



Better SAFE Than Sorry

House Judiciary Bill Would Restore Enforcement, Prioritize Safety

By W.D. Reasoner

Executive Summary

In June the House Judiciary Committee approved a bill that aims to enhance public safety and national security through more effective immigration law enforcement within the country as well as at the borders. Known as the [Strengthen and Fortify Enforcement \(SAFE\) Act](#), the bill was sponsored by Rep. Trey Gowdy (R-S.C.), who is chairman of the Immigration and Border Security sub-committee. In addition to shoring up many parts of immigration law to help prevent the entry of criminals and terrorists and to remove them when they are discovered, the bill facilitates cooperation between local law enforcement and federal agencies in enforcement. Our analysis finds that the SAFE Act, in contrast to the more widely hyped Senate bill, would reverse the [recent steep decline](#) in interior enforcement and especially the decline in removals of criminal aliens:

- The SAFE Act acknowledges that while the federal government has primary responsibility for immigration policy, the impact of illegal immigration is felt most profoundly at the local level, and therefore state and local governments have a role to play in controlling it. The bill would establish federal supremacy in immigration law, but preserve the ability of state and local governments to enact and enforce ordinances within certain parameters, allowing them to take action if the federal government does not.
- To assist ICE in locating the approximately one million aliens who are arrested for state and local crimes each year, the bill allows and even encourages local law enforcement agencies to assist in enforcement. It balances a mandate for local agencies to cooperate with ICE with a requirement for ICE to respond to local requests for ICE to take custody of criminal aliens. It improves information sharing in both directions to facilitate cooperation. It clarifies that local jails must not release criminals who will be deported and penalizes sanctuary jurisdictions that obstruct enforcement.
- The SAFE Act incorporates a longstanding wish list of career senior ICE officials that would make it easier to disrupt and remove terrorists, gang members, fraudsters, and other dangerous people who exploit the vulnerabilities in our system. It also shores up the laws to make it harder for such individuals to receive visas, asylum, green cards, citizenship, or other benefits.
- Unlike the Senate Gang of Eight bill, which would excuse a huge array of crimes and immigration fraud committed by illegal aliens seeking amnesty, the SAFE Act would deal firmly with those who have been arrested for drunk driving, sex crimes, gang crimes, espionage, identity theft, immigration fraud, repeat offenders, and other serious offenses by providing for expedited removal and limiting appeals and waivers.
- The SAFE Act seeks to restore integrity to our immigration system by cracking down on those who game the system by submitting frivolous applications, who ignore deportation orders, or who fail to appear for hearings. This is no small problem; ICE estimates that there are more than 850,000 aliens living here despite being ordered removed, and even more who have failed to show up for hearings.

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A summary and analysis of many key provisions in the SAFE Act follows.

Introduction

In June, the Senate passed S.744, also known as the Schumer-Rubio or Gang of Eight bill, its version of “comprehensive immigration reform”, a bill whose immigration enforcement and border security provisions are nearly all eviscerated by the fine print and whose signal accomplishment would be to grant amnesty to millions of illegal aliens, permitting them to remain in the United States whether or not the enforcement “triggers” of the bill are actually ever met.

Wisely, the House of Representatives has shown itself unwilling to act as a second-chamber rubber stamp for S.744. Rep. Bob Goodlatte (R-Va.), Chairman of the House Judiciary Committee, has expressed a commitment to ensure that any bill brought to a vote in the House includes not just reform of the legal immigration system and at our porous land borders, but also, significantly, through interior enforcement efforts.

This measured approach would well serve the American people. Close to half of the give-or-take 11 million illegal aliens in the United States right now initially entered legally through our land, sea, and air ports of entry and then simply overstayed their authorized period of admission, melted into the interior, and began taking jobs they were not entitled to — often by means of identity theft, misappropriating the names and Social Security numbers of citizens and lawful residents.

Any legislation that does not honestly and substantively tackle interior immigration enforcement, especially in our major metropolitan areas (and the Senate’s effort did not), is destined for failure.

One bill that makes an excellent start is the “Strengthen and Fortify Enforcement (SAFE) Act”, introduced into the House by Immigration and Border Security Subcommittee Chairman Trey Gowdy (R-S.C.). As legislation goes, it is refreshingly straightforward and easy to read: What you see is what you get. That stands in stark contrast to the Senate bill, which was replete with deceptions large and small masquerading as immigration enforcement, nearly all of which were eviscerated by the fine print.

