

Border Security (section 3003)

- As it is relatively easy for aliens to illegally cross our borders, it would also be relatively easy for foreign terrorists to enter the U.S. in this manner. Periodic reports of large numbers of Middle Eastern nationals crossing the southern border were verified by the recent release of Border Patrol data showing that in just the period from last October through this June, 44,614 non-Mexican aliens were caught trying to cross the northern or southern borders – including eight from Afghanistan, six from Algeria, 13 from Egypt, 20 from Indonesia, 10 from Iran, 55 from Israel, 122 from Pakistan, six from Saudi Arabia, six from Syria, 22 from Turkey, and two from Yemen. A South African woman alleged to be on a terrorist watch list recently indicated that she had crossed the border illegally from Mexico.
- By the mid 1990s, our southwest border was in a state of crisis. The transit routes most heavily used for illegal aliens were in the San Diego corridor. It had become an open sieve where illegal aliens from Mexico entered en masse and unhindered in what can only be described as a festival atmosphere. The Border Patrol in El Paso, Texas, then developed “Operation Hold the Line” and placed agents directly on the border. This visual deterrent had the effect of dramatically reducing illegal crossings, cutting crime in border communities, and winning the praise of the public. The INS adopted the Hold-the-Line strategy in San Diego under the moniker of “Operation Gatekeeper”, and came to believe that Gatekeeper was one of its most successful border control initiatives ever, bringing law and order to the San Diego border. However, overall illegal entries have not decreased – illegal aliens now resort to difficult routes across rugged terrain in California and Arizona.
- A study found that approximately 16,000 Border Patrol agents would be required to duplicate the Hold-the-Line strategy across the entire southwestern border. Given the need to also bolster resources along the northern border, Border Patrol strength should optimally be at least doubled from its current level of about 10,000. The legislation therefore authorize an increase in the Border Patrol of 2,000 agents a year for each of the next five years.

Foreign Identification Documents for Illegal Aliens (Consular Identification Cards)(section 3005)

- Since early 2002, the Mexican government has been promoting its consular identification card, called the “matricula consular”, for acceptance in the United States. Acceptance of the cards encourages illegal immigration to the United States. The only aliens in the U.S. who need additional identification documents, other than passports and U.S.-government issued documents, are those illegally here. Also, as the then-Assistant Director of the FBI’s Office of Intelligence, Steve McCraw, told the Immigration Subcommittee in June 2003, the matricula consular is vulnerable to fraud because the issuance standards are low and because the Mexican government does not monitor the cards’ issuance, and because it is also vulnerable to forgery. Mr. McCraw concluded that domestic acceptance of matricula cards in the United States poses a law-enforcement and national security risk. He stated that the criminal threat stems from the fact that matriculas “can be a perfect breeder document for establishing a false identity,” which can facilitate a wide range of crimes, including money laundering. He told of individuals who were arrested with multiple matriculas, each with the same photo but different names, some of whom had matching driver’s licenses. He concluded that the terrorist threat posed by these cards that is the “most worrisome” to the FBI. “The ability of foreign nationals to use [consular cards] to create a well-documented, but fictitious, identity in the United States provides an opportunity for terrorists to move freely within the United States without triggering name-based watch lists that are disseminated to local police officers.” Nor is the danger posed by those documents only as “breeder documents” for other documentation – notwithstanding their vulnerability to fraud and abuse, consular ID cards can be presented to board an airliner or open a bank account in the United States.
- The legislation would bar all federal employees from accepting identification cards possessed by aliens except documents issued for immigration purposes by the federal government, documents issued by state or federal officials that the Secretary of Homeland Security designates as reliable for identity purposes, and foreign passports if federal law authorizes their use for a specific purpose.

Interior Enforcement (section 3004)

- Even if we were to completely seal our borders, that would not be enough to control illegal immigration. Almost half of the illegal alien population came to the U.S. legally on temporary visas and simply never left. Interior enforcement is thus a key component. In addition to tracking down illegal aliens (including those who do make it past the border), interior investigators also play a crucial role in the location and deportation of criminal aliens and aliens who skip out on deportation orders. The Bureau of Immigration and Customs Enforcement only has about 2,000 investigators nationwide to handle all these tasks, a number that all agree is woefully inadequate to accomplish the job on hand. For instance, enforcement of employer sanctions has all but been abandoned. Arrests on job sites have declined from over 8,000 in 1992 to 451 in 2002 and final orders levying fines on employers for immigration law violations fell from over 1,000 in 1992 to 13 in 2002. Until we eliminate the “job magnet”, we will never successfully control illegal immigration. There are some 400,000 alien “absconders,” aliens who have been ordered removed from the U.S. and who have ignored those orders and remained in the country. Of those, 80,000 have criminal records unrelated to immigration. Although ICE has deployed 18 Fugitive Operations teams to arrest those aliens, the teams will clearly not be able to accomplish the task on their own. A recent report has stated that the San Diego team “with more than 550 apprehensions ranks near the top of the 22 cities where Homeland Security agents have caught fugitives since October” 2003. If each team were to arrest 600 aliens per year, it would take more than 37 years to apprehend the outstanding absconders, even if no other aliens were to evade removal. It would take more than seven years for these teams to arrest just the criminal absconders.
- The legislation would increase the number of ICE investigators to enforce our immigration laws by 800 a year for each of the next five years. At least half of these agents would be tasked with finding illegal aliens in the workplace. Each state would be allotted at least three additional agents a year.

