

115TH CONGRESS
2D SESSION

H. R. 6134

To clarify standards of family detention and the treatment of unaccompanied alien children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2018

Mr. MEADOWS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, 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 clarify standards of family detention and the treatment of unaccompanied alien children, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Equal Protection of Unaccompanied Minors Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—UNACCOMPANIED ALIEN CHILDREN; INTERIOR
IMMIGRATION ENFORCEMENT

- Sec. 1101. Repatriation of unaccompanied alien children.
- Sec. 1102. Clarification of standards for family detention.
- Sec. 1103. Detention of dangerous aliens.
- Sec. 1104. Definition of aggravated felony.
- Sec. 1105. Crime of violence.
- Sec. 1106. Grounds of inadmissibility and deportability for alien gang members.
- Sec. 1107. Special immigrant juvenile status for immigrants unable to reunite with either parent.
- Sec. 1108. Clarification of authority regarding determinations of convictions.
- Sec. 1109. Adding attempt and conspiracy to commit terrorism-related inadmissibility grounds acts to the definition of engaging in terrorist activity.
- Sec. 1110. Clarifying the authority of ICE detainers.
- Sec. 1111. Clarification of congressional intent.

TITLE II—ASYLUM REFORM

- Sec. 2101. Credible fear interviews.
- Sec. 2102. Jurisdiction of asylum applications.
- Sec. 2103. Recording expedited removal and credible fear interviews.
- Sec. 2104. Safe third country.
- Sec. 2105. Renunciation of asylum status pursuant to return to home country.
- Sec. 2106. Notice concerning frivolous asylum applications.
- Sec. 2107. Anti-fraud investigative work product.
- Sec. 2108. Penalties for asylum fraud.
- Sec. 2109. Statute of limitations for asylum fraud.
- Sec. 2110. Technical amendments.

1 **TITLE I—UNACCOMPANIED** 2 **ALIEN CHILDREN; INTERIOR** 3 **IMMIGRATION ENFORCE-** 4 **MENT**

5 **SEC. 1101. REPATRIATION OF UNACCOMPANIED ALIEN** 6 **CHILDREN.**

7 (a) IN GENERAL.—Section 235 of the William Wil-
8 berforce Trafficking Victims Protection Reauthorization
9 Act of 2008 (8 U.S.C. 1232) is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (2)—

1 (i) by amending the heading to read
2 as follows: “RULES FOR UNACCOMPANIED
3 ALIEN CHILDREN.—”;

4 (ii) in subparagraph (A)—

5 (I) in the matter preceding clause
6 (i), by striking “who is a national or
7 habitual resident of a country that is
8 contiguous with the United States”;

9 (II) in clause (i), by inserting
10 “and” at the end;

11 (III) in clause (ii), by striking “;
12 and” and inserting a period; and

13 (IV) by striking clause (iii);

14 (iii) in subparagraph (B)—

15 (I) in the matter preceding clause
16 (i), by striking “(8 U.S.C. 1101 et
17 seq.) may—” and inserting “(8
18 U.S.C. 1101 et seq.)—”;

19 (II) in clause (i), by inserting be-
20 fore “permit such child to withdraw”
21 the following: “may”; and

22 (III) in clause (ii), by inserting
23 before “return such child” the fol-
24 lowing: “shall”; and

25 (iv) in subparagraph (C)—

1 (I) by amending the heading to
2 read as follows: “AGREEMENTS WITH
3 FOREIGN COUNTRIES.—”; and

4 (II) in the matter preceding
5 clause (i), by striking “The Secretary
6 of State shall negotiate agreements
7 between the United States and coun-
8 tries contiguous to the United States”
9 and inserting “The Secretary of State
10 may negotiate agreements between the
11 United States and any foreign country
12 that the Secretary determines appro-
13 priate”;

14 (B) by redesignating paragraphs (3)
15 through (5) as paragraphs (4) through (6), re-
16 spectively, and inserting after paragraph (2) the
17 following:

18 “(3) SPECIAL RULES FOR INTERVIEWING UNAC-
19 COMPANIED ALIEN CHILDREN.—An unaccompanied
20 alien child shall be interviewed by a dedicated U.S.
21 Citizenship and Immigration Services immigration
22 officer with specialized training in interviewing child
23 trafficking victims. Such officer shall be in plain
24 clothes and shall not carry a weapon. The interview
25 shall occur in a private room.”; and

1 (C) in paragraph (6)(D) (as so redesignated)—
2

3 (i) in the matter preceding clause (i),
4 by striking “, except for an unaccompanied
5 alien child from a contiguous country subject to exceptions under subsection (a)(2),”
6 and inserting “who does not meet the criteria listed in paragraph (2)(A)”; and
7

8
9 (ii) in clause (i), by inserting before
10 the semicolon at the end the following: “,
11 which shall include a hearing before an immigration judge not later than 14 days
12 after being screened under paragraph (4)”;
13

14 (2) in subsection (b)—

15 (A) in paragraph (2)—

16 (i) in subparagraph (A), by inserting
17 before the semicolon the following: “believed not to meet the criteria listed in subsection (a)(2)(A)”; and
18
19

20 (ii) in subparagraph (B), by inserting
21 before the period the following: “and does
22 not meet the criteria listed in subsection (a)(2)(A)”; and
23

24 (B) in paragraph (3), by striking “an unaccompanied alien child in custody shall” and
25

1 all that follows, and inserting the following: “an
2 unaccompanied alien child in custody—

3 “(A) in the case of a child who does not
4 meet the criteria listed in subsection (a)(2)(A),
5 shall transfer the custody of such child to the
6 Secretary of Health and Human Services not
7 later than 30 days after determining that such
8 child is an unaccompanied alien child who does
9 not meet such criteria; or

10 “(B) in the case of child who meets the
11 criteria listed in subsection (a)(2)(A), may
12 transfer the custody of such child to the Sec-
13 retary of Health and Human Services after de-
14 termining that such child is an unaccompanied
15 alien child who meets such criteria.”; and

16 (3) in subsection (c)—

17 (A) in paragraph (3), by inserting at the
18 end the following:

19 “(D) INFORMATION ABOUT INDIVIDUALS
20 WITH WHOM CHILDREN ARE PLACED.—

21 “(i) INFORMATION TO BE PROVIDED
22 TO HOMELAND SECURITY.—Before placing
23 a child with an individual, the Secretary of
24 Health and Human Services shall provide
25 to the Secretary of Homeland Security, re-

1 garding the individual with whom the child
2 will be placed, the following information:

3 “(I) The name of the individual.

4 “(II) The Social Security number
5 of the individual, if available.

6 “(III) The date of birth of the in-
7 dividual.

8 “(IV) The location of the individ-
9 ual’s residence where the child will be
10 placed.

11 “(V) The immigration status of
12 the individual, if known.

13 “(VI) Contact information for
14 the individual.

15 “(ii) SPECIAL RULE.—In the case of a
16 child who was apprehended on or after
17 June 15, 2012, and before the date of the
18 enactment of this subparagraph, who the
19 Secretary of Health and Human Services
20 placed with an individual, the Secretary
21 shall provide the information listed in
22 clause (i) to the Secretary of Homeland
23 Security not later than 90 days after such
24 date of enactment.

1 “(iii) ACTIVITIES OF SECRETARY OF
2 HOMELAND SECURITY.—Not later than 30
3 days after receiving the information listed
4 in clause (i), the Secretary of Homeland
5 Security shall—

6 “(I) in the case that the immi-
7 gration status of an individual with
8 whom a child is placed is unknown,
9 investigate the immigration status of
10 that individual; and

11 “(II) upon determining that an
12 individual with whom a child is placed
13 is unlawfully present in the United
14 States, initiate removal proceedings
15 pursuant to chapter 4 of title II of the
16 Immigration and Nationality Act (8
17 U.S.C. 1221 et seq.).”; and

18 (B) in paragraph (5)—

19 (i) by inserting “(at no expense to the
20 Government)” after “to the greatest extent
21 practicable”; and

22 (ii) by striking “have counsel to rep-
23 resent them” and inserting “have access to
24 counsel to represent them”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to any unauthorized alien child ap-
3 prehended on or after June 15, 2012.

4 **SEC. 1102. CLARIFICATION OF STANDARDS FOR FAMILY DE-**
5 **TENTION.**

6 (a) IN GENERAL.—Section 235 of the William Wil-
7 berforce Trafficking Victims Protection Reauthorization
8 Act of 2008 (8 U.S.C. 1232) is amended by adding at
9 the end the following:

10 “(j) CONSTRUCTION.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of law, judicial determination, consent de-
13 cree, or settlement agreement, the detention of any
14 alien child who is not an unaccompanied alien child
15 shall be governed by sections 217, 235, 236, and
16 241 of the Immigration and Nationality Act (8
17 U.S.C. 1187, 1225, 1226, and 1231). There exists
18 no presumption that an alien child who is not an un-
19 accompanied alien child should not be detained, and
20 all such determinations shall be in the discretion of
21 the Secretary of Homeland Security.

22 “(2) RELEASE OF MINORS OTHER THAN UNAC-
23 COMPANIED ALIENS.—In no circumstances shall an
24 alien minor who is not an unaccompanied alien child

1 be released by the Secretary of Homeland Security
2 other than to a parent or legal guardian.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall take effect on the date of the enact-
5 ment of this Act and shall apply to all actions that occur
6 before, on, or after the date of the enactment of this Act.

7 **SEC. 1103. DETENTION OF DANGEROUS ALIENS.**

8 Section 241(a) of the Immigration and Nationality
9 Act (8 U.S.C. 1231(a)) is amended—

10 (1) by striking “Attorney General” each place
11 it appears, except for the first reference in para-
12 graph (4)(B)(i), and inserting “Secretary of Home-
13 land Security”;

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

16 “(B) **BEGINNING OF PERIOD.**—The re-
17 moval period begins on the latest of the fol-
18 lowing:

19 “(i) The date the order of removal be-
20 comes administratively final.

21 “(ii) If the alien is not in the custody
22 of the Secretary on the date the order of
23 removal becomes administratively final, the
24 date the alien is taken into such custody.

