

PROVIDING FOR CONSIDERATION OF H.R. 4437, BORDER
PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRA-
TION CONTROL ACT OF 2005

DECEMBER 15 (legislative day, DECEMBER 14), 2005.—Referred to the House
Calendar and ordered to be printed

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

R E P O R T

[To accompany H. Res. 610]

The Committee on Rules, having had under consideration House Resolution 610, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, under a structured rule. The rule provides two hours of general debate equally divided among and controlled by the chairman and ranking minority member of the Committee on the Judiciary and the chairman and ranking minority member of the Committee on Homeland Security. The rule waives all points of order against consideration of the bill.

The rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified by the amendment printed in part A of this report, shall be considered as adopted in the House and in the Committee of the Whole and shall be considered as read. The rule waives all points of order against the bill, as amended.

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

shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in part B of this report.

Finally, the rule provides that, after disposition of the amendments printed in part B of this report, the Committee of the Whole shall rise without motion and no further consideration of the bill shall be in order except by a subsequent order of the House.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill includes a waiver of clause 4(a) of rule XIII (requiring a three-day layover of the committee report). The waiver is necessary because the Committee on the Judiciary filed its report (H. Rept. 109-345, Part I) with the House on the legislative day of Tuesday, December 13, 2005 and the bill may be considered by the House as early as the legislative day of Thursday, December 15, 2005.

PART A—SUMMARY OF AMENDMENT CONSIDERED AS ADOPTED

(Summary of amendment derived from information provided by the sponsor.)

Thomas—No. 131: Authorizes the Commissioner of Social Security to perform activities with respect to carrying out the Commissioner's responsibilities in title VII, Employment Eligibility Verification, but only to the extent the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner's full costs in carrying out such responsibilities. Prohibits funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund from being used to carry out such responsibilities.

PART B—SUMMARY OF AMENDMENT MADE IN ORDER UNDER THE RULE

(Summaries of amendments derived from information provided by the sponsors.)

1. Carter—No. 38: Requires the Secretary of Homeland Security to include satellite communications in the plan authorized by Section 106 of H.R. 4473. (10 minutes)

2. Gohmert—No. 9: Directs the Inspector General to refer any instances of misconduct or wrongdoing on a contract to the Secretary of the Department of Homeland Security or other appropriate official for the purpose of evaluating whether or not suspension or debarment of the contractor is warranted. (10 minutes)

3. Johnson, Sam (TX)—No. 26: Sense of Congress that the President, 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 U.S., as enacted by Congress. (10 minutes)

4. Renzi—No. 77: States that all uniforms procured for use by Border Patrol agents are to be made in the United States. (10 minutes)

5. Castle—No. 16: Requires DHS to submit a timeline for: (1) equipping all land borders with the US-VISIT entry/exit system; (2) developing and deploying the exit component of the US-VISIT system at all land borders; and (3) making all border screening systems operated by the Department interoperable. (10 minutes)

6. Gingrey—No. 130: Suspends the Visa Waiver Program until the automated entry-exit program is operational and until ports of entry have functional biometric machine readers. (10 minutes)

7. Campbell—No. 59: Amends Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by replacing “Immigration and Naturalization Service” with “Department of Homeland Security” and enforces Section 642 by stating that the Attorney General shall not provide any grant amount to any Federal, State, or local government agency or entity that violates the Act (which states that any government official or entity may not be prohibited from sending information to DHS regarding the citizenship or immigration status of any individual). (10 minutes)

8. Jackson-Lee—No. 7: Provides guidelines for implementing the secured alternatives to detention provision in section 402(a). (10 minutes)

9. Castle—No. 17: Requires the Department of Homeland Security to report to Congress on: (1) the number of illegal aliens from noncontiguous countries who are apprehended at or between ports of entry; (2) the number of such aliens that have been deported; and (3) the number of such aliens from countries identified as sponsors of terrorism. Also encourages the Department to develop a strategy for entering the appropriate background information of illegal aliens from countries sponsoring terrorism into appropriate security screening watch lists. (10 minutes)

