So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

The title of the resolution was amended so as to read: ''Expressing the sense of the House of Representatives that the symbols and traditions of Christmas should be protected for those who celebrate Christmas''.''

A motion to reconsider was laid on the table.

URGING OBSERVANCE OF AMERICAN JEWISH HISTORY MONTH

The SPEAKER pro tempore (Mr. BASS). The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 315.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. PORTER) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 315, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 423, nays 0, not voting 10, as follows:

[Roll No. 638]

YEAS—423

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—10

Davis (FL)
Deal (GA)
Diaz-Balart, M.
Emanuel
Gonzalez
Herger
Hunter
Hyde
Tierney
Waters

□ 1616

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4437 to be considered shortly.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

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

The SPEAKER pro tempore. Pursuant to House Resolution 610 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4437.

□ 1618

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of 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, with Mr. BASS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

General debate shall not exceed 2 hours, with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, and 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Homeland Security.

The gentleman from Wisconsin (Mr. SENSENBRENNER), the gentleman from Michigan (Mr. CONYERS), the gentleman from New York (Mr. KING), and the gentleman from Mississippi (Mr. THOMPSON) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 4437, the Border Security, Antiterterrorism, and Illegal Immigration Control Act of 2005.

Mr. Chairman, our Nation has lost control of its borders, which has resulted in a sharp increase in illegal immigration and has left us vulnerable to infiltration by terrorists and criminals. Estimates indicate that there are currently more than 10 million illegal aliens already here, and that population continues to grow by an estimated half million additional aliens each year.

Large majorities of Americans support efforts to restore the security of our Nation's borders and to assure accountability of those who illegally enter the United States. America is a compassionate Nation that welcomes legal immigrants from all corners of the world. But it is also a Nation of laws. These concepts are not mutually exclusive, and H.R. 4437 reflects this.

This legislation, which I introduced with Homeland Security Committee Chairman KING, will diminish the lure of higher-wage employment that drives illegal entry into the United States while enhancing border security. This legislation will re-establish 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.

I am pleased that this bill incorporates vital border security provisions from legislation reported by the Committee on Homeland Security and congratulate Chairman KING for his committee's important role in drafting this component of the bill.

H.R. 4437 will deliver on the unkept promise of the Immigration Reform and Control Act of 1986 by providing employers with a reliable method of determining whether their employees are eligible to work. The bill expands on the premise of Representative CALVERT's legislation, 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. Within 2 years, this bill provides that all employers must check new hires against this database.

The bill also increases penalties for alien smuggling. Those who suffer most from alien smuggling are often the most vulnerable and desperate, entering the country in perilous conditions that sometimes result in injury or even death.

Moreover, debts owed to alien smugglers by those transported into the country illegally often create a form of indentured servitude that enriches criminal syndicates. The GAO has found that convicted smugglers, including those responsible for death or serious injury, receive an average prison sentence of only 10 months. Only 10 months, far less than that imposed for transporting illegal drugs or committing other serious crimes. The bill corrects these disparities by increasing criminal penalties for alien smugglers.

The legislation also gets tough on alien members of violent street gangs. It incorporates H.R. 2933, the Alien Gang Removal Act, which was authored by the gentleman from Virginia (Mr. FORBES). Alien gangs are a threat to communities across the country and represent a problem that is international in scope. We should not have to wait until alien gang members commit violent crimes before we can remove them from our communities.

The legislation also increases penalties for previously deported aliens who illegally re-enter the United States. These provisions are incorporated from H.R. 3150, the Criminal Alien Accountability Act, introduced by the gentleman from California (Mr. ISSA).

Another crucial provision of the legislation remedies the current situation in which the Department of Homeland Security is required to release dangerous alien criminals who cannot be deported. This has compelled the release of nearly 1,000 criminal aliens, including murderers and rapists, onto our streets. One such alien shot a New York state trooper. The legislation allows for the continued detention of these violent criminal aliens.

The bill also contains commonsense provisions that would bar aliens who are terrorists or security risks from being naturalized U.S. citizens, making aggravated felons inadmissible to the United States, and facilitate the deportation of aliens who sexually abuse minors.

Mr. Chairman, this legislation represents a critical step in helping to regain control of our borders and to prevent illegal immigration. I urge my colleagues to support this important bill.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Ladies and gentlemen, let me say from the outset that we on this side, the Democrats, believe that a strong border security policy is an absolute necessity for this Nation. We must ensure that terrorists cannot lurk in the shadows of our society and do us harm. Let us begin with that.

Now, if you will look at the dissenting views in our report on this measure, there may be 20 to 40 different reasons that we do not like the bill. So rather than take all that time up, what I want to talk about is the one that offends me the most, and that is the criminalizing of unlawful presence. Now, this, alone, should turn away a majority of the House. There are roughly 11 million undocumented individuals in the United States who, under sections 203 and 201 of this bill, would be subject to mandatory detention if convicted of a crime of being unlawfully in the United States. First time in history. Are you ready for this? These individuals would be mandatorily retained without regard to whether the person is a flight risk or poses any danger.

Re-entry after removal would also be another aggravated felony, and these provisions would result in a permanent bar to re-entry and no chance of a waiver whatsoever.

Now, criminalizing unlawful presence by an incarceration of more than 1 year is, to me, over the top. Millions of immigrants could be impacted and would suddenly be unable to apply for relief if they had been convicted of unlawful presence. Any immigrant who overstayed a visa and was convicted would be permanently barred from any form of immigration relief. Families who have been living and working in the U.S. for years would suddenly be ineligible for immigration relief that they would otherwise be able to receive. Virtually anyone who overstayed a visa could be guilty of an aggravated felony and thus ineligible for release.

Now, the last thing I want to mention before I reserve the balance of my time is to state what we do need. And I have taken a little time to come around to this. We do need a program for the 11 million people in this country who are out of status to a system of earned legalization. This is the only rational solution that I can bring to you today, my colleagues. The President of the United States, who I seldom quote, has said that without a comprehensive approach that includes earned legalization, we will not solve the problem. Otherwise, these millions will remain in this country, in the shadows; and we will not know what they are doing and who they are and where they are going.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, the gentleman from Michigan, I think, has exposed what the difference is between those who are for this bill and those who are against this bill.

□ 1630

Earned legalization is a nice word for amnesty for illegal aliens. The American public is against amnesty for illegal aliens. This bill does not give amnesty to illegal aliens, and it should not because it rewards somebody for breaking our laws.

Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, the American people know the difference between legal immigration, which has made our country great, and illegal immigration, which threatens our homeland security.

This legislation represents a crucial step forward in securing our borders and protecting the lives and property of the American people. Sponsored by Chairman SENSENBRENNER and Chairman KING, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005 achieves four essential goals.

It combats illegal immigrant smuggling and makes it easier to deport illegal aliens, 20 percent of all Federal prisoners, who have committed crimes. This will make our communities much safer. This legislation makes it easier to apprehend, convict and deport potential terrorists. It allows employers to determine whether a job applicant is legally in the United States. Last year, not a single employer was fined for illegally hiring someone. If we do not diminish the magnet of jobs, no amount of border enforcement alone will prevent illegal immigration. Lastly, Mr. Chairman, this initiative will result in more individuals being held accountable for breaking our immigration laws.

Our hearts go out to those who want to come to this country. We are the freest, most prosperous nation in the world. It is no surprise that America welcomes more legal immigrants than all other countries combined.

But no nation can protect its residents without knowing who is entering and why. Thousands of people continue to cross our borders illegally every day instead of playing by the rules and coming into the country the right way.

No Member of Congress advocates rounding up 10 to 20 million illegal immigrants, no one really knows how many, for mass deportation. But if we enforce our laws, many either will leave voluntarily or decide not to enter illegally. Perhaps the time will come for a limited foreign worker program, but that is only after we have secured our borders and put the interests of American workers first.

Immigration is an emotional, sensitive, complex subject. But Americans, citizens and legal immigrants alike, have every right to secure borders in a safe homeland. And it is time we turned that right into reality.

Mr. Chairman, Chairman SENSENBRENNER and Chairman KING deserve much credit and the thanks of the American people for bringing this legislation to the House floor.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentlewoman from California (Ms. ZOE LOFGREN), a distinguished member of the Judiciary Committee, the head of the California Democratic delegation.

Ms. ZOE LOFGREN of California. Mr. Chairman, every country has the right, even the obligation, to control its borders, and that includes the United States of America. Since 9/11, as many have mentioned, that obligation has taken on increased importance and significance, and all of us believe that we need to do a better job. The truth is that the bill before us today really does not do that better job.

We all watch TV, and we see the extravagant comments made, and some of them turn out to be correct. There is something called ''catch and release,'' and actually what it is, is individuals who are apprehended as they unlawfully enter the United States are cited and released with the promise that they will appear. It turns out that over 80 percent of the people who promise to appear do not show up. Now, when I was in local government, we had a failure-to-appear rate in single digits. We were alarmed at that. But even though the administration has seen this rate, they have not stopped doing it. Does this bill order the administration to go out and find those people that fail to appear and bring them in for processing to be deported or whatever the law requires? No, it does not.

When I was in local government, we would have individuals who were undocumented, without papers, who committed a crime, and they would be in our jail. And every week, the Immigration Service would come, and they would take those people away from our jail after their sentences were served, and they would deport them, which we thought was a pretty good deal. Recently, the ball has been dropped on that score. And so we have got people who have committed crimes, who should be deported, and they are not being deported. And sometimes they are being released from jail. Does this bill tell the administration to go out and find those people and bring them in, ready to be deported, as the law provides? No, it does not. It does not.

Does it order the administration to enhance its efforts so that criminals who are in jails who are supposed to be brought in for deportation are brought in? No, it does not do that either. It does not increase the resources.

And it does some things that I think are quite weird and unfortunate. I am a member of the Homeland Security Committee as well as the Judiciary Committee, and I have mentioned section 404 in both committees. Section 404 allows for the exclusion of legal residents if they were born in the following countries: China, Vietnam, Cuba, Ethiopia, India, Eritrea or Laos. Why is that? Those countries refuse to accept or unreasonably delay the acceptance of people whom we deport. The answer is not to exclude legal residents who were born in those countries.

I thank the gentleman for yielding me this time, and I will have further comments as the day proceeds.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. ZOE LOFGREN of California. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, could we begin this discussion amongst ourselves by distinguishing between earned legalization and amnesty? Earned legalization is not a free lunch. Those working under this program will have to work for years in the United States to gain citizenship. They are here. They work. They pay taxes. They raise their families. And that is one legitimate plan.

What does someone have here for an alternative? The bill before us does nothing about the 11 million people who are already here. And, by the way, is the President of the United States supporting an amnesty program? I do not think so.

I thank the gentlewoman for yielding to me.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN).

(Mr. DANIEL E. LUNGREN of California asked and was given permission to revise and extend his remarks.)

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, one of the primary attributes of a sovereign nation is the ability to control its own borders. In this regard, it is clear that the Constitution, article 1, section 8, places this duty right here, in the Congress. We have thus arrived at that moment of decision where the American people have a legitimate expectation that we will rise to this fundamental responsibility of governance.

As one who has had the opportunity to participate in the birthing process of this legislation in both of the committees of primary jurisdiction, I would be the first to acknowledge that this was not an immaculate conception. It remains my belief that a comprehensive approach to the issue is necessary if we are to maximize the effectiveness of our resources on the border.

However, it is critical that we have to take a first step. This bill should be judged on the basis of what it does contain, not for what it does not. On its own merits, this is a good bill. It is a good first step towards regaining control of our borders. And, furthermore, we have the assurances of the chairman of the Judiciary Committee that other aspects of the larger immigration issue will be considered after our return. The decision has been made to begin the process of reform of the border security bill. Why? Because that is what the American people expect of us. Even if it is not a Rembrandt, it is not a bad paint job.

As one who participated in the crafting of the 1986 Immigration Reform and Control Act, actually as the Republican floor manager of that bill, I can tell the Members that it was on the issue of employer sanctions that that bill crashed and burn. That legislation made it illegal for employers to knowingly hire or employ aliens not eligible to work in the United States. It was part of a carefully crafted compromise. It was part of the balance in the program. Little did we know that neither Republican nor Democratic administrations were going to enforce it nor Democratic nor Republican Congresses were going to support it. There is enough blame to go around. It is not just in the Executive branch. It is here in this body as well. And the American people now are demanding that we do something about it.

Under the law then passed, employers were to check the identity and work eligibility documents of all new hires. However, the explosion of a new industry dedicated to the production of false and fraudulent documents completely

undermined the employer sanctions provision of the bill. It did not have to happen that way. Congressman HALL of Texas offered a verification system somewhat like that contained in the bill before us. However, at that time I did not believe, nor did others in this body, that we had the technology to make it work. However, today, we do. It is incumbent upon us that we must learn from the past and have a reliable system of employment verification if employer sanctions are to work. A workable employment verification system is the critical linchpin in devising a strategy to demagnetize the attraction of unlawful employment.

These and other things are in this bill. This is a good first step. Let us not fall on our own swords in an effort to try to say we want a perfect bill. If we do not do this, we will not do anything.

Mr. CONYERS. Mr. Chairman I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), ranking member of the Subcommittee on Immigration and member of the House Judiciary Committee.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the chairman very much for yielding me this time.

And might I thank Mr. SENSENBRENNER because, as I said in the Rules Committee, I believe, between the ranking chairman of the Judiciary Committee and certainly the chairman and ranking member of the Homeland Security Committee, there are a lot of good intentions. But, frankly, I think it is overwhelming to expect that, in this short period of time, that we can answer all of the concerns of the American people and answer the question of 20 years of shortsighted enforcement-only legislation to address this question of the enormity of illegal and undocumented individuals but, in particular, to address the question of security. That is the underpinning of this border security bill, and that is where I believe that we have a number of failures.

The American people have polled repeatedly on one concept. That is whether or not they consider the immigration question a crisis worthy of our attention. But when they are asked about solutions, they specifically suggest the idea of comprehensive immigration reform. Strong enforcement at the border, which many legislative initiatives offered by KOLBE and GUTIERREZ, offered by members of the Homeland Security Committee, offered in Judiciary, offered by H.R. 4044, the Rapid Response Border Protection bill, all had reasonable responses, enforcement and earned access to immigration.

But allow me to tell my colleagues why this particular bill is going to fall on its own weight and, as I heard someone say, the wheels are going to fall off, unless we turn back the bill and work together.

It is important to note that as we stand here on the floor today, there are members of the United States military on the frontlines of Iraq and Afghanistan whose family members are undocumented. We have a program that many of us supported that would allow those who are on the frontlines of Iraq to become documented, legal permanent residents. In fact, we heard a story of a young man who was killed on his way to get fingerprinted, tragically. But it allows them to be able to be documented, and they can then access legalization for their family members.

While they are on the frontlines of Iraq, the very presence of their grandmother, their mother, their sister or their father will allow them to be incarcerated as a felon under this bill, will allow them to be detained under this bill. And then you want to ask the employers of America, who I believe should be responsible for who they hire, not to verify people whom they may question, and that means that they will think that anyone with a name that sounds unlike American should be verified.

□ 1645

That will be close to 146 million persons who are currently employed and then 54 million persons who are eligible for employment. The basic pilot program will fall under its own weight. Why? Because the technology is not yet able to document and detail whether one name that has a particular sounding name is equal to the other name. Our technology does not equal that kind of competence at this point.

And we have not answered the question of the funding because we require mandatory detention. The question is what kind of resources will be utilized.

There are many elements to this bill that we could find common ground on, and those are the technology aspects. I believe there should be more in there to provide for our Border Patrol agents, the equipment, the night goggles, the computers that we have been saying they need over and over again, the helicopters, power boats and training. But that, unfortunately, was not allowed in this legislation.

So, Mr. Chairman, as I conclude, might I thank those who have done the heavy lifting, might I thank the work that the Hispanic Caucus has done on behalf of all immigrants or individuals that may be undocumented. I value the fact that we as a Congress have been charged with the responsibility of securing America. Criminalizing undocumented hotel workers and restaurant workers does not do the job. Let us turn this bill back so that we will have an opportunity to work in a bipartisan manner.

I rise in support of my Rapid Response Border Protection Amendment, H.R. 4044, to the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, and against the underlining bill as it is presently drafted.

H.R. 4437 has a substantial number of provisions that would increase border security, but it is lacking in one very important respect. It does not provide the Border Patrol with the equipment and resources that it needs to secure the border. My amendment would address that deficiency.

For instance, aircraft and watercraft are invaluable tools for spotting people illegally crossing our borders and for assisting in their apprehension. They also are essential for rescue operations when people crossing the border need emergency assistance. The Secretary of the Homeland Security Department would be required to increase the number of Border Patrol helicopters by at least 100 and to increase the number of Border Patrol powerboats by at least 250.

The Border Patrol currently suffers from a severe shortage of serviceable, police-type vehicles. In many locations, agents have to wait for vehicles to be brought in from the field by other agents on the previous shift before they can begin their duties. The Secretary would be required to establish a fleet of such motor vehicles of at least one vehicle per every three Border Patrol agents.

The lack of portable computers precludes Border Patrol agents from utilizing biometric databases in the field. This results in inadequate checks being performed before suspects are released. The Secretary would be required to ensure that each police-type motor vehicle in the Border Patrol's fleet is equipped with a portable computer with access to all necessary law enforcement databases.

Smugglers and other criminals historically have used the cover of darkness to cross our borders. Although technology that enables the user to see at night has been available for many years, it is not readily available to all of the Border Patrol agents, and the Border Patrol is one of the few law enforcement agencies that conducts most of its operations in remote areas during the hours of darkness. The Secretary would be required to ensure that sufficient quantities of state-of-the-art night vision equipment are provided for every Border Patrol agent who works during the hours of darkness.

Body armor is a relatively inexpensive piece of protective equipment that has saved the lives of countless law enforcement officers. The Secretary would be required to ensure that every Border Patrol agent is issued high-quality body armor that is appropriate for the climate and risks faced by the individual officers.

Currently, fewer than 11,000 Border Patrol agents are responsible for patrolling more than 8,000 miles of land and coastal borders. Because of the need to provide continuous, around-the-clock coverage, no more than 25 percent of those agents are securing our borders at any given time. That averages one Border Patrol agent every 3 miles. A substantial increase in personnel is desperately needed. The Secretary would be required to hire an additional 10,000 agents.

Recruitment and retention problems make it difficult to maintain a large force of experienced Border Patrol agents. One of the key difficulties in this regard is the fact that the pay lags behind that of many other law enforcement officers. The amendment would address this problem by requiring the Secretary to raise the base pay for all journey-level Border Patrol agents to a GS–13 level.

Nonimmigrant S visas are available for aliens who assist the Government with the investigation or prosecution of a criminal organization or a terrorist organization. The amendment would establish a third category for aliens who assist the United States Government with the investigation or prosecution of a commercial alien smuggling organization or an organization engaged in the sale or production of fraudulent documents to be used for entering or remaining in the United States unlawfully. A protection program would be available for informants who need it.

A rewards program would be established for encouraging informants to assist in the elimination or disruption of commercial alien smuggling operations or an organization engaged in the sale or production of fraudulent documents to be used for entering or remaining in the United States unlawfully. A protection program would be available if needed.

Those who object to the cost of H.R. 4044 need to recall the enormous costs, not just in monetary terms, of the last terrorist attacks. If we want to prevent another terrorist attack on American soil, we must be prepared to devote whatever resources are necessary to keeping terrorists out of our country.

I urge you to vote for this amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. I thank the distinguished gentleman from Wisconsin for yielding me time and for his extraordinary leadership of the Judiciary Committee on which I serve. I also congratulate Chairman KING for his hard work on this important legislation.

As the grandson of an Irish immigrant, I believe in the ideals that are enshrined on the Statue of Liberty in New York Harbor. America has always and will always be a welcoming Nation, welcoming under the law any and all with the courage enough to come to this shining city on a hill. But a nation without borders is not a nation, and across this country Americans are anxious about the security of our border. Night after night they see news images of people sneaking across the border in the dark of night; they hear tales of people paying thousands of dollars to so-called ''coyotes'' to smuggle them into the country; they worry that drugs will make their way into the hands of their children more readily; and they rightly fear that our porous borders make it more likely that terrorists will cross with deadly intentions against our families.

This year alone, some 115,000 illegal aliens from countries other than Mexico have been apprehended by our Border Patrol; and simply as an ordinary American, I share this concern. That is why I support the legislation before us today.

Estimates vary, but it is generally accepted that around 11 million illegal aliens are living in our Nation today. The great majority of these people entered America by making an illegal border crossing. We cannot allow this trend to continue.

In today's legislation, the Department of Homeland Security is required to develop and submit to Congress a comprehensive strategy for securing the border, including surveillance plans, a timeline for implementation, 1,000 additional port of entry inspection personnel, 1,500 additional canine units and beyond.

Also, importantly, this legislation takes a giant step towards ending the current practice of what is known as ''catch and release'' that plagues the border by requiring mandatory detention of illegal border crossers until an immigration removal hearing can be held. As part of a well-developed strategy, the bill mandates that Homeland Security use every available detention bed and authorizes new detention space.

Finally, this bill addresses the need to enforce our employment laws by instituting an employer verification system whereby employers will be required to submit information to the Department of Homeland Security and the Social Security Administration for verification. Providing this verification system will ensure that only Americans and legal visitors to the United States of America are living and working in our Nation.

We have before us today an important first step in securing America's borders and stopping the flow of illegal immigrants into our Nation. I rise again in strong support of the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005. With gratitude for its authors, I urge its passage.

