

American Immigration Lawyers Association

Section-by-Section Summary of the SAFE Act “Strengthen and Fortify Enforcement Act” (H.R. 2278), introduced on June 6, 2013 and passed out of the House Judiciary Committee on June 18, 2013¹

(DRAFT VERSION as of 9/25/13)

Title I - Immigration Law Enforcement By States and Localities

Sec. 101. DEFINITIONS AND SEVERABILITY.

- “State” in this Title defined as used in INA §101(a)(36).
- “Secretary” in this Title means the Secretary of the Department of Homeland Security.
- Invalidation of individual provisions will not affect the remainder of the Title.

Sec. 102. IMMIGRATION LAW ENFORCEMENT BY STATES AND LOCALITIES.

- Permits states to enact, implement and enforce their own criminal and civil penalties² for federal immigration violations, so long as the penalties do not exceed³ those under federal law.
- Gives police the authority to investigate, arrest and detain individuals for all federal immigration violations to the same extent as federal law enforcement personnel.⁴

Sec. 103. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER. Requires the inclusion in the DOJ’s NCIC database (which is accessible by all state and local law enforcement) of all information in DHS’s possession about any noncitizen who:

- Has a final order of removal;
- Has entered into voluntary departure;
- Has overstayed their authorized period of stay; or
- Has a visa that has been revoked.

Sec. 104. TECHNOLOGY ACCESS. Gives states access to federal programs and technology for use in identifying removable noncitizens.

Sec. 105. STATE AND LOCAL LAW ENFORCEMENT PROVISION OF INFORMATION ABOUT APPREHENDED ALIENS.

- Requires state and local law enforcement to share with DHS detailed identifying information about anyone⁵ apprehended in their jurisdiction that is “believed to be inadmissible or deportable.”

¹ NB: As of the date of this draft, the bill has not yet been reported out of Committee.

² Subject to INA §274A(h)(2), which expressly preempts “state or local laws imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit for a fee for employment, unauthorized aliens.”

³ Whether state/local criminal penalties exceed federal penalties will be determined without regard to “ancillary issues such as the availability of probation or pardon.” In *Arizona v. U.S.*, No. 11-182 (2012), slip op. at 11, the U.S. Supreme Court had considered the availability of pardon and probation to be relevant to the question of whether the state and federal penalties at issue were actually the same.

⁴ The U.S Supreme Court recently addressed both of these issues in *Arizona v. U.S.*, No. 11-182 (2012). These proposed changes could reopen these questions.

- Requires DHS to reimburse states and localities for “all reasonable costs” incurred for providing this information.

Sec. 106. FINANCIAL ASSISTANCE TO STATE AND LOCAL POLICE AGENCIES THAT ASSIST IN THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS.

- Authorizes necessary appropriations to DHS to make grants to states and localities for equipment, technology, facilities and other products that facilitate or are directly related to investigating, apprehending, arresting, detaining, or transporting removable noncitizens, including administrative costs.
- Permits grants only to those localities that have a written policy and a practice to assist in immigration enforcement.
- Denies grants to any locality that has a policy or practice that prevents police from asking about immigration status.
- Requires a GAO audit within 3 years after enactment.

Sec. 107. INCREASED FEDERAL DETENTION SPACE. Requires the construction or acquisition of an unlimited number of new immigration detention facilities to meet need and authorizes appropriations.

Sec. 108. FEDERAL CUSTODY OF INADMISSIBLE AND DEPORTABLE ALIENS IN THE UNITED STATES APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT. Amends Title II of the INA by adding a new Section 240D that:

- When local police engage in immigration enforcement:
 - Requires DHS to assume custody⁶ (at local request) within 48 hours of police apprehending any noncitizen upon whom a detainer has been placed.
 - Encourages DHS to place a detainer if the apprehended noncitizen is not charged with a crime, when the locality requests it.
 - Requires DHS to request that the police “temporarily” detain or transfer into federal custody noncitizens apprehended by police.
- Mandates the federal, state or local detention of any noncitizen arrested “under this title,” pending “examination under this section.”⁷
- Lowers the standards for immigration detention to those required of U.S. Marshals custody.
- Reimburses states and localities for “all reasonable expenses” incurred in incarcerating and transporting removable noncitizens described in this section.
- Requires DHS to establish a regular circuit and schedule for transfer of apprehended noncitizens into federal custody and permits private contracts to implement.
- Requires a GAO audit within 3 years after enactment.

Sec. 109. TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.

- Requires DHS to create a training manual for state and local law enforcement and an immigration enforcement pocket guide (to be paid for by DHS), but states that nothing shall require state and local law enforcement to carry the manual or guide while on duty.

⁵ An exception is made for victims and witnesses.

⁶ An amendment adopted during markup clarifies in this section that DHS shall assume custody “in order to determine whether the alien should be detained, placed in removal proceedings, released, or removed.”

⁷ The legislative text of Section 108 is unclear, making the scope of its application difficult to assess.

- Requires DHS to make training available to state and local law enforcement, but states that training shall not be a prerequisite to state or local assistance in federal immigration enforcement.

Sec. 110. IMMUNITY. Immunizes state and local law enforcement, acting within the scope of their duties, from personal liability arising out of the performance of their duty under this title, to the same extent as federal law enforcement officers.

