H. R. 1901

To close loopholes in the immigration laws that serve as incentives to aliens to attempt to enter the United States unlawfully, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2021

Mr. Biggs (for himself, Mr. Jordan, Mr. McClintock, Ms. Herrell, Mr. Budd, Mr. Duncan, Mr. Hice of Georgia, Mr. Gaetz, Mr. Allen, Mr. Babin, Mr. Roy, Mr. Cloud, Mrs. Miller of Illinois, Mr. Arrington, Mr. Rosendale, Mr. Norman, Mrs. Boebert, Mr. Perry, Mr. Gooden of Texas, Mr. Good of Virginia, Mr. Tiffany, Mr. Steube, and Mr. Smith of Nebraska) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To close loopholes in the immigration laws that serve as incentives to aliens to attempt to enter the United States unlawfully, 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; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the

5 “Stopping Border Surges Act”.

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Table of Contents.—The table of contents for this Act is as follows:

Title I—Unaccompanied Alien Children

Sec. 102. Clarification of standards for family detention.
Sec. 103. Special immigrant juvenile status for immigrants unable to reunite with either parent.

Title II—Asylum Reform

Sec. 201. Credible fear interviews.
Sec. 203. Recording expedited removal and credible fear interviews.
Sec. 204. Safe third country.
Sec. 205. Renunciation of asylum status pursuant to return to home country.
Sec. 206. Notice concerning frivolous asylum applications.
Sec. 207. Anti-fraud investigative work product.
Sec. 208. Clarification of asylum eligibility.
Sec. 209. Application timing.
Sec. 211. Additional exception.
Sec. 212. Clarification regarding employment eligibility.
Sec. 213. Penalties for asylum fraud.
Sec. 214. Statute of limitations for asylum fraud.
Sec. 215. Technical amendments.

Title I—Unaccompanied Alien Children


(a) In General.—Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) by amending the heading to read as follows: “Rules for Unaccompanied Alien Children.—”;

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(ii) in subparagraph (A)—

(I) in the matter preceding clause

(i), by striking “who is a national or
habitual resident of a country that is
contiguous with the United States”;

(II) in clause (i), by inserting
“and” at the end;

(III) in clause (ii), by striking “;
and” and inserting a period; and

(IV) by striking clause (iii);

(iii) in subparagraph (B)—

(I) in the matter preceding clause

(i), by striking “(8 U.S.C. 1101 et
seq.) may—” and inserting “(8
U.S.C. 1101 et seq.)—”;

(II) in clause (i), by inserting be-
fore “permit such child to withdraw”
the following: “may”; and

(III) in clause (ii), by inserting
before “return such child” the fol-
lowing: “shall”; and

(iv) in subparagraph (C)—

(I) by amending the heading to
read as follows: “AGREEMENTS WITH
FOREIGN COUNTRIES.—”; and
(II) in the matter preceding clause (i), by striking “The Secretary of State shall negotiate agreements between the United States and countries contiguous to the United States” and inserting “The Secretary of State may negotiate agreements between the United States and any foreign country that the Secretary determines appropriate”; 

(B) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively, and inserting after paragraph (2) the following:

“(3) SPECIAL RULES FOR INTERVIEWING UNACCOMPANIED ALIEN CHILDREN.—An unaccompanied alien child shall be interviewed by an immigration officer with specialized training in interviewing child trafficking victims.”; and

(C) in paragraph (6)(D) (as so redesignated)—

(i) in the matter preceding clause (i), by striking “, except for an unaccompanied alien child from a contiguous country subject to exceptions under subsection (a)(2),”
and inserting “who does not meet the criteria listed in paragraph (2)(A)”; and

(ii) in clause (i), by inserting before
the semicolon at the end the following: “,
which shall include a hearing before an im-
migration judge not later than 14 days
after being screened under paragraph (4)”;

(2) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by inserting
before the semicolon the following: “believed not to meet the criteria listed in sub-
section (a)(2)(A)”; and

(ii) in subparagraph (B), by inserting
before the period the following: “and does
not meet the criteria listed in subsection
(a)(2)(A)”; and

(B) in paragraph (3), by striking “an un-
accompanied alien child in custody shall” and
all that follows, and inserting the following: “an
unaccompanied alien child in custody—
“(A) in the case of a child who does not
meet the criteria listed in subsection (a)(2)(A),
shall transfer the custody of such child to the
Secretary of Health and Human Services not
later than 30 days after determining that such child is an unaccompanied alien child who does not meet such criteria; or

“(B) in the case of child who meets the criteria listed in subsection (a)(2)(A), may transfer the custody of such child to the Secretary of Health and Human Services after determining that such child is an unaccompanied alien child who meets such criteria.”; and

(3) in subsection (c)—

(A) in paragraph (3), by inserting at the end the following:

“(D) INFORMATION ABOUT INDIVIDUALS WITH WHOM CHILDREN ARE PLACED.—

“(i) INFORMATION TO BE PROVIDED TO HOMELAND SECURITY.—Before placing a child with an individual, the Secretary of Health and Human Services shall provide to the Secretary of Homeland Security, regarding the individual with whom the child will be placed, the following information:

“(I) The name of the individual.

