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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Immigration and Nationality Act to provide for the performance of certain Department of Homeland Security counsel functions by State officers and employees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SCHMIDT introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to provide for the performance of certain Department of Homeland Security counsel functions by State officers and employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “State Partnerships to
5 Enhance Removal of Criminal Aliens Act”.

1 **SEC. 2. PERFORMANCE OF CERTAIN DEPARTMENT OF**
2 **HOMELAND SECURITY COUNSEL FUNCTIONS**
3 **BY STATE OFFICERS AND EMPLOYEES.**

4 Section 287 of the Immigration and Nationality Act
5 (8 U.S.C. 1357) is amended—

6 (1) by redesignating subsection (h) as sub-
7 section (i); and

8 (2) by inserting the following after subsection
9 (g):

10 “(h) PERFORMANCE OF CERTAIN DEPARTMENT OF
11 HOMELAND SECURITY COUNSEL FUNCTIONS BY STATE
12 OFFICERS AND EMPLOYEES.—

13 “(1) Notwithstanding section 1342 of title 31,
14 United States Code, the Secretary of Homeland Se-
15 curity, in coordination with the Attorney General,
16 may enter into a written agreement with a State
17 pursuant to which an officer or employee of the
18 State, who is a licensed attorney and who is deter-
19 mined by the Secretary of Homeland Security to be
20 qualified to perform the function of an Office of the
21 Principal Legal Advisor attorney in representing the
22 Department of Homeland Security in removal pro-
23 ceedings described in paragraph (9), may carry out
24 such function at the expense of the State.

25 “(2) An agreement under this subsection
26 shall—

1 “(A) require that an officer or employee of
2 a State performing a function under the agree-
3 ment have knowledge of, and adhere to, Federal
4 law relating to the function;

5 “(B) contain a written certification that
6 the officers or employees of a State performing
7 the function under the agreement have received
8 adequate training regarding the enforcement of
9 relevant Federal immigration laws; and

10 “(C) state that an officer or employee of a
11 State performing a function under the agree-
12 ment has no independent prosecutorial or pol-
13 icymaking discretion.

14 “(3) In performing a function under this sub-
15 section, an officer or employee of a State shall be
16 subject to the direction and supervision of the Sec-
17 retary of Homeland Security.

18 “(4) In performing a function under this sub-
19 section, an officer or employee of a State may use
20 Federal property or facilities, as provided in a writ-
21 ten agreement between the Secretary and the State.

22 “(5) With respect to each officer or employee of
23 a State who is authorized to perform a function
24 under this subsection, the specific powers and duties
25 that may be, or are required to be, exercised or per-

1 formed by the individual, the duration of the author-
2 ity of the individual, and the position of the agency
3 of the Secretary of Homeland Security who is re-
4 quired to supervise and direct the individual, shall be
5 set forth in a written agreement between the Sec-
6 retary of Homeland Security and the State.

7 “(6) The Secretary of Homeland Security may
8 not accept a service under this subsection if the
9 service will be used to displace any Federal em-
10 ployee.

11 “(7) Except as provided in paragraph (8), an
12 officer or employee of a State performing functions
13 under this subsection shall not be treated as a Fed-
14 eral employee for any purpose other than for pur-
15 poses of chapter 81 of title 5 (relating to compensa-
16 tion for injury) and sections 2671 through 2680 of
17 title 28, United State Code (relating to tort claims).

18 “(8) An officer or employee of a State acting
19 under color of authority under this subsection, or
20 any agreement entered into under this subsection,
21 shall be considered to be acting under color of Fed-
22 eral authority for purposes of determining the liabil-
23 ity, and immunity from suit, of the officer or em-
24 ployee in a civil action brought under Federal, State,
25 local, or tribal law.

