

116TH CONGRESS
1ST SESSION

H. R. 574

To clarify standards of family detention and the treatment of unaccompanied alien children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 2019

Mr. MEADOWS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Foreign Affairs, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To clarify standards of family detention and the treatment of unaccompanied alien children, 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 “Equal Protection of Unaccompanied Minors Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—UNACCOMPANIED ALIEN CHILDREN; INTERIOR
IMMIGRATION ENFORCEMENT

- Sec. 1101. Repatriation of unaccompanied alien children.
- Sec. 1102. Clarification of standards for family detention.
- Sec. 1103. Detention of dangerous aliens.
- Sec. 1104. Definition of aggravated felony.
- Sec. 1105. Crime of violence.
- Sec. 1106. Grounds of inadmissibility and deportability for alien gang members.
- Sec. 1107. Special immigrant juvenile status for immigrants unable to reunite with either parent.
- Sec. 1108. Clarification of authority regarding determinations of convictions.
- Sec. 1109. Adding attempt and conspiracy to commit terrorism-related inadmissibility grounds acts to the definition of engaging in terrorist activity.
- Sec. 1110. Clarifying the authority of ice detainers.
- Sec. 1111. Department of Homeland Security access to crime information databases.
- Sec. 1112. Clarification of congressional intent.

TITLE II—ASYLUM REFORM

- Sec. 2101. Credible fear interviews.
- Sec. 2102. Jurisdiction of asylum applications.
- Sec. 2103. Recording expedited removal and credible fear interviews.
- Sec. 2104. Safe third country.
- Sec. 2105. Renunciation of asylum status pursuant to return to home country.
- Sec. 2106. Notice concerning frivolous asylum applications.
- Sec. 2107. Anti-fraud investigative work product.
- Sec. 2108. Penalties for asylum fraud.
- Sec. 2109. Statute of limitations for asylum fraud.
- Sec. 2110. Technical amendments.

TITLE III—IMMIGRATION JUDGES, FACILITIES, AND PERSONNEL

- Sec. 3101. Facilities for asylum applicants who retain custody of a child.
- Sec. 3102. Increasing the number of authorized immigration judges.
- Sec. 3103. Increasing the number of available Department of Homeland Security employees.
- Sec. 3104. Definitions.

1 **TITLE I—UNACCOMPANIED**
2 **ALIEN CHILDREN; INTERIOR**
3 **IMMIGRATION ENFORCE-**
4 **MENT**

5 **SEC. 1101. REPATRIATION OF UNACCOMPANIED ALIEN**
6 **CHILDREN.**

7 (a) IN GENERAL.—Section 235 of the William Wil-
8 berforce Trafficking Victims Protection Reauthorization
9 Act of 2008 (8 U.S.C. 1232) is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (2)—

12 (i) by amending the heading to read
13 as follows: “RULES FOR UNACCOMPANIED
14 ALIEN CHILDREN.—”;

15 (ii) in subparagraph (A)—

16 (I) in the matter preceding clause
17 (i), by striking “who is a national or
18 habitual resident of a country that is
19 contiguous with the United States”;

20 (II) in clause (i), by inserting
21 “and” at the end;

22 (III) in clause (ii), by striking “;
23 and” and inserting a period; and

24 (IV) by striking clause (iii);

25 (iii) in subparagraph (B)—

1 (I) in the matter preceding clause
2 (i), by striking “(8 U.S.C. 1101 et
3 seq.) may—” and inserting “(8
4 U.S.C. 1101 et seq.)—”;

5 (II) in clause (i), by inserting be-
6 fore “permit such child to withdraw”
7 the following: “may”; and

8 (III) in clause (ii), by inserting
9 before “return such child” the fol-
10 lowing: “shall”; and

11 (iv) in subparagraph (C)—

12 (I) by amending the heading to
13 read as follows: “AGREEMENTS WITH
14 FOREIGN COUNTRIES.—”; and

15 (II) in the matter preceding
16 clause (i), by striking “The Secretary
17 of State shall negotiate agreements
18 between the United States and coun-
19 tries contiguous to the United States”
20 and inserting “The Secretary of State
21 may negotiate agreements between the
22 United States and any foreign country
23 that the Secretary determines appro-
24 priate”;

1 (B) by redesignating paragraphs (3)
2 through (5) as paragraphs (4) through (6), re-
3 spectively, and inserting after paragraph (2) the
4 following:

5 “(3) SPECIAL RULES FOR INTERVIEWING UNAC-
6 COMPANIED ALIEN CHILDREN.—An unaccompanied
7 alien child shall be interviewed by a dedicated U.S.
8 Citizenship and Immigration Services immigration
9 officer with specialized training in interviewing child
10 trafficking victims. Such officer shall be in plain
11 clothes and shall not carry a weapon. The interview
12 shall occur in a private room.”; and

13 (C) in paragraph (6)(D) (as so redesign-
14 ated)—

15 (i) in the matter preceding clause (i),
16 by striking “, except for an unaccompanied
17 alien child from a contiguous country sub-
18 ject to exceptions under subsection (a)(2),”
19 and inserting “who does not meet the cri-
20 teria listed in paragraph (2)(A)”;

21 (ii) in clause (i), by inserting before
22 the semicolon at the end the following: “,
23 which shall include a hearing before an im-
24 migration judge not later than 14 days
25 after being screened under paragraph (4)”;

1 (2) in subsection (b)—

2 (A) in paragraph (2)—

3 (i) in subparagraph (A), by inserting
4 before the semicolon the following: “be-
5 lieved not to meet the criteria listed in sub-
6 section (a)(2)(A)”;

7 (ii) in subparagraph (B), by inserting
8 before the period the following: “and does
9 not meet the criteria listed in subsection
10 (a)(2)(A)”;

11 (B) in paragraph (3), by striking “an un-
12 accompanied alien child in custody shall” and
13 all that follows, and inserting the following: “an
14 unaccompanied alien child in custody—

15 “(A) in the case of a child who does not
16 meet the criteria listed in subsection (a)(2)(A),
17 shall transfer the custody of such child to the
18 Secretary of Health and Human Services not
19 later than 30 days after determining that such
20 child is an unaccompanied alien child who does
21 not meet such criteria; or

22 “(B) in the case of child who meets the
23 criteria listed in subsection (a)(2)(A), may
24 transfer the custody of such child to the Sec-
25 retary of Health and Human Services after de-

1 termining that such child is an unaccompanied
2 alien child who meets such criteria.”; and

3 (3) in subsection (c)—

4 (A) in paragraph (3), by inserting at the
5 end the following:

6 “(D) INFORMATION ABOUT INDIVIDUALS
7 WITH WHOM CHILDREN ARE PLACED.—

8 “(i) INFORMATION TO BE PROVIDED
9 TO HOMELAND SECURITY.—Before placing
10 a child with an individual, the Secretary of
11 Health and Human Services shall provide
12 to the Secretary of Homeland Security, re-
13 garding the individual with whom the child
14 will be placed, the following information:

15 “(I) The name of the individual.

16 “(II) The social security number
17 of the individual, if available.

18 “(III) The date of birth of the in-
19 dividual.

20 “(IV) The location of the individ-
21 ual’s residence where the child will be
22 placed.

23 “(V) The immigration status of
24 the individual, if known.

1 “(VI) Contact information for
2 the individual.

3 “(ii) SPECIAL RULE.—In the case of a
4 child who was apprehended on or after the
5 effective date of this clause, and before the
6 date of the enactment of this subpara-
7 graph, who the Secretary of Health and
8 Human Services placed with an individual,
9 the Secretary shall provide the information
10 listed in clause (i) to the Secretary of
11 Homeland Security not later than 90 days
12 after such date of enactment.

13 “(iii) ACTIVITIES OF SECRETARY OF
14 HOMELAND SECURITY.—Not later than 30
15 days after receiving the information listed
16 in clause (i), the Secretary of Homeland
17 Security shall—

18 “(I) in the case that the immi-
19 gration status of an individual with
20 whom a child is placed is unknown,
21 investigate the immigration status of
22 that individual; and

23 “(II) upon determining that an
24 individual with whom a child is placed
25 is unlawfully present in the United

1 States, initiate removal proceedings
2 pursuant to chapter 4 of title II of the
3 Immigration and Nationality Act (8
4 U.S.C. 1221 et seq.)”;

5 (B) in paragraph (5)—

6 (i) by inserting “(at no expense to the
7 Government)” after “to the greatest extent
8 practicable”; and

9 (ii) by striking “have counsel to rep-
10 resent them” and inserting “have access to
11 counsel to represent them”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to any unauthorized alien child ap-
14 prehended on or after the date of enactment.

15 **SEC. 1102. CLARIFICATION OF STANDARDS FOR FAMILY DE-**
16 **TENTION.**

17 (a) IN GENERAL.—Section 235 of the William Wil-
18 berforce Trafficking Victims Protection Reauthorization
19 Act of 2008 (8 U.S.C. 1232) is amended by adding at
20 the end the following:

21 “(j) CONSTRUCTION.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of law, judicial determination, consent de-
24 cree, or settlement agreement, the detention of any
25 alien child who is not an unaccompanied alien child

1 shall be governed by sections 217, 235, 236, and
2 241 of the Immigration and Nationality Act (8
3 U.S.C. 1187, 1225, 1226, and 1231). There exists
4 no presumption that an alien child who is not an un-
5 accompanied alien child should not be detained, and
6 all such determinations shall be in the discretion of
7 the Secretary of Homeland Security.

8 “(2) RELEASE OF MINORS OTHER THAN UNAC-
9 COMPANIED ALIENS.—In no circumstances shall an
10 alien minor who is not an unaccompanied alien child
11 be released by the Secretary of Homeland Security
12 other than to a parent or legal guardian.

13 “(3) FAMILY DETENTION.—The Secretary of
14 Homeland Security shall—

15 “(A) maintain the care and custody of an
16 alien, during the period which the charges de-
17 scribed in clause (i) are pending, who—

18 “(i) is charged only with a mis-
19 demeanor offense under section 275(a) of
20 the Immigration and Nationality Act (8
21 U.S.C. 1325(a)); and

22 “(ii) entered the United States with
23 the alien’s child who has not attained 18
24 years of age; and

1 “(B) detain the alien with the alien’s
2 child.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall take effect on the date of the enact-
5 ment of this Act and shall apply to all actions that occur
6 before, on, or after the date of the enactment of this Act.

7 (c) **PREEMPTION OF STATE LICENSING REQUIRE-**
8 **MENTS.**—Notwithstanding any other provision of law, ju-
9 dicial determination, consent decree, or settlement agree-
10 ment, no State may require that an immigration detention
11 facility used to detain children who have not attained 18
12 years of age, families consisting of one or more such chil-
13 dren and the parents or legal guardians of such children,
14 that is located in that State, be licensed by the State or
15 any political subdivision thereof.

16 **SEC. 1103. DETENTION OF DANGEROUS ALIENS.**

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

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

23 (2) in paragraph (1), by amending subpara-
24 graph (B) to read as follows:

1 “(B) BEGINNING OF PERIOD.—The re-
2 moval period begins on the latest of the fol-
3 lowing:

4 “(i) The date the order of removal be-
5 comes administratively final.

6 “(ii) If the alien is not in the custody
7 of the Secretary on the date the order of
8 removal becomes administratively final, the
9 date the alien is taken into such custody.

