

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 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 “Asylum Reform and
5 Border Protection Act of 2021”.

6 **SEC. 2. CLARIFICATION OF INTENT REGARDING TAXPAYER-**

7 **PROVIDED COUNSEL.**

8 Section 292 of the Immigration and Nationality Act
9 (8 U.S.C. 1362) is amended—

1 (1) by striking “In any removal proceedings be-
2 fore an immigration judge and in any appeal pro-
3 ceedings before the Attorney General from any such
4 removal proceedings” and inserting “In any removal
5 proceedings before an immigration judge, or any
6 other immigration proceedings before the Attorney
7 General, the Secretary of Homeland Security, or any
8 appeal of such a proceeding”;

9 (2) by striking “(at no expense to the Govern-
10 ment)”; and

11 (3) by adding at the end the following:

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

15 **SEC. 3. CREDIBLE FEAR INTERVIEWS.**

16 Section 235(b)(1)(B)(v) of the Immigration and Na-
17 tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by
18 striking “claim” and all that follows and inserting “claim,
19 as determined pursuant to section 208(b)(1)(B)(iii) and
20 such other facts as are known to the officer, that the alien
21 could establish eligibility for asylum under section 208,
22 and it is more probable than not that the statements made
23 by, and on behalf of, the alien in support of the alien’s
24 claim are true.”.

1 **SEC. 4. RECORDING EXPEDITED REMOVAL AND CREDIBLE**
2 **FEAR INTERVIEWS.**

3 (a) IN GENERAL.—The Secretary of Homeland Secu-
4 rity shall establish quality assurance procedures and take
5 steps to effectively ensure that questions by employees of
6 the Department of Homeland Security exercising expe-
7 dited removal authority under section 235(b) of the Immi-
8 gration and Nationality Act (8 U.S.C. 1225(b)) are asked
9 in a uniform manner, to the extent possible, and that both
10 these questions and the answers provided in response to
11 them are recorded in a uniform fashion.

12 (b) FACTORS RELATING TO SWORN STATEMENTS.—
13 Where practicable, any sworn or signed written statement
14 taken of an alien as part of the record of a proceeding
15 under section 235(b)(1)(A) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1225(b)(1)(A)) shall be accom-
17 panied by a recording of the interview which served as the
18 basis for that sworn statement.

19 (c) INTERPRETERS.—The Secretary shall ensure that
20 a competent interpreter, not affiliated with the govern-
21 ment of the country from which the alien may claim asy-
22 lum, is used when the interviewing officer does not speak
23 a language understood by the alien.

24 (d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—
25 There shall be an audio or audio visual recording of inter-
26 views of aliens subject to expedited removal. The recording

1 shall be included in the record of proceeding and shall be
2 considered as evidence in any further proceedings involv-
3 ing the alien.

4 (e) NO PRIVATE RIGHT OF ACTION.—Nothing in this
5 section shall be construed to create any right, benefit,
6 trust, or responsibility, whether substantive or procedural,
7 enforceable in law or equity by a party against the United
8 States, its departments, agencies, instrumentalities, enti-
9 ties, officers, employees, or agents, or any person, nor does
10 this section create any right of review in any administra-
11 tive, judicial, or other proceeding.

12 **SEC. 5. PAROLE REFORM.**

13 (a) IN GENERAL.—Paragraph (5) of section 212(d)
14 of the Immigration and Nationality Act (8 U.S.C.
15 1182(d)) is amended to read as follows:

16 “(5) HUMANITARIAN AND SIGNIFICANT PUBLIC
17 INTEREST PAROLE.—

18 “(A) IN GENERAL.—Subject to the provi-
19 sions of this paragraph and section 214(f)(2),
20 the Secretary of Homeland Security, in the sole
21 discretion of the Secretary of Homeland Secu-
22 rity, may on an individual case-by-case basis,
23 and not according to eligibility criteria describ-
24 ing an entire class of potential parole recipients,
25 parole an alien into the United States tempo-

1 rarely, under such conditions as the Secretary of
2 Homeland Security may prescribe, only—

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

6 “(ii) an alien not present in the
7 United States for a reason deemed strictly
8 in the significant public interest (as de-
9 scribed under subparagraph (C)); or

10 “(iii) an alien who—

11 “(I) is present in the United
12 States without lawful immigration sta-
13 tus;

14 “(II) is the beneficiary of a pend-
15 ing or approved petition under section
16 203(a);

