

48. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
SENSENBRENNER OF WISCONSIN, OR HIS
DESIGNEE, TO BE DEBATABLE FOR 10 MINUTES:

92
Revised
Revised
Revised

**AMENDMENT TO H.R. 4437, AS REPORTED
OFFERED BY MR. SENSENBRENNER OF
WISCONSIN AND MR. KING OF NEW YORK**

In section 102—

(1) in subsection (b), in the matter before paragraph (1), strike “Committee on Homeland Security of the House of Representatives” and insert “appropriate congressional committees”;

(2) in subsection (b)(3), insert “, except for ports of entry and facilities subject to vulnerability assessments under section 70102 or 70103 of title 46, United States Code,” after “borders of the United States”;

(3) amend subsection (d) to read as follows:

1 (d) COORDINATION.— The National Strategy for
2 Border Security described in subsection (b) shall be con-
3 sistent with the National Strategy for Maritime Security
4 developed pursuant to Homeland Security Presidential Di-
5 rective 13.

(4) in subsection (f), strike “Committee on Homeland Security of the House of Representatives,



such Committee shall promptly report to the House”
and insert “appropriate congressional committees,
such committees shall promptly report to their re-
spective House”;

(5) in subsection (g), insert “and section
301(b)” after “this title”; and

(6) add at the end the following new subsection:

1 (h) **RULE OF CONSTRUCTION.**—Nothing in this sec-
2 tion shall be construed to alter, impact, diminish, or in
3 any way undermine the authority of the Administrator of
4 the Federal Aviation Administration to oversee, regulate,
5 and control the safe and efficient use of the airspace of
6 the United States.

In section 111, strike “Committee on Homeland Se-
curity of the House of Representatives” and insert “ap-
propriate congressional committees”.

At the end of title I, add the following new section:

7 **SEC. 118. VOLUNTARY RELOCATION PROGRAM EXTENSION.**

8 Section 5739(e) of title 5, United States Code, is
9 amended by striking “7” and inserting “12”.

In section 203, amend paragraph (3) to read as fol-
lows:

10 (3) by amending subsection (c) to read as fol-

11 lows:



1 “(c)(1) Whoever—

2 “(A) knowingly enters into a marriage for the
3 purpose of evading any provision of the immigration
4 laws; or

5 “(B) knowingly misrepresents the existence or
6 circumstances of a marriage—

7 “(i) in an application or document arising
8 under or authorized by the immigration laws of
9 the United States or the regulations prescribed
10 thereunder, or

11 “(ii) during any immigration proceeding
12 conducted by an administrative adjudicator (in-
13 cluding an immigration officer or examiner, a
14 consular officer, an immigration judge, or a
15 member of the Board of Immigration Appeals);
16 shall be fined under title 18, United States Code, or
17 imprisoned not more than 10 years, or both.

18 “(2) Whoever—

19 “(A) knowingly enters into two or more mar-
20 riages for the purpose of evading any provision of
21 the immigration laws; or

22 “(B) knowingly arranges, supports, or facili-
23 tates two or more marriages designed or intended to
24 evade any provision of the immigration laws;



1 shall be fined under title 18, United States Code, impris-
2 oned not less than 2 years nor more than 20 years, or
3 both.

4 “(3) An offense under this subsection continues until
5 the fraudulent nature of the marriage or marriages is dis-
6 covered by an immigration officer.

7 “(4) For purposes of this section, the term ‘pro-
8 ceeding’ includes an adjudication, interview, hearing, or
9 review.”

In section 275(e)(1) of the Immigration and Nation-
ality Act, proposed to be inserted by section 203(5)—

(1) in subparagraph (A), strike “(other than an
aggravated felony)”; and

(2) strike subparagraph (B) and insert the fol-
lowing:

10 (B) whose violation was subsequent to con-
11 viction for a felony for which the alien received
12 a sentence of 30 months or more, shall be fined
13 under title 18, United States Code, imprisoned
14 not more than 10 years, or both; or

15 (C) whose violation was subsequent to con-
16 viction for a felony for which the alien received
17 a sentence of 60 months or more, shall be fined
18 under title 18, United States Code, imprisoned
19 not more than 20 years, or both.



In proposed section 275(e)(3) of the Immigration and Nationality Act, as inserted by section 203(5)—

(1) strike “(A) or (B)” and insert “(A), (B), or (C)”; and

(2) strike “an aggravated felony or other qualifying crime” and insert “a qualifying crime”.

