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15
16 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

17 **CITY AND COUNTY OF SAN
18 FRANCISCO**

19 Plaintiff,

20 vs.

21 **DONALD J. TRUMP, President of the
United States, UNITED STATES OF
22 AMERICA, JOHN F. KELLY, Secretary
of the United States Department of
23 Homeland Security, DANA J. BOENTE,
Acting Attorney General of the United
24 States,**

25 Defendants.
26
27
28

Case No. 3:17-cv-00485-WHO

**ADMINISTRATIVE MOTION OF CITY
OF RICHMOND TO CONSIDER
WHETHER CASES SHOULD BE
RELATED PURSUANT TO CIVIL L.R.
3-12(B) and NOTICE OF RELATED
CASE PURSUANT TO CIVIL LOCAL
RULE 3-13**

Complaint Filed: January 31, 2017
No Trial Date

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rule 3-12(b), Plaintiff City of Richmond (“Richmond”) in the *City*
 3 *of Richmond v. Trump, et al.* Case No. 3:17-cv-01535-SK filed March 21, 2017 in this Court (“the
 4 Richmond Action”), a non-party in this action, respectfully requests that the Court consider
 5 whether the actions, *City of County of San Francisco v. Trump et al.*, Case No. 3:17-cv-00485-
 6 WHO (“San Francisco Action”) and the Richmond Action, may be related. On February 10,
 7 2017, this Court related the San Francisco Action to *County of Santa Clara v. Trump et al.*, Case
 8 No. 3:17-cv-00574-WHO (“Santa Clara Action”). A copy of the complaints are attached as
 9 Exhibit 1 (Richmond Action), Exhibit 2 (San Francisco Action), and Exhibit 3 (Santa Clara
 10 Action) to the Declaration of Nancy L. Fineman.

11 Richmond also gives notice pursuant to Civ. L.R. 3-13 that the Richmond Action is related
 12 to the San Francisco and Santa Clara actions.

13 **II. ARGUMENT**

14 “An action is related to another action if: (1) the actions concern substantially the same
 15 parties, property, transaction or event; and (2) it appears likely there will be an unduly
 16 burdensome duplication of labor and expense or conflicting results if the cases are conducted
 17 before different Judges.” Civ. L.R. 3-12(a).

18 The Richmond, San Francisco, and Santa Clara Actions concern substantially the same
 19 parties and events. Each Action challenges the constitutionality of Executive Order 13768 issued
 20 by defendant Donald J. Trump on January 25, 2017. The three actions make similar
 21 constitutional arguments, *i.e.*, that the Executive Order violates the Tenth Amendment and the
 22 Separation of Powers clause. Each action sues the President, Attorney General, Secretary of
 23 Homeland Security, and the United States of America. Relating the Richmond Action to the San
 24 Francisco and Santa Clara Actions will prevent unduly burdensome duplication of labor and
 25 expense and/or conflicting results.

26 ///

27 ///

28 ///

1 **III. CONCLUSION**

2 For the reasons set forth above, Richmond respectfully requests that the Court relate the
3 Richmond Action to the San Francisco and Santa Clara Actions.

4
5 Dated: March 23, 2017

COTCHETT, PITRE & McCARTHY, LLP

6
7 By: /s/ Nancy L. Fineman

8 NANCY L. FINEMAN
9 *Attorneys for Non-Party*
City of Richmond

10 Dated: March 23, 2017

CITY OF RICHMOND

11
12 By: /s/ Bruce Reed Goodmiller

13 BRUCE REED GOODMILLER
14 *Attorneys for Non-Party*
City of Richmond

15
16
17 **ATTESTATION OF FILING**

18 I, Nancy L. Fineman, hereby attest, pursuant to Northern District of California, Local Rule
19 5-1(i)(3) that concurrence to the filing of this document has been obtained from each signatory
20 hereto.

21 /s/ Nancy L. Fineman

22 NANCY L. FINEMAN
23 *Attorney for Non-Party*
24 *City of Richmond*

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Attorneys for Non-Party City of Richmond

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

**CITY AND COUNTY OF SAN
 FRANCISCO**

Plaintiff,

vs.

**DONALD J. TRUMP, President of the
 United States, UNITED STATES OF
 AMERICA, JOHN F. KELLY, Secretary
 of the United States Department of
 Homeland Security, DANA J. BOENTE,
 Acting Attorney General of the United
 States,**

Defendants.

Case No. 3:17-cv-00485-WHO

**DECLARATION OF NANCY L.
 FINEMAN IN SUPPORT OF
 ADMINISTRATIVE MOTION OF
 CITY OF RICHMOND TO
 CONSIDER WHETHER CASES
 SHOULD BE REALTED**

Complaint Filed: January 31, 2017
 No Trial Date

1 I, NANCY L. FINEMAN, declare and state as follows:

2 1. I am an attorney duly licensed to practice law before this court. I am a partner with
3 the law firm of Cotchett, Pitre & McCarthy, LLP ("CPM"), attorneys of record for City of
4 Richmond, Plaintiff in *Richmond v. Trump*, Northern District, Case No. 3:17-cv-01535-SK, a
5 non-party in this case (hereinafter referred to as "Richmond"). The following facts set forth
6 herein are within my personal knowledge and if called as a witness, I could and would
7 competently testify to all facts herein

8 2. I file this Declaration in support of the Richmond's Administrative Motion to
9 Consider Whether Cases Should Be Related (the "Administrative Motion").

10 3. Richmond has just filed the action, and Defendants have not been served nor
11 appeared in that case. Accordingly, Richmond was unable to obtain a stipulation regarding the
12 relief requested in the Administrative Motion pursuant to Civil Local Rule 7-12.

13 4. Attached hereto as Exhibit 1 is a true and correct copy of the complaint filed by
14 Richmond in *Richmond v Trump*, Case No. 3:17-cv-01535-SK.

15 5. The Amended Complaint of the City and County of San Francisco may be found at
16 Docket No. 20 in this action and is attached hereto as Exhibit 2 and the Complaint filed by the
17 County of Santa Clara may be found at Docket No. 11-3 in this action and is attached hereto as
18 Exhibit 3.

19 I declare under the penalty of perjury under the laws of the United States that the
20 foregoing is true and correct and that this declaration was executed on March 23, 2017 at
21 Burlingame, California.

22
23 /s/ Nancy L. Fineman
NANCY L. FINEMAN

EXHIBIT 1

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

**CITY OF RICHMOND, a municipal
 corporation,**

Plaintiff,

vs.

**DONALD J. TRUMP, President of the
 United States,
 JOHN F. KELLY, Secretary of the
 United States Department of Homeland
 Security,
 JEFFERSON B. SESSIONS, Attorney
 General of the United States, and the
 UNITED STATES OF AMERICA**

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE AND
 DECLARATORY RELIEF CONCERNING
 FEDERAL EXECUTIVE ORDER 13768, for**

- 1. VIOLATION OF THE TENTH
 AMENDMENT;**
- 2. VIOLATION OF THE SEPARATION OF
 POWERS AND SPENDING CLAUSES;**
- 3. VIOLATION OF THE FOURTH
 AMENDMENT;**
- 4. VIOLATION OF THE DUE PROCESS
 CLAUSE BECAUSE OF VAGUENESS;
 AND**
- 5. RULING THAT RICHMOND
 COMPLIES WITH 8 U.S.C. § 1373.**

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I. INTRODUCTION

1. On January 25, 2017, President Donald J. Trump issued an **Executive Order**, No. 13768 entitled “**Enhancing Public Safety in the Interior of the United States**,” 82 Fed. Reg. 8799 (Jan. 25, 2017) (“Executive Order”), which, in violation of the Constitution, seeks to force local police departments, such as the Richmond Police Department, to enforce federal immigration law. A copy of the Executive Order is attached as **Exhibit 1**.

2. The ability of the Richmond police to effectively combat crime will be severely curtailed by this Executive Order. In order to safeguard the safety of its residents and community, the City of Richmond, California (“Richmond”), the plaintiff in this action, engages in community policing. As its Police Chief Allwyn Brown recently explained: The Richmond Police are:

“Committed to a proven effective community policing model that knows the unmistakable truth, that community safety is a responsibility for everyone, and not just a job for the police. This requires active, engaged, and empowered neighborhood residents who freely interact with police without reservations.”

3. The Executive Order is in direct violation of the U.S. Constitution because it allows the Attorney General and Secretary of Homeland Security, based upon their discretion, to withhold federal funds from public entities that are jurisdictions who “willfully refuse” to comply with 8 U.S.C. 1373, a statute which seeks to regulate state and local jurisdictions’ response to immigration requests, and for the Attorney General to take enforcement actions against any jurisdiction that violates federal law. Our U.S. Supreme Court has said that this use of an Executive Order to coerce Richmond through a threat of the loss of all federal funds is unconstitutional. *Nat’l Fed’n of Indep. Bus v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 2602-04 (2012). “When, for example, such conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the states to accept policy changes.” 132 S. Ct. at 2604.

4. The term “sanctuary jurisdiction” is not defined in the Executive Order or in any federal statute or regulation. While many public entities, including Richmond, have been referred to as “Sanctuary Cities” and Richmond is proud to support its immigrants, the policies

1 of the different jurisdictions differ substantially. It is unclear if Richmond will be considered a
2 “sanctuary jurisdiction” subject to the loss of all federal funds. The Executive Order provides
3 no guidance to Richmond on how to make this determination and there is no legal precedent for
4 Richmond to consult to make this determination. Based upon statements made by President
5 Trump and others, Richmond believes it may be swept up as a sanctuary jurisdiction under the
6 Executive Order. The Executive Order violates the Due Process Clause because it is
7 unconstitutionally vague and unenforceable against a city like Richmond, California. *Grayned*
8 *v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 2298 (1972).

9 5. Moreover, the Executive Order does not define what actions or inaction can be
10 considered by the Attorney General and Secretary of Homeland Security as a willful refusal to
11 comply with 8 U.S.C. § 1373 and there is no legal precedent defining what constitutes a willful
12 refusal to comply with 8 U.S.C. § 1373. Richmond does comply with 8 U.S.C. § 1373. This is
13 an additional reason that the Executive Order is unconstitutionally vague and unenforceable
14 pursuant to Supreme Court precedent.

15 6. Given the vagueness of the Executive Order and the discretion it provides to the
16 Attorney General and Secretary of Homeland Security to withhold federal funds, Richmond
17 faces imminent danger of losing all federal funding because of legislation that it enacted twenty-
18 five years ago to foster trust between its police department and residents. Richmond has already
19 been harmed by the uncertainty caused by the Executive Order. The Defendants intend to
20 immediately begin enforcing the Executive Order, and the Executive Order does not provide any
21 policies or procedures to challenge the findings of the Attorney General or Secretary of
22 Homeland Security. Accordingly, this Court is the only vehicle for Richmond to obtain relief to
23 stop the calamitous effects that the Executive Order will have on Richmond.

24 7. Richmond directly receives federal funds each year and also receives State funds,
25 most of which are passed through federal funds. The funds are used to fund vital services, and
26 only a small amount are used for law enforcement or immigration. Most are used for housing
27 and infrastructure improvements. The loss of these funds will have a direct and substantial
28 effect on Richmond and its citizens. None of the grants of money by the federal government to

1 Richmond were conditioned on Richmond's compliance with any immigration law. The
2 Executive Order seeks to retroactively tie the receipt of federal funds to Richmond's compliance
3 with the Executive Order, and specifically immigration laws, which is unconstitutional on its
4 face.

5 8. While Presidents have the ability to issue executive orders, the President's power
6 "must stem either from any act of Congress or from the Constitution itself." *Youngstown Sheet*
7 *& Tube Co. v. Sawyer*, 343 U.S. 579, 585, 72 S. Ct. 863, 866 (1952). There is no authority from
8 an act of Congress or from the Constitution for President Trump to have issued the Executive
9 Order.

10 9. The Executive Order is an impermissible and illegal order because:

11 (1) the Executive Order violates the Tenth Amendment of the United States
12 Constitution;

13 (2) the Executive Order seeks to give two Cabinet members the unfettered
14 discretion to take away all federal funding from Richmond, a power that no branch of the
15 federal government has;

16 (3) the Executive Order impermissibly usurps the rights of the Legislative
17 branch regarding appropriating and spending monies thus violating the separation of
18 powers clause of the Constitution;

19 (4) the Executive Order violates the due process clause because it is
20 unconstitutionally vague in its definition of "sanctuary jurisdiction," "willful refusal to
21 comply," and the unfettered enforcement discretion it gives to the Attorney General and
22 Secretary of Homeland Security;

23 (5) the Executive Order exposes Richmond to liability under the Fourth
24 Amendment of the United States Constitution for improperly detaining people; and

25 (6) the Executive Order imposes additional costs on Richmond to comply
26 with the Executive Order, which costs the federal government will not reimburse.

1 10. In order to protect its residents, Richmond brings this action to have this Court
2 declare that the Executive Order is unconstitutional to find that Richmond complies with 8
3 U.S.C. § 1373, and to enjoin the Executive Order from being enforced against Richmond.

4 II. JURISDICTION AND VENUE

5 13. The Court has jurisdiction under 28 U.S.C. Sections 1331 and 1346. This Court
6 has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. Sections 2201 and
7 2202 *et seq.*

8 14. Venue properly lies within the Northern District of California because Plaintiff,
9 Richmond, is a public entity in this judicial district and a substantial part of the events or
10 omissions giving rise to this action will occur or have occurred in this District. 28 U.S.C. §
11 1391(e).

12 III. PARTIES

13 15. Plaintiff **City of Richmond** is a municipal corporation organized and existing
14 under and by virtue of the laws of the State of California, and is a Charter Law city. Its
15 population is just over 100,000 people. Under its charter, it has the power to exercise police
16 powers and make all necessary police regulations. Richmond Charter Art. II, § 1, ¶ 6.

17 16. Defendant **Donald J. Trump** has been since January 20, 2017, the President of
18 the United States. He is sued in his official capacity. As a candidate, he railed against sanctuary
19 cities and promised to punish them, and has consistently made insensitive and false statements
20 about immigrants. When he announced his candidacy in June 2015, for example, he stated:
21 “The U.S. has become a dumping ground for everybody else’s problems. Thank you. It’s true,
22 and these are the best and the finest. When Mexico sends its people, they’re not sending their
23 best. They’re not sending you. They’re not sending you. They’re sending people that have lots
24 of problems, and they’re bringing those problems to us. They’re bringing drugs. They’re
25 bringing crime. They’re rapists. And some, I assume, are good people.” There was no factual
26 support for this statement.

27 17. Defendant **John F. Kelly** is the Secretary of the Department of Homeland
28 Security, a cabinet department of the United States government with the primary mission of

1 securing borders of the United States. Pursuant to the Executive Order at issue here, Secretary
2 Kelly is responsible for executing relevant provisions of the Executive Order. He is sued in his
3 official capacity.

4 18. Defendant **Jefferson B. Sessions** is the Attorney General, a cabinet department of
5 the United States Government overseeing the Department of Justice. Attorney General Sessions
6 is responsible for executing relevant provisions of the Executive Order. Attorney General
7 Sessions is sued in his official capacity.

8 19. Defendant **United States of America** is sued under 28 U.S.C. Section 1346.

9 **IV. FACTUAL ALLEGATIONS**

10 **A. RICHMOND IS A CITY OF IMMIGRANTS AND IMMIGRANTS' TRUST IN** 11 **LAW ENFORCEMENT IS CRITICAL TO THE SAFETY OF THE** 12 **COMMUNITY**

13 20. Incorporated in 1905, Richmond has been a place where people from all over the
14 world have come to seek a better life for themselves and their families and to contribute to the
15 society in the Bay Area. According to the American Community Survey, in 2015, over 30% of
16 Richmond residents were born in foreign counties.

17 21. Richmond, like the rest of the United States, is strong and successful because of
18 the diversity of the immigrants who have come to this country. Their hard work and innovation
19 have made the United States one of the greatest, if not the greatest, countries in the world. The
20 contributions of immigrants are too numerous to even try to list. Most economists agree that
21 immigrants, including those who are undocumented, are good for the U.S. economy. In March
22 2017, the Institution of Taxation & Economic Policy estimated that undocumented workers pay
23 \$111.74 billion in taxes each year. In March 2017, the Pew Research Center issued a report
24 demonstrating that immigrants and their U.S.-born children are expected to drive growth in the
25 U.S. working-age population. [http://www.pewresearch.org/fact-tank/2017/03/08/immigration-](http://www.pewresearch.org/fact-tank/2017/03/08/immigration-projected-to-drive-growth-in-u-s-working-age-population-through-at-least-2035/)
26 [projected-to-drive-growth-in-u-s-working-age-population-through-at-least-2035/](http://www.pewresearch.org/fact-tank/2017/03/08/immigration-projected-to-drive-growth-in-u-s-working-age-population-through-at-least-2035/). Since the
27 Baby Boomer generation (people born after World War II and before 1965) is heading towards
28

1 retirement, there is a potential for the labor force to slow down without immigrants and their
 2 children being part of the work force. Richmond and the Bay Area need this work force.

3 22. Richmond has always welcomed newcomers. In the 1940s, for example, people
 4 came from all over the United States to help with the war effort by working in Richmond
 5 facilities such as the Kaiser shipyards. They and their families stayed and have made positive
 6 contributions to Richmond.

7 23. In the late 1980s, Richmond experienced an increase of immigrants arriving from
 8 Central America. They sought sanctuary from the violence and political instability in their
 9 native countries. Many of these immigrants had been the victims of political persecution. Since
 10 they came to Richmond, they and their families have contributed to the success of Richmond.
 11 Based upon their experience in their native countries, many of these immigrants were fearful of
 12 law enforcement. They were easy prey for criminals who knew the immigrants were unlikely to
 13 report crimes against them for fear that if they reported crimes or provided assistance to law
 14 enforcement, they would be deported. It is critical to the safety of the community that everyone,
 15 no matter their immigration status, trust law enforcement and provide information to keep
 16 Richmond safe and free from crime.

17 24. In response to these immigrants' concerns and to increase public safety, in 1990,
 18 over 25 years ago, the Richmond City Council unanimously enacted Ordinance No. 29-90, an
 19 ordinance whose purpose was to "foster an atmosphere of trust and cooperation between the
 20 Richmond Police Department and all persons, regardless of immigration status, residing in the
 21 City of Richmond; ..." A true and correct copy of the Ordinance is attached as **Exhibit 2**.

22 25. Further, Ordinance No. 29-90 provided in pertinent part:

23 Section 2. In order to address the fears expressed by the immigrant and refugee
 24 community in the City of Richmond concerning Immigration and Naturalization
 25 Service activities in the City of Richmond while preserving the ability of the
 Richmond Police Department to utilize all available resources to fight criminal
 activity, the Council of the City of Richmond hereby adopts the following policy:

- 26 1. All officers and employees of the City of Richmond, while acting in their
 27 official capacities, who receive any oral or written request from the
 Immigration and Naturalization Service for information, cooperation or
 28 assistance shall refer such request to the City Manager or the Chief of

Police. The City Manager or Chief of Police shall decide whether such information shall be given or whether such cooperation or assistance shall be provided to the Immigration and Naturalization Service. In exercising their discretion, the City Manager and Chief of Police shall consider the possible disruption and inconvenience that may be experienced by the immigrant and refugee community in the City of Richmond and any requirements of any federal, state or local law or court decision. Nothing delineated in the foregoing policy shall be construed to prevent the City Manager or the Chief of Police from providing information, assistance or cooperation to the Immigration and Naturalization Service regarding the criminal violation of any federal, state or local law.

26. On February 6, 2007, in Resolution No. 11-07, the Richmond City Council reaffirmed its commitment to its residents that the City “welcomes and values all of its residents and supports them to live and work free from discrimination, hostility, abuse, violence, exploitation and fear of local, state and federal law enforcement; ...” A true and correct copy of the Resolution is attached as **Exhibit 3**. In this resolution, the City of Richmond “reaffirms the terms of ordinance No. 20-90 ordering all officers and employees of this City not to inform, assist or cooperate with the Immigration and Customs Enforcement (ICE) formerly known as Immigration and Naturalization Service, without the specific authorization of the Richmond City Manager or the Chief of Police; ...”

27. The ordinance and regulation were not to prevent the exchange of information between the federal government and Richmond regarding immigration matters, but instead to increase the trust between Richmond law enforcement and the community, thereby increasing public safety. Federal immigration raids, like the 2003 raid on the Richmond home of Porfirio Quintano, an immigrant from Honduras and his family, is but one example of the fear and distrust in the immigrant community caused by improper immigration enforcement. As Quintano explained in the *San Francisco Chronicle*: “‘We are victims,’ said Quintano, adding that his wife and two daughters, then ages 4 and 10, live in fear of another raid, even though all four family members are U.S. citizens. ‘They were looking for somebody unrelated to us, but they lined us up against the wall and held us for an hour. It was terrifying, especially for our daughters.’” *San Francisco Chronicle* (Apr. 23, 2007).

28. In the 25 years since the enactment of Ordinance 29-90, the federal government has taken no action until now to stop the Richmond policy, and the policy has served Richmond and the nation well. The Richmond policy co-existed with the immigration policies of both Bush administrations as well as those of Presidents Clinton and Obama. Studies show that trust between law enforcement and those that they serve is key to decreasing crime and to making communities safe. See e.g. Bill O. Hing, “Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy, 2 *U.C. Irvine L. Rev.* 247 (2012). The final report of the President’s Task Force on 21st Century Policy (May 2015) explains:

Immigrants often fear approaching police officers when they are victims of and witnesses to crimes and when local police are entangled with federal immigration enforcement. At all levels of government, it is important that laws, policies, and practices not hinder the ability of local law enforcement to build the strong relationships necessary to public safety and community well-being. It is the view of this task force that whenever possible, state and local enforcement should not be involved in immigration enforcement.

The United States Department of Justice, Community Oriented Policy Services (COPS), published a report “Policy in New Immigrant Communities” by Matthew Alysalcowski, Albert Anthony Pearsall III and Jill Pope. The report provides suggestions to law enforcement about better serving the community, focusing on building trust and mutual respect between law enforcement and new immigrants. The report states that putting fears to rest is one of the most useful things law enforcement can do. “For many immigrants, reassurance that they will not be detained or deported removes the fear of reporting crimes.” Report at 11.

29. Richmond is not the only public entity to enact laws regarding the relationship between the public entity and ICE. Numerous other California counties and cities, such as Alameda County, Berkeley, Los Angeles County, Los Angeles, Monterey County, Napa County, Orange County, Riverside County, Sacramento County, San Bernardino County, San Diego County, San Francisco City and County, San Mateo County, Santa Ana, Santa Clara County, Santa Cruz County, and Sonoma County, have enacted similar laws. Other cities in the United States, such as Boston, Chicago, Houston, New York, Philadelphia, and Washington D.C., to name a few, have also enacted similar laws. Even though they are similar, they are not identical.

1 There is no way to determine by the language of the Executive Order if any of these jurisdictions
2 are “sanctuary jurisdictions.”

3 30. The State of California also has enacted legislation, specifically Government
4 Code sections 7282 and 7282.5 both effective January 1, 2014, regarding information that law
5 enforcement can provide federal immigration officials. Section 7282.5 provides that a “law
6 enforcement official shall have discretion to cooperate with federal immigration officials by
7 detaining an individual on the basis of an immigration hold after that individual becomes
8 eligible for release from custody only if the continued detention of the individual on the basis of
9 the immigration hold would not violate any federal, state, or local law, or any local policy, and
10 only under” certain specified circumstances. The notes to section 7282, which provides
11 definitions for the chapter, sets forth the Legislative Findings for these statutes.

12 SECTION 1. The Legislature finds and declares all of the following:

13 (a) The United States Immigration and Customs Enforcement’s (ICE) Secure
14 Communities program shifts the burden of federal civil immigration enforcement
15 onto local law enforcement. To operate the Secure Communities program, ICE
16 relies on voluntary requests, known as ICE holds or detainers, to local law
17 enforcement to hold individuals in local jails for additional time beyond when
18 they would be eligible for release in a criminal matter.

19 (b) State and local law enforcement agencies are not reimbursed by the federal
20 government for the full cost of responding to a detainer, which can include, but is
21 not limited to, extended detention time and the administrative costs of tracking
22 and responding to detainers.

23 31. The Department of Justice, under the previous administration, has already
24 identified the State of California as a jurisdiction that does not fully comply with federal
25 immigration enforcement priorities. Memorandum from Michael E. Horowitz, Inspector Gen.,
26 to Karol V. Mason, Assistant Att’y Gen. for the Office of Justice Programs, “Department of
27 Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients,”
28 at 13 (May 31, 2016), <https://oig.justice.gov/reports/2016/1607.pdf> (“Horowitz Memorandum”).
Since Richmond receives federal funds that are passed through the State of California,

1 Richmond faces the loss of funds under the Executive Order even if it complies with all
2 requirements of the Executive Order.

3 **B. IMMIGRANTS MAKE RICHMOND STRONG**

4 32. Immigrants have been, since the establishment of our country, critical to the
5 United States and specifically Richmond. The same false statements being made today about
6 immigrants were made about Italians, Irish, Jews, and other ethnicities in the late 1800's and
7 early 1900's.

8 33. In April of 2016, the U.S. Chamber of Commerce published a report entitled
9 Immigration Myths and Faces, www.uschamber.com/reports/immigration-myths. The report
10 demonstrates that most common negative contentions regarding immigrants are false.

11 34. For example, with citation to evidence, the Chamber of Commerce demonstrates
12 that immigrants do not take away jobs from U.S. citizens, do not drive down the wages of the
13 U.S. workers, but to the contrary, immigrants are necessary for the U.S. economy.

14 35. The Chamber also demonstrates that immigrants, even undocumented
15 immigrants, pay taxes. Undocumented immigrants are not eligible for federal public benefit
16 programs like Social Security, Medicaid, Medicare, and food stamps.

17 36. The Chamber report demonstrates that the premise of the Executive Order, that
18 undocumented immigrants commit crimes, is contradicted by the facts. FBI data demonstrates
19 that as the number of undocumented immigrants, tripled from 1990 violent crime declined 48%
20 and property crime declined 41%. A report from the conservative Americas Majority
21 Foundation found that crime rates are lowest in states with the highest immigration growth rates.
22 Immigrants are less likely than people born in the United States to commit crimes or be
23 incarcerated.

24 **C. FEDERAL LAW DOES NOT REQUIRE RICHMOND TO COMPLY WITH**
25 **DETAINER REQUESTS ISSUED BY ICE**

26 37. ICE is an agency in the Department of Homeland Security and enforces federal
27 immigration law. Federal law provides specific rules regarding the detention and removal of
28 people who do not have the legal right to be in this country.

38. Not all people living in the United States who are undocumented are subjected to deportation. See e.g. 8 U.S.C. § 1229b(a) (providing Attorney General with discretion to cancel removal of an undocumented immigrant who is otherwise inadmissible or subject to deportation if he or she meets specified requirements); § 1229b(b)(2) (providing Attorney General with discretion to cancel removal and adjust status of an undocumented immigrant who is a victim of domestic violence). There are also other ways that undocumented immigrants can legally stay in the United States.

39. ICE often asks local jurisdictions for information about people who have been arrested. Richmond does not have a policy against and would not refuse to categorically to honor these requests, but requires that any request be brought to the attention of the City Manager or Chief of Police, who make a determination about what information will be provided. Richmond Ordinance No. 29-90, Resolution No. 11-07.

40. ICE also often issues “detainer requests” to local jurisdictions. These detainer requests ask local law enforcement agencies to continue to detain an immigrant inmate for up to 48 additional hours after his or her regularly scheduled release date so that ICE can decide whether to take that individual into custody and initiate removal proceedings. A detainer request is different than a criminal warrant because a detainer request is not issued by a judge based upon a finding of probable cause.

41. A public entity has discretion in how it complies with immigration holds. As stated by *Flores v. City of Baldwin Park*, No. CV 14-9290-MWF(JCx), 2015 U.S. Dist. LEXIS 22149, at *11-12 (C.D. Cal. Feb. 23, 2015): “[F]ederal law leaves compliance with immigration holds wholly within the discretion of states and localities. See *Galarza v. Szalczyk*, 745 F.3d 634, 640-43 (3d Cir. 2014) (holding that ‘immigration detainers are requests and not mandatory orders’ and observing that ‘all federal agencies and departments having an interest in the matter have consistently described such detainers as requests’); Immigration Law, 127 *Harv. L. Rev.* [2593] at, 2596-97 [June 2014] (‘And even if ICE wanted to make detainer enforcement mandatory, prevailing Tenth Amendment jurisprudence—which prohibits ‘command[ing] the States’ officers, or those of their political subdivisions, to administer or enforce a federal

regulatory program’—indicates that it could not do so. States are thus free to decide for themselves whether to limit—or even prohibit—the enforcement of detainers.’)” (bracket materials added). As a general matter, ICE has not directed detainer requests to Richmond.

42. The fact that a person is an undocumented immigrant does not mean that the person is subject to detention. Most of the time, people who are suspected of being removable are not arrested; arrests only occur in certain circumstances and are only performed by federal officers specifically trained in immigration law. As the Supreme Court has explained:

As a general rule, it is not a crime for a removable alien to remain present in the United States. See *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038, 104 S. Ct. 3479, 82 L. Ed. 2d 778 (1984). If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent. When an alien is suspected of being removable, a federal official issues an administrative document called a Notice to Appear. See 8 U. S. C. § 1229(a); 8 CFR § 239.1(a) (2012). The form does not authorize an arrest. Instead, it gives the alien information about the proceedings, including the time and date of the removal hearing. See 8 U. S. C. § 1229(a)(1). If an alien fails to appear, an in absentia order may direct removal. § 1229a(b)(5)(A).

The federal statutory structure instructs when it is appropriate to arrest an alien during the removal process. For example, the Attorney General can exercise discretion to issue a warrant for an alien's arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U. S. C. § 1226(a); see Memorandum from John Morton, Director, ICE, to All Field Office Directors *et al.*, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011) (hereinafter 2011 ICE Memorandum) (describing factors informing this and related decisions). And if an alien is ordered removed after a hearing, the Attorney General will issue a warrant. See 8 CFR § 241.2(a)(1). In both instances, the warrants are executed by federal officers who have received training in the enforcement of immigration law. See §§ 241.2(b), 287.5(e)(3). If no federal warrant has been issued, those officers have more limited authority. See 8 U. S. C. § 1357(a). They may arrest an alien for being “in the United States in violation of any [immigration] law or regulation,” for example, but only where the alien “is likely to escape before a warrant can be obtained.” § 1357(a)(2).

Arizona v. United States, 567 U.S. 387, 132 S. Ct. 2492, 2505-06 (2012).

43. Even though Supreme Court precedent is clear, the Department of Justice, under the prior Presidential Administration, opined that failure to comply with detainer requests violates federal law. Horowitz Memorandum at 7.

44. The Richmond Police Department Policy Manual, Policy 428 specifically addresses Immigration Violations. A true and correct copy of the policy is attached hereto as

Exhibit 4. It provides that it is the “policy of the Richmond Police Department (RPD) to foster trust and cooperation with all people of the city and to encourage them to communicate with RPD officers without fear of inquiry regarding their immigration status.” *Id.* § 428.1. “It is also department policy, consistent with its obligations under state and federal law, to adhere to the City of Richmond Ordinance 29-90. This ordinance prohibits the use of City resources to assist in the enforcement of federal immigration laws without the specific authorization of the City Manager or the Chief of Police.” *Id.*

45. The policy does not prohibit assisting ICE. “When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326, the department may assist in the enforcement of federal immigration laws.” *Id.*, § 428.2. The policy provides that the Richmond Police Department “does not conduct immigration ‘sweeps’ or engage in other concerted efforts to identify or detain suspected undocumented individuals.” *Id.*, § 428.2.1; see also *id.*, § 428.2.2.

46. The policy reiterates the police department’s concern “for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person.” *Id.*, § 428.4. Arrests should be based upon probable cause and not on arbitrary characteristics, such as race or ethnicity and “all individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation.” *Id.*

47. The policy is explicit that: “Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).” *Id.*

48. Thus, Richmond has made a policy decision that the safety of its residents requires trust between its police department and all residents, whether they are United States citizens, legal residents, or undocumented. Additionally, Richmond’s policy is to comply with all laws, including 8 U.S.C. § 1373. Since ICE has not in the past asked Richmond for

1 information or issued detainer requests, Richmond has not violated 8 U.S.C. § 1373 or any other
2 federal law.

3 **D. THE EXECUTIVE ORDER**

4 49. On January 25, 2017, defendant President Donald J. Trump issued **Executive**
5 **Order 13768**, entitled “**Enhancing Public Safety in the Interior of the United States.**” That
6 Executive Order was published in the Federal Register on January 30, 2017, at 82 Fed. Reg.
7 8799. It is available on the White House public website ([https://www.whitehouse.gov/the-press-](https://www.whitehouse.gov/the-press-office/2017/01/25/Presidential-executive-order-enhancing-public-safety-interior-united)
8 [office/2017/01/25/Presidential-executive-order-enhancing-public-safety-interior-united](https://www.whitehouse.gov/the-press-office/2017/01/25/Presidential-executive-order-enhancing-public-safety-interior-united)), and is
9 attached hereto as **Exhibit 1**.

10 50. The Executive Order declares, “Sanctuary jurisdictions across the United States
11 willfully violate Federal law in an attempt to shield aliens from removal from the United States.
12 These jurisdictions have caused immeasurable harm to the American people and to the very
13 fabric of our Republic.”

14 51. To address the purported harm caused by Sanctuary Cities, the Executive Order
15 establishes the policy that “jurisdictions that fail to comply with applicable Federal law do not
16 receive Federal funds, except as mandated by law.”

17 52. Specifically, Section 9(a) of the Executive Order states: “It is the policy of the
18 executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision
19 of a State, shall comply with 8 U.S.C. 1373.” 8 U.S.C. § 1373 prohibits local jurisdictions from
20 prohibiting the exchange of information with ICE regarding citizenship or immigration status.

21 53. Section 9(a) of the Executive Order establishes a **funding restriction**:

22 In furtherance of this policy, the Attorney General and the Secretary, in their
23 discretion and to the extent consistent with law, shall ensure that jurisdictions that
24 willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not
25 eligible to receive Federal grants, except as deemed necessary for law
26 enforcement purposes by the Attorney General or the Secretary. The Secretary
27 has the authority to designate, in his discretion and to the extent consistent with
28 law, a jurisdiction as a sanctuary jurisdiction. *Id.*

26 / / /

27 / / /

54. Section 9(a) of the Executive Order also mandates **enforcement action** for violations:

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. *Id.*

55. Defendant John F. Kelly, the Secretary of Homeland Security has already begun implementing the Executive Order. On February 20, 2017, he issued two memoranda to implement the Executive Order. The first memorandum is entitled “Enforcement of the Immigration Law to Serve the National Interest.” A true and correct copy of this memorandum, which will be referred to as the “Enforcement Memorandum” can be found at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf and is attached hereto as **Exhibit 5**. The second memorandum is entitled “Implementing the President’s Border Security and Immigration Enforcement Improvement Policies.” A true and correct copy of this memorandum, which will be referred to as the “Implementation Memorandum” can be found at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf and is attached hereto as **Exhibit 6**.

56. The Enforcement Memorandum does not reference “sanctuary jurisdictions” or provide any guidance about how the Secretary of Homeland Security will use its discretion to determine that a local jurisdiction should lose all federal funds because of that jurisdictions’ “failure to comply with applicable Federal Law.”

57. The Enforcement Memorandum states that it will be expanding the INA section 287(g) Program. This program “allows a qualified state or local law enforcement officer to be designated as an ‘immigration officer’ for purposes of enforcing federal immigration law. Such officers have the authority to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, and conduct searches authorized by under the INA, under the direction and supervision of the

1 Department.” The program is voluntary; currently 32 law enforcement agencies in 16 states
2 participate.

3 58. The Enforcement Memorandum further provides that: “Department personnel
4 have full authority to arrest or apprehend an alien whom an immigration officer has probable
5 cause to believe is in violation of immigration laws.”

6 59. The Enforcement Memorandum also provides: “I direct the Director of ICE to
7 immediately reallocate any and all resources that are currently used to advocate on behalf of
8 illegal aliens (except as necessary to comply with a judicial order) to the new VOICE [Victims
9 of Immigration Crime Engagement] Office, and to immediately terminate the provision of such
10 outreach or advocacy services to illegal aliens.” [bracketed materials added]

11 60. The Implementation Memorandum primarily deals with the building of a wall
12 between the United States and Mexico, the hiring of additional Border Patrol Agents, and
13 expediting undocumented immigrants to their native countries. The Implementation
14 Memorandum does not provide any guidance regarding the implementation of the Executive
15 Order as it applies to Richmond.

16 61. Since the Executive Order, the Enforcement and Implementation Memoranda,
17 and federal law and regulations do not provide any guidelines to State and local jurisdictions
18 regarding the criteria that will be used to determine when federal funds will be taken away or
19 enforcement actions will be taken, Richmond must try to glean this information from other
20 public statements of Defendants.

21 62. Based upon the public statements of Defendants, they intend to broadly define
22 jurisdictions that do not comply with federal immigration law and to punish those jurisdictions
23 with the withdrawal of all federal funds. Since as early as 2015, when he was a candidate for the
24 Republican nominee for President, Donald Trump railed against “Sanctuary Cities.” As set
25 forth, *supra*, he called Mexican immigrants rapists, which statement is not supported by the
26 evidence. He promised to punish these jurisdictions.

27 63. Since President Trump’s inauguration, his office has reaffirmed these statements.
28 For example, on January 25, 2017, when announcing the issuance of the Executive Order, the

1 President's Press Secretary said: "We are going to strip federal grant money from the sanctuary
2 states and cities that harbor illegal immigrants. The American people are no longer going to
3 have to be forced to subsidize this disregard for our laws."

4 64. A press release from the White House on January 28, 2017 stated that the
5 executive order was going to halt federal funding for "sanctuary cities." The reference to
6 "sanctuary cities in the Press Release implies that the President considers "sanctuary cities" to
7 be the same as "sanctuary jurisdictions," which is the term used in the Executive Order. The
8 same conflation between "sanctuary cities" and "sanctuary jurisdictions" occurred in a press
9 release issued by the White house on February 1, 2017 and the term "sanctuary cities" is on the
10 White House website: <http://www.whitehouse.gov/law-enforcement-community>.

11 65. President Trump, during an interview with Bill O'Reilly on February 5, 2017,
12 also referenced "sanctuary cities" rather than "sanctuary jurisdictions" when referring to the
13 Executive Order. He also specifically referred to proposed legislation by the California
14 legislature regarding immigration as "ridiculous" and referred to the "tremendous amounts of
15 money" the federal government gives to California.

16 66. Immediately prior to becoming the Attorney General, Defendant Jefferson B.
17 Sessions, was a U.S. Senator. In July of 2015, he introduced Senate Bill 1842, the "Protecting
18 American Lives Act." With regards to the bill and in other statements regarding immigration,
19 Attorney General Sessions indicated an intent to punish local jurisdictions, such as Richmond,
20 which had enacted ordinances which demonstrated concern for immigrants.

21 67. Based upon the evidence, it appears there is a substantial probability that
22 Defendants, and each of them, will seek to enforce the unconstitutional Executive Order against
23 Richmond based upon its enactment of Ordinances No. 29-90 and Resolution No. 11-07,
24 Richmond being referred to as a "sanctuary city," and its large Latino population. While
25 Richmond does not believe that it has willfully refused to follow any federal law, the statements
26 by Defendants imply that simply enacting an ordinance like Ordinance No. 29-90 and
27 Resolution No. 11-07 will provide the basis for Defendants to enforce the Executive Order
28 against Richmond.

E. THE EXECUTIVE ORDER IS UNCONSTITUTIONAL BECAUSE IT EXCEEDS THE AUTHORITY OF THE PRESIDENT AND CONGRESS

1. The President Does Not Have the Authority to Issue the Executive Order

68. The federal system is a system of checks and balances. Our founders wanted to stop the President from being able to exercise unbridled discretion like the King from whom they had just won their freedom. Therefore, the Constitution limits the power of the President. Under Article I, section 8, clause 1 of the United States Constitution, Congress, not the President, has the authority to appropriate and spend federal monies. President Trump exceeded his constitutional authority by the enactment of the Executive Order because it is not authorized by any act of Congress or the Constitution. Hence, the Executive Order is unconstitutional. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585, 72 S. Ct. 863, 866 (1952).

69. The President may also not unilaterally impose new restrictions on jurisdictions' eligibility for federal funding because any restrictions on federal funds must be done so in advance by Congress. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 171 101 S. Ct. 1531 (1981). The President may not on his own impose restrictions when Congress has not acted. The President does not have "unilateral power to change the text of duly enacted statutes." *Clinton v. City of New York*, 524 U.S. 417, 447 (1998).

2. Congress Does Not Have the Authority to Take the Actions in the Executive Order

70. The Executive Order is also unconstitutional because not even Congress would have the authority to enact the Executive Order as legislation.

71. Once Congress has authorized money to a State, county or city and it has been accepted, Congress cannot impose new conditions on the receipt of the monies. The taking away of funds violates the Spending Clause by imposing new funding conditions on existing appropriations of federal funds. "[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously," in advance. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17, 101 S. Ct. 1531 (1981) "The legitimacy of Congress' power to legislate under the spending power . . . rests on whether the State voluntarily and knowingly accepts" Congress's conditions. *Id.* "There can, of course, be no knowing acceptance if a State

1 is unaware of the conditions or is unable to ascertain what is expected of it.” *Id.* The Executive
2 Order thus violates the Spending Clause because it seeks to take away monies already
3 authorized and accepted by Richmond.

4 72. Further, even if Congress enacted legislation paralleling the Executive Order, the
5 legislation would be unconstitutional because Congress cannot impose conditions to the
6 acceptance of federal funds when those conditions are unrelated to the purpose for which the
7 funds are given. See *South Dakota v. Dole*, 483 U.S. 203, 208-09 & n.3 (1987) (“[T]he imposition
8 of conditions under the spending power” must be ‘germane’ or ‘related’ to the purpose of federal
9 funding.”). The Executive Order threatens the loss of all federal funds, not only those related to the
10 purposes of the Executive Order, which purpose is related to immigration.

11 73. The Executive Order’s threat to strip Richmond of all federal funds and bring
12 enforcement actions against it for violation of Federal laws is also unconstitutional. Congress
13 also cannot use coercion or a “power akin to undue influence” to force States, counties or cities
14 to act in accordance with federal policies. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519,
15 132 S. Ct. 2566, 2602 (2012).

16 74. Under the United States’ Constitution, Congress cannot compel state officials to
17 execute federal law. *Printz v. United States*, 521 U.S. 898, 138 L. Ed. 2d 914, 117 S. Ct. 2365
18 (1997). “In providing for a stronger central government, therefore, the Framers explicitly chose
19 a Constitution that confers upon Congress the power to regulate individuals, not States. As we
20 have seen, the Court has consistently respected this choice. We have always understood that
21 even where Congress has the authority under the Constitution to pass laws requiring or
22 prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit
23 those acts.” *New York v. United States*, 505 U.S. 144, 166, 112 S. Ct. 2408, 2423 (1992). The
24 Executive Order violates these principles of federalism and state sovereignty and is
25 unconstitutional.

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27 ///

28

3. The Executive Order Is Unconstitutional Because It Violates the Tenth and Fourth Amendments

75. The Executive Order is also unconstitutional because it violates the Tenth Amendment of the Constitution. The Tenth Amendment provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This Amendment preserves the sovereignty of the States and local governments, but the Executive Order seeks to interfere with the States’ and local jurisdictions’ sovereignty.

76. The Executive Order is also unconstitutional because it forces jurisdictions to keep people in custody who otherwise would be released, thus potentially exposing the jurisdictions to liability under the Fourth Amendment. This is not an idle concern. Public entities may be liable under the Fourth Amendment for honoring an ICE civil detainer request. *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST, 2014 U.S. Dist. LEXIS 50340 (D. Or. Apr. 11, 2014); see *Morales v. Chadbourne*, 793 F.3d 208, 215-216 (1st Cir. 2015); *Orellana v. Nobles Cnty.*, No. 15-3852 ADM/SER, 2017 U.S. Dist. LEXIS 2438, at *23-24 (D. Minn. Jan. 6, 2017); *Mendia v. Garcia*, 165 F. Supp. 3d 861, 887 (N.D. Cal. 2016).

77. The federal government has made clear that the local agency bears the financial burden of the detention, providing that “[n]o detainer issued as a result of a determination made under this chapter . . . shall incur any fiscal obligation on the part of the Department.” 8 C.F.R. § 287.7(e). The federal government also will not indemnify local governments or its officials against constitutional claims, even when they arise directly out of actions the local government has taken at the direction of the federal government.

78. The Executive Order is unconstitutional because it coerces Richmond to implement federal immigration policy. The Executive Order provides that federal funds will be withheld from jurisdictions that failed to comply with federal law, including specifically 8 U.S.C. § 1373. Executive Order, § 9(a). However, nothing in 8 U.S.C. § 1373 conditions any federal funding on complying with 8 U.S.C. § 1373 and no federal funds which Richmond receives are conditioned with Richmond complying with 8 U.S.C. § 1373. In fact, in light of the

plain language of the statute, there can be no requirement that as a condition of receiving federal funds, a jurisdiction comply with 8 U.S.C. § 1373. If the Executive Order is allowed to stand, its implementation would impermissibly intrude on Richmond's exercise of powers conferred upon it by the State of California, and would unlawfully restrict Richmond's ability to shape local government according to Richmond's needs and policy mandates of its residents.

F. INJURY TO RICHMOND CAUSED BY THE EXECUTIVE ORDER

79. The Executive Order has created fear and confusion regarding the actions that Defendants Attorney General Sessions and Secretary of Homeland Security Kelly, acting on behalf of Defendant United States, will take against state and local governments, like Richmond, who have enacted ordinances to promote trust between law enforcement and the community.

80. Richmond has been forced to expend resources as a result of the Executive Order because the Executive Order has created an atmosphere of fear and distrust in the immigrant community. The positive effects created by Ordinance No. 29-90 and Resolution No. 11-07 in the relationship between law enforcement and the immigrant community have started to dissipate as a result of the Executive Order. The Executive Order has the effect of discouraging immigrants from reporting crimes and cooperating with law enforcement, which harms public safety.

81. Richmond has also been forced to expend resources to determine how it will provide vital municipal services if Defendant Attorney General Sessions and/or Defendant Secretary of Homeland Security Kelly, acting on behalf of Defendant United States, use their unbridled discretion, and determine that Richmond is a "sanctuary jurisdiction," which has willfully violated federal law, and then withhold federal funds.

82. Richmond is dependent on federal and state funds to provide critical services to its residents. From July 1, 2013 through June 30, 2014, it received over \$28 million in federal funds. For the same period, it received over \$18 million in state funds, many of these funds are pass-through federal funds. In a report prepared by the California State Controller in July 2016, found at http://www.sco.ca.gov/Files/AUD/07_2016_richmond_state_and_federal_expenditures.pdf, the Controller breaks down the federal funds.

83. For fiscal year 2016-2017, Richmond has been granted federal grants for street improvements, community oriented policing, low income public housing, housing choice voucher programs, home repairs, and other services.

84. Richmond's fiscal year runs from July 1 until June 30. Richmond begins its mid-year budget review in February of each year and holds its first budget hearings for the upcoming year in March. The City Council reviews and discusses the budget in May and June with final approval of the budget in early July. Thus, Richmond is in the midst of its budget process. Richmond is already facing budget issues and the potential that Richmond may be declared a "sanctuary jurisdiction" and have all federal funding stopped is causing uncertainty to Richmond's budget. Richmond is facing the prospect of sweeping cuts if federal funding ends. Richmond has no alternative source of funding or reserves to make-up for the loss of federal funding and, therefore, the loss of federal funding would be immediate and devastating to Richmond and its residents.

85. The Executive Order's threat to cut federal funds is manifestly coercive and, therefore unconstitutional. The Executive Order's direction to the Attorney General to take "appropriate enforcement action against any entity ... which has in effect a statute, policy or practice that prevents or hinders the enforcement of Federal law" presents an immediate harm to Richmond. Richmond needs to make budget decisions regarding next year's budget without having any direction about whether it complies with the Executive Order or whether the Executive Order will be enforced against Richmond and, if so, in what manner.

