

110TH CONGRESS
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To strengthen immigration enforcement and border security and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2007

Mr. KYL (for himself, Mr. MCCAIN, Mr. CORNYN, Mr. GRAHAM, Mr. SESSIONS, Mr. MARTINEZ, and Mr. SPECTER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To strengthen immigration enforcement and border security and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Immigration Enforcement and Border Security Act of
6 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Reference to the Immigration and Nationality Act.
- Sec. 3. Definitions.

TITLE I—BORDER SECURITY

Subtitle A—Assets for Controlling United States Borders

- Sec. 101. Achieving operational control of the borders.
- Sec. 102. Enforcement personnel.
- Sec. 103. Operation jump start.
- Sec. 104. Technological assets.
- Sec. 105. Infrastructure.
- Sec. 106. Ports of entry.

Subtitle B—Other Border Security Initiatives

- Sec. 112. Unlawful flight from immigration or customs controls.
- Sec. 113. Catch and return.
- Sec. 114. Seizure of conveyance with concealed compartment.

Subtitle C—Other Measures

- Sec. 121. Secure communication.
- Sec. 122. Unmanned aircraft systems.
- Sec. 123. Biometric data enhancements.
- Sec. 124. US-VISIT System.
- Sec. 125. Listing of immigration violators in the National Crime Information Center database.
- Sec. 126. Document fraud detection.
- Sec. 127. Border relief grant program.
- Sec. 128. Combating human smuggling.
- Sec. 129. Increase of Federal detention space and the utilization of facilities identified for closures as a result of the Defense Base Closure Realignment Act of 1990.
- Sec. 130. Northern border prosecution reimbursement.
- Sec. 131. Limitation on landowner's liability.

TITLE II—INTERIOR ENFORCEMENT

Subtitle A—Interior Security Measures

- Sec. 201. Additional immigration personnel.
- Sec. 202. Detention and removal of aliens ordered removed or aliens who overstay.
- Sec. 203. Aggravated felony.
- Sec. 204. Inadmissibility and deportability of gang members.
- Sec. 205. Grounds of inadmissibility and deportability relating to removal and firearm offenses.
- Sec. 206. Alien smuggling and related offenses.
- Sec. 207. Illegal entry.
- Sec. 208. Criminal penalties for aliens unlawfully present in the United States.
- Sec. 209. Illegal reentry.
- Sec. 210. Reform of passport, visa, and immigration fraud offenses.
- Sec. 211. Inadmissibility and removal for passport and immigration fraud offenses.
- Sec. 212. Incarceration of criminal aliens.
- Sec. 213. Encouraging aliens to depart voluntarily.
- Sec. 214. Deterring aliens ordered removed from remaining in the United States unlawfully.

- Sec. 215. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.
- Sec. 216. Uniform statute of limitations for certain immigration, passport, and naturalization offenses.
- Sec. 217. Diplomatic security service.
- Sec. 218. Streamlined processing of background checks conducted for immigration benefits.
- Sec. 219. State criminal alien assistance program.
- Sec. 220. Reducing illegal immigration and alien smuggling on tribal lands.
- Sec. 221. Alternatives to detention.
- Sec. 222. State and local enforcement of Federal immigration laws.
- Sec. 223. Protecting immigrants from convicted sex offenders.
- Sec. 224. Law enforcement authority of States and political subdivisions and transfer to Federal custody.
- Sec. 225. Laundering of monetary instruments.
- Sec. 226. Cooperative enforcement programs.
- Sec. 227. Expansion of the justice prisoner and alien transfer system.
- Sec. 228. Directive to the United States Sentencing Commission.
- Sec. 229. Cancellation of visas.
- Sec. 230. Judicial review of visa revocation.
- Sec. 231. Terrorist bar to good moral character.
- Sec. 232. Precluding admissibility of aliens convicted of aggravated felonies or other serious offenses.
- Sec. 233. Removal and denial of benefits to terrorist aliens.
- Sec. 234. Use of 1986 IRCA legalization information for national security purposes.
- Sec. 235. Definition of racketeering activity.
- Sec. 236. Sanctions for countries that delay or prevent repatriation of their nationals.
- Sec. 237. Appropriate remedies for immigration legislation.
- Sec. 238. Reporting requirements.
- Sec. 239. Withholding of removal.
- Sec. 240. Precluding refugees and asylees who have been convicted of aggravated felonies from adjustment to legal permanent resident status.
- Sec. 241. Judicial review of discretionary determinations and removal orders relating to criminal aliens.
- Sec. 242. Information sharing between Federal and local law enforcement officers.
- Sec. 243. Fraud prevention program.

Subtitle B—Worksite Enforcement

- Sec. 251. Unlawful employment of aliens.
- Sec. 252. Disclosure of certain taxpayer information to assist in immigration enforcement.
- Sec. 253. Increasing security and integrity of Social Security cards.
- Sec. 254. Increasing security and integrity of identity documents.
- Sec. 255. Voluntary Advanced Verification Program to Combat Identity Theft.
- Sec. 256. Responsibilities of the Social Security Administration.
- Sec. 257. Immigration enforcement support by the Internal Revenue Service and the Social Security Administration.
- Sec. 258. Additional criminal penalties for misuse of social security account numbers.
- Sec. 259. Authorization of appropriations.

1 **SEC. 2. REFERENCE TO THE IMMIGRATION AND NATION-**
2 **ALITY ACT.**

3 Except as otherwise expressly provided, whenever in
4 this Act an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101 et seq.).

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) DEPARTMENT.—The term “Department”
12 means the Department of Homeland Security.

13 (2) SECRETARY.—The term “Secretary” means
14 the Secretary of Homeland Security.

15 **TITLE I—BORDER SECURITY**
16 **Subtitle A—Assets for Controlling**
17 **United States Borders**

18 **SEC. 101. ACHIEVING OPERATIONAL CONTROL OF THE**
19 **BORDERS.**

20 (a) IN GENERAL.—Not later than 2 years after the
21 date of the enactment of this Act, the Secretary shall work
22 to achieve operational control of 100 percent of the inter-
23 national land and maritime borders of the United States
24 by—

25 (1) deploying along such borders physical infra-
26 structure enhancements, including additional check-

1 points, all weather access roads, and vehicle barriers
2 to gain operational control over such borders and to
3 facilitate access to such borders by United States
4 Customs and Border Protection;

5 (2) installing, along the international land bor-
6 der between the United States and Mexico, at
7 least—

8 (A) 300 miles of vehicle barriers;

9 (B) 700 linear miles of fencing as required
10 under the Secure Fence Act of 2006 (Public
11 Law 109–367); and

12 (C) 105 ground-based radar and camera
13 towers;

14 (3) deploying, for use along the international
15 land border between the United States and Mexico,
16 4 unmanned aerial vehicles, and the supporting sys-
17 tems for such vehicles; and

18 (4) conducting systematic surveillance of the
19 international land and maritime borders of the
20 United States through more effective use of per-
21 sonnel and technology, including ground-based sen-
22 sors, satellites, radar coverage, and cameras.

23 (b) OPERATIONAL CONTROL DEFINED.—In this sec-
24 tion, the term “operational control” means the successful
25 prevention of all unlawful entries into the United States,

1 including entries by terrorists, other unlawful aliens, in-
2 struments of terrorism, narcotics, and other contraband.

3 **SEC. 102. ENFORCEMENT PERSONNEL.**

4 (a) **ADDITIONAL PERSONNEL.—**

5 (1) **UNITED STATES CUSTOMS AND BORDER**
6 **PROTECTION OFFICERS.—**

7 (A) **IN GENERAL.—**In each of the fiscal
8 years 2008 through 2012, the Secretary, sub-
9 ject to the availability of appropriations, shall
10 increase by not less than 500 the number of po-
11 sitions for full-time active duty officers of
12 United States Customs and Border Protection
13 and provide appropriate training, equipment,
14 and support to such additional officers.

15 (B) **INTERNATIONAL AIRPORTS.—**Not later
16 than September 30, 2008, the Secretary, sub-
17 ject to the availability of appropriations, shall
18 employ not less than an additional 200 officers
19 of United States Customs and Border Protec-
20 tion to address staff shortages at the 20 inter-
21 national airports in the United States with the
22 highest number of foreign visitors arriving an-
23 nually, as determined pursuant to the most re-
24 cent data collected by United States Customs

1 and Border Protection before the date of the
2 enactment of this Act.

3 (2) IMMIGRATION AND CUSTOMS ENFORCEMENT
4 PERSONNEL.—In addition to the positions author-
5 ized under section 5203 of the Intelligence Reform
6 and Terrorism Prevention Act of 2004 (Public Law
7 108–458), during each of the fiscal years 2008
8 through 2012, the Secretary shall, subject to the
9 availability of appropriations, increase by not fewer
10 than 200 the number of positions for personnel with-
11 in the Department assigned to investigate alien
12 smuggling.

13 (3) DEPUTY UNITED STATES MARSHALS.—In
14 each of the fiscal years 2008 through 2012, the At-
15 torney General shall, subject to the availability of
16 appropriations, increase by not less than 50 the
17 number of positions for full-time active duty Deputy
18 United States Marshals that assist in matters re-
19 lated to immigration.

20 (4) RECRUITMENT OF FORMER MILITARY PER-
21 SONNEL.—The Commissioner of United States Cus-
22 toms and Border Protection, in conjunction with the
23 Secretary of Defense or a designee of the Secretary
24 of Defense, shall establish a program to actively re-
25 cruit members of the Army, Navy, Air Force, Ma-

1 rine Corps, and Coast Guard who have elected to
2 separate from active duty.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—

4 (1) UNITED STATES CUSTOMS AND BORDER
5 PROTECTION OFFICERS.—There are authorized to be
6 appropriated to the Secretary such sums as may be
7 necessary for each of the fiscal years 2008 through
8 2012 to carry out subsection (a)(1).

9 (2) DEPUTY UNITED STATES MARSHALS.—
10 There are authorized to be appropriated to the At-
11 torney General such sums as may be necessary for
12 each of the fiscal years 2008 through 2012 to carry
13 out subsection (a)(3).

14 (3) BORDER PATROL AGENTS.—Section 5202 of
15 the Intelligence Reform and Terrorism Prevention
16 Act of 2004 (118 Stat. 3734) is amended to read as
17 follows:

18 **“SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL**
19 **AGENTS.**

20 **“(a) IN GENERAL.—**The Secretary of Homeland Se-
21 curity shall acquire sufficient training staff and training
22 facilities to increase the capacity of the Department of
23 Homeland Security to train 2,400 new, full-time, active
24 duty Border Patrol agents per year.

1 “(b) NORTHERN BORDER.—In each of the fiscal
2 years 2008 through 2012, in addition to the border patrol
3 agents assigned along the northern border of the United
4 States during the previous fiscal year, the Secretary shall
5 assign a number of border patrol agents equal to not less
6 than 20 percent of the net increase in border patrol agents
7 during each such fiscal year.

8 “(c) ANNUAL INCREASES.—The Secretary of Home-
9 land Security shall, subject to the availability of appropria-
10 tions for such purpose, increase the number of positions
11 for full-time active duty border patrol agents within the
12 Department of Homeland Security (above the number of
13 such positions for which funds were appropriated for the
14 preceding fiscal year), by not less than—

15 “(1) 2,000 in fiscal year 2007;

16 “(2) 2,400 in fiscal year 2008;

17 “(3) 2,400 in fiscal year 2009;

18 “(4) 2,400 in fiscal year 2010;

19 “(5) 2,400 in fiscal year 2011; and

20 “(6) 2,400 in fiscal year 2012.

21 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated such sums as may be
23 necessary for each of the fiscal years 2008 through 2012
24 to carry out this section.”.

1 **SEC. 103. OPERATION JUMP START.**

2 (a) IN GENERAL.—The Secretary of Defense, in con-
3 junction with the Commissioner of United States Customs
4 and Border Protection, shall provide not fewer than 6,000
5 National Guard members on the southern land border of
6 the United States to assist the United States Border Pa-
7 trol in gaining operational control of that border.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to the Department of
10 Defense such sums as may be necessary for each of the
11 fiscal years 2008 through 2010 to carry out subsection
12 (a).

13 **SEC. 104. TECHNOLOGICAL ASSETS.**

14 (a) ACQUISITION.—Subject to the availability of ap-
15 propriations for such purpose, the Secretary shall procure
16 additional unmanned aerial vehicles, cameras, poles, sen-
17 sors, and other technologies necessary to achieve oper-
18 ational control of the borders of the United States.

19 (b) INCREASED AVAILABILITY OF EQUIPMENT.—The
20 Secretary and the Secretary of Defense shall develop and
21 implement a plan to use authorities provided to the Sec-
22 retary of Defense under chapter 18 of title 10, United
23 States Code, to increase the availability and use of Depart-
24 ment of Defense equipment, including unmanned aerial
25 vehicles, tethered aerostat radars, and other surveillance
26 equipment, to assist the Secretary in carrying out surveil-

1 lance activities conducted at or near the international land
2 borders of the United States to prevent illegal immigra-
3 tion.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary such
6 sums as may be necessary for each of the fiscal years 2008
7 through 2012 to carry out subsection (a).

8 **SEC. 105. INFRASTRUCTURE.**

9 Section 102 of the Illegal Immigration Reform and
10 Immigrant Responsibility Act of 1996 (8 U.S.C. 1103
11 note) is amended—

12 (1) in subsection (a), by striking “Attorney
13 General, in consultation with the Commissioner of
14 Immigration and Naturalization,” and inserting
15 “Secretary of Homeland Security”; and

16 (2) in subsection (b)—

17 (A) by redesignating paragraphs (1), (2),
18 (3), and (4) as paragraphs (2), (3), (4), and
19 (5), respectively;

20 (B) by inserting before paragraph (2), as
21 redesignated, the following:

22 “(1) FENCING NEAR SAN DIEGO, CALI-
23 FORNIA.—In carrying out subsection (a), the Sec-
24 retary shall provide for the construction of second
25 and third fences, in addition to the existing rein-

1 forced fence, along the first 14 miles of the inter-
2 national land border between the United States and
3 Mexico extending east from the Pacific Ocean, and
4 for roads between the fences.”;

5 (C) in paragraph (2), as redesignated—

6 (i) in the heading, by striking “**SECU-**
7 **RITY FEATURES**” and inserting—“**ADDI-**
8 **TIONAL FENCING ALONG SOUTHWEST**
9 **BORDER**”; and

10 (ii) by striking subparagraphs (A)
11 through (C) and inserting the following:

12 “(A) REINFORCED FENCING.—In carrying
13 out subsection (a), the Secretary of Homeland
14 Security shall construct reinforced fencing
15 along not less than 700 miles of the southwest
16 border where fencing would be most practical
17 and effective and provide for the installation of
18 additional physical barriers, roads, lighting,
19 cameras, and sensors to gain operational con-
20 trol of the southwest border.

21 “(B) PRIORITY AREAS.—In carrying out
22 this section, the Secretary of Homeland Secu-
23 rity shall—

24 “(i) identify the 370 miles along the
25 southwest border where fencing would be

1 most practical and effective in deterring
2 smugglers and aliens attempting to gain il-
3 legal entry into the United States; and

4 “(ii) not later than December 31,
5 2008, complete construction of reinforced
6 fencing along the 370 miles identified
7 under clause (i) before completing the con-
8 struction of the remaining 330 miles of
9 fencing.

10 “(C) CONSULTATION.—

11 “(i) IN GENERAL.—In carrying out
12 this section, the Secretary of Homeland
13 Security shall consult with the Secretary of
14 Interior, the Secretary of Agriculture,
15 States, local governments, Indian tribes,
16 and property owners in the United States
17 to minimize the impact on the environ-
18 ment, culture, commerce, and quality of
19 life for the communities and residents lo-
20 cated near the sites at which such fencing
21 is to be constructed.

22 “(ii) SAVINGS PROVISION.—Nothing
23 in this subparagraph may be construed
24 to—

1 “(I) create any right of action for
2 a State, local government, or other
3 person or entity affected by this sub-
4 section; or

5 “(II) affect the eminent domain
6 laws of the United States or of any
7 State.”; and

8 (D) in paragraph (5), as redesignated, by
9 striking “to carry out this subsection not to ex-
10 ceed \$12,000,000” and inserting “such sums as
11 may be necessary to carry out this subsection”.

12 **SEC. 106. PORTS OF ENTRY.**

13 Section 102 of the Illegal Immigration Reform and
14 Immigrant Responsibility Act of 1996, Division C of Pub-
15 lic Law 104–208, is amended by the addition, at the end
16 of that section, the following:

17 “(e) CONSTRUCTION AND IMPROVEMENTS.—The
18 Secretary is authorized to—

19 “(1) construct additional ports of entry along
20 the international land borders of the United States,
21 at locations to be determined by the Secretary; and

22 “(2) make necessary improvements to the ports
23 of entry.”.

1 **Subtitle B—Other Border Security**
2 **Initiatives**

3 **SEC. 112. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUS-**
4 **TOMS CONTROLS.**

5 (a) IN GENERAL.—Section 758 of title 18, United
6 States Code, is amended to read as follows:

7 **“§ 758. Unlawful flight from immigration or customs**
8 **controls**

9 “(a) EVADING A CHECKPOINT.—Any person who,
10 while operating a motor vehicle or vessel, knowingly flees
11 or evades a checkpoint operated by the Department of
12 Homeland Security or any other Federal law enforcement
13 agency, and knowingly or recklessly disregards or disobeys
14 the lawful command of any law enforcement agent, shall
15 be fined under this title, imprisoned not more than 5
16 years, or both.

17 “(b) FAILURE TO STOP.—Any person who, while op-
18 erating a motor vehicle, aircraft, or vessel, knowingly or
19 recklessly disregards or disobeys the lawful command of
20 an officer of the Department of Homeland Security en-
21 gaged in the enforcement of the immigration, customs, or
22 maritime laws, or the lawful command of any law enforce-
23 ment agent assisting such officer, shall be fined under this
24 title, imprisoned not more than 2 years, or both.

1 “(c) ALTERNATIVE PENALTIES.—Notwithstanding
2 the penalties provided in subsection (a) or (b), any person
3 who violates such subsection shall—

4 “(1) be fined under this title, imprisoned not
5 more than 10 years, or both, if the violation involved
6 the operation of a motor vehicle, aircraft, or vessel—

7 “(A) in excess of the applicable or posted
8 speed limit,

9 “(B) in excess of the rated capacity of the
10 motor vehicle, aircraft, or vessel, or

11 “(C) in an otherwise dangerous or reckless
12 manner;

13 “(2) be fined under this title, imprisoned not
14 more than 20 years, or both, if the violation created
15 a substantial and foreseeable risk of serious bodily
16 injury or death to any person;

17 “(3) be fined under this title, imprisoned not
18 more than 30 years, or both, if the violation caused
19 serious bodily injury to any person; or

20 “(4) be fined under this title, imprisoned for
21 any term of years or life, or both, if the violation re-
22 sulted in the death of any person.

23 “(d) ATTEMPT AND CONSPIRACY.—Any person who
24 attempts or conspires to commit any offense under this

1 section shall be punished in the same manner as a person
2 who completes the offense.

3 “(e) FORFEITURE.—Any property, real or personal,
4 constituting or traceable to the gross proceeds of the of-
5 fense and any property, real or personal, used or intended
6 to be used to commit or facilitate the commission of the
7 offense shall be subject to forfeiture.

8 “(f) FORFEITURE PROCEDURES.—Seizures and for-
9 feitures under this section shall be governed by the provi-
10 sions of chapter 46 of this title, relating to civil forfeitures,
11 including section 981(d) of such title, except that such du-
12 ties as are imposed upon the Secretary of the Treasury
13 under the customs laws described in that section shall be
14 performed by such officers, agents, and other persons as
15 may be designated for that purpose by the Secretary of
16 Homeland Security or the Attorney General. Nothing in
17 this section shall limit the authority of the Secretary to
18 seize and forfeit motor vehicles, aircraft, or vessels under
19 the Customs laws or any other laws of the United States.

20 “(g) DEFINITIONS.—In this section:

21 “(1) CHECKPOINT.—The term ‘checkpoint’ in-
22 cludes any customs or immigration inspection at a
23 port of entry.

24 “(2) LAWFUL COMMAND.—The term ‘lawful
25 command’ includes a command to stop, decrease

1 speed, alter course, or land, whether communicated
 2 orally, visually, by means of lights or sirens, or by
 3 radio, telephone, or other wire communication.

4 “(3) LAW ENFORCEMENT AGENT.—The term
 5 ‘law enforcement agent’ means any Federal, State,
 6 local or tribal official authorized to enforce criminal
 7 law, and, when conveying a command covered under
 8 subsection (b), an air traffic controller.

9 “(4) MOTOR VEHICLE.—The term ‘motor vehi-
 10 cle’ means any motorized or self-propelled means of
 11 terrestrial transportation.

12 “(5) SERIOUS BODILY INJURY.—The term ‘seri-
 13 ous bodily injury’ has the meaning given in section
 14 2119(2) of this title.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
 16 for chapter 35 of title 18, United States Code, is amended
 17 by striking the item relating to section 758 and inserting
 18 the following:

“758. Unlawful flight from immigration or customs controls.”.

19 **SEC. 113. CATCH AND RETURN.**

20 (a) MANDATORY DETENTION.—To deter illegal im-
 21 migration, the Secretary shall detain, until the Secretary
 22 has effected the removal of every alien, who—

23 (1) is a national of a noncontiguous country;

24 (2) has not been admitted or paroled into the
 25 United States; and

1 (3) was apprehended within 100 miles of the
2 international border of the United States.

3 (b) SUPERVISED RELEASE.—The Secretary may, for
4 urgent humanitarian reasons, grant an alien described in
5 subparagraph (a) supervised release with conditions dur-
6 ing a pending removal proceeding if the alien—

7 (1) does not pose a flight risk;

8 (2) does not pose a danger to the community;

9 and

10 (3) gives a bond of not less than \$5,000, with
11 security approved by, and containing conditions pre-
12 scribed by, the Secretary.

13 **SEC. 114. SEIZURE OF CONVEYANCE WITH CONCEALED**
14 **COMPARTMENT.**

15 Section 3 of the Act of August 5, 1935 (19 U.S.C.
16 1703) is amended—

17 (1) by amending the section heading to read as
18 follows:

19 **“§ 1703. Seizure and forfeiture of vessels, vehicles,**
20 **other conveyances and instruments of**
21 **international traffic”;**

22 (2) in subsection (a), by amending the sub-
23 section heading to read as follows:

1 “(a) VESSELS, VEHICLES, OTHER CONVEYANCES,
2 AND INSTRUMENTS OF INTERNATIONAL TRAFFIC SUB-
3 JECT TO SEIZURE AND FORFEITURE.—”;

4 (3) in subsections (a) and (b), by inserting “,
5 vehicle, other conveyance, or instrument of inter-
6 national traffic” after “vessel” each place it appears;

7 (4) in subsection (b), by amending the sub-
8 section heading to read as follows:

9 “(b) VESSELS, VEHICLES, OTHER CONVEYANCES,
10 AND INSTRUMENTS OF INTERNATIONAL TRAFFIC DE-
11 FINED.—”; and

12 (5) by amending subsection (c) to read as fol-
13 lows:

14 “(c) ACTS CONSTITUTING PRIMA FACIE EVIDENCE
15 OF VESSEL, VEHICLE, OR OTHER CONVEYANCE OR IN-
16 STRUMENT OF INTERNATIONAL TRAFFIC ENGAGED IN
17 SMUGGLING.—For the purposes of this section, prima
18 facie evidence that a conveyance is being, has been, or is
19 attempted to be employed in smuggling or to defraud the
20 revenue of the United States shall be—

21 “(1) in the case of a vessel, the fact that a ves-
22 sel has become subject to pursuit as provided in sec-
23 tion 1581, or is a hovering vessel, or that a vessel
24 fails, at any place within the customs waters of the

1 United States or within a customs-enforcement area,
2 to display light as required by law; and

3 “(2) in the case of a vehicle, other conveyance,
4 or instrument of international traffic, the fact that
5 a vehicle, other conveyance or instrument of inter-
6 national traffic has any compartment or equipment
7 that is built or fitted out for smuggling.”.

8 **Subtitle C—Other Measures**

9 **SEC. 121. SECURE COMMUNICATION.**

10 The Secretary shall, as expeditiously as practicable,
11 develop and implement a plan to improve the use of sat-
12 ellite communications and other technologies to ensure
13 clear and secure 2-way communication capabilities—

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

16 (2) between Border Patrol agents and their re-
17 spective Border Patrol stations; and

18 (3) between all appropriate border security
19 agencies of the Department and State, local, and
20 tribal law enforcement agencies.

21 **SEC. 122. UNMANNED AIRCRAFT SYSTEMS.**

22 (a) UNMANNED AIRCRAFT AND ASSOCIATED INFRA-
23 STRUCTURE.—The Secretary shall acquire and maintain
24 unmanned aircraft systems for use on the border, includ-
25 ing related equipment such as—

- 1 (1) additional sensors;
- 2 (2) critical spares;
- 3 (3) satellite command and control; and
- 4 (4) other necessary equipment for operational
- 5 support.

6 (b) AUTHORIZATION OF APPROPRIATIONS.—

- 7 (1) IN GENERAL.—There are authorized to be
- 8 appropriated to the Secretary to carry out sub-
- 9 section (a)—

10 (A) \$178,400,000 for fiscal year 2008; and

11 (B) \$276,000,000 for fiscal year 2009.

- 12 (2) AVAILABILITY OF FUNDS.—Amounts appro-
- 13 priated pursuant to paragraph (1) shall remain
- 14 available until expended.

15 **SEC. 123. BIOMETRIC DATA ENHANCEMENTS.**

16 Not later than October 1, 2008, the Secretary shall—

- 17 (1) in consultation with the Attorney General,
- 18 enhance connectivity between the Automated Bio-
- 19 metric Fingerprint Identification System of the De-
- 20 partment and the Integrated Automated Fingerprint
- 21 Identification System of the Federal Bureau of In-
- 22 vestigation to ensure more expeditious data searches;
- 23 and

- 24 (2) in consultation with the Secretary of State,
- 25 and the Secretary of State, collect all fingerprints

1 from each alien required to provide fingerprints dur-
2 ing the alien’s initial enrollment in the integrated
3 entry and exit data system described in section 110
4 of the Illegal Immigration Reform and Immigrant
5 Responsibility Act of 1996 (8 U.S.C. 1365a).

6 **SEC. 124. US-VISIT SYSTEM.**

7 (a) IN GENERAL.—Not later than 6 months after the
8 date of the enactment of this Act, the Secretary, in con-
9 sultation with the heads of other appropriate Federal
10 agencies, shall submit to Congress a schedule for—

11 (1) equipping all ports of entry of the United
12 States with the United States–Visitor and Immi-
13 grant Status Indicator Technology system (referred
14 to in this section as “US–VISIT”) implemented
15 under section 110 of the Illegal Immigration Reform
16 and Immigrant Responsibility Act of 1996 (8 U.S.C.
17 1365a), including all necessary changes to infra-
18 structure at the ports of entry to fully deploy US–
19 VISIT;

20 (2) developing and deploying at such ports of
21 entry the exit component of US–VISIT; and

22 (3) making interoperable all immigration
23 screening systems operated by the Secretary.

24 (b) VISA EXIT TRACKING SYSTEM.—In addition to
25 the requirements under subsection (a), the Secretary shall,

1 not later than 18 months after the date of the enactment
2 of this Act, establish and deploy a system capable of re-
3 cording the departure, at designated ports of entry, and,
4 in coordination with the Secretary of State, at designated
5 United States consulates, of aliens admitted on temporary
6 nonimmigrant visas under the Immigration and Nation-
7 ality Act (8 U.S.C. 1101 et seq.).

8 (c) PROMPT REMOVAL PROCEEDINGS.—Subject to
9 the availability of appropriations, the Secretary shall
10 promptly identify, investigate, and initiate removal pro-
11 ceedings against every alien admitted into the United
12 States on a temporary nonimmigrant visa under the Immi-
13 gration and Nationality Act and who exceeds the alien’s
14 period of authorized admission or otherwise violates any
15 terms of the alien’s nonimmigrant status. In conducting
16 such removal proceedings, the Secretary shall give priority
17 to aliens who may pose a threat to the national security,
18 and those convicted of criminal offenses.

19 (d) REPORT TO GOVERNORS.—

20 (1) IN GENERAL.—Not later than 1 year after
21 the date of the enactment of this Act, the Secretary
22 shall submit a report to the governor of each State
23 that shares a land border with Mexico and a sepa-
24 rate report to the governor of each State that shares
25 a land border with Canada that describes the

1 progress made in establishing, funding, and imple-
2 menting the border security and other measures set
3 forth under this title.

4 (2) GOVERNOR'S RESPONSE.—Not later than
5 60 days after receiving a report from the Secretary
6 under paragraph (1), a governor may submit a re-
7 port to Congress that—

8 (A) analyzes the accuracy of the informa-
9 tion received by the Secretary;

10 (B) indicates whether the governor agrees
11 with the Secretary that the border security and
12 other measures described in this title will be es-
13 tablished, funded, and operational; and

14 (C) makes recommendations regarding new
15 border enforcement policies, strategies, and ad-
16 ditional programs needed to secure the border.

17 (e) BIOMETRIC ENTRY-EXIT SYSTEM.—

18 (1) COLLECTION OF BIOMETRIC DATA FROM
19 ALIENS ENTERING AND DEPARTING THE UNITED
20 STATES.—Section 215 (8 U.S.C. 1185) is amend-
21 ed—

22 (A) by redesignating subsection (c) as sub-
23 section (g);

1 (B) by moving subsection (g), as redesignated by paragraph (1), to the end of the section; and

2
3
4 (C) by inserting after subsection (b) the following:

5
6 “(c) The Secretary is authorized to require aliens entering and departing the United States to provide biometric data and other information relating to their immigration status.”.

7
8
9
10 (2) INSPECTION OF APPLICANTS FOR ADMISSION.—Section 235(d) (8 U.S.C. 1225(d)) is amended by adding at the end the following:

11
12
13 “(5) AUTHORITY TO COLLECT BIOMETRIC DATA.—In conducting inspections under subsections (a) and (b), immigration officers are authorized to collect biometric data from—

14
15
16
17 “(A) any applicant for admission, including refugees and asylees, or any alien who is paroled under section 212(d)(5), seeking to or permitted to land temporarily as an alien crewman, or seeking to or permitted transit through the United States; or

18
19
20
21
22
23 “(B) any lawful permanent resident who is entering the United States and who is not re-

24

1 garded as seeking admission pursuant to sec-
2 tion 101(a)(13)(C).”.

3 (3) COLLECTION OF BIOMETRIC DATA FROM
4 ALIEN CREWMEN.—Section 252 (8 U.S.C. 1282) is
5 amended by adding at the end the following:

6 “(d) An immigration officer is authorized to collect
7 biometric data from an alien crewman seeking permission
8 to land temporarily in the United States.”.

9 (4) GROUNDS OF INADMISSIBILITY.—Section
10 212 (8 U.S.C. 1182) is amended—

11 (A) in subsection (a)(7), by adding at the
12 end the following:

13 “(C) WITHHOLDERS OF BIOMETRIC
14 DATA.—Except as provided under subsection
15 (d)(2), any alien who fails or has failed to com-
16 ply with a lawful request for biometric data
17 under section 215(c), 235(d), or 252(d) is inad-
18 missible.” and

19 (B) in subsection (d), by inserting after
20 paragraph (1) the following:

21 “(2) The Secretary may waive the application of sub-
22 section (a)(7)(C) for an individual alien or class of
23 aliens.”.

1 (5) IMPLEMENTATION.—Section 7208 of the 9/
2 11 Commission Implementation Act of 2004 (8
3 U.S.C. 1365b) is amended—

4 (A) in subsection (c), by adding at the end
5 the following:

6 “(3) IMPLEMENTATION.—In fully implementing
7 the automated biometric entry and exit data system
8 under this section, the Secretary is not required to
9 comply with the requirements of chapter 5 of title 5,
10 United States Code (commonly referred to as the
11 Administrative Procedure Act) or any other law re-
12 lating to rulemaking, information collection, or pub-
13 lication in the Federal Register.”; and

14 (B) in subsection (l)—

15 (i) by striking “There are authorized”
16 and inserting the following:

17 “(1) IN GENERAL.—There are authorized”; and

18 (ii) by adding at the end the fol-
19 lowing:

20 “(2) IMPLEMENTATION AT ALL PORTS OF
21 ENTRY.—

22 “(A) IN GENERAL.—The Secretary shall
23 ensure that the biometric entry-exit system is
24 operational and ready for use at all border

1 ports of entry not later than December 13,
2 2013.

3 “(B) AUTHORIZATION OF APPROPRIA-
4 TIONS.—There are authorized to be appro-
5 priated such sums as may be necessary for each
6 of the fiscal years 2008 through 2012 to imple-
7 ment the automated biometric entry and exit
8 data system at all border ports of entry.”.

9 (f) COLLECTION OF DEPARTURE DATA FROM CER-
10 TAIN NONIMMIGRANTS.—

11 (1) IN GENERAL.—The Secretary shall require
12 an alien who was admitted to the United States on
13 a temporary nonimmigrant visa to record the alien’s
14 departure at a designated port of entry or at a des-
15 ignated United States consulate abroad.

16 (2) FAILURE TO RECORD DEPARTURE.—If an
17 alien does not record the alien’s departure as re-
18 quired under paragraph (1), the Secretary, not later
19 than 48 hours after the expiration of the alien’s pe-
20 riod of authorized admission, shall enter the name of
21 the alien into the National Crime Information Cen-
22 ter database as having overstayed the alien’s period
23 of authorized admission.

24 (3) INFORMATION SHARING WITH LAW EN-
25 FORCEMENT AGENCIES.—Consistent with the au-

1 thority of State and local police to assist the Federal
2 Government in the enforcement of Federal immigra-
3 tion laws, the information in the database described
4 in paragraph (2) shall be made available to the De-
5 partment of State and to State and local law en-
6 forcement agencies pursuant to the provisions of sec-
7 tion 240D of the Immigration and Nationality Act,
8 as added by section 224 of this Act.

9 **SEC. 125. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
10 **TIONAL CRIME INFORMATION CENTER DATA-**
11 **BASE.**

12 (1) PROVISION OF INFORMATION TO THE NA-
13 TIONAL CRIME INFORMATION CENTER.—

14 (A) IN GENERAL.—Except as provided
15 under subparagraph (C), not later than 180
16 days after the date of the enactment of this
17 Act, the Secretary shall provide to the head of
18 the National Crime Information Center of the
19 Department of Justice, and the head of the Na-
20 tional Crime Information Center shall input
21 into the National Crime Information Center
22 Database, the information that the Secretary
23 has or maintains related to any alien—

24 (i) against whom a final order of re-
25 moval has been issued;

1 (ii) who enters into a voluntary depart-
2 ture agreement, or is granted voluntary de-
3 parture by an immigration judge, whose
4 period for departure has expired under
5 subsection (a)(3) of section 240B of the
6 Immigration and Nationality Act (8 U.S.C.
7 1229c), subsection (b)(2) of such section
8 240B, or who has violated a condition of a
9 voluntary departure agreement under such
10 section 240B;

11 (iii) whom a Federal immigration offi-
12 cer has confirmed to be unlawfully present
13 in the United States or removable from the
14 United States;

15 (iv) whose visa has expired; or

16 (v) whose visa has been revoked.

17 (B) REMOVAL OF INFORMATION.—The
18 head of the National Crime Information Center
19 shall promptly remove any information provided
20 by the Secretary under subparagraph (A) re-
21 lated to an alien who is lawfully admitted to
22 enter or lawfully permitted to remain in the
23 United States.

24 (C) PROCEDURE FOR REMOVAL OF ERRO-
25 NEOUS INFORMATION.—

1 (i) IN GENERAL.—The Secretary, in
2 consultation with the head of the National
3 Crime Information Center, shall develop
4 and implement a procedure by which an
5 alien may petition the Secretary or head of
6 the National Crime Information Center, as
7 appropriate, to remove any erroneous in-
8 formation provided by the Secretary under
9 subparagraph (A) related to such alien.

10 (ii) EFFECT OF FAILURE TO RECEIVE
11 NOTICE.—Under procedures developed
12 under clause (i), failure by the alien to re-
13 ceive notice of a violation of the immigra-
14 tion laws shall not constitute cause for re-
15 moving information provided by the Sec-
16 retary under subparagraph (A) related to
17 such alien, unless such information is erro-
18 neous.

19 (iii) INTERIM PROVISION OF INFORMA-
20 TION.—Notwithstanding the 180-day pe-
21 riod set forth in subparagraph (A), the
22 Secretary may not provide the information
23 required under subparagraph (A) until the
24 procedures required under this paragraph
25 have been developed and implemented.

1 (2) INCLUSION OF INFORMATION IN THE NA-
2 TIONAL CRIME INFORMATION CENTER DATABASE.—
3 Section 534(a) of title 28, United States Code, is
4 amended—

5 (A) in paragraph (3), by striking “and” at
6 the end;

7 (B) by redesignating paragraph (4) as
8 paragraph (5); and

9 (C) by inserting after paragraph (3) the
10 following:

11 “(4) acquire, collect, classify, and preserve
12 records of violations of the immigration laws of the
13 United States; and”.

14 **SEC. 126. DOCUMENT FRAUD DETECTION.**

15 (a) TRAINING.—Subject to the availability of appro-
16 priations, the Secretary shall provide all United States
17 Customs and Border Protection officers with training in
18 identifying and detecting fraudulent travel documents.
19 Such training shall be developed in consultation with the
20 head of the Forensic Document Laboratory of United
21 States Immigration and Customs Enforcement.

22 (b) FORENSIC DOCUMENT LABORATORY.—The Sec-
23 retary shall provide all United States Customs and Border
24 Protection officers with access to the Forensic Document
25 Laboratory.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary such
3 sums as may be necessary to carry out this section during
4 each of the fiscal years 2008 through 2012.

5 **SEC. 127. BORDER RELIEF GRANT PROGRAM.**

6 (a) GRANTS AUTHORIZED.—

7 (1) IN GENERAL.—The Secretary is authorized
8 to award grants, subject to the availability of appro-
9 priations, to an eligible law enforcement agency to
10 provide assistance to such agency to address—

11 (A) criminal activity that occurs in the ju-
12 risdiction of such agency by virtue of such
13 agency's proximity to the international border
14 of the United States; and

15 (B) the impact of any lack of security
16 along such border.

17 (2) DURATION.—Grants may be awarded under
18 this subsection during each of fiscal years 2008
19 through 2012.

20 (3) COMPETITIVE BASIS.—The Secretary shall
21 award grants under this subsection on a competitive
22 basis, except that the Secretary shall give priority to
23 applications from any eligible law enforcement agen-
24 cy serving a community—

1 (A) with a population of fewer than 50,000
2 residents; and

3 (B) located not farther than 100 miles
4 from a United States border with—

5 (i) Canada; or

6 (ii) Mexico.

7 (b) USE OF FUNDS.—Grants awarded pursuant to
8 subsection (a) may only be used to provide additional re-
9 sources for an eligible law enforcement agency to address
10 criminal activity occurring along any such border, includ-
11 ing—

12 (1) to obtain equipment;

13 (2) to hire additional personnel;

14 (3) to upgrade and maintain law enforcement
15 technology;

16 (4) to cover operational costs, including over-
17 time and transportation costs; and

18 (5) such other resources as are available to as-
19 sist that agency.

20 (c) APPLICATION.—

21 (1) IN GENERAL.—Each eligible law enforce-
22 ment agency seeking a grant under this section shall
23 submit an application to the Secretary at such time,
24 in such manner, and accompanied by such informa-
25 tion as the Secretary may reasonably require.

1 (2) CONTENTS.—Each application submitted
2 pursuant to paragraph (1) shall—

3 (A) describe the activities for which assist-
4 ance under this section is sought; and

5 (B) provide such additional assurances as
6 the Secretary determines to be essential to en-
7 sure compliance with the requirements of this
8 section.

9 (d) DEFINITIONS.—In this section:

10 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—
11 The term “eligible law enforcement agency” means
12 a tribal, State, or local law enforcement agency lo-
13 cated in a county that—

14 (A) is not farther than 100 miles from a
15 United States border with—

16 (i) Canada; or

17 (ii) Mexico; or

18 (B) has been certified by the Secretary as
19 a High Impact Area.