10. Brown-Waite—No. 51: Inserts a new section declaring that Congress condemns rapes by smugglers along the international land border of the U.S. and urges in the strongest possible terms the government of Mexico to work in coordination with the U.S. Customs and Border Protection of the Department of Homeland Security to take immediate action to prevent such rapes from occurring. (10 minutes)

11. Hunter/Dreier/Royce/Goode/Gingrey—No. 113: Mandates the construction of specific security fencing, including lights and cameras, along the Southwest border for the purposes of gaining operational control of the border. Fencing has been designated in sectors that have the highest number of immigrant deaths, instances of drug smuggling and illegal border crossings. Includes a requirement for the Secretary of Homeland Security to conduct a study on the use of physical barriers along the Northern border. (20 minutes)

12. DeFazio/Lungren—No. 47: Directs Customs and Border Protection (CPB) to conduct a pilot program to evaluate the use of automated systems for immediate prescreening of individual airline passengers bound for the U.S. before they board a plane. Pilot would use at least one airline in two foreign airports and evaluate up to three automated systems. CBP would be required to report to Congress no later than 30 days after completion of the pilot and provide a plan to fully deploy the most preferable prescreening system no later than January 1, 2007. (10 minutes)

13. Hayworth—No. 95: Increases the number of employment-based visas available through a reduction in other non-employment-based immigration categories. (10 minutes)

14. Goodlatte/Herseth—No. 37: Eliminates the visa lottery program. (10 minutes)

15. Filner—No. 45: Makes technical changes to the current statute governing the distribution of fraudulent documents. The statute does not mention “distribution” of illegal documents, which applies to the re-sale or sale of fraudulent documents. By adding distribution to the criminal code those convicted of distributing illegal documents will be held to the same penalties as those who create, alter, or falsify any immigration related document. (10 minutes)

COMMITTEE VOTES

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

Rules Committee record vote No. 138

Date: December 15, 2005 (Legislative day of December 14, 2005).

Measure: H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

Motion by: Mrs. Slaughter.

Summary of motion: To strike the unfunded mandates waiver (clause 11 of rule XVIII) from the rule.

Results: Defeated 4 to 8.

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

Rules Committee record vote No. 139

Date: December 15, 2005 (Legislative day of December 14, 2005).

Measure: H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

Motion by: Mrs. Slaughter.

Summary of motion: To not report the rule.

Results: Defeated 4 to 8.

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

Rules Committee record vote No. 140

Date: December 15, 2005 (Legislative day of December 14, 2005).

Measure: H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

Motion by: Mr. Hastings of Florida.

Summary of motion: To make in order and provide the appropriate waivers for the amendment offered by Mr. Kolbe, which maintains the enforcement and security provisions in the Border Protection, Antiterrorism, and Illegal Immigration Control Act and adds provisions of the Secure America and Orderly Immigration Act (H.R. 2330/S. 1033), including State Criminal Alien Assistance, the Essential Worker Visa Program, Family Unity and Backlog Reduction, Adjustment of Status for Undocumented Immigrants, Protection Against Immigration Fraud, and Civics Integration.

Results: Defeated 5 to 7.

Vote by Members: Diaz-Balart—Nay; Hastings (WA)—Yea; Sessions—Nay; Putnam—Nay; Capito—Nay; Cole—Nay; Gingrey—

Nay; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Matsui—Yea; Dreier—Nay.

PART A—TEXT OF AMENDMENT TO BE CONSIDERED AS ADOPTED

At the end of title VII, add the following new section:

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 (except 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.