G. THE COURT SHOULD DECLARE THE EXECUTIVE ORDER UNCONSTITUTIONAL AND ENJOIN ENFORCEMENT

86. There exists a present controversy between Defendants and Richmond because, based upon statements made by Defendants, Defendants, for purposes of enforcing the Executive Order, consider Richmond a sanctuary jurisdiction which is willfully violating the law. Richmond has been considered a Sanctuary City, but it believes that its ordinances comply with the law and permissibly use the discretion granted to Richmond by the United States Constitution and judicial precedent to make decisions regarding the safety of its community. Richmond

believes it complies with 8 U.S.C. § 1373. The Executive Order is unconstitutionally vague in that it fails to tell Richmond what it must do or not do to retain federal funds. There are no administrative remedies that Richmond can seek under the Executive Order. Therefore, Richmond seeks a declaration that the Executive Order is unconstitutional and unenforceable and also that Richmond believes it complies with 8 U.S.C. § 1373. This judicial declaration is necessary and appropriate at this time because of the imminent and irreparable harm that Richmond will face if the Executive Order is implemented against Richmond and all federal funds are cut off.

87. Richmond has no adequate or speedy remedy at law to stop the conduct of Defendants because the Executive Order provides no procedure for review or appeal. This action is Richmond's only way of securing prospective relief. Richmond has suffered actual harm by the issuance of the Executive Order and will continue to suffer extreme hardship and impending irreparable injury if the Executive Order is enforced because the Executive Order is unconstitutional and impermissibly seeks to take away Richmond's federal funding. The loss of federal funding on Richmond would be devastating. Therefore, Richmond seeks a temporary, preliminary, and permanent injunction enjoining the enforcement of the Executive Order against Richmond.

V. CLAIMS FOR RELIEF (All Claims Are Against All Defendants)

FIRST CLAIM FOR RELIEF

For Injunctive and Declaratory Relief Based on Violation of the Tenth Amendment

88. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

89. The Tenth Amendment preserves state's and local government's sovereignty and limits the federal government's ability to control local governments' actions. Under the Tenth Amendment, "Congress may not simply commandeer the legislative process of the States by directly compelling them to enact and enforce a federal regulatory program." *New York v. United States*, 505 U.S. 144, 161, 112 S. Ct. 2408 (1992) (internal quotation omitted). "The

1 commandeering cases involve attempts by Congress to direct states to perform certain functions,
 2 command state officers to administer federal regulatory programs, or to compel states to adopt
 3 specific legislation.” *Raich v. Gonzales*, 500 F.3d 850, 867 n. 17 (9th Cir. 2007). The Executive
 4 Order violates the Tenth Amendment.

5 90. The Tenth Amendment applies to Richmond. *Printz v. United States*, 521 U.S.
 6 898, 931, n. 15, 138 L. Ed. 2d 914, 117 S. Ct. 2365 (1997); *City of Santa Cruz v. Gonzales*, No.
 7 C 03-01802 JF, 2007 U.S. Dist. LEXIS 66414 (N.D. Cal. Aug. 30, 2007).

8 91. The Executive Order exceeds the power of the President or any federal branch of
 9 government because the Executive Order requires state and local governments to affirmatively
 10 assist federal immigration officials by, *inter alia*, complying, at their own expense, with ICE
 11 detainer requests. In Section 9(a) of the Executive Order, the “Attorney General shall take
 12 appropriate enforcement action against any entity that violates 8 U.S.C. § 1373, or which has in
 13 effect a statute, policy, or practice that prevents or hinders the enforcement of Federal Law.” By
 14 demanding that state and local governments, including Richmond, detain individuals who may
 15 be subject to removal at the request of federal officials even if those individuals would otherwise
 16 be subject to release from custody and by ordering the Attorney General to take enforcement
 17 action against state and local governments which do not comply, the Executive Order
 18 commandeers state and local officials in furtherance of a federal regulatory program in violation
 19 of the Tenth Amendment to the United States Constitution.

20 92. The Executive Order also requires that state and local governments take action to
 21 avoid preventing or hindering the federal government in the enforcement of Federal law.
 22 Executive Order, § 9(a). This requirement forces local officials to act as an arm of the federal
 23 government, which violates the Tenth Amendment. The federal government cannot use the
 24 appropriation of money as a threat to coerce Richmond to act in a certain way. This use of an
 25 Executive Order to coerce Richmond through a threat of the loss of all federal funds is
 26 unconstitutional. *Nat’l Fed’n of Indep. Bus v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 2602-04
 27 (2012).

93. The Executive Order further impermissibly seeks to interfere with Richmond's policy decisions in enacting Ordinance No. 29-90 and Resolution No. 11-07, which further legitimate local concerns and interests. This federal interference impermissibly penalizes state and local governments that are deemed to "prevent or hinder" the enforcement of federal law and thus impermissibly coerces state and local governments to adopt policies and practices that support the Executive Order to the subordination of state and local government interests.

94. The Executive Order additionally interferes with Richmond's ability to budget. If it is forced to keep people in custody as a result of an ICE detention request, Richmond must pay for these additional costs to detain. These costs are hundreds of dollars per day. If Richmond is forced to incur these costs, it will have less money to spend on services for its residents.

95. Accordingly, the Executive Ordinance is unconstitutional and Richmond seeks a declaration that the Executive Order is unconstitutional, and a temporary, preliminary, and permanent injunction enjoining the enforcement of the Executive Order against Richmond.

WHEREFORE, Richmond prays for relief as hereinafter set forth.

SECOND CLAIM FOR RELIEF

For Injunctive and Declaratory Relief Based on the Separation of Powers And Spending Clauses

96. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

97. The Executive Order Section 2(c) states: "It is the policy of the executive branch to . . . Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." It further states in Section 9 that: "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."

98. If defendant Attorney General Sessions or defendant Secretary of Homeland Security Kelly, in the discretion of either one of them, determines that a "sanctuary jurisdiction" who fully refuses to comply with 8 U.S.C. § 1373, they must ensure that the jurisdiction is not

1 “eligible to receive federal grants, except as deemed necessary for law enforcement purposes.”

2 Executive Order § 9.

3 99. The Executive Order provides that the Attorney General “shall take appropriate
4 enforcement action against any entity that violates 8 U.S.C. § 1373 or has in effect a statute
5 policy or practice that prevents or hinders the enforcement of Federal law.” Executive Order §
6 9.

7 100. The President does not have the authority to issue the Executive Order because
8 the Executive Order is not authorized by the Constitution or Congress.

9 101. Accordingly, the Executive Ordinance is unconstitutional and Richmond seeks a
10 declaration that the Executive Order is unconstitutional, and a temporary, preliminary, and
11 permanent injunction enjoining the enforcement of the Executive Order against Richmond.

12 WHEREFORE, Richmond prays for relief as hereinafter set forth.

13 **THIRD CLAIM FOR RELIEF**

14 **For Injunctive and Declaratory Relief Based on Violation of Fourth Amendment**

15 102. Plaintiff repeats and incorporates by reference each allegation of the prior
16 paragraphs as if fully set forth herein.

17 103. The Fourth Amendment prohibits unreasonable search and seizure, which
18 includes keeping people in custody who otherwise would be released.

19 104. The Executive Order requires Richmond to keep people in custody who would
20 otherwise be released. Richmond and its law enforcement officials will not have probable cause
21 to keep these people in custody.

22 105. Therefore, Richmond may be liable under the Fourth Amendment for honoring
23 an ICE civil detention request. *Miranda-Olivares v. Clackamas Cty.*, No. 3:12-cv-02317-ST,
24 2014 U.S. Dist. LEXIS 50340 (D. Or. Apr. 11, 2014); see *Morales v. Chadbourne*, 793 F.3d
25 208, 215-216 (1st Cir. 2015); *Orellana v. Nobles Cnty.*, No. 15-3852 ADM/SER, 2017 U.S.
26 Dist. LEXIS 2438, at *23-24 (D. Minn. Jan. 6, 2017); *Mendia v. Garcia*, 165 F. Supp. 3d 861,
27 887 (N.D. Cal. 2016). Further, the federal government has made clear that Richmond will bear
28 all responsibility for the additional detention costs and potential liability.

106. Accordingly, the Executive Ordinance is unconstitutional and Richmond seeks a declaration that the Executive Order is unconstitutional, and a temporary, preliminary, and permanent injunction enjoining the enforcement of the Executive Order against Richmond.

WHEREFORE, Richmond prays for relief as hereinafter set forth.

FOURTH CLAIM FOR RELIEF

For Injunctive and Declaratory Relief Based on Violation of Due Process Clause Because of Vagueness

107. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

108. The Executive Order is *unconstitutionally vague* in violation of the Due Process Claim, the Fifth Amendment of the Constitution.

109. 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, 128 S. Ct. 1830, 1845 (2008). This standard applies to Executive Orders. See *United States v. Soussi*, 316 F.3d 1095, 1101 (10th Cir. 2002). “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 2298 (1972); see also *Desertrain v. City of L.A.*, 754 F.3d 1147, 1155-56 (9th Cir. 2014).

110. The Executive Order is unconstitutionally vague and, therefore, unconstitutional. It fails to define key terms, such as “sanctuary jurisdiction” and the term is not defined in any federal law or regulation. Although Richmond and numerous other jurisdictions have been referred to as “sanctuary cities,” there is no common definition of a sanctuary city and there are differences between the ordinances and policies of the different jurisdictions referred to as “sanctuary cities.” The fact that a public entity has been referred to as a sanctuary city or that it has enacted legislation about immigration policies does not mean that it is a “sanctuary jurisdiction” under the Executive Order. No jurisdiction can determine by the language of the Executive Order if it is a “sanctuary jurisdiction” subject to the Executive Order.

111. The Executive Order is also unconstitutionally vague and, therefore, unconstitutional, because it does not define what actions or inactions constitute “willful refusal to comply with 8 U.S.C. § 1373.” The Executive Order gives unfettered discretion to the Attorney General and Secretary of Homeland Security without providing any rules or guidance on how that discretion should be exercised. The Executive Order is, therefore unconstitutionally vague. *United States v. Williams*, 553 U.S. at 304; *Grayned v. City of Rockford*, 408 U.S. at 108. The Executive Order is impermissibly vague because it allows resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. See *Grayned v. City of Rockford*, 408 U.S. at 109.

112. An additional reason that the Executive Order is unconstitutionally vague is that it does not define what is meant by the phrase: “Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law.” Richmond does not know, with respect to the Executive Order, what “applicable Federal law means.” There is no way for Richmond to know whether the “applicable Federal law” is only 8 U.S.C. § 1373, all immigration laws or all federal laws.

113. Accordingly, the Executive Ordinance is unconstitutional and Richmond seeks a declaration that the Executive Order is unconstitutional, and a temporary, preliminary, and permanent injunction enjoining the enforcement of the Executive Order against Richmond.

WHEREFORE, Richmond prays for relief as hereinafter set forth.

FIFTH CLAIM FOR RELIEF

For a Declaration that Richmond Complies With 8 U.S.C. § 1373

114. Plaintiff repeats and incorporates by reference each allegation of the prior paragraphs as if fully set forth herein.

115. Richmond contends that it complies with 8 U.S.C. § 1373. Specifically, the Richmond Police Department Policy Manual provides that nothing in Section 428 of the Manual regarding immigration violations “is intended to restrict officers from exchanging legitimate law enforcement information with other federal, state or local government entity (8 U.S.C. § 1373; 8 U.S.C. § 1644).”

116. Richmond believes that Defendants contend that Richmond does not comply with 8 U.S.C. § 1373.

117. An actual controversy thus presently exists between Richmond and Defendants about whether Richmond complies with 8 U.S.C. § 1373. A judicial determination resolving this controversy is necessary and appropriate at this time.

WHEREFORE, Richmond prays for relief as hereinafter set forth.

VI. PRAYER FOR RELIEF

Wherefore, the City of Richmond prays for the following relief:

1. For a declaration that the Executive Order is unconstitutional because it violates the Tenth Amendment, violates the separation of powers clause of the U.S. Constitution, violates the spending clause of the U.S. Constitution, is unconstitutionally coercive, violates the Fourth Amendment of the U.S. Constitution, and/or is unconstitutionally vague;
2. For a declaration that Richmond complies with 8 U.S.C. § 1373;
3. Temporarily, preliminarily and permanently enjoin the named Defendants from enforcing the Executive Order against the City of Richmond;
4. Award the City of Richmond reasonable costs and attorney's fees; and
5. Grant any other further relief that the Court deems fit and proper.

Dated: March 21, 2017

COTCHETT, PITRE & McCARTHY, LLP

By: /s/ Joseph W. Cotchett

JOSEPH W. COTCHETT
Attorneys for Plaintiff

Dated: March 21, 2017

CITY OF RICHMOND

By: /s/ Bruce Reed Goodmiller

BRUCE REED GOODMILLER
Attorneys for Plaintiff

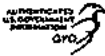
ATTESTATION OF FILING

I, Nancy L. Fineman, hereby attest, pursuant to Northern District of California, Local Rule 5-1(i)(3) that concurrence to the filing of this document has been obtained from each signatory hereto.

/s/ Nancy L. Fineman

NANCY L. FINEMAN
Attorney for Plaintiff

Exhibit 1



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.

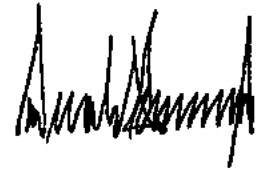
Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,
January 25, 2017.

Exhibit 2

ORDINANCE NO. 29-90 N.S.

AN ORDINANCE OF THE CITY OF RICHMOND, CALIFORNIA, ADOPTING CERTAIN POLICIES REGARDING THE REQUEST FOR INFORMATION, ASSISTANCE OR COOPERATION BY THE IMMIGRATION AND NATURALIZATION SERVICE OF THE UNITED STATES DEPARTMENT OF JUSTICE

WHEREAS, the Council of the City of Richmond desires to foster an atmosphere of trust and cooperation between the Richmond Police Department and all persons, regardless of immigration status, residing in the City of Richmond; and

WHEREAS, the creation of such trust and cooperation is important to law enforcement efforts in the City of Richmond in the war on drugs and criminal activity generally; and

WHEREAS, concerns have been raised that this positive environment may be compromised by certain actions engaged in by agents of the Immigration and Naturalization Service of the United States Department of Justice in the City of Richmond when aided by information or assistance provided by City of Richmond officers and employees; and

WHEREAS, the Council of the City of Richmond desires to respond to the community's concerns in an effective manner.

NOW, THEREFORE, the Council of the City of Richmond do ordain as follows:

Section 1. The Council of the City of Richmond hereby declares that it does not condone the detention of citizens and non-citizens by the Immigration and Naturalization Service based solely upon physical profiles or a lack of probable cause.

Section 2. In order to address the fears expressed by the immigrant and refugee community in the City of Richmond concerning Immigration and Naturalization Service activities in the City of Richmond while preserving the ability of the Richmond Police Department to utilize all available resources to fight criminal activity, the Council of the City of Richmond hereby adopts the following policy:

1. All officers and employees of the City of Richmond, while acting in their official capacities, who receive any oral or written request from the Immigration and Naturalization Service for information, cooperation or assistance shall refer

such request to the City Manager or the Chief of Police. The City Manager or the Chief of Police shall decide whether such information shall be given or whether such cooperation or assistance shall be provided to the Immigration and Naturalization Service. In exercising their discretion, the City Manager and the Chief of Police shall consider the possible disruption and inconvenience that may be experienced by the immigrant and refugee community in the City of Richmond and any requirements of any federal, state or local law or court decision. Nothing delineated in the foregoing policy shall be construed to prevent the City Manager or the Chief of Police from providing information, assistance or cooperation to the Immigration and Naturalization Service regarding the criminal violation of any federal, state or local law.

2. The City Manager and the Chief of Police shall report to the City Council regarding the activities of the Immigration and Naturalization Service within the City of Richmond as requested by the City Council or as the City Manager or Chief of Police may deem appropriate.

3. The City Manager shall distribute a copy of this policy to all current and new officers and employees of the City of Richmond and shall emphasize the importance of complying with this City Council policy.

Section 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

First read at a regular meeting of the Council of the City of Richmond, California, held August 13, 1990

ABJ676

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and finally passed and adopted at a regular meeting thereof held
August 20, 1990, by the following vote:

AYES: Councilmembers Niccolls, Corbin, Marquez, Ziesenhenne,
MacDiarmid, Griffin and Vice-Mayor McMillan

NOES: None

ABSENT: Councilmember Washington and Mayor Livingston

EULA M. BARNES
Clerk of the City of Richmond

Approved:

(SEAL)

GEORGE L. LIVINGSTON
Mayor

Approved as to form:

MALCOLM HUNTER
City Attorney

State of California)
County of Contra Costa : ss.
City of Richmond)

I certify that the foregoing is a true copy of Resolution No.
29-90 N.S. finally passed and adopted by the Council of the City of
Richmond at a regular meeting held August 13, 1990, and published in
accordance with law.

3 EULA M. BARNES
Clerk of the City of Richmond

By: *Diana Holmes*
Deputy City Clerk

Exhibit 3

RESOLUTION NO. 11-07

A RESOLUTION OF THE RICHMOND CITY COUNCIL REAFFIRMING ITS SUPPORT FOR COMPREHENSIVE IMMIGRATION REFORM THAT IS FAIR, JUST AND HUMANE

WHEREAS, The City of Richmond welcomes and values all of its residents and supports them to live and work free from discrimination, hostility, abuse, violence, exploitation and fear of local, state and federal law enforcement; and

WHEREAS, one fourth of the residents of Richmond are persons who were born in foreign countries and who have come to the U.S. in search of better lives for themselves and their families; and

WHEREAS; National experts and policy makers agree our federal immigration policy is broken, inconsistent and in need of reform; and

WHEREAS; Most economists agree that immigrants and undocumented workers are good for the US economy and studies show that immigrants contribute \$25-30 billion more in taxes than they receive in services; and

WHEREAS; A crackdown on illegal immigration in 2004 caused a shortage of workers needed to bring in the agricultural crop in the Western United States which caused a \$1 billion dollar loss for the industry; and

WHEREAS, The City of Richmond in resolution 35-06 of April 18, 2006 called for a comprehensive immigration reform bill that is fair, just and humane; that recognizes all immigrants for their contributions to our economic and social life; and

WHEREAS The City of Richmond passed Ordinance 29-90 to affirms its desire to foster an atmosphere of trust and cooperation between the Richmond Police Department and all residents of the city of Richmond; and

WHEREAS, Immigration and Customs Enforcement (ICE) has acknowledged through press reports that its officers identify themselves as "police", which technically correct misleads the residents of Richmond, by suggesting they are Richmond Police Department officers investigating local crimes and undermines the trust built by the Richmond Police Department; and

WHEREAS, the community and church leaders have received also numerous complaints of people arrested at places of work and in public places, for which no warrants existed, creating a climate of fear among immigrant families; and

NOW, THEREFORE, BE IT RESOLVED that the US Department of Homeland Security and the US Immigration and Customs Enforcement be called upon to issue a moratorium on raids until the US Congress comes to an agreement on comprehensive immigration reform so that the debate can be carried out in good faith, rather than against a backdrop of fear, repression and intimidation; and

BE IT FURTHER RESOLVED that the City of Richmond reaffirms the terms of ordinance No. 20-90 ordering all officers and employees of this City not to inform, assist or cooperate with the Immigration and Customs Enforcement (ICE) formerly known as Immigration and Naturalization Service, without the specific authorization of the Richmond City Manager or the Chief of Police; and

BE IT FURTHER RESOLVED that the City of Richmond calls for the Immigration and Customs Enforcement (ICE) officers conducting any future official business in Richmond to clearly and specifically identify themselves as federal immigration officers and to proactively and clearly state that they are not officers of the Richmond Police Department; and

BE IT FURTHER RESOLVED that the City of Richmond reaffirms its support for comprehensive immigration reform bill that is fair, just and humane; that recognizes all immigrants for their contributions to our economic and social life; that provides a system that addresses the backlog of visas to reunite families currently separated; that provides

undocumented workers and students with a path toward permanent residency; and prevents the criminalization of the estimated 12 million undocumented immigrants currently residing in the United States; and

BE IT FURTHER RESOLVED that the Richmond City Council directs the Clerk of the Richmond City Council to send copies of this resolution to Michael Chertoff, Secretary for Homeland Security, and to Federal representatives including Senator Dianne Feinstein, Senator Barbara Boxer, and Congressman George Miller.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond, California at a meeting held on February 6, 2007, by the following vote:

Ayes:	Councilmembers Bates, Butt, Lopez, Marquez, Rogers, Sandhu, Thurmond, Viramontes, and Mayor McLaughlin
Noes:	None
Abstentions:	None
Absent:	None

DIANE HOLMES
Clerk of the City of Richmond

[SEAL]

APPROVED:

GAYLE McLAUGHLIN
Mayor

APPROVED AS TO FORM:

JOHN EASTMAN
City Attorney

State of California }
County of Contra Costa : ss
City of Richmond }

I certify that the foregoing is a true copy of Resolution No. 11-07, finally passed and adopted by the Council of the City of Richmond at a meeting held on February 6, 2007.

Exhibit 4

Immigration Violations

428.1 PURPOSE AND SCOPE

It is the policy of the Richmond Police Department (RPD) to foster trust and cooperation with all people of the city and to encourage them to communicate with RPD officers without fear of inquiry regarding their immigration status. It is also department policy, consistent with its obligations under state and federal law, to adhere to the City of Richmond Ordinance 2990. This ordinance prohibits the use of City resources to assist in the enforcement of federal immigration laws without the specific authorization of the City Manager or the Chief of Police.

428.2 DEPARTMENT POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code dealing with illegal entry.

When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of 8 USC § 1304; 8 USC § 1324; 8 USC § 1325 and 8 USC § 1326, this department may assist in the enforcement of federal immigration laws.

428.2.1 IMMIGRATION "SWEEPS" AND SPECIAL ENFORCEMENT EFFORTS

The Richmond Police Department does not conduct immigration "sweeps" or engage in other concentrated efforts to identify or detain suspected undocumented individuals.

Equal consideration should be given to all suspected violations and not just those affecting a particular race, ethnic group, age group, gender, socioeconomic status, immigration status, or other group when enforcement efforts are increased in any particular area of the city.

The disposition of each contact (e.g., warning, citation, arrest), while discretionary in each case, should not be affected by such factors as race, ethnicity, sexual orientation, immigration status, etc.

428.2.2 ICE REQUEST FOR ASSISTANCE

If the U.S. Immigration and Customs Enforcement (ICE) requests assistance from this department for support services, such as traffic control or "keep the peace" efforts, authorization must be obtained from the Chief of Police.

RPD officers shall not participate in ICE operations such as immigration "sweeps", or activities related to immigration issues, other than as emergency backup.

428.2.3 BOOKING

If the officer is unable to reasonably establish an arrestee's identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

A person detained exclusively pursuant to the authority of Vehicle Code § 40302(a) for any Vehicle Code infraction or misdemeanor shall not be detained beyond four hours for the purpose of

Richmond Police Department

Policy Manual

Immigration Violations

establishing his/her true identity. Regardless of the status of that person's identity at the expiration of four hours, he/she shall be released on his/her signature with a promise to appear in court for the Vehicle Code infraction or misdemeanor involved.

428.2.4 NOTIFICATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

It is the policy of the City of Richmond and the Richmond Police Department that the Department shall not comply with Immigration and Customs Enforcement (ICE) hold "requests" or ICE detainers. Arrested persons shall not be held for these hold/retainer "requests." ICE has no legal authority to require compliance with these "requests." The Department shall comply with federal arrest warrants or orders signed by a judge.

ICE personnel shall not be allowed access to the Richmond Police Department Detention Unit (Temporary Holding Facility) unless they are there to pick up a prisoner on a federal warrant or order signed by a judge.

Richmond Police Department personnel shall not notify ICE of individuals who are taken into custody. If an arrested person meets Richmond Police Department criteria to be transported and booked into the County Jail, that person may be subject to an ICE hold or detainer "request" once he or she is booked into the county Jail based on the Contra Costa County Sheriff's Department's policy which provides ICE personnel access to the County Jail and shares information with ICE.

ICE personnel shall not be permitted access to any Richmond Police Department records, including booking sheets, booking logs, or police reports unless they have the approval of a Lieutenant or Chief of Police.

Any deviations from this policy shall require the approval of a Lieutenant or the Chief of Police.

428.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

In October 2000, the United States Congress passed the Victims of Trafficking and Violence Prevention Act. As part of this Act, Congress sought to strengthen the ability of local law enforcement agencies to detect, investigate, and prosecute crimes against nonresident foreigners. In cases in which the victims are nonresident foreigners, their immigration status in the United States can directly affect their ability to cooperate and assist local law enforcement in the investigation and prosecution of these crimes.

Nonresident foreign victims usually need to be in the United States to be accessible to provide information and testimony as part of an investigation or prosecution. Nonresident foreign victims may also need a place of refuge so they can avoid returning to the same environment in another country where they might be exposed to further crimes. For this reason, Congress created a specific avenue for nonresident foreign crime victims to obtain lawful temporary immigrant status. This was accomplished by amending certain sections of the Immigration and Nationality Act (INA) to create the "U Visa." The Richmond Police Department participates in the U Visa Program.

428.3.1 BASIS FOR CONTACT

- (a) Temporary Visa - allowing the victim to remain in the U.S. for up to four (4) years

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- (b) After three (3) years, the victim can apply for permanent residency
- (c) Victim may legally work in the U.S.; and
- (d) Nation-wide, a total of only 10,000 U-Visas are issued annually.
- (e) Except for those cases protected under California Penal Code Section 293, U-Visa information/records are subject to the Public Records Access Act.

428.3.2 SWEEPS

In order for a Form I-918, Supplement b to be completed and certified by the Department, the facts of the case under investigation must demonstrate the following:

- (a) The non-resident foreign victim has been, is being, or is likely to be "helpful" to an RPD investigation. For the purposes of this policy, the victim is described as being "helpful" when he/she:
 - 1. Possesses and furnishes vital information about a qualifying crime;
 - 2. Demonstrates continual cooperation during the investigation and/or prosecution;
 - 3. Assists investigators with gathering additional vital information; and
 - 4. Makes him/herself available to investigators.
- (b) The non-resident foreigner was a victim of an actual crime (listed in subpart C. below) which took place in the United States.
 - 1. If there is no Richmond connection (e.g., the Department has not and does not plan to open an investigation), the request shall be returned to the requester with instructions to forward to the appropriate investigating or charging agency.
 - 2. If a prior investigation and related criminal case has been closed and the date of the incident exceeds the statute of limitations, the Department shall not process the request without first consulting with the District Attorney's Office.
- (c) The non-resident foreign victim sustained physical injury or mental abuse and the crime was one of the following:
 - 1. Rape;
 - 2. Torture;
 - 3. Trafficking;
 - 4. Incest;
 - 5. Domestic violence;
 - 6. Sexual assaults;
 - 7. Abusive sexual contact;
 - 8. Prostitution, sexual exploitation;

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9. Female genital mutilation;
10. Abduction;
11. Unlawful criminal restraint;
12. False imprisonment;
13. Blackmail;
14. Extortion;
15. Manslaughter;
16. Murder;
17. Felonious assault;
18. Witness tampering;
19. Obstruction of justice;
20. Perjury or attempt;
21. Conspiracy; or
22. Solicitation to commit any of the above mentioned crimes.

- (d) The decision to complete the certification of Form I-918, Supplement B, is based solely on these qualifiers. If the application does not satisfy these criteria, the Form shall be returned to the requester uncompleted and "un-signed."

428.3.3 ICE REQUEST FOR ASSISTANCE

The Richmond Police Department's U-Visa program is managed by the Officer In Charge assigned to the Criminal Investigations Section. A petition for a U-Visa from the U.S. Citizenship and Immigrations Services must be completed on DHS Form I-918 by the assigned investigator or the assigned prosecutor and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa to be issued.

Any request for assistance in applying for U-Visa status should be forwarded in a timely fashion to the Investigations Division Sergeant assigned to supervise the handling of any related case. The Investigations Division Sergeant should do the following:

- Consult with the assigned detective to determine the current status of any related case and whether an update on the case is warranted.
- Review the instructions for completing the certification if necessary. Instructions for completing Form I-918 can be found on the DHS website at <http://www.uscis.gov/portal/site/uscis>.
- Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification has not already been completed and that certification is warranted.

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- Timely address the request and complete the certification if appropriate.
- Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.

428.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE

The Richmond Police Department is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any person. The decision to arrest shall be based upon those factors which establish probable cause and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, religion, and socioeconomic status alone are of no bearing on the decision to arrest.

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. Generally, if an officer suspects that a victim or witness is an undocumented immigrant, the officer need not report the person to ICE unless circumstances indicate such reporting is reasonably necessary.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (8 USC § 1373; 8 USC § 1644).

428.4.1 U-VISA/T-VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U); 8 USC § 1101(a)(15)(T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services may be completed on the appropriate U.S. DHS Form supplements (I-918 or I-914) by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Investigations Division sergeant assigned to supervise the handling of any related case. The Investigations Division sergeant should do the following:

- (a) Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.
- (b) Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918/I-914 can be found on the U.S. DHS website.
- (c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.

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- (d) Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- (e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed declaration/certification in the case file.

Exhibit 5

Secretary
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

February 20, 2017

MEMORANDUM FOR:

Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM:

John Kelly
Secretary

A handwritten signature in black ink, appearing to read "John Kelly", written over the printed name and title.

SUBJECT:

**Enforcement of the Immigration Laws to Serve the National
Interest**

This memorandum implements the Executive Order entitled "Enhancing Public Safety in the Interior of the United States," issued by the President on January 25, 2017. It constitutes guidance for all Department personnel regarding the enforcement of the immigration laws of the United States, and is applicable to the activities of U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS). As such, it should inform enforcement and removal activities, detention decisions, administrative litigation, budget requests and execution, and strategic planning.

With the exception of the June 15, 2012, memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” and the November 20, 2014 memorandum 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,”¹ all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal are hereby immediately rescinded—to the extent of the conflict—including, but not limited to, the November 20, 2014, memoranda entitled “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” and “Secure Communities.”

A. The Department’s Enforcement Priorities

Congress has defined the Department’s role and responsibilities regarding the enforcement of the immigration laws of the United States. Effective immediately, and consistent with Article II, Section 3 of the United States Constitution and Section 3331 of Title 5, United States Code, Department personnel shall faithfully execute the immigration laws of the United States against all removable aliens.

Except as specifically noted above, the Department no longer will exempt classes or categories of removable aliens from potential enforcement. In faithfully executing the immigration laws, Department personnel should take enforcement actions in accordance with applicable law. In order to achieve this goal, as noted below, I have directed ICE to hire 10,000 officers and agents expeditiously, subject to available resources, and to take enforcement actions consistent with available resources. However, in order to maximize the benefit to public safety, to stem unlawful migration and to prevent fraud and misrepresentation, Department personnel should prioritize for removal those aliens described by Congress in Sections 212(a)(2), (a)(3), and (a)(6)(C), 235(b) and (c), and 237(a)(2) and (4) of the Immigration and Nationality Act (INA).

Additionally, regardless of the basis of removability, Department personnel should prioritize removable aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense; (4) have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency; (5) have abused any program related to receipt of public benefits; (6) are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or (7) in the judgment of an immigration officer, otherwise pose a risk to public safety or national security. The Director of ICE, the Commissioner of CBP, and the Director of USCIS may, as they determine is appropriate, issue further guidance to allocate appropriate resources to prioritize enforcement activities within these categories—for example, by prioritizing enforcement activities against removable aliens who are convicted felons or who are involved in gang activity or drug trafficking.

¹ The November 20, 2014, memorandum will be addressed in future guidance.

B. Strengthening Programs to Facilitate the Efficient and Faithful Execution of the Immigration Laws of the United States

Facilitating the efficient and faithful execution of the immigration laws of the United States—and prioritizing the Department’s resources—requires the use of all available systems and enforcement tools by Department personnel.

Through passage of the immigration laws, Congress established a comprehensive statutory regime to remove aliens expeditiously from the United States in accordance with all applicable due process of law. I determine that the faithful execution of our immigration laws is best achieved by using all these statutory authorities to the greatest extent practicable. Accordingly, Department personnel shall make full use of these authorities.

Criminal aliens have demonstrated their disregard for the rule of law and pose a threat to persons residing in the United States. As such, criminal aliens are a priority for removal. The Priority Enforcement Program failed to achieve its stated objectives, added an unnecessary layer of uncertainty for the Department’s personnel, and hampered the Department’s enforcement of the immigration laws in the interior of the United States. Effective immediately, the Priority Enforcement Program is terminated and the Secure Communities Program shall be restored. To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Department shall eliminate the existing Forms I-247D, I-247N, and I-247X, and replace them with a new form to more effectively communicate with recipient law enforcement agencies. However, until such forms are updated they may be used as an interim measure to ensure that detainers may still be issued, as appropriate.

ICE’s Criminal Alien Program is an effective tool to facilitate the removal of criminal aliens from the United States, while also protecting our communities and conserving the Department’s detention resources. Accordingly, ICE should devote available resources to expanding the use of the Criminal Alien Program in any willing jurisdiction in the United States. To the maximum extent possible, in coordination with the Executive Office for Immigration Review (EOIR), removal proceedings shall be initiated against aliens incarcerated in federal, state, and local correctional facilities under the Institutional Hearing and Removal Program pursuant to section 238(a) of the INA, and administrative removal processes, such as those under section 238(b) of the INA, shall be used in all eligible cases.

The INA § 287(g) Program has been a highly successful force multiplier that allows a qualified state or local law enforcement officer to be designated as an “immigration officer” for purposes of enforcing federal immigration law. Such officers have the authority to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, and conduct searches authorized under the INA, under the direction and supervision of the Department.

There are currently 32 law enforcement agencies in 16 states participating in the 287(g)

Program. In previous years, there were significantly more law enforcement agencies participating in the 287(g) Program. To the greatest extent practicable, the Director of ICE and Commissioner of CBP shall expand the 287(g) Program to include all qualified law enforcement agencies that request to participate and meet all program requirements. In furtherance of this direction and the guidance memorandum, "Implementing the President's Border Security and Immigration Enforcement Improvements Policies" (Feb. 20, 2017), the Commissioner of CBP is authorized, in addition to the Director of ICE, to accept State services and take other actions as appropriate to carry out immigration enforcement pursuant to section 287(g) of the INA.

C. Exercise of Prosecutorial Discretion

Unless otherwise directed, Department personnel may initiate enforcement actions against removable aliens encountered during the performance of their official duties and should act consistently with the President's enforcement priorities identified in his Executive Order and any further guidance issued pursuant to this memorandum. Department personnel have full authority to arrest or apprehend an alien whom an immigration officer has probable cause to believe is in violation of the immigration laws. They also have full authority to initiate removal proceedings against any alien who is subject to removal under any provision of the INA, and to refer appropriate cases for criminal prosecution. The Department shall prioritize aliens described in the Department's Enforcement Priorities (Section A) for arrest and removal. This is not intended to remove the individual, case-by-case decisions of immigration officers.

The exercise of prosecutorial discretion with regard to any alien who is subject to arrest, criminal prosecution, or removal in accordance with law shall be made on a case-by-case basis in consultation with the head of the field office component, where appropriate, of CBP, ICE, or USCIS that initiated or will initiate the enforcement action, regardless of which entity actually files any applicable charging documents: CBP Chief Patrol Agent, CBP Director of Field Operations, ICE Field Office Director, ICE Special Agent-in-Charge, or the USCIS Field Office Director, Asylum Office Director or Service Center Director.

Except as specifically provided in this memorandum, prosecutorial discretion shall not be exercised in a manner that exempts or excludes a specified class or category of aliens from enforcement of the immigration laws. The General Counsel shall issue guidance consistent with these principles to all attorneys involved in immigration proceedings.

D. Establishing the Victims of Immigration Crime Engagement (VOICE) Office

Criminal aliens routinely victimize Americans and other legal residents. Often, these victims are not provided adequate information about the offender, the offender's immigration status, or any enforcement action taken by ICE against the offender. Efforts by ICE to engage these victims have been hampered by prior Department of Homeland Security (DHS) policy extending certain Privacy Act protections to persons other than U.S. citizens and lawful permanent residents, leaving victims feeling marginalized and without a voice. Accordingly, I am establishing the Victims of Immigration Crime Engagement (VOICE) Office within the Office of

the Director of ICE, which will create a programmatic liaison between ICE and the known victims of crimes committed by removable aliens. The liaison will facilitate engagement with the victims and their families to ensure, to the extent permitted by law, that they are provided information about the offender, including the offender's immigration status and custody status, and that their questions and concerns regarding immigration enforcement efforts are addressed.

To that end, I direct the Director of ICE to immediately reallocate any and all resources that are currently used to advocate on behalf of illegal aliens (except as necessary to comply with a judicial order) to the new VOICE Office, and to immediately terminate the provision of such outreach or advocacy services to illegal aliens.

Nothing herein may be construed to authorize disclosures that are prohibited by law or may relate to information that is Classified, Sensitive but Unclassified (SBU), Law Enforcement Sensitive (LES), For Official Use Only (FOUO), or similarly designated information that may relate to national security, law enforcement, or intelligence programs or operations, or disclosures that are reasonably likely to cause harm to any person.

E. Hiring Additional ICE Officers and Agents

To enforce the immigration laws effectively in the interior of the United States in accordance with the President's directives, additional ICE agents and officers are necessary. The Director of ICE shall—while ensuring consistency in training and standards—take all appropriate action to expeditiously hire 10,000 agents and officers, as well as additional operational and mission support and legal staff necessary to hire and support their activities. Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for Management and the Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

F. Establishment of Programs to Collect Authorized Civil Fines and Penalties

As soon as practicable, the Director of ICE, the Commissioner of CBP, and the Director of USCIS shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties which the Department is authorized under the law to assess and collect from aliens and from those who facilitate their unlawful presence in the United States.

G. Aligning the Department's Privacy Policies With the Law

The Department will no longer afford Privacy Act rights and protections to persons who are neither U.S. citizens nor lawful permanent residents. The DHS Privacy Office will rescind the *DHS Privacy Policy Guidance memorandum*, dated January 7, 2009, which implemented the DHS "mixed systems" policy of administratively treating all personal information contained in DHS record systems as being subject to the Privacy Act regardless of the subject's immigration status. The DHS Privacy Office, with the assistance of the Office of the General Counsel, will

develop new guidance specifying the appropriate treatment of personal information DHS maintains in its record systems.

H. Collecting and Reporting Data on Alien Apprehensions and Releases

The collection of data regarding aliens apprehended by ICE and the disposition of their cases will assist in the development of agency performance metrics and provide transparency in the immigration enforcement mission. Accordingly, to the extent permitted by law, the Director of ICE shall develop a standardized method of reporting statistical data regarding aliens apprehended by ICE and, at the earliest practicable time, provide monthly reports of such data to the public without charge.

The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public and a medium that can be readily accessed. At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following categories of information must be included: country of citizenship, convicted criminals and the nature of their offenses, gang members, prior immigration violators, custody status of aliens and, if released, the reason for release and location of their release, aliens ordered removed, and aliens physically removed or returned.

The ICE Director shall also develop and provide a weekly report to the public, utilizing a medium that can be readily accessed without charge, of non-Federal jurisdictions that release aliens from their custody, notwithstanding that such aliens are subject to a detainer or similar request for custody issued by ICE to that jurisdiction. In addition to other relevant information, to the extent that such information is readily available, the report shall reflect the name of the jurisdiction, the citizenship and immigration status of the alien, the arrest, charge, or conviction for which each alien was in the custody of that jurisdiction, the date on which the ICE detainer or similar request for custody was served on the jurisdiction by ICE, the date of the alien's release from the custody of that jurisdiction and the reason for the release, an explanation concerning why the detainer or similar request for custody was not honored, and all arrests, charges, or convictions occurring after the alien's release from the custody of that jurisdiction.

I. No Private Right of Action

This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

In implementing these policies, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.

Exhibit 6

Secretary
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

February 20, 2017

MEMORANDUM FOR: Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

Thomas D. Homan
Acting Director
U.S. Immigration and Customs Enforcement

Lori Scialabba
Acting Director
U.S. Citizenship and Immigration Services

Joseph B. Maher
Acting General Counsel

Dimple Shah
Acting Assistant Secretary for International Affairs

Chip Fulghum
Acting Undersecretary for Management

FROM: John Kelly
Secretary

SUBJECT: **Implementing the President's Border Security and
Immigration Enforcement Improvements Policies**

This memorandum implements the Executive Order entitled "Border Security and Immigration Enforcement Improvements," issued by the President on January 25, 2017, which establishes the President's policy regarding effective border security and immigration enforcement through faithful execution of the laws of the United States. It implements new policies designed to stem illegal immigration and facilitate the detection, apprehension, detention, and removal of aliens who have no lawful basis to enter or remain in the United States. It constitutes guidance to all Department personnel, and supersedes all existing conflicting policy, directives, memoranda, and other guidance regarding this subject matter—to the extent of the conflict—except as otherwise expressly stated in this memorandum.

A. Policies Regarding the Apprehension and Detention of Aliens Described in Section 235 of the Immigration and Nationality Act.

The President has determined that the lawful detention of aliens arriving in the United States and deemed inadmissible or otherwise described in section 235(b) of the Immigration and Nationality Act (INA) pending a final determination of whether to order them removed, including determining eligibility for immigration relief, is the most efficient means by which to enforce the immigration laws at our borders. Detention also prevents such aliens from committing crimes while at large in the United States, ensures that aliens will appear for their removal proceedings, and substantially increases the likelihood that aliens lawfully ordered removed will be removed.

These policies are consistent with INA provisions that mandate detention of such aliens and allow me or my designee to exercise discretionary parole authority pursuant to section 212(d)(5) of the INA only on a case-by-case basis, and only for urgent humanitarian reasons or significant public benefit. Policies that facilitate the release of removable aliens apprehended at and between the ports of entry, which allow them to abscond and fail to appear at their removal hearings, undermine the border security mission. Such policies, collectively referred to as “catch-and-release,” shall end.

Accordingly, effective upon my determination of (1) the establishment and deployment of a joint plan with the Department of Justice to surge the deployment of immigration judges and asylum officers to interview and adjudicate claims asserted by recent border entrants; and, (2) the establishment of appropriate processing and detention facilities, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) personnel should only release from detention an alien detained pursuant to section 235(b) of the INA, who was apprehended or encountered after illegally entering or attempting to illegally enter the United States, in the following situations on a case-by-case basis, to the extent consistent with applicable statutes and regulations:

1. When removing the alien from the United States pursuant to statute or regulation;
2. When the alien obtains an order granting relief or protection from removal or the Department of Homeland Security (DHS) determines that the individual is a U.S. citizen, national of the United States, or an alien who is a lawful permanent resident, refugee, asylee, holds temporary protected status, or holds a valid immigration status in the United States;
3. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director consents to the alien’s withdrawal of an application for admission, and the alien contemporaneously departs from the United States;
4. When required to do so by statute, or to comply with a binding settlement agreement or order issued by a competent judicial or administrative authority;

5. When an ICE Field Office Director, ICE Special Agent-in-Charge, U.S. Border Patrol Sector Chief, CBP Director of Field Operations, or CBP Air & Marine Operations Director authorizes the alien's parole pursuant to section 212(d)(5) of the INA with the written concurrence of the Deputy Director of ICE or the Deputy Commissioner of CBP, except in exigent circumstances such as medical emergencies where seeking prior approval is not practicable. In those exceptional instances, any such parole will be reported to the Deputy Director or Deputy Commissioner as expeditiously as possible; or
6. When an arriving alien processed under the expedited removal provisions of section 235(b) has been found to have established a "credible fear" of persecution or torture by an asylum officer or an immigration judge, provided that such an alien affirmatively establishes to the satisfaction of an ICE immigration officer his or her identity, that he or she presents neither a security risk nor a risk of absconding, and provided that he or she agrees to comply with any additional conditions of release imposed by ICE to ensure public safety and appearance at any removal hearings.

To the extent current regulations are inconsistent with this guidance, components will develop or revise regulations as appropriate. Until such regulations are revised or removed, Department officials shall continue to operate according to regulations currently in place.

As the Department works to expand detention capabilities, detention of all such individuals may not be immediately possible, and detention resources should be prioritized based upon potential danger and risk of flight if an individual alien is not detained, and parole determinations will be made in accordance with current regulations and guidance. See 8 C.F.R. §§ 212.5, 235.3. This guidance does not prohibit the return of an alien who is arriving on land to the foreign territory contiguous to the United States from which the alien is arriving pending a removal proceeding under section 240 of the INA consistent with the direction of an ICE Field Office Director, ICE Special Agent-in-Charge, CBP Chief Patrol Agent, or CBP Director of Field Operations.

B. Hiring More CBP Agents/Officers

CBP has insufficient agents/officers to effectively detect, track, and apprehend all aliens illegally entering the United States. The United States needs additional agents and officers to ensure complete operational control of the border. Accordingly, the Commissioner of CBP shall—while ensuring consistency in training and standards—immediately begin the process of hiring 5,000 additional Border Patrol agents, as well as 500 Air & Marine Agents/Officers, subject to the availability of resources, and take all actions necessary to ensure that such agents/officers enter on duty and are assigned to appropriate duty stations, including providing for the attendant resources and additional personnel necessary to support such agents, as soon as practicable.

Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for

Management, Chief Financial Officer, and Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

C. Identifying and Quantifying Sources of Aid to Mexico

The President has directed the heads of all executive departments to identify and quantify all sources of direct and indirect Federal aid or assistance to the Government of Mexico. Accordingly, the Under Secretary for Management shall identify all sources of direct or indirect aid and assistance, excluding intelligence activities, from every departmental component to the Government of Mexico on an annual basis, for the last five fiscal years, and quantify such aid or assistance. The Under Secretary for Management shall submit a report to me reflecting historic levels of such aid or assistance provided annually within 30 days of the date of this memorandum.

D. Expansion of the 287(g) Program in the Border Region

Section 287(g) of the INA authorizes me to enter into a written agreement with a state or political subdivision thereof, for the purpose of authorizing qualified officers or employees of the state or subdivision to perform the functions of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States. This grant of authority, known as the 287(g) Program, has been a highly successful force multiplier that authorizes state or local law enforcement personnel to perform all law enforcement functions specified in section 287(a) of the INA, including the authority to investigate, identify, apprehend, arrest, detain, transport and conduct searches of an alien for the purposes of enforcing the immigration laws. From January 2006 through September 2015, the 287(g) Program led to the identification of more than 402,000 removable aliens, primarily through encounters at local jails.

Empowering state and local law enforcement agencies to assist in the enforcement of federal immigration law is critical to an effective enforcement strategy. Aliens who engage in criminal conduct are priorities for arrest and removal and will often be encountered by state and local law enforcement officers during the course of their routine duties. It is in the interest of the Department to partner with those state and local jurisdictions through 287(g) agreements to assist in the arrest and removal of criminal aliens.

To maximize participation by state and local jurisdictions in the enforcement of federal immigration law near the southern border, I am directing the Director of ICE and the Commissioner of CBP to engage immediately with all willing and qualified law enforcement jurisdictions that meet all program requirements for the purpose of entering into agreements under 287(g) of the INA.

The Commissioner of CBP and the Director of ICE should consider the operational functions and capabilities of the jurisdictions willing to enter into 287(g) agreements and structure such agreements in a manner that employs the most effective enforcement model for that jurisdiction, including the jail enforcement model, task force officer model, or joint jail enforcement-task force officer model. In furtherance of my direction herein, the Commissioner of

CBP is authorized, in addition to the Director of ICE, to accept state services and take other actions as appropriate to carry out immigration enforcement pursuant to 287(g).

E. Commissioning a Comprehensive Study of Border Security

The Under Secretary for Management, in consultation with the Commissioner of CBP, Joint Task Force (Border), and Commandant of the Coast Guard, is directed to commission an immediate, comprehensive study of the security of the southern border (air, land and maritime) to identify vulnerabilities and provide recommendations to enhance border security. The study should include all aspects of the current border security environment, including the availability of federal and state resources to develop and implement an effective border security strategy that will achieve complete operational control of the border.

F. Border Wall Construction and Funding

A wall along the southern border is necessary to deter and prevent the illegal entry of aliens and is a critical component of the President's overall border security strategy. Congress has authorized the construction of physical barriers and roads at the border to prevent illegal immigration in several statutory provisions, including section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, 8 U.S.C. § 1103 note.

Consistent with the President's Executive Order, the will of Congress and the need to secure the border in the national interest, CBP, in consultation with the appropriate executive departments and agencies, and nongovernmental entities having relevant expertise—and using materials originating in the United States to the maximum extent permitted by law—shall immediately begin planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, along the land border with Mexico in accordance with existing law, in the most appropriate locations and utilizing appropriate materials and technology to most effectively achieve operational control of the border.

The Under Secretary for Management, in consultation with the Commissioner of CBP shall immediately identify and allocate all sources of available funding for the planning, design, construction and maintenance of a wall, including the attendant lighting, technology (including sensors), as well as patrol and access roads, and develop requirements for total ownership cost of this project, including preparing Congressional budget requests for the current fiscal year (e.g., supplemental budget requests) and subsequent fiscal years.

