

NumbersUSA

H.R. 4437

Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005

Introduced by Rep. Jim Sensenbrenner (R-WI) December 6, 2005

6 original cosponsors, 18 total cosponsors

Section 1 – Short title; table of contents.

Section 2 – Definitions: Defines the term “State.”

TITLE I – SECURING UNITED STATES BORDERS

Section 101 – Achieving operational control on the border:

- Directs the Department of Homeland Security (DHS) to take all necessary actions to achieve and maintain operational control over the land and maritime borders of the United States, including:
 - ensuring systematic surveillance of the borders through more effective use of personnel and technology (e.g., unmanned aerial vehicles, ground-based sensors);
 - enhancing physical infrastructure to prevent unlawful entry (e.g., checkpoints, vehicle barriers) and facilitating access to areas near the borders for Customs and Border Protection (CBP) personnel;
 - hiring and training, as expeditiously as possible, the 2000 additional Border Patrol agents authorized by the Intelligence Reform and Terrorism Prevention Act of 2004; and,
 - increasing deployment of CBP personnel to areas along the borders;

and,

- Defines “operational control” as preventing the entry into the United States of terrorists, other unlawful aliens, instruments of terror, narcotics, and other contraband.

Section 102 – National strategy for border security:

- Requires DHS to submit to Congress, within six months of this bill’s enactment, a comprehensive plan for the systematic surveillance of U.S. borders, which includes:
 - an assessment of existing technologies employed along the borders and a description of how new surveillance technologies will be compatible;
 - descriptions of how the CBP is working with DHS’s Directorate of Science and Technology to identify and test surveillance technology, and of how specific surveillance technology will be deployed;
 - an identification of obstacles that may impede full deployment;

- an estimation of the costs associated with deployment and continued maintenance of such technologies; and,
 - a description of how DHS is working with the Federal Aviation Administration on safety and airspace control issues related to the use of unmanned aerial vehicles;
 - Requires DHS – after consultation with state, local, and tribal authorities and a cross-section of private sector and nongovernmental organizations – to submit to Congress, within one year of this bill’s enactment, a National Strategy for Border Security (National Strategy) to achieve operational control over all ports of entry into the United States and its borders, which includes:
 - a risk assessment of all ports of entry and all portions of the borders with respect to: (1) preventing the entry of terrorists and their weapons (detailed assessment required), illegal aliens, and narcotics; and, (2) protecting critical infrastructure at or near the borders;
 - assessment of: (1) the most appropriate and cost-effective means of defending the U.S. borders against threats to security and illegal transit; (2) staffing needs for all border security functions; and, (3) of additional detention facilities and bed space needed to detain illegal aliens apprehended near the borders;
 - a description of the border security roles of federal, state, and local authorities, and recommendations on how coordination can improve enforcement;
 - a timeline for implementation of additional security measures called for in the National Strategy; and,
 - a prioritization of security measures, deadlines, and resource allocations;
- and,
- Requires the House Homeland Security Committee, upon receipt of the National Strategy, to report legislation authorizing the National Strategy’s security measures.

Section 103 – Implementation of cross-border security agreements: Requires DHS to submit to Congress, within six months of this bill’s enactment, a report on implementation of cross-border security agreements between the United States, Mexico, and Canada.

Section 104 – Biometric data enhancement: Requires DHS, not later than October 1, 2006, to: (1) enhance connectivity between the IDENT and the IAFIS fingerprint databases, in consultation with the Attorney General (AG) to ensure more expeditious data searches; and, (2) collect fingerprints from required aliens during their initial enrollment in the Integrated Entry and Exit Data System provided for in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Section 105 – One face at the border initiative: Requires DHS, not later than 90 days after this bill’s enactment, to submit to Congress a report:

- describing the tangible benefits and goals of the “One Face at the Border Initiative” (Initiative), as well as the annual training time provided to each employee under the Initiative’s components;
- providing a breakdown of the number of inspectors who were hired after DHS was established or were previously employed by the Customs Service, the Immigration and Naturalization Service, and the Department of Agriculture; and,
- outlining the steps taken by DHS to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions under the Initiative.

Section 106 – Secure communication: Requires DHS to implement a plan to ensure clear and secure two-way communication capabilities: (1) among all Border Patrol agents conducting operations between ports of entry; (2) between Border Patrol agents and their respective Border Patrol stations; (3) between Border Patrol agents and

residents in remote areas that do not have mobile communications; and, (4) between the agencies of DHS and state and local law enforcement agencies.

Section 107 – Port of entry inspection personnel: Requires DHS, for fiscal years 2007 through 2010, to hire at least 250 new port of entry inspectors each year, and authorizes appropriations as may be necessary for each of those fiscal years to hire, train, equip, and support the additional inspectors.

Section 108 – Canine detection teams: Requires DHS, for fiscal years 2007 through 2011, to employ at least 25 percent more trained detection canines than in the preceding fiscal year for use at ports of entry and along the borders.

Section 109 – Secure border initiative financial accountability: Requires DHS’s Inspector General to submit to the Secretary of DHS (Secretary) a report examining cost overruns and other financial problems under the Secure Border Initiative, requires the Secretary to submit to Congress a report on those findings and the steps taken to address identified problems, and authorizes appropriations as may be necessary to compile and submit these reports.

Section 110 – Border Patrol training capacity review: Requires the Comptroller General to review the basic training provided to Border Patrol agents to examine whether that training is efficient and cost-effective.

Section 111 – Airspace security mission impact review: Requires DHS, not later than 120 days after this bill’s enactment, to submit to the Committee a report detailing the impact the National Capital Region’s airspace security mission will have on DHS’s ability to protect the borders.

Section 112 – Repair of private infrastructure on border: Requires DHS to: (1) reimburse property owners for costs associated with repairing damages to private infrastructure on a federal government right-of-way at the border, when caused by illegal aliens and confirmed by DHS, up to a total of \$50,000; and, (2) report to Congress regarding the expenditures authorized by Section 112.

