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18

19 **SEC. 100. FINDINGS**

20

21 Congress finds the following:

- 22 1. Today, our borders are more secure than at any time in history.
- 23 2. An unprecedented range of personnel, infrastructure, technology, equipment, and
- 24 air and marine assets have been deployed along our borders.
- 25 3. Thousands of technology assets – including mobile surveillance, thermal imaging,
- 26 and large- and small-scale non-intrusive inspection equipment, including 124
- 27 aircraft and six Unmanned Aircraft Systems – operate along the Southwest border.
- 28 4. The Department of Homeland Security (DHS) has completed 651 miles of fencing
- 29 along the southwest border. This includes 299 miles of vehicle barriers and 352
- 30 miles of pedestrian fence.
- 31 5. The U.S. Border Patrol is better staffed today than at any time in its 88-year history,
- 32 and has doubled the number of agents from approximately 10,000 in 2004 to more
- 33 than 21,000 today.
- 34 6. Since 2004, the number of officers along the Southwest border has increased by
- 35 94% to nearly 18,500 Border Patrol Agents today. And over 3,800 Border Patrol
- 36 Agents man the Northern border, representing a 700 percent increase since 2001.
- 37 7. U.S. Immigration and Customs Enforcement (ICE) has deployed a quarter of all its
- 38 operational personnel to the Southwest border region, has doubled the number of

1 personnel assigned to identify, disrupt, and dismantle criminal organizations that
2 pose significant threats to border security, and has more than tripled deployments of
3 Border Liaison Officers who facilitate cooperation between U.S. and Mexican law
4 enforcement authorities on investigations and enforcement operations.

- 5 8. These significant investments in border security have resulted in unmatched levels
6 of operational capabilities, which in turn have resulted in increased interdiction of
7 drugs, weapons, and currency, a 53% decrease in apprehensions of illegal aliens,
8 indicating that fewer people are attempting to illegally cross the border, and
9 decreased crime and increased public safety in border towns and states.
- 10 9. Since 2008, crime rates in border cities like Nogales, Tucson, and San Diego have
11 steadily decreased and crime has decreased in each of the four Southwest border
12 states – Arizona, California, New Mexico, and Texas.
- 13 10. According to 2010 FBI crime reports, violent crimes in the Southwest border states
14 have dropped by an average of 40 percent in the last two decades.
- 15 11. In addition to its unprecedented efforts at the Southwest border, ICE continues to
16 fulfill its law enforcement mission by targeting criminal aliens who pose a threat to
17 public safety and deterring illegal employment.
- 18 12. In FY 2012, ICE removed more than 409,000 individuals - the largest number in the
19 agency's history. ICE has focused its enforcement efforts on convicted criminals
20 (doubling the number of such removals between FY 2008 and FY 2012), repeat
21 immigration law violators, recent border entrants, and immigration fugitive
22 operations teams focused on apprehending at-large convicted felons.
- 23 13. In the last four years, ICE has audited more than 8,932 employers suspected of
24 hiring illegal labor, debarred 8,590 companies and individuals, and imposed more
25 than \$100.3 million in financial sanctions—more than the total number of audits
26 and debarments than during the entire previous administration.
- 27 14. Employer enrollment in E-Verify has more than doubled since January 2009, with
28 more than 416,033 companies representing more than 1.2 million hiring sites
29 participating in the program. More than 20 million queries were processed in E-
30 Verify in FY 2012, allowing businesses to determine the eligibility of their
31 employees to work in the United States. Thus far in FY 2013, over 4.8 million
32 queries have been run through the system.

1 15. As a result of DHS enforcement efforts, the number of aliens put into removal
 2 proceedings has increased, and the number of cases pending before immigration
 3 courts within the Executive Office for Immigration Review is at an all-time high.
 4 On average, the typical immigration judge has well over 1,000 cases on his or her
 5 docket, which is much higher than judges in other comparable tribunals.

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

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

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

22
 23 **SEC. 101. TECHNOLOGICAL ASSETS.**

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

28
 29 (b) PRIVACY AND CIVIL LIBERTIES ASSESSMENTS —The Secretary, in
 30 consultation with the Attorney General, shall conduct a privacy impact assessment

1 and a civil liberties impact assessment prior to the deployment of the technologies
2 under this section.

3
4 **SEC. 102. REIMBURSABLE FEE AGREEMENTS**

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

16
17 (1) Within the first calendar year after enactment of this section, the
18 Commissioner may enter into no more than 5 agreements under this section.

19
20 (2) The Commissioner shall not enter into such an agreement if it would
21 unduly and permanently impact services funded in this or any other
22 appropriations Acts, or provided from any accounts in the Treasury of the
23 United States derived by the collection of fees.

24
25 (b) Funds collected pursuant to any agreement entered into under this section shall
26 be deposited in a newly established account as offsetting collections and remain
27 available until expended, without fiscal year limitation, and shall directly reimburse
28 each appropriation for the amount paid out of that appropriation for any expenses
29 incurred by U.S. Customs and Border Protection in providing U.S. Customs and
30 Border Protection services and any other costs incurred by U.S. Customs and
31 Border Protection relating to such services.

1 (c) The amount of the fee to be charged pursuant to an agreement authorized under
2 subsection (a) of this section shall be paid by each person requesting U.S. Customs
3 and Border Protection services and shall include, but shall not be limited to, the
4 salaries and expenses of individuals employed by U.S. Customs and Border
5 Protection to provide such U.S. Customs and Border Protection services and other
6 costs incurred by U.S. Customs and Border Protection relating to those services,
7 such as temporary placement or permanent relocation of those individuals.

8
9 (d) FAILURE TO PAY FEE— U.S. Customs and Border Protection shall terminate
10 the provision of services pursuant to an agreement entered into under subsection (a)
11 with a person that, after receiving notice from the Commissioner that a fee imposed
12 under subsection (a) is due, fails to pay the fee in a timely manner. In the event of
13 such termination, all costs incurred by U.S. Customs and Border Protection, which
14 have not been reimbursed, will become immediately due and payable. Interest on
15 unpaid fees will accrue based on current U.S. Treasury borrowing rates.
16 Additionally, any person who, after notice and demand for payment of any fee
17 charged under subsection (a) of this section, fails to pay such fee in a timely manner
18 shall be liable for a penalty or liquidated damage equal to two times the amount of
19 the fee. Any amount collected pursuant to any agreement entered into under this
20 subsection shall be deposited into the account specified under subsection (b) of this
21 section and shall be available as described therein.

22
23 (e) PROVISION OF FACILITIES AND EQUIPMENT—Each facility at which
24 such U.S. Customs and Border Protection services are performed shall provide,
25 maintain, and equip, without cost to the Government, facilities in accordance with
26 U.S. Customs and Border Protection specifications.

27
28 (f) AGREEMENTS WITH FOREIGN PERSONS—The authority found in this
29 section may not be used to enter into agreements to expand or begin to provide U.S.
30 Customs and Border Protection services outside of the United States.

31

1 (g) AGREEMENTS PERTAINING TO OPERATIONS AT EXISTING AIR
2 FACILITIES – The authority found in this section may not be used at existing U.S.
3 Customs and Border Protection-serviced air facilities to enter into agreements for
4 costs other than payment of overtime, premium pay, and associated benefit costs.

5
6 (h) The Commissioner shall notify the appropriate Committees of Congress 15 days
7 prior to entering into any agreement under the authority of this section and shall
8 provide a copy of the agreement to the appropriate Committees of Congress.

9
10 (i) DEFINITIONS—For purposes of this section the terms:

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

14
15 (2) “Person” means any natural person or any corporation, partnership, trust,
16 association, or any other public or private entity, or any officer, employee,
17 or agent thereof.

18
19 (3) “appropriate Committees of Congress” means the Committees on
20 Appropriations; Finance; Judiciary; and Homeland Security and
21 Governmental Affairs of the Senate and the Committees on Appropriations;
22 Judiciary; Ways and Means; and Homeland Security of the House of
23 Representatives.

24
25 **SEC.103.PORT OF ENTRY INSPECTORS.**—Notwithstanding any other provision of
26 law, the Secretary is authorized, in accordance with the fee collected in section 104 and
27 subject to the availability of appropriations, to hire full-time active duty port of entry
28 inspectors and provide appropriate training, equipment, and support to such additional
29 inspectors to carry out the requirements of this Act.

30
31 **SEC. 104. LAND BORDER CROSSING FEE STUDY**

32 (a) The Commissioner of the United States Customs and Border Protection shall:

1 (1) conduct a study assessing the feasibility and cost relating to establishing and
 2 collecting a land border crossing fee for both land border pedestrians and
 3 passenger vehicles along the northern and southwest borders of the United
 4 States. The study should include:

- 5 (I) the feasibility of collecting from existing operators on the land
 6 border such as bridge commissions, toll operators, commercial
 7 passenger bus, and commercial passenger rail;
- 8 (II) requirements to collect at land ports of entry where existing
 9 capability is not present; and,
- 10 (III) any legal and regulatory impediments to establishing and
 11 collecting a land border crossing fee.

12 (2) complete the study within 9 months of enactment of this Act.

13
 14 **SEC.105. CUSTOMS AND BORDER PROTECTION INSPECTION FEE**
 15 **CHANGES**

16 (a) Section 13031(f)(3)(A) of the Consolidated Omnibus Budget Reconciliation Act of
 17 1985 (19 U.S.C. 58c(f)(3)(A)) is amended as follows:

18 (1) by amending clause (i) to read as follows::

19 “(i) in--

- 20 (I) paying overtime compensation under section 267(a) of this title,
- 21 (II) paying premium pay under section 267(b) of this title, but the amount for which
 22 reimbursement may be made under this subclause may not, for any fiscal year,
 23 exceed the difference between the total cost of all the premium pay for such year
 24 calculated under section 267(b) of this title and the cost of the night and holiday
 25 premium pay that the Customs Service would have incurred for the same
 26 inspectional work on the day before August 10, 1993,
- 27 (III) providing salaries for full-time inspectional personnel,
- 28 (IV) paying agency contributions to the Civil Service Retirement and Disability
 29 Fund to match deductions from the overtime compensation paid under subclause
 30 (I),
- 31 (V) providing all preclearance services for which the recipients of such services are
 32 not required to reimburse the Secretary of the Treasury, and

1 (VI) paying foreign language proficiency awards under section 267a of this title,”

2 (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
 9 1985 (19 U.S.C. 58c(j)(3)(b)) is amended by striking clause (ii).