G. Expanding Expedited Removal Pursuant to Section 235(b)(1)(A)(iii)(I) of the INA

It is in the national interest to detain and expeditiously remove from the United States aliens apprehended at the border, who have been ordered removed after consideration and denial of their claims for relief or protection. Pursuant to section 235(b)(1)(A)(i) of the INA, if an immigration officer determines that an arriving alien is inadmissible to the United States under

section 212(a)(6)(C) or section 212(a)(7) of the INA, the officer shall, consistent with all applicable laws, order the alien removed from the United States without further hearing or review, unless the alien is an unaccompanied alien child as defined in 6 U.S.C. § 279(g)(2), indicates an intention to apply for asylum or a fear of persecution or torture or a fear of return to his or her country, or claims to have a valid immigration status within the United States or to be a citizen or national of the United States.

Pursuant to section 235(b)(1)(A)(iii)(I) of the INA and other provisions of law, I have been granted the authority to apply, by designation in my sole and unreviewable discretion, the expedited removal provisions in section 235(b)(1)(A)(i) and (ii) of the INA to aliens who have not been admitted or paroled into the United States, who are inadmissible to the United States under section 212(a)(6)(C) or section 212(a)(7) of the INA, and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been continuously physically present in the United States for the two-year period immediately prior to the determination of their inadmissibility. To date, this authority has only been exercised to designate for application of expedited removal, aliens encountered within 100 air miles of the border and 14 days of entry, and aliens who arrived in the United States by sea other than at a port of entry.¹

The surge of illegal immigration at the southern border has overwhelmed federal agencies and resources and has created a significant national security vulnerability to the United States. Thousands of aliens apprehended at the border, placed in removal proceedings, and released from custody have absconded and failed to appear at their removal hearings. Immigration courts are experiencing a historic backlog of removal cases, primarily proceedings under section 240 of the INA for individuals who are not currently detained.

During October 2016 and November 2016, there were 46,184 and 47,215 apprehensions, respectively, between ports of entry on our southern border. In comparison, during October 2015 and November 2015 there were 32,724 and 32,838 apprehensions, respectively, between ports of entry on our southern border. This increase of 10,000–15,000 apprehensions per month has significantly strained DHS resources.

Furthermore, according to EOIR information provided to DHS, there are more than 534,000 cases currently pending on immigration court dockets nationwide—a record high. By contrast, according to some reports, there were nearly 168,000 cases pending at the end of fiscal year (FY) 2004 when section 235(b)(1)(A)(i) was last expanded.² This represents an increase of more than 200% in the number of cases pending completion. The average removal case for an alien who is not detained has been pending for more than two years before an immigration judge.³ In some immigration courts, aliens who are not detained will not have their cases heard by an

¹ Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002); Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004); Eliminating Exception to Expedited Removal Authority for Cuban Nationals Encountered in the United States or Arriving by Sea, 82 Fed. Reg. 4902 (Jan. 17, 2017).

² Syracuse University, *Transactional Records Access Clearinghouse (TRAC) Data Research*, available at http://trac.syr.edu/phptools/immigration/court_backlog/.

³ *Id.*

immigration judge for as long as five years. This unacceptable delay affords removable aliens with no plausible claim for relief to remain unlawfully in the United States for many years.

To ensure the prompt removal of aliens apprehended soon after crossing the border illegally, the Department will publish in the *Federal Register* a new Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(a)(iii) of the Immigration and Nationality Act, which may, to the extent I determine is appropriate, depart from the limitations set forth in the designation currently in force. I direct the Commissioner of CBP and the Director of ICE to conform the use of expedited removal procedures to the designations made in this notice upon its publication.

H. Implementing the Provisions of Section 235(b)(2)(C) of the INA to Return Aliens to Contiguous Countries

Section 235(b)(2)(C) of the INA authorizes the Department to return aliens arriving on land from a foreign territory contiguous to the United States, to the territory from which they arrived, pending a formal removal proceeding under section 240 of the INA. When aliens so apprehended do not pose a risk of a subsequent illegal entry or attempted illegal entry, returning them to the foreign contiguous territory from which they arrived, pending the outcome of removal proceedings saves the Department's detention and adjudication resources for other priority aliens.

Accordingly, subject to the requirements of section 1232, Title 8, United States Code, related to unaccompanied alien children and to the extent otherwise consistent with the law and U.S. international treaty obligations, CBP and ICE personnel shall, to the extent appropriate and reasonably practicable, return aliens described in section 235(b)(2)(A) of the INA, who are placed in removal proceedings under section 240 of the INA—and who, consistent with the guidance of an ICE Field Office Director, CBP Chief Patrol Agent, or CBP Director of Field Operations, pose no risk of recidivism—to the territory of the foreign contiguous country from which they arrived pending such removal proceedings.

To facilitate the completion of removal proceedings for aliens so returned to the contiguous country, ICE Field Office Directors, ICE Special Agents-in-Charge, CBP Chief Patrol Agent, and CBP Directors of Field Operations shall make available facilities for such aliens to appear via video teleconference. The Director of ICE and the Commissioner of CBP shall consult with the Director of EOIR to establish a functional, interoperable video teleconference system to ensure maximum capability to conduct video teleconference removal hearings for those aliens so returned to the contiguous country.

I. Enhancing Asylum Referrals and Credible Fear Determinations Pursuant to Section 235(b)(1) of the INA

With certain exceptions, any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum. For those aliens who are subject

to expedited removal under section 235(b) of the INA, aliens who claim a fear of return must be referred to an asylum officer to determine whether they have established a credible fear of persecution or torture.⁴ To establish a credible fear of persecution, an alien must demonstrate that there is a "significant possibility" that the alien could establish eligibility for asylum, taking into account the credibility of the statements made by the alien in support of the claim and such other facts as are known to the officer.⁵

The Director of USCIS shall ensure that asylum officers conduct credible fear interviews in a manner that allows the interviewing officer to elicit all relevant information from the alien as is necessary to make a legally sufficient determination. In determining whether the alien has demonstrated a significant possibility that the alien could establish eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, the asylum officer shall consider the statements of the alien and determine the credibility of the alien's statements made in support of his or her claim and shall consider other facts known to the officer, as required by statute.⁶

The asylum officer shall make a positive credible fear finding only after the officer has considered all relevant evidence and determined, based on credible evidence, that the alien has a significant possibility of establishing eligibility for asylum, or for withholding or deferral of removal under the Convention Against Torture, based on established legal authority.⁷

The Director of USCIS shall also increase the operational capacity of the Fraud Detection and National Security (FDNS) Directorate and continue to strengthen the integration of its operations to support the Field Operations, Refugee, Asylum, and International Operations, and Service Center Operations Directorate, to detect and prevent fraud in the asylum and benefits adjudication processes, and in consultation with the USCIS Office of Policy and Strategy as operationally appropriate.

The Director of USCIS, the Commissioner of CBP, and the Director of ICE shall review fraud detection, deterrence, and prevention measures throughout their respective agencies and provide me with a consolidated report within 90 days of the date of this memorandum regarding fraud vulnerabilities in the asylum and benefits adjudication processes, and propose measures to enhance fraud detection, deterrence, and prevention in these processes.

J. Allocation of Resources and Personnel to the Southern Border for Detention of Aliens and Adjudication of Claims

The detention of aliens apprehended at the border is critical to the effective enforcement of the immigration laws. Aliens who are released from custody pending a determination of their removability are highly likely to abscond and fail to attend their removal hearings. Moreover, the screening of credible fear claims by USCIS and adjudication of asylum claims by EOIR at

⁴ See INA § 235(b)(1)(A)-(B); 8 C.F.R. §§ 235.3, 208.30.

⁵ See INA § 235(b)(1)(B)(v).

⁶ See *id.*

⁷ *Id.*

detention facilities located at or near the point of apprehension will facilitate an expedited resolution of those claims and result in lower detention and transportation costs.

Accordingly, the Director of ICE and the Commissioner of CBP should take all necessary action and allocate all available resources to expand their detention capabilities and capacities at or near the border with Mexico to the greatest extent practicable. CBP shall focus these actions on expansion of "short-term detention" (defined as 72 hours or less under 6 U.S.C. § 211(m)) capability, and ICE will focus these actions on expansion of all other detention capabilities. CBP and ICE should also explore options for joint temporary structures that meet appropriate standards for detention given the length of stay in those facilities.

In addition, to the greatest extent practicable, the Director of USCIS is directed to increase the number of asylum officers and FDNS officers assigned to detention facilities located at or near the border with Mexico to properly and efficiently adjudicate credible fear and reasonable fear claims and to counter asylum-related fraud.

K. Proper Use of Parole Authority Pursuant to Section 212(d)(5) of the INA

The authority to parole aliens into the United States is set forth in section 212(d)(5) of the INA, which provides that the Secretary may, in his discretion and on a case-by-case basis, temporarily parole into the United States any alien who is an applicant for admission for urgent humanitarian reasons or significant public benefit. The statutory language authorizes parole in individual cases only where, after careful consideration of the circumstances, it is necessary because of demonstrated urgent humanitarian reasons or significant public benefit. In my judgment, such authority should be exercised sparingly.

The practice of granting parole to certain aliens in pre-designated categories in order to create immigration programs not established by Congress, has contributed to a border security crisis, undermined the integrity of the immigration laws and the parole process, and created an incentive for additional illegal immigration.

Therefore, the Director of USCIS, the Commissioner of CBP, and the Director of ICE shall ensure that, pending the issuance of final regulations clarifying the appropriate use of the parole power, appropriate written policy guidance and training is provided to employees within those agencies exercising parole authority, including advance parole, so that such employees are familiar with the proper exercise of parole under section 212(d)(5) of the INA and exercise such parole authority only on a case-by-case basis, consistent with the law and written policy guidance.

Notwithstanding any other provision of this memorandum, pending my further review and evaluation of the impact of operational changes to implement the Executive Order, and additional guidance on the issue by the Director of ICE, the ICE policy directive establishing standards and procedures for the parole of certain arriving aliens found to have a credible fear of persecution or

torture shall remain in full force and effect.⁸ The ICE policy directive shall be implemented in a manner consistent with its plain language. In every case, the burden to establish that his or her release would neither pose a danger to the community, nor a risk of flight remains on the individual alien, and ICE retains ultimate discretion whether it grants parole in a particular case.

L. Proper Processing and Treatment of Unaccompanied Alien Minors Encountered at the Border

In accordance with section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (codified in part at 8 U.S.C. § 1232) and section 462 of the Homeland Security Act of 2002 (6 U.S.C. § 279), unaccompanied alien children are provided special protections to ensure that they are properly processed and receive the appropriate care and placement when they are encountered by an immigration officer. An unaccompanied alien child, as defined in section 279(g)(2), Title 6, United States Code, is an alien who has no lawful immigration status in the United States, has not attained 18 years of age; and with respect to whom, (1) there is no parent or legal guardian in the United States, or (2) no parent or legal guardian in the United States is available to provide care and physical custody.

Approximately 155,000 unaccompanied alien children have been apprehended at the southern border in the last three years. Most of these minors are from El Salvador, Honduras, and Guatemala, many of whom travel overland to the southern border with the assistance of a smuggler who is paid several thousand dollars by one or both parents, who reside illegally in the United States.

With limited exceptions, upon apprehension, CBP or ICE must promptly determine if a child meets the definition of an “unaccompanied alien child” and, if so, the child must be transferred to the custody of the Office of Refugee Resettlement within the Department of Health and Human Services (HHS) within 72 hours, absent exceptional circumstances.⁹ The determination that the child is an “unaccompanied alien child” entitles the child to special protections, including placement in a suitable care facility, access to social services, removal proceedings before an immigration judge under section 240 of the INA, rather than expedited removal proceedings under section 235(b) of the INA, and initial adjudication of any asylum claim by USCIS.¹⁰

Approximately 60% of minors initially determined to be “unaccompanied alien children” are placed in the care of one or more parents illegally residing in the United States. However, by Department policy and practice, such minors maintained their status as “unaccompanied alien children,” notwithstanding that they may no longer meet the statutory definition once they have been placed by HHS in the custody of a parent in the United States who can care for the minor. Exploitation of that policy led to abuses by many of the parents and legal guardians of those minors and has contributed to significant administrative delays in adjudications by immigration

⁸ ICE Policy No. 11002.1: Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009).

⁹ See 8 U.S.C. § 1232(b)(3).

¹⁰ See generally 8 U.S.C. § 1232; INA § 208(b)(3)(C).

courts and USCIS.

To ensure identification of abuses and the processing of unaccompanied alien children consistent with the statutory framework and any applicable court order, the Director of USCIS, the Commissioner of CBP, and the Director of ICE are directed to develop uniform written guidance and training for all employees and contractors of those agencies regarding the proper processing of unaccompanied alien children, the timely and fair adjudication of their claims for relief from removal, and, if appropriate, their safe repatriation at the conclusion of removal proceedings. In developing such guidance and training, they shall establish standardized review procedures to confirm that alien children who are initially determined to be “unaccompanied alien child[ren],” as defined in section 279(g)(2), Title 6, United States Code, continue to fall within the statutory definition when being considered for the legal protections afforded to such children as they go through the removal process.

M. Accountability Measures to Protect Alien Children from Exploitation and Prevent Abuses of Our Immigration Laws

Although the Department’s personnel must process unaccompanied alien children pursuant to the requirements described above, we have an obligation to ensure that those who conspire to violate our immigration laws do not do so with impunity—particularly in light of the unique vulnerabilities of alien children who are smuggled or trafficked into the United States.

The parents and family members of these children, who are often illegally present in the United States, often pay smugglers several thousand dollars to bring their children into this country. Tragically, many of these children fall victim to robbery, extortion, kidnapping, sexual assault, and other crimes of violence by the smugglers and other criminal elements along the dangerous journey through Mexico to the United States. Regardless of the desires for family reunification, or conditions in other countries, the smuggling or trafficking of alien children is intolerable.

Accordingly, the Director of ICE and the Commissioner of CBP shall ensure the proper enforcement of our immigration laws against any individual who—directly or indirectly—facilitates the illegal smuggling or trafficking of an alien child into the United States. In appropriate cases, taking into account the risk of harm to the child from the specific smuggling or trafficking activity that the individual facilitated and other factors relevant to the individual’s culpability and the child’s welfare, proper enforcement includes (but is not limited to) placing any such individual who is a removable alien into removal proceedings, or referring the individual for criminal prosecution.

N. Prioritizing Criminal Prosecutions for Immigration Offenses Committed at the Border

The surge of illegal immigration at the southern border has produced a significant increase in organized criminal activity in the border region. Mexican drug cartels, Central American gangs, and other violent transnational criminal organizations have established sophisticated criminal

enterprises on both sides of the border. The large-scale movement of Central Americans, Mexicans, and other foreign nationals into the border area has significantly strained federal agencies and resources dedicated to border security. These criminal organizations have monopolized the human trafficking, human smuggling, and drug trafficking trades in the border region.

It is in the national interest of the United States to prevent criminals and criminal organizations from destabilizing border security through the proliferation of illicit transactions and violence perpetrated by criminal organizations.

To counter this substantial and ongoing threat to the security of the southern border—including threats to our maritime border and the approaches—the Directors of the Joint Task Forces-West, -East, and -Investigations, as well as the ICE-led Border Enforcement Security Task Forces (BESTs), are directed to plan and implement enhanced counternetwork operations directed at disrupting transnational criminal organizations, focused on those involved in human smuggling. The Department will support this work through the Office of Intelligence and Analysis, CBP's National Targeting Center, and the DHS Human Smuggling Cell.

In addition, the task forces should include participants from other federal, state, and local agencies, and should target individuals and organizations whose criminal conduct undermines border security or the integrity of the immigration system, including offenses related to alien smuggling or trafficking, drug trafficking, illegal entry and reentry, visa fraud, identity theft, unlawful possession or use of official documents, and acts of violence committed against persons or property at or near the border.

In order to support the efforts of the BESTs and counter network operations of the Joint Task Forces, the Director of ICE shall increase the number of special agents and analysts in the Northern Triangle ICE Attaché Offices and increase the number of vetted Transnational Criminal Investigative Unit international partners. This expansion of ICE's international footprint will focus both domestic and international efforts to dismantle transnational criminal organizations that are facilitating and profiting from the smuggling routes to the United States.

O. Public Reporting of Border Apprehensions Data

The Department has an obligation to perform its mission in a transparent and forthright manner. The public is entitled to know, with a reasonable degree of detail, information pertaining to the aliens unlawfully entering at our borders.

Therefore, consistent with law, in an effort to promote transparency and renew confidence in the Department's border security mission, the Commissioner of CBP and the Director of ICE shall develop a standardized method for public reporting of statistical data regarding aliens apprehended at or near the border for violating the immigration law. The reporting method shall include uniform terminology and shall utilize a format that is easily understandable by the public in a medium that can be readily accessed.

At a minimum, in addition to statistical information currently being publicly reported regarding apprehended aliens, the following information must be included: the number of convicted criminals and the nature of their offenses; the prevalence of gang members and prior immigration violators; the custody status of aliens and, if released, the reason for release and location of that release; and the number of aliens ordered removed and those aliens physically removed.

P. No Private Right of Action

This document provides only internal DHS policy guidance, which may be modified, rescinded, or superseded at any time without notice. This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigation prerogatives of DHS.

In implementing this guidance, I direct DHS Components to consult with legal counsel to ensure compliance with all applicable laws, including the Administrative Procedure Act.

EXHIBIT 2

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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff,

vs.

DONALD J. TRUMP, President of the United
States, UNITED STATES OF AMERICA,
JOHN F. KELLY, Secretary of United States
Department of Homeland Security,
JEFFERSON B. SESSIONS, Attorney General
of the United States, DOES 1-100,

Defendants.

Case No. 3:17-cv-00485-WHO

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Trial Date: Not set

INTRODUCTION

1
2 1. In blatant disregard of the law, the President of the United States seeks to coerce local
3 authorities to bend to his will and abandon “Sanctuary City” laws and policies. To that end, on
4 January 25, 2017, the President issued an Executive Order entitled “Enhancing Public Safety in the
5 Interior of the United States.” Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017) (“Executive
6 Order”). The Executive Order announces that it is the Executive Branch’s policy to withhold federal
7 funds from “sanctuary jurisdictions,” directs the Attorney General and Secretary of Homeland Security
8 to ensure that sanctuary jurisdictions do not receive federal grants, and directs the Attorney General to
9 take enforcement action against any local entity that “hinders the enforcement of Federal law.” The
10 Executive Order undermines established principles of federalism and separation of powers, violates
11 the United States Constitution, and impermissibly threatens cities with catastrophic financial
12 consequences.

13 2. The President and San Francisco agree that the City and County of San Francisco
14 (“San Francisco”) is a Sanctuary City, but disagree about what that means. San Francisco laws limit
15 when city employees and agencies may assist with the enforcement of federal immigration law. These
16 laws generally prohibit city employees from using city funds or resources to assist in the enforcement
17 of federal immigration law, unless required by federal or state law. They specifically prohibit local law
18 enforcement officers from cooperating with Immigration and Customs Enforcement (“ICE”) detainer
19 requests, which are voluntary, and limit when local law enforcement officers may give ICE advance
20 notice of a person’s release from local jail.

21 3. Like many other cities, San Francisco is a city of immigrants—many of whom are
22 undocumented—who come here to live, work, and raise families. San Francisco’s Sanctuary City laws
23 make San Francisco safer, healthier, and economically stronger. San Francisco is safer when all
24 people, including undocumented immigrants, feel safe reporting crimes. San Francisco is healthier
25 when all residents, including undocumented immigrants, access public health programs. And
26 San Francisco is economically and socially stronger when all children, including undocumented
27 immigrants, attend school. Using city and county resources for federal immigration enforcement
28 breeds distrust of local government and officials who have no power to change federal laws, and can

1 also wrench apart family and community structures that support residents and thus conserve resources.
2 For these reasons, among others, San Francisco has directed its employees and officers not to assist the
3 Federal government in enforcing federal immigration law, with limited exceptions.

4 4. San Francisco faces the imminent loss of more than \$2 billion in federal funds and
5 impending enforcement action if it does not capitulate to the President's demand that it help enforce
6 federal immigration law. At least one jurisdiction has already succumbed to this presidential fiat.

7 5. The threat San Francisco faces now is particularly troubling given that San Francisco
8 already complies with all federal immigration laws. The Executive Order relies on Title 8, Section
9 1373 of the United States Code ("Section 1373"), which provides that local governments may not
10 prohibit or restrict any government entity or official from "sending to, or receiving from, [federal
11 immigration officials] information regarding the citizenship or immigration status . . . of any
12 individual."

13 6. San Francisco's laws comply with Section 1373. San Francisco previously prohibited
14 employees and officials from sharing information regarding immigration status but amended this
15 language to ensure compliance with Section 1373. Under current law, San Francisco does not prohibit
16 or restrict its employees from sharing information about the citizenship or immigration status of any
17 individual with federal immigration officials. Section 1373 has thus already undermined San
18 Francisco's Sanctuary City laws and intruded into its sovereign power to govern the official actions of
19 its officers and employees. San Francisco will bend no further.

20 7. The Executive Order is a further and more severe invasion of San Francisco's
21 sovereignty. The Executive Order not only interferes with San Francisco's ability to direct the official
22 actions of its officers and employees but also threatens new consequences for failing to comply with
23 Section 1373. In this action, San Francisco seeks declaratory relief that Section 1373 and the
24 Executive order are unconstitutional on their face and as applied to state and local Sanctuary City laws
25 such as San Francisco's. The Executive Branch may not commandeer state and local officials to
26 enforce federal law.

27 8. The Constitution establishes a balance of power between the state and Federal
28 governments, as well as among the coordinate branches of Federal government, to prevent the

1 excessive accumulation of power in any single entity and reduce the risk of tyranny and abuse from
2 any government office. In so doing, the Tenth Amendment provides that “[t]he powers not delegated
3 to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States
4 respectively, or to the people.” This state sovereignty extends to political subdivisions of the State,
5 including cities and counties such as San Francisco.

6 9. This lawsuit is about state sovereignty and a local government’s autonomy to devote
7 resources to local priorities and to control the exercise of its own police powers, rather than being
8 forced to carry out the agenda of the Federal government. Under the Constitution and established
9 principles of federalism, state and local governments have this autonomy. The Executive Order
10 purports otherwise to wrest this autonomy from state and local governments, and a court order is
11 needed to resolve this controversy.

12 10. This lawsuit is also about the separation of powers established by Article 1, Section 8
13 of the United States Constitution. Congress, not the Executive Branch, has the authority to determine
14 how federal funds will be spent.

15 11. San Francisco recognizes that there will be additional developments related to the
16 Executive Order in the weeks and months to come. But the consequences threatened by the Executive
17 Order are too severe for San Francisco to wait. The Executive Order threatens funds that support vital
18 services, the loss of community trust, and the loss of San Francisco’s sovereign authority to set and
19 follow its own laws on matters appropriately and historically within the control of local government.
20 San Francisco has no choice but to seek the intervention of this Court to ensure that its rights and
21 residents are protected, and that the Administration complies with Federal law and the Constitution.

22 12. San Francisco seeks declaratory and injunctive relief against the United States of
23 America and the above-named federal officials for violating the Tenth Amendment, U.S. Const.
24 amend. X. San Francisco further seeks a declaration that it complies with Title 8, Section 1373 of the
25 United States Code (“Section 1373”) under the Declaratory Judgment Act, 28 U.S.C. Sections 2201
26 and 2202 *et seq.*

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JURISDICTION AND VENUE

13. The Court has jurisdiction under 28 U.S.C. Sections 1331 and 1346. This Court has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. Sections 2201 and 2202 *et seq.*

14. Venue properly lies within the Northern District of California because Plaintiff, San Francisco, resides in this judicial district and a substantial part of the events or omissions giving rise to this action occurred in this District. 28 U.S.C. § 1391(e).

PARTIES

15. Plaintiff San Francisco is a municipal corporation organized and existing under and by virtue of the laws of the State of California, and is a charter city and county.

16. Defendant Donald J. Trump is the President of the United States. He is sued in his official capacity.

17. Defendant United States of America is sued under 28 U.S.C. Section 1346.

18. The U.S. Department of Homeland Security (“DHS”) is a cabinet department of the United States Federal government with the primary mission of securing the United States. Defendant John F. Kelly is the Secretary of DHS. Secretary Kelly is responsible for executing relevant provisions of the Executive Order. Secretary Kelly is sued in his official capacity.

19. The Attorney General (“AG”) is a cabinet department of the United States Federal government overseeing the Department of Justice. Defendant Jefferson B. Sessions is the Attorney General. Attorney General Sessions is responsible for executing relevant provisions of the Executive Order. Attorney General Sessions is sued in his official capacity.¹

20. Doe 1 through Doe 100 are sued under fictitious names. Plaintiffs do not now know the true names or capacities of said Defendants, who were responsible for the alleged violations alleged, but pray that the same may be alleged in this complaint when ascertained.

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¹ Attorney General Sessions assumed office on February 9, 2017, thereby replacing Acting Attorney General Dana J. Boente as a defendant, pursuant to Fed. R. Civ. P. 25(d).

FACTUAL ALLEGATIONS

I. SAN FRANCISCO'S SANCTUARY CITY LAWS

21. San Francisco has been a Sanctuary City since 1989. In the 1980s, thousands of Central American refugees fled countries in the midst of violent civil wars to seek legal protection in the United States. Against the backdrop of this humanitarian crisis, San Francisco began enacting the ordinances that, as later amended, make up San Francisco's Sanctuary City laws.

22. Numerous other municipalities have also enacted Sanctuary City laws. Although the details of their ordinances differ, all of these jurisdictions have adopted laws or policies that limit using local resources to implement and enforce federal immigration laws.

23. Today, San Francisco's body of Sanctuary City law is contained in two chapters of San Francisco's Administrative Code: Chapters 12H and 12I. Importantly, these chapters do not protect criminals or prevent people from being prosecuted for illegal acts. Instead, they protect children by ensuring that their parents feel safe taking them to playgrounds, to schools, and to hospitals. They support family stability and community engagement. And they protect the safety and health of all residents of San Francisco by helping to ensure that everyone, including undocumented immigrants, feels safe reporting crimes, cooperating with police investigations, and seeking medical care.

24. San Francisco Administrative Code Chapter 12H—the full text of which is attached as Exhibit 1—prohibits San Francisco departments, agencies, commissions, officers, and employees from using San Francisco funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information regarding the release status, or other confidential identifying information, of an individual unless such assistance is required by Federal or state law.

25. Chapter 12H previously prohibited disseminating information regarding the immigration status of any individual, but the Board of Supervisors amended Chapter 12H in July 2016 to, *inter alia*, delete that prohibition in order to ensure compliance with Section 1373.

26. San Francisco Administrative Code Chapter 12I—the full text of which is attached as Exhibit 2—prohibits San Francisco law enforcement officials from detaining an individual who is

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otherwise eligible for release from custody on the basis of a civil immigration detainer request issued by the Federal government.²

27. A detainer request is distinct from a criminal warrant, which San Francisco honors consistent with its Sanctuary City laws. A detainer request is not issued by a judge based on a finding of probable cause. It is simply a request by ICE that a state or local law enforcement agency hold individuals after their release date to provide ICE agents extra time to decide whether to take those individuals into federal custody and then deport them.

28. Complying with detainer requests requires municipalities to commit scarce law enforcement personnel and resources to track and respond to requests, detain individuals in holding cells, and supervise and feed individuals during the prolonged detention. And the Federal government has made clear that the local agency bears the financial burden of the detention, providing that “[n]o detainer issued as a result of a determination made under this chapter . . . shall incur any fiscal obligation on the part of the Department.” 8 C.F.R. § 287.7(e).

29. Further, complying with civil immigration detainer requests, in the absence of a probable cause determination, violates the Fourth Amendment to the United States Constitution and could subject San Francisco to civil liability. *See Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *Miranda-Olivares v. Clackamas Cnty.*, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *see also Melendres v. Arpaio*, 695 F.3d 990, 1000-01 (9th Cir. 2012) (applying the Fourth Amendment to immigration arrests).

30. Chapter 12I also prohibits San Francisco law enforcement officials from responding to a federal immigration officer’s request for advance notification of the date and time an individual in San Francisco’s custody is being released, unless the individual in question meets certain criteria. *See* S.F. Admin. Code § 12I.3(c), (d).

² Section 287.7 of Title 8 of the Code of Federal Regulations allows ICE to issue detainer requests to local jurisdictions. Section 287.7 provides that such a detainer “serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien.” Subsection (d) provides that “[u]pon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.”

31. Finally, as relevant here, Chapter 12I provides that “[l]aw enforcement officials shall not arrest or detain an individual, or provide any individual’s personal information to a federal immigration officer, on the basis of an administrative warrant, prior deportation order, or other civil immigration document based solely on alleged violations of the civil provisions of immigration laws.” *See* Section 12I.3(e). “Personal information” is defined as “any confidential, identifying information about an individual, including, but not limited to, home or work contact information, and family or emergency contact information.” *See* Section 12I.2.

32. Chapter 12I makes clear that its purpose and effect are limited to matters “relating to federal civil immigration detainers, notification of release of individuals, transmission of personal information, or civil immigration documents, based solely on alleged violations of the civil provisions of immigration laws.” Chapter 12I expressly states that “[i]n all other respects, local law enforcement agencies may continue to collaborate with federal authorities to protect public safety.” *See* Section 12I.4.

33. San Francisco’s Sanctuary City laws arise from San Francisco’s commitment and responsibility to ensure public safety and welfare. The Board of Supervisors, as San Francisco’s legislative body, found that public safety is “founded on trust and cooperation of community residents and local law enforcement.” Section 12I.1. Citing a study by the University of Illinois, which found that at least 40% of Latinos surveyed were less likely to provide information to police because they feared exposing themselves, family, or friends to a risk of deportation, the Legislature stated that “civil immigration detainers and notifications regarding release undermine community trust of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and cooperate with local law enforcement agencies.” *Id.*; *see also id.* (“The City has enacted numerous laws and policies to strengthen communities and to build trust between communities and local law enforcement. Local cooperation and assistance with civil immigration enforcement undermines community policing strategies.”). Indeed, a recent study shows that crime is statistically significantly lower in sanctuary counties compared to non-sanctuary counties. *See* Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. PROGRESS (Jan. 26, 2017),

1 <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects->
 2 [ofsanctuary-policies-on-crime-and-the-economy/](https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-).

3 34. The legislative findings set forth in Chapter 12I evidence the legitimate local purpose of
 4 San Francisco's Sanctuary City laws. For example, the Legislature declared:

5 Fostering a relationship of trust, respect, and open communication between City
 6 employees and City residents is essential to the City's core mission of ensuring
 7 public health, safety, and welfare, and serving the needs of everyone in the
 8 community, including immigrants. The purpose of this Chapter 12I, as well as
 9 of Administrative Code Chapter 12H, is to foster respect and trust between law
 enforcement and residents, to protect limited local resources, to encourage
 cooperation between residents and City officials, including especially law
 enforcement and public health officers and employees, and to ensure
 community security, and due process for all. (*See* Section 12I.2.)

10 35. The Board of Supervisors also had a public health purpose for its decision to restrict
 11 disclosure of confidential information: "To carry out public health programs, the City must be able to
 12 reliably collect confidential information from all residents Information gathering and cooperation
 13 may be jeopardized if release of personal information results in a person being taken into immigration
 14 custody." Section 12I.1.

15 36. Finally, the Board of Supervisors determined that enforcing immigration detainer
 16 requests would require San Francisco to redirect scarce local law enforcement personnel and
 17 resources—noting that the costs of "responding to a civil immigration detainer can include, but [are]
 18 not limited to, extended detention time, the administrative costs of tracking and responding to
 19 detainers, and the legal liability for erroneously holding an individual who is not subject to a civil
 20 immigration detainer." *Id.* In short, the Board of Supervisors concluded that "[c]ompliance with civil
 21 immigration detainers and involvement in civil immigration enforcement diverts limited local
 22 resources from programs that are beneficial to the City." *Id.*

23 37. San Francisco departments have adopted and implemented policies consistent with
 24 Chapters 12H and 12I.

25 38. California law incorporates local Sanctuary City laws such as Chapters 12H and 12I.
 26 The TRUST Act states that local law enforcement officials may comply with ICE detainer requests
 27 only if (1) the continued detention would not violate any federal, state, or local law, or any local
 28 policy, and (2) the defendant's criminal history meets specified conditions. Cal. Gov't Code §§ 7282,

7282.5. Thus, because in San Francisco ICE detentions are prohibited under local law, they are also prohibited under state law.

II. SECTION 1373

A. San Francisco Complies With Section 1373 By Not Prohibiting Its Employees From Sharing “Citizenship Or Immigration Status” Information With The Federal Government.

39. Section 1373 provides that a “local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal immigration officials] information regarding the citizenship or immigration status . . . of any individual.” 8 U.S.C. § 1373(a). This restriction exclusively regulates government entities.

40. Section 1373 requires San Francisco to allow its employees to use city resources, including San Francisco tax dollars, to respond to requests for information about citizenship and immigration status.

41. San Francisco complies with Section 1373.

42. Nothing in San Francisco Administrative Code Chapters 12H or 12I limits communications regarding citizenship or immigration status in any way.

43. And, indeed, under ICE’s recently restored Secure Communities program (also known as “S-Comm”), whenever an individual is taken into custody, the person is digitally fingerprinted and those fingerprints are sent to the California Department of Justice and ultimately the FBI. The FBI forwards the fingerprints to DHS, which allows ICE to determine the immigration status of everyone in San Francisco custody.

44. Under Chapter 12I and the TRUST Act, San Francisco does not enforce detainer requests (*see* ¶26, *supra*), and does not respond to notification requests from the Federal government unless certain conditions are met (*see* ¶30, *supra*). But compliance with such requests is not required by Section 1373, which speaks only to communications regarding *citizenship and immigration status*.

45. San Francisco has affirmatively instructed personnel regarding the substance of Section 1373 in a recent memorandum to all San Francisco employees from the San Francisco Human Resources Director.

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46. The San Francisco Board of Supervisors is currently considering a proposed ordinance that would prohibit San Francisco officers and employees from using San Francisco resources to assist with the creation or enforcement of any registry of individuals on the basis of religious affiliation, national origin, or ethnicity. *See* San Francisco Board of Supervisors, Board File No. 170092, S.F. Admin. Code – Non-Cooperation with Identity-Based Registry, introduced January 24, 2017, last amended February 22, 2017. The proposed ordinance specifically exempts from its scope communications about citizenship or immigration status authorized by Section 1373, and allows those communication until a court of competent jurisdiction declares Section 1373 unconstitutional. Findings for the proposed ordinance explain that it is San Francisco’s position that Section 1373 is unconstitutional, but that San Francisco will continue to comply with Section 1373 until it obtains Court relief.

B. The United States Improperly Interprets Section 1373 To Require Compliance With Detainer Requests.

47. On May 31, 2016, in response to a request from the Office of the Attorney General, the Office of the Inspector General (“OIG”) of the Department of Justice issued a memorandum (“OIG Memo”) regarding potential violations of Section 1373 by recipients of funding from the Edward Byrne Memorial Justice Assistance Grant Program (“JAG”). 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* (May 31, 2016), <https://oig.justice.gov/reports/2016/1607.pdf>.³

48. In analyzing the local laws and policies of ten selected state and local jurisdictions, OIG demonstrated how the Federal government interprets Section 1373.

49. Although Section 1373 does not expressly address immigration detainers, OIG expressed concern that local laws concerning the handling of detainer requests “may have a broader practical impact on the level of cooperation afforded to ICE by these jurisdictions and may, therefore,

³ The authorizing legislation for the JAG program requires that all grant applicants certify compliance with the provisions of the authorizing legislation and all other “applicable federal laws.” 42 U.S.C. § 3750 *et seq.* The U.S. Department of Justice, Office of Justice Programs has recently announced that Section 1373 is an “applicable” law under the JAG authorizing legislation.

1 be inconsistent with at least the intent of Section 1373.” OIG Memo at 7. It went on to state that local
2 laws and policies that “purport to be focused on civil immigration detainer requests [and say nothing
3 about sharing immigration status with ICE] . . . may nevertheless be affecting ICE’s interactions with
4 the local officials regarding ICE immigration status requests.” *Id.*

5 50. OIG also stated that such immigration detainer request policies “may be causing local
6 officials to believe and apply the policies in a manner that prohibits or restricts cooperation with ICE
7 in all respects . . . [which], of course, would be inconsistent with and prohibited by Section 1373.” *Id.*
8 at 8.

9 51. In the OIG Memo, the Federal government also endorses the view that local
10 jurisdictions hinder the enforcement of Federal immigration law if they do not honor detainer requests
11 or if they place any other limitations on cooperation with ICE. *See, e.g., id.* at 4 (stating that even
12 though Section 1373 does not specifically address restrictions by state or local entities on cooperation
13 with ICE regarding detainees, “[a] primary and frequently cited indicator of limitations placed on
14 cooperation by state and local jurisdictions with ICE is how the particular state or local jurisdiction
15 handles immigration detainer requests issued by ICE”).

16 52. Yet, San Francisco cannot lawfully comply with ICE detainer requests. Complying with
17 civil immigration detainer requests, in the absence of a determination of probable cause, would violate
18 the Fourth Amendment to the United States Constitution and could subject San Francisco to civil
19 liability for this harm. *See Arizona v. United States*, 132 S. Ct. 2492, 2509 (2012) (noting that
20 “[d]etaining individuals solely to verify their immigration status would raise constitutional concerns”);
21 *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015); *Miranda-Olivares v. Clackamas Cnty.*,
22 2014 WL 1414305 (D. Or. Apr. 11, 2014); *see also Melendres v. Arpaio*, 695 F.3d 990, 1000-01 (9th
23 Cir. 2012) (applying the Fourth Amendment to immigration arrests).

24 53. In the OIG Memo, OIG recommended that the U.S. Department of Justice, Office of
25 Justice Programs (“OJP”) provide JAG recipients clear guidance on their obligation to comply with
26 Section 1373 and require them to certify that they comply with that section. *See* OIG Memo at 9.

27 54. In response to these recommendations, in July and October 2016 OJP issued guidance
28 regarding compliance with Section 1373. *See* Office of Justice Programs, *Guidance Regarding*

1 *Compliance with 8 U.S.C. § 1373*, U.S. DEP'T JUST. (July 7, 2016) ("OJP July Guidance"); Office of
 2 Justice Programs, *Additional Guidance Regarding Compliance with 8 U.S.C. § 1373*, U.S. DEP'T JUST.
 3 (October 6, 2016) ("OJP October Guidance").

4 55. In the OJP July Guidance, OJP reads Section 1373 to impose an affirmative obligation
 5 on state and local governments. The Guidance states that to comply with Section 1373, "[y]our
 6 personnel *must* be informed that notwithstanding any state or local policies to the contrary, federal law
 7 does not allow any government entity or official to prohibit the sending or receiving of information
 8 about an individual's citizenship or immigration status with any federal, state or local government
 9 entity and officials." OJP July Guidance at 1 (emphasis added). Accordingly, OJP reads into the law
 10 an affirmative obligation to instruct personnel regarding the substance of Section 1373.

11 56. In the October 2016 Guidance, OIG stated that all JAG applicants must comply with—
 12 and certify their compliance with—Section 1373. OJP October Guidance at 1.

13 57. As a subgrantee of a JAG grant, San Francisco is required to certify its compliance with
 14 Section 1373.

15 **III. THE EXECUTIVE ORDER**

16 **A. The Executive Order Cuts Off Federal Funding From Sanctuary Jurisdictions** 17 **And Directs Enforcement Action Against Them.**

18 58. On January 25, 2017, President Donald J. Trump issued the Executive Order attached
 19 as Exhibit 3.

20 59. The Executive Order declares, "Sanctuary jurisdictions across the United States
 21 willfully violate Federal law in an attempt to shield aliens from removal from the United States. These
 22 jurisdictions have caused immeasurable harm to the American people and to the very fabric of our
 23 Republic." Executive Order at 8799.

24 60. To address the purported harm caused by Sanctuary Cities, the Executive Order
 25 establishes the policy that "jurisdictions that fail to comply with applicable Federal law do not receive
 26 Federal funds, except as mandated by law." *Id.*

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61. Specifically, Section 9(a) of the Executive Order states: “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.” *Id.* at 8801.

62. Section 9(a) of the Executive Order establishes a funding restriction (the “Funding Restriction”):

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.

Id.

63. Section 9(a) of the Executive Order also mandates enforcement action (the “Enforcement Directive”):

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.

Id.

64. Section 9(a) of the Executive Order defines “sanctuary jurisdictions” as those jurisdictions that “willfully refuse to comply with 8 U.S.C. 1373.” But Section 9(b) indicates that Defendants in fact define that category quite broadly as including any jurisdiction that declines to comply with ICE detainer requests:

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.

65. The Executive Order thus attempts to mandate compliance with detainer requests as part of Section 1373 compliance, with the consequence that a jurisdiction such as San Francisco that does not comply with ICE detainer requests will lose federal funds under the Executive Order.

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66. A jurisdiction that fails to comply with detainer requests also faces enforcement action under Section 9(a)'s Enforcement Provision. As discussed further below, Defendants view the local decision not to comply with ICE detainer requests as a "statute, policy, or practice that prevents or hinders the enforcement of Federal law."

B. Defendants Have Labeled San Francisco A Sanctuary Jurisdiction Within The Meaning Of The Executive Order.

67. As discussed above, San Francisco *does* comply with Section 1373, properly construed. Nonetheless, Defendants deem San Francisco a sanctuary jurisdiction pursuant to their overly broad definition of that term.

68. If there were any question about whether Defendants deem San Francisco as a "sanctuary jurisdiction," that question is answered by Defendants' own statements, which clearly characterize San Francisco as a Sanctuary City.

69. For example, in a written campaign speech, then-candidate Donald J. Trump gave in Phoenix, Arizona on August 31, 2016, he expressly referred to San Francisco as a Sanctuary City. *See 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> ("Another victim is Kate Steinle, gunned down in the Sanctuary City of San Francisco by an illegal immigrant deported five previous times.").

70. Further, Defendants have repeatedly identified Sanctuary Cities, and specifically San Francisco, as those that decline detainer requests and otherwise do not affirmatively support federal immigration enforcement.

- In statements to the Daily Caller on July 7, 2015, Congressman Darrell Issa and now-Attorney General Sessions criticized San Francisco and other sanctuary jurisdictions for failing to honor detainers. Sessions stated, "This disregarding of detainers and releasing persons that ICE has put a hold on—it goes against all traditions of law enforcement. Laws and courtesies within departments— if you have somebody charged with a crime in one city, you hold them until you complete your business with them So what was happening was, ICE authorities were

filing detainers and sanctuary cities were saying, ‘We’re not gonna honor them. They finished paying for the crime they committed in our city— we’ve released them.’” Kerry Pickett, *Sen. Sessions: City Officials Harboring Illegal Immigrant Felons Could Be Charged with Crime*, Daily Caller (July 7, 2015, 10:07 PM), <http://dailycaller.com/2015/07/07/sen-sessions-city-officials-harboring-illegal-immigrant-felons-could-be-charged-with-crime/#ixzz4XE9I12Ux>.

- On July 8, 2015, Sessions gave a speech to Congress describing San Francisco as “a jurisdiction that is known to release illegal immigrants back into the public,” and one which refused to “honor” a detainer sought by federal authorities. 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/news-releases?ID=B7A98B63-8ECA-4A4E-B5C8-4A665F2343DE>.
- In an interview with Breitbart News in May 2016, then-candidate Donald J. Trump stated, “Sanctuary cities are a disaster . . . They’re a safe-haven for criminals and people that should not have a safe-haven in many cases. It’s just unacceptable. We’ll be looking at sanctuary cities very hard.” Matthew Boyle, *Exclusive — Donald J. Trump to San Francisco: Sanctuary Cities ‘Unacceptable,’ A ‘Disaster’ Creating ‘Safe-Haven for Criminals’*, Breitbart News (May 16, 2016), <http://www.breitbart.com/2016-presidential-race/2016/05/16/exclusive-donald-j-trump-to-san-francisco-sanctuary-cities-unacceptable-a-disaster-creating-safe-haven-for-criminals/>. This Breitbart news report further stated that “Trump’s comments . . . come in response to efforts by far left progressive organizations in San Francisco to expand that city’s sanctuary city laws.” *Id.*
- Another Breitbart News article published on November 21, 2016 regarding Sanctuary Cities quoted Texas Republican Congressman John Culberson as stating, “The law requires cooperation with immigration officials 100 percent of the time.” Bob Price, *Sanctuary Cities Risk Losing DOJ Funds in 2017*, Texas Congressman

Says, Breitbart News (Nov. 21, 2016),

<http://www.breitbart.com/texas/2016/11/21/sanctuary-cities-risk-losing-doj-funds-2017-texas-congressman-says/>.

71. Defendants have also repeatedly stated their intent to strip federal funding from Sanctuary Cities.

- In a statement by White House Press Secretary Sean Spicer on January 25, 2017 announcing the issuance of the Executive Order, Spicer stated, “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>.
- A press release from the Office of the Press Secretary for the White House issued on January 28, 2017 detailing President Trump’s First Week of Action, reads in relevant part: “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>.
- Press Secretary Sean Spicer reiterated this goal on February 1, 2017, stating “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-pressoffice/2017/02/01/press-briefing-press-secretary-sean-spicer-212017-6>.

72. Indeed, Defendants have explicitly stated their intent to use federal funding cuts as a “weapon” against Sanctuary Cities, in an attempt to coerce jurisdictions to bend to their will.

- In an interview with Bill O’Reilly on February 5, 2017, President Trump called the efforts of California lawmakers to propose legislation that could stop state police and sheriffs from enforcing federal immigration laws “ridiculous.” Alexander Mallin and Lissette Rodriguez, *Trump Threatens Defunding Sanctuary States as 'Weapon'*, ABC News (Feb. 5, 2017, 6:01 PM), <http://abcnews.go.com/Politics/trump-threatens-defunding-sanctuary-states-weapon/story?id=45286642>. He stated: “I don’t want to defund anybody. I want to give them the money they need to properly operate as a city or a state.” But he said, “If they’re going to have sanctuary cities, we may have to do that. Certainly that would be a weapon.” *Id.* “Sanctuary cities, as you know I’m very much opposed to sanctuary cities -- they breed crime, there’s lots of problems.” *Id.* “We give tremendous amounts of money to California,” Trump said. “Obviously the voters agree or otherwise they wouldn’t have voted for me.” *Id.*
- When asked at a press briefing whether Cincinnati would face sanctions for voting to become a Sanctuary City, Sean Spicer, the President’s press secretary stated:

As I’ve noted before, at the end of the day, this order is about two things: one, keeping our cities safe, and two, respecting the hard-earned taxpayers who send their money to the federal government. And the President is going to do everything he can within the scope of the executive order to make sure that cities who don’t comply with it -- counties and other institutions that remain sanctuary cities don’t get federal government funding in compliance with the executive order. I think more areas like Miami-Dade, down in Florida, understand the importance of this order, and we hope cities like Cincinnati and other communities around the country follow their lead and comply with that.

Press Release, The White House, Office of the Press Secretary, *Press Briefing by Press Secretary Sean Spicer, 2/8/2017, #10* (Feb. 8, 2017), <https://www.whitehouse.gov/the-press-office/2017/02/08/press-briefing-press-secretary-sean-spicer-282017-10>.

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73. The White House’s public website states that President Trump “is dedicated to enforcing our border laws, *ending sanctuary cities*, and stemming the tide of lawlessness associated with illegal immigration.” *Standing Up For Our Law Enforcement Community*, The White House, <https://www.whitehouse.gov/law-enforcement-community> (last visited on Feb. 27, 2017) (emphasis added).

74. Defendants’ statements demonstrate their belief that Sanctuary Cities, like San Francisco, violate Section 1373 and their intent that Sanctuary Cities will lose federal funding—apparently all or almost all federal funding—and be subject to enforcement action under the Executive Order.

75. There is a “credible threat” that Defendants will seek to enforce the unconstitutional Executive Order against San Francisco.

IV. SECTION 1373 AND THE EXECUTIVE ORDER HARM SAN FRANCISCO

A. Constitutional Injury

1. Section 1373(a) Violates The Tenth Amendment.

76. Congress may not command States to provide the Federal government with information “that only state officials have access to.” *Printz v. United States*, 521 U.S. 898, 932 n.17 (1997). The Federal government must not regulate its fellow governments in their capacities as governments.

77. Yet, that is exactly what Section 1373(a) does. Section 1373(a) unconstitutionally regulates “States in their sovereign capacity.” *Reno v. Condon*, 528 U.S. 141, 151 (2000). It necessarily regulates governments in their capacities as governments. It does not “subject state governments to generally applicable laws.” *New York v. U.S.*, 505 U.S. 144, 160 (1992). On the contrary, in every possible application, it targets “government entit[ies] or official[s]” for special treatment. 8 U.S.C. § 1373(a).

