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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

COUNTY OF SANTA CLARA,

Plaintiff,

v.

DONALD J. TRUMP, President of the United States of America, JOHN F. KELLY, in his official capacity as Secretary of the United States Department of Homeland Security, DANA J. BOENTE, in his official capacity as Acting Attorney General of the United States, MARK SANDY, in his official capacity as Acting Director of the Office of Management and Budget, and DOES 1-50,

Defendants.

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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INTRODUCTION

1. This lawsuit challenges President Donald J. Trump's January 25, 2017 executive order directing reprisals against state, local, and municipal governments that he deems to be so-called "sanctuary jurisdictions." Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (the "Executive Order"). The Executive Order is patently unconstitutional under the Constitution's plain text, as well as settled United States Supreme Court precedent. The Executive Order throws Plaintiff County of Santa Clara's current budgetary and planning process into chaos, and also poses a real risk to the health, welfare, and safety of thousands of County residents.

2. The Executive Order purports to seize for the President and his subordinate executive officers—namely, the Attorney General and the Secretary of Homeland Security—the power to declare any "sanctuary jurisdiction" ineligible to receive any federal funds. The Executive Order nowhere defines the term "sanctuary jurisdiction." The Secretary of Homeland Security has plenary authority to designate any state, city, county, or other entity as a "sanctuary jurisdiction," despite that term having no defined meaning.

3. The Executive Order fails to provide any state or local government designated as a "sanctuary jurisdiction" with a right to challenge the designation through judicial review or any other means. Indeed, the Executive Order does not even require the federal government to provide notice to a state or local government that it has been designated a "sanctuary jurisdiction." Accordingly, the Executive Order gives the President and his executive agents unfettered, unreviewable discretion to strip any state or local government of its right to obtain any federal money, at any time or for any purpose, including money Congress has already appropriated and directed be paid.

4. The Executive Order does not stop there. It also directs the Attorney General to "take appropriate enforcement action" not only against so-called "sanctuary jurisdictions," but also any "entity" that "has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law." The Executive Order does not define what constitutes "preventing" or "hindering" enforcement of federal law. As a result, this broadly and carelessly worded directive requires our nation's top law-enforcement officer to take reprisals against any state, city,

county, or other municipality that he may decide, in his sole and unreviewable discretion, has taken any act that he believes "hinders" any interest set forth in the vast body of federal law. An aggrandizement of executive power of this magnitude has rarely been attempted in the history of the Republic.

5. The Executive Order also grants the Attorney General authority to commandeer local law enforcement officers to carry out the President's immigration agenda. It further obligates the Attorney General to retaliate against a local government whose law enforcement officers fail to provide what he considers "full compliance," in his sole and unreviewable discretion.

6. The Executive Order contains other enormous and obvious problems. Section 5, for example, vastly expands federal immigration enforcement priorities by prioritizing for removal undocumented immigrants who, *inter alia*, have allegedly "committed acts that constitute a chargeable criminal offense," "abused any program related to receipt of public benefits," or who, "[i]n the judgment of an immigration officer, otherwise pose a risk to public safety or national security." Executive Order, Sec. 5(c), (e), (g) at 8800. These standardless provisions encourage and sanction arbitrary, subjective, and discriminatory enforcement. And Section 6 of the Executive Order requires assessment of "fines and penalties" against not only undocumented persons but anyone who "facilitate[s] their presence in the United States." This undefined and unbounded category may include anyone who unknowingly rents a room to or conducts business with an undocumented person, medical personnel who provide essential or even life-saving services to an undocumented person, or even a lawyer defending such a person in immigration proceedings.

7. Through this lawsuit, the County of Santa Clara ("the County") challenges only those aspects of the Executive Order's unconstitutionality that directly injure the County's interests and are ripe for judicial review. Other challenges by other plaintiffs are sure to follow. This action alleges that the Executive Order is unconstitutional for the following independent reasons.

8. First, the Executive Order seizes for the President and the executive branch the power of the federal purse, which belongs exclusively to Congress under Article I, section 8, clause 1 of our federal Constitution. Only Congress has the power to appropriate and spend federal dollars. This power includes the right to determine who is eligible to receive federal funds, as well as which conditions, if any, they must fulfill to receive those funds. The President has no power to appropriate funds or unilaterally place conditions on eligibility for receipt of federal money, much less to bar by fiat a state, city, or county from receiving any federal money whatsoever. Yet that is what the Executive Order purports to do.

9. In fact, the Executive Order is so unconstitutionally overbroad that it claims spending power for the President and the executive branch that even Congress lacks. Under a long and unbroken line of United States Supreme Court precedent, Congress's power to place conditions on the receipt of federal funds is limited in several fundamental respects. Once it provides money to a state, county, or city and the money is accepted, Congress is barred from imposing new conditions. Nor may Congress impose conditions on federal money that are unrelated to the federal interest furthered by the appropriated funds. And Congress cannot impose a condition that is so coercive that it amounts to "a gun to the head," leaving the state or local government with no real choice but to buckle to a federal demand. The Executive Order attempts to do all these things. Accordingly, even if the Executive Order were an Act of Congress, or authorized by one, it would be unconstitutional.

10. Congress has not only failed to grant the President the spending power he now claims, but it also considered and rejected the very policy the Executive Order now seeks to impose by dictate. Indeed, Senator Jeff Sessions—the man tapped to become the Attorney General referenced in the Executive Order—introduced a Senate bill in 2015 that would have conditioned the receipt of certain, law-enforcement-related federal funds on compliance with federal immigration enforcement directives and priorities. The bill died in committee, as did its counterpart in the House of Representatives. After Mr. Sessions failed to achieve his policy ends through the legislative process, the President simply imposed them through the Executive Order, which repeats portions of Mr. Sessions's failed bill verbatim. A long line of Supreme Court

precedent makes clear that when the President acts in derogation of the "expressed or implied will of Congress, his power is at its lowest ebb." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). That is the case here. The President cannot enact Mr. Sessions's bill by executive order, especially when Congress itself declined the opportunity.

11. Second, the Executive Order is unconstitutional because it is too vague to provide the County with reasonable notice of what it must do to comply with its terms and avoid unspecified "enforcement actions." The Executive Order requires states, cities, and counties to refrain from "hinder[ing]" any enforcement of any federal law. Because this standard is nowhere defined in the Executive Order and its application is left up entirely to the sole and unreviewable discretion of the Attorney General, a state, city, or county could suffer whatever reprisals deemed appropriate by the Attorney General for any act deemed insufficiently supportive of federal law enforcement. Such a vague order cannot stand.

12. Third, the Executive Order denies the County the procedural due process protections afforded to it by the Fifth Amendment. The Executive Order provides the County no clue as to which acts would trigger the "hindrance" standard, and no opportunity to contest the Attorney General's decision or have that decision reviewed by an independent tribunal. Indeed, the Executive Order fails to guarantee that the County will even receive notice that it has been designated a "sanctuary jurisdiction" subject to deprivation of federal funds and unspecified enforcement actions. Because it fails to provide affected jurisdictions with reasonable notice or any opportunity to be heard, the Executive Order violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

13. Fourth, the Executive Order violates the Tenth Amendment and the federalism principles that animate our governmental structure. By requiring that County officials take unspecified actions to avoid "prevent[ing] or hinder[ing]" the federal government in the enforcement of "Federal law," the Executive Order commandeers state and local officials, transforming them into federal apparatchiks and severing the bonds of political accountability inherent in our federal system.

14. It is no exaggeration to say that the Executive Order contravenes centuries of constitutional law establishing the separation of powers between the legislative and executive branches of the federal government. It likewise flouts basic principles of federalism that prevent the federal government from invading the sovereignty of state and local governments. It is a naked grab for power that never has, does not, and cannot belong to the President or the executive branch. It is wholly unconstitutional and must be struck down.

JURISDICTION AND VENUE

15. The Court has federal question jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and the laws of the United States. The Court also has jurisdiction under 28 U.S.C. § 1346 because this is a civil action or claim against the United States founded upon the Constitution, an Act of Congress, and an executive regulation. Finally, this Court has mandamus jurisdiction under 28 U.S.C. § 1361, which provides that "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

16. Venue is proper in this District under 28 U.S.C. § 1391(e) because Defendants are officers and employees of the United States or any agency thereof acting in their official capacities, Plaintiff resides in this District, and a substantial part of the events or omissions giving rise to this action are occurring in this District.

17. The Court is authorized to award the requested declaratory, and preliminary and permanent injunctive relief, pursuant to 28 U.S.C. §§ 2201–2202.

INTRADISTRICT ASSIGNMENT

18. Pursuant to Civil L.R. 3-2(c), this case should be assigned to the San Jose Division of this Court because the action arises in Santa Clara County.

THE PARTIES

19. Plaintiff County of Santa Clara is a charter county organized and existing under the laws of the State of California.

20. Defendant Donald J. Trump is the President of the United States. He is sued in his

official capacity.

21. Defendant John F. Kelly is the Secretary of the U.S. Department of Homeland Security, a federal government agency responsible for, among other things, the enforcement of U.S. immigration laws. Defendant Kelly is sued solely in his official capacity.

22. Defendant Dana J. Boente is the Acting Attorney General of the U.S. Department of Justice.[1] Defendant Boente is sued solely in his official capacity.

23. Defendant Mark Sandy is the Acting Director of the Office of Management and Budget.[2] Defendant Sandy is sued solely in his official capacity.

24. The true names and capacities of Defendants identified as DOES 1-50 are unknown to Plaintiff, and Plaintiff will amend this Complaint to insert the true names and capacities of those fictitiously named Defendants when they are ascertained.

FACTUAL ALLEGATIONS

A. The County Relies on Federal Funding.

1. 1.9 million residents depend upon the County for essential services.

25. The County was established in 1850 as one of the first counties in California statehood. Today, 1.9 million people reside in the County, and rely on it to provide essential services, such as law enforcement, health and hospital care, education, care for youth and elderly, and social services. Many of the County's programs serve the neediest County residents, such as abused and neglected children, indigent and uninsured individuals requiring health care, persons who are mentally ill or substance dependent, and persons who are physically or mentally disabled.

26. The County also oversees most regional public health and public safety functions, including emergency planning and services, disease control and prevention, and criminal justice administration, in addition to operating roads, airports, parks, libraries, election systems, fire departments, and many other critical functions.

[1] The President has nominated Senator Jeff Sessions to serve as Attorney General, and, if confirmed, Senator Sessions will replace Acting Attorney General Boente.

[2] The President has nominated Congressman Mick Mulvaney to serve as Director of the Office of Management and Budget and, if confirmed, Representative Mulvaney will replace Acting Director Sandy.

2. The County relies on federal funds to provide essential services and meet its budget.

27. The County receives approximately $1 billion annually in federal funds, representing about 15% of its $6 billion annual budget. Only a small fraction of the federal funding the County receives relates to immigration or law enforcement. Much of the federal funding the County receives is passed through the State of California.

28. As discussed below, the vast majority of federal funding the County receives is used to provide essential safety-net programs and social services to its residents. Without these federal funds, the County would be forced to make extraordinary cuts to critical services—and in some cases totally eliminate key County services and functions. The elimination, or even reduction, of federal funding would require the County to fundamentally and globally reallocate funds and services. And, because the Executive Order purports to withdraw ***all*** federal funds from "sanctuary jurisdictions," the County is forced to determine now whether and how much to cut services, and whether a global reallocation of resources is necessary.

Santa Clara Valley Medical Center

29. Santa Clara Valley Medical Center ("SCVMC") is the only safety-net healthcare provider in the County. Wholly owned and operated by the County, SCVMC provides healthcare services to indigent and underserved patients whom other healthcare providers often refuse to serve. It operates a 574-bed hospital, specialized centers that provide trauma, burn and rehabilitation, renal and ambulatory care, ten ambulatory care clinics, and four medical and dental units.

30. Approximately seventy percent of SCVMC's $1.4 billion annual budget comes from direct federal funding, as well as funds from other sources that are dependent on the existence of a federal funding stream, and would not be provided in the absence of federal funds. Together, these funds help pay for the full suite of health care that SCVMC provides, including critical ambulatory primary and specialty care, women's and children's health services, neonatal and pediatric intensive care, comprehensive adult and pediatric specialty services, comprehensive oncology services, comprehensive trauma and emergency services, and other essential medical

services, as well as emergency and acute psychiatric services. Federal funds also allow SCVMC to invest in research, programs, and technologies that benefit all patients and society more broadly.

31. If SCVMC were to lose the funding that it receives from federal grants and reimbursements, hundreds of thousands of patients—including infants and children, the elderly, and those with chronic disease—would be left without viable healthcare options. This would create an untenable healthcare crisis in the community.

Social Services Agency

32. The County's Social Services Agency ("SSA") provides a wide array of services to the County's most vulnerable residents, including child welfare and child protective services, aid to needy families, services and support to disabled children and adults, services and protection to elderly individuals, and administration of many public benefits programs.

33. The SSA receives over $300 million in federal funding each year—approximately 40% of its budget—to support these essential safety-net services. Nearly all of the County's SSA funding is reimbursement-based, requiring the County to front the money necessary to provide services to its residents now based on the federal government's promise to reimburse the County later.

34. The County relies on these federal funds to provide critical social services to its neediest residents—including child welfare services, in-home care and nutrition services for the elderly, and time-limited assistance to the County's lowest-income families. Furthermore, because a substantial amount of SSA's federal funding pays for service providers, cutting those funds would threaten the jobs of approximately 23,000 workers who perform social work, home health care, and food services.

Behavioral Health Services Department

35. The County's Behavioral Health Services Department provides essential services to residents struggling with mental illness and substance abuse. It offers a broad range of services including mental health urgent care, crisis intervention, housing and support services, psychiatric

services, residential treatment programs, substance abuse treatment and services, jail diversion programs, and substance abuse prevention and education services.

36. The Behavioral Health Services Department receives approximately $131 million in direct federal funding annually, accounting for over 30% of its operating budget.

37. Without this federal funding, the County would be forced to drastically reduce the quantity and quality of behavioral health services it provides, and would be forced to significantly cut staff. In turn, residents would lose access to critical behavioral health services, making them more vulnerable to crises or decompensation, relapse, and increased risk of homelessness, addiction, criminal activity, incarceration, and death.

Public Health Department

38. The County's Public Health Department protects and promotes the health of the County's residents through programs to identify, treat, and stop the spread of communicable and potentially lethal diseases; to provide disease and injury prevention; to offer immunizations for children and travelers; and to provide health education. The fifteen cities within the County lack their own public health departments and depend entirely on the County's Public Health Department to provide these services.

39. Federal funds comprise approximately $40 million of the Public Health Department's $100 million annual budget.

40. The loss of federal funds would have a devastating impact on the County's ability to continue providing core public health services for the communities most in need. The County depends on these federal funds to support, among other things: the prevention of communicable diseases; maternal, child, and adolescent health care; food benefits, breastfeeding support, and nutrition education for low-income mothers and their children; medical care for uninsured and underinsured individuals living with HIV/AIDS; services for severely disabled children with chronic diseases; immunization support and vaccination services for children and schools; and programs to prepare for and respond to public health emergencies and potential terrorism.

Office of Emergency Services

41. The County's Office of Emergency Services ("OES") is responsible for facilitating the County's preparation for, response to, and recovery from disasters of all types—from severe weather events to terrorism to major earthquakes. Among its responsibilities, OES provides emergency management training exercises; engages in region-wide hazard planning; operates the Santa Clara County Emergency Operations Center during emergency incidents; and coordinates regional efforts to recover following emergency incidents.

42. For fiscal year 2016, OES has been awarded more than $5 million in federal funding, representing almost two-thirds of its budget. All of this funding is provided by the federal government on a reimbursement basis, with several million in grant funding currently outstanding—i.e., the funds have been awarded by the federal government, but the County has not yet been reimbursed.

43. These federal funds are critical to keeping the local community safe during natural disasters, man-made emergencies, acts of terrorism, and other large-scale catastrophic events. Furthermore, these funds are essential to the County's community- and region-wide emergency planning and preparedness.

Other Federal Funding

44. Despite their broad reach, the funding streams described above represent only a fraction of the County's federal funding sources. Numerous other County departments and agencies rely on federal funding to provide essential health, safety, and welfare services to the community, including the Consumer and Environmental Protection Agency, the Office of Supportive Housing, the Roads and Airports Department, the Facilities and Fleet Department, the Department of Child Support Services, the Probation Department, the Sheriff's Office, the Department of Parks and Recreation, and the Office of the County Executive.

45. Without federal funding, these departments and agencies would have to roll back their support of programs that comprise the very fabric of the community, including housing and community development, housing stability and supportive services for the chronically homeless, highway planning and construction, water quality improvement, agricultural pest management, child support, juvenile justice, security and intelligence initiatives, and multifaceted crime

prevention. It is a near certainty that the County's federal funding touches each and every one of its 1.9 million residents in some way or another.

3. The County must make budgetary decisions today for future services.

46. Each year, as required by the County Charter, the County Executive develops a recommended budget for approval by the Board of Supervisors. To develop that budget, County staff carefully analyzes and weighs a multitude of factors including anticipated revenues, specific service needs for diverse subsets of County residents, salary and benefits costs for the County's 18,000 employees, and an array of local priorities.

47. The County is currently in the process of formulating its budget for the fiscal year beginning on July 1, 2017.

48. Reliable access to federal funding plays a critical role in the County's budgeting process. The County receives federal funds in several different forms. For example, many of the federal funds the County receives are provided as reimbursements, under which the County first expends its own funds, and later seeks partial or complete reimbursement from the federal government. Other federal revenues are provided on a fee-for-service basis, under which the County must expend its own resources to deliver services, and then subsequently seek fee-based payments from the federal government. Still other federal funds are provided to the County in the form of direct, upfront grants. The County receives all federal funding either directly from the federal government, or passed through the State of California or other government entities.

49. The Executive Order has thrown the County's budget process into chaos, as the County suddenly faces the possibility that more than $1 billion of its anticipated revenues could disappear at the executive branch's whim. The County's contingency reserve is approximately $130 million, so there is no means by which the County could possibly absorb the resulting shortfall. Because the County's federally funded programs operate continuously, the County must decide whether to continue incurring hundreds of millions of dollars in costs that may never be reimbursed by the federal government, or instead discontinue basic safety-net services delivered to its most vulnerable residents.

4. County policies and practices regarding cooperation with U.S. Immigration and Customs Enforcement ("ICE") conflict with the President's stated policies.

50. The County is responsible for operating numerous criminal justice agencies, including the County Sheriff's Office, Department of Correction, District Attorney's Office, Public Defender's Office, Probation Department, and Office of Pretrial Services. These agencies investigate and prosecute crimes; provide criminal defense to indigent defendants; provide services to arrestees during the pretrial phase as well as post-sentencing to reduce flight and recidivism; and ensure the safety and security of all residents of the County, including those in custody in the County jail system, which is the fifth largest in California.

51. As part of their responsibility to apprehend and detain those suspected or convicted of committing criminal offenses, the County Sheriff's Office and Department of Correction have had significant experience with ICE "civil detainer requests" and other immigration enforcement mandates.

52. An ICE civil detainer request asks a local law enforcement agency to continue to detain an immigrant inmate—who is generally being held in a local jail for violations or suspected violations of state criminal laws—for up to 48 additional hours after his or her regularly scheduled release date so that ICE can decide whether to take the individual into custody and initiate removal proceedings.

53. Prior to late 2011, the County Sheriff's Office and Department of Correction regularly responded to ICE civil detainer requests and other inquiries from federal immigration officials. As a result of ICE civil detainer request, during this period, the County was holding on average 135 additional inmates at a time, at a daily cost of $159 per person.

54. In a public exchange of letters from August through October 2010, then-County Counsel Miguel Márquez asked ICE to clarify, among other things, (i) whether ICE viewed detainer compliance as compulsory, and (ii) whether the federal government would indemnify and reimburse the County for the costs associated with civil detainer requests. ICE responded that detainers are "requests," but that ICE would neither reimburse detention costs nor indemnify localities for any liability arising from responding to detainer requests.

55. Over the next several months, a task force convened by the County Board of Supervisors, and comprised of officials from each of the County criminal justice agencies listed above, carefully reviewed the County's history of compliance with ICE detainer requests, placing special focus on the impact on public safety in the community. The task force determined that a tailored approach of honoring ICE detainer requests only for individuals with serious or violent felony convictions, as defined under California law, would best protect public safety in the County.

56. When the Board of Supervisors formally adopted this position in the County Civil Detainer Policy in October 2011, it also included a provision stating that the County would honor ICE detainer requests for individuals with the requisite convictions only if ICE would enter into a prior written agreement "by which all costs incurred by the [C]ounty in complying with the ICE detainer shall be reimbursed." To date, ICE has refused to enter into a reimbursement agreement with the County, so the County has not honored any detainer requests since October 2011. Although the precise scope and meaning of the undefined term "sanctuary jurisdictions" is unknown and the executive branch's discretion to declare a state or local government to be such a jurisdiction is boundless, the County reasonably anticipates that its practices would place it on the Department of Homeland Security's weekly list of jurisdictions "that ignored or otherwise failed to honor any detainers." Executive Order, Sec. 9(b) at 8801.

57. Additionally, in 2010, the County Board of Supervisors adopted a Resolution affirming the separation between County services and the enforcement of federal civil immigration law. The Resolution prohibits County employees, including law enforcement officers, from initiating an inquiry or enforcement action based solely on an individual's actual or suspected immigration status, national origin, race/ethnicity, or English-speaking ability. It also prohibits the use of County funds or resources to investigate, question, apprehend, or arrest an individual solely because of an actual or suspected violation of immigration law, or to transmit to

ICE for purposes of federal immigration enforcement information collected by the County in the course of providing critical social services.[3]

58. The County's policies relating to involvement in federal immigration enforcement were specifically designed to advance public safety. County law enforcement officials rely on members of the local community—including those who lack lawful immigration status—to report crimes, come forward as witnesses, aid in apprehending individuals with bench warrants, and assist with criminal prosecutions.

59. When local law enforcement officers are perceived as immigration enforcers, the result is a dangerous chilling effect on trust and cooperation from the community. Individuals are less likely to seek police officers' help for fear of being questioned about their immigration status. Crimes go unreported. Victims and witnesses are hesitant to offer testimony. And communities are less safe. The view that involving local officials in federal immigration enforcement undermines public safety is not unique to the County of Santa Clara. Indeed, local law enforcement agencies around the country echo the County's experience.

60. The Executive Order wrongly suggests that only maximum cooperation with federal immigration enforcement priorities by local law enforcement agencies can protect public safety. In fact, forcing local governments such as the County to engage in immigration enforcement—whether by requiring them to honor ICE civil detainer requests or, more broadly, by compelling them to act as federal immigration officers—drives a wedge between local law enforcement officers and the communities they serve and protect, undercutting law enforcement's core public safety mandate.

61. Compelling the County to engage in immigration enforcement also threatens the County's fiscal stability. First, civil detainer requests impose significant costs that the federal

[3] Starting in 2016, two federal grant programs in which the County had participated—the State Criminal Alien Assistance Program (SCAAP) and Edward Byrne Memorial Justice Assistance Grant (JAG)—required the County to certify its compliance with "all applicable federal laws." On July 7, 2016, the U.S. Department of Justice issued guidance explaining that 8 U.S.C. § 1373, which relates to sharing of immigration status information, is now considered an "applicable federal law" for purposes of SCAAP and JAG funds, and that state and local governments with *any* restrictions on information-sharing with ICE would be viewed as noncompliant. To retain its discretion, the County decided in October 2016 not to apply for or accept future SCAAP or JAG funds from the federal government.

government refuses to reimburse. Although a civil detainer request formally asks a local law enforcement agency to maintain custody of an individual for an additional 48 hours beyond when he or she would otherwise be released, individuals subject to civil detainers typically are held for much longer than they would absent the detainer—largely because the existence of a detainer request makes an individual highly unlikely to be offered a bail bond to facilitate his or her release from custody pending trial. The costs associated with compliance with ICE detainer requests can quickly skyrocket, diverting County resources away from critical public safety functions to federal civil immigration enforcement.

62. Second, honoring civil detainer requests would expose the County to substantial liability for constitutional violations. Federal courts around the country have held that honoring ICE civil detainer requests exposes local law enforcement agencies to liability under the Fourth Amendment. *E.g.*, *Morales v. Chadbourne*, 793 F.3d 208, 215-16 (1st Cir. 2015); *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305, at *11-12 (D. Or. Apr. 11, 2014). The federal government has made clear that it will not indemnify local law enforcement agencies against constitutional claims, even when they arise directly out of actions the local agency has taken at the federal government's behest.

63. In addition, the County is currently a defendant in a class action lawsuit alleging Eight and Fourteenth Amendment violations relating to significant overcrowding in the County jails. Substantially increasing the jail population by honoring ICE detainers would directly and immediately compound the County's potential liability.

64. Even if the County rescinded its policies governing local participation in federal immigration enforcement, as the Executive Order seeks to compel, the County would still be required to comply with state laws that also significantly constrain its participation in federal immigration enforcement activities. California's Transparency and Responsibility Using State Tools (TRUST) Act, Cal. Gov. Code § 7282.5, permits local law enforcement agencies to honor ICE detainer requests only with respect to individuals in their custody who have specific prior criminal convictions or criminal charges as to which a judge has made a finding of probable cause. Moreover, the pending "California Values Act," Senate Bill 54, would (a) prohibit state

and local law enforcement agencies and school police from using public resources to investigate, interrogate, detain, detect, or arrest anyone solely for immigration enforcement purposes, and (b) require state agencies to ensure that information collected from individuals in the course of service delivery is limited to that necessary to provide services and is not used or disclosed for any other purpose.

65. Indeed, in a memorandum issued by the Department of Justice's Office of the Inspector General (OIG) relating to 8 U.S.C. § 1373, the OIG called out the entire State of California as a jurisdiction that does not fully comply with federal immigration enforcement priorities.[4] Because much of the County's federal funding is passed through agencies of the State of California, these active questions about the continuation of federal funding streams to the State of California as a whole substantially exacerbate the County's fiscal uncertainty.

B. The President's Executive Order Regarding "Sanctuary Jurisdictions" is Unconstitutional.

1. The Executive Order constitutes an unprecedented attempt to expand executive power.

66. On January 25, 2017, President Donald J. Trump issued Executive Order 13768, entitled "Enhancing Public Safety in the Interior of the United States." That Executive Order was published in the Federal Register on January 30, 2017, at Vol. 82, No. 18. It is available on the White House public website (https://www.whitehouse.gov/the-press-office/2017/01/25/Presidential-executive-order-enhancing-public-safety-interior-united), and is attached hereto as **Exhibit A**.

67. The Executive Order represents a gross overreach of executive power. This power grab comes at the expense of powers constitutionally vested in the Congress, as well as state and local governments.

68. Section 1 of the Executive Order announces the order's "[p]urpose." Executive Order, Sec. 1 at 8799. It declares that "Sanctuary jurisdictions across the United States willfully

[4] Memorandum from Michael E. Horowitz, Inspector Gen., to Karol V. Mason, Assistant Att'y Gen. for the Office of Justice Programs, "Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients," at 13 (May 31, 2016), https://oig.justice.gov/reports/2016/1607.pdf ("Horowitz Memo").

violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic." *Id.*

69. Section 2 of the Executive Order sets forth the "policy of the executive branch." *Id.* Sec. 2 at 8799. It describes that policy as, among other things, "[e]nsur[ing] that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." *Id.* Sec. 2(c) at 8799.

70. Section 3 of the Executive Order is titled "Definitions," but contains no specific definitions applicable to the order. *Id.* Sec. 3 at 8799. Instead, it states that "the terms of this order, where applicable, shall have the meaning provided by" 8 U.S.C. § 1101. *Id.*

71. In a sharp break with past practice, Section 5 of the Executive Order expands the federal government's immigration enforcement priorities well beyond any threshold needed to protect public safety. Section 5 calls upon the Department of Homeland Security to "prioritize for removal those aliens" who are removable on a large number of grounds, including that they:

i) have criminal charges that have not been resolved;

ii) "have committed acts that constitute a chargeable criminal offense" even if no charges have been filed;

iii) are arriving without prior admission (e.g., asylum-seekers);

iv) have "abused any program related to receipt of public benefits"; or

v) "otherwise pose a risk to public safety or national security" in the judgment of "an immigration officer," not an immigration judge. Executive Order, Sec. 5 at 8800.

72. These vague categories sweep in millions of individuals who have not been convicted of any criminal offense, let alone a serious or violent one. For example, "acts that constitute a chargeable criminal offense" could include a wide range of ordinary and nonthreatening conduct. Leaving unbridled discretion in the hands of immigration officers to brand individuals as "criminals" or "risks to public safety or national security"—without any clear standards or criteria—raises serious due process concerns.

73. Section 6 of the Executive Order is equally vague and subject to arbitrary and discriminatory enforcement. Section 6 purports to impose "fines and penalties" upon not only "aliens unlawfully present in the United States," but also upon "those ***who facilitate their presence*** in the United States." Executive Order, Sec. 6 at 8800 (emphasis added). This undefined phrase could result in attempts by the executive branch to impose penalties upon County employees who provide essential or even lifesaving services to immigrants who are unlawfully present; their friends and family members; churches and other religious organizations that assist them; landlords, co-workers, or employers; or even attorneys who represent them in immigration proceedings.

2. Section 9 of the Executive Order purports to vest the President with legislative powers that even Congress does not lawfully possess.

74. Section 9 of the Executive Order concerns the so-called "Sanctuary Jurisdictions" that are the subject of the order, as noted in Section 1. The Executive Order includes no clear definition of that phrase, nor is that phrase defined in 8 U.S.C. § 1101.

75. Section 9(a) purports to vest executive branch officials with broad authority and unlimited, unreviewable discretion to deny federal funds to whichever jurisdictions they deem to be Sanctuary Jurisdictions, and to take unspecified enforcement action against them. It begins with an unconstitutional provision allowing the executive branch to strip federal funding from such purported Sanctuary Jurisdictions:

> [T]he Attorney General and the Secretary [of Homeland Security], in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction.

Executive Order, Sec. 9(a) at 8801 (the "Defunding Provision").

76. The Defunding Provision places entirely new and amorphous conditions on jurisdictions, like the County, which rely on federal funds to provide services to their residents. Under the Executive Order, if the Attorney General and Secretary of Homeland Security determine (in their unbounded discretion) that a jurisdiction is "willfully refus[ing] to comply

with 8 U.S.C. 1373," then those jurisdictions will be rendered "not eligible to receive Federal grants."[5] *Id.*

77. Section 1373 provides, *inter alia*, that local governments may not prohibit or restrict "any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status . . . of any individual." 8 U.S.C. § 1373(a). It further forbids any person or agency from prohibiting or restricting any government entity from sending, maintaining, or exchanging such information with federal immigration officials. *Id.* § 1373(b).[6]

78. The Defunding Provision includes no process or procedure by which a state or local government may review, challenge, or even receive notice regarding its designation as a "sanctuary jurisdiction."

79. The Defunding Provision makes no mention of any statutory authority for the new conditions it imposes on the affected jurisdictions. Indeed, it makes no reference to Congress or Congressional action whatsoever. Rather, it grants the power to impose the new conditions—as well as to determine if those conditions have been met and to deny funding on that basis—solely to executive branch officials.

80. The Defunding Provision is incredibly broad. On its face, it appears to apply to existing and expected federal funds. It makes no distinction between block grants provided to states or municipalities, funds disbursed as reimbursements for previous or expected expenditures, funds disbursed under a fee-for-service model, or funds provided to state and local governments through entitlements such as Medicare or Medicaid.

81. Section 9(c) of the Executive Order makes clear that the Defunding Provision is intended to apply to all federal funds. Section 9(c) orders the Director of the Office of

[5] Because the phrase "Federal grant" is nowhere defined in the Executive Order, the County must interpret that phrase to apply to all federal funds, whatever their source. This interpretation is consistent with the President's statements regarding his desire to cut off taxpayer funds to state and local governments he considers to be "sanctuary jurisdictions." *See infra* ¶¶ 91–95.

[6] The federal government has expanded on its view of what Section 1373 requires through various memoranda and guidance documents. *See, e.g.*, Horowitz Memo; Office of Justice Programs, *Guidance Regarding Compliance with 8 U.S.C. § 1373*, U.S. Dep't of Justice (July 7, 2016); Office of Justice Programs, *Additional Guidance Regarding Compliance with 8 U.S.C. § 1373*, U.S. Dep't Just. (October 6, 2016).

Management and Budget "to obtain and provide relevant and responsive information on ***all Federal grant money that currently is received*** by any sanctuary jurisdiction." Executive Order, Sec. 9(c) at 8801 (emphasis added). On its face, the order targets "all" federal funds, whatever their source, and includes funds that affected jurisdictions—including the County—have "currently received." *Id.* It is therefore unbounded in both scope and time. Furthermore, the notion that the federal government may, pursuant to this order, attack County funds retroactively is no hypothetical scenario. For each type of funding the County receives, the federal government may attempt to claw back those funds.

82. By executive fiat, the Defunding Provision imposes new funding conditions that Congress could not constitutionally have imposed. The Defunding Provision applies to all "Federal grants," regardless of whether those grants have any connection, relation, or nexus to immigration. Executive Order, Sec. 9(a) at 8801. Such an untethered condition far exceeds Congress's power under the Spending Clause.

83. The order provides a mechanism by which certain monies "deemed necessary for law enforcement purposes" may be exempted from the blanket Defunding Provision. *Id.* That exemption gets the law exactly backwards, because funds related to law enforcement bear at least some connection to compliance with 8 U.S.C. § 1373, and are arguably the only funds that Congress could conceivably have tied to such compliance in a constitutional manner. *See* S. 1640, 114th Cong. § 114(d) (2015); H.R. 1148, 114th Cong. § 114(d) (2015). But Congress has never imposed any such restriction, and in fact has specifically considered and rejected similar restrictions. *See id.*

84. By threatening all of a jurisdiction's federal funding, the Defunding Provision goes beyond encouragement and becomes unduly coercive. It is, in effect, "a gun to the head." *Nat'l Fed'n of Indep. Bus. v. Sebelius* ("*NFIB*"), 132 S. Ct. 2566, 2604 (2012). The point of the threat is to compel each affected jurisdiction to "adopt a federal regulatory system as its own," which is "contrary to our system of federalism." *Id.*

85. The new spending conditions are also constitutionally infirm. Section 1373 itself raises a host of constitutional issues, particularly under the Tenth Amendment. And to the extent

that the executive branch determines that compliance with 8 U.S.C. § 1373 requires jurisdictions to detain individuals who would otherwise be released from custody, the Executive Order forces jurisdictions to violate the Fourth, Eighth, and Fourteenth Amendment rights of individuals within those jurisdictions, thereby risking civil liability, including personal liability against individual law enforcement officers.

86. The Executive Order not only claims the power to strip affected jurisdictions of the federal funding they rely on to govern, but also promises unspecified enforcement action against those jurisdictions:

> The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

Executive Order, Sec. 9(a) at 8801 (the "Enforcement Provision").

87. Like the Defunding Provision, the Enforcement Provision is both extremely broad and entirely vague in its wording. It promises enforcement action against any jurisdiction that "prevents or hinders the enforcement of Federal law." *Id.* By its terms, this provision applies to *all* federal law—all 54 titles of the U.S. Code, and presumably the entire Code of Federal Regulations to boot. Nor is it limited to violations of federal law; it targets any jurisdiction that has a "statute," "policy," or "practice" that simply "hinders" enforcement of those laws. The Enforcement Provision does not define what "hinders" means, vesting entirely in the executive branch the power to make that determination and offering no judicial review or other recourse to any jurisdiction deemed to have violated it.

88. Taken at face value, the Enforcement Provision reworks the entire structure of our federal republic, granting the federal executive branch untrammeled discretion to punish state and local governments for taking any action—or simply having a policy or practice—that the federal government finds inconvenient. The Enforcement Provision thus violates the anti-commandeering aspect of the Tenth Amendment, as well as federalism principles more generally.

89. The Executive Order makes no attempt to ground the vast new authority it seizes for the executive branch in any specific constitutional or statutory authority. The only sources of authority President Trump has claimed for the sweeping and unprecedented order are "the

authority vested in me as President by the Constitution and laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq*.)," as well as "Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code." Executive Order, Secs. 1, 2 at 8799.

90. None of these cited provisions grants the President any of the powers he has taken for his own. Justifying itself by reference to the "authority vested" in the President by the Constitution and federal law, the Executive Order begs the question of whether the President has such authority in the first place. The INA says nothing about withdrawing or restricting federal funds from jurisdictions that fail to comply with 8 U.S.C. § 1373, or imposing "appropriate enforcement action" against certain jurisdictions. Indeed, the phrase "sanctuary jurisdiction" is found nowhere in the Act. Article II, Section 3 of the Constitution is the "Take Care" clause, which by its terms requires the President to follow and execute the law Congress enacted, not to seize legislative power for himself. That clause has never been interpreted to allow the power grab the President is attempting here. And 5 U.S.C. § 3331 is the oath of office every federal official—except the President—takes when appointed to a federal office. The oath provides no independent authority for the powers claimed by the Executive Order.

3. The President's and his subordinates' statements reveal the Executive Order's unconstitutionally broad scope.

91. The Executive Order contains a few vague caveats indicating that it will, in part, be applied "to the extent consistent with law" (a caveat noticeably absent from the Enforcement Provision). *See* Executive Order, Sec. 9 at 8801. But the President's and his subordinates' own statements belie that blithe assurance. On the contrary, there is no indication that the executive branch understands, respects, or has any intention to interpret or enforce the Executive Order consistent with governing law and well-established constitutional limitations.

92. The President's own statements—and those of other officials in his administration—reveal that the executive branch intends the Executive Order to go far beyond current law. Indeed, the President has repeatedly promised, both on the campaign trail and once elected, that his goal is not to use the spending power (which is not his, in any event) to

encourage jurisdictions to cooperate with his federal immigration program. Rather, he proposes to deny *all* federal funding to jurisdictions he believes are failing to comply with federal immigration laws, "ending" them altogether. That approach is undoubtedly unconstitutional, however implemented.