1 “(iii) If the alien is detained or con-
2 fined (except under an immigration proc-
3 ess) on the date the order of removal be-
4 comes administratively final, the date the
5 alien is taken into the custody of the Sec-
6 retary, after the alien is released from such
7 detention or confinement.”;

8 (3) in paragraph (1), by amending subpara-
9 graph (C) to read as follows:

10 “(C) SUSPENSION OF PERIOD.—

11 “(i) EXTENSION.—The removal period
12 shall be extended beyond a period of 90
13 days and the Secretary may, in the Sec-
14 retary’s sole discretion, keep the alien in
15 detention during such extended period if—

16 “(I) the alien fails or refuses to
17 make all reasonable efforts to comply
18 with the removal order, or to fully co-
19 operate with the Secretary’s efforts to
20 establish the alien’s identity and carry
21 out the removal order, including mak-
22 ing timely application in good faith
23 for travel or other documents nec-
24 essary to the alien’s departure or con-
25 spires or acts to prevent the alien’s

1 removal that is subject to an order of
2 removal;

3 “(II) a court, the Board of Immi-
4 gration Appeals, or an immigration
5 judge orders a stay of removal of an
6 alien who is subject to an administra-
7 tively final order of removal;

8 “(III) the Secretary transfers
9 custody of the alien pursuant to law
10 to another Federal agency or a State
11 or local government agency in connec-
12 tion with the official duties of such
13 agency; or

14 “(IV) a court or the Board of
15 Immigration Appeals orders a remand
16 to an immigration judge or the Board
17 of Immigration Appeals, during the
18 time period when the case is pending
19 a decision on remand (with the re-
20 moval period beginning anew on the
21 date that the alien is ordered removed
22 on remand).

23 “(ii) RENEWAL.—If the removal pe-
24 riod has been extended under subpara-

graph (C)(i), a new removal period shall be deemed to have begun on the date—

“(I) the alien makes all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary’s efforts to establish the alien’s identity and carry out the removal order;

“(II) the stay of removal is no longer in effect; or

“(III) the alien is returned to the custody of the Secretary.

“(iii) MANDATORY DETENTION FOR CERTAIN ALIENS.—In the case of an alien described in subparagraphs (A) through (D) of section 236(c)(1), the Secretary shall keep that alien in detention during the extended period described in clause (i).

“(iv) SOLE FORM OF RELIEF.—An alien may seek relief from detention under this subparagraph only by filing an application for a writ of habeas corpus in accordance with chapter 153 of title 28, United States Code. No alien whose period of detention is extended under this sub-

1 paragraph shall have the right to seek re-
2 lease on bond.”;

3 (4) in paragraph (3)—

4 (A) by adding after “If the alien does not
5 leave or is not removed within the removal pe-
6 riod” the following: “or is not detained pursu-
7 ant to paragraph (6) of this subsection”; and

8 (B) by striking subparagraph (D) and in-
9 serting the following:

10 “(D) to obey reasonable restrictions on the
11 alien’s conduct or activities that the Secretary
12 prescribes for the alien, in order to prevent the
13 alien from absconding, for the protection of the
14 community, or for other purposes related to the
15 enforcement of the immigration laws.”;

16 (5) in paragraph (4)(A), by striking “paragraph
17 (2)” and inserting “subparagraph (B)”; and

18 (6) by striking paragraph (6) and inserting the
19 following:

20 “(6) ADDITIONAL RULES FOR DETENTION OR
21 RELEASE OF CERTAIN ALIENS.—

22 “(A) DETENTION REVIEW PROCESS FOR
23 COOPERATIVE ALIENS ESTABLISHED.—For an
24 alien who is not otherwise subject to mandatory
25 detention, who has made all reasonable efforts

1 to comply with a removal order and to cooper-
2 ate fully with the Secretary of Homeland Secu-
3 rity's efforts to establish the alien's identity and
4 carry out the removal order, including making
5 timely application in good faith for travel or
6 other documents necessary to the alien's depar-
7 ture, and who has not conspired or acted to
8 prevent removal, the Secretary shall establish
9 an administrative review process to determine
10 whether the alien should be detained or released
11 on conditions. The Secretary shall make a de-
12 termination whether to release an alien after
13 the removal period in accordance with subpara-
14 graph (B). The determination shall include con-
15 sideration of any evidence submitted by the
16 alien, and may include consideration of any
17 other evidence, including any information or as-
18 sistance provided by the Secretary of State or
19 other Federal official and any other information
20 available to the Secretary of Homeland Security
21 pertaining to the ability to remove the alien.

22 “(B) AUTHORITY TO DETAIN BEYOND RE-
23 MOVAL PERIOD.—

24 “(i) IN GENERAL.—The Secretary of
25 Homeland Security, in the exercise of the

1 Secretary’s sole discretion, may continue to
2 detain an alien for 90 days beyond the re-
3 moval period (including any extension of
4 the removal period as provided in para-
5 graph (1)(C)). An alien whose detention is
6 extended under this subparagraph shall
7 have no right to seek release on bond.

8 “(ii) SPECIFIC CIRCUMSTANCES.—The
9 Secretary of Homeland Security, in the ex-
10 ercise of the Secretary’s sole discretion,
11 may continue to detain an alien beyond the
12 90 days authorized in clause (i)—

13 “(I) until the alien is removed, if
14 the Secretary, in the Secretary’s sole
15 discretion, determines that there is a
16 significant likelihood that the alien—

17 “(aa) will be removed in the
18 reasonably foreseeable future; or

19 “(bb) would be removed in
20 the reasonably foreseeable future,
21 or would have been removed, but
22 for the alien’s failure or refusal
23 to make all reasonable efforts to
24 comply with the removal order,
25 or to cooperate fully with the

1 Secretary's efforts to establish
2 the alien's identity and carry out
3 the removal order, including
4 making timely application in
5 good faith for travel or other doc-
6 uments necessary to the alien's
7 departure, or conspires or acts to
8 prevent removal;

9 “(II) until the alien is removed,
10 if the Secretary of Homeland Security
11 certifies in writing—

12 “(aa) in consultation with
13 the Secretary of Health and
14 Human Services, that the alien
15 has a highly contagious disease
16 that poses a threat to public safe-
17 ty;

18 “(bb) after receipt of a writ-
19 ten recommendation from the
20 Secretary of State, that release
21 of the alien is likely to have seri-
22 ous adverse foreign policy con-
23 sequences for the United States;

24 “(cc) based on information
25 available to the Secretary of

1 Homeland Security (including
2 classified, sensitive, or national
3 security information, and without
4 regard to the grounds upon
5 which the alien was ordered re-
6 moved), that there is reason to
7 believe that the release of the
8 alien would threaten the national
9 security of the United States; or
10 “(dd) that the release of the
11 alien will threaten the safety of
12 the community or any person,
13 conditions of release cannot rea-
14 sonably be expected to ensure the
15 safety of the community or any
16 person, and either (AA)—
17 “(AA) the alien has
18 been convicted of (aaa) one
19 or more aggravated felonies
20 (as defined in section
21 101(a)(43)(A)), (bbb) one or
22 more crimes identified by
23 the Secretary of Homeland
24 Security by regulation, if the
25 aggregate term of imprison-

1 ment for such crimes is at
2 least 5 years, or (ccc) one or
3 more attempts or conspir-
4 acies to commit any such
5 aggravated felonies or such
6 identified crimes, if the ag-
7 gregate term of imprison-
8 ment for such attempts or
9 conspiracies is at least 5
10 years; or

11 “(BB) the alien has
12 committed one or more vio-
13 lent crimes (as referred to in
14 section 101(a)(43)(F), but
15 not including a purely polit-
16 ical offense) and, because of
17 a mental condition or per-
18 sonality disorder and behav-
19 ior associated with that con-
20 dition or disorder, the alien
21 is likely to engage in acts of
22 violence in the future; or

23 “(III) pending a certification
24 under subclause (II), so long as the
25 Secretary of Homeland Security has

1 initiated the administrative review
2 process not later than 30 days after
3 the expiration of the removal period
4 (including any extension of the re-
5 moval period, as provided in para-
6 graph (1)(C)).

7 “(iii) NO RIGHT TO BOND HEARING.—
8 An alien whose detention is extended under
9 this subparagraph shall have no right to
10 seek release on bond, including by reason
11 of a certification under clause (ii)(II).

12 “(C) RENEWAL AND DELEGATION OF CER-
13 TIFICATION.—

14 “(i) RENEWAL.—The Secretary of
15 Homeland Security may renew a certifi-
16 cation under subparagraph (B)(ii)(II)
17 every 6 months, after providing an oppor-
18 tunity for the alien to request reconsider-
19 ation of the certification and to submit
20 documents or other evidence in support of
21 that request. If the Secretary does not
22 renew a certification, the Secretary may
23 not continue to detain the alien under sub-
24 paragraph (B)(ii)(II).

1 “(ii) DELEGATION.—Notwithstanding
2 section 103, the Secretary of Homeland
3 Security may not delegate the authority to
4 make or renew a certification described in
5 item (bb), (cc), or (dd) of subparagraph
6 (B)(ii)(II) below the level of the Director
7 of Immigration and Customs Enforcement.

8 “(iii) HEARING.—The Secretary of
9 Homeland Security may request that the
10 Attorney General or the Attorney General’s
11 designee provide for a hearing to make the
12 determination described in item (dd)(BB)
13 of subparagraph (B)(ii)(II).

14 “(D) RELEASE ON CONDITIONS.—If it is
15 determined that an alien should be released
16 from detention by a Federal court, the Board of
17 Immigration Appeals, or if an immigration
18 judge orders a stay of removal, the Secretary of
19 Homeland Security, in the exercise of the Sec-
20 retary’s discretion, may impose conditions on
21 release as provided in paragraph (3).

22 “(E) REDETENTION.—The Secretary of
23 Homeland Security, in the exercise of the Sec-
24 retary’s discretion, without any limitations
25 other than those specified in this section, may

1 again detain any alien subject to a final re-
2 moval order who is released from custody, if re-
3 moval becomes likely in the reasonably foresee-
4 able future, the alien fails to comply with the
5 conditions of release, or to continue to satisfy
6 the conditions described in subparagraph (A),
7 or if, upon reconsideration, the Secretary, in
8 the Secretary's sole discretion, determines that
9 the alien can be detained under subparagraph
10 (B). This section shall apply to any alien re-
11 turned to custody pursuant to this subpara-
12 graph, as if the removal period terminated on
13 the day of the redetention.

14 “(F) REVIEW OF DETERMINATIONS BY
15 SECRETARY.—A determination by the Secretary
16 under this paragraph shall not be subject to re-
17 view by any other agency.”.