20 (2) HIGH IMPACT AREA.—The term “High Im-
21 pact Area” means any county designated by the Sec-
22 retary as such, taking into consideration—

23 (A) whether local law enforcement agencies
24 in that county have the resources to protect the

1 lives, property, safety, or welfare of the resi-
2 dents of that county;

3 (B) the relationship between any lack of
4 security along the United States border and the
5 rise, if any, of criminal activity in that county;
6 and

7 (C) any other unique challenges that local
8 law enforcement face due to a lack of security
9 along the United States border.

10 (e) AUTHORIZATION OF APPROPRIATIONS.—

11 (1) IN GENERAL.—There are authorized to be
12 appropriated \$250,000,000 for each of that fiscal
13 years 2008 through 2012 to carry out the provisions
14 of this section.

15 (2) DIVISION OF AUTHORIZED FUNDS.—Of the
16 amounts appropriated pursuant to paragraph (1)—

17 (A) $\frac{2}{3}$ shall be set aside for eligible law en-
18 forcement agencies located in the 6 States with
19 the largest number of undocumented alien ap-
20 prehensions; and

21 (B) $\frac{1}{3}$ shall be set aside for areas des-
22 ignated as a High Impact Area under sub-
23 section (d).

24 (f) SUPPLEMENT NOT SUPPLANT.—Amounts appro-
25 priated for grants under this section shall be used to sup-

1 plement and not to supplant other State and local public
2 funds obligated for the purposes provided under this title.

3 **SEC. 128. COMBATING HUMAN SMUGGLING.**

4 (a) REQUIREMENT FOR PLAN.—The Secretary shall
5 develop and implement a plan to improve coordination be-
6 tween the United States Immigration and Customs En-
7 forcement and the United States Customs and Border
8 Protection of the Department and any other Federal,
9 State, local, or tribal authorities, as determined appro-
10 priate by the Secretary, to improve coordination efforts
11 to combat human smuggling.

12 (b) CONTENT.—In developing the plan required by
13 subsection (a), the Secretary shall consider—

14 (1) the interoperability of databases utilized to
15 prevent human smuggling;

16 (2) adequate and effective personnel training;

17 (3) methods and programs to effectively target
18 networks that engage in such smuggling;

19 (4) effective utilization of—

20 (A) visas for victims of trafficking and
21 other crimes; and

22 (B) investigatory techniques, equipment,
23 and procedures that prevent, detect, and pros-
24 ecute international money laundering and other
25 operations that are utilized in smuggling;

1 (5) joint measures, with the Secretary of State,
 2 to enhance intelligence sharing and cooperation with
 3 foreign governments whose citizens are preyed on by
 4 human smugglers; and

5 (6) other measures that the Secretary considers
 6 appropriate to combating human smuggling.

7 (c) REPORT.—Not later than 1 year after imple-
 8 menting the plan described in subsection (a), the Sec-
 9 retary shall submit to Congress a report on such plan, in-
 10 cluding any recommendations for legislative action to im-
 11 prove efforts to combating human smuggling.

12 (d) SAVINGS PROVISION.—Nothing in this section
 13 may be construed to provide additional authority to any
 14 State or local entity to enforce Federal immigration laws.

15 **SEC. 129. INCREASE OF FEDERAL DETENTION SPACE AND**
 16 **THE UTILIZATION OF FACILITIES IDENTIFIED**
 17 **FOR CLOSURES AS A RESULT OF THE DE-**
 18 **FENSE BASE CLOSURE REALIGNMENT ACT**
 19 **OF 1990.**

20 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
 21 FACILITIES.—In addition to existing facilities for the de-
 22 tention of aliens, the Secretary, subject to available appro-
 23 priations, shall construct or acquire not fewer than 20 de-
 24 tention facilities in the United States that have the capac-
 25 ity to detain a combined total of not fewer than 45,000

1 individuals at any time for aliens detained pending re-
2 moval or a decision on removal of such aliens from the
3 United States.

4 (b) CONSTRUCTION OR ACQUISITION OF DETENTION
5 FACILITIES.—

6 (1) REQUIREMENT TO CONSTRUCT OR AC-
7 QUIRE.—Subject to available appropriations, the
8 Secretary shall construct or acquire additional deten-
9 tion facilities in the United States to accommodate
10 the detention beds required under section 5204(a) of
11 the Intelligence Reform and Terrorism Protection
12 Act of 2004 (Public Law 108–458; 118 Stat. 3734).

13 (2) USE OF ALTERNATE DETENTION FACILI-
14 TIES.—Subject to the availability of appropriations,
15 the Secretary shall fully utilize all possible options to
16 cost effectively increase available detention capaci-
17 ties, and shall utilize detention facilities that are
18 owned and operated by the Federal Government if
19 the use of such facilities is cost effective.

20 (3) USE OF INSTALLATIONS UNDER BASE CLO-
21 SURE LAWS.—In acquiring additional detention fa-
22 cilities under this subsection, the Secretary shall
23 consider the transfer of appropriate portions of mili-
24 tary installations approved for closure or realign-
25 ment under the Defense Base Closure and Realign-

1 ment Act of 1990 (10 U.S.C. 2687 note) for use in
2 accordance with subsection (a).

3 (4) DETERMINATION OF LOCATION.—The loca-
4 tion of any detention facility constructed or acquired
5 in accordance with this subsection shall be deter-
6 mined, with the concurrence of the Secretary, by the
7 senior officer responsible for Detention and Removal
8 Operations in the Department. The detention facili-
9 ties shall be located so as to enable the officers and
10 employees of the Department to increase to the max-
11 imum extent practicable the annual rate and level of
12 removals of illegal aliens from the United States.

13 (c) ANNUAL REPORT TO CONGRESS.—Not later than
14 1 year after the date of the enactment of this Act, and
15 annually thereafter, in consultation with the heads of
16 other appropriate Federal agencies, the Secretary shall
17 submit to Congress an assessment of the additional deten-
18 tion facilities and bed space needed to detain unlawful
19 aliens apprehended at the United States ports of entry or
20 along the international land borders of the United States.

21 (d) TECHNICAL AND CONFORMING AMENDMENT.—
22 Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by
23 striking “may expend” and inserting “shall expend”.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out this section.

4 **SEC. 130. NORTHERN BORDER PROSECUTION REIMBURSE-**
5 **MENT.**

6 (a) SHORT TITLE.—This section may be cited as the
7 “Northern Border Prosecution Initiative Reimbursement
8 Act”.

9 (b) NORTHERN BORDER PROSECUTION INITIA-
10 TIVE.—

11 (1) INITIATIVE REQUIRED.—From amounts
12 made available to carry out this section, the Attor-
13 ney General, acting through the Director of the Bu-
14 reau of Justice Assistance of the Office of Justice
15 Programs, shall carry out a program, to be known
16 as the Northern Border Prosecution Initiative, to
17 provide funds to reimburse eligible northern border
18 entities for costs incurred by those entities for han-
19 dling case dispositions of criminal cases that are fed-
20 erally initiated but federally declined-referred. This
21 program shall be modeled after the Southwestern
22 Border Prosecution Initiative and shall serve as a
23 partner program to that initiative to reimburse local
24 jurisdictions for processing Federal cases.

1 (2) PROVISION AND ALLOCATION OF FUNDS.—
2 Funds provided under the program shall be provided
3 in the form of direct reimbursements and shall be al-
4 located in a manner consistent with the manner
5 under which funds are allocated under the South-
6 western Border Prosecution Initiative.

7 (3) USE OF FUNDS.—Funds provided to an eli-
8 gible northern border entity may be used by the en-
9 tity for any lawful purpose, including—

- 10 (A) prosecution and related costs;
- 11 (B) court costs;
- 12 (C) costs of courtroom technology;
- 13 (D) costs of constructing holding spaces;
- 14 (E) costs of administrative staff; and
- 15 (F) detention costs, including pre-trial and
16 post-trial detention.

17 (4) DEFINITIONS.—In this section:

18 (A) CASE DISPOSITION.—The term “case
19 disposition”, for purposes of the Northern Bor-
20 der Prosecution Initiative—

- 21 (i) refers to the time between a sus-
22 pect’s arrest and the resolution of the
23 criminal charges through a county or State
24 judicial or prosecutorial process; and

1 (ii) does not include incarceration
2 time for sentenced offenders, or time spent
3 by prosecutors on judicial appeals.

4 (B) ELIGIBLE NORTHERN BORDER ENTI-
5 TY.—The term “eligible northern border entity”
6 means—

7 (i) Alaska, Idaho, Maine, Michigan,
8 Minnesota, Montana, New Hampshire,
9 New York, North Dakota, Ohio, Pennsyl-
10 vania, Vermont, Washington, and Wis-
11 consin; or

12 (ii) any unit of local government with-
13 in a State referred to in clause (i).

14 (C) FEDERALLY DECLINED-REFERRED.—
15 The term “federally declined-referred”—

16 (i) means, with respect to a criminal
17 case, that a decision has been made in that
18 case by a United States Attorney or a Fed-
19 eral law enforcement agency during a Fed-
20 eral investigation to no longer pursue Fed-
21 eral criminal charges against a defendant
22 and to refer the investigation to a State or
23 local jurisdiction for possible prosecution;
24 and

1 (ii) includes a decision made on an in-
 2 dividualized case-by-case basis and a deci-
 3 sion made pursuant to a general policy or
 4 practice or prosecutorial discretion.

5 (D) **FEDERALLY INITIATED.**—The term
 6 “federally initiated” means, with respect to a
 7 criminal case, that the case results from a
 8 criminal investigation or an arrest involving
 9 Federal law enforcement authorities for a po-
 10 tential violation of Federal criminal law, includ-
 11 ing investigations resulting from multi-jurisdic-
 12 tional task forces.

13 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
 14 are authorized to be appropriated to carry out this sec-
 15 tion—

- 16 (1) \$28,000,000 for fiscal year 2008; and
 17 (2) such sums as may be necessary for each
 18 succeeding fiscal year.

19 **SEC. 131. LIMITATION ON LANDOWNER’S LIABILITY.**

20 Section 287 (8 U.S.C. 1357) is amended by adding
 21 at the end the following:

22 “(i) **INDEMNITY FOR ACTIONS OF LAW ENFORCE-**
 23 **MENT OFFICERS.**—

24 “(1) **IN GENERAL.**—Notwithstanding any other
 25 provision of law and subject to appropriations, an

1 owner of land located within 100 miles of the inter-
2 national land border of the United States may seek
3 reimbursement from the Department of Homeland
4 Security for any adverse final tort judgment for neg-
5 ligence (excluding attorneys' fees and costs) author-
6 ized under the Federal or State tort law, arising di-
7 rectly from such border security activity if—

8 “(A) such owner has been found negligent
9 by a Federal or State court in any tort litiga-
10 tion;

11 “(B) such owner has not already been re-
12 imbursed for the final tort judgment, including
13 outstanding attorney's fees and costs;

14 “(C) such owner did not have or does not
15 have sufficient property insurance to cover the
16 judgment and have had an insurance claim for
17 such coverage denied; and

18 “(D) such tort action was brought as a di-
19 rect result of activity of law enforcement offi-
20 cers of the Department of Homeland Security,
21 acting in their official capacity, on the owner's
22 land.

23 “(2) DEFINITIONS.—In this subsection—

24 “(A) the term ‘land’ includes roads, water,
25 watercourses, and private ways, and buildings,

1 structures, machinery and equipment that is at-
2 tached to real property; and

3 “(B) the term ‘owner’ includes the pos-
4 sessor of a fee interest, a tenant, lessee, occu-
5 pant, the possessor of any other interest in
6 land, or any person having a right to grant per-
7 mission to use the land.

8 “(3) EXCEPTIONS.—Nothing in this subsection
9 may be construed to limit landowner liability which
10 would otherwise exist for—

11 “(A) willful or malicious failure to guard
12 or warn against a known dangerous condition,
13 use, structure, or activity likely to cause harm;

14 “(B) maintaining an attractive nuisance;

15 “(C) gross negligence; or

16 “(D) direct interference with, or hindrance
17 of, any agent or officer of the Federal Govern-
18 ment who is authorized to enforce the immigra-
19 tion laws of the United States during—

20 “(i) a patrol of such landowner’s land;

21 or

22 “(ii) any action taken to apprehend or
23 detain any alien attempting to enter the
24 United States illegally or evade execution

1 of an arrest warrant for a violation of any
2 immigration law.

3 “(4) SAVINGS PROVISION.—Nothing in this sub-
4 section may be construed to affect any right or rem-
5 edy available pursuant to the Federal Tort Claims
6 Act.”.

7 **TITLE II—INTERIOR**
8 **ENFORCEMENT**
9 **Subtitle A—Interior Security**
10 **Measures**

11 **SEC. 201. ADDITIONAL IMMIGRATION PERSONNEL.**

12 (a) DEPARTMENT OF HOMELAND SECURITY.—

13 (1) TRIAL ATTORNEYS.—In each of the fiscal
14 years 2008 through 2012, the Secretary, subject to
15 the availability of appropriations for such purpose,
16 shall increase the number of positions for attorneys
17 in the Office of General Counsel of the Department
18 who represent the Department in immigration mat-
19 ters in removal proceedings before immigration
20 judges and in Federal district courts or circuit
21 courts of appeals as Special Assistant United States
22 Attorneys by not fewer than 100 compared to the
23 number of such positions for which funds were made
24 available during the preceding fiscal year.

1 (2) ATTORNEY ADVISORS.—In each of the fiscal
2 years 2008 through 2012, the Secretary, subject to
3 the availability of appropriations for such purpose,
4 shall increase the number of positions for attorneys
5 in the Office of the Chief Counsel of United States
6 Citizenship and Immigration Services who advise
7 and provide litigation support to components of
8 United States Citizenship and Immigration Services,
9 the Office of Immigration Litigation of the Depart-
10 ment of Justice, and United States Attorney offices,
11 on litigation involving the adjudication of immigra-
12 tion benefits under the Immigration and Nationality
13 Act (8 U.S.C. 1101 et. seq.) or other matters involv-
14 ing United States Citizenship and Immigration Serv-
15 ices, by not less than 100 compared to the number
16 of such positions for which funds were made avail-
17 able during the preceding fiscal year.

18 (3) USCIS ADJUDICATORS.—In each of the fis-
19 cal years 2008 through 2012, the Secretary, subject
20 to the availability of appropriations for such pur-
21 pose, shall increase the number of positions for adju-
22 dicators in the United States Citizenship and Immi-
23 gration Service by not fewer than 100 compared to
24 the number of such positions for which funds were
25 made available during the preceding fiscal year.

1 (4) FORENSICS DOCUMENT LABORATORY PER-
2 SONNEL.—In each of the fiscal years 2008 through
3 2012, the Secretary, subject to the availability of ap-
4 propriations for such purpose, shall increase the
5 number of positions for forensic auditors in the Fo-
6 rensic Document Laboratory of the United States
7 Immigration and Customs Enforcement by not fewer
8 than 25 compared to the number of such positions
9 for which funds were made available during the pre-
10 ceding fiscal year.

11 (5) INCREASE IN FULL-TIME ICE AND CIS PER-
12 SONNEL.—In each of the fiscal years 2008 through
13 2012, the Secretary, subject to the availability of ap-
14 propriations, shall increase by not fewer than 2,000
15 the number of positions for full-time active duty in-
16 telligence research specialists, agents, officers, and
17 investigators in United States Immigration and Cus-
18 toms Enforcement and the Fraud Detection and Na-
19 tional Security Division of United States Citizenship
20 and Immigration Services—

21 (A) to carry out the removal of aliens who
22 are not admissible to, or are subject to removal
23 from, the United States;

24 (B) to investigate immigration fraud; and

25 (C) to enforce workplace violations.

1 (6) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated to the Sec-
3 retary for each of the fiscal years 2008 through
4 2012 such sums as may be necessary to carry out
5 paragraphs (1) through (5).

6 (7) CONFORMING AMENDMENT.—Section 5203
7 of the Intelligence Reform and Terrorism Protection
8 Act of 2004 (Public Law 108–458; 118 Stat. 3734)
9 is repealed.

10 (b) DEPARTMENT OF JUSTICE.—

11 (1) LITIGATION ATTORNEYS.—In each of the
12 fiscal years 2008 through 2012, the Attorney Gen-
13 eral, subject to the availability of appropriations for
14 such purpose, shall increase the number of positions
15 for attorneys in the Office of Immigration Litigation
16 by not fewer than 50 compared to the number of
17 such positions for which funds were made available
18 during the preceding fiscal year.

19 (2) UNITED STATES ATTORNEYS.—In each of
20 the fiscal years 2008 through 2012, the Attorney
21 General, subject to the availability of appropriations
22 for such purpose, shall increase the number of attor-
23 neys in the United States Attorneys' office assigned
24 to litigate and prosecute immigration cases in the
25 Federal courts by not fewer than 100 compared to

1 the number of such positions for which funds were
2 made available during the preceding fiscal year.

3 (3) CRIMINAL DIVISION ATTORNEYS.—The At-
4 torney General shall increase the number of attor-
5 neys in the Criminal Division assigned to prosecute
6 immigration cases in the Federal courts, as appro-
7 priate.

8 (4) JUDICIAL CLERKS.—The Attorney General,
9 subject to the availability of appropriations for such
10 purpose, shall appoint necessary law clerks for immi-
11 gration judges and Board of Immigration Appeals
12 members of not fewer than 1 per judge and member.
13 A law clerk appointed under this section shall be ex-
14 empt from the provisions of subchapter I of chapter
15 63 of title 5, United States Code.

16 (5) IMMIGRATION JUDGES.—In each of the fis-
17 cal years 2008 through 2012, the Attorney General,
18 subject to the availability of appropriations for such
19 purpose, shall—

20 (A) increase by not fewer than 20 the
21 number of full-time immigration judges com-
22 pared to the number of such positions for which
23 funds were made available during the preceding
24 fiscal year; and

1 (B) increase by not fewer than 80 the
2 number of positions for personnel to support
3 the immigration judges described in subpara-
4 graph (A) compared to the number of such po-
5 sitions for which funds were made available
6 during the preceding fiscal year.

7 (6) STAFF ATTORNEYS.—In each of the fiscal
8 years 2008 through 2012, the Attorney General,
9 subject to the availability of appropriations for such
10 purpose, shall—

11 (A) increase the number of positions for
12 full-time staff attorneys in the Board of Immi-
13 gration Appeals by not fewer than 20 compared
14 to the number of such positions for which funds
15 were made available during the preceding fiscal
16 year; and

17 (B) increase the number of positions for
18 personnel to support the staff attorneys de-
19 scribed in subparagraph (A) by not fewer than
20 10 compared to the number of such positions
21 for which funds were made available during the
22 preceding fiscal year.

23 (7) AUTHORIZATION OF APPROPRIATIONS.—
24 There are authorized to be appropriated to the At-
25 torney General for each of the fiscal years 2008

1 through 2012 such sums as may be necessary to
2 carry out this subsection, including the hiring of
3 necessary support staff.

4 (c) ADMINISTRATIVE OFFICE OF THE UNITED
5 STATES COURTS.—In each of the fiscal years 2008
6 through 2012, the Director of the Administrative Office
7 of the United States Courts, subject to the availability of
8 appropriations, shall increase the number of attorneys in
9 the Federal Defenders Program who litigate criminal im-
10 migration cases in the Federal courts by not fewer than
11 50 compared to the number of such positions for which
12 funds were made available during the preceding fiscal
13 year.

14 (d) DISTRICT JUDGES FOR THE DISTRICT COURTS
15 IN BORDER STATES.—

16 (1) IN GENERAL.—The President shall appoint,
17 by and with the advice and consent of the Senate—

18 (A) 4 additional district judges for the dis-
19 trict of Arizona;

20 (B) 4 additional district judges for the cen-
21 tral district of California;

22 (C) 4 additional district judges for the
23 eastern of California;

24 (D) 2 additional district judges for the
25 northern district of California;

1 (E) 4 additional district judges for the
2 middle district of Florida;

3 (F) 2 additional district judges for the
4 southern district of Florida;

5 (G) 1 additional district judge for the dis-
6 trict of Minnesota;

7 (H) 1 additional district judge for the dis-
8 trict of New Mexico;

9 (I) 3 additional district judges for the east-
10 ern district of New York;

11 (J) 1 additional district judge for the west-
12 ern district of New York;

13 (K) 1 additional district judge for the east-
14 ern district of Texas;

15 (L) 2 additional district judges for the
16 southern district of Texas;

17 (M) 1 additional district judge for the
18 western district of Texas; and

19 (N) 1 additional district judge for the
20 western district of Washington.

21 (2) TEMPORARY JUDGESHIPS.—The President
22 shall appoint, by and with the advice and consent of
23 the Senate—

24 (A) 1 additional district judge for the dis-
25 trict of Arizona;

1 (B) 1 additional district judge for the cen-
2 tral district of California;

3 (C) 1 additional district judge for the
4 northern district of California;

5 (D) 1 additional district judge for the mid-
6 dle district of Florida;

7 (E) 1 additional district judge for the
8 southern district of Florida;

9 (F) 1 additional district judge for the dis-
10 trict of Idaho; and

11 (G) 1 additional district judge for the dis-
12 trict of New Mexico.

13 (3) VACANCIES.—For each of the judicial dis-
14 tricts named in paragraph (2), the first vacancy
15 arising on the district court 10 years or more after
16 a judge is first confirmed to fill the temporary dis-
17 trict judgeship created in that district by paragraph
18 (2) shall not be filled.

19 (4) EXISTING JUDGESHIPS.—The existing
20 judgeships for the district of Arizona and the district
21 of New Mexico authorized by section 312(c) of the
22 21st Century Department of Justice Appropriations
23 Authorization Act (Public Law 107–273, 116 Stat.
24 1758), as of the effective date of this Act, shall be
25 authorized under section 133 of title 28, United

1 States Code, and the incumbents in those offices
 2 shall hold the office under section 133 of title 28,
 3 United States Code, as amended by this Act.

4 (5) TABLES.—The table contained in section
 5 133 of title 28, United States Code, is amended to
 6 read as follows:

“Districts	Judges
Alabama:	
Northern	7
Middle	3
Southern	3
Alaska	3
Arizona	17
Arkansas:	
Eastern	5
Western	3
California:	
Northern	16
Eastern	10
Central	31
Southern	13
Colorado	7
Connecticut	8
Delaware	4
District of Columbia	15
Florida:	
Northern	4
Middle	19
Southern	19
Georgia:	
Northern	11
Middle	4
Southern	3
Hawaii	3
Idaho	2
Illinois:	
Northern	22
Central	4
Southern	4
Indiana:	
Northern	5
Southern	5
Iowa:	
Northern	2
Southern	3
Kansas	5
Kentucky:	

“Districts	Judges
Eastern	5
Western	4
Eastern and Western	1
Louisiana:	
Eastern	12
Middle	3
Western	7
Maine	3
Maryland	10
Massachusetts	13
Michigan:	
Eastern	15
Western	4
Minnesota	8
Mississippi:	
Northern	3
Southern	6
Missouri:	
Eastern	6
Western	5
Eastern and Western	2
Montana	3
Nebraska	3
Nevada	7
New Hampshire	3
New Jersey	17
New Mexico	8
New York:	
Northern	5
Southern	28
Eastern	18
Western	5
North Carolina:	
Eastern	4
Middle	4
Western	4
North Dakota	2
Ohio:	
Northern	11
Southern	8
Oklahoma:	
Northern	3
Eastern	1
Western	6
Northern, Eastern, and Western	1
Oregon	6
Pennsylvania:	
Eastern	22
Middle	6
Western	10
Puerto Rico	7
Rhode Island	3
South Carolina	10
South Dakota	3

“Districts	Judges
Tennessee:	
Eastern	5
Middle	4
Western	5
Texas:	
Northern	12
Southern	21
Eastern	8
Western	14
Utah	5
Vermont	2
Virginia:	
Eastern	11
Western	4
Washington:	
Eastern	4
Western	8
West Virginia:	
Northern	3
Southern	5
Wisconsin:	
Eastern	5
Western	2
Wyoming	3.”.

1 (e) LEGAL ORIENTATION PROGRAM.—

2 (1) CONTINUED OPERATION.—The Director of
3 the Executive Office for Immigration Review shall
4 continue to operate a legal orientation program to
5 provide basic information about immigration court
6 procedures for immigration detainees and shall ex-
7 pand the legal orientation program to provide such
8 information on a nationwide basis.

9 (2) AUTHORIZATION OF APPROPRIATIONS.—

10 There are authorized to be appropriated such sums
11 as may be necessary to carry out the legal orienta-
12 tion program authorized under paragraph (1).

1 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**
2 **REMOVED OR ALIENS WHO OVERSTAY.**

3 (a) IN GENERAL.—Section 241(a) (8 U.S.C.
4 1231(a)) is amended—

5 (1) by striking “Attorney General” each place
6 it appears, except for the first reference in para-
7 graph (4)(B)(i), and inserting “Secretary of Home-
8 land Security”;

9 (2) in paragraph (1)—

10 (A) by amending clause (ii) of subpara-
11 graph (B) to read as follows:

12 “(ii) If a court, the Board of Immi-
13 gration Appeals, or an immigration judge
14 orders a stay of the removal of the alien,
15 the date the stay of removal is no longer
16 in effect.”;

17 (B) by adding at the end of subparagraph
18 (B), the following: “If, at the beginning of the
19 removal period, as determined under this sub-
20 paragraph, the alien is not in the custody of the
21 Secretary of Homeland Security (under the au-
22 thority of this Act), the Secretary shall take the
23 alien into custody for removal, and the removal
24 period shall not begin until the alien is taken
25 into such custody. If the Secretary transfers
26 custody of the alien during the removal period

1 pursuant to law to another Federal agency or
2 a State or local government agency in connec-
3 tion with the official duties of such agency, the
4 removal period shall be tolled, and shall begin
5 anew on the date of the alien’s return to the
6 custody of the Secretary subject to clause (ii).”;
7 and

8 (C) by amending subparagraph (C) to read
9 as follows:

10 “(C) SUSPENSION OF PERIOD.—The re-
11 moval period shall be extended beyond a period
12 of 90 days and the alien may remain in deten-
13 tion during such extended period if the alien—

14 “(i) fails or refuses to make all rea-
15 sonable efforts to comply with the removal
16 order, or to fully cooperate with the efforts
17 of the Secretary to establish the identity of
18 the alien and carry out the removal order,
19 including making timely application in
20 good faith for travel or other documents
21 necessary to the departure of the alien; or

22 “(ii) conspires or acts to prevent the
23 alien’s removal.”;

24 (3) in paragraph (2)—

1 (A) by striking “During” and inserting the
2 following:

3 “(A) IN GENERAL.—During”; and

4 (B) by adding at the end the following new
5 subparagraph:

6 “(B) EFFECT OF STAY OF REMOVAL.—If a
7 court, the Board of Immigration Appeals, or an
8 immigration judge orders a stay of removal of
9 an alien who is subject to an administratively
10 final order of removal, the Secretary of Home-
11 land Security in the exercise of discretion may
12 detain the alien during the pendency of such
13 stay of removal.”;

14 (4) in paragraph (3), by amending subpara-
15 graph (D) to read as follows:

16 “(D) to obey reasonable restrictions on the
17 alien’s conduct or activities or to perform af-
18 firmative acts that the Secretary of Homeland
19 Security prescribes for the alien, in order to
20 prevent the alien from absconding, for the pro-
21 tection of the community, or for other purposes
22 related to the enforcement of the immigration
23 laws.”;

24 (5) in paragraph (6), by striking “removal pe-
25 riod and, if released,” and inserting “removal period,

1 in the discretion of the Secretary of Homeland Secu-
2 rity, without any limitations other than those speci-
3 fied in this section, until the alien is removed. If the
4 alien is released, the alien”;

5 (6) by redesignating paragraph (7) as para-
6 graph (10); and

7 (7) by inserting after paragraph (6) the fol-
8 lowing:

9 “(7) PAROLE.—If an alien detained pursuant to
10 paragraph (6) is an applicant for admission, the
11 Secretary of Homeland Security, in the Secretary’s
12 discretion, may parole the alien under section
13 212(d)(5) and may provide, notwithstanding section
14 212(d)(5), that the alien shall not be returned to
15 custody unless either the alien violates the conditions
16 of the parole or the removal of the alien becomes
17 reasonably foreseeable. In no circumstance shall
18 such alien be considered admitted.

19 “(8) ADDITIONAL RULES FOR DETENTION OR
20 RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN
21 ENTRY.—The following procedures apply only to an
22 alien who has effected an entry into the United
23 States and do not apply to any other alien detained
24 pursuant to paragraph (6):

1 “(A) ESTABLISHMENT OF A DETENTION
2 REVIEW PROCESS FOR ALIENS WHO FULLY CO-
3 OPERATE WITH REMOVAL.—For an alien who
4 has made all reasonable efforts to comply with
5 a removal order and to cooperate fully with the
6 Secretary of Homeland Security’s efforts to es-
7 tablish the alien’s identity and carry out the re-
8 moval order, including making timely applica-
9 tion in good faith for travel or other documents
10 necessary to the alien’s departure, and has not
11 conspired or acted to prevent removal, the Sec-
12 retary of Homeland Security shall establish an
13 administrative review process to determine
14 whether an alien will be detained or released on
15 conditions. The Secretary shall make a deter-
16 mination whether to release an alien after the
17 removal period in accordance with paragraph
18 (1)(B). The determination shall include consid-
19 eration of any evidence submitted by the alien,
20 and may include consideration of any other evi-
21 dence, including any information or assistance
22 provided by the Department of State or other
23 Federal agency and any other information
24 available to the Secretary pertaining to the abil-
25 ity to remove the alien.

1 “(B) ADDITIONAL 90-DAY PERIOD.—The
2 Secretary of Homeland Security, in the exercise
3 of discretion, without any limitations other than
4 those specified in this section, may continue to
5 detain an alien for 90 days beyond the removal
6 period (including any extension of the removal
7 period as provided in paragraph (1)(D)).

8 “(C) FURTHER DETENTION.—The Sec-
9 retary of Homeland Security, in the exercise of
10 discretion, without any limitations other than
11 those specified in this section, may continue to
12 detain an alien beyond the removal period and
13 the 90-day period authorized by subparagraph
14 (B)—

15 “(i) until the alien is removed, if the
16 Secretary determines that there is a sig-
17 nificant likelihood that the alien—

18 “(I) will be removed in the rea-
19 sonably foreseeable future; or

20 “(II) would be removed in the
21 reasonably foreseeable future, or
22 would have been removed, but for the
23 failure or refusal of the alien to make
24 all reasonable efforts to comply with
25 the removal order, or to cooperate

1 fully with the efforts of the Secretary
2 to establish the identity of the alien
3 and to carry out the removal order,
4 including making timely application in
5 good faith for travel or other docu-
6 ments necessary to the departure of
7 the alien, or conspiracies or acts to
8 prevent the alien's removal;

9 “(ii) until the alien is removed, if the
10 Secretary certifies in writing—

11 “(I) in consultation with the Sec-
12 retary of Health and Human Services,
13 that the alien has a highly contagious
14 disease that poses a threat to public
15 safety;

16 “(II) after receipt of a written
17 recommendation from the Secretary of
18 State, that release of the alien is like-
19 ly to have serious adverse foreign pol-
20 icy consequences for the United
21 States;

22 “(III) based on information avail-
23 able to the Secretary of Homeland Se-
24 curity (including classified, sensitive,
25 or national security information, and

1 without regard to the grounds upon
2 which the alien was ordered removed),
3 that there is reason to believe that the
4 release of the alien would threaten the
5 national security of the United States;
6 or

7 “(IV) that the release of the alien
8 will threaten the safety of the commu-
9 nity or any person, conditions of re-
10 lease cannot reasonably be expected to
11 ensure the safety of the community or
12 any person, and—

13 “(aa) the alien has been
14 convicted of one or more aggra-
15 vated felonies as defined in sec-
16 tion 101(a)(43)(A), one or more
17 crimes identified by the Secretary
18 of Homeland Security by regula-
19 tion, or one or more attempts or
20 conspiracies to commit any such
21 aggravated felonies or such iden-
22 tified crimes, provided that the
23 aggregate term of imprisonment
24 for such attempts or conspiracies
25 is at least 5 years; or

1 “(bb) the alien has com-
2 mitted one or more crimes of vio-
3 lence (as defined in section 16 of
4 title 18, United States Code, but
5 not including a purely political
6 offense) and, because of a mental
7 condition or personality disorder
8 and behavior associated with that
9 condition or disorder, the alien is
10 likely to engage in acts of vio-
11 lence in the future; or

12 “(V) that the release of the alien
13 will threaten the safety of the commu-
14 nity or any person, conditions of re-
15 lease cannot reasonably be expected to
16 ensure the safety of the community or
17 any person, and the alien has been
18 convicted of at least one aggravated
19 felony as defined in section
20 101(a)(43); or

21 “(iii) pending a certification under
22 clause (ii), if the Secretary has initiated
23 the administrative review process under
24 subparagraph (C) not later than 30 days
25 after the expiration of the alien’s removal

1 period (including any extension of the re-
2 moval period as provided in paragraph
3 (1)(D)).

4 “(D) RENEWAL AND DELEGATION OF CER-
5 TIFICATION.—

6 “(i) RENEWAL.—The Secretary of
7 Homeland Security may renew a certifi-
8 cation under subparagraph (C)(ii) every
9 180 days without limitation, after pro-
10 viding an opportunity for the alien to re-
11 quest reconsideration of the certification
12 and to submit documents or other evidence
13 in support of that request. If the Secretary
14 does not renew such a certification, the
15 Secretary may not continue to detain the
16 alien under subparagraph (C)(ii).

17 “(ii) DELEGATION.—Notwithstanding
18 section 103, the Secretary of Homeland
19 Security may not delegate the authority to
20 make or renew a certification described in
21 subclause (II), (III), or (V) of subpara-
22 graph (C)(ii) to an official below the level
23 of the Assistant Secretary for Immigration
24 and Customs Enforcement.

1 “(iii) HEARING.—The Secretary of
2 Homeland Security may request that the
3 Attorney General, or a designee of the At-
4 torney General, provide for a hearing to
5 make the determination described in item
6 (bb) of subparagraph (C)(ii)(IV).

7 “(E) RELEASE ON CONDITIONS.—If it is
8 determined that an alien should be released
9 from detention under this paragraph, the Sec-
10 retary of Homeland Security, in the exercise of
11 discretion, may impose conditions on release as
12 provided in paragraph (3).

13 “(F) REDETENTION.—

14 “(i) IN GENERAL.—The Secretary of
15 Homeland Security, in the exercise of dis-
16 cretion, without any limitations other than
17 those specified in this section, may again
18 detain any alien subject to a final removal
19 order who is released from custody if—

20 “(I) the alien fails to comply with
21 the conditions of release;

22 “(II) the alien fails to continue to
23 satisfy the conditions described in
24 subparagraph (A); or

1 “(III) upon reconsideration, the
2 Secretary determines that the alien
3 may be detained under subparagraph
4 (B) or (C).

5 “(ii) APPLICABILITY OF CUSTODY
6 PROVISIONS.—This paragraph and para-
7 graph (6) shall apply to any alien returned
8 to custody pursuant to this subparagraph,
9 as if the removal period terminated on the
10 day that the alien was so returned to cus-
11 tody.

12 “(G) CERTAIN ALIENS WHO EFFECTED
13 ENTRY.—The Secretary of Homeland Security
14 may waive the provisions of subparagraph (A)
15 through (F) and detain an alien without any
16 limitations, except those which the Secretary
17 shall adopt by regulation, if—

18 “(i) the alien has effected an entry;

19 “(ii) the alien has not been lawfully
20 admitted into the United States; and

21 “(iii) the alien has not been physically
22 present in the United States continuously
23 for the 2-year period immediately prior to
24 the commencement of removal proceedings

1 under this Act or deportation proceedings
2 against the alien.

3 “(9) JUDICIAL REVIEW.—Without regard to the
4 place of confinement, judicial review of any action or
5 decision pursuant to paragraph (6), (7), or (8) shall
6 be available exclusively in a habeas corpus pro-
7 ceeding instituted in the United States District
8 Court for the District of Columbia, and only if the
9 alien has exhausted all administrative remedies
10 available to the alien as of right.”.

11 (b) DETENTION OF ALIENS DURING REMOVAL PRO-
12 CEEDINGS.—

13 (1) IN GENERAL.—Section 235 (8 U.S.C. 1225)
14 is amended by adding at the end the following:

15 “(e) LENGTH OF DETENTION.—

16 “(1) IN GENERAL.—An alien may be detained
17 under this section, without limitation, until the alien
18 is subject to an administratively final order of re-
19 moval.

20 “(2) EFFECT ON DETENTION UNDER SECTION
21 241.—The length of detention under this section
22 shall not affect the validity of any detention under
23 section 241.

24 “(3) JUDICIAL REVIEW.—Without regard to the
25 place of confinement, judicial review of any action or

1 decision made pursuant to paragraph (1) or (2) shall
2 be available exclusively in a habeas corpus pro-
3 ceeding instituted in the United States District
4 Court for the District of Columbia and only if the
5 alien has exhausted all administrative remedies
6 available to the alien as of right.”.

7 (2) CONFORMING AMENDMENTS.—Section 236
8 (8 U.S.C. 1226) is amended—

9 (A) in subsection (e)—

10 (i) by striking “The” and inserting
11 the following:

12 “(1) IN GENERAL.—The”; and

13 (ii) by adding at the end the following
14 new paragraph:

15 “(2) LIMITATION ON REVIEW.—Without regard
16 to the place of confinement, judicial review of any
17 action or decision made pursuant to subsection (f)
18 shall be available exclusively in a habeas corpus pro-
19 ceeding instituted in the United States District
20 Court for the District of Columbia, and only if the
21 alien has exhausted all administrative remedies
22 (statutory and nonstatutory) available to the alien as
23 of right.”; and

24 (B) by adding at the end the following:

25 “(f) LENGTH OF DETENTION.—

1 “(1) IN GENERAL.—With regard to the length
2 of detention, an alien may be detained under this
3 section, without limitation, until the alien is subject
4 to an administratively final order of removal.

5 “(2) EFFECT ON DETENTION UNDER SECTION
6 241.—The length of detention under this section
7 shall not affect the validity of any detention under
8 section 241.”.

9 (c) EFFECTIVE DATES.—

10 (1) AMENDMENTS MADE BY SUBSECTION (a).—
11 The amendments made by subsection (a) shall take
12 effect on the date of the enactment of this Act, and
13 section 241 of the Immigration and Nationality Act,
14 as amended, shall apply to—

15 (A) all aliens subject to a final administra-
16 tive removal, deportation, or exclusion order
17 that was issued before, on, or after the date of
18 the enactment of this Act; and

19 (B) acts and conditions occurring or exist-
20 ing before, on, or after the date of the enact-
21 ment of this Act.

22 (2) AMENDMENTS MADE BY SUBSECTION (b).—
23 The amendments made by subsection (b) shall take
24 effect on the date of the enactment of this Act, and
25 sections 235 and 236 of the Immigration and Na-

1 tionality Act, as amended, shall apply to any alien
2 in detention under provisions of such sections on or
3 after the date of the enactment of this Act.

4 (d) DETENTION OF ALIENS WHO EXCEED AUTHOR-
5 IZED ADMISSION PERIOD.—

6 (1) AMENDMENT.—Section 236 (8 U.S.C.
7 1226) is amended—

8 (A) by redesignating subsection (e) as sub-
9 section (f); and

10 (B) by inserting after subsection (d) the
11 following:

12 “(e) DETENTION OF ALIENS WHO EXCEED AUTHOR-
13 IZED ADMISSION PERIOD.—

14 “(1) CUSTODY.—An alien shall be arrested and
15 detained by the Secretary of Homeland Security
16 pending a decision on whether the alien is to be re-
17 moved from the United States if the alien knowingly,
18 or with reason to know, exceeded, by 30 days or
19 more, the period of the alien’s authorized admission
20 into the United States. An alien shall be deemed to
21 have reason to know that they exceeded the period
22 of authorized admission if—

23 “(A) the alien’s passport is stamped with
24 the expected departure date; or

1 “(B) the provision of law under which the
2 alien applied for a visa contains a length of
3 time for which the visa may be issued.

4 “(2) WAIVER.—

5 “(A) IN GENERAL.—The Secretary of
6 Homeland Security may waive the application
7 of paragraph (1) if the Secretary determines
8 that—

9 “(i) the alien exceeded the alien’s pe-
10 riod of authorized admission or parole as a
11 result of exceptional circumstances beyond
12 the control of the alien; or

13 “(ii) a waiver is necessary for humani-
14 tarian purposes.

