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SEC. 100. FINDINGS

Congress finds the following:

1. Today, our borders are more secure than at any time in history.
2. An unprecedented range of personnel, infrastructure, technology, equipment, and air and marine assets have been deployed along our borders.
3. Thousands of technology assets – including mobile surveillance, thermal imaging, and large- and small-scale non-intrusive inspection equipment, including 124 aircraft and six Unmanned Aircraft Systems – operate along the Southwest border.
4. The Department of Homeland Security (DHS) has completed 651 miles of fencing along the southwest border. This includes 299 miles of vehicle barriers and 352 miles of pedestrian fence.
5. The U.S. Border Patrol is better staffed today than at any time in its 88-year history, and has doubled the number of agents from approximately 10,000 in 2004 to more than 21,000 today.
6. Since 2004, the number of officers along the Southwest border has increased by 94% to nearly 18,500 Border Patrol Agents today. And over 3,800 Border Patrol Agents man the Northern border, representing a 700 percent increase since 2001.
7. U.S. Immigration and Customs Enforcement (ICE) has deployed a quarter of all its operational personnel to the Southwest border region, has doubled the number of
personnel assigned to identify, disrupt, and dismantle criminal organizations that pose significant threats to border security, and has more than tripled deployments of Border Liaison Officers who facilitate cooperation between U.S. and Mexican law enforcement authorities on investigations and enforcement operations.

8. These significant investments in border security have resulted in unmatched levels of operational capabilities, which in turn have resulted in increased interdiction of drugs, weapons, and currency, a 53% decrease in apprehensions of illegal aliens, indicating that fewer people are attempting to illegally cross the border, and decreased crime and increased public safety in border towns and states.

9. Since 2008, crime rates in border cities like Nogales, Tucson, and San Diego have steadily decreased and crime has decreased in each of the four Southwest border states – Arizona, California, New Mexico, and Texas.

10. According to 2010 FBI crime reports, violent crimes in the Southwest border states have dropped by an average of 40 percent in the last two decades.

11. In addition to its unprecedented efforts at the Southwest border, ICE continues to fulfill its law enforcement mission by targeting criminal aliens who pose a threat to public safety and deterring illegal employment.

12. In FY 2012, ICE removed more than 409,000 individuals - the largest number in the agency’s history. ICE has focused its enforcement efforts on convicted criminals (doubling the number of such removals between FY 2008 and FY 2012), repeat immigration law violators, recent border entrants, and immigration fugitive operations teams focused on apprehending at-large convicted felons.

13. In the last four years, ICE has audited more than 8,932 employers suspected of hiring illegal labor, debarred 8,590 companies and individuals, and imposed more than $100.3 million in financial sanctions—more than the total number of audits and debarments than during the entire previous administration.

14. Employer enrollment in E-Verify has more than doubled since January 2009, with more than 416,033 companies representing more than 1.2 million hiring sites participating in the program. More than 20 million queries were processed in E-Verify in FY 2012, allowing businesses to determine the eligibility of their employees to work in the United States. Thus far in FY 2013, over 4.8 million queries have been run through the system.
15. As a result of DHS enforcement efforts, the number of aliens put into removal proceedings has increased, and the number of cases pending before immigration courts within the Executive Office for Immigration Review is at an all-time high. On average, the typical immigration judge has well over 1,000 cases on his or her docket, which is much higher than judges in other comparable tribunals.

16. Last year, about half of non-detained respondents in removal proceedings were unrepresented and more than seventy-five percent of detained respondents in removal proceedings were unrepresented. The lack of adequate legal assistance in removal proceedings leads to delays in proceedings and reduces the efficiency of the immigration court system.

17. The Executive Office for Immigration Review’s Legal Orientation Program improves the efficiency of immigration proceedings by assisting aliens in making informed and timely decisions regarding their immigration proceedings. Research shows that Legal Orientation Program participants move through immigration court more quickly and, therefore, likely spend less time in detention at taxpayer expense than people who do not have access to legal help. In order to continue the important work of the executive branch to secure the border and our nation’s interior, and mete out a fair, efficient system of enforcing our laws, it is imperative that Congress fund and make improvements to our border security and immigration enterprise.

SUBTITLE A – INVESTING IN BORDER SECURITY: ASSETS, RESOURCES, AND INFRASTRUCTURE

SEC. 101. TECHNOLOGICAL ASSETS.

(a) ACQUISITION—Subject to the availability of appropriations for such purpose, the Secretary shall consider the continued use of existing technologies or acquisition of additional technologies to further Department of Homeland Security efforts to secure the land and maritime borders of the United States.

(b) PRIVACY AND CIVIL LIBERTIES ASSESSMENTS —The Secretary, in consultation with the Attorney General, shall conduct a privacy impact assessment...
and a civil liberties impact assessment prior to the deployment of the technologies under this section.

SEC. 102. REIMBURSABLE FEE AGREEMENTS

(a) Notwithstanding sections 58c(e) and 1451 of Title 19, United States Code, upon the request of any persons, the Commissioner of U.S. Customs and Border Protection may enter into reimbursable fee agreements for a period of up to 5 years with such persons for the provision of U.S. Customs and Border Protection services and any other costs incurred by U.S. Customs and Border Protection relating to such services. Such requests may include additional U.S. Customs and Border Protection services at existing U.S. Customs and Border Protection-serviced facilities (including but not limited to payment for overtime), the provision of U.S. Customs and Border Protection services at new facilities, and expanded U.S. Customs and Border Protection services at land border facilities.

(1) Within the first calendar year after enactment of this section, the Commissioner may enter into no more than 5 agreements under this section.

(2) The Commissioner shall not enter into such an agreement if it would unduly and permanently impact services funded in this or any other appropriations Acts, or provided from any accounts in the Treasury of the United States derived by the collection of fees.

(b) Funds collected pursuant to any agreement entered into under this section shall be deposited in a newly established account as offsetting collections and remain available until expended, without fiscal year limitation, and shall directly reimburse each appropriation for the amount paid out of that appropriation for any expenses incurred by U.S. Customs and Border Protection in providing U.S. Customs and Border Protection services and any other costs incurred by U.S. Customs and Border Protection relating to such services.
(c) The amount of the fee to be charged pursuant to an agreement authorized under subsection (a) of this section shall be paid by each person requesting U.S. Customs and Border Protection services and shall include, but shall not be limited to, the salaries and expenses of individuals employed by U.S. Customs and Border Protection to provide such U.S. Customs and Border Protection services and other costs incurred by U.S. Customs and Border Protection relating to those services, such as temporary placement or permanent relocation of those individuals.

(d) FAILURE TO PAY FEE— U.S. Customs and Border Protection shall terminate the provision of services pursuant to an agreement entered into under subsection (a) with a person that, after receiving notice from the Commissioner that a fee imposed under subsection (a) is due, fails to pay the fee in a timely manner. In the event of such termination, all costs incurred by U.S. Customs and Border Protection, which have not been reimbursed, will become immediately due and payable. Interest on unpaid fees will accrue based on current U.S. Treasury borrowing rates. Additionally, any person who, after notice and demand for payment of any fee charged under subsection (a) of this section, fails to pay such fee in a timely manner shall be liable for a penalty or liquidated damage equal to two times the amount of the fee. Any amount collected pursuant to any agreement entered into under this subsection shall be deposited into the account specified under subsection (b) of this section and shall be available as described therein.

(e) PROVISION OF FACILITIES AND EQUIPMENT—Each facility at which such U.S. Customs and Border Protection services are performed shall provide, maintain, and equip, without cost to the Government, facilities in accordance with U.S. Customs and Border Protection specifications.

(f) AGREEMENTS WITH FOREIGN PERSONS—The authority found in this section may not be used to enter into agreements to expand or begin to provide U.S. Customs and Border Protection services outside of the United States.
(g) AGREEMENTS PERTAINING TO OPERATIONS AT EXISTING AIR FACILITIES – The authority found in this section may not be used at existing U.S. Customs and Border Protection-serviced air facilities to enter into agreements for costs other than payment of overtime, premium pay, and associated benefit costs.

(h) The Commissioner shall notify the appropriate Committees of Congress 15 days prior to entering into any agreement under the authority of this section and shall provide a copy of the agreement to the appropriate Committees of Congress.

(i) DEFINITIONS—For purposes of this section the terms:

(1) U.S. Customs and Border Protection “services” means any activities of any employee or contractor of U.S. Customs and Border Protection pertaining to customs and immigration inspection-related matters.

(2) “Person” means any natural person or any corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

(3) “appropriate Committees of Congress” means the Committees on Appropriations; Finance; Judiciary; and Homeland Security and Governmental Affairs of the Senate and the Committees on Appropriations; Judiciary; Ways and Means; and Homeland Security of the House of Representatives.

SEC.103. PORT OF ENTRY INSPECTORS.—Notwithstanding any other provision of law, the Secretary is authorized, in accordance with the fee collected in section 104 and subject to the availability of appropriations, to hire full-time active duty port of entry inspectors and provide appropriate training, equipment, and support to such additional inspectors to carry out the requirements of this Act.

SEC. 104. LAND BORDER CROSSING FEE STUDY

(a) The Commissioner of the United States Customs and Border Protection shall:
(1) conduct a study assessing the feasibility and cost relating to establishing and
collecting a land border crossing fee for both land border pedestrians and
passenger vehicles along the northern and southwest borders of the United
States. The study should include:
   (I) the feasibility of collecting from existing operators on the land
       border such as bridge commissions, toll operators, commercial
       passenger bus, and commercial passenger rail;
   (II) requirements to collect at land ports of entry where existing
        capability is not present; and,
   (III) any legal and regulatory impediments to establishing and
        collecting a land border crossing fee.
(2) complete the study within 9 months of enactment of this Act.

SEC. 105. CUSTOMS AND BORDER PROTECTION INSPECTION FEE

(a) Section 13031(f)(3)(A) of the Consolidated Omnibus Budget Reconciliation Act of
1985 (19 U.S.C. 58c(f)(3)(A)) is amended as follows:
(1) by amending clause (i) to read as follows:
   “(i) in--
   (I) paying overtime compensation under section 267(a) of this title,
   (II) paying premium pay under section 267(b) of this title, but the amount for which
       reimbursement may be made under this subclause may not, for any fiscal year,
       exceed the difference between the total cost of all the premium pay for such year
       calculated under section 267(b) of this title and the cost of the night and holiday
       premium pay that the Customs Service would have incurred for the same
       inspectional work on the day before August 10, 1993,
   (III) providing salaries for full-time inspectional personnel,
   (IV) paying agency contributions to the Civil Service Retirement and Disability
       Fund to match deductions from the overtime compensation paid under subclause
       (I),
   (V) providing all preclearance services for which the recipients of such services are
       not required to reimburse the Secretary of the Treasury, and
(VI) paying foreign language proficiency awards under section 267a of this title,"
2 by amending the flush sentence after clause (iii) to read as follows:
3 “The transfer of funds required under subparagraph (C)(iii) has priority over
4 reimbursements under this subparagraph to carry out subclauses (II), (III), (IV), (V),
5 and (VI) of clause (i). Funds described in clause (ii) shall only be available to
6 reimburse costs in excess of the highest amount appropriated for such costs during
7 the period beginning with fiscal year 1990 and ending with the current fiscal year.
8 (b) Section 13031(j)(3)(B) of the Consolidated Omnibus Budget Reconciliation Act of
10 (c) Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19
11 U.S.C. 58c(a)) is amended as follows:
12 (1) in paragraph (1), by striking ‘$397’ and inserting ‘$594’;
13 (2) in paragraph (2), by striking ‘$5’ and inserting ‘$7.50’;
14 (3) in paragraph (3), by striking ‘$7.50’ and inserting ‘$11.25’;
15 (4) in paragraph (5)(A), by striking ‘$5’ and inserting ‘$7.50’;
16 (5) in paragraph (5)(B), by striking ‘$1.75’ and inserting ‘$4’;
17 (6) in paragraph (6), by striking ‘$5’ and inserting ‘$7.50’;
18 (7) in paragraph (7), by striking ‘$125’ and inserting ‘$188’; and
19 (8) in paragraph (8), by striking ‘$100’ and inserting ‘$150’.
20 (d) Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of
21 1985 (19 U.S.C. 58c(b)) is amended as follows:
22 (1) In paragraph (2), by striking ‘$100’ and inserting ‘$135’;
23 (2) In paragraph (3), by striking ‘$100’ and inserting ‘$135’;
24 (3) In paragraph (5)(A), by striking ‘$5,955’ and inserting ‘$8,100’;
25 (4) In paragraph (6), by striking ‘$1,500’ and inserting ‘$2,040’;
26 (5) In paragraph (9)(A)(ii), by striking ‘$.66’ and inserting ‘$2’; and
27 (6) In paragraph (9)(B)(i), by striking ‘not more than $1.00’ and inserting ‘not more
28 than $3.00’.
29 (e) Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19
30 U.S.C. 58c) is amended by adding the following at its end:
31 “(l) Adjustments
32 (1) Inflation Adjustment of Fees

For Discussion Purposes Only – Do Not Distribute
Beginning in fiscal year 2015, the fees charged under paragraphs (1) through (3) and paragraphs (5) through (8) of subsection (a) of this section shall each be adjusted annually by the Secretary of the Treasury through a Federal Register notice, without regard to the notice and comment provisions of section 553 of title 5 of the United States Code, to reflect any fluctuation in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor from when the fee amounts were last changed.

(A) No fee adjustment required by this subsection shall take effect until at least 30 days after notice of the fee has been published.