Mr. CONYERS. Mr. Chairman, I yield 5½ minutes to the gentleman from Illinois (Mr. GUTIERREZ), the one gentleman not on the Judiciary Committee that has worked with us all year long on this subject matter, who has done noble work for his caucus and for the committee.

Mr. GUTIERREZ. Mr. Chairman, I thank the chairman very much for all of his hard work.

Mr. Chairman, I guess I come to speak before this very, very able body today to say that we are really not solving the problem. The fact is that this bill represents a retreat from true immigration reform and from true security. Evaluate the bill, and you will see that it neither demonstrates the political will nor commits the requisite resources to deport 11 million people who currently live and work in the United States of America.

So after the bill is passed, there will still be 11 million, and I do not see anything in the bill that is going to cure that problem; 11 million people who we should, as President Bush has urged, as all like-minded people have urged, should be given the opportunity to come out of the shadows of darkness, should come out of the marginalized existence of exploitation in which they live and be able to join all of us doing three things: demonstrating their good moral character; demonstrating that they pay taxes; demonstrating that they work and they contribute to this great country of ours.

The bill does not do anything. It is silent. Eleven million people. Are we going to go out and arrest and detain and deport 11 million people? Nobody would argue that that is what we are going to do, because we have never demonstrated the political will to do that, nor have we ever committed the requisite resources to do that. So in the absence of that, if you truly want security here, I suggest that we should get their fingerprints; that we should have them come out of the darkness and give us their fingerprints; give us their bank accounts; give us their addresses and become full-fledged members of our society.

I am not saying put them at the head of the line. Put them at the back of the line. Let us see what it truly is. They have committed what is a civil offense. That is what it is, according to our statute. You cannot retroactively make it a criminal offense. It is a civil offense, and let us deal with the civil offense that they have committed.

What offense have they committed to come here? I do not know. But I just think that in America no one is in fear and trepidation of the Windex-wielding cleaning lady at K-Mart. I do not think anyone in America is in fear of the woman who wakes up every morning to cherish and to nourish and to raise the children of American citizens. No one is in fear when they go to their hotel room and they see the woman that has made their bed and cleaned their carpeting and placed their towels in their appropriate places. No one in this place fears walking into a restaurant and eating from the dishes that have been cleaned. No one in this room would say, God, I cannot eat those grapes, will not touch those apples from Washington State. Yet we well know who has toiled in those vineyards and in that agricultural sector in very tough conditions with very low wages.

I do not see people in America saying, God, Luis, the Congress of the United States should do something. I want my son to be a dishwasher. I want my daughter to pick grapes out there in the State of California.

We know who is doing these jobs. As a matter of fact, according to our own Department of Labor, our economy will continue to create low-wage, low-skilled, entry-level jobs for which there will not be an American workforce to fulfill those necessities.

So given that reality, let us not cast that all of the problems and ills of our society are somehow upon the immigrants who have come to this country. I will suggest to you that they are your neighbors; that you know that when you walk into a building and you see those shiny floors, you know who was up the night before shining those floors; when you walk into that comfortable room after a long day of work, you know who cleaned that room; when you eat from those dishes, you know who washed them.

It is critical and essential to our economy for their being here in the United States of America. So let us stop it. Let us put an end to it.

I would say to all of my colleagues here today, if you are selling drugs, if you are a rapist, if you are a robber, if you are a murderer, if you are someone of ill repute, I and the colleagues I know would be the first to stand up and to say, Out with you and back to your country of origin, if that is what you have come here to do.

But let us be honest. The immense majority of them are hardworking. The immense majority of them are people we know that are hardworking, taxpaying, good moral character people who want to do nothing more than what other immigrants have done before them, to become part of this great process.

So let us keep that in mind as we continue this debate. Let us take the high road, not the low road, in this debate.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. CALVERT).

Mr. CALVERT. Mr. Chairman, I rise in support of H.R. 4437, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act. I would like to thank Chairman SENSENBRENNER and Chairman King for the remarkable job they have done to bring this bill to the floor today.

A mandatory electronic employment verification system must be a key component in any immigration reform bill worthy of the name. We can never gain control of our borders until we turn off the job magnet that encourages people to flout the law. If illegal immigrants know that a job awaits them in the United States provided they can get past the gauntlet of the border, no amount of border security will ever stop them.

Every employee already fills out an I–9 immigration form and presents documents confirming their identify and eligibility to work. Of course, the current system does not work because the documents themselves are easily forged and cannot be checked.

The system proposed today would simply require that the information on the I–9 form be confirmed. It is not discriminatory; it is easy to use and will do more to stem the tide of illegal immigration than any other single provision.

Many people have commented on the mandatory employment verification system, and some comments have missed the point. This system is all about ensuring a legal workforce by preventing document fraud during the hiring process.

I believe that most employers are trying to do the right thing and hire only legal workers. Unfortunately, the current employment verification system does not give the employer enough information to be confident that their workforce is legal. Forged documents easily pass through the system without a problem, which leaves the employer with dubious U.S. citizens and legal immigrants at a competitive disadvantage and encourages the mass illegal immigration America is experiencing today.

Not only would this system strike a blow against document fraud; it would also reduce identity theft, a practice on the rise in the United States. Just like credit card companies can flag unusual purchases to stop identity theft, this program would flag unusual behavior.

This is a good program, and this bill must pass.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. LINDA T. SÁNCHEZ), one of our dedicated members on the Judiciary Committee and a leader in the Hispanic Caucus.

Ms. LINDA T. SÁNCHEZ of California. Mr. Chairman, I thank the gentleman from Michigan for yielding me time.

Mr. Chairman, I rise today in strong opposition to H.R. 4437. Americans are right to demand better border security and better enforcement of our immigration laws, but this bill is just a false sense of security. It does not secure our borders, it leaves our ports of entry exposed, and does nothing to reform our broken immigration system. What is needed is enforcement of laws that work, and we cannot have this without comprehensive immigration reform. Even President Bush agrees on this.

We should not be debating a bill thrown together at the 11th hour before we adjourn for recess, a bill that basically opens the door for witch hunts of anyone who looks foreign and a bill that erodes basic civil liberties and human rights for migrants, legal immigrants, and even citizens.

In looking at the lack of merit in this bill, we need to ask ourselves what kind of America do we want to live in. Do we want an America where we have mass deportations? Do we want an America where police officers can randomly ask foreign-looking Americans 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 American citizens will have to carry national identification cards to travel, work, or just walk down the street? Do we want an America that criminalizes 1.6 million children? Because that is exactly what this bill will do.

□ 1700

As the daughter of immigrants, I am offended by this bill, and I urge my colleagues to think long and hard about the vote they are about to cast and the detrimental impact it will have on the proud tradition of immigration that this country was built on.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN) who is an emeritus member of the Judiciary Committee.

Mrs. BLACKBURN. Mr. Chairman, I thank Chairman SENSENBRENNER and Chairman KING of New York for their extraordinary efforts on this bill. I do rise in support of H.R. 4437 today.

We do have a border crisis on our hands, and it is time that we do something about it other than talk. The chairmen have done a great job in bringing this forward. Everywhere I go in my district, Democrats, Republicans, everyone is united in the belief that our border enforcement is out of control and we have to give our border agents the tools they need to protect this great Nation.

My constituents see this truly as an issue of national security and of grave importance to our country. It is one we cannot wait to handle. We have to do something to secure those borders.

I am especially pleased to see that the Judiciary Committee has inserted several items on the bill that I had worked on while I was a member of the committee. During the 108 and 109th Congress, I introduced the Federal Contractor Security Act to tackle the problem of illegal entrants working for Federal contractors at critical infrastructure sites, at sites that are sensitive to our national security. And now the bill makes it mandatory for all employers, including Federal contractors, to use the worker verification system.

This is a system that employers can use at no charge, at no charge, and provide the sense of security that is needed by American citizens that the individuals working are indeed who they claim to be.

The legislation removes the guesswork about a worker's status and separates illegal entrants well before a business has invested time and money to train them.

Again, I want to thank Chairman SENSENBRENNER and Chairman KING of New York. I want to thank the leadership for their work and encourage support of H.R. 4437. This is something that is good for business. It is good for our Nation's security.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. FARR).

(Mr. FARR asked and was given permission to revise and extend his remarks.)

Mr. FARR. Mr. Chairman, I rise in opposition to this very poorly drafted bill. I learned long ago in my legislative career that you should not enact laws that you cannot enforce. This bill has some good provisions, but it also has a lot of bad provisions.

If there was ever a moment, I think, in legislative history of congressional hypocrisy, it has got to be right now. Just a few minutes ago we voted to recognize and support the symbols of Christmas. This bill steps on the spirit of Christmas for 11 million people in America who are now being given a Christmas present, being told they are

''criminals.'' Not only are all the undocumented people made instant criminals, so are their churches, so are their neighbors, and so are the people that support them and employ them.

Mr. Chairman, this bill declares war mostly on Mexicans because they are the vast majority of undocumented people in the United States. They are people that are already here, working, living in our communities. Who are these people? They may be your town heroes. They may be the latest valedictorian in your high school. They might have been the star of your football team or other sports team. They may have been the next scholarship winners. They may be some of America's brightest, our future. And yet now, by caveat, they are criminals.

Some cut your lawn, some clean your house, some harvest your food and that is the food that we pray over. This bill makes criminals out of innocent children, their mothers and their fathers. You cannot enforce this bill, I think, without a revolution. That is why the Chamber of Commerce, the American Bar Association, the Association of Builders and Contractors, the Episcopal Church, the International Association of Firefighters, the Jewish Federation of Greater Philadelphia, and many other areas oppose this legislation.

I ask for a ''no'' vote on a badly drafted bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, just to clarify everything, if someone entered the United States illegally, they have committed a Federal misdemeanor. If they overstayed their visa, they have committed a civil grounds of inadmissibility. So the people who snuck under the fence are already criminals, and what this bill does is criminalize the 40 percent who entered legally and did not go home when they were supposed to. And that is fair and that is equal.

Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. SHUSTER).

Mr. SHUSTER. Mr. Chairman, I rise today in strong support of H.R. 4437. This legislation is long overdue, and I want to thank Chairman SENSENBRENNER and Chairman KING of New York for their great work in bringing this bill to the floor.

My constituents are fed up with porous borders, lax enforcement, and excuses about why the Federal Government is unable or unwilling to ensure that immigrants entering our country are legal.

This measure provides genuine solutions such as state-of-the-art surveillance technology, 8,000 new border agents, and widespread physical barriers.

The citizens of Altoona, Pennsylvania, experienced the sobering realities of a poorly enforced immigration system when this last August an illegal alien with a prior criminal record of assault, reckless endangerment, and a weapons violation murdered three innocent people. Had the catch and release practice been eliminated and mandatory detention been in place, perhaps this painful tragedy could have been prevented.

Mr. Chairman, this bill's time has come. We cannot continue to allow overwhelming numbers of illegal immigrants to flood our communities without any scrutiny. I urge all of my colleagues to support this commonsense approach that will combat illegal immigration and strengthen our Nation's security.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. BERMAN), a senior member of the Judiciary Committee.

(Mr. BERMAN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Chairman, I appreciate the gentleman yielding me the time.

I am told that the chairman of the committee, I was not on the floor, in his comments after our ranking member spoke said, This shows the difference between the Democrats and the Republicans. Democrats are for amnesty. Republicans are not.

I remember back in the campaign in 1968 for President, or one in one of his races for Governor, George Wallace made the comment that, No one was going to out-''seg'' me.

Those kinds of charges and that kind of misuse of language is done by people who know that they are trying to fool the American people into thinking they are doing something.

This bill will never become law. It may pass this House, but it will never become law for the very reasons that it does not take a comprehensive approach to the problem.

The chairman of the Judiciary Committee says it is already illegal to come to this country without permission, without a visa of one kind or another; and he is right. That is why we call them illegal immigrants. And he says, so all we are doing with this bill is dealing with the people who came legally and then overstayed. I guess that is because the first part of it, dealing with the people who came here illegally, has worked so well. That is why every year hundreds of thousands of people are able to cross this border and work in this country. A few do some horrible things. But they come and the law has not made a difference. Unless you take a comprehensive approach, you will never solve the problem.

If what the chairman defines as amnesty is amnesty, then George Bush is for amnesty; JOHN CORNYN, the Senator from Texas, is for amnesty; Senator KYL of Arizona is for amnesty; and the chairman himself by saying that there needs to be a guest worker program eventually is for amnesty, because when the people who came here illegally get to come back into this country, because they have left or they have applied from within this country to work in our fields or our restaurants or other industries that have become heavily reliant on unauthorized workers, we are saying you get to do what you came here to do even though you committed an illegal act.

The fact in 1986 was not amnesty. None of the proposals now for a comprehensive immigration proposal include amnesty because they are all based on meeting certain future obligations, paying fines, continuing to work, coming out of the shadows, going through a background, learning whether or not they have committed any criminal acts other than the entrance here.

At the heart of why this bill will never become law are the reasons that the gentleman from California (Mr. CALVERT) spoke to. In this bill is a very logical employer verification system. It was what was missing from the 1986 bill. It is why the 1986 bill did not work. But everyone knows you can never implement an employer verification system unless you deal with the 11 million people who are now in this country. Because otherwise every grower, every restaurant owner, every hotel, every tourism industry, huge numbers of construction firms are all going to get the answer back on this verification system: the person you have working for you is not here legally; you will have to fire them. They will be closed down.

That will never happen. The employers of this country will never let that pass, because this bill will not even allow us to offer an amendment to make it comprehensive, to accept every one of the provisions, some of them to my way of thinking are draconian and over broad, but accept every one of the provisions of this bill and just add that aspect of the bill that can make for a coherent whole. They will not even let us bring that as an amendment.

I urge that Members of this House rise above the demagoguery that is going on about who stands for what and oppose this bill until we are allowed the chance to vote for a tough, comprehensive bill that does something real about illegal immigration.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DOOLITTLE).

Mr. DOOLITTLE. Mr. Chairman, I thank Chairman SENSENBRENNER and Chairman KING of New York for working on this bill and bringing something very substantial forward for our Members to vote on.

Mr. Chairman, the Federal Government for decades has ignored this problem. And it has become an enormous problem facing the entire Nation, not just the border States.

I am not sure I agree with my friend and colleague, Mr. BERMAN, that a comprehensive bill is actually possible. It is a big, big problem. We have got to

make a start at least. I think this legislation represents a good-faith attempt to begin to deal with the problem. Dealing with that 11 million is extremely difficult. I think at a minimum we need to start to deal with those who continue to enter the country illegally. It is certainly unacceptable for people to enter this country illegally, seek out our taxpayer-financed services, and hand the bill to the taxpayers.

I commend the chairman for putting provisions in the bill that reduce the likelihood of that continued flow of illegals into the country. I particularly like the provisions dealing with the San Diego-type fences in the urban areas. That is very, very important and I think will be effective. I know those are to be considered for approximately a dozen places along the border.

The other thing I like, in fact, several months ago I introduced a bill to end the absurd catch and release policy where our government has been giving tickets, essentially, to people who enter illegally and then letting them go and show up of their own volition. So far about 90,000 people this year have failed to appear in court who entered illegally and received such tickets. I am grateful that the provision to end that was included in the bill. That will make a big difference and will start us down the road to having a more effective border security policy. And I am confident we will have to continue to work together as we address this important issue. Please support this legislation.

Mr. CONYERS. Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 90 seconds to the gentleman from Alabama (Mr. ADERHOLT).

Mr. ADERHOLT. Mr. Chairman, I rise today in support of this legislation, the Border Protection Antiterterrorism, and Illegal Immigration Control Act.

I support this bill for several reasons, but I think one of the things that must be noted is it provides the Federal Government with needed authority to secure the borders.

□ 1715

It also closes the loopholes in current law that illegal immigrants and their facilitators exploit to enter and remain in the United States illegally. It is estimated that more than 11 million people, as it has been brought out here today, enter the U.S. illegally. That number includes those who have stayed over their visa and those who have entered this country illegally in the first place.

Of course, America is a very charitable Nation. We welcome those with open arms who wish to live here, who wish to work here, raise a family here and eventually become naturalized citizens. That is why we have a legal process to do so.

Since September 11, 2001, we as a Nation have had to reevaluate our willingness to have among us so many noncitizens that are here illegally. For the sake of our national security, for the sake of government programs that many of our colleagues on this side also cherish, we must pass a bill to begin to perform our duties to secure our borders.

This bill also facilitates cooperation between border sheriffs and Federal law enforcement by authorizing reimbursements to local sheriffs, along the border, for the cost of enforcing immigration laws and detaining illegal immigrants until transferred to Federal custody. This has been a growing problem, and the clarification provided in this bill and the financial resources are important.

Mr. President, I rise today in support of the Border Protection, Anti-terrorism and Illegal Immigration Control Act. I support this bill because it provides the Federal Government with needed authority to secure our borders. It also closes loopholes in current law that illegal immigrants and their facilitators exploit to enter and remain in the U.S. illegally. It's estimated that there are more than 11 million people in the U.S. here illegally. That number includes those who have overstayed their visas and those who have entered the country illegally.

America is a charitable nation; welcoming those who wish to live, work, raise a family and eventually become naturalized citizens. This is why we have a legal process to do so. Since September 11, 2001 we, as a nation, have had to re-evaluate our willingness to have among us so many non-citizens that are here illegally. For the sake of our national security, and for the sake of the government programs that many of my colleagues on the other side of the aisle cherish, we must pass this bill and begin to perform our duty to secure our borders.

Since the changes will increase the number of illegal aliens in Federal custody, this bill includes provisions to increase the number of beds available to house these illegal aliens. The Department of Homeland Security will expand capacity to house those awaiting court hearings or removal.

I want to thank the Chairman for yielding time and I'll close by asking all of my colleagues to support this bill; it is long overdue and a vital first step towards improving border security.

Mr. CONYERS. Mr. Chairman I yield 2 minutes to the courageous gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, let me thank the gentleman for yielding me the time and for his leadership and for making sure that we in this entire country understand what this so-called immigration reform bill is really about.

I rise in strong opposition to this bill. At best, this legislation is unbalanced; it is harsh, and it is unfair. Quite frankly, I think it is very un-American.

It criminalizes millions of hard-working people simply for being undocumented. It would turn local law enforcement into deputies of the border patrol, and innocent people will be needlessly scrutinized and jailed. I can only imagine how this irresponsible provision will affect racial profiling of Hispanics and other minorities.

This bill also ignores due process and would expand the government's ability to keep noncitizens locked up behind bars if they cannot be deported to their native countries. Jailed immigrants will lose the ability to appeal a deportation order.

Mr. Chairman, these are only a few of the reasons why this bill really makes no sense for our great country. Let us address the real issues of immigration reform that include a clear path to citizenship and commonsense protections for our borders. We need full immigration initiatives that make sense, not these very punitive and very un-American provisions that are included in this bill.

We cannot, and we must not, forget the undeniable history, our history, American history, that we have as a nation of immigrants and the contribution that immigrants have had on our economy, on our diversity and our way of life. This bill, quite frankly, just flies in the face of that history, and it should be rejected.

Mr. Chairman, I want to thank the gentleman again for his leadership and for yielding me the time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1½ minutes to the gentleman from California (Mr. RADANOVICH).

Mr. RADANOVICH. Mr. Chairman, with great respect to both chairmen on this bill, I do understand the importance of this measure and all of the hard work that has gone into it. We do need border security, and we need to beef up our Federal personnel and protect our citizens from terrorist threats.

However, we should not be moving a border bill that imposes penalties on employees and avoids dealing with the undocumented workers who are here now.

I do not support H.R. 4437 because it does not include comprehensive guest worker reform that my constituents desperately want back home in the San Joaquin Valley of California.

In 1986, Congress passed immigration reform. Two major mistakes were made when this bill was passed. Number one, it did not contain a guest worker provision, and number two, it provided amnesty for millions of illegal immigrants.

In passing immigration reform and granting amnesty in 1986, Congress thought that they would stop illegal immigration. Well, they were wrong, because today, we have about 10 million immigrants in our country.

Now we are here once again debating an immigration bill, and there is no guest worker program in the provisions. In this bill, we are penalizing employers without dealing with the millions of illegal workers currently here.

As long as this House continues to avoid the need to include a guest worker program in immigration reform, we will continue to have an illegal immigration problem in the United States.

U.S. border patrols are overwhelmed, and the cost of enforcement has skyrocketed. If we are implementing a guest worker program to provide temporary worker permits and allow workers to go home for part of the year, border enforcement officials could focus their resources on securing the border.

I urge my colleagues to vote against this measure, and it is with great respect to the chairman because it does not contain comprehensive guest worker reform.

Mr. CONYERS. Mr. Chairman, I yield myself the balance of the time.

This debate has a peculiar forgetfulness about where we are. The Republicans have been in control for 5 years, and we keep hearing about what is wrong: There is not enough personnel; there is not enough equipment; we are giving people tickets and letting them go; the whole program is horrible.

Would you explain to me why it has not been corrected before now, and you offer now criminalizing up to 11 million people as a solution? This doesn't make sense.

But, folks, hang on to your hats because tomorrow it could get worse. The distinguished Rules Committee has proposals before them. We do not know what we will get on the floor. Citizenship for people born in the United States, just because their parents were born somewhere else, forfeiture of church property if they provide shelter for illegal immigrants, jail sentences for priests or nuns who help illegal immigrants get food or shelter; these are serious Republican proposals for improving immigration policy of which they have complained without letup since this discussion has begun. The Rules Committee takes these proposals up tomorrow, and we may see them on the floor with recommendations that they become part of this bill.

