

HR 994 IH

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H. R. 994

To remove the incentives and loopholes that encourage illegal aliens to come to the United States to live and work, provide additional resources to local law enforcement and Federal border and immigration officers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES**February 11, 2009**

Mr. GARY G. MILLER of California (for himself, Mr. ROHRABACHER, Mr. BURTON of Indiana, Mr. BOOZMAN, Mr. CAMPBELL, Mr. DREIER, Mr. BILBRAY, Mr. FLEMING, Mr. GALLEGLY, and Mrs. MYRICK) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Oversight and Government Reform, Education and Labor, House Administration, Financial Services, Homeland Security, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To remove the incentives and loopholes that encourage illegal aliens to come to the United States to live and work, provide additional resources to local law enforcement and Federal border and immigration officers, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the `Loophole Elimination and Verification Enforcement Act' or the `LEAVE Act'.

SEC. 2. PURPOSE.

The purpose of this Act is to prohibit all activities that assist, encourage, direct, or induce an alien to reside in or remain in the United States or to attempt to reside in the United States, knowing or in reckless disregard of the fact that the alien is not authorized to be present in the United States.

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TITLE I--ALIEN SMUGGLING AND RELATED OFFENSES

SEC. 101. ALIEN SMUGGLING AND RELATED OFFENSES.

Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) is amended to read as follows:

` ALIEN SMUGGLING AND RELATED OFFENSES

` Sec. 274. (a) Criminal Offenses and Penalties-

` (1) PROHIBITED ACTIVITIES- Whoever--

` (A) assists, encourages, directs, or induces a person to come to or enter the United States, or to attempt to come to or enter the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to or enter the United States;

`(B) assists, encourages, directs, or induces a person to come to or enter the United States at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, regardless of whether such person has official permission or lawful authority to be in the United States, knowing or in reckless disregard of the fact that such person is an alien;

`(C) assists, encourages, directs, or induces a person to reside in or remain in the United States, or to attempt to reside in or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States;

`(D) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, where the transportation or movement will aid or further in any manner the person's illegal entry into or illegal presence in the United States;

`(E) harbors, conceals, or shields from detection a person in the United States knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States;

`(F) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from one country to another or on the high seas, under circumstances in which the person is in fact seeking to enter the United States without official permission or lawful authority; or

`(G) conspires or attempts to commit any of the preceding acts,

shall be punished as provided in paragraph (2), regardless of any official action which may later be taken with respect to such alien.

`(2) CRIMINAL PENALTIES- A person who violates the provisions of paragraph (1) shall--

`(A) except as provided in subparagraphs (D) through (H), in the case where the offense was not committed for commercial advantage, profit, or private financial gain, be imprisoned for not more than 5 years, or fined under title 18, United States Code, or both;

`(B) except as provided in subparagraphs (C) through (H), where the offense was committed for commercial advantage, profit, or private financial gain--

`(i) in the case of a first violation of this subparagraph, be imprisoned for not more than 20 years, or fined under title 18, United States Code, or both; and

`(ii) for any subsequent violation, be imprisoned for not less than 3 years nor more than 20 years, or fined under title 18, United States Code, or both;

`(C) in the case where the offense was committed for commercial advantage, profit, or private financial gain and involved 2 or more aliens other than the offender, be imprisoned for not less than 3 nor more than 20 years, or fined under title 18, United States Code, or both;

`(D) in the case where the offense furthers or aids the commission of any other offense against the United States or any State, which offense is punishable by imprisonment for more than 1 year, be imprisoned for not less than 5 nor more than 20 years, or fined under title 18, United States Code, or both;

`(E) in the case where any participant in the offense created a substantial risk of death or serious bodily injury to another person, including--

`(i) transporting a person in an engine compartment, storage compartment, or other confined space;

` (ii) transporting a person at an excessive speed or in excess of the rated capacity of the means of transportation; or

` (iii) transporting or harboring a person in a crowded, dangerous, or inhumane manner, be imprisoned not less than 5 nor more than 20 years, or fined under title 18, United States Code, or both;

` (F) in the case where the offense caused serious bodily injury (as defined in section 1365 of title 18, United States Code, including any conduct that would violate sections 2241 or 2242 of title 18, United States Code, if the conduct occurred in the special maritime and territorial jurisdiction of the United States) to any person, be imprisoned for not less than 7 nor more than 30 years, or fined under title 18, United States Code, or both;

` (G) in the case where the offense involved an alien who the offender knew or had reason to believe was an alien--

` (i) engaged in terrorist activity (as defined in section 212(a)(3)(B)); or

` (ii) intending to engage in such terrorist activity, be imprisoned for not less than 10 nor more than 30 years, or fined under title 18, United States Code, or both; and

` (H) in the case where the offense caused or resulted in the death of any person, be punished by death or imprisoned for not less than 10 years, or any term of years, or for life, or fined under title 18, United States Code, or both.

` (3) EXTRATERRITORIAL JURISDICTION- There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

` (b) Seizure and Forfeiture-

` (1) IN GENERAL- Any property, real or personal, that has been used to commit or facilitate the commission of a violation of this section, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

` (2) APPLICABLE PROCEDURES- Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, 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.

` (c) Authority To Arrest- No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees designated by the Secretary of Homeland Security, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

` (d) Admissibility of Evidence-

` (1) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS- Notwithstanding any provision of the Federal Rules of Evidence, in determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the violation lacks lawful authority to come to, enter, reside, remain, or be in the United States or that such alien had come to, entered, resided, remained or been present in the United States in violation of law:

` (A) Any order, finding, or determination concerning the alien's status or lack thereof made by a federal judge or administrative adjudicator (including an immigration judge or an immigration officer) during any judicial or administrative proceeding authorized under the immigration laws or regulations prescribed thereunder.

`(B) An official record of the Department of Homeland Security, Department of Justice, or the Department of State concerning the alien's status or lack thereof.

`(C) Testimony by an immigration officer having personal knowledge of the facts concerning the alien's status or lack thereof.

`(2) VIDEOTAPED TESTIMONY- Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unavailable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination at the deposition and the deposition otherwise complies with the Federal Rules of Evidence.

`(e) Definitions- For purposes of this section:

`(1) The term `lawful authority' means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or the regulations prescribed thereunder. Such term does not include any such authority secured by fraud or otherwise obtained in violation of law, nor does it include authority that has been sought but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside, remain, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

`(2) The term `unlawful transit' means travel, movement, or temporary presence that violates the laws of any country in which the alien is present, or any country from which or to which the alien is traveling or moving.'

TITLE II--IDENTITY SECURITY

Subtitle A--Photo Identification

SEC. 201. FORMS OF ACCEPTABLE IDENTIFICATION FOR FEDERAL GOVERNMENT PURPOSES.

(a) Forms of Acceptable Identification- A Federal agency may not accept, for any official purpose, including for Federal benefits and for individual taxpayer identification numbers, any form of identification of an individual other than the following:

(1) SOCIAL SECURITY CARD WITH PHOTO IDENTIFICATION CARD OR REAL ID ACT IDENTIFICATION-

(A) A Social Security card accompanied by a photo identification card issued by the Federal Government or a State Government; or

(B) a driver's license or identification card issued by a State in the case of a State that is in compliance with title II of the REAL ID Act of 2005 (title II of division B of Public Law 109-13; 49 U.S.C. 30301 note).

(2) PASSPORT- A passport issued by the United States or a foreign government.