(B) The adjustment required by this subsection shall be ignored if such an adjustment would result in an increase or decrease of less than 10% of the fee as measured from when such fee amounts were last changed.

(C) All fees which require adjustment under this subsection shall be rounded upward to the next $0.25 increment.

(D) Increases or decreases in fees made pursuant to this subsection shall not be subject to judicial review.

(2) Inflation Adjustment of Caps

For fiscal year 2015 and thereafter, the dollar amounts under paragraphs (2), (3), (5)(A), and (6) of subsection (b) of this section shall each be adjusted annually by the Secretary of the Treasury through a Federal Register notice, without regard to the notice and comment provisions of section 553 of title 5 of the United States Code, to reflect any fluctuation in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor from when the dollar amounts were last changed.

(A) No adjustment required by this subsection shall take effect until at least 30 days after notice of the fee has been published.

(B) The adjustment required by this subsection shall be ignored if such an adjustment would result in an increase or decrease of less than 10% of the fee as measured from when such amounts were last changed.
(C) All amounts which require adjustment under this subsection shall be rounded upward to the next $1.00 increment.

(D) Increases or decreases in amounts made pursuant to this subsection shall not be subject to judicial review.”

(f) IMMIGRATION USER FEE CHANGES – Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended as follows—

1. In subsection (d), by striking ‘$7’ and inserting ‘$9’; and
2. In subsection (e)(3), by striking ‘$3’ and inserting ‘$5’.

3. By inserting the following after subsection (o):
   “(p) Inflation Adjustment of Certain Fees
   Beginning in fiscal year 2015, the fees charged under subsections (d) and (e)(3) of this section shall each be adjusted annually by the Attorney through a Federal Register notice, without regard to the notice and comment provisions of section 553 of title 5 of the United States Code, to reflect any fluctuation in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor from when the fee amounts were last changed.
   (A) No fee adjustment required by this subsection shall take effect until at least 30 days after notice of the fee has been published.
   (B) The adjustment required by this subsection shall be ignored if such an adjustment would result in an increase or decrease of less than 10% of the fee as measured from when such fee amounts were last changed.
   (C) All fees which require adjustment under this subsection shall be rounded upward to the next $0.25 increment.
   (D) Increases or decreases in fees made pursuant to this subsection shall not be subject to judicial review.”

SEC. 106. AUTHORITY TO ACCEPT DONATIONS IN SUPPORT OF LAND PORTS OF ENTRY
(a) IN GENERAL – Notwithstanding any other provision of law, including Chapter 33 of Title 40, United States Code, the Secretary of Homeland Security may, for purposes of constructing, altering, operating or maintaining a new or existing land port of entry facility, accept donations of real and personal property (including monetary donations) and non-personal services, from private parties and State and local government entities.

(b) PURPOSES – The Secretary of Homeland Security may, with respect to any donation provided pursuant to subsection (a),

(1) use such property or services for necessary expenses related to the construction, alteration, operation or maintenance of a new or existing land port of entry facility under the custody and control of the Secretary, specifically including but not limited to expenses related to land acquisition, design, construction, repair and alteration, furniture and fixtures and equipment (FFE), deployment of technology and equipment, and operation and maintenance (O&M); or

(2) transfer such property or services to the Administrator of General Services for necessary expenses as described in subparagraph (b)(1) above related to a new or existing land port of entry facility under the custody and control of the Administrator.

(c) SUPPLEMENTAL FUNDING – Property (including monetary donations) and services provided pursuant to subsection (a) may be used in addition to any other funding (including appropriated funds), property or services made available for the same purpose.

(d) UNCONDITIONAL DONATIONS – A donation provided pursuant to subsection (a) may specify the land port of entry facility(ies) in support of which the donation is being made and the timeframe in which the donated property or services must be used, but must otherwise be made unconditionally.
(e) RETURN OF DONATIONS – If the Secretary or Administrator do not use the property or services donated pursuant to subsection (a) for the specific land port of entry facility(ies) designated or within the timeframe specified, then such donated property or services shall be returned to the entity that made the donation; provided, however, that no interest shall be owed on any donation of funding provided under subsection (a) and returned pursuant to this subparagraph.

(f) SAVINGS – Nothing in this Section shall be deemed to affect or alter the underlying authority of the Secretary of Homeland Security or the Administrator of General Services to construct, alter, operate and maintain land port of entry facilities.

SEC. 107. ENHANCING AND PROMOTING TRAVEL AND PORT MODERNIZATION.

(a) TRAVEL PROMOTION FUND FEES.–Section 217(h)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)) is amended as follows–

(1) by inserting, “For fiscal years 2011 through 2015,” in the beginning of clause (ii);

(2) by inserting, “provide and” before “administer the System” in clause (ii);

(3) by striking clause (iii), and inserting the following:

“(iii) CBP Travel Facilitation Account

(I) There is hereby established in the Treasury an account which shall be known as the CBP Travel Facilitation Account.

(II) Amounts deposited in this account, pursuant to clause (iv) of this paragraph, shall be available until expended, without fiscal year limitation, for the following purposes:
(1) Any expenses (including, but not limited to, employee salaries and benefits) incurred by U.S. Customs and Border Protection in carrying out the provisions of section 1752a of title 8; and/or

(2) Any expenses incurred in the implementation, maintenance, or marketing of any travel facilitation programs administered by U.S. Customs and Border Protection, including, but not limited to, the program required by subsection (k) of section 1365b of title 8.

(III) All amounts deposited into this account shall be available in addition to any other appropriated funds.”; and

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

“(iv) Disposition of Travel Authorization Fee after September 30, 2015

For fiscal years beginning after September 30, 2015, XX% of all fees collected pursuant to clause (i)(I) shall be deposited into the CBP Travel Facilitation Account.”

(b) CORPORATION FOR TRAVEL PROMOTION EXTENSION OF ACCESS TO FEES.--Subsection (d) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(d)) is amended--

(1) by striking “through 2015” in paragraph (2)(B) and inserting “and thereafter”;


(3) by inserting after paragraph (2)(B) the following:
“(C) For fiscal year 2016 and thereafter, only XX% of the fees collected under section 1187(h)(3)(B)(i)(I) of Title 8 shall be deposited in the general fund of the Treasury for the purpose set forth in subparagraph (B).

(D) At the end of fiscal year 2016 and each fiscal year thereafter, the Secretary of the Treasury shall transfer the difference, if any, between amounts deposited under subparagraph (C) and any amount made available to the Corporation under subparagraph (B), to the CBP Travel Facilitation Account established by section 1187(h)(3)(B)(iii) of title 8, and such funds shall be available as described therein.”

SEC. 108. BORDER COMMUNITIES LIAISON OFFICE.

(a) IN GENERAL.—The Secretary shall establish a border communities liaison office in each border patrol sector and at designated ports of entry on the southern and the northern borders. These offices shall report directly to a Border Communities Liaison Officer housed within the Office of the Secretary who shall have the authority to address, coordinate, and investigate matters as detailed below.

(b) PURPOSE.—The purpose of the border communities liaison office shall be to –

(1) foster and institutionalize consultation with border communities on policies, directives, and laws affecting such communities;

(2) provide information to border communities on such policies, directives, and laws;

(3) coordinate regular outreach and public education regarding border enforcement policies and programs; and

(4) receive concerns and complaints raised by border communities.

(c) Not less than 180 days after enactment of this Act, the Secretary shall establish a uniform procedure for filing, tracking, and addressing complaints received regarding Customs and Border Patrol Protection actions.

(d) Authorization of Appropriations—There are authorized to be appropriated such sums as may be necessary in each of the fiscal years 2014 through 2018 to carry out this section.
SEC. 109. IMPROVED TRAINING FOR BORDER AND IMMIGRATION OFFICERS.

The Secretary shall ensure that Department of Homeland Security border and immigration officers receive appropriate training in immigration law and procedures including protections for victims of crime or persecution, civil rights and civil liberties issues, and where appropriate, use of force policies and procedures.

SEC. 110. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.

(a) GRANTS AUTHORIZED.—The Secretary may award grants to Indian tribes that have been adversely affected by illegal immigration.

(b) USE OF FUNDS.—Grants awarded under subsection (a) may be used for--

(1) law enforcement activities, including enforcing licensing restrictions on electronic devices;

(2) health care services;

(3) environmental restoration; and

(4) the preservation of cultural resources.

SEC. 111. REPORT ON DEATHS.

(a) IN GENERAL.—The Commissioner of the United States Customs and Border Protection shall—

(1) collect statistics relating to deaths occurring at the border between the United States and Mexico, including the total number of deaths;

(2) publish the statistics collected under paragraph (1) on a quarterly basis; and

(3) not later than 1 year after the date of the enactment of this Act, and annually thereafter, submit a report to the Secretary that—

(A) analyzes trends with respect to the statistics collected under paragraph (1) during the preceding year; and

(B) recommends actions to reduce and prevent any deaths described in paragraph (1).
SEC. 112. AUTHORITIES FOR LAW ENFORCEMENT PARTNERSHIPS

Section 629(g) of the Tariff Act of 1930, as amended, (19 U.S.C. 1629(g)) is amended to read as follows:

“(g) Privileges and immunities

Any person designated to perform the duties of an officer of the Customs Service pursuant to section 1401(i) of this title shall be entitled to the same privileges and immunities as an officer of the Customs Service, or with respect to a foreign enforcement officer designated pursuant to section 1401(i) of this title, privileges and immunities as afforded by treaty, agreement, or law, with respect to any actions taken by the designated person in the performance of such duties. The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country to extend to officers of that foreign government who are designated pursuant to section 1401(i) of this title privileges and immunities as are necessary to carry out their functions.”.

SEC. 113. AUTHORITY OF FOREIGN CUSTOMS OFFICERS CONDUCTING PRECLEARANCE ACTIVITIES IN THE UNITED STATES TO CARRY AND USE FIREARMS AND OTHER WEAPONS AND RESTRAINT DEVICES, NOTWITHSTANDING STATE AND LOCAL FIREARMS LAWS.

Section 629(f) of the Tariff Act of 1930, as amended, (19 U.S.C. 1629(f)) is further amended:

(a) in paragraph (1) by striking “and”;
(b) in paragraph (2) by striking the period at the end of the sentence and inserting “; and”; and
(c) by adding a new paragraph (3) to read as follows:
“(3) such foreign customs officials may be permitted to carry and use firearms and
other weapons and restraint devices, for purposes of carrying out their official duties at a
preclearance facility, including transportation of such firearms and other weapons and
devices to and from the preclearance facility, to the same extent as U.S. customs officers
acting in their official capacity in the United States and notwithstanding any other
provision of the law of any State or any political subdivision thereof.”.

SEC. 114. STATIONING OF LAW ENFORCEMENT OFFICIALS.

seq.) is amended by adding a new section 890A to read as follows:

“Sec. 890A. Stationing of law enforcement officials or other personnel. The
Secretary or the Attorney General, or both as appropriate, with the approval of the Chief of
Mission for that country pursuant to established procedures, may station or deploy law
enforcement officials, other personnel, and contractors, in a foreign country or accept the
stationing or deployment of foreign law enforcement officials, and other persons assigned
by the foreign government, in the United States for the purpose of enhancing law
enforcement cooperation or operations with that country. The Secretary of State, in
coordination with the Secretary, Attorney General, or both as appropriate, may enter into
treaties or agreements with any foreign country to extend to such persons of that foreign
government privileges and immunities as are necessary to carry out their functions.”.

SEC. 115. FEDERAL JURISDICTION OVER PERSONNEL WORKING AS PART
OF CROSS-BORDER INITIATIVES.

Chapter 211 of title 18, United States Code, is amended by adding after section
3244, the following new section:

“Sec. 3245. Offenses committed by law enforcement officials working outside the
United States pursuant to section 890A of the Homeland Security Act or section 629 of the
Tariff Act.

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Whoever, while employed by or accompanying any department or agency of the United States and stationed or deployed in a foreign country pursuant to section 890A of the Homeland Security Act of 2002 (6 U.S.C. 451 et seq.) or section 629 of the Tariff Act of 1930, as amended, (19 U.S.C. 1629), engages in conduct (or conspires or attempts to engage in conduct) outside the United States that would constitute an offense for which a person may be prosecuted in a court of the United States had the person engaged in the conduct within the United States or within the special maritime and territorial jurisdiction of the United States shall be punished as provided for that offense.”.

SEC. 116. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUSTOMS CONTROLS AND DISOBEYANCE OF LAWFUL ORDERS.

Section 758 of Title 18, United States Code, is amended to read as follows:

“Sec. 758. Unlawful flight from Federal checkpoints and disobeyance of lawful orders.

“(a) EVADING A CHECKPOINT.— Any person who, while operating a motor vehicle or vessel, knowingly flees or evades a checkpoint operated by the Department of Homeland Security or any other federal law enforcement agency, and who knowingly disregards or disobeys the lawful command of a federal law enforcement officer engaged in the enforcement of federal laws, or the lawful command of any law enforcement officer assisting such federal law enforcement officer, shall be fined under this title, imprisoned not more than five years, or both.

“(b) FAILURE TO STOP.—Any person who, while operating a motor vehicle, aircraft, or vessel, knowingly disregards or disobeys the lawful command of a federal law enforcement officer engaged in the enforcement of federal laws, or the lawful command of any law enforcement officer assisting such federal law enforcement officer, shall be fined under this title, imprisoned not more than two years, or both.