Another desirable feature of the SAFE Act is its recognition that immigration affects communities large and small across this country and, because of that, like it or not, all levels of government have a role to play in responsibly addressing the phenomenon.

The bill levies cooperation with federal immigration authorities from state and local law enforcement and equally requires cooperation from those federal authorities with state and local law enforcement efforts. It also fills in gaps between the law enforcement and criminal justice systems at the different levels of government so that criminal aliens will not be released, whether purposely or inadvertently, to further terrorize their communities.

But the bill goes even further: It provides a legal baseline that clearly establishes federal supremacy in creating uniform immigration standards, while acknowledging the right of state and local governments to establish laws and ordinances appropriate for their respective jurisdictions within those standards, free from the threat of onerous, costly, and unnecessary lawsuits filed against them by the federal government.

As the DHS website tells us, “[T]he DHS seal was created in 2003 to symbolize the Department’s mission of preventing attacks and protecting Americans on land, sea, and air.” Given the history of multiple near misses in recent years, involving aliens attempting to engage in terrorist attacks within the United States, culminating in the tragedy of the Boston Marathon bombing, it’s fair to say that the DHS track record is mediocre at best. The SAFE Act takes a fresh look at national security and terrorism through the lens of our immigration laws — something that is long overdue.

The bill does the same thing in the more general context of immigration law enforcement as well, and that is a welcome development. It tackles integrity and security of the long-abused visa system, makes signal changes to the laws relating to inadmissibility and deportability of alien criminals, and tightens the rules relating to aliens within the also long-abused immigration due process system in order to minimize attempts to game the system.

The SAFE Act is vastly superior to the “comprehensive” immigration bill passed in June by the Senate: It doesn’t maunder, it doesn’t double-talk, it doesn’t pander to special interests, and it doesn’t compromise the security of the nation or the safety of American communities. It doesn’t excuse all manner of unpardonable behavior in a kind of “lowest common denominator” attempt to extend the umbrella of amnesty to the broadest swath of illegal aliens, even when they patently don’t deserve consideration because they are recidivists who have flouted the law repeatedly and victimized others in the process.

With important and complex issues such as immigration, it is important, and much more far-sighted, to legislate a few quality portions of law at a time, in digestible chunks, than to create a chameleon-like bill that is the thickness of a telephone directory, has the kind of small print you would expect in a used-car ad, and which purports, falsely, to be all things to all people, all at the same time.

This bill stands head-and-shoulders above the Senate bill, in terms of honesty, substance, and accountability to the American people.

Title I — Immigration Law Enforcement by States and Localities

Overview: *In the past few years, immigration has caused a fissure — some might say a chasm — between the federal government on one hand, and state and local governments on the other. State and local governments wishing to take part in controlling illegal immigration, which has had an adverse impact on their limited police, health, fire, emergency, and social service resources, have faced a barrage of lawsuits filed by the federal government when they attempted to assist or establish laws addressing the impact. On the flip side, the federal government has also been stiff-armed by a variety of state and local sanctuary laws, whose sole purpose seems to be to impede Immigration and Customs Enforcement (ICE) officers’ efforts to get a handle on alien criminals being handled by state and local law enforcement agencies (LEAs) and judicial systems, even while most of those self-same states, counties and cities hold their hands out to receive State Criminal Alien Assistance Program (SCAAP) funds amounting to millions of dollars. Title I tackles this atmosphere of mutual distrust and recrimination head-on by institutionalizing cooperation between ICE and local LEAs, and requiring them to work together.*

Section 101: Defines “state” for purposes of the Act; defines “secretary” as the secretary of Homeland Security; and establishes severability — any portion of the Act held invalid does not invalidate the remainder.

Section 102: The provisions of this section retain the existing preemption of any state or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, recruit, or refer for a fee unauthorized aliens for employment. The section also prohibits state and local LEAs from removing aliens from the United States, in order to ensure that the bright line between federal, vs. state or local responsibilities is maintained. (This is the reason that transfers of custody from state or local agencies to the federal government are mandated elsewhere in the bill — see section 108, below. Such a transfer permits aliens to avail themselves of whatever due process of law is required and permitted in the context of deportation proceedings, or applications for relief from removal.)