(3) USCIS PHOTO IDENTIFICATION CARD- A photo identification card issued by the Secretary of Homeland Security (acting through the Director of the United States Citizenship and Immigration Services).

(b) Effective Date- The requirements of subsection (a) shall take effect six months after the date of the enactment of this Act.

SEC. 202. FORMS OF ACCEPTABLE IDENTIFICATION FOR FINANCIAL INSTITUTIONS.

(a) In General- Section 5318(l) of title 31, United States Code (relating to identification and verification of

accountholders) is amended by striking paragraph (6) and inserting the following new paragraph:

`(6) FORMS OF ACCEPTABLE IDENTIFICATION- A financial institution may not accept, for the purpose of verifying the identity of an individual seeking to open an account in accordance with this subsection, any form of identification of the individual other than the following:

`(A) SOCIAL SECURITY CARD WITH PHOTO IDENTIFICATION CARD OR REAL ID ACT IDENTIFICATION-

`(i) A Social Security card accompanied by a photo identification card issued by the Federal Government or a State Government; or

`(ii) a driver's license or identification card issued by a State in the case of a State that is in compliance with title II of the REAL ID Act of 2005 (title II of division B of Public Law 109-13; 49 U.S.C. 30301 note).

`(B) PASSPORT- A passport issued by the United States or a foreign government.

`(C) USCIS PHOTO IDENTIFICATION CARD- A photo identification card issued by the Secretary of Homeland Security (acting through the Director of the U.S. Citizenship and Immigration Services).'

(b) Effective Date- The amendments made by subsection (a) shall take effect six months after the date of the enactment of this Act.

Subtitle B--Prohibition on Driver's Licenses for Unlawfully Present Aliens

SEC. 211. PROHIBITION ON ISSUING DRIVER'S LICENSES TO ILLEGAL ALIENS.

Section 202 of the REAL ID Act of 2005 (49 U.S.C. 30301 note) is amended--

(1) in subsection (d), by striking paragraph (11) and redesignating paragraphs (12) and (13) as paragraphs (11) and (12), respectively; and

(2) by adding at the end the following:

`(e) Prohibition- A State is prohibited from issuing any driver's license or identification card to any individual unless the State satisfies the requirements of subsection (c)(2)(B).'

Subtitle C--Stopping Social Security Number Abuse

SEC. 221. EFFECT OF FINAL REGULATION ON `NO-MATCH' LETTERS.

The Congress approves the final rule promulgated by the Department of Homeland Security entitled `Safe-Harbor Procedures for Employers Who Receive a No-Match Letter' (August 15, 2007; 72 Fed. Reg. 45611), and such rule shall have the force and effect of enacted law until changed by such law.

Subtitle D--Birth/Death Registry

SEC. 231. ESTABLISHMENT OF ELECTRONIC BIRTH AND DEATH REGISTRATION SYSTEMS.

(a) In consultation with the Secretary of Health and Human Services and the Commissioner of Social Security, the Secretary shall take the following actions:

(1) Work with the States to establish a common data set and common data exchange protocol for electronic birth registration systems and death registration systems.

(2) Coordinate requirements for such systems to align with a national model.

- (3) Ensure that fraud prevention is built into the design of electronic vital registration systems in the collection of vital event data, the issuance of birth certificates, and the exchange of data among government agencies.
- (4) Ensure that electronic systems for issuing birth certificates, in the form of printed abstracts of birth records or digitized images, employ a common format of the certified copy, so that those requiring such documents can quickly confirm their validity.
- (5) Establish uniform field requirements for State birth registries.
- (6) Not later than 1 year after the date of the enactment of this Act, establish a process with the Department of Defense that will result in the sharing of data, with the States and the Social Security Administration, regarding deaths of United States military personnel and the birth and death of their dependents.
- (7) Not later than 1 year after the date of the enactment of this Act, establish a process with the Department of State to improve registration, notification, and the sharing of data with the States and the Social Security Administration, regarding births and deaths of United States citizens abroad.
- (8) Not later than 3 years after the date of establishment of databases provided for under this section, require States to record and retain electronic records of pertinent identification information collected from requestors who are not the registrants.
- (9) Not later than 6 months after the date of the enactment of this Act, submit to Congress a report on whether there is a need for Federal laws to address penalties for fraud and misuse of vital records and whether violations are sufficiently enforced.

Subtitle E--Reform of Passport Fraud Offenses

SEC. 241. TRAFFICKING IN PASSPORTS.

Section 1541 of title 18, United States Code, is amended to read as follows:

Sec. 1541. Trafficking in passports

- (a) Multiple Passports- Any person who, during any period of 3 years or less, knowingly--
- (1) and without lawful authority produces, issues, or transfers 10 or more passports;
 - (2) forges, counterfeits, alters, or falsely makes 10 or more passports;
 - (3) 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
 - (4) completes, mails, prepares, presents, signs, or submits 10 or more applications for a United States passport, knowing the applications to contain any 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 a passport, 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. 242. FALSE STATEMENT IN AN APPLICATION FOR A PASSPORT.

Section 1542 of title 18, United States Code, is amended to read as follows:

`Sec. 1542. False statement in an application for a passport

`(a) In General- Whoever knowingly makes any false statement or representation in an application for a United States passport, or mails, prepares, presents, or signs an application for a United States passport knowing the application to contain any false statement or representation, shall be fined under this title, imprisoned not more than 15 years, or both.

`(b) Venue-

`(1) IN GENERAL- An offense under subsection (a) may be prosecuted in any district--

`(A) in which the false statement or representation was made or the application for a United States passport was prepared or signed; or

`(B) in which or to which the application was mailed or presented.

`(2) ACTS OCCURRING OUTSIDE THE UNITED STATES- An offense under subsection (a) involving an application for a United States passport prepared and adjudicated outside the United States may be prosecuted in the district in which the resultant passport was or would have been produced.

`(c) Savings Clause- Nothing in this section may be construed to limit the venue otherwise available under sections 3237 and 3238 of this title.'

SEC. 243. FORGERY AND UNLAWFUL PRODUCTION OF A PASSPORT.

Section 1543 of title 18, United States Code, is amended to read as follows:

`Sec. 1543. Forgery and unlawful production of a passport

`(a) Forgery- Any person who knowingly--

`(1) forges, counterfeits, alters, or falsely makes any passport; or

`(2) transfers any passport knowing it to be forged, counterfeited, altered, falsely made, stolen, or to have been produced or issued without lawful authority,

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

`(b) Unlawful Production- Any person who knowingly and without lawful authority--

`(1) produces, issues, authorizes, or verifies a passport in violation of the laws, regulations, or rules governing the issuance of the passport;

`(2) produces, issues, authorizes, or verifies a United States passport for or to any person knowing or in reckless disregard of the fact that such person is not entitled to receive a passport; or

`(3) transfers or furnishes a passport to any person for use by any person other than the person for whom the passport was issued or designed,

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

SEC. 244. MISUSE OF A PASSPORT.

Section 1544 of title 18, United States Code, is amended to read as follows:

`Sec. 1544. Misuse of a passport

`Any person who knowingly--

- ` (1) uses any passport issued or designed for the use of another;
- ` (2) uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;
- ` (3) secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, or produced or issued without lawful authority; or
- ` (4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States,

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

SEC. 245. SCHEMES TO DEFRAUD ALIENS.

