

## **Analysis of S.744 Provisions Impacting Immigrants Accused or Convicted of Crimes**

### **Glossary:**

**RPI:** Registered Provisional Immigrant. The first step in the legalization process under S. 744. People applying for RPI status will face ineligibility bars and inadmissibility grounds.

**Lawful Permanent Resident (LPR):** Green card holder. Can work and live here indefinitely, but can always be deported if she or he violates deportation (and some inadmissibility) grounds (such as getting convicted of certain crimes) - regardless of length of residence in U.S., family ties, and other favorable factors.

**Grounds of Inadmissibility:** A category of legal bars that apply when a person seeks “admission.” i.e. usually at the time of applying for a green card, asylum, etc. Violations of the inadmissibility grounds can also be used against undocumented people in removal proceedings (as well as LPRs returning to the U.S. after international travel). Inadmissibility bars and the specific RPI ineligibility bars are NOT the same, although they may overlap. Being deemed “inadmissible” means you have triggered a ground(s) of inadmissibility.

**Grounds of Deportation:** A category of legal bars that apply in removal proceedings when a person is accused of violating immigration laws after he or she has been legally admitted. Applies to anyone with legal status including LPRs, asylees, and people with Temporary Protected Status (TPS). Being deemed “deportable” means you have triggered the grounds of deportation.

**Aggravated Felonies (AF):** Federal immigration category that includes more than 50 classes of criminal offenses, some of which are neither “aggravated” nor a “felonies” (for example, misdemeanor shoplifting with a one-year sentence, even if suspended (not a day served in jail)). Congress expanded this term numerous times over the years, and most extensively in 1996. This is one of the government’s most powerful tools for deportation. An immigrant – including a lawful permanent resident – who is convicted of an offense classified as an “aggravated felony” is subject to mandatory detention (no bond) and virtually mandatory deportation since the immigration judge has no power (discretion) to grant them a waiver from deportation called cancellation of removal, or any other waivers, regardless of how long they have been here or their family ties.

**Crimes Involving Moral Turpitude (CIMT):** Broad immigration category covering many types of offenses (includes many theft, fraud, drug, assault, sex, and some driving related offenses). Because it has no definition it is often difficult to determine what offenses might constitute a CIMT. Both of the inadmissibility and deportation grounds include CIMT provisions, so depending upon the circumstances, a conviction for an offense classified as a CIMT can trigger both inadmissibility and deportability.

**Waivers:** An immigration judge or DHS (USCIS) official can, in certain circumstances, grant a waiver, which is like a “pardon,” to a qualifying person. The person may have triggered grounds of inadmissibility and is ineligible to be granted lawful status or the person has lawful status and is in removal proceedings because they have triggered a ground of deportation. Allows the judge or official to weigh the individual circumstances of a person who qualifies to ask for a waiver. Current immigration laws contain a handful of limited waivers, each with its own set of qualifications. Many criminal convictions disqualify someone from even asking for a waiver. Even if eligible, waivers are tough to get. For example, Immigration Courts handled nearly 400,000 cases in 2012, but less than 8,000 people were granted the most common type of waiver from deportation called “cancellation of removal.”

## DHS: Department of Homeland Security

### Criminal Bars to Legalization

| Section & Page #<br>in S. 744              | What Section Does  | Comments  | Examples and hypothetical examples  |
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| II. Sec. 2101<br>245B(b)(3)(A)(i)<br>P. 61 | <p><b><u>RPI Applicant Ineligibility Bars</u></b></p> <ul style="list-style-type: none"> <li>Any state or federal felony conviction;<br/>Exception: state/local conviction where immigration status is an element offense mirrors a violation of the Immigration &amp; Nationality Act</li> <li>Any conviction classified as an aggravated felony at time of conviction</li> <li>3 or more misdemeanor convictions <ul style="list-style-type: none"> <li>- Separate conviction dates required</li> <li>- Exceptions: “minor” traffic offenses &amp; state/local conviction where immigration status is an element or offense mirrors a violation of the Immigration &amp; Nationality Act</li> </ul> </li> <li>Certain foreign convictions</li> <li>Gang conduct and conviction (see definition below)</li> </ul> | <p>This is a long and overlapping list of crimes.</p> <p>(1) The aggravated felony or 1 felony bar is too broad. Aggravated felony includes misdemeanors and both categories include offenses occurring long ago.</p> <p>(2) Felony and misdemeanor bars do not exempt federal convictions where imm status is an element, such as illegal entry and illegal reentry. It also does not exempt state offenses that are</p> | <p>Examples of who will likely be ineligible to become RPIs:</p> <ul style="list-style-type: none"> <li>Georgia man with three young children convicted 5 years ago in Georgia misdemeanor assault w/365 day “suspended” sentence (no jail served). Successfully completes probation &amp; has no other conviction.</li> <li>Florida person convicted of a first time felony simple drug possession of a drug in Florida.</li> <li>Any person convicted of misdemeanor theft with a one year (365 day) suspended sentence.</li> </ul> |

