

AMENDMENT NO. _____ Calendar No. _____

Purpose: To improve the provisions relating to illegal entry,
reentry of removed aliens, and passport fraud.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for
other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 Strike sections 3704 through 3707 and insert the fol-
2 lowing:

3 **SEC. 3704. ILLEGAL ENTRY.**

4 (a) IN GENERAL.—Section 275 (8 U.S.C. 1325) is
5 amended to read as follows:

6 **“SEC. 275. ILLEGAL ENTRY.**

7 “(a) IN GENERAL.—

8 “(1) CRIMINAL OFFENSES.—An alien shall be
9 subject to the penalties set forth in paragraph (2) if
10 the alien—

1 “(A) enters, attempts to enter, or crosses
2 the border into the United States at any time
3 or place other than as designated by the Sec-
4 retary of Homeland Security;

5 “(B) eludes examination or inspection by
6 an immigration officer, or a customs or agri-
7 culture inspection at a port of entry; or

8 “(C) attempts to enter or obtains entry to
9 the United States by means of a knowingly
10 false or misleading representation or the con-
11 cealment of a material fact.

12 “(2) CRIMINAL PENALTIES.—Any alien who
13 violates any provision under paragraph (1)—

14 “(A) shall, for the first violation, be fined
15 under title 18, United States Code, imprisoned
16 not more than 12 months, or both;

17 “(B) shall, for a second or subsequent vio-
18 lation, or following an order of voluntary depar-
19 ture, be fined under such title, imprisoned not
20 more than 3 years, or both;

21 “(C) if the violation occurred after the
22 alien had been convicted of 3 or more mis-
23 demeanors or of a felony, shall be fined under
24 such title, imprisoned not more than 10 years,
25 or both; and

1 “(D) if the violation occurred after the
2 alien had been convicted of a felony for which
3 the alien was sentenced to a term of imprison-
4 ment, shall be fined under such title, impris-
5 oned not more than 15 years, or both.

6 “(3) PRIOR CONVICTIONS.—The prior convic-
7 tions described in subparagraphs (C) and (D) of
8 paragraph (2) are elements of the offenses described
9 in that paragraph and the penalties in such subpara-
10 graphs shall apply only in cases in which the convic-
11 tion or convictions that form the basis for the addi-
12 tional penalty are—

13 “(A) alleged in the indictment or informa-
14 tion; and

15 “(B) proven beyond a reasonable doubt at
16 trial or admitted by the defendant under oath
17 as part of a plea agreement.

18 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
19 ALTIES.—Any alien who is apprehended while knowingly
20 entering, attempting to enter, or crossing or attempting
21 to cross the border to the United States at a time or place
22 other than as designated by immigration officers shall be
23 subject to a civil penalty, in addition to any criminal or
24 other civil penalties that may be imposed under any other
25 provision of law, in an amount equal to—

1 “(1) not less than \$250 or more than \$5,000
2 for each such entry, crossing, attempted entry, or at-
3 tempted crossing; or

4 “(2) twice the amount specified in paragraph
5 (1) if the alien had previously been subject to a civil
6 penalty under this subsection.

7 “(c) FRAUDULENT MARRIAGE.—An individual who
8 knowingly enters into a marriage for the purpose of evad-
9 ing any provision of the immigration laws shall be impris-
10 oned for not more than 5 years, fined not more than
11 \$250,000, or both.

12 “(d) COMMERCIAL ENTERPRISES.—Any individual
13 who knowingly establishes a commercial enterprise for the
14 purpose of evading any provision of the immigration laws
15 shall be imprisoned for not more than 5 years, fined in
16 accordance with title 18, United States Code, or both.”.

17 (b) CLERICAL AMENDMENT.—The table of contents
18 is amended by striking the item relating to section 275
19 and inserting the following:

 “Sec. 275. Illegal entry.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect 1 year after the date of the
22 enactment of this Act.

23 **SEC. 3705. REENTRY OF REMOVED ALIEN.**

24 Section 276 (8 U.S.C. 1326) is amended to read as
25 follows:

1 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

2 “(a) REENTRY AFTER REMOVAL.—Any alien who
3 has been denied admission, excluded, deported, or re-
4 moved, or who has departed the United States while an
5 order of exclusion, deportation, or removal is outstanding,
6 and subsequently enters, attempts to enter, crosses the
7 border to, attempts to cross the border to, or is at any
8 time found in the United States, shall be fined under title
9 18, United States Code, imprisoned not more than 2
10 years, or both.