Section 1545 of title 18, United States Code, is amended to read as follows:

`Sec. 1545. Schemes to defraud aliens

` (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, promises,

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

` (b) Misrepresentation- Any person who knowingly and falsely represents that such person is an attorney or an accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regulations (or any successor regulation to such section)) in any matter arising under Federal immigration laws shall be fined under this title, imprisoned not more than 15 years, or both.'

SEC. 246. IMMIGRATION AND VISA FRAUD.

Section 1546 of title 18, United States Code, is amended to read as follows:

`Sec. 1546. Immigration and visa fraud

` (a) In General- Any person who knowingly--

- ` (1) uses any immigration document issued or designed for the use of another;
- ` (2) forges, counterfeits, alters, or falsely makes any immigration document;
- ` (3) completes, mails, prepares, presents, signs, or submits any immigration document knowing it to contain any materially false statement or representation;
- ` (4) secures, possesses, uses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;
- ` (5) adopts or uses a false or fictitious name to evade or to attempt to evade the immigration laws; or
- ` (6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the passport was issued or designed,

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

`(b) Trafficking- 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.

`(c) Immigration Document 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 immigration documents, 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.

`(d) Employment Documents- Whoever uses--

`(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor;

`(2) an identification document knowing (or having reason to know) that the document is false; or

`(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be fined under this title, imprisoned not more than 5 years, or both.'

SEC. 247. ALTERNATIVE IMPRISONMENT MAXIMUM FOR CERTAIN OFFENSES.

Section 1547 of title 18, United States Code, is amended--

(1) in the matter preceding paragraph (1), by striking `(other than an offense under section 1545)';

(2) in paragraph (1), by striking `15' and inserting `20'; and

(3) in paragraph (2), by striking `20' and inserting `25'.

SEC. 248. ATTEMPTS, CONSPIRACIES, JURISDICTION, AND DEFINITIONS.

Chapter 75 of title 18, United States Code, is amended by adding after section 1547 the following new sections:

`Sec. 1548. Attempts and conspiracies

`Any person who attempts or conspires to violate any section of this chapter shall be punished in the same manner as a person who completed a violation of that section.

`Sec. 1549. 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 such a document) or any matter, right, or benefit arising under or authorized by Federal immigration laws;
- ` (2) the offense is in or affects foreign commerce;
- ` (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 national security of the United States;
- ` (5) the offender is a national of the United States or an alien lawfully admitted for permanent residence (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. 1550. Authorized law enforcement activities

` 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 (Public Law 91-452; 84 Stat. 933).

` Sec. 1551. Definitions

` As used in this chapter:

- ` (1) The term `application for a United States passport' includes any document, photograph, or other piece of evidence submitted in support of an application for a United States passport.
- ` (2) The term `false statement or representation' includes a personation or an omission.
- ` (3) 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, certificate, permit, order, license, stamp, authorization, grant of authority, or other official document, 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 described in subparagraph (A).
- ` (4) 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 subparagraph (A) or (B).
- ` (5) A person does not exercise `lawful authority' if the person abuses or improperly exercises lawful authority the person otherwise holds.

`(6) 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).

`(7) The term `produce' means to make, prepare, assemble, issue, print, authenticate, or alter.

`(8) The term `to present' means to offer or submit for official processing, examination, or adjudication. Any such presentation continues until the official processing, examination, or adjudication is complete.

`(9) The `use' of a passport or an immigration document referred to in section 1541(a), 1543(b), 1544, 1546(a), and 1546(b) of this chapter includes--

`(A) any officially authorized use;

`(B) use to travel;

`(C) use to demonstrate identity, residence, nationality, citizenship, or immigration status;

`(D) use to seek or maintain employment; or

`(E) use in any matter within the jurisdiction of the Federal government or of a State government.'

SEC. 249. CLERICAL AMENDMENT.

The table of sections for chapter 75 of title 18, United States Code, is amended to read as follows:

`Sec.

`1541. Trafficking in passports.

`1542. False statement in an application for a passport.

`1543. Forgery and unlawful production of a passport.

`1544. Misuse of a passport.

`1545. Schemes to defraud aliens.

`1546. Immigration and visa fraud.

`1547. Alternative imprisonment maximum for certain offenses.

`1548. Attempts and conspiracies.

`1549. Additional jurisdiction.

`1550. Authorized law enforcement activities.

`1551. Definitions.'

TITLE III--BIRTHRIGHT CITIZENSHIP

SEC. 301. CITIZENSHIP AT BIRTH FOR CERTAIN PERSONS BORN IN THE UNITED STATES.

(a) In General- Section 301 of the Immigration and Nationality Act (8 U.S.C. 1401) is amended--

- (1) by inserting '(a) IN GENERAL-' before 'The following';
- (2) by redesignating paragraphs (a) through (h) as paragraphs (1) through (8); and
- (3) by adding at the end the following:

(b) Definition- Acknowledging the right of birthright citizenship established by section 1 of the 14th amendment to the Constitution, a person born in the United States shall be considered 'subject to the jurisdiction' of the United States for purposes of subsection (a)(1) if the person is born in the United States of parents, one of whom is--

- (1) a citizen or national of the United States;
- (2) an alien lawfully admitted for permanent residence in the United States whose residence is in the United States; or
- (3) an alien performing active service in the Armed Forces (as defined in section 101 of title 10, United States Code).'

(b) Applicability- The amendment made by subsection (a)(3) shall not be construed to affect the citizenship or nationality status of any person born before the date of the enactment of this Act.

TITLE IV--HOUSING AND HOMEOWNERSHIP

SEC. 401. MORTGAGES PROHIBITED FOR PRINCIPAL RESIDENCES OF INDIVIDUALS WHO LACK VALID PERSONAL IDENTIFICATION.

(a) In General- Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

'Sec. 140. Mortgages prohibited for principal residences of individuals who lack valid personal identification

'Notwithstanding any provision of State law, no credit may be extended by any creditor to any consumer in any consumer credit transaction in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property located within the United States which is or, upon the completion of the transaction, will be used as the principal residence of such consumer unless the creditor has verified that the consumer is a citizen or national of the United States or is lawfully present in the United States, by requiring the consumer to provide to the creditor valid personal identification in one of the forms specified in the amendment made by section 202(a) of the Loophole Elimination and Verification Enforcement Act.'

(b) Clerical Amendment- The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 139 the following new item:

- ' 140. Mortgages prohibited for principal residences of individuals who lack valid personal identification.'

SEC. 402. PROHIBITION ON PUBLIC HOUSING AND SECTION 8 RENTAL ASSISTANCE FOR ILLEGAL ALIENS.

Occupancy in public housing assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) may not be provided to any individual or household, and rental assistance under section 8 of such Act (42 U.S.C. 1437f) may not be provided to or on behalf of any individual or household, unless the public housing agency or owner of housing assisted under section 8, as applicable, verifies that the individual, or in the case of a household, all adult members of the household, are citizens or nationals of the United States or are lawfully present in the United States, by requiring such individual, or in the case of a household, all adult members of the household, to provide to the public housing agency or owner of housing assisted

under such section 8, as applicable, valid personal identification in one of the forms specified in section 201(a) of this Act.

SEC. 403. PROHIBITION ON RENTING OF DWELLING UNITS TO ILLEGAL ALIENS.

It is the sense of the Congress that renting a dwelling unit to an individual who is unlawfully present in the United States, or to any household that includes such an individual, should be considered an act of harboring an illegal alien or assisting an illegal alien to reside in the United States and therefore illegal.

