AMENDMENT NO. ____  Calendar No. ____

Purpose: To provide for a complete substitute.

IN THE SENATE OF THE UNITED STATES—107th Cong., 2d Sess.

S. 2452

To establish the Department of National Homeland Security and the National Office for Combating Terrorism.

Referred to the Committee on __________________________

and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. LIEBERMAN or his designee

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “National Homeland
5 Security and Combating Terrorism Act of 2002”.

6 SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF
7 CONTENTS.

8 (a) DIVISIONS.—This Act is organized into 2 divi-
9 sions as follows:
(1) Division A—National Homeland Security and Combating Terrorism.


(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.
Sec. 3. Definitions.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

Sec. 102. Secretary of Homeland Security.
Sec. 103. Deputy Secretary of Homeland Security.
Sec. 104. Under Secretary for Management.
Sec. 105. Assistant Secretaries.
Sec. 106. Inspector General.
Sec. 107. Chief Financial Officer.
Sec. 108. Chief Information Officer.
Sec. 109. General Counsel.
Sec. 110. Civil Rights Officer.
Sec. 111. Privacy Officer.
Sec. 112. Chief Human Capital Officer.
Sec. 113. Executive Schedule positions.

Subtitle B—Establishment of Directorates and Offices

Sec. 131. Directorate of Border and Transportation Protection.
Sec. 132. Directorate of Intelligence.
Sec. 133. Directorate of Critical Infrastructure Protection.
Sec. 135. Directorate of Science and Technology.
Sec. 136. Directorate of Immigration Affairs.
Sec. 137. Office for State and Local Government Coordination.
Sec. 138. United States Secret Service.
Sec. 139. Border Coordination Working Group.
Sec. 140. Executive Schedule positions.

Subtitle C—National Emergency Preparedness Enhancement

Sec. 151. Short title.
Sec. 152. Preparedness information and education.
Sec. 153. Pilot program.
Subtitle D—Miscellaneous Provisions

Sec. 162. Review of food safety.
Sec. 163. Exchange of employees between agencies and State or local governments.

Subtitle E—Transition Provisions

Sec. 171. Definitions.
Sec. 172. Transfer of agencies.
Sec. 173. Transitional authorities.
Sec. 174. Incidental transfers.
Sec. 175. Implementation progress reports and legislative recommendations.
Sec. 176. Transfer and allocation.
Sec. 177. Savings provisions.
Sec. 178. Transfer of related functions.

Subtitle F—Administrative Provisions

Sec. 191. Reorganizations and delegations.
Sec. 192. Reporting requirements.
Sec. 193. Environmental protection, safety, and health requirements.
Sec. 194. Labor standards.
Sec. 195. Authorization of appropriations.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

Sec. 201. National Office for Combating Terrorism.
Sec. 202. Funding for Strategy programs and activities.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE HOMELAND SECURITY RESPONSE

Sec. 301. Strategy.
Sec. 302. Management guidance for Strategy implementation.

TITLE IV—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

Sec. 401. Law enforcement powers of Inspector General agents.

TITLE V—EFFECTIVE DATE

Sec. 501. Effective date.

DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

Sec. 1001. Short title; table of contents.
Sec. 1002. Definitions.

TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS

Subtitle A—Organization

Sec. 1101. Abolition of INS.
Sec. 1102. Establishment of Directorate of Immigration Affairs.
Sec. 1103. Under Secretary of Homeland Security for Immigration Affairs.
Sec. 1104. Bureau of Immigration Services.
Sec. 1105. Bureau of Enforcement and Border Affairs.
Sec. 1106. Office of the Ombudsman within the Directorate.
Sec. 1107. Office of Immigration Statistics within the Directorate.
Sec. 1108. Clerical amendments.

Subtitle B—Transition Provisions

Sec. 1111. Transfer of functions.
Sec. 1112. Transfer of personnel and other resources.
Sec. 1113. Determinations with respect to functions and resources.
Sec. 1114. Delegation and reservation of functions.
Sec. 1115. Allocation of personnel and other resources.
Sec. 1116. Savings provisions.
Sec. 1117. Interim service of the Commissioner of Immigration and Naturalization.
Sec. 1118. Executive Office for Immigration Review authorities not affected.
Sec. 1119. Other authorities not affected.
Sec. 1120. Transition funding.

Subtitle C—Miscellaneous Provisions

Sec. 1121. Funding adjudication and naturalization services.
Sec. 1122. Application of Internet-based technologies.
Sec. 1123. Alternatives to detention of asylum seekers.

Subtitle D—Effective Date

Sec. 1131. Effective date.

TITLE XII—IMMIGRATION PERSONNEL

Sec. 1201. Improvements in personnel flexibilities.
Sec. 1202. Voluntary separation incentive payments for INS employees.
Sec. 1203. Voluntary separation incentive payments for employees of the Directorate of Immigration Affairs.
Sec. 1204. Basis for evaluation of immigration employees.
Sec. 1205. Effective date.

TITLE XIII—UNACCOMPANIED ALIEN CHILD PROTECTION

Sec. 1301. Short title.
Sec. 1302. Definitions.

Subtitle A—Structural Changes

Sec. 1311. Responsibilities of the Office of Refugee Resettlement With Respect to Unaccompanied Alien Children.
Sec. 1312. Establishment of Interagency Task Force on Unaccompanied Alien Children.
Sec. 1313. Transition provisions.
Sec. 1314. Effective date.

Subtitle B—Custody, Release, Family Reunification, and Detention

Sec. 1321. Procedures when encountering unaccompanied alien children.
Sec. 1322. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 1323. Appropriate conditions for detention of unaccompanied alien children.
Sec. 1324. Repatriated unaccompanied alien children.
Sec. 1325. Establishing the age of an unaccompanied alien child.
Sec. 1326. Effective date.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

Sec. 1331. Right of unaccompanied alien children to guardians ad litem.
Sec. 1332. Right of unaccompanied alien children to counsel.
Sec. 1333. Transitional pilot program.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

Sec. 1341. Special immigrant juvenile visa.
Sec. 1342. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 1343. Effective date.

Subtitle E—Children Refugee and Asylum Seekers

Sec. 1351. Guidelines for children’s asylum claims.
Sec. 1352. Unaccompanied refugee children.

Subtitle F—Authorization of Appropriations

Sec. 1361. Authorization of appropriations.

TITLE XIV—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structural and Function

Sec. 1401. Establishment.
Sec. 1402. Director of the Agency.
Sec. 1403. Board of Immigration Appeals.
Sec. 1404. Chief Immigration Judge.
Sec. 1405. Chief Administrative Hearing Officer.
Sec. 1406. Removal of judges.
Sec. 1407. Authorization of appropriations.

Subtitle B—Transfer of Functions and Savings Provisions

Sec. 1411. Transition provisions.

Subtitle C—Effective Date

Sec. 1421. Effective Date.

1 **SEC. 3. DEFINITIONS.**

2 Unless the context clearly indicates otherwise, the follow-

3 ing shall apply for purposes of division A:
(1) AGENCY.—Except for purposes of subtitle E of title I, the term “agency”—

(A) means—

(i) an Executive agency as defined under section 105 of title 5, United States Code;

(ii) a military department as defined under section 102 of title 5, United States Code;

(iii) the United States Postal Service; and

(B) does not include the General Accounting Office.

(2) ASSETS.—The term “assets” includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(3) DIRECTOR.—The term “Director” means the Director of the National Office for Combating Terrorism.

(4) DEPARTMENT.—The term “Department” means the Department of National Homeland Security established under title I.

(5) FEDERAL TERRORISM PREVENTION AND RESPONSE AGENCY.—The term “Federal terrorism
prevention and response agency” means any Federal
department or agency charged under the Strategy
with responsibilities for carrying out the Strategy.

(6) FUNCTIONS.—The term “functions” in-
cludes authorities, powers, rights, privileges, immu-
nities, programs, projects, activities, duties, respon-
sibilities, and obligations.

(7) HOMELAND.—The term “homeland” means
the United States, in a geographic sense.

(8) LOCAL GOVERNMENT.—The term “local
government” has the meaning given under section
102(6) of the Robert T. Stafford Disaster Relief and
Emergency Assistance Act (Public Law 93–288).

(9) OFFICE.—The term “Office” means the
National Office for Combating Terrorism established
under title II.

(10) PERSONNEL.—The term “personnel”
means officers and employees.

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

(12) STRATEGY.—The term “Strategy” means
the National Strategy for Combating Terrorism and
the Homeland Security Response developed under
this division.
(13) UNITED STATES.—The term “United States”, when used in a geographic sense, means any State (within the meaning of section 102(4) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288), any possession of the United States, and any waters within the jurisdiction of the United States.

DIVISION A—NATIONAL HOMELAND SECURITY AND COMBATING TERRORISM

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Subtitle A—Establishment of the Department of Homeland Security

SEC. 101. ESTABLISHMENT OF THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—There is established the Department of National Homeland Security.

(b) EXECUTIVE DEPARTMENT.—Section 101 of title 5, United States Code, is amended by adding at the end the following:

“‘The Department of Homeland Security.’”.

(c) MISSION OF DEPARTMENT.—

(1) HOMELAND SECURITY.—The mission of the Department is to—
(A) promote homeland security, particularly with regard to terrorism;

(B) prevent terrorist attacks or other homeland threats within the United States;

(C) reduce the vulnerability of the United States to terrorism, natural disasters, and other homeland threats; and

(D) minimize the damage, and assist in the recovery, from terrorist attacks or other natural or man-made crises that do occur within the United States.

(2) OTHER MISSIONS.—The Department shall be responsible for carrying out the other functions, and promoting the other missions, of entities transferred to the Department as provided by law.

(d) SEAL.—The Secretary shall procure a proper seal, with such suitable inscriptions and devices as the President shall approve. This seal, to be known as the official seal of the Department of Homeland Security, shall be kept and used to verify official documents, under such rules and regulations as the Secretary may prescribe. Judicial notice shall be taken of the seal.

SEC. 102. SECRETARY OF HOMELAND SECURITY.

(a) IN GENERAL.—The Secretary of Homeland Security shall be the head of the Department. The Secretary
shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Responsibilities.—The responsibilities of the Secretary shall be the following:

(1) To develop policies, goals, objectives, priorities, and plans for the United States for the promotion of homeland security, particularly with regard to terrorism.

(2) To administer, carry out, and promote the other established missions of the entities transferred to the Department.

(3) To develop, with the Director, a comprehensive strategy for combatting terrorism and the homeland security response in accordance with title III.

(4) To advise the Director on the development of a comprehensive annual budget for programs and activities under the Strategy, and have the responsibility for budget recommendations relating to border and transportation security, critical infrastructure protection, emergency preparedness and response, science and technology promotion related to homeland security, and Federal support for State and local activities.

(5) To plan, coordinate, and integrate those Federal Government activities relating to border and
transportation security, critical infrastructure protection, all-hazards emergency preparedness, response, recovery, and mitigation.

(6) To serve as a national focal point to analyze all information available to the United States related to threats of terrorism and other homeland threats.

(7) To establish and coordinate an integrated program to evaluate, identify, anticipate, and mitigate threats, vulnerabilities, and risks through threat and vulnerability assessments (including red teaming) and risk analysis, and to disseminate information and intelligence derived from such activities to appropriate entities.

(8) To identify and promote key scientific and technological advances that will enhance homeland security.

(9) To include, as appropriate, State and local governments and other entities in the full range of activities undertaken by the Department to promote homeland security, including—

(A) providing State and local government personnel, agencies and authorities, with appropriate intelligence information, including warnings, regarding threats posed by terrorism in a timely and secure manner;
(B) facilitating efforts by State and local law enforcement and other officials to assist in the collection and dissemination of intelligence information and to provide information to the Department, and other agencies, in a timely and secure manner;

(C) coordinating with State, regional, and local government personnel, agencies, and authorities and, as appropriate, with the private sector, other entities, and the public, to ensure adequate planning, team work, coordination, information sharing, equipment, training, and exercise activities;

(D) consulting State and local governments, and other entities as appropriate, in developing the Strategy under title III;

(E) systematically identifying and removing obstacles to developing effective partnerships between the Department, other agencies, and State, regional, and local government personnel, agencies, and authorities, the private sector, other entities, and the public to secure the homeland.

(10)(A) To consult and coordinate with the Secretary of Defense and the governors of the several
States regarding integration of the United States military, including the National Guard, into all aspects of the Strategy and its implementation, including detection, prevention, protection, response, and recovery.

(B) To consult and coordinate with the Secretary of Defense and make recommendations concerning organizational structure, equipment, and positioning of military assets determined critical to executing the Strategy.

(11) To seek to ensure effective day-to-day coordination of homeland security operations, and establish effective mechanisms for such coordination, among the elements constituting the Department and with other involved and affected Federal, State, and local departments and agencies.

(12) To administer the Homeland Security Advisory System, exercising primary responsibility for public threat advisories, and (in coordination with other agencies) providing specific warning information to State and local government personnel, agencies and authorities, the private sector, other entities and the public, and advice about appropriate protective actions and countermeasures.
(13) To conduct exercise and training programs for employees of the Department and other involved agencies, and establish effective command and control procedures for the full range of potential contingencies regarding United States homeland security, including contingencies that require the substantial support of military assets.

(14) To annually develop a Federal response plan for homeland security and emergency preparedness with regard to terrorism and other manmade and natural disasters.

(15) To direct the acquisition and management of all of the information resources of the Department, including communications resources.

(16) To endeavor to make the information technology systems of the Department, including communications systems, effective, efficient, secure, and appropriately interoperable.

(17) In furtherance of paragraph (16), to oversee and ensure the development and implementation of—

(A) an enterprise architecture for Department-wide information technology, with timetables for implementation; and
(B) a plan to achieve appropriate interoperability—

(i) among the information systems of the Department, including communications systems; and

(ii) between the information systems of the Department and those of other Federal, State, and local agencies with responsibility for homeland security.

(18) As the Secretary considers necessary, to oversee and ensure the development and implementation of updated versions of the enterprise architecture and plan under paragraph (16).

(19) To report to Congress on the development and implementation of the enterprise architecture and plan referred to in paragraph (16) in—

(A) each implementation progress report required under section 175; and

(B) each biennial report required under section 192(b).

(c) Visa Issuance by the Secretary.—

(1) Definition.—In this subsection, the term “consular officer” has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).
(2) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided under paragraph (3), the Secretary—

(A) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(B)(i) may delegate in whole or part the authority under subparagraph (A) to the Secretary of State; and

(ii) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in subparagraph (A).
(3) Authority of the Secretary of State.—

(A) In general.—The Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State considers such refusal necessary or advisable in the foreign policy or security interests of the United States.

(B) Statutory construction.—Nothing in this subsection shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(i) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).


(v) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(vi) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(vii) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(viii) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189).

(ix) Section 237(a)(4)(C) of Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(x) Section 104 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034).

(xi) Section 616 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999.


(xv) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(4) Consular officers and chiefs of missions.—Nothing in this subsection may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State;

or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(5) Assignment of homeland security employees to diplomatic and consular posts.—

(A) In general.—The Secretary is authorized to assign employees of the Department
to diplomatic and consular posts abroad to perform the following functions:

(i) Provide expert advice to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(ii) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(iii) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(B) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in subparagraph (A) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Se-

(C) TRAINING AND HIRING.—

(i) IN GENERAL.—The Secretary shall ensure that any employees of the Department assigned to perform functions described under subparagraph (A) and, as appropriate, consular officers, shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(ii) FOREIGN LANGUAGE PROFICIENCY.—Before assigning employees of the Department to perform the functions described under subparagraph (A), the Secretary shall promulgate regulations establishing foreign language proficiency requirements for employees of the Department performing the functions described under subparagraph (A) and providing that preference shall be given to individuals who meet such requirements in hiring.
employees for the performance of such functions.

(iii) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in clause (i).

(6) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(7) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.
(d) Membership on the National Security Council.—Section 101(a) of the National Security Act of 1947 (50 U.S.C. 402(a)) is amended in the fourth sentence by striking paragraphs (5), (6), and (7) and inserting the following:

“(5) the Secretary of Homeland Security; and

“(6) each Secretary or Under Secretary of such other executive department, or of a military department, as the President shall designate.”.

SEC. 103. DEPUTY SECRETARY OF HOMELAND SECURITY.

(a) In General.—There shall be in the Department a Deputy Secretary of Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Responsibilities.—The Deputy Secretary of Homeland Security shall—

(1) assist the Secretary in the administration and operations of the Department;

(2) perform such responsibilities as the Secretary shall prescribe; and

(3) act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the office of the Secretary.
SEC. 104. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—There shall be in the Department an Under Secretary for Management, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Under Secretary for Management shall report to the Secretary, who may assign to the Under Secretary such functions related to the management and administration of the Department as the Secretary may prescribe, including—

1. the budget, appropriations, expenditures of funds, accounting, and finance;
2. procurement;
3. human resources and personnel;
4. information technology and communications systems;
5. facilities, property, equipment, and other material resources;
6. security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources; and
7. identification and tracking of performance measures relating to the responsibilities of the Department.
SEC. 105. ASSISTANT SECRETARIES.

(a) In general.—There shall be in the Department not more than 5 Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Responsibilities.—

(1) In general.—Whenever the President submits the name of an individual to the Senate for confirmation as an Assistant Secretary under this subsection, the President shall describe the general responsibilities that such appointee will exercise upon taking office.

(2) Assignment.—Subject to paragraph (1), the Secretary shall assign to each Assistant Secretary such functions as the Secretary considers appropriate.

SEC. 106. INSPECTOR GENERAL.

(a) In general.—There shall be in the Department an Inspector General. The Inspector General and the Office of Inspector General shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.).

(b) Establishment.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by inserting “Homeland Security,” after “Health and Human Services,”; and
(2) in paragraph (2), by inserting “Homeland Security,” after “Health and Human Services,”.

(c) Review of the Department of Homeland Security.—The Inspector General shall designate 1 official who shall—

(1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department;

(2) publicize, through the Internet, radio, television, and newspaper advertisements—

(A) information on the responsibilities and functions of the official; and

(B) instructions on how to contact the official; and

(3) on a semi-annual basis, submit to Congress, for referral to the appropriate committee or committees, a report—

(A) describing the implementation of this subsection;

(B) detailing any civil rights abuses under paragraph (1); and

(C) accounting for the expenditure of funds to carry out this subsection.

(d) Additional Provisions With Respect to the Inspector General of the Department of

(1) by redesignating section 8I as section 8J;

and

(2) by inserting after section 8H the following:

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

“Sec. 8I. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the Department of Homeland Security (in this section referred to as the “Inspector General”) shall be under the authority, direction, and control of the Secretary of Homeland Security (in this section referred to as the “Secretary”) with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

“(A) intelligence or counterintelligence matters;

“(B) ongoing criminal investigations or proceedings;

“(C) undercover operations;

“(D) the identity of confidential sources, including protected witnesses;

“(E) other matters the disclosure of which would constitute a serious threat to the protection of any person or property authorized protection by—
“(i) section 3056 of title 18, United States Code;

“(ii) section 202 of title 3, United States Code; or

“(iii) any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

“(F) other matters the disclosure of which would constitute a serious threat to national security.

“(2) With respect to the information described under paragraph (1), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to—

“(A) prevent the disclosure of any information described under paragraph (1);

“(B) preserve the national security; or

“(C) prevent significant impairment to the national interests of the United States.

“(3) If the Secretary exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector
General in writing (appropriately classified, if necessary) within 7 calendar days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice, together with such comments concerning the exercise of such power as the Inspector General considers appropriate, to—

“(A) the President of the Senate;
“(B) the Speaker of the House of Representatives;
“(C) the Committee on Governmental Affairs of the Senate;
“(D) the Committee on Government Reform of the House of Representatives; and
“(E) other appropriate committees or subcommittees of Congress.

“(b)(1) In carrying out the duties and responsibilities under this Act, the Inspector General shall have oversight responsibility for the internal investigations and audits performed by any other office performing internal investigatory or audit functions in any subdivision of the Department of Homeland Security.

“(2) The head of each other office described under paragraph (1) shall promptly report to the Inspector Gen-
eral the significant activities being carried out by such office.

“(3) Notwithstanding paragraphs (1) and (2), the Inspector General may initiate, conduct, and supervise such audits and investigations in the Department (including in any subdivision referred to in paragraph (1)) as the Inspector General considers appropriate.

“(4) If the Inspector General initiates an audit or investigation under paragraph (3) concerning a subdivision referred to in paragraph (1), the Inspector General may provide the head of the other office performing internal investigatory or audit functions in the subdivision with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues such a notice, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General, and any other audit or investigation of such matter shall cease.

“(c) Any report required to be transmitted by the Secretary to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified under that subsection, to—

“(1) the President of the Senate;
“(2) the Speaker of the House of Representatives;
“(3) the Committee on Governmental Affairs of the Senate; and
“(4) the Committee on Government Reform of the House of Representatives.”.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—
The Inspector General Act of 1978 (5 U.S.C. appendix) is amended—

(1) in section 4(b), by striking “8F” each place it appears and inserting “8G”; and
(2) in section 8J (as redesignated by subsection (c)(1)), by striking “or 8H” and inserting “, 8H, or 8I”.

SEC. 107. CHIEF FINANCIAL OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Financial Officer, who shall be appointed or designated in the manner prescribed under section 901(a)(1) of title 31, United States Code.

(b) ESTABLISHMENT.—Section 901(b)(1) of title 31, United States Code, is amended by adding at the end the following:

“(Q) The Department of Homeland Security.”
SEC. 108. CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—There shall be in the Department a Chief Information Officer, who shall be designated in the manner prescribed under section 3506(a)(2)(A) of title 44, United States Code.

(b) RESPONSIBILITIES.—The Chief Information Officer shall assist the Secretary with Department-wide information resources management and perform those duties prescribed by law for chief information officers of agencies.

SEC. 109. GENERAL COUNSEL.

(a) IN GENERAL.—There shall be in the Department a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The General Counsel shall—

(1) serve as the chief legal officer of the Department;

(2) provide legal assistance to the Secretary concerning the programs and policies of the Department; and

(3) advise and assist the Secretary in carrying out the responsibilities under section 102(b).
SEC. 110. CIVIL RIGHTS OFFICER.

(a) IN GENERAL.—There shall be in the Department a Civil Rights Officer, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES.—The Civil Rights Officer shall be responsible for—

(1) ensuring compliance with all civil rights and related laws and regulations applicable to Department employees and participants in Department programs;

(2) coordinating administration of all civil rights and related laws and regulations within the Department for Department employees and participants in Department programs;

(3) assisting the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that civil rights considerations are appropriately incorporated and implemented in Department programs and activities;

(4) overseeing compliance with statutory and constitutional requirements related to the civil rights of individuals affected by the Department’s programs and activities; and

(5) notifying the Inspector General of any matter that, in the opinion of the Civil Rights Officer, warrants further investigation.
SEC. 111. PRIVACY OFFICER.

(a) IN GENERAL.—There shall be in the Department a Privacy Officer, who shall be appointed by the Secretary.