78. Also, Section 1373(a) targets government entities’ and officials’ authority to control their subordinates—an authority at the heart of a government’s existence as a government. “[A] State can act only through its officers and agents.” *Nevada v. Hicks*, 533 U.S. 353, 365 (2001). “Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

79. By preventing state and local governments from directing employees how to handle information about citizenship and immigration status, Section 1373 makes it impossible for local jurisdictions to freely choose and to clearly establish how they will handle this information. Under Section 1373, San Francisco cannot command its government officials and employees never to share citizenship or immigration information. Yet Congress has no power “to require the States to govern according to Congress’ instructions.” *New York*, 505 U.S. at 162.

80. Section 1373 mandates uncertainty where Sanctuary City laws seek to provide certainty. Because of Section 1373, San Francisco cannot tell the public that it will never share information about citizenship or immigration status. Any attempt to impose a uniform rule is fettered by the individual discretion of over 30,000 employees and officials. This is not the way San Francisco chooses to govern. It is chaos imposed by the Federal government.

81. Through its Sanctuary City laws, policies, and practices, San Francisco has sought to distinguish local law enforcement officers from federal immigration enforcement officers in order to encourage local government accountability and public confidence in local law enforcement. As applied against these local governance efforts, Section 1373 would violate a core principle underlying the Tenth Amendment, namely, the accountability of state and Federal government officials to their electorates. *See Printz*, 521 U.S. at 929–30.

82. Defendants’ broader interpretation of Section 1373—to require compliance with “voluntary” ICE detainer requests—implicates additional constitutional injury. This interpretation would affirmatively require San Francisco to use local resources to detain and hold people without probable cause, in violation of both the Fourth and Tenth Amendments.

2. The Executive Order Violates The Tenth Amendment, Separation Of Powers, And The Spending Clause.

a. The Executive Order Funding Restriction Is Unconstitutional.

i. Tenth Amendment

83. To the extent the Executive Order’s Funding Restriction incorporates Section 1373(a), it is invalid for all of the reasons described above. The Funding Restriction is also unconstitutional for the additional reasons described below.

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1 **ii. Separation of Powers**

2 84. As a threshold matter, the Funding Restriction purports to exercise Spending Power that
3 Article I, Section 8 of the Constitution grants exclusively to Congress.

4 85. The Executive Order violates the separation of powers by creating a penalty for Section
5 1373 that Congress did not authorize, without regard to statutory rules on grant programs put in place
6 by Congress. The Executive Order effectively legislates a sanction for violations of Section 1373 by
7 using the statute as a basis to broadly deny federal grants to municipalities that have made a policy
8 decision to focus law enforcement resources on local problems and limit their entanglement with
9 federal immigration enforcement. The President's unilateral imposition of this new sanction and
10 condition on spending is not supported by any act of Congress, including the Immigration and
11 Nationality Act, 8 U.S.C. § 1101 *et seq.*, or by the Constitution.

12 86. The Funding Restriction additionally violates the separation of powers by imposing a
13 new restriction on jurisdictions' eligibility to receive federal funds: "jurisdictions that willfully refuse
14 to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants,
15 except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary."
16 Executive Order at 8801.

17 87. The President may not unilaterally impose new restrictions on jurisdictions' eligibility
18 for federal funding. Any restriction on eligibility for federal funds must be imposed—clearly,
19 unambiguously, and in advance—by Congress. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S.
20 1, 17 (1981). When Congress has not imposed such a restriction by statute, the President may not do
21 so by fiat. The President does not have "unilateral power to change the text of duly enacted statutes."
22 *Clinton v. City of New York*, 524 U.S. 417, 447 (1998).

23 88. Congress has spoken to reject the imposition of such funding restrictions, including
24 when it declined to enact Senate Bill 1842, "Protecting American Lives Act," introduced in July 2015
25 by then-Senator Attorney General Jeff Sessions. The bill would in part have expanded Section 1373 to
26 deprive jurisdictions having "in effect a statute, policy, or practice that prohibits law enforcement
27 officers of the State, or of a political subdivision of the State, from assisting or cooperating with
28 Federal immigration law enforcement in the course of carrying out the officers' routine law

enforcement duties” of “any . . . law enforcement or Department of Homeland Security grant.” S. 1842, 114th Cong. § 3 (2015). Senate Bill 1842 did not make it out of committee, nor did the identical House of Representatives Bill 3437. Where the President “takes measures incompatible with 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).

89. By imposing conditions or limitations on federal spending 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).

iii. Spending Clause

90. Further, the Funding Restriction purports to exercise Spending Power in ways that even Congress could not.

91. The Funding Restriction violates the Spending Clause by imposing new funding conditions on existing appropriations of federal funds. “[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously,” in advance. *Pennhurst*, 451 U.S. at 17. “The legitimacy of Congress’ power to legislate under the spending power . . . rests on whether the State voluntarily and knowingly accepts” Congress’s conditions. *Id.* “There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it.” *Id.*

92. The Funding Restriction also violates the Spending Clause by imposing funding conditions that are not germane to the purpose of the funds. “[T]he imposition of conditions under the spending power” must be “germane” or “related” to the purpose of federal funding. *South Dakota v. Dole*, 483 U.S. 203, 208-09 & n.3 (1987); *see also Massachusetts v. United States*, 435 U.S. 444, 461 (1978). Here, the Funding Restriction conditions eligibility for federal funding on compliance with

Section 1373, without regard for whether Section 1373 is germane to any federal funds at issue. In fact, the Funding Restriction specifically exempts those federal funds—funds “deemed necessary for law enforcement purposes”—that might arguably be germane to Section 1373.

93. The Funding Restriction also imposes conditions so severe that they “cross[] the line distinguishing encouragement from coercion.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2603 (2012) (opinion of Roberts, C.J.); *New York v. United States*, 505 U.S. 144, 175 (1992). The Funding Restriction “is much more than ‘relatively mild encouragement’—it is a gun to the head.” *Sebelius*, 132 S. Ct. at 2604 (opinion of Roberts, C.J.). The Funding Restriction threatens a substantial percentage of San Francisco’s overall budget—approximately 13% of its total annual operating budget, even without considering federal multi-year grants. Threatened funds include the entire funding stream for programs, such as Medicaid, that are critical to the lives of San Francisco’s residents. Threats of this magnitude, and to such critical programs, constitute “economic dragooning that leaves the States with no real option but to acquiesce” to federal dictates. *Id.* at 2605.

94. Finally, because Defendants interpret Section 1373 to require jurisdictions to comply with immigration detainers, the Funding Restriction imposes a new funding condition that requires jurisdictions to act unconstitutionally. Under the Fourth Amendment, detention of an individual must be supported by a determination of probable cause. *See Morales v. Chadbourne*, 793 F.3d 208, 215–17 (1st Cir. 2015); *Miranda-Olivares v. Clackamas Cnty.*, 2014 WL 1414305 (D. Or. Apr. 11, 2014). Requiring state and local governments (including San Francisco) to establish blanket policies of compliance with immigration detainers could thus cause them to violate the Fourth Amendment. But Congress’s Spending Power “may not be used to induce the States to engage in activities that would themselves be unconstitutional.” *Dole*, 483 U.S. at 210.

95. This concern is heightened by the fact that state and local governments, including San Francisco, generally lack authority to make warrantless arrests under the Federal government’s civil immigration laws. *See Arizona v. United States*, 132 S. Ct. 2492, 2506 (2012). It is further heightened by the prospect that “ICE’s issuance of detainers that seek to detain individuals without a warrant goes beyond its statutory authority to make warrantless arrests.” *Moreno v. Napolitano*, No. 11-C-5452, 2016 WL 5720465, at *8 (N.D. Ill. Sept. 30, 2016).

1 96. For all these reasons, the Funding Restriction violates the Constitution’s separation of
2 powers (and, in particular, the Constitution’s grant of legislative power to Congress in Article I,
3 Section 1); the Spending Clause of Article I, Section 8; and the Tenth Amendment.

4 **b. The Executive Order Enforcement Directive Is Unconstitutional.**

5 97. The Executive Order’s Enforcement Directive violates the Tenth Amendment. The
6 Enforcement Directive commandeers state and local governments by, *inter alia*, compelling them to
7 enforce federal law under threat of legal action.

8 98. The Enforcement Directive mandates that “[t]he Attorney General shall take
9 appropriate enforcement action against any entity that violates 8 U.S.C. 1373.” Executive Order at
10 8801. As discussed above, Defendants interpret Section 1373 to require jurisdictions to comply with
11 immigration detainers.

12 99. The Enforcement Directive also mandates “enforcement action against any entity
13 that . . . has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal
14 law.” Executive Order at 8801. As discussed above, Defendants interpret a state or local government’s
15 decision not to comply with ICE detainer requests as a “statute, policy, or practice that prevents or
16 hinders the enforcement of Federal law.”

17 100. The Enforcement Directive thus mandates that the Attorney General take enforcement
18 action against state and local governments that do not detain individuals at the behest of the Federal
19 government.

20 101. Compelling state and local governments to detain individuals at the behest of the
21 Federal government violates the Tenth Amendment. “[T]he Federal Government may not compel the
22 States to implement, by legislation or executive action, federal regulatory programs.” *Printz v. United*
23 *States*, 521 U.S. 898, 925 (1997). To “command state or local officials to assist in the implementation
24 of federal law” is to engage in impermissible commandeering. *Id.* at 927.

25 **B. Community Injury**

26 102. The Executive Order fosters an atmosphere of fear and distrust between undocumented
27 immigrants and local government officials in San Francisco. Its sweeping terms, combined with recent
28 ICE activity in San Francisco, and compounded by the Trump administration’s statements about

1 immigration enforcement, have generated a maelstrom of fear and confusion that San Francisco
2 agencies have had to move quickly to contain.

3 103. The Executive Order is designed to—and does—create public confusion about whether
4 San Francisco is and will remain a Sanctuary City, and what that means.

5 104. San Francisco has been forced to spend resources to counteract the effect of the
6 Executive Order. Since the Executive Order issued, San Francisco officials and employees have
7 responded to questions from San Francisco departments, non-profit partners, and members of the
8 public about topics such as whether the Executive Order modifies ICE's authority to enter public
9 facilities, jails, and residences; whether individuals' personal identifying information on applications
10 for benefit programs remains protected; and whether the Executive Order changes the way
11 San Francisco law enforcement officers interact with ICE. San Francisco departments have held
12 numerous meetings discussing the impact of the Executive Order and have developed new educational
13 materials about San Francisco Chapters 12H and 12I.

14 105. Given the Executive Order's broad language, even San Francisco's extensive and
15 ongoing efforts to offer clear answers leave the public far from reassured.

16 106. By heightening undocumented immigrants' concerns that any interaction with
17 San Francisco officials will lead to their information being turned over to ICE, the Executive Order
18 discourages undocumented immigrants from reporting crimes, seeking public health services, and
19 otherwise engaging with San Francisco programs and services. This threat harms public safety, public
20 health, and San Francisco's ability to act in what San Francisco has determined to be the best interest
21 of its residents, consistent with federal and state law.

22 107. The Executive Order undermines San Francisco's ability to provide critical services not
23 just to undocumented immigrants, but to all residents. When witnesses and crime victims will not talk
24 to the police, law enforcement suffers and the entire community is less safe. When children are not
25 vaccinated or the sick are not treated for communicable diseases, illness spreads throughout the
26 community.

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1 108. As a result, the Executive Order causes the very harms San Francisco's Sanctuary City
2 laws were designed to prevent. The Executive Order destroys rather than "foster[s] respect and trust
3 between law enforcement and residents," wastes rather than "protect[s] limited local resources," and
4 discourages rather than "encourage[s] cooperation between residents and City officials, including
5 especially law enforcement and public health officers and employees." S.F. Admin. Code § 12I.1.

6 **C. Budgetary Injury**

7 **1. San Francisco Relies On Federal Funding For Essential Public Services.**

8 109. San Francisco is home to about 865,000 residents and has a total daytime population of
9 about 1,250,000. People who live in, work in or visit San Francisco rely on—in addition to other
10 public services—law enforcement provided by the San Francisco Police Department; public
11 infrastructure projects such as roads, bridges and public transit; and the availability of high quality
12 emergency care from San Francisco General Hospital. Residents also rely on public health programs
13 such as Medi-Cal and public assistance programs like CalWORKS. While San Francisco has
14 benefitted from a recent economic boom, over 12% of San Franciscans live in poverty, and depend on
15 public assistance to make ends meet and put food on the table.

16 110. San Francisco contributes disproportionately to national economic growth and job
17 creation. Between 2010 and 2015, San Francisco ranked second among all U.S. counties in percentage
18 change in employment, generating over 125,000 new jobs, a growth rate of 28%. A significant portion
19 of this growth has been in the technology sector, a source of high wage jobs with important multiplier
20 effects and potential for future growth.

21 111. The State of California, including San Francisco, pays more to the Federal government
22 in taxes than it receives in federal spending. In 2014, California residents and businesses paid a total of
23 \$369.2 billion in federal business and personal income, estate, gift, and excise taxes to the Internal
24 Revenue Services and were the beneficiaries of \$355.8 billion in federal expenditures. California
25 ranked 38th among states in the ratio of federal spending to collections.

26 112. In turn, San Francisco relies on federal funding to provide essential services and build
27 and maintain public infrastructure projects.

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113. San Francisco budgets by a fiscal year that runs from July 1 to June 30. The current fiscal year began July 1, 2016, and will end June 30, 2017 (“FY16-17”). The next fiscal year will run from July 1, 2017 to June 30, 2018 (“FY17-18”).

114. San Francisco’s annual operating budget for FY16-17 includes over \$1.2 billion in federal funds. This is approximately 13% of the total annual operating budget.

115. On top of the federal funds allocated in the annual operating budget, San Francisco expects to receive an additional \$800 million in federal multi-year grants, largely for public infrastructure projects.

116. The programs, projects, and services described below are just a few examples of how San Francisco uses federal funds.

a. Human Services Agency

117. San Francisco’s Human Services Agency (“HSA”) provides critical services to San Francisco’s most vulnerable residents. It works with over 200,000 residents each year to provide needed nutrition assistance, income support, and child welfare services, among other support services. Approximately one in four San Franciscans is a client of HSA. HSA also manages numerous programs that serve young children and their families, older adults, and individuals with disabilities. HSA relies on federal funding to provide these services.

118. For example, the In-Home Supportive Services (“IHSS”) program assists about 23,000 low-income elderly, disabled, or blind San Franciscans to live safely in their own homes and communities. For some recipients, the IHSS program reduces acute health care and institutional long-term care costs that would otherwise be incurred by the state and Federal governments through Medi-Cal. About 19,000 individuals work as independent providers for IHSS recipients. For FY16-17, the County’s IHSS program is budgeted to receive approximately \$64 million in federal funds, accounting for nearly 40% of the program’s budget. Virtually all of these funds are provided as reimbursements. This amount does not include the approximately \$200 million of federal funds that the State of California pays directly to independent IHSS providers.

119. HSA also provides financial assistance and services to San Francisco’s neediest residents, including children and families living in poverty. For example, through California Work

Opportunity and Responsibility to Kids (CalWORKS), HSA provides financial assistance, family stabilization, case management, vocational counseling, job readiness assistance, behavioral health treatment, transportation, and other services designed to help parents of low-income families meet welfare-to-work requirements, secure and retain employment, and become self-sufficient.

San Francisco's CalWORKS program is budgeted to receive approximately \$58 million in federal funding in FY16-17, accounting for over 50% of the County's CalWORKS and Welfare-to-Work FY16-17 budget. Virtually all of these funds are provided as reimbursements.

120. HSA offers numerous other social services, including child welfare programs and services, early childhood care and education services, adult protective services and a County Veteran's Service Office that helps veterans and their families receive benefits to which they are entitled.

121. In FY16-17, HSA expects to receive a total of approximately \$286 million in federal funding. This represents approximately 33% of its FY16-17 budget.

122. HSA directly employs nearly 2,000 employees. It also funds hundreds of additional jobs through contracts to service providers. Loss of federal funds would threaten many of these jobs, as well as the underlying services, that depend on HSA funds.

b. Department of Public Health

123. The Zuckerberg San Francisco General Hospital ("ZSFGH") is a licensed general acute care hospital owned and operated by San Francisco. ZSFGH has 284 beds and provides a full complement of inpatient, outpatient, emergency, skilled nursing, diagnostic, mental health, and rehabilitation services for adults and children. ZSFGH is the largest safety net provider in San Francisco and is the designated trauma center for the 1.5 million residents of San Francisco and northern San Mateo County. In FY16-17, ZSFGH expects to receive approximately \$450 million in federal funding for Medi-Cal and Medicare patient services. This accounts for over half of the ZSFGH FY16-17 budget of nearly \$840 million. Virtually all of these funds are provided as reimbursements.

124. Laguna Honda Hospital provides a full range of skilled nursing services to adult residents of San Francisco who are disabled or chronically ill, including specialized care for those with wounds, head trauma, stroke, spinal cord and orthopedic injuries, HIV/AIDS, and dementia. In FY16-17, Laguna Honda Hospital expects to receive approximately \$160 million in federal funding for

Medi-Cal and Medicare patient services, accounting for nearly 60% of its budget. Virtually all of these funds are provided as reimbursements.

125. The San Francisco Department of Public Health (“DPH”) also provides direct services through its primary care clinics, HIV/AIDS health services, mental health and substance abuse treatment, housing and homelessness assistance, maternal and child healthcare, and jail health services.

126. Additionally, the DPH Population Health Division addresses public health concerns, including consumer safety, health promotion, and disease prevention. DPH also monitors threats to public health.

127. Overall, in FY16-17, DPH expects to receive approximately \$800 million in federal funding. This represents almost 40% of the Department’s FY16-17 budget.

128. DPH has approximately 6,800 full-time equivalent employees, and it funds hundreds of additional jobs through contracts to service providers. Loss of federal funds would threaten many of the thousands of jobs that depend on DPH funds.

c. Department of Emergency Management

129. The Department of Emergency Management (“DEM”) leads San Francisco in planning, preparedness, communication, response, and recovery for daily emergencies, large scale citywide events, and major disasters. DEM is the vital link in emergency communication between the public and first responders.

130. One of the programs DEM administers is the Bay Area Urban Areas Security Initiative (“UASI”), which sustains and improves regional capacity to prevent, mitigate, respond to, and recover from terrorist attacks and catastrophic disasters. UASI funds training exercises and regional emergency management and disaster response. This program is funded entirely by federal funds.

131. In FY16-17, DEM anticipates receiving about \$25 million in federal funding, mostly supporting the UASI program. This represents nearly 30% of the Department’s FY16-17 budget.

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d. San Francisco Municipal Transportation Agency's Vehicle Replacement Program

132. San Francisco Municipal Transportation Authority ("SFMTA") operates over 1,000 vehicles across 75 transit lines, carrying on average 700,000 passengers each workday. Replacing and rehabilitating vehicles as they near the end of their useful life helps avoid costly repairs and service interruptions. Growing the vehicle fleet also alleviates overcrowding and enables the transit system to carry more passengers.

133. Nearly 80% of SFMTA's vehicle replacement and rehabilitation funding comes from the Federal government. Based on the latest Metropolitan Transportation Commission's Transportation Improvement Program, which is a comprehensive spending plan for the Bay Area region, SFMTA expects to receive over \$500 million for this purpose from FY 2016-17 through FY 2019-20. These funds are subject to "Buy American" provisions. For example, San Francisco's most recently purchased light-rail vehicles are manufactured in Sacramento, California and New Flyer trolley buses are manufactured in Minnesota. The funds are expected to replace the system's approximately 1,000 aging vehicles over the four-year period.

D. Federal Funding Streams

134. San Francisco receives federal funds in the form of grants, as well as through payments for entitlement programs. These entitlement programs include Medicaid and Medicare, Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program, Foster Care, and various child welfare programs. Undocumented immigrants are not eligible to receive benefits from most entitlement programs. Approximately 80% of the federal funds budgeted for FY16-17 are for entitlement programs.

135. San Francisco receives federal funds directly from the Federal government, as well as indirectly through the State of California and other pass-through entities. For FY16-17, San Francisco's budget includes over \$1.1 billion in pass-through funds, the vast majority of which is passed through the State of California. President Trump has identified California as a possible sanctuary jurisdiction. Because California does not prohibit voluntary communications about

1 immigration status, it should be deemed to comply with Section 1373. If Defendants nonetheless cut
2 off funds to California, this could result in the loss of pass-through funds to San Francisco.

3 136. San Francisco receives most federal funds—for both grants and entitlement programs—
4 as reimbursements. San Francisco is currently providing services and benefits that the Federal
5 government has agreed to reimburse. San Francisco is also building major transit expansions and other
6 public infrastructure projects, as well as running programs across a variety of San Francisco agencies,
7 based on the Federal governments' commitment to pay for these projects and programs. The Executive
8 Order calls into question whether the Federal government will in fact reimburse San Francisco for
9 these funds.

10 137. Congress has established numerous conditions governing eligibility for federal funds.
11 For instance, to receive Medicaid funds, a state must create a state plan that includes assurances to the
12 Federal government that the state will provide specified types of care and that the state regulates health
13 insurance providers to ensure access to medical assistance, among many other requirements. 42 U.S.C.
14 § 1396(a).

15 138. In another example, the United States Department of Housing and Urban Development
16 Community Development Block Grants fund many projects to combat unlawful evictions, maintain
17 stable housing occupancy and supply, and incentivize affordable unit construction. These grants
18 require the grantee to prepare a statement of community development objectives and projected use of
19 funds, provide a citizen participation plan, and certify other enumerated criteria. 42 U.S.C. § 5304.

20 139. No federal funds received by San Francisco have statutory conditions specifically
21 requiring compliance with Section 1373.

22 **C. Coercive Effect Of The Executive Order**

23 140. The Executive Order threatens not to pay San Francisco over \$2 billion in federal funds
24 that is money already spent by San Francisco—money San Francisco is spending today and money
25 San Francisco has reasonably relied on receiving. As set forth in this Complaint, the Executive Order
26 is unconstitutional in numerous respects. Nonetheless, San Francisco currently faces the prospect of
27 sweeping cuts in necessary federal funding.

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1 141. It would be catastrophic for San Francisco to lose all federal funds. It would not be
2 possible for San Francisco to backfill the loss of \$1.2 billion with local revenue sources.

3 142. San Francisco's reserves are insufficient to cover the loss of all federal funds.
4 San Francisco currently has contingency reserves of approximately \$350 million, in a Rainy Day Fund
5 and a Stabilization Fund, which were created and funded over the last decade for the purpose of
6 managing local tax revenue volatility created by economic conditions. These reserve levels, totaling
7 less than 8% of general fund revenues, remain below levels recommended by the Government Finance
8 Officers Association for local governments and the 10% target established by San Francisco law.
9 There are restrictions on the use of these reserves, and even if entirely depleted, their levels would be
10 inadequate to cover a shortfall in federal funds for even a single year. To fully absorb the loss of all
11 federal funds, San Francisco would also have to suspend capital projects—causing significant job
12 loss—and make drastic service cuts in order to maintain a balanced budget, as it is legally required to
13 do.

14 143. Even a loss of 10% of annual federal funds would be calamitous for San Francisco. A
15 cut of \$120 million would lead to severe public health and public safety impacts. San Francisco
16 currently has approximately 1,971 police officers, a level mandated by the Charter, but a \$120 million
17 cut would likely require San Francisco to reduce that number significantly, with similar reductions in
18 the number of firefighters. Capital programs would be postponed, resulting in lost jobs, and social
19 service programs would be reduced or eliminated. General Fund Departments have identified specific
20 programs and services that they will need to cut if they must reduce their General Fund Support for
21 FY17-18 to help the Mayor's Office balance the budget. These include, for example, services for
22 women that are domestic violence survivors, programming for low-income children and families, and
23 housing programs to support low-income residents.

24 144. The Executive Order's threat to cut federal funds is manifestly coercive. This is why at
25 least one jurisdiction has already changed its policy about immigration detainees in response to the
26 Executive Order. The day after the Executive Order was issued, Miami-Dade County Mayor Carlos
27 Giménez instructed the county's interim corrections director to "fully cooperate" with the Federal
28 government and comply with all immigration detainer requests, eliminating a previous requirement

1 that the Federal government reimburse detainer costs. “It’s really not worth the risk of losing millions
2 of dollars to the residents of Miami-Dade County in discretionary money from the feds,” said Mayor
3 Giménez. Ray Sanchez, *Florida’s Largest County to Comply with Trump’s Sanctuary Crackdown*,
4 CNN Politics (Jan. 27, 2017, 6:34 PM ET), [http://www.cnn.com/2017/01/27/politics/miami-dade-](http://www.cnn.com/2017/01/27/politics/miami-dade-mayor-sanctuary-crackdown/)
5 [mayor-sanctuary-crackdown/](http://www.cnn.com/2017/01/27/politics/miami-dade-mayor-sanctuary-crackdown/). There is little doubt that is exactly what the President intends this
6 coercive effect with his promise to defund Sanctuary Cities.

7 **D. Budget Impact of the Executive Order**

8 145. For FY16-17, San Francisco’s annual operating budget is approximately \$9.6 billion.
9 Of this, approximately \$1.2 billion is money provided by the Federal government for entitlement
10 programs, grants, and contracts, and other items. For the vast majority of the federal funds received by
11 San Francisco, there is no nexus between the purpose of the funds and immigration enforcement. Only
12 a small percentage of all federal funds received by San Francisco relate to either immigration or law
13 enforcement.

14 146. The concern about losing federal funds is so acute that the Board of Supervisors has
15 established the Budget and Finance Federal Select Committee, a new committee that will consider
16 issues related to the possible loss of federal funds as a result of the Executive Order and other federal
17 action.

18 147. San Francisco has already begun the seven-month process of adopting the annual
19 budget for the fiscal year beginning on July 1, 2017. On December 13, 2016, the Mayor and the
20 Controller (San Francisco’s chief financial officer) issued budget instructions to all San Francisco
21 departments with detailed guidance on the preparation of departments’ budget requests. Most
22 San Francisco departments held public hearings on their budget proposals in January and February and
23 submitted their budget requests for the coming fiscal year to the Controller by February 21.
24 San Francisco law requires the Controller to submit a consolidated budget proposal to the Mayor by
25 March 1, the Mayor to submit a balanced budget to the Board of Supervisors by June 1, and the Board
26 of Supervisors to approve a balanced budget by August 1.

27 148. To meet the June 1 deadline, the Mayor must make fundamental budget decisions by
28 May 15, and input these decisions into San Francisco’s budget software by May 24. During the last

1 week of May, the Controller's Office reconciles and confirms all financial calculations in the Mayor's
2 proposed budget, while the Mayor's Budget Office finalizes the narrative publication that accompanies
3 the proposed budget.

4 149. The budget for the fiscal year beginning July 1, 2017 will be approximately \$10 billion,
5 approximately \$5 billion of which is in San Francisco's General Fund. The remainder of the budget is
6 comprised of self-supporting activities at San Francisco's enterprise departments, which focus on city-
7 related business operations and include the Port, the Municipal Transportation Agency, the Airport,
8 the Public Utilities Commission, and others. The use of funds in these operations is legally restricted
9 and cannot be redirected to backfill a shortfall in the General Fund. Money in San Francisco's
10 General Fund is used to support public services such as public health, human services, police and fire
11 services, and public works. Approximately \$2 billion of General Fund money is legally dedicated for
12 specific purposes, leaving approximately \$3 billion in discretionary funds.

13 150. One of the fundamental budget decisions the Mayor must make by May 15, 2017, is
14 whether to create a budget reserve to account for the possible loss of federal and state funds in the
15 coming fiscal year. This presents a Hobson's choice. San Francisco, facing possible reductions, could
16 place funds into reserve at the beginning of the fiscal year, harming the public by reducing the amount
17 of money in San Francisco's General Fund. Or San Francisco could budget based on the continued
18 receipt of federal and state funds, knowing that cuts could come suddenly, outside of the budget
19 process.

20 151. If unanticipated cuts come mid-year, the General Fund will take an even bigger hit at
21 that time, as there will be less time to absorb the loss of funds. Depending on the nature of the cuts,
22 they could lead to immediate service cuts, layoffs, or cancellation of contracts and associated
23 penalties.

24 152. If current levels of uncertainty remain by May 15, 2017, the Mayor will be forced to
25 propose a federal and state budget reserve. The final amount of the reserve will depend on the Mayor's
26 assessment of the amount of funding at risk and the likelihood that federal or state funds will be cut.
27 Money used to fund the reserve is money that will not be available for General Fund programs and
28 services.

153. A May 15, 2017, decision to set the reserve at a specified amount will have a real world impact when the new fiscal year begins on July 1, 2017. Beginning on this date, funds allocated for the reserve will sit in the reserve instead of being available for General Fund services and programs. Once funds are placed in a federal and state budget reserve, they will remain there for the entire fiscal year unless they are released in response to reliably detailed information about the timing and size of federal or state funding cuts.

154. The Mayor must make a trade-off between putting money into a reserve and using it for other San Francisco priorities, some of which are currently unfunded. For instance, the Department of Homelessness and Supportive Housing needs an additional \$19.5 million in the next two fiscal years to make an impact in reducing homelessness in San Francisco. This money would fund a family shelter expansion, youth housing subsidies, a resource center, and shelter maintenance and security. A reserve would set money aside instead of using it for purposes like this.

155. Since the Executive Order issued, San Francisco has received inquiries from credit rating agencies about the impact of the Executive Order on San Francisco's finances. If credit rating agencies downgrade their assessment of San Francisco, it will increase San Francisco's borrowing costs. The Executive Order imposes a "substantial contingent liability" to the extent that it "immediately and directly affects the borrowing power, financial strength, and fiscal planning" of San Francisco. *See Clinton v. City of N.Y.*, 524 U.S. 417, 430-31 (1998).

CAUSES OF ACTION

COUNT ONE

DECLARATORY RELIEF – SAN FRANCISCO LAW COMPLIES WITH 8 U.S.C. § 1373

156. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs as if fully set forth herein.

157. San Francisco contends that it complies with Section 1373. San Francisco Administrative Code Chapters 12H and 12I do not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, immigration officials information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

158. Defendants contend that San Francisco does not comply with Section 1373.

160. A judicial determination resolving this controversy is necessary and appropriate at this time.

**DECLARATORY RELIEF – SAN FRANCISCO POLICIES
COMPLY WITH 8 U.S.C. § 1373**

161. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs as if fully set forth herein.

162. San Francisco contends that its policies comply with Section 1373. San Francisco does not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, immigration officials information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

163. Defendants contend that San Francisco does not comply with Section 1373.

164. An actual controversy presently exists between San Francisco and Defendants about whether San Francisco complies with Section 1373.

165. A judicial determination resolving this controversy is necessary and appropriate at this time.

TENTH AMENDMENT – 8 U.S.C. § 1373(a) IS UNCONSTITUTIONAL

166. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs as if fully set forth herein.

167. On its face, Section 1373 commandeers state and local governments in violation of the Tenth Amendment to the Constitution by, *inter alia*, regulating the “States in their sovereign capacity,” *Reno*, 528 U.S. at 151, limiting state authority to regulate internal affairs and determine the duties and responsibilities of state employees, *Gregory*, 501 U.S. at 460, and ultimately forcing States to allow their employees to use state time and state resources to assist in the enforcement of federal

statutes regulating private individuals, *Reno*, 528 U.S. at 151, and to provide information that belongs to the State and is available to them only in their official capacity, *Printz*, 521 U.S. at 932-33 & n.17.

168. As applied to invalidate state and local Sanctuary City laws, like San Francisco Administrative Code Chapters 12H and 12I, which were enacted to further legitimate local interests grounded in the basic police powers of local government and related to public health and safety, Section 1373(a) commandeers state and local governments and violates the Tenth Amendment to the United States Constitution.

COUNT FOUR

TENTH AMENDMENT, SEPARATION OF POWERS, AND SPENDING CLAUSE – EXECUTIVE ORDER SECTION 9(A)'S FUNDING RESTRICTIONS ARE UNCONSTITUTIONAL

169. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs as if fully set forth herein.

170. Executive Order Section 2(c) states: “It is the policy of the executive branch to . . . Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law.” Executive Order at 8799.

171. Executive Order Section 9 states: “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.” *Id.* at 8801.

172. Executive Order Section 9(a) contains a Funding Restriction stating: “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.” *Id.*

173. The Funding Restriction violates the Tenth Amendment, the Spending Clause, and Article I, sec. 1 of the United States Constitution by:

- a. Exercising Spending Power that the Constitution grants to Congress;

- b. Imposing new funding conditions on existing federal funds;
- c. Imposing funding conditions not germane to the purpose of the funds;
- d. Imposing funding conditions so severe as to coerce compliance; and
- e. Imposing funding conditions that require jurisdictions to act unconstitutionally.

COUNT FIVE

TENTH AMENDMENT – EXECUTIVE ORDER SECTION 9(A)’S ENFORCEMENT DIRECTIVE IS UNCONSTITUTIONAL

174. Plaintiffs repeat and incorporate by reference each allegation of the prior paragraphs as if fully set forth herein.

175. Executive Order Section 9(a) contains an Enforcement Directive stating: “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 at 8801.

176. The Federal government has taken the position that a state or local jurisdiction that fails to affirmatively assist federal immigration officials—by, for example, refusing to comply with a detainer request issued under Section 287.7 of Title 8 of the Code of Federal Regulations—hinders the enforcement of federal law and violates Section 1373.

177. Accordingly, the Enforcement Directive commandeers state and local governments, violating Tenth Amendment to the United States Constitution by, *inter alia*, compelling them to enforce a federal program by imprisoning individuals subject to removal at the request of the Federal government when those individuals would otherwise be released from custody.

PRAYER FOR RELIEF

Wherefore, San Francisco prays that the Court grant the following relief:

San Francisco Complies With Section 1373 (Count One and Two)

- 1. Declare that San Francisco laws comply with Section 1373;
- 2. Declare that San Francisco policies and practices comply with Section 1373;

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3. Preliminarily and permanently enjoin Defendants from designating San Francisco as a jurisdiction that fails to comply with Section 1373;

Section 1373 Is Unconstitutional (Count Three)

4. Declare that 8 U.S.C. Section 1373(a) is unconstitutional and invalid on its face;
5. Enjoin Defendants from enforcing Section 1373(a) or using it as a condition for receiving federal funds;
6. Declare that Section 1373(a) is invalid as applied to state and local Sanctuary City laws, like San Francisco Administrative Code Chapters 12H and 12I, which were enacted for legitimate local purposes related to public health and safety;
7. Preliminarily and permanently enjoin Defendants from enforcing Section 1373(a) against jurisdictions that enact Sanctuary City laws for legitimate local purposes;

Executive Order Section 9(a)'s Funding Restriction Is Unconstitutional (Count Four)

8. Declare the Funding Restriction in Executive Order invalid;
9. Preliminarily and permanently enjoin Defendants from enforcing the Funding Restriction in the Executive Order;

Executive Order Section 9(a)'s Enforcement Directive Is Unconstitutional (Count Five)

10. Declare the Enforcement Directive in Executive Order invalid;
11. Preliminarily and permanently enjoin unconstitutional applications of the Enforcement Directive in Executive Order Section 9(a);

Other Relief

12. Award San Francisco reasonable costs and attorney's fees; and

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13. Grant any other further relief that the Court deems fit and proper.

Dated: February 27, 2017

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EXHIBIT 1

San Francisco Administrative Code

CHAPTER 12H: IMMIGRATION STATUS

- Sec. 12H.1. City and County of Refuge.
- Sec. 12H.2. Use of City Funds Prohibited.
- Sec. 12H.3. Clerk of Board to Transmit Copies of this Chapter; Informing City Employees.
- Sec. 12H.4. Enforcement.
- Sec. 12H.5. City Undertaking Limited to Promotion of General Welfare.
- Sec. 12H.6. Severability.

SEC. 12H.1. CITY AND COUNTY OF REFUGE.

It is hereby affirmed that the City and County of San Francisco is a City and County of Refuge.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.2. USE OF CITY FUNDS PROHIBITED.

No department, agency, commission, officer, or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information regarding release status of individuals or any other such personal information as defined in Chapter 12I in the City and County of San Francisco unless such assistance is required by Federal or State statute, regulation, or court decision. The prohibition set forth in this Chapter 12H shall include, but shall not be limited to:

(a) Assisting or cooperating, in one's official capacity, with any investigation, detention, or arrest procedures, public or clandestine, conducted by the Federal agency charged with enforcement of the Federal immigration law and relating to alleged violations of the civil provisions of the Federal immigration law, except as permitted under Administrative Code Section 12I.3.

(b) Assisting or cooperating, in one's official capacity, with any investigation, surveillance, or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of City and County, State, or Federal criminal laws.

(c) Requesting information about, or disseminating information, in one's official capacity, regarding the release status of any individual or any other such personal information as defined in Chapter 12I, except as permitted under Administrative Code Section 12I.3, or conditioning the provision of services or benefits by the City and County of San Francisco upon immigration status, except as required by Federal or State statute or regulation, City and County public assistance criteria, or court decision.

(d) Including on any application, questionnaire, or interview form used in relation to benefits, services, or opportunities provided by the City and County of San Francisco any question regarding immigration status other than those required by Federal or State statute, regulation, or court decision. Any such questions existing or being used by the City and County at the time this Chapter is adopted shall be deleted within sixty days of the adoption of this Chapter.

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(Added by Ord. 375-89, App. 10/24/89; amended by Ord. 228-09, File No. 091032, App. 10-28-2009, Ord. 96-16, File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

SEC. 12H.2-1. [REPEALED.]

(Added by Ord. 282-92, App. 9/4/92; amended by Ord. 238-93, App. 8/4/93; Ord. 228-09, File No. 091032, App. 10-28-2009; repealed by Ord. 96-16, File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

SEC. 12H.3. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY EMPLOYEES.

The Clerk of the Board of Supervisors shall send copies of this Chapter, including any future amendments thereto that may be made, to every department, agency and commission of the City and County of San Francisco, to California's United States Senators, and to the California Congressional delegation, the Commissioner of the Federal agency charged with enforcement of the Federal immigration law, the United States Attorney General, and the Secretary of State and the President of the United States. Each appointing officer of the City and County of San Francisco shall inform all employees under her or his jurisdiction of the prohibitions in this ordinance, the duty of all of her or his employees to comply with the prohibitions in this ordinance, and that employees who fail to comply with the prohibitions of the ordinance shall be subject to appropriate disciplinary action. Each City and County employee shall be given a written directive with instructions for implementing the provisions of this Chapter.

(Added by Ord. 375-89, App. 10/24/89; Ord. 228-09, File No. 091032, App. 10-28-2009)

SEC. 12H.4. ENFORCEMENT.

The Human Rights Commission shall review the compliance of the City and County departments, agencies, commissions and employees with the mandates of this ordinance in particular instances in which there is question of noncompliance or when a complaint alleging noncompliance has been lodged.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.5. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the City is assuming an undertaking only to promote the general welfare. This Chapter is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person.

(Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.6. SEVERABILITY.

If any part of this ordinance, or the application thereof, is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in full force and effect. To this end, the provisions of this ordinance, and each of them, are severable.

(Added by Ord. 375-89, App. 10/24/89)

EXHIBIT 2

San Francisco Administrative Code

CHAPTER 12I:

CIVIL IMMIGRATION DETAINERS

- Sec. 12I.1. Findings.
- Sec. 12I.2. Definitions.
- Sec. 12I.3. Restrictions on Law Enforcement Officials.
- Sec. 12I.4. Purpose of this Chapter.
- Sec. 12I.5. Semiannual Report.
- Sec. 12I.6. Severability.
- Sec. 12I.7. Undertaking for the General Welfare.

SEC. 12I.1. FINDINGS.

The City and County of San Francisco (the "City") is home to persons of diverse racial, ethnic, and national backgrounds, including a large immigrant population. The City respects, upholds, and values equal protection and equal treatment for all of our residents, regardless of immigration status. Fostering a relationship of trust, respect, and open communication between City employees and City residents is essential to the City's core mission of ensuring public health, safety, and welfare, and serving the needs of everyone in the community, including immigrants. The purpose of this Chapter 12I, as well as of Administrative Code Chapter 12H, is to foster respect and trust between law enforcement and residents, to protect limited local resources, to encourage cooperation between residents and City officials, including especially law enforcement and public health officers and employees, and to ensure community security, and due process for all.

The United States Immigration and Customs Enforcement ("ICE") is responsible for enforcing the civil immigration laws. ICE's programs, including Secure Communities and its replacement, the Priority Enforcement Program ("PEP"), seek to enlist local law enforcement's voluntary cooperation and assistance in its enforcement efforts. In its description of PEP, ICE explains that all requests under PEP are for voluntary action and that any request is not an authorization to detain persons at the expense of the federal government. The federal government should not shift the financial burden of federal civil immigration enforcement, including personnel time and costs relating to notification and detention, onto local law enforcement by requesting that local law enforcement agencies continue detaining persons based on non-mandatory civil immigration detainers or cooperating and assisting with requests to notify ICE that a person will be released from local custody. It is not a wise and effective use of valuable City resources at a time when vital services are being cut.

ICE's Secure Communities program (also known as "S-Comm") shifted the burden of federal civil immigration enforcement onto local law enforcement. S-Comm came into operation after the state sent fingerprints that state and local law enforcement agencies had transmitted to the California Department of Justice ("Cal DOJ") to positively identify the arrestees and to check their criminal history. The FBI would forward the fingerprints to the Department of Homeland Security ("DHS") to be checked against immigration and other databases. To give itself time to take a detainee into immigration custody, ICE would send an Immigration Detainer – Notice of Action (DHS Form I-247) to the local law enforcement official requesting that the local law enforcement official hold the individual for up to 48 hours after that individual would otherwise be released ("civil immigration detainers"). Civil Immigration detainers may be issued without evidentiary support or probable cause by border patrol agents, aircraft pilots, special agents, deportation officers, immigration inspectors, and immigration adjudication officers.

Given that civil immigration detainers are issued by immigration officers without judicial oversight, and the regulation authorizing civil immigration detainers provides no minimum standard of proof for their issuance, there are serious questions as to their constitutionality. Unlike criminal warrants, which must be supported by probable cause and issued by a neutral magistrate, there are no such requirements for the issuance of a civil immigration detainer. Several federal courts have ruled that because civil immigration detainers and other ICE "Notice of Action" documents are issued without probable cause of criminal conduct, they do not meet the Fourth Amendment requirements for state or local law enforcement officials to arrest and hold an individual in custody. (*Miranda-Olivares v. Clackamas Co.*, No. 3:12-cv-02317-ST *17 (D.Or. April 11, 2014) (finding that detention pursuant to an immigration detainer is a seizure that must comport with the Fourth Amendment). *See also Morales v. Chadbourne*, 996 F. Supp. 2d 19, 29 (D.R.I 2014); *Villars v. Kubiowski*, No. 12-cv-4586 *10-12 (N.D. Ill. filed May 5, 2014).)

On December 4, 2012, the Attorney General of California, Kamala Harris, clarified the responsibilities of local law enforcement agencies under S-Comm. The Attorney General clarified that S-Comm did not require state or local law enforcement officials to determine an individual's immigration status or to enforce federal immigration laws. The Attorney General also clarified that civil immigration detainers are voluntary requests to local law enforcement agencies that do not mandate compliance. California local law enforcement agencies may determine on their own whether to comply with non-mandatory civil immigration detainers. In a June 25, 2014, bulletin, the Attorney General warned that a federal court outside of California had held a county liable for damages where it voluntarily complied with an ICE request to detain an individual, and the individual was otherwise eligible for release and that local law enforcement agencies may also be held liable for such conduct. Over 350 jurisdictions, including Washington, D.C., Cook County, Illinois, and many of California's 58 counties, have already acknowledged the discretionary nature of civil immigration detainers and are declining to hold people in their jails for the additional 48 hours as requested by ICE. Local law enforcement agencies' responsibilities, duties, and powers are regulated by state law. However, complying with non-mandatory civil immigration detainers frequently raises due process concerns.

According to Section 287.7 of Title 8 of the Code of Federal Regulations, the City is not reimbursed by the federal government for the costs associated with civil immigration detainers alone. The full cost of responding to a civil immigration detainer can include, but is not limited to, extended detention time, the administrative costs of tracking and responding to detainers, and the legal liability for erroneously holding an individual who is not subject to a civil immigration detainer. Compliance with civil immigration detainers and involvement in civil immigration enforcement diverts limited local resources from programs that are beneficial to the City.

The City seeks to protect public safety, which is founded on trust and cooperation of community residents and local law enforcement. However, civil immigration detainers and notifications regarding release undermine community trust of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and cooperate with local law enforcement agencies. A 2013 study by the University of Illinois, entitled "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," found that at least 40% of Latinos surveyed are less likely to provide information to police because they fear exposing themselves, family, or friends to a risk of deportation. Indeed, civil immigration detainers have resulted in the transfer of victims of crime, including domestic violence victims, to ICE.

The City has enacted numerous laws and policies to strengthen communities and to build trust between communities and local law enforcement. Local cooperation and assistance with civil immigration enforcement undermines community policing strategies.

In 2014, DHS ended the Secure Communities program and replaced it with PEP. PEP and S-Comm share many similarities. Just as with S-Comm, PEP uses state and federal databases to check an individual's fingerprints against immigration and other databases. PEP employs a number of tactics to facilitate transfers of individuals from local jails to immigration custody.

First, PEP uses a new form (known as DHS Form I-247N), which requests notification from local jails about an individual's release date prior to his or her release from local custody. As with civil immigration detainers, these notification requests are issued by immigration officers without judicial oversight, thus raising questions

about local law enforcement's liability for constitutional violations if any person is overdetained when immigration agents are unable to be present at the time of the person's release from local custody.

Second, under PEP, ICE will continue to issue civil immigration detainer requests where local law enforcement officials are willing to respond to the requests, and in instances of "special circumstances," a term that has yet to be defined by DHS. Despite federal courts finding civil immigration detainers do not meet Fourth Amendment requirements, local jurisdictions are often unable to confirm whether or not a detention request is supported by probable cause or has been reviewed by a neutral magistrate.

The increase in information-sharing between local law enforcement and immigration officials raises serious concerns about privacy rights. Across the country, including in the California Central Valley, there has been an increase of ICE agents stationed in jails, who often have unrestricted access to jail databases, booking logs, and other documents that contain personal information of all jail inmates.

The City has an interest in ensuring that confidential information collected in the course of carrying out its municipal functions, including but not limited to public health programs and criminal investigations, is not used for unintended purposes that could hamper collection of information vital to those functions. To carry out public health programs, the City must be able to reliably collect confidential information from all residents. To solve crimes and protect the public, local law enforcement depends on the cooperation of all City residents. Information gathering and cooperation may be jeopardized if release of personal information results in a person being taken into immigration custody.

In late 2015, Pedro Figueroa, an immigrant father of an 8-year-old U.S. citizen, sought the San Francisco Police Department's help in locating his stolen vehicle. When Mr. Figueroa went to the police station to retrieve his car, which police had located, he was detained for some time by police officers before being released, and an ICE agent was waiting to take him into immigration custody immediately as he left the police station. It was later reported that both the Police Department and the San Francisco Sheriff's Department had contact with ICE officials while Mr. Figueroa was at the police station. He spent over two months in an immigration detention facility and remains in deportation proceedings. Mr. Figueroa's case has raised major concerns about local law enforcement's relationship with immigration authorities, and has weakened the immigrant community's confidence in policing practices. Community cooperation with local law enforcement is critical to investigating and prosecuting crimes. Without the cooperation of crime victims – like Mr. Figueroa – and witnesses, local law enforcement's ability to investigate and prosecute crime, particularly in communities with large immigrant populations, will be seriously compromised.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.1 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.2. DEFINITIONS.

"Administrative warrant" means a document issued by the federal agency charged with the enforcement of the Federal immigration law that is used as a non-criminal, civil warrant for immigration purposes.

"Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:

- (a) All criminal charges against the individual have been dropped or dismissed.
- (b) The individual has been acquitted of all criminal charges filed against him or her.
- (c) The individual has served all the time required for his or her sentence.
- (d) The individual has posted a bond, or has been released on his or her own recognizance.
- (e) The individual has been referred to pre-trial diversion services.

(f) The individual is otherwise eligible for release under state or local law.

"Civil immigration detainer" means a non-mandatory request issued by an authorized federal immigration officer under Section 287.7 of Title 8 of the Code of Federal Regulations, to a local law enforcement official to maintain custody of an individual for a period not to exceed 48 hours and advise the authorized federal immigration officer prior to the release of that individual.

"Convicted" means the state of having been proved guilty in a judicial proceeding, unless the convictions have been expunged or vacated pursuant to applicable law. The date that an individual is Convicted starts from the date of release.

"Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion as defined in Penal Code Section 16520.

"Law enforcement official" means any City Department or officer or employee of a City Department, authorized to enforce criminal statutes, regulations, or local ordinances; operate jails or maintain custody of individuals in jails; and operate juvenile detention facilities or maintain custody of individuals in juvenile detention facilities.

