

113TH CONGRESS
2D SESSION

H. R. 5316

To secure the border between the United States and Mexico.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2014

Mr. STOCKMAN introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security, Ways and Means, Armed Services, and Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To secure the border between the United States and Mexico.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safely Exacting Cau-
5 tious Useful Rules for Immigration This Year (SECU-
6 RITY) Act”.

7 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

8 (a) The Congress finds that:

1 (1) An estimated 11,800,000 aliens reside in
2 the United States in contravention of Federal immi-
3 gration law.

4 (2) The construction of a double-layered fence
5 along the entire Southern Border reduces illegal im-
6 migration, decreases cross-border smuggling, and en-
7 ables the effective deployment of manpower, as dem-
8 onstrated by the San Diego sector where a fence was
9 built in 2004.

10 (3) Aliens, such as the El Salvadoran national
11 and MS-13 gang members Kevin Fabricio Claros
12 Cantarero and Julio Martinez, have attempted to
13 use applications for asylum in order to reside in the
14 United States.

15 (4) The closing of Border Patrol stations, such
16 as in June 2011, and failure to deploy the National
17 Guard to assist the Border Patrol, such as during
18 the border crisis of June 2014, impaired the ability
19 of law enforcement to secure the border.

20 (5) The backlog of immigration cases, in which
21 87 percent of cases where ICE filed Notices to Ap-
22 pear between 2009 to 2014 are still pending in
23 2014, could be addressed if Congress knew the num-
24 ber of judges needed in immigration courts.

1 (6) Illegal aliens, despite being ineligible, re-
2 ceived \$4.2 billion in additional child tax credits
3 from the United States Treasury in 2010 by apply-
4 ing with an individual taxpayer identification num-
5 ber.

6 (7) Aliens have been applying for and receiving
7 public benefits from Federal, State, and local gov-
8 ernments in substantially burdensome levels, such as
9 \$791.6 million covered by California taxpayers in
10 2013.

11 (b) The Congress further finds and declares that it
12 serves a compelling government interest of the United
13 States to—

14 (1) establish and regularly evaluate the security
15 at United States borders using the same metric;

16 (2) construct a double-layered fence along the
17 entire Southern Border of the United States;

18 (3) provide adequate manpower for enforcement
19 of immigration laws, sufficient judges to address the
20 backlog in immigration courts, and the appropriate
21 number of beds and facilities to meet immigration
22 detention needs;

23 (4) end the release of dangerous criminal aliens
24 and the likelihood of foreign gang members using

1 refugee and asylee status to reside in the United
2 States; and

3 (5) remove incentives for illegal immigration
4 provided by the availability of public benefits.

5 **SEC. 3. ACHIEVING AND MAINTAINING OPERATIONAL CON-**
6 **TROL OF THE BORDER.**

7 (a) PLAN.—Not later than 180 days of the date of
8 enactment of this Act, the Secretary of Homeland Security
9 shall develop and submit to the Committee on Homeland
10 Security of the House of Representatives and the Com-
11 mittee on Homeland Security and Governmental Affairs
12 of the Senate a plan to achieve and maintain operational
13 control of the entire international land and maritime bor-
14 ders of the United States. The Secretary shall begin imple-
15 menting the plan immediately following its submission.

16 (b) DEFINITION OF OPERATIONAL CONTROL OF THE
17 BORDER.—For purposes of this Act, the term “oper-
18 ational control” means the prevention of all unlawful en-
19 tries into the United States, including entries by terror-
20 ists, other unlawful aliens, instruments of terrorism, nar-
21 cotics, and other contraband. Any changes to the defini-
22 tion of “operational control” as defined in this Act must
23 be approved by Congress.

24 (c) REPORT AND CERTIFICATION.—

1 (1) Not later than one year after the date of
2 enactment of this Act and annually thereafter, the
3 Secretary shall submit to the Committee on Home-
4 land Security of the House of Representatives and
5 the Committee on Homeland Security and Govern-
6 mental Affairs of the Senate a report on the
7 progress made toward achieving and maintaining
8 operational control of the entire international land
9 and maritime borders of the United States. Such re-
10 port shall contain an analysis of the reason why, if
11 any, operational control has not been achieved or
12 maintained, and steps the Department will take to
13 meet its goal of operational control.

14 (2) Within 30 days of receiving the report, the
15 respective committees in subsection (1) must certify
16 whether operational control has been met.

17 (d) FAILURE TO ACHIEVE OPERATIONAL CON-
18 TROL.—If the Department of Homeland Security fails to
19 achieve or maintain operational control, then twenty-five
20 percent of the Department’s Under Secretary for Manage-
21 ment’s budget will be cut and redistributed to Customs
22 and Border Protection to go toward surveillance and inter-
23 diction activities.

