117TH CONGRESS
1ST SESSION

H. R. 759

To modify the treatment of unaccompanied alien children who are in Federal custody by reason of their immigration status, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2021

Mr. JOHNSON of Louisiana introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To modify the treatment of unaccompanied alien children who are in Federal custody by reason of their immigration status, and for other purposes.

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

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Asylum Reform and Border Protection Act of 2021”.

4 SEC. 2. CLARIFICATION OF INTENT REGARDING TAXPAYER-PROVIDED COUNSEL.

5 Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) is amended—
(1) by striking “In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings” and inserting “In any removal proceedings before an immigration judge, or any other immigration proceedings before the Attorney General, the Secretary of Homeland Security, or any appeal of such a proceeding”;

(2) by striking “(at no expense to the Government)”;

and

(3) by adding at the end the following:

“Notwithstanding any other provision of law, in no instance shall the Government bear any expense for counsel for any person in proceedings described in this section.”.

SEC. 3. CREDIBLE FEAR INTERVIEWS.

Section 235(b)(1)(B)(v) of the Immigration and Nationality 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. 4. RECORDING EXPEDITED REMOVAL AND CREDIBLE FEAR INTERVIEWS.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish quality assurance procedures and take steps to effectively ensure that questions by employees of the Department of Homeland Security exercising expedited removal authority under section 235(b) of the Immigration 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) FACTORS RELATING TO SWORN 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.

(c) 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.

(d) 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.

(e) **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. 5. **PAROLE REFORM.**

(a) **IN GENERAL.**—Paragraph (5) of section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended to read as follows:

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(5) HUMANITARIAN AND SIGNIFICANT PUBLIC INTEREST PAROLE.—

(A) IN GENERAL.—Subject to the provisions of this paragraph and section 214(f)(2), the Secretary of Homeland Security, in the sole discretion of the Secretary of Homeland Security, may on an individual case-by-case basis, and not according to eligibility criteria describing an entire class of potential parole recipients, parole an alien into the United States tempo-
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rarily, under such conditions as the Secretary of Homeland Security may prescribe, only—

“(i) an alien not present in the United States for an urgent humanitarian reason (as described under subparagraph (B));

“(ii) an alien not present in the United States for a reason deemed strictly in the significant public interest (as described under subparagraph (C)); or

“(iii) an alien who—

“(I) is present in the United States without lawful immigration status;

“(II) is the beneficiary of a pending or approved petition under section 203(a);

“(III) is not otherwise inadmissible or deportable; and

“(IV) is the spouse or minor child of a member of the Armed Forces serving on active duty at the request of the member of the Armed Forces.

“(B) HUMANITARIAN PAROLE.—The Secretary of Homeland Security may parole an
alien based on an urgent humanitarian reason described in this subparagraph only if—

“(i) the alien has a medical emergency and the alien cannot obtain necessary treatment in the foreign state in which the alien is residing or the medical emergency is life-threatening and there is insufficient time for the alien to be admitted through the normal visa process;

“(ii) the alien is the parent or legal guardian of an alien described in clause (i), if the alien described in clause (i) is a minor;

“(iii) the alien is needed in the United States in order to donate an organ or other tissue for transplant into a close family member and there is insufficient time for the alien to be admitted through the normal visa process;

“(iv) the alien has a close family member in the United States whose death is imminent and the alien could not arrive in the United States in time to see such family member alive if the alien were to be admitted through the normal visa process;
“(v) the alien is an adopted child with an urgent medical condition, who is in the legal custody of the petitioner for a final adoption-related visa, and whose medical treatment is required prior to the expected award of a final adoption-related visa;

“(vi) the alien is a lawful applicant for adjustment of status under section 245; or

“(vii) the alien was—

“(I) lawfully granted status under section 208;

“(II) lawfully admitted under section 207; or

“(III) granted withholding of removal under section 241(b)(3).

“(C) Significant public interest parole.—The Secretary of Homeland Security may parole an alien based on a reason deemed strictly in the significant public interest described in this subparagraph only if the alien has assisted (or will assist, whether knowingly or not) the United States Government in a matter, such as a criminal investigation, espionage, or other similar law enforcement activity, in-
cluding a civil litigation matter requiring the alien’s presence, and either the alien’s presence in the United States is required by the Government or the alien’s life would be threatened if the alien were not permitted to come to the United States. Only a matter described in this subparagraph shall qualify for purposes of this subparagraph, and no other matter may qualify.