"Notification request" means a non-mandatory request issued by an authorized federal immigration officer to a local law enforcement official asking for notification to the authorized immigration officer of an individual's release from local custody prior to the release of an individual from local custody. Notification requests may also include informal requests for release information by the Federal agency charged with enforcement of the Federal immigration law.

"Personal information" means any confidential, identifying information about an individual, including, but not limited to, home or work contact information, and family or emergency contact information.

"Serious Felony" means all serious felonies listed under Penal Code Section 1192.7(c) that also are defined as violent felonies under Penal Code Section 667.5(c); rape as defined in Penal Code Sections 261, and 262; exploding a destructive device with intent to injure as defined in Penal Code Section 18740; assault on a person with caustic chemicals or flammable substances as defined in Penal Code Section 244; shooting from a vehicle at a person outside the vehicle or with great bodily injury as defined in Penal Code Sections 26100(c) and (d).

"Violent Felony" means any crime listed in Penal Code Section 667.5(c); human trafficking as defined in Penal Code Section 236.1; felony assault with a deadly weapon as defined in Penal Code Section 245; any crime involving use of a firearm, assault weapon, machine gun, or .50 BMG rifle, while committing or attempting to commit a felony that is charged as a sentencing enhancement as listed in Penal Code Sections 12022.4 and 12022.5.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 121.2 added by Ord. 391-90, App. 12/6/90; amended by Ord. 278-96, App. 7/3/96; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.

(a) Except as provided in subsection (b), a law enforcement official shall not detain an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody.

(b) Law enforcement officials may continue to detain an individual in response to a civil immigration detainer for up to 48 hours after that individual becomes eligible for release if the continued detention is consistent with state and federal law, and the individual meets both of the following criteria:

(1) The individual has been Convicted of a Violent Felony in the seven years immediately prior to the date of the civil immigration detainer; and

(2) A magistrate has determined that there is probable cause to believe the individual is guilty of a Violent Felony and has ordered the individual to answer to the same pursuant to Penal Code Section 872.

In determining whether to continue to detain an individual based solely on a civil immigration detainer as permitted in this subsection (b), law enforcement officials shall consider evidence of the individual's rehabilitation and evaluate whether the individual poses a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes, but is not limited to: the individual's ties to the community, whether the individual has been a victim of any crime, the individual's contribution to the community, and the individual's participation in social service or rehabilitation programs.

This subsection (b) shall expire by operation of law on October 1, 2016, or upon a resolution passed by the Board of Supervisors that finds for purposes of this Chapter, the federal government has enacted comprehensive immigration reform that diminishes the need for this subsection (b), whichever comes first.

(c) Except as provided in subsection (d), a law enforcement official shall not respond to a federal immigration officer's notification request.

(d) Law Enforcement officials may respond to a federal immigration officer's notification request if the individual meets both of the following criteria:

(1) The individual either:

(A) has been Convicted of a Violent Felony in the seven years immediately prior to the date of the notification request; or

(B) has been Convicted of a Serious Felony in the five years immediately prior to the date of the notification request; or

(C) has been Convicted of three felonies identified in Penal Code sections 1192.7(c) or 667.5(c), or Government Code sections 7282.5(a)(2) or 7282.5(a)(3), other than domestic violence, arising out of three separate incidents in the five years immediately prior to the date of the notification request; and

(2) A magistrate has determined that there is probable cause to believe the individual is guilty of a felony identified in Penal Code sections 1192.7(c) or 667.5(c), or Government Code sections 7282.5(a)(2) or 7282.5(a)(3), other than domestic violence, and has ordered the individual to answer to the same pursuant to Penal Code Section 872.

In determining whether to respond to a notification request as permitted by this subsection (d), law enforcement officials shall consider evidence of the individual's rehabilitation and evaluate whether the individual poses a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes, but is not limited to, the individual's ties to the community, whether the individual has been a victim of any crime, the individual's contribution to the community, and the individual's participation in social service or rehabilitation programs.

(e) Law enforcement officials shall not arrest or detain an individual, or provide any individual's personal information to a federal immigration officer, on the basis of an administrative warrant, prior deportation order, or other civil immigration document based solely on alleged violations of the civil provisions of immigration laws.

(f) Law enforcement officials shall make good faith efforts to seek federal reimbursement for all costs incurred in continuing to detain an individual, after that individual becomes eligible for release, in response each civil immigration detainer.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.3 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.4. PURPOSE OF THIS CHAPTER.

The intent of this Chapter 12I is to address requests for non-mandatory civil immigration detainers, voluntary notification of release of individuals, transmission of personal information, and civil immigration documents based solely on alleged violations of the civil provisions of immigration laws. Nothing in this Chapter shall be construed to apply to matters other than those relating to federal civil immigration detainers, notification of release of individuals, transmission of personal information, or civil immigration documents, based solely on alleged violations of the civil provisions of immigration laws. In all other respects, local law enforcement agencies may continue to collaborate with federal authorities to protect public safety. This collaboration includes, but is not limited to, participation in joint criminal investigations that are permitted under local policy or applicable city or state law.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.4 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.5. SEMIANNUAL REPORT.

By no later than July 1, 2014, the Sheriff and Juvenile Probation Officer shall each provide to the Board of Supervisors and the Mayor a written report stating the number of detentions that were solely based on civil immigration detainers during the first six months following the effective date of this Chapter, and detailing the rationale behind each of those civil immigration detainers. Thereafter, the Sheriff and Juvenile Probation Officer shall each submit a written report to the Board of Supervisors and the Mayor, by January 1st and July 1st of each year, addressing the following issues for the time period covered by the report:

(a) a description of all communications received from the Federal agency charged with enforcement of the Federal immigration law, including but not limited to the number of civil immigration detainers, notification requests, or other types of communications.

(b) a description of any communications the Department made to the Federal agency charged with enforcement of the Federal immigration law, including but not limited to any Department's responses to inquiries as described in subsection 12I.5 and the Department's determination of the applicability of subsections 12I.3(b), 12I.3(d) and 12I.3(e).

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013; amended by Ord. [96-16](#), File No. 160022, App. 6/17/2016, Eff. 7/17/2016)

(Former Sec. 12I.5 added by Ord. 391-90, App. 12/6/90; amended by Ord. 304-92, App. 9/29/92; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.6. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Chapter 12I or its¹ application, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter 12I. The Board of Supervisors hereby declares that it would have passed this Chapter 12I and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter 12I would be subsequently declared invalid or unconstitutional.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013)

(Former Sec. 12I.6 added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

CODIFICATION NOTE

1. So in Ord. [204-13](#).

SEC. 12I.7. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Chapter 12I the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(Added by Ord. [204-13](#), File No. 130764, App. 10/8/2013, Eff. 11/7/2013)

(Former Sec. 12I.7 added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.8.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.10.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

SEC. 12I.11.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

EXHIBIT 3

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.

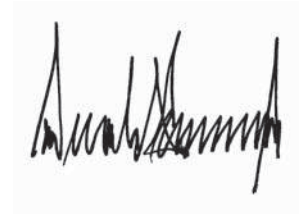
Sec. 18. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.

A handwritten signature in black ink, appearing to be "Donald Trump", is located in the upper right quadrant of the page. The signature is stylized with a large, prominent 'D' and 'T'.

THE WHITE HOUSE,
January 25, 2017.

Exhibit 3 - Part 1 of 4

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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**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Case No.

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INTRODUCTION

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

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

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

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

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

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

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

23 7. Through this lawsuit, the County of Santa Clara (“the County”) challenges only
24 those aspects of the Executive Order’s unconstitutionality that directly injure the County’s
25 interests and are ripe for judicial review. Other challenges by other plaintiffs are sure to follow.
26 This action alleges that the Executive Order is unconstitutional for the following independent
27 reasons.
28

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

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

20 10. Congress has not only failed to grant the President the spending power he now
21 claims, but it also considered and rejected the very policy the Executive Order now seeks to
22 impose by dictate. Indeed, Senator Jeff Sessions—the man tapped to become the Attorney
23 General referenced in the Executive Order—introduced a Senate bill in 2015 that would have
24 conditioned the receipt of certain, law-enforcement-related federal funds on compliance with
25 federal immigration enforcement directives and priorities. The bill died in committee, as did its
26 counterpart in the House of Representatives. After Mr. Sessions failed to achieve his policy ends
27 through the legislative process, the President simply imposed them through the Executive Order,
28 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.

JURISDICTION AND VENUE

INTRADISTRICT ASSIGNMENT

THE PARTIES

5

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.

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

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

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

15 Santa Clara Valley Medical Center

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

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

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

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

8 Social Services Agency

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

13 33. The SSA receives over \$300 million in federal funding each year—approximately
14 40% of its budget—to support these essential safety-net services. Nearly all of the County's SSA
15 funding is reimbursement-based, requiring the County to front the money necessary to provide
16 services to its residents now based on the federal government's promise to reimburse the County
17 later.

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

24 Behavioral Health Services Department

25 35. The County's Behavioral Health Services Department provides essential services
26 to residents struggling with mental illness and substance abuse. It offers a broad range of services
27 including mental health urgent care, crisis intervention, housing and support services, psychiatric
28

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

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

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

10 Public Health Department

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

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

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

27 Office of Emergency Services
28

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

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

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

16 Other Federal Funding

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

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

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

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

4 46. Each year, as required by the County Charter, the County Executive develops a
5 recommended budget for approval by the Board of Supervisors. To develop that budget, County
6 staff carefully analyzes and weighs a multitude of factors including anticipated revenues, specific
7 service needs for diverse subsets of County residents, salary and benefits costs for the County's
8 18,000 employees, and an array of local priorities.

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

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

20 49. The Executive Order has thrown the County's budget process into chaos, as the
21 County suddenly faces the possibility that more than \$1 billion of its anticipated revenues could
22 disappear at the executive branch's whim. The County's contingency reserve is approximately
23 \$130 million, so there is no means by which the County could possibly absorb the resulting
24 shortfall. Because the County's federally funded programs operate continuously, the County
25 must decide whether to continue incurring hundreds of millions of dollars in costs that may never
26 be reimbursed by the federal government, or instead discontinue basic safety-net services
27 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 detainees are "requests," but that ICE would neither reimburse detention costs nor indemnify localities for any liability arising from responding to detainer requests.

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

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

19 57. Additionally, in 2010, the County Board of Supervisors adopted a Resolution
20 affirming the separation between County services and the enforcement of federal civil
21 immigration law. The Resolution prohibits County employees, including law enforcement
22 officers, from initiating an inquiry or enforcement action based solely on an individual's actual or
23 suspected immigration status, national origin, race/ethnicity, or English-speaking ability. It also
24 prohibits the use of County funds or resources to investigate, question, apprehend, or arrest an
25 individual solely because of an actual or suspected violation of immigration law, or to transmit to
26
27
28

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

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

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

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

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

24 ³ Starting in 2016, two federal grant programs in which the County had participated—the State
25 Criminal Alien Assistance Program (SCAAP) and Edward Byrne Memorial Justice Assistance
26 Grant (JAG)—required the County to certify its compliance with “all applicable federal laws.”
27 On July 7, 2016, the U.S. Department of Justice issued guidance explaining that 8 U.S.C. § 1373,
28 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.

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

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

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

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

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

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

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

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

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

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

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

27 ⁴ Memorandum from Michael E. Horowitz, Inspector Gen., to Karol V. Mason, Assistant Att'y
28 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").

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

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

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

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

- 15 i) have criminal charges that have not been resolved;
- 16 ii) “have committed acts that constitute a chargeable criminal offense” even if
17 no charges have been filed;
- 18 iii) are arriving without prior admission (e.g., asylum-seekers);
- 19 iv) have “abused any program related to receipt of public benefits”; or
- 20 v) “otherwise pose a risk to public safety or national security” in the judgment
21 of “an immigration officer,” not an immigration judge. Executive Order, Sec. 5 at 8800.

22 72. These vague categories sweep in millions of individuals who have not been
23 convicted of any criminal offense, let alone a serious or violent one. For example, “acts that
24 constitute a chargeable criminal offense” could include a wide range of ordinary and
25 nonthreatening conduct. Leaving unbridled discretion in the hands of immigration officers to
26 brand individuals as “criminals” or “risks to public safety or national security”—without any
27 clear standards or criteria—raises serious due process concerns.
28

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

1 with 8 U.S.C. 1373,” then those jurisdictions will be rendered “not eligible to receive Federal
2 grants.”⁵ *Id.*

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

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

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

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

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

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

27 ⁶ The federal government has expanded on its view of what Section 1373 requires through
28 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).

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

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

14 83. The order provides a mechanism by which certain monies “deemed necessary for
15 law enforcement purposes” may be exempted from the blanket Defunding Provision. *Id.* That
16 exemption gets the law exactly backwards, because funds related to law enforcement bear at least
17 some connection to compliance with 8 U.S.C. § 1373, and are arguably the only funds that
18 Congress could conceivably have tied to such compliance in a constitutional manner. *See S.*
19 *1640, 114th Cong. § 114(d) (2015); H.R. 1148, 114th Cong. § 114(d) (2015).* But Congress has
20 never imposed any such restriction, and in fact has specifically considered and rejected similar
21 restrictions. *See id.*

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

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

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

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

9 The Attorney General shall take appropriate enforcement action against any entity
10 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.

11 Executive Order, Sec. 9(a) at 8801 (the “Enforcement Provision”).

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

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

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

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

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

17 **3. The President’s and his subordinates’ statements reveal the Executive**
18 **Order’s unconstitutionally broad scope.**

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

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

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

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

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

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

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

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

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

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

18 vii) Mr. Spicer, the President’s press secretary, reiterated this goal on February
19 1, 2017, stating in a press briefing, “I think the President’s goal in *ending sanctuary cities* is
20 pretty clear. . . . [T]he President has been very clear through his executive order that *federal*
21 *funds, paid for by hardworking taxpayers, should not be used to help fund sanctuary cities.*”
22 Press Release, The White House, Office of the Press Secretary, *Press Briefing by Press Secretary*
23 *Sean Spicer, 2/1/2017, #6* (Feb. 1, 2017), [https://www.whitehouse.gov/the-press-](https://www.whitehouse.gov/the-press-office/2017/02/01/press-briefing-press-secretary-sean-spicer-212017-6)
24 office/2017/02/01/press-briefing-press-secretary-sean-spicer-212017-6 (emphases added).

25 94. The Executive Order itself confirms the sweeping scope outlined by the President
26 and his aides. It cannot refer merely to existing executive power to limit spending; if that is all
27 the order accomplishes, then it is superfluous. There would be no need to order what the
28 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.

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

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

16 "(d) Compliance.—

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

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

28 "(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

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

S. 1640, 111th Cong. § 114(d) (2015).⁷

5 101. Shortly after introducing his bill in the U.S. Senate, Mr. Sessions issued a press
6 release calling on Congress to pass a law restricting federal funds to sanctuary cities—the very
7 authority the President now claims as his own. Senator Sessions said: “I am calling today on
8 Congress to make its first item of business *the immediate passage of legislation to cut off*
9 *relevant federal monies to sanctuary cities.*” News Release, Office of Senator Jeff Sessions,
10 *Senator Sessions Calls on Congress to Take Up Immigration Reform for Americans* (July 9,
11 2015), [http://www.sessions.senate.gov/public/index.cfm/2015/7/senator-sessions-calls-on-](http://www.sessions.senate.gov/public/index.cfm/2015/7/senator-sessions-calls-on-congress-to-take-up-immigration-reform-for-americans)
12 [congress-to-take-up-immigration-reform-for-americans](http://www.sessions.senate.gov/public/index.cfm/2015/7/senator-sessions-calls-on-congress-to-take-up-immigration-reform-for-americans) (emphasis added).

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

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

26
27
28 ⁷ The companion House bill, H.R. 1148, contained an identical provision. See H.R. 1148, 114th
Cong. § 114(d) (2015).

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

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

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

21 106. The President's attempt to secure by executive fiat what Senator Sessions failed to
22 win through the legislative process violates the separation of powers principles that undergird our
23

24 ⁸ Media reports confirm that Senator Sessions played a prominent role in the executive orders that
25 the President issued during his first week in office. One article states that Senator Sessions was
26 the "intellectual godfather" of Mr. Trump's executive orders, and that his longtime chief of staff,
27 along with one of his mentees, drafted the orders. See Philip Rucker & Robert Costa, *Trump's*
28 *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.*

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

8 **D. The County Requires Immediate Relief.**

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

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

18 109. Furthermore, the Executive Order applies to, and purportedly would bar the
19 County from receiving, federal funds to reimburse the County for established programs and
20 services that the County is *currently* providing, and for which Congress has already approved
21 funding. The County is an eligible recipient of, expects to receive, and has made budgeting,
22 programming, and hiring decisions based on these prior congressional funding decisions. Now,
23 the Executive Order purports to require retroactive imposition of the condition that municipalities
24 comply with federal immigration provisions to already-approved funds. This is precisely the sort
25 of “substantial contingent liability” that confers standing because it “immediately and directly
26 affects the borrowing power, financial strength, and fiscal planning” of the County. *See Clinton*
27 *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)).

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

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

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

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

26 125. Third, the Supreme Court has "repeatedly said that Congress may condition grants
27 under the spending power only in ways reasonably related to the purpose of the federal program"
28

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

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

7 127. Fifth, "in some circumstances the financial inducement offered by Congress might
8 be so coercive as to pass the point at which 'pressure turns to compulsion.'" *Dole*, 483 U.S. at
9 211 (quoting *Steward Machine Co. v. Davis*, 301 U.S. 548, 590 (1937)). Congress may not
10 constitutionally "force the States to implement a federal program," *NFIB*, 132 S. Ct. at 2602, and
11 may not end-run this limitation by imposing conditions on federal spending that are so draconian
12 that they amount to "a gun to the head" leaving the state or municipality no realistic choice but to
13 comply. *Id.* at 2604.

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

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

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

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

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

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

- 9 i) The Defunding Provision makes no distinction between federal funding
10 already approved by Congress and funding to be approved in the future, and
11 thus applies equally to both categories. But Congress, let alone the President,
12 could not impose a condition on federal spending retroactively.
- 13 ii) The Defunding Provision applies to *all* federal funding related to any subject.
14 It is not restricted to funding related to a legitimate federal interest in
15 enforcement of immigration laws by municipalities. But the Constitution
16 requires that any federal funding conditions Congress imposes must be
17 reasonably related to the federal interest to which the expenditure relates (the
18 “*Dole* nexus test”). The Executive Order fails that test utterly: the Defunding
19 Provision applies to, and would bar the County from being eligible for funding
20 for, Medicare and Medicaid programs, transportation, child welfare services,
21 elder care programs, mental health services, immunization and vaccine
22 programs, and a myriad of other programs and services that have absolutely
23 nothing to do with the enforcement of federal immigration laws by state or
24 local governments. *See supra* ¶¶ 27–45.⁹

25 ⁹ The Defunding Provision not only fails the *Dole* nexus test—it gets it exactly backwards. It
26 contains only one possible exception, for funding “deemed necessary for law enforcement
27 purposes,” which the Attorney General or Secretary of Homeland Security discretionarily allow
28 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.

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

13 iv) The new funding conditions the Executive Order imposes are profoundly
14 coercive to the County. Affecting all federal funds, the conditions go far
15 beyond the potential withdrawal of Medicaid funds, which the Supreme Court
16 described as an unconstitutional "gun to the head" in *NFIB*. As set forth
17 above, the County receives about \$1 billion in federal funding per year,
18 amounting to approximately 15% of its total budget. If the President makes
19 good on his threat to strip all of this federal funding away, it would decimate
20 the County's ability to provide basic services, including health care, to its
21 residents. Furthermore, unlike the congressional enactment in *NFIB*, which
22 permitted withdrawal of Medicaid funding if the Secretary of Health and
23 Human Services so decided, the Executive Order here unambiguously requires
24 the Attorney General and the Secretary of Homeland Security to "ensure that
25 jurisdictions" refusing the condition "are not eligible to receive Federal
26 grants." In other words, the conditions the Executive Order imposes are not
27 only broader in scope than the unconstitutional condition Congress imposed in
28 *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).

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

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

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

19 141. Other portions of the Executive Order are equally vague. Section 6, for example,
20 requires assessment of “fines and penalties” against not only undocumented persons but also
21 anyone who “facilitate[s] their presence in the United States.” *Id.* Sec. 6 at 8800. It is unclear
22 what “facilitate” means in this context, and could apply to County employees who provide
23 undocumented persons with basic, safety-net services, landlords, employers, friends, family,
24 churches or non-profit organizations who assist undocumented persons, or even lawyers who
25 represent undocumented persons in immigration proceedings. Not only does this standardless
26 provision exceed the President’s authority by legislating through executive order, but it also
27 encourages and sanctions arbitrary, subjective, and discriminatory enforcement.
28

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

Violation of the Tenth Amendment

CONCLUSION

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

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

13 **PRAYER FOR RELIEF**

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

- 16 1. A declaration that Section 9 of the Executive Order is unconstitutional and invalid
17 on its face;
- 18 2. A declaration that the Section 9 of the Executive Order is unconstitutional and
19 invalid as applied to the policies and practices of the County;
- 20 3. A preliminary and permanent injunction enjoining Defendants from enforcing
21 Section 9 of the Executive Order, or taking any other action in furtherance of any withholding or
22 conditioning of federal funds based on the Executive Order;
- 23 4. A declaration that Section 6 of the Executive Order is unconstitutional and invalid
24 on its face;
- 25 5. A declaration that Section 6 of the Executive Order is unconstitutional and invalid
26 as applied to the policies and practices of the County;
- 27 6. A preliminary and permanent injunction enjoining Defendants from taking any
28 action, or exercising any purported authority, against “those who facilitate [an alien’s] presence in

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

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

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

4
5 Respectfully submitted,

6 Dated: February 3, 2017

OFFICE OF THE COUNTY COUNSEL,
COUNTY OF SANTA CLARA

7
8 By: 

JAMES R. WILLIAMS, County Counsel
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14 Dated: February 3, 2017

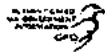
KEKER & VAN NEST LLP

16 By: /s/ John W. Keker

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SANTA CLARA

EXHIBIT A



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.

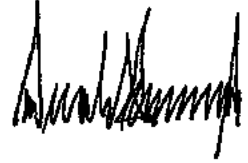
Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.

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.

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.

Sec. 321. Protecting immigrants from convicted sex offenders.

Sec. 322. Penalties for failure to obey removal orders.

Sec. 323. Pardons.

Sec. 324. Convictions.

TITLE IV—VISA SECURITY

Sec. 401. Cancellation of additional visas.

Sec. 402. Visa information sharing.

Sec. 403. Restricting waiver of visa interviews.

Sec. 404. Non-interview of certain ineligible visa applicants.

Sec. 405. Visa refusal and revocation.

Sec. 406. Funding for the visa security program.

Sec. 407. Expedited expansion of visa security program to high-risk posts.

Sec. 408. Expedited clearance and placement of Department of Homeland Security personnel at overseas embassies and consular posts.

Sec. 409. Accreditation requirements.

Sec. 410. Visa fraud.

Sec. 411. Background checks.

Sec. 412. Number of designated school officials.

Sec. 413. Reporting requirement.

Sec. 414. Flight schools not certified by FAA.

Sec. 415. Revocation of accreditation.

Sec. 416. Report on risk assessment.

Sec. 417. Implementation of GAO recommendations.

Sec. 418. Implementation of SEVIS II.

Sec. 419. Definitions.

TITLE V—AID TO U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICERS

Sec. 501. ICE immigration enforcement agents.

Sec. 502. ICE detention enforcement officers.

Sec. 503. Ensuring the safety of ICE officers and agents.

Sec. 504. ICE Advisory Council.

Sec. 505. Pilot program for electronic field processing.

Sec. 506. Additional ICE deportation officers and support staff.

Sec. 507. Additional ICE prosecutors.

TITLE VI—MISCELLANEOUS ENFORCEMENT PROVISIONS

Sec. 601. Timely repatriation.

Sec. 602. Encouraging aliens to depart voluntarily.

Sec. 603. Deterring aliens ordered removed from remaining in the United States unlawfully.

Sec. 604. Reinstatement of removal orders.

Sec. 605. Clarification with respect to definition of admission.

Sec. 606. Reports to Congress.

Sec. 607. Certain activities restricted.

Sec. 608. GAO study on deaths in custody.

Sec. 609. Removal proceedings.

Sec. 610. Eliminating backlog in the immigration court system.

Sec. 611. Proper filing of income taxes required for good moral character.

TITLE I—IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES

(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

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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:

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“(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”;

(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).”; 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 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;

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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

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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:

“(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)) is amended—

(1) in paragraph (1)(C), by inserting “, in consultation with the Secretary of Homeland Security,” after “if the Secretary”;

“(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.**—

(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 or 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)

“(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

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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

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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)”;

(vi) in subparagraph (E), as redesignated, by striking “subparagraph (B)” each place that term appears and inserting “subparagraph (C)”;

(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

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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

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. COWDY (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

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.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Michael Davis, Jr. in
5 Honor of State and Local Law Enforcement Act”.

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

7 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, deportability, and detention of drunk drivers.
- Sec. 311. Detention of dangerous aliens.

3

- Sec. 312. Grounds of inadmissibility and deportability for alien gang members.
- Sec. 313. Extension of identity theft offenses.
- Sec. 314. Laundering of monetary instruments.
- 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.
- Sec. 321. Protecting immigrants from convicted sex offenders.
- Sec. 322. Clarification to crimes of violence and crimes involving moral turpitude.
- Sec. 323. Penalties for failure to obey removal orders.
- Sec. 324. Pardons.
- Sec. 325. Convictions.

TITLE IV—VISA SECURITY

- 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.
- Sec. 406. Funding for the visa security program.
- Sec. 407. Expedited expansion of visa security program to high-risk posts.
- Sec. 408. Expedited clearance and placement of Department of Homeland Security personnel at overseas embassies and consular posts.
- Sec. 409. Accreditation requirements.
- Sec. 410. Visa fraud.
- Sec. 411. Background checks.
- Sec. 412. Number of designated school officials.
- Sec. 413. Reporting requirement.
- Sec. 414. Flight schools not certified by FAA.
- Sec. 415. Revocation of accreditation.
- Sec. 416. Report on risk assessment.
- Sec. 417. Implementation of GAO recommendations.
- Sec. 418. Implementation of SEVIS II.
- Sec. 419. Definitions.

TITLE V—AID TO U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT OFFICERS

- Sec. 501. ICE immigration enforcement agents.
- Sec. 502. ICE detention enforcement officers.
- Sec. 503. Ensuring the safety of ICE officers and agents.
- Sec. 504. ICE Advisory Council.
- Sec. 505. Pilot program for electronic field processing.
- Sec. 506. Additional ICE deportation officers and support staff.
- Sec. 507. Additional ICE prosecutors.

TITLE VI—MISCELLANEOUS ENFORCEMENT PROVISIONS

- Sec. 601. Timely repatriation.
- Sec. 602. Encouraging aliens to depart voluntarily.
- Sec. 603. Deterring aliens ordered removed from remaining in the United States unlawfully.
- Sec. 604. Reinstatement of removal orders.
- Sec. 605. Clarification with respect to definition of admission.
- Sec. 606. Reports to Congress on the exercise and abuse of prosecutorial discretion.
- Sec. 607. Certain activities restricted.
- Sec. 608. GAO study on deaths in custody.
- Sec. 609. Removal proceedings.

1 TITLE I—IMMIGRATION LAW EN- 2 FORCEMENT BY STATES AND 3 LOCALITIES

4 SEC. 101. DEFINITIONS AND SEVERABILITY.

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

9 (b) SECRETARY DEFINED.—For the purpose of this
10 title, the term “Secretary” means the Secretary of Home-
11 land Security.

12 (c) SEVERABILITY.—If any provision of this title, or
13 the application of such provision to any person or cir-
14 cumstance, is held invalid, the remainder of this title, and
15 the application of such provision to other persons not simi-
16 larly situated or to other circumstances, shall not be af-
17 fected by such invalidation.

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

3 (a) IN GENERAL.—Subject to section 274A(h)(2) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1324a(h)(2)), States, or political subdivisions of States,
6 may enact, implement and enforce criminal penalties that
7 penalize the same conduct that is prohibited in the crimi-
8 nal provisions of immigration laws (as defined in section
9 101(a)(17) of the Immigration and Nationality Act (8
10 U.S.C. 1101(a)(17))), as long as the criminal penalties do
11 not exceed the relevant Federal criminal penalties (without
12 regard to ancillary issues such as the availability of proba-
13 tion or pardon). States, or political subdivisions of States,
14 may enact, implement and enforce civil penalties that pe-
15 nalize the same conduct that is prohibited in the civil pro-
16 visions of immigration laws (as defined in such section
17 101(a)(17)), as long as the civil penalties do not exceed
18 the relevant Federal civil penalties.

19 (b) LAW ENFORCEMENT PERSONNEL.—Subject to
20 section 274A(h)(2) of the Immigration and Nationality
21 Act (8 U.S.C. 1324a(h)(2)), law enforcement personnel of
22 a State, or of a political subdivision of a State, may inves-
23 tigate, identify, apprehend, arrest, detain, or transfer to
24 Federal custody aliens for the purposes of enforcing the
25 immigration laws of the United States to the same extent
26 as Federal law enforcement personnel. Law enforcement

1 personnel of a State, or of a political subdivision of a
2 State, may also investigate, identify, apprehend, arrest, or
3 detain aliens for the purposes of enforcing the immigration
4 laws of a State or of a political subdivision of State, as
5 long as those immigration laws are permissible under this
6 section. Law enforcement personnel of a State, or of a po-
7 litical subdivision of a State, may not admit aliens to or
8 remove them from the United States.

9 **SEC. 103. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
10 **TIONAL CRIME INFORMATION CENTER DATA-**
11 **BASE.**

12 (a) PROVISION OF INFORMATION TO THE NCIC.—
13 Not later than 180 days after the date of the enactment
14 of this Act and periodically thereafter as updates may re-
15 quire, the Secretary shall provide the National Crime In-
16 formation Center of the Department of Justice with all
17 information that the Secretary may possess regarding any
18 alien against whom a final order of removal has been
19 issued, any alien who has entered into a voluntary depar-
20 ture agreement, any alien who has overstayed their au-
21 thorized period of stay, and any alien whose visa has been
22 revoked. The National Crime Information Center shall
23 enter such information into the Immigration Violators File
24 of the National Crime Information Center database, re-
25 gardless of whether—

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

3 (2) the alien has already been removed; or

4 (3) sufficient identifying information is avail-
5 able with respect to the alien.

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

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

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

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

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

16 “(4) acquire, collect, classify, and preserve
17 records of violations by aliens of the immigration
18 laws of the United States, regardless of whether any
19 such alien has received notice of the violation or
20 whether sufficient identifying information is avail-
21 able with respect to any such alien or whether any
22 such alien has already been removed from the
23 United States; and”.

24 (2) EFFECTIVE DATE.—The Attorney General
25 and the Secretary shall ensure that the amendment

1 made by paragraph (1) is implemented by not later
2 than 6 months after the date of the enactment of
3 this Act.

4 **SEC. 104. TECHNOLOGY ACCESS.**

5 States shall have access to Federal programs or tech-
6 nology directed broadly at identifying inadmissible or de-
7 portable aliens.

8 **SEC. 105. STATE AND LOCAL LAW ENFORCEMENT PROVI-**
9 **SION OF INFORMATION ABOUT APPRE-**
10 **HENDED ALIENS.**

11 (a) **PROVISION OF INFORMATION.**—In compliance
12 with section 642(a) of the Illegal Immigration Reform and
13 Immigrant Responsibility Act of 1996 (8 U.S.C. 1373)
14 and section 434 of the Personal Responsibility and Work
15 Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644),
16 each State, and each political subdivision of a State, shall
17 provide the Secretary of Homeland Security in a timely
18 manner with the information specified in subsection (b)
19 with respect to each alien apprehended in the jurisdiction
20 of the State, or in the political subdivision of the State,
21 who is believed to be inadmissible or deportable.

22 (b) **INFORMATION REQUIRED.**—The information re-
23 ferred to in subsection (a) is as follows:

24 (1) The alien's name.

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

1 (3) A physical description of the alien.

2 (4) The date, time, and location of the encoun-
3 ter with the alien and reason for stopping, detaining,
4 apprehending, or arresting the alien.

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

7 (6) If applicable, the type of any other identi-
8 fication document issued to the alien, any designa-
9 tion number contained on the identification docu-
10 ment, and the issuing entity for the identification
11 document.

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

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

17 (9) The alien's fingerprints, if available or read-
18 ily obtainable.

19 (c) ANNUAL REPORT ON REPORTING.—The Sec-
20 retary shall maintain and annually submit to the Congress
21 a detailed report listing the States, or the political subdivi-
22 sions of States, that have provided information under sub-
23 section (a) in the preceding year.

24 (d) REIMBURSEMENT.—The Secretary shall reim-
25 burse States, and political subdivisions of a State, for all

1 reasonable costs, as determined by the Secretary, incurred
2 by the State, or the political subdivision of a State, as
3 a result of providing information under subsection (a).

4 (c) CONSTRUCTION.—Nothing in this section shall re-
5 quire law enforcement officials of a State, or of a political
6 subdivision of a State, to provide the Secretary with infor-
7 mation related to a victim of a crime or witness to a crimi-
8 nal offense.

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

13 **SEC. 106. FINANCIAL ASSISTANCE TO STATE AND LOCAL**
14 **POLICE AGENCIES THAT ASSIST IN THE EN-**
15 **FORCEMENT OF IMMIGRATION LAWS.**

16 (a) GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING
17 AND PROCESSING CERTAIN ALIENS.—From amounts
18 made available to make grants under this section, the Sec-
19 retary shall make grants to States, and to political subdivi-
20 sions of States, for procurement of equipment, technology,
21 facilities, and other products that facilitate and are di-
22 rectly related to investigating, apprehending, arresting,
23 detaining, or transporting aliens who are inadmissible or
24 deportable, including additional administrative costs in-
25 curred under this title.

1 (b) ELIGIBILITY.—To be eligible to receive a grant
2 under this section, a State, or a political subdivision of
3 a State, must have the authority to, and shall have a writ-
4 ten policy and a practice to, assist in the enforcement of
5 the immigration laws of the United States in the course
6 of carrying out the routine law enforcement duties of such
7 State or political subdivision of a State. Entities covered
8 under this section may not have any policy or practice that
9 prevents local law enforcement from inquiring about a sus-
10 pect's immigration status.

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

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

17 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
18 FACILITIES.—

19 (1) IN GENERAL.—The Secretary shall con-
20 struct or acquire, in addition to existing facilities for
21 the detention of aliens, detention facilities in the
22 United States, for aliens detained pending removal
23 from the United States or a decision regarding such
24 removal. Each facility shall have a number of beds
25 necessary to effectuate the purposes of this title.

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

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
5 Section 241(g)(1) of the Immigration and Nationality Act
6 (8 U.S.C. 1231(g)(1)) is amended by striking “may ex-
7 pend” and inserting “shall expend”.

8 **SEC. 108. FEDERAL CUSTODY OF INADMISSIBLE AND DE-**
9 **PORTABLE ALIENS IN THE UNITED STATES**
10 **APPREHENDED BY STATE OR LOCAL LAW EN-**
11 **FORCEMENT.**

12 (a) STATE APPREHENSION.—

13 (1) IN GENERAL.—Title II of the Immigration
14 and Nationality Act (8 U.S.C. 1151 et seq.) is
15 amended by inserting after section 240C the fol-
16 lowing:

17 “CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS
18 PRESENT IN THE UNITED STATES

19 “SEC. 240D. (a) TRANSFER OF CUSTODY BY STATE
20 AND LOCAL OFFICIALS.—If a State, or a political subdivi-
21 sion of the State, exercising authority with respect to the
22 apprehension or arrest of an inadmissible or deportable
23 alien submits to the Secretary of Homeland Security a re-
24 quest that the alien be taken into Federal custody, not-
25 withstanding any other provision of law, regulation, or pol-
26 icy the Secretary—

1 “(1) shall take the alien into custody not later
2 than 48 hours (excluding Saturdays, Sundays, and
3 holidays) after the detainer has been issued following
4 the conclusion of the State or local charging process
5 or dismissal process, or if no State or local charging
6 or dismissal process is required, the Secretary
7 should issue a detainer and take the alien into cus-
8 tody not later than 48 hours (excluding Saturdays,
9 Sundays, and holidays) after the alien is appre-
10 hended, in order to determine whether the alien
11 should be detained, placed in removal proceedings,
12 released, or removed; and

13 “(2) shall request that the relevant State or
14 local law enforcement agency temporarily hold the
15 alien in their custody or transport the alien for
16 transfer to Federal custody.

17 “(b) POLICY ON DETENTION IN FEDERAL, CON-
18 TRACT, STATE, OR LOCAL DETENTION FACILITIES.—In
19 carrying out section 241(g)(1), the Attorney General or
20 Secretary of Homeland Security shall ensure that an alien
21 arrested under this title shall be held in custody, pending
22 the alien’s examination under this section, in a Federal,
23 contract, State, or local prison, jail, detention center, or
24 other comparable facility. Notwithstanding any other pro-

1 vision of law, regulation or policy, such facility is adequate
2 for detention, if—

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

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

8 “(3) the facility satisfies the standards for the
9 housing, care, and security of persons held in cus-
10 tody by a United States Marshal.

11 “(c) REIMBURSEMENT.—The Secretary of Homeland
12 Security shall reimburse a State, and a political subdivi-
13 sion of a State, for all reasonable expenses, as determined
14 by the Secretary, incurred by the State, or political sub-
15 division, as a result of the incarceration and transpor-
16 tation of an alien who is inadmissible or deportable as de-
17 scribed in subsections (a) and (b). Compensation provided
18 for costs incurred under such subsections shall be the av-
19 erage cost of incarceration of a prisoner in the relevant
20 State, as determined by the chief executive officer of a
21 State, or of a political subdivision of a State, plus the cost
22 of transporting the alien from the point of apprehension
23 to the place of detention, and to the custody transfer point
24 if the place of detention and place of custody are different.

1 “(d) SECURE FACILITIES.—The Secretary of Home-
2 land Security shall ensure that aliens incarcerated pursu-
3 ant to this title are held in facilities that provide an appro-
4 priate level of security.

5 “(e) TRANSFER.—

6 “(1) IN GENERAL.—In carrying out this sec-
7 tion, the Secretary of Homeland Security shall es-
8 tablish a regular circuit and schedule for the prompt
9 transfer of apprehended aliens from the custody of
10 States, and political subdivisions of a State, to Fed-
11 eral custody.

12 “(2) CONTRACTS.—The Secretary may enter
13 into contracts, including appropriate private con-
14 tracts, to implement this subsection.”.

15 “(2) CLERICAL AMENDMENT.—The table of con-
16 tents of such Act is amended by inserting after the
17 item relating to section 240C the following new item:

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

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

Exhibit 3 - Part 3 of 4

1 (c) EFFECTIVE DATE.—Section 240D of the Immi-
2 gration and Nationality Act, as added by subsection (a),
3 shall take effect on the date of the enactment of this Act,
4 except that subsection (e) of such section shall take effect
5 on the date that is 120 day after the date of the enactment
6 of this Act.

7 **SEC. 109. TRAINING OF STATE AND LOCAL LAW ENFORCE-**
8 **MENT PERSONNEL RELATING TO THE EN-**
9 **FORCEMENT OF IMMIGRATION LAWS.**

10 (a) ESTABLISHMENT OF TRAINING MANUAL AND
11 POCKET GUIDE.—Not later than 180 days after the date
12 of the enactment of this Act, the Secretary shall estab-
13 lish—

14 (1) a training manual for law enforcement per-
15 sonnel of a State, or of a political subdivision of a
16 State, to train such personnel in the investigation,
17 identification, apprehension, arrest, detention, and
18 transfer to Federal custody of inadmissible and de-
19 portable aliens in the United States (including the
20 transportation of such aliens across State lines to
21 detention centers and the identification of fraudulent
22 documents); and

23 (2) an immigration enforcement pocket guide
24 for law enforcement personnel of a State, or of a po-

1 litical subdivision of a State, to provide a quick ref-
2 erence for such personnel in the course of duty.

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

7 (c) APPLICABILITY.—Nothing in this section shall be
8 construed to require State or local law enforcement per-
9 sonnel to carry the training manual or pocket guide with
10 them while on duty.

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

14 (e) TRAINING FLEXIBILITY.—

15 (1) IN GENERAL.—The Secretary shall make
16 training of State and local law enforcement officers
17 available through as many means as possible, includ-
18 ing through residential training at the Center for
19 Domestic Preparedness, onsite training held at State
20 or local police agencies or facilities, online training
21 courses by computer, teleconferencing, and video-
22 tape, or the digital video display (DVD) of a train-
23 ing course or courses. E-learning through a secure,
24 encrypted distributed learning system that has all its
25 servers based in the United States, is scalable, sur-

1 vivable, and can have a portal in place not later than
2 30 days after the date of the enactment of this Act,
3 shall be made available by the Federal Law Enforce-
4 ment Training Center Distributed Learning Pro-
5 gram for State and local law enforcement personnel.

6 (2) FEDERAL PERSONNEL TRAINING.—The
7 training of State and local law enforcement per-
8 sonnel under this section shall not displace the train-
9 ing of Federal personnel.

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

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

19 **SEC. 110. IMMUNITY.**

20 Notwithstanding any other provision of law, a law en-
21 forcement officer of a State or local law enforcement agen-
22 cy who is acting within the scope of the officer's official
23 duties shall be immune, to the same extent as a Federal
24 law enforcement officer, from personal liability arising out
25 of the performance of any duty described in this title, in-

1 cluding the authorities to investigate, identify, apprehend,
2 arrest, detain, or transfer to Federal custody, an alien for
3 the purposes of enforcing the immigration laws of the
4 United States (as defined in section 101(a)(17) of the Im-
5 migration and Nationality Act (8 U.S.C. 1101(a)(17))) or
6 the immigration laws of a State or a political subdivision
7 of a State.

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

9 (a) CONTINUATION AND EXPANSION.—

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

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

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

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

18 (2) EXPANSION.—The program shall be ex-
19 tended to all States. Any State that receives Federal
20 funds for the incarceration of criminal aliens (pursu-
21 ant to the State Criminal Alien Assistance Program
22 authorized under section 241(i) of the Immigration
23 and Nationality Act (8 U.S.C. 1231(i)) or other
24 similar program) shall—

25 (A) cooperate with officials of the program;

1 (B) expeditiously and systematically iden-
2 tify criminal aliens in its prison and jail popu-
3 lations; and

4 (C) promptly convey such information to
5 officials of such program as a condition of re-
6 ceiving such funds.

7 (b) AUTHORIZATION FOR DETENTION AFTER COM-
8 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
9 enforcement officers of a State, or of a political subdivision
10 of a State, are authorized to—

11 (1) hold a criminal alien for a period of up to
12 48 hours (excluding Saturdays, Sundays, and holi-
13 days) after the alien has completed the alien's sen-
14 tence under State or local law in order to effectuate
15 the transfer of the alien to Federal custody when the
16 alien is inadmissible or deportable; or

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

21 (c) TECHNOLOGY USAGE.—Technology, such as video
22 conferencing, shall be used to the maximum extent prac-
23 ticable in order to make the program available in remote
24 locations. Mobile access to Federal databases of aliens and
25 live scan technology shall be used to the maximum extent

1 practicable in order to make these resources available to
2 State and local law enforcement agencies in remote loca-
3 tions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (2) by striking “Attorney General” each place
24 such term appears thereafter and inserting “Sec-
25 retary”; and

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

3 **SEC. 114. STATE VIOLATIONS OF ENFORCEMENT OF IMMI-**
4 **GRATION LAWS.**

5 (a) IN GENERAL.—Section 642 of the Illegal Immi-
6 gration Reform and Immigrant Responsibility Act of 1996
7 (8 U.S.C. 1373) is amended—

8 (1) by striking “Immigration and Naturaliza-
9 tion Service” each place it appears and inserting
10 “Department of Homeland Security”;

11 (2) in subsection (a), by striking “may” and in-
12 serting “shall”;

13 (3) in subsection (b)—

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

16 (B) by striking “doing any of the following
17 with respect to information” and inserting “un-
18 dertaking any of the following law enforcement
19 activities”; and

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

22 “(1) Notifying the Federal Government regard-
23 ing the presence of inadmissible and deportable
24 aliens who are encountered by law enforcement per-
25 sonnel of a State or political subdivision of a State.

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

3 “(3) Issuing policies in the form of a resolu-
4 tions, ordinances, administrative actions, general or
5 special orders, or departmental policies that violate
6 Federal law or restrict a State or political subdivi-
7 sion of a State from complying with Federal law or
8 coordinating with Federal law enforcement.”; and

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

10 “(d) COMPLIANCE.—

11 “(1) IN GENERAL.—A State, or a political sub-
12 division of a State, that has in effect a statute, pol-
13 icy, or practice that prohibits law enforcement offi-
14 cers of the State, or of a political subdivision of the
15 State, from assisting or cooperating with Federal
16 immigration law enforcement in the course of car-
17 rying out the officers’ routine law enforcement du-
18 ties shall not be eligible to receive—

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

1 “(B) any other law enforcement or Depart-
2 ment of Homeland Security grant.

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

8 “(3) REPORTS.—The Attorney General shall
9 issue a report concerning the compliance of any par-
10 ticular State or political subdivision at the request of
11 the House or Senate Judiciary Committee. Any ju-
12 risdiction that is found to be out of compliance shall
13 be ineligible to receive Federal financial assistance
14 as provided in paragraph (1) for a minimum period
15 of 1 year, and shall only become eligible again after
16 the Attorney General certifies that the jurisdiction is
17 in compliance.

18 “(4) REALLOCATION.—Any funds that are not
19 allocated to a State or to a political subdivision of
20 a State, due to the failure of the State, or of the po-
21 litical subdivision of the State, to comply with sub-
22 section (c) shall be reallocated to States, or to polit-
23 ical subdivisions of States, that comply with such
24 subsection.

1 “(c) CONSTRUCTION.—Nothing in this section shall
2 require law enforcement officials from States, or from po-
3 litical subdivisions of States, to report or arrest victims
4 or witnesses of a criminal offense.”.

5 (b) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on the date of the enactment
7 of this Act, except that subsection (d) of section 642 of
8 the Illegal Immigration Reform and Immigrant Responsi-
9 bility Act of 1996 (8 U.S.C. 1373), as added by this sec-
10 tion, shall take effect beginning one year after the date
11 of the enactment of this Act.

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

13 (a) IN GENERAL.—Except as otherwise provided by
14 Federal law or rule of procedure, the Secretary of Home-
15 land Security shall execute all lawful writs, process, and
16 orders issued under the authority of the United States,
17 and shall command all necessary assistance to execute the
18 Secretary’s duties.

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

1 transfer to Federal custody, shall not be eligible to re-
2 ceive—

3 (1) any of the funds that would otherwise be al-
4 located to the State or political subdivision under
5 section 241(i) of the Immigration and Nationality
6 Act (8 U.S.C. 1231(i)) or the “Cops on the Beat”
7 program under part Q of title I of the Omnibus
8 Crime Control and Safe Streets Act of 1968 (42
9 U.S.C. 3796dd et seq.); or

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

12 (c) IMMUNITY.—A State or a political subdivision of
13 a State acting in compliance with a Department of Home-
14 land Security detainer who temporarily holds aliens in its
15 custody so that they may be taken into Federal custody,
16 or transports the aliens for transfer to Federal custody,
17 shall be considered to be acting under color of Federal
18 authority for purposes of determining its liability, and im-
19 munity from suit, in civil actions brought by the aliens
20 under Federal or State law.

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

1 **TITLE II—NATIONAL SECURITY**

2 **SEC. 201. REMOVAL OF, AND DENIAL OF BENEFITS TO, TER-**
3 **RORIST ALIENS.**

4 (a) **ASYLUM.**—Section 208(b)(2)(A) of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1158(b)(2)(A)) is
6 amended—

7 (1) by inserting “or the Secretary of Homeland
8 Security” after “if the Attorney General”; and

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

10 “(v) the alien is described in subpara-
11 graph (B)(i) or (F) of section 212(a)(3),
12 unless, in the case of an alien described in
13 subparagraph (IV), (V), or (IX) of section
14 212(a)(3)(B)(i), the Secretary of Home-
15 land Security or the Attorney General de-
16 termines, in the discretion of the Secretary
17 or the Attorney General, that there are not
18 reasonable grounds for regarding the alien
19 as a danger to the security of the United
20 States; or”.

21 (b) **CANCELLATION OF REMOVAL.**—Section
22 240A(c)(4) of such Act (8 U.S.C. 1229b(c)(4)) is amend-
23 ed—

24 (1) by striking “inadmissible under” and insert-
25 ing “described in”; and

1 (2) by striking “deportable under” and insert-
2 ing “described in”.