11 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
12 withstanding the penalty provided in subsection (a), if an
13 alien described in that subsection—

14 “(1) was convicted for 3 or more misdemeanors
15 before such removal or departure, the alien shall be
16 fined under title 18, United States Code, imprisoned
17 not more than 10 years, or both;

18 “(2) was convicted for an aggravated felony be-
19 fore such removal or departure, the alien shall be
20 fined under such title, imprisoned not more than 20
21 years, or both;

22 “(3) was convicted for a felony before such re-
23 moval or departure for which the alien was sen-
24 tenced to a term of imprisonment of not less than
25 60 months, the alien shall be fined under such title,
26 imprisoned not more than 20 years, or both;

1 “(4) was convicted for 3 felonies before such re-
2 moval or departure, the alien shall be fined under
3 such title, imprisoned not more than 20 years, or
4 both, unless the Attorney General expressly consents
5 to the entry or reentry, as the case may be, of the
6 alien; or

7 “(5) was convicted, before such removal or de-
8 parture, for murder, rape, kidnapping, or a felony
9 offense described in chapter 77 (relating to peonage
10 and slavery) or 113B (relating to terrorism) of such
11 title, the alien shall be fined under such title, impris-
12 oned not more than 20 years, or both.

13 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
14 alien who has been denied admission, excluded, or de-
15 ported and thereafter enters, attempts to enter, crosses
16 the border to, attempts to cross the border to, or is at
17 any time found in the United States, shall be fined under
18 title 18, United States Code, imprisoned not more than
19 10 years, or both, unless the Attorney General expressly
20 consents to the entry or reentry, as the case may be, of
21 the alien.

22 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
23 convictions described in subsection (b) are elements of the
24 offenses described in that subsection, and the penalties in
25 such subsection shall apply only in cases in which the con-

1 viction or convictions that form the basis for the additional
2 penalty are—

3 “(1) alleged in the indictment or information;
4 and

5 “(2) proven beyond a reasonable doubt at trial
6 or admitted by the defendant under oath as part of
7 a plea agreement.

8 “(e) AFFIRMATIVE DEFENSES.—It shall be an af-
9 firmative defense to a violation of this section that—

10 “(1) prior to the alleged violation, the alien had
11 sought and received the express consent of the Sec-
12 retary of Homeland Security to reapply for admis-
13 sion into the United States; or

14 “(2) at the time of the prior exclusion, deporta-
15 tion, removal, or denial of admission alleged in the
16 violation, the alien had not yet reached 18 years of
17 age and had not been convicted of a crime or adju-
18 dicated a delinquent minor by a court of the United
19 States, or a court of a state or territory, for conduct
20 that would constitute a felony if committed by an
21 adult.

22 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
23 DERLYING DEPORTATION ORDER.—In a criminal pro-
24 ceeding under this section, an alien may not challenge the

1 validity of the deportation order described in subsection
2 (a) or subsection (c) unless the alien demonstrates that—

3 “(1) the alien exhausted any administrative
4 remedies that may have been available to seek relief
5 against the order;

6 “(2) the deportation proceedings at which the
7 order was issued improperly deprived the alien of the
8 opportunity for judicial review; and

9 “(3) the entry of the order was fundamentally
10 unfair.

11 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
12 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
13 moved pursuant to section 241(a)(4) who enters, attempts
14 to enter, crosses the border to, attempts to cross the bor-
15 der to, or is at any time found in, the United States shall
16 be incarcerated for the remainder of the sentence of im-
17 prisonment which was pending at the time of deportation
18 without any reduction for parole or supervised release.
19 Such alien shall be subject to such other penalties relating
20 to the reentry of removed aliens as may be available under
21 this section or any other provision of law.

22 “(h) LIMITATION.—It is not aiding and abetting a
23 violation of this section for an individual to provide an
24 alien with emergency medical care and food or to trans-
25 port the alien to a location where such medical care or

1 food can be provided without compensation or the expecta-
2 tion of compensation.

3 “(i) DEFINITIONS.—In this section:

4 “(1) FELONY.—The term ‘felony’ means any
5 criminal offense punishable by a term of imprison-
6 ment of more than 1 year under the laws of the
7 United States, any State, or a foreign government.

8 “(2) MISDEMEANOR.—The term ‘misdemeanor’
9 means any criminal offense punishable by a term of
10 imprisonment of not more than 1 year under the ap-
11 plicable laws of the United States, any State, or a
12 foreign government.