Strike section 210, and insert the following:

1 **SEC. 210. ESTABLISHMENT OF THE FORENSIC DOCUMENTS**

2 **LABORATORY.**

3 (a) **IN GENERAL.**—The Secretary of Homeland Security shall establish a Fraudulent Documents Center (to be
4 known as the Forensic Document Laboratory) to carry out
5 the following:
6

7 (1) Collect information from Federal, State,
8 and local law enforcement agencies, and foreign governments on the production, sale, distribution, and
9 use of fraudulent documents intended to be used to
10 enter, travel, or remain within the United States unlawfully.
11

12 (2) Maintain the information described in paragraph (1) in a comprehensive database.
13

14 (3) Maintain a repository of genuine and fraudulent travel and identity document exemplars.
15

16 (4) Convert the information collected into reports that provide guidance to government officials
17
18



1 in identifying fraudulent documents being used to
2 enter into, travel within, or remain in the United
3 States.

4 (5) Develop a system for distributing these re-
5 ports on an ongoing basis to appropriate Federal,
6 State, and local law enforcement agencies.

7 (b) DISTRIBUTION OF INFORMATION.—The Forensic
8 Document Laboratory shall distribute its reports to appro-
9 priate Federal, State, and local law enforcement agencies
10 on an ongoing basis.

At the end of title II, add the following new sections:

11 **SEC. 211. MOTIONS TO REOPEN OR RECONSIDER.**

12 (a) EXERCISE OF DISCRETION.—Section 240(c) of
13 the Immigration and Nationality Act (8 U.S.C. 1229a(c))
14 is amended—

15 (1) by adding at the end of paragraph (5) the
16 following new subparagraph:

17 “(D) DISCRETION.—The decision to grant
18 or deny a motion to reconsider is committed to
19 the Attorney General’s discretion.”; and

20 (2) by adding at the end of paragraph (6) the
21 following new subparagraph:

22 “(D) DISCRETION.—The decision to grant
23 or deny a motion to reopen is committed to the
24 Attorney General’s discretion.”.



1 (b) PRIMA FACIE ELIGIBILITY FOR PROTECTION
2 FROM REMOVAL TO ALTERNATIVE COUNTRY OF RE-
3 MOVAL NOT PREVIOUSLY CONSIDERED.—Section 240(c)
4 of the Immigration and Nationality Act (8 U.S.C. 1229a)
5 is further amended by adding at the end of paragraph (6)
6 the following new subparagraph:

7 “(E) SPECIAL RULE FOR ALTERNATIVE
8 COUNTRIES OF REMOVAL.—The time and nu-
9 merical limitations specified in this paragraph
10 shall not apply if—

11 “(i) the Secretary seeks to remove the
12 alien to an alternative or additional coun-
13 try of removal under subparagraph (D) or
14 (E) of section 241(b)(2) that had not been
15 considered during the alien’s prior removal
16 proceedings;

17 “(ii) the alien’s motion to reopen is
18 filed within 30 days after the date the
19 alien receives notice of the Secretary’s in-
20 tention to remove the alien to that country;
21 and

22 “(iii) the alien establishes a prima
23 facie case that the alien is entitled by law
24 to withholding of removal under section
25 241(b)(3) or protection under the Conven-



1 tion Against Torture with respect to that
2 particular country.”.

3 (c) EFFECTIVE DATE.—This section, and the amend-
4 ments made by this section, shall apply to motions to re-
5 open and reconsider that are filed on or after the date
6 of the enactment of this Act in removal, deportation, or
7 exclusion proceedings, regardless of whether a final ad-
8 ministrative order is entered before, on, or after such date.

9 **SEC. 212. REFORM OF PASSPORT, VISA, AND IMMIGRATION**
10 **FRAUD OFFENSES.**

11 Chapter 75 of title 18, United States Code is amend-
12 ed to read as follows:

13 **“CHAPTER 75—PASSPORT, VISA, AND**
14 **IMMIGRATION FRAUD**

- “1541. Trafficking in passports.
- “1542. False statement in an application for a passport.
- “1543. Forgery and unlawful production of a passport.
- “1544. Misuse of a passport.
- “1545. Schemes to defraud aliens.
- “1546. Immigration and visa fraud.
- “1547. Attempts and conspiracies.
- “1548. Increased penalties for certain offenses.
- “1549. Seizure and forfeiture.
- “1550. Additional jurisdiction.
- “1551. Additional venue.
- “1552. Definitions.
- “1553. Authorized law enforcement activities.

15 **“§ 1541. Trafficking in passports**

16 “(a) Whoever, during any three-year period—

17 “(1) knowingly and without lawful authority
18 produces, issues, or transfers 10 or more passports;

19 or

1 shall be fined under this title, imprisoned not more than
2 15 years, or both.

3 “(b) Whoever knowingly and without lawful
4 authority—

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

8 “(2) produces, issues, authorizes, or verifies a
9 United States passport for or to any person not
10 owing allegiance to the United States; or

11 “(3) transfers or furnishes a passport to a per-
12 son for use when such person is not the person for
13 whom the passport was issued or designed;

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

16 **“§ 1544. Misuse of a passport**

17 “(a) Whoever—

18 “(1) knowingly uses any passport issued or de-
19 signed for the use of another; or

20 “(2) knowingly uses any passport in violation of
21 the conditions or restrictions therein contained, or in
22 violation of the laws, regulations, or rules governing
23 the issuance and use of the passport; or

24 “(3) knowingly secures, possesses, uses, re-
25 ceives, buys, or sells any passport knowing it to be



1 forged, counterfeited, altered, falsely made, procured
2 by fraud, or produced or issued without lawful au-
3 thority; or

4 “(4) knowingly violates the terms and condi-
5 tions of any safe conduct duly obtained and issued
6 under the authority of the United States;

7 shall be fined under this title, imprisoned not more than
8 15 years, or both.