We don't need it to get worse to know that we don't need this measure. It's going nowhere, and I hope that somebody feels that they are getting some sound-bites out of this because I feel very badly about this important measure.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, I was here in 1986 when the Simpson-Mazzoli bill was passed. I voted against it because I didn't think it was a balanced bill, and I didn't think it was a workable bill, and I think that what has happened in the last 19 years showed that a no vote was the right vote.

That bill was based on the fact that we would solve the illegal alien problem by giving those who are already here amnesty and then we would impose sanctions on employers who hired new illegal aliens. The reason it didn't work, as my friend from California (Mr. DANIEL E. LUNGREN) has stated, is that the employer sanctions were never enforced. As a result, illegal aliens came across the border in increasing floods.

The current system gives an incentive to an employer to hire an illegal alien in an entry-level job that is labor intensive because illegal aliens work for less money than either documented aliens with green cards or United States citizens. As a result, the bad actors in areas like the hotel and restaurant business, agriculture, landscaping and the construction business, are able to have such a competitive economic advantage because of the low wages over those who are trying to do it the right way.

I can understand why the Chamber of Commerce is against this bill because of the employer verification system. I guess if I were lobbying for them, I would be, too, because they have benefited from the low wages, and the low wages that these corporations have benefited from have depressed the wages of honest, hardworking, middle-income American people and those who are trying to get these entry-level jobs who are authorized to work in this country.

The key in this bill is Mr. CALVERT's employer verification system because that will flush out those who hire large numbers of illegal aliens, and they can go into the marketplace and pay a decent wage to people who are legally entitled to work here. I think that this is the main reason why this bill should pass.

We have heard a litany of complaints about all of the enforcement provisions, fences on the border, making a criminal offense overstaying one's visa, giving the sheriffs in border counties the authority to enforce the immigration law which they don't have now. The fact is that those people who are against this bill don't want any changes in the existing system except perhaps amnesty or, excuse me, earned legalization and ultimately citizenship for those who have broken the law.

This bill has our priorities straight. We have to secure the border. We have to provide law enforcement the tools to apprehend those who have broken the law, and we have to force our employers to flush out all the fake documents that are out there that are held by people who are illegally in this country, which is what the verification program proposes to do.

This is a good bill. It is a necessary first step, and if this bill is defeated, as all of those who have been saying no to everything goes down, the consequence is going to be the continuation of the intolerable existing system.

Mr. Speaker, I yield back the balance of my time.

The CHAIRMAN. The Chair now recognizes the gentleman from New York (Mr. KING).

Mr. KING of New York. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong support of H.R. 4437, the Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005.

The bill before us today incorporates both border security and immigration enforcement provisions and is the result of a strong collaborative effort by the Committee on Homeland Security and the Committee on the Judiciary to address these important issues.

The Committee on Homeland Security began this process last month when we introduced the bill, H.R. 4312, entitled the Border Security and Terrorism Prevention Act of 2005. This measure focused on border security provisions and reflected a truly bipartisan effort among members of my committee to solve lingering problems in our border defenses. I particularly appreciate the strong and able leadership of the gentleman from Mississippi (Mr. THOMPSON), our ranking member, in achieving important goals in this bill. I also want to commend the gentlewoman from California (Ms. LORETTA SANCHEZ). Thanks to their cooperation, we were able to pass H.R. 4312 on a voice vote with absolutely no opposition.

I also want to thank my friend, Chairman SENSENBRENNER, and his staff for their diligence and willingness to cooperate with us in expanding and improving this legislation.

Mr. Chairman, I will focus in my remarks on the border security aspects of the bill because, since September 11, it has become more and more apparent that our borders are in crisis. In addition to whatever social issues there are with immigration or whatever criminal issues there are with immigration, there are now, since September 11 brought home to us dramatically, the terrorism aspects of illegal immigration.

The homeland security provisions of this bill try to, and I believe do, very effectively address the issue of terrorism that must be confronted if we are to survive as a people.

This legislation requires 100 percent coverage of our land and maritime borders, including physical infrastructure, border patrol personnel and the use of all available technology.

□ 1730

It also requires a joint and collaborative effort between the Department of Homeland Security and the Department of Defense to use all available military technology to ensure that our borders are controlled and sealed. Most importantly, I believe, and as importantly as any other provision, it ends the policy of catch and release, which has been discussed in the previous hour; and it mandates expedited removal. We no longer have the luxury; and if we are talking about, I know the gentleman from Michigan before was talking about, who has been in control and who has not been in control, I would be the first to say that we are dealing with a bipartisan problem which is why it requires a bipartisan effort. That was the bill that we attempted to pass out of the Homeland Security Committee, because we have to end such policies as catch and release and expedited removal.

I would hope that, as the debate goes forward, both sides acknowledge the good faith of the others. This is too serious an issue to be trivialized or demagogued. It is too serious an issue to be looked at in any kind of casual way. I listened very carefully to the gentleman from California (Mr. RADANOVICH). I understand his concerns about there not being guest worker provisions in this bill; but I believe that if the American people are to take us seriously, they want to see us address the issue of border control before we go on to any other expansion of rights or any other legalization of those who are here already or even setting in process a motion where we make it easier for workers to come into this country. We have to show we can control the borders before we go further, and that is the purpose of this bill.

Mr. Chairman, let me just say that as the grandson of immigrants who grew up in an immigrant neighborhood in New York City, I yield to no one in my admiration of what immigrants have contributed, are contributing, and must continue to contribute to our country; but it has to be legal immigration. I say that. Some of the things that maybe were looked at or not looked at prior to September 11 can not longer be ignored. They have to be addressed. We have to address head on the issue of illegal immigration because of its ties to international terrorism.

So while I grew up in a neighborhood of immigrants as a child, I also saw many of my neighbors killed on September 11. So neighborhoods have changed; things have changed. What was tolerated before September 11 maybe in some quarters can no longer be tolerated now. We no longer have the luxury of looking the other way. We have to address head on this issue of illegal immigration. That is what this bill is about. Certainly the aspects passed from the Homeland Security Committee, that is what they were about, combating illegal immigration and thereby also undercutting international terrorism.

I would ask the debate go forward in a reasonable way where we can exchange ideas, confront the issues that are confronting our Nation on this issue of illegal immigration.

Mr. Chairman, I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it used to be said that we are all either Republicans or we are all Democrats, but I wonder what is happening to this country as I look at this bill. But today that principle is long gone, replaced by partisan efforts to satisfy extremist groups. The Democratic members of the committee of Homeland Security, including myself, Ms. SANCHEZ, Ms. LOFGREN, worked tirelessly with my counterpart, Chairman KING, to create a good border security bill that had many, many good provisions; but after that bill left our committee, it fell into partisan hands to satisfy the extremist anti-immigrant groups.

Instead of giving the American people a Christmas present of a bipartisan bill that would secure our borders in a real and fair way, we are giving them a bill that looks more like a gift from an extremist Grinch who stole Christmas and trampled our Constitution on the way. The Judiciary Committee has loaded up our bill with controversial immigration proposals that are now opposed by nearly every reasonable business, immigration, and human rights group in America. I hope my chairman from New York recognizes this.

I know it is difficult, but if you look at the groups that have opposed this piece of legislation, you can understand why it is a bad bill. The Chamber of Commerce opposes this bill. The American Bar Association opposes this bill. The Irish Lobby for Immigration Reform opposes this bill. The U.S. Conference of Catholic Bishops oppose this bill. What reasonable organization is left to support it?

Mr. Chairman, this bill is so ridiculous that, according to the Republican version, Santa Claus himself would be a criminal for trekking from the North Pole to deliver holiday gifts without a visa. This bill is not a step in the right direction. It is time that we pass a real border security bill that is fair and effective, not a partisan bill that does not solve our problem.

Mr. Chairman, I reserve the balance of my time.

Mr. KING of New York. Mr. Chairman, the gentleman's reference to Santa Claus shows what a pleasure it is to deal with the gentleman.

Mr. Chairman, at this time I yield 3 minutes to the gentleman from Texas (Mr. MCCAUL) who is a former Federal prosecutor, a member of the Joint Terrorism Task Force, and chairman of the Subcommittee on Investigations.

Mr. MCCAUL of Texas. Mr. Chairman, I would like to thank Chairman KING for his hard work on this much-needed legislation.

Mr. Chairman, before running for Congress, as the chairman indicated, I had a counterterrorism background as a Federal prosecutor in the Justice Department. My jurisdiction included the Mexican border. Based upon this experience, I have a direct understanding of America's need for this comprehensive border security legislation; and I am proud to say out of our committee, Mr. Chairman, it was truly bipartisan.

The Border Security and Terrorism Prevention Act is a result of the United States' grave and perpetual problem with undocumented aliens. An estimated 8 million to 12 million undocumented aliens are here in the United States. Last year alone, over 1 million illegal aliens were apprehended at the border, and the Border Patrol estimates that many more have crossed undetected. In addition, there is evidence to support that al Qaeda would like to exploit our southwest border, and we know that it is vulnerable.

In the post-9/11 world, these figures no longer represent just an immigration problem, but rather one of national security. America's borders are being compromised by our inability to identify those who are coming into our country. This commonsense legislation will work to fix this growing problem and will greatly enhance security along our Nation's borders. If passed, America will begin to establish operational control of its borders and ports and have a national strategy, thereby ensuring a safer and more secure home for all of us.

I am honored to serve on the Homeland Security Committee and to have played a role in the drafting of this important legislation, including the mandatory detention provisions which will end the so-called catch and release policy of undocumented aliens, particularly those from other countries other than Mexico. Unknown OTMs crossing our borders present a dire national security risk, since most of the detained OTMs are immediately released into our streets never to return for their court date. Sadly, the number of OTMs crossing America's border has tripled over the last 3 years.

The second provision that I was proud to have a part in was to reimburse State and local law enforcement agencies for the cost they bear due to the national border security burden. If we have learned anything after 9/11, it is that the Federal Government must work with the State and local law enforcement to prevent terrorism.

It is our duty, indeed it is our responsibility as Members of this distinguished body, to do everything in our power to ensure that another 9/11 never occurs in this country again. This vital piece of legislation will greatly advance our efforts towards preventing terrorists from entering our shores.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong opposition to H.R. 4437. The chairman of the Committee on Homeland Security, the committee on which I serve, is right in saying that we worked on this bill in a very bipartisan way, at least the initial King-Sanchez bill that came to the Homeland Committee. We did it over a period of 2 months. We worked back and forth many of us on our side of the committee with Mr. KING and others, and then we brought a bill to the Homeland Security Committee, a bill that dealt with border security. Border security.

By the way, it was not just the immediate southern border we were talking about; we were talking about issues that are affecting us all, many of the borders and airports and coastal sections, and it included, this border security bill, even land away from the border, in the sense that it comes up to the area I represent. If you are in

Disneyland in my district, you are less than 100 miles away from the California border with Mexico. This bill that we had in Homeland Security would have affected my area.

Now, not everything was great about the Homeland Security bill. In fact, I was very angry at some pieces that managed to get in. But we had a real debate, and we took our time, and we understood what we were talking about. And then this bill was taken over by the Judiciary Committee, usurped, with many, many more pieces put on, pieces that do not make any sense and really are not about border security. They are not about getting rid of the catch and release process that we have right now; they are not about tightening. They are about being mean, mean to immigrants in this community. And not just those who have no documents to be in the United States. This bill dangerously is unfair and penalizes everyday Americans regardless of what their immigration status is.

Under this legislation, the Sensenbrenner bill, it would be a criminal offense, criminal offense, to be in the United States in violation of immigration laws. It would affect millions of legal immigrants, including lawful permanent residents and nonimmigrants who accrue technical violations of immigration regulations, like failing to report a change of address.

Now, I know this because we have been working, we have been thinking, and we have been looking. But many of my colleagues may not understand the impact that the Sensenbrenner bill has on the people of America, legal residents in some cases. People would be criminalized under H.R. 4437.

In addition, this bill criminalizes anyone who assists undocumented immigrants in the United States; and this would include, listen to this, please, it would include churches, other faith-based groups, volunteers that provide food aid, shelter, or other life-saving assistance to members of its community who may not have documents.

Do we really want to clog up the Federal system with decent people who are just trying to be Good Samaritans? Is that what this is about? For you taxpayers, is that what you want to spend your monies on, providing public defenders for everyone we are about to put in jail? And the 11 million, supposed, because we do not even know really how many people there are here without documents, that we are going to criminalize, women and children, where are we going to hold them? Because the mere presence of them being in the United States the day after a bill like this passes would make them felons in this country, according to Sensenbrenner.

So, it is not a good bill. This has not been thought through, the implications and how we handle it. And the money that this would cost is something that America really is not really ready for.

The Sensenbrenner bill also cripples American businesses. All of these people all of a sudden are felons. They are not in. They are not working. And all employers would be forced to use an employment eligibility verification system that, quite frankly, is not capable of handling the increase in volume that this Sensenbrenner bill would require.

The database for the employment eligibility verification system contains widespread flaws and false information, false information, which would show many legal workers as undocumented, depriving legal employees of jobs and employers of the much-needed workers, the reason these people are here.

The U.S. Chamber of Commerce and business groups across America oppose H.R. 4437 because the employers will pay the price for these impractical provisions and because enforcement-only legislation like H.R. 4437 will not create a rational immigration system needed to serve all Americans, businesses, and potential immigrants.

□ 1745

It does not address real comprehensive immigration reform, which is necessary for everybody out there in America who thinks that undocumented workers are a problem. This Sensenbrenner bill will not fix what we have on our hands. You have only to look at demographics to understand we in America need more workers than we can provide. And we need to get them from somewhere. So we need to get back to comprehensive immigration reform, not just closing off borders or hurting people or taking children away from mothers or deporting mothers. This will not solve the problem we have at hand.

And so when we were in the Homeland Security Committee, we were working on border security in the hopes that this would be a good-faith effort to work together in a bipartisan manner and to get the ball rolling to work on more comprehensive reform that would bring about what we need here: Family reunification, good economic conditions for our economy and homeland security.

I urge my colleagues to oppose H.R. 4437. We deserve a comprehensive solution to our immigration problems.

Mr. Chairman, I reserve the balance of my time.

Mr. KING of New York. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), the chairman of the Subcommittee on Economic Security, Infrastructure Protection and Cyber Security, and the former attorney general of California.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, there are a number of major provisions in this bill, and let me speak of one that has been referred to on both sides of the aisle, some in support and some not in support.

Section 407 which is the expedited removal section, this was adopted in the markup in the Homeland Security Committee. The question of expedited removal was one that we explored in our subcommittee. The specific context of our hearing involved the growing number of illegal border crossings by what is referred to by the service as ''other than Mexicans'' or ''OTMs.'' Let me explain what this is.

Most people who come across the border illegally from our adjoining countries, either on the north from Canada or on the south from Mexico, accept voluntary departure. They agree to voluntarily go home and agree that they do not go through the various processes involved. We cannot do that with those people who are not from those countries because neither Mexico nor Canada would accept them. So we have to have an acknowledgment from the country from whence they came, their home country, that they are, in fact, residents of those countries or citizens of those countries. That requires us to detain those people for some period of time. That requires detention space, and the subject that has been discussed before, the idea of catch and release was created as a result of insufficient detention space and insufficient resources dedicated to that proposition. After that was revealed by the press earlier this year, the administration responded by trying out a couple of pilot projects in certain sectors. Instead of catch and release, it was retain them and then have expedited removal. They found that to be successful, and so they have expanded it to the entire southern border.

Our bill mandates that not only be a temporary policy but a permanent policy. Yes, it does extend within 100 miles of the border, and it is limited to 14 days. That is, people who have been here less than 14 days, even though the underlying law allows it to be done for a 2-year period of time, it does not limit it to 100 miles from the border. This is a border security bill, and we limit it in that fashion. It is directed at those who have come here.

We even had the incident of a large number of people from Brazil this past year coming up, and we found that not only did they come across the border but instead of running away from our immigration officers, they ran to them. They ran to them to surrender, and they ran to them to surrender so they could be cited so they could actually get the citation which said you have entered this country illegally, you have to show up for your hearing 90 days hence. And 90-some percent did not show up.

My question is, why did the 6 percent show up? If you look at it, we have created a system with every incentive to come back. That has turned around because of the pilot project. What this bill does is mandates it. It is commonsensical. It is the right thing to do. It helps us take a right step in the right direction.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I yield 3½ minutes to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Chairman, Members on both sides of the aisle believe that the government has a right to know who is coming into this country.

Secondly, it would seem to me, once you get past the rhetoric, that we do not accept lawlessness. But I must say to Chairman KING, a man of intellect and compassion, and I will get to that in a second, and my very good friend, I must say to the chairman that, when we look at section 612, denying citizenship to any legal permanent resident who has been unlawfully present in the country at any time in their life, what we are doing is forgetting how Italians and how Irish came into this country.

Now 9/11 did change a lot of things, obviously; no question about that. And it does not mean that we should open the floodgates or close them or build them or not build them. But when we forget how our ancestors got here, many times not in a pristine fashion, this is not of your doing, Mr. Chairman. You can scream to the high moon, but this is not your idea, and even if you put your name on this, I know it is not for sure. We didn't pass this out of the Homeland Security Committee.

And by the way, how many folks are we going to have to hire to do all of this? Who is paying for this?

You have lost your background, and I mean that in a complimentary way. I do not mean that to be a wise guy. What you did just several years ago with the Irish immigrants who came here, when our British friends wanted to pluck them up and throw them out of the country, it was courageous. You cannot deny this in a bill. You cannot deny your heritage. I call on you to look at your heritage.

We are making all immigrants here suspects. I believe, and I think all of us do, that it is a moral imperative for Congress to enact comprehensive immigration reform. Both sides of the aisle agree on that. We need a full and robust approach, one that includes not only strong and effective enforcement provisions but strategies to create new legal channels for future flows of immigrants because they are coming.

Family immigration backlogs. Families, we want to unite families in a legal fashion. This bill does not do that, Mr. Chairman.

Indeed, it fails to address many of the most important elements of immigration reform while imposing harsh, considered punitive, measures. That is why I believe it is a moral imperative to vote this bill down today. I do not think it is wise, and I do not think it is a real plan. Instead of proceeding in a judicious manner that could affectively stem the flow of illegal immigration, we are debating ineffectual enforcement measures that do not increase the safety and security of the American people.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair would remind Members to address their remarks to the Chairman of the Committee of the Whole.

Mr. KING of New York. Mr. Chairman, I yield myself such time as I may consume.

I, once again, admire the passion of the gentleman from New Jersey and assure the gentleman that I hold in high esteem the contributions immigrants have made, are making and will continue to make to this country. I believe, however, that it is essential that we put it on a legal basis in fairness to those who are coming here legally and also because of the situation that developed after 9/11. Having said that, I have the greatest respect for the gentleman from New Jersey, and he and I, in our own way, will be able to resolve some of our differences.

Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Mr. Chairman, I rise today in favor of H.R. 4437. To paraphrase an old Ford commercial, border security is job one for America. Safeguarding the integrity of our borders is an important component of both economic and national security. H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, represents an important step towards the completion of this job.

H.R. 4437 modernizes and improves our border security operations, allows the Department of Homeland Security to utilize the Department of Defense surveillance assets to monitor activities around the border. It establishes physical barriers to crossing, and it calls for the utilization of new technology, such as unmanned aerial vehicles, UAVs, to ensure that we have 100 percent coverage of the areas in question.

And in order to monitor those coming across at legal check points, it authorizes 100,000 new, full-time port-of-entry inspectors as well as the training of 1,500 additional K–9 units over the next 5 years. This will go a long way towards making sure that people who are not supposed to be here, whether they be undocumented aliens or terrorists or both, do not get here.

The border is a dangerous place. It is a dangerous place to us as a country, as it can be an open door to those wishing to do us harm. But it is also dangerous place for individuals who cross for other reasons. Many women have been murdered along the border, and most of these homicides remain unsolved. People have died in the desert after being exploited by human traffickers, known as coyotes. This bill provides for mandatory minimum sentences for those convicted of alien smuggling. It also has the potential to save many lives.

Because of the enhanced surveillance capabilities provided by the bill, we are more likely to detect individuals who are lost, in distress or who are about to become victims of crime near these border crossings.

For all of the foregoing reasons, I ask that the body pass this important legislation. I commend Chairman KING and Chairman SENSENBRENNER for their leadership on this issue.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. GONZALEZ), the chairman of the Hispanic Caucus Task Force.

Mr. GONZALEZ. Mr. Chairman, I thank the gentlewoman from California, and I rise today in opposition to the legislation.

First of all, let us get it straight, this is not about border protection, and it is not about antiterterrorism. If it was, we would be debating the bill that was voted out of Homeland Security. But instead, that bill has been hijacked and now is a vehicle used to promote ineffective and hypocritical so-called illegal immigration control.

Let us start with the obvious. When it comes to the hiring of the undocumented worker, and that is simple: Demand will always determine supply. If you were serious about limiting the number of undocumented workers coming into this country, then significantly increase the fines levied against the employers. This bill does not do that. Make it as easy to criminalize the act of hiring as you do the act of entry into this country; this bill does not do that. Exclude employers that hire undocumented workers from government contracts and foreign subsidies and make sure that is a fact; this bill does not do that.

Overall, we need to stop the hypocrisy, and we need to deal with the reality. It is the hypocrisy of failing to acknowledge that the undocumented worker comes to this country at our behest and that they make this economy work. We should be discussing the legal framework that addresses these realities, that encourages assimilation, becoming one people and one Nation.