“(c) ALTERNATIVE PENALTIES.— Notwithstanding the penalties provided in subsection (a) or (b), any person who violates such subsection shall—

“(1) be fined under this title, imprisoned not more than 10 years, or both, if the violation involved the operation of a motor vehicle, aircraft, or vessel—

“(A) in excess of the applicable or posted speed limit,
“(B) in excess of the rated capacity of the motor vehicle, aircraft, or vessel, or
“(C) in an otherwise dangerous or reckless manner that created a risk of bodily injury to any person;
“(2) be fined under this title, imprisoned not more than 20 years, or both, if the violation created a substantial and foreseeable risk of serious bodily injury or death to any person;
“(3) be fined under this title, imprisoned not more than 30 years, or both, if the violation caused serious bodily injury to any person; or
“(4) be fined under this title, imprisoned for any term of years or life, or both, if the violation resulted in the death of any person.
“(e) FORFEITURE.—Any property, real or personal, constituting or traceable to the gross proceeds of the offense and any property, real or personal, used or intended to be used to commit or facilitate the commission of the offense shall be subject to forfeiture.
“(f) FORFEITURE PROCEDURES.—Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 of this title, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security or the Attorney General. Nothing in this section shall limit the authority of the Secretary to seize and forfeit motor vehicles, aircraft, or vessels under the customs laws or any other laws of the United States.
“(g) DEFINITIONS.—For purposes of this section—
“(1) The term ‘checkpoint’ includes, but is not limited to, any customs or immigration inspection at an immigration checkpoint or at a port of entry.
“(2) The term ‘law enforcement officer’ means any Federal, State, local or tribal official authorized to enforce criminal law, and, when conveying a command covered under subsection (b) of this section, an air traffic controller.
“(3) The term ‘lawful command’ includes, but is not limited to, a command to stop, decrease speed, alter course, or land, whether communicated orally, visually, by means of lights or sirens, wireless communication, or by radio, telephone, or other wire communication.
“(4) The term ‘motor vehicle’ means any motorized or self-propelled means of terrestrial transportation.

“(5) The term ‘serious bodily injury’ has the meaning given in section 2119(2) of this title.”.

SUBTITLE B – BUILDING A FAIR AND FIRM ENFORCEMENT SYSTEM

SEC. 117. FEDERAL PREEMPTION

(a) The Immigration and Nationality Act is amended by adding Section XXX providing:

“(a) Except as otherwise permitted or required by federal law, the provisions of this section preempt any State or local law which (1) imposes a civil or criminal sanction, impairment, or liability on the basis of either immigration status or violation of one of the provisions of this Act or the Immigration and Nationality Act, as amended, or (2) requires the disclosure of immigration status as a condition of receiving any dwelling, good, program, or service.

(b) Nothing in this section shall be deemed to restrict the authority of a state or locality to cooperate in the enforcement of federal immigration law, to the extent that such cooperation is authorized by this Act or the Immigration and Nationality Act as amended, or is conducted pursuant to the authorization of the Department of Homeland Security.”

(b) Section 1373, of Title 8 of the United States Code is amended to read as follows:

“(a) In general. Notwithstanding any other provision of Federal, State, or local law, no Federal, State, or local government entity or official may prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Department of Homeland Security information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities. Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in
any way restrict, a Federal, State, or local government entity or official from doing
any of the following with respect to information regarding the immigration status,
lawful or unlawful, of any individual:

(1) Requesting such information from the Department of Homeland Security
(2) Maintaining such information.
(3) Exchanging such information with any other Federal, State, or local
government entity.

(c) Obligation to respond to requests

The Department of Homeland Security shall respond to a request by a Federal,
State, or local government agency, seeking to verify or ascertain the citizenship or
immigration status of any individual within the jurisdiction of the agency by
providing the requested verification or status information only when:

(1) The request is made for a purpose authorized or required by federal law;
or
(2) The request is made for the purpose of cooperating with the Attorney
General and Secretary in their enforcement of federal immigration laws.

(d) Data sharing. For purposes of enforcing the anti-discrimination provision of
Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, the anti-discrimination
 provision of the Omnibus Crime Control Act and Safe Streets Act of 1968, 42
14141, and other federal civil rights laws, the Attorney General shall have access to
all data collected and maintained pursuant to any request for verification under this
section. The Secretary and Attorney General will enter into an agreement setting
forth the process for data sharing consistent with the purpose of this subsection.”

SEC. 118. REMOVAL OF NONIMMIGRANT OVERSTAYS.

(a) REMOVAL OF NONIMMIGRANT VISITOR OVERSTAYS.—The
Immigration and Nationality Act is amended by inserting the following new section:

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“Sec. 238A. Removal of nonimmigrant visitor overstays who are public safety and national security threats.

“(a) In general. The Secretary may exercise jurisdiction over proceedings to remove an alien who is admitted to United States as a nonimmigrant visitor for business or pleasure under 101(a)(15)(B) of Act, and who is deportable pursuant to section 237(a)(2) or (a)(4) of Act. An alien in proceedings under this section shall not be eligible;—

“(1) to seek review of or to appeal an immigration officer’s determination that the alien is deportable pursuant to section 237(a)(2) or (a)(4) of the Act, or

“(2) to contest any action for removal of the alien pursuant to a determination made under paragraph (1) of this subsection, other than on the basis of—

“(A) an application for asylum, withholding of removal, or protection pursuant to the Convention Against Torture;

“(B) an application for nonimmigrant status under section 101(a)(15)(T) or (U) of the Act, a petition for classification of adjustment of status as a VAWA self-petitioner or Special Immigrant Juvenile;

“(C) an application for cancellation of removal under section 240A(b); or

“(D) an application for adjustment of status as an immediate relative under section 201(b)(2).

“(b)(1) The Secretary by regulation shall establish an administrative procedure under which an immigration officer may make the determination described in paragraph (a)(1) of this section and issue an order of removal.

“(2) Such administrative procedure shall not apply to any alien who was under the age of 21 at the time of admission or who has remained less than 180 days past his or her period of authorized stay.

“(c) Proceedings before the Secretary under this subsection shall be in accordance with such regulations as the Secretary shall prescribe. The Secretary shall provide that—
“(1) the alien is given reasonable notice of the charges and of the opportunity described in subparagraph (3);
“(2) the alien shall have the privilege of being represented by counsel pursuant to section 292 of the Act;
“(3) the alien has a reasonable opportunity to inspect the evidence and rebut the charges;
“(4) a determination is made for the record that the individual upon whom the notice for the proceeding under this section is served (either in person or by mail) is, in fact, the alien named in such notice; and
“(5) the final order of removal is not adjudicated by the same official who issued the charges and is reviewed by a supervisor of the official who adjudicated the order.”.
“(d)(1) An alien subject to removal under this section who contests removal for reasons described in subparagraph (a)(2)(A), (C) or (D) shall be referred to an immigration judge for a hearing in accordance with section 240 of the Act to have his or her application adjudicated.
“(2) An alien subject to removal under this section who contests removal for a reason described in subparagraph (a)(2)(B) shall have his or her application adjudicated as otherwise provided under the immigration laws, and shall not be removed under this section until a denial of such request is administratively final.
“(f) The Secretary and the Secretary of State shall inform aliens applying for a nonimmigrant visa under section 101(a)(15)(B) or for admission under section 101(a)(15)(B) regarding the provisions of subsection (a).
“(g) Nothing in this section shall prohibit the Secretary or Attorney General from permitting voluntary departure as a matter of discretion pursuant to section 240B of the Act, or from placing an alien subject to the provisions of this section in removal proceedings under section 240 of the Act.”.

(b) EFFECTIVE DATES.—With respect to subsection (a), the amendments made by this section shall take effect and apply to aliens who file an application
for a nonimmigrant visa under section 101(a)(15)(B) of the Act on or after the
date that is 180 day after enactment of this Act.

SEC. 119. BIOMETRIC SCREENING

GROUND OF INADMISSIBILITY.—Section 212 (8 U.S.C. 1182) is amended—
(1) in subsection (a)(7), by adding at the end the following:
“(C) WITHHOLDERS OF INFORMATION.—Any alien who willingly,
through his or her own fault, fails or has failed to comply with a lawful request for
biometric information relative to an application for a U.S. visa, admission to the
United States, or other U.S. immigration benefits, is inadmissible.”; and
(2) in subsection (d), by inserting after paragraph (1) the following:
“(2) The Secretary or Attorney General may waive the application of
subsection (a)(7)(C) for an individual alien or class of aliens. The Secretary’s
discretionary judgment regarding whether or not a waiver is granted shall not be
subject to review.”.

SEC. 120. SANCTIONS FOR COUNTRIES THAT DELAY OR PREVENT
REPATRIATION OF THEIR CITIZENS AND NATIONALS.

Sec. 243(d) (8 USC 1253(d)) is amended by—
(1) striking “Attorney General” and inserting “Secretary of Homeland
Security, in consultation with the Secretary of State” each place it appears;
(2) inserting “or subsets of such visas” after “both,”;
(3) inserting “of State” after “Secretary” the last place that term appears.

SEC. 121. CUSTODY OPTIONS FOR ALIENS DETERMINED TO HAVE A
CREDIBLE FEAR.

(a) Section 235 (8 U.S.C. 1225) is amended—
(1) by amending clause (ii) of subsection (b)(1)(B) to read as follows:
“(ii) CUSTODY OF ALIENS DETERMINED TO HAVE A CREDIBLE
FEAR.—Subject to clause (iii), and irrespective of whether the alien is present in
the United States without having been admitted or is arriving in the United States, if
the officer determines at the time of the interview that an alien has a credible fear of
persecution (within the meaning of clause (vi)), the Secretary shall refer the alien for further consideration of the application for asylum and, may—

“(I) continue to detain the alien; or
“(II) release the alien on—
“(aa) bond with security approved by, and containing conditions prescribed by, the Secretary;
“(bb) conditions prescribed by the Secretary; or
“(cc) on recognizance; but
“(III) may not provide the alien with work authorization unless the alien otherwise would be provided such authorization.”

(2) by redesignating clauses (iii), (iv), and (v) of subsection (b)(1)(B) as clauses (iv), (v), and (vi) respectively; and
(3) by inserting a new clause (iii) to read as follows:
“(iii) In addition, bond or release authorized by the Secretary under clause (ii) does not constitute an admission or parole of the alien into the United States and the Secretary at any time may revoke such bond or conditional release, and re-arrest and detain any alien so authorized.”

(4) by striking “, to the maximum extent practicable” and all that follows and inserting a period at the end.

SEC. 122. AGGRAVATED FELONY.

(a) DEFINITION OF AGGRAVATED FELONY.—
(1) Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—
(A) 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, and to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—”;

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(B) in subparagraph (A), by striking “murder, rape, or sexual abuse
of a minor;” and inserting “murder, rape, aggravated sexual abuse, or sexual
abuse of a minor;
(C) in subparagraphs (F) and (G) by striking “at least one year” and
inserting “is more than five years;”;
(D) in subparagraphs (R) and (S) by striking “at least one year” and
inserting “more than five years;”;
(E) in subparagraph (P) by striking “at least 12 months” and
inserting “more than five years;”;
(F) by striking the undesignated matter following subparagraph (U).
(G) in subparagraph (N) by inserting ‘committed for purpose of
commercial advantage’ after ‘smuggling’; and by adding at the end a
semicolon;
(H) in subparagraphs (D) and (M)(i) by striking “$10,000” and
inserting “100,000”;
(I) in subparagraph (T) by striking “2 years” and inserting “more
than five years;”.
(b) REVISION OF CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT
RESIDENTS.—Section 240A(a)(3) (8 U.S.C. 1229b(a)(3)) is amended by striking the
period and inserting “(or felonies) for which the alien has been sentenced to an aggregate
term of imprisonment of at least 5 years.”
(c) EFFECTIVE DATE AND APPLICATION.—
(1) IN GENERAL.—The amendments made by subsection (a) and (b)
shall—
(A) take effect on the date of the enactment of this Act; and
(B) apply to any conviction that occurred before, on, or after the date
of the enactment of this Act provided an individual has not received a final
administrative order of removal before the date of enactment of this Act.
(2) APPLICATION OF IIRIRA AMENDMENTS.—Except as amended by
this section, the amendments to section 101(a)(43) of the Immigration and
Nationality Act made by section 321 of the Illegal Immigration Reform and
3009-627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.

SEC. 123. FINALITY OF CONVICTIONS.

(a) Section 101(a)(48)(A) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(48)(A)) is amended by

(1) in subparagraph (A)— removing the words “entered by a court” and all that follows and inserting the words “entered by a court (provided that, for purposes of this Act, direct appeals available as of right have been exhausted or waived). An adjudication or judgment of guilt that has been dismissed, expunged, deferred, annulled, invalidated, withheld, or vacated, an order of probation without entry of judgment, or any similar disposition shall not be considered a conviction for purposes of this Act.”;

(2) in subparagraph (B)—

(A) by inserting ‘only’ after ‘deemed to include’; and

(B) by striking ‘court of law’ and all that follows through the period at the end inserting ‘court of law. Any such reference shall not be deemed to include any portion of the imprisonment or sentence the imposition or execution of which was suspended.’

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to convictions and sentences entered before, on, or after the date of the enactment of this Act; provided an individual has not received a final administrative order of removal before the date of enactment of this Act.

SEC. 124. CANCELLATION OF REMOVAL

(a) Section 1229b of title 8, United States Code, is amended by striking subsection (e).

(b) BURDEN OF PROOF -- Section 1229b(b)(1)(D) of title 8, United States Code, is amended by-
(1) by striking “exceptional and extremely unusual” and inserting “extreme”; and

(2) by inserting “alien, or to the” between “to the” and “alien’s spouse,”.

