IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2005
Received

FEBRUARY 17, 2005
Read twice and referred to the Committee on the Judiciary

AN ACT

To establish and rapidly implement regulations for State driver’s license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "REAL ID Act of 2005".

TITLE I—AMENDMENTS TO FED-
ERAL LAWS TO PROTECT
AGAINST TERRORIST ENTRY

SEC. 101. PREVENTING TERRORISTS FROM OBTAINING RELIEF FROM REMOVAL.

(a) CONDITIONS FOR GRANTING ASYLUM.—Section 208(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)) is amended—

(1) by striking "The Attorney General" the first place such term appears and inserting the fol-
lowing:

"(A) ELIGIBILITY.—The Secretary of Homeland Security or the Attorney General";

(2) by striking "the Attorney General" the sec-
ond and third places such term appears and insert-
ing "the Secretary of Homeland Security or the At-
torney General"; and

(3) by adding at the end the following:

"(B) BURDEN OF PROOF.—"
“(i) IN GENERAL.—The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be a central reason for persecuting the applicant.

“(ii) SUSTAINING BURDEN.—The testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant’s testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant’s burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines, in the trier of fact’s discretion, that the applicant should
provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence without departing the United States. The inability to obtain corroborating evidence does not excuse the applicant from meeting the applicant’s burden of proof.

“(iii) Credibility determination.—The trier of fact should consider all relevant factors and may, in the trier of fact’s discretion, base the trier of fact’s credibility determination on any such factor, including the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not made under oath), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on coun-
try conditions), and any inaccuracies or falsehoods in such statements, without re-
gard to whether an inconsistency, inaccu-
raacy, or falsehood goes to the heart of the applicant’s claim. There is no presumption of credibility.”.

(b) WITHHOLDING OF REMOVAL.—Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended by adding at the end the fol-
lowing:

“(C) SUSTAINING BURDEN OF PROOF;
 CREDIBILITY DETERMINATIONS.—In determin-
ing whether an alien has demonstrated that the alien’s life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien’s burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of sec-
tion 208(b)(1)(B).”.

(c) OTHER REQUESTS FOR RELIEF FROM RE-
MOVAL.—Section 240(c) of the Immigration and Nation-
ality Act (8 U.S.C. 1230(c)) is amended—

(1) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively; and
(2) by inserting after paragraph (3) the follow-

ing:

“(4) APPLICATIONS FOR RELIEF FROM RE-

MOVAL.—

“(A) IN GENERAL.—An alien applying for

relief or protection from removal has the bur-

den of proof to establish that the alien—

“(i) satisfies the applicable eligibility

requirements; and

“(ii) with respect to any form of relief

that is granted in the exercise of discre-

tion, that the alien merits a favorable exer-

cise of discretion.

“(B) SUSTAINING BURDEN.—The appli-

cant must comply with the applicable require-

ments to submit information or documentation

in support of the applicant’s application for re-

lief or protection as provided by law or by regu-

lation or in the instructions for the application

form. In evaluating the testimony of the appli-

cant or other witness in support of the applica-

tion, the immigration judge will determine

whether or not the testimony is credible, is per-

suasive, and refers to specific facts sufficient to

demonstrate that the applicant has satisfied the
applicant’s burden of proof. In determining whether the applicant has met such burden, the immigration judge shall weigh the credible testimony along with other evidence of record. Where the immigration judge determines in the judge’s discretion that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence without departing from the United States. The inability to obtain corroborating evidence does not excuse the applicant from meeting the burden of proof.

“(C) CREDIBILITY DETERMINATION.—The immigration judge should consider all relevant factors and may, in the judge’s discretion, base the judge’s credibility determination on any such factor, including the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s written and oral statements (whenever made and whether or not made under oath), the internal consistency of
each such statement, the consistency of such
statements with other evidence of record (in-
cluding the reports of the Department of State
on country conditions), and any inaccuracies or
falsehoods in such statements, without regard
to whether an inconsistency, inaccuracy, or
falsehood goes to the heart of the applicant’s
claim. There is no presumption of credibility.”.

(d) STANDARD OF REVIEW FOR ORDERS OF RE-
MOVAL.—Section 242(b)(4) of the Immigration and Na-
tionality Act (8 U.S.C. 1252(b)(4)) is amended by adding
at the end, after subparagraph (D), the following: “No
court shall reverse a determination made by a trier of fact
with respect to the availability of corroborating evidence,
as described in section 208(b)(1)(B), 240(e)(4)(B), or
241(b)(3)(C), unless the court finds that a reasonable
trier of fact is compelled to conclude that such corrobo-
rating evidence is unavailable.”.

(e) CLARIFICATION OF DISCRETION.—Section
242(a)(2)(B) of the Immigration and Nationality Act (8
U.S.C. 1252(a)(2)(B)) is amended—

(1) by inserting “or the Secretary of Homeland
Security” after “Attorney General” each place such
term appears; and
(2) in the matter preceding clause (i), by inserting “and regardless of whether the judgment, decision, or action is made in removal proceedings,” after “other provision of law,”.