But other than those key supremacy provisions, the section provides that states and their political subdivisions:

- May enact, implement, and enforce criminal penalties that penalize the same conduct prohibited by federal immigration laws as long as the criminal penalties don’t exceed the relevant federal criminal penalties;
- May enact, implement, and enforce civil penalties for the same conduct prohibited in the civil violations of immigration laws;
- May investigate, identify, apprehend, arrest, detain, or transfer to federal custody aliens for the purposes of enforcing the immigration laws of the United States to the same extent as federal law enforcement personnel; and
- May also investigate, identify, apprehend, arrest, or detain aliens for the purposes of enforcing the immigration laws of the state or political subdivision.

Section 103: Expands use of the Immigration Violators subsection of the FBI's National Crime Information Center (NCIC) system by requiring the secretary to enter, and the FBI to maintain, "all information" about aliens:

- Against whom final orders of removal have been issued;
- Who have entered into a voluntary departure agreement (see Section 601 in Title VI, below, for additional details regarding use and abuse of voluntary departure); and
- Who have overstayed their authorized period of admission.

Current NCIC policies preclude entry of the aforementioned classes of immigration violators. Changing those rules will permit state and local LEAs on traffic duty or routine patrols to become aware when they conduct stops or detentions if the individuals approached are wanted by federal immigration authorities.

Section 104: Requires DHS to provide state and local LEAs access to general databases that will allow them to expeditiously identify individuals as removable alien criminals. This will permit state and local police to act effectively when arresting and booking individuals for crimes, when conducting investigations, and even when attempting to comply with federal rules regarding who is eligible or ineligible for various entitlement benefits.

Section 105: Is the flip side of section 104, above: It requires state and local LEAs to provide, without exception, biographic and biometric information to DHS on criminal suspects booked into their systems who may be aliens. State and local governments may also apply for grants to assist them in obtaining technology that will facilitate information and biometrics data transfer.

Section 106: Establishes a grant program for DHS to provide funding to state and local LEAs that assist in enforcing immigration laws for procurement of equipment, technology, facilities, and products that relate to investigating, apprehending, arresting, detaining, or transporting aliens who are inadmissible or deportable.

Section 107: Requires the secretary to construct or acquire (e.g. through contracts with existing jails) additional detention facilities sufficient to detain apprehended aliens, pending their removal.

Section 108: Obliges the federal government to take custody of removable aliens within 48 hours, when requested to do so by state or local LEAs having custody, and concurrently obliges the LEAs to honor federal requests to hold individuals pending completion of arrangements to assume custody. These requirements ensure that state and local governments accede to federal supremacy in the administration of due process, and removal from the United States, under the immigration laws, while at the same time ensuring that federal authorities do not defeat state or local LEAs' efforts at immigration enforcement by simply refusing to take custody of illegal aliens those LEAs have arrested. The section also provides for reimbursement to state and local LEAs for the periods of time they hold aliens upon request by the federal government.

Section 109: Directs the secretary to create a manual and a pocket guide for assisting state and local officers in enforcement of the immigration laws, and additionally directs the secretary to make in-person, online, and other forms of training available to those officers in a broad-based and secure manner so that they may become, and stay, current in the laws, regulations, and procedures that apply to immigration law enforcement.

Section 110: Provides that state or local officers engaged in enforcement of the immigration laws will be afforded immunity to the same extent as federal officers who enforce those laws. This provision is well-crafted, because even federal officers enjoy only limited immunity under the Federal Tort Claims Act. They must be acting appropriately, and within the scope of their duties, to claim immunity from litigation.

Section 111: Directs:

- ICE to fully deploy on a national basis its criminal alien identification program ("Secure Communities");

- State and local governments to:
 - Fully cooperate in the program, or risk loss of State Criminal Alien Assistance Program (SCAAP) funding,
 - Hold aliens on behalf of ICE for up to 14 days after completion of sentence,
 - Honor detainers filed by ICE against alien inmates; and
- Maximum use of video teleconferencing, mobile database access, and other technologies, particularly in remote locations where direct, personal access is difficult or time consuming.