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 “(I) Adjustments

- 32 (1) Inflation Adjustment of Fees

1 Beginning in fiscal year 2015, the fees charged under paragraphs (1) through (3)
 2 and paragraphs (5) through (8) of subsection (a) of this section shall each be
 3 adjusted annually by the Secretary of the Treasury through a Federal Register
 4 notice, without regard to the notice and comment provisions of section 553 of title 5
 5 of the United States Code, to reflect any fluctuation in the Consumer Price Index of
 6 the Bureau of Labor Statistics of the Department of Labor from when the fee
 7 amounts were last changed.

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

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

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

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

17 (2) Inflation Adjustment of Caps

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

25 (A) No adjustment required by this subsection shall take effect until at least
 26 30 days after notice of the fee has been published.

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

1 (C) All amounts which require adjustment under this subsection shall be
2 rounded upward to the next \$1.00 increment.

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

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

7 (1) In subsection (d), by striking ‘\$7’ and inserting ‘\$9’; and

8 (2) In subsection (e)(3), by striking ‘\$3’ and inserting ‘\$5’.

9 (3) By inserting the following after subsection (o):

10 “(p) Inflation Adjustment of Certain Fees
11 Beginning in fiscal year 2015, the fees charged under subsections (d) and
12 (e)(3) of this section shall each be adjusted annually by the Attorney through
13 a Federal Register notice, without regard to the notice and comment
14 provisions of section 553 of title 5 of the United States Code, to reflect any
15 fluctuation in the Consumer Price Index of the Bureau of Labor Statistics of
16 the Department of Labor from when the fee amounts were last changed.

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

19 (B) The adjustment required by this subsection shall be ignored if such
20 an adjustment would result in an increase or decrease of less than
21 10% of the fee as measured from when such fee amounts were last
22 changed.

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

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

27 **SEC. 106. AUTHORITY TO ACCEPT DONATIONS IN SUPPORT OF LAND**
28 **PORTS OF ENTRY**

1 (a) IN GENERAL – Notwithstanding any other provision of law, including Chapter 33 of
2 Title 40, United States Code, the Secretary of Homeland Security may, for purposes of
3 constructing, altering, operating or maintaining a new or existing land port of entry facility,
4 accept donations of real and personal property (including monetary donations) and non-
5 personal services, from private parties and State and local government entities.

6
7 (b) PURPOSES – The Secretary of Homeland Security may, with respect to any donation
8 provided pursuant to subsection (a),

9
10 (1) use such property or services for necessary expenses related to the
11 construction, alteration, operation or maintenance of a new or existing land
12 port of entry facility under the custody and control of the Secretary,
13 specifically including but not limited to expenses related to land acquisition,
14 design, construction, repair and alteration, furniture and fixtures and
15 equipment (FFE), deployment of technology and equipment, and operation
16 and maintenance (O&M); or

17
18 (2) transfer such property or services to the Administrator of General
19 Services for necessary expenses as described in subparagraph (b)(1) above
20 related to a new or existing land port of entry facility under the custody and
21 control of the Administrator.

22
23 (c) SUPPLEMENTAL FUNDING – Property (including monetary donations) and services
24 provided pursuant to subsection (a) may be used in addition to any other funding (including
25 appropriated funds), property or services made available for the same purpose.

26
27 (d) UNCONDITIONAL DONATIONS – A donation provided pursuant to subsection (a)
28 may specify the land port of entry facility(ies) in support of which the donation is being
29 made and the timeframe in which the donated property or services must be used, but must
30 otherwise be made unconditionally.

1 (e) RETURN OF DONATIONS – If the Secretary or Administrator do not use the
2 property or services donated pursuant to subsection (a) for the specific land port of entry
3 facility(ies) designated or within the timeframe specified, then such donated property or
4 services shall be returned to the entity that made the donation; provided, however, that no
5 interest shall be owed on any donation of funding provided under subsection (a) and
6 returned pursuant to this subparagraph.

7
8 (f) SAVINGS – Nothing in this Section shall be deemed to affect or alter the underlying
9 authority of the Secretary of Homeland Security or the Administrator of General Services
10 to construct, alter, operate and maintain land port of entry facilities.

11
12 **SEC. 107.ENHANCING AND PROMOTING TRAVEL AND PORT**
13 **MODERNIZATION.**

14
15 (a) TRAVEL PROMOTION FUND FEES.--Section 217(h)(3)(B) of the Immigration and
16 Nationality Act (8 U.S.C. 1187(h)(3)(B)) is amended as follows--

17
18 (1) by inserting, “For fiscal years 2011 through 2015,” in the beginning of clause (ii);

19
20 (2) by inserting, “provide and” before “administer the System” in clause (ii);

21
22 (3) by striking clause (iii), and inserting the following:

23
24 “(iii) CBP Travel Facilitation Account

25
26 (I) There is hereby established in the Treasury an account which shall be known as
27 the CBP Travel Facilitation Account.

28
29 (II) Amounts deposited in this account, pursuant to clause (iv) of this paragraph,
30 shall be available until expended, without fiscal year limitation, for the following
31 purposes:

1 (1) Any expenses (including, but not limited to, employee salaries and
2 benefits) incurred by U.S. Customs and Border Protection in carrying out
3 the provisions of section 1752a of title 8; and/or

4
5 (2) Any expenses incurred in the implementation, maintenance, or
6 marketing of any travel facilitation programs administered by U.S. Customs
7 and Border Protection, including, but not limited to, the program required by
8 subsection (k) of section 1365b of title 8.

9
10 (III) All amounts deposited into this account shall be available in addition to any
11 other appropriated funds.”; and

12
13 (4) by inserting after clause (iii) the following:

14
15 “(iv) Disposition of Travel Authorization Fee after September 30, 2015

16
17 For fiscal years beginning after September 30, 2015, XX% of all fees collected
18 pursuant to clause (i)(I) shall be deposited into the CBP Travel Facilitation
19 Account.”

20
21 (b) CORPORATION FOR TRAVEL PROMOTION EXTENSION OF ACCESS TO
22 FEES.--Subsection (d) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(d)) is
23 amended--

24
25 (1) by striking “through 2015” in paragraph (2)(B) and inserting “and thereafter”;

26
27 (2) by striking “fiscal year 2011, 2012, 2013, 2014, or 2015” in paragraph (4)(B) and
28 inserting “fiscal year 2011, 2012, 2013, 2014, 2015, and thereafter”; and

29
30 (3) by inserting after paragraph (2)(B) the following:

1 “(C) For fiscal year 2016 and thereafter, only XX% of the fees collected under
2 section 1187(h)(3)(B)(i)(I) of Title 8 shall be deposited in the general fund of the
3 Treasury for the purpose set forth in subparagraph (B).
4

5 (D) At the end of fiscal year 2016 and each fiscal year thereafter, the Secretary of
6 the Treasury shall transfer the difference, if any, between amounts deposited under
7 subparagraph (C) and any amount made available to the Corporation under
8 subparagraph (B), to the CBP Travel Facilitation Account established by section
9 1187(h)(3)(B)(iii) of title 8, and such funds shall be available as described therein.”
10

11 **SEC. 108. BORDER COMMUNITIES LIAISON OFFICE.**

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

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

- 18 (1) foster and institutionalize consultation with border communities
19 on policies, directives, and laws affecting such communities;
20 (2) provide information to border communities on such policies, directives,
21 and laws;
22 (3) coordinate regular outreach and public education regarding border
23 enforcement policies and programs; and
24 (4) receive concerns and complaints raised by border communities.
25

26 (c) Not less than 180 days after enactment of this Act, the Secretary shall establish a
27 uniform procedure for filing, tracking, and addressing complaints received regarding
28 Customs and Border Patrol Protection actions.
29

30 (d) Authorization of Appropriations- There are authorized to be appropriated such
31 sums as may be necessary in each of the fiscal years 2014 through 2018 to carry out this
32 section.

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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).

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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 law 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:

1 “(3) such foreign customs officials may be permitted to carry and use firearms and
2 other weapons and restraint devices, for purposes of carrying out their official duties at a
3 preclearance facility, including transportation of such firearms and other weapons and
4 devices to and from the preclearance facility, to the same extent as U.S. customs officers
5 acting in their official capacity in the United States and notwithstanding any other
6 provision of the law of any State or any political subdivision thereof.”

7
8 **SEC. 114. STATIONING OF LAW ENFORCEMENT OFFICIALS.**

9
10 Subtitle H of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 451 et
11 seq.) is amended by adding a new section 890A to read as follows:

12
13 “Sec. 890A. Stationing of law enforcement officials or other personnel. The
14 Secretary or the Attorney General, or both as appropriate, with the approval of the Chief of
15 Mission for that country pursuant to established procedures, may station or deploy law
16 enforcement officials, other personnel, and contractors, in a foreign country or accept the
17 stationing or deployment of foreign law enforcement officials, and other persons assigned
18 by the foreign government, in the United States for the purpose of enhancing law
19 enforcement cooperation or operations with that country. The Secretary of State, in
20 coordination with the Secretary, Attorney General, or both as appropriate, may enter into
21 treaties or agreements with any foreign country to extend to such persons of that foreign
22 government privileges and immunities as are necessary to carry out their functions.”

23
24 **SEC. 115. FEDERAL JURISDICTION OVER PERSONNEL WORKING AS PART**
25 **OF CROSS-BORDER INITIATIVES.**

26
27 Chapter 211 of title 18, United States Code, is amended by adding after section
28 3244, the following new section:

29
30 “Sec. 3245. Offenses committed by law enforcement officials working outside the
31 United States pursuant to section 890A of the Homeland Security Act or section 629 of the
32 Tariff Act.

1
2 Whoever, while employed by or accompanying any department or agency of the
3 United States and stationed or deployed in a foreign country pursuant to section 890A of
4 the Homeland Security Act of 2002 (6 U.S.C. 451 et seq.) or section 629 of the Tariff Act
5 of 1930, as amended, (19 U.S.C. 1629), engages in conduct (or conspires or attempts to
6 engage in conduct) outside the United States that would constitute an offense for which a
7 person may be prosecuted in a court of the United States had the person engaged in the
8 conduct within the United States or within the special maritime and territorial jurisdiction
9 of the United States shall be punished as provided for that offense.”.