(f) REMOVAL OF CAPS.—Section 209 of the Immigration and Nationality Act (8 U.S.C. 1159) is amended—

(1) in subsection (a)(1)—

(A) by striking “Service” and inserting “Department of Homeland Security”; and

(B) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security or the Attorney General”;

(2) in subsection (b)—

(A) by striking “Not more” and all that follows through “asylum who—” and inserting “The Secretary of Homeland Security or the Attorney General, in the Secretary’s or the Attorney General’s discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—”; and
(B) in the matter following paragraph (5),
by striking “Attorney General” and inserting
“Secretary of Homeland Security or the Attorney General”; and

(3) in subsection (c), by striking “Attorney General” and inserting “Secretary of Homeland Security or the Attorney General”.

(g) EFFECTIVE DATES.—

(1) The amendments made by paragraphs (1) and (2) of subsection (a) shall take effect as if enacted on March 1, 2003.

(2) The amendments made by subsections (a)(3), (b), and (e) shall take effect on the date of the enactment of this Act and shall apply to applications for asylum, withholding, or other removal made on or after such date.

(3) The amendment made by subsection (d) shall take effect on the date of the enactment of this Act and shall apply to all cases in which the final administrative removal order is or was issued before, on, or after such date.

(4) The amendments made by subsection (e) shall take effect on the date of the enactment of this Act and shall apply to all cases pending before any court on or after such date.
(5) The amendments made by subsection (f) shall take effect on the date of the enactment of this Act.

(h) REPEAL.—Section 5403 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is repealed.

SEC. 102. WAIVER OF LAWS NECESSARY FOR IMPROVEMENT OF BARRIERS AT BORDERS.

Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended to read as follows:

“(c) WAIVER.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive, and shall waive, all laws such Secretary, in such Secretary’s sole discretion, determines necessary to ensure expeditious construction of the barriers and roads under this section.

“(2) NO JUDICIAL REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), no court, administrative agency, or other entity shall have jurisdiction—

“(A) to hear any cause or claim arising from any action undertaken, or any decision
made, by the Secretary of Homeland Security pursuant to paragraph (1); or

“(B) to order compensatory, declaratory, injunctive, equitable, or any other relief for damage alleged to arise from any such action or decision.”.

SEC. 103. INADMISSIBILITY DUE TO TERRORIST AND TERRORIST-RELATED ACTIVITIES.

(a) In General.—So much of section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) as precedes the final sentence is amended to read as follows:

“(i) In General.—Any alien who—

“(I) has engaged in a terrorist activity;

“(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

“(III) has, under circumstances indicating an intention to cause death
or serious bodily harm, incited terrorist activity;

“(IV) is a representative (as defined in clause (v)) of—

“(aa) a terrorist organization (as defined in clause (vi)); or

“(bb) a political, social, or other group that endorses or espouses terrorist activity;

“(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

“(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

“(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;
“(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in clause (vi)); or

“(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years,".

(b) ENGAGE IN TERRORIST ACTIVITY DEFINED.—Section 212(a)(3)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iv)) is amended to read as follows:

“(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term ‘engage in terrorist activity’ means, in an individual capacity or as a member of an organization—

“(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or
serious bodily injury, a terrorist activ-
ity;

“(II) to prepare or plan a ter-
rorist activity;

“(III) to gather information on
potential targets for terrorist activity;

“(IV) to solicit funds or other
things of value for—

“(aa) a terrorist activity;

“(bb) a terrorist organiza-
tion described in clause (vi)(I) or
(vi)(II); or

“(cc) a terrorist organiza-
tion described in clause (vi)(III),
unless the solicitor can dem-
onstrate by clear and convincing
evidence that he did not know,
and should not reasonably have
known, that the organization was
a terrorist organization;

“(V) to solicit any individual—

“(aa) to engage in conduct
otherwise described in this sub-
section;
“(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

“(cc) for membership in a terrorist organization described in clause (vi)(III) unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

“(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

“(aa) for the commission of a terrorist activity;
“(bb) to any individual who
the actor knows, or reasonably
should know, has committed or
plans to commit a terrorist activ-
ity;

“(cc) to a terrorist organiza-
tion described in subclause (I) or
(II) of clause (vi) or to any mem-
ber of such an organization; or

“(dd) to a terrorist organi-
ization described in clause
(vi)(III), or to any member of
such an organization, unless the
actor can demonstrate by clear
and convincing evidence that the
actor did not know, and should
not reasonably have known, that
the organization was a terrorist
organization.

This clause shall not apply to any material
support the alien afforded to an organiza-
tion or individual that has committed ter-
rorist activity, if the Secretary of State,
after consultation with the Attorney Gen-
eral and the Secretary of Homeland Secu-
rity, or the Attorney General, after con-
sultation with the Secretary of State and
the Secretary of Homeland Security, con-
cludes in his sole unreviewable discretion,
that this clause should not apply.”.