17 “(III) is not otherwise inadmis-
18 sible or deportable; and

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

24 “(B) HUMANITARIAN PAROLE.—The Sec-
25 retary of Homeland Security may parole an

1 alien based on an urgent humanitarian reason
2 described in this subparagraph only if—

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

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

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

20 “(iv) the alien has a close family
21 member in the United States whose death
22 is imminent and the alien could not arrive
23 in the United States in time to see such
24 family member alive if the alien were to be
25 admitted through the normal visa process;

1 “(v) the alien is an adopted child with
2 an urgent medical condition, who is in the
3 legal custody of the petitioner for a final
4 adoption-related visa, and whose medical
5 treatment is required prior to the expected
6 award of a final adoption-related visa;

7 “(vi) the alien is a lawful applicant
8 for adjustment of status under section
9 245; or

10 “(vii) the alien was—

11 “(I) lawfully granted status
12 under section 208;

13 “(II) lawfully admitted under
14 section 207; or

15 “(III) granted withholding of re-
16 moval under section 241(b)(3).

17 “(C) SIGNIFICANT PUBLIC INTEREST PA-
18 ROLE.—The Secretary of Homeland Security
19 may parole an alien based on a reason deemed
20 strictly in the significant public interest de-
21 scribed in this subparagraph only if the alien
22 has assisted (or will assist, whether knowingly
23 or not) the United States Government in a mat-
24 ter, such as a criminal investigation, espionage,
25 or other similar law enforcement activity, in-

1 including a civil litigation matter requiring the
2 alien's presence, and either the alien's presence
3 in the United States is required by the Govern-
4 ment or the alien's life would be threatened if
5 the alien were not permitted to come to the
6 United States. Only a matter described in this
7 subparagraph shall qualify for purposes of this
8 subparagraph, and no other matter may qual-
9 ify.

10 “(D) LIMITATION ON THE USE OF PAROLE
11 AUTHORITY.—The Secretary of Homeland Se-
12 curity may not use the parole authority under
13 this paragraph—

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

17 “(ii) to supplement established immi-
18 gration categories without congressional
19 approval.

20 “(E) PAROLE NOT AN ADMISSION.—Parole
21 of an alien under this paragraph shall not be
22 considered an admission of the alien into the
23 United States. When the purposes of the parole
24 of an alien have been served, as determined by
25 the Secretary of Homeland Security, the alien

1 shall immediately return or be returned to the
2 custody from which the alien was paroled and
3 the alien shall be considered for admission to
4 the United States on the same basis as other
5 similarly situated applicants for admission.

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

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall take effect on the first day of the first
20 month beginning more than 60 days after the date of the
21 enactment of this Act.

1 **SEC. 6. MODIFICATIONS TO PREFERENTIAL AVAILABILITY**
2 **FOR ASYLUM FOR UNACCOMPANIED ALIEN**
3 **MINORS.**

4 Section 208(a)(2) of the Immigration and Nationality
5 Act (8 U.S.C. 1158(a)(2)) is amended by striking sub-
6 paragraph (E).

7 **SEC. 7. SAFE THIRD COUNTRY.**

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

10 (1) by striking “Attorney General” each place
11 it appears and inserting “Secretary of Homeland Se-
12 curity”; and

13 (2) by striking “removed, pursuant to a bilat-
14 eral or multilateral agreement, to” and inserting
15 “removed to”.

16 **SEC. 8. WITHHOLDING OF REMOVAL.**

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

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

21 “The burden of proof shall be on the alien to
22 establish that the alien’s life or freedom would
23 be threatened in that country, and that race,
24 religion, nationality, membership in a particular
25 social group, or political opinion would be at
26 least one central reason for such threat.”; and

1 (2) in subparagraph (C), by striking “In deter-
2 mining whether an alien has demonstrated that the
3 alien’s life or freedom would be threatened for a rea-
4 son described in subparagraph (A),” and inserting
5 “For purposes of this paragraph,”.

6 **SEC. 9. FIRM RESETTLEMENT.**

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

13 **SEC. 10. TERMINATION OF ASYLUM STATUS PURSUANT TO**
14 **RETURN TO HOME COUNTRY.**

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

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

20 “(A) IN GENERAL.—Except as provided in
21 subparagraphs (B) and (C), any alien who is
22 granted asylum status under this Act, who, ab-
23 sent changed country conditions, subsequently
24 returns to the country of such alien’s nation-
25 ality or, in the case of an alien having no na-

1 tionality, returns to any country in which such
2 alien last habitually resided, and who applied
3 for such status because of persecution or a well-
4 founded fear of persecution in that country on
5 account of race, religion, nationality, member-
6 ship in a particular social group, or political
7 opinion, shall have his or her status terminated.

