

Calendar No. 527

113TH CONGRESS
2D SESSION**S. 2772**

Making supplemental appropriations for the fiscal year ending September 30, 2014, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2014

Mr. FLAKE introduced the following bill; which was read the first time

AUGUST 1, 2014

Read the second time and placed on the calendar

A BILL

Making supplemental appropriations for the fiscal year ending September 30, 2014, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the following sums are appropriated, out of any
4 money in the Treasury not otherwise appropriated, for the
5 fiscal year ending September 30, 2014, and for other pur-
6 poses, namely:

**DIVISION A—SUPPLEMENTAL
APPROPRIATIONS AND RESCISSIONS**

TITLE I

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses”, \$71,000,000, to remain available until September 30, 2015, for necessary expenses to apprehend, transport, and provide temporary shelter associated with the significant rise in unaccompanied alien children and alien adults accompanied by an alien minor at the Southwest Border of the United States, including related activities to secure the border, disrupt transnational crime, and the necessary acquisition, construction, improvement, repair, and management of facilities: *Provided*, That not later than 30 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committees on Appropriations of the House of Representatives and the Senate an obligation and quarterly expenditure plan for these funds: *Provided further*, That the Secretary shall provide to such Committees quarterly updates on the expenditure of these funds.

1 U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
2 SALARIES AND EXPENSES

3 For an additional amount for “Salaries and Ex-
4 penses”, \$334,000,000, to remain available until Sep-
5 tember 30, 2015, for necessary expenses to respond to the
6 significant rise in unaccompanied alien children and alien
7 adults accompanied by an alien minor at the Southwest
8 Border of the United States, including for enforcement of
9 immigration and customs law, including detention and re-
10 moval operations, of which \$262,000,000 shall be for Cus-
11 tody Operations and \$72,000,000 shall be for Transpor-
12 tation and Removal operations: *Provided*, That not later
13 than 30 days after the date of the enactment of this Act,
14 the Secretary of Homeland Security shall submit to the
15 Committees on Appropriations of the House of Represent-
16 atives and the Senate an obligation and quarterly expendi-
17 ture plan for these funds: *Provided further*, That the Sec-
18 retary shall provide to such Committees quarterly updates
19 on the expenditure of these funds.

20 GENERAL PROVISIONS—THIS TITLE
21 (INCLUDING RESCISSION)

22 SEC. 101. Notwithstanding any other provision of
23 law, none of the funds provided by this title shall be avail-
24 able for obligation or expenditure through a reprogram-
25 ming or transfer of funds that proposes to use funds di-

1 rected for a specific activity by either of the Committees
2 on Appropriations of the House of Representatives or the
3 Senate for a different purpose than for which the appro-
4 priations were provided: *Provided*, That prior to the obli-
5 gation of such funds, a request for approval shall be sub-
6 mitted to such Committees.

7 SEC. 102. The Secretary of Homeland Security shall
8 provide to the Congress quarterly reports that include: (1)
9 the number of apprehensions at the border delineated by
10 unaccompanied alien children and alien adults accom-
11 panied by an alien minor; (2) the number of claims of a
12 credible fear of persecution delineated by unaccompanied
13 alien children and alien adults accompanied by an alien
14 minor, and the number of determinations of valid claims
15 of a credible fear of persecution delineated by unaccom-
16 panied alien children and alien adults accompanied by an
17 alien minor; (3) the number of unaccompanied alien chil-
18 dren and alien adults accompanied by an alien minor
19 granted asylum by an immigration judge, delineated by
20 year of apprehension; (4) the number of alien adults ac-
21 companied by an alien minor in detention facilities, alter-
22 natives to detention, and other non-detention forms of su-
23 pervision; and (5) the number of removals delineated by
24 unaccompanied alien children and alien adults accom-
25 panied by an alien minor.

1 SEC. 103. Of the unobligated balance available for
2 “Department of Homeland Security—Federal Emergency
3 Management Agency—Disaster Relief Fund”,
4 \$405,000,000 is rescinded: *Provided*, That no amounts
5 may be rescinded from amounts that were designated by
6 the Congress as an emergency requirement pursuant to
7 a concurrent resolution on a budget or the Balanced
8 Budget and Emergency Deficit Control Act of 1985: *Pro-*
9 *vided further*, That no amounts may be rescinded from the
10 amounts that were designated by the Congress as being
11 for disaster relief pursuant to section 251(b)(2)(D) of the
12 Balanced Budget and Emergency Deficit Control Act of
13 1985.

14 SEC. 104. Notwithstanding any other provision of
15 law, grants awarded under sections 2003 or 2004 of the
16 Homeland Security Act of 2002 (6 U.S.C. 604 and 605)
17 using funds provided under the heading “Federal Emer-
18 gency Management Agency—State and Local Programs”
19 in division F of Public Law 113–76, division D of Public
20 Law 113–6, or division D of Public Law 112–74 may be
21 used by State and local law enforcement and public safety
22 agencies within local units of government along the South-
23 west Border of the United States for costs incurred during
24 the award period of performance for personnel, overtime,
25 travel, costs related to combating illegal immigration and

1 drug smuggling, and costs related to providing humani-
2 tarian relief to unaccompanied alien children and alien
3 adults accompanied by an alien minor who have entered
4 the United States.

