

113TH CONGRESS
1ST SESSION

H. R. 2124

To amend the Immigration and Nationality Act to improve worksite enforcement, prevent crime, and gain operational control of the borders, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2013

Mr. BARROW of Georgia introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security, Ways and Means, Armed Services, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to improve worksite enforcement, prevent crime, and gain operational control of the borders, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Keeping the Promise of IRCA Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

1 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
2 PROCESS.—

3 “(1) NEW HIRES, RECRUITMENT, AND REFER-
4 RAL.—The requirements referred to in paragraphs
5 (1)(B) and (3) of subsection (a) are, in the case of
6 a person or other entity hiring, recruiting, or refer-
7 ring an individual for employment in the United
8 States, the following:

9 “(A) ATTESTATION AFTER EXAMINATION
10 OF DOCUMENTATION.—

11 “(i) ATTESTATION.—On the date of
12 hire (as defined in subsection (h)(4)), the
13 person or entity shall attest, under penalty
14 of perjury and on a form, including elec-
15 tronic and telephonic formats, designated
16 or established by the Secretary by regula-
17 tion not later than 6 months after the date
18 of the enactment of the Keeping the Prom-
19 ise of IRCA Act, that it has verified that
20 the individual is not an unauthorized alien
21 by—

22 “(I) obtaining from the indi-
23 vidual the individual’s social security
24 account number and recording the
25 number on the form (if the individual

1 claims to have been issued such a
2 number), and, if the individual does
3 not attest to United States nationality
4 under subparagraph (B), obtaining
5 such identification or authorization
6 number established by the Depart-
7 ment of Homeland Security for the
8 alien as the Secretary of Homeland
9 Security may specify, and recording
10 such number on the form; and

11 “(II) examining—

12 “(aa) a document relating to
13 the individual presenting it de-
14 scribed in clause (ii); or

15 “(bb) a document relating to
16 the individual presenting it de-
17 scribed in clause (iii) and a docu-
18 ment relating to the individual
19 presenting it described in clause
20 (iv).

21 “(ii) DOCUMENTS EVIDENCING EM-
22 PLOYMENT AUTHORIZATION AND ESTAB-
23 LISHING IDENTITY.—A document de-
24 scribed in this subparagraph is an individ-
25 ual’s—

1 “(I) unexpired United States
2 passport or passport card;

3 “(II) unexpired permanent resi-
4 dent card that contains a photograph;

5 “(III) unexpired employment au-
6 thorization card that contains a pho-
7 tograph;

8 “(IV) in the case of a non-
9 immigrant alien authorized to work
10 for a specific employer incident to sta-
11 tus, a foreign passport with Form I-
12 94 or Form I-94A, or other docu-
13 mentation as designated by the Sec-
14 retary specifying the alien’s non-
15 immigrant status as long as the pe-
16 riod of status has not yet expired and
17 the proposed employment is not in
18 conflict with any restrictions or limita-
19 tions identified in the documentation;

20 “(V) passport from the Fed-
21 erated States of Micronesia (FSM) or
22 the Republic of the Marshall Islands
23 (RMI) with Form I-94 or Form I-
24 94A, or other documentation as des-
25 ignated by the Secretary, indicating

1 nonimmigrant admission under the
2 Compact of Free Association Between
3 the United States and the FSM or
4 RMI; or

5 “(VI) other document designated
6 by the Secretary of Homeland Secu-
7 rity, if the document—

8 “(aa) contains a photograph
9 of the individual and biometric
10 identification data from the indi-
11 vidual and such other personal
12 identifying information relating
13 to the individual as the Secretary
14 of Homeland Security finds, by
15 regulation, sufficient for purposes
16 of this clause;

17 “(bb) is evidence of author-
18 ization of employment in the
19 United States; and

20 “(cc) contains security fea-
21 tures to make it resistant to tam-
22 pering, counterfeiting, and fraud-
23 ulent use.

24 “(iii) DOCUMENTS EVIDENCING EM-
25 PLOYMENT AUTHORIZATION.—A document

1 described in this subparagraph is an indi-
2 vidual’s social security account number
3 card (other than such a card which speci-
4 fies on the face that the issuance of the
5 card does not authorize employment in the
6 United States).

7 “(iv) DOCUMENTS ESTABLISHING
8 IDENTITY OF INDIVIDUAL.—A document
9 described in this subparagraph is—

10 “(I) an individual’s unexpired
11 State issued driver’s license or identi-
12 fication card if it contains a photo-
13 graph and information such as name,
14 date of birth, gender, height, eye
15 color, and address;

16 “(II) an individual’s unexpired
17 U.S. military identification card;

18 “(III) an individual’s unexpired
19 Native American tribal identification
20 document issued by a tribal entity rec-
21 ognized by the Bureau of Indian Af-
22 fairs; or

23 “(IV) in the case of an individual
24 under 18 years of age, a parent or
25 legal guardian’s attestation under

1 penalty of law as to the identity and
2 age of the individual.

3 “(v) AUTHORITY TO PROHIBIT USE OF
4 CERTAIN DOCUMENTS.—If the Secretary of
5 Homeland Security finds, by regulation,
6 that any document described in clause (i),
7 (ii), or (iii) as establishing employment au-
8 thorization or identity does not reliably es-
9 tablish such authorization or identity or is
10 being used fraudulently to an unacceptable
11 degree, the Secretary may prohibit or place
12 conditions on its use for purposes of this
13 paragraph.

14 “(vi) SIGNATURE.—Such attestation
15 may be manifested by either a hand-writ-
16 ten or electronic signature.

17 “(B) INDIVIDUAL ATTESTATION OF EM-
18 PLOYMENT AUTHORIZATION.—

19 “(i) IN GENERAL.—During the
20 verification period (as defined in subpara-
21 graph (F)), the individual shall attest,
22 under penalty of perjury on the form des-
23 ignated or established for purposes of sub-
24 paragraph (A), that the individual is a cit-
25 izen or national of the United States, an

1 alien lawfully admitted for permanent resi-
2 dence, or an alien who is authorized under
3 this Act or by the Secretary of Homeland
4 Security to be hired, recruited, or referred
5 for such employment. Such attestation may
6 be manifested by either a hand-written or
7 electronic signature. The individual shall
8 also provide that individual's social secu-
9 rity account number (if the individual
10 claims to have been issued such a number),
11 and, if the individual does not attest to
12 United States nationality under this sub-
13 paragraph, such identification or author-
14 ization number established by the Depart-
15 ment of Homeland Security for the alien
16 as the Secretary may specify.

17 “(ii) CRIMINAL PENALTY.—

18 “(I) OFFENSES.—Any individual
19 who, pursuant to clause (i), provides a
20 social security account number or an
21 identification or authorization number
22 established by the Secretary of Home-
23 land Security that belongs to another
24 person, knowing that the number does
25 not belong to the individual providing

1 the number, shall be fined under title
2 18, United States Code, imprisoned
3 not less than 1 year and not more
4 than 15 years, or both. Any individual
5 who, pursuant to clause (i), provides,
6 during and in relation to any felony
7 violation enumerated in section
8 1028A(c) of title 18, United States
9 Code, a social security account num-
10 ber or an identification or authoriza-
11 tion number established by the Sec-
12 retary of Homeland Security that be-
13 longs to another person, knowing that
14 the number does not belong to the in-
15 dividual providing the number, in ad-
16 dition to the punishment provided for
17 such felony, shall be fined under title
18 18, United States Code, imprisoned
19 for a term of 2 years, or both.

20 “(II) CONSECUTIVE SEN-
21 TENCE.—Notwithstanding any other
22 provision of law—

23 “(aa) a court shall not place
24 on probation any individual con-

1 victed of a violation of this
2 clause;

3 “(bb) except as provided in
4 item (dd), no term of imprison-
5 ment imposed on an individual
6 under this section shall run con-
7 currently with any other term of
8 imprisonment imposed on the in-
9 dividual under any other provi-
10 sion of law, including any term of
11 imprisonment imposed for the
12 felony enumerated in section
13 1028A(c) of title 18, United
14 States Code, during which the
15 violation of this section occurred;

16 “(cc) in determining any
17 term of imprisonment to be im-
18 posed for the felony enumerated
19 in section 1028A(c) of title 18,
20 United States Code, during
21 which the violation of this clause
22 occurred, a court shall not in any
23 way reduce the term to be im-
24 posed for such crime so as to
25 compensate for, or otherwise take

1 into account, any separate term
2 of imprisonment imposed or to be
3 imposed for a violation of this
4 clause; and

5 “(dd) a term of imprison-
6 ment imposed on an individual
7 for a violation of this clause may,
8 in the discretion of the court, run
9 concurrently, in whole or in part,
10 only with another term of impris-
11 onment that is imposed by the
12 court at the same time on that
13 individual for an additional viola-
14 tion of this clause, except that
15 such discretion shall be exercised
16 in accordance with any applicable
17 guidelines and policy statements
18 issued by the United States Sen-
19 tencing Commission pursuant to
20 section 994 of title 28, United
21 States Code.

22 “(C) RETENTION OF VERIFICATION FORM
23 AND VERIFICATION.—

24 “(i) IN GENERAL.—After completion
25 of such form in accordance with subpara-

1 graphs (A) and (B), the person or entity
2 shall—

3 “(I) retain a paper, microfiche,
4 microfilm, or electronic version of the
5 form and make it available for inspec-
6 tion by officers of the Department of
7 Homeland Security, the Special Coun-
8 sel for Immigration-Related Unfair
9 Employment Practices, or the Depart-
10 ment of Labor during a period begin-
11 ning on the date of the recruiting or
12 referral of the individual, or, in the
13 case of the hiring of an individual, the
14 date on which the verification is com-
15 pleted, and ending—

16 “(aa) in the case of the re-
17 cruiting or referral of an indi-
18 vidual, 3 years after the date of
19 the recruiting or referral; and

20 “(bb) in the case of the hir-
21 ing of an individual, the later of
22 3 years after the date the
23 verification is completed or one
24 year after the date the individ-

1 ual’s employment is terminated;
2 and

3 “(II) during the verification pe-
4 riod (as defined in subparagraph (F)),
5 make an inquiry, as provided in sub-
6 section (d), using the verification sys-
7 tem to seek verification of the identity
8 and employment eligibility of an indi-
9 vidual.

10 “(ii) CONFIRMATION.—

11 “(I) CONFIRMATION RE-
12 CEIVED.—If the person or other entity
13 receives an appropriate confirmation
14 of an individual’s identity and work
15 eligibility under the verification sys-
16 tem within the time period specified,
17 the person or entity shall record on
18 the form an appropriate code that is
19 provided under the system and that
20 indicates a final confirmation of such
21 identity and work eligibility of the in-
22 dividual.

