



Section by Section of H.R. 5137- Asylum Reform and Border Protection Act

*** Unless specified, “Secretary” refers to the Secretary of the Department of Homeland Security.**

Sec.1. SHORT TITLE. Asylum Reform and Border Protection Act of 2014.

Sec. 2. SAFE REMOVAL OF MINORS. Repeals the 2008 TVPRA’s rule for children from contiguous countries and the provision placing children in non-contiguous countries in 240 proceedings. Subjects all children, unaccompanied alien child or not, to expedited removal proceedings. Directs the secretary of State to negotiate repatriation agreements with countries, not just contiguous countries. Requires children to be returned during business hours to appropriate government officials who have training in the agreements.

Sec. 3. CLARIFICATION OF INTENT REGARDING TAXPAYER-PROVIDED COUNSEL. States that at no instance will the Government bear expense for counsel for anyone in removal or appeal proceedings.

Sec. 4. SPECIAL IMMIGRANT JUVENILE VISAS. Changes the definition of qualifying individuals from those whose reunification with one or both of the parents isn’t viable to those whose reunification is not possible with either parent. This provision will exclude cases for special immigrant juvenile status where only one parent has committed abuse, neglect or abandonment.

Sec. 5. CREDIBLE FEAR INTERVIEWS. Amends the definition of “credible fear of persecution” to include the standard that “it is more probable than not that the statements made by the alien in support of the alien’s claim are true.”

Sec. 6. RECORDING EXPEDITED REMOVAL AND CREDIBLE FEAR INTERVIEWS. Directs the Secretary to establish quality assurance procedures to ensure that DHS employees exercising expedited removal authority ask and record questions/answers in a uniform fashion. Directs any sworn or signed written statement by an individual be accompanied by a recording of the interview when practicable. Directs the Secretary to ensure a competent interpreter be used if there is no other government employee available. Requires recordings of interviews to be included in the record and considered as evidence in any future proceedings. States that nothing in this section creates a private right of action.

Sec. 7. PAROLE REFORM. Narrows humanitarian parole under 212(d)(5) to two types of cases: 1) Restricts the definition of “urgent humanitarian reasons” to cases involving serious medical emergencies or organ donation to a family member, or where a family member's death is imminent. 2) Restricts the definition of the new term "strictly in the public interest" to cases

where someone assisted the US government and their presence is required or their life would be threatened if not permitted entrance. Individuals who have been found to be ineligible for refugee status may not be paroled. DHS cannot parole anyone who does not meet these criteria. Parole is not an admission. Requires immediate return when DHS determines that the purposes for the parole have been served. Requires reports to Congress. Takes effect on the first day of the first month beginning more than 60 days after enactment.

Sec. 8. REPORT TO CONGRESS ON PAROLE PROCEDURES AND STANDIZATION OF PAROLE

PROCEDURES. Directs the Secretary and Attorney General to conduct a review, and report to House and Senate Judiciary Committees, no later than 180 days after enactment and annually thereafter, regarding the effectiveness of parole and custody determination procedures for individuals who have established a credible fear of persecution and are awaiting final determination of their asylum claim. The report shall include:

- Analysis of rate at which release from detention (including parole) is granted, and any disparity between locations/geographical areas including actions taken to achieve consistency.
- Analysis of the effect of parole/custody determination policies and procedures on individuals' pursuit of an asylum claim before an immigration court.
- Analysis of the effectiveness of parole/custody determination policies and procedures in securing an individual's presence at immigration court proceedings.
- Recommendations on whether existing parole/custody procedures respect the interests of the individuals and ensure their presence in court proceedings, including assessment on failure to appear rates, in absentia orders, and absconders.

Sec. 9. GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN GANG MEMBERS.

- Adds new inadmissibility and deportability grounds for anyone whom the government "knows or has reason to believe" (1) is or was a criminal gang member; or (2) participated in activities of a criminal gang knowing or having reason to know that such activities would promote, further, aid or support the illegal activity of the gang. Defines "criminal gang." Includes bringing in or harboring certain aliens under section 274 or crimes related to document fraud among the crimes that would qualify a group of 5 or individuals as a criminal gang. The new terms and provisions apply retroactively.
- Allows DHS to designate a "criminal street gang" where (1) the group meets the listed criteria; or (2) the group "poses a significant risk that threatens" security/safety of US nationals or security, foreign policy, or economy of US. Provides no defense or waiver for whose membership was not voluntary or who renounced membership.
- Amends 236(c) to require mandatory custody of anyone inadmissible or deportable under new criminal gang sections.
- Exempts individuals "described in" the new criminal gang inadmissibility and deportability grounds from the INA 241(b)(3) prohibition on removal to a country where the individual's life or freedom would be threatened because of race, religion, nationality, membership in a particular social group, or political opinion. In other words, a criminal gang member may be removed even if his or life would be threatened.

