



Analysis of the Senate Version of the Davis-Oliver Act

By Dan Cadman

The Senate Judiciary Committee is poised to consider its version of the “Michael Davis, Jr., and Danny Oliver in Honor of State and Local Law Enforcement Act”.¹

The Davis-Oliver Act is an immigration enforcement bill that passed the House of Representatives Judiciary Committee in March,² and that began life in the House Subcommittee on Immigration and Border Security quite some time ago as the SAFE Act under the stewardship of Subcommittee Chair Trey Gowdy (R-S.C.).³ The bill was re-named in honor of two California deputies who were shot and killed by an illegal, multiply deported alien who proudly wears a tattoo of the Mexican Republic’s coat of arms on his belly and is alleged to be a member of the Mexican Pride criminal gang.⁴ (Apparently, his pride wasn’t adequate to keep him on the Mexican side of the border.)

There are some differences between the Senate and House versions of the Davis-Oliver Act that will need to be reconciled, but both are excellent bills. One notable new provision permits designation of criminal street gangs, whose alien members and associates become deportable upon designation (see Section 312 of Title III, below). The National Sheriffs Association has endorsed the Davis-Oliver Act.

Following is a section-by-section analysis of the Senate version, which does not completely follow the title and section order of the House version. There are also several subtle textual differences between the House and Senate versions of the bill. The differences arose because the Senate Judiciary Committee has done some tweaking of the House version. (Significant differences from the House version are noted in italics.)

Title I - Immigration Law Enforcement by States and Localities

Section 101

- Establishes definitions and provides for severability so that if any portion of the bill is successfully challenged the remainder is left valid and untouched.

Section 102

- Permits states and their political subdivisions to enact and enforce both criminal and civil penalties that penalize the same conduct prohibited by federal immigration laws as long as the criminal and civil penalties don’t exceed the relevant federal criminal or civil penalties.
- Also authorizes state and local law enforcement personnel to investigate, identify, arrest, and detain aliens for the purposes of enforcing the immigration laws of the United States or of their own jurisdictions to the same extent as federal law enforcement personnel.
- Prohibits state and local enforcement personnel from deporting aliens from the United States, although transfer of custody from state or local agencies to the federal government is permitted so that the aliens

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may avail themselves of whatever due process of law is required and permitted in the context of deportation proceedings or applications for relief from removal.

Section 103

- Requires the Department of Homeland Security (DHS) secretary to provide information on immigration violators for inclusion in the FBI's National Crime Information Center (NCIC) database. This provides critical information to state and local officers on patrol, who may encounter alien fugitives, aliens who were previously deported, etc.

Section 104

- Continues the theme of technical cooperation established in Sec. 103, by granting state and local governments access to federal programs and systems that aid in identifying alien immigration violators.

Section 105

- Requires state and local governments to provide federal authorities detailed biographic, biometric, and other identifying information about alien immigration violators.
- Carves out an exception to the requirement for aliens who are victims of, or witnesses to, a crime.
- Requires the DHS secretary to maintain a list of complying state and local governments, to report these governments annually to Congress, and to reimburse them for costs associated with providing the information.

Section 106

- Establishes a process by which the DHS secretary can make financial grants to state and local law enforcement to procure equipment and facilities used in the investigation, identification, arrest, detention, and transporting of aliens for criminal and civil immigration offenses of the type described in section 102.
- Requires that states and localities have both a written policy and a practice of cooperating with federal immigration authorities and prohibits them from having policies or practices that prevent officers from inquiring into an individual's alienage or deportability in the course of their duties.
- Requires the Government Accountability Office (GAO) to audit grants within three years of enactment.

Section 107

- Requires the DHS secretary to increase, through construction or acquisition, available space for detaining aliens during their proceedings and up through the point of removal.

Section 108

- Authorizes state and local governments to request that the federal government assume custody of an alien, and requires the DHS secretary to respond by filing a detainer and taking custody of the alien no later than 48 hours after "the alien's release from custody".
- Permits the secretary to request that the state or local government transport the alien on a reimbursable basis, if possible. Requires the secretary to reimburse the state or local government average daily costs for incarceration.
- Establishes a policy that federal, state, local, or contract detention facilities are adequate if suitably located, amenable to accepting alien detainees on a reimbursable or contract basis, and meet established U.S. Marshal care and safety standards.

