

PROTECT OUR LAW ENFORCEMENT WITH IMMIGRATION
CONTROL AND ENFORCEMENT ACT OF 2023

MAY 15, 2023.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2494]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 2494) to make the assault of a law enforcement officer a de-
portable offense, and for other purposes, having considered the
same, reports favorably thereon with an amendment and rec-
ommends that the bill as amended do pass.

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The amendment is as follows:

Strike all that follows after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protect Our Law enforcement with Immigration Control and Enforcement Act of 2023” or the “POLICE Act of 2023”.

SEC. 2. ASSAULT OF LAW ENFORCEMENT OFFICER.

Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

“(G) ASSAULT OF LAW ENFORCEMENT OFFICER.—

“(i) IN GENERAL.—Any alien who has been convicted of, who admits having committed, or who admits committing acts which constitute the essential elements of, any offense involving assault of a law enforcement officer is deportable.

“(ii) CIRCUMSTANCES.—The circumstances referred to in clause (i) are that the law enforcement officer was assaulted—

“(I) while he or she was engaged in the performance of his or her official duties;

“(II) because of the performance of his or her official duties; or

“(III) because of his or her status as a law enforcement officer.

“(iii) DEFINITIONS.—In this subparagraph—

“(I) the term ‘assault’ has the meaning given that term in the jurisdiction where the act occurred; and

“(II) the term ‘law enforcement officer’ is a person authorized by law—

“(aa) to apprehend, arrest, or prosecute an individual for any criminal violation of law; or

“(bb) to be a firefighter or other first responder.”.

Purpose and Summary

H.R. 2494, the Protect Our Law enforcement with Immigration Control and Enforcement (POLICE) Act of 2023, introduced by Rep. Andrew Garbarino (R-NY), would create a ground of removability for aliens who have been convicted of, admit to, or admit to committing acts that constitute the essential elements of, any offense involving the assault of a law enforcement officer.

Background and Need for the Legislation

Violence against law enforcement officers continues to rise and is perpetuated by open borders. According to federal statistics, “43,649 [law enforcement] officers were assaulted while performing their duties in 2021.”¹ This figure represented an 11.2 percent increase from 2020.² Of the officers assaulted, 35.2 percent were injured.³ In both 2021 and 2022, “at least 64 officers were shot and killed in the line of duty,” which is 21 percent more than the average number of officers killed by gunfire from 2010 to 2020.⁴

The Fraternal Order of Police partially attributed the rise in violence to “an open border” and a “culture of lawlessness.”⁵ In fact,

¹*Law Enforcement Officers Assaulted in 2021*, FED. BUREAU OF INVESTIGATION (Apr. 5, 2023), <https://leb.fbi.gov/bulletin-highlights/additional-highlights/crime-data-law-enforcement-officers-assaulted-in-2021>.

²*Id.*

³*Id.*

⁴Paul Best, *Law enforcement officer deaths from firearms remain high in 2022*, FOX NEWS (Jan. 11, 2023, 9:40 PM), <https://www.foxnews.com/us/law-enforcement-officer-deaths-firearms-remain-high-2022>.

⁵Ashley Carnahan, *2022 saw disturbing increase in law enforcement fatalities: ‘A culture of lawlessness has gripped the country’*, FOX NEWS (Jan. 15, 2023, 8:30 PM), <https://www.foxnews.com/media/2022-saw-disturbing-increase-law-enforcement-fatalities-culture-lawlessness-gripped-country>.

illegal aliens continue to assault law enforcement officers across the country. In March 2023, for instance, an illegal alien violently assaulted a U.S. Border Patrol agent as the agent attempted to take the alien into custody, injuring the agent's face and arms.⁶ Similarly, in November 2022, the FBI arrested two illegal aliens for pushing, dragging, and punching a U.S. Border Patrol agent.⁷

Border Patrol agents are not the only law enforcement officers assaulted by illegal aliens. For example, in 2020, an illegal alien stabbed a New York police officer in the neck, took the officer's gun, and then shot at other officers.⁸ In 2019, a jury found an illegal alien guilty of assaulting an Immigration and Customs Enforcement (ICE) Deportation Officer.⁹ In 2020, an illegal alien shot and killed a Houston police sergeant.¹⁰ And, in 2021, illegal aliens on repatriation flights on multiple occasions attacked ICE agents and pilots, biting and physically assaulting them.¹¹

