

The Michael Davis, Jr. and Danny Oliver¹ in Honor of State and Local Law Enforcement Act

Title 1. Immigration Law Enforcement by States and Localities

Sec. 101. Definitions and Severability. Provides definitions and severability should any portion of the Act be held unconstitutional.

Sec. 102. Immigration Law Enforcement by States and Localities. This section grants States and localities explicit Congressional authorization to enact and enforce their own immigration laws as long as they are consistent with federal law and to assist in the enforcement of federal immigration law.

Sec. 103. Listing of Immigration Violators in the National Crime Information Center database. This section mandates that the Secretary of Homeland Security provide immigration status information to the NCIC database.

Sec. 104. Technology Access. This section ensures that States have access to Federal programs or technology directed broadly at identifying inadmissible and deportable aliens.

Sec. 105. State and Local Law Enforcement Provision of Information about Apprehended Aliens. This section mandates that States and localities provide DHS in a timely manner with information on each alien they apprehend who is believed to be in violation of the immigration laws of the United States. The section also requires DHS to provide an annual report to Congress on the information it receives from States and includes a provision for reimbursement for reasonable costs States incur with respect to providing such information.

Our (Senate) version also requires the State or locality to provide the phone number and email address pertaining to the alien, if applicable.

Sec. 106. Financial Assistance to State and Local Police Agencies that Assist in the Enforcement of Immigration Laws. This section provides grants to States and local police agencies for procurement of equipment, technology, facilities, and other products that facilitate and directly relate to investigating, apprehending, arresting, detaining, or transporting aliens who have violated the immigration law of the United States. This section also requires GAO to conduct audits, within three years, of funds distributed to States and localities.

Sec. 107. Increased Federal Detention Space. This section mandates the Federal government to construct or acquire, in addition to existing detention space, new facilities for aliens detained pending removal or a decision regarding such removal.

Sec. 108. Federal Custody of Inadmissible and Deportable Aliens in the United States Apprehended by State or Local Law Enforcement. Under this section, if a State or a locality requests the Secretary of Homeland Security to take an alien into Federal custody, the Secretary

¹ An illegal alien with an extensive criminal history and immigration record murdered Deputy Davis and Deputy Oliver in Northern California in 2014. This Act is named in honor of their service and sacrifice.

must issue a detainer and take the alien into custody as soon as practicable following the issuance of the detainer.

The House version requires the Secretary to take the alien in custody not later than 48 hours after the detainer has been issued following the conclusion of the State or locality charging or dismissal process, or if none is required, the Secretary must issue a detainer and take the alien into custody not later than 48 hours after the alien is apprehended to determine whether the alien should be detained, placed into removal proceedings, released, or removed (and also request that the relevant State or local law enforcement agency temporarily hold the alien in their custody or transport the alien for transfer to Federal custody and provide reimbursement accordingly). However, this language is problematic, as it seems to require DHS to assume custody of an alien before the completion of the alien's criminal proceedings. In many jurisdictions, if DHS takes custody of an alien too soon, the state or local government will drop the criminal charges with an expectation that the alien will be removed from the United States, which clearly does not happen in most cases. Accordingly, our version would require DHS to take custody of the alien only after the release from state custody (whether the alien has bonded out pending trial, or after the conclusion of a trial, or after the conclusion of the alien's period of incarceration). Moreover, DHS personnel will only be required to go pick up the alien if the State or local law enforcement agency cannot transfer the alien to Federal custody.

Sec. 109. Training of State and Local Law Enforcement Personnel Relating to the Enforcement of Immigration Laws. This section requires DHS to create training manuals and guides for the training of State and local officials in immigration laws and procedures. DHS would be responsible for any costs incurred.

Sec. 110. Immunity. This section provides that a State or local law enforcement officer that is acting within the scope of the officer's official duties shall be immune, to the same extent as a Federal law enforcement officer, from personal liability arising out of their assistance in the enforcement of the immigration laws.

Sec. 111. Criminal Alien Identification Program. This section requires DHS to continue to operate and implement a program which: (1) identifies removable criminal aliens in Federal and State correctional facilities; (2) ensures such aliens are not released into the public; and (3) removes such aliens from the United States after the completion of their sentences. Additionally, this program is extended to all States and requires participation by States that accept Federal funds for the incarceration of aliens.

This section also allows detainers to be issued by State and local law enforcement after a convicted criminal alien has served their sentence. This provision simply allows State and local law enforcement to issue post-sentence detainers for criminal aliens and allows State and local law enforcement to hold criminal aliens for a limited amount of time (48 hours) until they can be transferred to Federal law enforcement.

Sec. 112. Clarification of Congressional Intent. This section amends section 287(g) of the Immigration and Nationality Act (which allows DHS to enter into cooperative agreements with States and localities to assist in the enforcement of the immigration laws). It requires DHS

to accept a request from a State or locality to enter into a 287(g) agreement absent a compelling reason not to. No limit on the number of agreements under this subsection can be imposed. The Secretary shall process requests for such agreements with all due haste, and in no case shall take more than 90 days from the date the request is made until the agreement is consummated. Any such agreement under this section shall accommodate a requesting State or political subdivision with respect to the enforcement model of their choosing. This section clarifies that no federal program or technology directed broadly at identifying unlawful and criminal aliens in jail substitutes for such agreements, including those establishing a jail model, and shall operate in addition to any agreement under this section.