- Directs the secretary to create a transportation circuit between state and local facilities, and those in which it houses alien detainees, and authorizes contracts for that purpose.
- Requires the GAO to audit reimbursements and contracts within three years of enactment.

Senate language differs from the House bill as to the timing and juncture when an alien ordered detained shall be picked up, which it explains by saying House language might result in state or local prosecutors dropping charges once the federal government assumes custody. It is not clear such a scenario won't happen under Senate language as well, since pursuing criminal offenses is entirely within the purview of those officials.

Section 109

- Requires preparation of both a manual and a pocket field guide for dissemination to, and use by, state and local officers in the investigation, arrest, detention, and transporting of aliens for violations of immigration law within 180 days of enactment, at DHS expense.
- Directs availability of training for state and local officers “through as many means as possible” whether in person or by various computer and telecommunications methods, including e-learning, within 30 days of enactment.
- Provides that carrying of manuals or pocket guides is not mandatory, nor is federal training a requirement for state and local officers to assist in immigration enforcement.

Section 110

- Creates qualified (“acting within the scope” of duties) immunity for state and local officers commensurate with that of federal agents when performing immigration law enforcement functions.

Section 111

- Requires continuation and expansion of biometric data matching programs designed to identify and apprehend alien criminals in federal, state, or local correctional facilities.
- Establishes full cooperation of state and local governments with that program as a precondition for receipt of federal funds under the State Criminal Alien Assistance Program (SCAAP) or similar programs.
- Permits state or local officers to hold aliens for 48 hours after completion of an alien’s sentence, and issue a detainer so that the alien may be tendered to federal officials on removal charges.
- Directs maximum use of video and other telecommunications technologies, including mobile data access and live-scan capabilities, in expanding the criminal alien identification programs to remote locales.

Section 112

- Clarifies congressional intent regarding the cross-designation program authorizing state and local officers to exercise federal immigration authorities (known as “287(g)” after the provision of the Immigration and Nationality Act (INA) establishing the program), as follows:
 - Requires the DHS secretary to negotiate agreements with state and local law enforcement within 90 days of their request;
 - Directs availability of 287(g) training for state and local officers “through as many means as possible” whether in person or by various computer and telecommunications methods, including e-learning, within 30 days of enactment and specifies that both the DHS federal training center and the Justice Department COPS Office participate in the training distribution and participation efforts.

- Requires flexibility in the creation of an agreement best suited to the requesting state or locality;
- Prohibits denial of a 287(g) agreement simply because the state or locality already cooperates in other endeavors such as the criminal alien biometric matching program described in Sec. 111;
- Prohibits the secretary from denying or terminating agreements without a compelling reason, and requires at least 180 days advance written notice of termination;
- Permits state and local governments a federal court hearing, including appeals, to contest denials or terminations, during which time the agreement remains in effect.

Senate language differs from the House bill as regards contested 287(g) denials and terminations; the House provided for hearings before an administrative law judge.

Section 113

- Amends SCAAP by conferring authority on the DHS secretary instead of the attorney general, who currently oversees the program and fiscal disbursements.
- Revises language to include “charged” as well as “convicted” aliens within the scope of coverage.

Section 114

- Strengthens existing provisions of the INA establishing open communication exchange policies regarding immigration enforcement by prohibiting state or local governments with laws, ordinances, rules, or policies that restrict communication or impede full cooperation from receiving funds under SCAAP or other law enforcement programs in DHS or elsewhere (such as COPS, administered by the Justice Department).
- Requires the DHS secretary annually, and the attorney general at congressional request, to compile a list of state and local governments not in compliance, and therefore ineligible for grants or funding.
- Establishes an exception to cooperation and information exchange for victims or witnesses of crimes.
- Specifies that funds withheld from one jurisdiction will be reallocated to eligible jurisdictions.

Section 115

- Authorizes the DHS secretary to execute writs and other legal processes and to command assistance from others in order to execute his duties.
- Prohibits state or local governments with laws, ordinances, rules, or policies that refuse to permit agencies to honor immigration detainers or transport aliens, from receiving funds under SCAAP or other law enforcement programs in DHS or elsewhere (such as COPS, administered by the Justice Department).
- Creates immunity for state and local governments that comply with immigration detainers and transport alien detainees.
- States a sense of Congress that issuance of immigration detainers evidences immigration officials’ probable cause to believe there has been a violation of law.