23 “(II) TENTATIVE NONCONFIRMA-
24 TION RECEIVED.—If the person or
25 other entity receives a tentative non-

1 confirmation of an individual's iden-
2 tity or work eligibility under the
3 verification system within the time pe-
4 riod specified, the person or entity
5 shall so inform the individual for
6 whom the verification is sought. If the
7 individual does not contest the non-
8 confirmation within the time period
9 specified, the nonconfirmation shall be
10 considered final. The person or entity
11 shall then record on the form an ap-
12 propriate code which has been pro-
13 vided under the system to indicate a
14 final nonconfirmation. If the indi-
15 vidual does contest the nonconfirma-
16 tion, the individual shall utilize the
17 process for secondary verification pro-
18 vided under subsection (d). The non-
19 confirmation will remain tentative
20 until a final confirmation or noncon-
21 firmation is provided by the
22 verification system within the time pe-
23 riod specified. In no case shall an em-
24 ployer terminate employment of an in-
25 dividual because of a failure of the in-

1 dividual to have identity and work eli-
2 gibility confirmed under this section
3 until a nonconfirmation becomes final.
4 Nothing in this clause shall apply to a
5 termination of employment for any
6 reason other than because of such a
7 failure. In no case shall an employer
8 rescind the offer of employment to an
9 individual because of a failure of the
10 individual to have identity and work
11 eligibility confirmed under this sub-
12 section until a nonconfirmation be-
13 comes final. Nothing in this subclause
14 shall apply to a rescission of the offer
15 of employment for any reason other
16 than because of such a failure.

17 “(III) FINAL CONFIRMATION OR
18 NONCONFIRMATION RECEIVED.—If a
19 final confirmation or nonconfirmation
20 is provided by the verification system
21 regarding an individual, the person or
22 entity shall record on the form an ap-
23 propriate code that is provided under
24 the system and that indicates a con-
25 firmation or nonconfirmation of iden-

1 tity and work eligibility of the indi-
2 vidual.

3 “(IV) EXTENSION OF TIME.—If
4 the person or other entity in good
5 faith attempts to make an inquiry
6 during the time period specified and
7 the verification system has registered
8 that not all inquiries were received
9 during such time, the person or entity
10 may make an inquiry in the first sub-
11 sequent working day in which the
12 verification system registers that it
13 has received all inquiries. If the
14 verification system cannot receive in-
15 quiries at all times during a day, the
16 person or entity merely has to assert
17 that the entity attempted to make the
18 inquiry on that day for the previous
19 sentence to apply to such an inquiry,
20 and does not have to provide any ad-
21 ditional proof concerning such inquiry.

22 “(V) CONSEQUENCES OF NON-
23 CONFIRMATION.—

24 “(aa) TERMINATION OR NO-
25 TIFICATION OF CONTINUED EM-

1 PLOYMENT.—If the person or
2 other entity has received a final
3 nonconfirmation regarding an in-
4 dividual, the person or entity
5 may terminate employment of the
6 individual (or decline to recruit
7 or refer the individual). If the
8 person or entity does not termi-
9 nate employment of the indi-
10 vidual or proceeds to recruit or
11 refer the individual, the person or
12 entity shall notify the Secretary
13 of Homeland Security of such
14 fact through the verification sys-
15 tem or in such other manner as
16 the Secretary may specify.

17 “(bb) FAILURE TO NO-
18 TIFY.—If the person or entity
19 fails to provide notice with re-
20 spect to an individual as required
21 under item (aa), the failure is
22 deemed to constitute a violation
23 of subsection (a)(1)(A) with re-
24 spect to that individual.

1 “(VI) CONTINUED EMPLOYMENT
2 AFTER FINAL NONCONFIRMATION.—If
3 the person or other entity continues to
4 employ (or to recruit or refer) an indi-
5 vidual after receiving final noncon-
6 firmation, a rebuttable presumption is
7 created that the person or entity has
8 violated subsection (a)(1)(A).

9 “(D) EFFECTIVE DATES OF NEW PROCE-
10 DURES.—

11 “(i) HIRING.—The provisions of this
12 paragraph shall apply to a person or other
13 entity hiring an individual for employment
14 in the United States as follows:

15 “(I) With respect to employers
16 having 10,000 or more employees in
17 the United States on the date of the
18 enactment of the Keeping the Promise
19 of IRCA Act, on the date that is 6
20 months after the date of the enact-
21 ment of such Act.

22 “(II) With respect to employers
23 having 500 or more employees in the
24 United States, but less than 10,000
25 employees in the United States, on

1 the date of the enactment of the
2 Keeping the Promise of IRCA Act, on
3 the date that is 12 months after the
4 date of the enactment of such Act.

5 “(III) With respect to employers
6 having 20 or more employees in the
7 United States, but less than 500 em-
8 ployees in the United States, on the
9 date of the enactment of the Keeping
10 the Promise of IRCA Act, on the date
11 that is 18 months after the date of
12 the enactment of such Act.

13 “(IV) With respect to employers
14 having one or more employees in the
15 United States, but less than 20 em-
16 ployees in the United States, on the
17 date of the enactment of the Keeping
18 the Promise of IRCA Act, on the date
19 that is 24 months after the date of
20 the enactment of such Act.

21 “(ii) RECRUITING AND REFERRING.—

22 The provisions of this paragraph shall
23 apply to a person or other entity recruiting
24 or referring an individual for employment
25 in the United States on the date that is 12

1 months after the date of the enactment of
2 the Keeping the Promise of IRCA Act.

3 “(iii) TRANSITION RULE.—Subject to
4 paragraph (4), the following shall apply to
5 a person or other entity hiring, recruiting,
6 or referring an individual for employment
7 in the United States until the effective
8 date or dates applicable under clauses (i)
9 and (ii):

10 “(I) This subsection, as in effect
11 before the enactment of the Keeping
12 the Promise of IRCA Act.

13 “(II) Subtitle A of title IV of the
14 Illegal Immigration Reform and Im-
15 migrant Responsibility Act of 1996 (8
16 U.S.C. 1324a note), as in effect be-
17 fore the effective date in section 7(c)
18 of the Keeping the Promise of IRCA
19 Act.

20 “(III) Any other provision of
21 Federal law requiring the person or
22 entity to participate in the E-Verify
23 Program described in section 403(a)
24 of the Illegal Immigration Reform and
25 Immigrant Responsibility Act of 1996

1 (8 U.S.C. 1324a note), as in effect be-
2 fore the effective date in section 7(c)
3 of the Keeping the Promise of IRCA
4 Act, including Executive Order 13465
5 (8 U.S.C. 1324a note; relating to
6 Government procurement).

7 “(E) VERIFICATION PERIOD DEFINED.—

8 “(i) IN GENERAL.—For purposes of
9 this paragraph:

10 “(I) In the case of recruitment or
11 referral, the term ‘verification period’
12 means the period ending on the date
13 recruiting or referring commences.

14 “(II) In the case of hiring, the
15 term ‘verification period’ means the
16 period beginning on the date on which
17 an offer of employment is extended
18 and ending on the date that is 3 busi-
19 ness days after the date of hire, ex-
20 cept as provided in clause (ii).

21 “(ii) SPECIAL RULE.—Notwith-
22 standing clause (i)(II), in the case of an
23 alien who is authorized for employment
24 and who provides evidence from the Social
25 Security Administration that the alien has

1 applied for a social security account num-
2 ber, the verification period ends 3 business
3 days after the alien receives the social se-
4 curity account number.

5 “(2) REVERIFICATION FOR INDIVIDUALS WITH
6 LIMITED WORK AUTHORIZATION.—

7 “(A) IN GENERAL.—A person or entity
8 shall make an inquiry, as provided in subsection
9 (d), using the verification system to seek
10 reverification of the identity and employment
11 eligibility of all individuals with a limited period
12 of work authorization employed by the person
13 or entity during the 3 business days before the
14 date on which the employee’s work authoriza-
15 tion expires as follows:

16 “(i) With respect to employers having
17 10,000 or more employees in the United
18 States on the date of the enactment of the
19 Keeping the Promise of IRCA Act, begin-
20 ning on the date that is 6 months after the
21 date of the enactment of such Act.

22 “(ii) With respect to employers having
23 500 or more employees in the United
24 States, but less than 10,000 employees in
25 the United States, on the date of the en-

1 actment of the Keeping the Promise of
2 IRCA Act, beginning on the date that is
3 12 months after the date of the enactment
4 of such Act.

5 “(iii) With respect to employers hav-
6 ing 20 or more employees in the United
7 States, but less than 500 employees in the
8 United States, on the date of the enact-
9 ment of the Keeping the Promise of IRCA
10 Act, beginning on the date that is 18
11 months after the date of the enactment of
12 such Act.

13 “(iv) With respect to employers hav-
14 ing 1 or more employees in the United
15 States, but less than 20 employees in the
16 United States, on the date of the enact-
17 ment of the Keeping the Promise of IRCA
18 Act, beginning on the date that is 24
19 months after the date of the enactment of
20 such Act.

21 “(B) REVERIFICATION.—Paragraph
22 (1)(C)(ii) shall apply to reverifications pursuant
23 to this paragraph on the same basis as it ap-
24 plies to verifications pursuant to paragraph (1),
25 except that employers shall—

1 “(i) use a form designated or estab-
2 lished by the Secretary by regulation for
3 purposes of this paragraph; and

4 “(ii) retain a paper, microfiche, micro-
5 film, or electronic version of the form and
6 make it available for inspection by officers
7 of the Department of Homeland Security,
8 the Special Counsel for Immigration-Related
9 Unfair Employment Practices, or the
10 Department of Labor during the period be-
11 ginning on the date the reverification com-
12 mences and ending on the date that is the
13 later of 3 years after the date of such
14 reverification or 1 year after the date the
15 individual’s employment is terminated.

16 “(3) EARLY COMPLIANCE.—

17 “(A) FORMER E-VERIFY REQUIRED USERS,
18 INCLUDING FEDERAL CONTRACTORS.—Notwith-
19 standing the deadlines in paragraphs (1) and
20 (2), beginning on the date of the enactment of
21 the Keeping the Promise of IRCA Act, the Sec-
22 retary is authorized to commence requiring em-
23 ployers required to participate in the E-Verify
24 Program described in section 403(a) of the Ille-
25 gal Immigration Reform and Immigrant Re-

1 sponsibility Act of 1996 (8 U.S.C. 1324a note),
2 including employers required to participate in
3 such program by reason of Federal acquisition
4 laws (and regulations promulgated under those
5 laws, including the Federal Acquisition Regula-
6 tion), to commence compliance with the require-
7 ments of this subsection (and any additional re-
8 quirements of such Federal acquisition laws and
9 regulation) in lieu of any requirement to par-
10 ticipate in the E-Verify Program.

11 “(B) FORMER E-VERIFY VOLUNTARY
12 USERS AND OTHERS DESIRING EARLY COMPLI-
13 ANCE.—Notwithstanding the deadlines in para-
14 graphs (1) and (2), beginning on the date of
15 the enactment of the Keeping the Promise of
16 IRCA Act, the Secretary shall provide for the
17 voluntary compliance with the requirements of
18 this subsection by employers voluntarily electing
19 to participate in the E-Verify Program de-
20 scribed in section 403(a) of the Illegal Immigra-
21 tion Reform and Immigrant Responsibility Act
22 of 1996 (8 U.S.C. 1324a note) before such
23 date, as well as by other employers seeking vol-
24 untary early compliance.