“(D) LIMITATION ON THE USE OF PAROLE AUTHORITY.—The Secretary of Homeland Security may not use the parole authority under this paragraph—

“(i) to circumvent immigration policy established by law to admit classes of aliens who do not qualify for admission; or

“(ii) to supplement established immigration categories without congressional approval.

“(E) PAROLE NOT AN ADMISSION.—Parole of an alien under this paragraph shall not be considered an admission of the alien into the United States. When the purposes of the parole of an alien have been served, as determined by the Secretary of Homeland Security, the alien
shall immediately return or be returned to the
custody from which the alien was paroled and
the alien shall be considered for admission to
the United States on the same basis as other
similarly situated applicants for admission.

“(F) REPORT TO CONGRESS.—Not later
than 90 days after the end of each fiscal year,
the Secretary of Homeland Security shall sub-
mit a report to the Committees on the Judiciary
of the House of Representatives and the
Senate describing the number and categories of
aliens paroled into the United States under this
paragraph. Each such report shall contain in-
formation and data concerning the number and
categories of aliens paroled, the duration of pa-
role, and the current status of aliens paroled
during the preceding fiscal year.”.

(b) EFFECTIVE DATE.—The amendment made by
subsection (a) shall take effect on the first day of the first
month beginning more than 60 days after the date of the
enactment of this Act.
SEC. 6. MODIFICATIONS TO PREFERENTIAL AVAILABILITY FOR ASYLUM FOR UNACCOMPANIED ALIEN MINORS.

Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by striking subparagraph (E).

SEC. 7. 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 "Attorney General" each place it appears and inserting "Secretary of Homeland Security"; and

(2) by striking "removed, pursuant to a bilateral or multilateral agreement, to" and inserting "removed to".

SEC. 8. WITHHOLDING OF REMOVAL.

Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended—

(1) by adding at the end of subparagraph (A) the following:

"The burden of proof shall be on the alien to establish that the alien’s life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for such threat."; and
(2) in subparagraph (C), by striking “In deter-
mining whether an alien has demonstrated that the
alien’s life or freedom would be threatened for a rea-
son described in subparagraph (A),” and inserting
“For purposes of this paragraph,”.

SEC. 9. FIRM RESETTLEMENT.

Section 208(b)(2)(A)(vi) of the Immigration and Na-
tionality Act (8 U.S.C. 1158(b)(2)(A)(vi)) is amended by
striking “States.” and inserting “States, which shall be
considered demonstrated by evidence that the alien can
live in such country (in any legal status) without fear of
persecution.”.

SEC. 10. TERMINATION 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:

“(3) TERMINATION OF STATUS PURSUANT TO
RETURN TO HOME COUNTRY.—

“(A) IN GENERAL.—Except as provided in
subparagraphs (B) and (C), any alien who is
granted asylum status under this Act, who, ab-
sent changed country conditions, subsequently
returns to the country of such alien’s nation-
ality or, in the case of an alien having no na-
tionality, 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 shall 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. 11. 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) by striking “in the discretion of the Attorney General” and inserting “in the discretion of the Secretary of Homeland Security”;

(3) by striking “the Attorney General” and inserting “the Secretary of Homeland Security”.

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(2) in subparagraph (A), by striking “and of
the consequences, under paragraph (6), of knowingly
filing a frivolous application for asylum”;
(3) in subparagraph (B), by striking the period
and inserting “; and”;
(4) by adding at the end the following:
“(C) ensure that a written warning ap-
pears on the asylum application advising the
alien of the consequences of filing a frivolous
application.”; and
(5) by inserting after subparagraph (C) the fol-
lowing:
“The written warning referred to in subparagraph
(C) shall serve as notice to the alien of the con-
sequences 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—
(1) by striking “If the Attorney General” and
inserting “(A) IN GENERAL.—If the Department of
Homeland Security or the Attorney General”;
(2) by striking “paragraph (4)(A)” in subpara-
graph (A) (as designated in paragraph (1) of this
subsection) and inserting “paragraph (4)(C)”; and
(3) by adding at the end the following:
“(B) Determination.—An application may be found ‘frivolous’ if it is determined—

