

Siskind's Immigration Bulletin -
December 20, 2005

Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser, P.C., Attorneys at Law; telephone: 800-748-3819, 901-682-6455; facsimile: 800-684-1267 or 901-339-9604, e-mail: gsiskind@visalaw.com, WWW home page: <http://www.visalaw.com>.

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Editor: Greg Siskind. Associate Editor: Penny Egel. Contributors: Hadley Bajramovic, Kathleen Hines, Virginia Stewart, Maria Bjornerud.

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1. Openers

Dear Readers:

This week we present a special issue covering the passage of HR 4337 in the US House of Representatives. The bill focuses entirely on enforcement and contains a number of controversial provisions that we discuss in this issue of the newsletter. The bill is frightening in many regards even though we expect cooler heads to prevail in the Senate and for this bill to be summarily rejected by the upper chamber of Congress.

The bill's sponsors used the strategy of introducing and passing the legislation with lightning speed. Immigrant rights organizations had little time to organize and oppose the bill. The bill was introduced and passed in just over a week, a speed virtually unheard of in the history of immigration legislation.

The provision of the bill that is perhaps the most controversial is the criminalization of being out of status in the US. Furthermore, such a crime would be an aggravated felony barring the convicted criminal from ever legally entering the US again. This bill would actually make more than a million children in American criminals.

While the House of Representatives was passing a truly frightening piece of legislation, it apparently also managed to derail inclusion of H-1B and Employment Based green card quota relief in a bill that had already passed the Senate and needed to be reconciled with a House version of the bill.

The Senate version would have freed up to 300,000 H-1B visas and 90,000 green cards and made other changes that would have reduced problems created by the backlogs in the non-immigrant and immigrant visa programs.

While the immigration provisions are not officially dead, they're definitely on life-support and proponents of the legislation are already trying to find a new legislative strategy.

The bill did contain language that closed what little remaining access immigrants had to Medicaid health coverage. Since the 1996 Welfare Act, immigrants have been barred from most public benefits.

In firm news, this past week I was a speaker at the annual meeting of the New York Chapter of the American Immigration Lawyers Association. I spoke on using the Internet in preparing immigration cases and used an H-1B case as a hypothetical. I received a number of requests for my outline for my presentation and would be happy to share it with any attorney readers who are interested. Just email me at gsiskind@visalaw.com.

Readers who have subscribed to this newsletter for many of our 11 year history know that a few times a year our publication schedule becomes a little erratic. One of those times is around the end of the year when our staff tend to take off time for holiday travel. And we also know our readers are doing the same. We'll be back at the beginning of January and wish all of our readers a happy holiday season.

As always, we remind readers that we're lawyers who make our living representing immigration clients and employers seeking to comply with immigration laws. We would love to discuss becoming your law firm. Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

2. Passage of Border Bill Swift But Measure Not Likely to Become Law

The House of Representatives acted with extraordinary speed in passing one of the toughest immigration bills since the National Origin Act of 1924. The bill, H.R. 4337, was introduced by House Judiciary Committee Chairman James Sensenbrenner on December 6th, passed through the Judiciary Committee on December 13th and passed the entire House of

Representatives just four days later. Many members who voted on the 169 page piece of legislation may not have even had the opportunity to review the bill before casting a vote.

The bill passed by a margin of 239 to 182 largely along party lines. Republicans supported the measure by a margin of 203 to 17. Democrats opposed by a margin of 164 to 36. The bill's extreme measures and its failure to include guest worker provisions make it highly unlikely that it will pass the Senate. However, pro-immigration advocates worry that many of the bill's most controversial provisions could make it into a final bill that eventually reaches the President's desk.

H.R. 4337 is more than 200 pages long and has dozens of sections. Among the more controversial are provisions calling for

- making it a felony punishable by at least a year in prison to be in the US illegally either by entering illegally or overstaying or violating the terms of a visa
- expanding the definition of alien smuggling to include support offering any kind of support including the kind of aid offered by church groups and social service agencies
- elimination of the annual green card lottery
- a provision giving state and local law enforcement officials inherent authority to enforce immigration law
- the construction of more than 700 miles of fencing along the Mexican border and a study of whether the US should establish a similar barrier along the Canadian border
- elimination of judicial review for most types of cases including non-immigrant visas and arbitrary motion to reopen denials
- makes it an aggravated felony to use a false passport even if used as a way to get to the US to file for political asylum.
- Makes a single drunk driving offense a ground for deportation

Despite the swift movement of the bill, numerous groups publicly opposed the measure including most of the major religious faiths in the US, the AFL-CIO (the nation's largest confederation of labor unions), the US Chamber of Commerce, the American Bar Association, the Society of Human Resource Management and organizations representing many of the nation's ethnic communities.

