115TH CONGRESS
2D Session

H. R.

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

IN THE HOUSE OF REPRESENTATIVES

Mr. Meadows introduced the following bill; which was referred to the Committee on

A BILL

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Equal Protection of Unaccompanied Minors Act”.

(b) Table of Contents.—The table of contents for 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.

TITLE I—UNACCOMPANIED ALIEN CHILDREN; INTERIOR IMMIGRATION ENFORCEMENT

SEC. 1101. REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.

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

(1) in subsection (a)—

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

(ii) in subparagraph (A)—

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

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

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

(IV) by striking clause (iii);

(iii) in subparagraph (B)—

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

(II) in clause (i), by inserting before “permit such child to withdraw” the following: “may”; and

(III) in clause (ii), by inserting before “return such child” the following: “shall”; and

(iv) in subparagraph (C)—
(I) by amending the heading to read as follows: “AGREEMENTS WITH FOREIGN COUNTRIES.—”; and

(II) in the matter preceding clause (i), by striking “The Secretary of State shall negotiate agreements between the United States and countries contiguous to the United States” and inserting “The Secretary of State may negotiate agreements between the United States and any foreign country that the Secretary determines appropriate”;

(B) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively, and inserting after paragraph (2) the following:

“(3) SPECIAL RULES FOR INTERVIEWING UNCOMPANIED ALIEN CHILDREN.—An unaccompanied alien child shall be interviewed by a dedicated U.S. Citizenship and Immigration Services immigration officer with specialized training in interviewing child trafficking victims. Such officer shall be in plain clothes and shall not carry a weapon. The interview shall occur in a private room.”; and
(C) in paragraph (6)(D) (as so redesignated)—

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

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

(2) in subsection (b)—

(A) in paragraph (2)—

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

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

(B) in paragraph (3), by striking “an unaccompanied alien child in custody shall” and
all that follows, and inserting the following: “an
unaccompanied alien child in custody—

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

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

(3) in subsection (c)—

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

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

“(i) INFORMATION TO BE PROVIDED
TO HOMELAND SECURITY.—Before placing
a child with an individual, the Secretary of
Health and Human Services shall provide
to the Secretary of Homeland Security, re-
garding the individual with whom the child
will be placed, the following information:

“(I) The name of the individual.

“(II) The social security number
of the individual, if available.

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

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

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

“(VI) Contact information for
the individual.

“(ii) SPECIAL RULE.—In the case of a
child who was apprehended on or after
June 15, 2012, and before the date of the
enactment of this subparagraph, who the
Secretary of Health and Human Services
placed with an individual, the Secretary
shall provide the information listed in
clause (i) to the Secretary of Homeland
Security not later than 90 days after such
date of enactment.
“(iii) Activities of Secretary of Homeland Security.—Not later than 30 days after receiving the information listed in clause (i), the Secretary of Homeland Security shall—

“(I) in the case that the immigration status of an individual with whom a child is placed is unknown, investigate the immigration status of that individual; and

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

(B) in paragraph (5)—

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

(ii) by striking “have counsel to represent them” and inserting “have access to counsel to represent them”.
(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any unauthorized alien child apprehended on or after June 15, 2012.

SEC. 1102. CLARIFICATION OF STANDARDS FOR FAMILY DETENTION.

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

“(j) CONSTRUCTION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, the detention of any alien child who is not an unaccompanied alien child shall be governed by sections 217, 235, 236, and 241 of the Immigration and Nationality Act (8 U.S.C. 1187, 1225, 1226, and 1231). There exists no presumption that an alien child who is not an unaccompanied alien child should not be detained, and all such determinations shall be in the discretion of the Secretary of Homeland Security.

“(2) RELEASE OF MINORS OTHER THAN UNACCOMPANIED ALIENS.—In no circumstances shall an alien minor who is not an unaccompanied alien child

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

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to all actions that occur before, on, or after the date of the enactment of this Act.

SEC. 1103. DETENTION OF DANGEROUS ALIENS.

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

(1) by striking “Attorney General” each place it appears, except for the first reference in paragraph (4)(B)(i), and inserting “Secretary of Homeland Security”;

(2) in paragraph (1), by amending subparagraph (B) to read as follows:

“(B) Beginning of Period.—The removal period begins on the latest of the following:

“(i) The date the order of removal becomes administratively final.

“(ii) If the alien is not in the custody of the Secretary on the date the order of removal becomes administratively final, the date the alien is taken into such custody.
“(iii) If the alien is detained or confined (except under an immigration process) on the date the order of removal becomes administratively final, the date the alien is taken into the custody of the Secretary, after the alien is released from such detention or confinement.”;

(3) in paragraph (1), by amending subparagraph (C) to read as follows:

“(C) SUSPENSION OF PERIOD.—

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

“(I) the alien fails or refuses to make 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, including making timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s
removal that is subject to an order of removal;

“(II) a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administratively final order of removal;

“(III) the Secretary transfers custody of the alien pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency; or

“(IV) a court or the Board of Immigration Appeals orders a remand to an immigration judge or the Board of Immigration Appeals, during the time period when the case is pending a decision on remand (with the removal period beginning anew on the date that the alien is ordered removed on remand).