5 TITLE II

6 DEPARTMENT OF DEFENSE—MILITARY

7 MILITARY PERSONNEL

8 NATIONAL GUARD PERSONNEL, ARMY

9 For an additional amount for “National Guard Per-
10 sonnel, Army”, \$12,419,000, to remain available until
11 September 30, 2015, for necessary expenses related to the
12 Southwest Border of the United States.

13 NATIONAL GUARD PERSONNEL, AIR FORCE

14 For an additional amount for “National Guard Per-
15 sonnel, Air Force”, \$2,258,000, to remain available until
16 September 30, 2015, for necessary expenses related to the
17 Southwest Border of the United States.

18 OPERATION AND MAINTENANCE

19 OPERATION AND MAINTENANCE, ARMY NATIONAL 20 GUARD

21 For an additional amount for “Operation and Main-
22 tenance, Army National Guard”, \$15,807,000, to remain
23 available until September 30, 2015, for necessary expenses
24 related to the Southwest Border of the United States.

1 OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

2 For an additional amount for “Operation and Main-
 3 tenance, Air National Guard”, \$4,516,000, to remain
 4 available until September 30, 2015, for necessary expenses
 5 related to the Southwest Border of the United States.

6 GENERAL PROVISION—THIS TITLE

7 (RESCISSION)

8 SEC. 201. Of the unobligated balances of amounts ap-
 9 propriated in title II of division C of Public Law 113–
 10 76 for “Operation and Maintenance, Defense-Wide”,
 11 \$35,000,000 is hereby rescinded to reflect excess cash bal-
 12 ances in Department of Defense Working Capital Funds.

13 TITLE III

14 DEPARTMENT OF JUSTICE

15 GENERAL ADMINISTRATION

16 ADMINISTRATIVE REVIEW AND APPEALS

17 For an additional amount for “Administrative Review
 18 and Appeals” for necessary expenses to respond to the sig-
 19 nificant rise in unaccompanied alien children and alien
 20 adults accompanied by an alien minor at the Southwest
 21 Border of the United States, \$22,000,000, to remain
 22 available until September 30, 2015, of which \$12,900,000
 23 shall be for additional temporary immigration judges and
 24 related expenses, and \$9,100,000 shall be for technology

1 for judges to expedite the adjudication of immigration
2 cases.

3 GENERAL PROVISION—THIS TITLE

4 (RESCISSION)

5 SEC. 301. Of the unobligated balances available for
6 “Department of Justice—Legal Activities—Assets For-
7 feiture Fund”, \$22,000,000 is hereby permanently re-
8 scinded.

9 TITLE IV

10 GENERAL PROVISIONS—THIS TITLE

11 REPATRIATION AND REINTEGRATION

12 SEC. 401. (a) REPATRIATION AND REINTEGRA-
13 TION.—Of the funds appropriated in titles III and IV of
14 division K of Public Law 113–76, and in prior Acts mak-
15 ing appropriations for the Department of State, foreign
16 operations, and related programs, for assistance for the
17 countries in Central America, up to \$40,000,000 shall be
18 made available for such countries for repatriation and re-
19 integration activities: *Provided*, That funds made available
20 pursuant to this section may be obligated notwithstanding
21 subsections (c) and (e) of section 7045 of division K of
22 Public Law 113–76.

23 (b) REPORT.—Prior to the initial obligation of funds
24 made available pursuant to this section, but not later than
25 15 days after the date of enactment of this Act, and every

1 90 days thereafter until September 30, 2015, the Sec-
2 retary of State, in consultation with the Administrator of
3 the United States Agency for International Development,
4 shall submit to the appropriate congressional committees
5 a report on the obligation of funds made available pursu-
6 ant to this section by country and the steps taken by the
7 government of each country to—

8 (1) improve border security;

9 (2) enforce laws and policies to stem the flow
10 of illegal entries into the United States;

11 (3) enact laws and implement new policies to
12 stem the flow of illegal entries into the United
13 States, including increasing penalties for human
14 smuggling;

15 (4) conduct public outreach campaigns to ex-
16 plain the dangers of the journey to the Southwest
17 Border of the United States and to emphasize the
18 lack of immigration benefits available; and

19 (5) cooperate with United States Federal agen-
20 cies to facilitate and expedite the return, repatri-
21 ation, and reintegration of illegal migrants arriving
22 at the Southwest Border of the United States.

23 (c) SUSPENSION OF ASSISTANCE.—The Secretary of
24 State shall suspend assistance provided pursuant to this
25 section to the government of a country if such government

1 is not making significant progress on each item described
 2 in paragraphs (1) through (5) of subsection (b): *Provided*,
 3 That assistance may only be resumed if the Secretary re-
 4 ports to the appropriate congressional committees that
 5 subsequent to the suspension of assistance such govern-
 6 ment is making significant progress on each of the items
 7 enumerated in such subsection.