SEC. 404. PROHIBITION ON FEDERAL AND GOVERNMENT-SPONSORED ENTERPRISE SUPPORT FOR MORTGAGES FOR ILLEGAL ALIENS.

(a) Federal Agencies- No Federal agency, department, office, or other instrumentality may make, insure, or guarantee any mortgage or loan for the purchase of, or secured by, a residential property unless the mortgagee under such mortgage, or the lender under such loan, as the case may be, has verified that the mortgagor under the mortgage or borrower under the loan, as the case may be, is a citizen or national of the United States or is lawfully present in the United States, by requiring such mortgagor or borrower to provide to such lender under such mortgage or loan valid personal identification in one of the forms specified in section 201(a) of this Act.

(b) Fannie Mae and Freddie Mac- The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation may not purchase, securitize, service, sell, lend on the security of, or otherwise deal in any mortgage or loan unless the mortgagee under such mortgage has verified that the mortgagor under the mortgage is a citizen or national of the United States or is lawfully present in the United States, by requiring such mortgagor to provide to such mortgagee under such mortgage valid personal identification in one of the forms specified in section 201(a) of this Act.

TITLE V--TAXES AND SOCIAL SECURITY

SEC. 501. PROHIBITING TOTALIZATION AGREEMENTS THAT BENEFIT UNLAWFULLY PRESENT ALIENS.

It is the sense of the House of Representatives that the totalization agreement establishing totalization arrangements between the Social Security system established by title II of such Act and the Social Security system of Mexico, signed by the Commissioner of Social Security and the Director General, Mexican Social Security Institute, on June 29, 2004, is inappropriate public policy and should not take effect.

SEC. 502. NO SOCIAL SECURITY CREDIT FOR WORK PERFORMED WHILE UNLAWFULLY PRESENT.

(a) Determinations of Insured Status- Section 214(c)(1) of the Social Security Act (42 U.S.C. 414(c)(1)) is amended by striking `at the time of assignment,' and all that follows through `any later time,' and inserting `at the time any such quarters of coverage are earned,'.

(b) Entitlement to Disability Insurance Benefits- Section 223(a)(1)(C)(i) of such Act (42 U.S.C. 423(a)(1)(C)(i)) is amended by striking `at the time of assignment,' and all that follows through `any later time,' and inserting `at the time any such quarters of coverage are earned,'.

SEC. 503. LIMITED ELIGIBILITY FOR CREDITS.

Notwithstanding any other provision of law, an individual who makes a return with respect to Federal income tax and includes on such return an individual taxpayer identification number in lieu of a Social Security account number shall not be eligible for any refund of or credit against Federal income tax, including the earned income tax credit under section 32 of the Internal Revenue Code of 1986.

SEC. 504. REDUCING INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER ABUSE.

(a) Modified ITIN Format and Lawful Presence Requirement-

(1) IN GENERAL- Section 6109(c) of the Internal Revenue Code of 1986 (26 U.S.C. 6109(c)) is amended to read as follows:

(c) Requirement of Information-

(1) IN GENERAL- For purposes of this section, the Secretary is authorized to require such information of any person as may be necessary to assign an identifying number.

(2) SEPARATE FROM SOCIAL SECURITY ACCOUNT NUMBERS- Any identifying number assigned by the Secretary shall be comprised of a sequence of numerals and dashes that is visually distinguishable from and will not be mistaken for a Social Security account number.

(3) VERIFICATION OF STATUS FOR ALIENS- Prior to issuing any identifying number to an individual who is physically present in the United States, the Secretary shall verify with the Department of Homeland Security that the applicant for such number is lawfully present in the United States.'

(2) EFFECTIVE DATE- Section 6109(c)(2) of the Internal Revenue Code of 1986, as added by paragraph (1), shall take effect no later than 30 days after the date of enactment of this Act.

(b) Information Sharing-

(1) IN GENERAL- Section 6103(i)(3) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

(D) POSSIBLE VIOLATIONS OF FEDERAL IMMIGRATION LAW- The Secretary shall disclose in electronic format to the Secretary of Homeland Security the taxpayer identity (as defined in subsection (b)(6)) of each taxpayer who has been assigned an individual taxpayer identification number. The Secretary of Homeland Security may disclose such information to officers and employees of the Department to the extent necessary to enforce Federal immigration laws.'

(2) EFFECTIVE DATE- The Secretary of the Treasury shall disclose information under the amendment made by paragraph (1) not later than 60 days after the date of the enactment of this Act.

TITLE VI--EMPLOYEE VERIFICATION

Subtitle A--General Provisions

SEC. 601. MANDATORY EMPLOYMENT AUTHORIZATION VERIFICATION.

(a) Making Basic Pilot Program Permanent- Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by adding before the period at the end of the last sentence the following ` , except that the basic pilot program described in section 403(a) shall be a permanent program'.

(b) Mandatory Use of E-Verify System-

(1) IN GENERAL- Subject to paragraphs (2) and (3), every person or other entity that hires one or more individuals for employment in the United States shall verify through the E-Verify program, established as the basic pilot program by section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1324a note), that each such individual is authorized to work in the United States. The Secretary of Homeland Security shall ensure that verification by means of a toll-free telephone line is an available option in complying with the preceding sentence.

(2) SELECT ENTITIES REQUIRED TO USE E-VERIFY PROGRAM IMMEDIATELY- The following entities must satisfy the requirement in paragraph (1) by not later than one year after the date of the enactment of this Act:

- (A) FEDERAL AGENCIES- Each department and agency of the Federal Government.
 - (B) FEDERAL CONTRACTORS- A contractor that--
 - (i) has entered into a contract with the Federal Government to which section 2(b)(1) of the Service Contract Act of 1965 (41 U.S.C. 351(b)(1)) applies, and any subcontractor under such contract; or
 - (ii) has entered into a contract exempted from the application of such Act by section 6 of such Act (41 U.S.C. 356), and any subcontractor under such contract; and
 - (C) LARGE EMPLOYERS- An employer that employs more than 250 individuals in the United States.
- (3) PHASING-IN FOR OTHER EMPLOYERS-
- (A) 2 YEARS FOR EMPLOYERS OF 100 OR MORE- Entities that employ 100 or more individuals in the United States must satisfy the requirement in paragraph (1) by not later than two years after the date of the enactment of this Act.
 - (B) 3 YEARS FOR EMPLOYERS WITH 30 OR MORE EMPLOYEES- All entities that employ 30 or more individuals in the United States must satisfy the requirement in paragraph (1) by not later than three years after the date of the enactment of this Act.
 - (C) 4 YEARS FOR ALL EMPLOYERS- All entities that employ one or more individuals in the United States must satisfy the requirement in paragraph (1) by not later than four years after the date of the enactment of this Act.
- (4) VERIFYING EMPLOYMENT AUTHORIZATION OF CURRENT EMPLOYEES- Every person or other entity that employs one or more persons in the United States shall verify through the E-Verify program by not later than four years after the date of the enactment of this Act that each employee is authorized to work in the United States.
- (5) DEFENSE- An employer who has complied with the requirements in paragraphs (1) and (4) shall not be liable for hiring an unauthorized alien, if--
- (A) such hiring occurred due to an error in the E-Verify program that was unknown to the employer at the time of such hiring; and
 - (B) the employer terminates the employment of the alien upon being informed of the error.
- (6) SANCTIONS FOR NONCOMPLIANCE- The failure of an employer to comply with the requirements in paragraphs (1) or (4) shall--
- (A) be treated as a violation of section 274A(a)(1)(B) with respect to each offense; and
 - (B) create a rebuttable presumption that the employer has violated section 274A(a)(1)(A).
- (7) VOLUNTARY PARTICIPATION OF EMPLOYERS NOT IMMEDIATELY SUBJECT TO REQUIREMENT- Nothing in this subsection shall be construed as preventing a person or other entity that is not immediately subject to the requirement of paragraph (1) pursuant to paragraph (2) or (3) from voluntarily using the E-Verify program to verify the employment authorization of new hires or current employees.
- (8) STATE INTERFERENCE- No State may prohibit a person or other entity from using the E-verify program to verify the employment authorization of new hires or current employees.