Section 113 - Border Patrol unit for Virgin Islands: Requires DHS to establish at least one border patrol unit for the Virgin Islands by September 30, 2006.

Section 114 – Report on progress in tracking travel of Central American gangs along international border: Requires a DHS report to Congress one year after enactment on progress in tracking Central American border gangs.

Section 115 – Collection of data: Requires DHS, beginning October 1, 2006, to annually compile data on the number of illegal aliens: (1) encountered needing medical care; (2) encountered with serious injuries referred to hospitals; (3) with serious injuries or medical conditions who arrive at ports of entry who are admitted for emergency medical care (as reported by CBP); and, (4) encountered needing medical care and referred to hospitals that are taken in custody after treatment.

Section 116 – Deployment of radiation detection portal equipment at United States ports of entry: Requires DHS to deploy radiation portal monitors at all ports of entry to screen cargo for nuclear and radiological materials, authorizes related appropriations, and requires a related DHS report to certain Congressional Committees.

Section 117 – Consultation with businesses and firms: Requires DHS, in implementing the Secure Borders Initiative, to conduct outreach to, and consult with, the private sector (business councils, associations, disadvantaged small businesses) to: (1) identify emerging technologies and best business practices; (2) maximize economies of scale and cost effectiveness; and, (3) identify the most appropriate contract mechanisms to assure financial accountability.

TITLE II – COMBATting ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE

Section 201 – Definition of aggravated felony:

- Broadens the definition of “aggravated felony” for purposes of determining admissibility and deportability by specifically including the following offenses:
 - knowingly employing 10 or more smuggled aliens or smuggling groups of aliens as part of an ongoing commercial enterprise;
 - illegal entry, misrepresentation or concealment of related facts, or re-entry following removal, as well as soliciting, aiding, abetting, counseling, commanding, inducing, or procuring an attempt or conspiracy to commit an aggravated felony under the Immigration and Nationality Act (INA); and,
- States that an offense qualifying as an aggravated felony under the INA will be treated as such even if the statute setting forth the crime for which the alien was convicted lists other offenses that do not qualify as aggravated felonies, unless the alien proves that the facts underlying the crime do not satisfy the generic definition of that offense.

Section 202 – Alien smuggling and related offenses:

- Clarifies the activities that constitute smuggling and harboring and increases the penalties for such offenses when committed for commercial gain as follows:
 - for a first offense, no more than 20 years’ imprisonment, a fine, or both;
 - for subsequent offenses, no less than three nor more than 20 years’ imprisonment, a fine, or both; and,
 - for offenses involving two or more aliens other than the offender, no less than three nor more than 20 years’ imprisonment, a fine, or both;
- Increases the penalties for such offenses, whether or not committed for commercial gain, as follows:
 - in cases where the offense furthers or aids the commission of another crime against the United States or any individual state that is punishable by imprisonment of more than one year, no less than five nor more than 20 years’ imprisonment, a fine, or both;
 - in cases where a participant creates a substantial risk of death or serious bodily injury to another person (e.g., transportation in a confined space, at an excessive speed, etc.), no less than five nor more than 20 years’ imprisonment, a fine, or both;
 - in cases where the offense caused serious bodily injury – including sexual abuse – to any person, no less than seven nor more than 30 years’ imprisonment, a fine, or both;
 - in cases where the offense involves an alien who the offender should reasonably know is engaged in, or is intending to engage in, terrorist activity, no less than 10 nor more than 30 years’ imprisonment, a fine, or both; and,
 - in cases where the offense caused or resulted in a death, a death sentence or imprisonment for no less than 10 years, fined, or both;
- Increases the penalty for these offenses when not committed for commercial gain from one to five years’ imprisonment, a fine, or both; and,
- Defines “lawful authority” to enter the United States as permission, authorization, or license that is expressly provided for in immigration statutes or related regulations and “unlawful transit” as travel, movement, or temporary presence that violates the laws of any country in which the alien is present, or any country from which or to which the alien is traveling or moving.

Section 203 – Improper entry by, or presence of, aliens:

- Makes it a felony to enter or attempt to enter the United States outside a port of entry, to elude inspection, to enter by willfully making false or misleading representations or concealing material facts, or to be unlawfully present in the United States;
- Increasing the potential term of imprisonment from five years to 10 years for marriage fraud and establishes that marriage fraud is a continuous crime until discovered by immigration officials;
- Increases the term of imprisonment from five to 10 years for establishment of a commercial enterprise for the purpose of evading immigration laws and establishes such fraud as a continuous crime until discovered by immigration officials;
- Provides that aliens who commit any of the following offenses must either be: (1) fined, imprisoned for no more than 10 years, or both, if the offense was committed subsequent to three or more misdemeanor convictions involving drugs, crimes against the person, or both, or one non-aggravated felony conviction; or, (2) fined, imprisoned no more than 20 years, or both, if the offense was committed subsequent to an aggravated felony conviction:
 - entering or attempting to enter the United States outside a port of entry;
 - eluding inspection by immigration officers;
 - attempting to enter or obtaining entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact; or,
 - being unlawfully present in the United States;
- Clarifies that the prior convictions referred to above may only be used to increase the penalties for illegal entry or presence if they are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty; and,
- Establishes that illegal entry and unlawful presence are considered continuous until the alien is discovered within the United States by immigration officials.

Section 204 – Reentry of removed aliens:

- Establishes a minimum term of imprisonment of one year for aliens who reenter or attempt to reenter after having been excluded, ordered removed, or removed from the United States unless the alien has the express consent of DHS to reapply or is not required by law to obtain such consent;
- Establishes minimum terms of imprisonment for reentry-related offenses as follows:
 - an alien whose removal followed three or more misdemeanor convictions involving drugs, crimes against the person, or both, or one non-aggravated felony conviction, must be fined, imprisoned for a term of between five and 10 years, or both;
 - an alien whose removal followed an aggravated felony conviction must be fined, imprisoned for between 10 and 20 years, or both; and,
 - an alien convicted of a nonviolent offense who was removed prior to serving the full prison term for such offense must be fined, imprisoned for a term of between five and 10 years, or both;

Section 205 – Mandatory sentencing ranges for persons aiding or assisting certain reentering aliens: Provides that any person who knowingly aids, assists, or conspires in the reentry of an alien who was removed following criminal convictions is subject to the same penalties as the alien who reentered.