10 “(iii) If the alien is detained or con-
11 fined (except under an immigration proc-
12 ess) on the date the order of removal be-
13 comes administratively final, the date the
14 alien is taken into the custody of the Sec-
15 retary, after the alien is released from such
16 detention or confinement.”;

17 (3) in paragraph (1), by amending subpara-
18 graph (C) to read as follows:

19 “(C) SUSPENSION OF PERIOD.—

20 “(i) EXTENSION.—The removal period
21 shall be extended beyond a period of 90
22 days and the Secretary may, in the Sec-
23 retary’s sole discretion, keep the alien in
24 detention during such extended period if—

1 “(I) the alien fails or refuses to
2 make all reasonable efforts to comply
3 with the removal order, or to fully co-
4 operate with the Secretary’s efforts to
5 establish the alien’s identity and carry
6 out the removal order, including mak-
7 ing timely application in good faith
8 for travel or other documents nec-
9 essary to the alien’s departure or con-
10 spires or acts to prevent the alien’s
11 removal that is subject to an order of
12 removal;

13 “(II) a court, the Board of Immi-
14 gration Appeals, or an immigration
15 judge orders a stay of removal of an
16 alien who is subject to an administra-
17 tively final order of removal;

18 “(III) the Secretary transfers
19 custody of the alien pursuant to law
20 to another Federal agency or a State
21 or local government agency in connec-
22 tion with the official duties of such
23 agency; or

24 “(IV) a court or the Board of
25 Immigration Appeals orders a remand

1 to an immigration judge or the Board
2 of Immigration Appeals, during the
3 time period when the case is pending
4 a decision on remand (with the re-
5 moval period beginning anew on the
6 date that the alien is ordered removed
7 on remand).

8 “(ii) RENEWAL.—If the removal pe-
9 riod has been extended under subpara-
10 graph (C)(i), a new removal period shall be
11 deemed to have begun on the date—

12 “(I) the alien makes all reason-
13 able efforts to comply with the re-
14 moval order, or to fully cooperate with
15 the Secretary’s efforts to establish the
16 alien’s identity and carry out the re-
17 moval order;

18 “(II) the stay of removal is no
19 longer in effect; or

20 “(III) the alien is returned to the
21 custody of the Secretary.

22 “(iii) MANDATORY DETENTION FOR
23 CERTAIN ALIENS.—In the case of an alien
24 described in subparagraphs (A) through
25 (D) of section 236(c)(1), the Secretary

1 shall keep that alien in detention during
2 the extended period described in clause (i).

3 “(iv) SOLE FORM OF RELIEF.—An
4 alien may seek relief from detention under
5 this subparagraph only by filing an appli-
6 cation for a writ of habeas corpus in ac-
7 cordance with chapter 153 of title 28,
8 United States Code. No alien whose period
9 of detention is extended under this sub-
10 paragraph shall have the right to seek re-
11 lease on bond.”;

12 (4) in paragraph (3)—

13 (A) by adding after “If the alien does not
14 leave or is not removed within the removal pe-
15 riod” the following: “or is not detained pursu-
16 ant to paragraph (6) of this subsection”; and

17 (B) by striking subparagraph (D) and in-
18 sserting the following:

19 “(D) to obey reasonable restrictions on the
20 alien’s conduct or activities that the Secretary
21 prescribes for the alien, in order to prevent the
22 alien from absconding, for the protection of the
23 community, or for other purposes related to the
24 enforcement of the immigration laws.”;

1 (5) in paragraph (4)(A), by striking “paragraph
2 (2)” and inserting “subparagraph (B)”; and

3 (6) by striking paragraph (6) and inserting the
4 following:

5 “(6) ADDITIONAL RULES FOR DETENTION OR
6 RELEASE OF CERTAIN ALIENS.—

7 “(A) DETENTION REVIEW PROCESS FOR
8 COOPERATIVE ALIENS ESTABLISHED.—For an
9 alien who is not otherwise subject to mandatory
10 detention, who has made all reasonable efforts
11 to comply with a removal order and to cooper-
12 ate fully with the Secretary of Homeland Secu-
13 rity’s efforts to establish the alien’s identity and
14 carry out the removal order, including making
15 timely application in good faith for travel or
16 other documents necessary to the alien’s depar-
17 ture, and who has not conspired or acted to
18 prevent removal, the Secretary shall establish
19 an administrative review process to determine
20 whether the alien should be detained or released
21 on conditions. The Secretary shall make a de-
22 termination whether to release an alien after
23 the removal period in accordance with subpara-
24 graph (B). The determination shall include con-
25 sideration of any evidence submitted by the

1 alien, and may include consideration of any
2 other evidence, including any information or as-
3 sistance provided by the Secretary of State or
4 other Federal official and any other information
5 available to the Secretary of Homeland Security
6 pertaining to the ability to remove the alien.

7 “(B) AUTHORITY TO DETAIN BEYOND RE-
8 MOVAL PERIOD.—

9 “(i) IN GENERAL.—The Secretary of
10 Homeland Security, in the exercise of the
11 Secretary’s sole discretion, may continue to
12 detain an alien for 90 days beyond the re-
13 moval period (including any extension of
14 the removal period as provided in para-
15 graph (1)(C)). An alien whose detention is
16 extended under this subparagraph shall
17 have no right to seek release on bond.

18 “(ii) SPECIFIC CIRCUMSTANCES.—The
19 Secretary of Homeland Security, in the ex-
20 ercise of the Secretary’s sole discretion,
21 may continue to detain an alien beyond the
22 90 days authorized in clause (i)—

23 “(I) until the alien is removed, if
24 the Secretary, in the Secretary’s sole

1 discretion, determines that there is a
2 significant likelihood that the alien—

3 “(aa) will be removed in the
4 reasonably foreseeable future; or

5 “(bb) would be removed in
6 the reasonably foreseeable future,
7 or would have been removed, but
8 for the alien’s failure or refusal
9 to make all reasonable efforts to
10 comply with the removal order,
11 or to cooperate fully with the
12 Secretary’s efforts to establish
13 the alien’s identity and carry out
14 the removal order, including
15 making timely application in
16 good faith for travel or other doc-
17 uments necessary to the alien’s
18 departure, or conspires or acts to
19 prevent removal;

20 “(II) until the alien is removed,
21 if the Secretary of Homeland Security
22 certifies in writing—

23 “(aa) in consultation with
24 the Secretary of Health and
25 Human Services, that the alien

1 has a highly contagious disease
2 that poses a threat to public safe-
3 ty;

4 “(bb) after receipt of a writ-
5 ten recommendation from the
6 Secretary of State, that release
7 of the alien is likely to have seri-
8 ous adverse foreign policy con-
9 sequences for the United States;

10 “(cc) based on information
11 available to the Secretary of
12 Homeland Security (including
13 classified, sensitive, or national
14 security information, and without
15 regard to the grounds upon
16 which the alien was ordered re-
17 moved), that there is reason to
18 believe that the release of the
19 alien would threaten the national
20 security of the United States; or

21 “(dd) that the release of the
22 alien will threaten the safety of
23 the community or any person,
24 conditions of release cannot rea-
25 sonably be expected to ensure the

1 safety of the community or any
2 person, and either (AA)—

3 “(AA) the alien has
4 been convicted of (aaa) one
5 or more aggravated felonies
6 (as defined in section
7 101(a)(43)(A)), (bbb) one or
8 more crimes identified by
9 the Secretary of Homeland
10 Security by regulation, if the
11 aggregate term of imprison-
12 ment for such crimes is at
13 least 5 years, or (ccc) one or
14 more attempts or conspir-
15 acies to commit any such
16 aggravated felonies or such
17 identified crimes, if the ag-
18 gregate term of imprison-
19 ment for such attempts or
20 conspiracies is at least 5
21 years; or

22 “(BB) the alien has
23 committed one or more vio-
24 lent crimes (as referred to in
25 section 101(a)(43)(F), but

1 not including a purely polit-
2 ical offense) and, because of
3 a mental condition or per-
4 sonality disorder and behav-
5 ior associated with that con-
6 dition or disorder, the alien
7 is likely to engage in acts of
8 violence in the future; or

9 “(III) pending a certification
10 under subclause (II), so long as the
11 Secretary of Homeland Security has
12 initiated the administrative review
13 process not later than 30 days after
14 the expiration of the removal period
15 (including any extension of the re-
16 moval period, as provided in para-
17 graph (1)(C)).

18 “(iii) NO RIGHT TO BOND HEARING.—
19 An alien whose detention is extended under
20 this subparagraph shall have no right to
21 seek release on bond, including by reason
22 of a certification under clause (ii)(II).

23 “(C) RENEWAL AND DELEGATION OF CER-
24 TIFICATION.—

1 “(i) RENEWAL.—The Secretary of
2 Homeland Security may renew a certifi-
3 cation under subparagraph (B)(ii)(II)
4 every 6 months, after providing an oppor-
5 tunity for the alien to request reconsider-
6 ation of the certification and to submit
7 documents or other evidence in support of
8 that request. If the Secretary does not
9 renew a certification, the Secretary may
10 not continue to detain the alien under sub-
11 subparagraph (B)(ii)(II).

12 “(ii) DELEGATION.—Notwithstanding
13 section 103, the Secretary of Homeland
14 Security may not delegate the authority to
15 make or renew a certification described in
16 item (bb), (cc), or (dd) of subparagraph
17 (B)(ii)(II) below the level of the Director
18 of Immigration and Customs Enforcement.

19 “(iii) HEARING.—The Secretary of
20 Homeland Security may request that the
21 Attorney General or the Attorney General’s
22 designee provide for a hearing to make the
23 determination described in item (dd)(BB)
24 of subparagraph (B)(ii)(II).

1 “(D) RELEASE ON CONDITIONS.—If it is
2 determined that an alien should be released
3 from detention by a Federal court, the Board of
4 Immigration Appeals, or if an immigration
5 judge orders a stay of removal, the Secretary of
6 Homeland Security, in the exercise of the Sec-
7 retary’s discretion, may impose conditions on
8 release as provided in paragraph (3).

9 “(E) REDETENTION.—The Secretary of
10 Homeland Security, in the exercise of the Sec-
11 retary’s discretion, without any limitations
12 other than those specified in this section, may
13 again detain any alien subject to a final re-
14 moval order who is released from custody, if re-
15 moval becomes likely in the reasonably foresee-
16 able future, the alien fails to comply with the
17 conditions of release, or to continue to satisfy
18 the conditions described in subparagraph (A),
19 or if, upon reconsideration, the Secretary, in
20 the Secretary’s sole discretion, determines that
21 the alien can be detained under subparagraph
22 (B). This section shall apply to any alien re-
23 turned to custody pursuant to this subpara-
24 graph, as if the removal period terminated on
25 the day of the redetention.

1 “(F) REVIEW OF DETERMINATIONS BY
2 SECRETARY.—A determination by the Secretary
3 under this paragraph shall not be subject to re-
4 view by any other agency.”.