SEC. 602. MANDATORY NOTIFICATION OF SSN MISMATCHES AND MULTIPLE USES AND DETERMINATIONS OF INELIGIBILITY FOR EMPLOYMENT.

(a) Notification of Multiple Uses of Individual Social Security Account Numbers-

(1) PERIODIC REVIEW OF RECORDS REGARDING INDIVIDUALS FOR MATERIAL EMPLOYMENT-BASED INFORMATION- The Commissioner of Social Security shall review, on at least an annual basis, the records of the Commissioner to determine whether there is included in such records any material employment-based information in connection with any individual with respect to whom such records are maintained.

(2) NOTIFICATION OF INDIVIDUALS REGARDING MATERIAL EMPLOYMENT-BASED INFORMATION-

(A) IN GENERAL- In any case in which the Commissioner determines, on the basis of any review pursuant to paragraph (1), that there is any material employment-based information included in such records relating to any individual, the Commissioner shall notify such individual of the existence of such information and that such information may be evidence of the occurrence of identity theft.

(B) REQUIREMENTS- The notification shall be sent by letter to the individual's address maintained in the Commissioner's records and shall include--

- (i) the name and location of each person listed in such records as such individual's employer involved,
- (ii) a statement that, if the listing regarding each such employer so identified in the notification is in fact an accurate representation of persons who have been employers of such individual, there is no problem and no response to the notification is required, and
- (iii) a statement that, if the listing is in any respect not in fact an accurate representation of persons who have been employers of such individual, such individual is requested to notify the Department of Homeland Security or the Social Security Administration of the inaccuracy by telephone or by Internet communication at a telephone number or website which shall be specified in the notification.

(b) Material Employment-Based Information- For purposes of this section, the term 'material employment-based information' means, in relation to any individual, evidence determined, on the basis of any review conducted pursuant to subsection (a)(1), that--

- (1) such individual has had concurrent earnings from more than one employer over an extended period,
- (2) such individual has received benefits under title II of the Social Security Act while engaged in employment, or
- (3) such individual has been engaged in employment while under the age of 16.

(c) Identification and Treatment of Unauthorized Aliens-

(1) IDENTIFICATION OF SUSPECT EMPLOYERS AND EMPLOYEES AND ISSUANCE OF TENTATIVE DETERMINATION OF UNAUTHORIZED ALIEN STATUS- In any case in which the Social Security Administration receives a notification from an individual pursuant to subsection (a)(2)(B)(iii), the Commissioner of Social Security shall identify each employer involved and the employee of such employer actually employed in lieu of such individual, share with the Secretary of Homeland Security the identity of each such employer and such employee, and issue a tentative determination that such employee is an unauthorized alien (as defined in section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h))) with respect to the employment. Upon the issuance of such tentative determination, the Commissioner shall notify each such employer and such employee that a potential identity fraud has occurred in connection with the employment of such employee by such employer, and that such employee has been tentatively determined to be such an unauthorized alien.

(2) ISSUANCE OF CONCLUSIVE DETERMINATION- If, during the period of 30 business days following

the date on which such employee receives such notification, such employee fails to offer to the Commissioner evidence of the employee's correct identity and that such employee is not an unauthorized alien (as defined in section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h))) with respect to the employment, the Commissioner shall issue to such employer and such employee a conclusive determination that such employee is such an unauthorized alien.

(3) MANDATORY TERMINATION OF EMPLOYMENT- The failure of such employer to immediately terminate such employment of such employee upon receipt of such conclusive determination shall be treated as a violation of section 274a(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(2)).

(d) Notification of Mismatched Name and Social Security Number- The Commissioner of Social Security shall notify on an annual basis each United States employer with one or more employees whose Social Security account number does not match the employees name or date of birth in the records of the Commissioner. Such notification shall instruct employers to notify listed employees that they have 30 business days to correct the mismatch with the Social Security Administration or the employer will be required to terminate their employment. The notification also shall inform employers that they may not terminate listed employees prior to the close of the 30-day period.

(e) Information Sharing With the Department of Homeland Security-

(1) Not later than 180 days following the date of enactment of this Act, the Commissioner of Social Security shall promulgate regulations in accordance with section 1106 of the Social Security Act (42 U.S.C. 1306) to require that information regarding all unresolved mismatch notifications and regarding all multiple use notifications that lead to the identification of an unauthorized user of a Social Security account number be shared with the Secretary of Homeland Security on a timely basis.

(2) Information to be shared with the Secretary shall include, at a minimum, the name and mailing address of all employees who are the subject of an unresolved mismatch notification or who are unauthorized users of another individual's Social Security account number.

SEC. 603. PENALTY FOR FAILURE TO FILE CORRECT INFORMATION RETURNS.

Section 6721 of the Internal Revenue Code of 1986 (26 U.S.C. 6721) is amended by adding at the end the following:

(f) The Secretary shall assess the maximum allowable penalties on 100 percent of the employers designated in any tax year by the Social Security Administration as the most egregious noncompliant employers.

(g) Notwithstanding any other provision in this section, in the case of a failure described in subsection (a)(2) with respect to any person employing an alien not authorized to be so employed, the penalty under this section shall be determined in accordance with the following table:

	In the case of--	Not less than--	Not more than--
The first offense	\$2,500		\$5,000
The second offense	\$7,500		\$10,000
The third offense	\$25,000		\$40,000.

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be required to carry out this subtitle.

Subtitle B--Self-Employed Subcontractors Loophole

SEC. 611. REQUIRING SELF-EMPLOYED SUBCONTRACTORS TO PARTICIPATE IN EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROGRAM.

Beginning with fiscal year 2010, none of the funds authorized to be appropriated for the Department of Homeland Security or the Department of Justice may be made available to those departments unless each State and local government in the United States requires, as condition on acquisition of a business license, that the applicant demonstrate that the applicant has verified through the E-Verify program, established as the basic pilot program by section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1324a note), that the applicant, and each individual employed by the applicant, is authorized to work in the United States.

Subtitle C--Prohibition on Unlawful Employment of Aliens in Capitol**SEC. 621. REQUIRING LEGISLATIVE BRANCH CONTRACTORS TO PARTICIPATE IN EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROGRAM.**

An office of the legislative branch may not enter into a contract for the provision of goods or services within the Capitol Complex with any contractor who employs individuals unless the contractor--

- (1) elects to participate in the basic pilot program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), and is in compliance with the terms and conditions of such election, with respect to all of its employees as well as those providing goods or services under the contract; and
- (2) certifies that each of its subcontractors providing goods or services under the contract has elected to participate in such program, and is in compliance with the terms and conditions of such election, with respect to all of its employees as well as those providing goods or services under the subcontract.