13 “(3) REMOVAL.—The term ‘removal’ includes
14 any denial of admission, exclusion, deportation, or
15 removal, or any agreement by which an alien stipu-
16 lates or agrees to exclusion, deportation, or removal.

17 “(4) STATE.—The term ‘State’ means a State
18 of the United States, the District of Columbia, and
19 any commonwealth, territory, or possession of the
20 United States.”.

21 **SEC. 3706. PENALTIES RELATED TO REMOVAL.**

22 (a) PENALTIES RELATING TO VESSELS AND AIR-
23 CRAFT.—Section 243(c) (8 U.S.C. 1253(c)) is amended—

1 (1) by striking “Attorney General” each place
2 such term appears and inserting “Secretary of
3 Homeland Security”; and

4 (2) by striking “Commissioner” each place such
5 term appears and inserting “Secretary of Homeland
6 Security”; and

7 (3) in paragraph (1)—

8 (A) in subparagraph (A), by striking
9 “\$2,000” and inserting “\$5,000”;

10 (B) in subparagraph (B), by striking
11 “\$5,000” and inserting “\$10,000”; and

12 (C) by inserting at the end the following:

13 “(D) EXCEPTION.—A person, acting with-
14 out compensation or the expectation of com-
15 pensation, is not subject to penalties under this
16 paragraph if the person is—

17 “(i) providing, or attempting to pro-
18 vide, an alien with emergency medical care
19 or food or water; or

20 “(ii) transporting the alien to a loca-
21 tion where such medical care, food, or
22 water can be provided without compensa-
23 tion or the expectation of compensation.”.

1 (b) DISCONTINUATION OF VISAS TO NATIONALS OF
2 COUNTRIES DENYING OR DELAYING ACCEPTING
3 ALIEN.—Section 243(d) (8 U.S.C. 1253(d)) is amended—

4 (1) by striking “Attorney General” each place
5 such term appears and inserting “Secretary of
6 Homeland Security”; and

7 (2) by striking “notifies the Secretary” and in-
8 serting “notifies the Secretary of State”.

9 **SEC. 3707. REFORM OF PASSPORT, VISA, AND IMMIGRATION**
10 **FRAUD OFFENSES.**

11 (a) TRAFFICKING IN PASSPORTS.—Section 1541 of
12 title 18, United States Code, is amended to read as fol-
13 lows:

14 **“§ 1541. Issuance of passports without authority**

15 “(a) IN GENERA.—Subject to subsection (b), any
16 person who knowingly—

17 “(1) and without lawful authority produces,
18 issues, or transfers a passport;

19 “(2) forges, counterfeits, alters, or falsely
20 makes a passport;

21 “(3) secures, possesses, uses, receives, buys,
22 sells, or distributes a passport, knowing the passport
23 to be forged, counterfeited, altered, falsely made,
24 stolen, procured by fraud, or produced or issued
25 without lawful authority; or

1 “(1) knowingly makes any false statement or
2 representation in an application for a United States
3 passport, or mails, prepares, presents, or signs an
4 application for a United States passport knowing the
5 application to contain any false statement or rep-
6 resentation and with intent to induce or secure the
7 issuance of a passport under the authority of the
8 United States, either for the person’s own use or the
9 use of another, contrary to the laws regulating the
10 issuance of passports or the rules prescribed pursu-
11 ant to such laws; or

12 “(2) knowingly uses or attempts to use, or fur-
13 nishes to another for use, any passport the issuance
14 of which was secured in any way by reason of any
15 false statement,

16 shall be fined under this title, imprisoned not more than
17 25 years (if the offense was committed to facilitate an act
18 of international terrorism (as defined in section 2331 of
19 this title)), 20 years (if the offense was committed to fa-
20 cilitate a drug trafficking crime (as defined in section
21 929(a) of this title)), or 15 years (in the case of any other
22 offense), or both.

23 “(b) VENUE.—

24 “(1) IN GENERAL.—An offense under sub-
25 section (a) may be prosecuted in any district—

1 “(A) in which the false statement or rep-
2 resentation was made or the application for a
3 United States passport was prepared or signed;
4 or

5 “(B) in which or to which the application
6 was mailed or presented.

7 “(2) OFFENSES OUTSIDE THE UNITED
8 STATES.—An offense under subsection (a) involving
9 an application prepared and adjudicated outside the
10 United States may be prosecuted in the district in
11 which the resultant passport was or would have been
12 produced.

