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**Policy Brief: AILA Analysis of the Border and Immigration Provisions of the “Emergency National Security Supplemental Appropriations Act, 2024”**

Last Updated: February 5, 2024

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With unprecedented levels of global migration and an outdated U.S. immigration system pushing more migrants to the U.S. southern border, solutions are urgently needed to reform the immigration system, bring order to the border region, and process migrants more rapidly, efficiently, and fairly. To address the border situation, the Senate’s emergency spending bill includes the most extensive border funding and security measures proposed in decades, perhaps ever. This bill provides massive resources to the Department of Homeland Security (“DHS”) and other agencies on the order of \$20 billion, mostly targeted to the border. The bill creates new executive powers that will restrict and reduce the flow of migrants and asylum seekers at the southern border. If enacted, the border enforcement bill will accelerate asylum processing and rapidly expel many migrants from the United States. The bill also takes important first steps in expanding or affirming existing legal pathways to alleviate pressures that force people to the border.

It is undeniable that the rapid and truncated procedures will undermine the fairness and thoroughness of asylum screenings and endanger asylum seekers by pushing them back to unsafe and violent conditions. More migrants, including people needing humanitarian protection, will be detained or placed under ICE supervision while waiting for hearings. The bill’s new federal expulsion authority, which enables the rapid deportation of asylum seekers entering between ports of entry, will result in large encampments of migrants waiting on the Mexican side of the border, fostering crime and violence in the region and making the border more chaotic and dangerous, rather than safe and orderly. Efforts to control the flow of migrants must include a protective process that requires coordination with Mexico to ensure that anyone having to wait at the border for processing will be safe from smugglers and cartels, and that they have a meaningful chance to claim asylum as our laws require.

In addition to urgently needed funding that will help make the entire immigration system work faster and more efficiently, the bill includes several improvements:

- One-time infusion of 250,000 green cards for families and workers to be distributed over five years to reduce immigrant visa backlogs.
- Recognition of the President’s authority to grant humanitarian parole on a case by case basis through programs such as those created for Ukrainians, Cubans, Haitians, Venezuelans and Nicaraguans – critical legal pathways which also reduce people coming to the U.S. border.
- Legal representation paid-for by the government for young children.
- Pathway to permanent residence for our Afghan allies fleeing the Taliban.
- Protection for the children of high-skill temporary workers from falling out of status and losing their opportunity to become lawful permanent residents simply because of their age.

The bill is far from balanced, but it is not an enforcement-only plan. The improvements include concessions that have been blocked in Congress for years, such as additional green cards and legal representation. Absent from the bill is much-needed protection and a legalization plan for Dreamers and others who lack permanent legal status and have been contributing to the country for years. Such a plan

has enjoyed overwhelming bipartisan support among American voters for years. The bill also should provide more green cards for families and workers on a permanent basis to address the country's economic and social needs and to secure its future prosperity.

Congress must acknowledge that the bill imposes severe hardships on asylum seekers and that the United States will unfairly turn away more people who qualify for asylum under U.S. laws. The border can be managed effectively with emergency funding and solutions that do not compromise fundamental fairness or the bedrock humanitarian principles of U.S. immigration law.

### **Key Provisions**

- **Provides emergency funding.** \$20 billion for DHS, Justice Department, State Department and other agencies. The urgently needed funds will increase border management and migrant processing capacity as well as commit resources to reduce the excessive case backlogs that are delaying employment, family and humanitarian visas. Key areas funded:
  - Port of entry (POE) capacity and CBP officers
  - Asylum officers and immigration judge teams
  - Consular processing and visa processing
  - Combating Fentanyl and other narcotics smuggling
  - \$930 million for cities to provide temporary assistance to migrants, and \$300 million more conditioned on DHS meeting metrics which will delay use of funds.
  - International migration and refugee processing, including Safe Mobility Offices
  - The bill also includes \$3.2 billion to expand ICE detention capacity to an estimated 50,000 beds and an additional \$210 million for U.S. Marshals detention costs. AILA opposes these increases as unnecessary and unjustified.
  