9 “(b) Whoever knowingly uses any passport—

10 “(1) to enter or to attempt to enter the United
11 States, or

12 “(2) to defraud an agency of the United States,
13 a State, or a political subdivision of a State,

14 knowing the passport to be forged, counterfeited, altered,
15 falsely made, procured by fraud, produced or issued with-
16 out lawful authority, or issued or designed for the use of
17 another, shall be fined under this title, imprisoned not less
18 than 6 months nor more than 15 years, or both.

19 **“§ 1545. Schemes to defraud aliens**

20 “(a) Whoever knowingly defrauds any person in con-
21 nection with—

22 “(1) any matter that is authorized by or arises
23 under the immigration laws of the United States, or



1 “(2) any matter the offender claims or rep-
2 resents is authorized by or arises under the immi-
3 gration laws of the United States,
4 shall be fined under this title, imprisoned not more than
5 15 years, or both.

6 “(b) Whoever knowingly and falsely represents him-
7 self to be an attorney in any matter authorized by or aris-
8 ing under the immigration laws of the United States shall
9 be fined under this title, imprisoned not more than 15
10 years, or both.

11 “§ 1546. **Immigration and visa fraud**

12 “(a) Whoever—

13 “(1) knowingly uses any immigration document
14 issued or designed for the use of another; or

15 “(2) knowingly forges, counterfeits, alters, or
16 falsely makes any immigration document; or

17 “(3) knowingly completes, mails, prepares, pre-
18 sents, signs, or submits any immigration document
19 knowing it to contain any materially false statement
20 or representation; or

21 “(4) knowingly secures, possesses, uses, trans-
22 fers, receives, buys, or sells any immigration docu-
23 ment knowing it to be forged, counterfeited, altered,
24 falsely made, stolen, procured by fraud, issued or de-



1 signed for another, or produced or issued without
2 lawful authority; or

3 “(5) knowingly adopts or uses a false or ficti-
4 tious name to evade or to attempt to evade the im-
5 migration laws; or

6 “(6) knowingly and without lawful authority
7 transfers or furnishes an immigration document to
8 a person for use when such person is not the person
9 for whom the immigration document was issued or
10 designed;

11 shall be fined under this title, imprisoned not more than
12 15 years, or both.

13 “(b) Whoever, during any three-year period—

14 “(1) knowingly and without lawful authority
15 produces, issues, or transfers 10 or more immigra-
16 tion documents; or

17 “(2) knowingly forges, counterfeits, alters, or
18 falsely makes 10 or more immigration documents; or

19 “(3) knowingly secures, possesses, uses, buys,
20 or sells 10 or more immigration documents, knowing
21 the immigration documents to be forged, counter-
22 feited, altered, stolen, falsely made, procured by
23 fraud, or issued or designed for the use of another,
24 or produced or issued without lawful authority; or



1 “(4) knowingly completes, mails, prepares, pre-
2 sents, signs, or submits 10 or more immigration doc-
3 uments knowing the documents to contain any mate-
4 rially false statement or representation;
5 shall be fined under this title, imprisoned not less than
6 2 years nor more than 20 years, or both.

7 “(c) Whoever knowingly and without lawful authority
8 produces, counterfeits, secures, possesses, or uses any offi-
9 cial paper, seal, hologram, image, text, symbol, stamp, en-
10 graving, plate, or other material used to make an immigra-
11 tion document shall be fined under this title, imprisoned
12 not less than 2 years nor more than 20 years, or both.

13 **“§ 1547. Attempts and conspiracies**

14 “Whoever attempts or conspires to violate any section
15 within this chapter shall be punished in the same manner
16 as a completed violation of that section. An attempt of-
17 fense under this chapter is a general intent crime.

18 **“§ 1548. Increased penalties for certain offenses**

19 “(a) Whoever violates any of the sections within this
20 chapter with the intent to facilitate an act of international
21 terrorism (as defined in section 2331 of this title) shall
22 be fined under this title, imprisoned not less than 7 years
23 nor more than 25 years, or both.

24 “(b) Whoever violates any section in this chapter with
25 the intent to facilitate the commission of any offense



1 against the United States (other than an offense in this
2 chapter) or against any State, which offense is punishable
3 by imprisonment for more than 1 year, shall be fined
4 under this title, imprisoned not less than 3 years nor more
5 than 20 years, or both.

