

114TH CONGRESS
1ST SESSION

S. 44

To provide for the expedited processing of unaccompanied alien children illegally entering the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2015

Mr. VITTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the expedited processing of unaccompanied alien children illegally entering the United States, 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. EQUAL TREATMENT OF UNACCOMPANIED**
4 **ALIEN CHILDREN.**

5 Section 235 of the William Wilberforce Trafficking
6 Victims Protection Reauthorization Act of 2008 (8 U.S.C.
7 1232) is amended—

8 (1) in subsection (a)—

9 (A) in paragraph (2)—

1 (i) by amending the paragraph head-
2 ing to read as follows: “RULES FOR UNAC-
3 COMPANIED ALIEN CHILDREN”;

4 (ii) in subparagraph (A), by striking
5 “who is a national or habitual resident of
6 a country that is contiguous with the
7 United States”;

8 (iii) in subparagraph (B)—

9 (I) in the matter preceding clause
10 (i), by striking “may” and inserting
11 “shall”; and

12 (II) in clause (ii), by inserting
13 “not later than 72 hours after the
14 child is screened under paragraph (4)
15 by placing the child on the next avail-
16 able flight to such country, subject to
17 determinations of cost, feasibility and
18 any repatriation agreements with such
19 country” before the period at the end;
20 and

21 (iv) in subparagraph (C), by striking
22 “countries contiguous to the United
23 States” and inserting “countries from
24 which large numbers of unaccompanied

1 alien children are unlawfully entering the
2 United States”;

3 (B) in paragraph (4)—

4 (i) by striking “Within 48 hours of”
5 and inserting the following:

6 “(A) IN GENERAL.—Not later than 48
7 hours after”; and

8 (ii) by striking “Nothing in this para-
9 graph” and inserting the following:

10 “(B) GANG AFFILIATION.—If an immigra-
11 tion officer determines that an unaccompanied
12 alien child is, or has been, affiliated with a
13 criminal street gang (as defined in section
14 521(a) of title 18, United States Code), the
15 child shall be treated in accordance with para-
16 graph (2)(B).

17 “(C) SAVINGS PROVISION.—Nothing in
18 this paragraph”; and

19 (C) in paragraph (5)(D), by striking “from
20 a contiguous country subject to exceptions
21 under subsection (a)(2)” and inserting “de-
22 scribed in paragraph (2)(A)”; and

23 (2) in subsection (c)—

24 (A) by striking paragraphs (2) through
25 (4);

1 (B) by redesignating paragraphs (5) and
2 (6) as paragraphs (3) and (4), respectively; and
3 (C) by inserting after paragraph (1) the
4 following:

5 “(2) MANDATORY DETENTION FOR UNACCOM-
6 PANIED ALIEN CHILDREN.—An unaccompanied alien
7 child who is apprehended by U.S. Border Patrol or
8 U.S. Immigration and Customs Enforcement shall
9 be detained and remain in the custody of the De-
10 partment of Homeland Security until the child—

11 “(A) voluntarily departs from the United
12 States in accordance with section 240B of the
13 Immigration and Nationality Act (8 U.S.C.
14 1229e);

15 “(B) is expeditiously removed from the
16 United States in accordance with—

17 “(i) an order of removal issued in ac-
18 cordance with section 235(b)(1) of such
19 Act (8 U.S.C. 1225(b)(1)); or

20 “(ii) a final order of removal issued at
21 the conclusion of special removal pro-
22 ceedings conducted pursuant to section
23 240 of such Act (8 U.S.C. 1229a); or

24 “(C) is legally admitted into the United
25 States as—

1 “(i) a refugee under section 207 of
2 such Act (8 U.S.C. 1157); or

3 “(ii) an asylee under section 208 of
4 such Act (8 U.S.C. 1158).”.

5 **SEC. 2. EXPEDITED DUE PROCESS AND SCREENING OF UN-**
6 **ACCOMPANIED ALIEN CHILDREN.**

7 (a) IN GENERAL.—Chapter 4 of the Immigration and
8 Nationality Act (8 U.S.C. 1221 et seq.) is amended by
9 inserting after section 235A the following:

10 **“SEC. 235B. HUMANE AND EXPEDITED INSPECTION AND**
11 **SCREENING FOR UNACCOMPANIED ALIEN**
12 **CHILDREN.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) ASYLUM OFFICER.—The term ‘asylum offi-
15 cer’ means an immigration officer who—

16 “(A) has had professional training in coun-
17 try conditions, asylum law, and interview tech-
18 niques comparable to that provided to full-time
19 adjudicators of applications under section 208,
20 and

21 “(B) is supervised by an officer who—

22 “(i) meets the condition described in
23 subparagraph (A); and

24 “(ii) has had substantial experience
25 adjudicating asylum applications.