Sec. 111. CRIMINAL ALIEN IDENTIFICATION PROGRAM.

- Codifies and permits the expansion to all states of a program that identifies removable “criminal aliens” in federal and state correctional facilities, ensures that such noncitizens are not released into the community, and removes such noncitizens after the completion of their sentence.
- Requires any state that receives SCAAP funding to participate in the program and provide information to DHS on the “criminal aliens” in its jails and prisons.
- Authorizes state/local police to either:
 - hold a potentially removable “criminal alien” for up to 14 days after his or her prison sentence has ended, with or without a detainer; or
 - issue a detainer that would allow a noncitizen who has served a state or local prison sentence to be held in jail until DHS takes custody, with no time limit set.

Sec. 112. CLARIFICATION OF CONGRESSIONAL INTENT.

- Requires DHS to enter into 287(g) task force and jail agreements with any requesting locality (absent “a compelling reason”) and requires the continued implementation of both jail and task force models of the 287(g) program, regardless of reliance on additional technologies to identify removable noncitizens.
- Requires “a compelling reason” for termination of 287(g) agreements and written notice of intent to terminate, with right to administrative hearing and judicial review.
- Requires DHS to make training available.

Sec. 113. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP).

- Increases federal reimbursement to states and localities for the cost of detaining “undocumented criminal aliens” by expanding the latter definition to include those “charged with,” in addition to those convicted of, crimes.
- Moves control of SCAAP from DOJ to DHS.
- Authorizes necessary appropriations.

Sec. 114. STATE VIOLATIONS OF ENFORCEMENT OF IMMIGRATION LAWS.

- Expands existing prohibitions on restricting the sending, receiving, maintaining, and exchanging information regarding an individual’s immigration status between the federal government and states/localities (at 8 U.S.C. §1373) by:
 - Mandating state and local compliance with civil immigration detainers and with requests for information from DHS;
 - Mandating that states and localities notify the federal government of the presence of any removable noncitizens who are encountered by law enforcement personnel; and
 - Denying SCAAP, COPS, or any other law enforcement or DHS grant to states or localities that choose not to honor detainers or to engage in immigration enforcement in the other ways mandated by this section.
- Exempts victims and witnesses of crimes from the application of this section.

Sec. 115. CLARIFYING THE AUTHORITY OF ICE DETAINERS. Requires DHS to “execute all lawful writs” and states that the Secretary “shall command all necessary assistance to execute the Secretary’s duties.”

Title II – National Security

Sec. 201. REMOVAL OF, AND DENIAL OF BENEFITS TO, TERRORIST ALIENS.

- Asylum: amends the 208(b)(2)(A) bars to refugee protection to permit these determinations to be made by either the Attorney General or DHS and to include all of 212(a)(3)(B)(i) or (F), with discretion in certain cases.
- Cancellation of Removal: modifies the terrorism-related bars to Cancellation of Removal to exclude those “described in” the terrorism-related inadmissibility/deportability grounds rather than requiring that they be “inadmissible or deportable” under these grounds.
- Voluntary Departure: modifies the aggravated felony and terrorism-related bars to Voluntary Departure to exclude those “described in” these grounds rather than requiring that they be “inadmissible or deportable” under these grounds.
- Withholding of Removal:
 - Permits Withholding determinations to be made by DHS in addition to the Attorney General.
 - Adds the terrorism-related inadmissibility grounds as free-standing barriers to Withholding, with discretion in certain cases.

Sec. 202. TERRORIST BAR TO GOOD MORAL CHARACTER.

- Adds to the good moral character bar list anyone whom the Secretary or the Attorney General determines “to have been at any time an alien described in section 212(a)(3) or 237(a)(4)” (terrorism-related inadmissibility/deportability grounds).
- Expands the good moral character bar list to anyone who at any time has been convicted of an aggravated felony “regardless of whether the crime was classified as an aggravated felony at the time of conviction,” with discretion in certain limited cases (and eliminates existing statutory language stating that this bar only applies to aggravated felony convictions entered on or after November 29, 1990).
- Adds language stating that, in making good moral character determinations (which are discretionary), the Attorney General or DHS shall not be limited to the applicant’s conduct during the period for which good moral character is required.

Sec. 203. TERRORIST BAR TO NATURALIZATION.

- Adds to the INA’s naturalization requirements a new section barring anyone whom the Secretary or the Attorney General determines “to have been at any time an alien described in section 212(a)(3) or 237(a)(4)” (terrorism-related inadmissibility/deportability grounds).
- Eliminates the ability of district courts to adjudicate applications for naturalization that have been pending with USCIS for over 120 days and instead permits the court only to review the basis for the delay and remand the application to USCIS.
- Eliminates *de novo* federal court review of naturalization denials and instead allows courts to determine only whether the denial was supported by facially legitimate and bona fide reasons, placing the burden on the petitioner to show that it was not so supported.
- Eliminates judicial review of the Secretary’s determination, for the purposes of naturalization eligibility, of whether the applicant is (1) of good moral character or (2) attached to the principles of the Constitution and well-disposed to the good order and happiness of the US (except in the context of a proceeding for revocation of naturalization).

Sec. 204. DENATURALIZATION FOR TERRORISTS. Permits the revocation of citizenship for those who have naturalized if, at any time after naturalization, s/he engages in a terrorist activity as defined in INA Section 212(a)(3)(B) or other listed activities. This section is not retroactive.