1 **SEC. 4. CONSTRUCTION AND COMPLETION OF REIN-**
2 **FORCED DOUBLE-LAYERED FENCING ALONG**
3 **THE SOUTHERN BORDER.**

4 (a) Section 564 of division E of the Consolidated Ap-
5 propriations Act of 2008 (Public Law 110–161) is hereby
6 repealed.

7 (b) PLAN.—The Secretary of Homeland Security
8 shall establish a plan to construct double-layered rein-
9 forced fencing as required under section 3 of the Secure
10 Fence Act of 2006 (Public Law 109–367). Such plan must
11 be submitted by the Secretary within 180 days of enact-
12 ment of this Act to the Committee on Homeland Security
13 of the House of Representatives and the Committee on
14 Homeland Security and Governmental Affairs of the Sen-
15 ate. The plan shall include annual deadlines to complete
16 a proportion of the total construction of the fence, with
17 the entirety of the fence to be completed no later than
18 10 years from the date of the submission of the plan.

19 (c) REPORT.—Not later than one year after the date
20 of the enactment of this Act, and annually thereafter, the
21 Secretary of Homeland Security shall submit a report on
22 the progress of the fence to the Committee on Homeland
23 Security of the House of Representatives and the Com-
24 mittee on Homeland Security and Governmental Affairs
25 of the Senate. The report shall include whether planned
26 objectives have been achieved by the Secretary’s proposed

1 deadline, and detailed reasons why such deadline, if any,
2 has not been met.

3 (d) If the Secretary of Homeland Security does not
4 submit a plan or fencing progress reports as required by
5 subsections (b) and (c) of this section, the budget of the
6 Secretary of Homeland Security shall be reduced by twen-
7 ty-five percent and redistributed to Customs and Border
8 Protection operations along the border where the fence has
9 not yet been constructed.

10 **SEC. 5. USE OF NATIONAL GUARD TO SUPPORT DEPART-**
11 **MENT OF HOMELAND SECURITY BORDER**
12 **CONTROL ACTIVITIES.**

13 (a) DEPLOYMENT.—In addition to the members of
14 the National Guard deployed along the Southern Border
15 as of the date of the enactment of this Act, the Secretary
16 of Defense shall provide for the deployment of not less
17 than an additional 10,000 members of the National Guard
18 to be made available to border State Governors along the
19 Southern Border until the date on which the Secretary
20 of Homeland Security certifies that the Federal Govern-
21 ment has achieved operational control of the Southern
22 Border as defined in section 2 of this Act.

23 (1) ADDITIONAL DEPLOYMENTS.—The Sec-
24 retary of Defense may exceed the number specified
25 in this section at the request of a Governor of a

1 State along the Southern Border if operational con-
2 trol of the Southern Border has not been achieved.

3 (2) DEPLOYMENT AUTHORITIES.—Members of
4 the National Guard required to be deployed under
5 this section may be deployed under section 502(f) of
6 title 32, United States Code, pursuant to a State
7 border control activities plan approved under section
8 112a of such title, as added by this section, or pur-
9 suant to the order of the Secretary of Defense under
10 any other provision of law.

11 (b) EXEMPTION FROM END STRENGTHS AND OTHER
12 LIMITATIONS.—Members of the National Guard deployed
13 pursuant to this section shall not be included in the cal-
14 culation to determine compliance with—

15 (1) limits on end strength; or

16 (2) limits on the number of National Guard
17 personnel that may be placed on active duty for
18 operational support.

19 (c) FEDERAL ASSISTANCE FOR STATE BORDER CON-
20 TROL ACTIVITIES PLANS.—Title 32, United States Code,
21 is amended by adding after section 115, section 116:

22 **“§ 116. Assisting States in securing the border**

23 “(a) FUNDING ASSISTANCE.—The Secretary of De-
24 fense shall provide funds to the Governor of a State who
25 submits to the Secretary a State border control activities

1 plan satisfying the requirements of subsection (c). Such
2 funds shall be used for the following:

3 “(1) The pay, allowances, clothing, subsistence,
4 gratuities, travel, and related expenses, as author-
5 ized by State law, of personnel of the National
6 Guard of that State used, while not in Federal serv-
7 ice, for the purpose of border control activities.

8 “(2) The operation and maintenance of the
9 equipment and facilities of the National Guard of
10 that State used for the purpose of border control ac-
11 tivities.

12 “(3) The procurement of services and equip-
13 ment, and the leasing of equipment, for the National
14 Guard of that State used for the purpose of border
15 control activities. However, the use of such funds for
16 the procurement of equipment may not exceed
17 \$10,000 per item, unless approval for procurement
18 of equipment in excess of that amount is granted in
19 advance by the Secretary of Defense.

