DIVISION C—THE BORDER ACT

TITLE 1: CAPACITY BUILDING

Subtitle A: Hiring, Training, and Systems Modernization.

Chapter 1: Hiring Authorities.

Sec. 3101: USCIS Direct Hire Authority.

- (a) Grants direct hire authority for positions within the Refugee, Asylum, and International Operations Directorate, or the USCIS Service Center Operations Directorate for which public notice has been given, the Secretary has determined that a critical hiring need exists, and the Secretary has consulted with the OPM Director regarding the positions for which the Secretary plans to recruit, the quantity of candidates the Secretary is seeking, and the assessment and selection policies the Secretary plans to utilize.
- (b) defines "critical hiring need" as personnel necessary for the implementation of the Act and associated work.
- (c) Requires 5 annual reports to Congress which includes demographic data, including veteran status, salary information of individuals hired under the authority, and how DHS exercised authority consistent with Merit Systems Principles.
- (d) Authority sunsets after 5 years.

Sec. 3102: ICE Direct Hire Authority

- (a) Grants direct hire authority for positions within Enforcement and Removal Operations as a deportation officer or with duties exclusively relating to the Enforcement and Removal, Custody Operations, Alternatives to Detention, or Transportation and Removal program for which public notice has been given, the Secretary has determined that a critical hiring need exists, and the Secretary has consulted with the OPM Director regarding the positions for which the Secretary plans to recruit, the quantity of candidates the Secretary is seeking, and the assessment and selection policies the Secretary plans to utilize.
- (b) defines "critical hiring need" as personnel necessary for the implementation of the Act and associated work.
- (c) Requires 5 annual reports to Congress which includes demographic data, including veteran status, salary information of individuals hired under the authority, and how DHS exercised authority consistent with Merit Systems Principles.
- (d) Authority sunsets after 5 years.

Sec. 3103: Reemployment of Civilian Retirees to Meet Exceptional Employment Needs.

- (a) With respect to any position in Immigration and Customs Enforcement or the Refugee, Asylum, and International Operations Directorate, the Field Operations Directorate, or the USCIS Service Center Operations, the DHS Secretary, in consultation with the OPM Director, may waive on a case-by-case basis the application of the section of code governing the reduction, suspension, or termination of annuity payments for reemployed annuitants, for

the employment of an annuitant hired to a position necessary to implement the Act and associated work and for which there is exceptional difficulty in recruiting or retaining a qualified employee, or when a temporary emergency hiring need exists.

- (b) The DHS Secretary, in consultation with the OPM Director, shall prescribe procedures for the exercises of this authority, including for the delegation of authority.
- (c) An employee for whom a waiver under this section is in effect shall not be considered an employee for the purposes of CSRS and FERS.

Sec. 3104: Establishment of a Special Pay Rate for Asylum Officers.

- (a) At grades 1 through 15 of the General Schedule, the special base rate for an asylum officer shall be derived by increasing the otherwise applicable General Schedule base rate for the asylum officer by 15% for the grade of the asylum officer, rounded to the nearest whole dollar.
- (b) Clerical amendment
- (c) The special pay rate is effective on the first day of the first applicable pay period beginning 30 days after the enactment of the Act.

Chapter 2: Hiring Waivers.

Sec. 3111: Hiring Flexibility.

- (b): Waives the polygraph requirement for applicants to U.S. Border Patrol if those applicants:
    - (1) are current, full-time law enforcement officers employed by State or local law enforcement agencies who do not have misconduct in their personnel records and have previously successfully passed a polygraph;
    - (2) are currently serving as a Federal law enforcement officer, do not have misconduct on their records, and have an active Top Secret or Top Secret/Sensitive Compartmented Information clearance.
    - (3) are a veteran who served in the Armed Forces for at least 3 years, has held a Top Secret or Top Secret/Sensitive Compartmented Information clearance within the past 5 years, was honorably discharged and does not have a criminal record or misconduct on their personnel records, and did not require a waiver to obtain a clearance.
- (c): Sunsets the waiver authority for 3 years after enactment.

Sec. 3112: Supplemental Commissioner Authority and Definitions.

- Sec. 4: Requires that individuals who receive a polygraph waiver still undergo all other personnel vetting necessary to be hired as a Border Patrol agent.
- Sec. 5: Establishes reporting requirements regarding polygraph waivers
- Sec. 6: Requires a GAO report on Border Patrol agents who were hired with a polygraph waiver and Border Patrol agents who were subject to a polygraph.
- Sec. 7: Definitions.

Chapter 3: Alternatives to Detention Improvements and Training for U.S. Border Patrol.

Sec. 3121: Alternatives to Detention Improvements.

This provision would require U.S. Immigration and Customs Enforcement to set nationwide standards on escalation and de-escalation of supervision of illegal aliens enrolled in the Alternatives to Detention Program.

Sec. 3122: Training for U.S. Border Patrol.

This section sets training requirements for U.S. Border Patrol agents. It was included in the FY2024 Senate-passed NDAA and was part of the Border Patrol Enhancement Act.

Chapter 4: Modernizing Notices to Appear.

Sec. 3131: Electronic Notices to Appear.

Gives DHS the authority to serve Notices to Appear in immigration court electronically if the alien elects to receive such notices electronically.

Sec. 3132:Authority to Prepare and Issue Notices to Appear .

Gives authority to Border Patrol Processing Coordinators and other mission support personnel to issue Notices to Appear to aliens in CBP, ICE, or DHS custody. This allows for Border Patrol Agents and ICE Officers to stop processing paperwork and return to their border security and interior enforcement missions.

Subtitle B: Asylum Processing at the Border.

This subtitle establishes the provisional removal proceedings under Section 235B, protection merits removal proceedings under Section 240D, and procedures for voluntary departure (Section 240E), withdrawal of application (Section 240F), and voluntary repatriation (240G). These provisions create a mechanism where an alien who is encountered at the border and placed in these proceedings will receive a credible fear interview under the elevated standard within 90 days of crossing the border and will have their case decided on the merits within 180 days of crossing the border.

Current law only allows the use of expedited removal for an alien that is detained. This provision creates a new non-custodial expedited removal authority to use when detention space is beyond capacity. Nothing in this bill changes the existing expedited removal authorities or the authorities needed for Remain in Mexico. Under the new non-custodial expedited removal authority, the alien is required to be enrolled in mandatory alternatives to detention from the beginning of proceedings to removal. The new authority speeds the asylum screening at a higher standard, decreases the appeals, and accelerates deportations.

Under current law, an alien encountered at the border is released from custody with a Notice to Appear that sets a date for the alien's first hearing 10 or more years in the future. Aliens are able to access work authorization while they wait their 10 or more years in this asylum backlog.

These provisions in this subtitle will end the asylum backlog and ensure that aliens whose claims do not have merit are deported weeks to months after crossing the border – not years, decades, or never.

Under current practice, U.S. Immigration and Customs Enforcement will disenroll aliens who are in the Alternatives to Detention program within a few months after the alien crosses the border. The Heritage Foundation noted: "[Alternatives to Detention] have proven effective when used throughout the entirety of an illegal alien's removal proceedings, but DHS has placed a low proportion of released illegal aliens in ATDs and then has removed participants [from ATD] precipitously." These provisions will mandate that aliens are enrolled in ATD for the entirety of their removal proceedings.