Section 112: Restores the integrity of the 287(g) partnership program that permits state and local LEAs to enforce immigration laws under appropriate federal oversight by eliminating the politics from decisions as to which LEAs may participate and for what purpose. Those LEAs must abide by established rules and standards, but ICE would be required to articulate specific reasons for denying a request to participate or for ejecting program participants. Denied or ejected LEAs would have the right to appeal the adverse action in an administrative hearing. This provision is important because the Obama administration has eliminated dozens of these programs at the behest of advocacy groups, despite the absence of any proven abuse of authority and in the face of statistics proving the effectiveness of the program generally.

Section 113: Amends the statute governing the SCAAP program to vest authority in the secretary instead of the attorney general, to eliminate the fiscal year sunset over the program provided appropriations occur, and to expand its reach — subject to full state and local cooperation, as described in section 111 above — to include, for reimbursement purposes, aliens who are “charged with” as well as “convicted of” crimes.

Section 114: Puts teeth into the language of Section 102 by providing that any state or political subdivision that puts into effect a statute, policy, or practice prohibiting its officers from assisting or fully cooperating with federal immigration law enforcement will be ineligible to receive a variety of Department of Justice or Homeland Security law enforcement grants. The section also requires the attorney general and Homeland Security secretary to determine annually, and report on, which states or political subdivisions are not in compliance.

And, the section amends the existing language of 8 U.S.C. 1371 to make even more abundantly clear that state and local governments:

- May not prohibit their officers or employees from providing information to federal immigration authorities or cooperating with those authorities in enforcing immigration law; and
- Are prohibited from restricting the transmission of information from federal authorities to their employees.

Section 115: Authorizes the secretary to command assistance and compliance in execution of federal immigration laws. The language of this section is intended to ensure that state and local agencies honor federal alien detainer requests under the legal premise of federal supremacy.

Title II — National Security

Overview: There is a curious climate currently promoted by open borders and amnesty advocates — one apparently embraced by this administration — that is dismissive of the notion that there is any nexus between immigration issues and national security. They do not appear willing to learn history’s hard lessons in that regard, and are content instead to mouth platitudes about “risk management” with no real commitment to examining the policies and practices that continue to result in the grant of immigration benefits to individuals who do not embrace American values, and in some instances actively despise them and work to do our citizens harm through acts of terror. The SAFE Act acknowledges the nexus. Title II of the bill is dedicated entirely to national security legislation, as it relates to immigration and, equally importantly, naturalization.

Section 201: Prohibits aliens involved in espionage or terrorism from receiving important benefits such as asylum, cancellation of removal, or voluntary departure and additionally ensures that there are no restrictions on the designation of countries to which dangerous spies or terrorists who pose a threat to the United States may be removed.

The potential scale of the problem of aliens who pose security threats being granted asylum, refugee status, or other benefits is huge: In the decade from federal fiscal year 2001 through 2010, over 2.5 million aliens were admitted to the United States from a small list of just 16 nations that are troubled by internal insurgencies or Islamic extremist groups [willing to export their hate](#) whenever and wherever they can — and that list of nations is by no means exhaustive.

Section 202: Provides that no alien who has been determined by the DHS secretary or the attorney general to have been involved in espionage or terrorist activities can be found to have good moral character for purposes of granting various waivers, benefits, or relief from removal.

Section 203: Bars aliens who have been involved in espionage or terrorist activities from being naturalized into United States citizenship, and 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. Importantly, it also prohibits such aliens from petitioning for others to be admitted to the United States while any action to remove or denaturalize is pending. Finally, it limits the basis for review in habeas corpus actions brought by aliens suspected of espionage or terrorism activities.

Section 204: Streamlines the methods by which the government may bring actions to denaturalize individuals previously admitted to citizenship who participate in acts against the national security 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.

This provision is important because in the past decade, dozens of naturalized U.S. citizens have been arrested and charged with a variety of serious national security-related offenses involving terrorism, spying, and theft of sensitive information and technology, and the federal government [almost never revokes the citizenship](#) of these naturalized citizens, even when it is clear that they concealed material facts regarding their extreme ideas or associations with terrorist groups or foreign intelligence organizations at the time they naturalized.

Section 205: Opens up the previously confidential files of individuals who were legalized under the provisions of the 1986 Immigration Reform and Control Act — the “comprehensive” immigration bill with an amnesty that was going to end all future amnesties and give us border control and immigration reform — so that they are available for Census analyses, as well as for terrorism, espionage/intelligence, and national security investigations. (As hard as it is to believe, for all these years, those files have been closed for such purposes. And the immigration “reform” bill passed by the Senate in June would make that same mistake all over again.)