(c) EFFECTIVE DATE AND APPLICATION.— The amendments made by this section shall take effect on the date of the enactment of this Act; provided an individual has not received a final administrative order of removal before the date of enactment of this Act.

SEC 125. REDUCING STATELESSNESS.

In section 349(a) of the Immigration and Nationality Act, 8 U.S.C. 1481(a), paragraph (6) is hereby repealed, and paragraph (7) is renumbered as paragraph (6).

SEC. 126. WILLFUL FAILURE TO COMPLY WITH TERMS OF RELEASE UNDER SUPERVISION.

Section 243 (8 U.S.C. 1253) is amended by striking subsection (b) and inserting the following:

“(b) FAILURE TO COMPLY WITH TERMS OF RELEASE.—

“(1) VIOLATION OF REGULATIONS.— An alien who willfully fails to comply with regulations or requirements issued pursuant to section 241(a)(3) or sections 236(a)(2) or (c)(2) of this Act shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both.

“(2) DESTRUCTION OF MONITORING EQUIPMENT.— An alien who willfully disables, damages, alters, tampers with, or destroys monitoring equipment used in the telephonic reporting or physical tracking requirements of their terms of release shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both.”.

SEC. 127. EQUAL ACCESS TO JUSTICE ACT

Section 242 (8 U.S.C. 1252) is amended by inserting at the end a new paragraph (h) to read as follows—

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“(h) AWARDS OF ATTORNEYS FEES UNDER THE EQUAL ACCESS TO JUSTICE ACT IN CASES ARISING UNDER OR INVOLVING THE IMMIGRATION LAWS.—In any civil action arising under the immigration laws, including, but not limited to any action under any provision of title 5, United States Code, section 2241 of title 28, United States Code, or any other habeas corpus provisions, or sections 1361 or 1651 of title 28, that involves or is related to the enforcement or administration of the immigration laws, no award of attorney’s fees or costs shall arise under section 2412 of title 28 or any other statutory provision providing for the payment of a private party’s attorney’s fees by the government, unless the court finds that the government’s position was not substantially justified. The government’s failure to prevail alone does not support an award under this section. The government’s position is substantially justified as long as the position has a reasonable basis in law and fact.”.

SEC. 128. VISA WAIVER PROGRAM REFORMS.

(a) Definitions- Section 217(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(1)) is amended to read as follows:

‘(1) AUTHORITY TO DESIGNATE; DEFINITIONS-

‘(A) AUTHORITY TO DESIGNATE- The Secretary of Homeland Security, in consultation with the Secretary of State, may designate any country as a program country if that country meets the requirements under paragraph (2).

‘(B) DEFINITIONS- In this subsection:

‘(i) APPROPRIATE CONGRESSIONAL COMMITTEES- The term ‘appropriate congressional committees’ means--

‘(II) the Committee on Foreign Affairs, the Committee on Homeland Security, and the Committee on the Judiciary of the House of Representatives.

‘(ii) OVERSTAY RATE-

‘(I) INITIAL DESIGNATION- The term ‘overstay rate’ means, with respect to a country being considered for designation in the program, the ratio of--
‘(aa) the number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa under section 101(a)(15)(B) whose periods of authorized stay ended during a fiscal year but who remained unlawfully in the United States beyond such periods;

‘(bb) the number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa under section 101(a)(15)(B) whose periods of authorized stay ended during that fiscal year.

‘(II) CONTINUING DESIGNATION- The term ‘overstay rate’ means, for each fiscal year after initial designation under this section with respect to a country, the ratio of--

‘(aa) the number of nationals of that country who were admitted to the United States under this section or on the basis of a nonimmigrant visa under section 101(a)(15)(B) whose periods of authorized stay ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

‘(bb) the number of nationals of that country who were admitted to the United States under this section or on the basis of a nonimmigrant visa under section 101(a)(15)(B) whose periods of authorized stay ended during that fiscal year.

‘(III) COMPUTATION OF OVERSTAY RATE- In determining the overstay rate for a country, the Secretary of Homeland Security may utilize information from any available databases to ensure the accuracy of such rate.

‘(iii) PROGRAM COUNTRY- The term ‘program country’ means a country designated as a program country under subparagraph (A).’.

(b) Technical and Conforming Amendments- Section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) is amended--

(1) by striking ‘Attorney General’ each place the term appears (except in subsection (c)(11)(B)) and inserting ‘Secretary of Homeland Security’; and

(2) in subsection (c)--

(A) in paragraph (2)(C)(iii), by striking ‘Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate’ and inserting ‘appropriate congressional committees’;

(B) in paragraph (5)(A)(i)(III), by striking ‘Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Homeland Security, of the House of
Representatives and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate’ and inserting ‘appropriate congressional committees’; and

(C) in paragraph (7), by striking subparagraph (E).

(b) Revision of Discretionary Considerations for Program County designation-

(1) Section 217(c) of the Immigration and Nationality Act (8 U.S.C. 1187) is amended by inserting after paragraph (9) the following paragraph and renumbering paragraph (10) as (11) and paragraph (11) as (12):

‘(10) Discretionary trade-related considerations. - In determining whether to designate a country pursuant to paragraph (1) priority consideration shall be given if the government of the country provides favorable treatment and market access to goods, services, and investment of the United States, including through commitments undertaken in an international trade agreement with the United States.’

(c) Designation of Program Countries Based on Overstay Rates-

(1) IN GENERAL- Section 217(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)(A)) is amended to read as follows:

‘(A) GENERAL NUMERICAL LIMITATIONS-

‘(i) LOW NONIMMIGRANT VISA REFUSAL RATE- The percentage of nationals of that country refused nonimmigrant visas under section 101(a)(15)(B) during the previous full fiscal year was not more than 3 percent of the total number of nationals of that country who were granted or refused nonimmigrant visas under such section during such year.

(ii) LOW NONIMMIGRANT OVERSTAY RATE- The overstay rate for that country was not more than 3 percent during the previous fiscal year.’.

(2) QUALIFICATION CRITERIA- Section 217(c)(3) of such Act (8 U.S.C. 1187(c)(3)) is amended to read as follows:

‘(3) QUALIFICATION CRITERIA- After designation as a program country under section 217(c)(2), a country may not continue to be designated as a program country unless the Secretary of Homeland Security, in consultation with the Secretary of State, determines, pursuant to the requirements under paragraph (5), that the designation will be continued.’.
(3) INITIAL PERIOD- Section 217(c) is further amended by striking subsection (c)(4).

(4) CONTINUING DESIGNATION- Section 217(c)(5)(A)(i)(II) of such Act (8 U.S.C. 1187(c)(5)(A)(i)(II)) is amended to read as follows:

‘(II) shall determine, based upon the evaluation in subclause (I), whether any such designation under subsection (d) or (f), or probation under subsection (f), ought to be continued or terminated;’.

(5) COMPUTATION OF VISA REFUSAL RATES; JUDICIAL REVIEW- Section 217(c)(6) of such Act (8 U.S.C. 1187(c)(6)) is amended to read as follows:

‘(6) COMPUTATION OF VISA REFUSAL RATES AND JUDICIAL REVIEW-

‘(A) COMPUTATION OF VISA REFUSAL RATES- For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation.

‘(B) JUDICIAL REVIEW- No court shall have jurisdiction under this section to review any visa refusal, the Secretary of State’s computation of a visa refusal rate, the Secretary of Homeland Security’s computation of an overstay rate, or the designation or non-designation of a country as a program country.’.

(7) WAIVER AUTHORITY- Section 217(c)(7) of such Act (8 U.S.C. 1187(c)(7)) is amended--

(A) by striking subparagraphs (B) through (D); and

(B) by striking ‘WAIVER INFORMATION- ‘ and all that follows through ‘In refusing’ and inserting ‘WAIVER INFORMATION- In refusing’.

(8) WAIVER AUTHORITY- The Secretary of Homeland Security, in consultation with the Secretary of State, may waive the application of paragraph (2)(A)(i) for a country if--

‘(A) the country meets all other requirements of paragraph (2);

‘(B) the Secretary of Homeland Security determines that the totality of the country’s security risk mitigation measures provide assurance that the country’s
participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;

(C) there has been a general downward trend in the percentage of nationals of the country refused nonimmigrant visas under section 101(a)(15)(B);

(D) the country consistently cooperated with the Government of the United States on counterterrorism initiatives, information sharing, preventing terrorist travel, and extradition to the United States of individuals (including the country’s own nationals) who commit crimes that violate United States law before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State assess that such cooperation is likely to continue; and

(E) the percentage of nationals of the country refused a nonimmigrant visa under section 101(a)(15)(B) during the previous full fiscal year was not more than 10 percent of the total number of nationals of that country who were granted or refused such nonimmigrant visas.

(d) Termination of Designation; Probation- Section 217(f) of the Immigration and Nationality Act (8 U.S.C. 1187(f)) is amended to read as follows:

(f) Termination of Designation; Probation- 

(1) DEFINITIONS- In this subsection:

(A) PROBATIONARY PERIOD- The term ‘probationary period’ means the fiscal year in which a country is placed in probationary status under this subsection.

(B) PROGRAM COUNTRY- The term ‘program country’ has the meaning given that term in subsection (c)(1)(B).

(2) DETERMINATION, NOTICE, AND INITIAL PROBATIONARY PERIOD- 

(A) DETERMINATION OF PROBATIONARY STATUS AND NOTICE OF NONCOMPLIANCE- As part of each program country’s periodic evaluation required by subsection (c)(5)(A), the Secretary of Homeland Security shall determine whether a program country is in compliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2).

(B) INITIAL PROBATIONARY PERIOD- If the Secretary of Homeland Security determines that a program country is not in compliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2), the Secretary of Homeland
Security shall place the program country in probationary status for the fiscal year following the fiscal year in which the periodic evaluation is completed.

‘(3) ACTIONS AT THE END OF THE INITIAL PROBATIONARY PERIOD- At the end of the initial probationary period of a country under paragraph (2)(B), the Secretary of Homeland Security shall take 1 of the following actions:

‘(A) COMPLIANCE DURING INITIAL PROBATIONARY PERIOD- If the Secretary determines that all instances of noncompliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2) that were identified in the latest periodic evaluation have been remedied by the end of the initial probationary period, the Secretary shall end the country’s probationary period.

‘(B) NONCOMPLIANCE DURING INITIAL PROBATIONARY PERIOD- If the Secretary determines that any instance of noncompliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2) that were identified in the latest periodic evaluation has not been remedied by the end of the initial probationary period--

‘(i) the Secretary may terminate the country’s participation in the program; or

‘(ii) on an annual basis, the Secretary may continue the country’s probationary status if the Secretary, in consultation with the Secretary of State, determines that the country’s continued participation in the program is in the national interest of the United States.

‘(4) ACTIONS AT THE END OF ADDITIONAL PROBATIONARY PERIODS- At the end of all probationary periods granted to a country pursuant to paragraph (3)(B)(ii), the Secretary shall take 1 of the following actions:

‘(A) COMPLIANCE DURING ADDITIONAL PERIOD- The Secretary shall end the country’s probationary status if the Secretary determines during the latest periodic evaluation required by subsection (c)(5)(A) that the country is in compliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2).

‘(B) NONCOMPLIANCE DURING ADDITIONAL PERIODS- The Secretary shall terminate the country’s participation in the program if the Secretary determines during the latest periodic evaluation required by subsection (c)(5)(A) that the program country continues to be in non-compliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2).
‘(5) EFFECTIVE DATE- The termination of a country’s participation in the program under paragraph (3)(B) or (4)(B) shall take effect on the first day of the first fiscal year following the fiscal year in which the Secretary determines that such participation shall be terminated. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a).

‘(6) TREATMENT OF NATIONALS AFTER TERMINATION- For purposes of this subsection and subsection (d)--

‘(A) nationals of a country whose designation is terminated under paragraph (3) or (4) shall remain eligible for a waiver under subsection (a) until the effective date of such termination; and

‘(B) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

‘(7) CONSULTATIVE ROLE OF THE SECRETARY OF STATE- In this subsection, references to subparagraphs (A)(ii) through (F) of subsection (c)(2) and subsection (c)(5)(A) carry with them the consultative role of the Secretary of State as provided in those provisions.’.

(e) Review of Overstay Tracking Methodology- Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a review of the methods used by the Secretary of Homeland Security--

(1) to track aliens entering and exiting the United States; and

(2) to detect any such alien who stays longer than such alien’s period of authorized admission.

(f) Evaluation of Electronic System for Travel Authorization- Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress--

(1) an evaluation of the security risks of aliens who enter the United States without an approved Electronic System for Travel Authorization verification; and

(2) a description of any improvements needed to minimize the number of aliens who enter the United States without the verification described in paragraph (1).

(g) Sense of Congress on Priority for Review of Program Countries- It is the sense of Congress that the Secretary of Homeland Security, in the process of conducting
evaluations of countries participating in the visa waiver program under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), should prioritize the reviews of countries in which circumstances indicate that such a review is necessary or desirable.

(h) EFFECTIVE DATE.—The amendments made by subsection (h) shall apply to aliens applying for admission or admitted under the Visa Waiver Program on or after the date that is 60 days after enactment of this Act.

SEC. 129. INTERVIEW WAIVERS FOR LOW RISK VISA APPLICANTS.

INA 222(h)(1) is amended by inserting section (D) which says:

(D) by the Secretary of State, in consultation with the Secretary of Homeland Security, for such aliens or classes of aliens

(i) that the Secretary determines generally represent a low security risk; and

(ii) where an in-person interview would not add material benefit to the adjudication process; and

provided that no interview shall be waived for an individual unless a consular officer, after a review of all standard database and biometric checks, the visa application, and other supporting documents, determines that an interview is unlikely to reveal derogatory information.

