



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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S. 2611- Helping Unaccompanied Minors and Alleviating National Emergency Act  
(HUMANE Act)

Senator John Cornyn (R-Texas), introduced July 15, 2014

**TITLE I. Protecting Children**

***Repatriation of Unaccompanied Alien Children (UAC)*** – Amends section 235(a) of William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPA):

- Replaces the subparagraph heading “countries contiguous to the United States” with “Canada, El Salvador, Guatemala, Honduras, Mexico, and any other foreign country that the Secretary determines appropriate”;
- Replaces the section entitled “placement in removal proceedings” with a new section title “expedited due process and screening for unaccompanied alien children”;
- Further amends the TVPA by prohibiting unaccompanied alien children from being placed in the custody of a nongovernmental sponsor or released from the custody of the U.S. government until the child is repatriated.

***Expedited Due Process and Screening of Unaccompanied Alien Children*** – Amends chapter 4 of Immigration and Naturalization Act by inserting the following section, “Humane and Expedited Inspection and Screening for Unaccompanied Alien Children.”

Defines “Asylum officer” as an immigration officer who has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators, and supervised by an officer with these qualifications as well as substantial experience adjudicating asylum applications.

Not later than seven days after screening, an immigration judge shall conduct a proceeding to inspect, screen, and determine the status of the UAC who is an applicant for admission to the U.S.

Not later than seventy-two hours after the conclusion of the proceeding, the immigration judge shall issue such an order.

The immigration judge:

- Shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses;
- May issue subpoenas for attendance of witnesses and presentation of evidence;
- Is authorized to sanction by civil money penalty any action in contempt.

The proceeding may be:

- In person;
- At a location agreed to by parties, in absence of the alien;
- Through video conference;
- Through telephone conference.

If impracticable by reason of alien's mental incompetency for them to be present at proceeding, Attorney General shall prescribe safeguards to protect the rights and privileges of the alien.

Rights of the alien are:

- The privilege of being represented, at no expense to the Government, by counsel of alien's choosing who is authorized to practice in such proceedings;
- To be given reasonable opportunity to examine the evidence against them, present evidence on their own behalf, and cross-examine witnesses presented by the Government.

An alien applying for admission to the U.S. may, at any time, be permitted to withdraw such application and immediately be returned to alien's country of nationality or country of last habitual residence.

At the conclusion of the proceeding, immigration judge shall determine whether UAC likely to be admissible or eligible for any form of relief from removal.

Burden of proof on alien to prove they are likely to be entitled to be lawfully admitted to the U.S. or eligible for any form of relief from removal, or lawfully present in the U.S. pursuant to prior admission.

- If this burden of proof is met, they will be placed in further proceedings.
- If they don't meet the burden, the order will be removed without further hearing or review unless claim intention to apply for asylum or fear of persecution. In this case, they would be referred for an interview by an asylum officer.

***Asylum Interviews*** – Credible fear of persecution can be defined as a significant possibility that UAC could establish eligibility for asylum after taking into account the credibility of statements made by alien in support of their claim and other facts known by the officer.

- If determine has valid credible fear claim, alien should be held in the custody of the Secretary of Health and Human Services during further consideration of application for asylum.
- Removal without further review if no credible fear; officer shall prepare written record of determination, and immigration judge will conduct a prompt review, upon alien's request, of determination.

Mandatory protective custody by the Secretary of Health and Human Services pending final determination of credible fear and after determination that alien does not have such fear, and until removal.

Attorney General shall establish process for prompt review of order against alien who claims to have been lawfully admitted for permanent residence, admitted as a refugee, or granted asylum.

***Judicial Review of Orders of Removal*** – Amends section 242 of Immigration and Naturalization Act.

***Due Process Protections for Unaccompanied Alien Children Present in U.S.*** – Beginning sixty days after enactment, the Secretary of Homeland Security may permit UAC who was issued a Notice to Appear during period between January 1, 2013 and enactment of this Act:

- To appear, in person, before an immigration judge authorized to conduct proceedings;
- To attest to desire to apply for admission to U.S.;
- To file motion to expunge
  - Any final order of removal issued against;
  - Any Notice to Appear issued during this period;
- To apply for admission to U.S. by being placed in proceedings.

Immigration judge may grant motion filed upon finding that:

- Petitioner was a UAC on date on which Notice to Appear issued;
- Notice to Appear issued during period between January 1, 2013 and enactment;
- UAC applying for admission to the U.S.;
- Granting of motion would not be manifestly unjust.

Upon granting of motion to expunge:

- Secretary of Homeland Security shall immediately expunge any final order of removal resulting from proceeding;
- Immigration judge who granted shall immediately inspect and screen petitioner for admission to U.S. by conducting proceeding.

UAC granted motion shall be held in the custody of the Secretary of Health and Human Services.