20 “(b) USE OF PERSONNEL PERFORMING FULL-TIME
21 NATIONAL GUARD DUTY.—

22 “(1) Under regulations prescribed by the Sec-
23 retary of Defense, personnel of the National Guard
24 of a State may, in accordance with the State border
25 control activities plan referred to in subsection (c),

1 be ordered to perform full-time National Guard duty
2 under section 502(f) of this title for the purpose of
3 carrying out border control activities.

4 “(2) A member of the National Guard serving
5 full-time National Guard duty under orders author-
6 ized under paragraph (1) shall participate in the
7 training required under section 502(a) of this title
8 in addition to the duty performed for the purpose
9 authorized under that paragraph. The pay, allow-
10 ances, and other benefits of the member while par-
11 ticipating in the training shall be the same as those
12 to which the member is entitled while performing
13 duty for the purpose of carrying out border control
14 activities. The member is not entitled to additional
15 pay, allowances, or other benefits for participation in
16 training required under section 502(a)(1) of this
17 title.

18 “(3) Appropriations available for the Depart-
19 ment of Defense for homeland defense may be used
20 for paying costs associated with a member’s partici-
21 pation in training described in this section. Appro-
22 priations available for paying those costs shall be
23 available for making the reimbursements.

24 “(c) To ensure that the use of units and personnel
25 of the National Guard of a State pursuant to a State bor-

1 der control activities plan does not degrade the training
2 and readiness of such units and personnel, the following
3 requirements shall apply in determining the border control
4 activities that units and personnel of the National Guard
5 of a State may perform:

6 “(1) The performance of the activities may not
7 adversely affect the quality of that training or other-
8 wise interfere with the ability of a member or unit
9 of the National Guard to perform the military func-
10 tions of the member or unit.

11 “(2) National Guard personnel will not degrade
12 their military skills as a result of performing the ac-
13 tivities.

14 “(3) The performance of the activities will not
15 result in a significant increase in the cost of train-
16 ing.

17 “(4) In the case of border control activities per-
18 formed by a unit organized to serve as a unit, the
19 activities will support valid unit training require-
20 ments.

21 “(d) PLAN REQUIREMENTS.—A State border control
22 activities plan shall—

23 “(1) specify how personnel of the National
24 Guard of that State are to be used in border control
25 activities in support of the mission of the United

1 States Customs and Border Protection of the De-
2 partment of Homeland Security;

3 “(2) certify that those operations are to be con-
4 ducted at a time when the personnel involved are not
5 in Federal service;

6 “(3) certify that participation by National
7 Guard personnel in those operations is service in ad-
8 dition to training required under section 502 of this
9 title;

10 “(4) certify that any engineer-type activities (as
11 defined by the Secretary of Defense) under the plan
12 will be performed only by units and members of the
13 National Guard;

14 “(5) include a certification by the Attorney
15 General of the State (or, in the case of a State with
16 no position of Attorney General, a civilian official of
17 the State equivalent to a State attorney general)
18 that the use of the National Guard of the State for
19 the activities proposed under the plan is authorized
20 by, and is consistent with, State law; and

21 “(6) certify that the Governor of the State or
22 a civilian law enforcement official of the State des-
23 ignated by the Governor has determined that any ac-
24 tivities included in the plan that are carried out in

1 conjunction with Federal law enforcement agencies
2 serve a State law enforcement purpose.

3 “(e) EXAMINATION OF PLAN.—Before funds are pro-
4 vided to the Governor of a State under this section and
5 before members of the National Guard of that State are
6 ordered to full-time National Guard duty as authorized in
7 subsection (b), the Secretary of Defense shall, in consulta-
8 tion with the Secretary of Homeland Security, examine the
9 adequacy of the plan submitted by the Governor under
10 subsection (c). The plan as approved by the Secretary of
11 Defense may provide for the use of personnel and equip-
12 ment of the National Guard of that State to assist United
13 States Customs and Border Protection in the transpor-
14 tation of aliens who have violated a Federal immigration
15 law.

16 “(f) ANNUAL REPORT.—The Secretary of Defense
17 shall submit to Congress within 180 days an annual report
18 regarding assistance provided and activities carried out
19 under this section during the preceding fiscal year. The
20 report shall include the following:

21 “(1) The number of members of the National
22 Guard deployed along the border.

23 “(2) A description of the border control activi-
24 ties conducted by the National Guard along the bor-
25 der.

1 “(3) An accounting of the amount of funds pro-
2 vided to each State.

3 “(4) A description of the effect on military
4 training and readiness of using units and personnel
5 of the National Guard to perform activities under
6 the State border control activities plans.

7 “(g) STATUTORY CONSTRUCTION.—Nothing in this
8 section shall be construed as a limitation on the authority
9 of any unit of the National Guard of a State, when such
10 unit is not in Federal service, to perform law enforcement
11 functions authorized to be performed by the National
12 Guard by the laws of the State concerned.