No agreement can be terminated absent a compelling reason to do so. DHS shall provide a state or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination, and the notice shall fully explain the grounds for termination, along with providing evidence substantiating the Secretary's allegations. A State that has such an agreement terminated is provided with a cause of action against the Secretary in the U.S. District Court within the State, and can appeal the decision to the U.S. Court of Appeals for the Federal Circuit, if desired. The agreement shall remain in full effect during the course of any and all legal proceedings.

The House version provided for a hearing before an unidentified administrative law judge rather than the ability to file suit in federal court. DHS does not have ALJs, other than within the United States Coast Guard, and even if it did, it would not provide for a neutral forum for an aggrieved State.

Sec. 113. State Criminal Alien Assistance Program (SCAAP). This section provides reimbursements to states that house in their jails illegal aliens who are charged with or are convicted of criminal offenses. Additionally, this program moves the SCAAP program to DHS from DOJ, as that is the agency charged with identifying, detaining, and removing unlawful and criminal aliens.

Sec. 114. State Violations of the Enforcement of Immigration Laws. This section bars sanctuary cities, States, and localities from receiving SCAAP, law enforcement, and DHS grants.

Sec. 115. Clarifying the Authority of ICE Detainers. This section clarifies that States and localities must honor Federal detainers. As a result of significant litigation by the ACLU and other advocacy groups, ICE detainers (requests to local law enforcement agencies to detain named individuals for up to 48 hours after they would otherwise be released in order to provide ICE an opportunity to assume custody) recently have been interpreted to not be binding on local authorities who receive the detainers. This recent development has turned into a significant deterrent for cooperation from local law enforcement agencies, as they do not want to face the possibility of a lengthy and costly lawsuit. The section bars States and localities that do not comply with ICE detainers from receiving SCAAP, law enforcement and DHS grants. It also provides that a State or a political subdivision of a State acting in compliance with a DHS detainer who temporarily holds aliens in its custody so that they may be taken into federal custody shall be considered to be acting under color of federal authority for purposes of determining its liability, and immunity from suit, in civil actions brought by the aliens under

federal or State law. In addition, it expresses the sense of Congress that DHS has probable cause to believe that an alien is inadmissible or deportable when it issues a detainer regarding such alien under current standards.

Title II. National Security

Sec. 201. Removal of and Denial of Benefits to Terrorist Aliens. This section expands the class of aliens ineligible for certain forms of relief (cancellation of removal, voluntary departure) if they are aliens described in the INA’s security-related and/or terrorist grounds of removal. This section extends the grounds that trigger a statutory bar to asylum and withholding of removal based on terrorist activities. The section also provides that a person convicted of an aggravated felony is ineligible for voluntary departure.

The House version had a provision that allowed the Secretary of Homeland Security, or the Attorney General, to grant withholding of removal to a terrorist alien if the Secretary or the Attorney General made a discretionary determination that there were “not reasonable grounds for regarding the alien as a danger to the security of the United States.” Our version does not include this provision. The House Bill also expanded the classes of terrorist aliens who can seek *asylum* after such a determination by the Secretary or the Attorney General, but we removed those provisions in our bill and made the exception mirror existing law.

Sec. 202. Terrorist Bar to Good Moral Character. Applicants for certain immigration benefits, including naturalization, voluntary departure, and cancellation of removal, must demonstrate “good moral character,” as defined in the INA. At present, although the definition excludes (among others) “habitual drunkards” and gamblers, the definition does not expressly exclude aliens who are terrorists or aiders or supporters of terrorism. This section makes a number of changes to the good moral character provision to exclude any alien who is described in the terrorism and national security related grounds of removal. It also clarifies that the good moral character bar applies regardless of when a crime was classified as an aggravated felony; that a finding on good moral character is a discretionary finding; and that an adverse finding can be applied even if an express statutory bar does not apply. This is an important provision, because some immigration judges take the position that so long as an express statutory bar does not apply, an alien necessarily is a person of good moral character.

The House version included a provision to the definition of good moral character that permitted the Secretary of Homeland Security or the Attorney General to make a discretionary determination that an alien with an aggravated felony conviction – other than for murder, manslaughter, homicide, rape, or sexual abuse of a minor – can still be a person of good moral character if the alien completes a sentence of imprisonment more than ten years prior to the date of the application. This exception is contrary to the severity of penalties accorded to convictions for aggravated felonies, and as such, was eliminated in our version.

Additionally, our version eliminates the temporal limitation from the general definition of good moral character. As currently written, the INA provides that no “person shall be regarded as, or found to be, a person of good moral character who, *during the period for which good moral character is required to be established*, is, or was” a member of any of the subsequently-

listed class of aliens. *See* INA § 101(f) (emphasis added). Our version eliminates the “during the period for which good moral character is required to be established,” so as to be able to permit further latitude to deny an immigration benefit on this basis.

Sec. 203. Terrorist Bar to Naturalization. This provision expressly bars the naturalization of terrorists and other aliens described in the national security grounds of removal, clarifies that neither a Federal district court, nor the Secretary of Homeland Security may consider a naturalization application while any proceeding to determine inadmissibility, deportability, or eligibility for lawful permanent residence (i.e., revocation) is pending, clarifies that conditional lawful permanent residents must have the condition removed before applying for naturalization, establishes that review of denied applications for naturalization must reflect the required judicial deference to national security determinations of the Secretary and certain other determinations related to good moral character, and clarifies the availability of Federal district court review for pending naturalization applications.

The House version had one citation error, which has been corrected in our version.

Sec. 204. Denaturalization for Terrorists. This provision authorizes the Secretary of Homeland Security to revoke the naturalization of terrorists.