“(ii) RENEWAL.—If the removal period 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-
paragraph shall have the right to seek release on bond.”;

(4) in paragraph (3)—

(A) by adding after “If the alien does not leave or is not removed within the removal period” the following: “or is not detained pursuant to paragraph (6) of this subsection”; and

(B) by striking subparagraph (D) and inserting the following:

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

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

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

“(6) ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN AliENS.—

“(A) DETENTION REVIEW PROCESS FOR COOPERATIVE AliENS ESTABLISHED.—For an alien who is not otherwise subject to mandatory detention, who has made all reasonable efforts
to comply with a removal order and to cooperate fully with the Secretary of Homeland Security’s efforts to establish the alien’s identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien’s departure, and who has not conspired or acted to prevent removal, the Secretary shall establish an administrative review process to determine whether the alien should be detained or released on conditions. The Secretary shall make a determination whether to release an alien after the removal period in accordance with subparagraph (B). The determination shall include consideration of any evidence submitted by the alien, and may include consideration of any other evidence, including any information or assistance provided by the Secretary of State or other Federal official and any other information available to the Secretary of Homeland Security pertaining to the ability to remove the alien.

“(B) AUTHORITY TO DETAIN BEYOND REMOVAL PERIOD.—

“(i) IN GENERAL.—The Secretary of Homeland Security, in the exercise of the
Secretary’s sole discretion, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in paragraph (1)(C)). An alien whose detention is extended under this subparagraph shall have no right to seek release on bond.

“(ii) SPECIFIC CIRCUMSTANCES.—The Secretary of Homeland Security, in the exercise of the Secretary’s sole discretion, may continue to detain an alien beyond the 90 days authorized in clause (i)—

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

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

“(bb) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien’s failure or refusal to make all reasonable efforts to comply with the removal order, or to cooperate fully with the
Secretary’s efforts to establish the alien’s identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien’s departure, or conspires or acts to prevent removal;

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

“(aa) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

“(bb) after receipt of a written recommendation from the Secretary of State, that release of the alien is likely to have serious adverse foreign policy consequences for the United States;

“(cc) based on information available to the Secretary of
Homeland Security (including classified, sensitive, or national security information, and without regard to the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States; or

“(dd) that the release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and either (AA)—

“(AA) the alien has been convicted of (aaa) one or more aggravated felonies (as defined in section 101(a)(43)(A)), (bbb) one or more crimes identified by the Secretary of Homeland Security by regulation, if the aggregate term of imprison-
ment for such crimes is at least 5 years, or (eee) one or more attempts or conspiracies to commit any such aggravated felonies or such identified crimes, if the aggregate term of imprisonment for such attempts or conspiracies is at least 5 years; or

“(BB) the alien has committed one or more violent crimes (as referred to in section 101(a)(43)(F), but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future; or

“(III) pending a certification under subclause (II), so long as the Secretary of Homeland Security has
initiated the administrative review process not later than 30 days after the expiration of the removal period (including any extension of the removal period, as provided in paragraph (1)(C)).

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

“(C) RENEWAL AND DELEGATION OF CERTIFICATION.—

“(i) RENEWAL.—The Secretary of Homeland Security may renew a certification under subparagraph (B)(ii)(II) every 6 months, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under subparagraph (B)(ii)(II).
“(ii) DELEGATION.—Notwithstanding section 103, the Secretary of Homeland Security may not delegate the authority to make or renew a certification described in item (bb), (cc), or (dd) of subparagraph (B)(ii)(II) below the level of the Director of Immigration and Customs Enforcement.

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

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

“(E) REDETENTION.—The Secretary of Homeland Security, in the exercise of the Secretary’s discretion, without any limitations other than those specified in this section, may
again detain any alien subject to a final removal order who is released from custody, if removal becomes likely in the reasonably foreseeable future, the alien fails to comply with the conditions of release, or to continue to satisfy the conditions described in subparagraph (A), or if, upon reconsideration, the Secretary, in the Secretary’s sole discretion, determines that the alien can be detained under subparagraph (B). This section shall apply to any alien returned to custody pursuant to this subparagraph, as if the removal period terminated on the day of the redetention.

“(F) Review of determinations by Secretary.—A determination by the Secretary under this paragraph shall not be subject to review by any other agency.”

SEC. 1104. DEFINITION OF AGGRAVATED FELONY.