Despite aliens' repeated assaults on law enforcement officers, U.S. immigration law does not state explicitly that assault on a law enforcement officer is a deportable offense.¹² Instead, an alien who assaults a law enforcement officer likely will be found removable due to having been convicted of a crime that constitutes either an aggravated felony or a crime involving moral turpitude (CMT).¹³ Determining whether an offense is an aggravated felony or a CMT, however, often involves complicated legal analysis that can produce absurd results. In one instance, for example, a federal judge observed that the process, known as the categorical approach, presented "a single legal question about a single conviction," yet the analysis "spawned, over eleven years and counting: four decisions by the [Board of Immigration Appeals], four decisions by three different immigration judges, approximately six rounds of briefing, and a split opinion by [a federal] court."¹⁴

In specifically enumerating assault of a law enforcement officer as a ground of removability, H.R. 2494 eliminates the complicated analysis and ensures that any alien who assaults a law enforcement officer can be removed from the United States. In doing so,

⁶ Anders Hagstrom, *Female border patrol agent violently assaulted by illegal immigrant*, FOX NEWS (Mar. 5, 2023, 1:22 PM), <https://www.foxnews.com/us/female-border-patrol-agent-violently-assaulted-illegal-immigrant>.

⁷ Danielle Wallace, *FBI arrests 2 Venezuelan illegal immigrants for assault on Border Patrol agent in Texas*, FOX NEWS (Nov. 9, 2022, 9:26 AM), <https://www.foxnews.com/us/fbi-arrests-2-venezuelan-illegal-immigrants-assault-border-patrol-agent-texas>.

⁸ Lawrence Richard, *Illegal immigrant who stabbed, shot NYPD officers sentenced to 30 years in prison, deportation*, FOX NEWS (Sept. 22, 2022, 3:33 AM), <https://www.foxnews.com/us/illegal-immigrant-stabbed-shot-nypd-officers-sentenced-30-years-prison-deportation>.

⁹ *Illegal alien convicted of assaulting officer in Mississippi*, WTOK TV (Oct. 24, 2019, 1:23 PM), <https://www.wtok.com/content/news/Illegal-alien-convicted-of-assaulting-officer-in-Mississippi-563789991.html>.

¹⁰ Arelis R. Hernandez & Nick Miroff, *Suspect in killing of Houston police sergeant is in United States illegally, ICE says*, WASH. POST (Oct. 21, 2020, 4:43 PM), https://www.washingtonpost.com/national/houston-police-killing-immigrant-ice/2020/10/21/436ead4c-13a4-11eb-82af-864652063d61_story.html.

¹¹ Emily Crane, *Haitian migrants assault ICE officials, pilots on deportation flights*, N. Y. POST (Sept. 23, 2021), <https://nypost.com/2021/09/23/haitian-migrants-attack-ice-officials-on-deportation-flights/>.

¹² See generally INA § 237(a).

¹³ See INA § 237(a)(2)(A); see also *Cano v. U.S. Atty. Gen.*, 709 F.3d 1052 (11th Cir. 2013) (holding that a conviction for resisting an officer with violence constituted a crime involving moral turpitude); *Matter of Danesh*, 19 I. & N. Dec. 669, 673 (BIA 1988) (holding that "an aggravated assault against a peace officer, which results in bodily harm to the victim and which involves knowledge by the offender that his force is directed to an officer who is performing an official duty, constitutes a crime that involves moral turpitude").

¹⁴ *Valdez v. Garland*, 28 F.4th 72, 85 (9th Cir. 2022) (Graber, J., concurring in part and dissenting in part).

