) the identical social security account number in more than one instance, or when multiple employers have submitted to the verification system pursuant to such paragraph the identical social security account number, in a manner which indicates the possible fraudulent use of that number, the Secretary of Homeland Security shall conduct an investigation in order to ensure that no fraudulent use of a social security account number has taken place. If the Secretary has selected a designee to establish and administer the verification system, the designee shall notify the Secretary when a single employer has submitted to the verification system pursuant to paragraph (3)(A) the identical social security account number in more than one instance, or when multiple employers have submitted to the verification system pursuant to such paragraph the

1 identical social security account number, in a
2 manner which indicates the possible fraudulent
3 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 VER-
22 IFICATION 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

criminally liable for any action taken in good faith reliance on information provided through the employment eligibility verification mechanism established under this paragraph.''.

(b) REPEAL OF PROVISION RELATING TO EVALUATIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—Section 274A(d) (8 U.S.C. 1324a(d)) is repealed.

SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

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

(1) in subsection (a)(3), by inserting ''(A)'' after ''DEFENSE.—'', and by adding at the end the following:

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

''(i) FAILURE TO SEEK VERIFICATION.—

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

not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring, the date specified in subsection (b)(8)(B) for previously hired individuals, or before the recruiting or referring commences, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

"(II) SPECIAL RULE FOR FAILURE OF VERIFICATION MECHANISM.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no nonresponses and qualify for such defense.

"(ii) FAILURE TO OBTAIN VERIFICATION.—If the person or entity has made the inquiry described in clause (i)(I) but has not re-

ceived an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (b)(7)(B) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.";

(2) by amending subparagraph (A) of subsection (b)(1) to read as follows:

"(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Secretary by regulation, that it has verified that the individual is not an unauthorized alien by—

"(i) obtaining from the individual the individual's social security account number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under paragraph (2), obtaining such identification or authorization number established by the Department of Homeland Security 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 veri-
14 fied, and, if the document bears an expiration
15 date, that expiration date has not elapsed. If an
16 individual provides a document (or combination
17 of documents) that reasonably appears on its
18 face to be genuine, reasonably appears to per-
19 tain to the individual whose identity and work
20 eligibility is being verified, and is sufficient to
21 meet the first sentence of this paragraph, noth-
22 ing in this paragraph shall be construed as re-
23 quiring the person or entity to solicit the pro-
24 duction of any other document or as requiring
25 the individual to produce another document.'';

(3) in subsection (b)(1)(D)—

(A) in clause (i), by striking ''or such other personal identification information relating to the individual as the Secretary finds, by regulation, sufficient for purposes of this section''; and

(B) in clause (ii), by inserting before the period ''and that contains a photograph of the individual'';

(4) in subsection (b)(2), by adding at the end the following: ''The individual must also provide that individual's social security account number (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under this paragraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.''; and

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

''(3) RETENTION OF VERIFICATION FORM AND VERIFICATION.—

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

1 ''(i) retain the form and make it avail-
2 able for inspection by officers of the De-
3 partment of Homeland Security, the Spe-
4 cial Counsel for Immigration-Related Un-
5 fair Employment Practices, or the Depart-
6 ment of Labor during a period beginning
7 on the date of the hiring, recruiting, or re-
8 ferral of the individual or the date of the
9 completion of verification of a previously
10 hired individual and ending—
11 ''(I) in the case of the recruiting
12 or referral of an individual, three
13 years after the date of the recruiting
14 or referral;
15 ''(II) in the case of the hiring of
16 an individual, the later of—
17 ''(aa) three years after the
18 date of such hiring; or
19 ''(bb) one year after the
20 date the individual's employment
21 is terminated; and
22 ''(III) in the case of the verifica-
23 tion of a previously hired individual,
24 the later of—

"(aa) three years after the date of the completion of verification; or

"(bb) one year after the date the individual's employment is terminated;

"(ii) make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring or in the case of previously hired individuals, the date specified in subsection (b)(8)(B), or before the recruiting or referring commences; and

"(iii) may not commence recruitment or referral of the individual until the person or entity receives verification under subparagraph (B)(i) or (B)(iii).

"(B) VERIFICATION.—

"(i) VERIFICATION RECEIVED.—If the person or other entity receives an appropriate verification of an individual's iden-

1 tity and work eligibility under the verifica-
2 tion system within the time period speci-
3 fied, the person or entity shall record on
4 the form an appropriate code that is pro-
5 vided under the system and that indicates
6 a final verification of such identity and
7 work eligibility of the individual.

8 ''(ii) TENTATIVE NONVERIFICATION
9 RECEIVED.—If the person or other entity
10 receives a tentative nonverification of an
11 individual's identity or work eligibility
12 under the verification system within the
13 time period specified, the person or entity
14 shall so inform the individual for whom the
15 verification is sought. If the individual does
16 not contest the nonverification within the
17 time period specified, the nonverification
18 shall be considered final. The person or en-
19 tity shall then record on the form an ap-
20 propriate code which has been provided
21 under the system to indicate a tentative
22 nonverification. If the individual does con-
23 test the nonverification, the individual shall
24 utilize the process for secondary verifica-
25 tion provided under paragraph (7). The

1 nonverification will remain tentative until a
2 final verification or nonverification is pro-
3 vided by the verification system within the
4 time period specified. In no case shall an
5 employer terminate employment of an indi-
6 vidual because of a failure of the individual
7 to have identity and work eligibility con-
8 firmed under this section until a nonver-
9 ification becomes final. Nothing in this
10 clause shall apply to a termination of em-
11 ployment for any reason other than be-
12 cause of such a failure.

13 ''(iii) FINAL VERIFICATION OR NON-
14 VERIFICATION RECEIVED.—If a final ver-
15 ification or nonverification is provided by
16 the verification system regarding an indi-
17 vidual, the person or entity shall record on
18 the form an appropriate code that is pro-
19 vided under the system and that indicates
20 a verification or nonverification of identity
21 and work eligibility of the individual.

22 ''(iv) EXTENSION OF TIME.—If the
23 person or other entity in good faith at-
24 tempts to make an inquiry during the time
25 period specified and the verification system

1 has registered that not all inquiries were
2 received during such time, the person or
3 entity may make an inquiry in the first
4 subsequent working day in which the ver-
5 ification system registers that it has re-
6 ceived all inquiries. If the verification sys-
7 tem cannot receive inquiries at all times
8 during a day, the person or entity merely
9 has to assert that the entity attempted to
10 make the inquiry on that day for the pre-
11 vious sentence to apply to such an inquiry,
12 and does not have to provide any addi-
13 tional proof concerning such inquiry.

14 ''(v) CONSEQUENCES OF NONVER-
15 IFICATION.—

16 ''(I) TERMINATION OR NOTIFICA-
17 TION OF CONTINUED EMPLOYMENT.—
18 If the person or other entity has re-
19 ceived a final nonverification regard-
20 ing an individual, the person or entity
21 may terminate employment of the in-
22 dividual (or decline to recruit or refer
23 the individual). If the person or entity
24 does not terminate employment of the
25 individual or proceeds to recruit or

refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

"(II) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under subclause (I), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.

"(vi) CONTINUED EMPLOYMENT AFTER FINAL NONVERIFICATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonverification, a rebuttable presumption is created that the person or entity has violated subsection (a)(1)(A).".

SEC. 703. EXPANSION OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM TO PREVIOUSLY HIRED INDIVIDUALS AND RECRUITING AND REFERRING.

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

(1) in subsection (a)(1)(A), by striking ''for a fee'';

(2) in subsection (a)(1), by amending subparagraph (B) to read as follows:

''(B) to hire, continue to employ, or to recruit or refer for employment in the United States an individual without complying with the requirements of subsection (b).'';

(3) in subsection (a)(2) by striking ''after hiring an alien for employment in accordance with paragraph (1),'' and inserting ''after complying with paragraph (1),''; and

(4) in subsection (a)(3), as amended by section 702, is further amended by striking ''hiring'' and inserting ''hiring, employing,'' each place it appears.

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

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

"(8) USE OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM FOR PREVIOUSLY HIRED INDIVIDUALS.—

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

"(B) ON A MANDATORY BASIS.—

"(i) A person or entity described in clause (ii) must make an inquiry as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date

three years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

''(ii) A person or entity is described in this clause if it is a Federal, State, or local governmental body (including the Armed Forces of the United States), or if it employs individuals working in a location that is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, an airport, or that contains critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))), but only to the extent of such individuals.

''(iii) All persons and entities other than those described in clause (ii) must make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date six years after the

date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.''.

SEC. 704. BASIC PILOT PROGRAM.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''at the end of the 11-year period beginning on the first day the pilot program is in effect'' and inserting ''two years after the enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005''.

SEC. 705. HIRING HALLS.

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

''(4) DEFINITION OF RECRUIT OR REFER.—As used in this section, the term 'refer' means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person. Generally, only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition. However, union hiring halls that refer union members or nonunion individuals

who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section the term 'recruit' means the act of soliciting a person, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Generally, only persons or entities recruiting for remunerations (whether on a retainer or contingency basis) are included in the definition. However, union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service agencies, whether public, private, for-profit, or nonprofit that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.''.

SEC. 706. PENALTIES.

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

(1) in subsection (e)(4)—

(A) in subparagraph (A), in the matter before clause (i), by inserting ", subject to paragraph (10)," after "in an amount";

(B) in subparagraph (A)(i), by striking "not less than $250 and not more than $2,000" and inserting "not less than $5,000";

(C) in subparagraph (A)(ii), by striking "not less than $2,000 and not more than $5,000" and inserting "not less than $10,000";

(D) in subparagraph (A)(iii), by striking "not less than $3,000 and not more than $10,000" and inserting "not less than $25,000"; and

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

"(B) may require the person or entity to take such other remedial action as is appropriate.";

(2) in subsection (e)(5)—

(A) by inserting ", subject to paragraph (10)," after "in an amount";

(B) by striking "$100" and inserting "$1,000";

(C) by striking "$1,000" and inserting "$25,000";

(D) by striking ''the size of the business of the employer being charged, the good faith of the employer'' and inserting ''the good faith of the employer being charged''; and

(E) by adding at the end the following sentence: ''Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).'';

(3) by adding at the end of subsection (e) the following new paragraph:

''(10) MITIGATION OF CIVIL MONEY PENALTIES FOR SMALLER EMPLOYERS.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring by an employer, the dollar amounts otherwise specified in the respective paragraph shall be reduced as follows:

''(A) In the case of an employer with an average of fewer than 26 full-time equivalent

employees (as defined by the Secretary of Homeland Security), the amounts shall be reduced by 60 percent.

"(B) In the case of an employer with an average of at least 26, but fewer than 101, full-time equivalent employees (as so defined), the amounts shall be reduced by 40 percent.

"(C) In the case of an employer with an average of at least 101, but fewer than 251, full-time equivalent employees (as so defined), the amounts shall be reduced by 20 percent.

The last sentence of paragraph (4) shall apply under this paragraph in the same manner as it applies under such paragraph.".

(4) by amending paragraph (1) of subsection (f) to read as follows:

"(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1) or (2) shall be fined not more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year, or both, notwithstanding the provisions of any other Federal law relating to fine levels."; and

(5) in subsection (f)(2), by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.

SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EMPLOYMENT ELIGIBILITY VERIFICATION.

(a) REPORT.—

(1) IN GENERAL.—Not later than than 9 months after the date of the enactment of this Act, the Commissioner of Social Security, in consultation with the Secretary of Treasury, the Secretary of Homeland Security, and the Attorney General, shall submit a report to Congress that includes an evaluation of the following requirements and changes:

(A) A requirement that social security cards that are made of a durable plastic or similar material and that include an encrypted, machine-readable electronic identification strip and a digital photograph of the individual to whom the card is issued, be issued to each individual (whether or not a United States citizen) who—

(i) is authorized to be employed in the United States;

(ii) is seeking employment in the United States; and

(iii) files an application for such card, whether as a replacement of an existing social security card or as a card issued in connection with the issuance of a new social security account number.

(B) The creation of a unified database to be maintained by the Department of Homeland Security and comprised of data from the Social Security Administration and the Department of Homeland Security specifying the work authorization of individuals (including both United States citizens and noncitizens) for the purpose of conducting employment eligibility verification.

(C) A requirement that all employers verify the employment eligibility of all new hires using the social security cards described in subparagraph (A) and a phone, electronic card-reading, or other mechanism to seek verification of employment eligibility through the use of the unified database described in subparagraph (B).

(2) ITEMS INCLUDED IN REPORT.—The report under paragraph (1) shall include an evaluation of each of the following:

(A) Projected cost, including the cost to the Federal government, State and local governments, and the private sector.

(B) Administrability.

(C) Potential effects on—

(i) employers;

(ii) employees, including employees who are United States citizens as well as those that are not citizens;

(iii) tax revenue; and

(iv) privacy.

(D) The extent to which employer and employee compliance with immigration laws would be expected to improve.

(E) Any other relevant information.

(3) ALTERNATIVES.—The report under paragraph (1) also shall examine any alternatives to achieve the same goals as the requirements and changes described in paragraph (1) but that involve lesser cost, lesser burden on those affected, or greater ease of administration.

(b) INSPECTOR GENERAL REVIEW.—Not later than 3 months after the report is submitted under subsection (a), the Inspector General of the Social Security Administration, in consultation with the Inspectors General of the

Department of Treasury, the Department of Homeland Security, and the Department of Justice, shall send to the Congress an evaluation of the such report.

SEC. 708. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of enactment of this Act, except that the requirements of persons and entities to comply with the employment eligibility verification process takes effect on the date that is two years after such date.

TITLE VIII—IMMIGRATION LITIGATION ABUSE REDUCTION

SEC. 801. BOARD OF IMMIGRATION APPEALS REMOVAL ORDER AUTHORITY.

(a) IN GENERAL.—Section 101(a)(47) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(47)) is amended to read as follows:

"(47)(A) The term 'order of removal' means the order of the immigration judge, the Board of Immigration Appeals, or other administrative officer to whom the Attorney General or the Secretary of Homeland Security has delegated the responsibility for determining whether an alien is removable, concluding that the alien is removable or ordering removal.

"(B) The order described under subparagraph (A) shall become final upon the earliest of—

"(i) a determination by the Board of Immigration Appeals affirming such order;

"(ii) the entry by the Board of Immigration Appeals of such order;

"(iii) the expiration of the period in which any party is permitted to seek review of such order by the Board of Immigration Appeals;

"(iv) the entry by an immigration judge of such order, if appeal is waived by all parties; or

"(v) the entry by another administrative officer of such order, at the conclusion of a process as authorized by law other than under section 240.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to ordered entered before, on, or after such date.

SEC. 802. JUDICIAL REVIEW OF VISA REVOCATION.

(a) IN GENERAL.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by amending the last sentence to read as follows: "Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no

court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to visa revocations effected before, on, or after such date.

SEC. 803. REINSTATEMENT.

(a) IN GENERAL.—Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:

''(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

''(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed;

''(B) the alien is not eligible and may not apply for any relief under this Act, regardless

of the date that an application for such relief may have been filed; and

"(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not require proceedings before an immigration judge under section 240 or otherwise.".

(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

"(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—

"(1) IN GENERAL.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, or subsection (a)(2)(D) of this section, no court shall have jurisdiction to review any cause or claim arising from or relating to any reinstatement under section 241(a)(5) (including any challenge to the reinstated order), except as provided in paragraph (2) or (3).

"(2) CHALLENGES IN COURT OF APPEALS FOR DISTRICT OF COLUMBIA TO VALIDITY OF THE SYS-

TEM, ITS IMPLEMENTATION, AND RELATED INDIVIDUAL DETERMINATIONS.—

"(A) IN GENERAL.—Judicial review of determinations under section 241(a)(5) and its implementation is available in an action instituted in the United States Court of Appeals for the District of Columbia Circuit, but shall be limited, except as provided in subparagraph (B), to the following determinations:

"(i) Whether such section, or any regulation issued to implement such section, is constitutional.

"(ii) Whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General or the Secretary of Homeland Security to implement such section, is not consistent with applicable provisions of this Act or is otherwise in violation of a statute or the Constitution.

"(B) RELATED INDIVIDUAL DETERMINATIONS.—If a person raises an action under subparagraph (A), the person may also raise in the 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.

"(4) SINGLE ACTION.—A person who files an action under paragraph (2) may not file a separate action under paragraph (3). A person who files an action under paragraph (3) may not file an action under paragraph (2).".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on April 1, 1997, and shall apply to all orders reinstated on or after that date by the Secretary of Homeland Security (or by the Attorney General prior to March 1, 2003), regardless of the date of the original order.

SEC. 804. WITHHOLDING OF REMOVAL.

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

(1) in subparagraph (A), by adding at the end the following: "The burden of proof is on the alien to establish that the alien's life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for such threat."; and

(2) in subparagraph (C), by striking "In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a rea-

son described in subparagraph (A)'' and inserting ''For purposes of this paragraph''

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of section 101(c) of the REAL ID Act of 2005 (division B of Public Law 109–13).

SEC. 805. CERTIFICATE OF REVIEWABILITY.

(a) ALIEN'S BRIEF.—Section 242(b)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)(C)) is amended to read as follows:

''(C) ALIEN'S BRIEF.—The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available. The court may not extend this deadline except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.''.

(b) CERTIFICATE OF REVIEWABILITY.—Section 242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended by adding at the end the following new subparagraphs:

''(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—

"(I) all parties to the proceeding agree to such extension; or

"(II) such extension is for good cause shown or in the interests of justice, and the judge or circuit justice states the grounds for the extension with specificity.

"(vi) If no certificate of reviewability is issued before the end of the period described in clause (iv), including any extension under clause (v), the petition for review shall be deemed denied, any stay or injunction on petitioner's removal shall be dissolved without further action by the court or the government, and the alien may be removed.

"(vii) If a certificate of reviewability is issued under clause (ii), the Government shall be afforded an opportunity to file a brief in response to the alien's brief. The alien may serve and file a reply brief not later than 14 days after service of the Government's brief, and the court may not extend this deadline except upon motion for good cause shown.

"(E) NO FURTHER REVIEW OF THE COURT OF APPEALS JUDGE'S DECISION NOT TO ISSUE A CERTIFICATE OF REVIEWABILITY.—The single court of appeals judge's decision not to issue a certificate of reviewability, or the denial of a petition under subparagraph (D)(vi), shall be the final decision for the court of appeals and shall not be reconsidered, reviewed, or reversed by the court of appeals through any mechanism or procedure.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to petitions filed on or after the date that is 60 days after the date of the enactment of this Act.

SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA ISSUANCE.

(a) IN GENERAL.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1201(a)) is amended by adding at the end the following new paragraph:

"(3) An alien may not be issued a nonimmigrant visa unless the alien has waived any right—

"(A) to review or appeal under this Act of an immigration officer's determination as to the inadmissibility of the alien at the port of entry into the United States; or

"(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to visas issued on or after the date that is 90 days after the date of the enactment of this Act.

○

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes to——

Mr. SCOTT. Mr. Chairman, parliamentary inquiry. Did I understand you to say that each section would be considered for amendment as read?

Chairman SENSENBRENNER. Each title will be considered for amendment as read—title, not section.

Mr. SCOTT. I would ask unanimous consent, if an amendment is relevant to one section but covers other sections, that the amendment could be in order.

I have an amendment that strikes all the mandatory minimums in the bill, and rather than having section by section, it would make more sense to have one amendment.

Chairman SENSENBRENNER. The Chair would recommend that you redraft your amendment because everybody else would then ask the same thing and we would be jumping all around the bill on disjointed questions.

Let me redraft the unanimous consent request. I would ask unanimous consent that the bill be considered open for amendment by title, each title be considered as read, but that an amendment would be in order that deals with several different titles as long as it is offered to the last title of the bill to which it relates. With that understanding, without objection, so ordered.

The Chair now recognizes himself for 5 minutes to explain the bill.

America has lost control of its borders and is experiencing an unprecedented rise in illegal immigration. Border insecurity and lax enforcement of our Nation's immigration laws poses a security threat to the American people and rewards those who violate the law.

Large majorities of Americans support efforts to restore integrity to our Nation's borders and to stem the tide of illegal entry into the United States. America is a nation of immigrants but it is also a nation of laws. These concepts are not mutually exclusive and the legislation we consider at today's markup reflects this recognition.

Earlier this week, Homeland Security Chairman King and I introduced legislation to regain control of our borders and demagnetize the lure of higher-wage employment that drives illegal entry into this country. H.R. 4437 will help restore the integrity of our Nation's borders and reestablish respect for our laws by holding violators accountable, including human traffickers, employers who hire illegal aliens, and alien gang members who terrorize communities throughout the country.

This legislation incorporates vital border security protection provisions contained in H.R. 4312, reported by the Committee on Homeland Security earlier this month.

I will briefly outline some of the most important provisions of this legislation within this Committee's jurisdiction. First, the bill will fulfill the unkept promise of the Immigration Reform and Control Act of 1986 by providing all employers with a reliable method of determining whether employees are eligible to work. The bill institutes an employer eligibility verification system in which all employers will confirm or deny the authenticity of Social Security numbers offered by job applicants. This mechanism will identify

fraudulent submissions and ensure that employees are not working in the U.S. illegally.

The bill expands on the promise of Representative Calvert's H.R. 19 to build upon a successful pilot program that currently enables employers to verify the employment eligibility of their workers. Currently, employer participation in this program is on a voluntary basis. This legislation requires that all employers will check new hires against this database within 2 years.

The bill also increases penalties for alien smuggling. Under current law, individuals convicted of smuggling crimes often receive lenient sentences. The GAO has found that convicted smugglers, including those responsible for death or serious injury, receive an average sentence of only 10 months. Weak penalties fuel a trade in illegal alien smuggling because the risk of punishment for illegally transmitting aliens is far less than transmitting illegal drugs or committing other serious crimes.

Those who suffer the most are often the most vulnerable and desperate, entering our country in perilous conditions that sometimes result in either injury or death. Moreover, the debts owed to alien smugglers by those transported in the country illegally often create a form of indentured servitude that enriches criminal syndicates. The legislation establishes strong penalties to deter this trade in human traffic.

The legislation also cracks down on alien members of violent street gangs that have become a threat to communities across the country. It incorporates the Alien Gang Removal Act which was authored by Congressman Forbes, which passed this Committee. The bill also increases penalties for previously deported aliens who illegally reenter the United States. These provisions were incorporated from H.R. 3150 introduced by Congressman Issa.

A crucial provision of the legislation remedies the current situation in which the U.S. is required to release dangerous alien criminals onto our streets. Department of Homeland Security is currently not permitted to detain for more than a short time dangerous aliens who cannot be deported. This has compelled the release of thousands of criminal aliens, including murders and rapists. One of those released subsequently murdered a New York State trooper. The legislation allows for the detention of such illegal aliens.

The bill also bars aliens who are terrorists or security risks from becoming naturalized U.S. citizens, makes aggravated felons inadmissible to the U.S., and facilitates the deportation of aliens who sexually abuse minors.

Many of the provisions in the bill were requested by the Justice Department and the Department of Homeland Security. This legislative effort will not only help regain control of our borders and prevent illegal immigration, but will help strengthen and promote our compassionate and welcoming legal immigration system.

At this point, I wish to provide the following reminder to Committee Members. Rule XVI(7) of the House requires that Committee amendments be germane to the Rule X jurisdiction of the Committee considering the amendment. The legislation we consider today incorporates several border security provisions reported by the Committee on Homeland Security. Rule X provides the Committee on Homeland Security with jurisdiction over the administra-

tive aspects of the Department of Homeland Security as well as border and port security, except immigration policy and nonborder enforcement. As a result, amendments offered at today's markup exclusively within the Rule X jurisdiction of the Committee on Homeland Security will be considered nongermane for purposes of this markup, and I urge my colleagues to support the bill and recognize the gentleman from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman and Members.

This is a sad moment as we close out the first year of the 109th session of Congress because this bill is mostly not about border security; the bill includes some provisions, but uses them to bootstrap on anti-immigrant legislation, a set of legislation that has nothing to do with security at the border. And yet again the Republicans are using the fears of terrorism that Americans have in this uncertain post-September 11th world to piggyback its anti-immigrant agenda on a border security proposal, and I am deeply troubled by the procedure that has been used.

Instead of reforming our immigration system to improve border security and effectively and realistically address undocumented immigration, this bill further destroys the system. It is so heinous and extreme that the Democrats on this Committee agree that this bill cannot be fixed. It is a nonstarter.

And while we are eager to tell the American people why this bill is so dangerous, we will not spin our wheels on an impossible task in this partisan environment. With few exceptions, we will not even seek to amend this atrocious, irreparable bill that I think does no honor—brings no honor to this Committee in bringing it forward under these circumstances.

Repeatedly, over the last decade the Republican-controlled House has passed one immigration bill or border enforcement bill after another, yet the tide of unlawful immigrants entering this country continues to rise and then disappear into a shadowy, unknown society. Republicans will pass a policy that pretends to be tough on security and enforcement and then refuse to fund the policies year after year. We know the drill. Everybody is on to the game.

We do not sanction employers who hire unauthorized immigrant workers, and yet only three employers in the entire country were sanctioned last year for using unlawful labor. We are unable to detain or deport everyone here lawfully. We don't know who has come or who has gone or who is dangerous. We have done nothing to bring the 11 million unlawfully present immigrants out of the shadows.

And so it is with a heavy heart that we begin the task that is before us on a bill that is not worthy to be brought before the Committee at this time.

And I return the balance of my time, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, all Members' opening statements may be included in the record at this point.

Mr. BERMAN. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from California seek recognition?

Mr. BERMAN. Do we have an opportunity at this point, moving to strike the last word, to discuss the proposal that is in front of us?

Chairman SENSENBRENNER. If the gentleman desires, he can move to strike the word.

Mr. BERMAN. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BERMAN. Mr. Chairman, perhaps because I am going to make some harsh comments, I want to state at the outset that I have great respect for the Chairman's intelligence and his fairness in conducting this Committee. This is one of the most polarized Committees on the House of Representatives. We have many, many ideological differences, and while I feel—and will explain why I feel—so strongly about what is going on here today, I wanted to put it in the context of those comments.

The majority's decision to bring forth, as our Ranking Member said, on the week before we are about to leave, the Border and Immigration Enforcement Act of 2005, to my way of thinking can only be attributed to one of three things: stupidity, political panic, or venality.

I want to say that a—before—I will elaborate on why I feel that way, but I want to give some views about where I think most Democrats are coming from on this issue.

We believe illegal immigration is wrong. We think we have a national crisis respecting illegal immigration, and we think we should do whatever we can do to effectively stop it.

We think that a fundamental attribute of national sovereignty is substantial control of who comes into this country and how they come in and that the consequences of that lack of control—and we do have to a great extent a lack of control—causes incredibly serious problems: massive disruptions and impacts on public services, health care, education, law enforcement, humanitarian tragedies of tremendous proportions, exploitation of people, unsafe working conditions, disregard of labor laws; and particularly, as we know since 9/11, it becomes a vehicle by which terrorists and gang members and drug pushers can penetrate our country, threaten our security, and threaten our well-being.

Democrats support expending the resources and making the changes necessary to try and fix this problem. Democrats are willing to push and support tough border enforcement. At least a number of Democrats—I am one of them—are willing to support a meaningful verification system to correct the fundamental flaw of the 1986 bill so that employers are required to determine whether or not the people applying for jobs with them are authorized to work in the United States and that that corrects a big part of this problem.

But we also know that just doing those two things alone will do nothing; and that is where I get to the point that putting this proposal before us in the form it is in now—not so much because of the provisions that are in this bill, although a number of them I would suggest changes—but because of what is not in this bill demonstrates a reckless foolishness or some kind of political panic that is motivating the majority to act, notwithstanding the fact that what they are proposing will not solve their problem, or a certain kind of venality in a political context.

The stupidity of this bill is that everyone knows this won't work. The Chairman himself, I have read four separate times in the last

week, says without a guest worker program—we need to have a guest worker program, but that won't come in this bill. The President of the United States, George Bush, on a number of occasions has said the only approach to dealing with this issue is on a comprehensive basis.

We have 11 million people in this country here illegally. Without dealing with that fact, we are not going to solve the problem no matter how loud we shout about how tough we are. Senators Cornyn and Kyl and McCain on the Republican side of the aisle in the Senate recognize—they have different ways of approaching it, but recognize the need for a comprehensive approach. There are people on this Committee who I have talked to who know that without dealing with the issue of the 11 million undocumented——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. BERMAN. I would ask unanimous consent for 2 additional minutes.

Chairman SENSENBRENNER. Without objection.

Mr. BERMAN. There are people on the other aisle of this Committee that know full well that this bill, one, will never pass the U.S. Senate; and secondly, if it were to become law, would never deal with the problem unless we deal with the problem of the people in this country now on illegal status, unauthorized status, and deal with the issue of future worker and worker needs for American businesses.

So for those reasons this is a foolish approach.

So then I come to the conclusion perhaps, since surely the majority would not do something that cannot work intentionally, they must have a different motivation. And perhaps it is the fear of being Dreierized or Campbellized that certain kinds of demagogues on talk radio and the very understandable anger of the American people about our failure to fix this problem make them want to go for the quick-fix, easy solution that is no solution, and that this is fear at a time of plunging polls and scandals and demonstrations of executive incompetence and politicization of the disaster relief process. This becomes an issue to try and get a hold of in order to position oneself for the next elections.

Or maybe there is venality here. Maybe this is Ross Barnett of the 21st century. We are going to out-set whoever runs against us by demagoguing this issue. And these are harsh comments, but I can only understand what is happening here in the context of these ideas because you know, you know——

Chairman SENSENBRENNER. The gentleman's time has once again expired.

Mr. BERMAN. My last sentence is, this isn't about—we can have an interesting and philosophical debate about birthright, citizenship or what kind of enforcement—interior enforcement to have, or specific measures; but the notion it's not what is in this bill, that means this bill is destined not to solve the problem, and for that reason, I don't believe that this Committee should pass this bill out of here.

Chairman SENSENBRENNER. The Clerk will designate title I.

The CLERK. Securing United States borders——

Chairman SENSENBRENNER. Are there any amendments to title I?

Mr. KING. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Iowa, Mr. King, for what purpose do you seek recognition?

Mr. KING. I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

Mr. KING. Eighty-nine.

The CLERK. Amendment to H.R. 4437, offered by Mr. King of Iowa: Insert after Section 2 the following new section, Section 3, sense of Congress on setting a manageable level of immigration. It is the sense of Congress that the immigration and naturalization policy shall be designed to enhance the economic, social, and cultural well-being of the United States of America.

[The amendment follows:]

AMENDMENT TO H.R 4437

OFFERED BY MR. KING OF IOWA

Insert after section 2 the following new section:

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

It is the sense of Congress that the immigration and naturalization policy shall be designed to enhance the economic, social and cultural well-being of the United States of America.

Chairman SENSENBRENNER. The gentleman from Iowa is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

I offer this amendment today to include a sense of Congress about the future direction of our immigration policy. I wholly support immigration policy that is designed to enhance the economic, social and cultural well-being of the United States of America. Immigrants have made and will continue to make valuable contributions to our Nation. To benefit both immigrants and the United States, we must develop an immigration policy that aids the assimilation of newcomers by assuring our Nation does not admit more immigrants than it can reasonably accommodate.

Assimilation is valuable to immigrants who benefit from our shared American culture of personal responsibility, freedom and patriotism. The values shared by our civilization founded on the heritage of Western civilization, religious freedom and free enterprise capitalism serve immigrants and native born alike.

I am concerned that the recent rise in immigration levels in this country will make it difficult for newcomers to assimilate and find jobs. We must be careful to admit only as many newcomers as we can accommodate so our society will not be burden by unemployed immigrants. Cultural continuity must be assured by drafting policy that allows new immigrants to thrive and benefit the United States, not depend on the Federal Government for survival.

As Americans, we should promote a naturalization process that promotes American values, the responsibilities of citizenship and our constitutional principles. Candidates for naturalization should be proficient in English. Not only will English proficiency help newcomers attain better-paying jobs, it also provides a means of communication and unity for all Americans.

Finally, as a sovereign Nation, in a time of war controlling our borders is paramount. We must ensure terrorists do not infiltrate the United States. We must tighten and strengthen border control efforts so illegal aliens do not enter our country.

We must always remember the ultimate goal should be promotion of the well-being of the United States of America, not the benefit of a neighboring country. Setting a manageable legal of immigration is a reasonable request to achieve this objective. I ask for your support on this amendment.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Does the gentleman yield back his time?

Mr. KING. I yield back.

Mr. NADLER. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from New York, for what purpose do you seek recognition?

Mr. NADLER. To speak on the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Speaker.

This amendment, I heard what Mr. King thinks he means by it, but if you read the amendment, it is meaningless. It is the sense of Congress that the immigration and naturalization policy should be designed to enhance the economic, social and cultural well-being of the United States of America.

Well, I think everybody will agree with that sentiment. Certainly our laws, all our laws, should be designed to enhance the economic, social and cultural well-being of the United States of America. Of course, on this Committee we may have 36 different ideas of what bills, laws, amendments would do that. We may have different ideas of what advances the economic, social and cultural well-being of the United States of America.

I will stipulate that I will support this amendment because who could not, who could be against enhancing the economic, social and cultural well-being of the United States, although my interpretation of what would do that may be very different than Mr. King's interpretation, may in fact be diametrically opposed to what he thinks this amendment will do. So because this amendment states well-meaning goals, it is totally meaningless, I urge everyone to vote for it.

Chairman SENSENBRENNER. Does the gentleman want to yield back?

Mr. NADLER. I do not want to yield back.

Second, I want to second what Mr. Berman said. It is an outrage this bill is before us today, not just for the reasons that he said, but because this is a 169-page bill which makes fundamental changes, some technical, some very complicated, with far-reaching effects in many different aspects of the law; and the Democrats didn't see this 169-page bill until the day before yesterday. We have not had an opportunity to analyze it. I guarantee that the public at large, the professors, lawyers, immigration bar have not had an opportunity to analyze it or give comments.

There is no pressing necessity. When we passed the PATRIOT Act bill, unread, 4 years ago—not talking about this year, but originally 4 years ago—no one had a chance to read that. We were told well, we can't wait a week, there will be blood on our hands.

Why can't we wait a week, or 2, or 6? Nothing is happening.

This problem is a long-standing problem, it is going to be long-standing. We should deal with it as Mr. Berman said. But to deal with it by passing what may not be a one-House bill—or even worse, not a one-House bill—without proper analysis, with no opportunity to really look into it, is a disgrace and a travesty on the legislative record.

I am going to use the remaining time to discuss one provision of this bill which I just glanced at, haven't had a chance to really go into it, but is something that deserves extensive discussion in this Committee.

The expedited removal provision in title IV. This bill would require the Border Patrol to pick up and deport without even an administrative hearing, to deport without even an administrative hearing anyone within 100 miles of the border that an agent thinks is an undocumented immigrant who has been present less than 14 days.

It expands on the controversial policy of expedited removal, which grants extraordinary and unprecedented power to low-level immigration officers to remove individuals without review and without a fair hearing. "expedite removal" currently is applied to noncitizens arriving at airports with apparently improper documents, to noncitizens arriving by sea and a few other categories of noncitizens. Even as currently applied, expedited removal results

in terrible mistakes including its wrongful application to genuine refugees and even to U.S. citizens.

In 2001, 4 years ago, the Senate heard harrowing testimony from refugees wrongly subjected to expedited removal, including in one instance an Algerian refugee who faced persecution from Islamic extremists for his refusal—refusal to participate in a plot to murder his employer, the former Algerian president. Because of expedited removal, he was shackled when he said he would be sent back without review despite his claims of political asylum.

A Tibetan Buddhist monk also testified before the Senate, a monk whose comrades, two monks and a nun, were wrongly sent back to China and no one has heard from them since.

The Senate also heard the case of Sharon McKnight, an American citizen of Jamaican descent who suffers a mental disability and was wrongly put into expedited removal and sent to Jamaica because an inspector mistakenly thought her passport was fake and she didn't have the mental competence to persuade him otherwise.

Expedited removal, Mr. Chairman, should be fixed, not expanded. Because there is no check on expedited removal, expanding it to any person a Government official thinks is a recently arrived illegal immigrant within 100 miles of the border will inevitably result in the wrongful arrest and even deportation of perfectly legal residents, and even of U.S. citizens who may be of Mexican America heritage or look foreign to a Border Patrol officer, because there is no appeal for that, no hearing or administrative proceeding, never mind an immigration judge.

Expanding this policy to persons——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. NADLER. I will ask unanimous consent for 2 additional minutes.

Chairman SENSENBRENNER. Without objection.

Mr. NADLER. Thank you.

Expanding the policy of expedited removal to include persons already within the United States poses grave constitutional problems. In the case of *Zadvydas v. Davis* the U.S. Supreme Court ruled in 2001 once an alien enters the country, the legal circumstances change, for the due process clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent, end quote from the Supreme Court.

So to have an expedited removal for someone within the United States not caught at the border without any kind of due process is clearly unconstitutional. In *Shaughnessy v. United States ex rel. Miezi,* also decided by the Supreme Court, although this is an older case, aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process.