18 **SEC. 1104. DEFINITION OF AGGRAVATED FELONY.**

19 (a) IN GENERAL.—Section 101(a)(43) of the Immi-
20 gration and Nationality Act (8 U.S.C. 1101(a)(43)) is
21 amended to read as follows:

22 “(43) Notwithstanding any other provision of
23 law, the term ‘aggravated felony’ means any offense,
24 whether in violation of Federal, State, or foreign

1 law, that is described in this paragraph. An offense
2 described in this paragraph is—

3 “(A) homicide (including murder in any
4 degree, manslaughter, and vehicular man-
5 slaughter), rape (whether the victim was con-
6 scious or unconscious), statutory rape, sexual
7 assault or battery, or any offense of a sexual
8 nature involving an intended victim under the
9 age of 18 years (including offenses in which the
10 intended victim was a law enforcement officer);

11 “(B)(i) illicit trafficking in a controlled
12 substance (as defined in section 102 of the Con-
13 trolled Substances Act), including a drug traf-
14 ficking crime (as defined in section 924(c) of
15 title 18, United States Code); or

16 “(ii) any offense under State law relating
17 to a controlled substance (as so classified under
18 State law) which is classified as a felony in that
19 State regardless of whether the substance is
20 classified as a controlled substance under sec-
21 tion 102 of the Controlled Substances Act (21
22 U.S.C. 802);

23 “(C) illicit trafficking in firearms or de-
24 structive devices (as defined in section 921 of
25 title 18, United States Code) or in explosive

1 materials (as defined in section 841(c) of that
2 title);

3 “(D) an offense described in section 1956
4 of title 18, United States Code (relating to
5 laundering of monetary instruments) or section
6 1957 of that title (relating to engaging in mon-
7 etary transactions in property derived from spe-
8 cific unlawful activity) if the amount of the
9 funds exceeded \$10,000;

10 “(E) an offense described in—

11 “(i) section 842 or 844 of title 18,
12 United States Code (relating to explosive
13 materials offenses);

14 “(ii) section 922 or 924 of title 18,
15 United States Code (relating to firearms
16 offenses); or

17 “(iii) section 5861 of the Internal
18 Revenue Code of 1986 (relating to fire-
19 arms offenses);

20 “(F) a violent crime for which the term of
21 imprisonment is at least 1 year, including—

22 “(i) any offense that has an element
23 the use, attempted use, or threatened use
24 of physical force against the person or
25 property of another; or

1 “(ii) any other offense in which the
2 record of conviction establishes that the of-
3 fender used physical force against the per-
4 son or property of another in the course of
5 committing the offense;

6 “(G)(i) theft (including theft by deceit,
7 theft by fraud, embezzlement, motor vehicle
8 theft, unauthorized use of a vehicle, or receipt
9 of stolen property), regardless of whether the
10 intended deprivation was temporary or perma-
11 nent, for which the term of imprisonment is at
12 least 1 year; or

13 “(ii) burglary for which the term of impris-
14 onment is at least 1 year;

15 “(H) an offense described in section 875,
16 876, 877, or 1202 of title 18, United States
17 Code (relating to the demand for or receipt of
18 ransom);

19 “(I) an offense involving child pornography
20 or sexual exploitation of a minor (including any
21 offense described in section 2251, 2251A, or
22 2252 of title 18, United States Code);

23 “(J) an offense described in section 1962
24 of title 18, United States Code (relating to
25 racketeer influenced corrupt organizations), or

1 an offense described in section 1084 (if it is a
2 second or subsequent offense) or 1955 of that
3 title (relating to gambling offenses);

4 “(K) an offense that—

5 “(i) relates to the owning, controlling,
6 managing, or supervising of a prostitution
7 business;

8 “(ii) is described in section 2421,
9 2422, or 2423 of title 18, United States
10 Code (relating to transportation for the
11 purpose of prostitution) if committed for
12 commercial advantage; or

13 “(iii) is described in any of sections
14 1581–1585 or 1588–1591 of title 18,
15 United States Code (relating to peonage,
16 slavery, involuntary servitude, and traf-
17 ficking in persons);

18 “(L) an offense described in—

19 “(i) section 793 (relating to gathering
20 or transmitting national defense informa-
21 tion), 798 (relating to disclosure of classi-
22 fied information), 2153 (relating to sabo-
23 tage) or 2381 or 2382 (relating to treason)
24 of title 18, United States Code;

1 “(ii) section 601 of the National Secu-
2 rity Act of 1947 (50 U.S.C. 421) (relating
3 to protecting the identity of undercover in-
4 telligence agents);

5 “(iii) section 601 of the National Se-
6 curity Act of 1947 (relating to protecting
7 the identity of undercover agents);

8 “(iv) section 175 (relating to biologi-
9 cal weapons) of title 18, United States
10 Code;

11 “(v) sections 792 (harboring or con-
12 cealing persons who violated sections 793
13 or 794 of title 18, United States Code),
14 794 (gathering or delivering defense infor-
15 mation to aid foreign government), 795
16 (photographing and sketching defense in-
17 stallations), 796 (use of aircraft for
18 photographing defense installations), 797
19 (publication and sale of photographs of de-
20 fense installations), 799 (violation of
21 NASA regulations for protection of facili-
22 ties) of title 18, United States Code;

23 “(vi) sections 831 (prohibited trans-
24 actions involving nuclear materials) and
25 832 (participation in nuclear and weapons

1 of mass destruction threats to the United
2 States) of title 18, United States Code;

3 “(vii) sections 2332a–d, f–h (relating
4 to terrorist activities) of title 18, United
5 States Code;

6 “(viii) sections 2339 (relating to har-
7 boring or concealing terrorists), 2339A (re-
8 lating to material support to terrorists),
9 2339B (relating to material support or re-
10 sources to designated foreign terrorist or-
11 ganizations), 2339C (relating to financing
12 of terrorism), 2339D (relating to receiving
13 military-type training from a terrorist or-
14 ganization) of title 18, United States Code;

15 “(ix) section 1705 of the International
16 Emergency Economic Powers Act (50
17 U.S.C. 1705); or

18 “(x) section 38 of the Arms Export
19 Control Act (22 U.S.C. 2778);

20 “(M) an offense that—

21 “(i) involves fraud or deceit in which
22 the loss to the victim or victims exceeds
23 \$10,000; or

24 “(ii) is described in section 7201 of
25 the Internal Revenue Code of 1986 (relat-

1 ing to tax evasion) in which the revenue
2 loss to the Government exceeds \$10,000;

3 “(N) an offense described in section 274(a)
4 (relating to alien smuggling);

5 “(O) an offense described in section 275 or
6 276 for which the term of imprisonment is at
7 least 1 year;

8 “(P) an offense which is described in chap-
9 ter 75 of title 18, United States Code, and for
10 which the term of imprisonment is at least 1
11 year;

12 “(Q) an offense relating to a failure to ap-
13 pear by a defendant for service of sentence if
14 the underlying offense is punishable by impris-
15 onment for a term of 5 years or more;

16 “(R) an offense relating to commercial
17 bribery, counterfeiting, forgery, or trafficking in
18 vehicles the identification numbers of which
19 have been altered for which the term of impris-
20 onment is at least one year;

21 “(S) an offense relating to obstruction of
22 justice, perjury or subornation of perjury, or
23 bribery of a witness;

24 “(T) an offense relating to a failure to ap-
25 pear before a court pursuant to a court order

1 to answer to or dispose of a charge of a felony
2 for which a sentence of 2 years' imprisonment
3 or more may be imposed;

4 “(U) any offense for which the term of im-
5 prisonment imposed was 2 years or more;

6 “(V) an offense relating to terrorism or
7 national security (including a conviction for a
8 violation of any provision of chapter 113B of
9 title 18, United States Code);

10 “(W)(i) a single conviction for driving
11 while intoxicated (including a conviction for
12 driving while under the influence of or impair-
13 ment by alcohol or drugs), when such impaired
14 driving was a cause of the serious bodily injury
15 or death of another person; or

16 “(ii) a second or subsequent conviction for
17 driving while intoxicated (including a conviction
18 for driving under the influence of or impaired
19 by alcohol or drugs); or

20 “(X) an attempt or conspiracy to commit
21 an offense described in this paragraph or aid-
22 ing, abetting, counseling, procuring, command-
23 ing, inducing, facilitating, or soliciting the com-
24 mission of such an offense.

1 Any determinations under this paragraph shall be
2 made on the basis of the record of conviction. For
3 purposes of this paragraph, a person shall be consid-
4 ered to have committed an aggravated felony if that
5 person has been convicted for 3 or more mis-
6 demeanors not arising out the traffic laws (except
7 for any conviction for driving under the influence or
8 an offense that results in the death or serious bodily
9 injury of another person) or felonies for which the
10 aggregate term of imprisonment imposed was 3
11 years or more, regardless of whether the convictions
12 were all entered pursuant to a single trial or the of-
13 fenses arose from a single pattern or scheme of con-
14 duct.”.

15 (b) EFFECTIVE DATE; APPLICATION OF AMEND-
16 MENTS.—

17 (1) IN GENERAL.—The amendments made by
18 subsection (a)—

19 (A) shall take effect on the date of the en-
20 actment of this Act; and

21 (B) shall apply to any act or conviction
22 that occurred before, on, or after such date.

23 (2) APPLICATION OF IIRIRA AMENDMENTS.—

24 The amendments to section 101(a)(43) of the Immi-
25 gration and Nationality Act (8 U.S.C. 1101(a)(43))

1 made by section 321 of the Illegal Immigration Re-
2 form and Immigrant Responsibility Act of 1996 (di-
3 vision C of Public Law 104–208; 110 Stat. 3009–
4 627) shall continue to apply, whether the conviction
5 was entered before, on, or after September 30, 1996.

6 **SEC. 1105. CRIME OF VIOLENCE.**

7 Section 16 of title 18, United States Code, is amend-
8 ed to read as follows:

9 **“§ 16. Crime of violence defined**

10 “(a) The term ‘crime of violence’ means an offense
11 that—

12 “(1)(A) is murder, voluntary manslaughter, as-
13 sault, sexual abuse or aggravated sexual abuse, abu-
14 sive sexual contact, child abuse, kidnapping, robbery,
15 carjacking, firearms use, burglary, arson, extortion,
16 communication of threats, coercion, unauthorized
17 use of a vehicle, fleeing, interference with flight crew
18 members and attendants, domestic violence, hostage
19 taking, stalking, human trafficking, or using weap-
20 ons of mass destruction; or

21 “(B) involves use or unlawful possession of ex-
22 plosives or destructive devices described in 5845(f)
23 of the Internal Revenue Code of 1986;

1 “(2) has as an element the use, attempted use,
2 or threatened use of physical force against the per-
3 son or property of another; or

4 “(3) is an attempt to commit, conspiracy to
5 commit, solicitation to commit, or aiding and abet-
6 ting any of the offenses set forth in paragraphs (1)
7 and (2).