(b) RESPONSIBILITIES.—The Privacy Officer shall—

(1) oversee compliance with section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and all other applicable laws relating to the privacy of personal information;

(2) assist the Secretary, directorates, and offices with the development and implementation of policies and procedures that ensure that—

(A) privacy considerations and safeguards are appropriately incorporated and implemented in Department programs and activities; and

(B) any information received by the Department is used or disclosed in a manner that minimizes the risk of harm to individuals from the inappropriate disclosure or use of such materials;

(3) assist Department personnel with the preparation of privacy impact assessments when required by law or considered appropriate by the Secretary; and

(4) notify the Inspector General of any matter that, in the opinion of the Privacy Officer, warrants further investigation.
SEC. 112. CHIEF HUMAN CAPITAL OFFICER.

(a) In General.—The Secretary shall appoint or designate a Chief Human Capital Officer, who shall—

(1) advise and assist the Secretary and other officers of the Department in ensuring that the workforce of the Department has the necessary skills and training, and that the recruitment and retention policies of the Department allow the Department to attract and retain a highly qualified workforce, in accordance with all applicable laws and requirements, to enable the Department to achieve its missions;

(2) oversee the implementation of the laws, rules and regulations of the President and the Office of Personnel Management governing the civil service within the Department; and

(3) advise and assist the Secretary in planning and reporting under the Government Performance and Results Act of 1993 (including the amendments made by that Act), with respect to the human capital resources and needs of the Department for achieving the plans and goals of the Department.

(b) Functions.—The functions of the Chief Human Capital Officer shall include—

(1) setting the workforce development strategy of the Department;
(2) assessing workforce characteristics and future needs based on the mission and strategic plan of the Department;

(3) aligning the human resources policies and programs of the Department with organization mission, strategic goals, and performance outcomes;

(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

(5) identifying best practices and benchmarking studies;

(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth; and

(7) providing employee training and professional development.

**SEC. 113. EXECUTIVE SCHEDULE POSITIONS.**

(a) **Executive Schedule Level I Position.**—

Section 5312 of title 5, United States Code, is amended by adding at the end the following:

“Secretary of Homeland Security.”.

(b) **Executive Schedule Level II Position.**—

Section 5313 of title 5, United States Code, is amended by adding at the end the following:

“Deputy Secretary of Homeland Security.”.
(c) **EXECUTIVE SCHEDULE LEVEL III POSITION.**—

Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Under Secretary for Management, Department of Homeland Security.”.

(d) **EXECUTIVE SCHEDULE LEVEL IV POSITIONS.**—

Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Assistant Secretaries of Homeland Security (5).


“Chief Information Officer, Department of Homeland Security.

“General Counsel, Department of Homeland Security.”.

**Subtitle B—Establishment of Directorates and Offices**

**SEC. 131. DIRECTORATE OF BORDER AND TRANSPORTATION PROTECTION.**

(a) **ESTABLISHMENT.**—
1. **DIRECTORATE.**—There is established within the Department the Directorate of Border and Transportation Protection.

2. **UNDER SECRETARY.**—There shall be an Under Secretary for Border and Transportation, who shall be appointed by the President, by and with the advice and consent of the Senate.

3. **RESPONSIBILITIES.**—The Directorate of Border and Transportation Protection shall be responsible for the following:

   1. Securing the borders, territorial waters, ports, terminals, waterways and air, land (including rail), and sea transportation systems of the United States, including coordinating governmental activities at ports of entry.

   2. Receiving and providing relevant intelligence on threats of terrorism and other homeland threats.

   3. Administering, carrying out, and promoting other established missions of the entities transferred to the Directorate.

   4. Receiving, assessing, and distributing information collected in the course of its duties which relates to border and transportation security and threats to the United States.
(5) Using intelligence from the Directorate of Intelligence and other Federal intelligence organizations under section 131(b)(2) to establish inspection priorities to identify products, including agriculture and livestock, and other goods imported from suspect locations recognized by the intelligence community as having terrorist activities, unusual human health or agriculture disease outbreaks, or harboring terrorists.

(6) Performing such other duties assigned by the Secretary.

(c) Transfer of Authorities, Functions, Personnel, and Assets to the Department.—Except as provided under subsection (d), the authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The United States Customs Service, which shall be maintained as a distinct entity within the Department.

(2) The United States Coast Guard, which shall be maintained as a distinct entity within the Department.

(3) The Animal and Plant Health Inspection Service of the Department of Agriculture, that por-
tion of which administers laws relating to agricultural quarantine inspections at points of entry.

(4) The Transportation Security Administration of the Department of Transportation.

SEC. 132. DIRECTORATE OF INTELLIGENCE.

(a) Establishment.—

(1) Directorate.—

(A) In general.—There is established a Directorate of Intelligence which shall serve as a national-level focal point for the analysis of all information available to the United States Government for the purpose of preventing, deterring, protecting against, preparing for, and responding to threats of terrorism against the United States and other threats to homeland security.

(B) Support to Directorate.—The Directorate of Intelligence shall be supported by—

(i) the Federal Bureau of Investigation;

(ii) the intelligence community as defined under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a) including the Office of the Director of Central Intelligence, the National Intelligence
Council, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the Bureau of Intelligence and Research of the Department of State; and

(iii) other agencies or entities, including those within the Department, as determined by the Secretary.

(2) **Under Secretary.**—There shall be an Under Secretary for Intelligence who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) **Responsibilities.**—The Directorate of Intelligence shall be responsible for the following:

(1) Receiving and analyzing law enforcement information, intelligence, and other information in order to understand the nature and scope of threats to the homeland and to detect and identify threats of terrorism against the United States and other threats to homeland security.

(2) Ensuring timely and efficient access by the Directorate to—
(A) information from agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, private sector entities; and

(B) open source information.

(3) Working with the Director of Central Intelligence and the agencies described under subsection (a)(1)(B), to establish overall collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States and other threats to homeland security.

(4) Directing the agencies described under subsection (a)(1)(B), on behalf of the Secretary and subject to disapproval by the President, on a case-by-case basis, to provide additional information relating to threats of terrorism against the United States and other threats to homeland security.

(5) Disseminating information to the Directorate of Critical Infrastructure Protection, the agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, and private sector entities to assist in the deterrence, prevention, preemption, and
response to threats of terrorism against the United States and other threats to homeland security.

(6) Establishing and utilizing, in conjunction with the Chief Information Officer of the Department, and in conjunction with the appropriate officers at the agencies described under subsection (a)(1)(B), a secure communications and information technology infrastructure, including data mining and other advanced analytical tools, to permit the Directorate’s analysts to access, receive, and analyze law enforcement, intelligence, and other information in the possession of agencies, to the extent that such information may lawfully be obtained from State and local governments, local law enforcement and intelligence agencies, and private sector entities.

(7) Developing, in conjunction with the Chief Information Officer of the Department, and in conjunction with appropriate officers at the agencies described under subsection (a)(1)(B) appropriate software, hardware, and other information technology, and security and formatting protocols, to ensure that the Federal Government databases and information technology systems containing information relevant to terrorist threats, and other threats against the United States, are—
(A) compatible with the secure communications and information technology infrastructure referred to under paragraph (6); and

(B) comply with Federal laws concerning privacy and the prevention of unauthorized disclosure.

(8) Ensuring, in conjunction with the Director of Central Intelligence and the Attorney General, that all material received by the Department related to threats of terrorism against the United States and other threats to homeland security is protected against unauthorized disclosure and is utilized by the Department only in the course and for the purposes of fulfillment of official duties, and is transmitted, retained, handled, and disseminated consistent with—

(A) the authority of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures; or

(B) as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information, and the privacy interests of United States persons as defined under

(9) Referring, through the Secretary, to the appropriate law enforcement or intelligence agency, intelligence and analysis requiring further investigation or action.

(10) Providing training and other support as necessary to providers of information to the Department, or consumers of information from the Department, to allow such providers or consumers to identify and share intelligence information revealed in their ordinary duties or utilize information received from the Department.

(11) Reviewing, analyzing, and making recommendations through the Secretary for improvements in the policies and procedures governing the sharing of law enforcement, intelligence, and other information relating to threats of terrorism against the United States and other threats to homeland security within the Federal government and between the Federal government and State and local governments, local law enforcement and intelligence agencies, and private sector entities.

(12) Assisting and supporting the Secretary in conducting threat and vulnerability assessments and
risk analyses in coordination with other appropriate entities, including the Office of Risk Analysis and Assessment in the Directorate of Science and Technology.

(13) Performing other related and appropriate duties as assigned by the Secretary.

(c) ACCESS TO INFORMATION.—

(1) IN GENERAL.—The Secretary shall have access to, and agencies described under subsection (a)(1)(B) shall provide, all law enforcement, intelligence, and other information in the possession of agencies described under subsection (a)(1)(B) relating to threats of terrorism against the United States and other threats to homeland security, including all reports, assessments, analytical information, and unevaluated data the Secretary determines necessary in order to fulfill the responsibilities of the Secretary, except when the President determines otherwise in writing. If there is uncertainty to an agency possessing certain information as to the relevance of that information, that agency shall provide that information to the Secretary who shall determine the relevance of the information, except when the President determines otherwise in writing.
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(2) OBTAINING INFORMATION.—The Secretary may obtain information described under paragraph (1) by directing agencies described under subsection (a)(1)(B) to provide such information in such form and at such intervals as the Secretary determines necessary to fulfill the responsibilities of the Secretary under this division. Agencies shall provide the Secretary with information through secure means, including direct access to specific databases, and through secure communications and information technology infrastructure, consistent with the protection of such information from unauthorized disclosure.

(3) AGREEMENTS.—To facilitate access to information under this subsection, the Secretary may enter into cooperative arrangements or memoranda of understanding with agencies described under subsection (a)(1)(B), State and local governments, local law enforcement and intelligence agencies, and private sector entities, as the Secretary determines necessary and appropriate. Failure to reach an agreement under this paragraph with the Secretary shall not constitute grounds for an agency to withhold from the Secretary information that the Secretary
determines necessary for the fulfillment of the re-
sponsibilities of the Secretary.

(d) AUTHORIZATION TO SHARE LAW ENFORCEMENT
INFORMATION.—The Secretary shall be deemed to be a
Federal law enforcement, intelligence, protective, national
defense, or national security official for purposes of infor-
mation sharing provisions of—

(1) section 203(d) of the USA PATRIOT Act
of 2001 (Public Law 107–56);

(2) section 2517(6) of title 18, United States
Code; and

(3) rule 6(e)(3)(C) of the Federal Rules of
Criminal Procedure.

(e) ADDITIONAL RESPONSIBILITIES.—The Under
Secretary for Intelligence shall also be responsible for—

(1) developing intelligence about the means ter-
rorists are likely to use to exploit vulnerabilities in
the homeland security infrastructure;

(2) developing and conducting experiments,
tests, and inspections to test weaknesses in home-
land defenses;

(3) developing methods to conduct counter-sur-
veillance of critical infrastructure and potential tar-
gets for terrorism against the United States;
(4) conducting risk assessments to determine
the risk posed by specific kinds of terrorist attacks,
the probability of successful attacks, and the feasi-


(n) working with the Directorate of Critical In-
frastucture Protection, other offices and agencies in
the Department, other agencies, State and local gov-
ernments, local law enforcement and intelligence
agencies, and private sector entities, to address
vulnerabilities.

(f) MANAGEMENT AND STAFFING.—

(1) IN GENERAL.—The Directorate of Intel-
ligence shall be staffed, in part, by analysts as re-
quested by the Secretary and assigned by the agen-
cies described under subsection (a)(1)(B). The ana-
lysts shall be assigned by reimbursable detail for pe-
riods as determined necessary by the Secretary in
conjunction with the head of the assigning agency.

(2) EMPLOYEES ASSIGNED WITHIN THE DE-
PARTMENT.—The Secretary may assign employees
of the Department by reimbursable detail to the Di-
rectorate.

(3) SERVICE AS FACTOR FOR SELECTION.—The
President, or the designee of the President, shall
prescribe regulations to provide that service de-
scribed under paragraph (1) or (2), or service by employees within the Directorate shall be considered a positive factor for selection to positions of greater authority within all supporting agencies.

(4) PERSONNEL SECURITY STANDARDS.—The employment of personnel in the Directorate shall be in accordance with such personnel security standards for access to classified information and intelligence as the Secretary, in conjunction with the Director of Central Intelligence, shall establish for this subsection.

(5) PERFORMANCE EVALUATION.—The Secretary shall evaluate the performance of all personnel detailed to the Directorate, or delegate such responsibility to the Under Secretary for Intelligence.

(g) INTELLIGENCE COMMUNITY.—Those portions of the Directorate of Intelligence that concern information analysis under subsection (b)(1), and the intelligence-related components of agencies transferred by this division to the Department, including the United States Coast Guard, shall be—

(1) considered to be part of the United States intelligence community within the meaning of section
3 of the National Security Act of 1947 (50 U.S.C. 401a); and

(2) for budgetary purposes, within the National Foreign Intelligence Program.

SEC. 133. DIRECTORATE OF CRITICAL INFRASTRUCTURE PROTECTION.

(a) Establishment.—

(1) Directorate.—There is established within the Department the Directorate of Critical Infrastructure Protection.

(2) Under Secretary.—There shall be an Under Secretary for Critical Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Responsibilities.—The Directorate of Critical Infrastructure Protection shall be responsible for the following:

(1) Receiving relevant intelligence from the Directorate of Intelligence, law enforcement information, and other information in order to comprehensively assess the vulnerabilities of the key resources and critical infrastructures in the United States.

(2) Integrating relevant information, intelligence analysis, and vulnerability assessments (whether such information, analyses, or assessments
are provided by the Department or others) to identify priorities and support protective measures by the Department, by other agencies, by State and local government personnel, agencies, and authorities, by the private sector, and by other entities, to protect the key resources and critical infrastructures in the United States.

(3) As part of the Strategy, developing a comprehensive national plan for securing the key resources and critical infrastructure in the United States.

(4) Establishing specialized research and analysis units for the purpose of processing intelligence to identify vulnerabilities and protective measures in—

(A) public health;

(B) food and water storage, production and distribution;

(C) commerce systems, including banking and finance;

(D) energy systems, including electric power and oil and gas production and storage;

(E) transportation systems, including pipelines;
(F) information and communication systems;

(G) continuity of government services; and

(H) other systems or facilities the destruction or disruption of which could cause substantial harm to health, safety, property, or the environment.

(5) Enhancing the sharing of information regarding cyber security and physical security of the United States, developing appropriate security standards, tracking vulnerabilities, proposing improved risk management policies, and delineating the roles of various Government agencies in preventing, defending, and recovering from attacks.

(6) Acting as the Critical Information Technology, Assurance, and Security Officer of the Department and assuming the responsibilities carried out by the Critical Infrastructure Assurance Office and the National Infrastructure Protection Center before the effective date of this division.

(7) Coordinating the activities of the Information Sharing and Analysis Centers to share information, between the public and private sectors, on threats, vulnerabilities, individual incidents, and pri-
vacy issues regarding United States homeland security.

(8) Coordinating with the Federal Communications Commission in helping to establish cyber security policy, standards, and enforcement mechanisms and working closely with the Federal Communications Commission on cyber security issues with respect to international bodies.

(9) Establishing the necessary organizational structure within the Directorate to provide leadership and focus on both cyber security and physical security, and ensuring the maintenance of a nucleus of cyber security and physical security experts within the United States Government.

(10) Performing such other duties as assigned by the Secretary.

(c) Transfer of Authorities, Functions, Personnel, and Assets to the Department.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Critical Infrastructure Assurance Office of the Department of Commerce.

(2) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other
than the Computer Investigations and Operations Section).

(3) The National Communications System of the Department of Defense.

(4) The Computer Security Division of the National Institute of Standards and Technology of the Department of Commerce.

(5) The National Infrastructure Simulation and Analysis Center of the Department of Energy.


SEC. 134. DIRECTORATE OF EMERGENCY PREPAREDNESS AND RESPONSE.

(a) Establishment.—

(1) DIRECTORATE.—There is established within the Department the Directorate of Emergency Preparedness and Response.

(2) UNDER SECRETARY.—There shall be an Under Secretary for Emergency Preparedness and Response, who shall be appointed by the President, by and with the advice and consent of the Senate.
(b) Responsibilities.—The Directorate of Emergency Preparedness and Response shall be responsible for the following:

(1) Carrying out all emergency preparedness and response activities carried out by the Federal Emergency Management Agency before the effective date of this division.

(2) Assuming the responsibilities carried out by the National Domestic Preparedness Office before the effective date of this division.

(3) Organizing and training local entities to respond to emergencies and providing State and local authorities with equipment for detection, protection, and decontamination in an emergency involving weapons of mass destruction.

(4) Overseeing Federal, State, and local emergency preparedness training and exercise programs in keeping with intelligence estimates and providing a single staff for Federal assistance for any emergency (including emergencies caused by flood, earthquake, hurricane, disease, or terrorist attack).

(5) Providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and inter-
national entities that have established partnerships
with the Federal Law Enforcement Training Center.

(6) Creating a National Crisis Action Center to
act as the focal point for—

(A) monitoring emergencies;

(B) notifying affected agencies and State
and local governments; and

(C) coordinating Federal support for State
and local governments and the private sector in
crises.

(7) Coordinating and integrating operational
activities of the Department of Defense, the Na-
tional Guard, and other agencies into a Federal re-
sponse plan.

(8) Coordinating activities among private sector
entities, including entities within the medical com-
munity, with respect to recovery, consequence man-
agement, and planning for continuity of services.

(9) Developing and managing a single response
system for national incidents in coordination with—

(A) the Department of Justice;

(B) the Federal Bureau of Investigation;

(C) the Department of Health and Human
Services;
(D) the Centers for Disease Control and Prevention; and

(E) other appropriate agencies.

(10) Coordinating with other agencies necessary to carry out the functions of the Office of Emergency Preparedness.

(11) Collaborating with, and transferring funds to, the Centers for Disease Control and Prevention or other agencies for administration of the Strategic National Stockpile transferred under subsection (c)(5).

(12) Consulting with the Under Secretary for Science and Technology and the Director of the Centers for Disease Control and Prevention in establishing and updating the list of potential threat agents or toxins relating to the functions of the select agent registration program transferred under subsection (c)(6).

(13) Developing a plan to address the interface of medical informatics and the medical response to terrorism that address—

(A) standards for interoperability;

(B) real-time data collection;

(C) ease of use for health care providers;

(D) epidemiological surveillance;
(E) integration of telemedicine networks and standards;
(F) patient confidentiality; and
(G) other topics pertinent to the mission of the Department.

(14) Performing such other duties as assigned by the Secretary.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.—The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department, which shall be maintained as a distinct entity within the Department.


(3) The Office of Domestic Preparedness of the Department of Justice.

(4) The Office of Emergency Preparedness within the Office of the Assistant Secretary for Public Health Emergency Preparedness of the Department of Health and Human Services, including—
(A) the Noble Training Center;

(B) the Metropolitan Medical Response System;

(C) the National Disaster Medical System;

(D) the Disaster Medical Assistance Teams and Disaster Mortuary Operational Response Teams;

(E) the special events response; and

(F) the citizen preparedness programs.

(5) The Strategic National Stockpile of the Department of Health and Human Services including all functions and assets under sections 121 and 127 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(6)(A) The functions of the Select Agent Registration Program of the Department of Health and Human Services and the United States Department of Agriculture, including all functions of the Secretary of Health and Human Services and the Secretary of Agriculture under sections 201 through 221 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).
(7) The Federal Law Enforcement Training Center of the Department of the Treasury.

(c) APPOINTMENT AS UNDER SECRETARY AND DIRECTOR.—

(1) In general.—An individual may serve as both the Under Secretary for Emergency Preparedness and Response and the Director of the Federal Emergency Management Agency if appointed by the President, by and with the advice and consent of the Senate, to each office.

(2) Pay.—Nothing in paragraph (1) shall be construed to authorize an individual appointed to both positions to receive pay at a rate of pay in excess of the rate of pay payable for the position to which the higher rate of pay applies.

(d) Report.—No later than 1 year after the date of enactment of this Act, the Under Secretary for Emergency Preparedness and Response shall submit a report to Congress on the status of a national medical informatics system, and the capacity of that system to meet the goals under subsection (b)(13) in responding to a terrorist attack.

SEC. 135. DIRECTORATE OF SCIENCE AND TECHNOLOGY.

(a) Purpose.—The purpose of this section is to establish a Directorate of Science and Technology that will
support the mission of the Department and the directorates of the Department by—

(1) establishing, funding, managing, and supporting research, development, demonstration, testing, and evaluation activities to meet national homeland security needs and objectives;

(2) setting national research and development goals and priorities pursuant to the mission of the Department, and developing strategies and policies in furtherance of such goals and priorities;

(3) coordinating and collaborating with other Federal departments and agencies, and State, local, academic, and private sector entities, to advance the research and development agenda of the Department;

(4) advising the Secretary on all scientific and technical matters relevant to homeland security; and

(5) facilitating the transfer and deployment of technologies that will serve to enhance homeland security goals.

(b) DEFINITIONS.—In this section:

(1) COUNCIL.—The term “Council” means the Homeland Security Science and Technology Council established under this section.
(2) **FUND.**—The term “Fund” means the Acceleration Fund for Research and Development of Homeland Security Technologies established under this section.

(3) **HOMELAND SECURITY RESEARCH AND DEVELOPMENT.**—The term “homeland security research and development” means research and development applicable to the detection of, prevention of, protection against, response to, and recovery from homeland security threats, particularly acts of terrorism.

(4) **OSTP.**—The term “OSTP” means the Office of Science and Technology Policy.

(5) **SARPA.**—The term “SARPA” means the Security Advanced Research Projects Agency established under this section.

(6) **TECHNOLOGY ROADMAP.**—The term “technology roadmap” means a plan or framework in which goals, priorities, and milestones for desired future technological capabilities and functions are established, and research and development alternatives or means for achieving those goals, priorities, and milestones are identified and analyzed in order to guide decisions on resource allocation and investments.
(7) **UNDER SECRETARY.**—The term “Under Secretary” means the Under Secretary for Science and Technology.

(c) **DIRECTORATE OF SCIENCE AND TECHNOLOGY.**—

(1) **ESTABLISHMENT.**—There is established a Directorate of Science and Technology within the Department.

(2) **UNDER SECRETARY.**—There shall be an Under Secretary for Science and Technology, who shall be appointed by the President, by and with the advice and consent of the Senate. The principal responsibility of the Under Secretary shall be to effectively and efficiently carry out the purposes of the Directorate of Science and Technology under subsection (a). In addition, the Under Secretary shall undertake the following activities in furtherance of such purposes:

(A) Coordinating with the OSTP, the National Office for Combating Terrorism, and other appropriate entities in developing and executing the research and development agenda of the Department.

(B) Developing a technology roadmap that shall be updated biannually for achieving tech-
nological goals relevant to homeland security needs.

(C) Instituting mechanisms to promote, facilitate, and expedite the transfer and deployment of technologies relevant to homeland security needs, including dual-use capabilities.

(D) Assisting the Secretary and the Director of OSTP to ensure that science and technology priorities are clearly reflected and considered in the Strategy developed under title III.

(E) Establishing mechanisms for the sharing and dissemination of key homeland security research and technology developments and opportunities with appropriate Federal, State, local, and private sector entities.