Sec. 205. USE OF 1986 IRCA LEGALIZATION INFORMATION FOR NATIONAL SECURITY PURPOSES. Breaks the confidentiality restrictions in current law to permit information provided in applications for legalization under IRCA and for special agricultural worker status to be used, published, or released by DHS “in any investigation, case, or matter, or for any purpose, relating to terrorism, national intelligence, or the national security.”

Sec. 206. BACKGROUND AND SECURITY CHECKS.

- Codifies a requirement that DHS complete background and security checks before granting any immigration application, including employment authorization, or any immigrant or non-immigrant petition, or before issuing proof of status.
- Prohibits courts from compelling DHS to adjudicate petitions or applications by certain noncitizens.
- Provides all relevant officials with authority over immigration matters the discretion to deny or withhold adjudications of a noncitizen described in the INA’s terrorism-related provisions, or any noncitizen with respect to whom a criminal “or other proceeding or investigation” is open or pending (“including, but not limited to, issuance of an arrest warrant, detainer, or indictment”), where such proceeding or investigation is deemed to be material to the person’s eligibility.
- Prohibits judicial review of these discretionary decision to deny/withhold applications.
- Clarifies that this section does not limit or modify Withholding of Removal/CAT.
- Does not make this section retroactive.

Sec. 207. TECHNICAL AMENDMENTS RELATING TO THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004. Amends the language to reflect the creation of the Department of Homeland Security.

Title III – Removal of Criminal Aliens

Sec. 301. DEFINITION OF AGGRAVATED FELONY AND CONVICTION.⁸

- Expands the definition of aggravated felony at INA §101(a)(43) by:
 - making any conviction under the illegal entry statute (as amended by Section 315) or illegal re-entry statute (as amended by Section 316) an aggravated felony if the term of imprisonment is at least one year;⁹

⁸ The part of Section 301 that amends the definition of conviction to make clear that immigration consequences still attach to criminal convictions and sentences that federal courts have overturned or modified for certain purposes – including for counsel’s failure to advise a client of the immigration consequences of a guilty plea entered before the U.S. Supreme Court’s decision in *Padilla v. Kentucky*, which held that such a failure to advise violates a noncitizen’s Sixth Amendment right to effective assistance of counsel in criminal proceedings – was stricken by an amendment adopted in committee.

⁹ Section 301 must be read in conjunction with Section 315, which amends the illegal entry statute to include a new INA 275(a)(1)(D) (violation of the terms/conditions of admission/parole, commonly referred to as “visa overstay”) and (E) (unlawful presence). Convictions for these new crimes under Section 315 could, under Section 301, result in an “aggravated felony” charge in many circumstances. Currently, illegal entry or illegal reentry offenses can be charged as aggravated felonies ONLY if the person has previously been deported for a criminal conviction that qualifies as a different aggravated felony. See INA § 101(a)(43)(O) (“an offense described in [INA] section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph”).

- expanding “murder, rape, or sexual abuse of a minor” to include “murder, manslaughter, homicide, rape (whether conscious or unconscious), or any offense of a sexual nature involving a victim under the age of 18 years”;
- expanding the child pornography aggravated felony ground;
- expanding the “harboring and transporting” aggravated felony ground to include employers convicted for knowingly hiring noncitizens who are not authorized to work in the U.S. (under INA §274(a)(3));
- including not only convictions for attempting or conspiring to commit any of the listed offenses but also convictions for aiding, abetting, counseling, procuring, commanding, inducing, or soliciting the commission of these offenses; and
- authorizing an Immigration Judge to look beyond the record of conviction to determine if a particular criminal conviction is also a “crime of violence.”
- Makes all changes herein to INA §101(a)(43) are retroactive.

Sec. 302. PRECLUDING ADMISSIBILITY OF ALIENS CONVICTED OF AGGRAVATED FELONIES OR OTHER SERIOUS OFFENSES.

- Adds new grounds of inadmissibility for:
 - Identity fraud (18 U.S.C. §1028) or SSN misuse (42 U.S.C. 408), including conspiracy or attempt;
 - Procuring citizenship unlawfully;
 - Sale or possession of a firearm in violation of any law;
 - Conviction for an aggravated felony; and
 - A single domestic violence or child abuse conviction, or admission of acts constituting the offense, or a single violation of a protective order.
- Authorizes going beyond the record of conviction to determine if a crime of domestic violence is a “crime of violence,” with waiver available under INA §237(a)(7).
- Modifies INA §212(h) to permit a waiver for some of the new inadmissibility grounds (using a false social security number or documents, possession of a firearm unlawfully, and crimes of domestic violence) but bars eligibility for the waiver to anyone convicted of an aggravated felony.
- Adds new grounds of deportability for:
 - Procuring citizenship unlawfully; and
 - Identity fraud (18 U.S.C. §1028) or SSN misuse (42 U.S.C. 408).
- Makes this section retroactive in application.

Sec. 303. ESPIONAGE CLARIFICATION. Amends the national security-related grounds to make anyone inadmissible who plans to or has engaged in espionage or any other unlawful activity.

Sec. 304. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY, CERTAIN ALIENS. Prohibits the sale of or possession of firearms by any immigrant who is not lawfully admitted for permanent residence.