5 **SEC. 1104. DEFINITION OF AGGRAVATED FELONY.**

6 (a) IN GENERAL.—Section 101(a)(43) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1101(a)(43)) is
8 amended to read as follows:

9 “(43) Notwithstanding any other provision of
10 law, the term ‘aggravated felony’ means any offense,
11 whether in violation of Federal, State, or foreign
12 law, that is described in this paragraph. An offense
13 described in this paragraph is—

14 “(A) homicide (including murder in any
15 degree, manslaughter, and vehicular man-
16 slaughter), rape (whether the victim was con-
17 scious or unconscious), statutory rape, sexual
18 assault or battery, or any offense of a sexual
19 nature involving an intended victim under the
20 age of 18 years (including offenses in which the
21 intended victim was a law enforcement officer);

22 “(B)(i) illicit trafficking in a controlled
23 substance (as defined in section 102 of the Con-
24 trolled Substances Act), including a drug traf-

1 ficking crime (as defined in section 924(c) of
2 title 18, United States Code); or

3 “(ii) any offense under State law relating
4 to a controlled substance (as so classified under
5 State law) which is classified as a felony in that
6 State regardless of whether the substance is
7 classified as a controlled substance under sec-
8 tion 102 of the Controlled Substances Act (21
9 U.S.C. 802);

10 “(C) illicit trafficking in firearms or de-
11 structive devices (as defined in section 921 of
12 title 18, United States Code) or in explosive
13 materials (as defined in section 841(e) of that
14 title);

15 “(D) an offense described in section 1956
16 of title 18, United States Code (relating to
17 laundering of monetary instruments) or section
18 1957 of that title (relating to engaging in mon-
19 etary transactions in property derived from spe-
20 cific unlawful activity) if the amount of the
21 funds exceeded \$10,000;

22 “(E) an offense described in—

23 “(i) section 842 or 844 of title 18,
24 United States Code (relating to explosive
25 materials offenses);

1 “(ii) section 922 or 924 of title 18,
2 United States Code (relating to firearms
3 offenses); or

4 “(iii) section 5861 of the Internal
5 Revenue Code of 1986 (relating to fire-
6 arms offenses);

7 “(F) a violent crime for which the term of
8 imprisonment is at least 1 year, including—

9 “(i) any offense that has an element
10 the use, attempted use, or threatened use
11 of physical force against the person or
12 property of another; or

13 “(ii) any other offense in which the
14 record of conviction establishes that the of-
15 fender used physical force against the per-
16 son or property of another in the course of
17 committing the offense;

18 “(G)(i) theft (including theft by deceit,
19 theft by fraud, embezzlement, motor vehicle
20 theft, unauthorized use of a vehicle, or receipt
21 of stolen property), regardless of whether the
22 intended deprivation was temporary or perma-
23 nent, for which the term of imprisonment is at
24 least 1 year; or

1 “(ii) burglary for which the term of impris-
2 onment is at least 1 year;

3 “(H) an offense described in section 875,
4 876, 877, or 1202 of title 18, United States
5 Code (relating to the demand for or receipt of
6 ransom);

7 “(I) an offense involving child pornography
8 or sexual exploitation of a minor (including any
9 offense described in section 2251, 2251A, or
10 2252 of title 18, United States Code);

11 “(J) an offense described in section 1962
12 of title 18, United States Code (relating to
13 racketeer influenced corrupt organizations), or
14 an offense described in section 1084 (if it is a
15 second or subsequent offense) or 1955 of that
16 title (relating to gambling offenses);

17 “(K) an offense that—

18 “(i) relates to the owning, controlling,
19 managing, or supervising of a prostitution
20 business;

21 “(ii) is described in section 2421,
22 2422, or 2423 of title 18, United States
23 Code (relating to transportation for the
24 purpose of prostitution) if committed for
25 commercial advantage; or

1 “(iii) is described in any of sections
2 1581–1585 or 1588–1591 of title 18,
3 United States Code (relating to peonage,
4 slavery, involuntary servitude, and traf-
5 ficking in persons);

6 “(L) an offense described in—

7 “(i) section 793 (relating to gathering
8 or transmitting national defense informa-
9 tion), 798 (relating to disclosure of classi-
10 fied information), 2153 (relating to sabo-
11 tage) or 2381 or 2382 (relating to treason)
12 of title 18, United States Code;

13 “(ii) section 601 of the National Secu-
14 rity Act of 1947 (50 U.S.C. 421) (relating
15 to protecting the identity of undercover in-
16 telligence agents);

17 “(iii) section 601 of the National Se-
18 curity Act of 1947 (relating to protecting
19 the identity of undercover agents);

20 “(iv) section 175 (relating to biologi-
21 cal weapons) of title 18, United States
22 Code;

23 “(v) sections 792 (harboring or con-
24 cealing persons who violated sections 793
25 or 794 of title 18, United States Code),

1 794 (gathering or delivering defense infor-
2 mation to aid foreign government), 795
3 (photographing and sketching defense in-
4 stallations), 796 (use of aircraft for
5 photographing defense installations), 797
6 (publication and sale of photographs of de-
7 fense installations), 799 (violation of
8 NASA regulations for protection of facili-
9 ties) of title 18, United States Code;

10 “(vi) sections 831 (prohibited trans-
11 actions involving nuclear materials) and
12 832 (participation in nuclear and weapons
13 of mass destruction threats to the United
14 States) of title 18, United States Code;

15 “(vii) sections 2332a–d, f–h (relating
16 to terrorist activities) of title 18, United
17 States Code;

18 “(viii) sections 2339 (relating to har-
19 boring or concealing terrorists), 2339A (re-
20 lating to material support to terrorists),
21 2339B (relating to material support or re-
22 sources to designated foreign terrorist or-
23 ganizations), 2339C (relating to financing
24 of terrorism), 2339D (relating to receiving

1 military-type training from a terrorist or-
2 ganization) of title 18, United States Code;

3 “(ix) section 1705 of the International
4 Emergency Economic Powers Act (50
5 U.S.C. 1705); or

6 “(x) section 38 of the Arms Export
7 Control Act (22 U.S.C. 2778);

8 “(M) an offense that—

9 “(i) involves fraud or deceit in which
10 the loss to the victim or victims exceeds
11 \$10,000; or

12 “(ii) is described in section 7201 of
13 the Internal Revenue Code of 1986 (relat-
14 ing to tax evasion) in which the revenue
15 loss to the Government exceeds \$10,000;

16 “(N) an offense described in section 274(a)
17 (relating to alien smuggling);

18 “(O) an offense described in section 275 or
19 276 for which the term of imprisonment is at
20 least 1 year;

21 “(P) an offense which is described in chap-
22 ter 75 of title 18, United States Code, and for
23 which the term of imprisonment is at least 1
24 year;

1 “(Q) an offense relating to a failure to ap-
2 pear by a defendant for service of sentence if
3 the underlying offense is punishable by impris-
4 onment for a term of 5 years or more;

5 “(R) an offense relating to commercial
6 bribery, counterfeiting, forgery, or trafficking in
7 vehicles the identification numbers of which
8 have been altered for which the term of impris-
9 onment is at least one year;

10 “(S) an offense relating to obstruction of
11 justice, perjury or subornation of perjury, or
12 bribery of a witness;

13 “(T) an offense relating to a failure to ap-
14 pear before a court pursuant to a court order
15 to answer to or dispose of a charge of a felony
16 for which a sentence of 2 years’ imprisonment
17 or more may be imposed;

18 “(U) any offense for which the term of im-
19 prisonment imposed was 2 years or more;

20 “(V) an offense relating to terrorism or
21 national security (including a conviction for a
22 violation of any provision of chapter 113B of
23 title 18, United States Code;

24 “(W)(i) a single conviction for driving
25 while intoxicated (including a conviction for

1 driving while under the influence of or impair-
2 ment by alcohol or drugs), when such impaired
3 driving was a cause of the serious bodily injury
4 or death of another person; or

5 “(ii) a second or subsequent conviction for
6 driving while intoxicated (including a conviction
7 for driving under the influence of or impaired
8 by alcohol or drugs); or

9 “(X) an attempt or conspiracy to commit
10 an offense described in this paragraph or aid-
11 ing, abetting, counseling, procuring, com-
12 manding, inducing, facilitating, or soliciting the
13 commission of such an offense.

14 Any determinations under this paragraph shall be
15 made on the basis of the record of conviction. For
16 purposes of this paragraph, a person shall be consid-
17 ered to have committed an aggravated felony if that
18 person has been convicted for 3 or more mis-
19 demeanors not arising out the traffic laws (except
20 for any conviction for driving under the influence or
21 an offense that results in the death or serious bodily
22 injury of another person) or felonies for which the
23 aggregate term of imprisonment imposed was 3
24 years or more, regardless of whether the convictions
25 were all entered pursuant to a single trial or the of-

1 fenses arose from a single pattern or scheme of con-
2 duct.”.

3 (b) EFFECTIVE DATE; APPLICATION OF AMEND-
4 MENTS.—

5 (1) IN GENERAL.—The amendments made by
6 subsection (a)—

7 (A) shall take effect on the date of the en-
8 actment of this Act; and

9 (B) shall apply to any act or conviction
10 that occurred before, on, or after such date.

11 (2) APPLICATION OF IRIRA AMENDMENTS.—

12 The amendments to section 101(a)(43) of the Immi-
13 gration and Nationality Act (8 U.S.C. 1101(a)(43))
14 made by section 321 of the Illegal Immigration Re-
15 form and Immigrant Responsibility Act of 1996 (di-
16 vision C of Public Law 104–208; 110 Stat. 3009–
17 627) shall continue to apply, whether the conviction
18 was entered before, on, or after September 30, 1996.

19 **SEC. 1105. CRIME OF VIOLENCE.**

20 Section 16 of title 18, United States Code, is amend-
21 ed to read as follows:

22 **“§ 16. Crime of violence defined**

23 “(a) The term ‘crime of violence’ means an offense
24 that—

1 “(1)(A) is murder, voluntary manslaughter, as-
2 sault, sexual abuse or aggravated sexual abuse, abu-
3 sive sexual contact, child abuse, kidnapping, robbery,
4 carjacking, firearms use, burglary, arson, extortion,
5 communication of threats, coercion, unauthorized
6 use of a vehicle, fleeing, interference with flight crew
7 members and attendants, domestic violence, hostage
8 taking, stalking, human trafficking, or using weap-
9 ons of mass destruction; or

10 “(B) involves use or unlawful possession of ex-
11 plosives or destructive devices described in 5845(f)
12 of the Internal Revenue Code of 1986;

13 “(2) has as an element the use, attempted use,
14 or threatened use of physical force against the per-
15 son or property of another; or

16 “(3) is an attempt to commit, conspiracy to
17 commit, solicitation to commit, or aiding and abet-
18 ting any of the offenses set forth in paragraphs (1)
19 and (2).

20 “(b) In this section:

21 “(1) The term ‘abusive sexual contact’ means
22 conduct described in section 2244(a)(1) and (a)(2).

23 “(2) The terms ‘aggravated sexual abuse’ and
24 ‘sexual abuse’ mean conduct described in sections
25 2241 and 2242. For purposes of such conduct, the

1 term ‘sexual act’ means conduct described in section
2 2246(2), or the knowing and lewd exposure of geni-
3 talia or masturbation, to any person, with an intent
4 to abuse, humiliate, harass, degrade, or arouse or
5 gratify the sexual desire of any person.

6 “(3) The term ‘assault’ means conduct de-
7 scribed in section 113(a), and includes conduct com-
8 mitted recklessly, knowingly, or intentionally.

9 “(4) The term ‘arson’ means conduct described
10 in section 844(i) or unlawfully or willfully damaging
11 or destroying any building, inhabited structure, vehi-
12 cle, vessel, or real property by means of fire or ex-
13 plosive.

14 “(5) The term ‘burglary’ means an unlawful or
15 unprivileged entry into, or remaining in, a building
16 or structure, including any nonpermanent or mobile
17 structure that is adapted or used for overnight ac-
18 commodation or for the ordinary carrying on of busi-
19 ness, and, either before or after entering, the per-
20 son—

21 “(A) forms the intent to commit a crime;

22 or

23 “(B) commits or attempts to commit a
24 crime.