15 “(B) DEFINED TERM.—In this paragraph,
16 the term ‘exceptional circumstances’ shall have
17 the meaning given such term in section
18 240(e)(1).”.

19 “(2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) shall apply to all aliens granted or
21 issued a nonimmigrant visa on or after the date of
22 the enactment of this Act.

23 “(e) CRIMINAL DETENTION OF ALIENS.—Section
24 3142 of title 18, United States Code, is amended—

1 (1) by amending subsection (e) to read as fol-
2 lows:

3 “(e) DETENTION.—

4 “(1) IN GENERAL.—If, after a hearing pursu-
5 ant to subsection (f), the judicial officer finds that
6 no condition or combination of conditions will rea-
7 sonably assure the appearance of the person as re-
8 quired and the safety of any other person and the
9 community, such judicial officer shall order the de-
10 tention of the person before trial.

11 “(2) EFFECT OF RECENT CONVICTION.—In a
12 case described in subsection (f)(1), a rebuttable pre-
13 sumption arises that no condition or combination of
14 conditions will reasonably assure the safety of any
15 other person and the community if such judicial offi-
16 cer finds that—

17 “(A) the person has been convicted of a
18 Federal offense that is described in subsection
19 (f)(1), or of a State or local offense that would
20 have been an offense described in subsection
21 (f)(1) if a circumstance giving rise to Federal
22 jurisdiction had existed;

23 “(B) the offense described in subparagraph
24 (A) was committed while the person was on re-

1 lease pending trial for a Federal, State, or local
2 offense; and

3 “(C) a period of not more than 5 years has
4 elapsed since the date of conviction, or the re-
5 lease of the person from imprisonment, for the
6 offense described in subparagraph (A), which-
7 ever is later.

8 “(3) EFFECT OF SERIOUS OFFENSES.—Subject
9 to rebuttal by the person, it shall be presumed that
10 no condition or combination of conditions will rea-
11 sonably assure the appearance of the person as re-
12 quired and the safety of the community if the judi-
13 cial officer finds that there is probable cause to be-
14 lieve that the person committed—

15 “(A) an offense for which a maximum
16 term of imprisonment of 10 years or more is
17 prescribed in the Controlled Substances Act (21
18 U.S.C. 801 et seq.), the Controlled Substances
19 Import and Export Act (21 U.S.C. 951 et seq.),
20 or chapter 705 of title 46;

21 “(B) an offense under section 924(c),
22 956(a), or 2332b of this title;

23 “(C) an offense listed in section
24 2332b(g)(5)(B) of this title for which a max-

1 imum term of imprisonment of 10 years or
2 more is prescribed; or

3 “(D) an offense involving a minor victim
4 under section 1201, 1591, 2241, 2242,
5 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1),
6 2252(a)(2), 2252(a)(3), 2252A(a)(1),
7 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260,
8 2421, 2422, 2423, or 2425 of this title.

9 “(4) OTHER PRESUMPTIONS.—Subject to rebut-
10 tal by the person, it shall be presumed that no con-
11 dition or combination of conditions will reasonably
12 assure the appearance of the person as required if
13 the judicial officer finds that there is probable cause
14 to believe that the person is an alien and that the
15 person—

16 “(A) has no lawful immigration status in
17 the United States;

18 “(B) is the subject of a final order of re-
19 moval; or

20 “(C) has committed a felony offense under
21 section 842(i)(5), 911, 922(g)(5), 1015, 1028,
22 1028A, 1425, or 1426 of this title, chapter 75
23 or 77 of this title, or section 243, 274, 275,
24 276, 277, or 278 of the Immigration and Na-
25 tionality Act.”; and

1 (2) in subsection (g)(3)—

2 (A) in subparagraph (A), by striking
3 “and” at the end; and

4 (B) by adding at the end the following:

5 “(C) the person’s immigration status;
6 and”.

7 **SEC. 203. AGGRAVATED FELONY.**

8 (a) DEFINITION OF AGGRAVATED FELONY.—Section
9 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

10 (1) by striking “The term ‘aggravated felony’
11 means—” and inserting “Notwithstanding any other
12 provision of law, the term ‘aggravated felony’ applies
13 to an offense described in this paragraph, whether in
14 violation of Federal or State law, and to such an of-
15 fense in violation of the law of a foreign country for
16 which the term of imprisonment was completed with-
17 in the previous 15 years, even if the term of impris-
18 onment for the offense is based on recidivist or other
19 enhancements, and regardless of whether the convic-
20 tion was entered before, on, or after September 30,
21 1996, as established by evidence contained in the
22 record of conviction or by evidence extrinsic to the
23 record of conviction (or as a matter of fact), and
24 means—”;

1 (2) in subparagraph (A), by striking “murder,
2 rape, or sexual abuse of a minor”; and inserting
3 “murder, manslaughter, homicide, rape, or an of-
4 fense of a sexual nature involving a victim under the
5 age of 18 (whether or not the age of the victim is
6 established by evidence contained in the record of
7 conviction or by evidence extrinsic to the record of
8 conviction) or the failure of an individual to register
9 as a sex offender as required under section 2250 of
10 title 18, United States Code;”;

11 (3) by amending subparagraph (F) to read as
12 follows:

13 “(F)(i) a crime of violence (as defined in
14 section 16 of title 18, United States Code, but
15 not including a purely political offense) for
16 which the term of imprisonment is at least 1
17 year; or

18 “(ii) a second conviction for driving while
19 intoxicated (including a second conviction for
20 driving while intoxicated or impaired by alcohol
21 or drugs) under Federal or State law, without
22 regard to whether the conviction is classified as
23 a felony or misdemeanor under Federal or State
24 law, for which the term of imprisonment is at
25 least 1 year.”;

1 (4) in subparagraph (N), by striking “para-
2 graph (1)(A) or (2) of”;

3 (5) in subparagraph (O), by striking “section
4 275(a) or 276 committed by an alien who was pre-
5 viously deported on the basis of a conviction for an
6 offense described in another subparagraph of this
7 paragraph” and inserting “section 275 or 276 for
8 which the term of imprisonment is at least 1 year”;

9 (6) in subparagraph (U), by striking “an at-
10 tempt or conspiracy to commit an offense described
11 in this paragraph” and inserting “attempting or
12 conspiring to commit an offense described in this
13 paragraph, or aiding ,abetting, counseling, pro-
14 curing, commanding, inducing, or soliciting the com-
15 mission of such an offense”; and

16 (7) by striking the undesignated matter fol-
17 lowing subparagraph (U); and

18 (b) DEFINITION OF CONVICTION.—Section
19 101(a)(48) (8 U.S.C. 1101(a)(48)) is amended by insert-
20 ing after clause (B) the following:

21 “(C) Any reversal, vacatur, expungement, or
22 modification to a conviction, sentence, or conviction
23 record that was granted to ameliorate the con-
24 sequences of the conviction, sentence, or conviction
25 record, or was granted for rehabilitative purposes, or

1 for failure to advise the alien of the immigration
2 consequences of a guilty plea or a determination of
3 guilt, shall have no effect on the immigration con-
4 sequences resulting from the original conviction. The
5 alien shall have the burden of demonstrating that
6 any reversal, vacatur, expungement, or modification
7 was not granted to ameliorate the consequences of
8 the conviction, sentence, or conviction record, for re-
9 habilitative purposes, or for failure to advise the
10 alien of the immigration consequences of a guilty
11 plea or a determination of guilt. Nothing in this
12 paragraph affects the consequences of any reversal,
13 vacatur, expungement, or modification of a convic-
14 tion for any other reason, including legal error or
15 constitutional defect.”.

16 (c) EFFECTIVE DATE AND APPLICATION.—The
17 amendments made by subsection (a) shall take effect on
18 the date of the enactment of this Act and shall apply to
19 any act or offense that occurred before, on, or after the
20 date of the enactment of this Act.

21 **SEC. 204. INADMISSIBILITY AND DEPORTABILITY OF GANG**
22 **MEMBERS.**

23 (a) DEFINITION OF CRIMINAL GANG.—Section
24 101(a) (8 U.S.C. 1101(a)) is amended by inserting after
25 paragraph (51) the following:

1 “(52)(A) The term ‘criminal gang’ means an
2 ongoing group, club, organization, or association of
3 5 or more persons—

4 “(i) that has, as 1 of its primary purposes,
5 the commission of 1 or more of the criminal of-
6 fenses described in subparagraph (B); and

7 “(ii) the members of which engage, or have
8 engaged within the past 5 years, in a con-
9 tinuing series of offenses described in subpara-
10 graph (B).

11 “(B) Offenses described in this subparagraph,
12 whether in violation of Federal or State law or in
13 violation of the law of a foreign country, regardless
14 of whether charged, and regardless of whether the
15 conduct occurred before, on, or after the date of the
16 enactment of this paragraph, are—

17 “(i) a felony drug offense (as defined in
18 section 102 of the Controlled Substances Act
19 (21 U.S.C. 802));

20 “(ii) a felony offense involving firearms or
21 explosives, including a violation of section
22 924(c), 924(h), or 931 of title 18 (relating to
23 purchase, ownership, or possession of body
24 armor by violent felons);

1 “(iii) an offense under section 274 (relat-
2 ing to bringing in and harboring certain aliens),
3 section 277 (relating to aiding or assisting cer-
4 tain aliens to enter the United States), or sec-
5 tion 278 (relating to the importation of an alien
6 for immoral purpose);

7 “(iv) a felony crime of violence (as defined
8 in section 16 of title 18, United States Code);

9 “(v) a crime involving obstruction of jus-
10 tice; tampering with or retaliating against a
11 witness, victim, or informant; or burglary;

12 “(vi) any conduct punishable under sec-
13 tions 1028 and 1029 of title 18, United States
14 Code (relating to fraud and related activity in
15 connection with identification documents or ac-
16 cess devices), sections 1581 through 1594 of
17 such title (relating to peonage, slavery and traf-
18 ficking in persons), section 1952 of such title
19 (relating to interstate and foreign travel or
20 transportation in aid of racketeering enter-
21 prises), section 1956 of such title (relating to
22 the laundering of monetary instruments), sec-
23 tion 1957 of such title (relating to engaging in
24 monetary transactions in property derived from
25 specified unlawful activity), or sections 2312

1 through 2315 of such title (relating to inter-
2 state transportation of stolen motor vehicles or
3 stolen property); and

4 “(vii) a conspiracy to commit an offense
5 described in clause (i) through (vi).”.

6 (b) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C.
7 1182(a)(2)) is amended by striking subparagraph (F) and
8 inserting the following:

9 “(F) ALIENS ASSOCIATED WITH CRIMINAL
10 GANGS.—

11 “(i) IN GENERAL.—Any alien whom—

12 “(I) a consular officer, the Attor-
13 ney General, or the Secretary of
14 Homeland Security knows or has rea-
15 son to believe to be or have been a
16 member of a criminal gang; or

17 “(II) a consular officer, the At-
18 torney General, or the Secretary of
19 Homeland Security knows or has rea-
20 son to believe to have participated in
21 the activities of a criminal gang,
22 knowing or having reason to know
23 that such activities will promote, fur-
24 ther, aid, or support the illegal activ-
25 ity of the criminal gang,

1 is inadmissible.

2 “(ii) WAIVER.—The Secretary of
3 Homeland Security or the Attorney Gen-
4 eral may waive the application of sub-
5 clauses (I) and (II) of clause (i) for any
6 alien who is the parent, spouse, or child of
7 a United States citizen and who establishes
8 that his or her removal from the United
9 States would result in extreme hardship to
10 such parent, spouse, or child.”.

11 (c) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C.
12 1227(a)(2)) is amended by adding at the end the fol-
13 lowing:

14 “(F) ALIENS ASSOCIATED WITH CRIMINAL
15 GANGS.—

16 “(i) IN GENERAL.—Any alien whom—

17 “(I) there is reasonable ground
18 to believe is or has been a member of
19 a criminal gang; or

20 “(II) there is reasonable ground
21 to believe has participated in the ac-
22 tivities of a criminal gang, knowing or
23 having reason to know that such ac-
24 tivities will promote, further, aid, or

1 support the illegal activity of the
2 criminal gang,
3 is deportable.

4 “(ii) WAIVER.—The Secretary of
5 Homeland Security or the Attorney Gen-
6 eral may waive the application of sub-
7 clauses (I) and (II) of clause (i) for any
8 alien who is the parent, spouse, or child of
9 a United States citizen and who establishes
10 that his or her removal from the United
11 States would result in extreme hardship to
12 such parent, spouse, or child.”.

13 (d) TEMPORARY PROTECTED STATUS.—Section 244
14 (8 U.S.C. 1254a) is amended—

15 (1) by striking “Attorney General” each place
16 it appears and inserting “Secretary of Homeland Se-
17 curity”;

18 (2) in subparagraph (c)(2)(B)—

19 (A) in clause (i), by striking “or” and in-
20 serting a semicolon;

21 (B) in clause (ii), by striking the period at
22 the end and inserting a semicolon; and

23 (C) by adding at the end the following:

24 “(iii) the alien participates in, or at
25 any time after admission has participated

1 in, knowing or having reason to know that
2 such participation promoted, furthered,
3 aided, or supported the illegal activity of
4 the gang, the activities of a criminal gang;
5 or

6 “(iv) the alien is a member of a crimi-
7 nal gang.”; and

8 (3) in subsection (d)—

9 (A) in paragraph (2)—

10 (i) by striking “Subject to paragraph
11 (3), such” and inserting “Such”; and

12 (ii) by striking “(under paragraph
13 (3))”;

14 (B) by striking paragraph (3);

15 (C) by redesignating paragraph (4) as
16 paragraph (3); and

17 (D) in paragraph (3), as redesignated, by
18 adding at the end the following: “The Secretary
19 of Homeland Security may detain an alien pro-
20 vided temporary protected status under this
21 section whenever appropriate under any other
22 provision.”.

23 (e) EFFECTIVE DATE.—Notwithstanding any other
24 provision of this Act, the amendments made by sub-
25 sections (b), (c), and (d) of this section shall apply to—

1 (1) all aliens required to establish admissibility
2 on or after the date of the enactment of this Act;
3 and

4 (2) all aliens in removal, deportation, or exclu-
5 sion proceedings that are filed, pending, or reopened,
6 on or after such date of enactment.

7 (f) PRECLUDING ADMISSIBILITY OF ALIENS CON-
8 VICTED OF SERIOUS CRIMINAL OFFENSES AND DOMESTIC
9 VIOLENCE, STALKING, CHILD ABUSE AND VIOLATION OF
10 PROTECTION ORDERS.—

11 (1) INADMISSIBILITY ON CRIMINAL AND RE-
12 LATED GROUNDS; WAIVERS.—Section 212 (8 U.S.C.
13 1182) is amended—

14 (A) in subsection (a)(2), by adding at the
15 end the following:

16 “(J) CRIMES OF DOMESTIC VIOLENCE,
17 STALKING, OR VIOLATION OF PROTECTION OR-
18 DERS; CRIMES AGAINST CHILDREN.—

19 “(i) DOMESTIC VIOLENCE, STALKING,
20 AND CHILD ABUSE.—

21 “(I) IN GENERAL.—Any alien
22 who is convicted of, or who admits
23 committing or having committed acts
24 which constitute the essential ele-
25 ments of, a crime of domestic violence,

1 stalking, child abuse, child neglect, or
2 child abandonment is inadmissible.

3 “(II) DEFINED TERM.—In this
4 clause, the term ‘crime of domestic vi-
5 olence’ means any crime of violence
6 (as defined in section 16 of title 18,
7 United States Code) against a person
8 committed by a current or former
9 spouse of the person, by an individual
10 with whom the person shares a child
11 in common, by an individual who is
12 cohabiting with or has cohabited with
13 the person as a spouse, by an indi-
14 vidual similarly situated to a spouse
15 of the person under the domestic or
16 family violence laws of the jurisdiction
17 where the offense occurs, or by any
18 other individual against a person who
19 is protected from that individual’s
20 acts under the domestic or family vio-
21 lence laws of the United States or any
22 State, Indian tribal government, or
23 unit of local or foreign government.

24 “(ii) VIOLATORS OF PROTECTION OR-
25 DERS.—

1 “(I) IN GENERAL.—Any alien
2 who at any time is enjoined under a
3 protection order issued by a court and
4 whom the court determines has en-
5 gaged in conduct that violates the por-
6 tion of a protection order that involves
7 protection against credible threats of
8 violence, repeated harassment, or bod-
9 ily injury to the person or persons for
10 whom the protection order was issued
11 is inadmissible.

12 “(II) DEFINED TERM.—In this
13 clause, the term ‘protection order’
14 means any injunction issued for the
15 purpose of preventing violent or
16 threatening acts of domestic violence,
17 including temporary or final orders
18 issued by civil or criminal courts
19 (other than support or child custody
20 orders or provisions) whether obtained
21 by filing an independent action or as
22 an independent order in another pro-
23 ceedings.”; and

24 (B) in subsection (h)—

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

4 (ii) in the matter preceding paragraph
5 (1), by striking “The Attorney General
6 may, in his discretion, waive the applica-
7 tion of subparagraphs (A)(i)(I), (B), (D),
8 and (E) of subsection (a)(2)” and inserting
9 “The Attorney General or the Secretary of
10 Homeland Security may waive the applica-
11 tion of subparagraphs (A)(i)(I), (B), (D),
12 (E), and (M) of subsection (a)(2)”;

13 (iii) in the matter following paragraph
14 (2)—

15 (I) by striking “torture.” and in-
16 serting “torture, or has been convicted
17 of an aggravated felony.”; and

18 (II) by striking “if either since
19 the date of such admission the alien
20 has been convicted of an aggravated
21 felony or the alien” and inserting “if
22 since the date of such admission the
23 alien”.

24 (2) CONSTRUCTION.—The amendment made by
25 paragraph (1) may not be construed to create eligi-

1 bility for relief from removal under the former sec-
2 tion 212(c) of the Immigration and Nationality Act
3 if such eligibility did not exist before the amendment
4 became effective.

5 **SEC. 205. GROUNDS OF INADMISSIBILITY AND DEPORT-**
6 **ABILITY RELATING TO REMOVAL AND FIRE-**
7 **ARM OFFENSES.**

8 (a) PENALTIES RELATED TO REMOVAL.—Section
9 243 (8 U.S.C. 1253) is amended—

10 (1) in subsection (a)(1)—

11 (A) in the matter preceding subparagraph
12 (A), by inserting “212(a) or” after “section”;
13 and

14 (B) in the matter following subparagraph
15 (D), by striking “or imprisoned not more than
16 four years” and inserting “and imprisoned for
17 not more than 5 years”; and

18 (2) in subsection (b), by striking “not more
19 than \$1,000 or imprisoned for not more than one
20 year, or both” and inserting “under title 18, United
21 States Code, and imprisoned for not more than 5
22 years (or for not more than 10 years if the alien is
23 a member of any of the classes described in para-
24 graphs (1)(E), (2), (3), and (4) of section 237(a)).”.

1 (b) PROHIBITING CARRYING OR USING A FIREARM
 2 DURING AND IN RELATION TO AN ALIEN SMUGGLING
 3 CRIME.—Section 924(c) of title 18, United States Code,
 4 is amended—

5 (1) in paragraph (1)—

6 (A) in subparagraph (A)—

7 (i) by inserting “, alien smuggling
 8 crime,” after “any crime of violence”; and

9 (ii) by inserting “, alien smuggling
 10 crime,” after “such crime of violence”; and

11 (B) in subparagraph (D)(ii), by inserting
 12 “, alien smuggling crime,” after “crime of vio-
 13 lence”; and

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

15 “(6) In this subsection, the term ‘alien smug-
 16 gling crime’ means any felony punishable under sec-
 17 tion 274(a), 277, or 278 of the Immigration and
 18 Nationality Act (8 U.S.C. 1324(a), 1327, and
 19 1328).”.

20 (c) INADMISSIBILITY FOR FIREARMS OFFENSES.—
 21 Section 212(a)(2) (8 U.S.C. 1182(a)(2)), as amended by
 22 this Act, is further amended by adding at the end the fol-
 23 lowing:

24 “(L) CERTAIN FIREARM OFFENSES.—Any
 25 alien who at any time has been convicted under

1 any law of, or who admits having committed or
2 admits committing acts which constitute the es-
3 sential elements of, purchasing, selling, offering
4 for sale, exchanging, using, owning, possessing,
5 or carrying, or of attempting or conspiring to
6 purchase, sell, offer for sale, exchange, use,
7 own, possess, or carry, any weapon, part, or ac-
8 cessory which is a firearm or destructive device
9 (as defined in section 921(a) of title 18, United
10 States Code) in violation of any law is inadmis-
11 sible.”.

12 (d) CONSTRUCTION.—The amendments made by this
13 section may not be construed to create eligibility for relief
14 from removal under former section 212(e) of the Immigra-
15 tion and Nationality Act if such eligibility did not exist
16 before the amendments became effective.

17 **SEC. 206. ALIEN SMUGGLING AND RELATED OFFENSES.**

18 (a) IN GENERAL.—Section 274 (8 U.S.C. 1324), is
19 amended to read as follows:

20 **“SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.**

21 “(a) CRIMINAL OFFENSES AND PENALTIES.—

22 “(1) PROHIBITED ACTIVITIES.—Except as pro-
23 vided under paragraph (3), a person shall be pun-
24 ished as provided under paragraph (2), if the per-
25 son—

1 “(A) facilitates, encourages, directs, or in-
2 duces a person to come to or enter the United
3 States, or to cross the border to the United
4 States, knowing or in reckless disregard of the
5 fact that such person is an alien who lacks law-
6 ful authority to come to, enter, or cross the bor-
7 der to the United States;

8 “(B) facilitates, encourages, directs, or in-
9 duces a person to come to or enter the United
10 States, or to cross the border to the United
11 States, at a place other than a designated port
12 of entry or place other than as designated by
13 the Secretary of Homeland Security, knowing
14 or in reckless disregard of the fact that such
15 person is an alien and regardless of whether
16 such alien has official permission or lawful au-
17 thority to be in the United States;

18 “(C) transports, moves, harbors, conceals,
19 or shields from detection a person outside of
20 the United States knowing or in reckless dis-
21 regard of the fact that such person is an alien
22 in unlawful transit from 1 country to another
23 or on the high seas, under circumstances in
24 which the alien is seeking to enter the United

1 States without official permission or legal au-
2 thority;

3 “(D) encourages or induces a person to re-
4 side in the United States, knowing or in reck-
5 less disregard of the fact that such person is an
6 alien who lacks lawful authority to reside in the
7 United States;

8 “(E) transports or moves a person in the
9 United States, knowing or in reckless disregard
10 of the fact that such person is an alien who
11 lacks lawful authority to enter or be in the
12 United States, if the transportation or move-
13 ment will further the alien’s illegal entry into or
14 illegal presence in the United States;

15 “(F) harbors, conceals, or shields from de-
16 tection a person in the United States, knowing
17 or in reckless disregard of the fact that such
18 person is an alien who lacks lawful authority to
19 be in the United States; or

20 “(G) conspires or attempts to commit any
21 of the acts described in subparagraphs (A)
22 through (F).

23 “(2) CRIMINAL PENALTIES.—A person who vio-
24 lates any provision under paragraph (1) shall for

1 each alien in respect to whom a violation of para-
2 graph (1) occurs—

3 “(A) except as provided in subparagraphs
4 (C) through (G), if the violation was not com-
5 mitted for commercial advantage, profit, or pri-
6 vate financial gain, shall be fined under title 18,
7 United States Code, imprisoned for not more
8 than 5 years, or both;

9 “(B) except as provided in subparagraphs
10 (C) through (G), if the violation was committed
11 for commercial advantage, profit, or private fi-
12 nancial gain—

13 “(i) be fined under such title, impris-
14 oned for not less than 3 years or more
15 than 15 years, or both, if the violation is
16 the offender’s first violation under this
17 subparagraph; or

18 “(ii) be fined under such title, impris-
19 oned for not less than 5 years or more
20 than 20 years, or both, if the violation is
21 the offender’s second or subsequent viola-
22 tion of this subparagraph;

23 “(C) if the violation furthered or aided the
24 commission of any other offense against the
25 United States or any State that is punishable

1 by imprisonment for more than 1 year, shall be
2 fined under such title, imprisoned for not less
3 than 5 years or more than 20 years, or both;

4 “(D) shall be fined under such title, im-
5 prisoned not less than 5 years or more than 25
6 years, or both, if the violation created a sub-
7 stantial and foreseeable risk of death, a sub-
8 stantial and foreseeable risk of serious bodily
9 injury (as defined in section 2119(2) of title 18,
10 United States Code), or inhumane conditions to
11 another person, including—

12 “(i) transporting the person in an en-
13 gine compartment, storage compartment,
14 or other confined space;

15 “(ii) transporting the person at an ex-
16 cessive speed or in excess of the rated ca-
17 pacity of the means of transportation; or

18 “(iii) transporting the person in, har-
19 boring the person in, or otherwise sub-
20 jecting the person to crowded or dangerous
21 conditions;

22 “(E) if the violation caused serious bodily
23 injury (as defined in section 2119(2) of title 18,
24 United States Code) to any person, shall be

1 fined under such title, imprisoned for not less
2 than 7 years or more than 30 years, or both;

3 “(F) be fined under such title and impris-
4 oned for not less than 10 years or more than
5 30 years if the violation involved an alien who
6 the offender knew or had reason to believe
7 was—

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

10 “(ii) intending to engage in terrorist
11 activity;

12 “(G) if the offense caused or resulted in
13 the death of any person, shall be punished by
14 death or imprisoned for a term of years not less
15 than 15 years and up to life, and fined under
16 title 18, United States Code.

17 “(3) LIMITATION.—It is not a violation of sub-
18 paragraph (D), (E), or (F) of paragraph (1)— for
19 a religious denomination having a bona fide non-
20 profit, religious organization in the United States, or
21 the agents or officers of such denomination or orga-
22 nization, to encourage, invite, call, allow, or enable
23 an alien who is present in the United States to per-
24 form the vocation of a minister or missionary for the
25 denomination or organization in the United States

1 as a volunteer who is not compensated as an em-
2 ployee, notwithstanding the provision of room,
3 board, travel, medical assistance, and other basic liv-
4 ing expenses, provided the minister or missionary
5 has been a member of the denomination for at least
6 1 year.

7 “(4) EXTRATERRITORIAL JURISDICTION.—
8 There is extraterritorial Federal jurisdiction over the
9 offenses described in this subsection.

10 “(b) SEIZURE AND FORFEITURE.—

11 “(1) IN GENERAL.—Any real or personal prop-
12 erty used to commit or facilitate the commission of
13 a violation of this section, the gross proceeds of such
14 violation, and any property traceable to such prop-
15 erty or proceeds, shall be subject to forfeiture.

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

1 “(3) PRIMA FACIE EVIDENCE IN DETERMINA-
2 TIONS OF VIOLATIONS.—In determining whether a
3 violation of subsection (a) has occurred, prima facie
4 evidence that an alien involved in the alleged viola-
5 tion lacks lawful authority to come to, enter, reside
6 in, remain in, or be in the United States or that
7 such alien had come to, entered, resided in, re-
8 mained in, or been present in the United States in
9 violation of law may include—

10 “(A) any order, finding, or determination
11 concerning the alien’s status or lack of status
12 made by a Federal judge or administrative ad-
13 judicator (including an immigration judge or
14 immigration officer) during any judicial or ad-
15 ministrative proceeding authorized under Fed-
16 eral immigration law;

17 “(B) official records of the Department of
18 Homeland Security, the Department of Justice,
19 or the Department of State concerning the
20 alien’s status or lack of status; and

21 “(C) testimony by an immigration officer
22 having personal knowledge of the facts con-
23 cerning the alien’s status or lack of status.

1 “(c) AUTHORITY TO ARREST.—No officer or person
2 shall have authority to make any arrests for a violation
3 of any provision of this section except—

4 “(1) officers and employees designated by the
5 Secretary of Homeland Security, either individually
6 or as a member of a class; and

7 “(2) other officers responsible for the enforce-
8 ment of Federal criminal laws.

9 “(d) ADMISSIBILITY OF VIDEOTAPED WITNESS TES-
10 TIMONY.—Notwithstanding any provision of the Federal
11 Rules of Evidence, the videotaped or otherwise audio-
12 visually preserved deposition of a witness to a violation
13 of subsection (a) who has been deported or otherwise ex-
14 pelled from the United States, or is otherwise unavailable
15 to testify, may be admitted into evidence in an action
16 brought for that violation if—

17 “(1) the witness was available for cross exam-
18 ination at the deposition by the party, if any, oppos-
19 ing admission of the testimony; and

20 “(2) the deposition otherwise complies with the
21 Federal Rules of Evidence.

22 “(e) DEFINITIONS.—In this section:

23 “(1) CROSS THE BORDER.—The term ‘cross the
24 border’ refers to the physical act of crossing the bor-

1 der into the United States regardless of whether the
2 alien is free from official restraint.

3 “(2) **LAWFUL AUTHORITY.**—The term ‘lawful
4 authority’ means permission, authorization, or li-
5 cense that is expressly provided for in the immigra-
6 tion laws of the United States or accompanying reg-
7 ulations. The term does not include any such au-
8 thority secured by fraud or otherwise obtained in
9 violation of law or authority sought, but not ap-
10 proved. No alien shall be deemed to have lawful au-
11 thority to come to, enter, reside in, remain in, or be
12 in the United States if such coming to, entry, resi-
13 dence, remaining, or presence was, is, or would be
14 in violation of law.

15 “(3) **PROCEEDS.**—The term ‘proceeds’ includes
16 any property or interest in property obtained or re-
17 tained as a consequence of an act or omission in vio-
18 lation of this section.

19 “(4) **UNLAWFUL TRANSIT.**—The term ‘unlawful
20 transit’ means travel, movement, or temporary pres-
21 ence that violates the laws of any country in which
22 the alien is present or any country from which the
23 alien is traveling or moving.”

1 (b) CLERICAL AMENDMENT.—The table of contents
2 is amended by striking the item relating to section 274
3 and inserting the following:

“Sec. 274. Alien smuggling and related offenses.”.

4 **SEC. 207. ILLEGAL ENTRY.**

5 (a) IN GENERAL.—Section 275 (8 U.S.C. 1325) is
6 amended to read as follows:

7 **“SEC. 275. ILLEGAL ENTRY.**

8 “(a) IN GENERAL.—

9 “(1) CRIMINAL OFFENSES.—An alien shall be
10 subject to the penalties set forth in paragraph (2) if
11 the alien—

12 “(A) knowingly enters or crosses the bor-
13 der into the United States at any time or place
14 other than as designated by the Secretary of
15 Homeland Security;

16 “(B) knowingly eludes examination or in-
17 spection by an immigration officer (including
18 failing to stop at the command of such officer),
19 or a customs or agriculture inspection at a port
20 of entry;

21 “(C) knowingly enters or crosses the bor-
22 der to the United States by means of a know-
23 ingly false or misleading representation or the
24 knowing concealment of a material fact (includ-
25 ing such representation or concealment in the

1 context of arrival, reporting, entry, or clearance
2 requirements of the customs laws, immigration
3 laws, agriculture laws, or shipping laws);

4 “(D) knowingly exceeds for a period of 90
5 days or more the period of the alien’s admission
6 or parole to the United States; or

7 “(E) is found in the United States after
8 having violated any of subparagraphs (A)
9 through (D).

10 “(2) CRIMINAL PENALTIES.—Any alien who
11 violates any provision under paragraph (1)—

12 “(A) shall, for the first violation, be fined
13 under title 18, United States Code, imprisoned
14 not more than 6 months, or both;

15 “(B) shall, for a second or subsequent vio-
16 lation, or following an order of voluntary depar-
17 ture, be fined under such title, imprisoned not
18 more than 2 years, or both;

19 “(C) if the violation occurred after the
20 alien had been convicted of 3 or more mis-
21 demeanors or for a felony, shall be fined under
22 such title, imprisoned not more than 10 years,
23 or both;

24 “(D) if the violation occurred after the
25 alien had been convicted of a felony for which

1 the alien received a term of imprisonment of
2 not less than 24 months, shall be fined under
3 such title, imprisoned not more than 15 years,
4 or both; and

5 “(E) if the violation occurred after the
6 alien had been convicted of a felony for which
7 the alien received a term of imprisonment of
8 not less than 48 months, such alien shall be
9 fined under such title, imprisoned not more
10 than 20 years, or both.

11 “(3) PRIOR CONVICTIONS.—The prior convic-
12 tions described in subparagraphs (C) through (E) of
13 paragraph (2) are elements of the offenses described
14 in that paragraph and the penalties in such subpara-
15 graphs shall apply only in cases in which the convic-
16 tion or convictions that form the basis for the addi-
17 tional penalty are—

18 “(A) alleged in the indictment or informa-
19 tion; and

20 “(B) proven beyond a reasonable doubt at
21 trial or admitted by the defendant.

22 “(4) DURATION OF OFFENSE.—An offense
23 under this subsection continues until the alien is dis-
24 covered within the United States by an immigration
25 officer.

1 “(5) ATTEMPT.—Any person who attempts to
2 commit any offense under this section shall be pun-
3 ished in the same manner as for a completion of
4 such offense.

5 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
6 ALTIES.—Any alien who is apprehended while entering, at-
7 tempting to enter, or knowingly crossing or attempting to
8 cross the border to the United States at a time or place
9 other than as designated by immigration officers shall be
10 subject to a civil penalty, in addition to any criminal or
11 other civil penalties that may be imposed under any other
12 provision of law, in an amount equal to—

13 “(1) not less than \$50 or more than \$250 for
14 each such entry, crossing, attempted entry, or at-
15 tempted crossing; or

16 “(2) twice the amount specified in paragraph
17 (1) if the alien had previously been subject to a civil
18 penalty under this subsection.”.

19 (b) CLERICAL AMENDMENT.—The table of contents
20 is amended by striking the item relating to section 275
21 and inserting the following:

“Sec. 275. Illegal Entry.”.

22 (c) EFFECTIVE DATE.—Subparagraph (E) of section
23 275(a)(1) of the Immigration and Nationality Act, as
24 added by this Act, shall apply only to violations of sub-

1 paragraphs (A) through (D) of such section 275(a)(1)
2 committed on or after the date of enactment of this Act.

3 **SEC. 208. CRIMINAL PENALTIES FOR ALIENS UNLAWFULLY**
4 **PRESENT IN THE UNITED STATES.**

5 Title II (8 U.S.C. 1151 et seq.) is amended by adding
6 after section 275 the following:

7 **“SEC. 275A. CRIMINAL PENALTIES FOR UNLAWFUL PRES-**
8 **ENCE IN THE UNITED STATES.**

9 “(a) IN GENERAL.—In addition to any other viola-
10 tion, an alien present in the United States in violation of
11 this Act shall be guilty of a misdemeanor and shall be
12 fined under title 18, United States Code, imprisoned not
13 more than 1 year, or both.

14 “(b) AFFIRMATIVE DEFENSE.—It shall be an affirm-
15 ative defense to a violation under subsection (a) that the
16 alien overstayed the time allotted under the alien’s visa
17 due to an exceptional and extremely unusual hardship or
18 physical illness that prevented the alien from leaving the
19 United States by the required date.”.

20 **SEC. 209. ILLEGAL REENTRY.**

21 Section 276 (8 U.S.C. 1326) is amended to read as
22 follows:

23 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

24 “(a) REENTRY AFTER REMOVAL.—Any alien who
25 has been denied admission, excluded, deported, or re-

1 moved, or who has departed the United States while an
2 order of exclusion, deportation, or removal is outstanding,
3 and subsequently enters, attempts to enter, crosses the
4 border to, attempts to cross the border to, or is at any
5 time found in the United States, shall be fined under title
6 18, United States Code, and imprisoned not less than 60
7 days and not more than 2 years.

8 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
9 withstanding the penalty provided in subsection (a), if an
10 alien described in that subsection—

11 “(1) was convicted for 3 or more misdemeanors
12 or a felony before such removal or departure, the
13 alien shall be fined under title 18, United States
14 Code, and imprisoned not more than 10 years, or
15 both;

16 “(2) was convicted for a felony before such re-
17 moval or departure for which the alien was sen-
18 tenced to a term of imprisonment of not less than
19 24 months, the alien shall be fined under such title,
20 and imprisoned not more than 15 years, or both;

21 “(3) was convicted for a felony before such re-
22 moval or departure for which the alien was sen-
23 tenced to a term of imprisonment of not less than
24 48 months, the alien shall be fined under such title,
25 and imprisoned not more than 20 years, or both;

1 “(4) was convicted for 3 felonies before such re-
2 moval or departure, the alien shall be fined under
3 such title, and imprisoned not more than 20 years,
4 or both; or

5 “(5) was convicted, before such removal or de-
6 parture, for murder, rape, kidnaping, or a felony of-
7 fense described in chapter 77 (relating to peonage
8 and slavery) or 113B (relating to terrorism) of such
9 title, the alien shall be fined under such title, and
10 imprisoned not less than 5 years and not more than
11 20 years, or both.

12 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
13 alien who has been denied admission, excluded, deported,
14 or removed 3 or more times and thereafter enters, at-
15 tempts to enter, crosses the border to, attempts to cross
16 the border to, or is at any time found in the United States,
17 shall be fined under title 18, United States Code, and im-
18 prisoned not fewer than 2 years and not more than 10
19 years, or both.

20 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
21 convictions described in subsection (b) are elements of the
22 crimes described in that subsection, and the penalties in
23 that subsection shall apply only in cases in which the con-
24 viction or convictions that form the basis for the additional
25 penalty are—

1 “(1) alleged in the indictment or information;
2 and

3 “(2) proven beyond a reasonable doubt at trial
4 or admitted by the defendant.

5 “(e) AFFIRMATIVE DEFENSES.—It shall be an af-
6 firmative defense to a violation of this section that—

7 “(1) prior to the alleged violation, the alien had
8 sought and received the express consent of the Sec-
9 retary of Homeland Security to reapply for admis-
10 sion into the United States; or

11 “(2) with respect to an alien previously denied
12 admission and removed, the alien—

13 “(A) was not required to obtain such ad-
14 vance consent under the Immigration and Na-
15 tionality Act or any prior Act; and

16 “(B) had complied with all other laws and
17 regulations governing the alien’s admission into
18 the United States.

19 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
20 DERLYING REMOVAL ORDER.—In a criminal proceeding
21 under this section, an alien may not challenge the validity
22 of any prior removal order concerning the alien unless the
23 alien demonstrates by clear and convincing evidence
24 that—

1 “(1) the alien exhausted all administrative remedies that may have been available to seek relief
2 against the order;
3

4 “(2) the removal proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
5
6

7 “(3) the entry of the order was fundamentally unfair.
8

9 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall
10 be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation
11 without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to
12 the alien’s reentry. Such alien shall be subject to such
13 other penalties relating to the reentry of removed aliens
14 as may be available under this section or any other provision of law.
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23 “(h) DEFINITIONS.—In this section:

24 “(1) FELONY.—The term ‘felony’ means any
25 criminal offense punishable by a term of imprison-

1 ment of more than 1 year under the laws of the
 2 United States, any State, or a foreign government.

3 “(2) MISDEMEANOR.—The term ‘misdemeanor’
 4 means any criminal offense punishable by a term of
 5 imprisonment of not more than 1 year under the ap-
 6 plicable laws of the United States, any State, or a
 7 foreign government.

8 “(3) REMOVAL.—The term ‘removal’ includes
 9 any denial of admission, exclusion, deportation (in-
 10 cluding self deportation), or removal, or any agree-
 11 ment by which an alien stipulates or agrees to exclu-
 12 sion, deportation, or removal.

13 “(4) STATE.—The term ‘State’ means a State
 14 of the United States, the District of Columbia, and
 15 any commonwealth, territory, or possession of the
 16 United States.”.

17 **SEC. 210. REFORM OF PASSPORT, VISA, AND IMMIGRATION**
 18 **FRAUD OFFENSES.**

19 Chapter 75 of title 18, United States Code, is amend-
 20 ed to read as follows:

“CHAPTER 75—PASSPORT, VISA, AND IMMIGRATION FRAUD

“Sec.

“1541. Trafficking in passports.

“1542. False statement in an application for a passport.

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Marriage fraud.

“1548. Attempts and conspiracies.

“1549. Alternative penalties for certain offenses.

“1550. Seizure and forfeiture.

“1551. Additional jurisdiction.

“1552. Definitions.

“1553. Authorized law enforcement activities.