The bill may also have a damaging effect on US-Mexico relations. Mexican President Vicente Fox, according to today's New York Times, is furious about the passage of the bill, calling it a "shameful" setback in bilateral relations and a troubling reflection of America's willingness to tolerate "xenophobic groups that impose the law at will."

Fox went further stating "To us, what has been decided in the United States Congress is a terrible sign that does not speak well for a country that calls itself a country of migrants. The entire population of the United States, when we look at its roots, the immense majority of people are migrants who have come from all over the world, and have built that great nation."

According to the Times, Ruben Aguilar, a spokesman for Fox, said Mexico feels they trusted President Bush to get support from his own party for a more comprehensive immigration bill and they are "deeply disappointed" by the House bill.

3. Section by Section Summary of Sensenbrenner Bill

This week, the US House of Representatives passed the Border and Immigration Enforcement Act of 2005. The bill's primary sponsors are James Sensenbrenner (R-WI), the chairman of the House Judiciary Committee and Peter King (R-NY), Chairman of the Homeland Security Committee.

The bill makes numerous to changes to US immigration law which are summarized as follows:

Title I – Securing United States Borders

SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE BORDER.

Requires the Homeland Security Secretary to use all means to gain operational control over the US borders including systematic surveillance, adding physical infrastructure and hiring additional border patrol agents,

SEC. 102. NATIONAL STRATEGY FOR BORDER SECURITY.

Within six months of this law passing, DHS must submit a comprehensive plan for the systematic surveillance of US borders.

Requires submission within a year a National Strategy for Border Security to achieve operational control over the borders. . The NSBS must be drafted in consultation with local, tribal and state authorities.

SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY AGREEMENTS.

Not later than six months after the laws passes, DHS must submit a report on reaching cross-border security agreements with Canada and Mexico.

SEC. 104. BIOMETRIC DATA ENHANCEMENTS.

By October 1, 2006, DHS shall enhance the connectivity between the IDENT and IAFIS biometric databases and to collect ten fingerprints from visitors processed in the US-VISIT system).

SEC. 105. ONE FACE AT THE BORDER INITIATIVE.

Within 90 days of passage of the bill, DHS shall submit a report to Congress on the "One Fact at the Border" inspection initiative including information on personnel hired from the previously existing customs and immigration agencies.

SEC. 106. SECURE COMMUNICATION.

DHS is required to develop a plan to provide for secure, two-way communications between Border Patrol agents and their field offices.

SEC. 107. PORT OF ENTRY INSPECTION PERSONNEL.

Provides for expansion of port of entry inspectors by 250 per year for each of Fiscal Years 2007 through 2010.

SEC. 108. CANINE DETECTION TEAMS.

Authorizes a 25% increase in the number of canine teams used by DHS at ports of entry or along the US borders.

SEC. 109. SECURE BORDER INITIATIVE FINANCIAL ACCOUNTABILITY.

Contains provisions require DHS' Inspector General to review contracts over \$20 million and to report on any problems.

SEC. 110. BORDER PATROL TRAINING CAPACITY REVIEW.

Requires the Comptroller General of the US to conduct a study on the training of Border Patrol personnel and to compare to similar programs at other agencies at the state and local level.

SEC. 111. AIRSPACE SECURITY MISSION IMPACT REVIEW.

DHS is to report on how the National Capitol Region airspace security mission affects border security.

SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BORDER.

Requires DHS to reimburse property owners for the costs associated with repairing damage caused by illegal aliens. \$50,000 is authorized for each fiscal year to carry out this obligation.

SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BORDER.

By September 30, 2006 a Border Patrol unit shall be operating in the US Virgin Islands.

SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF CENTRAL AMERICAN GANGS ALONG INTERNATIONAL BORDER.

Within a year of passage of this bill, DHS must report to Congress on the travel of Central American gang members into the US and Mexico.

SEC. 115. COLLECTION OF DATA.

Requires the collection and reporting of data on the number of aliens taken into custody at the borders, the number of aliens requiring medical care, US border personnel admitted into hospitals for emergency medical care and how many individuals are taken into custody after receiving the medical treatment.

SEC. 116. DEPLOYMENT OF RADIATION DETECTION PORTAL EQUIPMENT AT UNITED STATES PORTS OF ENTRY.

Requires DHS to deploy radiation monitoring equipment at all US ports of entry within a year of enactment.

SEC. 117. CONSULTATION WITH BUSINESSES AND FIRMS.

Calls on DHS to establish outreach programs with the business community to identify the best technologies, maximize productivity and improve cost-effectiveness.

TITLE II—COMBATting ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE

SEC. 201. DEFINITION OF AGGRAVATED FELONY.

All alien smuggling offenses are now aggravated felonies as are crimes involving illegally entering and reentering the country where the sentence is at least a year. Also expands the definition of "aggravated felony" to include "soliciting, aiding, abetting, counseling, commanding, procuring" specified offenses.