3 (c) VOLUNTARY DEPARTURE.—Section
4 240B(b)(1)(C) of such Act (8 U.S.C. 1229c(b)(1)(C)) is
5 amended by striking “deportable under section
6 237(a)(2)(A)(iii) or section 237(a)(4);” and inserting “de-
7 scribed in paragraph (2)(A)(iii) or (4) of section 237(a);”.

8 (d) RESTRICTION ON REMOVAL.—Section
9 241(b)(3)(B) of such Act (8 U.S.C. 1231(b)(3)(B)) is
10 amended—

11 (1) in the matter preceding clause (i), by insert-
12 ing “or the Secretary of Homeland Security” after
13 “Attorney General” each place it appears;

14 (2) in clause (iii), by striking “or” at the end;

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

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

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

20 “(v) the alien is described in subpara-
21 graph (B)(i) or (F) of section 212(a)(3),
22 unless, in the case of an alien described in
23 subparagraph (IV), (V), or (IX) of section
24 212(a)(3)(B)(i), the Secretary of Home-
25 land Security or the Attorney General de-

1 termines, in discretion of the Secretary or
2 the Attorney General, that there are not
3 reasonable grounds for regarding the alien
4 as a danger to the security of the United
5 States; or”.

6 (e) RECORD OF ADMISSION.—

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

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

12 “SEC. 249. The Secretary of Homeland Security, in
13 the discretion of the Secretary and under such regulations
14 as the Secretary may prescribe, may enter a record of law-
15 ful admission for permanent residence in the case of any
16 alien, if no such record is otherwise available and the
17 alien—

18 “(1) entered the United States before January
19 1, 1972;

20 “(2) has continuously resided in the United
21 States since such entry;

22 “(3) has been a person of good moral character
23 since such entry;

24 “(4) is not ineligible for citizenship;

25 “(5) is not described in paragraph (1)(A)(iv),
26 (2), (3), (6)(C), (6)(E), or (8) of section 212(a); and

1 “(6) did not, at any time, without reasonable
2 cause fail or refuse to attend or remain in attend-
3 ance at a proceeding to determine the alien’s inad-
4 missibility or deportability.

5 Such recordation shall be effective as of the date of ap-
6 proval of the application or as of the date of entry if such
7 entry occurred prior to July 1, 1924.”.

8 (2) CLERICAL AMENDMENT.—The table of con-
9 tents for such Act is amended by amending the item
10 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.”.

11 (f) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on the date of enactment of
13 this Act and sections 208(b)(2)(A), 212(a), 240A, 240B,
14 241(b)(3), and 249 of the Immigration and Nationality
15 Act, as so amended, shall apply to—

16 (1) all aliens in removal, deportation, or exclu-
17 sion proceedings;

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

20 (3) with respect to aliens and applications de-
21 scribed in paragraph (1) or (2) of this subsection,
22 acts and conditions constituting a ground for exclu-
23 sion, deportation, or removal occurring or existing

1 before, on, or after the date of the enactment of this
2 Act.

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

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

7 (1) by inserting after paragraph (1) the fol-
8 lowing:

9 “(2) one who the Secretary of Homeland Secu-
10 rity or Attorney General determines to have been at
11 any time an alien described in section 212(a)(3) or
12 237(a)(4), which determination may be based upon
13 any relevant information or evidence, including clas-
14 sified, sensitive, or national security information;”;

15 (2) in paragraph (8), by inserting “, regardless
16 whether the crime was classified as an aggravated
17 felony at the time of conviction, except that the Sec-
18 retary of Homeland Security or Attorney General
19 may, in the unreviewable discretion of the Secretary
20 or Attorney General, determine that this paragraph
21 shall not apply in the case of a single aggravated fel-
22 ony conviction (other than murder, manslaughter,
23 homicide, rape, or any sex offense when the victim
24 of such sex offense was a minor) for which comple-
25 tion of the term of imprisonment or the sentence

1 (whichever is later) occurred 10 or more years prior
2 to the date of application” after “(as defined in sub-
3 section (a)(43))”; and

4 (3) in the matter following paragraph (9), by
5 striking the first sentence and inserting the fol-
6 lowing: “The fact that any person is not within any
7 of the foregoing classes shall not preclude a discre-
8 tionary finding for other reasons that such a person
9 is or was not of good moral character. The Secretary
10 or the Attorney General shall not be limited to the
11 applicant’s conduct during the period for which good
12 moral character is required, but may take into con-
13 sideration as a basis for determination the appli-
14 cant’s conduct and acts at any time.”.

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

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

22 (c) TECHNICAL CORRECTION TO THE INTELLIGENCE
23 REFORM ACT.—Section 5504(2) of the Intelligence Re-
24 form and Terrorism Prevention Act of 2004 (Public Law

1 108–458) is amended by striking “adding at the end” and
2 inserting “inserting after paragraph (8)”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 subsections (a) and (b) shall take effect on the date of
5 enactment of this Act, shall apply to any act that occurred
6 before, on, or after such date and shall apply to any appli-
7 cation for naturalization or any other benefit or relief, or
8 any other case or matter under the immigration laws
9 pending on or filed after such date. The amendments
10 made by subsection (c) shall take effect as if enacted in
11 the Intelligence Reform and Terrorism Prevention Act of
12 2004 (Public Law 108–458).

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

14 (a) **NATURALIZATION OF PERSONS ENDANGERING**
15 **THE NATIONAL SECURITY.**—Section 316 of the Immigra-
16 tion and Nationality Act (8 U.S.C. 1426) is amended by
17 adding at the end the following:

18 “(g) **PERSONS ENDANGERING THE NATIONAL SECU-**
19 **RITY.**—No person shall be naturalized who the Secretary
20 of Homeland Security determines to have been at any time
21 an alien described in section 212(a)(3) or 237(a)(4). Such
22 determination may be based upon any relevant informa-
23 tion or evidence, including classified, sensitive, or national
24 security information.”.

1 (b) CONCURRENT NATURALIZATION AND REMOVAL
2 PROCEEDINGS.—Section 318 of the Immigration and Na-
3 tionality Act (8 U.S.C. 1429) is amended by striking
4 “other Act;” and inserting “other Act; and no application
5 for naturalization shall be considered by the Secretary of
6 Homeland Security or any court if there is pending
7 against the applicant any removal proceeding or other pro-
8 ceeding to determine the applicant’s inadmissibility or de-
9 portability, or to determine whether the applicant’s lawful
10 permanent resident status should be rescinded, regardless
11 of when such proceeding was commenced: *Provided*, That
12 the findings of the Attorney General in terminating re-
13 moval proceedings or in canceling the removal of an alien
14 pursuant to the provisions of this Act, shall not be deemed
15 binding in any way upon the Secretary of Homeland Secu-
16 rity with respect to the question of whether such person
17 has established his eligibility for naturalization as required
18 by this title;”.

19 (c) PENDING DENATURALIZATION OR REMOVAL
20 PROCEEDINGS.—Section 204(b) of the Immigration and
21 Nationality Act (8 U.S.C. 1154(b)) is amended by adding
22 at the end the following: “No petition shall be approved
23 pursuant to this section if there is any administrative or
24 judicial proceeding (whether civil or criminal) pending
25 against the petitioner that could (whether directly or indi-

1 rectly) result in the petitioner's denaturalization or the
2 loss of the petitioner's lawful permanent resident status.”.

3 (d) CONDITIONAL PERMANENT RESIDENTS.—Sec-
4 tions 216(e) and section 216A(e) of the Immigration and
5 Nationality Act (8 U.S.C. 1186a(e) and 1186b(e)) are
6 each amended by striking the period at the end and insert-
7 ing “, if the alien has had the conditional basis removed
8 pursuant to this section.”.

9 (e) DISTRICT COURT JURISDICTION.—Subsection
10 336(b) of the Immigration and Nationality Act (8 U.S.C.
11 1447(b)) is amended to read as follows:

12 “(b) If there is a failure to render a final administra-
13 tive decision under section 335 before the end of the 180-
14 day period after the date on which the Secretary of Home-
15 land Security completes all examinations and interviews
16 conducted under such section, as such terms are defined
17 by the Secretary of Homeland Security pursuant to regu-
18 lations, the applicant may apply to the district court for
19 the district in which the applicant resides for a hearing
20 on the matter. Such court shall only have jurisdiction to
21 review the basis for delay and remand the matter to the
22 Secretary of Homeland Security for the Secretary's deter-
23 mination on the application.”.

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

4 (1) by inserting “, not later than the date that
5 is 120 days after the Secretary of Homeland Secu-
6 rity’s final determination,” after “seek”; and

7 (2) by striking the second sentence and insert-
8 ing the following: “The burden shall be upon the pe-
9 titioner to show that the Secretary’s denial of the
10 application was not supported by facially legitimate
11 and bona fide reasons. Except in a proceeding under
12 section 340, notwithstanding any other provision of
13 law (statutory or nonstatutory), including section
14 2241 of title 28, United States Code, or any other
15 habeas corpus provision, and sections 1361 and
16 1651 of such title, no court shall have jurisdiction
17 to determine, or to review a determination of the
18 Secretary made at any time regarding, whether, for
19 purposes of an application for naturalization, an
20 alien is a person of good moral character, whether
21 the alien understands and is attached to the prin-
22 ciples of the Constitution of the United States, or
23 whether an alien is well disposed to the good order
24 and happiness of the United States.”.

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

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

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

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

12 (2) by inserting after subsection (e) the fol-
13 lowing:

14 “(f)(1) If a person who has been naturalized partici-
15 pates in any act described in paragraph (2), the Attorney
16 General is authorized to find that, as of the date of such
17 naturalization, such person was not attached to the prin-
18 ciples of the Constitution of the United States and was
19 not well disposed to the good order and happiness of the
20 United States at the time of naturalization, and upon such
21 finding shall set aside the order admitting such person to
22 citizenship and cancel the certificate of naturalization as
23 having been obtained by concealment of a material fact
24 or by willful misrepresentation, and such revocation and
25 setting aside of the order admitting such person to citizen-

1 ship and such canceling of certificate of naturalization
2 shall be effective as of the original date of the order and
3 certificate, respectively.

4 “(2) The acts described in this paragraph are the fol-
5 lowing:

6 “(A) Any activity a purpose of which is the op-
7 position to, or the control or overthrow of, the Gov-
8 ernment of the United States by force, violence, or
9 other unlawful means.

10 “(B) Engaging in a terrorist activity (as de-
11 fined in clauses (iii) and (iv) of section
12 212(a)(3)(B)).

13 “(C) Incitement of terrorist activity under cir-
14 cumstances indicating an intention to cause death or
15 serious bodily harm.

16 “(D) Receiving military-type training (as de-
17 fined in section 2339D(e)(1) of title 18, United
18 States Code) from or on behalf of any organization
19 that, at the time the training was received, was a
20 terrorist organization (as defined in section
21 212(a)(3)(B)(vi)).”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall take effect on the date of the enact-
24 ment of this Act and shall apply to acts that occur on
25 or after such date.

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

3 (a) SPECIAL AGRICULTURAL WORKERS.—Section
4 210(b)(6) of the Immigration and Nationality Act (8
5 U.S.C. 1160(b)(6)) is amended—

6 (1) by striking “Attorney General” each place
7 such term appears and inserting “Secretary of
8 Homeland Security”;

9 (2) in subparagraph (A), by striking “Depart-
10 ment of Justice,” and inserting “Department of
11 Homeland Security,”;

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

14 (4) by inserting after subparagraph (B) the fol-
15 lowing:

16 “(C) AUTHORIZED DISCLOSURES.—

17 “(i) CENSUS PURPOSE.—The Sec-
18 retary of Homeland Security may provide,
19 in his discretion, for the furnishing of in-
20 formation furnished under this section in
21 the same manner and circumstances as
22 census information may be disclosed under
23 section 8 of title 13, United States Code.

24 “(ii) NATIONAL SECURITY PUR-
25 POSE.—The Secretary of Homeland Secu-
26 rity may provide, in his discretion, for the

1 furnishing, use, publication, or release of
2 information furnished under this section in
3 any investigation, case, or matter, or for
4 any purpose, relating to terrorism, national
5 intelligence or the national security.”; and

6 (5) in subparagraph (D), as redesignated, by
7 striking “Service” and inserting “Department of
8 Homeland Security”.

9 (b) ADJUSTMENT OF STATUS UNDER THE IMMIGRA-
10 TION REFORM AND CONTROL ACT OF 1986.—Section
11 245A(c)(5) of the Immigration and Nationality Act (8
12 U.S.C. 1255a(c)(5)), is amended—

13 (1) by striking “Attorney General” each place
14 such term appears and inserting “Secretary of
15 Homeland Security”;

16 (2) in subparagraph (A), by striking “Depart-
17 ment of Justice,” and inserting “Department of
18 Homeland Security,”;

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

21 “(C) AUTHORIZED DISCLOSURES.—

22 “(i) CENSUS PURPOSE.—The Sec-
23 retary of Homeland Security may provide,
24 in his discretion, for the furnishing of in-
25 formation furnished under this section in

1 the same manner and circumstances as
2 census information may be disclosed under
3 section 8 of title 13, United States Code.

4 “(ii) NATIONAL SECURITY PUR-
5 POSE.—The Secretary of Homeland Secu-
6 rity may provide, in his discretion, for the
7 furnishing, use, publication, or release of
8 information furnished under this section in
9 any investigation, case, or matter, or for
10 any purpose, relating to terrorism, national
11 intelligence or the national security.”; and

12 (4) in subparagraph (D)(i), striking “Service”
13 and inserting “Department of Homeland Security”.

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

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

19 “(h) Notwithstanding any other provision of law
20 (statutory or nonstatutory), including but not limited to
21 section 309 of Public Law 107–173, sections 1361 and
22 1651 of title 28, United States Code, and section 706(1)
23 of title 5, United States Code, neither the Secretary of
24 Homeland Security, the Attorney General, nor any court
25 may—

1 “(1) grant, or order the grant of or adjudica-
2 tion of an application for adjustment of status to
3 that of an alien lawfully admitted for permanent res-
4 idence;

5 “(2) grant, or order the grant of or adjudica-
6 tion of an application for United States citizenship
7 or any other status, relief, protection from removal,
8 employment authorization, or other benefit under
9 the immigration laws;

10 “(3) grant, or order the grant of or adjudica-
11 tion of, any immigrant or nonimmigrant petition; or

12 “(4) issue or order the issuance of any docu-
13 mentation evidencing or related to any such grant,
14 until such background and security checks as the
15 Secretary may in his discretion require have been
16 completed or updated to the satisfaction of the Sec-
17 retary.

18 “(i) Notwithstanding any other provision of law (stat-
19 utory or nonstatutory), including but not limited to section
20 309 of Public Law 107–173, sections 1361 and 1651 of
21 title 28, United States Code, and section 706(1) of title
22 5, United States Code, neither the Secretary of Homeland
23 Security nor the Attorney General may be required to—

24 “(1) grant, or order the grant of or adjudica-
25 tion of an application for adjustment of status to

1 that of an alien lawfully admitted for permanent res-
2 idence,

3 “(2) grant, or order the grant of or adjudica-
4 tion of an application for United States citizenship
5 or any other status, relief, protection from removal,
6 employment authorization, or other benefit under
7 the immigration laws,

8 “(3) grant, or order the grant of or adjudica-
9 tion of, any immigrant or nonimmigrant petition, or

10 “(4) issue or order the issuance of any docu-
11 mentation evidencing or related to any such grant,
12 until any suspected or alleged materially false infor-
13 mation, material misrepresentation or omission, con-
14 cealment of a material fact, fraud or forgery, coun-
15 terfeiting, or alteration, or falsification of a docu-
16 ment, as determined by the Secretary, relating to
17 the adjudication of an application or petition for any
18 status (including the granting of adjustment of sta-
19 tus), relief, protection from removal, or other benefit
20 under this subsection has been investigated and re-
21 solved to the Secretary’s satisfaction.

22 “(j) Notwithstanding any other provision of law (stat-
23 utory or nonstatutory), including section 309 of the En-
24 hanced Border Security and Visa Entry Reform Act (8
25 U.S.C. 1738), sections 1361 and 1651 of title 28, United

1 States Code, and section 706(1) of title 5, United States
2 Code, no court shall have jurisdiction to require any of
3 the acts in subsection (h) or (i) to be completed by a cer-
4 tain time or award any relief for failure to complete or
5 delay in completing such acts.”.

6 (b) CONSTRUCTION.—

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

10 “CONSTRUCTION

11 “SEC. 362. (a) IN GENERAL.—Nothing in this Act
12 or any other law, except as provided in subsection (d),
13 shall be construed to require the Secretary of Homeland
14 Security, the Attorney General, the Secretary of State, the
15 Secretary of Labor, or a consular officer to grant any ap-
16 plication, approve any petition, or grant or continue any
17 relief, protection from removal, employment authorization,
18 or any other status or benefit under the immigration laws
19 by, to, or on behalf of—

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

23 “(2) any alien with respect to whom a criminal
24 or other proceeding or investigation is open or pend-
25 ing (including, but not limited to, issuance of an ar-
26 rest warrant, detainer, or indictment), where such

1 proceeding or investigation is deemed by the official
2 described in subsection (a) to be material to the
3 alien's eligibility for the status or benefit sought.

4 “(b) DENIAL OR WITHHOLDING OF ADJUDICA-
5 TION.—An official described in subsection (a) may, in the
6 discretion of the official, deny (with respect to an alien
7 described in paragraph (1) or (2) of subsection (a)) or
8 withhold adjudication of pending resolution of the inves-
9 tigation or case (with respect to an alien described in sub-
10 section (a)(2) of this section) any application, petition, re-
11 lief, protection from removal, employment authorization,
12 status or benefit.

13 “(c) JURISDICTION.—Notwithstanding any other pro-
14 vision of law (statutory or nonstatutory), including section
15 309 of the Enhanced Border Security and Visa Entry Re-
16 form Act (8 U.S.C. 1738), sections 1361 and 1651 of title
17 28, United States Code, and section 706(1) of title 5,
18 United States Code, no court shall have jurisdiction to re-
19 view a decision to deny or withhold adjudication pursuant
20 to subsection (b) of this section.

21 “(d) WITHHOLDING OF REMOVAL AND TORTURE
22 CONVENTION.—This section does not limit or modify the
23 applicability of section 241(b)(3) or the United Nations
24 Convention Against Torture and Other Cruel, Inhuman or
25 Degrading Treatment or Punishment, subject to any res-

1 ervations, understandings, declarations and provisos con-
2 tained in the United States Senate resolution of ratifica-
3 tion of the Convention, as implemented by section 2242
4 of the Foreign Affairs Reform and Restructuring Act of
5 1998 (Public Law 105-277) with respect to an alien oth-
6 erwise eligible for protection under such provisions.”.

7 (2) CLERICAL AMENDMENT.—The table of con-
8 tents for such Act is amended by inserting after the
9 item relating to section 361 the following:

“Sec. 362. Construction.”.

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

14 **SEC. 207. TECHNICAL AMENDMENTS RELATING TO THE IN-**
15 **TELLIGENCE REFORM AND TERRORISM PRE-**
16 **VENTION ACT OF 2004.**

17 (a) TRANSIT WITHOUT VISA PROGRAM.—Section
18 7209(d) of the Intelligence Reform and Terrorism Preven-
19 tion Act of 2004 (8 U.S.C. 1185 note) is amended by
20 striking “the Secretary, in conjunction with the Secretary
21 of Homeland Security,” and inserting “the Secretary of
22 Homeland Security, in consultation with the Secretary of
23 State,”.

24 (b) TECHNOLOGY ACQUISITION AND DISSEMINATION
25 PLAN.—Section 7201(c)(1) of such Act is amended by in-

1 setting “and the Department of State” after “used by the
2 Department of Homeland Security”.

3 **TITLE III—REMOVAL OF**
4 **CRIMINAL ALIENS**

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

6 (a) DEFINITION OF AGGRAVATED FELONY.—Section
7 101(a)(43) of the Immigration and Nationality Act (8
8 U.S.C. 1101(a)(43)) is amended—

9 (1) by striking “The term ‘aggravated felony’
10 means—” and inserting “Notwithstanding any other
11 provision of law, the term ‘aggravated felony’ applies
12 to an offense described in this paragraph, whether in
13 violation of Federal or State law, or in violation of
14 the law of a foreign country for which the term of
15 imprisonment was completed within the previous 15
16 years, even if the length of the term of imprisonment
17 for the offense is based on recidivist or other en-
18 hancements and regardless of whether the conviction
19 was entered before, on, or after September 30, 1996,
20 and means—”;

21 (2) in subparagraph (A), by striking “murder,
22 rape, or sexual abuse of a minor;” and inserting
23 “murder, manslaughter, homicide, rape (whether the
24 victim was conscious or unconscious), or any offense

1 of a sexual nature involving a victim under the age
2 of 18 years;”;

3 (3) in subparagraph (I), by striking “or 2252”
4 and inserting “2252, or 2252A”;

5 (4) in subparagraph (F), by striking “at least
6 one year;” and inserting “is at least one year, except
7 that if the conviction records do not conclusively es-
8 tablish whether a crime constitutes a crime of vio-
9 lence, the Attorney General may consider other evi-
10 dence related to the conviction that clearly estab-
11 lishes that the conduct for which the alien was en-
12 gaged constitutes a crime of violence;”;

13 (5) in subparagraph (N)—

14 (A) by striking “paragraph (1)(A) or (2)
15 of”; and

16 (B) by inserting a semicolon at the end;

17 (6) in subparagraph (O), by striking “section
18 275(a) or 276 committed by an alien who was pre-
19 viously deported on the basis of a conviction for an
20 offense described in another subparagraph of this
21 paragraph” and inserting “section 275 or 276 for
22 which the term of imprisonment is at least 1 year”;

23 (7) in subparagraph (U), by striking “an at-
24 tempt or conspiracy to commit an offense described
25 in this paragraph” and inserting “attempting or

1 conspiring to commit an offense described in this
2 paragraph, or aiding, abetting, counseling, pro-
3 curing, commanding, inducing, or soliciting the com-
4 mission of such an offense”; and

5 (8) by striking the undesignated matter fol-
6 lowing subparagraph (U).

7 (b) EFFECTIVE DATE; APPLICATION OF AMEND-
8 MENTS.—

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

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

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

15 (2) APPLICATION OF IIRIRA AMENDMENTS.—

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

1 **SEC. 302. PRECLUDING ADMISSIBILITY OF ALIENS CON-**
2 **VICTED OF AGGRAVATED FELONIES OR**
3 **OTHER SERIOUS OFFENSES.**

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

7 (1) in subsection (a)(2)(A)(i)—

8 (A) in subclause (I), by striking “or” at
9 the end;

10 (B) in subclause (II), by adding “or” at
11 the end; and

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

14 “(III) a violation of (or a con-
15 spiracy or attempt to violate) an of-
16 fense described in section 408 of title
17 42, United States Code (relating to
18 social security account numbers or so-
19 cial security cards) or section 1028 of
20 title 18, United States Code (relating
21 to fraud and related activity in con-
22 nection with identification documents,
23 authentication features, and informa-
24 tion),”;

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

1 “(J) PROCUREMENT OF CITIZENSHIP OR
2 NATURALIZATION UNLAWFULLY.—Any alien
3 convicted of, or who admits having committed,
4 or who admits committing acts which constitute
5 the essential elements of, a violation of, or an
6 attempt or a conspiracy to violate, subsection
7 (a) or (b) of section 1425 of title 18, United
8 States Code (relating to the procurement of
9 citizenship or naturalization unlawfully) is inad-
10 missible.

11 “(K) CERTAIN FIREARM OFFENSES.—Any
12 alien who at any time has been convicted under
13 any law of, or who admits having committed or
14 admits committing acts which constitute the es-
15 sential elements of, purchasing, selling, offering
16 for sale, exchanging, using, owning, possessing,
17 or carrying, or of attempting or conspiring to
18 purchase, sell, offer for sale, exchange, use,
19 own, possess, or carry, any weapon, part, or ac-
20 cessory which is a firearm or destructive device
21 (as defined in section 921(a) of title 18, United
22 States Code) in violation of any law is inadmis-
23 sible.

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

4 “(M) CRIMES OF DOMESTIC VIOLENCE,
5 STALKING, OR VIOLATION OF PROTECTION OR-
6 DERS, CRIMES AGAINST CHILDREN.—

7 “(i) DOMESTIC VIOLENCE, STALKING,
8 AND CHILD ABUSE.—Any alien who at any
9 time is convicted of, or who admits having
10 committed or admits committing acts
11 which constitute the essential elements of,
12 a crime of domestic violence, a crime of
13 stalking, or a crime of child abuse, child
14 neglect, or child abandonment is inadmis-
15 sible. For purposes of this clause, the term
16 ‘crime of domestic violence’ means any
17 crime of violence (as defined in section 16
18 of title 18, United States Code) against a
19 person committed by a current or former
20 spouse of the person, by an individual with
21 whom the person shares a child in com-
22 mon, by an individual who is cohabiting
23 with or has cohabited with the person as a
24 spouse, by an individual similarly situated
25 to a spouse of the person under the domes-

1 tic or family violence laws of the jurisdic-
2 tion where the offense occurs, or by any
3 other individual against a person who is
4 protected from that individual's acts under
5 the domestic or family violence laws of the
6 United States or any State, Indian tribal
7 government, or unit of local or foreign gov-
8 ernment.

9 “(ii) VIOLATORS OF PROTECTION OR-
10 DERS.—Any alien who at any time is en-
11 joined under a protection order issued by
12 a court and whom the court determines
13 has engaged in conduct that violates the
14 portion of a protection order that involves
15 protection against credible threats of vio-
16 lence, repeated harassment, or bodily in-
17 jury to the person or persons for whom the
18 protection order was issued is inadmissible.
19 For purposes of this clause, the term ‘pro-
20 tection order’ means any injunction issued
21 for the purpose of preventing violent or
22 threatening acts of domestic violence, in-
23 cluding temporary or final orders issued by
24 civil or criminal courts (other than support
25 or child custody orders or provisions)

1 whether obtained by filing an independent
2 action or as a independent order in an-
3 other proceeding.

4 “(iii) WAIVER AUTHORIZED.—The
5 waiver authority available under section
6 237(a)(7) with respect to section
7 237(a)(2)(E)(i) shall be available on a
8 comparable basis with respect to this sub-
9 paragraph.

10 “(iv) CLARIFICATION.—If the convic-
11 tion records do not conclusively establish
12 whether a crime of domestic violence con-
13 stitutes a crime of violence (as defined in
14 section 16 of title 18, United States Code),
15 the Attorney General may consider other
16 evidence related to the conviction that
17 clearly establishes that the conduct for
18 which the alien was engaged constitutes a
19 crime of violence.”; and

20 (3) in subsection (h)—

21 (A) by striking “The Attorney General
22 may, in his discretion, waive the application of
23 subparagraphs (A)(i)(I), (B), (D), and (E) of
24 subsection (a)(2)” and inserting “The Attorney
25 General or the Secretary of Homeland Security

1 may, in the discretion of the Attorney General
2 or the Secretary, waive the application of sub-
3 paragraphs (A)(i)(I), (III), (B), (D), (E), (K),
4 and (M) of subsection (a)(2)”;

5 (B) by striking “a criminal act involving
6 torture.” and inserting “a criminal act involving
7 torture, or has been convicted of an aggravated
8 felony.”;

9 (C) by striking “if either since the date of
10 such admission the alien has been convicted of
11 an aggravated felony or the alien” and inserting
12 “if since the date of such admission the alien”;
13 and

14 (D) by inserting “or Secretary of Home-
15 land Security” after “the Attorney General”
16 each place it appears.

17 (b) DEPORTABILITY; CRIMINAL OFFENSES.—Section
18 237(a)(3)(B) of the Immigration and Nationality Act (8
19 U.S.C. 1227(a)(3)(B)) is amended—

20 (1) in clause (ii), by striking “or” at the end;

21 (2) in clause (iii), by inserting “or” at the end;

22 and

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

24 “(iv) of a violation of, or an attempt
25 or a conspiracy to violate, section 1425(a)

1 or (b) of title 18 (relating to the procure-
2 ment of citizenship or naturalization un-
3 lawfully),”.

4 (c) DEPORTABILITY; OTHER CRIMINAL OFFENSES.—
5 Section 237(a)(2) of the Immigration and Nationality Act
6 (8 U.S.C. 1227(a)(2)) is amended by adding at the end
7 the following:

8 “(G) FRAUD AND RELATED ACTIVITY AS-
9 SOCIATED WITH SOCIAL SECURITY ACT BENE-
10 FITS AND IDENTIFICATION DOCUMENTS.—Any
11 alien who at any time after admission has been
12 convicted of a violation of (or a conspiracy or
13 attempt to violate) section 208 of the Social Se-
14 curity Act (42 U.S.C. 408) (relating to social
15 security account numbers or social security
16 cards) or section 1028 of title 18, United States
17 Code (relating to fraud and related activity in
18 connection with identification) is deportable.”.

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

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

23 (2) to all aliens who are required to establish
24 admissibility on or after such date, and in all re-

1 removal, deportation, or exclusion proceedings that are
2 filed, pending, or reopened, on or after such date.

3 (c) CONSTRUCTION.—The amendments made by sub-
4 section (a) shall not be construed to create eligibility for
5 relief from removal under former section 212(c) of the Im-
6 migration and Nationality Act where such eligibility did
7 not exist before these amendments became effective.

8 **SEC. 303. ESPIONAGE CLARIFICATION.**

9 Section 212(a)(3)(A) of the Immigration and Nation-
10 ality Act (8 U.S.C. 1182(a)(3)(A)), is amended to read
11 as follows:

12 “(A) IN GENERAL.—Any alien who a con-
13 sular officer, the Attorney General, or the Sec-
14 retary of Homeland Security knows, or has rea-
15 sonable ground to believe, seeks to enter the
16 United States to engage solely, principally, or
17 incidentally in, or who is engaged in, or with re-
18 spect to clauses (i) and (iii) of this subpara-
19 graph has engaged in—

20 “(i) any activity—

21 “(I) to violate any law of the
22 United States relating to espionage or
23 sabotage; or

24 “(II) to violate or evade any law
25 prohibiting the export from the

1 United States of goods, technology, or
2 sensitive information;
3 “(ii) any other unlawful activity; or
4 “(iii) any activity a purpose of which
5 is the opposition to, or the control or over-
6 throw of, the Government of the United
7 States by force, violence, or other unlawful
8 means;
9 is inadmissible.”.

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

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

15 (1) in subsection (d)(5), in subparagraph (B),
16 by striking “(y)(2)” and all that follows and insert-
17 ing “(y), is in the United States not as an alien law-
18 fully admitted for permanent residence;”;

19 (2) in subsection (g)(5), in subparagraph (B),
20 by striking “(y)(2)” and all that follows and insert-
21 ing “(y), is in the United States not as an alien law-
22 fully admitted for permanent residence;”;

23 (3) in subsection (y)—

24 (A) in the header, by striking “ADMITTED
25 UNDER NONIMMIGRANT VISAS.—” and insert-

1 ing “NOT LAWFULLY ADMITTED FOR PERMA-
2 NENT RESIDENCE.—”;

3 (B) in paragraph (1), by amending sub-
4 paragraph (B) to read as follows:

5 “(B) the term ‘lawfully admitted for per-
6 manent residence’ has the same meaning as in
7 section 101(a)(20) of the Immigration and Na-
8 tionality Act (8 U.S.C. 1101(a)(20)).”;

9 (C) in paragraph (2), by striking “under a
10 nonimmigrant visa” and inserting “but not law-
11 fully admitted for permanent residence”; and

12 (D) in paragraph (3)(A), by striking “ad-
13 mitted to the United States under a non-
14 immigrant visa” and inserting “lawfully admit-
15 ted to the United States but not as an alien
16 lawfully admitted for permanent residence”.

17 **SEC. 305. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
18 **TAIN IMMIGRATION, NATURALIZATION, AND**
19 **PEONAGE OFFENSES.**

20 Section 3291 of title 18, United States Code, is
21 amended by striking “No person” and all that follows
22 through the period at the end and inserting the following:
23 “No person shall be prosecuted, tried, or punished for a
24 violation of any section of chapters 69 (relating to nation-
25 ality and citizenship offenses) and 75 (relating to pass-

1 port, visa, and immigration offenses), or for a violation
2 of any criminal provision of sections 243, 266, 274, 275,
3 276, 277, or 278 of the Immigration and Nationality Act,
4 or for an attempt or conspiracy to violate any such section,
5 unless the indictment is returned or the information is
6 filed within ten years after the commission of the of-
7 fense.”.

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

10 Section 1961(1) of title 18, United States Code, is
11 amended by striking “section 1542” through “section
12 1546 (relating to fraud and misuse of visas, permits, and
13 other documents)” and inserting “sections 1541–1548 (re-
14 lating to passports and visas)”.

15 **SEC. 307. CONFORMING AMENDMENTS FOR THE AGGRA-**
16 **VATED FELONY DEFINITION.**

17 (a) IN GENERAL.—Subparagraph (P) of section
18 101(a)(43) of the Immigration and Nationality Act (8
19 U.S.C. 1101(a)(43)) is amended—

20 (1) by striking “(i) which either is falsely mak-
21 ing, forging, counterfeiting, mutilating, or altering a
22 passport or instrument in violation of section 1543
23 of title 18, United States Code, or is described in
24 section 1546(a) of such title (relating to document
25 fraud) and (ii)” and inserting “which is described in

1 any section of chapter 75 of title 18, United States
2 Code,”; and

3 (2) by inserting after “first offense” the fol-
4 lowing: “(i) that is not described in section 1548 of
5 such title (relating to increased penalties), and (ii)”.

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

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

12 (a) IN GENERAL.—Section 209(c) of the Immigration
13 and Nationality Act (8 U.S.C. 1159(c)) is amended by
14 adding at the end thereof the following: “However, an
15 alien who is convicted of an aggravated felony is not eligi-
16 ble for a waiver or for adjustment of status under this
17 section.”.

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

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

22 (2) to all aliens who are required to establish
23 admissibility on or after such date, and in all re-
24 moval, deportation, or exclusion proceedings that are
25 filed, pending, or reopened, on or after such date.

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

3 (a) IN GENERAL.—Section 241(b)(3)(B) (8 U.S.C.
4 1231(b)(3)(B)), as amended by section 201, is further
5 amended by inserting after clause (v), as inserted by sec-
6 tion 201, the following:

7 “(vi) the alien is convicted of an ag-
8 gravated felony.”.

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

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

13 (2) to all aliens who are required to establish
14 admissibility on or after such date, and in all re-
15 moval, deportation, or exclusion proceedings that are
16 filed, pending, or reopened on or after such date.

17 **SEC. 310. INADMISSIBILITY, DEPORTABILITY, AND DETEN-**
18 **TION OF DRUNK DRIVERS.**

19 (a) IN GENERAL.—Section 101(a)(43) of the Immi-
20 gration and Nationality Act (8 U.S.C. 1101(a)(43)) (as
21 amended by this Act) is further amended—

22 (1) in subparagraph (T), by striking “and”;

23 (2) in subparagraph (U), by striking the period
24 at the end and inserting “; and”; and

25 (3) by inserting after subparagraph (U) the fol-
26 lowing:

1 “(V) a second or subsequent conviction for
2 driving while intoxicated (including a conviction
3 for driving while under the influence of or im-
4 paired by alcohol or drugs) without regard to
5 whether the conviction is classified as a mis-
6 demeanor or felony under State law.”.

7 (b) DETENTION.—Section 236(c)(1) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1226(c)(1)) is amend-
9 ed—

10 (1) in subparagraph (C), by striking “or” at
11 the end;

12 (2) in subparagraph (D), by adding “or” at the
13 end; and

14 (3) by inserting after subparagraph (D) the fol-
15 lowing:

16 “(E) is unlawfully present in the United
17 States and has been convicted one or multiple
18 times for driving while intoxicated (including a
19 conviction for driving while under the influence
20 or impaired by alcohol or drugs) without regard
21 to whether the conviction is classified as a mis-
22 demeanor or felony under State law,”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date of the enactment

1 of this Act and apply to convictions entered on or after
2 such date.

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

4 (a) IN GENERAL.—Section 241(a) of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1231(a)) is amended—

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

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

12 “(B) BEGINNING OF PERIOD.—The re-
13 moval period begins on the latest of the fol-
14 lowing:

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

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

21 “(iii) If the alien is detained or con-
22 fined (except under an immigration proc-
23 ess) on the date the order of removal be-
24 comes administratively final, the date the
25 alien is taken into the custody of the Sec-

1 retary, after the alien is released from such
2 detention or confinement.”;

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

5 “(C) SUSPENSION OF PERIOD.—

6 “(i) EXTENSION.—The removal period
7 shall be extended beyond a period of 90
8 days and the Secretary may, in the Sec-
9 retary’s sole discretion, keep the alien in
10 detention during such extended period if—

11 “(I) the alien fails or refuses to
12 make all reasonable efforts to comply
13 with the removal order, or to fully co-
14 operate with the Secretary’s efforts to
15 establish the alien’s identity and carry
16 out the removal order, including mak-
17 ing timely application in good faith
18 for travel or other documents nec-
19 essary to the alien’s departure or con-
20 spires or acts to prevent the alien’s
21 removal that is subject to an order of
22 removal;

23 “(II) a court, the Board of Immi-
24 gration Appeals, or an immigration
25 judge orders a stay of removal of an

1 alien who is subject to an administra-
2 tively final order of removal;

3 “(III) the Secretary transfers
4 custody of the alien pursuant to law
5 to another Federal agency or a State
6 or local government agency in connec-
7 tion with the official duties of such
8 agency; or

9 “(IV) a court or the Board of
10 Immigration Appeals orders a remand
11 to an immigration judge or the Board
12 of Immigration Appeals, during the
13 time period when the case is pending
14 a decision on remand (with the re-
15 moval period beginning anew on the
16 date that the alien is ordered removed
17 on remand).

18 “(ii) RENEWAL.—If the removal pe-
19 riod has been extended under clause (C)(i),
20 a new removal period shall be deemed to
21 have begun on the date—

22 “(I) the alien makes all reason-
23 able efforts to comply with the re-
24 moval order, or to fully cooperate with
25 the Secretary’s efforts to establish the

1 alien's identity and carry out the re-
2 moval order;

3 “(II) the stay of removal is no
4 longer in effect; or

5 “(III) the alien is returned to the
6 custody of the Secretary.

7 “(iii) MANDATORY DETENTION FOR
8 CERTAIN ALIENS.—In the case of an alien
9 described in subparagraphs (A) through
10 (D) of section 236(e)(1), the Secretary
11 shall keep that alien in detention during
12 the extended period described in clause (i).

13 “(iv) SOLE FORM OF RELIEF.—An
14 alien may seek relief from detention under
15 this subparagraph only by filing an appli-
16 cation for a writ of habeas corpus in ac-
17 cordance with chapter 153 of title 28,
18 United States Code. No alien whose period
19 of detention is extended under this sub-
20 paragraph shall have the right to seek re-
21 lease on bond.”;

22 (4) in paragraph (3)—

23 (A) by adding after “If the alien does not
24 leave or is not removed within the removal pe-

1 riod” the following: “or is not detained pursu-
2 ant to paragraph (6) of this subsection”; and

3 (B) by striking subparagraph (D) and in-
4 serting the following:

5 “(D) to obey reasonable restrictions on the
6 alien’s conduct or activities that the Secretary
7 prescribes for the alien, in order to prevent the
8 alien from absconding, for the protection of the
9 community, or for other purposes related to the
10 enforcement of the immigration laws.”;

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

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

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

17 “(A) DETENTION REVIEW PROCESS FOR
18 COOPERATIVE ALIENS ESTABLISHED.—For an
19 alien who is not otherwise subject to mandatory
20 detention, who has made all reasonable efforts
21 to comply with a removal order and to cooper-
22 ate fully with the Secretary of Homeland Secu-
23 rity’s efforts to establish the alien’s identity and
24 carry out the removal order, including making
25 timely application in good faith for travel or

1 other documents necessary to the alien's depar-
2 ture, and who has not conspired or acted to
3 prevent removal, the Secretary shall establish
4 an administrative review process to determine
5 whether the alien should be detained or released
6 on conditions. The Secretary shall make a de-
7 termination whether to release an alien after
8 the removal period in accordance with subpara-
9 graph (B). The determination shall include con-
10 sideration of any evidence submitted by the
11 alien, and may include consideration of any
12 other evidence, including any information or as-
13 sistance provided by the Secretary of State or
14 other Federal official and any other information
15 available to the Secretary of Homeland Security
16 pertaining to the ability to remove the alien.

17 “(B) AUTHORITY TO DETAIN BEYOND RE-
18 MOVAL PERIOD.—

19 “(i) IN GENERAL.—The Secretary of
20 Homeland Security, in the exercise of the
21 Secretary's sole discretion, may continue to
22 detain an alien for 90 days beyond the re-
23 moval period (including any extension of
24 the removal period as provided in para-
25 graph (1)(C)). An alien whose detention is

1 extended under this subparagraph shall
2 have no right to seek release on bond.

3 “(ii) SPECIFIC CIRCUMSTANCES.—The
4 Secretary of Homeland Security, in the ex-
5 ercise of the Secretary’s sole discretion,
6 may continue to detain an alien beyond the
7 90 days authorized in clause (i)—

8 “(I) until the alien is removed, if
9 the Secretary, in the Secretary’s sole
10 discretion, determines that there is a
11 significant likelihood that the alien—

12 “(aa) will be removed in the
13 reasonably foreseeable future; or

14 “(bb) would be removed in
15 the reasonably foreseeable future,
16 or would have been removed, but
17 for the alien’s failure or refusal
18 to make all reasonable efforts to
19 comply with the removal order,
20 or to cooperate fully with the
21 Secretary’s efforts to establish
22 the alien’s identity and carry out
23 the removal order, including
24 making timely application in
25 good faith for travel or other doc-

1 uments necessary to the alien's
2 departure, or conspires or acts to
3 prevent removal;

4 “(II) until the alien is removed,
5 if the Secretary of Homeland Security
6 certifies in writing—

7 “(aa) in consultation with
8 the Secretary of Health and
9 Human Services, that the alien
10 has a highly contagious disease
11 that poses a threat to public safe-
12 ty;

13 “(bb) after receipt of a writ-
14 ten recommendation from the
15 Secretary of State, that release
16 of the alien is likely to have seri-
17 ous adverse foreign policy con-
18 sequences for the United States;

19 “(cc) based on information
20 available to the Secretary of
21 Homeland Security (including
22 classified, sensitive, or national
23 security information, and without
24 regard to the grounds upon
25 which the alien was ordered re-

1 moved), that there is reason to
2 believe that the release of the
3 alien would threaten the national
4 security of the United States; or

5 “(dd) that the release of the
6 alien will threaten the safety of
7 the community or any person,
8 conditions of release cannot rea-
9 sonably be expected to ensure the
10 safety of the community or any
11 person, and either (AA) the alien
12 has been convicted of one or
13 more aggravated felonies (as de-
14 fined in section 101(a)(43)(A))
15 or of one or more crimes identi-
16 fied by the Secretary of Home-
17 land Security by regulation, or of
18 one or more attempts or conspir-
19 acies to commit any such aggra-
20 vated felonies or such identified
21 crimes, if the aggregate term of
22 imprisonment for such attempts
23 or conspiracies is at least 5
24 years; or (BB) the alien has com-
25 mitted 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.—

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

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

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

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

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

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

5 (b) DETENTION OF ALIENS DURING REMOVAL PRO-
6 CEEDINGS.—

7 (1) CLERICAL AMENDMENT.—(A) Section 236
8 of the Immigration and Nationality Act (8 U.S.C.
9 1226) is amended by striking “Attorney General”
10 each place it appears (except in the second place
11 that term appears in section 236(a)) and inserting
12 “Secretary of Homeland Security”.

13 (B) Section 236(a) of such Act (8 U.S.C.
14 1226(a)) is amended by inserting “the Secretary of
15 Homeland Security or” before “the Attorney Gen-
16 eral—”.

17 (C) Section 236(e) of such Act (8 U.S.C.
18 1226(e)) is amended by striking “Attorney Gen-
19 eral’s” and inserting “Secretary of Homeland Secu-
20 rity’s”.

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

24 “(f) LENGTH OF DETENTION.—

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

7 “(2) CONSTRUCTION.—The length of detention
8 under this section shall not affect detention under
9 section 241.”.

10 (3) DETENTION OF CRIMINAL ALIENS.—Section
11 236(c)(1) of the Immigration and Nationality Act (8
12 U.S.C. 1226(c)(1)) (as amended by section 310(b))
13 is further amended, in the matter following subpara-
14 graph (E) to read as follows:

15 “any time after the alien is released, without regard
16 to whether an alien is released related to any activ-
17 ity, offense, or conviction described in this para-
18 graph; to whether the alien is released on parole, su-
19 pervised release, or probation; or to whether the
20 alien may be arrested or imprisoned again for the
21 same offense. If the activity described in this para-
22 graph does not result in the alien being taken into
23 custody by any person other than the Secretary,
24 then when the alien is brought to the attention of
25 the Secretary or when the Secretary determines it is

1 practical to take such alien into custody, the Sec-
2 retary shall take such alien into custody.”.

3 (4) ADMINISTRATIVE REVIEW.—Section 236 of
4 the Immigration and Nationality Act (8 U.S.C.
5 1226), as amended by paragraph (2), is further
6 amended by adding at the end the following:

7 “(g) ADMINISTRATIVE REVIEW.—

8 “(1) IN GENERAL.—The Attorney General’s re-
9 view of the Secretary’s custody determinations under
10 subsection (a) for the following classes of aliens shall
11 be limited to whether the alien may be detained, re-
12 leased on bond (of at least \$1,500 with security ap-
13 proved by the Secretary), or released with no bond:

14 “(A) Aliens in exclusion proceedings.

15 “(B) Aliens described in section 212(a)(3)
16 or 237(a)(4).

17 “(C) Aliens described in subsection (c).

18 “(2) SPECIAL RULE.—

19 “(h) RELEASE ON BOND.—

20 “(1) IN GENERAL.—An alien detained under
21 subsection (a) may seek release on bond. No bond
22 may be granted except to an alien who establishes
23 by clear and convincing evidence that the alien is not
24 a flight risk or a risk to another person or the com-
25 munity.

1 “(2) CERTAIN ALIENS INELIGIBLE.—No alien
2 detained under subsection (c) may seek release on
3 bond.”.

4 (5) CLERICAL AMENDMENTS.—(A) Section
5 236(a)(2)(B) of the Immigration and Nationality
6 Act (8 U.S.C. 1226(a)(2)(B)) is amended by strik-
7 ing “conditional parole” and inserting “recog-
8 nizance”.

9 (B) Section 236(b) of such Act (8 U.S.C.
10 1226(b)) is amended by striking “parole” and in-
11 serting “recognizance”.

12 (c) SEVERABILITY.—If any of the provisions of this
13 section or any amendment by this section, or the applica-
14 tion of any such provision to any person or circumstance,
15 is held to be invalid for any reason, the remainder of this
16 section and of amendments made by this section, and the
17 application of the provisions and of the amendments made
18 by this section to any other person or circumstance shall
19 not be affected by such holding.

20 (d) EFFECTIVE DATES.—

21 (1) The amendments made by subsection (a)
22 shall take effect upon the date of enactment of this
23 Act, and section 241 of the Immigration and Na-
24 tionality Act, as so amended, shall in addition apply
25 to—

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

5 (B) acts and conditions occurring or exist-
6 ing before, on, or after such date.

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

13 **SEC. 312. GROUNDS OF INADMISSIBILITY AND DEPORT-**
14 **ABILITY FOR ALIEN GANG MEMBERS.**

15 (a) DEFINITION OF GANG MEMBER.—Section 101(a)
16 of the Immigration and Nationality Act (8 U.S.C.
17 1101(a)) is amended by adding at the end the following:
18 “(53)(A) The term ‘criminal gang’ means an ongoing
19 group, club, organization, or association of 5 or more per-
20 sons that has as one of its primary purposes the commis-
21 sion of 1 or more of the following criminal offenses and
22 the members of which engage, or have engaged within the
23 past 5 years, in a continuing series of such offenses, or
24 that has been designated as a criminal gang by the Sec-
25 retary of Homeland Security, in consultation with the At-

1 torney General, as meeting these criteria. The offenses de-
2 scribed, whether in violation of Federal or State law or
3 foreign law and regardless of whether the offenses oc-
4 curred before, on, or after the date of the enactment of
5 this paragraph, are the following:

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

9 “(ii) An offense under section 274 (relating to
10 bringing in and harboring certain aliens), section
11 277 (relating to aiding or assisting certain aliens to
12 enter the United States), or section 278 (relating to
13 importation of alien for immoral purpose).

14 “(iii) A crime of violence (as defined in section
15 16 of title 18, United States Code).

16 “(iv) A crime involving obstruction of justice,
17 tampering with or retaliating against a witness, vic-
18 tim, or informant, or burglary.