8 “(b) In this section:

9 “(1) The term ‘abusive sexual contact’ means
10 conduct described in section 2244(a)(1) and (a)(2).

11 “(2) The terms ‘aggravated sexual abuse’ and
12 ‘sexual abuse’ mean conduct described in sections
13 2241 and 2242. For purposes of such conduct, the
14 term ‘sexual act’ means conduct described in section
15 2246(2), or the knowing and lewd exposure of geni-
16 talia or masturbation, to any person, with an intent
17 to abuse, humiliate, harass, degrade, or arouse or
18 gratify the sexual desire of any person.

19 “(3) The term ‘assault’ means conduct de-
20 scribed in section 113(a), and includes conduct com-
21 mitted recklessly, knowingly, or intentionally.

22 “(4) The term ‘arson’ means conduct described
23 in section 844(i) or unlawfully or willfully damaging
24 or destroying any building, inhabited structure, vehi-

1 cle, vessel, or real property by means of fire or ex-
2 plosive.

3 “(5) The term ‘burglary’ means an unlawful or
4 unprivileged entry into, or remaining in, a building
5 or structure, including any nonpermanent or mobile
6 structure that is adapted or used for overnight ac-
7 commodation or for the ordinary carrying on of busi-
8 ness, and, either before or after entering, the per-
9 son—

10 “(A) forms the intent to commit a crime;

11 or

12 “(B) commits or attempts to commit a
13 crime.

14 “(6) The term ‘carjacking’ means conduct de-
15 scribed in section 2119, or the unlawful taking of a
16 motor vehicle from the immediate actual possession
17 of a person against his will, by means of actual or
18 threatened force, or violence or intimidation, or by
19 sudden or stealthy seizure or snatching, or fear of
20 injury.

21 “(7) The term ‘child abuse’ means the unlawful
22 infliction of physical injury or the commission of any
23 sexual act against a child under fourteen by any per-
24 son eighteen years of age or older.

1 “(8) The term ‘communication of threats’
2 means conduct described in section 844(e), or the
3 transmission of any communications containing any
4 threat of use of violence to—

5 “(A) demand or request for a ransom or
6 reward for the release of any kidnapped person;
7 or

8 “(B) threaten to kidnap or injure the per-
9 son of another.

10 “(9) The term ‘coercion’ means causing the
11 performance or non-performance of any act by an-
12 other person which under such other person has a
13 legal right to do or to abstain from doing, through
14 fraud or by the use of actual or threatened force, vi-
15 olence, or fear thereof, including the use, or an ex-
16 press or implicit threat of use, of violence to cause
17 harm, or threats to cause injury to the person, rep-
18 utation or property of any person.

19 “(10) The term ‘domestic violence’ means any
20 assault committed by a current or former spouse,
21 parent, or guardian of the victim, by a person with
22 whom the victim shares a child in common, by a per-
23 son who is cohabiting with or has cohabited with the
24 victim as a spouse, parent, or guardian, or by a per-

1 son similarly situated to a spouse, parent, or guard-
2 ian of the victim

3 “(11) The term ‘extortion’ means conduct de-
4 scribed in section 1951(b)(2)), but not extortion
5 under color of official right or fear of economic loss.

6 “(12) The term ‘firearms use’ means conduct
7 described in section 924(c) or 929(a), if the firearm
8 was brandished, discharged, or otherwise possessed,
9 carried, or used as a weapon and the crime of vio-
10 lence or drug trafficking crime during and in rela-
11 tion to which the firearm was possessed, carried, or
12 used was subject to prosecution in any court of the
13 United States, State court, military court or tri-
14 bunal, or tribal court. Such term also includes un-
15 lawfully possessing a firearm described in section
16 5845(a) of the Internal Revenue Code of 1986 (such
17 as a sawed-off shotgun or sawed-off rifle, silencer,
18 bomb, or machine gun), possession of a firearm de-
19 scribed in section 922(g)(1), 922(g)(2) and
20 922(g)(4), possession of a firearm with the intent to
21 use such firearm unlawfully, or reckless discharge of
22 a firearm at a dwelling.

23 “(13) The term ‘fleeing’ means knowingly oper-
24 ating a motor vehicle and, following a law enforce-

1 ment officer’s signal to bring the motor vehicle to a
2 stop—

3 “(A) failing or refusing to comply; or

4 “(B) fleeing or attempting to elude a law
5 enforcement officer.

6 “(14) The term ‘force’ means the level of force
7 needed or intended to overcome resistance.

8 “(15) The term ‘hostage taking’ means conduct
9 described in section 1203.

10 “(16) The term ‘human trafficking’ means con-
11 duct described in section 1589, 1590, and 1591.

12 “(17) The term ‘interference with flight crew
13 members and attendants’ means conduct described
14 in section 46504 of title 49, United States Code.

15 “(18) The term ‘kidnapping’ means conduct de-
16 scribed in section 1201(a)(1) or seizing, confining,
17 inveigling, decoying, abducting, or carrying away
18 and holding for ransom or reward or otherwise any
19 person.

20 “(19) The term ‘murder’ means conduct de-
21 scribed as murder in the first degree or murder in
22 the second degree described in section 1111.

23 “(20) The term ‘robbery’ means conduct de-
24 scribed in section 1951(b)(1), or the unlawful taking
25 or obtaining of personal property from the person or

1 in the presence of another, against his will, by
2 means of actual or threatened force, or violence or
3 intimidation, or by sudden or stealthy seizure or
4 snatching, or fear of injury, immediate or future, to
5 his person or property, or property in his custody or
6 possession, or the person or property of a relative or
7 member of his family or of anyone in his company
8 at the time of the taking or obtaining.

9 “(21) The term ‘stalking’ means conduct de-
10 scribed in section 2261A.

11 “(22) The term ‘unauthorized use of a motor
12 vehicle’ means the intentional or knowing operation
13 of another person’s boat, airplane, or motor vehicle
14 without the consent of the owner.

15 “(23) The term ‘using weapons of mass de-
16 struction’ means conduct described in section 2332a.

17 “(24) The term ‘voluntary manslaughter’
18 means conduct described in section 1112(a).

19 “(c) For purposes of this section, in the case of any
20 reference in subsection (b) to an offense under this title,
21 such reference shall include conduct that constitutes an
22 offense under State or tribal law or under the Uniform
23 Code of Military Justice, if such conduct would be an of-
24 fense under this title if a circumstance giving rise to Fed-
25 eral jurisdiction had existed.”.

1 **SEC. 1106. GROUNDS OF INADMISSIBILITY AND DEPORT-**
2 **ABILITY FOR ALIEN GANG MEMBERS.**

3 (a) DEFINITION OF GANG MEMBER.—Section 101(a)
4 of the Immigration and Nationality Act (8 U.S.C.
5 1101(a)) is amended by inserting after paragraph (52) the
6 following:

7 “(53)(A) The term ‘criminal gang’ means an ongoing
8 group, club, organization, or association of 5 or more per-
9 sons—

10 “(i) that has as one of its primary purposes the
11 commission of 1 or more of the criminal offenses de-
12 scribed in subparagraph (B) and the members of
13 which engage, or have engaged within the past 5
14 years, in a continuing series of such offenses; or

15 “(ii) that has been designated as a criminal
16 gang by the Secretary of Homeland Security, in con-
17 sultation with the Attorney General, as meeting
18 these criteria.

19 “(B) The offenses described, whether in violation of
20 Federal or State law or foreign law and regardless of
21 whether the offenses occurred before, on, or after the date
22 of the enactment of this paragraph, are the following:

23 “(i) A ‘felony drug offense’ (as defined in sec-
24 tion 102 of the Controlled Substances Act (21
25 U.S.C. 802)).

1 “(ii) A felony offense involving firearms or ex-
2 plosives or in violation of section 931 of title 18,
3 United States Code (relating to purchase, ownership,
4 or possession of body armor by violent felons).

5 “(iii) An offense under section 274 (relating to
6 bringing in and harboring certain aliens), section
7 277 (relating to aiding or assisting certain aliens to
8 enter the United States), or section 278 (relating to
9 importation of alien for immoral purpose), except
10 that this clause does not apply in the case of an or-
11 ganization described in section 501(c)(3) of the In-
12 ternal Revenue Code of 1986 (26 U.S.C. 501(c)(3))
13 which is exempt from taxation under section 501(a)
14 of such Code.

15 “(iv) A violent crime described in section
16 101(a)(43)(F).

17 “(v) A crime involving obstruction of justice,
18 tampering with or retaliating against a witness, vic-
19 tim, or informant, or perjury or subornation of per-
20 jury.

21 “(vi) Any conduct punishable under sections
22 1028A and 1029 of title 18, United States Code (re-
23 lating to aggravated identity theft or fraud and re-
24 lated activity in connection with identification docu-
25 ments or access devices), sections 1581 through

1 1594 of such title (relating to peonage, slavery, and
2 trafficking in persons), section 1951 of such title
3 (relating to interference with commerce by threats or
4 violence), section 1952 of such title (relating to
5 interstate and foreign travel or transportation in aid
6 of racketeering enterprises), section 1956 of such
7 title (relating to the laundering of monetary instru-
8 ments), section 1957 of such title (relating to engag-
9 ing in monetary transactions in property derived
10 from specified unlawful activity), or sections 2312
11 through 2315 of such title (relating to interstate
12 transportation of stolen motor vehicles or stolen
13 property).

14 “(vii) An attempt or conspiracy to commit an
15 offense described in this paragraph or aiding, abet-
16 ting, counseling, procuring, commanding, inducing,
17 facilitating, or soliciting the commission of an of-
18 fense described in clauses (i) through (vi).”.