8 (d) NOTIFICATION REQUIREMENT.—Funds made
 9 available pursuant to this section shall be subject to the
 10 regular notification procedures of the Committees on Ap-
 11 propriations of the House of Representatives and the Sen-
 12 ate.

13 (RESCISSION)

14 SEC. 402. Of the unexpended balances available to
 15 the President for bilateral economic assistance under the
 16 heading “Economic Support Fund” from prior Acts mak-
 17 ing appropriations for the Department of State, foreign
 18 operations, and related programs, \$197,000,000 is re-
 19 scinded: *Provided*, That no amounts may be rescinded
 20 from amounts that were designated by the Congress for
 21 Overseas Contingency Operations/Global War on Ter-
 22 rorism pursuant to section 251(b)(2)(A) of the Balanced
 23 Budget and Emergency Deficit Control Act of 1985 or as
 24 an emergency requirement pursuant to a concurrent reso-

1 lution on the budget or the Balanced Budget and Emer-
 2 gency Deficit Control Act of 1985.

3 TITLE V

4 DEPARTMENT OF HEALTH AND HUMAN 5 SERVICES

6 ADMINISTRATION FOR CHILDREN AND FAMILIES

7 REFUGEE AND ENTRANT ASSISTANCE

8 For an additional amount for “Refugee and Entrant
 9 Assistance”, \$197,000,000, to be merged with and avail-
 10 able for the same time period and for the same purposes
 11 as the funds made available under this heading in division
 12 H of Public Law 113–76 “for carrying out such sections
 13 414, 501, 462, and 235”: *Provided*, That of this amount,
 14 \$47,000,000 shall be for the Social Services and Targeted
 15 Assistance programs.

16 This division may be cited as the “Secure the South-
 17 west Border Supplemental Appropriations Act, 2014”.

18 **DIVISION B—SECURE THE** 19 **SOUTHWEST BORDER ACT OF** 20 **2014**

21 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

22 (a) SHORT TITLE.—This division may be cited as the
 23 “Secure the Southwest Border Act of 2014”.

24 (b) TABLE OF CONTENTS.—The table of contents for
 25 this division is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROTECTING CHILDREN

Sec. 101. Repatriation of unaccompanied alien children.

Sec. 102. Expedited due process and screening of unaccompanied alien children.

Sec. 103. Due process protections for unaccompanied alien children present in the United States.

Sec. 104. Emergency immigration judge resources.

Sec. 105. Protecting children from human traffickers, sex offenders, and other criminals.

Sec. 106. Inclusion of additional grounds for per se ineligibility for asylum.

TITLE II—USE OF NATIONAL GUARD TO IMPROVE BORDER SECURITY

Sec. 201. National Guard support for border operations.

TITLE III—NATIONAL SECURITY AND FEDERAL LANDS PROTECTION

Sec. 301. Prohibition on actions that impede border security on certain Federal land.

Sec. 302. Sense of Congress on placement of unauthorized aliens at military installations.

TITLE I—PROTECTING CHILDREN

SEC. 101. REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.

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

(1) in paragraph (2)—

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

(B) in subparagraph (A), in the matter preceding clause (i), by striking “who is a national or habitual resident of a country that is contiguous with the United States”; and

1 (C) in subparagraph (C)—

2 (i) by amending the subparagraph
3 heading to read as follows: “AGREEMENTS
4 WITH FOREIGN COUNTRIES”; and

5 (ii) in the matter preceding clause (i),
6 by striking “countries contiguous to the
7 United States” and inserting “Canada, El
8 Salvador, Guatemala, Honduras, Mexico,
9 and any other foreign country that the
10 Secretary determines appropriate”; and

11 (2) in paragraph (5)(D)—

12 (A) in the subparagraph heading, by strik-
13 ing “PLACEMENT IN REMOVAL PROCEEDINGS”
14 and inserting “EXPEDITED DUE PROCESS AND
15 SCREENING FOR UNACCOMPANIED ALIEN CHIL-
16 DREN”;

17 (B) in the matter preceding clause (i), by
18 striking “, except for an unaccompanied alien
19 child from a contiguous country subject to the
20 exceptions under subsection (a)(2), shall be—”
21 and inserting “who meets the criteria listed in
22 paragraph (2)(A)—”;

23 (C) by striking clause (i) and inserting the
24 following:

1 “(i) shall be placed in a proceeding in
2 accordance with section 235B of the Immi-
3 gration and Nationality Act, which shall
4 commence not later than 7 days after the
5 screening of an unaccompanied alien child
6 described in paragraph (4);”;

7 (D) by redesignating clauses (ii) and (iii)
8 as clauses (iii) and (iv), respectively;

9 (E) by inserting after clause (i) the fol-
10 lowing:

11 “(ii) may not be placed in the imme-
12 diate custody of a nongovernmental spon-
13 sor or otherwise released from the custody
14 of the United States Government until the
15 child is repatriated unless the child is the
16 subject of an order under section
17 235B(e)(1) of the Immigration and Na-
18 tionality Act;”;

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

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

1 **SEC. 102. EXPEDITED DUE PROCESS AND SCREENING OF**
 2 **UNACCOMPANIED ALIEN CHILDREN.**

3 (a) AMENDMENTS TO IMMIGRATION AND NATION-
 4 ALITY ACT.—

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

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

11 “(a) DEFINED TERM.—In this section, the term ‘asy-
 12 lum officer’ had the meaning given such term in section
 13 235(b)(1)(E) of the Immigration and Nationality Act (8
 14 U.S.C. 1225(b)(1)(E)).