93. The President's and his aides' statements unambiguously point to a broad, and therefore unconstitutional, interpretation of the Executive Order. For instance:

i) On August 31, 2016, then-candidate Donald J. Trump issued an "Address on Immigration," which included a heading entitled "Block Funding for Sanctuary Cities." *Donald J. Trump: Address on Immigration*, Donald J. Trump for President (Aug. 31, 2016), https://www.donaldjtrump.com/press-releases/donald-j.-trump-address-on-immigration. Mr. Trump stated, "We will end the Sanctuary Cities that have resulted in so many needless deaths. ***Cities that refuse to cooperate with federal authorities will not receive taxpayer dollars***, and we will work with Congress to pass legislation to protect those jurisdictions that do assist federal authorities." *Id.* (emphasis added).

ii) On January 25, 2017—the day on which the President issued the Executive Order—the President's press secretary, Sean Spicer, made clear that the order targets all federal funding: "***We are going to strip federal grant money from the sanctuary states and cities that harbor illegal immigrants.*** The American people are no longer going to have to be forced to subsidize this disregard for our laws." White House, *1/25/17: White House Press Briefing*, YouTube (Jan. 25, 2017), https://www.youtube.com/watch?v=OaPriMVvtZA (begin at 3:57 mark) (emphasis added).

iii) On January 26, 2016, President Trump reiterated his plan to target sanctuary jurisdictions during remarks at the Congressional Republican Retreat: "And finally, at long last, ***cracking down on sanctuary cities***. It's time to restore the civil rights of Americans, to protect their jobs, their hopes and their dreams for a much better future." Donald J. Trump, *President Trump Remarks at Congressional Republican Retreat*, C-Span (Jan. 26, 2017), https://www.c-span.org/video/?422829-1/President-trump-tells-congressional-republicans-now-deliver (begin at 13:54 mark) (emphasis added).

iv) On January 28, 2017, the White House issued a press release stating, "President Trump signed an executive order to ensure that immigration laws are enforced throughout the United States, ***including halting federal funding for sanctuary cities***." Press Release, The White House, Office of the Press Secretary, President Trump's First Week of Action (Jan. 28, 2017), https://www.whitehouse.gov/the-press-office/2017/01/28/President-trumps-first-week-action (emphasis added).

v) That same day, the President stated, "Here are just a few of the executive actions that I have taken in the last few days . . . . An order to immediately begin the border wall and to ***crack down on sanctuary cities***. They are not safe, we have to take care of that horrible situation." Press Release, The White House, Office of the Press Secretary, President Trump's First Weekly Address (Jan. 28, 2017), https://www.whitehouse.gov/the-press-office/2017/01/28/President-trumps-first-weekly-address (emphasis added).

vi) The White House's public website likewise states that President Trump "is dedicated to enforcing our border laws, ***ending sanctuary cities***, and stemming the tide of lawlessness associated with illegal immigration." The White House, *Standing Up For Our Law Enforcement Community*, https://www.whitehouse.gov/law-enforcement-community (last accessed on February 1, 2017) (emphasis added).

vii) Mr. Spicer, the President's press secretary, reiterated this goal on February 1, 2017, stating in a press briefing, "I think the President's goal in ***ending sanctuary cities*** is pretty clear. . . . [T]he President has been very clear through his executive order that ***federal funds, paid for by hardworking taxpayers, should not be used to help fund sanctuary cities***." Press Release, The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sean Spicer, 2/1/2017, #6* (Feb. 1, 2017), https://www.whitehouse.gov/the-press-office/2017/02/01/press-briefing-press-secretary-sean-spicer-212017-6 (emphases added).

94. The Executive Order itself confirms the sweeping scope outlined by the President and his aides. It cannot refer merely to existing executive power to limit spending; if that is all the order accomplishes, then it is superfluous. There would be no need to order what the President may already accomplish through existing statutory authorization.

95. In addition to comments regarding the Executive Order, the President's more recent statements reveal a complete lack of understanding of, and respect for, the boundaries between executive and legislative powers. For example, commenting on reports of violent protests at U.C. Berkeley in response to a planned speaking event, the President tweeted, "If U.C. Berkeley does not allow free speech and practices violence on innocent people with a different point of view – NO FEDERAL FUNDS?" @realDonaldTrump, Twitter (Feb. 2, 2017, 3:13 AM), https://twitter.com/realDonaldTrump/status/827112633224544256 (last accessed Feb. 2, 2017). The President seems to hold the misimpression that the executive branch controls the power of the purse, and that he can simply turn off the federal funding spigot to states, local governments, and other publicly funded entities he disfavors. The Founders drafted and designed our Constitution to avoid precisely this result.

C. Congress Considered and Rejected Conditioning Federal Law Enforcement Funds on Compliance with Section 1373.

96. The Executive Order not only claims legislative power in excess of what the Constitution grants to Congress, but it also represents an attempt to enact a policy that Congress has already expressly considered and rejected. In fact, one of the individuals who will likely be tasked with implementing and enforcing the Executive Order is the same person who tried and failed to persuade Congress to enact the policy the executive branch is now imposing by dictate: Jeff Sessions.

97. On June 22, 2015, Senator Jeff Sessions—now the President's nominee for Attorney General of the United States—introduced a bill in the United States Senate. The bill, S. 1640, is entitled the "Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act," and is attached hereto as **Exhibit B**. Senator Sessions's bill sought to tie certain federal funds to compliance with 8 U.S.C. § 1373. S. 1640, 114th Cong. (2015). That is the same power, on a narrower scale, the President now claims.

98. Only seven Senators co-sponsored Mr. Sessions's bill, which died in the Senate Judiciary Committee.

99. Senator Sessions's bill had a counterpart in the United States House of Representatives. There, U.S. Representative Trey Gowdy introduced H.R. 1148, entitled the "Michael Davis, Jr. in Honor of State and Local Law Enforcement Act." H.R. 1148, 114th Cong. (2015). The House bill is attached hereto as **Exhibit C**. Only 50 House Members co-sponsored Mr. Gowdy's bill, which was reported out of the House Judiciary Committee, but languished in the Committee on Homeland Security. It never received a vote on the floor of the House.

100. Senator Sessions's unsuccessful legislation, as well as its companion bill in the House, was a narrower version of the sweeping Executive Order the President issued after nominating Mr. Sessions to be his Attorney General. Its declared purpose was to "amend the Immigration and Nationality Act to improve immigration law enforcement within the interior of the United States." S. 1640, 114th Cong. (2015). Section 114 of the bill, entitled, "State Violations of Enforcement of Immigration Laws," proposed an amendment to 8 U.S.C. § 1373 that is strikingly similar to the Executive Order Mr. Sessions will enforce if he is confirmed as the Attorney General. Section 114(d) provided as follows:

> "(d) Compliance.—
>
> > "(1) IN GENERAL.—A State, or a political subdivision of a State, that has in effect a statute, policy, or practice that prohibits law enforcement officers of the State, or of a political subdivision of the State, from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers' routine law enforcement duties shall not be eligible to receive—
> >
> > > "(A) any of the funds that would otherwise be allocated to the State or political subdivision under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) or the 'Cops on the Beat' program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.); or
> >
> > > "(B) any other law enforcement or Department of Homeland Security grant.
> >
> > "(2) ANNUAL DETERMINATION.—The Secretary shall determine annually which State or political subdivision of a State are not in compliance with this section and shall report such determinations to Congress on March 1 of each year.
> >
> > "(3) REPORTS.—The Attorney General shall issue a report concerning the compliance of any particular State or political subdivision at the request of the House or Senate Judiciary Committee. Any jurisdiction that is found to

> be out of compliance shall be ineligible to receive Federal financial assistance as provided in paragraph (1) for a minimum period of 1 year, and shall only become eligible again after the Attorney General certifies that the jurisdiction is in compliance.

S. 1640, 11th Cong. § 114(d) (2015).[7]

101. Shortly after introducing his bill in the U.S. Senate, Mr. Sessions issued a press release calling on Congress to pass a law restricting federal funds to sanctuary cities—the very authority the President now claims as his own. Senator Sessions said: "I am calling today on Congress to make its first item of business ***the immediate passage of legislation to cut off relevant federal monies to sanctuary cities.***" News Release, Office of Senator Jeff Sessions, *Senator Sessions Calls on Congress to Take Up Immigration Reform for Americans* (July 9, 2015), http://www.sessions.senate.gov/public/index.cfm/2015/7/senator-sessions-calls-on-congress-to-take-up-immigration-reform-for-americans (emphasis added).

102. Two aspects of Senator Sessions's statement bear emphasizing, and each of them demonstrates the unconstitutionality of the Executive Order Mr. Sessions will be charged with implementing if he is confirmed as Attorney General. First, Senator Sessions is flatly admitting that current law does *not* allow funds to be "cut off" from sanctuary jurisdictions. As Senator Sessions understood, new legislation would be needed to accomplish that objective. Second, Senator Sessions is recognizing that only "***relevant*** federal monies" may be conditioned on compliance with certain immigration laws. *Id.* (emphasis added). Senator Sessions did not call on Congress to render sanctuary jurisdictions ineligible from receiving *all* federal grants, whether or not those grants were germane to immigration or law enforcement, because such a law would be patently unconstitutional.

103. Despite Senator Sessions's exhortation, Congress never enacted his proposed bill, which would have cut off certain federal funding to state and local governments deemed insufficiently compliant with federal immigration directives. In fact, the precise opposite is true:

[7] The companion House bill, H.R. 1148, contained an identical provision. *See* H.R. 1148, 114th Cong. § 114(d) (2015).

both houses of Congress have independently and expressly considered and rejected the policy that the President and Mr. Sessions now claim for the executive branch by fiat.

104. The similarities between Senator Sessions's failed bill and the Executive Order are striking, and likely not coincidental.[8] The two documents share common phrases nearly verbatim, targeting any jurisdiction that "has in effect a statute, policy, or practice" that the federal government finds problematic. They both declare that such jurisdictions shall not be "eligible to receive" federal funds. And they both vest in the Secretary of Homeland Security the ability to designate certain jurisdictions as noncompliant. They also both contemplate the Attorney General publishing a report listing jurisdictions that the Attorney General has deemed noncompliant.

105. The differences between the failed bill and the Executive Order are also telling. The bill appears to have made at least some effort to conform to constitutional limitations on Congress's spending power. For example, the bill tied only certain law-enforcement-related funds to the proposed funding condition, signaling out "Cops on the Beat" funds, and other law enforcement or Department of Homeland Security grants. S. 1640, 114th Cong. § 114(d)(1)(A-B). That limitation stands in stark contrast to the Executive Order, which renders affected jurisdictions ineligible to receive all "Federal grants." Executive Order, Sec. 9(a) at 8801. The failed bill also vested the Secretary of Homeland Security with primary authority for implementing the legislation. By contrast, the Executive Order vests the Attorney General—presumably Mr. Sessions—as well as the Secretary with ensuring fund ineligibility. *Id.*

106. The President's attempt to secure by executive fiat what Senator Sessions failed to win through the legislative process violates the separation of powers principles that undergird our

[8] Media reports confirm that Senator Sessions played a prominent role in the executive orders that the President issued during his first week in office. One article states that Senator Sessions was the "intellectual godfather" of Mr. Trump's executive orders, and that his longtime chief of staff, along with one of his mentees, drafted the orders. *See* Philip Rucker & Robert Costa, *Trump's Hard-Line Actions Have an Intellectual Godfather: Jeff Sessions*, Wash. Post, Jan. 30, 2017. Indeed, administration officials have stated that Senator Sessions "helped devise the President's first-week strategy, in which Trump signed a blizzard of executive orders that begin to fulfill his signature campaign promises — although Sessions had advocated going even faster." *Id.* According to the reports, Senator Sessions "lobbied for a 'shock-and-awe' period of executive action that would rattle Congress, impress Trump's base and catch his critics unaware." *Id.*

system of government. As Justice Jackson stated in his seminal concurrence in *Youngstown*, "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." 343 U.S. at 637 (Jackson, J., concurring). In issuing the Executive Order, the President operated at his lowest ebb of power, since Congress had already expressed its will by considering and rejecting the very powers the President has claimed for himself with the stroke of a pen.

D. The County Requires Immediate Relief.

107. The County has standing to challenge the Executive Order and its claims are ripe for adjudication today.

108. The County has suffered an injury-in-fact. As set forth above, the County receives approximately $1 billion in federal funding per year, which amounts to more than 15% of its total budget. The Executive Order purports to strip away all of this federal funding, decimating the County's ability to provide basic services to its residents. The "loss of funds promised under federal law" is a quintessential economic injury that "satisfies Article III's standing requirement." *See Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 965 (9th Cir. 2015) (en banc), *cert. denied sub nom. Alaska v. Organized Vill. of Kake, Alaska*, 136 S. Ct. 1509 (2016).

109. Furthermore, the Executive Order applies to, and purportedly would bar the County from receiving, federal funds to reimburse the County for established programs and services that the County is ***currently*** providing, and for which Congress has already approved funding. The County is an eligible recipient of, expects to receive, and has made budgeting, programming, and hiring decisions based on these prior congressional funding decisions. Now, the Executive Order purports to require retroactive imposition of the condition that municipalities comply with federal immigration provisions to already-approved funds. This is precisely the sort of "substantial contingent liability" that confers standing because it "immediately and directly affects the borrowing power, financial strength, and fiscal planning" of the County. *See Clinton v. City of N.Y.*, 524 U.S. 417, 430-31 (1998).

110. The County's injuries are "actual or imminent." *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (quotations omitted). The County has already suffered harm as a result of the Executive Order, and its injuries will only continue to grow unless the Executive Order is declared unlawful and its implementation enjoined. Indeed, the Executive Order has thrown the County's ongoing budgeting process into chaos, forcing the County to choose whether to continue incurring hundreds of millions of dollars in costs that may never be reimbursed or discontinue providing basic safety-net services to its most vulnerable residents. And, because the County's federally funded programs operate continuously, the County is currently spending millions of dollars that may never be reimbursed by the federal government pursuant to the Executive Order.

111. Furthermore, Defendants have made clear that their express purpose in adopting the Executive Order is to "[h]alt federal funding for," "strip federal grant money from," and "crack down on" municipalities, like the County of Santa Clara, which do not comply with federal directives, as purportedly required by the Executive Order. *See supra* ¶¶ 91–95.

112. Given the County's policies described above, and Defendants' repeated threats to pull federal funding from jurisdictions that refuse to carry out the commands of federal immigration officials, there is a "credible threat" that Defendants will seek to enforce the unconstitutional Executive Order against the County. *See Susan B. Anthony List*, 134 S. Ct. at 2342 (collecting cases). The County is not required to "expose [itself] to liability before bringing suit to challenge the basis for [Defendants'] threat." *MedImmune, Inc. v. Genentech, Inc.,* 549 U.S. 118, 128–129 (2007).

113. The County's injuries are "fairly traceable to the challenged action"—in fact, they are directly caused by the Executive Order. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 180 (2000). But for the Executive Order, the County would continue to receive federal funds for programs and services that it currently provides, and would be able to make budgeting and programming decisions without the threat that its federal funds will disappear.

114. The Court can redress the County's injuries by declaring the Executive Order unconstitutional and enjoining its implementation and enforcement.

115. The issues in this case are fit for judicial decision. The Executive Order is final and the County's challenge to that Order presents legal issues that "will not be clarified by further factual development." *Susan B. Anthony List*, 134 S. Ct. at 2347 (quotations omitted).

116. Postponing judicial review would impose a significant hardship on the County. Requiring the County to "proceed without knowing whether the [Executive Order] is valid would impose a palpable and considerable hardship" by forcing the County to decide now whether to continue providing essential safety-net services to its residents, without knowing that it will recoup the promised federal funding. *Thomas v. Union Carbide Agric. Prod. Co.*, 473 U.S. 568, 581 (1985) (quoting *Pac. Gas & Elec. Co. v. State Energy Resources Conservation and Development Comm'n,* 461 U.S. 190, 201 (1983)).

117. In light of this substantial and imminent constitutional injury, the County is left with no choice but to seek immediate judicial relief, including a preliminary and permanent injunction.

CLAIMS FOR RELIEF

COUNT 1

Violation of the Separation of Powers Inherent in the U.S. Constitution

118. The County incorporates and re-alleges each and every allegation contained above as if fully set forth herein.

119. Sixty-five years ago, in the midst of the Korean War, our Supreme Court held that the power of the President, "if any," to issue executive orders "must stem either from an act of Congress or from the Constitution itself." *Youngstown*, 343 U.S. at 585. Accordingly, an executive order lacking congressional or constitutional authority is unconstitutional.

120. Furthermore, "[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Id.* at 637 (Jackson, J., concurring) (adopted in *Dames & Moore v. Regan*, 453 U.S. 654, 669 (1981)).

121. Article I of the Constitution vests the federal government's spending power exclusively in Congress. *See* U.S. Const. art. I, § 8, cl. 1. By contrast, nothing in the Constitution's text, or in more than two centuries of judicial decisions interpreting the Constitution, purports to confer on the President or the executive branch any power either to dictate government spending or to place conditions or limits on the spending power that is vested in the legislative branch. Those powers reside solely with Congress.

122. Although the Constitution vests the spending power exclusively in Congress, it does not confer unlimited discretion on the legislative branch when that branch seeks to place conditions on federal spending directed to states and local governments. As the Supreme Court held in *South Dakota v. Dole*, 483 U.S. 203, 207 (1987), "[t]he spending power is of course not unlimited." In its *Dole* decision, the Court identified and explained particular limits on Congress's power to spend. Subsequent cases have given further definition to those limits.

123. First, as the words of the Constitution make clear, any "exercise of the spending power must be in pursuit of 'the general welfare.'" *Dole*, 483 U.S. at 207.

124. Second, if Congress wishes to place certain conditions on federal funds, "it must do so unambiguously," so that states and local governments may "exercise their choice knowingly, cognizant of the consequences of their participation." *Id.* (internal quotation marks omitted). Accordingly, Congress may not surprise a state or local government by initially approving spending unconditionally, then later imposing a condition on receipt of those funds. *See NFIB*, 132 S. Ct. at 2602–04. As the Court explained in *NFIB*, "[w]e have repeatedly characterized … Spending Clause legislation as much in the nature of a *contract*." *Id.* at 2602 (internal quotation marks omitted) (emphasis in original). Under this framework, "[t]he legitimacy of Congress's exercise of the spending power thus rests on whether the state voluntarily and knowingly accepts the terms of the contract" at the time Congress offers the money. *Id.* (internal quotation marks omitted).

125. Third, the Supreme Court has "repeatedly said that Congress may condition grants under the spending power only in ways reasonably related to the purpose of the federal program"

at issue. *Dole*, 483 U.S. at 213. In other words, Congress may not burden the payment of funds to a state or municipality for one purpose with a condition that serves a different federal interest.

126. Fourth, a conditional grant of federal funds may be barred if it would violate some independent constitutional provision. *Id.* at 208. For example, Congress could not condition federal grants on a municipality's agreement to perform unlawful searches and seizures in violation of the Fourth Amendment.

127. Fifth, "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns to compulsion.'" *Dole*, 483 U.S. at 211 (quoting *Steward Machine Co. v. Davis*, 301 U.S. 548, 590 (1937)). Congress may not constitutionally "force the States to implement a federal program," *NFIB*, 132 S. Ct. at 2602, and may not end-run this limitation by imposing conditions on federal spending that are so draconian that they amount to "a gun to the head" leaving the state or municipality no realistic choice but to comply. *Id*. at 2604.

128. Section 9(a) of the Executive Order violates most, if not all, of the constitutional principles and binding precedents outlined above.

129. The Executive Order claims the power to establish conditions governing federal spending—which Congress has declined to impose through legislation—and to direct subordinate executive branch officials to restrict eligibility for federal spending without statutory authority to do so. Such powers lie beyond the President's constitutional authority. They claim for the executive branch powers exclusively assigned to Congress under the Spending Clause, U.S. Const. art. I, § 8, cl. 1.

130. To the extent the President is purporting to impose any conditions or limitations on federal spending, or to direct subordinate executive branch officials to do the same, without express statutory authority, the Executive Order also unlawfully exceeds the President's powers under other provisions of the Constitution that establish the separation of powers among the branches of our government, including:

i) the President's obligation to "take Care that the Laws be faithfully executed," U.S. Const. art. II, § 3, cl. 5 (Take Care Clause); and

ii) the limitation that Congressional enactments must "be presented to the President of the United States," who then may sign that enactment or veto it, but has no power to merely revise it, either upon presentment or after enactment, U.S. Const. art. I, § 7, cls. 2-3 (Presentment Clause).

131. The Executive Order not only attempts to commandeer Congress's spending power, but it also establishes conditions on federal spending that even Congress could not constitutionally impose. In other words, the President has claimed powers over federal spending that even Congress does not possess, and could therefore never delegate. For example:

i) The Defunding Provision makes no distinction between federal funding already approved by Congress and funding to be approved in the future, and thus applies equally to both categories. But Congress, let alone the President, could not impose a condition on federal spending retroactively.

ii) The Defunding Provision applies to *all* federal funding related to any subject. It is not restricted to funding related to a legitimate federal interest in enforcement of immigration laws by municipalities. But the Constitution requires that any federal funding conditions Congress imposes must be reasonably related to the federal interest to which the expenditure relates (the "*Dole* nexus test"). The Executive Order fails that test utterly: the Defunding Provision applies to, and would bar the County from being eligible for funding for, Medicare and Medicaid programs, transportation, child welfare services, elder care programs, mental health services, immunization and vaccine programs, and a myriad of other programs and services that have absolutely nothing to do with the enforcement of federal immigration laws by state or local governments. *See supra* ¶¶ 27–45.[9]

[9] The Defunding Provision not only fails the *Dole* nexus test—it gets it exactly backwards. It contains only one possible exception, for funding "deemed necessary for law enforcement purposes," which the Attorney General or Secretary of Homeland Security discretionarily allow to be remitted. These are the sorts of funds that *might* have withstood constitutional scrutiny had Congress passed them (and indeed, Congress considered such restrictions and declined to impose them, *see* S. 1640, 114th Cong. § 114(d) (2015)). The Executive Order threatens all funding unrelated to law enforcement, while paradoxically allowing a mechanism by which relevant funding may escape the ban.

iii) The Executive Order requires County law enforcement officers to undertake actions that are themselves unconstitutional. For example, the Executive Order's text, as well as the President's statements, indicate that he interprets the Executive Order to require County law enforcement officers to comply with federal directives regarding detainer actions by U.S. Immigration & Customs Enforcement. Courts across the country have already determined that these directives violate the Fourth Amendment. If County law enforcement personnel are obligated to violate the Fourth Amendment in order to receive the federal funds they rely upon to provide services, County personnel would subject themselves to personal liability (including punitive damages), and potentially subject the County to municipal liability, under 42 U.S.C. § 1983 and related federal civil rights laws.

iv) The new funding conditions the Executive Order imposes are profoundly coercive to the County. Affecting all federal funds, the conditions go far beyond the potential withdrawal of Medicaid funds, which the Supreme Court described as an unconstitutional "gun to the head" in *NFIB*. As set forth above, the County receives about $1 billion in federal funding per year, amounting to approximately 15% of its total budget. If the President makes good on his threat to strip all of this federal funding away, it would decimate the County's ability to provide basic services, including health care, to its residents. Furthermore, unlike the congressional enactment in *NFIB*, which permitted withdrawal of Medicaid funding if the Secretary of Health and Human Services so decided, the Executive Order here unambiguously requires the Attorney General and the Secretary of Homeland Security to "ensure that jurisdictions" refusing the condition "are not eligible to receive Federal grants." In other words, the conditions the Executive Order imposes are not only broader in scope than the unconstitutional condition Congress imposed in *NFIB*, but they are also mandatory rather than permissive.

132. Because the conditions in the Executive Order would be unconstitutional even if imposed by Congress, it is no defense for the government to argue that Congress may have delegated its Spending Clause authority to the President with respect to some or all of the federal funds at issue. Plainly, Congress cannot delegate a power that it does not possess, so it could not authorize the President to impose an unconstitutional condition on federal spending.

133. The County in no way concedes that any delegation of Congress's power under the Spending Clause is constitutionally permitted, or that Congress actually purported to delegate any spending power to the President with respect to the particular federal programs and funds at issue here. In any event, the conditions imposed by the Executive Order are ones that no branch of the federal government has the power to impose, under settled United States Supreme Court precedent.

134. For all these reasons, and as set forth elsewhere in this Complaint, section 9(a) of the Executive Order is unlawful and unconstitutional because it violates the constitutional separation of powers and the specific constitutional provisions identified herein.

COUNT 2

Violation of the Due Process Clause, Amend. 5 – Void for Vagueness

135. The County incorporates and re-alleges each and every allegation contained above as if fully set forth herein.

136. Under the Fifth Amendment to the United States Constitution, a federal law is unconstitutionally vague if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008).

137. The constitutional vagueness standard applies with full force to executive orders. *See United States v. Soussi*, 316 F.3d 1095, 1101 (10th Cir. 2002). When an executive order contains terms that are not "susceptible of a clear meaning," nor "mitigate the vagueness of the term by supplying any definition," then the provision "lends itself to subjective interpretation" and is unconstitutional. *Humanitarian Law Project v. U.S. Dep't of Treasury*, 463 F. Supp. 2d 1049, 1070 (C.D. Cal. 2006).

138. The Executive Order, which reads more like a slapdash press release than it does a serious expression of federal policy, fails to satisfy this constitutional minimum. It fails to provide fair notice of the conduct it requires from the County.

139. Section 9(a) of the Executive Order fails to define key terms, such as "sanctuary jurisdiction," "Federal grants," "law enforcement purposes," "appropriate enforcement action," and "entity," as well as the all-important phrase "statute, policy, or practice that prevents or hinders the enforcement of Federal law." Executive Order, Sec. 9(a) at 8801. Having such a "practice" subjects a jurisdiction to "enforcement action," which could be draconian in nature. *Id.* What such a practice might be is left undefined, and subject to the executive branch's unbridled discretion.

140. The Executive Order lends itself to subjective interpretation and discriminatory enforcement; indeed, that seems to be its point. The order grants the Secretary of Homeland Security unfettered discretion to designate a state or local government as a "sanctuary jurisdiction" that is "not eligible to receive Federal grants." *Id.* The order likewise grants the Attorney General unfettered discretion to take "appropriate enforcement action" against any "entity" that, in his estimation, violates 8 U.S.C. § 1373, or has a "statute, policy, or practice that prevents or hinders the enforcement of Federal law." *Id.* Such a vast, standardless, and overbroad power invites arbitrary, subjective, and discriminatory enforcement.

141. Other portions of the Executive Order are equally vague. Section 6, for example, requires assessment of "fines and penalties" against not only undocumented persons but also anyone who "facilitate[s] their presence in the United States." *Id.* Sec. 6 at 8800. It is unclear what "facilitate" means in this context, and could apply to County employees who provide undocumented persons with basic, safety-net services, landlords, employers, friends, family, churches or non-profit organizations who assist undocumented persons, or even lawyers who represent undocumented persons in immigration proceedings. Not only does this standardless provision exceed the President's authority by legislating through executive order, but it also encourages and sanctions arbitrary, subjective, and discriminatory enforcement.

142. For all these reasons, and as set forth elsewhere in this Complaint, the Executive Order is unconstitutionally vague in violation of the Fifth Amendment's Due Process Clause.

COUNT 3

Violation of the Due Process Clause, Amend. 5 – Procedural Due Process

143. The County incorporates and re-alleges each and every allegation contained above as if fully set forth herein.

144. Under the Fifth Amendment to the United States Constitution, the federal government may not deprive the County of money or property without "due process of law."

145. The County has a constitutionally protectable property interest in the federal funds it relies on to provide essential services to 1.9 million residents. The County's property interest in those federal funds is established and governed by rules and mutually explicit understandings with the federal government.

146. Section 9(a) of the Executive Order deprives the County of its procedural due process rights under the Fifth Amendment because it grants the Attorney General and Secretary of Homeland Security unfettered discretion to deprive the County of all federal funds, with no opportunity to review, challenge, or even obtain notice that the deprivation is coming.

147. Specifically, the Executive Order grants the Attorney General and Secretary of Homeland Security unfettered discretion to "ensure" that certain jurisdictions "are not eligible to receive Federal grants." Executive Order, Sec. 9(a) at 8801. The order further grants those executive branch officials unfettered discretion to designate a state or local government as a "sanctuary jurisdiction" that may not receive federal funds. *Id.* The order likewise grants the Attorney General unfettered discretion to take "appropriate enforcement action" against any "entity" that, in his estimation, violates 8 U.S.C. § 1373, or has a "statute, policy, or practice that prevents or hinders the enforcement of Federal law." *Id.* The order provides no mechanism by which a state or local government may review, challenge, or even obtain notice that it has been designated a "sanctuary jurisdiction" ineligible for federal funds.

148. Because the Executive Order deprives the County of a cognizable property interest while providing no notice, no pre-deprivation opportunity to be heard, and no post-deprivation opportunity to be heard, it violates the Fifth Amendment's due process clause.

COUNT 4

Violation of the Tenth Amendment

149. The County incorporates and re-alleges each and every allegation contained above as if fully set forth herein.

150. Executive Order Section 9(a) provides that "The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. § 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law." Executive Order, Sec. 9(a) at 8801.

151. The Executive Order requires state and local jurisdictions to affirmatively assist federal immigration officials by, *inter alia*, complying, at their own expense, with ICE detainer requests. By demanding that state and local governments, including the County, imprison individuals subject to removal at the request of federal officials even if those individuals would otherwise be subject to release from County custody, the Executive Order commandeers state and local officials in furtherance of a federal regulatory program in violation of the Tenth Amendment to the United States Constitution.

152. The Executive Order also demands that state and local governments, including the County, take other unspecified actions to avoid "prevent[ing] or hinder[ing]" the federal government in the enforcement of "Federal law" more generally. *Id.* That directive transforms state and local officials into ancillary arms of the federal government, destroying the political accountability that drives our federal system. A more plain violation of the Tenth Amendment is difficult to fathom.

CONCLUSION

153. In Federalist No. 47, James Madison warned of the dangers inherent in "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands," pronouncing it "the very definition of tyranny." The Federalist No. 47 (James Madison). Mindful of the

threat, he continued: "Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system." *Id.* Quoting Montesquieu, Madison focused on the particular dangers posed by an executive that claims for himself the legislative power: "When the legislative and executive powers are united in the same person or body . . . there can be no liberty, because apprehensions may arise lest THE SAME monarch or senate should ENACT tyrannical laws to EXECUTE them in a tyrannical manner." *Id.*

154. Capital lettering notwithstanding, Madison's statement was no tweet. It describes a bedrock notion—the separation of powers—that lies at the very legal heart of our nation. And if the nation, and the Constitution that created it, are to endure, then that principle must yet have force. Executive Order 13768 is unconstitutional, and the courts must declare it so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff County of Santa Clara respectfully requests that this Court enter judgment in its favor, and grant the following relief:

1. A declaration that Section 9 of the Executive Order is unconstitutional and invalid on its face;

2. A declaration that the Section 9 of the Executive Order is unconstitutional and invalid as applied to the policies and practices of the County;

3. A preliminary and permanent injunction enjoining Defendants from enforcing Section 9 of the Executive Order, or taking any other action in furtherance of any withholding or conditioning of federal funds based on the Executive Order;

4. A declaration that Section 6 of the Executive Order is unconstitutional and invalid on its face;

5. A declaration that Section 6 of the Executive Order is unconstitutional and invalid as applied to the policies and practices of the County;

6. A preliminary and permanent injunction enjoining Defendants from taking any action, or exercising any purported authority, against "those who facilitate [an alien's] presence in

the United States" pursuant to Section 6 of the Executive Order;

7. An award to the County of reasonable costs and attorneys' fees; and

8. Such other and further relief that this Court may deem fit and proper.

Respectfully submitted,

Dated: February 3, 2017

OFFICE OF THE COUNTY COUNSEL,
COUNTY OF SANTA CLARA

By:

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Attorneys For Plaintiff COUNTY OF SANTA CLARA

Dated: February 3, 2017

KEKER & VAN NEST LLP

By: /s/ John W. Keker

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EXHIBIT A

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Presidential Documents

Executive Order 13768 of January 25, 2017

Enhancing Public Safety in the Interior of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. *Purpose.* Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. *Policy.* It is the policy of the executive branch to:

(a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;

(b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;

(c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;

(d) Ensure that aliens ordered removed from the United States are promptly removed; and

(e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. *Definitions.* The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. *Enforcement of the Immigration Laws in the Interior of the United States*. In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. *Enforcement Priorities*. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

(a) Have been convicted of any criminal offense;

(b) Have been charged with any criminal offense, where such charge has not been resolved;

(c) Have committed acts that constitute a chargeable criminal offense;

(d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;

(e) Have abused any program related to receipt of public benefits;

(f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or

(g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. *Civil Fines and Penalties*. As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. *Additional Enforcement and Removal Officers*. The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. *Federal-State Agreements*. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. *Sanctuary Jurisdictions.* It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. *Review of Previous Immigration Actions and Policies.* (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. *Department of Justice Prosecutions of Immigration Violators.* The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. *Recalcitrant Countries.* The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. *Office for Victims of Crimes Committed by Removable Aliens.* The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. *Privacy Act.* Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. *Reporting.* Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. *Transparency.* To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. *Personnel Actions.* The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

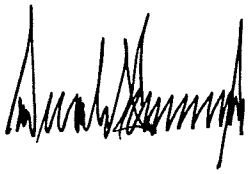
Sec. 18. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 25, 2017.

[FR Doc. 2017–02102
Filed 1–27–17; 11:15 am]
Billing code 3295–F7–P

EXHIBIT B

114TH CONGRESS
1ST SESSION

S. 1640

To amend the Immigration and Nationality Act to improve immigration law enforcement within the interior of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2015

Mr. SESSIONS (for himself, Mr. COTTON, Mr. PERDUE, Mr. VITTER, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend the Immigration and Nationality Act to improve immigration law enforcement within the interior of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. **SHORT TITLE.**

This Act may be cited as the "Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act".

SEC. 2. **TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES

Sec. 101. Definitions and severability.
Sec. 102. Immigration law enforcement by States and localities.
Sec. 103. Listing of immigration violators in the national crime information center database.
Sec. 104. Technology access.
Sec. 105. State and local law enforcement provision of information about apprehended aliens.
Sec. 106. Financial assistance to State and local police agencies that assist in the enforcement of immigration laws.
Sec. 107. Increased Federal detention space.
Sec. 108. Federal custody of inadmissible and deportable aliens in the United States apprehended by State or local law enforcement.
Sec. 109. Training of State and local law enforcement personnel relating to the enforcement of immigration laws.
Sec. 110. Immunity.
Sec. 111. Criminal alien identification program.
Sec. 112. Clarification of congressional intent.
Sec. 113. State criminal alien assistance program (SCAAP).
Sec. 114. State violations of enforcement of immigration laws.
Sec. 115. Clarifying the authority of ICE detainers.

TITLE II—NATIONAL SECURITY

Sec. 201. Removal of, and denial of benefits to, terrorist aliens.
Sec. 202. Terrorist bar to good moral character.
Sec. 203. Terrorist bar to naturalization.
Sec. 204. Denaturalization for terrorists.
Sec. 205. Use of 1986 IRCA legalization information for national security purposes.
Sec. 206. Background and security checks.
Sec. 207. Technical amendments relating to the Intelligence Reform and Terrorism Prevention Act of 2004.

TITLE III—REMOVAL OF CRIMINAL ALIENS

Sec. 301. Definition of aggravated felony.
Sec. 302. Precluding admissibility of aliens convicted of aggravated felonies or other serious offenses.
Sec. 303. Espionage clarification.
Sec. 304. Prohibition of the sale of firearms to, or the possession of firearms by, certain aliens.
Sec. 305. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.
Sec. 306. Conforming amendment to the definition of racketeering activity.
Sec. 307. Conforming amendments for the aggravated felony definition.
Sec. 308. Precluding refugee or asylee adjustment of status for aggravated felons.
Sec. 309. Precluding withholding of removal for aggravated felons.
Sec. 310. Inadmissibility and deportability of drunk drivers.
Sec. 311. Detention of dangerous aliens.
Sec. 312. Grounds of inadmissibility and deportability for alien gang members.
Sec. 313. Extension of identity theft offenses.
Sec. 314. Laundering of monetary instruments.
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TITLE I—IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES

SEC. 101. **DEFINITIONS AND SEVERABILITY.**

(a) STATE DEFINED.—For the purposes of this title, the term "State" has the meaning given to such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(b) SECRETARY DEFINED.—For the purpose of this title, the term "Secretary" means the Secretary of Homeland Security.

(c) SEVERABILITY.—If any provision of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of this title, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

SEC. 102. **IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES.**

(a) IN GENERAL.—Subject to section 274A(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(2)), States, or political subdivisions of States, may enact, implement and enforce criminal penalties that penalize the same conduct that is prohibited in the criminal provisions of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))), as long as the criminal penalties do not exceed the relevant Federal criminal penalties (without regard to ancillary issues such as the availability of probation or pardon). States, or political subdivisions of States, may enact, implement and enforce civil penalties that penalize the same conduct that is prohibited in the civil provisions of immigration laws (as defined in such section 101(a)(17)), as long as the civil penalties do not exceed the relevant Federal civil penalties.

(b) LAW ENFORCEMENT PERSONNEL.—Subject to section 274A(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(2)), law enforcement personnel of a State, or of a political subdivision of a State, may investigate, identify, apprehend, arrest, detain, or transfer to Federal custody aliens for the purposes of enforcing the immigration laws of the United States to the same extent as Federal law enforcement personnel. Law enforcement personnel of a State, or of a political subdivision of a State, may also investigate, identify, apprehend, arrest, or detain aliens for the purposes of enforcing the immigration laws of a State or of a political subdivision of State, as long as those immigration laws are permissible under this section. Law enforcement personnel of a State, or of a political subdivision of a State, may not admit aliens to or remove them from the United States.

SEC. 103. **LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.**

(a) PROVISION OF INFORMATION TO THE NCIC.—Not later than 180 days after the date of the enactment of this Act and periodically thereafter as updates may

require, the Secretary shall provide the National Crime Information Center of the Department of Justice with all information that the Secretary may possess regarding any alien against whom a final order of removal has been issued, any alien who has entered into a voluntary departure agreement, any alien who has overstayed their authorized period of stay, and any alien whose visa has been revoked. The National Crime Information Center shall enter such information into the Immigration Violators File of the National Crime Information Center database, regardless of whether—

(1) the alien received notice of a final order of removal;

(2) the alien has already been removed; or

(3) sufficient identifying information is available with respect to the alien.

(b) INCLUSION OF INFORMATION IN THE NCIC DATABASE.—

(1) IN GENERAL.—Section 534(a) of title 28, United States Code, is amended—

(A) in paragraph (3), by striking "and" at the end;

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

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

"(4) acquire, collect, classify, and preserve records of violations by aliens of the immigration laws of the United States, regardless of whether any such alien has received notice of the violation or whether sufficient identifying information is available with respect to any such alien or whether any such alien has already been removed from the United States; and".

(2) EFFECTIVE DATE.—The Attorney General and the Secretary shall ensure that the amendment made by paragraph (1) is implemented by not later than 6 months after the date of the enactment of this Act.

SEC. 104. **TECHNOLOGY ACCESS.**

States shall have access to Federal programs or technology directed broadly at identifying inadmissible or deportable aliens.

SEC. 105. **STATE AND LOCAL LAW ENFORCEMENT PROVISION OF INFORMATION ABOUT APPREHENDED ALIENS.**

(a) PROVISION OF INFORMATION.—In compliance with section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C.