(I) in every case, the consular officer retains the right to require an applicant to appear for an interview.

SEC. 130. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

(a) PASSPORT, VISA, AND IMMIGRATION FRAUD.—

(1) IN GENERAL.—Chapter 75 of title 18, United States Code, is amended After1546.Fraud and misuse of visas, permits, and other documents., to add:

“SEC. 1547. TRAFFICKING IN PASSPORTS.

“Any person who, during any period of 3 years or less, knowingly—

“(a) and without lawful authority produces, issues, or transfers 10 or more passports;
“(b) forges, counterfeits, alters, or falsely makes 10 or more passports;

“(c) secures, possesses, uses, receives, buys, sells, or distributes 10 or more

passports, knowing the passports to be forged, counterfeited, altered, falsely made,

stolen, procured by fraud, or produced or issued without lawful authority; or

“(d) completes, mails, prepares, presents, signs, or submits 10 or more applications

for a United States passport, knowing the applications to contain any materially false

statement or representation, shall be fined under this title, imprisoned not more than 20

years, or both.

“(b) PASSPORT MATERIALS.—Any person who knowingly and without lawful

authority produces, buys, sells, possesses, or uses any official material (or counterfeit of

any official material) used to make 10 or more passports, including any distinctive paper,

seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this

title, imprisoned not more than 20 years, or both.

“SEC. 1548.TRAFFICKING IN IMMIGRATION DOCUMENTS.

“(a) Any person who, during any period of 3 years or less, knowingly—

“(1) and without lawful authority produces, issues, or transfers 10 or more

immigration documents;

“(2) forges, counterfeits, alters, or falsely makes 10 or more immigration

documents;

“(3) secures, possesses, uses, buys, sells, or distributes 10 or more

immigration documents, knowing the immigration documents to be forged,

counterfeited, altered, stolen, falsely made, procured by fraud, or produced or

issued without lawful authority; or

“(4) completes, mails, prepares, presents, signs, or submits 10 or more

immigration documents knowing the documents to contain any materially false

statement or representation,

shall be fined under this title, imprisoned not more than 20 years, or both.

“(b) IMMIGRATION DOCUMENT MATERIALS.—Any person who

knowingly and without lawful authority produces, buys, sells, or possesses any

official material (or counterfeit of any official material) used to make 10 or more

immigration documents, including any distinctive paper, seal, hologram, image,
text, symbol, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.

“SEC. 1549. SCHEMES RELATING TO MARRIAGE FRAUD.

(a) MULTIPLE MARRIAGES.—Any person who:

“(1) knowingly enters into 2 or more marriages for the purpose of evading any immigration law; or

“(2) knowingly arranges, or facilitates 2 or more marriages designed or intended to evade any immigration law,

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

“(b) DURATION OF OFFENSE.— An offense under subsection (a) continues as long as the marriage continues.

“(c) TERMINATION OF IMMIGRATION BENEFIT UPON CONVICTION.— Upon conviction of a defendant pursuant to subsection (a), the District Court shall—

“(1) order withdrawn any immigration application or petition pending on the defendant’s behalf if the application, or petition, or marriage is the basis for the conviction; and

“(2) terminate any immigration benefit that the defendant received as a result of any application, petition, or marriage that is the basis for the conviction.

“SEC. 1550. IMMIGRATION SCHEMES TO DEFRAUD.

“(a) IN GENERAL - Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under Federal immigration laws or any matter the offender claims or represents is authorized by or arises under Federal immigration laws, to—

“(1) defraud any person, or

“(2) 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 10 years, or both.

“SEC. 1551. ALTERNATIVE PENALTIES FOR CERTAIN OFFENSES.—

“Notwithstanding any other provision of this title, the maximum term of imprisonment that may be imposed for an offense under this chapter—
“(a) if committed to facilitate a drug trafficking crime (as defined in section 929(a)) is 20 years; and

“(b) if committed to facilitate an act of international terrorism (as defined in section 2331) is 25 years.

(c) Whoever violates any section in this Chapter—

‘(1) knowing that such violation will facilitate an act of international or domestic terrorism (as defined in section 2331 of this Title); or

‘(2) with the intent to facilitate an act of international or domestic terrorism (as defined in section 2331 of this Title), shall be fined under this Title, imprisoned not more than 25 years, or both.

(d) Whoever violates any section in this Chapter—

‘(1) knowing that such violation will facilitate the commission of any offense against the United States (other than an offense in this Chapter) or against any State, which offense is punishable by imprisonment for more than 1 year; or

‘(2) with the intent to facilitate the commission of any offense against the United States (other than an offense in this Chapter) or against any State, which offense is punishable by imprisonment for more than 1 year, shall be fined under this Title, imprisoned not more than 20 years, or both.

“SEC. 1552. SEIZURE AND FORFEITURE.—

“(a) FORFEITURE.—Any property, real or personal, used to commit or facilitate the commission of a violation of any section of this chapter, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

“(b) APPLICABLE LAW.—Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 relating to civil forfeitures, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in
section 981(d) shall be performed by such officers, agents, and other persons as may be
designated for that purpose by the Secretary of Homeland Security, the Secretary of State,
or the Attorney General.

SEC. 1553. ADDITIONAL JURISDICTION.—
(a) IN GENERAL.—Any person who commits an offense under this chapter
within the special maritime and territorial jurisdiction of the United States shall be
punished as provided under this chapter.

(b) EXTRATERRITORIAL JURISDICTION.—Any person who commits an
offense under this chapter outside the United States shall be punished as provided under
this chapter if—

(1) the offense involves a United States passport or immigration document
(or any document purporting to be a United States passport or immigration
document) or any matter, right, or benefit arising under or authorized by Federal
immigration laws;

(2) the offense is in or affects foreign commerce with the United States;

(3) the offense affects, jeopardizes, or poses a significant risk to the lawful
administration of Federal immigration laws, or the national security of the United
States;

(4) the offense is committed to facilitate an act of international terrorism
(as defined in section 2331) or a drug trafficking crime (as defined in section
929(a)(2)) that affects or would affect the United States;

(5) the offender is a national of the United States or an alien lawfully
admitted for permanent residence in the United States (as those terms are defined in
section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))); or

(6) the offender is a stateless person whose habitual residence is in the
United States.

SEC. 1554. DEFINITIONS.—As used in this chapter:

(1) The term ‘immigration document’—
“(A) means any application, petition, affidavit, declaration, attestation, form, visa, identification card, alien registration document, employment authorization document, border crossing card, arrival or departure document, certificate, permit, order, license, stamp, authorization, grant of authority, or other document prescribed by statute or regulation arising under or authorized by the immigration laws of the United States; and

“(B) includes any document, photograph, or other piece of evidence attached to or submitted in support of an immigration document.

“(2) The term ‘immigration laws’ includes—

“(A) the laws described in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17));

“(B) the laws relating to the issuance and use of passports; and

“(C) the regulations prescribed under the authority of any law described in paragraphs (A) and (B).

“(3) The term ‘immigration proceeding’ includes an adjudication, interview, hearing, or review.

“(4) A person does not exercise ‘lawful authority’ if the person abuses or improperly exercises lawful authority the person otherwise holds.

“(5) The term ‘passport’ means—

“(A) a travel document attesting to the identity and nationality of the bearer that is issued under the authority of the Secretary of State, a foreign government, or an international organization; or

“(B) any instrument purporting to be a document described in subparagraph (A).

“(6) The term ‘to present’ means to offer or submit for official processing, examination, or adjudication. Any such presentation continues until the processing, examination, or adjudication is complete and a final decision rendered.

“(7) The term ‘proceeds’ includes any property or interest in property obtained or retained as a consequence of an act or omission in violation of this section.

“(8) The term ‘produce’ means to make, prepare, assemble, issue, print, authenticate, or alter.
“(9) The term ‘State’ means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

“(10) The ‘use’ of a passport or an immigration document referred to in this chapter includes any officially authorized use; use to travel; use to demonstrate identity, residence, nationality, citizenship, or immigration status; use to seek or maintain employment; or use in any matter within the jurisdiction of the Federal government or of a State government.

“SEC. 1555. AUTHORIZED LAW ENFORCEMENT ACTIVITIES.

“(a) Nothing in this chapter shall prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (84 Stat. 933).

“(b) Protection for Refugees and Asylum Seekers—

“(1) PROSECUTION GUIDELINES—The Attorney General, in consultation with the Secretary of Homeland Security and the Secretary of State, shall develop prosecution guidelines for federal prosecutors to ensure that any prosecution of an alien seeking entry into the United States by fraud is consistent with the obligations of the United States under Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

“(2) NO PRIVATE RIGHT OF ACTION—The guidelines required by subparagraph (1), and any internal office procedures adopted pursuant thereto, are intended solely for the guidance of attorneys for the United States. This section, the guidelines required by subparagraph (1), and the process for determining such guidelines are not intended to, do 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.”.

(b) Table of Sections Amendment – The table of section for chapter 75 of title 18, is amended by:

For Discussion Purposes Only – Do Not Distribute
(1) striking “1557. Alternative Imprisonment maximum for certain offenses.”
(2) adding at the end:
“1547. Trafficking in Passports.
“1548. Trafficking in Immigration Documents
“1549. Schemes Relating to Marriage Fraud
“1550. Immigration Schemes to Defraud
“1551. Alternative penalties for certain offenses.
“1552. Seizure and forfeiture.
“1553. Additional jurisdiction.
“1554. Definitions.
“1555. Authorized law enforcement activities.

SEC. 131. INADMISSIBILITY AND DEPORTABILITY FOR PASSPORT AND IMMIGRATION FRAUD OFFENSES.

(a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)) is amended—

(1) in subclause (I), by striking “, or” at the end and inserting a semicolon;
(2) in subclause (II), by striking the comma at the end and inserting “; or”;
and
(3) by inserting after subclause (II) the following:
“(III) a violation of (or a conspiracy or attempt to violate) sections 1547, 1548, 1549, or 1550 of title 18, United States Code,”.

(b) DEPORTABILITY.—Section 237(a)(3)(B)(iii) (8 U.S.C. 1227(a)(3)(B)(iii)) is amended to read as follows:
“(iii) of a violation of (or a conspiracy or attempt to violate) sections 1547, 1548, 1549, or 1550 of title 18, United States Code,”.

(c) EFFECTIVE DATE.—Nothing in this subsection shall be construed to limit the applicability of grounds of inadmissibility or removal to conduct occurring before the date of enactment of this Act.

SEC 132. COMBATING SCHEMES TO DEFRAUD ALIENS
(a) The Secretary of Homeland Security and the Attorney General, for matters within their respective jurisdictions arising under the immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))), shall promulgate appropriate regulations, forms, and procedures defining the circumstances in which—

(1) Persons submitting applications, petitions, motions, or other written materials relating to immigration benefits or relief from removal under the immigration laws will be required to identify who (other than immediate family members) assisted them in preparing or translating the immigration submissions; and

(2) Any person or persons who received compensation (other than a nominal fee for copying, mailing, or similar services) in connection with the preparation, completion, or submission of such materials will be required to sign the form as a preparer and provide identifying information.

(b) Civil Injunctions against Immigration Service Providers

(1) Authority to seek injunction—The Attorney General may commence a civil action in the name of the United States to enjoin any immigration service provider who has engaged in any fraudulent conduct that substantially interferes with the proper administration of the immigration laws as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)) or who willfully misrepresents his or her legal authority to provide representation before the Department of Justice or Department of Homeland Security.

(2) Definition.—For purposes of subsection (a), the term “immigration service provider” means any individual or entity (other than an attorney or individual otherwise authorized to provide representation in immigration proceedings as provided in federal regulation) who, for a fee or other compensation, provides any assistance or representation to aliens in relation to any filing or proceeding relating to the alien which arises, or which the provider claims to arise, under the immigration and nationality laws, as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)), executive order, or presidential proclamation.
(c) Misrepresentation, Fraud, and False Statements

In General – Section 1041 of Title 18 of the United States Code is amended as follows:

(A) by inserting:

“(a) § 1041. MISREPRESENTATION.—

(1) Any person who, within the United States, knowingly and falsely represents that such person is, or holds himself out as an attorney, a government official, a government employee, or any person authorized to represent any other person before any court or agency of the United States or otherwise authorized to represent others as described in sections 292.1 and 1292.1 of title 8, Code of Federal Regulations (or any successors to such sections), in any matter that is authorized by or arises under the immigration laws or in any other matter claimed or represented to rise under the immigration laws, shall be fined under this title, imprisoned not more than 10 years, or both.

(2) For purposes of this section the term ‘attorney’ means a person lawfully authorized to practice law in any State of the United States, Indian tribe, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(B) Table of Sections Amendment – The table of section for chapter 47 of title 18, United States Code, is amended by adding after the item relating to section 1040 the following:

“Sec. 1041. Misrepresentation”

SEC. 133. STATUTE OF LIMITATIONS FOR VISA FRAUD AND OTHER FALSE STATEMENTS INVOLVING HUMAN RIGHTS VIOLATIONS

Section 3291 of Title 18 is amended by inserting at the end the following new paragraph:

“Notwithstanding section 3282, no person may be prosecuted, tried, or punished for a violation of sections 1001, 1015, or 1621 where the fraud or false statements at issue concerns participation in a human rights offense
unless the indictment or the information is filed not later than 10 years after
the offense was committed. For purposes of this statute, ‘human rights
offense’ is defined as conduct described in Title 8 section 1182(a)(3)(E),
and Title 18 sections 2441(c), and 2442.”