Modification of the “Western Hemisphere Exception” for Returning U.S. Citizens (section 3001)

- The Immigration and Nationality Act allows U.S. citizens to reenter the United States from countries in the Western Hemisphere without passports. A May 2003 Immigration Subcommittee hearing and investigation into D.C. sniper John Muhammad’s smuggling activities between the Caribbean and the United States revealed significant weaknesses in the admission process resulting from the exception. Muhammad made a living by exploiting the exception and providing bogus U.S.-state identification documents such as driver’s licenses and birth certificates to aliens seeking admission posing as U.S. citizens. GAO performed two investigations of this process, one for the Senate Finance Committee in January 2003, and another for the House Immigration Subcommittee in May 2003. In January, GAO agents crossed into the United States by presenting counterfeit state identification documents with false names (or no documents at all) from Canada, Mexico, and Jamaica. After briefing DHS on what it had done, and using the same documents, inspectors reentered from Barbados unimpeded in May.
- The bill would require that by October 2006, all U.S. citizens returning from the Western Hemisphere other than Canada and Mexico must present U.S. passports. In the interim, U.S. citizens would have to present a document designated by the Secretary of Homeland Security. For U.S. citizens returning from Canada and Mexico, the Secretary of Homeland Security would have to designate acceptable documents to be presented. Documents that can be issued to illegal aliens would not be acceptable. This provision will greatly reduce the likelihood that potential terrorists would be able to escape detection at the ports falsely claiming to be U.S. citizens, because it would limit the documents that could be presented for entry, thereby increasing the likelihood that an inspector would be able to identify a bogus entry document.

Entry into the U.S. by Aliens Claiming to be Canadian (section 3002)

- Foreign visitors usually need passports or U.S. visas or border crossing cards to enter the United States. However, the Immigration and Nationality Act allows the Administration to waive this requirement for nationals of contiguous countries – which it has done for Canadians. Therefore, U.S. inspectors at northern ports-of-entry can allow persons identifying themselves as Canadians and not looking “suspicious” to enter the U.S. without having to show any documents whatsoever, or can request to see documents such as Canadian driver’s licenses. There is an obvious security concern about non-Canadians entering the U.S. without any documents by claiming to be Canadian, and about Canadians on terrorist watchlists not being identified at the border because they do not have to provide documents. This is heightened by the fact that a large number of international terrorist organizations operate in Canada – facilitated by Canada’s ultra-liberal asylum policies – and incidents such as the 1999 arrest by U.S. Customs of Algerian Ahmed Ressay at the Port Angeles, Washington, port of entry, from where he was going to travel to Los Angeles to plant a bomb at the international airport.
- The bill would require that by the beginning of 2007, aliens claiming to be Canadian who seek to enter the U.S. must present a passport or other secure identification designated by the Secretary of Homeland Security.

Excessive Appeals by Alien Criminals (section 3009)

- To provide for the more efficient and expeditious removal of alien criminals, Congress in 1996 streamlined the judicial review of immigration orders against such criminals. Congress limited judicial review of final orders of removal to the Courts of Appeal, and barred judicial review for aliens removable for having committed specified criminal offenses. Because the 1996 reforms lacked express language precluding habeas, however, many courts have employed the writ to give aliens judicial review possibilities in addition to the review specified in the legislation. The interpretation of these provisions by the Supreme Court has provided criminal aliens with *more* opportunities and layers of judicial review than they had prior to the 1996 acts, and more than non-criminal aliens possess, an outcome Justice Scalia has described as “perverting [the] statutory scheme.” Further, some courts have allowed aliens to challenge removal orders both by habeas petitions before the district courts and review petitions to the circuit courts, resulting in a dramatic increase in the volume of immigration cases filed in the federal courts.
- The legislation would direct alien appeals to the circuit courts of appeals, and specify that such review include constitutional claims and questions of law, satisfying due process concerns for criminal aliens who, in black letter law, now have no review opportunities.