8 “(B) WAIVER.—The Secretary has discre-
9 tion to waive subparagraph (A) if it is estab-
10 lished to the satisfaction of the Secretary that
11 the alien had a compelling reason for the re-
12 turn. The waiver shall be sought prior to depar-
13 ture from the United States or upon return.”.

14 (b) CONFORMING AMENDMENT.—Section 208(c)(3)
15 of the Immigration and Nationality Act (8 U.S.C.
16 1158(c)(3)) is amended by inserting after “paragraph
17 (2)” the following: “or (4)”.

18 **SEC. 11. NOTICE CONCERNING FRIVOLOUS ASYLUM APPLI-**
19 **CATIONS.**

20 (a) IN GENERAL.—Section 208(d)(4) of the Immi-
21 gration and Nationality Act (8 U.S.C. 1158(d)(4)) is
22 amended—

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

1 (2) in subparagraph (A), by striking “and of
2 the consequences, under paragraph (6), of knowingly
3 filing a frivolous application for asylum”;

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

6 (4) by adding at the end the following:

7 “(C) ensure that a written warning ap-
8 pears on the asylum application advising the
9 alien of the consequences of filing a frivolous
10 application.”; and

11 (5) by inserting after subparagraph (C) the fol-
12 lowing:

13 “The written warning referred to in subparagraph
14 (C) shall serve as notice to the alien of the con-
15 sequences of filing a frivolous application.”.

16 (b) CONFORMING AMENDMENT.—Section 208(d)(6)
17 of the Immigration and Nationality Act (8 U.S.C.
18 1158(d)(6)) is amended—

19 (1) by striking “If the Attorney General” and
20 inserting “(A) IN GENERAL.—If the Department of
21 Homeland Security or the Attorney General”;

22 (2) by striking “paragraph (4)(A)” in subpara-
23 graph (A) (as designated in paragraph (1) of this
24 subsection) and inserting “paragraph (4)(C)”;

25 (3) by adding at the end the following:

1 “(B) DETERMINATION.—An application
2 may be found ‘frivolous’ if it is determined—

3 “(i) to be totally insufficient in sub-
4 stance such that it is clear that the appli-
5 cant knowingly filed the application with-
6 out intending to pursue the merits of his
7 or her asylum claim solely—

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

10 “(II) to seek employment author-
11 ization as an applicant for asylum
12 pursuant to regulations issued pursu-
13 ant to paragraph (2); or

14 “(III) for applicants whom have
15 not yet had removal proceedings initi-
16 ated against them under section 239,
17 to seek issuance of a notice to appear
18 in order to pursue cancellation of re-
19 moval under section 240A(b); or

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

22 “(C) LIMITATION ON DETERMINATION.—A
23 determination under subparagraph (B) shall
24 only be made if the decision maker is satisfied
25 that the applicant, during the course of the pro-

1 ceedings, has had sufficient opportunity to ac-
2 count for any discrepancies or implausible as-
3 pects of the claim. For purposes of this section,
4 a finding that an alien filed a frivolous asylum
5 application shall not preclude the alien from
6 seeking withholding of removal under section
7 241(b)(3).”.

8 **SEC. 12. TERMINATION OF ASYLUM STATUS IN REMOVAL**
9 **PROCEEDINGS.**

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

13 (1) in paragraph (2)—

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

18 (B) in subparagraph (C), by striking “,
19 pursuant to a bilateral or multilateral agree-
20 ment,”; and

21 (2) by adding at the end the following:

22 “(5) **TIMING FOR CONSIDERATION OF TERMI-**
23 **NATION OF ASYLUM STATUS IN REMOVAL PRO-**
24 **CEEDINGS.—**If an alien’s asylum status is subject to
25 termination under paragraph (2) or (4), the immi-

1 gration judge shall first determine whether the con-
2 ditions specified under that paragraph have been
3 met, and if so, terminate the alien’s asylum status
4 before considering whether the alien is eligible for
5 adjustment of status under section 209.”.

6 **SEC. 13. LIMITATION ON ELIGIBILITY FOR ASYLUM BASED**
7 **ON GENERALIZED VIOLENCE.**

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

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

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

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

22 “(III) Having been recruited
23 into, or having a fear of being re-
24 cruited into, membership of, or the ac-
25 tivities of, a criminal gang.