Title II – National Security

Section 201

- Ensures that aliens involved in espionage or terrorism will not receive important immigration benefits such as asylum or cancellation or withholding of removal, or be granted voluntary departure in lieu of deportation.
- Also ensures that there are no restrictions on the government's ability to designate the countries to which dangerous spies or terrorists who pose a threat to the United States may be removed.
- Prohibits aliens who have absconded from immigration hearings from being eligible for recordation of lawful admission under Section 249 of the INA (8 USC § 1259).
- Prohibits alien aggravated felons from being granted voluntary departure in lieu of deportation.

Senate language differs from the House bill, which would have permitted grants of asylum or withholding of removal to aliens removable under national security grounds if the DHS secretary or attorney general specifically found they were not a threat to security. The Senate has eliminated those forms of relief in their entirety to such aliens.

Section 202

- Provides that no alien who has been involved in espionage or terrorist activities — or convicted of a crime then (or later) defined as an aggravated felony offense — can be found to have good moral character for purposes of granting various waivers, benefits, or relief from removal.
- Specifically provides that findings of involvement in spying or terrorism may be based on classified or sensitive national security evidence.

The Senate version also establishes a statutory basis for discretionary findings that an alien lacks good moral character beyond the specific barring provisions and timeframes laid out in the INA. The House version had no such provision.

Section 203

- Bars aliens who have been involved in espionage or terrorist activities from being naturalized.
- Prohibits aliens from seeking to force naturalization through writs in the courts while any action is pending to remove the alien, or to rescind or revoke his permanent resident status.
- Prohibits such aliens from petitioning for others to be admitted to the United States while any action to remove or denaturalize is pending.
- Clarifies that a conditional resident alien may not apply for naturalization unless/until the condition is removed and the alien becomes a lawful permanent resident.
- Limits the basis for review in habeas corpus actions brought by aliens suspected of espionage or terrorism activities.

Section 204

- Streamlines the means the government may use to denaturalize individuals who participate in acts against the national security, including terrorism, on a *nunc pro tunc* basis, because such acts reveal that the individual was not truly attached to the principles of the Constitution at the time he was naturalized.

Section 205

- Opens previously confidential files of individuals who were legalized under the provisions of the 1986 Immigration Reform and Control Act so that they are available for Census analyses, as well as for terrorism, espionage, and national security investigations.

Section 206

- Prohibits bodies in the executive and judicial branches from ordering adjudication or granting of any benefits claims under the various immigration and naturalization laws until full background checks have been conducted, and satisfactory results obtained.
- Provides authority for investigating possible fraud in any application or petition filed, before the benefit is granted.
- Clarifies that the provisions have no effect on the international obligations of the United States, such as withholding of removal pursuant to the Convention Against Torture (CAT).

Section 207

- Amends existing statute that assigns authority to the Secretary of State for overseeing the transit-without-visa program, which affects limited and secure areas of U.S. ports of entry, and reassigns that responsibility to the DHS secretary.
- Establishes that technologies created pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004 must be compatible with DHS and State Department systems.

Title III – Removal of Criminal Aliens**Section 301**

- Adds a variety of offenses to the definition of aggravated felony, including, significantly, some crimes found in the INA, such as felony convictions for alien smuggling (including of family members) and immigration frauds.
- Adds new verbiage specifying that soliciting, inducing, commanding, etc. other individuals to commit an aggravated felony is itself an aggravated felony.
- Changes the technical definition of “aggravated felony” by referring to “an offense relating to” each of the categories of crimes, rather than specifying the crimes themselves. The intent is to expand the reach of the definition of aggravated felonies in order to overcome past judicial and tribunal findings that have quibbled over whether a crime, including certain kinds of homicide, or sexual and trafficking offenses, was encompassed within the statutory definition.