- Individuals “described in” the new criminal gang inadmissibility and deportability grounds are ineligible for asylum.
- A person who is, or at any time after admission has been, a member of a criminal gang, is ineligible for TPS or SIJS.
- Permits DHS to detain TPS grantee “whenever appropriate under any other provision of law.”
- Section 9 provisions shall apply retroactively.

Sec. 10. UNACCOMPANIED ALIEN CHILDREN DEFINED. Changes the definition of an “unaccompanied alien child” to require that there be:

- No parent or legal guardian in the United States;
- No parent or legal guardian in the U.S. available to provide care and physical custody; or
- No sibling or cousin over 18 years of age, aunt, uncle, or grandparent available to provide care and physical custody

Directs HHS and DHS to revoke designation as a UAC when such family member or legal guardian is found in the United States and available to provide care and physical custody. Otherwise retains these elements of the UAC definition: 1) no lawful status; 2) less than 18 years old.

Sec. 11. MODIFICATIONS TO PREFERENTIAL AVAILABILITY FOR ASYLUM FOR UNACCOMPANIED ALIEN MINORS. Eliminates exemptions for unaccompanied alien children from removal to a safe third country and from the one-year filing deadline for asylum applications. Eliminates provision giving asylum officers initial jurisdiction over an UAC's asylum application that were enacted in the 2008 TVPRA.

Sec. 12. NOTIFICATION AND TRANSFER OF CUSTODY REGARDING UNACCOMPANIED ALIEN MINORS. Lengthens the time that a department/agency shall notify HHS of an apprehension/discovery of an UAC from 48 hours to 7 days. Lengthens the time that a child shall be transferred after determination as a UAC to HHS custody from 72 hours to 30 days.

Sec. 13. INFORMATION SHARING BETWEEN DEPARTMENT OF HEALTH AND HUMAN SERVICES AN DEPARTMENT OF HOMELAND SECURITY. Requires HHS to share information with DHS any information on a UAC, including location of the child and person to whom custody has been transferred. The sharing of information can be for any legitimate law enforcement objective including enforcement of immigration laws.

Sec. 14. SAFE THIRD COUNTRY. Eliminates the requirement of a bilateral or multilateral agreement for the removal of individual to a country to a safe third country. Changes “Attorney General” to “Secretary of Homeland Security.”

Sec. 15. ADDITIONAL IMMIGRATION JUDGES AND ICE PROSECUTORS. Increases the number of immigration judges, subject to appropriations, by not less than 50 and the number of ICE trial attorneys by not less than 60 for each for each of the fiscal years 2014 through 2016.

Sec. 16. PROHIBITION ON ACTIONS THAT IMPEDE BORDER SECURITY ON CERTAIN FEDERAL LAND. Prohibits Secretaries of Interior and Agriculture from restricting CBP activities on Federal land within 100 miles of an international land border. Authorizes CBP to have immediate access to these lands for the purposes of preventing all unlawful entries into the United States. Authorized activities include construction and maintenance of roads and barriers; use of vehicles to patrol, apprehend, and rescue; installation, maintenance, and operation of communication/surveillance equipment and sensors; and deployment of temporary tactical infrastructure. Expands the April 1, 2008 waiver by the Secretary to laws affecting sections of the U.S.-Mexico/U.S.-Canada borders to all Federal land within 100 miles of the international land borders for CBP activities.

Clarifies that this section will not restrict legal uses of the federal lands, will have no force or effect on State or private lands, and will have no effect on treaties or agreement with Indian tribes.

Sec. 17. MINORS IN CUSTODY. Removes provision in TVPRA stating that a child shall not be placed in security facility absent being a danger to self/others or been charged/committed a criminal offense. Permits the detention of UACs after a finding of credible fear for further consideration of their asylum applications.

Sec. 18. FOREIGN ASSISTANCE FOR REPATRIATION. Directs Secretary of State to immediately suspend all foreign assistance to any “large sending country” that refuses to negotiate repatriation agreements or refuses to accept repatriated UACs from the United States. Permits additional foreign assistance for the implementation of any repatriation agreements provided the total amount of assistance to that country does not increase. Defines a “large sending country” as any country which was the country of nationality or last habitual residence for 1,000 or more UACs who entered the U.S. in a single fiscal year in the past 3 fiscal years; or any country the Secretary deems appropriate. Establishes an effective date as the date of enactment.

Sec. 19. REPORTS. Directs Secretary of State and HHS, with assistance from DHS to submit a report to Senate and House Judiciary Committees on efforts to improve repatriation programs for UACs. The report shall be submitted no later than 6 months after enactment and annually thereafter and shall include:

- Average time a child is detained after apprehension until removal
- Number of children detained beyond the required 7 days/30 days of notification/transfer to HHS.
- Funds used to repatriation children, including reallocated fund from foreign assistance accounts since enactment.

Establishes an effective date as the date of enactment.