1 “(2) SUBSTANTIATED FEAR OF PERSECU-
2 TION.—The term ‘substantiated fear of persecution’
3 means, after taking into account the credibility of
4 the statements made by the alien in support of the
5 alien’s claim and such other facts as are known to
6 the officer, there is a significant possibility that the
7 alien could establish eligibility for asylum under sec-
8 tion 208.

9 “(b) PROCEEDING.—

10 “(1) IN GENERAL.—Not later than 7 days after
11 the screening of an unaccompanied alien child under
12 section 235(a)(4) of the William Wilberforce Traf-
13 ficking Victims Protection Reauthorization Act of
14 2008 (8 U.S.C. 1232(a)(4)), an immigration judge
15 shall conduct a proceeding to inspect, screen, and
16 determine the status of an unaccompanied alien
17 child who is an applicant for admission to the
18 United States.

19 “(2) BIOMETRIC DATA COLLECTION.—The in-
20 spection and screening required under paragraph (1)
21 shall include the collection of biometric data from
22 each unaccompanied alien child, including photo-
23 graphs and fingerprints.

24 “(3) TIME LIMIT.—Not later than 72 hours
25 after the conclusion of a proceeding with respect to

1 an unaccompanied alien child under this section, the
2 immigration judge who conducted such proceeding
3 shall issue an order pursuant to subsection (e).

4 “(c) CONDUCT OF PROCEEDING.—

5 “(1) AUTHORITY OF IMMIGRATION JUDGE.—

6 The immigration judge conducting a proceeding
7 under this section—

8 “(A) shall administer oaths, receive evi-
9 dence, and interrogate, examine, and cross-ex-
10 amine the alien and any witnesses;

11 “(B) may issue subpoenas for the attend-
12 ance of witnesses and presentation of evidence;
13 and

14 “(C) is authorized to sanction by civil
15 money penalty any action (or inaction) in con-
16 tempt of the judge’s proper exercise of author-
17 ity under this Act.

18 “(2) FORM OF PROCEEDING.—A proceeding
19 under this section may take place—

20 “(A) in person;

21 “(B) at a location agreed to by the parties,
22 in the absence of the alien;

23 “(C) through video conference; or

24 “(D) through telephone conference.

1 “(3) PRESENCE OF ALIEN.—If it is impracti-
2 cable by reason of an alien’s mental incompetency
3 for the alien to be present at the proceeding, the At-
4 torney General shall prescribe safeguards to protect
5 the rights and privileges of the alien.

6 “(4) RIGHTS OF THE ALIEN.—In a proceeding
7 under this section—

8 “(A) the alien shall be given the privilege
9 of being represented, at no expense to the Gov-
10 ernment, by counsel of the alien’s choosing who
11 is authorized to practice in such proceedings;

12 “(B) the alien shall be given a reasonable
13 opportunity—

14 “(i) to examine the evidence against
15 the alien;

16 “(ii) to present evidence on the alien’s
17 own behalf; and

18 “(iii) to cross-examine witnesses pre-
19 sented by the Government;

20 “(C) the rights set forth in subparagraph
21 (B) shall not entitle the alien—

22 “(i) to examine such national security
23 information as the Government may prof-
24 fer in opposition to the alien’s admission to
25 the United States; or

1 “(ii) to an application by the alien for
2 discretionary relief under this Act; and

3 “(D) a complete record shall be kept of all
4 testimony and evidence produced at the pro-
5 ceeding.

6 “(5) WITHDRAWAL OF APPLICATION FOR AD-
7 MISSION.—In the discretion of the Attorney General,
8 an alien applying for admission to the United States
9 may, and at any time, be permitted to withdraw
10 such application and immediately be returned to the
11 alien’s country of nationality or country of last ha-
12 bitual residence.