Sec. 305. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES. Places a 10-year statute of limitations on most criminal violations of the INA.

Sec. 306. CONFORMING AMENDMENT TO THE DEFINITION OF RACKETEERING ACTIVITY. Adjusts the sections of the U.S. Code to conform to changes made to the sections related to passports and visas.

Sec. 307. CONFORMING AMENDMENTS FOR THE AGGRAVATED FELONY DEFINITION. Adjusts the sections of the U.S. Code listed in the aggravated felony definition to changes made to the sections related to passports and visas.

Sec. 308. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT OF STATUS FOR AGGRAVATED FELONS. Prohibits a waiver or adjustment of status for a refugee convicted of an aggravated felony.

Sec. 309. INADMISSIBILITY, DEPORTABILITY, AND DETENTION OF DRUNK DRIVERS.

- Makes a second or subsequent conviction for DUI an aggravated felony.
- Mandates detention under INA §236(c) for any unlawfully present noncitizen convicted of a single or subsequent DUI, whether a misdemeanor or felony.
- Both provisions apply retroactively.

Sec. 310. DETENTION OF DANGEROUS ALIENS.

After Removal Order:

- During initial or extended removal period, for noncitizens (1) who fail/refuse to make reasonable efforts to leave, (2) who are granted a stay of removal by the Immigration Judge, BIA, or a federal court, or (3) whose case is remanded back to the Immigration Judge or BIA:
 - DHS may keep them in detention (unless they are described in INA §236(c), in which case DHS must detain), and
 - The noncitizen may not seek release on bond but, rather, may only seek release through a writ of habeas corpus.
- For noncitizens who are cooperating fully in the removal process, DHS must establish an administrative custody review process, so long as they are not subject to mandatory detention and, once the removal period ends, must determine whether to release the noncitizen on bond or continue to detain.
- DHS may continue to detain any noncitizen for 90 days beyond the removal period.
- DHS may continue to detain certain classes of noncitizens beyond these 90 days (potentially indefinitely) based on a certification by the DHS Secretary. These classes include individuals with an aggravated felony conviction and individuals who have committed a crime of violence and a have a mental disability that renders them likely to engage in future violence, where the DHS Secretary certifies that their release would threaten public safety.¹⁰
- Noncitizens detained beyond the removal period may not seek release on bond.

During Removal Proceedings:

- For noncitizens eligible for bond hearings during removal proceedings (under INA §236(a)), places the burden on the noncitizen to establish by clear and convincing evidence that they are not a flight risk or a risk to another person or the community.
- For noncitizens eligible for bond hearings during removal proceedings (under INA §236(a)), removes the authority of Immigration Judges to order the supervision of immigrants through alternatives to detention.
- Denies noncitizens mandatorily detained under INA §236(c) the possibility of any bond hearing during the entirety of their removal case.¹¹

¹⁰ This section may conflict with *Zadvydas v. Davis*, 533 U.S. 678 (2001), in which the Court interpreted the INA provision permitting detention beyond the removal period (INA §241(a)(6)) to include “an implicit ‘reasonable time’ limitation” rather than construing it to permit indefinite detention, which the Court said would raise serious due process concerns.

¹¹ This change amends the INA in a way that may conflict with recent federal court cases holding that prolonged mandatory detention raises serious constitutional concerns under the Due Process Clause of the Fifth Amendment, including cases from the Third, Fourth, Sixth, and Ninth Circuits. See, e.g., *Diop v. ICE/Dep’t Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Welch v. Ashcroft*, 293 F.3d 213 (4th Cir. 2002);

- Applies the mandatory detention statute (INA §236(c)) retroactively to apply to individuals who were released from incarceration for designated convictions *before* the effective date of the statute (October 20, 1998).¹²
- Authorizes DHS to subject individuals to §236(c) mandatory detention at “any time” after release from criminal custody.¹³

Retroactivity provisions:

- Applies INA §241 (as amended) to all noncitizens subject to a final order of removal “that was issued before, on, or after” the date of enactment and to all “acts and conditions occurring or existing before, on, or after such date of enactment”; applies INA §236 (as amended) to “any alien in detention under provisions of such section on or after such date of enactment”.

Sec. 311. GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN GANG MEMBERS.

- Adds current or prior gang membership, based on “reason to believe” (with no conviction requirement), as a ground of inadmissibility and deportability.
- Gives the Secretary of DHS authority to designate groups as “criminal gangs.”
- Adds to the INA the definition of a “criminal gang” as a group of 5 or more people that has as one of its primary purpose to engage or has engaged in the past 5 years in one or more of an enumerated list of criminal offenses.
- Mandates detention for anyone found inadmissible or deportable for membership in a criminal street gang.
- Bars individuals found inadmissible or deportable for membership in a criminal gang from asylum, withholding of removal, and temporary protected status.

Sec. 312. EXTENSION OF IDENTITY THEFT OFFENSES. Expands the scope of identity fraud in 18 U.S.C. §§1028 and 1028A from criminalizing using the identity “of another person” to any identity “that is not his or her own.”¹⁴

Sec. 313. LAUNDERING OF MONETARY INSTRUMENTS. Adds additional predicate offenses to the money laundering statute, including trafficking in persons, and makes other changes to the money laundering statute.