13 “(h) BORDER CONTROL ACTIVITIES DEFINED.—The
14 term ‘border control activities’, with respect to the Na-
15 tional Guard of a State, means the use of National Guard
16 personnel in border control activities authorized by the law
17 of the State and requested by the Governor of the State
18 in support of the mission of the United States Customs
19 and Border Protection of the Department of Homeland
20 Security, including activities as follows:

21 “(1) Armed vehicle and foot patrols along the
22 international border between the United States and
23 Mexico.

24 “(2) Interdiction of a vehicle, vessel, aircraft or
25 other similar activity.

1 “(3) Search, seizure, and detention of suspects.

2 “(4) Construction of roads, fences, and vehicle
3 barriers.

4 “(5) Search and rescue operations.

5 “(6) Intelligence gathering, surveillance, and re-
6 connaissance.

7 “(7) Aviation support.”.

8 **SEC. 6. KEEPING CRIMINAL ALIENS OFF OF THE STREETS.**

9 (a) DETENTION, RELEASE, AND REMOVAL OF
10 ALIENS ORDERED REMOVED.—

11 (1) In section 241(a)(1)(A) of the Immigration
12 and Nationality Act, strike “Attorney General” and
13 insert “Secretary of Homeland Security”.

14 (2) In section 241(a)(1)(B) of the Immigration
15 and Nationality Act, strike “following:” and insert
16 “following, if the alien is in the custody of the Sec-
17 retary on the date in question, and if the alien is not
18 yet in the custody of the Secretary, then the removal
19 period will start on the day the alien is taken into
20 custody of the Secretary after the latest of the fol-
21 lowing:”.

22 (3) Strike section 241(a)(1)(C) of the Immigra-
23 tion and Nationality Act, and replace with:

24 “(C) SUSPENSION OF PERIOD.—The re-
25 moval period shall be extended beyond a period

1 of 90 days and the alien may remain in deten-
2 tion during such extended period if:

3 “(i) The alien fails or refuses to make
4 timely application in good faith for travel
5 or other documents necessary to the alien’s
6 departure or conspires or acts to prevent
7 the alien’s removal subject to an order of
8 removal, or in any other way fails or re-
9 fuses to fully cooperate with the Secretary
10 of Homeland Security’s efforts to carry out
11 the removal order.

12 “(ii) Any court, immigration judge or
13 the Board of Immigration Appeals orders a
14 stay of the alien’s removal.

15 “(iii) Another agency takes custody of
16 the alien.”.

17 (4) In section 241(a)(1)(2) of the Immigration
18 and Nationality Act, strike “Attorney General” each
19 time it appears and replace with “Secretary of
20 Homeland Security”.

21 (5) Strike section 241(a)(3) of the Immigration
22 and Nationality Act and replace with:

23 “SUPERVISION AFTER 90-DAY PERIOD.—If the
24 alien does not leave or is not removed within the re-
25 moval period, or is not detained pursuant to para-

graph (8) of this subsection, the alien pending removal shall be subject to supervision under regulations prescribed by the Secretary of Homeland Security. The regulations shall include provisions:

“(A) Requiring the alien—

“(i) to appear before an immigration officer monthly for identification, and to be eligible for placement in detention again if an appearance is missed;

“(ii) to give information under oath about the alien’s nationality, circumstances, habits, associations, and activities, and other information the Secretary of Homeland Security considers appropriate; and

“(iii) to obey reasonable restrictions on the alien’s conduct or activities that the Secretary of Homeland Security prescribes for the alien through regulations.

“(B) The Secretary of Homeland Security must ensure—

“(i) that the alien’s whereabouts are continually monitored electronically to prevent the alien absconding;

1 “(ii) that local law enforcement are
 2 notified upon the alien’s settlement in a
 3 community of the alien’s arrival and
 4 known criminal history; and

5 “(iii) that any other reasonable pre-
 6 cautions in light of the alien’s cir-
 7 cumstances of release are taken for the
 8 protection of the community, at the Fed-
 9 eral Government’s expense.”.

10 (6) In section 241(a)(4) of the Immigration and
 11 Nationality Act, strike “Attorney General” each
 12 time it appears and replace with “Secretary of
 13 Homeland Security”.

14 (7) In section 241(a)(6) of the Immigration and
 15 Nationality Act, insert following “comply with the
 16 order of removal”, “, in accordance with the proce-
 17 dures in paragraph (8)”.