Sec. 3141.—Provisional Noncustodial Removal Proceedings: Establishes Section 235B of the Immigration and Nationality Act.

- 235B(a)(1): Clarifies that DHS may enroll an alien into section 235B based on operational circumstances if such alien expresses a fear of persecution or indicates an intention to apply for a protection determination (see Title II, Sec.3201, Combined Screenings.) A protection determination is a combined screening for eligibility for asylum, withholding of removal under section 241(b)(3), and the Convention Against Torture.
- 235B(a)(2): Gives authority to DHS to release aliens from physical custody into 235B provisional noncustodial removal proceedings.235B(a)(3): Clarifies that an alien who is placed into proceedings under this section must be enrolled in alternatives to detention from the commencement of proceedings through the end of proceedings.
- 235B(a)(4): Creates a rule establishing that family members who are referred to proceedings under this section should be referred for proceedings at the same time with the same interview date.
- 235B(a)(5)(A): Exempts unaccompanied alien children from placement into proceedings under this section.
- 235B(a)(5)(B): Applies the current law definitions for where expedited removal applies to proceedings under this section.
- 235B(a)(6): Requires that aliens who are processed under this section receive a protection determination and decision on that protection determination within 90 days of encounter.
- 235B(b)(1): Defines when proceedings under this section commence.
- 235B(b)(2): Sets forth notice requirements for protection determinations under this section.
- 235B(b)(3): Establishes rules for the protection determination.
    - 235B(b)(3)(A): Requires that a protection determination occur within 90 days of placement into proceedings under this section.
    - 235B(b)(3)(B): Allows for an alien to have counsel, at no expense to the Federal government, in his or her protection determination.
    - 235B(b)(3)(C): Gives authority to the asylum officer to receive testimony in a protection determination and specifies that an alien's testimony in a protection determination must be provided under penalty of perjury.

- 235B(b)(3)(D): Allows for an asylum officer to obtain an interpreter to assist with the protection determination.
- 235B(b)(3)(E): Specifies that protection determinations should occur in U.S. Citizenship and Immigration Services facilities or other facilities authorized by the Director of USCIS.
- 235B(b)(3)(F): Clarifies that the asylum officer must provide a written record of the interview and any additional facts or information relied upon by the asylum officer in making a decision.
- 235B(b)(3)(G): Allows for an alien to reschedule an interview in cases of extreme battery, cruelty, or the death of a family member and clarifies that the instances in which an alien may reschedule are not counted against the 90-day clock for completing proceedings under this section.
- 235B(b)(3)(H): Allows for an alien to elect to voluntarily depart the United States without completing an interview, withdraw his or her application and depart the United States without completing his or her interview, or participate in the voluntary repatriation program created by sections 3143 and 3144 of this Act.
- 235B(b)(3)(I):
- Special rule to require certain complex cases to be referred to an immigration judge.
- 235B(b)(3)(J): Clarifies that any information provided to the alien or such alien's counsel of record may not include any information for which disclosure would be otherwise prohibited by law.

- 235B(c): Creates rules for adjudicating a protection determination.
  - 235B(c)(1): Requires that DHS conduct background checks and verify the identity of the alien prior to commencing a protection determination.
  - 235B(c)(2): Requires that an asylum officer conduct a protection determination and defines outcomes for the protection determination.
    - A "positive protection determination" means that an alien has established eligibility for asylum, withholding of removal, or under the Convention Against Torture and therefore may be referred to further proceedings for a decision on the merits.
    - A "negative protection determination" means that the alien has not established eligibility for asylum, withholding of removal, or under the Convention Against Torture and must be removed from the United States.
  - 235B(c)(3): Clarifies that the record of the interview becomes the alien's application for asylum, withholding of removal, and protection under the Convention Against Torture. This seemingly clerical provision allows for USCIS to check additional Federal databases to determine whether the alien is a criminal or terrorist and prohibits the alien from being able to change or modify the reason given for establishing eligibility for asylum, withholding of removal, and protection under the Convention Against Torture.
  - 235B(c)(4): Clarifies procedures for an alien who has a positive protection determination, including a requirement that the alien be referred to a protection merits interview under section 240D. Consistent with Section 3502, an alien is also eligible to receive work authorization if he or she passes the elevated screening standard under the protection determination.

        - Current law allows an alien to receive a work permit for simply applying for asylum. This change would make receiving a work permit more difficult, because illegal aliens must pass a screening at the elevated standard prior to receiving work authorization.
    - 235B(c)(5): Allows for an asylum officer in extraordinary and rare circumstances to grant asylum, withholding of removal, or protection under the Convention Against Torture if an alien establishes by clear and convincing evidence during a protection determination that he or she merits such protection. This approval only becomes final if an supervisor reviews the case and concurs with the asylum officer's judgement. USCIS is required to submit regular reports to Congress on when this authority is exercised to ensure public transparency and accountability.
    - 235B(c)(6): Clarifies that an alien who receives an approval under section 235B(c)(5) is able to obtain work authorization upon approval of the case.
- 235B(d): Sets forth rules for an alien whose protection determination is denied.
    - 235B(d)(1): Requires that an alien who receives a negative protection determination be advised of the outcome of the asylum officer's decision and served a removal order.
    - 235B(d)(2): Establishes procedures for an alien to move for the asylum officer to reconsider his or her decision and for appeal of a decision.
    - 235B(d)(3): Establishes rules and timelines for a request for reconsideration. An alien may request a reconsideration within 5 days of receiving notice of a negative protection determination, and an asylum officer may approve or deny the request.
    - 235B(d)(4): Establishes that an alien may appeal his or her negative protection determination to the Protection Appellate Board established. The alien's appeal will be decided within 24 hours.
    - 235B(d)(5): Special rule to prohibit interference in procedures for a reinstatement of a removal order or penalties for misrepresentation or concealment of facts.
- 235B(e): Rules around service of a protection determination decision.
    - 235(e)(1)(A): Requires that DHS notify the alien when the asylum officer reaches a decision regarding the protection determination and that DHS schedule a meeting to serve the decision on the alien.
    - 235(e)(1)(B): Specifies the type of facility in which DHS may schedule a meeting to serve a decision of a protection determination.
    - 235(e)(2)(A): Requires that DHS provide a written notice of decision to the alien and his or her counsel of record (if applicable).
    - 235(e)(2)(B): Requires that the written decision be provided, to the maximum extent practicable, in the alien's native language or in a language the alien understands.
    - 235(e)(2)(C): Specifies that the alien's counsel of record may attend the meeting where the decision is served, so long as the counsel's attendance does not delay the meeting.
    - 235(e)(2)(D): Specifies that only an asylum officer may serve the decision on the alien.
    - 235(e)(2)(E): Prohibits USCIS from using quotas to dictate decision outcomes.
    - 235(e)(3): Requires that, in the case of a denial, the asylum officer advise the alien of whether or not the alien may be eligible for voluntary departure, withdrawal of an