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|  | <p><u>Definition of conviction</u> changed for RPI only:<br/>A conviction does not include an offense that has been expunged, set aside, or equivalent.</p>   | <p>prosecuted related to imm status, but do not explicitly include imm status as an element, such as showing false ID.</p> <p>(3) It is unclear what will qualify as a minor traffic offense.</p>  | <ul style="list-style-type: none"> <li>• A bar fight resulting in an assault conviction with 1yr. sentence even if a person spends less (or no) time in jail.</li> <li>• Person convicted of Class 6 felony identity theft in Arizona after her workplace was raided by Sheriff Arpaio.</li> <li>• A person who shows a false identification to a police officer out of fear due to undocumented status and later convicted of a felony likely to be ineligible for legalization.</li> </ul> |
| <p>II. Sec. 2101<br/>245B(b)(3)(A)(ii)<br/>P. 63</p> | <p><b><u>RPI Applicant Subject to INA § 212(a)(2) Grounds of Inadmissibility</u></b><br/>This includes:</p> <ul style="list-style-type: none"> <li>• A CIMT conviction (a broad category of offenses including theft, fraud, assault, sex, and some driving related offenses)</li> <li>• Any drug related offense</li> </ul> <p>These grounds also include the new 212(a)(2) grounds created by S. 744:</p> <ul style="list-style-type: none"> <li>• Gang related crimes and conduct (see 3701), but has one important distinction: the gang ineligibility ground <b>does not</b> require that the person reside outside the United States.</li> <li>• Driving under the influence - 3702</li> <li>• Domestic violence convictions - 3711(c)</li> </ul> | <ul style="list-style-type: none"> <li>• This is a broad category that may sweep up individuals who may not otherwise fall within the ineligibility bars above. A person who may not trigger the ineligibility bars may still trigger the inadmissibility grounds.</li> <li>• CIMT ground of inadmissibility will make it difficult to determine who is eligible because this is a vague category with no clear definition.</li> </ul> | <ul style="list-style-type: none"> <li>• A person who does not have 3 or more misdemeanor convictions on their record, but has a single misdemeanor conviction such as theft with a sentence of &gt;180 days (including suspended time) will trigger the CIMT inadmissibility ground.</li> <li>• A person with a simple drug possession conviction will trigger the drug convictions inadmissibility ground.</li> </ul>  |

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|   | <p>A <u>conviction</u> does not include an offense that has been expunged, set aside, or equivalent. - Only applies to legalization applicants.</p>  | <ul style="list-style-type: none"> <li>• The drug related offense category is too broad, e.g., it includes a conviction for possession of a small amount of marijuana.</li> </ul>   |  |
| <p>II. Sec. 2101(a)<br/><br/>245B(a)(3)(B)<br/>P. 65C</p> | <p><b><u>RPI Waiver of Ineligibility &amp; Inadmissibility</u></b> – Department of Homeland Security (DHS) <u>CAN</u> (may) waive:</p> <ul style="list-style-type: none"> <li>• Ineligibility for 3 or more misdemeanors</li> <li>• Certain criminal grounds of inadmissibility involving misdemeanor convictions, including: CIMTs, drug possession, DUI &amp; domestic violence grounds.</li> <li>• Waives prior deportation inadmissibility grounds - successful applicants will not face reinstatement.</li> </ul> <p><b>STANDARD:</b></p> <ul style="list-style-type: none"> <li>- Humanitarian purposes OR</li> <li>- To ensure family unity OR</li> <li>- Otherwise in public interest.</li> </ul> <p><b>EXCEPTIONS:</b> The following <u>CANNOT</u> be waived:</p> <ul style="list-style-type: none"> <li>-The one felony ineligibility bar</li> <li>- The aggravated felony ineligibility bar</li> <li>- 2 or more convictions where total 5 year sentence</li> </ul> | <ul style="list-style-type: none"> <li>• While the waiver overcomes some of the criminal obstacles to legalization it only waives some, not all misdemeanors.</li> <li>• The waiver does not overcome the felony or aggravated felony ineligibility bar.</li> </ul> | <ul style="list-style-type: none"> <li>• Although the waiver waives offenses related to crimes involving moral turpitude or controlled substances, if the offense is a felony, even first time simple possession or first time theft, the person will be ineligible to legalize because the waiver does not cover the felony ineligibility ground.</li> <li>• A person with a first time misdemeanor offense constituting an aggravated felony, such as a theft or bar fight with a one year sentence, will not qualify for the waiver.</li> <li>• A person with a misdemeanor drug trafficking conviction will be ineligible for the waiver because it will be an aggravated felony and it will trigger the reason to believe drug trafficking involvement ground.</li> </ul> |