- **Creates a new border expulsion authority.** This new expulsion provision either authorizes or mandates that DHS bar access to asylum and rapidly expel anyone apprehended between ports of entry. The authority would be triggered when border encounters reach set levels:
  - When daily levels reach 4,000 (over a 7-day average), DHS has **discretion** to use this authority; when encounters reach 5,000 (over a 7-day average), or 8,500 on any 1 calendar day, DHS is **mandated** to use it.
  - This authority must be in effect for a minimum of 90 calendar days and a maximum of 270 days in its first year of implementation. In the third year, this maximum decreases to a period of 180 days total.
  - The expulsion authority does not “shut down” the border. Ports of entry remain open for people with U.S. passports and visas, and in addition, processing at least 1,400 people daily.
  - This expulsion power is likely to foster [crime and violence](#) at the border rather than improve order and security. Large numbers of asylum seekers will wait up to a year on the Mexican side of the border in unsafe, unsanitary conditions. As was the case with Remain in Mexico and under Title 42, cartels will increase human smuggling operations and compete for control of border crossings. This will jeopardize the security of Americans in U.S. border communities.
  - As yet, Mexico has not agreed to accept people the United States would expel under this authority. Mexico's asylum process is [unable to process](#) and provide consistent screening and protection for those expelled from the U.S. under this authority.
  - When the expulsion authority is triggered, people apprehended between POEs are excluded from asylum, but they can seek Withholding of Removal or Convention Against Torture protection if they proactively request it (also known as a “shout-test”).
  - There is no judicial review of removal orders issued under the expulsion authority.

- **Rapid review of asylum cases and more restrictive standards.** In addition to raising the credible fear standard from significant possibility to [reasonable possibility](#), the bill creates a new expedited process to rapidly screen asylum seekers within 90 days known as a protection determination.
  - **These faster procedures and stricter standards will make it more difficult for eligible asylum seekers to qualify and deny humanitarian protection to those who deserve it.**
  - This bill requires the asylum officer to determine during a credible fear screening if a bar to asylum applies. The bill also codifies an asylum bar for someone who can avoid persecution by relocating to another location in their country. An internal relocation bar exists in regulation.
  - The new expedited process also eliminates review by an immigration court or federal district court (aside from constitutional matters) for those it applies to, and instead allows for appeal to a new board of U.S. Citizenship and Immigration Services asylum officers.
  - While their cases are screened, people will be released from physical custody and placed in alternatives to detention programs to ensure they are supervised and appear throughout the process.
  
- **Maintains humanitarian parole.** The bill retains the President’s authority to grant humanitarian parole on a case by case basis and affirms the use of parole for programs like those created for Ukrainians, Cubans, Haitians, Venezuelans and Nicaraguans – which have been a critical tool for managing and reducing the arrival of people at the southern U.S. border.
  
- **Provides an increase in green cards over five years.** The bill adds 50,000 additional green cards each year for a 5-year period allocating 32,000 for family purposes and 18,000 for employment purposes. While the additional green cards are temporary and will not significantly reduce immigrant visa backlogs, it provides relief to some individuals who have been stuck waiting many years for legal status, advancing the country’s social and economic interests. These additional visa numbers are subject to the per country limitation and are available until used.
  
- **Creates protections for children who age out of H-1B status.** The bill ensures that the children of high-skilled (H-1B) temporary workers who depend on their parents’ immigration status for their ability to remain in the United States and become a permanent resident, will not lose their legal status when they reach the age of 21. These are children who spent a significant part of their youth in the U.S. and were on the path to permanent residence who risk becoming undocumented because of immigrant visa backlogs.
  
- **Guarantees government-funded legal representation for unaccompanied children** ages 13 and under who are in removal proceedings.
  
- **Creates additional protections for Afghan nationals.** The bill provides a pathway to lawful permanent residence, after full vetting of all applicants equivalent to that conducted in the U.S. Refugee Admissions Program, for certain Afghan nationals inspected and admitted into the U.S. or those paroled into the U.S. in connection with the U.S. withdrawal from Afghanistan. The bill also extends the eligibility period for the Special Immigrant Visa program to 2029 and expands eligibility to include parents and siblings of members of the armed forces.
  
- **Improves work authorization access to some nonimmigrants.** The bill streamlines work authorization for fiancées, spouses and children of certain temporary immigrants (K

nonimmigrants and H-4 dependents of H-1B workers), eliminating unnecessary applications for individuals who are eligible to work if they are granted the requisite underlying status.

- **Alleviates some family separation caused by green card backlogs.** Allows relatives of U.S. citizens and green card holders stuck in the immigrant visa backlog to temporarily visit family members in the United States.
- **Streamlines pathway to citizenship for U.S. military personnel.** Creates a streamlined pathway to citizenship for individuals who have honorably served in the U.S. armed forces.