6 **“§ 1549. Seizure and forfeiture**

7 “(a) Any property, real or personal, that has been
8 used to commit or facilitate the commission of a violation
9 of any section within this chapter, the gross proceeds of
10 such violation, and any property traceable to such prop-
11 erty or proceeds, shall be subject to forfeiture.

12 “(b) Seizures and forfeitures under this section shall
13 be governed by the provisions of chapter 46 of this title,
14 relating to civil forfeitures, including section 981(d) of
15 such title, except that such duties as are imposed upon
16 the Secretary of the Treasury under the customs laws de-
17 scribed in that section shall be performed by such officers,
18 agents, and other persons as may be designated for that
19 purpose by the Secretary of Homeland Security, the Sec-
20 retary of State, or the Attorney General.

21 **“§ 1550. Additional jurisdiction**

22 “(a) Whoever commits an offense under this chapter
23 within the special maritime and territorial jurisdiction of
24 the United States shall be punished as provided by that
25 offense.



1 “(b) Whoever commits an offense under this chapter
2 outside the United States shall be punished as provided
3 by that offense if—

4 “(1) the offense involves a United States immi-
5 gration document (or any document purporting to be
6 the same) or any matter, right, or benefit arising
7 under or authorized by the immigration laws of the
8 United States or the regulations prescribed there-
9 under; or

10 “(2) the offense is in or affects foreign com-
11 merce; or

12 “(3) the offense affects, jeopardizes, or poses a
13 significant risk to the lawful administration of the
14 immigration laws of the United States, or the na-
15 tional security of the United States; or

16 “(4) the offense is committed to facilitate an
17 act of international terrorism (as defined in section
18 2331 of this title) or a drug trafficking crime (as de-
19 fined in section 929(a) of this title) that affects or
20 would affect the national security of the United
21 States; or

22 “(5) an offender is a national of the United
23 States (as defined in section 101(a)(22) of the Im-
24 migration and Nationality Act (8 U.S.C. §
25 1001(a)(22)) or an alien lawfully admitted for per-



1 manent residence in the United States (as defined in
2 section 101(a)(20) of the Immigration and Nation-
3 ality Act (8 U.S.C. § 1001(a)(20)); or

4 “(6) an offender is a stateless person whose ha-
5 bitual residence is in the United States.

6 **“§ 1551. Additional venue**

7 “An offense under section 1542 of this chapter may
8 be prosecuted in—

9 “(1) any district in which the false statement or
10 representation was made; or

11 “(2) any district in which the passport applica-
12 tion was prepared, submitted, mailed, received, proc-
13 essed, or adjudicated; or

14 “(3) in the case of an application prepared and
15 adjudicated outside the United States, in the district
16 in which the resultant passport was produced.

17 Nothing in this section limits the venue otherwise available
18 under sections 3237 and 3238 of this title.

19 **“§ 1552. Definitions**

20 “For purposes of this chapter:

21 “(1) The term ‘falsely make’ means to prepare
22 or complete an immigration document with knowl-
23 edge or in reckless disregard of the fact that the
24 document—



1 “(A) contains a statement or representa-
2 tion that is false, fictitious, or fraudulent;

3 “(B) has no basis in fact or law; or

4 “(C) otherwise fails to state a fact that is
5 material to the purpose for which the document
6 was created, designed, or submitted.

7 “(2) The term a ‘false statement or representa-
8 tion’ includes a personation or an omission.

9 “(3) The term ‘felony’ means any criminal of-
10 fense punishable by a term of imprisonment of more
11 than 1 year under the laws of the United States, any
12 State, or a foreign government.

13 “(4) The term ‘immigration document’
14 means—

15 “(A) any passport or visa; or

16 “(B) any application, petition, affidavit,
17 declaration, attestation, form, identification
18 card, alien registration document, employment
19 authorization document, border crossing card,
20 certificate, permit, order, license, stamp, au-
21 thorization, grant of authority, or other evi-
22 dentiary document, arising under or authorized
23 by the immigration laws of the United States.



1 Such term includes any document, photograph, or
2 other piece of evidence attached to or submitted in
3 support of an immigration document.

4 “(5) The term ‘immigration laws’ includes—

5 “(A) the laws described in section
6 101(a)(17) of the Immigration and Nationality
7 Act (8 U.S.C. 1101(a)(17));

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

10 “(C) the regulations prescribed under the
11 authority of any law described in paragraphs
12 (1) and (2) of this subsection.

13 “(6) A person does not exercise ‘lawful author-
14 ity’ if the person abuses or improperly exercises law-
15 ful authority the person otherwise holds.

16 “(7) The term ‘passport’ means a travel docu-
17 ment attesting to the identity and nationality of the
18 bearer that is issued under the authority of the Sec-
19 retary of State, a foreign government, or an inter-
20 national organization; or any instrument purporting
21 to be the same.

22 “(8) The term ‘produce’ means to make, pre-
23 pare, assemble, issue, print, authenticate, or alter.