1 **“SEC. 1541. TRAFFICKING IN PASSPORTS.**

2 “(a) **MULTIPLE PASSPORTS.**—Any person who, dur-
3 ing any 3-year period, knowingly—

4 “(1) and without lawful authority produces,
5 issues, or transfers 10 or more passports;

6 “(2) forges, counterfeits, alters, or falsely
7 makes 10 or more passports;

8 “(3) secures, possesses, uses, receives, buys,
9 sells, or distributes 10 or more passports, knowing
10 the passports to be forged, counterfeited, altered,
11 falsely made, stolen, procured by fraud, or produced
12 or issued without lawful authority; or

13 “(4) completes, mails, prepares, presents, signs,
14 or submits 10 or more applications for a United
15 States passport, knowing the applications to contain
16 any false statement or representation,

17 shall be fined under this title, imprisoned for not less than
18 2 years and not more than 20 years, or both.

19 “(b) **PASSPORT MATERIALS.**—Any person who know-
20 ingly and without lawful authority produces, buys, sells,
21 possesses, or uses any official material (or counterfeit of
22 any official material) used to make a passport, including
23 any distinctive paper, seal, hologram, image, text, symbol,

1 stamp, engraving, or plate, shall be fined under this title,
2 imprisoned for not less than 2 years and not more than
3 20 years, or both.

4 **“SEC. 1542. FALSE STATEMENT IN AN APPLICATION FOR A**
5 **PASSPORT.**

6 “(a) IN GENERAL.—Any person who knowingly
7 makes any false statement or representation in an applica-
8 tion for a United States passport, or mails, prepares, pre-
9 sents, or signs an application for a United States passport
10 knowing the application to contain any false statement or
11 representation, shall be fined under this title, imprisoned
12 for not more than 15 years, or both.

13 “(b) VENUE.—

14 “(1) An offense under subsection (a) may be
15 prosecuted in any district,

16 “(A) in which the false statement or rep-
17 resentation was made or the application for a
18 United States passport was prepared or signed,
19 or

20 “(B) in which or to which the application
21 was mailed or presented.

22 “(2) An offense under subsection (a) involving
23 an application prepared and adjudicated outside the
24 United States may be prosecuted in the district in

1 which the resultant passport was or would have been
2 produced.

3 “(c) SAVINGS CLAUSE.—Nothing in this section may
4 be construed to limit the venue otherwise available under
5 sections 3237 and 3238.

6 **“SEC. 1543. FORGERY AND UNLAWFUL PRODUCTION OF A**
7 **PASSPORT.**

8 “(a) FORGERY.—Any person who—

9 “(1) knowingly forges, counterfeits, alters, or
10 falsely makes any passport; or

11 “(2) knowingly transfers any passport knowing
12 it to be forged, counterfeited, altered, falsely made,
13 stolen, or to have been produced or issued without
14 lawful authority,

15 shall be fined under this title, imprisoned for not more
16 than 15 years, or both.

17 “(b) UNLAWFUL PRODUCTION.—Any person who
18 knowingly and without lawful authority—

19 “(1) produces, issues, authorizes, or verifies a
20 passport in violation of the laws, regulations, or
21 rules governing the issuance of the passport;

22 “(2) produces, issues, authorizes, or verifies a
23 United States passport for or to any person, know-
24 ing or in reckless disregard of the fact that such
25 person is not entitled to receive a passport; or

1 “(3) transfers or furnishes a passport to any
2 person for use by any person other than the person
3 for whom the passport was issued or designed,
4 shall be fined under this title, imprisoned for not more
5 than 15 years, or both.

6 **“SEC. 1544. MISUSE OF A PASSPORT.**

7 “Any person who knowingly—

8 “(1) uses any passport issued or designed for
9 the use of another;

10 “(2) uses any passport in violation of the condi-
11 tions or restrictions therein contained, or in violation
12 of the laws, regulations, or rules governing the
13 issuance and use of the passport;

14 “(3) secures, possesses, uses, receives, buys,
15 sells, or distributes any passport knowing it to be
16 forged, counterfeited, altered, falsely made, procured
17 by fraud, or produced or issued without lawful au-
18 thority; or

19 “(4) violates the terms and conditions of any
20 safe conduct duly obtained and issued under the au-
21 thority of the United States,

22 shall be fined under this title, imprisoned for not more
23 than 15 years, or both.

1 **“SEC. 1545. SCHEMES TO DEFRAUD ALIENS.**

2 “(a) IN GENERAL.—Any person who knowingly exe-
3 cutes a scheme or artifice, in connection with any matter
4 that is authorized by or arises under Federal immigration
5 laws or any matter the offender claims or represents is
6 authorized by or arises under Federal immigration laws,
7 to—

8 “(1) defraud any person, or

9 “(2) obtain or receive money or anything else of
10 value from any person, by means of false or fraudu-
11 lent pretenses, representations, or promises,
12 shall be fined under this title, imprisoned for not more
13 than 15 years, or both.

14 “(b) MISREPRESENTATION.—Any person who know-
15 ingly and falsely represents that such person is an attor-
16 ney or accredited representative (as that term is defined
17 in section 1292.1 of title 8, Code of Federal Regulations
18 (or any successor regulation to such section)) in any mat-
19 ter arising under Federal immigration laws shall be fined
20 under this title, imprisoned for not more than 15 years,
21 or both.

22 **“SEC. 1546. IMMIGRATION AND VISA FRAUD.**

23 “(a) IN GENERAL.—Any person who knowingly—

24 “(1) uses any immigration document issued or
25 designed for the use of another;

1 “(2) forges, counterfeits, alters, or falsely
2 makes any immigration document;

3 “(3) completes, mails, prepares, presents, signs,
4 or submits any immigration document knowing it to
5 contain any materially false statement or representa-
6 tion;

7 “(4) secures, possesses, uses, transfers, re-
8 ceives, buys, sells, or distributes any immigration
9 document knowing it to be forged, counterfeited, al-
10 tered, falsely made, stolen, procured by fraud, or
11 produced or issued without lawful authority;

12 “(5) adopts or uses a false or fictitious name to
13 evade or to attempt to evade the immigration laws;
14 or

15 “(6) transfers or furnishes, without lawful au-
16 thority, an immigration document to another person
17 for use by a person other than the person for whom
18 the immigration document was issued or designed,
19 shall be fined under this title, imprisoned for not more
20 than 15 years, or both.

21 “(b) MULTIPLE IMMIGRATION DOCUMENTS.—Any
22 person who, during any 3-year period, knowingly—

23 “(1) and without lawful authority produces,
24 issues, or transfers 10 or more immigration docu-
25 ments;

1 “(2) forges, counterfeits, alters, or falsely
2 makes 10 or more immigration documents;

3 “(3) secures, possesses, uses, buys, sells, or dis-
4 tributes 10 or more immigration documents, know-
5 ing the immigration documents to be forged, coun-
6 terfeited, altered, stolen, falsely made, procured by
7 fraud, or produced or issued without lawful author-
8 ity; or

9 “(4) completes, mails, prepares, presents, signs,
10 or submits 10 or more immigration documents
11 knowing the documents to contain any materially
12 false statement or representation,

13 shall be fined under this title, imprisoned for not more
14 than 20 years, or both.

15 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
16 person who knowingly and without lawful authority pro-
17 duces, buys, sells, or possesses any official material (or
18 counterfeit of any official material) used to make an immi-
19 gration document, including any distinctive paper, seal,
20 hologram, image, text, symbol, stamp, engraving, or plate,
21 shall be fined under this title, imprisoned for not more
22 than 20 years, or both.

23 “(d) EMPLOYMENT DOCUMENTS.—Any person who,
24 for the purpose of satisfying a requirement of section

1 274A(b) of the Immigration and Nationality Act (8 U.S.C.
2 1324a(b)), uses—

3 “(1) an identification document, knowing or
4 having reason to know that the document was not
5 issued lawfully for the use of the possessor;

6 “(2) an identification document knowing or
7 having reason to know that the document is false; or

8 “(3) a false attestation,

9 shall be fined under this title, imprisoned for not more
10 than 5 years, or both.

11 **“SEC. 1547. MARRIAGE FRAUD.**

12 “(a) EVASION OR MISREPRESENTATION.—Any per-
13 son who—

14 “(1) knowingly enters into a marriage for the
15 purpose of evading any provision of the immigration
16 laws; or

17 “(2) knowingly misrepresents the existence or
18 circumstances of a marriage—

19 “(A) in an application or document author-
20 ized by the immigration laws; or

21 “(B) during any immigration proceeding
22 conducted by an administrative adjudicator (in-
23 cluding an immigration officer or examiner, a
24 consular officer, an immigration judge, or a
25 member of the Board of Immigration Appeals),

1 shall be fined under this title, imprisoned for not more
2 than 10 years, or both.

3 “(b) MULTIPLE MARRIAGES.—Any person who—

4 “(1) knowingly enters into 2 or more marriages
5 for the purpose of evading any immigration law; or

6 “(2) knowingly arranges, supports, or facilitates
7 2 or more marriages designed or intended to evade
8 any immigration law,

9 shall be fined under this title, imprisoned for not less than
10 2 years and not more than 20 years, or both.

11 “(c) COMMERCIAL ENTERPRISE.—Any person who
12 knowingly establishes a commercial enterprise for the pur-
13 pose of evading any provision of the immigration laws
14 shall be fined under this title, imprisoned for not less than
15 2 years and not more than 10 years, or both.

16 “(d) DURATION OF OFFENSE.—

17 “(1) IN GENERAL.—An offense under sub-
18 section (a) or (b) continues until the fraudulent na-
19 ture of the marriage or marriages is discovered by
20 an immigration officer.

21 “(2) COMMERCIAL ENTERPRISE.—An offense
22 under subsection (c) continues until the fraudulent
23 nature of the commercial enterprise is discovered by
24 an immigration officer or other law enforcement offi-
25 cer.

1 **“SEC. 1548. ATTEMPTS AND CONSPIRACIES.**

2 “Any person who attempts or conspires to violate any
3 section of this chapter shall be punished in the same man-
4 ner as a person who completed a violation of that section.

5 **“SEC. 1549. ALTERNATIVE PENALTIES FOR CERTAIN OF-**
6 **FENSES.**

7 “(a) **TERRORISM.**—Any person who violates any sec-
8 tion in this chapter—

9 “(1) knowing that such violation will facilitate
10 an act of international terrorism or domestic ter-
11 rorism (as those terms are defined in section 2331),
12 or

13 “(2) with the intent to facilitate an act of inter-
14 national terrorism or domestic terrorism,
15 shall be fined under this title, imprisoned for not less than
16 7 years and not more than 25 years, or both.

17 “(b) **OFFENSE AGAINST GOVERNMENT.**—Any person
18 who violates any section in this chapter:

19 “(1) knowing that such violation will facilitate
20 the commission of any offense against the United
21 States (other than an offense in this chapter) or
22 against any State, which offense is punishable by
23 imprisonment for more than 1 year; or

24 “(2) with the intent to facilitate the commission
25 of any offense against the United States (other than
26 an offense in this chapter) or against any State,

1 which offense is punishable by imprisonment for
2 more than 1 year,
3 shall be fined under this title, imprisoned for not less than
4 3 years and not more than 20 years, or both.

5 **“SEC. 1550. SEIZURE AND FORFEITURE.**

6 “(a) FORFEITURE.—Any property, real or personal,
7 used to commit or facilitate the commission of a violation
8 of any section of this chapter, the gross proceeds of such
9 violation, and any property traceable to such property or
10 proceeds, shall be subject to forfeiture.

11 “(b) APPLICABLE LAW.—Seizures and forfeitures
12 under this section shall be governed by the provisions of
13 chapter 46 relating to civil forfeitures, except that such
14 duties as are imposed upon the Secretary of the Treasury
15 under the customs laws described in section 981(d) shall
16 be performed by such officers, agents, and other persons
17 as may be designated for that purpose by the Secretary
18 of Homeland Security, the Secretary of State, or the At-
19 torney General.

20 **“SEC. 1551. ADDITIONAL JURISDICTION.**

21 “(a) IN GENERAL.—Any person who commits an of-
22 fense under this chapter within the special maritime and
23 territorial jurisdiction of the United States shall be pun-
24 ished as provided under this chapter.

1 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-
2 son who commits an offense under this chapter outside
3 the United States shall be punished as provided under this
4 chapter if—

5 “(1) the offense involves a United States pass-
6 port or immigration document (or any document
7 purporting to be such a document) or any matter,
8 right, or benefit arising under or authorized by Fed-
9 eral immigration laws;

10 “(2) the offense is in or affects foreign com-
11 merce;

12 “(3) the offense affects, jeopardizes, or poses a
13 significant risk to the lawful administration of Fed-
14 eral immigration laws, or the national security of the
15 United States;

16 “(4) the offense is committed to facilitate an
17 act of international terrorism (as defined in section
18 2331) or a drug trafficking crime (as defined in sec-
19 tion 929(a)(2)) that affects or would affect the na-
20 tional security of the United States;

21 “(5) the offender is a national of the United
22 States or an alien lawfully admitted for permanent
23 residence in the United States (as such terms are
24 defined in section 101(a) of the Immigration and
25 Nationality Act (8 U.S.C. 1101(a))); or

1 “(6) the offender is a stateless person whose
2 habitual residence is in the United States.

3 **“SEC. 1552. DEFINITIONS.**

4 “As used in this chapter—

5 “(1) the term ‘application for a United States
6 passport’ includes any document, photograph, or
7 other piece of evidence attached to or submitted in
8 support of the application;

9 “(2) the term ‘false statement or representa-
10 tion’ includes a personation or an omission;

11 “(3) the term ‘falsely make’ means to prepare
12 or complete an immigration document with knowl-
13 edge or in reckless disregard of the fact that the
14 document—

15 “(A) contains a statement or representa-
16 tion that is false, fictitious, or fraudulent;

17 “(B) has no basis in fact or law; or

18 “(C) otherwise fails to state a fact which
19 is material to the purpose for which the docu-
20 ment was created, designed, or submitted;

21 “(4) the term ‘immigration document’—

22 “(A) means any application, petition, affi-
23 davit, declaration, attestation, form, visa, iden-
24 tification card, alien registration document, em-
25 ployment authorization document, border cross-

1 ing card, certificate, permit, order, license,
2 stamp, authorization, grant of authority, or
3 other official document, arising under or au-
4 thorized by the immigration laws of the United
5 States; and

6 “(B) includes any document, photograph,
7 or other piece of evidence attached to or sub-
8 mitted in support of an immigration document;

9 “(5) the term ‘immigration laws’ includes—

10 “(A) the laws described in section
11 101(a)(17) of the Immigration and Nationality
12 Act (8 U.S.C. 1101(a)(17));

13 “(B) the laws relating to the issuance and
14 use of passports; and

15 “(C) the regulations prescribed under the
16 authority of any law described in paragraphs
17 (A) and (B);

18 “(6) the term ‘immigration proceeding’ includes
19 an adjudication, interview, hearing, or review;

20 “(7) a person does not exercise ‘lawful author-
21 ity’ if the person abuses or improperly exercises law-
22 ful authority the person otherwise holds;

23 “(8) the term ‘passport’ means—

24 “(A) a travel document attesting to the
25 identity and nationality of the bearer that is

1 issued under the authority of the Secretary of
2 State, a foreign government, or an international
3 organization; or

4 “(B) any instrument purporting to be a
5 document described in subparagraph (A);

6 “(9) the term ‘present’ means to offer or sub-
7 mit for official processing, examination, or adjudica-
8 tion. Any such presentation continues until the offi-
9 cial processing, examination, or adjudication is com-
10 plete;

11 “(10) the term ‘proceeds’ includes any property
12 or interest in property obtained or retained as a con-
13 sequence of an act or omission in violation of this
14 section;

15 “(11) the term ‘produce’ means to make, pre-
16 pare, assemble, issue, print, authenticate, or alter;

17 “(12) the term ‘State’ means a State of the
18 United States, the District of Columbia, or any com-
19 monwealth, territory, or possession of the United
20 States;

21 “(13) the use of a passport or an immigration
22 document referred to in sections 1541(a), 1543(b),
23 1544, 1546(a), and 1546(b) includes—

24 “(A) any officially authorized use;

25 “(B) use to travel;

1 “(C) use to demonstrate identity, resi-
2 dence, nationality, citizenship, or immigration
3 status;

4 “(D) use to seek or maintain employment;
5 or

6 “(E) use in any matter within the jurisdic-
7 tion of the Federal government or of a State
8 government.

9 **“SEC. 1553. AUTHORIZED LAW ENFORCEMENT ACTIVITIES.**

10 “(a) SAVINGS PROVISION.—Nothing in this chapter
11 may be construed to prohibit any lawfully authorized in-
12 vestigative, protective, or intelligence activity of a law en-
13 forcement agency of the United States, a State, or a polit-
14 ical subdivision of a State, or an intelligence agency of
15 the United States, or any activity authorized under title
16 V of the Organized Crime Control Act of 1970 (Public
17 Law 91–452; 84 Stat. 933).

18 “(b) PROTECTION FOR LEGITIMATE REFUGEES AND
19 ASYLUM SEEKERS.—

20 “(1) PROSECUTION GUIDELINES.—The Attor-
21 ney General, in consultation with the Secretary of
22 Homeland Security, shall develop binding prosecu-
23 tion guidelines for federal prosecutors to ensure that
24 any prosecution of an alien seeking entry into the
25 United States by fraud is consistent with the obliga-

1 tions of the United States under Article 31(1) of the
2 Convention Relating to the Status of Refugees, done
3 at Geneva July 28, 1951 (as made applicable by the
4 Protocol Relating to the Status of Refugees, done at
5 New York January 31, 1967 (19 UST 6223)).

6 “(2) NO PRIVATE RIGHT OF ACTION.—The
7 guidelines required under paragraph (1), and any in-
8 ternal office procedures adopted pursuant to such
9 guidelines, are intended solely for the guidance of at-
10 torneys for the United States. This section, the
11 guidelines required under paragraph (1), and the
12 process for determining such guidelines are not in-
13 tended to, do not, and may not be relied upon to
14 create any right or benefit, substantive or proce-
15 dural, enforceable at law by any party in any admin-
16 istrative, civil, or criminal matter.”

17 **SEC. 211. INADMISSIBILITY AND REMOVAL FOR PASSPORT**
18 **AND IMMIGRATION FRAUD OFFENSES.**

19 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
20 U.S.C. 1182(a)(2)(A)(i)), as amended by this Act, is fur-
21 ther amended by inserting after subclause (III) the fol-
22 lowing:

23 “(IV) a violation of any section
24 of chapter 75 of title 18, United
25 States Code,”.

1 (b) REMOVAL.—Section 237(a)(3)(B)(iii) of the Im-
2 migration and Nationality Act (8 U.S.C.
3 1227(a)(3)(B)(iii)) is amended to read as follows:

4 “(iii) of a violation of any section of
5 chapter 75 of title 18, United States
6 Code,”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to proceedings, applications and
9 adjudications pending on or after the date of the enact-
10 ment of this Act.

11 **SEC. 212. INCARCERATION OF CRIMINAL ALIENS.**

12 (a) INSTITUTIONAL REMOVAL PROGRAM.—

13 (1) TECHNOLOGICAL IMPROVEMENT AND EX-
14 PANSION.—The Secretary shall improve the Institu-
15 tional Removal Program (referred to in this section
16 as the “Program”) to—

17 (A) identify the total criminal alien popu-
18 lation in Federal, State, and local correctional
19 facilities by making use of analytical informa-
20 tion technology tools that systematically use up-
21 dated nationwide jail-booking databases;

22 (B) ensure that such aliens are not re-
23 leased into the community; and

24 (C) remove such aliens from the United
25 States after the completion of their sentences.

1 (2) EXPANSION.—The Secretary may extend
2 the scope of the Program to all States.

3 (b) TECHNOLOGY USAGE.—Technology, such as
4 videoconferencing, shall be used to the maximum extent
5 practicable to make the Program available in remote loca-
6 tions. Mobile access to Federal databases of aliens, such
7 as IDENT, and live scan technology shall be used to the
8 maximum extent practicable to make these resources
9 available to State and local law enforcement agencies in
10 remote locations.

11 (c) REPORT TO CONGRESS.—Not later than 6
12 months after the date of the enactment of this Act, and
13 annually thereafter, the Secretary shall submit a report
14 to Congress on the participation of States in the Program
15 and in any other program authorized under subsection (a).

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated such sums as may be
18 necessary in each of the fiscal years 2008 through 2012
19 to carry out the Program.

20 (e) CRIMINAL ALIEN PROGRAM PILOT PROJECT.—

21 (1) IN GENERAL.—The Secretary shall reserve
22 \$300,000 of the funds appropriated to United States
23 Immigration and Customs Enforcement for the
24 Criminal Alien Program to implement a pilot project
25 to evaluate technology that can—

1 (A) effectively analyze information on jail
2 and prison populations; and

3 (B) automatically identify incarcerated ille-
4 gal aliens in a timely manner before their re-
5 lease from detention.

6 (2) MINIMUM REQUIREMENTS.—The pilot
7 project implemented under subsection (a) shall in-
8 volve not fewer than 2 States and shall provide for
9 the daily collection of data from not fewer than 15
10 jails or prisons.

11 (3) REPORT.—Not later than July 1, 2008, the
12 Secretary shall submit a report to the Committee on
13 Appropriations of the Senate and the Committee on
14 Appropriations of the House of Representatives that
15 describes—

16 (A) the status of the pilot project imple-
17 mented under subsection (a);

18 (B) the impact of the pilot project on ille-
19 gal alien management; and

20 (C) the Secretary's plans to integrate the
21 technology evaluated under the pilot project
22 into future enforcement budgets and operating
23 procedures.

1 **SEC. 213. ENCOURAGING ALIENS TO DEPART VOLUN-**
2 **TARILY.**

3 (a) IN GENERAL.—Section 240B (8 U.S.C. 1229c)
4 is amended—

5 (1) in subsection (a)—

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

8 “(1) INSTEAD OF REMOVAL PROCEEDINGS.—If
9 an alien is not described in paragraph (2)(A)(iii) or
10 (4) of section 237(a), the Secretary of Homeland Se-
11 curity may permit the alien to voluntarily depart the
12 United States at the alien’s own expense under this
13 subsection instead of being subject to proceedings
14 under section 240.”;

15 (B) by striking paragraph (3);

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

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

20 “(2) BEFORE THE CONCLUSION OF REMOVAL
21 PROCEEDINGS.—If an alien is not described in para-
22 graph (2)(A)(iii) or (4) of section 237(a), the Attor-
23 ney General may permit the alien to voluntarily de-
24 part the United States at the alien’s own expense
25 under this subsection after the initiation of removal
26 proceedings under section 240 and before the con-

1 clusion of such proceedings before an immigration
2 judge.”;

3 (E) in paragraph (3), as redesignated—

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

6 “(A) INSTEAD OF REMOVAL.—Subject to
7 subparagraph (C), permission to voluntarily de-
8 part under paragraph (1) shall not be valid for
9 any period in excess of 120 days. The Secretary
10 may require an alien permitted to voluntarily
11 depart under paragraph (1) to post a voluntary
12 departure bond, to be surrendered upon proof
13 that the alien has departed the United States
14 within the time specified.”;

15 (ii) by redesignating subparagraphs
16 (B), (C), and (D) as paragraphs (C), (D),
17 and (E), respectively;

18 (iii) by inserting after subparagraph
19 (A) the following:

20 “(B) BEFORE THE CONCLUSION OF RE-
21 MOVAL PROCEEDINGS.—Permission to volun-
22 tarily depart under paragraph (2) shall not be
23 valid for any period longer than 60 days, and
24 may be granted only after a finding that the
25 alien has the means to depart the United States

1 and intends to depart the United States. An
2 alien permitted to voluntarily depart under
3 paragraph (2) shall post a voluntary departure
4 bond, in an amount necessary to ensure that
5 the alien will depart, which shall be surrendered
6 upon proof that the alien has departed the
7 United States within the time specified. An im-
8 migration judge may waive the requirement to
9 post a voluntary departure bond in individual
10 cases upon a finding that the alien has pre-
11 sented compelling evidence that the posting of
12 a bond will pose a serious financial hardship
13 and the alien has presented credible evidence
14 that such a bond is unnecessary to guarantee
15 timely departure.”;

16 (iv) in subparagraph (C), as redesign-
17 nated, by striking “subparagraphs (C)
18 and(D)(ii)” and inserting “subparagraphs
19 (D) and (E)(ii)”;

20 (v) in subparagraph (D), as redesign-
21 nated, by striking “subparagraph (B)”
22 each place that term appears and inserting
23 “subparagraph (C)”;

24 (vi) in subparagraph (E), as redesign-
25 nated, by striking “subparagraph (B)”

1 each place that term appears and inserting
2 “subparagraph (C)”; and

3 (F) in paragraph (4), by striking “para-
4 graph (1)” and inserting “paragraphs (1) and
5 (2)”;

6 (2) in subsection (b)(2), by striking “a period
7 exceeding 60 days” and inserting “any period longer
8 than 45 days”;

9 (3) by striking subsection (c) through (e) and
10 inserting the following:

11 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

12 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

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

20 “(2) CONCESSIONS BY THE SECRETARY.—In

21 connection with the alien’s agreement to depart vol-
22 untarily under paragraph (1), the Secretary of
23 Homeland Security may agree to a reduction in the
24 period of inadmissibility under subparagraph (A) or
25 (B)(i) of section 212(a)(9).

1 “(3) ADVISALS.—Agreements relating to vol-
2 untary departure granted during removal pro-
3 ceedings under section 240, or at the conclusion of
4 such proceedings, shall be presented on the record
5 before the immigration judge. The immigration
6 judge shall advise the alien of the consequences of
7 a voluntary departure agreement before accepting
8 such agreement.

9 “(4) FAILURE TO COMPLY WITH AGREE-
10 MENT.—

11 “(A) IN GENERAL.—If an alien agrees to
12 voluntary departure under this section and fails
13 to depart the United States within the time al-
14 lowed for voluntary departure or fails to comply
15 with any other terms of the agreement (includ-
16 ing failure to timely post any required bond),
17 the alien is—

18 “(i) ineligible for the benefits of the
19 agreement;

20 “(ii) subject to the penalties described
21 in subsection (d); and

22 “(iii) subject to an alternate order of
23 removal if voluntary departure was granted
24 under subsection (a)(2) or (b).

1 “(B) EFFECT OF FILING TIMELY AP-
2 PEAL.—If, after agreeing to voluntary depart-
3 ture, the alien files a timely appeal of the immi-
4 gration judge’s decision granting voluntary de-
5 parture, the alien may pursue the appeal in-
6 stead of the voluntary departure agreement.
7 Such appeal operates to void the alien’s vol-
8 untary departure agreement and the con-
9 sequences of such agreement, but precludes the
10 alien from another grant of voluntary departure
11 while the alien remains in the United States.

12 “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-
13 FECTED.—Except as expressly agreed to by the Sec-
14 retary in writing in the exercise of the Secretary’s
15 discretion before the expiration of the period allowed
16 for voluntary departure, no motion, appeal, applica-
17 tion, petition, or petition for review shall affect, rein-
18 state, enjoin, delay, stay, or toll the alien’s obligation
19 to depart from the United States during the period
20 agreed to by the alien and the Secretary.

21 “(d) PENALTIES FOR FAILURE TO DEPART.—If an
22 alien is permitted to voluntarily depart under this section
23 and fails to voluntarily depart from the United States
24 within the time period specified or otherwise violates the

1 terms of a voluntary departure agreement, the alien will
2 be subject to the following penalties:

3 “(1) CIVIL PENALTY.—The alien shall be liable
4 for a civil penalty of \$3,000. The order allowing vol-
5 untary departure shall specify the amount of the
6 penalty, which shall be acknowledged by the alien on
7 the record. If the Secretary thereafter establishes
8 that the alien failed to depart voluntarily within the
9 time allowed, no further procedure will be necessary
10 to establish the amount of the penalty, and the Sec-
11 retary may collect the civil penalty at any time
12 thereafter and by whatever means provided by law.
13 An alien will be ineligible for any benefits under this
14 chapter until this civil penalty is paid.

15 “(2) INELIGIBILITY FOR RELIEF.—The alien
16 shall be ineligible during the time the alien remains
17 in the United States and for a period of 10 years
18 after the alien’s departure for any further relief
19 under this section and sections 240A, 245, 248, and
20 249. The order permitting the alien to depart volun-
21 tarily shall inform the alien of the penalties under
22 this subsection.

23 “(3) REOPENING.—The alien shall be ineligible
24 to reopen the final order of removal that took effect
25 upon the alien’s failure to depart, or upon the alien’s

1 other violations of the conditions for voluntary de-
2 parture, during the period described in paragraph
3 (2). This paragraph does not preclude a motion to
4 reopen to seek withholding of removal under section
5 241(b)(3) or protection against torture, if the mo-
6 tion—

7 “(A) presents material evidence of changed
8 country conditions arising after the date of the
9 order granting voluntary departure in the coun-
10 try to which the alien would be removed; and

11 “(B) makes a sufficient showing to the sat-
12 isfaction of the Attorney General that the alien
13 is otherwise eligible for such protection.

14 “(e) ELIGIBILITY.—

15 “(1) PRIOR GRANT OF VOLUNTARY DEPAR-
16 TURE.—An alien shall not be permitted to volun-
17 tarily depart under this section if the Secretary of
18 Homeland Security or the Attorney General pre-
19 viously permitted the alien to depart voluntarily.

20 “(2) RULEMAKING.—The Secretary may pro-
21 mulgate regulations to limit eligibility or impose ad-
22 ditional conditions for voluntary departure under
23 subsection (a)(1) for any class of aliens. The Sec-
24 retary or Attorney General may by regulation limit
25 eligibility or impose additional conditions for vol-

1 untary departure under subsections (a)(2) or (b) of
2 this section for any class or classes of aliens.”; and

3 (4) in subsection (f), by adding at the end the
4 following: “Notwithstanding section 242(a)(2)(D),
5 sections 1361, 1651, and 2241 of title 28, United
6 States Code, any other habeas corpus provision, and
7 any other provision of law (statutory or nonstatu-
8 tory), no court shall have jurisdiction to affect, rein-
9 state, enjoin, delay, stay, or toll the period allowed
10 for voluntary departure under this section.”.

11 (b) RULEMAKING.—The Secretary shall promulgate
12 regulations to provide for the imposition and collection of
13 penalties for failure to depart under section 240B(d) of
14 the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

15 (c) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall apply with respect to all orders granting vol-
19 untary departure under section 240B of the Immi-
20 gration and Nationality Act (8 U.S.C. 1229c) made
21 on or after the date that is 180 days after the enact-
22 ment of this Act.

23 (2) EXCEPTION.—The amendment made by
24 subsection (a)(4) shall take effect on the date of the
25 enactment of this Act and shall apply with respect

1 to any petition for review which is filed on or after
2 such date.

3 **SEC. 214. DETERRING ALIENS ORDERED REMOVED FROM**
4 **REMAINING IN THE UNITED STATES UNLAW-**
5 **FULLY.**

6 (a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) (8
7 U.S.C. 1182(a)(9)(A)) is amended—

8 (1) in clause (i), by striking “seeks admission
9 within 5 years of the date of such removal (or within
10 20 years” and inserting “seeks admission not later
11 than 5 years after the date of the alien’s removal (or
12 not later than 20 years after the alien’s removal”;
13 and

14 (2) in clause (ii), by striking “seeks admission
15 within 10 years of the date of such alien’s departure
16 or removal (or within 20 years of” and inserting
17 “seeks admission not later than 10 years after the
18 date of the alien’s departure or removal (or not later
19 than 20 years after”.

20 (b) BAR ON DISCRETIONARY RELIEF.—Section 274D
21 (8 U.S.C. 1324d) is amended—

22 (1) in subsection (a), by striking “Commis-
23 sioner” and inserting “Secretary of Homeland Secu-
24 rity”; and

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

1 “(c) INELIGIBILITY FOR RELIEF.—

2 “(1) IN GENERAL.—Absent the granting of a
3 timely motion to reconsider under section 240(c)(6)
4 or a timely motion to reopen under section
5 240(c)(7), an alien described in subsection (a) shall
6 be ineligible for any discretionary relief from re-
7 moval (including cancellation of removal and adjust-
8 ment of status) during the time the alien remains in
9 the United States and for a period of 10 years after
10 the alien’s departure from the United States.

11 “(2) SAVINGS PROVISION.—Nothing in para-
12 graph (1) may be construed to preclude a motion to
13 reopen to seek withholding of removal under section
14 241(b)(3) or protection against torture, if the mo-
15 tion—

16 “(A) presents material evidence of changed
17 country conditions arising after the date of the
18 final order of removal in the country to which
19 the alien would be removed; and

20 “(B) makes a sufficient showing to the sat-
21 isfaction of the Attorney General that the alien
22 is otherwise eligible for such protection.”.

23 (c) EFFECTIVE DATES.—The amendments made by
24 this section shall take effect on the date of the enactment

1 of this Act with respect to aliens who are subject to a final
2 order of removal entered on or after such date.

3 **SEC. 215. PROHIBITION OF THE SALE OF FIREARMS TO, OR**
4 **THE POSSESSION OF FIREARMS BY CERTAIN**
5 **ALIENS.**

6 Section 922 of title 18, United States Code, is
7 amended—

8 (1) in subsection (d)(5)(B), by striking “(y)(2)”
9 and all that follows and inserting “(y), is in the
10 United States not as an alien lawfully admitted for
11 permanent residence”;

12 (2) in subsection (g)(5)(B), by striking “(y)(2)”
13 and all that follows and inserting “(y), is in the
14 United States not as an alien lawfully admitted for
15 permanent residence”; and

16 (3) in subsection (y)—

17 (A) in the subsection heading, by striking
18 “ADMITTED UNDER NONIMMIGRANT VISAS”
19 and inserting “NOT LAWFULLY ADMITTED FOR
20 PERMANENT RESIDENCE”;

21 (B) in paragraph (1), by amending sub-
22 paragraph (B) to read as follows:

23 “(B) the term ‘lawfully admitted for per-
24 manent residence’ has the meaning given such

1 term in section 101(a)(20) of the Immigration
2 and Nationality Act (8 U.S.C. 1101(a)(20)).”;

3 (C) in paragraph (2), by striking “under a
4 nonimmigrant visa” and inserting “and has not
5 been lawfully admitted for permanent resi-
6 dence”; and

7 (D) in paragraph (3)(A), by striking “ad-
8 mitted to the United States under a non-
9 immigrant visa” and inserting “lawfully admit-
10 ted to the United States and has not been law-
11 fully admitted for permanent residence”.

12 **SEC. 216. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
13 **TAIN IMMIGRATION, PASSPORT, AND NATU-**
14 **RALIZATION OFFENSES.**

15 (a) IN GENERAL.—Section 3291 of title 18, United
16 States Code, is amended to read as follows:

17 **“SEC. 3291. IMMIGRATION, PASSPORT, AND NATURALIZA-**
18 **TION OFFENSES.**

19 “No person shall be prosecuted, tried, or punished
20 for a violation of any section of chapters 69 (relating to
21 nationality and citizenship offenses), 75 (relating to pass-
22 port, visa, and immigration offenses), or for a violation
23 of any criminal provision under section 243, 266, 274,
24 275, 276, 277, or 278 of the Immigration and Nationality
25 Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and

1 1328), or for an attempt or conspiracy to violate any such
2 section, unless the indictment is returned or the informa-
3 tion filed not later than 10 years after the commission
4 of the offense.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 for chapter 213 of title 18, United States Code, is amend-
7 ed by striking the item relating to section 3291 and insert-
8 ing the following:

“3291. Immigration, passport, and naturalization offenses.”.

9 **SEC. 217. DIPLOMATIC SECURITY SERVICE.**

10 (a) IN GENERAL.—Section 37(a)(1) of the State De-
11 partment Basic Authorities Act of 1956 (22 U.S.C.
12 2709(a)(1)) is amended to read as follows:

13 “(1) conduct investigations concerning—

14 “(A) illegal passport or visa issuance or
15 use;

16 “(B) identity theft or document fraud af-
17 fecting or relating to the programs, functions,
18 and authorities of the Department of State;

19 “(C) violations of chapter 77 of title 18,
20 United States Code; and

21 “(D) Federal offenses committed within
22 the special maritime and territorial jurisdiction
23 defined in section 7(9) of title 18, United
24 States Code, except as that jurisdiction relates

1 to the premises of United States military mis-
2 sions and related residences;”.

3 (b) CONSTRUCTION.—Nothing in the amendment
4 may be subsection (a) may be construed to limit the inves-
5 tigative authority of any Federal department or agency
6 other than the Department of State.

7 **SEC. 218. STREAMLINED PROCESSING OF BACKGROUND**
8 **CHECKS CONDUCTED FOR IMMIGRATION**
9 **BENEFITS.**

10 (a) INFORMATION SHARING; INTERAGENCY TASK
11 FORCE.—Section 105 (8 U.S.C. 1105) is amended by add-
12 ing at the end the following:

13 “(e) INTERAGENCY TASK FORCE.—

14 “(1) IN GENERAL.—The Secretary of Homeland
15 Security and the Attorney General shall establish an
16 interagency task force to resolve cases in which an
17 application or petition for an immigration benefit
18 conferred under this Act has been delayed due to an
19 outstanding background check investigation for more
20 than 2 years after the date on which such applica-
21 tion or petition was initially filed.

22 “(2) MEMBERSHIP.—The interagency task
23 force established under paragraph (1) shall include
24 representatives from Federal agencies with immigra-

1 tion, law enforcement, or national security respon-
2 sibilities under this Act.”.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Director of the
5 Federal Bureau of Investigation such sums as are nec-
6 essary for each fiscal year, 2008 through 2012 for en-
7 hancements to existing systems for conducting background
8 and security checks necessary to support immigration se-
9 curity and orderly processing of applications.

10 (c) REPORT ON BACKGROUND AND SECURITY
11 CHECKS.—

12 (1) IN GENERAL.—Not later than 180 days
13 after the date of the enactment of this Act, the Di-
14 rector of the Federal Bureau of Investigation shall
15 submit to the Committee on the Judiciary of the
16 Senate and the Committee on the Judiciary of the
17 House of Representatives a report on the back-
18 ground and security checks conducted by the Fed-
19 eral Bureau of Investigation on behalf of United
20 States Citizenship and Immigration Services.

21 (2) CONTENT.—The report required under
22 paragraph (1) shall include—

23 (A) a description of the background and
24 security check program;

1 (B) a statistical breakdown of the back-
2 ground and security check delays associated
3 with different types of immigration applications;

4 (C) a statistical breakdown of the back-
5 ground and security check delays by applicant
6 country of origin; and

7 (D) the steps that the Director of the Fed-
8 eral Bureau of Investigation is taking to expe-
9 dite background and security checks that have
10 been pending for more than 180 days.

11 **SEC. 219. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

12 (a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH
13 PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary
14 may reimburse States and units of local government for
15 costs associated with processing undocumented criminal
16 aliens through the criminal justice system, including—

17 (1) indigent defense;

18 (2) criminal prosecution;

19 (3) autopsies;

20 (4) translators and interpreters; and

21 (5) courts costs.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) PROCESSING CRIMINAL ILLEGAL ALIENS.—

24 There are authorized to be appropriated

1 \$400,000,000 for each of the fiscal years 2008
2 through 2013 to carry out subsection (a).

3 (2) COMPENSATION UPON REQUEST.—Section
4 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as
5 follows:

6 “(5) There are authorized to be appropriated to
7 carry this subsection—

8 “(A) such sums as may be necessary for
9 fiscal year 2008;

10 “(B) \$750,000,000 for fiscal year 2009;

11 “(C) \$850,000,000 for fiscal year 2010;

12 and

13 “(D) \$950,000,000 for each of the fiscal
14 years 2011 through 2013.”.

15 (c) TECHNICAL AMENDMENT.—Section 501 of the
16 Immigration Reform and Control Act of 1986 (8 U.S.C.
17 1365) is amended by striking “Attorney General” each
18 place it appears and inserting “Secretary of Homeland Se-
19 curity”.

20 **SEC. 220. REDUCING ILLEGAL IMMIGRATION AND ALIEN**
21 **SMUGGLING ON TRIBAL LANDS.**

22 (a) GRANTS AUTHORIZED.—The Secretary may
23 award grants to Indian tribes with lands adjacent to an
24 international border of the United States that have been
25 adversely affected by illegal immigration.