SEC. 622. CAPITOL COMPLEX DEFINED.

For purposes of this subtitle, the `Capitol Complex' consists of the following facilities together with their grounds:

- (1) The United States Capitol (including the Capitol Visitor Center) and the Capitol Grounds.
- (2) The Cannon, Longworth, Rayburn, and Ford House Office Buildings.
- (3) The Russell, Dirksen, and Hart Senate Office Buildings.
- (4) The House of Representatives Child Care Center and the Senate Employee Child Care Center.
- (5) Any facility serving as a dormitory residence for Congressional pages.
- (6) The United States Botanic Garden.
- (7) The Jefferson, Madison, and Adams Buildings of the Library of Congress.
- (8) The Capitol Power Plant.
- (9) The United States Capitol Police Headquarters Building.

SEC. 623. EFFECTIVE DATE; TRANSITION FOR CURRENT CONTRACTS.

(a) In General- This subtitle shall apply with respect to contracts entered into after the expiration of the 30-day period which begins on the date of the enactment of this Act.

(b) Transition for Current Contracts- Upon the enactment of this Act, each office of the legislative branch with a contract in effect on the date of the enactment of this Act which is described in section 621 shall

obtain assurances from the contractor involved that the contractor will meet the requirements of such section prior to the expiration of the period described in subsection (a).

Subtitle D--Coordination Between SSA and IRS

SEC. 631. AVAILABILITY OF INFORMATION.

The Commissioner of Social Security shall make available to the Commissioner of Internal Revenue any information related to the investigation and enforcement of section 162(c)(4) of the Internal Revenue Code of 1986, including any no-match letter and any information in the earnings suspense file.

TITLE VII--PROHIBITING UNLAWFULLY PRESENT ALIENS FROM OBTAINING FINANCIAL SERVICES

SEC. 701. FOREIGN-ISSUED FORMS OF IDENTIFICATION PROHIBITED AS PROOF OF IDENTITY TO OPEN ACCOUNTS AT FINANCIAL INSTITUTIONS.

Section 5318(l) of title 31, United States Code (relating to identification and verification of accountholders) is inserting after paragraph (6) (as added by section 202) the following new paragraph:

` (7) PROHIBITION ON USE OF IDENTIFICATION ISSUED BY A FOREIGN GOVERNMENT- A financial institution may not accept any form of identification that was issued by a foreign government, other than a passport that meets the requirement of paragraph (6), for use in verifying the identity of a person in connection with the opening of an account by such person at the financial institution, including a matricula consular issued in the United States by a duly authorized consular officer of the Government of Mexico.'

SEC. 702. `KNOW YOUR CUSTOMER' REGULATIONS APPLIED TO CERTAIN TRANSMITTING BUSINESSES.

Section 5318(m) of title 31, United States Code, is amended by striking `promulgated pursuant to the authority contained in' and inserting `prescribed under paragraph (1) of subsection (l) (notwithstanding paragraph (5) of such subsection) or'.

SEC. 703. REQUIREMENTS RELATING TO THE UNITED STATES POSTAL SERVICE.

(a) In General- The United States Postal Service shall take such measures as may be necessary to ensure that in the administration of any international wire transfer service, no transfer may be made unless the sender presents an acceptable form of identification, as determined in accordance with section 201.

(b) Definition- For purposes of this section, the term `international wire transfer service' means any program or service, administered by the United States Postal Service, which provides for the international electronic transfer of money.

(c) Effective Date- The requirements of this section shall take effect six months after the date of the enactment of this Act.

SEC. 704. APPLICABILITY OF IDENTIFICATION RULES TO CERTAIN TRANSACTIONS INVOLVING THE FEDERAL RESERVE BOARD, INCLUDING THE DIRECTO A MEXICO PROGRAM.

(a) In General- The Board of Governors of the Federal Reserve System shall take such measures as may be necessary to ensure that in the administration of any international wire transfer service or settlement services, including any automated clearing house transaction such as the Directo a Mexico™ program, no transfer may be made unless the financial institution involved has certified that the sender has presented an acceptable form of identification, as determined in accordance with section 202(a).

(b) Definition- For purposes of this section, the term `international wire transfer service or settlement'

means any program or service, administered by the Board of Governors of the Federal Reserve System directly or through any Federal reserve bank, including the Fedwire Funds Service, which provides for the international electronic transfer of funds.

(c) Effective Date- The requirements of this section shall take effect six months after the date of the enactment of this Act.

TITLE VIII--BORDER AND LAW ENFORCEMENT

SEC. 801. CONSTRUCTION OF BORDER FENCING AND SECURITY IMPROVEMENTS.

(a) In General- Section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended to read as follows:

 ` (1) SECURITY FEATURES-

 ` (A) REINFORCED FENCING- In carrying out subsection (a), the Secretary of Homeland Security shall provide for at least 2 layers of reinforced fencing, the installation of additional physical barriers, roads, lighting, cameras, and sensors--

 ` (i) extending from 10 miles west of the Tecate, California, port of entry to 10 miles east of the Tecate, California, port of entry;

 ` (ii) extending from 10 miles west of the Calexico, California, port of entry to 5 miles east of the Douglas, Arizona, port of entry;

 ` (iii) extending from 5 miles west of the Columbus, New Mexico, port of entry to 10 miles east of El Paso, Texas;

 ` (iv) extending from 5 miles northwest of the Del Rio, Texas, port of entry to 5 miles southeast of the Eagle Pass, Texas, port of entry; and

 ` (v) extending 15 miles northwest of the Laredo, Texas, port of entry to the Brownsville, Texas, port of entry.

 ` (B) COMPLETION DATES- With respect to the border area described in subparagraph (A), the Secretary shall ensure that the duties required under such subparagraph are completed by not later than July 31, 2010.

 ` (C) EXCEPTION- If the topography of a specific area has an elevation grade that exceeds 10 percent, the Secretary may use other means to secure such area, including the use of surveillance and barrier tools.'

(b) Authorization of Appropriations- There is authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out the amendment made by subsection (a).

(c) Repeals- Subsection (b) of section 564 of division E of the Consolidated Appropriations Act, 2008 (Public Law 110-161) is repealed. The amendment made by subsection (a)(2)(A) of such section is repealed.

SEC. 802. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

Section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 118 Stat. 3734) is amended to read as follows:

` SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

 ` (a) Annual Increases- The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active-duty Border Patrol agents within the Department of Homeland Security (above the number of positions for which funds were

appropriated for the preceding fiscal year), by--

- ` (1) 2,500 in fiscal year 2010;
- ` (2) 2,000 in fiscal year 2011;
- ` (3) 1,500 in fiscal year 2012;
- ` (4) 1,000 in fiscal year 2013; and
- ` (5) 1,000 in fiscal year 2014.

` (b) Allocations- Of the Border Patrol agents hired under subsection (a), 80 percent shall be deployed along the southern border of the United States and 20 percent shall be deployed along the northern border of the United States.

` (c) Authorization of Appropriations- The necessary funds are authorized to be appropriated for each of fiscal years 2010 through 2014 to carry out this section.'

SEC. 803. INCREASE IN NUMBER OF ICE AGENTS.