15 “(b) PROCEEDING.—

16 “(1) IN GENERAL.—Not later than 7 days after
 17 the screening of an unaccompanied alien child under
 18 section 235(a)(4) of the William Wilberforce Traf-
 19 ficking Victims Protection Reauthorization Act of
 20 2008 (8 U.S.C. 1232(a)(4)), an immigration judge
 21 shall conduct a proceeding to inspect, screen, and
 22 determine the status of an unaccompanied alien
 23 child who is an applicant for admission to the
 24 United States.

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

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

4 “(c) CONDUCT OF PROCEEDING.—

5 “(1) AUTHORITY OF IMMIGRATION JUDGE.—

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

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

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

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

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

20 “(A) in person;

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

23 “(C) through video conference; or

24 “(D) through telephone conference.

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

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

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

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

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

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

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

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

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

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

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

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

13 “(6) CONSEQUENCES OF FAILURE TO AP-
14 PPEAR.—Any alien who fails to appear at a pro-
15 ceeding required under this section, shall be ordered
16 removed in absentia if the Government establishes
17 by a preponderance of the evidence that the alien
18 was at fault for their absence from the proceedings.

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

20 “(1) DECISION.—

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

1 “(i) admissible to the United States;

2 or

3 “(ii) eligible for any form of relief

4 from removal under this Act.

5 “(B) EVIDENCE.—The determination of

6 the immigration judge under subparagraph (A)

7 shall be based only on the evidence produced at

8 the hearing.

9 “(2) BURDEN OF PROOF.—

10 “(A) IN GENERAL.—In a proceeding under

11 this section, an alien who is an applicant for

12 admission has the burden of establishing, by a

13 preponderance of the evidence, that the alien—

14 “(i) is likely to be entitled to be law-

15 fully admitted to the United States or eli-

16 gible for any form of relief from removal

17 under this Act; or

18 “(ii) is lawfully present in the United

19 States pursuant to a prior admission.

20 “(B) ACCESS TO DOCUMENTS.—In meeting

21 the burden of proof under subparagraph (A)(ii),

22 the alien shall be given access to—

23 “(i) the alien’s visa or other entry

24 document, if any; and

1 “(ii) any other records and docu-
2 ments, not considered by the Attorney
3 General to be confidential, pertaining to
4 the alien’s admission or presence in the
5 United States.

6 “(e) ORDERS.—

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

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

19 “(A) an intention to apply for asylum
20 under section 208; or

21 “(B) a fear of persecution.

22 “(3) CLAIMS FOR ASYLUM.—If an unaccom-
23 panied alien child described in paragraph (2) claims
24 an intention to apply for asylum under section 208
25 or a fear of persecution, the judge shall order the

1 alien referred for an interview by an asylum officer
2 under subsection (f).

3 “(f) ASYLUM INTERVIEWS.—

4 “(1) DEFINED TERM.—In this subsection, the
5 term ‘credible fear of persecution’ has the meaning
6 given such term in section 235(b)(1)(B)(v) of the
7 Immigration and Nationality Act (8 U.S.C.
8 1225(b)(1)(B)(v)).

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

12 “(3) REFERRAL OF CERTAIN ALIENS.—If the
13 officer determines at the time of the interview that
14 an alien has a credible fear of persecution, the alien
15 shall be held in the custody of the Secretary of
16 Health and Human Services pursuant to section
17 235(b) of the William Wilberforce Trafficking Vic-
18 tims Protection Reauthorization Act of 2008 (8
19 U.S.C. 1232(b)) during further consideration of the
20 application for asylum.

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

23 “(A) IN GENERAL.—Subject to subpara-
24 graph (C), if the asylum officer determines that
25 an alien does not have a credible fear of perse-

1 cution the officer shall order the alien removed
2 from the United States without further hearing
3 or review.

4 “(B) RECORD OF DETERMINATION.—The
5 officer shall prepare a written record of a deter-
6 mination under subparagraph (A), which shall
7 include—

8 “(i) a summary of the material facts
9 as stated by the applicant;

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

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

15 “(iv) a copy of the officer’s interview
16 notes.

17 “(C) REVIEW OF DETERMINATION.—

18 “(i) RULEMAKING.—The Attorney
19 General shall establish, by regulation, a
20 process by which an immigration judge will
21 conduct a prompt review, upon the alien’s
22 request, of a determination under subpara-
23 graph (A) that the alien does not have a
24 credible fear of persecution.