10
11 **SEC. 116. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUSTOMS**
12 **CONTROLS AND DISOBEYANCE OF LAWFUL ORDERS.**

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

14 “Sec. 758. Unlawful flight from Federal checkpoints and disobedience of lawful
15 orders.

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

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

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

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

32 “(A) in excess of the applicable or posted speed limit,

1 “(B) in excess of the rated capacity of the motor vehicle, aircraft, or
 2 vessel, or

3 “(C) in an otherwise dangerous or reckless manner that created a risk
 4 of bodily injury to any person;

5 “(2) be fined under this title, imprisoned not more than 20 years, or both, if
 6 the violation created a substantial and foreseeable risk of serious bodily injury or
 7 death to any person;

8 “(3) be fined under this title, imprisoned not more than 30 years, or both, if
 9 the violation caused serious bodily injury to any person; or

10 “(4) be fined under this title, imprisoned for any term of years or life, or
 11 both, if the violation resulted in the death of any person.

12 “(e) FORFEITURE.—Any property, real or personal, constituting or traceable to
 13 the gross proceeds of the offense and any property, real or personal, used or intended to be
 14 used to commit or facilitate the commission of the offense shall be subject to forfeiture.

15 “(f) FORFEITURE PROCEDURES.—Seizures and forfeitures under this section
 16 shall be governed by the provisions of chapter 46 of this title, relating to civil forfeitures,
 17 including section 981(d) of such title, except that such duties as are imposed upon the
 18 Secretary of the Treasury under the customs laws described in that section shall be
 19 performed by such officers, agents, and other persons as may be designated for that
 20 purpose by the Secretary of Homeland Security or the Attorney General. Nothing in this
 21 section shall limit the authority of the Secretary to seize and forfeit motor vehicles, aircraft,
 22 or vessels under the customs laws or any other laws of the United States.

23 “(g) DEFINITIONS.—For purposes of this section—

24 “(1) The term ‘checkpoint’ includes, but is not limited to, any customs or
 25 immigration inspection at an immigration checkpoint or at a port of entry.

26 “(2) The term ‘law enforcement officer’ means any Federal, State, local or
 27 tribal official authorized to enforce criminal law, and, when conveying a command
 28 covered under subsection (b) of this section, an air traffic controller.

29 “(3) The term ‘lawful command’ includes, but is not limited to, a command
 30 to stop, decrease speed, alter course, or land, whether communicated orally,
 31 visually, by means of lights or sirens, wireless communication, or by radio,
 32 telephone, or other wire communication.

1 “(4) The term ‘motor vehicle’ means any motorized or self-propelled means
2 of terrestrial transportation.

3 “(5) The term ‘serious bodily injury’ has the meaning given in section
4 2119(2) of this title.”.

5
6
7 **SUBTITLE B – BUILDING A FAIR AND FIRM ENFORCEMENT SYSTEM**

8
9 **SEC. 117. FEDERAL PREEMPTION**

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

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

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

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

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

30 (b) Additional authority of government entities. Notwithstanding any other
31 provision of Federal, State, or local law, no person or agency may prohibit, or in

1 any way restrict, a Federal, State, or local government entity or official from doing
2 any of the following with respect to information regarding the immigration status,
3 lawful or unlawful, of any individual:

4 (1) Requesting such information from the Department of Homeland Security

5 (2) Maintaining such information.

6 (3) Exchanging such information with any other Federal, State, or local
7 government entity.

8 (c) Obligation to respond to requests

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

13 (1) The request is made for a purpose authorized or required by federal law;
14 or

15 (2) The request is made for the purpose of cooperating with the Attorney
16 General and Secretary in their enforcement of federal immigration laws.

17 (d) Data sharing. For purposes of enforcing the anti-discrimination provision of
18 Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, the anti-discrimination
19 provision of the Omnibus Crime Control Act and Safe Streets Act of 1968, 42
20 U.S.C. § 3789d, the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C.
21 § 1997, the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §
22 14141, and other federal civil rights laws, the Attorney General shall have access to
23 all data collected and maintained pursuant to any request for verification under this
24 section. The Secretary and Attorney General will enter into an agreement setting
25 forth the process for data sharing consistent with the purpose of this subsection.”

26 **SEC. 118. REMOVAL OF NONIMMIGRANT OVERSTAYS.**

27 (a) REMOVAL OF NONIMMIGRANT VISITOR OVERSTAYS.—The
28 Immigration and Nationality Act is amended by inserting the following new section:
For Discussion Purposes Only – Do Not Distribute

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

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

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

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

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

16 “(B) an application for nonimmigrant status under section
17 101(a)(15)(T) or (U) of the Act, a petition for classification of
18 adjustment of status as a VAWA self-petitioner or Special Immigrant
19 Juvenile;

20 (C) an application for cancellation of removal under section
21 240A(b); or

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

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

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

30 “(c) Proceedings before the Secretary under this subsection shall be in
31 accordance with such regulations as the Secretary shall prescribe. The Secretary
32 shall provide that—

1 “(1) the alien is given reasonable notice of the charges and of the
2 opportunity described in subparagraph (3);

3 “(2) the alien shall have the privilege of being represented by
4 counsel pursuant to section 292 of the Act;

5 “(3) the alien has a reasonable opportunity to inspect the evidence
6 and rebut the charges;

7 “(4) a determination is made for the record that the individual upon
8 whom the notice for the proceeding under this section is served (either in
9 person or by mail) is, in fact, the alien named in such notice; and

10 “(5) the final order of removal is not adjudicated by the same official
11 who issued the charges and is reviewed by a supervisor of the official who
12 adjudicated the order .”.

13 “(d)(1) An alien subject to removal under this section who contests removal
14 for reasons described in subparagraph (a)(2)(A), (C) or (D) shall be referred to an
15 immigration judge for a hearing in accordance with section 240 of the Act to have
16 his or her application adjudicated.

17 “(2) An alien subject to removal under this section who contests
18 removal for a reason described in subparagraph (a)(2)(B) shall have his or
19 her application adjudicated as otherwise provided under the immigration
20 laws, and shall not be removed under this section until a denial of such
21 request is administratively final.

22 “(f) The Secretary and the Secretary of State shall inform aliens applying for a
23 nonimmigrant visa under section 101(a)(15)(B) or for admission under section
24 101(a)(15)(B) regarding the provisions of subsection (a).

25 “(g) Nothing in this section shall prohibit the Secretary or Attorney General
26 from permitting voluntary departure as a matter of discretion pursuant to section
27 240B of the Act, or from placing an alien subject to the provisions of this section in
28 removal proceedings under section 240 of the Act.”.

29
30 (b) EFFECTIVE DATES.—With respect to subsection (a), the amendments
31 made by this section shall take effect and apply to aliens who file an application

1 for a nonimmigrant visa under section 101(a)(15)(B) of the Act on or after the
 2 date that is 180day after enactment of this Act.

3
 4 **SEC. 119. BIOMETRIC SCREENING**

5 GROUNDS OF INADMISSIBILITY.—Section 212 (8 U.S.C. 1182) is amended—

6 (1) in subsection (a)(7), by adding at the end the following:

7 “(C) WITHHOLDERS OF INFORMATION.—Any alien who willingly,
 8 through his or her own fault, fails or has failed to comply with a lawful request for
 9 biometric information relative to an application for a U.S. visa, admission to the
 10 United States, or other U.S. immigration benefits, is inadmissible.”; and

11 (2) in subsection (d), by inserting after paragraph (1) the following:

12 “(2) The Secretary or Attorney General may waive the application of
 13 subsection (a)(7)(C) for an individual alien or class of aliens. The Secretary’s
 14 discretionary judgment regarding whether or not a waiver is granted shall not be
 15 subject to review.”.

16
 17 **SEC. 120. SANCTIONS FOR COUNTRIES THAT DELAY OR PREVENT**
 18 **REPATRIATION OF THEIR CITIZENS AND NATIONALS.**

19 Sec. 243(d) (8 USC 1253(d)) is amended by—

20 (1) striking “Attorney General” and inserting “Secretary of Homeland
 21 Security, in consultation with the Secretary of State” each place it appears;

22 (2) inserting “or subsets of such visas” after “both,”;

23 (3) inserting “of State” after “Secretary” the last place that term appears.
 24

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

27 (a) Section 235 (8 U.S.C. 1225) is amended—

28 (1) by amending clause (ii) of subsection (b)(1)(B) to read as follows:

29 “(ii) CUSTODY OF ALIENS DETERMINED TO HAVE A CREDIBLE
 30 FEAR.—Subject to clause (iii), and irrespective of whether the alien is present in
 31 the United States without having been admitted or is arriving in the United States, if
 32 the officer determines at the time of the interview that an alien has a credible fear of

1 persecution (within the meaning of clause (vi)), the Secretary shall refer the alien
 2 for further consideration of the application for asylum and, may—

3
 4 “(I) continue to detain the alien; or

5 “(II) release the alien on—

6 “(aa) bond with security approved by, and containing
 7 conditions prescribed by, the Secretary;

8 “(bb) conditions prescribed by the Secretary; or

9 “(cc) on recognizance; but

10 “(III) may not provide the alien with work authorization unless the
 11 alien otherwise would be provided such authorization.”

12 (2) by redesignating clauses (iii), (iv), and (v) of subsection (b)(1)(B) as
 13 clauses (iv), (v), and (vi) respectively; and

14 (3) by inserting a new clause (iii) to read as follows:

15 “(iii) In addition, bond or release authorized by the Secretary under clause
 16 (ii) does not constitute an admission or parole of the alien into the United States and
 17 the Secretary at any time may revoke such bond or conditional release, and re-arrest
 18 and detain any alien so authorized.”

