

113TH CONGRESS
2D SESSION

S. _____

To prohibit future consideration of deferred action for childhood arrivals or work authorization for aliens who are not in lawful status, to facilitate the expedited processing of minors entering the United States across the southern border, and to require the Secretary of Defense to reimburse States for National Guard deployments in response to large-scale border crossings of unaccompanied alien children from noncontiguous countries.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To prohibit future consideration of deferred action for childhood arrivals or work authorization for aliens who are not in lawful status, to facilitate the expedited processing of minors entering the United States across the southern border, and to require the Secretary of Defense to reimburse States for National Guard deployments in response to large-scale border crossings of unaccompanied alien children from noncontiguous countries.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protect Children and
3 Families Through the Rule of Law Act”.

4 **SEC. 2. LIMITATION ON EXECUTIVE IMMIGRATION AU-**
5 **THORITY.**

6 No agency or instrumentality of the Federal Govern-
7 ment may use Federal funding or resources—

8 (1) to consider or adjudicate any new or pre-
9 viously denied application of any alien requesting
10 consideration of deferred action for childhood arriv-
11 als, as authorized by Executive memorandum on Au-
12 gust 15, 2012, or by any other succeeding executive
13 memorandum authorizing a similar program; or

14 (2) to authorize any alien to work in the United
15 States if such alien—

16 (A) was not lawfully admitted into the
17 United States in compliance with the Immigra-
18 tion and Nationality Act (8 U.S.C. 1101 et
19 seq.); and

20 (B) is not in lawful status in the United
21 States on the date of the enactment of this Act.

22 **SEC. 3. REPATRIATION OF UNACCOMPANIED ALIEN CHIL-**
23 **DREN.**

24 Section 235(a) of the William Wilberforce Trafficking
25 Victims Protection Reauthorization Act of 2008 (8 U.S.C.
26 1232(a)) is amended—

1 (1) in paragraph (2)—

2 (A) by amending the paragraph heading to
3 read as follows: “RULES FOR UNACCOMPANIED
4 ALIEN CHILDREN”;

5 (B) in subparagraph (A), in the matter
6 preceding clause (i), by striking “who is a na-
7 tional or habitual resident of a country that is
8 contiguous with the United States”; and

9 (C) in subparagraph (C)—

10 (i) by amending the subparagraph
11 heading to read as follows: “AGREEMENTS
12 WITH FOREIGN COUNTRIES”; and

13 (ii) in the matter preceding clause (i),
14 by striking “countries contiguous to the
15 United States” and inserting “Canada, El
16 Salvador, Guatemala, Honduras, Mexico,
17 and any other foreign country that the
18 Secretary determines appropriate”; and

19 (2) in paragraph (5)(D)—

20 (A) in the subparagraph heading, by strik-
21 ing “PLACEMENT IN REMOVAL PROCEEDINGS”
22 and inserting “EXPEDITED DUE PROCESS AND
23 SCREENING FOR UNACCOMPANIED ALIEN CHIL-
24 DREN”;

1 (B) in the matter preceding clause (i), by
2 striking “, except for an unaccompanied alien
3 child from a contiguous country subject to the
4 exceptions under subsection (a)(2), shall be—”
5 and inserting “who does not meet the criteria
6 listed in paragraph (2)(A)—”;

7 (C) by striking clause (i) and inserting the
8 following:

9 “(i) shall be placed in a proceeding in
10 accordance with section 235B of the Immi-
11 gration and Nationality Act, which shall
12 commence not later than 7 days after the
13 screening of an unaccompanied alien child
14 described in paragraph (4);”;

15 (D) by redesignating clauses (ii) and (iii)
16 as clauses (iii) and (iv), respectively;

17 (E) by inserting after clause (i) the fol-
18 lowing:

19 “(ii) may not be placed in the custody
20 of a nongovernmental sponsor or otherwise
21 released from the custody of the United
22 States Government until the child is repa-
23 triated unless the child is the subject of an
24 order under section 235B(e)(1) of the Im-
25 migration and Nationality Act;”;

1 (F) in clause (iii), as redesignated, by in-
2 serting “is” before “eligible”; and

3 (G) in clause (iv), as redesignated, by in-
4 serting “shall be” before “provided”.

