

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 418,
REAL ID ACT OF 2005

FEBRUARY 9, 2005.—Referred to the House Calendar and ordered to be printed

Mr. SESSIONS, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 75]

The Committee on Rules, having had under consideration House Resolution 75, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the further consideration of H.R. 418, the REAL ID Act of 2005, under a structured rule. The rule provides that no further general debate shall be in order.

The rule provides that the amendment printed in Part A of this report shall be considered as adopted in the House and in the Committee of the Whole. The rule provides that the bill, as amended, shall be considered as the original bill for the purpose of further amendment and shall be considered as read.

The rule makes in order only those amendments printed in Part B of this report. The rule provides that the amendments printed in Part B of this report may be offered only in the order printed in the report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.

The rule waives all points of order against the amendments printed in Part B of this report. Finally, the rule provides one motion to recommit with or without instructions.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 1

Date: February 9, 2005.

Measure: Providing further consideration of H.R. 418, REAL ID Act of 2005.

Motion by: Mrs. Slaughter.

Summary of motion: To make in order and provide the appropriate waivers for the amendment offered by Representative Nancy Johnson of Connecticut, which closes the loopholes in the H-1B and L-1 visa programs. The amendment requires companies to seek to hire qualified Americans before beginning the search for a single H-1B worker. The amendment applies several of the protections in the H-1B program to the L-1 visa program, which was created to enable multinational corporations to bring in key foreign employees to work in the United States for up to seven years, including the payment of prevailing wage and restrictions on replacing American workers with L-1 visa holders. Also, the amendment cuts the maximum length of stay by a L-1 visa holder by two years (i.e. from seven years to five years) for executives and managers and from five years to three years for workers with specialized knowledge.

Results: Defeated 3 to 9.

Vote by Members: Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Putnam—Nay; Capito—Nay; Cole—Nay; Bishop—Nay; Gingrey—Nay; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee Record Vote No. 2

Date: February 9, 2005.

Measure: Providing for further consideration of H.R. 418, REAL ID Act of 2005.

Motion by: Mr. McGovern.

Summary of motion: To report an open rule for H.R. 418, the REAL ID Act of 2005.

Results: Defeated 3 to 9.

Vote by Members: Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Putnam—Nay; Capito—Nay; Cole—Nay; Bishop—Nay; Gingrey—Nay; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

PART A—SUMMARY OF AMENDMENT CONSIDERED AS ADOPTED

Manager's Amendment. Removes the annual cap on the number of aliens granted asylum who can become permanent residents. It would also extend the bill's provisions regarding the credibility determinations of immigration judges in asylum proceedings to apply to other requests for relief from removal before immigration judges. Ensures the prompt removal of criminal aliens and terrorists who pose a threat to our national security. It would clarify that no county administrative agency, quasi-state Commission or state administrative agency, or state-authorized Commission can hear any cause

or claim to block the completion of the border fence between San Diego and Tijuana. Adds Secretary of Homeland Security to Attorney General and Secretary of State for purposes of making decisions on the inadmissibility of terrorists. The amendment would also make a series of minor and technical amendments.

PART B—SUMMARY OF AMENDMENTS MADE IN ORDER

1. Sessions: Promotes the goal of 100% repatriation of all aliens ordered deported by clarifying obligations under the Department of Homeland Security's existing delivery bond authority. (20 minutes)

2. Castle: Requires the Secretary of Homeland Security to enter into the appropriate aviation security screening database the appropriate background information of any person convicted of using a false drivers' license for the purpose of boarding an airplane. In addition to the federally mandated punishment for using a false drivers' license, collecting this information would enhance our ability to track and detect potential security threats. (20 minutes)

3. Kolbe: Vulnerability and Threat Assessment—requires the Department of Homeland Security, working through field offices of the Bureau of Customs and Border Protection (BCBP), to study the technology, equipment, and personnel needed to address security within the U.S. and submit a report to Congress including recommendations for improvement.

Ground Surveillance Pilot Program—similar to the aerial surveillance pilot program, requires DHS to develop and carry out a ground surveillance pilot program to identify and test ground surveillance technologies that will improve border security. The program will include at least one northern border and one southern border location.