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

21
 22 **SEC. 122.AGGRAVATED FELONY.**

23 (a) DEFINITION OF AGGRAVATED FELONY.—

24 (1) Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

25 (A) by striking “The term ‘aggravated felony’ means—” and
 26 inserting “Notwithstanding any other provision of law, the term ‘aggravated
 27 felony’ applies to an offense described in this paragraph, whether in
 28 violation of Federal or State law, and to such an offense in violation of the
 29 law of a foreign country for which the term of imprisonment was completed
 30 within the previous 15 years, and regardless of whether the conviction was
 31 entered before, on, or after September 30, 1996, and means—”;

1 (B) in subparagraph (A), by striking “murder, rape, or sexual abuse
 2 of a minor;” and inserting “murder, rape, aggravated sexual abuse, or sexual
 3 abuse of a minor;

4 (C) in subparagraphs (F) and (G) by striking “at least one year” and
 5 inserting “is more than five years;”;

6 (D) in subparagraphs (R) and (S) by striking “at least one year” and
 7 inserting “more than five years;”;

8 (E) in subparagraph (P) by striking “at least 12 months” and
 9 inserting “more than five years;”;

10 (F) by striking the undesignated matter following subparagraph (U).

11 (G) in subparagraph (N) by inserting ‘committed for purpose of
 12 commercial advantage’ after ‘smuggling’; and by adding at the end a
 13 semicolon;

14 (H) in subparagraphs (D) and (M)(i) by striking “\$10,000” and
 15 inserting “100,000”;

16 (I) in subparagraph (T) by striking “2 years” and inserting “more
 17 than five years;”.

18 (b) REVISION OF CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT
 19 RESIDENTS.— Section 240A(a)(3) (8 U.S.C. 1229b(a)(3)) is amended by striking the
 20 period and inserting “(or felonies) for which the alien has been sentenced to an aggregate
 21 term of imprisonment of at least 5 years.”

22 (c) EFFECTIVE DATE AND APPLICATION.—

23 (1) IN GENERAL.—The amendments made by subsection (a) and (b)
 24 shall—

25 (A) take effect on the date of the enactment of this Act; and

26 (B) apply to any conviction that occurred before, on, or after the date
 27 of the enactment of this Act provided an individual has not received a final
 28 administrative order of removal before the date of enactment of this Act.

29 (2) APPLICATION OF IIRIRA AMENDMENTS.—Except as amended by
 30 this section, the amendments to section 101(a)(43) of the Immigration and
 31 Nationality Act made by section 321 of the Illegal Immigration Reform and
 32 Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 110 Stat.

1 3009-627) shall continue to apply, whether the conviction was entered before, on,
 2 or after September 30, 1996.

3
 4 **SEC. 123. FINALITY OF CONVICTIONS.**

5
 6 (a) Section 101(a)(48)(A) of the Immigration and Nationality Act (8 U.S.C.

7 § 1101(a)(48)(A)) is amended by

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

15
 16 (2) in subparagraph (B)—

17 (A) by inserting `only' after `deemed to include'; and

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

22
 23 (b) EFFECTIVE DATE.-The amendments made by subsection (a) shall apply to convictions
 24 and sentences entered before, on, or after the date of the enactment of this Act; provided an
 25 individual has not received a final administrative order of removal before the date of
 26 enactment of this Act.

27
 28 **SEC. 124. CANCELLATION OF REMOVAL**

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

31 (b) BURDEN OF PROOF -- Section 1229b(b)(1)(D) of title 8, United States Code,
 32 is amended by-
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(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—

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

14
 15 **SEC. 128. VISA WAIVER PROGRAM REFORMS.**

16
 17 (a) Definitions- Section 217(c)(1) of the Immigration and Nationality Act (8 U.S.C.
 18 1187(c)(1)) is amended to read as follows:

19 ‘(1) AUTHORITY TO DESIGNATE; DEFINITIONS-

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

23 ‘(B) DEFINITIONS- In this subsection:

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

26 ‘(I) the Committee on Foreign Relations, the Committee on Homeland Security and
 27 Governmental Affairs, and the Committee on the Judiciary of the Senate; and

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

30 ‘(ii) OVERSTAY RATE-

31 ‘(I) INITIAL DESIGNATION- The term ‘overstay rate’ means, with respect to a
 32 country being considered for designation in the program, the ratio of--

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

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

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

10 ‘(aa) the number of nationals of that country who were admitted to the United
11 States under this section or on the basis of a nonimmigrant visa under section
12 101(a)(15)(B) whose periods of authorized stay ended during a fiscal year but who
13 remained unlawfully in the United States beyond such periods; to

14 ‘(bb) the number of nationals of that country who were admitted to the United
15 States under this section or on the basis of a nonimmigrant visa under section
16 101(a)(15)(B) whose periods of authorized stay ended during that fiscal year.

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

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

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

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

26 (2) in subsection (c)--

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

31 (B) in paragraph (5)(A)(i)(III), by striking ‘Committee on the Judiciary, the
32 Committee on Foreign Affairs, and the Committee on Homeland Security, of the House of

1 Representatives and the Committee on the Judiciary, the Committee on Foreign Relations,
 2 and the Committee on Homeland Security and Governmental Affairs of the Senate’ and
 3 inserting ‘appropriate congressional committees’; and

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

5 (b) Revision of Discretionary Considerations for Program Country designation-

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

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

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

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

17 ‘(A) GENERAL NUMERICAL LIMITATIONS-

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

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

25 (2) QUALIFICATION CRITERIA- Section 217(c)(3) of such Act (8 U.S.C.
 26 1187(c)(3)) is amended to read as follows:

27 ‘(3) QUALIFICATION CRITERIA- After designation as a program country under
 28 section 217(c)(2), a country may not continue to be designated as a program country unless
 29 the Secretary of Homeland Security, in consultation with the Secretary of State, determines,
 30 pursuant to the requirements under paragraph (5), that the designation will be continued.’.

1 (3) INITIAL PERIOD- Section 217(c) is further amended by striking subsection
 2 (c)(4).

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

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

8 (5) COMPUTATION OF VISA REFUSAL RATES; JUDICIAL REVIEW- Section
 9 217(c)(6) of such Act (8 U.S.C. 1187(c)(6)) is amended to read as follows:

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

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

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

20 (6) VISA WAIVER INFORMATION- Section 217(c)(7) of such Act (8 U.S.C.
 21 1187(c)(7)) is amended--

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

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

25 (7) WAIVER AUTHORITY- Section 217(c)(8) of such Act (8 U.S.C. 1187(c)(8))
 26 is amended to read as follows:

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

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

31 ‘(B) the Secretary of Homeland Security determines that the totality of the
 32 country’s security risk mitigation measures provide assurance that the country’s

1 participation in the program would not compromise the law enforcement, security interests,
2 or enforcement of the immigration laws of the United States;

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

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

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

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

17 '(f) Termination of Designation; Probation-

18 '(1) DEFINITIONS- In this subsection:

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

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

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

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

29 '(B) INITIAL PROBATIONARY PERIOD- If the Secretary of Homeland Security
30 determines that a program country is not in compliance with the program requirements
31 under subparagraphs (A)(ii) through (F) of subsection (c)(2), the Secretary of Homeland

1 Security shall place the program country in probationary status for the fiscal year following
2 the fiscal year in which the periodic evaluation is completed.

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

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

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

16 '(i) the Secretary may terminate the country's participation in the program; or
17 '(ii) on an annual basis, the Secretary may continue the country's probationary
18 status if the Secretary, in consultation with the Secretary of State, determines that the
19 country's continued participation in the program is in the national interest of the United
20 States.

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

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

28 '(B) NONCOMPLIANCE DURING ADDITIONAL PERIODS- The Secretary
29 shall terminate the country's participation in the program if the Secretary determines during
30 the latest periodic evaluation required by subsection (c)(5)(A) that the program country
31 continues to be in non-compliance with the program requirements under subparagraphs
32 (A)(ii) through (F) of subsection (c)(2).

1 ‘(5) EFFECTIVE DATE- The termination of a country’s participation in the
2 program under paragraph (3)(B) or (4)(B) shall take effect on the first day of the first fiscal
3 year following the fiscal year in which the Secretary determines that such participation
4 shall be terminated. Until such date, nationals of the country shall remain eligible for a
5 waiver under subsection (a).

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

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

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

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

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

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

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

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

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

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

31 (g) Sense of Congress on Priority for Review of Program Countries- It is the sense
32 of Congress that the Secretary of Homeland Security, in the process of conducting

1 evaluations of countries participating in the visa waiver program under section 217 of the
 2 Immigration and Nationality Act (8 U.S.C. 1187), should prioritize the reviews of countries
 3 in which circumstances indicate that such a review is necessary or desirable.

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

7
 8 **SEC. 129. INTERVIEW WAIVERS FOR LOW RISK VISA APPLICANTS.**

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

10
 11 (D) by the Secretary of State, in consultation with the Secretary of Homeland Security, for
 12 such aliens or classes of aliens

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

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

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

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

22
 23 **SEC. 130. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD**
 24 **OFFENSES.**

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

26 (1) IN GENERAL.—Chapter 75 of title 18, United States Code, is amended
 27 After 1546. Fraud and misuse of visas, permits, and other documents., to add:

28
 29 “SEC. 1547. TRAFFICKING IN PASSPORTS.

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

31 “(a) and without lawful authority produces, issues, or transfers 10 or more
 32 passports;

1 “(b) forges, counterfeits, alters, or falsely makes 10 or more passports;
 2 “(c) secures, possesses, uses, receives, buys, sells, or distributes 10 or more
 3 passports, knowing the passports to be forged, counterfeited, altered, falsely made,
 4 stolen, procured by fraud, or produced or issued without lawful authority; or
 5 “(d) completes, mails, prepares, presents, signs, or submits 10 or more applications
 6 for a United States passport, knowing the applications to contain any materially false
 7 statement or representation, shall be fined under this title, imprisoned not more than 20
 8 years, or both.

9 “(b) PASSPORT MATERIALS.—Any person who knowingly and without lawful
 10 authority produces, buys, sells, possesses, or uses any official material (or counterfeit of
 11 any official material) used to make 10 or more passports, including any distinctive paper,
 12 seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this
 13 title, imprisoned not more than 20 years, or both.

14
 15 “SEC. 1548. TRAFFICKING IN IMMIGRATION DOCUMENTS.

16 “(a) Any person who, during any period of 3 years or less, knowingly—
 17 “(1) and without lawful authority produces, issues, or transfers 10 or more
 18 immigration documents;
 19 “(2) forges, counterfeits, alters, or falsely makes 10 or more immigration
 20 documents;
 21 “(3) secures, possesses, uses, buys, sells, or distributes 10 or more
 22 immigration documents, knowing the immigration documents to be forged,
 23 counterfeited, altered, stolen, falsely made, procured by fraud, or produced or
 24 issued without lawful authority; or
 25 “(4) completes, mails, prepares, presents, signs, or submits 10 or more
 26 immigration documents knowing the documents to contain any materially false
 27 statement or representation,
 28 shall be fined under this title, imprisoned not more than 20 years, or both.