1 (b) USE OF GRANT FUNDS.—Grants awarded under
2 subsection (a) may be used for—

- 3 (1) law enforcement activities;
- 4 (2) health care services;
- 5 (3) environmental restoration; and
- 6 (4) the preservation of cultural resources.

7 (c) REPORT.—Not later than 180 days after the date
8 of the enactment of this Act, the Secretary shall submit
9 a report to the Committee on the Judiciary of the Senate
10 and the Committee on the Judiciary of the House of Rep-
11 resentatives that—

12 (1) describes the level of access of Border Pa-
13 trol agents on tribal lands;

14 (2) describes the extent to which enforcement of
15 immigration laws may be improved by enhanced ac-
16 cess to tribal lands;

17 (3) contains a strategy for improving such ac-
18 cess through cooperation with tribal authorities; and

19 (4) identifies grants provided by the Depart-
20 ment for Indian tribes, either directly or through
21 State or local grants, relating to border security ex-
22 penses.

23 (d) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be

1 necessary for each of the fiscal years 2008 through 2012
2 to carry out this section.

3 **SEC. 221. ALTERNATIVES TO DETENTION.**

4 The Secretary shall conduct a study of—

5 (1) the effectiveness of alternatives to detention,
6 including electronic monitoring devices and intensive
7 supervision programs, in ensuring alien appearance
8 at court and compliance with removal orders;

9 (2) the effectiveness of the Intensive Super-
10 vision Appearance Program and the costs and bene-
11 fits of expanding that program to all States; and

12 (3) other alternatives to detention, including—

13 (A) release on an order of recognizance;

14 (B) appearance bonds; and

15 (C) electronic monitoring devices.

16 **SEC. 222. STATE AND LOCAL ENFORCEMENT OF FEDERAL**
17 **IMMIGRATION LAWS.**

18 (a) IN GENERAL.—Section 287(g) (8 U.S.C.
19 1357(g)) is amended—

20 (1) in paragraph (2), by adding at the end the
21 following: “If such training is entered into by the of-
22 ficers of a State or political subdivision of a State
23 as a result of entering into an agreement under this
24 subsection, the costs incurred by the State or polit-
25 ical subdivision as a result of such training, includ-

1 ing applicable overtime costs, shall be reimbursed by
2 the Secretary of Homeland Security.”; and

3 (2) in paragraph (4), by adding at the end the
4 following: “The cost of any equipment required to be
5 purchased under such written agreement and nec-
6 essary to perform a function under this subsection
7 shall be reimbursed by the Secretary of Homeland
8 Security.”.

9 (b) TRAINING FLEXIBILITY.—

10 (1) IN GENERAL.—The Secretary shall make
11 training of State and local law enforcement officers
12 available through as many means as possible, includ-
13 ing—

14 (A) residential training at the Center for
15 Domestic Preparedness;

16 (B) onsite training held at State or local
17 police agencies or facilities;

18 (C) on-line training courses by computer,
19 teleconferencing, and videotape; or

20 (D) DVD of a training course or courses.

21 (2) ON-LINE TRAINING.—The head of the Dis-
22 tributed Learning Program of the Federal Law En-
23 forcement Training Center shall make training avail-
24 able for State and local law enforcement personnel
25 through the Internet through a secure, encrypted

1 distributed learning system that has all its servers
2 based in the United States, is sealable, survivable,
3 and is capable of having a portal in place within 30
4 days.

5 (3) FEDERAL PERSONNEL TRAINING.—The
6 training of State and local law enforcement per-
7 sonnel under this section shall not displace the train-
8 ing of Federal personnel.

9 (c) SAVINGS PROVISION.—Nothing in this Act or any
10 other provision of law may be construed as making any
11 immigration-related training a requirement for, or pre-
12 requisite to, any State or local law enforcement officer ex-
13 ercising the inherent authority of the officer to investigate,
14 identify, apprehend, arrest, detain, or transfer to Federal
15 custody illegal aliens during the normal course of carrying
16 out the law enforcement duties of the officer.

17 (d) TRAINING LIMITATION.—Section 287(g) (8
18 U.S.C. 1357(g)) is amended—

19 (1) by striking “Attorney General” each place
20 that term appears and inserting “Secretary of
21 Homeland Security”; and

22 (2) in paragraph (2), by adding at the end the
23 following: “Such training shall not exceed 14 days or
24 80 hours, whichever is longer.”.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary such
3 sums as may be necessary to carry out this section and
4 the amendments made by this section.

5 **SEC. 223. PROTECTING IMMIGRANTS FROM CONVICTED**
6 **SEX OFFENDERS.**

7 (a) IMMIGRANTS.—Section 204(a)(1) (8 U.S.C.
8 1154(a)(1)), is amended—

9 (1) in subparagraph (A), by amending clause
10 (viii) to read as follows:

11 “(viii) Clause (i) shall not apply to a citizen of the
12 United States who has been convicted of an offense de-
13 scribed in subparagraph (A), (I), or (K) of section
14 101(a)(43), unless the Secretary of Homeland Security,
15 in the Secretary’s sole and unreviewable discretion, deter-
16 mines that the citizen poses no risk to the alien with re-
17 spect to whom a petition described in clause (i) is filed.”;
18 and

19 (2) in subparagraph (B)(i), by amending sub-
20 clause (II) to read as follows:

21 “(II) Subclause (I) shall not apply to an alien admit-
22 ted for permanent residence who has been convicted of an
23 offense described in subparagraph (A), (I), or (K) of sec-
24 tion 101(a)(43), unless the Secretary of Homeland Secu-
25 rity, in the Secretary’s sole and unreviewable discretion,

1 determines that the alien lawfully admitted for permanent
 2 residence poses no risk to the alien with respect to whom
 3 a petition described in subclause (I) is filed.”.

4 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) (8
 5 U.S.C. 1101(a)(15)(K)), is amended by inserting “(other
 6 than a citizen described in section 204(a)(1)(A)(viii))”
 7 after “citizen of the United States” each place such term
 8 appears.

9 **SEC. 224. LAW ENFORCEMENT AUTHORITY OF STATES AND**
 10 **POLITICAL SUBDIVISIONS AND TRANSFER TO**
 11 **FEDERAL CUSTODY.**

12 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et. seq.)
 13 is amended by adding after section 240C the following:
 14 **“SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES**
 15 **AND POLITICAL SUBDIVISIONS AND TRANS-**
 16 **FER OF ALIENS TO FEDERAL CUSTODY.**

17 “(a) AUTHORITY.—The authority under section
 18 287(g) of the Immigration and Nationality Act does not
 19 limit or replace the existing authority of a State or a polit-
 20 ical subdivision of a State to investigate, apprehend, ar-
 21 rest, detain, or transfer to Federal custody (including the
 22 transportation across State lines to detention centers) an
 23 unlawfully present or removable alien for the purpose of
 24 assisting in the enforcement of the immigration laws of
 25 the United States, including laws related to visa overstay,

1 in the normal course of carrying out the law enforcement
2 duties of such personnel.

3 “(b) TRANSFER.—If the head of a law enforcement
4 entity of a State, or, if appropriate, a political subdivision
5 of the State, exercising authority with respect to the ap-
6 prehension or arrest of an alien submits a request to the
7 Secretary of Homeland Security that the alien be taken
8 into Federal custody, the Secretary—

9 “(1) shall—

10 “(A) deem the request to include the in-
11 quiry to verify immigration status described in
12 section 642(c) of the Illegal Immigration Re-
13 form and Immigrant Responsibility Act of 1996
14 (8 U.S.C. 1373(c)), and expeditiously inform
15 the requesting entity whether such individual is
16 an alien lawfully admitted to the United States
17 or is otherwise lawfully present in the United
18 States; and

19 “(B) if the individual is an alien who is not
20 lawfully admitted to the United States or other-
21 wise is not lawfully present in the United
22 States—

23 “(i) take the illegal alien into the cus-
24 tody of the Federal Government not later
25 than 72 hours after—

1 “(I) the conclusion of the State
2 charging process or dismissal process;
3 or

4 “(II) the illegal alien is appre-
5 hended, if no State charging or dis-
6 missal process is required; or

7 “(ii) request that the relevant State or
8 local law enforcement agency temporarily
9 detain or transport the alien to a location
10 for transfer to Federal custody; and

11 “(2) shall designate at least 1 Federal, State,
12 or local prison or jail or a private contracted prison
13 or detention facility within each State as the central
14 facility for that State to transfer custody of aliens
15 to the Department of Homeland Security.

16 “(c) REIMBURSEMENT.—

17 “(1) IN GENERAL.—The Secretary of Homeland
18 Security shall reimburse a State, or a political sub-
19 division of a State, for expenses, as verified by the
20 Secretary, incurred by the State or political subdivi-
21 sion in the detention and transportation of an alien
22 as described in this section.

23 “(2) COST COMPUTATION.—Compensation pro-
24 vided for costs incurred under this section shall be
25 the sum of—

1 “(A) the product of—

2 “(i) the average daily cost of incarceration
3 ation of a prisoner in the relevant State, as
4 determined by the chief executive officer of
5 a State (or, as appropriate, a political sub-
6 division of the State); and

7 “(ii) the number of days that the alien
8 was in the custody of the State or political
9 subdivision;

10 “(B) the cost of transporting the alien
11 from the point of apprehension or arrest to the
12 location of detention, and if the location of de-
13 tention and of custody transfer are different, to
14 the custody transfer point; and

15 “(C) the cost of uncompensated emergency
16 medical care provided to a detained alien during
17 the period between the time of transmittal of
18 the request described in this section and the
19 time of transfer into Federal custody.

20 “(d) REQUIREMENT FOR APPROPRIATE SECURITY.—
21 The Secretary of Homeland Security shall ensure that—

22 “(1) aliens incarcerated in a Federal facility
23 pursuant to this section are held in facilities which
24 provide an appropriate level of security; and

1 “(2) if practicable, aliens detained solely for
2 civil violations of Federal immigration law are sepa-
3 rated within a facility or facilities.

4 “(e) REQUIREMENT FOR SCHEDULE.—In carrying
5 out this section, the Secretary of Homeland Security shall
6 establish a regular circuit and schedule for the prompt
7 transportation of apprehended aliens from the custody of
8 those States, and political subdivisions of States, which
9 routinely submit requests described this section, into Fed-
10 eral custody.

11 “(f) AUTHORITY FOR CONTRACTS.—

12 “(1) IN GENERAL.—The Secretary of Homeland
13 Security may enter into contracts or cooperative
14 agreements with appropriate State and local law en-
15 forcement and detention agencies to implement this
16 section.

17 “(2) DETERMINATION BY SECRETARY.—Before
18 entering into a contract or cooperative agreement
19 with a State or political subdivision of a State under
20 paragraph (1), the Secretary shall determine wheth-
21 er the State, or if appropriate, the political subdivi-
22 sion in which the agencies are located, has in place
23 any formal or informal policy that violates section
24 642 of the Illegal Immigration Reform and Immig-
25 grant Responsibility Act of 1996 (8 U.S.C. 1373).

1 The Secretary shall not allocate any of the funds
2 made available under this section to any State or po-
3 litical subdivision that has in place a policy that vio-
4 lates such section.”.

5 (b) DETENTION AND TRANSPORTATION TO FEDERAL
6 CUSTODY OF ALIENS NOT LAWFULLY PRESENT.—

7 (1) AUTHORIZATION OF APPROPRIATIONS.—

8 There are authorized to be appropriated
9 \$850,000,000 for fiscal year 2008 and for each sub-
10 sequent fiscal year for the detention and removal of
11 aliens not lawfully present in the United States
12 under the Immigration and Nationality Act.

13 (2) TRANSPORTATION AND PROCESSING OF IL-
14 LEGAL ALIENS APPREHENDED BY STATE AND LOCAL
15 LAW ENFORCEMENT.—

16 (A) IN GENERAL.—The Secretary may
17 provide sufficient transportation and officers to
18 take illegal aliens apprehended by State and
19 local law enforcement officers into custody for
20 processing at a detention facility operated by
21 the Department.

22 (B) AUTHORIZATION OF APPROPRIA-
23 TIONS.—There are authorized to be appro-
24 priated such sums as may be necessary for each

1 of fiscal years 2008 through 2012 to carry out
2 this paragraph.

3 (c) AUTHORIZATION FOR DETENTION AND TRANS-
4 PORTATION AFTER COMPLETION OF STATE OR LOCAL
5 PRISON SENTENCE.—

6 (1) IN GENERAL.—Law enforcement officers of
7 a State or political subdivision of a State may—

8 (A) hold an illegal alien for a period not to
9 exceed 14 days after the completion of the
10 alien's State prison sentence to effectuate the
11 transfer of the alien to Federal custody if the
12 alien is removable or not lawfully present in the
13 United States;

14 (B) issue a detainer that would allow
15 aliens who have served a State prison sentence
16 to be detained by the State prison until author-
17 ized employees of the Bureau of Immigration
18 and Customs Enforcement can take the alien
19 into custody; or

20 (C) transport the alien (including the
21 transportation across State lines to detention
22 centers) to a location where transfer to Federal
23 custody can be effectuated.

24 (2) AUTHORIZATION OF APPROPRIATIONS.—
25 There are authorized to be appropriated

1 \$500,000,000 per fiscal year to reimburse the ex-
2 penses incurred by State, or political subdivisions of
3 a State, in the detention or transportation of crimi-
4 nal aliens to Federal custody.

5 **SEC. 225. LAUNDERING OF MONETARY INSTRUMENTS.**

6 Section 1956(c)(7)(D) of title 18, United States
7 Code, is amended—

8 (1) by inserting “section 1590 (relating to traf-
9 ficking with respect to peonage, slavery, involuntary
10 servitude, or forced labor),” after “section 1363 (re-
11 lating to destruction of property within the special
12 maritime and territorial jurisdiction),”; and

13 (2) by inserting “section 274(a) of the Immi-
14 gration and Nationality Act (8 U.S.C.1324(a)) (re-
15 lating to bringing in and harboring certain aliens),”
16 after “section 590 of the Tariff Act of 1930 (19
17 U.S.C. 1590) (relating to aviation smuggling),”.

18 **SEC. 226. COOPERATIVE ENFORCEMENT PROGRAMS.**

19 Not later than 2 years after the date of the enact-
20 ment of this Act, the Secretary shall negotiate and exe-
21 cute, where practicable, a cooperative enforcement agree-
22 ment described in section 287(g) of the Immigration and
23 Nationality Act (8 U.S.C. 1357(g)) with at least 1 law
24 enforcement agency in each State, to train law enforce-
25 ment officers in the detection and apprehension of individ-

1 uals engaged in transporting, harboring, sheltering, or en-
2 couraging aliens in violation of section 274 of such Act
3 (8 U.S.C. 1324).

4 **SEC. 227. EXPANSION OF THE JUSTICE PRISONER AND**
5 **ALIEN TRANSFER SYSTEM.**

6 Not later than 60 days after the date of the enact-
7 ment of this Act, the Attorney General shall issue a direc-
8 tive to expand the Justice Prisoner and Alien Transfer
9 System (referred to in this section as the “System”) to
10 provide additional services with respect to aliens who are
11 illegally present in the United States, including—

12 (1) increasing the daily operations of the Sys-
13 tem with buses and air hubs in 3 geographic regions;

14 (2) allocating a set number of seats for such
15 aliens for each metropolitan area;

16 (3) allowing metropolitan areas to trade or give
17 some of seats allocated to them under the System
18 for such aliens to other areas in their region based
19 on the transportation needs of each area; and

20 (4) requiring an annual report that analyzes of
21 the number of seats that each metropolitan area is
22 allocated under the System for such aliens and
23 modifies such allocation if necessary.

1 **SEC. 228. DIRECTIVE TO THE UNITED STATES SENTENCING**
2 **COMMISSION.**

3 (a) IN GENERAL.—Pursuant to the authority under
4 section 994 of title 28, United States Code, the United
5 States Sentencing Commission shall promulgate or amend
6 the sentencing guidelines, policy statements, and official
7 commentaries related to immigration-related offenses, in-
8 cluding the offenses described in chapter 75 of title 18,
9 United States Code, to reflect the serious nature of such
10 offenses and the amendments made by this Act.

11 (b) REPORT.—Not later than 1 year after the date
12 of the enactment of this Act, the United States Sentencing
13 Commission shall submit to the Committee on the Judici-
14 ary of the Senate and the Committee on the Judiciary of
15 the House of Representatives a report on the implementa-
16 tion of this section.

17 **SEC. 229. CANCELLATION OF VISAS.**

18 Section 222(g) (8 U.S.C. 1202(g)) is amended—

19 (1) in paragraph (1)—

20 (A) by striking “Attorney General” and in-
21 serting “Secretary”;

22 (B) by inserting “or otherwise violated any
23 of the terms of the nonimmigrant classification
24 in which the alien was admitted,” before “such
25 visa”; and

1 (C) by inserting “and any other non-
2 immigrant visa issued by the United States that
3 is in the possession of the alien” after “such
4 visa”; and

5 (2) in paragraph (2)(A), by striking “(other
6 than the visa described in paragraph (1)) issued in
7 a consular office located in the country of the alien’s
8 nationality” and inserting “(other than a visa de-
9 scribed in paragraph (1)) issued in a consular office
10 located in the country of the alien’s nationality or
11 foreign residence”.

12 **SEC. 230. JUDICIAL REVIEW OF VISA REVOCATION.**

13 (a) IN GENERAL.—Section 221(i) of the Immigration
14 and Nationality Act (8 U.S.C. 1201(i)) is amended by
15 striking “There shall be no means of judicial review” and
16 all that follows and inserting the following: “Notwith-
17 standing any other provision of law (statutory or non-
18 statutory), including section 2241 of title 28, United
19 States Code, any other habeas corpus provision, and sec-
20 tions 1361 and 1651 of such title, a revocation under this
21 subsection may not be reviewed by any court, and no court
22 shall have jurisdiction to hear any claim arising from, or
23 any challenge to, such a revocation, provided that the rev-
24 ocation is executed by the Secretary.”.

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

3 (1) take effect on the date of the enactment of
4 this Act; and

5 (2) apply to all revocations made on or after
6 such date.

7 **SEC. 231. TERRORIST BAR TO GOOD MORAL CHARACTER.**

8 (a) DEFINITION OF GOOD MORAL CHARACTER.—
9 Section 101(f) (8 U.S.C. 1101(f)) is amended—

10 (1) by inserting after paragraph (1) the fol-
11 lowing:

12 “(2) one who the Secretary of Homeland Secu-
13 rity or the Attorney General determines, in the
14 unreviewable discretion of the Secretary or the At-
15 torney General, to have been an alien described in
16 section 212(a)(3) or 237(a)(4), which determina-
17 tion—

18 “(A) may be based upon any relevant in-
19 formation or evidence, including classified, sen-
20 sitive, or national security information; and

21 “(B) shall be binding upon any court re-
22 gardless of the applicable standard of review;”;

23 (2) in paragraph (8), by striking the period at
24 the end and inserting the following: “, regardless
25 whether the crime was classified as an aggravated

1 felony at the time of conviction, provided that, the
2 Secretary of Homeland Security or Attorney General
3 may in the unreviewable discretion of the Secretary
4 or the Attorney General, determine that this para-
5 graph shall not apply in the case of a single aggra-
6 vated felony conviction (other than murder, man-
7 slaughter, rape, or any sex offense when the victim
8 of such sex offense was a minor) for which comple-
9 tion of the term of imprisonment or the sentence
10 (whichever is later) occurred 10 or more years before
11 the date of application;” after “(as defined in sub-
12 section (a)(43)); or”;

13 (3) by moving paragraph (9) before the undes-
14 ignated matter following paragraph (8); and

15 (4) in the undesignated matter following para-
16 graph (9)—

17 (A) by striking the first sentence and in-
18 serting the following: “The fact that any person
19 is not within any of the foregoing classes shall
20 not preclude a discretionary finding for other
21 reasons that such a person is or was not of
22 good moral character. The Secretary or the At-
23 torney General shall not be limited to the appli-
24 cant’s conduct during the period for which good
25 moral character is required, but may take into

1 consideration as a basis for determination the
2 applicant's conduct and acts at any time.”; and

3 (B) by striking “; or” at the end and in-
4 serting a period.

5 (b) AGGRAVATED FELONS.—Section 509(b) of the
6 Immigration Act of 1990 (8 U.S.C. 1101 note) is amended
7 by striking “convictions” and all that follows and inserting
8 “convictions occurring before, on or after such date.”.

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

17 (d) NATURALIZATION OF PERSONS ENDANGERING
18 NATIONAL SECURITY.—

19 (1) IN GENERAL.—Section 316 (8 U.S.C. 1427)
20 is amended by adding at the end the following:

21 “(g) PERSONS ENDANGERING NATIONAL SECUR-
22 ITY.—No person may be naturalized if the Secretary of
23 Homeland Security determines that the person has been
24 an alien described in section 212(a)(3) or 237(a)(4). Such
25 determination may be based upon any relevant informa-

1 tion or evidence, including classified, sensitive, or national
2 security information, and shall be binding upon, and
3 unreviewable by, any court exercising jurisdiction, under
4 the immigration laws of the United States, over any appli-
5 cation for naturalization, regardless of the applicable
6 standard of review.”.

7 (2) CONCURRENT NATURALIZATION AND RE-
8 MOVAL PROCEEDINGS.—Section 318 (8 U.S.C.
9 1429) is amended by striking “; and no application”
10 and all that follows and inserting the following: “No
11 application for naturalization shall be considered by
12 the Secretary of Homeland Security or by any court
13 if there is pending against the applicant any removal
14 proceedings or other proceeding to determine the ap-
15 plicant’s inadmissibility or deportability, or to deter-
16 mine whether the applicant’s lawful permanent resi-
17 dent status should be rescinded, regardless of when
18 such proceedings was commenced. The findings of
19 the Attorney General in terminating removal pro-
20 ceedings or in canceling the removal of an alien
21 under this Act shall not be binding in any way upon
22 the Secretary of Homeland Security with respect to
23 the question of whether such person has established
24 his eligibility for naturalization under this title.”.

1 (3) PENDING DENATURALIZATION OR REMOVAL
2 PROCEEDINGS.—Section 240(b) (8 U.S.C. 1154(b))
3 is amended by adding at the end the following:

4 “(8) LIMITATION WHILE PROCEEDING IS PEND-
5 ING.—No petition may be approved under this sec-
6 tion if there is any administrative or judicial pro-
7 ceeding pending against the petitioner that could di-
8 rectly or indirectly result in the petitioner’s
9 denaturalization or the loss of the petitioner’s lawful
10 permanent resident status.”.

11 (4) CONDITIONAL PERMANENT RESIDENT.—
12 Sections 216(e) and 216A(e) (8 U.S.C. 1186a(e)
13 and 1186b(e)) are each amended by inserting “, if
14 the alien has had the conditional basis removed pur-
15 suant to this section” before the period at the end
16 of each such subsection.

17 (5) DISTRICT COURT JURISDICTION.—Section
18 336(b) (8 U.S.C. 1447(b)) is amended to read as
19 follows:

20 “(b) If there is a failure to render a final administra-
21 tive decision under section 335 before the end of the 180-
22 day period beginning on the date on which the Secretary
23 of Homeland Security completes all examinations and
24 interviews conducted under such section, the applicant
25 may apply to the district court for the district in which

1 the applicants resides for a hearing on the matter. Such
2 court shall only have jurisdiction to review the basis for
3 delay and remand the matter to the Secretary of Home-
4 land Security for the Secretary's determination on the ap-
5 plication.”.

6 (6) CONFORMING AMENDMENT.—Section
7 310(c) (8 U.S.C. 1421(c)) is amended—

8 (A) by inserting “, not later than 120 days
9 after the Secretary of Homeland Security's final
10 determination,” before “seek”; and

11 (B) by striking “Such review” and all that
12 follows and inserting the following: “The peti-
13 tioner shall have the burden to show that the
14 Secretary's denial of the application was not
15 supported by facially legitimate and bona fide
16 reasons. Except in a proceeding under section
17 340, and notwithstanding any other provision of
18 law (statutory or nonstatutory), including sec-
19 tion 2241 of title 28, United States Code, any
20 other habeas corpus provision, and sections
21 1361 and 1651 of such title, no court shall have
22 jurisdiction to determine, or to review a deter-
23 mination of the Secretary made at any time re-
24 garding, whether, for purposes of an application
25 for naturalization, an alien—

1 “(1) is a person of good moral character;

2 “(2) understands and is attached to the prin-
3 ciples of the Constitution of the United States; or

4 “(3) is well disposed to the good order and hap-
5 piness of the United States.”.

6 (7) EFFECTIVE DATE.—The amendments made
7 by this subsection—

8 (A) shall take effect on the date of the en-
9 actment of this Act;

10 (B) shall apply to any act that occurred
11 before, on, or after such date of enactment; and

12 (C) shall apply to any application for natu-
13 ralization or any other case or matter under
14 Federal immigration law that is pending on, or
15 filed after, such date of enactment.

16 **SEC. 232. PRECLUDING ADMISSIBILITY OF ALIENS CON-**
17 **VICTED OF AGGRAVATED FELONIES OR**
18 **OTHER SERIOUS OFFENSES.**

19 (a) INADMISSIBILITY ON CRIMINAL AND RELATED
20 GROUNDS; WAIVERS.—Section 212(a)(2) (8 U.S.C.
21 1182(a)(2)) is amended—

22 (1) in subparagraph (A)(i), as amended by this
23 title, by inserting after subclause (IV) the following:

24 “(V) a violation of (or a con-
25 spiracy or attempt to violate) an of-

1 fense described in section 208 of the
2 Social Security Act (42 U.S.C. 408)
3 (relating to social security account
4 numbers or social security cards) or
5 section 1028 of title 18, United States
6 Code (relating to fraud and related
7 activity in connection with identifica-
8 tion documents, authentication fea-
9 tures, and information),”;

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

11 “(M) CITIZENSHIP FRAUD.—Any alien
12 convicted of, or who admits having committed,
13 or who admits committing acts which constitute
14 the essential elements of, a violation of, or an
15 attempt or conspiracy to violate, subsection (a)
16 or (b) of section 1425 of title 18, United States
17 Code (relating to the procurement of citizenship
18 or naturalization unlawfully), is inadmissible.

19 “(N) AGGRAVATED FELONS.—Any alien
20 who has been convicted of an aggravated felony
21 at any time is inadmissible.”.

22 (b) DEPORTABILITY; CRIMINAL OFFENSES.—Section
23 237(a)(3)(B) (8 U.S.C. 1227(a)(3)(B)) is amended—

24 (1) in clause (i), by striking the comma at the
25 end and inserting a semicolon;

1 (2) in clause (ii), by striking “, or” at the end
2 and inserting a semicolon;

3 (3) in clause (iii), by striking the comma at the
4 end and inserting “; or”; and

5 (4) by inserting after clause (iii) the following:

6 “(iv) of a violation of, or an attempt
7 or conspiracy to violate, subsection (a) or
8 (b) of section 1425 of title 18 (relating to
9 procurement of citizenship or naturaliza-
10 tion unlawfully),”.

11 (c) DEPORTABILITY; CRIMINAL OFFENSES.—Section
12 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at
13 the end the following:

14 “(H) IDENTIFICATION FRAUD.—Any alien
15 who is convicted of a violation of (or a con-
16 spiracy or attempt to violate) an offense de-
17 scribed in section 208 of the Social Security Act
18 (42 U.S.C. 408) (relating to social security ac-
19 count numbers or social security cards) or sec-
20 tion 1028 of title 18, United States Code (relat-
21 ing to fraud and related activity in connection
22 with identification), is deportable.”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to—

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

3 (2) all aliens who are required to establish ad-
4 missibility on or after such date; and

5 (3) all removal, deportation, or exclusion pro-
6 ceedings that are filed, pending, or reopened, on or
7 after such date.

8 **SEC. 233. REMOVAL AND DENIAL OF BENEFITS TO TER-**
9 **RORIST ALIENS.**

10 (a) ASYLUM.—Section 208(b)(2)(A) (8 U.S.C.
11 1158(b)(2)(A)) is amended—

12 (1) by inserting “or the Secretary of Homeland
13 Security” after “if the Attorney General”; and

14 (2) by amending clause (v) to read as follows:

15 “(v) the alien is described in subpara-
16 graph (B)(i) or (F) of section 212(a)(3),
17 unless the alien is described in section
18 212(a)(3)(B)(i)(IX) and the Attorney Gen-
19 eral or the Secretary of Homeland Security
20 determines that there are not reasonable
21 grounds for regarding the alien as a dan-
22 ger to the security of the United States;
23 or”.

24 (b) CONFORMING AMENDMENT.—Section
25 212(a)(3)(B)(ii) (8 U.S.C. 1182(a)(3)(B)(ii)) is amended

1 by striking “(VII) of clause (i) does” and inserting “(IX)
2 of clause (i) shall”.

3 (c) CANCELLATION OF REMOVAL.—Section
4 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

5 (1) by striking “inadmissible under” and insert-
6 ing “described in”; and

7 (2) by striking “deportable under” and insert-
8 ing “described in”.

9 (d) VOLUNTARY DEPARTURE.—Section
10 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by
11 striking “deportable under section 237(a)(2)(A)(iii) or
12 section 237(a)(4)” and inserting “described in paragraph
13 (2)(A)(iii) or (4) of section 237(a)”.

14 (e) RESTRICTION ON REMOVAL.—Section
15 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

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

19 (2) in clause (iii), by striking “or” at the end;

20 (3) in clause (iv), by striking the period at the
21 end and inserting “; or”;

22 (4) by inserting after clause (iv) the following:

23 “(v) the alien is described in subpara-
24 graph (B)(i) or (F) of section 212(a)(3),
25 unless, in the case of an alien described in

1 section 212(a)(3)(B)(i)(IX), the Secretary
2 of Homeland Security or the Attorney
3 General determines that there are not rea-
4 sonable grounds for regarding the alien as
5 a danger to the security of the United
6 States.”; and

7 (5) in the undesignated matter at the end, by
8 striking “For purposes of clause (iv), an alien who
9 is described in section 237(a)(4)(B) shall be consid-
10 ered to be an alien with respect to whom there are
11 reasonable grounds for regarding as a danger to the
12 security of the United States.”.

13 **SEC. 234. USE OF 1986 IRCA LEGALIZATION INFORMATION**
14 **FOR NATIONAL SECURITY PURPOSES.**

15 (a) SPECIAL AGRICULTURAL WORKERS.—Section
16 210(b)(6) (8 U.S.C. 1160(b)(6)) is amended—

17 (1) by striking “Attorney General” each place
18 such term appears and inserting “Secretary of
19 Homeland Security”;

20 (2) in subparagraph (A), by striking “Justice”
21 and inserting “Homeland Security”;

22 (3) by redesignating subparagraphs (C) and
23 (D) as subparagraphs (D) and (E), respectively;

24 (4) by inserting after subparagraph (B) the fol-
25 lowing:

1 “(C) AUTHORIZED DISCLOSURES.—

2 “(i) CENSUS PURPOSE.—The Sec-
3 retary of Homeland Security may provide,
4 in the discretion of the Secretary, or at the
5 request of the Attorney General, informa-
6 tion furnished under this section in the
7 same manner and circumstances as census
8 information may be disclosed under section
9 8 of title 13, United States Code.

10 “(ii) NATIONAL SECURITY PUR-
11 POSE.—The Secretary of Homeland Secu-
12 rity may, in the discretion of the Secretary,
13 use, publish, or release information fur-
14 nished under this section to support any
15 investigation, case, or matter, or for any
16 purpose, relating to terrorism, national in-
17 telligence, or the national security.”; and

18 (5) in subparagraph (D), as redesignated, by
19 striking “Service” and inserting “Department of
20 Homeland Security”.

21 (b) ADJUSTMENT OF STATUS UNDER THE IMMIGRA-
22 TION REFORM AND CONTROL ACT OF 1986.—Section
23 245A(c)(5) (8 U.S.C. 1255a(c)(5)) is amended—

1 (1) by striking “Attorney General” each place
2 such term appears and inserting “Secretary of
3 Homeland Security”;

4 (2) in subparagraph (A), by striking “Justice”
5 and inserting “Homeland Security”;

6 (3) by amending subparagraph (C) to read as
7 follows:

8 “(C) AUTHORIZED DISCLOSURES.—

9 “(i) CENSUS PURPOSE.—The Sec-
10 retary of Homeland Security may provide,
11 in the discretion of the Secretary, informa-
12 tion furnished under this section in the
13 same manner and circumstances as census
14 information may be disclosed under section
15 8 of title 13, United States Code.

16 “(ii) NATIONAL SECURITY PUR-
17 POSE.—The Secretary of Homeland Secu-
18 rity may, in the discretion of the Secretary,
19 use, publish, or release information fur-
20 nished under this section to support any
21 investigation, case, or matter, or for any
22 purpose, relating to terrorism, national in-
23 telligence, or the national security.”; and

24 (4) in subparagraph (D), by striking “Service”
25 and inserting “Department of Homeland Security”.

1 **SEC. 235. DEFINITION OF RACKETEERING ACTIVITY.**

2 Section 1961(1) of title 18, United States Code, is
3 amended by striking “section 1542” and all that follows
4 through “section 1546 (relating to fraud and misuse of
5 visas, permits, and other documents)” and inserting “sec-
6 tions 1541 through 1548 (relating to passport, visa, and
7 immigration fraud)”.

8 **SEC. 236. SANCTIONS FOR COUNTRIES THAT DELAY OR**
9 **PREVENT REPATRIATION OF THEIR NATION-**
10 **ALS.**

11 Section 243(d) (8 U.S.C. 1253(d)) is amended to
12 read as follows:

13 “(d) DISCONTINUING GRANTING VISAS TO NATION-
14 ALS OF COUNTRIES THAT DENY OR DELAY ACCEPTING
15 ALIENS.—Notwithstanding section 221(e), if the Sec-
16 retary of Homeland Security determines that the govern-
17 ment of a foreign country denies or unreasonably delays
18 accepting aliens who are citizens, subjects, nationals, or
19 residents of that country after the Secretary asks whether
20 the government will accept an alien under this section, or
21 after a determination that the alien is inadmissible under
22 paragraph (6) or (7) of section 212(a)—

23 “(1) the Secretary of State, upon notification
24 from the Secretary of Homeland Security of such
25 denial or delay to accept aliens under circumstances
26 described in this section, shall order consular officers

1 in that foreign country to discontinue granting im-
2 migrant visas, nonimmigrant visas, or both, to citi-
3 zens, subjects, nationals, and residents of that coun-
4 try until the Secretary of Homeland Security notifies
5 the Secretary of State that the country has accepted
6 the aliens;

7 “(2) the Secretary of Homeland Security may
8 deny admission to any citizens, subjects, nationals,
9 and residents from that country; and

10 “(3) the Secretary of Homeland Security may
11 impose limitations, conditions, or additional fees on
12 the issuance of visas or travel from that country and
13 any other sanctions authorized by law.”.

14 **SEC. 237. APPROPRIATE REMEDIES FOR IMMIGRATION**
15 **LEGISLATION.**

16 (a) **LIMITATION ON CIVIL ACTIONS.**—No court may
17 certify a class under Rule 23 of the Federal Rules of Civil
18 Procedure in any civil action pertaining to the administra-
19 tion or enforcement of the immigration laws of the United
20 States that is filed after the date of the enactment of this
21 Act.

22 (b) **REQUIREMENTS FOR AN ORDER GRANTING PRO-**
23 **SPECTIVE RELIEF AGAINST THE GOVERNMENT.**—

24 (1) **IN GENERAL.**—If a court determines that
25 prospective relief should be ordered against the Gov-

1 ernment in any civil action pertaining to the admin-
2 istration or enforcement of the immigration laws of
3 the United States, the court shall—

4 (A) limit the relief to the minimum nec-
5 essary to correct the violation of law;

6 (B) adopt the least intrusive means to cor-
7 rect the violation of law;

8 (C) minimize, to the greatest extent prac-
9 ticable, the adverse impact on national security,
10 border security, immigration administration and
11 enforcement, and public safety; and

12 (D) provide for the expiration of the relief
13 on a specific date, which allows for the min-
14 imum practical time needed to remedy the vio-
15 lation.

16 (2) WRITTEN EXPLANATION.—The require-
17 ments described in subsection (1) shall be—

18 (A) discussed and explained in writing in
19 the order granting prospective relief; and

20 (B) sufficiently detailed to allow review by
21 another court.

22 (3) EXPIRATION OF PRELIMINARY INJUNCTIVE
23 RELIEF.—Preliminary injunctive relief shall auto-
24 matically expire on the date that is 90 days after the

1 date on which such relief is entered, unless the
2 court—

3 (A) makes the findings required under
4 paragraph (1) for the entry of permanent pro-
5 spective relief; and

6 (B) makes the order final before expiration
7 of such 90-day period.

8 (4) REQUIREMENTS FOR ORDER DENYING MO-
9 TION.—This subsection shall apply to any order de-
10 nying the Government’s motion to vacate, modify,
11 dissolve, or otherwise terminate an order granting
12 prospective relief in any civil action pertaining to the
13 administration or enforcement of the immigration
14 laws of the United States.

15 (c) PROCEDURE FOR MOTION AFFECTING ORDER
16 GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERN-
17 MENT.—

18 (1) IN GENERAL.—A court shall promptly rule
19 on the Government’s motion to vacate, modify, dis-
20 solve, or otherwise terminate an order granting pro-
21 spective relief in any civil action pertaining to the
22 administration or enforcement of the immigration
23 laws of the United States.

24 (2) AUTOMATIC STAYS.—

1 (A) IN GENERAL.—The Government’s mo-
2 tion to vacate, modify, dissolve, or otherwise
3 terminate an order granting prospective relief
4 made in any civil action pertaining to the ad-
5 ministration or enforcement of the immigration
6 laws of the United States shall automatically,
7 and without further order of the court, stay the
8 order granting prospective relief on the date
9 that is 15 days after the date on which such
10 motion is filed unless the court previously has
11 granted or denied the Government’s motion.

12 (B) DURATION OF AUTOMATIC STAY.—An
13 automatic stay under subparagraph (A) shall
14 continue until the court enters an order grant-
15 ing or denying the Government’s motion.

16 (C) POSTPONEMENT.—The court, for good
17 cause, may postpone an automatic stay under
18 subparagraph (A) for not longer than 15 days.

19 (D) AUTOMATIC STAYS DURING REMANDS
20 FROM HIGHER COURTS.—If a higher court re-
21 mands a decision on a motion subject to this
22 section to a lower court, the order granting pro-
23 spective relief which is the subject of the motion
24 shall be automatically stayed until the district

1 court enters an order granting or denying the
2 Government's motion.

3 (E) ORDERS BLOCKING AUTOMATIC
4 STAYS.—Any order staying, suspending, delay-
5 ing, or otherwise barring the effective date of
6 the automatic stay described in subparagraph
7 (A), other than an order to postpone the effec-
8 tive date of the automatic stays for not longer
9 than 15 days under subparagraph (C), shall
10 be—

11 (i) treated as an order refusing to va-
12 cate, modify, dissolve or otherwise termi-
13 nate an injunction; and

14 (ii) immediately appealable under sec-
15 tion 1292(a)(1) of title 28, United States
16 Code.

17 (3) PENDING MOTIONS.—

18 (A) NOT MORE THAN 45 DAYS.—For pur-
19 poses of this subsection, any motion, which has
20 been pending for not more than 45 days on the
21 date of the enactment of this Act, shall be
22 treated as if it had been filed on such date of
23 enactment.

24 (B) MORE THAN 45 DAYS.—Every motion
25 to vacate, modify, dissolve or otherwise termi-

1 nate an order granting prospective relief in any
2 civil action pertaining to the administration or
3 enforcement of the immigration laws of the
4 United States, which has been pending for more
5 than 45 days on the date of enactment of this
6 Act, and remains pending on the tenth day
7 after such date of enactment, shall result in an
8 automatic stay, without further order of the
9 court, of the prospective relief that is the sub-
10 ject of any such motion. An automatic stay pur-
11 suant to this subsection shall continue until the
12 court enters an order granting or denying the
13 Government's motion. No further postponement
14 of any such automatic stay pursuant to this
15 subsection shall be available under paragraph
16 (2)(C).