Section 206 – Prohibiting carrying or using a firearm during and in relation to an alien smuggling crime: Applies enhanced penalties to those convicted of alien smuggling crimes while carrying or using a firearm.

Section 207 – Clarifying changes: Clarifies that:

- a false claim of nationality, as well as of citizenship, is a ground for inadmissibility;
- government information regarding any person subject to, or seeking any benefit under the INA must be shared, as necessary and appropriate, with DHS; and,
- inadmissibility of a spouse or child of an inadmissible terrorist alien (for whom inadmissibility is based on activity occurring within the last five years) does not apply to a spouse or child: (1) who did not know or should not reasonably have known of the activity causing the alien to be found inadmissible; or, (2) whom the consular officer or AG has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible.

Section 208: Voluntary departure reform:

- Authorizes DHS to allow an alien voluntarily to depart the United States at the alien's own expense in cases where the alien is not deportable on grounds of being convicted of an aggravated felony or of being considered a risk to national security, provided the alien: (1) departs according to a specified schedule, unless otherwise authorized by DHS (i.e., 60, as opposed to 120, days [courts have no jurisdiction to modify this schedule]); (2) posts bond in an amount necessary to ensure the alien's departure and which must be surrendered upon proof that the alien has departed the United States within the specified time; (3) requests a voluntary departure agreement and waives any right to review relative to removal; and, (4) has not been previously permitted to depart voluntarily;
- Authorizes DHS to limit, by regulation, eligibility for voluntary departure for any class of aliens, which limitation may not be reviewed by any court;
- Establishes a \$3,000 civil penalty for failure to depart voluntarily per the specified schedule – which replaces the current range of available penalties (\$1,000 to \$5,000) – and requires DHS to implement regulations to provide for the imposition and collection of civil penalties;
- Allows the re-opening of a final order of removal in certain cases if removal entails being repatriated to a country in which the alien's life or freedom may be threatened; and,
- States that Section 208 applies with respect to all removal orders granting voluntary departure made on or after the 180 days following this bill's enactment, except for provisions governing a court's lack of jurisdiction in voluntary departure cases, which take effect upon this bill's enactment and apply with respect to any petition for review which is entered on or after that date.

Section 209: Deterring aliens ordered removed from remaining in the United States unlawfully and from unlawfully returning to the United States after departing voluntarily:

- Clarifies that – effective upon this bill's enactment with respect to aliens subject to a final order of removal, regardless of when the order was entered – an alien who willfully fails to depart per a removal order is ineligible for discretionary relief from removal – asylum, cancellation of removal, or adjustment of status excepted – or to reopen a removal order during the time the alien remains in the United States and for 10 years following departure, unless removal entails being repatriated to a country in which the alien's life or freedom may be threatened; and,
- States that – effective upon this bill's enactment and applicable to conduct occurring on or after that date – unlawful entry into the United States following an order of voluntary departure is punishable by two years in prison, a fine, or both.

TITLE III – BORDER SECURITY COOPERATION AND ENFORCEMENT

Section 301 – Joint strategic plan for border surveillance and support:

- Requires DHS and the Department of Defense (DOD) to develop a joint strategic plan to use DOD surveillance equipment to assist with DHS surveillance activities conducted at or near the borders;
- Requires DHS and DOD to submit a joint report, not later than six months after this bill's enactment, to Congress containing: (1) a description of DOD equipment used to assist DHS surveillance; (2) the joint strategic plan, (3) a description of the types of equipment and other support to be provided by the DOD, and (4) a description of cooperation with the Department of Transportation regarding safety and airspace control issues associated with unmanned aerial vehicles; and,
- Prohibits Section 301 from being construed as altering or amending the prohibition on the use of any part of the Army or the Air Force as a *posse comitatus* under federal statute.

Section 302 – Border security on protected land: Requires DHS, in consultation with the Department of Interior (DOI), to evaluate border security vulnerabilities on land directly adjacent to the U.S. borders under the DOI's jurisdiction related to preventing the entry of terrorists, other unlawful aliens, narcotics, and other contraband into the United States, and, subsequently, to provide appropriate border security assistance on those lands.

Section 303 – Border security threat assessment and information sharing test and evaluation exercise: Requires DHS, not later than one year after this bill's enactment, to design and carry out a national border security exercise for the purposes of: (1) involving federal, state, local, and international governments; (2) testing and evaluating the U.S. capacity to anticipate, detect, and disrupt threats to border integrity; and, (3) evaluating information sharing capabilities among federal, state, local, and international governments.

Section 304 – Border Security Advisory Committee: Requires DHS – within one year of this bill's enactment – to establish a Border Security Advisory Committee, comprised of state, local and community representatives from along the border, that will advise DHS on border security and enforcement.

Section 305 – Permitted use of Homeland Security grant funds for border security activities:

- Requires DHS to create the State Homeland Security Grant Program, the Urban Area Security Initiative and the Law Enforcement Terrorism Prevention Program, and allows the use of grant funds for related purposes dating back to fiscal year 2002; and,
- Allows DHS to reimburse state and local governments and tribes for activities related detecting or preventing unlawful entry that are carried out under an agreement with a federal agency.

Section 306 – Center of excellence for border security: Requires DHS to establish a university-based Center of Excellence for Border Security that will conduct research on border risks and vulnerabilities.

Section 307 – Sense of Congress regarding cooperation with Indian Nations: States Congress's belief that DHS should cooperate with sovereign Indian nations regarding border security and protection against terrorism, and should consider whether a Tribal Smart Border working group is necessary.