29 “(b) IMMIGRATION DOCUMENT MATERIALS.—Any person who
 30 knowingly and without lawful authority produces, buys, sells, or possesses any
 31 official material (or counterfeit of any official material) used to make 10 or more
 32 immigration documents, including any distinctive paper, seal, hologram, image,

1 text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned
2 not more than 20 years, or both.

3 “SEC. 1549. SCHEMES RELATING TO MARRIAGE FRAUD.

4 (a) MULTIPLE MARRIAGES.—Any person who:

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

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

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

10 “(b) DURATION OF OFFENSE.—

11 An offense under subsection (a) continues as long as the marriage continues.

12 “(c) TERMINATION OF IMMIGRATION BENEFIT UPON CONVICTION.—

13 Upon conviction of a defendant pursuant to subsection (a), the District Court shall—

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

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

19 “SEC. 1550. IMMIGRATION SCHEMES TO DEFRAUD.

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

24 “(1) defraud any person, or

25 “(2) obtain or receive money or anything else of value from any person, by
26 means of false or fraudulent pretenses, representations, or promises,

27 “shall be fined under this title, imprisoned not more than 10 years, or both.

28
29 “SEC. 1551. ALTERNATIVE PENALTIES FOR CERTAIN OFFENSES.—

30 “Notwithstanding any other provision of this title, the maximum term of
31 imprisonment that may be imposed for an offense under this chapter—

1 “(a) if committed to facilitate a drug trafficking crime (as defined in section 929(a))
2 is 20 years; and

3 “(b) if committed to facilitate an act of international terrorism (as defined in section
4 2331) is 25 years.

5 (c) Whoever violates any section in this Chapter-

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

8
9 ‘(2) with the intent to facilitate an act of international or domestic terrorism
10 (as defined in section 2331 of this Title), shall be fined under this Title, imprisoned
11 not more than 25 years, or both.

12
13 ‘(d) Whoever violates any section in this Chapter-

14
15 ‘(1) knowing that such violation will facilitate the commission of any
16 offense against the United States (other than an offense in this Chapter) or
17 against any State, which offense is punishable by imprisonment for more
18 than 1 year; or

19
20 ‘(2) with the intent to facilitate the commission of any offense against the
21 United States (other than an offense in this Chapter) or against any State, which
22 offense is punishable by imprisonment for more than 1 year, shall be fined under
23 this Title, imprisoned not more than 20 years, or both.

24
25 “SEC. 1552. SEIZURE AND FORFEITURE.—

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

30 “(b) APPLICABLE LAW.—Seizures and forfeitures under this section shall be
31 governed by the provisions of chapter 46 relating to civil forfeitures, except that such duties
32 as are imposed upon the Secretary of the Treasury under the customs laws described in

1 section 981(d) shall be performed by such officers, agents, and other persons as may be
 2 designated for that purpose by the Secretary of Homeland Security, the Secretary of State,
 3 or the Attorney General.

4
 5 “SEC. 1553. ADDITIONAL JURISDICTION.—

6 “(a) IN GENERAL.—Any person who commits an offense under this chapter
 7 within the special maritime and territorial jurisdiction of the United States shall be
 8 punished as provided under this chapter.

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

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

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

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

20 “(4) the offense is committed to facilitate an act of international terrorism
 21 (as defined in section 2331) or a drug trafficking crime (as defined in section
 22 929(a)(2)) that affects or would affect the United States;

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

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

28
 29 “SEC. 1554. DEFINITIONS.—As used in this chapter:

30
 31 “(1) The term ‘immigration document’—

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

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

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

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

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

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

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

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

19 “(5) The term ‘passport’ means—

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

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

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

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

30 “(8) The term ‘produce’ means to make, prepare, assemble, issue, print,
 31 authenticate, or alter.

1 “(9) The term ‘State’ means a State of the United States, the District of Columbia,
2 or any commonwealth, territory, or possession of the United States.

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

7
8 “SEC. 1555.AUTHORIZED LAW ENFORCEMENT ACTIVITIES.

9 “(a) Nothing in this chapter shall prohibit any lawfully authorized investigative,
10 protective, or intelligence activity of a law enforcement agency of the United States, a
11 State, or a political subdivision of a State, or an intelligence agency of the United States, or
12 any activity authorized under title V of the Organized Crime Control Act of 1970 (84 Stat.
13 933).

14 “(b) Protection for Refugees and Asylum Seekers—

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

23 “(2) NO PRIVATE RIGHT OF ACTION—The guidelines required by
24 subparagraph (1), and any internal office procedures adopted pursuant thereto, are
25 intended solely for the guidance of attorneys for the United States. This section, the
26 guidelines required by subparagraph (1), and the process for determining such
27 guidelines are not intended to, do not, and may not be relied upon to create any
28 right or benefit, substantive or procedural, enforceable at law by any party in any
29 administrative, civil, or criminal matter.”.

30
31 (b) Table of Sections Amendment – The table of section for chapter 75 of title 18, is
32 amended by:



- 1 (1) striking “1557. Alternative Imprisonment maximum for certain offenses.”
- 2 (2) adding at the end:
- 3 “1547. Trafficking in Passports.
- 4 “1548. Trafficking in Immigration Documents
- 5 “1549. Schemes Relating to Marriage Fraud
- 6 “1550. Immigration Schemes to Defraud
- 7 “1551. Alternative penalties for certain offenses.
- 8 “1552. Seizure and forfeiture.
- 9 “1553. Additional jurisdiction.
- 10 “1554. Definitions.
- 11 “1555. Authorized law enforcement activities.

12
 13 **SEC. 131. INADMISSIBILITY AND DEPORTABILITY FOR PASSPORT AND**
 14 **IMMIGRATION FRAUD OFFENSES.**

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

- 17 (1) in subclause (I), by striking “, or” at the end and inserting a semicolon;
- 18 (2) in subclause (II), by striking the comma at the end and inserting “; or”;
- 19 and
- 20 (3) by inserting after subclause (II) the following:

21 “(III) a violation of (or a conspiracy or attempt to violate) sections 1547,
 22 1548, 1549, or 1550 of title 18, United States Code.”

23 (b) DEPORTABILITY.—Section 237(a)(3)(B)(iii) (8 U.S.C. 1227(a)(3)(B)(iii)) is
 24 amended to read as follows:

25 “(iii) of a violation of (or a conspiracy or attempt to violate) sections 1547, 1548,
 26 1549, or 1550 of title 18, United States Code.”

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

30
 31 **SEC 132. COMBATING SCHEMES TO DEFRAUD ALIENS**
 32

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

6 (1) Persons submitting applications, petitions, motions, or other written materials
7 relating to immigration benefits or relief from removal under the immigration laws will be
8 required to identify who (other than immediate family members) assisted them in preparing
9 or translating the immigration submissions; and
10

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

15 (b) Civil Injunctions against Immigration Service Providers
16

17 (1) Authority to seek injunction—The Attorney General may commence a civil
18 action in the name of the United States to enjoin any immigration service provider who has
19 engaged in any fraudulent conduct that substantially interferes with the proper
20 administration of the immigration laws as defined in section 101(a)(17) of the Immigration
21 and Nationality Act (8 U.S.C. 1101(a)(17)) or who willfully misrepresents his or her legal
22 authority to provide representation before the Department of Justice or Department of
23 Homeland Security.
24

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

1 (c) Misrepresentation, Fraud, and False Statements

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

3 (A) by inserting:

4 “(a) § 1041.MISREPRESENTATION.—

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

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

19
20 (B) Table of Sections Amendment – The table of section for chapter 47 of title 18,
21 United States Code, is amended by adding after the item relating to section 1040 the
22 following:

23 “Sec. 1041. Misrepresentation”

24
25 **SEC. 133. STATUTE OF LIMITATIONS FOR VISA FRAUD AND OTHER FALSE**
26 **STATEMENTS INVOLVING HUMAN RIGHTS VIOLATIONS**

27
28 Section 3291 of Title 18 is amended by inserting at the end the following new paragraph:

29
30 “Notwithstanding section 3282, no person may be prosecuted, tried, or
31 punished for a violation of sections 1001, 1015, or 1621 where the fraud or
32 false statements at issue concerns participation in a human rights offense

1 unless the indictment or the information is filed not later than 10 years after
 2 the offense was committed. For purposes of this statute, ‘human rights
 3 offense’ is defined as conduct described in Title 8 section 1182(a)(3)(E),
 4 and Title 18 sections 2441(c), and 2442.”

5
 6 **SEC. 134. CRIMINAL PENALTY FOR BRINGING HUMAN RIGHTS**
 7 **VIOLATORS INTO THE UNITED STATES.**

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

15
 16 (b) EFFECTIVE DATE.—The amendment made by this section shall take effect upon
 17 enactment of this Act and shall apply to any act on or after the date of enactment aiding or
 18 assisting to bring the inadmissible alien into the United States who was inadmissible at the
 19 time of entry.

20
 21 **SEC. 135. INCARCERATION OF CRIMINAL ALIENS.**

22 (a) INSTITUTIONAL REMOVAL PROGRAM.—

23 (1) CONTINUATION.—The Secretary shall continue to operate the
 24 Institutional Removal Program (referred to in this section as the “Program”) or shall
 25 develop and implement another program to—

26 (A) identify removable criminal aliens in Federal and State
 27 correctional facilities;

28 (B) conduct proceedings in conformity with section 240 before the
 29 criminal aliens complete their criminal sentences; and

30 (C) remove such aliens from the United States after the completion
 31 of their sentences.

1 (2) EXPANSION.—The Secretary may extend the scope of the Program to
 2 all States.

3
 4 (b) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be
 5 used to the maximum extent practicable to make the Program available in remote locations.
 6 Mobile access to Federal databases of aliens shall be used to the maximum extent
 7 practicable to make these resources available to State and local law enforcement agencies
 8 in remote locations.