Sec. 205. Use of 1986 IRCA Legalization Information for National Security Purposes. This section amends the Immigration Reform and Control Act of 1986’s legalization provisions relating to the confidentiality of information provided by applicants for the Special Agricultural Worker (SAW) program and applicants for adjustment of status. These provisions do not currently authorize the use of information provided in the legalization applications for terrorism or national security cases or investigations, even if relevant.

Sec. 206. Background and Security Checks. This section ensures that all necessary background and security checks be completed before any benefit under the immigration laws is provided to any person, whether by DHS, the Executive Office for Immigration Review or judicially. The provision clarifies that courts may not order the grant of benefits to any person until the necessary checks have been completed. It also provides for the investigation of suspected fraud before the grant of any benefit.

Sec. 207. Technical Amendments to the Intelligence Reform and Terrorism Prevention Act of 2004. Section 7209(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-454) assigns the Secretary of State responsibility for securing transit passage areas at ports of entry within the United States. This function more appropriately resides with the Secretary of Homeland Security, who is generally responsible for security at ports of entry within the United States. This section amends section 7209(d) to assign this function to the Secretary of Homeland Security. Additionally, the section provides that systems deployed pursuant to the plan to detect fraudulent documents must be compatible with those of both DHS and the State Department.

Title III. Removal of Criminal Aliens

Sec. 301. The Definition of Aggravated Felony. This section modifies the definition of the term “aggravated felony” to clarify that the term applies to offenses whether in violation of Federal or State law and to offenses in foreign countries if the term of imprisonment was completed within the last 15 years. This section also adds manslaughter, certain harboring of aliens crimes, felony convictions for marriage fraud, and immigration-related entrepreneurship fraud, in addition to offenses for improper entry and reentry where the alien was sentenced to six months or more of incarceration, as aggravated felonies. Further, it includes the acts of soliciting, aiding, abetting, counseling, commanding, inducing, or procuring another to commit one of the crimes listed already in the definition.

Our version makes additional modifications to the definition of multiple aggravated felonies. Several loopholes currently exist with respect to aggravated felonies as a result of both statutory language and decisions from both the federal courts and Executive Office for Immigration Review – including for serious offenses such as drug trafficking, crimes of violence, and theft offenses. Accordingly, our version adds the phrase “an offense relating to” to several aggravated felony definitions to eliminate such loopholes (specifically, in (A) (murder, manslaughter, homicide, rape, or sexual abuse of a child), (B) (drug trafficking), (C) (firearms trafficking), (F) (crimes of violence), and (G) (theft offenses)).

Our version eliminates an exception in INA § 101(a)(43)(N) that prevents a conviction for alien smuggling of certain family members from constituting an aggravated felony. Under current law, a conviction for smuggling will not constitute an aggravated felony if an alien affirmatively shows that “the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual) to violate a provision of [the INA].” Our version strikes this language. This exception must be eliminated to provide a further deterrence against one of the most common forms of alien smuggling.

Our version eliminates a redundant provision from the House bill related to the use of extrinsic evidence to establish that a conviction constitutes a crime of violence under § 101(a)(43)(F). Section 325 of the House bill (and section 324 of our bill) provides that such extrinsic evidence can be used to determine inadmissibility or removability for *any* conviction, and as such, the same language appearing in this section is not necessary.

Finally, our version modifies the sentence required for a conviction for illegal entry, illegal reentry, or illegal presence to constitute an aggravated felony under § 101(a)(43)(O). The House version required a sentence of at least one year. Such sentences are not always common for convictions for illegal entry or reentry. Specifically, a first conviction for illegal entry carries a maximum sentence of six months, and subsequent offenses carry a maximum term of imprisonment of two years. For a typical reentry conviction (not involving aggravating circumstances), the maximum sentence is two years. Reducing the required sentence to at least six months will capture more illegal aliens who have displayed a flagrant disregard for our immigration laws, will ensure that most first-time offenses for illegal entry will not constitute

aggravated felonies, but will permit first-time offenses to constitute aggravated felonies if the sentence is exactly six months (the maximum that the sentencing judge could impose).

Sec. 302. Precluding Admissibility of Aliens Convicted of Aggravated Felonies or Other Serious Offenses. Under current law, an aggravated felony conviction only renders an alien who was admitted to the United States deportable. Therefore, an aggravated felony conviction does not render an alien who entered without inspection inadmissible under the law unless the conviction also falls within one of the existing specified criminal grounds of inadmissibility, such as a crime involving moral turpitude, or a controlled substance or money laundering offense. Certain additional grounds of deportability, such as serious firearms offenses and crimes of domestic violence, are not currently grounds of inadmissibility. This section clarifies that conviction of an aggravated felony is an independent ground of inadmissibility for those who entered without inspection.

This section also adds inadmissibility grounds for certain offenses that are currently only grounds of deportability (e.g., certain firearms offenses and crimes of domestic violence), making both positions consistent. Further, this section amends the inadmissibility and deportability grounds to allow for the removal of aliens who have committed or been convicted of crimes relating to Social Security fraud or the unlawful procurement of citizenship. The section also clarifies that an alien convicted of an aggravated felony is ineligible for a discretionary waiver of certain criminal inadmissibility grounds.

Our version eliminates a redundant provision from the House bill related to the use of extrinsic evidence to establish that a conviction constitutes a crime of domestic violence. Section 324 of the bill provides that such extrinsic evidence can be used to determine inadmissibility or removability for *any* conviction, and as such, the same language appearing in this section is not necessary.