application, or voluntary repatriation and that the alien has the opportunity to appeal a denial.
    - 235B(e)(4): Imposes standards regarding service and custody of children.
- 235B(e)(5): Gives definitions and authority for an order of removal to become final.
- 235B(f): Failure to Conduct a Protection Determination.
    - 235B(f)(1): Specifies that, if the Federal government fails to meet the 90-day processing timeline, the alien will be referred to a protection merits interview to speed up the adjudication. While most aliens under 235B receive two bites at the apple with a screening and merits interview, aliens under 235B(f) will only receive one opportunity to make the case for their asylum eligibility.
    - 235B(f)(2): Specifies the rules for providing notice for a protection merits interview if an alien is referred directly to the protection merits interview.
    - 235B(f)(3): Special rule to clarify how this section aliens with other sections of the INA regarding dates of filing for asylum applications.
    - 235B(f)(4): Specifies that an alien, absent exigent circumstances, will be ordered removed if they fail to comply with the terms and conditions of this section.
    - 235B(f)(5): Allows for aliens to obtain work authorization 30 days after filing their protection merits application under this section and requires DHS to revoke any work authorization for illegal aliens who fail to appear for their interview.
- 235B(g): Consequences for failure to appear.
    - 235B(g)(1): Penalizes all illegal immigrants who abscond from proceedings by requiring DHS to serve an *in absentia* removal order upon failure to appear. This removal order will equip ICE to arrest and immediately deport any illegal immigrant absconder if ICE or a State or local law enforcement agency that works with ICE encounters the illegal immigrant absconder.
    - 235B(g)(2): Allows for an alien to seek redress from the penalties for failure to appear if the alien identifies in writing and provides evidence of extreme battery or cruelty or the death of a family member.
- 235B(h): Implementation provisions.
- 235B(i): Savings clauses to insulate this section from judicial review and ensure that DHS is able to detain criminal and other illegal aliens.
- 235B(j): Limitation on judicial review of individual cases denied under this section and a requirement that any litigation involving the operation of the program be heard by the District Court of D.C.
- 235B(k): Accountability and transparency through reporting.
- 235B(j): Definitions for terms used in this section.

Sec. 3142.—Protection Merits Removal Proceedings: Establishes Section 240D of the Immigration and Nationality Act.

- 240D(a): Establishes that aliens who were processed under section 235(b) or section 235B shall be referred to protection merits removal proceedings under this section.

- 240D(b): Requires that removal proceedings under this section occur within 90 days of commencement.
- 240D(c)(1): Sets forth requirements for service and notice of a protection merits interview.
- 240D(c)(2): Mandates that aliens who are subject to 240D removal proceedings shall be enrolled in Alternatives to Detention for the full pendency of proceedings.
- 240D(c)(3): Establishes requirements around the protection merits interview.
    - 240D(c)(3)(A): Requires that an asylum officer conduct a protection merits interview.
    - 240D(c)(3)(B): Allows for an alien, at no expense to the Federal taxpayer, to consult with counsel during the interview.
    - 240D(c)(3)(C): Requires that any testimony provided in the protection merits interview be provided under oath.
    - 240D(c)(3)(D): Requires aliens who present any evidence in a protection merits interview to provide that evidence in a certified English translation.
    - 240D(c)(3)(E): Specifies that DHS shall work with an interpreter to conduct a protection merits interview if the alien does not speak English.
    - 240D(c)(3)(F): Defines location requirements for where a protection merits interview may occur.
    - 240D(c)(3)(G): Specifies what may constitute the written record of a protection merits interview.
    - 240D(c)(3)(H): Allows for an alien to request that an interview be rescheduled in cases which involve battery, extreme cruelty to the alien and alien's child or serious illness of the alien or death of the spouse child, or parent of the alien.
    - 240D(c)(3)(I): Allows for an alien to use voluntary departure, withdraw his or her application, or the voluntary repatriation program to depart the United States.
- 240D(c)(4): Exempts aliens who receive a protection merits interview under section 240D from the one-year filing bar for asylum, since their cases will be heard and adjudicated within 180 days and since their credible fear interview constitutes their application for asylum.
- 240D(c)(5): Requires that DHS provide at least 30 days notice prior to a protection merits determination.
- 240D(d): Sets forth rules for what happens in a protection merits interview.
    - 240D(d)(1): Gives an asylum officer the authority to make a decision regarding the alien's eligibility for asylum, withholding of removal, or protection under the Convention Against Torture in the protection merits interview.
    - 240D(d)(2): Specifies that if an alien demonstrates eligibility for asylum, withholding of removal, or protection under the Convention Against Torture, the asylum officer may grant such protection.
    - 240D(d)(3): Specifies that if an alien does not demonstrate eligibility for asylum, withholding of removal, or protection under the Convention Against Torture, the asylum officer may not grant such protection and sets forth procedures for a request for reconsideration of a decision.
- 240D(e): Sets forth rules for appeal.

    - 240D(e)(1): Allows for an alien who received a negative outcome in their protection merits interview to submit an appeal on the record only to the Protection Appellate Board in USCIS.
    - 240D(e)(2): Requires that all petitions for review on appeal are provided under oath.
    - 240D(e)(3): Requires that the alien and the Protection Appellate Board be provided with a record of the negative protection merits interview, with applicable protections for classified and law enforcement sensitive information.
    - 240D(e)(4): Sets the standard for review on appeal as follows:
        - For questions of fact: clearly erroneous
        - For questions of law, discretion, and judgment: de novo
    - 240D(e)(5): Requires that appeals be completed within 7 days.
    - 240D(e)(6): Authorizes DHS to accept additional information into the record during the appeal.
    - 240D(e)(7): Clarifies that aliens who win their appeal will be able to receive asylum, withholding of removal, or protection under the Convention Against Torture and those who do not win their appeal will be removed from the United States.
    - 240D(e)(8): Gives authority for the Protection Appellate Board to receive motions to re-open and motions to reconsider a decision.
- 240D(f): Sets forth procedures for removal of aliens who receive a negative protection determination.
    - 240D(f)(1): Clarifies the Secretary's authority to remove an alien who receives a negative protection merits determination.
    - 240D(f)(2): Requires that aliens who receive a negative decision be detained until removal.
- 240D(g): Limits judicial review for denials and orders of removal under this section unless the alien has a constitutional claim.
- 240D(h): Authorizes the Secretary to implement this section initially with interpretive rules and policy guidance prior to engaging in rulemaking under the Administrative Procedures Act.
- 240D(i): Savings clauses to insulate this section from litigation risk.
- 240D(j): Requires that any family unit that is being removed under this section be removed together.
- 240D(k): Limits judicial review of any individual cases denied under this section and requires any litigation regarding policy guidance, regulations, or constitutional issues to be heard by the District Court for D.C.
- 240(l): Definitions used in this section.

Sec. 3143.—Voluntary Departure After Noncustodial Processing; Withdrawal of Application for Admission: Creates Section 240E to Allow for Aliens Processed under Section 235B or Section 240D to Voluntarily Depart from the United States. Creates Section 240F to allow for aliens subject to 235B or 240D proceedings to withdraw their application.

