

105TH CONGRESS  
1ST SESSION

# H. R. 2588

To establish the Office of Enforcement and Border Affairs within the  
Department of Justice.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 1997

Mr. REYES (for himself, Mr. HUNTER, Mr. BECERRA, Mr. FROST, Mr. HINOJOSA, Mr. GREEN, Mr. BONO, Mr. TORRES, Mr. PASTOR, Mr. BOSWELL, Mr. EDWARDS, and Mr. UNDERWOOD) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To establish the Office of Enforcement and Border Affairs  
within the Department of Justice.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Security and  
5 Enforcement Act of 1997”.

6 **SEC. 2. ESTABLISHMENT OF OFFICE.**

7 (a) IN GENERAL.—There is established in the De-  
8 partment of Justice an office to be known as the Office  
9 of Enforcement and Border Affairs.

1 (b) DIRECTOR.—The head of the Office of Enforce-  
2 ment and Border Affairs shall be the Director of the Of-  
3 fice of Enforcement and Border Affairs, who—

4 (1) shall be appointed by the President, by and  
5 with the advice and consent of the Senate; and

6 (2) shall report directly to the Attorney Gen-  
7 eral.

8 (c) COMPENSATION.—The Director shall be paid at  
9 the rate of basic pay payable for level III of the Executive  
10 Schedule.

11 (d) FUNCTIONS.—The Director shall perform such  
12 functions as are transferred to the Director by this Act  
13 or otherwise vested in the Director by law.

14 **SEC. 3. TRANSFER OF FUNCTIONS.**

15 There are transferred from the Commissioner of the  
16 Immigration and Naturalization Service to the Director all  
17 functions performed under the following programs, and all  
18 personnel, infrastructure, and funding provided to the  
19 Commissioner in support of such programs immediately  
20 before the effective date of this Act:

21 (1) The Border Patrol program.

22 (2) The detention and deportation program.

23 (3) The intelligence program.

24 (4) The investigations program.

25 (5) The inspections program.

1 **SEC. 4. REFERENCES.**

2 With respect to any function transferred by this Act  
3 and exercised on or after the effective date of this Act,  
4 reference in any other Federal law, Executive order, rule,  
5 regulation, or delegation of authority, or any document of  
6 or pertaining to an office from which a function is trans-  
7 ferred by this Act—

8 (1) to the head of such office is deemed to refer  
9 to the head of the office to which such function is  
10 transferred; or

11 (2) to such office is deemed to refer to the of-  
12 fice to which such function is transferred.

13 **SEC. 5. EXERCISE OF AUTHORITIES.**

14 Except as otherwise provided by law, a Federal offi-  
15 cial to whom a function is transferred by this Act may,  
16 for purposes of performing the function, exercise all au-  
17 thorities under any other provision of law that were avail-  
18 able with respect to the performance of that function to  
19 the official responsible for the performance of the function  
20 immediately before the effective date of the transfer of the  
21 function under this Act.

22 **SEC. 6. SAVINGS PROVISIONS.**

23 (a) LEGAL DOCUMENTS.—All orders, determinations,  
24 rules, regulations, permits, grants, loans, contracts, agree-  
25 ments, certificates, licenses, and privileges—

1           (1) that have been issued, made, granted, or al-  
2           lowed to become effective by the President, the At-  
3           torney General, the Commissioner of the Immigra-  
4           tion and Naturalization Service, the Assistant Com-  
5           missioner for Border Patrol, the Assistant Commis-  
6           sioner for Detention and Deportation, the Assistant  
7           Commissioner for Intelligence, the Assistant Com-  
8           missioner for Investigations, or any other Govern-  
9           ment official, or by a court of competent jurisdic-  
10          tion, in the performance of any function that is  
11          transferred by this Act; and

12           (2) that are in effect on the effective date of  
13          such transfer (or become effective after such date  
14          pursuant to their terms as in effect on such effective  
15          date);

16 shall continue in effect according to their terms until  
17 modified, terminated, superseded, set aside, or revoked in  
18 accordance with law by the President, any other author-  
19 ized official, a court of competent jurisdiction, or operation  
20 of law.

21          (b) PROCEEDINGS.—This Act shall not affect any  
22 proceedings or any application for any benefits, service,  
23 license, permit, certificate, or financial assistance pending  
24 on the date of the enactment of this Act before an office  
25 whose functions are transferred by this Act, but such pro-

1 ceedings and applications shall be continued. Orders shall  
2 be issued in such proceedings, appeals shall be taken  
3 therefrom, and payments shall be made pursuant to such  
4 orders, as if this Act had not been enacted, and orders  
5 issued in any such proceeding shall continue in effect until  
6 modified, terminated, superseded, or revoked by a duly au-  
7 thorized official, by a court of competent jurisdiction, or  
8 by operation of law. Nothing in this subsection shall be  
9 considered to prohibit the discontinuance or modification  
10 of any such proceeding under the same terms and condi-  
11 tions and to the same extent that such proceeding could  
12 have been discontinued or modified if this Act had not  
13 been enacted.

14 (c) SUITS.—This Act shall not affect suits com-  
15 menced before the date of the enactment of this Act, and  
16 in all such suits, proceeding shall be had, appeals taken,  
17 and judgments rendered in the same manner and with the  
18 same effect as if this Act had not been enacted.