Section 303. Espionage Clarification. Currently, the inadmissibility provision governing espionage, sabotage, unlawful exportation of technology and sensitive information, and wishing to overthrow the United States Government, refers only to future activities, not past activities. This section modifies the provision to include both past and future espionage and related activities.

Sec. 304. Prohibition of the Sale of Firearms to, or the Possession of Firearms By, Certain Aliens. This section clarifies existing criminal law provisions, which bar sales and transfers of firearms, and munitions to unlawful aliens and temporary visa holders so that there is consistency with provisions in the INA.

Section 305. Uniform Statute of Limitations for Certain Immigration, Naturalization, and Peonage Offenses. This section provides a statute of limitations of ten years for most immigration crimes under the INA and title 18. Under current law, some immigration offenses have a five-year statute of limitations.

Sec. 306. Conforming Amendment to the Definition of Racketeering Activity. This section is a conforming amendment that makes all passport and visa fraud a racketeering activity for purposes of federal criminal law.

Sec. 307. Conforming Amendments for the Aggravated Felony Definition. This section amends the definition of “aggravated felony” so that it covers all penalties for passport, visa, and immigration fraud under chapter 75 of title 18.

Our version of the bill also eliminates an exception present in the pertinent aggravated felony definition – 101(a)(43)(P) – relating to the commission of passport and visa fraud to benefit an alien’s immediate family member. Specifically, under current law, an offense involving passport fraud is not an aggravated felony if the alien affirmatively shows that “the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual) to violate a provision of [the INA].” Our version strikes this language. This exception must be eliminated to provide a further deterrence against a common form of illegal immigration.

Sec. 308. Precluding Refugee or Asylee Adjustment of Status for Aggravated Felons. Section 308 bars asylees and refugees convicted of aggravated felonies from adjusting status to permanent residence. Under current law, most aggravated felony convictions do not bar a refugee or asylee from obtaining permanent resident status.

Sec. 309. Precluding Withholding of Removal for Aggravated Felons. Section 309 bars aliens convicted of aggravated felonies from receiving withholding of removal. Under current law, an alien convicted of certain aggravated felony offenses may obtain withholding of removal, which is a temporary immigration status that permits an alien to remain in the United States if he or she demonstrates that his or her life would be threatened in his or her home country because of that alien’s race, religion, nationality, membership in a particular social group, or political opinion. Although an aggravated felony conviction bars an alien from receiving asylum, it only bars an alien from receiving withholding of removal if that alien received a sentence of five years in prison.

Sec. 310. Inadmissibility and Deportability of Drunk Drivers. This section makes a second or subsequent conviction for driving while intoxicated an aggravated felony.

The House version of the bill also provided for the mandatory detention of an alien who does not have lawful presence who has been convicted of a single DUI offense in this section. For the sake of clarity and conciseness, our bill removes the detention language from this section, and instead modifies Section 311 (below) to clarify and expand the categories of criminal aliens subject to mandatory detention. Moreover, by limiting the category to aliens without lawful presence, an alien with DACA who has a DUI conviction would not be subject to mandatory custody – our bill addresses this issue in 311 by stating that it applies to any alien without *lawful status*, as opposed to lawful presence.

Sec. 311. Detention of Dangerous Aliens. This section provides a statutory basis for DHS to detain as long as necessary specified dangerous immigrants under orders of removal who

cannot be removed – including those aliens who currently are released pursuant to the United States Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). It authorizes DHS to detain non-removable aliens beyond six months, if the alien will be removed in the reasonably foreseeable future; the alien would have been removed but for the alien’s refusal to make all reasonable efforts to comply and cooperate with the Homeland Security Secretary’s efforts to remove them; the alien has a highly contagious disease; release would have serious adverse foreign policy consequences; release would threaten national security; or release would threaten the safety of the community and the alien either is an aggravated felon or has committed certain other crimes. These aliens may be detained for periods of six months at a time, and the period of detention may be renewed.

Our version of the bill also clarifies the language of section 236(c) of the INA, which provides for the mandatory custody of certain classes of aliens, in a manner that provides for the mandatory detention of additional classes of criminal aliens, and ensures that no loopholes in the statute will permit the release of criminal aliens. As a result, any alien who is described in 212(a)(2) (criminal aliens) or (3) (national security), 237(a)(2) (criminal aliens who have been admitted), 237(a)(4) (national security for aliens who have been admitted), or any alien without lawful status who has been convicted of one or more DUI offenses, is subject to mandatory custody.

Sec. 312. Grounds of Inadmissibility and Deportability for Alien Gang Members. This section makes criminal alien gang members deportable from and inadmissible to the United States. The section includes a definition of the term “criminal gang.” An alien who is, or was, a member of a criminal gang is inadmissible, deportable, and ineligible for asylum and temporary protected status. Additionally, the relevant agencies can designate specified gangs, membership in which would render an alien inadmissible/deportable.

The House version of the bill had a provision that prevented an alien who “is, or *at any time after admission* has been” a gang member from obtaining Temporary Protected Status. This language was problematic, as most TPS applicants have never been *admitted* to the United States. Accordingly, our version prevents an alien who “is, or at any time has been” a gang member from obtaining TPS.

The House version of the bill also had a provision providing for the mandatory detention of gang members in this section, however, section 311 of our bill provides for the mandatory detention of such aliens. Accordingly, we removed the provision from this section in our bill.