<u>Voluntary Departure Provisions:</u>

- 240E(a)(1): Establishes the authority for DHS to allow for an alien to voluntarily depart the United States rather than be processed under sections 235B or section 240D.
- 240E(a)(2): Requires that an alien who chooses to depart must do so within 120 days of making the decision.
- 240E(a)(3): Gives DHS the authority to require a voluntary departure bond to require compliance with voluntary departure.
- 240E(b): Specifies that an alien may only depart at his or her own expense and procedures for such departure.
    - 240(b)(1)(A): Requires DHS to enter an order granting voluntary departure in the alien's file.
    - 240(b)(1)(B): Requires that an alien be present in the U.S. for at least 60 days, have good moral character, not be subject to the grounds of deportability, and demonstrate by clear and convincing evidence that he or she has the means to depart the United States in order to qualify for voluntary departure.
    - 240(b)(2): Creates rules for posting and releasing a voluntary departure bond.
- 240E(c): Requires that DHS prohibit any alien from using voluntary departure if the alien previously elected voluntary departure but did not depart.
- 240E(d): Establishes penalties for aliens who do not voluntarily depart.
    - 240E(d)(1): These penalties include a civil penalty of between $1,000 and $5,000 and a 10-year bar for certain immigration benefits.
    - 240E(d)(2): Special rule to govern applicability of penalties.
    - 240E(d)(3): Requires DHS to notify the alien of the penalties of not following the rules to voluntarily depart.
- 240E(e): Gives the DHS Secretary the authority to prescribe additional limitations on the voluntary departure process.
- 240E(f): Shields decisions for voluntary departure from judicial review.
- 240E(g): Rule of construction to prohibit this provision from impacting voluntary departure for aliens who are subject to removal proceedings under section 240.

<u>Withdrawal of Application Provisions:</u>

- 240F(a): Allows an alien to withdraw his or her application from the beginning of proceedings under section 235B through the commencement of the protection merits interview.
- 240F(b): Requires aliens to voluntarily decide to withdraw their application and gives DHS the authority to regulate how aliens may elect to withdraw their application.
- 240F(c): Establishes that any alien who fails to depart according to the rules in this section and implementing regulations will be subject to a 5 year bar for immigration benefits.
- 240F(d): Rule of construction to prohibit this section from impacting the withdrawal provisions under section 235 (expedited removal).

Sec. 3144.—Voluntary Repatriation: Creates Section 240G to allow for aliens who elect voluntary repatriation to be returned to their home country on commercial flights.

- 240G(a): Establishes a voluntary repatriation program at DHS.
- 240G(b): To expedited removals and clear the hearing dockets faster, allows for an alien to elect voluntary repatriation prior to the beginning of his or her protection merits interview.
- 240G(c): Requires that any alien who elects voluntary repatriation depart the United States within 120 days of electing voluntary repatriation.
- 240G(d): Creates rules for who may elect voluntary repatriation.
    - 240(d)(1): Requires DHS to enter an order granting voluntary repatriation in the alien's file.
    - 240(d)(2): Requires that an alien be present in the U.S., have good moral character, not be subject to the grounds of deportability, meet minimum income requirements, and not have previously elected voluntary repatriation in order to participate in the voluntary repatriation program.
- 240G(e): Requires that DHS provide notice to the alien upon the alien's election of voluntary repatriation and advise the alien at the beginning of the protection determination under section 235B and protection merits interview under section 240D that the alien has the opportunity to participate in the program. An alien may only elect voluntary repatriation in a written format.
- 240G(f): Allows for DHS to use commercial flights for voluntary repatriation.
- 240G(g): Requires the DHS Secretary to advise the alien of any repatriation programs in his or her home country prior to repatriation.
- 240G(h): Establishes rules to ensure that family units who elect voluntary repatriation are repatriated together.
- 240G(i): Specifies penalties for failing to voluntarily repatriate, including service of a final order of removal, a civil penalty equal to the cost of the repatriation flight, and a 10 year bar for additional immigration benefits.
- 240G(j): Clerical matters to insulate this program from litigation and from judicial review.
- 240G(k): Definition of voluntary repatriation.

Sec 3145.—Immigration Examinations Fee Account.

This section is a conforming amendment to specify that fee funds in the Immigration Examinations Fee Account remain used for the day-to-day functioning of the immigration system and that funds appropriated under the supplemental are used for implementing the supplemental's authorizing provisions.

Sec 3146.—Border Reforms. These provisions end the use of 212(d)(5) parole and 236(a) parole along the southern and northern borders as "release valves" when DHS does not have the capacity or time to process illegal aliens who have crossed the border.

<u>212(d)(5) Parole Reform:</u>

- 244A(a): Eliminates the use of 212(d)(5) parole along any land border and instead requires that aliens be placed into section 235 (expedited removal) or section 235B (provisional removal proceedings). Under these reforms, aliens will no longer be able to show up at a port, receive immediate work authorization, and be released into the country for 10 – 12

years while they await their hearings. Instead, aliens will be required to be screened within 90 days maximum and denied or approved on the merits within 180 days. This provision will end the Biden Administration's use of CBPOne to facilitate free entry and immediate work authorization into the United States.
    - (1): Establishes that all aliens who arrive at the border, whether or not at a port of entry, are subject to expedited removal under section 235 or provisional removal proceedings under section 235B, unless certain very limited criteria are met.
    - (2): Rules of construction to ensure that DHS is able to remove recidivist aliens, that the provisions do not impact ongoing litigation regarding the Biden Administration's abuse of parole authority, and close of DHS's discretion to release aliens into 240 proceedings without a screening.
    - (3): Clarifies that this provision will be implemented within 90 days of enactment.
- 244A(b): Rules of construction to clarify this authority.
- 244A(c): Transition rules for implementing the prohibition on 212(d)(5) parole at U.S. international land borders.

<u>236(a) Conditional Parole Reform:</u>

- (b): This provision ends the use of "conditional parole" under section 236(a) of the Immigration and Nationality Act at the southern border and instead requires that aliens be processed under section 235 (expedited removal) or section 235B (provisional noncustodial removal proceedings). Rather than waiting 8 to 10 years for an alien to work through the court system, these provisions help ensure that an alien encountered along the southern or northern border is processed within 180 days prior to approval or removal.
- (c): Establishes clear metrics for implementation.
- (d): Establishes GAO oversight of implementation process.

Sec 3147.—Protection Appellate Board: Amends the Homeland Security Act to Authorize the Protection Appellate Board at U.S. Citizenship and Immigration Services.

- 463(a): Establishes the Protection Appellate Board in U.S. Citizenship and Immigration Services and vests it with the authority to conduct reviews of protection determinations and protection merits interviews.
- 463(b): Requires that the Protection Appellate Board be composed of at least 3 asylum officers with experience adjudicating asylum claims and who come from different regions of the United States.
- 463(c): Requires that the members of the Protection Appellate Board independently review the record of the alien's interview when reaching a decision regarding an appeal.
- 463(d): Requires that each member of the board submit their decision independently.
- 463(e): Establishes that the Protection Appellate Board has jurisdiction to hear appeals of negative protection merits interviews and determinations.
- 463(f): Procedural matters regarding how Protection Appellate Board reaches a decision.
- 463(g): Requires reporting on the decisions regarding the Protection Appellate Board to ensure public accountability.

TITLE II: ASYLUM PROCESSING ENHANCEMENTS.

Sec. 3201: Combined Screenings.

Amends Section 101 of the Immigration and Nationality Act to create new definitions for "protection determination" and "protection merits interview.

