



BILL ANALYSIS | Center for Homeland Security and Immigration
H.R. 1901, THE STOPPING BORDER
SURGES ACT

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TOPLINE POINTS

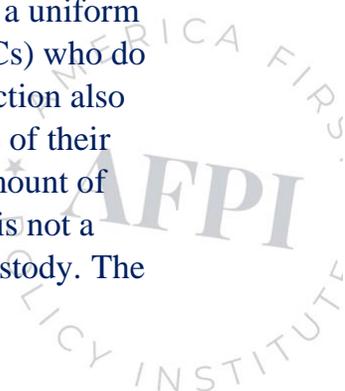
- ★ H.R. 1901 will combat child trafficking by subjecting all unaccompanied alien children to the same streamlined removal process.
- ★ This legislation will also secure the border by preventing illegal aliens from exploiting the asylum system to get into the U.S.
- ★ By solving these issues and others, H.R. 1901 will disrupt trafficking efforts, discourage economic migrants from taking the dangerous journey, and help secure our country.

H.R. 1901, introduced by Rep. Andy Biggs (AZ-05), would amend the Immigration and Nationality Act (INA) to close various loopholes that incentivize aliens, smugglers, and traffickers to attempt to enter the United States unlawfully.

If enacted, this legislation would:

Allow for the Prompt Return of All Unaccompanied Alien Children

Section 101 of the bill amends section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) (8 U.S.C. 1232) to establish a uniform process for the quick and safe return of all unaccompanied alien children (UACs) who do not have a credible fear of persecution, regardless of country of origin. This section also ensures that UACs receive a hearing with an immigration judge within 14 days of their apprehension at the southern border. Additionally, this section increases the amount of time the Department of Homeland Security (DHS) has to transfer a UAC who is not a victim of trafficking into Department of Health and Human Services (HHS) custody. The



amount of time would increase from 72 hours to 30 days. Finally, before HHS may release a UAC to a sponsor, it must collect and provide the following information about the sponsor to DHS: name; Social Security number (if applicable); date of birth; location and contact information; and immigration status (if known).

Why this provision is necessary

A loophole in current law allows for the quick and safe return of UACs from only contiguous countries such as Mexico. UACs from the rest of the world are put into lengthy removal proceedings. This disparate treatment has caused a sustained increase in the trafficking and smuggling of non-Mexican UACs, who are often released from HHS custody to the same adults responsible for trafficking or smuggling them into the country.

This bill adds several new protections for UACs to disincentivize the smuggling and trafficking of children across the border. First, it creates a new requirement that UACs determined to be victims of severe trafficking receive a hearing before an immigration judge within 14 days of being apprehended. This provision will ensure that these victims promptly receive the humanitarian protection they qualify for under our immigration laws. Next, the bill significantly increases the amount of time DHS can detain UACs before transferring them to HHS from 3 days to 30 days. Finally, it establishes a new reporting requirement of key biographic data of sponsors before UACs are released into their custody. These two provisions protect vulnerable UACs from further exploitation by preventing their quick release to unvetted sponsors who have nefarious motives.

Allow for the Detention of Family Units Apprehended at the Border

Section 102 of the bill amends section 235 of the TVPRA (8 U.S.C. 1232) to allow for the detention of family units (FMUs) while their cases are pending in immigration court. This section authorizes the release of a minor child that is part of an FMU only when the child is released to a lawfully present parent or legal guardian in the United States.

Why this provision is necessary

Under the *Flores* settlement agreement, UACs may only be detained for 20 days and then must be released. A federal district court judge reinterpreted the *Flores* settlement agreement to also limit the detention of FMUs to 20 days. This incentivized adults to bring children along for the dangerous journey north, knowing that their detention time would be limited before being released into the country. Many children are subjected to physical, emotional, and sexual abuse, and a practice of “recycling” children emerged where the same alien children are paired with unrelated adults to pose as an FMU at the border. This section expressly overrides the *Flores* settlement agreement, ensures that



FMUs are not separated while their immigration cases are pending, and prevents the recycling of vulnerable children by only allowing them to be released to a lawfully present parent or legal guardian.