1 “(ii) MANDATORY COMPONENTS.—

2 The review described in clause (i)—

3 “(I) shall include an opportunity
4 for the alien to be heard and ques-
5 tioned by the immigration judge, ei-
6 ther in person or by telephonic or
7 video connection; and

8 “(II) shall be conducted—

9 “(aa) as expeditiously as
10 possible;

11 “(bb) within the 24-hour pe-
12 riod beginning at the time the
13 asylum officer makes a deter-
14 mination under subparagraph
15 (A), to the maximum extent
16 practicable; and

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

19 “(5) MANDATORY PROTECTIVE CUSTODY.—Any
20 alien subject to the procedures under this subsection
21 shall be held in the custody of the Secretary of
22 Health and Human Services pursuant to section
23 235(b) of the William Wilberforce Trafficking Vic-
24 tims Protection Reauthorization Act of 2008 (8
25 U.S.C. 1232(b))—

1 “(A) pending a final determination of an
2 asylum application under section 208; or

3 “(B) after a determination that the alien
4 does not have a credible fear of persecution,
5 until the alien is removed.

6 “(g) LIMITATION ON ADMINISTRATIVE REVIEW.—

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

11 “(2) RULEMAKING.—The Attorney General
12 shall establish, by regulation, a process for the
13 prompt review of an order under subsection (e)(2)
14 against an alien who claims under oath, or as per-
15 mitted under penalty of perjury under section 1746
16 of title 28, United States Code, after having been
17 warned of the penalties for falsely making such
18 claim under such conditions to have been—

19 “(A) lawfully admitted for permanent resi-
20 dence;

21 “(B) admitted as a refugee under section
22 207; or

23 “(C) granted asylum under section 208.

24 “(h) LAST IN, FIRST OUT.—In any proceedings, de-
25 terminations, or removals under this section, priority shall

1 be accorded to the alien who has most recently arrived
2 in the United States.”.

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

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

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

10 (1) in subsection (a)—

11 (A) in paragraph (1), by inserting “, or an
12 order of removal issued to an unaccompanied
13 alien child after proceedings under section
14 235B” after “section 235(b)(1)”; and

15 (B) in paragraph (2)—

16 (i) by inserting “or section 235B”
17 after “section 235(b)(1)” each place it ap-
18 pears; and

19 (ii) in subparagraph (A)—

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

23 (II) in clause (iii), by striking
24 “section 235(b)(1)(B),” and inserting

1 “section 235(b)(1)(B) or 235B(f);”;

2 and

3 (2) in subsection (e)—

4 (A) in the subsection heading, by inserting

5 “OR 235B” after “SECTION 235(b)(1)”;

6 (B) by inserting “or section 235B” after

7 “section 235(b)(1)” in each place it appears;

8 (C) in subparagraph (2)(C), by inserting

9 “or section 235B(g)” after “section
10 235(b)(1)(C)”; and

11 (D) in subparagraph (3)(A), by inserting

12 “or section 235B” after “section 235(b)”.

13 **SEC. 103. DUE PROCESS PROTECTIONS FOR UNACCOM-**
14 **PANIED ALIEN CHILDREN PRESENT IN THE**
15 **UNITED STATES.**

16 (a) **FILING AUTHORIZED.**—Not later than 60 days
17 after the date of the enactment of this Act, the Secretary
18 of Homeland Security, notwithstanding any other provi-
19 sion of law, shall, at an immigration court designated to
20 conduct proceedings under section 235B of the Immigra-
21 tion and Nationality Act, permit an unaccompanied alien
22 child who was issued a Notice to Appear under section
23 239 of the Immigration and Nationality Act (8 U.S.C.
24 1229) during the period beginning on January 1, 2013,
25 and ending on the date of the enactment of this Act—

1 (1) to appear, in-person, before an immigration
2 judge who has been authorized by the Attorney Gen-
3 eral to conduct proceedings under section 235B of
4 the Immigration and Nationality Act, as added by
5 section 102;

6 (2) to attest to their desire to apply for admis-
7 sion to the United States; and

8 (3) to file a motion—

9 (A) to replace any Notice to Appear issued
10 between January 1, 2013, and the date of the
11 enactment of this Act under section 239 of the
12 Immigration and Nationality Act (8 U.S.C.
13 1229); and

14 (B) to apply for admission to the United
15 States by being placed in proceedings under
16 section 235B of the Immigration and Nation-
17 ality Act.

18 (b) MOTION GRANTED.—An immigration judge may,
19 at the sole and unreviewable discretion of the judge, grant
20 a motion filed under subsection (a)(3) upon a finding
21 that—

22 (1) the petitioner was an unaccompanied alien
23 child (as such term is defined in section 462 of the
24 Homeland Security Act of 2002 (6 U.S.C. 279)) on

1 the date on which a Notice to Appear described in
2 subsection (a) was issued to the alien;

3 (2) the Notice to Appear was issued during the
4 period beginning on January 1, 2013, and ending on
5 the date of the enactment of this Act;

6 (3) the unaccompanied alien child is applying
7 for admission to the United States; and

8 (4) the granting of such motion would not be
9 manifestly unjust.