“(i) to be totally insufficient in substance such that it is clear that the applicant knowingly filed the application without intending to pursue the merits of his or her asylum claim solely—

“(I) to delay removal from the United States;

“(II) to seek employment authorization as an applicant for asylum pursuant to regulations issued pursuant to paragraph (2); or

“(III) for applicants whom have not yet had removal proceedings initiated against them under section 239, to seek issuance of a notice to appear in order to pursue cancellation of removal under section 240A(b); or

“(ii) that any of its material elements is deliberately fabricated.

“(C) Limitation on Determination.—A determination under subparagraph (B) shall only be made if the decision maker is satisfied that the applicant, during the course of the pro-
ceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim. 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).”.

SEC. 12. TERMINATION OF ASYLUM STATUS IN REMOVAL PROCEEDINGS.

Section 208(c) of the Immigration and Nationality Act (8 U.S.C. 1158(e)), as amended by this Act, is further amended—

(1) in paragraph (2)—

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

and

(B) in subparagraph (C), by striking “, pursuant to a bilateral or multilateral agreement,”; and

(2) by adding at the end the following:

“(5) Timing for consideration of termination of asylum status in removal proceedings.—If an alien’s asylum status is subject to termination under paragraph (2) or (4), the immi-
gration judge shall first determine whether the con-
ditions specified under that paragraph have been
met, and if so, terminate the alien’s asylum status
before considering whether the alien is eligible for
adjustment of status under section 209.”.

SEC. 13. LIMITATION ON ELIGIBILITY FOR ASYLUM BASED
ON GENERALIZED VIOLENCE.

Section 208(b)(2)(B) of the Immigration and Nation-
ality Act (8 U.S.C. 1158(b)(2)(B)) is amended by adding
at the end the following:

“(iii) LIMITATION ON ELIGIBILITY
BASED ON GENERALIZED VIOLENCE.—An
alien is not eligible for asylum under this
section, or withholding of removal under
section 241, based on any of the following
circumstances:

“(I) Being, or having been, a
member of a criminal gang.

“(II) Participating, or having
participated, in the activities of a
criminal gang.

“(III) Having been recruited
into, or having a fear of being re-
cruited into, membership of, or the ac-
tivities of, a criminal gang.
“(IV) Having been, or having a fear of being, the victim of a crime committed by a member of a criminal gang, or otherwise having been, or having a fear of being, the victim of a crime in the alien’s home country, unless the main motivating factor for the commission of the crime, or the fear of being the victim of a crime, is related to the alien’s race, religion, national origin, or political opinion.”.

SEC. 14. MEMBERSHIP IN A PARTICULAR SOCIAL GROUP DEFINED.

Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(53) The term ‘membership in a particular social group’ means membership in a group that is—

“(A) composed of members who share a common immutable characteristic;

“(B) defined with particularity; and

“(C) socially distinct within the society in question.”.
SEC. 15. 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. 16. CLARIFICATION FOR CONDUCT OF ROGUE FOREIGN OFFICIALS.

(a) Asylum Applications.—Section 208(b)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(B)), as amended by this Act, is further amended by adding at the end the following:

“(iv) Rogue foreign government officials.—The burden of proof under paragraph (1)(B) may not be established based on the conduct of rogue foreign government officials acting outside the scope of their official capacity.”.
(b) COUNTRIES TO WHICH AN ALIEN MAY BE REMOVED.—Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended by adding at the end the following:

“(C) SPECIAL RULE.—The burden of proof for relief under this paragraph may not be established based on the conduct of rogue foreign government officials acting outside the scope of their official capacity.”.

SEC. 17. 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”; and

(B) 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”;

(C) in paragraph (3), by inserting “Secretary of Homeland Security or the” before “Attorney General” each place such term appears;

(D) in paragraph (5)—

(i) in subparagraph (A), by inserting “Secretary of Homeland Security or the” before “Attorney General”; and

(ii) in subparagraph (B), by inserting “Secretary of Homeland Security or the” before “Attorney General”; and
(E) in paragraph (6), by inserting “Secretary of Homeland Security or the” before “Attorney General” each place such term appears.