

118TH CONGRESS
1ST SESSION

S. 716

To extend title 42 expulsion authority, to resume border wall system construction, to preserve the exclusive authority of immigration judges over asylum claims, and to codify the Migrant Protection Protocols.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2023

Mr. RISCH (for himself, Mr. CRAPO, Mr. HAGERTY, Mr. BUDD, Mr. TILLIS, and Mr. BOOZMAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To extend title 42 expulsion authority, to resume border wall system construction, to preserve the exclusive authority of immigration judges over asylum claims, and to codify the Migrant Protection Protocols.

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 “Solving the Border Crisis Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Findings.
 Sec. 3. Sense of Congress.
 Sec. 4. Definitions.
 Sec. 5. Termination of suspension of entries and imports from designated places related to the COVID–19 pandemic.
 Sec. 6. Resumption of border wall system construction.
 Sec. 7. Congressional resolution of disapproval regarding termination of the exclusive authority of immigration judges over asylum claims.
 Sec. 8. Treatment of aliens arriving from contiguous territory.
 Sec. 9. Minimum staffing levels.
 Sec. 10. Mandatory detention funding.
 Sec. 11. Report requirement.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The current situation at the southern bor-
 4 der presents a border security and humanitarian cri-
 5 sis that threatens core national security interests
 6 and constitutes a national emergency.

7 (2) The southern border is a major entry point
 8 for criminals, gang members, and illicit narcotics.

9 (3) Recent years have seen sharp increases in
 10 the number of family units entering and seeking
 11 entry to the United States.

12 (4) If not detained, such aliens are often re-
 13 leased into the country and are often difficult to re-
 14 move from the United States because they fail to ap-
 15 pear for hearings, do not comply with orders of re-
 16 moval, or are otherwise difficult to locate.

17 **SEC. 3. SENSE OF CONGRESS.**

18 It is the sense of Congress that the President should
 19 use the authorities granted under sections 201 and 301

1 of the National Emergencies Act (50 U.S.C. 1621 and
2 1631) to declare that a national emergency exists at the
3 southern border of the United States.

4 **SEC. 4. DEFINITIONS.**

5 In this Act:

6 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
7 **TEES.**—The term “appropriate congressional com-
8 mittees” means—

9 (A) the Committee on Homeland Security
10 and Governmental Affairs of the Senate;

11 (B) the Committee on the Judiciary of the
12 Senate;

13 (C) the Committee on Appropriations of
14 the Senate;

15 (D) the Committee on Homeland Security
16 of the House of Representatives;

17 (E) the Committee on the Judiciary of the
18 House of Representatives; and

19 (F) the Committee on Appropriations of
20 the House of Representatives.

21 (2) **TACTICAL INFRASTRUCTURE.**—The term
22 “tactical infrastructure” includes boat ramps, access
23 gates, checkpoints, lighting, and roads associated
24 with a border wall system.

1 (3) TECHNOLOGY.—The term “technology” in-
2 cludes border surveillance and detection technology,
3 including linear ground detection systems, cameras,
4 underground detection sensors, and autonomous sen-
5 sor towers, associated with a border wall system.

6 **SEC. 5. TERMINATION OF SUSPENSION OF ENTRIES AND**
7 **IMPORTS FROM DESIGNATED PLACES RE-**
8 **LATED TO THE COVID-19 PANDEMIC.**

9 (a) IN GENERAL.—An order of suspension issued
10 under section 362 of the Public Health Service Act (42
11 U.S.C. 265) as a result of the public health emergency
12 relating to the Coronavirus Disease 2019 (COVID-19)
13 pandemic declared by the Secretary of Health and Human
14 Services on January 31, 2020 under section 319 of such
15 Act (42 U.S.C. 247d), and any continuation of such dec-
16 laration, shall be lifted not earlier than 120 days after the
17 date on which the Surgeon General provides written notifi-
18 cation to the appropriate committees of Congress that
19 such public health emergency declaration and all such con-
20 tinuations have been terminated.