5 **SEC. 4. EXPEDITED DUE PROCESS AND SCREENING OF UN-**
6 **ACCOMPANIED ALIEN CHILDREN .**

7 (a) AMENDMENTS TO IMMIGRATION AND NATION-
8 ALITY ACT.—

9 (1) IN GENERAL.—Chapter 4 of the Immigra-
10 tion and Nationality Act is amended by inserting
11 after section 235A the following:

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

15 “(a) DEFINED TERM.—In this section, the term ‘asy-
16 lum officer’ means an immigration officer who—

17 “(1) has had professional training in country
18 conditions, asylum law, and interview techniques
19 comparable to that provided to full-time adjudicators
20 of applications under section 208, and

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

22 “(A) meets the condition described in
23 paragraph (1); and

24 “(B) has had substantial experience adju-
25 dicating asylum applications.

1 “(b) PROCEEDING.—

2 “(1) IN GENERAL.—Not later than 7 days after
3 the screening of an unaccompanied alien child under
4 section 235(a)(4) of the William Wilberforce Traf-
5 ficking Victims Protection Reauthorization Act of
6 2008 (8 U.S.C. 1232(a)(4)), an immigration judge
7 shall conduct a proceeding to inspect, screen, and
8 determine the status of an unaccompanied alien
9 child who is an applicant for admission to the
10 United States.

11 “(2) TIME LIMIT.—Not later than 72 hours
12 after the conclusion of a proceeding with respect to
13 an unaccompanied alien child under this section, the
14 immigration judge who conducted such proceeding
15 shall issue an order pursuant to subsection (e).

16 “(c) CONDUCT OF PROCEEDING.—

17 “(1) AUTHORITY OF IMMIGRATION JUDGE.—
18 The immigration judge conducting a proceeding
19 under this section—

20 “(A) shall administer oaths, receive evi-
21 dence, and interrogate, examine, and cross-ex-
22 amine the alien and any witnesses;

23 “(B) may issue subpoenas for the attend-
24 ance of witnesses and presentation of evidence;
25 and

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

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

7 “(A) in person;

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

10 “(C) through video conference; or

11 “(D) through telephone conference.

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

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

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

23 “(B) the alien shall be given a reasonable
24 opportunity—

1 “(i) to examine the evidence against
2 the alien;

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

5 “(iii) to cross-examine witnesses pre-
6 sented by the Government;

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

9 “(i) to examine such national security
10 information as the Government may prof-
11 fer in opposition to the alien’s admission to
12 the United States; or

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

15 “(D) a complete record shall be kept of all
16 testimony and evidence produced at the pro-
17 ceeding.

18 “(5) WITHDRAWAL OF APPLICATION FOR AD-
19 MISSION.—In the discretion of the Attorney General,
20 an alien applying for admission to the United States
21 may, and at any time, be permitted to withdraw
22 such application and immediately be returned to the
23 alien’s country of nationality or country of last ha-
24 bitual residence.

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

1 “(1) DECISION.—

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

6 “(i) admissible to the United States;

7 or

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

10 “(B) EVIDENCE.—The determination of
11 the immigration judge under subparagraph (A)
12 shall be based only on the evidence produced at
13 the hearing.

14 “(2) BURDEN OF PROOF.—

15 “(A) IN GENERAL.—In a proceeding under
16 this section, an alien who is an applicant for
17 admission has the burden of establishing, by a
18 preponderance of the evidence, that the alien—

19 “(i) is likely to be entitled to be law-
20 fully admitted to the United States or eli-
21 gible for any form of relief from removal
22 under this Act; or

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

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

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

6 “(ii) any other records and docu-
7 ments, not considered by the Attorney
8 General to be confidential, pertaining to
9 the alien’s admission or presence in the
10 United States.

11 “(e) ORDERS.—

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

18 “(2) ORDERS OF REMOVAL.—If an immigration
19 judge determines that the unaccompanied alien child
20 has not met the burden of proof required under sub-
21 section (d)(2), the judge shall order the alien re-
22 moved from the United States without further hear-
23 ing or review unless the alien claims—

24 “(A) an intention to apply for asylum
25 under section 208; or

1 “(B) a fear of persecution.

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

8 “(f) ASYLUM INTERVIEWS.—

9 “(1) DEFINED TERM.—In this subsection, the
10 term ‘credible fear of persecution’ means, after tak-
11 ing into account the credibility of the statements
12 made by the alien in support of the alien’s claim and
13 such other facts as are known to the officer, there
14 is a significant possibility that the alien could estab-
15 lish eligibility for asylum under section 208.

16 “(2) CONDUCT BY ASYLUM OFFICER.—An asy-
17 lum officer shall conduct interviews of aliens referred
18 under subsection (e)(3).