1 “(6) The term ‘carjacking’ means conduct de-
2 scribed in section 2119, or the unlawful taking of a
3 motor vehicle from the immediate actual possession
4 of a person against his will, by means of actual or
5 threatened force, or violence or intimidation, or by
6 sudden or stealthy seizure or snatching, or fear of
7 injury.

8 “(7) The term ‘child abuse’ means the unlawful
9 infliction of physical injury or the commission of any
10 sexual act against a child under fourteen by any per-
11 son eighteen years of age or older.

12 “(8) The term ‘communication of threats’
13 means conduct described in section 844(e), or the
14 transmission of any communications containing any
15 threat of use of violence to—

16 “(A) demand or request for a ransom or
17 reward for the release of any kidnapped person;
18 or

19 “(B) threaten to kidnap or injure the per-
20 son of another.

21 “(9) The term ‘coercion’ means causing the
22 performance or non-performance of any act by an-
23 other person which under such other person has a
24 legal right to do or to abstain from doing, through
25 fraud or by the use of actual or threatened force, vi-

1 olence, or fear thereof, including the use, or an ex-
2 press or implicit threat of use, of violence to cause
3 harm, or threats to cause injury to the person, rep-
4 utation or property of any person.

5 “(10) The term ‘domestic violence’ means any
6 assault committed by a current or former spouse,
7 parent, or guardian of the victim, by a person with
8 whom the victim shares a child in common, by a per-
9 son who is cohabiting with or has cohabited with the
10 victim as a spouse, parent, or guardian, or by a per-
11 son similarly situated to a spouse, parent, or guard-
12 ian of the victim.

13 “(11) The term ‘extortion’ means conduct de-
14 scribed in section 1951(b)(2)), but not extortion
15 under color of official right or fear of economic loss.

16 “(12) The term ‘firearms use’ means conduct
17 described in section 924(c) or 929(a), if the firearm
18 was brandished, discharged, or otherwise possessed,
19 carried, or used as a weapon and the crime of vio-
20 lence or drug trafficking crime during and in rela-
21 tion to which the firearm was possessed, carried, or
22 used was subject to prosecution in any court of the
23 United States, State court, military court or tri-
24 bunal, or tribal court. Such term also includes un-
25 lawfully possessing a firearm described in section

1 5845(a) of the Internal Revenue Code of 1986 (such
2 as a sawed-off shotgun or sawed-off rifle, silencer,
3 bomb, or machine gun), possession of a firearm de-
4 scribed in section 922(g)(1), 922(g)(2) and
5 922(g)(4), possession of a firearm with the intent to
6 use such firearm unlawfully, or reckless discharge of
7 a firearm at a dwelling.

8 “(13) The term ‘fleeing’ means knowingly oper-
9 ating a motor vehicle and, following a law enforce-
10 ment officer’s signal to bring the motor vehicle to a
11 stop—

12 “(A) failing or refusing to comply; or

13 “(B) fleeing or attempting to elude a law
14 enforcement officer.

15 “(14) The term ‘force’ means the level of force
16 needed or intended to overcome resistance.

17 “(15) The term ‘hostage taking’ means conduct
18 described in section 1203.

19 “(16) The term ‘human trafficking’ means con-
20 duct described in section 1589, 1590, and 1591.

21 “(17) The term ‘interference with flight crew
22 members and attendants’ means conduct described
23 in section 46504 of title 49, United States Code.

24 “(18) The term ‘kidnapping’ means conduct de-
25 scribed in section 1201(a)(1) or seizing, confining,

1 inveigling, decoying, abducting, or carrying away
2 and holding for ransom or reward or otherwise any
3 person.

4 “(19) The term ‘murder’ means conduct de-
5 scribed as murder in the first degree or murder in
6 the second degree described in section 1111.

7 “(20) The term ‘robbery’ means conduct de-
8 scribed in section 1951(b)(1), or the unlawful taking
9 or obtaining of personal property from the person or
10 in the presence of another, against his will, by
11 means of actual or threatened force, or violence or
12 intimidation, or by sudden or stealthy seizure or
13 snatching, or fear of injury, immediate or future, to
14 his person or property, or property in his custody or
15 possession, or the person or property of a relative or
16 member of his family or of anyone in his company
17 at the time of the taking or obtaining.

18 “(21) The term ‘stalking’ means conduct de-
19 scribed in section 2261A.

20 “(22) The term ‘unauthorized use of a motor
21 vehicle’ means the intentional or knowing operation
22 of another person’s boat, airplane, or motor vehicle
23 without the consent of the owner.

24 “(23) The term ‘using weapons of mass de-
25 struction’ means conduct described in section 2332a.

1 “(24) The term ‘voluntary manslaughter’
2 means conduct described in section 1112(a).

3 “(c) For purposes of this section, in the case of any
4 reference in subsection (b) to an offense under this title,
5 such reference shall include conduct that constitutes an
6 offense under State or tribal law or under the Uniform
7 Code of Military Justice, if such conduct would be an of-
8 fense under this title if a circumstance giving rise to Fed-
9 eral jurisdiction had existed.”.

10 **SEC. 1106. GROUNDS OF INADMISSIBILITY AND DEPORT-**
11 **ABILITY FOR ALIEN GANG MEMBERS.**

12 (a) DEFINITION OF GANG MEMBER.—Section 101(a)
13 of the Immigration and Nationality Act (8 U.S.C.
14 1101(a)) is amended by inserting after paragraph (52) the
15 following:

16 “(53)(A) The term ‘criminal gang’ means an ongoing
17 group, club, organization, or association of 5 or more per-
18 sons—

19 “(i) that has as one of its primary purposes the
20 commission of 1 or more of the criminal offenses de-
21 scribed in subparagraph (B) and the members of
22 which engage, or have engaged within the past 5
23 years, in a continuing series of such offenses; or

24 “(ii) that has been designated as a criminal
25 gang by the Secretary of Homeland Security, in con-

1 sultation with the Attorney General, as meeting
2 these criteria.

3 “(B) The offenses described, whether in violation of
4 Federal or State law or foreign law and regardless of
5 whether the offenses occurred before, on, or after the date
6 of the enactment of this paragraph, are the following:

7 “(i) A ‘felony drug offense’ (as defined in sec-
8 tion 102 of the Controlled Substances Act (21
9 U.S.C. 802)).

10 “(ii) A felony offense involving firearms or ex-
11 plosives or in violation of section 931 of title 18,
12 United States Code (relating to purchase, ownership,
13 or possession of body armor by violent felons).

14 “(iii) An offense under section 274 (relating to
15 bringing in and harboring certain aliens), section
16 277 (relating to aiding or assisting certain aliens to
17 enter the United States), or section 278 (relating to
18 importation of alien for immoral purpose), except
19 that this clause does not apply in the case of an or-
20 ganization described in section 501(c)(3) of the In-
21 ternal Revenue Code of 1986 (26 U.S.C. 501(c)(3))
22 which is exempt from taxation under section 501(a)
23 of such Code.

24 “(iv) A violent crime described in section
25 101(a)(43)(F).

1 “(v) A crime involving obstruction of justice,
2 tampering with or retaliating against a witness, vic-
3 tim, or informant, or perjury or subornation of per-
4 jury.

5 “(vi) Any conduct punishable under sections
6 1028A and 1029 of title 18, United States Code (re-
7 lating to aggravated identity theft or fraud and re-
8 lated activity in connection with identification docu-
9 ments or access devices), sections 1581 through
10 1594 of such title (relating to peonage, slavery, and
11 trafficking in persons), section 1951 of such title
12 (relating to interference with commerce by threats or
13 violence), section 1952 of such title (relating to
14 interstate and foreign travel or transportation in aid
15 of racketeering enterprises), section 1956 of such
16 title (relating to the laundering of monetary instru-
17 ments), section 1957 of such title (relating to engag-
18 ing in monetary transactions in property derived
19 from specified unlawful activity), or sections 2312
20 through 2315 of such title (relating to interstate
21 transportation of stolen motor vehicles or stolen
22 property).

23 “(vii) An attempt or conspiracy to commit an
24 offense described in this paragraph or aiding, abet-
25 ting, counseling, procuring, commanding, inducing,

1 facilitating, or soliciting the commission of an of-
2 fense described in clauses (i) through (vi).”.

3 (b) INADMISSIBILITY.—Section 212(a)(2) of such Act
4 (8 U.S.C. 1182(a)(2)) is amended—

5 (1) in subparagraph (A)(i)—

6 (A) in subclause (I), by striking “or” at
7 the end; and

8 (B) by inserting after subclause (II) the
9 following:

10 “(III) a violation of (or a con-
11 spiracy or attempt to violate) any law
12 or regulation of a State, the United
13 States, or a foreign country relating
14 to participation or membership in a
15 criminal gang, or

16 “(IV) any felony or misdemeanor
17 offense for which the alien received a
18 sentencing enhancement predicated on
19 gang membership or conduct that pro-
20 moted, furthered, aided, or supported
21 the illegal activity of the criminal
22 gang,”; and

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

24 “(N) ALIENS ASSOCIATED WITH CRIMINAL
25 GANGS.—

1 “(i) ALIENS NOT PHYSICALLY
2 PRESENT IN THE UNITED STATES.—In the
3 case of an alien who is not physically
4 present in the United States:

5 “(I) That alien is inadmissible if
6 a consular officer, an immigration of-
7 ficer, the Secretary of Homeland Se-
8 curity, or the Attorney General knows
9 or has reason to believe—

10 “(aa) to be or to have been
11 a member of a criminal gang (as
12 defined in section 101(a)(53)); or

13 “(bb) to have participated in
14 the activities of a criminal gang
15 (as defined in section
16 101(a)(53)), knowing or having
17 reason to know that such activi-
18 ties will promote, further, aid, or
19 support the illegal activity of the
20 criminal gang.

21 “(II) That alien is inadmissible if
22 a consular officer, an immigration of-
23 ficer, the Secretary of Homeland Se-
24 curity, or the Attorney General has
25 reasonable grounds to believe the alien

1 has participated in, been a member of,
2 promoted, or conspired with a crimi-
3 nal gang, either inside or outside of
4 the United States.

5 “(III) That alien is inadmissible
6 if a consular officer, an immigration
7 officer, the Secretary of Homeland Se-
8 curity, or the Attorney General has
9 reasonable grounds to believe seeks to
10 enter the United States or has en-
11 tered the United States in furtherance
12 of the activities of a criminal gang, ei-
13 ther inside or outside of the United
14 States.

15 “(ii) ALIENS PHYSICALLY PRESENT IN THE
16 UNITED STATES.—In the case of an alien who
17 is physically present in the United States, that
18 alien is inadmissible if the alien—

19 “(I) is a member of a criminal gang
20 (as defined in section 101(a)(53)); or

21 “(II) has participated in the activities
22 of a criminal gang (as defined in section
23 101(a)(53)), knowing or having reason to
24 know that such activities will promote, fur-

1 ther, aid, or support the illegal activity of
2 the criminal gang.”.

3 (c) DEPORTABILITY.—Section 237(a)(2) of the Im-
4 migration and Nationality Act (8 U.S.C. 1227(a)(2)) is
5 amended by adding at the end the following:

6 “(H) ALIENS ASSOCIATED WITH CRIMINAL
7 GANGS.—Any alien is deportable who—

8 “(i) is or has been a member of a
9 criminal gang (as defined in section
10 101(a)(53));

11 “(ii) has participated in the activities
12 of a criminal gang (as so defined), knowing
13 or having reason to know that such activi-
14 ties will promote, further, aid, or support
15 the illegal activity of the criminal gang;

16 “(iii) has been convicted of a violation
17 of (or a conspiracy or attempt to violate)
18 any law or regulation of a State, the
19 United States, or a foreign country relat-
20 ing to participation or membership in a
21 criminal gang; or

22 “(iv) any felony or misdemeanor of-
23 fense for which the alien received a sen-
24 tencing enhancement predicated on gang
25 membership or conduct that promoted,

1 furthered, aided, or supported the illegal
2 activity of the criminal gang.”.