Sec. 314. INCREASED CRIMINAL PENALTIES RELATING TO ALIEN SMUGGLING AND RELATED OFFENSES. Expands the harboring and transporting statute (INA §274) to:

- Punish the following conduct:

Ly v. Hansen, 351 F.3d 263 (6th Cir. 2003); *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013); *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011); *Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008); *Tijani v. Willis*, 430 F.3d 1241 (9th Cir. 2005).

¹² In *Matter of Garcia-Arreola*, 25 I&N Dec. 267 (BIA 2010), the BIA interpreted the current text of §236(c) to apply only to individuals who are released from incarceration for designated convictions after the effective date of the statute (which was October 20, 1998).

¹³ INA §236(c) provides that the government “shall take into custody” individuals who are inadmissible and deportable under various criminal and security related grounds “when the alien is released....” Several federal court courts have held that the “when released” language is a temporal requirement for mandatory detention (rejecting the opposite conclusion by the BIA in *Matter of Rojas*) (*see, e.g., Hosh v. Lucero*, No. 11-464, 2011 U.S. Dist. LEXIS 52040 (E.D. Va. May 16, 2011)), while other district courts have agreed with *Matter of Rojas* (*see, e.g., Sulayao v. Shanahan*, No. 09-7347, 2009 U.S. Dist. LEXIS 86497 (S.D.N.Y. Sept. 14, 2009)).

¹⁴ In *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), the U.S. Supreme Court held that, in order to establish the crime of aggravated identity theft under the existing language of §1028A, the government must show that a defendant knew that a form of ID they used actually belonged to another person (as opposed to using a randomly selected set of numbers).

- Facilitating, encouraging, directing, or inducing someone to come to, enter, or cross the border into the U.S., knowing or in reckless disregard of the fact that the person lacks lawful authority to enter, etc.;
- Facilitating, encouraging, directing, or inducing someone to cross into the U.S. at a place other than a designated port of entry, knowing or in reckless disregard of the fact that the person does not have permission or lawful authority to be in the U.S.;
- Transporting, moving, harboring, concealing, or shielding from detention someone who is outside the U.S. but seeking entrance without permission or lawful authority, knowing or in reckless disregard of the fact that the person is a noncitizen in “unlawful transit” from one country to another;
- Encouraging or inducing someone to reside in the U.S., knowing or in reckless disregard of the fact that they lack lawful authority to reside;
- Transporting or moving a person in the U.S., knowing or in reckless disregard of the fact that they lack lawful authority to enter/be in the U.S., if doing so will further their illegal entry/presence;
- Harboring, concealing, or shielding from detection a person in the U.S., knowing or in reckless disregard of the fact that they lack lawful authority to be in the U.S.; or
- Conspiring or attempting to do any of the above.
- Include the existing exception for religious organizations to provide basic living expenses to someone who becomes a minister or missionary provided they have been a member of the denomination for at least a year.
- Outline the criminal penalties, which include mandatory minimums in certain cases.
- Extend extraterritorial federal jurisdiction over the listed offenses.
- Includes a civil forfeiture provision.
- Dictate what will be considered prima facie evidence that a person lacks lawful authority to enter/reside in the U.S.
- Limit the authority to make arrests for a violation of this provision to officers/employees of DHS and/or officers responsible for the enforcement of federal criminal laws.
- Define “lawful authority” as permission expressly provided for in the immigration laws or regulations of the U.S. and does not include authority secured by fraud or in violation of law.

Sec. 315. PENALTIES FOR ILLEGAL ENTRY OR PRESENCE

- Amends INA §275 to punish the following conduct:
 - Knowingly entering or crossing the border at a place other than a designated port of entry;
 - Knowingly evading inspection by an immigration, customs, or agricultural officer;
 - Knowingly making a false or misleading statement or concealing a material fact during examination or inspection while crossing the border;
 - Knowingly violating the conditions of admission or parole into the U.S.; or
 - Knowingly being unlawfully present in the U.S. (as defined in INA §212(a)(9)(B)(ii) and subject to the exceptions in INA §212(a)(9)(B)(iii)).
- Outlines criminal penalties:
 - First violation¹⁵: max 6 months jail;
 - Second of subsequent violation of unlawful presence (subparagraph E): max 6 months
 - Second or subsequent violation of any other subparagraphs: max 2 years;
 - First violation following order of voluntary departure: max 2 years;
 - First violation following conviction for felony or 3 or more misdemeanors: max 10 years;

¹⁵ This refers to any “violation of,” not “conviction for,” any one of the above subparagraphs.

- First violation following felony conviction with at least 30 month prison term: max 15 years;
- First violation following felony conviction with at least 60 months prison term: max 20 years.
- Makes the prior “convictions” referenced above elements of the offenses described and must be alleged in the indictment/information, proven beyond reasonable doubt, or admitted.
- Makes any of the listed offenses continuing violations.
- Punishes attempt in the same manner as completion of any of these acts.
- Outlines civil penalties for improper time or place entry into the U.S.

Sec. 316. ILLEGAL REENTRY.