1 “(4) COPYING OF DOCUMENTATION PER-
2 MITTED.—Notwithstanding any other provision of
3 law, the person or entity may copy a document pre-
4 sented by an individual pursuant to this subsection
5 and may retain the copy, but only (except as other-
6 wise permitted under law) for the purpose of com-
7 plying with the requirements of this subsection.

8 “(5) LIMITATION ON USE OF FORMS.—A form
9 designated or established by the Secretary of Home-
10 land Security under this subsection and any infor-
11 mation contained in or appended to such form, may
12 not be used for purposes other than for enforcement
13 of this Act and any other provision of Federal crimi-
14 nal law.

15 “(6) GOOD FAITH COMPLIANCE.—

16 “(A) IN GENERAL.—Except as otherwise
17 provided in this subsection, a person or entity
18 is considered to have complied with a require-
19 ment of this subsection notwithstanding a tech-
20 nical or procedural failure to meet such require-
21 ment if there was a good faith attempt to com-
22 ply with the requirement.

23 “(B) EXCEPTION IF FAILURE TO CORRECT
24 AFTER NOTICE.—Subparagraph (A) shall not
25 apply if—

1 “(i) the failure is not de minimus;

2 “(ii) the Secretary of Homeland Secu-
3 rity has explained to the person or entity
4 the basis for the failure and why it is not
5 de minimus;

6 “(iii) the person or entity has been
7 provided a period of not less than 30 cal-
8 endar days (beginning after the date of the
9 explanation) within which to correct the
10 failure; and

11 “(iv) the person or entity has not cor-
12 rected the failure voluntarily within such
13 period.

14 “(C) EXCEPTION FOR PATTERN OR PRAC-
15 TICE VIOLATORS.—Subparagraph (A) shall not
16 apply to a person or entity that has or is engag-
17 ing in a pattern or practice of violations of sub-
18 section (a)(1)(A) or (a)(2).

19 “(7) SINGLE EXTENSION OF DEADLINES UPON
20 CERTIFICATION.—In a case in which the Secretary
21 of Homeland Security has certified to the Congress
22 that the employment eligibility verification system
23 required under subsection (d) will not be fully oper-
24 ational by the date that is 6 months after the date
25 of the enactment of the Keeping the Promise of

1 IRCA Act, each deadline established under this sec-
2 tion for an employer to make an inquiry using such
3 system shall be extended by 6 months. No other ex-
4 tension of such a deadline shall be made.”.

5 (b) DATE OF HIRE.—Section 274A(h) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1324a(h)) is
7 amended by adding at the end the following:

8 “(4) DEFINITION OF DATE OF HIRE.—As used
9 in this section, the term ‘date of hire’ means the
10 date of actual commencement of employment for
11 wages or other remuneration, unless otherwise speci-
12 fied.”.

13 **SEC. 102. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
14 **TEM.**

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

17 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
18 TEM.—

19 “(1) IN GENERAL.—Patterned on the employ-
20 ment eligibility confirmation system established
21 under section 404 of the Illegal Immigration Reform
22 and Immigrant Responsibility Act of 1996 (8 U.S.C.
23 1324a note), the Secretary of Homeland Security
24 shall establish and administer a verification system
25 through which the Secretary (or a designee of the

1 Secretary, which may be a nongovernmental enti-
2 ty)—

3 “(A) responds to inquiries made by per-
4 sons at any time through a toll-free telephone
5 line and other toll-free electronic media con-
6 cerning an individual’s identity and whether the
7 individual is authorized to be employed; and

8 “(B) maintains records of the inquiries
9 that were made, of verifications provided (or
10 not provided), and of the codes provided to in-
11 quirers as evidence of their compliance with
12 their obligations under this section.

13 “(2) INITIAL RESPONSE.—The verification sys-
14 tem shall provide confirmation or a tentative non-
15 confirmation of an individual’s identity and employ-
16 ment eligibility within 3 working days of the initial
17 inquiry. If providing confirmation or tentative non-
18 confirmation, the verification system shall provide an
19 appropriate code indicating such confirmation or
20 such nonconfirmation.

21 “(3) SECONDARY CONFIRMATION PROCESS IN
22 CASE OF TENTATIVE NONCONFIRMATION.—In cases
23 of tentative nonconfirmation, the Secretary shall
24 specify, in consultation with the Commissioner of
25 Social Security, an available secondary verification

1 process to confirm the validity of information pro-
2 vided and to provide a final confirmation or noncon-
3 firmation not later than 10 working days after the
4 date on which the notice of the tentative noncon-
5 firmation is received by the employee. The Secretary,
6 in consultation with the Commissioner, may extend
7 this deadline on a case-by-case basis, and if the time
8 is extended, shall document such extension within
9 the verification system. When final confirmation or
10 nonconfirmation is provided, the verification system
11 shall provide an appropriate code indicating such
12 confirmation or nonconfirmation.

13 “(4) DESIGN AND OPERATION OF SYSTEM.—
14 The verification system shall be designed and oper-
15 ated—

16 “(A) to maximize its reliability and ease of
17 use by persons and other entities consistent
18 with insulating and protecting the privacy and
19 security of the underlying information;

20 “(B) to respond to all inquiries made by
21 such persons and entities on whether individ-
22 uals are authorized to be employed and to reg-
23 ister all times when such inquiries are not re-
24 ceived;

1 “(C) with appropriate administrative, tech-
2 nical, and physical safeguards to prevent unau-
3 thorized disclosure of personal information;

4 “(D) to have reasonable safeguards against
5 the system’s resulting in unlawful discrimina-
6 tory practices based on national origin or citi-
7 zenship status, including—

8 “(i) the selective or unauthorized use
9 of the system to verify eligibility; or

10 “(ii) the exclusion of certain individ-
11 uals from consideration for employment as
12 a result of a perceived likelihood that addi-
13 tional verification will be required, beyond
14 what is required for most job applicants;
15 and

16 “(E) to limit the subjects of verification to
17 the following individuals:

18 “(i) Individuals hired, referred, or re-
19 cruited, in accordance with paragraph (1)
20 or (4) of subsection (b).

21 “(ii) Employees and prospective em-
22 ployees, in accordance with paragraph (1),
23 (2), (3), or (4) of subsection (b).

1 “(iii) Individuals seeking to confirm
2 their own employment eligibility on a vol-
3 untary basis.

4 “(5) RESPONSIBILITIES OF COMMISSIONER OF
5 SOCIAL SECURITY.—As part of the verification sys-
6 tem, the Commissioner of Social Security, in con-
7 sultation with the Secretary of Homeland Security
8 (and any designee of the Secretary selected to estab-
9 lish and administer the verification system), shall es-
10 tablish a reliable, secure method, which, within the
11 time periods specified under paragraphs (2) and (3),
12 compares the name and social security account num-
13 ber provided in an inquiry against such information
14 maintained by the Commissioner in order to validate
15 (or not validate) the information provided regarding
16 an individual whose identity and employment eligi-
17 bility must be confirmed, the correspondence of the
18 name and number, and whether the individual has
19 presented a social security account number that is
20 not valid for employment. The Commissioner shall
21 not disclose or release social security information
22 (other than such confirmation or nonconfirmation)
23 under the verification system except as provided for
24 in this section or section 205(c)(2)(I) of the Social
25 Security Act.

1 “(6) RESPONSIBILITIES OF SECRETARY OF
2 HOMELAND SECURITY.—As part of the verification
3 system, the Secretary of Homeland Security (in con-
4 sultation with any designee of the Secretary selected
5 to establish and administer the verification system),
6 shall establish a reliable, secure method, which, with-
7 in the time periods specified under paragraphs (2)
8 and (3), compares the name and alien identification
9 or authorization number (or any other information
10 as determined relevant by the Secretary) which are
11 provided in an inquiry against such information
12 maintained or accessed by the Secretary in order to
13 validate (or not validate) the information provided,
14 the correspondence of the name and number, wheth-
15 er the alien is authorized to be employed in the
16 United States, or to the extent that the Secretary
17 determines to be feasible and appropriate, whether
18 the records available to the Secretary verify the
19 identity or status of a national of the United States.

20 “(7) OFFENSES.—

21 “(A) IN GENERAL.—Any person or entity
22 that, in making an inquiry under subsection
23 (b)(1)(C)(i)(II), provides to the verification sys-
24 tem a social security account number or an
25 identification or authorization number estab-

1 lished by the Secretary of Homeland Security
2 that belongs to a person other than the indi-
3 vidual whose identity and employment author-
4 ization are being verified, knowing that the
5 number does not belong to the individual whose
6 identity and employment authorization are
7 being verified, shall be fined under title 18,
8 United States Code, imprisoned not less than 1
9 year and not more than 15 years, or both. If
10 the person or entity, in making an inquiry
11 under subsection (b)(1)(C)(i)(II), during and in
12 relation to any felony violation enumerated in
13 section 1028A(c) of title 18, United States
14 Code, provides to the verification system a so-
15 cial security account number or an identifica-
16 tion or authorization number established by the
17 Secretary of Homeland Security that belongs to
18 a person other than the individual whose iden-
19 tity and employment authorization are being
20 verified, knowing that the number does not be-
21 long to the individual whose identity and work
22 authorization are being verified, in addition to
23 the punishment provided for such felony, shall
24 be fined under title 18, United States Code, im-
25 prisoned for a term of 2 years, or both.

1 “(B) CONSECUTIVE SENTENCE.—Notwith-
2 standing any other provision of law—

3 “(i) a court shall not place on proba-
4 tion any person or entity convicted of a
5 violation of this paragraph;

6 “(ii) except as provided in clause (iv),
7 no term of imprisonment imposed on a
8 person or entity under this section shall
9 run concurrently with any other term of
10 imprisonment imposed on the person or en-
11 tity under any other provision of law, in-
12 cluding any term of imprisonment imposed
13 for the felony enumerated in section
14 1028A(c) of title 18, United States Code,
15 during which the violation of this para-
16 graph occurred;

17 “(iii) in determining any term of im-
18 prisonment to be imposed for the felony
19 enumerated in section 1028A(c) of title 18,
20 United States Code, during which the vio-
21 lation of this section occurred, a court
22 shall not in any way reduce the term to be
23 imposed for such crime so as to com-
24 pensate for, or otherwise take into account,
25 any separate term of imprisonment im-

1 posed or to be imposed for a violation of
2 this paragraph; and

3 “(iv) a term of imprisonment imposed
4 on a person or entity for a violation of this
5 paragraph may, in the discretion of the
6 court, run concurrently, in whole or in
7 part, only with another term of imprison-
8 ment that is imposed by the court at the
9 same time on that person or entity for an
10 additional violation of this paragraph, ex-
11 cept that such discretion shall be exercised
12 in accordance with any applicable guide-
13 lines and policy statements issued by the
14 United States Sentencing Commission pur-
15 suant to section 994 of title 28, United
16 States Code.

17 “(8) UPDATING INFORMATION.—The Commis-
18 sioner of Social Security and the Secretary of Home-
19 land Security shall update their information in a
20 manner that promotes the maximum accuracy and
21 shall provide a process for the prompt correction of
22 erroneous information, including instances in which
23 it is brought to their attention in the secondary
24 verification process described in paragraph (3).