(a) In General.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

“(43) Notwithstanding any other provision of law, the term ‘aggravated felony’ means any offense, whether in violation of Federal, State, or foreign
law, that is described in this paragraph. An offense described in this paragraph is—

“(A) homicide (including murder in any degree, manslaughter, and vehicular manslaughter), rape (whether the victim was conscious or unconscious), statutory rape, sexual assault or battery, or any offense of a sexual nature involving an intended victim under the age of 18 years (including offenses in which the intended victim was a law enforcement officer);

“(B)(i) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code); or

“(ii) any offense under State law relating to a controlled substance (as so classified under State law) which is classified as a felony in that State regardless of whether the substance is classified as a controlled substance under section 102 of the Controlled Substances Act (21 U.S.C. 802);

“(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive
materials (as defined in section 841(c) of that title);

“(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

“(E) an offense described in—

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

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

“(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

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

“(i) any offense that has an element the use, attempted use, or threatened use of physical force against the person or property of another; or
“(ii) any other offense in which the record of conviction establishes that the offender used physical force against the person or property of another in the course of committing the offense;

“(G)(i) theft (including theft by deceit, theft by fraud, embezzlement, motor vehicle theft, unauthorized use of a vehicle, or receipt of stolen property), regardless of whether the intended deprivation was temporary or permanent, for which the term of imprisonment is at least 1 year; or

“(ii) burglary for which the term of imprisonment is at least 1 year;

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

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

“(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or
an offense described in section 1084 (if it is a
second or subsequent offense) or 1955 of that
title (relating to gambling offenses);

“(K) an offense that—

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

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

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

“(L) an offense described in—

“(i) section 793 (relating to gathering
or transmitting national defense infor-
lation), 798 (relating to disclosure of classi-
fied information), 2153 (relating to sabo-
tagge) or 2381 or 2382 (relating to treason)
of title 18, United States Code;
“(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents);

“(iii) section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);

“(iv) section 175 (relating to biological weapons) of title 18, United States Code;

“(v) sections 792 (harboring or concealing persons who violated sections 793 or 794 of title 18, United States Code), 794 (gathering or delivering defense information to aid foreign government), 795 (photographing and sketching defense installations), 796 (use of aircraft for photographing defense installations), 797 (publication and sale of photographs of defense installations), 799 (violation of NASA regulations for protection of facilities) of title 18, United States Code;

“(vi) sections 831 (prohibited transactions involving nuclear materials) and 832 (participation in nuclear and weapons
of mass destruction threats to the United States) of title 18, United States Code;

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

“(viii) sections 2339 (relating to harboring or concealing terrorists), 2339A (relating to material support to terrorists), 2339B (relating to material support or resources to designated foreign terrorist organizations), 2339C (relating to financing of terrorism), 2339D (relating to receiving military-type training from a terrorist organization) of title 18, United States Code;

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

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

“(M) an offense that—

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

“(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relat-
(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness;

“(T) an offense relating to a failure to appear before a court pursuant to a court order
to answer to or dispose of a charge of a felony
for which a sentence of 2 years’ imprisonment
or more may be imposed;

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

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

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

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

“(X) an attempt or conspiracy to commit
an offense described in this paragraph or aid-
ing, abetting, counseling, procuring, com-
manding, inducing, facilitating, or soliciting the
commission of such an offense.
Any determinations under this paragraph shall be made on the basis of the record of conviction. For purposes of this paragraph, a person shall be considered to have committed an aggravated felony if that person has been convicted for 3 or more misdemeanors not arising out the traffic laws (except for any conviction for driving under the influence or an offense that results in the death or serious bodily injury of another person) or felonies for which the aggregate term of imprisonment imposed was 3 years or more, regardless of whether the convictions were all entered pursuant to a single trial or the offenses arose from a single pattern or scheme of conduct.”.

(b) Effective Date; Application of Amendments.—

(1) In General.—The amendments made by subsection (a)—

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

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

(2) Application of IRIRA Amendments.—

The amendments to section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43))
made by section 321 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.

SEC. 1105. CRIME OF VIOLENCE.

Section 16 of title 18, United States Code, is amended to read as follows:

“§ 16. Crime of violence defined

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

“(1)(A) is murder, voluntary manslaughter, assault, sexual abuse or aggravated sexual abuse, abusive sexual contact, child abuse, kidnapping, robbery, carjacking, firearms use, burglary, arson, extortion, communication of threats, coercion, unauthorized use of a vehicle, fleeing, interference with flight crew members and attendants, domestic violence, hostage taking, stalking, human trafficking, or using weapons of mass destruction; or

“(B) involves use or unlawful possession of explosives or destructive devices described in 5845(f) of the Internal Revenue Code of 1986;
“(2) has as an element the use, attempted use, 
or threatened use of physical force against the per-
son or property of another; or

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

“(b) In this section:

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

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

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

“(4) The term ‘arson’ means conduct described 
in section 844(i) or unlawfully or willfully damaging 
or destroying any building, inhabited structure, vehi-
cle, vessel, or real property by means of fire or explosive.

“(5) The term ‘burglary’ means an unlawful or unprivileged entry into, or remaining in, a building or structure, including any nonpermanent or mobile structure that is adapted or used for overnight accommodation or for the ordinary carrying on of business, and, either before or after entering, the person—

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

or

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

“(6) The term ‘carjacking’ means conduct described in section 2119, or the unlawful taking of a motor vehicle from the immediate actual possession of a person against his will, by means of actual or threatened force, or violence or intimidation, or by sudden or stealthy seizure or snatching, or fear of injury.