SEC. 134. CRIMINAL PENALTY FOR BRINGING HUMAN RIGHTS
VIOLATORS INTO THE UNITED STATES.

(a) Section 277 of the Immigration and Nationality Act (8 U.S.C. 1327) is amended by
(1) striking “(insofar as an alien inadmissible under such section has been convicted of an
aggravated felony)” and inserting “(insofar as an alien inadmissible under such section has
been convicted of an aggravated felony or committed particularly severe violations of
religious freedom as a foreign government official)”;
and
(2) striking “212(a)(3) (other than subparagraph (E) thereof)” and inserting “212(a)(3)”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect upon
enactment of this Act and shall apply to any act on or after the date of enactment aiding or
assisting to bring the inadmissible alien into the United States who was inadmissible at the
time of entry.

SEC. 135. INCARCERATION OF CRIMINAL ALIENS.

(a) INSTITUTIONAL REMOVAL PROGRAM.—
(1) CONTINUATION.—The Secretary shall continue to operate the
Institutional Removal Program (referred to in this section as the “Program”) or shall
develop and implement another program to—
(A) identify removable criminal aliens in Federal and State
correctional facilities;
(B) conduct proceedings in conformity with section 240 before the
criminal aliens complete their criminal sentences; and
(C) remove such aliens from the United States after the completion
of their sentences.
(2) EXPANSION.—The Secretary may extend the scope of the Program to all States.

(b) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be used to the maximum extent practicable to make the Program available in remote locations. Mobile access to Federal databases of aliens shall be used to the maximum extent practicable to make these resources available to State and local law enforcement agencies in remote locations.

SEC. 136. REFORMS TO PROCESSING OF ILLEGAL ALIENS APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS AND DATA COLLECTION.

(a) The Secretary may assume custody and provide transportation and officers to take aliens removable under the immigration laws and subject to a detainer who are apprehended, detained, or incarcerated by State, tribal, and local law enforcement officers for violations of state or local criminal law in the course of such agency’s law enforcement duties if the Secretary has reasonable suspicion the alien is subject to removal under this chapter.

(b) The Secretary may issue an immigration detainer to a federal, state, local, or tribal law enforcement agency authorizing and requesting such agency—

(1) to transfer custody of an alien to the Secretary upon the otherwise scheduled release of the alien from the agency’s custody; and

(2) to detain temporarily and on behalf of the Secretary an alien in the agency’s custody for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) in order to permit the Secretary to assume custody of the alien within the 48 hour period, after which time the agency must release the alien from the detainer.

(c) The Secretary shall—

(1) limit issuance of detainers consistent with the enforcement priorities of the Department;

(2) notify the detaining Federal, State or local law enforcement agency that, unless the Department has taken custody of the alien within 48 hours of the issuance of the
detainer, excluding holidays and weekends, the agency may not maintain detention or
custody of an alien who would otherwise be released;

(3) train Federal, State and local agencies who have the authority to lodge detainers
issued by the Department on:

(A) the purpose and scope of detainers;
(B) the role and responsibilities of Federal, State or local law enforcement
agencies in the detainer issuance process; and
(C) the consequences to Federal, State or local law enforcement agencies for
violating a statutory, regulatory or policy provision governing the detainer issuance
process.

(4) ensure that as soon as practicable after issuance of the detainer, the Department
provides to the alien and the counsel for the alien, if any:

(A) notice of the detainer;
(B) information on how an individual can notify the Department if it
believes the detainer has been inappropriately issued; and
(C) notice that the detainer lapses if the Department does not take custody of
the alien within 48 hours.

(d) The Department shall promptly cancel any detainer issued for a person who the
Department learns upon further investigation is a United States citizen, a United States
national or not subject to removal.

(e) The Secretary shall promulgate regulations within one year of enactment of this
Act requiring officers and employees of the Department of Homeland Security to
collect data regarding issuance of immigration detainers, including, where
applicable and available –

(1) the criminal charge for which the individual was detained or
arrested;
(2) the Federal, State or local law enforcement agency that initially
detained or arrested the individual;
(3) the date the Federal, State or local law enforcement agency initially
detained or arrested the individual;
(4) the date on which the detainer was issued;
(5) the basis for issuing of the detainer;
(6) the date on which the Department took custody of the individual;

(7) the age and country of origin of the individual against whom the
detainer was issued;

(8) the ultimate disposition of any immigration case, including whether
the individual was determined to be a United States citizen or to be
in lawful immigration status; and

(9) whether the individual was removed.

(f) For purposes of enforcing the anti-discrimination provision of Title VI of the Civil
Rights Act of 1964, 42 U.S.C. § 2000d, the anti-discrimination provision of the Omnibus
Crime Control Act and Safe Streets Act of 1968, 42 U.S.C. § 3789d, the Civil Rights of
Institutionalized Persons Act of 1980, 42 U.S.C. § 1997, the Violent Crime Control and
Law Enforcement Act of 1994, 42 U.S.C. § 14141, and other federal civil rights laws, the
Attorney General shall have access to all data collected and maintained under subsections
(e).

(g) Notwithstanding any other provision of law (statutory or non-statutory), including but
not limited to section 2241 of Title 28, or any other habeas corpus provision, and sections
1331, 1361, and 1651 of such title, no court shall have jurisdiction to review any decision
or action by the Secretary regarding whether or when to issue a detainer, except that an
alien may challenge actual detention after the commencement of the 48-hour period
described in subsection (b)(2) with a petition for a writ of habeas corpus under section 2241
of Title 28. Nothing in this subsection shall be construed to preclude review of
constitutional claims or questions of law raised in a petition for review filed in accordance

SEC. 137. DATA COLLECTION RELATED REFORMS TO 287(G)
AGREEMENTS

(a) IN GENERAL.—Section 287(g)(8 U.S.C. 1357(g)) is amended—

(1) by striking “Attorney General” each place it appears and inserting
“Secretary”;
(2) in subsection (1), by striking “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)” and inserting “immigration-related duties that relate to detention operations supported by U.S. Immigration and Customs Enforcement”.

(b) REGULATIONS. --Section 287(g)(8 U.S.C. 1357(g)) is amended by inserting after subsection (10), subsection (11):

“The Secretary, in consultation with the Attorney General, shall promulgate regulations within six months of enactment of this Act that:

(A) specify the nature of the delegated authority to participating agencies;
(B) specify the circumstances under which the detention officers who are delegated authority under section 287(g) may operate; and
(C) specify the training and supervision requirements of participating agencies required by the Secretary.”

c) DATA COLLECTION. --Section 287(g)(8 U.S.C. 1357(g)) is further amended by inserting after subsection (11), subsection (12):

“The Secretary, in consultation with the Attorney General, shall promulgate final regulations within one year of enactment of this Act:

(A0 requiring each State, or any political subdivision of a State, that enters into a written agreement pursuant to section 287(g) of the Immigration and Nationality Act to collect and maintain such records and data as are reasonably necessary to assure that actions under the agreement are in compliance with federal law, including –

(i) the criminal charge for which the individual was detained, arrested and the disposition of any criminal case against the individual;
(ii) the law enforcement agency that initially detained or arrested the individual, including geographic data and jurisdiction designation;
(iii) the date and time of the initial encounter with the individual;
(iv) the location of the initial encounter with the individual;
(v) the duration of the initial encounter with the individual;
(vi) the age, race, ethnicity, and country of origin of any individual arrested pursuant to such agreement and
(vii) whether the individual was a victim or a witness to a crime for which he or she was arrested or detained.

(d) Section 287(g)(8 U.S.C. 1357(g)) is further amended by inserting after subsection (12), subsection (13):

“For purposes of enforcing the anti-discrimination provision of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, the anti-discrimination provision of the Omnibus Crime Control Act and Safe Streets Act of 1968, 42 U.S.C. § 3789d, the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. § 1997, the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, and other federal civil rights laws, the Attorney General shall have access to all data collected and maintained under paragraph (12). The Secretary and Attorney General will enter into an agreement setting forth the process for data sharing consistent with the purpose of this subsection.”

SUBTITLE C – FIGHTING TRANSNATIONAL CRIME

SEC. 138. LAUNDERING OF MONETARY INSTRUMENTS.

Section 1961(1) of title 18, United States Code, is amended—
in subsection (1)(B) by inserting “section 1541 (relating to trafficking in passports), after “section 1513 (relating to retaliating against a witness, victim, or an informant),”, and by inserting “section 1545 (relating to schemes to defraud aliens),” after “section 1544 (relating to misuse of passport),”, and by inserting “section 1547 (relating to marriage fraud), section 1548 (relating to attempts and conspiracies),” after “section 1546 (relating to fraud and misuse of visas, permits, and other documents),”, and by inserting “section 1028A (relating to aggravated identity theft),” after “section 1028 (relating to fraud and related activity in connection with identification documents),”, and(2) in subsection (1)(F), by inserting “section 274A(a)(1), 274A(a)(2) or 274A(i) (relating to the unlawful employment of aliens),” after “section 274 (relating to bringing in and harboring certain
aliens),” and by inserting “or section 295 (relating to organized human smuggling), section
296 (relating to abusive treatment of smuggled migrants), section 297 (relating to hindering
immigration, border, and customs controls),” after “section 278 (relating to importation of
alien for immoral purpose) if the act indictable under such section of such Act was
committed for the purpose of financial gain.” ;

SEC. 139. KNOWLEDGE REQUIREMENT IN CONCEALMENT
MONEY LAUNDERING

Section 1956(a)(1)(B) of title 18, United States Code, is amended to read 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,”

Section 1956(a)(2)(B) of title 18, United States Code, is amended to read 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. 140. ILLEGAL MONEY TRANSMITTING BUSINESSES

(a) Section 1960(b)(1)(B) of title 18, United States Code, is amended by inserting the
following before the semi-colon: “, whether or not the defendant knew that the operation
was required to comply with such registration requirements or regulations”.
(b) TECHNICAL AMENDMENTS.—Section 1960 of title 18, United States Code, is
amended – (1) in the title by striking “unlicensed” and inserting “illegal;
(2) in subsection (a) by striking “unlicensed” and inserting “illegal”;

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(3) in subsection (b)(1) by striking “unlicensed” and inserting “illegal”; and

(4) in subsection (b)(1)(C) by inserting “exchange” after “transportation.”

(c) DEFINITION OF MONEY TRANSMITTING BUSINESS (Section 1960(b)(2) of title 18, United States Code, is amended to read as follows:

“(2) the term “money transmitting business” means any business other than the United States Postal Service, which provides check cashing, currency exchange, money transmitting or remittance services, or issues, sells or redeems money orders, travelers’ checks, prepaid access devices, digital currencies, or other similar instruments or any other person or association of persons, formal or informal, engaging as a business in transporting, transferring, exchanging or transmitting currency, means to access funds or the value of funds, or funds in any form, including any person or association of persons, formal or informal, engaging as a business in any informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.”

SEC. 141. BULK CASH SMUGGLING

Section 5332(b) of title 31, United States Code, is amended by –

(a) in subparagraph (1), striking “5” and inserting “10”; and

(b) by renumbering current subparagraphs (2), (3), and (4) as (3), (4), and (5) and adding the following as subparagraph (2):

“(A) IN GENERAL. – Whoever violates this section shall be fined in accordance with title 18.
“(B) ENHANCED FINE FOR AGGRAVATED CASES. – Whoever violates this section while violating another law of the United States, other
than 31 U.S.C. §
5316 or § 5324(c), as part of a pattern of any unlawful activity,
including violations of 31 U.S.C. § 5316 or § 5324(c), shall be fined
twice the amount provided in subsection (b)(3) or (c)(3) of section 3571
of title 18, United States Code.”

SEC. 142. INCORPORATING INFORMAL VALUE TRANSFER SYSTEMS INTO SECTION 1957

Section 1956(a)(1) of title 18, United States Code, is amended by striking “For purposes of this paragraph, a financial transaction” and inserting “For purposes of this paragraph and Section 1957, a financial transaction or a monetary transaction”.

SEC. 143. CRIMINAL FORFEITURE.

Section 982 of Title 18 is amended:
(1) in subsection (a)(2)(B) by inserting “1028A” between “1028” and “1029”, and
(2) in subsection (a)(6)(A):
(A) by striking “274A(a)(1) or 274A(a)(2),” and inserting “295, 296, or 297”; and
(B) by inserting “and 1028A” after “1028” and
(3) in subsection (a)(8) by inserting “and 1028A” after “1028.”.

SEC. 144. SUBPOENAS IN MONEY LAUNDERING AND FORFEITURE CASES

(a) Section 986 of title 18, United States Code, is amended as follows
“(a)
“(1) Before the filing of a verified complaint, the United States may request the Clerk of the Court in any district where a civil forfeiture action may be filed pursuant to section 1355(b) of title 28, United States Code, to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party.”

“(2) At any time after the commencement of any action for forfeiture by the United States under section 981 or 982 of this title, or sections 5317 and 5332 of title 31, United States Code, or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena.”;

(2) in subsection (c), by inserting “or the Federal Rules of Criminal Procedure” after “Procedure”.