1 “(9) LIMITATION ON USE OF THE
2 VERIFICATION SYSTEM AND ANY RELATED SYS-
3 TEMS.—

4 “(A) NO NATIONAL IDENTIFICATION
5 CARD.—Nothing in this section shall be con-
6 strued to authorize, directly or indirectly, the
7 issuance or use of national identification cards
8 or the establishment of a national identification
9 card.

10 “(B) CRITICAL INFRASTRUCTURE.—The
11 Secretary may authorize or direct any person or
12 entity responsible for granting access to, pro-
13 tecting, securing, operating, administering, or
14 regulating part of the critical infrastructure (as
15 defined in section 1016(e) of the Critical Infra-
16 structure Protection Act of 2001 (42 U.S.C.
17 5195c(e))) to use the verification system to the
18 extent the Secretary determines that such use
19 will assist in the protection of the critical infra-
20 structure.”.

21 **SEC. 103. RECRUITMENT, REFERRAL, AND CONTINUATION**
22 **OF EMPLOYMENT.**

23 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-
24 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-

1 MENT.—Section 274A(a) of the Immigration and Nation-
2 ality Act (8 U.S.C. 1324a(a)) is amended—

3 (1) in paragraph (1)(A), by striking “for a fee”;

4 (2) in paragraph (1), by amending subpara-
5 graph (B) to read as follows:

6 “(B) to hire, continue to employ, or to re-
7 cruit or refer for employment in the United
8 States an individual without complying with the
9 requirements of subsection (b).”;

10 (3) in paragraph (2), by striking “after hiring
11 an alien for employment in accordance with para-
12 graph (1),” and inserting “after complying with
13 paragraph (1),”; and

14 (4) in paragraph (3), by striking “hiring,” and
15 inserting “hiring, employing,” each place it appears.

16 (b) DEFINITION.—Section 274A(h) of the Immigra-
17 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended
18 by section 101(b) of this Act, is further amended by add-
19 ing at the end the following:

20 “(5) DEFINITION OF RECRUIT OR REFER.—As
21 used in this section, the term ‘refer’ means the act
22 of sending or directing a person who is in the United
23 States or transmitting documentation or information
24 to another, directly or indirectly, with the intent of
25 obtaining employment in the United States for such

1 person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or non-union individuals who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section, the term ‘recruit’ means the act of soliciting a person who is in the United States, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date that is 1 year
3 after the date of the enactment of this Act, except that
4 the amendments made by subsection (a) shall take effect
5 6 months after the date of the enactment of this Act inso-
6 far as such amendments relate to continuation of employ-
7 ment.

8 **SEC. 104. GOOD FAITH DEFENSE.**

9 Section 274A(a)(3) of the Immigration and Nation-
10 ality Act (8 U.S.C. 1324a(a)(3)) is amended to read as
11 follows:

12 “(3) GOOD FAITH DEFENSE.—

13 “(A) DEFENSE.—An employer (or person
14 or entity that hires, employs, recruits, or refers
15 (as defined in subsection (h)(5)), or is otherwise
16 obligated to comply with this section) who es-
17 tablishes that it has complied in good faith with
18 the requirements of subsection (b)—

19 “(i) shall not be liable to a job appli-
20 cant, an employee, the Federal Govern-
21 ment, or a State or local government,
22 under Federal, State, or local criminal or
23 civil law for any employment-related action
24 taken with respect to a job applicant or
25 employee in good-faith reliance on informa-

1 tion provided through the system estab-
2 lished under subsection (d); and

3 “(ii) has established compliance with
4 its obligations under subparagraphs (A)
5 and (B) of paragraph (1) and subsection
6 (b) absent a showing by the Secretary of
7 Homeland Security, by clear and con-
8 vincing evidence, that the employer had
9 knowledge that an employee is an unau-
10 thorized alien.

11 “(B) FAILURE TO SEEK AND OBTAIN
12 VERIFICATION.—Subject to the effective dates
13 and other deadlines applicable under subsection
14 (b), in the case of a person or entity in the
15 United States that hires, or continues to em-
16 ploy, an individual, or recruits or refers an indi-
17 vidual for employment, the following require-
18 ments apply:

19 “(i) FAILURE TO SEEK
20 VERIFICATION.—

21 “(I) IN GENERAL.—If the person
22 or entity has not made an inquiry,
23 under the mechanism established
24 under subsection (d) and in accord-
25 ance with the timeframes established

1 under subsection (b), seeking
2 verification of the identity and work
3 eligibility of the individual, the de-
4 fense under subparagraph (A) shall
5 not be considered to apply with re-
6 spect to any employment, except as
7 provided in subclause (II).

8 “(II) SPECIAL RULE FOR FAIL-
9 URE OF VERIFICATION MECHANISM.—

10 If such a person or entity in good
11 faith attempts to make an inquiry in
12 order to qualify for the defense under
13 subparagraph (A) and the verification
14 mechanism has registered that not all
15 inquiries were responded to during the
16 relevant time, the person or entity can
17 make an inquiry until the end of the
18 first subsequent working day in which
19 the verification mechanism registers
20 no nonresponses and qualify for such
21 defense.

22 “(ii) FAILURE TO OBTAIN
23 VERIFICATION.—If the person or entity
24 has made the inquiry described in clause
25 (i)(I) but has not received an appropriate

1 verification of such identity and work eligi-
2 bility under such mechanism within the
3 time period specified under subsection
4 (d)(2) after the time the verification in-
5 quiry was received, the defense under sub-
6 paragraph (A) shall not be considered to
7 apply with respect to any employment after
8 the end of such time period.”.

9 **SEC. 105. REPEAL.**

10 (a) IN GENERAL.—Subtitle A of title IV of the Illegal
11 Immigration Reform and Immigrant Responsibility Act of
12 1996 (8 U.S.C. 1234a note) is repealed.

13 (b) REFERENCES.—Any reference in any Federal
14 law, Executive order, rule, regulation, or delegation of au-
15 thority, or any document of, or pertaining to, the Depart-
16 ment of Homeland Security, Department of Justice, or the
17 Social Security Administration, to the employment eligi-
18 bility confirmation system established under section 404
19 of the Illegal Immigration Reform and Immigrant Respon-
20 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to
21 refer to the employment eligibility confirmation system es-
22 tablished under section 274A(d) of the Immigration and
23 Nationality Act, as amended by section 102 of this Act.

1 (c) **EFFECTIVE DATE.**—This section shall take effect
2 on the date that is 36 months after the date of the enact-
3 ment of this Act.

4 **SEC. 106. PENALTIES.**

5 Section 274A of the Immigration and Nationality Act
6 (8 U.S.C. 1324a) is amended—

7 (1) in subsection (e)(1)—

8 (A) by striking “Attorney General” each
9 place such term appears and inserting “Sec-
10 retary of Homeland Security”; and

11 (B) by striking “Service” and inserting
12 “Department of Homeland Security”;

13 (2) in subsection (e)(4)—

14 (A) in subparagraph (A), in the matter be-
15 fore clause (i), by inserting “, subject to para-
16 graph (10),” after “in an amount”;

17 (B) in subparagraph (A)(i), by striking
18 “not less than \$250 and not more than
19 \$2,000” and inserting “not less than \$2,500
20 and not more than \$5,000”;

21 (C) in subparagraph (A)(ii), by striking
22 “not less than \$2,000 and not more than
23 \$5,000” and inserting “not less than \$5,000
24 and not more than \$10,000”;

1 (D) in subparagraph (A)(iii), by striking
2 “not less than \$3,000 and not more than
3 \$10,000” and inserting “not less than \$10,000
4 and not more than \$25,000”; and

5 (E) by amending subparagraph (B) to read
6 as follows:

7 “(B) may require the person or entity to
8 take such other remedial action as is appro-
9 priate.”;

10 (3) in subsection (e)(5)—

11 (A) in the paragraph heading, strike “PA-
12 PERWORK”;

13 (B) by inserting “, subject to paragraphs
14 (10) through (12),” after “in an amount”;

15 (C) by striking “\$100” and inserting
16 “\$1,000”;

17 (D) by striking “\$1,000” and inserting
18 “\$25,000”;

19 (E) by adding at the end the following:
20 “Failure by a person or entity to utilize the em-
21 ployment eligibility verification system as re-
22 quired by law, or providing information to the
23 system that the person or entity knows or rea-
24 sonably believes to be false, shall be treated as
25 a violation of subsection (a)(1)(A).”;

1 (4) by adding at the end of subsection (e) the
2 following:

3 “(10) EXEMPTION FROM PENALTY FOR GOOD
4 FAITH VIOLATION.—In the case of imposition of a
5 civil penalty under paragraph (4)(A) with respect to
6 a violation of subsection (a)(1)(A) or (a)(2) for hir-
7 ing or continuation of employment or recruitment or
8 referral by person or entity and in the case of im-
9 position of a civil penalty under paragraph (5) for a
10 violation of subsection (a)(1)(B) for hiring or re-
11 cruitment or referral by a person or entity, the pen-
12 alty otherwise imposed may be waived or reduced if
13 the violator establishes that the violator acted in
14 good faith.

15 “(11) AUTHORITY TO DEBAR EMPLOYERS FOR
16 CERTAIN VIOLATIONS.—

17 “(A) IN GENERAL.—If a person or entity
18 is determined by the Secretary of Homeland Se-
19 curity to be a repeat violator of paragraph
20 (1)(A) or (2) of subsection (a), or is convicted
21 of a crime under this section, such person or
22 entity may be considered for debarment from
23 the receipt of Federal contracts, grants, or co-
24 operative agreements in accordance with the de-
25 barment standards and pursuant to the debar-

1 ment procedures set forth in the Federal Acqui-
2 sition Regulation.

3 “(B) DOES NOT HAVE CONTRACT, GRANT,
4 AGREEMENT.—If the Secretary of Homeland
5 Security or the Attorney General wishes to have
6 a person or entity considered for debarment in
7 accordance with this paragraph, and such an
8 person or entity does not hold a Federal con-
9 tract, grant or cooperative agreement, the Sec-
10 retary or Attorney General shall refer the mat-
11 ter to the Administrator of General Services to
12 determine whether to list the person or entity
13 on the List of Parties Excluded from Federal
14 Procurement, and if so, for what duration and
15 under what scope.

16 “(C) HAS CONTRACT, GRANT, AGREE-
17 MENT.—If the Secretary of Homeland Security
18 or the Attorney General wishes to have a per-
19 son or entity considered for debarment in ac-
20 cordance with this paragraph, and such person
21 or entity holds a Federal contract, grant or co-
22 operative agreement, the Secretary or Attorney
23 General shall advise all agencies or departments
24 holding a contract, grant, or cooperative agree-
25 ment with the person or entity of the Govern-

1 ment’s interest in having the person or entity
2 considered for debarment, and after soliciting
3 and considering the views of all such agencies
4 and departments, the Secretary or Attorney
5 General may refer the matter to any appro-
6 priate lead agency to determine whether to list
7 the person or entity on the List of Parties Ex-
8 cluded from Federal Procurement, and if so, for
9 what duration and under what scope.