“(7) The term ‘child abuse’ means the unlawful infliction of physical injury or the commission of any sexual act against a child under fourteen by any person eighteen years of age or older.
“(8) The term ‘communication of threats’ means conduct described in section 844(e), or the transmission of any communications containing any threat of use of violence to—

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

“(B) threaten to kidnap or injure the person of another.

“(9) The term ‘coercion’ means causing the performance or non-performance of any act by another person which under such other person has a legal right to do or to abstain from doing, through fraud or by the use of actual or threatened force, violence, or fear thereof, including the use, or an express or implicit threat of use, of violence to cause harm, or threats to cause injury to the person, reputation or property of any person.

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

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

“(12) The term ‘firearms use’ means conduct described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise possessed, carried, or used as a weapon and the crime of violence or drug trafficking crime during and in relation to which the firearm was possessed, carried, or used was subject to prosecution in any court of the United States, State court, military court or tribunal, or tribal court. Such term also includes unlawfully possessing a firearm described in section 5845(a) of the Internal Revenue Code of 1986 (such as a sawed-off shotgun or sawed-off rifle, silencer, bomb, or machine gun), possession of a firearm described in section 922(g)(1), 922(g)(2) and 922(g)(4), possession of a firearm with the intent to use such firearm unlawfully, or reckless discharge of a firearm at a dwelling.

“(13) The term ‘fleeing’ means knowingly operating a motor vehicle and, following a law enforce-
ment officer’s signal to bring the motor vehicle to a
stop—

“(A) failing or refusing to comply; or

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

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

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

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

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

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

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

“(20) the term ‘robbery’ means conduct de-
scribed in section 1951(b)(1), or the unlawful taking
or obtaining of personal property from the person or
in the presence of another, against his will, by means of actual or threatened force, or violence or intimidation, or by sudden or stealthy seizure or snatching, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

“(21) The term ‘stalking’ means conduct described in section 2261A.

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

“(23) The term ‘using weapons of mass destruction’ means conduct described in section 2332a.

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

“(c) For purposes of this section, in the case of any reference in subsection (b) to an offense under this title, such reference shall include conduct that constitutes an offense under State or tribal law or under the Uniform Code of Military Justice, if such conduct would be an offense under this title if a circumstance giving rise to Federal jurisdiction had existed.”.
SEC. 1106. GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN GANG MEMBERS.

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

“(53)(A) The term ‘criminal gang’ means an ongoing group, club, organization, or association of 5 or more persons—

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

“(ii) that has been designated as a criminal gang by the Secretary of Homeland Security, in consultation with the Attorney General, as meeting these criteria.

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

“(i) A ‘felony drug offense’ (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).
“(ii) A felony offense involving firearms or explosives or in violation of section 931 of title 18, United States Code (relating to purchase, ownership, or possession of body armor by violent felons).

“(iii) An offense under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose), except that this clause does not apply in the case of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) which is exempt from taxation under section 501(a) of such Code.

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

“(v) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or perjury or subornation of perjury.

“(vi) Any conduct punishable under sections 1028A and 1029 of title 18, United States Code (relating to aggravated identity theft or fraud and related activity in connection with identification documents or access devices), sections 1581 through
1594 of such title (relating to peonage, slavery, and trafficking in persons), section 1951 of such title (relating to interference with commerce by threats or violence), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

“(vii) An attempt or conspiracy to commit an offense described in this paragraph or aiding, abetting, counseling, procuring, commanding, inducing, facilitating, or soliciting the commission of an offense described in clauses (i) through (vi).”.

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

(1) in subparagraph (A)(i)—

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

(B) by inserting after subclause (II) the following:
“(III) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to participation or membership in a criminal gang, or

“(IV) any felony or misdemeanor offense for which the alien received a sentencing enhancement predicated on gang membership or conduct that promoted, furthered, aided, or supported the illegal activity of the criminal gang,”.

(2) by adding at the end the following:

“(N) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—

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

“(I) That alien is inadmissible if a consular officer, an immigration officer, the Secretary of Homeland Security, or the Attorney General knows or has reason to believe—
“(aa) to be or to have been a member of a criminal gang (as defined in section 101(a)(53)); or

“(bb) to have participated in the activities of a criminal gang (as defined in section 101(a)(53)), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.

“(II) That alien is inadmissible if a consular officer, an immigration officer, the Secretary of Homeland Security, or the Attorney General has reasonable grounds to believe the alien has participated in, been a member of, promoted, or conspired with a criminal gang, either inside or outside of the United States.

“(III) That alien is inadmissible if a consular officer, an immigration officer, the Secretary of Homeland Security, or the Attorney General has reasonable grounds to believe seeks to
enter the United States or has en-
tered the United States in furtherance
of the activities of a criminal gang, ei-
ther inside or outside of the United
States.