17 (d) **ADDITIONAL RULES CONCERNING PROSPECTIVE**
18 **RELIEF AFFECTING EXPEDITED REMOVAL.**—

19 (1) **JUDICIAL REVIEW.**—Except as expressly
20 provided under section 242(e) of the Immigration
21 and Nationality Act (8 U.S.C. 1252(e)) and notwith-
22 standing any other provision of law (statutory or
23 nonstatutory), including section 2241 of title 28,
24 United States Code, any other habeas provision, and
25 sections 1361 and 1651 of such title, no court has

1 jurisdiction to grant or continue an order or part of
2 an order granting prospective relief if the order or
3 part of the order interferes with, affects, or impacts
4 any determination pursuant to, or implementation
5 of, section 235(b)(1) of such Act (8 U.S.C.
6 1225(b)(1)).

7 (2) GOVERNMENT MOTION.—Upon the Govern-
8 ment’s filing of a motion to vacate, modify, dissolve,
9 or otherwise terminate an order granting prospective
10 relief in a civil action identified in subsection (b), the
11 court shall promptly—

12 (A) decide whether the court continues to
13 have jurisdiction over the matter; and

14 (B) vacate any order or part of an order
15 granting prospective relief that is not within the
16 jurisdiction of the court.

17 (3) APPLICABILITY.—Paragraphs (1) and (2)
18 shall not apply to the extent that an order granting
19 prospective relief was entered before the date of the
20 enactment of this Act and such prospective relief is
21 necessary to remedy the violation of a right guaran-
22 teed by the United States Constitution.

23 (e) SETTLEMENTS.—

24 (1) CONSENT DECREES.—In any civil action
25 pertaining to the administration or enforcement of

1 the immigration laws of the United States, the court
2 may not enter, approve, or continue a consent decree
3 that does not comply with subsection (b).

4 (2) PRIVATE SETTLEMENT AGREEMENTS.—

5 Nothing in this section shall preclude parties from
6 entering into a private settlement agreement that
7 does not comply with subsection (b) if the terms of
8 that agreement are not subject to court enforcement
9 other than reinstatement of the civil proceedings
10 that the agreement settled.

11 (f) DEFINITIONS.—In this section:

12 (1) CONSENT DECREE.—The term “consent de-
13 cree”—

14 (A) means any relief entered by the court
15 that is based in whole or in part on the consent
16 or acquiescence of the parties; and

17 (B) does not include private settlements.

18 (2) GOOD CAUSE.—The term “good cause”
19 does not include discovery or congestion of the
20 court’s calendar.

21 (3) GOVERNMENT.—The term “Government”
22 means the United States, any Federal department or
23 agency, or any Federal agent or official acting with-
24 in the scope of official duties.

1 (4) PERMANENT RELIEF.—The term “perma-
2 nent relief” means relief issued in connection with a
3 final decision of a court.

4 (5) PRIVATE SETTLEMENT AGREEMENT.—The
5 term “private settlement agreement” means an
6 agreement entered into among the parties that is not
7 subject to judicial enforcement other than the rein-
8 statement of the civil action that the agreement set-
9 tled.

10 (6) PROSPECTIVE RELIEF.—The term “pro-
11 spective relief” means temporary, preliminary, or
12 permanent relief other than compensatory monetary
13 damages.

14 (g) EXPEDITED PROCEEDINGS.—It shall be the duty
15 of every court to advance on the docket and to expedite
16 the disposition of any civil action or motion considered
17 under this section.

18 (h) APPLICATION OF AMENDMENT.—This section
19 shall apply with respect to all orders granting prospective
20 relief in any civil action pertaining to the administration
21 or enforcement of the immigration laws of the United
22 States, whether such relief was ordered before, on, or after
23 the date of the enactment of this Act.

24 (i) SEVERABILITY.—If any provision of this section
25 or the application of such provision to any person or cir-

1 cumstance is found to be unconstitutional, the remainder
2 of this section and the application of the provisions of this
3 section to any person or circumstance shall not be affected
4 by such finding.

5 **SEC. 238. REPORTING REQUIREMENTS.**

6 (a) CLARIFYING ADDRESS REPORTING REQUIRE-
7 MENTS.—Section 265 (8 U.S.C. 1305) is amended—

8 (1) in subsection (a)—

9 (A) by striking “notify the Attorney Gen-
10 eral in writing” and inserting “submit written
11 or electronic notification to the Secretary of
12 Homeland Security, in a manner approved by
13 the Secretary,”;

14 (B) by striking “the Attorney General may
15 require by regulation” and inserting “the Sec-
16 retary may require”; and

17 (C) by adding at the end the following: “If
18 the alien is involved in a proceeding before an
19 immigration judge or in an administrative ap-
20 peal of such proceeding, the alien shall submit
21 to the Attorney General the alien’s current ad-
22 dress and a telephone number, if any, at which
23 the alien may be contacted.”;

1 (2) in subsection (b), by striking “Attorney
2 General” each place such term appears and inserting
3 “Secretary of Homeland Security”;

4 (3) in subsection (c), by striking “given to such
5 parent” and inserting “given by such parent’” and

6 (4) by adding at the end the following:

7 “(d)(1) Except as otherwise provided by the Sec-
8 retary under paragraph (2), an address provided by an
9 alien under this section—

10 “(A) shall be alien’s current residential mailing
11 address; and

12 “(B) may not be a post office box, another non-
13 residential mailing address, or the address of an at-
14 torney, representative, labor organization, or em-
15 ployer.

16 “(2) The Secretary may provide specific requirements
17 with respect to—

18 “(A) designated classes of aliens and special
19 circumstances, including aliens who are employed at
20 a remote location; and

21 “(B) the reporting of address information by
22 aliens who are incarcerated in a Federal, State, or
23 local correctional facility.

24 “(3) An alien who is being detained by the Secretary
25 under this Act—

1 “(A) is not required to report the alien’s cur-
2 rent address under this section while the alien re-
3 mains in detention; and

4 “(B) shall notify the Secretary of the alien’s ad-
5 dress under this section at the time of the alien’s re-
6 lease from detention.

7 “(e)(1) Notwithstanding any other provision of law,
8 the Secretary may provide for the appropriate coordina-
9 tion and cross-referencing of address information provided
10 by an alien under this section with other information relat-
11 ing to the alien’s address under other Federal programs,
12 including—

13 “(A) any information pertaining to the alien,
14 which is submitted in any application, petition, or
15 motion filed under this Act with the Secretary of
16 Homeland Security, the Secretary of State, or the
17 Secretary of Labor;

18 “(B) any information available to the Attorney
19 General with respect to an alien in a proceeding be-
20 fore an immigration judge or an administrative ap-
21 peal or judicial review of such proceeding;

22 “(C) any information collected with respect to
23 nonimmigrant foreign students or exchange program
24 participants under section 641 of the Illegal Immi-

1 gration Reform and Immigrant Responsibility Act of
2 1996 (8 U.S.C. 1372); and

3 “(D) any information collected from State or
4 local correctional agencies pursuant to the State
5 Criminal Alien Assistance Program.

6 “(2) The Secretary may rely on the most recent ad-
7 dress provided by the alien under this section or section
8 264 to send to the alien any notice, form, document, or
9 other matter pertaining to Federal immigration laws, in-
10 cluding service of a notice to appear. The Attorney Gen-
11 eral and the Secretary may rely on the most recent ad-
12 dress provided by the alien under section 239(a)(1)(F) to
13 contact the alien about pending removal proceedings.

14 “(3) The alien’s provision of an address for any other
15 purpose under the Federal immigration laws does not ex-
16 cuse the alien’s obligation to submit timely notice of the
17 alien’s address to the Secretary under this section (or to
18 the Attorney General under section 239(a)(1)(F) with re-
19 spect to an alien in a proceeding before an immigration
20 judge or an administrative appeal of such proceeding).”.

21 (b) CONFORMING CHANGES WITH RESPECT TO REG-
22 ISTRATION REQUIREMENTS.—Chapter 7 of title II (8
23 U.S.C. 1301 et seq.) is amended—

1 (1) in section 262(c), by striking “Attorney
2 General” and inserting “Secretary of Homeland Se-
3 curity”;

4 (2) in section 263(a), by striking “Attorney
5 General” and inserting “Secretary of Homeland Se-
6 curity”; and

7 (3) in section 264—

8 (A) in subsections (a), (b), (c), and (d), by
9 striking “Attorney General” each place it ap-
10 pears and inserting “Secretary of Homeland
11 Security”; and

12 (B) in subsection (f)—

13 (i) by striking “Attorney General is
14 authorized” and inserting “Secretary of
15 Homeland Security and Attorney General
16 are authorized”; and

17 (ii) by striking “Attorney General or
18 the Service” and inserting “Secretary or
19 the Attorney General”.

20 (c) PENALTIES.—Section 266 (8 U.S.C. 1306) is
21 amended—

22 (1) by striking subsection (b) and inserting the
23 following:

24 “(b)(1) Any alien or any parent or legal guardian in
25 the United States of a minor alien who fails to notify the

1 Secretary of Homeland Security of the alien's current ad-
2 dress in accordance with section 265 shall be fined under
3 title 18, United States Code, imprisoned for not more than
4 6 months, or both.

5 “(2) Any alien who violates section 265 (regardless
6 of whether the alien is punished under paragraph (1)) and
7 does not establish to the satisfaction of the Secretary that
8 such failure was reasonably excusable or was not willful
9 shall be taken into custody in connection with removal of
10 the alien. If the aliens has not been inspected or admitted,
11 or if the alien has failed on more than 1 occasion to submit
12 notice of the alien's current address as required under sec-
13 tion 265, the aliens may be presumed to be flight risk.

14 “(3) The Secretary or the Attorney General, in con-
15 sidering any form of relief from removal which may be
16 granted in the discretion of the Secretary or the Attorney
17 General, may take into consideration the alien's failure to
18 comply with section 265 as a separate negative factor. If
19 the aliens failed to comply with the requirements of section
20 265 after becoming subject to a final order of removal,
21 deportation, or exclusion, the alien's failure shall be con-
22 sidered as a strongly negative factor with respect to any
23 discretionary motion for reopening or reconsideration filed
24 by the alien.”;

1 (2) in subsection (c), by inserting “or a notice
2 of current address” before “containing statements”;
3 and

4 (3) in subsections (c) and (d), by striking “At-
5 torney General” each place it appears and inserting
6 “Secretary”.

7 (d) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as provided under
9 paragraph (2), the amendments made by this section
10 shall apply to proceedings initiated on or after the
11 date of the enactment of this Act.

12 (2) CONFORMING AND TECHNICAL AMEND-
13 MENTS.—The amendments made by paragraphs
14 (1)(A), (1)(B), (2), and (3) of subsection (a) are ef-
15 fective as if enacted on March 1, 2003.

16 **SEC. 239. WITHHOLDING OF REMOVAL.**

17 (a) IN GENERAL.—Section 241(b)(3) (8 U.S.C.
18 1231(b)(3)) is amended—

19 (1) in subparagraph (A), by adding at the end
20 the following: “The alien has the burden of proof to
21 establish that the alien’s life or freedom would be
22 threatened in such country, and that race, religion,
23 nationality, membership in a particular social group,
24 or political opinion would be at least 1 central rea-
25 son for such threat.”; and

1 (2) in subparagraph (C), by striking “In deter-
2 mining whether an alien has demonstrated that the
3 alien’s life or freedom would be threatened for a rea-
4 son described in subparagraph (A)” and inserting
5 “For purposes of this paragraph”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 subsection (a) shall take effect as if enacted on May 11,
8 2005, and shall apply to applications for withholding of
9 removal made on or after such date.

10 **SEC. 240. PRECLUDING REFUGEES AND ASYLEES WHO**
11 **HAVE BEEN CONVICTED OF AGGRAVATED**
12 **FELONIES FROM ADJUSTMENT TO LEGAL**
13 **PERMANENT RESIDENT STATUS.**

14 (a) IN GENERAL.—Section 209(c) (8 U.S.C. 1159(c))
15 is amended—

16 (1) by inserting “(1)” before “The provisions”;
17 and

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

19 “(2) An alien who is convicted of an aggravated fel-
20 ony is not eligible for a waiver under paragraph (1) or
21 for adjustment of status under this section.”.

22 (b) APPLICABILITY.—The amendment made by sub-
23 section (a) shall apply with respect to—

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

1 (2) all aliens who are required to establish ad-
2 missibility on or after such date; and

3 (3) all removal, deportation, or exclusion pro-
4 ceedings that are filed, pending, or reopened, on or
5 after such date.

6 **SEC. 241. JUDICIAL REVIEW OF DISCRETIONARY DETER-**
7 **MINATIONS AND REMOVAL ORDERS RELAT-**
8 **ING TO CRIMINAL ALIENS.**

9 (a) DENIAL OF RELIEF.—Section 242(a)(2)(B) (8
10 U.S.C. 1252(a)(2)(B)) is amended to read as follows:

11 “(B) DENIAL OF DISCRETIONARY RELIEF
12 AND CERTAIN OTHER RELIEF.—Except as pro-
13 vided under subparagraph (D), and notwith-
14 standing any other provision of law (statutory
15 or nonstatutory), including section 2241 of title
16 28, any other habeas corpus provision, and sec-
17 tions 1361 and 1651 of such title, and regard-
18 less of whether the individual determination, de-
19 cision, or action is made in removal pro-
20 ceedings, no court shall have jurisdiction to re-
21 view—

22 “(i) an individual determination re-
23 garding the granting of status or relief
24 under section 212(h), 212(i), 240A, 240B,
25 or 245; or

1 “(ii) any discretionary decision or ac-
2 tion of the Attorney General or the Sec-
3 retary of Homeland Security under this
4 Act or the regulations promulgated under
5 this Act, other than the granting of relief
6 under section 208(a), regardless of wheth-
7 er such decision or action is guided or in-
8 formed by standards or guidelines, regu-
9 latory, statutory, or otherwise.”.

10 (b) FINAL ORDER OF REMOVAL.—Section
11 242(a)(2)(C) (8 U.S.C. 1252(a)(2)(C)) is amended to read
12 as follows:

13 “(C) Except as provided under subpara-
14 graph (D), and notwithstanding any other pro-
15 vision of law (statutory or nonstatutory), in-
16 cluding section 2241 of title 28, any other ha-
17 beas corpus provision, and sections 1361 and
18 1651 of such title, no court shall have jurisdic-
19 tion to review any final order of removal (re-
20 gardless of whether relief or protection was de-
21 nied on the basis of the alien’s having com-
22 mitted a criminal offense) against an alien who
23 is removable for committing a criminal offense
24 under subparagraph (A)(iii), (B), (C), or (D) of
25 section 237(a)(2) or any offense under section

1 237(a)(2)(A)(ii) for which both predicate of-
2 fenses are, without regard to their date of com-
3 mission, described in section 237(a)(2)(A)(i).”.

4 **SEC. 242. INFORMATION SHARING BETWEEN FEDERAL AND**
5 **LOCAL LAW ENFORCEMENT OFFICERS.**

6 (a) REQUIREMENT FOR INFORMATION SHARING.—

7 No person or agency may prohibit a Federal, State, or
8 local government entity from acquiring information re-
9 garding the immigration status of any individual if the en-
10 tity seeking such information has probable cause to believe
11 that the individual is removable or not lawfully present
12 in the United States.

13 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
14 tion may be construed—

15 (1) to limit the acquisition of information as
16 otherwise provided by law; or

17 (2) to require a person to disclose information
18 regarding an individual’s immigration status before
19 receiving medical services or seeking law enforce-
20 ment assistance.

21 **SEC. 243. FRAUD PREVENTION PROGRAM.**

22 Notwithstanding any other provision of this Act, the
23 head of each department responsible for the administra-
24 tion of a program or authority to confer an immigration
25 benefit, relief, or status under this Act shall, subject to

1 available appropriations, develop an administrative pro-
2 gram to prevent fraud within or upon such program or
3 authority. Such program shall provide for fraud preven-
4 tion training for the relevant administrative adjudicators
5 within the department and such other measures as the
6 head of the department may provide.

7 **Subtitle B—Worksite Enforcement**

8 **SEC. 251. UNLAWFUL EMPLOYMENT OF ALIENS.**

9 Section 274A (8 U.S.C. 1324a) is amended to read
10 as follows:

11 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

12 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
13 ALIENS UNLAWFUL.—

14 “(1) IN GENERAL.—It is unlawful for an em-
15 ployer—

16 “(A) to hire, or to recruit or refer for a
17 fee, an alien for employment in the United
18 States knowing or with reckless disregard that
19 the alien is an unauthorized alien with respect
20 to such employment; or

21 “(B) to hire, or to recruit or refer for a
22 fee, for employment in the United States an in-
23 dividual without complying with the require-
24 ments under subsections (c) and (d).

1 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
2 ful for an employer, after hiring an alien for employ-
3 ment, to continue to employ the alien in the United
4 States knowing or with reckless disregard that the
5 alien is (or has become) an unauthorized alien with
6 respect to such employment.

7 “(3) USE OF LABOR THROUGH CONTRACT.—

8 “(A) IN GENERAL.—For purposes of this
9 section, an employer who uses a contract, sub-
10 contract, or exchange to obtain the labor of an
11 alien in the United States knowing that the
12 alien is an unauthorized alien (as defined in
13 subsection (b)(3)) with respect to performing
14 such labor, shall be considered to have hired the
15 alien for employment in the United States in
16 violation of paragraph (1)(A).

17 “(B) RULEMAKING.—The Secretary may
18 promulgate regulations—

19 “(i) to require, for purposes of ensur-
20 ing compliance with the immigration laws
21 of the United States, that an employer in-
22 clude in a written contract, subcontract, or
23 exchange an effective and enforceable re-
24 quirement that the contractor or subcon-

1 tractor adhere to such immigration laws,
2 including use of EEVS;

3 “(ii) to establish procedures by which
4 an employer may obtain confirmation from
5 the Secretary that the contractor or sub-
6 contractor has registered with EEVS and
7 is utilizing EEVS to verify its employees;
8 and

9 “(iii) to establish such other require-
10 ments for employers using contractors or
11 subcontractors as the Secretary determines
12 to be necessary to prevent knowing viola-
13 tions of this paragraph after rulemaking
14 pursuant to section 553 of title 5, United
15 States Code.

16 “(C) GUIDELINES.—The Secretary may
17 issue guidelines to clarify and supplement the
18 regulations issued pursuant to subparagraph
19 (B)(iii) and broadly disseminate such guide-
20 lines, in coordination with the Private Sector
21 Office of the Department of Homeland Secu-
22 rity.

23 “(4) DEFENSE.—

24 “(A) IN GENERAL.—Subject to subpara-
25 graphs (B) through (D), an employer that es-

1 tablishes that it has complied in good faith with
2 the requirements of paragraphs (1) through (4)
3 of subsection (c), pertaining to document
4 verification requirements, and subsection (d)
5 has established an affirmative defense that the
6 employer has not violated paragraph (1)(A)
7 with respect to hiring, recruiting, or referral.

8 “(B) LIMITED EXCEPTION.—A defense is
9 established without a showing of compliance
10 with subsection (d) until such time as the Sec-
11 retary has required an employer to participate
12 in EEVS or such participation is permitted on
13 a voluntary basis pursuant to subsection (d).

14 “(C) ADDITIONAL REQUIREMENTS.—The
15 employer may not establish a defense unless the
16 employer is in compliance with any additional
17 requirements that the Secretary may promul-
18 gate by regulation pursuant to subsections (c),
19 (d), and (k).

20 “(D) FAILURE TO COMPLY WITH STAND-
21 ARDS.—An employer is presumed to have acted
22 with knowledge or reckless disregard if the em-
23 ployer fails to comply with written standards,
24 procedures or instructions issued by the Sec-

1 retary. Such standards, procedures or instruc-
2 tions shall be objective and verifiable.

3 “(5) PREEMPTION.—This section preempts any
4 State or local law that—

5 “(A) requires the use of EEVS in a man-
6 ner that—

7 “(i) conflicts with any Federal policy,
8 procedure, or timetable;

9 “(ii) requires employers to verify
10 whether or not an individual is authorized
11 to work in the United States; or

12 “(iii) imposes a civil or criminal sanc-
13 tion (other than through licensing or other
14 similar laws) on a person that employs, or
15 recruits or refers for a fee for employment,
16 any unauthorized alien; and

17 “(B) requires, as a condition of con-
18 ducting, continuing, or expanding a business, a
19 business entity—

20 “(i) provide, build, fund, or maintain
21 a shelter, structure, or designated area at
22 or near the place of business of the entity
23 for use by—

24 “(I) any individual who is not an
25 employee of the business entity who

1 enters or seeks to enter the property
2 of the entity for the purpose of seek-
3 ing employment by the entity; or

4 “(II) any contractor, customer or
5 other person over which the business
6 entity has no authority; or

7 “(ii) carry out any other activity to
8 facilitate the employment by others of—

9 “(I) any individual who is not an
10 employee of the business entity who
11 enters or seeks to enter the property
12 of the entity for the purpose of seek-
13 ing employment by the entity; or

14 “(II) any contractor, customer,
15 or other person over which the busi-
16 ness entity has no authority.

17 “(b) DEFINITIONS.—In this section:

18 “(1) CRITICAL INFRASTRUCTURE.—The term
19 ‘critical infrastructure’ means agencies and depart-
20 ments of the United States, States, their suppliers
21 or contractors, and any other employer whose em-
22 ployees have access as part of their jobs to a govern-
23 ment building, military base, nuclear energy site,
24 weapon site, airport, or seaport.

25 “(2) EMPLOYER.—

1 “(A) IN GENERAL.—The term ‘em-
2 ployer’—

3 “(i) means any person or entity hir-
4 ing, recruiting, or referring for a fee an in-
5 dividual for employment in the United
6 States; and

7 “(ii) includes the Federal Government
8 and State, local, and tribal governments.

9 “(B) FRANCHISED BUSINESSES.—Fran-
10 chised businesses that operate independently do
11 not constitute a single employer solely on the
12 basis of sharing a common brand.

13 “(3) UNAUTHORIZED ALIEN.—The term ‘unau-
14 thorized alien’ means, with respect to the employ-
15 ment of an alien at a particular time, that the alien
16 is not at that time either—

17 “(A) an alien lawfully admitted for perma-
18 nent residence; or

19 “(B) authorized to be so employed by the
20 Secretary of Homeland Security under this Act.

21 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—

22 “(1) IN GENERAL.—Any employer hiring, re-
23 cruiting, or referring for a fee an individual for em-
24 ployment in the United States shall take all reason-
25 able steps to verify that the individual is authorized

1 to work in the United States, including the require-
2 ments under this subsection and under subsection
3 (d).

4 “(2) ATTESTATION AFTER EXAMINATION OF
5 DOCUMENTATION.—

6 “(A) IN GENERAL.—

7 “(i) REQUIREMENT.—The employer
8 shall attest, under penalty of perjury and
9 on a form prescribed by the Secretary, that
10 the employer has verified the identity and
11 work authorization status of the individual
12 by examining—

13 “(I) a document described in
14 subparagraph (B); or

15 “(II) a document described in
16 subparagraph (C) and a document de-
17 scribed in subparagraph (D).

18 “(ii) FORM OF ATTESTATION.—An at-
19 testation under clause (i) may be mani-
20 fested by a handwritten or electronic signa-
21 ture. An employer has complied with the
22 requirement of this paragraph with respect
23 to examination of documentation if the em-
24 ployer has followed applicable regulations
25 and any written procedures or instructions

1 provided by the Secretary and if a reason-
2 able person would conclude that the docu-
3 mentation is genuine and establishes the
4 employee's identity and authorization to
5 work, taking into account any information
6 provided to the employer by the Secretary,
7 including photographs.

8 “(B) DOCUMENTS ESTABLISHING BOTH
9 EMPLOYMENT AUTHORIZATION AND IDEN-
10 TITY.—A document described in this subpara-
11 graph is an individual's—

12 “(i) United States passport, or pass-
13 port card issued pursuant to the Secretary
14 of State's authority under the first section
15 of the Act of July 3, 1926 (22 U.S.C.
16 211a);

17 “(ii) permanent resident card or other
18 document issued by the Secretary or Sec-
19 retary of State to aliens authorized to work
20 in the United States, if the document—

21 “(I) contains a photograph of the
22 individual, biometric data, such as fin-
23 gerprints, or such other personal iden-
24 tifying information relating to the in-
25 dividual as the Secretary finds, by

1 regulation, sufficient for the purposes
2 of this subsection;

3 “(II) is evidence of authorization
4 for employment in the United States;
5 and

6 “(III) contains security features
7 to make it resistant to tampering,
8 counterfeiting, and fraudulent use; or

9 “(iii) social security card (other than
10 a card that specifies on its face that the
11 card is not valid for establishing employ-
12 ment authorization in the United States)
13 that bears a photograph and meets the
14 standards established under the Immigra-
15 tion Enforcement and Border Security Act
16 of 2007, upon the recommendation of the
17 Secretary of Homeland Security, in con-
18 sultation with the Commissioner of Social
19 Security.

20 “(C) DOCUMENTS ESTABLISHING IDEN-
21 TITY OF INDIVIDUAL.—A document described in
22 this subparagraph includes—

23 “(i) an individual’s driver’s license or
24 identity card issued by a State, the Com-
25 monwealth of the Northern Mariana Is-

1 lands, or an outlying possession of the
2 United States, provided that the issuing
3 State or entity has certified to the Sec-
4 retary of Homeland Security that it is in
5 compliance with the minimum standards
6 required under section 202 of the REAL
7 ID Act of 2005 (division B of Public Law
8 109–13; 49 U.S.C. 30301 note) and imple-
9 menting regulations issued by the Sec-
10 retary of Homeland Security once those re-
11 quirements become effective;

12 “(ii) an individual’s driver’s license or
13 identity card issued by a State, the Com-
14 monwealth of the Northern Mariana Is-
15 lands, or an outlying possession of the
16 United States which is not compliant
17 under section 202 of the REAL ID Act of
18 2005 if—

19 “(I) the driver’s license or iden-
20 tity card contains the individual’s pho-
21 tograph as well as the individual’s
22 name, date of birth, gender, height,
23 eye color and address;

24 “(II) the card has been approved
25 for this purpose by the Secretary in

1 accordance with timetables and proce-
2 dures established by the Secretary
3 pursuant to subsection (c)(1)(F); and

4 “(III) the card is presented by
5 the individual and examined by the
6 employer in combination with a U.S.
7 birth certificate, or a Certificate of
8 Naturalization, or a Certificate of
9 Citizenship, or such other documents
10 as may be prescribed by the Sec-
11 retary;

12 “(iii) for individuals under 16 years of
13 age who are unable to present a document
14 listed in clause (i) or (ii), documentation of
15 personal identity of such other type as the
16 Secretary finds provides a reliable means
17 of identification, provided it contains secu-
18 rity features to make it resistant to tam-
19 pering, counterfeiting, and fraudulent use;
20 or

21 “(iv) other documentation evidencing
22 identity as identified by the Secretary in
23 his discretion, with notice to the public
24 provided in the Federal Register, to be ac-
25 ceptable for purposes of this section, pro-

1 vided that the document, including any
2 electronic security measures linked to the
3 document, contains security features that
4 make the document as resistant to tam-
5 pering, counterfeiting, and fraudulent use
6 as a document described in clause (i) or
7 subparagraph (B)(i) or (B)(ii).

8 “(D) DOCUMENTS EVIDENCING EMPLOY-
9 MENT AUTHORIZATION.—The following docu-
10 ments shall be accepted as evidence of employ-
11 ment authorization:

12 “(i) A social security account number
13 card issued by the Commissioner of Social
14 Security (other than a card which specifies
15 on its face that the card is not valid for
16 employment in the United States). The
17 Secretary, in consultation with the Com-
18 missioner of Social Security, may require
19 by publication of a notice in the Federal
20 Register that only a social security account
21 number card described in section 253 of
22 the Immigration Enforcement and Border
23 Security Act of 2007 be accepted for this
24 purpose.

1 “(ii) Any other documentation evi-
2 dencing authorization of employment in
3 the United States which the Secretary de-
4 clares, by publication in the Federal Reg-
5 ister, to be acceptable for purposes of this
6 section, provided that the document, in-
7 cluding any electronic security measures
8 linked to the document contains security
9 features to make it resistant to tampering,
10 counterfeiting, and fraudulent use.

11 “(E) AUTHORITY TO PROHIBIT USE OF
12 CERTAIN DOCUMENTS.—If the Secretary deter-
13 mines that any document or class of documents
14 described in subparagraph (B), (C), or (D) as
15 establishing employment authorization or iden-
16 tity does not reliably establish such authoriza-
17 tion or identity or is being used fraudulently to
18 an unacceptable degree, the Secretary shall,
19 with notice to the public provided in the Fed-
20 eral Register, prohibit or restrict the use of that
21 document or class of documents for purposes of
22 this subsection.

23 “(3) INDIVIDUAL ATTESTATION OF EMPLOY-
24 MENT AUTHORIZATION.—The individual shall attest,
25 under penalty of perjury on the form prescribed by

1 the Secretary, that the individual is a citizen or na-
2 tional of the United States, an alien lawfully admit-
3 ted for permanent residence, or an alien who is au-
4 thorized under this Act or by the Secretary to be
5 hired, recruited, or referred for such employment.
6 Such attestation may be manifested by either a
7 handwritten or electronic signature.

8 “(4) RETENTION OF VERIFICATION FORM.—
9 After completing a form under paragraphs (1) and
10 (2), the employer shall retain a paper, microfiche,
11 microfilm, or electronic version of the form and
12 make such version available for inspection by officers
13 of the Department of Homeland Security (or per-
14 sons designated by the Secretary), the Special Coun-
15 sel for Immigration-Related Unfair Employment
16 Practices, or the Department of Labor during a pe-
17 riod beginning on the date of the hiring, recruiting,
18 or referral of the individual and ending—

19 “(A) in the case of the recruiting or refer-
20 ral for a fee (without hiring) of an individual,
21 7 years after the date of the recruiting or refer-
22 ral; and

23 “(B) in the case of the hiring of an indi-
24 vidual—

1 “(i) 7 years after the date of such hir-
2 ing; or

3 “(ii) 2 years after the date the indi-
4 vidual’s employment is terminated, which-
5 ever is earlier.

6 “(5) COPYING OF DOCUMENTATION AND REC-
7 ORDKEEPING REQUIRED.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of law, the employer shall copy
10 all documents presented by an individual pursu-
11 ant to this subsection and shall retain a paper,
12 microfiche, microfilm, or electronic copy as pre-
13 scribed in paragraph (4), but only (except as
14 otherwise permitted under law) for the purposes
15 of complying with the requirements of this sub-
16 section. Such copies shall reflect the signatures
17 of the employer and the employee and the date
18 of receipt.

19 “(B) SSA RECORDS.—The employer shall
20 also maintain records of Social Security Admin-
21 istration correspondence regarding name and
22 number mismatches or no-matches and the
23 steps taken to resolve such issues.

24 “(C) RESOLUTION OF IDENTITY.—The em-
25 ployer shall maintain records of all actions and

1 copies of any correspondence or action taken by
2 the employer to clarify or resolve any issue that
3 raises reasonable doubt as to the validity of the
4 alien’s identity or work authorization.

5 “(D) OTHER RECORDS.—The employer
6 shall maintain such records as prescribed in
7 this subsection. The Secretary may prescribe
8 the manner of recordkeeping and may require
9 that additional records be kept or that addi-
10 tional documents be copied and maintained.
11 The Secretary may require that these docu-
12 ments be transmitted electronically, and may
13 develop automated capabilities to request such
14 documents.

15 “(6) PENALTIES.—An employer that fails to
16 comply with any requirement under this subsection
17 shall be penalized under subsection (e)(4)(B).

18 “(7) NO AUTHORIZATION OF NATIONAL IDENTI-
19 FICATION CARDS.—Nothing in this section shall be
20 construed to authorize, directly or indirectly, the
21 issuance or use of national identification cards or
22 the establishment of a national identification card.

23 “(8) ALL EMPLOYEES.—The employer shall use
24 the procedures for document verification set forth in

1 this paragraph for all employees without regard to
2 national origin or citizenship status.

3 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
4 TEM.—

5 “(1) IN GENERAL.—The Secretary, in coopera-
6 tion and consultation with the Secretary of State,
7 the Commissioner of Social Security, and the States,
8 shall implement and specify the procedures for
9 EEVS. The participating employers shall timely reg-
10 ister with EEVS and shall use EEVS in accordance
11 with paragraph (5).

12 “(2) IMPLEMENTATION SCHEDULE.—

13 “(A) As of the date of enactment of this
14 section, the Secretary, with notice to the public
15 provided in the Federal Register, is authorized
16 to require any employer or industry which the
17 Secretary determines to be part of the critical
18 infrastructure, a Federal contractor, or directly
19 related to the national security or homeland se-
20 curity of the United States to participate in
21 EEVS. This requirement may be applied to
22 both newly hired and current employees. The
23 Secretary shall notify employers not later than
24 30 days before such employers are required to

1 participate in EEVS pursuant to this subpara-
2 graph.

3 “(B) Not later than 6 months after the
4 date of the enactment of this section, the Sec-
5 retary shall require additional employers or in-
6 dustries to participate in EEVS. This subpara-
7 graph shall apply to new employees hired, and
8 current employees subject to reverification be-
9 cause of expiring work authorization docu-
10 mentation or expiration of immigration status,
11 on or after the date on which the requirement
12 takes effect. The Secretary, by notice in the
13 Federal Register, shall designate these employ-
14 ers or industries, in the discretion of the Sec-
15 retary, based upon risks to critical infrastruc-
16 ture, national security, immigration enforce-
17 ment, or homeland security needs.

18 “(C) Not later than 18 months after the
19 date of the enactment of this section, the Sec-
20 retary shall require all employers to participate
21 in EEVS with respect to newly hired employees
22 and current employees subject to reverification
23 because of expiring work authorization docu-
24 mentation or expiration of immigration status.

1 “(D) Not later than 3 years after the date
2 of the enactment of this section, all employers
3 shall participate in EEVS with respect to new
4 employees, all employees whose identity and em-
5 ployment authorization have not been previously
6 verified through EEVS. The Secretary may
7 specify earlier dates for participation in EEVS,
8 in the discretion of the Secretary, for some or
9 all classes of employer or employee.

10 “(E) The Secretary shall create the nec-
11 essary systems and processes to monitor the
12 functioning of EEVS, including the volume of
13 the workflow, the speed of processing of que-
14 ries, and the speed and accuracy of responses.
15 The Comptroller General of the United States
16 shall audit these systems and processes not
17 later than 9 months after the date of the enact-
18 ment of this section and not later than 24
19 months after the date of the enactment of this
20 section. The Comptroller General shall report
21 the results of the audits conducted under this
22 subparagraph to Congress.

23 “(3) PARTICIPATION IN EEVS.—The Secretary
24 may—

1 “(A) permit any employer that is not re-
2 quired to participate in EEVS to participate on
3 a voluntary basis; and

4 “(B) require any employer that is required
5 to participate in EEVS with respect to its
6 newly hired employees also to do so with respect
7 to its current workforce if the Secretary has
8 reasonable cause to believe that the employer
9 has engaged in any violation of the immigration
10 laws.

11 “(4) CONSEQUENCE OF FAILURE TO PARTICI-
12 PATE.—If an employer fails to comply with the re-
13 quirements of EEVS with respect to an individual—

14 “(A) such failure shall be treated as a vio-
15 lation of subsection (a)(1)(B) with respect to
16 that individual; and

17 “(B) a rebuttable presumption is created
18 that an employer has acted with knowledge or
19 reckless disregard if the employer is shown by
20 clear and convincing evidence to have materially
21 failed to comply with written standards, proce-
22 dures, or instructions issued by the Secretary,
23 which shall be objective and verifiable.

24 “(5) PROCEDURES FOR PARTICIPANTS IN
25 EEVS.—

1 “(A) IN GENERAL.—An employer partici-
2 pating in EEVS shall register in EEVS and
3 conform to the procedures under this paragraph
4 in the event of hiring, recruiting, or referring
5 any individual for employment in the United
6 States.

7 “(B) REGISTRATION OF EMPLOYERS.—The
8 Secretary of Homeland Security, through notice
9 in the Federal Register, shall prescribe proce-
10 dures that employers shall follow to register in
11 EEVS. In prescribing these procedures, the
12 Secretary may require employers to provide—

13 “(i) the name of the employer;

14 “(ii) the employer’s employment iden-
15 tification number;

16 “(iii) the address of the employer;

17 “(iv) the name, position, and social
18 security number of the employees of the
19 employer for whom EEVS is being
20 accessed; and

21 “(v) such other information as the
22 Secretary deems necessary to ensure prop-
23 er use and security of EEVS.

24 “(C) TRAINING.—The Secretary shall re-
25 quire employers to undergo such training as the

1 Secretary determines to be necessary to ensure
2 proper use and security of EEVS. Such train-
3 ing shall be made available electronically, if
4 practicable.

5 “(D) PROVISION OF ADDITIONAL INFOR-
6 MATION.—Each prospective employee shall pro-
7 vide to the employer, and the employer shall
8 record in such manner as the Secretary may
9 specify—

10 “(i) the prospective employee’s social
11 security account number;

12 “(ii) if the prospective employee does
13 not attest to being a national of the United
14 States under subsection (c)(2), such identi-
15 fication or authorization number estab-
16 lished by the Department of Homeland Se-
17 curity as the Secretary of Homeland Secu-
18 rity shall specify; and

19 “(iii) such other information as the
20 Secretary may require to determine the
21 identity and work authorization of the pro-
22 spective employee.

23 “(E) PRESENTATION OF DOCUMENTA-
24 TION.—The employer and each prospective em-

1 employee shall fulfill the requirements under sub-
2 section (c).

3 “(F) PRESENTATION OF BIOMETRICS.—

4 Employers who are enrolled in the Voluntary
5 Advanced Verification Program to Combat
6 Identity Theft established under section 255 of
7 the Immigration Enforcement and Border Secu-
8 rity Act of 2007 shall, in addition to documen-
9 tary evidence of identity and work eligibility,
10 electronically provide the fingerprints of the
11 prospective employee to the Secretary of Home-
12 land Security.

13 “(6) SEEKING CONFIRMATION.—

14 “(A) IN GENERAL.—The employer shall
15 use EEVS to provide the Secretary of Home-
16 land Security with all required information to
17 obtain confirmation of the identity and employ-
18 ment eligibility of any employee before the date
19 on which the individual is employed, recruited,
20 or referred. An employer may not make the
21 starting date of an individual’s employment
22 contingent on the receipt of a confirmation of
23 the identity and employment eligibility.

24 “(B) LIMITED WORK AUTHORIZATION.—

25 For reverification of an employee with a limited

1 period of work authorization, all required
2 verification procedures shall be completed not
3 later than the date the employee's work author-
4 ization expires.

5 “(C) NOTIFICATION.—The Secretary shall
6 provide, and the employer shall utilize, as part
7 of EEVS, a method of communicating notices
8 and requests for information or action on the
9 part of the employer with respect to expiring
10 work authorization or status and other matters.
11 The Secretary shall provide a method of noti-
12 fying employers of a confirmation, nonconfirma-
13 tion or a notice that further action is required
14 (referred to in this subsection as the ‘further
15 action notice’). The employer shall communicate
16 to the prospective employee that is the subject
17 of the verification all information provided to
18 the employer by EEVS for communication to
19 such prospective employee.

20 “(7) CONFIRMATION OR NONCONFIRMATION.—

21 “(A) INITIAL RESPONSE.—EEVS shall
22 provide a confirmation, a nonconfirmation, or a
23 further action notice of an prospective employ-
24 ee's identity and employment eligibility at the
25 time of the inquiry, unless for technological rea-

1 sons or due to unforeseen circumstances, EEVS
2 is unable to provide such confirmation or fur-
3 ther action notice. In such situations, the sys-
4 tem shall provide confirmation or further action
5 notice not later than 2 business days after the
6 initial inquiry. If providing confirmation or fur-
7 ther action notice, EEVS shall provide an ap-
8 propriate code indicating such confirmation or
9 such further action notice.

10 “(B) CONFIRMATION UPON INITIAL IN-
11 QUIRY.—If the employer receives an appro-
12 priate confirmation of an prospective employee’s
13 identity and work eligibility under EEVS, the
14 employer shall record the confirmation in such
15 manner as the Secretary may specify.

16 “(C) FURTHER ACTION NOTICE UPON INI-
17 TIAL INQUIRY AND SECONDARY
18 VERIFICATION.—

19 “(i) FURTHER ACTION NOTICE.—If
20 the employer receives a further action no-
21 tice of a prospective employee’s identity or
22 work eligibility under EEVS, the employer
23 shall immediately inform the prospective
24 employee of the further action notice and
25 any procedures specified by the Secretary

1 for addressing the further action notice.
2 The employee shall acknowledge in writing
3 the receipt of the further action notice
4 from the employer.