10 “(D) REVIEW.—Any decision to debar a
11 person or entity in accordance with this para-
12 graph shall be reviewable pursuant to part 9.4
13 of the Federal Acquisition Regulation.

14 “(12) OFFICE FOR STATE AND LOCAL GOVERN-
15 MENT COMPLAINTS.—The Secretary of Homeland
16 Security shall establish an office—

17 “(A) to which State and local government
18 agencies may submit information indicating po-
19 tential violations of subsection (a), (b), or
20 (g)(1) that were generated in the normal course
21 of law enforcement or the normal course of
22 other official activities in the State or locality;

23 “(B) that is required to indicate to the
24 complaining State or local agency within 5 busi-
25 ness days of the filing of such a complaint by

1 identifying whether the Secretary will further
2 investigate the information provided;

3 “(C) that is required to investigate those
4 complaints filed by State or local government
5 agencies that, on their face, have a substantial
6 probability of validity;

7 “(D) that is required to notify the com-
8 plaining State or local agency of the results of
9 any such investigation conducted; and

10 “(E) that is required to report to the Con-
11 gress annually the number of complaints re-
12 ceived under this paragraph, the States and lo-
13 calities that filed such complaints, and the reso-
14 lution of the complaints investigated by the Sec-
15 retary.”; and

16 (5) by amending paragraph (1) of subsection (f)
17 to read as follows:

18 “(1) CRIMINAL PENALTY.—Any person or enti-
19 ty which engages in a pattern or practice of viola-
20 tions of subsection (a) (1) or (2) shall be fined not
21 more than \$15,000 for each unauthorized alien with
22 respect to which such a violation occurs, imprisoned
23 for not less than one year and not more than 10
24 years, or both, notwithstanding the provisions of any
25 other Federal law relating to fine levels.”.

1 **TITLE II—CRIME PREVENTION**
2 **AND PENALTIES**

3 **SEC. 201. ESTABLISHMENT OF ELECTRONIC BIRTH AND**
4 **DEATH REGISTRATION SYSTEMS.**

5 In consultation with the Secretary of Health and
6 Human Services and the Commissioner of Social Security,
7 the Secretary of Homeland Security shall take the fol-
8 lowing actions:

9 (1) Work with the States to establish a common
10 data set and common data exchange protocol for
11 electronic birth registration systems and death reg-
12 istration systems.

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

15 (3) Ensure that fraud prevention is built into
16 the design of electronic vital registration systems in
17 the collection of vital event data, the issuance of
18 birth certificates, and the exchange of data among
19 government agencies.

20 (4) Ensure that electronic systems for issuing
21 birth certificates, in the form of printed abstracts of
22 birth records or digitized images, employ a common
23 format of the certified copy, so that those requiring
24 such documents can quickly confirm their validity.

1 (5) Establish uniform field requirements for
2 State birth registries.

3 (6) Not later than 1 year after the date of the
4 enactment of this Act, establish a process with the
5 Department of Defense that will result in the shar-
6 ing of data, with the States and the Social Security
7 Administration, regarding deaths of United States
8 military personnel and the birth and death of their
9 dependents.

10 (7) Not later than 1 year after the date of the
11 enactment of this Act, establish a process with the
12 Department of State to improve registration, notifi-
13 cation, and the sharing of data with the States and
14 the Social Security Administration, regarding births
15 and deaths of United States citizens abroad.

16 (8) Not later than 3 years after the date of es-
17 tablishment of databases provided for under this sec-
18 tion, require States to record and retain electronic
19 records of pertinent identification information col-
20 lected from requestors who are not the registrants.

21 (9) Not later than 6 months after the date of
22 the enactment of this Act, submit to Congress a re-
23 port on whether there is a need for Federal laws to
24 address penalties for fraud and misuse of vital

1 records and whether violations are sufficiently en-
2 forced.

3 **SEC. 202. ENHANCED PENALTIES FOR DOCUMENT FRAUD.**

4 Section 1028(b)(3) of title 18, United States Code,
5 is amended—

6 (1) in subparagraph (B), by striking “or” at
7 the end;

8 (2) by redesignating subparagraph (C) as sub-
9 paragraph (D); and

10 (3) by inserting after subparagraph (B) the fol-
11 lowing:

12 “(C) to facilitate illegal immigration or
13 human smuggling; or”.

14 **SEC. 203. ALIEN SMUGGLING AND TERRORISM PREVEN-**
15 **TION.**

16 (a) CHECKS AGAINST TERRORIST WATCHLIST.—The
17 Secretary of Homeland Security shall, to the extent prac-
18 ticable, check against all available terrorist watchlists
19 those persons suspected of alien smuggling and smuggled
20 individuals who are interdicted at the land, air, and sea
21 borders of the United States.

22 (b) STRENGTHENING PROSECUTION AND PUNISH-
23 MENT OF ALIEN SMUGGLERS.—Section 274(a) of the Im-
24 migration and Nationality Act (8 U.S.C. 1324(a)) is
25 amended—

1 (1) by amending the subsection heading to read
2 as follows: “BRINGING IN, HARBORING, AND SMUG-
3 GLING OF UNLAWFUL AND TERRORIST ALIENS.—”;

4 (2) by amending paragraphs (1) through (2) to
5 read as follows:

6 “(1)(A) Whoever, knowing or in reckless disregard of
7 the fact that an individual is an alien who lacks lawful
8 authority to come to, enter, or reside in the United States,
9 knowingly—

10 “(i) brings that individual to the United States
11 in any manner whatsoever regardless of any future
12 official action which may be taken with respect to
13 such individual;

14 “(ii) recruits, encourages, or induces that indi-
15 vidual to come to, enter, or reside in the United
16 States;

17 “(iii) transports or moves that individual in the
18 United States, in furtherance of their unlawful pres-
19 ence; or

20 “(iv) harbors, conceals, or shields from detec-
21 tion the individual in any place in the United States,
22 including any building or any means of transpor-
23 tation;

24 or attempts or conspires to do so, shall be punished as
25 provided in subparagraph (C).

1 “(B) Whoever, knowing that an individual is an alien,
2 brings that individual to the United States in any manner
3 whatsoever at a place, other than a designated port of
4 entry or place designated by the Secretary of Homeland
5 Security, regardless of whether such individual has re-
6 ceived prior official authorization to come to, enter, or re-
7 side in the United States and regardless of any future offi-
8 cial action which may be taken with respect to such indi-
9 vidual, or attempts or conspires to do so, shall be punished
10 as provided in subparagraph (C).

11 “(C) Whoever commits an offense under this para-
12 graph shall, for each individual in respect to whom such
13 a violation occurs—

14 “(i) if the offense results in the death of any
15 person, be fined under title 18, United States Code,
16 and subject to the penalty of death or imprisonment
17 for any term of years or for life;

18 “(ii) if the offense involves kidnapping, an at-
19 tempt to kidnap, the conduct required for aggra-
20 vated sexual abuse (as defined in section 2241 of
21 title 18, United States Code, without regard to
22 where it takes place), or an attempt to commit such
23 abuse, or an attempt to kill, be fined under title 18,
24 United States Code, or imprisoned for any term of
25 years or life, or both;

1 “(iii) if the offense involves an individual who
2 the defendant knew was engaged in or intended to
3 engage in terrorist activity (as defined in section
4 212(a)(3)(B)), be fined under title 18, United States
5 Code, or imprisoned not more than 30 years, or
6 both;

7 “(iv) if the offense results in serious bodily in-
8 jury (as defined in section 1365 of title 18, United
9 States Code) or places in jeopardy the life of any
10 person, be fined under title 18, United States Code,
11 or imprisoned not more than 20 years, or both;

12 “(v) if the offense is a violation of paragraph
13 (1)(A)(i) and was committed for the purpose of prof-
14 it, commercial advantage, or private financial gain,
15 or if the offense was committed with the intent or
16 reason to believe that the individual unlawfully
17 brought into the United States will commit an of-
18 fense against the United States or any State that is
19 punishable by imprisonment for more than 1 year,
20 be fined under title 18, United States Code, and im-
21 prisoned, in the case of a first or second violation,
22 not less than 3 nor more than 10 years, and for any
23 other violation, not less than 5 nor more than 15
24 years;

1 “(vi) if the offense is a violation of paragraphs
2 (1)(A)(ii), (iii), or (iv), or paragraph (1)(B), and
3 was committed for the purpose of profit, commercial
4 advantage, or private financial gain, be fined under
5 title 18, United States Code, or imprisoned not more
6 than 10 years, or both;

7 “(vii) if the offense involves the transit of the
8 defendant’s spouse, child, sibling, parent, grand-
9 parent, or niece or nephew, and the offense is not
10 described in any of clauses (i) through (vi), be fined
11 under title 18, United States Code, or imprisoned
12 not more than 1 year, or both; and

13 “(viii) in any other case, be fined under title
14 18, United States Code, or imprisoned not more
15 than 5 years, or both.

16 “(2)(A) There is extraterritorial jurisdiction over the
17 offenses described in paragraph (1).

18 “(B) In a prosecution for a violation of, or an attempt
19 or conspiracy to violate, subsection (a)(1)(A)(i),
20 (a)(1)(A)(ii), or (a)(1)(B), that occurs on the high seas,
21 no defense based on necessity can be raised unless the de-
22 fendant—

23 “(i) as soon as practicable, reported to the
24 Coast Guard the circumstances of the necessity, and
25 if a rescue is claimed, the name, description, registry

1 number, and location of the vessel engaging in the
2 rescue; and

3 “(ii) did not bring, attempt to bring, or in any
4 manner intentionally facilitate the entry of any alien
5 into the land territory of the United States without
6 lawful authority, unless exigent circumstances ex-
7 isted that placed the life of that alien in danger, in
8 which case the reporting requirement set forth in
9 clause (i) is satisfied by notifying the Coast Guard
10 as soon as practicable after delivering the alien to
11 emergency medical or law enforcement personnel
12 ashore.

13 “(C) It is not a violation of, or an attempt or con-
14 spiracy to violate, clause (iii) or (iv) of paragraph (1)(A),
15 or paragraph (1)(A)(ii) (except if a person recruits, en-
16 courages, or induces an alien to come to or enter the
17 United States), for a religious denomination having a bona
18 fide nonprofit, religious organization in the United States,
19 or the agents or officer of such denomination or organiza-
20 tion, to encourage, invite, call, allow, or enable an alien
21 who is present in the United States to perform the voca-
22 tion of a minister or missionary for the denomination or
23 organization in the United States as a volunteer who is
24 not compensated as an employee, notwithstanding the pro-
25 vision of room, board, travel, medical assistance, and other

1 basic living expenses, provided the minister or missionary
2 has been a member of the denomination for at least one
3 year.