“(II) The social security number of the individual, if available.
“(III) The date of birth of the individual.

“(IV) The location of the individual’s residence where the child will be placed.

“(V) The immigration status of the individual, if known.

“(VI) Contact information for the individual.

“(ii) SPECIAL RULE.—In the case of a child who was apprehended on or after the effective date of this clause, and before the date of the enactment of this subparagraph, who the Secretary of Health and Human Services placed with an individual, the Secretary shall provide the information listed in clause (i) to the Secretary of Homeland Security not later than 90 days after such date of enactment.”; and

(B) in paragraph (5)—

(i) by inserting after “to the greatest extent practicable” the following: “(at no expense to the Government)”;}
(ii) by striking “have counsel to represent them” and inserting “have access to counsel to represent them”.

(b) Effective Date.—The amendments made by this section shall apply to any unaccompanied alien child apprehended on or after the date of enactment.

SEC. 102. CLARIFICATION OF STANDARDS FOR FAMILY DETENTION.

(a) In General.—Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) is amended by adding at the end the following:

“(j) Construction.—

“(1) In General.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, the detention of any alien child who is not an unaccompanied alien child shall be governed by sections 217, 235, 236, and 241 of the Immigration and Nationality Act (8 U.S.C. 1187, 1225, 1226, and 1231). There is no presumption that an alien child who is not an unaccompanied alien child should not be detained, and all such determinations shall be in the discretion of the Secretary of Homeland Security.
“(2) Release of minors other than unaccompanied aliens.—In no circumstances shall an alien minor who is not an unaccompanied alien child be released by the Secretary of Homeland Security other than to a parent or legal guardian, who is lawfully present in the United States.

“(3) Family detention.—The Secretary of Homeland Security shall—

“(A) maintain the care and custody of an alien, during the period during which the charges described in clause (i) are pending, who—

“(i) is charged only with a misdemeanor offense under section 275(a) of the Immigration and Nationality Act (8 U.S.C. 1325(a)); and

“(ii) entered the United States with the alien’s child who has not attained 18 years of age; and

“(B) detain the alien with the alien’s child.”.

(b) Sense of Congress.—It is the sense of Congress that the amendments in this section to section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) are intended
to satisfy the requirements of the Settlement Agreement in Flores v. Meese, No. 85–4544 (C.D. Cal) as approved by the court on January 28, 1997, with respect to its interpretation in Flores v. Johnson, 212 F. Supp. 3d 864 (C.D. Cal. 2015), that the agreement applies to accompanied minors.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to all actions that occur before, on, or after the date of the enactment of this Act.

(d) PREEMPTION OF STATE LICENSING REQUIREMENTS.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, no State may require that an immigration detention facility used to detain children who have not attained 18 years of age, or families consisting of one or more of such children and the parents or legal guardians of such children, that is located in that State, be licensed by the State or any political subdivision thereof.

SEC. 103. SPECIAL IMMIGRANT JUVENILE STATUS FOR IMMIGRANTS UNABLE TO REUNITE WITH EITHER PARENT.

(1) in clause (i), by striking ‘‘, and whose reuni-

fication with 1 or both of the immigrant’s parents

is not viable due to abuse, neglect, abandonment, or

a similar basis found under State law’’; and

(2) in clause (iii)—

(A) by striking ‘‘and’’ at the end of sub-

clause (I);

(B) by inserting ‘‘and’’ at the end of sub-

clause (II); and

(C) by adding at the end the following:

‘‘(III) an alien may not be grant-

ed special immigrant juvenile status

under this subparagraph if his or her

reunification with any one parent or

legal guardian is not precluded by

abuse, neglect, abandonment, or any

similar cause under State law;’’.

TITLE II—ASYLUM REFORM

SEC. 201. CREDIBLE FEAR INTERVIEWS.

Section 235(b)(1)(B)(v) of the Immigration and Na-

tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by

striking ‘‘claim’’ and all that follows, and inserting ‘‘claim,

as determined pursuant to section 208(b)(1)(B)(iii), and

such other facts as are known to the officer, that the alien

could establish eligibility for asylum under section 208,
and it is more probable than not that the statements made
by, and on behalf of, the alien in support of the alien’s
claim are true.”.

SEC. 202. JURISDICTION OF ASYLUM APPLICATIONS.

Section 208(b)(3) of the Immigration and Nationality
Act (8 U.S.C. 1158) is amended by striking subparagraph
(C).