10 (c) EFFECT OF MOTION.—Notwithstanding any
11 other provision of law, upon the granting of a motion to
12 replace under subsection (b), the immigration judge who
13 granted such motion shall—

14 (1) while the petitioner remains in-person, im-
15 mediately inspect and screen the petitioner for ad-
16 mission to the United States by conducting a pro-
17 ceeding under section 235B of the Immigration and
18 Nationality Act, as added by section 102;

19 (2) immediately notify the petitioner of the peti-
20 tioner's ability, under section 235B(c)(5) of the Im-
21 migration and Nationality Act to withdraw the peti-
22 tioner's application for admission to the United
23 States and immediately be returned to the peti-
24 tioner's country of nationality or country of last ha-
25 bitual residence; and

1 (3) replace the petitioner’s notice to appear
2 with an order under section 235B(e) of the Immi-
3 gration and Nationality Act.

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

10 **SEC. 104. EMERGENCY IMMIGRATION JUDGE RESOURCES.**

11 (a) DESIGNATION.—Not later than 14 days after the
12 date of the enactment of this Act, the Attorney General
13 shall designate up to 40 immigration judges, including
14 through the hiring of retired immigration judges, adminis-
15 trative law judges, or magistrate judges, or the reassign-
16 ment of current immigration judges, that are dedicated
17 to conducting humane and expedited inspection and
18 screening for unaccompanied alien children under section
19 235B of the Immigration and Nationality Act, as added
20 by section 102. Such designations shall remain in effect
21 solely for the duration of the humanitarian crisis at the
22 southern border (as determined by the Secretary of Home-
23 land Security, in consultation with the Attorney General).

24 (b) REQUIREMENT.—The Attorney General shall en-
25 sure that sufficient immigration judge resources are dedi-

1 cated to the purpose described in subsection (a) to comply
 2 with the requirement under section 235B(b)(1) of the Im-
 3 migration and Nationality Act.

4 **SEC. 105. PROTECTING CHILDREN FROM HUMAN TRAF-**
 5 **FICKERS, SEX OFFENDERS, AND OTHER**
 6 **CRIMINALS.**

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

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

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

14 “(D) PROHIBITION ON PLACEMENT WITH
 15 SEX OFFENDERS AND HUMAN TRAFFICKERS.—

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

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

1 “(II) a crime involving a severe
 2 form of trafficking in persons (as de-
 3 fined in section 103 of the Trafficking
 4 Victims Protection Act of 2000 (22
 5 U.S.C. 7102)).

6 “(ii) REQUIREMENTS OF CRIMINAL
 7 BACKGROUND CHECK.—A biometric crimi-
 8 nal history check under subparagraph (A)
 9 shall be based on a set of fingerprints or
 10 other biometric identifiers and conducted
 11 through—

12 “(I) the Federal Bureau of Inves-
 13 tigation; and

14 “(II) criminal history repositories
 15 of all States that the individual lists
 16 as current or former residences.”.

17 **SEC. 106. INCLUSION OF ADDITIONAL GROUNDS FOR PER**
 18 **SE INELIGIBILITY FOR ASYLUM.**

19 Section 208(b)(2)(A)(iii) of the Immigration and Na-
 20 tionality Act (8 U.S.C. 1158(b)(2)(A)(iii)) is amended by
 21 inserting after “a serious nonpolitical crime” the fol-
 22 lowing: “(including any drug-related offense punishable by
 23 a term of imprisonment greater than 1 year)”.

1 **TITLE II—USE OF NATIONAL**
 2 **GUARD TO IMPROVE BORDER**
 3 **SECURITY**

4 **SEC. 201. NATIONAL GUARD SUPPORT FOR BORDER OPER-**
 5 **ATIONS.**

6 (a) DEPLOYMENT AUTHORITY AND FUNDING.—
 7 Amounts appropriated for the Department of Defense in
 8 this Act shall be expended for any units or personnel of
 9 the National Guard deployed to perform operations and
 10 missions under section 502(f) of title 32, United States
 11 Code, on the southern border of the United States.

12 (b) ASSIGNMENT OF OPERATIONS AND MISSIONS.—

13 (1) IN GENERAL.—National Guard units and
 14 personnel deployed under subsection (a) may be as-
 15 signed such operations as may be necessary to pro-
 16 vide assistance for operations on the southern bor-
 17 der, with priority given to high traffic areas experi-
 18 encing the highest number of crossings by unaccom-
 19 panied alien children.

20 (2) NATURE OF DUTY.—The duty of National
 21 Guard personnel performing operations and missions
 22 on the southern border shall be full-time duty under
 23 title 32, United States Code.

24 (c) MATERIEL AND LOGISTICAL SUPPORT.—The Sec-
 25 retary of Defense shall deploy such materiel and equip-

1 ment and logistical support as may be necessary to ensure
 2 success of the operations and missions conducted by the
 3 National Guard under this section.