Section 206: Would prohibit both executive and judicial bodies from ordering the adjudication or granting of any claims under the immigration and naturalization laws until full background checks have been conducted, and satisfactory results obtained.

Title III — Removal of Criminal Aliens

Overview: The SAFE Act recognizes that interior immigration enforcement is critical to regaining control of our borders; and that a critical part of interior enforcement is apprehending and removing alien criminals. Title III undertakes a number of legislative reforms to ensure the government is more effective in this effort. The fact that these reforms are necessary is a troubling indication of just how loose and how easily breached our system is in its current state, even by criminals and other miscreants who most observers would agree should be a clear case for inadmissibility or removal.

Section 301: Clarifies the definition of “aggravated felony”. (This is important because under the immigration laws, aggravated felons are subject to expeditious removal and are barred from almost all forms of waivers and relief). The amendments:

- Specify that sentencing enhancements may be used to determine whether an alien is an aggravated felon for immigration removal purposes;
- Expand sexual exploitation crimes to include date rape situations, and additional offenses against minors;
- Add “aiding, abetting, counseling, procuring, commanding, inducing, or soliciting” to “attempting or conspiring” to commit the offenses themselves.

The section also amends “conviction” to preclude, in many instances, subsequent actions to reverse, vacate, or expunge convictions, or modify sentences or the like, from adversely affecting the government’s ability to remove the alien. And it permits federal authorities to consider evidence in addition to court conviction documents, when needed to ascertain whether the crime and sentence imposed constitute an aggravated felony.

Section 302: Expands the grounds of inadmissibility and removability to aliens who:

- Are convicted of Social Security fraud and identity theft crimes;
- Illegally procure, or attempt to procure, U.S. citizenship (e.g. through fraud or misrepresentation) in violation of the federal criminal code;
- Are convicted of or admit to committing federal firearms offenses;
- Are convicted of aggravated felonies; or
- Are convicted of or admit committing domestic violence, stalking, or child abuse offenses, including violation of protective orders. (This provision also permits federal authorities to consider evidence such as police reports, in addition to court conviction documents, when necessary to determine the nature of the crime.)

Section 303: Modifies the grounds of inadmissibility relating to espionage to include additional crimes such as theft or unlawful export of sensitive goods, technology, or information, as well as acts aimed at overthrowing or controlling the government of the United States by force or illegal means.

Section 304: Closes loopholes found in the federal criminal code relating to firearms by criminalizing sale and possession of weapons to all but a limited class of aliens (e.g. lawful permanent residents).

Section 305: Standardizes the statute of limitations to 10 years for immigration- and citizenship-related criminal offenses.

Section 306: Amends federal racketeering statutes to include passport, citizenship, and visa fraud and counterfeiting crimes as predicate offenses.

Section 307: Expands the definition of “aggravated felony” to include passport, citizenship, and visa fraud and counterfeiting crimes.

Section 308: Precludes refugees or asylees who are convicted of aggravated felonies from obtaining waivers and adjusting status to become resident aliens.

Section 309: Makes recidivist alien drunk drivers inadmissible and removable from the United States upon a second conviction, whether for a misdemeanor or felony.

Section 310: Alters immigration law to:

- Permit the government to retain custody of dangerous criminal aliens while attempting to expel them from the United States;

- Clarify the timeframe the government is authorized to detain aliens after an order of removal, but prior to expulsion;
- Suspend that timeframe if an alien obstructs or refuses to assist the government in obtaining documents needed for removal;
- Establish a review process for determining release conditions of cooperative aliens when removal within the authorized detention period is not possible; and,
- Authorize the DHS secretary to maintain custody of certain aliens, without regard to timeframes, if they have a contagious disease; their release would adversely affect U.S. foreign policy; or release would threaten national security or public safety — although periodic reviews are required to determine if/when circumstances change.

Section 311: Creates an entirely new provision of law by:

- Authorizing designation of “criminal gangs” (analogous to designating terrorist organizations under the immigration laws);
- Defining predicate offenses needed for designation of a “criminal gang” (such as narcotics trafficking, crimes of violence, etc.);
- Rendering aliens who are associates of criminal gangs inadmissible and deportable from the United States;
- Requiring mandatory detention of such aliens during removal proceedings; and
- Precluding claimed membership in a gang as a basis on which adjudicators may grant asylum or temporary protected status. (Some gangbangers have claimed that having been part of a gang is membership in a “protected group” since they are subject to persecution by the government authorities and other gangs in their country — and gotten asylum in the United States on that basis — see case *ES.010* on the U.S. Committee for Refugees and Immigrants [website](#).)