Enhancement of Border Communications Integration and Information Sharing—requires DHS to develop a plan to improve communications and information sharing with federal, state and tribal government agencies and report findings with a plan for implementation.

Adds Judiciary Committee to the reporting requirements and removes references to the "Select" Committee on Homeland Security. (20 minutes)

4. Nadler/Meek: Strikes section 101. (20 minutes)

5. Farr: Strikes section 102. (20 minutes)

PART A—TEXT OF AMENDMENT CONSIDERED AS ADOPTED

Amend section 101 to read as follows:

SECTION 101. PREVENTING TERRORISTS FROM OBTAINING RELIEF FROM REMOVAL.

(a) CONDITIONS FOR GRANTING ASYLUM.—Section 208(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)) is amended—

(1) by striking "The Attorney General" the first place such term appears and inserting the following:

"(A) ELIGIBILITY.—The Secretary of Homeland Security or the Attorney General";

(2) by striking "the Attorney General" the second and third places such term appears and inserting "the Secretary of Homeland Security or the Attorney General"; and

(3) by adding at the end the following:

“(B) BURDEN OF PROOF.—

“(i) IN GENERAL.—The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be a central reason for persecuting the applicant.

“(ii) SUSTAINING BURDEN.—The testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant’s testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant’s burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines, in the trier of fact’s discretion, that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence without departing the United States. The inability to obtain corroborating evidence does not excuse the applicant from meeting the applicant’s burden of proof.

“(iii) CREDIBILITY DETERMINATION.—The trier of fact should consider all relevant factors and may, in the trier of fact’s discretion, base the trier of fact’s credibility determination on any such factor, including the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not made under oath), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim. There is no presumption of credibility.”

(b) WITHHOLDING OF REMOVAL.—Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended by adding at the end the following:

“(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), the trier of fact shall determine whether the alien has sustained the alien’s burden of proof, and shall make credibility deter-

minations, in the manner described in clauses (ii) and (iii) of section 208(b)(1)(B).”.

(c) OTHER REQUESTS FOR RELIEF FROM REMOVAL.—Section 240(c) of the Immigration and Nationality Act (8 U.S.C. 1230(c)) is amended—

(1) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and

(2) by inserting after paragraph (3) the following:

“(4) APPLICATIONS FOR RELIEF FROM REMOVAL.—

“(A) IN GENERAL.—An alien applying for relief or protection from removal has the burden of proof to establish that the alien—

“(i) satisfies the applicable eligibility requirements; and

“(ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion.

“(B) SUSTAINING BURDEN.—The applicant must comply with the applicable requirements to submit information or documentation in support of the applicant’s application for relief or protection as provided by law or by regulation or in the instructions for the application form. In evaluating the testimony of the applicant or other witness in support of the application, the immigration judge will determine whether or not the testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant has satisfied the applicant’s burden of proof. In determining whether the applicant has met such burden, the immigration judge shall weigh the credible testimony along with other evidence of record. Where the immigration judge determines in the judge’s discretion that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence without departing from the United States. The inability to obtain corroborating evidence does not excuse the applicant from meeting the burden of proof.

“(C) CREDIBILITY DETERMINATION.—The immigration judge should consider all relevant factors and may, in the judge’s discretion, base the judge’s credibility determination on any such factor, including the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not made under oath), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim. There is no presumption of credibility.”.

(d) STANDARD OF REVIEW FOR ORDERS OF REMOVAL.—Section 242(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(4)) is amended by adding at the end, after subparagraph (D), the following: “No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 208(b)(1)(B), 240(c)(4)(B), or 241(b)(3)(C), unless the court finds that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.”.

(e) CLARIFICATION OF DISCRETION.—Section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)) is amended—

(1) by inserting “or the Secretary of Homeland Security” after “Attorney General” each place such term appears; and

(2) in the matter preceding clause (i), by inserting “and regardless of whether the judgment, decision, or action is made in removal proceedings,” after “other provision of law,”.