19 (b) INADMISSIBILITY.—Section 212(a)(2) of such Act
20 (8 U.S.C. 1182(a)(2)) is amended—

21 (1) in subparagraph (A)(i)—

22 (A) in subclause (I), by striking “or” at
23 the end;

24 (B) by inserting after subclause (II) the
25 following:

1 “(III) a violation of (or a con-
2 spiracy or attempt to violate) any law
3 or regulation of a State, the United
4 States, or a foreign country relating
5 to participation or membership in a
6 criminal gang; or

7 “(IV) any felony or misdemeanor
8 offense for which the alien received a
9 sentencing enhancement predicated on
10 gang membership or conduct that pro-
11 moted, furthered, aided, or supported
12 the illegal activity of the criminal
13 gang,”; and

14 (2) by adding at the end the following:

15 “(N) ALIENS ASSOCIATED WITH CRIMINAL
16 GANGS.—

17 “(i) ALIENS NOT PHYSICALLY
18 PRESENT IN THE UNITED STATES.—In the
19 case of an alien who is not physically
20 present in the United States:

21 “(I) That alien is inadmissible if
22 a consular officer, an immigration of-
23 ficer, the Secretary of Homeland Se-
24 curity, or the Attorney General knows
25 or has reason to believe—

1 “(aa) to be or to have been
2 a member of a criminal gang (as
3 defined in section 101(a)(53)); or

4 “(bb) to have participated in
5 the activities of a criminal gang
6 (as defined in section
7 101(a)(53)), knowing or having
8 reason to know that such activi-
9 ties will promote, further, aid, or
10 support the illegal activity of the
11 criminal gang.

12 “(II) That alien is inadmissible if
13 a consular officer, an immigration of-
14 ficer, the Secretary of Homeland Se-
15 curity, or the Attorney General has
16 reasonable grounds to believe the alien
17 has participated in, been a member of,
18 promoted, or conspired with a crimi-
19 nal gang, either inside or outside of
20 the United States.

21 “(III) That alien is inadmissible
22 if a consular officer, an immigration
23 officer, the Secretary of Homeland Se-
24 curity, or the Attorney General has
25 reasonable grounds to believe seeks to

1 enter the United States or has en-
2 tered the United States in furtherance
3 of the activities of a criminal gang, ei-
4 ther inside or outside of the United
5 States.

6 “(ii) ALIENS PHYSICALLY PRESENT IN THE
7 UNITED STATES.—In the case of an alien who
8 is physically present in the United States, that
9 alien is inadmissible if the alien—

10 “(I) is a member of a criminal gang
11 (as defined in section 101(a)(53)); or

12 “(II) has participated in the activities
13 of a criminal gang (as defined in section
14 101(a)(53)), knowing or having reason to
15 know that such activities will promote, fur-
16 ther, aid, or support the illegal activity of
17 the criminal gang.”.

18 (c) DEPORTABILITY.—Section 237(a)(2) of the Im-
19 migration and Nationality Act (8 U.S.C. 1227(a)(2)) is
20 amended by adding at the end the following:

21 “(H) ALIENS ASSOCIATED WITH CRIMINAL
22 GANGS.—Any alien is deportable who—

23 “(i) is or has been a member of a
24 criminal gang (as defined in section
25 101(a)(53));

1 “(ii) has participated in the activities
 2 of a criminal gang (as so defined), knowing
 3 or having reason to know that such activi-
 4 ties will promote, further, aid, or support
 5 the illegal activity of the criminal gang;

6 “(iii) has been convicted of a violation
 7 of (or a conspiracy or attempt to violate)
 8 any law or regulation of a State, the
 9 United States, or a foreign country relat-
 10 ing to participation or membership in a
 11 criminal gang; or

12 “(iv) any felony or misdemeanor of-
 13 fense for which the alien received a sen-
 14 tencing enhancement predicated on gang
 15 membership or conduct that promoted,
 16 furthered, aided, or supported the illegal
 17 activity of the criminal gang.”.

18 (d) DESIGNATION.—

19 (1) IN GENERAL.—Chapter 2 of title II of the
 20 Immigration and Nationality Act (8 U.S.C. 1182) is
 21 amended by inserting after section 219 the fol-
 22 lowing:

23 “DESIGNATION OF CRIMINAL GANG

24 “SEC. 220.

25 “(a) DESIGNATION.—

1 “(1) IN GENERAL.—The Secretary of Homeland Se-
2 curity, in consultation with the Attorney General, may
3 designate a group, club, organization, or association of 5
4 or more persons as a criminal gang if the Secretary finds
5 that their conduct is described in section 101(a)(53).

6 “(2) PROCEDURE.—

7 “(A) NOTIFICATION.—Seven days before mak-
8 ing a designation under this subsection, the Sec-
9 retary shall, by classified communication, notify the
10 Speaker and Minority Leader of the House of Rep-
11 resentatives, the President pro tempore, Majority
12 Leader, and Minority Leader of the Senate, and the
13 members of the relevant committees of the House of
14 Representatives and the Senate, in writing, of the
15 intent to designate a group, club, organization, or
16 association of 5 or more persons under this sub-
17 section and the factual basis therefor.

18 “(B) PUBLICATION IN THE FEDERAL REG-
19 ISTER.—The Secretary shall publish the designation
20 in the Federal Register seven days after providing
21 the notification under subparagraph (A).

22 “(3) RECORD.—

23 “(A) IN GENERAL.—In making a designation
24 under this subsection, the Secretary shall create an
25 administrative record.

1 “(B) CLASSIFIED INFORMATION.—The Sec-
2 retary may consider classified information in making
3 a designation under this subsection. Classified infor-
4 mation shall not be subject to disclosure for such
5 time as it remains classified, except that such infor-
6 mation may be disclosed to a court ex parte and in
7 camera for purposes of judicial review under sub-
8 section (c).

9 “(4) PERIOD OF DESIGNATION.—

10 “(A) IN GENERAL.—A designation under this
11 subsection shall be effective for all purposes until re-
12 voked under paragraph (5) or (6) or set aside pursu-
13 ant to subsection (c).

14 “(B) REVIEW OF DESIGNATION UPON PETI-
15 TION.—

16 “(i) IN GENERAL.—The Secretary shall re-
17 view the designation of a criminal gang under
18 the procedures set forth in clauses (iii) and (iv)
19 if the designated group, club, organization, or
20 association of 5 or more persons files a petition
21 for revocation within the petition period de-
22 scribed in clause (ii).

23 “(ii) PETITION PERIOD.—For purposes of
24 clause (i)—

1 “(I) if the designated group, club, or-
2 ganization, or association of 5 or more per-
3 sons has not previously filed a petition for
4 revocation under this subparagraph, the
5 petition period begins 2 years after the
6 date on which the designation was made;
7 or

8 “(II) if the designated group, club, or-
9 ganization, or association of 5 or more per-
10 sons has previously filed a petition for rev-
11 ocation under this subparagraph, the peti-
12 tion period begins 2 years after the date of
13 the determination made under clause (iv)
14 on that petition.

15 “(iii) PROCEDURES.—Any group, club, or-
16 ganization, or association of 5 or more persons
17 that submits a petition for revocation under
18 this subparagraph of its designation as a crimi-
19 nal gang must provide evidence in that petition
20 that it is not described in section 101(a)(53).

21 “(iv) DETERMINATION.—

22 “(I) IN GENERAL.—Not later than
23 180 days after receiving a petition for rev-
24 ocation submitted under this subpara-

graph, the Secretary shall make a determination as to such revocation.

“(II) CLASSIFIED INFORMATION.—

The Secretary may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

“(III) PUBLICATION OF DETERMINATION.—

A determination made by the Secretary under this clause shall be published in the Federal Register.

“(IV) PROCEDURES.—

Any revocation by the Secretary shall be made in accordance with paragraph (6).

“(C) OTHER REVIEW OF DESIGNATION.—

“(i) IN GENERAL.—

If in a 5-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the criminal gang in order to determine whether

1 such designation should be revoked pursuant to
2 paragraph (6).

3 “(ii) PROCEDURES.—If a review does not
4 take place pursuant to subparagraph (B) in re-
5 sponse to a petition for revocation that is filed
6 in accordance with that subparagraph, then the
7 review shall be conducted pursuant to proce-
8 dures established by the Secretary. The results
9 of such review and the applicable procedures
10 shall not be reviewable in any court.

11 “(iii) PUBLICATION OF RESULTS OF RE-
12 VIEW.—The Secretary shall publish any deter-
13 mination made pursuant to this subparagraph
14 in the Federal Register.

15 “(5) REVOCATION BY ACT OF CONGRESS.—The Con-
16 gress, by an Act of Congress, may block or revoke a des-
17 ignation made under paragraph (1).

18 “(6) REVOCATION BASED ON CHANGE IN CIR-
19 CUMSTANCES.—

20 “(A) IN GENERAL.—The Secretary may revoke
21 a designation made under paragraph (1) at any
22 time, and shall revoke a designation upon completion
23 of a review conducted pursuant to subparagraphs
24 (B) and (C) of paragraph (4) if the Secretary finds
25 that—

1 “(i) the group, club, organization, or asso-
2 ciation of 5 or more persons that has been des-
3 ignated as a criminal gang is no longer de-
4 scribed in section 101(a)(53); or

5 “(ii) the national security or the law en-
6 forcement interests of the United States war-
7 rants a revocation.

8 “(B) PROCEDURE.—The procedural require-
9 ments of paragraphs (2) and (3) shall apply to a
10 revocation under this paragraph. Any revocation
11 shall take effect on the date specified in the revoca-
12 tion or upon publication in the Federal Register if
13 no effective date is specified.

14 “(7) EFFECT OF REVOCATION.—The revocation of a
15 designation under paragraph (5) or (6) shall not affect
16 any action or proceeding based on conduct committed
17 prior to the effective date of such revocation.

18 “(8) USE OF DESIGNATION IN TRIAL OR HEAR-
19 ING.—If a designation under this subsection has become
20 effective under paragraph (2), an alien in a removal pro-
21 ceeding shall not be permitted to raise any question con-
22 cerning the validity of the issuance of such designation
23 as a defense or an objection.

24 “(b) AMENDMENTS TO A DESIGNATION.—

1 “(1) IN GENERAL.—The Secretary may amend
2 a designation under this subsection if the Secretary
3 finds that the group, club, organization, or associa-
4 tion of 5 or more persons has changed its name,
5 adopted a new alias, dissolved and then reconsti-
6 tuted itself under a different name or names, or
7 merged with another group, club, organization, or
8 association of 5 or more persons.

9 “(2) PROCEDURE.—Amendments made to a
10 designation in accordance with paragraph (1) shall
11 be effective upon publication in the Federal Register.
12 Paragraphs (2), (4), (5), (6), (7), and (8) of sub-
13 section (a) shall also apply to an amended designa-
14 tion.

15 “(3) ADMINISTRATIVE RECORD.—The adminis-
16 trative record shall be corrected to include the
17 amendments as well as any additional relevant infor-
18 mation that supports those amendments.