1373) and section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644), each State, and each political subdivision of a State, shall provide the Secretary of Homeland Security in a timely manner with the information specified in subsection (b) with respect to each alien apprehended in the jurisdiction of the State, or in the political subdivision of the State, who is believed to be inadmissible or deportable.

(b) INFORMATION REQUIRED.—The information referred to in subsection (a) is as follows:

(1) The alien's name.

(2) The alien's address or place of residence.

(3) A physical description of the alien.

(4) The date, time, and location of the encounter with the alien and reason for stopping, detaining, apprehending, or arresting the alien.

(5) If applicable, the alien's driver's license number and the State of issuance of such license.

(6) If applicable, the type of any other identification document issued to the alien, any designation number contained on the identification document, and the issuing entity for the identification document.

(7) If applicable, the license plate number, make, and model of any automobile registered to, or driven by, the alien.

(8) A photo of the alien, if available or readily obtainable.

(9) The alien's fingerprints, if available or readily obtainable.

(10) If applicable, the phone number and email address pertaining to the alien.

(c) ANNUAL REPORT ON REPORTING.—The Secretary shall maintain and annually submit to the Congress a detailed report listing the States, or the political subdivisions of States, that have provided information under subsection (a) in the preceding year.

(d) REIMBURSEMENT.—The Secretary shall reimburse States, and political subdivisions of a State, for all reasonable costs, as determined by the Secretary, incurred by the State, or the political subdivision of a State, as a result of providing information under subsection (a).

(e) CONSTRUCTION.—Nothing in this section shall require law enforcement officials of a State, or of a political subdivision of a State, to provide the Secretary with information related to a victim of a crime or witness to a criminal offense.

(f) EFFECTIVE DATE.—This section shall take effect on the date that is 120 days after the date of the enactment of this Act and shall apply with respect to aliens apprehended on or after such date.

SEC. 106. **FINANCIAL ASSISTANCE TO STATE AND LOCAL POLICE AGENCIES THAT ASSIST IN THE ENFORCEMENT OF IMMIGRATION LAWS.**

(a) GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING AND PROCESSING CERTAIN ALIENS.—From amounts made available to make grants under this section, the Secretary shall make grants to States, and to political subdivisions of States, for procurement of equipment, technology, facilities, and other products that facilitate and are directly related to investigating, apprehending, arresting, detaining, or transporting aliens who are inadmissible or deportable, including additional administrative costs incurred under this title.

(b) ELIGIBILITY.—To be eligible to receive a grant under this section, a State, or a political subdivision of a State, must have the authority to, and shall have a written policy and a practice to, assist in the enforcement of the immigration laws of the United States in the course of carrying out the routine law enforcement duties of such State or political subdivision of a State. Entities covered under this section may not have any policy or practice that prevents local law enforcement from inquiring about a suspect's immigration status.

(c) GAO AUDIT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an audit of funds distributed to States, and to political subdivisions of a State, under subsection (a).

SEC. 107. **INCREASED FEDERAL DETENTION SPACE.**

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(1) IN GENERAL.—The Secretary shall construct or acquire, in addition to existing facilities for the detention of aliens, detention facilities in the United States, for aliens detained pending removal from the United States or a decision regarding such removal. Each facility shall have a number of beds necessary to effectuate the purposes of this title.

(2) DETERMINATIONS.—The location of any detention facility built or acquired in accordance with this subsection shall be determined by the Secretary.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 241(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1231(g)(1)) is amended by striking "may expend" and inserting "shall expend".

SEC. 108. **FEDERAL CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS IN THE UNITED STATES APPREHENDED BY STATE OR LOCAL LAW ENFORCEMENT.**

(a) STATE APPREHENSION.—

(1) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by inserting after section 240C the following:

"CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS PRESENT IN THE UNITED STATES

"SEC. 240D. (a) TRANSFER OF CUSTODY BY STATE AND LOCAL OFFICIALS.—If a State, or a political subdivision of the State, exercising authority with respect to the apprehension or arrest of an inadmissible or deportable alien submits to the Secretary of Homeland Security a request that the alien be taken into Federal custody, notwithstanding any other provision of law, regulation, or policy the Secretary shall—

"(1) request that the relevant State or local law enforcement agency temporarily hold the alien in their custody or transport the alien for transfer to Federal custody; and

"(2) if the State or local law enforcement agency is unable to transport the alien for transfer to Federal custody, take the alien into custody not later than 48 hours (excluding Saturdays, Sundays, and holidays) after the alien's release from the custody of the State or political subdivision of the State.

"(b) POLICY ON DETENTION IN FEDERAL, CONTRACT, STATE, OR LOCAL DETENTION FACILITIES.—In carrying out section 241(g)(1), the Attorney General or Secretary of Homeland Security shall ensure that an alien arrested under this title shall be held in custody, pending the alien's examination under this section, in a Federal, contract, State, or local prison, jail, detention center, or other comparable facility. Notwithstanding any other provision of law, regulation or policy, such facility is adequate for detention, if—

"(1) such a facility is the most suitably located Federal, contract, State, or local facility available for such purpose under the circumstances;

"(2) an appropriate arrangement for such use of the facility can be made; and

"(3) the facility satisfies the standards for the housing, care, and security of persons held in custody by a United States Marshal.

"(c) REIMBURSEMENT.—The Secretary of Homeland Security shall reimburse a State, and a political subdivision of a State, for all reasonable expenses, as determined by the Secretary, incurred by the State, or political subdivision, as a result of the incarceration and transportation of an alien who is inadmissible or deportable as described in subsections (a) and (b). Compensation provided for costs incurred under such subsections shall be the average cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State, or of a political subdivision of a State, plus the cost of transporting the alien from the point of apprehension to the place of detention, and to the custody transfer point if the place of detention and place of custody are different.

"(d) SECURE FACILITIES.—The Secretary of Homeland Security shall ensure that aliens incarcerated pursuant to this title are held in facilities that provide an appropriate level of security.

"(e) TRANSFER.—

"(1) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transfer of apprehended aliens from the custody of States, and political subdivisions of a State, to Federal custody.

"(2) CONTRACTS.—The Secretary may enter into contracts, including appropriate private contracts, to implement this subsection.".

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 240C the following new item:

"Sec. 240D. Custody of inadmissible and deportable aliens present in the United States.".

(b) GAO AUDIT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an audit of compensation to States, and to political subdivisions of a State, for the incarceration of inadmissible or deportable aliens under section 240D(a) of the Immigration and Nationality Act (as added by subsection (a)(1)).

(c) EFFECTIVE DATE.—Section 240D of the Immigration and Nationality Act, as added by subsection (a), shall take effect on the date of the enactment of this Act, except that subsection (e) of such section shall take effect on the date that is 120 day after the date of the enactment of this Act.

SEC. 109. **TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.**

(a) ESTABLISHMENT OF TRAINING MANUAL AND POCKET GUIDE.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish—

(1) a training manual for law enforcement personnel of a State, or of a political subdivision of a State, to train such personnel in the investigation, identification, apprehension, arrest, detention, and transfer to Federal custody of inadmissible and deportable aliens in the United States (including the transportation of such aliens across State lines to detention centers and the identification of fraudulent documents); and

(2) an immigration enforcement pocket guide for law enforcement personnel of a State, or of a political subdivision of a State, to provide a quick reference for such personnel in the course of duty.

(b) AVAILABILITY.—The training manual and pocket guide established in accordance with subsection (a) shall be made available to all State and local law enforcement personnel.

(c) APPLICABILITY.—Nothing in this section shall be construed to require State or local law enforcement personnel to carry the training manual or pocket guide with them while on duty.

(d) COSTS.—The Secretary shall be responsible for any costs incurred in establishing the training manual and pocket guide.

(e) TRAINING FLEXIBILITY.—

(1) IN GENERAL.—The Secretary shall make training of State and local law enforcement officers available through as many means as possible, including through residential training at the Center for Domestic Preparedness, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display (DVD) of a training course or courses. E-learning through a secure, encrypted distributed learning system that has all its servers based in the United States, is scalable, survivable, and can have a portal in place not later than 30 days after the date of the enactment of this Act, shall be made available by the Federal Law Enforcement Training Center Distributed Learning Program for State and local law enforcement personnel.

(2) FEDERAL PERSONNEL TRAINING.—The training of State and local law enforcement personnel under this section shall not displace the training of

Federal personnel.

(3) CLARIFICATION.—Nothing in this title or any other provision of law shall be construed as making any immigration-related training a requirement for, or prerequisite to, any State or local law enforcement officer to assist in the enforcement of Federal immigration laws.

(4) PRIORITY.—In carrying out this subsection, priority funding shall be given for existing web-based immigration enforcement training systems.

SEC. 110. **IMMUNITY.**

Notwithstanding any other provision of law, a law enforcement officer of a State or local law enforcement agency who is acting within the scope of the officer's official duties shall be immune, to the same extent as a Federal law enforcement officer, from personal liability arising out of the performance of any duty described in this title, including the authorities to investigate, identify, apprehend, arrest, detain, or transfer to Federal custody, an alien for the purposes of enforcing the immigration laws of the United States (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) or the immigration laws of a State or a political subdivision of a State.

SEC. 111. **CRIMINAL ALIEN IDENTIFICATION PROGRAM.**

(a) CONTINUATION AND EXPANSION.—

(1) IN GENERAL.—The Secretary shall continue to operate and implement a program that—

(A) identifies removable criminal aliens in Federal and State correctional facilities;

(B) ensures such aliens are not released into the community; and

(C) removes such aliens from the United States after the completion of their sentences.

(2) EXPANSION.—The program shall be extended to all States. Any State that receives Federal funds for the incarceration of criminal aliens (pursuant to the State Criminal Alien Assistance Program authorized under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) or other similar program) shall—

(A) cooperate with officials of the program;

(B) expeditiously and systematically identify criminal aliens in its prison and jail populations; and

(C) promptly convey such information to officials of such program as a condition of receiving such funds.

(b) AUTHORIZATION FOR DETENTION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.—Law enforcement officers of a State, or of a political subdivision of a State, are authorized to—

(1) hold a criminal alien for a period of up to 48 hours (excluding Saturdays, Sundays, and holidays) after the alien has completed the alien's sentence under State or local law in order to effectuate the transfer of the alien to Federal custody when the alien is inadmissible or deportable; or

(2) issue a detainer that would allow aliens who have served a prison sentence under State or local law to be detained by the State or local prison or jail until the Secretary can take the alien into custody.

(c) TECHNOLOGY USAGE.—Technology, such as video conferencing, shall be used to the maximum extent practicable in order to make the program available in remote locations. Mobile access to Federal databases of aliens and live scan technology shall be used to the maximum extent practicable in order to make these resources available to State and local law enforcement agencies in remote locations.

(d) EFFECTIVE DATE.—This section shall take effect of the date of the enactment of this Act, except that subsection (a)(2) shall take effect on the date that is 180 days after such date.

SEC. 112. **CLARIFICATION OF CONGRESSIONAL INTENT.**

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

(1) in paragraph (1) by striking "may enter" and all that follows through the period at the end and inserting the following: "shall enter into a written agreement with a State, or any political subdivision of a State, upon request of the State or political subdivision, pursuant to which an officer or employee of the State or subdivision, who is determined by the Secretary to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to extent consistent with State and local law. No request from a bona fide State or political subdivision or bona fide law enforcement agency shall be denied

absent a compelling reason. No limit on the number of agreements under this subsection may be imposed. The Secretary shall process requests for such agreements with all due haste, and in no case shall take not more than 90 days from the date the request is made until the agreement is consummated.";

(2) by redesignating paragraph (2) as paragraph (5) and paragraphs (3) through (10) as paragraphs (7) through (14), respectively;

(3) by inserting after paragraph (1) the following:

"(2) An agreement under this subsection shall accommodate a requesting State or political subdivision with respect to the enforcement model or combination of models, and shall accommodate a patrol model, task force model, jail model, any combination thereof, or any other reasonable model the State or political subdivision believes is best suited to the immigration enforcement needs of its jurisdiction.

"(3) No Federal program or technology directed broadly at identifying inadmissible or deportable aliens shall substitute for such agreements, including those establishing a jail model, and shall operate in addition to any agreement under this subsection.

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

"(B)(i) The Secretary shall provide a State or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination, and the notice shall fully explain the grounds for termination, along with providing evidence substantiating the Secretary's allegations.

"(ii) The State or political subdivision shall have a cause of action against the Secretary in a United States District Court within the State regarding the termination of the agreement, and if the ruling is against the State or political subdivision, to appeal the ruling to the Federal Circuit Court of Appeals and, if the ruling is against the State or political subdivision, to the Supreme Court.

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

(4) by inserting after paragraph (5) (as redesignated) the following:

"(6) The Secretary of Homeland Security shall make training of State and local law enforcement officers available through as many means as possible, including through residential training at the Center for Domestic Preparedness and the Federal Law Enforcement Training Center, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and

videotape, or the digital video display (DVD) of a training course or courses. Distance learning through a secure, encrypted distributed learning system that has all its servers based in the United States, is scalable, survivable, and can have a portal in place not later than 30 days after the date of the enactment of this Act, shall be made available by the COPS Office of the Department of Justice and the Federal Law Enforcement Training Center Distributed Learning Program for State and local law enforcement personnel. Preference shall be given to private sector-based web-based immigration enforcement training programs for which the Federal Government has already provided support to develop.”.

SEC. 113. **STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP).**

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

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

(2) by striking “Attorney General” each place such term appears thereafter and inserting “Secretary”; and

(3) in paragraph (3)(A), by inserting “charged with or” before “convicted”.

SEC. 114. **STATE VIOLATIONS OF ENFORCEMENT OF IMMIGRATION LAWS.**

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

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

(2) in subsection (a), by striking “may” and inserting “shall”;

(3) in subsection (b)—

(A) by striking “no person or agency may ” and inserting “a person or agency shall not”;

(B) by striking “doing any of the following with respect to information” and inserting “undertaking any of the following law enforcement activities”; and

(C) by striking paragraphs (1) through (3) and inserting the following:

"(1) Notifying the Federal Government regarding the presence of inadmissible and deportable aliens who are encountered by law enforcement personnel of a State or political subdivision of a State.

"(2) Complying with requests for information from Federal law enforcement.

"(3) Issuing policies in the form of a resolutions, ordinances, administrative actions, general or special orders, or departmental policies that violate Federal law or restrict a State or political subdivision of a State from complying with Federal law or coordinating with Federal law enforcement."; and

(4) by adding at the end the following:

"(d) COMPLIANCE.—

"(1) IN GENERAL.—A State, or a political subdivision of a State, that has in effect a statute, policy, or practice that prohibits law enforcement officers of the State, or of a political subdivision of the State, from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers' routine law enforcement duties shall not be eligible to receive—

"(A) any of the funds that would otherwise be allocated to the State or political subdivision under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) or the 'Cops on the Beat' program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.); or

"(B) any other law enforcement or Department of Homeland Security grant.

"(2) ANNUAL DETERMINATION.—The Secretary shall determine annually which State or political subdivision of a State are not in compliance with this section and shall report such determinations to Congress on March 1 of each year.

"(3) REPORTS.—The Attorney General shall issue a report concerning the compliance of any particular State or political subdivision at the request of the House or Senate Judiciary Committee. Any jurisdiction that is found to be out of compliance shall be ineligible to receive Federal financial assistance as provided in paragraph (1) for a minimum period of 1 year, and shall only become eligible again after the Attorney General certifies that the jurisdiction is in compliance.

"(4) REALLOCATION.—Any funds that are not allocated to a State or to a political subdivision of a State, due to the failure of the State, or of the political subdivision of the State, to comply with subsection (c) shall be reallocated to States, or to political subdivisions of States, that comply with such subsection.

"(e) CONSTRUCTION.—Nothing in this section shall require law enforcement officials from States, or from political subdivisions of States, to report or arrest victims or witnesses of a criminal offense.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, except that subsection (d) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373), as added by this section, shall take effect beginning one year after the date of the enactment of this Act.

SEC. 115. **CLARIFYING THE AUTHORITY OF ICE DETAINERS.**

(a) IN GENERAL.—Except as otherwise provided by Federal law or rule of procedure, the Secretary of Homeland Security shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute the Secretary's duties.

(b) STATE AND LOCAL COOPERATION WITH DHS DETAINERS.—A State, or a political subdivision of a State, that has in effect a statute or policy or practice providing that it not comply with any Department of Homeland Security detainer ordering that it temporarily hold an alien in their custody so that the alien may be taken into Federal custody, or transport the alien for transfer to Federal custody, shall not be eligible to receive—

(1) any of the funds that would otherwise be allocated to the State or political subdivision under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) or the "Cops on the Beat" program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.); or

(2) any other law enforcement or Department of Homeland Security grant.

(c) IMMUNITY.—A State or a political subdivision of a State acting in compliance with a Department of Homeland Security detainer who temporarily holds aliens in its custody so that they may be taken into Federal custody, or transports the aliens for transfer to Federal custody, shall be considered to be acting under color of Federal authority for purposes of determining its liability, and immunity from suit, in civil actions brought by the aliens under Federal or State law.

(d) PROBABLE CAUSE.—It is the sense of Congress that the Department of Homeland Security has probable cause to believe that an alien is inadmissible or deportable when it issues a detainer regarding such alien under the standards in place on the date of introduction of this Act.

TITLE II—NATIONAL SECURITY

SEC. 201. **REMOVAL OF, AND DENIAL OF BENEFITS TO, TERRORIST ALIENS.**

(a) ASYLUM.—Section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)) is amended—

(1) by inserting "or the Secretary of Homeland Security" after "if the Attorney General"; and

(2) by amending clause (v) to read as follows:

"(v) the alien is described in subparagraph (B)(i) or (F) of section 212(a)(3), unless, in the case of an alien described in subparagraph (IV) of section 212(a)(3)(B)(i), the Secretary of Homeland Security or the Attorney General determines, in the discretion of the Secretary or the Attorney General, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or".

(b) CANCELLATION OF REMOVAL.—Section 240A(c)(4) of such Act (8 U.S.C. 1229b(c)(4)) is amended—

(1) by striking "inadmissible under" and inserting "described in"; and

(2) by striking "deportable under" and inserting "described in".

(c) VOLUNTARY DEPARTURE.—Section 240B(b)(1)(C) of such Act (8 U.S.C. 1229c(b)(1)(C)) is amended by striking "deportable under section 237(a)(2)(A)(iii) or section 237(a)(4);" and inserting "described in paragraph (2)(A)(iii) or (4) of section 237(a);".

(d) RESTRICTION ON REMOVAL.—Section 241(b)(3)(B) of such Act (8 U.S.C. 1231(b)(3)(B)) is amended—

(1) in the matter preceding clause (i), by inserting "or the Secretary of Homeland Security" after "Attorney General" each place it appears;

(2) in clause (iii), by striking "or" at the end;

(3) in clause (iv), by striking the period at the end and inserting a semicolon;

(4) by striking the flush matter that follows after clause (iv); and

(5) by inserting after clause (iv) the following:

"(v) the alien is described in subparagraph (B)(i) or (F) of section 212(a)(3); or".

(e) RECORD OF ADMISSION.—

(1) IN GENERAL.—Section 249 of such Act (8 U.S.C. 1259) is amended to read as follows:

"RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JANUARY 1, 1972

"SEC. 249. The Secretary of Homeland Security, in the discretion of the Secretary and under such regulations as the Secretary may prescribe, may enter a record of lawful admission for permanent residence in the case of any alien, if no such record is otherwise available and the alien—

"(1) entered the United States before January 1, 1972;

"(2) has continuously resided in the United States since such entry;

"(3) has been a person of good moral character since such entry;

"(4) is not ineligible for citizenship;

"(5) is not described in paragraph (1)(A)(iv), (2), (3), (6)(C), (6)(E), or (8) of section 212(a); and

"(6) did not, at any time, without reasonable cause fail or refuse to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability.

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by amending the item relating to section 249 to read as follows:

"Sec. 249. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to January 1, 1972.".

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and sections 208(b)(2)(A), 212(a), 240A, 240B, 241(b)(3), and 249 of the Immigration and Nationality Act, as so amended, shall apply to—

(1) all aliens in removal, deportation, or exclusion proceedings;

(2) all applications pending on, or filed after, the date of the enactment of this Act; and

(3) with respect to aliens and applications described in paragraph (1) or (2) of this subsection, acts and conditions constituting a ground for exclusion, deportation, or removal occurring or existing before, on, or after the date of the enactment of this Act.

SEC. 202. **TERRORIST BAR TO GOOD MORAL CHARACTER.**

(a) DEFINITION OF GOOD MORAL CHARACTER.—Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended—

(1) in the matter preceding paragraph (1), by striking "who, during the period for which good moral character is required to be established, is," and inserting "who is";

(2) by inserting after paragraph (1) the following:

"(2) one who the Secretary of Homeland Security or Attorney General determines to have been at any time an alien described in section 212(a)(3) or 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information;";

(3) in paragraph (8), by striking "subsection (a)(43));" and inserting "subsection (a)(43)), regardless whether the crime was classified as an aggravated felony at the time of conviction;"; and

(4) in the matter following paragraph (9), by striking the first sentence and inserting the following: "The fact that any person is not within any of the foregoing classes shall not preclude a discretionary finding for other reasons that such a person is or was not of good moral character. The Secretary or the Attorney General shall not be limited to the applicant's conduct during the period for which good moral character is required, but may take into consideration as a basis for determination the applicant's conduct and acts at any time.".

(b) AGGRAVATED FELONS.—Section 509(b) of the Immigration Act of 1990 (8 U.S.C. 1101 note) is amended to read as follows:

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on November 29, 1990, and shall apply to convictions occurring before, on or after such date.".

(c) TECHNICAL CORRECTION TO THE INTELLIGENCE REFORM ACT.—Section 5504(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is amended by striking "adding at the end" and inserting "inserting after paragraph (8)".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of enactment of this Act, shall apply to any act that occurred before, on, or after such date and shall apply to any application for naturalization or any other benefit or relief, or any other case or matter under the immigration laws pending on or filed after such date. The amendments made by subsection (c) shall take effect as if enacted in the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458).

SEC. 203. **TERRORIST BAR TO NATURALIZATION.**

(a) NATURALIZATION OF PERSONS ENDANGERING THE NATIONAL SECURITY.—Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end the following:

"(g) PERSONS ENDANGERING THE NATIONAL SECURITY.—No person shall be naturalized who the Secretary of Homeland Security determines to have been at any time an alien described in section 212(a)(3) or 237(a)(4). Such determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information.".

(b) CONCURRENT NATURALIZATION AND REMOVAL PROCEEDINGS.—Section 318 of the Immigration and Nationality Act (8 U.S.C. 1429) is amended by striking "other Act;" and inserting "other Act; and no application for naturalization shall be considered by the Secretary of Homeland Security or any court if there is pending against the applicant any removal proceeding or other proceeding to determine the applicant's inadmissibility or deportability, or to determine whether the applicant's lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced: *Provided*, That the findings of the Attorney General in terminating removal proceedings or in canceling the removal of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the Secretary of Homeland Security with respect to the question of whether such person has established his eligibility for naturalization as required by this title;".

(c) PENDING DENATURALIZATION OR REMOVAL PROCEEDINGS.—Section 204(b) of the Immigration and Nationality Act (8 U.S.C. 1154(b)) is amended by adding at the end the following: "No petition shall be approved pursuant to this

section if there is any administrative or judicial proceeding (whether civil or criminal) pending against the petitioner that could (whether directly or indirectly) result in the petitioner's denaturalization or the loss of the petitioner's lawful permanent resident status.".

(d) CONDITIONAL PERMANENT RESIDENTS.—Sections 216(e) and section 216A(e) of the Immigration and Nationality Act (8 U.S.C. 1186a(e) and 1186b(e)) are each amended by striking the period at the end and inserting ", if the alien has had the conditional basis removed pursuant to this section.".

(e) DISTRICT COURT JURISDICTION.—Subsection 336(b) of the Immigration and Nationality Act (8 U.S.C. 1447(b)) is amended to read as follows:

"(b) If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period after the date on which the Secretary of Homeland Security completes all examinations and interviews conducted under such section, as such terms are defined by the Secretary of Homeland Security pursuant to regulations, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. Such court shall only have jurisdiction to review the basis for delay and remand the matter to the Secretary of Homeland Security for the Secretary's determination on the application.".

(f) CONFORMING AMENDMENT.—Section 310(c) of the Immigration and Nationality Act (8 U.S.C. 1421(c)) is amended—

(1) by inserting ", not later than the date that is 120 days after the Secretary of Homeland Security's final determination," after "seek"; and

(2) by striking the second sentence and inserting the following: "The burden shall be upon the petitioner to show that the Secretary's denial of the application was not supported by facially legitimate and bona fide reasons. Except in a proceeding under section 340, notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to determine, or to review a determination of the Secretary made at any time regarding, whether, for purposes of an application for naturalization, an alien is a person of good moral character, whether the alien understands and is attached to the principles of the Constitution of the United States, or whether an alien is well disposed to the good order and happiness of the United States.".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, shall apply to any act that occurred before, on, or after such date, and shall apply to any application for naturalization or any other case or matter under the immigration laws pending on, or filed after, such date.

SEC. 204. **DENATURALIZATION FOR TERRORISTS.**

(a) IN GENERAL.—Section 340 of the Immigration and Nationality Act is amended—

(1) by redesignating subsections (f) through (h) as subsections (g) through (i), respectively; and

(2) by inserting after subsection (e) the following:

"(f)(1) If a person who has been naturalized participates in any act described in paragraph (2), the Attorney General is authorized to find that, as of the date of such naturalization, such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and upon such finding shall set aside the order admitting such person to citizenship and cancel the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

"(2) The acts described in this paragraph are the following:

"(A) Any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.

"(B) Engaging in a terrorist activity (as defined in clauses (iii) and (iv) of section 212(a)(3)(B)).

"(C) Incitement of terrorist activity under circumstances indicating an intention to cause death or serious bodily harm.

"(D) Receiving military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in section 212(a)(3)(B)(vi))."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts that occur on or after such date.

SEC. 205. **USE OF 1986 IRCA LEGALIZATION INFORMATION FOR NATIONAL SECURITY PURPOSES.**

(a) SPECIAL AGRICULTURAL WORKERS.—Section 210(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1160(b)(6)) is amended—

(1) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security";

(2) in subparagraph (A), by striking "Department of Justice," and inserting "Department of Homeland Security,";

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively;

(4) by inserting after subparagraph (B) the following:

"(C) AUTHORIZED DISCLOSURES.—

"(i) CENSUS PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed under section 8 of title 13, United States Code.

"(ii) NATIONAL SECURITY PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing, use, publication, or release of information furnished under this section in any investigation, case, or matter, or for any purpose, relating to terrorism, national intelligence or the national security."; and

(5) in subparagraph (D), as redesignated, by striking "Service" and inserting "Department of Homeland Security".

(b) ADJUSTMENT OF STATUS UNDER THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.—Section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5)), is amended—

(1) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security";

(2) in subparagraph (A), by striking "Department of Justice," and inserting "Department of Homeland Security,";

(3) by amending subparagraph (C) to read as follows:

"(C) AUTHORIZED DISCLOSURES.—

"(i) CENSUS PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed under section 8 of title 13, United States Code.

"(ii) NATIONAL SECURITY PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing, use, publication, or release of information furnished under this section in any investigation, case, or matter, or for any purpose, relating to terrorism, national intelligence or the national security."; and

(4) in subparagraph (D)(i), striking "Service" and inserting "Department of Homeland Security".

SEC. 206. **BACKGROUND AND SECURITY CHECKS.**

(a) REQUIREMENT TO COMPLETE BACKGROUND AND SECURITY CHECKS.—Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following:

"(h) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security, the Attorney General, nor any court may—

"(1) grant, or order the grant of or adjudication of an application for adjustment of status to that of an alien lawfully admitted for permanent residence;

"(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws;

"(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition; or

"(4) issue or order the issuance of any documentation evidencing or related to any such grant, until such background and security checks as the Secretary may in his discretion require have been completed or updated to the satisfaction of the Secretary.

"(i) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security nor the Attorney General may be required to—

"(1) grant, or order the grant of or adjudication of an application for adjustment of status to that of an alien lawfully admitted for permanent residence,

"(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws,

"(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition, or

"(4) issue or order the issuance of any documentation evidencing or related to any such grant, until any suspected or alleged materially false information, material misrepresentation or omission, concealment of a material fact, fraud or forgery, counterfeiting, or alteration, or falsification of a document, as determined by the Secretary, relating to the adjudication of an application or petition for any status (including the granting of adjustment of status), relief, protection from removal, or other benefit under this subsection has been investigated and resolved to the Secretary's satisfaction.

"(j) Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to require any of the acts in subsection (h) or (i) to be completed by a certain time or award any relief for failure to complete or delay in completing such acts.".

(b) CONSTRUCTION.—

(1) IN GENERAL.—Chapter 4 of title III of the Immigration and Nationality Act (8 U.S.C. 1501 et seq.) is amended by adding at the end the following:

"CONSTRUCTION

"SEC. 362. (a) IN GENERAL.—Nothing in this Act or any other law, except as provided in subsection (d), shall be construed to require the Secretary of Homeland Security, the Attorney General, the Secretary of State, the Secretary of Labor, or a consular officer to grant any application, approve any petition, or grant or continue

any relief, protection from removal, employment authorization, or any other status or benefit under the immigration laws by, to, or on behalf of—

"(1) any alien deemed by the Secretary to be described in section 212(a)(3) or section 237(a)(4); or

"(2) any alien with respect to whom a criminal or other proceeding or investigation is open or pending (including, but not limited to, issuance of an arrest warrant, detainer, or indictment), where such proceeding or investigation is deemed by the official described in subsection (a) to be material to the alien's eligibility for the status or benefit sought.

"(b) DENIAL OR WITHHOLDING OF ADJUDICATION.—An official described in subsection (a) may, in the discretion of the official, deny (with respect to an alien described in paragraph (1) or (2) of subsection (a)) or withhold adjudication of pending resolution of the investigation or case (with respect to an alien described in subsection (a)(2) of this section) any application, petition, relief, protection from removal, employment authorization, status or benefit.

"(c) JURISDICTION.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to review a decision to deny or withhold adjudication pursuant to subsection (b) of this section.

"(d) WITHHOLDING OF REMOVAL AND TORTURE CONVENTION.—This section does not limit or modify the applicability of section 241(b)(3) or the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277) with respect to an alien otherwise eligible for protection under such provisions.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 361 the following:

"Sec. 362. Construction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to applications for immigration benefits pending on or after such date.

SEC. 207. **TECHNICAL AMENDMENTS RELATING TO THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.**

(a) TRANSIT WITHOUT VISA PROGRAM.—Section 7209(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1185 note) is amended by striking "the Secretary, in conjunction with the Secretary of Homeland Security," and inserting "the Secretary of Homeland Security, in consultation with the Secretary of State,".

(b) TECHNOLOGY ACQUISITION AND DISSEMINATION PLAN.—Section 7201(c)(1) of such Act is amended by inserting "and the Department of State" after "used by the Department of Homeland Security".

TITLE III—REMOVAL OF CRIMINAL ALIENS

SEC. 301. **DEFINITION OF AGGRAVATED FELONY.**

(a) DEFINITION OF AGGRAVATED FELONY.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—

(1) by striking "The term 'aggravated felony' means—" and inserting "Notwithstanding any other provision of law, the term 'aggravated felony' applies to an offense described in this paragraph, whether in violation of Federal or State law, or in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, even if the length of the term of imprisonment for the offense is based on recidivist or other enhancements and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—";

(2) in subparagraph (A), by striking "murder, rape, or sexual abuse of a minor;" and inserting "an offense relating to murder, manslaughter, homicide, rape (whether the victim was conscious or unconscious), or any offense of a sexual nature involving a victim under the age of 18 years;";

(3) in subparagraph (B), by inserting "an offense relating to" before "illicit trafficking";

(4) in subparagraph (C), by inserting "an offense relating to" before "illicit trafficking in firearms";

(5) in subparagraph (F), by inserting "an offense relating to" before "a crime of violence";

(6) in subparagraph (G), by striking "a theft offense (including receipt of stolen property) or a burglary offense" and inserting "an offense relating to theft (including receipt of stolen property) or burglary";

(7) in subparagraph (I), by striking "or 2252" and inserting "2252, or 2252A";

(8) in subparagraph (N), by striking "paragraph (1)(A) or (2) of" and all that follows through the end and inserting "section 274(a) (relating to alien smuggling);";

(9) in subparagraph (O), by striking "section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;" and inserting "section 275 or 276 for which the term of imprisonment is at least 6 months;";

(10) in subparagraph (U), by striking "an attempt or conspiracy to commit an offense described in this paragraph" and inserting "attempting or conspiring to commit an offense described in this paragraph, or aiding, abetting, counseling, procuring, commanding, inducing, or soliciting the commission of such an offense"; and

(11) by striking the undesignated matter following subparagraph (U).

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—

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

(A) shall take effect on the date of the enactment of this Act; and

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

(2) APPLICATION OF IIRIRA AMENDMENTS.—The amendments to section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) made by section 321 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.

SEC. 302. **PRECLUDING ADMISSIBILITY OF ALIENS CONVICTED OF AGGRAVATED FELONIES OR OTHER SERIOUS OFFENSES.**

(a) INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS; WAIVERS.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(1) in subsection (a)(2)(A)(i)—

(A) in subclause (I), by striking "or" at the end;

(B) in subclause (II), by adding "or" at the end; and

(C) by inserting after subclause (II) the following:

"(III) a violation of (or a conspiracy or attempt to violate) an offense described in section 408 of title 42, United States Code (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and related activity in connection with identification documents, authentication features, and information),";

(2) by adding at the end of subsection (a)(2) the following:

"(J) PROCUREMENT OF CITIZENSHIP OR NATURALIZATION UNLAWFULLY.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of, or an attempt or a conspiracy to violate, subsection (a) or (b) of section 1425 of title 18, United States Code (relating to the procurement of citizenship or naturalization unlawfully) is inadmissible.

"(K) CERTAIN FIREARM OFFENSES.—Any alien who at any time has been convicted under any law of, or who admits having committed or admits committing acts which constitute the essential elements of, purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is inadmissible.

"(L) AGGRAVATED FELONS.—Any alien who has been convicted of an aggravated felony at any time is inadmissible.

"(M) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDERS, CRIMES AGAINST CHILDREN.—

"(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who at any time is convicted of, or who admits having committed or admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is inadmissible. For purposes of this clause, the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of

title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

"(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is inadmissible. For purposes of this clause, the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a independent order in another proceeding.

"(iii) WAIVER AUTHORIZED.—The waiver authority available under section 237(a)(7) with respect to section 237(a)(2)(E)(i) shall be available on a comparable basis with respect to this subparagraph."; and

(3) in subsection (h)—

(A) by striking "The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)" and inserting "The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or the Secretary, waive the application of subparagraphs (A)(i)(I), (III), (B), (D), (E), or (M) of subsection (a)(2)";

(B) by striking "a criminal act involving torture." and inserting "a criminal act involving torture, or has been convicted of an aggravated felony.";

(C) by striking "if either since the date of such admission the alien has been convicted of an aggravated felony or the alien" and inserting "if since the date of such admission the alien"; and

(D) by inserting "or Secretary of Homeland Security" after "the Attorney General" each place it appears.

(b) DEPORTABILITY; CRIMINAL OFFENSES.—Section 237(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(3)(B)) is amended—

(1) in clause (ii), by striking "or" at the end;

(2) in clause (iii), by inserting "or" at the end; and

(3) by inserting after clause (iii) the following:

"(iv) of a violation of, or an attempt or a conspiracy to violate, section 1425(a) or (b) of title 18 (relating to the procurement of citizenship or naturalization unlawfully),".

(c) DEPORTABILITY; OTHER CRIMINAL OFFENSES.—Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

"(G) FRAUD AND RELATED ACTIVITY ASSOCIATED WITH SOCIAL SECURITY ACT BENEFITS AND IDENTIFICATION DOCUMENTS.—Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) section 208 of the Social Security Act (42 U.S.C. 408) (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and related activity in connection with identification) is deportable.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply—

(1) to any act that occurred before, on, or after the date of the enactment of this Act; and

(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

(e) CONSTRUCTION.—The amendments made by subsection (a) shall not be construed to create eligibility for relief from removal under former section 212(c) of the Immigration and Nationality Act where such eligibility did not exist before these amendments became effective.

SEC. 303. **ESPIONAGE CLARIFICATION.**

Section 212(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(A)), is amended to read as follows:

"(A) IN GENERAL.—Any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in, or who is engaged in, or with respect to clauses (i) and (iii) of this subparagraph has engaged in—

"(i) any activity—

"(I) to violate any law of the United States relating to espionage or sabotage; or

"(II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information;

"(ii) any other unlawful activity; or

"(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means;

is inadmissible.".

SEC. 304. **PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY, CERTAIN ALIENS.**

Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)(5), in subparagraph (B), by striking "(y)(2)" and all that follows and inserting "(y), is in the United States not as an alien lawfully admitted for permanent residence;";

(2) in subsection (g)(5), in subparagraph (B), by striking "(y)(2)" and all that follows and inserting "(y), is in the United States not as an alien lawfully admitted for permanent residence;"; and

(3) in subsection (y)—

(A) in the header, by striking "ADMITTED UNDER NONIMMIGRANT VISAS.—" and inserting "NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—";

(B) in paragraph (1), by amending subparagraph (B) to read as follows:

"(B) the term 'lawfully admitted for permanent residence' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).";

(C) in paragraph (2), by striking "under a nonimmigrant visa" and inserting "but not lawfully admitted for permanent residence"; and

(D) in paragraph (3)(A), by striking "admitted to the United States under a nonimmigrant visa" and inserting "lawfully admitted to the United States but not as an alien lawfully admitted for permanent residence".

SEC. 305. **UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.**

Section 3291 of title 18, United States Code, is amended by striking "No person" and all that follows through the period at the end and inserting the following: "No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses) and 75 (relating to passport, visa, and immigration offenses), or for a violation of any criminal provision of section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act, or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information is filed within ten years after the commission of the offense.".

SEC. 306. **CONFORMING AMENDMENT TO THE DEFINITION OF RACKETEERING ACTIVITY.**

Section 1961(1) of title 18, United States Code, is amended by striking "section 1542" through "section 1546 (relating to fraud and misuse of visas, permits, and other documents)" and inserting "sections 1541–1548 (relating to passports and visas)".

SEC. 307. **CONFORMING AMENDMENTS FOR THE AGGRAVATED FELONY DEFINITION.**

(a) IN GENERAL.—Subparagraph (P) of section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(P) an offense which is described in any section of chapter 75 of title 18, United States Code, for which the term of imprisonment is at least 12 months;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts that occur before, on, or after the date of the enactment of this Act.