(f) REMOVAL OF CAPS.—Section 209 of the Immigration and Nationality Act (8 U.S.C. 1159) is amended—

(1) in subsection (a)(1)—

(A) by striking “Service” and inserting “Department of Homeland Security”; and

(B) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security or the Attorney General”;

(2) in subsection (b)—

(A) by striking “Not more” and all that follows through “asylum who—” and inserting “The Secretary of Homeland Security or the Attorney General, in the Secretary’s or the Attorney General’s discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—”; and

(B) in the matter following paragraph (5), by striking “Attorney General” and inserting “Secretary of Homeland Security or the Attorney General”; and

(3) in subsection (c), by striking “Attorney General” and inserting “Secretary of Homeland Security or the Attorney General”.

(g) EFFECTIVE DATES.—

(1) The amendments made by paragraphs (1) and (2) of subsection (a) shall take effect as if enacted on March 1, 2003.

(2) The amendments made by subsections (a)(3), (b), and (c) shall take effect on the date of the enactment of this Act and shall apply to applications for asylum, withholding, or other removal made on or after such date.

(3) The amendment made by subsection (d) shall take effect on the date of the enactment of this Act and shall apply to all cases in which the final administrative removal order is or was issued before, on, or after such date.

(4) The amendments made by subsection (e) shall take effect on the date of the enactment of this Act and shall apply to all cases pending before any court on or after such date.

(5) The amendments made by subsection (f) shall take effect on the date of the enactment of this Act.

(h) REPEAL.—Section 5403 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is repealed.

In section 102(c)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as proposed to be added by section 102 of the bill, strike “court” and insert “court, administrative agency, or other entity”.

In section 103(a) of the bill, strike “Section” and all that follows through “is amended” and insert the following: “So much of section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) as precedes the final sentence is amended”.

In section 212(a)(3)(B)(i)(IV)(aa) of the Immigration and Nationality Act, as proposed to be amended by section 103(a) of the bill, after “organization” insert “(as defined in clause (vi))”.

In section 212(a)(3)(B)(i)(VIII) of the Immigration and Nationality Act, as proposed to be added by section 103(a) of the bill, after “terrorist organization” insert “(as defined in clause (vi))”.

In section 212(a)(3)(B)(i) of the Immigration and Nationality Act, as proposed to be amended by section 103(a) of the bill, strike the final sentence.

In section 212(a)(3)(B)(iv) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, strike “subparagraph” and insert “Act”.

In section 212(a)(3)(B)(iv)(V)(aa) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, strike “clause” and insert “subsection”.

In section 212(a)(3)(B)(iv)(VI)(cc) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, after “clause (vi)” insert “or to any member of such an organization,”

In section 212(a)(3)(B)(iv)(VI)(dd) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, after “(vi)(III),” insert “or to any member of such an organization,”.

At the end of section 212(a)(3)(B)(iv) of the Immigration and Nationality Act, as proposed to be amended by section 103(b) of the bill, add the following:

This clause shall not apply to any material support the alien afforded to an organization or individual that has committed terrorist activity, if the Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Attorney General, after consultation with the Secretary of State and the Secretary of Homeland Security, concludes in his sole unreviewable discretion, that this clause should not apply.

Amend section 103(d) of the bill to read as follows:

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, 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 proceedings instituted before, on, or after the date of the enactment of this Act; and

(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.

In section 104(a)(1) of the bill, insert “of the Immigration and Nationality Act” after “237(a)(4)(B)”

In section 237(a)(4)(B) of the Immigration and Nationality Act, as proposed to be amended by section 104(a)(1) of the bill, strike “would be considered inadmissible pursuant to” and insert “is described in”.

Amend section 104(a)(2) of the bill to read as follows:

“(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act, and the amendment, and section 237(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(B)), as amended by such paragraph, shall apply to—

“(A) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

“(B) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.”

At the end of title I of the bill, add the following:

SEC. 105. JUDICIAL REVIEW OF ORDERS OF REMOVAL.