SEC. 202. ALIEN SMUGGLING AND RELATED OFFENSES.

Alien smuggling will now include instances where a person acts in "reckless disregard" of the fact that an alien is not allowed to enter the US. Imposes mandatory minimum sentences of three to thirty years depending on the smuggling/harboring offense. Knowingly hiring ten or more illegal aliens shall be considered a smuggling offense punishable by up to five years imprisonment. Allows for authorities to seize any property used to commit a smuggling offense.

The new law is broad enough to potentially include employees of social service agencies and church groups that offer services to undocumented workers.

SEC. 203. IMPROPER ENTRY BY, OR PRESENCE OF, ALIENS.

Illegal presence in the US will become a crime punishable by a year imprisonment. This covers those who violate the terms of a visa. The penalty for the offense of entering the US illegally is now expanded from a misdemeanor punishable by a fine or up to six months in jail to a felony punishable by a year in prison.

The penalty for marriage fraud and EB-5 fraud is expanded from five years to ten years. Aliens convicted of three or more misdemeanors or one felony involving drugs or crimes against the person who are in the US illegally are subject to additional imprisonment of up to ten years. A 20 year sentence may be imposed on someone illegally in the US who is convicted of a felony.

SEC. 204. REENTRY OF REMOVED ALIENS.

Sets minimum sentences for those convicted of reentering the US after removal.

SEC. 205. MANDATORY SENTENCING RANGES FOR PERSONS AIDING OR ASSISTING CERTAIN REENTERING ALIENS.

Sets minimum sentences for smugglers involved in bringing in previously removed aliens.

SEC. 206. PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.

If a gun is used in the crime of alien smuggling, an increased sentence may be imposed.

SEC. 207. CLARIFYING CHANGES.

False claims of US nationality are now a basis for barring someone from the US, not just false claims of US citizenship. This section also clarifies that DHS shall have access to any information kept by a US government agency regarding any person seeking an immigration benefit or privilege.

SEC. 208. VOLUNTARY DEPARTURE REFORM.

The maximum period for voluntary departure is reduced from 120 days to 60 days. People seeking voluntary departure must post a bond or show why posting a bond would create a hardship or is not needed. All rights to appeal must be waived in order to receive voluntary departure. An alien could still appeal, but this would invalidate the voluntary departure order and the alien would again be subject to penalties for failing to depart. Failing to obey a voluntary departure order will be punishable by a fine of \$3000 and a ten year bar on eligibility for any immigration benefits. And an alien who fails to depart under a voluntary

departure order would be barred from reopening removal proceedings except to claim protection under the Convention Against Torture or the removal to a country would cause a person to face a threat to life or freedom on account of membership in a group that would normally be eligible for asylum status.

SEC. 209. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY AND FROM UNLAWFULLY RETURNING TO THE UNITED STATES AFTER DEPARTING VOLUNTARILY.

Closes a loophole wherein aliens ordered removed who fail to depart are barred from being readmitted if they leave and, for the first time, barred for an equal amount of time from getting acquiring legal status if they remain.

SEC. 210. ESTABLISHMENT OF THE FORENSIC DOCUMENTS LABORATORY

Establishes a laboratory to collect information in a database on fraudulent documents intended to be used in connection with traveling to the US. The information will be shared with other agencies and the FDL will report regularly on its data findings.

SEC. 211. SECTION 1546 AMENDMENTS.

Adds distribution to the elements of fraudulent misuse of a visa.

SEC. 212. MOTIONS TO REOPEN OR RECONSIDER.

In cases where DHS decides to remove someone to an alternate country, the Attorney General has sole discretion to approve a motion to reopen or reconsider and such motion must be filed within 30 days.

SEC. 213. REFORM OF PASSPORT, VISA AND IMMIGRATION FRAUD OFFENSES.

Broadens the scope of who can be charged for producing false passports or visas. Dramatically expands the statutory language to bring in trafficking of passports.

There is new language making it punishable by 15 years imprisonment to knowingly defraud anyone in connection with an immigration matter. Whoever knowingly and falsely represents himself or herself as an immigration lawyer can be fined and imprisoned by up to 15 years.

Anyone who knowingly uses an immigration document issued for the use of another or who forges or alters an immigration document, or who knowingly and without lawful authority transfers an immigration document to a person when the person is not the person for whom the immigration document was signed is punishable by up to 15 years in prison.

Knowingly completing, mailing, preparing, presenting, signing, or submitting any immigration document knowing it contains any materially false statement or representation can be punished by up to 15 years in prison.

Property used to commit a crime in this section may be seized and forfeited.

Anyone who commits a violation under this section for the purposes of participating in terrorism shall be subject to higher penalties.

SEC. 214. CRIMINAL DETENTION OF ALIENS.

The bill creates a presumption that can be rebutted that a person is a flight risk who cannot get a bond if the person has no legal status in the US, is the subject of a removal order, or has committed certain types of felonies.