H.R. 2494 gives authorities another tool to protect not only every American but also the law enforcement officers who serve the country every day.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to develop H.R. 2494: “The Biden Border Crisis: Part I,” a hearing held on February 1, 2023, before the Judiciary Committee. The Committee heard testimony from the following witnesses:

- Brandon Dunn, co-founder, Forever15Project;
- The Honorable Mark J. Dannels, Sheriff, Cochise County, Arizona;
- The Honorable Dale Lynn Carruthers, County Judge, Terrell County, Texas; and
- The Honorable Ricardo Samaniego, County Judge, El Paso County, Texas.

The hearing addressed how President Biden’s open-borders policies affect Americans with rising crime and lawlessness at the southwest border and beyond. In his opening statement, Sheriff Mark Dannels of Cochise County, Arizona, testified how his deputies have been placed in life-threatening situations with aliens and how border-related crimes are at an all-time high.¹⁵

Committee Consideration

On May 10, 2023, the Committee met in open session and ordered the bill, H.R. 2494, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 15 to 11, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee’s consideration of H.R. 2494:

1. Vote on Amendment #1 to H.R. 2494 ANS offered by Ms. Jayapal of WA—failed 9 ayes to 21 nays
2. Vote on Amendment #2 to H.R. 2494 ANS offered by Mr. Nadler of NY—failed 9 ayes to 19 nays
3. Vote on Amendment #3 to H.R. 2494 ANS offered by Mr. Ivey of MD—failed 11 ayes to 15 nays
4. Vote on favorably reporting H.R. 2494, as amended—passed 15 ayes to 11 nays

¹⁵*The Biden Border Crisis: Part I: Hearing Before the H. Comm. On the Judiciary*, 118th Cong. 11 (2023) (statement of Mark J. Dannels, Sheriff, Cochise County, Arizona).

COMMITTEE ON THE JUDICIARY

118th CONGRESS

25-19

ROLL CALL

Date: 5/10/23

Vote on: Jayapal Amendment (F.1) to HR 2494 ANS

Roll Call #: 1

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. BUCK (CO)		✓		MS. JACKSON LEE (TX)			
MR. GAETZ (FL)		✓		MR. COHEN (TN)	✓		
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)				MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)		✓		MR. CORREA (CA)			
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)			
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)			
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)	✓		
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals:

Ayes:

9

Nays:

21

Present:

Failed:

Passed:

COMMITTEE ON THE JUDICIARY

118th CONGRESS

25-19

ROLL CALL

Date: 5/10/23

Vote on: Nadler Amendment (#2) to HR 2494 ANS

Roll Call #: 2

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. BUCK (CO)		✓		MS. JACKSON LEE (TX)			
MR. GAETZ (FL)		✓		MR. COHEN (TN)	✓		
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)				MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)			
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)			
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)			
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)				MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)	✓		
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)		✓					
MR. FRY (SC)		✓					

Roll Call Totals:

Ayes:

97

Nays:

19

Present:

X

Passed: _____

Failed: _____

COMMITTEE ON THE JUDICIARY

118th CONGRESS

25-19

ROLL CALL

Date: 9/19/23

Vote on: Ivey Amendment (#3) to HR 2494 ANS

Roll Call #: 3

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>				MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. BUCK (CO)		✓		MS. JACKSON LEE (TX)			
MR. GAETZ (FL)				MR. COHEN (TN)	✓		
MR. JOHNSON (LA)				MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)				MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)	✓		
MR. ROY (TX)				MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)			
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)			
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)				MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)	✓		
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals:

Ayes:

11

Nays:

15

Present:

Failed:

X

Passed: _____

COMMITTEE ON THE JUDICIARY
118th CONGRESS

25-19

ROLL CALL

Date: 5/10/23

Vote on: Final passage of H.R. 2499, as amended

Roll Call #: 9

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>				MR. NADLER (NY) <i>Ranking Member</i>		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)			
MR. BUCK (CO)	✓			MS. JACKSON LEE (TX)			
MR. GAETZ (FL)				MR. COHEN (TN)		✓	
MR. JOHNSON (LA)				MR. JOHNSON (GA)		✓	
MR. BIGGS (AZ)				MR. SCHIFF (CA)		✓	
MR. McCLINTOCK (CA)	✓			MR. CICILLINE (RI)			
MR. TIFFANY (WI)	✓			MR. SWALWELL (CA)			
MR. MASSIE (KY)	✓			MR. LIEU (CA)		✓	
MR. ROY (TX)				MS. JAYAPAL (WA)		✓	
MR. BISHOP (NC)				MR. CORREA (CA)		✓	
MS. SPARTZ (IN)	✓			MS. SCANLON (PA)			
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)			
MR. CLINE (VA)	✓			MS. DEAN (PA)		✓	
MR. GOODEN (TX)				MS. ESCOBAR (TX)		✓	
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)		✓	
MR. NEHLS (TX)	✓			MS. BUSH (MO)			
MR. MOORE (AL)	✓			MR. IVEY (MD)		✓	
MR. KILEY (CA)	✓						
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)	✓						
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Total:

Ayes:

15

Nays:

11

Present:

Passed:

X

Failed:

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974* has been timely submitted prior to filing of the report and is included in the report. Such a cost estimate is included in this report.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the enclosed cost estimate for H.R. 2494 from the Director of the Congressional Budget Office:

H.R. 2494, POLICE Act of 2023				
As ordered reported by the House Committee on the Judiciary on May 10, 2023				
By Fiscal Year, Millions of Dollars		2023	2023-2028	2023-2033
Direct Spending (Outlays)		*	*	*
Revenues		0	0	0
Increase or Decrease (-) in the Deficit		*	*	*
Spending Subject to Appropriation (Outlays)		*	*	*
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?		Yes
		Mandate Effects		
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?		No
		Contains private-sector mandate?		No
* = between -\$500,000 and zero.				

H.R. 2494 would allow the government to deport an alien (a non-U.S. national) from the United States if that person admitted to or was convicted of assaulting a law enforcement officer. Under current law, the government can deport aliens who are convicted of assault. Therefore, CBO expects that only a few people would be deported based solely on this bill's enactment.

Enacting H.R. 2494 would reduce direct spending and spending subject to appropriation because aliens are eligible for certain federal benefits, such as emergency Medicaid, if they otherwise meet the eligibility requirements for those benefits. Because few people would be affected by the bill, CBO estimates that those effects would not be significant.

The CBO staff contact for this estimate is David Rafferty. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 2494 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 2494 would create a ground of removability for aliens convicted of, or who admit to committing, any offense relating to assault of a law enforcement officer.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 2494 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

Federal Mandates Statement

Pursuant to section 423 of the *Unfunded Mandates Reform Act*, the Committee has determined that the bill does not contain federal mandates on the private sector. The Committee has determined that the bill does not impose a federal intergovernmental mandate on state, local, or tribal governments.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

Section-by-Section Analysis

TITLE I: BORDER SECURITY AND ENFORCEMENT ACT OF 2023

Sec. 1. Short Title: This section states the title of H.R. 2494 as the “Protect Our Law enforcement with Immigration Control and Enforcement Act of 2023,” or the “POLICE Act of 2023.”

Sec. 2. Assault of a Law Enforcement Officer: This section creates a ground of removability for aliens who have been convicted of, admit to, or admit to committing acts that constitute the essential elements of, any offense involving the assault of a law enforcement officer.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * *

TITLE II—IMMIGRATION

* * * * *

CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * *

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 237. (a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) INADMISSIBLE AT TIME OF ENTRY OR OF ADJUSTMENT OF STATUS OR VIOLATES STATUS.—

(A) INADMISSIBLE ALIENS.—Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.

(B) PRESENT IN VIOLATION OF LAW.—Any alien who is present in the United States in violation of this Act or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 221(i), is deportable.

(C) VIOLATED NONIMMIGRANT STATUS OR CONDITION OF ENTRY.—

(i) NONIMMIGRANT STATUS VIOLATORS.—Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248, or to comply with the conditions of any such status, is deportable.

(ii) VIOLATORS OF CONDITIONS OF ENTRY.—Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions,

and controls that were imposed under section 212(g) is deportable.

(D) TERMINATION OF CONDITIONAL PERMANENT RESIDENCE.—

(i) IN GENERAL.—Any alien with permanent resident status on a conditional basis under section 216 (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 216A (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable.