Sec. 313. Extension of Identity Theft Offenses. This section clarifies the existing aggravated identify theft statute so that a person who fraudulently uses identification documents in the commission of certain immigration-related felonies can be prosecuted, as long as they knew the documents were not their own. The United States Supreme Court, in *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), previously held that in order to obtain a conviction under 18 U.S.C. § 1028A, the government must show that a defendant knew the means of identification belonged to another person.

Sec. 314. Laundering of Monetary Instruments. Pursuant to case law, current laundering statutes required proof that transportation of laundered funds was “designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control” of the funds. This provision clarifies current law so the Government is not required to prove that a defendant knew the purpose and plan behind the transportation and closes the loophole allowing transport of ill-gotten gains with impunity. Additionally, this section adds 18 U.S.C. § 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor) and section 274(a) of the INA (relating to bringing in and harboring certain aliens) as specified unlawful activity under 18 U.S.C. §. 1956(c)(7)(D).

Sec. 315. Penalties for Illegal Entry or Presence. The section makes unlawful presence a federal misdemeanor punishable by a fine or imprisonment of up to six months in prison.

Sec. 316. Illegal Re-entry. This section provides strengthened penalties for aliens convicted of illegal reentry who have a serious criminal record, including a term of imprisonment not less than two years nor more than fifteen years for an alien with a prior felony conviction with at least a thirty month term of imprisonment, and a term of imprisonment not less than five years nor more than twenty years for an alien with a prior felony conviction with at least a five-year term of imprisonment. In addition, this section provides a narrow affirmative defense for aliens previously denied admission and removed who have nevertheless complied with the governing laws and regulations relating to admission.

Sec. 317. Reform of Passport, Visa, and Immigration Fraud Offenses. This section revises chapter 75 of title 18 of the United States Code to clarify and improve the existing criminal provisions governing passport, visa, and immigration fraud.

- *Issuance without authority:* The section revises 18 U.S.C. § 1541 to clarify the existing criminal provisions governing passport issuance and related fraud. The section sets a 15-year maximum penalty for any such conviction.
- *False statement in an application for a passport:* The section revises 18 U.S.C. § 1542 to clarify the existing criminal provisions governing false statements in passport and related fraud. This section sets a 15-year maximum penalty for any such conviction.
- *Forgery and unlawful production of a passport:* The section revises 18 U.S.C. § 1543 to clarify the existing criminal provisions governing false statements in passport and related fraud. This section sets a 15-year maximum penalty for any such conviction.
- *Misuse of a passport:* The section revises section 18 U.S.C. § 1544 to clarify the existing criminal provisions governing false statements in passport and related fraud. This section sets a 15-year maximum penalty for any such.
- *Schemes to defraud aliens:* The section makes it a federal crime to pursue immigration schemes designed to defraud aliens. Under existing law, it is difficult for federal prosecutors to bring charges against those who defraud immigrants in connection with federal immigration benefits but who do not actually file applications or petitions with federal immigration authorities. The provision rectifies this problem by making it a

federal crime – punishable by up to 15 years – to defraud an alien in connection with an immigration benefit, regardless of whether any benefit is actually sought or received.

- *Immigration and visa fraud:* The section simplifies and strengthens the existing penalties governing immigration and visa fraud. The revised provision (1) expands the kinds of immigration fraud subject to prosecution, (2) raises the maximum sentence for base offenses from five years to fifteen years, and (3) adds a new offense prohibiting trafficking in immigration documents, made punishable by a mandatory minimum sentence of two years.
- *Attempts and conspiracies:* The section clarifies that any attempt or conspiracy to violate any offense within chapter 75 (passport and visa offenses) is also an offense subject to punishment in the same manner as the person who completed the offense
- *Alternative penalties for certain offenses:* The section provides a sentencing enhancement for offenses under chapter 75 that facilitate international terrorism (not more than twenty-five years) or to facilitate a drug trafficking crime (not more than twenty years).

Sec. 318. Forfeiture. The section provides for civil forfeiture regarding chapter 75 crimes (passport and visa offenses).

Sec. 319. Expedited Removal for Aliens Inadmissible on Criminal or Security Grounds. The section authorizes the Secretary to use expedited removal proceedings with respect to an alien inadmissible on criminal grounds or security-related grounds who: (1) has not been admitted or paroled; (2) has not been found to have a credible fear of persecution; and (3) is not eligible for a waiver of inadmissibility or 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. This section renders an alien inadmissible or deportable where the alien is a convicted sex offender who has failed to register as required by law.

Sec. 321. Protecting Immigrants from Convicted Sex Offenders. The section bars convicted sex offenders from petitioning for relatives for permanent residency status under Section 245(a) of the INA unless DHS determines the petitioner poses no risk to the alien with respect to whom a petition is filed. The provision also applies to fiancée visa applicants.

The House version modifies the current language in the INA from preventing anyone convicted of any crime covered by the Adam Walsh Child Protection and Safety Act of 2006 from petitioning for any alien (as it is currently written in statute), to preventing anyone convicted of an aggravated felony under sections 101(a)(43)(A) (murder, manslaughter, rape, child sex abuse), (I) (child pornography), and (K) (prostitution and slavery offenses) of the INA. The Adam Walsh Child Protection and Safety Act covers additional offenses, such as kidnapping. As such, our version adds “or any offense defined in section 111 of the Adam Walsh Child Protection and Safety Act of 2006” to the definition provided in the House version, so as to ensure that the range of offenses is not decreased by this legislation.