(c) TERRORIST ORGANIZATION DEFINED.—Section
212(a)(3)(B)(vi) of the Immigration and Nationality Act
(8 U.S.C. 1182(a)(3)(B)(vi)) is amended to read as fol-
lows:

“(vi) TERRORIST ORGANIZATION DE-
FINED.—As used in this section, the term
‘terrorist organization’ means an organiza-
tion—

“(I) designated under section
219;

“(II) otherwise designated, upon
publication in the Federal Register, by
the Secretary of State in consultation
with or upon the request of the Attor-
ney General or the Secretary of
Homeland Security, as a terrorist or-
ganization, after finding that the or-
ganization engages in the activities
described in subclauses (I) through
(VI) of clause (iv); or
“(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and these amendments, and section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)), as amended by this section, shall apply to—

(1) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.

SEC. 104. REMOVAL OF TERRORISTS.

(a) IN GENERAL.—

(1) IN GENERAL.—Section 237(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(B)) is amended to read as follows:
“(B) TERRORIST ACTIVITIES.—Any alien who is described in subparagraph (B) or (F) of section 212(a)(3) is deportable.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act, and the amendment, and section 237(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(B)), as amended by such paragraph, shall apply to—

(A) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

(B) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after such date.

(b) REPEAL.—Effective as of the date of the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), section 5402 of such Act is repealed, and the Immigration and Nationality Act shall be applied as if such section had not been enacted.

SEC. 105. JUDICIAL REVIEW OF ORDERS OF REMOVAL.

(a) IN GENERAL.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended—

(1) in subsection (a)—
(A) in paragraph (2)—

(i) in subparagraph (A), by inserting "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "Notwithstanding any other provision of law"; and

(ii) in each of subparagraphs (B) and (C), by inserting "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D)" after "Notwithstanding any other provision of law"; and

(iii) by adding at the end the following:

"(D) JUDICIAL REVIEW OF CERTAIN LEGAL CLAIMS.—Nothing in subparagraph (B) or (C), or in any other provision of this Act which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or pure questions of law raised upon a petition for review filed with an appro-
priate court of appeals in accordance with this
section.”; and

(B) by adding at the end the following:

“(4) CLAIMS UNDER THE UNITED NATIONS
CONVENTION.—Notwithstanding any other provision
of law (statutory or nonstatutory), including section
2241 of title 28, United States Code, or any other
habeas corpus provision, and sections 1361 and
1651 of such title, a petition for review filed with an
appropriate court of appeals in accordance with this
section shall be the sole and exclusive means for ju-
dicial review of any cause or claim under the United
Nations Convention Against Torture and Other
Forms of Cruel, Inhuman, or Degrading Treatment
or Punishment, except as provided in subsection (e).

“(5) EXCLUSIVE MEANS OF REVIEW.—Notwith-
standing any other provision of law (statutory or
nonstatutory), including section 2241 of title 28,
United States Code, or any other habeas corpus pro-
vision, and sections 1361 and 1651 of such title, a
petition for review filed with an appropriate court of
appeals in accordance with this section shall be the
sole and exclusive means for judicial review of an
order of removal entered or issued under any provi-
sion of this Act, except as provided in subsection (e).
For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms ‘judicial review’ and ‘jurisdiction to review’ include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).”;

(2) in subsection (b)—

(A) in paragraph (3)(B), by inserting “pursuant to subsection (f)” after “unless”;

and

(B) in paragraph (9), by adding at the end the following: “Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.”; and

(3) in subsection (g), by inserting “(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus pro-
vision, and sections 1361 and 1651 of such title’’

after “notwithstanding any other provision of law’’.

(b) EFFECTIVE DATE.—The amendments made by
subsection (a) shall take effect upon the date of the enact-
ment of this Act and shall apply to cases in which the
final administrative order of removal, deportation, or ex-
clusion was issued before, on, or after the date of the en-
actment of this Act.

(e) TRANSFER OF CASES.—If an alien’s case, brought
under section 2241 of title 28, United States Code, and
challenging a final administrative order of removal, depor-
tation, or exclusion, is pending in a district court on the
date of the enactment of this Act, then the district court
shall transfer the case (or the part of the case that chal-
lenges the order of removal, deportation, or exclusion) to
the court of appeals for the circuit in which a petition for
review could have been properly filed under section
242(b)(2) of the Immigration and Nationality Act (8
U.S.C. 1252), as amended by this section, or under section
309(e)(4)(D) of the Illegal Immigration Reform and Im-
The court of appeals shall treat the transferred case as
if it had been filed pursuant to a petition for review under
such section 242, except that subsection (b)(1) of such
section shall not apply.
(d) Transitional Rule Cases.—A petition for review filed under former section 106(a) of the Immigration and Nationality Act (as in effect before its repeal by section 306(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1252 note)) shall be treated as if it had been filed as a petition for review under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this section. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, such petition for review shall be the sole and exclusive means for judicial review of an order of deportation or exclusion.