□ 1800

I believe many supporters of this bill are concerned with the changing face of this country when what they are doing today and tomorrow will be changing the heart and soul of this country, which matters much more. The nature of those concerns happens to be superficial, just as this legislation is superficial. If this legislation does not fail now before it becomes law, it will fail later after it becomes law. I ask my colleagues, do not vote for failure.

Mr. KING of New York. Mr. Chairman, I yield 3 minutes to the gentleman from Georgia (Mr. LINDER), the chairman of the Subcommittee on Prevention of Nuclear, Chemical and Biological Attacks.

Mr. LINDER. Mr. Chairman, I thank the chairman for yielding this time, and I want to commend both Chairman KING and Chairman SENSENBRENNER for being able to work together and bring this legislation to the floor. This is not a perfect bill, but it is a very, very good start.

Mr. Chairman, I rise in support of H.R. 4437 and urge my colleagues to

join me. While much of our Nation's attention is rightfully focused on hostilities abroad, I am pleased that the House is working to uphold the other half of its responsibility to protect the American people, namely, the prevention of dangers here at home.

It is widely acknowledged that issue one of illegal immigration must be addressed on two major fronts, the first of which being the prevention of illegal entry into the United States, and the second, concentrating on finding, documenting and in most cases deporting illegals already within our borders. The bill before us addresses both of these contentious points.

It appears that protecting our borders has drawn the ire of some, including our neighbors to the south, who have called our effort today ''disgraceful and shameful'' and question whether the economic prosperity of our country will be adversely affected by our actions.

My response is that until they fully grasp the concept that a lack of control at the border allows in not only those seeking a better life in this country but those also seeking to destroy us, I, for one, will respond that the United States has a sovereign right and responsibility to protect its own domestic interests as it sees fit.

I agree with the assessment of many regarding the positive contributions of those from other nations, without whom many components of our economy could be hurt.

But, frankly, today's debate is one of security, not commerce. If we are to believe that our immigration laws simply have no value, as our current policies would have us believe, should we then simply throw them all out, the entire lot of immigration law? I hope not.

The American people want economic prosperity, high-quality goods and low prices, all of which I support. My concerns, however, are very simple. If we fail to secure our borders, to prevent the entry of individuals illegally into this country and to uphold the rule of law, then we waste our time worrying about the strength of our economy, for an attack involving a weapon of mass destruction, carried by a terrorist who brought that weapon across our borders, would certainly destroy it all, and preventing that scenario, which is the mission of my subcommittee, the Homeland Security full committee and the Congress as a whole, should be reason enough to support this bill.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself 3 minutes.

It is interesting that in the face of a massive failure of administration of our border security, the Congress responds not with enhancing the remedies and its personnel so that we can enforce the law, but instead comes up with a bill to dramatically change the law.

I mentioned earlier, we have cited and released individuals who never showed up, 80 percent of the time or better. And what did the administration do? They just kept doing it. That is the definition of insanity, doing the same thing over and over again and expecting a different outcome. Well, changing the law is not going to change the fact that this has been a massive failure of administration. Making 11 million people without their papers aggravated felons is not going to remedy the failure of the administration at the border.

The gentleman from Michigan (Mr. CONYERS) mentioned that there was a provision that could criminalize churches. In fact, it is section 202 in the base bill. It provides that people who assist those who do not have their papers could be guilty of a crime and, in fact, requires the seizure of property. We know that some of our churches that are helping the homeless do not ask for papers when they hand out the soup. In this bill it requires seizure of their church properties.

I want to mention another provision I touched on earlier, and that is section 404 of the bill. It does not make any sense at all when we are talking about the need to secure our borders, which every country has a right and an obligation to do, to reinstate the exclusion of legal persons based on the place they were born.

There is a sad part of American history. In 1882, the 47th Congress of the United States passed a bill called the Chinese Exclusion Act, and that bill haunted this country, really, into 1943. It provided that people from China could not come.

In section 404, we are de facto reinstituting the Chinese Exclusion Act because we are saying that countries that do not cooperate with us, currently the State Department tells me it is China, Vietnam, Ethiopia and Cuba, then we have the ability to exclude people who are born in those countries.

Let me just give you an example. I have a lot of Vietnamese Americans in my district. Do you think the Communist government in Vietnam cares if we do not let a refugee from their country into the United States? Do you think that the communists in China really would be concerned if a Chinese citizen was escaping from China, because they are facing a forced abortion in China? Do you think that enhancing the Communist governments of Cuba, Vietnam and China is really about securing our Nation's borders? I think not.

This bill is defective in so many ways that a wide number of groups have opposed it. The minority leader, Ms. PELOSI, will submit the list for the RECORD.

Mr. Chairman, I reserve the balance of my time.

Mr. KING of New York. Mr. Chairman, I yield 4 minutes to the gentleman from Alabama (Mr. ROGERS), the chairman of the Subcommittee on Management, Integration and Oversight.

Mr. ROGERS of Alabama. Mr. Chairman, I rise today in strong support of this bill and in particular the provisions of this bill that help secure our border and protect our homeland.

The bill we are considering today contains many key border security provisions from H.R. 4312, the Border Security and Terrorism Prevention Act of 2005, which was passed recently out of the Homeland Security Committee by a unanimous voice vote.

I would like to note that H.R. 4312 was the first major bill reported by the committee under the chairmanship of Mr. KING, and we appreciate his leadership.

Mr. Chairman, we have nothing less than a crisis situation on our borders. This past August I led a congressional delegation to our southern border with Mexico, and we saw firsthand vast areas without fences and densely populated areas where illegal aliens find their way across our border.

And I would urge you, Mr. Chairman, and our colleagues to refer to these individuals as what they are. They are illegal aliens, not the benign, friendly, undocumented worker phrase. They are illegal aliens.

I was impressed during this visit with the dedication and level of our Border Patrol agents. However, they desperately need more resources.

We also need to make sure that they have more cameras; more vehicles; and in particular, more canine assets.

Section 108 of this bill that we are considering today in particular will strengthen border security by increasing the number of canine detection teams working with our Border Patrol agents. These detection dogs are instrumental in finding concealed humans, explosives, drugs, and bulk cash.

We also need to ensure new border surveillance equipment is functional and cost efficient.

Section 109 of this bill addresses these concerns. It requires that a DHS Inspector General conduct reviews of each contract action over $20 million relating to the new Secure Border Initiative.

With thousands of new Border Patrol agents being hired, we also need to ensure they are trained as cost effectively as possible. Therefore, section 110 of this bill would instruct the GAO to evaluate and review the cost of Border Patrol training.

H.R. 4437 includes many other strong border security provisions that will improve the safety and security of this great Nation.

I commend Chairman KING for his leadership on these issues, and I urge my colleagues to support this legislation.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1½ minutes to the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN), a member of the Homeland Security Committee.

Mrs. CHRISTENSEN. Mr. Chairman, I too want to commend Chairman KING and Ranking Member THOMPSON for their work on legislation which passed on a voice vote out of our Homeland

Security Committee and which is included in this bill before us today.

Mr. Chairman, securing our Nation's air, land, and sea borders is a difficult, yet critical, task. While H.R. 4437 takes some good steps in addressing this problem, such as authorizing more Border Patrol agents and creating a new Border Patrol unit in my district, it also includes a number of harsh and contentious provisions which makes it impossible for it to receive the same kind of bipartisan support that was achieved in the Homeland Security Committee.

So while I am pleased that the passage of this bill would mean that over 175 miles of unprotected and open borders in the U.S. Virgin Islands, a gateway of choice for smugglers into the United States, would finally receive protection from a newly established Border Patrol unit, I remain deeply concerned that H.R. 4437 would be excessively harmful to immigrants, families, businesses, and communities. It was a much better bill when it left out of the Homeland Security Committee. And I would hope that as we continue the process of moving this bill through Congress, we would find a way to develop a consensus on the final form that the legislation would take, which would protect our borders without doing harm to immigrants and Americans of all backgrounds.

Mr. KING of New York. Mr. Chairman, I yield myself such time as I may consume and yield to the gentleman from New Jersey (Mr. LOBIONDO), the chairman of the Subcommittee on Coast Guard Maritime Transportation, for the purposes of a colloquy.

Mr. LOBIONDO. Mr. Chairman, I thank the gentleman for yielding this time, and I thank him for engaging in a colloquy to clarify the intent of this bill regarding our Nation's seaports.

Mr. Chairman, I would like to ask you if it is the sentiment of the chairman that this bill does not intend to duplicate or supersede existing policies and strategies that have been developed specifically for the maritime domain as part of the Strategy for Maritime Security or the National Maritime Transportation Security Plan, because these strategies provide a comprehensive framework to enhance maritime domain awareness including activities that may affect or threaten our maritime border security.

Mr. KING of New York. I would say to the gentleman that it is my intent that maritime border security strategies called for in H.R. 4437 should be developed under the framework of the Strategy for Maritime Security and in a way that complements the maritime security strategies that are being implemented under that plan

Mr. LOBIONDO. As the chairman knows, the Coast Guard has been identified as the lead Federal agency with responsibilities over maritime domain awareness. The Coast Guard's efforts to enhance awareness of activities in the maritime domain, in addition to the services role as the lead law enforcement agency in the maritime environment, enhance the Nation's capabilities to maintain security along our maritime borders. The Coast Guard carries out missions every day to interdict illegal immigrants, drugs, and suspect cargo and crew before each reaches the United States.

I ask the chairman if it is his intent to continue this House's support of the Coast Guard's efforts to maintain heightened border security and that this act would not hinder these critical Coast Guard missions.

Mr. KING of New York. Nothing in this act should be understood to divert existing responsibilities for maritime border security or more generally any component of security in the maritime domain from the Coast Guard to any other entities in the Department of Homeland Security.

Mr. LOBIONDO. I thank the chairman for clarifying these very critically important issues regarding our maritime homeland security and the Coast Guard.

Mr. KING of New York. Mr. Chairman, I reserve the balance of my time.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. HINOJOSA).

(Mr. HINOJOSA asked and was given permission to revise and extend his remarks.)

Mr. HINOJOSA. Mr. Chairman, I rise in strong opposition to this ill-conceived and harmful legislation, H.R. 4437. Our immigration laws are in need of a complete overhaul. There are bipartisan proposals on the table, but the majority is not interested in solutions. It is interested in finding its next wedge issue for this 2006 campaign season. Our Nation will suffer as a result.

For the past 20 years we have taken a get-tough enforcement-only approach to this immigration problem, and the result has been the situation we find ourselves in today.

Those of us who represent border districts live on the front lines on the immigration issue. Let me give you a view from where we live. Our schools, hospitals, law enforcement, and social services are being stretched to the limit. At the same time, we have experienced a surge in economic activity and growth. My area has one of the fastest rates of job growth in the Nation.

□ 1815

Immigration is both a challenge and an engine for growth. We need laws that are up to the challenge.

For a perspective from the front lines, listen to the words of John McClung, the president of the Texas Produce Association: ''Attempting to solve our border problems by passing draconian 'enforcement' legislation, absent a credible guest worker program, would be enormously destructive to the economy, unfair to employers, ruinous to our relations with Mexico, and, yes, that really does matter.''

Mr. Chairman, I will submit the full text of this letter into the RECORD.

This bill will not help families. In my district, our caseworkers and our advocacy organizations, on a daily basis, work with families who have been waiting 10 years or more to be reunited with loved ones—a spouse, a sister, a child, a grandparent. The backlogs are enormous, and the system is capricious and error-ridden. Call for information on your immigration case, and the temporary contract worker at the call center with little to no training in immigration rules will give you a different answer every time.

This bill does nothing to fix our immigration system. It is not reality-based. It should be rejected.

TEXAS PRODUCE ASSOCIATION,
Mission, TX, December 13, 2005

Hon. RUBEN E. HINOJOSA,
Washington, DC.

DEAR REP. HINOJOSA: I am writing the Texas Congressional delegation in the belief that the Congress is perilously close to passing ill conceived immigration reform legislation that will do grave injury to this country, and fail in its objectives.

My office is about five miles from the U.S./Mexico border. My home is about a third of a mile from that border. I am as mindful as any American—more than most—of the surge of illegals into this country, and I certainly understand, and sympathize with, the need most of us feel to return to the rule of law. From the front yard of my house in the rural Rio Grande Valley, I often see groups of illegals trudging down the road. Many times I've watched the Border Patrol agents chase them down, cuff them, and haul them away. I can tell you that there's no satisfaction in it, no sense of the good guys prevailing. Only a sad recognition that this country's immigration laws are a dismal failure by any measure: economic, humanitarian, political. The saving grace is that enough illegals, get through to do most of the jobs that need doing, as disgraceful, flawed and inefficient as our nonsystem may be.

At least, they get through for now. I represent an industry that employs thousands of semi-skilled laborers, and increasingly is unable to find anywhere near an adequate supply of willing workers. Most people don't want to do stoop labor in the fields, no matter the pay scale. They certainly don't want their kids doing it. So we truly need guest workers from Mexico or Central America or wherever. So does the restaurant industry, and the construction industry, and every other industry that requires numbers of semiskilled workers. And what is the U.S. Congress doing about this mess? Preparing, it appears, to make a very bad situation a lot worse.

Most of us get it down here in rural Texas.

Why can't more members of Congress get it?

Is the need to act tough for the media so compelling? Is the ideologue mantra of no amnesty (adjustment of status?) for lawbreakers going to be allowed to jeopardize American agriculture, and conceivably the national economy? Is the fact that these illegals want essential jobs in this country that none of our own citizens will take at any realistic pay rate of no consequence at all because they're ''illegal'' or ''undocumented''?

Attempting to solve our border problems by passing draconian ''enforcement'' legislation, absent a credible guest worker program, would be enormously destructive to the economy, unfair to employers, ruinous to our relations with Mexico (and yes, that really does matter), and ultimately unenforceable. The Sensenbrenner bill just passed out by the Judiciary Committee (H.R. 4437)—the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005—is a grand example. It relies on bludgeoning U.S. employers into submission with fines and administrative procedures, but only after denying them the only source of labor they might realistically have hoped for. As I hope you recognize, it's just one of several one-sided bills designed to appease the ''broken borders'' crowd.

Here's what we're asking. The Sensenbrenner bill needs to be shelved, as do all proposals that do not include a practical alien worker provision. To require electronic verification of employment eligibility without a smart guest laborer program, and without some form of ''amnesty,'' won't succeed. For those who gag on the idea of amnesty, the real question isn't determining how to avoid rewarding scofflaws—the real issue is deciding to avoid punishing this country. The produce industry has long supported the Craig-Kennedy AgJOBS bill (Flake-Kolbe on the House side), and continues to do so. If you and your colleagues can engineer a better bill than Flake-Kolbe, that would be great. If you can't, pass AgJOBS. Either way, please help lead the nation away from a politically expedient catastrophe.

Thank you for your consideration.

JOHN M. MCCLUNG,
President and CEO.

Mr. KING of New York. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Chairman, I would like to thank Chairman KING and Subcommittee Chairman LUNGREN for their leadership in bringing this to the floor.

I have serious problems with some non-Homeland Security parts of this bill, but I want to praise the Homeland Security section because I think they have done a terrific job.

I would like to thank them in particular for two key provisions that we have been working to fix ever since Homeland Security has broken them. One is in section 502, the Office of Air and Marine Operations, AMO; and in section 503 relating to the Native American Customs Patrol Officers known as the Shadow Wolves.

Section 502 relates to the AMO, which has historically been responsible for interdicting drug smuggling airplanes and ''go-fast'' speed boats; for supporting Customs drug investigations and raids as well as migrant interdictions; for providing airspace security in the Nation's capital and at special events like the Olympics; and for providing crucial maritime patrol aircraft, most notably the fleet of P–3 radar planes, for drug interdiction operations in the Caribbean and Eastern Pacific. Now they are being deployed as a picket fence. It makes no sense, and this bill helps to start to fix that before we destroy one of our best units in the United States Government.

In section 503, the Shadow Wolves have fallen victim to the same kind of over-compartmentalized thinking that threatens AMO. The Shadow Wolves are one of the last remaining Customs Patrol Officer units in the country. They control one of the critical points of the border and operate on the Tohono O'odham Indian Reservation in southern Arizona, which has 70 miles of the U.S.-Mexican border running through it.

Here we have a Native American group that has been honored all over the United States and the world, something we need at several other parts of the border, and they want to break them up and make them fit some arbitrary thing, when they are really more like detectives than patrol officers, and put them as part of the Border Patrol. I do not have any axe to grind with the Border Patrol. I think they do a great job. But units like AMO and the Shadow Wolves do not fit this cookie cutter approach in trying to systematize this agency, and this bill fixes that before we lose some of our most effective anti-drug units in our entire government. And I thank the chairman and the subcommittee chairman for finally addressing this question.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. REYES), who had a distinguished career in the Border Patrol before being elected to Congress.

Mr. REYES. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, the well-known comedienne Joan Rivers used to say: Can we talk? And that is what I would like to say tonight, is, can we talk about a terrible bill, a bill that may feel good and make some people think they are voting for border security and to do a better job of monitoring the borders of our Nation but really is not?

We can do much better. This bill reminds me a lot of the automobile that was built by Dr. Seuss that looked like an abomination. This bill has fenders sponsored by Congressman ISSA. It has got a horn and a steering wheel sponsored by somebody else. It has got an engine that belongs to somebody else. And in its totality, it does nothing to address the issues and the problems that we have as a Nation.

It talks about getting tough on smugglers, and do my colleagues know what it does? It criminalizes immediate family members. That means, if an individual is bringing in his wife or his children or his parents, he gets zapped just like that individual that is bringing in people for profit. Terrible.

It talks about mandatory sentencing. That translates, if we are serious about that, to billions of dollars in prison construction. It does nothing for assistant U.S. Attorneys who are going to have to prosecute all these new felons. It does nothing to provide new judges that are going to be needed in this process. And it certainly is silent on U.S. marshals who, today, their vehicles average about 140,000 miles when the replacement suggested mileage is about 95,000.

But, oh, no, we are not doing anything about the things that we really need on the border. We are doing things that are mean spirited, things that are not in keeping with the best traditions of a Nation that was founded by our immigrants. It betrays our legacy. It insults our immigrants. And I will tell my colleagues, Mr. Chairman, we can do much better.

In fact, last week, in my district, I was informed that two young men that had just come back from Iraq, two young men that I have gotten to know because their father a long time ago came into this country as a bracero; he overstayed, raised a family here, and under the provisions and amendments that are proposed in this legislation, those two young men would be ineligible to be U.S. citizens. But, oh, yes, by the way, that is okay that they can go to Iraq and fight for the principles and for the rights of all people in this country.

This is a terrible bill. I am opposed to it. I recommend that all our colleagues oppose it. Let us talk about doing a better job for this country by doing a better job with immigration.

Mr. KING of New York. Mr. Chairman, I yield 2 minutes to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE), the new member of the committee, who, also, is back from surgery.

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, I rise today in strong support of H.R. 4437, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005.

I am proud to be a new member of the Homeland Security Committee and appreciate this opportunity to work with Chairman KING on this legislation.

Every weekend, when I go back home to Florida, I hear from constituents that our country is being overrun by illegal immigrants. Today, we truly show our constituents that Congress is listening to them and that we mean business.

For starters, the bill requires mandatory detention of illegal aliens, eliminating the Department of Homeland Security's dangerous catch-and-release policy. Catch and release does nothing other than allow the Border Patrol to apprehend illegal immigrants then release them with nothing but a flimsy promise that they will return for a deportation hearing. Ha, ha. It does not happen. As Members may guess, 75 percent of them do not show up for their court date and are free to roam throughout our neighborhoods. That policy has existed for far too long. This bill requires that law enforcement hold illegal aliens until they are deported.

I am also pleased that the chairman was able to include some language in the bill that authorizes Homeland Security to engage in competitive contracts with companies to help manage the transportation of illegal aliens. Allowing the Secretary to engage in

these contracts will free up these resources and assist the department as it eliminates the harmful catch-and-release policy.

Mr. Chairman, our Nation's lawmakers did not craft our immigration laws as suggestions or reading material for insomniacs. Our laws were made to ensure proper, secure and legal entry into our country. This bill helps to accomplish exactly that, and I urge my colleagues to support it.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1½ minutes to the gentleman from Maryland (Mr. HOYER), our distinguished whip.

Mr. HOYER. Mr. Chairman, let us set the record straight. This legislation is not real. It is a cynical political ploy.

Do not take my word for it. Grover Norquist, one of your heroes, said this, this morning: ''The good news is that the legislation that is being voted on, even with amendments that would improve it and make it less problematic, is not a piece of legislation that is going to pass the Senate and be signed by the President.'' So we are making political points, not policy.

This bill, even if it did become law, would not solve the real issue that confronts our Nation: the Federal Government's failure to ensure that our borders are secure. Who says that? George Bush, President of the United States, says that.

Let no one be mistaken. Our Nation has a border security problem. And it has an immigration problem. These problems were not created overnight, and they will not be remedied with a misguided, mean-spirited proposal that the majority has put on the floor today. The fact is, Republican inaction has left the United States ill-prepared to prevent or respond to another terrorist attack on our soil. Do not take my word for it. Tom Kean, former Republican Governor, and the 9/11 Commission gave Congress and the White House grades of D and F on the implementation of 17 of the commission's recommendations. This legislation would do little to prevent would-be terrorists from entering our country.

Democrats are for the rule of law. We want to get border security right. But this bill is not about solving problems. It is all about harsh, punitive measures that will not work.

Oppose this legislation.

Mr. Chairman, let's set the record straight: This legislation is a cynical, political charade.