So here we have a provision in this bill which we don't have time to really go into, don't have time to examine, and don't have time to fix because maybe its aims are okay. But we don't have time to fix it because we have got to rush this bill through, and yet it is clearly unconstitutional, as applied, in many cases. It will clearly result in U.S. citizens, legally admitted aliens, being deported improperly; and it will result in people with good claims of political

asylum, people whom we want in this country, who may have fled here because they oppose the Taliban or opposed the tyrants that we are opposing, we will send them back to be murdered, raped or punished for their nerve in standing up for American values and for freedom.

This is really something that is not a good idea. I yield back.

Chairman SENSENBRENNER. The question is——

Mr. DELAHUNT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I won't take the 5 minutes.

I would encourage support for the amendment for the reasons articulated by my colleague from New York, Mr. Nadler.

My good friend from Iowa, Mr. King, speaks about a number, a number which I would pose to him that I am not sure of, but a number that he believes that this Nation could deal with in terms of assimilation; and I wonder if he would share with us that particular number of immigrants.

I yield to my friend from Iowa.

Mr. KING. Thank the gentleman from Massachusetts.

And I have spoken openly about this on the floor, as Mr. Delahunt may recall, and I said that I will support a consistent level of immigration that is in the 450 to 500,000 a year number, kind of the legal number that we have.

I think if anybody is going to have an opinion on immigration, the first thing they ought to answer is, is there such a thing as too much immigration, and the next question is how much is too much. If you don't have an opinion on that, then you ought not engage in this debate.

I thank you and yield back.

Mr. DELAHUNT. I yield back.

Ms. LOFGREN. Mr. Chairman.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. The amendment itself, as pointed out by our colleague from New York, Mr. Nadler, basically is meaningless, and therefore, we can vote whichever way we want; it doesn't accomplish anything. But I do think it is important to note some of the severe problems in the base bill.

One of the things that has not yet been fully discussed is that approval and enactment of this bill into law would preclude President Bush's proposal to have some kind of orderly progress to allow those who are temporarily working to have legal status even for a temporary period, because the bill turns people who are undocumented into aggravated felons.

I think it is worth pointing out that among the several million people who are here without documents and whom we need to deal with include at least a million and a half children who, under the

bill, would become aggravated felons. To think that this would solve the problem that besets the country, I think is a mistake.

I want to note something else, and it is a small issue perhaps, but it is a big issue to those who are fleeing communism, and it is an issue that I raised in the Homeland Security markup, and we were advised that we lacked jurisdiction in the Homeland Security Committee, so obviously we have jurisdiction in this Committee; and that deals with Section 404, the denial of admission to nationals of countries denying or delaying accepting an alien.

It is a problem when the United States decides to deport someone; if the country of origin refuses to repatriate that person, it causes a problem. The answer to that is diplomacy. Recently, although it has caused problems in some communities, the United States did negotiate an agreement with the country of Cambodia to accept people who are permanent residents of the United States who are not deportable back to Cambodia.

The problem that I see with this provision is that it punishes the victim of communism rather than actually dealing with the Communist government that is at fault, and let me give you an example. I have a large number of Vietnamese Americans in my district. I will guarantee you this, the Communist government in Vietnam does not care about the civil rights of their citizens. As a matter of fact, as some Members of the Committee know, they are actively engaged in oppressing religious freedom, political freedom, freedom of the press. I mean they have been cited by our State Department as a country of particular concern.

Under the provisions of this act, if someone escapes from the Communists in Vietnam because they have been oppressed by that authoritarian Communist government, they would not be admitted to the United States because their government refuses to repatriate deportees.

Now, how is that a sensible provision? It is not.

I would like to point out that in addition to Vietnamese who are fleeing communism, the other big country that refuses to repatriate is China. Now, we have an economic relationship with China, but I have not been impressed that the Chinese government is particularly concerned about the civil rights, civil liberties and religious freedom of the people of China. In fact, many Members of Congress have outlined various abuses that have occurred by the Chinese government towards their citizens, including forced abortions, oppression of religious freedom and the like.

Why should we oppress further those people who have fled from China, presented themselves to the United States having fled from that oppressive Communist regime? Why should we turn those victims of communism away to punish the Communist government? This is completely nonsensical. It is only one of many bad provisions in this bill, but it is something that ought to be thoroughly rejected. It will not accomplish its goal, and it really is playing into the hands of authoritarian Communist regimes, especially in Asia, and deserves our repudiation and——

Ms. WATERS. Will the gentlelady yield?

Ms. LOFGREN. I will be happy to yield to the gentlelady.

Ms. WATERS. Since you have taken a look at that section, do you understand this section basically dictates that if they refuse to take a person back, we close down our borders to the country forever?

Ms. LOFGREN. It would include not just refugees but, for example, if a person born in China married my son.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. LOFGREN. I would ask 1 additional minute.

Mr. ISSA. I object. Not speaking to the amendment.

Chairman SENSENBRENNER. Objection is heard.

The question is on agreeing to the amendment offered by the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. I yield to the gentlelady from California.

Ms. LOFGREN. Thank you. I would just, in response to my colleague from California, Ms. Waters, point out that this is a comprehensive bar and it would include those who are married to American citizens.

If my son falls in love and marries a gal from China, I mean she would be excluded. It would include Nobel Prize winners who want to come over and become part of the American economy and bring their patent portfolio with them, in addition to those who would be asylees.

So I think this is really a way to not only punish victims of communism but also to punish Americans for no good reason.

And I note that my colleague from Texas wished time so I would further yield to the gentlelady.

Mr. SCOTT. I yield.

Ms. JACKSON LEE. I thank—is the gentleman yielding?

Mr. SCOTT. I yield to you.

Ms. JACKSON LEE. I thank very much the distinguished gentleman and distinguished gentlelady from California.

Let me just—as the time wanes, just simply say that as we look at the provisions that you have spoken about, it adds to my angst and concern that this legislation creates gridlock for the immigration system of America. It is not a practical approach, though there are many aspects that I believe we could have collaborated on in a very bipartisan way; evidence the border security bill out of Homeland Security. H.R. 4044 that I had offered spoke to the question of enhancing Border Patrol agents' training, scholarship, equipment and detention beds.

As I look at the legislation that we have now, we will effectively shut down the Nation's resort communities, hotels, restaurants. Again, we go back to employer sanctions which were ineffective in 1996, and I don't know how they can be effective now. You give no out and no relief for existing undocumented individuals who are tax-paying on homes or children who are in school. There is no relief whatsoever.

You close the door to a guest worker program and you close the door to an earned access to legalization, fair responses to the 11 million undocumented aliens in this country. When we leave this place today we will have done nothing to address that question.

My concern on Mr. King's amendment is that it is benign in and of itself, and I wish that he would have an amendment that says that we want to address the undocumented problem in this country. And when I say "problem," I am suggesting that we cannot

look away from hard-working, tax-paying individuals. Again, we take judicial review to the next level, and though we are a nation of due process and the Bill of Rights, we suggest that a revocation of a visa is not appealable.

I support the alien smuggling provisions, enhanced provisions to avoid the loss of life, those being smuggled across the border. It is reasonable. But certainly I think the process of due process is reputable and adds to the democracy and the image of the United States.

We know that this Nation is a nation of laws, it is a nation of immigrants. We also recognize that this country is better because we interact with people from around the world. It helps us when students from the Mideast come and are educated in the Nation's schools. In many instances, they may help us create jobs.

This bill does not open the door to a fix of the immigration system; it dampens asylum, it rushes for expedited removal without due process, and in fact, in the detention it seems to me that rather than focusing on the OTMs, which many of us have suggested are the gateway for terrorists, we are suggesting that we are going to detain everyone.

Even in H.R. 4044 I was bold enough to suggest that we needed 100,000 beds. You will never get the number of beds necessary in order to provide the security that this bill is offering.

Lastly, let me say when we begin to open the doors, as many of my good friends have advocated for local officials who are clamoring to be immigration officers, we are going down the pathway of no return and doom. Local law enforcement are to get the cops and robbers in their own community. And believe me, they are over their heads in that, to add the immigration issue so that the least little person driving their vehicle down someone's highway is intimidated by a local sheriff; and I do believe they have good intentions.

The bill also adds to the enhanced responsibility of the Department of Defense, and I clearly believe you are crossing the line of demarcation of making this country a militarized nation by insisting that the Department of Defense has an active role on the border.

Chairman SENSENBRENNER. The time of the gentleman from Virginia has expired.

Ms. JACKSON LEE. I would suggest that this bill needs collaborative effort, Mr. Chairman, and I hope we can take it back and work with the Democrats. I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from Iowa, Mr. King. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it and the amendment is agreed to. Are there further amendments to title I?

Mr. NADLER. Mr. Chairman.

Chairman SENSENBRENNER. For what purposes does the gentleman from New York seek recognition?

Mr. NADLER. Strike the last word on the bill.

Chairman SENSENBRENNER. The gentleman, I believe, has already been recognized.

Mr. NADLER. I was recognized on the amendment, not on the bill.

Chairman SENSENBRENNER. Are there further amendments to title I?

Mr. NADLER. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, since we have not had proper time to analyze this bill or to go into detail, I just want to take this time to analyze one and, if I have time, two other provisions of this bill that deserve extensive analysis and discussion.

Also, in title VIII, I think it is title VIII, is the criminalization of immigrants, including asylum seekers and others with valid claims for relief.

Immigration laws and regulations include both civil and criminal penalties. Removal is normally a civil process that determines whether a noncitizen is present legally and whether any relief, such as asylum or humanitarian relief, is available under the law. Some knowing violations of immigration law—immigrant smuggling, entry without inspection, failing to register when required—are criminal. Section 203 of this bill would create a new Federal crime of illegal presence defined broadly as any violation, even technical, of an immigration law or regulation, even without any intent to violate the immigration laws.

In essence, it makes every immigration violation, however minor, into a Federal crime. In fact, it makes actions which are unavoidable into Federal crimes. For example—and here are some consequences that I don't think have been anticipated or thought through—penalizing immigrants with valid asylum claims or other valid claims for relief come out from this provision.

The bill would turn into criminals noncitizens whose claims for immigration benefits have not yet been decided.

Persons fleeing persecution or on a temporary visa may have their visa expire before their asylum claim is adjudicated. Under the bill, they would become criminals subject to imprisonment for a term of years even if they are subsequently granted asylum. They would be subject—they would be criminals and subject to imprisonment for being here illegally because the Government delayed in granting them their valid asylum claim.

Other forms of relief, like temporary protective status granted by countries that suffer natural disaster, give temporary relief from deportation. The Government's decision to grant asylum or temporary protective status or other forms of relief would not necessarily wipe away the consequences of even a technical period of illegal presence, which would be criminal, despite the fact the immigrant never intended to violate any law and applied for relief in the correct manner.

Another consequence is that the overbroad definition of "smuggling" in section 202 could criminalize the work of churches or other refugee organizations acting in good faith. Harboring anyone who is illegally present is a crime, even with no intent of financial gain, even if that person has a valid asylum claim ultimately judged valid. An asylum seeker with a valid claim may be illegally present for some period, which would make it criminal for churches or refugee organizations to try to help them, treating such organizations the same as smuggling organizations.

I don't think, Mr. Chairman, that this is what the authors of the bill intended. I hope it is not. I don't think so ill of them that I think they would intend this.

I think this bill has not been properly thought through in this provision as among others, and I would hope that this bill would be withdrawn from consideration today until it can get proper venting, proper changes by its sponsors when they agree with the people who comment, proper debate when they don't agree; and so we don't rush through a very, very important 169-page bill which has——

Ms. LOFGREN. Will the gentleman yield?

I just want to point out another provision that really snuck in there, and that is in section 613. There is a U.S. Supreme Court case that basically recognizes that there are a lot of reasons why individuals could plead guilty to a criminal act.

[11:00 a.m.]

Ms. LOFGREN. I will give you an example. You are 20 years old. You have been arrested for possession of marijuana. You are a kid. Your defense lawyer recommends that you plead guilty because you don't have the money and you are not going to serve in any time in jail, and so you do that. Thirty years later, it becomes a problem immigration-wise.

The Supreme Court said that unless you understood the immigration implications at the time you made the plea, you could not use that provision in the immigration proceedings. There needs to be notice so that the plea is actually made intentionally.

This section basically says that State courts no longer have jurisdiction to run their own business. That is unprecedented that the Federal Government would step in to the State courts and start telling judges that they cannot modify sentences based on what they have found in their own courts based on their own records.

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Ms. WATERS. Mr. Chairman——

Chairman SENSENBRENNER. The Chair will announce that the Members of the majority are committed to stay here as long as it takes to get this bill done and put Members of the minority on notice that we will be here until there is a final vote.

For what purpose does the gentlewoman from California seek recognition?

Ms. WATERS. I seek recognition to strike the last word.

Chairman SENSENBRENNER. Gentlewoman is recognized for 5 minutes.

Ms. WATERS. Mr. Chairman, as I have said to you, I think, on more than one occasion, I am prepared to support a reasonable bill to deal with the immigration problem that we have in this country.

I was impressed upon first learning about the bill, because you had taken a giant step in dealing with the employers and stepped out willing to provide some sanctions. I thought that that was courageous on your part, given that many of the employers would like to have it both ways. However, being the fine legal mind that you are, Mr. Chairman, I am a bit surprised at some of what I am finding in the bill.

First of all, you know that there are many of us who have problems with continuing to bog down the legal system with mandatory

minimum sentencing, and here you have created—in one bill—more mandatory minimum sentences than perhaps we created in all of the last 2 years. In section 202 alone, you have created eight mandatory minimum sentencing, that is in title II, and it goes on and on and on in some of the other sections.

I know, also, not only are you a great legal mind but you are a bit of a fiscal conservative. Where does the money come from to expand our court system to deal with all of the mandatory minimums and other things that you have put into this bill? I don't know if you gave that consideration.

But I guess you did, because you want to take some money from first responders. Now you know that your President is in this war on terrorism, and you know that he set up homeland security. And one of the most important aspects of that is to be able to fund first responders in our cities so that our firemen and our police officers and others will be trained and prepared and have the equipment that they need to deal with terrorism.

What is going to happen when we have one of these alerts where everybody is put on notice and they have to move, they have to do certain things? Surely, Mr. Chairman, you did not intend to rob our cities of money for first responders in this tremendous fight on terrorism that we are engaged in in order to deal with the immigration problem in the way that you are trying to do.

In addition to that, there are some other issues in the bill that I think you could give better consideration to. Now, I know, as my colleague from California was discussing, the fact that we have some countries that would not allow reentry of removed aliens. But you go a bit far and you imply in this bill that if they do not take a person back that we are trying to send back that we are going to close our borders forever to that country and not allow any persons from that country in under any circumstances.

Surely you don't mean that; and I think perhaps, in your haste to do something good, you have overlooked the fact that, first of all, whatever we do has got to be constitutional.

Second——

Ms. LOFGREN. Would the gentlelady yield?

Ms. WATERS. I would yield to the gentlelady.

Ms. LOFGREN. I would turn back to the St. Cyr case, the U.S. Supreme Court case, because I think that decision is based on due process in the Constitution, is not going to be overturned statutorily, number one. But I think it is important to note that it is not about undocumented or illegal aliens, it is about legal residents, people who have gone through all the hoops, who have obtained their legal residency and who have been caught up either when they are trying to reenter the United States after a trip or they have applied for U.S. citizenship and got caught up on this. So this has no place in a bill about undocumented aliens, and it also clearly fails to meet the due process provisions in the constitution.

It purports to overturn the St. Cyr case. I don't think it can. But it is also very unfair to Americans who are married to these legal residents who really need an opportunity to have their situations reviewed by a State court judge.

Ms. WATERS. I think you is absolutely correct, and I think it is just an oversight on Mr. Sensenbrenner's part.

Now this mandatory detention for all illegal entrants until they are removed, where are you going to put them? I don't see where.

Chairman SENSENBRENNER. Gentlewoman's time has expired.

Chair asks unanimous consent that the remainder of the bill be considered as read and open for amendment at any point. And is there any objection?

Hearing none, so ordered.

Ms. WASSERMAN SCHULTZ. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Florida seek recognition?

Ms. WASSERMAN SCHULTZ. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WASSERMAN SCHULTZ. Thank you, Mr. Chairman.

Mr. Chairman, all of us here today on both sides of the aisle clearly recognize and know that immigration reform is necessary. Hundreds of thousands of illegal aliens cross our borders each year. Just using my own street as an example, four of the seven families that live on my own street are recent legal immigrants to this country.

Although these men and women come to America in search of a better life for themselves and their families, they obviously place a great burden on Federal, State and local governments. The Republican leadership has said many times that Congress should take up comprehensive immigration reforms that address not only enforcement but also allow for an adjustment of status for current undocumented immigrants.

This legislation does no such thing. In fact, this bill's primary focus is on border security and interior enforcement. We need a bill, if we are going to really address this problem, that is much broader in scope, one that offers real solutions and not another simplistic approach to a complex problem.

I commend to you comments last year from my Governor, my State's Governor, Florida's Governor Jeb Bush, with whom I rarely agree on anything, but I did agree with him on this. He said about illegal immigration last year, he said, we shouldn't allow them to come into the country to begin with, but once they are here, what do you do? Do you basically say they are lepers to society, that they don't exist? He said a policy that ignores them is a policy of denial.

Next year is an election year. We all know the stakes that are riding on this election. However, the Nation's immigration laws are too far reaching to simply rush through the legislation so that we can say we did something on immigration.

Mr. Chairman, as a Nation, we must address this complex problem, but we need to do this right. We must take an approach that addresses the Nation's illegal immigration problem more thoroughly, including guest worker provisions, programs to increase legal immigration, and policies that recognize that undocumented immigrants are here. They are here. There is no question that they are here, and then address some of the issues that result from their presence.

Until we can take a systematic approach and not take a simplistic approach to this very complex problem, then I cannot support this legislation.

Thank you, and I yield back the balance of my time.

Chairman SENSENBRENNER. Are there further amendments to the bill?

Mr. CANNON. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. CANNON. It is amendment Cannon .054.

[The amendment follows:]

AMENDMENT TO H.R. 4437

OFFERED BY MR. CANNON OF UTAH

[page and line number refer to print of December 6, 2005 1:23 PM]

In paragraph (3)(A)(i) of section 274A(b) of the Immigration and Nationality Act, as amended by section 702(5) of the bill, [page 141, line 1], insert after ''retain'' the following: ''a paper, microfiche, microfilm, or electronic version of'' ''.

Mr. CANNON. This is a technical amendment. Mr. Chairman, if I might just begin to explain this while it is being passed out.

Chairman SENSENBRENNER. A point of order is reserved by the gentleman from California. The gentleman is recognized for 5 minutes.

Mr. CANNON. This is a technical amendment. Last year, the House and the Senate passed H.R. 4306, which allows for electronic storage of I9 forms by voice vote and was signed into law. This amendment merely reinserts the language that an employer may keep I9s in electronic format.

This legislation enhances security and provides greater privacy protection for employees by electronic computer storage with a backup system. It is far more secure than paper-based systems in which paper documents can be lost, damaged, misfiled or accessed by unauthorized individuals.

This language is inadvertently, I believe, dropped from the bill; and I am adding back what is already existing law so as not to cause any confusion about the intent of Congress. I urge the support of this amendment by my colleagues and yield back the balance of my time.

Chairman SENSENBRENNER. Does the gentleman from California insist on his point of order.

Mr. BERMAN. No.

Chairman SENSENBRENNER. The gentleman from New York, for what purpose do you seek recognition?

Mr. NADLER. Strike the last word on the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I think that as far as I can judge, in not having had a chance to read the bill, this is a fine amendment. But it does give me the opportunity to comment on another provision of this bill, on the court-stripping provisions, which otherwise might not see the light of day in our rather abbreviated consideration of this bill. Again, these are provisions that ought to be looked at in detail and not in a 20-minute period or even a 5-minute period in a Committee meeting.

Because of court-stripping legislation passed 10 years ago and again earlier this year, current law severely restricts access to the courts for many kinds of immigration claims, including class actions and even ordinary review for many individual claims. As a result, immigrants who allege the Government acted illegally in the removal process have only one shot at review directly in the Circuit Court of Appeals, many under very narrow scope of review in current law.

In 2002, Attorney General Ashcroft worsened this problem by severely limiting administrative review by the Board of Immigration Appeals, leading to a truncated, one-judge review for most appeals, a review that does not satisfy elementary due process. This bill would worsen that trend by bringing second class review into the last avenue of relief, the Court of Appeals, and by manipulating the system to ensure no review at all—no review at all—for many immigrants. No review at all for temporary residents. Legal nonimmigrants—students, guest workers, et cetera, are effectively deprived of any review from a deportation order because they must

sign a waiver of their right to an administrative hearing or judicial review to obtain a visa.

Under this bill, to get a visa, you have to waive your rights. Under current law, such waivers apply only to tourists and other short-term visitors who qualify for travel under the visa waiver program. Revoking the visas were made unreviewable even by habeas corpus with only a systemic challenge to the statute available before the Court of Appeals in the District of Columbia Circuit, even if you are in Texas or California or somewhere else.

For those who still have a right to go into Federal court, a single appeals court judge is required within 60 days to issue a court certificate of your ability or the case is automatically dismissed. A similar one-judge system for the Bureau of Immigration Appeals has led to numerous mistakes and a string of reversals.

Expedited removal without a lawyer or a hearing, which the bill mandates, would apply to all noncitizens within 100 miles of the border and also forbids any review by a Federal Court.

Finally, many decisions, even decisions made with secret evidence, are made unreviewable, even by habeas corpus. The bill makes a number of decisions expressly unreviewable. For example, the Government's decision using secret evidence that an applicant for naturalization is involved in a terrorist group or has endorsed or espoused terrorism cannot be reviewed by a court, cannot be reviewed by the Bureau of Immigration Appeals. The bureaucrat's decision is final. And as we saw in that case in Florida, the jury disagreed.

One thing the authors of this bill should know by now is that not every bureaucrat is right 100 percent of the time. I would have thought the Republicans would know that. But this bill says every bureaucrat is always right and never needs to be reviewed.

Many decisions regarding voluntary departure agreements, deportation under existing deportation orders—even where Government's record keeping mistakes led to its entry—are unreviewable.

Mr. Chairman, it is a fundamental denial of the basic liberty concepts of this country, of the basic due process concepts of the country, to allow bureaucrats to deport people, to violate their rights with no review in court, with no review even by an immigration judge. It is simply beyond the pale—or it ought to be beyond the pale—and this ought not to be in this bill.

Just one more example of what an ill-considered bill this is and why we should not be considering this 169-page bill on less than 2 days notice at this time.

I am not terribly hopeful that anything we say here makes any difference, because this is all a political ploy, as we know. But, nonetheless, it would be nice if this Committee made a semblance of acting with some responsibility of actually considering these points on their merits. But I suppose that is too much to ask.

I yield back.

Ms. JACKSON LEE. Mr. Chairman——

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. I seek to strike the last word.

Chairman SENSENBRENNER. Gentlewoman is recognized 5 minutes.

Ms. JACKSON LEE. I thank the Chairman very much.

Because Mr. Cannon took the opportunity to share with us how enhanced technology could be an effective tool in the collective efforts that all of us are trying to achieve, and that is a fair and just and comprehensive immigration system, I wanted to make note of my considered, I guess, consternation and frustration with ignoring of the front-liners, if you will, in this bill and even though there may be some representation that the issue is a question of germaneness, but that is of the Border Patrol agency and agents.

There are any number of us who have walked the line, if you will, and that is—of the southern border and the northern border, but in particular the southern border—and have seen the Border Patrol agents day after day and night after night suffer with the half staffing, if you will, of the necessary equipment they need, the technology that they need to be able to perform their jobs.

Interestingly enough, the Republican efforts both in Homeland Security and, frankly, here clearly have ignored I think key elements of answering the question of the massive illegal immigration that many are concerned about and much of what we know is economic.

But no one seems to wants to sit down and analyze what do the Border Patrol agents need? They do want to analyze let's see how the Department of Defense can violate the seam between civilian and defense and engage in the issue of immigration. They do want to break the bank of local law enforcement and take them away from protecting school children and finding sexual predators and making sure that the banks are operating than put them on the border.

It is to me inconsistent to have strong enforcement and you don't have provisions for recruitment, scholarships for the recruitment of Border Patrol agents. You don't have enhanced certifying of their positions, advancing them at a civil service level, pension relief. You don't have helicopter and power boats added to their arsenal, if you will, motor vehicles where they suffer a severe shortage and have to share the vehicles that are down at the border, portable computers which are mostly in every local law enforcement. Now you will see local law enforcement with hand-carrying or car-carrying computers, radio communication, that does not exist, handheld global positioning system and, most of all, simplistically, night vision equipment.

If any of you have stood at the borders as I have done in the night watching Border Patrol agents, they are doing their best at a disadvantage. Body armor that, frankly, they probably have to buy for themselves. Simplistic responses to ensuring that the front-liners of immigration, regulation and control are well-trained, well-skilled and well-equipped.

I don't know what we are doing if we ignore that component of the work that we have to do. H.R. 4044 would offer that. I had hoped that we would be able to merge in a bipartisan manner to look at these issues.

But if we are talking about rapidly responding to the crisis and we overlook the Border Patrol agents and we focus on the Department of Defense to give us the strategy, might I say that they are, I would hope, filling up their days with a strategy on Iraq that is crying out for some reasonable response which at this time we are looking for.

But I don't see how adding another major component—something as large as the Department of Defense—to engage in this process, when we have been begging and crying for comprehensive reform.

I would hope, again, that in the waning hours of this session that we will have an opportunity to take this bill into a room and truly address the comprehensive needs of immigration in America. But I am disappointed that we can't find some way to give the necessary tools to an agency that has been maligned—not of their own doing but because they have not been given both the staffing, the detention facilities—reasonable detention. Not as it has been crafted in this bill. And they have certainly have not been given the equipment and I would also say the opportunities of recruitment and professional training to add to the excellent job that they are attempting to do. And I have seen them do some good work.

So I am glad that Mr. Cannon has added technology in a small way, but I was certainly disappointed——

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Questions on the amendment offered by the gentleman from Utah, Mr. Cannon. Those in favor will say aye. Aye. Opposed no. No.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments?

Mr. CANNON. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from Utah seek recognition?

Mr. CANNON. I have two amendments. I would like unanimous consent to offer them en block. Those are amendments Cannon 055 and 056.

Chairman SENSENBRENNER. Clerk will report the amendment.

The CLERK. Amendment to H.R. 4437 offered by Mr. Cannon of Utah.

Page 149, beginning line 17, strike clause 3.

Amendment to H.R. 4437 offered by Mr. Cannon of Utah.

Page 152, strike lines 20 through 25 and redesignate subsequent paragraphs accordingly.

Chairman SENSENBRENNER. Without objection, the amendments will be considered as en bloc. Hearing none, so ordered.

[The amendments follow:]

AMENDMENT TO H.R. 4437

OFFERED BY MR. CANNON OF UTAH

(Page and line numbers refer to SENSEN__104 ON DECEMBER 6, 2005 AT 1:23PM)

Page 149, beginning line 17, strike clause (iii).

AMENDMENT TO H.R. 4437

OFFERED BY MR. CANNON OF UTAH

(Page and line numbers refer to SENSEN__104 ON DECEMBER 6, 2005 AT 1:23PM)

Page 152, strike lines 20 through 25 and redesignate subsequent subparagraphs accordingly.

Chairman SENSENBRENNER. The gentleman from Utah is recognized for 5 minutes.

Mr. BERMAN. Mr. Chairman, I do have a reservation.

Chairman SENSENBRENNER. Gentleman from California reserves a point of order.

Gentleman from Utah is recognized for 5 minutes.

Mr. CANNON. Thank you, Mr. Chairman.

The first amendment would strike the mandatory verification on existing employees.

I want to just start off by saying how much I appreciate the Chairman's incredible work on this issue over a long period of time and that in an environment where there has been a great deal of other activity, including the Patriot Act which has taken, I think, an obscene amount of time; and so I appreciate his work on both efforts. But in the case of the basic pilot program the new national employment verification system is a good concept. I support that, and I hope it will work.

I can support the prospective use of the program, but I have concerns about a national mandate applying a program that has been questioned by the agencies to at least 8 million employers and 140 million employees. The burden that is created by mandating that every employer in the country use the employment verification to reverify the work authorization of some 140 million workers is more than extremely unfair to the vast majority of law-abiding employers. It would place a significant burden on businesses of every size because there are too many unanswered questions about this program.

The GAO studies on this subject earlier this year in August and June 2005 indicated that if the basic pilot program is expanded, several weaknesses in the program, including its inability to detect fraud and DHS delays in entering data into their databases, could become more significant and adversely affect a greater number of employees and employers.

DHS responded to the GAO study by saying the testing of alternative of pilots is important; and USCIS believes it is important to test and evaluate alternative employment verification systems before we go about creating a new, expensive mandatory national employment verification system.

CIS officials told GAO that the current basic pilot program may not be able to complete timely verifications of work eligibility if the numbers of employers using the program were to significantly increase. We have about 3,600 employers using the system now, as opposed to 8 million.

There are some fundamental problems inherent in the basic pilot that are not yet worked out. The basic pilot cannot detect identity fraud. If an unauthorized worker presents valid documentation that belongs to another person authorized to work, the program would likely find that person authorized to work.

Most importantly, we have existing laws on the books that penalize employers who are hiring unauthorized workers. IRCA provided sanctions against employers who do not follow the I9 employment verification process.

Under current law, employers are required to reverify the employment eligibility of individuals whose work authorization has expired to determine whether the are authorized to continue to

work. Employers who fail to properly complete, retain or present for inspection their I9s face civil fines ranging from a $1,000 to $20,000 for violation, and employers who knowingly hire or continue to employ unauthorized aliens also face increased fines. Employers who engage in a pattern of knowingly hiring illegal aliens are subject to criminal penalties, including imprisonment.

The Social Security Administration reports no match letters to the IRS, which then investigates and imposes fines for returns filed to the IRS that contain a missing or incorrect taxpayer identification number.

If the existing laws and fines are not being adequately enforced, then let's have a debate about that before we step up a whole new program of possible unintended consequences for the burdens it places on business and employers.

On the second amendment that I submitted en bloc, this section would eliminate the dramatic increase in penalties for what are pure paperwork violations. The current penalties range from $100 to $1,000. In H.R. 4437, these penalties would increase substantially from a thousand minimum to $25,000 maximum for not checking the appropriate box or signing the form.

We are here today to discuss immigration reform and not impose paperwork penalties on every American. The question is, why we are increasing penalties 2,500 percent for simple paperwork mistakes that may or may not have any connection to immigration problems? This penalty is not for those who are here intentionally or intentionally hire illegal workers or those who recruit illegal workers.

My amendment keeps the language and protects against fraudulent uses. If someone is gaming the paperwork, they can be prosecuted under the fraud and conspiracy laws which carry criminal penalties.

I understand that the bill contains a good-faith compliance exception before the imposition of this penalty would occur. But that exception does not take into account that this section is overbroad and really doesn't work with our task at hand, which is to reform our immigration system.

We are adding huge civil penalties to all businesses simply for clerical errors. You can be penalized for failing to check the right box or you can be penalized for failing to sign the form.

I urge my colleagues to support both of these amendments and vote for them en bloc. And with that, I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The time of the gentleman is expired.

The Chair recognizes himself for 5 minutes in opposition to the amendments en bloc. These amendments strike the guts of the bill and it has this bill and our country go down the slippery slope of the mistake that was made in 1986 in the Simpson-Mazzoli bill, and that was lack of adequate verification of the eligibility to work for people who applied for jobs in the United States.

The reason Simpson-Mazzoli failed—and we have more undocumented aliens in the United States today than we ever had in the early 1980's—is because there was not a way for employers to check whether somebody who was asking for a job was legally in the country and eligible to work.

The first amendment that the gentleman from Utah has offered strikes the necessity to check the employment eligibility of already existing workers.

Now the result of his amendment, if it becomes the law, is going to create an indentured servant program for undocumented aliens. Because if they are working for an existing employer and they are undocumented, they can't get a new job because their Social Security number would be caught up in the employer verification system. That is not the way we should go about dealing with this issue.

The second one, relative to paperwork violations of—the gentleman from Utah seems to think that these violations are trivial in nature. They really are not. Because it does require—the current immigration law does require employers to examine the work authorization documents in each new hire and attest on the I9 form that the new employee is not an unauthorized alien, and the problem is that the fines don't act as a sufficient deterrent for them to do the job right.

Now, in 1996, we recognized that employees should not be penalized for mere technical violations or mistakes, and there is a good-faith compliance issue. What we are dealing with with these penalties is not the people who are attempting to comply in good faith but the bad actors. Now the bad actors who hire scores or maybe even hundreds of undocumented aliens in effect are the 21st century slave masters. I don't have any soft spot in my heart for them, because the 21st century slave masters are operating in just as immoral a manner as the 19th century slave masters were.

I would ask that the Members vote against the Cannon amendments en bloc and yield back the balance of my time.

Mr. BERMAN. Would the gentleman yield?

Chairman SENSENBRENNER. Gentleman from California, Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. BERMAN. I hate opposing an amendment by my friend who I have worked on these issues with so much over the past few years, the gentleman from Utah. But my comments are particularly directed to the gentleman from California, Mr. Lungren. Think back to 1986 and that slippery slope the Chairman made reference to, where the problem in this bill isn't the idea of verification. It is the absence of an earned adjustment program, a guest worker program, the kinds of provisions that are in Kolbe-Flake and Cornyn-Kyl and Kennedy-McCain and that are being promoted by President Bush. It is the absence of those provisions.

What you do with this amendment is you go back to the 86 formulation of we criminalize the presence of these people in this country. We make it a new crime in the bill, but the employer can continue to employ these criminals as long as he wants, no burdens on the employer, if he has somebody employed.

By the way, every grower who hires—in an industry which is predominantly filled with undocumented workers, every grower, every time it is a peak season, is rehiring somebody, so this amendment doesn't even protect that particular employer.

Don't fundamentally because of the—the way to correct this bill isn't to give the employers more free passes. It is to deal with the presence of 11,000,000 people in this country who are not authorized to work at the present time, to correct that problem and to provide future courses of workers with adequate wage protections so they don't displace the jobs of U.S. workers where you have temporary shortages in the future. That is where the amendment should be coming to, not destroying the verification process which is part of a strategy of dealing with the problem of illegal immigration. We made that mistake in 1986. We are about to do it again.

Ms. LOFGREN. Would the gentleman yield, Mr. Berman?

I just want to support your suggestion of opposing the amendment in a slight variation of my thinking on yours that really this whole section needs a more comprehensive approach than can be accomplished in this amendment, and I have reached the same conclusion as you that we cannot support it.

I thank the gentleman.

Mr. BERMAN. Just to reclaim my time. The verification provisions aren't adequate as they are now. There needs to be walls protected to make sure the information is not misused, that the privacy of citizens is not violated. There are a number of mistakes in the verification process, how it gets phased in, how it gets implemented. These are important questions which couldn't possibly have been dealt. We haven't had the kind of hearings and advice from Homeland Security and the Social Security Administration on how this will be done.

But to carve a loophole out for existing employees and say the employer doesn't have to verify them is essentially just going back to taking the burden off of the employers, criminalizing the aliens and inducing employers to keep on doing the same old thing all over again.

Mr. CANNON. Would the gentleman yield? I want to make a couple of comments.

I think the rationale behind what we would be doing here is that people who are here illegally can't get another job because of the nature of the verification program. So I don't think of that in terms of indentured servitude but rather an opportunity to get straight with the law or leave. And, at the same time, it puts an incredible burden on the employer.

I don't think that—there are some bad actors. Without any question. I want to agree with the Chairman. There are some bad actors out there. But most employers just want to get their product out the door, and they want to be able to do it in a way that they can make a profit. And that is not bad. In fact, the free market system is the basis for what we do in America. So I would urge the—pardon me——

Mr. BERMAN. Let me reclaim my time—because it is going to expire in a second—to say then offer an amendment that provides some kind of earned adjustment and guest worker status. We can debate whether you have to leave the country or not. We can have a good discussion about that. Do something to correct the problem. Don't fall back to the 1986 trap of attempting.

Mr. CANNON. The '86 was a trap where we had penalties that were too great to be enforced.

Mr. BERMAN. The penalties were unenforceable because we said the employers——

Chairman SENSENBRENNER. Time of the gentleman from California is expired.

Does the gentleman from California insist on his point of order.

Mr. BERMAN. No, I don't.

Chairman SENSENBRENNER. The gentleman—other gentleman from California, Mr. Lungren, is recognized for 5 minutes.

Mr. LUNGREN. Thank you, Mr. Chairman. I move to strike the last word, and I rise in opposition to the amendment.

As I listen to the Chairman's reference to the 1986 Act as well as my friend from California's, I am reminded of the old saying that victory has many fathers, while failure is an orphan. I guess I am the only one around here who would admit to voting for the law back in 1986.

Mr. BERMAN. I voted for it, too.

Mr. LUNGREN. I am glad to hear that. Although you are probably hurting me with my point with my friends on this side by saying that.

Look, we thought we had reached a balance in 1986. We thought we were doing something with the phenomenon that existed of those who were in this country illegally at this time and also attempting to try and enforce the law going forward. A critical part of that was employer sanctions.

It is not a partisan failure. It is a bipartisan failure. Democratic and Republican administrations have failed to enforce the employer sanctions, in part because the will of the people wasn't there. I think the will of the people is now there, and I think we also have to create a system that works.