SEC. 215. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION AND PEONAGE OFFENSES

Establishes a ten year statute of limitations for immigration-related crimes.

SEC. 216. CONFORMING AMENDMENT

Broadens the definition of "aggravated felony" to include new offenses created by Section 212 of this bill.

SEC. 217. INADMISSIBILITY FOR PASSPORT OR IMMIGRATION FRAUD

Broadens grounds for inadmissibility to include new offenses created by Section 212 of this bill.

SEC. 218. REMOVAL FOR PASSPORT AND IMMIGRATION FRAUD.

Broadens grounds for removal to include new offenses created by Section 212 of this bill.

SEC. 219. REDUCTION IN IMMIGRATION BACKLOG.

Directs USCIS to, within six months of enactment of the law, to undertake maximum efforts to reduce processing backlogs. Requires establishment of a pilot program charged with reducing backlogs as much as possible and preventing the recurrence of backlogs. Measures undertaken may include increasing personnel, transferring personnel, streamlining processes and increasing the use of technology and service centers.

SEC. 220. FEDERAL AFFIRMATION OF ASSISTANCE IN THE IMMIGRATION LAW ENFORCEMENT BY STATES AND POLITICAL SUBDIVISIONS OF STATES.

Grants state and local law enforcement authorities the inherent authority to investigate, identify, apprehend, arrest, detain or transfer to Federal custody aliens for the purpose of enforcing immigration laws.

SEC. 221. TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.

DHS must develop a training manual for state and local law enforcement agencies to train officials in the investigation, identification, apprehension, arrest, detention and transfer to Federal custody of aliens in the US. DHS shall also develop a pocket guide on the same subject for use in the course of duty.

DHS must also develop in person and online/offline training programs regarding the same.

SEC. 222. FINANCIAL ASSISTANCE TO STATE AND LOCAL POLICE AGENCIES THAT ASSIST IN THE ENFORCEMENT OF IMMIGRATION LAWS.

DHS shall make grants to state and local police departments to assist in the procurement of equipment, technology, facilities and other products to assist in pursuing immigration law violators. Up to \$250,000,000 will be made available each year for this purpose. GAO shall conduct an audit within three years on the funds distributed.

SEC. 223. INSTITUTIONAL REMOVAL PROGRAM (IRP).

DHS shall continue Institutional Removal Program to identify criminal aliens in state and federal prisons and act to immediately remove them from the US after their sentences are completed. The program will be extended to all states. States receiving funds to incarcerate criminal aliens will have to participate in the system.

State and local prison authorities are authorized to hold a prisoner for up to 14 days after the alien has completed his or her sentence.

DHS is authorized to spend \$650,000,000 over a five year period to deploy technology to extend the IRP to remote locations.

SEC. 224. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP).

Authorizes continued contracting with local and state authorities for the detention of aliens with a \$1,000,000,000 authorized each year.

SEC. 225. STATE AUTHORIZATION FOR ASSISTANCE IN THE ENFORCEMENT OF IMMIGRATION LAWS ENCOURAGED.

State and local authorities that bar law enforcement officials from assisting or cooperating with federal immigration law enforcement shall not receive funds otherwise granted to states to reimburse for expenses related to dealing with illegal immigrants.

TITLE III—BORDER SECURITY COOPERATION AND ENFORCEMENT

SEC. 301. JOINT STRATEGIC PLAN FOR UNITED STATES BORDER SURVEILLANCE AND SUPPORT.

DHS and the Department of Defense shall develop a joint strategic plan to use DOD surveillance equipment to assist with the surveillance activities of DHS. A report must be submitted to Congress within twelve months reviewing the cooperation.

SEC. 302. BORDER SECURITY ON PROTECTED LAND.

DHS shall consult with the Department of Interior to evaluate border vulnerabilities in Department of Interior land adjacent to the US international borders. Based on the findings, DHS shall provide appropriate border security assistance.

SEC. 303. BORDER SECURITY THREAT ASSESSMENT AND INFORMATION SHARING TEST AND EVALUATION EXERCISE.

Within a year of enactment of the bill, DHS shall conduct a training exercise on border security information sharing and issue report on the results. .

SEC. 304. BORDER SECURITY ADVISORY COMMITTEE.

Within a year of enactment of the bill, DHS shall establish a Border Security Advisory Committee to advise DHS on issues relating to border security and enforcement. Membership shall be comprised of individuals representing state and local governments, community groups, and tribal governments located in the border areas of the US.

SEC. 305. PERMITTED USE OF HOMELAND SECURITY GRANT FUNDS FOR BORDER SECURITY ACTIVITIES.

Calls for DHS to establish a grant program to assist other agencies with enforcing immigration laws if those activities are carried out under agreement with a Federal agency.

