To transfer and limit Executive Branch authority to suspend or restrict the entry of a class of aliens.

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2019

Mr. Coons (for himself, Mrs. Feinstein, Mr. Van Hollen, Mr. Blumenthal, Mr. Markey, Ms. Harris, Mr. Durbin, Ms. Warren, Mrs. Murray, Mr. Leahy, Mr. Menendez, Ms. Klobuchar, Mr. Booker, Mr. Cardin, Mr. Kaine, Mr. Schumer, Mrs. Shaheen, Ms. Hirono, Ms. Stabenow, Mr. Merkley, Mr. Bennet, Mr. Sanders, Mr. Carper, Ms. Duckworth, Mr. Brown, Mrs. Gillibrand, Mr. Murphy, Ms. Smith, Mr. Casey, Mr. Whitehouse, Ms. Hassan, and Mr. Peters) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To transfer and limit Executive Branch authority to suspend or restrict the entry of a class of aliens.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLES.

4 This Act may be cited as the “National Origin-Based Antidiscrimination for Nonimmigrants Act” or the “NO BAN Act”.

SEC. 2. EXPANSION OF NONDISCRIMINATION PROVISION.

Section 202(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1152(a)(1)(A)) is amended—

(1) by inserting “or a nonimmigrant visa, entry into the United States, or the approval or revocation of any immigration benefit” after “immigrant visa”; 

(2) by inserting “religion,” after “sex,”; and 

(3) by inserting “, except if expressly required by statute, or if a statutorily authorized benefit takes into consideration such factors” before the period at the end.

SEC. 3. TRANSFER AND LIMITATIONS ON AUTHORITY TO SUSPEND OR RESTRICT THE ENTRY OF A CLASS OF ALIENS.

Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)) is amended—

(1) in the subsection heading, by striking “BY PRESIDENT”; and 

(2) by striking “Whenever the President” and all that follows through “appropriate.” and inserting the following:

“(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of State, after consultation with the Secretary of Homeland Security, determines, based on credible facts, that the entry of any aliens or of any class of aliens into the United States should be
suspended or restricted to address specific acts that undermine the security or public safety of the United States; human rights; democratic processes or institutions; or international stability, the President may temporarily—

“(A) suspend the entry of any aliens or any class of aliens as immigrants or non-immigrants; or

“(B) impose any restrictions on the entry of aliens that the President considers to be appropriate.

“(2) LIMITATIONS.—In carrying out paragraph (1), the President, the Secretary of State, and the Secretary of Homeland Security—

“(A) shall provide specific evidence supporting the determination;

“(B) shall comply with all provisions of this Act, including section 202(a)(1)(A);

“(C) shall narrowly tailor the suspension or restriction to meet a compelling governmental interest;

“(D) shall specify the duration of the suspension or restriction and set forth evidence justifying such duration;
“(E) shall use the least restrictive means possible to achieve the specified governmental interest; and

“(F) shall consider waivers to any class-based restriction or suspension and apply a rebuttable presumption in favor of granting family-based and humanitarian waivers.

“(3) CONSULTATION.—The President, the Secretary of State, and the Secretary of Homeland Security shall consult with Congress before exercising the authority under paragraph (1).

“(4) CONGRESSIONAL NOTIFICATION.—Not later than 48 hours after the President exercises the authority under paragraph (1), the Secretary of State and the Secretary of Homeland Security shall provide a briefing and submit a written report to the Committee on Foreign Relations of the Senate, the Committee on the Judiciary of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Foreign Affairs of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the House of Representatives, the Committee on the Judiciary of the House of Representatives, and the Committee on Homeland Security of the House of Representatives that describes—
“(A) the actions taken pursuant to paragraph (1) and the number of individuals to which such actions apply;

“(B) the constitutional and legislative authority under which such actions took place; and

“(C) the circumstances necessitating the actions taken pursuant to paragraph (1), including how such actions comply with the limitations described in paragraph (2).

“(5) PERIODIC REPORTING.—If the briefing required under paragraph (4) is not provided by the Secretary of State and the Secretary of Homeland Security within 48 hours after exercising the authority under paragraph (1), and updated every 30 days thereafter, such emergency suspension or action shall immediately terminate absent intervening congressional action.

“(6) PUBLICATION.—The Secretary of State and the Secretary of Homeland Security shall publicly announce and publish in the Federal Register—

“(A) the nature of the actions taken pursuant to paragraph (1);

“(B) the estimated number of individuals impacted by such actions;
“(C) the specified objective of each such action; and

“(D) the circumstances necessitating such actions.

“(7) JUDICIAL REVIEW.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, an individual or entity who is present in the United States and has been harmed by a violation of this subsection may file an action in an appropriate district court of the United States to seek declaratory or injunctive relief.

“(B) CLASS ACTION.—Nothing in this Act may be construed to preclude an action filed pursuant to subparagraph (A) from proceeding as a class action.

“(8)”.

SEC. 4. TERMINATION OF CERTAIN EXECUTIVE ACTIONS.

(a) TERMINATION.—Presidential Proclamations 9645 and 9822 and Executive Orders 13769, 13780, and 13815 shall be void beginning on the date of the enactment of this Act.

(b) EFFECT.—All actions made pursuant to any proclamation or executive order terminated under subsection (a) shall cease on the date of the enactment of this Act.
SEC. 5. VISA APPLICANTS REPORT.

(a) Initial Reports.—Not later than 90 days after the date of the enactment of this Act, the Secretary of State, in coordination with the relevant heads of other Federal agencies, shall submit a report to the appropriate congressional committees that describes the implementation of each of the presidential proclamations and executive orders referred to in section 4. The report submitted with respect to Presidential Proclamation 9645 (‘‘Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats’’), issued on September 24, 2017, should include, for each country listed in Presidential Proclamation 9645 or in any subsequent amendment to such proclamation—

(1) the total number of new visa applicants, disaggregated by country and visa category;

(2) the total number of visa applicants approved, disaggregated by country and visa category;

(3) the total number of visa applicants rejected, disaggregated by country and visa category, and the reasons they were rejected;

(4) the total number of pending visa applicants, disaggregated by country and visa category;
(5) the total number of visa applicants granted a waiver, disaggregated by country and visa category;

(6) the total number of visa applicants denied a waiver under such section, disaggregated by country and visa category, and the reasons such waiver requests were denied;

(7) the total number of refugees admitted, disaggregated by country; and

(8) the complete reports that have been submitted to the President every 180 days in accordance with section 4 of Presidential Proclamation 9645.

(b) ADDITIONAL REPORTS.—Not later than 30 days after the President exercises authority under section 212(f) of the Immigration and Nationality Act, as amended by section 3, and every 30 days thereafter, the Secretary of State, in coordination with the heads of other relevant Federal agencies, shall submit a report to the appropriate congressional committees that identifies, with respect to visa applications affected by a suspension or restriction authorized under such subsection, the information described in paragraphs (1) through (7) of subsection (a).
(c) Form; Availability.—The reports required under subsections (a) and (b)—

(1) shall be submitted in unclassified form; and

(2) shall be made publicly available online.