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|   | <ul style="list-style-type: none"> <li>- Reason to believe involvement in drug trafficking</li> <li>- Security/terrorism inadmissibility ground</li> <li>- Unlawful voting inadmissibility ground</li> </ul>  |   |   |
| II. 2101<br>245(c)(9)<br>P.80           | <p><b><u>Renewal of RPI status</u></b> (6 yrs)</p> <ul style="list-style-type: none"> <li>• Must prove “remains eligible” for RPI status so ineligibility &amp; inadmissibility bars will apply again at time of renewal.</li> </ul>  | <ul style="list-style-type: none"> <li>• Not clear if RPI waiver (or other waivers) will apply at renewal.</li> </ul>                 | <ul style="list-style-type: none"> <li>• A person with two misdemeanors occurring before the application for RPI status may obtain a conviction for a third misdemeanor during the 10 year period he/she is waiting for legalization. This third misdemeanor will result in the revocation of RPI status and deportation unless the RPI waiver of the 3 more or misdemeanors applies at renewal.</li> </ul> |
| II. 2101<br>245(d)(2)<br>P.89           | <p><b><u>Revocation</u></b> Process for RPIs who become ineligible</p>  | <ul style="list-style-type: none"> <li>• Not clear if RPI waiver (or other waivers) will apply to avoid revocation.</li> </ul>        |   |
| II. 2101<br>245C<br>P.94                | <p><b><u>Adjustment of status (applying for green card): RPI to legal permanent resident (LPR)</u></b></p> <ul style="list-style-type: none"> <li>• Must prove “remains eligible” for RPI status so ineligibility &amp; inadmissibility bars will apply again (for the third time).</li> <li>• Previously granted waivers will still apply</li> </ul> | <ul style="list-style-type: none"> <li>• Not clear if RPI waiver or conditional waiver will apply at adjustment of status.</li> </ul> | <ul style="list-style-type: none"> <li>• See RPI examples above.</li> </ul>   |
| II. Sec. 2101<br>245B(c)(13)<br>p. 86-7 | <p><b><u>RPI for DACA DREAMers</u></b></p> <ul style="list-style-type: none"> <li>• DHS <i>may</i> grant RPI status to Deferred Action for Childhood Arrival (DACA)</li> </ul>  | <ul style="list-style-type: none"> <li>• Bill identifies “conduct,” not convictions. This could mean that DACA</li> </ul>             |   |

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|  | recipients UNLESS person has “engaged in conduct” post-DACA-grant that makes them ineligible for RPI status.  | recipients could face revocation or denial for conduct, not convictions.<br><br>● RPI waiver likely available. |   |
| II. Sec. 2103<br>245D(b)(1)(A)(i)<br>p. 111<br><br><br><br><br><br><br><br><br><br>245D(b)(1)(E)(i)(I)<br>p. 114 | <b><u>Adjustment of Status to LPR for DREAMers</u></b><br><ul style="list-style-type: none"> <li>● DACA &amp; non-DACA dreamers treated same at AOS</li> <li>● To AOS to LPR, must have been 5 yrs as RPI. But for AOS LPR for DREAMers no specific “remains eligible” for RPI status language.</li> <li>● Can AOS to LPR after 5 yrs as RPI, avoids RPI extension</li> <li>● Potential crime-bars: Requires DHS to use background check info to “determine if any criminal, national security, or other factor makes applicant ineligible.”</li> </ul> | <ul style="list-style-type: none"> <li>● The “background check” requirement is unclear.</li> </ul>             | <ul style="list-style-type: none"> <li>● See RPI examples above.</li> </ul> |
| II. Sec. 2201(a)(3)<br>p. 153  | <b><u>Eligibility for Blue Card Status (agricultural workers):</u></b><br><ul style="list-style-type: none"> <li>● RPI ineligibility and inadmissibility bars apply</li> <li>● RPI waivers available</li> <li>● RPI conviction definition controls</li> </ul>   |  | <ul style="list-style-type: none"> <li>● See RPI examples above.</li> </ul> |