13 “(d) DECISION AND BURDEN OF PROOF.—

14 “(1) DECISION.—

15 “(A) IN GENERAL.—At the conclusion of a
16 proceeding under this section, the immigration
17 judge shall determine whether an unaccom-
18 panied alien child is likely to be—

19 “(i) admissible to the United States;

20 or

21 “(ii) eligible for any form of relief
22 from removal under this Act.

23 “(B) EVIDENCE.—The determination of
24 the immigration judge under subparagraph (A)

1 shall be based only on the evidence produced at
2 the hearing.

3 “(2) BURDEN OF PROOF.—

4 “(A) IN GENERAL.—In a proceeding under
5 this section, an alien who is an applicant for
6 admission has the burden of establishing, by a
7 preponderance of the evidence, that the alien—

8 “(i) is likely to be entitled to be law-
9 fully admitted to the United States or eli-
10 gible for any form of relief from removal
11 under this Act; or

12 “(ii) is lawfully present in the United
13 States pursuant to a prior admission.

14 “(B) ACCESS TO DOCUMENTS.—In meeting
15 the burden of proof under subparagraph (A)(ii),
16 the alien shall be given access to—

17 “(i) the alien’s visa or other entry
18 document, if any; and

19 “(ii) any other records and docu-
20 ments, not considered by the Attorney
21 General to be confidential, pertaining to
22 the alien’s admission or presence in the
23 United States.

24 “(e) ORDERS.—

1 “(1) PLACEMENT IN FURTHER PRO-
2 CEEDINGS.—If an immigration judge determines
3 that the unaccompanied alien child has met the bur-
4 den of proof under subsection (d)(2), the judge shall
5 order the alien to be placed in further proceedings
6 in accordance with section 240.

7 “(2) ORDERS OF REMOVAL.—If an immigration
8 judge determines that the unaccompanied alien child
9 has not met the burden of proof required under sub-
10 section (d)(2), the judge shall order the alien re-
11 moved from the United States without further hear-
12 ing or review unless the alien claims—

13 “(A) an intention to apply for asylum
14 under section 208; or

15 “(B) a substantiated fear of persecution.

16 “(3) CLAIMS FOR ASYLUM.—If an unaccom-
17 panied alien child described in paragraph (2) claims
18 an intention to apply for asylum under section 208
19 or a substantiated fear of persecution, the officer
20 shall order the alien referred for an interview by an
21 asylum officer under subsection (f).

22 “(f) ASYLUM INTERVIEWS.—

23 “(1) CONDUCT BY ASYLUM OFFICER.—An asy-
24 lum officer shall conduct interviews of aliens referred
25 under subsection (e)(3).

1 “(2) REFERRAL OF CERTAIN ALIENS.—If the
2 officer determines at the time of the interview that
3 an alien has a substantiated fear of persecution, the
4 alien shall be held in the custody of the Secretary
5 of Health and Human Services pursuant to section
6 235(b) of the William Wilberforce Trafficking Vic-
7 tims Protection Reauthorization Act of 2008 (8
8 U.S.C. 1232(b)) during further consideration of the
9 application for asylum.

10 “(3) REMOVAL WITHOUT FURTHER REVIEW IF
11 NO SUBSTANTIATED FEAR OF PERSECUTION.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (C), if the asylum officer determines that
14 an alien does not have a substantiated fear of
15 persecution, the officer shall order the alien re-
16 moved from the United States without further
17 hearing or review.

18 “(B) RECORD OF DETERMINATION.—The
19 officer shall prepare a written record of a deter-
20 mination under subparagraph (A), which shall
21 include—

22 “(i) a summary of the material facts
23 as stated by the applicant;

24 “(ii) such additional facts (if any) re-
25 lied upon by the officer;

1 “(iii) the officer’s analysis of why, in
2 light of such facts, the alien has not estab-
3 lished a substantiated fear of persecution;
4 and

5 “(iv) a copy of the officer’s interview
6 notes.

7 “(C) REVIEW OF DETERMINATION.—

8 “(i) RULEMAKING.—The Attorney
9 General shall establish, by regulation, a
10 process by which an immigration judge will
11 conduct a prompt review, upon the alien’s
12 request, of a determination under subpara-
13 graph (A) that the alien does not have a
14 substantiated fear of persecution.