9
 10 **SEC. 136. REFORMS TO PROCESSING OF ILLEGAL ALIENS APPREHENDED**
 11 **BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS AND DATA**
 12 **COLLECTION.**

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

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

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

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

27 (c) The Secretary shall—

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

30 (2) notify the detaining Federal, State or local law enforcement agency that, unless
 31 the Department has taken custody of the alien within 48 hours of the issuance of the

1 detainer, excluding holidays and weekends, the agency may not maintain detention or
 2 custody of an alien who would otherwise be released;

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

5 (A) the purpose and scope of detainers;

6 (B) the role and responsibilities of Federal, State or local law enforcement
 7 agencies in the detainer issuance process; and

8 (C) the consequences to Federal, State or local law enforcement agencies for
 9 violating a statutory, regulatory or policy provision governing the detainer issuance
 10 process.

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

13 (A) notice of the detainer;

14 (B) information on how an individual can notify the Department if it
 15 believes the detainer has been inappropriately issued; and

16 (C) notice that the detainer lapses if the Department does not take custody of
 17 the alien within 48 hours.

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

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

25 (1) the criminal charge for which the individual was detained or
 26 arrested;

27 (2) the Federal, State or local law enforcement agency that initially
 28 detained or arrested the individual;

29 (3) the date the Federal, State or local law enforcement agency initially
 30 detained or arrested the individual;

31 (4) the date on which the detainer was issued;

32 (5) the basis for issuing of the detainer;

- 1 (6) the date on which the Department took custody of the individual;
- 2 (7) the age and country of origin of the individual against whom the
- 3 detainer was issued;
- 4 (8) the ultimate disposition of any immigration case, including whether
- 5 the individual was determined to be a United States citizen or to be
- 6 in lawful immigration status; and
- 7 (9) whether the individual was removed.

8

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

16

17 (g) Notwithstanding any other provision of law (statutory or non-statutory), including but
 18 not limited to section 2241 of Title 28, or any other habeas corpus provision, and sections
 19 1331, 1361, and 1651 of such title, no court shall have jurisdiction to review any decision
 20 or action by the Secretary regarding whether or when to issue a detainer, except that an
 21 alien may challenge actual detention after the commencement of the 48-hour period
 22 described in subsection (b)(2) with a petition for a writ of habeas corpus under section 2241
 23 of Title 28. Nothing in this subsection shall be construed to preclude review of
 24 constitutional claims or questions of law raised in a petition for review filed in accordance
 25 with 8 U.S.C. 1252(a)(2)(D).

26

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

28 **AGREEMENTS**

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

- 30 (1) by striking “Attorney General” each place it appears and inserting
- 31 “Secretary”;

1 (2) in subsection (1), by striking “a function of an immigration officer in
 2 relation to the investigation, apprehension, or detention of aliens in the
 3 United States (including the transportation of such aliens across State lines
 4 to detention centers)” and inserting “immigration-related duties that relate to
 5 detention operations supported by U.S. Immigration and Customs
 6 Enforcement”.

7
 8 (b) REGULATIONS. --Section 287(g)(8 U.S.C. 1357(g)) is amended by inserting after
 9 subsection (10), subsection (11):

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

12 (A) specify the nature of the delegated authority to participating agencies;

13 (B) specify the circumstances under which the detention officers who are delegated
 14 authority under section 287(g) may operate; and

15 (C) specify the training and supervision requirements of participating agencies
 16 required by the Secretary.”

17
 18 (c) DATA COLLECTION. --Section 287(g)(8 U.S.C. 1357(g)) is further amended by
 19 inserting after subsection (11), subsection (12):

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

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

27 (i) the criminal charge for which the individual was detained,
 28 arrested and the disposition of any criminal case against the individual;

29 (ii) the law enforcement agency that initially detained or arrested the
 30 individual, including geographic data and jurisdiction designation;

31 (iii) the date and time of the initial encounter with the individual;

32 (iv) the location of the initial encounter with the individual;

- 1 (v) the duration of the initial encounter with the individual;
- 2 (vi) the age, race, ethnicity, and country of origin of any individual
- 3 arrested pursuant to such agreement and
- 4 (vii) whether the individual was a victim or a witness to a crime for
- 5 which he or she was arrested or detained.

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

8 “For purposes of enforcing the anti-discrimination provision of Title VI of
 9 the Civil Rights Act of 1964, 42 U.S.C. § 2000d, the anti-discrimination
 10 provision of the Omnibus Crime Control Act and Safe Streets Act of 1968,
 11 42 U.S.C. § 3789d, the Civil Rights of Institutionalized Persons Act of 1980,
 12 42 U.S.C. § 1997, the Violent Crime Control and Law Enforcement Act of
 13 1994, 42 U.S.C. § 14141, and other federal civil rights laws, the Attorney
 14 General shall have access to all data collected and maintained under
 15 paragraph (12). The Secretary and Attorney General will enter into an
 16 agreement setting forth the process for data sharing consistent with the
 17 purpose of this subsection.”

18
 19 **SUBTITLE C – FIGHTING TRANSNATIONAL CRIME**

20
 21 **SEC. 138. LAUNDERING OF MONETARY INSTRUMENTS.**

22 Section 1961(1) of title 18, United States Code, is amended—
 23 in subsection (1)(B) by inserting “section 1541 (relating to trafficking in passports),
 24 after “section 1513 (relating to retaliating against a witness, victim, or an informant),” and
 25 by inserting “section 1545 (relating to schemes to defraud aliens),” after “section 1544
 26 (relating to misuse of passport),” and by inserting “section 1547 (relating to marriage
 27 fraud), section 1548 (relating to attempts and conspiracies),” after “section 1546 (relating
 28 to fraud and misuse of visas, permits, and other documents),” and by inserting “section
 29 1028A (relating to aggravated identity theft),” after “section 1028 (relating to fraud and
 30 related activity in connection with identification documents),”; and(2) in subsection (1)(F) ,
 31 by inserting “section 274A(a)(1), 274A(a)(2) or 274A(i) (relating to the unlawful
 32 employment of aliens),” after “section 274 (relating to bringing in and harboring certain

1 aliens),” and by inserting “or section 295(relating to organized human smuggling), section
 2 296 (relating to abusive treatment of smuggled migrants), section 297 (relating to hindering
 3 immigration, border, and customs controls),” after “section 278 (relating to importation of
 4 alien for immoral purpose) if the act indictable under such section of such Act was
 5 committed for the purpose of financial gain,” ;

6
 7 **SEC. 139. KNOWLEDGE REQUIREMENT IN CONCEALMENT**
 8 **MONEY LAUNDERING**

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

10 follows:“(B) knowing that the transaction –

11 “(i) conceals or disguises, or is intended to conceal or disguise, the nature,
 12 source, location, ownership or control of the proceeds of some form of
 13 unlawful activity; or

14 “(ii) avoids, or is intended to avoid, a transaction reporting
 15 requirement under state or federal law,”

16 Section 1956(a)(2)(B) of title 18, United States Code, is amended to read as follows:

17 “(B) knowing that the monetary instrument or funds involved in the
 18 transportation, transmission or transfer represent the proceeds of some form of
 19 unlawful activity, and knowing that such transportation, transmission, or
 20 transfer --

21 “(i) conceals or disguises, or is intended to conceal or disguise, the nature,
 22 source, location, ownership or control of the proceeds of some form of
 23 unlawful activity; or

24 “(ii) avoids, or is intended to avoid, a transaction reporting
 25 requirement under state or federal law,”

26 **SEC. 140. ILLEGAL MONEY TRANSMITTING BUSINESSES**

27 (a) Section 1960(b)(1)(B) of title 18, United States Code, is amended by inserting the
 28 following before the semi-colon: “, whether or not the defendant knew that the operation
 29 was required to comply with such registration requirements or regulations”.

30 (b) TECHNICAL AMENDMENTS.– Section 1960 of title 18, United States Code, is
 31 amended – (1) in the title by striking “unlicensed” and inserting “illegal”;
 32 (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.

1 “(B) ENHANCED FINE FOR AGGRAVATED CASES. – Whoever
 2 violates this section while violating another law of the United States, other
 3 than 31 U.S.C. §
 4 5316 or § 5324(c), or as part of a pattern of any unlawful activity,
 5 including violations of 31 U.S.C. § 5316 or § 5324(c), shall be fined
 6 twice the amount provided in subsection (b)(3) or (c)(3) of section 3571
 7 of title 18, United States Code.”
 8

9 **SEC. 142. INCORPORATING INFORMAL VALUE TRANSFER SYSTEMS**
 10 **INTO SECTION 1957**

11 Section 1956(a)(1) of title 18, United States Code, is amended by striking “For purposes
 12 of this paragraph, a financial transaction” and inserting “For purposes of this paragraph
 13 and Section 1957, a financial transaction or a monetary transaction”.
 14

15 **SEC. 143. CRIMINAL FORFEITURE.**

16 Section 982 of Title 18 is amended:

17 (1) in subsection (a)(2)(B) by inserting “1028A” between “1028” and
 18 “1029”, and

19 (2) in subsection (a)(6)(A):

20 (A) by striking “ 274A(a)(1) or 274A(a)(2),” and inserting “295,
 21 296, or 297”; and

22 (B) by inserting “and 1028A” after “1028” and

23 (3) in subsection (a)(8) by inserting “and 1028A” after “1028.”.
 24

25 **SEC. 144. SUBPOENAS IN MONEY LAUNDERING AND FORFEITURE**
 26 **CASES**

27
 28 (a) Section 986 of title 18, United States Code, is amended as
 29 follows

30 “(a)

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

8 “(2) At any time after the commencement of any action for forfeiture by
 9 the United States under section 981 or 982 of this title, or sections 5317
 10 and 5332 of title 31, United States Code, or the Controlled Substances Act,
 11 any party may request the Clerk of the Court in the district in which the
 12 proceeding is pending to issue a subpoena duces tecum to any financial
 13 institution, as defined in section
 14 5312(a) of title 31, United States Code, to produce books, records and
 15 any other documents at any place designated by the requesting party. All
 16 parties to the proceeding shall be notified of the issuance of any such
 17 subpoena.”; and

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

20
 21 (b) AMENDMENTS TO SECTION 3486.— Section 3486(a) of title 18, United States
 22 Code, is amended --

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

24
 25 (2) by striking “,” at the end of subsection (ii), inserting “; or” after “the Treasury”
 26 in that subsection, and inserting the following new subsection (iii) after subsection
 27 (ii):

28 “(iii) an offense under section 1956, 1957, or 1960 of this title, or section
 29 5313, 5316, 5324, 5331 or 5332 of title 31, or an offense against a foreign
 30 nation constituting specified unlawful activity under section 1956, or a
 31 criminal or civil forfeiture based upon an offense enumerated in this

1 subsection or for which enforcement could be brought under section 2467 of
2 title 28, the Attorney General; the Secretary of Homeland Security; or the
3 Secretary of the Treasury,”; and

4 (3) by striking the word “or” before subsection (a)(6)(B)(iv), inserting “, or”
5 after the word “witnesses” in that subsection, and inserting the following new
6 subsection (B)(v), as follows:

7 “(v) dissipation, destruction, removal, transfer, damage, encumbrance, or other
8 unavailability of property that may become subject to forfeiture or an
9 enforcement action under 2467 of title 28, United States Code.”