Sec. 322. Penalties for Failure to Obey Removal Orders. The section extends to inadmissible aliens ordered removed the criminal penalties for deportable aliens ordered removed who fail to deport.

Sec. 323. Pardons. Under the INA, when aliens are pardoned for some crimes, the immigration consequences are removed, but not for other crimes. This provision provides consistent treatment of all pardons, removing the immigration consequences of the crimes.

Sec. 324. Convictions. This section is one of the most important provisions of the bill, given recent developments in the law pertaining to removability of criminal aliens. This section provides that for purposes of determining whether an underlying criminal offense constitutes a ground of inadmissibility or deportability, all statutes or common law offenses are divisible as long as any of the conduct encompassed by a statute constitutes an offense that is a ground of inadmissibility or deportability. In addition, if the conviction record does not conclusively establish whether a crime constitutes a ground of inadmissibility or deportability, the adjudicator may consider other evidence related to the conviction.

The House version of the bill includes a section 322, which provides that an Immigration Judge may consider extrinsic evidence to determine if a crime is a crime of violence or a crime involving moral turpitude. Our version deletes Section 322 entirely because section 325 of the House bill (and section 324 of our bill) provides that such extrinsic evidence can be used to determine inadmissibility or removability for *any* conviction, and as such, the same language appearing in Section 322 is not necessary.

Our version of the bill also adds a new subsection to the definition of the term “conviction” in section 101(a)(48) of the INA, which will eliminate the ability of an alien to benefit from “post-conviction relief” – other than a pardon – after the initiation of removal proceedings. Currently, many aliens are able to avoid the immigration consequences of a conviction by obtaining “post-conviction relief” for a conviction, oftentimes years after the completion of any sentence for such a conviction. This practice provides a benefit to criminal aliens that is not afforded to citizens, and as such, the Senate version attempts to curtail this practice entirely.

Title IV. Visa Security

Sec. 401. Cancellation of Additional Visas. This section amends the INA to clarify that all visas held by an alien are void if that alien has overstayed any such visas by remaining in the U.S. beyond the period of authorized stay, or otherwise violated any of the terms of the nonimmigrant classification in which the alien was admitted.

Sec. 402. Visa Information Sharing. This section amends the INA to provide the Federal government with additional flexibility to release certain data in visa records, such as biographic information, to foreign governments. Current law provides that visa records relating to the issuance or refusal of visas to enter the United States must be considered confidential and may be used only for specified purposes – namely, the formulation, amendment, administration or enforcement of the immigration, nationality, and other laws of the United States – with certain

limited exceptions. The section would clarify that the State Department may share visa records with a foreign government on a case-by-case basis for determining removability or eligibility for a visa, admission, or other immigration benefits or when the sharing is in the U.S. national interest. In addition, this section ensures that visa revocation records can be disclosed pursuant to the same standards as records concerning visa issuance and refusal.

Sec. 403. Restricting Waiver of Visa Interviews. This section ensures that the “national interest” waiver authority for required visa interviews (1) can be exercised only in consultation with the Secretary of Homeland Security; (2) cannot be used to waive interviews for persons of national security concern or where such waiver would create a high risk of degradation of visa program integrity; and (3) cannot be based on mere travel facilitation or reducing the workload of consular officers. Notably, President Obama instituted a program that waives the interview requirement for the issuance of certain visas.

Sec. 404. Non-Interview of Certain Ineligible Visa Applicants. Currently, the State Department must conduct in-person interviews of nonimmigrant visa applicants even if it is evident to the consular officer, based solely on the content of the individual’s application, that the applicant is ineligible for a visa. In order to avoid wasting limited consular resources and making a clearly ineligible visa applicant travel a potentially long distance to the consulate, this provision clarifies that the State Department does not have to conduct interviews of visa applicants in these instances.

Our version of the bill made a technical change to the title of this subsection, from “Authorizing the Department of State to Not Interview Certain Ineligible Visa Applicants” to “Non-Interview of certain ineligible visa applicants.”

Sec. 405. Visa Refusal and Revocation. This section authorizes the Secretary of Homeland Security and the Secretary of State to refuse or revoke visas to aliens if in the security interests of the United States and provides that there is no judicial review of visa revocations (including of admitted aliens).

Sec. 406. Funding for the Visa Security Program. This section requires the State Department to impose surcharges on immigrant visa fees to support enhanced border security through funding of the Visa Security Program (VSP) and repay funds appropriated for this purpose.

Sec. 407. Expedious Expansion of Visa Security Program to High-Risk Posts. This section provides for the expansion of the VSP to the top 30 high-risk posts.

Our version of the bill changed the applicable fiscal years for the appropriations related to the program from “2014 and 2015” to “2015 and 2016.”

Sec. 408. Expedited Clearance and Placement of Department of Homeland Security Personnel at Overseas Embassies and Consular Posts. This section provides expedited clearance and placement of Department of Homeland Security personnel at overseas embassies and consular posts.

Sec. 409. Accreditation Requirements. This section requires that colleges and universities be accredited in order to host foreign students seeking to study in the U.S. It also expands the current definition of “accredited language training program,” requiring that all such institutions be accredited by an accrediting agency recognized by the Secretary of Education. It also gives the Secretary of Homeland Security the discretion to require accreditation of other academic institutions (except for seminaries or other religious institutions) if (1) the institution is not already required to be accredited and (2) an appropriate accrediting agency recognized by the Secretary of Education is able to provide such accreditation. The Secretary of Homeland Security can waive the accreditation requirement if a college, university, or language-training program is otherwise in compliance with the requirements of the INA and is making a good faith effort to satisfy the accreditation requirement. It provides that during the three year period beginning on the date of enactment, foreign students can continue to receive student visas to attend an unaccredited college or university so long as such institution (1) is certified by the Student and Exchange Visitor Program (SEVP – the DHS program that manages schools and foreign students), (2) submits an application for accreditation within six months after the date of enactment and (3) continues to comply with the applicable accrediting requirements of the accrediting agency.