19 “(4) CLASSIFIED INFORMATION.—The Sec-
20 retary may consider classified information in amend-
21 ing a designation in accordance with this subsection.
22 Classified information shall not be subject to disclo-
23 sure for such time as it remains classified, except
24 that such information may be disclosed to a court ex

1 parte and in camera for purposes of judicial review
2 under subsection (c) of this section.

3 “(c) JUDICIAL REVIEW OF DESIGNATION.—

4 “(1) IN GENERAL.—Not later than 30 days
5 after publication in the Federal Register of a des-
6 ignation, an amended designation, or a determina-
7 tion in response to a petition for revocation, the des-
8 ignated group, club, organization, or association of 5
9 or more persons may seek judicial review in the
10 United States Court of Appeals for the District of
11 Columbia Circuit.

12 “(2) BASIS OF REVIEW.—Review under this
13 subsection shall be based solely upon the administra-
14 tive record, except that the Government may submit,
15 for ex parte and in camera review, classified infor-
16 mation used in making the designation, amended
17 designation, or determination in response to a peti-
18 tion for revocation.

19 “(3) SCOPE OF REVIEW.—The Court shall hold
20 unlawful and set aside a designation, amended des-
21 ignation, or determination in response to a petition
22 for revocation the court finds to be—

23 “(A) arbitrary, capricious, an abuse of dis-
24 cretion, or otherwise not in accordance with
25 law;

1 “(B) contrary to constitutional right,
2 power, privilege, or immunity;

3 “(C) in excess of statutory jurisdiction, au-
4 thority, or limitation, or short of statutory
5 right;

6 “(D) lacking substantial support in the ad-
7 ministrative record taken as a whole or in clas-
8 sified information submitted to the court under
9 paragraph (2); or

10 “(E) not in accord with the procedures re-
11 quired by law.

12 “(4) JUDICIAL REVIEW INVOKED.—The pend-
13 ency of an action for judicial review of a designation,
14 amended designation, or determination in response
15 to a petition for revocation shall not affect the appli-
16 cation of this section, unless the court issues a final
17 order setting aside the designation, amended des-
18 ignation, or determination in response to a petition
19 for revocation.

20 “(d) DEFINITIONS.—As used in this section—

21 “(1) the term ‘classified information’ has the
22 meaning given that term in section 1(a) of the Clas-
23 sified Information Procedures Act (18 U.S.C. App.);

1 “(2) the term ‘national security’ means the na-
 2 tional defense, foreign relations, or economic inter-
 3 ests of the United States;

4 “(3) the term ‘relevant committees’ means the
 5 Committees on the Judiciary of the Senate and of
 6 the House of Representatives; and

7 “(4) the term ‘Secretary’ means the Secretary
 8 of Homeland Security, in consultation with the At-
 9 torney General.”.

10 (2) CLERICAL AMENDMENT.—The table of con-
 11 tents for such Act is amended by inserting after the
 12 item relating to section 219 the following:

“Sec. 220. Designation.”.

13 (e) MANDATORY DETENTION OF CRIMINAL GANG
 14 MEMBERS.—

15 (1) IN GENERAL.—Section 236(c)(1) of the Im-
 16 migration and Nationality Act (8 U.S.C. 1226(c)(1))
 17 is amended—

18 (A) in subparagraph (C), by striking “or”
 19 at the end;

20 (B) in subparagraph (D), by inserting
 21 “or” at the end; and

22 (C) by inserting after subparagraph (D)
 23 the following:

1 “(E) is inadmissible under section
2 212(a)(2)(N) or deportable under section
3 237(a)(2)(H),”.

4 (2) ANNUAL REPORT.—Not later than March 1
5 of each year (beginning 1 year after the date of the
6 enactment of this Act), the Secretary of Homeland
7 Security, after consultation with the appropriate
8 Federal agencies, shall submit a report to the Com-
9 mittees on the Judiciary of the House of Represent-
10 atives and of the Senate on the number of aliens de-
11 tained under the amendments made by paragraph
12 (1).

13 (f) ASYLUM CLAIMS BASED ON GANG AFFILI-
14 ATION.—

15 (1) INAPPLICABILITY OF RESTRICTION ON RE-
16 MOVAL TO CERTAIN COUNTRIES.—Section
17 241(b)(3)(B) of the Immigration and Nationality
18 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
19 matter preceding clause (i), by inserting “who is de-
20 scribed in section 212(a)(2)(N)(i) or section
21 237(a)(2)(H)(i) or who is” after “to an alien”.

22 (2) INELIGIBILITY FOR ASYLUM.—Section
23 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))
24 is amended—

1 (A) in clause (v), by striking “or” at the
2 end;

3 (B) by redesignating clause (vi) as clause
4 (vii); and

5 (C) by inserting after clause (v) the fol-
6 lowing:

7 “(vi) the alien is described in section
8 212(a)(2)(N)(i) or section 237(a)(2)(H)(i);
9 or”.

10 (g) TEMPORARY PROTECTED STATUS.—Section 244
11 of such Act (8 U.S.C. 1254a) is amended—

12 (1) by striking “Attorney General” each place
13 it appears and inserting “Secretary of Homeland Se-
14 curity”;

15 (2) in subparagraph (c)(2)(B)—

16 (A) in clause (i), by striking “or” at the
17 end;

18 (B) in clause (ii), by striking the period
19 and inserting “; or”; and

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

21 “(iii) the alien is, or at any time has
22 been, described in section 212(a)(2)(N) or
23 section 237(a)(2)(H).”; and

24 (3) in subsection (d)—

25 (A) by striking paragraph (3); and

1 (B) in paragraph (4), by adding at the end
 2 the following: “The Secretary of Homeland Se-
 3 curity may detain an alien provided temporary
 4 protected status under this section whenever
 5 appropriate under any other provision of law.”.

6 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section
 7 101(a)(27)(J)(iii) of the Immigration and Nationality Act
 8 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

9 (1) in subclause (I), by striking “and”;

10 (2) in subclause (II), by adding “and” at the
 11 end; and

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

13 “(III) no alien who is, or at any
 14 time has been, described in section
 15 212(a)(2)(N) or section 237(a)(2)(H)
 16 shall be eligible for any immigration
 17 benefit under this subparagraph;”.

18 (i) PAROLE.—An alien described in section
 19 212(a)(2)(N) of the Immigration and Nationality Act, as
 20 added by subsection (b), shall not be eligible for parole
 21 under section 212(d)(5)(A) of such Act unless—

22 (1) the alien is assisting or has assisted the
 23 United States Government in a law enforcement
 24 matter, including a criminal investigation; and

1 (2) the alien’s presence in the United States is
2 required by the Government with respect to such as-
3 sistance.

4 (j) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the date of the enactment
6 of this Act and shall apply to acts that occur before, on,
7 or after the date of the enactment of this Act.

8 **SEC. 1107. SPECIAL IMMIGRANT JUVENILE STATUS FOR IM-**
9 **MIGRANTS UNABLE TO REUNITE WITH EI-**
10 **THER PARENT.**

11 Section 101(a)(27)(J)(i) of the Immigration and Na-
12 tionality Act (8 U.S.C. 1101(a)(27)(J)(i)) is amended by
13 striking “1 or both of the immigrant’s parents” and in-
14 serting “either of the immigrant’s parents”.

15 **SEC. 1108. CLARIFICATION OF AUTHORITY REGARDING DE-**
16 **TERMINATIONS OF CONVICTIONS.**

17 Section 101(a)(48) of the Immigration and National
18 Act (8 U.S.C. 1101(a)(48)) is amended by adding at the
19 end the following:

20 “(C) In making a determination as to
21 whether a conviction is for—

22 “(i) a crime under section 212(a)(2);

23 or

24 “(ii) a crime under 237(a)(2),

1 such determination shall be determined on the
2 basis of the record of conviction and any facts
3 established within the record of conviction.

4 “(D) Any reversal, vacatur, expungement,
5 or modification to a conviction, sentence, or
6 conviction record that was granted to amelio-
7 rate the immigration consequences of the con-
8 viction, sentence, or conviction record, or was
9 granted for rehabilitative purposes shall have no
10 effect on the immigration consequences result-
11 ing from the original conviction. The alien shall
12 have the burden of proving that the reversal,
13 vacatur, expungement, or modification was not
14 for such purposes. In no case in which a rever-
15 sal, vacatur, expungement, or modification was
16 granted for a procedural or substantive defect
17 in the criminal proceedings. Whether an alien
18 has been convicted of a crime for which a sen-
19 tence of one year or longer may be imposed or
20 whether the alien has been convicted for a
21 crime where the maximum penalty possible did
22 not exceed one year shall be determined based
23 on the maximum penalty allowed by the statute
24 of conviction as of the date the offense was
25 committed. Subsequent changes in State or

1 Federal law which increase or decrease the sen-
 2 tence that may be imposed for a given crime
 3 shall not be considered.”.

4 **SEC. 1109. ADDING ATTEMPT AND CONSPIRACY TO COMMIT**
 5 **TERRORISM-RELATED INADMISSIBILITY**
 6 **GROUND ACTS TO THE DEFINITION OF EN-**
 7 **GAGING IN TERRORIST ACTIVITY.**

8 Section 212(a)(3)(B)(iv) of the Immigration and Na-
 9 tionality Act (8 U.S.C. 1182(a)(3)(B)(iv)) is amended—
 10 (1) in subclause (VI), by striking the period
 11 and inserting “; or”; and

12 (2) by adding at the end the following:
 13 “(VII) an attempt or conspiracy
 14 to do any of the foregoing.”.

15 **SEC. 1110. CLARIFYING THE AUTHORITY OF ICE DETAIN-**
 16 **ERS.**

17 (a) IN GENERAL.—Section 287(d) of the Immigra-
 18 tion and Nationality Act (8 U.S.C. 1357(d)) is amended
 19 to read as follows:

20 “(d) DETAINER OF INADMISSIBLE OR DEPORTABLE
 21 ALIENS.—

22 “(1) IN GENERAL.—In the case of an individual
 23 who is arrested by any Federal, State, or local law
 24 enforcement official or other personnel for the al-
 25 leged violation of any criminal or motor vehicle law

1 relating to driving while intoxicated or driving under
2 the influence (including driving while under the in-
3 fluence of or impairment by alcohol or drugs), the
4 Secretary may issue a detainer regarding the indi-
5 vidual to any Federal, State, or local law enforce-
6 ment entity, official, or other personnel if the Sec-
7 retary has probable cause to believe that the indi-
8 vidual is an inadmissible or deportable alien.

