



LEGISLATIVE ANALYSIS

To embrace and uphold our tradition as a nation of immigrants.

H.R. 1279

Gang Deterrence and Community Protection Act of 2005 Select Provisions

On May 11, the House passed a bill with troubling immigration related provisions known as the Gang Deterrence and Community Protection Act of 2005 (H.R. 1279). In the Senate, Senator Feinstein has introduced the Gang Prevention and Effective Deterrence Act of 2005 (S. 155). While the Senate bill does not currently contain the House immigration provisions, Senators could add these provisions when the bill is marked up or confereed.

Section 112: Expands the Aggravated Felony Definition: This section expands the definition of a “crime of violence” in the federal code to read: “*any other offense* that is an offense punishable by imprisonment for more than one year and that, *by its nature*, involves a substantial risk that *physical injury may result* to the person or property of another.”¹

This section of H.R. 1279 expands the “crime of violence” definition to include *non-violent* acts like “driving under the influence” or any other act that a judge interprets may result in physical injury even if there is no injury at all! Noncitizens convicted of crimes that fall within the (already) broad “crime of violence” definition may be classified as “aggravated felons” under the immigration code. Such classification carries very harsh consequences, including mandatory detention and removal, bars on all discretionary relief, and no judicial review.

Background: The 1996 immigration laws greatly expanded the definition of “aggravated felony.” An immigrant convicted of a crime defined as an “aggravated felony” in the immigration code is subject to mandatory detention without bond and permanent removal from the United States. Under the 1996 laws, even misdemeanor crimes as minor as shoplifting can be considered “aggravated felonies.” These penalties apply to all non-citizens, including long-time lawful permanent residents. Moreover, the expanded definition applies retroactively, meaning that legal immigrants can be deported for minor offenses they committed decades ago, before such offenses were even deportable crimes. The 1996 laws also bar anyone who has been convicted of an aggravated felony from applying for relief. This expansion denies long-term legal permanent residents who have family, ties to the community, and other strong equities any chance to remain in the United States.

Sections 117 and 119: Mandates Immigration Information Into the National Crime Information Center: Together, these sections require the Department of Homeland Security to provide the National Crime Information Center (NCIC) of the Department of Justice information

¹ Currently, the definition of “crime of violence” reads: (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. H.R. 1279 amends section 16(b) of title 18, United States Code.

on aliens with a final order of removal, aliens who have signed a voluntary departure agreement, or aliens who have overstayed a temporary visa. Such information must be provided to the NCIC even if the alien never received notice of a final order of removal, has obtained legal status, or has already left the United States.

These sections require DHS to enter information unrelated to criminal acts into a federal *criminal* database. They provide no assurance that data being entered into the NCIC is accurate or even relevant. These provisions will lead state and local police to arrest individuals for civil immigration status violations, including in all likelihood individuals whose status problems have been corrected but not updated in the database. Under this scheme, people who have left the United States under a voluntary departure agreement or a final removal order and re-entered the U.S. *legally* will be exposed to unlawful arrest. A temporary visitor who has applied for an extension of his visa and is simply waiting for DHS to process it could also be subject to arrest by state and local police.

Background: The FBI's NCIC is a computerized database of criminal justice information available to virtually every law enforcement agency nationwide, 24 hours a day, 365 days a year. Traditionally, immigration information included in the database has been limited to criminal activity. In 2002, the Bush Administration decided to list new categories of immigration violators in the NCIC, including civil violators. This move caused confusion among state and local police agencies that want to assist the federal government in apprehending criminals and dangerous people, but do not want to enforce federal civil laws against otherwise law-abiding immigrants.

These sections expand the Administration's position into further uncharted territory, calling for the entry into NCIC of potentially millions of immigrants' names who have nothing to do with criminal behavior. The provisions are not about fighting crime but ensnaring immigrants trying to negotiate the rules of a bureaucracy that is notoriously slow and inadequate. They distract state and local law enforcement from their primary mission (protecting the public from actual criminals). Also, requiring DHS to provide this information to NCIC without regard to whether an immigrant has received notice of a removal order raises serious due process concerns.

Section 118: Crimes of Violence and Drug Crimes Committed by Illegal Aliens: This section sets a mandatory minimum five-year jail sentence for aliens unlawfully present in the United States who commit, conspire, or attempt to commit a "crime of violence" or a "drug trafficking offense." Aliens with a previous removal order on these grounds must be sentenced for a mandatory minimum of 15 years.

The sentencing enhancements due to someone's immigration status will be costly to taxpayers: a five year sentence minimum means that state and local facilities will have to pay the costs for incarceration longer than necessary before an offender is deported. Moreover, mandating different punishments for the same crime, based solely on an individual's immigration status, raises serious constitutional concerns.

*Prepared by the National Immigration Forum
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