- 101(a)(53): A protection determination is a combined screening for credible fear, withholding of removal, and the Convention Against Torture.
- 101(a)(54): A protection merits interview is a faster combined interview on the merits in order to determine whether or not an alien obtains asylum, withholding of removal, or protection under the Convention Against Torture.

Sec.3202.—Credible Fear Standard and Asylum Bars at Screening Interview.

Amends Section 235(b)(1)(B) of the Immigration and Nationality Act to increase the credible fear standard and apply the asylum bars during the credible fear screening process.

- 235(b)(1)(B)(v): Increases the credible fear standard from significant possibility to reasonable possibility; and
- 235(b)(1)(B)(vi): Applies the asylum eligibility bars at Section 208(b)(2)(A) to aliens who are being screened under the elevated credible fear standard. These bars include:
    - The persecutor bar, the criminal bars, firm resettlement, the terrorism bar, whether the alien was convicted of a serious crime outside of the United States, and whether the alien is a danger to the United States or to our national security. This will also apply the internal relocation bar described in Sec. 3203.

Sec. 3203: Internal Relocation.

Amends Section 208(b)(2)(A) of the Immigration and Nationality Act to create a new eligibility bar for asylum known as "internal relocation." Under this bar, an asylum officer or immigration judge would determine if an alien could have sought safety anywhere in his or her home country rather than illegally crossing the border to the United States.

Sec. 3204: Asylum Officer Definition.

- 235(b)(1)(E): Clarifies that credible fear interviews are a duty that may only be performed by asylum officers.

TITLE III: SECURING AMERICA.

SUBTITLE A: BORDER EMERGENCY AUTHORITY.

The Border Emergency Authority is a temporary, three-year mandate, that requires the immediate deportation of all aliens crossing the southern land border or the southern maritime border (Florida to California) once encounters reach a one-week average of 5,000 aliens a day. There is also a discretionary authority to close the border at an average of 4,000 aliens a

day. The emergency closure of the border does not affect legal and orderly vehicle or pedestrian traffic through the ports of entry.

When the authority is activated, all aliens are removed and not allowed to apply for asylum unless they have an orderly appointment at a port of entry for an asylum request. The ports of entry must remain open for orderly asylum requests, but no alien can make an asylum claim between ports of entry. The limited number of aliens that are screened for asylum through the port of entry are screened at the higher standard of evidence, under the additional bars to eligibility in the bill.

Once the border emergency authority activates, all aliens are deported immediately each day until the total number of encounters drops at least 25% for seven consecutive days. Encounters include aliens at the port of entry, between the ports of entry and in the southern coastal waters (Florida to California). When the number of encounters has dropped at least 25%, DHS has up to 14 days turn off the use of the authority. This means that when the border closes, it will remain closed for three weeks or longer. To stop returns, any alien that crosses the border a second time after expulsion during the emergency authority will have a one-year immigration bar applied as a consequence. The authority begins the day after enactment of the bill.

The three-year border emergency authority is designed to immediately stop the current high number of illegal crossings while the other aspects of the bill are fully implemented. As an example, in the first four months of FY 2024, more than 954,000 aliens were encountered crossing the southern border. The vast majority of the nearly one million aliens were released into the country to await an asylum screening or hearing sometime in the next ten years. All of the aliens who crossed the first four months of FY2024 were either given a work permit at the border the first day or they were told that they are eligible for a work permit if they apply for an asylum screening which will occur years in the future.

If the border emergency authority was in place October 1, 2023, the total number of aliens who could have applied for asylum in four months would have been less than 200,000, the remaining 800,000 would have been deported immediately. Of the 200,000 orderly asylum requests through the port of entry, most would be adjudicated within a few weeks, with the vast majority of the applicants quickly deported under the elevated screening standard. No one would have received a work permit the first day of their arrival.

Sec. 3301: Border Emergency Authority.

- 244(a)(1): Vests the DHS Secretary with the Border Emergency Authority.
- 244(a)(2): Exempts U.S. Citizens, legal immigrants, unaccompanied minors, and certain other populations from expulsion.
- 244(a)(3): Applies the BEA to any illegal alien who crosses within 100 miles of the southwest land border of the United States and who has been present in the United States for 14 or fewer days.
- 244(b)(1): Allows for the DHS Secretary to summarily remove illegal aliens under the Border Emergency Authority once it is activated.
- 244(b)(2): Specifies the removal authority under which the DHS Secretary may summarily remove illegal aliens, unless such aliens clearly manifest a humanitarian need. (Modeled off

of Title 42). This paragraph specifies the limited circumstances under which an alien who manifests a humanitarian need may be screened.

- 244(b)(3): Specifies how the Border Emergency Authority is activated
    - (b)(3)(A): Specifies that the BEA may be triggered if the 7-day average of encounters is at or above 4,000 per day.
    - (b)(3)(B): Specifies that the BEA shall be triggered if the 7-day average of encounters is at or above 5,000 per day.
    - (b)(3)(C): Specifies that the BEA shall be triggered if CBP encounters 8,5000 aliens in one day.
- (b)(4): Specifies the number of days in which the BEA may be triggered
    - (b)(4)(A): Specifies that UACs from noncontiguous countries are not included in the encounter levels under (b)(3).
    - (b)(4)(B): Specifies the following time periods for activation:
        - (b)(4)(B)(i): Within the 1st year, the BEA may be activated for 270 days.
        - (b)(4)(B)(ii): Within the 2nd year, the BEA may be activated for 225 days.
        - (b)(4)(B)(iii): Within the 3rd year, the BEA may be activated for 180 days.
    - (b)(4)(C): Requires that summary expulsions occur within 24 hours of the exercise of the BEA.
- (b)(5): Specifies how the BEA is de-activated and border processing returns to normal.
    - (b)(5)(A): If the authority is triggered by 4,000 or more encounters, the DHS Secretary can only deactivate the authority if the average daily encounter over the preceding 7 days was at or below 75 percent of 4,000.
    - (b)(5)(B): If the authority is triggered by 5,000 or more encounters, the DHS Secretary can only deactivate the authority if the average daily encounter over the preceding 7 days was at or below 75 percent of 5,000.
    - (b)(5)(C): If the authority is triggered by 8,500 or more encounters, the DHS Secretary can only deactivate the authority if the average daily encounter over the preceding 7 days was at or below 75 percent of 5,000.
- (b)(6): Special rules regarding tolling of the number of days the BEA may be triggered.
- (b)(7): Gives the President the authority to terminate the use of the BEA for not more than 45 days if there is a declared emergency warranting such termination.
- (c)(1): Requires that, during the exercise of the BEA, DHS process 1,400 inadmissible aliens across U.S. southern border land ports.
- (c)(2): Clarifies how the 1,400 inadmissible aliens are processed and calculated.
- (d): Imposes a 1-year bar on any recidivist alien who crosses after being removed under the BEA.
- (e): Savings clauses and rules of construction to further define the terms listed in this section.
- (f): Prohibits judicial review of a summary removal order while the BEA is exercised and gives jurisdiction to the District Court for the District of Columbia to hear any challenges regarding the BEA.
- (g): Allows for the BEA to go into effect immediately upon enactment.
- (h): Specifies regulatory procedures for further implementation of this section.

- (i): Definitions for terms used in this section.