18 (8) Insert after paragraph (7):

19 “(8) DETENTION OF ALIENS FROM COUNTRIES
 20 REFUSING REPATRIATION.—The Secretary of Home-
 21 land Security shall establish an administrative re-
 22 view process through the rulemaking process, avail-
 23 able only to those aliens who are not otherwise sub-
 24 ject to mandatory detention, to determine whether
 25 and how to release those aliens who have received a

1 final order of removal, and have made all reasonable
2 efforts to comply, including fully cooperating with
3 the Secretary of Homeland Security, but the United
4 States has been unable to return to the alien's coun-
5 try of origin.

6 “(A) The Secretary will have the authority
7 to detain the alien for 90 days beyond the re-
8 moval period even if this review process is not
9 instituted.

10 “(B) At the end of the removal period, the
11 Secretary shall indicate in writing if the review
12 process should be initiated.

13 “(C) The first hearing to determine wheth-
14 er the alien should be released shall be held
15 within 90 days after the Secretary indicates the
16 review process shall be initiated.

17 “(D) Both the Secretary and the alien
18 shall be able to present evidence during this re-
19 view process.

20 “(E) There will be further hearings every
21 180 days to determine whether the alien should
22 remain in detention or, if released, be again de-
23 tained, until the alien is removed from the
24 United States or otherwise leaves the country.

1 “(F) During the review process, the alien
2 may continue to be detained, or, if released,
3 shall be detained again, if evidence is presented
4 at the first or subsequent hearing that—

5 “(i) there is still any significant likeli-
6 hood the alien may be removed,

7 “(ii) the alien has a highly contagious
8 disease that poses a threat to public safety,

9 “(iii) the Secretary of State says re-
10 lease would have adverse foreign policy
11 consequences,

12 “(iv) there is reason to believe based
13 on classified information that releasing the
14 alien would threaten the security of the
15 United States,

16 “(v) the release of the alien would
17 threaten the safety of the community or
18 any individual,

19 “(vi) conditions of release cannot be
20 expected to ensure the safety of the com-
21 munity,

22 “(vii) the alien has committed any ag-
23 gravated felonies as defined in section
24 101(a)(43)(A) of this Act, or a crime of vi-
25 olence as defined in 16 U.S.C. 18, or

1 “(viii) because of a mental condition
2 the alien is likely to commit a crime of vio-
3 lence or threaten the safety of himself or
4 any other person.

5 “(G) The review will allow one administra-
6 tive appeal of the outcome of the hearing. After
7 the alien has exhausted his administrative rem-
8 edies, review of the outcome will only be avail-
9 able through habeas corpus proceedings under
10 the U.S. District Court for the District of Co-
11 lumbia.

12 “(H) If the review determines that the
13 alien should be released, the Secretary of
14 Homeland Security shall provide notice to the
15 chief law enforcement officers of the State and
16 local jurisdiction in which the alien is released
17 of the identity of the alien and the cir-
18 cumstances which under which he or she was
19 not able to be removed or detained, and will de-
20 scribe what sanctions, if any, have been applied
21 to the alien’s country, if the alien has not been
22 removed because that country has refused to
23 accept the alien.”.

1 (b) Strike section 243(d) of the Immigration and Na-
2 tionality Act (8 U.S.C. 1253(d)) and replace with the fol-
3 lowing:

4 “(d) SANCTIONS ON COUNTRIES WHICH DENY OR
5 DELAY ACCEPTING ALIENS.—

6 “(1) COUNTRIES REFUSING OR UNREASONABLY
7 DELAYING REPATRIATION.—If a country for more
8 than 60 days after receiving a request from an offi-
9 cial of the United States who is authorized to make
10 such a request refuses to accept an alien who is a
11 citizen, national, subject, or resident, that country
12 will be considered to be refusing or unreasonably de-
13 laying repatriation.

14 “(2) REPORT.—

15 “(A) Within 90 days after the date of the
16 enactment of this Act, the Secretary of Home-
17 land Security shall prepare, publish publicly to
18 the Department of Homeland Security Website,
19 and submit to Congress a report listing for each
20 month the following:

21 “(i) The number of aliens without
22 lawful status or presence released from the
23 custody of the Department of Homeland
24 Security with criminal convictions or ar-
25 rests, including a list of the crimes for

1 which each alien was convicted or arrested,
2 the reason for the release from custody,
3 and the detention status of each alien.

4 “(ii) The number of aliens without
5 lawful status or presence that come from a
6 country, which, in the previous six months,
7 refused or unreasonably delaying repa-
8 triating its citizens, nationals, subjects, or
9 residents, and will include the total number
10 of aliens from each country that has re-
11 fused or delayed repatriation, the detention
12 status of each of these aliens, and the
13 criminal record of each of these aliens.

14 “(B) Following the first report, the Sec-
15 retary shall submit subsequent reports annu-
16 ally. If the Secretary of Homeland Security
17 misses the deadline for submitting one of these
18 reports by more than 90 days, any American
19 citizen has a cause of action in the United
20 States District Court against the Secretary to
21 compel the Secretary to publish the late report.