Senate language differs from the House bill, primarily through the expanded technical definition designed to close certain linguistic loopholes exploited by alien criminals to evade being defined as aggravated felons. However, the inclusion of aliens convicted of smuggling family members in the definition is also significant, given how large this problem has become — particularly in regard to the smuggling of vulnerable children, as became evident in the recent “surge” of illegal border crossers from Central America last summer and fall.⁵

Section 302

- Expands the grounds on which an alien may be excluded from the United States to specifically include convictions for any aggravated felony; for identity theft or fraud and misuse of Social Security cards and accounts; domestic violence, stalking, violation of protection orders, or child abuse; firearms offenses; and unlawful procurement of naturalization.

- Expands the grounds on which an alien may be deported to include identity theft or fraud and misuse of Social Security cards and accounts; and unlawful procurement of naturalization (the other grounds described in the bullet immediately above are already deportation offenses).

Section 303

- Amends the INA to ensure that aliens are inadmissible and excludable not just for potential future espionage offenses and activities, but also past acts. (The existing verbiage of law is anomalous in not making clear that past espionage activities render one excludable.)

Section 304

- Amends federal criminal firearms laws to preclude aliens unlawfully in the United States, or in temporary visa categories, from purchasing or possessing weapons except for limited and clearly defined hunting purposes.

Section 305

- Standardizes the statute of limitations for criminal immigration offenses, such as passport or visa fraud, at 10 years. (Some offenses presently have a five-year limitation.)

Section 306

- Expands the definition of federal racketeering offenses to include all of the criminal passport and visa fraud offenses covered in 18 USC, §§ 1541 through 1548.

Section 307

- Expands the definition of “aggravated felony” to include all of the criminal passport and visa fraud offenses covered in 18 USC, §§ 1541 through 1548, including when committed to aid family members.

Senate language differs from the House bill by inclusion of aliens convicted of fraud on behalf of family members, given how large this problem has become (like that of smuggling family members, including children).

Section 308

- Precludes aliens who entered as refugees or who have been given asylum from adjusting to permanent resident status if they are convicted of an aggravated felony.

Section 309

- Precludes aliens who entered as refugees or who have been given asylum from being granted withholding of removal as a relief from deportation if they are convicted of an aggravated felony.

Section 310

- Expands the definition of “aggravated felony” to include second or subsequent convictions for driving under the influence (DUI) of alcohol or drugs.

Section 311

- Standardizes the basis for mandatory detention of certain categories of aliens pending their removal, including aggravated felons and even aliens convicted of a single DUI. Also requires mandatory detention of criminal gang members and associates during the pendency of removal proceedings (see Section 312, below).

- Mandates their continued detention all the way through pendency of removal proceedings.
- Establishes a statutory provision for continued detention of specific categories of dangerous aliens who have been ordered removed, but under present policies are released after a period of time if the government faces difficulty removing them — most often because their country of nationality refuses to take them back, and sometimes because they themselves obstruct attempts to remove them.
- Amends the tolling date used to calculate the length an alien is in detention.
- Provides that stays of removal or remands ordered by courts and tribunals after issuance of an order of deportation do not count toward the detention tolling period.
- States that aliens mandatorily detained may not seek bond hearings; they are limited to filing of habeas corpus requests in federal court.
- Requires periodic reviews of detained aliens in determining progress toward removal, vs. continued detention, including assessment of their cooperation with those efforts as well as public safety.
- Authorizes re-detention of aliens who violate conditions of their release or whose removal becomes likely.
- Requires that, of those aliens who are not barred from seeking bond, they must establish they are neither a flight risk, nor danger to the community or any person.
- Amends the language relating to bonds and releases to provide that aliens may be released on recognizance (as opposed to “conditional parole”); this technical amendment is critical to close a loophole by which some aliens have sought to claim the right to adjust status by virtue of having been given “parole”.

Section 312

- Establishes new and specific grounds of inadmissibility and deportability for aliens who are members or associates of designated criminal gangs.
- The designation process is similar to that in current law relating to designation of terrorist organizations (Section 219 of the INA), and articulates the predicate crimes a gang perpetrates to make it eligible for designation — gun and drug trafficking; crimes of violence; alien smuggling; identity fraud; obstruction of justice and intimidation; money laundering and racketeering; etc.
- Ensures that gang members and supporters are barred from immigration benefits such as asylum, withholding of removal, temporary protected status, special immigration juvenile visas, etc.
- Directs the DHS secretary to submit annual reports to Congress on the number of aliens detained pursuant to these provisions.