4 (d) EXCLUSION FROM NATIONAL GUARD PER-
 5 SONNEL STRENGTH LIMITATIONS.—National Guard per-
 6 sonnel deployed under subsection (a) shall not be included
 7 in—

8 (1) the calculation to determine compliance
 9 with limits on end strength for National Guard per-
 10 sonnel; or

11 (2) limits on the number of National Guard
 12 personnel that may be placed on active duty for
 13 operational support under section 115 of title 10,
 14 United States Code.

15 (e) HIGH TRAFFIC AREAS DEFINED.—In this sec-
 16 tion:

17 (1) The term “high traffic areas” means sec-
 18 tors along the northern and southern borders of the
 19 United States that are within the responsibility of
 20 the Border Patrol that have the most illicit cross-
 21 border activity, informed through situational aware-
 22 ness.

23 (2) The term “unaccompanied alien child”
 24 means a child who—

1 (A) has no lawful immigration status in
 2 the United States;

3 (B) has not attained 18 years of age; and

4 (C) with respect to whom—

5 (i) there is no parent or legal guard-
 6 ian in the United States; or

7 (ii) no parent or legal guardian in the
 8 United States is available to provide care
 9 and physical custody.

10 **TITLE III—NATIONAL SECURITY**
 11 **AND FEDERAL LANDS PRO-**
 12 **TECTION**

13 **SEC. 301. PROHIBITION ON ACTIONS THAT IMPEDE BOR-**
 14 **DER SECURITY ON CERTAIN FEDERAL LAND.**

15 (a) PROHIBITION ON SECRETARIES OF THE INTE-
 16 RIOR AND AGRICULTURE.—The Secretary of the Interior
 17 or the Secretary of Agriculture shall not impede, prohibit,
 18 or restrict activities of U.S. Customs and Border Protec-
 19 tion on Federal land located within 100 miles of the
 20 United States border with Mexico that is under the juris-
 21 diction of the Secretary of the Interior or the Secretary
 22 of Agriculture, to execute search and rescue operations,
 23 and to prevent all unlawful entries into the United States,
 24 including entries by terrorists, other unlawful aliens, in-
 25 struments of terrorism, narcotics, and other contraband

1 through such international land border of the United
2 States. These authorities of U.S. Customs and Border
3 Protection on such Federal land apply whether or not a
4 state of emergency exists.

5 (b) AUTHORIZED ACTIVITIES OF U.S. CUSTOMS AND
6 BORDER PROTECTION.—U.S. Customs and Border Pro-
7 tection shall have immediate access to Federal land within
8 100 miles of the United States border with Mexico that
9 is under the jurisdiction of the Secretary of the Interior
10 or the Secretary of Agriculture for purposes of conducting
11 the following activities on such land that prevent all un-
12 lawful entries into the United States, including entries by
13 terrorists, other unlawful aliens, instruments of terrorism,
14 narcotics, and other contraband through such inter-
15 national land border of the United States:

16 (1) Construction and maintenance of roads.

17 (2) Construction and maintenance of barriers.

18 (3) Use of vehicles to patrol, apprehend, or res-
19 cue.

20 (4) Installation, maintenance, and operation of
21 communications and surveillance equipment and sen-
22 sors.

23 (5) Deployment of temporary tactical infra-
24 structure.

1 (c) CLARIFICATION RELATING TO WAIVER AUTHOR-
2 ITY.—

3 (1) IN GENERAL.—Notwithstanding any other
4 provision of law (including any termination date re-
5 lating to the waiver referred to in this subsection),
6 the waiver by the Secretary of Homeland Security
7 on April 1, 2008, under section 102(c)(1) of the Ille-
8 gal Immigration Reform and Immigrant Responsi-
9 bility Act of 1996 (8 U.S.C. 1103 note; Public Law
10 104–208) of the laws described in paragraph (2)
11 with respect to certain sections of the international
12 border between the United States and Mexico shall
13 be considered to apply to all Federal land under the
14 jurisdiction of the Secretary of the Interior or the
15 Secretary of Agriculture within 100 miles of such
16 international land border of the United States for
17 the activities of U.S. Customs and Border Protection
18 described in subsection (b).

19 (2) DESCRIPTION OF LAWS WAIVED.—The laws
20 referred to in paragraph (1) are limited to the Wil-
21 derness Act (16 U.S.C. 1131 et seq.), the National
22 Environmental Policy Act of 1969 (42 U.S.C. 4321
23 et seq.), the Endangered Species Act of 1973 (16
24 U.S.C. 1531 et seq.), the National Historic Preser-
25 vation Act (16 U.S.C. 470 et seq.), Public Law 86–