- Amends INA section 276(a) and adds crossing the border or attempting to cross the border as conduct that can be punished with a fine or imprisonment of up to 2 years.
- Amends the punishments for reentry for individuals with criminal convictions as follows:
 - Punishes reentry after 3 misdemeanors regardless of the type of conviction or a felony conviction with up to 10 years in prison;
 - Punishes reentry after a felony conviction that carried a sentence of 30 months imprisonment with a minimum of 2 years and not more than 15 years in prison;
 - Punishes reentry after a felony conviction that carried a sentence of 60 months imprisonment with a minimum of 4 years and a maximum of 20 years in prison;
 - Punishes reentry after a conviction for murder, rape, kidnapping, or a felony related to peonage or slavery or 3 or more felony convictions with a minimum of 5 years and a maximum of 25 years in prison.
- Adds attempting to re-enter after 3 or more removals as an offense that can be punishable by a fine or imprisonment for up to 10 years.
- Requires the indictment allege the underlying conviction as an element of the crime and the underlying conviction can only be used if it was proven beyond a reasonable doubt or admitted by the defendant.
- Establishes affirmative defenses including consent to reapply for admission from the Secretary or, for someone previously denied admission and removed, was not required to obtain advance consent and complied with all other laws governing their admission.
- Prohibits a collateral attack on the underlying removal order.
- Rewrites the provision requiring the completion of a sentence of anyone who was removed prior to completion and re-enters or attempts to re-enter the U.S.

Sec. 317. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES. Amends Chapter 75 of title 18 of the U.S. Code to:

- Punishes the following with a fine or up to 15 years in prison:
 - Issuing a passport without authority;
 - Knowingly making a false statement in an application for a passport or using, attempting to use, or furnishing to another person a passport secured by a false statement;
 - Forging a passport, using, attempting to use, or furnishing to another a passport that is forged;
 - Using a passport of another, using a passport in violation of its conditions, or using a passport known to be forged, altered, or issued without authority.
- Punishes by a fine or up to 15 years in prison any person who executes a scheme to defraud immigrants.
- Punishes the following with a fine or up to 15 years in prison as Immigration and Visa Fraud:
 - Using someone else’s immigration document;
 - Forging any immigration document;

- Preparing or signing an immigration document with a false statement or representation;
- Possessing or distributing a forged immigration document;
- Using a false name to evade immigration laws;
- Transferring or furnishing an immigration document to a person other than the person for whom it was issued;
- Issuing an immigration document without authority.
- Establishes that attempt to do any of the crimes listed in this chapter will be treated the same as completing the crime.
- Adds to the maximum prison sentence under this chapter if a violation is done to facilitate terrorism or drug trafficking.

Sec. 318. FORFEITURE. Amends 18 U.S.C. §981(a)(1) to include any property used to commit or facilitate the commission of a violation of Chapter 75 of title 18 of the U.S. Code.

Sec. 319. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE ON CRIMINAL OR SECURITY GROUNDS. Amends INA §238(b) (expedited removal for non-permanent or conditional residents deportable for an aggravated felony conviction) by:

- Cutting the existing 14-day window to seek judicial review of the expedited removal order down to 7 days; and
- Expanding these expedited removal procedures to any individual who is inadmissible due to a criminal offense if the individual has not been admitted or paroled, does not have a credible fear of persecution, and is not eligible for relief from removal.

Sec. 320. INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER. Adds failing to register as a sex offender as a ground of inadmissibility and deportability.

Sec. 321. PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS. Prevents U.S. citizen or LPR sex offenders from petitioning for an immigrant visa unless the person proves that he/she poses no risk to the immigrant.

Sec. 322. CLARIFICATION TO CRIMES OF VIOLENCE AND CRIMES INVOLVING MORAL TURPITUDE.

- Authorizes an immigration judge to go beyond the record of conviction to determine if a crime is a “crime involving moral turpitude.”
- Allows the immigration judge to go beyond the record of conviction to determine if a domestic violence crime is a “crime of violence.”

Sec. 323. PENALTIES FOR FAILURE TO OBEY REMOVAL ORDERS.

- Adds anyone who has been ordered removed for being inadmissible to the list of individuals who can be fined or imprisoned for failing to comply with a removal order.
- Deletes the section of the existing statute that provides for suspension of a sentence for those who establish “good cause” for their failure to obey a removal.

Sec. 324. PARDONS. Defines the term pardon and provides that a conviction for which a pardon has been issued shall not be a ground of deportability by reason of that criminal conviction.

Title IV – Visa Security

Sec. 401. CANCELLATION OF ADDITIONAL VISAS. Cancels all nonimmigrant visas in the possession of someone who overstays a visa, not just the specific visa being used at the time the person overstayed.

Sec. 402. VISA INFORMATION SHARING. Expands existing exceptions to the confidentiality of Department of State records pertaining to the issuance, refusal, or revocation of visas and permitting the Secretary of State to share individual noncitizen information with a foreign government for the purposes of preventing/prosecuting U.S. crimes, determining if a person is deportable or eligible for a visa or other immigration benefit, or if the Secretary of State determines it is in the national interest to provide the information to a foreign government.

Sec. 403. RESTRICTING WAIVER OF VISA INTERVIEWS.

- Requires consultation with the Secretary of DHS before the Secretary of State can waive a visa interview.
- Does not allow waivers of visa interviews to facilitate travel of foreign nationals, reduction of visa application processing times, or allocation of consular resources.
- Requires a visa interview if the Secretary of DHS determines the individual is in a class of people that are a threat to national security, is a person of concern, or a waiver of a visa interview would create a high risk of degradation of the visa program integrity.