3 (d) DESIGNATION.—

4 (1) IN GENERAL.—Chapter 2 of title II of the
5 Immigration and Nationality Act (8 U.S.C. 1182) is
6 amended by inserting after section 219 the fol-
7 lowing:

8 “DESIGNATION OF CRIMINAL GANG

9 “SEC. 220.

10 “(a) DESIGNATION.—

11 “(1) IN GENERAL.—The Secretary of Homeland Se-
12 curity, in consultation with the Attorney General, may
13 designate a group, club, organization, or association of 5
14 or more persons as a criminal gang if the Secretary finds
15 that their conduct is described in section 101(a)(53).

16 “(2) PROCEDURE.—

17 “(A) NOTIFICATION.—Seven days before mak-
18 ing a designation under this subsection, the Sec-
19 retary shall, by classified communication, notify the
20 Speaker and minority leader of the House of Rep-
21 resentatives, the President pro tempore, majority
22 leader, and minority leader of the Senate, and the
23 members of the relevant committees of the House of
24 Representatives and the Senate, in writing, of the
25 intent to designate a group, club, organization, or

1 association of 5 or more persons under this sub-
2 section and the factual basis therefor.

3 “(B) PUBLICATION IN THE FEDERAL REG-
4 ISTER.—The Secretary shall publish the designation
5 in the Federal Register seven days after providing
6 the notification under subparagraph (A).

7 “(3) RECORD.—

8 “(A) IN GENERAL.—In making a designation
9 under this subsection, the Secretary shall create an
10 administrative record.

11 “(B) CLASSIFIED INFORMATION.—The Sec-
12 retary may consider classified information in making
13 a designation under this subsection. Classified infor-
14 mation shall not be subject to disclosure for such
15 time as it remains classified, except that such infor-
16 mation may be disclosed to a court ex parte and in
17 camera for purposes of judicial review under sub-
18 section (c).

19 “(4) PERIOD OF DESIGNATION.—

20 “(A) IN GENERAL.—A designation under this
21 subsection shall be effective for all purposes until re-
22 voked under paragraph (5) or (6) or set aside pursu-
23 ant to subsection (c).

24 “(B) REVIEW OF DESIGNATION UPON PETI-
25 TION.—

1 “(i) IN GENERAL.—The Secretary shall re-
2 view the designation of a criminal gang under
3 the procedures set forth in clauses (iii) and (iv)
4 if the designated group, club, organization, or
5 association of 5 or more persons files a petition
6 for revocation within the petition period de-
7 scribed in clause (ii).

8 “(ii) PETITION PERIOD.—For purposes of
9 clause (i)—

10 “(I) if the designated group, club, or-
11 ganization, or association of 5 or more per-
12 sons has not previously filed a petition for
13 revocation under this subparagraph, the
14 petition period begins 2 years after the
15 date on which the designation was made;
16 or

17 “(II) if the designated group, club, or-
18 ganization, or association of 5 or more per-
19 sons has previously filed a petition for rev-
20 ocation under this subparagraph, the peti-
21 tion period begins 2 years after the date of
22 the determination made under clause (iv)
23 on that petition.

24 “(iii) PROCEDURES.—Any group, club, or-
25 ganization, or association of 5 or more persons

1 that submits a petition for revocation under
2 this subparagraph of its designation as a crimi-
3 nal gang must provide evidence in that petition
4 that it is not described in section 101(a)(53).

5 “(iv) DETERMINATION.—

6 “(I) IN GENERAL.—Not later than
7 180 days after receiving a petition for rev-
8 ocation submitted under this subpara-
9 graph, the Secretary shall make a deter-
10 mination as to such revocation.

11 “(II) CLASSIFIED INFORMATION.—

12 The Secretary may consider classified in-
13 formation in making a determination in re-
14 sponse to a petition for revocation. Classi-
15 fied information shall not be subject to dis-
16 closure for such time as it remains classi-
17 fied, except that such information may be
18 disclosed to a court *ex parte* and *in camera*
19 for purposes of judicial review under sub-
20 section (c).

21 “(III) PUBLICATION OF DETERMINA-

22 TION.—A determination made by the Sec-
23 retary under this clause shall be published
24 in the Federal Register.

1 “(IV) PROCEDURES.—Any revocation
2 by the Secretary shall be made in accord-
3 ance with paragraph (6).

4 “(C) OTHER REVIEW OF DESIGNATION.—

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

11 “(ii) PROCEDURES.—If a review does not
12 take place pursuant to subparagraph (B) in re-
13 sponse to a petition for revocation that is filed
14 in accordance with that subparagraph, then the
15 review shall be conducted pursuant to proce-
16 dures established by the Secretary. The results
17 of such review and the applicable procedures
18 shall not be reviewable in any court.

19 “(iii) PUBLICATION OF RESULTS OF RE-
20 VIEW.—The Secretary shall publish any deter-
21 mination made pursuant to this subparagraph
22 in the Federal Register.

23 “(5) REVOCATION BY ACT OF CONGRESS.—The Con-
24 gress, by an Act of Congress, may block or revoke a des-
25 ignation made under paragraph (1).

1 “(6) REVOCATION BASED ON CHANGE IN CIR-
2 CUMSTANCES.—

3 “(A) IN GENERAL.—The Secretary may revoke
4 a designation made under paragraph (1) at any
5 time, and shall revoke a designation upon completion
6 of a review conducted pursuant to subparagraphs
7 (B) and (C) of paragraph (4) if the Secretary finds
8 that—

9 “(i) the group, club, organization, or asso-
10 ciation of 5 or more persons that has been des-
11 ignated as a criminal gang is no longer de-
12 scribed in section 101(a)(53); or

13 “(ii) the national security or the law en-
14 forcement interests of the United States war-
15 rants a revocation.

16 “(B) PROCEDURE.—The procedural require-
17 ments of paragraphs (2) and (3) shall apply to a
18 revocation under this paragraph. Any revocation
19 shall take effect on the date specified in the revoca-
20 tion or upon publication in the Federal Register if
21 no effective date is specified.

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

1 “(8) USE OF DESIGNATION IN TRIAL OR HEAR-
2 ING.—If a designation under this subsection has become
3 effective under paragraph (2) an alien in a removal pro-
4 ceeding shall not be permitted to raise any question con-
5 cerning the validity of the issuance of such designation
6 as a defense or an objection.

7 “(b) AMENDMENTS TO A DESIGNATION.—

8 “(1) IN GENERAL.—The Secretary may amend
9 a designation under this subsection if the Secretary
10 finds that the group, club, organization, or associa-
11 tion of 5 or more persons has changed its name,
12 adopted a new alias, dissolved and then reconsti-
13 tuted itself under a different name or names, or
14 merged with another group, club, organization, or
15 association of 5 or more persons.

16 “(2) PROCEDURE.—Amendments made to a
17 designation in accordance with paragraph (1) shall
18 be effective upon publication in the Federal Register.
19 Paragraphs (2), (4), (5), (6), (7), and (8) of sub-
20 section (a) shall also apply to an amended designa-
21 tion.

22 “(3) ADMINISTRATIVE RECORD.—The adminis-
23 trative record shall be corrected to include the
24 amendments as well as any additional relevant infor-
25 mation that supports those amendments.

1 “(4) CLASSIFIED INFORMATION.—The Secre-
2 tary may consider classified information in amending
3 a designation in accordance with this subsection.
4 Classified information shall not be subject to disclo-
5 sure for such time as it remains classified, except
6 that such information may be disclosed to a court ex
7 parte and in camera for purposes of judicial review
8 under subsection (c) of this section.

9 “(c) JUDICIAL REVIEW OF DESIGNATION.—

10 “(1) IN GENERAL.—Not later than 30 days
11 after publication in the Federal Register of a des-
12 ignation, an amended designation, or a determina-
13 tion in response to a petition for revocation, the des-
14 ignated group, club, organization, or association of 5
15 or more persons may seek judicial review in the
16 United States Court of Appeals for the District of
17 Columbia Circuit.

18 “(2) BASIS OF REVIEW.—Review under this
19 subsection shall be based solely upon the administra-
20 tive record, except that the Government may submit,
21 for ex parte and in camera review, classified infor-
22 mation used in making the designation, amended
23 designation, or determination in response to a peti-
24 tion for revocation.

1 “(3) SCOPE OF REVIEW.—The Court shall hold
2 unlawful and set aside a designation, amended des-
3 ignation, or determination in response to a petition
4 for revocation the court finds to be—

5 “(A) arbitrary, capricious, an abuse of dis-
6 cretion, or otherwise not in accordance with
7 law;

8 “(B) contrary to constitutional right,
9 power, privilege, or immunity;

10 “(C) in excess of statutory jurisdiction, au-
11 thority, or limitation, or short of statutory
12 right;

13 “(D) lacking substantial support in the ad-
14 ministrative record taken as a whole or in clas-
15 sified information submitted to the court under
16 paragraph (2); or

17 “(E) not in accord with the procedures re-
18 quired by law.

19 “(4) JUDICIAL REVIEW INVOKED.—The pend-
20 ency of an action for judicial review of a designation,
21 amended designation, or determination in response
22 to a petition for revocation shall not affect the appli-
23 cation of this section, unless the court issues a final
24 order setting aside the designation, amended des-

1 ignation, or determination in response to a petition
2 for revocation.

3 “(d) DEFINITIONS.—As used in this section—

4 “(1) the term ‘classified information’ has the
5 meaning given that term in section 1(a) of the Clas-
6 sified Information Procedures Act (18 U.S.C. App.);

7 “(2) the term ‘national security’ means the na-
8 tional defense, foreign relations, or economic inter-
9 ests of the United States;

10 “(3) the term ‘relevant committees’ means the
11 Committees on the Judiciary of the Senate and of
12 the House of Representatives; and

13 “(4) the term ‘Secretary’ means the Secretary
14 of Homeland Security, in consultation with the At-
15 torney General.”.

16 (2) CLERICAL AMENDMENT.—The table of con-
17 tents for such Act is amended by inserting after the
18 item relating to section 219 the following:

“Sec. 220. Designation.”.

19 (e) MANDATORY DETENTION OF CRIMINAL GANG
20 MEMBERS.—

21 (1) IN GENERAL.—Section 236(c)(1) of the Im-
22 migration and Nationality Act (8 U.S.C. 1226(c)(1))
23 is amended—

24 (A) in subparagraph (C), by striking “or”
25 at the end;

1 (B) in subparagraph (D), by inserting
2 “or” at the end; and

3 (C) by inserting after subparagraph (D)
4 the following:

5 “(E) is inadmissible under section
6 212(a)(2)(N) or deportable under section
7 237(a)(2)(H),”.

8 (2) ANNUAL REPORT.—Not later than March 1
9 of each year (beginning 1 year after the date of the
10 enactment of this Act), the Secretary of Homeland
11 Security, after consultation with the appropriate
12 Federal agencies, shall submit a report to the Com-
13 mittees on the Judiciary of the House of Represent-
14 atives and of the Senate on the number of aliens de-
15 tained under the amendments made by paragraph
16 (1).