1 “(9) The removal proceedings described in
2 paragraph (1) are proceedings under—

3 “(A) section 238 if the alien is located in
4 a Federal, State, or local correctional facility in
5 the State with which the Secretary of Home-
6 land Security has entered into a written agree-
7 ment described in this section; or

8 “(B) section 240 if—

9 “(i) the alien is charged with a
10 ground of inadmissibility under section
11 212(a) or a ground of deportability under
12 section 237(a) that is based on a violation
13 of State law, to the extent the Secretary of
14 Homeland Security has entered into a
15 written agreement described in this section
16 with that State; or

17 “(ii) the alien’s eligibility for immigra-
18 tion relief may be affected by such a viola-
19 tion of State law, to the extent the Sec-
20 retary of Homeland Security has entered
21 into a written agreement described in this
22 section with that State.”.

1 **SEC. 3. AGGRAVATED FELONY.**

2 (a) DEFINITION.—Paragraph (43) of section 101(a)
3 of the Immigration and Nationality Act (8 U.S.C.
4 1101(a)(43)) is amended—

5 (1) in subparagraph (A), by striking “minor”
6 and inserting “minor, or an offense involving any of
7 the preceding offenses”;

8 (2) by amending subparagraph (B) to read as
9 follows:

10 “(B) an offense involving—

11 “(i) illicit trafficking in a controlled
12 substance (as defined in section 102 of the
13 Controlled Substances Act), including a
14 drug trafficking crime (as defined in sec-
15 tion 924(c) of title 18, United States
16 Code); or

17 “(ii) any other crime classified as a
18 felony in the jurisdiction of conviction, or
19 punishable by a maximum term of impris-
20 onment of more than 1 year in the juris-
21 diction of conviction, involving—

22 “(I) in the case of an offense
23 under State, local, or tribal law, a
24 substance that is classified as a con-
25 trolled substance under such law, as
26 applicable, regardless of whether the

1 substance is a controlled substance
2 (as defined in section 102 of such
3 Act); or

4 “(II) in the case of an offense
5 under Federal law or foreign law, a
6 controlled substance (as defined in
7 section 102 of such Act);”;

8 (3) in subparagraph (C), by inserting “an of-
9 fense involving” before “illicit trafficking in fire-
10 arms”;

11 (4) in subparagraph (E)—

12 (A) in clause (ii), by striking “or” at the
13 end;

14 (B) by redesignating clause (iii) as clause
15 (iv); and

16 (C) by inserting after clause (ii) the fol-
17 lowing:

18 “(iii) sections 932 and 933 of title 18
19 (relating to straw purchasing of firearms
20 and trafficking in firearms); or”;

21 (5) in subparagraph (I), by striking “or 2252”
22 and inserting “2252, or 2252A”;

23 (6) by amending subparagraph (F) to read as
24 follows:

25 “(F) an offense that is—

1 “(i) a crime of violence (as defined in
2 section 16 of title 18, United States Code,
3 but not including a purely political offense)
4 for which the term of imprisonment is at
5 least one year;

6 “(ii) any crime, for which the term of
7 imprisonment is at least one year, where
8 evidence establishes the circumstances of
9 the crime as actually committed by the
10 alien involved the use, attempted use, or
11 threatened use of physical force against
12 the person or property of another;

13 “(iii) assault, battery, or robbery, as
14 defined under the jurisdiction of convic-
15 tion, for which the term of imprisonment is
16 at least one year; or

17 “(iv) described in section 2119 of title
18 18, United States Code (relating to
19 carjacking);”;

20 (7) by amending subparagraph (G) to read as
21 follows:

22 “(G)(i) an offense involving burglary (re-
23 gardless of whether a structure was involved) or
24 theft (including theft by deceit, theft by fraud,
25 embezzlement, or receipt, possession, or use of

1 stolen property), regardless of whether any tak-
2 ing was temporary or permanent, for which the
3 term of imprisonment is at least one year; or

4 “(ii) any crime, for which the term of im-
5 prisonment is at least one year, where evidence
6 establishes the circumstances of the crime as
7 actually committed by the alien was an offense
8 involving burglary (regardless of whether a
9 structure was involved) or theft (including theft
10 by deceit, theft by fraud, embezzlement, or re-
11 ceipt, possession, or use of stolen property), re-
12 gardless of whether any taking was temporary
13 or permanent;”;