Sec. 404. AUTHORIZING THE DEPARTMENT OF STATE TO NOT INTERVIEW CERTAIN INELIGIBLE VISA APPLICATIONS. Authorizes the Secretary of State to deny visa applications without an interview if, after review of the application, the Secretary of State determines the applicant is ineligible for a visa.

Sec. 405. VISA REFUSAL AND REVOCATION.

- Gives the Secretary of DHS authority to issue regulations and administer provisions of immigration law relating to the function of consular officers granting or denying visas and can refuse, revoke, or deny to an individual or class of people any visa.
- Provides no judicial review of the Secretary of DHS' decision to refuse or revoke a visa.
- The Secretary of State may refuse a visa if necessary but cannot make a decision to approve a visa in contravention of a decision by the Secretary of DHS.

Sec. 406. FUNDING FOR THE VISA SECURITY PROGRAM. Authorizes a 10% surcharge for consular services in addition to the immigrant visa fees to be credited to appropriations for ICE for the Visa Security Program.

Sec. 407. EXPEDITIOUS EXPANSION OF VISA SECURITY PROGRAM TO HIGH-RISK POSTS. Requires the Secretary of DHS do an onsite review of all visa applications before adjudication at the top 30 visa-issuing posts designated by both the Secretary of State and the Secretary of DHS and appropriates \$60,000,000 for FY2014 and FY2015 to expedite implementation.

Sec. 408. EXPEDITED CLEARANCE AND PLACEMENT OF DEPARTMENT OF HOMELAND SECURITY PERSONNEL AT OVERSEAS EMBASSIES AND CONSULAR POSTS. Provides a 1 year timeline to have personnel in place in an overseas consular office after the Secretary of DHS communicates the assignment to the Secretary of State.

Sec. 409. INCREASED CRIMINAL PENALTIES FOR STUDENT VISA INTEGRITY. Changes the maximum penalty for immigration and visa fraud to 15 years if the offense was committed by an employee of an educational institution with respect to their participation in SEVIS.

Sec. 410. ACCREDITATION REQUIREMENTS.

- Modifies the definition of a nonimmigrant student and accredited college, university, or language training program to reflect termination of accreditation based on noncompliance with any accreditation requirements.
- Requires the Secretary of DHS to accredit an academic institution if the institution is not already required to be accredited or the Secretary of Education is able to provide accreditation.
- Allows the Secretary of DHS to waive accreditation if the institution is otherwise in compliance with the applicable requirements or has been a candidate for accreditation for a year or more and continues to progress toward accreditation.
- Provides a temporary exception during the 3 year period after the effective date for institutions that now have to be accredited to continue to participate in SEVIS while pursuing accreditation.

Sec. 411. VISA FRAUD. Allows for the temporary suspension of SEVIS if there is a reasonable suspicion that an approved institution has committed fraud and a conviction for fraud can lead to permanent disqualification from access to SEVIS.

Sec. 412. BACKGROUND CHECKS. Requires the Secretary of DHS to do background checks before a U.S. citizen or LPR can serve as a designated school official and ensure that the person has not been convicted for a violation of immigration laws, is not a national security threat, and has successfully completed an online training course. Authorizes someone to serve as an interim designated school official while the Secretary is conducting the background check.

Sec. 413. NUMBER OF DESIGNATED SCHOOL OFFICIALS. Provides that a school official may designate as many Designated School Officials aside from the Primary Designated School Official as necessary to adequately advise students on how to maintain their nonimmigrant status and support timely reporting to DHS.

Sec. 414. REPORTING REQUIREMENT. Requires a report to DHS within 10 days after any change of information maintained by DHS regarding a nonimmigrant student visa holder.

Sec. 415. FLIGHTS SCHOOLS NOT CERTIFIED BY FAA. Prohibits any flight school not certified by the Federal Aviation Administration from accessing SEVIS unless the school was certified under SEVIS on the date of enactment and has submitted an application that is progressing toward certification by the FAA.

Sec. 416. REVOCATION OF ACCREDITATION. Requires the Secretary of DHS to withdraw access to SEVIS immediately after notification that a school loses or is denied accreditation.

Sec. 417. REPORT ON RISK ASSESSMENT. Requires a report to the Senate and House Judiciary Committees within 180 days of enactment on the risk assessment strategy that will be used to identify, investigate, and take appropriate action against schools that violate immigration laws.

Sec. 418. IMPLEMENTATION OF GAO RECOMMENDATIONS. Requires the Secretary of DHS to submit a report to the Senate and House Judiciary Committees within 180 days of enactment on the work done to identify and assess risks to SEVP, procedures for ensuring a school's eligibility, and criteria for referring cases of potential criminal activity from SEVP among other information.

Sec. 419. IMPLEMENTATION OF SEVIS II. Requires the completion of SEVIS II within 2 years of enactment.

Sec. 420. DEFINITIONS. Provides definitions for SEVIS and SEVP.

Title V – Aid to U.S. Immigration and Customs Enforcement Officers

Sec. 501. ICE IMMIGRATION ENFORCEMENT AGENTS.

- Expands the warrantless arrest authority of federal immigration agents by removing the requirement that agents have a reason to believe that the noncitizen is likely to escape before a warrant can be obtained.
- Authorizes immigration enforcement agents who have completed basic immigration law enforcement training to carry a firearm.
- Requires ICE agents to be paid on the same scale as ICE deportation officers.