5 “(ii) CONTEST.—Not later than 5
6 business days after the date on which a
7 prospective employee is notified under this
8 subparagraph, the employee shall contact
9 the appropriate agency to contest the fur-
10 ther action notice and, if required by the
11 Secretary, appear in person at the appro-
12 priate Federal or State agency to verify
13 the employee’s identity and employment
14 authorization. The Secretary, in consulta-
15 tion with the Commissioner of Social Secu-
16 rity and other appropriate Federal and
17 State officials, shall specify an available
18 secondary verification procedure to confirm
19 the validity of information provided and to
20 provide a final confirmation or noncon-
21 firmation. An employee contesting a fur-
22 ther action notice shall attest under pen-
23 alty of perjury to the employee’s identity
24 and employment authorization.

1 “(iii) NO CONTEST.—If the prospec-
2 tive employee does not contest the further
3 action notice within the period specified in
4 clause (ii), a final nonconfirmation shall be
5 issued and the employer shall record the
6 nonconfirmation in such manner as the
7 Secretary may specify.

8 “(iv) FINALITY.—EEVS shall provide
9 a final confirmation or nonconfirmation
10 not later than 10 business days after a
11 prospective employee contests the further
12 action notice. If the employee is taking the
13 steps required by the Secretary and the
14 agency that the employee has contacted to
15 resolve a further action notice, the Sec-
16 retary shall extend the period of investiga-
17 tion until the secondary verification proce-
18 dure allows the Secretary to provide a final
19 confirmation or nonconfirmation. If the
20 employee fails to take the steps required by
21 the Secretary and the appropriate agency,
22 a final nonconfirmation may be issued to
23 that employee.

24 “(v) REEXAMINATION.—Nothing in
25 this section may be construed to prevent

1 the Secretary from reexamining a case
2 where a final confirmation has been pro-
3 vided if subsequently received information
4 indicates that the individual may not be
5 work authorized.

6 “(D) TERMINATION OF EMPLOYMENT.—

7 An employer may not terminate the employ-
8 ment of an individual solely because of the fail-
9 ure of the individual to have identity and work
10 eligibility confirmed under this section until a
11 nonconfirmation becomes final. When final con-
12 firmation or nonconfirmation is provided, the
13 confirmation system shall provide an appro-
14 priate code indicating such confirmation or non-
15 confirmation.

16 “(8) CONSEQUENCES OF NONCONFIRMATION.—

17 “(A) TERMINATION OF CONTINUED EM-
18 PLOYMENT.—If the employer has received a
19 final nonconfirmation regarding a prospective
20 employee, the employer shall terminate employ-
21 ment, recruitment, or referral of the employee.

22 “(B) CONTINUED EMPLOYMENT AFTER
23 FINAL NONCONFIRMATION.—If the employer
24 violates subparagraph (A), a rebuttable pre-
25 sumption is created that the employer has vio-

1 lated paragraphs (1)(A) and (2) of subsection
2 (a).

3 “(C) EXCEPTION.—Subparagraph (B)
4 shall not apply in any prosecution under section
5 274A(e)(1).

6 “(9) OBLIGATION TO RESPOND TO QUERIES
7 AND ADDITIONAL INFORMATION.—

8 “(A) IN GENERAL.—Employers shall com-
9 ply with requests from the Secretary through
10 EEVS for information, including queries con-
11 cerning current and former employees that re-
12 late to the functioning of EEVS, the accuracy
13 of the responses provided by EEVS, and any
14 suspected fraud or identity theft in the use of
15 EEVS. Failure to comply with such a request
16 is a violation of subsection (a)(1)(B).

17 “(B) FURTHER ACTION.—Individuals
18 being verified through EEVS may be required
19 to take further action to address irregularities
20 identified in the documents relied upon for pur-
21 poses of employment verification. The employer
22 shall communicate to the individual any such
23 requirement for further actions and shall record
24 the date and manner of such communication.
25 The individual shall acknowledge in writing the

1 receipt of this communication from the em-
2 ployer. Failure to communicate such a require-
3 ment is a violation of subsection (a)(1)(B).

4 “(C) ADDITIONAL REQUIREMENTS.—The
5 Secretary, with notice to the public provided in
6 the Federal Register, may implement, clarify,
7 and supplement the requirements of this para-
8 graph to facilitate the functioning of EEVS or
9 to prevent fraud or identity theft in the use of
10 EEVS.

11 “(10) IMPERMISSIBLE USE OF EEVS.—

12 “(A) An employer may not use EEVS to
13 verify an individual before extending to the in-
14 dividual an offer of employment.

15 “(B) An employer may not require an indi-
16 vidual to verify the individual’s employment eli-
17 gibility through EEVS as a condition of extend-
18 ing to that individual an offer of employment.
19 Nothing in this subparagraph may be construed
20 to prevent an employer from encouraging an
21 employee or a prospective employee from
22 verifying the employee’s or a prospective em-
23 ployee’s employment eligibility before obtaining
24 employment pursuant to paragraph (12).

1 “(C) An employer may not terminate an
2 individual’s employment solely because that in-
3 dividual has been issued a further action notice.

4 “(D) An employer may not take the fol-
5 lowing actions solely because an individual has
6 been issued a further action notice:

7 “(i) Reduce the salary, bonuses, or
8 other compensation due to the employee.

9 “(ii) Suspend the employee without
10 pay.

11 “(iii) Reduce the hours that the em-
12 ployee is required to work if such reduction
13 is accompanied by a reduction in salary,
14 bonuses, or other compensation due to the
15 employee. An employer, with the agree-
16 ment of an employee, may provide the em-
17 ployee with reasonable time off without pay
18 in order to contest and resolve the further
19 action notice received by the employee.

20 “(iv) Deny the employee the training
21 necessary to perform the employment du-
22 ties for which the employee has been hired.

23 “(E) An employer may not, in the course
24 of utilizing the procedures for document
25 verification set forth in subsection (c), require

1 that a prospective employee present additional
2 documents or different documents than those
3 prescribed under that section.

4 “(F) The Secretary of Homeland Security
5 shall develop the necessary policies and proce-
6 dures to monitor the use of EEVS by employers
7 and their compliance with the requirements set
8 forth in this section. Employers shall comply
9 with requests from the Secretary for informa-
10 tion related to any monitoring, audit or inves-
11 tigation undertaken pursuant to this paragraph.

12 “(G) The Secretary of Homeland Security,
13 in consultation with the Secretary of Labor,
14 shall establish and maintain a process by which
15 any employee (or any prospective employee who
16 would otherwise have been hired) who has rea-
17 son to believe that an employer has violated any
18 of subparagraphs (A) through (E) may file a
19 complaint against the employer.

20 “(H) Any employer found to have violated
21 any of subparagraphs (A) through (E) shall pay
22 a civil penalty in an amount not to exceed
23 \$10,000 for each violation.

24 “(I) This paragraph is not intended to,
25 and does not, create any right, benefit, trust, or

1 responsibility, whether substantive or proce-
2 dural, enforceable at law or equity by a party
3 against the United States, its departments,
4 agencies, instrumentalities, entities, officers,
5 employees, or agents, or any person, nor does it
6 create any right of review in a judicial pro-
7 ceeding.

8 “(11) MODIFICATION OF REQUIREMENTS.—If,
9 based on a regular review of EEVS and the docu-
10 ment verification procedures to identify fraudulent
11 use and to assess the security of the documents
12 being used to establish identity or employment au-
13 thorization, the Secretary determines that modifica-
14 tions are necessary to ensure that EEVS accurately
15 and reliably determines the work authorization of
16 employees while providing protection against fraud
17 and identity theft, the Secretary, in consultation
18 with the Commissioner of Social Security and after
19 publishing a notice the Federal Register, may mod-
20 ify—

21 “(A) the documents required to be pre-
22 sented to the employer;

23 “(B) the information required to be pro-
24 vided to EEVS by the employer; and

1 “(C) the procedures required to be followed
2 by employers with respect to any aspect of
3 EEVS.

4 “(12) SECURE SELF-VERIFICATION PROCE-
5 DURES.—Subject to appropriate safeguards to pre-
6 vent misuse of EEVS, the Secretary, in consultation
7 with the Commissioner of Social Security, shall es-
8 tablish secure procedures to permit an individual,
9 seeking to verify the individual’s employment eligi-
10 bility before obtaining or changing employment, to
11 contact the appropriate agency and, in a timely
12 manner, correct or update the information used by
13 EEVS.

14 “(e) PROTECTION FROM LIABILITY FOR ACTIONS
15 TAKEN ON THE BASIS OF INFORMATION PROVIDED BY
16 EEVS.—No employer participating in EEVS may be held
17 liable under any law for any employment-related action
18 taken with respect to the employee in good faith reliance
19 on information provided through EEVS.

20 “(f) ADMINISTRATIVE REVIEW.—

21 “(1) FILING REQUIREMENT.—

22 “(A) IN GENERAL.—An individual who re-
23 ceives a final nonconfirmation notice may, not
24 later than 15 days after the date that such no-
25 tice is received, file an administrative appeal of

1 such final notice. An individual who did not
2 timely contest a further action notice may not
3 file an administrative appeal under this para-
4 graph. Unless the Secretary of Homeland Secu-
5 rity, in consultation with the Commissioner of
6 Social Security, specifies otherwise, all adminis-
7 trative appeals shall be filed in accordance with
8 this paragraph.

9 “(B) NATIONALS OF THE UNITED
10 STATES.—An individual claiming to be a na-
11 tional of the United States shall file the admin-
12 istrative appeal with the Commissioner.

13 “(C) ALIENS.—An individual claiming to
14 be an alien authorized to work in the United
15 States shall file the administrative appeal with
16 the Secretary.

17 “(2) REVIEW FOR ERROR.—The Secretary and
18 the Commissioner shall each develop procedures for
19 resolving administrative appeals regarding final non-
20 confirmations based upon the information that the
21 individual has provided, including any additional evi-
22 dence that was not previously considered. Appeals
23 shall be resolved not later than 30 days after the in-
24 dividual submits all evidence relevant to the appeal.
25 The Secretary and the Commissioner may, on a case

1 by case basis for good cause, extend this period in
2 order to ensure accurate resolution of the appeal.
3 Administrative review under this subsection shall be
4 limited to whether the final nonconfirmation notice
5 is supported by the weight of the evidence.

6 “(3) ADMINISTRATIVE RELIEF.—Relief avail-
7 able under this subsection is limited to an adminis-
8 trative order upholding, reversing, modifying,
9 amending, or setting aside the final nonconfirmation
10 notice.

11 “(4) DAMAGES, FEES AND COSTS.—Money
12 damages, fees, or costs may not be awarded in the
13 administrative review process, and no court shall
14 have jurisdiction to award any damages, fees or
15 costs relating to such administrative review under
16 the Equal Access to Justice Act (Public Law 96-
17 481) or under any other law.

18 “(g) JUDICIAL REVIEW.—

19 “(1) EXCLUSIVE PROCEDURE.—Notwith-
20 standing any other provision of law, including sec-
21 tions 1361 and 1651 of title 28, United States Code,
22 no court shall have jurisdiction to consider any claim
23 against the United States, or any of its agencies, of-
24 ficers, or employees, challenging or otherwise relat-

1 ing to a final nonconfirmation notice or to EEVS,
2 except as specifically provided under this subsection.

3 “(2) PETITION FOR REVIEW.—

4 “(A) IN GENERAL.—A petition for review
5 of a denial of a final administrative order up-
6 holding a final nonconfirmation notice shall be
7 filed with the United States Court of Appeals
8 for the judicial circuit in which the petitioner
9 resided when the final nonconfirmation notice
10 was issued.

11 “(B) SCOPE AND STANDARD FOR RE-
12 VIEW.—The court of appeals shall decide the
13 petition only on the administrative record on
14 which the final nonconfirmation order is based.
15 The burden shall be on the petitioner to show
16 that the administratively final nonconfirmation
17 decision was arbitrary, capricious, not sup-
18 ported by substantial evidence, or otherwise not
19 in accordance with law. Administrative findings
20 of fact are conclusive unless any reasonable ad-
21 judicator would be compelled to reach a con-
22 trary conclusion.

23 “(3) EXHAUSTION OF ADMINISTRATIVE REM-
24 EDIES.—A court may review an administratively
25 final order of a nonconfirmation notice only if the

1 petitioner has exhausted all administrative remedies
2 available to the petitioner as of right.

3 “(4) LIMIT ON INJUNCTIVE RELIEF.—Regard-
4 less of the nature of the action or claim or of the
5 identity of the party or parties bringing the action,
6 no court (other than the Supreme Court) shall have
7 jurisdiction or authority to enjoin or restrain the op-
8 eration of the provisions in this section.

9 “(h) MANAGEMENT OF EMPLOYMENT ELIGIBILITY
10 VERIFICATION SYSTEM.—

11 “(1) IN GENERAL.—The Secretary shall estab-
12 lish, manage, and modify EEVS to—

13 “(A) respond to inquiries made by partici-
14 pating employers at any time through the Inter-
15 net concerning an individual’s identity and
16 whether the individual is authorized to be em-
17 ployed;

18 “(B) maintain records of the inquiries that
19 were made, of confirmations provided (or not
20 provided), and of the codes provided to employ-
21 ers as evidence of their compliance with their
22 obligations under EEVS; and

23 “(C) provide information to, and request
24 action by, employers and individuals using the
25 system, including notifying employers of the ex-

1 piration or other relevant change in an employ-
2 ee’s employment authorization, and directing an
3 employer to convey to the employee a request to
4 contact the appropriate Federal or State agen-
5 cy.

6 “(2) DESIGN AND OPERATION OF SYSTEM.—
7 EEVS shall be designed and operated—

8 “(A) to maximize its reliability and ease of
9 use by employers consistent with insulating and
10 protecting the privacy and security of the un-
11 derlying information;

12 “(B) to respond accurately to all inquiries
13 made by employers on whether individuals are
14 authorized to be employed and to register any
15 times when the system is unable to receive in-
16 quiries;

17 “(C) to maintain appropriate administra-
18 tive, technical, and physical safeguards to pre-
19 vent unauthorized disclosure of personal infor-
20 mation;

21 “(D) to allow for auditing use of the sys-
22 tem to detect fraud and identify theft, and to
23 preserve the security of the information in
24 EEVS, including—

1 “(i) the development and use of algo-
2 rithms to detect potential identity theft,
3 such as multiple uses of the same identi-
4 fying information or documents;

5 “(ii) the development and use of algo-
6 rithms to detect misuse of EEVS by em-
7 ployers and employees;

8 “(iii) the development of capabilities
9 to detect anomalies in the use of EEVS
10 that may indicate potential fraud or mis-
11 use of EEVS;

12 “(iv) auditing documents and infor-
13 mation submitted by potential employees to
14 employers, including authority to conduct
15 interviews with employers and employees;

16 “(E) to confirm identity and work author-
17 ization through verification of records main-
18 tained by the Secretary, other Federal depart-
19 ments, States, the Commonwealth of the North-
20 ern Mariana Islands, or an outlying possession
21 of the United States, as determined necessary
22 by the Secretary, including—

23 “(i) records maintained by the Social
24 Security Administration as specified in
25 paragraph (4), including photographs and

1 any other biometric information as may be
2 required;

3 “(ii) birth and death records main-
4 tained by vital statistics agencies of any
5 State or other United States jurisdiction;

6 “(iii) passport and visa records, in-
7 cluding photographs, maintained by the
8 United States Department of State; and

9 “(iv) State driver’s license or identity
10 card information, including photographs,
11 maintained by the department of motor ve-
12 hicles of a State;

13 “(F) to electronically confirm the issuance
14 of the employment authorization or identity
15 document and to display the digital photograph
16 that the issuer placed on the document so that
17 the employer can compare the photograph dis-
18 played to the photograph on the document pre-
19 sented by the employee; and

20 “(G) if in exceptional cases a photograph
21 is not available from the issuer, to implement
22 an alternative procedure, as specified by the
23 Secretary, for confirming the authenticity of a
24 document described in subparagraph (F).

1 “(3) RULEMAKING.—The Secretary is author-
2 ized, with notice to the public provided in the Fed-
3 eral Register, to issue regulations concerning oper-
4 ational and technical aspects of EEVS and the effi-
5 ciency, accuracy, and security of EEVS.

6 “(4) ACCESS TO INFORMATION.—

7 “(A) Notwithstanding any other provision
8 of law, the Secretary of Homeland Security
9 shall have access to relevant records described
10 in paragraph (2)(E), for the purposes of pre-
11 venting identity theft and fraud in the use of
12 EEVS and enforcing the provisions of this sec-
13 tion governing employment verification. A State
14 or other non-Federal jurisdiction that does not
15 provide such access shall not be eligible for any
16 grant or other program of financial assistance
17 administered by the Secretary.

18 “(B) The Secretary, in consultation with
19 the Commissioner of Social Security and other
20 appropriate Federal and State officials, shall
21 develop policies and procedures to ensure pro-
22 tection of the privacy and security of personally
23 identifiable information and identifiers con-
24 tained in the records accessed pursuant to this
25 subsection and subsection (e)(5)(A). The Sec-

1 retary, in consultation with the Commissioner
2 and other appropriate Federal and State agen-
3 cies, shall develop and deploy appropriate pri-
4 vacy and security training for the Federal and
5 State employees accessing the records pursuant
6 to this subsection and subsection (e)(5)(A).

7 “(C) The Chief Privacy Officer of the De-
8 partment of Homeland Security shall conduct
9 regular privacy audits of the policies and proce-
10 dures established under subparagraph (B), in-
11 cluding any collection, use, dissemination, and
12 maintenance of personally identifiable informa-
13 tion and any associated information technology
14 systems, as well as scope of requests for this in-
15 formation. The Chief Privacy Officer shall re-
16 view the results of the audits and recommend to
17 the Secretary and the Privacy and Civil Lib-
18 erties Oversight Board any changes necessary
19 to improve the privacy protections of the pro-
20 gram.

21 “(5) RESPONSIBILITIES OF THE SECRETARY OF
22 HOMELAND SECURITY.—

23 “(A) As part of EEVS, the Secretary shall
24 establish a reliable, secure method, that—

1 “(i) compares the name, alien identi-
2 fication or authorization number, or other
3 relevant information provided in an inquiry
4 against such information maintained or
5 accessed by the Secretary in order to con-
6 firm (or not confirm) the validity of the in-
7 formation provided, the correspondence of
8 the name and number, whether the alien is
9 authorized to be employed in the United
10 States (or, to the extent that the Secretary
11 determines to be feasible and appropriate,
12 whether the Secretary’s records verify
13 United States citizenship), and such other
14 information as the Secretary may pre-
15 scribe; and

16 “(ii) displays the digital photograph
17 described in paragraph (2)(F).

18 “(B) The Secretary shall have authority to
19 prescribe when a confirmation, nonconfirmation
20 or further action notice shall be issued.

21 “(C) The Secretary shall perform regular
22 audits under EEVS in accordance with para-
23 graph (2)(D) and shall utilize the information
24 obtained from such audits and any information
25 obtained from the Commissioner of Social Secu-

1 rity pursuant to section 253 of the Immigration
2 Enforcement and Border Security Act of 2007,
3 to improve immigration enforcement.

4 “(D) The Secretary shall make appropriate
5 arrangements to allow employers who are other-
6 wise unable to access EEVS to use Federal
7 Government facilities or public facilities in
8 order to utilize EEVS.

9 “(6) RESPONSIBILITIES OF THE SECRETARY OF
10 STATE.—As part of EEVS, the Secretary of State
11 shall provide to the Secretary access to passport and
12 visa information as needed to confirm that a pass-
13 port or passport card presented under subsection
14 (c)(1)(B) belongs to the subject of EEVS check, or
15 that a passport or visa photograph matches an indi-
16 vidual;

17 “(7) UPDATING INFORMATION.—The Commis-
18 sioner of Social Security, the Secretary of Homeland
19 Security, and the Secretary of State shall update
20 their information in a manner that promotes max-
21 imum accuracy and shall provide a process for the
22 prompt correction of erroneous information.

23 “(i) LIMITATION ON USE OF EEVS.—Notwith-
24 standing any other provision of law, nothing in this section
25 may be construed to permit any agency of the United

1 States Government to utilize any information, database,
2 or other records assembled under this section for any pur-
3 pose other than for the enforcement and administration
4 of the immigration laws, antiterrorism laws, or for en-
5 forcement of Federal criminal law related to the functions
6 of EEVS, including prohibitions on forgery, fraud and
7 identity theft.

8 “(j) UNAUTHORIZED USE OR DISCLOSURE OF IN-
9 FORMATION.—Any employee of the Department of Home-
10 land Security or another Federal or State agency who
11 knowingly uses or discloses the information assembled
12 under this subsection for a purpose other than the purpose
13 authorized under this section shall pay a civil penalty for
14 each such violation in an amount not less than \$5,000 and
15 not to exceed \$50,000.

16 “(k) FUNDS.—In addition to any funds otherwise ap-
17 propriated, the Secretary of Homeland Security may use
18 funds made available under subsections (m) and (n) of
19 section 286, for the maintenance and operation of EEVS,
20 which shall be considered an immigration adjudication
21 service for purposes of such subsections.

22 “(l) SCOPE.—The employer shall use the procedures
23 for EEVS specified in this section for all employees with-
24 out regard to national origin or citizenship status.

1 “(m) CONFORMING AMENDMENT.—Title IV of the Il-
2 legal Immigration Reform and Immigrant Responsibility
3 Act of 1996 (8 U.S.C. 1324a note) is repealed.

4 “(n) COMPLIANCE.—

5 “(1) COMPLAINTS AND INVESTIGATIONS.—The
6 Secretary of Homeland Security shall establish pro-
7 cedures—

8 “(A) for individuals and entities to file
9 complaints respecting potential violations of
10 subsection (a) or (f)(1);

11 “(B) for the investigation of those com-
12 plaints which the Secretary determines should
13 be investigated; and

14 “(C) for the investigation of such other
15 violations of subsection (a) or (f)(1) as the Sec-
16 retary determines to be appropriate.

17 “(2) AUTHORITY IN INVESTIGATIONS.—

18 “(A) IN GENERAL.—In conducting inves-
19 tigation and hearings under this subsection—

20 “(i) immigration officers shall have
21 reasonable access to examine evidence of
22 any employer being investigated; and

23 “(ii) immigration officers designated
24 by the Secretary may compel by subpoena
25 the attendance of witnesses and the pro-

1 duction of evidence at any designated place
2 in an investigation or case under this sub-
3 section.

4 “(B) ENFORCEMENT OF SUBPOENAS.—In
5 case of contumacy or refusal to obey a sub-
6 poena lawfully issued under this paragraph, the
7 Secretary may request that the Attorney Gen-
8 eral apply in an appropriate district court of
9 the United States for an order requiring com-
10 pliance with such subpoena, and any failure to
11 obey such order may be punished by such court
12 as a contempt of such court. Failure to cooper-
13 ate with such subpoena shall be subject to fur-
14 ther penalties, including further fines and the
15 voiding of any mitigation of penalties or termi-
16 nation of proceedings under paragraph (3)(B).

17 “(3) COMPLIANCE PROCEDURES.—

18 “(A) PRE-PENALTY NOTICE.—If the Sec-
19 retary has reasonable cause to believe that
20 there has been a civil violation of this section
21 and determines that further proceedings are
22 warranted, the Secretary shall issue to the em-
23 ployer concerned a written notice of the Depart-
24 ment’s intention to issue a claim for a monetary
25 or other penalty. Such prepenalty notice shall—

1 “(i) describe the violation;

2 “(ii) specify the laws and regulations
3 allegedly violated;

4 “(iii) disclose the material facts which
5 establish the alleged violation; and

6 “(iv) inform such employer that he or
7 she shall have a reasonable opportunity to
8 make representations as to why a claim for
9 a monetary or other penalty should not be
10 imposed.

11 “(B) REMISSION OR MITIGATION OF PEN-
12 ALTIES.—If any employer receives written
13 prepenalty notice of a fine or other penalty in
14 accordance with subparagraph (A), the em-
15 ployer may, not later than 15 days after receiv-
16 ing such notice, file with the Secretary a peti-
17 tion for the remission or mitigation of such fine
18 or penalty, or a petition for termination of the
19 proceedings. The petition may include any rel-
20 evant evidence or proffer of evidence the em-
21 ployer wishes to present, and shall be filed and
22 considered in accordance with procedures to be
23 established by the Secretary. If the Secretary
24 determines that such fine, penalty, or forfeiture
25 was incurred erroneously, or that mitigating

1 circumstances as to justify the remission or
2 mitigation of such fine or penalty, the Secretary
3 may remit or mitigate the same upon such
4 terms and conditions as the Secretary considers
5 reasonable and just, or order termination of any
6 related proceedings. Such mitigating cir-
7 cumstances may include good faith compliance
8 and participation in, or agreement to partici-
9 pate in, EEVS, if not otherwise required. This
10 subparagraph shall not apply to an employer
11 that has or is engaged in a pattern or practice
12 of violating paragraph (1)(A), (1)(B), or (2) of
13 subsection (a) or of any other requirement
14 under this section.

15 “(C) PENALTY CLAIM.—After considering
16 any evidence and representations offered by the
17 employer pursuant to subparagraph (B), the
18 Secretary shall determine whether there was a
19 violation and promptly issue a written final de-
20 termination setting forth the findings of fact
21 and conclusions of law on which the determina-
22 tion is based. If the Secretary determines that
23 there was a violation, the Secretary shall issue
24 the final determination with a written penalty
25 claim. The penalty claim shall specify all

1 charges in the information provided under
2 clauses (i) through (iii) of subparagraph (A)
3 and any mitigation or remission of the penalty
4 that the Secretary determines to be appro-
5 priate.

6 “(4) CIVIL PENALTIES.—

7 “(A) HIRING OR CONTINUING TO EMPLOY
8 UNAUTHORIZED ALIENS.—Any employer that
9 violates any provision under paragraph (1)(A)
10 or (2) of subsection (a)—

11 “(i) shall pay a civil penalty of \$5,000
12 for each unauthorized alien with respect to
13 which such violation occurred;

14 “(ii) if an employer has previously
15 been fined under subsection (d)(4)(A),
16 shall pay a civil penalty of \$10,000 for
17 each unauthorized alien with respect to
18 which such violation occurred;

19 “(iii) if an employer has previously
20 been fined more than once under sub-
21 section (d)(4)(A), shall pay a civil penalty
22 of \$25,000 for each unauthorized alien
23 with respect to which such violation oc-
24 curred in addition to any penalties pre-
25 viously assessed if the employer failed to

1 comply with a previously issued and final
2 order under this section;

3 “(iv) if an employer has previously
4 been fined more than twice under sub-
5 section (d)(4)(A), shall pay a civil penalty
6 of \$75,000 for each alien with respect to
7 which such violation occurred; and

8 “(v) shall, in addition to any penalties
9 assessed under clauses (i) through (iv), be
10 fined \$75,000 for each violation if the em-
11 ployer failed to comply with a previously
12 issued and final order under this section.

13 “(B) RECORDKEEPING OR VERIFICATION
14 PRACTICES.—Any employer that violates or fails
15 to comply with any requirement under sub-
16 section (b), (c), or (d)—

17 “(i) shall pay a civil penalty of \$1,000
18 for each such violation;

19 “(ii) if an employer has previously
20 been fined under subsection (d)(4)(B),
21 shall pay a civil penalty of \$2,000 for each
22 such violation;

23 “(iii) if an employer has previously
24 been fined more than once under sub-
25 section (d)(4)(B), shall pay a civil penalty

1 of \$5,000 for each such violation in addi-
2 tion to any penalties previously assessed if
3 the employer failed to comply with a pre-
4 viously issued and final order under this
5 section;

6 “(iv) if an employer has previously
7 been fined more than twice under sub-
8 section (d)(4)(B), shall pay a civil penalty
9 of \$15,000 for each violation; and

10 “(v) shall, in addition to any penalties
11 previously assessed, be fined \$15,000 for
12 each such violation if the employer failed
13 to comply with a previously issued and
14 final order under this section.

15 “(C) OTHER PENALTIES.—The Secretary
16 may impose additional penalties for violations,
17 including cease and desist orders, specially de-
18 signed compliance plans to prevent further vio-
19 lations, suspended fines to take effect in the
20 event of a further violation, and in appropriate
21 cases, the remedy provided by subsection (f)(2).
22 All penalties in this section may be adjusted
23 every 4 years to account for inflation as pro-
24 vided by law.

1 “(D) REDUCTION OR MITIGATION OF PEN-
2 ALTIES.—The Secretary may reduce or mitigate
3 penalties imposed upon employers, based upon
4 factors including the employer’s hiring volume,
5 compliance history, good-faith implementation
6 of a compliance program, participation in a
7 temporary worker program, and voluntary dis-
8 closure of violations of this subsection to the
9 Secretary.

10 “(5) ORDER OF INTERNAL REVIEW AND CER-
11 TIFICATION OF COMPLIANCE.—If the Secretary has
12 reasonable cause to believe that an employer has
13 failed to comply with this section, the Secretary is
14 authorized, at any time, to require that the employer
15 certify that it is in compliance with this section, or
16 has instituted a program to come into compliance.
17 Not later than 60 days after receiving a notice from
18 the Secretary requiring such a certification, the em-
19 ployer’s chief executive officer or similar official with
20 responsibility for, and authority to bind the company
21 on, all hiring and immigration compliance notices
22 shall certify under penalty of perjury that the em-
23 ployer is in conformance with the requirements of
24 paragraphs (1) through (4) of subsection (c), per-
25 taining to document verification requirements, and

1 with any additional requirements that the Secretary
2 may promulgate by regulation pursuant to sub-
3 sections (c) and (k), or that the employer has insti-
4 tuted a program to come into compliance with these
5 requirements. At the request of the employer, the
6 Secretary may extend the 60-day deadline for good
7 cause. The Secretary may publish in the Federal
8 Register standards or methods for such certification,
9 require specific recordkeeping practices with respect
10 to such certifications, and audit such records at any
11 time. The authority granted under this paragraph
12 may not be construed to diminish or qualify any
13 other penalty provided under this section.

14 “(6) JUDICIAL REVIEW.—

15 “(A) IN GENERAL.—Notwithstanding any
16 other provision of law, including sections 1361
17 and 1651 of title 28, United States Code, no
18 court shall have jurisdiction to consider a final
19 determination or penalty claim issued under
20 paragraph (3)(C), except as specifically pro-
21 vided under this paragraph. Except as specifi-
22 cally provided in this paragraph, judicial review
23 of a final determination under paragraph (4)
24 shall be governed exclusively under chapter 158
25 of such title 28. The filing of a petition under

1 this paragraph shall stay the Secretary's deter-
2 mination until entry of judgment by the court.
3 The Secretary may require that petitioner pro-
4 vide, prior to filing for review, security for pay-
5 ment of fines and penalties through bond or
6 other guarantee of payment acceptable to the
7 Secretary.

8 “(B) REQUIREMENTS FOR REVIEW OF A
9 FINAL DETERMINATION.—With respect to judi-
10 cial review of a final determination or penalty
11 claim issued under paragraph (3)(C), the fol-
12 lowing requirements shall apply:

13 “(i) DEADLINE.—The petition for re-
14 view shall be filed not later than 30 days
15 after the date of the final determination or
16 penalty claim issued under paragraph
17 (3)(C).

18 “(ii) VENUE AND FORMS.—The peti-
19 tion for review shall be filed with the court
20 of appeals for the judicial circuit wherein
21 the employer resided when the final deter-
22 mination or penalty claim was issued. The
23 record and briefs do not have to be print-
24 ed. The court of appeals shall review the

1 proceeding on a typewritten record and on
2 typewritten briefs.

3 “(iii) SERVICE.—The respondent is ei-
4 ther the Secretary of Homeland Security
5 or the Commissioner of Social Security,
6 but not both, depending upon who issued
7 (or affirmed) the final nonconfirmation no-
8 tice. In addition to serving the respondent,
9 the petitioner must also serve the Attorney
10 General.

11 “(iv) PETITIONER’S BRIEF.—The pe-
12 titioner shall serve and file a brief in con-
13 nection with a petition for judicial review
14 not later than 40 days after the date on
15 which the administrative record is avail-
16 able, and may serve and file a reply brief
17 not later than 14 days after service of the
18 brief of the respondent, and the court may
19 not extend these deadlines, except for good
20 cause shown. If a petitioner fails to file a
21 brief within the time provided in this para-
22 graph, the court shall dismiss the appeal
23 unless a manifest injustice would result.

24 “(v) SCOPE AND STANDARD FOR RE-
25 VIEW.—The court of appeals shall decide

1 the petition only on the administrative
2 record on which the final determination is
3 based. The burden shall be on the peti-
4 tioner to show that the final determination
5 was arbitrary, capricious, not supported by
6 substantial evidence, or otherwise not in
7 accordance with law. Administrative find-
8 ings of fact are conclusive unless any rea-
9 sonable adjudicator would be compelled to
10 conclude to the contrary.

11 “(C) EXHAUSTION OF ADMINISTRATIVE
12 REMEDIES.—A court may review a final deter-
13 mination under paragraph (3)(C) only if—

14 “(i) the petitioner has exhausted all
15 administrative remedies available to the pe-
16 titioner as of right; and

17 “(ii) another court has not decided
18 the validity of the order, unless the review-
19 ing court finds that the petition presents
20 grounds that could not have been pre-
21 sented in the prior judicial proceeding or
22 that the remedy provided by the prior pro-
23 ceeding was inadequate or ineffective to
24 test the validity of the order.

1 “(D) LIMIT ON INJUNCTIVE RELIEF.—Re-
2 gardless of the nature of the action or claim or
3 of the identity of the party or parties bringing
4 the action, no court, except for the Supreme
5 Court, shall have jurisdiction or authority to en-
6 join or restrain the operation of the provisions
7 in this section, other than with respect to the
8 application of such provisions to an individual
9 petitioner.

10 “(7) ENFORCEMENT OF ORDERS.—If an em-
11 ployer fails to comply with a final determination
12 issued against such employer under this subsection,
13 and the final determination is not subject to review
14 under paragraph (6), the Attorney General may file
15 suit to enforce compliance with the final determina-
16 tion in any appropriate district court of the United
17 States. In any such suit, the validity and appro-
18 priateness of the final determination shall not be
19 subject to review.

20 “(8) LIENS.—

21 “(A) CREATION OF LIEN.—If any employer
22 is held liable for a fee or penalty under this sec-
23 tion, neglects or refuses to pay such liability,
24 and fails to file a petition for review under
25 paragraph (6), such liability is a lien in favor

1 of the United States on all property and rights
2 to property of such person as if the liability of
3 such person were a liability for a tax assessed
4 under the Internal Revenue Code of 1986. If a
5 petition for review is filed under paragraph (6),
6 the lien shall arise upon the entry of a final
7 judgment by the court and shall continue for 20
8 years or until the liability is satisfied, remitted,
9 set aside, or terminated.

10 “(B) EFFECT OF FILING NOTICE OF
11 LIEN.—Upon filing a notice of lien in the man-
12 ner in which a notice of tax lien would be filed
13 under paragraphs (1) and (2) of section
14 6323(f) of the Internal Revenue Code of 1986,
15 the lien shall be valid against any purchaser,
16 holder of a security interest, mechanic’s lien or
17 judgment lien creditor, except with respect to
18 properties or transactions specified in sub-
19 section (b), (c), or (d) of such section 6323 for
20 which a notice of tax lien properly filed on the
21 same date would not be valid. The notice of lien
22 shall be considered a notice of lien for taxes
23 payable to the United States for the purpose of
24 any State or local law providing for the filing
25 of a notice of a tax lien. A notice of lien that

1 is registered, recorded, docketed, or indexed in
2 accordance with the rules and requirements re-
3 lating to judgments of the courts of the State
4 where the notice of lien is registered, recorded,
5 docketed, or indexed shall be considered for all
6 purposes as the filing prescribed by this section.
7 The provisions of section 3201(e) of title 28,
8 United States Code, shall apply to liens filed
9 under this section.

10 “(C) ENFORCEMENT OF A LIEN.—A lien
11 obtained through this process shall be consid-
12 ered a debt (as defined in section 3002 of title
13 28, United States Code) and enforceable pursu-
14 ant to subchapter C of chapter 176 of title 28,
15 United States Code (commonly known as the
16 Federal Debt Collection Procedures Act).

17 “(o) CRIMINAL PENALTIES AND INJUNCTIONS FOR
18 PATTERN OR PRACTICE VIOLATIONS.—

19 “(1) CRIMINAL PENALTY.—Any employer that
20 engages in a pattern or practice of knowing viola-
21 tions of paragraph (1)(A) or (2) of subsection (a)
22 shall be fined not more than \$75,000 for each unau-
23 thorized alien with respect to whom such a violation
24 occurs, imprisoned for not more than 6 months for
25 the entire pattern or practice, or both.

1 “(2) ENJOINING OF PATTERN OR PRACTICE
2 VIOLATIONS.—If the Secretary of Homeland Secu-
3 rity or the Attorney General has reasonable cause to
4 believe that an employer is engaged in a pattern or
5 practice of employment, recruitment, or referral in
6 violation of paragraph (1)(A) or (2) of subsection
7 (a), the Attorney General may bring a civil action in
8 the appropriate district court of the United States
9 requesting such relief, including a permanent or
10 temporary injunction, restraining order, or other
11 order against the employer, as the Secretary deter-
12 mines to be necessary.

13 “(p) PROHIBITION OF INDEMNITY BONDS.—

14 “(1) PROHIBITION.—It is unlawful for an em-
15 ployer, in the hiring, recruiting, or referring for em-
16 ployment of any individual, to require the individual
17 to post a bond or security, to pay or agree to pay
18 an amount, or otherwise to provide a financial guar-
19 antee or indemnity, against any potential liability
20 arising under this section relating to such hiring, re-
21 cruiting, or referring of the individual.

22 “(2) CIVIL PENALTY.—If the Secretary deter-
23 mines, after notice and opportunity for mitigation of
24 the monetary penalty under subsection (d), that an
25 employer has violated paragraph (1), the employer

1 shall be subject to a civil penalty of \$10,000 for
2 each violation and to an administrative order requir-
3 ing the return of any amounts received in violation
4 of such paragraph to the employee or, if the em-
5 ployee cannot be located, to the general fund of the
6 Treasury.

7 “(q) GOVERNMENT CONTRACTS.—

8 “(1) EMPLOYERS.—

9 “(A) IN GENERAL.—If the Secretary deter-
10 mines that an employer who does not hold Fed-
11 eral contracts, grants, or cooperative agree-
12 ments is a repeat violator of this section or is
13 convicted of a crime under this section, the em-
14 ployer shall be subject to debarment from the
15 receipt of Federal contracts, grants, or coopera-
16 tive agreements for a period not to exceed 2
17 years in accordance with the procedures and
18 standards prescribed by the Federal Acquisition
19 Regulations.

20 “(B) NOTIFICATION; LISTING.—The Sec-
21 retary or the Attorney General shall notify the
22 Administrator of General Services of any such
23 debarment, and the Administrator of General
24 Services shall list the employer on the List of
25 Parties Excluded from Federal Procurement

1 and Nonprocurement Programs for the period
2 of the debarment.

3 “(C) WAIVER; LIMITATION.—The Adminis-
4 trator of General Services, in consultation with
5 the Secretary and Attorney General, may waive
6 operation of this subsection or may limit the
7 duration or scope of the debarment.

8 “(D) RULEMAKING.—The Secretary shall
9 promulgate a regulation, in accordance with the
10 requirements under section 553 of title 5,
11 United States Code, that defines the term ‘re-
12 peat violator’ for purposes of this subsection.

13 “(2) CONTRACTORS AND RECIPIENTS.—

14 “(A) IN GENERAL.—If the Secretary deter-
15 mines that an employer who holds Federal con-
16 tracts, grants, or cooperative agreements is a
17 repeat violator of this section or is convicted of
18 a crime under this section, the employer shall
19 be subject to debarment from the receipt of
20 Federal contracts, grants, or cooperative agree-
21 ments for a period not to exceed 2 years in ac-
22 cordance with the procedures and standards
23 prescribed by the Federal Acquisition Regula-
24 tions.

1 “(B) NOTIFICATION.—Before such debar-
2 ment, the Secretary, in cooperation with the
3 Administrator of General Services, shall notify
4 all agencies holding contracts, grants, or coop-
5 erative agreements with the employer of the
6 proceedings to debar the employer from the re-
7 ceipt of new Federal contracts, grants, or coop-
8 erative agreements for a period not to exceed 2
9 years.