SEC. 308. **PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT OF STATUS FOR AGGRAVATED FELONS.**

(a) IN GENERAL.—Section 209(c) of the Immigration and Nationality Act (8 U.S.C. 1159(c)) is amended by adding at the end thereof the following: "However, an alien who is convicted of an aggravated felony is not eligible for a waiver or for adjustment of status under this section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) to any act that occurred before, on, or after the date of the enactment of this Act; and

(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

SEC. 309. **PRECLUDING WITHHOLDING OF REMOVAL FOR AGGRAVATED FELONS.**

(a) IN GENERAL.—Section 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)), as amended by section 201, is further amended by inserting after clause (v), as inserted by section 201, the following:

"(vi) the alien is convicted of an aggravated felony.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) to any act that occurred before, on, or after the date of the enactment of this Act; and

(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened on or after such date.

SEC. 310. **INADMISSIBILITY AND DEPORTABILITY OF DRUNK DRIVERS.**

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) (as amended by this Act) is further amended—

(1) in subparagraph (T), by striking "and";

(2) in subparagraph (U), by striking the period at the end and inserting "; and"; and

(3) by inserting after subparagraph (U) the following:

"(V) a second or subsequent conviction for driving while intoxicated (including a conviction for driving while under the influence of or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under State law.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and apply to convictions entered on or after such date.

SEC. 311. **DETENTION OF DANGEROUS ALIENS.**

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

(1) by striking "Attorney General" each place it appears, except for the first reference in paragraph (4)(B)(i), and inserting "Secretary of Homeland Security";

(2) in paragraph (1), by amending subparagraph (B) to read as follows:

"(B) BEGINNING OF PERIOD.—The removal period begins on the latest of the following:

"(i) The date the order of removal becomes administratively final.

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

"(iii) If the alien is detained or confined (except under an immigration process) on the date the order of removal becomes administratively final, the date the alien is taken into the custody of the Secretary, after the alien is released from such detention or confinement.";

(3) in paragraph (1), by amending subparagraph (C) to read as follows:

"(C) SUSPENSION OF PERIOD.—

"(i) EXTENSION.—The removal period shall be extended beyond a period of 90 days and the Secretary may, in the Secretary's sole discretion, keep the alien in detention during such extended period if—

"(I) the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal that is subject to an order of removal;

"(II) a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administratively final order of removal;

"(III) the Secretary transfers custody of the alien pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency; or

"(IV) a court or the Board of Immigration Appeals orders a remand to an immigration judge or the Board of Immigration Appeals, during the time period when the case is pending a decision on remand (with the removal period beginning anew on the date that the alien is ordered removed on remand).

"(ii) RENEWAL.—If the removal period has been extended under clause (C)(i), a new removal period shall be deemed to have begun on the date—

"(I) the alien makes all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order;

"(II) the stay of removal is no longer in effect; or

"(III) the alien is returned to the custody of the Secretary.

"(iii) MANDATORY DETENTION FOR CERTAIN ALIENS.—In the case of an alien described in section 236(c)(1), the Secretary shall keep that alien in detention during the extended period described in clause (i).

"(iv) SOLE FORM OF RELIEF.—An alien may seek relief from detention under this subparagraph only by filing an application for a writ of habeas corpus in accordance with chapter 153 of title 28, United States Code. No alien whose period of detention is extended under this subparagraph shall have the right to seek release on bond.";

(4) in paragraph (3)—

(A) by adding after "If the alien does not leave or is not removed within the removal period" the following: "or is not detained pursuant to paragraph (6) of this subsection"; and

(B) by striking subparagraph (D) and inserting the following:

"(D) to obey reasonable restrictions on the alien's conduct or activities that the Secretary prescribes for the alien, in order to prevent the alien from absconding, for the protection of the community, or for other purposes related to the enforcement of the immigration laws.";

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

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

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

"(A) DETENTION REVIEW PROCESS FOR COOPERATIVE ALIENS ESTABLISHED.—For an alien who is not otherwise subject to mandatory detention, who has made all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary of Homeland Security's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, and who has not conspired or acted to prevent removal, the Secretary shall establish an administrative review process to determine whether the alien should be detained or released on conditions. The Secretary shall make a determination whether to release an alien after the removal period in accordance with subparagraph (B). The determination shall include consideration of any evidence submitted by the alien, and may include consideration of any other evidence, including any information or assistance provided by the Secretary of State or other Federal official and any other information available to the Secretary of Homeland Security pertaining to the ability to remove the alien.

"(B) AUTHORITY TO DETAIN BEYOND REMOVAL PERIOD.—

"(i) IN GENERAL.—The Secretary of Homeland Security, in the exercise of the Secretary's sole discretion, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in paragraph (1)(C)). An alien whose detention is extended under this subparagraph shall have no right to seek release on bond.

"(ii) SPECIFIC CIRCUMSTANCES.—The Secretary of Homeland Security, in the exercise of the Secretary's sole discretion, may continue to detain an alien beyond the 90 days authorized in clause (i)—

"(I) until the alien is removed, if the Secretary, in the Secretary's sole discretion, determines that there is a significant likelihood that the alien—

"(aa) will be removed in the reasonably foreseeable future; or

"(bb) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien's failure or refusal to make all reasonable efforts to comply with the removal order, or to cooperate fully with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspires or acts to prevent removal;

"(II) until the alien is removed, if the Secretary of Homeland Security certifies in writing—

"(aa) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

"(bb) after receipt of a written recommendation from the Secretary of State, that release of the alien is likely to have serious adverse foreign policy consequences for the United States;

"(cc) based on information available to the Secretary of Homeland Security (including classified, sensitive, or national security information, and without regard to the

grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States; or

"(dd) that the release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and either—

"(AA) the alien has been convicted of one or more aggravated felonies (as defined in section 101(a)(43)(A)) or of one or more crimes identified by the Secretary of Homeland Security by regulation, or of one or more attempts or conspiracies to commit any such aggravated felonies or such identified crimes, if the aggregate term of imprisonment for such attempts or conspiracies is at least 5 years; or

"(BB) the alien has committed one or more crimes of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future; or

"(III) pending a certification under subclause (II), so long as the Secretary of Homeland Security has initiated the administrative review process not later than 30 days after the expiration of the removal period (including any extension of the removal period, as provided in paragraph (1)(C)).

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

"(C) RENEWAL AND DELEGATION OF CERTIFICATION.—

"(i) RENEWAL.—The Secretary of Homeland Security may renew a certification under subparagraph (B)(ii)(II) every 6 months, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a

certification, the Secretary may not continue to detain the alien under subparagraph (B)(ii)(II).

"(ii) DELEGATION.—Notwithstanding section 103, the Secretary of Homeland Security may not delegate the authority to make or renew a certification described in item (bb), (cc), or (dd) of subparagraph (B)(ii)(II) below the level of the Assistant Secretary for Immigration and Customs Enforcement.

"(iii) HEARING.—The Secretary of Homeland Security may request that the Attorney General or the Attorney General's designee provide for a hearing to make the determination described in item (dd)(BB) of subparagraph (B)(ii)(II).

"(D) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention by a Federal court, the Board of Immigration Appeals, or if an immigration judge orders a stay of removal, the Secretary of Homeland Security, in the exercise of the Secretary's discretion, may impose conditions on release as provided in paragraph (3).

"(E) REDETENTION.—The Secretary of Homeland Security, in the exercise of the Secretary's discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody, if removal becomes likely in the reasonably foreseeable future, the alien fails to comply with the conditions of release, or to continue to satisfy the conditions described in subparagraph (A), or if, upon reconsideration, the Secretary, in the Secretary's sole discretion, determines that the alien can be detained under subparagraph (B). This section shall apply to any alien returned to custody pursuant to this subparagraph, as if the removal period terminated on the day of the redetention.

"(F) REVIEW OF DETERMINATIONS BY SECRETARY.—A determination by the Secretary under this paragraph shall not be subject to review by any other agency.".

(b) DETENTION OF ALIENS DURING REMOVAL PROCEEDINGS.—

(1) CLERICAL AMENDMENT.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(A) by striking "Attorney General" each place it appears (except in the second place that term appears in subsection (a)) and inserting "Secretary of Homeland Security";

(B) in subsection (a) of such Act, by inserting "the Secretary of Homeland Security or" before "the Attorney General—"; and

(C) in subsection (e) by striking "Attorney General's" and inserting "Secretary of Homeland Security's".

(2) LENGTH OF DETENTION.—Section 236 of such Act (8 U.S.C. 1226) is amended by adding at the end the following:

"(f) LENGTH OF DETENTION.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, an alien may be detained, and for an alien described in subsection (c) shall be detained, under this section without time limitation, except as provided in subsection (h), during the pendency of removal proceedings.

"(2) CONSTRUCTION.—The length of detention under this section shall not affect detention under section 241.".

(3) DETENTION OF CRIMINAL ALIENS.—Section 236(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)) is amended to read as follows:

"(1) CUSTODY.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall take into custody any alien who is described in paragraph (2) or (3) of section 212(a), section 237(a)(2), section 237(a)(4), or who has no lawful status in the United States and has been convicted one or more times for driving while intoxicated (including a conviction for driving while under the influence or impaired by alcohol or drugs), any time after the alien is released, without regarding to whether—

"(i) an alien is released related to any activity, offense, or conviction described in this paragraph;

"(ii) the alien is released on parole, supervised release or probation; or

"(iii) the alien may be arrested or imprisoned again for the same offense.

"(B) SUBSEQUENT CUSTODY.—If the activity described in this paragraph does not result in the alien being taken into custody by any person other than the Secretary of Homeland Security, then when the alien

is brought to the attention of the Secretary or when the Secretary determines it is practical to take such alien into custody, the Secretary shall take such alien into custody.".

(4) RELEASE ON BOND.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226), as amended by paragraph (2), is further amended by adding at the end the following:

"(g) RELEASE ON BOND.—

"(1) IN GENERAL.—An alien detained under subsection (a) may seek release on bond. No bond may be granted except to an alien who establishes by clear and convincing evidence that the alien is not a flight risk or a risk to another person or the community.

"(2) CERTAIN ALIENS INELIGIBLE.—No alien detained under subsection (c) may seek release on bond.".

(5) CLERICAL AMENDMENTS.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(A) in subsection (a)(2)(B), by striking "conditional parole;" and inserting "recognizance;"; and

(B) in subsection (b), by striking "parole" and inserting "recognizance".

(c) SEVERABILITY.—If any of the provisions of this section or any amendment by this section, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this section and of amendments made by this section, and the application of the provisions and of the amendments made by this section to any other person or circumstance shall not be affected by such holding.

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall take effect upon the date of enactment of this Act, and section 241 of the Immigration and Nationality Act, as so amended, shall in addition apply to—

(A) all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act; and

(B) acts and conditions occurring or existing before, on, or after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall take effect upon the date of the enactment of this Act, and section 236 of the Immigration and Nationality Act, as so amended, shall in addition apply to any alien in detention under provisions of such section on or after such date.

SEC. 312. **GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN GANG MEMBERS.**

(a) DEFINITION OF GANG MEMBER.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

"(53)(A) The term 'criminal gang' means an ongoing group, club, organization, or association of 5 or more persons that has as one of its primary purposes the commission of 1 or more of the following criminal offenses and the members of which engage, or have engaged within the past 5 years, in a continuing series of such offenses, or that has been designated as a criminal gang by the Secretary of Homeland Security, in consultation with the Attorney General, as meeting these criteria. The offenses described, whether in violation of Federal or State law or foreign law and regardless of whether the offenses occurred before, on, or after the date of the enactment of this paragraph, are the following:

"(i) A 'felony drug offense' (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(ii) An offense under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose).

"(iii) A crime of violence (as defined in section 16 of title 18, United States Code).

"(iv) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

"(v) Any conduct punishable under sections 1028 and 1029 of title 18, United States Code (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery and trafficking in persons), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

"(vi) A conspiracy to commit an offense described in clauses (i) through (v).

"(B) Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conduct occurred before, on, or after the date of the enactment of this paragraph.".

(b) INADMISSIBILITY.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)), as amended by section 302(a)(2) of this Act, is further amended by adding at the end the following:

> "(O) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien is inadmissible who a consular officer, the Secretary of Homeland Security, or the Attorney General knows or has reason to believe—
>
> > "(i) to be or to have been a member of a criminal gang (as defined in section 101(a)(53)); or
> >
> > "(ii) to have participated in the activities of a criminal gang (as defined in section 101(a)(53)), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.".

(c) DEPORTABILITY.—Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)), as amended by section 302(c) of this Act, is further amended by adding at the end the following:

> "(H) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien is deportable who the Secretary of Homeland Security or the Attorney General knows or has reason to believe—
>
> > "(i) is or has been a member of a criminal gang (as defined in section 101(a)(53)); or
> >
> > "(ii) has participated in the activities of a criminal gang (as so defined), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.".

(d) DESIGNATION.—

(1) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting after section 219 the following:

"DESIGNATION

"SEC. 220. (a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Attorney General, and the Secretary of State may designate a group or association as a criminal street gang if their conduct is described in section 101(a)(53) or if the group or association conduct poses a significant risk that threatens the security and the public safety of United States nationals or the national security, homeland security, foreign policy, or economy of the United States.

"(b) EFFECTIVE DATE.—Designations under subsection (a) shall remain in effect until the designation is revoked after consultation between the Secretary of Homeland Security, the Attorney General, and the Secretary of State or is terminated in accordance with Federal law.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 219 the following:

"220. Designation.".

(e) ANNUAL REPORT ON DETENTION OF CRIMINAL STREET GANG MEMBERS.—Not later than March 1 of each year (beginning 1 year after the date of the enactment of this Act), the Secretary of Homeland Security, after consultation with the appropriate Federal agencies, shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the number of aliens detained who are described by subparagraph (O) of section 212(a)(2) and subparagraph (H) of section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2) and 1227(a)(2)), as added by subsections (b) and (c).

(f) ASYLUM CLAIMS BASED ON GANG AFFILIATION.—

(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the matter preceding clause (i), by inserting "who is described in section 212(a)(2)(O)(i) or section 237(a)(2)(H)(i) or who is" after "to an alien".

(2) INELIGIBILITY FOR ASYLUM.—Section 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) (as amended by this Act) is further amended—

(A) in clause (v), by striking "or" at the end;

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

(C) by inserting after clause (v) the following:

"(vi) the alien is described in section 212(a)(2)(O)(i) or section 237(a)(2)(H)(i) (relating to participation in criminal street gangs); or".

(g) TEMPORARY PROTECTED STATUS.—Section 244 of such Act (8 U.S.C. 1254a) is amended—

(1) by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security";

(2) in subparagraph (c)(2)(B)—

(A) in clause (i), by striking "States, or" and inserting "States;";

(B) in clause (ii), by striking the period and inserting "; or"; and

(C) by adding at the end the following:

"(iii) the alien is, or at any time has been, an alien described in section 212(a)(2)(O)(i) or section 237(a)(2)(H)(i).";

(3) in subsection (d)—

(A) by striking paragraph (3); and

(B) in paragraph (4), by adding at the end the following: "The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision of law.".

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

SEC. 313. **EXTENSION OF IDENTITY THEFT OFFENSES.**

Section 1028A of title 18, United States Code, is amended by adding at the end the following:

"(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution for a violation of subsection (a)(1) predicated on a violation described in subsection (c)(2), (6), (7), (9), or (10) of this section, the Government need not prove that the defendant knew the means of identification was of another person.".

SEC. 314. **LAUNDERING OF MONETARY INSTRUMENTS.**

(a) ADDITIONAL PREDICATE OFFENSES.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting "section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor)," after "section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),"; and

(2) by inserting "section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) (relating to bringing in and harboring certain aliens)," after "section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),".

(b) INTENT TO CONCEAL OR DISGUISE.—Section 1956(a) of title 18, United States Code, is amended—

(1) in paragraph (1) so that subparagraph (B) reads as follows:

"(B) knowing that the transaction—

"(i) conceals or disguises, or is intended to conceal or disguise, the nature, source, location, ownership, or control of the proceeds of some form of unlawful activity; or

"(ii) avoids, or is intended to avoid, a transaction reporting requirement under State or Federal law,"; and

(2) in paragraph (2) so that subparagraph (B) reads as follows:

"(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity, and knowing that such transportation, transmission, or transfer—

"(i) conceals or disguises, or is intended to conceal or disguise, the nature, source, location, ownership, or control of the proceeds of some form of unlawful activity; or

"(ii) avoids, or is intended to avoid, a transaction reporting requirement under State or Federal law,".

SEC. 315. **PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.**

(a) IN GENERAL.—Section 275 of the Immigration and Nationality Act (8 U.S.C. 1325) is amended to read as follows:

"SEC. 275. (a) IN GENERAL.—

"(1) ILLEGAL ENTRY OR PRESENCE.—An alien shall be subject to the penalties set forth in paragraph (2) if the alien—

"(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

"(B) knowingly eludes, at any time or place, examination or inspection by an authorized immigration, customs, or agriculture officer (including by failing to stop at the command of such officer);

"(C) knowingly enters or crosses the border to the United States and, upon examination or inspection, knowingly makes a false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws);

"(D) knowingly violates the terms or conditions of the alien's admission or parole into the United States; or

"(E) knowingly is unlawfully present in the United States (as defined in section 212(a)(9)(B)(ii) subject to the exceptions set forth in section 212(a)(9)(B)(iii)).

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

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

"(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years (or not more than 6 months in the case of a second or subsequent violation of paragraph (1)(E)), or both;

"(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

"(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

"(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

"(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

"(A) alleged in the indictment or information; and

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

"(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is discovered within the United States by an immigration, customs, or agriculture officer.

"(5) ATTEMPT.—Whoever attempts to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

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

"(1) not less than $50 or more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

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

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act is amended by striking the item relating to section 275 and inserting the following:

"Sec. 275. Illegal entry or presence.".

SEC. 316. **ILLEGAL REENTRY.**

Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended to read as follows:

"REENTRY OF REMOVED ALIEN

"SEC. 276. (a) REENTRY AFTER REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 2 years, or both.

"(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection was convicted before such removal or departure—

"(1) for 3 or more misdemeanors or for a felony, the alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

"(2) for a felony for which the alien was sentenced to a term of imprisonment of not less than 30 months, the alien shall be fined under such title, imprisoned not less than 2 years and not more than 15 years, or both;

"(3) for a felony for which the alien was sentenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, imprisoned not less than 4 years and not more than 20 years, or both; or

"(4) for murder, rape, kidnapping, or a felony offense described in chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism) of such title, or for 3 or more felonies of any kind, the alien shall be fined under such title, imprisoned not less than 5 years and not more than 25 years, or both.

"(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both.

"(d) PROOF OF PRIOR CONVICTIONS.—The prior convictions described in subsection (b) are elements of the crimes described, and the penalties in that subsection shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

"(1) alleged in the indictment or information; and

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

"(e) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to a violation of this section that—

"(1) prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States; or

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

"(A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act; and

"(B) had complied with all other laws and regulations governing the alien's admission into the United States.

"(f) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien.

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

"(h) DEFINITIONS.—For purposes of this section and section 275, the following definitions shall apply:

"(1) CROSSES THE BORDER TO THE UNITED STATES.—The term 'crosses the border' refers to the physical act of crossing the border, regardless of whether the alien is free from official restraint.

"(2) FELONY.—The term 'felony' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

"(3) MISDEMEANOR.—The term 'misdemeanor' means any criminal offense punishable by a term of imprisonment of not more than 1 year under the applicable laws of the United States, any State, or a foreign government.

"(4) REMOVAL.—The term 'removal' includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

"(5) STATE.—The term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 317. **REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.**

Chapter 75 of title 18, United States Code, is amended to read as follows:

"CHAPTER 75—PASSPORTS AND VISAS

"1541. Issuance without authority.
"1542. False statement in application and use of passport.
"1543. Forgery or false use of passport.
"1544. Misuse of a passport.
"1545. Schemes to defraud aliens.
"1546. Immigration and visa fraud.
"1547. Attempts and conspiracies.
"1548. Alternative penalties for certain offenses.
"1549. Definitions.

"§ 1541. **Issuance without authority**

"(a) IN GENERAL.—Whoever—

"(1) acting or claiming to act in any office or capacity under the United States, or a State, without lawful authority grants, issues, or verifies any passport or other instrument in the nature of a passport to or for any person; or

"(2) being a consular officer authorized to grant, issue, or verify passports, knowingly grants, issues, or verifies any such passport to or for any person not owing allegiance, to the United States, whether a citizen or not;

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

"(b) DEFINITION.—In this section, the term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"§ 1542. **False statement in application and use of passport**

"Whoever knowingly—

"(1) makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

"(2) uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement;

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

"§ 1543. **Forgery or false use of passport**

"Whoever—

"(1) falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

"(2) knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same;

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

"§ 1544. **Misuse of a passport**

"Whoever knowingly—

"(1) uses any passport issued or designed for the use of another;

"(2) uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;

"(3) secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, stolen, or produced or issued without lawful authority; or

"(4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States;

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

"§ 1545. **Schemes to defraud aliens**

"Whoever inside the United States, or in or affecting interstate or foreign commerce, in connection with any matter that is authorized by or arises under the immigration laws of the United States or any matter the offender claims or represents is authorized by or arises under the immigration laws of the United States, knowingly executes a scheme or artifice—

"(1) to defraud any person, or

"(2) to obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, or promises;

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

"§ 1546. **Immigration and visa fraud**

"Whoever knowingly—

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

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

"(3) mails, prepares, presents, or signs any immigration document knowing it to contain any materially false statement or representation;

"(4) secures, possesses, uses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

"(5) adopts or uses a false or fictitious name to evade or to attempt to evade the immigration laws;

"(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the immigration document was issued or designed; or

"(7) produces, issues, authorizes, or verifies, without lawful authority, an immigration document;

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

"§ 1547. **Attempts and conspiracies**

"Whoever attempts or conspires to violate this chapter shall be punished in the same manner as a person who completes that violation.

"§ 1548. **Alternative penalties for certain offenses**

"(a) TERRORISM.—Whoever violates any section in this chapter to facilitate an act of international terrorism or domestic terrorism (as such terms are defined in section 2331), shall be fined under this title or imprisoned not more than 25 years, or both.

"(b) DRUG TRAFFICKING OFFENSES.—Whoever violates any section in this chapter to facilitate a drug trafficking crime (as defined in section 929(a)) shall be fined under this title or imprisoned not more than 20 years, or both.

"§ 1549. **Definitions**

"In this chapter:

"(1) An 'application for a United States passport' includes any document, photograph, or other piece of evidence attached to or submitted in support of the application.

"(2) The term 'immigration document' means any instrument on which is recorded, by means of letters, figures, or marks, matters which may be used to fulfill any requirement of the Immigration and Nationality Act.".

SEC. 318. **FORFEITURE.**

Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

"(I) Any property, real or personal, that has been used to commit or facilitate the commission of a violation of chapter 75, the gross proceeds of such violation, and any property traceable to any such property or proceeds.".

SEC. 319. **EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE ON CRIMINAL OR SECURITY GROUNDS.**

(a) IN GENERAL.—Section 238(b) of the Immigration and Nationality Act (8 U.S.C. 1228(b)) is amended–

(1) in paragraph (1)—

(A) by striking "Attorney General" and inserting "Secretary of Homeland Security in the exercise of discretion"; and

(B) by striking "set forth in this subsection or" and inserting "set forth in this subsection, in lieu of removal proceedings under";

(2) in paragraph (3), by striking "paragraph (1) until 14 calendar days" and inserting "paragraph (1) or (3) until 7 calendar days";

(3) by striking "Attorney General" each place it appears in paragraphs (3) and (4) and inserting "Secretary of Homeland Security";

(4) in paragraph (5)—

(A) by striking "described in this section" and inserting "described in paragraph (1) or (2)"; and

(B) by striking "the Attorney General may grant in the Attorney General's discretion" and inserting "the Secretary of Homeland Security or the Attorney General may grant, in the discretion of the Secretary or Attorney General, in any proceeding";

(5) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and

(6) by inserting after paragraph (2) the following new paragraph:

"(3) The Secretary of Homeland Security in the exercise of discretion may determine inadmissibility under section 212(a)(2) (relating to criminal offenses) or section 212(a)(3) (related to security grounds) and issue an order of removal pursuant to the procedures set forth in this subsection, in lieu of removal proceedings under section 240, with respect to an alien who—

"(A) has not been admitted or paroled;

"(B) has not been found to have a credible fear of persecution pursuant to the procedures set forth in section 235(b)(1)(B); and

"(C) is not eligible for a waiver of inadmissibility or relief from removal.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act but shall not apply to aliens who are in removal proceedings under section 240 of the Immigration and Nationality Act as of such date.

SEC. 320. **INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER.**

(a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)), as amended by section 302(a) of this Act, is further amended—

(1) in subclause (II), by striking "or" at the end;

(2) in subclause (III), by adding "or" at the end; and

(3) by inserting after subclause (III) the following:

"(IV) a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender),".

(b) DEPORTABILITY.—Section 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended by sections 302(c) and 311(c) of this Act, is further amended—

(1) in subparagraph (A), by striking clause (v); and

(2) by adding at the end the following:

"(I) FAILURE TO REGISTER AS A SEX OFFENDER.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender) is deportable.".

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

SEC. 321. **PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS.**

(a) IMMIGRANTS.—Section 204(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)), is amended—

(1) in subparagraph (A), by amending clause (viii) to read as follows:

"(viii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43) or any offense defined in section 111 of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16911), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses

no risk to the alien with respect to whom a petition described in clause (i) is filed."; and

(2) in subparagraph (B)(i)—

(A) by redesignating the second subclause (I) as subclause (II); and

(B) by amending such subclause (II) to read as follows:

"(II) Subclause (I) shall not apply in the case of an alien admitted for permanent residence who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the alien lawfully admitted for permanent residence poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.".

(b) NONIMMIGRANTS.—Section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)), is amended by striking "204(a)(1)(A)(viii)(I))" each place such term appears and inserting "204(a)(1)(A)(viii))".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to petitions filed on or after such date.

SEC. 322. **PENALTIES FOR FAILURE TO OBEY REMOVAL ORDERS.**

(a) IN GENERAL.—Section 243(a) of the Immigration and Nationality Act (8 U.S.C. 1253(a)) is amended—

(1) in the matter preceding subparagraph (A) of paragraph (1), by inserting "212(a) or" before "237(a),"; and

(2) by striking paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts that are described in subparagraphs (A) through (D) of section 243(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1253(a)(1)) that occur on or after the date of the enactment of this Act.

SEC. 323. **PARDONS.**

(a) DEFINITION.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), as amended by section 312(a) of this Act, is further amended by adding at the end the following:

"(54) The term 'pardon' means a full and unconditional pardon granted by the President of the United States, Governor of any of the several States or constitutionally recognized body.".

(b) DEPORTABILITY.—Section 237(a) of such Act (8 U.S.C. 1227(a)) is amended—

(1) in paragraph (2)(A), by striking clause (vi); and

(2) by adding at the end the following:

"(8) PARDONS.—In the case of an alien who has been convicted of a crime and is subject to removal due to that conviction, if the alien, subsequent to receiving the criminal conviction, is granted a pardon, the alien shall not be deportable by reason of that criminal conviction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to a pardon granted before, on, or after such date.

SEC. 324. **CONVICTIONS.**

(a) IN GENERAL.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following subparagraph:

"(J) CONVICTIONS.—

"(i) IN GENERAL.—For purposes of determining whether an underlying criminal offense constitutes a ground of inadmissibility under this subsection, all statutes or common law offenses are divisible so long as any of the conduct encompassed by the statute constitutes an offense that is a ground of inadmissibility.

"(ii) OTHER EVIDENCE.—If the conviction records do not conclusively establish whether a crime constitutes a ground of inadmissibility, the Attorney General or the Secretary of Homeland Security may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a ground of inadmissibility.".

(b) CRIMINAL OFFENSES.—Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following subparagraph:

"(G) CRIMINAL OFFENSES.—

"(i) IN GENERAL.—For purposes of determining whether an underlying criminal offense constitutes a ground of deportability under this subsection, all statutes or common law offenses are divisible so long as any of the conduct encompassed by the statute constitutes an offense that is a ground of deportability.

"(ii) OTHER EVIDENCE.—If the conviction records do not conclusively establish whether a crime constitutes a ground of deportability, the Attorney General or the Secretary of Homeland Security may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a ground of deportability.".

(c) FINALITY OF SENTENCES FOR IMMIGRATION PURPOSES.—Section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(48)) is amended by adding at the end the following subparagraph:

"(C) Any modification, clarification, vacatur, or any other such similar action with respect to an alien's conviction, other than a full and complete pardon, made after the initiation of any proceedings to remove the alien from the United States shall have no effect for the purposes of this Act.".

TITLE IV—VISA SECURITY

SEC. 401. **CANCELLATION OF ADDITIONAL VISAS.**

(a) IN GENERAL.—Section 222(g) of the Immigration and Nationality Act (8 U.S.C. 1202(g)) is amended—

(1) in paragraph (1)—

(A) by striking "Attorney General" and inserting "Secretary"; and

(B) by inserting "and any other nonimmigrant visa issued by the United States that is in the possession of the alien" after "such visa"; and

(2) in paragraph (2)(A), by striking "(other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality" and inserting "(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality or foreign residence".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to a visa issued before, on, or after such date.

SEC. 402. **VISA INFORMATION SHARING.**

(a) IN GENERAL.—Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)(2)) is amended—

(1) by striking "issuance or refusal" and inserting "issuance, refusal, or revocation";

(2) in paragraph (2), in the matter preceding subparagraph (A), by striking "and on the basis of reciprocity";

(3) in paragraph (2)(A)—

(A) by inserting "(i)" after "for the purpose of"; and

(B) by striking "illicit weapons; or" and inserting "illicit weapons, or (ii) determining a person's deportability or eligibility for a visa, admission, or other immigration benefit;";

(4) in paragraph (2)(B)—

(A) by striking "for the purposes" and inserting "for one of the purposes"; and

(B) by striking "or to deny visas to persons who would be inadmissible to the United States." and inserting "; or"; and

(5) in paragraph (2), by adding at the end the following:

"(C) with regard to any or all aliens in the database specified data elements from each record, if the Secretary of State determines that it is in the national interest to provide such information to a foreign government.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date of the enactment of the Act.

SEC. 403. **RESTRICTING WAIVER OF VISA INTERVIEWS.**

Section 222(h) of the Immigration and Nationality Act (8 U.S.C. 1202(h)(1)(B)) is amended—

(1) in paragraph (1)(C), by inserting ", in consultation with the Secretary of Homeland Security," after "if the Secretary";

(2) in paragraph (1)(C)(i), by inserting ", where such national interest shall not include facilitation of travel of foreign nationals to the United States, reduction of visa application processing times, or the allocation of consular resources" before the semicolon at the end; and

(3) in paragraph (2)—

(A) by striking "or" at the end of subparagraph (E);

(B) by striking the period at the end of subparagraph (F) and inserting "; or"; and

(C) by adding at the end the following:

"(G) is an individual—

"(i) determined to be in a class of aliens determined by the Secretary of Homeland Security to be threats to national security;

"(ii) identified by the Secretary of Homeland Security as a person of concern; or

"(iii) applying for a visa in a visa category with respect to which the Secretary of Homeland Security has determined that a waiver of the visa interview would create a high risk of degradation of visa program integrity.".

SEC. 404. **NON-INTERVIEW OF CERTAIN INELIGIBLE VISA APPLICANTS.**

(a) IN GENERAL.—Section 222(h)(1) of the Immigration and Nationality Act (8 U.S.C. 1202(h)(1)) is amended by inserting "the alien is determined by the Secretary of State to be ineligible for a visa based upon review of the application or" after "unless".

(b) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall issue guidance to consular officers on the standards and processes for implementing the authority to deny visa applications without interview in cases where the alien is determined by the Secretary of State to be ineligible for a visa based upon review of the application.

(c) REPORTS.—Not less frequently than once each quarter, the Secretary of State shall submit to the Congress a report on the denial of visa applications without interview, including—

(1) the number of such denials; and

(2) a post-by-post breakdown of such denials.

SEC. 405. **VISA REFUSAL AND REVOCATION.**

(a) AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY AND THE SECRETARY OF STATE.—

(1) IN GENERAL.—Section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236) is amended by striking subsections (b) and (c) and inserting the following:

"(b) AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY.—

"(1) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) and except for the authority of the Secretary of State under subparagraphs (A) and (G) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), the Secretary—

"(A) shall have exclusive authority to issue regulations, establish policy, and administer and enforce the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and all other immigration or nationality laws relating to the functions of consular officers of the United States in connection with the granting and refusal of a visa; and

"(B) may refuse or revoke any visa to any alien or class of aliens if the Secretary, or designee, determines that such refusal or revocation is necessary or advisable in the security or foreign policy interests of the United States.

"(2) EFFECT OF REVOCATION.—The revocation of any visa under paragraph (1)(B)—

"(A) shall take effect immediately; and

"(B) shall automatically cancel any other valid visa that is in the alien's possession.

"(3) JUDICIAL REVIEW.—Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review a decision by the Secretary of Homeland Security to refuse or revoke a visa, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a refusal or revocation.

"(c) AUTHORITY OF THE SECRETARY OF STATE.—

"(1) IN GENERAL.—The Secretary of State may direct a consular officer to refuse a visa requested by an alien if the Secretary of State determines such refusal to be necessary or advisable in the security or foreign policy interests of the United States.

"(2) LIMITATION.—No decision by the Secretary of State to approve a visa may override a decision by the Secretary of Homeland Security under subsection (b).".

(2) CONFORMING AMENDMENT.—Section 237(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(B)) is amended by striking "under section 221(i)".

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to visa refusals and revocations occurring before, on, or after such date.

(b) TECHNICAL CORRECTIONS TO THE HOMELAND SECURITY ACT.—Section 428(a) of the Homeland Security Act of 2002 (6 U.S.C. 236(a)) is amended by—

(1) striking "subsection" and inserting "section"; and

(2) striking "consular office" and inserting "consular officer".

SEC. 406. **FUNDING FOR THE VISA SECURITY PROGRAM.**

(a) IN GENERAL.—The Department of State and Related Agency Appropriations Act, 2005 (title IV of division B of Public Law 108–447) is amended, in the fourth paragraph under the heading "Diplomatic and Consular Programs", by striking "Beginning" and all that follows through the period at the end and inserting the following: "Beginning in fiscal year 2005 and thereafter, the Secretary of State is authorized to charge surcharges related to consular services in support of enhanced border security that are in addition to the immigrant visa fees in effect on January 1, 2004: *Provided*, That funds collected pursuant to this authority shall be credited to the appropriation for U.S. Immigration and Customs Enforcement for the fiscal year in which the fees were collected, and shall be available until expended for the funding of the Visa Security Program established by the Secretary of Homeland Security under section 428(e) of the Homeland Security Act of 2002 (Public Law 107–296): *Provided further*, That such surcharges shall be 10 percent of the fee assessed on immigrant visa applications.".

(b) REPAYMENT OF APPROPRIATED FUNDS.—Twenty percent of the funds collected each fiscal year under the heading "Diplomatic and Consular Programs" in the Department of State and Related Agency Appropriations Act, 2005 (title IV of division B of Public Law 108–447), as amended by subsection (a), shall be

deposited into the general fund of the Treasury as repayment of funds appropriated pursuant to section 407(c) of this Act until the entire appropriated sum has been repaid.

SEC. 407. **EXPEDITIOUS EXPANSION OF VISA SECURITY PROGRAM TO HIGH-RISK POSTS.**

(a) IN GENERAL.—Section 428(i) of the Homeland Security Act of 2002 (6 U.S.C. 236(i)) is amended to read as follows:

"(i) VISA ISSUANCE AT DESIGNATED HIGH-RISK POSTS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall conduct an on-site review of all visa applications and supporting documentation before adjudication at the top 30 visa-issuing posts designated jointly by the Secretaries of State and Homeland Security as high-risk posts.".

(b) ASSIGNMENT OF PERSONNEL.—Not later than one year after the date of enactment of this section, the Secretary of Homeland Security shall assign personnel to the visa-issuing posts referenced in section 428(i) of the Homeland Security Act of 2002 (6 U.S.C. 236(i)), as amended by this section, and communicate such assignments to the Secretary of State.

(c) APPROPRIATIONS.—There is authorized to be appropriated $60,000,000 for each of the fiscal years 2015 and 2016, which shall be used to expedite the implementation of section 428(i) of the Homeland Security Act, as amended by this section.

SEC. 408. **EXPEDITED CLEARANCE AND PLACEMENT OF DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT OVERSEAS EMBASSIES AND CONSULAR POSTS.**

Section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236) is amended by adding at the end the following:

"(j) EXPEDITED CLEARANCE AND PLACEMENT OF DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT OVERSEAS EMBASSIES AND CONSULAR POSTS.—Notwithstanding any other provision of law, and the processes set forth in National Security Defense Directive 38 (dated June 2, 1982) or any successor Directive, the Chief of Mission of a post to which the Secretary of Homeland Security has assigned personnel under subsection (e) or (i) shall ensure, not later than one year after the date on which the Secretary of Homeland Security communicates such assignment to the Secretary of State, that such personnel have been stationed and accommodated at post and are able to carry out their duties.".

SEC. 409. **ACCREDITATION REQUIREMENTS.**

(a) COLLEGES, UNIVERSITIES, AND LANGUAGE TRAINING PROGRAMS.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended—

(1) in paragraph (15)(F)(i)—

(A) by striking "section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States" and inserting "section 214(m) at an accredited college, university, or language training program, or at an established seminary, conservatory, academic high school, elementary school, or other academic institution in the United States";

(B) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security"; and

(C) by striking "and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn," and inserting "and if any such institution of learning of place of study fails to make reports promptly or fails to comply with any accreditation requirement (including deadlines for submitting accreditation applications or obtaining accreditation) the approval shall be withdrawn,"; and

(2) by amending paragraph (52) to read as follows:

"(52) Except as provided in section 214(m)(4), the term 'accredited college, university, or language training program' means a college, university, or language training program that is accredited by an accrediting agency recognized by the Secretary of Education.".

(b) OTHER ACADEMIC INSTITUTIONS.—Section 214(m) of the Immigration and Nationality Act (8 U.S.C. 1184(m)) is amended by adding at the end the following:

"(3) The Secretary of Homeland Security shall require accreditation of an academic institution (except for seminaries or other religious institutions) for purposes of section 101(a)(15)(F) if—

"(A) that institution is not already required to be accredited under section 101(a)(15)(F)(i); and

"(B) an appropriate accrediting agency recognized by the Secretary of Education is able to provide such accreditation.

"(4) The Secretary of Homeland Security, in the Secretary's discretion, may waive the accreditation requirement in paragraph (3) or section 101(a)(15)(F)(i)

with respect to an institution if such institution—

"(A) is otherwise in compliance with the requirements of section 101(a)(15)(F)(i); and

"(B) has been a candidate for accreditation for at least 1 year and continues to progress toward accreditation by an accrediting agency recognized by the Secretary of Education.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall—

(A) take effect on the date that is 180 days after the date of enactment of this Act; and

(B) apply with respect to applications for nonimmigrant visas that are filed on or after the effective date described in subparagraph (A).