Back in 1986, Sam Hall, the Democratic Congressman from Texas, offered an amendment to actually establish such a verification system. I voted against it at that time because I didn't think it was practical, that is, you can actually do it. I think it can be done now. I think the pilot project has proven that it can work; and if it does—if it has proven its ability to work, then I think we ought to enforce it.

I agree with the gentleman very much on the fact that we will ultimately need a guest worker program—whatever you want to call it. It is a program of foreign workers that will actually be a regulated system that the United States determines the parameters of, which is far better than having the illegal system that we have now. And I think, in fact, the employer community will demand that. They will accept, I believe, sanctions of this type, if they have that kind of program that meets particular needs.

Mr. BERMAN. Will the gentleman yield just on that point?

Mr. LUNGREN. No, I won't. I don't have enough time right now.

On that point, I also realize the political realities, that sometimes you have to do certain things that not all people agree with, but you can get a consensus for a step. So I am not hiding the fact that I believe that, ultimately, in order to have all of this come together, you are going to need some sort of system. It can't be an amnesty. It can't be something like that. It has to be something different. And I think we have to have an ongoing system.

But with respect to this bill, which goes to the question of border security and getting some control over the situation that exists

now, I think the components parts that are in there are, in fact, reasonable. If you look at the phase-in of the mandatory nature of this section of the bill, it is over a number of years; and there is certainly adequate time for us to be able to ensure the other parts come together.

I just would say that, as one who was there at the beginning, in 1986, of our attempt to try and reach a balanced program, employer sanctions were integral to our attempt. They have not worked for a number of reasons. They would be made impossible to work I think if we adopted the gentleman from Utah's amendments here, not that he intends that they not work. And I understand that he believes, as you do, we do need to have some sort of verified foreign worker program.

But, please, we are serious about the problem that confronts us right now with illegal immigration. If we are truly serious about it, employer sanctions have got to be a component. We have major parts of our problem. One is the magnet of employment that pulls people here. No doubt about it. We have to do something about it.

The other half I think is the question of birthright citizenship. We are not going to deal with that at this time. I may offer an amendment to that and then withdraw it for purposes of discussion. But that is one half of the problem, I believe.

At least let us be honest. American people really do believe, Democrats, Republicans, Independents, no matter what their stripe, we ought to do something about the issue. If anybody can tell me how we deal with the magnet of employment without having an employer sanctioned program that actually is capable of work, I would like to hear it; and I yield to the gentleman from Utah if he can tell me that.

Mr. CANNON. Thank you.

I think you have said there is a political will. I think that the penalties are high enough if we apply the penalties. So raising penalties, especially in areas where its paperwork is difficult, but doesn't the gentleman also feel that over time, if you are verifying new employment, we can do it do without shaking down American businesses to get to identify for us every person that is here illegally?

Mr. LUNGREN. I will be happy to reclaim my time.

I don't view it as shaking down American business. This is analogous to a situation I faced when I was trying to enforce Proposition 65 in California. I had the wine industry come to me to beg me to sue the entire industry over the question of the presence of lead as a result of the caps they used to put on wine bottles, and the reason they asked for me to sue them is they thought that if they had an overall comprehensive approach as a result of a settlement——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. LUNGREN. One additional minute?

Chairman SENSENBRENNER. Without objection.

Mr. LUNGREN. And the point was, as long as they all felt they were covered by the same laws, they were all free to do what they wanted to do, which was to change the way they put caps on their wine bottles and get rid of the lead that leached in wine bottles.

When I talk to most employers, they say to me, look, if you have a law that works, I will follow it. But they all tell me it is a joke

right now. They say, you give me these documents. You tell me I can't discriminate again people for other indicia, so I don't. And the document may, in fact, be phony. I am not an expert on that. But you haven't given me anything to rely on. If you would give me something to rely on, I would do it.

I think most employers are scrupulous and want to follow the law. So I think it is——

Chairman SENSENBRENNER. The time of the gentleman has once again expired.

Ms. JACKSON LEE. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from California, Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman.

As you can see, the discussion has gone on so long I have already moved up in seniority during the hearing. I would like to yield to my colleague from California, Mr. Berman.

Mr. BERMAN. I thank the gentleman for yielding.

I just want to contest one point in the otherwise very lucid and coherent explanation by the gentleman from California.

Dan, you are wrong. If the employers can devastate the verification program, they won't be clamoring for a guest worker program because they will keep employing undocumented workers, illegal immigrants, whatever it is.

The only reason they are clamoring for a guest worker program or for some kind of adjustment program is because they are getting nervous about their ability to rely on their existing workforce. The moment this amendment passes, they will be quite happy—this amendment and a few other refined amendments.

But let me also make one other point, if the gentleman will continue to yield.

Make no mistake about it. If this bill were to become law without an adjustment program, without a guest worker program, perishable fruits and vegetables in the United States disappear. The tourism and hospitality industries, massive disruptions. Home construction in many parts of this country, we know who is doing that. Don't kid yourself.

When you say, well, sometime down the road we should do a guest worker program, you put in tough border enforcements and real verification, without that, and you are kissing away huge amounts of U.S. industries. And you know it.

You haven't given us a coherent reason why you aren't doing a comprehensive approach like the President wants, like the Chairman has suggested in the end needs to be done, like you have acknowledged needs to be done. Why aren't you doing it at the same time so we don't go through that fundamentally massive disruption in our economy.

Mr. LUNGREN. Would the gentleman yield?

Mr. SCHIFF. I would be glad to yield.

Mr. LUNGREN. In response to my friend, I would say I do support that; and you know, in 1986, I will agree we didn't create a perfect bill. If the gentleman had joined me in 1986 in having a guest worker bill, we wouldn't be in the problem we are in today.

Mr. SCHIFF. Reclaiming my time, I would be happy to yield to my colleague from California.

Mr. BERMAN. I joined the gentleman in a good adjustment program for seasonal agriculture workers. The gentleman wanted a new, brassier program.

Mr. LUNGREN. No, the guest worker program.

Mr. CANNON. Would the gentleman yield? Mr. Schiff, would the gentleman yield?

Mr. SCHIFF. Yes, I would be delighted to yield.

Mr. CANNON. The benefit of having time in our parliamentary system.

Let me make the point again. This is about reducing one penalty, the penalty that relates to paperwork violations, which is going from $100 to $25,000.

The second point—the second piece of the en bloc amendment is eliminating the requirement that employers who have already gone through the legal processes to identify their employees not be required to go through that—a new process, which, by the way, is not clear that it is going to work. And it is going to put them in the blocks, not DHS, whoever is creating the system.

So I would, again, urge my colleagues to think about these amendments. These are amendments that will allow business to continue to operate thoughtfully and profitably without being jerked around by a system that is a little bit harsher than I think we actually would want, on reflection.

Thank you. I yield back to you.

Mr. SCHIFF. Reclaiming the balance of my time, I just wanted to state briefly that I concur with the sentiments expressed by my colleague from the San Fernando Valley. I think this issue ought to be addressed in a comprehensive immigration reform bill that addresses all the issues that Mr. Berman enumerated. I have no illusions about this bill in this form being passed into law, will be back at the same place next year. But I don't think this has been a productive exercise, and I yield back to the Chair.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman.

Ms. JACKSON LEE. Mr. Chairman.

Chairman SENSENBRENNER. Does the gentlewoman from Texas wish to speak on the amendment?

Ms. JACKSON LEE. Yes, Mr. Chairman.

Chairman SENSENBRENNER. Then the gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

I give credit to Mr. Cannon for making a valiant effort to unshackle businesses and relieve them of extraordinary requirements, $25,000 and paperwork. But, in doing so, I think that, again, I would have hoped our good friend would have joined us in the comprehensive approach and, I add, an additional aspect to the issue of the guest worker.

My unreadiness and discomfort is that, even as we speak to the issue of the guest worker, it is not secure as it makes it way to the Senate. Because the guest worker program to be proposed in the Senate may be more of the Cornyn-Kyl approach, which is that individuals must leave the country first before they can ascertain their status or develop an opportunity to be a citizen.

The issue of the gentleman from Utah is to unburden employers and unshackle the business community, because I am sure that

they are in horror as they watch this particular bill pass through the process.

But no one is responding to the question that, whether it be the efforts Mr. Cannon is making, they don't address the comprehensive need that I think needs both an earned access component and a guest worker and that we should be sensitive to any guest worker program that may ultimately turn into the leaving of the country. Because rooted families with homes and children in school will not be eager and will not participate in that aspect of a guest worker program.

So I would rather have us join together with guest worker, earned access to legalization, if you will, with a recognition that it is not a reality to expect 11 million people to take a bus either to the north or the south or wherever they might have come to.

Your amendment, Mr. Cannon, does well to try to relieve the business community of severe both pressures and enforcement, if we actually even enforce it, but it really doesn't go to the question of what you do with the people they are dealing with. That is why I think it has frailties and failures, and I would hope that maybe you would join us in looking at it in a more comprehensive manner.

With that, I yield back.

Chairman SENSENBRENNER. The question is on the amendments en bloc offered by the gentleman from Utah, Mr. Cannon. All those in favor, signify by saying aye. Aye. Opposed, no. No.

The noes appear to have it.

Mr. CANNON. Mr. Chairman, rather than asking for rollcall vote, it sounded to me like there were two ayes, only mine and Mr. Chabot's, in that voice vote.

Chairman SENSENBRENNER. The Chair's hearing is not that particular. The noes have it, and the amendment is not agreed to.

Are there further amendments? Are there further amendments?

Gentleman from Virginia has an amendment. The Clerk will report his amendment.

Mr. SCOTT. Mr. Chairman, I have an amendment, Scott VA 062.

Chairman SENSENBRENNER. Clerk will report the amendment.

The CLERK. Amendment to H.R. 4437 offered by Mr. Scott of Virginia.

Add at the end of title VI the following new section:

Section 408. GAO study——

Mr. SCOTT. Mr. Chairman, I ask unanimous consent——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 4437

OFFERED BY MR. SCOTT OF VIRGINIA

Add at the end of title IV the following new section:

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

2 The Comptroller General of the United States shall
3 submit to Congress within six months of enactment a report on the deaths in custody of
4 detainees held on immigration violations by the Secretary
5 of Homeland Security. The report shall include the fol-
6 lowing information with respect to any such deaths and
7 in connection therewith:

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

10 (2) Whether any such deaths were caused by
11 negligence or deliberate indifference by such per-
12 sonnel.

13 (3) Whether Department practice and proce-
14 dures were properly followed and obeyed.

15 (4) Whether such practice and procedures are
16 sufficient to protect the health and safety of such
17 detainees.

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

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. This amendment looks like a very constructive one, and the Chair is prepared to support it.

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. The gentleman yields back the balance of his time.

The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say Aye. Aye. Opposed, no.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments? Are there further amendments?

Gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I have an amendment at the desk.

Chairman SENSENBRENNER. The Clerk will report the amendment.

Mr. SCOTT. Scott VA 061.

Chairman SENSENBRENNER. The clerk will report Scott VA 061.

The CLERK. Amendment to H.R. 4437 offered by Mr. Scott of Virginia.

Page 28, line 12, strike "less than 3 years nor".

Page 28, line 19, strike, "less than 3 nor".

Page 29, beginning——

Mr. SCOTT. I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection so ordered.

[The amendment follows:]

AMENDMENT TO H.R. 4437

OFFERED BY MR. SCOTT OF VIRGINIA

(Page and line numbers refer to sensen__104 ON 12/6/05 AT 1:23PM)

Page 28, line 12, strike ''less than 3 years nor''.

Page 28, line 19, strike ''less than 3 nor''.

Page 29, beginning line 1, strike ''less than 5 nor''.

Page 29, line 17, strike ''less than 5 nor''.

Page 30, line 2, strike ''less than 7 nor''.

Page 30, line 12, strike ''less than 10 nor''.

Page 30, beginning line 17, strike ''not less than 10 years, or''.

Page 38, beginning line 7, strike subparagraph (B) and redesignate subsequent subparagraphs accordingly.

Page 38, beginning line 25, strike subparagraph (A).

Page 39, beginning line 3, strike subparagraph (B).

Page 39, beginning line 9, strike subparagraph (D).

Page 39, beginning line 7, redesignate subparagraph (C) as subparagraph (A).

Page 39, beginning line 13, redesignate subparagraph (E) as subparagraph (B).

Page 41, beginning line 6, strike section 206 and redesignate subsequent sections accordingly.

Page 87, line 11, strike ''at least five years'' and insert ''not more than 20 years''.

Page 90, line 6, strike ''less than six months or''.

Page 90, beginning line 13, strike ''less than six months or''.

Page 154, line 22, strike ''less than one year'' and insert ''more than two years''.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, just for the public interest, the last amendment created a GAO study to—in response to a report on National Public Radio questioning health care in our detention centers, and that study was adopted.

Mr. Chairman, this amendment has to do with mandatory minimums, and it goes through and picks and chooses each of the new mandatory minimums in this bill. The reason we waived the reading of the bill is that the number of new mandatory minimums in the bill took more than a full page of striking this and that. So, Mr. Chairman, this removes in one fell swoop all of the mandatory minimums in the bill. It keeps the increased maximums in all of the bills, but by increasing the maximums we signal to the sentencing commission that they should consider increasing the guideline sentences. And when we do that, Mr. Chairman, the sentencing commission generally complies and adjusts the guidelines.

The difference between a sentencing guideline floor and a statutory mandatory minimum is that other guideline considerations can be brought into account under the guidelines to allow appropriate sentencing for each individual case by the commission and the courts, rather than sentencing in the blind by Congress without the benefit of the facts and circumstances of the individual case or the individual sentence.

Mr. Chairman, mandatory minimums have been studied extensively and have been found to disrupt the underlying sentencing scheme, to discriminate against minorities and waste the taxpayers' money when compared to traditional sentencing where the individual roles and culpabilities can be taken into account. It does nothing to those who deserve to be sentenced to longer sentences, but it unfairly penalizes those who deserve lesser sentences.

The Judicial Conference has written Congress over a dozen times to point out, Mr. Chairman, that mandatory minimum sentencing violates common sense.

Mr. Chairman, I want to repeat that.

The Judicial Conference has written Congress over a dozen times to point out that mandatory minimum sentencing violates common sense.

Mr. Chairman, the purpose of this bill is to strengthen enforcement of immigration laws and enhance border security. But it is hard to see how placing a mandatory minimum sentence on some cases after the people have been removed will do anything more than just clog up our overcrowded prisons with people whose crime may be nothing worse than trying to reunite with their families.

Mr. Chairman, the passage of this amendment will do nothing to eliminate punishment. It will, however, provide that the punishment will be consistent with common sense. So I urge my colleagues to support the amendment.

I yield back.

Chairman SENSENBRENNER. Chair recognizes himself briefly.

This goes to the debate on mandatory minimum sentences that the Committee has had repeatedly for almost as long as I have been on the Committee, which is longer than anybody but my friend from Michigan who is seated to my immediate left.

Let me just say that one of the more egregious mandatory minimums that the gentleman's amendment strikes is in the case where the offense involved an alien where the offender knew, or had reason to believe, that the alien was engaged in terrorist activity or intending to engage in terrorist activity. There is a mandatory minimum of 10 years there.

I think everybody knows what their philosophical bent is on mandatory minimums. Mr. Scott is against them. I am in favor of them. I urge the rejection of Mr. Scott's amendment and yield back the balance of my time.

Questions on Mr. Scott's amendment?

All those in favor, signify by saying aye. Aye. Opposed, no. No.

The noes appear to have it. A rollcall will be ordered.

Those in favor of the Scott amendment, when your name is called, answer aye; those opposed will answer no. And clerk will call the roll.

The CLERK. Mr. Hyde.

[No response.]

The CLERK. Mr. Coble.

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith.

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly.

[No response.]

The CLERK. Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Mr. Chabot.

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Lungren.

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no.

Mr. Jenkins.

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Mr. Cannon.

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Mr. Bachus.

[no response.]

The CLERK. Mr. Inglis.

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no.

Mr. Hostettler.

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Mr. Green.

[no response.]

The CLERK. Mr. Keller.

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Mr. Issa.

[no response.]
The CLERK. Mr. Flake.
[no response.]
The CLERK. Mr. Pence.
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Mr. Forbes.
[no response.]
The CLERK. Mr. King.
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Feeney.
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mr. Franks.
Mr. FRANKS. No.
The CLERK. Mr. Franks, no.
Mr. Gohmert.
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman.
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.
Mr. Boucher.
[no response.]
The CLERK. Mr. Nadler.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt.
[no response.]
The CLERK. Ms. Lofgren.
[no response.]
The CLERK. Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters.
[no response.]
The CLERK. Mr. Meehan.
[no response.]
The CLERK. Mr. Delahunt.
[no response.]
The CLERK. Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff.
Mr. SCHIFF. Aye.

The CLERK. Mr. Schiff, aye.
Ms. Sánchez.
Ms. SÁNCHEZ. Aye.
The CLERK. Ms. Sánchez, aye.
Mr. Van Hollen.
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye.
Ms. Wasserman Schultz.
[no response.]
The CLERK. Mr. Chairman.
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further Members in the Chamber wish to cast their votes?
Gentleman from California, Mr. Gallegly.
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Chairman SENSENBRENNER. Gentleman from Wisconsin, Mr. Green.
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Chairman SENSENBRENNER. Gentleman from California, Mr. Issa.
Mr. ISSA. No.
The CLERK. Mr. Issa, No.
Chairman SENSENBRENNER. Gentleman from Massachusetts, Mr. Meehan.
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Chairman SENSENBRENNER. Gentleman from Arizona, Mr. Flake.
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Chairman SENSENBRENNER. Further Members in the Chamber wish to cast or change their votes?
If not, the clerk will report.
Gentleman from North Carolina, Mr. Watt.
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Chairman SENSENBRENNER. Clerk will try again to report.
The CLERK. Mr. Chairman, there are 12 ayes and 20 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
The gentlewoman from Texas, Ms. Jackson Lee.
Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I have an amendment at the desk.
Chairman SENSENBRENNER. Clerk will report the amendment.
Ms. JACKSON LEE. 100.
The CLERK. Amendment to H.R. 4437 offered by Ms. Jackson Lee of Texas.
At the end of title II, insert the following:
Section 210. Establishment of a special task force for coordinating and distributing information on fraudulent immigration documents.

Ms. JACKSON LEE. Mr. Chairman, I ask that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection.

[The amendment follows:]

AMENDMENT TO H.R. 4437

OFFERED BY MS. JACKSON-LEE OF TEXAS

At the ~~appropriate place in the bill~~ end of Title II, insert the following:

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

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

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

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

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

1 (4) Develop a system for distributing these re-
2 ports on an ongoing basis to appropriate Federal,
3 State, and local law enforcement agencies.
4 (b) DISTRIBUTION OF INFORMATION.—Distribute the
5 reports to appropriate Federal, State, and local law en-
6 forcement agencies on an ongoing basis.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. I thank you very much, Mr. Chairman.

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. JACKSON LEE. I will yield.

Chairman SENSENBRENNER. The Chair is happy to accept this amendment. It is a constructive addition to the bill. And I thank the gentlewoman for yielding.

Ms. JACKSON LEE. I thank the gentleman.

It addresses the question of fraudulent documents and provides a singular database and as well as provides assessment of trends. And, with that, I yield back.

Chairman SENSENBRENNER. The question is on agreement of the amendment offered by the gentleman woman of Texas.

All those in favor, signify by saying aye. Aye. Opposed, no. No.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments?

The gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. Mr. Chairman, I have an amendment at the desk designated number 44.

Chairman SENSENBRENNER. Clerk will report the amendment.

The CLERK. Amendment to H.R. 4437 offered by Mr. Hostettler of Indiana.

At the end of title VII, add the following new section:

Section 709. Sense of Congress.

It is the sense of Congress that there is little——

Mr. HOSTETTLER. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

AMENDMENT TO H.R. 4437

OFFERED BY MR. HOSTETTLER OF INDIANA

At the end of title VII, add the following new section:

SEC. 709. SENSE OF CONGRESS.

It is the sense of Congress that there is little empirical evidence to support the notion that new immigrants are taking large numbers of jobs that United States workers do not want to do.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HOSTETTLER. Mr. Chairman, my amendment would add an important sense of Congress to this legislation.

In a hearing that the Subcommittee on Immigration, Border Security, and Claims held on May 4th earlier this year, we learned that there are no jobs that Americans will not do and that immigration—especially illegal immigration—has had a tremendous impact on the ability of many Americans to find work or improve their families' economic status.

Steven Camarota, a researcher with the Center for Immigration Studies, found that, quote, by significantly increasing the supply of unskilled workers during the recession between 2000, 2004, immigration may be making it more difficult for similar American workers to improve their situation end quote.

Paul Harrington is the Associate Director of the Center for Labor Market Studies and Professor of Economics and Education at Northeastern University in Boston. Professor Harrington testified at that same hearing that, quote, there is little empirical evidence to support the notion that new immigrants are taking large numbers of jobs that Americans do not want to do. End quote.

On the contrary, Mr. Harrington's recent study on the impact of immigration on the American job market concludes that, quote, given large job losses among the Nation's teens, 20- to 24-year-olds with no 4-year degree, black males and poorly educated native-born men, it is clear that native-born workers have been displaced in recent years. End quote.

Before creating the guest worker program that we are considering maybe later next year, it is imperative that we remember that there are large numbers of unemployed Americans who do want jobs. The argument that there are jobs Americans just won't do is a false statement.

For example, in job categories such as construction labor, building maintenance and food preparation, immigration added 1.1 million adult workers between 2000 and 2004. But there were nearly 2 million unemployed adult natives in these very same occupations in 2004. About two-thirds of the new immigrant workers in these occupations are illegal aliens.

In the area of construction specifically, for example, 24 percent of the workers are immigrants, while there is a 12.7 percent native unemployment rate.

In the food preparation sector, 23 percent of workers are immigrants, while there is a 9.3 percent native unemployment rate.

In farming, fishing and forestry, 36 percent of these occupations are comprised by immigrants, while there is an almost 12 percent native unemployment rate.

Mr. Chairman, let's not forget these facts and figures as we contemplate the legislation before us and that we will consider later.

I urge my colleagues to support this amendment and yield back the balance of my time.

[12:00 p.m.]

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes to strike the last word.

Let me say that this is an interesting issue to debate. I believe that many people have strong views on the subject and there are

many variations of those views on the subject of the impact of illegal immigration on the job market and on the unemployment rate, particularly amongst American workers. I think that as this debate goes forward, we ought to get more opinions and more empirical evidence on this.

I would suggest to the gentleman from Indiana that his amendment is premature. I can give him a commitment that we will be looking into this issue in a little bit greater detail as time goes on and suggest that he withdraw the amendment at the present time. And I yield to the gentleman from Indiana.

Mr. HOSTETTLER. Mr. Chairman, I ask unanimous consent that the amendment be withdrawn at this time.

Chairman SENSENBRENNER. Without objection, so ordered. Are there further amendments?

Mr. BERMAN. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from California, Mr. Berman.

Mr. BERMAN. I seek recognition for purposes of seeking an advisory opinion.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes, although he might not get an answer.

Mr. BERMAN. There is an interesting proposal that has been introduced by a distinguished Member of this Committee, Mr. Flake, along with Mr. Kolbe and Mr. Guiterrez, that provides a comprehensive approach to this issue. If one were to take—if one were to offer as an amendment the adjustment of the new H-5B U.S. immigration visa program for people now in the U.S. and the guest worker titles of that provision and offer it as an amendment, would it in the eyes of the Chair be germane to this bill?

Chairman SENSENBRENNER. Probably not.

Mr. BERMAN. Why not? This is a bill that covers a lot of different issues. Why isn't the whole INA open?

Chairman SENSENBRENNER. This is a bill that deals with border security. I have stated that we will be dealing with issues such as employment and guest workers at a later time. I think that we need to work a lot more on refining how we deal with this, and I can say that I think it is probably not germane but it definitely is not ripe. There is going to be a lot of discussion that will be had on the whole issue of the employment base in this country. I think, however, the border security issue is the one that is of top priority, as well as fixing the holes in the employment verification system developed following the passage of the Simpson-Mazzoli Act 19 years ago.

Mr. BERMAN. Mr. Chairman, if I may just continue this academic discussion a little longer. I understand if this were simply a bill on border security; but when you—as you indicate, this bill is about border security and holes in employer verification from the 86 bill, there were adjustment programs in the 86 bill, there were guest worker program changes in the 86 bill. Once you move beyond border security to verification, what is the basis for ruling—I don't want you to think I accept your argument that it would not be ripe, because one thing I feel very certain about is it would be ripe to offer it, but whether it would be germane I think is debatable. Why doesn't this cover so many other issues now that the whole INA would be open?

Chairman SENSENBRENNER. Well, the Chair can only rule on a specific amendment that is offered. The Chair has also stated that he supports a properly framed guest worker program. I think that we have got to make sure it is properly framed lest we go down the road of the mistakes made in the 1986 bill. I have not ruled out philosophically a guest worker program later on in the consideration of the entire issue of the immigration system and how it needs to be fixed. I am just saying that I don't think the time is ripe to be able to do it in the context of a border security bill.

Mr. BERMAN. Well, but it is not just a border security bill, it is a verification bill. The consequences of legislating a mandatory verification system without dealing with the 11 million people in this country and future temporary worker needs in this country has devastating consequences. One thing I cannot understand is how one can accept that it is needed but it isn't needed, both at the same time.

Chairman SENSENBRENNER. Well, if the gentleman will yield further, the 11 million people who are undocumented are in this country illegally. We have to deal with that issue and figure out how to work through it.

Mr. BERMAN. I agree, and that is exactly right. The border security issue for the most part is not about the 11 million people now in this country except insofar as it is an inducement for other members of their family to try to join them. It is about if we get a verification system that ends up disqualifying millions and millions of people now in the workforce, what is the alternative and how are we going to deal with the consequences of that? The two are inextricably related.

Chairman SENSENBRENNER. If the gentleman will yield further, I don't believe that they are as inextricably related as Siamese twins are joined, and that is why I am a believer of the philosophy that the camel's back can only have so many straws, and if we deal with this in one package, it will be much more difficult to get 218 votes to pass it.

And the gentleman's time has expired. Does the gentleman wish additional time?

Mr. BERMAN. No.

Chairman SENSENBRENNER. Are there further amendments? Does the gentlewoman from Texas have an amendment?

Ms. JACKSON LEE. Yes. It is amendment number 186. I intend to offer and withdraw.

The CLERK. Amendment to H.R. 4437 offered by Ms. Jackson Lee of Texas:

Amend section 402 to read as follows: Section 402, expansion and effective management of detention facilities. In general, subject to the ability of appropriations——

Chairman SENSENBRENNER. The gentleman from Texas reserves a point of order. Without objection, the amendment is considered as read and the gentlewoman from Texas is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 4437

OFFERED BY MS. JACKSON-LEE OF TEXAS

(Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005)

Amend section 402 to read as follows:

SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary of Homeland Security shall fully utilize—

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

(2) all possible options to cost effectively increase available detention capacities, including the use of temporary detention facilities, the use of State and local correctional facilities, private space, and secure alternatives to detention (in accordance with subsection (b)).

(b) SECURE ALTERNATIVES TO DETENTION PROGRAM.—

(1) NATURE OF THE PROGRAM.—For purposes of this section, the secure alternatives to detention

1 referred to in subsection (a) is a program under
2 which eligible aliens are released to the custody of
3 suitable individual or organizational sponsors who
4 will supervise them, use appropriate safeguards to
5 prevent them from absconding, and ensure that they
6 make required appearances.

7 (2) PROGRAM DEVELOPMENT.—The program
8 shall be developed in accordance with the following
9 guidelines:

10 (A) The Secretary shall design the pro-
11 gram in consultation with nongovernmental or-
12 ganizations and academic experts in both the
13 immigration and the criminal justice fields.
14 Consideration should be given to methods that
15 have proven successful in appearance assistance
16 programs, such as the appearance assistance
17 program developed by the Vera Institute and
18 the Department of Homeland Security's Inten-
19 sive Supervision Appearance Program.

20 (B) The program shall utilize a continuum
21 of alternatives based on the alien's need for su-
22 pervision, including placement of the alien with
23 an individual or organizational sponsor, a su-
24 pervised group home, or in a supervised, non-

penal community setting that has guards stationed along its perimeter.

(C) The Secretary shall enter into contracts with nongovernmental organizations and individuals to implement the secure alternatives to detention program.

(c) ELIGIBILITY AND OPERATIONS.—

(1) SELECTION OF PARTICIPANTS.—The Secretary shall select aliens to participate in the program from designated groups specified in paragraph (4) if the Secretary determines that such aliens are not flight risks or dangers to the community.

(2) VOLUNTARY PARTICIPATION.—An alien's participation in the program is voluntary and shall not confer any rights or benefits to the alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) LIMITATION ON PARTICIPATION.—

(A) IN GENERAL.—Only aliens who are in expedited removal proceedings under section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) may participate in the program.

(B) RULES OF CONSTRUCTION.—

(i) ALIENS APPLYING FOR ASYLUM.—Aliens who have established a credible fear

of persecution and have been referred to the Executive Office for Immigration Review for an asylum hearing shall not be considered to be in expedited removal proceedings and the custody status of such aliens after service of a Notice to Appear shall be determined in accordance with the procedures governing aliens in removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

(ii) UNACCOMPANIED ALIEN CHILDREN.—Unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act (6 U.S.C. 279(g)(2))) shall be considered to be in the care and exclusive custody of the Department of Health and Human Services and shall not be subject to expedited removal and shall not be permitted to participate in the program.

(4) DESIGNATED GROUPS.—The designated groups referred to in paragraph (1) are the following:

(A) Alien parents who are being detained with one or more of their children, and their detained children.

(B) Aliens who have serious medical or mental health needs.

(C) Aliens who are mentally retarded or autistic.

(D) Pregnant alien women.

(E) Elderly aliens who are over the age of 65.

(F) Aliens placed in expedited removal proceedings after being rescued from trafficking or criminal operations by Government authorities.

(G) Other groups designated in regulations promulgated by the Secretary.

(5) IMPLEMENTING REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to implement the secure alternatives to detention program and to standardize the care and treatment of aliens in immigration custody based on the Detention Operations Manual of the Department of Homeland Security.

(6) DECISIONS REGARDING PROGRAM NOT REVIEWABLE.—The decisions of the Secretary regard-

ing when to utilize the program and to what extent and the selection of aliens to participate in the program shall not be subject to administrative or judicial review.

(d) REPORTING REQUIREMENTS.—Not later than 180 days after the date of the enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives, the Committee on the Judiciary of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on the Judiciary of the Senate a report that details all policies, regulations, and actions taken to comply with the provisions in this section, including maximizing detention capacity and increasing the cost-effectiveness of detention by implementing the secure alternatives to detention program, and a description of efforts taken to ensure that all aliens in expedited removal proceedings are residing under conditions that are safe, secure, and healthy.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Thank you for your kindness. As I indicated, I intend to offer and withdraw and hope my colleagues will consider this as we move toward the floor. The underlying bill has sections dealing with alternative utilization of facilities for detention beds. In that, we open the jailhouse doors, which may be a portion of a solution for those now new detainees, including more than OTM, and the raging numbers that will come and, of course, we indicate that the detention is mandatory, with little opportunity for release.

This amendment is straightforward. It provides instructions to the Secretary of Homeland Security to design a program in consultation with nongovernmental organizations and academic experts in both the immigration and criminal justice fields in order to give some criteria and guidelines for the kind of facilities that we will be using.

Those facilities will be holding the elderly, women, children, individuals who may be ill, maybe sexual predators. And to be able to utilize any form of a detention facility with no protections, no guidelines, no firewalls between those who would prey upon those victims or those subject to being victims, any of you who have gone to some of the commercial centers where detainees are, you will note that they are in are large open rooms, open bunk beds, and certainly those facilities are under the Federal jurisdiction.

Who knows what will come up to be utilized in this new legislation? They will not be controlled by Border Patrol or Federal resources, they will be controlled by local authorities or private entities.

And so, my friends, I think that if we are going to talk about massive detaining of this wave of undocumented individuals, then I think minimally you need criteria, you need instructions, you need guidelines for the safety and care of those who will be detained.

At this time, Mr. Chairman, I ask respectfully that this amendment be withdrawn and I hope that as we move toward the floor and this bill includes a provision of earned access or documentation of our undocumented individuals in this country and we look to comprehensive immigration form, a provision such as providing guidance to the new holders of immigrants undocumented, if that is the case, if that happens, that we be respectful of the fact they must be safely secured, children safely secured, women must be safely secured, the elderly and the frail, because that would not be the approach that Americans would want to take. With that I yield back and ask——

Chairman SENSENBRENNER. Without objection the amendment is withdrawn. Are there further amendments?

Ms. SÁNCHEZ. Mr. Chairman.

Chairman SENSENBRENNER. Does the gentlewoman from California have an amendment?

Ms. SÁNCHEZ. No, but I would like to strike the last word on the underlying bill.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

I came to this hearing with every intention to mark up your border enforcement and immigration reform bill, the Border Protec-

tion, Antiterrorism and Illegal Immigration Control Act of 2005, but to my surprise this bill really has nothing to do with border enforcement or immigration reform. On the contrary, this bill will jeopardize our national security by implementing the worst provisions of the CLEAR Act.

Mr. Chairman, with all due respect, if your intention was to pass the CLEAR Act, why didn't you just call this the CLEAR Act? As we all know, efforts to pass the CLEAR Act last session were derailed because many national security experts, law enforcement agencies and associations, local governments, faith-based institutions and community groups opposed it. And why did they oppose the CLEAR Act? Because they recognized that making police enforce immigration laws would have a detrimental effect on community policing and public safety.

Clearly this bill uses the pretext of national security to bootstrap unimmigrant and, quite frankly, unAmerican policies into this bill. It merely perpetuates our failed immigration policies. Twenty years of shortsighted enforcement on immigration legislation has created the largest illegal population in our Nation's history, and unfortunately H.R. 4437 is just more of the same.

Since 1996 the Government has consistently taken an enforcement-only approach that includes many of the same flawed policies that H.R. 4437 would expand. These include using ever more sophisticated military-style surveillance equipment, physical barriers, including walls, fences and highways doubling as border barriers, and dramatically increasing the number of Border Patrol agents.

Enforcement alone does not work. As we know, throwing more money at our broken immigration system and putting more agents at the border hasn't led to fewer undocumented immigrants, it has increased that number. Enforcement only doesn't work.

From 1993 to 2004, the number of Border Patrol agents tripled from about 4,000 to 11,000 and the amount of spending has gone up five times, from 740 million to 3.8 billion, yet the number of undocumented immigrants doubled from 4.5 million to 9.3 million. Enforcement only doesn't work.

More of the same old poise will not solve our immigration problems, it will however continue to erode the basic civil liberties and human rights not only of migrants but of legal immigrants and citizens as well.

Let me highlight three of the most troubling provisions of this bill that are from the CLEAR Act. First, this bill makes unlawful presence a crime as well as an aggravated felony under section 203. Since State and local police can assist in the enforcement of Federal criminal laws, this bill could lead to an open season on anyone in this country who appears to be foreign, and that is left up to the discretion of the enforcing officer.

Immigrants will no longer know if it is safe to call local police or not, because law enforcement officials could possibly question their status. As we know, local police departments do not want to become immigration enforcers because it silences immigrant crime victims and witnesses to helping them solve crimes. According to the California Police Chief's Association, the result of this provision will set back years of community policing efforts and attempts by law enforcement agencies to build goodwill in the community.

This provision will make communities less safe, not more safe. And it gets worse. There is a provision in this bill that would permit State and local agents to use homeland security grants for immigration enforcement activities pursuant to an agreement with the Federal Government. This provision basically robs Peter to pay Paul. First responders receiving homeland security funds need every dime to prevent and respond to emergencies. This provision raids their covers to encourage State and local police to be immigration agents.

Congress has already cut first responder funding. The State Homeland Security Grant Program has been cut in half, from 1.1 billion to $550 million, and the Urban Area Security Initiative has been cut by another $120 million. For the sake of national security, our State and local governments cannot afford further dilution of these critical funds. This bill is far from being pro-security and pro-enforcement. The three CLEAR Act provisions I mentioned in this bill actually undermine enforcement and security.

Basically we need to ask ourselves on this Committee this question: What kind of America do we want? Do we want an America where we have mass deportations? Do we want an America where police officers can randomly ask people who look "other" to produce identification to prove their legal status? Do we want an America where people can be detained for life when their home country is unwilling to take them back? Do we want an America where Americans will have to carry national identification cards to travel, work, or just walk down the street? I sincerely hope not. But all the things I just mentioned are possible if we pass H.R. 4437, and for this reason I urge my colleagues to oppose this bill.

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Ms. SÁNCHEZ. I would ask for unanimous consent for an additional minute.

Chairman SENSENBRENNER. Without objection.

Ms. SÁNCHEZ. It is in the Book of Matthew that Jesus tells us, "For whatsoever you do to the lowest of my brethren, you do unto me." I think this is a very sad day and that America can do better.

With my concluding comments, I would just ask for unanimous consent to include letters from the Congressional Hispanic Caucus, the American Jewish Committee, the Human Rights Watch, National Council of LaRaza, who all oppose this bill, and of 150 State and local law enforcement agencies, associations and governments who are opposed to the CLEAR Act, into the record. I yield back my time.