17 (f) ASYLUM CLAIMS BASED ON GANG AFFILI-
18 ATION.—

19 (1) INAPPLICABILITY OF RESTRICTION ON RE-
20 MOVAL TO CERTAIN COUNTRIES.—Section
21 241(b)(3)(B) of the Immigration and Nationality
22 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
23 matter preceding clause (i), by inserting “who is de-
24 scribed in section 212(a)(2)(N)(i) or section
25 237(a)(2)(H)(i) or who is” after “to an alien”.

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

4 (A) in clause (v), by striking “or” at the
5 end;

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

8 (C) by inserting after clause (v) the fol-
9 lowing:

10 “(vi) the alien is described in section
11 212(a)(2)(N)(i) or section 237(a)(2)(H)(i);
12 or”.

13 (g) TEMPORARY PROTECTED STATUS.—Section 244
14 of such Act (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” at the
20 end;

21 (B) in clause (ii), by striking the period
22 and inserting “; or”; and

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

1 “(iii) the alien is, or at any time has
2 been, described in section 212(a)(2)(N) or
3 section 237(a)(2)(H).”; and

4 (3) in subsection (d)—

5 (A) by striking paragraph (3); and

6 (B) in paragraph (4), by adding at the end
7 the following: “The Secretary of Homeland Se-
8 curity may detain an alien provided temporary
9 protected status under this section whenever
10 appropriate under any other provision of law.”.

11 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section
12 101(a)(27)(J)(iii) of the Immigration and Nationality Act
13 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

14 (1) in subclause (I), by striking “and”;

15 (2) in subclause (II), by adding “and” at the
16 end; and

17 (3) by adding at the end the following:

18 “(III) no alien who is, or at any
19 time has been, described in section
20 212(a)(2)(N) or section 237(a)(2)(H)
21 shall be eligible for any immigration
22 benefit under this subparagraph;”.

23 (i) PAROLE.—An alien described in section
24 212(a)(2)(N) of the Immigration and Nationality Act, as

1 added by subsection (b), shall not be eligible for parole
2 under section 212(d)(5)(A) of such Act unless—

3 (1) the alien is assisting or has assisted the
4 United States Government in a law enforcement
5 matter, including a criminal investigation; and

6 (2) the alien’s presence in the United States is
7 required by the Government with respect to such as-
8 sistance.

9 (j) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect on the date of the enactment
11 of this Act and shall apply to acts that occur before, on,
12 or after the date of the enactment of this Act.

13 **SEC. 1107. SPECIAL IMMIGRANT JUVENILE STATUS FOR IM-**
14 **MIGRANTS UNABLE TO REUNITE WITH EI-**
15 **THER PARENT.**

16 Section 101(a)(27)(J)(i) of the Immigration and Na-
17 tionality Act (8 U.S.C. 1101(a)(27)(J)(i)) is amended by
18 striking “1 or both of the immigrant’s parents” and in-
19 serting “either of the immigrant’s parents”.

20 **SEC. 1108. CLARIFICATION OF AUTHORITY REGARDING DE-**
21 **TERMINATIONS OF CONVICTIONS.**

22 Section 101(a)(48) of the Immigration and National
23 Act (8 U.S.C. 1101(a)(48)) is amended by adding at the
24 end the following:

1 “(C) In making a determination as to
2 whether a conviction is for—

3 “(i) a crime under section 212(a)(2),

4 or

5 “(ii) a crime under 237(a)(2),

6 such determination shall be determined on the
7 basis of the record of conviction and any facts
8 established within the record of conviction.

9 “(D) Any reversal, vacatur, expungement,
10 or modification to a conviction, sentence, or
11 conviction record that was granted to amelio-
12 rate the immigration consequences of the con-
13 viction, sentence, or conviction record, or was
14 granted for rehabilitative purposes shall have no
15 effect on the immigration consequences result-
16 ing from the original conviction. The alien shall
17 have the burden of proving that the reversal,
18 vacatur, expungement, or modification was not
19 for such purposes. In no case in which a rever-
20 sal, vacatur, expungement, or modification was
21 granted for a procedural or substantive defect
22 in the criminal proceedings. Whether an alien
23 has been convicted of a crime for which a sen-
24 tence of one year or longer may be imposed or
25 whether the alien has been convicted for a

1 crime where the maximum penalty possible did
 2 not exceed one year shall be determined based
 3 on the maximum penalty allowed by the statute
 4 of conviction as of the date the offense was
 5 committed. Subsequent changes in State or
 6 Federal law which increase or decrease the sen-
 7 tence that may be imposed for a given crime
 8 shall not be considered.”.

9 **SEC. 1109. ADDING ATTEMPT AND CONSPIRACY TO COMMIT**
 10 **TERRORISM-RELATED INADMISSIBILITY**
 11 **GROUND ACTS TO THE DEFINITION OF EN-**
 12 **GAGING IN TERRORIST ACTIVITY.**

13 Section 212(a)(3)(B)(iv) of the Immigration and Na-
 14 tionality Act (8 U.S.C. 1182(a)(3)(B)(iv)) is amended—

15 (1) in subclause (VI), by striking the period
 16 and inserting “; or”; and

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

18 “(VII) an attempt or conspiracy
 19 to do any of the foregoing.”.

20 **SEC. 1110. CLARIFYING THE AUTHORITY OF ICE DETAIN-**
 21 **ERS.**

22 (a) IN GENERAL.—Section 287(d) of the Immigra-
 23 tion and Nationality Act (8 U.S.C. 1357(d)) is amended
 24 to read as follows:

1 “(d) DETAINER OF INADMISSIBLE OR DEPORTABLE
2 ALIENS.—

3 “(1) IN GENERAL.—In the case of an individual
4 who is arrested by any Federal, State, or local law
5 enforcement official or other personnel for the al-
6 leged violation of any criminal or motor vehicle law
7 relating to driving while intoxicated or driving under
8 the influence (including driving while under the in-
9 fluence of or impairment by alcohol or drugs), the
10 Secretary may issue a detainer regarding the indi-
11 vidual to any Federal, State, or local law enforce-
12 ment entity, official, or other personnel if the Sec-
13 retary has probable cause to believe that the indi-
14 vidual is an inadmissible or deportable alien.

15 “(2) PROBABLE CAUSE.—Probable cause is
16 deemed to be established if—

17 “(A) the individual who is the subject of
18 the detainer matches, pursuant to biometric
19 confirmation or other Federal database records,
20 the identity of an alien who the Secretary has
21 reasonable grounds to believe to be inadmissible
22 or deportable;

23 “(B) the individual who is the subject of
24 the detainer is the subject of ongoing removal

1 proceedings, including matters where a charg-
2 ing document has already been served;

3 “(C) the individual who is the subject of
4 the detainer has previously been ordered re-
5 moved from the United States and such an
6 order is administratively final;

7 “(D) the individual who is the subject of
8 the detainer has made voluntary statements or
9 provided reliable evidence that indicate that
10 they are an inadmissible or deportable alien; or

11 “(E) the Secretary otherwise has reason-
12 able grounds to believe that the individual who
13 is the subject of the detainer is an inadmissible
14 or deportable alien.

15 “(3) TRANSFER OF CUSTODY.—If the Federal,
16 State, or local law enforcement entity, official, or
17 other personnel to whom a detainer is issued com-
18 plies with the detainer and detains for purposes of
19 transfer of custody to the Department of Homeland
20 Security the individual who is the subject of the de-
21 tainer, the Department may take custody of the in-
22 dividual within 48 hours (excluding weekends and
23 holidays), but in no instance more than 96 hours,
24 following the date that the individual is otherwise to

1 be released from the custody of the relevant Federal,
2 State, or local law enforcement entity.”.

3 (b) IMMUNITY.—

4 (1) IN GENERAL.—A State or a political sub-
5 division of a State (and the officials and personnel
6 of the State or subdivision acting in their official ca-
7 pacities), and a nongovernmental entity (and its per-
8 sonnel) contracted by the State or political subdivi-
9 sion for the purpose of providing detention, acting in
10 compliance with a Department of Homeland Secu-
11 rity detainer issued pursuant to this section who
12 temporarily holds an alien in its custody pursuant to
13 the terms of a detainer so that the alien may be
14 taken into the custody of the Department of Home-
15 land Security, shall be considered to be acting under
16 color of Federal authority for purposes of deter-
17 mining their liability and shall be held harmless for
18 their compliance with the detainer in any suit seek-
19 ing any punitive, compensatory, or other monetary
20 damages.

21 (2) FEDERAL GOVERNMENT AS DEFENDANT.—

22 In any civil action arising out of the compliance with
23 a Department of Homeland Security detainer by a
24 State or a political subdivision of a State (and the
25 officials and personnel of the State or subdivision

1 acting in their official capacities), or a nongovern-
2 mental entity (and its personnel) contracted by the
3 State or political subdivision for the purpose of pro-
4 viding detention, the United States Government
5 shall be the proper party named as the defendant in
6 the suit in regard to the detention resulting from
7 compliance with the detainer.

8 (3) BAD FAITH EXCEPTION.—Paragraphs (1)
9 and (2) shall not apply to any mistreatment of an
10 individual by a State or a political subdivision of a
11 State (and the officials and personnel of the State
12 or subdivision acting in their official capacities), or
13 a nongovernmental entity (and its personnel) con-
14 tracted by the State or political subdivision for the
15 purpose of providing detention.

16 (c) PRIVATE RIGHT OF ACTION.—

17 (1) CAUSE OF ACTION.—Any individual, or a
18 spouse, parent, or child of that individual (if the in-
19 dividual is deceased), who is the victim of a murder,
20 rape, or any felony, as defined by the State, for
21 which an alien (as defined in section 101(a)(3) of
22 the Immigration and Nationality Act (8 U.S.C.
23 1101(a)(3))) has been convicted and sentenced to a
24 term of imprisonment of at least 1 year, may bring
25 an action against a State or political subdivision of

1 a State or public official acting in an official capac-
2 ity in the appropriate Federal court if the State or
3 political subdivision, except as provided in paragraph
4 (3)—

5 (A) released the alien from custody prior
6 to the commission of such crime as a con-
7 sequence of the State or political subdivision's
8 declining to honor a detainer issued pursuant to
9 section 287(d)(1) of the Immigration and Na-
10 tionality Act (8 U.S.C. 1357(d)(1));

11 (B) has in effect a statute, policy, or prac-
12 tice not in compliance with section 642 of the
13 Illegal Immigration Reform and Immigrant Re-
14 sponsibility Act of 1996 (8 U.S.C. 1373) as
15 amended, and as a consequence of its statute,
16 policy, or practice, released the alien from cus-
17 tody prior to the commission of such crime; or

18 (C) has in effect a statute, policy, or prac-
19 tice requiring a subordinate political subdivision
20 to decline to honor any or all detainers issued
21 pursuant to section 287(d)(1) of the Immigra-
22 tion and Nationality Act (8 U.S.C. 1357(d)(1)),
23 and, as a consequence of its statute, policy or
24 practice, the subordinate political subdivision
25 declined to honor a detainer issued pursuant to

1 such section, and as a consequence released the
2 alien from custody prior to the commission of
3 such crime.

4 (2) LIMITATIONS ON BRINGING ACTION.—An
5 action may not be brought under this subsection
6 later than 10 years following the occurrence of the
7 crime, or death of a person as a result of such
8 crime, whichever occurs later.