Sec. 106. Delivery Bonds.

(a) Definitions.—For purposes of this section:

(1) delivery bond.—The term “delivery bond” means a written suretyship undertaking for the surrender of an individual against whom the Department of Homeland Security has issued an order to show cause or a notice to appear, the performance of which is guaranteed by an acceptable surety on Federal bonds.

(2) principal.—The term “principal” means an individual who is the subject of a bond.
(3) Suretyship Undertaking.—The term “suretyship undertaking” means a written agree-
ment, executed by a bonding agent on behalf of a surety, which binds all parties to its certain terms
and conditions and which provides obligations for the principal and the surety while under the bond
and penalties for forfeiture to ensure the obligations of the principal and the surety under the agreement.

(4) Bonding Agent.—The term “bonding agent” means any individual properly licensed, ap-
proved, and appointed by power of attorney to execute or countersign surety bonds in connection with
any matter governed by the Immigration and Nationality Act as amended (8 U.S.C. 1101, et seq.),
and who receives a premium for executing or countersigning such surety bonds.

(5) Surety.—The term “surety” means an entity, as defined by, and that is in compliance with,
sections 9304 through 9308 of title 31, United States Code, that agrees—

(A) to guarantee the performance, where appropriate, of the principal under a bond;

(B) to perform the bond as required; and

(C) to pay the face amount of the bond as a penalty for failure to perform.
(b) **Validity, Agent not Co-Obligor, Expiration, Renewal, and Cancellation of Bonds.**—

1. **Validity.**—Delivery bond undertakings are valid if such bonds—
   1. state the full, correct, and proper name of the alien principal;
   2. state the amount of the bond;
   3. are guaranteed by a surety and countersigned by an agent who is properly appointed;
   4. bond documents are properly executed; and
   5. relevant bond documents are properly filed with the Secretary of Homeland Security.

2. **Bonding Agent not Co Obligor, Party, or Guarantor in Individual Capacity, and No Refusal if Acceptable Surety.**—Section 9304(b) of title 31, United States Code, is amended by adding at the end the following: “Notwithstanding any other provision of law, no bonding agent of a corporate surety shall be required to execute bonds as a co-obligor, party, or guarantor in an individual capacity on bonds provided by the corporate surety, nor shall a corporate surety bond be refused if the corporate surety appears on the cur-
rent Treasury Department Circular 570 as a com-
pany holding a certificate of authority as an accept-
able surety on Federal bonds and attached to the
bond is a currently valid instrument showing the au-
thority of the bonding agent of the surety company
to execute the bond.”.

(3) EXPIRATION.—A delivery bond undertaking
shall expire at the earliest of—

(A) 1 year from the date of issue;

(B) at the cancellation of the bond or sur-
render of the principal; or

(C) immediately upon nonpayment of the
renewal premium.

(4) RENEWAL.—Delivery bonds may be re-
newed annually, with payment of proper premium to
the surety, if there has been no breach of conditions,
default, claim, or forfeiture of the bond. Notwith-
standing any renewal, when the alien is surrendered
to the Secretary of Homeland Security for removal,
the Secretary shall cause the bond to be canceled.

(5) CANCELLATION.—Delivery bonds shall be
canceled and the surety exonerated—

(A) for nonrenewal after the alien has been
surrendered to the Department of Homeland
Security for removal;
(B) if the surety or bonding agent provides reasonable evidence that there was misrepresentation or fraud in the application for the bond;

(C) upon the death or incarceration of the principal, or the inability of the surety to produce the principal for medical reasons;

(D) if the principal is detained by any law enforcement agency of any State, county, city, or any political subdivision thereof;

(E) if it can be established that the alien departed the United States of America for any reason without permission of the Secretary of Homeland Security, the surety, or the bonding agent;

(F) if the foreign state of which the principal is a national is designated pursuant to section 244 of the Act (8 U.S.C. 1254a) after the bond is posted; or

(G) if the principal is surrendered to the Department of Homeland Security, removal by the surety or the bonding agent.

(6) SURRENDER OF PRINCIPAL; FORFEITURE OF BOND PREMIUM.—

(A) SURRENDER.—At any time, before a breach of any of the bond conditions, if in the
opinion of the surety or bonding agent, the principal becomes a flight risk, the principal may be surrendered to the Department of Homeland Security for removal.

(B) FORFEITURE OF BOND PREMIUM.—A principal may be surrendered without the return of any bond premium if the principal—

(i) changes address without notifying the surety, the bonding agent, and the Secretary of Homeland Security in writing prior to such change;

(ii) hides or is concealed from a surety, a bonding agent, or the Secretary;

(iii) fails to report to the Secretary as required at least annually; or

(iv) violates the contract with the bonding agent or surety, commits any act that may lead to a breach of the bond, or otherwise violates any other obligation or condition of the bond established by the Secretary.