But don't take my word for it. Just listen to Grover Norquist, the President of Americans for Tax Reform and a White House confidante.

This morning he is quoted as saying: ''The good news is that the legislation that is being voted on, even with amendments that would improve it and make it less problematic, is not a piece of legislation that is going to pass the Senate and be signed by the President.''

This bill, even if it did become law, would not solve the real issue that confronts our Nation—the Federal Government's failure to ensure that our borders are secure.

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These problems were not created overnight. And they will not be remedied with the misguided, mean-spirited proposal that the majority has put on this floor today.

The fact is, Republican inaction has left the United States ill-prepared to prevent or respond to another terrorist attack on our soil.

The 9/11 commission just issued a report card that gave Congress and the White House grades of D or F on the implementation of 17 of the Commission's recommendations.

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Democrats are for the rule of law, we want to get border security right.

But this bill is not about solving problems. It is all about harsh, punitive measures that will not work.

This Republican Congress has simply failed to provide the resources that our Federal law enforcement agencies need to get the job done.

And, we certainly do not have the detention space necessary to keep all the undocumented migrants we detain—much less the millions of people that this bill would force us to incarcerate.

So, after allowing this situation to become a crisis, Republicans today offer a purely political proposal that promises a quick-fix, a magic bullet: Make them all criminals—the workers, their neighbors, and their employers.

And, make local and State law enforcement officials do the job of the Federal Government.

Democrats have a different approach. We want to take on this challenge in a comprehensive fashion.

We would do what's necessary to protect our borders, give law enforcement the tools that they need, ensure that our businesses have the workers they require, allow families to stay united, and honor the principles of inclusion and freedom that have always been our hallmark.

I urge my colleagues to vote against this bill.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Mr. Chairman, I thank the subcommittee chairman for yielding me this time to speak on this issue.

I rise to strongly support the reform of our border security and enforcement and strengthening of current law.

My constituents keep asking me: When are we going to do something about illegal immigration? When are we going to take this problem seriously? Our borders must be secure, and our laws must be enforced.

America is a good and a generous Nation. We open our arms to the world. It is that spirit that makes us unique and inviting and vulnerable. And the world has changed, and our Nation is not secure unless our borders are secure. And it ought not be too much to ask to bring accountability to the prevention of illegal immigration. And is that not what it is all about, accountability? Those who break our immigration laws should be held accountable. Those who hire illegal aliens should be held accountable. And those who turn the other way and claim that there is no problem should be held accountable.

Mr. Chairman, we have a large and a growing crises in our country, and it is our responsibility to act on behalf of our constituents and our Nation. Simply put, if our borders are not secure, our Nation is not secure. The time to act is now.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), our distinguished Democratic leader.

Ms. PELOSI. Mr. Chairman, I thank the gentlewoman for yielding, and I want to commend her for her tremendous leadership on keeping our borders safe and strong and secure and for moving toward a comprehensive immigration policy.

I also want to thank the ranking member of the Judiciary Committee, Mr. CONYERS; and the ranking member of the Homeland Security Committee, Mr. BENNIE THOMPSON, for their outstanding work in keeping America secure.

Mr. Chairman, the previous speaker said in his opening remarks, When are we going to take this issue seriously, the issue of borders and the issue of immigration?

That is exactly what I would like to know. For a long time now, there have been Members on both sides of the aisle, led by Mr. KOLBE on the Republican side, who have called for comprehensive immigration reform. That would be taking this issue seriously.

We ask the same question of the President. When, Mr. President, are we going to take this issue seriously? And instead of having one bad bill after another come to the floor, we can have comprehensive bipartisan reform. It does exist now in the Kolbe-Gutierrez legislation that is also sponsored in the Senate by Senator MCCAIN and Senator KENNEDY. I want to commend Mr. GUTIERREZ on our side of the aisle for his leadership as well.

Broken borders, that is an oxymoron, something we cannot tolerate. Borders, by their nature, are our definition as a Nation and our protection as a country. Broken borders, they do not exist. We cannot tolerate them.

□ 1830

So let us say from the start that we all in this body, and I know I can speak very firmly for the Democrats, support strong border control, and it must be part and the first part of any comprehensive immigration reform. Our obligation as elected officials is to keep the American people safe, and our borders are one of our early lines of defense to do that. It used to be our first and only line of defense, but in this age of technology, more is possible.

In our caucus, we have a true expert on the issue of border security, the gentleman from Texas, Mr. REYES, who just recently spoke on the floor. He is ready to further these efforts. Over and over, Democratic initiatives to make our borders more secure have been soundly rejected by the majority of the Republicans and the Republican leadership.

Democrats also support enforcing laws, current laws, against those who came here illegally and those who hire illegal immigrants; yet the Bush administration has refused to do just this. There is all of this talk about illegal immigration to the United States and going after those workers who are working here illegally, and we should, but we also must have employer sanctions. Where are these people working? Why are we not enforcing the law against employers who hire illegal, undocumented people here?

The Bush administration has prosecuted only three employer sanctioned cases in the last fiscal year; only three cases. When, yes, when, are we going to take this issue seriously? That is my question, my colleagues.

The point employer clarification provision in this bill, however, would have a big percentage of error built into it because it is so unwise and would put enormous financial burdens on American businesses, again unwisely. It would be discriminatory in questioning the legal status of not only every newcomer to our country but anyone who looked like a newcomer to our country.

Democrats have led the way to meet our urgent homeland security needs as well, not only at our borders but in all aspects identified by the 9/11 Commission; at our ports, at our nuclear facilities, at our chemical plants and rail yards. But Republicans have not done so, even 4 years after 9/11. So if we want to talk about broken borders, as I said earlier, those borders as they define our country geographically, we can also be invaded in ways that go well beyond our borders, and that is why the 9/11 Commission has given the President and the Republican Congress a failing grade.

For the first time in our history, this bill would make it a Federal crime instead of a civil offense to be in the United States in violation of immigration laws or regulations. This provision would turn millions of immigrants currently here into criminals, hindering their ability to acquire any legal status, and would effectively frustrate the proposals that would provide real immigration reform.

Under the guise of an expansive definition of smuggling, it could make criminals out of Catholic priests and nuns, ministers, rabbis and social service workers who provide assistance and acts of charity to those in need. It would impose prison sentences of up to 5 years on those who answer God's call and provide assistance to those in need. This is from the party who claims to promote religious and family values.

I will submit for the record, Mr. Chairman, a list of organizations that are opposing this bill. From the Jewish community, from the Methodist community, from the Presbyterian community, from the Catholic community, from the Lutheran community, from the Arab community, from almost every denomination that you can name; the list goes on and on of religious people of faith who are opposing this legislation.

Mr. Chairman, it simply does not take the immigration and broken borders issue seriously. It does not. It misses the mark completely by its arbitrary provisions, and, again, it misses an opportunity for comprehensive immigration reform.

Mr. Chairman, we all know what we must do. Democrats have long called for strong border security, effective law enforcement and for comprehensive immigration reform, not this punitive, mean-spirited legislation that does nothing to weed out terrorists.

This Republican bill before us is an attempt to belatedly address some border security needs but fails to provide real security, as I said, as envisioned by the 9/11 Commission. It is not comprehensive immigration reform, and that is what we need. Instead, Republicans have proposed a bill that is an abomination of the worst kind. It calls upon the worst political and most craven impulses. It is a failure of leadership. It is a failure of moral leadership.

All in all, what we must do as elected officials, we have the responsibility to make the American people safer and to make America stronger. We can make America stronger, not only at our borders but in upholding our values and our principles.

I want to commend, again, Mr. KOLBE and others who have worked with Mr. GUTIERREZ and others on our side of the aisle to make America safe and strong, because I know that, together, America can do better.

Mr. Chairman, I include for the RECORD the list of organizations opposing this legislation.

LIST OF GROUPS OPPOSED TO BORDER SECURITY BILL

LEAD NATIONAL ORGANIZATIONS

League of United Latin American Citizens (LULAC), Mexican American Legal Defense and Educational Fund (MALDEF), National Council of La Raza—NCLR, National Immigration Forum, American Civil Liberties Union, National Asian Pacific American Legal Consortium, National League of Cities, People For the American Way, NALEO—National Association of Latino, Elected and Appointed Officials, American Jewish Committee, Anti-Defamation League, Catholic Charities USA, Episcopal Church, Episcopal Migration Ministries, Leadership Conference for Civil Rights, American Jewish Community, National Immigration Forum, ACORN, and US Action.

FAITH GROUPS

American Jewish Committee (AJC), Amnesty International USA, Arab Community Center for Economic and Social Services, Arizona Interfaith Network (AIN), Episcopal Migration Ministries, FaithAction, Jesuit Refugee Services, Jesuit Conference of the United States, Jewish Federation of Greater Philadelphia, Justice for Immigrants—Catholic Coalition, Lutheran Immigration and Refugee Service (LIRS), Presbyterian Church USA, National Catholic Association of Diocesan, U.S. Conference of Catholic Bishops, Church World Service/Immigration, Refugee Program, Catholic Charities of Dallas, Inc., Catholic Charities of Des Moines—Iowa, Catholic Charities of the Diocese of Santa Rosa, and Catholic Charities of the Diocese of Stockton.

LABOR

AFL–CIO, Service Employees International Union, American Federation of Teachers, and United-Here.

MINORITY GROUPS

American-Arab Anti-Discrimination Committee, Polish American Association, Asian American Justice Center (AAJC), Asian American Legal Defense and Education Fund, Asian Pacific American Legal Resource Center, Asian Pacific American Community, and Organization of Chinese Americans.

BUSINESS GROUPS

Alliance for Worker Freedom, American Council on International Personnel and Society for Human Resource Management (Joint Letter), American Hotel & Lodging Association, American Nursery & Landscape Association, American Road and Transportation Builders Association, American Trucking Associations, Americans for Tax Reform, Associated Builders and Contractors, Associated General Contractors, Essential Worker Immigration Coalition (EWIC), HR Policy Association, International Foodservice Distributors Association, International Franchise Association, National Association of Home Builders, National Association of Manufacturers, National Club Association, National Council of Chain Restaurants, National Restaurant Association, National Retail Federation, National Roofing Contractors Association, National Utility Contractors Association, Plumbing-Heating-Cooling Contractors—National Association, Retail Industry Leaders Association, Small Business & Entrepreneurship Council, Society of American Florists, The Associated General Contractors of America, U.S. Chamber of Commerce, U.S. Hispanic Chamber of Commerce, U.S. African American Chamber of Commerce, and US-Mexico Chamber of Commerce.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I yield 1 minute to the gentleman from New Hampshire (Mr. BASS).

Mr. BASS. Mr. Chairman, I thank my friend from California for yielding me time.

Mr. Chairman, I rise in support of this bill. Nothing is more important than good border security for our national security. Nothing is more important than enforcing the law of the land. And we cannot go on indefinitely with immigration laws that nobody pays any attention to. Yes, indeed, this is a bill that is courageous. It is bold. Certainly, it is controversial. But it is a step in the right direction, and it moves this issue forward.

What I am most particularly interested in is the committee's acceptance of a provision that Congressman NORWOOD and I brought to the first responders bill that would allow States to use homeland security funds, State police, local police and so forth, to round up illegal immigrants and deliver them to the Feds. In New Hampshire, we spent over $650,000 in State police funds last year doing Federal duties and $200,000 from the Marine Patrol on the sea coast. I think this is a provision that adds flexibility to a bill that needs to be passed in this Congress.

Mr. Chairman, my constituents and constituents all over the country are crying out for a just law to end this

process of having undocumented illegal aliens working and flaunting the law.

Ms. ZOE LOFGREN of California. Mr. Chairman, we are fortunate in Homeland Security to have two of us who serve both on the Judiciary Committee and Homeland Security Committee, and I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE), the ranking member of the Immigration Subcommittee of the House Judiciary Committee.

Ms. JACKSON-LEE of Texas. Mr. Chairman, what disappoints me most on this legislation is, the men and women that are on the front lines, the Border Patrol agents, are the most left out of this particular legislative vehicle.

Quickly, Mr. Chairman, I will tell you that an amendment that was offered by myself and Mr. THOMPSON, the ranking member, specifically gives tools to those Border Patrol agents, who I believe are the people that are entrusted with the responsibility of securing the borders by the American people.

We do not have aircraft and watercraft, which are valuable tools. We do not have the helicopters that are necessary. We do not have the necessary Border Patrol agents, which in my amendment to H.R. 4044, the bill that we offered, the homeland security legislation, we would have added 10,000 more agents. We would have added provisions about recruitment and retention problems so that we would have an experienced Border Patrol agency.

Mr. Chairman, my friend, Mr. REYES, indicated the importance of a secure homeland with the right kind of personnel. We would have raised the base pay for a journey level Border Patrol agent to a GS–13. We leave out the very men and women on the front lines, and I would hope we will go back and fix this legislation to do that.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I am pleased to yield 1 minute to the gentlewoman from North Carolina (Ms. FOXX).

Ms. FOXX. Mr. Chairman, I rise in strong support of this bill. If we fail to secure our borders, we could face an even greater terrorist attack than 9/11. We live in the greatest country on Earth. It is no wonder that so many people from other nations want to live in a land of such opportunity. I certainly do not want to stop people from wanting to live and work in this great country. My paternal grandparents were legal immigrants to America several decades ago. But we have a responsibility to keep this great Nation safe and secure for future generations.

If we continue to neglect our porous borders and the potential harm that can come from that, then we might as well bury the American flag in the sand. Every day that we fail to secure our borders is another day when a hardened criminal or even a terrorist might slip through. We risk the lives of our sons and daughters and risk the longevity of this great Nation.

I am certainly not saying that all of those who have come through our borders illegally are criminals or terrorists, but the possibility of letting in just one who is could cost many American lives and wreak havoc on our way of life.

Securing our borders is not closing them. I applaud Chairman SENSENBRENNER and Chairman KING and their staffs for their tireless efforts on this bill to secure our borders and prevent potential terrorist attacks.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, remember at the height of Katrina, that tragedy, and we heard the words, ''Good job, Brownie.'' Well, we have someone equally qualified now in charge of the immigration function in the Homeland Security Department, and I think it is that level of competence that has led us to the problem that we face today, and that is that we have basically dropped the ball, the administration has dropped the ball at the border. They have permitted thousands, tens of thousands, of individuals to promise to appear and then simply to escape into the country.

This bill does not direct the administration to go find them and deport them or have their matter be heard. We used to, on a regular basis during the first Bush administration, the father Bush and the Clinton administration, persistently go and grab criminals after their sentences were served out in State and local incarceration facilities and deport them. The law provides for that. The ball has been dropped on that. This bill does not direct the administration to go find those folks who should have been taken in, who should have been deported.

Mr. Chairman, I have had some questions about section 404 of the act that I have mentioned previously, and I want to spend a moment on that. Incredibly enough, it provides that legal individuals, permanent residents of the United States, could be precluded, barred from reentry if they leave. Let me give you an example of how it would work.

Say your son falls in love with a gal who was born in Cuba. She becomes a legal permanent resident because your son is an American citizen. They go on vacation to London. They try to come back in. Your son gets in, but his wife, a legal permanent resident of the United States, is refused admission. Why? Because Cuba will not accept people who we deport. Now, do you think Fidel Castro cares whether your daughter-in-law is barred or not? I do not think so.

This is a ridiculous provision, and it is punitive towards people who were born in China, in Vietnam, in Cuba and in Ethiopia. It has nothing to do with securing our borders, but it does have a lot to do with the de facto reinstatement of the Chinese Exclusion Act of 1882 and has a very pernicious, very pernicious result for those who have fled communism in Vietnam and also in Cuba.

People are calling in wondering about this bill. They cannot believe that it is true. But let me explain how other provisions would work. The proposal is that individuals who are here without their proper documents, something none of us approve of, would become aggravated felons under this bill. If you are a 10-year-old and you came in here with your parents, you do not have your papers, under this bill, you are an aggregated felon. This will not make up for the Bush administration's failure at the border.

Mr. KING of New York. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this has been a very lively and interesting debate. I would hope that as we go through the amendments and into tomorrow, we would keep focusing on the fact that everyone here is well-intentioned.

We face a crisis on our borders. We face a national crisis. We face a crisis involving international terrorism, and we must fix it. We must take significant first steps. That is what this bill is.

We can have honest disagreements, but it is wrong, I believe, to be impugning motives, to be suggesting someone is anti-immigrant.

For instance, the gentlewoman from California is talking about section 404. What that does is give the Secretary of Homeland Security the right, in consultation with the Secretary of State, to take action if the Secretary deems it necessary.

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That to me is an appropriate power, an appropriate discretionary power to be given to the Secretary of Homeland Security at a time when our homeland security is being threatened. It is irresponsible to not give the Secretary that power, and that is what this is about. It is a power, by the way, which the Secretary of State has had for many years.

As we go forward, let us keep in mind that this country was built by immigrants, that immigrants are essential. They are the life's blood of our Nation. All of us are descendents of immigrants. At the same time, for our country to survive, for our country to be secure, for our country to be safe we must be as certain as we can be that the immigrants entering this country deserve to be in this country, that they are no threat to this country.

As long as we have this mass entrance of millions and millions of illegal immigrants, we do not have that security that we need. We do not have the sense of safety that we need, and we are not protecting ourselves to the extent we must if we are going to avoid having another September 11.

I lost many people in my district on September 11. I do not want another 9/11 commission to come back in several years and say why did you not close

the borders, why did you not allow another 9/11 to go forward, to happen? Why could you not stop another 9/11? Because you did not have the guts to take the tough action.

We are being confronted here by many forces including big business. Big business does not want this. We also have advocacy groups that do not want it. We cannot yield our responsibility to any outside pressure groups, whether they be big business or advocacy groups. I urge the adoption of this legislation as we go through this process.

Mr. HONDA. Mr. Chairman, I rise in strong opposition to this measure.

Border security is a critical component of our nation's security, but we cannot have true border security without addressing comprehensive immigration reform.

As U.S. Homeland Security Department Secretary Chertoff pointed out,

''[t]he problem of immigration is one that's been with this country for 20 years. So we are digging ourselves out of a hole which it took 20 years to dig ourselves into.''

During the past twenty years, Congress has been taking an enforcement only approach which has put us in the ''hole'' that Secretary Chertoff referenced.

If you want to get out of a hole, the first step is to stop digging.

The Border Security bill we have today will only worsen an already broken immigration system and it represents the latest in misguided enforcement only approaches.

In the past few years we have passed the Patriot Act, the Real ID act and now we are further expanding a big brother form of government by taking up this flawed bill.

To fix our immigration system we must uphold American values by reuniting families, providing earned legalization for immigrants who have proven to be law abiding members of society and as the president has said, develop a guest worker program.

Reuniting families is of particular concern for Congressional Asian Pacific American Caucus. Our family preference immigration system has not been updated in more than a decade, and an increasing number of families face periods of separation of up to twenty years.

Family reunification is impeded by immigration backlogs and by outdated quota systems. The backlog for processing children of permanent residents to come to the U.S. is unconscionable if we are a nation that truly believes in family values.

Earned legalization is important to the many Asian Americans who are here working hard, paying taxes and need a chance to adjust their status.

A fair, efficient and sensible guest worker program is also needed to provide a labor supply for American employers.

Again, the real solution requires a comprehensive approach, not a border enforcement only measure.

H.R. 4437, a bill that deals with enforcement only, ignores the reality of our current immigration challenges and will not be an effective way to address the security of our nation and the well being of our people.

The time has come for Congress to make immigration reform a priority.

Congress is long overdue in passing immigration laws that meet the real needs of families and businesses while reflecting America's tradition of embracing the contributions of immigrants.

Mr. CANNON. Mr. Chairman, I rise today to support HR 4437, the Border Protection, Antiterrorism and Illegal Immigration Control Act.

The debate over our nation's immigration policy has steadily moved from the back of the newspaper to the front page. I should know. I've been working on this issue since I first came to the House of Representatives in 1996.

Americans are rightly concerned about the security and the integrity of our nation's borders because the very system designed to stem the flow of illegal immigrants into our country is broken. Current statistics estimate that we now have at least 10 million illegal aliens in this country.

Mr. Chairman, if we are going to fix this system, it is important that we fix it in the right way, comprehensively, so that we are not back debating this issue within a year.

We need a system that will encourage well-intentioned, contributing aliens out of the shadows so they can be identified. Standing on the soap box, spouting fire and brimstone is not going to do that, but laws implementing a guest worker program will.

From 1990 to 2000, the number of U.S. Border Patrol agents nearly tripled, but illegal immigration increased by as much as 5.5 million. Increasing enforcement resources to keep out willing immigrant workers, as we did throughout the 1990s, has obviously failed.

Mr. Chairman, as most are well aware, I have long stated that enforcement, border security and a guest worker program are the pieces of the puzzle that need to be linked together to allow us to effectively control our border. A broader strategy that includes both enforcement and the creation of adequate legal channels for immigration serves our nation's interests.

Our immigration laws and policies must reflect the realities we face today. Our economy demands workers, but our national security demands that we identify those lurking in the shadows.

An editorial that ran on KSL-TV of Utah last week stated: ''Steps must be taken to stop the torrential northward flow of illegal workers. As that is accomplished, attention can focus on rationally dealing with the millions of illegal immigrants already here. A realistic temporary worker program, in some form, must be part of the effort.''

Mr. Chairman, KSL has it right. Enhanced enforcement must be a priority for immigration policy, but as part of today's debate, we must realize that we owe it to our constituents to resolve all the issues that contribute to true immigration reform and that includes a guest worker program.