21 (b) PROCEDURES DURING 60-DAY TERMINATION
22 WINDOW.—

23 (1) PLAN.—Not later than 30 days after the
24 date on which a written notification is provided pur-
25 suant to subsection (a) with respect to an order of

1 suspension, the Secretary of Homeland Security, in
2 consultation with the Surgeon General and the head
3 of any other Federal agency, State, Tribal, or local
4 government, or nongovernmental organization that
5 has a role in managing outcomes associated with
6 such suspension (as determined by the Secretary or
7 his or her designee), shall develop and submit a plan
8 to the appropriate committees of Congress that ad-
9 dresses any possible influx of entries or imports (as
10 described in such order of suspension) related to the
11 termination of such order.

12 (2) FAILURE TO SUBMIT.—If the plan required
13 under paragraph (1) is not submitted to the appro-
14 priate committees of Congress before the end of the
15 30-day period described in such paragraph—

16 (A) the Secretary of Homeland Security
17 shall submit, not later than 7 days after the ex-
18 piration of such 30-day period, written notifica-
19 tion to the appropriate committees of Congress
20 of the status of preparing such plan and the
21 date on by such plan will be submitted in ac-
22 cordance with paragraph (1); and

23 (B) the termination of the order of suspen-
24 sion described in subsection (a) shall be delayed
25 until the date that is 30 days after the date on

1 which such plan is submitted to the appropriate
2 committees of Congress.

3 **SEC. 6. RESUMPTION OF BORDER WALL SYSTEM CON-**
4 **STRUCTION.**

5 (a) BORDER WALL SYSTEM CONSTRUCTION.—

6 (1) IN GENERAL.—

7 (A) IMMEDIATELY RESUME BORDER WALL
8 SYSTEM CONSTRUCTION.—Not later than 24
9 hours after the date of the enactment of this
10 Act, the Secretary of Homeland Security shall
11 resume all activities related to the construction
12 of the border wall system along the inter-
13 national border between the United States and
14 Mexico that were underway or being planned
15 for before January 20, 2021.

16 (B) NO CANCELLATIONS.—The Secretary
17 of Homeland Security may not cancel any con-
18 tract for activities related to border wall system
19 construction described in paragraph (1) that
20 was entered into on or before January 20,
21 2021.

22 (C) USE OF FUNDS.—The Secretary of
23 Homeland Security shall expend all funds ap-
24 propriated or explicitly obligated for border wall
25 system construction described in paragraph (1)

1 that were appropriated or obligated, as the case
2 may be, on or after October 1, 2016.

3 (D) IMPLEMENTATION PLAN.—Not later
4 than 30 days after the date of enactment of
5 this Act, the Secretary of Homeland Security
6 shall submit an implementation plan to the ap-
7 propriate congressional committees for the com-
8 pletion, by not later than September 30, 2024,
9 of the border wall system construction described
10 in paragraph (1) and funded in accordance with
11 subparagraph (C).

12 (2) PLAN TO COMPLETE TACTICAL INFRA-
13 STRUCTURE AND TECHNOLOGY ELEMENTS OF BOR-
14 DER WALL SYSTEM.—Not later than 90 days after
15 the date of the enactment of this Act, the Secretary
16 of Homeland Security shall submit an implementa-
17 tion plan to the appropriate congressional commit-
18 tees that includes quarterly benchmarks and cost es-
19 timates for satisfying all of the requirements of the
20 border wall system construction described in para-
21 graph (1)(A), including tactical infrastructure, tech-
22 nology, and other elements identified by the Depart-
23 ment of Homeland Security before January 20,
24 2021, through the expenditure of funds appropriated
25 or explicitly obligated, as the case may be, for use

1 beginning on October 1, 2016, and any additional
2 funds appropriated by Congress for such purpose.

3 (3) UPHOLD NEGOTIATED AGREEMENTS.—The
4 Secretary of Homeland Security shall ensure that all
5 agreements relating to current and future border
6 wall system construction that were executed in writ-
7 ing between the Department of Homeland Security
8 and private citizens, State, Tribal, and local govern-
9 ments, and other stakeholders are honored by the
10 Department in accordance with the terms of such
11 agreements.