(7) CERTIFIED COPY OF BOND AND ARREST WARRANT TO ACCOMPANY SURRENDER.—

(A) IN GENERAL.—A bonding agent or surety desiring to surrender the principal—
(i) shall have the right to petition the Secretary of Homeland Security or any Federal court, without having to pay any fees or court costs, for an arrest warrant for the arrest of the principal;

(ii) shall forthwith be provided 2 certified copies each of the arrest warrant and the bond undertaking, without having to pay any fees or courts costs; and

(iii) shall have the right to pursue, apprehend, detain, and surrender the principal, together with certified copies of the arrest warrant and the bond undertaking, to any Department of Homeland Security detention official or Department detention facility or any detention facility authorized to hold Federal detainees.

(B) EFFECTS OF DELIVERY.—Upon surrender of a principal under subparagraph (A)(iii)—

(i) the official to whom the principal is surrendered shall detain the principal in custody and issue a written certificate of surrender; and
(ii) the Secretary of Homeland Secu-

rity shall immediately exonerate the surety

from any further liability on the bond.

(8) FORM OF BOND.—Delivery bonds shall in

all cases state the following and be secured by a cor-

porate surety that is certified as an acceptable sur-

ety on Federal bonds and whose name appears on

the current Treasury Department Circular 570:

“(A) BREACH OF BOND; PROCEDURE, FOR-

FEITURE, NOTICE.—

“(i) If a principal violates any condi-

tions of the delivery bond, or the principal

is or becomes subject to a final administra-

tive order of deportation or removal, the

Secretary of Homeland Security shall—

“(I) immediately issue a warrant

for the principal’s arrest and enter

that arrest warrant into the National

Crime Information Center (NCIC)

computerized information database;

“(II) order the bonding agent

and surety to take the principal into

custody and surrender the principal to

any one of 10 designated Department

of Homeland Security ‘turn-in’ cen-
ters located nationwide in the areas of greatest need, at any time of day during 15 months after mailing the arrest warrant and the order to the bonding agent and the surety as required by subclause (III), and immediately enter that order into the National Crime Information Center (NCIC) computerized information database; and

“(III) mail 2 certified copies each of the arrest warrant issued pursuant to subclause (I) and 2 certified copies each of the order issued pursuant to subclause (II) to only the bonding agent and surety via certified mail return receipt to their last known addresses.

“(ii) Bonding agents and sureties shall immediately notify the Secretary of Homeland Security of their changes of address and/or telephone numbers.

“(iii) The Secretary of Homeland Security shall establish, disseminate to bonding agents and sureties, and maintain on a
current basis a secure nationwide toll-free
list of telephone numbers of Department of
Homeland Security officials, including the
names of such officials, that bonding
agents, sureties, and their employees may
immediately contact at any time to discuss
and resolve any issue regarding any prin-
cipal or bond, to be known as ‘Points of
Contact’.

“(iv) A bonding agent or surety shall
have full and complete access, free of
charge, to any and all information, elec-
tronic or otherwise, in the care, custody,
and control of the United States Govern-
ment or any State or local government or
any subsidiary or police agency thereof re-
garding the principal that may be helpful
in complying with section 105 of the
REAL ID Act of 2005 that the Secretary
of Homeland Security, by regulations sub-
ject to approval by Congress, determines
may be helpful in locating or surrendering
the principal. Beyond the principal, a
bonding agent or surety shall not be re-
quired to disclose any information, includ-
ing but not limited to the arrest warrant and order, received from any governmental source, any person, firm, corporation, or other entity.

“(v) If the principal is later arrested, detained, or otherwise located outside the United States and the outlying possessions of the United States (as defined in section 101(a) of the Immigration and Nationality Act), the Secretary of Homeland Security shall—

“(I) immediately order that the surety is completely exonerated, and the bond canceled; and

“(II) if the Secretary of Homeland Security has issued an order under clause (i), the surety may request, by written, properly filed motion, reinstatement of the bond. This subclause may not be construed to prevent the Secretary of Homeland Security from revoking or resetting a bond at a higher amount.

“(vi) The bonding agent or surety must—
“(I) during the 15 months after
the date the arrest warrant and order
were mailed pursuant to clause
(i)(III) surrender the principal one
time; or
“(II)(aa) provide reasonable evi-
dence that producing the principal
was prevented—
“(aaa) by the principal’s ill-
ness or death;
“(bbb) because the principal
is detained in custody in any city,
State, country, or any political
subdivision thereof;
“(ccc) because the principal
has left the United States or its
outlying possessions (as defined
in section 101(a) of the Immigra-
tion and Nationality Act (8
U.S.C. 1101(a)); or
“(ddd) because required no-
tice was not given to the bonding
agent or surety; and
“(bb) establish by affidavit that
the inability to produce the principal
was not with the consent or connivance of the bonding agent or surety.

“(vii) If compliance occurs more than 15 months but no more than 18 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 25 percent of the face amount of the bond shall be assessed as a penalty against the surety.