TITLE IV – DETENTION AND REMOVAL

Section 401 – Mandatory detention for aliens apprehended at or between ports of entry:

- Eliminates the practice of "catch and release" by requiring, beginning October 1, 2006, that an alien caught illegally entering the United States, at a port of entry or along a border, be detained until the alien is removed or a final decision granting admission has been determined, unless the alien is: (1) permitted to withdraw his/her application for admission and depart the United States immediately; or, (2) paroled into the United States by DHS for urgent humanitarian reasons or significant public benefit;

- Allows, beginning 60 days after this bill's enactment and until October 1, 2006, an alien apprehended at or between ports of entry to be released with a notice to appear only if DHS determines, after conducting security checks, that the alien does not pose a national security risk, and the alien provides a bond of at least \$5,000; and,
- Prohibits Section 401 from being construed to: (1) limit the right of an alien to apply for asylum or for relief or deferral of removal based on a fear of persecution; or, (2) apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations.

Section 402 – Expansion and effective management of detention facilities: Requires DHS to fully utilize all available detention facilities and all possible options to increase available detention capacities in a cost-effective manner, including the use of temporary detention facilities, state and local correctional facilities, private space, and secure alternatives to detention.

Section 403 – Enhancing transportation capacity for unlawful aliens: Authorizes DHS to enter into contracts with private entities for the purpose of providing secure domestic transport of aliens who are apprehended at or along the borders from the custody of the CBP to detention facilities.

Section 404 – Denial of admission to nationals of country denying or delaying accepting aliens: Authorizes the Secretary – whenever he/she determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, national, etc., of that country after the alien has been ordered removed – to deny admission to that alien and, after consultation with the Department of State, to deny admission to any citizen, national, etc., of that country until it accepts aliens who were ordered removed.

Section 405 – Report on financial burden of repatriation: Authorizes DHS, annually no later than October 31, to submit to the Department of State and Congress a report that details the cost to DHS of repatriating unlawful aliens to their countries of nationality or last habitual residence, including details relating to cost per country.

Section 406 – Training program: Requires DHS, not later than six months after this bill's enactment, to: (1) evaluate the training provided Border Patrol agents and port of entry inspectors with regard to referrals to asylum officers based on a determination of credible fear; and, (2) take necessary and appropriate measures to ensure consistency in these referrals.

Section 407 – Expedited removal:

- Requires DHS to apply expedited removal procedures to illegal aliens who have not been admitted or paroled into the United States and who are from non-contiguous nations if they are caught within 100 miles of the border and within 14 days of entry, and allows application of these procedures upon this bill's enactment; and,
- Provides that expedited removal does not apply to aliens from nations with which the United States does not have full diplomatic relations if their nationals are present in the United States and have arrived in any manner (current law affects only those arriving by aircraft at a port of entry).

TITLE V – EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

Section 501 – Enhanced border security coordination and management: Requires DHS to ensure that border security efforts are coordinated among its component agencies, and to remedy any failure of coordination or integration in a prompt and efficient manner, by:

- overseeing and ensuring the coordinated execution of border security operations and policy;
- establishing a mechanism for sharing and coordinating intelligence information and analysis at the headquarters and field office levels pertaining to counter-terrorism, border enforcement, immigration, human smuggling, human trafficking, and other issues of concern;

- establishing task forces (to include other federal, state, tribal and local law enforcement agencies) to better coordinate border enforcement and the disruption and dismantling of criminal organizations engaged in cross-border smuggling, money laundering, and immigration violations;
- requiring that, with respect to cases involving violations of the customs and immigration laws, the CBP coordinate with and refer those cases to Immigration and Customs Enforcement (ICE);
- examining the allocation of its border security-related resources, and analyzing budget issues on the basis of Department-wide border enforcement goals, plans, and processes;
- establishing measures for determining the effectiveness of coordinated border enforcement efforts; and
- developing and implementing a comprehensive plan for protecting the northern and southern borders that coordinates border security and improves communications among federal, state, local, and tribal governments and with border nations.

Section 502 – Office of Air and Marine Operations:

- Establishes within DHS an Office of Air and Marine Operations (Office) – to be headed by a Presidentially-appointed, Senatorially-confirmed Assistant Secretary for Air and Marine Operations – the primary mission of which is to prevent terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband from entering the United States;
- Requires the Office to operate and maintain the Air and Marine Operations Center (Center) in Riverside, California (or at other facilities), which will provide comprehensive radar, communications, and control services to the Office and to eligible federal, state, and local agencies;
- States that the mission of the Center is to identify, track, and support the interdiction and apprehension of individuals attempting to enter U.S. airspace or coastal waters for the purpose of narcotics trafficking, trafficking of persons, or other terrorist or criminal activity; and,
- Requires DHS, beginning not later than 180 days after this bill’s enactment, to ensure that the Center is informed about aviation activities undertaken by the Office with DHS subdivisions (e.g., identified transponders, radar, and electronic emissions and codes originating and resident aboard the aircraft, etc.);
- Requires DHS to ensure that information is provided to the Center in advance of the aviation activity whenever practicable for the purpose of timely coordination and conflict resolution of air missions; and,
- Provides that nothing in Section 502 alters or undermines the authority of the Federal Aviation Administration to regulate the safe and efficient use of air space.

Section 503 – Shadow Wolves transfer: Requires DHS, not later than 90 days after this bill’s enactment, to transfer to ICE all functions of the customs patrol officers unit operating on the Tohono O’odham Indian reservation (commonly known as the “Shadow Wolves” unit), and requires the customs patrol officer unit transferred, and additional units established, to operate on Indian lands by preventing the entry of terrorists, other unlawful aliens, narcotics, and other contraband into the United States.