Section 312: Amends the identity theft statute by criminalizing use of documents by a person that are “not his or her own” rather than “of another person”.

Section 313: Amends money laundering statutes to include peonage, slavery, involuntary servitude, forced labor, and alien smuggling and harboring as predicate offenses.

Section 314: Expands the alien smuggling and harboring statute by:

- Enhancing penalties;
- Clarifying standards for seizures; and
- Criminalizing use of firearms in the commission of such offenses.

Section 315: Enhances penalties for illegal entry into the United States and, importantly, closes the “I said nothing” defense for aliens who cross the border at a port of entry, but allege that either the inspector did not question them or that they simply remained silent about their alienage and are therefore not guilty of illegal entry since they crossed at a designated point.

Section 316: Amends the reentry-into-the-U.S.-after-deportation statute by restructuring and enhancing penalties, and adding a new recidivist provision for aliens who illegally reenter after having been “denied admission, excluded, deported, or removed three or more times.”

Section 317: Reforms Chapter 75 of the federal criminal code (18 U.S.C. §§ 1541 – 1549) relating to fraud and misuse of passports, visas, and immigration and citizenship documents through:

- Revised definitions;
- Enhanced penalties (especially for violations used to further other offenses such as terrorism or narcotics trafficking); and
- Refinements in the language outlining what constitutes violations of these important statutes.

Section 318: Renders forfeitable any property that was used in commission of, or constitutes the fruits of, the crimes defined in Chapter 75 of the criminal code discussed in Section 317 immediately above.

Section 319: Expands expedited removal procedures to include aliens who are inadmissible on certain criminal and national security grounds.

Section 320: Makes inadmissible and deportable any convicted sex offender who has failed to register as required by law.

Section 321: Prohibits convicted sex offenders from petitioning to bring spouses, fiancées or others to the United States, unless the DHS secretary finds that the would-be petitioner “poses no risk to the alien”.

Section 322: Clarifies that when determining whether an offense is a crime of moral turpitude or violence that would render an alien inadmissible or deportable, federal authorities may consider evidence such as police reports, in addition to court conviction documents, when necessary.

Section 323: Criminalizes conduct by aliens who impede efforts to remove them for being inadmissible. Current law only criminalizes such conduct when the alien is deportable.

Section 324: Defines “pardon” in a manner to void, for immigration purposes, any such action granted for the purpose, in whole or in part, of permitting an alien to evade removal.

Title IV—Visa Security

Overview: Informed statisticians inside the government and out calculate that, at a minimum, about 40 percent of those living in our country without permission initially entered legally through land, sea, and air ports of entry and then simply overstayed their periods of authorized admission, melting into the interior and working illegally, often by assuming the identities and using the critical data (such as Social Security numbers) of citizens and lawful residents. In other words, nearly half of the illegal alien population consists of individuals who abused our visa and visa-waiver systems. Title IV of the SAFE Act is entirely about reinstating integrity and security in our visa issuing system.

Section 401: When a nonimmigrant visa is cancelled by the U.S. government, this section provides for a cascading effect that cancels all nonimmigrant visas held by the alien. Imagine this scenario: A foreign student violates his status, and is allowed to leave voluntarily in lieu of being expelled. His student visa is cancelled. The student departs, but turns right around and attempts to enter using a multiple entry tourist visa valid for several years, which was issued prior to the student visa. Nothing stops him from doing so because there has been no authority to cancel the tourist visa concurrent with the student visa. This provision seals that loophole.

Section 402: Expands the bases under which the secretary of State may share otherwise-confidential information contained in visa application files, including for additional criminal or civil offenses committed by the applicant as well as to foreign governments when it is in the U.S. national interest.

Section 403: Requires the secretary of State to consult with the secretary of the Department Homeland 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”; and requires a finding that waivers be in the national interest — but precludes “in the national interest” from being decided on the basis of visa backlogs or limited consular resources.