(F) Establishing, in coordination with the Under Secretary for Critical Infrastructure Protection and the Under Secretary for Emergency Preparedness and Response and relevant programs under their direction, a National Emergency Technology Guard, comprised of teams of volunteers with expertise in relevant areas of science and technology, to assist local communities in responding to and recovering
from emergency contingencies requiring specialized scientific and technical capabilities. In carrying out this responsibility, the Under Secretary shall establish and manage a database of National Emergency Technology Guard volunteers, and prescribe procedures for organizing, certifying, mobilizing, and deploying National Emergency Technology Guard teams.

(G) Chairing the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(H) Assisting the Secretary in developing the Strategy for Countermeasure Research described under subsection (k).

(I) Assisting the Secretary and acting on behalf of the Secretary in contracting with, commissioning, or establishing federally funded research and development centers determined useful and appropriate by the Secretary for the purpose of providing the Department with independent technical analysis and support.

(J) Assisting the Secretary and acting on behalf of the Secretary in entering into joint sponsorship agreements with the Department of
Energy regarding the use of the national laboratories or sites.

(K) Other appropriate activities as directed by the Secretary.

(3) RESEARCH AND DEVELOPMENT-RELATED AUTHORITIES.—The Secretary shall exercise the following authorities relating to the research and development activities of the Directorate of Science and Technology:

(A) With respect to research and development expenditures under this section, the authority (subject to the same limitations and conditions) as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), for a period of 5 years beginning on the date of enactment of this Act. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered under the authority of this paragraph. The annual report required under subsection (h) of such section, as applied to the Secretary by this subparagraph, shall—

(i) be submitted to the President of the Senate, the Speaker of the House of
Representatives, the Committee on Governmental Affairs of the Senate Committee, and the Committee on Government Reform of the House of Representatives; and

(ii) report on other transactions entered into under subparagraph (B).

(B) Authority to carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160), for a period of 5 years beginning on the date of enactment of this Act. In applying the authorities of such section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) of that section. Competitive, merit-based selection procedures shall be used for the selection of projects and participants for transactions entered under the authority of this paragraph.

(C) In hiring personnel to assist in research and development activities within the Di-
rectorate of Science and Technology, the au-

thority to exercise the personnel hiring and

management authorities described in section

1101 of the Strom Thurmond National Defense

Authorization Act for Fiscal Year 1999 (5

U.S.C. 3104 note; Public Law 105–261), with

the stipulation that the Secretary shall exercise

such authority for a period of 7 years com-

mencing on the date of enactment of this Act,

that a maximum of 100 persons may be hired

under such authority, and that the term of ap-

pointment for employees under subsection

(c)(1) of that section may not exceed 5 years

before the granting of any extensions under

subsection (c)(2) of that section.

(D) With respect to such research and de-

velopment responsibilities under this title (ex-

ccept as provided in subparagraph (E)) as the

Secretary may elect to carry out through agen-

cies other than the Department (under agree-

ments with their respective heads), the Sec-

retary may transfer funds to such heads.

(E) The Secretary shall carry out the

human health-related biological, biomedical, and

infectious disease research and development (in-
including vaccine research and development) re-
sponsibilities of the Secretary to the extent such
responsibilities are supported by funding appro-
priated to the National Institutes of Health for
bioterrorism research and related facilities de-
velopment, through the National Institutes of
Health. This research shall be conducted under
joint strategic research plan and prioritization
agreements between the Secretary and the Sec-
retary of the Department of Health and
Human Services, except the Secretary shall re-
tain the authority to establish general research
priorities in these agreements. All research pro-
grams established under this paragraph shall be
managed and awarded by the Director of the
National Institutes of Health consistent with
these agreements. The Secretary may transfer
funds to the Department of Health and Human
Services in connection with such agreements.

(d) ACCELERATION FUND.—

(1) ESTABLISHMENT.—There is established an
Acceleration Fund to support research and develop-
ment of technologies relevant to homeland security.

(2) FUNCTION.—The Fund shall be used to
stimulate and support research and development
projects selected by SARPA under subsection (f),
and to facilitate the rapid transfer of research and
technology derived from such projects.

(3) RECIPIENTS.—Fund monies may be made
available through grants, contracts, cooperative
agreements, and other transactions under subsection
(e)(3) (A) and (B) to—

(A) public sector entities, including Fed-
eral, State, or local agencies;

(B) private sector entities, including cor-
porations, partnerships, or individuals; and

(C) nongovernmental organizations, includ-
ing universities and other academic or research
institutions.

(4) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated
$200,000,000 for the Fund for fiscal year 2003, and
such sums as are necessary in subsequent fiscal
years.

(e) SCIENCE AND TECHNOLOGY COUNCIL.—

(1) ESTABLISHMENT.—There is established the
Homeland Security Science and Technology Council
within the Directorate of Science and Technology.
The Under Secretary shall chair the Council and
have the authority to convene meetings. At the dis-
cretion of the Under Secretary and the Director of OSTP, the Council may be constituted as a sub-committee of the National Science and Technology Council.

(2) COMPOSITION.—The Council shall be composed of the following:

(A) Senior research and development officials representing agencies engaged in research and development relevant to homeland security and combating terrorism needs. Each representative shall be appointed by the head of the representative’s respective agency with the advice and consent of the Under Secretary.

(B) The Director of SARPA and other appropriate officials within the Directorate of Science and Technology.

(C) The Director of the OSTP.

(3) RESPONSIBILITIES.—The Council shall—

(A) provide the Under Secretary with recommendations on priorities and strategies, including those related to funding and portfolio management, for homeland security research and development;

(B) facilitate effective coordination and communication among agencies, other entities
of the Federal Government, and entities in the private sector and academia, with respect to the conduct of research and development related to homeland security;

(C) recommend specific technology areas for which the Fund and other research and development resources shall be used to rapidly transition homeland security research and development into deployed technology and reduce identified homeland security vulnerabilities;

(D) assist and advise the Under Secretary in developing the biannual technology roadmap referred to under subsection (c)(2)(C); and

(E) perform other appropriate activities as directed by the Under Secretary.

(4) ADVISORY PANEL.—The Under Secretary may establish an advisory panel consisting of representatives from industry, academia, and other non-Federal entities to advise and support the Council.

(5) WORKING GROUPS.—At the discretion of the Under Secretary, the Council may establish working groups in specific homeland security areas consisting of individuals with relevant expertise in each articulated area. Working groups established for bioterrorism and public health-related research
shall be fully coordinated with the Working Group established under section 108 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188).

(f) **SECURITY ADVANCED RESEARCH PROJECTS AGENCY.**—

(1) **ESTABLISHMENT.**—There is established the Security Advanced Research Projects Agency within the Directorate of Science and Technology.

(2) **RESPONSIBILITIES.**—SARPA shall—

(A) undertake and stimulate basic and applied research and development, leverage existing research and development, and accelerate the transition and deployment of technologies that will serve to enhance homeland defense;

(B) identify, fund, develop, and transition high-risk, high-payoff homeland security research and development opportunities that—

(i) may lie outside the purview or capabilities of the existing Federal agencies; and

(ii) emphasize revolutionary rather than evolutionary or incremental advances; and
(C) provide selected projects with single or multiyear funding, and require such projects to provide interim progress reports, no less often than annually;

(D) administer the Acceleration Fund to carry out the purposes of this paragraph;

(E) advise the Secretary and Under Secretary on funding priorities under subsection (e)(3)(D); and

(F) perform other appropriate activities as directed by the Under Secretary.

(g) OFFICE OF RISK ANALYSIS AND ASSESSMENT.—

(1) ESTABLISHMENT.—There is established an Office of Risk Analysis and Assessment within the Directorate of Science and Technology.

(2) FUNCTIONS.—The Office of Risk Analysis and Assessment shall—

(A) assist the Under Secretary in conducting or commissioning studies related to threat assessment and risk analysis, including—

(i) analysis of responses to terrorist incidents;

(ii) scenario-based threat assessment exercises and simulations;
(iii) red teaming to predict and discern the potential methods, means, and targets of terrorists; and

(iv) economic and policy analyses of alternative counterterrorism policies;

(B) coordinate with other entities engaged in threat assessment and risk analysis, including those within the Department, such as the Directorate for Intelligence;

(C) monitor and evaluate novel scientific findings in order to assist the Under Secretary in developing and reassessing the research and development priorities of the Department;

(D) design metrics to evaluate the effectiveness of homeland security programs;

(E) support the Office of Emergency Preparedness in designing field tests and exercises; and

(F) perform other appropriate activities as directed by the Under Secretary.

(h) Office for Technology Evaluation and Transition.—

(1) Establishment.—There is established an Office for Technology Evaluation and Transition within the Directorate of Science and Technology.
(2) FUNCTION.—The Office for Technology Evaluation and Transition shall, with respect to technologies relevant to homeland security needs—

(A) serve as the principal, national point-of-contact and clearinghouse for receiving and processing proposals or inquiries regarding such technologies;

(B) identify and evaluate promising new technologies;

(C) assist in transitioning such technologies into deployable, fielded systems;

(D) consult with and advise agencies regarding the development, acquisition, and deployment of such technologies;

(E) coordinate with SARPA to accelerate the transition of technologies developed by SARPA and ensure transition paths for such technologies; and

(F) perform other appropriate activities as directed by the UnderSecretary.

(3) TECHNICAL SUPPORT WORKING GROUP.— The functions described under this subsection may be carried out through, in coordination with, or through an entity established by the Secretary and modeled after, the Technical Support Working
Group (organized under the April, 1982, National Security Decision Directive Numbered 30) that provides an interagency forum to coordinate research and development of technologies for combating terrorism.

(i) Office of Laboratory Research.—

(1) Establishment.—There is established an Office of Laboratory Research within the Directorate of Science and Technology.

(2) Research and development functions transferred.—There shall be transferred to the Department, to be administered by the Under Secretary, the functions, personnel, assets, and liabilities of the following programs and activities:

(A) Within the Department of Energy (but not including programs and activities relating to the strategic nuclear defense posture of the United States) the following:

(i) The chemical and biological national security and related programs and activities supporting domestic response of the nonproliferation and verification research and development program.

(ii) The nuclear smuggling programs and activities, and other programs and ac-
ties directly related to homeland security, within the proliferation detection program of the nonproliferation and verification research and development program, except that the programs and activities described in this clause may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(iii) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(iv) The Environmental Measurements Laboratory.

(B) Within the Department of Defense, the National Bio-weapons Defense Analysis Center established under section 161.

(3) RESPONSIBILITIES.—The Office of Laboratory Research shall—

(A) supervise activities of the entities transferred under this subsection;
(B) administer the disbursement and undertake oversight of research and development funds transferred from the Department to other agencies outside of the Department, including funds transferred to the Department of Health and Human Services consistent with subsection (c)(3)(E);

(C) establish and direct new research and development facilities as the Secretary determines appropriate;

(D) include a science advisor to the Under Secretary on research priorities related to biological and chemical weapons, with supporting scientific staff who shall advise on and support research priorities with respect to—

(i) research on countermeasures for biological weapons, including research on the development of drugs, devices, and biologies; and

(ii) research on biological and chemical threat agents; and

(E) other appropriate activities as directed by the Under Secretary.

(j) OFFICE FOR NATIONAL LABORATORIES.—
(1) **Establishment.**—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(2) **Joint Sponsorship Arrangements.**—

(A) **National Laboratories.**—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work on behalf of the Department.

(B) **Department of Energy Site.**—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(C) **Primary Sponsor.**—The Department of Energy shall be the primary sponsor under
a multiple agency sponsorship arrangement entered into under subparagraph (A) or (B).

(D) CONDITIONS.—A joint sponsorship arrangement under this subsection shall—

(i) provide for the direct funding and management by the Department of the work being carried out on behalf of the Department; and

(ii) include procedures for addressing the coordination of resources and tasks to minimize conflicts between work undertaken on behalf of either Department.

(E) LEAD AGENT AND FEDERAL ACQUISITION REGULATION.—

(i) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship agreement between the Department and a Department of Energy national laboratory or site for work on homeland security.

(ii) COMPLIANCE WITH FEDERAL ACQUISITION REGULATION.—Any work performed by a national laboratory or site under this section shall comply with the
policy on the use of federally funded re-
search and development centers under sec-
tion 35.017 of the Federal Acquisition
Regulation.

(F) FUNDING.—The Department shall
provide funds for work at the Department of
Energy national laboratories or sites, as the
case may be, under this section under the same
terms and conditions as apply to the primary
sponsor of such national laboratory under sec-
tion 303(b)(1)(C) of the Federal Property and
Administrative Services Act of 1949 (41 U.S.C.
253 (b)(1)(C)) or of such site to the extent
such section applies to such site as a federally
funded research and development center by rea-
son of subparagraph (B).

(3) OTHER ARRANGEMENTS.—The Office for
National Laboratories may enter into other arrange-
ments with Department of Energy national labora-
tories to carry out work to support the missions of
the Department under applicable law, except that
the Department of Energy may not charge or apply
administrative fees for work on behalf of the Depart-
ment.
(4) Technology Transfer.—The Office for National Laboratories may exercise the authorities in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) to permit the Director of a Department of Energy national laboratory to enter into cooperative research and development agreements, or to negotiate licensing agreements, pertaining to work supported by the Department at the Department of Energy national laboratory.

(5) Assistance in Establishing Department.—At the request of the Under Secretary, the Department of Energy shall provide for the temporary appointment or assignment of employees of Department of Energy national laboratories or sites to the Department for purposes of assisting in the establishment or organization of the technical programs of the Department through an agreement that includes provisions for minimizing conflicts between work assignments of such personnel.

(k) Strategy for Countermeasure Research.—

(1) In General.—The Secretary, acting through the Under Secretary for Science and Technology, shall develop a comprehensive, long-term strategy and plan for engaging non-Federal entities,
particularly including private, for-profit entities, in
the research, development, and production of home-
land security countermeasures for biological, chem-
ical, and radiological weapons.

(2) Timeframe.—The strategy and plan under
this subsection, together with recommendations for
the enactment of supporting or enabling legislation,
shall be submitted to the Congress within 270 days
after the date of enactment of this Act.

(3) Coordination.—In developing the strategy
and plan under this subsection, the Secretary shall
consult with—

(A) other agencies with expertise in re-
search, development, and production of counter-
measures;

(B) private, for-profit entities, and entre-
preneurs with appropriate expertise and tech-
ology regarding countermeasures;

(C) investors that fund such entities;

(D) nonprofit research universities and in-
stitutions;

(E) public health and other interested pri-
vate sector and government entities; and

(F) governments allied with the United
States in the war on terrorism.
(4) PURPOSE.—The strategy and plan under this subsection shall evaluate proposals to assure that—

(A) research on countermeasures by non-Federal entities leads to the expeditious development and production of countermeasures that may be procured and deployed in the homeland security interests of the United States;

(B) capital is available to fund the expenses associated with such research, development, and production, including Government grants and contracts and appropriate capital formation tax incentives that apply to non-Federal entities with and without tax liability;

(C) the terms for procurement of such countermeasures are defined in advance so that such entities may accurately and reliably assess the potential countermeasures market and the potential rate of return;

(D) appropriate intellectual property, risk protection, and Government approval standards are applicable to such countermeasures;

(E) Government-funded research is conducted and prioritized so that such research complements, and does not unnecessarily dupli-
cate, research by non-Federal entities and that such Government-funded research is made available, transferred, and licensed on commercially reasonable terms to such entities for development; and

(F) universities and research institutions play a vital role as partners in research and development and technology transfer, with appropriate progress benchmarks, with such for-profit entities.

(5) REPORTING.—The Secretary shall report periodically to the Congress on the status of non-Federal entity countermeasure research, development and production and submit additional recommendations for legislation as needed.

(l) CLASSIFICATION OF RESEARCH.—

(1) IN GENERAL.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(2) CLASSIFICATION AND REVIEW.—The Under Secretary shall—

(A)(i) decide whether classification is appropriate before the award of a research grant, contract, cooperative agreement, or other transaction by the Department; and
(ii) if the decision under clause (i) is one of classification, control the research results through standard classification procedures; and

(B) periodically review all classified research grants, contracts, cooperative agreements, or other transactions issued by the Department to determine whether classification is still necessary.

(3) Restrictions.—No restrictions shall be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided under applicable provisions of law.

(m) Office of Science and Technology Policy.—The National Science and Technology Policy, Organization, and Priorities Act is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting “homeland security,” after “national security,”; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting “the National Office for Combating Terrorism,” after “National Security Council,”.
SEC. 136. DIRECTORATE OF IMMIGRATION AFFAIRS.

The Directorate of Immigration Affairs shall be established and shall carry out all functions of that Directorate in accordance with subdivision B of this Act.

SEC. 137. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) Establishment.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) Responsibilities.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.
SEC. 138. UNITED STATES SECRET SERVICE.

There are transferred to the Department the authorities, functions, personnel, and assets of the United States Secret Service, which shall be maintained as a distinct entity within the Department.

SEC. 139. BORDER COORDINATION WORKING GROUP.

(a) Definitions.—In this section:

(1) Border security functions.—The term “border security functions” means the securing of the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States.

(2) Relevant agencies.—The term “relevant agencies” means any department or agency of the United States that the President determines to be relevant to performing border security functions.

(b) Establishment.—The Secretary shall establish a border security working group (in this section referred to as the “Working Group”), composed of the Secretary or the designee of the Secretary, the Under Secretary for Border and Transportation Security, and the Under Secretary for Immigration Affairs.

(c) Functions.—The Working Group shall meet at least quarterly and shall—

(1) with respect to border security functions, develop coordinated budget requests, allocations of
appropriations, staffing requirements, communication, use of equipment, transportation, facilities, and other infrastructure;

(2) coordinate joint and cross-training programs for personnel performing border security functions;

(3) monitor, evaluate and make improvements in the coverage and geographic distribution of border security programs and personnel;

(4) develop and implement policies and technologies to ensure the speedy, orderly, and efficient flow of lawful traffic, travel and commerce, and enhanced scrutiny for high-risk traffic, travel and commerce; and

(5) identify systemic problems in coordination encountered by border security agencies and programs and propose administrative, regulatory, or statutory changes to mitigate such problems.

(c) RELEVANT AGENCIES.—The Secretary shall consult representatives of relevant agencies with respect to deliberations under subsection (b)(1), and may include representatives of such agencies in Working Group deliberations, as appropriate.
SEC. 140. EXECUTIVE SCHEDULE POSITIONS.

Section 5312 of title 5, United States Code, is amended by adding at the end the following:

“Under Secretary for Border and Transportation, Department of Homeland Security.


“Under Secretary for Immigration, Department of Homeland Security.

“Under Secretary for Intelligence, Department of Homeland Security.

“Under Secretary for Science and Technology, Department of Homeland Security.”.

Subtitle C—National Emergency Preparedness Enhancement

SEC. 151. SHORT TITLE.

This subtitle may be cited as the “National Emergency Preparedness Enhancement Act of 2002”.

SEC. 152. PREPAREDNESS INFORMATION AND EDUCATION.

(a) ESTABLISHMENT OF CLEARINGHOUSE.—There is established in the Department a National Clearinghouse on Emergency Preparedness (referred to in this section as the “Clearinghouse”). The Clearinghouse shall be headed by a Director.
(b) Consultation.—The Clearinghouse shall consult with such heads of Federal agencies, such task forces appointed by Federal officers or employees, and such representatives of the private sector, as appropriate, to collect information on emergency preparedness, including information relevant to the Strategy.

(c) Duties.—

(1) Dissemination of Information.—The Clearinghouse shall ensure efficient dissemination of accurate emergency preparedness information.

(2) Center.—The Clearinghouse shall establish a one-stop center for emergency preparedness information, which shall include a website, with links to other relevant Federal websites, a telephone number, and staff, through which information shall be made available on—

(A) ways in which States, political subdivisions, and private entities can access Federal grants;

(B) emergency preparedness education and awareness tools that businesses, schools, and the general public can use; and

(C) other information as appropriate.

(3) Public Awareness Campaign.—The Clearinghouse shall develop a public awareness cam-
campaign. The campaign shall be ongoing, and shall include an annual theme to be implemented during the National Emergency Preparedness Week established under section 154. The Clearinghouse shall work with heads of Federal agencies to coordinate public service announcements and other information-sharing tools utilizing a wide range of media.

(4) BEST PRACTICES INFORMATION.—The Clearinghouse shall compile and disseminate information on best practices for emergency preparedness identified by the Secretary and the heads of other Federal agencies.

SEC. 153. PILOT PROGRAM.

(a) EMERGENCY PREPAREDNESS ENHANCEMENT PILOT PROGRAM.—The Department shall award grants to private entities to pay for the Federal share of the cost of improving emergency preparedness and educating employees and other individuals using the entities’ facilities about emergency preparedness.

(b) USE OF FUNDS.—An entity that receives a grant under this subsection may use the funds made available through the grant to—

(1) develop evacuation plans and drills;
(2) plan additional or improved security measures, with an emphasis on innovative technologies or practices;

(3) deploy innovative emergency preparedness technologies; or

(4) educate employees and customers about the development and planning activities described in paragraphs (1) and (2) in innovative ways.

(e) FEDERAL SHARE.—The Federal share of the cost described in subsection (a) shall be 50 percent, up to a maximum of $250,000 per grant recipient.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 2003 through 2005 to carry out this section.

SEC. 154. DESIGNATION OF NATIONAL EMERGENCY PREPAREDNESS WEEK.

(a) NATIONAL WEEK.—

(1) DESIGNATION.—Each week that includes September 11 is “National Emergency Preparedness Week”.

(2) PROCLAMATION.—The President is requested every year to issue a proclamation calling on the people of the United States (including State and local governments and the private sector) to observe the week with appropriate activities and programs.
(b) **Federal Agency Activities.**—In conjunction with National Emergency Preparedness Week, the head of each Federal agency, as appropriate, shall coordinate with the Department to inform and educate the private sector and the general public about emergency preparedness activities, resources, and tools, giving a high priority to emergency preparedness efforts designed to address terrorist attacks.

**Subtitle D—Miscellaneous Provisions**

**SEC. 161. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.**

(a) **Establishment.**—There is established within the Department of Defense a National Bio-Weapons Defense Analysis Center (in this section referred to as the “Center”).

(b) **Mission.**—The mission of the Center is to develop countermeasures to potential attacks by terrorists using biological or chemical weapons that are weapons of mass destruction (as defined under section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))).

**SEC. 162. REVIEW OF FOOD SAFETY.**

(a) **Review of Food Safety Laws and Food Safety Organizational Structure.**—The Secretary
shall enter into an agreement with and provide funding to the National Academy of Sciences to conduct a detailed, comprehensive study which shall—

(1) review all Federal statutes and regulations affecting the safety and security of the food supply to determine the effectiveness of the statutes and regulations at protecting the food supply from deliberate contamination; and

(2) review the organizational structure of Federal food safety oversight to determine the efficiency and effectiveness of the organizational structure at protecting the food supply from deliberate contamination.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the National Academy of Sciences shall prepare and submit to the President, the Secretary, and Congress a comprehensive report containing—

(A) the findings and conclusions derived from the reviews conducted under subsection (a); and

(B) specific recommendations for improving—
(i) the effectiveness and efficiency of Federal food safety and security statutes and regulations; and

(ii) the organizational structure of Federal food safety oversight.