[The material referred to follows:]

Congress of the United States

Washington, DC 20515

December 8, 2005

The Honorable John Conyers
Ranking Member
House Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Ranking Member Conyers:

As the Judiciary Committee prepares to consider H.R. 4437, the Border and Immigration Enforcement Act of 2005, the Congressional Hispanic Caucus (CHC) would like to express deep concern with this bill. The CHC has a long-standing history of dealing with and understanding the border community. Based on that knowledge and decades of experience, the CHC has established guiding principles, which ensure that immigration and border security legislation upholds the humanity, civility and integrity of all Americans. These guiding principles call for immigration reform that is comprehensive, a path which President Bush has also called for repeatedly.

After evaluating H.R. 4437, the CHC has concluded that this bill poses a threat to working families and the American economy.

Although its proponents claim this bill is immigration reform, it is more of the same failed policies that have been enacted for the past 20 years. The CHC is in favor of comprehensive immigration reform - a border security PLUS bill - one that protects our borders, respects American values by reuniting families, and provides earned legalization for immigrants who have proven to be law abiding members of society. H.R. 4437, a bill that deals with border security alone, ignores the reality of our current immigration challenge and continues to victimize the welfare and security of this country.

The time has come for Congress to prioritize immigration and enact legislation that is committed to fixing the issues at hand and make immigration law reflect the real needs of families and businesses while reflecting America's history of valuing the contributions of immigrants.

Sincerely,

Grace Flores Napolitano
Chair, Congressional Hispanic Caucus

Luis V. Gutierrez
Chair, CHC Immigration Taskforce

cc: Honorable Jim Sensenbrenner

PRINTED ON RECYCLED PAPER

Congress of the United States

Washington, DC 20515

December 8, 2005

The Honorable Jim Sensenbrenner
Chairman
House Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Sensenbrenner:

As the Judiciary Committee prepares to consider H.R. 4437, the Border and Immigration Enforcement Act of 2005, the Congressional Hispanic Caucus (CHC) would like to express deep concern with this bill. The CHC has a long-standing history of dealing with and understanding the border community. Based on that knowledge and decades of experience, the CHC has established guiding principles, which ensure that immigration and border security legislation upholds the humanity, civility and integrity of all Americans. These guiding principles call for immigration reform that is comprehensive, a path which President Bush has also called for repeatedly.

After evaluating H.R. 4437, the CHC has concluded that this bill poses a threat to working families and the American economy.

Although its proponents claim this bill is immigration reform, it is more of the same failed policies that have been enacted for the past 20 years. The CHC is in favor of comprehensive immigration reform - a border security PLUS bill - one that protects our borders, respects American values by reuniting families, and provides earned legalization for immigrants who have proven to be law abiding members of society. H.R. 4437, a bill that deals with border security alone, ignores the reality of our current immigration challenge and continues to victimize the welfare and security of this country.

The time has come for Congress to prioritize immigration and enact legislation that is committed to fixing the issues at hand and make immigration law reflect the real needs of families and businesses while reflecting America's history of valuing the contributions of immigrants.

Sincerely,

Grace Flores Napolitano
Chair, Congressional Hispanic Caucus

Luis V. Gutierrez
Chair, CHC Immigration Taskforce

cc: Honorable John Conyers

PRINTED ON RECYCLED PAPER

The American Jewish Committee
Office of Government and International Affairs
1156 Fifteenth Street, N.W., Washington, D.C. 20005 www.ajc.org 202-785-4200 Fax 202-785-4115 E-mail ogia@ajc.org

Re: 12/8 Mark-up of Border Protection, Anti-terrorism and Illegal Immigration Control Act

December 8, 2005

Dear Representative:

The American Jewish Committee, the nation's first human relations organization, has long been a strong voice on behalf of immigrant rights as well as a vocal advocate for a broad, multifaceted response to global and domestic threats of terrorism. We are committed to replacing the current disorganized and dysfunctional system with one that regulates immigration in a safe, orderly, legal, and just manner while bolstering national security. The "Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005" (H.R.4437) is not an appropriate vehicle to achieve this goal. We urge you to oppose this bill, which serves to erode the rights of our nation's most vulnerable, while failing to further our national security.

The United States needs comprehensive immigration reform that will increase our national security through enhanced border control and effective enforcement while simultaneously providing for a sensible and fair immigration system that includes mechanism for earned legalization and increased worker protections. Unfortunately, instead of accomplishing these important goals, the H.R.4437 would disrupt our economy, present new security concerns, and deny both undocumented and documented immigrants basic civil rights and civil liberties. Further, H.R.4437 neither realistically addresses the presence of millions of undocumented immigrants in this country, nor does it address the future shortage of native-born workers to fill jobs necessary to run our economy.

We are encouraged that Congress appears eager to resolve the problems with our current immigration system. We are committed to working with Congress to reform our immigration system in a manner that addresses national security concerns while treating immigrants in a fair, sensible, and safe fashion. H.R.4437 is not the way to achieve these vital goals. We strongly urge you to oppose this measure.

Thank you for considering our views on this important matter.

Respectfully,

Richard Foltin

Richard T. Foltin
Legislative Director and Counsel

HUMAN RIGHTS WATCH

350 Fifth Ave, 34th Floor
New York, NY 10118
Phone: 212.290.4700
Fax: 212.736.1300
hrwnyc@hrw.org

U.S. PROGRAM
Jamie Fellner
Director
Corinna Carey
Researcher
Jennifer Daskal
Advocacy Director
Mia Lewis
Aryeh Neier Fellow
Katherine Newell Bierman
Counsel on Counter Terrorism
Alison Parker
Senior Researcher
Keramet Reiter
Associate
ADVISORY COMMITTEE
Catherine Powell
Chair
Catherine Albisa
Roland Algrant
Stephen Bright
Tanya Coke
David Cole
Mike Farrell
Lulie Haddad
Gara LaMarche
Cecilia Munoz
Bill Quigley
Bruce Rabb
Steven Shapiro
William Snipes
Alexandra Stanton
Julie Stewart
Dorothy Thomas
Robin Toone
HUMAN RIGHTS WATCH
Kenneth Roth
Executive Director
Allison Adorado
Operations Director
Michele Alexander
Development & Outreach Director
Carroll Bogert
Associate Director
Widney Brown
Deputy Program Director
Peggy Hicks
Global Advocacy Director
Iain Levine
Program Director
Dinah PoKempner
General Counsel
James Ross
Senior Legal Advisor
Joe Saunders
Deputy Program Director
Wilder Tayler
Legal and Policy Director
Joanna Weschler
UN Advocacy Director
Jane Olson
Chair, Board of Directors

December 7, 2005

The Honorable F. James Sensenbrenner, Jr.
The House Committee on the Judiciary, Chairman
2449 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
The House Committee on the Judiciary, Ranking Member
2426 Rayburn House Office Building
Washington, DC 20515

Dear House Judiciary Committee Members:

Human Rights Watch writes to urge you to oppose H.R. 4437 the "Border Protection, Antiterrorism, and Illegal Immigration Control Act," during tomorrow's House Committee on the Judiciary mark-up session.

The legislation undermines basic due process protections, human rights obligations, and notions of fundamental fairness. These are complicated issues that deserve extended discussion and debate and should not be rushed through committee and to the House floor.

Of particular concern, the legislation would:

- Expand the expedited removal program, which has already resulted in terrible mistakes, including the wrongful removal of genuine refugees and US citizens.
- Expand the categories and types of crimes that render a non-citizen removable to include low-level offenses for which deportation is an excessive and unnecessary sanction.
- Impose mandatory detention even when the individual is not a flight risk or threat to the community.
- Allow for the indefinite, and potentially perpetual, detention of non-citizens who cannot be deported.
- Strip federal courts of oversight over certain removal and other immigration decisions.
- Add new mandatory minimum penalties for a number of crimes, including crimes committed by U.S. citizens. There is no justification

for these additional restrictions on judges' ability to craft sentences that fit the crime and individual circumstances.

We urge you to refrain from violating the human rights of non-citizens and their lawfully present family members. As human beings and "persons" under the constitution, non-citizens must not be deprived of fundamental fairness and due process of law.

Sincerely yours,

Jennifer Daskal
Advocacy Director, U.S. Programs
(202) 612-4349
daskalj@brw.org

cc: House Judiciary Committee Members

Janet Murguia, President

National Office
Raul Yzaguirre Building
1126 16th Street, N.W.
Washington, DC 20036
Phone: 202.785.1670
Fax: 202.776.1792
www.nclr.org

December 7, 2005

House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

Dear Representative:

On behalf of the National Council of La Raza (NCLR), the largest national Hispanic civil rights and advocacy organization in the U.S., I write to express deep concern about the "Border and Immigration Enforcement Act" (H.R. 4437). NCLR strongly opposes this bill and urges you to vote against it. While we believe that immigration reform is vitally and urgently needed and must include strong and effective enforcement provisions, we believe this legislation will exacerbate our nation's immigration problems rather than solve them. It fails to address many of the most important elements of immigration reform, including backlogs in family visas, regulation of the future flow of migrants, and the presence of a sizeable undocumented community in the United States. Worse, this bill's approach presents a grave threat to deeply-held American values, including due process of law, family unity, and the safety and security of all Americans.

For decades, Congress has passed immigration enforcement measure after enforcement measure. The number of Border Patrol officers tripled between 1993 and 2004; the border enforcement budget quintupled during the same time period. Dozens of other enforcement measures have become law in the past 20 years. However, despite these measures, the flow of undocumented immigrants into the U.S. has not slowed, and the number of undocumented immigrants in the U.S. doubled from 4.5 million to 9.3 million between 1993 and 2004. The number of deaths along the U.S.-Mexico border has increased dramatically; an average of more than one person each day perishes at the border. This year has produced the highest number of deaths to date. Clearly, focusing only on enforcement builds on a strategy that has failed, with tragic results.

H.R. 4437 contains many provisions that go well beyond the boundaries of the current immigration debate and well beyond enforcing current immigration laws. For example, the bill:

- Criminalizes millions of immigrants. Anyone in the U.S. illegally would be subject not only to deportation but imprisonment as well.
- Greatly expands the definition of smuggling in a way that could severely penalize innocent acts of kindness and daily, casual contacts that many Americans have with undocumented immigrants. U.S. citizens married to undocumented immigrants could be convicted of aiding aliens. Persons driving their nannies to an appointment could be convicted of transporting aliens.

- Greatly expands mandatory detention and expedited removal, potentially imprisoning millions of persons and generating huge costs to the taxpayer while accomplishing little in the way of deterring migration.
- Expands the definition of "aggravated felony," rendering legal immigrants convicted of minor offenses in the past ineligible for immigration benefits including naturalization. Those negatively affected by this will inevitably be American families, who could face separation as a result.
- Deputizes local law enforcement officials to enforce federal immigration laws over the objections of many such officials, who believe that this authority undercuts their ability to protect the public safety.
- Mandates a broad-reaching employment verification system that requires employers to retroactively verify the employment status of employees who have been employed for years. It also mandates that churches, NGOs, and others involved in workforce development prescreen potential job applicants before referring them to jobs, a procedure that is likely to result in employment delays and possibly discrimination
- Severely reduces due process rights for legal immigrants in a way that dramatically undercuts basic principles of American justice.

The problematic provisions of H.R. 4437 are too numerous to list. This is an extremely far-reaching piece of legislation that goes beyond immigration enforcement and deserves far more analysis and discussion than the short period that was allowed between introduction and markup. Immigration is an extremely complex issue that requires significantly more attention.

Most importantly, Hispanic Americans – indeed all Americans – want effective reforms of the nation's immigration laws, not shortsighted measures that appear tough on immigration but do not resolve the underlying problems. Only a comprehensive approach that provides a path to citizenship for current undocumented immigrants, creates new legal channels for future flows of needed immigrants, reduces family immigration backlogs, and protects worker rights will reduce undocumented immigration and bring order to our immigration system. We strongly believe that smart, effective, and realistic enforcement of a well-functioning immigration system is possible. H.R. 4437 does not take us down the path of real immigration reform.

We share Congress's commitment to enhancing the security of our nation, including the security of our borders. We also share the desire to enforce a good, workable immigration system. Ultimately, we have concluded that these objectives can be accomplished only through comprehensive reform. We are extremely disappointed that the Committee is instead considering a shortsighted and extraordinarily harsh and dangerous proposal that will ultimately leave our deepest immigration problems unresolved. NCLR urges you in the strongest possible terms to oppose H.R. 4437,

Sincerely,

Janet Murguía
President and CEO

Organizations Opposed to Local Enforcement of Immigration Laws

The following organizations have expressed opposition to the idea of having state and local police enforce federal immigration laws, outside of limited avenues already available under current law. Their positions may have been manifested in organizational policy directives, statements made to the press, local resolutions, executive orders, or other public forums.

For a list of organizations that are on record explicitly opposing the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671) and the Homeland Security Enhancement Act (S. 1906), visit http://www.immigrationforum.org/currentissues/clear.htm.

National Immigration Forum, November 2004

State and Local Law Enforcement Agencies

Arizona
Chandler Police Department
Phoenix Police Department
Pima County Sheriff's Department
Santa Cruz County Sheriff's Office
South Tucson Police Department
Yuma County Sheriff's Office

California
Anaheim Police Department
Arroyo Grande Police Department
Fresno Police Department
Los Angeles County Sheriff's Department
Los Angeles Police Commission
Los Angeles Police Department
Marin County Sheriff's Office
Modoc County Sheriff's Office
National City Police Department
Newark Police Department
Sacramento Police Department
Salinas Police Department
San Diego Police Department
San Francisco Police Department
San Joaquin County Police Department
San Jose Police Department
Sonoma County Police Department
Stockton Police Department
Ventura County Sheriff's Department

Colorado
Boulder Police Department
Denver Police Department
Durango Police Department
Glenwood Springs Police Department

District of Columbia
Washington, DC Metropolitan Police Department

Florida
Clearwater Police Department
Hillsborough Sheriff's Office
Lake County Sheriff's Office
Miami Police Department
North Miami Beach Police Department
Tampa Police Department

Georgia
Cobb County Police Department
Gwinnett County Police Department

Illinois
Chicago Police Department
Cicero Police Department

Iowa
Des Moines Police Department
Muscatine Police Department

Kansas
Kansas City Police Department
Lenexa Police Department
Overland Park Police Department

Maine
Maine State Police
Cumberland County Office of the Sheriff
Portland Police Department

Maryland
Baltimore City Police Department
Montgomery County Police Department

Massachusetts
Boston Police Department
Lowell Police Department

Michigan
Ann Arbor Police Department
Dearborn Police Department

Minnesota
Minneapolis Police Department
St. Paul Police Department

New Jersey
Fairview Police Department
Hackensack Police Department
Hillsdale Police Department
Palisades Park Police Department

New York
New York City Police Department

New Mexico
Albuquerque Police Department
Bernalillo County Sheriff's Office

North Carolina
Cary Police Department
High Point Police Department

Oregon
Eugene Police Department
Hillsboro Police Department
Multnomah County Sheriff's Office
Portland Police Bureau

Pennsylvania
Bensalem Department of Public Safety
Hammonton Police Department
Philadelphia Police Department

Rhode Island
Pawtucket Police Department

South Carolina
North Charleston Police Department

Tennessee
Nashville Metropolitan Police Department
Putnam County Police Department

Texas
Arlington Police Department

Austin Police Department
Bexar County Sheriff's Office
Carrollton Police Department
Dalton Police Department
El Paso Sheriff's Department
Garland Police Department
Houston Police Department
Katy Police Department
Lewisville Police Department
San Antonio Police Department
Waco Police Department

Virginia
Arlington County Police Department

Washington
Seattle Police Department
Whatcom County Sheriff's Department

Wisconsin
Dane County Sheriff's Department

Law Enforcement Associations

National
Association of National Minority Law Enforcement Associations (ANMLEA)
Federal Hispanic Law Enforcement Officers Association (FHLEA)
Hispanic American Police Command Officers Association (HAPCOA)
National Black Police Association
National Latino Peace Officers Association (NLPOA)
Police Executive Research Forum (PERF)
Police Foundation

State/Local
California Police Chiefs' Association
California State Sheriffs' Association
Chicano Police Officers Association (NM)
Connecticut Police Chiefs' Association
Dallas Police Association
El Paso Municipal Police Officers' Association
Hispanic American Police Command Officers Association, Albuquerque Chapter
Houston Police Officers Union
Miami-Dade Chiefs Association
NM Sheriffs and Police Association
Police Benevolent Association (FL)
Washington Association of Sheriffs and Police Chiefs

State and Local Governments

National Associations
National Association of Counties
National Conference of State Legislatures
National League of Cities
The United States Conference of Mayors
United States/Mexico Border Counties Coalition

State and Local Governments

Alaska
State Legislature of Alaska
Anchorage City Council
Fairbanks City Council

Arizona
Governor Jane Hull (R)

Arkansas
City of Rogers

California
54 members of the California Legislature
Daly City Mayor Sal Torres
Los Angeles City Attorney Rocky Delgadillo
Los Angeles City Council
Los Angeles County Board of Supervisors
National City Mayor Nick Inzunza
National City City Council
San Francisco City Council

Connecticut
Danbury Mayor Mark Boughton

Colorado
Durango Mayor Joe Colgan
Durango City Council

District of Columbia
Mayor Anthony Williams (D)
City Council Member Adrian Fenty (D)
City Council Member Jim Graham (D)

Florida
Governor Jeb Bush (R)

Illinois
Evanston City Council
City of Chicago Alderman George Cardenas, 12th Ward
City of Chicago Alderman Tom Tunney, 44th Ward

Kansas
Unified Government of Wyandotte County

Maine
Governor John Baldacci (D)
Labor Commissioner Laura Fortman
Public Safety Commissioner Michael Cantara
Portland City Council

Maryland
Baltimore Mayor Martin O'Malley
Baltimore City Council
Montgomery County Executive Doug Duncan
Takoma Park City Council

Massachusetts
Cambridge City Council
Orleans City Council

Michigan
Ann Arbor City Council
Detroit City Council
Dearborn Mayor Michael Guido

Minnesota
Minneapolis City Council
St. Paul City Council
St. Paul Department of Human Rights

New Mexico
Governor Bill Richardson
Albuquerque Mayor Martin Chavez
Albuquerque City Council
Aztec City Council
Rio Arriba County Board of Commissioners
Santa Fe City Council

New York
New York City Mayor Michael Bloomberg (R)
Former New York City Mayor Rudy Giuliani (R)
Queens City Councilman Hiram Monserrate

North Carolina
Durham Mayor Bill Bell
Durham Assistant City Manager Ted Voorhees

Ohio
Lorain County Board of Commissioners
Former Attorney General Betty Montgomery

Oregon
Oregon Revised Statute 181.850
Attorney General Hardy Myers
Ashland City Council
Gaston City Council
Marion County City Council
Salem City Council

Pennsylvania
Philadelphia City Solicitor Nelson Diaz

Texas
Austin City Council
Houston Mayor Pro Tem Gordon Quan
San Antonio Assistant City Manager Rolando Bono

Virginia
Arlington County Board Member Walter Tejada

Washington
Seattle Mayor Greg Nickels
Seattle City Council

Wisconsin
Madison City Council
Dane County Board of Supervisors Member Scott McDonell
District Attorney Brian Blanchard

Security Experts

General Wesley Clark
Bruce Schneier, CTO of Counterpane Internet Security, Inc.

Congress

Congressional Hispanic Caucus
Senator Edward Kennedy (D-MA)
Senator Jeff Bingaman (D-NM)
Representative Howard Berman (D-CA)

Representative Chris Cannon (R-UT)
Representative Lincoln Diaz-Balart (R-FL)
Representative Bob Filner (D-CA)
Representative Jeff Flake (R-AZ)
Representative Richard Gephardt (D-MO)
Representative Luis Gutierrez (D-IL)
Representative Mike Honda (D-CA)
Representative Sheila Jackson Lee (D-TX)
Representative Jim Kolbe (R-AZ)
Representative Barbara Lee (D-CA)
Representative Zoe Lofgren (D-CA)
Representative Karen McCarthy (D-MO)
Representative Robert Menendez (D-NJ)
Representative Nancy Pelosi (D-CA)
Representative Silvestre Reyes (D-TX)
Representative Ciro Rodriguez (D-TX)
Representative Ileana Ros-Lehtinen (R-FL)
Representative Linda Sanchez (D-CA)
Representative José Serrano (D-NY)
Representative Jan Schakowsky (D-IL)
Representative Heather Wilson (R-NM)

Editorial Boards

Albuquerque Journal
American City and County
The American Prospect
Arizona Daily Star
Athens (GA) Banner-Herald
Atlanta Journal-Constitution
Boston Globe
Chicago Tribune
Des Moines Register
El Paso Times
Houston Chronicle
Los Angeles Times
The Miami Herald
Minneapolis Star Tribune
Orange County Register
New York Sun
The New York Times
Newsday
Palm Springs Desert Sun
St. Petersburg (FL) Times
San Diego Union-Tribune
San Francisco Chronicle
San Jose Mercury News

Star Tribune (MN)
Tucson Citizen

Miscellaneous Organizations

Over 350 organizations (nearly 70 national groups and 300 regional/state/local organizations in 37 states), comprised of domestic violence prevention advocates; conservative ideologues; faith-based groups; civil rights, civil liberties, and human rights watchdogs; immigrants' rights groups; legal services providers and law firms; refugee advocates; health care providers; workers' advocates; labor unions; businesses; counselors; and financial services providers are opposed to local enforcement of federal immigration laws.

National Interest Groups

ACORN
American-Arab Anti-Discrimination Committee (ADC)
American Civil Liberties Union
American Conservative Union
Americans for Tax Reform
Anti-Defamation League
American Conservative Union
American Immigration Lawyers Association
Amnesty International USA
Arab American Institute
Asian American Legal Defense and Education Fund
Asian & Pacific Islander American Health Forum
Catholic Alliance
Catholic Legal Immigration Network, Inc. (CLINIC)
Church Women United
Church World Service IRP
The Committee for Inter-American Human Rights
Council on American-Islamic Relations
Detention Watch Network
Doctors of the World-USA
Episcopal Migration Ministries (EMM)
Family Violence Prevention Fund
Friends Committee on National Legislation (FCNL)
Hebrew Immigrant Aid Society (HIAS)
Hmong National Development
Immigrant Legal Resource Center
Immigrant Women Program of NOW Legal Defense and Education Fund
Immigration and Refugee Services of America
International Gay and Lesbian Human Rights Commission
Jesuit Refugee Service/USA
Labor Council for Latin American Advancement (LCLAA)
Lawyers Committee for Human Rights
Leadership Conference on Civil Rights (LCCR)

Love Sees No Borders
Lutheran Immigration and Refugee Service
Mexican-American Legal Defense and Educational Fund
Muslim Public Affairs Council
National Alliance To End Sexual Violence
National Alliance of Vietnamese American Service Agencies
National Asian Pacific American Legal Consortium
National Catholic Association of Diocesan Directors for Hispanic Ministry (NCADDHM)
National Center on Domestic and Sexual Violence
National Center on Poverty Law
National Coalition Against Domestic Violence
National Coalition for Asian Pacific American Community Development
National Coalition for Haitian Rights
National Council of La Raza
National Employment Law Project
National Immigration Forum
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Korean American Service and Education Consortium
National Network for Immigrant and Refugee Rights
National Organization of Sisters of Color Ending Sexual Assault (SCESA)
National Organization for Women (NOW)
Network in Solidarity with the People of Guatemala (NISGUA)
Orange County (CA) Congregation Community Organization
Organization of Chinese Americans
People For the American Way
The Puerto Rican Legal Defense and Education Fund
Service Employees International Union (SEIU), AFL-CIO, CLC
SHARE Foundation
Sikh Mediawatch and Resource Task Force (SMART)
Social Welfare Action Alliance
Southeast Asia Resource Action Center (SEARAC)
South Asian Network
Stop-Traffic
Tahirih Justice Center
UNITE!
United Food and Commercial Workers International Union (UFCW)
U.S. Civil Rights Commission
United States Conference of Catholic Bishops
World Relief

Regional, State, and Local Interest Groups (By State)

Alabama
ACLU of Alabama
Hispanic Interest Coalition of Alabama

Arizona

Addiction Services, P.C.
Border Action Network
Border Watch
Florence Immigrant and Refugee Rights Project
Tempe Hispanic Forum

California
ACLU of Southern California
ACLU of Northern California
Alliance of South Asians Taking Action
American Arab Anti-Discrimination Committee, Los Angeles and Orange County Chapter
American Arab Anti-Discrimination Committee, San Francisco Chapter
Americans for Community Involvement's Asian Women's House
Applied Research Center
Asian Law Alliance
Asian Law Caucus
Asian Pacific American Legal Center of Southern California
Asian & Pacific Islander Institute on Domestic Violence (San Francisco)
Asian Pacific Islander Legal Outreach
Asian Pacific Policy and Planning Council
Asians and Pacific Islanders for Community Empowerment
Bay Area Immigrant Rights Coalition
Cambodian Community Development
Catholic Charities of the Diocese of Santa Rosa
Catholic Charities Refugee and Immigrant Services—San Diego
Catholic Charities of San Jose
Central American Resource Center (CARECEN)—Los Angeles
Child Care Law Center (San Francisco)
Coalition to Abolish Slavery and Trafficking (CAST) (Los Angeles)
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Community United Against Violence (San Francisco)
El Concilio del Condado de Ventura
Darin M. Camarena Health Centers, Inc.
East Bay Alliance for a Sustainable Economy
East Bay Asian Local Development Corporation
East San Jose Community Law Center
Filipino Civil Rights Advocates (Oakland)
Filipinos for Affirmative Action (Oakland)
Immigration Law Project, La Raza Centro Legal, Inc. (San Francisco)
International Institute of the East Bay
International Institute of San Francisco
Korean American Coalition to End Domestic Abuse (Oakland)
Korean Resource Center of Los Angeles (KRC)
The Latina Center
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Migration Policy and Resource Center/Occidental College, Los Angeles
Riley Center: Services for Battered Women and their Children (San Francisco)
Sexual Assault Crisis Agency (SACA)

Shimtuh: Korean Domestic Violence Program of the Korean Community Center of the East Bay
South Asian Network

Colorado
9to5 Colorado
Boulder County Safehouse
Center for Justice, Peace and Environment
Colorado Coalition Against Domestic Violence (Denver)
El Centro Amistad
Fuerza Latina (Fort Collins)
Los Compañeros (San Juan Citizens Alliance)
Rape Awareness and Assistance Program (Denver)
Rights for All People/Derechos Para Todos
Rocky Mountain Peace and Justice Center

Connecticut
Catholic Charities Migration and Refugee Services—Hartford

District of Columbia
AYUDA Inc.
Break The Chain Campaign
Capital Area Immigrants' Rights Coalition
CAREFEN-DC (Central American Resource Center)
Washington Lawyers' Committee for Civil Rights and Urban Affairs
Women Empowered Against Violence, Inc. (WEAVE)

Florida
Catholic Charities of Orlando, Inc.
Coalition of Immokalee Workers (Immokalee)
Diocese of Orlando, Respect Life Office
The Farmworker Association of Florida, Inc.
Florida Council Against Sexual Violence (Tallahassee)
Florida Immigrant Advocacy Center (FIAC)
GALATA, Inc. (Florida City)
Latino Leadership, Inc.
The Law Firm of M. Thomas Lobasz, P.A.
Office for Farmworker Ministry

Georgia
African Immigrant Communities Leadership Initiatives/US (Columbus)
Immigration Services of Catholic Social Services—Atlanta
Raksha Inc. (Atlanta)

Hawaii
Catholic Charities Community and Immigrant Services
Na Loio - Immigrant Rights & Public Interest Legal Center (Honolulu)

Illinois

Alivio Medical Center
Asian American Institute (Chicago)
Dominican Literacy Center
Heartland Alliance for Human Needs & Human Rights (Chicago)
Illinois Coalition for Immigrant and Refugee Rights (Chicago)
The Immigration Project (Granite City)
Korean American Resource & Cultural Center (KRCC)
Latinos Progresando (Chicago)
Latino Youth, Inc.
Metropolitan Family Services, Family Violence Intervention Program (Chicago)
Midwest Immigrant & Human Rights Center (Chicago)
Peregrinos por la Dignidad

Iowa
Asian Coalition Against Domestic Violence and Sexual Assault (ACADVSA)
Assault Care Center Extending Shelter (Ames)
Catholic Charities, Domestic Violence/Sexual A.P. (Council Bluffs)
Cedar Valley Friends of the Family (Waverly)
Centers Against Abuse and Sexual Assault (Spencer)
Clinton YWCA, Domestic Violence/Sexual A.R.C. (Clinton)
Committee of the Immigrant Rights Network of Clarion, Iowa
Committee of the Immigrant Rights Network of Des Moines, Iowa
Committee of the Immigrant Rights Network of Dubuque, Iowa
Committee of the Immigrant Rights Network of Ottumwa, Iowa
Committee of the Immigrant Rights Network of Red Oak, Iowa
Committee of the Immigrant Rights Network of Shenandoah, Iowa
Committee of the Immigrant Rights Network of Sioux City, Iowa
Council Against Domestic Abuse and Sexual Assault (Cherokee)
Council on Sexual Assault and Domestic Violence (Sioux City)
Crisis Center and Women's Shelter (Ottumwa)
Crisis Intervention and Advocacy Program (Adel)
Crisis Intervention Service (Mason City)
Crisis Intervention Services of Mahaska County (Oskaloosa)
Domestic Abuse Prevention Center (Carroll)
The Domestic and Sexual Abuse Resource Center (Decorah)
Domestic/Sexual Assault Outreach Center (Fort Dodge)
Domestic Violence Advocacy Program (Davenport)
Domestic Violence Alternatives/Sexual Assault C. (Marshalltown)
Domestic Violence Education and Shelter (Shenandoah)
Domestic Violence Intervention Program (Iowa City)
The Family Crisis Center of North Iowa (Algona)
Family Crisis Centers of NW Iowa (Sioux Center)
Family Crisis Support Network (Atlantic)
Family Service League Crisis Services (Waterloo)
The Family Violence Center (Des Moines)
Iowa Coalition Against Domestic Violence
Iowa Coalition Against Sexual Assault Rape and Sexual Assault Program Polk Co. V.S. (Des Moines)
Rape Victim Advocacy Program (Iowa City)

Riverview Center, Inc. (Dubuque)
Rural Crisis Center: Domestic Violence & S.A.S. (Creston)
Seeds of Hope (Grundy Center)
Sexual Assault/Domestic Abuse Advocacy Program (Muscatine)
Tri-State Coalition Against Domestic and Sexual Assault (Keokuk)
Turning Point (Knoxville)
Waypoint Services for Women, Children and Families (Cedar Rapids)
YWCA Domestic Violence Program (Dubuque)
YWCA Domestic Violence Shelter and Sexual A.P. (Burlington)

Kansas
El Centro, Inc.
Kansas Coalition Against Sexual and Domestic Violence
Law Offices of Sarah J. Schlicher (Overland Park)

Kentucky
Kentucky Domestic Violence Association

Louisiana
Catholic Charities Archdiocese of New Orleans
Migration and Refugee Services/Catholic Diocese of Lafayette
Office of Justice and Peace/Catholic Diocese of Lafayette

Maine
Center for the Prevention of Hate Violence
Family Crisis Services (Portland)
Immigrant Legal Advocacy Project
National Association for the Advancement of Colored People (NAACP), Portland Branch

Maryland
Immigration Outreach Service Center (IOSC)
Migrant and Refugee Cultural Support, Inc. (MIRECS)

Massachusetts
Brazilian Immigrant Center
Brazilian Resources and Services Network
Brazilian Workers Center
Greater Boston Legal Services, on behalf of its clients
Irish Immigration Center
Massachusetts Immigrant and Refugee Advocacy (MIRA) Coalition
Massachusetts Law Reform Institute
Political Asylum/Immigration Representation Project (Boston)
Refugee Immigration Ministry (Malden)
UFCW Local 1445

Michigan
ACCESS (The Arab Community Center for Economic and Social Services)
Domestic Violence Project, Inc./SAFE House (Ann Arbor)

Hispanic American Council
Michigan Coalition Against Domestic and Sexual Violence (Okemos)
Michigan Organizing Project (MOP)
Relief After Violent Encounter, Inc. (St. Johns)
Turning Point (Mt. Clemens)
YWCA of Grand Rapids

Minnesota
ACORN
AFFIRM (The Alliance for Fair Federal Immigration Reform of Minnesota)
AFSCME Council 14
Al Taqwa Mosque
Archdiocese of St. Paul & Minneapolis Hispanic Ministry Leadership Team
C.N. Realty
Centro de Derechos Laborales
Comite Civico Ecuatoriano
Community Stabilization Project (CSP)
Confederation of Somali Community
Congregation of the Sisters of St. Joseph of Corondolet
Council on Asian Pacific Minnesotans
Council on Black Minnesotans
Friends for a Nonviolent World
HERE (Hotel Employees and Restaurant Employees International Union)
Hmong 18 Council
Hmong American Partnership
ISAIAH
Jewish Community Action
Jobs and Affordable Housing Campaign
Lauj Youth Society of Minnesota
MN Chapter of the American-Arab Anti-Discrimination Committee
MN Chapter of the American Immigration Lawyers Association
MN Chapter of the National Lawyers Guild
MN State AFL-CIO
Merriam Park Neighbors for Peace
Minnesota Advocates for Human Rights (Minneapolis)
Minnesota Alliance for Progressive Action (MAPA)
Minnesota Literacy Council
Minnesota Muslim American Society
Minnesota Tenants Union
National Conference of Black Lawyers
Our Lady of Guadalupe Congregation
Progressive Minnesota
Resource Center for the Americas
SEIU Minnesota State Council
Sacred Heart Congregation
St. Paul African-American Leadership Council
St. Paul Bill of Rights Defense Committee

St. Paul Branch of the NAACP
St. Paul Trades and Labor Association
Steelworkers of America
Swede Hollow Democratic Club
UFCW Local 789
Wascca Area Neighborhood Service Centre
Women of Africa Resource and Development Association (WARDA)

Mississippi
Catholic Charities of the Diocese of Jackson
Catholic Diocese of Jackson
Daughters of Charity
Dominican Sisters
Saint Anne Catholic Church

Missouri
Refugee & Immigration Services, Diocese of Jefferson City

Nebraska
Immigrant Rights Network of Iowa and Nebraska
NE Mexican American Commission
Nebraska Appleseed Center for Law in the Public Interest

New Jersey
American Friends Service Committee Immigrant Rights Program of Newark, NJ
Catholic Community Services, Refugee Resettlement and Immigration Assistance Programs—Newark
El Centro Hispanoamericano (Plainfield)
Migration and Refugee Services/Diocese of Trenton
New Jersey Coalition for Battered Women
New Jersey Immigration Policy Network, Inc.
Wind of the Spirit, Immigrant Resource Center

New Mexico
ACLU of New Mexico
ACORN
Albuquerque Rape Crisis Center
Catholic Charities of Albuquerque
Catholic Charities of Central New Mexico
Community Health Partnership
Enlace Comunitario
Health Action New Mexico
Human Needs Coordinating Council
LAMLAVC
Legal FACS
MANA de Albuquerque (Mexican American National Association of Women)
NM Center on Law and Poverty
NM Coalition Against Domestic Violence

NM Human Rights Coalition
Somos Un Pueblo Unido
Southwest Creations Collaborative
Southwest Network for Environmental and Economic Justice
Southwest Organizing Project

New York
Alianza Dominicana, Inc.
Asian Americans For Equality, Inc.
CUNY School of Law, Immigrant Initiatives
Cabrini Immigrant Services
Catholic Charities of Rockville Centre
Central American Legal Assistance
Central American Refugee Center
Centro Salvadoreño
Community Board 2 Manhattan
Face to Face
The Forest Hills Community House
Goddard Riverside Community Center
Greater Upstate Law Project (Albany, Rochester and White Plains, NY)
Hotel Employees & Restaurant Employees Union, Local 100
Kids Meeting Kids
Latin American Integration Center
Lesbian and Gay Immigration Rights Task Force (New York)
Lutheran Family and Community Services (New York)
Marymount Manhattan College Institute for Immigrant Concerns
New Immigrant Community Empowerment (NICE) – Jackson Heights
New York Immigration Coalition
New York State Defenders Association
Rockland Immigration Coalition
Safe Horizon (New York City)
Sanctuary for Families (New York City)
Sex Workers Project at the Urban Justice League (New York City)
Young Korean American Service & Education Center (YKASEC)

North Carolina
Center for New North Carolinians
Episcopal Farmworker Ministry
FaithAction
Latino Community Credit Union
Latino Community Development Center
North Carolina Justice and Community Development Center

Ohio
Community Refugee & Immigration Services
En Camino, Migrant and Immigrant Outreach/Diocese of Toledo

Oklahoma

Asian American Community Service Association, Inc.
Domestic Violence Intervention Services, Inc. (Tulsa)
Leblang, Sobel & Ashbaugh, P.L.L.P.