24 “(9) The term ‘State’ means a State of the
25 United States, the District of Columbia, and any



1 commonwealth, territory, or possession of the United
2 States.

3 **“§ 1553. Authorized law enforcement activities**

4 “The sections in this chapter do not prohibit any law-
5 fully authorized investigative, protective, or intelligence ac-
6 tivity of a law enforcement agency of the United States,
7 a State, or a subdivision of a State, or of an intelligence
8 agency of the United States, or any activity authorized
9 under title V of the Organized Crime Control Act of 1970
10 (18 U.S.C. note prec. 3481).”.

11 **SEC. 213. CRIMINAL DETENTION OF ALIENS.**

12 (a) Section 3142(e) of title 18, United States Code,
13 is amended by inserting at the end the following:

14 “Subject to rebuttal by the person, it shall be presumed
15 that no condition or combination of conditions will reason-
16 ably assure the appearance of the person as required if
17 the judicial officer finds that there is probable cause to
18 believe that the person is an alien and that the person—

19 “(1) has no lawful immigration status in the
20 United States;

21 “(2) is the subject of a final order of removal;
22 or

23 “(3) has committed a felony offense under sec-
24 tion 911, 922(g)(5), 1015, 1028, 1425, or 1426 of
25 this title, or any section of chapters 75 and 77 of



1 this title, or section 243, 274, 275, 276, 277, or
2 278, of the Immigration and Nationality Act.”.

3 (b) Section 3142(g)(3) of title 18, United States
4 Code, is amended by striking “and” at the end of subpara-
5 graph (A) and by adding at the end the following new sub-
6 paragraph:

7 “(C) the person’s immigration status;
8 and”.

9 **SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CER-**
10 **TAIN IMMIGRATION, NATURALIZATION, AND**
11 **PEONAGE OFFENSES.**

12 Section 3291 of title 18, United States Code, is
13 amended to read as follows:

14 **“SEC. 3291. IMMIGRATION, NATURALIZATION, AND PEON-**
15 **AGE OFFENSES.**

16 “No person shall be prosecuted, tried, or punished
17 for a violation of any section of chapters 69 (relating to
18 nationality and citizenship offenses), 75 (relating to pass-
19 port, visa, and immigration offenses), or 77 (relating to
20 peonage, slavery, and trafficking in persons) of this title
21 (or for attempt or conspiracy to violate any such section),
22 or for a violation of any criminal provision of sections 243,
23 266, 274, 275, 276, 277, or 278 of the Immigration and
24 Nationality Act (or for attempt or conspiracy to violate
25 any such section), unless the indictment is returned or the



1 information filed within ten years after the commission of
2 the offense.”.

3 **SEC. 215. CONFORMING AMENDMENT.**

4 Subparagraph (P) of section 101(a)(43) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1101(a)(43)) is
6 amended—

7 (1) by striking “(i) which either is falsely mak-
8 ing, forging, counterfeiting, mutilating, or altering a
9 passport or instrument in violation of section 1543
10 of Title 18 or is described in section 1546(a) of such
11 title (relating to document fraud) and (ii)” and in-
12 serting “which is described in any section of chapter
13 75 of title 18, United States Code,”; and

14 (2) by inserting after “first offense” the fol-
15 lowing: “(i) that is not described in section 1548 (re-
16 lating to increased penalties), and (ii)”.

17 **SEC. 216. INADMISSIBILITY FOR PASSPORT AND IMMIGRA-
18 TION FRAUD.**

19 (a) **IN GENERAL.**—Section 212(a)(2)(A)(i) of the Im-
20 migration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i))
21 is amended—

22 (1) by striking “or” at the end of subclause (I);

23 (2) by inserting “or” at the end of subclause
24 (II); and



1 (3) by inserting the following new subpara-
2 graph:

3 “(III) a violation of (or a con-
4 spiracy or attempt to violate) any sec-
5 tion of chapter 75 of title 18, United
6 States Code,”.

7 (b) **EFFECTIVE DATE.**—The amendments made by
8 subsection (a) shall apply to proceedings pending on or
9 after the date of the enactment of this Act.

10 **SEC. 217. REMOVAL FOR PASSPORT AND IMMIGRATION**

11 **FRAUD.**

12 (a) **IN GENERAL.**—Clause (iii) of section
13 237(a)(3)(B) of the Immigration and Nationality Act (8
14 U.S.C.1227(a)(3)(B)) is amended to read as follows “(iii)
15 of a violation of, or an attempt or a conspiracy to violate,
16 any section of chapter 75 of title 18, United States
17 Code,”.