Subtitle B—FEND Off Fentanyl Act

To disrupt the flow of illicit opioids into the United States, the *FEND Off Fentanyl Act* would:

- Declare that the international trafficking of fentanyl is a national emergency.
- Require the President to sanction transnational criminal organizations and drug cartels' key members engaged in international fentanyl trafficking.
- Enable the President to use proceeds of forfeited, sanctioned property of fentanyl traffickers to further law enforcement efforts.
- Enhance the ability to enforce sanctions violations thereby making it more likely that people who defy U.S. law will be caught and prosecuted.
- Require the administration to report to Congress on actions the U.S. government is taking to reduce the international trafficking of fentanyl and related opioids.
- Allow the Treasury Department to utilize special measures to combat fentanyl-related money laundering.
- Require the Treasury Department to prioritize fentanyl-related suspicious transactions and include descriptions of drug cartels' financing actions in Suspicious Activity Reports.

Sec.3311.Short titles.

Sec.3312.Sense of Congress.

Sec.3313.Definitions.

Chapter 1—Sanctions Matters

Subchapter A—Sanctions in response to national emergency relating to fentanyl trafficking

Sec.3314.Finding; policy.

Declares that the fentanyl crisis is a national emergency and makes it U.S. policy to apply economic and financial sanctions to international traffickers of fentanyl, fentanyl precursors, and other related opioids.

Sec.3315.Use of national emergency authorities; reporting.

Authorizes the President to exercise emergency authority provided by the International Emergency Economic Powers Act (IEEA). Requires the President to submit a report to Congress on the executive branch's actions to address the fentanyl national emergency within 180 days of the bill's enactment.

Sec.3316.Imposition of sanctions with respect to fentanyl trafficking by transnational criminal organizations.

Directs the President to use IEEPA authorities to block property transactions and interests in property for foreign persons involved in the trafficking of fentanyl, fentanyl precursors, or other

related opioids. Requires the President to submit a report to Congress on the executive branch's actions in this domain within 180 days of the bill's enactment.

Sec.3317.Penalties; waivers; exceptions.

Determines that violations will be subject to the penalties outlined in IEEPA. Provides a waiver for national security purposes and an exemption for intelligence, law enforcement, and humanitarian activities.

Sec.3318.Treatment of forfeited property of transnational criminal organizations.

Provides the pathway for forfeited property under this act to be sent to the Treasury Forfeiture Fund to support law enforcement. Requires a report of deposits made from the bill.

Subchapter B—Other matters

Sec.3319.Ten-year statute of limitations for violations of sanctions.

Amends IEEPA and the *Trading with the Enemy Act* to increase the statute of limitations for sanctions violations to ten years.

Sec.3320.Classified report and briefing on staffing of office of foreign assets control.

Requires the Director of the Office of Foreign Assets Control to provide a classified report and briefing to Congress on the office's staffing, disaggregated by staffing dedicated to each sanctions program and each country or issue, within 180 days of the bill's enactment.

Sec.3321.Report on drug transportation routes and use of vessels with mislabeled cargo.

Requires the Secretary of the Treasury and other heads of relevant agencies, within 180 days of the bill's enactment, to provide a classified report and briefing to Congress on drug transportation routes and the prevalence of false cargo labeling and shipment of precursor chemicals without accurate tracking of the customers purchasing the chemicals.

Sec.3322.Report on actions of People's Republic of China with respect to persons involved in fentanyl supply chain.

Requires a classified briefing on China's role in fentanyl trafficking.

Chapter 2—Anti-Money Laundering Matters

Sec.3323.Designation of illicit fentanyl transactions of sanctioned persons as of primary money laundering concern.

Makes it a primary concern of the Secretary of the Treasury to apply anti-money laundering measures when it is determined on reasonable grounds that an international transaction is connected to illicit opioid trafficking.

Sec.3324.Treatment of transnational criminal organizations in suspicious transaction s reports of the financial crimes enforcement network.

Requires the Director of the Financial Crimes Enforcement Network (FinCEN), within 180 days of the bill's enactment, to issue guidance or instruction to U.S. financial institutions for filing reports on suspicious transactions related to suspected fentanyl trafficking by transnational criminal organizations. Requires the Director to prioritize research into reports that indicate a connection to the trafficking of fentanyl or related synthetic opioids or financing of suspected transnational criminal organizations.

Sec.3325.Report on trade-based money laundering in trade with Mexico, the People's Republic of China, and Burma.

Requires the Secretary of the Treasury to provide a report to Congress on trade-based money laundering originating in Mexico or the People's Republic of China and involving Burma.

Chapter 3—Exception Relating to Importation of Goods

Sec.3326.Exception relating to importation of goods.

Clarifies that the authority or a requirement to block and prohibit transactions in all property and interests in property under this bill shall not include the authority or a requirement to impose sanctions on the importation of goods.

Subtitle C—Fulfilling Promises to Afghan Allies

Sec.3331.Definitions.

Sec.3332.Support for Afghan allies outside the United States.

- Directs the Secretary of State to designate an office at the Department of State responsible for overseeing specified applications from Afghan nationals, issuing visas and other travel documents, and providing services that would otherwise be fulfilled by an Embassy. Requires the Secretary to respond to Congressional inquiries regarding the status of applications by, or on behalf of, Afghan nationals.

Sec.3333.Conditional permanent resident status for eligible individuals.

- Authorizes the Secretary of Homeland Security to adjust the status of Afghan nationals who were admitted or paroled into the United States after July 30, 2021 to conditional lawful permanent resident status following completion of a vetting process which is equivalent in rigor to that of the U.S. Refugee Assistance Program. To be eligible for adjustment, an individual must not be subject to any grounds of inadmissibility under Sec. 212 of the Immigration and Nationality Act. However, the Secretary is permitted to waive application of grounds of inadmissibility under Sec. 212(a) for humanitarian or family unity purposes, except certain criminal, security, and related grounds as specified in this Act.
- Provides that individuals granted conditional permanent resident status and their child or spouse who is the beneficiary of an immigrant petition under Sec. 204 of the Immigration and Nationality Act are exempt from numerical limitations under Sec. 201, 202, and 203 of the Immigration and Nationality Act.
- Authorizes conditional lawful permanent resident status to be revoked if the Secretary 1) removes conditions pursuant to this Act; 2) determines that an individual is no longer eligible

for conditional status; or 3) determines that the individual is not eligible for removal of conditions. The conditional basis of the status may be removed for eligible individuals within 120 days of the earliest of 1) four years after being paroled into the U.S.; or 2) July 1, 2027.
- Requires the Office of Refugee Resettlement to schedule a non-adversarial meeting to assist an individual with referral or application for benefits under the Department of Health and Human Services and any other benefits administered by the U.S. government within 180 days of conditional lawful permanent resident status being conferred.
- Sunsets the parole of Afghan nationals by prohibiting any Afghan national who is paroled after the date of enactment from adjusting status under this bill.
- Directs the Secretary to develop procedures for an individual granted conditional lawful permanent resident status to apply for naturalization upon the removal of conditions.

Sec.3334.Refugee processes for certain at-risk Afghan allies.