I would like to note that the Mexican government and their President Vincente Fox have taken steps to work cooperatively with the United States to protect our southern border. What often goes unnoticed in the immigration debate is Mexico's efforts to reign in organized crime, stymie drug trafficking and the ongoing cooperation between our Attorney Generals to combat narcotics, illegal immigration and related violence on the border. The OASISS, a prosecution program launched by our countries this year to stop human smuggling by criminal rackets, has helped stem the illegal flow of persons, but there is more to do. President Fox has shown himself to be an ally of America's national and economic security by standing up to the dictators of Latin America, like Hugo Chavez, and this should not go unnoticed.

I encourage my colleagues to support this bill. Broader immigration reform has been outlined by President Bush, and there are ideas in both Houses of Congress that will restore public confidence in a safe and secure immigration system.

I stand committed to seeing comprehensive immigration reform passed out of Congress and sent to the President for his signature. That is what America wants and needs.

I would like to thank Chairman SENSENBRENNER for his tireless work on this issue. I support this bill as the first step in the process towards true immigration reform.

Mr. MARKEY. Mr. Chairman, rise in strong opposition to this bill, which fails to provide the strengthened border security our nation needs to deter terrorists while also leaving many of our internal immigration problems unresolved. This bill claims to address the problem of illegal immigration, but it offers an enforcement-only solution, where a comprehensive strategy is needed. I planned to offer two amendments to improve this bill, Mr. Speaker, but the Republican-controlled Rules Committee refused to permit them to be debated and voted on today on the House Floor. Many of my colleagues also were blocked from offering important amendments.

Shutting out more than 100 amendments certainly represents serious ''sins of omission'' by this Republican Congress. There are also many ''sins of commission'' tucked into this bill. For example, the bill:

Subjects members of churches and other humanitarian organizations to criminal penalties of up to 5 years in prison if they provide food, shelter, or health care to undocumented immigrants, even if they are in desperate or life-threatening circumstances; and the bill

Reclassifies 11 million undocumented immigrants—including children—as aggravated felons who could be arrested and imprisoned for more than a year if they are caught.

These provisions do not make us safer. Mr. Chairman, and they do not reflect the values of our nation.

The first amendment I planned to offer today would have tightened security on the millions of cargo containers that enter our country from overseas, from Mexico and from Canada. Seven million cargo containers arrive at U.S. ports every year. These containers represent an important component of our economy, providing consumers with an enormous array of choices. In Massachusetts, the port of Boston—which became an international cargo port in 1630 and is the oldest continually active major port in the Western Hemisphere—handles 1.3 million tons of general cargo and 12.8 million tons of bulk fuel cargos every year. Clearly, such global commerce is critical to the economic health of our country.

At the same, however, cargo containers represent tempting targets for terrorists. Arms control expert Graham Allison has said that ''more likely than not'', there will be terrorist attack using a nuclear bomb in our country. He has described the detonation of a nuclear explosive device in a cargo container in one of our ports as a nightmare scenario for our country. Steven Flynn, a senior fellow at the Council on Foreign Relations and former officer in the Coast Guard, wrote in his book

America the Vulnerable about ''catastrophic consequences of terror in a box'' delivered by a cargo ship to one of our ports. [Page 84].

To balance the need to participate in the global economy and the security concerns associated with the millions of cargo containers entering our ports every year, the Department of Homeland Security's Customs and Border Security division developed the Customs-Trade Partnership Against Terrorism (C–TPAT). Under C–TPAT, shippers commit to improving the security of their cargo shipments, and in return, they receive a range of benefits from our government.

Specifically, if shippers provide information about their operations to Customs and Border Protection, their goods are less likely to be inspected at the border. They basically receive an ''E-Z Pass'' from our government, sort of like drivers who speed right through toll booths without having to stop.

The problem is that Customs and Border Protection grants these special benefits without verifying that the security information provided by the shippers—is reliable, accurate and effective. According to the GAO, Customs and Border Protection has conducted validations at the facilities of only 11 percent of all the C–TPAT members. [''Key Cargo Security Programs Can be Improved,'' May 26, 2005]

Basically, the C–TPAT program really is a ''STAND PAT'' program. It takes a complacent posture towards port security by giving companies the benefit of speedy approval at the border without checking to make sure that promised security measures actually are in place at their facilities.

Customs and Border Program also has a related program, called ''FAST'', which stands for Free and Secure Trade program. The FAST program requires that trucking companies subject their drivers to background checks and participate in the C–TPAT program. Again, the problem is that the truckers get waved through the FAST lane, but the trucking companies' facilities are rarely, if ever, inspected to validate that the security policies they've promised to implement are fact or fiction.

This makes the FAST program, really the ''FAST ONE'' program, since truckers are pulling a fast one on our country by getting benefits without having to demonstrate the promised security policies.

My amendment would have required Customs and Border Protection to verify the security measures at the facilities of each member of the C–TPAT and FAST programs within one year of the enactment of this bill and twice a year thereafter. Moreover, the amendment would require Customs and Border Protection to establish policies if members do not live up to their obligations under the C–TPAT and FAST programs.

Now, some of my colleagues may argue that we simply do not have the resources to conduct these validations. Or real validations would bring global commerce to a grinding halt.

The numbers simply do not support this assertion. Customs and Border Protection has approximately 100 inspectors to conduct validations, and there are approximately 11,000 ''STAND PAT'' and ''FAST ONE'' members.

If each inspector performed only about 2 validations per week, all the facilities could be validated in less than a year—within 45 weeks or so.

When it comes to these two programs, we should follow the Reagan Doctrine of cargo inspection and Trust and Verify that the shippers are performing as promised.

The second amendment I would have offered today, if the Republican-controlled Rules Committee it in order, deals with the issue of torture of detainees. Mr. Chairman, this issue has received considerable attention recently—and for good reason—but we cannot have a full and open debate today on the House Floor because the Republican majority has shut out my amendment.

Mr. Chairman, my amendment provides that if an alien is apprehended at or between a port of entry or along the interational land or maritime borders of the United States, and is then detained pursuant to the new authorities set forth in Section 301 of the bill, than that alien shall not be transferred or rendered to any country if there are substantial grounds to believe that the alien would be in danger of being tortured, or of being subjected to cruel, humiliating or degrading treatment or punishment.

The Convention Against Torture already bars the practice of torture, or of rendering persons to countries where they are likely to face torture or other forms of cruel, humiliating or degrading treatment. This treaty was signed by the United States during the Reagan Administration, and ratified by the Senate in 1994.

Despite our commitments under this treaty and the statements made by the Administration emphasizing that the U.S. is emphatically and unambiguously against the use of torture, reports keep growing of the U.S. sending detainees to countries where they are likely to face torture, including to countries notorious for human rights violations. This practice known as ''Extraordinary Rendition,'' and amounts to nothing more than Outsourcing Torture.

Article 3 of the Convention Against Torture explicitly requires parties to refrain from sending persons to countries where they are likely be tortured.

In order to be able to argue that it is meeting this obligation under the Convention, the Bush Administration has been engaging in a piece of legalistic fiction. The Administration obtains ''diplomatic assurances'' that the transferred detainee will not be tortured, and then based on these assurances, it argues that our obligation under the Convention has been satisfied because there is no longer a substantial likelihood that the person we are sending to one of these known torturing countries will, in fact, be tortured.

In other words, our government is relying on ''diplomatic assurances'' or promises from countries like Egypt or Syria that they will not torture transferred detainees. Based on the word of Syria or Libya, our government is arguing that our obligations under the Convention Against Torture are satisfied. Apparently, the Bush Administration's motto here is ''In Syria We Trust''.

This is outrageous. Is there any Member who thinks that we should accept the word of Syria and Libya—longtime human rights violators?

Here is how the State Department's annual human rights report describes typical Syrian methods of interrogation:

''administering electrical shocks, pulling out fingernails, forcing objects into the rectum, . . .''

My amendment reaffirmed our commitment to the Convention Against Torture. It said that we should not transfer aliens who have tried to enter this country to other countries where they are likely to face torture. It said that we should not rely on ''diplomatic assurances'' from torturers that they will refrain from engaging in torture. Torture mocks the core values on which our nation was founded. And it endangers our men and women in uniform who we send abroad to fight for our freedom.

We should not be sending aliens who have sought entry into this country, and who have been apprehended and detained by the U.S., to other countries where they are likely to be tortured and then pretend to stand against torture. This is wrong.

Mr. Chairman, the Rules Committee made in order only 15 of the more than 120 amendments submitted to the Committee. These amendments could have substantially improved the bill on the Floor today. Without these perfecting amendments, I cannot support this flawed bill, and I urge my colleagues to vote ''No.''

Ms. ROYBAL-ALLARD. Mr. Chairman, I rise today in strong opposition to H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. I too am committed to protecting our borders and strengthening our immigration policies. However, this bill does neither.

Instead of offering necessary comprehensive immigration reform, this bill simply continues the same failed policies of the past. Over the last decade, from Fiscal Year 1993 to Fiscal Year 2004, the number of Border Patrol officers tripled from 3,965 to 10,835 agents, and spending on border enforcement quintupled from $740 million to $3.8 billion per year. In that same time frame, the number of undocumented immigrants in the U.S. doubled from 4.5 million to 9.3 million. Clearly our current policies have failed to stop the flow of illegal immigration. Yet this bill simply offers more of the same failed remedies to our immigration problems.

Furthermore, this bill contains several unacceptable provisions. Please allow me to outline a few of the most egregious of these.

First, by expanding mandatory detention, this bill would allow women and children seeking asylum to be held in jails or prison-like detention centers while their immigration proceedings are pending even though they are no threat to our national security. Imprisoning these asylum seekers who often times are trying to escape brutalities back home violates the integrity of what our nation stands for and undermines our history of due process of law.

Second, this bill unfairly denies admission to immigrants who legally come to the U.S. from countries that do not accept the re-entry of their citizens. This means that, even though our State Department has approved their visas, legal immigrants and refugees from communist countries such as Vietnam, China and Somalia would be refused entry into the U.S. and forced to return to the oppressive regimes they are trying to escape.

Third, this bill takes valuable time and resources away from urgent police responsibilities, such as dealing with murder, rape, and gang activity by empowering state and local police to enforce immigration laws which is currently the responsibility of the Department of Homeland Security.

Fourth, this bill would classify as aggravated felons children who through no fault of their

own are brought here illegally by their parents. While I support cracking down on criminal aliens, I cannot support the criminalization of innocent children and thus deny them the opportunity to advance their lives in the future.

Fifth, this bill can weaken our fight against terrorism by permitting Homeland Security Grant Funds to be diverted from critical personnel such as our first responders. The State Homeland Security Grant Program has already been cut in half from $1.1 billion to $550 million. Our state and local governments cannot afford further shrinking of these critical funds if they are to protect us in the event of another terrorist attack.

Finally, this bill would expand the controversial process of removing individuals from our country without a fair hearing. This flawed procedure, known as expedited removal, has already resulted in the wrongful deportation of refugees who faced torture and death when they were returned to their native countries. Rather than fix this unjust procedure and protect these vulnerable individuals, this provision further denies them due process of law.

Our great nation serves as a model for democracy, fairness, and the rule of law. Unfortunately, this bill takes us away from these ideals upon which our nation was founded. I urge my colleagues to join me in defeating this dangerous bill.

Mr. MORAN of Virginia. Mr. Chairman, I rise today in opposition to H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. Rather than take a hard look at our immigration system, this legislation uses broad strokes targeting both legal and undocumented immigrants and would make felons of nonprofits working to care for the underserved in our communities.

The American public knows that our immigration system is broken. Polls show that two-thirds of the country believes that our system needs to be fixed. But instead of working to assemble a comprehensive package to fix our Nation's immigration system, we are being given this bill that has no chance of being enacted, that is intent on punishing immigrants, and relies more on rhetoric than real solutions.

What we need is a comprehensive approach that deals not just with border security, but with employers and the undocumented immigrants who are supporting our economy by working in jobs Americans refuse to take. This legislation is a punitive, heavy-handed measure that would not in any shape reform immigration, but would only make matters worse.

First and foremost, this bill seeks to criminalize both legal and illegal immigrants. Current law holds that undocumented immigrants face civil charges and may be subject to fines and deportation if found to be living here illegally. This legislation would change those civil charges to a criminal felony, ensnaring not only undocumented immigrants but also people who are here legally but have not notified the Government of technical changes in their status, such as an address change. These people, here legally and working hard to support their families in low wage jobs, could face up to a year in prison under the bill's provisions.

Many of the working immigrants who are here illegally perform jobs that U.S. citizens simply do not want or will not take. They are mainly in service and agricultural jobs, which are a vital part of our economy. Punishing those people, who contribute greatly to our economy, rather than providing some form of guest worker visa program, is penny wise but pound foolish. We should be in the business of helping them gain a pathway to legal status rather than locking them up.

One of the most deleterious provisions of this legislation is the section that would make it a crime for a U.S. citizen to help an undocumented immigrant, even if this is done unknowingly. Under the expanded definition of smuggling, a citizen could be prosecuted for simply driving a neighbor to the grocery store or hospital emergency room.

Such a provision risks criminalizing the work of nonprofits and religious organizations, whose sole purpose is to help human beings in need. Many organizations work on behalf of refugees and asylum seekers, helping them navigate their way through the Byzantine immigration process. Because our immigration system is so complicated, it is possible that asylum seekers are in the United States illegally for a short time. Any citizen who helps people who have fled their home country because they feared for their lives could be prosecuted under the wording of this bill. This is totally unacceptable and runs counter to the values that have made our country great. The United States is a beacon for democracy and has always been a refuge for people seeking freedom. From the first settlers who were escaping religious persecution, to Europeans escaping Communist regimes, accepting the huddled masses yearning to be free has been a part of our Nation's genetic code.

Mr. Chairman, President Kennedy once stated, ''Everywhere immigrants have enriched and strengthened the fabric of American life.'' This can be seen in all aspects of our society from advances in science and medicine to great works of art and literature. If this legislation is passed, the fabric of our Nation could be permanently altered.

Mr. KING of New York. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill, modified by the amendment printed in part A of House Report 109–347, is adopted. The bill, as amended, shall be considered as an original bill for the purpose of further amendment under the 5-minute rule and shall be considered read.

The text of the amendment in the nature of a substitute, as modified, is as follows:

H.R. 4437

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''.

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

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 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.''; 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 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 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 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 ''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 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.

SEC. 710. LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.

The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner's responsibilities in this title or the amendments made by this title, but only to the extent (extent for the purpose of carrying out section 707) the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner's full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

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.

The Acting CHAIRMAN. No further amendment to the committee amendment is in order except those printed in part B of the report. Each further amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered 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.

PART B AMENDMENT NO. 1 OFFERED BY MR. CARTER

Mr. CARTER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 1 printed in House Report 109–347 offered by Mr. CARTER of Texas:

In section 106, in the matter preceding paragraph (1), strike ''communication capabilities'' and insert ''communication capabilities, including the specific use of satellite communications''.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Texas (Mr. CARTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

This amendment would ensure that the Secretary of Homeland Security would look at all technical solutions to find the best solution for effective two-way communication on the United States border. By specifically requiring the Department of Homeland Security to include satellite communications as part of this solution to curing the inefficiencies of existing communication on the border, Congress would be ensuring the consideration of the only proven communication tool that can maintain the constant connection to the Border Patrol officers in the field, thereby saving their lives and providing homeland security seamlessly and flawlessly.

In many instances during the recent natural disasters of hurricanes Katrina and Rita, satellite technology was the only reliable method of communication. Moreover, this technology has been used extensively by the U.S. military in inhospitable and remote areas of Afghanistan and Iraq. Satellite communication has proven its worth.

During the Katrina disaster, I had a conversation with the gentleman from Nevada (Mr. PORTER) about going down with a load of provisions to help folks down there. When he arrived at the town, I do not remember the name of the town, he ask if they had talked to FEMA and they said, yes, they gave us a phone number to call, but, unfortunately, our cell phones do not work, and our land lines are down so there is no telephone in this town.

Mr. PORTER had his satellite phone with him. He shared his satellite phone with those disaster victims, and they were able to communicate with FEMA.

Given the unique characteristics of our border area, satellite technology would be specifically useful in alleviating many of the communication problems that currently exist and can be done in a very cost-effective way to the U.S. taxpayer. This amendment ensures that all available options would be considered instead of limiting the Border Patrol to outmoded and frequently ineffective technology.

I ask my colleagues to support this amendment because it will greatly enhance the U.S. Border Patrol's ability to protect our Nation's borders and provide for their individual safety.

Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Who claims time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, although I do not oppose the amendment, I would note that we will support this amendment, and I would also like to yield 2 minutes to the gentleman from Texas (Mr. GENE GREEN).

Mr. GENE GREEN of Texas. Mr. Chairman, I rise today in support of my Texas colleague's amendment, but against the bill with reservations. There are many aspects of this bill that I support. I believe we should improve security along the border. Every nation in the world should control their borders and know who is crossing their borders. That is why I co-sponsored the Border Security Act last Congress with our former colleague Jim Turner.

I believe we should prevent immigration officials from having to catch and release detainees because there are not enough detention beds and holding facilities. That is why I co-sponsored legislation with the gentleman from Texas (Mr. ORTIZ) and the gentleman from Texas (Mr. REYES) that would give us the number of beds we need.

However, I cannot support this bill in its current form.

Under this bill, approximately 11 million people in this country would become aggravated felons. If you think we have catch and release problems now, wait until we have an additional 11 million felons that have to be detained under this legislation. There are not enough prisons to handle these numbers. I cannot imagine our country loading box cars with the estimated 10 to 12 million people who do not have documents showing they are legal. This brings visions of deportation and Nazi Germany and Stalin and the Soviet Union.

Currently, 40 percent of immigration detainees are held in Department of Homeland Security facilities; 60 percent of these detainees are in local jails under contract with the Federal Government. The Federal Government needs to take responsibility for holding all of these detainees, much less the concern we have about an additional 11 million.

It is estimated by making all these people felons there are approximately 3 million U.S. citizen children that would be impacted by having their parents or guardians detained or deported. This is something we need to review closely and make sure we are not making life harder for children that are U.S. citizens who happen to be born to undocumented parents.

Finally, this bill closes the door to the courthouse for many immigrants. Without judicial review, we cannot be certain that our laws are being enforced appropriately. I believe in increasing protection along our borders, realistically addressing the current undocumented population; but I also oppose a new guest worker program.

Mr. CARTER. Mr. Chairman, I yield the balance of my time to the gentleman from New York (Mr. KING).

Mr. KING of New York. Mr. Chairman, let me commend the gentleman from Texas (Mr. CARTER) for this very fine amendment. It is important to the bill. It is a well-intentioned and well-drawn amendment. I am willing to accept the amendment.

I thank the gentleman for his thoughtful consideration and for all that he does on this very, very vital issue.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as I mentioned earlier, I do not oppose the amendment. Land line and cellular telecommunications can be severely disrupted in a time of natural disaster, and it is important to have satellite communications available so that they are a reliable alternative for first responders and others involved in natural disasters.

However, I would note that while I will be happy to vote ''aye'' on the amendment; we do not actually need this amendment to have the use of satellite communications. That is something that the administration could have done on its own. There are some other things that they ought to be doing that would really make a difference.

The U.S. Border Patrol needs additional agents, and we need new training for those agents. We need 2,000 additional agents in ICE and 250 additional detention officers. U.S. Marshals need 250 additional personnel and $50 million for vehicles, communications equipment, and miscellaneous equipment. U.S. Attorneys, we need 100 additional personnel on the southwest border and $30 million for additional office space. Why? We have talked about detention beds, but the issue is we need to be able to process these cases, not just hold people. We needs to bring charges against them, those who have an arguable claim, and then adjudicate that claim: either deport them or find that their claim is a valid one.

We need additional immigration judges. We need 2,500 additional enforcement personnel in the Coast Guard, and we need 25,000 detention beds. We need 1,000 investigators for fraudulent schemes and documents. We need at least 100 helicopters and 250 power boats for the Border Patrol and at least one police-type motor vehicle for every three agents for the Border Patrol. We need enough portable computers for every Border Patrol motor vehicle. We need hand-held global positioning systems for each Border Patrol agent.

We need night vision equipment for all Border Patrol agents working during hours of darkness. We need enough body armor appropriate for the climate and risks faced by individual Border Patrol agents. We need to reestablish the Border Patrol anti-smuggling unit. And we need to establish specialized criminal investigator occupations: one for the investigation of violations of immigration law, another for customs laws, and a third for ag laws.

We need to require foreign language training for all our officers in the Department of Homeland Security who come into contact with aliens who cross the border illegally.

Yes, this amendment is worth supporting, but we do not really need it to get satellite communications. We do need, however, to authorize the equipment and the personnel so we can enforce the laws at America's borders both north and south. Unfortunately, the underlying bill before us does not do that. It is not a real enforcement measure.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. CARTER).

The amendment was agreed to.

PART B AMENDMENT NO. 2 OFFERED BY MR. GOHMERT

Mr. GOHMERT. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 2 printed in House Report 109–347 offered by Mr. GOHMERT of Texas:

At the end of section 109, add the following new subsection:

(e) ACTION BY INSPECTOR GENERAL.—In the event the Inspector General becomes aware of any improper conduct or wrongdoing in accordance with the contract review required under subsection (a), the Inspector General shall, as expeditiously as practicable, refer information related to such improper conduct or wrongdoing to the Secretary of Homeland Security or other appropriate official in the Department of Homeland Security for purposes of evaluating whether to suspend or debar the contractor.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Texas (Mr. GOHMERT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to thank Chairman KING of New York and Chairman SENSENBRENNER for their hard work on this important legislation. Some have said it seemed like it was spur of the moment, but those of us who have spent hundreds of hours on this issue this year know otherwise and took it up in committee and subcommittee. I would also like to thank Mr. DREIER for allowing me to bring this amendment up in the Rules Committee.