TITLE VI – TERRORIST AND CRIMINAL ALIENS

Section 601 – Removal of terrorist aliens:

- Allows the AG to remove an alien engaged in terrorist activities to a country in which the alien’s life or freedom may be threatened, unless DHS determines that there are not reasonable grounds for regarding the alien as a danger to homeland security;
- Prohibits the adjustment of status for aliens engaged in terrorist activities, espionage, and actions adverse to U.S. foreign policy; and,

- States that this section takes effect upon this bill's enactment and applies to: (1) all aliens in removal, deportation, or exclusion proceedings; (2) all applications pending on or filed after this bill's enactment; and, (3) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after this bill's enactment.

Section 602 – Detention of dangerous aliens:

- Revises guidelines as to the beginning, suspension, and continuation of an alien's removal period (i.e., the 90-day period following a removal order within which DHS must remove an alien from the United States);
- Authorizes DHS detention of an alien while a stay of removal is pending, and detention without limitation in cases of aliens ordered removed for terrorist activity;
- Allows DHS to place aliens under supervision in order to prevent the alien from absconding, or for the protection of the community, or for other purposes related to the enforcement of immigration laws;
- Authorizes the paroling of an alien applicant for admission who is detained under suspicion of terrorist involvement and a continuation of that parole unless the alien violates the conditions of parole or removal becomes reasonably foreseeable, provided that the alien is never admitted;
- Requires DHS to establish an administrative review process to determine whether aliens to which these provisions apply should be detained or released on conditions for aliens who have made all reasonable efforts to comply with their removal orders, complied with DHS's efforts to carry out the removal orders, and have not conspired or acted to prevent removal;
- Authorizes continued detention of an alien for up to 90 days beyond the removal period if the alien: (1) is likely to be, or should be, removed in the foreseeable future; (2) has highly contagious disease; or, (3) is, or may be, a threat to national, community, or any one person's security;
- Allows DHS to impose conditions on an alien's release and to re-detain any alien subject to a final removal order who is released from custody if the alien fails to comply with the conditions of release or to cooperate in the alien's removal from the United States or, following reconsideration, the alien can be detained;
- Applies these guidelines for detention, release and removal of aliens ordered removed to any alien returned to custody, as if the removal period terminated on the day of the re-detention, and only with respect to lawfully admitted aliens who have not been paroled pursuant to DHS's discretion, but gives DHS the authority to decide not to apply these procedures and detain an alien without any limitations in cases where an alien has effected an entry into the United States, but has neither been lawfully admitted nor physically present in the United States continuously for the two-year period immediately prior to the commencement of removal or deportation proceedings;
- Requires judicial review of any action or decision pursuant to these new procedures to be available exclusively in habeas corpus proceedings instituted in the U.S. District Court for the District of Columbia, and only if the alien has exhausted all administrative remedies available to the alien; and,
- States that Section 602's provisions concerning detention of dangerous aliens take effect upon this bill's enactment and that they apply to all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after that date, as well as to acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after that date.

Section 603 – Increase in criminal penalties:

- Increases the maximum prison term for general failure to depart pursuant to a final order of removal from four to five years; and,

- Removes the \$1,000 cap on fines for willful failure to comply with the terms of release under supervision and increases the maximum term of imprisonment for this offense from one to five years, or 10 years if the offending alien is a smuggler or has committed specified crimes.

Section 604 – Precluding admissibility of aggravated felons and other criminals:

- Makes the following offenses grounds for inadmissibility, but allows DHS or the AG to grant waivers of inadmissibility relative to these offenses:
 - Social Security or identification fraud;
 - unlawful procurement of citizenship or naturalization;
 - domestic violence, stalking, child abuse, child neglect, or child abandonment; and,
 - violations of protection orders;
- Makes conviction for an aggravated felony a ground for inadmissibility that cannot be waived;
- Provides that Section 604 may not be construed to create eligibility for relief from removal where relief did not exist before the enactment of the Immigration Reform and Immigrant Responsibility Act of 1996; and,
- States that Section 604 applies to acts occurring at any time and to all aliens who must establish admissibility on or after this bill’s enactment, and in all removal, deportation, or exclusion proceedings filed, pending, or reopened after this bill’s enactment.

Section 605 – Precluding refugee or asylee adjustment of status for aggravated felonies:

- Prohibits an aggravated felon from being eligible for a waiver related to, or adjustment to, refugee status; and,
- Applies this prohibition to any act occurring before, on or after this bill’s enactment, and to all aliens required to establish admissibility on or after that date, and in all removal, deportation, or exclusion proceedings filed, pending, or re-opened on or after that date.

Section 606 – Removing drunk drivers: Includes those convicted of drunk driving for a third time in the list of “aggravated felonies.”

Section 607 – Designated county law enforcement assistance program:

- Authorizes sheriffs from designated counties adjacent to the southern border (i.e., counties of which any part is within 25 miles of the southern border) to transfer unlawfully present aliens to federal custody as immediately as is possible;
- Requires DHS or the AG to pay these sheriffs – within 60 days and from a dedicated account within the Treasury – for the costs of performing those functions, including costs for: (1) equipping, training, and deploying personnel; and, (2) detaining, housing, and transporting unlawfully present aliens;
- Authorizes the dedicated reimbursement account to receive up to \$100 million per year;
- Prohibits more than 20 percent of funding to be used for the construction or renovation of detention or similar facilities;
- Prohibits reimbursement for costs incurred prior to this bill’s enactment and allows advance payment of these costs in specified situations;
- Requires DHS and the AG to jointly issue regulations not later than 60 days after this bill’s enactment: (1) governing the distribution of funds under for all reasonable and necessary costs and other expenses incurred or proposed to be incurred by local sheriffs; and, (2) providing uniform standards that all other

federal law enforcement officials shall follow to cooperate with those sheriffs and to otherwise implement Section 607;

- Provides that Section 607 takes effect upon this bill's enactment, and that any reasonable and necessary expenses or costs authorized by this section and incurred by local sheriffs after that date, but before the promulgation of DHS and AG regulations are eligible for reimbursement;
- Subjects all funds paid out per this section to audit by the Department of Justice's Inspector General; and,
- Prohibits these funds from replacing state and local funds used for the same or similar purposes.