- Defines "Afghan ally" as eligible Afghans who served in elements of the Afghanistan National Defense and Security Forces, including all female members, and senior personnel of the former Ministry of Defense or former Ministry of Interior Affairs of Afghanistan for at least one year in support of the U.S. mission in Afghanistan.
- Provides that Afghan allies are considered as refugees of special humanitarian concern. This designation will expire no earlier than 10 years after enactment of this Act or a determination by the Secretary of State that it is no longer in the interest of the United States.
- Requires the Secretary of Defense to establish a program for individuals to apply for classification as an Afghan ally and request a referral to the U.S. Refugee Admissions Program. The program must include a secure, online portal for Afghan nationals to provide information and is permitted to be used by other U.S. departments or agencies according to arrangements made by the Secretary of Defense. An applicant must be referred to the U.S. Refugee Admissions Program following determination that an applicant is an Afghan ally without significant derogatory information.
- Directs the Secretary of State must also make reasonable effort to provide protection for or immediately remove an individual designated as an Afghan ally from Afghanistan, if possible.

Sec.3335.Improving efficiency and oversight of refugee and special immigrant processing.

- Establishes rules around the acceptance of biometrics for vetting of Afghan nationals, including fingerprint and other biometrics.
- Requires the State, DHS, DOD, and other agencies to vet Afghan nationals referred for refugee processing.
- Allows for DHS to use remote processing of Afghan nationals rather than relying on third-country processing.

Sec.3336.Support for certain vulnerable Afghans relating to employment by or on behalf of the United States.

- Amends the definition of "special immigrant" to create a new category for a citizen or national of Afghanistan who is the parent, brother, or sister of a member or veteran of the

U.S. armed forces. Provides that the maximum number of visas that may be issued under this definition is 2,500 per fiscal year and 10,000 total.

- Amends Sec. 602 of the Afghan Allies Protection Act of 2009 to establish an exemption to the service time requirement for the Afghan Special Immigrant program for individuals who were wounded or serious injured in connection with their employment prior to completing one year of eligible employment.
- Extends the deadline for individuals seeking special immigrant status under Sec. 602(b) of the Afghan Allies Protection Act of 2009 until December 31, 2029, and the annual reporting requirement until January 21, 2030.
- Authorizes an applicant for a special immigrant visa under the Afghan Allies Protection Act of 2009 to sign an application through a virtual video meeting before a consular officer.
- Amends the reporting requirement under the Afghan Allies Protection Act of 2009 to account for changes made under this Act, including average processing time and number of denials issued for applicants for refugee referral.

Sec.3337.Support for allies seeking resettlement in the United States.

- Allows for DHS and the State Department to waive fees for immigration benefit requests under this section.

Sec.3338.Reporting.

TITLE IV: PROMOTING LEGAL IMMIGRATION.

Sec. 3401: Employment authorization for fiances, fiancees, spouses, and children of United States citizens and specialty workers.

- Amends section 214 of the Immigration and Nationality Act to clarify that legally present alien fiances, adult spouses, and adult children of such fiances or spouses are eligible for work authorization incident to status.
- Amends section 214 of the Immigration and Nationality Act to clarify that legally present adult spouses and children of aliens on H-1B visas who have a pending I-140 are eligible for work authorization incident to status.

Additional Background: These provisions are currently codified at 8 CFR § 274a.12(a)(6) and (9) and 8 CFR § 274a.12(c)(26). This provision would codify these regulatory provisions into the Immigration and Nationality Act.

Sec. 3402: Additional Visas.

This provision amends Section 201 of the Immigration and Nationality Act to increase the number of employment-based and family-based visas by 50,000 for Fiscal Years 2025, 2026, 2027, 2028, and 2029.

- 201(c)(6)(A): Increases the family-based immigrant visa level by 32,000 (a 6 percent increase) for Fiscal Years 2025, 2026, 2027, 2028, and 2029.

- 201(c)(6)(B): Specifies that the visas shall be issued each fiscal year, shall not expire, and shall be allocated according to the current law distribution in Sections 202 and 203 of the Immigration and Nationality Act.
- 201(d)(3)(A): Increases the employment-based immigrant visa level by 18,000 (a 13 percent increase) for Fiscal Years 2025, 2026, 2027, 2028, and 2029.
- 201(d)(3)(B): Specifies that the visas shall be issued each fiscal year, shall not expire, and shall be allocated according to the current law distribution in Sections 202 and 203 of the Immigration and Nationality Act.

Sec. 3403: Children of Long-term Visa Holders.

These provisions amend the Sections 203 and 214 of the Immigration and Nationality Act to freeze the age of children of legal H-1B visa holders who have filed for a green card and are waiting in the green card backlog. Under current law, a child of an H-1B visa holder loses his or her status solely due to the length of the green card backlog. These provisions amend the provisions that impact the age calculation, so that the children of the H-1B visa holders in the green card backlog can wait with their parents until the parents' priority date arrives.

- (a): Spells out determinative factors for whether or not the child of an H-1B visa holder is able to receive age-out protections.
- (b): Creates filing requirements and eligibility requirements for the children of H-1B visa holders to receive age-out protections.
- (c): Allows for children who aged out and had to depart the U.S. to file a motion to re-open their case.

This provision would also allow for a child of an H-1B holder who is waiting in the green card backlog to obtain work authorization while he or she waits for his or her parent's priority date.

Sec. 3404: Military Naturalization Modernization.

Under current law, there are two ways an alien serving in the Armed Forces may naturalize. INA 328 specifies procedures for naturalization through peacetime service. This provision has a lengthened physical presence requirement due to the peacetime service provision.

INA 329 specifies procedures for naturalization through wartime service. This provision has a different method for calculating physical presence.

The provisions of INA 328 have generally not been in use since prior to 2001. This bill strikes INA 328 in its entirety and makes conforming amendments that allow for aliens who are serving in the armed services to naturalize through INA 329 and its method for calculating physical presence.

Sec. 3405: Temporary Family Visits.

This bill clarifies the law to ensure that aliens who are seeking to enter the United States on a tourist visa (B visa) may also visit family while on the visa.

- Sec. 1: Title

- Sec. 2(a): Establishes a B-3 visa for family purposes
- Sec. 2(b): Amends Section 214 of the Immigration Act to do the following:
    - (t)(1): Define "family purpose" for the purposes of a B-3 visa to mean "any visit by a relative for a social, occasional, or any other purpose."
    - (t)(2): Allows for B visas to be used for family visit purposes immediately upon enactment.
    - (t)(3): Sets forth requirements for admission on a B-3 visa, including requirements that the alien on a B-3 visa has an affidavit of support, a health insurance policy to provide coverage for the duration of the trip, expresses intent to depart the United States, and attests under penalty of perjury that he or she is aware of the penalties of overstaying one's visa.
    - (t)(4): Prohibits a family member from petitioning for a relative to visit the U.S. on a B-3 visa if that relative has previously overstayed a visa in the United States. This section also sets forth a waiver process for this prohibition based on "extraordinary circumstances beyond the control of the relative."
- Sec. 2(c): Prohibits an alien on a B-3 visa from changing status.
- Sec. 2(d): Allows for an alien in the family-based green card backlog to visit family members on a B-3 visa provided that the terms and conditions specified in Sec. 2(b) are met.
- Sec. 2(e): Rules of construction to retain the discretion of immigration officers to refuse admission to anyone who is ineligible for a B-3 visa or who is inadmissible and to clarify the alignment of B-3 visas with current policies and procedures.