(2) CONTENTS.—In conjunction with the recommendations under paragraph (1), the report under paragraph (1) shall address—

(A) the effectiveness with which Federal food safety statutes and regulations protect public health and ensure the food supply remains free from contamination;

(B) the shortfalls, redundancies, and inconsistencies in Federal food safety statutes and regulations;

(C) the application of resources among Federal food safety oversight agencies;

(D) the effectiveness and efficiency of the organizational structure of Federal food safety oversight;

(E) the shortfalls, redundancies, and inconsistencies of the organizational structure of Federal food safety oversight; and
(F) the merits of a unified, central organizational structure of Federal food safety oversight.

(c) Response of the Secretary.—Not later than 90 days after the date on which the report under this section is submitted to the Secretary, the Secretary shall provide to the President and Congress the response of the Department to the recommendations of the report and recommendations of the Department to further protect the food supply from contamination.

SEC. 163. EXCHANGE OF EMPLOYEES BETWEEN AGENCIES AND STATE OR LOCAL GOVERNMENTS.

(a) Findings.—Congress finds that—

(1) information sharing between Federal, State, and local agencies is vital to securing the homeland against terrorist attacks;

(2) Federal, State, and local employees working cooperatively can learn from one another and resolve complex issues;

(3) Federal, State, and local employees have specialized knowledge that should be consistently shared between and among agencies at all levels of government; and

(4) providing training and other support, such as staffing, to the appropriate Federal, State, and
local agencies can enhance the ability of an agency to analyze and assess threats against the homeland, develop appropriate responses, and inform the United States public.

(b) Exchange of Employees.—

(1) In general.—The Secretary may provide for the exchange of employees of the Department and State and local agencies in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(2) Conditions.—With respect to exchanges described under this subsection, the Secretary shall ensure that—

(A) any assigned employee shall have appropriate training or experience to perform the work required by the assignment; and

(B) any assignment occurs under conditions that appropriately safeguard classified and other sensitive information.

Subtitle E—Transition Provisions

Sec. 171. Definitions.

In this subtitle:

(1) Agency.—The term “agency” includes any entity, organizational unit, or function transferred or to be transferred under this title.
(2) Transition Period.—The term “transition period” means the 1-year period beginning on the effective date of this division.

SEC. 172. TRANSFER OF AGENCIES.

The transfer of an agency to the Department, as authorized by this title, shall occur when the President directs, but in no event later than the end of the transition period.

SEC. 173. TRANSITIONAL AUTHORITIES.

(a) Provision of Assistance by Officials.—Until an agency is transferred to the Department, any official having authority over, or functions relating to, the agency immediately before the effective date of this division shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may reasonably request in preparing for the transfer and integration of the agency into the Department.

(b) Services and Personnel.—During the transition period, upon the request of the Secretary, the head of any agency (as defined under section 2) may, on a reimbursable basis, provide services and detail personnel to assist with the transition.

(e) Acting Officials.—

(1) Designation.—During the transition period, pending the nomination and advice and consent
of the Senate to the appointment of an officer re-
quired by this division to be appointed by and with
such advice and consent, the President may des-
ignate any officer whose appointment was required
to be made by and with such advice and consent,
and who continues as such an officer, to act in such
office until the office is filled as provided in this di-
vision.

(2) COMPENSATION.—While serving as an act-
ing officer under paragraph (1), the officer shall re-
ceive compensation at the higher of the rate
provided—

(A) by this division for the office in which
that officer acts; or

(B) for the office held at the time of des-
ignation.

(3) PERIOD OF SERVICE.—The person serving
as an acting officer under paragraph (1) may serve
in the office for the periods described under section
3346 of title 5, United States Code, as if the office
became vacant on the effective date of this division.

SEC. 174. INCIDENTAL TRANSFERS.

(a) IN GENERAL.—The Director of the Office of
Management and Budget, in consultation with the Sec-
retary, shall make such additional incidental dispositions
of personnel, assets, and liabilities held, used, arising
from, available, or to be made available, in connection with
the functions transferred by this title, as the Director de-
termines necessary to accomplish the purposes of this title.

(b) ADJUDICATORY OR REVIEW FUNCTIONS.—

(1) IN GENERAL.—At the time an agency is
transferred to the Department, the President may
also transfer to the Department any agency estab-
lished to carry out or support adjudicatory or review
functions in relation to the transferred agency.

(2) EXCEPTION.—The President may not trans-
fer the Executive Office of Immigration Review of
the Department of Justice under this subsection.

SEC. 175. IMPLEMENTATION PROGRESS REPORTS AND LEG-
ISLATIVE RECOMMENDATIONS.

(a) IN GENERAL.—In consultation with the President
and in accordance with this section, the Secretary shall
prepare implementation progress reports and submit such
reports to—

(1) the President of the Senate and the Speaker
of the House of Representatives for referral to the
appropriate committees; and

(2) the Comptroller General of the United
States.

(b) REPORT FREQUENCY.—
(1) **INITIAL REPORT.**—As soon as practicable, and not later than 6 months after the date of enactment of this Act, the Secretary shall submit the first implementation progress report.

(2) **SEMIANNUAL REPORTS.**—Following the submission of the report under paragraph (1), the Secretary shall submit additional implementation progress reports not less frequently than once every 6 months until all transfers to the Department under this title have been completed.

(3) **FINAL REPORT.**—Not later than 6 months after all transfers to the Department under this title have been completed, the Secretary shall submit a final implementation progress report.

(c) **CONTENTS.**—

(1) **IN GENERAL.**—Each implementation progress report shall report on the progress made in implementing this division, including fulfillment of the functions transferred under this title, and shall include all of the information specified under paragraph (2) that the Secretary has gathered as of the date of submission. Information contained in an earlier report may be referenced, rather than set out in full, in a subsequent report. The final implementa-
tion progress report shall include any required infor-
mation not yet provided.

(2) SPECIFICATIONS.—Each implementation
progress report shall contain, to the extent
available—

(A) with respect to the transfer and incor-
poration of agencies—

(i) the actions needed to transfer and
incorporate agencies into the Department;

(ii) a projected schedule, with mile-
stones, for completing the various phases
of the transition;

(iii) a progress report on taking those
actions and meeting the schedule;

(iv) the organizational structure of the
Department, including a listing of the re-
spective Directorates, the field offices of
the Department, and the executive posi-
tions that will be filled by political ap-
pointees or career executives;

(v) the location of Department head-
quarters, including a timeframe for relo-
cating to the new location, an estimate of
cost for the relocation, and information
about which elements of the various agencies will be located at headquarters;

(vi) unexpended funds and assets, liabilities, and personnel that will be transferred, and the proposed allocations and disposition within the Department; and

(vii) the costs of implementing the transition;

(B) with respect to human capital planning—

(i) a description of the workforce planning undertaken for the Department, including the preparation of an inventory of skills and competencies available to the Department, to identify any gaps, and to plan for the training, recruitment, and retention policies necessary to attract and retain a workforce to meet the needs of the Department;

(ii) the past and anticipated future record of the Department with respect to recruitment and retention of personnel;

(iii) plans or progress reports on the utilization by the Department of existing personnel flexibility, provided by law or
through regulations of the President and
the Office of Personnel Management, to
achieve the human capital needs of the De-
partment;

(iv) any inequitable disparities in pay
or other terms and conditions of employ-
ment among employees within the Depart-
ment resulting from the consolidation
under this division of functions, entities,
and personnel previously covered by dis-
parate personnel systems; and

(v) efforts to address the disparities
under clause (iv) using existing personnel
flexibility;

(C) with respect to information
technology—

(i) an assessment of the existing and
planned information systems of the De-
partment; and

(ii) a report on the development and
implementation of enterprise architecture
and of the plan to achieve interoperability;

(D) with respect to programmatic
implementation—
(i) the progress in implementing the programmatic responsibilities of this division;

(ii) the progress in implementing the mission of each entity transferred to the Department;

(iii) recommendations of other governmental functions or elements that need to be incorporated into the Department in order for the Department to function effectively; and

(iv) recommendations of any functions not related to homeland security transferred to the Department that need to be transferred from the Department or terminated for the Department to function effectively.

(d) LEGISLATIVE RECOMMENDATIONS.—

(1) INCLUSION IN REPORT.—The Secretary, after consultation with the appropriate committees of Congress, shall include in the report under this section, recommendations for legislation that the Secretary determines is necessary to—

(A) facilitate the integration of transferred entities and functions into the Department;
(B) reorganize agencies, executive positions, and the assignment of functions within the Department;

(C) address any inequitable disparities in pay or other terms and conditions of employment among employees within the Department resulting from the consolidation of agencies, functions, and personnel previously covered by disparate personnel systems;

(D) enable the Secretary to engage in procurement essential to the mission of the Department;

(E) otherwise help further the mission of the Department; and

(F) make technical and conforming amendments to existing law to reflect the changes made by this division.

(2) SEPARATE SUBMISSION OF PROPOSED LEGISLATION.—The Secretary may submit the proposed legislation under paragraph (1) to Congress before submitting the balance of the report under this section.

SEC. 176. TRANSFER AND ALLOCATION.

Except as otherwise provided in this title, the personnel employed in connection with, and the assets, liabil-
ities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions and entities transferred by this title, shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and to section 1531 of title 31, United States Code. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

SEC. 177. SAVINGS PROVISIONS.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—

All orders, determinations, rules, regulations, permits, agreements, grants, contracts, recognitions of labor organizations, collective bargaining agreements, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this title; and

(2) which are in effect at the time this division takes effect, or were final before the effective date
of this division and are to become effective on or
after the effective date of this division,
shall, to the extent related to such functions, continue in
effect according to their terms until modified, terminated,
superseded, set aside, or revoked in accordance with law
by the President, the Secretary or other authorized offi-
cial, a court of competent jurisdiction, or by operation of
law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions
of this title shall not affect any proceedings, including no-
tices of proposed rulemaking, or any application for any
license, permit, certificate, or financial assistance pending
before an agency at the time this title takes effect, with
respect to functions transferred by this title but such pro-
ceedings and applications shall continue. Orders shall be
issued in such proceedings, appeals shall be taken there-
from, and payments shall be made pursuant to such or-
ders, as if this title had not been enacted, and orders
issued in any such proceedings shall continue in effect
until modified, terminated, superseded, or revoked by a
duly authorized official, by a court of competent jurisdic-
tion, or by operation of law. Nothing in this subsection
shall be deemed to prohibit the discontinuance or modi-
fication of any such proceeding under the same terms and
conditions and to the same extent that such proceeding
could have been discontinued or modified if this title had
not been enacted.

(c) Suits Not Affected.—The provisions of this
title shall not affect suits commenced before the effective
date of this division, and in all such suits, proceedings
shall be had, appeals taken, and judgments rendered in
the same manner and with the same effect as if this title
had not been enacted.

(d) Nonabatement of Actions.—No suit, action,
or other proceeding commenced by or against an agency,
or by or against any individual in the official capacity of
such individual as an officer of an agency, shall abate by
reason of the enactment of this title.

(e) Administrative Actions Relating to Promul-
agation of Regulations.—Any administrative ac-
tion relating to the preparation or promulgation of a regu-
lation by an agency relating to a function transferred
under this title may be continued by the Department with
the same effect as if this title had not been enacted.

(f) Employment and Personnel.—

(1) Interim Authority for Appointment
and Compensation.—Funds available to any offi-
cial or component of any entity the functions of
which are transferred to the Department, may with
the approval of the Director of the Office of Man-
agement and Budget, be used to pay the compensa-
tion and expenses of any officer or employee under
this title until such time as funds for that purpose
are otherwise available.

(2) EMPLOYEE RIGHTS.—

(A) TRANSFERRED AGENCIES.—The De-
partment, or a subdivision of the Department,
that includes an agency, or subdivision thereof,
transferred under this title, or performs func-
tions transferred under this title shall not be
excluded from coverage of chapter 71 of title 5,
United States Code, as a result of any order
issued under section 7103(b)(1) of title 5,

(B) TRANSFERRED EMPLOYEES.—An em-
ployee transferred to the Department under
this division, who was in an appropriate unit
under section 7112 of title 5, United States
Code, prior to the transfer, shall not be ex-
cluded from a unit under subsection (b)(6) of
that section unless—

(i) the primary job duty of the em-
pLOYEE is materially changed after the
transfer; and
(ii) the primary job duty of the employee after such change consists of intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.

(C) TRANSFERRED FUNCTIONS.—An employee of the Department who is primarily engaged in carrying out a function transferred to the Department under this division or a function substantially similar to a function so transferred shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the function prior to the transfer was performed by an employee excluded from a unit under that section.

(D) OTHER AGENCIES, EMPLOYEES, AND FUNCTIONS.—

(i) Subject to paragraph (A), a subdivision of the Department shall not be excluded from coverage under chapter 71 of
title 5, United States Code, under section 7103(b)(1) of that title unless—

(I) the subdivision has, as a primary function, intelligence, counterintelligence, or investigative duties directly related to terrorism investigation; and

(II) the provisions of that chapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(ii) Subject to subparagraphs (B) and (C), an employee of the Department shall not be excluded from a unit under section 7112(b)(6) of title 5, United States Code, unless the primary job duty of the employee consists of intelligence, counterintelligence, or investigative duties directly related to terrorism investigation, if it is clearly demonstrated that membership in a unit and coverage under chapter 71 of title 5, United States Code, cannot be applied in a manner that would not have a substantial adverse effect on national security.
(E) Exclusion.—Paragraphs (A) through (D) shall not apply to any agency, or subdivision of an agency, transferred to the Department under this title that, on July 19, 2002, was excluded from coverage under chapter 71 of title 5, United States Code, under section 7103(b)(1) of that title.

(3) Terms and Conditions of Employment.—The transfer of an employee to the Department under this title shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(4) Conditions and Criteria for Appointment.—Any qualifications, conditions, or criteria required by law for appointments to a position in an agency, or subdivision thereof, transferred to the Department under this title, including a requirement that an appointment be made by the President, by and with the advice and consent of the Senate, shall continue to apply with respect to any appointment to the position made after such transfer to the Department has occurred.

(g) No Effect on Intelligence Authorities.—The transfer of authorities, functions, personnel, and assets of elements of the United States Government under
this title, or the assumption of authorities and functions, 
by the Department of Homeland Security under this title, 
shall not be construed, in cases where such authorities, 
functions, personnel, and assets, are engaged in intel-
ligence activities as defined in the National Security Act 
of 1947, as affecting the authorities of the Director of 
Central Intelligence, the Secretary of Defense, or the 
heads of departments and agencies within the intelligence 
community.

SEC. 178. TRANSFER OF RELATED FUNCTIONS.

(a) In general.—The transfer, under this title, of 
an agency that is a subdivision of a department before 
such transfer, shall include the transfer to the Secretary 
of any function relating to such agency that, on the date 
before the transfer, was exercised by the head of the de-
partment from which such agency is transferred.

(b) References.—A reference in any other Federal 
law, Executive order, rule, regulation, delegation of au-
thority, or other document pertaining to an agency trans-
ferred under this title that refers to the head of the de-
partment from which such agency is transferred is deemed 
to refer to the Secretary.
Subtitle F—Administrative Provisions

SEC. 191. REORGANIZATIONS AND DELEGATIONS.

(a) REORGANIZATION AUTHORITY.—

(1) IN GENERAL.—The Secretary may, as necessary and appropriate—

(A) allocate, or reallocate, functions among officers of the Department; and

(B) establish, consolidate, alter, or discontinue organizational entities within the Department.

(2) LIMITATION.—Paragraph (1) does not apply to—

(A) any office, bureau, unit, or other entity established by law and transferred to the Department;

(B) any function vested by law in an entity referred to in subparagraph (A) or vested by law in an officer of such an entity; or

(C) the alteration of the assignment or delegation of functions assigned by this division to any officer or organizational entity of the Department.

(b) DELEGATION AUTHORITY.—

(1) SECRETARY.—The Secretary may—
(A) delegate any of the functions of the Secretary;

(B) authorize successive redelegations of functions of the Secretary to other officers and employees of the Department; and

(C) procure the temporary or intermittent services of experts or consultants under section 3109(b) of title 5, United States Code.

(2) OFFICERS.—An officer of the Department may—

(A) delegate any function assigned to the officer by law; and

(B) authorize successive redelegations of functions assigned to the officer by law to other officers and employees of the Department.

(3) LIMITATIONS.—

(A) INTERUNIT DELEGATION.—Any function assigned by this title to an organizational unit of the Department or to the head of an organizational unit of the Department may not be delegated to an officer or employee outside of that unit.

(B) FUNCTIONS.—Any function vested by law in an entity established by law and transferred to the Department or vested by law in an
officer of such an entity may not be delegated to an officer or employee outside of that entity.

SEC. 192. REPORTING REQUIREMENTS.

(a) ANNUAL EVALUATIONS.—The Comptroller General of the United States shall monitor and evaluate the implementation of this division. Not later than 15 months after the effective date of this division, and every year thereafter for the succeeding 5 years, the Comptroller General of the United States shall submit a report to Congress containing—

(1) an evaluation of the progress reports submitted to Congress by the Secretary under section 175;

(2) the findings and conclusions of the Comptroller General of the United States resulting from the monitoring and evaluation conducted under this subsection, including evaluations of how successfully the Department is meeting—

(A) the homeland security missions of the Department; and

(B) the other missions of the Department;

and

(3) any recommendations for legislation or administrative action the Comptroller General of the United States considers appropriate.
(b) Biennial Reports.—Every 2 years the Secretary shall submit to Congress—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues; and

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction.

(c) Point of Entry Management Report.—Not later than 1 year after the effective date of this division, the Secretary shall submit to Congress a report outlining proposed steps to consolidate management authority for Federal operations at key points of entry into the United States.

(d) Combating Terrorism and Homeland Security.—Not later than 270 days after the date of enactment of this Act, the Secretary and the Director shall—

(1) in consultation with the head of each department or agency affected by this division, develop definitions of the terms “combating terrorism” and “homeland security” for purposes of this division and shall consider such definitions in determining the mission of the Department and Office; and
(2) submit a report to Congress on such definitions.

(c) Results-Based Management.—

(1) Strategic Plan.—

(A) In General.—Not later than September 30, 2003, consistent with the requirements of section 306 of title 5, United States Code, the Secretary, in consultation with Congress, shall prepare and submit to the Director of the Office of Management and Budget and to Congress a strategic plan for the program activities of the Department.

(B) Period; Revisions.—The strategic plan shall cover a period of not less than 5 years from the fiscal year in which it is submitted and it shall be updated and revised at least every 3 years.

(C) Scope.—The strategic plan shall describe the planned results for the non-homeland security related activities of the Department as well as the homeland security related activities of the Department.

(2) Performance Plan.—

(A) In General.—In accordance with section 1115 of title 31, United States Code, the
Secretary shall prepare an annual performance plan covering each program activity set forth in the budget of the Department.

(B) CONTENTS.—The performance plan shall include—

(i) the goals to be achieved during the year;

(ii) strategies and resources required to meet the goals; and

(iii) the means used to verify and validate measured values.

(C) SCOPE.—The performance plan should describe the planned results for the non-homeland security related activities of the Department as well as the homeland security related activities of the Department.

(3) PERFORMANCE REPORT.—

(A) IN GENERAL.—In accordance with section 1116 of title 31, United States Code, the Secretary shall prepare and submit to the President and Congress an annual report on program performance for the previous fiscal year.

(B) CONTENTS.—The performance report shall include the actual results achieved during
the year compared to the goals expressed in the
performance plan for that year.

SEC. 193. ENVIRONMENTAL PROTECTION, SAFETY, AND
HEALTH REQUIREMENTS.
The Secretary shall—
(1) ensure that the Department complies with
all applicable environmental, safety, and health stat-
utes and requirements; and
(2) develop procedures for meeting such re-
quirements.

SEC. 194. LABOR STANDARDS.
(a) IN GENERAL.—All laborers and mechanics em-
ployed by contractors or subcontractors in the perform-
ance of construction work financed in whole or in part
with assistance received under this division shall be paid
wages at rates not less than those prevailing on similar con-
struction in the locality as determined by the Secretary
of Labor in accordance with the Davis-Bacon Act (40
U.S.C. 276a et seq.).

(b) SECRETARY OF LABOR.—The Secretary of Labor
shall have, with respect to the enforcement of labor stand-
ards under subsection (a), the authority and functions set
forth in Reorganization Plan Number 14 of 1950 (5
U.S.C. App.) and section 2 of the Act of June 13, 1934
SEC. 195. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to—

(1) enable the Secretary to administer and manage the Department; and

(2) carry out the functions of the Department other than those transferred to the Department under this title.

TITLE II—NATIONAL OFFICE FOR COMBATING TERRORISM

SEC. 201. NATIONAL OFFICE FOR COMBATING TERRORISM.

(a) Establishment.—There is established within the Executive Office of the President the National Office for Combating Terrorism.

(b) Officers.—

(1) Director.—The head of the Office shall be the Director of the National Office for Combating Terrorism, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Executive Schedule Level I Position.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

“Director of the National Office for Combating Terrorism.”.

(3) Other Officers.—The President shall assign to the Office such other officers as the Presi-
dent, in consultation with the Director, considers appropriate to discharge the responsibilities of the Office.

(c) RESPONSIBILITIES.—Subject to the direction and control of the President, the responsibilities of the Office shall include the following:

(1) To develop national objectives and policies for combating terrorism.

(2) To direct and review the development of a comprehensive national assessment of terrorist threats and vulnerabilities to those threats, which shall be—

(A) conducted by the heads of relevant Federal agencies the National Security Advisor, the Director of the Office of Science and Technology Policy, and other involved White House entities; and

(B) used in preparation of the Strategy.

(3) To develop with the Secretary of Homeland Security, the Strategy under title III.

(4) To coordinate, oversee, and evaluate the implementation and execution of the Strategy by agencies of the Federal Government with responsibilities for combating terrorism under the Strategy, particularly those involving military, intelligence, law en-
forcement, diplomatic, and scientific and technological assets.

(5) To work with agencies of the Federal Government, including the Environmental Protection Agency, to ensure that appropriate actions are taken to address vulnerabilities identified by the Department of Homeland Security Directorate of Critical Infrastructure Protection.

(6)(A) To coordinate, with the advice of the Secretary, the development of a comprehensive annual budget for the programs and activities under the Strategy, including the budgets of the military departments and agencies within the National Foreign Intelligence Program relating to international terrorism, but excluding military programs, projects, or activities relating to force protection.

(B) To have the lead responsibility for budget recommendations relating to military, intelligence, law enforcement, diplomatic, and scientific and technological assets in support of the Strategy.

(7) To exercise funding authority for Federal terrorism prevention and response agencies in accordance with section 202.

(8) To serve as an advisor to the National Security Council.
(9) To work with the Director of the Federal Bureau of Investigation to ensure that—

(A) the Director of the National Office for Combating Terrorism receives the relevant information from the Federal Bureau of Investigation related to terrorism; and

(B) such information is made available to the appropriate agencies and to State and local law enforcement officials.

(d) RESOURCES.—In consultation with the Director, the President shall assign or allocate to the Office such resources, including funds, personnel, and other resources, as the President considers appropriate in order to facilitate the discharge of the responsibilities of the Office.