18 (b) **EFFECTIVE DATE.**—This amendment made by
19 subsection (a) shall apply to proceedings pending on or
20 after the date of the enactment of this Act

In section 301—

(1) in subsection (b), in the matter preceding
paragraph (1), strike “Congress” and insert “appro-
priate congressional committees (as defined in sec-
tion 102(g))”; and



(2) in subsection (c), strike “RULE OF CONSTRUCTION” and insert “RULES OF CONSTRUCTION”, insert “(1)” before “Nothing” and add at the end the following new paragraph:

1 (2) Nothing in this section shall be construed to alter,
2 impact, diminish, or in any way undermine the authority
3 of the Administrator of the Federal Aviation Administra-
4 tion to oversee, regulate, and control the safe and efficient
5 use of the airspace of the United States.

In section 305(a), in the matter before paragraph (1), strike “any activity” and insert “any terrorism prevention or deterrence activity”.

At the end of title III, add the following new section:

6 **SEC. 308. RED ZONE DEFENSE BORDER INTELLIGENCE**
7 **PILOT PROGRAM.**

8 (a) **ESTABLISHMENT.**—The Secretary of Homeland
9 Security and the Director of National Intelligence shall
10 jointly establish a pilot program to improve the coordina-
11 tion and management of intelligence and homeland secu-
12 rity information provided to or utilized by the Department
13 of Homeland Security relating to the southwest inter-
14 national land and maritime border of the United States.

15 (b) **PILOT AREA.**—The Secretary of Homeland Secu-
16 rity and the Director of National Intelligence shall des-
17 ignate a geographic area along the southwest international



1 land and maritime border of the United States centered
2 on Cochise County, Arizona, to be the pilot area for the
3 pilot program established pursuant to subsection (a).

4 (c) PROGRAM.—The pilot program established pursu-
5 ant to subsection (a) shall—

6 (1) coordinate and facilitate the sharing of in-
7 telligence and homeland security information related
8 to border security within the pilot area designated
9 pursuant to subsection (b) among Federal, State,
10 local, and tribal governments, including relevant in-
11 telligence and homeland security information pro-
12 vided to the Department of Homeland Security by
13 the intelligence community and relevant intelligence
14 and homeland security information gathered by the
15 Department of Homeland Security from other
16 sources;

17 (2) to the maximum extent possible, provide for
18 persistent surveillance of such pilot area;

19 (3) to the maximum extent possible, utilize air-
20 ships, aerostats, and existing unmanned aerial vehi-
21 cles to provide for surveillance of such pilot area;

22 (4) to the maximum extent possible, fully utilize
23 the capabilities of underutilized assets currently
24 available to conduct surveillance of such pilot area;



1 (5) where practicable, utilize the capabilities of
2 existing operational and analytical centers that ana-
3 lyze intelligence and homeland security information
4 relating to such pilot area from multiple sources and
5 improve the interoperability of such centers;

6 (6) consistent with applicable security require-
7 ments, disseminate actionable intelligence and home-
8 land security information relating to border security
9 within such pilot area to the appropriate Federal,
10 State, local, tribal, and foreign governments to sup-
11 port operational activities relating to border security
12 within such pilot area;

13 (7) provide for direct transmission of such ac-
14 tionable intelligence and homeland security informa-
15 tion to operational and analytical centers included in
16 the pilot program;

17 (8) provide for a representative of the Depart-
18 ment of Homeland Security to be assigned to each
19 operational and analytical center to facilitate the im-
20 mediate utilization, where practicable, of such ac-
21 tionable intelligence and homeland security informa-
22 tion; and

23 (9) develop metrics to assess the capability of
24 such pilot program to improve border security.



1 (d) STRATEGY COORDINATION.—In establishing the
2 pilot program under subsection (a), the Director of Na-
3 tional Intelligence shall coordinate the intelligence activi-
4 ties of the pilot program with the relevant activities and
5 programs of other elements of the intelligence community.

6 (e) HEADQUARTERS.—The Secretary of Homeland
7 Security and the Director of National Intelligence may es-
8 tablish a headquarters for the pilot program established
9 pursuant to subsection (a) within the area designated as
10 the pilot area pursuant to subsection (b).

11 (f) DURATION.—The pilot program established pur-
12 suant to subsection (a) shall last a minimum of two years.

13 (g) REPORT.—Not later than one year after the es-
14 tablishment of the pilot program pursuant to subsection
15 (a), the Secretary of Homeland Security and the Director
16 of National Intelligence shall submit to Congress a report
17 containing—

18 (1) the lessons learned from such pilot program
19 based on the metrics developed pursuant to sub-
20 section (c)(9);

21 (2) recommendations for enhancing the provi-
22 sion and sharing of intelligence and homeland secu-
23 rity information relating to border security under
24 the National Strategy for Border Security submitted
25 pursuant to section 102(b) and with other programs



1 of the intelligence community relating to border se-
2 curity; and

3 (3) an identification of any provisions of law
4 that may impede effective coordination of intel-
5 ligence and homeland security information relating
6 to the southwest international land and maritime
7 border of the United States.