TITLE V: SELF SUFFICIENCY AND DUE PROCESS.

SUBTITLE A: WORK AUTHORIZATION.

Requires that an alien must first pass the elevated credible fear standard and the bars to obtain work authorization if the alien is released from custody after a positive credible fear screening. This provision does not create a right to release from detention, a right to work authorization for aliens who crossed the border illegally, or modify the employment authorization process for any alien who is not screened under the elevated credible fear standard. This provision changes current law, which allows for an alien to receive a work permit simply for applying for asylum without having a screening, to now require that an alien must first pass an elevated credible fear screening and all asylum bars – including the persecutor bar, criminal bars, terrorism bar, firm resettlement bar, and internal relocation bar – prior to obtaining work authorization.

Sec. 3501: Work Authorization.

- Conforming amendment to INA 208(d)(2) to capture the provisions of Section 235C.

Sec. 3502: Employment Eligibility. Creates Section 235C.

- 235C(a)(1): Allows for the following populations to obtain work authorization:
    - Aliens who have completed a positive credible fear screening under expedited removal and who are subsequently released from detention;

    - Aliens who have completed a positive protection determination under the provisional non-custodial removal proceedings in section 235B; and
    - Aliens who are referred to a positive protection merits interview under Section 235B without first having a positive protection determination.
- Sec. 235C(a)(2): Authorizes the granting of employment authorization to the populations described in Sec. 235C(a)(1).
- Sec. 235C(b): Specifies that work authorization is allowed for an initial period of 2 years, is renewable in 2-year increments, and will be revoked on the date when an applicant is denied or if the applicant obtains asylum or another immigration benefit which affords work authorization.
- Sec. 235C(c): rules of construction to clarify that the provisions above do not create a right for an alien to be released from detention and to cabin the 235C work authorization authority only to aliens who are placed into proceedings under Section 235(b)(1) or Section 235B.

SUBTITLE B: PROTECTING DUE PROCESS.

Sec. 3511: Access to Counsel.

Amends Section 235 of the Immigration and Nationality Act to provide certain protections around access to counsel at the alien's expense for detained illegal aliens who have been placed in expedited removal.

- 235(b)(1)(B)(iv)(I): Requires that DHS provide information on credible fear interviews, protection determinations (if applicable), and information on process to aliens enrolled in expedited removal.
- 235(b)(1)(B)(iv)(II): Describes the types of information that should be provided to aliens under this section.
- 235(b)(1)(B)(iv)(III): Provides accessibility protections for certain aliens regarding the information provided under this section.
- 235(b)(1)(B)(iv)(IV): Requires that DHS conduct a credible fear screening on an alien in detention not earlier than 72 hours after the alien has received the information under this section, unless the alien waives this 72 hour period.
- 235(b)(1)(B)(iv)(V): Allows for an alien who is eligible for a credible fear interview to consult a lawyer, accredited represented, consular officer, or any other individual of such alien's choosing at the alien's expense.

Sec. 3512: Counsel for Certain Unaccompanied Alien Children.

Amends Section 235(c)(5) of the *William Wilberforce Trafficking Victims Protection Act of 2013* (TVPRA) to allow for certain tender age unaccompanied alien children who are 13-years old or younger to obtain representation in removal proceedings.

- (5)(A): A restatement of current law provisions at Section 235(c)(5).
- (5)(B)(i): Amends the Sec. 235(c)(5) of the TVPRA to allow for unaccompanied alien children who are 13-years old or younger to be represented by counsel.

- (5)(B)(ii): Requires that the HHS Secretary verify the age of a UAC prior to the UAC's ability to be represented under this section.
- (5)(B)(iii): Limits the representation only to immigration court proceedings under section 240 of the Immigration and Nationality Act, unless the Secretary of Health and Human Services certifies that representation is necessary in cases of "extraordinary importance." This would not cover any collateral matters which may arise in litigation.
- (5)(B)(iv): Requires that HHS implement these provisions within 90 days of enactment.
- (5)(B)(v): Limits these provisions to be subject to appropriations.

Additional Background: Seven percent of UACs already receive taxpayer funded counsel pursuant to section 235(c)(5) if the TVPRA. This provision would require HHS to prioritize pro-bono counsel prior to resorting to taxpayer-funded counsel and would only apply to tender age unaccompanied alien children who are placed into removal proceedings after enactment.

Sec. 3513: Counsel for Certain Incompetent Individuals.

Amends Section 240 of the Immigration and Nationality Act to establish rules regarding aliens who are incompetent to represent themselves in removal proceedings.

- (e)(1): Requires immigration judges to appoint a lawyer or qualified representative to represent an alien in removal proceedings if pro bono counsel is not available, the incompetent alien is unrepresented, and the alien was found by an immigration judge to be incompetent to represent themselves.
- (e)(2)(A): Establishes a presumption that any alien is presumed to be competent to participate in removal proceedings, unless certain indicia are present or if the alien raises that they are incompetent to stand trial.
- (e)(2)(B): Sets forth how an immigration judge may determine that an alien is incompetent to represent themselves, clarifies that an immigration judge must consider malingering in the analysis of incompetence, and prohibits an alien from obtaining representation under this section solely on account of illiteracy or language barriers. This provision also prohibits judicial review and appeal of an immigration judge's decision regarding the alien's competency.
- (e)(3): Mandates a quarterly report to ensure public accountability and transparency regarding immigration judges' decisions regarding competency under this section.
- (e)(4): Rules of construction to clarify the interpretation of this section.
- (e)(5): Authorizes the Attorney General to promulgate regulations to implement this section.

Additional Background: The Board of Immigration Appeals currently requires appointment of counsel for the small population of aliens who are deemed incompetent to participate in removal proceedings under *Matter of M-A-M-*, 25 I & N Dec. 474 (2011). Counsel has previously been funded under this program through the FY2022 CJS Appropriations bill. These provisions provide significant safeguards for taxpayer resources by ensuring that immigration judges consider malingering and that immigration judges cannot appoint counsel solely on account of language barriers or illiteracy.

Sec. 3514: Conforming Amendment.

Conforming amendment to Sec. 292 of the Immigration and Nationality Act to capture authorizations provided in Counsel for Tender Age Unaccompanied Alien Children and Counsel for Certain Incompetent Adults sections.

- 292(a): Restatement of current law: Sec. 292 of the Immigration and Nationality Act.
- 292(b): Conforming amendment to clarify that certain tender age UACs as defined by this Act and certain incompetent aliens as defined by this Act may obtain representation.

TITLE VI: ACCOUNTABILITY AND METRICS.

This title includes key accountability and metrics through reporting requirements, including reports on:

- The nationwide use of parole (Sec. 3606);
- DHS reporting and GAO reporting on decision rate comparisons between asylum officers and immigration judges (Secs. 3607 and 3609).
- A mandate that CBP publish operational statistics, including border encounters and terrorism watchlist encounters, by not later than the 7th day of each month.
- Transparency regarding recalcitrant countries and DHS and State's actions to ensure compliance with removal orders.

TITLE VII: OTHER MATTERS.

Sec. 3701. Severability.