(2) TEMPORARY EXCEPTION.—During the 3-year period beginning on the effective date described in paragraph (1)(A), an institution that is newly required to be accredited under this section may continue to participate in the Student and Exchange Visitor Program notwithstanding the institution's lack of accreditation if the institution—

(A) was certified under the Student and Exchange Visitor Program on such date;

(B) submitted an application for accreditation to an accrediting agency recognized by the Secretary of Education during the 6-month period ending on such date; and

(C) continues to progress toward accreditation by such accrediting agency.

SEC. 410. **VISA FRAUD.**

(a) TEMPORARY SUSPENSION OF SEVIS ACCESS.—Section 641(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)) is amended—

(1) in paragraph (1)(A), by striking "institution,," and inserting "institution,"; and

(2) by adding at the end the following:

"(3) EFFECT OF REASONABLE SUSPICION OF FRAUD.—If the Secretary of Homeland Security has reasonable suspicion that an owner of, or a designated school official at, an approved institution of higher education, an other approved educational institution, or a designated exchange visitor program has committed fraud or attempted to commit fraud relating to any aspect of the Student and Exchange Visitor Program (SEVP), the Secretary may immediately suspend, without notice, such official's or such school's access to the Student and Exchange Visitor Information System (SEVIS), including the ability to issue Form I–20s, pending a final determination by the Secretary with respect to the institution's certification under the Student and Exchange Visitor Program.".

(b) EFFECT OF CONVICTION FOR VISA FRAUD.—Such section 641(d), as amended by subsection (a)(2), is further amended by adding at the end the following:

"(4) PERMANENT DISQUALIFICATION FOR FRAUD.—A designated school official at, or an owner of, an approved institution of higher education, an other approved educational institution, or a designated exchange visitor program who is convicted for fraud relating to any aspect of the Student and Exchange Visitor Program shall be permanently disqualified from filing future petitions and from having an ownership interest or a management role, including serving as a principal, owner, officer, board member, general partner, designated school official, or any other position of substantive authority for the operations or management of the institution, in any United States educational institution that enrolls nonimmigrant alien students described in subparagraph (F) or (M) of section 101(a)(15) the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).".

SEC. 411. **BACKGROUND CHECKS.**

(a) IN GENERAL.—Section 641(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)), as amended by section 411(b) of this Act, is further amended by adding at the end the following:

"(5) BACKGROUND CHECK REQUIREMENT.—

"(A) IN GENERAL.—An individual may not serve as a designated school official or be granted access to SEVIS unless the individual is a national of the United States or an alien lawfully admitted for permanent residence and during the most recent 3-year period—

"(i) the Secretary of Homeland Security has—

"(I) conducted a thorough background check on the individual, including a review of the individual's criminal and sex offender history and the verification of the individual's immigration status; and

"(II) determined that the individual has not been convicted of any violation of United States immigration law and is not a risk to national security of the United States; and

"(ii) the individual has successfully completed an on-line training course on SEVP and SEVIS, which has been developed by the Secretary.

"(B) INTERIM DESIGNATED SCHOOL OFFICIAL.—

"(i) IN GENERAL.—An individual may serve as an interim designated school official during the period that the Secretary is conducting the background check required by subparagraph (A)(i)(I).

"(ii) REVIEWS BY THE SECRETARY.—If an individual serving as an interim designated school official under clause (i) does not successfully complete the background check required by subparagraph (A)(i)(I), the Secretary shall review each Form I–20 issued by such interim designated school official.

"(6) FEE.—The Secretary is authorized to collect a fee from an approved school for each background check conducted under paragraph (6)(A)(i). The amount of such fee shall be equal to the average amount expended by the Secretary to conduct such background checks.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 1 year after the date of the enactment of this Act.

SEC. 412. **NUMBER OF DESIGNATED SCHOOL OFFICIALS.**

Section 641(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)), as amended by section 412(a) of this Act, is further amended by adding at the end the following:

"(7) NUMBER OF DESIGNATED SCHOOL OFFICIALS.—School officials may nominate as many Designated School Officials (DSOs) in addition to the school's Principal Designated School Official (PDSO) as they determine necessary to adequately provide recommendations to students enrolled at the school regarding maintenance of nonimmigrant status under subparagraph (F) or (M) of section 101(a)(15) and to support timely and complete recordkeeping

and reporting to the Secretary of Homeland Security, as required by this section, except that a school may not have less than one DSO per every 200 students who have nonimmigrant status pursuant to subparagraph (F), (J), or (M) of such section. School officials shall not permit a DSO or PDSO nominee access to SEVIS until the Secretary approves the nomination.".

SEC. 413. **REPORTING REQUIREMENT.**

Section 442(a) of the Homeland Security Act of 2002 (6 U.S.C. 252(a)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

"(5) STUDENT AND EXCHANGE VISITOR PROGRAM.—In administering the program under paragraph (4), the Secretary shall, not later than one year after the date of the enactment of this paragraph, prescribe regulations to require an institution or exchange visitor program sponsor participating in the Student Exchange Visitor Program to ensure that each student or exchange visitor who has nonimmigrant status pursuant to subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) enrolled at the institution or attending the exchange visitor program is reported to the Department within 10 days of—

"(A) transferring to another institution or program;

"(B) changing academic majors; or

"(C) any other changes to information required to be maintained in the system described in paragraph (4).".

SEC. 414. **FLIGHT SCHOOLS NOT CERTIFIED BY FAA.**

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of Homeland Security shall prohibit any flight school in the United States from accessing SEVIS or issuing a Form I–20 to an alien seeking a student visa pursuant to subparagraph (F)(i) or (M)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) if the flight school has not been certified to the satisfaction of the Secretary and by the Federal Aviation Administration pursuant to part 141 or part 142 of title 14, Code of Federal Regulations (or similar successor regulations).

(b) TEMPORARY EXCEPTION.—During the 5-year period beginning on the date of the enactment of this Act, the Secretary may waive the requirement under

subsection (a) that a flight school be certified by the Federal Aviation Administration if such flight school—

(1) was certified under the Student and Exchange Visitor Program on the date of the enactment of this Act;

(2) submitted an application for certification with the Federal Aviation Administration during the 1-year period beginning on such date; and

(3) continues to progress toward certification by the Federal Aviation Administration.

SEC. 415. **REVOCATION OF ACCREDITATION.**

At the time an accrediting agency or association is required to notify the Secretary of Education and the appropriate State licensing or authorizing agency of the final denial, withdrawal, suspension, or termination of accreditation of an institution pursuant to section 496 of the Higher Education Act of 1965 (20 U.S.C. 1099b), such accrediting agency or association shall notify the Secretary of Homeland Security of such determination and the Secretary of Homeland Security shall immediately terminate the school's Student and Exchange Visitor Program (SEVP) certification and prohibit the school from accessing the Student and Exchange Visitor Information System (SEVIS).

SEC. 416. **REPORT ON RISK ASSESSMENT.**

Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that contains the risk assessment strategy that will be employed by the Secretary to identify, investigate, and take appropriate action against schools and school officials that are facilitating the issuance of Form I–20 and the maintenance of student visa status in violation of the immigration laws of the United States.

SEC. 417. **IMPLEMENTATION OF GAO RECOMMENDATIONS.**

Not later than 180 days after the date of the enactment of this act, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that describes—

(1) the process in place to identify and assess risks in the SEVP;

(2) a risk assessment process to allocate SEVP's resources based on risk;

(3) the procedures in place for consistently ensuring a school's eligibility, including consistently verifying in lieu of letters;

(4) how SEVP identified and addressed missing school case files;

(5) a plan to develop and implement a process to monitor State licensing and accreditation status of all SEVP-certified schools;

(6) whether all flight schools that have not been certified to the satisfaction of the Secretary and by the Federal Aviation Administration have been removed from the program and have been restricted from accessing SEVIS;

(7) the standard operating procedures that govern coordination among SEVP, the U.S. Immigration and Customs Enforcement (ICE) Counterterrorism and Criminal Exploitation Unit, and ICE field offices; and

(8) the established criteria for referring cases of a potentially criminal nature from SEVP to the counterterrorism and intelligence community.

SEC. 418. **IMPLEMENTATION OF SEVIS II.**

Not later than 2 years after the date of the enactment of this Act, the Secretary of Homeland Security shall complete the deployment of both phases of the 2nd generation Student and Exchange Visitor Information System (commonly known as "SEVIS II").

SEC. 419. **DEFINITIONS.**

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

(1) SEVIS.—The term "SEVIS" means the Student and Exchange Visitor Information System of the Department of Homeland Security.

(2) SEVP.—The term "SEVP" means the Student and Exchange Visitor Program of the Department of Homeland Security.

TITLE V—AID TO U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICERS

SEC. 501. **ICE IMMIGRATION ENFORCEMENT AGENTS.**

(a) IN GENERAL.—The Secretary of Homeland Security shall authorize all immigration enforcement agents and deportation officers of the Department of Homeland Security who have successfully completed basic immigration law enforcement training to exercise the powers conferred by—

(1) section 287(a)(5)(A) of the Immigration and Nationality Act to arrest for any offense against the United States;

(2) section 287(a)(5)(B) of such Act to arrest for any felony;

(3) section 274(a) of such Act to arrest for bringing in, transporting, or harboring certain aliens, or inducing them to enter;

(4) section 287(a) of such Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States; and

(5) section 287(a) of such Act to carry firearms, provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force.

(b) ARREST POWERS.—Section 287(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(2)) is amended by striking "regulation and is likely to escape before a warrant can be obtained for his arrest," and inserting "regulation,".

(c) PAY.—Immigration enforcement agents shall be paid on the same scale as Immigration and Customs Enforcement deportation officers and shall receive the same benefits.

SEC. 502. **ICE DETENTION ENFORCEMENT OFFICERS.**

(a) AUTHORIZATION.—The Secretary of Homeland Security is authorized to hire 2,500 Immigration and Customs Enforcement detention enforcement officers.

(b) DUTIES.—Immigration and Customs Enforcement detention enforcement officers who have successfully completed detention enforcement officers' basic training shall be responsible for—

(1) taking and maintaining custody of any person who has been arrested by an immigration officer;

(2) transporting and guarding immigration detainees;

(3) securing Department of Homeland Security detention facilities; and

(4) assisting in the processing of detainees.

SEC. 503. **ENSURING THE SAFETY OF ICE OFFICERS AND AGENTS.**

(a) BODY ARMOR.—The Secretary of Homeland Security shall ensure that every Immigration and Customs Enforcement deportation officer and immigration enforcement agent on duty is issued high-quality body armor that is appropriate for the climate and risks faced by the agent. Enough body armor must be purchased to cover every agent in the field.

(b) WEAPONS.—Such Secretary shall ensure that Immigration and Customs Enforcement deportation officers and immigration enforcement agents are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and innocent third parties from the threats posed by armed criminals. Such weapons shall include, at a minimum, standard-issue handguns, M–4 (or equivalent) rifles, and Tasers.

(c) EFFECTIVE DATE.—This section shall take effect 90 days after the date of the enactment of this Act.

SEC. 504. **ICE ADVISORY COUNCIL.**

(a) ESTABLISHMENT.—An ICE Advisory Council shall be established not later than 3 months after the date of the enactment of this Act.

(b) MEMBERSHIP.—The ICE Advisor Council shall be comprised of 7 members.

(c) APPOINTMENT.—Members shall to be appointed in the following manner:

(1) One member shall be appointed by the President.

(2) One member shall be appointed by the Chairman of the Judiciary Committee of the House of Representatives.

(3) One member shall be appointed by the Chairman of the Judiciary Committee of the Senate.

(4) One member shall be appointed by the Local 511, the ICE prosecutor's union.

(5) Three members shall be appointed by the National Immigration and Customs Enforcement Council.

(d) TERM.—Members shall serve renewable, 2-year terms.

(e) VOLUNTARY.—Membership shall be voluntary and non-remunerated, except that members will receive reimbursement from the Secretary of Homeland Security for travel and other related expenses.

(f) RETALIATION PROTECTION.—Members who are employed by the Secretary of Homeland Security shall be protected from retaliation by their supervisors, managers, and other Department of Homeland Security employees for their participation on the Council.

(g) PURPOSE.—The purpose of the Council is to advise the Congress and the Secretary of Homeland Security on issues including the following:

(1) The current status of immigration enforcement efforts, including prosecutions and removals, the effectiveness of such efforts, and how enforcement could be improved.

(2) The effectiveness of cooperative efforts between the Secretary of Homeland Security and other law enforcement agencies, including additional types of enforcement activities that the Secretary should be engaged in, such as State and local criminal task forces.

(3) Personnel, equipment, and other resource needs of field personnel.

(4) Improvements that should be made to the organizational structure of the Department of Homeland Security, including whether the position of immigration enforcement agent should be merged into the deportation officer position.

(5) The effectiveness of specific enforcement policies and regulations promulgated by the Secretary of Homeland Security, and whether other enforcement priorities should be considered.

(h) REPORTS.—The Council shall provide quarterly reports to the Chairmen and Ranking Members of the Judiciary Committees of the Senate and the House of Representatives and to the Secretary of Homeland Security. The Council members shall meet directly with the Chairmen and Ranking Members (or their designated representatives) and with the Secretary to discuss their reports every 6 months.

SEC. 505. **PILOT PROGRAM FOR ELECTRONIC FIELD PROCESSING.**

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a pilot program in at least five of the ten Immigration and Customs Enforcement field offices with the largest removal caseloads to allow Immigration and Customs deportation officers and immigration enforcement agents to—

(1) electronically process and serve charging documents, including Notices to Appear, while in the field; and

(2) electronically process and place detainers while in the field.

(b) DUTIES.—The pilot program described in subsection (a) shall be designed to allow deportation officers and immigration enforcement agents to use handheld or vehicle-mounted computers to—

(1) enter any required data, including personal information about the alien subject and the reason for issuing the document;

(2) apply the electronic signature of the issuing officer or agent;

(3) set the date the alien is required to appear before an immigration judge, in the case of Notices to Appear;

(4) print any documents the alien subject may be required to sign, along with additional copies of documents to be served on the alien; and

(5) interface with the ENFORCE database so that all data is stored and retrievable.

(c) CONSTRUCTION.—The pilot program described in subsection (a) shall be designed to replace, to the extent possible, the current paperwork and data-entry process used for issuing such charging documents and detainers.

(d) DEADLINE.—The Secretary shall initiate the pilot program described in subsection (a) within 6 months of the date of enactment of this Act.

(e) REPORT.—The Government Accountability Office shall report to the Judiciary Committee of the Senate and the House of Representatives no later than 18 months after the date of enactment of this Act on the effectiveness of the pilot program and provide recommendations for improving it.

(f) ADVISORY COUNCIL.—The ICE Advisory Council established by section 504 shall include recommendations on how the pilot program should work in the first quarterly report of the Council, and shall include assessments of the program and recommendations for improvement in each subsequent report.

(g) EFFECTIVE DATE.—This section shall take effect 180 days after the date of the enactment of this Act.

SEC. 506. **ADDITIONAL ICE DEPORTATION OFFICERS AND SUPPORT STAFF.**

(a) IN GENERAL.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active-duty Immigration and Customs Enforcement deportation officers by 5,000 above the number of full-time positions for which funds were appropriated for fiscal year 2013. The Secretary will determine the rate at which the additional officers will be added with due regard to filling the positions as expeditiously as

possible without making any compromises in the selection or the training of the additional officers.

(b) SUPPORT STAFF.—The Secretary shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time support staff for Immigration and Customs Enforcement deportation officers by 700 above the number of full-time positions for which funds were appropriated for fiscal year 2013.

SEC. 507. **ADDITIONAL ICE PROSECUTORS.**

The Secretary of Homeland Security shall increase by 60 the number of full-time trial attorneys working for the Immigration and Customs Enforcement Office of the Principal Legal Advisor.

TITLE VI—MISCELLANEOUS ENFORCEMENT PROVISIONS

SEC. 601. **TIMELY REPATRIATION.**

(a) LISTING OF COUNTRIES.—Beginning on the date that is 6 months after the date of enactment of this Act, and every 6 months thereafter, the Secretary of Homeland Security shall publish a report including the following:

(1) A list of the following:

(A) Countries that have refused or unreasonably delayed repatriation of an alien who is a national of that country since the date of enactment of this Act and the total number of such aliens, disaggregated by nationality.

(B) Countries that have an excessive repatriation failure rate.

(2) A list of each country that was included under subparagraph (B) or (C) of paragraph (1) in both the report preceding the current report and the current report.

(b) SANCTIONS.—Beginning on the date that a country is included in a list under subsection (a)(2) and ending on the date that such country is not included in such list, such country shall be subject to the following:

(1) The Secretary of State may not issue visas under section 101(a)(15)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)(iii)) to attendants, servants, personal employees, and members of their immediate families, of the officials and employees of such country who receive

nonimmigrant status under clause (i) or (ii) of section 101(a)(15)(A) of such Act.

(2) Each 6 months thereafter that the country is included in that list, the Secretary of State shall reduce the number of visas available under clause (i) or (ii) of section 101(a)(15)(A) of the Immigration and Nationality Act in a fiscal year to nationals of that country by an amount equal to 10 percent of the baseline visa number for such country. Except as provided under section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253), the Secretary may not reduce the number to a level below 20 percent of the baseline visa number.

(c) WAIVERS.—

(1) NATIONAL SECURITY WAIVER.—If the Secretary of State submits to Congress a written determination that significant national security interests of the United States require a waiver of the sanctions under subsection (b), the Secretary may waive any reduction below 80 percent of the baseline visa number. The Secretary of Homeland Security may not delegate the authority under this subsection.

(2) TEMPORARY EXIGENT CIRCUMSTANCES.—If the Secretary of State submits to Congress a written determination that temporary exigent circumstances require a waiver of the sanctions under subsection (b), the Secretary may waive any reduction below 80 percent of the baseline visa number during 6-month renewable periods. The Secretary of Homeland Security may not delegate the authority under this subsection.

(d) EXEMPTION.—The Secretary of Homeland Security, in consultation with the Secretary of State, may exempt a country from inclusion in a list under subsection (a)(2) if the total number of nonrepatriations outstanding is less than 10 for the preceding 3-year period.

(e) UNAUTHORIZED VISA ISSUANCE.—Any visa issued in violation of this section shall be void.

(f) NOTICE.—If an alien who has been convicted of a criminal offense before a Federal or State court whose repatriation was refused or unreasonably delayed is to be released from detention by the Secretary of Homeland Security, the Secretary shall provide notice to the State and local law enforcement agency for the jurisdictions in which the alien is required to report or is to be released. When possible, and particularly in the case of violent crime, the Secretary shall make a reasonable effort to provide notice of such release to any crime victims and their immediate family members.

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

(1) REFUSED OR UNREASONABLY DELAYED.—A country is deemed to have refused or unreasonably delayed the acceptance of an alien who is a citizen, subject, national, or resident of such country if, not later than 90 days after receiving a request to repatriate such alien from an official of the United States who is authorized to make such a request, the country does not accept the alien or issue valid travel documents.

(2) FAILURE RATE.—The term "failure rate" for a period means the percentage determined by dividing the total number of repatriation requests for aliens who are citizens, subjects, nationals, or residents of a country that such country refused or unreasonably delayed during that period by the total number of such requests during that period.

(3) EXCESSIVE REPATRIATION FAILURE RATE.—The term "excessive repatriation failure rate" means, with respect to a report under subsection (a), a failure rate greater than 10 percent for any of the following:

(A) The period of the 3 full fiscal years preceding the date of publication of the report.

(B) The period of 1 year preceding the date of publication of the report.

(4) NUMBER OF NON-REPATRIATIONS OUTSTANDING.—The term "number of non-repatriations outstanding" means, for a period, the number of unique aliens whose repatriation a country has refused or unreasonably delayed and whose repatriation has not occurred during that period.

(5) BASELINE VISA NUMBER.—The term "baseline visa number" means, with respect to a country, the average number of visas issued each fiscal year to nationals of that country under clauses (i) and (ii) of section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)) for the 3 full fiscal years immediately preceding the first report under subsection (a) in which such country is included in the list under subsection (a)(2).

(h) GAO REPORT.—On the date that is 1 day after the date that the President submits a budget under section 1105(a) of title 31, United States Code, for fiscal year 2016, the Comptroller General of the United States shall submit a report to Congress regarding the progress of the Secretary of Homeland Security and the Secretary of State in implementation of this section and in making requests to repatriate aliens as appropriate.

SEC. 602. **ENCOURAGING ALIENS TO DEPART VOLUNTARILY.**

(a) IN GENERAL.—Section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240.";

(B) by striking paragraph (3);

(C) by redesignating paragraph (2) as paragraph (3);

(D) by adding after paragraph (1) the following:

"(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.";

(E) in paragraph (3), as redesignated—

(i) by amending subparagraph (A) to read as follows:

"(A) INSTEAD OF REMOVAL.—Subject to subparagraph (C), permission to voluntarily depart under paragraph (1) shall not be valid for any period in excess of 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.";

(ii) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively;

(iii) by adding after subparagraph (A) the following:

"(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do

so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.";

(iv) in subparagraph (C), as redesignated, by striking "subparagraphs (C) and (D)(ii)" and inserting "subparagraphs (D) and (E)(ii)";

(v) in subparagraph (D), as redesignated, by striking "subparagraph (B)" each place that term appears and inserting "subparagraph (C)"; and

(vi) in subparagraph (E), as redesignated, by striking "subparagraph (B)" each place that term appears and inserting "subparagraph (C)"; and

(F) in paragraph (4), by striking "paragraph (1)" and inserting "paragraphs (1) and (2)";

(2) in subsection (b)(2), by striking "a period exceeding 60 days" and inserting "any period in excess of 45 days";

(3) by amending subsection (c) to read as follows:

"(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

"(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure may only be granted as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall include a waiver of the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal.

"(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

"(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement before accepting such agreement.

"(4) FAILURE TO COMPLY WITH AGREEMENT.—

"(A) IN GENERAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is —

"(i) ineligible for the benefits of the agreement;

"(ii) subject to the penalties described in subsection (d); and

"(iii) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b).

"(B) EFFECT OF FILING TIMELY APPEAL.—If, after agreeing to voluntary departure, the alien files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences of such agreement, but precludes the alien from another grant of voluntary departure while the alien remains in the United States.

"(5) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.";

(4) by amending subsection (d) to read as follows:

"(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:

"(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify this amount, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

"(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien's departure for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

"(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal that took effect upon the alien's failure to depart, or upon the alien's other violations of the conditions for voluntary departure, during the period described in paragraph (2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.";

(5) by amending subsection (e) to read as follows:

"(e) ELIGIBILITY.—

"(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

"(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(2) or (b) of this section for any class or classes of aliens."; and

(6) in subsection (f), by adding at the end the following: "Notwithstanding section 242(a)(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory or nonstatutory), no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.".

(b) RULEMAKING.—The Secretary shall within one year of the date of enactment of this Act promulgate regulations to provide for the imposition and

collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the enactment of this Act.

(2) EXCEPTION.—The amendment made by subsection (a)(6) shall take effect on the date of the enactment of this Act and shall apply with respect to any petition for review which is filed on or after such date.

SEC. 603. **DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.**

(a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(A)) is amended—

(1) in clause (i), by striking "seeks admission within 5 years of the date of such removal (or within 20 years" and inserting "seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal"; and

(2) in clause (ii), by striking "seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of" and inserting "seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after".

(b) BAR ON DISCRETIONARY RELIEF.—Section 274D of such Act (8 U.S.C. 324d) is amended—

(1) in subsection (a), by striking "Commissioner" and inserting "Secretary of Homeland Security"; and

(2) by adding at the end the following:

"(c) INELIGIBILITY FOR RELIEF.—

"(1) IN GENERAL.—Unless a timely motion to reopen is granted under section 240(c)(6), an alien described in subsection (a) shall be ineligible for any discretionary relief from removal (including cancellation of removal and adjustment of status) during the time the alien remains in the United States and for a period of 10 years after the alien's departure from the United States.

"(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the final order of removal in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.".

(c) EFFECTIVE DATES.—The amendments made by this section shall take effect on the date of the enactment of this Act with respect to aliens who are subject to a final order of removal entered before, on, or after such date.

SEC. 604. **REINSTATEMENT OF REMOVAL ORDERS.**

(a) IN GENERAL.—Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:

"(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed, deported, or excluded or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

"(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed notwithstanding section 242(a)(2)(D);

"(B) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application or request for such relief may have been filed or made; and

"(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not require proceedings under section 240 or other proceedings before an immigration judge.".

(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following:

"(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—

"(1) REVIEW OF REINSTATEMENT.—Judicial review of determinations under section 241(a)(5) is available in an action under subsection (a).

"(2) NO REVIEW OF ORIGINAL ORDER.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, any other habeas corpus provision, or sections 1361 and 1651 of such title, no court shall have jurisdiction to review any cause or claim, arising from, or relating to, any challenge to the original order.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on April 1, 1997, and shall apply to all orders reinstated or after that date by the Secretary of Homeland Security (or by the Attorney General prior to March 1, 2003), regardless of the date of the original order.

SEC. 605. **CLARIFICATION WITH RESPECT TO DEFINITION OF ADMISSION.**

Section 101(a)(13)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(A)) is amended by adding at the end the following: "An alien's adjustment of status to that of lawful permanent resident status under any provision of this Act, or under any other provision of law, shall be considered an 'admission' for any purpose under this Act, even if the adjustment of status occurred while the alien was present in the United States.".

SEC. 606. **REPORTS TO CONGRESS.**

(a) IN GENERAL.—Not later than 30 days after the end of each quarter of a fiscal year, the Secretary of Homeland Security and the Attorney General shall each provide to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the following:

(1) Aliens apprehended or arrested by State or local law enforcement agencies who were identified by the Department of Homeland Security in the previous quarter and for whom the Department of Homeland Security did not issue detainers and did not take into custody despite the Department of Homeland Security's findings that the aliens were inadmissible or deportable.

(2) Aliens who were applicants for admission in the previous quarter but not clearly and beyond a doubt entitled to be admitted by an immigration officer and who were not detained as required pursuant to section 235(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(2)(A)).

(3) Aliens who in the previous quarter were found by Department of Homeland Security officials performing duties related to the adjudication of applications for immigration benefits or the enforcement of the immigration laws to be inadmissible or deportable who were not issued notices to appear

pursuant to section 239 of such Act (8 U.S.C. 1229) or placed into removal proceedings pursuant to section 240 (8 U.S.C. 1229a), unless the aliens were placed into expedited removal proceedings pursuant to section 235(b)(1)(A)(i) (8 U.S.C. 1225(b)(1)(A)(5)) or section 238 (8 U.S.C. 1228), were granted voluntary departure pursuant to section 240B, were granted relief from removal pursuant to statute, were granted legal nonimmigrant or immigrant status pursuant to statute, or were determined not to be inadmissible or deportable.

(4) Aliens issued notices to appear that were cancelled in the previous quarter despite the Department of Homeland Security's findings that the aliens were inadmissible or deportable, unless the aliens were granted relief from removal pursuant to statute, were granted voluntary departure pursuant to section 240B of such Act (8 U.S.C. 1229c), or were granted legal nonimmigrant or immigrant status pursuant to statute.

(5) Aliens who were placed into removal proceedings, whose removal proceedings were terminated or administratively closed in the previous quarter prior to their conclusion, unless the aliens were granted relief from removal pursuant to statute, were granted voluntary departure pursuant to section 240B, were granted legal nonimmigrant or immigrant status pursuant to statute, or were determined not to be inadmissible or deportable.

(6) Aliens granted parole pursuant to section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

(7) Aliens granted deferred action, extended voluntary departure or any other type of relief from removal not specified in the Immigration and Nationality Act or where determined not to be inadmissible or deportable.

(8) Aliens released from custody, including the number of releases, the number of aliens who were released who have a criminal history, the general reasons for release, the conditions of release, and the zip codes of the last known addresses.

(9) Aliens granted an administrative stay of removal, or otherwise permitted to remain in the United States through any similar process by U.S. Immigration and Customs Enforcement.

(b) CONTENTS OF REPORT.—The report shall include a listing of each alien described in each paragraph of subsection (a), including when in the possession of the Department of Homeland Security their names, fingerprint identification numbers, alien registration numbers, and reason why each was granted the type of prosecutorial discretion received. The report shall also include current criminal histories on each alien from the Federal Bureau of Investigation.

SEC. 607. **CERTAIN ACTIVITIES RESTRICTED.**

(a) IN GENERAL.—

(1) PROHIBITION ON USE OF FUNDS.—No funds, resources, or fees made available to the Secretary of Homeland Security, or to any other official of a Federal agency, by this Act or any other Act for any fiscal year, including any deposits into the "Immigration Examinations Fee Account" established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), may be used to implement, administer, enforce, or carry out (including through the issuance of any regulations) any of the policy changes set forth in the following memoranda (or any substantially similar policy changes issued or taken on or after January 9, 2015, whether set forth in memorandum, Executive order, regulation, directive, or by other action):

(A) The memorandum from the Director of United States Immigration and Customs Enforcement entitled "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" dated March 2, 2011.

(B) The memorandum from the Director of United States Immigration and Customs Enforcement entitled "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" dated June 17, 2011.

(C) The memorandum from the Principal Legal Advisor of United States Immigration and Customs Enforcement entitled "Case-by-Case Review of Incoming and Certain Pending Cases" dated November 17, 2011.

(D) The memorandum from the Director of United States Immigration and Customs Enforcement entitled "Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems" dated December 21, 2012.

(E) The memorandum from the Secretary of Homeland Security entitled "Southern Border and Approaches Campaign" dated November 20, 2014.

(F) The memorandum from the Secretary of Homeland Security entitled "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants" dated November 20, 2014.

(G) The memorandum from the Secretary of Homeland Security entitled "Secure Communities" dated November 20, 2014.

(H) The memorandum from the Secretary of Homeland Security entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents" dated November 20, 2014.

(I) The memorandum from the Secretary of Homeland Security entitled "Expansion of the Provisional Waiver Program" dated November 20, 2014.

(J) The memorandum from the Secretary of Homeland Security entitled "Policies Supporting U.S. High-Skilled Businesses and Workers" dated November 20, 2014.

(K) The memorandum from the Secretary of Homeland Security entitled "Families of U.S. Armed Forces Members and Enlistees" dated November 20, 2014.

(L) The memorandum from the Secretary of Homeland Security entitled "Directive to Provide Consistency Regarding Advance Parole" dated November 20, 2014.

(M) The memorandum from the Secretary of Homeland Security entitled "Policies to Promote and Increase Access to U.S. Citizenship" dated November 20, 2014.

(N) The memorandum from the President entitled "Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century" dated November 21, 2014.

(O) The memorandum from the President entitled "Creating Welcoming Communities and Fully Integrating Immigrants and Refugees" dated November 21, 2014.

(2) NO LEGAL EFFECT.—The memoranda referred to in subsection (a) (or any substantially similar policy changes issued or taken on or after January 9, 2015, whether set forth in memorandum, Executive order, regulation, directive, or by other action) have no statutory or constitutional basis and therefore have no legal effect.

(3) PROHIBITION ON FEDERAL BENEFITS.—No funds or fees made available to the Secretary of Homeland Security, or to any other official of a

Federal agency, by this Act or any other Act for any fiscal year, including any deposits into the "Immigration Examinations Fee Account" established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), may be used to grant any Federal benefit to any alien pursuant to any of the policy changes set forth in the memoranda referred to in subsection (a) (or any substantially similar policy changes issued or taken on or after January 9, 2015, whether set forth in memorandum, Executive order, regulation, directive, or by other action).

(b) DEFERRED ACTION FOR CHILDHOOD ARRIVALS.—No funds, resources, or fees made available to the Secretary of Homeland Security, or to any other official of a Federal agency, by this Act or any other Act for any fiscal year, including any deposits into the "Immigration Examinations Fee Account" established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), may be used to consider or adjudicate any new, renewal, or previously denied application for any alien requesting consideration of deferred action pursuant to the guidance in the June 15, 2012, memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (or any substantially similar policy changes issued or taken on or after January 9, 2015, whether set forth in memorandum, Executive order, regulation, directive, or by other action).

SEC. 608. **GAO STUDY ON DEATHS IN CUSTODY.**

The Comptroller General of the United States shall submit to Congress within 6 months after the date of the enactment of this Act, a report on the deaths in custody of detainees held by the Department of Homeland Security. The report shall include the following information with respect to any such deaths and in connection therewith:

(1) Whether any such deaths could have been prevented by the delivery of medical treatment administered while the detainee is in the custody of the Department of Homeland Security.

(2) Whether Department practice and procedures were properly followed and obeyed.

(3) Whether such practice and procedures are sufficient to protect the health and safety of such detainees.

(4) Whether reports of such deaths were made to the Deaths in Custody Reporting Program.

SEC. 609. **REMOVAL PROCEEDINGS.**

Subsection (b) of section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended by adding at the end the following paragraph:

"(8) ORDER OF CONSIDERATION OF PROCEEDINGS.—Whenever possible, proceedings shall take place in the order in which aliens are placed in proceedings.".

SEC. 610. **ELIMINATING BACKLOG IN THE IMMIGRATION COURT SYSTEM.**

Section 240A(e) of the Immigration and Nationality Act (8 U.S.C. 1229b(e)) is amended—

(1) in paragraph (1), by striking "(2) and (3)," and inserting "(2), (3), and (4),"; and

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

"(4) PROHIBITION ON DELAY.—The Attorney General may not, except for in cases in which the Attorney General has decided to grant an application under this section and the fiscal year cap has been reached, in any way delay or suspend making a final decision for an application submitted under this section.".

SEC. 611. **PROPER FILING OF INCOME TAXES REQUIRED FOR GOOD MORAL CHARACTER.**

Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended by inserting after paragraph (1) the following paragraph:

"(2) one who has failed to properly file an income tax return for each year that one was required to be filed;".

EXHIBIT C

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

I

114TH CONGRESS
1ST SESSION

H. R. 1148

To amend the Immigration and Nationality Act to improve immigration law enforcement within the interior of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2015

Mr. GOWDY (for himself, Mr. GOODLATTE, Mr. SMITH of Texas, Mr. COLLINS of Georgia, Mr. POE of Texas, Mr. FORBES, Mr. CARTER of Texas, and Mr. CHABOT) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on 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

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A BILL

To amend the Immigration and Nationality Act to improve immigration law enforcement within the interior of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Michael Davis, Jr. in Honor of State and Local Law Enforcement Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

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Sec. 101. Definitions and severability.
Sec. 102. Immigration law enforcement by States and localities.
Sec. 103. Listing of immigration violators in the national crime information center database.
Sec. 104. Technology access.
Sec. 105. State and local law enforcement provision of information about apprehended aliens.
Sec. 106. Financial assistance to State and local police agencies that assist in the enforcement of immigration laws.
Sec. 107. Increased Federal detention space.
Sec. 108. Federal custody of inadmissible and deportable aliens in the United States apprehended by State or local law enforcement.
Sec. 109. Training of State and local law enforcement personnel relating to the enforcement of immigration laws.
Sec. 110. Immunity.
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TITLE II—NATIONAL SECURITY

Sec. 201. Removal of, and denial of benefits to, terrorist aliens.
Sec. 202. Terrorist bar to good moral character.
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Sec. 301. Definition of aggravated felony.
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Sec. 304. Prohibition of the sale of firearms to, or the possession of firearms by, certain aliens.
Sec. 305. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.
Sec. 306. Conforming amendment to the definition of racketeering activity.
Sec. 307. Conforming amendments for the aggravated felony definition.
Sec. 308. Precluding refugee or asylee adjustment of status for aggravated felons.
Sec. 309. Precluding withholding of removal for aggravated felons.
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Sec. 312. Grounds of inadmissibility and deportability for alien gang members.
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Sec. 315. Penalties for illegal entry or presence.
Sec. 316. Illegal reentry.
Sec. 317. Reform of passport, visa, and immigration fraud offenses.
Sec. 318. Forfeiture.
Sec. 319. Expedited removal for aliens inadmissible on criminal or security grounds.
Sec. 320. Increased penalties barring the admission of convicted sex offenders failing to register and requiring deportation of sex offenders failing to register.
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Sec. 401. Cancellation of additional visas.
Sec. 402. Visa information sharing.
Sec. 403. Restricting waiver of visa interviews.
Sec. 404. Authorizing the Department of State to not interview certain ineligible visa applicants.
Sec. 405. Visa refusal and revocation.
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Sec. 407. Expeditious expansion of visa security program to high-risk posts.
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Sec. 412. Number of designated school officials.
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Sec. 416. Report on risk assessment.
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TITLE V—AID TO U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICERS

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Sec. 606. Reports to Congress on the exercise and abuse of prosecutorial discretion.
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Sec. 608. GAO study on deaths in custody.
Sec. 609. Removal proceedings.

TITLE I—IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES

SEC. 101. DEFINITIONS AND SEVERABILITY.

(a) STATE DEFINED.—For the purposes of this title, the term ''State'' has the meaning given to such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(b) SECRETARY DEFINED.—For the purpose of this title, the term ''Secretary'' means the Secretary of Homeland Security.

(c) SEVERABILITY.—If any provision of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of this title, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

SEC. 102. IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES.

(a) IN GENERAL.—Subject to section 274A(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(2)), States, or political subdivisions of States, may enact, implement and enforce criminal penalties that penalize the same conduct that is prohibited in the criminal provisions of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))), as long as the criminal penalties do not exceed the relevant Federal criminal penalties (without regard to ancillary issues such as the availability of probation or pardon). States, or political subdivisions of States, may enact, implement and enforce civil penalties that penalize the same conduct that is prohibited in the civil provisions of immigration laws (as defined in such section 101(a)(17)), as long as the civil penalties do not exceed the relevant Federal civil penalties.

(b) LAW ENFORCEMENT PERSONNEL.—Subject to section 274A(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(2)), law enforcement personnel of a State, or of a political subdivision of a State, may investigate, identify, apprehend, arrest, detain, or transfer to Federal custody aliens for the purposes of enforcing the immigration laws of the United States to the same extent as Federal law enforcement personnel. Law enforcement

personnel of a State, or of a political subdivision of a State, may also investigate, identify, apprehend, arrest, or detain aliens for the purposes of enforcing the immigration laws of a State or of a political subdivision of State, as long as those immigration laws are permissible under this section. Law enforcement personnel of a State, or of a political subdivision of a State, may not admit aliens to or remove them from the United States.