19 “(v) Any conduct punishable under sections
20 1028 and 1029 of title 18, United States Code (re-
21 lating to fraud and related activity in connection
22 with identification documents or access devices), sec-
23 tions 1581 through 1594 of such title (relating to
24 peonage, slavery and trafficking in persons), section
25 1952 of such title (relating to interstate and foreign

1 travel or transportation in aid of racketeering enter-
2 prises), section 1956 of such title (relating to the
3 laundering of monetary instruments), section 1957
4 of such title (relating to engaging in monetary trans-
5 actions in property derived from specified unlawful
6 activity), or sections 2312 through 2315 of such title
7 (relating to interstate transportation of stolen motor
8 vehicles or stolen property).

9 “(vi) A conspiracy to commit an offense de-
10 scribed in clauses (i) through (v).

11 “(B) Notwithstanding any other provision of law (in-
12 cluding any effective date), the term applies regardless of
13 whether the conduct occurred before, on, or after the date
14 of the enactment of this paragraph.”.

15 (b) INADMISSIBILITY.—Section 212(a)(2) of such Act
16 (8 U.S.C. 1182(a)(2)), as amended by section 302(a)(2)
17 of this Act, is further amended by adding at the end the
18 following:

19 “(N) ALIENS ASSOCIATED WITH CRIMINAL
20 GANGS.—Any alien is inadmissible who a con-
21 sular officer, the Secretary of Homeland Secu-
22 rity, or the Attorney General knows or has rea-
23 son to believe—

1 “(i) to be or to have been a member
2 of a criminal gang (as defined in section
3 101(a)(53)); or

4 “(ii) to have participated in the activi-
5 ties of a criminal gang (as defined in sec-
6 tion 101(a)(53)), knowing or having reason
7 to know that such activities will promote,
8 further, aid, or support the illegal activity
9 of the criminal gang.”.

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

14 “(H) ALIENS ASSOCIATED WITH CRIMINAL
15 GANGS.—Any alien is deportable who the Sec-
16 retary of Homeland Security or the Attorney
17 General knows or has reason to believe—

18 “(i) is or has been a member of a
19 criminal gang (as defined in section
20 101(a)(53)); or

21 “(ii) has participated in the activities
22 of a criminal gang (as so defined), knowing
23 or having reason to know that such activi-
24 ties will promote, further, aid, or support
25 the illegal activity of the criminal gang.”.

1 (d) DESIGNATION.—

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

6 “DESIGNATION

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

16 “(b) EFFECTIVE DATE.—Designations under sub-
17 section (a) shall remain in effect until the designation is
18 revoked after consultation between the Secretary of Home-
19 land Security, the Attorney General, and the Secretary of
20 State or is terminated in accordance with Federal law.”.

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

“220. Designation.”.

24 (e) MANDATORY DETENTION OF CRIMINAL STREET
25 GANG MEMBERS.—

1 (1) IN GENERAL.—Section 236(c)(1)(D) of the
2 Immigration and Nationality Act (8 U.S.C.
3 1226(c)(1)(D)) is amended—

4 (A) by inserting “or 212(a)(2)(N)” after
5 “212(a)(3)(B)”; and

6 (B) by inserting “237(a)(2)(H) or” before
7 “237(a)(4)(B)”.

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

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

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

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

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

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

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

10 “(vi) the alien is described in section
11 212(a)(2)(N)(i) or section 237(a)(2)(H)(i)
12 (relating to participation in criminal street
13 gangs); or”.

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

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

19 (2) in subparagraph (c)(2)(B)—

20 (A) in clause (i), by striking “or” at the
21 end;

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

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

1 “(iii) the alien is, or at any time after
2 admission has been, a member of a crimi-
3 nal gang (as defined in section
4 101(a)(53)).”; and

5 (3) in subsection (d)—

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

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

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

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

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

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

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

2 (a) **ADDITIONAL PREDICATE OFFENSES.**—Section
3 1956(e)(7)(D) of title 18, United States Code, is amend-
4 ed—

5 (1) by inserting “section 1590 (relating to traf-
6 ficking with respect to peonage, slavery, involuntary
7 servitude, or forced labor),” after “section 1363 (re-
8 lating to destruction of property within the special
9 maritime and territorial jurisdiction),”; and

10 (2) by inserting “section 274(a) of the Immi-
11 gration and Nationality Act (8 U.S.C.1324(a)) (re-
12 lating to bringing in and harboring certain aliens),”
13 after “section 590 of the Tariff Act of 1930 (19
14 U.S.C. 1590) (relating to aviation smuggling),”.

15 (b) **INTENT TO CONCEAL OR DISGUISE.**—Section
16 1956(a) of title 18, United States Code, is amended—

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

19 “(B) knowing that the transaction—

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

24 “(ii) avoids, or is intended to avoid, a
25 transaction reporting requirement under State
26 or Federal law,”; and

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

3 “(B) knowing that the monetary instrument or
4 funds involved in the transportation, transmission,
5 or transfer represent the proceeds of some form of
6 unlawful activity, and knowing that such transpor-
7 tation, transmission, or transfer—

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

12 “(ii) avoids, or is intended to avoid, a
13 transaction reporting requirement under State
14 or Federal law,”.

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

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

19 “SEC. 275. (a) IN GENERAL.—

20 “(1) ILLEGAL ENTRY OR PRESENCE.—An alien
21 shall be subject to the penalties set forth in para-
22 graph (2) if the alien—

23 “(A) knowingly enters or crosses the bor-
24 der into the United States at any time or place

1 other than as designated by the Secretary of
2 Homeland Security;

3 “(B) knowingly eludes, at any time or
4 place, examination or inspection by an author-
5 ized immigration, customs, or agriculture offi-
6 cer (including by failing to stop at the com-
7 mand of such officer);

8 “(C) knowingly enters or crosses the bor-
9 der to the United States and, upon examination
10 or inspection, knowingly makes a false or mis-
11 leading representation or the knowing conceal-
12 ment of a material fact (including such rep-
13 resentation or concealment in the context of ar-
14 rival, reporting, entry, or clearance require-
15 ments of the customs laws, immigration laws,
16 agriculture laws, or shipping laws);

17 “(D) knowingly violates the terms or con-
18 ditions of the alien’s admission or parole into
19 the United States; or

20 “(E) knowingly is unlawfully present in the
21 United States (as defined in section
22 212(a)(9)(B)(ii) subject to the exceptions set
23 for in section 212(a)(9)(B)(iii)).

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

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

4 “(B) shall, for a second or subsequent vio-
5 lation, or following an order of voluntary depar-
6 ture, be fined under such title, imprisoned not
7 more than 2 years (or not more than 6 months
8 in the case of a second or subsequent violation
9 of paragraph (1)(E)), or both;

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

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

21 “(E) if the violation occurred after the
22 alien had been convicted of a felony for which
23 the alien received a term of imprisonment of
24 not less than 60 months, such alien shall be

1 fined under such title, imprisoned not more
2 than 20 years, or both.

3 “(3) PRIOR CONVICTIONS.—The prior convic-
4 tions described in subparagraphs (C) through (E) of
5 paragraph (2) are elements of the offenses described
6 and the penalties in such subparagraphs shall apply
7 only in cases in which the conviction or convictions
8 that form the basis for the additional penalty are—

9 “(A) alleged in the indictment or informa-
10 tion; and

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

13 “(4) DURATION OF OFFENSE.—An offense
14 under this subsection continues until the alien is dis-
15 covered within the United States by an immigration,
16 customs, or agriculture officer.

17 “(5) ATTEMPT.—Whoever attempts to commit
18 any offense under this section shall be punished in
19 the same manner as for a completion of such of-
20 fense.

21 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
22 ALTIES.—Any alien who is apprehended while entering, at-
23 tempting to enter, or knowingly crossing or attempting to
24 cross the border to the United States at a time or place
25 other than as designated by immigration officers shall be

1 subject to a civil penalty, in addition to any criminal or
2 other civil penalties that may be imposed under any other
3 provision of law, in an amount equal to—

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

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

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

“Sec. 275. Illegal entry or presence.”.

14 **SEC. 316. ILLEGAL REENTRY.**

15 Section 276 of the Immigration and Nationality Act
16 (8 U.S.C. 1326) is amended to read as follows:

17 “REENTRY OF REMOVED ALIEN

18 “SEC. 276. (a) REENTRY AFTER REMOVAL.—Any
19 alien who has been denied admission, excluded, deported,
20 or removed, or who has departed the United States while
21 an order of exclusion, deportation, or removal is out-
22 standing, and subsequently enters, attempts to enter,
23 crosses the border to, attempts to cross the border to, or
24 is at any time found in the United States, shall be fined

1 under title 18, United States Code, imprisoned not more
2 than 2 years, or both.

3 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
4 withstanding the penalty provided in subsection (a), if an
5 alien described in that subsection was convicted before
6 such removal or departure—

7 “(1) for 3 or more misdemeanors or for a fel-
8 ony, the alien shall be fined under title 18, United
9 States Code, imprisoned not more than 10 years, or
10 both;

11 “(2) for a felony for which the alien was sen-
12 tenced to a term of imprisonment of not less than
13 30 months, the alien shall be fined under such title,
14 imprisoned not less than 2 years and not more than
15 15 years, or both;

16 “(3) for a felony for which the alien was sen-
17 tenced to a term of imprisonment of not less than
18 60 months, the alien shall be fined under such title,
19 imprisoned not less than 4 years and not more than
20 20 years, or both; or

21 “(4) for murder, rape, kidnapping, or a felony
22 offense described in chapter 77 (relating to peonage
23 and slavery) or 113B (relating to terrorism) of such
24 title, or for 3 or more felonies of any kind, the alien

1 shall be fined under such title, imprisoned not less
2 than 5 years and not more than 25 years, or both.

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

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

15 “(1) alleged in the indictment or information;

16 and

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

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

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

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

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

6 “(B) had complied with all other laws and
7 regulations governing the alien’s admission into
8 the United States.

9 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
10 DERLYING REMOVAL ORDER.—In a criminal proceeding
11 under this section, an alien may not challenge the validity
12 of any prior removal order concerning the alien.

13 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
14 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
15 moved pursuant to section 241(a)(4) who enters, attempts
16 to enter, crosses the border to, attempts to cross the bor-
17 der to, or is at any time found in, the United States shall
18 be incarcerated for the remainder of the sentence of im-
19 prisonment which was pending at the time of deportation
20 without any reduction for parole or supervised release un-
21 less the alien affirmatively demonstrates that the Sec-
22 retary of Homeland Security has expressly consented to
23 the alien’s reentry. Such alien shall be subject to such
24 other penalties relating to the reentry of removed aliens

1 as may be available under this section or any other provi-
2 sion of law.

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

5 “(1) CROSSES THE BORDER TO THE UNITED
6 STATES.—The term ‘crosses the border’ refers to the
7 physical act of crossing the border, regardless of
8 whether the alien is free from official restraint.

9 “(2) FELONY.—The term ‘felony’ means any
10 criminal offense punishable by a term of imprison-
11 ment of more than 1 year under the laws of the
12 United States, any State, or a foreign government.

13 “(3) MISDEMEANOR.—The term ‘misdemeanor’
14 means any criminal offense punishable by a term of
15 imprisonment of not more than 1 year under the ap-
16 plicable laws of the United States, any State, or a
17 foreign government.

18 “(4) REMOVAL.—The term ‘removal’ includes
19 any denial of admission, exclusion, deportation, or
20 removal, or any agreement by which an alien stipu-
21 lates or agrees to exclusion, deportation, or removal.

22 “(5) STATE.—The term ‘State’ means a State
23 of the United States, the District of Columbia, and
24 any commonwealth, territory, or possession of the
25 United States.”.

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

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

5 **“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.

6 **“§ 1541. Issuance without authority**

7 **“(a) IN GENERAL.—Whoever—**

8 **“(1) acting or claiming to act in any office or**
9 **capacity under the United States, or a State, with-**
10 **out lawful authority grants, issues, or verifies any**
11 **passport or other instrument in the nature of a**
12 **passport to or for any person; or**

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

18 **shall be fined under this title or imprisoned not more than**
19 **15 years, or both.**

20 **“(b) DEFINITION.—In this section, the term ‘State’**
21 **means a State of the United States, the District of Colum-**

1 bia, and any commonwealth, territory, or possession of the
2 United States.

3 **“§1542. False statement in application and use of**
4 **passport**

5 “Whoever knowingly—

6 “(1) makes any false statement in an applica-
7 tion for passport with intent to induce or secure the
8 issuance of a passport under the authority of the
9 United States, either for his own use or the use of
10 another, contrary to the laws regulating the issuance
11 of passports or the rules prescribed pursuant to such
12 laws; or

13 “(2) uses or attempts to use, or furnishes to
14 another for use any passport the issue of which was
15 secured in any way by reason of any false statement;
16 shall be fined under this title or imprisoned not more than
17 15 years, or both.

18 **“§1543. Forgery or false use of passport**

19 “Whoever—

20 “(1) falsely makes, forges, counterfeits, muti-
21 lates, or alters any passport or instrument pur-
22 porting to be a passport, with intent that the same
23 may be used; or

24 “(2) knowingly uses, or attempts to use, or fur-
25 nishes to another for use any such false, forged,

1 counterfeited, mutilated, or altered passport or in-
2 strument purporting to be a passport, or any pass-
3 port validly issued which has become void by the oc-
4 currence of any condition therein prescribed invali-
5 dating the same;

6 shall be fined under this title or imprisoned not more than
7 15 years, or both.

8 **“§ 1544. Misuse of a passport**

9 “Whoever knowingly—

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

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

16 “(3) secures, possesses, uses, receives, buys,
17 sells, or distributes any passport knowing it to be
18 forged, counterfeited, altered, falsely made, procured
19 by fraud, stolen, or produced or issued without law-
20 ful authority; or

21 “(4) violates the terms and conditions of any
22 safe conduct duly obtained and issued under the au-
23 thority of the United States;

24 shall be fined under this title, imprisoned not more than
25 15 years, or both.

1 **“§ 1545. Schemes to defraud aliens**

2 “Whoever inside the United States, or in or affecting
3 interstate or foreign commerce, in connection with any
4 matter that is authorized by or arises under the immigra-
5 tion laws of the United States or any matter the offender
6 claims or represents is authorized by or arises under the
7 immigration laws of the United States, knowingly executes
8 a scheme or artifice—

9 “(1) to defraud any person, or

10 “(2) to obtain or receive money or anything else
11 of value from any person by means of false or fraud-
12 ulent pretenses, representations, or promises;
13 shall be fined under this title, imprisoned not more than
14 15 years, or both.

15 **“§ 1546. Immigration and visa fraud**

16 “Whoever knowingly—

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

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

21 “(3) mails, prepares, presents, or signs any im-
22 migration document knowing it to contain any mate-
23 rially false statement or representation;

24 “(4) secures, possesses, uses, transfers, re-
25 ceives, buys, sells, or distributes any immigration
26 document knowing it to be forged, counterfeited, al-

1 tered, falsely made, stolen, procured by fraud, or
2 produced or issued without lawful authority;

3 “(5) adopts or uses a false or fictitious name to
4 evade or to attempt to evade the immigration laws;

5 “(6) transfers or furnishes, without lawful au-
6 thority, an immigration document to another person
7 for use by a person other than the person for whom
8 the immigration document was issued or designed;
9 or

10 “(7) produces, issues, authorizes, or verifies,
11 without lawful authority, an immigration document;
12 shall be fined under this title, imprisoned not more than
13 15 years, or both.

14 **“§ 1547. Attempts and conspiracies**

15 “Whoever attempts or conspires to violate this chap-
16 ter shall be punished in the same manner as a person who
17 completes that violation.

18 **“§ 1548. Alternative penalties for certain offenses**

19 “(a) **TERRORISM.**—Whoever violates any section in
20 this chapter to facilitate an act of international terrorism
21 or domestic terrorism (as such terms are defined in section
22 2331), shall be fined under this title or imprisoned not
23 more than 25 years, or both.

24 “(b) **DRUG TRAFFICKING OFFENSES.**—Whoever vio-
25 lates any section in this chapter to facilitate a drug traf-

1 ficking crime (as defined in section 929(a)) shall be fined
2 under this title or imprisoned not more than 20 years, or
3 both.

4 **“§ 1549. Definitions**

5 “In this chapter:

6 “(1) An ‘application for a United States pass-
7 port’ includes any document, photograph, or other
8 piece of evidence attached to or submitted in support
9 of the application.

10 “(2) The term ‘immigration document’ means
11 any instrument on which is recorded, by means of
12 letters, figures, or marks, matters which may be
13 used to fulfill any requirement of the Immigration
14 and Nationality Act.”.

15 **SEC. 318. FORFEITURE.**

16 Section 981(a)(1) of title 18, United States Code, is
17 amended by adding at the end the following:

18 “(I) Any property, real or personal, that has
19 been used to commit or facilitate the commission of
20 a violation of chapter 75, the gross proceeds of such
21 violation, and any property traceable to any such
22 property or proceeds.”.

1 **SEC. 319. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE**
2 **ON CRIMINAL OR SECURITY GROUNDS.**

3 (a) IN GENERAL.—Section 238(b) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1228(b)) is amended—

5 (1) in paragraph (1)—

6 (A) by striking “Attorney General” and in-
7 serting “Secretary of Homeland Security in the
8 exercise of discretion”; and

9 (B) by striking “set forth in this sub-
10 section or” and inserting “set forth in this sub-
11 section, in lieu of removal proceedings under”;

12 (2) in paragraph (3), by striking “paragraph
13 (1) until 14 calendar days” and inserting “para-
14 graph (1) or (3) until 7 calendar days”;

15 (3) by striking “Attorney General” each place
16 it appears in paragraphs (3) and (4) and inserting
17 “Secretary of Homeland Security”;

18 (4) in paragraph (5)—

19 (A) by striking “described in this section”
20 and inserting “described in paragraph (1) or
21 (2)”; and

22 (B) by striking “the Attorney General may
23 grant in the Attorney General’s discretion” and
24 inserting “the Secretary of Homeland Security
25 or the Attorney General may grant, in the dis-

1 cretion of the Secretary or Attorney General, in
2 any proceeding”;

3 (5) by redesignating paragraphs (3), (4), and
4 (5) as paragraphs (4), (5), and (6), respectively; and
5 (6) by inserting after paragraph (2) the fol-
6 lowing new paragraph:

7 “(3) The Secretary of Homeland Security in
8 the exercise of discretion may determine inadmis-
9 sibility under section 212(a)(2) (relating to criminal
10 offenses) or section 212(a)(3)(related to security
11 grounds) and issue an order of removal pursuant to
12 the procedures set forth in this subsection, in lieu of
13 removal proceedings under section 240, with respect
14 to an alien who—

15 “(A) has not been admitted or paroled;

16 “(B) has not been found to have a credible
17 fear of persecution pursuant to the procedures
18 set forth in section 235(b)(1)(B); and

19 “(C) is not eligible for a waiver of inadmis-
20 sibility or relief from removal.”.

21 (b) EFFECTIVE DATE.—The amendments made by
22 subsection (a) shall take effect on the date of the enact-
23 ment of this Act but shall not apply to aliens who are
24 in removal proceedings under section 240 of the Immigra-
25 tion and Nationality Act as of such date.

1 **SEC. 320. INCREASED PENALTIES BARRING THE ADMIS-**
2 **SION OF CONVICTED SEX OFFENDERS FAIL-**
3 **ING TO REGISTER AND REQUIRING DEPORTA-**
4 **TION OF SEX OFFENDERS FAILING TO REG-**
5 **ISTER.**

6 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) of
7 the Immigration and Nationality Act (8 U.S.C.
8 1182(a)(2)(A)(i)), as amended by section 302(a) of this
9 Act, is further amended—

10 (1) in subclause (II), by striking “or” at the
11 end;

12 (2) in subclause (III), by adding “or” at the
13 end; and

14 (3) by inserting after subclause (III) the fol-
15 lowing:

16 “(IV) a violation of section 2250
17 of title 18, United States Code (relat-
18 ing to failure to register as a sex of-
19 fender),”.

20 (b) DEPORTABILITY.—Section 237(a)(2) of such Act
21 (8 U.S.C. 1227(a)(2)), as amended by sections 302(c) and
22 311(c) of this Act, is further amended—

23 (1) in subparagraph (A), by striking clause (v);

24 and

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

1 “(I) FAILURE TO REGISTER AS A SEX OF-
2 FENDER.—Any alien convicted of, or who ad-
3 mits having committed, or who admits commit-
4 ting acts which constitute the essential elements
5 of a violation of section 2250 of title 18, United
6 States Code (relating to failure to register as a
7 sex offender) is deportable.”.

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

12 **SEC. 321. PROTECTING IMMIGRANTS FROM CONVICTED**
13 **SEX OFFENDERS.**

14 (a) IMMIGRANTS.—Section 204(a)(1) of the Immigra-
15 tion and Nationality Act (8 U.S.C. 1154(a)(1)), is amend-
16 ed—

17 (1) in subparagraph (A), by amending clause
18 (viii) to read as follows:

19 “(viii) Clause (i) shall not apply to a citizen of the
20 United States who has been convicted of an offense de-
21 scribed in subparagraph (A), (I), or (K) of section
22 101(a)(43), unless the Secretary of Homeland Security,
23 in the Secretary’s sole and unreviewable discretion, deter-
24 mines that the citizen poses no risk to the alien with re-

1 spect to whom a petition described in clause (i) is filed.”;

2 and

3 (2) in subparagraph (B)(i)—

4 (A) by redesignating the second subclause

5 (I) as subclause (II); and

6 (B) by amending such subclause (II) to

7 read as follows:

8 “(II) Subclause (I) shall not apply in the case of an
9 alien admitted for permanent residence who has been con-
10 victed of an offense described in subparagraph (A), (I),
11 or (K) of section 101(a)(43), unless the Secretary of
12 Homeland Security, in the Secretary’s sole and
13 unreviewable discretion, determines that the alien lawfully
14 admitted for permanent residence poses no risk to the
15 alien with respect to whom a petition described in sub-
16 clause (I) is filed.”.

17 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) of
18 such Act (8 U.S.C. 1101(a)(15)(K)), is amended by strik-
19 ing “204(a)(1)(A)(viii)(I))” each place such term appears
20 and inserting “204(a)(1)(A)(viii))”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date of the enactment
23 of this Act and shall apply to petitions filed on or after
24 such date.

1 **SEC. 322. CLARIFICATION TO CRIMES OF VIOLENCE AND**
2 **CRIMES INVOLVING MORAL TURPITUDE.**

3 (a) INADMISSIBLE ALIENS.—Section 212(a)(2)(A) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1182(a)(2)(A)) is amended by adding at the end the fol-
6 lowing:

7 “(iii) CLARIFICATION.—If the convic-
8 tion records do not conclusively establish
9 whether a crime constitutes a crime involv-
10 ing moral turpitude, the Attorney General
11 may consider other evidence related to the
12 conviction that clearly establishes that the
13 conduct for which the alien was engaged
14 constitutes a crime involving moral turpi-
15 tude.”.

16 (b) DEPORTABLE ALIENS.—

17 (1) GENERAL CRIMES.—Section 237(a)(2)(A)
18 of such Act (8 U.S.C. 1227(a)(2)(A)), as amended
19 by section 320(b) of this Act, is further amended by
20 inserting after clause (iv) the following:

21 “(v) CRIMES INVOLVING MORAL TUR-
22 PITUDE.—If the conviction records do not
23 conclusively establish whether a crime con-
24 stitutes a crime involving moral turpitude,
25 the Attorney General may consider other
26 evidence related to the conviction that

1 clearly establishes that the conduct for
2 which the alien was engaged constitutes a
3 crime involving moral turpitude.”.

4 (2) DOMESTIC VIOLENCE.—Section
5 237(a)(2)(E) of such Act (8 U.S.C. 1227(a)(2)(E))
6 is amended by adding at the end the following:

7 “(iii) CRIMES OF VIOLENCE.—If the
8 conviction records do not conclusively es-
9 tablish whether a crime of domestic vio-
10 lence constitutes a crime of violence (as de-
11 fined in section 16 of title 18, United
12 States Code), the Attorney General may
13 consider other evidence related to the con-
14 viction that clearly establishes that the
15 conduct for which the alien was engaged
16 constitutes a crime of violence.”.

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

21 **SEC. 323. PENALTIES FOR FAILURE TO OBEY REMOVAL OR-**
22 **DERS.**

23 (a) IN GENERAL.—Section 243(a) of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1253(a)) is amended—

1 (1) in the matter preceding subparagraph (A)
2 of paragraph (1), by inserting “212(a) or” before
3 “237(a),”; and

4 (2) by striking paragraph (3).

5 (b) **EFFECTIVE DATE.**—The amendments made by
6 subsection (a) shall take effect on the date of the enact-
7 ment of this Act and shall apply to acts that are described
8 in subparagraphs (A) through (D) of section 243(a)(1) of
9 the Immigration and Nationality Act (8 U.S.C.
10 1253(a)(1)) that occur on or after the date of the enact-
11 ment of this Act.

12 **SEC. 324. PARDONS.**

13 (a) **DEFINITION.**—Section 101(a) of the Immigration
14 and Nationality Act (8 U.S.C. 1101(a)), as amended by
15 section 312(a) of this Act, is further amended by adding
16 at the end the following:

17 “(54) The term ‘pardon’ means a full and uncondi-
18 tional pardon granted by the President of the United
19 States, Governor of any of the several States or constitu-
20 tionally recognized body.”.

21 (b) **DEPORTABILITY.**—Section 237(a) of such Act (8
22 U.S.C. 1227(a)) is amended—

23 (1) in paragraph (2)(A), by striking clause (vi);
24 and

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

1 “(8) PARDONS.—In the case of an alien who
2 has been convicted of a crime and is subject to re-
3 moval due to that conviction, if the alien, subsequent
4 to receiving the criminal conviction, is granted a
5 pardon, the alien shall not be deportable by reason
6 of that criminal conviction.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date of the enactment
9 of this Act and shall apply to a pardon granted before,
10 on, or after such date.

11 **SEC. 325. CONVICTIONS.**

12 (a) Section 212(a)(2) of the Immigration and Nation-
13 ality Act (8 U.S.C. 1182(a)(2)) is amended by adding at
14 the end the following subparagraph:

15 “(J) CONVICTIONS.—

16 “(i) IN GENERAL.—For purposes of
17 determining whether an underlying crimi-
18 nal offense constitutes a ground of inad-
19 missibility under this subsection, all stat-
20 utes or common law offenses are divisible
21 so long as any of the conduct encompassed
22 by the statute constitutes an offense that
23 is a ground of inadmissibility.

24 “(ii) OTHER EVIDENCE.—If the con-
25 viction records do not conclusively establish

1 whether a crime constitutes a ground of in-
2 admissibility, the Attorney General or the
3 Secretary of Homeland Security may con-
4 sider other evidence related to the convic-
5 tion that clearly establishes that the con-
6 duct for which the alien was engaged con-
7 stitutes a ground of inadmissibility.”.

8 (b) Section 237(a)(2) of the Immigration and Nation-
9 ality Act (8 U.S.C. 1227(a)(2)) is amended by adding at
10 the end the following subparagraph:

11 “(G) CRIMINAL OFFENSES.—

12 “(i) IN GENERAL.—For purposes of
13 determining whether an underlying crimi-
14 nal offense constitutes a ground of deport-
15 ability under this subsection, all statutes or
16 common law offenses are divisible so long
17 as any of the conduct encompassed by the
18 statute constitutes an offense that is a
19 ground of deportability.

20 “(ii) OTHER EVIDENCE.—If the con-
21 viction records do not conclusively establish
22 whether a crime constitutes a ground of
23 deportability, the Attorney General or the
24 Secretary of Homeland Security may con-
25 sider other evidence related to the convic-

1 tion that clearly establishes that the con-
2 duct for which the alien was engaged con-
3 stitutes a ground of deportability.”.

4 **TITLE IV—VISA SECURITY**

5 **SEC. 401. CANCELLATION OF ADDITIONAL VISAS.**

6 (a) IN GENERAL.—Section 222(g) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1202(g)) is amended—

8 (1) in paragraph (1)—

9 (A) by striking “Attorney General” and in-
10 serting “Secretary”; and

11 (B) by inserting “and any other non-
12 immigrant visa issued by the United States that
13 is in the possession of the alien” after “such
14 visa”; and

15 (2) in paragraph (2)(A), by striking “(other
16 than the visa described in paragraph (1)) issued in
17 a consular office located in the country of the alien’s
18 nationality” and inserting “(other than a visa de-
19 scribed in paragraph (1)) issued in a consular office
20 located in the country of the alien’s nationality or
21 foreign residence”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall take effect on the date of the enact-
24 ment of this Act and shall apply to a visa issued before,
25 on, or after such date.

1 **SEC. 402. VISA INFORMATION SHARING.**

2 (a) IN GENERAL.—Section 222(f) of the Immigration
3 and Nationality Act (8 U.S.C. 1202(f)(2)) is amended—

4 (1) by striking “issuance or refusal” and insert-
5 ing “issuance, refusal, or revocation”;

6 (2) in paragraph (2), in the matter preceding
7 subparagraph (A), by striking “and on the basis of
8 reciprocity”;

9 (3) in paragraph (2)(A)—

10 (A) by inserting “(i)” after “for the pur-
11 pose of”; and

12 (B) by striking “illicit weapons; or” and
13 inserting “illicit weapons, or (ii) determining a
14 person’s deportability or eligibility for a visa,
15 admission, or other immigration benefit;”;

16 (4) in paragraph (2)(B)—

17 (A) by striking “for the purposes” and in-
18 serting “for one of the purposes”; and

19 (B) by striking “or to deny visas to per-
20 sons who would be inadmissible to the United
21 States.” and inserting “; or”; and

22 (5) in paragraph (2), by adding at the end the
23 following:

24 “(C) with regard to any or all aliens in the
25 database specified data elements from each
26 record, if the Secretary of State determines that

1 it is in the national interest to provide such in-
2 formation to a foreign government.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 subsection (a) shall take effect 60 days after the date of
5 the enactment of the Act.

6 **SEC. 403. RESTRICTING WAIVER OF VISA INTERVIEWS.**

7 Section 222(h) of the Immigration and Nationality
8 Act (8 U.S.C. 1202(h)(1)(B)) is amended—

9 (1) in paragraph (1)(C), by inserting “, in con-
10 sultation with the Secretary of Homeland Security,”
11 after “if the Secretary”;

12 (2) in paragraph (1)(C)(i), by inserting “,
13 where such national interest shall not include facili-
14 tation of travel of foreign nationals to the United
15 States, reduction of visa application processing
16 times, or the allocation of consular resources” before
17 the semicolon at the end; and

18 (3) in paragraph (2)—

19 (A) by striking “or” at the end of subpara-
20 graph (E);

21 (B) by striking the period at the end of
22 subparagraph (F) and inserting “; or”; and

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

24 “(G) is an individual—

1 “(i) determined to be in a class of
2 aliens determined by the Secretary of
3 Homeland Security to be threats to na-
4 tional security;

5 “(ii) identified by the Secretary of
6 Homeland Security as a person of concern;
7 or

8 “(iii) applying for a visa in a visa cat-
9 egory with respect to which the Secretary
10 of Homeland Security has determined that
11 a waiver of the visa interview would create
12 a high risk of degradation of visa program
13 integrity.”.

14 **SEC. 404. AUTHORIZING THE DEPARTMENT OF STATE TO**
15 **NOT INTERVIEW CERTAIN INELIGIBLE VISA**
16 **APPLICANTS.**

17 (a) IN GENERAL.—Section 222(h)(1) of the Immi-
18 gration and Nationality Act (8 U.S.C. 1202(h)(1)) is
19 amended by inserting “the alien is determined by the Sec-
20 retary of State to be ineligible for a visa based upon review
21 of the application or” after “unless”.

22 (b) GUIDANCE.—Not later than 90 days after the
23 date of the enactment of this Act, the Secretary of State
24 shall issue guidance to consular officers on the standards
25 and processes for implementing the authority to deny visa

1 applications without interview in cases where the alien is
2 determined by the Secretary of State to be ineligible for
3 a visa based upon review of the application.

4 (c) REPORTS.—Not less frequently than once each
5 quarter, the Secretary of State shall submit to the Con-
6 gress a report on the denial of visa applications without
7 interview, including—

8 (1) the number of such denials; and

9 (2) a post-by-post breakdown of such denials.

10 **SEC. 405. VISA REFUSAL AND REVOCATION.**

11 (a) AUTHORITY OF THE SECRETARY OF HOMELAND
12 SECURITY AND THE SECRETARY OF STATE.—

13 (1) IN GENERAL.—Section 428 of the Home-
14 land Security Act of 2002 (6 U.S.C. 236) is amend-
15 ed by striking subsections (b) and (c) and inserting
16 the following:

17 “(b) AUTHORITY OF THE SECRETARY OF HOMELAND
18 SECURITY.—

19 “(1) IN GENERAL.—Notwithstanding section
20 104(a) of the Immigration and Nationality Act (8
21 U.S.C. 1104(a)) or any other provision of law, and
22 except as provided in subsection (c) and except for
23 the authority of the Secretary of State under sub-
24 paragraphs (A) and (G) of section 101(a)(15) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1101(a)(15)), the Secretary—

3 “(A) shall have exclusive authority to issue
4 regulations, establish policy, and administer and
5 enforce the provisions of the Immigration and
6 Nationality Act (8 U.S.C. 1101 et seq.) and all
7 other immigration or nationality laws relating
8 to the functions of consular officers of the
9 United States in connection with the granting
10 and refusal of a visa; and

11 “(B) may refuse or revoke any visa to any
12 alien or class of aliens if the Secretary, or des-
13 ignee, determines that such refusal or revoca-
14 tion is necessary or advisable in the security or
15 foreign policy interests of the United States.

16 “(2) EFFECT OF REVOCATION.—The revocation
17 of any visa under paragraph (1)(B)—

18 “(A) shall take effect immediately; and

19 “(B) shall automatically cancel any other
20 valid visa that is in the alien’s possession.

21 “(3) JUDICIAL REVIEW.—Notwithstanding any
22 other provision of law, including section 2241 of title
23 28, United States Code, or any other habeas corpus
24 provision, and sections 1361 and 1651 of such title,
25 no court shall have jurisdiction to review a decision

1 by the Secretary of Homeland Security to refuse or
2 revoke a visa, and no court shall have jurisdiction to
3 hear any claim arising from, or any challenge to,
4 such a refusal or revocation.

5 “(c) AUTHORITY OF THE SECRETARY OF STATE.—

6 “(1) IN GENERAL.—The Secretary of State may
7 direct a consular officer to refuse a visa requested
8 by an alien if the Secretary of State determines such
9 refusal to be necessary or advisable in the security
10 or foreign policy interests of the United States.

11 “(2) LIMITATION.—No decision by the Sec-
12 retary of State to approve a visa may override a de-
13 cision by the Secretary of Homeland Security under
14 subsection (b).”.

15 (2) CONFORMING AMENDMENT.—Section
16 237(a)(1)(B) of the Immigration and Nationality
17 Act (8 U.S.C. 1227(a)(1)(B)) is amended by strik-
18 ing “under section 221(i)”.

19 (3) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) shall take effect on the date of the
21 enactment of this Act and shall apply to visa refus-
22 als and revocations occurring before, on, or after
23 such date.

1 (b) TECHNICAL CORRECTIONS TO THE HOMELAND
2 SECURITY ACT.—Section 428(a) of the Homeland Secu-
3 rity Act of 2002 (6 U.S.C. 236(a)) is amended by—

4 (1) striking “subsection” and inserting “sec-
5 tion”; and

6 (2) striking “consular office” and inserting
7 “consular officer”.

8 **SEC. 406. FUNDING FOR THE VISA SECURITY PROGRAM.**

9 (a) IN GENERAL.—The Department of State and Re-
10 lated Agency Appropriations Act, 2005 (title IV of division
11 B of Public Law 108–447) is amended, in the fourth para-
12 graph under the heading “Diplomatic and Consular Pro-
13 grams”, by striking “Beginning” and all that follows
14 through the period at the end and inserting the following:
15 “Beginning in fiscal year 2005 and thereafter, the Sec-
16 retary of State is authorized to charge surcharges related
17 to consular services in support of enhanced border security
18 that are in addition to the immigrant visa fees in effect
19 on January 1, 2004: *Provided*, That funds collected pursu-
20 ant to this authority shall be credited to the appropriation
21 for U.S. Immigration and Customs Enforcement for the
22 fiscal year in which the fees were collected, and shall be
23 available until expended for the funding of the Visa Secu-
24 rity Program established by the Secretary of Homeland
25 Security under section 428(e) of the Homeland Security

1 Act of 2002 (Public Law 107–296): *Provided further*, That
2 such surcharges shall be 10 percent of the fee assessed
3 on immigrant visa applications.”.

4 (b) REPAYMENT OF APPROPRIATED FUNDS.—Twen-
5 ty percent of the funds collected each fiscal year under
6 the heading “Diplomatic and Consular Programs” in the
7 Department of State and Related Agency Appropriations
8 Act, 2005 (title IV of division B of Public Law 108–447),
9 as amended by subsection (a), shall be deposited into the
10 general fund of the Treasury as repayment of funds ap-
11 propriated pursuant to section 407(c) of this Act until the
12 entire appropriated sum has been repaid.

13 **SEC. 407. EXPEDITIOUS EXPANSION OF VISA SECURITY**
14 **PROGRAM TO HIGH-RISK POSTS.**

15 (a) IN GENERAL.—Section 428(i) of the Homeland
16 Security Act of 2002 (6 U.S.C. 236(i)) is amended to read
17 as follows:

18 “(i) VISA ISSUANCE AT DESIGNATED HIGH-RISK
19 POSTS.—Notwithstanding any other provision of law, the
20 Secretary of Homeland Security shall conduct an on-site
21 review of all visa applications and supporting documenta-
22 tion before adjudication at the top 30 visa-issuing posts
23 designated jointly by the Secretaries of State and Home-
24 land Security as high-risk posts.”.

1 (b) ASSIGNMENT OF PERSONNEL.—Not later than
2 one year after the date of enactment of this section, the
3 Secretary of Homeland Security shall assign personnel to
4 the visa-issuing posts referenced in section 428(i) of the
5 Homeland Security Act of 2002 (6 U.S.C. 236(i)), as
6 amended by this section, and communicate such assign-
7 ments to the Secretary of State.

8 (c) APPROPRIATIONS.—There is authorized to be ap-
9 propriated \$60,000,000 for each of the fiscal years 2014
10 and 2015, which shall be used to expedite the implementa-
11 tion of section 428(i) of the Homeland Security Act, as
12 amended by this section.

13 **SEC. 408. EXPEDITED CLEARANCE AND PLACEMENT OF DE-**
14 **PARTMENT OF HOMELAND SECURITY PER-**
15 **SONNEL AT OVERSEAS EMBASSIES AND CON-**
16 **SULAR POSTS.**

17 Section 428 of the Homeland Security Act of 2002
18 (6 U.S.C. 236) is amended by adding at the end the fol-
19 lowing:

20 “(j) EXPEDITED CLEARANCE AND PLACEMENT OF
21 DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT
22 OVERSEAS EMBASSIES AND CONSULAR POSTS.—Notwith-
23 standing any other provision of law, and the processes set
24 forth in National Security Defense Directive 38 (dated
25 June 2, 1982) or any successor Directive, the Chief of

1 Mission of a post to which the Secretary of Homeland Se-
2 curity has assigned personnel under subsection (e) or (i)
3 shall ensure, not later than one year after the date on
4 which the Secretary of Homeland Security communicates
5 such assignment to the Secretary of State, that such per-
6 sonnel have been stationed and accommodated at post and
7 are able to carry out their duties.”.

8 **SEC. 409. ACCREDITATION REQUIREMENTS.**

9 (a) COLLEGES, UNIVERSITIES, AND LANGUAGE
10 TRAINING PROGRAMS.—Section 101(a) of the Immigra-
11 tion and Nationality Act (8 U.S.C. 1101(a)) is amended—

12 (1) in paragraph (15)(F)(i)—

13 (A) by striking “section 214(l) at an estab-
14 lished college, university, seminary, conserv-
15 atory, academic high school, elementary school,
16 or other academic institution or in an accred-
17 ited language training program in the United
18 States” and inserting “section 214(m) at an ac-
19 credited college, university, or language training
20 program, or at an established seminary, con-
21 servatory, academic high school, elementary
22 school, or other academic institution in the
23 United States”;

1 (B) by striking “Attorney General” each
2 place such term appears and inserting “Sec-
3 retary of Homeland Security”; and

4 (C) by striking “and if any such institution
5 of learning or place of study fails to make re-
6 ports promptly the approval shall be with-
7 drawn,” and inserting “and if any such institu-
8 tion of learning of place of study fails to make
9 reports promptly or fails to comply with any ac-
10 creditation requirement (including deadlines for
11 submitting accreditation applications or obtain-
12 ing accreditation) the approval shall be with-
13 drawn,”; and

14 (2) by amending paragraph (52) to read as fol-
15 lows:

16 “(52) Except as provided in section 214(m)(4), the
17 term ‘accredited college, university, or language training
18 program’ means a college, university, or language training
19 program that is accredited by an accrediting agency recog-
20 nized by the Secretary of Education.”.

21 (b) OTHER ACADEMIC INSTITUTIONS.—Section
22 214(m) of the Immigration and Nationality Act (8 U.S.C.
23 1184(m)) is amended by adding at the end the following:

24 “(3) The Secretary of Homeland Security shall re-
25 quire accreditation of an academic institution (except for

1 seminaries or other religious institutions) for purposes of
2 section 101(a)(15)(F) if—

3 “(A) that institution is not already required to
4 be accredited under section 101(a)(15)(F)(i); and

5 “(B) an appropriate accrediting agency recog-
6 nized by the Secretary of Education is able to pro-
7 vide such accreditation.

8 “(4) The Secretary of Homeland Security, in the Sec-
9 retary’s discretion, may waive the accreditation require-
10 ment in paragraph (3) or section 101(a)(15)(F)(i) with
11 respect to an institution if such institution—

12 “(A) is otherwise in compliance with the re-
13 quirements of section 101(a)(15)(F)(i); and

14 “(B) has been a candidate for accreditation for
15 at least 1 year and continues to progress toward ac-
16 creditation by an accrediting agency recognized by
17 the Secretary of Education.”.

18 (c) EFFECTIVE DATE.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), the amendments made by this section
21 shall—

22 (A) take effect on the date that is 180
23 days after the date of enactment of this Act;
24 and

1 (B) apply with respect to applications for
2 nonimmigrant visas that are filed on or after
3 the effective date described in subparagraph
4 (A).

5 (2) TEMPORARY EXCEPTION.—During the 3-
6 year period beginning on the effective date described
7 in paragraph (1)(A), an institution that is newly re-
8 quired to be accredited under this section may con-
9 tinue to participate in the Student and Exchange
10 Visitor Program notwithstanding the institution's
11 lack of accreditation if the institution—

12 (A) was certified under the Student and
13 Exchange Visitor Program on such date;

14 (B) submitted an application for accredita-
15 tion to an accrediting agency recognized by the
16 Secretary of Education during the 6-month pe-
17 riod ending on such date; and

18 (C) continues to progress toward accredita-
19 tion by such accrediting agency.

20 **SEC. 410. VISA FRAUD.**

21 (a) TEMPORARY SUSPENSION OF SEVIS ACCESS.—
22 Section 641(d) of the Illegal Immigration Reform and Im-
23 migrant Responsibility Act of 1996 (8 U.S.C. 1372(d)) is
24 amended—

1 (1) in paragraph (1)(A), by striking “institu-
2 tion,,” and inserting “institution,”; and

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

4 “(3) EFFECT OF REASONABLE SUSPICION OF
5 FRAUD.—If the Secretary of Homeland Security has
6 reasonable suspicion that an owner of, or a des-
7 ignated school official at, an approved institution of
8 higher education, an other approved educational in-
9 stitution, or a designated exchange visitor program
10 has committed fraud or attempted to commit fraud
11 relating to any aspect of the Student and Exchange
12 Visitor Program, the Secretary may immediately
13 suspend, without notice, such official’s or such
14 school’s access to the Student and Exchange Visitor
15 Information System (SEVIS), including the ability
16 to issue Form I-20s, pending a final determination
17 by the Secretary with respect to the institution’s cer-
18 tification under the Student and Exchange Visitor
19 Program.”.

20 (b) EFFECT OF CONVICTION FOR VISA FRAUD.—
21 Such section 641(d), as amended by subsection (a)(2), is
22 further amended by adding at the end the following:

23 “(4) PERMANENT DISQUALIFICATION FOR
24 FRAUD.—A designated school official at, or an owner
25 of, an approved institution of higher education, an

1 other approved educational institution, or a des-
2 ignated exchange visitor program who is convicted
3 for fraud relating to any aspect of the Student and
4 Exchange Visitor Program shall be permanently dis-
5 qualified from filing future petitions and from hav-
6 ing an ownership interest or a management role, in-
7 cluding serving as a principal, owner, officer, board
8 member, general partner, designated school official,
9 or any other position of substantive authority for the
10 operations or management of the institution, in any
11 United States educational institution that enrolls
12 nonimmigrant alien students described in subpara-
13 graph (F) or (M) of section 101(a)(15) the Immi-
14 gration and Nationality Act (8 U.S.C.
15 1101(a)(15)).”.

16 **SEC. 411. BACKGROUND CHECKS.**

17 (a) IN GENERAL.—Section 641(d) of the Illegal Im-
18 migration Reform and Immigrant Responsibility Act of
19 1996 (8 U.S.C. 1372(d)), as amended by section 411(b)
20 of this Act, is further amended by adding at the end the
21 following:

22 “(5) BACKGROUND CHECK REQUIREMENT.—

23 “(A) IN GENERAL.—An individual may not
24 serve as a designated school official or be grant-
25 ed access to SEVIS unless the individual is a

1 national of the United States or an alien law-
2 fully admitted for permanent residence and dur-
3 ing the most recent 3-year period—

4 “(i) the Secretary of Homeland Secu-
5 rity has—

6 “(I) conducted a thorough back-
7 ground check on the individual, in-
8 cluding a review of the individual’s
9 criminal and sex offender history and
10 the verification of the individual’s im-
11 migration status; and

12 “(II) determined that the indi-
13 vidual has not been convicted of any
14 violation of United States immigration
15 law and is not a risk to national secu-
16 rity of the United States; and

17 “(ii) the individual has successfully
18 completed an on-line training course on
19 SEVP and SEVIS, which has been devel-
20 oped by the Secretary.

21 “(B) INTERIM DESIGNATED SCHOOL OFFI-
22 CIAL.—

23 “(i) IN GENERAL.—An individual may
24 serve as an interim designated school offi-
25 cial during the period that the Secretary is

1 conducting the background check required
2 by subparagraph (A)(i)(I).

3 “(ii) REVIEWS BY THE SECRETARY.—

4 If an individual serving as an interim des-
5 ignated school official under clause (i) does
6 not successfully complete the background
7 check required by subparagraph (A)(i)(I),
8 the Secretary shall review each Form I-20
9 issued by such interim designated school
10 official.

11 “(6) FEE.—The Secretary is authorized to col-
12 lect a fee from an approved school for each back-
13 ground check conducted under paragraph (6)(A)(i).
14 The amount of such fee shall be equal to the average
15 amount expended by the Secretary to conduct such
16 background checks.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall take effect on the date that is 1 year
19 after the date of the enactment of this Act.

20 **SEC. 412. NUMBER OF DESIGNATED SCHOOL OFFICIALS.**

21 Section 641(d) of the Illegal Immigration Reform and
22 Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(d)),
23 as amended by section 412(a) of this Act, is further
24 amended by adding at the end the following:

1 “(7) NUMBER OF DESIGNATED SCHOOL OFFI-
2 CIALS.—School officials may nominate as many Des-
3 ignated School Officials (DSOs) in addition to the
4 school’s Principal Designated School Official
5 (PDSO) as they determine necessary to adequately
6 provide recommendations to students enrolled at the
7 school regarding maintenance of nonimmigrant sta-
8 tus under subparagraph (F) or (M) of section
9 101(a)(15) and to support timely and complete rec-
10 ordkeeping and reporting to the Secretary of Home-
11 land Security, as required by this section, except
12 that a school may not have less than one DSO per
13 every 200 students who have nonimmigrant status
14 pursuant to subparagraph (F), (J), or (M) of such
15 section. School officials shall not permit a DSO or
16 PDSO nominee access to SEVIS until the Secretary
17 approves the nomination.”.