(a) IN GENERAL.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraph (A), by inserting “(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” after “Notwithstanding any other provision of law”;

(ii) in each of subparagraphs (B) and (C), by inserting “(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, and except as provided in subparagraph (D)” after “Notwithstanding any other provision of law”; and

(iii) by adding at the end the following:

“(D) JUDICIAL REVIEW OF CERTAIN LEGAL CLAIMS.—Nothing in subparagraph (B) or (C), or in any other provision of this Act which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or pure questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.”; and

(B) by adding at the end the following:

“(4) CLAIMS UNDER THE UNITED NATIONS CONVENTION.—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 petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture

and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

“(5) EXCLUSIVE MEANS OF REVIEW.—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 petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act, except as provided in subsection (e). For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms ‘judicial review’ and ‘jurisdiction to review’ include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).”;

(2) in subsection (b)—

(A) in paragraph (3)(B), by inserting “pursuant to subsection (f)” after “unless”; and

(B) in paragraph (9), by adding at the end the following: “Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.”; and

(3) in subsection (g), by inserting “(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” after “notwithstanding any other provision of law”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the date of the enactment of this Act and shall apply to cases in which the final administrative order of removal, deportation, or exclusion was issued before, on, or after the date of the enactment of this Act.

(c) TRANSFER OF CASES.—If an alien’s case, brought under section 2241 of title 28, United States Code, and challenging a final administrative order of removal, deportation, or exclusion, is pending in a district court on the date of the enactment of this Act, then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for the circuit in which a petition for review could have been properly filed under section 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section, or under section 309(c)(4)(D) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note). The court of appeals shall treat the transferred case as if it had been filed pursuant to a petition for review under such section 242, except that subsection (b)(1) of such section shall not apply.

(d) TRANSITIONAL RULE CASES.—A petition for review filed under former section 106(a) of the Immigration and Nationality Act (as in effect before its repeal by section 306(b) of the Illegal Immigration

Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1252 note)) shall be treated as if it had been filed as a petition for review under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section. 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, such petition for review shall be the sole and exclusive means for judicial review of an order of deportation or exclusion.

In section 202(a)(2) of the bill, strike “to the Secretary.” and all that follows through the period at the end and insert the following: “to the Secretary of Transportation. Such certifications shall be made at such times and in such manner as the Secretary of Transportation, in consultation with the Secretary of Homeland Security, may prescribe by regulation.”

Strike section 202(d)(11) of the bill.

Strike section 202(e) of the bill.

In section 206(a) of the bill, strike “certify” and insert “set”.

In section 206 of the bill—

(1) redesignate subsection (b) as subsection (c); and

(2) insert after subsection (a) the following:

(b) COMPLIANCE WITH STANDARDS.—All authority to certify compliance with standards under this title shall be carried out by the Secretary of Transportation, in consultation with the Secretary of Homeland Security and the States.

At the end of the bill, add the following:

SEC. 208. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this title shall be construed to affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code.

PART B—TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SESSIONS OF TEXAS, OR HIS DESIGNEE, TO BE DEBATABLE FOR 20 MINUTES

At the end of title I, add the following:

SEC. 105. DELIVERY BONDS.

(a) DEFINITIONS.—For purposes of this section:

(1) DELIVERY BOND.—The term “delivery bond” means a written suretyship undertaking for the surrender of an individual against whom the Department of Homeland Security has issued an order to show cause or a notice to appear, the performance of which is guaranteed by an acceptable surety on Federal bonds.

(2) PRINCIPAL.—The term “principal” means an individual who is the subject of a bond.

(3) SURETYSHIP UNDERTAKING.—The term “suretyship undertaking” means a written agreement, executed by a bonding agent on behalf of a surety, which binds all parties to its certain terms and conditions and which provides obligations for the principal and the surety while under the bond and penalties for forfeiture to ensure the obligations of the principal and the surety under the agreement.

(4) BONDING AGENT.—The term “bonding agent” means any individual properly licensed, approved, and appointed by power of attorney to execute or countersign surety bonds in connection with any matter governed by the Immigration and Nationality Act as amended (8 U.S.C. 1101, et seq.), and who receives a premium for executing or countersigning such surety bonds.

(5) SURETY.—The term “surety” means an entity, as defined by, and that is in compliance with, sections 9304 through 9308 of title 31, United States Code, that agrees—

- (A) to guarantee the performance, where appropriate, of the principal under a bond;
- (B) to perform the bond as required; and
- (C) to pay the face amount of the bond as a penalty for failure to perform.