SEC. 103. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(a) PROVISION OF INFORMATION TO THE NCIC.—Not later than 180 days after the date of the enactment of this Act and periodically thereafter as updates may require, the Secretary shall provide the National Crime Information Center of the Department of Justice with all information that the Secretary may possess regarding any alien against whom a final order of removal has been issued, any alien who has entered into a voluntary departure agreement, any alien who has overstayed their authorized period of stay, and any alien whose visa has been revoked. The National Crime Information Center shall enter such information into the Immigration Violators File of the National Crime Information Center database, regardless of whether—

(1) the alien received notice of a final order of removal;

(2) the alien has already been removed; or

(3) sufficient identifying information is available with respect to the alien.

(b) INCLUSION OF INFORMATION IN THE NCIC DATABASE.—

(1) IN GENERAL.—Section 534(a) of title 28, United States Code, is amended—

(A) in paragraph (3), by striking ''and'' at the end;

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

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

''(4) acquire, collect, classify, and preserve records of violations by aliens of the immigration laws of the United States, regardless of whether any such alien has received notice of the violation or whether sufficient identifying information is available with respect to any such alien or whether any such alien has already been removed from the United States; and''.

(2) EFFECTIVE DATE.—The Attorney General and the Secretary shall ensure that the amendment

made by paragraph (1) is implemented by not later than 6 months after the date of the enactment of this Act.

SEC. 104. TECHNOLOGY ACCESS.

States shall have access to Federal programs or technology directed broadly at identifying inadmissible or deportable aliens.

SEC. 105. STATE AND LOCAL LAW ENFORCEMENT PROVISION OF INFORMATION ABOUT APPREHENDED ALIENS.

(a) PROVISION OF INFORMATION.—In compliance with section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) and section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644), each State, and each political subdivision of a State, shall provide the Secretary of Homeland Security in a timely manner with the information specified in subsection (b) with respect to each alien apprehended in the jurisdiction of the State, or in the political subdivision of the State, who is believed to be inadmissible or deportable.

(b) INFORMATION REQUIRED.—The information referred to in subsection (a) is as follows:

(1) The alien's name.

(2) The alien's address or place of residence.

(3) A physical description of the alien.

(4) The date, time, and location of the encounter with the alien and reason for stopping, detaining, apprehending, or arresting the alien.

(5) If applicable, the alien's driver's license number and the State of issuance of such license.

(6) If applicable, the type of any other identification document issued to the alien, any designation number contained on the identification document, and the issuing entity for the identification document.

(7) If applicable, the license plate number, make, and model of any automobile registered to, or driven by, the alien.

(8) A photo of the alien, if available or readily obtainable.

(9) The alien's fingerprints, if available or readily obtainable.

(c) ANNUAL REPORT ON REPORTING.—The Secretary shall maintain and annually submit to the Congress a detailed report listing the States, or the political subdivisions of States, that have provided information under subsection (a) in the preceding year.

(d) REIMBURSEMENT.—The Secretary shall reimburse States, and political subdivisions of a State, for all

reasonable costs, as determined by the Secretary, incurred by the State, or the political subdivision of a State, as a result of providing information under subsection (a).

(e) CONSTRUCTION.—Nothing in this section shall require law enforcement officials of a State, or of a political subdivision of a State, to provide the Secretary with information related to a victim of a crime or witness to a criminal offense.

(f) EFFECTIVE DATE.—This section shall take effect on the date that is 120 days after the date of the enactment of this Act and shall apply with respect to aliens apprehended on or after such date.

SEC. 106. FINANCIAL ASSISTANCE TO STATE AND LOCAL POLICE AGENCIES THAT ASSIST IN THE ENFORCEMENT OF IMMIGRATION LAWS.

(a) GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING AND PROCESSING CERTAIN ALIENS.—From amounts made available to make grants under this section, the Secretary shall make grants to States, and to political subdivisions of States, for procurement of equipment, technology, facilities, and other products that facilitate and are directly related to investigating, apprehending, arresting, detaining, or transporting aliens who are inadmissible or deportable, including additional administrative costs incurred under this title.

(b) ELIGIBILITY.—To be eligible to receive a grant under this section, a State, or a political subdivision of a State, must have the authority to, and shall have a written policy and a practice to, assist in the enforcement of the immigration laws of the United States in the course of carrying out the routine law enforcement duties of such State or political subdivision of a State. Entities covered under this section may not have any policy or practice that prevents local law enforcement from inquiring about a suspect's immigration status.

(c) GAO AUDIT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an audit of funds distributed to States, and to political subdivisions of a State, under subsection (a).

SEC. 107. INCREASED FEDERAL DETENTION SPACE.

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(1) IN GENERAL.—The Secretary shall construct or acquire, in addition to existing facilities for the detention of aliens, detention facilities in the United States, for aliens detained pending removal from the United States or a decision regarding such removal. Each facility shall have a number of beds necessary to effectuate the purposes of this title.

(2) DETERMINATIONS.—The location of any detention facility built or acquired in accordance with this subsection shall be determined by the Secretary.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 241(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1231(g)(1)) is amended by striking ''may expend'' and inserting ''shall expend''.

SEC. 108. FEDERAL CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS IN THE UNITED STATES APPREHENDED BY STATE OR LOCAL LAW ENFORCEMENT.

(a) STATE APPREHENSION.—

(1) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by inserting after section 240C the following:

''CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS PRESENT IN THE UNITED STATES

''SEC. 240D. (a) TRANSFER OF CUSTODY BY STATE AND LOCAL OFFICIALS.—If a State, or a political subdivision of the State, exercising authority with respect to the apprehension or arrest of an inadmissible or deportable alien submits to the Secretary of Homeland Security a request that the alien be taken into Federal custody, notwithstanding any other provision of law, regulation, or policy the Secretary—

"(1) shall take the alien into custody not later than 48 hours (excluding Saturdays, Sundays, and holidays) after the detainer has been issued following the conclusion of the State or local charging process or dismissal process, or if no State or local charging or dismissal process is required, the Secretary should issue a detainer and take the alien into custody not later than 48 hours (excluding Saturdays, Sundays, and holidays) after the alien is apprehended, in order to determine whether the alien should be detained, placed in removal proceedings, released, or removed; and

"(2) shall request that the relevant State or local law enforcement agency temporarily hold the alien in their custody or transport the alien for transfer to Federal custody.

"(b) POLICY ON DETENTION IN FEDERAL, CONTRACT, STATE, OR LOCAL DETENTION FACILITIES.—In carrying out section 241(g)(1), the Attorney General or Secretary of Homeland Security shall ensure that an alien arrested under this title shall be held in custody, pending the alien's examination under this section, in a Federal, contract, State, or local prison, jail, detention center, or other comparable facility. Notwithstanding any other pro-

vision of law, regulation or policy, such facility is adequate for detention, if—

"(1) such a facility is the most suitably located Federal, contract, State, or local facility available for such purpose under the circumstances;

"(2) an appropriate arrangement for such use of the facility can be made; and

"(3) the facility satisfies the standards for the housing, care, and security of persons held in custody by a United States Marshal.

"(c) REIMBURSEMENT.—The Secretary of Homeland Security shall reimburse a State, and a political subdivision of a State, for all reasonable expenses, as determined by the Secretary, incurred by the State, or political subdivision, as a result of the incarceration and transportation of an alien who is inadmissible or deportable as described in subsections (a) and (b). Compensation provided for costs incurred under such subsections shall be the average cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State, or of a political subdivision of a State, plus the cost of transporting the alien from the point of apprehension to the place of detention, and to the custody transfer point if the place of detention and place of custody are different.

"(d) SECURE FACILITIES.—The Secretary of Homeland Security shall ensure that aliens incarcerated pursuant to this title are held in facilities that provide an appropriate level of security.

"(e) TRANSFER.—

"(1) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transfer of apprehended aliens from the custody of States, and political subdivisions of a State, to Federal custody.

"(2) CONTRACTS.—The Secretary may enter into contracts, including appropriate private contracts, to implement this subsection.".

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 240C the following new item:

"Sec. 240D. Custody of inadmissible and deportable aliens present in the United States.".

(b) GAO AUDIT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an audit of compensation to States, and to political subdivisions of a State, for the incarceration of inadmissible or deportable aliens under section 240D(a) of the Immigration and Nationality Act (as added by subsection (a)(1)).

(c) EFFECTIVE DATE.—Section 240D of the Immigration and Nationality Act, as added by subsection (a), shall take effect on the date of the enactment of this Act, except that subsection (e) of such section shall take effect on the date that is 120 day after the date of the enactment of this Act.

SEC. 109. TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.

(a) ESTABLISHMENT OF TRAINING MANUAL AND POCKET GUIDE.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish—

(1) a training manual for law enforcement personnel of a State, or of a political subdivision of a State, to train such personnel in the investigation, identification, apprehension, arrest, detention, and transfer to Federal custody of inadmissible and deportable aliens in the United States (including the transportation of such aliens across State lines to detention centers and the identification of fraudulent documents); and

(2) an immigration enforcement pocket guide for law enforcement personnel of a State, or of a po-

litical subdivision of a State, to provide a quick reference for such personnel in the course of duty.

(b) AVAILABILITY.—The training manual and pocket guide established in accordance with subsection (a) shall be made available to all State and local law enforcement personnel.

(c) APPLICABILITY.—Nothing in this section shall be construed to require State or local law enforcement personnel to carry the training manual or pocket guide with them while on duty.

(d) COSTS.—The Secretary shall be responsible for any costs incurred in establishing the training manual and pocket guide.

(e) TRAINING FLEXIBILITY.—

(1) IN GENERAL.—The Secretary shall make training of State and local law enforcement officers available through as many means as possible, including through residential training at the Center for Domestic Preparedness, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display (DVD) of a training course or courses. E-learning through a secure, encrypted distributed learning system that has all its servers based in the United States, is scalable, sur-

vivable, and can have a portal in place not later than 30 days after the date of the enactment of this Act, shall be made available by the Federal Law Enforcement Training Center Distributed Learning Program for State and local law enforcement personnel.

(2) FEDERAL PERSONNEL TRAINING.—The training of State and local law enforcement personnel under this section shall not displace the training of Federal personnel.

(3) CLARIFICATION.—Nothing in this title or any other provision of law shall be construed as making any immigration-related training a requirement for, or prerequisite to, any State or local law enforcement officer to assist in the enforcement of Federal immigration laws.

(4) PRIORITY.—In carrying out this subsection, priority funding shall be given for existing web-based immigration enforcement training systems.

SEC. 110. IMMUNITY.

Notwithstanding any other provision of law, a law enforcement officer of a State or local law enforcement agency who is acting within the scope of the officer's official duties shall be immune, to the same extent as a Federal law enforcement officer, from personal liability arising out of the performance of any duty described in this title, in-

cluding the authorities to investigate, identify, apprehend, arrest, detain, or transfer to Federal custody, an alien for the purposes of enforcing the immigration laws of the United States (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) or the immigration laws of a State or a political subdivision of a State.

SEC. 111. CRIMINAL ALIEN IDENTIFICATION PROGRAM.

(a) CONTINUATION AND EXPANSION.—

(1) IN GENERAL.—The Secretary shall continue to operate and implement a program that—

(A) identifies removable criminal aliens in Federal and State correctional facilities;

(B) ensures such aliens are not released into the community; and

(C) removes such aliens from the United States after the completion of their sentences.

(2) EXPANSION.—The program shall be extended to all States. Any State that receives Federal funds for the incarceration of criminal aliens (pursuant to the State Criminal Alien Assistance Program authorized under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) or other similar program) shall—

(A) cooperate with officials of the program;

(B) expeditiously and systematically identify criminal aliens in its prison and jail populations; and

(C) promptly convey such information to officials of such program as a condition of receiving such funds.

(b) AUTHORIZATION FOR DETENTION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.—Law enforcement officers of a State, or of a political subdivision of a State, are authorized to—

(1) hold a criminal alien for a period of up to 48 hours (excluding Saturdays, Sundays, and holidays) after the alien has completed the alien's sentence under State or local law in order to effectuate the transfer of the alien to Federal custody when the alien is inadmissible or deportable; or

(2) issue a detainer that would allow aliens who have served a prison sentence under State or local law to be detained by the State or local prison or jail until the Secretary can take the alien into custody.

(c) TECHNOLOGY USAGE.—Technology, such as video conferencing, shall be used to the maximum extent practicable in order to make the program available in remote locations. Mobile access to Federal databases of aliens and live scan technology shall be used to the maximum extent

practicable in order to make these resources available to State and local law enforcement agencies in remote locations.

(d) EFFECTIVE DATE.—This section shall take effect of the date of the enactment of this Act, except that subsection (a)(2) shall take effect on the date that is 180 days after such date.

SEC. 112. CLARIFICATION OF CONGRESSIONAL INTENT.

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

(1) in paragraph (1) by striking ''may enter'' and all that follows through the period at the end and inserting the following: ''shall enter into a written agreement with a State, or any political subdivision of a State, upon request of the State or political subdivision, pursuant to which an officer or employee of the State or subdivision, who is determined by the Secretary to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to extent consistent with State and local law. No request from a bona

fide State or political subdivision or bona fide law enforcement agency shall be denied absent a compelling reason. No limit on the number of agreements under this subsection may be imposed. The Secretary shall process requests for such agreements with all due haste, and in no case shall take not more than 90 days from the date the request is made until the agreement is consummated.'';

(2) by redesignating paragraph (2) as paragraph (5) and paragraphs (3) through (10) as paragraphs (7) through (14), respectively;

(3) by inserting after paragraph (1) the following:

''(2) An agreement under this subsection shall accommodate a requesting State or political subdivision with respect to the enforcement model or combination of models, and shall accommodate a patrol model, task force model, jail model, any combination thereof, or any other reasonable model the State or political subdivision believes is best suited to the immigration enforcement needs of its jurisdiction.

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

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

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

''(B)(i) The Secretary shall provide a State or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination, and the notice shall fully explain the grounds for termination, along with providing evidence substantiating the Secretary's allegations.

''(ii) The State or political subdivision shall have the right to a hearing before an administrative law judge and, if the ruling is against the State or political subdivision, to appeal the ruling to the Federal Circuit Court of Appeals and, if the ruling is against the State or political subdivision, to the Supreme Court.

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

(4) by inserting after paragraph (5) (as redesignated) the following:

''(6) The Secretary of Homeland Security shall make training of State and local law enforcement officers available through as many means as possible, including through residential training at the Center for Domestic Preparedness and the Federal Law Enforcement Training

Center, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display (DVD) of a training course or courses. Distance learning through a secure, encrypted distributed learning system that has all its servers based in the United States, is scalable, survivable, and can have a portal in place not later than 30 days after the date of the enactment of this Act, shall be made available by the COPS Office of the Department of Justice and the Federal Law Enforcement Training Center Distributed Learning Program for State and local law enforcement personnel. Preference shall be given to private sector-based web-based immigration enforcement training programs for which the Federal Government has already provided support to develop.''.

SEC. 113. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP).

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

(1) by striking ''Attorney General'' the first place such term appears and inserting ''Secretary of Homeland Security'';

(2) by striking ''Attorney General'' each place such term appears thereafter and inserting ''Secretary''; and

(3) in paragraph (3)(A), by inserting ''charged with or'' before ''convicted''.

SEC. 114. STATE VIOLATIONS OF ENFORCEMENT OF IMMIGRATION LAWS.

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

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

(2) in subsection (a), by striking ''may'' and inserting ''shall'';

(3) in subsection (b)—

(A) by striking ''no person or agency may'' and inserting ''a person or agency shall not'';

(B) by striking ''doing any of the following with respect to information'' and inserting ''undertaking any of the following law enforcement activities''; and

(C) by striking paragraphs (1) through (3) and inserting the following:

''(1) Notifying the Federal Government regarding the presence of inadmissible and deportable aliens who are encountered by law enforcement personnel of a State or political subdivision of a State.

"(2) Complying with requests for information from Federal law enforcement.

"(3) Issuing policies in the form of a resolutions, ordinances, administrative actions, general or special orders, or departmental policies that violate Federal law or restrict a State or political subdivision of a State from complying with Federal law or coordinating with Federal law enforcement."; and

(4) by adding at the end the following:

"(d) COMPLIANCE.—

"(1) IN GENERAL.—A State, or a political subdivision of a State, that has in effect a statute, policy, or practice that prohibits law enforcement officers of the State, or of a political subdivision of the State, from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers' routine law enforcement duties shall not be eligible to receive—

"(A) any of the funds that would otherwise be allocated to the State or political subdivision under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) or the 'Cops on the Beat' program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.); or

"(B) any other law enforcement or Department of Homeland Security grant.

"(2) ANNUAL DETERMINATION.—The Secretary shall determine annually which State or political subdivision of a State are not in compliance with this section and shall report such determinations to Congress on March 1 of each year.

"(3) REPORTS.—The Attorney General shall issue a report concerning the compliance of any particular State or political subdivision at the request of the House or Senate Judiciary Committee. Any jurisdiction that is found to be out of compliance shall be ineligible to receive Federal financial assistance as provided in paragraph (1) for a minimum period of 1 year, and shall only become eligible again after the Attorney General certifies that the jurisdiction is in compliance.

"(4) REALLOCATION.—Any funds that are not allocated to a State or to a political subdivision of a State, due to the failure of the State, or of the political subdivision of the State, to comply with subsection (c) shall be reallocated to States, or to political subdivisions of States, that comply with such subsection.

"(e) CONSTRUCTION.—Nothing in this section shall require law enforcement officials from States, or from political subdivisions of States, to report or arrest victims or witnesses of a criminal offense.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, except that subsection (d) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373), as added by this section, shall take effect beginning one year after the date of the enactment of this Act.

SEC. 115. CLARIFYING THE AUTHORITY OF ICE DETAINERS.

(a) IN GENERAL.—Except as otherwise provided by Federal law or rule of procedure, the Secretary of Homeland Security shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute the Secretary's duties.

(b) STATE AND LOCAL COOPERATION WITH DHS DETAINERS.—A State, or a political subdivision of a State, that has in effect a statute or policy or practice providing that it not comply with any Department of Homeland Security detainer ordering that it temporarily hold an alien in their custody so that the alien may be taken into Federal custody, or transport the alien for

transfer to Federal custody, shall not be eligible to receive—

(1) any of the funds that would otherwise be allocated to the State or political subdivision under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) or the ''Cops on the Beat'' program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.); or

(2) any other law enforcement or Department of Homeland Security grant.

(c) IMMUNITY.—A State or a political subdivision of a State acting in compliance with a Department of Homeland Security detainer who temporarily holds aliens in its custody so that they may be taken into Federal custody, or transports the aliens for transfer to Federal custody, shall be considered to be acting under color of Federal authority for purposes of determining its liability, and immunity from suit, in civil actions brought by the aliens under Federal or State law.

(d) PROBABLE CAUSE.—It is the sense of Congress that the Department of Homeland Security has probable cause to believe that an alien is inadmissible or deportable when it issues a detainer regarding such alien under the standards in place on the date of introduction of this Act.

TITLE II—NATIONAL SECURITY

SEC. 201. REMOVAL OF, AND DENIAL OF BENEFITS TO, TERRORIST ALIENS.

(a) ASYLUM.—Section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)) is amended—

(1) by inserting ''or the Secretary of Homeland Security'' after ''if the Attorney General''; and

(2) by amending clause (v) to read as follows:

''(v) the alien is described in subparagraph (B)(i) or (F) of section 212(a)(3), unless, in the case of an alien described in subparagraph (IV), (V), or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security or the Attorney General determines, in the discretion of the Secretary or the Attorney General, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or''.

(b) CANCELLATION OF REMOVAL.—Section 240A(c)(4) of such Act (8 U.S.C. 1229b(c)(4)) is amended—

(1) by striking ''inadmissible under'' and inserting ''described in''; and

(2) by striking ''deportable under'' and inserting ''described in''.

(c) VOLUNTARY DEPARTURE.—Section 240B(b)(1)(C) of such Act (8 U.S.C. 1229c(b)(1)(C)) is amended by striking ''deportable under section 237(a)(2)(A)(iii) or section 237(a)(4);'' and inserting ''described in paragraph (2)(A)(iii) or (4) of section 237(a);''.

(d) RESTRICTION ON REMOVAL.—Section 241(b)(3)(B) of such Act (8 U.S.C. 1231(b)(3)(B)) is amended—

(1) in the matter preceding clause (i), by inserting ''or the Secretary of Homeland Security'' after ''Attorney General'' each place it appears;

(2) in clause (iii), by striking ''or'' at the end;

(3) in clause (iv), by striking the period at the end and inserting a semicolon;

(4) by striking the flush matter that follows after clause (iv); and

(5) by inserting after clause (iv) the following:

''(v) the alien is described in subparagraph (B)(i) or (F) of section 212(a)(3), unless, in the case of an alien described in subparagraph (IV), (V), or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security or the Attorney General de-

termines, in discretion of the Secretary or the Attorney General, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or''.

(e) RECORD OF ADMISSION.—

(1) IN GENERAL.—Section 249 of such Act (8 U.S.C. 1259) is amended to read as follows:

''RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JANUARY 1, 1972

''SEC. 249. The Secretary of Homeland Security, in the discretion of the Secretary and under such regulations as the Secretary may prescribe, may enter a record of lawful admission for permanent residence in the case of any alien, if no such record is otherwise available and the alien—

''(1) entered the United States before January 1, 1972;

''(2) has continuously resided in the United States since such entry;

''(3) has been a person of good moral character since such entry;

''(4) is not ineligible for citizenship;

''(5) is not described in paragraph (1)(A)(iv), (2), (3), (6)(C), (6)(E), or (8) of section 212(a); and

"(6) did not, at any time, without reasonable cause fail or refuse to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability.

Such recordation shall be effective as of the date of approval of the application or as of the date of entry if such entry occurred prior to July 1, 1924.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by amending the item relating to section 249 to read as follows:

"Sec. 249. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to January 1, 1972.".

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and sections 208(b)(2)(A), 212(a), 240A, 240B, 241(b)(3), and 249 of the Immigration and Nationality Act, as so amended, shall apply to—

(1) all aliens in removal, deportation, or exclusion proceedings;

(2) all applications pending on, or filed after, the date of the enactment of this Act; and

(3) with respect to aliens and applications described in paragraph (1) or (2) of this subsection, acts and conditions constituting a ground for exclusion, deportation, or removal occurring or existing

before, on, or after the date of the enactment of this Act.

SEC. 202. TERRORIST BAR TO GOOD MORAL CHARACTER.

(a) DEFINITION OF GOOD MORAL CHARACTER.—Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended—

(1) by inserting after paragraph (1) the following:

"(2) one who the Secretary of Homeland Security or Attorney General determines to have been at any time an alien described in section 212(a)(3) or 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information;";

(2) in paragraph (8), by inserting ", regardless whether the crime was classified as an aggravated felony at the time of conviction, except that the Secretary of Homeland Security or Attorney General may, in the unreviewable discretion of the Secretary or Attorney General, determine that this paragraph shall not apply in the case of a single aggravated felony conviction (other than murder, manslaughter, homicide, rape, or any sex offense when the victim of such sex offense was a minor) for which completion of the term of imprisonment or the sentence

(whichever is later) occurred 10 or more years prior to the date of application'' after ''(as defined in subsection (a)(43))''; and

(3) in the matter following paragraph (9), by striking the first sentence and inserting the following: ''The fact that any person is not within any of the foregoing classes shall not preclude a discretionary finding for other reasons that such a person is or was not of good moral character. The Secretary or the Attorney General shall not be limited to the applicant's conduct during the period for which good moral character is required, but may take into consideration as a basis for determination the applicant's conduct and acts at any time.''.

(b) AGGRAVATED FELONS.—Section 509(b) of the Immigration Act of 1990 (8 U.S.C. 1101 note) is amended to read as follows:

''(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on November 29, 1990, and shall apply to convictions occurring before, on or after such date.''.

(c) TECHNICAL CORRECTION TO THE INTELLIGENCE REFORM ACT.—Section 5504(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law

108–458) is amended by striking ''adding at the end'' and inserting ''inserting after paragraph (8)''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date of enactment of this Act, shall apply to any act that occurred before, on, or after such date and shall apply to any application for naturalization or any other benefit or relief, or any other case or matter under the immigration laws pending on or filed after such date. The amendments made by subsection (c) shall take effect as if enacted in the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458).

SEC. 203. TERRORIST BAR TO NATURALIZATION.

(a) NATURALIZATION OF PERSONS ENDANGERING THE NATIONAL SECURITY.—Section 316 of the Immigration and Nationality Act (8 U.S.C. 1426) is amended by adding at the end the following:

''(g) PERSONS ENDANGERING THE NATIONAL SECURITY.—No person shall be naturalized who the Secretary of Homeland Security determines to have been at any time an alien described in section 212(a)(3) or 237(a)(4). Such determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information.''.

(b) CONCURRENT NATURALIZATION AND REMOVAL PROCEEDINGS.—Section 318 of the Immigration and Nationality Act (8 U.S.C. 1429) is amended by striking ''other Act;'' and inserting ''other Act; and no application for naturalization shall be considered by the Secretary of Homeland Security or any court if there is pending against the applicant any removal proceeding or other proceeding to determine the applicant's inadmissibility or deportability, or to determine whether the applicant's lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced: *Provided*, That the findings of the Attorney General in terminating removal proceedings or in canceling the removal of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the Secretary of Homeland Security with respect to the question of whether such person has established his eligibility for naturalization as required by this title;''.

(c) PENDING DENATURALIZATION OR REMOVAL PROCEEDINGS.—Section 204(b) of the Immigration and Nationality Act (8 U.S.C. 1154(b)) is amended by adding at the end the following: ''No petition shall be approved pursuant to this section if there is any administrative or judicial proceeding (whether civil or criminal) pending against the petitioner that could (whether directly or indi-

rectly) result in the petitioner's denaturalization or the loss of the petitioner's lawful permanent resident status.''.

(d) CONDITIONAL PERMANENT RESIDENTS.—Sections 216(e) and section 216A(e) of the Immigration and Nationality Act (8 U.S.C. 1186a(e) and 1186b(e)) are each amended by striking the period at the end and inserting '', if the alien has had the conditional basis removed pursuant to this section.''.

(e) DISTRICT COURT JURISDICTION.—Subsection 336(b) of the Immigration and Nationality Act (8 U.S.C. 1447(b)) is amended to read as follows:

''(b) If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period after the date on which the Secretary of Homeland Security completes all examinations and interviews conducted under such section, as such terms are defined by the Secretary of Homeland Security pursuant to regulations, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. Such court shall only have jurisdiction to review the basis for delay and remand the matter to the Secretary of Homeland Security for the Secretary's determination on the application.''.

(f) CONFORMING AMENDMENT.—Section 310(c) of the Immigration and Nationality Act (8 U.S.C. 1421(c)) is amended—

(1) by inserting ", not later than the date that is 120 days after the Secretary of Homeland Security's final determination," after "seek"; and

(2) by striking the second sentence and inserting the following: "The burden shall be upon the petitioner to show that the Secretary's denial of the application was not supported by facially legitimate and bona fide reasons. Except in a proceeding under section 340, notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to determine, or to review a determination of the Secretary made at any time regarding, whether, for purposes of an application for naturalization, an alien is a person of good moral character, whether the alien understands and is attached to the principles of the Constitution of the United States, or whether an alien is well disposed to the good order and happiness of the United States.".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, shall apply to any act that occurred before, on, or after such date, and shall apply to any application for naturalization or any other case or matter under the immigration laws pending on, or filed after, such date.

SEC. 204. DENATURALIZATION FOR TERRORISTS.

(a) IN GENERAL.—Section 340 of the Immigration and Nationality Act is amended—

(1) by redesignating subsections (f) through (h) as subsections (g) through (i), respectively; and

(2) by inserting after subsection (e) the following:

''(f)(1) If a person who has been naturalized participates in any act described in paragraph (2), the Attorney General is authorized to find that, as of the date of such naturalization, such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and upon such finding shall set aside the order admitting such person to citizenship and cancel the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizen-

ship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

"(2) The acts described in this paragraph are the following:

"(A) Any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.

"(B) Engaging in a terrorist activity (as defined in clauses (iii) and (iv) of section 212(a)(3)(B)).

"(C) Incitement of terrorist activity under circumstances indicating an intention to cause death or serious bodily harm.

"(D) Receiving military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in section 212(a)(3)(B)(vi))."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts that occur on or after such date.

SEC. 205. USE OF 1986 IRCA LEGALIZATION INFORMATION FOR NATIONAL SECURITY PURPOSES.

(a) SPECIAL AGRICULTURAL WORKERS.—Section 210(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1160(b)(6)) is amended—

(1) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security'';

(2) in subparagraph (A), by striking ''Department of Justice,'' and inserting ''Department of Homeland Security,'';

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively;

(4) by inserting after subparagraph (B) the following:

''(C) AUTHORIZED DISCLOSURES.—

''(i) CENSUS PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed under section 8 of title 13, United States Code.

''(ii) NATIONAL SECURITY PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the

furnishing, use, publication, or release of information furnished under this section in any investigation, case, or matter, or for any purpose, relating to terrorism, national intelligence or the national security.''; and

(5) in subparagraph (D), as redesignated, by striking ''Service'' and inserting ''Department of Homeland Security''.

(b) ADJUSTMENT OF STATUS UNDER THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.—Section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5)), is amended—

(1) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security'';

(2) in subparagraph (A), by striking ''Department of Justice,'' and inserting ''Department of Homeland Security,'';

(3) by amending subparagraph (C) to read as follows:

''(C) AUTHORIZED DISCLOSURES.—

''(i) CENSUS PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing of information furnished under this section in

the same manner and circumstances as census information may be disclosed under section 8 of title 13, United States Code.

"(ii) NATIONAL SECURITY PURPOSE.—The Secretary of Homeland Security may provide, in his discretion, for the furnishing, use, publication, or release of information furnished under this section in any investigation, case, or matter, or for any purpose, relating to terrorism, national intelligence or the national security."; and

(4) in subparagraph (D)(i), striking "Service" and inserting "Department of Homeland Security".

SEC. 206. BACKGROUND AND SECURITY CHECKS.

(a) REQUIREMENT TO COMPLETE BACKGROUND AND SECURITY CHECKS.—Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following:

"(h) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security, the Attorney General, nor any court may—

"(1) grant, or order the grant of or adjudication of an application for adjustment of status to that of an alien lawfully admitted for permanent residence;

"(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws;

"(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition; or

"(4) issue or order the issuance of any documentation evidencing or related to any such grant, until such background and security checks as the Secretary may in his discretion require have been completed or updated to the satisfaction of the Secretary.

"(i) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security nor the Attorney General may be required to—

"(1) grant, or order the grant of or adjudication of an application for adjustment of status to

that of an alien lawfully admitted for permanent residence,

"(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws,

"(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition, or

"(4) issue or order the issuance of any documentation evidencing or related to any such grant, until any suspected or alleged materially false information, material misrepresentation or omission, concealment of a material fact, fraud or forgery, counterfeiting, or alteration, or falsification of a document, as determined by the Secretary, relating to the adjudication of an application or petition for any status (including the granting of adjustment of status), relief, protection from removal, or other benefit under this subsection has been investigated and resolved to the Secretary's satisfaction.

"(j) Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United

States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to require any of the acts in subsection (h) or (i) to be completed by a certain time or award any relief for failure to complete or delay in completing such acts.''.

(b) CONSTRUCTION.—

(1) IN GENERAL.—Chapter 4 of title III of the Immigration and Nationality Act (8 U.S.C. 1501 et seq.) is amended by adding at the end the following:

''CONSTRUCTION

''SEC. 362. (a) IN GENERAL.—Nothing in this Act or any other law, except as provided in subsection (d), shall be construed to require the Secretary of Homeland Security, the Attorney General, the Secretary of State, the Secretary of Labor, or a consular officer to grant any application, approve any petition, or grant or continue any relief, protection from removal, employment authorization, or any other status or benefit under the immigration laws by, to, or on behalf of—

''(1) any alien deemed by the Secretary to be described in section 212(a)(3) or section 237(a)(4); or

''(2) any alien with respect to whom a criminal or other proceeding or investigation is open or pending (including, but not limited to, issuance of an arrest warrant, detainer, or indictment), where such

proceeding or investigation is deemed by the official described in subsection (a) to be material to the alien's eligibility for the status or benefit sought.

"(b) DENIAL OR WITHHOLDING OF ADJUDICATION.—An official described in subsection (a) may, in the discretion of the official, deny (with respect to an alien described in paragraph (1) or (2) of subsection (a)) or withhold adjudication of pending resolution of the investigation or case (with respect to an alien described in subsection (a)(2) of this section) any application, petition, relief, protection from removal, employment authorization, status or benefit.

"(c) JURISDICTION.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to review a decision to deny or withhold adjudication pursuant to subsection (b) of this section.

"(d) WITHHOLDING OF REMOVAL AND TORTURE CONVENTION.—This section does not limit or modify the applicability of section 241(b)(3) or the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any res-

ervations, understandings, declarations and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277) with respect to an alien otherwise eligible for protection under such provisions.''.

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 361 the following:

''Sec. 362. Construction.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to applications for immigration benefits pending on or after such date.

SEC. 207. TECHNICAL AMENDMENTS RELATING TO THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004.

(a) TRANSIT WITHOUT VISA PROGRAM.—Section 7209(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1185 note) is amended by striking ''the Secretary, in conjunction with the Secretary of Homeland Security,'' and inserting ''the Secretary of Homeland Security, in consultation with the Secretary of State,''.

(b) TECHNOLOGY ACQUISITION AND DISSEMINATION PLAN.—Section 7201(c)(1) of such Act is amended by in-

serting ''and the Department of State'' after ''used by the Department of Homeland Security''.

TITLE III—REMOVAL OF CRIMINAL ALIENS

SEC. 301. DEFINITION OF AGGRAVATED FELONY.

(a) DEFINITION OF AGGRAVATED FELONY.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—

(1) by striking ''The term 'aggravated felony' means—'' and inserting ''Notwithstanding any other provision of law, the term 'aggravated felony' applies to an offense described in this paragraph, whether in violation of Federal or State law, or in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, even if the length of the term of imprisonment for the offense is based on recidivist or other enhancements and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—'';

(2) in subparagraph (A), by striking ''murder, rape, or sexual abuse of a minor;'' and inserting ''murder, manslaughter, homicide, rape (whether the victim was conscious or unconscious), or any offense

of a sexual nature involving a victim under the age of 18 years;'';

(3) in subparagraph (I), by striking ''or 2252'' and inserting ''2252, or 2252A'';

(4) in subparagraph (F), by striking ''at least one year;'' and inserting ''is at least one year, except that if the conviction records do not conclusively establish whether a crime constitutes a crime of violence, the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime of violence;'';

(5) in subparagraph (N)—

(A) by striking ''paragraph (1)(A) or (2) of''; and

(B) by inserting a semicolon at the end;

(6) in subparagraph (O), by striking ''section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph'' and inserting ''section 275 or 276 for which the term of imprisonment is at least 1 year'';

(7) in subparagraph (U), by striking ''an attempt or conspiracy to commit an offense described in this paragraph'' and inserting ''attempting or

conspiring to commit an offense described in this paragraph, or aiding, abetting, counseling, procuring, commanding, inducing, or soliciting the commission of such an offense''; and

(8) by striking the undesignated matter following subparagraph (U).

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—

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

(A) shall take effect on the date of the enactment of this Act; and

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

(2) APPLICATION OF IIRIRA AMENDMENTS.—The amendments to section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) made by section 321 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.

SEC. 302. PRECLUDING ADMISSIBILITY OF ALIENS CONVICTED OF AGGRAVATED FELONIES OR OTHER SERIOUS OFFENSES.

(a) INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS; WAIVERS.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(1) in subsection (a)(2)(A)(i)—

(A) in subclause (I), by striking ''or'' at the end;

(B) in subclause (II), by adding ''or'' at the end; and

(C) by inserting after subclause (II) the following:

''(III) a violation of (or a conspiracy or attempt to violate) an offense described in section 408 of title 42, United States Code (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and related activity in connection with identification documents, authentication features, and information),'';

(2) by adding at the end of subsection (a)(2) the following:

"(J) PROCUREMENT OF CITIZENSHIP OR NATURALIZATION UNLAWFULLY.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of, or an attempt or a conspiracy to violate, subsection (a) or (b) of section 1425 of title 18, United States Code (relating to the procurement of citizenship or naturalization unlawfully) is inadmissible.

"(K) CERTAIN FIREARM OFFENSES.—Any alien who at any time has been convicted under any law of, or who admits having committed or admits committing acts which constitute the essential elements of, purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is inadmissible.

"(L) AGGRAVATED FELONS.—Any alien who has been convicted of an aggravated felony at any time is inadmissible.

"(M) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDERS, CRIMES AGAINST CHILDREN.—

"(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who at any time is convicted of, or who admits having committed or admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is inadmissible. For purposes of this clause, the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domes-

tic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

''(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is inadmissible. For purposes of this clause, the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions)

whether obtained by filing an independent action or as a independent order in another proceeding.

"(iii) WAIVER AUTHORIZED.—The waiver authority available under section 237(a)(7) with respect to section 237(a)(2)(E)(i) shall be available on a comparable basis with respect to this subparagraph.

"(iv) CLARIFICATION.—If the conviction records do not conclusively establish whether a crime of domestic violence constitutes a crime of violence (as defined in section 16 of title 18, United States Code), the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime of violence."; and

(3) in subsection (h)—

(A) by striking "The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)" and inserting "The Attorney General or the Secretary of Homeland Security

may, in the discretion of the Attorney General or the Secretary, waive the application of subparagraphs (A)(i)(I), (III), (B), (D), (E), (K), and (M) of subsection (a)(2)'';

(B) by striking ''a criminal act involving torture.'' and inserting ''a criminal act involving torture, or has been convicted of an aggravated felony.'';

(C) by striking ''if either since the date of such admission the alien has been convicted of an aggravated felony or the alien'' and inserting ''if since the date of such admission the alien''; and

(D) by inserting ''or Secretary of Homeland Security'' after ''the Attorney General'' each place it appears.

(b) DEPORTABILITY; CRIMINAL OFFENSES.—Section 237(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(3)(B)) is amended—

(1) in clause (ii), by striking ''or'' at the end;

(2) in clause (iii), by inserting ''or'' at the end; and

(3) by inserting after clause (iii) the following:

''(iv) of a violation of, or an attempt or a conspiracy to violate, section 1425(a)

or (b) of title 18 (relating to the procurement of citizenship or naturalization unlawfully),''.

(c) DEPORTABILITY; OTHER CRIMINAL OFFENSES.—Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

''(G) FRAUD AND RELATED ACTIVITY ASSOCIATED WITH SOCIAL SECURITY ACT BENEFITS AND IDENTIFICATION DOCUMENTS.—Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) section 208 of the Social Security Act (42 U.S.C. 408) (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and related activity in connection with identification) is deportable.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply—

(1) to any act that occurred before, on, or after the date of the enactment of this Act; and

(2) to all aliens who are required to establish admissibility on or after such date, and in all re-

moval, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

(e) CONSTRUCTION.—The amendments made by subsection (a) shall not be construed to create eligibility for relief from removal under former section 212(c) of the Immigration and Nationality Act where such eligibility did not exist before these amendments became effective.