9 “(2) PROBABLE CAUSE.—Probable cause is
10 deemed to be established if—

11 “(A) the individual who is the subject of
12 the detainer matches, pursuant to biometric
13 confirmation or other Federal database records,
14 the identity of an alien who the Secretary has
15 reasonable grounds to believe to be inadmissible
16 or deportable;

17 “(B) the individual who is the subject of
18 the detainer is the subject of ongoing removal
19 proceedings, including matters where a charg-
20 ing document has already been served;

21 “(C) the individual who is the subject of
22 the detainer has previously been ordered re-
23 moved from the United States and such an
24 order is administratively final;

1 “(D) the individual who is the subject of
2 the detainer has made voluntary statements or
3 provided reliable evidence that indicate that
4 they are an inadmissible or deportable alien; or

5 “(E) the Secretary otherwise has reason-
6 able grounds to believe that the individual who
7 is the subject of the detainer is an inadmissible
8 or deportable alien.

9 “(3) TRANSFER OF CUSTODY.—If the Federal,
10 State, or local law enforcement entity, official, or
11 other personnel to whom a detainer is issued com-
12 plies with the detainer and detains for purposes of
13 transfer of custody to the Department of Homeland
14 Security the individual who is the subject of the de-
15 tainer, the Department may take custody of the in-
16 dividual within 48 hours (excluding weekends and
17 holidays), but in no instance more than 96 hours,
18 following the date that the individual is otherwise to
19 be released from the custody of the relevant Federal,
20 State, or local law enforcement entity.”.

21 (b) IMMUNITY.—

22 (1) IN GENERAL.—A State or a political sub-
23 division of a State (and the officials and personnel
24 of the State or subdivision acting in their official ca-
25 pacities), and a nongovernmental entity (and its per-

1 sonnel) contracted by the State or political subdivi-
2 sion for the purpose of providing detention, acting in
3 compliance with a Department of Homeland Secu-
4 rity detainer issued pursuant to this section who
5 temporarily holds an alien in its custody pursuant to
6 the terms of a detainer so that the alien may be
7 taken into the custody of the Department of Home-
8 land Security, shall be considered to be acting under
9 color of Federal authority for purposes of deter-
10 mining their liability and shall be held harmless for
11 their compliance with the detainer in any suit seek-
12 ing any punitive, compensatory, or other monetary
13 damages.

14 (2) FEDERAL GOVERNMENT AS DEFENDANT.—
15 In any civil action arising out of the compliance with
16 a Department of Homeland Security detainer by a
17 State or a political subdivision of a State (and the
18 officials and personnel of the State or subdivision
19 acting in their official capacities), or a nongovern-
20 mental entity (and its personnel) contracted by the
21 State or political subdivision for the purpose of pro-
22 viding detention, the United States Government
23 shall be the proper party named as the defendant in
24 the suit in regard to the detention resulting from
25 compliance with the detainer.

1 (3) BAD FAITH EXCEPTION.—Paragraphs (1)
2 and (2) shall not apply to any mistreatment of an
3 individual by a State or a political subdivision of a
4 State (and the officials and personnel of the State
5 or subdivision acting in their official capacities), or
6 a nongovernmental entity (and its personnel) con-
7 tracted by the State or political subdivision for the
8 purpose of providing detention.

9 (c) PRIVATE RIGHT OF ACTION.—

10 (1) CAUSE OF ACTION.—Any individual, or a
11 spouse, parent, or child of that individual (if the in-
12 dividual is deceased), who is the victim of a murder,
13 rape, or any felony, as defined by the State, for
14 which an alien (as defined in section 101(a)(3) of
15 the Immigration and Nationality Act (8 U.S.C.
16 1101(a)(3))) has been convicted and sentenced to a
17 term of imprisonment of at least 1 year, may bring
18 an action against a State or political subdivision of
19 a State or public official acting in an official capac-
20 ity in the appropriate Federal court if the State or
21 political subdivision, except as provided in paragraph
22 (3)—

23 (A) released the alien from custody prior
24 to the commission of such crime as a con-
25 sequence of the State or political subdivision's

1 declining to honor a detainer issued pursuant to
2 section 287(d)(1) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1357(d)(1));

4 (B) has in effect a statute, policy, or prac-
5 tice not in compliance with section 642 of the
6 Illegal Immigration Reform and Immigrant Re-
7 sponsibility Act of 1996 (8 U.S.C. 1373) as
8 amended, and as a consequence of its statute,
9 policy, or practice, released the alien from cus-
10 tody prior to the commission of such crime; or

11 (C) has in effect a statute, policy, or prac-
12 tice requiring a subordinate political subdivision
13 to decline to honor any or all detainers issued
14 pursuant to section 287(d)(1) of the Immigra-
15 tion and Nationality Act (8 U.S.C. 1357(d)(1)),
16 and, as a consequence of its statute, policy or
17 practice, the subordinate political subdivision
18 declined to honor a detainer issued pursuant to
19 such section, and as a consequence released the
20 alien from custody prior to the commission of
21 such crime.

22 (2) LIMITATIONS ON BRINGING ACTION.—An
23 action may not be brought under this subsection
24 later than 10 years following the occurrence of the

1 crime, or death of a person as a result of such
2 crime, whichever occurs later.

3 (3) PROPER DEFENDANT.—If a political sub-
4 division of a State declines to honor a detainer
5 issued pursuant to section 287(d)(1) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1357(d)) as
7 a consequence of the State or another political sub-
8 division with jurisdiction over the subdivision prohib-
9 iting the subdivision through a statute or other legal
10 requirement of the State or other political subdivi-
11 sion—

12 (A) from honoring the detainer; or

13 (B) fully complying with section 642 of the

14 Illegal Immigration Reform and Immigrant Re-
15 sponsibility Act of 1996 (8 U.S.C. 1373),

16 and, as a consequence of the statute or other legal
17 requirement of the State or other political subdivi-
18 sion, the subdivision released the alien referred to in
19 paragraph (1) from custody prior to the commission
20 of the crime referred to in that paragraph, the State
21 or other political subdivision that enacted the statute
22 or other legal requirement, shall be deemed to be the
23 proper defendant in a cause of action under this
24 subsection, and no such cause of action may be

1 maintained against the political subdivision which
2 declined to honor the detainer.

3 (4) ATTORNEY’S FEE AND OTHER COSTS.—In
4 any action or proceeding under this subsection the
5 court shall allow a prevailing plaintiff a reasonable
6 attorneys fee as part of the costs, and include expert
7 fees as part of the attorneys fee.

8 **SEC. 1111. CLARIFICATION OF CONGRESSIONAL INTENT.**

9 Section 287(g) of the Immigration and Nationality
10 Act (8 U.S.C. 1357(g)) is amended—

11 (1) in paragraph (1) by striking “may enter”
12 and all that follows through the period at the end
13 and inserting the following: “shall enter into a writ-
14 ten agreement with a State, or any political subdivi-
15 sion of a State, upon request of the State or political
16 subdivision, pursuant to which officers or employees
17 of the State or subdivision, who are determined by
18 the Secretary to be qualified to perform a function
19 of an immigration officer in relation to the investiga-
20 tion, apprehension, or detention of aliens in the
21 United States (including the transportation of such
22 aliens across State lines to detention centers), may
23 carry out such function at the expense of the State
24 or political subdivision and to the extent consistent
25 with State and local law. No request from a bona

1 fide State or political subdivision or bona fide law
2 enforcement agency shall be denied absent a compel-
3 ling reason. No limit on the number of agreements
4 under this subsection may be imposed. The Sec-
5 retary shall process requests for such agreements
6 with all due haste, and in no case shall take not
7 more than 90 days from the date the request is
8 made until the agreement is consummated.”;

9 (2) by redesignating paragraph (2) as para-
10 graph (5) and paragraphs (3) through (10) as para-
11 graphs (7) through (14), respectively;

12 (3) by inserting after paragraph (1) the fol-
13 lowing:

14 “(2) An agreement under this subsection shall accom-
15 modate a requesting State or political subdivision with re-
16 spect to the enforcement model or combination of models,
17 and shall accommodate a patrol model, task force model,
18 jail model, any combination thereof, or any other reason-
19 able model the State or political subdivision believes is best
20 suited to the immigration enforcement needs of its juris-
21 diction.

22 “(3) No Federal program or technology directed
23 broadly at identifying inadmissible or deportable aliens
24 shall substitute for such agreements, including those es-

1 tablishing a jail model, and shall operate in addition to
2 any agreement under this subsection.

3 “(4)(A) No agreement under this subsection shall be
4 terminated absent a compelling reason.

5 “(B)(i) The Secretary shall provide a State or polit-
6 ical subdivision written notice of intent to terminate at
7 least 180 days prior to date of intended termination, and
8 the notice shall fully explain the grounds for termination,
9 along with providing evidence substantiating the Sec-
10 retary’s allegations.

11 “(ii) The State or political subdivision shall have the
12 right to a hearing before an administrative law judge and,
13 if the ruling is against the State or political subdivision,
14 to appeal the ruling to the Federal Circuit Court of Ap-
15 peals and, if the ruling is against the State or political
16 subdivision, to petition the Supreme Court for certeriori.

17 “(C) The agreement shall remain in full effect during
18 the course of any and all legal proceedings.”; and

19 (4) by inserting after paragraph (5) (as redesign-
20 nated) the following:

21 “(6) The Secretary of Homeland Security shall make
22 training of State and local law enforcement officers avail-
23 able through as many means as possible, including
24 through residential training at the Center for Domestic
25 Preparedness and the Federal Law Enforcement Training

1 Center, onsite training held at State or local police agen-
 2 cies or facilities, online training courses by computer, tele-
 3 conferencing, and videotape, or the digital video display
 4 (DVD) of a training course or courses. Distance learning
 5 through a secure, encrypted, distributed learning system
 6 that has all its servers based in the United States, is scal-
 7 able, survivable, and can have a portal in place not later
 8 than 30 days after the date of the enactment of the Secur-
 9 ing America’s Future Act of 2018, shall be made available
 10 by the COPS Office of the Department of Justice and the
 11 Federal Law Enforcement Training Center Distributed
 12 Learning Program for State and local law enforcement
 13 personnel. Preference shall be given to private sector-
 14 based, web-based immigration enforcement training pro-
 15 grams for which the Federal Government has already pro-
 16 vided support to develop.”.