8 (h) DEFINITIONS.—In this section:

9 (1) HOMELAND SECURITY INFORMATION.—The
10 term “homeland security information” has the
11 meaning given the term in section 892(f)(1) of the
12 Homeland Security Act of 2002 (6 U.S.C.
13 482(f)(1)).

14 (2) INTELLIGENCE COMMUNITY.—The term
15 “intelligence community” has the meaning given the
16 term in section 3(4) of the National Security Act of
17 1947 (50 U.S.C. 401a(4)).

18 (i) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated such sums as may be
20 necessary to carry out this section .

In section 401(c), add at the end the following para-
graph:



21 (3) DISCRETION.—Nothing in this section shall
22 be construed as limiting the authority of the Sec-
23 retary of Homeland Security, in the Secretary’s sole

1 unreviewable discretion, to determine whether an
 2 alien described in clause (ii) of section 235(b)(1)(B)
 3 of the Immigration and Nationality Act shall be de-
 4 tained or released after a finding of a credible fear
 5 of persecution (as defined in clause (v) of such sec-
 6 tion).

In section 431(e) of the Homeland Security Act of
 2002, as added by section 502(a), insert "the Depart-
 ment of Transportation," after "Justice,".

Amend clause (vi) of section 601(a)(1)(B) to read as
 follows:

7 (vi) by striking the last sentence and
 8 inserting the following: "The Secretary of
 9 Homeland Security ^{shall} ~~may~~ waive the applica-
 10 tion of clause (v) in the case of removal of
 11 an alien who is a native or citizen of a
 12 country in the Western Hemisphere with
 13 whose government the United States does
 14 not have full diplomatic relations. ~~if the~~
 15 ~~Secretary determines, in the Secretary's~~
 16 ~~discretion that there are reasonable~~
 17 ~~grounds to believe that the alien is~~
 18 ~~guilty of the security of the United States~~
 19 ~~Notwithstanding any other provision of law~~
 20 ~~(including any statute), and if~~



1 graph (A) or (B) of paragraph (4)
2 apply; or
3 “(II) pending a determination as
4 provided in subparagraph (C) of para-
5 graph (4).”

In section 241~~(c)~~(3)(B)(ii) of the Immigration and Nationality Act, inserted by section 602(a)(9), strike “paragraph (4)(A)” and insert “paragraph (4)(B)”.

In section 611—

(1) strike “section 103(d)(1)” and insert “sections 103(d)(1) and 105(a)(2)(A)”; and

(2) strike “is amended” and insert “are each amended”.

Add at the end of title VI, the following new sections:

6 SEC. 615. REPORT ON CRIMINAL ALIEN PROSECUTION.

7 Not later than one year after the date of the enact-
8 ment of this Act and annually thereafter, the Attorney
9 General shall submit to the Committee on the Judiciary
10 of the House of Representatives and the Committee on
11 the Judiciary of the Senate a report on the status of crimi-
12 nal alien prosecutions, including prosecutions of human
13 smugglers.

1 **SEC. 616. DETERMINATION OF IMMIGRATION STATUS OF**
2 **INDIVIDUALS CHARGED WITH FEDERAL OF-**
3 **FENSES.**

4 (a) RESPONSIBILITY OF UNITED STATES ATTOR-
5 NEYS.—Beginning 2 years after the date of the enactment
6 of this Act, the office of the United States attorney that
7 is prosecuting a criminal case in a Federal court—

8 (1) shall determine, not later than 30 days
9 after filing the initial pleadings in the case, whether
10 each defendant in the case is lawfully present in the
11 United States (subject to subsequent legal pro-
12 ceedings to determine otherwise);

13 (2)(A) if the defendant is determined to be an
14 alien lawfully present in the United States, shall no-
15 tify the court in writing of the determination and
16 the current status of the alien under the Immigra-
17 tion and Nationality Act; and

18 (B) if the defendant is determined not to be
19 lawfully present in the United States, shall notify
20 the court in writing of the determination, the de-
21 fendant's alien status, and, to the extent possible,
22 the country of origin or legal residence of the de-
23 fendant; and

24 (3) ensure that the information described in
25 paragraph (2) is included in the case file and the



1 criminal records system of the office of the United
2 States attorney.

3 The determination under paragraph (1) shall be made in
4 accordance with guidelines of the Executive Office for Im-
5 migration Review of the Department of Justice.

6 (b) RESPONSIBILITIES OF FEDERAL COURTS.—

7 (1) MODIFICATIONS OF RECORDS AND CASE
8 MANAGERMENTS SYSTEMS.—Not later than 2 years
9 after the date of the enactment of this Act, all Fed-
10 eral courts that hear criminal cases, or appeals of
11 criminal cases, shall modify their criminal records
12 and case management systems, in accordance with
13 guidelines which the Director of the Administrative
14 Office of the United States Courts shall establish, so
15 as to enable accurate reporting of information de-
16 scribed in paragraph (2) of subsection (a).