1 523 (16 U.S.C. 469 et seq.), the Act of June 8,
 2 1906 (commonly known as the “Antiquities Act of
 3 1906”; 16 U.S.C. 431 et seq.), the Wild and Scenic
 4 Rivers Act (16 U.S.C. 1271 et seq.), the Federal
 5 Land Policy and Management Act of 1976 (43
 6 U.S.C. 1701 et seq.), the National Wildlife Refuge
 7 System Administration Act of 1966 (16 U.S.C.
 8 668dd et seq.), the Fish and Wildlife Act of 1956
 9 (16 U.S.C. 742a et seq.), the Fish and Wildlife Co-
 10 ordination Act (16 U.S.C. 661 et seq.), subchapter
 11 II of chapter 5, and chapter 7, of title 5, United
 12 States Code (commonly known as the “Administra-
 13 tive Procedure Act”), the National Park Service Or-
 14 ganic Act (16 U.S.C. 1 et seq.), the General Au-
 15 thorities Act of 1970 (Public Law 91–383) (16
 16 U.S.C. 1a–1 et seq.), sections 401(7), 403, and 404
 17 of the National Parks and Recreation Act of 1978
 18 (Public Law 95–625, 92 Stat. 3467), and the Ari-
 19 zona Desert Wilderness Act of 1990 (16 U.S.C.
 20 1132 note; Public Law 101–628).

21 (d) PROTECTION OF LEGAL USES.—This section
 22 shall not be construed to provide—

23 (1) authority to restrict legal uses, such as
 24 grazing, hunting, mining, or public-use recreational
 25 and backcountry airstrips on land under the jurisdic-

1 tion of the Secretary of the Interior or the Secretary
2 of Agriculture; or

3 (2) any additional authority to restrict legal ac-
4 cess to such land.

5 (e) EFFECT ON STATE AND PRIVATE LAND.—This
6 Act shall—

7 (1) have no force or effect on State or private
8 lands; and

9 (2) not provide authority on or access to State
10 or private lands.

11 (f) TRIBAL SOVEREIGNTY.—Nothing in this section
12 supersedes, replaces, negates, or diminishes treaties or
13 other agreements between the United States and Indian
14 tribes.

15 **SEC. 302. SENSE OF CONGRESS ON PLACEMENT OF UNAU-**
16 **THORIZED ALIENS AT MILITARY INSTALLA-**
17 **TIONS.**

18 (a) SENSE OF CONGRESS.—It is the sense of Con-
19 gress that—

20 (1) the Secretary of Defense should not allow
21 the placement of unauthorized aliens at a military
22 installation unless—

23 (A) the Secretary submits written notice to
24 the congressional defense committees and each
25 Member of Congress representing any jurisdic-

1 tion in which an affected military installation is
2 situated; and

3 (B) the Secretary publishes notice in the
4 Federal Register;

5 (2) the placement of unauthorized aliens at a
6 military institution should not displace active mem-
7 bers of the Armed Forces;

8 (3) the placement of unauthorized aliens at a
9 military institution should not interfere with any
10 mission of the Department of Defense;

11 (4) the Secretary of Health and Human Serv-
12 ices should not use a military installation for the
13 placement of unauthorized aliens unless all other fa-
14 cilities of the Department of Health and Human
15 Services are unavailable;

16 (5) the Secretary of Health and Human Serv-
17 ices should not use a military installation for the
18 placement of unauthorized aliens for more than 120
19 days;

20 (6) the Secretary of Health and Human Serv-
21 ices should ensure that all unauthorized alien chil-
22 dren are vaccinated upon arrival at a military instal-
23 lation as set forth in the guidelines of the Office of
24 Refugee Resettlement;

1 (7) the Secretary of Health and Human Serv-
2 ices should ensure that all individuals under the su-
3 pervision of the Secretary with access to unauthor-
4 ized alien children at a military installation are
5 properly cleared according to the procedures set
6 forth in the Victims of Child Abuse Act of 1990 (42
7 U.S.C. 13001 et seq.);

8 (8) the Secretary of Health and Human Serv-
9 ices should fully comply with the provisions of the
10 Victims of Child Abuse Act of 1990 (42 U.S.C.
11 13001 et seq.) with respect to background checks
12 and should retain full legal responsibility for such
13 compliance; and

14 (9) in accordance with section 1535 of title 31,
15 United States Code (commonly referred to as the
16 “Economy Act”), the Secretary of Health and
17 Human Services should reimburse the Secretary of
18 Defense for all expenses incurred by the Secretary of
19 Defense in carrying out the placement of unauthor-
20 ized aliens at a military installation.

21 (b) DEFINITIONS.—In this section:

22 (1) The term “congressional defense commit-
23 tees” has the meaning given that term in section
24 101(a)(16) of title 10, United States Code.

1 (2) The term “Member of Congress” has the
2 meaning given that term in section 1591(c)(1) of
3 title 10, United States Code.

4 (3) The term “military installation” has the
5 meaning given that term in section 2801(c)(4) of
6 title 10, United States Code, but does not include an
7 installation located outside of the United States.

8 (4) The term “placement” means the placement
9 of an unauthorized alien in either a detention facility
10 or an alternative to such a facility.

11 (5) The term “unauthorized alien” means an
12 alien unlawfully present in the United States, but
13 does not include a dependent of a member of the
14 Armed Forces.

Calendar No. 527

113TH CONGRESS
2D Session

S. 2772

A BILL

Making supplemental appropriations for the fiscal year ending September 30, 2014, and for other purposes.

AUGUST 1, 2014

Read the second time and placed on the calendar