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| II. Sec. 2201(c)(1)(C), (c)(2)<br>p. 169-70 | <b><u>Loss of Blue Card Status:</u></b> <ul style="list-style-type: none"> <li>(c)(2) - Status may be revoked if “no longer meets eligibility requirements”</li> </ul>   |   |   |
| II. § 2212(b)(1)(A)<br>p. 177               | <b><u>Adjustment of status from blue card to LPR:</u></b> <ul style="list-style-type: none"> <li>Deny green card if “is no longer eligible” for blue card (i.e., RPI ineligible/inadmissibility bars apply at AOS).</li> </ul>   | <ul style="list-style-type: none"> <li>Unclear if RPI waivers available at renewal</li> </ul> | <ul style="list-style-type: none"> <li>See RPI examples above.</li> </ul> |
| II. § 2232<br>218A(d)(1)(A)(ii)<br>p. 198   | <b><u>W visa eligibility (temp. ag. workers) :</u></b> <ul style="list-style-type: none"> <li>No specific inadmissibility bars listed in the bill - treated like all other nonimmigrant visa applicants (tourists, students, etc.). Must prove they do not trigger inadmissibility grounds.</li> <li>Requires obtaining “successful clearance” of security and criminal background check.</li> </ul> |   |   |

## **Conditional Waivers**

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| II. Sec. 2313(a)<br>p.328-331 | <b><u>Section 2313 Conditional Waiver</u></b><br><b>(can be granted by Immigration Judge (IJ) in removal proceedings)</b><br>Adds INA § 240(c)(4) to give IJ discretion to decline to order the alien removable, deportable or inadmissible...and terminate proceedings”<br><ul style="list-style-type: none"> <li><b><u>Standard:</u></b> if in public interest, hardship to US Citizen/Lawful Permanent Resident parent spouse or child, or prima facie eligible</li> </ul> | <ul style="list-style-type: none"> <li><b><u>Does waive:</u></b><br/>*Following <u>inadmissibility</u> grounds: <ul style="list-style-type: none"> <li>- CIMA conviction that triggers inadmissibility grounds</li> <li>- Drug convictions (other than Aggravated Felony trafficking)</li> </ul> </li> </ul> | <p>Examples of people disqualified from waiver:</p> <ul style="list-style-type: none"> <li>Longtime lawful permanent resident (LPR) with 2 shoplifting convictions.</li> <li>Asylee who was in a bar fight (can be convicted of felony assault in many states).</li> </ul> |
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|  | <p>for naturalization</p> <ul style="list-style-type: none"> <li>● <b>Cannot Waive</b> applicability of:</li> </ul> <p>*Following <u>inadmissibility</u> grounds:</p> <ul style="list-style-type: none"> <li>- 2(+) convictions w/ 5 yr sentence (B)</li> <li>- Reason to believe drug trafficker (C)</li> <li>- Prostitution procurement (D)(ii)</li> <li>- Asserts immunity from pros. (E)</li> <li>- Human traffickers (H)</li> <li>- Reason to believe money laundering (I)</li> <li>- New Gang inadmissibility ground (J)</li> </ul> <p>* Security grounds 212(a)(3)</p> <p>* Violated Trafficking Victim Protection Act (TVPA) Sec. 8 or 9 (trafficker)</p> <p>* Polygamists, international child abductors &amp; unlawful voters (a)(10)</p> <p>* Cannot waive <u>deportability</u> grounds:</p> <ul style="list-style-type: none"> <li>- 2+ CIMT convictions (2)(A)(ii)</li> <li>- failure to register as a sex offender (2)(A)(v)</li> <li>- human trafficking (2)(F)</li> <li>- Security grounds (4)</li> <li>- unlawful voters(6)</li> </ul> <p>*Violated TVPA Sec. 8 &amp; 9 (trafficker)</p> <p>* Felony conviction classified as an aggravated felony at time of conviction</p> | <ul style="list-style-type: none"> <li>- Prostitution (except for trafficking in or operating prostitution business)</li> <li>- New DUI and domestic violence inadmissibility grounds</li> </ul> <p>*Following <u>deportability</u> grounds</p> <ul style="list-style-type: none"> <li>-1 CIMT conviction that triggers deportability grounds</li> <li>- Drug convictions (other than Aggravated Felony trafficking)</li> <li>-Firearms convictions (other than Aggravated Felony trafficking)</li> <li>-Domestic violence, stalking, crime against child, violation of order of protection</li> <li>-new DUI and gang deportability ground</li> </ul> <ul style="list-style-type: none"> <li>● Does not specifically authorize IJ to grant legal status (greencard) based upon grant of this waiver <ul style="list-style-type: none"> <li>- so unclear what exactly this will look like in practice.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>● Longtime LPR who wrote a bad check if 1 year sentence imposed even if a person spends less (or no) time in jail.</li> </ul> |
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|                               |  | <ul style="list-style-type: none"> <li>• Allows IJ to determine naturalization eligibility (currently have to wait for DHS determination).</li> <li>• Permits IJ to waive most other non-criminal inadmissibility and deportation grounds.</li> </ul>  |   |
| II. Sec. 2313(a)<br>p.328-331 | <p><b><u>Section 2313 Conditional Waiver</u></b><br/><b>(can be granted by DHS)</b></p> <p>Adds new INA § 212(w) to give DHS discretion to waive inadmissibility and deportability</p> <ul style="list-style-type: none"> <li>• <b><u>Standard</u></b>: if in public interest, hardship to US Citizen/Lawful Permanent Resident parent, spouse, or child.</li> <li>• <b><u>Cannot waive</u></b> applicability of: <ul style="list-style-type: none"> <li>*Following <u>inadmissibility</u> grounds: <ul style="list-style-type: none"> <li>- 2(+) convictions w/ 5 year sentence (B)</li> <li>- Reason to believe drug trafficker (C)</li> <li>- Prostitution procurement (D)(ii)</li> <li>- Asserts immunity from prosecution (E)</li> <li>- Human traffickers (H)</li> <li>- Reason to believe money laundering (I)</li> <li>- New Gangs ground (J)</li> </ul> </li> <li>* Security grounds 212(a)(3)</li> <li>* Polygamists, international child abductors &amp; unlawful voters (a)(10)</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• <b><u>Does waive</u></b>: <ul style="list-style-type: none"> <li>*Following <u>inadmissibility</u> grounds: <ul style="list-style-type: none"> <li>- CIMT conviction that triggers inadmissibility grounds</li> <li>- Drug convictions (other than Aggravated Felony trafficking)</li> <li>- Prostitution (except for trafficking in or operating prostitution business)</li> <li>- New domestic violence, and DUI inadmissibility grounds</li> </ul> </li> <li>*Following <u>deportability</u> grounds: <ul style="list-style-type: none"> <li>- 1 CIMT conviction that triggers deportability grounds</li> <li>- Drug convictions (other</li> </ul> </li> </ul> </li> </ul> | <p>Examples of people disqualified from waiver:</p> <ul style="list-style-type: none"> <li>• Undocumented mother with 2 shoplifting convictions.</li> <li>• Young person who overstayed her visa and convicted of (or possibly even charged with) selling \$10 worth of marijuana.</li> </ul> |