18 **SEC. 413. REPORTING REQUIREMENT.**

19 Section 442(a) of the Homeland Security Act of 2002
20 (6 U.S.C. 252(a)) is amended—

21 (1) by redesignating paragraph (5) as para-
22 graph (6); and

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

1 “(5) STUDENT AND EXCHANGE VISITOR PRO-
2 GRAM.—In administering the program under para-
3 graph (4), the Secretary shall, not later than one
4 year after the date of the enactment of this para-
5 graph, prescribe regulations to require an institution
6 or exchange visitor program sponsor participating in
7 the Student Exchange Visitor Program to ensure
8 that each student or exchange visitor who has non-
9 immigrant status pursuant to subparagraph (F),
10 (J), or (M) of section 101(a)(15) of the Immigration
11 and Nationality Act (8 U.S.C. 1101(a)(15)) enrolled
12 at the institution or attending the exchange visitor
13 program is reported to the Department within 10
14 days of—

15 “(A) transferring to another institution or
16 program;

17 “(B) changing academic majors; or

18 “(C) any other changes to information re-
19 quired to be maintained in the system described
20 in paragraph (4).”.

21 **SEC. 414. FLIGHT SCHOOLS NOT CERTIFIED BY FAA.**

22 (a) IN GENERAL.—Except as provided in subsection
23 (b), the Secretary of Homeland Security shall prohibit any
24 flight school in the United States from accessing SEVIS
25 or issuing a Form I-20 to an alien seeking a student visa

1 pursuant to subparagraph (F)(i) or (M)(i) of section
2 101(a)(15) of the Immigration and Nationality Act (8
3 U.S.C. 1101(a)(15)) if the flight school has not been cer-
4 tified to the satisfaction of the Secretary and by the Fed-
5 eral Aviation Administration pursuant to part 141 or part
6 142 of title 14, Code of Federal Regulations (or similar
7 successor regulations).

8 (b) TEMPORARY EXCEPTION.—During the 5-year pe-
9 riod beginning on the date of the enactment of this Act,
10 the Secretary may waive the requirement under subsection
11 (a) that a flight school be certified by the Federal Aviation
12 Administration if such flight school—

13 (1) was certified under the Student and Ex-
14 change Visitor Program on the date of the enact-
15 ment of this Act;

16 (2) submitted an application for certification
17 with the Federal Aviation Administration during the
18 1-year period beginning on such date; and

19 (3) continues to progress toward certification by
20 the Federal Aviation Administration.

21 **SEC. 415. REVOCATION OF ACCREDITATION.**

22 At the time an accrediting agency or association is
23 required to notify the Secretary of Education and the ap-
24 propriate State licensing or authorizing agency of the final
25 denial, withdrawal, suspension, or termination of accredi-

1 tation of an institution pursuant to section 496 of the
2 Higher Education Act of 1965 (20 U.S.C. 1099b), such
3 accrediting agency or association shall notify the Secretary
4 of Homeland Security of such determination and the Sec-
5 retary of Homeland Security shall immediately withdraw
6 the school from the SEVP and prohibit the school from
7 accessing SEVIS.

8 **SEC. 416. REPORT ON RISK ASSESSMENT.**

9 Not later than 180 days after the date of the enact-
10 ment of this Act, the Secretary of Homeland Security shall
11 submit to the Committee on the Judiciary of the Senate
12 and the Committee on the Judiciary of the House of Rep-
13 resentatives a report that contains the risk assessment
14 strategy that will be employed by the Secretary to identify,
15 investigate, and take appropriate action against schools
16 and school officials that are facilitating the issuance of
17 Form I-20 and the maintenance of student visa status
18 in violation of the immigration laws of the United States.

19 **SEC. 417. IMPLEMENTATION OF GAO RECOMMENDATIONS.**

20 Not later than 180 days after the date of the enact-
21 ment of this act, the Secretary of Homeland Security shall
22 submit to the Committee on the Judiciary of the Senate
23 and the Committee on the Judiciary of the House of Rep-
24 resentatives a report that describes—

1 (1) the process in place to identify and assess
2 risks in the SEVP;

3 (2) a risk assessment process to allocate
4 SEVP's resources based on risk;

5 (3) the procedures in place for consistently en-
6 suring a school's eligibility, including consistently
7 verifying in lieu of letters;

8 (4) how SEVP identified and addressed missing
9 school case files;

10 (5) a plan to develop and implement a process
11 to monitor State licensing and accreditation status
12 of all SEVP-certified schools;

13 (6) whether all flight schools that have not been
14 certified to the satisfaction of the Secretary and by
15 the Federal Aviation Administration have been re-
16 moved from the program and have been restricted
17 from accessing SEVIS;

18 (7) the standard operating procedures that gov-
19 ern coordination among SEVP, Counterterrorism
20 and Criminal Exploitation Unit, and U.S. Immigra-
21 tion and Customs Enforcement field offices; and

22 (8) the established criteria for referring cases of
23 a potentially criminal nature from SEVP to the
24 counterterrorism and intelligence community.

1 **SEC. 418. IMPLEMENTATION OF SEVIS II.**

2 Not later than 2 years after the date of the enact-
3 ment of this Act, the Secretary of Homeland Security shall
4 complete the deployment of both phases of the 2nd genera-
5 tion Student and Exchange Visitor Information System
6 (commonly known as “SEVIS II”).

7 **SEC. 419. DEFINITIONS.**

8 (a) **DEFINITIONS.**—For purposes of this title:

9 (1) **SEVIS.**—The term “SEVIS” means the
10 Student and Exchange Visitor Information System
11 of the Department of Homeland Security.

12 (2) **SEVP.**—The term “SEVP” means the Stu-
13 dent and Exchange Visitor Program of the Depart-
14 ment of Homeland Security.

15 **TITLE V—AID TO U.S. IMMIGRA-**
16 **TION AND CUSTOMS EN-**
17 **FORCEMENT OFFICERS**

18 **SEC. 501. ICE IMMIGRATION ENFORCEMENT AGENTS.**

19 (a) **IN GENERAL.**—The Secretary of Homeland Secu-
20 rity shall authorize all immigration enforcement agents
21 and deportation officers of the Department of Homeland
22 Security who have successfully completed basic immigra-
23 tion law enforcement training to exercise the powers con-
24 ferred by—

1 (1) section 287(a)(5)(A) of the Immigration
2 and Nationality Act to arrest for any offense against
3 the United States;

4 (2) section 287(a)(5)(B) of such Act to arrest
5 for any felony;

6 (3) section 274(a) of such Act to arrest for
7 bringing in, transporting, or harboring certain
8 aliens, or inducing them to enter;

9 (4) section 287(a) of such Act to execute war-
10 rants of arrest for administrative immigration viola-
11 tions issued under section 236 of the Act or to exe-
12 cute warrants of criminal arrest issued under the
13 authority of the United States; and

14 (5) section 287(a) of such Act to carry fire-
15 arms, provided that they are individually qualified by
16 training and experience to handle and safely operate
17 the firearms they are permitted to carry, maintain
18 proficiency in the use of such firearms, and adhere
19 to the provisions of the enforcement standard gov-
20 erning the use of force.

21 (b) ARREST POWERS.—Section 287(a)(2) of the Im-
22 migration and Nationality Act (8 U.S.C. 1357(a)(2)) is
23 amended by striking “regulation and is likely to escape
24 before a warrant can be obtained for his arrest,” and in-
25 serting “regulation,”.

1 (c) PAY.—Immigration enforcement agents shall be
2 paid on the same scale as Immigration and Customs En-
3 forcement deportation officers and shall receive the same
4 benefits.

5 **SEC. 502. ICE DETENTION ENFORCEMENT OFFICERS.**

6 (a) AUTHORIZATION.—The Secretary of Homeland
7 Security is authorized to hire 2,500 Immigration and Cus-
8 toms Enforcement detention enforcement officers.

9 (b) DUTIES.—Immigration and Customs Enforce-
10 ment detention enforcement officers who have successfully
11 completed detention enforcement officers' basic training
12 shall be responsible for—

13 (1) taking and maintaining custody of any per-
14 son who has been arrested by an immigration offi-
15 cer;

16 (2) transporting and guarding immigration de-
17 tainees;

18 (3) securing Department of Homeland Security
19 detention facilities; and

20 (4) assisting in the processing of detainees.

21 **SEC. 503. ENSURING THE SAFETY OF ICE OFFICERS AND**
22 **AGENTS.**

23 (a) BODY ARMOR.—The Secretary of Homeland Se-
24 curity shall ensure that every Immigration and Customs
25 Enforcement deportation officer and immigration enforce-

1 ment agent on duty is issued high-quality body armor that
2 is appropriate for the climate and risks faced by the agent.
3 Enough body armor must be purchased to cover every
4 agent in the field.

5 (b) WEAPONS.—Such Secretary shall ensure that Im-
6 migration and Customs Enforcement deportation officers
7 and immigration enforcement agents are equipped with
8 weapons that are reliable and effective to protect them-
9 selves, their fellow agents, and innocent third parties from
10 the threats posed by armed criminals. Such weapons shall
11 include, at a minimum, standard-issue handguns, M-4 (or
12 equivalent) rifles, and Tasers.

13 (c) EFFECTIVE DATE.—This section shall take effect
14 90 days after the date of the enactment of this Act.

15 **SEC. 504. ICE ADVISORY COUNCIL.**

16 (a) ESTABLISHMENT.—An ICE Advisory Council
17 shall be established not later than 3 months after the date
18 of the enactment of this Act.

19 (b) MEMBERSHIP.—The ICE Advisor Council shall
20 be comprised of 7 members.

21 (c) APPOINTMENT.—Members shall to be appointed
22 in the following manner:

23 (1) One member shall be appointed by the
24 President.

1 (2) One member shall be appointed by the
2 Chairman of the Judiciary Committee of the House
3 of Representatives.

4 (3) One member shall be appointed by the
5 Chairman of the Judiciary Committee of the Senate.

6 (4) One member shall be appointed by the
7 Local 511, the ICE prosecutor's union.

8 (5) Three members shall be appointed by the
9 National Immigration and Customs Enforcement
10 Council.

11 (d) TERM.—Members shall serve renewable, 2-year
12 terms.

13 (e) VOLUNTARY.—Membership shall be voluntary and
14 non-remunerated, except that members will receive reim-
15 bursement from the Secretary of Homeland Security for
16 travel and other related expenses.

17 (f) RETALIATION PROTECTION.—Members who are
18 employed by the Secretary of Homeland Security shall be
19 protected from retaliation by their supervisors, managers,
20 and other Department of Homeland Security employees
21 for their participation on the Council.

22 (g) PURPOSE.—The purpose of the Council is to ad-
23 vise the Congress and the Secretary of Homeland Security
24 on issues including the following:

1 (1) The current status of immigration enforce-
2 ment efforts, including prosecutions and removals,
3 the effectiveness of such efforts, and how enforce-
4 ment could be improved.

5 (2) The effectiveness of cooperative efforts be-
6 tween the Secretary of Homeland Security and other
7 law enforcement agencies, including additional types
8 of enforcement activities that the Secretary should
9 be engaged in, such as State and local criminal task
10 forces.

11 (3) Personnel, equipment, and other resource
12 needs of field personnel.

13 (4) Improvements that should be made to the
14 organizational structure of the Department of
15 Homeland Security, including whether the position
16 of immigration enforcement agent should be merged
17 into the deportation officer position.

18 (5) The effectiveness of specific enforcement
19 policies and regulations promulgated by the Sec-
20 retary of Homeland Security, and whether other en-
21 forcement priorities should be considered.

22 (h) REPORTS.—The Council shall provide quarterly
23 reports to the Chairmen and Ranking Members of the Ju-
24 diciary Committees of the Senate and the House of Rep-
25 resentatives and to the Secretary of Homeland Security.

1 The Council members shall meet directly with the Chair-
2 men and Ranking Members (or their designated represent-
3 atives) and with the Secretary to discuss their reports
4 every 6 months.

5 **SEC. 505. PILOT PROGRAM FOR ELECTRONIC FIELD PROC-**
6 **ESSING.**

7 (a) IN GENERAL.—The Secretary of Homeland Secu-
8 rity shall establish a pilot program in at least five of the
9 ten Immigration and Customs Enforcement field offices
10 with the largest removal caseloads to allow Immigration
11 and Customs deportation officers and immigration en-
12 forcement agents to—

13 (1) electronically process and serve charging
14 documents, including Notices to Appear, while in the
15 field; and

16 (2) electronically process and place detainees
17 while in the field.

18 (b) DUTIES.—The pilot program described in sub-
19 section (a) shall be designed to allow deportation officers
20 and immigration enforcement agents to use handheld or
21 vehicle-mounted computers to—

22 (1) enter any required data, including personal
23 information about the alien subject and the reason
24 for issuing the document;

1 (2) apply the electronic signature of the issuing
2 officer or agent;

3 (3) set the date the alien is required to appear
4 before an immigration judge, in the case of Notices
5 to Appear;

6 (4) print any documents the alien subject may
7 be required to sign, along with additional copies of
8 documents to be served on the alien; and

9 (5) interface with the ENFORCE database so
10 that all data is stored and retrievable.

11 (c) CONSTRUCTION.—The pilot program described in
12 subsection (a) shall be designed to replace, to the extent
13 possible, the current paperwork and data-entry process
14 used for issuing such charging documents and detainers.

15 (d) DEADLINE.—The Secretary shall initiate the pilot
16 program described in subsection (a) within 6 months of
17 the date of enactment of this Act.

18 (e) REPORT.—The Government Accountability Office
19 shall report to the Judiciary Committee of the Senate and
20 the House of Representatives no later than 18 months
21 after the date of enactment of this Act on the effectiveness
22 of the pilot program and provide recommendations for im-
23 proving it.

24 (f) ADVISORY COUNCIL.—The ICE Advisory Council
25 established by section 504 shall include recommendations

1 on how the pilot program should work in the first quar-
2 terly report of the Council, and shall include assessments
3 of the program and recommendations for improvement in
4 each subsequent report.

5 (g) **EFFECTIVE DATE.**—This section shall take effect
6 180 days after the date of the enactment of this Act.

7 **SEC. 506. ADDITIONAL ICE DEPORTATION OFFICERS AND**
8 **SUPPORT STAFF.**

9 (a) **IN GENERAL.**—The Secretary of Homeland Secu-
10 rity shall, subject to the availability of appropriations for
11 such purpose, increase the number of positions for full-
12 time active-duty Immigration and Customs Enforcement
13 deportation officers by 5,000 above the number of full-
14 time positions for which funds were appropriated for fiscal
15 year 2013. The Secretary will determine the rate at which
16 the additional officers will be added with due regard to
17 filling the positions as expeditiously as possible without
18 making any compromises in the selection or the training
19 of the additional officers.

20 (b) **SUPPORT STAFF.**—The Secretary shall, subject
21 to the availability of appropriations for such purpose, in-
22 crease the number of positions for full-time support staff
23 for Immigration and Customs Enforcement deportation
24 officers by 700 above the number of full-time positions for
25 which funds were appropriated for fiscal year 2013.

1 **SEC. 507. ADDITIONAL ICE PROSECUTORS.**

2 The Secretary of Homeland Security shall increase
3 by 60 the number of full-time trial attorneys working for
4 the Immigration and Customs Enforcement Office of the
5 Principal Legal Advisor.

6 **TITLE VI—MISCELLANEOUS**
7 **ENFORCEMENT PROVISIONS**

8 **SEC. 601. TIMELY REPATRIATION.**

9 (a) LISTING OF COUNTRIES.—Beginning on the date
10 that is 6 months after the date of enactment of this Act,
11 and every 6 months thereafter, the Secretary of Homeland
12 Security shall publish a report including the following:

13 (1) A list of the following:

14 (A) Countries that have refused or unrea-
15 sonably delayed repatriation of an alien who is
16 a national of that country since the date of en-
17 actment of this Act and the total number of
18 such aliens, disaggregated by nationality.

19 (B) Countries that have an excessive repa-
20 triation failure rate.

21 (2) A list of each country that was included
22 under subparagraph (B) or (C) of paragraph (1) in
23 both the report preceding the current report and the
24 current report.

25 (b) SANCTIONS.—Beginning on the date that a coun-
26 try is included in a list under subsection (a)(2) and ending

1 on the date that that country is not included in such list,
2 that country shall be subject to the following:

3 (1) The Secretary of State may not issue visas
4 under section 101(a)(15)(A)(iii) of the Immigration
5 and Nationality Act (8 U.S.C. 1101(a)(15)(A)(iii))
6 to attendants, servants, personal employees, and
7 members of their immediate families, of the officials
8 and employees of that country who receive non-
9 immigrant status under clause (i) or (ii) of section
10 101(a)(15)(A) of such Act.

11 (2) Each 6 months thereafter that the country
12 is included in that list, the Secretary of State shall
13 reduce the number of visas available under clause (i)
14 or (ii) of section 101(a)(15)(A) of the Immigration
15 and Nationality Act in a fiscal year to nationals of
16 that country by an amount equal to 10 percent of
17 the baseline visa number for that country. Except as
18 provided under section 243(d) of the Immigration
19 and Nationality Act (8 U.S.C. 1253), the Secretary
20 may not reduce the number to a level below 20 per-
21 cent of the baseline visa number.

22 (c) WAIVERS.—

23 (1) NATIONAL SECURITY WAIVER.—If the Sec-
24 retary of State submits to Congress a written deter-
25 mination that significant national security interests

1 of the United States require a waiver of the sanc-
2 tions under subsection (b), the Secretary may waive
3 any reduction below 80 percent of the baseline visa
4 number. The Secretary of Homeland Security may
5 not delegate the authority under this subsection.

6 (2) TEMPORARY EXIGENT CIRCUMSTANCES.—If
7 the Secretary of State submits to Congress a written
8 determination that temporary exigent circumstances
9 require a waiver of the sanctions under subsection
10 (b), the Secretary may waive any reduction below 80
11 percent of the baseline visa number during 6-month
12 renewable periods. The Secretary of Homeland Secu-
13 rity may not delegate the authority under this sub-
14 section.

15 (d) EXEMPTION.—The Secretary of Homeland Secu-
16 rity, in consultation with the Secretary of State, may ex-
17 empt a country from inclusion in a list under subsection
18 (a)(2) if the total number of nonrepatriations outstanding
19 is less than 10 for the preceding 3-year period.

20 (e) UNAUTHORIZED VISA ISSUANCE.—Any visa
21 issued in violation of this section shall be void.

22 (f) NOTICE.—If an alien who has been convicted of
23 a criminal offense before a Federal or State court whose
24 repatriation was refused or unreasonably delayed is to be
25 released from detention by the Secretary of Homeland Se-

1 curity, the Secretary shall provide notice to the State and
2 local law enforcement agency for the jurisdictions in which
3 the alien is required to report or is to be released. When
4 possible, and particularly in the case of violent crime, the
5 Secretary shall make a reasonable effort to provide notice
6 of such release to any crime victims and their immediate
7 family members.

8 (g) DEFINITIONS.—For purposes of this section:

9 (1) REFUSED OR UNREASONABLY DELAYED.—

10 A country is deemed to have refused or unreasonably
11 delayed the acceptance of an alien who is a citizen,
12 subject, national, or resident of that country if, not
13 later than 90 days after receiving a request to repa-
14 triate such alien from an official of the United
15 States who is authorized to make such a request, the
16 country does not accept the alien or issue valid trav-
17 el documents.

18 (2) FAILURE RATE.—The term “failure rate”
19 for a period means the percentage determined by di-
20 viding the total number of repatriation requests for
21 aliens who are citizens, subjects, nationals, or resi-
22 dents of a country that that country refused or un-
23 reasonably delayed during that period by the total
24 number of such requests during that period.

1 (3) EXCESSIVE REPATRIATION FAILURE
2 RATE.—The term “excessive repatriation failure
3 rate” means, with respect to a report under sub-
4 section (a), a failure rate greater than 10 percent
5 for any of the following:

6 (A) The period of the 3 full fiscal years
7 preceding the date of publication of the report.

8 (B) The period of 1 year preceding the
9 date of publication of the report.

10 (4) NUMBER OF NON-REPATRIATIONS OUT-
11 STANDING.—The term “number of non-repatriations
12 outstanding” means, for a period, the number of
13 unique aliens whose repatriation a country has re-
14 fused or unreasonably delayed and whose repatri-
15 ation has not occurred during that period.

16 (5) BASELINE VISA NUMBER.—The term “base-
17 line visa number” means, with respect to a country,
18 the average number of visas issued each fiscal year
19 to nationals of that country under clauses (i) and
20 (ii) of section 101(a)(15)(A) of the Immigration and
21 Nationality Act (8 U.S.C. 1101(a)(15)(A)) for the 3
22 full fiscal years immediately preceding the first re-
23 port under subsection (a) in which that country is
24 included in the list under subsection (a)(2).

1 (h) GAO REPORT.—On the date that is 1 day after
2 the date that the President submits a budget under sec-
3 tion 1105(a) of title 31, United States Code, for fiscal year
4 2016, the Comptroller General of the United States shall
5 submit a report to Congress regarding the progress of the
6 Secretary of Homeland Security and the Secretary of
7 State in implementation of this section and in making re-
8 quests to repatriate aliens as appropriate.

9 **SEC. 602. ENCOURAGING ALIENS TO DEPART VOLUN-**
10 **TARILY.**

11 (a) IN GENERAL.—Section 240B of the Immigration
12 and Nationality Act (8 U.S.C. 1229c) is amended—

13 (1) in subsection (a)—

14 (A) by amending paragraph (1) to read as
15 follows:

16 “(1) INSTEAD OF REMOVAL PROCEEDINGS.—If
17 an alien is not described in paragraph (2)(A)(iii) or
18 (4) of section 237(a), the Secretary of Homeland Se-
19 curity may permit the alien to voluntarily depart the
20 United States at the alien’s own expense under this
21 subsection instead of being subject to proceedings
22 under section 240.”;

23 (B) by striking paragraph (3);

24 (C) by redesignating paragraph (2) as
25 paragraph (3);

1 (D) by adding after paragraph (1) the fol-
2 lowing:

3 “(2) BEFORE THE CONCLUSION OF REMOVAL
4 PROCEEDINGS.—If an alien is not described in para-
5 graph (2)(A)(iii) or (4) of section 237(a), the Attor-
6 ney General may permit the alien to voluntarily de-
7 part the United States at the alien’s own expense
8 under this subsection after the initiation of removal
9 proceedings under section 240 and before the con-
10 clusion of such proceedings before an immigration
11 judge.”;

12 (E) in paragraph (3), as redesignated—

13 (i) by amending subparagraph (A) to
14 read as follows:

15 “(A) INSTEAD OF REMOVAL.—Subject to
16 subparagraph (C), permission to voluntarily de-
17 part under paragraph (1) shall not be valid for
18 any period in excess of 120 days. The Secretary
19 may require an alien permitted to voluntarily
20 depart under paragraph (1) to post a voluntary
21 departure bond, to be surrendered upon proof
22 that the alien has departed the United States
23 within the time specified.”;

1 (ii) by redesignating subparagraphs
2 (B), (C), and (D) as subparagraphs (C),
3 (D), and (E), respectively;

4 (iii) by adding after subparagraph (A)
5 the following:

6 “(B) BEFORE THE CONCLUSION OF RE-
7 MOVAL PROCEEDINGS.—Permission to volun-
8 tarily depart under paragraph (2) shall not be
9 valid for any period in excess of 60 days, and
10 may be granted only after a finding that the
11 alien has the means to depart the United States
12 and intends to do so. An alien permitted to vol-
13 untarily depart under paragraph (2) shall post
14 a voluntary departure bond, in an amount nec-
15 essary to ensure that the alien will depart, to be
16 surrendered upon proof that the alien has de-
17 parted the United States within the time speci-
18 fied. An immigration judge may waive the re-
19 quirement to post a voluntary departure bond
20 in individual cases upon a finding that the alien
21 has presented compelling evidence that the
22 posting of a bond will pose a serious financial
23 hardship and the alien has presented credible
24 evidence that such a bond is unnecessary to
25 guarantee timely departure.”;

1 (iv) in subparagraph (C), as redesign-
2 nated, by striking “subparagraphs (C) and
3 (D)(ii)” and inserting “subparagraphs (D)
4 and (E)(ii)”;

5 (v) in subparagraph (D), as redesign-
6 nated, by striking “subparagraph (B)”
7 each place that term appears and inserting
8 “subparagraph (C)”; and

9 (vi) in subparagraph (E), as redesign-
10 nated, by striking “subparagraph (B)”
11 each place that term appears and inserting
12 “subparagraph (C)”; and

13 (F) in paragraph (4), by striking “para-
14 graph (1)” and inserting “paragraphs (1) and
15 (2)”;

16 (2) in subsection (b)(2), by striking “a period
17 exceeding 60 days” and inserting “any period in ex-
18 cess of 45 days”;

19 (3) by amending subsection (c) to read as fol-
20 lows:

21 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

22 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

23 Voluntary departure may only be granted as part of
24 an affirmative agreement by the alien. A voluntary
25 departure agreement under subsection (b) shall in-

1 clude a waiver of the right to any further motion,
2 appeal, application, petition, or petition for review
3 relating to removal or relief or protection from re-
4 moval.

5 “(2) CONCESSIONS BY THE SECRETARY.—In
6 connection with the alien’s agreement to depart vol-
7 untarily under paragraph (1), the Secretary of
8 Homeland Security may agree to a reduction in the
9 period of inadmissibility under subparagraph (A) or
10 (B)(i) of section 212(a)(9).

11 “(3) ADVISALS.—Agreements relating to vol-
12 untary departure granted during removal pro-
13 ceedings under section 240, or at the conclusion of
14 such proceedings, shall be presented on the record
15 before the immigration judge. The immigration
16 judge shall advise the alien of the consequences of
17 a voluntary departure agreement before accepting
18 such agreement.

19 “(4) FAILURE TO COMPLY WITH AGREE-
20 MENT.—

21 “(A) IN GENERAL.—If an alien agrees to
22 voluntary departure under this section and fails
23 to depart the United States within the time al-
24 lowed for voluntary departure or fails to comply
25 with any other terms of the agreement (includ-

1 ing failure to timely post any required bond),
 2 the alien is—
 3 “(i) ineligible for the benefits of the
 4 agreement;
 5 “(ii) subject to the penalties described
 6 in subsection (d); and
 7 “(iii) subject to an alternate order of
 8 removal if voluntary departure was granted
 9 under subsection (a)(2) or (b).
 10 “(B) EFFECT OF FILING TIMELY AP-
 11 PEAL.—If, after agreeing to voluntary depart-
 12 ure, the alien files a timely appeal of the immi-
 13 gration judge’s decision granting voluntary de-
 14 parture, the alien may pursue the appeal in-
 15 stead of the voluntary departure agreement.
 16 Such appeal operates to void the alien’s vol-
 17 untary departure agreement and the con-
 18 sequences of such agreement, but precludes the
 19 alien from another grant of voluntary departure
 20 while the alien remains in the United States.
 21 “(5) VOLUNTARY DEPARTURE PERIOD NOT AP-
 22 PECTED.—Except as expressly agreed to by the Sec-
 23 retary in writing in the exercise of the Secretary’s
 24 discretion before the expiration of the period allowed
 25 for voluntary departure, no motion, appeal, applica-

1 tion, petition, or petition for review shall affect, rein-
2 state, enjoin, delay, stay, or toll the alien's obligation
3 to depart from the United States during the period
4 agreed to by the alien and the Secretary.”;

5 (4) by amending subsection (d) to read as fol-
6 lows:

7 “(d) PENALTIES FOR FAILURE TO DEPART.—If an
8 alien is permitted to voluntarily depart under this section
9 and fails to voluntarily depart from the United States
10 within the time period specified or otherwise violates the
11 terms of a voluntary departure agreement, the alien will
12 be subject to the following penalties:

13 “(1) CIVIL PENALTY.—The alien shall be liable
14 for a civil penalty of \$3,000. The order allowing vol-
15 untary departure shall specify this amount, which
16 shall be acknowledged by the alien on the record. If
17 the Secretary thereafter establishes that the alien
18 failed to depart voluntarily within the time allowed,
19 no further procedure will be necessary to establish
20 the amount of the penalty, and the Secretary may
21 collect the civil penalty at any time thereafter and
22 by whatever means provided by law. An alien will be
23 ineligible for any benefits under this chapter until
24 this civil penalty is paid.

1 “(2) INELIGIBILITY FOR RELIEF.—The alien
2 shall be ineligible during the time the alien remains
3 in the United States and for a period of 10 years
4 after the alien’s departure for any further relief
5 under this section and sections 240A, 245, 248, and
6 249. The order permitting the alien to depart volun-
7 tarily shall inform the alien of the penalties under
8 this subsection.

9 “(3) REOPENING.—The alien shall be ineligible
10 to reopen the final order of removal that took effect
11 upon the alien’s failure to depart, or upon the alien’s
12 other violations of the conditions for voluntary de-
13 parture, during the period described in paragraph
14 (2). This paragraph does not preclude a motion to
15 reopen to seek withholding of removal under section
16 241(b)(3) or protection against torture, if the mo-
17 tion—

18 “(A) presents material evidence of changed
19 country conditions arising after the date of the
20 order granting voluntary departure in the coun-
21 try to which the alien would be removed; and

22 “(B) makes a sufficient showing to the sat-
23 isfaction of the Attorney General that the alien
24 is otherwise eligible for such protection.”;

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

3 “(e) ELIGIBILITY.—

4 “(1) PRIOR GRANT OF VOLUNTARY DEPAR-
5 TURE.—An alien shall not be permitted to volun-
6 tarily depart under this section if the Secretary of
7 Homeland Security or the Attorney General pre-
8 viously permitted the alien to depart voluntarily.

9 “(2) RULEMAKING.—The Secretary may pro-
10 mulgate regulations to limit eligibility or impose ad-
11 ditional conditions for voluntary departure under
12 subsection (a)(1) for any class of aliens. The Sec-
13 retary or Attorney General may by regulation limit
14 eligibility or impose additional conditions for vol-
15 untary departure under subsections (a)(2) or (b) of
16 this section for any class or classes of aliens.”; and

17 (6) in subsection (f), by adding at the end the
18 following: “Notwithstanding section 242(a)(2)(D) of
19 this Act, sections 1361, 1651, and 2241 of title 28,
20 United States Code, any other habeas corpus provi-
21 sion, and any other provision of law (statutory or
22 nonstatutory), no court shall have jurisdiction to af-
23 fect, reinstate, enjoin, delay, stay, or toll the period
24 allowed for voluntary departure under this section.”.

1 (b) RULEMAKING.—The Secretary shall within one
2 year of the date of enactment of this Act promulgate regu-
3 lations to provide for the imposition and collection of pen-
4 alties for failure to depart under section 240B(d) of the
5 Immigration and Nationality Act (8 U.S.C. 1229e(d)).

6 (c) EFFECTIVE DATES.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the amendments made by this section
9 shall apply with respect to all orders granting vol-
10 untary departure under section 240B of the Immi-
11 gration and Nationality Act (8 U.S.C. 1229e) made
12 on or after the date that is 180 days after the enact-
13 ment of this Act.

14 (2) EXCEPTION.—The amendment made by
15 subsection (a)(6) shall take effect on the date of the
16 enactment of this Act and shall apply with respect
17 to any petition for review which is filed on or after
18 such date.

19 **SEC. 603. DETERRING ALIENS ORDERED REMOVED FROM**
20 **REMAINING IN THE UNITED STATES UNLAW-**
21 **FULLY.**

22 (a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) of
23 the Immigration and Nationality Act (8 U.S.C.
24 1182(a)(9)(A)) is amended—

1 (1) in clause (i), by striking “seeks admission
2 within 5 years of the date of such removal (or within
3 20 years” and inserting “seeks admission not later
4 than 5 years after the date of the alien’s removal (or
5 not later than 20 years after the alien’s removal”;
6 and

7 (2) in clause (ii), by striking “seeks admission
8 within 10 years of the date of such alien’s departure
9 or removal (or within 20 years of” and inserting
10 “seeks admission not later than 10 years after the
11 date of the alien’s departure or removal (or not later
12 than 20 years after”.

13 (b) BAR ON DISCRETIONARY RELIEF.—Section 274D
14 of such Act (8 U.S.C. 324d) is amended—

15 (1) in subsection (a), by striking “Commis-
16 sioner” and inserting “Secretary of Homeland Secu-
17 rity”; and

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

19 “(c) INELIGIBILITY FOR RELIEF.—

20 “(1) IN GENERAL.—Unless a timely motion to
21 reopen is granted under section 240(c)(6), an alien
22 described in subsection (a) shall be ineligible for any
23 discretionary relief from removal (including cancella-
24 tion of removal and adjustment of status) during the
25 time the alien remains in the United States and for

1 a period of 10 years after the alien's departure from
2 the United States.

3 “(2) SAVINGS PROVISION.—Nothing in para-
4 graph (1) shall preclude a motion to reopen to seek
5 withholding of removal under section 241(b)(3) or
6 protection against torture, if the motion—

7 “(A) presents material evidence of changed
8 country conditions arising after the date of the
9 final order of removal in the country to which
10 the alien would be removed; and

11 “(B) makes a sufficient showing to the sat-
12 isfaction of the Attorney General that the alien
13 is otherwise eligible for such protection.”.

14 (c) EFFECTIVE DATES.—The amendments made by
15 this section shall take effect on the date of the enactment
16 of this Act with respect to aliens who are subject to a final
17 order of removal entered before, on, or after such date.

18 **SEC. 604. REINSTATEMENT OF REMOVAL ORDERS.**

19 (a) IN GENERAL.—Section 241(a)(5) of the Immi-
20 gration and Nationality Act (8 U.S.C. 1231(a)(5)) is
21 amended to read as follows:

22 “(5) REINSTATEMENT OF REMOVAL ORDERS
23 AGAINST ALIENS ILLEGALLY REENTERING.—If the
24 Secretary of Homeland Security finds that an alien
25 has entered the United States illegally after having

1 been removed, deported, or excluded or having de-
2 parted voluntarily, under an order of removal, depor-
3 tation, or exclusion, regardless of the date of the
4 original order or the date of the illegal entry—

5 “(A) the order of removal, deportation, or
6 exclusion is reinstated from its original date
7 and is not subject to being reopened or reviewed
8 notwithstanding section 242(a)(2)(D);

9 “(B) the alien is not eligible and may not
10 apply for any relief under this Act, regardless
11 of the date that an application or request for
12 such relief may have been filed or made; and

13 “(C) the alien shall be removed under the
14 order of removal, deportation, or exclusion at
15 any time after the illegal entry.

16 Reinstatement under this paragraph shall not re-
17 quire proceedings under section 240 or other pro-
18 ceedings before an immigration judge.”.

19 (b) JUDICIAL REVIEW.—Section 242 of the Immigra-
20 tion and Nationality Act (8 U.S.C. 1252) is amended by
21 adding at the end the following:

22 “(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER
23 SECTION 241(a)(5).—

1 “(1) REVIEW OF REINSTATEMENT.—Judicial
2 review of determinations under section 241(a)(5) is
3 available in an action under subsection (a).

4 “(2) NO REVIEW OF ORIGINAL ORDER.—Not-
5 withstanding any other provision of law (statutory or
6 nonstatutory), including section 2241 of title 28,
7 United States Code, any other habeas corpus provi-
8 sion, or sections 1361 and 1651 of such title, no
9 court shall have jurisdiction to review any cause or
10 claim, arising from, or relating to, any challenge to
11 the original order.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 subsections (a) and (b) shall take effect as if enacted on
14 April 1, 1997, and shall apply to all orders reinstated or
15 after that date by the Secretary of Homeland Security (or
16 by the Attorney General prior to March 1, 2003), regard-
17 less of the date of the original order.

18 **SEC. 605. CLARIFICATION WITH RESPECT TO DEFINITION**
19 **OF ADMISSION.**

20 Section 101(a)(13)(A) of the Immigration and Na-
21 tionality Act (8 U.S.C. 1101(a)(13)(A)) is amended by
22 adding at the end the following: “An alien’s adjustment
23 of status to that of lawful permanent resident status under
24 any provision of this Act, or under any other provision
25 of law, shall be considered an ‘admission’ for any purpose

1 under this Act, even if the adjustment of status occurred
2 while the alien was present in the United States.”.

3 **SEC. 606. REPORTS TO CONGRESS ON THE EXERCISE AND**
4 **ABUSE OF PROSECUTORIAL DISCRETION.**

5 (a) IN GENERAL.—Not later than 180 days after the
6 end of each fiscal year, the Secretary of Homeland Secu-
7 rity and the Attorney General shall each provide to the
8 Committees on the Judiciary of the House of Representa-
9 tives and of the Senate a report on the following:

10 (1) Aliens apprehended or arrested by State or
11 local law enforcement agencies who were identified
12 by the Department of Homeland Security in the pre-
13 vious fiscal year and for whom the Department of
14 Homeland Security did not issue detainers and did
15 not take into custody despite the Department of
16 Homeland Security’s findings that the aliens were
17 inadmissible or deportable.

18 (2) Aliens who were applicants for admission in
19 the previous fiscal year but not clearly and beyond
20 a doubt entitled to be admitted by an immigration
21 officer and who were not detained as required pursu-
22 ant to section 235(b)(2)(A) of the Immigration and
23 Nationality Act (8 U.S.C. 1225(b)(2)(A)).

24 (3) Aliens who in the previous fiscal year were
25 found by Department of Homeland Security officials

1 performing duties related to the adjudication of ap-
2 plications for immigration benefits or the enforce-
3 ment of the immigration laws to be inadmissible or
4 deportable who were not issued notices to appear
5 pursuant to section 239 of such Act (8 U.S.C. 1229)
6 or placed into removal proceedings pursuant to sec-
7 tion 240 (8 U.S.C. 1229a), unless the aliens were
8 placed into expedited removal proceedings pursuant
9 to section 235(b)(1)(A)(i) (8 U.S.C.
10 1225(b)(1)(A)(5)) or section 238 (8 U.S.C. 1228),
11 were granted voluntary departure pursuant to sec-
12 tion 240B, were granted relief from removal pursu-
13 ant to statute, were granted legal nonimmigrant or
14 immigrant status pursuant to statute, or were deter-
15 mined not to be inadmissible or deportable.

16 (4) Aliens issued notices to appear that were
17 cancelled in the previous fiscal year despite the De-
18 partment of Homeland Security's findings that the
19 aliens were inadmissible or deportable, unless the
20 aliens were granted relief from removal pursuant to
21 statute, were granted voluntary departure pursuant
22 to section 240B of such Act (8 U.S.C. 1229c), or
23 were granted legal nonimmigrant or immigrant sta-
24 tus pursuant to statute.

1 (5) Aliens who were placed into removal pro-
2 ceedings, whose removal proceedings were termi-
3 nated in the previous fiscal year prior to their con-
4 clusion, unless the aliens were granted relief from
5 removal pursuant to statute, were granted voluntary
6 departure pursuant to section 240B, were granted
7 legal nonimmigrant or immigrant status pursuant to
8 statute, or were determined not to be inadmissible or
9 deportable.

10 (6) Aliens granted parole pursuant to section
11 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

12 (7) Aliens granted deferred action, extended
13 voluntary departure or any other type of relief from
14 removal not specified in the Immigration and Na-
15 tionality Act or where determined not to be inadmis-
16 sible or deportable.

17 (b) CONTENTS OF REPORT.—The report shall include
18 a listing of each alien described in each paragraph of sub-
19 section (a), including when in the possession of the De-
20 partment of Homeland Security their names, fingerprint
21 identification numbers, alien registration numbers, and
22 reason why each was granted the type of prosecutorial dis-
23 cretion received. The report shall also include current
24 criminal histories on each alien from the Federal Bureau
25 of Investigation.

1 **SEC. 607. CERTAIN ACTIVITIES RESTRICTED.**

2 (a) IN GENERAL.—

3 (1) No funds, resources, or fees made available
4 to the Secretary of Homeland Security, or to any
5 other official of a Federal agency, by this Act or any
6 other Act for any fiscal year, including any deposits
7 into the “Immigration Examinations Fee Account”
8 established under section 286(m) of the Immigration
9 and Nationality Act (8 U.S.C. 1356(m)), may be
10 used to implement, administer, enforce, or carry out
11 (including through the issuance of any regulations)
12 any of the policy changes set forth in the following
13 memoranda (or any substantially similar policy
14 changes issued or taken on or after January 9,
15 2015, whether set forth in memorandum, Executive
16 order, regulation, directive, or by other action):

17 (A) The memorandum from the Director of
18 United States Immigration and Customs En-
19 forcement entitled “Civil Immigration Enforce-
20 ment: Priorities for the Apprehension, Deten-
21 tion, and Removal of Aliens” dated March 2,
22 2011.

23 (B) The memorandum from the Director
24 of United States Immigration and Customs En-
25 forcement entitled “Exercising Prosecutorial
26 Discretion Consistent with the Civil Immigra-

1 tion Enforcement Priorities of the Agency for
2 the Apprehension, Detention, and Removal of
3 Aliens” dated June 17, 2011.

4 (C) The memorandum from the Principal
5 Legal Advisor of United States Immigration
6 and Customs Enforcement entitled “Case-by-
7 Case Review of Incoming and Certain Pending
8 Cases” dated November 17, 2011.

9 (D) The memorandum from the Director
10 of United States Immigration and Customs En-
11 forcement entitled “Civil Immigration Enforce-
12 ment: Guidance on the Use of Detainers in the
13 Federal, State, Local, and Tribal Criminal Jus-
14 tice Systems” dated December 21, 2012.

15 (E) The memorandum from the Secretary
16 of Homeland Security entitled “Southern Bor-
17 der and Approaches Campaign” dated Novem-
18 ber 20, 2014.

19 (F) The memorandum from the Secretary
20 of Homeland Security entitled “Policies for the
21 Apprehension, Detention and Removal of Un-
22 documented Immigrants” dated November 20,
23 2014.

1 (G) The memorandum from the Secretary
2 of Homeland Security entitled “Secure Commu-
3 nities” dated November 20, 2014.

4 (H) The memorandum from the Secretary
5 of Homeland Security entitled “Exercising
6 Prosecutorial Discretion with Respect to Indi-
7 viduals Who Came to the United States as Chil-
8 dren and with Respect to Certain Individuals
9 Who Are the Parents of U.S. Citizens or Per-
10 manent Residents” dated November 20, 2014.

11 (I) The memorandum from the Secretary
12 of Homeland Security entitled “Expansion of
13 the Provisional Waiver Program” dated Novem-
14 ber 20, 2014.

15 (J) The memorandum from the Secretary
16 of Homeland Security entitled “Policies Sup-
17 porting U.S. High-Skilled Businesses and
18 Workers” dated November 20, 2014.

19 (K) The memorandum from the Secretary
20 of Homeland Security entitled “Families of
21 U.S. Armed Forces Members and Enlistees”
22 dated November 20, 2014.

23 (L) The memorandum from the Secretary
24 of Homeland Security entitled “Directive to

1 Provide Consistency Regarding Advance Pa-
2 role” dated November 20, 2014.

3 (M) The memorandum from the Secretary
4 of Homeland Security entitled “Policies to Pro-
5 mote and Increase Access to U.S. Citizenship”
6 dated November 20, 2014.

7 (N) The memorandum from the President
8 entitled “Modernizing and Streamlining the
9 U.S. Immigrant Visa System for the 21st Cen-
10 tury” dated November 21, 2014.

11 (O) The memorandum from the President
12 entitled “Creating Welcoming Communities and
13 Fully Integrating Immigrants and Refugees”
14 dated November 21, 2014.

15 (2) The memoranda referred to in subsection
16 (a) (or any substantially similar policy changes
17 issued or taken on or after January 9, 2015, wheth-
18 er set forth in memorandum, Executive order, regu-
19 lation, directive, or by other action) have no statu-
20 tory or constitutional basis and therefore have no
21 legal effect.

22 (3) No funds or fees made available to the Sec-
23 retary of Homeland Security, or to any other official
24 of a Federal agency, by this Act or any other Act
25 for any fiscal year, including any deposits into the

1 “Immigration Examinations Fee Account” estab-
2 lished under section 286(m) of the Immigration and
3 Nationality Act (8 U.S.C. 1356(m)), may be used to
4 grant any Federal benefit to any alien pursuant to
5 any of the policy changes set forth in the memo-
6 randa referred to in subsection (a) (or any substan-
7 tially similar policy changes issued or taken on or
8 after January 9, 2015, whether set forth in memo-
9 randum, Executive order, regulation, directive, or by
10 other action).

11 (b) DEFERRED ACTION FOR CHILDHOOD ARRIV-
12 ALS.—No funds, resources or fees made available to the
13 Secretary of Homeland Security, or to any other official
14 of a Federal agency, by this Act or any other Act for any
15 fiscal year, including any deposits into the “Immigration
16 Examinations Fee Account” established under section
17 286(m) of the Immigration and Nationality Act (8 U.S.C.
18 1356(m)), may be used to consider or adjudicate any new,
19 renewal or previously denied application for any alien re-
20 questing consideration of deferred action for childhood ar-
21 rivals, as authorized by the Executive memorandum dated
22 June 15, 2012, and effective on August 15, 2012 (or any
23 substantially similar policy changes issued or taken on or
24 after January 9, 2015, whether set forth in memorandum,
25 Executive order, regulation, directive, or by other action).

1 **SEC. 608. GAO STUDY ON DEATHS IN CUSTODY.**

2 The Comptroller General of the United States shall
3 submit to Congress within 6 months after the date of the
4 enactment of this Act, a report on the deaths in custody
5 of detainees held by the Department of Homeland Secu-
6 rity. The report shall include the following information
7 with respect to any such deaths and in connection there-
8 with:

9 (1) Whether any such deaths could have been
10 prevented by the delivery of medical treatment ad-
11 ministered while the detainee is in the custody of the
12 Department of Homeland Security.

13 (2) Whether Department practice and proce-
14 dures were properly followed and obeyed.

15 (3) Whether such practice and procedures are
16 sufficient to protect the health and safety of such
17 detainees.

18 (4) Whether reports of such deaths were made
19 to the Deaths in Custody Reporting Program.

20 **SEC. 609. REMOVAL PROCEEDINGS.**

21 Subsection (b) of section 240 of the Immigration and
22 Nationality Act (8 U.S.C. 1229a) is amended by adding
23 at the end the following new paragraph (8):

24 “(8) ORDER OF CONSIDERATION OF PRO-
25 CEEDINGS.—Whenever possible, proceedings shall

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- 1 take place in the order in which aliens are placed in
- 2 proceedings.”.

○

JS-CAND 44 (Rev. 07/16)

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

COUNTY OF SANTA CLARA

(b) County of Residence of First Listed Plaintiff County of Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

John W. Kecker - #49092

Keker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111

Tel: 415-391-5400; jkecker@kvn.com

DEFENDANTS

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, Acting Director of the Office of Management and
Budget, and DOES 1-50

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: INLAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4 ☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5 ☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment Of Veteran's Benefits ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	☐ 625 Drug Related Seizure of Property 21 USC § 881 ☐ 690 Other	☐ 422 Appeal 28 USC § 158 ☐ 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC § 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities Employment ☐ 446 Amer. w/Disabilities Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement	LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS-Third Party 26 USC § 7609
		IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District
- ☐ 6 Multidistrict Litigation-Transfer
- ☐ 8 Multidistrict Litigation-Direct File

(Specify)

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Taxing and Spending Clause, U.S. Const., art. I, sec. 8, cl. 1; U.S. Const., amend. V; U.S. Const., amend. X

Brief description of cause: Challenge to constitutionality of Presidential Executive Order No. 13768

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S)**

IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE☐ EUREKA-MCKINLEYVILLE

DATE: February 3, 2017

SIGNATURE OF ATTORNEY OF RECORD: /s/ John W. Kecker



INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
 - (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.

Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. **Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.

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14 *Attorneys for Non-Party City of Richmond*

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **CITY AND COUNTY OF SAN**
18 **FRANCISCO**

19 Plaintiff,

20 vs.

21 **DONALD J. TRUMP, President of the**
22 **United States, UNITED STATES OF**
23 **AMERICA, JOHN F. KELLY, Secretary**
24 **of the United States Department of**
Homeland Security, DANA J. BOENTE,
Acting Attorney General of the United
States,

25 Defendants.

Case No. 3:17-cv-00485-WHO

**[PROPOSED] ORDER GRANTING
ADMINISTRATIVE MOTION OF CITY
OF RICHMOND TO CONSIDER
WHETHER CASES SHOULD BE
RELATED**

Complaint File: January 31, 2017
No Trial Date

1 On March 21, 2017, non-party City of Richmond (“Richmond”) filed an Administrative
2 Motion to Consider Whether Cases Should Be Related under Civil Local Rule 3-12. The Court
3 has already related the San Francisco and Santa Clara actions. Having considered the papers and
4 pleadings on file, the Court GRANTS the Administrative Motion to Consider Whether Cases
5 Should Be Related and ORDERS that the following cases be related:

- 6 • *City and County of S.F. v. Trump et al.*, Case No 3:17-cv-00485–WHO
- 7 • *County of Santa Clara v Trump, et al.*, Case No. 3:17-cv-00574-WHO
- 8 • *City of Richmond v. Trump, et al.*, Case No. 3:17-cv-01535-SK

9 **IT IS SO ORDERED**

10 Dated:

11
12 HONORABLE WILLIAM H. ORRICK
13 JUDGE, UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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