Section 608 – Rendering inadmissible and deportable aliens participating in criminal street gangs; detention; ineligibility from protection from removal and asylum:

- Defines “criminal street gang” as a formal or informal group or association of three or more individuals, who commit two or more gang crimes (one of which is a crime of violence) in two or more separate criminal episodes in relation to the group or association, and “gang crime” as conduct constituting any federal or state crime, punishable by imprisonment for one year or more, in any of five specified categories;
- Renders inadmissible and deportable any alien who has been removed for gang crimes or who DHS knows or has reason to suspect that the alien is either a member of a criminal street gang who plans to continue that activity in the United States;
- Authorizes the AG to designate a group or association as a criminal street gang and outlines procedures by which such a designation may be made, how a review of that designation may arise, and instances under which the designation may be revoked (including Congressional intervention);
- Gives the AG the authority to take into custody any alien deemed inadmissible as a result of participation in a criminal street gang;
- Requires DHS submission of an annual report to the House and Senate Judiciary Committees regarding the number of aliens detained pursuant to Section 608;
- Provides that these revisions to detention statutes take effect upon this bill's enactment and apply to aliens detained on or after that date;
- Allows removal of an alien involved in a criminal street gang to a country where the alien's life or freedom might be threatened;
- Forbids aliens involved in criminal street gangs from being granted asylum and denies related judicial review in such cases, effective upon this bill's enactment and applicable to applications for asylum pending on or after that date;
- States that, unless otherwise noted, Section 608 takes effect immediately upon this bill's enactment and apply to all pending cases in which no final administrative action has been entered.

Section 609 – Naturalization reform:

- Prohibits an alien deemed to be a threat to national security from being naturalized and makes the Secretary the determining official in all applications for naturalization;
- Prohibits the naturalization of a person against whom any proceeding to determine the person's inadmissibility or deportability, or to determine whether the person's lawful permanent resident (LPR) status should be rescinded, is pending;
- Prohibits approval of a petition for skilled worker or skilled professional status if any administrative or judicial proceeding is pending against the petitioner that could, in any way, result in his/her denaturalization or the loss of his/her LPR status;

- Clarifies that conditional permanent residents who have had the conditional basis removed are considered to have LPR status for purposes of naturalization;
- Extends the period within which DHS may render a final administrative decision as to an applicant's naturalization before an appeal to the District Court is allowed from 120 to 180 days;
- Places the burden of proof upon a petitioner for judicial review that denial of an application for naturalization was not supported by legitimate reasons;
- Prohibits a court from having jurisdiction to determine, or to review a DHS determination made at any time regarding, for purposes of an application for naturalization, whether an alien: (1) is a person of good moral character; (2) understands and is attached to the principles of the Constitution; or, (3) is well disposed to the good order and happiness of the United States; and,
- States that Section 609 takes effect upon this bill's enactment, and applies to all acts and to any application for naturalization or any other case or matter under federal immigration law pending on, or filed on or after, this bill's enactment.

Section 610 – Expedited removal for aliens inadmissible on criminal or security grounds:

- Allows execution of a removal order after seven days, rather than 14, in cases of aliens determined to be deportable by reason of a conviction for an aggravated felony, or inadmissible by reason of criminal activity, provided that – in the latter case – the alien: (1) has not been admitted or paroled into the United States; (2) has not been found to have a credible fear of persecution; and, (3) is ineligible for a waiver of inadmissibility or relief from removal; and,
- States that Section 610 takes effect upon this bill's enactment, but does not apply to aliens who are in removal proceedings as of that date.

Section 611 – Technical correction for effective date in change in inadmissibility for terrorists under REAL ID Act: Makes a technical correction to the REAL ID Act of 2005 (Division B of Public Law 109-13) regarding the deportation and exclusion of terrorist aliens.

Section 612 – Bar to good moral character:

- Establishes as bars to “good moral character” (whenever that must be established): (1) a determination that an individual is a risk to national security; and, (2) conviction, at any time, of an aggravated felony, regardless of the classification of the offense when it was committed;
- States that DHS and the AG are not limited only to considering conduct during a period when an individual must establish “good moral character”;
- States that convictions for murder occurring at any time are bars to “good moral character”; and,
- Provides that Section 612 takes effect upon this bill's enactment and applies to all acts and to any application for naturalization or any other case or matter under federal immigration law pending upon, or filed on or after, this bill's enactment.

Section 613 – Strengthening definitions of “aggravated felony” and “conviction”:

- Adds crimes to the list of offenses considered “aggravated felonies”;
- Clarifies that any overturning of a conviction granted to ameliorate the consequences of the conviction, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt has no effect on the immigration consequences resulting from the original conviction;
- Places the burden of demonstrating that the reversal was not granted to ameliorate the consequences of the conviction, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, upon the alien; and;

- Provides that Section 613 takes effect upon this bill's enactment and applies to all acts, and to any matter under federal immigration law pending upon, or filed on or after, this bill's enactment.

Section 614 – Deportability for criminal offenses:

- States that conviction for, or an attempt or a conspiracy to, unlawfully procure naturalization or citizenship, or Social Security or identification fraud, is punishable by deportation; and,
- Provides that Section 614 applies to any act that occurred before, on, or after this bill's enactment, and to all aliens who are required to establish admissibility on or after that date and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after that date.