(ii) EXCEPTION.—Clause (i) shall not apply in the cases described in section 216(c)(4) (relating to certain hardship waivers).

(E) SMUGGLING.—

(i) IN GENERAL.—Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) SPECIAL RULE IN THE CASE OF FAMILY REUNIFICATION.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) WAIVER AUTHORIZED.—The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(G) MARRIAGE FRAUD.—An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if—

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of

the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.

(H) WAIVER AUTHORIZED FOR CERTAIN MISREPRESENTATIONS.—The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 212(a)(6)(C)(i), whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who—

(i)(I) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

(II) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such admission except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 212(a) which were a direct result of that fraud or misrepresentation.

(ii) is a VAWA self-petitioner.

A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

(2) CRIMINAL OFFENSES.—

(A) GENERAL CRIMES.—

(i) CRIMES OF MORAL TURPITUDE.—Any alien who—

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(j)) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed,

is deportable.

(ii) MULTIPLE CRIMINAL CONVICTIONS.—Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) AGGRAVATED FELONY.—Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) HIGH SPEED FLIGHT.—Any alien who is convicted of a violation of section 758 of title 18, United States

Code (relating to high speed flight from an immigration checkpoint), is deportable.

(v) FAILURE TO REGISTER AS A SEX OFFENDER.—Any alien who is convicted under section 2250 of title 18, United States Code, is deportable.

(vi) WAIVER AUTHORIZED.—Clauses (i), (ii), and (iii) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) CONTROLLED SUBSTANCES.—

(i) CONVICTION.—Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) DRUG ABUSERS AND ADDICTS.—Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) CERTAIN FIREARM OFFENSES.—Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is deportable.

(D) MISCELLANEOUS CRIMES.—Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate—

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18, United States Code, for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18, United States Code;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 215 or 278 of this Act, is deportable.

(E) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDER, CRIMES AGAINST CHILDREN AND.—

(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—Any alien who at any time after admission is

convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term “crime of domestic violence” means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual’s acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) VIOLATORS OF PROTECTION ORDERS.—Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

(F) TRAFFICKING.—Any alien described in section 212(a)(2)(H) is deportable.

(G) ASSAULT OF LAW ENFORCEMENT OFFICER.—

(i) *IN GENERAL.*—Any alien who has been convicted of, who admits having committed, or who admits committing acts which constitute the essential elements of, any offense involving assault of a law enforcement officer is deportable.

(ii) *CIRCUMSTANCES.*—The circumstances referred to in clause (i) are that the law enforcement officer was assaulted—

(I) while he or she was engaged in the performance of his or her official duties;

(II) because of the performance of his or her official duties; or

(III) because of his or her status as a law enforcement officer.

(iii) *DEFINITIONS.*—In this subparagraph—

(I) the term “assault” has the meaning given that term in the jurisdiction where the act occurred; and

(II) the term “law enforcement officer” is a person authorized by law—

(aa) to apprehend, arrest, or prosecute an individual for any criminal violation of law; or

(bb) to be a firefighter or other first responder.

(3) FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—

(A) CHANGE OF ADDRESS.—An alien who has failed to comply with the provisions of section 265 is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(B) FAILURE TO REGISTER OR FALSIFICATION OF DOCUMENTS.—Any alien who at any time has been convicted—

(i) under section 266(c) of this Act or under section 36(c) of the Alien Registration Act, 1940,

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of title 18, United States Code (relating to fraud and misuse of visas, permits, and other entry documents),

is deportable.

(C) DOCUMENT FRAUD.—

(i) IN GENERAL.—An alien who is the subject of a final order for violation of section 274C is deportable.

(ii) WAIVER AUTHORIZED.—The Attorney General may waive clause (i) in the case of an alien lawfully admitted for permanent residence if no previous civil money penalty was imposed against the alien under section 274C and the offense was incurred solely to assist, aid, or support the alien’s spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause.

(D) FALSELY CLAIMING CITIZENSHIP.—

(i) IN GENERAL.—Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any Federal or State law is deportable.

(ii) EXCEPTION.—In the case of an alien making a representation described in clause (i), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be deportable under any provision of this subsection based on such representation.