19 (d) NONABATEMENT OF ACTIONS.—No suit, action,  
20 or other proceeding commenced by or against the Depart-  
21 ment of Justice or the Immigration and Naturalization  
22 Service, or by or against any individual in the official ca-  
23 pacity of such individual as an officer or employee in con-  
24 nection with a function transferred by this Act, shall abate  
25 by reason of the enactment of this Act.

1 (e) CONTINUANCE OF SUITS.—If any Government of-  
2 ficer in the official capacity of such officer is party to a  
3 suit with respect to a function of the officer, and under  
4 this Act such function is transferred to any other officer  
5 or office, then such suit shall be continued with the other  
6 officer or the head of such other office, as applicable, sub-  
7 stituted or added as a party.

8 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-  
9 VIEW.—Except as otherwise provided by this Act, any  
10 statutory requirements relating to notice, hearings, action  
11 upon the record, or administrative or judicial review that  
12 apply to any function transferred by this Act shall apply  
13 to the exercise of such function by the head of the office,  
14 and other officers of the office, to which such function is  
15 transferred by this Act.

16 **SEC. 7. TRANSFER AND ALLOCATION OF APPROPRIATIONS**  
17 **AND PERSONNEL.**

18 (a) IN GENERAL.—The personnel of the Department  
19 of Justice employed in connection with the functions  
20 transferred by this Act, and the assets, liabilities, con-  
21 tracts, property, records, and unexpended balance of ap-  
22 propriations, authorizations, allocations, and other funds  
23 employed, held, used, arising from, available to, or to be  
24 made available to the Immigration and Naturalization  
25 Service in connection with the functions transferred by

1 this Act, subject to section 202 of the Budget and Ac-  
2 counting Procedures Act of 1950, shall be transferred to  
3 the Office of Enforcement and Border Affairs for appro-  
4 priate allocation by the Director. Unexpended funds trans-  
5 ferred pursuant to this subsection shall be used only for  
6 the purposes for which the funds were originally author-  
7 ized and appropriated.

8 (b) EFFECT ON PERSONNEL.—

9 (1) IN GENERAL.—The transfer under this Act  
10 of full-time personnel (except special Government  
11 employees) and part-time personnel holding perma-  
12 nent positions shall not cause any such employee to  
13 be separated or reduced in grade or compensation  
14 for 1 year after the date of transfer to the Office of  
15 Enforcement and Border Affairs.

16 (2) EXECUTIVE SCHEDULE.—Any person who,  
17 on the day preceding the effective date of this Act,  
18 held a position compensated in accordance with the  
19 Executive Schedule prescribed in chapter 53 of title  
20 5, United States Code, and who, without a break in  
21 service, is appointed in the Office of Enforcement  
22 and Border Affairs to a position having duties com-  
23 parable to the duties performed immediately preced-  
24 ing such appointment shall continue to be com-  
25 pensated in such new position at not less than the

1 rate provided for such previous position, for the du-  
2 ration of the service of such person in such new po-  
3 sition.

4 **SEC. 8. DELEGATION AND ASSIGNMENT.**

5 Except as otherwise expressly prohibited by law or  
6 otherwise provided in this Act, an official to whom func-  
7 tions are transferred under this Act (including the head  
8 of any office to which functions are transferred under this  
9 Act) may delegate any of the functions so transferred to  
10 such officers and employees of the office of the official as  
11 the official may designate, and may authorize successive  
12 redelegations of such functions as may be necessary or ap-  
13 propriate. No delegation of functions under this section  
14 or under any other provision of this Act shall relieve the  
15 official to whom a function is transferred under this Act  
16 of responsibility for the administration of the function.

17 **SEC. 9. AUTHORITY OF DIRECTOR OF THE OFFICE OF MAN-**  
18 **AGEMENT AND BUDGET WITH RESPECT TO**  
19 **FUNCTIONS TRANSFERRED.**

20 (a) DETERMINATIONS.—If necessary, the Director of  
21 the Office of Management and Budget shall make any de-  
22 termination of the functions that are transferred under  
23 this Act.

24 (b) INCIDENTAL TRANSFERS.—The Director of the  
25 Office of Management and Budget, at such time or times

1 as the Director shall provide, may make such determina-  
2 tions as may be necessary with regard to the functions  
3 transferred by this Act, and to make such additional inci-  
4 dental dispositions of personnel, assets, liabilities, grants,  
5 contracts, property, records, and unexpended balances of  
6 appropriations, authorizations, allocations, and other  
7 funds held, used, arising from, available to, or to be made  
8 available in connection with such functions, as may be nec-  
9 essary to carry out the provisions of this Act. The Director  
10 shall provide for such further measures and dispositions  
11 as may be necessary to effectuate the purposes of this Act.

12 **SEC. 10. DEFINITIONS.**

13 For purposes of this Act:

14 (1) Except as otherwise provided, the term “Di-  
15 rector” means the Director of the Office of Enforce-  
16 ment and Border Affairs.

17 (2) The term “function” includes any duty, ob-  
18 ligation, power, authority, responsibility, right, privi-  
19 lege, activity, or program.

20 (3) The term “office” includes any office, ad-  
21 ministration, agency, bureau, institute, council, unit,  
22 organizational entity, or component thereof.

23 **SEC. 11. EFFECTIVE DATE.**

24 This Act shall take effect on October 1, 1999.

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