(b) VALIDITY, AGENT NOT CO-OBLIGOR, EXPIRATION, RENEWAL, AND CANCELLATION OF BONDS.—

(1) VALIDITY.—Delivery bond undertakings are valid if such bonds—

- (A) state the full, correct, and proper name of the alien principal;
- (B) state the amount of the bond;
- (C) are guaranteed by a surety and countersigned by an agent who is properly appointed;
- (D) bond documents are properly executed; and
- (E) relevant bond documents are properly filed with the Secretary of Homeland Security.

(2) BONDING AGENT NOT CO-OBLIGOR, PARTY, OR GUARANTOR IN INDIVIDUAL CAPACITY, AND NO REFUSAL IF ACCEPTABLE SURETY.—Section 9304(b) of title 31, United States Code, is amended by adding at the end the following: “Notwithstanding any other provision of law, no bonding agent of a corporate surety shall be required to execute bonds as a co-obligor, party, or guarantor in an individual capacity on bonds provided by the corporate surety, nor shall a corporate surety bond be refused if the corporate surety appears on the current Treasury Department Circular 570 as a company holding a certificate of authority as an acceptable surety on Federal bonds and attached to the bond is a currently valid instrument showing the authority of the bonding agent of the surety company to execute the bond.”

(3) EXPIRATION.—A delivery bond undertaking shall expire at the earliest of—

- (A) 1 year from the date of issue;
- (B) at the cancellation of the bond or surrender of the principal; or
- (C) immediately upon nonpayment of the renewal premium.

(4) RENEWAL.—Delivery bonds may be renewed annually, with payment of proper premium to the surety, if there has been no breach of conditions, default, claim, or forfeiture of the bond. Notwithstanding any renewal, when the alien is surrendered to the Secretary of Homeland Security for removal, the Secretary shall cause the bond to be canceled.

(5) CANCELLATION.—Delivery bonds shall be canceled and the surety exonerated—

(A) for nonrenewal after the alien has been surrendered to the Department of Homeland Security for removal;

(B) if the surety or bonding agent provides reasonable evidence that there was misrepresentation or fraud in the application for the bond;

(C) upon the death or incarceration of the principal, or the inability of the surety to produce the principal for medical reasons;

(D) if the principal is detained by any law enforcement agency of any State, county, city, or any political subdivision thereof;

(E) if it can be established that the alien departed the United States of America for any reason without permission of the Secretary of Homeland Security, the surety, or the bonding agent;

(F) if the foreign state of which the principal is a national is designated pursuant to section 244 of the Act (8 U.S.C. 1254a) after the bond is posted; or

(G) if the principal is surrendered to the Department of Homeland Security, removal by the surety or the bonding agent.

(6) SURRENDER OF PRINCIPAL; FORFEITURE OF BOND PREMIUM.—

(A) SURRENDER.—At any time, before a breach of any of the bond conditions, if in the opinion of the surety or bonding agent, the principal becomes a flight risk, the principal may be surrendered to the Department of Homeland Security for removal.

(B) FORFEITURE OF BOND PREMIUM.—A principal may be surrendered without the return of any bond premium if the principal—

(i) changes address without notifying the surety, the bonding agent, and the Secretary of Homeland Security in writing prior to such change;

(ii) hides or is concealed from a surety, a bonding agent, or the Secretary;

(iii) fails to report to the Secretary as required at least annually; or

(iv) violates the contract with the bonding agent or surety, commits any act that may lead to a breach of the bond, or otherwise violates any other obligation or condition of the bond established by the Secretary.

(7) CERTIFIED COPY OF BOND AND ARREST WARRANT TO ACCOMPANY SURRENDER.—

(A) IN GENERAL.—A bonding agent or surety desiring to surrender the principal—

(i) shall have the right to petition the Secretary of Homeland Security or any Federal court, without having to pay any fees or court costs, for an arrest warrant for the arrest of the principal;

(ii) shall forthwith be provided 2 certified copies each of the arrest warrant and the bond undertaking, without having to pay any fees or courts costs; and

(iii) shall have the right to pursue, apprehend, detain, and surrender the principal, together with cer-

tified copies of the arrest warrant and the bond undertaking, to any Department of Homeland Security detention official or Department detention facility or any detention facility authorized to hold Federal detainees.