PART B—TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CARTER OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOHMERT OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SAM JOHNSON OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RENZI OF ARIZONA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CASTLE OF DELAWARE, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title I, inset 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.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GINGREY OF GEORGIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CAMPBELL OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title III, add the following:

SEC. 308. COMMUNICATION BETWEEN GOVERNMENT AGENCIES AND THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended—

(1) by striking “Immigration and Naturalization Service” and inserting “Department of Homeland Security” each place it appears; and

(2) by adding at the end the following:

“(d) ENFORCEMENT.—

“(1) INELIGIBILITY FOR FEDERAL LAW ENFORCEMENT AID.—Upon a determination that any person, or any Federal, State, or local government agency or entity, is in violation of subsection (a) or (b), the Attorney General shall not provide to that person, agency, or entity any grant amount pursuant to any law enforcement grant program carried out by any element of the Department of Justice, including the program under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 241(i)), and shall ensure that no such grant amounts are provided, directly or indirectly, to such person, agency, or entity. In the case of grant amounts that otherwise would be provided to such person, agency, or entity pursuant to a formula, such amounts shall be reallocated among eligible recipients.

“(2) VIOLATIONS BY GOVERNMENT OFFICIALS.—In any case in which a Federal, State, or local government official is in violation of subsection (a) or (b), the government agency or entity that employs (or, at the time of the violation, employed) the official shall be subject to the sanction under paragraph (1).

“(3) DURATION.—The sanction under paragraph (1) shall remain in effect until the Attorney General determines that the person, agency, or entity has ceased violating subsections (a) and (b).”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to grant requests pending on or after the date of the enactment of this Act.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON-LEE OF TEXAS, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Amend section 402 to read as follows:

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

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary of Homeland Security shall fully utilize—

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

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

(b) SECURE ALTERNATIVES TO DETENTION PROGRAM.—

(1) NATURE OF THE PROGRAM.—For purposes of this section, the secure alternatives to detention referred to in subsection (a) is a program under which eligible aliens are released to the custody of suitable individual or organizational sponsors who will supervise them, use appropriate safeguards to prevent them from absconding, and ensure that they make required appearances.

(2) PROGRAM DEVELOPMENT.—The program shall be developed in accordance with the following guidelines:

(A) The Secretary shall design the program in consultation with nongovernmental organizations and academic experts in both the immigration and the criminal justice fields. Consideration should be given to methods that have proven successful in appearance assistance programs, such as the appearance assistance program developed by the Vera Institute and the Department of Homeland Security’s Intensive Supervision Appearance Program.

(B) The program shall utilize a continuum of alternatives based on the alien’s need for supervision, including placement of the alien with an individual or organizational sponsor, a supervised group home, or in a supervised, non-penal community setting that has guards stationed along its perimeter.

(C) The Secretary shall enter into contracts with nongovernmental organizations and individuals to implement the secure alternatives to detention program.

(c) ELIGIBILITY AND OPERATIONS.—

(1) SELECTION OF PARTICIPANTS.—The Secretary shall select aliens to participate in the program from designated groups specified in paragraph (4) if the Secretary determines that such aliens are not flight risks or dangers to the community.

(2) VOLUNTARY PARTICIPATION.—An alien’s participation in the program is voluntary and shall not confer any rights or benefits to the alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) LIMITATION ON PARTICIPATION.—

(A) IN GENERAL.—Only aliens who are in expedited removal proceedings under section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) may participate in the program.

(B) RULES OF CONSTRUCTION.—

(i) ALIENS APPLYING FOR ASYLUM.—Aliens who have established a credible fear of persecution and have been referred to the Executive Office for Immigration Review for an asylum hearing shall not be considered to be in expedited removal proceedings and the custody status of such aliens after service of a Notice to Appear shall be determined in accordance with the procedures governing aliens in removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

(ii) UNACCOMPANIED ALIEN CHILDREN.—Unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act (6 U.S.C. 279(g)(2))) shall be considered to be in the care and exclusive custody of the Department of Health and Human Services and shall not be subject to expedited removal and shall not be permitted to participate in the program.

(4) DESIGNATED GROUPS.—The designated groups referred to in paragraph (1) are the following:

(A) Alien parents who are being detained with one or more of their children, and their detained children.