I will be brief, since my amendment is pretty straightforward. This amendment will help ensure that the Federal Government is doing business with ethical contractors. Section 109 of the bill requires the Inspector General to review contracts over $20 million. This review is to be sure that the contracts were properly competed.

My amendment adds a subsection that says that during this review if the Inspector General discovers any wrongdoing or misconduct, the Inspector General will refer this information to the Secretary of Homeland Security for the purpose of evaluating whether suspension or debarrment is warranted.

Some Members may be familiar with the Darlene Druyun case. She was a top Air Force acquisition official who awarded billions of dollars' worth of contract to one particular defense contractor and all the while she was negotiating with that same defense contractor for a job for herself and her daughter. The officials at the company that negotiated her employment and she, herself, were debarred.

Some are familiar with Representative Cunningham. He did wrong, and he will and should be punished accordingly; but the contractors who competed illegally and unethically should also suffer.

This amendment helps address issues such as this as it requires the Inspector General to go forward with information

to the Secretary to evaluate for possible debarrment or suspension. Suspension and debarrment are less costly to the government than criminal or civil remedies that involve the Department of Justice. In addition, companies learn from the process and as a result they create innovative compliance and ethics programs.

Contracting with ethical companies ultimately saves taxpayers' dollars and gives us more quality for the money. For that reason and to that end I humbly offer this amendment.

Mr. Chairman, I reserve the balance of my time.

□ 1900

The Acting CHAIRMAN (Mr. SIMPSON). Does the gentlewoman from California claim the time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, I claim the time in opposition; although I do not oppose the amendment.

The Acting CHAIRMAN. Without objection, the gentlewoman is recognized.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I rise in support of this amendment. The Department of Homeland Security IG has exposed improper conduct or wrongdoing of contractors who maintain Federal contracts with the department, and I think this amendment is along the lines of trying to make sure that the American taxpayers are not going to get ripped off like they have been in the past.

Take a look at the level of fraud in contracting that has occurred in the Middle East, in Iraq; I mean, hundreds of thousand of dollars of stolen money and the stories that are coming out of the taxpayers being ripped off by contractors in the gulf region after Hurricane Katrina. We know that the record is not a good one in terms of this administration choosing contractors who will not cheat us. So I do think it is important to have this amendment, and I commend the Congressman for bringing this forward.

In June, the Homeland Security Committee heard testimony from Joel Gallay who is the acting Inspector General of GSA. Mr. Gallay provided a detailed account of significant deficiencies he discovered in evaluating the efficacy of ISIS, and of particular concern to the IG was the procurement of remote surveillance equipment, the lack of progress in implementing the system and what he called the chronic inattention to the proper administration of the contract.

The IG wrote that the program was severely hampered by ineffective management that led to waste, and the report showed deficiencies in the ISIS contract management and in the training of government officials responsible for implementing the program.

Now, it is unfortunate that we need this amendment. We would like to think that our administration would not be inept; that they would have accountability; that they would know how to administer; and they would not have this rip-off of taxpayers that has been identified to the committee repeatedly. Unfortunately, that appears not to be the case, and therefore, I do support this amendment to try and stop this rip-off of the taxpayers.

As the philosopher George Santayana cautioned, Those who do not learn from history are condemned to repeat it.

I hope that this amendment will be adopted, and that will help us from continuing to see the rip-off of American taxpayers in the arena of the Department of Homeland Security.

Mr. Chairman, I reserve the balance of my time.

Mr. GOHMERT. Mr. Chairman, I yield myself such time as I may consume.

I appreciate my colleague from California's support on this amendment, and as I think she knows, this is an issue that knows no party boundaries, and so I am proud to stand with those who want to end this, and that would include Chairman KING.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. KING).

Mr. KING of New York. Mr. Chairman, I thank the gentleman for yielding me time, and let me express my strong support for this amendment and thank the gentleman from Texas (Mr. GOHMERT) for the contribution he has made, for the dedication he brings to this issue.

I also would say, parenthetically, if someone with his accent and my accent are supporting this bill, it shows how extensive and wide-ranging the support is for this bill. It shows that all Americans, from one end of the country to the other, one accent to the other, stand behind a bill which is good, an amendment which really adds substantially to the bill and does provide the level of integrity and honesty and interaction that we need.

With that, I express my strong support for the gentleman's amendment.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I would just note that the gentleman from Mississippi (Mr. THOMPSON), the ranking member of our full committee, worked very hard on this in collaboration with the majority. I would like to thank him for his extraordinary efforts on this, along with that of the author and the chairman.

As I say, we support this, although it is a sad day that it is so needed because of the poor administration at the department overall.

Mr. Chairman, I yield back the balance of my time.

Mr. GOHMERT. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GOHMERT).

The amendment was agreed to.

PART B AMENDMENT NO. 3 OFFERED BY MR. SAM JOHNSON OF TEXAS

Mr. SAM JOHNSON of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 3 printed in House Report 109–347 offered by Mr. SAM JOHNSON of Texas:

At the end of title I, insert the following:

SEC. 118. SENSE OF CONGRESS REGARDING ENFORCEMENT OF IMMIGRATION LAWS.

(a) FINDINGS.—Congress finds the following:

(1) A primary duty of the Federal Government is to secure the homeland and ensure the safety of United States citizens and lawful residents.

(2) As a result of the terrorist attacks on September 11, 2001, perpetrated by al Qaida terrorists on United States soil, the United States is engaged in a Global War on Terrorism.

(3) According to the National Commission on Terrorist Attacks Upon the United States, up to 15 of the 9/11 hijackers could have been intercepted or deported through more diligent enforcement of immigration laws.

(4) Four years after those attacks, there is still a failure to secure the borders of the United States against illegal entry.

(5) The failure to enforce immigration laws in the interior of the United States means that illegal aliens face little or no risk of apprehension or removal once they are in the country.

(6) If illegal aliens can enter and remain in the United States with impunity, so, too, can terrorists enter and remain while they plan, rehearse, and then carry out their attacks.

(7) The failure to control and to prevent illegal immigration into the United States increases the likelihood that terrorists will succeed in launching catastrophic or harmful attacks on United States soil.

(8) There are numerous immigration laws that are currently not being enforced.

(9) Law enforcement officers are often discouraged from enforcing the law by superiors.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President, the Attorney General, Secretary of State, Secretary of Homeland Security, and other Department Secretaries should immediately use every tool available to them to enforce the immigration laws of the United States, as enacted by Congress.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Texas (Mr. SAM JOHNSON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield myself 4 minutes.

Listen up. According to the 9/11 Commission, up to 15 hijackers should have been deported, but our immigration laws are not being enforced.

We cannot sit here as a body that makes laws and just watch them collect dust as our enemies plot against us.

My amendment expresses a sense of Congress that immigration laws enacted by Congress must be enforced.

This amendment sends a simple message from the Congress to the administration: Enforce the law.

We can debate how to solve the illegal immigration problem until we are blue in the face, and I see some very blue faces around the room, but if the laws we enact are not being enforced, then it is just a bunch of hot air.

I have got a four-page list of immigration laws in front of me that are currently being ignored. This is unacceptable. This non-enforcement must end. The United States Congress must demand it right now.

Let me give my colleagues a couple of examples. In 2002, we enacted a law requiring implementation of a system known as Chimera. This means there will be information sharing from Federal databases in the intelligence community to any Federal official considering an immigrant's admissibility or deportability. Well, you knew as you heard information sharing, it is not happening.

Did you know we have a law forbidding public colleges from giving in-State tuition to illegals unless they offer it to every citizen in the United States? It is going on in nine States. Federal law is being violated, and guess what, the Federal Government's doing nothing about it.

Do you know that all registered aliens are required to notify DHS within 10 days of changing address? Failure to do so is a deportable offense. This has tremendous national security value, and it is not being enforced.

In 1996, we made a law requiring the Department of State to suspend all visas to any country who refuses to receive a national who has been deported from the United States. So, hypothetically, if China would not accept people we are deporting back to China, which they are, then the Federal Government is not allowed to issue anymore visas to people coming from China. Who here thinks we are not giving visas to people from China?

The list goes on and on. I will submit it for the RECORD at this point.

IMMIGRATION LAWS THE ADMINISTRATION IS NOT ENFORCING

ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT OF 2002

Integration of all databases and data systems maintained by [DHS] that process or contain information on aliens (§202).

DHS has no plan to accomplish this.

Implementation of an interoperable electronic data system (also known as the ''Chimera'' system) to provide current and immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is needed to determine whether to issue a visa or to determine the admissibility or deportability of an alien (§202).

Chimera is to incorporate the integrated alien data system;

information in Chimera must be readily and easily accessible—

to any consular officer responsible for the issuance of visas;

to any Federal official responsible for determining an alien's admissibility to or deportability from the United States; and

to any Federal law enforcement or intelligence officer determined by regulation to be responsible for the investigation or identification of aliens.

DHS has no plan to accomplish this.

Make interoperable all security databases relevant to making determinations of admissibility under section 212 of the Immigration and Nationality Act (§302).

DHS has no plan to accomplish this.

Not later than October 26, 2004, DHS and the State Department shall issue to aliens only machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers (§303).

DHS still issues easily counterfeited temporary cards until a more secure card is mailed to the alien.

Not later than October 26, 2004, the Attorney General, in consultation with the Secretary of State, shall install at all ports of entry of the United States equipment and software (i.e., machine readers) to allow biometric comparison and authentication of all United States visas and other travel and entry documents issued to aliens, and passports (§303).

About 500 readers have been put in place in only some POEs, and all are in secondary, rather than primary, inspection.

Beginning upon implementation of Chimera, not later than 72 hours after receiving notification of the loss or theft of a United States or foreign passport, DHS and State, as appropriate, shall enter into Chimera the corresponding identification number for every lost or stolen passport (§308).

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

An alien presenting a border crossing identification card (i.e., a laser visa) is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien (§104).

The Administration exempted Mexico from participation in US–VISIT, so biometrics are not being verified and border crossing cards are merely inspected visually.

Process all aliens through US–VISIT (the automated entry-exit control system) so as to ''collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States'' (§110).

Only about 20 percent of nonimmigrants are being processed through the entry part of US–VISIT; the other 80 percent of nonimmigrants have been exempted; immigrants (lawful permanent residents) also have been exempted; and the exit part of the system is still being tested in pilots at a handful of POEs.

Aliens who have resided illegally in the United States for more than six months but less than one year and voluntarily departed are barred from re-entry for three years; aliens who have resided illegally in the United States for more than one year are barred from re-entry for ten years (§301).

Only about 12,000 aliens were subjected to these bars on re-entry during the first four years after this provision took effect: it is estimated that the bars could have been applied to up to 2.5 million aliens during that period.

Mandatory detention pending removal of all aggravated felons and other aliens who are inadmissible or removable due to criminal convictions (§303).

Limited detention space and mismanagement of budgets result in criminal aliens being routinely released from detention prior to removal: more than 80,000 criminal aliens are free in American communities.

Mandatory detention of aliens from the time they are issued a final order of removal until the alien is actually removed or until 90 days have passed if the alien cannot be removed within that period (§305).

In 2004, almost half (34,800) of the more than 75,000 ''other than Mexicans'' apprehended by the Border Patrol were released on their own recognizance pending removal: an estimated 90 percent of nondetained aliens abscond after being issued an order of removal.

Upon notification by DHS or the AG that a foreign government refuses or unreasonably delays the return a national of that country who is ordered removed from the United States, the State Department shall suspend the issuance of immigrant and/or nonimmigrant visas to nationals of that country (§307).

A handful of governments routinely refuse to issue travel documents to their nationals who have been ordered removed from the United States, but this provision is not invoked.

Each Department of the Federal Government shall elect to participate in a pilot program to verify employment authorization of its employees and shall comply with the terms and conditions of such election (§402).

The 1996 law created three different pilot programs from which government agencies could choose; when two of them were allowed to lapse and only one, the Basic Pilot, was extended, agencies using one of the lapsed pilots simply stopped participating rather than sign up for the remaining one.

Public institutions of higher education may not offer in-state tuition to illegal aliens unless they also offer it to every citizen of the United States (§505).

Neither DHS nor the Justice Department has challenged any of the nine states that have passed laws that violate this law, despite the fact that Federal law clearly supersedes state law in the area of immigration.

Any alien seeking admission to the United States or a change of status who is likely to become a public charge or who is a public charge is excludable, if seeking admission, or removable, if already here and seeking adjustment of status (§531).

DHS has yet to come up with a definition of ''public charge'' to implement this provision.

Upon notification that a sponsored alien has received any means-tested public benefit, the entity (nongovernmental, Federal, state or local) that provided the benefit shall request full reimbursement by the sponsor (§551).

Only one lawsuit seeking reimbursement has been filed, and it was filed by private citizens trying to force the Los Angeles public hospital system to seek reimbursement from sponsors: the case was dismissed on technical, not substantive, grounds.

States and localities may not adopt policies, formally or informally, that prohibit employees from communicating with DHS regarding the immigration status of individuals (sanctuary policies) (§642).

Neither of the two sanctuary states, Maine and New Mexico, nor any of the multitude of sanctuary cities have been challenged by DHS or DOJ for violating this provision: soon after this law passed, the City of New York challenged the law in court and the court upheld the law and ordered the City to rescind its sanctuary policy: instead, the City modified its policy slightly, but the Federal Government has not challenged it.

DHS shall respond to an inquiry by a Federal, State, or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law (§642).

This law also required the establishment by then-INS of the Law Enforcement Support Center (LESC), which is available 24/7 to state and local police seeking information on alienage and citizenship: however, state and local police who contact ICE about illegal aliens they have taken into custody are routinely rebuffed and told to simply release the aliens.

IMMIGRATION AND NATIONALITY ACT

The Secretary of DHS is authorized to expand expedited removal procedures to any or all aliens who have not been admitted or paroled into the United States and who have not affirmatively shown to the satisfaction of an immigration officer that they have been physically present in the United States continuously for two years immediately prior to this determination (§235).

The Secretary has only recently used this authority to expand expedited removal to nine Border Patrol sectors. The fact that our Federal court system is clogged with appeals of removal orders—the number of cases filed in Federal court rose from just over 2,000 in 1994 to more than 14,500 in 2004—and the fact that the illegal alien population in the United States continues to grow would suggest that expedited removal needs to be expanded along the entire land border of the United States.

Once an alien is apprehended and removal proceedings are initiated, DHS may detain the alien, release him on a minimum $1,500 bond, or release him on conditional parole (§236).

Since on estimated 90 percent of non-detained aliens abscond after being issued an order of removal, and since DHS has the authority to detain aliens pending removal, it makes no sense that almost half (34,800) of the more than 75,000 ''other than Mexicans'' apprehended by the Border Patrol were released on their own recognizance pending removal in 2004.

Marriage fraud, used in the past by at least nine terrorists to prolong their stay in the United States, is a deportable offense (§237).

ICE has announced that single-instance marriage fraud is a low priority and so will not be investigated or prosecuted.

Domestic violence, false claims to US citizenship and voting illegally are deportable offenses (§237).

Illegal aliens who are victims of domestic violence can obtain green cards through the Violence Against Women Act, but the abuser is rarely prosecuted and even more rarely deported; as happened in New York City with Mayor Giuliani's ''broken-window policing,'' stepped up enforcement of these ''low priority'' violations would begin to reassert the rule of law in our immigration system.

Failure of an alien intending to remain in the United States for thirty days or longer to apply for registration and fingerprinting during that thirty-day period is a deportable offense (§262).

Enforcement of this provision would be of obvious national security value, and it would send a clear message that security is our top priority.

All registered aliens are required to notify DHS within ten days of changing addresses; failure to do so is a deportable offense (§266).

This, too, has important national security value.

Any individual or entity that ''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'' is guilty of a felony punishable by imprisonment (§274).

A strong case could be made that localities like Herndon, Virginia, that are using taxpayer funds to build and promote day-labor sites for aliens they know to be illegal, and government entities like the Illinois Housing Development Authority, which has set aside taxpayer funds to provide mortgages to illegal aliens, are ''encourag[ing illegal aliens] to reside in the United States.'' The same case can be made against banks that accept consular ID cards to open accounts or allow illegal aliens to use individual taxpayer ID numbers to get home loans.

It is unlawful to knowingly hire, recruit, or refer for a fee an alien who is not authorized to work in the United States, and it is unlawful to hire any individual without verifying the employment authorization of that individual, either through the I–9 process alone or combined with the Basic Pilot program (§274A).

While it is exceedingly difficult to establish that an employer knew an employee was illegal, it is not difficult to establish that an employer failed to complete the I–9 process; it is also not difficult to encourage employers to use the Basic Pilot to verify work eligibility.

Aliens who commit fraud, use false or altered documents, or make misrepresentations on applications for immigration benefits are ineligible for the benefits (§§212, 237, 340, among others).

Not only does USCIS grant benefits to aliens despite indications of, and sometimes even evidence of, fraud or misrepresentation, ICE rarely investigates cases of alleged benefits fraud referred by USCIS. USCIS estimates that ICE declines to investigate over 70 percent of the benefits fraud referrals it receives. It is exceedingly rare for either agency to attempt to rescind a benefit once it is granted.

Millions of new immigrants come to America every year, and the numbers are rising. Do you know why these numbers continue to increase? Because when we don't enforce the laws, we send the message that we don't take our laws seriously.

We don't pass laws to be ignored. Join me in supporting this amendment.

Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Does the gentlewoman from California claim the time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, I claim the time in opposition, but I will not oppose the gentleman's amendment.

The Acting CHAIRMAN. Without objection, the gentlewoman can claim the time in opposition.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I will note that the amendment does not really accomplish anything; although, I certainly really would not want to oppose enforcing the law.

The gentleman mentioned some things that are deficient in the administration of our immigration laws, and they are not new things.

Let me just give you an example on reporting a change of address. Do you know how that is done? You fill out a piece of paper, and you submit it. Do you think it is possible to actually find those pieces of paper, the millions of pieces of paper? Anybody who came in and who is a legal permit resident, you could file it, but no one will ever find it.

We mention often the terrorists that came into our country and did such damage to us on 9/11. You know what? Those people, most of them were not admissible to the United States, but the poor officer at the border, he did not know that. He could not know it because the piece of information that would have told him that was on a piece of microfiche sitting in a bucket in Florida waiting to be translated into an actual database.

There is a lack of technology in the department, and nothing in this bill changes that.

Further, nothing in this bill orders the President to order his department to go out and get the people who promised to appear and then disappeared. Let us go find those people. Let us bring them to justice. Either they will be deported or they will have their day and find their remedy.

Nothing in this bill tells the department to go out and find the people who have been convicted of crimes, who were supposed to be deported, who instead were released from county jail or from State prison because the department failed to go pick them up. There is nothing in this bill that says, go every day, check with the jails, find out who is a criminal alien and who is about to be released and deport them. There is nothing in there. There are no resources.

So this underlying bill is a failure. The amendment is well-meaning I am sure, but it accomplishes almost nothing. Nevertheless, it would be wrong to oppose it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentlewoman yield?

Ms. ZOE LOFGREN of California. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentlewoman very much.

Let me just say, Mr. JOHNSON is a good friend from Texas, and I know that this sense of Congress reflects the attitude of the people of Texas and America that we should enforce the immigration laws. I am going to enthusiastically join and support him on this idea of enforcing the Nation's immigration laws.

But what I do want to indicate is that this is building on some enforcement laws that we have had, and that is that, over the years, we have enacted 20 enforcement laws in the last 20-years. We have increased the Border Patrol budget by a factor of 10, but it has not been enough. We have tripled the number of agents, but we need to do more, and we have created a Department of Homeland Security.

What we have not been able to do is write real, if you will, effective immigration law that brings in the comprehensive nature of immigration law which provides, if you will, an earned access to legalization and the building up and the securing of our borders by the enhancement of our Border Patrol agents, for example, scholarships, recruitment.

There is another amendment coming up about making sure that clothing comes from the right country. I think this is a good amendment, but I think that we can do better by looking at this from a comprehensive perspective and building and writing the kinds of laws that would be effective, if you will, to ensure that we are enforcing those laws.

Ms. ZOE LOFGREN of California. Mr. Chairman, I reserve the balance of my time.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I thank the gentlewoman from Houston for her comments. I appreciate it.

Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. GOODE).

Mr. GOODE. Mr. Chairman, I want to thank the gentleman from Texas for introducing this amendment to this fine legislation. He recognizes that the failure to control and to prevent illegal immigration into the United States increases the likelihood that terrorists will succeed in launching a catastrophic or harmful attack on the United States.

His amendment is a message to the executive branch: Please enforce the laws that we have now to stop illegal immigration. They will listen to the gentleman from Texas with his stature and patriotism. It will be a fine message.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I would simply note that this amendment will not really cure the problems in this bill. It will not get the resources. It will not make the administration do its job. It will not cure the incompetence and lack of performance that we have seen at the borders, both borders, southern and northern, as well as our ports of entry.

It a good idea to enforce the laws. Unfortunately, the administration is not doing so. Nothing in this bill is going to help them do so.

Mr. Chairman, I yield the remainder of my time to the gentleman from California (Mr. BACA).

Mr. BACA. Mr. Chairman, I rise in opposition of H.R. 4437. I have nothing against this particular amendment, but I am totally against this legislation.