4 “(D) For purposes of this paragraph and paragraph
5 (1)—

6 “(i) the term ‘United States’ means the several
7 States, the District of Columbia, the Commonwealth
8 of Puerto Rico, Guam, American Samoa, the United
9 States Virgin Islands, the Commonwealth of the
10 Northern Mariana Islands, and any other territory
11 or possession of the United States; and

12 “(ii) the term ‘lawful authority’ means permis-
13 sion, authorization, or waiver that is expressly pro-
14 vided for in the immigration laws of the United
15 States or the regulations prescribed under those
16 laws and does not include any such authority se-
17 cured by fraud or otherwise obtained in violation of
18 law or authority that has been sought but not ap-
19 proved.”.

20 (c) MARITIME LAW ENFORCEMENT.—

21 (1) PENALTIES.—Subsection (b) of section
22 2237 of title 18, United States Code, is amended to
23 read as follows:

24 “(b) Whoever intentionally violates this section
25 shall—

1 “(1) if the offense results in death or involves
2 kidnapping, an attempt to kidnap, the conduct re-
3 quired for aggravated sexual abuse (as defined in
4 section 2241 without regard to where it takes place),
5 or an attempt to commit such abuse, or an attempt
6 to kill, be fined under such title or imprisoned for
7 any term of years or life, or both;

8 “(2) if the offense results in serious bodily in-
9 jury (as defined in section 1365 of this title) or
10 transportation under inhumane conditions, be fined
11 under this title, imprisoned not more than 15 years,
12 or both;

13 “(3) if the offense is committed in the course
14 of a violation of section 274 of the Immigration and
15 Nationality Act (alien smuggling); chapter 77 (peon-
16 age, slavery, and trafficking in persons), section 111
17 (shipping), 111A (interference with vessels), 113
18 (stolen property), or 117 (transportation for illegal
19 sexual activity) of this title; chapter 705 (maritime
20 drug law enforcement) of title 46, or title II of the
21 Act of June 15, 1917 (chapter 30; 40 Stat. 220), be
22 fined under this title or imprisoned for not more
23 than 10 years, or both; and

24 “(4) in any other case, be fined under this title
25 or imprisoned for not more than 5 years, or both.”.

1 (2) LIMITATION ON NECESSITY DEFENSE.—
2 Section 2237(c) of title 18, United States Code, is
3 amended—

4 (A) by inserting “(1)” after “(c)”;

5 (B) by adding at the end the following:

6 “(2) In a prosecution for a violation of this section,
7 no defense based on necessity can be raised unless the de-
8 fendant—

9 “(A) as soon as practicable upon reaching
10 shore, delivered the person with respect to which the
11 necessity arose to emergency medical or law enforce-
12 ment personnel;

13 “(B) as soon as practicable, reported to the
14 Coast Guard the circumstances of the necessity re-
15 sulting giving rise to the defense; and

16 “(C) did not bring, attempt to bring, or in any
17 manner intentionally facilitate the entry of any alien,
18 as that term is defined in section 101(a)(3) of the
19 Immigration and Nationality Act (8 U.S.C.
20 1101(a)(3)), into the land territory of the United
21 States without lawful authority, unless exigent cir-
22 cumstances existed that placed the life of that alien
23 in danger, in which case the reporting requirement
24 of subparagraph (B) is satisfied by notifying the
25 Coast Guard as soon as practicable after delivering

1 that person to emergency medical or law enforce-
2 ment personnel ashore.”.

3 (3) DEFINITION.—Section 2237(e) of title 18,
4 United States Code, is amended—

5 (A) by striking “and” at the end of para-
6 graph (3);

7 (B) by striking the period at the end of
8 paragraph (4) and inserting “; and”; and

9 (C) by adding at the end the following:

10 “(5) the term ‘transportation under inhumane
11 conditions’ means the transportation of persons in
12 an engine compartment, storage compartment, or
13 other confined space, transportation at an excessive
14 speed, transportation of a number of persons in ex-
15 cess of the rated capacity of the means of transpor-
16 tation, or intentionally grounding a vessel in which
17 persons are being transported.”.

18 (d) AMENDMENT TO THE SENTENCING GUIDE-
19 LINES.—

20 (1) IN GENERAL.—Pursuant to its authority
21 under section 994 of title 28, United States Code,
22 and in accordance with this section, the United
23 States Sentencing Commission shall review and, if
24 appropriate, amend the sentencing guidelines and
25 policy statements applicable to persons convicted of

1 alien smuggling offenses and criminal failure to
2 heave to or obstruction of boarding.

3 (2) CONSIDERATIONS.—In carrying out this
4 section, the Sentencing Commission, shall—

5 (A) consider providing sentencing enhance-
6 ments or stiffening existing enhancements for
7 those convicted of offenses described in sub-
8 section (a) that—

9 (i) involve a pattern of continued and
10 flagrant violations;

11 (ii) are part of an ongoing commercial
12 organization or enterprise;

13 (iii) involve aliens who were trans-
14 ported in groups of ten or more;

15 (iv) involve the transportation or
16 abandonment of aliens in a manner that
17 endangered their lives; or

18 (v) involve the facilitation of terrorist
19 activity; and

20 (B) consider cross-references to the guide-
21 lines for Criminal Sexual Abuse and Attempted
22 Murder.

23 (3) EXPEDITED PROCEDURES.—The Commis-
24 sion may promulgate the guidelines or amendments
25 under this section in accordance with the procedures

1 set forth in section 21(a) of the Sentencing Act of
2 1987, as though the authority under that Act had
3 not expired.

4 **SEC. 204. ELIGIBILITY FOR STATE CRIMINAL ALIEN ASSIST-**
5 **ANCE PROGRAM FUNDING.**

6 (a) IN GENERAL.—The Attorney General shall—

7 (1) determine annually which State or local ju-
8 risdictions are not in compliance with section 642 of
9 the Illegal Immigration Reform and Immigrant Re-
10 sponsibility Act (Public Law 104–208) and shall re-
11 port such determinations to Congress on March 1 of
12 each year; and

13 (2) issue a report concerning the compliance of
14 any particular State or local jurisdiction at the re-
15 quest of any Member of Congress.

16 (b) INCARCERATION.—Section 241(i) of the Immigra-
17 tion and Nationality Act (8 U.S.C. 1231(i)) is amended
18 by adding at the end the following:

19 “(7) A State (or a political subdivision of a
20 State) shall not be eligible to enter into a contrac-
21 tual arrangement under paragraph (1) if the State
22 (or political subdivision) has been determined by the
23 Attorney General to be out of compliance with sec-
24 tion 642 of the Illegal Immigration Reform and Im-
25 migrant Responsibility Act (Public Law 104–208).

1 Such State (or political subdivision) shall remain in-
2 eligible until the Attorney General determines that
3 the State (or political subdivision) has come into
4 compliance.”.

5 **SEC. 205. ICE IMMIGRATION ENFORCEMENT AGENTS.**

6 (a) IN GENERAL.—The Secretary shall authorize all
7 immigration enforcement agents and deportation officers
8 of Immigration and Customs Enforcement who have suc-
9 cessfully completed basic immigration law enforcement
10 training to exercise the powers conferred by—

11 (1) section 287(a)(5)(A) of the Immigration
12 and Nationality Act to arrest for any offense against
13 the United States;

14 (2) section 287(a)(5)(B) of the Immigration
15 and Nationality Act to arrest for any felony;

16 (3) section 274(a) of the Immigration and Na-
17 tionality Act to arrest for bringing in, transporting,
18 or harboring certain aliens, or inducing them to
19 enter;

20 (4) section 287(a) of the Immigration and Na-
21 tionality Act to execute warrants of arrest for ad-
22 ministrative immigration violations issued under sec-
23 tion 236 of the Act or to execute warrants of crimi-
24 nal arrest issued under the authority of the United
25 States; and

1 (5) section 287(a) of the Act to carry firearms,
2 provided that they are individually qualified by
3 training and experience to handle and safely operate
4 the firearms they are permitted to carry, maintain
5 proficiency in the use of such firearms, and adhere
6 to the provisions of the enforcement standard gov-
7 erning the use of force.

8 (b) PAY.—Immigration enforcement agents shall be
9 paid on the same scale as Immigration and Customs En-
10 forcement deportation officers and shall receive the same
11 benefits.

12 **SEC. 206. ICE DETENTION ENFORCEMENT OFFICERS.**

13 (a) AUTHORIZATION.—The Secretary is authorized to
14 hire 2,500 Immigration and Customs Enforcement deten-
15 tion enforcement officers.

16 (b) DUTIES.—Detention enforcement officers who
17 have successfully completed detention enforcement offi-
18 cers' basic training shall be responsible for—

19 (1) taking and maintaining custody of any per-
20 son who has been arrested by an immigration offi-
21 cer;

22 (2) transporting and guarding immigration de-
23 tainees;

24 (3) securing ICE detention facilities; and

25 (4) assisting in the processing of detainees.

1 **SEC. 207. ADDITIONAL ICE DEPORTATION OFFICERS AND**
2 **SUPPORT STAFF.**

3 (a) IN GENERAL.—The Secretary shall, subject to the
4 availability of appropriations for such purpose, increase
5 the number of positions for full-time active-duty Immigra-
6 tion and Customs Enforcement deportation officers by
7 5,000 above the number of full-time positions for which
8 funds were appropriated for fiscal year 2013.

9 (b) SUPPORT STAFF.—The Secretary shall, subject
10 to the availability of appropriations for such purpose, in-
11 crease the number of positions for full-time support staff
12 for Immigration and Customs Enforcement deportation
13 officers by 700 above the number of full-time positions for
14 which funds were appropriated for fiscal year 2013.

15 **SEC. 208. ASSISTING GANG AND DRUG TASK FORCES.**

16 The Secretary shall assign at least one Immigration
17 and Customs Enforcement deportation officer or immigra-
18 tion enforcement agent to serve as a member of any State
19 or local gang or drug task force—

20 (1) if the task force requests such assistance in
21 writing to an ICE field office; and

22 (2) for as long as the task force remains active
23 and wants such assistance.

24 **SEC. 209. PROTECTING COMMUNITIES.**

25 (a) PRISONS AND JAILS.—The Secretary shall assign
26 an Immigration and Customs Enforcement deportation of-

1 fier or immigration enforcement agent to every Federal,
2 State, and County prison or jail facility.

3 (b) DETAINERS.—Immigration and Customs En-
4 forcement deportation officers and immigration enforce-
5 ment agents assigned to a prison or jail facility are re-
6 quired to place a detainer on every alien they determine
7 is unlawfully present in the United States.

8 **SEC. 210. PROTECTING PUBLIC SAFETY AND REMOVING**
9 **CRIMINAL ALIENS.**

10 (a) NOTICES TO APPEAR.—Notwithstanding any
11 other provision of law, immigration officers who encoun-
12 ter, under any circumstances, an alien listed in subsection
13 (b) of this section are required to process such aliens and
14 refer them for removal proceedings by issuing a Notice
15 to Appear.