(B) Aliens who have serious medical or mental health needs.

(C) Aliens who are mentally retarded or autistic.

(D) Pregnant alien women.

(E) Elderly aliens who are over the age of 65.

(F) Aliens placed in expedited removal proceedings after being rescued from trafficking or criminal operations by Government authorities.

(G) Other groups designated in regulations promulgated by the Secretary.

(5) IMPLEMENTING REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to implement the secure alternatives to detention program and to standardize the care and treatment of aliens in immigration custody based on the Detention Operations Manual of the Department of Homeland Security.

(6) DECISIONS REGARDING PROGRAM NOT REVIEWABLE.—The decisions of the Secretary regarding when to utilize the program and to what extent and the selection of aliens to participate in the program shall not be subject to administrative or judicial review.

(d) REPORTING REQUIREMENTS.—Not later than 180 days after the date of the enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives, the Committee on the Judiciary of

the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on the Judiciary of the Senate a report that details all policies, regulations, and actions taken to comply with the provisions in this section, including maximizing detention capacity and increasing the cost-effectiveness of detention by implementing the secure alternatives to detention program, and a description of efforts taken to ensure that all aliens in expedited removal proceedings are residing under conditions that are safe, secure, and healthy.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CASTLE OF DELAWARE, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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

SEC. 408. REPORT ON APPREHENSION AND DETENTION OF CERTAIN ALIENS.

(a) **REPORT REQUIRED.**—Not later than two years after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report on—

(1) the number of illegal aliens from noncontiguous countries who are apprehended at or between ports of entry since the date of enactment of this Act;

(2) the number of such aliens who have been deported since the date of enactment of this Act; and

(3) the number of such aliens from countries the governments of which the Secretary of State has determined, for purposes section 6(j)(1)(A) of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.), section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or other provision of law, are governments that have repeatedly provided support for acts of international terrorism.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the Secretary of Homeland Security should develop a strategy for entering into appropriate security screening watch lists the appropriate background information of illegal aliens from countries described in paragraph (3) of subsection (a).

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BROWN-WAITE OF FLORIDA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

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

SEC. 615. DECLARATION OF CONGRESS.

Congress condemns rapes by smugglers along the international land border of the United States and urges in the strongest possible terms the Government of Mexico to work in coordination with United States Customs and Border Protection of the Department of

Homeland Security take immediate action to prevent such rapes from occurring.

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

At the end of the bill, add the following:

**TITLE IX—FENCING AND OTHER
BORDER SECURITY IMPROVEMENTS**

SEC. 901. FINDINGS.

The Congress finds the following:

- (1) Hundreds of people die crossing our international border with Mexico every year.
- (2) Illegal narcotic smuggling along the Southwest border of the United States is both dangerous and prolific.
- (3) Over 155,000 non-Mexican individuals were apprehended trying to enter the United States along the Southwest border in fiscal year 2005.
- (4) The number of illegal entrants into the United States through the Southwest border is estimated to exceed one million people a year.

SEC. 902. CONSTRUCTION OF FENCING AND SECURITY IMPROVEMENTS IN BORDER AREA FROM PACIFIC OCEAN TO GULF OF MEXICO.

Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 8 U.S.C. 1103 note) is amended—

- (1) in the subsection heading by striking “NEAR SAN DIEGO, CALIFORNIA”; and
- (2) by amending paragraph (1) to read as follows:

“(1) SECURITY FEATURES.—

“(A) REINFORCED FENCING.—In carrying out subsection (a), the Secretary of Homeland Security shall provide for least 2 layers of reinforced fencing, the installation of additional physical barriers, roads, lighting, cameras, and sensors—

“(i) extending from 10 miles west of the Tecate, California, port of entry to 10 miles east of the Tecate, California, port of entry;

“(ii) extending from 10 miles west of the Calexico, California, port of entry to 5 miles east of the Douglas, Arizona, port of entry;

“(iii) extending from 5 miles west of the Columbus, New Mexico, port of entry to 10 miles east of El Paso, Texas;

“(iv) extending from 5 miles northwest of the Del Rio, Texas, port of entry to 5 miles southeast of the Eagle Pass, Texas, port of entry; and

“(v) extending 15 miles northwest of the Laredo, Texas, port of entry to the Brownsville, Texas, port of entry.