14 (8) in subparagraph (N)—

15 (A) by striking “paragraph (1)(A) or (2)
16 of”; and

17 (B) by inserting a semicolon at the end;

18 (9) in subparagraph (O), by striking “section
19 275(a) or 276 committed by an alien who was pre-
20 viously deported on the basis of a conviction for an
21 offense described in another subparagraph of this
22 paragraph” and inserting “section 275 or 276 for
23 which the term of imprisonment is at least 1 year”;

24 (10) in subparagraph (P)—

1 (A) by striking “(i) which either is falsely
2 making, forging, counterfeiting, mutilating, or
3 altering a passport or instrument in violation of
4 section 1543 of title 18, United States Code, or
5 is described in section 1546(a) of such title (re-
6 lating to document fraud) and (ii)” and insert-
7 ing “described in any section of chapter 75 of
8 title 18, United States Code, and”; and

9 (B) by striking “, except in the case of a
10 first offense for which the alien has affirma-
11 tively shown that the alien committed the of-
12 fense for the purpose of assisting, abetting, or
13 aiding only the alien’s spouse, child, or parent
14 (and no other individual) to violate a provision
15 of this Act”;

16 (11) in subparagraph (T), by striking “and” at
17 the end;

18 (12) by striking subparagraph (U); and

19 (13) by adding at the end the following:

20 “(U) an offense described in—

21 “(i) section 2441 of title 18, United
22 States Code (relating to war crimes);

23 “(ii) section 2340A of title 18, United
24 States Code (relating to torture);

1 “(iii) section 1091 of title 18, United
2 States Code (relating to genocide); or

3 “(iv) section 2442 of title 18, United
4 States Code (relating to use and recruit-
5 ment of child soldiers);

6 “(V) any offense not otherwise listed in
7 this paragraph that is—

8 “(i) defined as a felony by the juris-
9 diction of conviction; or

10 “(ii) punishable by a maximum term
11 of imprisonment of more than 1 year; and

12 “(W) an offense, either classified in the ju-
13 risdiction of conviction as or consisting of, a
14 conspiracy, attempt, or solicitation to commit
15 an offense described in this paragraph, or aid-
16 ing, abetting, counseling, procuring, com-
17 manding, or inducing the commission of such
18 an offense.”.

19 (b) INADMISSIBILITY.—Section 212(a)(2)(A)(i) of
20 the Immigration and Nationality Act (8 U.S.C.
21 1182(a)(2)(A)(i)) is amended—

22 (1) in subclause (I), by striking “or” at the
23 end;

24 (2) in subclause (II), by adding “or” at the
25 end; and

1 of sentence imposed, an alien has been convicted of
2 a particularly serious crime.” and inserting “For
3 purposes of clause (ii), an alien who has been con-
4 victed of an aggravated felony shall be considered to
5 have been convicted of a particularly serious crime.
6 The Attorney General and Secretary of Homeland
7 Security may jointly designate, by regulation, of-
8 fenses that will be considered to be a crime described
9 in clause (ii) or (iii). An alien may be determined to
10 have been convicted of a particularly serious crime
11 without regard to whether the offense for which the
12 alien was convicted is an aggravated felony or an of-
13 fense designated under the previous sentence.”; and

14 (4) in section 242(a)(2)(C), by striking
15 “237(a)(2)(A)(iii)” and all that follows through the
16 period at the end and inserting “section 237(a)(2)”.

17 (d) **APPLICABILITY.**—This section, and the amend-
18 ments made by this section, shall apply with respect to
19 the commission of an offense before, on, or after the date
20 of enactment of this section, and with respect to removal
21 proceedings commenced before, on, or after the date of
22 enactment of this section.

23 **SEC. 4. SEVERABILITY.**

24 If any provision of this Act, or any amendment made
25 by this Act, or the application of such provision to any

1 person, entity, government, or circumstance, is held to be
2 unconstitutional, the remainder of this Act, or any amend-
3 ment made thereby, or the application of such provision
4 to all other persons, entities, governments, or cir-
5 cumstances, shall not be affected thereby.