19 “(3) REFERRAL OF CERTAIN ALIENS.—If the
20 officer determines at the time of the interview that
21 an alien has a credible fear of persecution, the alien
22 shall be held in the custody of the Secretary of
23 Health and Human Services pursuant to section
24 235(b) of the William Wilberforce Trafficking Vic-
25 tims Protection Reauthorization Act of 2008 (8

1 U.S.C. 1232(b)) during further consideration of the
2 application for asylum.

3 “(4) REMOVAL WITHOUT FURTHER REVIEW IF
4 NO CREDIBLE FEAR OF PERSECUTION.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (C), if the asylum officer determines that
7 an alien does not have a credible fear of perse-
8 cution, the officer shall order the alien removed
9 from the United States without further hearing
10 or review.

11 “(B) RECORD OF DETERMINATION.—The
12 officer shall prepare a written record of a deter-
13 mination under subparagraph (A), which shall
14 include—

15 “(i) a summary of the material facts
16 as stated by the applicant;

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

19 “(iii) the officer’s analysis of why, in
20 light of such facts, the alien has not estab-
21 lished a credible fear of persecution; and

22 “(iv) a copy of the officer’s interview
23 notes.

24 “(C) REVIEW OF DETERMINATION.—

1 “(i) RULEMAKING.—The Attorney
2 General shall establish, by regulation, a
3 process by which an immigration judge will
4 conduct a prompt review, upon the alien’s
5 request, of a determination under subpara-
6 graph (A) that the alien does not have a
7 credible fear of persecution.

8 “(ii) MANDATORY COMPONENTS.—
9 The review described in clause (i)—

10 “(I) shall include an opportunity
11 for the alien to be heard and ques-
12 tioned by the immigration judge, ei-
13 ther in person or by telephonic or
14 video connection; and

15 “(II) shall be conducted—

16 “(aa) as expeditiously as
17 possible;

18 “(bb) within the 24-hour pe-
19 riod beginning at the time the
20 asylum officer makes a deter-
21 mination under subparagraph
22 (A), to the maximum extent
23 practicable; and

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

1 “(D) MANDATORY PROTECTIVE CUS-
2 TODY.—Any alien subject to the procedures
3 under this paragraph shall be held in the cus-
4 tody of the Secretary of Health and Human
5 Services pursuant to Section 235(b) of the Wil-
6 liam Wilberforce Trafficking Victims Protection
7 Reauthorization Act of 2008 (8 U.S.C.
8 1232(b))—

9 “(i) pending a final determination of
10 credible fear of persecution; and

11 “(ii) after a determination that the
12 alien does not such a fear, until the alien
13 is removed.

14 “(g) LIMITATION ON ADMINISTRATIVE REVIEW.—

15 “(1) IN GENERAL.—Except as provided in sub-
16 section (f)(4)(C) and in paragraph (2), a removal
17 order entered in accordance with subsection (e)(2) or
18 (f)(4)(A) is not subject to administrative appeal.

19 “(2) RULEMAKING.—The Attorney General
20 shall establish, by regulation, a process for the
21 prompt review of an order under subsection (e)(2)
22 against an alien who claims under oath, or as per-
23 mitted under penalty of perjury under section 1746
24 of title 28, United States Code, after having been

1 warned of the penal ties for falsely making such
2 claim under such conditions to have been—

3 “(A) lawfully admitted for permanent resi-
4 dence;

5 “(B) admitted as a refugee under section
6 207; or

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

8 (2) CLERICAL AMENDMENT.—The table of con-
9 tents for the Immigration and Nationality Act (8
10 U.S.C. 1101 et seq.) is amended by inserting after
11 the item relating to section 235A the following:

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

12 (b) JUDICIAL REVIEW OF ORDERS OF REMOVAL.—
13 Section 242 of the Immigration and Nationality Act (8
14 U.S.C. 1252) is amended—

15 (1) in subsection (a)—

16 (A) in paragraph (1), by inserting “, or an
17 order of removal issued to an unaccompanied
18 alien child after proceedings under section
19 235B” after “section 235(b)(1)”; and

20 (B) in paragraph (2)—

21 (i) by inserting “or section 235B”
22 after “section 235(b)(1)” each place it ap-
23 pears; and

24 (ii) in subparagraph (A)—

1 (I) in the subparagraph heading,
2 by inserting “OR 235B” after “SEC-
3 TION 235(b)(1)”; and

4 (II) in clause (iii), by striking
5 “section 235(b)(1)(B),” and inserting
6 “section 235(b)(1)(B) or 235B(f);”;
7 and

8 (2) in subsection (e)—

9 (A) in the subsection heading, by inserting
10 “OR 235B” after “SECTION 235(b)(1)”;

11 (B) by inserting “or section 235B” after
12 “section 235(b)(1)” in each place it appears;

13 (C) in subparagraph (2)(C), by inserting
14 “or section 235B(g)” after “section
15 235(b)(1)(C)”;

16 (D) in subparagraph (3)(A), by inserting
17 “or section 235B” after “section 235(b)”.