“(B) PRIORITY AREAS.—With respect to the border described—

“(i) in subparagraph (A)(ii), the Secretary shall ensure that an interlocking surveillance camera system is installed along such area by May 30, 2006 and that fence construction is completed by May 30, 2007; and

“(ii) in subparagraph (A)(v), the Secretary shall ensure that fence construction from 15 miles northwest of the Laredo, Texas port of entry to 15 southeast of the Laredo, Texas port of entry is completed by December 31, 2006.

“(C) EXCEPTION.—If the topography of a specific area has an elevation grade that exceeds 10%, the Secretary may use other means to secure such area, including the use of surveillance and barrier tools. ”.

SEC. 903. NORTHERN BORDER STUDY.

(a) IN GENERAL.—The Secretary of Homeland Security shall conduct a study on the construction of a state-of-the-art barrier system along the northern international land and maritime border of the United States and shall include in the study—

- (1) the necessity of constructing such a system; and
- (2) the feasibility of constructing the system.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall report to the Congress on the study described in subsection (a).

SEC. 904. SENSE OF THE CONGRESS.

It is the sense of the Congress that the Secretary of Homeland Security shall take all necessary steps to secure the Southwest international border for the purpose of saving lives, stopping illegal drug trafficking, and halting the flow of illegal entrants into the United States.

12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DEFazio OF OREGON, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following (and conform the table of contents accordingly):

TITLE _____ —PRESCREENING OF AIR PASSENGERS

SEC. ____ . IMMEDIATE INTERNATIONAL PASSENGER PRESCREENING PILOT PROGRAM.

(a) PILOT PROGRAM.—Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall initiate a pilot program to evaluate the use of automated systems for the immediate prescreening of passengers on flights in foreign air transportation, as defined by section 40102 of title 49, United States Code, that are bound for the United States.

(b) REQUIREMENTS.—At a minimum, with respect to a passenger on a flight described in subsection (a) operated by an air carrier or foreign air carrier, the automated systems evaluated under the pilot program shall—

(1) compare the passenger's information against the integrated and consolidated terrorist watchlist maintained by the Federal Government and provide the results of the comparison to the air carrier or foreign air carrier before the passenger is permitted to board the flight;

(2) provide functions similar to the advanced passenger information system established under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431); and

(3) make use of machine-readable data elements on passports and other travel and entry documents in a manner consistent with international standards.

(c) OPERATION.—The pilot program shall be conducted—

(1) in not fewer than 2 foreign airports; and

(2) in collaboration with not fewer than one air carrier at each airport participating in the pilot program.

(d) EVALUATION OF AUTOMATED SYSTEMS.—In conducting the pilot program, the Secretary shall evaluate not more than 3 automated systems. One or more of such systems shall be commercially available and currently in use to prescreen passengers.

(e) PRIVACY PROTECTION.—The Secretary shall ensure that the passenger data is collected under the pilot program in a manner consistent with the standards established under section 552a of title 5, United States Code.

(f) DURATION.—The Secretary shall conduct the pilot program for not fewer than 90 days.

(g) PASSENGER DEFINED.—In this section, the term “passenger” includes members of the flight crew.

(h) REPORT.—Not later than 30 days after the date of completion of the pilot program, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the following:

(1) An assessment of the technical performance of each of the tested systems, including the system's accuracy, scalability, and effectiveness with respect to measurable factors, including, at a minimum, passenger throughput, the rate of flight diversions, and the rate of false negatives and positives.