(B) EFFECTS OF DELIVERY.—Upon surrender of a principal under subparagraph (A)(iii)—

(i) the official to whom the principal is surrendered shall detain the principal in custody and issue a written certificate of surrender; and

(ii) the Secretary of Homeland Security shall immediately exonerate the surety from any further liability on the bond.

(8) FORM OF BOND.—Delivery bonds shall in all cases state the following and be secured by a corporate surety that is certified as an acceptable surety on Federal bonds and whose name appears on the current Treasury Department Circular 570:

“(A) BREACH OF BOND; PROCEDURE, FORFEITURE, NOTICE.—

“(i) If a principal violates any conditions of the delivery bond, or the principal is or becomes subject to a final administrative order of deportation or removal, the Secretary of Homeland Security shall—

“(I) immediately issue a warrant for the principal’s arrest and enter that arrest warrant into the National Crime Information Center (NCIC) computerized information database;

“(II) order the bonding agent and surety to take the principal into custody and surrender the principal to any one of 10 designated Department of Homeland Security ‘turn-in’ centers located nationwide in the areas of greatest need, at any time of day during 15 months after mailing the arrest warrant and the order to the bonding agent and the surety as required by subclause (III), and immediately enter that order into the National Crime Information Center (NCIC) computerized information database; and

“(III) mail 2 certified copies each of the arrest warrant issued pursuant to subclause (I) and 2 certified copies each of the order issued pursuant to subclause (II) to only the bonding agent and surety via certified mail return receipt to their last known addresses.

“(ii) Bonding agents and sureties shall immediately notify the Secretary of Homeland Security of their changes of address and/or telephone numbers.

“(iii) The Secretary of Homeland Security shall establish, disseminate to bonding agents and sureties, and maintain on a current basis a secure nationwide toll-free list of telephone numbers of Department of Homeland Security officials, including the names of such officials, that bonding agents, sureties, and their employees may immediately contact at any time to

discuss and resolve any issue regarding any principal or bond, to be known as ‘Points of Contact’.

“(iv) A bonding agent or surety shall have full and complete access, free of charge, to any and all information, electronic or otherwise, in the care, custody, and control of the United States Government or any State or local government or any subsidiary or police agency thereof regarding the principal that may be helpful in complying with section 105 of the REAL ID Act of 2005 that the Secretary of Homeland Security, by regulations subject to approval by Congress, determines may be helpful in locating or surrendering the principal. Beyond the principal, a bonding agent or surety shall not be required to disclose any information, including but not limited to the arrest warrant and order, received from any governmental source, any person, firm, corporation, or other entity.

“(v) If the principal is later arrested, detained, or otherwise located outside the United States and the outlying possessions of the United States (as defined in section 101(a) of the Immigration and Nationality Act), the Secretary of Homeland Security shall—

“(I) immediately order that the surety is completely exonerated, and the bond canceled; and

“(II) if the Secretary of Homeland Security has issued an order under clause (i), the surety may request, by written, properly filed motion, reinstatement of the bond. This subclause may not be construed to prevent the Secretary of Homeland Security from revoking or resetting a bond at a higher amount.

“(vi) The bonding agent or surety must—

“(I) during the 15 months after the date the arrest warrant and order were mailed pursuant to clause (i)(III) surrender the principal one time; or

“(II)(aa) provide reasonable evidence that producing the principal was prevented—

“(aaa) by the principal’s illness or death;

“(bbb) because the principal is detained in custody in any city, State, country, or any political subdivision thereof;

“(ccc) because the principal has left the United States or its outlying possessions (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)); or

“(ddd) because required notice was not given to the bonding agent or surety; and

“(bb) establish by affidavit that the inability to produce the principal was not with the consent or connivance of the bonding agent or surety.

“(vii) If compliance occurs more than 15 months but no more than 18 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal

to 25 percent of the face amount of the bond shall be assessed as a penalty against the surety.

“(viii) If compliance occurs more than 18 months but no more than 21 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 50 percent of the face amount of the bond shall be assessed as a penalty against the surety.

“(ix) If compliance occurs more than 21 months but no more than 24 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 75 percent of the face amount of the bond shall be assessed as a penalty against the surety.

“(x) If compliance occurs 24 months or more after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 100 percent of the face amount of the bond shall be assessed as a penalty against the surety.