Oregon
ACLU of Oregon
AFSCME Council 75
AILA Oregon Chapter
Adelante Mujeres
American Immigration Lawyers Association, Oregon Chapter
Asian Pacific American Network of Oregon
Basic Rights Oregon
Benton County Bill of Rights Defense Committee
Better People
Bridge City Preparative Meeting of the Religious Society of Friends
CAUSA
Center for Environmental Equity
Centro Cultural
Centro LatinoAmericano
Commission on Hispanic Affairs
Common Cause Oregon
Community Alliance of Lane County
Coos County Women's Crisis Service
Domestic Violence Resource Center
Ecumenical Ministries of Oregon
Eugene Human Rights Commission
Haven from Domestic Violence
Human Dignity Coalition
Illinois Valley Safe House Alliance
Japanese American Citizen League, Portland Chapter
Lane County Central Labor Council
Lane County Bill of Rights Defense Committee
Lane County Human Rights Advisory Committee
Lane County Law & Advocacy Center
Latino Network
Latinos Unidos Siempre
Mid-Valley Women's Crisis Service
Network for Immigrant Justice
Northwest Workers' Justice Project
Oregon AFL-CIO
Oregon CURE
Oregon NOW
Oregon Action
Oregon Chapter National Association of Social Workers
Oregon Child Development Coalition
Oregon Coalition Against Domestic and Sexual Violence
Oregon Criminal Defense Lawyers Association
Oregon Law Center

Oregon Pacific Green Party
Peace & Justice Works/Portland Copwatch
Pineros y Campesinos Unidos del Noroeste (PCUN)
Portland Bill of Rights Defense Committee
Portland Books to Prisoners
Portland State University Faculty Association
Q: A Queer Resource for Social Change
Rural Organizing Project
SEIU Local 49
SEIU Local 503, OPEU
SEIU Local 503, Latino Caucus
Safe Harbors
Salem/Keizer Coalition for Equality
Sexual Assault Resource Center
Sexual Assault Support Services
Siuslaw Area Women's Center Board of Directors
Southern Oregon Chapter of the ACLU of Oregon
Springfield Alliance for Equality and Respect
Survivors Advocating for An Effective System
Tillamook County Citizens for Human Dignity
VOZ Workers' Rights Education Project
Wasco County Citizens for Human Dignity
Western Prison Project
Western States Center
Womenspace

Pennsylvania
CIRCLE - Coalition for Immigrants' Rights at the Community Level (York)
Detention Resource Project (Philadelphia)
Lutheran Settlement House (Philadelphia)
Golden Vision Foundation (York)
Pennsylvania Immigrant & Refugee Women's Network (Enola)
Pennsylvania Immigration Resource Center (York)
Pennsylvania Coalition Against Rape (Enola)
PRIME – Ecumenical Commitment to Refugees (Clifton Heights)

Rhode Island
International Institute of Rhode Island, Inc.
Rhode Island Jobs with Justice

Tennessee
Abused Women's Services of The YWCA of Greater Memphis
Garcia Labor Company, Inc.
Highlander Research and Education Center
Iraqi House
Tennessee Coalition Against Domestic and Sexual Violence (Nashville)
Tennessee Immigrant and Refugee Rights Coalition (TIRRC)

Texas
ARCA (Association for Residency and Citizenship of America)
Association for Immigrants' Equality and Freedom
BARCA, Inc.
Border Association for Refugees from Central America (Edinburg)
Casa Guanajuato
Catholic Charities of Dallas, Immigration Counseling Services
Catholic Family Service, Inc.
Citizens and Immigrants for Equal Justice (Mesquite)
Concilio de Inmigración
Equal Justice Center
Hines & Leigh, P.C.
School for All
The Texas Civil Rights Project (Austin)
Texas Council on Family Violence

Utah
YWCA of Salt Lake

Vermont
Vermont Network Against Domestic Violence & Sexual Assault (Montpelier)
Vermont Refugee Assistance (Montpelier)

Virginia
Boat People S.O.S. (Falls Church)
The Hispanic Committee of Virginia
Office of Justice and Peace, Catholic Diocese of Richmond
Refugee and Immigration Services, Catholic Diocese of Richmond
Refugee & Immigration Services - Roanoke Office
Tenants' & Workers' Support Committee
Virginia Hispanic Chamber of Commerce
Virginia Justice Center for Farm and Immigrant Workers

Washington
Broadview Emergency Shelter and Transitional Housing Program (Seattle)
Chinese Cultural Association
Eastside Domestic Violence Program (Bellevue)
El Centro de la Raza
Hate Free Zone Campaign of Washington (Seattle)
King County Coalition Against Domestic Violence (Seattle)
Law Offices of Carol L. Edward & Associates, P.S. (Seattle)
Northwest Immigrant Rights Project (Seattle)
Washington Alliance for Immigrant and Refugee Justice
Washington Defender Association's Immigration Project (Seattle)

Wisconsin
La Causa, Inc.
UNIDOS Against Domestic Violence (Madison)

Mr. GOHMERT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Gohmert, is recognized for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman. I appreciate the question, what kind of America do we want? Let me tell you, as a former judge, some of the things that we dealt with and some of the things that law enforcement dealt with. For one thing, when you have a man that comes to your court who has been arrested time and time and time again for driving while intoxicated and he has never been deported because they don't have adequate agents to do that kind of thing, one in the entire area of East Texas, and it is made clear by the Federal Government that local law enforcement are not allowed to take immigration actions, it gets pretty frustrating to local law enforcement; and the people would like a safe America, so the people that were hit by this gentleman who is illegally in the United States, not only harmed them, he gave my Hispanic friends, people cast a giant shadow over all of a particular group just because he happens to have a similar appearance, and it is grossly unfair. But people deserve a safe America.

So when I sent the man to prison because he had harmed people while intoxicated for the umpteenth time, and then see him back in my court in just a matter of months, because as soon as he got to prison finally the Federal authorities decided to take action and they deported him, but they didn't wait long enough at the border to watch him come back across and come to our county so that he could hit other citizens while intoxicated.

I said if they are going to pull him out of prison, let us send him to treatment so maybe there be less chance. He made it through a few months of treatment before INS picked him up and deported him, so heaven knows who all he may have harmed after that.

This kind of law will allow local law enforcement to assist the Federal law enforcement in making America safer. Hispanics, people who have come over from Mexico, they deserve not to have illegal people who do wrong acts cast a pall over them. We have hardworking friends and Americans who deserve to be protected, of every race, creed, color, national origin, gender, and that is what this bill is trying to do. When it comes to what kind of America we want, it ought to be safer for every race, creed, national origin or gender, and I am proud that we are actually trying to take action to do that. I yield back.

Chairman SENSENBRENNER. Are there further amendments?

Ms. LOFGREN. Mr. Chairman.

Chairman SENSENBRENNER. Do you have an amendment?

Ms. LOFGREN. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. LOFGREN. I think we are winding down, it appears to me, but there are a couple of other items in the underlying bill that I really feel need to be discussed and brought to the attention of Members and the public generally. And I am going to mention two of them: section 407, the expansion of the expedited removal provision; as well as section 805 which is, I think, a completely unworkable proposal relative to reviews of BIA decisions.

First, on the expedited removal provision, I think it is important to note that expedited removal is an abbreviated process that basi-

cally is no process it all. It is an officer who is playing an immigration function who essentially acts as prosecutor, judge, jury, the entire decision maker. There is no review, there is no due process whatsoever.

Now, an argument can be made that that is an appropriate process at the border and we could have a discussion about that. If you are in the middle of the desert and a group of people is walking across, certain assumptions can be made about that when people do not present themselves at a port of entry without documentation. But what the bill proposes to do is to treat that border process, to expand it 100 miles from the border.

Now, I am from California, northern California, which is more than 100 miles from the southern land border, but in the Homeland Security Committee we had a substantial discussion about what in California is 100 miles from the border, and it includes Disneyland. Disneyland is not the border; it is not the border, and the issue. And my colleague Mr. Lungren and I engaged in a dialogue about what our concern was about the due process of illegal aliens. I think it is important to note we are concerned about the due process of rights of American citizens, American citizens and legal residents of the United States; because there is no process to protect the rights of Americans who could be perceived by an individual as not lawfully present.

And so I guarantee you if this becomes law, and I don't think it will, ultimately we will deport Americans and there will be no recourse for those Americans. We will deport legal residents and it will have a deleterious impact on our country and it certainly does not mete what we have come to know as fortunate people who are Americans the due process that is required in the American Constitution.

Now to section 805. This is truly an extraordinary provision. This section sets up a new system in which a single court of appeals judge must prereview the case to certify whether it should be reviewed in Federal court under the standard of, quote, "substantial showing that the petition for review is likely to be granted," unquote. If the prereview judge fails to issue a certificate of reviewability, the petition for review is deemed denied. No explanation is required. The decision is completely unreviewable.

Now, we know and we have had discussions about the Ninth Circuit and how overwhelmed they are. I have met with the justices of the Ninth Circuit and they have explained to me and other members of the California delegation that part of the problem they are dealing with is the massive inflow of immigration appeals. And the reason why those appeals are coming is that the Administration basically destroyed the Bureau of Immigration Appeals. And we have immigration law judges that are issuing one-sentence decisions. They are not being appropriately reviewed. We have got BIA judges doing one-sentence decisions, and the process has broken down; but those cases don't go away, they simply show up in the court of appeals which has jurisdiction.

I think that to think, even with our limited habeas provisions in here, that we will avoid burdening the Federal courts by section 805 is a big mistake. There is a habeas, and I think it is unfortunate that all habeas jurisdiction would be lodged in the District of Columbia, no matter where the case arises, but I can guarantee

you that that will be where these cases flow to. And if we have got a sludge of cases in the Ninth Circuit, we are going to see that same thing occur in the District of Columbia.

Chairman SENSENBRENNER. The time of the gentlewoman has expired. Are there further amendments?

Mr. BERMAN. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from California seek recognition?

Mr. BERMAN. I have an amendment at the desk, Mr. Chairman.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 4437 offered by Mr. Berman:

At the end, insert the following and make technical and conforming changes, including changing title and section numbers, as necessary.

Title III——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentleman from California will be recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO HR 4437
OFFERED BY MR. BERMAN

At the end, insert the following and make technical and conforming changes (including changing title and section numbers) as necessary:

TITLE III--ESSENTIAL WORKER VISA PROGRAM

1. SEC. 301. ESSENTIAL WORKERS.

Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended--

(1) by striking `(H) an alien (i)(b)' and inserting the following:

`(H) an alien--

`(i)(b)';

(2) by striking `or (ii)(a)' and inserting the following:

`(ii)(a)';

(3) by striking `or (iii)' and inserting the following:

`(iii)'; and

(4) by adding at the end the following:

`(v)(a) subject to section 218A, having residence in a foreign country, which the alien has no intention of abandoning, who is coming temporarily to the United States to initially perform labor or services (other than those occupation classifications covered under the provisions of clause (i)(b) or (ii)(a) or subparagraph (L), (O), (P), or (R)); or.'.

SEC. 302. ADMISSION OF ESSENTIAL WORKERS.

(a) In General- Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

`ADMISSION OF TEMPORARY H-5A WORKERS

`SEC. 218A. (a) The Secretary of State may grant a temporary visa to a nonimmigrant described in section 101(a)(15)(H)(v)(a) who demonstrates an intent to perform labor or services in the United States (other than those occupational classifications covered under the provisions of clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or subparagraph (L), (O), (P), or (R)) of section 101(a)(15).

`(b) Requirements for Admission- In order to be eligible for nonimmigrant status under section 101(a)(15)(H)(v)(a), an alien shall meet the following requirements:

`(1) ELIGIBILITY TO WORK- The alien shall establish that the alien is capable of performing the labor or services required for an occupation under section 101(a)(15)(H)(v).

`(2) EVIDENCE OF EMPLOYMENT- The alien's evidence of employment shall be provided through the Employment Eligibility Confirmation System established under section 274E or in accordance with requirements issued by the Secretary of State, in consultation with the Secretary of Homeland Security. In carrying out this paragraph, the Secretary may consider evidence from employers, employer associations, and labor representatives.

`(3) FEE- The alien shall pay a $500 application fee to apply for the visa in addition to the cost of processing and adjudicating such application. Nothing in this paragraph shall be construed to affect consular procedures for charging reciprocal fees.

`(4) MEDICAL EXAMINATION- The alien shall undergo a medical examination (including a determination of immunization status) at the alien's expense, that conforms to generally accepted standards of medical practice.

`(c) Grounds of Inadmissibility-

`(1) IN GENERAL- In determining an alien's admissibility as a nonimmigrant under section 101(a)(15)(H)(v)(a)--

`(A) paragraphs (5), (6) (except for subparagraph (E)), (7), (9), and (10)(B) of section 212(a) may be waived for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced;

`(B) the Secretary of Homeland Security may not waive--

`(i) subparagraph (A), (B), (C), (E), (G), (H), or (I) of section 212(a)(2) (relating to criminals);

`(ii) section 212(a)(3) (relating to security and related grounds); or

`(iii) subparagraph (A) or (C) of section 212(a)(10) (relating to polygamists and child abductors);

`(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or when such waiver is otherwise in the public interest; and

`(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security to waive the provisions of section 212(a).

`(2) WAIVER FINE- An alien who is granted a waiver under subparagraph (1) shall pay a $1,500 fine upon approval of the alien's visa application.

`(3) APPLICABILITY OF OTHER PROVISIONS- Sections 240B(d) and 241(a)(5) shall not apply to an alien who initially seeks admission as a nonimmigrant under section 101(a)(15)(H)(v)(a).

`(4) RENEWAL OF AUTHORIZED ADMISSION AND SUBSEQUENT ADMISSIONS- An alien seeking renewal of authorized admission or subsequent admission as a nonimmigrant under section 101(a)(15)(H)(v)(a) shall establish that the alien is not inadmissible under section 212(a).

`(d) Period of Authorized Admission-

`(1) INITIAL PERIOD- The initial period of authorized admission as a nonimmigrant described in section 101(a)(15)(H)(v)(a) shall be 3 years.

`(2) RENEWALS- The alien may seek an extension of the period described in paragraph (1) for 1 additional 3-year period.

`(3) LOSS OF EMPLOYMENT-

`(A) IN GENERAL- Subject to subsection (c), the period of authorized admission of a nonimmigrant alien under section 101(a)(15)(H)(v)(a) shall terminate if the nonimmigrant is unemployed for 45 or more consecutive days.

`(B) RETURN TO FOREIGN RESIDENCE- Any alien whose period of authorized admission terminates under subparagraph (A) shall be required to return to the country of the alien's nationality or last residence.

`(C) PERIOD OF VISA VALIDITY- Any alien, whose period of authorized admission terminates under subparagraph (A), who returns to the country of the alien's nationality or last residence under subparagraph (B), may reenter the United States on the basis of the same visa to work for an employer, if the alien has complied with the requirements of subsection (b)(1).

`(4) VISITS OUTSIDE UNITED STATES-

`(A) IN GENERAL- Under regulations established by the Secretary of

Homeland Security, a nonimmigrant alien under section 101(a)(15)(H)(v)(a)--

`(i) may travel outside of the United States; and

`(ii) may be readmitted without having to obtain a new visa if the period of authorized admission has not expired.

`(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION- Time spent outside the United States under subparagraph (A) shall not extend the period of authorized admission in the United States.

`(e) Portability- A nonimmigrant alien described in this section, who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(v)(a), may accept new employment with a subsequent employer.

`(f) Waiver of Rights Prohibited- A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) may not be required to waive any rights or protections under the Secure America and Orderly Immigration Act.

`(g) Change of Address- An alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall comply by either electronic or paper notification with the change of address reporting requirements under section 265.

`(h) Bar to Future Visas for Violations-

`(1) IN GENERAL- Any alien having the nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall not be eligible to renew such nonimmigrant status if the alien willfully violates any material term or condition of such status.

`(2) WAIVER- The alien may apply for a waiver of the application of subparagraph (A) for technical violations, inadvertent errors, or violations for which the alien was not at fault.

`(i) Collection of Fees- All fees collected under this section shall be deposited in the Treasury in accordance with section 286(w).'.

(b) Conforming Amendment Regarding Presumption of Nonimmigrant Status- Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by inserting `(H)(v)(a),' after `(H)(i),'.

(c) Clerical Amendment- The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

`Sec. 218A. Admission of temporary H-5A workers.'.

SEC. 303. EMPLOYER OBLIGATIONS.

Employers employing a nonimmigrant described in section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act, as added by section 301, shall comply with all applicable Federal, State, and local laws, including--

(1) laws affecting migrant and seasonal agricultural workers; and

(2) the requirements under section 274E of such Act, as added by section 402.

SEC. 304. PROTECTION FOR WORKERS.

Section 218A of the Immigration and Nationality Act, as added by section 302, is amended by adding at the end the following:

`(h) Application of Labor and Other Laws-

`(1) DEFINITIONS- As used in this subsection and in subsections (i) through (k):

`(A) EMPLOY; EMPLOYEE; EMPLOYER- The terms `employ', `employee', and `employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

`(B) FOREIGN LABOR CONTRACTOR- The term `foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

`(C) FOREIGN LABOR CONTRACTING ACTIVITY- The term `foreign labor contracting activity' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(v)(a).

`(2) COVERAGE- Notwithstanding any other provision of law--

`(A) a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) is prohibited from being treated as an independent contractor; and

`(B) no person may treat a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) as an independent contractor.

`(3) APPLICABILITY OF LAWS- A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien's status as a nonimmigrant worker.

`(4) TAX RESPONSIBILITIES- With respect to each employed nonimmigrant alien described in section 101(a)(15)(H)(v)(a), an employer shall comply with all applicable

Federal, State, and local tax and revenue laws.

`(5) NONDISCRIMINATION IN EMPLOYMENT- An employer shall provide nonimmigrants issued a visa under this section with the same wages, benefits, and working conditions that are provided by the employer to United States workers similarly employed in the same occupation and the same place of employment.

`(6) NO REPLACEMENT OF STRIKING EMPLOYEES- An employer may not hire a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) as a replacement worker if there is a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

`(7) WAIVER OF RIGHTS PROHIBITED- A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) may not be required to waive any rights or protections under the Secure America and Orderly Immigration Act. Nothing under this provision shall be construed to affect the interpretation of other laws.

`(8) NO THREATENING OF EMPLOYEES- It shall be a violation of this section for an employer who has filed a petition under section 203(b) to threaten the alien beneficiary of such a petition with withdrawal of the application, or to withdraw such a petition in retaliation for the beneficiary's exercise of a right protected by the Secure America and Orderly Immigration Act.

`(9) WHISTLEBLOWER PROTECTION- It shall be unlawful for an employer or a labor contractor of a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee--

`(A) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of Secure America and Orderly Immigration Act.

`(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of the Secure America and Orderly Immigration Act.

`(i) Labor Recruiters-

`(1) IN GENERAL- Each employer that engages in foreign labor contracting activity and each foreign labor contractor shall ascertain and disclose to each such worker who is recruited for employment the following information at the time of the worker's recruitment:

`(A) The place of employment.

`(B) The compensation for the employment.

`(C) A description of employment activities.

`(D) The period of employment.

`(E) Any other employee benefit to be provided and any costs to be charged for each benefit.

`(F) Any travel or transportation expenses to be assessed.

`(G) The existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment.

`(H) The existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers.

`(I) The extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including work related injuries and death, during the period of employment and, if so, the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

`(J) Any education or training to be provided or required, including the nature and cost of such training, who will pay such costs, and whether the training is a condition of employment, continued employment, or future employment.

`(K) A statement, in a form specified by the Secretary of Labor, describing the protections of this Act for workers recruited abroad.

`(2) FALSE OR MISLEADING INFORMATION- No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide material false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

`(3) LANGUAGES- The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Department of Labor shall make forms available in English, Spanish, and other languages, as necessary, which may be used in providing workers with information required under this section.

`(4) FEES- A person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

`(5) TERMS- No employer or foreign labor contractor shall, without justification, violate the terms of any agreement made by that contractor or employer regarding employment under this program.

`(6) TRAVEL COSTS- If the foreign labor contractor or employer charges the

employee for transportation such transportation costs shall be reasonable.

`(7) OTHER WORKER PROTECTIONS-

`(A) NOTIFICATION- Every 2 years, each employer shall notify the Secretary of Labor of the identity of any foreign labor contractor engaged by the employer in any foreign labor contractor activity for or on behalf of the employer.

`(B) REGISTRATION OF FOREIGN LABOR CONTRACTORS-

`(i) IN GENERAL- No person shall engage in foreign labor recruiting activity unless such person has a certificate of registration from the Secretary of Labor specifying the activities that such person is authorized to perform. An employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under this subparagraph.

`(ii) ISSUANCE- The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed. Such process shall include requirements under paragraphs (1), (4), and (5) of section 1812 of title 29, United States Code, an expeditious means to update registrations and renew certificates and any other requirements the Secretary may prescribe.

`(iii) TERM- Unless suspended or revoked, a certificate under this subparagraph shall be valid for 2 years.

`(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION- In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph. The justification for such refusal, suspension, or revocation may include the following:

`(I) The application or holder of the certification has knowingly made a material misrepresentation in the application for such certificate.

`(II) The applicant for or holder of the certification is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify for a certificate under this paragraph.

`(III) The applicant for or holder of the certification has failed

to comply with the Secure America and Orderly Immigration Act.

`(C) REMEDY FOR VIOLATIONS- An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates the provisions of this subsection shall be subject to remedies for foreign labor contractor violations under subsections (j) and (k). If a foreign labor contractor acting as an agent of an employer violates any provision of this subsection, the employer shall also be subject to remedies under subsections (j) and (k). An employer that violates a provision of this subsection relating to employer obligations shall be subject to remedies under this subsections (j) and (k).

`(D) EMPLOYER NOTIFICATION- An employer shall notify the Secretary of Labor any time the employer becomes aware of a violation of this subsection by a foreign labor recruiter.

`(E) WRITTEN AGREEMENTS- No foreign labor contractor shall violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

`(F) BONDING REQUIREMENT- The Secretary of Labor may require a foreign labor contractor under this subsection to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has sufficient ties to the United States to adequately enforce this subsection.

`(j) Enforcement-

`(1) IN GENERAL- The Secretary of Labor shall prescribe regulations for the receipt, investigation, and disposition of complaints by an aggrieved person respecting a violation of this section.

`(2) DEFINITION- As used in this subsection, an `aggrieved person' is a person adversely affected by the alleged violation, including--

`(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

`(B) a representative for workers whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

`(3) FILING DEADLINE- No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 12 months after the date of such violation.

`(4) REASONABLE CAUSE- The Secretary of Labor shall conduct an investigation under this subsection if there is reasonable cause to believe that a violation of this

section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

`(5) NOTICE AND HEARING-

`(A) IN GENERAL- Not later than 60 days after the Secretary of Labor makes a determination of reasonable cause under paragraph (4), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

`(B) COMPLAINT- If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved party or organization an opportunity for a hearing under subparagraph (A), the Secretary shall notify the aggrieved party or organization of such determination and the aggrieved party or organization may seek a hearing on the complaint in accordance with such section 556.

`(C) HEARING DEADLINE- Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (6).

`(6) ATTORNEYS' FEES- A complainant who prevails with respect to a claim under this subsection shall be entitled to an award of reasonable attorneys' fees and costs.

`(7) POWER OF THE SECRETARY- The Secretary may bring an action in any court of competent jurisdiction--

`(A) to seek remedial action, including injunctive relief;

`(B) to recover the damages described in subsection (k); or

`(C) to ensure compliance with terms and conditions described in subsection (i).

`(8) SOLICITOR OF LABOR- Except as provided in section 518(a) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

`(9) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES- The rights and remedies provided to workers under this section are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

`(k) Penalties-

`(1) IN GENERAL- If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of subsection (h) or (i), the Secretary may impose

administrative remedies and penalties, including--

`(A) back wages;

`(B) fringe benefits; and

`(C) civil monetary penalties.

`(2) CIVIL PENALTIES- The Secretary of Labor may impose, as a civil penalty--

`(A) for a violation of subsection (h)--

`(i) a fine in an amount not to exceed $2,000 per violation per affected worker;

`(ii) if the violation was willful violation, a fine in an amount not to exceed $5,000 per violation per affected worker;

`(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not to exceed $25,000 per violation per affected worker; and

`(B) for a violation of subsection (i)--

`(i) a fine in an amount not less than $500 and not more than $4,000 per violation per affected worker;

`(ii) if the violation was willful, a fine in an amount not less than $2,000 and not more than $5,000 per violation per affected worker; and

`(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

`(3) USE OF CIVIL PENALTIES- All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

`(4) CRIMINAL PENALTIES- If a willful and knowing violation of subsection (i) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined not more than $35,000 fine, or both.'.

SEC. 305. MARKET-BASED NUMERICAL LIMITATIONS.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended--

(1) in paragraph (1)--

(A) by striking `(beginning with fiscal year 1992)';

(B) in subparagraph (B), by striking the period at the end and inserting `; and'; and

(C) by adding at the end the following:

`(C) under section 101(a)(15)(H)(v)(a), may not exceed--

`(i) 400,000 for the first fiscal year in which the program is implemented;

`(ii) in any subsequent fiscal year--

`(I) if the total number of visas allocated for that fiscal year are allotted within the first quarter of that fiscal year, then an additional 20 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 20 percent of the original allocated amount in the prior fiscal year;

`(II) if the total number of visas allocated for that fiscal year are allotted within the second quarter of that fiscal year, then an additional 15 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 15 percent of the original allocated amount in the prior fiscal year;

`(III) if the total number of visas allocated for that fiscal year are allotted within the third quarter of that fiscal year, then an additional 10 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year;

`(IV) if the total number of visas allocated for that fiscal year are allotted within the last quarter of that fiscal year, then the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year; and

`(V) with the exception of the first subsequent fiscal year to the fiscal year in which the program is implemented, if fewer visas were allotted the previous fiscal year than the number of visas allocated for that year and the reason was not due to processing delays or delays in promulgating regulations, then the allocated amount for the following fiscal year shall decrease by 10 percent of the allocated amount in the prior fiscal year.'; and

(2) by adding at the end the following:

`(9)(A) Of the total number of visas allocated for each fiscal year under paragraph (1)(C)--

`(i) 50,000 visas shall be allocated to qualifying counties; and

`(ii) any of the visas allocated under clause (i) that are not issued by June 30 of such fiscal year, may be made available to any qualified applicant.

`(B) In this paragraph, the term `qualifying county' means any county that--

`(i) that is outside a metropolitan statistical area; and

`(ii) during the 20-year-period ending on the last day of the calendar year preceding the date of enactment of the Secure America and Orderly Immigration Act, experienced a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

`(10) In allocating visas under this subsection, the Secretary of State may take any additional measures necessary to deter illegal immigration.'.

SEC. 306. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS.

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

`(n)(1) For purposes of adjustment of status under subsection (a), employment-based immigrant visas shall be made available to an alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) upon the filing of a petition for such a visa--

`(A) by the alien's employer; or

`(B) by the alien, if the alien has maintained such nonimmigrant status in the United States for a cumulative total of 4 years.

`(2) An alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) may not apply for adjustment of status under this section unless the alien--

`(A) is physically present in the United States; and

`(B) the alien establishes that the alien--

`(i) meets the requirements of section 312; or

`(ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and government of the United States.

`(3) An alien who demonstrates that the alien meets the requirements of section 312 may be

considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

`(4) Filing a petition under paragraph (1) on behalf of an alien or otherwise seeking permanent residence in the United States for such alien shall not constitute evidence of the alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(v)(a).

`(5) The limitation under section 302(d) regarding the period of authorized stay shall not apply to any alien having nonimmigrant status under section 101(a)(15)(H)(v)(a) if--

`(A) a labor certification petition filed under section 203(b) on behalf of such alien is pending; or

`(B) an immigrant visa petition filed under section 204(b) on behalf of such alien is pending.

`(6) The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under paragraph (5) in 1-year increments until a final decision is made on the alien's lawful permanent residence.

`(7) Nothing in this subsection shall be construed to prevent an alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) from filing an application for adjustment of status under this section in accordance with any other provision of law.'.

SEC. 307. ESSENTIAL WORKER VISA PROGRAM TASK FORCE.

(a) Establishment of Task Force-

(1) IN GENERAL- There is established a task force to be known as the Essential Worker Visa Program Task Force (referred to in this section as the `Task Force').

(2) PURPOSES- The purposes of the Task Force are--

(A) to study the Essential Worker Visa Program (referred to in this section as the `Program') established under this title; and

(B) to make recommendations to Congress with respect to such program.

(3) MEMBERSHIP- The Task Force shall be composed of 10 members, of whom--

(A) 1 shall be appointed by the President and shall serve as chairman of the Task Force;

(B) 1 shall be appointed by the leader of the Democratic Party in the Senate, in consultation with the leader of the Democratic Party in the House of Representatives, and shall serve as vice chairman of the Task Force;

(C) 2 shall be appointed by the majority leader of the Senate;

(D) 2 shall be appointed by the minority leader of the Senate;

(E) 2 shall be appointed by the Speaker of the House of Representatives; and

(F) 2 shall be appointed by the minority leader of the House of Representatives.

(4) QUALIFICATIONS-

(A) IN GENERAL- Members of the Task Force shall be--

(i) individuals with expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience; and

(ii) representative of a broad cross-section of perspectives within the United States, including the public and private sectors and academia;

(B) POLITICAL AFFILIATION- Not more than 5 members of the Task Force may be members of the same political party.

(C) NONGOVERNMENTAL APPOINTEES- An individual appointed to the Task Force may not be an officer or employee of the Federal Government or of any State or local government.

(5) DEADLINE FOR APPOINTMENT- All members of the Task Force shall be appointed not later than 6 months after the Program has been implemented.

(6) VACANCIES- Any vacancy in the Task Force shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(7) MEETINGS-

(A) INITIAL MEETING- The Task Force shall meet and begin the operations of the Task Force as soon as practicable.

(B) SUBSEQUENT MEETINGS- After its initial meeting, the Task Force shall meet upon the call of the chairman or a majority of its members.

(8) QUORUM- Six members of the Task Force shall constitute a quorum.

(b) Duties- The Task Force shall examine and make recommendations regarding the Program, including recommendations regarding--

(1) the development and implementation of the Program;

(2) the criteria for the admission of temporary workers under the Program;

(3) the formula for determining the yearly numerical limitations of the Program;

(4) the impact of the Program on immigration;

(5) the impact of the Program on the United States workforce and United States

businesses; and

(6) any other matters regarding the Program that the Task Force considers appropriate.

(c) Information and Assistance From Federal Agencies-

(1) INFORMATION FROM FEDERAL AGENCIES- The Task Force may seek directly from any Federal department or agency such information, including suggestions, estimates, and statistics, as the Task Force considers necessary to carry out the provisions of this section. Upon request of the Task Force, the head of such department or agency shall furnish such information to the Task Force.

(2) ASSISTANCE FROM FEDERAL AGENCIES- The Administrator of General Services shall, on a reimbursable base, provide the Task Force with administrative support and other services for the performance of the Task Force's functions. The departments and agencies of the United States may provide the Task Force with such services, funds, facilities, staff, and other support services as they determine advisable and as authorized by law.

(d) Reports-

(1) INITIAL REPORT- Not later than 2 years after the Program has been implemented, the Task Force shall submit a report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains--

(A) findings with respect to the duties of the Task Force;

(B) recommendations for improving the Program; and

(C) suggestions for legislative or administrative action to implement the Task Force recommendations.

(2) FINAL REPORT- Not later than 4 years after the submission of the initial report under paragraph (1), the Task Force shall submit a final report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains additional findings, recommendations, and suggestions, as described in paragraph (1).

SEC. 308. WILLING WORKER-WILLING EMPLOYER ELECTRONIC JOB REGISTRY.

(a) Establishment- The Secretary of Labor shall direct the coordination and modification of the national system of public labor exchange services (commonly known as `America's Job Bank') in existence on the date of enactment of this Act to provide information on essential worker employment opportunities available to United States workers and nonimmigrant workers under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act, as added by this Act.

(b) Recruitment of United States Workers- Before the completion of evidence of employment

for a potential nonimmigrant worker under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a), an employer shall attest that the employer has posted in the Job Registry for not less than 30 days in order to recruit United States workers. An employer shall maintain records for not less than 1 year demonstrating why United States workers who applied were not hired.

(c) Oversight and Maintenance of Records- The Secretary of Labor shall maintain electronic job registry records, as established by regulation, for the purpose of audit or investigation.

(d) Access to Job Registry-

(1) CIRCULATION IN INTERSTATE EMPLOYMENT SERVICE SYSTEM- The Secretary of Labor shall ensure that job opportunities advertised on the electronic job registry established under this section are accessible by the State workforce agencies, which may further disseminate job opportunity information to other interested parties.

(2) INTERNET- The Secretary of Labor shall ensure that the Internet-based electronic job registry established or approved under this section may be accessed by workers, employers, labor organizations, and other interested parties.

SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of State such sums as may be necessary to carry out this title and the amendments made by this title for the period beginning on the date of enactment of this Act and ending on the last day of the sixth fiscal year beginning after the effective date of the regulations promulgated by the Secretary to implement this title.

TITLE VII--H-5B NONIMMIGRANTS

1. SEC. 701. H-5B NONIMMIGRANTS.

(a) In General- Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by adding after section 250 the following:

`H-5B NONIMMIGRANTS

`SEC. 250A. (a) In General- The Secretary of Homeland Security shall adjust the status of an alien to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) if the alien--

`(1) submits an application for such adjustment; and

`(2) meets the requirements of this section.

`(b) Presence in the United States- The alien shall establish that the alien--

`(1) was present in the United States before the date on which the Secure America and Orderly Immigration Act was introduced, and has been continuously in the United

States since such date; and

`(2) was not legally present in the United States on the date on which the Secure America and Orderly Immigration Act was introduced under any classification set forth in section 101(a)(15).

`(c) Spouses and Children- Notwithstanding any other provision of law, the Secretary of Homeland Security shall, if the person is otherwise eligible under subsection (b)--

`(1) adjust the status to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) for, or provide a nonimmigrant visa to, the spouse or child of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b); or

`(2) adjust the status to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) for an alien who, before the date on which the Secure America and Orderly Immigration Act was introduced in Congress, was the spouse or child of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b), or is eligible for such status, if--

`(A) the termination of the qualifying relationship was connected to domestic violence; and

`(B) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b).

`(d) Other Criteria-

`(1) IN GENERAL- An alien may be granted nonimmigrant status under section 101(a)(15)(H)(v)(b), or granted status as the spouse or child of an alien eligible for such status under subsection (c), if the alien establishes that the alien--

`(A) is not inadmissible to the United States under section 212(a), except as provided in paragraph (2); or

`(B) has not ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

`(2) GROUNDS OF INADMISSIBILITY- In determining an alien's admissibility under paragraph (1)(A)--

`(A) paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) shall not apply for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced;

`(B) the Secretary of Homeland Security may not waive--

`(i) subparagraph (A), (B), (C), (E), (G), (H), or (I) of section 212(a)(2)

(relating to criminals);

`(ii) section 212(a)(3) (relating to security and related grounds); or

`(iii) subparagraph (A) or (C) of section 212(a)(10) (relating to polygamists and child abductors);

`(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or when such waiver is otherwise in the public interest; and

`(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security other than under this paragraph to waive the provisions of section 212(a).

`(3) APPLICABILITY OF OTHER PROVISIONS- Sections 240B(d) and 241(a)(5) shall not apply to an alien who is applying for adjustment of status in accordance with this title for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced.

`(e) Employment-

`(1) IN GENERAL- The Secretary of Homeland Security may not adjust the status of an alien to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) unless the alien establishes that the alien--

`(A) was employed in the United States, whether full time, part time, seasonally, or self-employed, before the date on which the Secure America and Orderly Immigration Act was introduced; and

`(B) has been employed in the United States since that date.

`(2) EVIDENCE OF EMPLOYMENT-

`(A) CONCLUSIVE DOCUMENTS- An alien may conclusively establish employment status in compliance with paragraph (1) by submitting to the Secretary of Homeland Security records demonstrating such employment maintained by--

`(i) the Social Security Administration, Internal Revenue Service, or by any other Federal, State, or local government agency;

`(ii) an employer; or

`(iii) a labor union, day labor center, or an organization that assists workers in matters related to employment.

`(B) OTHER DOCUMENTS- An alien who is unable to submit a document described in clauses (i) through (iii) of subparagraph (A) may satisfy the requirement in paragraph (1) by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment, including--

`(i) bank records;

`(ii) business records;

`(iii) sworn affidavits from nonrelatives who have direct knowledge of the alien's work; or

`(iv) remittance records.

`(3) INTENT OF CONGRESS- It is the intent of Congress that the requirement in this subsection be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien.

`(4) BURDEN OF PROOF- An alien described in paragraph (1) who is applying for adjustment of status under this section has the burden of proving by a preponderance of the evidence that the alien has satisfied the requirements of this subsection. An alien may meet such burden of proof by producing sufficient evidence to demonstrate such employment as a matter of reasonable inference.

`(f) Special Rules for Minors and Individuals Who Entered as Minors- The employment requirements under this section shall not apply to any alien under 21 years of age.

`(g) Education Permitted- An alien may satisfy the employment requirements under this section, in whole or in part, by full-time attendance at--

`(1) an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)); or

`(2) a secondary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)).

`(h) Security and Law Enforcement Background Checks-

`(1) SUBMISSION OF FINGERPRINTS- An alien may not be granted nonimmigrant status under section 101(a)(15)(H)(v)(b), or granted status as the spouse or child of an alien eligible for such status under subsection (c), unless the alien submits fingerprints in accordance with procedures established by the Secretary of Homeland Security.

`(2) BACKGROUND CHECKS- The Secretary of Homeland Security shall utilize fingerprints and other data provided by the alien to conduct a background check of such alien relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status as described in this section.