Senate language differs from the House bill by eliminating the reference to an alien who has been “lawfully admitted” to ensure the broadest possible coverage of the criminal gang grounds for removal.

Section 313

- Amends the criminal statute relating to misuse of identity documents for immigration purposes by specifying that it is not necessary for the individual to know the documents belonged to another person; it is sufficient to know they were not his own.

Section 314

- Adds new predicate offenses to the money laundering statutes, to wit, alien smuggling and harboring; and slavery, peonage, involuntary servitude, and the like.
- Amends the money laundering statutes to eliminate the requirement that the individual must know the whole of the scheme in order to be charged with concealing and transporting illicit funds.

Section 315

- Amends the federal law (8 USC § 1325) criminalizing illegal entry into the United States to include, for the first time, *unlawful presence* in the United States, making it a misdemeanor punishable by six months for a first offense, and escalating thereafter. The amendment also criminalizes knowingly violating the conditions of one's admission or parole into the United States.

Section 316

- Amends the federal law (8 USC § 1326) criminalizing illegal re-entry into the United States after deportation by increasing penalties for multiple offenders, and for aliens who return after being deported for conviction of other criminal offenses.
- Minimizes the legal bases on which a charge of reentry can be fought by attempting to collaterally attack the underlying order of deportation.

Section 317

- Amends and strengthens the criminal passport, visa, and immigration fraud offenses covered in 18 USC, §§ 1541-1548, through technical and linguistic changes to eliminate loopholes and improve enforcement efforts at combating fraud.
- Provides for increased penalties for violation of the offenses, especially when committed to further crimes such as terrorism or drug trafficking.

Section 318

- Authorizes seizure and forfeiture of the fruits and instrumentalities for passport, visa, and immigration fraud offenses.

Section 319

- Creates a new expedited removal mechanism for expelling aliens charged with being excludable from the United States, who have not been admitted.

Section 320

- Establishes new grounds of excludability and deportability for aliens who are convicted sex offenders who fail to register as required by law (or who admit committing the essential elements of the crime requiring registration).

Section 321

- Prevents a convicted sex offender from petitioning to bring an alien into the country as an immigrant relative or fiance(e) unless the DHS secretary issues a finding that the petitioner is no danger to the alien beneficiary of the petition.

Section 322

- Amends the INA to add inadmissible (excludable) aliens to the criminal provision that penalizes aliens who actively take steps to impede or obstruct their removal. At present, the provision covers only deportable aliens.

Section 323

- Amends the INA to provide that an alien granted a full and unconditional pardon shall not be subject to deportation. At present, the law provides relief from deportation to pardons in certain circumstances and not in others. Although this provision would standardize the law, it may be problematic in that some governors and clemency boards have acted to grant aliens pardons for the purpose of aiding them to evade deportation, and this may encourage future such efforts.

Section 324

- Provides that if a criminal statute prohibits more than one kind of conduct, one of which is a ground of deportability or excludability, then the statute is “divisible” for purposes of finding an alien removable. This is intended to overcome past judicial and tribunal findings that have declared such statutes cannot form the basis for removal.
- Permits an examination of collateral evidence such as police or probation reports, rather than only the conviction documents of record, in determining whether the underlying criminal conduct constitutes grounds of inadmissibility or deportability.
- States that actions (other than a pardon) taken to vacate or otherwise alter final convictions once a proceeding has begun shall have no force or effect for purposes of a finding of removability.

The House version of the bill does not contain the “final conviction” provision described in the last bullet above, which is highly desirable in light of the actions undertaken in certain states to assist aliens in evading removal.

Title IV – Visa Security**Section 401**

- Establishes a cascading effect that cancels all nonimmigrant visas when any nonimmigrant visa held by an alien is canceled by the U.S. government. This provision seals a loophole that could permit an alien whose student visa has been canceled for violations, for instance, to turn right around and reenter the United States using a still-valid tourist visa.

Section 402

- Expands the bases under which the Secretary of State may share otherwise-confidential information contained in visa files, including criminal or civil offenses committed by the applicant, as well as to foreign governments when it is in the national interest.