“(xi) If any surety surrenders any principal to the Secretary of Homeland Security at any time and place after the period for compliance has passed, the Secretary of Homeland Security shall cause to be issued to that surety an amount equal to 50 percent of the face amount of the bond: *Provided, however,* That if that surety owes any penalties on bonds to the United States, the amount that surety would otherwise receive shall be offset by and applied as a credit against the amount of penalties on bonds it owes the United States, and then that surety shall receive the remainder of the amount to which it is entitled under this subparagraph, if any.

“(xii) All penalties assessed against a surety on a bond, if any, shall be paid by the surety no more than 27 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III).

“(B) The Secretary of Homeland Security may waive penalties or extend the period for payment or both, if—

“(i) a written request is filed with the Secretary of Homeland Security; and

“(ii) the bonding agent or surety provides an affidavit that diligent efforts were made to effect compliance of the principal.

“(C) COMPLIANCE; EXONERATION; LIMITATION OF LIABILITY.—

“(i) COMPLIANCE.—A bonding agent or surety shall have the absolute right to locate, apprehend, arrest, detain, and surrender any principal, wherever he or she may be found, who violates any of the terms and conditions of his or her bond.

“(ii) EXONERATION.—Upon satisfying any of the requirements of the bond, the surety shall be completely exonerated.

“(iii) **LIMITATION OF LIABILITY.**—Notwithstanding any other provision of law, the total liability on any surety undertaking shall not exceed the face amount of the bond.”

(c) **EFFECTIVE DATE.**—The provisions of this section shall take effect on the date of the enactment of this Act and shall apply to bonds and surety undertakings executed before, on, or after the date of the enactment of this Act.

SEC. 106. RELEASE OF ALIENS IN REMOVAL PROCEEDINGS.

(a) **IN GENERAL.**—Section 236(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1226(a)(2)) is amended to read as follows:

“(2) subject to such reasonable regulations as the Secretary of Homeland Security may prescribe, shall permit agents, servants, and employees of corporate sureties to visit in person with individuals detained by the Secretary of and, subject to section 241(a)(8), may release the alien on a delivery bond of at least \$10,000, with security approved by the Secretary, and containing conditions and procedures prescribed by section 105 of the REAL ID Act of 2005 and by the Secretary, but the Secretary shall not release the alien on or to his own recognizance unless an order of an immigration judge expressly finds and states in a signed order to release the alien to his own recognizance that the alien is not a flight risk and is not a threat to the United States”.

(b) **REPEAL.**—Section 286(r) of the Immigration and Nationality Act (8 U.S.C. 1356(r)) is repealed.

(c) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 107. DETENTION OF ALIENS DELIVERED BY BONDSMEN.

(a) **IN GENERAL.**—Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) is amended by adding at the end the following:

“(8) **EFFECT OF PRODUCTION OF ALIEN BY BONDSMAN.**—Notwithstanding any other provision of law, the Secretary of Homeland Security shall take into custody any alien subject to a final order of removal, and cancel any bond previously posted for the alien, if the alien is produced within the prescribed time limit by the obligor on the bond whether or not the Department of Homeland Security accepts custody of the alien. The obligor on the bond shall be deemed to have substantially performed all conditions imposed by the terms of the bond, and shall be released from liability on the bond, if the alien is produced within such time limit.”

(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 all immigration bonds posted before, on, or after such date.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CASTLE OF DELAWARE, OR HIS DESIGNEE, TO BE DEBATABLE FOR 20 MINUTES

In section 204 of the bill, before “Section” insert “(a) **CRIMINAL PENALTY.**—”.

At the end of section 204 of the bill, insert the following:

(b) USE OF FALSE DRIVER'S LICENSE AT AIRPORTS.—

(1) IN GENERAL.—The Secretary shall enter, into the appropriate aviation security screening database, appropriate information regarding any person convicted of using a false driver's license at an airport (as such term is defined in section 40102 of title 49, United States Code).