Raises the Credible Fear Screening Standard for Aliens Claiming Asylum at the Border

Section 201 of the bill amends section 235(b)(1)(B)(v) of the INA (8 U.S.C. 1225(b)(1)(B)(v)) to redefine “credible fear of persecution” as requiring a finding that “it is more probable than not” that the asylum claim is true.

Why this provision is necessary

A credible fear screening is the first step in the asylum process for an alien apprehended at the border. The current definition of “credible fear of persecution” has a lower threshold, requiring a finding that “there is a significant possibility” that the alien could establish eligibility for asylum. As a result of this lower threshold, more than 70% of claims pass the credible fear screening, but fewer than 15% actually qualify for asylum. A low credible fear threshold encourages smugglers and traffickers to exploit the asylum system knowing that the illegal aliens will be allowed into the United States despite most of them not being eligible for asylum.

The low threshold directly overwhelms the immigration courts by adding hundreds of thousands of cases to the docket that will eventually be denied. Currently, there is an immigration court backlog of more than 1 million cases, which pushes court dates many years down the road. As a result, legitimate cases are unduly delayed from receiving humanitarian relief, while non-meritorious cases use the extra time to disappear into the interior of the country.

Eliminates Asylum Forum Shopping

Section 204 of the bill amends section 208(a)(2)(A) of the INA (8 U.S.C. 1158(a)(2)(A)) to require an alien to show proof of having sought asylum. It also requires showing proof of a denial by each country he or she traveled through on the way to the southern border before he or she can seek asylum in the United States. This section exempts from this requirement any alien who was the victim of a severe form of trafficking or who only traveled through countries that were not parties to the 1951 United Nations (UN) refugee convention, the 1967 Protocols relating to refugees, or the UN Convention Against Torture.



Why this provision is necessary

Legitimate asylum seekers are fleeing persecution and should seek refuge in the first safe country they reach. But most aliens are traveling through multiple countries that have functioning asylum systems in favor of coming to the United States. Such forum shopping indicates that decisions are driven by economic considerations rather than reaching safety.

Restricts Asylum Eligibility to Aliens Who Go to Ports of Entry

Section 208 of the bill amends section 208(a)(1) of the INA (8 U.S.C. 1158(a)(1)) by making aliens who do not present themselves at a port of entry ineligible to apply for asylum.

Why this provision is necessary

Cartels and smugglers exploit aliens crossing between ports of entry to distract or otherwise occupy Customs and Border Protection personnel in order for them to sneak illicit drugs, terrorists, and other bad actors into our country. This provision discourages illegal entry by requiring asylum seekers to go to a port of entry to ensure a safe and orderly asylum screening process and to free up Border Patrol resources to secure the border.

Automatically Revokes Asylum Status if Alien Returns to Country of Claimed Persecution

Section 205 of the bill amends section 208(c) of the INA (8 U.S.C. 1158(c)) by adding paragraph (4) to automatically terminate a grant of asylum if the alien subsequently returns to the country he or she claimed persecution from on account of a protected status. A protected status includes race, religion, nationality, membership in a particular social group, or political opinion. This section provides an exception for a change in country conditions since the alien was granted asylum and allows the DHS Secretary to waive this provision if the alien “had a compelling reason for the return” to the home country.

Why this provision is necessary

To qualify for asylum, an alien must establish past persecution or a well-founded fear of persecution on account of a protected class. A legitimate asylee would not return to the country of past persecution, but there are countless examples of aliens granted asylum



asylum seekers making such trips, which raise the specter that the asylum claim was bogus.

Enhances Penalties for Filing Frivolous and Fraudulent Asylum Claims

Section 206 of the bill amends section 208(d)(4) of the INA (8 U.S.C. 1158(d)(4)) to permanently bar an alien who makes a frivolous asylum claim from any future immigration benefit. This section also requires a written notice to be included on the asylum application to put the alien on constructive notice of the consequences of filing a frivolous application. This section creates an exception to allow still an alien who files a frivolous asylum application to apply for statutory withholding of removal under section 241(b)(3) of the INA or protections under the Convention Against Torture.

Section 213 of the bill amends 18 USC 1001 to add a new section that subjects an alien to a fine and/or up to 10 years imprisonment if he or she knowingly and willfully (1) “makes any materially false, fictitious, or fraudulent” statements or (2) “makes or uses any false writings or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.”