9 (3) PROPER DEFENDANT.—If a political sub-
10 division of a State declines to honor a detainer
11 issued pursuant to section 287(d)(1) of the Immi-
12 gration and Nationality Act (8 U.S.C. 1357(d)) as
13 a consequence of the State or another political sub-
14 division with jurisdiction over the subdivision prohib-
15 iting the subdivision through a statute or other legal
16 requirement of the State or other political subdivi-
17 sion—

18 (A) from honoring the detainer; or

19 (B) fully complying with section 642 of the
20 Illegal Immigration Reform and Immigrant Re-
21 sponsibility Act of 1996 (8 U.S.C. 1373),

22 and, as a consequence of the statute or other legal
23 requirement of the State or other political subdivi-
24 sion, the subdivision released the alien referred to in
25 paragraph (1) from custody prior to the commission

1 of the crime referred to in that paragraph, the State
2 or other political subdivision that enacted the statute
3 or other legal requirement, shall be deemed to be the
4 proper defendant in a cause of action under this
5 subsection, and no such cause of action may be
6 maintained against the political subdivision which
7 declined to honor the detainer.

8 (4) ATTORNEY’S FEE AND OTHER COSTS.—In
9 any action or proceeding under this subsection the
10 court shall allow a prevailing plaintiff a reasonable
11 attorney’s fee as part of the costs, and include ex-
12 pert fees as part of the attorney’s fee.

13 **SEC. 1111. DEPARTMENT OF HOMELAND SECURITY ACCESS**
14 **TO CRIME INFORMATION DATABASES.**

15 Section 105(b) of the Immigration and Nationality
16 Act (8 U.S.C. 1105(b)) is amended—

17 (1) in paragraph (1)—

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

20 (B) by striking “visa applicant or applicant
21 for admission” and inserting “visa applicant,
22 applicant for admission, applicant for adjust-
23 ment of status, or applicant for any other ben-
24 efit under the immigration laws”; and

1 (2) by inserting after paragraph (4) the fol-
2 lowing:

3 “(5) The Secretary of Homeland Security shall
4 receive, upon request, access to the information de-
5 scribed in paragraph (1) by means of extracts of the
6 records for placement in the appropriate database
7 without any fee or charge.”.

8 **SEC. 1112. CLARIFICATION OF CONGRESSIONAL INTENT.**

9 Section 287(g) of the Immigration and Nationality
10 Act (8 U.S.C. 1357(g)) is amended—

11 (1) in paragraph (1) by striking “may enter”
12 and all that follows through the period at the end
13 and inserting the following: “shall enter into a writ-
14 ten agreement with a State, or any political subdivi-
15 sion of a State, upon request of the State or political
16 subdivision, pursuant to which officers or employees
17 of the State or subdivision, who are determined by
18 the Secretary to be qualified to perform a function
19 of an immigration officer in relation to the investiga-
20 tion, apprehension, or detention of aliens in the
21 United States (including the transportation of such
22 aliens across State lines to detention centers), may
23 carry out such function at the expense of the State
24 or political subdivision and to the extent consistent
25 with State and local law. No request from a bona

1 fide State or political subdivision or bona fide law
2 enforcement agency shall be denied absent a compel-
3 ling reason. No limit on the number of agreements
4 under this subsection may be imposed. The Sec-
5 retary shall process requests for such agreements
6 with all due haste, and in no case shall take not
7 more than 90 days from the date the request is
8 made until the agreement is consummated.”;

9 (2) by redesignating paragraph (2) as para-
10 graph (5) and paragraphs (3) through (10) as para-
11 graphs (7) through (14), respectively;

12 (3) by inserting after paragraph (1) the fol-
13 lowing:

14 “(2) An agreement under this subsection shall accom-
15 modate a requesting State or political subdivision with re-
16 spect to the enforcement model or combination of models,
17 and shall accommodate a patrol model, task force model,
18 jail model, any combination thereof, or any other reason-
19 able model the State or political subdivision believes is best
20 suited to the immigration enforcement needs of its juris-
21 diction.

22 “(3) No Federal program or technology directed
23 broadly at identifying inadmissible or deportable aliens
24 shall substitute for such agreements, including those es-

1 tablishing a jail model, and shall operate in addition to
2 any agreement under this subsection.

3 “(4)(A) No agreement under this subsection shall be
4 terminated absent a compelling reason.

5 “(B)(i) The Secretary shall provide a State or polit-
6 ical subdivision written notice of intent to terminate at
7 least 180 days prior to date of intended termination, and
8 the notice shall fully explain the grounds for termination,
9 along with providing evidence substantiating the Sec-
10 retary’s allegations.

11 “(ii) The State or political subdivision shall have the
12 right to a hearing before an administrative law judge and,
13 if the ruling is against the State or political subdivision,
14 to appeal the ruling to the Federal Circuit Court of Ap-
15 peals and, if the ruling is against the State or political
16 subdivision, to petition the Supreme Court for certiorari.

17 “(C) The agreement shall remain in full effect during
18 the course of any and all legal proceedings.”; and

19 (4) by inserting after paragraph (5) (as redesign-
20 nated) the following:

21 “(6) The Secretary of Homeland Security shall make
22 training of State and local law enforcement officers avail-
23 able through as many means as possible, including
24 through residential training at the Center for Domestic
25 Preparedness and the Federal Law Enforcement Training

1 Center, onsite training held at State or local police agen-
2 cies or facilities, online training courses by computer, tele-
3 conferencing, and videotape, or the digital video display
4 (DVD) of a training course or courses. Distance learning
5 through a secure, encrypted, distributed learning system
6 that has all its servers based in the United States, is scal-
7 able, survivable, and can have a portal in place not later
8 than 30 days after the date of the enactment of the Secur-
9 ing America’s Future Act of 2018, shall be made available
10 by the COPS Office of the Department of Justice and the
11 Federal Law Enforcement Training Center Distributed
12 Learning Program for State and local law enforcement
13 personnel. Preference shall be given to private sector-
14 based, web-based immigration enforcement training pro-
15 grams for which the Federal Government has already pro-
16 vided support to develop.”.

17 **TITLE II—ASYLUM REFORM**

18 **SEC. 2101. CREDIBLE FEAR INTERVIEWS.**

19 Section 235(b)(1)(B)(v) of the Immigration and Na-
20 tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by
21 striking “claim” and all that follows, and inserting “claim,
22 as determined pursuant to section 208(b)(1)(B)(iii), and
23 such other facts as are known to the officer, that the alien
24 could establish eligibility for asylum under section 208,
25 and it is more probable than not that the statements made

1 by, and on behalf of, the alien in support of the alien's
2 claim are true.”.

3 **SEC. 2102. JURISDICTION OF ASYLUM APPLICATIONS.**

4 Section 208(b)(3) of the Immigration and Nationality
5 Act (8 U.S.C. 1158) is amended by striking subparagraph
6 (C).

7 **SEC. 2103. RECORDING EXPEDITED REMOVAL AND CRED-**
8 **IBLE FEAR INTERVIEWS.**

9 (a) IN GENERAL.—The Secretary of Homeland Secu-
10 rity shall establish quality assurance procedures and take
11 steps to effectively ensure that questions by employees of
12 the Department of Homeland Security exercising expe-
13 dited removal authority under section 235(b) of the Immi-
14 gration and Nationality Act (8 U.S.C. 1225(b)) are asked
15 in a uniform manner, to the extent possible, and that both
16 these questions and the answers provided in response to
17 them are recorded in a uniform fashion.

18 (b) FACTORS RELATING TO SWORN STATEMENTS.—
19 Where practicable, any sworn or signed written statement
20 taken of an alien as part of the record of a proceeding
21 under section 235(b)(1)(A) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1225(b)(1)(A)) shall be accom-
23 panied by a recording of the interview which served as the
24 basis for that sworn statement.

1 (c) INTERPRETERS.—The Secretary shall ensure that
2 a competent interpreter, not affiliated with the govern-
3 ment of the country from which the alien may claim asy-
4 lum, is used when the interviewing officer does not speak
5 a language understood by the alien.

6 (d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—
7 There shall be an audio or audio visual recording of inter-
8 views of aliens subject to expedited removal. The recording
9 shall be included in the record of proceeding and shall be
10 considered as evidence in any further proceedings involv-
11 ing the alien.

12 (e) NO PRIVATE RIGHT OF ACTION.—Nothing in this
13 section shall be construed to create any right, benefit,
14 trust, or responsibility, whether substantive or procedural,
15 enforceable in law or equity by a party against the United
16 States, its departments, agencies, instrumentalities, enti-
17 ties, officers, employees, or agents, or any person, nor does
18 this section create any right of review in any administra-
19 tive, judicial, or other proceeding.

20 **SEC. 2104. SAFE THIRD COUNTRY.**

21 Section 208(a)(2)(A) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

23 (1) by striking “Attorney General” each place
24 it appears and inserting “Secretary of Homeland Se-
25 curity”; and

1 (2) by striking “removed, pursuant to a bilat-
2 eral or multilateral agreement, to” and inserting
3 “removed to”.

4 **SEC. 2105. RENUNCIATION OF ASYLUM STATUS PURSUANT**
5 **TO RETURN TO HOME COUNTRY.**

6 (a) IN GENERAL.—Section 208(c) of the Immigration
7 and Nationality Act (8 U.S.C. 1158(c)) is amended by
8 adding at the end the following new paragraph:

9 “(4) RENUNCIATION OF STATUS PURSUANT TO
10 RETURN TO HOME COUNTRY.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), any alien who is granted
13 asylum status under this Act, who, absent
14 changed country conditions, subsequently re-
15 turns to the country of such alien’s nationality
16 or, in the case of an alien having no nationality,
17 returns to any country in which such alien last
18 habitually resided, and who applied for such
19 status because of persecution or a well-founded
20 fear of persecution in that country on account
21 of race, religion, nationality, membership in a
22 particular social group, or political opinion,
23 shall have his or her status terminated.

24 “(B) WAIVER.—The Secretary has discre-
25 tion to waive subparagraph (A) if it is estab-

1 lished to the satisfaction of the Secretary that
2 the alien had a compelling reason for the re-
3 turn. The waiver may be sought prior to depart-
4 ture from the United States or upon return.”.

5 (b) CONFORMING AMENDMENT.—Section 208(c)(3)
6 of the Immigration and Nationality Act (8 U.S.C.
7 1158(c)(3)) is amended by inserting after “paragraph
8 (2)” the following: “or (4)”.

9 **SEC. 2106. NOTICE CONCERNING FRIVOLOUS ASYLUM AP-**
10 **PLICATIONS.**

11 (a) IN GENERAL.—Section 208(d)(4) of the Immi-
12 gration and Nationality Act (8 U.S.C. 1158(d)(4)) is
13 amended—

14 (1) in the matter preceding subparagraph (A),
15 by inserting “the Secretary of Homeland Security
16 or” before “the Attorney General”;

17 (2) in subparagraph (A), by striking “and of
18 the consequences, under paragraph (6), of knowingly
19 filing a frivolous application for asylum; and” and
20 inserting a semicolon;

21 (3) in subparagraph (B), by striking the period
22 and inserting “; and”; and

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

24 “(C) ensure that a written warning ap-
25 pears on the asylum application advising the

1 alien of the consequences of filing a frivolous
2 application and serving as notice to the alien of
3 the consequence of filing a frivolous applica-
4 tion.”.

5 (b) CONFORMING AMENDMENT.—Section 208(d)(6)
6 of the Immigration and Nationality Act (8 U.S.C.
7 1158(d)(6)) is amended by striking “If the” and all that
8 follows and inserting:

9 “(A) If the Secretary of Homeland Secu-
10 rity or the Attorney General determines that an
11 alien has knowingly made a frivolous applica-
12 tion for asylum and the alien has received the
13 notice under paragraph (4)(C), the alien shall
14 be permanently ineligible for any benefits under
15 this chapter, effective as the date of the final
16 determination of such an application.