(e) OVERSIGHT BY CONGRESS.—The establishment of the Office within the Executive Office of the President shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office or any study conducted by or at the direction of the Director; or

(2) any personnel of the Office.
SEC. 202. FUNDING FOR STRATEGY PROGRAMS AND ACTIVITIES.

(a) Budget Review.—In consultation with the Director of the Office of Management and Budget, the Secretary, and the heads of other agencies, the National Security Advisor, the Director of the Office of Science and Technology Policy, and other involved White House entities, the Director shall—

(1) identify programs that contribute to the Strategy; and

(2) in the development of the budget submitted by the President to Congress under section 1105 of title 31, United States Code, review and provide advice to the heads of executive departments and agencies on the amount and use of funding for programs identified under paragraph (1).

(b) Submittal of Proposed Budgets to the Director.—

(1) In General.—The head of each Federal terrorism prevention and response agency shall submit to the Director each year the proposed budget of that agency for the fiscal year beginning in that year for programs and activities of that agency under the Strategy during that fiscal year.
(2) DATE FOR SUBMISSION.—The proposed budget of an agency for a fiscal year under paragraph (1) shall be submitted to the Director—

(A) not later than the date on which the agency completes the collection of information for purposes of the submission by the President of a budget to Congress for that fiscal year under section 1105 of title 31, United States Code; and

(B) before that information is submitted to the Director of the Office of Management and Budget for such purposes.

(3) FORMAT.—In consultation with the Director of the Office of Management and Budget, the Director shall specify the format for the submittal of proposed budgets under paragraph (1).

(c) REVIEW OF PROPOSED BUDGETS.—

(1) IN GENERAL.—The Director shall review each proposed budget submitted to the Director under subsection (b).

(2) INADEQUATE FUNDING DETERMINATION.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is inadequate, in whole or in part, to permit the implementation by the agency
during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year, the Director shall submit to the head of the agency—

(A) a notice in writing of the determination; and

(B) a statement of the proposed funding, and any specific initiatives, that would (as determined by the Director) permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year.

(3) ADEQUATE FUNDING DETERMINATION.—If the Director determines under paragraph (1) that the proposed budget of an agency for a fiscal year under subsection (b) is adequate to permit the implementation by the agency during the fiscal year of the goals of the Strategy applicable to the agency during the fiscal year, the Director shall submit to the head of the agency a notice in writing of that determination.

(4) MAINTENANCE OF RECORDS.—The Director shall maintain a record of—

(A) each notice submitted under paragraph (2), including any statement accompanying such notice; and
(B) each notice submitted under paragraph (3).

(d) AGENCY RESPONSE TO REVIEW OF PROPOSED BUDGETS.—

(1) INCORPORATION OF PROPOSED FUNDING.—

The head of a Federal terrorism prevention and response agency that receives a notice under subsection (c)(2) with respect to the proposed budget of the agency for a fiscal year shall incorporate the proposed funding, and any initiatives, set forth in the statement accompanying the notice into the information submitted to the Office of Management and Budget in support of the proposed budget for the agency for the fiscal year under section 1105 of title 31, United States Code.

(2) ADDITIONAL INFORMATION.—The head of each agency described under paragraph (1) for a fiscal year shall include as an appendix to the information submitted to the Office of Management and Budget under that paragraph for the fiscal year the following:

(A) A summary of any modifications in the proposed budget of such agency for the fiscal year under that paragraph.
(B) An assessment of the effect of such modifications on the capacity of such agency to perform its responsibilities during the fiscal year other than its responsibilities under the Strategy.

(3) Submission to Congress.—

(A) In general.—Subject to subparagraph (B), the head of each agency described under paragraph (1) for a fiscal year shall submit to Congress a copy of the appendix submitted to the Office of Management and Budget for the fiscal year under paragraph (2) at the same time the budget of the President for the fiscal year is submitted to Congress under section 1105 of title 31, United States Code.

(B) Elements within intelligence programs.—In the submission of the copy of the appendix to Congress under subparagraph (A), those elements of the appendix which are within the National Foreign Intelligence Program shall be submitted to—

(i) the Select Committee on Intelligence of the Senate; and
(ii) the Permanent Select Committee on Intelligence of the House of Represent-atives.

(e) SUBMITTAL OF REVISED PROPOSED BUDGETS.—

(1) IN GENERAL.—At the same time the head of a Federal terrorism prevention and response agency submits its proposed budget for a fiscal year to the Office of Management and Budget for purposes of the submission by the President of a budget to Congress for the fiscal year under section 1105 of title 31, United States Code, the head of the agency shall submit a copy of the proposed budget to the Director.

(2) REVIEW AND DECERTIFICATION AUTHORITY.—The Director of the National Office for Combating Terrorism—

(A) shall review each proposed budget submitted under paragraph (1); and

(B) in the case of a proposed budget for a fiscal year to which subsection (e)(2) applies in the fiscal year, if the Director determines as a result of the review that the proposed budget does not include the proposed funding, and any initiatives, set forth in the notice under that
subsection with respect to the proposed budget—

(i) may decertify the proposed budget;

and

(ii) with respect to any proposed budget so decertified, shall submit to Congress—

(I) a notice of the decertification;

(II) a copy of the notice submitted to the agency concerned for the fiscal year under subsection (c)(2)(B); and

(III) the budget recommendations made under this section.

(f) NATIONAL TERRORISM PREVENTION AND RESPONSE PROGRAM BUDGET.—

(1) IN GENERAL.—For each fiscal year, following the submittal of proposed budgets to the Director under subsection (b), the Director shall, in consultation with the Secretary and the head of each Federal terrorism prevention and response agency concerned—

(A) develop a consolidated proposed budget for such fiscal year for all programs and activities under the Strategy for such fiscal year; and
subject to paragraph (2), submit the consolidated proposed budget to the President and to Congress.

(2) ELEMENTS WITHIN INTELLIGENCE PROGRAMS.—In the submission of the consolidated proposed budget to Congress under paragraph (1)(B), those elements of the budget which are within the National Foreign Intelligence Program shall be submitted to—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(3) DESIGNATION OF CONSOLIDATED PROPOSED BUDGET.—The consolidated proposed budget for a fiscal year under this subsection shall be known as the National Terrorism Prevention and Response Program Budget for the fiscal year.

(g) REPROGRAMMING AND TRANSFER REQUESTS.—

(1) APPROVAL BY THE DIRECTOR.—The head of a Federal terrorism prevention and response agency may not submit to Congress a request for the reprogramming or transfer of any funds specified in the National Terrorism Prevention and Response Program Budget for programs or activities of
the agency under the Strategy for a fiscal year in excess of $5,000,000 without the approval of the Director.

(2) Approval by the President.—The President may, upon the request of the head of the agency concerned, permit the submittal to Congress of a request previously disapproved by the Director under paragraph (1) if the President determines that the submittal of the request to Congress will further the purposes of the Strategy.

TITLE III—NATIONAL STRATEGY FOR COMBATING TERRORISM AND THE HOMELAND SECURITY RESPONSE

SEC. 301. STRATEGY.

(a) Development.—The Secretary and the Director shall develop the National Strategy for Combating Terrorism and Homeland Security Response for detection, prevention, protection, response, and recovery to counter terrorist threats, including threat, vulnerability, and risk assessment and analysis, and the plans, policies, training, exercises, evaluation, and interagency cooperation that address each such action relating to such threats.

(b) Responsibilities.—
(1) **RESPONSIBILITIES OF THE SECRETARY.**—

The Secretary shall have responsibility for portions of the Strategy addressing border security, critical infrastructure protection, emergency preparation and response, and integrating State and local efforts with activities of the Federal Government.

(2) **RESPONSIBILITIES OF THE DIRECTOR.**—

The Director shall have overall responsibility for development of the Strategy, and particularly for those portions of the Strategy addressing intelligence, military assets, law enforcement, and diplomacy.

(c) **CONTENTS.**—The contents of the Strategy shall include—

(1) a comprehensive statement of mission, goals, objectives, desired end-state, priorities and responsibilities;

(2) policies and procedures to maximize the collection, translation, analysis, exploitation, and dissemination of information relating to combating terrorism and the homeland security response throughout the Federal Government and with State and local authorities;

(3) plans for countering chemical, biological, radiological, nuclear and explosives, and cyber threats;
(4) plans for integrating the capabilities and assets of the United States military into all aspects of the Strategy;

(5) plans for improving the resources of, coordination among, and effectiveness of health and medical sectors for detecting and responding to terrorist attacks on the homeland;

(6) specific measures to enhance cooperative efforts between the public and private sectors in protecting against terrorist attacks;

(7) a review of measures needed to enhance transportation security with respect to potential terrorist attacks;

(8) plans for identifying, prioritizing, and meeting research and development objectives to support homeland security needs; and

(9) other critical areas.

(d) COOPERATION.—At the request of the Secretary or Director, departments and agencies shall provide necessary information or planning documents relating to the Strategy.

(e) INTERAGENCY COUNCIL.—

(1) ESTABLISHMENT.—There is established the National Combating Terrorism and Homeland Secu-
rity Response Council to assist with preparation and implementation of the Strategy.

(2) MEMBERSHIP.—The members of the Council shall be the heads of the Federal terrorism prevention and response agencies or their designees. The Secretary and Director shall designate such agencies.

(3) CO-CHAIRS AND MEETINGS.—The Secretary and Director shall co-chair the Council, which shall meet at their direction.

(f) SUBMISSION TO CONGRESS.—Not later than December 1, 2003, and each year thereafter in which a President is inaugurated, the Secretary and the Director shall submit the Strategy to Congress.

(g) UPDATING.—Not later than December 1, 2005, and on December 1, of every 2 years thereafter, the Secretary and the Director shall submit to Congress an updated version of the Strategy.

(h) PROGRESS REPORTS.—Not later than December 1, 2004, and on December 1, of each year thereafter, the Secretary and the Director may submit to Congress a report that—

(1) describes the progress on implementation of the Strategy; and
(2) provides recommendations for improvement of the Strategy and the implementation of the Strategy.

SEC. 302. MANAGEMENT GUIDANCE FOR STRATEGY IMPLEMENTATION.

(a) IN GENERAL.—In consultation with the Director and the Secretary, the Director of the Office of Management and Budget shall provide management guidance for Federal agencies to successfully implement and execute the Strategy.

(b) OFFICE OF MANAGEMENT AND BUDGET REPORT.—Not later than 180 days after the date of the submission of the Strategy referred to under section 301, the Director of the Office of Management and Budget shall—

(1) submit to Congress a report describing agency progress under subsection (a); and

(2) provide a copy of the report to the Comptroller General of the United States.

(c) GENERAL ACCOUNTING OFFICE REPORT.—Not later than 90 days after the receipt of the report required under subsection (b), the Comptroller General of the United States shall submit a report to the Governmental Affairs Committee of the Senate and the Government Reform Committee of the House of Representatives evaluating—
(1) the management guidance identified under subsection (a); and

(2) Federal agency performance in implementing and executing the Strategy.

SEC. 303. NATIONAL COMBATING TERRORISM STRATEGY PANEL.

(a) ESTABLISHMENT.—The Secretary and the Director shall establish a nonpartisan, independent panel to be known as the National Combating Terrorism Strategy Panel (in this section referred to as the “Panel”).

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Panel shall be composed of a chairperson and 8 other individuals appointed by the Secretary and the Director, in consultation with the chairman and ranking member of the Committee on Governmental Affairs of the Senate and the chairman and ranking member of the Committee on Government Reform of the House of Representatives, from among individuals in the private sector who are recognized experts in matters relating to the homeland security of the United States.

(2) TERMS.—

(A) IN GENERAL.—An individual shall be appointed to the Panel for an 18-month term.
(B) TERM PERIODS.—Terms on the Panel shall not be continuous. All terms shall be for the 18-month period which begins 12 months before each date a report is required to be submitted under subsection (l)(2)(A).

(C) MULTIPLE TERMS.—An individual may serve more than 1 term.

(c) DUTIES.—The Panel shall—

(1) conduct and submit to the Secretary the assessment of the Strategy; and

(2) conduct the independent, alternative assessment of homeland security measures required under this section.

(d) ALTERNATIVE ASSESSMENT.—The Panel shall submit to the Secretary an independent assessment of the optimal policies and programs to combat terrorism, including homeland security measures. As part of the assessment, the Panel shall, to the extent practicable, estimate the funding required by fiscal year to achieve these optimal approaches.

(e) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—Subject to paragraph (2), the Panel may secure directly from any Federal department or agency such information as the Panel considers necessary to carry out this section. Upon
request of the Chairperson, the head of such depart-
ment or agency shall furnish such information to the
Panel.

(2) INTELLIGENCE INFORMATION.—The provi-
sion of information under this paragraph related to
intelligence shall be provided in accordance with pro-
cedures established by the Director of Central Intel-
ligence and in accordance with section 103(d)(3) of
the National Security Act of 1947 (50 U.S.C. 403–
3(d)(3)).

(f) COMPENSATION OF MEMBERS.—Each member of
the Panel shall be compensated at a rate equal to the daily
equivalent of the annual rate of basic pay prescribed for
level IV of the Executive Schedule under section 5315 of
title 5, United States Code, for each day (including travel
time) during which such member is engaged in the per-
formance of the duties of the Panel.

(g) TRAVEL EXPENSES.—The members of the Panel
shall be allowed travel expenses, including per diem in lieu
of subsistence, at rates authorized for employees of agen-
cies under subchapter I of chapter 57 of title 5, United
States Code, while away from their homes or regular
places of business in the performance of services for the
Panel.

(h) STAFF.—
(1) **IN GENERAL.**—The Chairperson of the Panel may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Panel to perform its duties. The employment of an executive director shall be subject to confirmation by the Panel.

(2) **COMPENSATION.**—The Chairperson of the Panel may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) **PERSONNEL AS FEDERAL EMPLOYEES.**—

(A) **IN GENERAL.**—The executive director and any personnel of the Panel who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.
(B) Members of Panel.—Subparagraph (A) shall not be construed to apply to members of the Panel.

(4) Reduction of staff.—During periods that members are not serving terms on the Panel, the executive director shall reduce the number and hours of employees to the minimum necessary to—

(A) provide effective continuity of the Panel; and

(B) minimize personnel costs of the Panel.

(i) Detail of Government Employees.—Any Federal Government employee may be detailed to the Panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(j) Administrative Provisions.—

(1) Use of mail and printing.—The Panel may use the United States mails and obtain printing and binding services in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(2) Support services.—The Secretary shall furnish the Panel any administrative and support services requested by the Panel.
(3) Gifts.—The Panel may accept, use, and dispose of gifts or donations of services or property.

(k) Payment of Panel Expenses.—The compensation, travel expenses, and per diem allowances of members and employees of the Panel shall be paid out of funds available to the Department for the payment of compensation, travel allowances, and per diem allowances, respectively, of civilian employees of the Department. The other expenses of the Panel shall be paid out of funds available to the Department for the payment of similar expenses incurred by the Department.

(l) Reports.—

(1) Preliminary report.—

(A) Report to Secretary.—Not later than July 1, 2004, the Panel shall submit to the Secretary and the Director a preliminary report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) Report to Congress.—Not later than 30 days after the submission of the report under subparagraph (A), the Secretary and the Director shall submit to the committees re-
ferred to under subsection (b) a copy of that report with the comments of the Secretary on the report.

(2) QUADRENNIAL REPORTS.—

(A) REPORTS TO SECRETARY.—Not later than December 1, 2004, and not later than December 1 every 4 years thereafter, the Panel shall submit to the Secretary and the Director a report setting forth the activities and the findings and recommendations of the Panel under subsection (d), including any recommendations for legislation that the Panel considers appropriate.

(B) REPORTS TO CONGRESS.—Not later than 60 days after each report is submitted under subparagraph (A), the Secretary shall submit to the committees referred to under subsection (b) a copy of the report with the comments of the Secretary and the Director on the report.
TITLE IV—LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS

SEC. 401. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) In General.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

“(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

“(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

“(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, As-
sistant Inspector General, or agent has reasonable
grounds to believe that the person to be arrested has
committed or is committing such felony; and

“(C) seek and execute warrants for arrest,
search of a premises, or seizure of evidence issued
under the authority of the United States upon prob-
able cause to believe that a violation has been com-
mitted.

“(2) The Attorney General may authorize exercise of
the powers under this subsection only upon an initial de-
termination that—

“(A) the affected Office of Inspector General is
significantly hampered in the performance of respon-
sibilities established by this Act as a result of the
lack of such powers;

“(B) available assistance from other law en-
forcement agencies is insufficient to meet the need
for such powers; and

“(C) adequate internal safeguards and manage-
ment procedures exist to ensure proper exercise of
such powers.

“(3) The Inspector General offices of the Department
of Commerce, Department of Education, Department of
Energy, Department of Health and Human Services, De-
partment of Homeland Security, Department of Housing
1 and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

“(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

“(5) Powers authorized for an Office of Inspector General under paragraph (1) shall be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the
guidelines promulgated by the Attorney General under paragraph (4).

“(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

“(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.
“(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.”.

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term “memoranda of understanding” means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.
(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

TITeL V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

This division shall take effect 30 days after the date of enactment of this Act or, if enacted within 30 days before January 1, 2003, on January 1, 2003.
DIVISION B—IMMIGRATION REFORM, ACCOUNTABILITY, AND SECURITY ENHANCEMENT ACT OF 2002

SEC. 1001. SHORT TITLE.

This division may be cited as the “Immigration Reform, Accountability, and Security Enhancement Act of 2002”.

SEC. 1002. DEFINITIONS.

In this division:

(1) Enforcement Bureau.—The term “Enforcement Bureau” means the Bureau of Enforcement and Border Affairs established in section 114 of the Immigration and Nationality Act, as added by section 1105 of this Act.

(2) Function.—The term “function” includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) Immigration Enforcement Functions.—The term “immigration enforcement functions” has the meaning given the term in section 114(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.

(4) Immigration Laws of the United States.—The term “immigration laws of the United States” has the meaning given the term in section 1104(b)(2) of the Immigration and Nationality Act, as added by section 1105 of this Act.
States” has the meaning given the term in section 111(e) of the Immigration and Nationality Act, as added by section 1102 of this Act.

(5) IMMIGRATION POLICY, ADMINISTRATION, AND INSPECTION FUNCTIONS.—The term “immigration policy, administration, and inspection functions” has the meaning given the term in section 112(b)(3) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(6) IMMIGRATION SERVICE FUNCTIONS.—The term “immigration service functions” has the meaning given the term in section 113(b)(2) of the Immigration and Nationality Act, as added by section 1104 of this Act.

(7) OFFICE.—The term “office” includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

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

(9) SERVICE BUREAU.—The term “Service Bureau” means the Bureau of Immigration Services established in section 113 of the Immigration and Nationality Act, as added by section 1104 of this Act.
(10) **UNDER SECRETARY.**—The term “Under Secretary” means the Under Secretary of Homeland Security for Immigration Affairs appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

**TITLE XI—DIRECTORATE OF IMMIGRATION AFFAIRS**

Subtitle A—Organization

**SEC. 1101. ABOLITION OF INS.**

(a) **IN GENERAL.**—The Immigration and Naturalization Service is abolished.

(b) **REPEAL.**—Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service), is repealed.

**SEC. 1102. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.**

(a) **ESTABLISHMENT.**—Title I of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(1) by inserting “CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES” after “TITLE I—GENERAL”; and

(2) by adding at the end the following:
“CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

“SEC. 111. ESTABLISHMENT OF DIRECTORATE OF IMMIGRATION AFFAIRS.

“(a) Establishment.—There is established within the Department of Homeland Security the Directorate of Immigration Affairs.

“(b) Principal Officers.—The principal officers of the Directorate are the following:

“(1) The Under Secretary of Homeland Security for Immigration Affairs appointed under section 112.

“(2) The Assistant Secretary of Homeland Security for Immigration Services appointed under section 113.

“(3) The Assistant Secretary of Homeland Security for Enforcement and Border Affairs appointed under section 114.

“(c) Functions.—Under the authority of the Secretary of Homeland Security, the Directorate shall perform the following functions:

“(1) Immigration policy, administration, and inspection functions, as defined in section 112(b).

“(2) Immigration service and adjudication functions, as defined in section 113(b).
“(3) Immigration enforcement functions, as defined in section 114(b).

“(d) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary to carry out the functions of the Directorate.

“(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

“(e) IMMIGRATION LAWS OF THE UNITED STATES DEFINED.—In this chapter, the term ‘immigration laws of the United States’ means the following:

“(1) This Act.

“(2) Such other statutes, Executive orders, regulations, or directives, treaties, or other international agreements to which the United States is a party, insofar as they relate to the admission to, detention in, or removal from the United States of aliens, insofar as they relate to the naturalization of aliens, or insofar as they otherwise relate to the status of aliens.”.

(b) CONFORMING AMENDMENTS.—(1) The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—
(A) by striking section 101(a)(34) (8 U.S.C. 1101(a)(34)) and inserting the following:

“(34) The term ‘Directorate’ means the Directorate of Immigration Affairs established by section 111.”;

(B) by adding at the end of section 101(a) the following new paragraphs:

“(51) The term ‘Secretary’ means the Secretary of Homeland Security.

“(52) The term ‘Department’ means the Department of Homeland Security.”;

(C) by striking “Attorney General” and “Department of Justice” each place it appears and inserting “Secretary” and “Department”, respectively;

(D) in section 101(a)(17) (8 U.S.C. 1101(a)(17)), by striking “The” and inserting “Except as otherwise provided in section 111(e), the; and

(E) by striking “Immigration and Naturalization Service”, “Service”, and “Service’s” each place they appear and inserting “Directorate of Immigration Affairs”, “Directorate”, and “Directorate’s”, respectively.

(2) Section 6 of the Act entitled “An Act to authorize certain administrative expenses for the Department of
Justice, and for other purposes”, approved July 28, 1950 (64 Stat. 380), is amended—

(A) by striking “Immigration and Naturalization Service” and inserting “Directorate of Immigration Affairs”;

(B) by striking clause (a); and

(C) by redesignating clauses (b), (c), (d), and (e) as clauses (a), (b), (c), and (d), respectively.

(e) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Directorate of Immigration Affairs of the Department of Homeland Security, and any reference in the immigration laws of the United States (as defined in section 111(e) of the Immigration and Nationality Act, as added by this section) to the Attorney General shall be deemed to refer to the Secretary of Homeland Security, acting through the Under Secretary of Homeland Security for Immigration Affairs.

SEC. 1103. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 of this Act, is amended by adding at the end the following:
“SEC. 112. UNDER SECRETARY OF HOMELAND SECURITY FOR IMMIGRATION AFFAIRS.

“(a) Under Secretary of Immigration Affairs.—the Directorate shall be headed by an Under Secretary of Homeland Security for Immigration Affairs who shall be appointed in accordance with section 103(c) of the Immigration and Nationality Act.

“(b) Responsibilities of the Under Secretary.—

“(1) In general.—The Under Secretary shall be charged with any and all responsibilities and authority in the administration of the Directorate and of this Act which are conferred upon the Secretary as may be delegated to the Under Secretary by the Secretary or which may be prescribed by the Secretary.