16 (b) ALIENS COVERED.—Aliens covered by subsection
17 (a) of this section include any alien who is unlawfully
18 present in the United States, whether such alien entered
19 without inspection or violated the terms of admission, and
20 who:

21 (1) Has been convicted of any felony;

22 (2) Has been convicted of any two or more mis-
23 demeanors;

24 (3) Has been convicted of a crime involving
25 moral turpitude;

1 (4) Has been convicted of any felony or mis-
2 demeanor involving the operation of a vehicle while
3 under the influence of alcohol or drugs;

4 (5) Has been convicted of any felony or mis-
5 demeanor involving domestic violence, sexual assault,
6 or sexual abuse of a child;

7 (6) Has a known or suspected gang affiliation;

8 (7) Assaults any law enforcement officer; or

9 (8) Poses a risk to public safety or national se-
10 curity.

11 **SEC. 211. PILOT PROGRAM FOR ELECTRONIC FIELD PROC-**
12 **ESSING.**

13 (a) **IN GENERAL.**—The Secretary shall establish a
14 pilot program in at least five of the 10 Immigration and
15 Customs Enforcement field offices with the largest re-
16 moval caseloads to allow Immigration and Customs depor-
17 tation officers and immigration enforcement agents to—

18 (1) electronically process and serve charging
19 documents, including Notices to Appear, while in the
20 field; and

21 (2) electronically process and place detainers
22 while in the field.

23 (b) **DUTIES.**—The pilot program described in sub-
24 section (a) shall be designed to allow deportation officers

1 and immigration enforcement agents to use handheld or
2 vehicle-mounted computers to—

3 (1) enter any required data, including personal
4 information about the alien subject and the reason
5 for issuing the document;

6 (2) apply the electronic signature of the issuing
7 officer or agent;

8 (3) set the date the alien is required to appear
9 before an immigration judge, in the case of Notices
10 to Appear;

11 (4) print any documents the alien subject may
12 be required to sign, along with additional copies of
13 documents to be served on the alien; and

14 (5) interface with the ENFORCE database so
15 that all data is stored and retrievable.

16 (c) CONSTRUCTION.—The pilot program described in
17 subsection (a) shall be designed to replace, to the extent
18 possible, the current paperwork and data-entry process
19 used for issuing such charging documents and detainers.

20 (d) DEADLINE.—The Secretary shall initiate the pilot
21 program described in subsection (a) within 6 months of
22 the date of enactment of this Act.

23 (e) REPORT.—The Government Accountability Office
24 shall report to the Judiciary Committee of the Senate and
25 the House of Representatives no later than 18 months

1 after the date of enactment of this Act on the effectiveness
2 of the pilot program and provide recommendations for im-
3 proving it.

4 (f) **ADVISORY COUNCIL.**—The ICE Advisory Council
5 established by section 217 of this Act shall include an rec-
6 ommendations on how the pilot program should work in
7 the first quarterly report of the Council, and shall include
8 assessments of the program and recommendations for im-
9 provement in each subsequent report.

10 **SEC. 212. RESTRICTING VISAS FOR COUNTRIES THAT**
11 **REFUSE TO REPATRIATE THEIR NATIONALS.**

12 (a) **PENALTIES RELATED TO REMOVAL.**—Section
13 243 of the Immigration and Nationality Act (8 U.S.C.
14 1253) is amended by striking subsection (d).

15 (b) **COUNTRIES TO WHICH ALIENS MAY BE RE-**
16 **MOVED.**—Section 241(b) of the Immigration and Nation-
17 ality Act (8 U.S.C. 1231(b)) is amended by adding at the
18 end the following:

19 “(4) **DISCONTINUING GRANTING CERTAIN VISAS**
20 **AND DENYING ADMISSION TO NATIONALS OF COUN-**
21 **TRY DENYING OR DELAYING ACCEPTING ALIENS.**—

22 “(A) **DISCONTINUING GRANTING VISAS.**—
23 Except as provided under subparagraph (C), if
24 a country is listed in the most recent quarterly
25 report submitted by the Secretary of Homeland

1 Security to the Congress under subparagraph
2 (E), the Secretary of State may not issue a
3 nonimmigrant visa pursuant to section
4 101(a)(15) to a citizen, subject, national, or
5 resident of such country until—

6 “(i) the Secretary of Homeland Secu-
7 rity notifies the Secretary of State that the
8 country should no longer be so listed; or

9 “(ii) each alien listed in the report
10 with respect to such country has otherwise
11 been removed from the United States.

12 “(B) DENYING ADMISSION TO NATIONALS
13 AND FOREIGN GOVERNMENT OFFICIALS.—Ex-
14 cept as provided under subparagraph (C), if a
15 country is listed in the most recent quarterly
16 report submitted by the Secretary of Homeland
17 Security to the Congress under subparagraph
18 (E), the Secretary of Homeland Security, in
19 consultation with the Secretary of State, shall
20 deny admission to any citizen, subject, national,
21 or resident of that country who has received a
22 nonimmigrant visa pursuant to section
23 101(a)(15).

24 “(C) EXCEPTION.—Subparagraphs (A)
25 and (B) do not apply if the Secretary of State

1 determines that the life or freedom of the visa
2 applicant or individual seeking admission would
3 be threatened in the country listed under sub-
4 paragraph (E).

5 “(D) EFFECT OF UNAUTHORIZED
6 ISSUANCE.—Any visa issued in violation of this
7 paragraph shall be null and void.

8 “(E) QUARTERLY REPORTS.—Not later
9 than 90 days after the date of the enactment of
10 this Act, and every 3 months thereafter, the
11 Secretary of Homeland Security shall submit a
12 report to the Congress that—

13 “(i) lists all the countries that deny or
14 unreasonably delay the acceptance of at
15 least 10 percent of the total number of
16 aliens who—

17 “(I) are physically present in the
18 United States;

19 “(II) are a citizen, subject, na-
20 tional, or resident of such country;
21 and

22 “(III) have received a final order
23 of removal; and

1 “(ii) includes the total number of
2 aliens described under clause (i), organized
3 by—

4 “(I) name;

5 “(II) country;

6 “(III) detention status; and

7 “(IV) criminal status.

8 “(F) COMPLIANCE WITH REPATRIATION.—

9 If the Secretary of Homeland Security deter-
10 mines that a country listed in the quarterly re-
11 port under subparagraph (E) has accepted each
12 alien listed with respect to that country under
13 subparagraph (E)(ii), the country shall be re-
14 moved from the list in the next quarterly report
15 submitted under subparagraph (E) and shall
16 not be subject to the sanctions described in this
17 paragraph, unless subparagraph (E) applies to
18 such country with respect to another alien.

19 “(G) DENIES OR UNREASONABLY
20 DELAYS.—

21 “(i) IN GENERAL.—Except as pro-
22 vided under clause (ii), in this paragraph,
23 a country ‘denies or unreasonably delays’
24 the acceptance of an alien who is a citizen,
25 subject, national, or resident of the country

1 if the country does not accept the alien
2 within the removal period.

3 “(ii) ALIEN THAT MAY NOT BE RE-
4 MOVED.—For purposes of clause (i), a
5 country does not deny or unreasonably
6 delay the acceptance of an alien who is a
7 citizen, subject, national, or resident of the
8 country if such alien may not be removed
9 pursuant to this section.”.

10 **SEC. 213. ADDITIONAL ICE DETENTION SPACE.**

11 (a) IN GENERAL.—The Secretary of Homeland Secu-
12 rity shall make arrangements for the availability of 10,000
13 additional beds for detaining aliens taken into custody by
14 immigration officials.

15 (b) IMPLEMENTATION.—Efforts shall be made to—

16 (1) contract private facilities whenever possible
17 to promote efficient use and to limit the Federal
18 Government’s maintenance of and liability for addi-
19 tional infrastructure;

20 (2) utilize State and local facilities for the pro-
21 vision of additional beds; and

22 (3) utilize BRAC facilities or active duty facili-
23 ties.

1 (c) CONSTRUCTION.—The Department of Homeland
2 Security shall construct facilities as necessary to meet the
3 remainder of the 10,000 new beds to be provided.

4 **SEC. 214. ADDITIONAL IMMIGRATION JUDGESHIPS AND**
5 **LAW CLERKS.**

6 (a) JUDGESHIPS.—The Attorney General shall create
7 and fill twenty additional Immigration Judgeships within
8 6 months after the date of enactment of this Act.

9 (b) CLERKSHIPS.—The Attorney General shall also
10 ensure that for every 2 Immigration Judges there shall
11 be no fewer than one law clerk dedicated to assisting Im-
12 migration Judges.

13 **SEC. 215. ADDITIONAL ICE PROSECUTORS.**

14 The Secretary shall increase by sixty the number of
15 full-time trial attorneys working for the Immigration and
16 Customs Enforcement Office of the Principal Legal Advi-
17 sor.

18 **SEC. 216. ENSURING THE SAFETY OF ICE OFFICERS AND**
19 **AGENTS.**

20 (a) BODY ARMOR.—The Secretary shall ensure that
21 every Immigration and Customs Enforcement deportation
22 officer and immigration enforcement agent on duty is
23 issued high-quality body armor that is appropriate for the
24 climate and risks faced by the agent. Enough body armor
25 must be purchased to cover every agent in the field.

1 (b) WEAPONS.—The Secretary shall ensure that Im-
2 migration and Customs Enforcement deportation officers
3 and immigration enforcement agents are equipped with
4 weapons that are reliable and effective to protect them-
5 selves, their fellow agents, and innocent third parties from
6 the threats posed by armed criminals. Such weapons shall
7 include, at a minimum, standard-issue handguns, M-4 (or
8 equivalent) rifles, and Tasers.

9 **SEC. 217. ICE ADVISORY COUNCIL.**

10 (a) ESTABLISHMENT.—An ICE Advisory Council
11 shall be established within 3 months of enactment of this
12 Act.

13 (b) MEMBERSHIP.—The ICE Advisor Council shall
14 be comprised of seven members.

15 (1) Members are to be appointed in the fol-
16 lowing manner:

17 (A) One member shall be appointed by the
18 President;

19 (B) One member shall be appointed by the
20 Chairman of the Judiciary Committee of the
21 House of Representatives;

22 (C) One member shall be appointed by the
23 Chairman of the Judiciary Committee of the
24 Senate;

1 (D) One member shall be appointed by the
2 Local 511, the ICE prosecutor's union; and

3 (E) Three members shall be appointed by
4 the National Immigration and Customs En-
5 forcement Council.

6 (2) Members shall serve renewable, 2-year
7 terms.

8 (3) Membership shall be voluntary and non-re-
9 munerated, except that members will receive reim-
10 bursement from ICE for travel and other related ex-
11 penses.

12 (4) Members who are employed by ICE shall be
13 protected from retaliation by their supervisors, man-
14 agers, and other DHS employees for their participa-
15 tion on the Council.

16 (c) PURPOSE.—The purpose of the Council is to ad-
17 vise the Congress and the Director of Immigration and
18 Customs Enforcement on issues including the following:

19 (1) The current status of ICE immigration en-
20 forcement efforts, including prosecutions and remov-
21 als, the effectiveness of such efforts, and how en-
22 forcement could be improved;

23 (2) The effectiveness of cooperative efforts be-
24 tween ICE and other law enforcement agencies, in-
25 cluding additional types of enforcement activities

1 that ICE should be engaged in, such as State and
2 local criminal task forces;

3 (3) Personnel, equipment, and other resource
4 needs of ICE field personnel;

5 (4) Improvements that should be made to ICE's
6 organizational structure, including whether the posi-
7 tion of immigration enforcement agent should be
8 merged into the deportation officer position; and

9 (5) The effectiveness of specific enforcement
10 policies and regulations promulgated by ICE Head-
11 quarters, and whether other enforcement priorities
12 should be considered.