TITLE VII – EMPLOYMENT ELIGIBILITY VERIFICATION

Section 701 – Employment eligibility verification system:

- Requires DHS to establish and administer a reliable, easy-to-use, secure, and non-discriminatory verification system: (1) through which an individual's identity and eligibility to work in the United States are confirmed within three working days of an initial inquiry; and, (2) that maintains records of inquiries made, verifications provided (or not provided), and of codes given to inquirers as evidence of compliance with Section 701;
- Requires DHS, in cases of tentative non-verification and in consultation with the Social Security Administration (SSA), to make available a secondary process to confirm the validity of information provided and to provide final verification or non-verification within 10 working days after the tentative non-verification;
- Requires DHS and the SSA to establish reliable, secure methods, which validate (or do not validate): (1) the information provided regarding an individual whose identity and eligibility for employment must be confirmed; (2) the correspondence of the name and Social Security number (SSN) provided; and, (3) whether the individual has presented a SSN that is not valid for employment;
- Prohibits the SSA from disclosing or releasing Social Security information except as provided for in Section 701 or for purposes of remuneration of compensation pursuant to the Railroad Retirement Act;
- Requires a DHS investigation in cases when an SSN is submitted multiple times, and DHS notification of the submitting employer(s) of possible fraud in such cases;
- Requires DHS and the SSA to update their information as to promote maximum accuracy, and to provide a process for prompt correction of erroneous information;
- Prohibits the verification system from being construed to: (1) allow any government agency to use any information gathered through the system for any purpose other than as provided for; or, (2) authorize the establishment, issuance, or use of a national identification card;
- Allows an individual to seek compensation and injunctive relief pursuant to the Federal Tort Claims Act if he/she is alleging that he/she would not have been dismissed from a job except as a result of an error in the verification system, but prohibits class actions from being brought;
- Immunizes from civil and criminal liability any person or entity who, in good faith, relied upon information provided through the employment eligibility verification system; and,
- Repeals statutes governing evaluation and changes to the existing employment verification system.

Section 702 – Employment eligibility verification process:

- States that an employer's "good faith compliance" defense is inapplicable if the employer fails to seek verification of an individual's eligibility to work – except in the case of a failure in the verification

mechanism – more than: (1) three days following the individual’s hiring; (2) three years following this bill’s enactment in the case of previously-hired employees engaged in government’s “critical infrastructure”; (3) six years following this bill’s enactment in the case of all other previously-hired employees; or, (4) before recruiting or referring for employment begins;

- States that that defense also does not apply to any employment after the end of the appropriate time frame if an inquiry has been timely made, but no appropriate verification has been received within the mandatory time frame;
- Requires an individual’s attestation of employment authorization to include: (1) the individual’s SSN (if the individual claims to have been issued an SSN) and, (2) if the individual does not claim United States citizenship, a DHS identification or authorization number for the alien;
- Requires an employer’s attestation of employee verification to include an affirmation one method by which the employer has verified an individual’s eligibility is by: (1) obtaining from the individual the individual’s SSN and recording the SSN on the form (if the individual claims to have been issued an SSN); and, (2) if the individual does not claim United States citizenship, obtaining a DHS identification or authorization number for the alien and recording that number on the attestation form;
- Considers an employer to have complied with attestation requirements if the provided documentation reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and if it bears an expiration date, that date has not expired;
- Requires documents allowable as establishing an individual’s identity to bear a photograph of the individual;
- Requires an employer to maintain verification documentation, in the case of previously-hired individuals, until the later of three years following hiring and one year following termination;
- Prohibits an employer from recruiting or referring an individual who has not been verified;
- Requires an employer to record codes relative to verification, tentative non-verification, and final verification or non-verification;
- Requires an employer to notify an individual of tentative non-verification, and if that tentative determination is not contested, considers the non-verification final;
- States that non-verification remains tentative until a final verification or non-verification is provided in a timely manner by the verification system, and prohibits the termination of an individual because of a failure of the individual to have identity and work eligibility confirmed until a non-verification becomes final;
- Authorizes a one-working-day extension of time for employer verification inquiries in cases when an employer attempts to make a timely inquiry and the verification system has registered that not all inquiries were received in a timely manner;
- Allows termination, or declination of recruitment or referral, of an individual about which non-verification has become final, but requires, if the employer does not so terminate or decline, to notify DHS; and,
- Considers failure to notify, or continuation of employment, recruitment, or referral, to be unlawful employment of an unauthorized alien.

Section 703 – Expansion of employment eligibility verification system to previously hired individuals and recruiting and referring:

- Makes all willful recruitment or referral for employment in the United States of an alien unauthorized to work in the United States unlawful (current law only forbids fee-based recruiting and referral);

- Considers the continuation of employment, or the recruitment or referral for employment in the United States without complying with employment verification processes unlawful employment of an unauthorized alien;
- Phases in the employment eligibility verification system with regard to previously-hired individuals, on a voluntary basis between two years following this bill's enactment and six years following enactment;
- Requires mandatory verification for previously-hired employees engaged in government's "critical infrastructure" within three years of this bill's enactment, and for all other previously-hired employees within six years of enactment;

Section 704 – Basic pilot program: Terminates the Basic Pilot program two years after this bill's enactment.

Section 705 – Hiring halls:

- Defines "refer," for purposes of unlawful employment of aliens, as the act of sending or directing a person or transmitting documentation or information to another directly, with the intent of obtaining employment in the United States for that person;
- Clarifies that although, in general, only persons or entities referring for remuneration are included in the definition, union hiring halls that refer union members or non-union individuals who pay union membership dues are included in the definition of "refer" whether or not they receive remuneration, as are labor service agencies that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party;
- Defines "recruit" as the act of soliciting a person and referring the person to another with the intent of obtaining employment for that person; and,
- Clarifies that although, in general, only persons or entities recruiting for remunerations are included in the definition of "recruit," union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in the definition of "recruit" whether or not they receive remuneration, as are labor service agencies that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.