Section 403

- Requires the Secretary of State to consult with the Secretary of the Department Homeland Security (DHS) before deciding to waive personal interviews of visa applicants.
- Prohibits waivers of personal interviews of individuals or categories of visas where doing so is deemed by DHS to “create a high risk of degradation of visa program integrity”.

- Requires a finding that waivers be in the national interest — but precludes “in the national interest” from being decided on such bases as travel facilitation, visa backlogs, or limited consular resources.

Section 404

- Permits consular officers to waive interviews when applicants are ineligible and will be denied whether or not the interview is conducted, and requires the Secretary of State to develop regulations to that effect.

Section 405

- Grants the DHS secretary plenary authority to issue regulations and policies on the grant or denial of visas that are binding on American consular officers serving abroad.
- Additionally grants the DHS secretary authority, concurrent with the Secretary of State, to deny or revoke visas to any alien or class of aliens (with the exception of diplomats and members of international organizations, who remain under sole authority of the State Department).
- Authorizes the Secretary of State to direct denial or revocation of a visa, but prohibits the Secretary of State from overriding a decision by the DHS secretary to deny or revoke a visa.
- Precludes judicial review of denied or revoked visas.

Section 406

- Places the DHS Visa Security Program (VSP) on a sound fiscal footing by providing that visa fee surcharges collected by the State Department will be used to fund VSP officers at American embassies and consulates abroad.

Section 407

- Directs the secretaries of State and DHS to jointly establish a list of the top-30 high-risk posts abroad for expansion of the VSP.
- Requires all visa applications at those posts to be reviewed by VSP officers before they are adjudicated by consular officers.

Section 408

- Requires chiefs of mission (usually ambassadors) at the 30 high-risk posts to cooperate and ensure that VSP officers are cleared and placed on a priority basis, not to exceed one year after enactment into law. (In the past, chiefs of mission reluctant to accept VSOs have invoked NSDD-38, a presidential directive, as their authority to decline, or slow down to a crawl, assignment of VSOs to their posts.)

Section 409

- Plugs a massive loophole in the foreign student program by requiring that participating schools and institutions demonstrate that they have been accredited by an agency recognized by the U.S. Department of Education, including English training institutes — sites of considerable abuse in issuance of documents needed to enter the United States as a student. Also provides for temporary waivers of the accreditation requirement by DHS when on a path toward accreditation.

Section 410

- If the DHS secretary suspects that fraud has been committed or attempted by an authorized school or institution, permits him/her to suspend its access to the Student and Exchange Visitor's Information System (SEVIS), which effectively precludes the school or institution from issuing documents required to grant a visa to enter the United States.
- Also provides that if an official of a school or institution is convicted of visa fraud, he or she is permanently disqualified from participation in any activities related to foreign students or exchange visitors.
- Requires timely notification to DHS of required reports; failure to provide timely reports is cause for suspension of school participation and SEVIS access.

Section 411

- Requires national security and criminal history background checks of school and institution officials, who must also be citizens or resident aliens, and who must pass online training courses before they are permitted to act as "designated officials" for purposes of SEVIS access and issuing documents needed by prospective foreign students or exchange visitors to obtain visas and entry to the United States.

Section 412

- Permits schools to have as many designated officials as they desire with access to SEVIS, provided that the ratio cannot exceed one per every 200 foreign students or exchange visitors.

Section 413

- Requires approved schools and institutions to notify DHS via SEVIS within 10 days of changes affecting a foreign student's or exchange visitor's status, such as transfer, failure to register for classes, etc. (Failure to provide timely reports would be cause for suspension under Section 410, above.)

Section 414

- Requires participating flight training schools to be certified by the Federal Aviation Administration, and provides for temporary five-year waivers when on a path toward FAA certification.

Section 415

- Requires timely notification to DHS by accrediting agencies when accreditation of a school or institution is revoked, at which time access to SEVIS must be terminated.

Section 416

- Requires the DHS secretary to prepare a risk assessment report to Congress within 180 days, outlining plans to mitigate fraud and abuse by designated schools and institutions.

Section 417

- Requires the DHS secretary to prepare a report to Congress within 180 days, outlining plans responsive to prior GAO audit reports that outlined fraud and material weaknesses in the current program and made recommendations to curb the abuses.