Section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 118 Stat. 3734) is amended to read as follows:

` SEC. 5203. INCREASE IN FULL-TIME IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.

` (a) In General- By not later than September 30, 2013, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by 3,000 the number of positions for full-time active-duty investigators within the Department of Homeland Security investigating violations of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))) above the number of such positions for which funds were made available during the preceding fiscal year.

` (b) Authorization of Appropriations- There are authorized to be appropriated to the Secretary to carry out this section such sums as may be necessary for each fo fiscal years 2010 through 2013.'

TITLE IX--STATE AND LOCAL GOVERNMENT AUTHORITY

Subtitle A--General Provisions

SEC. 901. STATE DEFINED; SEVERABILITY.

(a) State Defined- For purposes of this title the term ` State' has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

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

SEC. 902. FEDERAL AFFIRMATION OF ASSISTANCE IN THE IMMIGRATION LAW ENFORCEMENT BY STATES AND POLITICAL SUBDIVISIONS OF STATES.

Notwithstanding any other provision of law and reaffirming the existing inherent authority of States, law enforcement personnel of a State, or of a political subdivision of a State, have the inherent authority of a sovereign entity to investigate, identify, apprehend, arrest, detain, or transfer to Federal custody aliens in the United States (including the transportation of such aliens across State lines to detention centers), for the purposes of assisting in the enforcement of the immigration laws of the United States in the course of carrying out routine duties. This State authority has never been displaced or preempted by Congress.

SEC. 903. STATE AUTHORIZATION FOR ASSISTANCE IN THE ENFORCEMENT OF IMMIGRATION LAWS ENCOURAGED.

(a) In General- Effective two years after the date of the enactment of this Act, a State, or a political subdivision of a State, that has in effect a statute, policy, or practice that prohibits law enforcement officers of the State, or of a political subdivision of the State, from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers' routine law enforcement duties shall not receive any of the funds that would otherwise be allocated to the State under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)).

(b) Construction- Nothing in this section shall require law enforcement officials from States, or from political subdivisions of States, to report or arrest victims or witnesses of a criminal offense.

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

SEC. 904. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(a) Provision of Information to the NCIC- Not later than 180 days after the date of the enactment of this Act and periodically thereafter as updates may require, the Under Secretary for Border and Transportation Security of the Department of Homeland Security shall provide the National Crime Information Center of the Department of Justice with such information as the Under Secretary may possess regarding any aliens against whom a final order of removal has been issued, any aliens who have signed a voluntary departure agreement, any aliens who have overstayed their authorized period of stay, and any aliens whose visas have been revoked. The National Crime Information Center shall enter such information into the Immigration Violators File of the National Crime Information Center database, regardless of whether--

- (1) the alien concerned received notice of a final order of removal;
- (2) the alien concerned has already been removed; or
- (3) sufficient identifying information is available with respect to the alien concerned.

(b) Inclusion of Information in the NCIC Database- Section 534(a) of title 28, United States Code, is amended--

- (1) in paragraph (3), by striking `and' at the end;
- (2) by redesignating paragraph (4) as paragraph (5); and
- (3) by inserting after paragraph (3) the following new paragraph:
` (4) acquire, collect, classify, and preserve records of violations by aliens of the immigration laws of the United States, regardless of whether any such alien has received notice of the violation or whether sufficient identifying information is available with respect to any such alien and even if any such alien has already been removed from the United States; and'.

SEC. 905. STATE AND LOCAL LAW ENFORCEMENT PROVISION OF INFORMATION ABOUT APPREHENDED ALIENS.

(a) Provision of Information- In compliance with section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) and section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644), each State, and each political subdivision of a State, shall provide the Secretary of Homeland Security in a timely manner with the information specified in subsection (b) with respect to each alien apprehended in the jurisdiction of the State, or in the political subdivision of the State, who is believed to be in violation of the immigration laws of the United States.

(b) Information Required- The information referred to in subsection (a) is as follows:

- (1) The alien's name.
- (2) The alien's address or place of residence.
- (3) A physical description of the alien.
- (4) The date, time, and location of the encounter with the alien and reason for stopping, detaining, apprehending, or arresting the alien.
- (5) If applicable, the alien's driver's license number and the State of issuance of such license.
- (6) If applicable, the type of any other identification document issued to the alien, any designation number contained on the identification document, and the issuing entity for the identification document.
- (7) If applicable, the license plate number, make, and model of any automobile registered to, or driven by, the alien.
- (8) A photo of the alien, if available or readily obtainable.
- (9) The alien's fingerprints, if available or readily obtainable.

(c) Annual Report on Reporting- The Secretary shall maintain and annually submit to Congress a detailed report listing the States, or the political subdivisions of States, that have provided information under subsection (a) in the preceding year.

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

(e) Authorization of Appropriations- There is authorized to be appropriated to the Secretary such sums as are necessary to carry out this section.

(f) Construction- Nothing in this section shall require law enforcement officials of a State, or of a political subdivision of a State, to provide the Secretary of Homeland Security with information related to a victim of a crime or witness to a criminal offense.

SEC. 906. FINANCIAL ASSISTANCE TO STATE AND LOCAL POLICE AGENCIES THAT ASSIST IN THE ENFORCEMENT OF IMMIGRATION LAWS.

(a) Grants for Special Equipment for Housing and Processing Certain Aliens- From amounts made available to make grants under this section, the Secretary of Homeland Security shall make grants to States, and to political subdivisions of States, for procurement of equipment, technology, facilities, and other products that facilitate and are directly related to investigating, apprehending, arresting, detaining, or transporting aliens who have violated the immigration law of the United States, including additional administrative costs incurred under this title.

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

(c) Funding- There is authorized to be appropriated to the Secretary for grants under this section such sums as may be necessary for fiscal year 2010 and each subsequent fiscal year.

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

SEC. 907. INCREASED FEDERAL DETENTION SPACE.

(a) Construction or Acquisition of Detention Facilities-

(1) IN GENERAL- The Secretary of Homeland Security shall construct or acquire, in addition to existing facilities for the detention of aliens, 20 detention facilities in the United States, with at least 500 beds per facility, for aliens detained pending removal from the United States or a decision regarding such removal.

(2) DETERMINATIONS- The location of any detention facility built or acquired in accordance with this subsection shall be determined by the Deputy Assistant Director of the Detention Management Division of the Immigration and Customs Enforcement Office of Detention and Removal within United States Immigration and Customs Enforcement.

(3) USE OF INSTALLATIONS UNDER BASE CLOSURE LAWS- In acquiring detention facilities under this subsection, the Secretary of Homeland Security shall consider the transfer of appropriate portions of military installations approved for closure or realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) for use in accordance with paragraph (1).

(b) Authorization of Appropriations- There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this section.

(c) Technical and Conforming Amendment- Section 241(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1231(g)(1)) is amended by striking 'may expend' and inserting 'shall expend'.

SEC. 908. FEDERAL CUSTODY OF ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES APPREHENDED BY STATE OR LOCAL LAW ENFORCEMENT.