(b) AMENDMENTS TO SECTION 3486.—Section 3486(a) of title 18, United States Code, is amended --

(1) in subsection (a)(1)(A) by striking “of” after “relating” and inserting “to”; and

(2) by striking “,” at the end of subsection (ii), inserting “; or” after “the Treasury” in that subsection, and inserting the following new subsection (iii) after subsection (ii):

“(iii) an offense under section 1956, 1957, or 1960 of this title, or section 5313, 5316, 5324, 5331 or 5332 of title 31, or an offense against a foreign nation constituting specified unlawful activity under section 1956, or a criminal or civil forfeiture based upon an offense enumerated in this...
subsection or for which enforcement could be brought under section 2467 of
title 28, the Attorney General; the Secretary of Homeland Security; or the
Secretary of the Treasury;”; and
(3) by striking the word “or” before subsection (a)(6)(B)(iv), inserting “, or”
after the word “witnesses” in that subsection, and inserting the following new
subsection (B)(v), as follows:
“(v) dissipation, destruction, removal, transfer, damage, encumbrance, or other
unavailability of property that may become subject to forfeiture or an
enforcement action under 2467 of title 28, United States Code.”

(c) FAIR CREDIT REPORTING ACT AMENDMENT.-- Section 604(a)(1) of the Fair
Credit Reporting Act (15 U.S.C. § 1681b(a)(1)) is amended by inserting before the
period at the end “, or a subpoena issued pursuant to section 5318 of title 31 or section
3486 of title 18”.

(d) OBSTRUCTION OF CRIMINAL INVESTIGATIONS.-- Section 1510(b) of title 18,
United States Code, is amended –

“(1) in paragraph (b)(2)(A), by striking “grand jury subpoena” and inserting
“subpoena for records”; and
“(2) in paragraph (b)(3)(B), by deleting “or a Department of Justice
subpoena (issued under section 3486 of title 18)” and by inserting “, a
subpoena issued under section 3486 of title 18, or an order or subpoena
issued pursuant to section 3512 of title 18, section 5318 of title 31, or
section 1782 of title 28, ” after “grand jury subpoena”, and
“(3) in paragraph (b)(3)(B)(i) by inserting “, 1960, or an offense against a
foreign nation constituting specified unlawful activity under section 1956,
or a foreign offense for which enforcement of a foreign forfeiture
judgment could be brought under section 2467 of title 28” after “1957”.

(e) RIGHT TO FINANCIAL PRIVACY ACT.-- Section 3420 of title 12, United States
Code, is amended in subsection (b)(1)(A) by deleting “or 1957” and inserting “, 1957, or
1960” and by deleting “and 5324” and inserting “, 5322, 5324, 5331, and 5332 of title
31”;

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SEC. 145. CIVIL FORFEITURE CASES BASED UPON FOREIGN OFFENSES

(a) Section 981(b)(4) of title 18, United States Code, is amended by:

(1) in subsection (A) striking “30” and inserting “90” and striking “43(e)” and inserting “43(c)”;

(2) in subsection (B) by inserting the following after the words “under this subsection”: “or to receive an order, affidavit, or evidence in support of an application to preserve property pursuant to section 2467 of title 28, United States Code.”

(b) Section 981(i)(4) of title 18, United States Code, is amended to delete the word “drug” between “unlawful” and “activity” wherever it appears.

(c) Section 981(k) of title 18, United States Code, is amended to add new subsections (5) and (6), as follows:

“(5) Venue. — A forfeiture proceeding pursuant to this subsection may be brought in any district court where a forfeiture action against the underlying property located in a foreign country could have been brought as set forth in section 1355(b) of title 28.

“(6) Attorney fees and liability. — The provisions of section 2465 of title 28 do not apply to any procedure initiated by the United States under this section in which a foreign financial institution establishes ownership in accordance with subsection (4)(B)(ii).

SEC. 146. UPDATING ADMINISTRATIVE FORFEITURE AUTHORITY
(a) ADMINISTRATIVE FORFEITURE OF FUNDS.– Section 1607(a) of title 19, United States Code, is amended by --

(1) striking “or” at the end of paragraph (3);

(2) inserting “or” after the semi-colon at the end of paragraph (4); and

(3) inserting the following after paragraph (4):

“(5) such seized merchandise comprises funds accessible through a prepaid access device or other portable storage device;”.

(b) ADMISSIBILITY OF FOREIGN RECORDS IN CIVIL FORFEITURE PROCEEDINGS.– Section 3505(a)(1) of title 18, United States Code, is amended by inserting the following after the words “criminal proceeding,” “civil forfeiture action, or enforcement action brought under section 2467 of title 28, United States Code”.

SEC. 147. ALIEN SMUGGLING AND HARBORING

(a) REAL PROPERTY USED IN ALIEN SMUGGLING AND HARBORING.– Section 274(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1324(b)(1)) is amended by --

(1) striking “Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation” and inserting “Any property, real or personal, used or intended to be used to commit or to facilitate the commission of a violation”; and

(2) striking “such conveyance” and inserting “such property”.

(b) PROCEEDS OF ALIEN SMUGGLING AND HARBORING.– Section 274(b) of the Immigration and Nationality Act (8 U.S.C. § 1324(b)) is amended by adding the following after paragraph (3):

“(4) For purposes of this subsection and Section 982(a)(6) of title 18, the term “proceeds” means any property derived from or obtained or retained, directly or
indirectly, as a consequence of an act or omission in violation of this section, including the gross receipts of such activity.”.

SEC. 148. PROPERTY DETAINED AT THE BORDER

Section 983(a)(1) of title 18, United States Code, is amended –

(1) in subparagraph (A), by adding the following after clause (v):
“(vi) In cases where property is detained at an international border or port of entry for the purpose of examination, testing, inspection, obtaining documentation or other investigation relating to the importation of the property into, or the exportation of the property out of, the United States, such period of detention shall not be included in the 60-day period described in clause (i). In such cases, the 60-day period shall begin to run when the period of detention is concluded, and a law enforcement agency of the United States seizes the property for the purpose of forfeiture to the United States.”; and

(2) in subparagraph (D), –

(A) by striking “or” at the end of clause (iv);

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

(C) by inserting the following after clause (iv):
“(v) initiation of a forfeiture proceeding before the seizing agency has received the results of a scientific test or laboratory analysis of the seized property that is material to the determination whether the property is subject to forfeiture; or”

SEC. 149. PERMIT INTERNATIONAL COOPERATION REGARDING WITNESS RELOCATION.
(a) Section 3521(a)(1) of Title 18, United States Code, is amended by inserting after the phrase “State government” the following phrase: “or for a foreign authority”;

(b) Section 3526(b) of Title 18, United States Code, is amended by inserting “or foreign authority” after “In any case in which a State government”; and Section 3526(b)(2) of Title 18, United States Code, is amended by inserting at the beginning “where the request for protection is made by a State Government,”, and by inserting at the end “Where the request for protection is made by a foreign authority, the Attorney General may enter into a similar agreement with that authority.”

(c) Section 3528 of Title 18, United States Code, is amended by inserting at the end, the following new paragraph: “For purposes of this chapter, the term “foreign authority” shall have the meaning given to that term in section 3512(h)(2) of this Title.

SEC. 150. PENALTIES RELATING TO VESSELS AND AIRCRAFT.

Section 243(c) (8 U.S.C. 1253(c)) is amended—

(1) by striking “Attorney General” and “Commissioner” each place those terms appear and inserting “Secretary of Homeland Security”;

(2) in paragraph (1)(A), by striking “$2,000” and inserting “$5,000”;

(3) in paragraph (1)(B) by striking “$5,000” and inserting “$10,000”; and

(4) by amending paragraph (1)(C) to read as follows:

“(C) COMPROMISE.—The Secretary of Homeland Security may in the Secretary’s unreviewable discretion, upon application in writing, mitigate penalties under this subsection for each alien stowaway to an amount not less than $2,000, upon such terms that the Secretary of Homeland Security determines appropriate.” and;

(5) by inserting:

“(D) EXCEPTION -- a person, acting without compensation or the expectation of compensation, is not subject to penalties under this paragraph if the person is—

(1) providing, or attempting to provide, an alien with humanitarian assistance, including emergency medical care or food or water; or
(2) transporting the alien to a location where such humanitarian assistance can be rendered without compensation or the expectation of compensation.”

SEC. 151. TERRITORIAL JURISDICTION OVER CERTAIN ACTIVITIES OCCURRING ON VESSELS AND AIRCRAFT OF THE UNITED STATES

(a) Chapter 1 of title 18, United States Code is amended by inserting after section 21 the following new section:

“§ 22. Territorial jurisdiction over vessels and aircraft of the United States.

“(a) For the purpose of application of criminal offenses made punishable by any enactment of Congress, conduct committed upon a vessel of the United States or an aircraft of the United States that is outside the jurisdiction of any State (as such terms are defined in this section), shall be deemed to have been committed within the territory of the United States.

“(b) As used in this section, the term—

“(1) ‘vessel of the United States’ has the meaning set forth in the Maritime Drug Law Enforcement Act, as amended (46 U.S.C. 70502(b));

“(2) ‘aircraft of the United States’ has the meaning set forth in 49 U.S.C. 40102 (a) (17); and

“(3) ‘State’ includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”.

(b) The table of sections for chapter 1 of title 18, United States Code, is amended by inserting the following after the item relating to section 21:

“22. Territorial jurisdiction over vessels and aircraft of the United States.”.

(a) Section 9 of title 18, United States Code, is amended by striking “The term” and inserting “Except as otherwise provided, the term”.

(c) Section 7 of title 18, United States Code, is amended—
(1) in paragraph (1), by inserting “or registered under the laws of the United States, or any State, Territory, District, or possession thereof,” after “or possession thereof,”; and
(2), in paragraph (5), by—
   (A) inserting “or any aircraft registered under the laws of the United States,” after “possession thereof,”; and
   (B) striking “over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States”.

(d) Section 13, Title 18, United States Code, is amended by inserting the following after subsection (c):
   “(d) Whoever, upon a vessel or aircraft of the United States as defined in section 22 of this title, not located within the jurisdiction of any State, Commonwealth, territory, possession or district, is guilty of any act or omission which would be punishable by imprisonment for a term exceeding one year if committed within the jurisdiction of the District of Columbia, by the laws in force at the time of such act or omission, although not otherwise made punishable by enactment of Congress or otherwise by subsections (a) through (c), shall be guilty of a like offense and subject to a like punishment.”.

SEC. 152. ORGANIZED AND ABUSIVE HUMAN SMUGGLING ACTIVITIES.

(a) ENHANCED PENALTIES.—The Immigration and Nationality Act is amended by inserting after section 294 the following new sections:

“SEC. 295. ORGANIZED HUMAN SMUGGLING.
   “(a) PROHIBITED ACTIVITIES.—Whoever, while acting for profit or other financial gain, knowingly directs, participates in, or furthers an effort or scheme to assist or cause five or more persons (other than a parent, spouse or child of the offender)—
   “(1) to enter, attempt to enter, or prepare to enter the United States—
      “(A) by fraud, falsehood, or other corrupt means,
      “(B) at any place other than a port or place of entry designated by the Secretary, or
      “(C) in a concealed manner or any other manner not prescribed by the immigration laws and regulations of the United States; or
   “(2) to travel by air, land, or sea toward the United States (whether directly or indirectly)—

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“(A) knowing that the persons seek to enter or attempt to enter the
United States without lawful authority, and
“(B) with the intent to aid or further such entry or attempted entry; or
“(3) to be transported or moved outside of the United States—
“(A) knowing that such persons are aliens in unlawful transit from
one country to another or on the high seas, and
“(B) under circumstances in which the persons are in fact seeking to
enter the United States without official permission or legal authority;
“shall be punished as provided in subsection (c) or (d).
“(b) CONSPIRACY AND ATTEMPT.—Any person who attempts or conspires to
violate subsection (a) of this section shall be punished in the same manner as a person who
completes a violation of such subsection.
“(c) BASE PENALTY.—Except as provided in subsection (d), any person who
violates subsection (a) or (b) shall be fined under title 18, imprisoned for not more than 20
years, or both.
“(d) ENHANCED PENALTIES.—Any person who violates subsection (a) or (b)
shall—
“(1) in the case of a violation during and in relation to which a serious
bodily injury (as defined in section 1365 of title 18) occurs to any person, be fined
under title 18, imprisoned for not more than 30 years, or both;
“(2) in the case of a violation during and in relation to which the life of any
person is placed in jeopardy, be fined under title 18, imprisoned for not more than
30 years, or both;
“(3) in the case of a violation involving 10 or more persons, be fined under
title 18, imprisoned for not more than 30 years, or both;
“(4) in the case of a violation involving the bribery or corruption of a U.S. or
foreign government official, be fined under title 18, imprisoned for not more than
30 years, or both;”
“(5) in the case of a violation involving robbery or extortion as defined in
section 1951(b)(1) and (2) of title 18, be fined under title 18, imprisoned for not
more than 30 years, or both;
“(6) in the case of a violation during and in relation to which any person is subjected to an involuntary sexual act (as defined in section 2246(2) of title 18), be fined under title 18, imprisoned for not more than 30 years, or both; or

“(7) in the case of a violation resulting in the death of any person, be fined under title 18, imprisoned for any term of years or for life, or both.

“(e) LAWFUL AUTHORITY DEFINED.—For purposes of this section, the term “lawful authority” means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or accompanying regulations. The term does not include any such authority secured by fraud or otherwise obtained in violation of law; nor does it include authority sought, but not approved. No alien shall be deemed to have lawful authority to travel to or enter the United States if such travel or entry was, is, or would be in violation of law.

“(f) EFFORT OR SCHEME DEFINED.—For purposes of this section, ‘effort or scheme to assist or cause five or more persons’ does not require that the five or more persons enter, attempt to enter, prepare to enter, or travel at the same time.

“SEC. 296. ABUSIVE TREATMENT OF MIGRANTS BEING SMUGGLED.