“(2) Duties.—Subject to the authority of the Secretary under paragraph (1), the Under Secretary shall have the following duties:

“(A) Immigration policy.—The Under Secretary shall develop and implement policy under the immigration laws of the United States. The Under Secretary shall propose, promulgate, and issue rules, regulations, and statements of policy with respect to any function within the jurisdiction of the Directorate.
“(B) Administration.—The Under Secretary shall have responsibility for—

“(i) the administration and enforcement of the functions conferred upon the Directorate under section 1111(c) of this Act; and

“(ii) the administration of the Directorate, including the direction, supervision, and coordination of the Bureau of Immigration Services and the Bureau of Enforcement and Border Affairs.

“(C) Inspections.—The Under Secretary shall be directly responsible for the administration and enforcement of the functions of the Directorate under the immigration laws of the United States with respect to the inspection of aliens arriving at ports of entry of the United States.

“(3) Activities.—As part of the duties described in paragraph (2), the Under Secretary shall do the following:

“(A) Resources and Personnel Management.—The Under Secretary shall manage the resources, personnel, and other support requirements of the Directorate.
“(B) INFORMATION RESOURCES MANAGEMENT.—Under the direction of the Secretary, the Under Secretary shall manage the information resources of the Directorate, including the maintenance of records and databases and the coordination of records and other information within the Directorate, and shall ensure that the Directorate obtains and maintains adequate information technology systems to carry out its functions.

“(C) COORDINATION OF RESPONSE TO CIVIL RIGHTS VIOLATIONS.—The Under Secretary shall coordinate, with the Civil Rights Officer of the Department of Homeland Security or other officials, as appropriate, the resolution of immigration issues that involve civil rights violations.

“(3) DEFINITION.—In this chapter, the term “immigration policy, administration, and inspection functions” means the duties, activities, and powers described in this subsection.

“(c) GENERAL COUNSEL.—

“(1) IN GENERAL.—There shall be within the Directorate a General Counsel, who shall be ap-
pointed by the Secretary of Homeland Security, in consultation with the Under Secretary.

“(2) FUNCTION.—The General Counsel shall—

“(A) serve as the chief legal officer for the Directorate; and

“(B) be responsible for providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Under Secretary with respect to legal matters affecting the Directorate, and any of its components.

“(d) FINANCIAL OFFICERS FOR THE DIRECTORATE OF IMMIGRATION AFFAIRS.—

“(1) CHIEF FINANCIAL OFFICER.—

“(A) IN GENERAL.—There shall be within the Directorate a Chief Financial Officer. The position of Chief Financial Officer shall be a career reserved position in the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Directorate. For purposes of section 902(a)(1) of such title, the Under Secretary shall be deemed to be an agency head.

“(B) FUNCTIONS.—The Chief Financial Officer shall be responsible for directing, super-
vising, and coordinating all budget formulas
and execution for the Directorate.

“(2) DEPUTY CHIEF FINANCIAL OFFICER.—The
Directorate shall be deemed to be an agency for pur-
poses of section 903 of such title (relating to Deputy
Chief Financial Officers).

“(e) CHIEF OF POLICY.—

“(1) IN GENERAL.—There shall be within the
Directorate a Chief of Policy. Under the authority of
the Under Secretary, the Chief of Policy shall be re-
sponsible for—

“(A) establishing national immigration pol-
icy and priorities;

“(B) performing policy research and anal-
ysis on issues arising under the immigration
laws of the United States; and

“(C) coordinating immigration policy be-
tween the Directorate, the Service Bureau, and
the Enforcement Bureau.

“(2) WITHIN THE SENIOR EXECUTIVE SERV-
ICE.—The position of Chief of Policy shall be a Sen-
ior Executive Service position under section 5382 of
title 5, United States Code.

“(f) CHIEF OF CONGRESSIONAL, INTERGOVERN-
MENTAL, AND PUBLIC AFFAIRS.—
“(1) IN GENERAL.—There shall be within the
Directorate a Chief of Congressional, Intergovern-
mental, and Public Affairs. Under the authority of
the Under Secretary, the Chief of Congressional,
Intergovernmental, and Public Affairs shall be re-
sponsible for—

“(A) providing to Congress information re-
lating to issues arising under the immigration
laws of the United States, including information
on specific cases;

“(B) serving as a liaison with other Fed-
eral agencies on immigration issues; and

“(C) responding to inquiries from, and
providing information to, the media on immi-
gration issues.

“(2) WITHIN THE SENIOR EXECUTIVE SERV-
ICE.—The position of Chief of Congressional, Inter-
governmental, and Public Affairs shall be a Senior
Executive Service position under section 5382 of
title 5, United States Code.”.

(b) COMPENSATION OF THE UNDER SECRETARY.—
Section 5314 of title 5, United States Code, is amended
by adding at the end the following:

“Under Secretary of Immigration Affairs, De-
partment of Justice.”.
(c) **Compensation of General Counsel and Chief Financial Officer.**—Section 5316 of title 5, United States Code, is amended by adding at the end the following:

“General Counsel, Directorate of Immigration Affairs, Department of Homeland Security.

“Chief Financial Officer, Directorate of Immigration Affairs, Department of Homeland Security.”.

(d) **Repeals.**—The following provisions of law are repealed:

(1) Section 7 of the Act of March 3, 1891, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(2) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district directors).

(3) Section 1 of the Act of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(e) **Conforming Amendments.**—(1)(A) Section 101(a)(8) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(8)) is amended to read as follows:
“(8) The term ‘Under Secretary’ means the Under Secretary of Homeland Security for Immigration Affairs who is appointed under section 103(c).”.

(B) Except as provided in subparagraph (C), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking “Commissioner of Immigration and Naturalization” and “Commissioner” each place they appear and inserting “Under Secretary of Homeland Security for Immigration Affairs” and “Under Secretary”, respectively.

(C) The amendments made by subparagraph (B) do not apply to references to the “Commissioner of Social Security” in section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

(2) Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended—

(A) in subsection (c), by striking “Commissioner” and inserting “Under Secretary”;

(B) in the section heading, by striking “COMMISSIONER” and inserting “UNDER SECRETARY”;

(C) in subsection (d), by striking “Commissioner” and inserting “Under Secretary”; and

(D) in subsection (e), by striking “Commissioner” and inserting “Under Secretary”.

(3) Sections 104 and 105 of the Immigration and Nationality Act (8 U.S.C. 1104, 1105) are amended by striking “Director” each place it appears and inserting “Assistant Secretary of State for Consular Affairs”.

(4) Section 104(c) of the Immigration and Nationality Act (8 U.S.C. 1104(c)) is amended—

(A) in the first sentence, by striking “Passport Office, a Visa Office,” and inserting “a Passport Services office, a Visa Services office, an Overseas Citizen Services office,”; and

(B) in the second sentence, by striking “the Passport Office and the Visa Office” and inserting “the Passport Services office and the Visa Services office”.

(5) Section 5315 of title 5, United States Code, is amended by striking the following:

“Commissioner of Immigration and Naturalization, Department of Justice.”.

(f) REFERENCES.—Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Commissioner of Immigration and Naturalization shall be deemed to refer to the Under Secretary of Homeland Security for Immigration Affairs.
SEC. 1104. BUREAU OF IMMIGRATION SERVICES.

(a) In General.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by section 1103, is further amended by adding at the end the following:

"SEC. 113. BUREAU OF IMMIGRATION SERVICES.

“(a) Establishment of Bureau.—

“(1) In General.—There is established within the Directorate a bureau to be known as the Bureau of Immigration Services (in this chapter referred to as the ‘Service Bureau’).

“(2) Assistant Secretary.—The head of the Service Bureau shall be the Assistant Secretary of Homeland Security for Immigration Services (in this chapter referred to as the ‘Assistant Secretary for Immigration Services’), who—

“(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

“(B) shall report directly to the Under Secretary.

“(b) Responsibilities of the Assistant Secretary.—

“(1) In General.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Services shall admin-
ister the immigration service functions of the Directorate.

“(2) Immigration service functions defined.—In this chapter, the term ‘immigration service functions’ means the following functions under the immigration laws of the United States (as defined in section 111(e)):

“(A) Adjudications of petitions for classification of nonimmigrant and immigrant status.

“(B) Adjudications of applications for adjustment of status and change of status.

“(C) Adjudications of naturalization applications.

“(D) Adjudications of asylum and refugee applications.

“(E) Adjudications performed at Service centers.

“(F) Determinations concerning custody and parole of asylum seekers who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, including determinations under section 236B.
“(G) All other adjudications under the immigration laws of the United States (as defined in section 111(e)).

“(c) CHIEF BUDGET OFFICER OF THE SERVICE BUREAU.—There shall be within the Service Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Service Bureau shall be responsible for monitoring and supervising all financial activities of the Service Bureau.

“(d) QUALITY ASSURANCE.—There shall be within the Service Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—

“(1) ensure that the Directorate’s policies with respect to the immigration service functions of the Directorate are properly implemented; and

“(2) ensure that Service Bureau policies or practices result in sound records management and efficient and accurate service.

“(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—

There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Service Bureau and for receiving and investigating charges of misconduct or ill treatment made by the public.
“(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Services, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Service Bureau.”.

(b) COMPENSATION OF ASSISTANT SECRETARY OF SERVICE BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

“Assistant Secretary of Homeland Security for Immigration Services, Directorate of Immigration Affairs, Department of Homeland Security.”.

(c) SERVICE BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Services, shall establish Service Bureau offices, including suboffices and satellite offices, in appropriate municipalities and locations in the United States. In the selection of sites for the Service Bureau offices, the Under Secretary shall consider the location’s proximity and accessibility to the community served, the workload for which that office shall be responsible, whether the location would significantly reduce the backlog of cases in that given geographic area, whether the location will improve customer service, and whether the location is in a geographic area with an increase
in the population to be served. The Under Secretary
shall conduct periodic reviews to assess whether the
location and size of the respective Service Bureau of-
ices adequately serve customer service needs.

(2) TRANSITION PROVISION.—In determining
the location of Service Bureau offices, including sub-
offices and satellite offices, the Under Secretary
shall first consider maintaining and upgrading of-
ices in existing geographic locations that satisfy the
provisions of paragraph (1). The Under Secretary
shall also explore the feasibility and desirability of
establishing new Service Bureau offices, including
suboffices and satellite offices, in new geographic lo-
cations where there is a demonstrated need.

SEC. 1105. BUREAU OF ENFORCEMENT AND BORDER AF-
FAIRS.

(a) IN GENERAL.—Chapter 2 of title I of the Immi-
gration and Nationality Act, as added by section 1102 and
amended by sections 1103 and 1104, is further amended
by adding at the end the following:

“SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AF-
FAIRS.

“(a) ESTABLISHMENT OF BUREAU.—

“(1) IN GENERAL.—There is established within
the Directorate a bureau to be known as the Bureau
of Enforcement and Border Affairs (in this chapter referred to as the ‘Enforcement Bureau’).

“(2) ASSISTANT SECRETARY.—The head of the Enforcement Bureau shall be the Assistant Secretary of Homeland Security for Enforcement and Border Affairs (in this chapter referred to as the ‘Assistant Secretary for Immigration Enforcement’), who—

“(A) shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary; and

“(B) shall report directly to the Under Secretary.

“(b) RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—

“(1) IN GENERAL.—Subject to the authority of the Secretary and the Under Secretary, the Assistant Secretary for Immigration Enforcement shall administer the immigration enforcement functions of the Directorate.

“(2) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED.—In this chapter, the term ‘immigration enforcement functions’ means the following functions under the immigration laws of the United States (as defined in section 111(e)): 
“(A) The border patrol function.

“(B) The detention function, except as specified in section 113(b)(2)(F).

“(C) The removal function.

“(D) The intelligence function.

“(E) The investigations function.

“(c) CHIEF BUDGET OFFICER OF THE ENFORCEMENT BUREAU.—There shall be within the Enforcement Bureau a Chief Budget Officer. Under the authority of the Chief Financial Officer of the Directorate, the Chief Budget Officer of the Enforcement Bureau shall be responsible for monitoring and supervising all financial activities of the Enforcement Bureau.

“(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility for ensuring the professionalism of the Enforcement Bureau and receiving charges of misconduct or ill treatment made by the public and investigating the charges.

“(e) OFFICE OF QUALITY ASSURANCE.—There shall be within the Enforcement Bureau an Office of Quality Assurance that shall develop procedures and conduct audits to—
“(1) ensure that the Directorate’s policies with respect to immigration enforcement functions are properly implemented; and
“(2) ensure that Enforcement Bureau policies or practices result in sound record management and efficient and accurate recordkeeping.
“(f) TRAINING OF PERSONNEL.—The Assistant Secretary for Immigration Enforcement, in consultation with the Under Secretary, shall have responsibility for determining the training for all personnel of the Enforcement Bureau.”.

(b) COMPENSATION OF ASSISTANT SECRETARY OF ENFORCEMENT BUREAU.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:


(c) ENFORCEMENT BUREAU OFFICES.—

(1) IN GENERAL.—Under the direction of the Secretary, the Under Secretary, acting through the Assistant Secretary for Immigration Enforcement, shall establish Enforcement Bureau offices, including suboffices and satellite offices, in appropriate
municipalities and locations in the United States. In
the selection of sites for the Enforcement Bureau of-
ices, the Under Secretary shall make selections ac-
cording to trends in unlawful entry and unlawful
presence, alien smuggling, national security con-
cerns, the number of Federal prosecutions of immi-
giration-related offenses in a given geographic area,
and other enforcement considerations. The Under
Secretary shall conduct periodic reviews to assess
whether the location and size of the respective En-
forcement Bureau offices adequately serve enforce-
ment needs.

(2) Transition provision.—In determining
the location of Enforcement Bureau offices, includ-
ing suboffices and satellite offices, the Under Sec-
retary shall first consider maintaining and upgrad-
ing offices in existing geographic locations that sat-
isfy the provisions of paragraph (1). The Under Sec-
retary shall also explore the feasibility and desir-
ability of establishing new Enforcement Bureau of-
ices, including suboffices and satellite offices, in
new geographic locations where there is a demon-
strated need.
SEC. 1106. OFFICE OF THE OMBUDSMAN WITHIN THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immigration and Nationality Act, as added by section 1102 and amended by sections 1103, 1104, and 1105, is further amended by adding at the end the following:

“SEC. 115. OFFICE OF THE OMBUDSMAN FOR IMMIGRATION AFFAIRS WITHIN THE DIRECTORATE.

“(a) IN GENERAL.—There is established within the Directorate the Office of the Ombudsman for Immigration Affairs, which shall be headed by the Ombudsman.

“(b) OMBUDSMAN.—

“(1) APPOINTMENT.—The Ombudsman shall be appointed by the Secretary of Homeland Security, in consultation with the Under Secretary. The Ombudsman shall report directly to the Under Secretary.

“(2) COMPENSATION.—The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Secretary of Homeland Security so determines, at a rate fixed under section 9503 of such title.
“(c) Functions of Office.—The functions of the Office of the Ombudsman for Immigration Affairs shall include—

“(1) to assist individuals in resolving problems with the Directorate or any component thereof;

“(2) to identify systemic problems encountered by the public in dealings with the Directorate or any component thereof;

“(3) to propose changes in the administrative practices or regulations of the Directorate, or any component thereof, to mitigate problems identified under paragraph (2);

“(4) to identify potential changes in statutory law that may be required to mitigate such problems; and

“(5) to monitor the coverage and geographic distribution of local offices of the Directorate.

“(d) Personnel Actions.—The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman’s Office as in the Ombudsman’s judgment may be necessary to address and rectify problems.

“(e) Annual Report.—Not later than December 31 of each year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representa-
... and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Each report shall contain a full and substantive analysis, in addition to statistical information, and shall contain—

“(1) a description of the initiatives that the Office of the Ombudsman has taken on improving the responsiveness of the Directorate;

“(2) a summary of serious or systemic problems encountered by the public, including a description of the nature of such problems;

“(3) an accounting of the items described in paragraphs (1) and (2) for which action has been taken, and the result of such action;

“(4) an accounting of the items described in paragraphs (1) and (2) for which action remains to be completed;

“(5) an accounting of the items described in paragraphs (1) and (2) for which no action has been taken, the reasons for the inaction, and identify any Agency official who is responsible for such inaction;

“(6) recommendations as may be appropriate to resolve problems encountered by the public;

“(7) recommendations as may be appropriate to resolve problems encountered by the public, includ-
ing problems created by backlogs in the adjudication
and processing of petitions and applications;

“(8) recommendations to resolve problems
caused by inadequate funding or staffing; and

“(9) such other information as the Ombudsman
may deem advisable.

“(f) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized to be
appropriated to the Office of the Ombudsman such
sums as may be necessary to carry out its functions.

“(2) AVAILABILITY OF FUNDS.—Amounts ap-
propriated pursuant to paragraph (1) are authorized
to remain available until expended.”.

SEC. 1107. OFFICE OF IMMIGRATION STATISTICS WITHIN
THE DIRECTORATE.

(a) IN GENERAL.—Chapter 2 of title I of the Immi-
gration and Nationality Act, as added by section 1102 and
amended by sections 1103, 1104, and 1105, is further
amended by adding at the end the following:

“SEC. 116. OFFICE OF IMMIGRATION STATISTICS.

“(a) ESTABLISHMENT.—There is established within
the Directorate an Office of Immigration Statistics (in this
section referred to as the ‘Office’), which shall be headed
by a Director who shall be appointed by the Secretary of
Homeland Security, in consultation with the Under Sec-
retary. The Office shall collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Directorate and the Executive Office for Immigration Review (or its successor entity).

“(b) RESPONSIBILITIES OF DIRECTOR.—The Director of the Office shall be responsible for the following:

“(1) STATISTICAL INFORMATION.—Maintenance of all immigration statistical information of the Directorate of Immigration Affairs.

“(2) STANDARDS OF RELIABILITY AND VALIDITY.—Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity).

“(c) RELATION TO THE DIRECTORATE OF IMMIGRATION AFFAIRS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

“(1) OTHER AUTHORITIES.—The Directorate and the Executive Office for Immigration Review shall provide statistical information to the Office from the operational data systems controlled by the Directorate and the Executive Office for Immigra-
tion Review (or its successor entity), respectively, as requested by the Office, for the purpose of meeting the responsibilities of the Director of the Office.

“(2) DATABASES.—The Director of the Office, under the direction of the Secretary, shall ensure the interoperability of the databases of the Directorate, the Bureau of Immigration Services, the Bureau of Enforcement, and the Executive Office for Immigration Review (or its successor entity) to permit the Director of the Office to perform the duties of such office.”.

(b) TRANSFER OF FUNCTIONS.—There are transferred to Directorate of Immigration Affairs for exercise by the Under Secretary through the Office of Immigration Statistics established by section 116 of the Immigration and Nationality Act, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service, and the statistical functions performed by the Executive Office for Immigration Review (or its successor entity), on the day before the effective date of this title.

SEC. 1108. CLERICAL AMENDMENTS.

The table of contents of the Immigration and Nationality Act is amended—
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(1) by inserting after the item relating to the heading for title I the following:

“CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES”;

(2) by striking the item relating to section 103 and inserting the following:

“Sec. 103. Powers and duties of the Secretary of Homeland Security and the Under Secretary of Homeland Security for Immigration Affairs.”;

and

(3) by inserting after the item relating to section 106 the following:

“CHAPTER 2—DIRECTORATE OF IMMIGRATION AFFAIRS

“Sec. 111. Establishment of Directorate of Immigration Affairs.
“Sec. 114. Bureau of Enforcement and Border Affairs.
“Sec. 115. Office of the Ombudsman for Immigration Affairs within the Directorate.
“Sec. 116. Office of Immigration Statistics.”.

Subtitle B—Transition Provisions

SEC. 1111. TRANSFER OF FUNCTIONS.

(a) IN GENERAL.—

(1) FUNCTIONS OF THE ATTORNEY GENERAL.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Attorney General, immediately prior to the effective date of this title, are transferred to the Secretary on such effective date for exercise by the Secretary through the Under Secretary in accordance
with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(2) FUNCTIONS OF THE COMMISSIONER OR THE INS.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization or the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately prior to the effective date of this title, are transferred to the Directorate of Immigration Affairs on such effective date for exercise by the Under Secretary in accordance with section 112(b) of the Immigration and Nationality Act, as added by section 1103 of this Act.

(b) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, the Under Secretary may, for purposes of performing any function transferred to the Directorate of Immigration Affairs under subsection (a), exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function pursuant to this title.
SEC. 1112. TRANSFER OF PERSONNEL AND OTHER RESOURCES.

Subject to section 1531 of title 31, United States Code, upon the effective date of this title, there are transferred to the Under Secretary for appropriate allocation in accordance with section 1115—

(1) the personnel of the Department of Justice employed in connection with the functions transferred pursuant to this title; and

(2) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title.

SEC. 1113. DETERMINATIONS WITH RESPECT TO FUNCTIONS AND RESOURCES.

Under the direction of the Secretary, the Under Secretary shall determine, in accordance with the corresponding criteria set forth in sections 1112(b), 1113(b), and 1114(b) of the Immigration and Nationality Act (as added by this division)—

(1) which of the functions transferred under section 1111 are—
(A) immigration policy, administration, and inspection functions;

(B) immigration service functions; and

(C) immigration enforcement functions;

and

(2) which of the personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds transferred under section 1112 were held or used, arose from, were available to, or were made available, in connection with the performance of the respective functions specified in paragraph (1) immediately prior to the effective date of this title.

SEC. 1114. DELEGATION AND RESERVATION OF FUNCTIONS.

(a) IN GENERAL.—

(1) DELEGATION TO THE BUREAUS.—Under the direction of the Secretary, and subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103 of this Act), the Under Secretary shall delegate—

(A) immigration service functions to the Assistant Secretary for Immigration Services; and
(B) immigration enforcement functions to the Assistant Secretary for Immigration Enforcement.

(2) Reservation of Functions.—Subject to section 112(b)(1) of the Immigration and Nationality Act (as added by section 1103 of this Act), immigration policy, administration, and inspection functions shall be reserved for exercise by the Under Secretary.

(b) Nonexclusive Delegations Authorized.—Delegations made under subsection (a) may be on a non-exclusive basis as the Director may determine may be necessary to ensure the faithful execution of the Director’s responsibilities and duties under law.

(c) Effect of Delegations.—Except as otherwise expressly prohibited by law or otherwise provided in this title, the Under Secretary may make delegations under this subsection to such officers and employees of the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau, respectively, as the Under Secretary may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to
whom a function is transferred pursuant to this title of responsibility for the administration of the function.

(d) STATUTORY CONSTRUCTION.—Nothing in this division may be construed to limit the authority of the Under Secretary, acting directly or by delegation under the Secretary, to establish such offices or positions within the Directorate of Immigration Affairs, in addition to those specified by this division, as the Under Secretary may determine to be necessary to carry out the functions of the Directorate.

SEC. 1115. ALLOCATION OF PERSONNEL AND OTHER RESOURCES.