***Emergency Immigration Judge Resources*** – Not later than fourteen days after enactment, the Attorney General shall designate up to forty immigration judges dedicated to conducting humane and expedited inspection and screening for UACs. Attorney General shall ensure sufficient immigration judge resources dedicated to this purpose.

***Protecting Children from Human Traffickers, Sex Offenders, and Other Criminals*** – Amends section 235(c)(3) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

Secretary of Health and Human Services may not place UAC in custody of an individual who has been convicted of a sex offense, or a crime involving a severe form of trafficking in persons. To ensure this, a criminal background check should be conducted through the Investigative Division of the Federal Bureau of Investigation and criminal history repositories of all states the individual lists as current or former residences.

## **TITLE II. Border Security and Trade Facilitation**

***Definitions*** – “Appropriate congressional committees” are the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Homeland Security of the House of Representatives.

“Cocaine removal effectiveness rate” is the percentage that results from dividing the amount of cocaine removed by Department of Homeland Security’s maritime security components inside or outside transit zone, by total documented cocaine flow rate as contained in Federal drug databases.

“Consequence delivery system” is a series of consequences applied to persons illegally entering the U.S. by Border Patrol to prevent illegal border crossing recidivism.

“Got away” is an illegal border crosser who, after making illegal entry into the U.S., is not turned back or apprehended.

“High traffic areas” are sectors along the north and south borders of the U.S. that are within the responsibility of the Border Patrol that have the most illicit cross-border activity, informed through situational awareness.

“Illegal border crossing effectiveness rate” is the percentage resulting from dividing the number of apprehensions and turn backs by number of apprehensions, turn backs, and got aways.

A “major violator” is a person or entity who has engaged in serious criminal activities at any land, air, or sea port of entry.

“Operational control” is a condition in which there is not lower than ninety percent of illegal border crossing effectiveness rate, informed by situational awareness, and significant reduction in the movement of illicit drugs and other contraband through such areas being achieved.

“Situational awareness” is knowledge and understanding of current illicit cross-border activity, individual cross-border threats and trends concerning illicit trafficking and unlawful crossings, and the ability to forecast future shifts in threats and trends.

“Transit zone” is the sea corridors of the western Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and eastern Pacific Ocean through which undocumented migrants and illicit drugs transit, either directly or indirectly, to U.S.

“Turn back” is an illegal border crosser who, after making an illegal entry, returns to the country from which they entered.

***Border Security Results*** – Not later than ninety days after enactment, every one hundred eighty days after until the Comptroller General reports on results of review, and annually after such a report, the Secretary of Homeland Security shall submit a report to the appropriate congressional committees and Government Accountability Office that:

- Assesses and describes state of situational awareness and operational control;
- Identifies high traffic areas and illegal border crossing effectiveness rate for each sector along north and south border within responsibility of Border Patrol.

Not later than ninety days after initial report received, Comptroller General shall submit a report to the appropriate congressional committees regarding verification of data and methodology used to determine high traffic areas and illegal border crossing effectiveness rate.

***Strategy to Achieve Situational Awareness and Operational Control of Border*** – Not later than one hundred eighty days after enactment, the Secretary of Homeland Security shall submit to the appropriate congressional committees a comprehensive strategy for:

- Gaining and maintaining situational awareness and operational control of high traffic areas not later than two years after date of submission of implementation place required;
- Gaining and maintaining operational control along suborder of U.S. not later than five years after such date of submission.

Not later than ninety days after submission of strategy required, Secretary of Homeland Security shall submit to the appropriate congressional committees and to Government Accountability Office an implementation plan for each of the border security components of the Department of Homeland Security to carry out such a strategy.

- Not later than ninety days after receiving an implementation plan, the Comptroller General shall submit an assessment of the plan to appropriate congressional committees.

Not later than one hundred eighty days after submission of each Quadrennial Homeland Security Reviews, the Secretary of Homeland Security shall submit to the appropriate congressional committees an updated strategy and implementation plan.

Not later than one hundred twenty days after enactment, the Secretary of Homeland Security shall implement metrics, informed by situational awareness, to measure the effectiveness of security between ports of entry as well as a separate report for at ports of entry.

Inspector General of the Department of Homeland Security shall carry out covert testing at ports of entry and submit to the Secretary of Homeland Security and appropriate congressional committees a report containing the results.

Not later than one hundred twenty days after enactment, the Secretary of Homeland Security shall implement metrics, informed by situational awareness, to measure the effectiveness of security in the maritime environment.

- The Secretary of Homeland Security shall collaborate with the head of the national laboratory within Department of Homeland Security laboratory network with expertise in border security and the head of the border security university-based center within the Department of Homeland Security centers of excellence network to develop and ensure the suitability and statistical validity of metrics.
- Head of national laboratory and head of border security university-based center shall make recommendations to the Secretary of Homeland Security for other suitable metrics that may be used to measure the effectiveness of border security.
- The Secretary shall also consult with the Governors of every border state and representatives of Border Patrol and U.S. Customs and Border Protection regarding the development of metrics.