“(viii) If compliance occurs more than 18 months but no more than 21 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 50 percent of the face amount of the bond shall be assessed as a penalty against the surety.

“(ix) If compliance occurs more than 21 months but no more than 24 months after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 75 percent of the face amount of
the bond shall be assessed as a penalty against the surety.

“(x) If compliance occurs 24 months or more after the mailing of the arrest warrant and order to the bonding agent and the surety required under clause (i)(III), an amount equal to 100 percent of the face amount of the bond shall be assessed as a penalty against the surety.

“(xi) If any surety surrenders any principal to the Secretary of Homeland Security at any time and place after the period for compliance has passed, the Secretary of Homeland Security shall cause to be issued to that surety an amount equal to 50 percent of the face amount of the bond: Provided, however, That if that surety owes any penalties on bonds to the United States, the amount that surety would otherwise receive shall be offset by and applied as a credit against the amount of penalties on bonds it owes the United States, and then that surety shall receive the remainder of the amount to which it is entitled under this subparagraph, if any.
“(xii) All penalties assessed against a
surety on a bond, if any, shall be paid by
the surety no more than 27 months after
the mailing of the arrest warrant and
order to the bonding agent and the surety
required under clause (i)(III).

“(B) The Secretary of Homeland Security
may waive penalties or extend the period for
payment or both, if—

“(i) a written request is filed with the
Secretary of Homeland Security; and

“(ii) the bonding agent or surety pro-
vides an affidavit that diligent efforts were
made to effect compliance of the principal.

“(C) COMPLIANCE; EXONERATION; LIMITA-
TION OF LIABILITY.—

“(i) COMPLIANCE.—A bonding agent
or surety shall have the absolute right to
locate, apprehend, arrest, detain, and sur-
render any principal, wherever he or she
may be found, who violates any of the
terms and conditions of his or her bond.

“(ii) EXONERATION.—Upon satisfying
any of the requirements of the bond, the
surety shall be completely exonerated.
“(iii) LIMITATION OF LIABILITY.—

Notwithstanding any other provision of law, the total liability on any surety undertaking shall not exceed the face amount of the bond.”.

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this Act and shall apply to bonds and surety undertakings executed before, on, or after the date of the enactment of this Act.

SEC. 107. RELEASE OF ALIENS IN REMOVAL PROCEEDINGS.

(a) IN GENERAL.—Section 236(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1226(a)(2)) is amended to read as follows:

“(2) subject to such reasonable regulations as the Secretary of Homeland Security may prescribe, shall permit agents, servants, and employees of corporate sureties to visit in person with individuals detained by the Secretary of and, subject to section 241(a)(8), may release the alien on a delivery bond of at least $10,000, with security approved by the Secretary, and containing conditions and procedures prescribed by section 105 of the REAL ID Act of 2005 and by the Secretary, but the Secretary shall not release the alien on or to his own recognizance unless an order of an immigration judge expressly

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finds and states in a signed order to release the
alien to his own recognizance that the alien is not
a flight risk and is not a threat to the United
States”.

(b) Repeal.—Section 286(r) of the Immigration and
Nationality Act (8 U.S.C. 1356(r)) is repealed.

(e) Effective Date.—The amendment made by
subsection (a) shall take effect on the date of the enact-
ment of this Act.

SEC. 108. DETENTION OF ALIENS DELIVERED BY BONDS-
MEN.

(a) In General.—Section 241(a) of the Immigra-
tion and Nationality Act (8 U.S.C. 1231(a)) is amended
by adding at the end the following:

“(8) Effect of Production of Alien by
Bondsman.—Notwithstanding any other provision
of law, the Secretary of Homeland Security shall
take into custody any alien subject to a final order
of removal, and cancel any bond previously posted
for the alien, if the alien is produced within the pre-
scribed time limit by the obligor on the bond wheth-
er or not the Department of Homeland Security ac-
cepts custody of the alien. The obligor on the bond
shall be deemed to have substantially performed all
conditions imposed by the terms of the bond, and
shall be released from liability on the bond, if the
alien is produced within such time limit.”

(b) EFFECTIVE DATE.—The amendment made by
subsection (a) shall take effect on the date of the enact-
ment of this Act and shall apply to all immigration bonds
posted before, on, or after such date.

TITLE II—IMPROVED SECURITY
FOR DRIVERS’ LICENSES AND
PERSONAL IDENTIFICATION
CARDS

SEC. 201. DEFINITIONS.

In this title, the following definitions apply:

(1) DRIVER’S LICENSE.—The term “driver’s li-
ence” means a motor vehicle operator’s license, as
defined in section 30301 of title 49, United States
Code.

(2) IDENTIFICATION CARD.—The term “identi-
ification card” means a personal identification card,
as defined in section 1028(d) of title 18, United
States Code, issued by a State.

(3) SECRETARY.—The term “Secretary” means
the Secretary of Homeland Security.