Section 214 of the bill amends 18 USC 3291 to make fraud and misuse of visas (18 USC 1546) subject to a 10-year statute of limitations from the date the fraud is discovered.

Why this provision is necessary

Fewer than 15% of asylum claims made by illegal aliens apprehended at the southern border succeed. Enhancing the penalties for filing frivolous and fraudulent asylum claims are necessary to further deter the smuggling and trafficking of economic migrants from exploiting the asylum system as a means of gaining entry into the United States. While not all of the cases currently denied would be subject to these penalties if they became law, many could run afoul of one or more of these penalties depending on the specific circumstances of the claims.

Asylum Application Integrity Measures

Section 209 of the bill amends section 208(a)(2)(B) of the INA (8 U.S.C. 1158(a)(2)(B)) to reduce the amount of time an alien has to file for asylum from 1 year to 6 months after the alien’s arrival in the United States

Section 212 of the bill amends section 208(d)(2) of the INA (8 U.S.C. 1158(d)(2)) to increase the amount of time an asylum application must be pending before the alien is



eligible for a work permit from 180 days to 1 year. This section also reduces the validity of the work permit from 2 years to 6 months and makes these work permits no longer eligible for renewal.

Why this provision is necessary

Aliens legitimately fleeing persecution should be encouraged to file for asylum as quickly as possible and reducing the time period to submit the application will help streamline the process and assist immigration judges during removal hearings for aliens who failed to file in a timely manner. The ability of an illegal alien to obtain a work permit just because an application has been pending is a lucrative incentive to make fraudulent, frivolous, or otherwise non-meritorious claims. The current 180-day waiting period between the filing of an asylum application and the ability to obtain a work permit no longer serves as a sufficient deterrent for aliens to file an asylum application for the primary purpose of obtaining a work permit. Extending the amount of time the application has to be pending before the alien is eligible for a work permit and reducing the validity of the work permit will reduce the incentive of claiming asylum for the primary purpose of gaining work authorization.

Closes Juvenile Illegal Alien Loophole

Section 103 of the bill amends section 101(a)(27)(J) of the INA (8 U.S.C. 1101(a)(27)(J)) to clarify that an alien is ineligible for special immigrant juvenile (SIJ) status if reunification “with any one parent or legal guardian is not precluded by abuse, neglect, abandonment, or any similar case under State law.”

Why this provision is necessary

SIJ is a form of amnesty that awards an illegal alien juvenile with lawful permanent resident status and a path to citizenship. The current statutory definition, “whose reunification with 1 or both of the immigrant’s parents is not viable,” has been misinterpreted to allow illegal alien juveniles who live with one parent to qualify despite Congress intending this status to go to alien juveniles who are unable to live with either parent because of abuse, neglect, or abandonment.

Remove Restrictions on who can Hear UAC Asylum Claims

Section 202 of the bill amends section 208(b)(3) of the INA (8 U.S.C. 1158(b)(3)) by eliminating the provision that gave United States Citizen and Immigration Services (USCIS) asylum officers initial jurisdiction over asylum claims made by UACs.



Why this provision is necessary

USCIS asylum officers have a reputation for viewing themselves as advocates of the alien rather than adjudicators of the law. By striking this provision, any qualified DHS officer or adjudicator can hear an asylum claim made by a UAC, increasing the integrity of the system by ensuring and giving DHS the flexibility to adjust resources depending on workload demands.

Improves Transparency and Consistency in the Asylum System

Section 203 of the bill requires DHS to establish quality assurance procedures to ensure that all questions asked of aliens in expedited removal (INA 235 proceedings) are asked in a uniform manner and that the responses are recorded in a uniform manner. This section also requires DHS to develop a checklist of “standard questions and concepts” to be used for credible fear screenings and to be “routinely” updated. Additionally, this section requires an audio recording or audio-visual recording of all expedited removal interviews and, where practicable, a recording of an interview that results in the alien signing a written statement.

Why this provision is necessary

This provision ensures transparency and consistency in the asylum system by ensuring that all questions and answers during the expedited removal process are recorded and that all officers conducting credible fear screenings are working off a uniform checklist of questions that account for relevant law and country conditions.