SEC. 306. CENTER OF EXCELLENCE FOR BORDER SECURITY.

DHS shall establish a university-based Center of Excellence for Border Security to analyze border security technologies and systems and provide educational, technical and analytical assistance to DHS regarding border security.

SEC. 307. SENSE OF CONGRESS REGARDING COOPERATION WITH INDIAN NATIONS.

Sense of Congress that DHS should include recommendations in developing the National Strategy for Border Security relating to including tribal authorities in developing border security plans.

SEC. 308. RED ZONE DEFENSE BORDER INTELLIGENCE

Establishes a pilot program jointly for DHS and the Director of National Intelligence to improve the coordination and management of intelligence and homeland security information relating to the southwest border of the US. The program will focus on a test geographic area and involve sharing intelligence and homeland security information with federal, state, local and tribal officials and providing for surveillance of the pilot area including utilizing unmanned aerial vehicles. A report must be submitted to Congress within a year.

TITLE IV—DETENTION AND REMOVAL

SEC. 401. MANDATORY DETENTION FOR ALIENS APPREHENDED AT OR BETWEEN PORTS OF ENTRY.

Beginning October 1, 2006, "catch and release" will end and any aliens apprehended at ports of entry or along the border will be detained until they are removed or a final decision is rendered granting them admission to the US. An exception is made for aliens who depart immediately and voluntarily and those paroled into the US for humanitarian reasons. Asylum rights are not affected by this section.

A bond of \$5000 may be secured with a notice to appear.

SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.

DHS is to fully use all bed space and fully review "all possible options to cost effectively increase available detention capacities, including the use of temporary detention facilities, the use of State and local correctional facilities, private space, and secure alternatives to detention."

SEC. 403. ENHANCING TRANSPORTATION CAPACITY FOR UNLAWFUL ALIENS.

DHS is authorized to enter in contracts with private entities to secure the return of apprehended immigrants across the border.

SEC. 404. DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.

Amends Section 243(d) of the Immigration Act to authorize DHS to deny admission of aliens who are nationals of countries that refuse or delay the repatriation of their nationals removed from the US.

SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRIATION.

DHS is required to submit an annual cost assessing the price for deporting aliens to their home countries or countries of last residence. The report should also assess which countries are the most expensive for repatriation.

SEC. 406. TRAINING PROGRAM.

Requires DHS to evaluate port of entry inspections to determine agents are referring properly cases to have credible fear screenings for asylum applications.

SEC. 407. EXPEDITED REMOVAL.

Permits DHS to remove via expedited removal any alien apprehended within 100 miles of the border within 14 days of entering the US. Does not include people who show up for inspection at ports of entry.

SEC. 408. GAO STUDY ON DEATHS IN CUSTODY.

GAO must prepare a report on this subject and discuss 1) whether crimes were committed by DHS officials, 2) whether deaths were caused by negligence by such personnel, 3) whether DHS practices were followed, 4) whether DHS practices are enough to protect enough to protect detainees and 5) whether reports of such deaths were made under Deaths in Custody Act.

SEC. 409. REPORT ON APPREHENSION AND DETENTION OF CERTAIN ALIENS.

Within two years, DHS must submit to Congress a report on the number of illegal aliens from noncontiguous countries apprehended along the US borders, the number of aliens deported, and the number of such aliens from countries deemed to provide support for international terrorism.

SEC. 410. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

Within six months from passage of the bill, DHS' Under Secretary for Border and Transportation Security must provide the NCIC of the Justice Department with information the Under Secretary may have on all aliens subject to a removal order, subject to a voluntary departure agreement, anyone who has overstayed an I-94 and anyone whose visa has been revoked.

TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

SEC. 501. ENHANCED BORDER SECURITY COORDINATION AND MANAGEMENT.

DHS shall ensure full coordination of activities between its immigration agencies. In particular, DHS shall 1) ensure the coordinated execution of policy, 2) establish a mechanism for sharing and coordinating intelligence information, 3) establish DHS task forces to better coordinate border security initiatives, 4) better coordinate investigations, 5) comprehensively analyze the border security budget, 6) establish measures and metrics to determine the effectiveness of such coordination efforts, and 7) develop a comprehensive plan to protect the northern and southern borders.

SEC. 502. OFFICE OF AIR AND MARINE OPERATIONS.

DHS shall establish an Office of Air and Marine Operations headed by a newly appointed Assistant Secretary of DHS for Air and Marine Operations. The new office shall be charged with the "prevention of the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband of the United States." The Office will operate the Air and Marine Operations Center, tentatively slated to operate in Riverside, California. AMOC will provide radar, communications and control services to the Office of Air and Marine Operations. AMOC's information shall be available to other agencies at DHS.

SEC. 503. SHADOW WOLVES TRANSFER.

The Customs Patrol Officers Unit operating at the Tohono O'odham Indian reservation (commonly known as the Shadow Wolves unit) shall be transferred from CBP to ICE within 90 days after the bill is enacted.