Section 418

- Requires the DHS secretary, within two years of enactment, to have in place and operational all phases of the successor SEVIS II system, which has been in development for several years without having been successfully concluded and fully deployed.

Section 419

- Establishes definitions used in the sections of Title IV.

The House version of the bill established enhanced criminal penalties for violation of 18 USC § 1546 (visa fraud) when committed by officials of schools authorized to accept foreign students and exchange visitors. The Senate has dropped that provision.

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

Section 501

- Requires the DHS secretary to authorize all ICE agents and officers who successfully complete basic training to effect arrests for offenses against the United States, including all felonies (presumably including state violations of law) and all alien smuggling and harboring offenses and to execute administrative warrants for violation of civil immigration laws; to execute all criminal warrants issued under U.S. law; to arrest for civil violations of immigration law without warrant; and to carry firearms, provided they qualify and adhere to use-of-force standards.
- Establishes pay and grade equity among and between ICE enforcement agents and ICE deportation officers.

Section 502

- Re-establishes the position of “detention enforcement officer” within ICE, said position to be responsible for transportation, custody, and detention operations, thus freeing up agents and deportation officers for field enforcement duties.

Section 503

- Requires the DHS secretary to ensure provision of appropriate and adequate body armor and weapons sufficient for all on-duty agents and deportation officers.

Section 504

- Requires creation of an ICE advisory council of seven members within three months of enactment, to consist of a member appointed by the president, members appointed by the House and Senate Judiciary Committee chairs, one appointed by the ICE prosecutors union, and three appointed by the agents union.
- Establishes terms and conditions of participation and specifically prohibits retaliation against ICE union members for participation in the council.
- Provides a mission and charter for the council in advising Congress on the status of immigration enforcement efforts and programs nationally.
- Requires quarterly reports to the House and Senate Judiciary Committees; and semi-annual meetings with chairs, ranking members, and the DHS secretary.

Section 505

- Authorizes and directs, within six months of enactment, establishment of a pilot program in five field offices with large case loads, permitting electronic processing, filing of detainers, and service of charging documents on apprehended aliens in remote field locations, without need to return to offices for such processing.
- Directs development and use of vehicle-mounted or hand-held equipment to facilitate the pilot, including the capability to print required forms and pass electronic data for storage in appropriate ICE databases.
- Requires GAO to audit the pilot within 18 months.

Section 506

- Authorizes hiring 5,000 additional ICE enforcement agents and 700 additional support staff above fiscal year 2013 on-duty numbers. (Note that authorization does not equate to funding, however, which must be appropriated in a separate act.)

Section 507

- Authorizes hiring of 60 additional ICE prosecutors (trial attorneys) above fiscal year 2013 on-duty numbers. (Note that authorization does not equate to funding, however, which must be appropriated in a separate act.)

Title VI – Miscellaneous Enforcement Provisions**Section 601**

- Requires the DHS secretary to issue within six months, and every six months thereafter, a list of countries that refuse, or inordinately delay, acceptance of its nationals when being removed from the United States.
- Inordinate delay is defined as more than 90 days from the date of a U.S. request to repatriate; other criteria for listing of countries is also defined based on repatriation failure rates.
- Establishes sanctions to be used against countries on the list. These sanctions consist of denial of visas to family members, personal staff, and servants of diplomats from such countries. For each six months a country is listed, the number of “A” (diplomatic) visas issued will be decremented by 10 percent, down to an overall 20 percent baseline.
- Permits the Secretary of State to seek waivers of the sanctions based on national security or temporary exigency.
- Provides that visas issued in violation of the sanctions are void.
- Requires the DHS secretary to notify state and local enforcement authorities when releasing convicted criminal aliens due to inability to remove because countries refuse to accept the individual, and to attempt to notify victims of the aliens’ crimes.
- Requires GAO to report to the Congress, within one day after submission of a presidential budget request, on progress of the DHS secretary and Secretary of State in implementing the sanctions.

Section 602

- Encourages aliens to depart voluntarily in lieu of formal removal proceedings (except those who are statutorily barred from voluntary departure for criminal or national security reasons, as described previously), at their own expense and provided that a formal order of removal has not already been entered.