(4) STATE.—The term “State” means a State
of the United States, the District of Columbia, Puer-
to Rico, the Virgin Islands, Guam, American Samoa,
SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) Minimum Standards for Federal Use.—

(1) In general.—Beginning 3 years after the date of the enactment of this Act, a Federal agency may not accept, for any official purpose, a driver’s license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

(2) State certifications.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary of Transportation. Such certifications shall be made at such times and in such manner as the Secretary of Transportation, in consultation with the Secretary of Homeland Security, may prescribe by regulation.

(b) Minimum Document Requirements.—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on
each driver’s license and identification card issued to a person by the State:

(1) The person’s full legal name.
(2) The person’s date of birth.
(3) The person’s gender.
(4) The person’s driver’s license or identification card number.
(5) A digital photograph of the person.
(6) The person’s address of principle residence.
(7) The person’s signature.
(8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.
(9) A common machine-readable technology, with defined minimum data elements.

c) Minimum Issuance Standards.—

(1) In General.—To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver’s license or identification card to a person:

(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person’s full legal name and date of birth.
(B) Documentation showing the person’s
date of birth.

(C) Proof of the person’s social security
account number or verification that the person
is not eligible for a social security account num-
ber.

(D) Documentation showing the person’s
name and address of principal residence.

(2) SPECIAL REQUIREMENTS.—

(A) IN GENERAL.—To meet the require-
ments of this section, a State shall comply with
the minimum standards of this paragraph.

(B) EVIDENCE OF LAWFUL STATUS.—A
State shall require, before issuing a driver’s li-
cense or identification card to a person, valid
documentary evidence that the person—

(i) is a citizen of the United States;

(ii) is an alien lawfully admitted for
permanent or temporary residence in the
United States;

(iii) has conditional permanent resi-
dent status in the United States;

(iv) has an approved application for
asylum in the United States or has entered
into the United States in refugee status;
(v) has a valid, unexpired non-immigrant visa or nonimmigrant visa status for entry into the United States;

(vi) has a pending application for asylum in the United States;

(vii) has a pending or approved application for temporary protected status in the United States;

(viii) has approved deferred action status; or

(ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(C) TEMPORARY DRIVERS’ LICENSES AND IDENTIFICATION CARDS.—

(i) IN GENERAL.—If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the State may only issue a temporary driver’s license or temporary identification card to the person.

(ii) EXPIRATION DATE.—A temporary driver’s license or temporary identification
card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant’s authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(iii) **Display of Expiration Date.**—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) **Renewal.**—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver’s license or temporary identification card has been extended by the Secretary of Homeland Security.

(3) **Verification of Documents.**—To meet the requirements of this section, a State shall implement the following procedures:
(A) Before issuing a driver’s license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–664), to verify the legal presence status of a person, other than a United States citizen, applying for a driver’s license or identification card.

(d) Other Requirements.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers’ licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver’s license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant’s information.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver’s license or identification card, the State shall resolve the discrepancy and take appropriate action.

(6) Refuse to issue a driver’s license or identification card to a person holding a driver’s license issued by another State without confirmation that the person is terminating or has terminated the driver’s license.
(7) Ensure the physical security of locations where drivers’ licenses and identification cards are produced and the security of document materials and papers from which drivers’ licenses and identification cards are produced.

(8) Subject all persons authorized to manufacture or produce drivers’ licenses and identification cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of drivers’ licenses and identification cards.

(10) Limit the period of validity of all driver’s licenses and identification cards that are not temporary to a period that does not exceed 8 years.

SEC. 203. LINKING OF DATABASES.

(a) IN GENERAL.—To be eligible to receive any grant or other type of financial assistance made available under this title, a State shall participate in the interstate compact regarding sharing of driver license data, known as the “Driver License Agreement”, in order to provide electronic access by a State to information contained in the motor vehicle databases of all other States.
(b) Requirements for Information.—A State motor vehicle database shall contain, at a minimum, the following information:

(1) All data fields printed on drivers’ licenses and identification cards issued by the State.

(2) Motor vehicle drivers’ histories, including motor vehicle violations, suspensions, and points on licenses.

SEC. 204. TRAFFICKING IN AUTHENTICATION FEATURES FOR USE IN FALSE IDENTIFICATION DOCUMENTS.

(a) Criminal Penalty.—Section 1028(a)(8) of title 18, United States Code, is amended by striking “false authentication features” and inserting “false or actual authentication features”.

(b) Use of False Driver’s License at Airports.—

(1) In general.—The Secretary shall enter, into the appropriate aviation security screening database, appropriate information regarding any person convicted of using a false driver’s license at an airport (as such term is defined in section 40102 of title 49, United States Code).

(2) False defined.—In this subsection, the term “false” has the same meaning such term has
under section 1028(d) of title 18, United States Code.

SEC. 205. GRANTS TO STATES.

(a) IN GENERAL.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title.

SEC. 206. AUTHORITY.