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|  | <p>* Following <u>deportability</u> grounds:</p> <ul style="list-style-type: none"> <li>- 2+ CIMT convictions (2)(A)(ii)</li> <li>- human trafficking (2)(F)</li> <li>- unlawful voters(6)</li> </ul> <p>* Violated TVPA Sec. 8 &amp; 9 (trafficker)</p> <p>* Aggravated felony at time of conviction + felony</p>  | <p>than Aggravated Felony trafficking)</p> <ul style="list-style-type: none"> <li>-Firearms convictions (other than Aggravated Felony trafficking)</li> <li>-Domestic violence, stalking, crime against child, violation of order of protection</li> <li>- New Gang and DUI deportability grounds</li> </ul>   |  |
| <p>II. Sec. 2101<br/>245B<br/>P. 71-73</p> | <p><b><u>Limited Waiver for People Previously Deported</u></b></p> <p>Adds new INA § 245B(c)(6) permitting certain people (spouse, child, or parent of a U.S. Citizen or LPR, or certain Dreamers) who have already been deported, received voluntary departure, or who illegally reentered after 12/31/11, to apply for legalization (RPI) if they are otherwise eligible.</p> <p>People will be subject to all criminal disqualifying bars to RPI status discussed above.</p> | <ul style="list-style-type: none"> <li>● Unclear if waiver can be used.</li> <li>● Government may argue that people remain subject to the time bars on returning to the U.S. after a prior removal under current law. These time bars, which are rarely waived, range from 5 or 10 or 20 years all the way to permanent bars for someone convicted of AF.</li> </ul> |  |
| <p>II. Sec. 2313(c)<br/>P. 331</p>         | <p><b><u>Reinstatement</u></b> (re-executing a prior removal order without hearing) section amended (amends INA § 241(a)(5))</p> <p>Creates exceptions:</p>   | <p>This is positive because it creates exceptions to the current harsh bars of reinstatement.</p>  |  |