10 (c) FAIR CREDIT REPORTING ACT AMENDMENT.— Section 604(a)(1) of the Fair
11 Credit Reporting Act (15 U.S.C. § 1681b(a)(1)) is amended by inserting before the
12 period at the end “, or a subpoena issued pursuant to section 5318 of title 31 or section
13 3486 of title 18”.

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

16 “(1) in paragraph (b)(2)(A), by striking “grand jury subpoena” and inserting
17 “subpoena for records”; and

18 “(2) in paragraph (b)(3)(B), by deleting “or a Department of Justice
19 subpoena (issued under section 3486 of title 18)” and by inserting “, a
20 subpoena issued under section 3486 of title 18, or an order or subpoena
21 issued pursuant to section 3512 of title 18, section 5318 of title 31, or
22 section 1782 of title 28, ” after “grand jury subpoena”, and

23 “(3) in paragraph (b)(3)(B)(i) by inserting “, 1960, or an offense against a
24 foreign nation constituting specified unlawful activity under section 1956,
25 or a foreign offense for which enforcement of a foreign forfeiture
26 judgment could be brought under section 2467 of title 28” after “1957”.

27 (e) RIGHT TO FINANCIAL PRIVACY ACT.-- Section 3420 of title 12, United States
28 Code, is amended in subsection (b)(1)(A) by deleting “or 1957” and inserting “, 1957, or
29 1960” and by deleting “and 5324” and inserting “, 5322, 5324, 5331, and 5332 of title
30 31”;

31

1 **SEC. 145. CIVIL FORFEITURE CASES BASED UPON FOREIGN OFFENSES**

2
3 (a) Section 981(b)(4) of title 18, United States Code, is amended by:

4
5 (1) in subsection (A) striking “30” and inserting “90” and striking “43(e)” and
6 inserting “43(c)”; and

7
8 (2) in subsection (B) by inserting the following after the words “under this
9 subsection”: “or to receive an order, affidavit, or evidence in support of an
10 application to preserve property pursuant to section 2467 of title 28, United
11 States Code.”

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

14
15 (c) Section 981(k) of title 18, United States Code, is amended to add new subsections (5)
16 and

17
18 (6), as follows:

19 “(5) Venue. — A forfeiture proceeding pursuant to this subsection may be brought
20 in any district court where a forfeiture action against the underlying property
21 located in a foreign country could have been brought as set forth in section
22 1355(b) of title 28.

23
24 “(6) Attorney fees and liability.—The provisions of section 2465 of title 28 do
25 not apply to any procedure initiated by the United States under this section in
26 which a foreign financial institution establishes ownership in accordance with
27 subsection (4)(B)(ii).

28
29 **SEC. 146. UPDATING ADMINISTRATIVE FORFEITURE AUTHORITY**

1 (a) ADMINISTRATIVE FORFEITURE OF FUNDS.– Section 1607(a) of title 19, United
2 States Code, is amended by --

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

5
6 (2) inserting “or” after the semi-colon at the end of paragraph (4); and

7
8 (3) inserting the following after paragraph (4):

9
10 “(5) such seized merchandise comprises funds accessible through a prepaid access
11 device or other portable storage device;”.

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

16 **SEC. 147. ALIEN SMUGGLING AND HARBORING**

17
18 (a) REAL PROPERTY USED IN ALIEN SMUGGLING AND HARBORING.– Section
19 274(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1324(b)(1)) is amended by --

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

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

25
26 (b) PROCEEDS OF ALIEN SMUGGLING AND HARBORING.– Section 274(b) of the
27 Immigration and Nationality Act (8 U.S.C. § 1324(b)) is amended by adding the
28 following after paragraph (3):

29 “(4) For purposes of this subsection and Section 982(a)(6) of title 18, the term
30 “proceeds” means any property derived from or obtained or retained, directly or

1 indirectly, as a consequence of an act or omission in violation of this section,
 2 including the gross receipts of such activity.”

3
 4 **SEC. 148. PROPERTY DETAINED AT THE BORDER**

5
 6 Section 983(a)(1) of title 18, United States Code, is amended –

7
 8 (1) in subparagraph (A), by adding the following after clause (v):

9 “(vi) In cases where property is detained at an international border or port of
 10 entry for the purpose of examination, testing, inspection, obtaining
 11 documentation or other investigation relating to the importation of the property
 12 into, or the exportation of the property out of, the United States, such period of
 13 detention shall not be included in the 60-day period described in clause (i). In
 14 such cases, the 60-day period shall begin to run when the period of detention is
 15 concluded, and a law enforcement agency of the United States seizes the
 16 property for the purpose of forfeiture to the United States.”; and

17 (2) in subparagraph (D), –

18
 19 (A) by striking “or” at the end of clause (iv);

20
 21 (B) by redesignating clause (v) as clause (vi); and

22
 23 (C) by inserting the following after clause (iv):

24
 25 “(v) initiation of a forfeiture proceeding before the seizing agency has
 26 received the results of a scientific test or laboratory analysis of the seized
 27 property that is material to the determination whether the property is
 28 subject to forfeiture; or”

29
 30 **SEC. 149. PERMIT INTERNATIONAL COOPERATION REGARDING WITNESS**
 31 **RELOCATION.**

1 (a) Section 3521(a)(1) of Title 18, United States Code, is amended by inserting
 2 after the phrase “State government” the following phrase: “or for a foreign authority”;

3 (b) Section 3526(b) of Title 18, United States Code, is amended by inserting “or
 4 foreign authority” after “In any case in which a State government”; and Section
 5 3526(b)(2) of Title 18, United States Code, is amended by inserting at the beginning “where
 6 the request for protection is made by a State Government,” and by inserting at the end
 7 “Where the request for protection is made by a foreign authority, the Attorney General may
 8 enter into a similar agreement with that authority.”

9 (c) Section 3528 of Title 18, United States Code, is amended by inserting at the
 10 end, the following new paragraph: “For purposes of this chapter, the term “foreign
 11 authority” shall have the meaning given to that term in section 3512(h)(2) of this Title.
 12

13 **SEC. 150. PENALTIES RELATING TO VESSELS AND AIRCRAFT.**

14
 15 Section 243(c) (8 U.S.C. 1253(c)) is amended—

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

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

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

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

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

26 (5) by inserting:

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

30 (1) providing, or attempting to provide, an alien with humanitarian
 31 assistance, including emergency medical care or food or water;

32 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 (1) in paragraph (1), by inserting “or registered under the laws of the United States, or
 2 any State, Territory, District, or possession thereof,” after “or possession thereof,”; and

3 (2), in paragraph (5), by—

4 (A) inserting “or any aircraft registered under the laws of the United States,”
 5 after “possession thereof,”; and

6 (B) striking “over the high seas, or over any other waters within the admiralty
 7 and maritime jurisdiction of the United States”.

8
 9
 10 (d) Section 13, Title 18, United States Code, is amended by inserting the following after
 11 subsection (c):

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

19 **SEC. 152. ORGANIZED AND ABUSIVE HUMAN SMUGGLING**

20 **ACTIVITIES.**

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

23 “SEC. 295. ORGANIZED HUMAN SMUGGLING.

24 “(a) PROHIBITED ACTIVITIES.—Whoever, while acting for profit or other
 25 financial gain, knowingly directs, participates in, or furthers an effort or scheme to assist or
 26 cause five or more persons (other than a parent, spouse or child of the offender)—

27 “(1) to enter, attempt to enter, or prepare to enter the United States—

28 “(A) by fraud, falsehood, or other corrupt means,

29 “(B) at any place other than a port or place of entry designated by the
 30 Secretary, or

31 “(C) in a concealed manner or any other manner not prescribed by
 32 the immigration laws and regulations of the United States; or

33 “(2) to travel by air, land, or sea toward the United States (whether directly
 34 or indirectly)—

1 “(A) knowing that the persons seek to enter or attempt to enter the
2 United States without lawful authority, and

3 “(B) with the intent to aid or further such entry or attempted entry; or
4 “(3) to be transported or moved outside of the United States—

5 “(A) knowing that such persons are aliens in unlawful transit from
6 one country to another or on the high seas, and

7 “(B) under circumstances in which the persons are in fact seeking to
8 enter the United States without official permission or legal authority;

9 “shall be punished as provided in subsection (c) or (d).

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

13 “(c) BASE PENALTY.—Except as provided in subsection (d), any person who
14 violates subsection (a) or (b) shall be fined under title 18, imprisoned for not more than 20
15 years, or both.