12 (b) DNA COLLECTION CONSISTENT WITH FEDERAL
13 LAW.—Not later than 14 days after the date of the enact-
14 ment of this Act, the Secretary of Homeland Security shall
15 ensure and certify to the Committee on Homeland Secu-
16 rity and Governmental Affairs of the Senate and the Com-
17 mittee on Homeland Security of the House of Representa-
18 tives that U.S. Customs and Border Protection is fully
19 compliant with the DNA Fingerprint Act of 2005 (title
20 X of Public Law 109–162) at all border facilities that
21 process adults (including as part of a family unit) in the
22 custody of U.S. Customs and Border Protection.

1 **SEC. 7. CONGRESSIONAL RESOLUTION OF DISAPPROVAL**
2 **REGARDING TERMINATION OF THE EXCLU-**
3 **SIVE AUTHORITY OF IMMIGRATION JUDGES**
4 **OVER ASYLUM CLAIMS.**

5 Congress disapproves the interim final rule submitted
6 by the Executive Office for Immigration Review and U.S.
7 Citizenship and Immigration Services, relating to “Proce-
8 dures for Credible Fear Screening and Consideration of
9 Asylum, Withholding of Removal, and CAT Protection
10 Claims by Asylum Officers” (87 Fed. Reg. 18078) and
11 such rule shall have no force or effect.

12 **SEC. 8. TREATMENT OF ALIENS ARRIVING FROM CONTIG-**
13 **UOUS TERRITORY.**

14 Section 235(b)(2)(C) of the Immigration and Nation-
15 ality Act (8 U.S.C. 1225(b)(2)(C)) is amended by striking
16 “may return” and all that follows and inserting the fol-
17 lowing: “shall—”

18 “(i) return the alien to such territory,
19 or to a safe third country (as described in
20 section 208), pending a proceeding under
21 section 240; or

22 “(ii) detain the alien for further con-
23 sideration of an application for asylum,
24 which shall include a determination of
25 credible fear of persecution.”.

1 **SEC. 9. MINIMUM STAFFING LEVELS.**

2 (a) OFFICE OF ENFORCEMENT AND REMOVAL OPER-
3 ATIONS.—The Secretary of Homeland Security shall en-
4 sure that there are always not fewer than 10,000 full-time
5 equivalent employees in the Office of Enforcement and Re-
6 moval Operations of U.S. Immigration and Customs En-
7 forcement.

8 (b) U.S. BORDER PATROL.—The Secretary of Home-
9 land Security shall ensure that the authorized personnel
10 level for United States Border Patrol agents is not fewer
11 than 25,000 agents, excluding Border Patrol Reserve
12 Agents and Border Patrol Processing Coordinators.

13 (c) OFFICE OF FIELD OPERATIONS.—The Secretary
14 of Homeland Security shall ensure that the authorized
15 personnel level for U.S. Customs and Border Protection
16 officers in the Office of Field Operations is not fewer than
17 25,000 officers, excluding Agriculture Specialists.

18 **SEC. 10. MANDATORY DETENTION FUNDING.**

19 Section 386(a) of the Illegal Immigration Reform and
20 Immigrant Responsibility Act of 1996 (8 U.S.C. 1368(a))
21 is amended to read as follows:

22 “(a) INCREASE IN DETENTION FACILITIES.—

23 “(1) IN GENERAL.—The Secretary of Homeland
24 Security shall ensure that sufficient detention facili-
25 ties are available for U.S. Immigration and Customs
26 Enforcement to comply with the mandatory deten-

1 tion requirements under section 235 of the Immigra-
2 tion and Nationality Act (8 U.S.C. 1225).

3 “(2) FUNDING.—In addition to any amounts
4 otherwise appropriated for such purpose, the Sec-
5 retary of Homeland Security may use any manda-
6 tory fees collected by the Department of Homeland
7 Security for expenses incurred by the Secretary to
8 inspect, detain, transport, and provide medical care
9 and any other needed goods or services to aliens who
10 have been detained pursuant to section 235 of the
11 Immigration and Nationality Act (8 U.S.C. 1225).”.

12 **SEC. 11. REPORT REQUIREMENT.**

13 Not later than 60 days after the date of the enact-
14 ment of this Act, the Secretary of Homeland Security shall
15 submit a report to the appropriate congressional commit-
16 tees that outlines how the Department of Homeland Secu-
17 rity is attempting to mitigate border encounters.

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