ICE is authorized to establish additional units as needed.

TITLE VI—TERRORIST AND CRIMINAL ALIENS

SEC. 601. REMOVAL OF TERRORIST ALIENS.

Those deportable on terrorist grounds would be barred from the remedy of withholding of removal.

SEC. 602. DETENTION OF DANGEROUS ALIENS.

This section is a response to the *Zadvydas v. Davis* decision from the US Supreme Court. DHS will be allowed to hold certain dangerous aliens who cannot be removed. The decisions must be reviewed every six months by the DC District Court.

SEC. 603. INCREASE IN CRIMINAL PENALTIES.

Penalties are increased and minimum sentences are set for failing to depart when ordered removed.

SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED FELONS AND OTHER CRIMINALS.

Misusing a Social Security number in connection with obtaining identification documents is a deportable offense along with procuring citizenship unlawfully, and committing domestic violence, stalking, child abuse, child neglect and child abandonment offenses.

SEC. 605. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT OF STATUS FOR AGGRAVATED FELONIES.

Refugees and asylees who commit aggravated felonies are barred from becoming permanent residents.

SEC. 606. REMOVING DRUNK DRIVERS.

Committing three drunk driving offenses is grounds for removal.

SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT ASSISTANCE PROGRAM.

Allows sheriffs in counties along the southern border to enforce immigration laws in their counties. They can then seek reimbursement from DHS.

SEC. 608. RENDERING INADMISSIBLE AND DEPORTABLE ALIENS PARTICIPATING IN CRIMINAL STREET GANGS; DETENTION; INELIGIBILITY FROM PROTECTION FROM REMOVAL AND ASYLUM.

Aliens who join criminal street gangs are deportable and inadmissible and are barred from receiving asylum or TPS status.

SEC. 609. NATURALIZATION REFORM.

Bars aliens removable from the US on terrorism grounds from naturalizing. Aliens in removal proceedings based on terrorism grounds are barred from naturalizing while these removal proceedings are pending. Conditional permanent residents must have these conditions removed before naturalization may occur.

SEC. 610. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE ON CRIMINAL OR SECURITY GROUNDS.

Gives DHS authority to use procedures to expedite removal for aliens removable on criminal grounds who have no eligibility for any remedy.

SEC. 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE IN CHANGE IN INADMISSIBILITY FOR TERRORISTS UNDER REAL ID ACT.

Clarifies that REAL ID applies to deportation proceedings relating to terrorism grounds initiated before REAL ID passed.

SEC. 612. BAR TO GOOD MORAL CHARACTER.

Any alien who is inadmissible for terrorism or security-related reasons cannot be found to have good moral character for purposes of naturalization and cancellation of removal. Commission of an aggravated felony bars a good moral character finding even if the conduct was not considered an aggravated felony at the time it occurred.

SEC. 613. STRENGTHENING DEFINITIONS OF "AGGRAVATED FELONY" AND "CONVICTION".

Adds sexual abuse of a minor as an aggravated felony.

Also, any reversal of a conviction provided by a court in order to help someone avoid removal shall no longer have the effect of forestalling deportation.

SEC. 614. DEPORTABILITY FOR CRIMINAL OFFENSES.

Adds misusing Social Security numbers and unlawfully procuring citizenship as ground for removal.

SEC. 615. DECLARATION OF CONGRESS.

Declaration that Congress condemns rapes by alien smugglers and urges Mexican government to work with DHS to prevent them from occurring.

SEC. 616. REPORT ON CRIMINAL ALIEN PROSECUTION

Within a year of passage of this bill, the Attorney General must submit to Congress a report on the status of criminal alien prosecutions, including prosecutions of human smugglers.

SEC. 617 DETERMINATION OF IMMIGRATION STATUS OF INDIVIDUALS CHARGED WITH FEDERAL OFFENSES

Two years after enactment of the bill, a US Attorney prosecuting a criminal case in federal court must determine within 30 days after filing the initial pleadings in a case whether the defendant is lawfully present in the US. If the defendant is lawfully present, the court must be notified of the alien's current status. If the defendant is not lawfully present, the US Attorney shall notify the court in writing of the defendant's status and country of origin or legal residence. The information is to be added into the criminal records system of the US

Attorney and the courts. DOJ must issue an annual report to Congress containing statistical information on trials and convictions of aliens.

SEC. 618. INCREASED CRIMINAL PENALTIES FOR DOCUMENT FRAUD AND CRIMES OF VIOLENCE.

Increases minimum sentences for document fraud violations. If an alien is illegally in the US and commits a crime of violence or a drug trafficking offense, the alien will get an additional five years imprisonment. An additional 15 years imprisonment will be imposed if the alien was previously removed. The additional prison time can only run after the underlying prison sentence is completed.

TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION

This title makes participation in the employment verification pilot system (an electronic/phone system to verify employment eligibility) mandatory for all employers within two years. Previously hired employees may be re-verified under the new system.

DHS must investigate cases where a Social Security number is submitted more than once by the same employer or by more than one employer.

Employment verification requirements are extended to day employment situations.

Civil penalties for hiring illegal aliens are increased.

The Social Security Administration is to conduct a study on the on the cost of requiring a hardened Social Security cards with an electronic strip and a digital photo as well as the creation of a unified database between the SSA and DHS for employment verification. Employers would be able to swipe the new cards through a card reader to determine instantly a worker's eligibility.

TITLE VIII—IMMIGRATION LITIGATION ABUSE REDUCTION

SEC. 801. BOARD OF IMMIGRATION APPEALS REMOVAL ORDER AUTHORITY.

Gives the Board of Immigration Appeals authority to reverse an Immigration Judge's decision and order removal instead of having to remand the case to the Immigration Judge.

SEC. 802. JUDICIAL REVIEW OF VISA REVOCATION.

Ends judicial review of revocation of a visa.

SEC. 803. REINSTATEMENT.

If DHS finds that an alien has reentered the US after having been removed previously, the previously ordered removal order would be reinstated and may not be reviewed by a court.

SEC. 804. WITHHOLDING OF REMOVAL.

This bill borrows the concept of the REAL ID act relating to asylum applications that requires that the alien's life must be threatened primarily based on one of the grounds for asylum. This concept is extended to withholding of removal.

SEC. 805. CERTIFICATE OF REVIEWABILITY.

The bill requires appeals of BIA decisions to be referred to a single circuit court judge for an initial screening and then that judge will issue a "certificate of reviewability" if he believes the case should proceed to a three-judge panel.

SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA ISSUANCE.

Bars access to the immigration courts for all non-immigrants seeking to appeal a denial of admission at a port of entry. Non-immigrants must waive the right to contest a removal proceeding.

SEC. 807. CLARIFICATION OF JURISDICTION ON REVIEW

Further limits instances of judicial review in removal cases.

SEC. 808. FEES AND EXPENSES IN JUDICIAL PROCEEDINGS

Courts may not award fees and expenses based on an alien's status as a prevailing party in any proceeding relating to an order of removal unless the court of appeals finds that the Attorney General's determination that the alien was removal under INA Section 212 or 237 was not substantially justified.

TITLE IX--PRESCREENING OF AIR PASSENGERS

SEC. 901. IMMEDIATE INTERNATIONAL PASSENGER PRESREENING PILOT PROGRAM.

Within 90 days, DHS shall start a pilot program to test use of automated systems for immediate prescreening of passengers at foreign airports. The system, using machine-readable data from passports, would check names against terror watch lists and provide information to the airline. A report to Congress must be submitted within 30 days of the program ending.

TITLE X--FENCING AND OTHER BORDER SECURITY IMPROVEMENTS

SEC. 1001. FINDINGS.

Congress finds the following:

- (1) Hundreds of people die crossing our international border with Mexico every year.
- (2) Illegal narcotic smuggling along the Southwest border of the United States is both dangerous and prolific.
- (3) Over 155,000 non-Mexican individuals were apprehended trying to enter the United States along the Southwest border in fiscal year 2005.
- (4) The number of illegal entrants into the United States through the Southwest border is estimated to exceed one million people a year.

SEC. 1002. CONSTRUCTION OF FENCING AND SECURITY IMPROVEMENTS IN BORDER AREA FROM PACIFIC OCEAN TO GULF OF MEXICO.

IIRAIRA is amended to require two layers of fencing and the installation of additional barriers across most of the US land border with Mexico. Specific sections of the border are specified for prioritization. Other forms of surveillance can be used in the hilliest areas.

SEC. 1003. NORTHERN BORDER STUDY.

DHS is to conduct a study on building a wall along the Canadian border. DHS must report to Congress within a year on this.

SEC. 1004. SENSE OF THE CONGRESS.

"It is the sense of the Congress that the Secretary of Homeland Security shall take all necessary steps to secure the Southwest international border for the purpose of saving lives, stopping illegal drug trafficking, and halting the flow of illegal entrants into the United States."

TITLE XI--SECURITY AND FAIRNESS ENHANCEMENT

SEC. 1101. SHORT TITLE.

This title may be cited as--

- (1) the `Security and Fairness Enhancement for America Act of 2005'; or
- (2) the `SAFE for America Act'.

SEC. 1102. ELIMINATION OF DIVERSITY IMMIGRANT PROGRAM.

The diversity immigrant ("Green card lottery") program is eliminated beginning on October 1, 2006.

TITLE XII--OATH OF RENUNCIATION AND ALLEGIANCE

SEC. 1201. OATH OF RENUNCIATION AND ALLEGIANCE.