10 “(C) WAIVER; LIMITATION.—After consid-
11 eration of the views of agencies holding con-
12 tracts, grants or cooperative agreements with
13 the employer, the Secretary may, instead of de-
14 barring the employer from receiving new Fed-
15 eral contracts, grants, or cooperative agree-
16 ments for a period not to exceed 2 years, waive
17 operation of this subsection, limit the duration
18 or scope of the proposed debarment, or may
19 refer to an appropriate lead agency the decision
20 of whether to seek debarment of the employer,
21 for what duration, and under what scope in ac-
22 cordance with the procedures and standards
23 prescribed by the Federal Acquisition Regula-
24 tion.

1 “(D) REVIEW.—Any proposed debarment
2 predicated on an administrative determination
3 of liability for civil penalty by the Secretary or
4 the Attorney General shall not be reviewable in
5 any debarment proceeding.

6 “(3) SUSPENSION.—Indictments for violations
7 of this section or adequate evidence of actions that
8 could form the basis for debarment under this sub-
9 section shall be considered a cause for suspension
10 under the procedures and standards for suspension
11 prescribed by the Federal Acquisition Regulation.

12 “(4) INADVERTENT VIOLATIONS.—Inadvertent
13 violations of recordkeeping or verification require-
14 ments, in the absence of any other violations of this
15 section, shall not be a basis for determining that an
16 employer is a repeat violator for purposes of this
17 subsection.

18 “(r) DOCUMENTATION.—In providing documentation
19 or endorsement of authorization of aliens (other than
20 aliens lawfully admitted for permanent residence) author-
21 ized to be employed in the United States, the Secretary
22 shall provide that any limitations with respect to the pe-
23 riod or type of employment or employer shall be conspicu-
24 ously stated on the documentation or endorsement.

1 “(s) DEPOSIT OF AMOUNTS RECEIVED.—Except as
2 otherwise specified, civil penalties collected under this sec-
3 tion shall be deposited by the Secretary into the general
4 fund of the Treasury.

5 “(t) NO MATCH NOTICE.—

6 “(1) IN GENERAL.—For the purpose of this
7 subsection, a no match notice is written notice from
8 the Social Security Administration to an employer
9 reporting earnings on a Form W-2 that employees’
10 names or corresponding social security account num-
11 bers fail to match SSA records. The Secretary, in
12 consultation with the Commissioner of Social Secu-
13 rity, is authorized to establish by regulation require-
14 ments for verifying the identity and work authoriza-
15 tion of employees who are the subject of no-match
16 notices.

17 “(2) RULEMAKING.—The Secretary shall estab-
18 lish, by regulation, a reasonable period during which
19 an employer shall allow an employee who is subject
20 to a no match notice to resolve the no match notice
21 with no adverse employment consequences to the
22 employee. The Secretary may establish, by regula-
23 tion, penalties for noncompliance.

24 “(u) CHALLENGES TO VALIDITY.—

1 “(1) IN GENERAL.—Any right, benefit, or claim
2 not otherwise waived or limited under this section is
3 available in an action instituted in the United States
4 District Court for the District of Columbia. Such ac-
5 tion shall be limited to determinations of—

6 “(A) whether this section, or any regula-
7 tion issued to implement this section, violates
8 the Constitution of the United States; or

9 “(B) whether such a regulation issued by
10 or under the authority of the Secretary to im-
11 plement this section, is contrary to applicable
12 provisions of this section or was issued in viola-
13 tion of chapter 5 of title 5, United States Code.

14 “(2) DEADLINES FOR BRINGING ACTIONS.—
15 Any action instituted under this paragraph shall be
16 filed not later than 90 days after the date the chal-
17 lenged section or regulation described in subpara-
18 graph (A) or (B) of paragraph (1) is first imple-
19 mented.

20 “(3) CLASS ACTIONS.—The court may not cer-
21 tify a class under Rule 23 of the Federal Rules of
22 Civil Procedure in any action under this section.

23 “(4) RULE OF CONSTRUCTION.—In determining
24 whether the Secretary’s interpretation regarding any
25 provision of this section is contrary to law, a court

1 shall accord to such interpretation the maximum
2 deference permissible under the Constitution.

3 “(5) NO ATTORNEYS’ FEES.—Notwithstanding
4 any other provision of law, the court shall not award
5 fees or other expenses to any person or entity based
6 upon any action relating to this section that is
7 brought under this subsection.

8 “(v) NOTIFICATION OF EXPIRATION OF ADMIS-
9 SION.—Notwithstanding any other provision of this Act,
10 an employer or educational institution shall notify an alien
11 in writing of the expiration of the alien’s period of author-
12 ized admission not later than 14 days before such eligi-
13 bility expires.”.

14 **SEC. 252. DISCLOSURE OF CERTAIN TAXPAYER INFORMA-**
15 **TION TO ASSIST IN IMMIGRATION ENFORCE-**
16 **MENT.**

17 (a) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY
18 INFORMATION.—

19 (1) IN GENERAL.—Section 6103(l) of the Inter-
20 nal Revenue Code of 1986 is amended by adding at
21 the end the following new paragraph:

22 “(21) DISCLOSURE OF CERTAIN TAXPAYER
23 IDENTITY INFORMATION BY SOCIAL SECURITY AD-
24 MINISTRATION TO DEPARTMENT OF HOMELAND SE-
25 CURITY.—

1 “(A) IN GENERAL.—From taxpayer iden-
2 tity information or other information which has
3 been disclosed or otherwise made available to
4 the Social Security Administration and upon
5 written request by the Secretary of Homeland
6 Security (referred to in this paragraph as the
7 ‘Secretary’), the Commissioner of Social Secu-
8 rity shall disclose directly to officers, employees,
9 and contractors of the Department of Home-
10 land Security—

11 “(i) the taxpayer identity information
12 of each person who has filed an informa-
13 tion return required by reason of section
14 6051 after calendar year 2005 and before
15 the date specified in subparagraph (D)
16 which contains—

17 “(I) 1 (or any greater number
18 the Secretary shall request) taxpayer
19 identifying number, name, and ad-
20 dress of any employee (within the
21 meaning of such section) that did not
22 match the records maintained by the
23 Commissioner of Social Security, or

24 “(II) 2 (or any greater number
25 the Secretary shall request) names,

1 and addresses of employees (within
2 the meaning of such section), with the
3 same taxpayer identifying number,
4 and the taxpayer identity of each such em-
5 ployee, and

6 “(ii) the taxpayer identity of each per-
7 son who has filed an information return re-
8 quired by reason of section 6051 after cal-
9 endar year 2005 and before the date speci-
10 fied in subparagraph (D) which contains
11 the taxpayer identifying number (assigned
12 under section 6109) of an employee (within
13 the meaning of section 6051)—

14 “(I) who is under the age of 14
15 (or any lesser age the Secretary shall
16 request), according to the records
17 maintained by the Commissioner of
18 Social Security,

19 “(II) whose date of death, ac-
20 cording to the records so maintained,
21 occurred in a calendar year preceding
22 the calendar year for which the infor-
23 mation return was filed,

24 “(III) whose taxpayer identifying
25 number is contained in more than one

1 (or any greater number the Secretary
2 shall request) information return filed
3 in such calendar year, or

4 “(IV) who is not authorized to
5 work in the United States, according
6 to the records maintained by the
7 Commissioner of Social Security,
8 and the taxpayer identity and date of birth
9 of each such employee.

10 “(B) REIMBURSEMENT.—The Secretary
11 shall transfer to the Commissioner the funds
12 necessary to cover the additional cost directly
13 incurred by the Commissioner in carrying out
14 the searches or manipulations requested by the
15 Secretary.”

16 (2) COMPLIANCE BY DHS CONTRACTORS WITH
17 CONFIDENTIALITY SAFEGUARDS.—Section 6103(p)
18 of such Code is amended by adding at the end the
19 following new paragraph:

20 “(9) DISCLOSURE TO DHS CONTRACTORS.—
21 Notwithstanding any other provision of this section,
22 no return or return information shall be disclosed to
23 any contractor of the Department of Homeland Se-
24 curity unless such Department, to the satisfaction of
25 the Secretary—

1 “(A) has requirements in effect which re-
2 quire each such contractor which would have
3 access to returns or return information to pro-
4 vide safeguards (within the meaning of para-
5 graph (4)) to protect the confidentiality of such
6 returns or return information,

7 “(B) agrees to conduct an on-site review
8 every 3 years (mid-point review in the case of
9 contracts or agreements of less than 3 years in
10 duration) of each contractor to determine com-
11 pliance with such requirements,

12 “(C) submits the findings of the most re-
13 cent review conducted under subparagraph (B)
14 to the Secretary as part of the report required
15 by paragraph (4)(E), and

16 “(D) submits a certification to the Sec-
17 retary for the most recent annual period that
18 includes the name and address of each con-
19 tractor, a description of the contract or agree-
20 ment with such contractor, and the duration of
21 such contract or agreement, and certifies that
22 such contractor is in compliance with all such
23 requirements.”.

24 (3) CONFORMING AMENDMENTS.—

1 (A) Section 6103(a)(3) of such Code is
2 amended by striking “or (20)” and inserting
3 “(20), or (21)”.

4 (B) Section 6103(p)(3)(A) of such Code is
5 amended by adding at the end the following
6 new sentence: “The Commissioner of Social Se-
7 curity shall provide to the Secretary such infor-
8 mation as the Secretary may require in carrying
9 out this paragraph with respect to return infor-
10 mation inspected or disclosed under the author-
11 ity of subsection (l)(21).”.

12 (C) Section 6103(p)(4) of such Code is
13 amended—

14 (i) by striking “or (17)” both places it
15 appears and inserting “(17), or (21)”; and

16 (ii) by striking “or (20)” each place it
17 appears and inserting “(20), or (21)”.

18 (D) Section 6103(p)(8)(B) of such Code is
19 amended by inserting “or paragraph (9)” after
20 “subparagraph (A)”.

21 (E) Section 7213(a)(2) of such Code is
22 amended by striking “or (20)” and inserting
23 “(20), or (21)”.

1 (b) FALSELY CLAIMING CITIZENSHIP OR NATION-
2 ALITY.—Section 212(a)(6)(C)(ii)(I) is amended by insert-
3 ing “or national” after “citizen”.

4 (c) REPEAL OF REPORTING REQUIREMENTS.—

5 (1) REPORT ON EARNINGS OF ALIENS NOT AU-
6 THORIZED TO WORK.—Section 290(c) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1360) is re-
8 pealed.

9 (2) REPORT ON FRAUDULENT USE OF SOCIAL
10 SECURITY ACCOUNT NUMBERS.—Section 414(b) of
11 the Illegal Immigration Reform and Immigrant Re-
12 sponsibility Act of 1996 (division C of Public Law
13 104–208; 8 U.S.C. 1360 note) is repealed.

14 (d) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to the Secretary of
16 Homeland Security such sums as are necessary to carry
17 out the amendments made by this section.

18 (e) EFFECTIVE DATES.—

19 (1) IN GENERAL.—The amendments made by
20 subsection (a) shall apply to disclosures made on or
21 after the date of the enactment of this Act.

22 (2) CERTIFICATIONS.—The first certification
23 under section 6103(p)(9)(D) of the Internal Revenue
24 Code of 1986, as added by subsection (a)(2), shall
25 be made with respect to calendar year 2007.

1 (3) REPEALS.—The repeals made by subsection
2 (c) shall take effect on the date of the enactment of
3 this Act.

4 **SEC. 253. INCREASING SECURITY AND INTEGRITY OF SO-**
5 **CIAL SECURITY CARDS.**

6 (a) FRAUD-RESISTANT, TAMPER-RESISTANT, AND
7 WEAR-RESISTANT SOCIAL SECURITY CARDS.—

8 (1) ISSUANCE.—Not later than the first day of
9 the second fiscal year in which amounts are appro-
10 priated pursuant to subsection (e), the Commis-
11 sioner of Social Security shall begin to administer
12 and issue fraud-resistant, tamper-resistant, and
13 wear-resistant social security cards displaying a pho-
14 tograph.

15 (2) INTERIM.—Not later than the first day of
16 the seventh fiscal year in which amounts are appro-
17 priated pursuant to subsection (e), the Commis-
18 sioner of Social Security shall issue only fraud-re-
19 sistant, tamper-resistant, and wear-resistant social
20 security cards displaying a photograph.

21 (3) COMPLETION.—Not later than the first day
22 of the tenth fiscal year in which amounts are appro-
23 priated pursuant to subsection (e), all social security
24 cards that are not fraud-resistant, tamper-resistant,
25 and wear-resistant shall be invalid for establishing

1 employment authorization for any individual 16
2 years of age or older.

3 (4) EXEMPTION.—Nothing in this section may
4 be construed to—

5 (A) require an individual under the age of
6 16 years to be issued or to present for any pur-
7 pose a social security card described in this sub-
8 section, unless needed to establish employment
9 authorization; or

10 (B) prohibit the Commissioner of Social
11 Security from issuing a social security card that
12 does not meet the requirements under this sub-
13 section to an individual under the age of 16
14 years who otherwise meets the eligibility re-
15 quirements for a social security card.

16 (b) ADDITIONAL DUTIES OF THE SOCIAL SECURITY
17 ADMINISTRATION.—In accordance with the responsibil-
18 ities of the Commissioner of Social Security under section
19 205(c)(2)(I) of the Social Security Act, as added by sec-
20 tion 256 of this Act, the Commissioner—

21 (1) shall issue a social security card to an indi-
22 vidual at the time of the issuance of a social security
23 account number to such individual, which card
24 shall—

1 (A) contain such security and identification
2 features as determined by the Secretary of
3 Homeland Security, in consultation with the
4 Commissioner; and

5 (B) be fraud-resistant, tamper-resistant,
6 and wear-resistant;

7 (2) in consultation with the Secretary, shall
8 issue regulations specifying such particular security
9 and identification features, renewal requirements
10 (including updated photographs), and standards for
11 the social security card as necessary to be acceptable
12 for purposes of establishing identity and employment
13 authorization under the immigration laws of the
14 United States; and

15 (3) may not issue a replacement social security
16 card to any individual unless the Commissioner de-
17 termines that the purpose for requiring the issuance
18 of the replacement document is legitimate.

19 (c) REPORTING REQUIREMENTS.—

20 (1) REPORT ON THE USE OF IDENTIFICATION
21 DOCUMENTS.—Not later than the first day of the
22 tenth fiscal year in which amounts are appropriated
23 pursuant to subsection (e), the Secretary shall sub-
24 mit to Congress a report recommending which docu-
25 ments, if any, among those described in section

1 274A(c)(1) of the Immigration and Nationality Act,
2 should continue to be used to establish identity and
3 employment authorization in the United States.

4 (2) REPORT ON IMPLEMENTATION.—

5 (A) IN GENERAL.—Not later than 12
6 months after the date on which the Commis-
7 sioner begins to administer and issue fraud-re-
8 sistant, tamper-resistant, and wear-resistant
9 cards under subsection (d)(1), and annually
10 thereafter, the Commissioner shall submit to
11 Congress a report on the implementation of this
12 section.

13 (B) CONTENTS.—The report submitted
14 under subparagraph (A) shall include an anal-
15 ysis of—

16 (i) the amounts needed to be appro-
17 priated to implement this section; and

18 (ii) any measures taken to protect the
19 privacy of individuals who hold social secu-
20 rity cards described in this section.

21 (d) ACCESS TO SOCIAL SECURITY CARD INFORMA-
22 TION.—Section 205(c)(2)(I)(i) of the Social Security Act,
23 as added by section 256 of this Act, is further amended
24 by inserting at the end of the flush text at the end the
25 following: “As part of the employment eligibility

1 verification system established under section 274A of the
2 Immigration and Nationality Act, the Commissioner of
3 Social Security shall provide to the Secretary of Homeland
4 Security access to any photograph, other feature, or infor-
5 mation included in the social security card.”.

6 (e) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated such sums as may be
8 necessary to carry out this section and the amendments
9 made by this section.

10 **SEC. 254. INCREASING SECURITY AND INTEGRITY OF IDEN-**
11 **TITY DOCUMENTS.**

12 (a) PURPOSE.—The Secretary of Homeland Security,
13 shall establish the State Records Improvement Grant Pro-
14 gram (referred to in this section as the “Program”), under
15 which the Secretary may award grants to States for the
16 purpose of advancing the purposes of this Act and of
17 issuing or implementing plans to issue driver’s license and
18 identity cards that—

19 (1) can be used for purposes of verifying iden-
20 tity under section 274A of the Immigration and Na-
21 tionality Act, as added by section 251 of this Act;
22 and

23 (2) comply with the State license requirements
24 under section 202 of the REAL ID Act of 2005 (di-

1 vision B of Public Law 109–13; 49 U.S.C. 30301
2 note).

3 (b) INELIGIBILITY.—States that do not certify their
4 intent to comply with the provisions of the REAL ID Act
5 of 2005 or do not submit a compliance plan acceptable
6 to the Secretary are not eligible to receive a grant under
7 the Program. Driver’s license or identification cards issued
8 by States that do not comply with the provisions of the
9 REAL ID Act of 2005 may not be used to verify identity
10 under section 274A of the Immigration and Nationality
11 Act, except under conditions approved by the Secretary.

12 (c) GRANTS AND CONTRACTS AUTHORIZED.—

13 (1) IN GENERAL.—The Secretary is authorized
14 to award grants, subject to the availability of appro-
15 priations, to a State to provide assistance to such
16 State agency to meet the deadlines for the issuance
17 of a driver’s license which meets the requirements of
18 section 202 of the REAL ID Act of 2005 (division
19 B of Public Law 109–13; 49 U.S.C. 30301 note).

20 (2) DURATION.—Grants may be awarded under
21 this subsection during fiscal years 2008 through
22 2012.

23 (3) COMPETITIVE BASIS.—The Secretary shall
24 give priority to States whose plan to implement the
25 provisions of the REAL ID Act of 2005 is compat-

1 ible with the employment verification systems, proc-
2 esses, and implementation schedules set forth in sec-
3 tion 274A of the Immigration and Nationality Act,
4 as determined by the Secretary. Minimum standards
5 for compatibility will include the ability of the State
6 to promptly verify the document and provide access
7 to the digital photograph displayed on the document.

8 (4) FUNDING OPTIONS.—If the Secretary of
9 Homeland Security determines that compliance with
10 the provisions of the REAL ID Act of 2005 and
11 with the requirements of the employment verification
12 system can best be met by awarding grants or con-
13 tracts to a State, a group of States, a government
14 agency, or a private entity, the Secretary may utilize
15 Program funds to award such a grant, grants, con-
16 tract or contracts.

17 (5) IMPROVING ACCURACY AND AVAILABILITY
18 OF RECORDS.—On an expedited basis, the Secretary
19 shall award grants or contracts for the purpose of
20 improving the accuracy and electronic availability of
21 states' records of births, deaths, driver's licenses,
22 and of other records necessary for implementation of
23 the Employment Eligibility Verification System and
24 as otherwise necessary to advance the purposes of
25 this Act.

1 (d) USE OF FUNDS.—Grants or contracts awarded
2 pursuant to the Program may be used to assist State com-
3 pliance with the requirements under the REAL ID Act
4 of 2005, including—

- 5 (1) upgrading and maintaining technology;
- 6 (2) obtaining equipment;
- 7 (3) hiring additional personnel;
- 8 (4) covering operational costs, including over-
9 time; and
- 10 (5) acquiring such other resources as are avail-
11 able to assist such grantee.

12 (e) APPLICATION.—

13 (1) IN GENERAL.—Each eligible state seeking a
14 grant under this section shall submit an application
15 to the Secretary at such time, in such manner, and
16 accompanied by such information as the Secretary
17 may reasonably require.

18 (2) CONTENTS.—Each application submitted
19 pursuant to paragraph (1) shall—

20 (A) describe the activities for which assist-
21 ance under this section is sought; and

22 (B) provide such additional assurances as
23 the Secretary determines to be essential to en-
24 sure compliance with the requirements of this
25 section.

1 (f) CONDITIONS.—All grants under the Program
2 shall be conditioned on the recipient—

3 (1) certifying compliance with the provisions
4 under the REAL ID Act of 2005 and providing im-
5 plementation plans that are acceptable to the Sec-
6 retary, including—

7 (A) the adoption of appropriate security
8 measures to protect against improper issuance
9 of driver’s licenses and identity cards, tam-
10 pering with electronic issuance systems, and
11 identity theft as the Secretary may prescribe;

12 (B) ensuring introduction and maintenance
13 of such security features and other measures
14 necessary to make the documents issued by re-
15 cipient resistant to tampering, counterfeiting,
16 and fraudulent use as the Secretary may pre-
17 scribe; and

18 (C) ensuring implementation and mainte-
19 nance of such safeguards for the security of the
20 information contained on these documents as
21 the Secretary may prescribe;

22 (2) agreeing to adhere to the timetables and
23 procedures for issuing driver’s licenses and identi-
24 fication cards that comply with the provisions of the
25 REAL ID Act of 2005, as required under section

1 274A(c)(1)(F) of the Immigration and Nationality
2 Act; and

3 (3) agreeing to implement the requirements of
4 this Act and any implementing regulations to the
5 satisfaction of the Secretary of Homeland Security.

6 (g) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated \$300,000,000 for each
8 of fiscal years 2008 through 2012 to carry out the provi-
9 sions of this section.

10 (h) SUPPLEMENT NOT SUPPLANT.—Amounts appro-
11 priated for grants under this section shall be used to sup-
12 plement and not supplant other State and local public
13 funds obligated for the purposes provided under this title.

14 (i) ADDITIONAL USES.—Amounts authorized under
15 this section may also be used to assist in sharing of law
16 enforcement information between States and the Depart-
17 ment of Homeland Security, at the discretion of the Sec-
18 retary of Homeland Security.

19 **SEC. 255. VOLUNTARY ADVANCED VERIFICATION PROGRAM**
20 **TO COMBAT IDENTITY THEFT.**

21 (a) VOLUNTARY ADVANCED VERIFICATION PRO-
22 GRAM.—

23 (1) IN GENERAL.—Not later than 18 months
24 after the date of the enactment of this Act, the Sec-
25 retary shall establish and make available to willing

1 employers a voluntary program, to be known as the
2 Voluntary Advanced Verification Program, to allow
3 employers to submit and verify an employee's finger-
4 prints for purposes of determining the identity and
5 work authorization of the employee.

6 (2) VOLUNTARY PARTICIPATION.—Nothing in
7 this section may be construed to require employers
8 to participate in the Voluntary Advanced
9 Verification Program.

10 (b) LIMITED RETENTION PERIOD FOR FINGER-
11 PRINTS.—

12 (1) IN GENERAL.—The Secretary may only
13 maintain fingerprint records of any citizen of the
14 United States that were submitted by an employer
15 through the Employment Eligibility Verification Sys-
16 tem (referred to in this section as “EEVS”) for 10
17 business days. At the end of such period, such
18 records shall be purged from any EEVS-related sys-
19 tem unless the fingerprints have been ordered to be
20 retained for purposes of a fraud or similar investiga-
21 tion by a government agency with criminal or other
22 investigative authority.

23 (2) EXCEPTION.—For purposes of preventing
24 identity theft or other harm, an employee who is a
25 citizen of the United States may submit a written

1 request that the employee's fingerprint records be
2 retained for employee verification purposes by the
3 Secretary. Upon receiving written consent, the Sec-
4 retary may retain such fingerprint records until the
5 employee notifies the Secretary in writing that such
6 consent has been withdrawn, at which time the Sec-
7 retary shall purge such fingerprint records within 10
8 business days unless the fingerprints have been or-
9 dered to be retained for purposes of a fraud or simi-
10 lar investigation by a government agency with an
11 independent criminal or other investigative author-
12 ity.

13 (c) LIMITED USE OF FINGERPRINTS SUBMITTED
14 FOR PROGRAM.—The Secretary and the employer may use
15 any fingerprints taken from the employee and transmitted
16 for querying EEVS solely for the purposes of verifying
17 identity and employment eligibility during the employee
18 verification process. Such transmitted fingerprints may
19 not be used for any other purpose. This provision does
20 not alter any other provisions regarding the use of non-
21 fingerprint information in EEVS.

22 (d) SAFEGUARDING OF FINGERPRINT INFORMA-
23 TION.—The Secretary, subject to specifications and limita-
24 tions set forth under this section and other relevant provi-
25 sions of this Act, shall be responsible for safely and se-

1 curely maintaining and storing all fingerprints submitted
2 under this program.

3 **SEC. 256. RESPONSIBILITIES OF THE SOCIAL SECURITY AD-**
4 **MINISTRATION.**

5 Section 205(c)(2) of the Social Security Act (42
6 U.S.C. 405(c)(2)), is amended by adding at the end the
7 following new subparagraphs:

8 “(I)(i) As part of the verification system estab-
9 lished under this paragraph, the Commissioner of
10 Social Security shall, subject to the provisions of sec-
11 tion 274A(d) of the Immigration and Nationality
12 Act, establish a reliable, secure method that, oper-
13 ating through the Employment Eligibility
14 Verification System—

15 “(I) compares the name, social security ac-
16 count number and available citizenship informa-
17 tion provided in an inquiry against such infor-
18 mation maintained by the Commissioner in
19 order to confirm (or not confirm) the validity of
20 the information provided regarding an indi-
21 vidual whose identity and employment eligibility
22 must be confirmed;

23 “(II) analyzes the correspondence of the
24 name, number, and any other identifying infor-
25 mation;

1 “(III) determines whether the name and
2 number belong to an individual who is deceased;

3 “(IV) determines whether an individual is
4 a national of the United States (when avail-
5 able);

6 “(V) determines whether the individual has
7 presented a social security account number that
8 is not valid for employment; and

9 “(VI) does not disclose or release social se-
10 curity information to employers through the
11 confirmation system (other than such confirma-
12 tion or nonconfirmation).

13 “(ii) For purposes of preventing identity theft,
14 protecting employees, and reducing burden on em-
15 ployers, and notwithstanding section 6103 of the In-
16 ternal Revenue Code of 1986, the Commissioner of
17 Social Security, in consultation with the Secretary of
18 Homeland Security, shall—

19 “(I) review the Social Security Administra-
20 tion databases and information technology to
21 identify any deficiencies and discrepancies re-
22 lated to name, birth date, citizenship status, or
23 death records of the social security accounts
24 and social security account holders that are
25 likely to contribute to fraudulent use of docu-

1 ments, or identity theft, or to affect the proper
2 functioning of EEVS;

3 “(II) correct any errors identified under
4 subclause (I); and

5 “(III) ensure that a system for identifying
6 and correcting such deficiencies and discrep-
7 ancies is adopted to ensure the accuracy of the
8 Social Security Administration’s databases.

9 “(iii) The Commissioner of Social Security, in
10 consultation with the Secretary of Homeland Secu-
11 rity, shall establish a secure process whereby an in-
12 dividual can request that the Commissioner preclude
13 any confirmation under EEVS based on that individ-
14 ual’s Social Security number until it is reactivated
15 by that individual.”.

16 **SEC. 257. IMMIGRATION ENFORCEMENT SUPPORT BY THE**
17 **INTERNAL REVENUE SERVICE AND THE SO-**
18 **CIAL SECURITY ADMINISTRATION.**

19 (a) **TIGHTENING REQUIREMENTS FOR THE PROVI-**
20 **SION OF SOCIAL SECURITY NUMBERS ON FORM W-2**
21 **WAGE AND TAX STATEMENTS.**—Section 6724 of the In-
22 **ternal Revenue Code of 1986 (relating to waiver; defini-**
23 **tions and special rules) is amended by adding at the end**
24 **the following new subsection:**

1 “(f) SPECIAL RULES WITH RESPECT TO SOCIAL SE-
2 CURITY NUMBERS ON WITHHOLDING EXEMPTION CER-
3 TIFICATES.—

4 “(1) REASONABLE CAUSE WAIVER NOT TO
5 APPLY.—Except as provided in paragraph (2), sub-
6 section (a) shall not apply with respect to the social
7 security account number of an employee furnished
8 under section 6051(a)(2).

9 “(2) EXCEPTION.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), paragraph (1) shall not
12 apply in any case in which the employer—

13 “(i) receives confirmation that the dis-
14 crepancy described in section 205(c)(2)(I)
15 of the Social Security Act (42 U.S.C.
16 405(c)(2)(I)) has been resolved, or

17 “(ii) corrects a clerical error made by
18 the employer with respect to the social se-
19 curity account number of an employee not
20 later than 60 days after receiving notifica-
21 tion under section 205(c)(2)(I) of the So-
22 cial Security Act that the social security
23 account number contained in wage records
24 provided to the Social Security Administra-
25 tion by the employer with respect to the

1 employee does not match the social secu-
2 rity account number of the employee con-
3 tained in relevant records otherwise main-
4 tained by the Social Security Administra-
5 tion.

6 “(B) EXCEPTION NOT APPLICABLE TO
7 FREQUENT OFFENDERS.—Subparagraph (A)
8 shall not apply—

9 “(i) in any case in which not fewer
10 than 50 of the statements required to be
11 made by an employer pursuant to section
12 6051 either fail to include an employee’s
13 social security account number or include
14 an incorrect social security account num-
15 ber, or

16 “(ii) with respect to any employer who
17 has received written notification under sec-
18 tion 205(c)(2)(1) of the Social Security
19 Act during each of the 3 preceding taxable
20 years that the social security account num-
21 bers in the wage records provided to the
22 Social Security Administration by such em-
23 ployer with respect to 10 more employees
24 do not match relevant records otherwise

1 maintained by the Social Security Adminis-
2 tration.”.

3 (b) ENFORCEMENT.—

4 (1) IN GENERAL.—Not later than 90 days after
5 the date of the enactment of this Act, the Secretary
6 of the Treasury, in consultation with the Secretary,
7 shall establish a unit within the Criminal Investiga-
8 tion Office of the Internal Revenue Service to inves-
9 tigate violations of the Internal Revenue Code of
10 1986 related to the employment of individuals who
11 are not authorized to work in the United States.

12 (2) SPECIAL AGENTS; SUPPORT STAFF.—The
13 Secretary of the Treasury—

14 (A) shall assign to the unit established
15 pursuant to paragraph (1) not fewer than 10
16 full-time special agents and necessary support
17 staff; and

18 (B) may employ not more than 200 full
19 time special agents for this unit based on inves-
20 tigative requirements and work load.

21 (3) REPORTS.—During each of the first 5 cal-
22 endar years beginning after the date on which the
23 unit was established, and biennially thereafter, the
24 unit shall transmit to Congress a report that de-

1 scribes its activities and includes the number of in-
2 vestigations and cases referred for prosecution.

3 (c) INCREASE IN PENALTY ON EMPLOYER FAILING
4 TO FILE CORRECT INFORMATION RETURNS.—Section
5 6721 of such Code (relating to failure to file correct infor-
6 mation returns) is amended—

7 (1) in subsection (a)(1)—

8 (A) by striking “\$50” and inserting
9 “\$200”; and

10 (B) by striking “\$250,000” and inserting
11 “\$1,000,000”;

12 (2) in subsection (b)—

13 (A) in paragraph (1)—

14 (i) in subparagraph (A), by striking
15 “\$15 in lieu of \$50” and inserting “\$60
16 instead of \$200”; and

17 (ii) in subparagraph(B), by striking
18 “\$75,000” and inserting “\$300,000”; and

19 (B) in paragraph (2)—

20 (i) in subparagraph (A), by striking
21 “\$30 in lieu of \$50” and inserting “\$120
22 instead of \$200”; and

23 (ii) in subparagraph (B), by striking
24 “\$150,000” and inserting “\$600,000”;

25 and

1 (3) in subsection (d)—

2 (A) in the subsection heading, by striking
3 “\$5,000,000” and inserting “\$2,000,000”;

4 (B) in paragraph (1)—

5 (i) in subparagraph (A), by striking
6 “‘\$100,000’ for ‘\$250,000’” and inserting
7 “‘\$400,000’ for ‘\$1,000,000’”;

8 (ii) in subparagraph (B), by striking
9 “‘\$25,000’ for ‘\$75,000’” and inserting
10 “‘\$100,000’ for ‘\$300,000’”; and

11 (iii) in subparagraph (C), by striking
12 “‘\$50,000’ for ‘\$150,000’” and inserting
13 “‘\$200,000’ for ‘\$600,000’”;

14 (C) in paragraph (2)(A), by striking
15 “\$5,000,000” and inserting “\$2,000,000”; and

16 (4) in subsection (e)—

17 (A) in paragraph (2)—

18 (i) in subparagraph (A), by striking
19 “\$100” and inserting “\$400”;

20 (ii) in subparagraph (C)(i), by strik-
21 ing “\$25,000” and inserting “\$100,000”;
22 and

23 (iii) in subparagraph (C)(ii), by strik-
24 ing “\$100,000” and inserting “\$400,000”;
25 and

1 (B) in paragraph (3)(A), by striking
2 “\$250,000” and inserting “\$1,000,000”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 subsections (b) and (c) shall apply to failures occurring
5 after December 31, 2006.

6 **SEC. 258. ADDITIONAL CRIMINAL PENALTIES FOR MISUSE**
7 **OF SOCIAL SECURITY ACCOUNT NUMBERS.**

8 (a) IN GENERAL.—Section 208(a) of the Social Secu-
9 rity Act (42 U.S.C. 408(a)) is amended—

10 (1) by amending paragraph (7) to read as fol-
11 lows:

12 “(7) for any purpose—

13 “(A) knowingly possesses or uses a social
14 security account number or social security card
15 knowing that such number or card was obtained
16 from the Commissioner of Social Security by
17 means of fraud or false statements;

18 “(B) knowingly and falsely represents a
19 number to be the social security account num-
20 ber assigned by the Commissioner of Social Se-
21 curity to the person or to another person, when
22 in fact such number is not the social security
23 account number assigned by the Commissioner
24 of Social Security to such person or to such
25 other person;

1 “(C) knowingly buys, sells, or possesses
2 with intent to buy or sell a social security ac-
3 count number or a social security card that is
4 or purports to be a number or card issued by
5 the Commissioner of Social Security;

6 “(D) knowingly alters, counterfeits, forges,
7 or falsely makes a social security account num-
8 ber or a social security card; or

9 “(E) knowingly possesses, uses, distrib-
10 utes, or transfers a social security account
11 number or a social security card knowing the
12 number or card to be altered, counterfeited,
13 forged, falsely made, or stolen; or”;

14 (2) in paragraph (8)—

15 (A) by inserting “knowingly” before “dis-
16 closes”;

17 (B) by inserting “account” after “secu-
18 rity”; and

19 (C) by inserting “or” after the semicolon
20 at the end;

21 (3) by inserting after paragraph (8) the fol-
22 lowing:

23 “(9) without lawful authority, knowingly pro-
24 duces or acquires for any person a social security ac-
25 count number, a social security card, or a number

1 or card that purports to be a social security account
2 number or social security card,”; and

3 (4) in the flush text at the end, by striking
4 “five” and inserting “10”.

5 (b) CONSPIRACY AND DISCLOSURE.—Section 208 of
6 such Act is further amended by adding at the end the fol-
7 lowing:

8 “(f) Whoever attempts or conspires to violate any
9 criminal provision under this section shall be punished in
10 the same manner as a person who completes a violation
11 of such provision.

12 “(g)(1) Subject to paragraph (3) and notwith-
13 standing any other provision of law, the Commissioner of
14 Social Security shall disclose to any Federal law enforce-
15 ment agency the records described in paragraph (2) if
16 such law enforcement agency requests such records for the
17 purpose of investigating a violation of this section or any
18 other felony offense.

19 “(2) The records described in this paragraph are
20 records of the Social Security Administration con-
21 cerning—

22 “(A) the identity, address, location, or financial
23 institution accounts of the holder of a social security
24 account number or social security card;

1 “(B) the application for and issuance of a social
2 security account number or social security card; and

3 “(C) the existence or nonexistence of a social
4 security account number or social security card.

5 “(3) The Commissioner of Social Security may not
6 disclose any tax return or tax return information pursuant
7 to this subsection except as authorized under section 6103
8 of the Internal Revenue Code of 1986.”.

9 **SEC. 259. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) IN GENERAL.—There are authorized to be appro-
11 priated to the Secretary of Homeland Security such sums
12 as may be necessary to carry out the provisions of this
13 Act, and the amendments made by this Act, including—

14 (1) in each of the 2 fiscal years beginning on
15 the date of the enactment of this Act, the appropria-
16 tions necessary to hire not fewer than 2,500 new
17 personnel at the Department of Homeland Security
18 assigned exclusively or principally to an office or of-
19 fices dedicated to monitoring and enforcing compli-
20 ance with sections 274A and 274C of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1324a and
22 1324c), including compliance with the requirements
23 of the Employment Eligibility Verification System,
24 which personnel shall monitor compliance by—

1 (A) verifying the Employment Identifica-
2 tion Numbers of employers participating in the
3 Employment Eligibility Verification System (re-
4 ferred to in this section as “EEVS”);

5 (B) verifying compliance of employers par-
6 ticipating in EEVS with the requirements for
7 participation that are prescribed by the Sec-
8 retary;

9 (C) monitoring EEVS for multiple uses of
10 Social Security numbers and any immigration
11 identification numbers for evidence that could
12 indicate identity theft or fraud;

13 (D) monitoring EEVS to identify discrimi-
14 natory practices;

15 (E) monitoring EEVS to identify employ-
16 ers who are not using the system properly, in-
17 cluding employers who fail to make appropriate
18 records with respect to their queries and any
19 notices of confirmation, nonconfirmation, or
20 further action;

21 (F) identifying instances in which employ-
22 ees allege that an employer violated their pri-
23 vacy rights;

1 (G) analyzing and auditing the use of
2 EEVS and the data obtained through EEVS
3 to—

4 (i) identify fraud trends, including
5 fraud trends across industries, geo-
6 graphical areas, or employer size; and

7 (ii) develop compliance tools as nec-
8 essary to respond to changing patterns of
9 fraud;

10 (H) providing employers with additional
11 training and other information on the proper
12 use of EEVS;

13 (I) performing threshold evaluation of
14 cases for referral to United States Immigration
15 and Customs Enforcement and to liaise with
16 such agency with respect to these referrals;

17 (J) any other compliance and monitoring
18 activities that, in the Secretary's judgment, are
19 necessary to ensure the functioning of EEVS;

20 (K) investigating identity theft and fraud
21 detected through EEVS and undertake the nec-
22 essary enforcement actions;

23 (L) investigating the use of fraudulent doc-
24 uments or access to fraudulent documents

1 through local facilitation and undertake the
2 necessary enforcement actions;

3 (M) providing support to United States
4 Citizenship and Immigration Services with re-
5 spect to the evaluation of cases for referral to
6 United States Immigration and Customs En-
7 forcement; and

8 (N) performing any other investigation
9 that the Secretary determines to be necessary
10 to ensure the functioning of EEVS, and under-
11 take any enforcement actions necessary as a re-
12 sult of these investigations; and

13 (2) the appropriations necessary to acquire, in-
14 stall, and maintain technological equipment nec-
15 essary to support the functioning of EEVS and the
16 connectivity between United States Citizenship and
17 Immigration Services and United States Immigra-
18 tion and Customs Enforcement with respect to the
19 sharing of information to support EEVS and related
20 immigration enforcement actions.

21 (b) AUTHORIZATION OF APPROPRIATIONS.—

22 (1) COMMISSION OF SOCIAL SECURITY.—There
23 are authorized to be appropriated to Commissioner
24 of Social Security such sums as may be necessary to

1 carry out the duties of the Commissioner under this
2 subtitle and the amendments made by this subtitle.

3 (2) SECRETARY OF HOMELAND SECURITY.—In
4 addition to any other amounts authorized to be ap-
5 propriated in this Act, there are authorized to be ap-
6 propriated to the Secretary, in each of the 2 fiscal
7 years beginning after the date of the enactment of
8 this Act, such sums as may be necessary to annually
9 hire not fewer than 2,500 personnel of the Depart-
10 ment of Homeland Security, who shall be assigned
11 exclusively or principally to an office or offices dedi-
12 cated to monitoring and enforcing compliance with
13 sections 274A and 274C of the Immigration and
14 Nationality Act (8 U.S.C. 1324a and 1324c), includ-
15 ing compliance with the requirements of EEVS.
16 These personnel shall perform the compliance and
17 monitoring activities described in subparagraphs (A)
18 through (N) of subsection (a)(1).

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