- Requires an alien to affirmatively agree to voluntary departure, limits the timeframe in which he is permitted to depart, and specifies that failure to abide by the agreement will result in an order of removal and additional penalties, including ineligibility for relief or reinstatement of the voluntary departure in the future, plus a civil penalty of \$3,000.
- Allows the DHS secretary to negotiate subsequent periods of inadmissibility that will apply to the alien in return for his agreement to depart voluntarily.
- Permits the DHS secretary to levy a bond adequate to ensure compliance with the terms of voluntary departure.
- Prohibits reopening of cases in which the alien fails to voluntarily depart, except as regards requests for protection under CAT or withholding of removal.

The Senate version eliminates a House provision that would allow immigration judges to waive requirement of a voluntary departure bond, as it would likely be invoked in nearly all cases and eviscerate the effort to encourage, but control abuse of, voluntary departure.

Section 603

- Deters aliens from remaining illegally in the United States after an order of removal, by extending and strengthening penalties for such conduct, including bars to admission and ineligibility for discretionary relief for 10 years, which does not begin to toll until after the alien has departed.
- Exceptions to the relief bar are carved out for protection under CAT or withholding of removal.

Section 604

- Strengthens existing provisions authorizing reinstatement of removal orders if an alien illegally reenters the United States.
- Prevents reopening of the prior order and precludes grants of relief to an alien subject to a reinstated order.
- Sharply limits judicial grounds for examining or overturning reinstated orders and prohibits judicial review of the previously executed order.

Section 605

- Clarifies that adjustment of status constitutes an “admission” to the United States — the functional equivalent of a lawful physical entry. This is significant because it establishes a more recent date reference for acts that might render an alien removable from the United States, thus precluding a claim to relief based on time accrued between original admission and violation.
- The clarification also ensures that all grounds of excludability fully apply to an individual seeking adjustment to resident aliens status.

Section 606

- Establishes a mandatory quarterly reporting requirement to Congress on use — and abuse — of prosecutorial discretion by executive branch officials, specifying the detailed information to be provided. According to recent GAO and DHS inspector general reports, present DHS statistical data is inadequate to assess the application of prosecutorial discretion in order to ensure that it isn’t being misused.

Section 607

- Prohibits expenditure of government funds, notably including accounts containing fees collected from aliens who apply for benefits, to implement the various “executive actions” ordered by the president, the DHS secretary, and subordinate agency directors in a series of memoranda, each of which is specified in this provision of the bill. The executive actions have had the cumulative effect of granting lawful status to hundreds of thousands of aliens illegally in the country and/or ensuring that they are ignored and not charged in removal proceedings even though there are unlawfully present.
- States that the series of memoranda, because they are not grounded in statute or the Constitution, have no legal force or effect.

Section 608

- Directs GAO, within six months of enactment, to conduct a study of deaths of aliens in custody, including an examination of whether the deaths were preventable through medical treatment, whether policies or procedure were followed, whether such policies and procedures were adequate to safeguard detainees, and whether such deaths were appropriately reported.

Section 609

- Establishes a general rule that removal proceedings should be held chronologically, based on when the charging documents are filed with the immigration court.

Section 610

- With certain exceptions, prohibits the attorney general (as supervisor of the immigration courts, which are a part of the Justice Department) from delaying or suspending removal proceedings in cancellation of removal cases. The effect of this rule will be to prevent immigration judges from avoiding decisions solely for the purpose of allowing an alien to seek that relief prematurely, and then accrue the requisite period of time in which to qualify for cancellation while the case is in suspension.

Section 611

- Prohibits a finding of “good moral character” (which is needed for various forms of relief) to an alien who has failed to file his income tax returns.

End Notes

¹ A copy of the Senate Davis-Oliver Act bill can be seen [here](#).

² U.S. House of Representatives, Committee on the Judiciary, [“House Judiciary Committee Approves Bill to Strengthen the Enforcement of Immigration Law”](#), March 18, 2015.

³ The SAFE Act was previously the subject of a separate series of blog analyses published by the Center for Immigration Studies (CIS).

⁴ Jessica Vaughan, [“Lax Immigration Policies May Have Shielded Killer of California Deputies”](#), CIS blog, October 27, 2014.

⁵ Dan Cadman, [“Uncle Sam, Coyote Extraordinaire”](#), Center for Immigration Studies blog, December 19, 2013.