DHS will notify foreign governments when their citizens naturalize and that allegiance to that country has been denounced and loyalty to the US has been promised. This section takes effect six months after passage of this bill.

TITLE XIII--ELIMINATION OF CORRUPTION AND PREVENTION OF ACQUISITION OF IMMIGRATION BENEFITS THROUGH FRAUD

SEC. 1301. SHORT TITLE.

This title may be cited as the 'Taking Action to Keep Employees Accountable in Immigration Matters Act of 2005' or the 'TAKE AIM Act of 2005'.

SEC. 1302. FINDINGS.

Listing of findings focusing on the need to prevent immigration fraud and corruption including corruption within US immigration agencies. .

SEC. 1303. STRUCTURE OF THE OFFICE OF SECURITY AND INVESTIGATIONS.

The Director of the Office of Security and Investigations shall report directly to the Director of United States Citizenship and Immigration Services.

SEC. 1304. AUTHORITY OF THE OFFICE OF SECURITY AND INVESTIGATIONS TO INVESTIGATE INTERNAL CORRUPTION.

OSI has sole authority to investigate criminal and noncriminal violations of the Immigration and Nationality Act by any officer or contract worker of USCIS. The powers of OSI to carry out this mission are outlined in this section.

SEC. 1305. AUTHORITY OF THE OFFICE OF SECURITY AND INVESTIGATIONS TO DETECT AND INVESTIGATE IMMIGRATION BENEFITS FRAUD.

OSI may also conduct immigration benefits fraud operations.

SEC. 1306. INCREASE IN FULL-TIME OFFICE OF SECURITY AND INVESTIGATIONS PERSONNEL.

OSI is authorized to expand by set numbers each year through 2010. At least 1/3 will be allocated for internal affairs investigations and the remainder will be assigned to benefits fraud.

SEC. 1307. ANNUAL REPORT.

OSI must submit a report on its activities to Congress on an annual basis.

SEC. 1308. INVESTIGATIONS OF FRAUD TO PRECEDE IMMIGRATION BENEFITS GRANT.

No immigration benefit may be granted until any suspected or alleged fraud relating to the benefit has been fully investigated and found to be unsubstantiated.

SEC. 1309. ELIMINATION OF THE FRAUD DETECTION AND NATIONAL SECURITY OFFICE.

Not later than 30 days following the date of enactment of this title, the Secretary of Homeland Security shall eliminate the Fraud Detection and National Security Office of United States Citizenship and Immigration Services and transfer all authority of such office to the Office of Security and Investigations.

SEC. 1310. SECURITY FEE.

A new \$10 fee will be added on to any immigrant or nonimmigrant applications and on to adjustment applications to fund OSI's fraud investigations.

4. Congress Fails to Pass Worker Visa Relief

Congress has quietly dropped a section of the budget savings bill passed this weekend that would have raised more than a half billion dollars and offered relief to backlogs in the H-1B non-immigrant program and in employment-based green card categories. The measure had been included in a Senate version of the bill, but the House version of the budget bill only had a provision calling for a tax on L-1 visas. Several Republican members the House of Representatives, the chamber that holds more hostile views on immigration, threatened to vote against the compromise bill if the immigration provisions were not dropped. All immigration provisions, including the House's L-1 visa tax, were stripped out of the bill at the last moment.

The bill would have made the following reforms:

H-1B visas reform

Changes to the H-1B program would have included the following:

1. The proposal would recapture unused H-1B numbers that were not used in prior fiscal years when the H-1B cap is reached up to a maximum of 30,000 in any particular year. The recapture period would go back to 1991, the first year there was an H-1B cap.
2. These "bonus" H-1Bs accompanied by a recapture fee of \$500 per visa. An estimated \$150 would be raised through such a fee over a five year period.

Employment-based green card changes

The proposal would have made several key reforms to employment-based green card filing including the following:

1. Unused employment-based green cards would be recaptured from prior fiscal years with a maximum of 90,000 issued in any year. There are currently about 90,000 visas that could be reclaimed. The 50,000 green cards reserved for Schedule A occupations (mainly nurses) earlier this year would remain untouched.
2. The plan calls for the removal of spouses and children from the counting of employment-based green cards. About 2.5 green cards are issued for family

members for every principal applicant claiming an employment-based green card. This is currently the case for non-immigrant visa categories with caps.

3. Employment-based green card applicants would be eligible to file for adjustment of status even if a visa is not currently available
4. A fee of \$500 would be imposed on most employment-based green card categories. An estimated \$150 would be raised through such a fee.

L-1 visa reform

The House and Senate each approved provisions to tax L-1s between \$750 and \$1500.

The House is not expected to include these provisions in its version of the budget bill.

Groups that pushed for the legislation vow to bring the measure up again early in the new calendar year when Congress returns from its Christmas recess.