SEC. 303. ESPIONAGE CLARIFICATION.

Section 212(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(A)), is amended to read as follows:

"(A) IN GENERAL.—Any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in, or who is engaged in, or with respect to clauses (i) and (iii) of this subparagraph has engaged in—

"(i) any activity—

"(I) to violate any law of the United States relating to espionage or sabotage; or

"(II) to violate or evade any law prohibiting the export from the

United States of goods, technology, or sensitive information;

"(ii) any other unlawful activity; or

"(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means;

is inadmissible.".

SEC. 304. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY, CERTAIN ALIENS.

Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)(5), in subparagraph (B), by striking "(y)(2)" and all that follows and inserting "(y), is in the United States not as an alien lawfully admitted for permanent residence;";

(2) in subsection (g)(5), in subparagraph (B), by striking "(y)(2)" and all that follows and inserting "(y), is in the United States not as an alien lawfully admitted for permanent residence;"; and

(3) in subsection (y)—

(A) in the header, by striking "ADMITTED UNDER NONIMMIGRANT VISAS.—" and insert-

ing ''NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—'';

(B) in paragraph (1), by amending subparagraph (B) to read as follows:

''(B) the term 'lawfully admitted for permanent residence' has the same meaning as in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).'';

(C) in paragraph (2), by striking ''under a nonimmigrant visa'' and inserting ''but not lawfully admitted for permanent residence''; and

(D) in paragraph (3)(A), by striking ''admitted to the United States under a nonimmigrant visa'' and inserting ''lawfully admitted to the United States but not as an alien lawfully admitted for permanent residence''.

SEC. 305. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.

Section 3291 of title 18, United States Code, is amended by striking ''No person'' and all that follows through the period at the end and inserting the following: ''No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses) and 75 (relating to pass-

port, visa, and immigration offenses), or for a violation of any criminal provision of sections 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act, or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information is filed within ten years after the commission of the offense.''.

SEC. 306. CONFORMING AMENDMENT TO THE DEFINITION OF RACKETEERING ACTIVITY.

Section 1961(1) of title 18, United States Code, is amended by striking ''section 1542'' through ''section 1546 (relating to fraud and misuse of visas, permits, and other documents)'' and inserting ''sections 1541–1548 (relating to passports and visas)''.

SEC. 307. CONFORMING AMENDMENTS FOR THE AGGRAVATED FELONY DEFINITION.

(a) IN GENERAL.—Subparagraph (P) of section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—

(1) by striking ''(i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii)'' and inserting ''which is described in

any section of chapter 75 of title 18, United States Code,''; and

(2) by inserting after ''first offense'' the following: ''(i) that is not described in section 1548 of such title (relating to increased penalties), and (ii)''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts that occur before, on, or after the date of the enactment of this Act.

SEC. 308. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT OF STATUS FOR AGGRAVATED FELONS.

(a) IN GENERAL.—Section 209(c) of the Immigration and Nationality Act (8 U.S.C. 1159(c)) is amended by adding at the end thereof the following: ''However, an alien who is convicted of an aggravated felony is not eligible for a waiver or for adjustment of status under this section.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) to any act that occurred before, on, or after the date of the enactment of this Act; and

(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

SEC. 309. PRECLUDING WITHHOLDING OF REMOVAL FOR AGGRAVATED FELONS.

(a) IN GENERAL.—Section 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)), as amended by section 201, is further amended by inserting after clause (v), as inserted by section 201, the following:

''(vi) the alien is convicted of an aggravated felony.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) to any act that occurred before, on, or after the date of the enactment of this Act; and

(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened on or after such date.

SEC. 310. INADMISSIBILITY, DEPORTABILITY, AND DETENTION OF DRUNK DRIVERS.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) (as amended by this Act) is further amended—

(1) in subparagraph (T), by striking ''and'';

(2) in subparagraph (U), by striking the period at the end and inserting ''; and''; and

(3) by inserting after subparagraph (U) the following:

"(V) a second or subsequent conviction for driving while intoxicated (including a conviction for driving while under the influence of or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under State law.".

(b) DETENTION.—Section 236(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)) is amended—

(1) in subparagraph (C), by striking "or" at the end;

(2) in subparagraph (D), by adding "or" at the end; and

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

"(E) is unlawfully present in the United States and has been convicted one or multiple times for driving while intoxicated (including a conviction for driving while under the influence or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under State law,".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment

of this Act and apply to convictions entered on or after such date.

SEC. 311. DETENTION OF DANGEROUS ALIENS.

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

(1) by striking ''Attorney General'' each place it appears, except for the first reference in paragraph (4)(B)(i), and inserting ''Secretary of Homeland Security'';

(2) in paragraph (1), by amending subparagraph (B) to read as follows:

''(B) BEGINNING OF PERIOD.—The removal period begins on the latest of the following:

''(i) The date the order of removal becomes administratively final.

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

''(iii) If the alien is detained or confined (except under an immigration process) on the date the order of removal becomes administratively final, the date the alien is taken into the custody of the Sec-

retary, after the alien is released from such detention or confinement.'';

(3) in paragraph (1), by amending subparagraph (C) to read as follows:

''(C) SUSPENSION OF PERIOD.—

''(i) EXTENSION.—The removal period shall be extended beyond a period of 90 days and the Secretary may, in the Secretary's sole discretion, keep the alien in detention during such extended period if—

''(I) the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal that is subject to an order of removal;

''(II) a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an

alien who is subject to an administratively final order of removal;

"(III) the Secretary transfers custody of the alien pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency; or

"(IV) a court or the Board of Immigration Appeals orders a remand to an immigration judge or the Board of Immigration Appeals, during the time period when the case is pending a decision on remand (with the removal period beginning anew on the date that the alien is ordered removed on remand).

"(ii) RENEWAL.—If the removal period has been extended under clause (C)(i), a new removal period shall be deemed to have begun on the date—

"(I) the alien makes all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the

alien's identity and carry out the removal order;

"(II) the stay of removal is no longer in effect; or

"(III) the alien is returned to the custody of the Secretary.

"(iii) MANDATORY DETENTION FOR CERTAIN ALIENS.—In the case of an alien described in subparagraphs (A) through (D) of section 236(c)(1), the Secretary shall keep that alien in detention during the extended period described in clause (i).

"(iv) SOLE FORM OF RELIEF.—An alien may seek relief from detention under this subparagraph only by filing an application for a writ of habeas corpus in accordance with chapter 153 of title 28, United States Code. No alien whose period of detention is extended under this subparagraph shall have the right to seek release on bond.";

(4) in paragraph (3)—

(A) by adding after "If the alien does not leave or is not removed within the removal pe-

riod'' the following: ''or is not detained pursuant to paragraph (6) of this subsection''; and

(B) by striking subparagraph (D) and inserting the following:

''(D) to obey reasonable restrictions on the alien's conduct or activities that the Secretary prescribes for the alien, in order to prevent the alien from absconding, for the protection of the community, or for other purposes related to the enforcement of the immigration laws.'';

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

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

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

''(A) DETENTION REVIEW PROCESS FOR COOPERATIVE ALIENS ESTABLISHED.—For an alien who is not otherwise subject to mandatory detention, who has made all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary of Homeland Security's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or

other documents necessary to the alien's departure, and who has not conspired or acted to prevent removal, the Secretary shall establish an administrative review process to determine whether the alien should be detained or released on conditions. The Secretary shall make a determination whether to release an alien after the removal period in accordance with subparagraph (B). The determination shall include consideration of any evidence submitted by the alien, and may include consideration of any other evidence, including any information or assistance provided by the Secretary of State or other Federal official and any other information available to the Secretary of Homeland Security pertaining to the ability to remove the alien.

"(B) AUTHORITY TO DETAIN BEYOND REMOVAL PERIOD.—

"(i) IN GENERAL.—The Secretary of Homeland Security, in the exercise of the Secretary's sole discretion, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in paragraph (1)(C)). An alien whose detention is

extended under this subparagraph shall have no right to seek release on bond.

"(ii) SPECIFIC CIRCUMSTANCES.—The Secretary of Homeland Security, in the exercise of the Secretary's sole discretion, may continue to detain an alien beyond the 90 days authorized in clause (i)—

"(I) until the alien is removed, if the Secretary, in the Secretary's sole discretion, determines that there is a significant likelihood that the alien—

"(aa) will be removed in the reasonably foreseeable future; or

"(bb) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien's failure or refusal to make all reasonable efforts to comply with the removal order, or to cooperate fully with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other doc-

uments necessary to the alien's departure, or conspires or acts to prevent removal;

"(II) until the alien is removed, if the Secretary of Homeland Security certifies in writing—

"(aa) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

"(bb) after receipt of a written recommendation from the Secretary of State, that release of the alien is likely to have serious adverse foreign policy consequences for the United States;

"(cc) based on information available to the Secretary of Homeland Security (including classified, sensitive, or national security information, and without regard to the grounds upon which the alien was ordered re-

moved), that there is reason to believe that the release of the alien would threaten the national security of the United States; or

"(dd) that the release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and either (AA) the alien has been convicted of one or more aggravated felonies (as defined in section 101(a)(43)(A)) or of one or more crimes identified by the Secretary of Homeland Security by regulation, or of one or more attempts or conspiracies to commit any such aggravated felonies or such identified crimes, if the aggregate term of imprisonment for such attempts or conspiracies is at least 5 years; or (BB) the alien has committed one or more crimes of vio-

lence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future; or

"(III) pending a certification under subclause (II), so long as the Secretary of Homeland Security has initiated the administrative review process not later than 30 days after the expiration of the removal period (including any extension of the removal period, as provided in paragraph (1)(C)).

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

"(C) RENEWAL AND DELEGATION OF CERTIFICATION.—

"(i) RENEWAL.—The Secretary of Homeland Security may renew a certification under subparagraph (B)(ii)(II) every 6 months, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under subparagraph (B)(ii)(II).

"(ii) DELEGATION.—Notwithstanding section 103, the Secretary of Homeland Security may not delegate the authority to make or renew a certification described in item (bb), (cc), or (dd) of subparagraph (B)(ii)(II) below the level of the Assistant Secretary for Immigration and Customs Enforcement.

"(iii) HEARING.—The Secretary of Homeland Security may request that the Attorney General or the Attorney General's designee provide for a hearing to make the determination described in item (dd)(BB) of subparagraph (B)(ii)(II).

"(D) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention by a Federal court, the Board of Immigration Appeals, or if an immigration judge orders a stay of removal, the Secretary of Homeland Security, in the exercise of the Secretary's discretion, may impose conditions on release as provided in paragraph (3).

"(E) REDETENTION.—The Secretary of Homeland Security, in the exercise of the Secretary's discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody, if removal becomes likely in the reasonably foreseeable future, the alien fails to comply with the conditions of release, or to continue to satisfy the conditions described in subparagraph (A), or if, upon reconsideration, the Secretary, in the Secretary's sole discretion, determines that the alien can be detained under subparagraph (B). This section shall apply to any alien returned to custody pursuant to this subparagraph, as if the removal period terminated on the day of the redetention.

"(F) REVIEW OF DETERMINATIONS BY SECRETARY.—A determination by the Secretary under this paragraph shall not be subject to review by any other agency.".

(b) DETENTION OF ALIENS DURING REMOVAL PROCEEDINGS.—

(1) CLERICAL AMENDMENT.—(A) Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended by striking "Attorney General" each place it appears (except in the second place that term appears in section 236(a)) and inserting "Secretary of Homeland Security".

(B) Section 236(a) of such Act (8 U.S.C. 1226(a)) is amended by inserting "the Secretary of Homeland Security or" before "the Attorney General—".

(C) Section 236(e) of such Act (8 U.S.C. 1226(e)) is amended by striking "Attorney General's" and inserting "Secretary of Homeland Security's".

(2) LENGTH OF DETENTION.—Section 236 of such Act (8 U.S.C. 1226) is amended by adding at the end the following:

"(f) LENGTH OF DETENTION.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, an alien may be detained, and for an alien described in subsection (c) shall be detained, under this section without time limitation, except as provided in subsection (h), during the pendency of removal proceedings.

"(2) CONSTRUCTION.—The length of detention under this section shall not affect detention under section 241.".

(3) DETENTION OF CRIMINAL ALIENS.—Section 236(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)) (as amended by section 310(b)) is further amended, in the matter following subparagraph (E) to read as follows:

"any time after the alien is released, without regard to whether an alien is released related to any activity, offense, or conviction described in this paragraph; to whether the alien is released on parole, supervised release, or probation; or to whether the alien may be arrested or imprisoned again for the same offense. If the activity described in this paragraph does not result in the alien being taken into custody by any person other than the Secretary, then when the alien is brought to the attention of the Secretary or when the Secretary determines it is

practical to take such alien into custody, the Secretary shall take such alien into custody.''.

(4) ADMINISTRATIVE REVIEW.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226), as amended by paragraph (2), is further amended by adding at the end the following:

''(g) ADMINISTRATIVE REVIEW.—

''(1) IN GENERAL.—The Attorney General's review of the Secretary's custody determinations under subsection (a) for the following classes of aliens shall be limited to whether the alien may be detained, released on bond (of at least $1,500 with security approved by the Secretary), or released with no bond:

''(A) Aliens in exclusion proceedings.

''(B) Aliens described in section 212(a)(3) or 237(a)(4).

''(C) Aliens described in subsection (c).

''(2) SPECIAL RULE.—

''(h) RELEASE ON BOND.—

''(1) IN GENERAL.—An alien detained under subsection (a) may seek release on bond. No bond may be granted except to an alien who establishes by clear and convincing evidence that the alien is not a flight risk or a risk to another person or the community.

"(2) CERTAIN ALIENS INELIGIBLE.—No alien detained under subsection (c) may seek release on bond.".

(5) CLERICAL AMENDMENTS.—(A) Section 236(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1226(a)(2)(B)) is amended by striking "conditional parole" and inserting "recognizance".

(B) Section 236(b) of such Act (8 U.S.C. 1226(b)) is amended by striking "parole" and inserting "recognizance".

(c) SEVERABILITY.—If any of the provisions of this section or any amendment by this section, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this section and of amendments made by this section, and the application of the provisions and of the amendments made by this section to any other person or circumstance shall not be affected by such holding.

(d) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall take effect upon the date of enactment of this Act, and section 241 of the Immigration and Nationality Act, as so amended, shall in addition apply to—

(A) all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act; and

(B) acts and conditions occurring or existing before, on, or after such date.

(2) The amendments made by subsection (b) shall take effect upon the date of the enactment of this Act, and section 236 of the Immigration and Nationality Act, as so amended, shall in addition apply to any alien in detention under provisions of such section on or after such date.

SEC. 312. GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN GANG MEMBERS.

(a) DEFINITION OF GANG MEMBER.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(53)(A) The term 'criminal gang' means an ongoing group, club, organization, or association of 5 or more persons that has as one of its primary purposes the commission of 1 or more of the following criminal offenses and the members of which engage, or have engaged within the past 5 years, in a continuing series of such offenses, or that has been designated as a criminal gang by the Secretary of Homeland Security, in consultation with the At-

torney General, as meeting these criteria. The offenses described, whether in violation of Federal or State law or foreign law and regardless of whether the offenses occurred before, on, or after the date of the enactment of this paragraph, are the following:

"(i) A 'felony drug offense' (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(ii) An offense under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose).

"(iii) A crime of violence (as defined in section 16 of title 18, United States Code).

"(iv) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.

"(v) Any conduct punishable under sections 1028 and 1029 of title 18, United States Code (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery and trafficking in persons), section 1952 of such title (relating to interstate and foreign

travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

''(vi) A conspiracy to commit an offense described in clauses (i) through (v).

''(B) Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conduct occurred before, on, or after the date of the enactment of this paragraph.''.

(b) INADMISSIBILITY.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)), as amended by section 302(a)(2) of this Act, is further amended by adding at the end the following:

''(N) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien is inadmissible who a consular officer, the Secretary of Homeland Security, or the Attorney General knows or has reason to believe—

"(i) to be or to have been a member of a criminal gang (as defined in section 101(a)(53)); or

"(ii) to have participated in the activities of a criminal gang (as defined in section 101(a)(53)), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.".

(c) DEPORTABILITY.—Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)), as amended by section 302(c) of this Act, is further amended by adding at the end the following:

"(H) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Any alien is deportable who the Secretary of Homeland Security or the Attorney General knows or has reason to believe—

"(i) is or has been a member of a criminal gang (as defined in section 101(a)(53)); or

"(ii) has participated in the activities of a criminal gang (as so defined), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.".

(d) DESIGNATION.—

(1) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting after section 219 the following:

"DESIGNATION

"SEC. 220. (a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Attorney General, and the Secretary of State may designate a group or association as a criminal street gang if their conduct is described in section 101(a)(53) or if the group or association conduct poses a significant risk that threatens the security and the public safety of United States nationals or the national security, homeland security, foreign policy, or economy of the United States.

"(b) EFFECTIVE DATE.—Designations under subsection (a) shall remain in effect until the designation is revoked after consultation between the Secretary of Homeland Security, the Attorney General, and the Secretary of State or is terminated in accordance with Federal law.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 219 the following:

"220. Designation.".

(e) MANDATORY DETENTION OF CRIMINAL STREET GANG MEMBERS.—

(1) IN GENERAL.—Section 236(c)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)(D)) is amended—

(A) by inserting ''or 212(a)(2)(N)'' after ''212(a)(3)(B)''; and

(B) by inserting ''237(a)(2)(H) or'' before ''237(a)(4)(B)''.

(2) ANNUAL REPORT.—Not later than March 1 of each year (beginning 1 year after the date of the enactment of this Act), the Secretary of Homeland Security, after consultation with the appropriate Federal agencies, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the number of aliens detained under the amendments made by paragraph (1).

(f) ASYLUM CLAIMS BASED ON GANG AFFILIATION.—

(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the matter preceding clause (i), by inserting ''who is described in section 212(a)(2)(N)(i) or section 237(a)(2)(H)(i) or who is'' after ''to an alien''.

(2) INELIGIBILITY FOR ASYLUM.—Section 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) (as amended by this Act) is further amended—

(A) in clause (v), by striking ''or'' at the end;

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

(C) by inserting after clause (v) the following:

''(vi) the alien is described in section 212(a)(2)(N)(i) or section 237(a)(2)(H)(i) (relating to participation in criminal street gangs); or''.

(g) TEMPORARY PROTECTED STATUS.—Section 244 of such Act (8 U.S.C. 1254a) is amended—

(1) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(2) in subparagraph (c)(2)(B)—

(A) in clause (i), by striking ''or'' at the end;

(B) in clause (ii), by striking the period and inserting ''; or''; and

(C) by adding at the end the following:

"(iii) the alien is, or at any time after admission has been, a member of a criminal gang (as defined in section 101(a)(53))."; and

(3) in subsection (d)—

(A) by striking paragraph (3); and

(B) in paragraph (4), by adding at the end the following: "The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision of law.".

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

SEC. 313. EXTENSION OF IDENTITY THEFT OFFENSES.

Section 1028A of title 18, United States Code, is amended by adding at the end the following:

"(d) STATE OF MIND PROOF REQUIREMENT.—In a prosecution for a violation of subsection (a)(1) predicated on a violation described in subsection (c)(2), (6), (7), (9), or (10) of this section, the Government need not prove that the defendant knew the means of identification was of another person.".

SEC. 314. LAUNDERING OF MONETARY INSTRUMENTS.

(a) ADDITIONAL PREDICATE OFFENSES.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting ''section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor),'' after ''section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),''; and

(2) by inserting ''section 274(a) of the Immigration and Nationality Act (8 U.S.C.1324(a)) (relating to bringing in and harboring certain aliens),'' after ''section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),''.

(b) INTENT TO CONCEAL OR DISGUISE.—Section 1956(a) of title 18, United States Code, is amended—

(1) in paragraph (1) so that subparagraph (B) reads as follows:

''(B) knowing that the transaction—

''(i) conceals or disguises, or is intended to conceal or disguise, the nature, source, location, ownership, or control of the proceeds of some form of unlawful activity; or

''(ii) avoids, or is intended to avoid, a transaction reporting requirement under State or Federal law,''; and

(2) in paragraph (2) so that subparagraph (B) reads as follows:

"(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity, and knowing that such transportation, transmission, or transfer—

"(i) conceals or disguises, or is intended to conceal or disguise, the nature, source, location, ownership, or control of the proceeds of some form of unlawful activity; or

"(ii) avoids, or is intended to avoid, a transaction reporting requirement under State or Federal law,".

SEC. 315. PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.

(a) IN GENERAL.—Section 275 of the Immigration and Nationality Act (8 U.S.C. 1325) is amended to read as follows:

"SEC. 275. (a) IN GENERAL.—

"(1) ILLEGAL ENTRY OR PRESENCE.—An alien shall be subject to the penalties set forth in paragraph (2) if the alien—

"(A) knowingly enters or crosses the border into the United States at any time or place

other than as designated by the Secretary of Homeland Security;

"(B) knowingly eludes, at any time or place, examination or inspection by an authorized immigration, customs, or agriculture officer (including by failing to stop at the command of such officer);

"(C) knowingly enters or crosses the border to the United States and, upon examination or inspection, knowingly makes a false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws);

"(D) knowingly violates the terms or conditions of the alien's admission or parole into the United States; or

"(E) knowingly is unlawfully present in the United States (as defined in section 212(a)(9)(B)(ii) subject to the exceptions set for in section 212(a)(9)(B)(iii)).

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

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

"(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years (or not more than 6 months in the case of a second or subsequent violation of paragraph (1)(E)), or both;

"(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

"(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

"(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be

fined under such title, imprisoned not more than 20 years, or both.

"(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

"(A) alleged in the indictment or information; and

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

"(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is discovered within the United States by an immigration, customs, or agriculture officer.

"(5) ATTEMPT.—Whoever attempts to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

"(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be

subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

''(1) not less than $50 or more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

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

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act is amended by striking the item relating to section 275 and inserting the following:

''Sec. 275. Illegal entry or presence.''.

SEC. 316. ILLEGAL REENTRY.

Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended to read as follows:

''REENTRY OF REMOVED ALIEN

''SEC. 276. (a) REENTRY AFTER REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined

under title 18, United States Code, imprisoned not more than 2 years, or both.

"(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection was convicted before such removal or departure—

"(1) for 3 or more misdemeanors or for a felony, the alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

"(2) for a felony for which the alien was sentenced to a term of imprisonment of not less than 30 months, the alien shall be fined under such title, imprisoned not less than 2 years and not more than 15 years, or both;

"(3) for a felony for which the alien was sentenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, imprisoned not less than 4 years and not more than 20 years, or both; or

"(4) for murder, rape, kidnapping, or a felony offense described in chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism) of such title, or for 3 or more felonies of any kind, the alien

shall be fined under such title, imprisoned not less than 5 years and not more than 25 years, or both.

''(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both.

''(d) PROOF OF PRIOR CONVICTIONS.—The prior convictions described in subsection (b) are elements of the crimes described, and the penalties in that subsection shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

''(1) alleged in the indictment or information; and

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

''(e) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to a violation of this section that—

''(1) prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States; or

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

"(A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act; and

"(B) had complied with all other laws and regulations governing the alien's admission into the United States.

"(f) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien.

"(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens

as may be available under this section or any other provision of law.

''(h) DEFINITIONS.—For purposes of this section and section 275, the following definitions shall apply:

''(1) CROSSES THE BORDER TO THE UNITED STATES.—The term 'crosses the border' refers to the physical act of crossing the border, regardless of whether the alien is free from official restraint.

''(2) FELONY.—The term 'felony' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

''(3) MISDEMEANOR.—The term 'misdemeanor' means any criminal offense punishable by a term of imprisonment of not more than 1 year under the applicable laws of the United States, any State, or a foreign government.

''(4) REMOVAL.—The term 'removal' includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

''(5) STATE.—The term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.''.

SEC. 317. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

Chapter 75 of title 18, United States Code, is amended to read as follows:

"CHAPTER 75—PASSPORTS AND VISAS

"1541. Issuance without authority.
"1542. False statement in application and use of passport.
"1543. Forgery or false use of passport.
"1544. Misuse of a passport.
"1545. Schemes to defraud aliens.
"1546. Immigration and visa fraud.
"1547. Attempts and conspiracies.
"1548. Alternative penalties for certain offenses.
"1549. Definitions.

"§ 1541. Issuance without authority

"(a) IN GENERAL.—Whoever—

"(1) acting or claiming to act in any office or capacity under the United States, or a State, without lawful authority grants, issues, or verifies any passport or other instrument in the nature of a passport to or for any person; or

"(2) being a consular officer authorized to grant, issue, or verify passports, knowingly grants, issues, or verifies any such passport to or for any person not owing allegiance, to the United States, whether a citizen or not;

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

"(b) DEFINITION.—In this section, the term 'State' means a State of the United States, the District of Colum-

bia, and any commonwealth, territory, or possession of the United States.

"§ 1542. False statement in application and use of passport

"Whoever knowingly—

"(1) makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

"(2) uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement;

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

"§ 1543. Forgery or false use of passport

"Whoever—

"(1) falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

"(2) knowingly uses, or attempts to use, or furnishes to another for use any such false, forged,

counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same;

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

"§ 1544. Misuse of a passport

''Whoever knowingly—

''(1) uses any passport issued or designed for the use of another;

''(2) uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;

''(3) secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, stolen, or produced or issued without lawful authority; or

''(4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States;

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

"§ 1545. Schemes to defraud aliens

''Whoever inside the United States, or in or affecting interstate or foreign commerce, in connection with any matter that is authorized by or arises under the immigration laws of the United States or any matter the offender claims or represents is authorized by or arises under the immigration laws of the United States, knowingly executes a scheme or artifice—

''(1) to defraud any person, or

''(2) to obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, or promises;

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

"§ 1546. Immigration and visa fraud

''Whoever knowingly—

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

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

''(3) mails, prepares, presents, or signs any immigration document knowing it to contain any materially false statement or representation;

''(4) secures, possesses, uses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, al-

tered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

"(5) adopts or uses a false or fictitious name to evade or to attempt to evade the immigration laws;

"(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the immigration document was issued or designed; or

"(7) produces, issues, authorizes, or verifies, without lawful authority, an immigration document;

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

"§ 1547. Attempts and conspiracies

"Whoever attempts or conspires to violate this chapter shall be punished in the same manner as a person who completes that violation.

"§ 1548. Alternative penalties for certain offenses

"(a) TERRORISM.—Whoever violates any section in this chapter to facilitate an act of international terrorism or domestic terrorism (as such terms are defined in section 2331), shall be fined under this title or imprisoned not more than 25 years, or both.

"(b) DRUG TRAFFICKING OFFENSES.—Whoever violates any section in this chapter to facilitate a drug traf-

ficking crime (as defined in section 929(a)) shall be fined under this title or imprisoned not more than 20 years, or both.

"§ 1549. Definitions

"In this chapter:

"(1) An 'application for a United States passport' includes any document, photograph, or other piece of evidence attached to or submitted in support of the application.

"(2) The term 'immigration document' means any instrument on which is recorded, by means of letters, figures, or marks, matters which may be used to fulfill any requirement of the Immigration and Nationality Act.".

SEC. 318. FORFEITURE.

Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

"(I) Any property, real or personal, that has been used to commit or facilitate the commission of a violation of chapter 75, the gross proceeds of such violation, and any property traceable to any such property or proceeds.".

SEC. 319. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE ON CRIMINAL OR SECURITY GROUNDS.

(a) IN GENERAL.—Section 238(b) of the Immigration and Nationality Act (8 U.S.C. 1228(b)) is amended–

(1) in paragraph (1)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security in the exercise of discretion''; and

(B) by striking ''set forth in this subsection or'' and inserting ''set forth in this subsection, in lieu of removal proceedings under'';

(2) in paragraph (3), by striking ''paragraph (1) until 14 calendar days'' and inserting ''paragraph (1) or (3) until 7 calendar days'';

(3) by striking ''Attorney General'' each place it appears in paragraphs (3) and (4) and inserting ''Secretary of Homeland Security'';

(4) in paragraph (5)—

(A) by striking ''described in this section'' and inserting ''described in paragraph (1) or (2)''; and

(B) by striking ''the Attorney General may grant in the Attorney General's discretion'' and inserting ''the Secretary of Homeland Security or the Attorney General may grant, in the dis-

cretion of the Secretary or Attorney General, in any proceeding'';

(5) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and

(6) by inserting after paragraph (2) the following new paragraph:

''(3) The Secretary of Homeland Security in the exercise of discretion may determine inadmissibility under section 212(a)(2) (relating to criminal offenses) or section 212(a)(3)(related to security grounds) and issue an order of removal pursuant to the procedures set forth in this subsection, in lieu of removal proceedings under section 240, with respect to an alien who—

''(A) has not been admitted or paroled;

''(B) has not been found to have a credible fear of persecution pursuant to the procedures set forth in section 235(b)(1)(B); and

''(C) is not eligible for a waiver of inadmissibility or relief from removal.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act but shall not apply to aliens who are in removal proceedings under section 240 of the Immigration and Nationality Act as of such date.

SEC. 320. INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER.

(a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)), as amended by section 302(a) of this Act, is further amended—

(1) in subclause (II), by striking ''or'' at the end;

(2) in subclause (III), by adding ''or'' at the end; and

(3) by inserting after subclause (III) the following:

''(IV) a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender),''.

(b) DEPORTABILITY.—Section 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended by sections 302(c) and 311(c) of this Act, is further amended—

(1) in subparagraph (A), by striking clause (v); and

(2) by adding at the end the following:

"(I) FAILURE TO REGISTER AS A SEX OFFENDER.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender) is deportable.".

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

SEC. 321. PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS.

(a) IMMIGRANTS.—Section 204(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)), is amended—

(1) in subparagraph (A), by amending clause (viii) to read as follows:

"(viii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with re-

spect to whom a petition described in clause (i) is filed.''; and

(2) in subparagraph (B)(i)—

(A) by redesignating the second subclause (I) as subclause (II); and

(B) by amending such subclause (II) to read as follows:

''(II) Subclause (I) shall not apply in the case of an alien admitted for permanent residence who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the alien lawfully admitted for permanent residence poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.''.

(b) NONIMMIGRANTS.—Section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)), is amended by striking ''204(a)(1)(A)(viii)(I))'' each place such term appears and inserting ''204(a)(1)(A)(viii))''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to petitions filed on or after such date.

SEC. 322. CLARIFICATION TO CRIMES OF VIOLENCE AND CRIMES INVOLVING MORAL TURPITUDE.

(a) INADMISSIBLE ALIENS.—Section 212(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)) is amended by adding at the end the following:

"(iii) CLARIFICATION.—If the conviction records do not conclusively establish whether a crime constitutes a crime involving moral turpitude, the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime involving moral turpitude.".

(b) DEPORTABLE ALIENS.—

(1) GENERAL CRIMES.—Section 237(a)(2)(A) of such Act (8 U.S.C. 1227(a)(2)(A)), as amended by section 320(b) of this Act, is further amended by inserting after clause (iv) the following:

"(v) CRIMES INVOLVING MORAL TURPITUDE.—If the conviction records do not conclusively establish whether a crime constitutes a crime involving moral turpitude, the Attorney General may consider other evidence related to the conviction that

clearly establishes that the conduct for which the alien was engaged constitutes a crime involving moral turpitude.''.

(2) DOMESTIC VIOLENCE.—Section 237(a)(2)(E) of such Act (8 U.S.C. 1227(a)(2)(E)) is amended by adding at the end the following:

''(iii) CRIMES OF VIOLENCE.—If the conviction records do not conclusively establish whether a crime of domestic violence constitutes a crime of violence (as defined in section 16 of title 18, United States Code), the Attorney General may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a crime of violence.''.

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

SEC. 323. PENALTIES FOR FAILURE TO OBEY REMOVAL ORDERS.

(a) IN GENERAL.—Section 243(a) of the Immigration and Nationality Act (8 U.S.C. 1253(a)) is amended—

(1) in the matter preceding subparagraph (A) of paragraph (1), by inserting ''212(a) or'' before ''237(a),''; and

(2) by striking paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts that are described in subparagraphs (A) through (D) of section 243(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1253(a)(1)) that occur on or after the date of the enactment of this Act.

SEC. 324. PARDONS.

(a) DEFINITION.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), as amended by section 312(a) of this Act, is further amended by adding at the end the following:

''(54) The term 'pardon' means a full and unconditional pardon granted by the President of the United States, Governor of any of the several States or constitutionally recognized body.''.

(b) DEPORTABILITY.—Section 237(a) of such Act (8 U.S.C. 1227(a)) is amended—

(1) in paragraph (2)(A), by striking clause (vi); and

(2) by adding at the end the following:

"(8) PARDONS.—In the case of an alien who has been convicted of a crime and is subject to removal due to that conviction, if the alien, subsequent to receiving the criminal conviction, is granted a pardon, the alien shall not be deportable by reason of that criminal conviction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to a pardon granted before, on, or after such date.

SEC. 325. CONVICTIONS.

(a) Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following subparagraph:

"(J) CONVICTIONS.—

"(i) IN GENERAL.—For purposes of determining whether an underlying criminal offense constitutes a ground of inadmissibility under this subsection, all statutes or common law offenses are divisible so long as any of the conduct encompassed by the statute constitutes an offense that is a ground of inadmissibility.

"(ii) OTHER EVIDENCE.—If the conviction records do not conclusively establish

whether a crime constitutes a ground of inadmissibility, the Attorney General or the Secretary of Homeland Security may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a ground of inadmissibility.''.

(b) Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following subparagraph:

''(G) CRIMINAL OFFENSES.—

''(i) IN GENERAL.—For purposes of determining whether an underlying criminal offense constitutes a ground of deportability under this subsection, all statutes or common law offenses are divisible so long as any of the conduct encompassed by the statute constitutes an offense that is a ground of deportability.

''(ii) OTHER EVIDENCE.—If the conviction records do not conclusively establish whether a crime constitutes a ground of deportability, the Attorney General or the Secretary of Homeland Security may consider other evidence related to the convic-

tion that clearly establishes that the conduct for which the alien was engaged constitutes a ground of deportability.''.

TITLE IV—VISA SECURITY

SEC. 401. CANCELLATION OF ADDITIONAL VISAS.

(a) IN GENERAL.—Section 222(g) of the Immigration and Nationality Act (8 U.S.C. 1202(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''Attorney General'' and inserting ''Secretary''; and

(B) by inserting ''and any other nonimmigrant visa issued by the United States that is in the possession of the alien'' after ''such visa''; and

(2) in paragraph (2)(A), by striking ''(other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality'' and inserting ''(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality or foreign residence''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to a visa issued before, on, or after such date.

SEC. 402. VISA INFORMATION SHARING.

(a) IN GENERAL.—Section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)(2)) is amended—

(1) by striking ''issuance or refusal'' and inserting ''issuance, refusal, or revocation'';

(2) in paragraph (2), in the matter preceding subparagraph (A), by striking ''and on the basis of reciprocity'';

(3) in paragraph (2)(A)—

(A) by inserting ''(i)'' after ''for the purpose of''; and

(B) by striking ''illicit weapons; or'' and inserting ''illicit weapons, or (ii) determining a person's deportability or eligibility for a visa, admission, or other immigration benefit;'';

(4) in paragraph (2)(B)—

(A) by striking ''for the purposes'' and inserting ''for one of the purposes''; and

(B) by striking ''or to deny visas to persons who would be inadmissible to the United States.'' and inserting ''; or''; and

(5) in paragraph (2), by adding at the end the following:

''(C) with regard to any or all aliens in the database specified data elements from each record, if the Secretary of State determines that

it is in the national interest to provide such information to a foreign government.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date of the enactment of the Act.

SEC. 403. RESTRICTING WAIVER OF VISA INTERVIEWS.

Section 222(h) of the Immigration and Nationality Act (8 U.S.C. 1202(h)(1)(B)) is amended—

(1) in paragraph (1)(C), by inserting ‘‘, in consultation with the Secretary of Homeland Security,'' after ‘‘if the Secretary'';

(2) in paragraph (1)(C)(i), by inserting ‘‘, where such national interest shall not include facilitation of travel of foreign nationals to the United States, reduction of visa application processing times, or the allocation of consular resources'' before the semicolon at the end; and

(3) in paragraph (2)—

(A) by striking ‘‘or'' at the end of subparagraph (E);

(B) by striking the period at the end of subparagraph (F) and inserting ‘‘; or''; and

(C) by adding at the end the following:

‘‘(G) is an individual—

"(i) determined to be in a class of aliens determined by the Secretary of Homeland Security to be threats to national security;

"(ii) identified by the Secretary of Homeland Security as a person of concern; or

"(iii) applying for a visa in a visa category with respect to which the Secretary of Homeland Security has determined that a waiver of the visa interview would create a high risk of degradation of visa program integrity.".

SEC. 404. AUTHORIZING THE DEPARTMENT OF STATE TO NOT INTERVIEW CERTAIN INELIGIBLE VISA APPLICANTS.

(a) IN GENERAL.—Section 222(h)(1) of the Immigration and Nationality Act (8 U.S.C. 1202(h)(1)) is amended by inserting "the alien is determined by the Secretary of State to be ineligible for a visa based upon review of the application or" after "unless".

(b) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State shall issue guidance to consular officers on the standards and processes for implementing the authority to deny visa

applications without interview in cases where the alien is determined by the Secretary of State to be ineligible for a visa based upon review of the application.

(c) REPORTS.—Not less frequently than once each quarter, the Secretary of State shall submit to the Congress a report on the denial of visa applications without interview, including—

(1) the number of such denials; and

(2) a post-by-post breakdown of such denials.

SEC. 405. VISA REFUSAL AND REVOCATION.

(a) AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY AND THE SECRETARY OF STATE.—

(1) IN GENERAL.—Section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236) is amended by striking subsections (b) and (c) and inserting the following:

''(b) AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY.—

''(1) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) and except for the authority of the Secretary of State under subparagraphs (A) and (G) of section 101(a)(15) of the

Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), the Secretary—

"(A) shall have exclusive authority to issue regulations, establish policy, and administer and enforce the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and all other immigration or nationality laws relating to the functions of consular officers of the United States in connection with the granting and refusal of a visa; and

"(B) may refuse or revoke any visa to any alien or class of aliens if the Secretary, or designee, determines that such refusal or revocation is necessary or advisable in the security or foreign policy interests of the United States.

"(2) EFFECT OF REVOCATION.—The revocation of any visa under paragraph (1)(B)—

"(A) shall take effect immediately; and

"(B) shall automatically cancel any other valid visa that is in the alien's possession.

"(3) JUDICIAL REVIEW.—Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review a decision

by the Secretary of Homeland Security to refuse or revoke a visa, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a refusal or revocation.