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

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

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

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

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

“(i) is or has been a member of a
criminal gang (as defined in section
101(a)(53));
“(ii) has participated in the activities of a criminal gang (as so defined), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang;

“(iii) has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to participation or membership in a criminal gang; or

“(iv) any felony or misdemeanor offense for which the alien received a sentencing enhancement predicated on gang membership or conduct that promoted, furthered, aided, or supported the illegal activity of the criminal gang.”.

(d) DESIGNATION.—

(1) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting after section 219 the following:

“DESIGNATION OF CRIMINAL GANG

“Sec. 220.

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

“(2) PROCEDURE.—

“(A) NOTIFICATION.—Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group, club, organization, or association of 5 or more persons under this subsection and the factual basis therefor.

“(B) PUBLICATION IN THE FEDERAL REGISTER.—The Secretary shall publish the designation in the Federal Register seven days after providing the notification under subparagraph (A).

“(3) RECORD.—

“(A) IN GENERAL.—In making a designation under this subsection, the Secretary shall create an administrative record.
“(B) CLASSIFIED INFORMATION.—The Secretary may consider classified information in making a designation under this subsection. 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).

“(4) PERIOD OF DESIGNATION.—

“(A) IN GENERAL.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c).

“(B) REVIEW OF DESIGNATION UPON PETITION.—

“(i) IN GENERAL.—The Secretary shall review the designation of a criminal gang under the procedures set forth in clauses (iii) and (iv) if the designated group, club, organization, or association of 5 or more persons files a petition for revocation within the petition period described in clause (ii).

“(ii) PETITION PERIOD.—For purposes of clause (i)—
“(I) if the designated group, club, organization, or association of 5 or more persons has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

“(II) if the designated group, club, organization, or association of 5 or more persons has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

“(iii) PROCEDURES.—Any group, club, organization, or association of 5 or more persons that submits a petition for revocation under this subparagraph of its designation as a criminal gang must provide evidence in that petition that it is not described in section 101(a)(53).

“(iv) DETERMINATION.—

“(I) IN GENERAL.—Not later than 180 days after receiving a petition for revocation 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
such designation should be revoked pursuant to paragraph (6).

“(ii) PROCEDURES.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

“(iii) PUBLICATION OF RESULTS OF REVIEW.—The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.

“(5) REVOCATION BY ACT OF CONGRESS.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

“(6) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

“(A) IN GENERAL.—The Secretary may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Secretary finds that—
“(i) the group, club, organization, or association of 5 or more persons that has been designated as a criminal gang is no longer described in section 101(a)(53); or

“(ii) the national security or the law enforcement interests of the United States warrants a revocation.

“(B) PROCEDURE.—The procedural requirements of paragraphs (2) and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

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

“(8) USE OF DESIGNATION IN TRIAL OR HEARING.—If a designation under this subsection has become effective under paragraph (2) an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection.

“(b) AMENDMENTS TO A DESIGNATION.—
“(1) IN GENERAL.—The Secretary may amend a designation under this subsection if the Secretary finds that the group, club, organization, or association of 5 or more persons has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another group, club, organization, or association of 5 or more persons.

“(2) PROCEDURE.—Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Paragraphs (2), (4), (5), (6), (7), and (8) of subsection (a) shall also apply to an amended designation.

“(3) ADMINISTRATIVE RECORD.—The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

“(4) CLASSIFIED INFORMATION.—The Secretary may consider classified information in amending a designation in accordance with this subsection. 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 (e) of this section.

“(c) JUDICIAL REVIEW OF DESIGNATION.—

“(1) IN GENERAL.—Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated group, club, organization, or association of 5 or more persons may seek judicial review in the United States Court of Appeals for the District of Columbia Circuit.

“(2) BASIS OF REVIEW.—Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation, amended designation, or determination in response to a petition for revocation.

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

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
“(B) contrary to constitutional right, power, privilege, or immunity;

“(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

“(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (2); or

“(E) not in accord with the procedures required by law.

“(4) JUDICIAL REVIEW INVOKED.—The pendency of an action for judicial review of a designation, amended designation, or determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.

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

“(1) the term ‘classified information’ has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);
“(2) the term ‘national security’ means the national defense, foreign relations, or economic interests of the United States;

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

“(4) the term ‘Secretary’ means the Secretary of Homeland Security, in consultation with the Attorney General.”.

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 219 the following:

“Sec. 220. Designation.”.

(e) MANDATORY DETENTION OF CRIMINAL GANG MEMBERS.—

(1) IN GENERAL.—Section 236(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)) is amended—

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

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

(C) by inserting after subparagraph (D) the following:
“(E) is inadmissible under section 212(a)(2)(N) or deportable under section 237(a)(2)(H),”.

(2) ANNUAL REPORT.—Not later than March 1 of each year (beginning 1 year after the date of the enactment of this Act), the Secretary of Homeland Security, after consultation with the appropriate Federal agencies, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the number of aliens detained under the amendments made by paragraph (1).