22 “(3) VISAS.—Not later than 60 days after the
23 first report has been submitted, and for each report
24 thereafter, the Secretary of State may not issue a
25 visa to any citizen, national, subject, or resident of

1 a country listed in the report. This subsection will
2 apply to the country until a report pursuant to sub-
3 section (2) of this section is submitted to Congress
4 or the Secretary of Homeland Security otherwise
5 certifies that the country no longer meets the re-
6 quirements to be listed in the report, and the coun-
7 try has issued appropriate travel documents to and
8 accepted every alien listed in a report that they have
9 refused. If the State Department should issue a visa
10 to a citizen, national, subject, or resident when it is
11 not legal to do so under this section, that visa shall
12 be null and void under law. If a State Department
13 issues a visa when it is not legal to do so under this
14 section, employees of the State Department shall no
15 longer be eligible for bonuses or salary increases
16 until it has revoked all such unlawful visas and
17 stopped issuing such visas.

18 “(4) TRADE.—If a country listed in the report
19 has any favored or preferred status in a trade agree-
20 ment with the United States, the country will lose
21 that status. This sanction will apply to the country
22 until another report is submitted to Congress or the
23 Secretary of Homeland Security otherwise certifies
24 that the country no longer meets the requirements
25 to be listed in the report, and the country has issued

1 appropriate travel documents to and accepted every
2 alien listed in a report that they have refused.

3 “(5) FOREIGN AID.—If a country listed in the
4 report receives any money from the United States in
5 foreign aid, the United States will discontinue all
6 such aid. This sanction will apply to the country
7 until another report is submitted to Congress or the
8 Secretary of Homeland Security otherwise certifies
9 that the country no longer meets the requirements
10 to be listed in the report, and the country has issued
11 appropriate travel documents to and accepted every
12 alien listed in a report that they have refused.”.

13 (c) SEVERABILITY.—If any of the provisions of this
14 Act is held to be invalid for any reason, the remainder
15 of the Act shall not be affected by such holding.

16 **SEC. 7. GROUNDS OF INADMISSIBILITY AND DEPORT-**
17 **ABILITY FOR ALIEN GANG MEMBERS.**

18 (a) DEFINITION OF GANG MEMBER.—Section 101(a)
19 of the Immigration and Nationality Act (8 U.S.C.
20 1101(a)) is amended by adding at the end the following:

21 “(53)(A) The term ‘criminal gang’ means an
22 ongoing group, club, organization, or association of
23 5 or more persons that has as one of its primary
24 purposes the commission of 1 or more of the fol-
25 lowing criminal offenses and the members of which

1 engage, or have engaged within the past 5 years, in
2 a continuing series of such offenses, or that has been
3 designated as a criminal gang by the Secretary of
4 Homeland Security, in consultation with the Attor-
5 ney General, as meeting these criteria. The offenses
6 described, whether in violation of Federal or State
7 law or foreign law and regardless of whether the of-
8 fenses occurred before, on, or after the date of the
9 enactment of this paragraph, are the following:

10 “(i) A ‘felony drug offense’ (as defined in
11 section 102 of the Controlled Substances Act
12 (21 U.S.C. 802)).

13 “(ii) An offense under section 274 (related
14 to bringing in and harboring certain aliens),
15 section 277 (relating to aiding or assisting cer-
16 tain aliens to enter the United States), or sec-
17 tion 278 (relating to importation of alien for
18 immoral purpose).

19 “(iii) A crime of violence (as defined in
20 section 16 of title 18, United States Code).

21 “(iv) A crime involving obstruction of jus-
22 tice, tampering with or retaliating against a
23 witness, victim, or informant, or burglary.

24 “(v) Any conduct punishable under sec-
25 tions 1028 and 1029 of title 18, United States

1 Code (relating to fraud and related activity in
2 connection with identification documents or ac-
3 cess devices), sections 1581 through 1594 of
4 such title (relating to peonage, slavery and traf-
5 ficking in persons), section 1952 of such title
6 (relating to interstate and foreign travel or
7 transportation in aid of racketeering enter-
8 prises), section 1956 of such title (relating to
9 the laundering of monetary instruments), sec-
10 tion 1957 of such title (relating to engaging in
11 monetary transactions in property derived from
12 specified unlawful activity), or sections 2312
13 through 2315 of such title (relating to inter-
14 state transportation of stolen motor vehicles or
15 stolen property).

16 “(vi) A conspiracy to commit an offense
17 described in clauses (i) through (v).

18 “(B) Notwithstanding any other provision of
19 law (including any effective date), the term applies
20 regardless of whether the conduct occurred before,
21 on, or after the date of enactment of this para-
22 graph.”.