(a) AUTHORITY OF THE UNDER SECRETARY.—

(1) IN GENERAL.—Subject to paragraph (2) and section 1114(b), the Under Secretary shall make allocations of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with the performance of the respective functions, as determined under section 1113, in accordance with the delegation of functions and the reservation of functions made under section 1114.
(2) LIMITATION.—Unexpended funds transferred pursuant to section 1112 shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) AUTHORITY TO TERMINATE AFFAIRS OF INS.—

The Attorney General in consultation with the Secretary, shall provide for the termination of the affairs of the Immigration and Naturalization Service and such further measures and dispositions as may be necessary to effectuate the purposes of this division.

c) TREATMENT OF SHARED RESOURCES.—The Under Secretary is authorized to provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the office of the Under Secretary, the Service Bureau, and the Enforcement Bureau. The Under Secretary shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 1116. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—
(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law, except that any collective bargaining agreement shall remain in effect until the date of termination specified in the agreement.

(b) PROCEEDINGS.—

(1) PENDING.—Sections 111 through 116 of the Immigration and Nationality Act, as added by subtitle A of this title, shall not affect any proceeding or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an
office whose functions are transferred pursuant to this title, but such proceedings and applications shall be continued.

(2) ORDERS.—Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This title, and the amendments made by this title, shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title, and the amendments made by this title, had not been enacted.
(d) Nonabatement of Actions.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) Continuance of Suit with Substitution of Parties.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) Administrative Procedure and Judicial Review.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.
SEC. 1117. INTERIM SERVICE OF THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION.

The individual serving as the Commissioner of Immigration and Naturalization on the day before the effective date of this title may serve as Under Secretary until the date on which an Under Secretary is appointed under section 112 of the Immigration and Nationality Act, as added by section 1103 of this Act.

SEC. 1118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by the Executive Office for Immigration Review of the Department of Justice (or its successor entity), or any officer, employee, or component thereof immediately prior to the effective date of this title.

SEC. 1119. OTHER AUTHORITIES NOT AFFECTED.

Nothing in this title, or any amendment made by this title, may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by—

(1) the Secretary of State under the State Department Basic Authorities Act of 1956, or under the immigration laws of the United States, immediately prior to the effective date of this title, with
respect to the issuance and use of passports and visas;

(2) the Secretary of Labor or any official of the Department of Labor immediately prior to the effective date of this title, with respect to labor certifications or any other authority under the immigration laws of the United States; or

(3) except as otherwise specifically provided in this division, any other official of the Federal Government under the immigration laws of the United States immediately prior to the effective date of this title.

SEC. 1120. TRANSITION FUNDING.

(a) Authorization of Appropriations for Transition.—

(1) In general.—There are authorized to be appropriated to the Department of Homeland Security such sums as may be necessary—

(A) to effect—

(i) the abolition of the Immigration and Naturalization Service;

(ii) the establishment of the Directorate of Immigration Affairs and its components, the Bureau of Immigration Serv-
ices, and the Bureau of Enforcement and Border Affairs; and

(iii) the transfer of functions required to be made under this division; and

(B) to carry out any other duty that is made necessary by this division, or any amendment made by this division.

(2) ACTIVITIES SUPPORTED.—Activities supported under paragraph (1) include—

(A) planning for the transfer of functions from the Immigration and Naturalization Service to the Directorate of Immigration Affairs, including the preparation of any reports and implementation plans necessary for such transfer;

(B) the division, acquisition, and disposition of—

(i) buildings and facilities;

(ii) support and infrastructure resources; and

(iii) computer hardware, software, and related documentation;

(C) other capital expenditures necessary to effect the transfer of functions described in this paragraph;
(D) revision of forms, stationery, logos, and signage;

(E) expenses incurred in connection with the transfer and training of existing personnel and hiring of new personnel; and

(F) such other expenses necessary to effect the transfers, as determined by the Secretary.

(b) Availability of Funds.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

(c) Transition Account.—

(1) Establishment.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the “Directorate of Immigration Affairs Transition Account” (in this section referred to as the “Account”).

(2) Use of Account.—There shall be deposited into the Account all amounts appropriated under subsection (a) and amounts reprogrammed for the purposes described in subsection (a).

(d) Report to Congress on Transition.—Beginning not later than 90 days after the effective date of division A of this Act, and at the end of each fiscal year in which appropriations are made pursuant to subsection (c),
the Secretary of Homeland Security shall submit a report to Congress concerning the availability of funds to cover transition costs, including—

(1) any unobligated balances available for such purposes; and

(2) a calculation of the amount of appropriations that would be necessary to fully fund the activities described in subsection (a).

(e) EFFECTIVE DATE.—This section shall take effect one year after the effective date of division A of this Act.

Subtitle C—Miscellaneous Provisions

SEC. 1121. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) LEVEL OF FEES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking “services, including the costs of similar services provided without charge to asylum applicants or other immigrants” and inserting “services”.

(b) USE OF FEES.—

(1) IN GENERAL.—Each fee collected for the provision of an adjudication or naturalization service shall be used only to fund adjudication or naturalization services or, subject to the availability of funds provided pursuant to subsection (c), costs of
similar services provided without charge to asylum
and refugee applicants.

(2) Prohibition.—No fee may be used to fund
adjudication- or naturalization-related audits that
are not regularly conducted in the normal course of
operation.

(c) Refugee and Asylum Adjudication Services.—

(1) Authorization of Appropriations.—In
addition to such sums as may be otherwise available
for such purposes, there are authorized to be appro-
priated such sums as may be necessary to carry out
the provisions of sections 207 through 209 of the
Immigration and Nationality Act.

(2) Availability of Funds.—Funds appro-
priated pursuant to paragraph (1) are authorized to
remain available until expended.

(d) Separation of Funding.—

(1) In General.—There shall be established
separate accounts in the Treasury of the United
States for appropriated funds and other collections
available for the Bureau of Immigration Services
and the Bureau of Enforcement and Border Affairs.

(2) Fees.—Fees imposed for a particular serv-
ice, application, or benefit shall be deposited into the
account established under paragraph (1) that is for
the bureau with jurisdiction over the function to
which the fee relates.

(3) FEES NOT TRANSFERABLE.—No fee may be
transferred between the Bureau of Immigration
Services and the Bureau of Enforcement and Border
Affairs for purposes not authorized by section 286
of the Immigration and Nationality Act, as amended
by subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS FOR BACK-
LOG REDUCTION.—

(1) IN GENERAL.—There are authorized to be
appropriated such sums as may be necessary for
each of the fiscal years 2003 through 2006 to carry
out the Immigration Services and Infrastructure Im-
provement Act of 2000 (title II of Public Law 106–
313).

(2) AVAILABILITY OF FUNDS.—Amounts appro-
priated under paragraph (1) are authorized to re-
main available until expended.

(3) INFRASTRUCTURE IMPROVEMENT AC-
COUNT.—Amounts appropriated under paragraph
(1) shall be deposited into the Immigration Services
and Infrastructure Improvements Account estab-
lished by section 204(a)(2) of title II of Public Law 106–313.

SEC. 1122. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) Establishment of On-Line Database.—

(1) In general.—Not later than two years after the effective date of division A of this Act, the Secretary, in consultation with the Under Secretary and the Technology Advisory Committee, shall establish an Internet-based system that will permit an immigrant, nonimmigrant, employer, or other person who files any application, petition, or other request for any benefit under the immigration laws of the United States access to on-line information about the processing status of the application, petition, or other request.

(2) Privacy Considerations.—The Under Secretary shall consider all applicable privacy issues in the establishment of the Internet system described in paragraph (1). No personally identifying information shall be accessible to unauthorized persons.

(3) Means of Access.—The on-line information under the Internet system described in paragraph (1) shall be accessible to other persons de-
scribed in subsection (a) through a personal identification number (PIN) or other personalized password.

(4) Prohibition on fees.—The Under Secretary shall not charge any immigrant, non-immigrant, employer, or other person described in subsection (a) a fee for access to the information in the database that pertains to that person.

(b) Feasibility Study for On-Line Filing and Improved Processing.—

(1) On-line filing.—

(A) In general.—The Under Secretary, in consultation with the Technology Advisory Committee, shall conduct a study to determine the feasibility of on-line filing of the documents described in subsection (a).

(B) Study elements.—The study shall—

(i) include a review of computerization and technology of the Immigration and Naturalization Service (or successor agency) relating to immigration services and the processing of such documents;
(ii) include an estimate of the time-frame and costs of implementing on-line filing of such documents; and

(iii) consider other factors in implementing such a filing system, including the feasibility of the payment of fees on-line.

(2) REPORT.—Not later than two years after the effective date of division A of this Act, the Under Secretary shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the findings of the study conducted under this subsection.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—Not later than one year after the effective date of division A of this Act, the Under Secretary shall establish, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, an advisory committee (in this section referred to as the “Technology Advisory Committee”) to assist the Under Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).
(2) COMPOSITION.—The Technology Advisory Committee shall be composed of—

(A) experts from the public and private sector capable of establishing and implementing the system in an expeditious manner; and

(B) representatives of persons or entities who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 1123. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) ASSIGNMENTS OF ASYLUM OFFICERS.—The Under Secretary shall assign asylum officers to major ports of entry in the United States to assist in the inspection of asylum seekers. For other ports of entry, the Under Secretary shall take steps to ensure that asylum officers participate in the inspections process.

(b) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.) is amended by inserting after section 236A the following new section:

"SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

“(a) DEVELOPMENT OF ALTERNATIVES TO DETENTION.—The Under Secretary shall—"
“(1) authorize and promote the utilization of alternatives to the detention of asylum seekers who do not have nonpolitical criminal records; and

“(2) establish conditions for the detention of asylum seekers that ensure a safe and humane environment.

“(b) SPECIFIC ALTERNATIVES FOR CONSIDERATION.—The Under Secretary shall consider the following specific alternatives to the detention of asylum seekers described in subsection (a):

“(1) Parole from detention.

“(2) For individuals not otherwise qualified for parole under paragraph (1), parole with appearance assistance provided by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

“(3) For individuals not otherwise qualified for parole under paragraph (1) or (2), non-secure shelter care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.

“(4) Noninstitutional settings for minors such as foster care or group homes operated by private nonprofit voluntary agencies with expertise in the legal and social needs of asylum seekers.
“(c) Regulations.—The Under Secretary shall promulgate such regulations as may be necessary to carry out this section.

“(d) Definition.—In this section, the term ‘asylum seeker’ means any applicant for asylum under section 208 or any alien who indicates an intention to apply for asylum under that section.”.

(b) Clerical Amendment.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 236A the following new item:

“Sec. 236B. Alternatives to detention of asylum seekers.”.

Subtitle D—Effective Date

SEC. 1131. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect one year after the effective date of division A of this Act.

TITLE XII—IMMIGRATION PERSONNEL

SEC. 1201. IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.

(a) In General.—Part III of title 5, United States Code, is amended by adding at the end the following new subpart:


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“Subpart J—Immigration Personnel

“CHAPTER 96—PERSONNEL

FLEXIBILITIES

“Sec.
“9601. Immigration personnel flexibilities.
“9602. Pay authority for critical positions.
“9603. Streamlined critical pay authority.
“9604. Recruitment, retention, relocation incentives, and relocation expenses.

“§ 9601. Immigration personnel flexibilities

“(a) Any flexibilities provided by sections 9602 through 9604 of this chapter shall be exercised in a manner consistent with—

“(1) chapter 23 (relating to merit system principles and prohibited personnel practices);

“(2) provisions relating to preference eligibles;

“(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

“(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

“(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Attorney General or, upon the effective date of title XI of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, the Secretary of Homeland Security, under section 1104(a)(2).
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“(b) The Attorney General or, upon such effective date, the Secretary of Homeland Security, shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

§ 9602. Pay authority for critical positions

“(a) When the Attorney General or, upon the effective date of title XI of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, the Secretary of Homeland Security, seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Immigration and Naturalization Service or, upon such effective date, the Directorate of Immigration Affairs, the Office of Management and Budget may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

“(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee’s total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.
§ 9603. Streamlined critical pay authority

“(a) Notwithstanding section 9602, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Attorney General or, upon the effective date of title XI of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, the Secretary of Homeland Security, may, for a period of 10 years after the date of enactment of that Act, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Directorate of Immigration Affairs, if—

“(1) the positions—

“(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

“(B) are critical to the successful accomplishment of an important mission by the Immigration and Naturalization Service or the Directorate of Immigration Affairs, as the case may be;

“(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;
“(3) the number of such positions does not exceed 40 at any one time;
“(4) designation of such positions are approved by the Attorney General or, upon the effective date of title XI of that Act, the Secretary of Homeland Security;
“(5) the terms of such appointments are limited to no more than 4 years;
“(6) in the case of appointments made after the effective date of title XI of that Act, appointees to such positions were not employees of the Immigration and Naturalization Service prior to such date;
“(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and
“(8) all such positions are excluded from the collective bargaining unit.
“(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

§9604. Recruitment, retention, relocation incentives, and relocation expenses
“(a) For a period of 10 years after the date of enactment of the Immigration Reform, Accountability, and Se-
scurity Enhancement Act of 2002, and subject to approval by the Office of Personnel Management, the Attorney General or, upon the effective date of title XI of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, the Secretary of Homeland Security, may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives with respect to employees of the Immigration and Naturalization Service or, upon such effective date, the Directorate of Immigration Affairs.

“(b) For a period of 10 years after the date of enactment of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, and subject to approval by the Office of Personnel Management, the Attorney General or, upon the effective date of that Act, the Secretary of Homeland Security, may pay from appropriations made to the Immigration and Naturalization Service or the Directorate of Immigration Affairs, as appropriate, allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9602 or 9603 after such effective date.”.
(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following new items:

"SUBPART J—IMMIGRATION PERSONNEL"

"96. Personnel flexibilities ............................................................ 9601.".

SEC. 1202. VOLUNTARY SEPARATION INCENTIVE PAYMENTS FOR INS EMPLOYEES.

(a) DEFINITION.—In this section, the term “employee” means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Immigration and Naturalization Service serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include—

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has not repaid such payment;

(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) Authority To Provide Voluntary Separation Incentive Payments.—

(1) In general.—The Attorney General may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to establish the Directorate of Immigration Affairs under title XI.
(2) AMOUNT AND TREATMENT OF PAYMENTS.—

A voluntary separation incentive payment—

(A) shall be paid in a lump sum after the employee’s separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;

(C) shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(ii) an amount determined by an agency head not to exceed $25,000;

(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2006;

(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under sec-
tion 5595 of title 5, United States Code, based on any other separation.

(c) ADDITIONAL IMMIGRATION AND NATURALIZATION SERVICE CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Immigration and Naturalization Service shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) DEFINITION.—In paragraph (1), the term “final basic pay”, with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefore.
(d) Effect of Subsequent Employment With the Government.—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based, shall be required to pay, prior to the individual’s first day of employment, the entire amount of the incentive payment to the Immigration and Naturalization Service or, in the case of employment or work occurring after the effective date of title XI, the Directorate of Immigration Affairs.

(e) Use of Voluntary Separations.—The Immigration and Naturalization Service may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 1203. VOLUNTARY SEPARATION INCENTIVE PAYMENTS FOR EMPLOYEES OF THE DIRECTORATE OF IMMIGRATION AFFAIRS.

(a) Definition.—In this section, the term “employee” means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Directorate of Immigration Affairs serving under an ap-
pointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include—

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has not repaid such payment;
(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—The Secretary of Homeland Security may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to establish the Directorate of Immigration Affairs under title XI.

(2) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

(A) shall be paid in a lump sum after the employee’s separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;
(C) shall be equal to the lesser of—

(i) an amount equal to the amount
the employee would be entitled to receive
under section 5595(c) of title 5, United
States Code; or

(ii) an amount determined by an
agency head not to exceed $25,000;

(D) may not be made except in the case of
any qualifying employee who voluntarily sepa-
rates (whether by retirement or resignation) be-
fore January 1, 2006;

(E) shall not be a basis for payment, and
shall not be included in the computation, of any
other type of Government benefit; and

(F) shall not be taken into account in de-
termining the amount of any severance pay to
which the employee may be entitled under sec-
tion 5595 of title 5, United States Code, based
on any other separation.

(e) ADDITIONAL DIRECTORATE OF IMMIGRATION AF-
FAIRS CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any other
payments which it is required to make under sub-
chapter III of chapter 83 of title 5, United States
Code, the Directorate of Immigration Affairs shall
remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) DEFINITION.—In paragraph (1), the term “final basic pay”, with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefore.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based, shall be required to pay, prior to the individual’s first day of em-
employment, the entire amount of the incentive payment to
the Directorate of Immigration Affairs.

(c) Use of Voluntary Separations.—The Directorate of Immigration Affairs may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

(f) Effective Date.—This section shall take effect upon the effective date of title XI of the Immigration Reform, Accountability, and Security Enhancement Act of 2002.

SEC. 1204. Basis for Evaluation of Immigration Employees.

The Immigration and Naturalization Service and, upon the effective date of title XI of the Immigration Reform, Accountability, and Security Enhancement Act of 2002, the Directorate of Immigration Affairs, shall use the fair and equitable treatment of aliens by employees as one of the standards for evaluating employee performance.

SEC. 1205. Effective Date.

Except as provided in section 1203(f), this title, and the amendments made by this title, shall take effect on the date of enactment of this Act.
TITLE XIII—UNACCOMPANIED ALIEN CHILD PROTECTION

SEC. 1301. SHORT TITLE.

This title may be cited as the “Unaccompanied Alien Child Protection Act of 2002”.

SEC. 1302. DEFINITIONS.

(a) IN GENERAL.—In this title:

(1) DIRECTOR.—The term “Director” means the Director of the Office.

(2) OFFICE.—The term “Office” means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act.

(3) SERVICE.—The term “Service” means the Immigration and Naturalization Service (or, upon the effective date of title XI, the Directorate of Immigration Affairs).

(4) UNACCOMPANIED ALIEN CHILD.—The term “unaccompanied alien child” means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained the age of 18; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or
(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

(5) VOLUNTARY AGENCY.—The term “voluntary agency” means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children as licensed by the appropriate State and certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraphs:

“(53) The term ‘unaccompanied alien child’ means a child who—

“(A) has no lawful immigration status in the United States;

“(B) has not attained the age of 18; and

“(C) with respect to whom—

“(i) there is no parent or legal guardian in the United States; or

“(ii) no parent or legal guardian in the United States is able to provide care and physical custody.
“(54) The term ‘unaccompanied refugee children’ means persons described in paragraph (42) who—

“(A) have not attained the age of 18; and

“(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.”.

Subtitle A—Structural Changes

SEC. 1311. RESPONSIBILITIES OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) In General.—

(1) Responsibilities of the Office.—The Office shall be responsible for—

(A) coordinating and implementing the care and placement for unaccompanied alien children who are in Federal custody by reason of their immigration status; and

(B) ensuring minimum standards of detention for all unaccompanied alien children.

(2) Duties of the Director with Respect to Unaccompanied Alien Children.—The Director shall be responsible under this title for—

(A) ensuring that the best interests of the child are considered in decisions and actions re-
lating to the care and placement of an unac-
accompanied alien child;

(B) making placement, release, and deten-
tion determinations for all unaccompanied alien
children in the custody of the Office;

(C) implementing the placement, release,
and detention determinations made by the Of-

(D) convening, in the absence of the As-
sistant Secretary, Administration for Children
and Families of the Department of Health and
Human Services, the Interagency Task Force
on Unaccompanied Alien Children established
in section 1312;

(E) identifying a sufficient number of
qualified persons, entities, and facilities to
house unaccompanied alien children in accord-
ance with sections 1322 and 1323;

(F) overseeing the persons, entities, and
facilities described in sections 1322 and 1323 to
ensure their compliance with such provisions;

(G) compiling, updating, and publishing at
least annually a State-by-State list of profes-
sionals or other entities qualified to contract
with the Office to provide the services described in sections 1331 and 1332;

(H) maintaining statistical information and other data on unaccompanied alien children in the Office’s custody and care, which shall include—

(i) biographical information such as the child’s name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody, including each instance in which such child came into the custody of—

(I) the Service; or

(II) the Office;

(iii) information relating to the custody, detention, release, and repatriation of unaccompanied alien children who have been in the custody of the Office;

(iv) in any case in which the child is placed in detention, an explanation relating to the detention; and

(v) the disposition of any actions in which the child is the subject;
(I) collecting and compiling statistical information from the Service, including Border Patrol and inspections officers, on the unaccompanied alien children with whom they come into contact; and

(J) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (3)(F), the Director is encouraged to utilize the refugee children foster care system established pursuant to section 412(d)(2) of the Immigration and Nationality Act for the placement of unaccompanied alien children.

(4) POWERS.—In carrying out the duties specified in paragraph (3), the Director shall have the power to—

(A) contract with service providers to perform the services described in sections 1322, 1323, 1331, and 1332; and

(B) compel compliance with the terms and conditions set forth in section 1323, including the power to terminate the contracts of providers that are not in compliance with such con-
ditions and reassign any unaccompanied alien child to a similar facility that is in compliance with such section.

(b) No Effect on Service, EOIR, and Department of State Adjudicatory Responsibilities.—Nothing in this title may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act from the authority of any official of the Service, the Executive Office of Immigration Review (or successor entity), or the Department of State.

SEC. 1312. ESTABLISHMENT OF INTERAGENCY TASK FORCE ON UNACCOMPANIED ALIEN CHILDREN.

(a) Establishment.—There is established an Interagency Task Force on Unaccompanied Alien Children.

(b) Composition.—The Task Force shall consist of the following members:

(1) The Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(2) The Under Secretary of Homeland Security for Immigration Affairs.

(3) The Assistant Secretary of State for Population, Refugees, and Migration.

(4) The Director.
(5) Such other officials in the executive branch of Government as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Assistant Secretary, Administration for Children and Families, Department of Health and Human Services.

(d) ACTIVITIES OF THE TASK FORCE.—In consultation with nongovernmental organizations, the Task Force shall—

(1) measure and evaluate the progress of the United States in treating unaccompanied alien children in United States custody; and

(2) expand interagency procedures to collect and organize data, including significant research and resource information on the needs and treatment of unaccompanied alien children in the custody of the United States Government.

SEC. 1313. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—All functions with respect to the care and custody of unaccompanied alien children under the immigration laws of the United States vested by statute in, or exercised by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component thereof), immediately prior to the effective date of this subtitle, are transferred to the Office.
(b) **Transfer and Allocations of Appropriations and Personnel.**—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

(c) **Legal Documents.**—All orders, determinations, rules, regulations, permits, grants, loans, contracts, recognition of labor organizations, agreements, including collective bargaining agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this section; and
(2) that are in effect on the effective date of
such transfer (or become effective after such date
pursuant to their terms as in effect on such effective
date);

shall continue in effect according to their terms until
modified, terminated, superseded, set aside, or revoked in
accordance with law by the President, any other author-
ized official, a court of competent jurisdiction, or operation
of law, except that any collective bargaining agreement
shall remain in effect until the date of termination speci-
fied in the agreement.

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under
subsection (a) shall not affect any proceeding or any
application for any benefit, service, license, permit,
certificate, or financial assistance pending on the ef-
fective date of this subtitle before an office whose
functions are transferred pursuant to this section,
but such proceedings and applications shall be con-
tinued.

(2) ORDERS.—Orders shall be issued in such
proceedings, appeals shall be taken therefrom, and
payments shall be made pursuant to such orders, as
if this Act had not been enacted, and orders issued
in any such proceeding shall continue in effect until
modified, terminated, superseded, or revoked by a
duly authorized official, by a court of competent ju-
risdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—
Nothing in this section shall be considered to pro-
hibit the discontinuance or modification of any such
proceeding under the same terms and conditions and
to the same extent that such proceeding could have
been discontinued or modified if this section had not
been enacted.