13 (d) REPORTS.—The Council shall provide quarterly
14 reports to the Chairmen and Ranking Members of the Ju-
15 diciary Committees of the Senate and the House of Rep-
16 resentatives and to the Director of Immigration and Cus-
17 toms Enforcement. The Council members shall meet di-
18 rectly with the Chairmen and Ranking Members (or their
19 designated representatives) and with the Director to dis-
20 cuss their reports every 6 months.

1 **TITLE III—GAINING OPER-**
2 **ATIONAL CONTROL OF AMER-**
3 **ICA’S BORDERS**

4 **SEC. 301. AUTOMATED ENTRY-EXIT CONTROL SYSTEM.**

5 (a) **SYSTEM.**—Not later than 2 years after the date
6 of the enactment of this Act, the Secretary shall develop
7 the biometric automated entry and exit control system re-
8 quired by Sec. 110 of the Illegal Immigration Reform and
9 Immigrant Responsibility Act of 1996 (Public Law 104–
10 208), which was duly enacted by Congress and signed into
11 law.

12 (b) **PILOT EXIT PROGRAMS.**—Not later than 6
13 months after the date of enactment of this Act, the Sec-
14 retary shall establish biometric exit pilot programs at a
15 minimum of 10 land ports of entry, including at least two
16 each in California, Arizona, New Mexico, and Texas, and
17 at least two on the United States-Canada border.

18 (c) **PURPOSE.**—Such pilot programs, at a minimum
19 shall match all nonimmigrant visa holders who depart the
20 United States through the pilot port with their initial
21 entry into the United States and report whether they de-
22 parted within the terms of their visas.

23 (d) **DHS REPORT.**—The Secretary shall report to
24 Congress no later than one year after the date of enact-

1 ment of this Act, and every 6 months thereafter, on the
2 effectiveness of the pilot programs, including—

3 (1) what percentage of aliens leaving the United
4 States through the pilot ports were tracked through
5 the pilot;

6 (2) what percentage of tracked aliens violated
7 the duration of their visas; and

8 (3) the rate of visa compliance by non-
9 immigrant visa type.

10 (e) GAO REPORT.—The General Accountability Of-
11 fice shall report to Congress no later than one year after
12 the date of enactment of this Act on the effectiveness of
13 the pilot programs and recommendations for improving
14 their effectiveness and expanding them nationwide.

15 **SEC. 302. MEASURING BORDER SECURITY.**

16 (a) IN GENERAL.—The Department of Homeland Se-
17 curity shall assess the effectiveness of border enforcement
18 strategies and tools by using the metric of “operational
19 control”.

20 (b) OPERATIONAL CONTROL DEFINED.—In this sec-
21 tion, the term “operational control” means the prevention
22 of all unlawful entries into the United States, including
23 entries by terrorists, other unlawful aliens, instruments of
24 terrorism, narcotics, and other contraband.

1 (c) DHS REPORT.—Not later than 1 year after the
2 date of the enactment of this Act and annually thereafter,
3 the Secretary shall submit to Congress a report on the
4 progress made toward achieving and maintaining oper-
5 ational control over the entire international land and mari-
6 time borders of the United States in accordance with this
7 section.

8 (d) GAO REPORT.—Not later than 1 year after the
9 date of the enactment of this Act and annually thereafter,
10 the General Accountability Office shall submit to Congress
11 a report on the progress made toward achieving and main-
12 taining operational control over the entire international
13 land and maritime borders of the United States in accord-
14 ance with this section.

15 **SEC. 303. NATIONAL STRATEGY TO ACHIEVE OPERATIONAL**
16 **CONTROL OF AMERICA'S BORDERS.**

17 (a) REQUIREMENT FOR NATIONAL STRATEGY.—The
18 Secretary, in consultation with the heads of other appro-
19 priate Federal agencies, shall develop a national strategy
20 to secure the borders that describes actions to be carried
21 out to achieve operational control over all ports of entry
22 into the United States and the international land and mar-
23 itime borders of the United States by December 31, 2015.

24 (b) CONTENT.—The national strategy to secure the
25 borders shall include the following:

1 (1) An assessment of the threats posed by ter-
2 rorists and terrorist groups that may try to infiltrate
3 the United States at locations along the inter-
4 national land and maritime borders of the United
5 States.

6 (2) A risk assessment for all United States
7 ports of entry and all portions of the international
8 land and maritime borders of the United States that
9 includes a description of activities being under-
10 taken—

11 (A) to prevent the entry of terrorists, other
12 unlawful aliens, instruments of terrorism, nar-
13 cotics, and other contraband into the United
14 States; and

15 (B) to protect critical infrastructure at or
16 near such ports of entry or borders.

17 (3) An assessment of the most appropriate,
18 practical, and cost-effective means of defending the
19 international land and maritime borders of the
20 United States against threats to security and illegal
21 transit, including intelligence capacities, technology,
22 equipment, personnel, and training needed to ad-
23 dress security vulnerabilities.

24 (4) An assessment of staffing needs for all bor-
25 der security functions, taking into account threat

1 and vulnerability information pertaining to the bor-
2 ders and the impact of new security programs, poli-
3 cies, and technologies.

4 (5) A description of the border security roles
5 and missions of Federal Government, State govern-
6 ment, local government, and tribal authorities, and
7 recommendations regarding actions the Secretary
8 can carry out to improve coordination with such au-
9 thorities to enable border security and enforcement
10 activities to be carried out in a more efficient and
11 effective manner.

12 (6) An assessment of existing efforts and tech-
13 nologies used for border security and the effect of
14 the use of such efforts and technologies on the safe-
15 ty, civil rights, private property rights, privacy
16 rights, and civil liberties, including the effects on
17 Americans living in the border region and local,
18 State, and Federal law enforcement officers working
19 in the border region.

20 (7) A prioritized list of research and develop-
21 ment objectives to enhance the security of the inter-
22 national land and maritime borders of the United
23 States.

24 (8) An assessment of additional detention facili-
25 ties and beds that are needed to detain unlawful

1 aliens apprehended at United States ports of entry
2 or along the international land borders of the United
3 States.

4 (9) A schedule for the implementation of the se-
5 curity measures described in said strategy, including
6 a prioritization of security measures, realistic dead-
7 lines for addressing the security and enforcement
8 needs, an estimate of the resources needed to carry
9 out such measures, and a description of how such
10 resources should be allocated.

11 (c) CONSULTATION.—In developing the national
12 strategy for border security, the Secretary shall consult
13 with representatives of—

14 (1) State, local, and tribal governmental au-
15 thorities with responsibility for locations along the
16 international land and maritime borders of the
17 United States; and

18 (2) appropriate private sector entities, non-
19 governmental organizations, and affected commu-
20 nities that have expertise in areas related to border
21 security.

22 (d) COORDINATION.—The national strategy for bor-
23 der security shall be consistent with the National Strategy
24 for Maritime Security developed pursuant to Homeland

1 Security Presidential Directive 13, dated December 21,
2 2004.

3 (e) SUBMISSION TO CONGRESS.—

4 (1) STRATEGY.—Not later than December 31,
5 2013, the Secretary shall submit to Congress the na-
6 tional strategy to achieve operational control of U.S.
7 borders.

8 (2) UPDATES.—The Secretary shall submit to
9 Congress any update of such strategy that the Sec-
10 retary determines is necessary, not later than 30
11 days after such update is developed.

12 (f) IMMEDIATE ACTION.—Nothing in this section
13 may be construed to relieve the Secretary of the responsi-
14 bility to take all actions necessary and appropriate to
15 achieve and maintain immediate operational control over
16 the entire international land and maritime borders of the
17 United States.

18 **SEC. 304. IMPROVING BORDER TECHNOLOGY.**

19 (a) EQUIPMENT SHARING BETWEEN DEPARTMENT
20 OF HOMELAND SECURITY AND DEPARTMENT OF DE-
21 FENSE.—The Secretaries of these 2 departments shall de-
22 velop and implement a plan to use authorities provided
23 to the Secretary of Defense under chapter 18 of title 10,
24 United States Code, to increase the availability and use
25 of Department of Defense equipment, including unmanned

1 aerial vehicles, tethered aerostat radars, and other surveil-
2 lance equipment, to assist the Secretary in carrying out
3 surveillance activities conducted at or near the inter-
4 national land borders of the United States to prevent ille-
5 gal immigration.

6 (b) REPORT.—Not later than 6 months after the date
7 of enactment of this Act (and then annually from that
8 point), the Secretary and the Secretary of Defense shall
9 submit to Congress a report that contains—

10 (1) a description of the current use of Depart-
11 ment of Defense equipment to assist the Secretary
12 in carrying out surveillance of the international land
13 borders of the United States and assessment of the
14 potential risks to citizens of the United States and
15 key foreign policy interests associated with the use
16 of such equipment;

17 (2) the plan developed under subsection (a) to
18 increase the use of Department of Defense equip-
19 ment to assist such surveillance activities; and

20 (3) a description of the types of equipment and
21 other support to be provided by the Secretary of De-
22 fense under such plan during the 1-year period be-
23 ginning on the date of the submission of the report.

24 (c) SECURE COMMUNICATION.—The secretary shall,
25 as expeditiously as practicable, develop and implement a

1 plan to improve the use of satellite communications and
2 other technologies to ensure clear and secure 2-way com-
3 munication capabilities—

4 (1) among all Border Patrol agents conducting
5 operations between ports of entry;

6 (2) between Border Patrol agents and their re-
7 spective Border Patrol stations; and

8 (3) between all appropriate law enforcement
9 agencies of the Department and State, local, and
10 tribal law enforcement agencies.

11 (d) OTHER TECHNOLOGY UPGRADES.—The Sec-
12 retary shall purchase and implement new technology to se-
13 cure the borders, including, but not limited to drones, in-
14 frared cameras, sensors, mobile lighting units, radar and
15 infrared heat.

16 **SEC. 305. ENSURING THE SAFETY OF BORDER PATROL**
17 **AGENTS.**

18 (a) BODY ARMOR.—The Secretary shall ensure that
19 every agent on duty is issued high-quality body armor that
20 is appropriate for the climate and risks faced by the agent.
21 Enough body armor must be purchased to cover every
22 agent in the field.

23 (b) WEAPONS.—The Secretary shall ensure that
24 agents are equipped with weapons, including long-guns,
25 that are reliable and effective to protect themselves, their

1 fellow agents, and innocent third parties from the threats
2 posed by armed criminals. The Secretary shall ensure that
3 the policies of the Department authorize all agents to
4 carry weapons that are suited to the potential threats that
5 they face, and that all agents receive appropriate training
6 in the use of such weapons.

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