Section 706 – Penalties:

- Increases civil monetary penalties for hiring, recruiting, and referral violations, but allows the following reductions in civil penalties for smaller employers:
 - 25 or fewer full-time employees results in a 60 percent reduction;
 - between 26 and 100 full-time employees, a 40 percent reduction; and
 - between 101 and 250 full-time employees, a 20 percent reduction;
- Establishes that failure by an employer to use the employment eligibility verification system as required by law, and willful provision of false information to that system, are considered to violate provisions governing the unlawful employment of an unauthorized alien; and,
- States that any employer engaging in a pattern of unlawful employment practices is subject to a fine of up to \$50,000 for each unauthorized alien with respect to which such a violation occurs and imprisonment for at least one year.

Section 707 – Report on Social Security card-based employment eligibility verification:

- Requires the Social Security Commissioner – within nine months of this bill's enactment and in consultation with DHS, the Treasury, and the AG – to submit a report to Congress, which evaluates the cost, administrability, employment impact and compliance, of: (1) mandatory modifications to the Social Security card (e.g., made of durable material, include machine-readable identification and a digital photograph of the individual to whom the card is issued); (2) the creation of a unified database –

comprised of SSA and DHS data and maintained by DHS – that specifies the work authorization of all individuals for the purpose of conducting employment eligibility verification; and, (3) a requirement that all employers verify the employment eligibility of all new hires using appropriately-modified Social Security cards and a phone, electronic card-reading, or other mechanism, to seek verification of employment eligibility through the use of the unified database;

- Allows this report to examine any alternatives to achieve the same goals at a lower cost, that impose a lesser burden on those affected, or that allow greater ease of administration; and,
- Requires the SSA's Inspector General – within three months after the above report's submission and in consultation with the Inspector Generals of the Treasury, DHS, and the Department of Justice – to send Congress an evaluation of that report.

Section 708 – Effective date: States that Title VII takes effect upon this bill's enactment, except that requirements relative to compliance with the employment eligibility verification process take effect two years following this bill's enactment.

TITLE VIII – IMMIGRATION LITIGATION ABUSE REDUCTION

Section 801 – Board of Immigration Appeals removal order authority:

- Defines “order of removal” (replacing “order of deportation”) as the order of the immigration judge, the Board of Immigration Appeals, or other administrative officer to whom the AG or DHS has delegated the responsibility for determining whether an alien is removable, concluding that the alien is removable, or ordering removal;
- Establishes guidelines as to the finality of removal orders; and,
- States that Section 801 takes effect upon this bill's enactment and applies to orders entered before, on, or after that date.

Section 802 – Judicial review of visa revocation: Prohibits a visa revocation from being reviewed by any court, and from any court having jurisdiction to hear any claim arising from, or any challenge to, such a revocation, effective upon this bill's enactment and applicable to visa revocations effected before, on, or after that date, notwithstanding habeas corpus and certain other specified provisions of law.

Section 803 – Reinstatement:

- Requires the following in cases where an alien has entered the United States illegally after having been removed 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:
 - the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being review or re-opening; and,
 - the alien is ineligible, and may not apply, for any relief under the INA, and must be removed under the order of removal, deportation, or exclusion at any time after the illegal entry;
- States that reinstatement pursuant to the above provisions do not require proceedings before an immigration judge;
- Allows judicial review of a determination made pursuant to these amendments to be made available in an action instituted in the U.S. Court of Appeals for the District of Columbia Circuit, but limits the review to constitutionality and inconsistency with the INA or the Constitution;
- States that, if a person raises an action pursuant to these revisions, the person also may raise in that action whether the petitioner is an alien, was previously ordered removed or deported, or excluded, or has since

illegally entered the United States, and provides that judicial review is available but is limited to determinations of status (i.e., is an alien, etc.);

- Requires these actions to be filed no more than 60 days following the date the issue under challenge (e.g., regulations, guidelines, etc.) is first implemented and prohibits a person from filing an action pursuant to both reinstatement of removal orders and judicial review of those orders; and,
- Provides that Section 803 takes effect retroactively on April 1, 1997, and applies to all orders reinstated or after that date, regardless of the date of the original order.

Section 804 – Withholding of removal:

- Places the burden of proof, in cases where an alien may be removed to a country in which that alien’s life or freedom may be threatened, on the alien to establish that his/her life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for that threat; and,
- States that Section 804 takes effect, retroactively, on May 11, 2005.

Section 805 – Certificate of reviewability:

- Eliminates an alien’s right to file a reply brief following initial service of the alien’s initial brief petition for review of a removal order;
- Revises procedures with regard to review of removal orders by:
 - assigning petitions for review to individual court of appeals judges and denying them unless a court of appeals judge or a circuit justice issues a certificate of reviewability;
 - allowing those certificates to be issued only if the alien has made a substantial showing that the petition for review is likely to be granted;
 - requiring the court of appeals judge or a circuit justice to complete all action on certificates of reviewability, including rendering judgment, no later than 60 days after the date the petition was assigned, unless an extension is granted;
 - allowing such an extension if all parties to the proceeding agree to it or the extension is for good cause shown or in the interests of justice, provided the judge or justice states, specifically, the grounds for the extension;
 - deeming a petition for review denied in cases where no certificate of reviewability is timely issued and no extension is granted and, furthermore, dissolving any stay or injunction on the petitioner’s removal without further action by the court or the government and allowing the alien to be removed;
 - affording the government, in cases where a certificate of reviewability is issued, the opportunity to file a brief in response to the alien’s brief, after which the alien may – within 14 days after service of the government’s brief, with no extensions or exceptions allowed unless upon motion for good cause shown – serve and file a reply brief; and,
 - making final the single court of appeals judge’s decision not to issue a certificate of reviewability, or the denial of a petition, which may not be reconsidered, reviewed, or reversed by the court of appeals through any mechanism or procedure;

and,

- States that Section 805 apply to petitions filed on or after the 60th day following this bill’s enactment.

Section 806 – Waiver of rights in nonimmigrant visa issuance: Prohibits an alien, effective 90 days following this bill’s enactment, from being issued a nonimmigrant visa unless that alien has waived any right to review or

appeal under the INA of an immigration officer's determination of inadmissibility, or to contest any action for removal, other than on the basis of an application for asylum.