We are all about protecting our borders. We are all about enforcement, and we are about developing a comprehensive immigration reform legislation that really will impact our people, but this bill today, it is flawed. It is inconsistent with the American values.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield the remaining time to the gentleman from New York (Mr. KING), the chairman of the committee.

□ 1915

Mr. KING of New York. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I just want to emphasize that I stand in strong support of his amendment. This is just one more example of the outstanding contributions to public service made by the gentleman from Texas. I support it and urge its adoption.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from Texas (Mr. SAM JOHNSON).

The amendment was agreed to.

PART B AMENDMENT NO. 4 OFFERED BY MR. RENZI

Mr. RENZI. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 4 printed in House Report 109–347 offered by Mr. RENZI:

Add at the end of title I the following new section:

SEC. 118. SECURING ACCESS TO BORDER PATROL UNIFORMS.

Notwithstanding any other provision of law, all uniforms procured for the use of Border Patrol agents shall be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Arizona (Mr. RENZI) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Arizona.

Mr. RENZI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me begin by thanking the chairman of our Homeland Security Committee for his allowing to move forward on this amendment, and more so for the protection he is now about to provide to many of our Border Patrol agents. I rise today to offer an amendment that would require all the uniforms worn by our Border Patrol agents to be made in America.

Imagine yourself a Border Patrol agent who serves in harm's way along this vast and violent border who dons the uniform of this Nation which is currently made in Mexico and which could easily fall into the wrong hands. As we speak, uniforms worn by our Border Patrol agents are manufactured in Mexico and could be easily lost or stolen or, worse yet, intentionally produced to undermine our border security efforts. These uniforms represent the law and order on our border, and allowing these uniforms to be made in America would minimize the possibilities that they could be procured by smugglers, terrorists, or others who pose great risk to our agents.

In 1941, Congress passed the Berry amendment, which restricts the Department of Defense from procuring some military uniforms for national security purposes outside of them being manufactured in America. For over 60 years Congress has chosen to keep this policy in place, and yet every day on our border our agents are besieged by armed human smugglers and drug traffickers and those who want to use lethal means to target our agents.

Just 2 years ago, the Border Patrol confiscated a smuggler's vehicle down on the southwest border that was painted like a Border Patrol vehicle.

While we may not be able to prevent individuals from painting trucks, we can surely stop them from getting these uniforms and from these uniforms falling into the wrong hands. Our Border Patrol agents need to be able to take pride in the uniforms they wear. They need to be secure in the knowledge that, when they are on the border peering into the darkness at night protecting us and when they are trying to determine whether the individual approaching them is friend or foe, that these uniforms are not being used as a tool against them. When our agents wake up each morning, they need to see the American flag and the ''Made in U.S.A.'' label on their uniforms. I urge my colleagues to support this amendment.

Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Who claims time in opposition to the amendment?

Ms. JACKSON-LEE of Texas. Mr. Chairman, I claim the time in opposition, but I will not oppose it.

The Acting CHAIRMAN. Without objection, the gentlewoman may claim the time in opposition.

There was no objection.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, to the distinguished gentleman that offered the amendment, that is why we have suggested that we can work on these issues in a bipartisan manner. I think you have a very reasonable amendment, and might I just say that the National Border Patrol Council supports this amendment because it involves officer and public safety.

Since early last year, the Border Patrol uniforms, including the patches, the identifying patches, have been made outside of the country. It would be quite simple for someone to bribe a low-paid factory worker or truck driver in order to procure a quantity of uniforms for the purpose of masquerading as a Border Patrol agent. Obviously this makes sense, and that is why part of the problem with the underlying bill is, frankly, that it is weighted down by the criminalizing of the undocumented and not focusing on the criminalizing of the criminals. This, in fact, is a very instructive amendment because it helps to ensure the sanctity of the Border Patrol officers' uniform and their work. Inasmuch as the Border Patrol's work is done at night and low-light surroundings, it would be nearly impossible for the genuine Border Patrol agents to spot the imposters until they were close enough to harm the agents if they had a false uniform. Likewise, members of the public could easily be fooled into believing that the imposters had authority to stop and question them, and they could perpetrate crimes.

Mr. Chairman, I support this amendment, and I am delighted to yield such time as he may consume to my distinguished colleague from California (Mr. BACA).

Mr. BACA. Mr. Chairman, once again I stand in opposition to this legislation. This is not comprehensive legislation. We all believe that we could have stronger enforcement not only on our borders but also stronger enforcement in reference to what happened to immigrants, but basically this legislation is not a comprehensive educational law reform or immigration reform. It basically is deplorable legislation. It violates the 13th and 14th amendments of the Constitution. We are abolishing the Constitution that protects us. How can we alter the Constitution?

I must remind our colleagues that we are talking about individuals who have a human face, a senior, an adult, and a young child. So this legislation, instead, will say the 11 million undocumented workers are felons, are felons. Is that what America wants, to arrest and lock up 11 million immigrants? Are we going to have detention camps, concentration camps? What are we going to do with these 11 million individuals who would be designated as undocumented individuals? What happens to children of individuals that will be labeled? They will be labeled, and they will have to carry that label the rest of their lives as either a felon or an individual who has a misdemeanor. When you have that label, you carry that label with you the rest of your life, and you are asking us to be productive individuals. What happens to those individuals that every day of their life some individual will tell them, well, you are the little individual, you are the criminal. We see a little white person looking, a little brown person stereotyping them and says, you are a felon, you are here in this country illegally. They had nothing to do with them being out here.

Let me tell you, this legislation is horrible, it is terrible, it is deplorable. We must stop this kind of legislation. We must develop comprehensive legislation. We must not have concentration camps; we must not kick our students out of school. What happens to a lot of our kids who are in our schools because the legislation will label them as a criminal? ADA funding that goes to our schools, what happens? Who arrests them? Are we aiding and abetting? When we go to church and we see someone in our church or a pew right next to us, do we then turn in someone because we assume that you are an undocumented? We will begin to do more profiling. We will begin to identify more individuals like myself and others to say, Are you legal or not legal here in the United States? And people who look a different color will not be asked to prove their identity.

This legislation is horrible. We should not support this kind of legislation. We should protect our Constitution.

Mr. RENZI. Mr. Chairman, I want to thank the gentleman for California. I do have respect for him. I think his passion on the issue has to do with the overall bill, while we are here discussing my amendment which relates to Border Patrol uniforms.

Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. HAYES).

Mr. HAYES. Mr. Chairman, I thank Mr. RENZI for his very thoughtful amendment, and I thank him for yielding the time.

Mr. Chairman, this is about Border Patrol uniforms, the amendment. Mr. Chairman, I rise today in strong support of this amendment. I know we need to take the necessary steps to ensure the Federal Government is producing sensitive goods such as U.S. Border Patrol uniforms in the United States to help alleviate this national security risk. After reading an Associated Press article in late November, I was shocked to learn that U.S. Border Patrol uniforms are not made in America.

The article states that agents and lawmakers are concerned about the consequences if the uniforms for agents charged with combating illegal immigration fall into the hands of criminals or terrorists. The article detailed some of the concerns I have been expressing for some time now.

For years now I have been a stalwart for strengthening the Berry amendment, which requires the Department of Defense to give preference to domestically produced and manufactured products, notably clothing, food, fabrics, and specialty medals. Soon I will reintroduce a bill that applies the Berry amendment guidelines to Department of Homeland Security procurement.

It is imperative that we remedy this issue to help protect our borders and deter terrorists or criminal acts. Not only is this an issue of national security but it would help our Nation's economic security by maintaining a strong U.S. manufacturing base as well.

I commend Mr. RENZI for offering the amendment, and I look forward to working closely with him and my colleagues and the administration to ensure that we are all doing everything that we can to protect America's national security. I urge all my colleagues to support this important amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I want to acknowledge the fact that we could be doing more on this bill. Clearly, we want our Border Patrol agents to be well equipped and well uniformed. That is the missing part of this bill. The uniform ''Made in the USA'' is a good statement to make, but you cannot have Border Patrol agents without power boats, helicopters, night goggles, computers; and you cannot have them without recruitment, scholarship, and increased numbers to secure the border.

That is what we should be doing with the underlying bill, but I do support the amendment and just wish we could do more.

Mr. RENZI. Mr. Chairman, I yield the balance of my time to the gentleman from New York (Mr. KING), the new chairman of the Homeland Security Committee, who has stepped up to protect our Border Patrol agents and who championed this amendment.

Mr. KING of New York. Mr. Chairman, I thank the gentleman for yielding me this time, and there is no one who is not on the committee who has done more work than the gentleman from Arizona to really work on the issue of terrorism in the intelligence area, in the homeland security area, and I strongly support this amendment.

It is in keeping with the spirit of the law. It is in keeping in the spirit that we should be searching for as we try to stop illegal immigration, stand behind those on the borders who are protecting us against this massive increase of illegal immigrants.

So I am proud to stand by and endorse the amendment of the gentleman from Arizona.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona (Mr. RENZI).

The amendment was agreed to.

PART B AMENDMENT NO. 5 OFFERED BY MR. CASTLE

Mr. CASTLE. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 5 printed in House Report 109–347 offered by Mr. CASTLE of Delaware:

At the end of title I, insert the following new section:

SEC. 118. US–VISIT.

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 timeline for—

(1) equipping all land border ports of entry with the US–VISIT system;

(2) developing and deploying at all land border ports of entry the exit component of the US–VISIT system; and

(3) making interoperable all immigration screening systems operated by the Department of Homeland Security.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Delaware (Mr. CASTLE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Delaware.

Mr. CASTLE. Mr. Chairman, I rise to offer this simple amendment to the legislation before us today. In the post-9/11 world, our primary concern has to be stopping terrorists from penetrating our borders. Chairman SENSENBRENNER's dedication to fixing gaps in our security is commendable, and I am

proud to join him and Chairman KING in improving our border security capabilities while allowing American citizens and legal immigrants to continue contributing to our economy.

Both Congress and the 9/11 Commission have identified the US–VISIT biometric entry and exit system as essential to preventing terrorists from entering the country through land borders, airports, and seaports. Currently, US–VISIT kiosks are deployed at most airports and some land borders, where travelers submit biometric information, including digital fingerprints and a photograph, and the Department of Homeland Security screens the data against terrorist watch lists and criminal record databases.

Since its implementation, US–VISIT has caught more than 900 murderers, pedophiles, and other dangerous criminals attempting to enter the United States. Still, the system records only a fraction of foreign arrivals and does not yet record when foreign travelers leave the country. While US–VISIT is presently being used at some of the busiest border crossings, the Department has yet to deploy the tracking system at all land border ports of entry.

The development of the system's exit component has also been slow; and thus our government does not yet have a reliable way of tracking visa overstays. In addition, the 9/11 Commission and other recent reports have highlighted the need for the Department to improve the interoperability of US–VISIT and its other immigration screening systems to ensure that terrorists and criminals do not slip through the cracks.

The Department of Homeland Security is already working on a plan to expand US–VISIT and eventually track every foreign visitor entering and leaving the country. My amendment would simply require the Department to update Congress on the progress of this plan by submitting a detailed time line for equipping all land borders with the US–VISIT system, developing and deploying the exit component of the system at all land borders, and making all immigration screening systems operated by the Department compatible with one another.

Improving the quantity and quality of the information in US–VISIT will undoubtedly enhance our ability to better track and identify potential security threats to our Nation. The Department already has a plan to do this, and my amendment will ensure that Congress is updated on the status of this important process.

Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN. Who claims time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, I will not oppose the amendment, but I claim the time in opposition.

The Acting CHAIRMAN. Without objection, the gentlewoman from California is recognized for 5 minutes.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I will support the amendment, but I am under no illusion that the amendment will actually achieve what the author hopes.

Over 5 years ago, before there was a Department of Homeland Security, I strongly suggested to the then immigration service that we engage in a biometric study so that we would have a secure biometric system that could be deployed and would be both with our immigration screening systems and also with other databases. We were told by the National Institute of Standards and Technology that they could accomplish that in 6 months for about $2 million. Unfortunately, we never did it.

So we now have biometrics that are incompatible in various databases, law enforcement, immigration, and certain other databases that we have. Consequently, even the system that we have on US–VISIT is not fully functional. I would like to note also that the databases that are utilized by US–VISIT are also not integrated.

It is true, we have caught some people who have committed crimes who should not be admitted to the United States through US–VISIT, and I count that as a good thing. But the 9/11 Commission was looking at the need to stop terrorists. The problem is that US–VISIT is completely disconnected with our databases relative to terrorists, and I do not think this amendment is going to fix that.

I would also like to note that the amendment suggests that we accelerate, I believe, the exit component of US–VISIT.

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There is no exit component of the US–VISIT. Basically, it does not exist.

The situation with databases and technology in the department is simply dismal. We should be filing all immigration matters by biometrics so we do not have the confusion we currently have of names that sound similar, or, in some languages, first and last names get traded back and forth rather interchangeably. It is ridiculous that we have not done that; but it is not for lack of asking, urging and insisting.

And I will say something else about getting reports. I sit on the Homeland Security Committee. We are due so many reports by this department, I cannot even begin to count them. We were due a rail security report, I believe, it was last June. We are due reports on cybersecurity; that is several years ago. The department basically thumbs its nose at the United States Congress. It does not provide the reports required under current law. I suppose hope springs internal, and we should ask again, but this resolution will not cure the massive arrogance and incompetence of the department.

Mr. Chairman, I reserve the balance of my time.

Mr. CASTLE. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. KING).

Mr. KING of New York. Mr. Chairman, the Castle amendment is extremely well written. I am proud to endorse it.

I also would emphasize that the points raised in the amendment do refer to points that we have been asking DHS to provide us information on. This amendment will give us more of the muscle that we need to ensure DHS is in compliance. I thank the gentleman for his amendment and urge its adoption.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself the balance of my time.

As I said earlier, I plan to support the amendment. I think it is worth making clear: There is no exit system now. So why does that matter? People come into the United States, they put their fingerprints on the US–VISIT system. It catches some people, and it does not catch others. And then they come into the United States.

We have been talking earlier about making aggravated felons of those who overstay their visas, whether they be visitor or whatever. At the current time, and I do not see this changing any time soon, we do not catch those people. If they leave, we do not know if they have left or if they are here. Because we do not have a connection with our database, we do not know if they are connected with terrorism or not.

So the lack of functionality that we have in technology and the lack of deployment of additional technology has left us more vulnerable than we need to be.

I mentioned earlier this evening that some of the 9/11 terrorists were not admissible to the United States. The officer who inspected them could not know that because the fact of their ineligibility was on a piece of microfiche sitting in a bucket. You cannot search a database if it is on a piece of microfiche sitting in a bucket. We are not that much better off today than we were at that time. I am sure the gentleman is distraught about that. I am as well. I have been trying to get this changed for more than half a decade.

The timeline for a billion-dollar program is a good idea, but I do not have any real confidence that the department will perform any better after this amendment is adopted than it has in the past several years with a lot of pushing and insisting from Members, frankly, on both sides of the aisle. The incompetence just does not quit.

Mr. Chairman, I reserve the balance of my time.

Mr. CASTLE. Mr. Chairman, I yield myself the balance of my time.

I agree with almost everything that the gentlewoman from California has said about this particular system. I share her concerns. I appreciate her support for my amendment and Mr. KING's support as well.

I think the whole business of biometrics and US–VISIT has tremendous potential that is not being realized. The reason I present this amendment is

not to change anything they are doing; this is not complimenting anything that they are doing or saying that they are doing it particularly well; but to force some sort of reportorial system back to Congress, that is all this amendment does, so perhaps they will get it in their heads that they have to do better than they are doing now.

The gentlewoman is right, there is a lot of disorganization and incompatibility and inconsistency in terms of what is happening, and yet it has potential.

Ms. ZOE LOFGREN of California. Mr. Chairman, will the gentleman yield?

Mr. CASTLE. I yield to the gentlewoman from California.

Ms. ZOE LOFGREN of California. Mr. Chairman, we have numerous reports that are required. I sit on the committee, which is why I know this. They never do the reports. They are required by law to submit the reports. We have dozens, hundreds of reports that simply have never been delivered. I hope this is an exception, but I do not have a high level of confidence.

Mr. CASTLE. Mr. Chairman, we can tweak them a little bit if this amendment passes because I do believe, and it has worked, and even with the limitations the gentlewoman has shown, it has worked rather well in some areas where they have actually captured people who have done things that they should not have done. I think it could do a heck of a lot more in terms of terrorism, and it should. I intend to force it. We know this department has some start-up difficulties, and we have to deal with that. Having said that, I think this is a good step in the right direction. If we stand behind it and help it work, it will help us all.

I thank the gentlewoman for her support.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from Delaware (Mr. CASTLE).

The amendment was agreed to.

The Acting CHAIRMAN. The Committee will rise informally.

The SPEAKER pro tempore (Mr. KING of Iowa) assumed the Chair.

MESSAGE FROM THE SENATE

A message from the Senate Ms. CURTIS, one of its clerks, announced that the Senate disagrees to the amendment of the House to the bill (S. 1932) ''An Act to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).'' and requests a conference with the House on the disagreeing votes of the two Houses thereon, and

That on December 15, 2005, appoints Mr. GREGG, Mr. DOMENICI, Mr. GRASSLEY, Mr. ENZI, Mr. ALLARD, Mr. SESSIONS, Mr. STEVENS, Mr. SHELBY, Mr. SPECTER, Mr. CHAMBLISS, Mr. MCCONNELL, Mr. CONRAD, Mrs. MURRAY, Mr. HARKIN, Mr. SARBANES, Mr. INOUYE, Mr. BINGAMAN, Mr. BAUCUS, Mr. KENNEDY, and Mr. LEAHY, to be the conferees on the part of the Senate.

The SPEAKER pro tempore. The Committee will resume its sitting.

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

The Committee resumed its sitting.

PART B AMENDMENT NO. 6 OFFERED BY MR. GINGREY

Mr. GINGREY. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 6 printed in House Report 109–347 offered by Mr. GINGREY of Georgia:

At the end of title I, insert the following new section:

SEC. 118. SUSPENSION OF VISA WAIVER PROGRAM.

(a) IN GENERAL.—Notwithstanding any other provision of law, the visa waiver program established under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187)is hereby suspended until such time as the Secretary of Homeland Security determines and certifies to Congress that—

(1) the automated entry-exit control system authorized under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note) is fully implemented and functional;

(2) all United States ports of entry have functional biometric machine readers; and

(3) all nonimmigrants, including Border Crossing Card holders, are processed through the automated entry-exit control system.

(b) REPEAL.—Subparagraph (B) of section 217(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1187(a)(3)) is hereby repealed.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Georgia (Mr. GINGREY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia.

Mr. GINGREY. Mr. Chairman, I believe that the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 needs to address a loophole in our immigration system. I have introduced this amendment which suspends, not cancels, but suspends temporarily the Visa Waiver Program until the machine-readable and tamper-resistant biometric identification system mandated by the PATRIOT Act to be the cornerstone of the entry-exit system is fully operational.

Until we have the technical and human resources to secure our points of entry, we cannot afford to allow visitors to come to the United States without prescreening them prior to arrival. Despite the fact that the United Kingdom is one of our Nation's closest friends and allies, the London subway bombings earlier this year were executed in large part by British citizens with known ties to terrorism.

We know that terrorists like Zacharias Moussaui and Richard Reid exploited the Visa Waiver Program to travel to the United States. Do we want individuals like these to fly to America unchecked and to attack our subway system in the name of terrorist groups like al Qaeda under the cloak of the Visa Waiver Program? Do we want French citizens with Islamofascist mindsets to get a free pass through Customs? If not, we need to suspend this program until we are equipped to check the criminal and terrorist backgrounds of every visitor who arrives at a point of entry and to confirm the identity of each visitor using biometric identifiers.

The success and failure of the Visa Waiver Program can trace its roots back to 1986 when it was passed as part of the Immigration Reform Control Act. As many of my colleagues know, what we left undone in 1986 is in large part why we need to consider a new immigration reform law in 2005 that is consistent with the recent reauthorization of the PATRIOT Act. The Visa Waiver Program was only designed to be a temporary program for a small and select group of nations. Today, 27 countries are eligible under visa waivers, opening the door widely, widely, Mr. Chairman, for an unscreened terrorist to attack the United States.

Yesterday, the United States USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 passed by a vote of 251–174, a strong endorsement for securing our Nation against terrorism. The PATRIOT Act acknowledges the problem of the Visa Waiver Program, and I have introduced this amendment to suspend the program until the solution made possible by the PATRIOT Act can realistically take effect. This is an issue that extends beyond apprehending illegal immigrants and actually works to secure our points of entry from those who desire to attack our Nation.

Mr. Chairman, I include for the RECORD a letter from the 9/11 Families for a Secure America in full support of this amendment.

9/11 FAMILIES FOR A SECURE AMERICA,
DECEMBER 15, 2005.
Staten Island, NY,

Hon. PHIL GINGREY,
Cannon House Office Building,
Washington, DC.

DEAR MR. GINGREY, 9/11 Families for a Secure America fully supports your amendment to H.R. 4437 to suspend the Visa Waiver Program until the automated entry-exit control system authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is fully implemented.

The recent civil disturbances in France make it quite clear that the time is past when citizens of particular countries should be granted blanket permission to enter the United States without first applying for a visa. Many of the nations of Europe, after decades of permitting mass immigration from nations that sponsor terrorism have created a situation where large numbers of Islamic extremists, though closely connected to the terrorism that originates in countries such as Saudi Arabia, are themselves citizens or native born in any of a dozen European nations. The result is that Islamic extremism is no longer limited to persons born