`(3) EXPEDITIOUS PROCESSING- The background checks required under paragraph (2) shall be conducted as expeditiously as possible.

`(i) Period of Authorized Stay and Application Fee and Fine-

`(1) PERIOD OF AUTHORIZED STAY-

`(A) IN GENERAL- The period of authorized stay for a nonimmigrant described in section 101(a)(15)(H)(v)(b) shall be 6 years.

[Struck out->][(B) LIMITATION- The Secretary of Homeland Security may not authorize a change from such nonimmigrant classification to any other immigrant or nonimmigrant classification until the termination of the 6-year period described in subparagraph (A). The Secretary may only extend such period to accommodate the processing of an application for adjustment of status under section 245B.][<-Struck out]

`(2) APPLICATION FEE- The Secretary of Homeland Security shall impose a fee for filing an application for adjustment of status under this section. Such fee shall be sufficient to cover the administrative and other expenses incurred in connection with the review of such applications.

`(3) FINES-

`(A) IN GENERAL- In addition to the fee required under paragraph (2), the Secretary of Homeland Security may accept an application for adjustment of status under this section only if the alien pays a $1,000 fine.

`(B) EXCEPTION- Fines paid under this paragraph shall not be required from an alien under the age of 21.

`(4) COLLECTION OF FEES AND FINES- All fees and fines collected under this section shall be deposited in the Treasury in accordance with section 286(w).

`(j) Treatment of Applicants-

`(1) IN GENERAL- An alien who files an application under this section, including the alien's spouse or child--

`(A) shall be granted employment authorization pending final adjudication of the alien's application for adjustment of status;

`(B) shall be granted permission to travel abroad;

`(C) may not be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for adjustment of status, unless the alien, through conduct or criminal conviction, becomes ineligible for such adjustment of status; and

`(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3)) until employment authorization under subparagraph (A) is denied.

`(2) BEFORE APPLICATION PERIOD- If an alien is apprehended after the date of enactment of this section, but before the promulgation of regulations pursuant to this section, and the alien can establish prima facie eligibility as a nonimmigrant under section 101(a)(15)(H)(v)(b), the Secretary of Homeland Security shall provide the alien with a reasonable opportunity, after promulgation of regulations, to file an application for adjustment.

`(3) DURING CERTAIN PROCEEDINGS- Notwithstanding any provision of this Act, an alien who is in removal proceedings shall have an opportunity to apply for adjustment of status under this title unless a final administrative determination has been made.

`(4) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS- An alien who is present in the United States and has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of this Act may, notwithstanding such order, apply for adjustment of status in accordance with this section. Such an alien shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order. If the Secretary of Homeland Security grants the application, the Secretary shall cancel such order. If the Secretary of Homeland Security renders a final administrative decision to deny the application, such order shall be effective and enforceable to the same extent as if the application had not been made.

`(k) Administrative and Judicial Review-

`(1) ADMINISTRATIVE REVIEW-

`(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW- The Secretary of Homeland Security shall establish an appellate authority within the United States Citizenship and Immigration Services to provide for a single level of administrative appellate review of a determination respecting an application for adjustment of status under this section.

`(B) STANDARD FOR REVIEW- Administrative appellate review referred to in subparagraph (A) shall be based solely upon the administrative record established at the time of the determination on the application and upon the presentation of additional or newly discovered evidence during the time of the pending appeal.

`(2) JUDICIAL REVIEW-

`(A) IN GENERAL- There shall be judicial review in the Federal courts of appeal of the denial of an application for adjustment of status under this section. Notwithstanding any other provision of law, the standard for review of such a denial shall be governed by subparagraph (B).

`(B) STANDARD FOR JUDICIAL REVIEW- Judicial review of a denial of an application under this section shall be based solely upon the administrative record established at the time of the review. The findings of fact and other determinations contained in the record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record, considered as a whole.

`(C) JURISDICTION OF COURTS-

`(i) IN GENERAL- Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary of Homeland Security in the operation or implementation of this section that is arbitrary, capricious, or otherwise contrary to law, and may order any appropriate relief.

`(ii) REMEDIES- A district court may order any appropriate relief under clause (i) if the court determines that resolution of such cause or claim will serve judicial and administrative efficiency or that a remedy would otherwise not be reasonably available or practicable.

`(3) STAY OF REMOVAL- Aliens seeking administrative or judicial review under this subsection shall not be removed from the United States until a final decision is rendered establishing ineligibility

under this section.

`(l) Confidentiality of Information-

`(1) IN GENERAL- Except as otherwise provided in this subsection, no Federal agency or bureau, nor any officer, employee, or agent of such agency or bureau, may--

`(A) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application;

`(B) make any publication through which the information furnished by any particular applicant can be identified; or

`(C) permit anyone other than the sworn officers and employees of such agency or bureau to examine individual applications.

`(2) REQUIRED DISCLOSURES- The Secretary of Homeland Security shall provide the information furnished pursuant to an application filed under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested in writing by such entity.

`(3) CRIMINAL PENALTY- Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined not more than $10,000.

`(m) Penalties for False Statements in Applications-

`(1) CRIMINAL PENALTY-

`(A) VIOLATION- It shall be unlawful for any person--

`(i) to file or assist in filing an application for adjustment of status under this section and knowingly and willfully falsify, misrepresent, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

`(ii) to create or supply a false writing or document for use in making such an application.

`(B) PENALTY- Any person who violates subparagraph (A) shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

`(2) INADMISSIBILITY- An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

`(3) EXCEPTION- Notwithstanding paragraphs (1) and (2), any alien or other entity (including an employer or union) that submits an employment record that contains incorrect data that the alien used in order to obtain such employment before the date on which the Secure America and Orderly Immigration Act is introduced, shall not, on that ground, be determined to have violated this section.'.

(b) Clerical Amendment- The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 250 the following:

`Sec. 250A. -5B nonimmigrants.'.

SEC. 702. ADJUSTMENT OF STATUS FOR H-5B NONIMMIGRANTS.

(a) In General- Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

`ADJUSTMENT OF STATUS OF FORMER H-5B NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR LAWFUL PERMANENT RESIDENCE

`SEC. 245B. (a) Requirements- The Secretary shall adjust the status of an alien from nonimmigrant status under section 101(a)(15)(H)(v)(b) to that of an alien lawfully admitted for permanent residence under this section if the alien satisfies the following requirements:

`(1) COMPLETION OF EMPLOYMENT OR EDUCATION REQUIREMENT- The alien establishes that the alien has been employed in the United States, either full time, part time, seasonally, or self-employed, or has met the education requirements of subsection (f) or (g) of section 250A during the period required by section 250A(e).

`(2) RULEMAKING- The Secretary shall establish regulations for the timely filing and processing of applications for adjustment of status for nonimmigrants under section 101(a)(15)(H)(v)(b).

`(3) APPLICATION AND FEE- The alien who applies for adjustment of status under this section shall pay the following:

`(A) APPLICATION FEE- An alien who files an application under section 245B of the Immigration and Nationality Act, shall pay an application fee, set by the Secretary.

`(B) ADDITIONAL FINE- Before the adjudication of an application for adjustment of status filed under this section, an alien who is at least 21 years of age shall pay a fine of $1,000.

`(4) ADMISSIBLE UNDER IMMIGRATION LAWS- The alien establishes that the alien is not inadmissible under section 212(a), except for any provision of that section that is not applicable or waived under section 250A(d)(2).

`(5) MEDICAL EXAMINATION- The alien shall undergo, at the alien's expense, an appropriate medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

`(6) PAYMENT OF INCOME TAXES-

`(A) IN GENERAL- Not later than the date on which status is adjusted under this section, the alien shall establish the payment of all Federal income taxes owed for employment during the period of employment required by section 250A(e) by establishing that--

`(i) no such tax liability exists;

`(ii) all outstanding liabilities have been met; or

`(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

`(B) IRS COOPERATION- The Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all income taxes required by this paragraph.

`(7) BASIC CITIZENSHIP SKILLS-

`(A) IN GENERAL- Except as provided in subparagraph (B), the alien shall establish that the alien--

`(i) meets the requirements of section 312; or

`(ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and government of the United States.

`(B) RELATION TO NATURALIZATION EXAMINATION- An alien who demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

`(8) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS- The Secretary shall conduct a security and law enforcement background check in accordance with procedures described in section 250A(h).

`(9) MILITARY SELECTIVE SERVICE- The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), that such alien has registered under that Act.

`(b) Treatment of Spouses and Children-

`(1) ADJUSTMENT OF STATUS- Notwithstanding any other provision of law, the Secretary of Homeland Security shall--

`(A) adjust the status to that of a lawful permanent resident under this section, or provide an immigrant visa to the spouse or child of an alien who adjusts status to that of a permanent resident under this section; or

`(B) adjust the status to that of a lawful permanent resident under this section for an alien who was the spouse or child of an alien who adjusts status or is eligible to adjust status to that of a permanent resident under section 245B in accordance with subsection (a), if--

`(i) the termination of the qualifying relationship was connected to domestic violence; and

`(ii) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who adjusts status to that of a permanent resident under this section.

`(2) APPLICATION OF OTHER LAW- In acting on applications filed under this subsection with respect to aliens who have been battered or subjected to extreme cruelty, the Secretary of Homeland Security shall apply the provisions of section 204(a)(1)(J) and the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

`(c) Judicial Review; Confidentiality; Penalties- Subsections (n), (o), and (p) of section 250A shall apply to this section.'.

(b) Clerical Amendment- The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 245A the following:

`Sec. 245B. Adjustment of status of former H-5B nonimmigrant to that of person admitted for lawful permanent residence.'.

SEC. 703. ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.

Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended--

(1) in subparagraph (A), by striking `subparagraph (A) or (B) of'; and

(2) by adding at the end the following:

`(F) Aliens whose status is adjusted from the status described in section 101(a)(15)(H)(v)(b).'.

SEC. 704. EMPLOYER PROTECTIONS.

(a) Immigration Status of Alien- Employers of aliens applying for adjustment of status under section 245B or 250A of the Immigration and Nationality Act, as added by this title, shall not be subject to civil and criminal tax liability relating directly to the employment of such alien prior to such alien receiving employment authorization under this title.

(b) Provision of Employment Records- Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for adjustment of status under section 245B or 250A of the Immigration and Nationality Act or any other application or petition pursuant to any other immigration law, shall not be subject to civil and criminal liability under section 274A of such Act for employing such unauthorized aliens.

(c) Applicability of Other Law- Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

SEC. 705. AUTHORIZATION OF APPROPRIATIONS.

(a) In General- There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this title and the amendments made by this title.

(b) Availability of Funds- Funds appropriated pursuant subsection (a) shall remain available until expended.

(c) Sense of Congress- It is the sense of Congress that funds authorized to be appropriated under subsection (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 245B and 250A of the Immigration and Nationality Act, as added by this Act.

Mr. BERMAN. Yes, Mr. Chairman. This is the Kolbe-Flake—two titles of the Kolbe-Flake legislation, H.R. 2330 dealing with Titles III and VII. Title III is the essential worker visa program which provides for the admission of essential workers based on market-based numerical limitations with provisions for employer obligations with respect to these workers, protection of workers, pot righting for their adjustment to lawful permanent resident status, and creating a willing worker/willing employer electronic job registry.

Title VII creates the H-5B nonimmigrants visa program dealing with U.S.—workers in the U.S. not now in status, to give them a process to adjust status, both come forward, provide their true identities, be fingerprinted, have background checks, and then allow them temporary visas to work and condition their status on their continuing to work; and if at such time as they complete their obligations with respect to payment of fines and their obligations to work, makes them eligible for adjustment to permanent resident status.

This amendment fills the glaring hole and the fundamental deficiency in the bill before us by truly making what is an unworkable program into a meaningful and comprehensive solution with some very tough border enforcement provisions, a mandatory verification provision, and a provision by which the 11 million people in this country whose presence keeps the bill, without this provision, from having any positive impacts. It provides that which President Bush has spoken about, which a number of key Senators have, and which I think almost every objective observer of the crisis we are in thinks is essential to its conclusion. I ask for the Committee's adoption of Mr. Flake's negotiated language.

Mr. FLAKE. Mr. Chairman.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes in opposition to the amendment.

The Chair knew that the gentleman from California couldn't resist his impulses to offer this amendment. The Chair tried to advise the gentleman from California in our earlier colloquy that it was a bad idea to offer this amendment because it is premature and things need to be worked out.

This amendment should be rejected if only for one reason. Section 306 grants amnesty to 11 million illegal aliens. The amendment turns a border security enforcement and employer verification bill into a mass amnesty bill. Amnesty did not work in the Simpson-Mazzoli Act in 1986, it won't work again in this bill. Amnesty only encourages more people to come to the United States illegally, whether it is illegal entry under the fence, or a legal entry, and then overstaying a visa.

I think that the gentleman offering this amendment, if he persists in it, is going to set back the efforts to get a reasonable guest worker program that is politically acceptable to the Congress and the American public a huge amount. I would urge a strong "no" vote against this amendment and yield back the balance of my time.

Mr. BERMAN. Would the gentleman yield?

Chairman SENSENBRENNER. Of course.

Mr. BERMAN. The word "amnesty" is an interesting one. It is used to oppose things that people don't like. I am curious, since the

gentleman is on record as envisioning a context in which at some point in the future we will need a guest worker program, to the extent that such a program allowed people who entered this country illegally to participate in the program. Is that program that the gentleman envisions—and understanding he hasn't worked out the specifics yet—is that an amnesty program?

Chairman SENSENBRENNER. The devil is in the details.

Mr. BERMAN. Yes.

Chairman SENSENBRENNER. You have got the details in this one, and it is an amnesty program. It is called adjustment of status. But adjustment of status for people who are illegally in the United States is amnesty. And if it quacks like amnesty, it adjusts like amnesty, it is amnesty.

Mr. BERMAN. If the gentleman would continue to yield. I would like to tell him a conversation I had with the gentleman from Colorado, Mr. Tancredo, a couple of years ago.

Chairman SENSENBRENNER. If the gentleman will yield back, that should have been enlightening. So tell us.

Mr. BERMAN. The gentleman from Colorado liked to use the term "amnesty." So I did it in the context of a piece of legislation Mr. Cannon knows well, worked with me on, called Ag Jobs. And he was saying that is amnesty. John Cornyn of Texas has proposed an amnesty, everybody is proposing amnesty, according to Mr. Tancredo.

I said in the context of Ag Jobs, Tom, if you had a choice, you had entered the country illegally, and you were told you had a choice of two different kinds of punishment, 30 days in county jail or working for 360 days in agriculture, harvesting crops, which one would you take? Because Mr. Tancredo is an honest and direct person, he said I would take 30 days in county jail over 360 days picking crops in agriculture.

I suggest to you anything which is conditioned on future work, that requires fines to pay off because of the original illegal entry and creates a series of conditions, including ensuring that you had committed no other illegal acts while you were in this country, that you are checked through on any watch list that exists, that you come out, that you become fingerprinted, you give your true identity, I would suggest that is not within my concept of amnesty; that is a conditional adjustment based on not simply what has happened in the past, but things you have to do in the future in order to make the conditions of that adjustment of status.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. ISSA. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman, and I too rise in strong opposition to this amendment. And I would like to clarify two things. First of all, President Bush has made it clear that he does not want an amnesty, and this falls well within the definition of amnesty by President Bush.

Having said that, I would like to respond to my colleague from California by saying that we can define very clearly for you what is amnesty, and it is fairly straightforward. Whether or not we have a guest worker program that uses existing workers in this country who are here out of status illegally, or we bring them in,

if we are going to bring them in and tell them you can get a green card and become a citizen, then it is not a guest worker program. The definition of a guest worker program must be one in which you are a temporary guest and you go home. If you take a guest worker program and convert it to an immigration program, then by definition it is no longer just a guest worker program.

So I would say to the gentleman, no matter where the source of those workers, if you want to call something a guest worker program, you genuinely have to recognize that it cannot mix and match immigration.

Just one more thing.

Mr. BERMAN. Will the gentleman yield?

Mr. ISSA. One more thing before I yield. I am not somebody who believes in pure democracy. I have often said people of my district send me here to use my best judgment. However, in my district I did a poll of 8,788 people, so it was a very comprehensive survey, and I did this with the Government money just to find out some important points of where people stood.

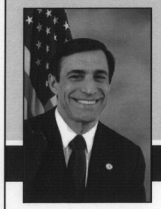
And on the question of supporting requiring employers to use the employment eligibility verification system, I had 81.5 percent of those 8,000 or so respondents who said yes, they have to do it. So that, as one of the underlying underpinnings of this bill, is clearly something that crosses party lines, crosses economic lines. I probably had illegals who said they should be doing it, it is so many people.

Additionally, the question of amnesty is opposed by 65 percent. And when asked would you support an adjustment, yes, I had 42 percent, but only for—on the question asked as though it was an adjustment to work here, not to immigrate.

I would ask unanimous consent that the survey be allowed to be placed in the record and I would yield to the gentleman without objection.

Chairman SENSENBRENNER. Without objection.

[The material referred to follows:]



Congress of the United States

House of Representatives
Washington, DC 20515-0515

Dear Friend,

Here are the results of a just completed survey of the 49th Congressional District on the issue of illegal immigration. 8,788 residents of our district completed this survey and I am grateful to all those who took time to participate.

I have recently written Administration officials to express my outrage at the failure of the U.S. Attorney's office in San Diego to prosecute criminal aliens and alien smugglers, to ask that real enforcement of immigration laws occur before enacting any guest worker program, and to ask for a meeting with U.S. Attorney General Alberto Gonzales to discuss how our communities can be better protected from criminal aliens.

Earlier this year, I introduced the "Criminal Alien Accountability Act" that would establish minimum federal prison sentences for any previously deported alien who illegally reenters the United States, enhanced minimum sentences for aliens with a previous criminal conviction who are apprehended, and stringent minimum sentences for any individual who engages in alien smuggling.

Members of Congress and the Administration are beginning to understand that illegal immigration poses a significant threat to our security, the viability of many government programs, and the ability of law enforcement to uphold state and local laws.

I hope you find the survey results informative. I look forward to hearing your thoughts and ideas as Congress begins the process of fixing our nation's failed immigration policies.

Sincerely,

Darrell Issa

Survey Results

1) When thinking about the problem of illegal immigration, which of the following proposed solutions do you believe should be given the highest priority:

Targeting employers who hire illegal aliens.	2489	28.3%
Stronger enforcement at the border.	3486	39.7%
A guest worker program so foreign workers can enter the United States legally.	2682	30.5%
No action needed.	131	1.5%

2) Many employers say they are doing their best to hire legal workers, but complain that illegal aliens present them with false documents and they aren't equipped to determine which documents are real and which are fake. One bill pending in Congress would expand an existing voluntary employment eligibility verification program and require that all employers use the system to verify that the information provided by new employees is valid and they are eligible to work in the United States.

Support requiring employers to use the employment eligibility verification system.	7159	81.5%
Oppose a mandatory employment eligibility verification system.	1629	18.5%

3) Under current law, a child born in the United States to illegal alien parents is automatically entitled to U.S. citizenship. Some lawmakers want to limit this "birthright" citizenship to children who have at least one parent who is legally residing in the United States. Do you:

Support limiting birthright citizenship.	6879	78.3%
Oppose any limits to birthright citizenship.	1909	21.7%

4) Some proponents of guest worker programs believe participants should be able to earn legal resident status in the United States after several years as a guest worker. Critics label this "amnesty" and oppose such earned residency programs.

Believe guest workers should be able to earn legal residency.	3718	42.3%
Oppose such amnesty proposals.	1737	19.8%
Oppose all guest worker programs.	3333	37.9%

Immigration Security Proposals Enacted into Law this Year

- ☑ **More Enforcement Agents** – Funding for 2,068 new Border Patrol and Immigration and Customs Agents
- ☑ **Completing San Diego Border Fence** – Cleared regulatory barriers hindering completion of the San Diego border fence to close the 3 mile gap known as 'Smugglers' Gulch'
- ☑ **Securing Drivers' Licenses** – Requirement that states establish strong security standards for the issuance of drivers' licenses – including proof of lawful residence in the U.S.

Immigration Reform Proposals Co-sponsored by Rep. Issa in the 109th Congress:

Criminal Alien Accountability Act – Authored by Rep. Issa

- ❑ Establishes minimum federal prison sentences for illegal aliens who violate deportation orders and minimum sentences for aliens or U.S. citizens who engage in alien smuggling.

CLEAR Act

- ❑ Grants local law enforcement officers the authority to arrest illegal aliens and expands deportation programs for criminal aliens after incarceration in state prisons.

True Enforcement and Border Security Act

- ❑ Creates a border security zone from the Pacific Ocean to the Gulf of Mexico with a network of fencing, roads, and detection technology to stop illegal crossings. Institutes a mandatory worker eligibility verification program that employers must use to determine that job applicants are not illegal aliens – employers who hire illegal aliens will face stiff penalties.

U.S. CONGRESS
211 Cannon House Office Bldg
Washington, DC 20515

PUBLIC DOCUMENT

OFFICIAL BUSINESS

This mailing was prepared, published, and mailed at taxpayer expense.

M.C.
PRSRT STD

Contact Congressman Issa
Washington, DC Office
211 Cannon House Office Bldg.
Washington, DC 20515
Phone (202) 225-3906
Fax (202) 225-3303

San Diego County Office
1800 Thibodo Road, #310
Vista, CA 92081
Phone (760) 599-5000
Fax (760) 599-1178

Southwest Riverside County
Phone (951) 693-2447

www.issa.house.gov

SURVEY RESULTS
49th Congressional District of California
ILLEGAL IMMIGRATION

CONGRESSMAN DARRELL ISSA
Serving California's 49th District

Mr. BERMAN. I thank the gentleman for yielding. So in the gentleman's very interesting and flexible definition of amnesty, if you have entered this country illegally and worked in a legal status, and then you go home and apply for the guest worker program and come into this country, that is okay.

Mr. ISSA. Reclaiming my time. To answer the gentleman's question, the amendment that we are faced with that I am speaking on is not just a guest worker program but, in fact, an adjustment of status to permanent residents—hold on—allowing for citizenship. That is what is clearly the definition of amnesty. That is clearly what the voters in my district and, for that matter, the voters in your district oppose. We can have a civilized discussion on a guest worker program. I look forward to that, I will support that. However, today what we are doing is taking a broken system both at the border and interior and trying to fix it. This is not only not germane but it is clearly an amnesty, and I would yield to the gentleman.

Mr. BERMAN. There is nothing in any dictionary definition that describes amnesty as if it leads to permanent citizenship; it is okay. Amnesty is about forgiving people for their illegal acts.

Mr. ISSA. Reclaiming my time. The gentleman from California did a good job of explaining Mr. Tancredo's position that everything is amnesty. This Committee, I believe on a bipartisan basis, is willing to set aside one strict definition and find a way to fix a broken—or absence of a sufficient guest worker program. However, clearly the amendment offered here today has fatal flaws at a Presidential level, at a House level, at a Senate level, and certainly with the Committee Chairman, and that is the reason I am urging people to strongly oppose this. And I yield back.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner.

Mr. WEINER. Let me be sure I understand the opposition to the Flake bill, which is what we are discussing here. This is the Republican Flake approach to this problem. It apparently is amnesty. You apparently believe the Flake approach represents amnesty and it should be rejected, and you just articulated that this is a position that has been redacted by this House. I am not sure the gentleman from Arizona would agree with that, but let us assume for a moment that we accept that premise.

I imagine next we will able to consider the McCain approach. Would that be amnesty? Would that be something that has universally been rejected? Well, I have heard President Bush say positive things about the McCain approach. Perhaps there is an Issa approach, perhaps a Sensenbrenner approach. We are having a markup now of immigration legislation which has been described as solving the problems of immigration laws. Let's go at it. If you believe that the Flake Republican approach, which we are considering now, is not the correct approach——

Mr. ISSA. Would the gentleman yield?

Mr. WEINER. Certainly.

Mr. ISSA. I apologize, but we are not really having an immigration markup.

Mr. WEINER. I reclaim my time. You have finally struck upon a chord of truth. We are not having an immigration markup today. I am glad somebody has conceded that on that side of the aisle. We

are trying. It has been explained that we were, so we are going to try now. And now you have the Republican Flake amendment in front of you, his bill that we are going to have a chance now—Mr. Flake was out of the room, so let me—I don't know if you heard it. This may comes as news to you, but it has been described, Flake, as dead on arrival; doesn't represent the view of the House, the view of the President, the view of the country, because it is amnesty.

Here it is. We believe that the Flake amendment should be debated and we are doing it now. We have also—we also perhaps have heard that the President doesn't support the Flake approach. I have read the President, who doesn't have a bill, by the way, prefers the McCain Republican approach to this problem. We have heard Mr. Issa say he opposes the Tancredo Republican approach to this problem. Maybe it is about time we decide what the Republican governing position is on this matter. We have a moment here to do it. We have the Flake amendment before us. If you think it should be amended and voted down, I happen to agree with you. If you think it should be amended and voted down, bring it on "Chicky," let's do it.

If you think the McCain, which I think we will offer next, should be amended and voted down, that is fine. But you are running out of the various approaches that the Republicans call their immigration policy.

Mr. ISSA. Would the gentleman yield? Since you have invoked my name "Chicky," I just wanted to quickly respond. When I said——

Chairman SENSENBRENNER. The Members will conduct their debate in a parliamentarily decorous manner.

Mr. ISSA. Yes, Mr. Chairman.

To respond to your statement, it is to amend the Immigration Nationality Act to strengthen enforcement of immigration laws and enhance border security, and that is the reason I am saying it is not about immigration. Hopefully I am consistent.

Mr. WEINER. Let me reclaim my time. You can walk backwards out of a gaffe as long as you want, but I want to talk about what we are doing here. What we are doing here is trying to sort out what the Republican policy is on immigration. Now, obviously, there is a widespread schizophrenia problem going on even between you and the gentleman to your right. You have described Mr. Flake's bill as essentially not representing the House, not representing the President. Well, let's find that out. The only way is by marking it up and voting on it.

And so right there—we are in a strange position. We are waiting to see what the governing party wants to do on this very important issue that now six people have referred to as we desperately need to revisit at some point. Let's do it.

Mr. BERMAN. Will the gentleman yield?

Mr. WEINER. Certainly I would.

Mr. BERMAN. Isn't this the party that keeps telling the minority party, what is your proposal, where is your alternative? They are the majority party. They know that the bill they are passing can never become law because of the devastating impacts on the economy. At least half of them have already acknowledged here we need a guest worker program. But do they have one in this bill? No.

Mr. WEINER. If I could just reclaim my time. But at least maybe we can sort out at least in that little corner of the lower row of the Republican Party here, exactly what the view is; and a good way is let's have a vote. Let's resoundingly reject, as Mr. Issa said, the Flake approach.

Mr. ISSA. Will the gentleman further yield?

Mr. WEINER. I have now yielded twice and gotten nothing fruitful from it.

Mr. ISSA. I was going to give you something fruitful. I look forward to working with Mr. Tancredo and Mr. Flake and myself to find compromises.

Chairman SENSENBRENNER. The time of the gentleman from New York has expired.

Mr. WEINER. Request unanimous consent for 1 additional minute.

Chairman SENSENBRENNER. Without objection.

Mr. WEINER. I am pleased to hear, and I am sure the Nation breathes a sigh of relief to know you are willing to work out the Republican agenda on immigration. We are here at the House Judiciary Committee dealing with legislation on immigration. What time better than now? The gentleman whose amendment is being considered right now is just right now right next to you. You can even introduce yourself to him.

You have characterized his legislation in the most derisive way: it is amnesty. It is not the policy of this country and never will be. The President doesn't support it.

Here it is. We are having a markup, we have a chance. We are going to, by hook or crook, determine what the Republican view is on immigration reform. You say you want to do it, let's go ahead and do it.

Chairman SENSENBRENNER. The gentleman's time has once again expired.

Mr. FLAKE. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Arizona has come to life. For what purpose—the gentleman is recognized for 5 minutes.

Mr. FLAKE. I appreciate the Chairman giving me this chance to talk about my amendment, my bill. Let me just say that when I was elected 5 years ago, the first thing I said while I was campaigning and said consistently since I have been here, if we want to secure the border, we have to have a legal channel for workers to come and then return home. I believed that then, I believe that now.

I am not in favor of amnesty, I have never proposed amnesty. I agree with Mr. Berman's definition. An amnesty is an unconditional pardon for a breach of law. I am not offering that. Under our legislation, if you are here illegally and wish to stay on a temporary basis, you pay a fine of $1,000 and you go to the back of the line. And amnesty is what we did in 1986 when we said, if you can prove you have been here for 5 years, you have got a shortcut to a green card.

That is not what we are proposing here. I would submit those who are so quick to call our bill amnesty and to say that anything less than enforcing the current law is amnesty might want to consider that the current law means that we ought to round everybody

up, ship them home, and subject them to either a 3- or 10-year bar. Unless you are willing to offer that legislation and the funding to do it, you are offering amnesty. That is the bottom line.

So when these terms are thrown around like that, think of what you are saying. The current law calls for removal, deportation, and a bar from reentry. For those who say, well, let's just pretend that they are not here, let's keep them in the shadows, that is more of an amnesty than anything in my view. To pretend they are not here and let's say I will count to 100 and if you go back to your home country and apply from there, then we are not going to give you amnesty, that is simply wrong and we shouldn't be engaging in that charade.

I am committed to our approach. I think that if we want a secure border, you have to have a legal channel for workers to come and go and to recognize the best thing we can do for national security, for the economy, and for humanitarian reasons is to bring those who are in the shadows out and not pretend that they don't exist.

But now I also believe, as Ecclesiastes said in the Bible, there's a time and a place under everything under heaven. Now is not the time, unfortunately, for our bill to be debated in the Judiciary Committee. I would love to see it pass, and I believe that we will. We are committed to having a guest worker plan. I don't often say this, but thank goodness for the Senate. I don't think I have ever said that.

Mr. WEINER. Will the gentleman yield?

Mr. CHABOT. Take those words down.

Mr. FLAKE. I would encourage the gentleman from California——

Chairman SENSENBRENNER. Was that a serious demand that the gentleman's words be taken down?

Mr. CHABOT. I will withdraw.

Mr. FLAKE. I would urge the gentleman from California if he cares about moving the ball ahead, I would love to do it comprehensively. I am not in favor of doing this now. I would rather see the whole thing done, but that is not where it is done. I am smart enough to count votes. And I would like to see the ball move ahead and finally to address the immigration problem that we have.

With that, I would encourage the Member to withdraw his amendment.

Mr. BERMAN. May I respond?

Chairman SENSENBRENNER. The gentleman from Arizona will have to yield.

Mr. FLAKE. I will yield 30 seconds to the gentleman from California.

Mr. BERMAN. Thirty? Sixty. I am not going to withdraw it and here's why. Because the speaker has said, a number of people here have said, we have to have this. I started out the comments in this entire discussion by talking about stupid. I would be embarrassed to say I know this bill is missing something, but we are not going to go through the effort to try and resolve and fill in what is missing in the hopes that the Senate would do the right thing.

If I thought bringing this to a vote now would hurt what your ultimate goal is, I wouldn't bring it to a vote. It won't. It will just show the vacuous nature of what the majority in the House is trying to do. People who know this is a wrong approach shouldn't be voting for this bill. People who want the tough border enforcement

and the verification and the adjustment and guest worker features as part of a comprehensive approach, like the President has said, like Senator Cornyn has said, like Senator McCain has said, Senator Kyl has said, they should not be voting for this——

Chairman SENSENBRENNER. The time of the gentleman from Arizona has expired.

Mr. DELAHUNT. Mr. Chairman. Mr. Delahunt from Massachusetts.

Chairman SENSENBRENNER. Oh, yes. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. You will be happy to know, Mr. Chairman, that I am going to yield my time to the gentleman from New York, Mr. Weiner.

Mr. WEINER. I thank the gentleman from Massachusetts and I thank the gentleman from Arizona for making that fervent appeal to his colleague from California. Unfortunately, the one he made the appeal to was the wrong gentleman from California.

You did a very good job of rebutting what Mr. Issa had to say. You gave an articulate explanation about the importance of the issue that you believe in. I have got news for you, Mr. Flake; you don't have the votes there by any stretch. You probably don't have a lot of votes here, but at least we want to have a debate about this issue. But if you believe for a moment, for a moment, that this issue is going to somehow become more appealing to the leadership of this Committee or the leadership of the House as it gets closer to the election, or as months go by, you are wrong. This is it. This is our moment that we have in this Committee to deal with these important matters, and it is also a moment that you have to persuade your colleagues to do it.

This notion that somehow things will get better if we do the political thing, the partisan thing now, or the easy thing or the thing that sells the best on TV now, and we will do the difficult complex things later on, it is myth.

The President's bill—have you seen the President's bill? There is no President's bill. He has been talking about it for some time. He recently gave a round of speeches to perhaps try to divert from other subjects. He has no bill. I think you deserve credit for stepping up and saying I have some ideas, ideas that maybe I don't like, but let's do it and let's do it now.

The way that your bill is being dismissed out of hand as not even worthy of consideration because it has amnesty all over it, I think that deserves to be debated as well. You had a completely different explanation of your view of amnesty than Mr. Issa's view of amnesty.

If not now, when? I think it is important to know that this is in your control. The Republicans control the House, they control the Senate, they control the White House, they control the judiciary. This is the moment. Do you think it is going to get better in years to come? This is a moment of national attention. The President deserves credit for bringing that attention. This is a moment that this Committee has said, before we break, let's do something about immigration reform. Now you have a chance to persuade people to vote for your amendment, let's get to it. Let's talk about the things that we need to do to deal with this economy, to deal with this ongoing complex problem.

You are going to look back, I fear, I say to the gentleman from Arizona, look back and say, boy, that was it, that was the Judiciary Committee of the House of Representatives considering the tough issues of immigration that plague the people of Arizona, that plague this economy, and, frankly, weigh on us as a moral matter in this country. And you are going to realize that day in early December, that was your last crack at it?

Well, I think we have another choice. The other choice is to take your amendment, consider it, figure out ways we can reach consensus. I daresay there are very strong views held by your side, there are others over here as well, and let's have something good come out of this.

If you don't like Flake, I say to Mr. Issa, go ahead, bring something else up. If you want to amend Flake, if you want to take out the part about amnesty, let's have a debate. But this is the burden of leadership. You guys run the House of Representatives, you run the Congress, your President has stood up and said do something about the vexing issues of immigration in this country. Well, this is the moment. The Judiciary Committee in whose jurisdiction this piece of legislation that has been ruled previously in this debate to be germane, let's go ahead and do it. And we have the foremost spokesman in the House, Mr. Flake's amendment before us. You don't want this withdrawn, Mr. Flake; you want this passed. You don't want your bill withdrawn, you want us to vote yes on it. You are on TV, writing articles, debating every single day. You want a "yes" vote.

I want Mr. Flake to stand up and say I want a "yes" vote on Mr. Flake. I can't even get Mr. Flake to say he wants a yes. Mr. Issa said no, Mr. Sensenbrenner says he wants a "no" vote on Flake. You don't want Flake withdrawn, you want the Republican bill on the immigration voted yes, don't you? Isn't that why you are here? Isn't that why your constituents sent you here, to get a "yes" vote on Flake bills and amendments?

This is your moment. You have a Flake bill, a Flake amendment right now in front of us at this moment. Now you want to withdraw Flake. You don't. You want "yes" on Flake. And I don't understand; if we can't get Flake to ask for a "yes" on Flake, who can we ask?

So we have already heard Mr. Issa say "no" on Flake. We have heard Sensenbrenner say "no" on Flake. We have heard Berman say, "You are going to have a vote on Flake." I hope at least Flake votes "yes" on Flake, because you may be the only one left here that will. And I yield back.

Mr. GOHMERT. Will the gentleman yield? Just for clarity, when you use the words "Flake bill," are you using "Flake" as an adjective or a proper noun?

Chairman SENSENBRENNER. And with that, the time of the gentleman has now expired. The question is on the Berman amendment. Those in favor will say aye.

Opposed to the Berman amendment will say no.

The noes appear to have to have it.

Mr. BERMAN. Mr. Chairman, on that we would like a rollcall vote.

Chairman SENSENBRENNER. rollcall will be ordered. Those in favor of the Berman amendment—and that is not the Flake amend-

ment, but the Berman amendment—those in favor will signify by saying aye, those opposed, no; and the clerk will call the roll.

The CLERK. Mr. Hyde.
Mr. HYDE. No.
The CLERK. Mr. Hyde, no.
Mr. Coble.
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Mr. Smith.
Mr. SMITH. No.
The CLERK. Mr. Smith, no.
Mr. Gallegly.
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Mr. Goodlatte.
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Mr. Chabot.
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Mr. Lungren.
Mr. LUNGREN. No on Berman, yes on Flake.
The CLERK. Mr. Lungren, no.
Mr. Jenkins.
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Mr. Cannon.
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Mr. Bachus.
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Inglis.
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no.
Mr. Hostettler.
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green.
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller.
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa.
Mr. ISSA. I am with Flake. No on Berman.
The CLERK. Mr. Issa, no.
Mr. Flake.
Mr. FLAKE. Present.
The CLERK. Mr. Flake, present.
Mr. Pence.
Mr. PENCE. No.
The CLERK. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no.