''(c) AUTHORITY OF THE SECRETARY OF STATE.—

''(1) IN GENERAL.—The Secretary of State may direct a consular officer to refuse a visa requested by an alien if the Secretary of State determines such refusal to be necessary or advisable in the security or foreign policy interests of the United States.

''(2) LIMITATION.—No decision by the Secretary of State to approve a visa may override a decision by the Secretary of Homeland Security under subsection (b).''.

(2) CONFORMING AMENDMENT.—Section 237(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(B)) is amended by striking ''under section 221(i)''.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to visa refusals and revocations occurring before, on, or after such date.

(b) TECHNICAL CORRECTIONS TO THE HOMELAND SECURITY ACT.—Section 428(a) of the Homeland Security Act of 2002 (6 U.S.C. 236(a)) is amended by—

(1) striking ''subsection'' and inserting ''section''; and

(2) striking ''consular office'' and inserting ''consular officer''.

SEC. 406. FUNDING FOR THE VISA SECURITY PROGRAM.

(a) IN GENERAL.—The Department of State and Related Agency Appropriations Act, 2005 (title IV of division B of Public Law 108–447) is amended, in the fourth paragraph under the heading ''Diplomatic and Consular Programs'', by striking ''Beginning'' and all that follows through the period at the end and inserting the following: ''Beginning in fiscal year 2005 and thereafter, the Secretary of State is authorized to charge surcharges related to consular services in support of enhanced border security that are in addition to the immigrant visa fees in effect on January 1, 2004: *Provided*, That funds collected pursuant to this authority shall be credited to the appropriation for U.S. Immigration and Customs Enforcement for the fiscal year in which the fees were collected, and shall be available until expended for the funding of the Visa Security Program established by the Secretary of Homeland Security under section 428(e) of the Homeland Security

Act of 2002 (Public Law 107–296): *Provided further*, That such surcharges shall be 10 percent of the fee assessed on immigrant visa applications.''.

(b) REPAYMENT OF APPROPRIATED FUNDS.—Twenty percent of the funds collected each fiscal year under the heading ''Diplomatic and Consular Programs'' in the Department of State and Related Agency Appropriations Act, 2005 (title IV of division B of Public Law 108–447), as amended by subsection (a), shall be deposited into the general fund of the Treasury as repayment of funds appropriated pursuant to section 407(c) of this Act until the entire appropriated sum has been repaid.

SEC. 407. EXPEDITIOUS EXPANSION OF VISA SECURITY PROGRAM TO HIGH-RISK POSTS.

(a) IN GENERAL.—Section 428(i) of the Homeland Security Act of 2002 (6 U.S.C. 236(i)) is amended to read as follows:

''(i) VISA ISSUANCE AT DESIGNATED HIGH-RISK POSTS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall conduct an on-site review of all visa applications and supporting documentation before adjudication at the top 30 visa-issuing posts designated jointly by the Secretaries of State and Homeland Security as high-risk posts.''.

(b) ASSIGNMENT OF PERSONNEL.—Not later than one year after the date of enactment of this section, the Secretary of Homeland Security shall assign personnel to the visa-issuing posts referenced in section 428(i) of the Homeland Security Act of 2002 (6 U.S.C. 236(i)), as amended by this section, and communicate such assignments to the Secretary of State.

(c) APPROPRIATIONS.—There is authorized to be appropriated $60,000,000 for each of the fiscal years 2014 and 2015, which shall be used to expedite the implementation of section 428(i) of the Homeland Security Act, as amended by this section.

SEC. 408. EXPEDITED CLEARANCE AND PLACEMENT OF DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT OVERSEAS EMBASSIES AND CONSULAR POSTS.

Section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236) is amended by adding at the end the following:

"(j) EXPEDITED CLEARANCE AND PLACEMENT OF DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT OVERSEAS EMBASSIES AND CONSULAR POSTS.—Notwithstanding any other provision of law, and the processes set forth in National Security Defense Directive 38 (dated June 2, 1982) or any successor Directive, the Chief of

Mission of a post to which the Secretary of Homeland Security has assigned personnel under subsection (e) or (i) shall ensure, not later than one year after the date on which the Secretary of Homeland Security communicates such assignment to the Secretary of State, that such personnel have been stationed and accommodated at post and are able to carry out their duties.''.

SEC. 409. ACCREDITATION REQUIREMENTS.

(a) COLLEGES, UNIVERSITIES, AND LANGUAGE TRAINING PROGRAMS.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended—

(1) in paragraph (15)(F)(i)—

(A) by striking ''section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States'' and inserting ''section 214(m) at an accredited college, university, or language training program, or at an established seminary, conservatory, academic high school, elementary school, or other academic institution in the United States'';

(B) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security''; and

(C) by striking ''and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn,'' and inserting ''and if any such institution of learning of place of study fails to make reports promptly or fails to comply with any accreditation requirement (including deadlines for submitting accreditation applications or obtaining accreditation) the approval shall be withdrawn,''; and

(2) by amending paragraph (52) to read as follows:

''(52) Except as provided in section 214(m)(4), the term 'accredited college, university, or language training program' means a college, university, or language training program that is accredited by an accrediting agency recognized by the Secretary of Education.''.

(b) OTHER ACADEMIC INSTITUTIONS.—Section 214(m) of the Immigration and Nationality Act (8 U.S.C. 1184(m)) is amended by adding at the end the following:

''(3) The Secretary of Homeland Security shall require accreditation of an academic institution (except for

seminaries or other religious institutions) for purposes of section 101(a)(15)(F) if—

"(A) that institution is not already required to be accredited under section 101(a)(15)(F)(i); and

"(B) an appropriate accrediting agency recognized by the Secretary of Education is able to provide such accreditation.

"(4) The Secretary of Homeland Security, in the Secretary's discretion, may waive the accreditation requirement in paragraph (3) or section 101(a)(15)(F)(i) with respect to an institution if such institution—

"(A) is otherwise in compliance with the requirements of section 101(a)(15)(F)(i); and

"(B) has been a candidate for accreditation for at least 1 year and continues to progress toward accreditation by an accrediting agency recognized by the Secretary of Education.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall—

(A) take effect on the date that is 180 days after the date of enactment of this Act; and

(B) apply with respect to applications for nonimmigrant visas that are filed on or after the effective date described in subparagraph (A).

(2) TEMPORARY EXCEPTION.—During the 3-year period beginning on the effective date described in paragraph (1)(A), an institution that is newly required to be accredited under this section may continue to participate in the Student and Exchange Visitor Program notwithstanding the institution's lack of accreditation if the institution—

(A) was certified under the Student and Exchange Visitor Program on such date;

(B) submitted an application for accreditation to an accrediting agency recognized by the Secretary of Education during the 6-month period ending on such date; and

(C) continues to progress toward accreditation by such accrediting agency.

SEC. 410. VISA FRAUD.

(a) TEMPORARY SUSPENSION OF SEVIS ACCESS.—Section 641(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)) is amended—

(1) in paragraph (1)(A), by striking ''institution,,'' and inserting ''institution,''; and

(2) by adding at the end the following:

''(3) EFFECT OF REASONABLE SUSPICION OF FRAUD.—If the Secretary of Homeland Security has reasonable suspicion that an owner of, or a designated school official at, an approved institution of higher education, an other approved educational institution, or a designated exchange visitor program has committed fraud or attempted to commit fraud relating to any aspect of the Student and Exchange Visitor Program, the Secretary may immediately suspend, without notice, such official's or such school's access to the Student and Exchange Visitor Information System (SEVIS), including the ability to issue Form I–20s, pending a final determination by the Secretary with respect to the institution's certification under the Student and Exchange Visitor Program.''.

(b) EFFECT OF CONVICTION FOR VISA FRAUD.—Such section 641(d), as amended by subsection (a)(2), is further amended by adding at the end the following:

''(4) PERMANENT DISQUALIFICATION FOR FRAUD.—A designated school official at, or an owner of, an approved institution of higher education, an

other approved educational institution, or a designated exchange visitor program who is convicted for fraud relating to any aspect of the Student and Exchange Visitor Program shall be permanently disqualified from filing future petitions and from having an ownership interest or a management role, including serving as a principal, owner, officer, board member, general partner, designated school official, or any other position of substantive authority for the operations or management of the institution, in any United States educational institution that enrolls nonimmigrant alien students described in subparagraph (F) or (M) of section 101(a)(15) the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).''.

SEC. 411. BACKGROUND CHECKS.

(a) IN GENERAL.—Section 641(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)), as amended by section 411(b) of this Act, is further amended by adding at the end the following:

''(5) BACKGROUND CHECK REQUIREMENT.—

''(A) IN GENERAL.—An individual may not serve as a designated school official or be granted access to SEVIS unless the individual is a

national of the United States or an alien lawfully admitted for permanent residence and during the most recent 3-year period—

"(i) the Secretary of Homeland Security has—

"(I) conducted a thorough background check on the individual, including a review of the individual's criminal and sex offender history and the verification of the individual's immigration status; and

"(II) determined that the individual has not been convicted of any violation of United States immigration law and is not a risk to national security of the United States; and

"(ii) the individual has successfully completed an on-line training course on SEVP and SEVIS, which has been developed by the Secretary.

"(B) INTERIM DESIGNATED SCHOOL OFFICIAL.—

"(i) IN GENERAL.—An individual may serve as an interim designated school official during the period that the Secretary is

conducting the background check required by subparagraph (A)(i)(I).

''(ii) REVIEWS BY THE SECRETARY.—If an individual serving as an interim designated school official under clause (i) does not successfully complete the background check required by subparagraph (A)(i)(I), the Secretary shall review each Form I–20 issued by such interim designated school official.

''(6) FEE.—The Secretary is authorized to collect a fee from an approved school for each background check conducted under paragraph (6)(A)(i). The amount of such fee shall be equal to the average amount expended by the Secretary to conduct such background checks.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 1 year after the date of the enactment of this Act.

SEC. 412. NUMBER OF DESIGNATED SCHOOL OFFICIALS.

Section 641(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)), as amended by section 412(a) of this Act, is further amended by adding at the end the following:

"(7) NUMBER OF DESIGNATED SCHOOL OFFICIALS.—School officials may nominate as many Designated School Officials (DSOs) in addition to the school's Principal Designated School Official (PDSO) as they determine necessary to adequately provide recommendations to students enrolled at the school regarding maintenance of nonimmigrant status under subparagraph (F) or (M) of section 101(a)(15) and to support timely and complete recordkeeping and reporting to the Secretary of Homeland Security, as required by this section, except that a school may not have less than one DSO per every 200 students who have nonimmigrant status pursuant to subparagraph (F), (J), or (M) of such section. School officials shall not permit a DSO or PDSO nominee access to SEVIS until the Secretary approves the nomination.".

SEC. 413. REPORTING REQUIREMENT.

Section 442(a) of the Homeland Security Act of 2002 (6 U.S.C. 252(a)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

"(5) STUDENT AND EXCHANGE VISITOR PROGRAM.—In administering the program under paragraph (4), the Secretary shall, not later than one year after the date of the enactment of this paragraph, prescribe regulations to require an institution or exchange visitor program sponsor participating in the Student Exchange Visitor Program to ensure that each student or exchange visitor who has nonimmigrant status pursuant to subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) enrolled at the institution or attending the exchange visitor program is reported to the Department within 10 days of—

"(A) transferring to another institution or program;

"(B) changing academic majors; or

"(C) any other changes to information required to be maintained in the system described in paragraph (4).".

SEC. 414. FLIGHT SCHOOLS NOT CERTIFIED BY FAA.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of Homeland Security shall prohibit any flight school in the United States from accessing SEVIS or issuing a Form I–20 to an alien seeking a student visa

pursuant to subparagraph (F)(i) or (M)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) if the flight school has not been certified to the satisfaction of the Secretary and by the Federal Aviation Administration pursuant to part 141 or part 142 of title 14, Code of Federal Regulations (or similar successor regulations).

(b) TEMPORARY EXCEPTION.—During the 5-year period beginning on the date of the enactment of this Act, the Secretary may waive the requirement under subsection (a) that a flight school be certified by the Federal Aviation Administration if such flight school—

(1) was certified under the Student and Exchange Visitor Program on the date of the enactment of this Act;

(2) submitted an application for certification with the Federal Aviation Administration during the 1-year period beginning on such date; and

(3) continues to progress toward certification by the Federal Aviation Administration.

SEC. 415. REVOCATION OF ACCREDITATION.

At the time an accrediting agency or association is required to notify the Secretary of Education and the appropriate State licensing or authorizing agency of the final denial, withdrawal, suspension, or termination of accredi-

tation of an institution pursuant to section 496 of the Higher Education Act of 1965 (20 U.S.C. 1099b), such accrediting agency or association shall notify the Secretary of Homeland Security of such determination and the Secretary of Homeland Security shall immediately withdraw the school from the SEVP and prohibit the school from accessing SEVIS.

SEC. 416. REPORT ON RISK ASSESSMENT.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that contains the risk assessment strategy that will be employed by the Secretary to identify, investigate, and take appropriate action against schools and school officials that are facilitating the issuance of Form I–20 and the maintenance of student visa status in violation of the immigration laws of the United States.

SEC. 417. IMPLEMENTATION OF GAO RECOMMENDATIONS.

Not later than 180 days after the date of the enactment of this act, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that describes—

(1) the process in place to identify and assess risks in the SEVP;

(2) a risk assessment process to allocate SEVP's resources based on risk;

(3) the procedures in place for consistently ensuring a school's eligibility, including consistently verifying in lieu of letters;

(4) how SEVP identified and addressed missing school case files;

(5) a plan to develop and implement a process to monitor State licensing and accreditation status of all SEVP-certified schools;

(6) whether all flight schools that have not been certified to the satisfaction of the Secretary and by the Federal Aviation Administration have been removed from the program and have been restricted from accessing SEVIS;

(7) the standard operating procedures that govern coordination among SEVP, Counterterrorism and Criminal Exploitation Unit, and U.S. Immigration and Customs Enforcement field offices; and

(8) the established criteria for referring cases of a potentially criminal nature from SEVP to the counterterrorism and intelligence community.

SEC. 418. IMPLEMENTATION OF SEVIS II.

Not later than 2 years after the date of the enactment of this Act, the Secretary of Homeland Security shall complete the deployment of both phases of the 2nd generation Student and Exchange Visitor Information System (commonly known as ''SEVIS II'').

SEC. 419. DEFINITIONS.

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

(1) SEVIS.—The term ''SEVIS'' means the Student and Exchange Visitor Information System of the Department of Homeland Security.

(2) SEVP.—The term ''SEVP'' means the Student and Exchange Visitor Program of the Department of Homeland Security.

TITLE V—AID TO U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICERS

SEC. 501. ICE IMMIGRATION ENFORCEMENT AGENTS.

(a) IN GENERAL.—The Secretary of Homeland Security shall authorize all immigration enforcement agents and deportation officers of the Department of Homeland Security who have successfully completed basic immigration law enforcement training to exercise the powers conferred by—

(1) section 287(a)(5)(A) of the Immigration and Nationality Act to arrest for any offense against the United States;

(2) section 287(a)(5)(B) of such Act to arrest for any felony;

(3) section 274(a) of such Act to arrest for bringing in, transporting, or harboring certain aliens, or inducing them to enter;

(4) section 287(a) of such Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States; and

(5) section 287(a) of such Act to carry firearms, provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force.

(b) ARREST POWERS.—Section 287(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(2)) is amended by striking ''regulation and is likely to escape before a warrant can be obtained for his arrest,'' and inserting ''regulation,''.

(c) PAY.—Immigration enforcement agents shall be paid on the same scale as Immigration and Customs Enforcement deportation officers and shall receive the same benefits.

SEC. 502. ICE DETENTION ENFORCEMENT OFFICERS.

(a) AUTHORIZATION.—The Secretary of Homeland Security is authorized to hire 2,500 Immigration and Customs Enforcement detention enforcement officers.

(b) DUTIES.—Immigration and Customs Enforcement detention enforcement officers who have successfully completed detention enforcement officers' basic training shall be responsible for—

(1) taking and maintaining custody of any person who has been arrested by an immigration officer;

(2) transporting and guarding immigration detainees;

(3) securing Department of Homeland Security detention facilities; and

(4) assisting in the processing of detainees.

SEC. 503. ENSURING THE SAFETY OF ICE OFFICERS AND AGENTS.

(a) BODY ARMOR.—The Secretary of Homeland Security shall ensure that every Immigration and Customs Enforcement deportation officer and immigration enforce-

ment agent on duty is issued high-quality body armor that is appropriate for the climate and risks faced by the agent. Enough body armor must be purchased to cover every agent in the field.

(b) WEAPONS.—Such Secretary shall ensure that Immigration and Customs Enforcement deportation officers and immigration enforcement agents are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and innocent third parties from the threats posed by armed criminals. Such weapons shall include, at a minimum, standard-issue handguns, M–4 (or equivalent) rifles, and Tasers.

(c) EFFECTIVE DATE.—This section shall take effect 90 days after the date of the enactment of this Act.

SEC. 504. ICE ADVISORY COUNCIL.

(a) ESTABLISHMENT.—An ICE Advisory Council shall be established not later than 3 months after the date of the enactment of this Act.

(b) MEMBERSHIP.—The ICE Advisor Council shall be comprised of 7 members.

(c) APPOINTMENT.—Members shall to be appointed in the following manner:

(1) One member shall be appointed by the President.

(2) One member shall be appointed by the Chairman of the Judiciary Committee of the House of Representatives.

(3) One member shall be appointed by the Chairman of the Judiciary Committee of the Senate.

(4) One member shall be appointed by the Local 511, the ICE prosecutor's union.

(5) Three members shall be appointed by the National Immigration and Customs Enforcement Council.

(d) TERM.—Members shall serve renewable, 2-year terms.

(e) VOLUNTARY.—Membership shall be voluntary and non-remunerated, except that members will receive reimbursement from the Secretary of Homeland Security for travel and other related expenses.

(f) RETALIATION PROTECTION.—Members who are employed by the Secretary of Homeland Security shall be protected from retaliation by their supervisors, managers, and other Department of Homeland Security employees for their participation on the Council.

(g) PURPOSE.—The purpose of the Council is to advise the Congress and the Secretary of Homeland Security on issues including the following:

(1) The current status of immigration enforcement efforts, including prosecutions and removals, the effectiveness of such efforts, and how enforcement could be improved.

(2) The effectiveness of cooperative efforts between the Secretary of Homeland Security and other law enforcement agencies, including additional types of enforcement activities that the Secretary should be engaged in, such as State and local criminal task forces.

(3) Personnel, equipment, and other resource needs of field personnel.

(4) Improvements that should be made to the organizational structure of the Department of Homeland Security, including whether the position of immigration enforcement agent should be merged into the deportation officer position.

(5) The effectiveness of specific enforcement policies and regulations promulgated by the Secretary of Homeland Security, and whether other enforcement priorities should be considered.

(h) REPORTS.—The Council shall provide quarterly reports to the Chairmen and Ranking Members of the Judiciary Committees of the Senate and the House of Representatives and to the Secretary of Homeland Security.

The Council members shall meet directly with the Chairmen and Ranking Members (or their designated representatives) and with the Secretary to discuss their reports every 6 months.

SEC. 505. PILOT PROGRAM FOR ELECTRONIC FIELD PROCESSING.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a pilot program in at least five of the ten Immigration and Customs Enforcement field offices with the largest removal caseloads to allow Immigration and Customs deportation officers and immigration enforcement agents to—

(1) electronically process and serve charging documents, including Notices to Appear, while in the field; and

(2) electronically process and place detainers while in the field.

(b) DUTIES.—The pilot program described in subsection (a) shall be designed to allow deportation officers and immigration enforcement agents to use handheld or vehicle-mounted computers to—

(1) enter any required data, including personal information about the alien subject and the reason for issuing the document;

(2) apply the electronic signature of the issuing officer or agent;

(3) set the date the alien is required to appear before an immigration judge, in the case of Notices to Appear;

(4) print any documents the alien subject may be required to sign, along with additional copies of documents to be served on the alien; and

(5) interface with the ENFORCE database so that all data is stored and retrievable.

(c) CONSTRUCTION.—The pilot program described in subsection (a) shall be designed to replace, to the extent possible, the current paperwork and data-entry process used for issuing such charging documents and detainers.

(d) DEADLINE.—The Secretary shall initiate the pilot program described in subsection (a) within 6 months of the date of enactment of this Act.

(e) REPORT.—The Government Accountability Office shall report to the Judiciary Committee of the Senate and the House of Representatives no later than 18 months after the date of enactment of this Act on the effectiveness of the pilot program and provide recommendations for improving it.

(f) ADVISORY COUNCIL.—The ICE Advisory Council established by section 504 shall include recommendations

on how the pilot program should work in the first quarterly report of the Council, and shall include assessments of the program and recommendations for improvement in each subsequent report.

(g) EFFECTIVE DATE.—This section shall take effect 180 days after the date of the enactment of this Act.

SEC. 506. ADDITIONAL ICE DEPORTATION OFFICERS AND SUPPORT STAFF.

(a) IN GENERAL.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active-duty Immigration and Customs Enforcement deportation officers by 5,000 above the number of full-time positions for which funds were appropriated for fiscal year 2013. The Secretary will determine the rate at which the additional officers will be added with due regard to filling the positions as expeditiously as possible without making any compromises in the selection or the training of the additional officers.

(b) SUPPORT STAFF.—The Secretary shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time support staff for Immigration and Customs Enforcement deportation officers by 700 above the number of full-time positions for which funds were appropriated for fiscal year 2013.

SEC. 507. ADDITIONAL ICE PROSECUTORS.

The Secretary of Homeland Security shall increase by 60 the number of full-time trial attorneys working for the Immigration and Customs Enforcement Office of the Principal Legal Advisor.

TITLE VI—MISCELLANEOUS ENFORCEMENT PROVISIONS

SEC. 601. TIMELY REPATRIATION.

(a) LISTING OF COUNTRIES.—Beginning on the date that is 6 months after the date of enactment of this Act, and every 6 months thereafter, the Secretary of Homeland Security shall publish a report including the following:

(1) A list of the following:

(A) Countries that have refused or unreasonably delayed repatriation of an alien who is a national of that country since the date of enactment of this Act and the total number of such aliens, disaggregated by nationality.

(B) Countries that have an excessive repatriation failure rate.

(2) A list of each country that was included under subparagraph (B) or (C) of paragraph (1) in both the report preceding the current report and the current report.

(b) SANCTIONS.—Beginning on the date that a country is included in a list under subsection (a)(2) and ending

on the date that that country is not included in such list, that country shall be subject to the following:

(1) The Secretary of State may not issue visas under section 101(a)(15)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)(iii)) to attendants, servants, personal employees, and members of their immediate families, of the officials and employees of that country who receive non-immigrant status under clause (i) or (ii) of section 101(a)(15)(A) of such Act.

(2) Each 6 months thereafter that the country is included in that list, the Secretary of State shall reduce the number of visas available under clause (i) or (ii) of section 101(a)(15)(A) of the Immigration and Nationality Act in a fiscal year to nationals of that country by an amount equal to 10 percent of the baseline visa number for that country. Except as provided under section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253), the Secretary may not reduce the number to a level below 20 percent of the baseline visa number.

(c) WAIVERS.—

(1) NATIONAL SECURITY WAIVER.—If the Secretary of State submits to Congress a written determination that significant national security interests

of the United States require a waiver of the sanctions under subsection (b), the Secretary may waive any reduction below 80 percent of the baseline visa number. The Secretary of Homeland Security may not delegate the authority under this subsection.

(2) TEMPORARY EXIGENT CIRCUMSTANCES.—If the Secretary of State submits to Congress a written determination that temporary exigent circumstances require a waiver of the sanctions under subsection (b), the Secretary may waive any reduction below 80 percent of the baseline visa number during 6-month renewable periods. The Secretary of Homeland Security may not delegate the authority under this subsection.

(d) EXEMPTION.—The Secretary of Homeland Security, in consultation with the Secretary of State, may exempt a country from inclusion in a list under subsection (a)(2) if the total number of nonrepatriations outstanding is less than 10 for the preceding 3-year period.

(e) UNAUTHORIZED VISA ISSUANCE.—Any visa issued in violation of this section shall be void.

(f) NOTICE.—If an alien who has been convicted of a criminal offense before a Federal or State court whose repatriation was refused or unreasonably delayed is to be released from detention by the Secretary of Homeland Se-

curity, the Secretary shall provide notice to the State and local law enforcement agency for the jurisdictions in which the alien is required to report or is to be released. When possible, and particularly in the case of violent crime, the Secretary shall make a reasonable effort to provide notice of such release to any crime victims and their immediate family members.

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

(1) REFUSED OR UNREASONABLY DELAYED.—A country is deemed to have refused or unreasonably delayed the acceptance of an alien who is a citizen, subject, national, or resident of that country if, not later than 90 days after receiving a request to repatriate such alien from an official of the United States who is authorized to make such a request, the country does not accept the alien or issue valid travel documents.

(2) FAILURE RATE.—The term ''failure rate'' for a period means the percentage determined by dividing the total number of repatriation requests for aliens who are citizens, subjects, nationals, or residents of a country that that country refused or unreasonably delayed during that period by the total number of such requests during that period.

(3) EXCESSIVE REPATRIATION FAILURE RATE.—The term ''excessive repatriation failure rate'' means, with respect to a report under subsection (a), a failure rate greater than 10 percent for any of the following:

(A) The period of the 3 full fiscal years preceding the date of publication of the report.

(B) The period of 1 year preceding the date of publication of the report.

(4) NUMBER OF NON-REPATRIATIONS OUTSTANDING.—The term ''number of non-repatriations outstanding'' means, for a period, the number of unique aliens whose repatriation a country has refused or unreasonably delayed and whose repatriation has not occurred during that period.

(5) BASELINE VISA NUMBER.—The term ''baseline visa number'' means, with respect to a country, the average number of visas issued each fiscal year to nationals of that country under clauses (i) and (ii) of section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)) for the 3 full fiscal years immediately preceding the first report under subsection (a) in which that country is included in the list under subsection (a)(2).

(h) GAO REPORT.—On the date that is 1 day after the date that the President submits a budget under section 1105(a) of title 31, United States Code, for fiscal year 2016, the Comptroller General of the United States shall submit a report to Congress regarding the progress of the Secretary of Homeland Security and the Secretary of State in implementation of this section and in making requests to repatriate aliens as appropriate.

SEC. 602. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

(a) IN GENERAL.—Section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240.";

(B) by striking paragraph (3);

(C) by redesignating paragraph (2) as paragraph (3);

(D) by adding after paragraph (1) the following:

''(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.'';

(E) in paragraph (3), as redesignated—

(i) by amending subparagraph (A) to read as follows:

''(A) INSTEAD OF REMOVAL.—Subject to subparagraph (C), permission to voluntarily depart under paragraph (1) shall not be valid for any period in excess of 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.'';

(ii) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively;

(iii) by adding after subparagraph (A) the following:

''(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.'';

(iv) in subparagraph (C), as redesignated, by striking ''subparagraphs (C) and (D)(ii)'' and inserting ''subparagraphs (D) and (E)(ii)'';

(v) in subparagraph (D), as redesignated, by striking ''subparagraph (B)'' each place that term appears and inserting ''subparagraph (C)''; and

(vi) in subparagraph (E), as redesignated, by striking ''subparagraph (B)'' each place that term appears and inserting ''subparagraph (C)''; and

(F) in paragraph (4), by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (2)'';

(2) in subsection (b)(2), by striking ''a period exceeding 60 days'' and inserting ''any period in excess of 45 days'';

(3) by amending subsection (c) to read as follows:

''(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

''(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure may only be granted as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall in-

clude a waiver of the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal.

"(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

"(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement before accepting such agreement.

"(4) FAILURE TO COMPLY WITH AGREEMENT.—

"(A) IN GENERAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (includ-

ing failure to timely post any required bond), the alien is—

"(i) ineligible for the benefits of the agreement;

"(ii) subject to the penalties described in subsection (d); and

"(iii) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b).

"(B) EFFECT OF FILING TIMELY APPEAL.—If, after agreeing to voluntary departure, the alien files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences of such agreement, but precludes the alien from another grant of voluntary departure while the alien remains in the United States.

"(5) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, applica-

tion, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.'';

(4) by amending subsection (d) to read as follows:

''(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:

''(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify this amount, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

"(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien's departure for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

"(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal that took effect upon the alien's failure to depart, or upon the alien's other violations of the conditions for voluntary departure, during the period described in paragraph (2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.";

(5) by amending subsection (e) to read as follows:

''(e) ELIGIBILITY.—

''(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

''(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsections (a)(2) or (b) of this section for any class or classes of aliens.''; and

(6) in subsection (f), by adding at the end the following: ''Notwithstanding section 242(a)(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory or nonstatutory), no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.''.

(b) RULEMAKING.—The Secretary shall within one year of the date of enactment of this Act promulgate regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the enactment of this Act.

(2) EXCEPTION.—The amendment made by subsection (a)(6) shall take effect on the date of the enactment of this Act and shall apply with respect to any petition for review which is filed on or after such date.

SEC. 603. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.

(a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(A)) is amended—

(1) in clause (i), by striking ''seeks admission within 5 years of the date of such removal (or within 20 years'' and inserting ''seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal''; and

(2) in clause (ii), by striking ''seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of'' and inserting ''seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after''.

(b) BAR ON DISCRETIONARY RELIEF.—Section 274D of such Act (8 U.S.C. 324d) is amended—

(1) in subsection (a), by striking ''Commissioner'' and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following:

''(c) INELIGIBILITY FOR RELIEF.—

''(1) IN GENERAL.—Unless a timely motion to reopen is granted under section 240(c)(6), an alien described in subsection (a) shall be ineligible for any discretionary relief from removal (including cancellation of removal and adjustment of status) during the time the alien remains in the United States and for

a period of 10 years after the alien's departure from the United States.

"(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the final order of removal in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.".

(c) EFFECTIVE DATES.—The amendments made by this section shall take effect on the date of the enactment of this Act with respect to aliens who are subject to a final order of removal entered before, on, or after such date.

SEC. 604. REINSTATEMENT OF REMOVAL ORDERS.

(a) IN GENERAL.—Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:

"(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having

been removed, deported, or excluded or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

"(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed notwithstanding section 242(a)(2)(D);

"(B) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application or request for such relief may have been filed or made; and

"(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not require proceedings under section 240 or other proceedings before an immigration judge.".

(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following:

"(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—

"(1) REVIEW OF REINSTATEMENT.—Judicial review of determinations under section 241(a)(5) is available in an action under subsection (a).

"(2) NO REVIEW OF ORIGINAL ORDER.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, any other habeas corpus provision, or sections 1361 and 1651 of such title, no court shall have jurisdiction to review any cause or claim, arising from, or relating to, any challenge to the original order.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on April 1, 1997, and shall apply to all orders reinstated or after that date by the Secretary of Homeland Security (or by the Attorney General prior to March 1, 2003), regardless of the date of the original order.

SEC. 605. CLARIFICATION WITH RESPECT TO DEFINITION OF ADMISSION.

Section 101(a)(13)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(A)) is amended by adding at the end the following: "An alien's adjustment of status to that of lawful permanent resident status under any provision of this Act, or under any other provision of law, shall be considered an 'admission' for any purpose

under this Act, even if the adjustment of status occurred while the alien was present in the United States.''.

SEC. 606. REPORTS TO CONGRESS ON THE EXERCISE AND ABUSE OF PROSECUTORIAL DISCRETION.

(a) IN GENERAL.—Not later than 180 days after the end of each fiscal year, the Secretary of Homeland Security and the Attorney General shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the following:

(1) Aliens apprehended or arrested by State or local law enforcement agencies who were identified by the Department of Homeland Security in the previous fiscal year and for whom the Department of Homeland Security did not issue detainers and did not take into custody despite the Department of Homeland Security's findings that the aliens were inadmissible or deportable.

(2) Aliens who were applicants for admission in the previous fiscal year but not clearly and beyond a doubt entitled to be admitted by an immigration officer and who were not detained as required pursuant to section 235(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(2)(A)).

(3) Aliens who in the previous fiscal year were found by Department of Homeland Security officials

performing duties related to the adjudication of applications for immigration benefits or the enforcement of the immigration laws to be inadmissible or deportable who were not issued notices to appear pursuant to section 239 of such Act (8 U.S.C. 1229) or placed into removal proceedings pursuant to section 240 (8 U.S.C. 1229a), unless the aliens were placed into expedited removal proceedings pursuant to section 235(b)(1)(A)(i) (8 U.S.C. 1225(b)(1)(A)(5)) or section 238 (8 U.S.C. 1228), were granted voluntary departure pursuant to section 240B, were granted relief from removal pursuant to statute, were granted legal nonimmigrant or immigrant status pursuant to statute, or were determined not to be inadmissible or deportable.

(4) Aliens issued notices to appear that were cancelled in the previous fiscal year despite the Department of Homeland Security's findings that the aliens were inadmissible or deportable, unless the aliens were granted relief from removal pursuant to statute, were granted voluntary departure pursuant to section 240B of such Act (8 U.S.C. 1229c), or were granted legal nonimmigrant or immigrant status pursuant to statute.

(5) Aliens who were placed into removal proceedings, whose removal proceedings were terminated in the previous fiscal year prior to their conclusion, unless the aliens were granted relief from removal pursuant to statute, were granted voluntary departure pursuant to section 240B, were granted legal nonimmigrant or immigrant status pursuant to statute, or were determined not to be inadmissible or deportable.

(6) Aliens granted parole pursuant to section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

(7) Aliens granted deferred action, extended voluntary departure or any other type of relief from removal not specified in the Immigration and Nationality Act or where determined not to be inadmissible or deportable.

(b) CONTENTS OF REPORT.—The report shall include a listing of each alien described in each paragraph of subsection (a), including when in the possession of the Department of Homeland Security their names, fingerprint identification numbers, alien registration numbers, and reason why each was granted the type of prosecutorial discretion received. The report shall also include current criminal histories on each alien from the Federal Bureau of Investigation.

SEC. 607. CERTAIN ACTIVITIES RESTRICTED.

(a) IN GENERAL.—

(1) No funds, resources, or fees made available to the Secretary of Homeland Security, or to any other official of a Federal agency, by this Act or any other Act for any fiscal year, including any deposits into the ''Immigration Examinations Fee Account'' established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), may be used to implement, administer, enforce, or carry out (including through the issuance of any regulations) any of the policy changes set forth in the following memoranda (or any substantially similar policy changes issued or taken on or after January 9, 2015, whether set forth in memorandum, Executive order, regulation, directive, or by other action):

(A) The memorandum from the Director of United States Immigration and Customs Enforcement entitled ''Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens'' dated March 2, 2011.

(B) The memorandum from the Director of United States Immigration and Customs Enforcement entitled ''Exercising Prosecutorial Discretion Consistent with the Civil Immigra-

tion Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens'' dated June 17, 2011.

(C) The memorandum from the Principal Legal Advisor of United States Immigration and Customs Enforcement entitled ''Case-by-Case Review of Incoming and Certain Pending Cases'' dated November 17, 2011.

(D) The memorandum from the Director of United States Immigration and Customs Enforcement entitled ''Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems'' dated December 21, 2012.

(E) The memorandum from the Secretary of Homeland Security entitled ''Southern Border and Approaches Campaign'' dated November 20, 2014.

(F) The memorandum from the Secretary of Homeland Security entitled ''Policies for the Apprehension, Detention and Removal of Undocumented Immigrants'' dated November 20, 2014.

(G) The memorandum from the Secretary of Homeland Security entitled ''Secure Communities'' dated November 20, 2014.

(H) The memorandum from the Secretary of Homeland Security entitled ''Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents'' dated November 20, 2014.

(I) The memorandum from the Secretary of Homeland Security entitled ''Expansion of the Provisional Waiver Program'' dated November 20, 2014.

(J) The memorandum from the Secretary of Homeland Security entitled ''Policies Supporting U.S. High-Skilled Businesses and Workers'' dated November 20, 2014.

(K) The memorandum from the Secretary of Homeland Security entitled ''Families of U.S. Armed Forces Members and Enlistees'' dated November 20, 2014.

(L) The memorandum from the Secretary of Homeland Security entitled ''Directive to

Provide Consistency Regarding Advance Parole'' dated November 20, 2014.

(M) The memorandum from the Secretary of Homeland Security entitled ''Policies to Promote and Increase Access to U.S. Citizenship'' dated November 20, 2014.

(N) The memorandum from the President entitled ''Modernizing and Streamlining the U.S. Immigrant Visa System for the 21st Century'' dated November 21, 2014.

(O) The memorandum from the President entitled ''Creating Welcoming Communities and Fully Integrating Immigrants and Refugees'' dated November 21, 2014.

(2) The memoranda referred to in subsection (a) (or any substantially similar policy changes issued or taken on or after January 9, 2015, whether set forth in memorandum, Executive order, regulation, directive, or by other action) have no statutory or constitutional basis and therefore have no legal effect.

(3) No funds or fees made available to the Secretary of Homeland Security, or to any other official of a Federal agency, by this Act or any other Act for any fiscal year, including any deposits into the

"Immigration Examinations Fee Account" established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), may be used to grant any Federal benefit to any alien pursuant to any of the policy changes set forth in the memoranda referred to in subsection (a) (or any substantially similar policy changes issued or taken on or after January 9, 2015, whether set forth in memorandum, Executive order, regulation, directive, or by other action).

(b) DEFERRED ACTION FOR CHILDHOOD ARRIVALS.—No funds, resources or fees made available to the Secretary of Homeland Security, or to any other official of a Federal agency, by this Act or any other Act for any fiscal year, including any deposits into the "Immigration Examinations Fee Account" established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)), may be used to consider or adjudicate any new, renewal or previously denied application for any alien requesting consideration of deferred action for childhood arrivals, as authorized by the Executive memorandum dated June 15, 2012, and effective on August 15, 2012 (or any substantially similar policy changes issued or taken on or after January 9, 2015, whether set forth in memorandum, Executive order, regulation, directive, or by other action).

SEC. 608. GAO STUDY ON DEATHS IN CUSTODY.

The Comptroller General of the United States shall submit to Congress within 6 months after the date of the enactment of this Act, a report on the deaths in custody of detainees held by the Department of Homeland Security. The report shall include the following information with respect to any such deaths and in connection therewith:

(1) Whether any such deaths could have been prevented by the delivery of medical treatment administered while the detainee is in the custody of the Department of Homeland Security.

(2) Whether Department practice and procedures were properly followed and obeyed.

(3) Whether such practice and procedures are sufficient to protect the health and safety of such detainees.

(4) Whether reports of such deaths were made to the Deaths in Custody Reporting Program.

SEC. 609. REMOVAL PROCEEDINGS.

Subsection (b) of section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) is amended by adding at the end the following new paragraph (8):

''(8) ORDER OF CONSIDERATION OF PROCEEDINGS.—Whenever possible, proceedings shall

take place in the order in which aliens are placed in proceedings.''.

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