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|                       | <ul style="list-style-type: none"> <li>● entered &lt;18 years old <u>OR</u></li> <li>● not in public interest <u>OR</u></li> <li>● results in hardship to US Citizen/LPR spouse, parent or child.</li> </ul>                          |                       |  |
| II. (C) 2315<br>P.335 | <p><b><u>Changes to Cancellation of Removal:</u></b><br/>Continuous presence ends for everyone at filing of Notice to Appear with Immigration Courts<br/>- EXCEPTION: no continuous presence cut off for VAWA cancellation (b)(2)</p> | Positive development. |  |

## **New Deportation Grounds and New Crimes**

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| III.(G) -<br>3701(a)(2)<br>p. 604 and<br>p. 606 (waiver) | <p><b><u>Creates new Gang Inadmissibility Ground</u></b><br/>(INA § 212(a)(2)(J))</p> <ul style="list-style-type: none"> <li>● (i) conviction where <ul style="list-style-type: none"> <li>- active gang participation is element AND</li> <li>- knowledge that members engaged in specified gang offenses AND</li> <li>- acted to promote/further gang's felonious activities,</li> </ul> </li> <li><u>OR</u></li> <li>● (ii) 18 yrs or more AND</li> <li>● outside the U.S., and where</li> <li>● DHS has "clear and convincing" evidence of knowing &amp; willing participation that promoted/furthered illegal gang activities</li> </ul> <p><b><u>WAIVER</u></b> - DHS may waive (ii) <u>only</u> if renounced association, is otherwise admissible</p> | <ul style="list-style-type: none"> <li>● Inadmissibility ground NOT the same as RPI ineligibility ground - RPI ineligibility ground applies to people <u>in</u> the United States</li> <li>● "Illegal activities" could include crimes like graffiti, trespassing</li> <li>● No way to challenge "clear and convincing" evidence</li> <li>● Waiver may not be available for people convicted of certain "gang crimes"</li> </ul> | <ul style="list-style-type: none"> <li>● DHS could try to claim that gang database information constitutes "clear and convincing" evidence. Gang databases face mounting criticism because of problems of over-identification, mis-identification, and lack of quality control.</li> <li>● States label individuals as gang members if they are arrested in the company of other gang members, or seen in a neighborhood "frequented" by gangs.</li> <li>● Renunciation could put people at risk of harm if gang learns of</li> </ul> |
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|   | & not threat to U.S.  | <p>Waiver problems:</p> <ul style="list-style-type: none"> <li>• Renounce requirement - could put individuals at risk in their home country</li> <li>• Difficult to prove that person is not a threat</li> </ul>  | <p>renunciation.</p> <ul style="list-style-type: none"> <li>• This provision is unnecessary: Suspected gang members already targeted by ICE through Operation Community Shield (deported over 20,000 individuals).</li> </ul> <p>Example:</p> <ul style="list-style-type: none"> <li>• A 19-year-old California resident applying for legalization could be barred from program if the person was found in the Cal Gang database and was arrested for vandalism (gang graffiti).</li> </ul> |
| III. (G) - 3701(b)<br>p. 606                          | <p><b><u>Gang Deportation Ground</u></b> (INA § 237(a)(2)(G))</p> <ul style="list-style-type: none"> <li>• Convicted of offense where element was active participation in gang AND</li> <li>• engaged in or had knowledge that members engaged in specified gang activities AND</li> <li>• acted to promote gang's felonious activities or to increase his/her position in gang.</li> </ul> | <ul style="list-style-type: none"> <li>• Will impact lawful permanent residents and anyone who has been admitted.</li> <li>• Retroactive: No language limiting retroactivity. This means it could apply to gang activity long ago, even if the person has rehabilitated.</li> </ul> | (SEE ABOVE for ineligibility ground description)  |
| III. Sec. 3711<br>(c)(1)(i) & (2)<br>(enactment date) | New inadmissibility ground for <b><u>DV, stalking &amp; child abuse and child abandonment</u></b> offenses if:  | <ul style="list-style-type: none"> <li>• This ground, along with similar deportation</li> </ul>   |   |