Mr. Forbes.
Mr. FORBES. No.
The CLERK. Mr. Forbes, no.
Mr. King.
Mr. KING. No.
The CLERK. Mr. King, no.
Mr. Feeney.
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no.
Mr. Franks.
Mr. FRANKS. No.
The CLERK. Mr. Franks, no.
Mr. Gohmert.
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no.
Mr. Conyers.
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Berman.
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.
Mr. Boucher.
[No response.]
The CLERK. Mr. Nadler.
[No response.]
The CLERK. Mr. Scott.
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt.
[No response.]
The CLERK. Ms. Lofgren.
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye.
Ms. Jackson Lee.
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters.
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan.
[No response.]
The CLERK. Mr. Delahunt.
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye.
Mr. Wexler.
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye.
Mr. Weiner.
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff.
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Ms. Sánchez.
Ms. SÁNCHEZ. Aye.

The CLERK. Ms. Sánchez, aye.
Mr. Van Hollen.
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye.
Ms. Wasserman Schultz.
[No response.]
Mr. Chairman.
Chairman SENSENBRENNER. No.
Further Members who wish to cast or change their votes?
The gentleman from New York, Mr. Nadler.
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes?
If not, the clerk will report.
The CLERK. Mr. Chairman, there are 13 ayes, 22 nays and one present.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments.
Does the gentleman from Maryland have an amendment?
Mr. VAN HOLLEN. I do not, but I move to strike the last word.
Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.
Mr. VAN HOLLEN. I thank you, Mr. Chairman. As I take it we are wrapping up, I just want to say a few words having attended this entire markup.
First, I would like to say I think all of us agree we need to address the border security problems. I think you can find bipartisan support for that issue. We have a porous border; we need to do more about it, and I think there are actually many provisions in this bill that address those issues.
There are also—as my colleagues have pointed out; I am not going to go in detail—many provisions in this bill that I think take us very much in the wrong direction. And, frankly, having just received this bill about 48 hours ago, I don't think there is—there are very few Members of this Committee who have had a chance to read this entire thing. And I think it is inappropriate to be moving forward so rapidly on a bill that we have had no opportunity to review.
Contrast that to Mr. Flake's bill, which has been before this body for a long time.
I think all of us had an opportunity to review Mr. Flake's proposal and other proposals, and the glaring hole in this whole debate in this Committee is the fact that we are not dealing with this in a comprehensive manner.
Mr. Flake mentioned the fact that sometimes he wished, you know, God bless the Senate from time to time. And unfortunately, from my perspective, that is not only true on this issue but on many other issues. But it is very true on this issue.
Because you know, Mr. Flake—and I have great respect for you and your approach to issue—you know that this body over here is just taking up this particular piece of it because there is not a consensus on your side of the aisle to address this other very important piece.

And you have also stated and the President has stated, if we don't deal comprehensively with this issue, we are not going to be able to address the issue of immigration problems generally.

This train is leaving the station in the House. And I think it is a sad day when the House and everybody on this Committee, the great House Judiciary Committee, decides to abdicate its responsibility on a different issue and punt it over to the Senate and hope one day we are going to go to conference with the Senate that does its job, and we will have only dealt with half of the problem over here.

I think the American people should be ashamed of the fact that we have refused to address this issue over here in the way all us know it should be addressed.

And finally, to the extent people are proposing this is some kind of issue that deals with homeland security, yes, of course, there is a homeland security component to the border. But the 9/11 Commission just issued its final report. They issued a series of Ds and Fs with respect to this Congress' follow-through and their recommendations.

None of those Ds and Fs related to any provision in this bill that we are dealing with today. They dealt with a whole range of other issues that are much more urgent on the national security agenda. And, again, not one of the Ds and Fs related to something that is being addressed in this bill.

To present this to the American people as if this addresses our national security and homeland security issues, when the Commission, on a bipartisan basis, that was set up to look at this issue, has not even put this on their report card as something that should be addressed, I think is a scandal and misleads the American public.

This is a very important issue. It should be dealt with as you, Mr. Flake, and others have tried to deal with it in a thoughtful manner. This was our opportunity today to address it in a thoughtful manner, and it is unfortunate that we are not doing so. And for that reason I am going to be voting "no" on final passage.

Chairman SENSENBRENNER. The Chair will remind Members that they can only be recognized once on a single question. The question is on the underlying base bill, and Members who have been recognized on that question heretofore must ask unanimous consent to speak a second time.

Ms. JACKSON LEE. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. JACKSON LEE. It is offered and withdrawn.

The CLERK. Mr. Chairman, I have two amendments.

Ms. JACKSON LEE. It is amendment No. 189.

[The amendment follows:]

AMENDMENT TO H.R. 4377

OFFERED BY MS. JACKSON-LEE OF TEXAS

In section 401(c), add at the end the following new paragraph:

1 (3) UNACCOMPANIED ALIEN CHILD.—The man-
2 datory detention requirement in subsection (a) does
3 not apply to any alien who is an unaccompanied
4 alien child, as defined in section 462(g)(2) of the
5 Homeland Security Act of 2002 (6 U.S.C.
6 279(g)(2)).

Chairman SENSENBRENNER. Clerk will report the amendment.

The CLERK. Amendment to H.R. 4377, offered by Ms. Jackson-Lee of Texas. In section 401(c) add at the end of the following new paragraph: (3), Unaccompanied alien child—The mandatory detention requirements in subsection——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentlewoman will be recognized for 5 minutes.

Ms. JACKSON LEE. I thank the distinguished gentleman very much.

The previous discussion, I felt fully comfortable in embracing Mr. Berman/Mr. Flake's amendment because frankly it, in essence, put at the very pinnacle of this discussion the reality of what we have to confront.

And I guess my question to Mr. Flake, as I discussed my amendment, is, no matter how we move through this process, and whether we move to the Senate, we will have to confront the issue of the Republicans redefining "amnesty." And to Mr. Issa's poll, if you malign, stigmatize and demonize a structure that will allow the regularity or making more regular the immigration system, you are going to get polling of 100 percent, a poll to any form of regulation.

And so I would ask Mr. Flake, what is his intent to even convince the Senate? Because he well knows my good friend and esteemed Senator in Texas and his Senator in Arizona intend to put forward a guest worker program that sends 11 million people back to their respective countries. Very unrealistic.

And so this debate should have occurred not only today, but it should have occurred in regular order in the Subcommittee on Immigration, and it did not occur.

Also, it did not address, if you will, the pulling of migrant workers to the United States because of their negative economic posture in the country where they come from. It has no provisions to prevent the 11 million migrant workers who are in the shadows of this immigration system to come out of the shadow.

What is Mr. Flake's position on arguing that amnesty has been demonized? In fact, "amnesty" now has been equated to "terror." You will never get anything passed in the Senate because unless you break the shackles of the definition of what "amnesty" means—and I would ask Mr. Flake whether he intends to do that.

I have had legislation, as many others have had, H.R. 2092, and I intend respectively to offer those amendments on the floor that realistically look at earned access to legalization, which should be a real partner to the guest worker program. Because what it addresses is the question of putting criteria on undocumented individuals, no criminal background, community service, to get them in line. That speaks to security. That is what the 9/11 Commission was speaking about, that we are not secure; we don't know who is in this country.

The amendment that is before us speaks to, I think unfortunately, an indictment in this bill. For the first time in history, we will have mandatory detainment for children. My amendment attempted to correct that.

I hope my colleagues will look at this amendment when we go to the floor. Because I asked the question before, what is the criteria for all of the alternative detainment centers that we expect

to use on this bill? Will we be using barns? Will we be using people's homes? Will there be any legitimate criteria to protect the most vulnerable? And because we are detaining children mandatorily under this bill, it seems to me we have great concern.

And so, Mr. Flake, I wish you had taken the opportunity to defend this concept of earned access to legalization. In your instance, it is the guest worker program. And I wish you had defended, if you will, the reality of your provisions, because you tell me whether or not you expect to deport 11 million.

And might I say that we have utilized the basic premise of the debate on immigrants coming from the southern border. There are South Asian immigrants. There are immigrants from the Mideast. There are immigrants from Ireland, from Poland. Poland is outraged that they have been one of our strongest allies in the war on terror and we won't open up the doors on the visa waiver program.

I will be happy to yield in just a moment, Mr. Flake.

Mr. FLAKE. Thank you.

Ms. JACKSON LEE. The real question of this debate today is one we should have premised and started in the Subcommittee of jurisdiction.

Secondarily, I don't know how we leave this room speaking only of border security and labeling any form of regularizing the nondocumented individuals, not putting them in front of the legal line individuals, but recognizing their presence here, their ownership of property, and we demonize it by either suggesting "amnesty" equals to "terror" or amnesty is unacceptable.

Then, Mr. Flake, your bill will not pass in the Senate, either. I yield to you for a moment.

Mr. FLAKE. Thank you for yielding the last 15 seconds, I think.

Ms. JACKSON LEE. Just about. And I reclaim the 10.

Mr. FLAKE. I mentioned that we need a comprehensive approach. But part of the problem with the approach that was just offered by Mr. Berman is that it only offers two sections of our bill. There are other sections of our bill that need to be offered, debated and passed. And I would argue to pass the whole thing.

The problem is, part of the reason there isn't an amnesty to do what we are doing is because we say, if you are going through the legal, orderly process in your home country——

Ms. JACKSON LEE. I ask for an additional minute.

Chairman SENSENBRENNER. Without objection.

Mr. FLAKE. If you are going through the legal, orderly process in your home country, you won't be placed in line in back of these who are here illegally now. So another section of our bill deals with backlog reduction, for example.

That is why you need a comprehensive approach, not just the two sections that were offered.

There was a clever way to do it, and I am glad the debate was had. And I am grateful to Mr. Berman for speaking up.

Mr. BERMAN. Would you like me to offer the bill?

Ms. JACKSON LEE. Let me just say to you, I think you would have had a friendly response if you had offered to amend Mr. Berman's——

Chairman SENSENBRENNER. The time of the gentlewoman has once again expired.

Ms. JACKSON LEE. My amendment——

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Ms. JACKSON LEE. I ask to withdraw my amendment, Mr. Chairman.

Chairman SENSENBRENNER. Without objection, the amendment is withdrawn.

Are there further amendments?

Mr. KING. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from Iowa seek recognition?

Mr. KING. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 4437 offered by Mr. King of Iowa. In section 247—excuse me, 274A(b)(7)(F)(ii), of the Immigration and Nationality Act, as added by section 701(a) of the bill, insert [page 133, line 15] "within the time period specified in subparagraphs (B) and (C)," after "investigation."

[The amendment follows:]

AMENDMENT TO H.R. 4437

OFFERED BY MR. KING OF IOWA

[page and line numbers refer to print of December 6, 2005, 1:23 PM]

In section 274A(b)(7)(F)(ii) of the Immigration and Nationality Act, as added by section 701(a) of the bill, insert [page 133, line 15] ", within the time periods specified in subparagraphs (B) and (C)," after "investigation".

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith, reserves a point of order.

The gentleman from Iowa is recognized for 5 minutes.

Mr. KING. Thank you Mr. Chairman.

My amendment addresses, I will say, a hole that is created by the bill. The bill requires the employers to use the employment verification system.

Chairman SENSENBRENNER. Will the gentleman from Iowa yield?

Mr. KING. I would, Mr. Chairman.

Chairman SENSENBRENNER. My understanding is that this requires suspicious—or investigation within 10 days of suspicious use of Social Security numbers in the basic pilot program. I think it is an improvement to the bill. And I am prepared to accept it.

Mr. KING. I would thank the Chairman and conclude my opening remarks and yield back the balance of my time.

Chairman SENSENBRENNER. Gentleman's time is yielded back. The question is on adoption of the amendment offered by the gentleman from Iowa, Mr. King.

All those in favor, signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments? If there are no further amendments, a reporting quorum is present. The question occurs on the motion to report the bill, H.R. 4437, favorably as amended.

All those in favor will say aye.

Opposed, no.

The ayes appear to have it.

Two Members are requesting a rollcall. Those in favor of reporting the bill as amended favorably will, as your name is, called answer aye. Those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye.

Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye.

Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye.

Mr. Gallegly.

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye.

Mr. Goodlatte.

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye.

Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye.

Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren, aye.

Mr. Jenkins.

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye.

Mr. Cannon.
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye.
Mr. Bachus.
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye.
Mr. Inglis.
Mr. INGLIS. Aye.
The CLERK. Mr. Inglis, aye.
Mr. Hostettler.
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye.
Mr. Green.
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Mr. Keller.
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Mr. Issa.
[No response.]
The CLERK. Mr. Flake.
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye.
Mr. Pence.
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye.
Mr. Forbes.
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye.
Mr. King.
Mr. KING. Aye.
The CLERK. Mr. King, aye.
Mr. Feeney.
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye.
Mr. Franks.
Mr. FRANKS. Aye.
The CLERK. Mr. Franks, aye.
Mr. Gohmert.
Mr. GOHMERT. Aye.
The CLERK. Mr. Gohmert, aye.
Mr. Conyers.
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no.
Mr. Berman.
Mr. BERMAN. No.
The CLERK. Mr. Berman, no.
Mr. Boucher.
[No response.]
The CLERK. Mr. Nadler.
Mr. NADLER. No.
The CLERK. Mr. Nadler, no.
Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.

Mr. Watt.
Mr. WATT. No.
The CLERK. Mr. Watt, no.
Ms. Lofgren.
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no.
Ms. Jackson Lee.
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no.
Ms. Waters.
[No response.]
The CLERK. Mr. Meehan.
[No response.]
The CLERK. Mr. Delahunt.
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt, no.
Mr. Wexler.
Mr. WEXLER. No.
The CLERK. Mr. Wexler, no.
Mr. Weiner.
Mr. WEINER. Yes on Flake. No on this.
The CLERK. Mr. Weiner, no.
Mr. Schiff.
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Ms. Sánchez.
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no.
Mr. Van Hollen.
Mr. VAN HOLLEN. No.
The CLERK. Mr. Van Hollen, no.
Ms. Wasserman Schultz.
Ms. WASSERMAN SCHULTZ. No.
The CLERK. Ms. Wasserman Schultz, no.
Mr. Chairman.
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Further Members in the Chamber wish to cast or change their votes?
Gentleman from California, Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes?
If not, the clerk will report.
Gentlelady from California, Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no.
Mr. Chairman, there are 23 ayes and 15 noes.
Chairman SENSENBRENNER. And the motion to report the bill favorably as amended is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today.

Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by the rules, in which to submit additional dissenting supplemental or minority views.

This concludes the business of the meeting as noticed. And without objection, the Committee stands adjourned.

[Whereupon, at 1:15 p.m., the Committee was adjourned.]

ADDITIONAL VIEWS

If circumstances would have allowed me to have been recognized today in the Committee, I would have made the point that I agree that our immigration process is sorely in need of overhaul, from the top to the bottom.

I have spent the last 60 days on an immigration tour throughout the Fourth District examining the impact of our current immigration policy on health care, education, construction, manufacturing, farms and government agencies. All total, we visited more than a dozen stops and hosted six town meetings. The results are clear that we need comprehensive and effective immigration laws. At every stop, we saw the effects of laws that are not enforced or not enforceable; are not working or are inadequately supported by personnel or infrastructure.

This leads to my first concern with this bill. It is not a comprehensive solution. I can appreciate the need for tougher penalties and better deterrents for those that violate immigration laws, but penalties must be supported by additional enforcement mechanisms to ensure the penalties can be implemented.

This proposal also strengthens one critically weak area of the current system by requiring employers to verify the eligibility status of prospective employees, and thankfully, technology makes this easier than ever.

It is my hope that the Senate will add a provision for a guest worker program—one that does not include amnesty, but offers a way that those who have entered our country illegally can pay restitution, leave the country to adjust status, even carry out community service or pay some other penalty in order to earn the privilege of being restored as legal residents.

Other areas of concern I had with the bill are the provisions for mandatory minimum sentences. Mandatory minimums do a disservice to the judicial decision-making process, which is already guided by sentencing guidelines. I would hope that these mandatory minimum sentences will be addressed during conference with the Senate, which is less prone to rely upon mandatory-minimum sentences.

I eagerly look forward to working with the Committee leadership on future issues.

BOB INGLIS.

DISSENTING VIEWS

We believe that a strong border security policy is an absolute and immediate necessity for this Nation. However, without bipartisan comprehensive immigration reform to bring eleven million people out of the shadows with a path to legal immigration status and full integration in our society, the gaping hole in our border security will continue to grow unabated.

The Nation has an immediate crisis along the Southern border as evidenced by the recent declarations of emergency by the governors of those states. The Homeland Security Committee passed a border security bill to concerning these issues. On the way to our Committee, however, the legislation was made far worse and less effective by anti-immigrant provisions which have been hastily added to this legislation and have no bearing on security on the border.[1] This pursuit of short-term political gain will ultimately prove counter-productive, since the legislation will distract the Department of Homeland Security and divert it limited resources from the core mission of protecting this Nation against terrorism. Indeed, the bipartisan 9/11 Commission has not identified any of the excessive provisions that the Majority have included in this bill as necessary for homeland security. We recognize that Americans deserve real border security rather than the false sense of security offered by this bill. This is particularly true at a time when the present Administration is bringing but a handful of employer sanction cases per year. For all of the reasons set forth below in further detail, we respectfully dissent from H.R. 4437.

OVERVIEW

With this legislation, the Majority increases mandatory detention, expedited removal and criminal penalties for civil immigration violations for all aliens, including innocent undocumented children, who will now automatically be subject to being locked up behind bars without the right to see an immigration judge. Of the bill's most pernicious provisions, an alien's "unlawful presence" would become a federal felony punishable by over one year in jail time and an "aggravated felony" for immigration purposes which would permanently bar a person from securing lawful immigration status in the United States.

Ironically, or perhaps intentionally, the 11 million undocumented people in the United States would be excluded from a guest-worker program which President Bush and other Members of the Majority

[1] At the outset, we must object that Majority leadership provided Committee members with a copy of the 169-page bill only two days prior to the Committee hearing which necessarily limited both Republicans' and Democrats' ability to thoroughly review and debate the bill on its merits at the Committee hearing. Given the importance of the matters at hand, we believe that the Committee should have been given an opportunity for a full consideration and the opportunity to craft comprehensive legislation.

reportedly embrace. If history is any lesson, these get-tough policies have not proven effective in deterring violations under the Immigration and Nationality Act (INA). Over the last two decades, Congress has enacted 17 pieces of legislation to crack down on immigration violators. Instead, the undocumented population has swelled to a record level. There is a clear consensus within the mainstream American public that the INA needs to be fundamentally overhauled to recognize the reality of the American economy and American employer's real labor shortages and needs for foreign-born workers. Often compared to the Internal Revenue Service tax code given its arcane complexity, the INA is torturous for United States businesses, citizens and American families to navigate and secure status for employees and loved ones.

We also oppose the bill because it eviscerates due process protections fundamental to our legal system and the Constitution through the expanded use of expedited removal, limitations on judicial review and refugee protection. These provisions cannot be predicated on the belief that low-level bureaucrats are somehow infallible in their decision-making and thereby should not be subject to any further review of their decisions. This belief is fundamentally mistaken given the dismal track record of the Department of Homeland Security and the Executive Office for Immigration Review in administering justice in individual cases.

The lack of administrative and judicial review is particularly worrisome since even United States citizens and lawful permanent residents inevitably will become wrongfully ensnared by expedited removal and wrongfully deported to foreign countries by virtue of their ethnicity, appearance or not carrying and presenting their proper identification to border patrol agents. In virtually every other area of law, review of an administrative agency's decision is guaranteed. Instead of correcting the lack of justice in the underlying administrative system, the Majority instead seeks to immunize the system from any transparency, accountability and scrutiny.

Additionally, we believe that certain provisions in the bill are an insulting rebuke to the Supreme Court of the United States and the American public which trusts the Court to interpret the United States Constitution. One provision discussed below effectively reverses Supreme Court precedent prohibiting the Department's indefinite detention of aliens to now sanction the Department's indefinite detention of aliens. Another provision discussed below effectively reverses Supreme Court precedent protective of the due process rights of aliens when they accept pleas in state courts of law and are unapprised that their pleas will result in their removal by immigration authorities. Under this bill, corrective state court orders will be given no effect for immigration purposes despite Article IV to the United States Constitution which requires the Federal Government to give full, faith and credit to state court judgments.

In our opinion, the bill is so extreme that it is beyond repair. Instead of reforming our immigration system to improve border security and effectively and realistically address undocumented immigration, this legislation destroys the system and creates untenable expectations for the Department of Homeland Security to successfully enforce every provision of this misguided bill. The Department

of Homeland Security does not have and will never be appropriated the detention capacity necessary to detain and deport all aliens subject to mandatory detention and expedited removal, thereby undermining their ability or willingness to arrest as many aliens as possible. The Department of Justice further will not be appropriated the resources necessary to prosecute and incarcerate all 11 million undocumented aliens, their American families and employers. As written, the bill betrays real border security as well as the moral values, economic priorities and the promise of America.

I. JURISDICTIONAL CONSIDERATIONS PRECLUDED OUR REVIEW OF FOUR PROBLEMATICAL SECTIONS OF THIS BILL THAT ELEVATE POLITICAL MESSAGING OVER SERIOUS REFORM.

The provisions of Titles I, III, IV, and V of H.R. 4437 were originally Titles I, II, III, and IV, respectively, of the House Homeland Security Committee-reported version of H.R. 4312, the "Border Security and Terrorism Prevention Act of 2005." Unfortunately, Chairman Sensenbrenner announced at the beginning of the Judiciary Committee's markup of H.R. 4437 that most of these provisions were outside of the scope of the Judiciary Committee and that, accordingly, amendments to most of these provisions in the Judiciary Committee would be ruled nongermane. This precluded the Minority from offering amendments to improve these important provisions of the bill. We must still, however, express our concern about several aspects of these provisions.

First, we are disappointed by the timidity of the Homeland Security Committee-reported provisions in addressing our problems on the United States border with Mexico and Canada, as is embodied by these provisions. The four titles contain several important provisions that we support and several that we oppose. However, on the whole, they repeat a well-worn pattern that has emerged over the last five years, wherein the President declines to ask Congress for the resources necessary to secure our border, the Majority, declines to authorize specific amounts of funding for those resources, and the Majority fails to appropriate adequate resources for those purposes.

We note that the Minority on the House Committee on Homeland Security offered a substitute for H.R. 4312 that would have more effectively addressed our Nation's border security needs. We believe that amendment was worthy of support, and we are disappointed that the Committee rejected it on a party-line vote. We wish to associate ourselves with the dissenting views presented by our colleagues on the House Committee on Homeland Security in H. Rept. 109-317, part 1, which expressed their view that their Substitute to H.R. 4312 would have "better secure[d] the border by taking steps in three main areas insufficiently addressed in the base bill: (1) stronger planning and coordination; (2) more accountability for struggling efforts to screen travelers and speed up commerce and travel; and (3) genuine commitments to provide the resources, training, and incentives needed by the people working everyday to secure the border."

We associate ourselves, as well, with the dissenting views expressed by our colleagues on the Homeland Security Committee that:

"The Democratic substitute provides for stronger border security planning and coordination by requiring the development and implementation of a national border security strategy that includes specific information on the personnel, infrastructure, technology and other resources needed to secure the border, including surveillance equipment necessary to monitor the entire northern and southern borders. The substitute also strengthens planning and coordination by establishing an Office of Tribal Security to help the Department coordinate with tribes along the border who are overwhelmed by illegal border crossings. It also creates northern and southern border coordinators who can be held accountable for the security of the border in their respective geographic areas.

"The Democratic substitute strengthens accountability for programs designed to screen travelers and speed commerce and travel by requiring regular reports on Smart Border accords with Mexico; expanding expedited land border traveler programs by putting their enrollment systems in more locations and reducing fees, creating a North American travel card usable by certain low-risk American, Canadian, and Mexican travelers; creating a pilot of a system for prescreening of U.S.-bound passengers before they get on a plane; developing a new tool to replace the Department's antiquated method for checking names against terrorist databases; requiring on-site verification of the security measures taken by entities participating in the Customs-Trade Partnership Against Terrorism (C-TPAT) program and the Free and Secure Trade (FAST) program; and requiring annual reporting on the implementation of the "One Face at the Border" initiative.

"Finally, the Democratic substitute makes genuine commitments to provide the tools and authority needed to better secure the border . . ."

Second, we are disappointed that several provisions that had been adopted by the Committee on Homeland Security in H.R. 4312, as it was reported to the House of Representatives, were left out of H.R. 4437. These include:

- Section 302 of H.R. 4312, as reported by the Homeland Security Committee, which would have authorized funding to carry out section 5204 of the Intelligence Reform and Terrorism Prevention Act of 2004, directing the Secretary of Homeland Security to increase detention bed space by 8,000 beds per year during that time.
- An amendment by Ranking Democrat Bennie Thompson, agreed to during the House Committee on Homeland Security markup of H.R. 4312, that would have established within the Department of Homeland Security an Office of Tribal Security.

The failure of the Majority to include these provisions that were in H.R. 4312 in the version of H.R. 4437 is emblematic of a longstanding pattern that the Majority is more interested in protecting the priorities of the current Administration than in protecting our borders.

Third, we are concerned that several provisions contained in the four titles that were originally reported by the House Committee on Homeland Security are actually counterproductive and could be more harmful than helpful in helping to combat illegal immigration. Among these are:

A. Use of Homeland Security Grants for Immigration Enforcement.[2]

We are deeply concerned about section 305 for two reasons. First, it would permit states to divert their homeland security grant funds to pay for border security functions that would normally be carried out by federal agencies. While we share the concern that an increasing amount of local government funds in border states are having to be spent to deal with the consequences of illegal immigration, we do not support forcing states and local governments to forgo funding they need to meet their traditional law enforcement and first responder missions.

We note that the Administration already has cut the State Homeland Security Grant program, one of the grants affected by section 305, in half, from $1.1 billion in FY 2005 to $550 million in FY 2006. Spreading thin the remaining dollars in this program will only weaken state and local government first responder and homeland security preparedness. We note that the International Association of Fire Fighters opposed section 305 in a letter stating: "If money is needed for immigration enforcement, then Congress should provide funding to the appropriate programs. Diverting funds from fire departments is not the solution."

We also oppose the Majority's unrelenting push to force states to enforce civil immigration law. Many State and local law enforcement agencies around the country have expressed grave concerns about undertaking a role in enforcing civil immigration law, contending that it would undermine the relationships they need to have with their communities and make their communities less safe. We agree with their views on this question.

B. Mandatory Detention.[3]

Section 401 is an overreaction to a flawed Administration policy of "catch and release" of aliens who it should have detained. While detention of aliens who are a danger to the community, a national security risk, or are in danger of absconding is a vital part of any strategy to secure our borders, expanding mandatory detention indiscriminately on such a broad scale as would occur under section 401 would be more harmful than helpful. Rather than enact section 401 into law, the Administration should seek and Congress should provide additional detention resources, better guidance on deten-

[2] Section 305 of H.R. 4437 would permit States to use State Homeland Security Committee grants, Urban Area Security Initiative grants, or Law Enforcement Terrorism Prevention Program grant funds for preventing or responding to the unlawful entry of an alien or providing support to another entity relating to preventing such an entity.

[3] Section 401 of H.R. 4437 would require the mandatory detention of an alien "who is attempting to enter the United States illegally and who is apprehended at a United States port of entry or along the international land and maritime border of the United States" until he or she is removed from the United States or until a final decision has been rendered granting the alien admission to the United States. During an interim period between the date of enactment of the bill and one year after the date of enactment, the provision would permit such aliens to be released, but only if they pay a minimum $5,000 bond and meet certain other conditions.

tion, and a more rational policy on who is detained and who is released.

Section 401, adopts a one-size-fits-all attitude that fails to prioritize scare detention resources. Coming on top of the failure of the Majority to provide adequate detention resources, it is a prescription for continued disaster. We do not have the physical capacity—even with greatly increased numbers of beds and facilities—to hold all illegal entrants for months or years. The logical solution to this problem is to focus on expediting the judicial process for captured aliens and detaining those who are a threat to our communities or at risk of flight.[4]

C. Denial of Entry to Citizens of Countries that Deny Admission of U.S. Deportees.[5]

We have serious concerns about the impact this section could have on citizens from certain countries who will be completely unresponsive to the pressure on their citizens that this new requirement might exert. To address this problem, Representative Lofgren introduced an amendment during the House Committee on Homeland Security markup requiring the Secretary of Homeland Security to deny admission not to average citizens, but rather to government officials traveling to the United States on official government business. This amendment would put the pressure on the government officials causing the problem, rather than on innocent foreign nationals merely wanting to come to the U.S. for travel, trade and family visits. This amendment was found non-germane in the Homeland Security Committee, and the opening announcement by Chairman Sensenbrenner about his view of germaneness implied that any amendment to deal with this unfortunate section would have been ruled nongermane in the Judiciary Committee, as well.

D. Training Program on Credible Fear.[6]

We are concerned about the impact of this provision on those seeking asylum. Current law requires persons to be referred for a credible fear determination if they indicate a fear of persecution. We would hope that the Administration will not interpret this pro-

---

[4] We note that Representative Lofgren, Representative Jackson Lee, and Representative Meek offered numerous amendments during the House Committee on Homeland Security markup of H.R. 4312 that would have enacted a more rational policy than that contained in section 401. Among them were amendments that would have sped the judicial process by requiring the Department to make a determination of whether an individual should be detained within seven days of arrest; put into place better controls to ensure that an alien released will appear at future proceedings; mandated a legal orientation program for aliens in removal proceedings to increase the efficiency and effectiveness of removal proceedings; and exempted vulnerable populations, such as the elderly, unaccompanied alien children, pregnant women, and the critically ill from the mandates of section 401. Unfortunately, these amendments were either defeated or ruled nongermane.

[5] Section 404 of H.R. 4437 would repeal current law, which *requires* the Secretary of State to deny visas to nationals of countries that deny or delay accepting their citizens, nationals, or residents whom the United States wishes to deport. It would insert in its place a provision that would *authorize* the Secretary of Homeland Security, after consultation with the Secretary of State, to deny the admission of nationals of countries that deny or delay accepting their citizens, nationals, or residents whom the United States wishes to deport.

[6] Section 406 of H.R. 4437 would require that, not later than six months after the date of enactment, the Secretary of Homeland Security review and evaluate the training provided Border Patrol agents and port of entry inspectors in the exercise of their duties with respect to referring aliens to asylum officers for credible fear determinations. The section would, further, require the Secretary to "take necessary and appropriate measures" to ensure consistency in their referrals of aliens to asylum officers for determinations of credible fear.

vision as a signal that there should be fewer referrals of aliens for credible fear determinations.

E. Expansion of Expedited Removal.[7]

We are deeply concerned by the implications of Section 501. Current law already gives the Administration flexibility to expand or contract expedited removal as it sees fit in order to fit circumstances that it confronts at any given time. Expanding expedited removal statutorily in this manner would permanently tie the Administration's hands and force it to use the procedure, even when it might deem it unwise, and when it believes that the use of expedited removal would pose more of a burden than it is worth.

Moreover, once amended by this section, expedited removal would give the Secretary the power to remove from the country, without hearing, any immigrant thought to be illegally in the United States caught within 100 miles of the border and within 2 weeks of the person crossing into the United States. Imposing expedited removal on all aliens apprehended at or between all land borders and within 100 miles of that border will apply expedited removal to thousands of people who are currently subject to regular immigration proceedings. Suddenly, thousands of people will go from having rights to appeal removal orders, rights of release from detention by immigration judges, and other due process rights in regular immigration proceedings to no appeal option and no opportunity for counsel. The only proceeding these individuals will receive is an on-the-spot decision by a Border Patrol Agent as to whether they should be removed. Furthermore, these individuals will face 5-year bars on reentering, all based on a very quick decision by a Border Patrol agent.

We also feel strongly that the rule of law must be paramount in our practices, and expedited removal should be a method of last resort. It is far more preferable to hold a hearing to ascertain the status and intentions of a detained alien than to remove the person without trial for two reasons. First, security may be threatened by expedited removal as it may lead to the removal of an alien who, if detained for a longer period or subjected to a judicial hearing, may be discovered to be a terrorist. Second, removing individuals without at least some sort of hearing undermines the perception that the United States is a Nation that believes in a fair judicial process governed by the rule of law. At a time when we are engaged in a War on Terror where our respect for fairness and the law is one of the most important principles we can export abroad, we should not take steps to eliminate these principles in our immigration enforcement process—even for those caught here illegally.

[7] Section 501 of H.R. 4437 would make the use of expedited removal mandatory against aliens suspected of having entered the United States without inspection who are neither Mexican nor Canadian, who are apprehended within 100 miles of the U.S. international border, and have been in the United States for 14 days or fewer.

II. H.R. 4437 WILL FUTHER EXPAND THE MANDATORY DEPORTATION PROVISIONS IN CURRENT LAW TO INCLUDE CATEGORIES OF MINOR OFFENSES FOR WHICH NO EXTENUATING CIRCUMSTANCES MAY BE CONSIDERED.

Instead of enacting long-needed reforms of the Nation's deportation laws to give immigrants facing deportation a chance to show why their deportation would be unfair and contrary to the Nation's interests, H.R. 4437 increases the unfairness and harshness of the current immigration laws relating to non-citizens accused of past violations of the law. We are aware of the serious immigration consequences of a conviction for an aggravated felony are: mandatory detention and deportation, as well as permanent bars to immigration relief and future legal entry. Taken together, we are deeply concerned that Sections 203 and 201 of H.R. 4437 make criminals of the 11 million individuals living in this country without legal status, including 1.6 million children.[8] The overwhelming majority of these people are not here to commit crimes, but rather to work and provide for their families. Turning them all into felons with the stroke of a pen is counterproductive.[9]

Significantly, Sections 201 and 203 would also criminalize millions of *legal* non-immigrants and immigrants, including lawful permanent residents and non-immigrants who accrue technical violations of immigration regulations. Section 203 makes being "present in the United States in violation of the immigration laws or the regulations prescribed thereunder" a federal crime punishable by a prison sentence of one year and one day. But such violations would include lawful permanent residents who fail to report a change of address to the Department of Homeland Security (DHS) within ten days, as well as university students on an F-1 visa who drop below a full course load or H-1B workers who lose their jobs and take too long to find another job. Section 201 would make such "crimes" an "aggravated felony," subject to mandatory detention and virtually no relief from deportation."

We consider it ironic that many of the lead authors of H.R. 4437 recently announced their support for a temporary worker program.[10] Their legislation here, however, will make undocumented immigrants who are convicted of the new crime of unlawful presence ineligible for any type of temporary program, legalization, or

[8] Section 203 of H.R. 4437 modifies section 275 of the Immigration and Nationality Act to make "unlawful presence" in the United States a misdemeanor. Section 201 makes a conviction for this new crime an "aggravated felony" for immigration purposes.

[9] Making criminals out of undocumented people makes them vulnerable to state and local police arrest. The inclusion of section 203 in this legislation is a sly attempt by the bill's authors to enact the CLEAR Act (H.R. 3137) without calling it such. We reject the bills' premise that all undocumented immigrants are criminals that should be rounded up by state and local police agents. State and local law enforcement have many more serious concerns on their hands, including protecting our communities from violent criminals and keeping our streets safe. If this provision passes as part of H.R. 4437, undocumented immigrants and their families will no longer know whether contacting the local police will be a help or a hurt. In addition, police officers attempting to implement this provision will no doubt use dubious strategies to determine who to question and detain. Racial profiling is an inevitable outcome, as police will focus greater scrutiny on people who look or sound "foreign." Such a policy would most certainly lead to civil rights violations and expensive lawsuits when police question and detain legal residents and citizens who happen to be of Latin American, Asian, or other descent.

[10] President Bush has also indicated that he envisions such a program to facilitate legal immigration based on employment to reduce undocumented migration. He would extend this program to the current 7 million undocumented workers making up 5% of the Nation's labor force, in addition to future workers.

future immigration status. The question we raised during Committee consideration of H.R. 4437 remains—does the Majority wish to find a solution for the 11 million undocumented immigrants living among us? If so, can they agree on what it is? Is it making them all criminals and organizing mass deportations, or is it a registration and vetting process along the lines proposed in H.R. 2330 by Representatives Jim Kolbe (R-AZ), Jeff Flake (R-AZ), and Luis Gutierrez (D-IL) ? We support earned legalization, not criminalization and mass deportation.

III. OVERBROAD SMUGGLING PROVISIONS IN SECTION 202 COULD SEVERELY PENALIZE INNOCENT ACTS

This section goes well beyond the traditional scope of alien smuggling and has the great potential to implicate many Americans under the broadened definition of smuggling.[11] We believe that the "assists, encourages, directs, or induces" standard is so broad that the Government could prosecute almost any American who has regular contact with undocumented immigrants.

With 11 million undocumented immigrants currently residing and working in the this country, millions of American have direct and casual contact with undocumented immigrants. For example, a church group that provides food aid, shelter, or other assistance to members of its community could be penalized for "assisting or encouraging." The aid worker who finds an illegal entrant suffering from dehydration in the desert and drives that person to a hospital could be penalized for "transporting." Even driving an undocumented worker to work could be interpreted to "aid or further in any manner the person's illegal presence in the U.S." And any U.S. citizen living with an undocumented spouse could be considered to be "assisting or encouraging" a spouse's presence.