Sec. 410. Visa Fraud. This section allows the Secretary of Homeland Security to suspend SEVP access and participation if the Secretary has reasonable suspicion that the owner or SEVP designee at an educational institution has committed or attempted to commit fraud relating to SEVP. This section prohibits a person convicted of a fraud offense relating to SEVP from ever being able to have an ownership or managerial role in an educational institution that enrolls foreign students holding F (traditional student) or M visas (vocational or technical student).

Our version of the bill made a technical edit, adding the “SEVP” acronym to the text of the bill.

Sec. 411. Background Checks. This section requires that an educational institution’s individuals designated to access SEVIS (the foreign student tracking system) be U.S. citizens or lawful permanent residents and within three years have undergone a background check and successfully complete SEVIS training. This section also authorizes the Secretary of Homeland Security to collect a fee to cover the cost of the background check.

Sec. 412. Number of Designated School Officials. This section allows a school the flexibility to permit as many Designated School Officials (DSO) to place information into the SEVIS system as necessary, in addition to the required Principal Designated School Official. However, the school must not have fewer DSOs than one for every 200-student visa holders.

Sec. 413. Reporting Requirement. This section requires schools to report in SEVIS any changes in required information regarding foreign students within ten days. Currently, a school has 21 days to report any such change or modification.

Sec. 414. Flight Schools Not Certified by FAA. This section requires that in order to sponsor students for F or M visas, flight schools in the U.S. must be certified by the Federal

Aviation Administration. The section also allows a waiver of this requirement for five years in order to give flight schools time to become certified as long as a flight school is SEVP certified, submits a certification application within one year of enactment and continues to progress toward certification.

Sec. 415. Revocation of Accreditation. This section requires that an accrediting agency or association notify the Secretary of Homeland Security if an educational institution is denied accreditation or if accreditation is suspended withdrawn or terminated. The Secretary shall immediately terminate SEVIS access.

Our version of the bill made a technical edit to the language requiring the Secretary to terminate SEVIS access, from stating that the Secretary “shall immediately withdraw the school from the SEVP and prohibit the school from accessing SEVIS,” to stating that the Secretary “shall immediately terminate the school’s SEVP certification and prohibit the school from accessing SEVIS.”

Sec. 416. Report on Risk Assessment. This section requires the Secretary of Homeland Security to submit to Congress a report on a risk assessment strategy to be deployed by the Secretary to identify, investigate, and take action against schools and school officials committing or facilitating student visa fraud.

Sec. 417. Implementation of GAO Recommendations. This section requires the Secretary of Homeland Security to submit to Congress a plan for implementation of several fraud and misuse-related recommendations by GAO.

Our version of the bill made a technical edit to a provision in this section relating to the standard operating procedures described in a report required for submission under this section, from “the standard operating procedures that govern coordination among SEVP, Counterterrorism and Criminal Exploitation Unit, and U.S. Immigration and Customs Enforcement field offices,” to “the standard operating procedures that govern coordination among SEVP, the U.S. Immigration and Customs Enforcement (ICE) Counterterrorism and Criminal Exploitation Unit, and ICE field offices.”

Sec. 418. Implementation of SEVIS II. This section requires the Secretary of Homeland Security to implement SEVIS II, the updated foreign student-tracking database, within two years of the date of enactment.

Sec. 419. Definitions.

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

Sec. 501. ICE Immigration Enforcement Agents. The section authorizes all ICE immigration enforcement agents and deportation officers while they are enforcing Federal immigration laws to make arrests for immigration violations, Federal felonies, Federal criminal offenses for bringing in and harboring aliens, and offenses against the U.S., and to carry firearms.

Sec. 502. ICE Detention Enforcement Officers. The section provides for additional ICE detention officers. Currently, ICE does not have “detention enforcement officers.” In the past, former INS had such officers to handle matters pertaining to transportation and detention of aliens. Reinstating such a position will enable ICE Deportation Officers and Immigration Enforcement Agents to focus on other tasks related to the removal of aliens from the United States.

Sec. 503. Ensuring Safety of ICE Officers and Agents. The section requires that ICE immigration enforcement agents and deportation officers be issued body armor and weapons.

Sec. 504. ICE Advisory Council. The section establishes an ICE Advisory Council, including members appointed by the ICE officers’ and prosecutors’ unions, to advise Congress and ICE on improving immigration enforcement efforts, the resource needs of ICE personnel, and the effectiveness of ICE enforcement policies.

Sec. 505. Pilot Program for Electronic Field Processing. This provision establishes a pilot program allowing ICE agents to electronically process and serve charging documents and detainees.

Sec. 506. Additional ICE Deportation Officers and Support Staff. This provision authorizes the hiring of additional ICE agents.

Sec. 507. Additional ICE Prosecutors. The provision authorizes the hiring of additional ICE prosecutors.