(2) A description of the provisions of each tested system to protect the civil liberties and privacy rights of passengers, as well as a description of the adequacy of an immediate redress or appeals process for passengers denied authorization to travel.

(3) Cost projections for implementation of each tested system, including—

(A) projected costs to the Department of Homeland Security; and

(B) projected costs of compliance to air carriers operating flights described in subsection (a).

(4) A determination as to which tested system is the best-performing and most efficient system to ensure immediate prescreening of international passengers. Such determination shall be made after consultation with individuals in the private sector having expertise in airline industry, travel, tourism, privacy, national security, and computer security issues.

(5) A plan to fully deploy the best-performing and most efficient system tested by not later than January 1, 2007.

13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HAYWORTH OF ARIZONA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, insert the following:

TITLE IX—AMENDMENTS TO VISA NUMBERS

SEC. 901. ELIMINATION OF FAMILY 4TH PREFERENCE VISA CATEGORY FOR ADULT SIBLINGS OF CITIZENS.

(a) IN GENERAL.—Section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended—

(1) in paragraph (1), by striking “paragraph (4)” and inserting “paragraph (3)”; and

(2) by striking paragraph (4).

(b) CONFORMING AMENDMENTS.—The Immigration and Nationality Act is amended—

(1) in section 201(c)(1)(A)(i) (8 U.S.C. 1151(c)(1)(A)(i)), by striking “480,000” and inserting “415,000”;

(2) in section 204(a)(1)(A)(i) (8 U.S.C. 1154(a)(1)(A)(i)), by striking “(1), (3), or (4)” and inserting “(1) or (3)”; and

(3) in section 212(d)(11) (8 U.S.C. 1182(d)(11)), by striking “(other than paragraph (4) thereof)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to visa numbers for fiscal years beginning with the first fiscal year beginning after the date of the enactment of this Act.

SEC. 902. INCREASE IN EMPLOYMENT BASED VISAS.

(a) IN GENERAL.—Section 201(d)(1)(A) of the Immigration and Nationality Act is amended by striking “140,000” and inserting “205,000”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply beginning with the first fiscal year that begins after the date of the enactment of this Act.

14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GOODLATTE OF VIRGINIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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

TITLE IX—SECURITY AND FAIRNESS ENHANCEMENT

SEC. 901. SHORT TITLE.

This title may be cited as—

(1) the “Security and Fairness Enhancement for America Act of 2005”; or

(2) the “SAFE for America Act”.

SEC. 902. ELIMINATION OF DIVERSITY IMMIGRANT PROGRAM.

(a) **WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.**—Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended—

- (1) in subsection (a)—
 - (A) by inserting “and” at the end of paragraph (1);
 - (B) by striking “; and” at the end of paragraph (2) and inserting a period; and
 - (C) by striking paragraph (3); and
- (2) by striking subsection (e).

(b) **ALLOCATION OF DIVERSITY IMMIGRANT VISAS.**—Section 203 of such Act (8 U.S.C. 1153) is amended—

- (1) by striking subsection (c);
- (2) in subsection (d), by striking “(a), (b), or (c),” and inserting “(a) or (b),”;
- (3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);
- (4) in subsection (f), by striking “(a), (b), or (c)” and inserting “(a) or (b),”;
- (5) in subsection (g), by striking “(a), (b), and (c)” and inserting “(a) and (b)”.

(c) **PROCEDURE FOR GRANTING IMMIGRANT STATUS.**—Section 204 of such Act (8 U.S.C. 1154) is amended—

- (1) by striking subsection (a)(1)(I); and
- (2) in subsection (e), by striking “(a), (b), or (c)” and inserting “(a) or (b)”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on October 1, 2006.

15. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FILNER OF CALIFORNIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Section 1546(a) of title 18, United States Code, is amended in the first paragraph by inserting “distributes (or intends to distribute),” before “or falsely” the first place it appears.

Section 1546(a) of title 18, United States Code, is amended in the first paragraph by inserting “distributed,” before “or falsely” the second place it appears.