Certainly alien smuggling and trafficking for profit are activities that need to be sanctioned, and existing law already provides for harsh penalties. However, H.R. 4437 goes far beyond increasing penalties for these heinous activities and jeopardizes the well-being of millions of Americans—neighbors, family members, faith institutions, and others—who live and work with undocumented immigrants.

IV. TITLE VI OF H.R. 4437 WOULD BAR A GRANT OF LAWFUL RESIDENT STATUS TO MILLIONS OF IMMIGRANTS CURRENTLY WORKING IN THE U.S., INCLUDING MANY IMMIGRANTS WITH U.S. CITIZEN SPOUSES OR CHILDREN OR FLEEING PERSECUTION ABROAD.

The Federal Government has an obligation to protect the freedoms enshrined in the Constitution at the same time we protect the security of our borders. America's democratic principles of fair-

[11] Section 202 amends Section 274 of the INA in a manner that greatly expands the scope of criminal smuggling, harboring, and transporting aliens to "whoever assists, encourages, directs, or induces a person to come to or enter the U.S., or to attempt to come to or enter the U.S., knowing or in reckless disregard of the fact that such person is an alien who lacks authority to come to or enter the United States." H.R. 4437 also goes beyond the current language of Section 274 to include "whoever assists, encourages, directs, or induces a person to reside in or remain in the United States, or to attempt to reside in or remain in the United States" H.R. 4437 further expands the transporting provisions as well to include the clause "where the transportation or movement will aid or further in any manner the person's illegal entry into or illegal presence in the United States."

ness are essential to our way of life. We must, therefore, oppose many provisions in Title VI because they undermine these principles. Instead of getting tough on dangerous individuals and terrorists as the disingenuous titles of the sections imply, provisions in Title VI targets those hardworking families who want to be part of American society and refugees who fled persecution for hope and opportunity in America.

We believe that Section 601 has the potential to deny individuals who face death, torture or abuse in their home countries from obtaining relief under withholding of removal. This is inconsistent with America's obligations under international law and the plain meaning of the Immigration and Nationality Act.[12]

We are also alarmed by the sweeping nature of Section 602, disingenuously titled as "Detention of Dangerous Aliens" because it expands the Government's authority to jail people for an infinite period of time. Two recent Supreme Court decisions expressly found that the Government cannot indefinitely detain of individuals who have final removal orders, but cannot be returned to their home country, due to no fault of their own. The question raised in these cases, and by this section, is a simple one: is it lawful for an executive branch employee, essentially the warden in these cases, to give a person a life sentence merely because the Government is unable to remove the person? The answer was a resounding no.[13]

A statute permitting indefinite detention would raise serious constitutional questions. Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause." This bill's attempt to exclude "inadmissible" aliens entirely from a review process contradicts *Clark v. Martinez,* which extended the protections outlined in *Zadvydas* to "inadmissible aliens" from Cuba whose deportation was not "foreseeable." The Court held, "Even if the statutory purpose and constitutional concerns influencing the *Zadvydas* construction are not present for inadmissible aliens, that cannot justify giving the same statutory text a different meaning depending on the characteristics of the aliens involved."[14] Even asylum seekers and individuals with no criminal convictions have been, and could be, subject to indefinite detention under this section.[15] Similarly, we are concerned about the fact that the removal period can be "tolled" for immigrants who are transferred to another Federal, state or local agency—his appears to be a stalling tactic to

---

[12] Withholding of removal is a form of protection given to immigrants whose life or freedom would be threatened because of the alien's race, religion, nationality, membership in a social group, or political opinion. Similarly, immigrants who would face torture in their home countries can apply for withholding of removal protection through the Convention Against Torture. The applicant for withholding must show a *clear probability* of persecution or that it is *more likely than not* that her or she would be persecuted if removed to his home country. Unlike asylum, withholding of removal is "mandatory," which means that a judge is required to grant relief to individuals who meet the statutory requirements.

[13] In *Zadvydas v. Davis,* et al., 121 S. Ct. 2491 (June 28, 2001) the Court found, "The post-removal-period detention statute, read in light of the Constitution's demands, implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal from the United States, and does not permit indefinite detention.

[14] *Clark v. Martinez,* 125 S.Ct. 716 (Jan 12, 2005), the Court held that the prohibition in *Zadvydas* against indefinite detention of removable aliens also applied to inadmissible aliens given canons of statutory construction requiring that the removal statute be construed consistently for both classes.

[15] For example, an individual who arrives from China, fails to attend a removal proceeding because he never got notice of the hearing and thus has a final order of removal, could be become a "lifer" and detained indefinitely if his home country is unwilling to issue travel documents.

prevent individuals from having their detentions reviewed in the statutory allotted 90 days.

We also oppose Section 603 because it increases penalties and sets mandatory minimum sentence with respect to aliens who fail to depart when ordered removed or obstruct their removal, or who fail to comply with the terms of release while under supervision. The premise underlying this section is that tough mandatory minimum sentences will solve the problems associated with removal. We believe, however, that current law already contains sufficient penalties for individuals who fail to depart or comply with the terms of their release. Moreover, empirical evidence does not support this premise. The Judicial Conference of the United States and the U.S. Sentencing Commission have found that mandatory minimums distort the sentencing process and have the "opposite of their intended effect."[16] Mandatory minimums "destroy honesty in sentencing by encouraging charge and fact plea bargains."

Further, mandatory minimums result in unwarranted sentencing disparity. That is, "mandatory minimums . . . treat dissimilar offenders in a similar manner, although those offenders can be quite different with respect to the seriousness of their conduct or their danger to society . . ." and . . . "require the sentencing court to impose the same sentence on offenders when sound policy and common sense call for reasonable differences in punishment."[17] The Majority has failed to demonstrate any rationale purpose for mandatory sentences in this legislation—only an unwanted increase in detention time, space and money. Finally, we do not believe the punishment fits the crime when the Government is forced to detain someone for offenses without looking at the individual circumstances of the person's case.

Section 604 creates a new ground of inadmissibility for individuals who are in violation of fraud related offenses connected with Social Security cards and other identification documents. We are particularly disturbed by the fact that Section 604 strips the right to waivers to inadmissibility for certain individuals. This section will harshly penalize newcomers who are not criminals and come to the United States to contribute to the US work force. Because there are not legal channels for most of these necessary workers to enter the country or obtain work permits, many rely on false documents to contribute to our economy and feed their families.

This section inappropriately removes the discretion of officers and judges to weigh favorable equities and individual circumstances when determining whether a bar to admission should be "waived" for humanitarian or related reasons. Under this section, individuals can be forever barred from this country for this conduct that occurred 20 years ago, regardless of their potential to be an outstanding member of society. Countless individuals would be denied admission without regard to family and employment ties, and other discretionary factors. Barring such waivers is an insult to judges whose exercise of discretion is fundamental to their role.

We must also take issue Sections 605 and 606 due to the wide and retroactive net cast by these aggravated felony provisions. As

[16] See U.S. Sentencing Commission, Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (August 1991).

[17] *Id.*

we noted above, the aggravated felony provisions of this bill border on the ridiculous by including a wide net of minor offenses, including ones that are misdemeanors and not violent or aggravated. It is unreasonably harsh to attach a bar to adjustment for some individuals who fall under these provisions, when discretion in the review process can produce a more just and reasonable outcome.

Similarly, we take issue with Section 608 because it creates new grounds of inadmissibility and deportability for people who may have not have engaged in any wrongdoing at all.[18] We believe it may be unconstitutional to create a "guilt by association" regime whereby individuals who have never actually engaged in gang related activities but who are merely associated with them can be found deportable or inadmissible.[19] Further, we believe the designation scheme is likely unconstitutional because it provides no notice to the group or association being designated. Lastly, we believe the bars to asylum and TPS undermine our obligations to protect people who are victims of persecution or torture.

As a general matter, we are disturbed by attempts in this bill to slow down and limit the naturalization process.[20] In combination, Sections 609 and 612 represent an unprecedented attack on lawful permanent residents who are applying for naturalization. Section 609 unreasonably extends the time DHS has to adjudicate naturalizations applications from 120 days to 180 days and limits the ability of an individual seek relief from District Courts if the DHS fails to make a timely decision a naturalization application. The bill removes the ability of the District Court to adjudicate delayed applications and instead only allows the court the ability to review the cause for the delay and remand the case back to DHS where there is no guarantee of prompt processing. Given President Bush's repeated pledge to speed up DHS application process, it is unjustifiable to award DHS additional time to complete naturalization applications and then further penalize the individual whose applica-

[18] Section 608 applies to individuals who are 1) members of a criminal street gang and has committed, conspired or threatened to commit or seeks to enter the United States to engage solely, principally, or incidentally in, a gang crime or any other unlawful activity or 2) is a member of a criminal street gang as designated by the Attorney General. The bill sets up a designation process whereby the Attorney General can without notice designate a group or association as a "gang." This proposal is based on the "Alien Gang Removal Act of 2005," H.R. 2933.

[19] We echo the remarks by Georgetown University Law Center Professor David Cole: "It is already a deportable offense for a gang member, or indeed any other foreign national who is convicted of an aggravated felony, a very broad term that as this Committee no doubt knows, includes misdemeanors, misdemeanors, includes shoplifting crimes and the like. What this bill does is make people deportable who have never committed a crime in their life, who are not suspected of committing a crime, who are merely deemed by the Department of Homeland Security to be a member of a group which is deemed by the Attorney General to be a bad group. Bad groups have bad people in them. They also have good people in them. This bill makes no distinction between the two. It deports anyone who is found to be a member of any group which has been blacklisted by the Attorney General. That's guilt by association. If you took the McCarthy era laws that this Congress repealed in 1990, and you just substitute "criminal street gang" for "communist," that's what this bill would be. It essentially takes that approach where we punished people not for their own individual culpable conduct, but for their association with groups that we didn't like, and rendered them deportable. That's what this bill does, and it violates the first amendment right of association, and violates the fifth amendment right of an individual to be treated as an individual and not treated as culpable based on your associations." *http://judiciary.house.gov/media/pdfs/printers/109th/22187.pdf*

[20] In addition to the constitutional issues raised by retroactive application of the provisions of Section 6, we are also concerned that section 610 may be unconstitutional because it expands the ability for DHS (a non-neutral agency) to summarily deport a broad class of immigrants without judicial or administrative review. See also Section 613, modifying the already problematic definition of conviction to include any reversal, expungement, or modification of a conviction record.

tion is not adjudicated in a timely manner by denying him the ability to seek relief in court.[21]

Section 612 similarly limits the naturalization process by making it more difficult to achieve a finding of good moral character.[22] We believe that current standards, allowing the Government to determine good moral character based on conduct outside the five year time period provides sufficient flexibility and has more meaning because of the five year limitation. Under this section, such flexibility is subject to more abuse because it is coupled with language that allows an aggravated felony conviction at any time to be a bar on good moral character, sending the impression that dated offenses and acts can fit this definition.[23]

---

[21] See also, remarks from Robert Gibbs, "This approach is particularly troubling given our experience here in Seattle, where we won a state-wide class action settlement with CIS agreeing that they had been making GMC determinations incorrectly for the past several years, causing at least 500 bad denials. Our experience demonstrates the need for judicial review." See, *Lee v. Gonzalez.*

609 limits scope of judicial review of denial to whether the DHS denial was supported by a "facially legitimate and bona fide reasons" as opposed to the current de novo review. **BIEA** 609(c) also precludes adjudication of a natz application if ICE commences removal proceedings, so even if you get to court on a denial, they can shut down your court case by filing an NTA.

609: Besides the improper denials, there is a huge problem with delayed adjudications. There are 900 citizenship cases in this district that are held up beyond normal processing times because the FBI is overwhelmed with background check requests. There are many thousands more nationally. There is nothing negative on the applicants, just an inability of FBI to complete the searches that they want to do. We have numerous of these cases, some waiting over three years after their interview, where they passed all the history and English tests. Many are Iraqi refugees from Gulf War I, who escaped Saddam Hussein's prisons and who cleared CIS background checks when they entered and then when they got permanent resident status. Some have been offered jobs by the US Army to go back to Iraq and interpret for our troops, but they cannot get hired because their citizenship application is stuck, and CIS can give no explanation of the problem.

Under the current law, 8 USC 1447(b), if the citizenship interview has happened, and 120 days have passed without a decision, the applicant can ask a federal court judge to decide your case, who can grant the application, or send it back to CIS for further action. [Prior to 1990, the statute provided that the courts would decide naturalization applications, after you applied to INS for a recommendation. In 1990, Congress decided to make it more administrative, and shifted to INS the power to decide the application as an initial matter, but left an option to go to court for a decision if INS did not do so in 120 days after interview].

BIEA 609 would effectively eliminate the right under 8 USC 1447(b) to get a decision in delayed citizenship cases. While it appears to just shift the wait time from 120 to 180 days, in reality the clock would never start, as BIEA 609 also allows the DHS to define by regulation an "interview" or "examination" to be continuing. This is a tack they tried successfully in a court in Virginia with a pro se petitioner, but other courts have rejected this as vitiating the 120 day rule completely. As if this were not enough, even if the case gets to court, the only power the court s is to send it back to CIS.

[22] Applicants for certain immigration benefits, including naturalization and cancellation of removal must demonstrate "good moral character". When a person attempts to show good moral character for naturalize, s/he must generally show "good moral character" for the past five years. This section would extend that review period from five years to indefinitely for aggravated felonies, regardless of whether the crime was classified as an aggravated felony at the time of conviction. The bill also adds a clause that Government "shall not be limited to the applicant's conduct during the period for which good moral character is required, but may take into considerations as a basis determination the applicant's conduct and acts at any time."

[23] Notes from Robert Gibbs: BIEA 612 would give CIS even more power to make incorrect good moral character decisions in a couple of ways. First, the bill effectively increases the good moral character eligibility requirement from five years to lifetime. § 609(a)(3). It tries to overturn a recent en banc 9th Cir decision in Hovsepian, 422 F.3d 883 (9th Cir 2005) which held that since citizenship required good moral character for only the past five years, if the applicant showed he met that requirement, the CIS could not deny based on an offense prior to the five year period. This is a recipe for more delays, endless investigations into errors in the distant past. As the Ninth Circuit stated in Hovsepian, "To hold otherwise would sanction a denial of citizenship where the applicant's misconduct . . . was many years in the past, and where a former bad record has been followed by many years of exemplary conduct with every evidence of reformation and subsequent good moral character. Such a conclusion would require a holding that Congress had enacted a legislative doctrine of predestination and eternal damnation, whereas the statutes contemplate rehabilitation." Hovsepian, *supra.*

V. THE PROPOSED EMPLOYMENT VERIFICATION SYSTEM ENACTS AN UNWORKABLE, COSTLY GOVERNMENT PERMISSION-TO-WORK SYSTEM THAT WILL NOT RESOLVE THE FLOW OF UNDOCUMENTED WORKERS INTO AMERICAN SEEKING WORK

Title VII of H.R. 4437 creates a new Government program, the Employment Eligibility Verification System (EEVS) by vastly expanding the existing Basic Pilot Verification System and requiring, for the first time, all employers to seek Government consent to retain each and every worker they employ. We do not believe that the Majority has thought through costs and legal implication of the implementation of such a system, making its implementation unwise without further investigation.

At base, this country simply cannot afford to enact the proposed system. Building the type of electronic, employment verification system envisioned by this bill that will not delay employers and employees unduly will cost at least $11.7 billion per year according to the GAO, and that cost will be born mostly by employers.[24] Further, enacting the system will mandate the construction of a national ID system, whereby the Federal Government will collect and store in Government databases every American's most-sensitive, personally-identifiable information. Recent GAO reports estimate that requiring the issuance of a hardened Social Security Card like the one necessary for this program to all Americans and lawful permanent residents will cost at least $4 billion.

The challenge of implementing the massive new system envisioned by the Majority would be daunting at best: screening the approximately 54 million new hires per year and 146 million person workforce. However, there is no guarantee that the system will ever work due to the technological hurdles. The difficulties posed by the proposed system are well-documented by the current Basic Pilot. For example, the entire system would be based on databases that are known to contain an unacceptable number of errors and that would therefore likely yield millions of false determinations.[25] Workers with erroneous information would face layoffs and would be unable to work for any lawful business for the weeks or months it would take for Government agencies to resolve the problem. Lawful employees should not have to fight the Government just to keep working. Businesses should not lose experienced employees while Government data glitches are resolved.

The difficultlies mount for employment-authorized non-citizens. The records of employment-authorized non-citizens are even more inaccurate than those of citizens, so employers would be required to spend much more time and money to resolve their problems. SSA's databases only automatically verify the status of less than 50% of work-authorized non-citizens.[26] The SSA automated ap-

[24] The GAO cited a study by the Temple University Institute for Survey Research and stated that a "mandatory dial-up version of the pilot program for all employers would cost the Federal Government, employers, and employees about $11.7 billion total per year, *with employers bearing most of the costs*." GAO Report at 29 (emphasis added).

[25] As an example of DHS's current incapacity to manage its databases, just last month DHS Citizenship and Immigration Services (CIS) sent out letters recalling more than 60,000 green cards because a computer glitch miscalculated immigrants' residency start dates. Many of those letters were incorrect and CIS has announced it will send out new letters advising all individuals who received the initial letter in error, informing them that their green card was correct and that there was no need to return it.

[26] USCIS, *Report to Congress on the Basic Pilot Program* (Washington, DC 2004)

proval failure rate is more than 50 times higher for work-authorized non-citizens than for citizens.[27] The work-authorized non-citizens whose status cannot be confirmed by SSA must be referred to CIS for confirmation. Of these, CIS has to verify about 17% manually—a step which substantially delays eligibility confirmation.[28] The EEVS also requires employers to collect more data from non-citizens than for others.

Because of this added average expense and burden for non-citizens, we are concerned that employers, recruiters, or referrers are likely to shy away from employing or assisting anyone who looks or sounds foreign. Even worse, the burdensome new system would likely be the last straw for many of these businesses, potentially sending hundreds of thousands of them into the cash economy, completely out of the bounds of Government oversight and regulations. Ironically, this would likely increase undocumented immigration by creating a hidden new employment channel. This potential for exploitation and discrimination would be particularly acute for referrers and recruiters, who are required to verify employment eligibility *before* taking action.

The employer sanction system has frequently been abused by bad-apple employers who want to intimidate workers who complain about job conditions or exercise their workplace rights. Title VII exacerbates this problem by allowing employers to voluntarily and selectively reverify current workers starting two years after enactment so long as they cannot be shown to have done so on a discriminatory basis.

H.R. 4437 includes no procedures, funds or safeguards for correcting or updating inaccurate records, other than the simple requirement that it be done. Based on the error rate in the current pilot program, we could conservatively expect at least 3 million initial false negatives (a determination that the worker was not employment eligible) among the current workforce, many of which would require weeks or months to correct during which time it would be illegal to hire the worker. As a practical matter, we believe that records should be updated *before* the system goes into effect, for example, by setting accuracy standards as triggers before it becomes mandatory. This bill does not do that. In fact, it would severely limit legal recourse by workers who suffer injuries due to systematic agency errors. Under the bill, each wronged worker would be limited to individual claims for compensation under the Federal Tort Claims Act.

Of additional concern are the privacy implications raised by such a system. To be capable of confirming work-eligibility these databases will contain *substantial* amounts of personally identifiable information regarding *every* citizen and *every* visa holder. The information needed will include name, age, Social Security Number and/or another unique identifier, citizenship status, period of work-eligibility for non-citizens, address (to stamp out ID fraud), and a list of the queries from employers, their locations and the dates of those inquiries. Further, to resolve data errors, reduce identity fraud and distinguish between people with common names, addi-

[27] *Ibid.*
[28] *Ibid.*

tional information distinguishing individuals with the same names may be required, which likely necessitates the inclusion in the database of a date of birth and, perhaps, other biometric or personally identifiable information for every person residing in the United States.

Thus, the database to support such a system will, for the first time, list every citizen and every visa holder residing in the United States, and, by necessity those who are non-eligible, but lawfully residing in this country. And, it will track their employment history. This is the very essence of a National ID system. The establishment of such a system is an anathema to rights to privacy under the Fourth Amendment to the United States Constitution.[29] One searches in vain in Title VII for provisions that could potentially mitigate these serious concerns—such as adequate privacy and civil rights safeguards, or protections or recourse for persons who suffer termination due to agency error.

Finally, we are again concerned that this proposal is not accompanied by comprehensive immigration reform, which would provide channels for immigrants to live and work in the U.S. legally. Implementation of an employment verification system without such reform would invite severe unintended consequences such as expansion of the underground economy and increased identity theft, fraud, bribery and corruption.

VI. SECTION 8 OF THE BILL WOULD STRIP FEDERAL COURTS OF JURISDICTION OVER IMMIGRATION CASES AND COMPOUND THE INJUSTICES ALREADY PRESENT IN THE CURRENT SYSTEM

Legal immigrants face the risk of mandatory detention and automatic deportation for run-ins with the law that are considered minor in the case of U.S. citizens, and are subjected to judicial proceedings in which speed is valued far more than accuracy or fairness. Evidence of the abysmal treatment that legal immigrants often face in the judicial system can be found in the scathing criticisms emanating even from conservative federal courts as they consider appeals of the decisions handed down by immigration courts.[30] Phrases like "ignored the evidence," "riven with error," "astounding lapse in logic," and "woefully inadequate" have begun to pepper a growing number of these critiques by Federal courts. The Majority's solution to these injustices is to strip Federal courts of their already limited ability to identify and rectify mistakes made by immigration judges.

Section 802 seeks to restrict judicial review of a decision by DHS to revoke an individual's visa.[31] The Majority argues that consular

[29] Further, the database itself will be a threat to privacy because it will be a prime target of identity thieves. Such an enormous database will be impossible to secure, thus any undocumented immigrant seeking work will be able to pay hackers to steal work-eligible Americans identities. The most obvious targets will be those who are work-eligible but who do not work. Moreover, as current events have indicated, data breaches and spills are inevitable. Thus, we should anticipate significant losses of millions of Americans most sensitive information.

[30] The 7th Circuit court of appeals recently noted that it had to reverse 40% of these BIA orders in the past year—a vastly higher percentage than in other cases where the U.S. Government was the appellee (in those cases the reversal rate was 18%).

[31] This section would amend INA § 221(i) to eliminate judicial review over claims or challenges arising from the revocation of a visa after the holder of the visa has entered the U.S., thereby removing any judicial oversight over consular decisions. (As background, the House, in last year's Intelligence Reform Bill made visa revocation a ground of removal, but in conference the Senate added a clause allowing aliens facing removal to seek judicial review of their visa revoca-

decisions are non-reviewable, so revocations should likewise be non-reviewable. That argument misses the mark. To revoke someone's visa after they have traveled to the United States and acted in reliance on the validity of that issuance (e.g. moving to the U.S. and beginning employment) is very different from denying someone authority to enter the country from the outset. We believe that basic principles of fairness militate in favor of providing an opportunity to challenge the Government's arbitrary reversal of significant decision upon which an individual justifiably relied.

Section 803 attempts to negate 9th Circuit precedent that prohibits reinstatement of removal without a hearing. It would amend INA § 241(a)(5) to state that reinstatement shall not require proceedings before an immigration judge under INA section 240 or otherwise. Section 803 also would amend INA § 242 to restrict any judicial review on the issue of reinstatement to the United States Court of Appeals for the District of Columbia Circuit and would only allow a challenge to the constitutionality of the law or regulations.

Section 804 is another assault on those who fear persecution. "Withholding of removal" is a form of protection that, while similar to asylum, differs in two important respects: (1) it is nondiscretionary and (2) to receive this benefit, the alien must meet a higher standard of proof than asylum. In the REAL ID Act, Congress amended the asylum motivation standard to require an asylum applicant to show that one of the five protected characteristics would be "at least one central reason" for harm in order to receive asylum. Section 804 would import the REAL ID Act's "one central reason" requirement into the withholding statute by amending INA § 241(b)(3) to preclude a grant of withholding of removal unless the alien can establish that his or her life or freedom would be threatened in the country in question, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one *central reason* for such threat. The provision would be effective retroactive to the date of the REAL ID Act's passage into law (May 11, 2005).

We remain concerned about this standard because it could mean that a woman who is raped because she is a woman and because she is of a minority religion could apply for withholding of removal only if she could prove that the persecution based on religion was a central reason, but not if it was only one non-central reason while the main reason was due to her sex. Sex is not one of the protected categories. Proving this "central reason" is often difficult in these situations considering the many mixed motives for rape of minority women.

Section 805 would severely weaken the right to federal court review of erroneous Board of Immigration Review opinions. Specifically, section 805 would amend INA § 242(b)(3) to implement a process whereby an alien's petition for review would be assigned to a single court of appeals judge upon the filing of the alien's brief. If the judge issues a "certificate of reviewability," the case would proceed through the normal appellate process. Such certificate,

---

tions.) This section would gut the Senate's attempt to inject a measure of due process into the revocation process.

however, would issue only if the alien had "made a substantial showing that the petition for review is likely to be granted." If the alien fails to make such a showing, the single judge would deny the petition for review and that decision would be unreviewable. In addition, if the judge fails to issue such a certificate within 60 days (with certain limited extensions available), the petition for review would be deemed denied. If no certificate of reviewability is issued, any stay of removal would dissolve automatically, the Government would not be required to file its brief, and the petitioner could be removed without further recourse.

We strongly object to this proposal. Only months after the Majority revamped the statute as part of REAL ID, insisting that the circuit courts were the appropriate place for judicial review, the bill now seeks to restrict and virtually eliminate it altogether. In essence, section 805 unnecessarily initiates an unprecedented certiorari process for Article III court appeals, at a time when the circuit courts have become increasingly critical of the quality of agency decision making.

The number of cases being reversed and remanded, and the percentages cited by the courts themselves, indicates that petitions for review being filed today are far from "meritless," as the Majority contends. Although circuit courts have experienced an increase in volume of immigration cases (resulting in large part from irresponsible streamlining regulations issued by the Department of Justice), they also have initiated measures to address the caseflow that are far less drastic than those the bill would impose. Given the significant role being played by the judiciary in insuring that removal decisions comport with due process, we believe the degree of interference that the bill requires would undermine the court's role in ensuring fairness and providing needed oversight. There are far better mechanisms than those the bill proposes, which are already in place and working, to address the wave of immigration appeals in a way that balances the interests of all concerned.[32]

Congress has contemplated "court stripping" legislation numerous times including around the issue of desegregation that occurred in the 1960s at the height of the modern civil rights era. Those proposals were seen for what they were—an attack on judges who enforce the Constitution and protect the rights of individuals—and were defeated. Likewise opponents of women's right to reproductive choice and to separation of church and state have tried to strip the courts of their jurisdiction over abortion and school prayer cases. In each instance, civil rights, civil liberties and women's right communities mobilized against the proposed laws, educating the public that taking away the court's power to enforce rights is tantamount to taking away the rights themselves. When the targets are the most vulnerable in our society: immigrants, prisoners and the poor, there is less public awareness or opposition but all the greater need to defend these constitutional protections of fairness.

Section 806 would prohibit the issuance of a non-immigrant visa unless the applicant first waives his or her right to any review or appeal of an immigration officer's decision at the port of entry as

[32] For example, the 2nd Circuit has established a mediation program for blocks of cases where appropriate. Other courts such as the 3rd Circuit have established pro bono referral programs to ensure competent representation of aliens in their petitions for review.

to the alien's admissibility, as well as his or her right to contest, other than on the basis of an application for asylum, any action for removal of the alien. In the Majority's explanation of the bill, they analogize this required waiver of due process rights to the existing requirement under the Visa Waiver Program.

This analogy is disingenuous at best, as the class of individuals affected under this amendment would include H-1B and L-1 visa holders, students, exchange visitors, journalists, diplomats, treaty traders, fiancés, spouses of United States citizens entering on K visas, athletes, entertainers, certain aliens with extraordinary ability, cultural exchange visitors, religious workers, witnesses, and victims of trafficking. We maintain that the entry of these individuals is not analogous to that of tourists who, in exchange for being admitted visa-free for a period of 90 days, agree to waive their right to a removal hearing.

VII. H.R. 4437 VIOLATES U.S. OBLIGATIONS TO ASYLUM SEEKERS AND REFUGEES UNDER INTERNATIONAL LAW

People seeking asylum in the United States from persecution in their home countries would be particularly affected by this legislation. Asylum seekers detained upon arrival in the United States are already subject to being treated like criminals and detained under jail-like conditions for indeterminate periods of time. This bill would increase the prolonged detention of this vulnerable population, would redefine asylum seekers who were simply here out of status as felons under the law, and would subject an overwhelming proportion of asylum seekers inside the United States to removal without a hearing.

For those whose cases were decided through the immigration court process, the bill would aim to diminish their access to judicial review, by subjecting their cases to summary dismissal if a single judge of the court of appeals failed to issue them a "certificate of reviewability" within a 60 day time limit. Finally, by attempting to undo the Supreme Court's rulings prohibiting the indefinite detention of non-citizens who cannot be removed from the United States, the bill would allow asylum seekers and refugees who were ordered removed but could not be returned to their countries—a situation which historically has applied to persons who fled countries ranging from Cambodia to Vietnam to Cuba—to be jailed indefinitely, subject to very limited administrative and still more limited judicial review.

Section 203 of the bill would make it a crime to be in the U.S. in violation of immigration laws. The radical nature of this change to our immigration laws, as applied to non-citizens generally, has been noted earlier. As applied to asylum seekers, it would also violate U.S. obligations under Article 31 of the Refugee Convention, which prohibits the penalization of asylum seekers for the irregular manner of their entry into or presence in the territory of their country of refuge. The bill contains no exception for asylum seekers. Nor does it contain an exception for other vulnerable populations: victims of trafficking, children, young people whose lack of status in the U.S. is due to their having been brought here at a young age by their parents, battered women, and others whose ir-

regular presence in the United States is due to forces beyond their control including war or natural disaster in their home countries.[33]

Other sections of the bill that aim to subject an increasing proportion of non-citizens to summary removal without a hearing also pose particular concerns for refugee protection. Section 806 would prohibit the issuance of a non-immigrant visa to anyone unless the person waives his right, not only to review or appeal the decision of a BCBP officer at the port of entry that he is inadmissible, but also "to contest, other than on the basis of an application for asylum, any action for the removal of the alien."

The extreme nature of this proposal as applied to non-citizens in general has been noted earlier, and despite its provision of an exception for asylum claims, it also threatens asylum seekers' access to the adjudication process. Persons apprehended and deported for overstaying their period of authorized admission under the Visa Waiver Program (VWP) are not subject even to the limited protections available to asylum seekers placed in expedited removal under section 235. The extension of these same summary-removal provisions currently applicable to VWP entrants to all non-immigrants greatly increases the risk of asylum seekers who entered the U.S. legally being returned to their countries of persecution without ever having an opportunity to make their claims.

In addition, this provision would appear to prevent those who entered on non-immigrant visas and are coming forward spontaneously to claim asylum from making an affirmative application for asylum before the Asylum Office, in that people not eligible for hearings under section 240 are currently removed from the Asylum Office's jurisdiction. While being inefficient (in forcing the adjudication of all these cases by the immigration courts, a much slower, more cumbersome, and more expensive process), this provision also has the perverse effect of penalizing asylum seekers who entered the United States through legal channels for the legality of their original entry. And asylum is the only exception this provision recognizes, leaving other categories of vulnerable people to be deported with no process whatsoever, including children, trafficking victims, and persons eligible for relief under VAWA, cancellation of removal, or Temporary Protected Status.

The vast expansion by statute of expedited removal under section 401 of this bill, to anyone (other than Mexicans, Canadians, and Cubans) present in the U.S. without admission or parole and apprehended within 100 miles of an international land border of the U.S. and within 14 days of entry, is also of serious concern. Although persons seeking asylum would still be eligible to be referred for a credible fear interview, the expansion of these summary procedures, which place enormous unreviewable power into the hands of Border Patrol officers, would pose a very serious challenge of training and supervision to ensure that refugees are not returned to persecution in violation of the United States' obligations under the Refugee Convention. Moreover, aside from asylum seekers, this

[33] For example, under this provision, a person who entered the U.S. legally and found herself unable to return to, for example, El Salvador, Liberia, Honduras, Burundi, based on circumstances beyond her control like civil war or natural disaster, could find herself prosecuted, jailed for up to 366 days, and then—as a result of this—ineligible for TPS if that protection later became available to people in her situation.

section makes no other exceptions for other vulnerable groups who have a claim to protection under our laws, including victims of trafficking.

Additionally, for arriving asylum seekers, Section 401, would result in increased prolonged detention.[34] Under the permanent regime, however, the person's detention would be mandatory until admitted or removed, unless he/she were permitted to withdraw his/her application for admission and immediately depart the U.S., or were paroled. DHS's use of its discretionary parole authority for arriving asylum seekers thus far has been erratic—leading, for example, to the unaccountable decision last year to detain the Rev. Joseph N. Dantica, an 81-year-old Baptist minister from Haiti who arrived in the United States on a valid passport and visa and whom DHS had the power to release immediately pending his asylum claim, but who instead died in DHS custody a few days later.

This bill's overwhelming focus on detention and on filling available bed space without providing adequate safeguards sets the stage for further tragedies of this sort as automatic detention, rather than a reasoned consideration of individual circumstances, becomes a reflex.[35] The Committee in fact recognized the problem of substandard, inhumane conditions and treatment of immigration detainees through adopting an amendment offered by Mr. Scott of Viginia which will require the Comptroller General of the United States to report to Congress on the deaths in custody of detainees held on immigration violations.[36]

For persons, including asylum seekers and refugees, whose cases were ultimately denied but who could not be returned to their countries of origin, Section 602, as described in more detail in earlier sections of this document, would allow them to be jailed indefinitely subject to very limited review. This section could subject large numbers of asylum seekers, refugees, and nationals of countries like Cuba to prolonged indefinite detention for reasons beyond their control and subject to inadequate review.

---

[34] The provision sets up an interim regime, which would go into effect 60 days after enactment of this legislation, and a permanent regime, which would go into effect on October 1, 2006. Under the interim regime, a person attempting to enter the U.S. illegally and apprehended at a U.S. port of entry or along a land or maritime border could not be released pending proceedings unless the DHS secretary determined ("after conducting all appropriate background and security checks on the alien") that the alien "does not pose a national security risk" and the alien posted bond of at least $5,000.

[35] In this regard, we recognize the importance of Congressman Meek's amendment to the House's Border Security and Terrorism Prevention Act of 2005 (H.R. 4312) entitled "The Security Immigration Coordination and Oversight Act" which provided simple protections for immigrant detainees. For example, the amendment called for families to be detained together and not separated, as current policy dictates. The amendment also included language mandating access to medical care for these vulnerable detainees, many of whom have experienced rape, torture and other human rights abuses. It also sought to increase the effectiveness of the Department of Homeland Security's Policy Directorate, codify detention standards and provide for a high level officer in charge of monitoring detention conditions. Had the measure passed, it would have directed DHS to create enforceable regulations on the treatment of immigrants, asylum-seekers, refugees and other vulnerable groups that promote a balance between law enforcement and humanitarian considerations.

[36] Mr. Scott's amendment was timely considering the shocking, gut-wrenching expose entitled "The Death of Richard Rust" which aired on National Public Radio's *All Things* Considered on December 5, 2005, available *http://www.npr.org/templates/story/story.php?storyI.* In this expose, Daniel Zwerdling examines how Richard Rust, a 34-year-old Jamaican detainee in Louisiana's Oakdale Federal Detention Center, collapsed and died after Government employees apparently disregarded national medical standards by neglecting to give him basic emergency care. Prison employees subsequently put dozens of immigrants at Oakdale in near-solitary confinement after they protested what had happened. The Department of Homeland Security refused to be interview for the report.

CONCLUSION

There is an urgent need and desire for real solutions that could truly address our immigration problems. H.R. 4437 does not deliver, and represents yet another failed opportunity. As it stands, this bill is just another in a long line of get-tough immigration bills that have only succeeded in exacerbating our problems. Since 1995, Congress has enacted an average of nearly one such bill every year. Enactment of H.R. 4437 would represent the third time in just the last 12 months that we would have done so. Last December we passed intelligence reform, which included significant immigration enforcement provisions, and then in May we passed the REAL ID Act which was supposed to bring our immigration situation under control. No sooner do we enact such legislation than it is forgotten—except by those charged with implementing failed concepts that sounded good in a press release—and calls begin for yet another get-tough bill.

After numerous such bills in the last decade of GOP control, net illegal immigration is at its highest level ever, and there are an estimated 11 million undocumented immigrants in the U.S. We believe that it is well past time to re-consider our approach. As Members on both sides of the aisle now recognize, our immigration enforcement mechanisms will not work until we reform the system they are intended to enforce. It is time to enact comprehensive legislation that resolves the status of undocumented immigrants who work and pay taxes in our country, accommodates the future flows that will be necessary for our economy, and prevents the needless separation of families.

JOHN CONYERS, JR.
HOWARD L. BERMAN.
JERROLD NADLER.
ROBERT C. SCOTT.
MELVIN L. WATT.
ZOE LOFGREN.
SHEILA JACKSON LEE.
MARTIN T. MEEHAN.
WILLIAM D. DELAHUNT.
ROBERT WEXLER.
LINDA T. SÁNCHEZ.
CHRIS VAN HOLLEN.
DEBBIE WASSERMAN SCHULTZ.

○