23 (b) INADMISSIBILITY.—Section 212(a)(2) of such Act
24 (8 U.S.C. 1182(a)(2)), is amended by adding at the end
25 the following:

1 “(J) ALIENS ASSOCIATED WITH CRIMINAL
 2 GANGS.—Any alien is inadmissible who a con-
 3 sular officer, the Secretary of Homeland Secu-
 4 rity, or the Attorney General knows or has rea-
 5 son to believe—

6 “(i) to be or to have been a member
 7 of a criminal gang (as defined in section
 8 101(a)(53)); or

9 “(ii) to have participated in the activi-
 10 ties of a criminal gang (as defined in sec-
 11 tion 101(a)(53)), knowing or having reason
 12 to know that such activities will promote,
 13 further, aid, or support the illegal activity
 14 of the criminal gang.”.

15 (c) DEPORTABILITY.—Section 237(a)(2) of the Im-
 16 migration and Nationality Act (8 U.S.C. 1227(a)(2)), is
 17 amended by adding at the end the following:

18 “(G) ALIENS ASSOCIATED WITH CRIMINAL
 19 GANGS.—Any alien is deportable who the Sec-
 20 retary of Homeland Security or the Attorney
 21 General knows or has reason to believe—

22 “(i) is or has been a member of a
 23 criminal gang (as defined in section
 24 101(a)(53)); or

1 “(ii) has participated in the activities
2 of a criminal gang (as so defined), knowing
3 or having reason to know that such activi-
4 ties will promote, further, aid, or support
5 the illegal activity of the criminal gang.”.

6 (d) DESIGNATION.—

7 (1) IN GENERAL.—The Immigration and Na-
8 tionality Act (8 U.S.C. 1182) is amended by insert-
9 ing after section 219 the following:

10 **“SEC. 220. DESIGNATION OF CRIMINAL STREET GANG.**

11 “(a) DESIGNATION.—The Secretary of Homeland Se-
12 curity, in consultation with the Attorney General and the
13 Secretary of State, may designate a group or association
14 as a criminal street gang if its conduct is described in sec-
15 tion 101(a)(53) or if the group or association conduct
16 poses a significant risk that threatens the security and the
17 public safety, national security, homeland security, foreign
18 policy, or economy of the United States.

19 “(b) EFFECTIVE DATE.—Designations under sub-
20 section (a) shall remain in effect until the designation is
21 revoked after consultation between the Secretary of Home-
22 land Security, the Attorney General, and the Secretary of
23 State or is terminated in accordance with Federal law.
24 The Secretary shall notify the Senate Judiciary Com-
25 mittee and the House Judiciary Committee of any revoca-

tion of designation at least 30 days before the revocation takes effect.”.

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 219 the following:

“Sec. 220. Designation of criminal street gang.”.

(e) MANDATORY DETENTION.—

(1) IN GENERAL.—Section 236(c)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)(D)) is amended—

(A) by inserting “or 212(a)(2)(J),” after “212(a)(3)(B)”; and

(B) by inserting “or 237(a)(2)(G),” before “237(a)(4)(B)”.

(2) ANNUAL REPORT.—Not later than 180 days after the end of each fiscal year, the Secretary of Homeland Security, after consultation with the Department of Justice, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the number of aliens detained under the amendments made by paragraph (1).

(f) ASYLUM CLAIMS BASED ON GANG AFFILIATION.—

(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL TO CERTAIN COUNTRIES.—Section

1 241(b)(3)(B) of the Immigration and Nationality
2 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
3 matter preceding clause (i), by inserting “who is de-
4 scribed in section 212(a)(2)(J)(i) or section
5 237(a)(2)(G)(i) or who is” following “to an alien”.

6 (2) INELIGIBILITY FOR ASYLUM.—Section
7 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))
8 is amended—

9 (A) in clause (v), by striking “or” at the
10 end;

11 (B) by redesignating clause (vi) as clause
12 (vii); and

13 (C) by inserting after clause (v) the fol-
14 lowing:

15 “(vi) the alien is described in section
16 212(a)(2)(J)(i) or section 237(a)(2)(G)(i)
17 (relating to participation in criminal street
18 gangs); or”.

19 (g) TEMPORARY PROTECTED STATUS.—Section 244
20 of such Act (8 U.S.C. 1254a) is amended—

21 (1) by striking “Attorney General” each place
22 it appears and inserting “Secretary of Homeland Se-
23 curity”;

24 (2) in subparagraph (c)(2)(B), by adding at the
25 end the following:

1 “(iii) the alien is, or at any time after
2 admission has been, a member of a crimi-
3 nal gang (as defined in section
4 101(a)(53)).”; and
5 (3) in subsection (d)—

6 (A) by striking paragraph (3) and redesignig-
7 nating paragraph (4) as paragraph (3); and

8 (B) in paragraph (3), as redesignated, by
9 adding at the end the following: “The Secretary
10 of Homeland Security may detain an alien pro-
11 vided temporary protected status under this
12 section whenever appropriate under any other
13 provision of law.”.