SEC. 203. RECORDING EXPEDITED REMOVAL AND CRED-
IBLE FEAR INTERVIEWS.

(a) In General.—The Secretary of Homeland Secu-
rit y shall establish quality assurance procedures and take
steps to effectively ensure that questions by employees of
the Department of Homeland Security exercising expedi-
ted removal authority under section 235(b) of the Immi-
gration and Nationality Act (8 U.S.C. 1225(b)) are asked
in a uniform manner, to the extent possible, and that both
these questions and the answers provided in response to
them are recorded in a uniform fashion.

(b) Credible Fear Interview Checklists.—The
Secretary of Homeland Security shall provide a checklist
of standard questions and concepts to be addressed in all
interviews under section 235(b) to immigration officers ex-
ercising decision-making authority in such interviews.
Such checklists shall be routinely updated to include rel-
evant changes to law and procedures and shall, at a min-

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(c) FACTORS RELATING TO SIGNED STATEMENTS.—Where practicable, any sworn or signed written statement taken of an alien as part of the record of a proceeding under section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a recording of the interview which served as the basis for that sworn statement.

(d) INTERPRETERS.—The Secretary shall ensure that a competent interpreter, not affiliated with the government of the country from which the alien may claim asylum, is used when the interviewing officer does not speak a language understood by the alien.

(e) RECORDINGS IN IMMIGRATION PROCEEDINGS.—There shall be an audio or audio visual recording of interviews of aliens subject to expedited removal. The recording shall be included in the record of proceeding and shall be considered as evidence in any further proceedings involving the alien.

(f) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural,
enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. 204. SAFE THIRD COUNTRY.

Section 208(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

(1) by striking “if the Attorney General determines” and inserting “if the Attorney General or the Secretary of Homeland Security determines—”;

(2) by striking “that the alien may be removed” and inserting:

“(i) that the alien may be removed’’;

(3) by striking “removed, pursuant to a bilateral or multilateral agreement, to” and inserting “removed to”;

(4) by inserting “, on a case by case basis,” before “finds that”;

(5) by striking the period at the end and inserting “; or”; and

(6) by adding at the end the following:

“(ii) that the alien entered, attempted to enter, or arrived in the United States after transiting through at least one country outside the alien’s
country of citizenship, nationality, or last lawful habitual residence en route to the United States, unless—

“(I) the alien demonstrates that he or she applied for protection from persecution or torture in at least one country outside the alien’s country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States, and the alien received a final judgement denying the alien protection in each country;

“(II) the alien demonstrates that he or she was a victim of a severe form of trafficking in which a commercial sex act was induced by force, fraud, or coercion, or in which the person induced to perform such act was under the age of 18 years; or in which the trafficking included the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, and was unable to apply for protection from persecution in all countries that alien transited
en route to the United States as a result of such severe form of trafficking; or

“(III) the only countries through which the alien transited en route to the United States were, at the time of the transit, not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”.

SEC. 205. RENUNCIATION OF ASYLUM STATUS PURSUANT TO RETURN TO HOME COUNTRY.

(a) In General.—Section 208(c) of the Immigration and Nationality Act (8 U.S.C. 1158(c)) is amended by adding at the end the following new paragraph:

“(4) Renunciation of status pursuant to return to home country.—

“(A) In general.—Except as provided in subparagraph (B), any alien who is granted asylum status under this Act, who, absent changed country conditions, subsequently returns to the country of such alien’s nationality or, in the case of an alien having no nationality, returns to any country in which such alien last
habitually resided, and who applied for such status because of persecution or a well-founded fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, shall have his or her status terminated.

“(B) WAIVER.—The Secretary has discretion to waive subparagraph (A) if it is established to the satisfaction of the Secretary that the alien had a compelling reason for the return. The waiver may be sought prior to departure from the United States or upon return.”.

(b) CONFORMING AMENDMENT.—Section 208(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1158(c)(3)) is amended by inserting after “paragraph (2)” the following: “or (4)”.

SEC. 206. NOTICE CONCERNING FRIVOLOUS ASYLUM APPLICATIONS.

(a) IN GENERAL.—Section 208(d)(4) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(4)) is amended—

(1) in the matter preceding subparagraph (A), by inserting “the Secretary of Homeland Security or” before “the Attorney General”;
(2) in subparagraph (A), by striking “and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and” and inserting a semicolon;

(3) in subparagraph (B), by striking the period and inserting “; and”; and

(4) by adding at the end the following:

“(C) ensure that a written warning appears on the asylum application advising the alien of the consequences of filing a frivolous application and serving as notice to the alien of the consequence of filing a frivolous application.”.