18 **SEC. 5. DUE PROCESS PROTECTIONS FOR UNACCOM-**
19 **PANIED ALIEN CHILDREN PRESENT IN THE**
20 **UNITED STATES.**

21 (a) SPECIAL MOTIONS FOR UNACCOMPANIED ALIEN
22 CHILDREN.—

23 (1) FILING AUTHORIZED.—Beginning on the
24 date that is 60 days after the date of the enactment
25 of this Act, the Secretary of Homeland Security,

1 notwithstanding any other provision of law, may, at
2 the sole and unreviewable discretion of the Sec-
3 retary, permit an unaccompanied alien child who
4 was issued a Notice to Appear under section 239 of
5 the Immigration and Nationality Act (8 U.S.C.
6 1229) during the period beginning on January 1,
7 2013, and ending on the date of the enactment of
8 this Act—

9 (A) to appear, in-person, before an immi-
10 gration judge who has been authorized by the
11 Attorney General to conduct proceedings under
12 section 235B of the Immigration and Nation-
13 ality Act, as added by section 4;

14 (B) to attest to their desire to apply for
15 admission to the United States; and

16 (C) to file a motion to apply for admission
17 to the United States by being placed in pro-
18 ceedings under section 235B of the Immigra-
19 tion and Nationality Act.

20 (2) MOTION GRANTED.—An immigration judge
21 may, at the sole and unreviewable discretion of the
22 judge, grant a motion filed under paragraph (1)(C)
23 upon a finding that—

24 (A) the petitioner was an unaccompanied
25 alien child (as defined in section 235 of the Wil-

1 liam Wilberforce Trafficking Victims Protection
2 Reauthorization Act of 2008 (8 U.S.C. 1232))
3 on the date on which a Notice to Appear was
4 issued to the alien under section 239 of the Im-
5 migration and Nationality Act (8 U.S.C. 1229);

6 (B) the Notice to Appear was issued dur-
7 ing the period beginning on January 1, 2013,
8 and ending on the date of the enactment of this
9 Act;

10 (C) the unaccompanied alien child is apply-
11 ing for admission to the United States; and

12 (D) the granting of such motion would not
13 be manifestly unjust.

14 (3) EFFECT OF MOTION.—Notwithstanding any
15 other provision of law, upon the granting of a mo-
16 tion under paragraph (2)—

17 (A) the immigration judge who granted
18 such motion shall, while the petitioner remains
19 in-person, immediately inspect and screen the
20 petitioner for admission to the United States by
21 conducting a proceeding under section 235B of
22 the Immigration and Nationality Act; and

23 (B) the petitioner shall not be subject to
24 the 5-year expedited removal bar under section

1 212(a)(6)(B) of the Immigration and Nation-
2 ality Act (8 U.S.C. 1182(a)(6)(B)).

3 (4) PROTECTIVE CUSTODY.—An unaccompanied
4 alien child who has been granted a motion under
5 paragraph (2) shall be held in the custody of the
6 Secretary of Health and Human Services pursuant
7 to section 235 of the William Wilberforce Traf-
8 ficking Victims Protection Reauthorization Act of
9 2008 (8 U.S.C. 1232).

10 **SEC. 6. EMERGENCY IMMIGRATION JUDGE RESOURCES.**

11 (a) DESIGNATION.—Not later than 14 days after the
12 date of the enactment of this Act, the Attorney General
13 shall designate up to 40 immigration judges, including
14 through the hiring of retired immigration judges or mag-
15 istrate judges, or the reassignment of current immigration
16 judges, that are dedicated to conducting humane and ex-
17 pedited inspection and screening for unaccompanied alien
18 children under section 235B of the Immigration and Na-
19 tionality Act, as added by section 4.

20 (b) REQUIREMENT.—The Attorney General shall en-
21 sure that sufficient immigration judge resources are dedi-
22 cated to the purpose described in subsection (a) to comply
23 with the requirement under section 235B(b)(1) of the Im-
24 migration and Nationality Act.