1 “(IV) Having been, or having a
2 fear of being, the victim of a crime
3 committed by a member of a criminal
4 gang, or otherwise having been, or
5 having a fear of being, the victim of
6 a crime in the alien’s home country,
7 unless the main motivating factor for
8 the commission of the crime, or the
9 fear of being the victim of a crime, is
10 related to the alien’s race, religion,
11 national origin, or political opinion.”.

12 **SEC. 14. MEMBERSHIP IN A PARTICULAR SOCIAL GROUP**
13 **DEFINED.**

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

17 “(53) The term ‘membership in a particular so-
18 cial group’ means membership in a group that is—
19 “(A) composed of members who share a
20 common immutable characteristic;
21 “(B) defined with particularity; and
22 “(C) socially distinct within the society in
23 question.”.

1 **SEC. 15. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.**

2 (a) ASYLUM CREDIBILITY DETERMINATIONS.—Sec-
3 tion 208(b)(1)(B)(iii) of the Immigration and Nationality
4 Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting
5 after “all relevant factors” the following: “, including
6 statements made to, and investigative reports prepared by,
7 immigration authorities and other government officials”.

8 (b) RELIEF FOR REMOVAL CREDIBILITY DETER-
9 MINATIONS.—Section 240(c)(4)(C) of the Immigration
10 and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended
11 by inserting after “all relevant factors” the following: “,
12 including statements made to, and investigative reports
13 prepared by, immigration authorities and other govern-
14 ment officials”.

15 **SEC. 16. CLARIFICATION FOR CONDUCT OF ROGUE FOR-**
16 **EIGN OFFICIALS.**

17 (a) ASYLUM APPLICATIONS.—Section 208(b)(2)(B)
18 of the Immigration and Nationality Act (8 U.S.C.
19 1158(b)(2)(B)), as amended by this Act, is further amend-
20 ed by adding at the end the following:

21 “(iv) ROGUE FOREIGN GOVERNMENT
22 OFFICIALS.—The burden of proof under
23 paragraph (1)(B) may not be established
24 based on the conduct of rogue foreign gov-
25 ernment officials acting outside the scope
26 of their official capacity.”.

1 (b) COUNTRIES TO WHICH AN ALIEN MAY BE RE-
2 MOVED.—Section 241(b)(3) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1231(b)(3)) is amended by adding
4 at the end the following:

5 “(C) SPECIAL RULE.—The burden of proof
6 for relief under this paragraph may not be es-
7 tablished based on the conduct of rogue foreign
8 government officials acting outside the scope of
9 their official capacity.”.

10 **SEC. 17. TECHNICAL AMENDMENTS.**

11 Section 208 of the Immigration and Nationality Act
12 (8 U.S.C. 1158) is amended—

13 (1) in subsection (a)—

14 (A) in paragraph (2)(D), by inserting
15 “Secretary of Homeland Security or the” before
16 “Attorney General”; and

17 (B) in paragraph (3), by inserting “Sec-
18 retary of Homeland Security or the” before
19 “Attorney General”;

20 (2) in subsection (b)(2), by inserting “Secretary
21 of Homeland Security or the” before “Attorney Gen-
22 eral” each place such term appears;

23 (3) in subsection (c)—

24 (A) in paragraph (1), by striking “Attor-
25 ney General” each place such term appears and

1 inserting “Secretary of Homeland Security”;
2 and

3 (B) in paragraph (3), by inserting “Sec-
4 retary of Homeland Security or the” before
5 “Attorney General”; and

6 (4) in subsection (d)—

7 (A) in paragraph (1), by inserting “Sec-
8 retary of Homeland Security or the” before
9 “Attorney General” each place such term ap-
10 pears;

11 (B) in paragraph (2), by striking “Attor-
12 ney General” and inserting “Secretary of
13 Homeland Security”;

14 (C) in paragraph (3), by inserting “Sec-
15 retary of Homeland Security or the” before
16 “Attorney General” each place such term ap-
17 pears;

18 (D) in paragraph (5)—

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

22 (ii) in subparagraph (B), by inserting
23 “Secretary of Homeland Security or the”
24 before “Attorney General”; and

1 (E) in paragraph (6), by inserting “Sec-
2 retary of Homeland Security or the” before
3 “Attorney General” each place such term ap-
4 pears.

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