The Secretary of Homeland Security shall provide the Government Accountability Office with data and methodology used to develop such metrics.

- Not later than two hundred seventy days after receiving, the Comptroller General shall submit a report to the appropriate congressional committee on suitability and statistical validity of such data and methodology.

***Certifications and Reports Relating to Operational Control*** – Within two years after implementation plan submitted, if the Secretary of Homeland Security determines situational awareness and operational control of high traffic areas have been achieved, the Secretary shall submit an attestation of achievement to appropriate congressional committees and Comptroller General of U.S.

If operational control achieved within five years of submission of implementation plan, the Secretary shall then submit an attestation.

Comptroller General shall review and assess attestations. Not later than one hundred twenty days after conducting this review, they shall submit a report.

***Failure to Achieve Situational Awareness or Operational Control*** – If situational awareness or operational control have not been achieved, the Secretary shall, not later than sixty days after the two year or five year point passed, submit a report to appropriate congressional committees that:

- Describes why situational awareness or operational control, or both, have not been achieved;
- Includes a description of impediments incurred, potential remedies, and recommendations to achieve situational awareness, operational control, or both.

Not later than one year after enactment, the Comptroller General shall submit a report to the appropriate congressional committees that addresses:

- Areas of overlap in responsibilities within border security functions of Department of Homeland Security;
- Relative cost effectiveness of border security strategies including the deployment of personnel and technology, and construction of virtual and physical barriers.

Not later than sixty days after enactment then annually thereafter, the Secretary of Homeland Security shall submit a report to the appropriate congressional committees that contains:

- Resource allocation model for current and future year staffing requirements;
- Detailed information on the level of manpower available at all land, air, and sea ports of entry and between ports of entry;
- Detailed information that describes the difference between staffing model suggestions and actual staffing at each port of entry and between ports of entry;
- Detailed information examining security impacts and competitive impacts of entering into reimbursement agreement with foreign governments for U.S. Customs and Border Protection preclearance facilities.

***Prohibition on Land Border Crossing Fee Study*** – Secretary of Homeland Security may not conduct any study relating to imposition of border crossing fee at land ports of entry.

***Border Security Resources*** – Secretary of Homeland Security with the Commissioner of U.S. Customs and Border Protection shall upgrade existing technological assets and equipment on the southern border.

The Secretary shall upgrade existing physical and tactical infrastructure of Department of Homeland Security, and construct and acquire additional physical and tactical infrastructure on southern border.

Secretary is authorized to increase the number of trained active-duty U.S. Customs and Border Protection officers deployed on the southern border.

Secretary authorized to conduct enhanced recruiting operations for U.S. Customs and Border Protection personnel, conduct additional training academies, and promulgate regulations allowing for expedited training.

Amounts authorized may be expended, with the approval of the Secretary of Defense and Secretary of Homeland Security, for the Governor of any State to order any units of personnel of National Guard to perform operations and missions on the southern border.

National Guard has temporary authority to:

- Provide assistance for law enforcement, including interdiction of human trafficking, illicit drugs, and contraband crossing border;
- Assist in provision of humanitarian relief;
- Increase ground-based mobile surveillance systems;
- Deploy additional unmanned aerial systems and manned aircraft sufficient to maintain continuous surveillance of southern border;
- Deploy and provide capability for radio communications interoperability between Customs and Border Protection and State, local, and tribal law enforcement agencies;
- Construct checkpoints along the southern border to bridge the gap to long-term permanent checkpoints;
- Provide assistance to U.S. Customs and Border Protection, particularly in rural, high-trafficked areas, as designated by the Commissioner;
- Enhance law enforcement rotary wing operations supporting quick reaction forces, medical air evacuations, and incident awareness and assessment operations;

- Provide equipment and training to law enforcement agencies.

The Secretary of Defense shall deploy such material, equipment, and logistical support as may be necessary to ensure the success of operations and missions conducted by the National Guard.

The National Guard shall not be included in calculations to determine compliance with limits on end strength for the National Guard, or limits on number that may be placed on active duty for operational support.

Such sums as may be necessary for these changes are authorized to be appropriated for fiscal years 2014 and 2015.

***State and Local Assistance*** – Federal Emergency Management Agency (FEMA) shall enhance law enforcement preparedness, humanitarian responses, and operational readiness along south border through Operation Stonegarden.

Amounts allocated for grants and reimbursements to State and local governments in Border Patrol sectors on south border for personnel, overtime, travel, costs related to combating illegal immigration and drug smuggling, and costs related to providing humanitarian relief to UAC who have entered the U.S.

Allocations for grants and reimbursements shall be made by FEMA through a competitive process.

Such sums as may be necessary are authorized to be appropriated for fiscal years 2014 and 2015.

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