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| p.635 (& 638)   | <ul style="list-style-type: none"> <li>- 1 conviction where served 1 year sentence</li> <li>- 2 or more convictions not arising out of similar scheme.</li> <li>● Applies to acts occurring on or after enactment date</li> </ul>   | <p>ground (already in the imm statute) can be waived by the conditional waiver.</p> <ul style="list-style-type: none"> <li>● Unclear whether 212(h) waiver (common crime-related inadmissibility waiver) will apply since not included in the amendment to that section.</li> </ul>             |  |
| <p>III. Sec. 3711 (c)(1)(ii) &amp; (2) (enactment date) p.636 (&amp; 638)</p> <p>Exception: Sec. 3711 (c)(1)(iii) p.637</p> | <p>New inadmissibility ground for <b><u>violations of protection orders</u></b> where violation is re: portions of order relating to credible threats of violence, repeated harassment or bodily injury.</p> <ul style="list-style-type: none"> <li>● Applies to acts occurring on or after enactment date</li> </ul> <p><b><u>EXCEPTION to stalking, protection order violations</u></b> inadmissibility ground IF:</p> <ul style="list-style-type: none"> <li>- battery/extreme cruelty victim AND</li> <li>- not primary perpetrator AND</li> <li>- acting in self-defense; OR</li> <li>- violated Protection Order intended to protect him/herself; OR</li> <li>- offense did not result in serious bodily injury.</li> </ul> | <ul style="list-style-type: none"> <li>● Could include <u>civil</u> protective orders</li> <li>● Exception limited to victims of battery and extreme cruelty</li> <li>● Overbroad category that will bar people for technical violations that do not involve violence or harassment.</li> </ul> |  |
| III. Sec. 3711 (c)(1)(B) p. 638   | Amends INA § 212(h) waiver: Adds “Secretary of Homeland Security” after “the Attorney General”  | <ul style="list-style-type: none"> <li>● Amended 212(h) waiver does not cover new inadmissibility grounds: DUI, domestic violence, gangs</li> </ul>   |  |

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| III. Sec. 3702(b)<br>p. 609 | <p>New inadmissibility ground for <b>3 or more convictions “related to” DUI</b> on separate dates (added to INA § 212(a)(2)(F)).</p> <ul style="list-style-type: none"> <li>• RPI waiver available.</li> </ul> | <ul style="list-style-type: none"> <li>• Language is very broad and will cover “physical control” offenses (drunk in car but not driving) &amp; possibly negligent driving.</li> <li>• Retroactive. This will make lawful permanent residents deportable for activities that did not make them deportable at the time of conviction.</li> </ul> | <ul style="list-style-type: none"> <li>• Many states extend DUI laws to actions beyond driving: being drunk in parked car in private driveway, sleeping in the backseat or the passenger seat with the keys anywhere in the passenger compartment of the car.</li> <li>• A person convicted of three DUIs in 1999 after being found drunk in parked car may be disqualified from legalization.</li> </ul> <p>Many states allow a person to plead to a lesser offense than DUI. In California, for example, this is called a wet reckless. Because of the language in S. 744, this will count.</p> |
| III. Sec. 3702(a)<br>p. 608 | <p>New deportability ground for <b>3 or more convictions “related to” Driving Under Influence (DUI)</b>, at least one occurring after bill’s enactment (added as INA § 237(a)(2)(H))</p>                       | <ul style="list-style-type: none"> <li>• Language is very broad and will cover “physical control” offenses (drunk in car but not driving) &amp; possibly negligent driving and lesser offenses than DUI.</li> <li>• Not sure if 2313 conditional waiver applies.</li> </ul>   | <p>SEE ABOVE</p> <ul style="list-style-type: none"> <li>• A person convicted of two DUIs in 1999 but one after 2014 after the date the law comes into effect after being found drunk in parked car may be deportable.</li> </ul>  |

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| <p>III. Sec. 3709<br/>p. 628</p>  | <p>Adds certain convictions for document fraud offenses to grounds of inadmissibility and deportability,</p> <ul style="list-style-type: none"> <li>• INA § 212(a)(2)(A)(i) amended to add 18 USC §§ 1541, 1545 and 1546(b).</li> <li>• INA § 237(a)(3)(B)(iii) amended to add 18 USC §§ 1541, 1545 and 1546(b).</li> </ul>  | <ul style="list-style-type: none"> <li>• Impact is unclear since convictions under these statutes usually count as aggravated felonies.</li> <li>• Not retroactive</li> </ul>   |  |
| <p>Sec. 3704.<br/>p. 609, 610</p> | <p><b><u>Illegal entry</u></b></p> <ul style="list-style-type: none"> <li>• Increases maximum sentence to 12 months for simple unlawful entry</li> <li>• Creates a penalty for second time offenders (including after a voluntary departure)</li> <li>• Reduces mental state relating to misrepresentation at entry</li> <li>• Creates enhanced sentences for individuals with 3 or more misdemeanors or certain felonies (but clarifies that prior convictions are elements of the offense that must be proven beyond a reasonable doubt)</li> <li>• Increases mandatory civil fines for illegal entry--\$250 to \$5000</li> <li>• Eliminates two sections</li> </ul> | <ul style="list-style-type: none"> <li>• Only an aggravated felony if person convicted was previously deported for an aggravated felony other than illegal entry or reentry.</li> <li>• Most common “lead charge” in federal magistrate courts, especially in Texas, California, and Utah</li> <li>• It is not excluded from ineligibility disqualifiers because there is no exemption for federal immigration status related offenses. See above.</li> </ul> |  |