(b) CONFORMING AMENDMENT.—Section 208(d)(6) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(6)) is amended by striking “If the” and all that follows and inserting:

“(A) If the Secretary of Homeland Security or the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(C), the alien shall be permanently ineligible for any benefits under this chapter, effective as the date of the final determination of such an application.
“(B) An application is frivolous if the Secretary of Homeland Security or the Attorney General determines, consistent with subparagraph (C), that—

“(i) it is so insufficient in substance that it is clear that the applicant knowingly filed the application solely or in part to delay removal from the United States, to seek employment authorization as an applicant for asylum pursuant to regulations issued pursuant to paragraph (2), or to seek issuance of a Notice to Appear in order to pursue Cancellation of Removal under section 240A(b); or

“(ii) any of the material elements are knowingly fabricated.

“(C) In determining that an application is frivolous, the Secretary or the Attorney General, must be satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to clarify any discrepancies or implausible aspects of the claim.

“(D) For purposes of this section, a finding that an alien filed a frivolous asylum application shall not preclude the alien from seeking
withholding of removal under section 241(b)(3) or protection pursuant to the Convention Against Torture.”

SEC. 207. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.

(a) Asylum Credibility Determinations.—Section 208(b)(1)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting after “all relevant factors” the following: “, including statements made to, and investigative reports prepared by, immigration authorities and other government officials”.

(b) Relief for Removal Credibility Determinations.—Section 240(c)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended by inserting after “all relevant factors” the following: “, including statements made to, and investigative reports prepared by, immigration authorities and other government officials”.

SEC. 208. CLARIFICATION OF ASYLUM ELIGIBILITY.

(a) In General.—Section 208(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)(A)) is amended by inserting after “section 101(a)(42)(A)” the following: “and is eligible to apply for asylum under subsection (a)”.

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(b) PLACE OF ARRIVAL.—Section 208(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(1)) is amended—

(1) by striking “or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters),”; and

(2) by inserting after “United States” the following: “and has arrived in the United States at a port of entry,”.

SEC. 209. APPLICATION TIMING.

Section 208(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)(B)) is amended by striking “1 year” and inserting “6 months”.

SEC. 210. CLARIFICATION OF BURDEN OF PROOF.

Section 208(b)(1)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)(B)(i)) is amended by striking “at least one” and inserting “the”.

SEC. 211. ADDITIONAL EXCEPTION.

Section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)) is amended—

(1) in clause (v), by striking “or” at the end; and

(2) in clause (vi), by striking the period and inserting “; or”; and
(3) by adding at the end the following:

“(vii) there are reasonable grounds for concluding the alien could avoid persecution by relocating to another part of the alien’s country of nationality or, if stateless, another part of the alien’s country of last habitual residence.”.

SEC. 212. CLARIFICATION REGARDING EMPLOYMENT ELIGIBILITY.

Section 208(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(2)) is amended—

(1) by striking “180 days’” and inserting “1 year”; and

(2) by inserting “and the authorization shall expire 6 months after the date of issuance” before the period at the end.

SEC. 213. PENALTIES FOR ASYLUM FRAUD.

Section 1001 of title 18, United States Code, is amended by inserting at the end of the paragraph—

“(d) Whoever, in any matter before the Secretary of Homeland Security or the Attorney General pertaining to asylum under section 208 of the Immigration and Nationality Act or withholding of removal under section 241(b)(3) of such Act, knowingly and willfully—
“(1) makes any materially false, fictitious, or fraudulent statement or representation; or
“(2) makes or uses any false writings or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry,
shall be fined under this title or imprisoned not more than 10 years, or both.”

SEC. 214. STATUTE OF LIMITATIONS FOR ASYLUM FRAUD.

Section 3291 of title 18, United States Code, is amended—

(1) by striking “1544,” and inserting “1544, and section 1546,”; and
(2) by striking “offense.” and inserting “offense or within 10 years after the fraud is discovered.”.

SEC. 215. TECHNICAL AMENDMENTS.

Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended—

(1) in subsection (a)—

(A) in paragraph (2)(D), by inserting “Secretary of Homeland Security or the” before “Attorney General”; and
(B) in paragraph (3), by inserting “Secretary of Homeland Security or the” before “Attorney General”;
(2) in subsection (b)(2), by inserting “Secretary of Homeland Security or the” before “Attorney General” each place such term appears;

(3) in subsection (c)—

(A) in paragraph (1), by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”;

(B) in paragraph (2), in the matter preceding subparagraph (A), by inserting “Secretary of Homeland Security or the” before “Attorney General”; and

(C) in paragraph (3), by inserting “Secretary of Homeland Security or the” before “Attorney General”; and

(4) in subsection (d)—

(A) in paragraph (1), by inserting “Secretary of Homeland Security or the” before “Attorney General” each place such term appears;

(B) in paragraph (2), by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(C) in paragraph (5)—
(i) in subparagraph (A), by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(ii) in subparagraph (B), by inserting “Secretary of Homeland Security or the” before “Attorney General”.

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