(a) State Apprehension-

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

` CUSTODY OF ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES

` Sec. 240D. (a) Transfer of Custody by State and Local Officials- If a State, or a political subdivision of the State, exercising authority with respect to the apprehension or arrest of an alien who is unlawfully present in the United States submits to the Secretary of Homeland Security a request that the alien be taken into Federal custody, the Secretary--

` (1) shall--

` (A) not later than 48 hours after the conclusion of the State, or the political subdivision of a State, charging process or dismissal process, or if no State or political subdivision charging or dismissal process is required, not later than 48 hours after the alien is apprehended, take the alien into the custody of the Federal Government and incarcerate the alien; or

` (B) request that the relevant State or local law enforcement agency temporarily incarcerate or transport the alien for transfer to Federal custody; and

` (2) shall designate at least one Federal, State, or local prison or jail or a private contracted prison or

detention facility within each State as the central facility for that State to transfer custody of aliens to the Department of Homeland Security.

`(b) Policy on Detention in State and Local Detention Facilities- In carrying out section 241(g)(1), the Attorney General or Secretary of Homeland Security shall ensure that an alien arrested under this Act shall be detained, pending the alien's being taken for the examination under this section, in a State or local prison, jail, detention center, or other comparable facility. Notwithstanding any other provision of law or regulation, such facility is adequate for detention, if--

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

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

`(3) such facility satisfies the standards for the housing, care, and security of persons held in custody of a United States marshal.

`(c) Reimbursement- The Secretary of Homeland Security shall reimburse States, and political subdivisions of a State, for all reasonable expenses, as determined by the Secretary, incurred by the State, or political subdivision, as a result of the incarceration and transportation of an alien who is unlawfully present in the United States as described in subparagraphs (A) and (B) of subsection (a)(1). Compensation provided for costs incurred under such subparagraphs shall be the average cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State, or of a political subdivision of a State, plus the cost of transporting the alien from the point of apprehension to the place of detention, and to the custody transfer point if the place of detention and place of custody are different.

`(d) Secure Facilities- The Secretary of Homeland Security shall ensure that aliens incarcerated in Federal facilities pursuant to this Act are held in facilities that provide an appropriate level of security.

`(e) Transfer-

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

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

`(f) Definition- For purposes of this section, the term `alien who is unlawfully present in the United States' means an alien who--

`(1) entered the United States without inspection or at any time, manner or place other than that designated by the Secretary of Homeland Security;

`(2) was admitted as a nonimmigrant and who, at the time the alien was taken into custody by the State, or a political subdivision of the State, had failed to--

`(A) maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248; or

`(B) comply with the conditions of any such status;

`(3) was admitted as an immigrant and has subsequently failed to comply with the requirements of that status; or

`(4) failed to depart the United States under a voluntary departure agreement or under a final order of removal.'

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

` Sec. 240D. Custody of aliens unlawfully present in the United States.'.

(b) GAO Audit- Not later than three years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an audit of compensation to States, and to political subdivisions of a State, for the incarceration of aliens unlawfully present in the United States under section 240D(a) of the Immigration and Nationality Act (as added by subsection (a)(1)).

SEC. 909. TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.

(a) Establishment of Training Manual and Pocket Guide- Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish--

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

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

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

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

(d) Costs- The Secretary of Homeland Security shall be responsible for any costs incurred in establishing the training manual and pocket guide.

(e) Training Flexibility-

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

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

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

In carrying out this section, priority funding shall be given for existing web-based immigration enforcement training systems.

SEC. 910. IMMUNITY.

(a) Personal Immunity- Notwithstanding any other provision of law, a law enforcement officer of a State or local law enforcement agency who is acting within the scope of the officer's official duties shall be immune, to the same extent as a Federal law enforcement officer, from personal liability arising out of the

performance of any duty described in this title.

(b) Agency Immunity- Notwithstanding any other provision of law, a State or local law enforcement agency shall be immune from any claim for money damages based on Federal, State, or local civil rights law for an incident arising out of the enforcement of any immigration law, except to the extent a law enforcement officer of such agency committed a violation of Federal, State, or local criminal law in the course of enforcing such immigration law.

SEC. 911. INSTITUTIONAL REMOVAL PROGRAM (IRP).

(a) Continuation and Expansion-

(1) IN GENERAL- The Secretary of Homeland Security shall continue to operate and implement the program known as the Institutional Removal Program (IRP) which--

- (A) identifies removable criminal aliens in Federal and State correctional facilities;
- (B) ensures such aliens are not released into the community; and
- (C) removes such aliens from the United States after the completion of their sentences.

(2) EXPANSION- The Institutional Removal Program shall be extended to all States. Any State that receives Federal funds for the incarceration of criminal aliens shall--

- (A) cooperate with officials of the Institutional Removal Program;
- (B) expeditiously and systematically identify criminal aliens in its prison and jail populations; and
- (C) promptly convey such information to officials of such Program as a condition of receiving such funds.

(b) Authorization for Detention After Completion of State or Local Prison Sentence- Law enforcement officers of a State, or of a political subdivision of a State, are authorized to--

- (1) hold a criminal alien for a period of up to 14 days after the alien has completed the alien's State prison sentence in order to effectuate the transfer of the alien to Federal custody when the alien is removable or not lawfully present in the United States; or
- (2) issue a detainer that would allow aliens who have served a State prison sentence to be detained by the State prison until personnel from United States Immigration and Customs Enforcement can take the alien into custody.

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

Subtitle B--Eliminating Sanctuary Cities

SEC. 921. ELIMINATING SANCTUARY CITIES.

None of the funds made available for the Department of Homeland Security or the Department of Justice may be provided to any State or unit of local government that has in effect any law, policy, or procedure in contravention of subsection (a) or (b) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373).

Subtitle C--Criminal Aliens

SEC. 931. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP).

Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C.1231(i)) is amended to read as follows:

`(5) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 2010 and each subsequent fiscal year.'

SEC. 932. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary for fiscal year 2010 and each subsequent fiscal year such sums as may be necessary to carry out this title.

SEC. 933. ASSISTANCE FOR STATES INCARCERATING UNDOCUMENTED ALIENS CHARGED WITH CERTAIN CRIMES.

Section 241(i)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(3)(A)) is amended by inserting `charged with or' before `convicted'.

SEC. 934. PREEMPTION.

It is the sense of the Congress that States and local political subdivisions are not preempted from the enactment and enforcement of immigration-related laws and ordinances that do not directly conflict with Federal immigration laws.

TITLE X--PROHIBITING IN-STATE TUITION FOR UNLAWFULLY PRESENT ALIENS**SEC. 1001. ENSURING ENFORCEABILITY.**

Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is amended--

(1) in subsection (a)--

(A) by striking `on the basis of residence within a State (or a political subdivision)'; and

(B) by striking `unless a citizen' and all that follows through the period at the end and inserting `unless every citizen or national of the United States is entitled to such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is a resident of the State or has attended or graduated from a school in the State.';

(2) by redesignating subsection (b) as subsection (c); and

(3) by inserting the following after subsection (a):

`(b) Enforcement Through Civil Action-

`(1) IN GENERAL- Any citizen or national of the United States who is attending or is enrolled to attend a postsecondary educational institution alleged to be in violation of subsection (a) may commence a civil action on his own behalf against any official of the State entity that governs such postsecondary educational institutions or of the educational institution itself to enforce the terms of subsection (a).

`(2) RELIEF- The court shall provide all appropriate relief, including damages equal to the monetary value of any benefit provided to an illegal alien but denied to the citizen or national of the United States, and shall award attorneys' fees and costs to a citizen or national of the United States who establishes a violation of subsection (a) to the satisfaction of the court.

`(3) AUTHORITY- This subsection is enacted pursuant to section 5 of the 14th amendment to the Constitution of the United States.'

END

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