(e) SUITS.—This section shall not affect suits com-
enced before the effective date of this subtitle, and in
all such suits, proceeding shall be had, appeals taken, and
judgments rendered in the same manner and with the
same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action,
or other proceeding commenced by or against the Depart-
ment of Justice or the Immigration and Naturalization
Service, or by or against any individual in the official ca-
pacity of such individual as an officer or employee in con-
nection with a function transferred pursuant to this sec-
tion, shall abate by reason of the enactment of this Act.

(g) CONTINUANCE OF SUIT WITH SUBSTITUTION OF
PARTIES.—If any Government officer in the official capac-
ity of such officer is party to a suit with respect to a func-
1    tion of the officer, and pursuant to this section such func-
2    tion is transferred to any other officer or office, then such
3    suit shall be continued with the other officer or the head
4    of such other office, as applicable, substituted or added
5    as a party.

6 (h) Administrative Procedure and Judicial
7 Review.—Except as otherwise provided by this title, any
8 statutory requirements relating to notice, hearings, action
9 upon the record, or administrative or judicial review that
10 apply to any function transferred pursuant to any provi-
11 sion of this section shall apply to the exercise of such func-
12 tion by the head of the office, and other officers of the
13 office, to which such function is transferred pursuant to
14 such provision.

15 SEC. 1314. EFFECTIVE DATE.
16    This subtitle shall take effect one year after the effec-
17 tive date of division A of this Act.

18 Subtitle B—Custody, Release, Family Reunification, and Detention

19 SEC. 1321. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

20 (a) Unaccompanied Children Found Along the
21 United States Border or at United States Ports
22 of Entry.—
Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act, the officer shall—

(A) permit such child to withdraw the child’s application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act; and

(B) remove such child from the United States.

(2) Special rule for contiguous countries.—

(A) In general.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—
(i) such child has a fear of returning
to the child’s country of nationality or
country of last habitual residence owing to
a fear of persecution;

(ii) the return of such child to the
child’s country of nationality or country of
last habitual residence would endanger the
life or safety of such child; or

(iii) the child cannot make an inde-
dependent decision to withdraw the child’s
application for admission due to age or
other lack of capacity.

(B) Right of consultation.—Any child
described in subparagraph (A) shall have the
right to consult with a consular officer from the
child’s country of nationality or country of last
habitual residence prior to repatriation, as well
as consult with the Office, telephonically, and
such child shall be informed of that right.

(3) Rule for apprehensions at the bor-
der.—The custody of unaccompanied alien children
not described in paragraph (2) who are apprehended
at the border of the United States or at a United
States port of entry shall be treated in accordance
with the provisions of subsection (b).
(b) Custody of Unaccompanied Alien Children Found in the Interior of the United States.—

(1) Establishment of Jurisdiction.—

(A) In general.—Except as otherwise provided in subsection (a) and subparagraph (B), the custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) Exception for children who have committed crimes.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act, while such charges are pending; or

(ii) has been convicted of any such felony.

(C) Exception for children who threaten national security.—Notwithstanding subparagraph (A), the Service shall retain or assume the custody and care of an unaccompanied alien child if the Secretary of
Homeland Security has substantial evidence that such child endangers the national security of the United States.

(2) Notification.—Upon apprehension of an unaccompanied alien child, the Secretary of Homeland Security shall promptly notify the Office.

(3) Transfer of Unaccompanied Alien Children.—

(A) Transfer to the Office.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in paragraph (1) (B) or (C), not later than 72 hours after the apprehension of such child; or

(ii) in the case of a child whose custody has been retained or assumed by the Service pursuant to paragraph (1) (B) or (C), immediately following a determination that the child no longer meets the description set forth in such paragraph.

(B) Transfer to the Service.—Upon determining that a child in the custody of the Office is described in paragraph (1) (B) or (C), the Director shall promptly make arrangements
to transfer the care and custody of such child
to the Service.

(c) Age Determinations.—In any case in which
the age of an alien is in question and the resolution of
questions about such alien’s age would affect the alien’s
eligibility for treatment under the provisions of this title,
a determination of whether such alien meets the age re-
quirements of this title shall be made in accordance with
the provisions of section 1325.

SEC. 1322. FAMILY REUNIFICATION FOR UNACCOMPANIED
ALIEN CHILDREN WITH RELATIVES IN THE
UNITED STATES.

(a) Placement Authority.—

(1) Order of preference.—Subject to the
Director’s discretion under paragraph (4) and sec-
tion 1323(a)(2), an unaccompanied alien child in the
custody of the Office shall be promptly placed with
one of the following individuals in the following
order of preference:

(A) A parent who seeks to establish cus-
tody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to estab-
lish custody, as described in paragraph (3)(A).

(C) An adult relative.
(D) An entity designated by the parent or legal guardian that is capable and willing to care for the child’s well-being.

(E) A State-licensed juvenile shelter, group home, or foster home willing to accept legal custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

(2) HOME STUDY.—Notwithstanding the provisions of paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid home-study conducted by an agency of the State of the child’s proposed residence, by an agency authorized by that State to conduct such a study, or by an appropriate voluntary agency contracted with the Office to conduct such studies has found that the person or entity is capable of providing for the child’s physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—
(A) Placement with Parent or Legal Guardian.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child’s placement within 30 days.

(B) Rule of Construction.—Nothing in this title shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Programme of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) Protection from Smugglers and Traffickers.—The Director shall take affirmative steps to ensure that unaccompanied alien children are pro-
ected from smugglers, traffickers, or others seeking
to victimize or otherwise engage such children in
criminal, harmful, or exploitative activity. Attorneys
involved in such activities should be reported to their
State bar associations for disciplinary action.

(5) Grants and contracts.—Subject to the
availability of appropriations, the Director is author-
ized to make grants to, and enter into contracts
with, voluntary agencies to carry out the provisions
of this section.

(6) Reimbursement of state expenses.—
Subject to the availability of appropriations, the Di-
rector is authorized to reimburse States for any ex-
penses they incur in providing assistance to unac-
accompanied alien children who are served pursuant to
this title.

(b) Confidentiality.—All information obtained by
the Office relating to the immigration status of a person
listed in subsection (a) shall remain confidential and may
be used only for the purposes of determining such person’s
qualifications under subsection (a)(1).

SEC. 1323. APPROPRIATE CONDITIONS FOR DETENTION OF
UNACCOMPANIED ALIEN CHILDREN.

(a) Standards for placement.—
(1) Prohibition of detention in certain facilities.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) Detention in appropriate facilities.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) State licensure.—In the case of a placement of a child with an entity described in section 1322(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) Conditions of detention.—

(A) In general.—At a minimum, the Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

   (i) educational services appropriate to the child;

   (ii) medical care;
(iii) mental health care, including treatment of trauma;
(iv) access to telephones;
(v) access to legal services;
(vi) access to interpreters;
(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;
(viii) recreational programs and activities;
(ix) spiritual and religious needs; and
(x) dietary needs.

(B) Notification of Children.—Such regulations shall provide that all children are notified orally and in writing of such standards.

(b) Prohibition of Certain Practices.—The Director and the Secretary of Homeland Security shall develop procedures prohibiting the unreasonable use of—
(1) shackling, handcuffing, or other restraints on children;
(2) solitary confinement; or
(3) pat or strip searches.
(c) Rule of Construction.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 1324. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) Country Conditions.—

(1) Sense of Congress.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) Assessment of Conditions.—

(A) In General.—In carrying out repatriations of unaccompanied alien children, the Office shall conduct assessments of country conditions to determine the extent to which the country to which a child is being repatriated has a child welfare system capable of ensuring the child’s well being.
(B) FACTORS FOR ASSESSMENT.—In assessing country conditions, the Office shall, to the maximum extent practicable, examine the conditions specific to the locale of the child’s repatriation.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Beginning not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Judiciary Committees of the House of Representatives and Senate on the Director’s efforts to repatriate unaccompanied alien children. Such report shall include at a minimum the following information:

(1) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(2) A description of the type of immigration relief sought and denied to such children.

(3) A statement of the nationalities, ages, and gender of such children.

(4) A description of the procedures used to effect the removal of such children from the United States.
(5) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(6) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 1325. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

The Director shall develop procedures that permit the presentation and consideration of a variety of forms of evidence, including testimony of a child and other persons, to determine an unaccompanied alien child’s age for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. Radiographs shall not be the sole means of determining age.

SEC. 1326. EFFECTIVE DATE.

This subtitle shall take effect one year after the effective date of division A of this Act.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

SEC. 1331. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM.

(a) Guardian Ad Litem.—
(1) APPOINTMENT.—The Director shall appoint a guardian ad litem who meets the qualifications described in paragraph (2) for each unaccompanied alien child in the custody of the Office not later than 72 hours after the Office assumes physical or constructive custody of such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem who is not—

(i) a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possessing of special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Service.

(3) DUTIES.—The guardian ad litem shall—
(A) conduct interviews with the child in a manner that is appropriate, taking into account the child’s age;

(B) investigate the facts and circumstances relevant to such child’s presence in the United States, including facts and circumstances arising in the country of the child’s nationality or last habitual residence and facts and circumstances arising subsequent to the child’s departure from such country;

(C) work with counsel to identify the child’s eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child’s custody, detention, release, and repatriation;

(E) ensure that the child’s best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

(F) ensure that the child understands such determinations and proceedings; and
(G) report findings and recommendations to the Director and to the Executive Office of Immigration Review (or successor entity).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed,

(B) the child departs the United States,

(C) the child is granted permanent resident status in the United States,

(D) the child attains the age of 18, or

(E) the child is placed in the custody of a parent or legal guardian,

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;
(D) shall be notified in advance of all hearings involving the child that are held in connection with proceedings under the Immigration and Nationality Act, and shall be given a reasonable opportunity to be present at such hearings; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child.

(b) Training.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the circumstances and conditions that unaccompanied alien children face as well as in the various immigration benefits for which such a child might be eligible.

SEC. 1332. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO COUNSEL.

(a) Access to Counsel.—

(1) In general.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or in the custody of the Service who are not described in section 1321(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.
(2) **PRO BONO REPRESENTATION.**—To the maximum extent practicable, the Director shall utilize the services of pro bono attorneys who agree to provide representation to such children without charge.

(3) **GOVERNMENT FUNDED REPRESENTATION.**—

(A) **APPOINTMENT OF COMPETENT COUNSEL.**—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, when no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

(B) **LIMITATION ON ATTORNEY FEES.**—Counsel appointed under subparagraph (A) may not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

(C) **AVAILABILITY OF FUNDING.**—In carrying out this paragraph, the Director may make use of funds derived from any source designated by the Secretary of Health and Human Services from discretionary funds available to the Department of Health and Human Services.
(D) Assumption of the cost of government-paid counsel.—In the case of a
child for whom counsel is appointed under sub-
paragraph (A) who is subsequently placed in
the physical custody of a parent or legal guard-
ian, such parent or legal guardian may elect to
retain the same counsel to continue representa-
tion of the child, at no expense to the Govern-
ment, beginning on the date that the parent or
legal guardian assumes physical custody of the
child.

(4) Development of necessary infra-
structures and systems.—In ensuring that legal
representation is provided to such children, the Di-
rector shall develop the necessary mechanisms to
identify entities available to provide such legal as-
sistance and representation and to recruit such enti-
ties.

(5) Contracting and grant making au-
thority.—

(A) In general.—Subject to the avail-
ability of appropriations, the Director shall
enter into contracts with or make grants to na-
tional nonprofit agencies with relevant expertise
in the delivery of immigration-related legal serv-
ices to children in order to carry out this sub-
section.

(B) INELIGIBILITY FOR GRANTS AND CON-
TRACTS.—In making grants and entering into
contracts with such agencies, the Director shall
ensure that no such agency is—

(i) a grantee or contractee for services
provided under section 1322 or 1331; and

(ii) simultaneously a grantee or con-
tractee for services provided under sub-
paragraph (A).

(b) REQUIREMENT OF LEGAL REPRESENTATION.—
The Director shall ensure that all unaccompanied alien
children have legal representation within 7 days of the
child coming into Federal custody.

(c) DUTIES.—Counsel shall represent the unaccompa-
panied alien child all proceedings and actions relating to
the child’s immigration status or other actions involving
the Service and appear in person for all individual merits
hearings before the Executive Office for Immigration Re-
view and interviews involving the Service.

(d) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reason-
able access to the unaccompanied alien child, includ-
ing access while the child is being held in detention,
in the care of a foster family, or in any other setting that has been determined by the Office.

(2) Restriction on Transfers.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child’s placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(e) Termination of Appointment.—Counsel shall carry out the duties described in subsection (e) until—

(1) those duties are completed,

(2) the child departs the United States,

(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act,

(4) the child is granted protection under the Convention Against Torture,

(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act,

(6) the child is granted permanent resident status in the United States, or

(7) the child attains 18 years of age,

whichever occurs first.
(f) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(g) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 1333. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This subtitle shall take effect one year after the effective date of division A of this Act.

(b) APPLICABILITY.—The provisions of this subtitle shall apply to all unaccompanied alien children in Federal
Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

SEC. 1341. SPECIAL IMMIGRANT JUVENILE VISa.

(a) J Visa.—Section 101(a)(27)(J) (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

“(J) an immigrant under the age of 18 on the date of application who is present in the United States—

“(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment, or a similar basis found under State law;

“(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous
country of nationality or country of last habitual residence; and

“(iii) for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Under Secretary of Homeland Security for Immigration Affairs that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;”.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

“(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply,”;

(2) in subparagraph (B), by striking the period

and inserting “, and”; and

(3) by adding at the end the following new sub-paragraph:
“(C) the Secretary of Homeland Security may waive paragraph (2) (A) and (B) in the case of an offense which arose as a consequence of the child being unaccompanied.”.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), and who is in the custody of a State shall be eligible for all funds made available under section 412(d) of such Act.

SEC. 1342. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary of Homeland Security, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into
currently existing education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF SERVICE PERSONNEL.—The Secretary of Homeland Security, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Service who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States border or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 1321(a)(2).

SEC. 1343. EFFECTIVE DATE.

The amendment made by section 1341 shall apply to all eligible children who were in the United States before, on, or after the date of enactment of this Act.

Subtitle E—Children Refugee and Asylum Seekers

SEC. 1351. GUIDELINES FOR CHILDREN’S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Service for its issuance of its “Guidelines for Children’s Asylum Claims”, dated December 1998, and encourages
and supports the Service’s implementation of such guidelines in an effort to facilitate the handling of children’s asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice (or successor entity) to adopt the “Guidelines for Children’s Asylum Claims” in its handling of children’s asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary of Homeland Security shall provide periodic comprehensive training under the “Guidelines for Children’s Asylum Claims” to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 1352. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:
“(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region. Such analysis shall include an assessment of—

“(A) the number of unaccompanied refugee children, by region;

“(B) the capacity of the Department of State to identify such refugees;

“(C) the capacity of the international community to care for and protect such refugees;

“(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

“(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

“(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.”.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking “and” after “countries,”; and

(2) inserting before the period at the end the following: “, and instruction on the needs of unaccompanied refugee children”.
Subtitle F—Authorization of Appropriations

SEC. 1361. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

(b) Availability of Funds.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE XIV—AGENCY FOR IMMIGRATION HEARINGS AND APPEALS

Subtitle A—Structure and Function

SEC. 1401. ESTABLISHMENT.

(a) In General.—There is established within the Department of Justice the Agency for Immigration Hearings and Appeals (in this title referred to as the “Agency”).

(b) Abolition of EOIR.—The Executive Office for Immigration Review of the Department of Justice is hereby abolished.

SEC. 1402. DIRECTOR OF THE AGENCY.

(a) Appointment.—There shall be at the head of the Agency a Director who shall be appointed by the President, by and with the advice and consent of the Senate.
(b) OFFICES.—The Director shall appoint a Deputy Director, General Counsel, Pro Bono Coordinator, and other offices as may be necessary to carry out this title.

(c) RESPONSIBILITIES.—The Director shall—

(1) administer the Agency and be responsible for the promulgation of rules and regulations affecting the Agency;

(2) appoint each Member of the Board of Immigration Appeals, including a Chair;

(3) appoint the Chief Immigration Judge; and

(4) appoint and fix the compensation of attorneys, clerks, administrative assistants, and other personnel as may be necessary.

SEC. 1403. BOARD OF IMMIGRATION APPEALS.

(a) IN GENERAL.—The Board of Immigration Appeals (in this title referred to as the “Board”) shall perform the appellate functions of the Agency. The Board shall consist of a Chair and not less than 14 other immigration appeals judges.

(b) APPOINTMENT.—Members of the Board shall be appointed by the Director, in consultation with the Chair of the Board of Immigration Appeals.

(e) QUALIFICATIONS.—The Chair and each other Member of the Board shall be an attorney in good standing of a bar of a State or the District of Columbia and
shall have at least seven years of professional legal expertise in immigration and nationality law.

(d) Chair.—The Chair shall direct, supervise, and establish the procedures and policies of the Board.

(e) Jurisdiction.—

(1) In general.—The Board shall have such jurisdiction as was, prior to the date of enactment of this Act, provided by statute or regulation to the Board of Immigration Appeals (as in effect under the Executive Office of Immigration Review).

(2) De novo review.—The Board shall have de novo review of any decision by an immigration judge, including any final order of removal.

(f) Decisions of the Board.—The decisions of the Board shall constitute final agency action, subject to review only as provided by the Immigration and Nationality Act and other applicable law.

(g) Independence of Board Members.—The Members of the Board shall exercise their independent judgment and discretion in the cases coming before the Board.

SEC. 1404. CHIEF IMMIGRATION JUDGE.

(a) Establishment of Office.—There shall be within the Agency the position of Chief Immigration Judge, who shall administer the immigration courts.
(b) DUTIES OF THE CHIEF IMMIGRATION JUDGE.—

The Chief Immigration Judge shall be responsible for the
general supervision, direction, and procurement of re-
source and facilities and for the general management of
immigration court dockets.

(c) APPOINTMENT OF IMMIGRATION JUDGES.—Im-
migration judges shall be appointed by the Director, in
consultation with the Chief Immigration Judge.

(d) QUALIFICATIONS.—Each immigration judge, in-
cluding the Chief Immigration Judge, shall be an attorney
in good standing of a bar of a State or the District of
Columbia and shall have at least seven years of profes-
sional legal expertise in immigration and nationality law.

(e) JURISDICTION AND AUTHORITY OF IMMIGRATION
COURTS.—The immigration courts shall have such juris-
diction as was, prior to the date of enactment of this Act,
provided by statute or regulation to the immigration
courts within the Executive Office for Immigration Review
of the Department of Justice.

(f) INDEPENDENCE OF IMMIGRATION JUDGES.—The
immigration judges shall exercise their independent judg-
ment and discretion in the cases coming before the Immi-
grantion Court.
SEC. 1405. CHIEF ADMINISTRATIVE HEARING OFFICER.

(a) Establishment of Position.—There shall be within the Agency the position of Chief Administrative Hearing Officer.

(b) Duties of the Chief Administrative Hearing Officer.—The Chief Administrative Hearing Officer shall hear cases brought under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

SEC. 1406. REMOVAL OF JUDGES.

Immigration judges and Members of the Board may be removed from office only for good cause, including neglect of duty or malfeasance, by the Director, in consultation with the Chair of the Board, in the case of the removal of a Member of the Board, or in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

SEC. 1407. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Agency such sums as may be necessary to carry out this title.

Subtitle B—Transfer of Functions and Savings Provisions

SEC. 1411. TRANSITION PROVISIONS.

(a) Transfer of Functions.—All functions under the immigration laws of the United States vested by statute in, or exercised by, the Executive Office of Immigration Review of the Department of Justice (or any officer,
employee, or component thereof), immediately prior to the

effective date of this title, are transferred to the Direc-
torate.

(b) Transfer and Allocations of Appropriations and Personnel.—The personnel employed in con-

nection with, and the assets, liabilities, contracts, prop-

erty, records, and unexpended balances of appropriations,

authorizations, allocations, and other funds employed,

used, held, arising from, available to, or to be made avail-
able in connection with the functions transferred by this

section, subject to section 1531 of title 31, United States

Code, shall be transferred to the Directorate. Unexpended

funds transferred pursuant to this section shall be used

only for the purposes for which the funds were originally

authorized and appropriated.

(e) Legal Documents.—All orders, determinations,

rules, regulations, permits, grants, loans, contracts, rec-

ognition of labor organizations, agreements, including col-

lective bargaining agreements, certificates, licenses, and

privileges—

(1) that have been issued, made, granted, or al-

lowed to become effective by the Attorney General or

the Executive Office of Immigration Review of the

Department of Justice, their delegates, or any other

Government official, or by a court of competent ju-
risdiction, in the performance of any function that is
transferred pursuant to this section; and

(2) that are in effect on the effective date of
such transfer (or become effective after such date
pursuant to their terms as in effect on such effective
date);
shall continue in effect according to their terms until
modified, terminated, superseded, set aside, or revoked in
accordance with law by the Directorate, any other author-
ized official, a court of competent jurisdiction, or operation
of law, except that any collective bargaining agreement
shall remain in effect until the date of termination speci-

(d) PROCEEDINGS.—

(1) PENDING.—The transfer of functions under
subsection (a) shall not affect any proceeding or any
application for any benefit, service, license, permit,
certificate, or financial assistance pending on the ef-
fective date of this title before an office whose func-
tions are transferred pursuant to this section, but
such proceedings and applications shall be contin-
ued.

(2) ORDERS.—Orders shall be issued in such
proceedings, appeals shall be taken therefrom, and
payments shall be made pursuant to such orders, as
if this Act had not been enacted, and orders issued
in any such proceeding shall continue in effect until
modified, terminated, superseded, or revoked by a
duly authorized official, by a court of competent ju-
risdiction, or by operation of law.

(3) DISCONTINUANCE OR MODIFICATION.—
Nothing in this section shall be considered to pro-
hibit the discontinuance or modification of any such
proceeding under the same terms and conditions and
to the same extent that such proceeding could have
been discontinued or modified if this section had not
been enacted.

(e) SUITS.—This section shall not affect suits com-
menced before the effective date of this title, and in all
such suits, proceeding shall be had, appeals taken, and
judgments rendered in the same manner and with the
same effect as if this section had not been enacted.

(f) NONABATEMENT OF ACTIONS.—No suit, action,
or other proceeding commenced by or against the Depart-
ment of Justice or the Executive Office of Immigration
Review, or by or against any individual in the official ca-
pacity of such individual as an officer or employee in con-
nection with a function transferred pursuant to this sec-
tion, shall abate by reason of the enactment of this Act.
(g) Continuance of Suit With Substitution of Parties.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this section such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(h) Administrative Procedure and Judicial Review.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to any provision of this section shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such provision.

Subtitle C—Effective Date

SEC. 1421. EFFECTIVE DATE.

This title shall take effect one year after the effective date of division A of this Act.

Amend the title so as to read: “A bill to establish the Department of Homeland Security and the National
Office for Combating Terrorism, and for other purposes.”.