Section 404: Permits consular officers to waive personal interviews when applicants are clearly 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 authority of the secretary of State, to refuse or revoke visas to any alien or class of aliens, with the exception of diplomats and members of international organizations; and prohibits the secretary of State from overriding a decision by the DHS secretary to deny, refuse, or revoke a visa.

Section 406: Places the DHS Visa Security Program on a sound fiscal footing by providing that a portion of the visa fees collected by the State Department will be used to fund DHS visa security officers (VSOs) at American embassies and consulates abroad.

Section 407: Requires the secretaries of State and DHS to jointly establish a list of the top 30 high-risk posts abroad for expansion of the DHS Visa Security Program, and requires review of visa applications at those posts by VSOs before they may be adjudicated by consular officers.

Section 408: Clarifies that chiefs of mission (usually ambassadors) of the 30 designated high-risk posts are required to cooperate and participate in ensuring that the DHS VSOs are cleared and in place 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 decision directive, as their authority to decline, or to slow down to a crawl, assignment of VSOs to their posts. This provision specifically cites NSDD-38 as inappropriate to attempt such a maneuver.)

Section 409: Enhances the criminal penalties for violation of Title 18 U.S. Code Section 1546 (visa fraud) when committed by officials of schools authorized to accept foreign students and exchange visitors.

Sections 410 and 413: Plug two massive loopholes 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 (Section 410), or if engaged in flight training, certified by the Federal Aviation Administration (Section 413).

Section 411: Provides that if the DHS secretary suspects that fraud, or attempted fraud, has been committed by an authorized school or institution, he or she may suspend its access to the Student and Exchange Visitor's Information System (SEVIS), which effectively precludes the school or institution from issuing documentation required to grant a visa to enter the United States. It 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.

Section 412: Requires national security and criminal history background checks of school and institution officials before they may be permitted to act as "designated officials" for purposes of issuing documents to prospective foreign students or exchange visitors.

Section 414: Requires notification to DHS when accreditation of a school or institution is revoked, at which time access to SEVIS must be suspended.

Sections 415 and 416: Provide for required reports to Congress by the DHS secretary (Sec. 415), and the Government Accountability Office (Sec. 416), on strategic planning and execution of those plans, in defining and mitigating risks in the student and exchange visitor program.

Section 417: Requires the DHS Secretary, within two years of enactment, to have in place of the existing SEVIS system the successor SEVIS II system, which has been in development for several years without having been successfully concluded and fully deployed.

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

Overview: Title V of the bill is important because the secretary has not accorded to immigration enforcement agents (IEAs), who are a part of ICE Enforcement & Removal Operations (ERO), the division which daily enforces the immigration laws, the same regulatory authorities, technology or equipment as that accorded to ERO deportation officers and special agents (who are a part of ICE Homeland Security Investigations, not ERO). This title cures many of those defects.

Section 501: Directs the Department of Homeland Security secretary to authorize immigration enforcement agents (IEAs) to exercise all of the powers afforded them by law in the Immigration and Nationality Act, provided they have appropriate training; and amends the pay and grade of these officers to be commensurate with that of deportation officers (DOs).

Section 502: Establishes a cadre of detention enforcement officers whose sole job is to act as the functional equivalent of jail and transportation officers for alien detention facilities. This section recognizes that the role of a detention officer in a facility is fundamentally different than that of an officer who works the streets to locate and apprehend suspects, and creates job classifications to distinguish them accordingly.

Section 503: Requires the DHS secretary to provide reliable body armor and weapons to IEAs and DOs. Again, this section is important because it will rectify the disparity in treatment and equipment between those officers and ICE special agents.

Section 504: Creates an ICE Advisory Council that includes representatives from Congress and the ICE prosecutor and agent unions “to advise the Congress and the secretary” on issues including the status of immigration enforcement, prosecutions and removals, the effectiveness of cooperative efforts between DHS and other law enforcement agencies, improvements that should be made to organizational structure, and the effectiveness of enforcement policies and regulations. This section provides Congress and the secretary an avenue to hear directly from line prosecutors and officers on those programs and issues that are effective, and those that are ineffective or downright detrimental to enforcement of the nation’s immigration laws. It also protects ICE participants against retaliation for voicing their views as council members.

Section 505: Establishes a pilot program for electronic production of arrest and charging documents by officers operating in the field or at locations remote from ICE offices. Such a capacity is critical to ensuring that field officers work at their most efficient while also ensuring that charging documents are issued and served on arrestees in a timely manner.