Title VI. Miscellaneous Enforcement Provisions

Sec. 601. Timely Repatriation. This section provides an additional mechanism (in addition to section 243(d) of the INA) to sanction countries that do not accept return of their nationals ordered removed from the U.S. The section requires DHS to periodically publish a report of countries that have refused or unreasonably delayed repatriation of their nationals and countries that have an excessive repatriation failure rate. The State Department may not issue A-3 visas to employees and immediate family members of officials and employees who have A-1 or A-2 diplomatic status from countries that are listed on multiple reports (including the current one) and shall reduce the number of A-1 and A-2 visas it makes available to nationals of countries that continue to remain on the list. Certain waivers are available to the Secretary of State. In addition, if an alien who has been convicted of a criminal offense in the U.S. whose repatriation was refused or unreasonably delayed is to be released from DHS detention, DHS shall provide notice to the State and local law enforcement agency for the jurisdictions in which the alien is required to report or is to be released (and make a reasonable attempt to provide notice to the crime victims and their immediate family members).

Sec. 602. Encouraging Aliens to Depart Voluntarily. This section strengthens the requirements for voluntary departure in lieu of formal removal. It adds violators of security and related grounds of removal to the class of aliens ineligible for voluntary departure and clarifies

the ineligibility category by including all those “described in” (rather than “deportable under”) all prohibited categories. This section also allows for less time to complete departure following a grant of voluntary departure at the conclusion of removal proceedings and requires a bond to ensure departure. The current penalties for an alien’s failure to timely depart after agreeing to voluntary departure are inadequate to ensure the alien’s departure. This section strengthens the penalties an alien will be subject to for failing to timely depart the United States and restricts the ability of an alien to reopen their case or receive a future immigration benefit if the alien fails to timely depart.

Our version of the bill eliminates a provision in the House version that grants Immigration Judges the authority to waive the requirement for an alien to pose a voluntary departure bond. If provided such authority, Immigration Judges will grant it in nearly all cases.

Sec. 603. Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully. Section 602 provides more effective tools to deter absconders from remaining in the U.S. illegally. This section amends the bar on admissibility for aliens removed from the United States to “not later than” five years (or ten, or twenty, depending on the circumstance) after the date of removal, in contrast to the current law which bars aliens seeking admission “within” five years (or ten, or twenty) of the date of removal. This closes a loophole allowing removed aliens to avoid the bar on reentry by unlawfully remaining in the United States. The language also renders any alien who absconds after receiving a final order of removal ineligible for future discretionary immigration relief until ten years after the alien leaves the United States (except in narrow circumstances).

Sec. 604. Reinstatement of Removal Orders. This section provides that if aliens with a prior removal order against them have subsequently illegally reentered the United States, the prior removal order is reinstated without the need for proceedings before an Immigration Judge. Judicial review of the reinstatement is limited, and the court does not have jurisdiction to review the original order of removal.

Sec. 605. Clarification with Respect to Definition of Admission. This provision clarifies that adjustment of status to legal permanent residency is an admission under the INA. This is an extremely important provision of the bill, as it will eliminate a loophole that permits certain criminal aliens from obtaining relief from removal.

Sec. 606. Reports to Congress on the Exercise and Abuse of Prosecutorial Discretion. The section requires DHS to provide a report to Congress each quarter of a fiscal year on the number of inadmissible and removable aliens encountered and not processed for removal, or granted immigration benefits under “prosecutorial discretion.” Criminal histories of all such aliens must be provided.

The House version required such reporting to occur on an annual basis. Requiring the provision of such information on a quarterly basis will ensure that Congress can exercise oversight in a manner as timely as possible. Our version also adds a reporting requirement for cases administratively closed by ICE, aliens granted stays of removal, and aliens released from ICE custody.

Sec. 607. Certain Activities Restricted. This section provides that no federal funds, resources, or fees whatsoever may be used to implement, administer, enforce, or carry out policy changes set forth in 15 memoranda issued by President Obama or DHS (or any substantially similar policy changes). In addition, no federal funds, resources, or fees whatsoever may be used to consider or adjudicate any new, renewal or previously denied application for any alien requesting consideration of deferred action for childhood arrivals pursuant to a DHS memorandum of June 15, 2012 (or any substantially similar policy changes).

Sec. 608. GAO Study on Deaths in Custody. This section requires a report on the causes of death of individuals who die while in ICE custody.

Sec. 609. Removal Proceedings. This provision requires the Executive Office for Immigration Review to conduct removal proceedings in the order in which they are received, whenever possible.

Sec. 610. Elimination of Immigration Court Backlog. This provision does not exist in the House bill. It was included in our bill to address an issue raised in a recent oversight letter sent to the Executive Office for Immigration Review and would require Immigration Judges – if they will not be granting an application for Cancellation of Removal – to deny any such application at the conclusion of an individual hearing, rather than wait to deny an application until some unknown date in the future.

Under current law, a regulation prohibits immigration judges from making *any* decisions in cases involving applications for Cancellation of Removal once the fiscal year cap has been reached for grants of such applications. As a result, immigration judges are prevented from denying applications for Cancellation of Removal based on an unfavorable exercise of discretion, certain findings of a lack of good moral character, or a failure to establish the requisite level of hardship until applications for Cancellation of Removal are available to actually be granted in a new fiscal year. This section will eliminate a significant source of backlog in the immigration court system.

Section 611. Proper Filing of Taxes for Good Moral Character. This provision does not exist in the House bill. Under current law, an alien is not required to properly file income taxes to demonstrate that he or she is a person of good moral character. Willful failure to file an income tax return, or the commission of tax fraud, are federal offenses. Aliens who fail to properly file income tax returns will not be able to establish good moral character for the purposes of the Immigration and Nationality Act.