17 **TITLE II—ASYLUM REFORM**

18 **SEC. 2101. CREDIBLE FEAR INTERVIEWS.**

19 Section 235(b)(1)(B)(v) of the Immigration and Na-
 20 tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by
 21 striking “claim” and all that follows, and inserting “claim,
 22 as determined pursuant to section 208(b)(1)(B)(iii), and
 23 such other facts as are known to the officer, that the alien
 24 could establish eligibility for asylum under section 208,
 25 and it is more probable than not that the statements made

1 by, and on behalf of, the alien in support of the alien's
2 claim are true.”.

3 **SEC. 2102. JURISDICTION OF ASYLUM APPLICATIONS.**

4 Section 208(b)(3) of the Immigration and Nationality
5 Act (8 U.S.C. 1158) is amended by striking subparagraph
6 (C).

7 **SEC. 2103. RECORDING EXPEDITED REMOVAL AND CRED-**
8 **IBLE FEAR INTERVIEWS.**

9 (a) IN GENERAL.—The Secretary of Homeland Secu-
10 rity shall establish quality assurance procedures and take
11 steps to effectively ensure that questions by employees of
12 the Department of Homeland Security exercising expe-
13 dited removal authority under section 235(b) of the Immi-
14 gration and Nationality Act (8 U.S.C. 1225(b)) are asked
15 in a uniform manner, to the extent possible, and that both
16 these questions and the answers provided in response to
17 them are recorded in a uniform fashion.

18 (b) FACTORS RELATING TO SWORN STATEMENTS.—
19 Where practicable, any sworn or signed written statement
20 taken of an alien as part of the record of a proceeding
21 under section 235(b)(1)(A) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1225(b)(1)(A)) shall be accom-
23 panied by a recording of the interview which served as the
24 basis for that sworn statement.

1 (c) INTERPRETERS.—The Secretary shall ensure that
2 a competent interpreter, not affiliated with the govern-
3 ment of the country from which the alien may claim asy-
4 lum, is used when the interviewing officer does not speak
5 a language understood by the alien.

6 (d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—
7 There shall be an audio or audio visual recording of inter-
8 views of aliens subject to expedited removal. The recording
9 shall be included in the record of proceeding and shall be
10 considered as evidence in any further proceedings involv-
11 ing the alien.

12 (e) NO PRIVATE RIGHT OF ACTION.—Nothing in this
13 section shall be construed to create any right, benefit,
14 trust, or responsibility, whether substantive or procedural,
15 enforceable in law or equity by a party against the United
16 States, its departments, agencies, instrumentalities, enti-
17 ties, officers, employees, or agents, or any person, nor does
18 this section create any right of review in any administra-
19 tive, judicial, or other proceeding.

20 **SEC. 2104. SAFE THIRD COUNTRY.**

21 Section 208(a)(2)(A) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

23 (1) by striking “Attorney General” each place
24 it appears and inserting “Secretary of Homeland Se-
25 curity”; and

1 (2) by striking “removed, pursuant to a bilat-
2 eral or multilateral agreement, to” and inserting
3 “removed to”.

4 **SEC. 2105. RENUNCIATION OF ASYLUM STATUS PURSUANT**
5 **TO RETURN TO HOME COUNTRY.**

6 (a) IN GENERAL.—Section 208(c) of the Immigration
7 and Nationality Act (8 U.S.C. 1158(c)) is amended by
8 adding at the end the following new paragraph:

9 “(4) RENUNCIATION OF STATUS PURSUANT TO
10 RETURN TO HOME COUNTRY.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), any alien who is granted
13 asylum status under this Act, who, absent
14 changed country conditions, subsequently re-
15 turns to the country of such alien’s nationality
16 or, in the case of an alien having no nationality,
17 returns to any country in which such alien last
18 habitually resided, and who applied for such
19 status because of persecution or a well-founded
20 fear of persecution in that country on account
21 of race, religion, nationality, membership in a
22 particular social group, or political opinion,
23 shall have his or her status terminated.

24 “(B) WAIVER.—The Secretary has discre-
25 tion to waive subparagraph (A) if it is estab-

1 lished to the satisfaction of the Secretary that
 2 the alien had a compelling reason for the re-
 3 turn. The waiver may be sought prior to depar-
 4 ture from the United States or upon return.”.

5 (b) CONFORMING AMENDMENT.—Section 208(c)(3)
 6 of the Immigration and Nationality Act (8 U.S.C.
 7 1158(c)(3)) is amended by inserting after “paragraph
 8 (2)” the following: “or (4)”.

9 **SEC. 2106. NOTICE CONCERNING FRIVOLOUS ASYLUM AP-**
 10 **PLICATIONS.**

11 (a) IN GENERAL.—Section 208(d)(4) of the Immi-
 12 gration and Nationality Act (8 U.S.C. 1158(d)(4)) is
 13 amended—

14 (1) in the matter preceding subparagraph (A),
 15 by inserting “the Secretary of Homeland Security
 16 or” before “the Attorney General”;

17 (2) in subparagraph (A), by striking “and of
 18 the consequences, under paragraph (6), of knowingly
 19 filing a frivolous application for asylum; and” and
 20 inserting a semicolon;

21 (3) in subparagraph (B), by striking the period
 22 and inserting “; and”; and

23 (4) by adding at the end the following:

24 “(C) ensure that a written warning ap-
 25 pears on the asylum application advising the

1 alien of the consequences of filing a frivolous
2 application and serving as notice to the alien of
3 the consequence of filing a frivolous applica-
4 tion.”.

5 (b) CONFORMING AMENDMENT.—Section 208(d)(6)
6 of the Immigration and Nationality Act (8 U.S.C.
7 1158(d)(6)) is amended by striking “If the” and all that
8 follows and inserting:

9 “(A) If the Secretary of Homeland Secu-
10 rity or the Attorney General determines that an
11 alien has knowingly made a frivolous applica-
12 tion for asylum and the alien has received the
13 notice under paragraph (4)(C), the alien shall
14 be permanently ineligible for any benefits under
15 this chapter, effective as the date of the final
16 determination of such an application.

17 “(B) An application is frivolous if the Sec-
18 retary of Homeland Security or the Attorney
19 General determines, consistent with subpara-
20 graph (C), that—

21 “(i) it is so insufficient in substance
22 that it is clear that the applicant know-
23 ingly filed the application solely or in part
24 to delay removal from the United States,
25 to seek employment authorization as an

1 applicant for asylum pursuant to regula-
2 tions issued pursuant to paragraph (2), or
3 to seek issuance of a Notice to Appeal in
4 order to pursue Cancellation of Removal
5 under section 240A(b); or

6 “(ii) any of the material elements are
7 knowingly fabricated.

8 “(C) In determining that an application is
9 frivolous, the Secretary or the Attorney Gen-
10 eral, must be satisfied that the applicant, dur-
11 ing the course of the proceedings, has had suffi-
12 cient opportunity to clarify any discrepancies or
13 implausible aspects of the claim.

14 “(D) For purposes of this section, a find-
15 ing that an alien filed a frivolous asylum appli-
16 cation shall not preclude the alien from seeking
17 withholding of removal under section 241(b)(3)
18 or protection pursuant to the Convention
19 Against Torture.”.

20 **SEC. 2107. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.**

21 (a) ASYLUM CREDIBILITY DETERMINATIONS.—Sec-
22 tion 208(b)(1)(B)(iii) of the Immigration and Nationality
23 Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting
24 after “all relevant factors” the following: “, including

1 statements made to, and investigative reports prepared by,
2 immigration authorities and other government officials”.

3 (b) RELIEF FOR REMOVAL CREDIBILITY DETER-
4 MINATIONS.—Section 240(c)(4)(C) of the Immigration
5 and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended
6 by inserting after “all relevant factors” the following: “,
7 including statements made to, and investigative reports
8 prepared by, immigration authorities and other govern-
9 ment officials”.

10 **SEC. 2108. PENALTIES FOR ASYLUM FRAUD.**

11 Section 1001 of title 18 is amended by inserting at
12 the end of the paragraph—

13 “(d) Whoever, in any matter before the Secretary of
14 Homeland Security or the Attorney General pertaining to
15 asylum under section 208 of the Immigration and Nation-
16 ality Act or withholding of removal under section
17 241(b)(3) of such Act, knowingly and willfully—

18 “(1) makes any materially false, fictitious, or
19 fraudulent statement or representation; or

20 “(2) makes or uses any false writings or docu-
21 ment knowing the same to contain any materially
22 false, fictitious, or fraudulent statement or entry,
23 shall be fined under this title or imprisoned not more than
24 10 years, or both.”.

1 **SEC. 2109. STATUTE OF LIMITATIONS FOR ASYLUM FRAUD.**

2 Section 3291 of title 18 is amended—

3 (1) by striking “1544,” and inserting “1544,
4 and section 1546,”; and

5 (2) by striking “offense.” and inserting “of-
6 fense or within 10 years after the fraud is discov-
7 ered.”.

8 **SEC. 2110. TECHNICAL AMENDMENTS.**

9 Section 208 of the Immigration and Nationality Act
10 (8 U.S.C. 1158) is amended—

11 (1) in subsection (a)—

12 (A) in paragraph (2)(D), by inserting
13 “Secretary of Homeland Security or the” before
14 “Attorney General”; and

15 (B) in paragraph (3), by inserting “Sec-
16 retary of Homeland Security or the” before
17 “Attorney General”;

18 (2) in subsection (b)(2), by inserting “Secretary
19 of Homeland Security or the” before “Attorney Gen-
20 eral” each place such term appears;

21 (3) in subsection (c)—

22 (A) in paragraph (1), by striking “Attor-
23 ney General” each place such term appears and
24 inserting “Secretary of Homeland Security”;

25 (B) in paragraph (2), in the matter pre-
26 ceding subparagraph (A), by by inserting “Sec-

1 retary of Homeland Security or the” before
2 “Attorney General”; and

3 (C) in paragraph (3), by inserting “Sec-
4 retary of Homeland Security or the” before
5 “Attorney General”; and
6 (4) in subsection (d)—

7 (A) in paragraph (1), by inserting “Sec-
8 retary of Homeland Security or the” before
9 “Attorney General” each place such term ap-
10 pears;

11 (B) in paragraph (2), by striking “Attor-
12 ney General” and inserting “Secretary of
13 Homeland Security”; and

14 (C) in paragraph (5)—

15 (i) in subparagraph (A), by striking
16 “Attorney General” and inserting “Sec-
17 retary of Homeland Security”; and

18 (ii) in subparagraph (B), by inserting
19 “Secretary of Homeland Security or the”
20 before “Attorney General”.

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