17 (2) DATA ENTRIES.—Beginning 2 years after
18 the date of the enactment of this Act, each Federal
19 court described in paragraph (1) shall enter into its
20 electronic records the information contained in each
21 notification to the court under subsection (a)(2).

22 (c) ANNUAL REPORT TO CONGRESS.—The Director
23 of the Administrative Office of the United States Courts
24 shall include, in the annual report filed with the Congress
25 under section 604 of title 28, United States Code—



1 (1) statistical information on criminal trials of
2 aliens in the courts and criminal convictions of
3 aliens in the lower courts and upheld on appeal, in-
4 cluding the type of crime in each case and including
5 information on the legal status of the aliens; and

6 (2) recommendations on whether additional
7 court resources are needed to accommodate the vol-
8 ume of criminal cases brought against aliens in the
9 Federal courts.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated for each of fiscal years
12 2007 through 2012, such sums as may be necessary to
13 carry out this Act. Funds appropriated pursuant to this
14 subsection in any fiscal year shall remain available until
15 expended.

In section 274A(h)(4) of the Immigration and Na-
tionality Act, as added by section 705—

(1) amend the heading to read: “**RECRUIT-
MENT AND REFERRAL**”;

(2) amend the third sentence to read as follows:
“However, labor service agencies, whether public,
private, for-profit, or nonprofit, that refer, dispatch,
or otherwise facilitate the hiring of workers for any
period of time by a third party are included in the



definition whether or not they receive remuneration.” ; and

(3) amend the sixth sentence to read as follows: “However, labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of workers for any period of time by a third party are included in the definition whether or not they receive remuneration.”.

Redesignate section 708 as 709, and insert after section 707 the following new section:

1 **SEC. 708. EXTENSION OF PREEMPTION TO REQUIRED CON-**
2 **STRUCTION OF DAY LABORER SHELTERS.**

3 Paragraph 274A(h)(2) of the Immigration and Na-
4 tionality Act (8 U.S.C. 1324a(h)(2)) is amended—

5 (1) by striking “imposing”, and inserting a
6 dash and “(A) imposing”;

7 (2) by striking the period at the end and insert-
8 ing “; and”; and

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

10 “(B) Requiring as a condition of con-
11 ducting, continuing, or expanding a business
12 that a business entity—

13 “(i) provide, build, fund, or maintain
14 a shelter, structure, or designated area for



1 use by day laborers at or near its place of
2 business; or
3 “(ii) take other steps that facilitate
4 the employment of day laborers by oth-
5 ers.”.

At the end of title VIII add the following:

6 **SEC. 807. CLARIFICATION OF JURISDICTION ON REVIEW.**

7 (a) REVIEW OF DISCRETIONARY DETERMINA-
8 TIONS.—Section 242(a)(2)(B) of the Immigration and
9 Nationality Act (8 U.S.C. 1252(a)(2)(B)) is amended—

10 (1) by inserting before “no court” the following:

11 “and regardless of whether the individual determina-
12 tion, decision, or action is made in removal pro-
13 ceedings,”;

14 (2) in clause (i), by striking “any judgment”
15 and inserting “any individual determination”; and

16 (3) in clause (ii)—

17 (A) by inserting “discretionary” after “any
18 other”;

19 (B) by striking “the authority for which is
20 specified under this title to be in the discretion
21 of the Attorney General or the Secretary of
22 Homeland Security,” and inserting “under this
23 title or the regulations promulgated here-
24 under,”; and



1 (C) by striking the period at the end and
2 inserting the following: “, irrespective of wheth-
3 er such decision or action is guided or informed
4 by standards, regulatory or otherwise.”.

5 (b) **REVIEW OF ORDERS AGAINST CRIMINAL**
6 **ALIENS.**—Section 242(a)(2)(C) of the Immigration and
7 Nationality Act (8 U.S.C. 1252(a)(2)(C)) is amended by
8 inserting after “of removal” the following: “(irrespective
9 of whether relief or protection was denied on the basis of
10 the alien’s having committed a criminal offense)”.

11 (c) **EFFECTIVE DATE.**—The amendments made by
12 this section shall apply to petitions for review that are
13 pending on or after the date of the enactment of this Act.

14 **SEC. 808. FEES AND EXPENSES IN JUDICIAL PROCEEDINGS.**

15 (a) **IN GENERAL.**—Section 242 of the Immigration
16 and Nationality Act (8 U.S.C. 1252) is amended by add-
17 ing at the end the following new subsection:

18 “(i) Notwithstanding any other provision of law, a
19 court shall not award fees or other expenses to an alien
20 based upon the alien’s status as a prevailing party in any
21 proceedings relating to an order of removal issued under
22 this Act, unless the court of appeals concludes that the
23 Attorney General’s determination that the alien was re-
24 movable under section 212 or 237 was not substantially
25 justified.”.



1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to fees or other expenses award-
3 ed on or after the date of the enactment of this Act.