15 “(ii) MANDATORY COMPONENTS.—
16 The review described in clause (i)—

17 “(I) shall include an opportunity
18 for the alien to be heard and ques-
19 tioned by the immigration judge, ei-
20 ther in person or by telephonic or
21 video connection; and

22 “(II) shall be conducted—

23 “(aa) as expeditiously as
24 possible;

1 “(bb) within the 24-hour pe-
2 riod beginning at the time the
3 asylum officer makes a deter-
4 mination under subparagraph
5 (A), to the maximum extent
6 practicable; and

7 “(cc) in no case later than 7
8 days after such determination.

9 “(D) MANDATORY PROTECTIVE CUS-
10 TODY.—Any alien subject to the procedures
11 under this paragraph shall be held in the cus-
12 tody of the Department of Homeland Secu-
13 rity—

14 “(i) pending a final determination of
15 substantiated fear of persecution; and

16 “(ii) after a determination that the
17 alien does not have such a fear, until the
18 alien is removed.

19 “(g) LIMITATION ON ADMINISTRATIVE REVIEW.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2) and subsection (f)(4)(C), a removal order
22 entered in accordance with subsection (e)(2) or
23 (f)(4)(A) is not subject to administrative appeal.

24 “(2) RULEMAKING.—The Attorney General
25 shall establish, by regulation, a process for the

1 prompt review of an order under subsection (e)(2)
 2 against an alien who claims under oath, or as per-
 3 mitted under penalty of perjury under section 1746
 4 of title 28, United States Code, after having been
 5 warned of the penal ties for falsely making such
 6 claim under such conditions to have been—

7 “(A) lawfully admitted for permanent resi-
 8 dence;

9 “(B) admitted as a refugee under section
 10 207; or

11 “(C) granted asylum under section 208.”.

12 (b) CLERICAL AMENDMENT.—The table of contents
 13 for the Immigration and Nationality Act (8 U.S.C. 1101
 14 et seq.) is amended by inserting after the item relating
 15 to section 235A the following:

“Sec. 235B. Humane and expedited inspection and screening for unaccom-
 panied alien children.”.

16 **SEC. 3. ASYLUM SEEKERS.**

17 (a) REFUGEE DEFINED.—Section 101(a)(42) of the
 18 Immigration and Nationality Act (8 U.S.C. 1101(a)(42))
 19 is amended—

20 (1) in subparagraph (A), by striking “because
 21 of persecution or a well-founded fear of persecution
 22 on account of” and inserting “the alien’s life or free-
 23 dom would be threatened in that country because of
 24 the alien’s”; and

1 (2) in subparagraph (B), by striking “who is
2 persecuted or who has a well-founded fear of perse-
3 cution on account of” and inserting “the person’s
4 life or freedom is threatened if the person remains
5 in that country because of the person’s”.

6 (b) MANDATORY DETENTION.—Section 208(d) of the
7 Immigration and Nationality Act (8 U.S.C. 1158(d)) is
8 amended by adding at the end the following:

9 “(8) DETENTION.—The Secretary of Homeland
10 Security shall detain any alien seeking asylum under
11 this section until the alien—

12 “(A) is removed from the United States in
13 accordance with—

14 “(i) an order of removal issued in ac-
15 cordance with section 235(b)(1); or

16 “(ii) a final order of removal issued at
17 the conclusion of special removal pro-
18 ceedings conducted pursuant to section
19 240; or

20 “(B) granted asylum under subsection
21 (b).”.

22 **SEC. 4. EXTENSION OF BAR TO REENTRY.**

23 Section 212(a)(9) of the Immigration and Nationality
24 Act (8 U.S.C. 1182(a)(9)) is amended—

1 (1) in subparagraph (A)(i) by striking “5
2 years” and inserting “10 years”; and

3 (2) in subparagraph (B)(i)(I), by striking “3
4 years” and inserting “10 years”.

5 **SEC. 5. REPORTING REQUIREMENT.**

6 The Secretary of Homeland Security shall submit an
7 annual report to Congress that identifies, for the previous
8 12-month period—

9 (1) the number of aliens unlawfully present in
10 the United States who were apprehended by, or
11 placed in the physical custody of, U.S. Border Patrol
12 or U.S. Immigration and Customs Enforcement;

13 (2) the number of aliens described in paragraph
14 (1) who were deported from the United States pur-
15 suant to a final order of removal;

16 (3) the number of aliens described in paragraph
17 (1) who departed from the United States without an
18 order of removal (voluntary departures); and

19 (4) the number of aliens who were granted ref-
20 ugee status or asylum.

○