(f) ASYLUM CLAIMS BASED ON GANG AFFILIATION.—

(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the matter preceding clause (i), by inserting “who is described in section 212(a)(2)(N)(i) or section 237(a)(2)(H)(i) or who is” after “to an alien”.

(2) INELIGIBILITY FOR ASYLUM.—Section 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is amended—
(A) in clause (v), by striking “or” at the end;

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

(C) by inserting after clause (v) the following:

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

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

(1) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”;

(2) in subparagraph (c)(2)(B)—

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

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

(C) by adding at the end the following:

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

(3) in subsection (d)—

(A) by striking paragraph (3); and
(B) in paragraph (4), by adding at the end the following: “The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision of law.”.

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

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

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

(3) by adding at the end the following:

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

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

(1) the alien is assisting or has assisted the United States Government in a law enforcement matter, including a criminal investigation; and
(2) the alien’s presence in the United States is required by the Government with respect to such assistance.

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

SEC. 1107. SPECIAL IMMIGRANT JUVENILE STATUS FOR IMMIGRANTS UNABLE TO REUNITE WITH EITHER PARENT.

Section 101(a)(27)(J)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)(i)) is amended by striking “1 or both of the immigrant’s parents” and inserting “either of the immigrant’s parents”.

SEC. 1108. CLARIFICATION OF AUTHORITY REGARDING TERMINATIONS OF CONVICTIONS.

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

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

“(i) a crime under section 212(a)(2),

or

“(ii) a crime under 237(a)(2),
such determination shall be determined on the basis of the record of conviction and any facts established within the record of conviction.

“(D) Any reversal, vacatur, expungement, or modification to a conviction, sentence, or conviction record that was granted to ameliorate the immigration consequences of the conviction, sentence, or conviction record, or was granted for rehabilitative purposes shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of proving that the reversal, vacatur, expungement, or modification was not for such purposes. In no case in which a reversal, vacatur, expungement, or modification was granted for a procedural or substantive defect in the criminal proceedings. Whether an alien has been convicted of a crime for which a sentence of one year or longer may be imposed or whether the alien has been convicted for a crime where the maximum penalty possible did not exceed one year shall be determined based on the maximum penalty allowed by the statute of conviction as of the date the offense was committed. Subsequent changes in State or
Federal law which increase or decrease the sentence that may be imposed for a given crime shall not be considered.”.

SEC. 1109. ADDING ATTEMPT AND CONSPIRACY TO COMMIT TERRORISM-RELATED INADMISSIBILITY GROUNDS ACTS TO THE DEFINITION OF ENGAGING IN TERRORIST ACTIVITY.


(1) in subclause (VI), by striking the period and inserting “; or”; and

(2) by adding at the end the following:

“(VII) an attempt or conspiracy to do any of the foregoing.”.

SEC. 1110. CLARIFYING THE AUTHORITY OF ICE DETAINERS.

(a) IN GENERAL.—Section 287(d) of the Immigration and Nationality Act (8 U.S.C. 1357(d)) is amended to read as follows:

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

“(1) IN GENERAL.—In the case of an individual who is arrested by any Federal, State, or local law enforcement official or other personnel for the alleged violation of any criminal or motor vehicle law
relating to driving while intoxicated or driving under
the influence (including driving while under the in-
fluence of or impairment by alcohol or drugs), the
Secretary may issue a detainer regarding the indi-
vidual to any Federal, State, or local law enforce-
ment entity, official, or other personnel if the Sec-
retary has probable cause to believe that the indi-
vidual is an inadmissible or deportable alien.

“(2) Probable Cause.—Probable cause is
deemed to be established if—

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

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

“(C) the individual who is the subject of
the detainer has previously been ordered re-
moved from the United States and such an
order is administratively final;
“(D) the individual who is the subject of the detainer has made voluntary statements or provided reliable evidence that indicate that they are an inadmissible or deportable alien; or

“(E) the Secretary otherwise has reasonable grounds to believe that the individual who is the subject of the detainer is an inadmissible or deportable alien.

“(3) TRANSFER OF CUSTODY.—If the Federal, State, or local law enforcement entity, official, or other personnel to whom a detainer is issued complies with the detainer and detains for purposes of transfer of custody to the Department of Homeland Security the individual who is the subject of the detainer, the Department may take custody of the individual within 48 hours (excluding weekends and holidays), but in no instance more than 96 hours, following the date that the individual is otherwise to be released from the custody of the relevant Federal, State, or local law enforcement entity."

(b) IMMUNITY.—

(1) IN GENERAL.—A State or a political subdivision of a State (and the officials and personnel of the State or subdivision acting in their official capacities), and a nongovernmental entity (and its per-
sonnel) contracted by the State or political subdivision for the purpose of providing detention, acting in compliance with a Department of Homeland Security detainer issued pursuant to this section who temporarily holds an alien in its custody pursuant to the terms of a detainer so that the alien may be taken into the custody of the Department of Homeland Security, shall be considered to be acting under color of Federal authority for purposes of determining their liability and shall be held harmless for their compliance with the detainer in any suit seeking any punitive, compensatory, or other monetary damages.