(4) SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL.—Any alien who has engaged, is engaged, or at any time after admission engages in—

(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other criminal activity which endangers public safety or national security, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is deportable.

(B) TERRORIST ACTIVITIES.—Any alien who is described in subparagraph (B) or (F) of section 212(a)(3) is deportable.

(C) FOREIGN POLICY.—

(i) IN GENERAL.—An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

(ii) EXCEPTIONS.—The exceptions described in clauses (ii) and (iii) of section 212(a)(3)(C) shall apply to deportability under clause (i) in the same manner as they apply to inadmissibility under section 212(a)(3)(C)(i).

(D) PARTICIPATED IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING.—Any alien described in clause (i), (ii), or (iii) of section 212(a)(3)(E) is deportable.

(E) PARTICIPATED IN THE COMMISSION OF SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien described in section 212(a)(2)(G) is deportable.

(F) RECRUITMENT OR USE OF CHILD SOLDIERS.—Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code, is deportable.

(5) PUBLIC CHARGE.—Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.

(6) UNLAWFUL VOTERS.—

(A) IN GENERAL.—Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.

(B) EXCEPTION.—In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was

a citizen, the alien shall not be considered to be deportable under any provision of this subsection based on such violation.

(7) WAIVER FOR VICTIMS OF DOMESTIC VIOLENCE.—

(A) IN GENERAL.—The Attorney General is not limited by the criminal court record and may waive the application of paragraph (2)(E)(i) (with respect to crimes of domestic violence and crimes of stalking) and (ii) in the case of an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship—

(i) upon a determination that—

(I) the alien was acting in self-defense;

(II) the alien was found to have violated a protection order intended to protect the alien; or

(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime—

(aa) that did not result in serious bodily injury; and

(bb) where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty.

(B) CREDIBLE EVIDENCE CONSIDERED.—In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(b) An alien, admitted as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or 101(a)(15)(G)(i), and who fails to maintain a status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under paragraph (4) of subsection (a).

(c) Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) (other than so much of paragraph (1) as relates to a ground of inadmissibility described in paragraph (2) or (3) of section 212(a)) shall not apply to a special immigrant described in section 101(a)(27)(J) based upon circumstances that existed before the date the alien was provided such special immigrant status.

(d)(1) If the Secretary of Homeland Security determines that an application for nonimmigrant status under subparagraph (T) or (U) of section 101(a)(15) filed for an alien in the United States sets forth a prima facie case for approval, the Secretary may grant the alien an administrative stay of a final order of removal under section 241(c)(2) until—

(A) the application for nonimmigrant status under such subparagraph (T) or (U) is approved; or

(B) there is a final administrative denial of the application for such nonimmigrant status after the exhaustion of administrative appeals.

(2) The denial of a request for an administrative stay of removal under this subsection shall not preclude the alien from applying for a stay of removal, deferred action, or a continuance or abeyance of

removal proceedings under any other provision of the immigration laws of the United States.

(3) During any period in which the administrative stay of removal is in effect, the alien shall not be removed.

(4) Nothing in this subsection may be construed to limit the authority of the Secretary of Homeland Security or the Attorney General to grant a stay of removal or deportation in any case not described in this subsection.

* * * * *

Minority Views

Assaulting a law enforcement officer is a serious offense and it cannot be tolerated. If this bill closed an actual gap in current law and made our country safer, Democrats would have gladly supported it. Unfortunately, this bill represents another unserious attempt by our Republican colleagues to target and scapegoat immigrants, and to score cheap political points for Police Week, while doing nothing to actually protect law enforcement officers.

Furthermore, despite what the Republican Majority spent most of its time talking about at markup, this bill is not about undocumented immigrants, who are already removable. This bill applies largely to people who have been lawfully admitted to the country, people who have set down roots and established themselves in the United States. For years, we have had a bipartisan understanding that individuals like these should only be deported for a serious offense. This bill breaks down that understanding.