16 “(d) ENHANCED PENALTIES.—Any person who violates subsection (a) or (b)
17 shall—

18 “(1) in the case of a violation during and in relation to which a serious
19 bodily injury (as defined in section 1365 of title 18) occurs to any person, be fined
20 under title 18, imprisoned for not more than 30 years, or both;

21 “(2) in the case of a violation during and in relation to which the life of any
22 person is placed in jeopardy, be fined under title 18, imprisoned for not more than
23 30 years, or both;

24 “(3) in the case of a violation involving 10 or more persons, be fined under
25 title 18, imprisoned for not more than 30 years, or both;

26 “(4) in the case of a violation involving the bribery or corruption of a U.S. or
27 foreign government official, be fined under title 18, imprisoned for not more than
28 30 years, or both;”

29 “(5) in the case of a violation involving robbery or extortion as defined in
30 section 1951(b)(1) and (2) of title 18, be fined under title 18, imprisoned for not
31 more than 30 years, or both;

1 “(6) in the case of a violation during and in relation to which any person is
2 subjected to an involuntary sexual act (as defined in section 2246(2) of title 18), be
3 fined under title 18, imprisoned for not more than 30 years, or both; or

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

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

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

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

17 “(a) **VIOLENCE AND SEXUAL ABUSE.**—

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

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

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

30 “(B) any offense under section 1111 (relating to murder), 1112
31 (relating to manslaughter), or 1113 (relating to attempt to commit murder or
32 manslaughter) of chapter 51 of title 18;

1 “(C) any offense under section 1581 (relating to peonage), 1583
2 (relating to enticement into slavery), 1584 (relating to sale into involuntary
3 servitude), 1585 (relating to seizure, detention, transportation, or sale of
4 slaves), 1589 (relating to forced labor), 1590 (relating to trafficking with
5 respect to peonage, slavery, involuntary servitude, or forced labor), or 1591
6 (relating to sex trafficking of children by force, fraud, or coercion) of
7 chapter 77 of title 18; and

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

10 “(b) ABANDONMENT.—Whoever, during and in relation to any offense under
11 section 274, 278, or 295 of this Act for which the person may be prosecuted in a court of
12 the United States, knowingly abandons or otherwise deserts a person under the offender’s
13 direction, control, or care in circumstances that place such person at a significant and
14 apparent risk of death, including by starvation, illness, or injury shall be fined under title
15 18, imprisoned for or any term of years or for life, or both.

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

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

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

24 “(b) DESTRUCTION OF UNITED STATES BORDER CONTROLS.—Whoever
25 knowingly and without lawful authorization destroys, alters, or damages any fence, barrier,
26 sensor, camera, or other physical or electronic device deployed by the Federal government
27 to control the border or a port of entry or otherwise seeks to construct, excavate, or make
28 any structure intended to defeat, circumvent or evade any such fence, barrier, sensor
29 camera, or other physical or electronic device deployed by the Federal government to
30 control the border or a port of entry shall be fined under title 18, imprisoned not more than
31 10 years, or both, and if, at the time of the offense, the person uses or carries a firearm or

1 who, in furtherance of any such crime, possesses a firearm, that person shall be fined under
 2 Title 18, imprisoned not more than 20 years, or both

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

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

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

9 (1) in paragraph (1)—

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

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

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

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

18 (c) STATUTE OF LIMITATIONS.—Section 3298 of title 18, United States Code,
 19 is amended by inserting “, 295, 296, or 297” after “274(a)”.

20
 21 **SEC. 153. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN**
 22 **IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.**

23
 24 (a) IN GENERAL.— Section 3291 of title 18, United States Code, is amended to
 25 read as follows:

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

28 “No person shall be prosecuted, tried, or punished for a violation of any section of
 29 chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa,
 30 and immigration offenses), 77 (relating to peonage, slavery, and trafficking in persons). or
 31 for a violation of any criminal provision under section 243, 266, 274, 274A, 275, 276, 277,
 32 or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324, 1324a, 1325,

1 1326, 1327, and 1328), or for an attempt or conspiracy to violate any such section, unless
2 the indictment is returned or the information filed not later than 10 years after the
3 commission of the offense.”.

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

7 “3291. Immigration, passport, and naturalization offenses.”.

8
9 **SEC. 154. DIRECTIVES TO THE UNITED STATES SENTENCING**
10 **COMMISSION.**

11 Pursuant to the authority under section 994 of title 28, United States Code, the
12 United States Sentencing Commission shall—

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

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

22
23 **SUBTITLE D: STRENGTHENING THE IMMIGRATION COURT SYSTEM**

24
25 **SECTION 155. IMMIGRATION COURTS PERSONNEL**

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

30 (1) 40 in fiscal year 2014;

31 (2) 50 in fiscal year 2015; and

1 (3) 50 in fiscal year 2016

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

5 (1) 30 in fiscal year 2014;

6 (2) 30 in fiscal year 2015; and

7 (3) 30 in fiscal year 2016

8

9 **SEC. 156. CLARIFYING IMMIGRATION JUDGE AUTHORITY**

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

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

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

19

20 **SEC. 157. DEFINING BOARD OF IMMIGRATION APPEALS**

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

23 “(53) the term “Board Member” means an attorney whom the Attorney General
24 appoints as an administrative judge within the Executive Office for Immigration
25 Review to serve on the Board of Immigration Appeals, qualified to review decisions
26 of immigration judges and other matters within the jurisdiction of the Board of
27 Immigration Appeals .”

1 (b) Section 1229a (a)(1) of title 8, United States Code, is amended by adding at the
2 end “The Board of Immigration Appeals shall review decisions of immigration judges
3 under this section.”
4

5 **SEC. 158. INCREASING ACCESS TO LEGAL SERVICES**

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

8
9 (A) by striking “removal” and inserting “immigration”

10
11 (B) by striking ‘(at no expense to the Government)’; and

12
13 (C) by adding at the end the following:

14
15 ‘The Government is not required to provide counsel to aliens under this
16 section; however, the Attorney General may, in his or her sole and unreviewable
17 discretion, provide counsel to aliens in immigration proceedings.’
18

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

20
21 (A) in subsection by striking ‘(at no expense to the Government)’; and

22
23 (B) by adding at the end the following:

24
25 ‘The Government is not required to provide counsel to aliens under this
26 section; however, the Attorney General may, in his or her sole and unreviewable
27 discretion, provide counsel at government expense to aliens in immigration
28 proceedings.’
29

30 (b) REPRESENTATION FOR PARTICULARLY VULNERABLE
31 ALIENS- The Attorney General, in consultation with the Secretary and the
32 Secretary of Health and Human Services, shall establish pilot programs to provide

1 counsel to unaccompanied alien children (as defined in 6 U.S.C. §279(g)(2)) and
 2 mentally incompetent aliens. There are authorized to be appropriated to the
 3 Attorney General such sums as may be necessary to carry out this section.
 4

5 **SEC. 159. TRAINING AND RESOURCE CENTER**

6
 7 (a) ESTABLISHMENT OF A TRAINING AND RESOURCE CENTER. - The
 8 Attorney General shall establish a Training and Resource Center for the purpose of
 9 providing training programs for adjudicators and staff of the Executive Office for
 10 Immigration Review and create and maintain country condition information that may be
 11 used by adjudicators in the Executive Office for Immigration Review. The Attorney
 12 General has sole, unreviewable discretion to determine the contents of country conditions
 13 information provided by the Training and Resource Center. Country condition information
 14 from the Training and Resource Center may be entered into evidence by immigration
 15 judges in immigration proceedings. Parties to proceedings must be presented with country
 16 conditions information that may be entered into evidence and provided an adequate
 17 opportunity to respond to the information.
 18

19 (b) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be
 20 appropriated to the Attorney General such sums as may be necessary to carry out this
 21 section.
 22

23 **SEC. 160. SECURE ALTERNATIVES PROGRAM.**

24
 25 (a) Pursuant to such rules and procedures as the Secretary may prescribe,
 26 the Secretary shall establish a secure alternatives program for qualified
 27 individuals in removal proceedings. The program shall be designed to
 28 ensure public safety and the appearance of individuals at their removal
 29 hearings and for any subsequently ordered removals.

30 (b) In determining whether an individual is eligible for such a program he
 31 Secretary shall consider— whether the individual—
 32

33 (1) poses a danger to himself, public safety, or national security;

- 1 (2) poses a high risk of flight from removal proceedings or potential
- 2 removal order; or
- 3 (3) is subject to mandatory detention by law.

4

5 Placement in the program shall be at the sole and unreviewable discretion of

6 the Secretary, and the Secretary may elect, at the Secretary’s discretion or

7 upon recommendation of the Attorney General, to place an individual in the

8 program in addition to any bond or conditions of supervision imposed on the

9 individual by the Attorney General.

10

11 (c) If an individual fails to comply with any of the terms or conditions

12 imposed by the Secretary under the program, the Secretary may modify the

13 terms or conditions, or terminate the individual’s participation and detain the

14 individual pending further hearing or removal.

15

16 (d) The program’s general implementation, law enforcement functions,

17 oversight, and decisions concerning eligibility or termination shall rest with

18 the Secretary but the Secretary may authorize contracts to assist with the

19 administration of the program.

20

21 (e) The Secretary shall closely monitor the rates of compliance under the

22 program and make such modifications to the program that are needed to

23 maintain a high rate of compliance.

24

25 **SEC. 161. OFFICE OF LEGAL ACCESS PROGRAMS**

26

27 (a) IN GENERAL – The Attorney General shall establish within the Executive

28 Office for Immigration Review an Office of Legal Access Programs to develop and

29 administer a system of legal orientation programs to educate aliens regarding

30 administrative procedures and legal rights under United States immigration law and to

31 establish other programs to assist in providing aliens access to legal assistance.

32 (b) The Legal Orientation Program may:—

1 (1) provide services to assist aliens in making informed and timely decisions
 2 regarding their removal and eligibility for relief from removal in order to increase
 3 efficiency in immigration proceedings and federal custody processes and to
 4 improve access to counsel and other legal services; and

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

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

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

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

17
 18 (d) Nothing in this subsection shall be construed to create any substantive or
 19 procedural right or benefit that is legally enforceable by any party against the United States
 20 or its agencies or officers or any other person.

21
 22 **SEC. 162. PROVISIONS GOVERNING MENTALLY INCOMPETENT ALIENS**

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

24 “(3) Presence of alien.—

25
 26 (A) In General. If an alien is found to have indicia of mental incompetency or is
 27 determined to lack mental competence to represent himself or herself, the Attorney General
 28 and the Secretary of Homeland Security shall prescribe safeguards to protect the rights and
 29 privileges of the alien.

30 (i) Competency Evaluations. To assist in determining whether the alien is mentally
 31 competent, the Attorney General may order that a psychiatric or psychological examination
 32 of the alien be conducted, and that a psychiatric or psychological report be filed with the
 33 court. A program to procure competency evaluations ordered by the Attorney General

1 shall be administered by the Department of Justice. Such examinations shall not be
2 conducted by the Department of Homeland Security; provided, however, that the
3 Department of Homeland Security shall fund such examinations and shall make aliens in its
4 custody available to be evaluated by the court-appointed examiner. A finding of
5 incompetency must be made on the record and may be made with or without a formal
6 competency hearing.

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

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

12

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

16