(2) Federal government as defendant.—In any civil action arising out of the compliance with a Department of Homeland Security detainer by a State or a political subdivision of a State (and the officials and personnel of the State or subdivision acting in their official capacities), or a nongovernmental entity (and its personnel) contracted by the State or political subdivision for the purpose of providing detention, the United States Government shall be the proper party named as the defendant in the suit in regard to the detention resulting from compliance with the detainer.
(3) BAD FAITH EXCEPTION.—Paragraphs (1)
and (2) shall not apply to any mistreatment of an
individual by a State or a political subdivision of a
State (and the officials and personnel of the State
or subdivision acting in their official capacities), or
a nongovernmental entity (and its personnel) con-
tracted by the State or political subdivision for the
purpose of providing detention.
(e) PRIVATE RIGHT OF ACTION.—
(1) CAUSE OF ACTION.—Any individual, or a
spouse, parent, or child of that individual (if the in-
dividual is deceased), who is the victim of a murder,
rape, or any felony, as defined by the State, for
which an alien (as defined in section 101(a)(3) of
the Immigration and Nationality Act (8 U.S.C.
1101(a)(3))) has been convicted and sentenced to a
term of imprisonment of at least 1 year, may bring
an action against a State or political subdivision of
a State or public official acting in an official capac-
ity in the appropriate Federal court if the State or
political subdivision, except as provided in paragraph
(3)—
(A) released the alien from custody prior
to the commission of such crime as a con-
sequence of the State or political subdivision’s
declining to honor a detainer issued pursuant to
section 287(d)(1) of the Immigration and Na-
tionality Act (8 U.S.C. 1357(d)(1));

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

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

(2) LIMITATIONS ON BRINGING ACTION.—An
action may not be brought under this subsection
later than 10 years following the occurrence of the
crime, or death of a person as a result of such
crime, whichever occurs later.

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

(A) from honoring the detainer; or

(B) fully complying with section 642 of the

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

and, as a consequence of the statute or other legal
requirement of the State or other political subdivi-
sion, the subdivision released the alien referred to in
paragraph (1) from custody prior to the commission
of the crime referred to in that paragraph, the State
or other political subdivision that enacted the statute
or other legal requirement, shall be deemed to be the
proper defendant in a cause of action under this
subsection, and no such cause of action may be
maintained against the political subdivision which declined to honor the detainer.

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

SEC. 1111. CLARIFICATION OF CONGRESSIONAL INTENT.

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

(1) in paragraph (1) by striking “may enter” and all that follows through the period at the end and inserting the following: “shall enter into a written agreement with a State, or any political subdivision of a State, upon request of the State or political subdivision, pursuant to which officers or employees of the State or subdivision, who are determined by the Secretary to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law. No request from a bona
fide State or political subdivision or bona fide law

enforcement agency shall be denied absent a compelling reason. No limit on the number of agreements

under this subsection may be imposed. The Secretary shall process requests for such agreements

with all due haste, and in no case shall take not more than 90 days from the date the request is

made until the agreement is consummated.”;

(2) by redesignating paragraph (2) as paragraph (5) and paragraphs (3) through (10) as paragraphs (7) through (14), respectively;

(3) by inserting after paragraph (1) the following:

“(2) An agreement under this subsection shall accommodate a requesting State or political subdivision with respect to the enforcement model or combination of models, and shall accommodate a patrol model, task force model, jail model, any combination thereof, or any other reasonable model the State or political subdivision believes is best suited to the immigration enforcement needs of its jurisdiction.

“(3) No Federal program or technology directed broadly at identifying inadmissible or deportable aliens shall substitute for such agreements, including those es-
establishing a jail model, and shall operate in addition to any agreement under this subsection.

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

“(B)(i) The Secretary shall provide a State or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination, and the notice shall fully explain the grounds for termination, along with providing evidence substantiating the Secretary’s allegations.

“(ii) The State or political subdivision shall have the right to a hearing before an administrative law judge and, if the ruling is against the State or political subdivision, to appeal the ruling to the Federal Circuit Court of Appeals and, if the ruling is against the State or political subdivision, to petition the Supreme Court for certiorari.

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

By inserting after paragraph (5) (as redesignated) the following:

“(6) The Secretary of Homeland Security shall make training of State and local law enforcement officers available through as many means as possible, including through residential training at the Center for Domestic Preparedness and the Federal Law Enforcement Training
Center, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display (DVD) of a training course or courses. Distance learning through a secure, encrypted, distributed learning system that has all its servers based in the United States, is scalable, survivable, and can have a portal in place not later than 30 days after the date of the enactment of the Securing America’s Future Act of 2018, shall be made available by the COPS Office of the Department of Justice and the Federal Law Enforcement Training Center Distributed Learning Program for State and local law enforcement personnel. Preference shall be given to private sector-based, web-based immigration enforcement training programs for which the Federal Government has already provided support to develop.”.