14 (h) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date of the enactment
16 of this Act.

17 **SEC. 8. ADDITIONAL JUDGES.**

18 (a) EVALUATION.—Not later than 30 days after the
19 enactment of this Act, the Attorney General, in consulta-
20 tion with the Secretary of Homeland Security, shall sub-
21 mit to Congress a report indicating the number, if any,
22 of additional immigration judges that are needed to proc-
23 ess the backlog of removal cases.

24 (b) REPORTING.—Following the initial report, the
25 Attorney General, in consultation with the Secretary of

1 Homeland Security, shall thereafter submit a report annu-
 2 ally to the Committee on the Judiciary in the Senate and
 3 the Committee on the Judiciary in the House, indicating
 4 the number of immigration judges needed for the following
 5 fiscal year.

6 **SEC. 9. ADDITIONAL DETENTION SPACE.**

7 (a) ADDITIONAL DETENTION SPACE NEEDED TO
 8 HOUSE UNLAWFUL ENTRANTS.—Not later than 30 days
 9 of enactment, the Secretary of Homeland Security shall
 10 submit to Congress a request for additional beds and de-
 11 tention space needed to hold criminal aliens and aliens
 12 without lawful presence or lawful status.

13 (b) REPORTING.—The Secretary of Homeland Secu-
 14 rity shall submit to Congress annually a report indicating
 15 the number, if any, of additional detention beds and deten-
 16 tion space needed to hold criminal aliens and aliens with-
 17 out lawful presence or lawful status.

18 (c) FUNDING.—Such requests are hereby authorized
 19 to be funded.

20 **SEC. 10. OFFSETS.**

21 (a) CLOSING THE ADDITIONAL CHILD TAX CREDIT
 22 LOOPHOLE.—

23 (1) IN GENERAL.—Subsection (e) of section 24
 24 of the Internal Revenue Code of 1986 is amended by
 25 striking “under this section to a taxpayer” and all

1 that follows and inserting “under this section to any
2 taxpayer unless—

3 “(A) such taxpayer includes the taxpayer’s
4 valid identification number (as defined in sec-
5 tion 6428(h)(2)) on the return of tax for the
6 taxable year, and

7 “(B) with respect to any qualifying child,
8 the taxpayer includes the name and taxpayer
9 identification number of such qualifying child
10 on such return of tax.”.

11 (2) EFFECTIVE DATE.—The amendment made
12 by this section shall apply to the first full taxable
13 year and all subsequent years following the date of
14 enactment of this Act.

15 (b) SECTION 1641 OF TITLE 8 OF THE UNITED
16 STATES CODE IS AMENDED BY ADDING.—

17 (1) LIMITATION ON BENEFITS FOR PREVIOUSLY
18 UNLAWFUL ALIENS.—

19 “(d) LIMITATION ON BENEFITS FOR PREVIOUSLY
20 UNLAWFUL ALIENS.—Any alien in violation of section
21 212(a)(6) or section 212(a)(7) of the Immigration and
22 Nationality Act who gains lawful status pursuant to an
23 Act of Congress, or lawful status or lawful presence pursu-
24 ant to an order or policy directive by the Executive

1 Branch, is hereby not qualified for public benefits under
2 this section.”.

3 (2) EFFECTIVE DATE.—This provision shall be
4 effective upon enactment of this Act.

5 (c) FOREIGN REMITTANCE TAX.—

6 (1) IN GENERAL.—Section 1073 of Public Law
7 111–203 is amended by adding:

8 “TAXATION OF REMITTANCES.— All monetary remit-
9 tances sent from senders in the United States to recipients
10 in any of the top ten remittance recipient nations shall
11 be taxed at the rate of ten percent (10%) of the trans-
12 mitted amount, provided however that the transmitters
13 shall not be required to provide to the Internal Revenue
14 Service information with respect to each individual trans-
15 mission. The top ten remittance recipients are defined as
16 those ten nations with the greatest money transfers from
17 the United States, from reported data required in Public
18 Law 111–203.”.

19 (2) EFFECTIVE DATE.—This provision shall be
20 effective upon enactment of this Act.

1 **SEC. 11. LIMITATION ON DEFERRED ACTION FOR CHILD-**
2 **HOOD ARRIVALS; RESTRICTIONS ON EMPLOY-**
3 **MENT AUTHORIZATION FOR ALIENS NOT IN**
4 **LAWFUL STATUS.**

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

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

12 (2) to authorize any alien to work in the United
13 States if such alien—

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

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

○