1 **SEC. 7. PROTECTING CHILDREN FROM HUMAN TRAF-**
2 **FICKERS, SEX OFFENDERS, AND OTHER**
3 **CRIMINALS.**

4 Section 235(c)(3) of the William Wilberforce Traf-
5 ficking Victims Protection Reauthorization Act of 2008 (8
6 U.S.C. 1232(c)(3)) is amended—

7 (1) in subparagraph (A), by inserting “, includ-
8 ing a mandatory biometric criminal history check”
9 before the period at the end; and

10 (2) by adding at the end the following—

11 “(D) PROHIBITION ON PLACEMENT WITH
12 SEX OFFENDERS AND HUMAN TRAFFICKERS.—

13 “(i) IN GENERAL.—The Secretary of
14 Health and Human Services may not place
15 an unaccompanied alien child in the cus-
16 tody of an individual who has been con-
17 victed of—

18 “(I) a sex offense (as defined in
19 section 111 of the Sex Offender Reg-
20 istration and Notification Act (42
21 U.S.C. 16911)); or

22 “(II) a crime involving a severe
23 form of trafficking in persons (as de-
24 fined in section 103 of the Trafficking
25 Victims Protection Act of 2000 (22
26 U.S.C. 7102)).

1 “(b) MANDATORY REIMBURSEMENT.—If the gov-
2 ernor of a State deploys personnel of the National Guard
3 in response to the apprehension of 6,000 or more unac-
4 companied alien children (as defined in section 462(g) of
5 the Homeland Security Act of 2002 (6 U.S.C. 279(g)))
6 who are nationals of countries other than Canada or Mex-
7 ico, the Secretary of Defense shall reimburse such State
8 for any expenses incurred by the State as a result of such
9 deployment.”.

10 (b) STATE AND LOCAL ASSISTANCE.—

11 (1) IN GENERAL.—The Federal Emergency
12 Management Agency shall enhance law enforcement
13 preparedness, humanitarian responses, and oper-
14 ational readiness along the Southern border through
15 Operation Stonegarden.

16 (2) GRANTS AND REIMBURSEMENTS.—

17 (A) IN GENERAL.—Amounts appropriated
18 pursuant to paragraph (3) shall be used for
19 grants and reimbursements to State and local
20 governments in Border Patrol sectors on the
21 Southern border for—

22 (i) personnel, overtime, travel, and
23 other costs related to combating illegal im-
24 migration and drug smuggling; and

1 (ii) costs related to providing humani-
2 tarian relief to unaccompanied alien chil-
3 dren who have entered the United States.

4 (B) FUNDING FOR STATE AND LOCAL GOV-
5 ERNMENTS.—Grants and reimbursements au-
6 thorized subparagraph (A) shall be made by the
7 Federal Emergency Management Agency
8 through a competitive process.

9 (3) AUTHORIZATION OF APPROPRIATIONS.—

10 (A) IN GENERAL.—There are authorized to
11 be appropriated, for fiscal years 2014 and
12 2015, such sums as may be necessary to carry
13 out this subsection.

14 (B) OFFSET.—Any amounts appropriated
15 pursuant to subparagraph (A) shall be offset by
16 an equal reduction in the amounts appropriated
17 for other purposes.

18 (C) RESCISSION.—If the reductions re-
19 quired under subparagraph (B) are not made
20 during the 180-day period beginning on the
21 date of the enactment of this Act, there shall be
22 rescinded, from all unobligated amounts appro-
23 priated for any Federal agency (other than the
24 Department of Defense), on a proportionate

1 basis, an amount equal to the amount appro-
2 priated pursuant to subparagraph (A).

3 (c) SCOPE OF NATIONAL GUARD AUTHORITY.—Sec-
4 tion 902 of title 32, United States Code, as amended by
5 subsection (a), is further amended by adding at the end
6 the following:

7 “(c) SCOPE OF AUTHORITY.—Notwithstanding sec-
8 tion 1385 of title 18 or any other provision of law, Na-
9 tional Guard personnel who are deployed to conduct home-
10 land defense activities near an international border are au-
11 thorized to detain any person, and transfer such person
12 to the custody of U.S. Border Patrol or another appro-
13 priate Federal law enforcement agency, if there is probable
14 cause that such person has violated any Federal law relat-
15 ing to—

16 “(1) immigration;

17 “(2) drug trafficking;

18 “(3) human trafficking; or

19 “(4) terrorism.”.