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| <p>Sec. 3705<br/>p.612</p>  | <p><b><u>Illegal Reentry</u></b></p> <ul style="list-style-type: none"> <li>• Creates enhanced sentences punishable by maximum sentence of 10, 15, or 20 years depending on the nature, number, or sentence for prior offenses (and eliminates aggravated felony, drug crimes, etc. as a basis for enhancements).</li> <li>• Individuals deported prior to completion of term of imprisonment may not have to serve out remainder of sentence upon reentry.</li> <li>• Creates 2 affirmative defenses: if DHS has consented to re-application for admission and if at the time of deportation, individual was not 18 and not convicted of a felony/delinquency.</li> <li>• Adds provision to clarify that providing humanitarian assistance is not “aiding and abetting.”</li> <li>• Adds definitions of terms “felony,” “misdemeanor,” “removal,” and “state.”</li> </ul> | <ul style="list-style-type: none"> <li>• Usually prosecuted as a felony</li> <li>• an aggravated felony if person convicted was previously deported for an aggravated felony other than illegal entry or reentry.</li> <li>• one of the most prosecuted federal crimes, especially in Texas, California and Utah.</li> <li>• It is not excluded from ineligibility disqualifiers because there is no exemption for federal immigration status related offenses. See above.</li> </ul> |  |
| <p>Sec. 3717<br/>p. 619</p> | <p><b>Federal Document Fraud Offenses:</b></p> <p>Passport fraud</p> <ul style="list-style-type: none"> <li>• Expands 18 USC § 1541(passport fraud) to include new “trafficking in passports” criminal penalties for any person who is involved in passport fraud – producing,</li> </ul>  | <p>Generally, convictions for these crimes are ALREADY not waivable under current law.</p>  |  |



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| <p>Sec. 3707<br/>p. 623</p> | <p>forging, altering, using, receiving, selling, and possessing involving three or more passports in a period of three years or less.</p> <ul style="list-style-type: none"> <li>• Adds minor language changes to 18 USC § 1542 and a new subsection (b) about venue for prosecutions of false passport applications.</li> <li>• Adds language to 18 USC § 1544 penalizing those “secure, possess, use, receive, buy, sell, or distribute” a passport if they know it to be procured by fraud in some way.</li> </ul> <p>False documents:</p> <ul style="list-style-type: none"> <li>• Adds ‘trafficking’ offense to 18 USC § 1546 for those who are involved with 3 or more false immigration documents in a period of three years.</li> </ul> <p><b>Adds new “notario fraud” offense, 18 USC § 1545</b></p> <ul style="list-style-type: none"> <li>• Adds crime of for providing fraudulent immigration services or falsely representing that one is an attorney or accredited representative.</li> </ul> |  |  |
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| Sec. 3102<br>p. 507  | <b>Add new social security fraud crime, 18 USC §1041</b> <ul style="list-style-type: none"> <li>Punishes for a maximum of 5 years individuals who engage, among other things, in social security fraud and selling of social security information.</li> </ul>  | Punishment could result in an aggravated felony crime, but must be viewed in relation to existing social security fraud offenses. |  |
| Sec. 3712,<br>p. 623 | <b>Creates three new federal crimes for border control (Amends 8 USC § 1151)</b> <ul style="list-style-type: none"> <li><u>Illicit spotting</u> – transmitting to another person the location or activities of any law enforcement agency with intent to further a crime related to immigration or border control. The offense is punishable by a maximum of 10 years.</li> <li><u>Destruction of border controls</u> – knowingly destroying, altering, or damaging any fence, barrier, sensor, camera, or other physical or electronic device to control the border or construction a structure to evade such border controls. Punishable by a maximum of 10-20 years.</li> <li>Conspiracy or attempt of the above</li> </ul> | Criminalizes border offenses and will result in the prosecution of more migrants.   |  |