13 “(c) SAVINGS CLAUSE.—Nothing in this section may
14 be construed to limit the venue otherwise available under
15 sections 3237 and 3238 of this title.”.

16 (c) MISUSE OF A PASSPORT.—Section 1544 of title
17 18, United States Code, is amended to read as follows:

18 **“§ 1544. Misuse of a passport**

19 “Any person who knowingly—

20 “(1) uses or attempts to use any passport
21 issued or designed for the use of another;

22 “(2) uses or attempts to use any passport in
23 violation of the conditions and restrictions specified
24 in the passport or any rules or regulations pre-

1 scribed pursuant to the laws regulating the issuance
2 of passports; or

3 “(3) secures, possesses, uses, receives, buys,
4 sells, or distributes any passport knowing the pass-
5 port to be forged, counterfeited, altered, falsely
6 made, procured by fraud, or produced or issued
7 without lawful authority,

8 shall be fined under this title, imprisoned not more than
9 25 years (if the offense was committed to facilitate an act
10 of international terrorism (as defined in section 2331 of
11 this title)), 20 years (if the offense was committed to fa-
12 cilitate a drug trafficking crime (as defined in section
13 929(a) of this title)) or 15 years (in the case of any other
14 offense), or both.”.

15 (d) SCHEMES TO PROVIDE FRAUDULENT IMMIGRA-
16 TION SERVICES.—Section 1545 of title 18, United States
17 Code, is amended to read as follows:

18 “§ 1545. Schemes to provide fraudulent immigration
19 services

20 “(a) IN GENERAL.—Any person who knowingly exe-
21 cutes a scheme or artifice, in connection with any matter
22 that is authorized by or arises under any Federal immigra-
23 tion law or any matter the offender claims or represents
24 is authorized by or arises under any Federal immigration
25 law, to—

1 “(1) defraud any person; or

2 “(2) obtain or receive money or anything else of
3 value from any person by means of false or fraudu-
4 lent pretenses, representations, or promises,
5 shall be fined under this title, imprisoned not more than
6 10 years, or both.

7 “(b) MISREPRESENTATION.—Any person who know-
8 ingly and falsely represents that such person is an attor-
9 ney or an accredited representative (as that term is de-
10 fined in section 1292.1 of title 8, Code of Federal Regula-
11 tions (or any successor regulation)) in any matter arising
12 under any Federal immigration law shall be fined under
13 this title, imprisoned not more than 15 years, or both.”.

14 (e) IMMIGRATION AND VISA FRAUD.—Section 1546
15 of title 18, United States Code, is amended by amending
16 the section heading to read as follows:

17 “§ 1546. Immigration and visa fraud”.

18 (f) ALTERNATIVE IMPRISONMENT MAXIMUM FOR
19 CERTAIN OFFENSES.—Section 1547 of title 18, United
20 States Code, is amended—

21 (1) in the matter preceding paragraph (1), by
22 striking “(other than an offense under section
23 1545)”; and

24 (2) in paragraph (1), by striking “15” and in-
25 serting “20”; and

1 (3) in paragraph (2), by striking “20” and in-
2 serting “25”.

3 (g) AUTHORIZED LAW ENFORCEMENT ACTIVITIES.—
4 Chapter 75 of title 18, United States Code, is amended
5 by adding after section 1547 the following:

6 **“§ 1548. Authorized law enforcement activities**

7 “Nothing in this chapter may be construed to pro-
8 hibit—

9 “(1) any lawfully authorized investigative, pro-
10 tective, or intelligence activity of a law enforcement
11 agency of the United States, a State, or a political
12 subdivision of a State, or an intelligence agency of
13 the United States; or

14 “(2) any activity authorized under title V of the
15 Organized Crime Control Act of 1970 (Public Law
16 91–452; 84 Stat. 933).”.

17 (h) TABLE OF SECTIONS AMENDMENT.—The table
18 of sections for chapter 75 of title 18, United States Code,
19 is amended to read as follows:

“Sec.

“1541. Trafficking in passports.

“1542. False statement in an application for a passport.

“1543. Forgery or false use of a passport.

“1544. Misuse of a passport.

“1545. Schemes to provide fraudulent immigration services.

“1546. Immigration and visa fraud.

“1547. Alternative imprisonment maximum for certain offenses.

“1548. Authorized law enforcement activities.”.