(a) PARTICIPATION OF SECRETARY OF TRANSPORTATION AND STATES.—All authority to issue regulations, set standards, and issue grants under this title shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) COMPLIANCE WITH STANDARDS.—All authority to certify compliance with standards under this title shall be carried out by the Secretary of Transportation, in consultation with the Secretary of Homeland Security and the States.

(c) EXTENSIONS OF DEADLINES.—The Secretary may grant to a State an extension of time to meet the requirements of section 202(a)(1) if the State provides adequate justification for noncompliance.
SEC. 207. REPEAL.
Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is repealed.

SEC. 208. LIMITATION ON STATUTORY CONSTRUCTION.
Nothing in this title shall be construed to affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code.

TITLE III—BORDER INFRASTRUCTURE AND TECHNOLOGY INTEGRATION

SEC. 301. VULNERABILITY AND THREAT ASSESSMENT.
(a) STUDY.—The Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Under Secretary of Homeland Security for Science and Technology and the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, shall study the technology, equipment, and personnel needed to address security vulnerabilities within the United States for each field office of the Bureau of Customs and Border Protection that has responsibility for any portion of the United States borders with Canada and Mexico. The Under Secretary shall conduct follow-up studies at least once every 5 years.
(b) REPORT TO CONGRESS.—The Under Secretary shall submit a report to Congress on the Under Secretary's findings and conclusions from each study conducted under subsection (a) together with legislative recommendations, as appropriate, for addressing any security vulnerabilities found by the study.

e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Homeland Security Directorate of Border and Transportation Security such sums as may be necessary for fiscal years 2006 through 2011 to carry out any such recommendations from the first study conducted under subsection (a).

SEC. 302. USE OF GROUND SURVEILLANCE TECHNOLOGIES FOR BORDER SECURITY.

(a) PILOT PROGRAM.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary of Homeland Security for Science and Technology, in consultation with the Under Secretary of Homeland Security for Border and Transportation Security, the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection, and the Secretary of Defense, shall develop a pilot program to utilize, or increase the utilization of, ground surveillance technologies to enhance
the border security of the United States. In developing the
program, the Under Secretary shall—

(1) consider various current and proposed
ground surveillance technologies that could be uti-
liized to enhance the border security of the United
States;

(2) assess the threats to the border security of
the United States that could be addressed by the
utilization of such technologies; and

(3) assess the feasibility and advisability of uti-
lizing such technologies to address such threats, in-
cluding an assessment of the technologies considered
best suited to address such threats.

(b) ADDITIONAL REQUIREMENTS.—

(1) IN GENERAL.—The pilot program shall in-
clude the utilization of a variety of ground surveil-
lance technologies in a variety of topographies and
areas (including both populated and unpopulated
areas) on both the northern and southern borders of
the United States in order to evaluate, for a range
of circumstances—

(A) the significance of previous experiences
with such technologies in homeland security or
critical infrastructure protection for the utiliza-
tion of such technologies for border security;
(B) the cost, utility, and effectiveness of such technologies for border security; and

(C) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

(2) TECHNOLOGIES.—The ground surveillance technologies utilized in the pilot program shall include the following:

(A) Video camera technology.

(B) Sensor technology.

(C) Motion detection technology.

(c) IMPLEMENTATION.—The Under Secretary of Homeland Security for Border and Transportation Security shall implement the pilot program developed under this section.

(d) REPORT.—Not later than 1 year after implementing the pilot program under subsection (a), the Under Secretary shall submit a report on the program to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on the Judiciary. The Under Secretary shall include in the report a description of the program together with such recommendations as the Under Secretary finds
appropriate, including recommendations for terminating
the program, making the program permanent, or enhancing
the program.

SEC. 303. ENHANCEMENT OF COMMUNICATIONS INTEGRATION
AND INFORMATION SHARING ON BORDER SECURITY.

(a) IN GENERAL.—Not later than 180 days after the
date of the enactment of this Act, the Secretary of Home-
land Security, acting through the Under Secretary of
Homeland Security for Border and Transportation Secu-
rity, in consultation with the Under Secretary of Home-
land Security for Science and Technology, the Under Sec-
retary of Homeland Security for Information Analysis and
Infrastructure Protection, the Assistant Secretary of Com-
merce for Communications and Information, and other ap-
propriate Federal, State, local, and tribal agencies, shall
develop and implement a plan—

(1) to improve the communications systems of
the departments and agencies of the Federal Gov-
ernment in order to facilitate the integration of com-
munications among the departments and agencies of
the Federal Government and State, local government
agencies, and Indian tribal agencies on matters re-
lating to border security; and
(2) to enhance information sharing among the departments and agencies of the Federal Government, State and local government agencies, and Indian tribal agencies on such matters.

(b) REPORT.—Not later than 1 year after implementing the plan under subsection (a), the Secretary shall submit a copy of the plan and a report on the plan, including any recommendations the Secretary finds appropriate, to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Science, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on the Judiciary.

Passed the House of Representatives February 10, 2005.

Attest: JEFF TRANDAHL,

Clerk.