“(a) VIOLENCE AND SEXUAL ABUSE.—

“(1) Whoever, during and in relation to any offense that constitutes a violation of section 274, 278, or 295 of this Act, engages in conduct that would constitute any offense enumerated in paragraph (2) of this subsection (or a conspiracy to commit any such offense) had the conduct been engaged in within the special maritime and territorial jurisdiction of the United States shall be punished as provided for that enumerated offense. A person may be prosecuted under this section regardless of whether the person is or could be prosecuted for, and regardless of whether any person is charged with, the related violation of 274, 278, or 295 of this Act.

“(2) The offenses covered by paragraph (1) include—

“(A) any offense under section 113 (relating to assault) or 114 (relating to maiming) of chapter 7 of title 18;

“(B) any offense under section 1111 (relating to murder), 1112 (relating to manslaughter), or 1113 (relating to attempt to commit murder or manslaughter) of chapter 51 of title 18;
“(C) any offense under section 1581 (relating to peonage), 1583 (relating to enticement into slavery), 1584 (relating to sale into involuntary servitude), 1585 (relating to seizure, detention, transportation, or sale of slaves), 1589 (relating to forced labor), 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), or 1591 (relating to sex trafficking of children by force, fraud, or coercion) of chapter 77 of title 18; and

“(D) any offense under chapter 109A (relating to sexual abuse) of title 18.

“(b) ABANDONMENT.—Whoever, during and in relation to any offense under section 274, 278, or 295 of this Act for which the person may be prosecuted in a court of the United States, knowingly abandons or otherwise deserts a person under the offender’s direction, control, or care in circumstances that place such person at a significant and apparent risk of death, including by starvation, illness, or injury shall be fined under title 18, imprisoned for or any term of years or for life, or both.

“(c) EXTRATERRITORIAL APPLICATION.—This section shall have extraterritorial application.

“SEC. 297. HINDERING IMMIGRATION, BORDER, AND CUSTOMS CONTROLS.

“(a) ILLICIT SPOTTING.—Whoever knowingly surveils, tracks, monitors, or transmits the location, movement, or activities of any Federal, State, or tribal law enforcement agency with the intent to further any violation of Federal law relating to United States immigration, customs, drug, agriculture, currency, or other border controls shall be fined under title 18, imprisoned not more than 10 years, or both.

“(b) DESTRUCTION OF UNITED STATES BORDER CONTROLS.—Whoever knowingly and without lawful authorization destroys, alters, or damages any fence, barrier, sensor, camera, or other physical or electronic device deployed by the Federal government to control the border or a port of entry or otherwise seeks to construct, excavate, or make any structure intended to defeat, circumvent or evade any such fence, barrier, sensor camera, or other physical or electronic device deployed by the Federal government to control the border or a port of entry shall be fined under title 18, imprisoned not more than 10 years, or both, and if, at the time of the offense, the person uses or carries a firearm or
who, in furtherance of any such crime, possesses a firearm, that person shall be fined under
Title 18, imprisoned not more than 20 years, or both

“(c) CONSPIRACY AND ATTEMPT.—Any person who attempts or conspires to
violate subsection (a) or (b) of this section shall be punished in the same manner as a
person who completes a violation of such subsection.”

(b) PROHIBITING CARRYING OR USE OF A FIREARM DURING AND IN
RELATION TO AN ALIEN SMUGGLING CRIME.

Section 924(c) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting “, alien smuggling crime,” after
“crime of violence” each place it appears;

(B) in subparagraph (D)(ii), by inserting “, alien smuggling crime,” after
“crime of violence”; and

(2) by adding at the end a new paragraph (6) to read as follows:

“(6) For purposes of this subsection, the term ‘alien smuggling crime’
means any felony punishable under section 274(a), 277, 278, 295, and 296 of the
Immigration and Nationality Act.”

(c) STATUTE OF LIMITATIONS.—Section 3298 of title 18, United States Code,

is amended by inserting “, 295, 296, or 297” after “274(a)”.

SEC. 153. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN
IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.

(a) IN GENERAL.— Section 3291 of title 18, United States Code, is amended to
read as follows:

“SEC. 3291.IMMIGRATION, PASSPORT, AND NATURALIZATION
OFFENSES.

“No person shall be prosecuted, tried, or punished for a violation of any section of
chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa,
and immigration offenses), 77 (relating to peonage, slavery, and trafficking in persons) or
for a violation of any criminal provision under section 243, 266, 274, 274A, 275, 276, 277,
or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324, 1324a, 1325,
1326, 1327, and 1328), or for an attempt or conspiracy to violate any such section, unless
the indictment is returned or the information filed not later than 10 years after the
commission of the offense.”.

(b) CLERICAL AMENDMENT- The table of sections for chapter 213 of title 18,
United States Code, is amended by striking the item relating to section 3291 and inserting
the following:

“3291. Immigration, passport, and naturalization offenses.”.

SEC. 154. DIRECTIVES TO THE UNITED STATES SENTENCING
COMMISSION.
Pursuant to the authority under section 994 of title 28, United States Code, the
United States Sentencing Commission shall—

(1) promulgate or amend the sentencing guidelines, policy statements, and
official commentaries related to material false statements or omissions related to
terrorism-related offenses; and

(2) review its guidelines and policy statements applicable to persons
convicted of offenses under sections 274(a), 278, 295, and 296 of the Immigration
and Nationality Act (as amended by this Act), and any other relevant provisions of
law, in order to reflect the intent of Congress that such penalties be increased in
comparison to those currently provided by such guidelines and policy statements for
those offenders who engage in organized or abusive human smuggling.

SUBTITLE D: STRENGTHENING THE IMMIGRATION COURT SYSTEM

SECTION 155. IMMIGRATION COURTS PERSONNEL

(a) Annual Increases in Immigration Courts Judges - The Attorney General shall, subject to the
availability of appropriations, increase the number of immigration judges (including the
necessary additional support staff) to adjudicate current pending cases and efficiently process
future cases by--

(1) 40 in fiscal year 2014;

(2) 50 in fiscal year 2015; and
(3) 50 in fiscal year 2016

(b) Annual Increases in Appeals Court Personnel - The Attorney General shall, subject to the availability of appropriations, increase the number of Board of Immigration Appeals staff attorneys (including the necessary additional support staff) to efficiently process appeals by--

'(1) 30 in fiscal year 2014;

'(2) 30 in fiscal year 2015; and

'(3) 30 in fiscal year 2016

SEC. 156. CLARIFYING IMMIGRATION JUDGE AUTHORITY

(a) Section 1229a(b)(1) of title 8, United States Code, is amended--

(1) by inserting after “action (or inaction),” “by parties in immigration proceedings, including, but not limited to, aliens, witnesses, counsel for the alien and counsel for the government, ;”

(2) The Attorney General, in consultation with the Secretary, shall issue final regulations within 9 months of the date of enactment of this title to enhance accountability in removal proceedings, including the standards expected of aliens, witnesses, counsel for the alien, counsel for the government, and immigration judges, and to ensure efficient docket management and appropriate case completion deadlines.

SEC. 157. DEFINING BOARD OF IMMIGRATION APPEALS

(a) Section 1101(a) of title 8, United States Code, is amended by adding at the end the following:

“(53) the term “Board Member” means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review to serve on the Board of Immigration Appeals .”
(b) Section 1229a (a)(1) of title 8, United States Code, is amended by adding at the end “The Board of Immigration Appeals shall review decisions of immigration judges under this section.”

SEC. 158. INCREASING ACCESS TO LEGAL SERVICES

(a) IN GENERAL—(1) Section 1362 of title 8, United States Code, is amended:--

(A) by striking “removal” and inserting “immigration”

(B) by striking ‘(at no expense to the Government)’; and

(C) by adding at the end the following:

‘The Government is not required to provide counsel to aliens under this section; however, the Attorney General may, in his or her sole and unreviewable discretion, provide counsel to aliens in immigration proceedings.’

(2) Section 1229a(b)(4)(A) of title 8, United States Code, is amended: –

(A) in subsection by striking ‘(at no expense to the Government)’; and

(B) by adding at the end the following:

‘The Government is not required to provide counsel to aliens under this section; however, the Attorney General may, in his or her sole and unreviewable discretion, provide counsel at government expense to aliens in immigration proceedings.’

(b) REPRESENTATION FOR PARTICULARLY VULNERABLE ALIENS- The Attorney General, in consultation with the Secretary and the Secretary of Health and Human Services, shall establish pilot programs to provide
counsel to unaccompanied alien children (as defined in 6 U.S.C. §279(g)(2)) and mentally incompetent aliens. There are authorized to be appropriated to the Attorney General such sums as may be necessary to carry out this section.

SEC. 159. TRAINING AND RESOURCE CENTER

(a) ESTABLISHMENT OF A TRAINING AND RESOURCE CENTER. - The Attorney General shall establish a Training and Resource Center for the purpose of providing training programs for adjudicators and staff of the Executive Office for Immigration Review and create and maintain country condition information that may be used by adjudicators in the Executive Office for Immigration Review. The Attorney General has sole, unreviewable discretion to determine the contents of country conditions information provided by the Training and Resource Center. Country condition information from the Training and Resource Center may be entered into evidence by immigration judges in immigration proceedings. Parties to proceedings must be presented with country conditions information that may be entered into evidence and provided an adequate opportunity to respond to the information.

(b) AUTHORIZATION OF APPROPRIATIONS. - There are authorized to be appropriated to the Attorney General such sums as may be necessary to carry out this section.

SEC. 160. SECURE ALTERNATIVES PROGRAM.

(a) Pursuant to such rules and procedures as the Secretary may prescribe, the Secretary shall establish a secure alternatives program for qualified individuals in removal proceedings. The program shall be designed to ensure public safety and the appearance of individuals at their removal hearings and for any subsequently ordered removals.

(b) In determining whether an individual is eligible for such a program he Secretary shall consider—whether the individual—

(1) poses a danger to himself, public safety, or national security;
(2) poses a high risk of flight from removal proceedings or potential removal order; or
(3) is subject to mandatory detention by law.

Placement in the program shall be at the sole and unreviewable discretion of the Secretary, and the Secretary may elect, at the Secretary’s discretion or upon recommendation of the Attorney General, to place an individual in the program in addition to any bond or conditions of supervision imposed on the individual by the Attorney General.

(c) If an individual fails to comply with any of the terms or conditions imposed by the Secretary under the program, the Secretary may modify the terms or conditions, or terminate the individual’s participation and detain the individual pending further hearing or removal.

(d) The program’s general implementation, law enforcement functions, oversight, and decisions concerning eligibility or termination shall rest with the Secretary but the Secretary may authorize contracts to assist with the administration of the program.

(e) The Secretary shall closely monitor the rates of compliance under the program and make such modifications to the program that are needed to maintain a high rate of compliance.

SEC. 161. OFFICE OF LEGAL ACCESS PROGRAMS

(a) IN GENERAL – The Attorney General shall establish within the Executive Office for Immigration Review an Office of Legal Access Programs to develop and administer a system of legal orientation programs to educate aliens regarding administrative procedures and legal rights under United States immigration law and to establish other programs to assist in providing aliens access to legal assistance.

(b) The Legal Orientation Program may:—
(1) provide services to assist aliens in making informed and timely decisions regarding their removal and eligibility for relief from removal in order to increase efficiency in immigration proceedings and federal custody processes and to improve access to counsel and other legal services; and

(2) may provide services to detained aliens in immigration and asylum proceedings under sections 235, 238, 240, and 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1225, 1228, 1229a, and 1231(a)(5)) and non-detained aliens in immigration and asylum proceedings under sections 235, 238, and 240 of the Immigration and Nationality Act (8 U.S.C. 1225, 1228, and 1229a)

(c) PROCEDURES - The Secretary of Homeland Security shall establish procedures that ensure:

(1) regularly scheduled legal orientation presentations for detained aliens within five days of arrival into custody; and

(2) information pertaining to the alien which is relevant to the alien’s legal proceeding is made available to Legal Orientation Program providers in advance of legal orientation presentations.

(d) Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

**SEC. 162. PROVISIONS GOVERNING MENTALLY INCOMPETENT ALIENS**

(a) Section 240(b)(3)(8 U.S.C. § 1229a(b)(3)) is amended to read as follows:

“(3) Presence of alien.—

(A) In General. If an alien is found to have indicia of mental incompetency or is determined to lack mental competence to represent himself or herself, the Attorney General and the Secretary of Homeland Security shall prescribe safeguards to protect the rights and privileges of the alien.

(i) Competency Evaluations. To assist in determining whether the alien is mentally competent, the Attorney General may order that a psychiatric or psychological examination of the alien be conducted, and that a psychiatric or psychological report be filed with the court. A program to procure competency evaluations ordered by the Attorney General...
shall be administered by the Department of Justice. Such examinations shall not be conducted by the Department of Homeland Security; provided, however, that the Department of Homeland Security shall fund such examinations and shall make aliens in its custody available to be evaluated by the court-appointed examiner. A finding of incompetency must be made on the record and may be made with or without a formal competency hearing.

(ii) Termination of Proceedings. An immigration judge must terminate proceedings without prejudice if the alien’s proceedings cannot be made fundamentally fair.

(iii) Appointment of Counsel. If proceedings are not terminated for a mentally incompetent alien, and the alien remains unrepresented, the Attorney General shall appoint representation for the unrepresented alien.”

(b) The Attorney General shall issue regulations within 9 months of the date of enactment of this title to address issues related to aliens who are or may be mentally incompetent who are in removal proceedings.