This bill is a solution in search of a problem. People who are convicted of serious assaults of law enforcement officials are already deportable. Around the country, serious assaults on law enforcement officers are considered felonies. Felony convictions are punishable by one year or more in person. Under current immigration law, a Crime Involving Moral Turpitude (CIMT) conviction where the crime is punishable by one year or more and a crime of violence aggravated felony conviction where an individual is imprisoned for a year both make an individual deportable.¹ As such, serious assaults on law enforcement officers already make someone deportable under current law. This bill does not protect law enforcement officers from some new and looming threat.

But because this bill is so broadly drafted, people who pose no real danger to law enforcement will now become subject to deportation. The bill does not include any requirement that the assault actually cause harm. No actual physical injury would be required. Without any limitations, this could lead to absurd results. For example, under the terms of this bill, a green card holder in a fire who pushes a firefighter out of the way of a falling beam would have committed assault and would become deportable. Likewise, if a foreign student whose religion prohibits blood transfusions is receiving medical care from an Emergency Medical Technician (EMT) and he swats the EMT's hand away because she is trying to give him a blood transfusion, that student will have committed the elements of an assault on a law enforcement officer and become deportable under this bill.

¹ INA § 237(a)(2).

The bill does not require that the individual be convicted of the crime, simply that the assault or act constituting assault was committed and that the individual admits to the commission. In the above scenarios, the noncitizen would likely have no apprehension admitting what they did, without realizing that it would render them deportable. This is in stark contrast to every other criminal deportability ground in Section 237 of the INA, except for the human trafficking grounds.² All other circumstances require a criminal conviction to render a noncitizen deportable.

At markup, Representative Jayapal offered amendments to require a conviction for assault before a person can be deported under this new standard. Ranking Member Nadler offered an amendment to require an element of intent—i.e., that the person actually intend to harm a law enforcement officer prior to being removed under this broad new standard. Either change would have made this bill more reasonable. Republicans defeated both amendments on party line votes. Complicating matters further, rather than define the term “assault,” the bill defers to whatever definition is used in the jurisdiction in which the act occurred. Because some states and the District of Columbia define assault on a law enforcement officer as a misdemeanor, this would mean that a non-citizen with such a conviction could be rendered deportable for a single misdemeanor. Under current law, one misdemeanor alone is not sufficient grounds for deportation. This bill would change that.

The Majority argued during markup that prosecutorial discretion would be exercised in cases of minor assaults that do not cause harm. However, even under current law, crimes a judge referred to as “small potatoes” can lead to protracted removal cases.³ For example, in 2001, a green card holder named Carlos Garcia-Meza was convicted of “aggravated assault” of a police officer.⁴ According to the Seventh Circuit Court of Appeals, his crime was that he asked for the officer’s name while moving his hand toward the officer’s nametag. The officer pushed his hand away, and Mr. Garcia-Meza ended up grabbing and twisting the officer’s fingers. The officer was not injured, and Mr. Garcia-Meza received two years’ probation.⁵ Nevertheless, because Mr. Garcia-Meza pleaded guilty and was convicted of aggravated assault, he was rendered deportable, and both an immigration judge and the Board of Immigration Appeals ordered him removed. The Seventh Circuit remanded his case back to the BIA because “an assault or battery on a police officer without bodily harm or other violence, or the intent to cause harm or use violence (also absent here), should not be included among crimes of moral turpitude.”⁶ If this bill were to become law, such analysis could not be considered, and Mr. Garcia-Meza would have to be deported.

Mr. Ivey offered an amendment that would have allowed adjudicators to consider a variety of mitigating factors in an attempt to avoid the unintended consequences of this legislation, which was rejected on a party-line vote.

²*Id.*

³*Garcia-Meza v. Mukasey*, 516 F.3d 535 (7th Cir. 2008).

⁴*Id.*

⁵*Id.* at 536.

⁶*Id.* at 538.

H.R. 2494 is an overbroad unnecessary piece of legislation that would have significant unintended consequences for long-term residents of this county. Instead of working with Democrats to advance bipartisan legislation, the Majority has once again advanced a fundamentally unserious proposal to close an imaginary gap in the law.

For all of these reasons, I dissent, and I urge all of my colleagues to oppose this legislation.

JERROLD NADLER,
Ranking Member.