17 “(B) An application is frivolous if the Sec-
18 retary of Homeland Security or the Attorney
19 General determines, consistent with subpara-
20 graph (C), that—

21 “(i) it is so insufficient in substance
22 that it is clear that the applicant know-
23 ingly filed the application solely or in part
24 to delay removal from the United States,
25 to seek employment authorization as an

1 applicant for asylum pursuant to regula-
2 tions issued pursuant to paragraph (2), or
3 to seek issuance of a Notice to Appeal in
4 order to pursue Cancellation of Removal
5 under section 240A(b); or

6 “(ii) any of the material elements are
7 knowingly fabricated.

8 “(C) In determining that an application is
9 frivolous, the Secretary or the Attorney Gen-
10 eral, must be satisfied that the applicant, dur-
11 ing the course of the proceedings, has had suffi-
12 cient opportunity to clarify any discrepancies or
13 implausible aspects of the claim.

14 “(D) For purposes of this section, a find-
15 ing that an alien filed a frivolous asylum appli-
16 cation shall not preclude the alien from seeking
17 withholding of removal under section 241(b)(3)
18 or protection pursuant to the Convention
19 Against Torture.”.

20 **SEC. 2107. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.**

21 (a) **ASYLUM CREDIBILITY DETERMINATIONS.**—Sec-
22 tion 208(b)(1)(B)(iii) of the Immigration and Nationality
23 Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting
24 after “all relevant factors” the following: “, including

1 statements made to, and investigative reports prepared by,
2 immigration authorities and other government officials”.

3 (b) RELIEF FOR REMOVAL CREDIBILITY DETER-
4 MINATIONS.—Section 240(c)(4)(C) of the Immigration
5 and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended
6 by inserting after “all relevant factors” the following: “,
7 including statements made to, and investigative reports
8 prepared by, immigration authorities and other govern-
9 ment officials”.

10 **SEC. 2108. PENALTIES FOR ASYLUM FRAUD.**

11 Section 1001 of title 18, United States Code, is
12 amended by adding at the end the following:

13 “(d) Whoever, in any matter before the Secretary of
14 Homeland Security or the Attorney General pertaining to
15 asylum under section 208 of the Immigration and Nation-
16 ality Act or withholding of removal under section
17 241(b)(3) of such Act, knowingly and willfully—

18 “(1) makes any materially false, fictitious, or
19 fraudulent statement or representation; or

20 “(2) makes or uses any false writings or docu-
21 ment knowing the same to contain any materially
22 false, fictitious, or fraudulent statement or entry,
23 shall be fined under this title or imprisoned not more than
24 10 years, or both.”.

1 **SEC. 2109. STATUTE OF LIMITATIONS FOR ASYLUM FRAUD.**

2 Section 3291 of title 18, United States Code, is
3 amended—

4 (1) by striking “69, and sections” and inserting
5 “69, sections”;

6 (2) by inserting “section 1546 of this title” be-
7 fore “or for conspiracy”; and

8 (3) by striking “offense.” and inserting “of-
9 fense or within 10 years after the fraud is discov-
10 ered.”.

11 **SEC. 2110. TECHNICAL AMENDMENTS.**

12 Section 208 of the Immigration and Nationality Act
13 (8 U.S.C. 1158) is amended—

14 (1) in subsection (a)—

15 (A) in paragraph (2)(D), by inserting
16 “Secretary of Homeland Security or the” before
17 “Attorney General”; and

18 (B) in paragraph (3), by inserting “Sec-
19 retary of Homeland Security or the” before
20 “Attorney General”;

21 (2) in subsection (b)(2), by inserting “Secretary
22 of Homeland Security or the” before “Attorney Gen-
23 eral” each place such term appears;

24 (3) in subsection (c)—

1 (A) in paragraph (1), by striking “Attor-
2 ney General” each place such term appears and
3 inserting “Secretary of Homeland Security”;

4 (B) in paragraph (2), in the matter pre-
5 ceeding subparagraph (A), by inserting “Sec-
6 retary of Homeland Security or the” before
7 “Attorney General”; and

8 (C) in paragraph (3), by inserting “Sec-
9 retary of Homeland Security or the” before
10 “Attorney General”; and

11 (4) in subsection (d)—

12 (A) in paragraph (1), by inserting “Sec-
13 retary of Homeland Security or the” before
14 “Attorney General” each place such term ap-
15 pears;

16 (B) in paragraph (2), by striking “Attor-
17 ney General” and inserting “Secretary of
18 Homeland Security”; and

19 (C) in paragraph (5)—

20 (i) in subparagraph (A), by striking
21 “Attorney General” and inserting “Sec-
22 retary of Homeland Security”; and

23 (ii) in subparagraph (B), by inserting
24 “Secretary of Homeland Security or the”
25 before “Attorney General”.

1 **TITLE** **III—IMMIGRATION**
2 **JUDGES, FACILITIES, AND**
3 **PERSONNEL**

4 **SEC. 3101. FACILITIES FOR ASYLUM APPLICANTS WHO RE-**
5 **TAIN CUSTODY OF A CHILD.**

6 (a) IN GENERAL.—The designated agencies shall
7 maintain facilities for the joint detention of Asylum Appli-
8 cants who retain custody of a child and the child. These
9 facilities shall only contain individuals who are under the
10 age of 18 or are the parents or legal guardians of individ-
11 uals under the age of 18.

12 (b) FUNDING.—There are authorized to be appro-
13 priated for each of fiscal years 2019, 2020, and 2021 such
14 sums as may be necessary to carry out this section.

15 **SEC. 3102. INCREASING THE NUMBER OF AUTHORIZED IM-**
16 **MIGRATION JUDGES.**

17 (a) INCREASE IN IMMIGRATION JUDGES.—The Attor-
18 ney General of the United States shall increase the total
19 number of immigration judges to adjudicate pending cases
20 and efficiently process future cases by 75 judges.

21 (b) NECESSARY SUPPORT STAFF FOR IMMIGRATION
22 JUDGES.—To address the shortage of support staff for
23 immigration judges, the Attorney General shall ensure
24 that each immigration judge has sufficient support staff,

1 adequate technological and security resources, and appro-
2 priate courtroom facilities.

3 (c) INCREASE IN BOARD OF IMMIGRATION APPEALS
4 ATTORNEYS.—The Attorney General shall increase the
5 number of Board of Immigration Appeals staff attorneys
6 by sixty attorneys.

7 (d) NECESSARY SUPPORT STAFF FOR BOARD OF IM-
8 MIGRATION APPEALS.—To address the shortage of sup-
9 port staff for the Board of Immigration appeals, the At-
10 torney General shall ensure that the Board of Immigration
11 Appeals and its staff attorneys has sufficient support staff
12 and adequate technological and security resources.

13 (e) PRIORITIZATION OF ASYLUM APPLICANTS.—Any
14 immigration judges, Board of Immigration Appeals staff
15 attorneys, and support staff hired under the authority of
16 this section shall prioritize asylum applications that are
17 filed by Asylum Applicants.

18 (f) FUNDING.—There are authorized to be appro-
19 priated for fiscal years 2019, 2020, and 2021 a total of
20 \$563,000,000 to carry out this section.

21 **SEC. 3103. INCREASING THE NUMBER OF AVAILABLE DE-**
22 **PARTMENT OF HOMELAND SECURITY EM-**
23 **PLOYEES.**

24 (a) INCREASE IN ASYLUM PROCESSORS.—The Sec-
25 retary of Homeland Security shall increase the total num-

1 ber of Department personnel to that are responsible for
2 processing asylum applications filed by Asylum Applicants
3 by 200. There are authorized to be appropriated for each
4 of fiscal years 2019, 2020, and 2021 such sums as may
5 be necessary to carry out this subsection.

6 (b) INCREASE IN BORDER PATROL AGENTS.—The
7 Secretary of Homeland Security shall increase the number
8 of United States Border Patrol agents by 2,000. There
9 are authorized to be appropriated for fiscal years 2019,
10 2020, and 2021 a total of \$211,000,000 to carry out this
11 subsection.

12 (c) INCREASE IN ICE PERSONNEL.—The Secretary
13 of Homeland Security shall increase the total number of
14 United States Immigration and Customs Enforcement
15 personnel by 750. There are authorized to be appropriated
16 for fiscal years 2019, 2020, and 2021 a total of
17 \$571,000,000 to carry out this subsection.

18 (d) INCREASE IN IMMIGRATION DETENTION CAPAC-
19 ITY.—The Secretary of Homeland Security shall increase
20 the immigration detention capacity to a daily immigration
21 detention capacity of not less than 52,000 detention beds.
22 There are authorized to be appropriated for fiscal years
23 2019, 2020, and 2021 a total of \$4,200,000,000 to carry
24 out the preceding sentence and for additional detention

1 personnel, transportation of detained aliens, and detention
2 alternatives.

3 (e) GENERAL PROVISIONS.—

4 (1) IN GENERAL.—Positions authorized before
5 the date of the enactment of this Act, and any exist-
6 ing officer vacancies within the Department of
7 Homeland Security on such date, shall not count to-
8 wards the increases mandated by this section.

9 (2) OTHER AUTHORIZED EXPENDITURES.—The
10 Secretary is authorized to procure space, temporary
11 facilities, and to hire the required administrative and
12 legal support staff, on an expedited basis, to accom-
13 modate the additional positions authorized under
14 this section.

15 (3) SUBJECT TO APPROPRIATIONS.—This sec-
16 tion is subject to the availability of appropriations.

17 **SEC. 3104. DEFINITIONS.**

18 In this title:

19 (1) ASYLUM APPLICANT.—The term “Asylum
20 Applicant” means an alien who (a) has no perma-
21 nent immigration status; (b) is detained by the
22 United States Government at or near a port of entry
23 or within 100 miles of the border of the United
24 States while having custody of and being in the pres-
25 ence of a child for whom the alien is a parent or

1 legal guardian; and (c) seeks, within 48 hours of de-
2 tention, asylum pursuant to section 208 of the Im-
3 migration and Nationality Act, withholding of re-
4 moval pursuant to section 241(b)(3) of the Immigra-
5 tion and Nationality Act, or withholding of removal
6 pursuant to the Convention Against Torture.

7 (2) ASYLUM APPLICATION.—The term “asylum
8 application” means an application for asylum pursu-
9 ant to section 208 of the Immigration and Nation-
10 ality Act, an application for withholding of removal
11 under section 241(b)(3) of the Immigration and Na-
12 tionality Act, and/or an application for withholding
13 of removal pursuant to the Convention Against Tor-
14 ture.

15 (3) CHILD.—The term “child” means an indi-
16 vidual who—

17 (A) has not reached the age of 18;

18 (B) has no permanent immigration status;

19 and

20 (C) was in the custody and presence of a
21 parent or legal guardian when the parent or
22 legal guardian was detained for illegally enter-
23 ing into the United States at or near a port of
24 entry or within 100 miles of the border of the
25 United States.

1 (4) DESIGNATED AGENCY.—The term “des-
2 ignated agency” means—

3 (A) the Department of Homeland Security;

4 (B) the Department of Justice; and

5 (C) the Department of Health and Human
6 Services.

7 (5) SECRETARY.—Unless otherwise specified,
8 the term “Secretary” means the Secretary of Home-
9 land Security.

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