

SUMMARY OF H.R. 2278

The Strengthen and Fortify Enforcement (SAFE) Act

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The SAFE Act was introduced in June 2013 by the chair of the House of Representatives' Immigration Subcommittee, Rep. Trey Gowdy (R-SC), with the support of the chair of the House Judiciary Committee, Rep. Bob Goodlatte (R-VA). On June 18, 2013, the Judiciary Committee approved the legislation by a vote of 20-15. If enacted, the SAFE Act's single-minded focus on immigration enforcement will increase detentions and deportations, and will create an environment of rampant racial profiling and unconstitutional detentions without fixing the immigration system's problems. Key provisions of the SAFE Act, as approved by the Judiciary Committee, include the following:

Grants states and localities full authority to create, implement, and enforce their own criminal and civil penalties for federal immigration violations so long as the penalties applied do not exceed those under federal law. This provision would directly overturn the Supreme Court's decision last year in *Arizona v. United States*, 132 S. Ct. 2492 (2012), which reaffirmed that states may not enact their own criminal penalties for violations of federal immigration law, even when the state law mirrors the federal provision. Allowing all the 50 states and many localities to enact their own immigration enforcement laws is unworkable, and it will decrease public safety and adversely impact our nation's relations with other countries.

Allows state and local law enforcement to investigate, identify, apprehend, arrest, and detain people in violation of immigration laws and to transfer them to federal immigration authorities. This is an unfettered delegation of immigration enforcement authority to localities, allowing them to arrest and detain people based on nothing more than mere suspicion that a person has committed a civil immigration violation. Local officers with minimal training in the complexities of immigration law cannot be expected to implement federal immigration law appropriately or uniformly.

Eliminates the administration's ability to implement its Deferred Action for Childhood Arrivals (DACA) policy and other policies related to reviewing otherwise deportable people's immigration cases to determine if they should be allowed to remain in the U.S. Also eliminates the use of current guidance on detainers (often referred to as "immigration holds") issued by the U.S. Department of Homeland Security (DHS). As a result of this provision, many more immigrants who would otherwise qualify for temporary relief, particularly those who entered the U.S. as children, would be deported. During the Judiciary Committee's consideration of the bill, Rep. Steve King (R-Iowa) sponsored the amendment that added this language.

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Requires the federal government to assume custody over every person identified by a state or local government as inadmissible or deportable upon request by such agency. Such persons must be held in detention in a federal, contract, state, or local prison, jail, detention center, or other facility. This section would strip the DHS secretary of the discretion to decide whether to release a person on bond, under an order of supervision, or on his or her own recognizance rather than continue to detain the person.

Allows states or localities to detain inadmissible or deportable people for 14 days after they complete their jail or prison sentences, in order to transfer them to ICE custody. This unprecedented and unconstitutional expansion of detention authority hinges on an untrained local officer's determination of whether a person is inadmissible or deportable. This section also allows state and local law enforcement officers, untrained in federal immigration law, to issue an immigration hold (detainer) for a person and to detain the person indefinitely until DHS assumes custody. This completely unchecked authority to detain people in prison for 14 days or longer will result in the prolonged detention of U.S. citizens and lawfully present immigrants.

Makes changes that would expand the failed 287(g) program. This provision strips away federal control by requiring that DHS accede to any state or local jurisdiction's request to participate in the 287(g) program, except where a "compelling reason" exists to refuse participation. Under current law, either DHS or the state or local party to the 287(g) agreement may terminate the agreement for any reason; however, this provision restricts DHS's ability to terminate. This is particularly problematic, given the many documented abuses by deputized state and local officers that have occurred under the program.

Requires state and local law enforcement agencies to provide extensive information regarding every noncitizen "apprehended" who is "believed to be inadmissible or deportable." This provision represents a dramatic expansion of existing law (8 U.S.C. §§ 1373 and 1644) by requiring extensive information sharing, which will tax local law enforcement resources and drive a wedge between communities and the police.

Requires that the National Crime Information Center (NCIC) database be filled with millions of noncriminal records pertaining to noncitizens who have overstayed visas, received voluntary departure or final orders of removal, or have had their visas revoked. This would clutter up the NCIC, a critical tool for law enforcement, and local law enforcement officers using the system would have to waste precious time deciding whether a "hit" in the system merited action. Law enforcement chiefs and associations oppose such changes.

Prohibits states and localities from limiting compliance with U.S. Immigration and Customs Enforcement (ICE) detainer requests and from issuing policies, resolutions, or ordinances that restrict local cooperation with federal law enforcement. This section is a direct response to a number of jurisdictions — most prominently Cook County, Illinois — that have adopted policies or ordinances setting guidelines for when local law enforcement will extend the detention of a person based on an ICE detainer request. This undermines the ability of state and local agencies to direct their policing resources based upon the public safety needs of the communities they serve.

Expands the crime of illegal entry and criminalizes overstaying a visa. This section removes the traditional limit on the crime of illegal entry, which currently criminalizes only people apprehended while entering the U.S., and instead makes illegal entry a continuing offense until the time the person is discovered by federal officials. The section also criminalizes overstaying a visa, even by a single day and regardless of any compelling circumstances.

Attempts to authorize the indefinite detention of people who have been ordered removed. In *Zadvydas v. Davis*, 33 U.S. 678 (2001), the Supreme Court held that indefinite detention of a noncitizen who has been ordered removed, but whose removal is not significantly likely to occur in the reasonably foreseeable future, would raise serious constitutional concerns. This section attempts to overturn the *Zadvydas* decision, except for a narrow category of cases. Worse, the provision also appears to restrict court review of indefinite detention for individuals who cannot be removed and limits the decision to continue to detain solely to the discretion of DHS.

Creates new grounds of inadmissibility and deportability for people whom DHS knows or “has reason to believe” are current or former members of a criminal gang. Such people would be subject to mandatory detention and barred from receiving asylum and temporary protected status (TPS). This would sweep in people who have never been convicted of a crime and are merely suspected of being in a gang, as well as people who are erroneously listed on gang databases because they live in neighborhoods where gangs are active.

Institutes harsh consequences for anyone convicted of a driving-under-the-influence (DUI) offense, even a misdemeanor offense. Undocumented immigrants with one DUI conviction would never be eligible to legalize their status. Immigrants with legal status would be deportable after two DUI convictions, regardless of whether the convictions occurred long ago or were minor misdemeanor offenses. This language was added during the Judiciary Committee’s consideration of the bill.

Subjects anyone who transports or “harbors” a person with the knowledge that the person is undocumented to severe criminal penalties. The mere act of driving an undocumented sibling, parent, parishioner, or neighbor to a job could be considered a criminal offense under the “alien smuggling” provision. There is a limited exception for religious organizations assisting an undocumented minister or missionary who serves in a voluntary capacity. This language was added during the Judiciary Committee’s consideration of the bill.

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