(2) FALSE DEFINED.—In this subsection, the term “false” has the same meaning such term has under section 1028(d) of title 18, United States Code.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KOLBE OF ARIZONA, OR HIS DESIGNEE, TO BE DEBATABLE FOR 20 MINUTES

At the end of the bill, insert the following new title:

**TITLE III—BORDER INFRASTRUCTURE
AND TECHNOLOGY INTEGRATION**

SEC. 301. VULNERABILITY AND THREAT ASSESSMENT.

(a) STUDY.—The Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, shall study the technology, equipment, and personnel needed to address security vulnerabilities within the United States for each field office of the Bureau of Customs and Border Protection that has responsibility for any portion of the United States borders with Canada and Mexico. The Under Secretary shall conduct follow-up studies at least once every 5 years.

(b) REPORT TO CONGRESS.—The Under Secretary shall submit a report to Congress on the Under Secretary's findings and conclusions from each study conducted under subsection (a) together with legislative recommendations, as appropriate, for addressing any security vulnerabilities found by the study.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Homeland Security Directorate of Border and Transportation Security such sums as may be necessary for fiscal years 2006 through 2011 to carry out any such recommendations from the first study conducted under subsection (a).

SEC. 302. USE OF GROUND SURVEILLANCE TECHNOLOGIES FOR BORDER SECURITY.

(a) PILOT PROGRAM.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Homeland Security for Science and Technology, in consultation with the Under Secretary of Homeland Security for Border and Transportation Security, the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, and the Secretary of Defense, shall develop a pilot program to utilize, or increase the utilization of, ground surveillance technologies to enhance the border security of the United States. In developing the program, the Under Secretary shall—

(1) consider various current and proposed ground surveillance technologies that could be utilized to enhance the border security of the United States;

(2) assess the threats to the border security of the United States that could be addressed by the utilization of such technologies; and

(3) assess the feasibility and advisability of utilizing such technologies to address such threats, including an assessment of the technologies considered best suited to address such threats.

(b) **ADDITIONAL REQUIREMENTS.**—

(1) **IN GENERAL.**—The pilot program shall include the utilization of a variety of ground surveillance technologies in a variety of topographies and areas (including both populated and unpopulated areas) on both the northern and southern borders of the United States in order to evaluate, for a range of circumstances—

(A) the significance of previous experiences with such technologies in homeland security or critical infrastructure protection for the utilization of such technologies for border security;

(B) the cost, utility, and effectiveness of such technologies for border security; and

(C) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

(2) **TECHNOLOGIES.**—The ground surveillance technologies utilized in the pilot program shall include the following:

(A) Video camera technology.

(B) Sensor technology.

(C) Motion detection technology.

(c) **IMPLEMENTATION.**—The Under Secretary of Homeland Security for Border and Transportation Security shall implement the pilot program developed under this section.

(d) **REPORT.**—Not later than 1 year after implementing the pilot program under subsection (a), the Under Secretary shall submit a report on the program to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on the Judiciary. The Under Secretary shall include in the report a description of the program together with such recommendations as the Under Secretary finds appropriate, including recommendations for terminating the program, making the program permanent, or enhancing the program.

SEC. 303. ENHANCEMENT OF COMMUNICATIONS INTEGRATION AND INFORMATION SHARING ON BORDER SECURITY.

(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Under Secretary of Homeland Security for Science and Technology, the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, the Assistant Secretary of Commerce for Communications and Information, and other appropriate Federal, State, local, and tribal agencies, shall develop and implement a plan—

(1) to improve the communications systems of the departments and agencies of the Federal Government in order to facilitate the integration of communications among the departments and agencies of the Federal Government and State, local government agencies, and Indian tribal agencies on matters relating to border security; and

(2) to enhance information sharing among the departments and agencies of the Federal Government, State and local government agencies, and Indian tribal agencies on such matters.

(b) REPORT.—Not later than 1 year after implementing the plan under subsection (a), the Secretary shall submit a copy of the plan and a report on the plan, including any recommendations the Secretary finds appropriate, to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on the Judiciary.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE NADLER OF NEW YORK, OR HIS DESIGNEE, TO BE DEBATABLE FOR 20 MINUTES

Strike section 101 of the bill (and redesignate the succeeding sections of title I accordingly).

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FARR OF CALIFORNIA, OR HIS DESIGNEE, TO BE DEBATABLE FOR 20 MINUTES

Strike section 102 of the bill.

