

117TH CONGRESS
1ST SESSION

H. R. 709

To amend the Immigration and Nationality Act to reform certain asylum procedures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2021

Mrs. LESKO introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to reform
certain asylum procedures, 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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Crisis Preven-
5 tion Act of 2021”.

6 **SEC. 2. CREDIBLE FEAR INTERVIEWS.**

7 (a) DETERMINATION OF PROBABILITY OF CLAIM
8 TRUTH.—Section 235(b)(1)(B)(v) of the Immigration and
9 Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended
10 by striking “claim” and all that follows, and inserting

1 “claim, as determined pursuant to section
2 208(b)(1)(B)(iii), and such other facts as are known to
3 the officer, that the alien could establish eligibility for asy-
4 lum under section 208, and it is more probable than not
5 that the statements made by, and on behalf of, the alien
6 in support of the alien’s claim are true.”.

7 (b) JURISDICTION OF ASYLUM APPLICATIONS.—Sec-
8 tion 208(b)(3) of the Immigration and Nationality Act (8
9 U.S.C. 1158) is amended by striking subparagraph (C).

10 (c) RECORDING EXPEDITED REMOVAL AND CRED-
11 IBLE FEAR INTERVIEWS.—

12 (1) IN GENERAL.—The Secretary of Homeland
13 Security shall establish quality assurance procedures
14 and take steps to effectively ensure that questions by
15 employees of the Department of Homeland Security
16 exercising expedited removal authority under section
17 235(b) of the Immigration and Nationality Act (8
18 U.S.C. 1225(b)) are asked in a uniform manner, to
19 the extent possible, and that both these questions
20 and the answers provided in response to them are
21 recorded in a uniform fashion.

22 (2) FACTORS RELATING TO SWORN STATE-
23 MENTS.—Where practicable, any sworn or signed
24 written statement taken of an alien as part of the
25 record of a proceeding under section 235(b)(1)(A) of

1 the Immigration and Nationality Act (8 U.S.C.
2 1225(b)(1)(A)) shall be accompanied by a recording
3 of the interview which served as the basis for that
4 sworn statement.

5 (3) INTERPRETERS.—The Secretary shall en-
6 sure that a competent interpreter, not affiliated with
7 the government of the country from which the alien
8 may claim asylum, is used when the interviewing of-
9 ficer does not speak a language understood by the
10 alien.

11 (4) RECORDINGS IN IMMIGRATION PRO-
12 CEEDINGS.—There shall be an audio or audio visual
13 recording of interviews of aliens subject to expedited
14 removal. The recording shall be included in the
15 record of proceeding and shall be considered as evi-
16 dence in any further proceedings involving the alien.

17 (5) NO PRIVATE RIGHT OF ACTION.—Nothing
18 in this subsection shall be construed to create any
19 right, benefit, trust, or responsibility, whether sub-
20 stantive or procedural, enforceable in law or equity
21 by a party against the United States, its depart-
22 ments, agencies, instrumentalities, entities, officers,
23 employees, or agents, or any person, nor does this
24 subsection create any right of review in any adminis-
25 trative, judicial, or other proceeding.

1 **SEC. 3. SAFE THIRD COUNTRY.**

2 Section 208(a)(2)(A) of the Immigration and Nation-
3 ality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

4 (1) by striking “Attorney General” each place
5 it appears and inserting “Secretary of Homeland Se-
6 curity”; and

7 (2) by striking “removed, pursuant to a bilat-
8 eral or multilateral agreement, to” and inserting
9 “removed to”.

10 **SEC. 4. DETENTION SPACES.**

11 There is authorized to be appropriated such sums as
12 may be necessary to provide for sufficient detention spaces
13 as the Secretary of Homeland Security determines nec-
14 essary to enforce the immigration laws.

15 **SEC. 5. IMMIGRATION JUDGES.**

16 (a) IN GENERAL.—The Attorney General may ap-
17 point 100 additional immigration judges in addition to im-
18 migration judges currently serving as of the date of enact-
19 ment of this Act.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
21 authorized to be appropriated such sums as may be nec-
22 essary to carry out this section.

23 **SEC. 6. ASYLUM PROCEDURES RELATED TO FILING FRIVO-**
24 **LOUS APPLICATIONS.**

25 (a) NOTICE CONCERNING FRIVOLOUS ASYLUM AP-
26 PPLICATIONS.—

1 (1) IN GENERAL.—Section 208(d)(4) of the Im-
2 migration and Nationality Act (8 U.S.C.
3 1158(d)(4)) is amended—

4 (A) in the matter preceding subparagraph
5 (A), by inserting “the Secretary of Homeland
6 Security or” before “the Attorney General”;

7 (B) in subparagraph (A), by striking “and
8 of the consequences, under paragraph (6), of
9 knowingly filing a frivolous application for asy-
10 lum; and” and inserting a semicolon;

11 (C) in subparagraph (B), by striking the
12 period and inserting “; and”; and

13 (D) by adding at the end the following:

14 “(C) ensure that a written warning ap-
15 pears on the asylum application advising the
16 alien of the consequences of filing a frivolous
17 application and serving as notice to the alien of
18 the consequence of filing a frivolous applica-
19 tion.”.