Section 506: Authorizes, subject to appropriations, augmentation of the existing 2013 manpower levels of deportation officers (by 5,000) and support staff (by 700).

Section 507: Authorizes, subject to appropriations, augmentation of ICE prosecutors (by 60).

Collectively, the officer, prosecutor, and support staff enhancements provided for in Sections 506 and 507 are an acknowledgement that nearly half of the aliens illegally in the United States did not enter as border crossers and that the overwhelming majority of illegal aliens in the United States, regardless of how they originally entered, work and reside in the interior where ERO officers perform their duties.

Title VI — Miscellaneous Enforcement Provisions

Overview: This title of the SAFE Act is a kind of catch-all of desirable provisions, and amendments to existing law, which did not neatly fit into, and were not encompassed within, the prior five titles of the bill.

Section 601: Amends existing statutes relating to the grant of voluntary departure in lieu of formal removal, both before and after the initiation of immigration hearings, by:

- Limiting grants of this privilege to no more than 120 days pre-hearing and 60 days after commencement;
- Authorizing the government to require the posting of a voluntary departure bond by the alien to ensure that he or she actually departs;

- Requiring the alien to affirmatively agree to voluntary departure in writing, with the stipulation that in so doing he/she waives further appeals, motions, requests for relief, etc.;
- Providing civil penalties for aliens who renege on their voluntary departure agreements or fail to depart, preclude them from seeking reopening of their cases, and bar them from a variety of forms of relief from removal;
- Precluding the repeated grant of voluntary departure to an alien; and
- Authorizing the secretary (for DHS officers) or the attorney general (for immigration judges) to establish regulations imposing additional reasonable limitations on use of voluntary departure.

These are welcome amendments because voluntary departure, originally envisioned as a method of streamlining the expulsion of aliens charged with less-serious, non-criminal offenses, has become the subject of much abuse, both by government (which has been overly generous in its grants of voluntary departure — increasingly even to aliens with criminal histories), and by aliens (who accept the offer and then, instead of departing, abscond or file repeated frivolous motions to reopen their case with the immigration courts in order to buy more time to remain in the United States).

Section 602: Restructures the bars for reentry of inadmissible aliens who fail to depart after being ordered removed, and provides that they are ineligible for relief. The language of the section is intended to deter aliens from fleeing instead of obeying lawful removal orders, by strengthening and extending the “shelf-life” of penalties for failing to depart, and making clear that aliens who become fugitives will be entitled to no future consideration or benefits under the law.

Section 603: Expands the conditions under which prior orders of removal may be reinstated (in lieu of new/additional proceedings) when aliens are found to have subsequently illegally reentered the United States; prohibits any grant of relief to such aliens; and limits the use of judicial review and habeas corpus proceedings to contest reinstated orders.

Reinstating previously issued orders of removal against aliens who reenter the United States illegally, results in a tremendous savings of officer, prosecutor, and court resources. It is also a prudent means of preserving limited taxpayer funds while deporting recidivist alien offenders. This section augments the existing authority for its use, and ensures that there are few, if any, loopholes for aliens to exploit in avoiding expulsion through reinstatement of prior orders, when caught in the United States again.

Section 604: Clarifies that an adjustment of status to permanent residence under the INA constitutes an admission to the United States — the functional equivalent of a lawful physical entry. This is a technical but highly desirable amendment because it ensures that if an alien violates his resident alien status after adjustment (for instance, through criminal conviction), the “date of entry” will be calculated only back as far as his adjustment, not his original entry. This will prevent many undeserving aliens from claiming that they have accrued enough time after “entry” to merit relief from deportation even in the face of unlawful conduct.

Section 605: Requires reports to Congress on use — and abuse — of discretion by executive branch officials. (This provision was discussed at some length in my fourth [SAFE Act blog](#), and is a direct response to administration activities curtailing immigration law enforcement and granting the equivalent of an administrative free pass to thousands of aliens who are in the country illegally.)

Section 606: Precludes the secretaries of Interior or Agriculture from establishing rules or policies that prevent patrolling within 100 miles of the borders on federal lands, and waives certain rules relating to creating roadways, fences, dragstrips and the like, which are used by federal officers in their border patrol efforts.