Sec. 502. ICE DETENTION ENFORCEMENT OFFICERS. Authorizes DHS to hire 2,500 ICE detention enforcement officers.

Sec. 503. ENSURING THE SAFETY OF ICE OFFICERS AND AGENTS. Requires the Secretary of DHS to provide ICE deportation and enforcement officers with body armor and weapons.

Sec. 504. ICE ADVISORY COUNCIL.

- Establishes the ICE Advisory Council, to be comprised of 7 members, four of whom are appointed by the ICE prosecutors' and agents' unions.
- Provides that the Council will advise the Secretary of DHS regarding removal efforts, cooperation between law enforcement agencies, resource needs of personnel, improvements that need to be made to DHS, and effectiveness of specific enforcement policies.

Sec. 505. PILOT PROGRAM FOR ELECTRONIC FIELD PROCESSING.

- Establishes a pilot program in at least 5 of the busiest ICE field offices to electronically process and serve charging documents (NTAs) and place detainees in the field through the use of handheld or vehicle-mounted computers that can interface with ENFORCE.
- Requires input from the ICE Advisory Council on how the pilot program should work and a report to the Senate and House Judiciary committee no later than 18 months after enactment on the effectiveness of the program.

Sec. 506. ADDITIONAL ICE DEPORTATION OFFICERS AND SUPPORT STAFF. Increases the number of ICE deportation officers by 5,000 and support staff by 700 with regard to filling positions as expeditiously as possible without compromising training.

Sec. 507. ADDITIONAL ICE PROSECUTORS. Increases the number of full-time ICE trial attorneys by 60.

Title VI – Miscellaneous Enforcement Provisions

Sec. 601. ENCOURAGING ALIENS TO DEPART VOLUNTARILY. Amends the existing voluntary departure statute (INA §240B).

Sec. 602. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.

- Changes the language regarding the bars to reentry for someone with a prior order of removal to read “seeks admission not later than” rather than “seeks admission within.”
- Bars discretionary relief to an immigrant who remains in the U.S. after being ordered removed and for 10 years after the person’s departure, except for CAT relief.

Sec. 603. REINSTATEMENT OF REMOVAL ORDERS.

- Amends the existing reinstatement of removal statute (INA §241(a)(5)) to make clear that, for anyone who reentered the country illegally after having previously been removed:
 - DHS may automatically reinstate a prior removal order regardless of the date of the original order or illegal entry; and
 - The noncitizen remains ineligible for any discretionary relief from removal regardless of the date of application or request for relief.
- Prohibits judicial review of DHS’s decision to reinstate a prior order, including any review of constitutional claims and questions of law otherwise protected in INA §242(a)(2)(D).
- Prohibits the noncitizen from reopening the original removal order.

Sec. 604. CLARIFICATION WITH RESPECT TO DEFINITION OF ADMISSION. Clarifies the definition of admission to include adjustment of status to lawful permanent residence even if it occurred in the U.S.

Sec. 605. REPORTS TO CONGRESS ON THE EXERCISE AND ABUSE OF PROSECUTORIAL DISCRETION. Requires a report to the Senate and House Judiciary committees within 180 days of the end of the fiscal year on the following:

- Immigrants arrested by state and local law enforcement for whom DHS decided not to issue a detainer or take custody despite a finding of removability;
- Immigrants who were clearly and beyond a doubt not entitled to admission who were not detained;
- Immigrants encountered by DHS who were removable who were not issued NTAs;
- NTAs that were cancelled despite the person’s removability;
- Removal proceedings that were terminated without the person receiving relief;
- Immigrants granted parole; and
- Immigrants granted deferred action, extended voluntary departure, or other relief not specified by the INA.

Sec. 606. WAIVER OF FEDERAL LAWS WITH RESPECT TO BORDER SECURITY ACTIONS ON DEPARTMENT OF THE INTERIOR AND DEPARTMENT OF AGRICULTURE LANDS. Allows CBP to gain access to federal lands located within 100 miles of an international land border.

Sec. 607.¹⁶ BIOMETRIC ENTRY AND EXIT DATA SYSTEM. Requires the Secretary of Homeland Security to implement the biometric entry and exit system outlined by the Intelligence Reform and Terrorism Prevention Act of 2004 within 2 years after enactment of this bill at every port of entry.

Sec. 608. CERTAIN ACTIVITIES RESTRICTED. Prohibits the Secretary of DHS to finalize, implement, or enforce the Prosecutorial Discretion Memos, the DACA Memo, and the Civil ICE Detainer Memo.

¹⁶ Several amendments were adopted during mark-up that were labeled as “Section 607.” They are listed here as Sections 607, 608, 609, and 610, based on the order in which they were adopted.

Sec. 609. GAO STUDY ON DEATHS IN CUSTODY. Requires a report to Congress within 6 months of enactment on any deaths that occurred while a person was in DHS custody and should include the following information:

- Whether the death could have been avoided by the delivery of medical treatment while in custody;
- Whether DHS practice and procedures were followed;
- Whether those practices and procedures are sufficient; and
- Whether reports of those deaths were properly made.

Sec. 610. BORDER PATROL MOBILE RAPID RESPONSE TEAM. Creates rapid response teams to respond to emergency situations encountered by law enforcement on the Southern border.