**Title II—Asylum Reform**

**Sec. 2101. Credible Fear Interviews.**

Section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by striking “claim” and all that follows, and inserting “claim, as determined pursuant to section 208(b)(1)(B)(iii), and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208, and it is more probable than not that the statements made
by, and on behalf of, the alien in support of the alien’s claim are true.”.

SEC. 2102. JURISDICTION OF ASYLUM APPLICATIONS.

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

SEC. 2103. RECORDING EXPEDITED REMOVAL AND CREDIBLE FEAR INTERVIEWS.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish quality assurance procedures and take steps to effectively ensure that questions by employees of the Department of Homeland Security exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) are asked in a uniform manner, to the extent possible, and that both these questions and the answers provided in response to them are recorded in a uniform fashion.

(b) FACTORS RELATING TO SWORN STATEMENTS.—Where practicable, any sworn or signed written statement taken of an alien as part of the record of a proceeding under section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a recording of the interview which served as the basis for that sworn statement.
(c) INTERPRETERS.—The Secretary shall ensure that a competent interpreter, not affiliated with the government of the country from which the alien may claim asylum, is used when the interviewing officer does not speak a language understood by the alien.

(d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—There shall be an audio or audio visual recording of interviews of aliens subject to expedited removal. The recording shall be included in the record of proceeding and shall be considered as evidence in any further proceedings involving the alien.

(e) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. 2104. SAFE THIRD COUNTRY.

Section 208(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

(1) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”; and
(2) by striking “removed, pursuant to a bilateral or multilateral agreement, to” and inserting “removed to”.

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

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

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

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

“(B) WAIVER.—The Secretary has discretion to waive subparagraph (A) if it is estab-
lished to the satisfaction of the Secretary that
the alien had a compelling reason for the re-
turn. The waiver may be sought prior to depart-
ture from the United States or upon return.”.

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

SEC. 2106. NOTICE CONCERNING FRIVOLOUS ASYLUM AP-
PLICATIONS.

(a) In General.—Section 208(d)(4) of the Immi-
gration and Nationality Act (8 U.S.C. 1158(d)(4)) is
amended—

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

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

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

(4) by adding at the end the following:
“(C) ensure that a written warning ap-
ppears on the asylum application advising the
alien of the consequences of filing a frivolous application and serving as notice to the alien of the consequence of filing a frivolous application.”.

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

“(A) If the Secretary of Homeland Security or the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(C), the alien shall be permanently ineligible for any benefits under this chapter, effective as the date of the final determination of such an application;

“(B) An application is frivolous if the Secretary of Homeland Security or the Attorney General determines, consistent with subparagraph (C), that—

“(i) it is so insufficient in substance that it is clear that the applicant knowingly filed the application solely or in part to delay removal from the United States, to seek employment authorization as an
applicant for asylum pursuant to regulations issued pursuant to paragraph (2), or
to seek issuance of a Notice to Appeal in
order to pursue Cancellation of Removal
under section 240A(b); or
“(ii) any of the material elements are
knowingly fabricated.
“(C) In determining that an application is
frivolous, the Secretary or the Attorney Gen-
eral, must be satisfied that the applicant, dur-
ing the course of the proceedings, has had suffi-
cient opportunity to clarify any discrepancies or
implausible aspects of the claim.
“(D) For purposes of this section, a find-
ing that an alien filed a frivolous asylum appli-
cation shall not preclude the alien from seeking
withholding of removal under section 241(b)(3)
or protection pursuant to the Convention
Against Torture.”.

SEC. 2107. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.

(a) ASYLUM CREDIBILITY DETERMINATIONS.—Sec-
tion 208(b)(1)(B)(iii) of the Immigration and Nationality
Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting
after “all relevant factors” the following: “, including
statements made to, and investigative reports prepared by, immigration authorities and other government officials”.

(b) Relief for Removal Credibility Determinations.—Section 240(c)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended by inserting after “all relevant factors” the following: “,

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

SEC. 2108. Penalties for Asylum Fraud.

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

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

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

“(2) makes or uses any false writings or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than 10 years, or both.”.
SEC. 2109. STATUTE OF LIMITATIONS FOR ASYLUM FRAUD.

Section 3291 of title 18 is amended—

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

(2) by striking “offense.” and inserting “offense or within 10 years after the fraud is discovered.”.

SEC. 2110. TECHNICAL AMENDMENTS.

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

(1) in subsection (a)—

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

(B) in paragraph (3), by inserting “Secretary of Homeland Security or the” before “Attorney General”;

(2) in subsection (b)(2), by inserting “Secretary of Homeland Security or the” before “Attorney General” each place such term appears;

(3) in subsection (c)—

(A) in paragraph (1), by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”;

(B) in paragraph (2), in the matter preceding subparagraph (A), by inserting “Sec-
retary of Homeland Security or the” before
“Attorney General”; and

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

(4) in subsection (d)—

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

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

(C) in paragraph (5)—

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

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