20 (2) CONFORMING AMENDMENT.—Section
21 208(d)(6) of the Immigration and Nationality Act (8
22 U.S.C. 1158(d)(6)) is amended by striking “If the”
23 and all that follows and inserting:

24 “(A) If the Secretary of Homeland Secu-
25 rity or the Attorney General determines that an

1 alien has knowingly made a frivolous applica-
2 tion for asylum and the alien has received the
3 notice under paragraph (4)(C), the alien shall
4 be permanently ineligible for any benefits under
5 this chapter, effective as the date of the final
6 determination of such an application.

7 “(B) An application is frivolous if the Sec-
8 retary of Homeland Security or the Attorney
9 General determines, consistent with subpara-
10 graph (C), that—

11 “(i) it is so insufficient in substance
12 that it is clear that the applicant know-
13 ingly filed the application solely or in part
14 to delay removal from the United States,
15 to seek employment authorization as an
16 applicant for asylum pursuant to regula-
17 tions issued pursuant to paragraph (2), or
18 to seek issuance of a Notice to Appear in
19 order to pursue Cancellation of Removal
20 under section 240A(b); or

21 “(ii) any of the material elements are
22 knowingly fabricated.

23 “(C) In determining that an application is
24 frivolous, the Secretary or the Attorney General
25 must be satisfied that the applicant, during the

1 course of the proceedings, has had sufficient op-
2 portunity to clarify any discrepancies or implau-
3 sible aspects of the claim.

4 “(D) For purposes of this section, a find-
5 ing that an alien filed a frivolous asylum appli-
6 cation shall not preclude the alien from seeking
7 withholding of removal under section 241(b)(3)
8 or protection pursuant to the Convention
9 Against Torture.”.

10 (b) ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.—

11 (1) ASYLUM CREDIBILITY DETERMINATIONS.—

12 Section 208(b)(1)(B)(iii) of the Immigration and
13 Nationality Act (8 U.S.C. 1158(b)(1)(B)(iii)) is
14 amended by inserting after “all relevant factors” the
15 following: “, including statements made to, and in-
16 vestigative reports prepared by, immigration authori-
17 ties and other government officials”.

18 (2) RELIEF FOR REMOVAL CREDIBILITY DETER-

19 MINATIONS.—Section 240(c)(4)(C) of the Immigra-
20 tion and Nationality Act (8 U.S.C. 1229a(c)(4)(C))
21 is amended by inserting after “all relevant factors”
22 the following: “, including statements made to, and
23 investigative reports prepared by, immigration au-
24 thorities and other government officials”.

1 **SEC. 7. DETENTION OF DANGEROUS ALIENS.**

2 Section 241(a) of the Immigration and Nationality
3 Act (8 U.S.C. 1231(a)) is amended—

4 (1) by striking “Attorney General” each place
5 it appears, except for the first reference in para-
6 graph (4)(B)(i), and inserting “Secretary of Home-
7 land Security”;

8 (2) in paragraph (1), by amending subpara-
9 graph (B) to read as follows:

10 “(B) BEGINNING OF PERIOD.—The re-
11 moval period begins on the latest of the fol-
12 lowing:

13 “(i) The date the order of removal be-
14 comes administratively final.

15 “(ii) If the alien is not in the custody
16 of the Secretary on the date the order of
17 removal becomes administratively final, the
18 date the alien is taken into such custody.

19 “(iii) If the alien is detained or con-
20 fined (except under an immigration proc-
21 ess) on the date the order of removal be-
22 comes administratively final, the date the
23 alien is taken into the custody of the Sec-
24 retary, after the alien is released from such
25 detention or confinement.”;

1 (3) in paragraph (1), by amending subpara-
2 graph (C) to read as follows:

3 “(C) SUSPENSION OF PERIOD.—

4 “(i) EXTENSION.—The removal period
5 shall be extended beyond a period of 90
6 days and the Secretary may, in the Sec-
7 retary’s sole discretion, keep the alien in
8 detention during such extended period if—

9 “(I) the alien fails or refuses to
10 make all reasonable efforts to comply
11 with the removal order, or to fully co-
12 operate with the Secretary’s efforts to
13 establish the alien’s identity and carry
14 out the removal order, including mak-
15 ing timely application in good faith
16 for travel or other documents nec-
17 essary to the alien’s departure or con-
18 spires or acts to prevent the alien’s
19 removal that is subject to an order of
20 removal;

21 “(II) a court, the Board of Immi-
22 gration Appeals, or an immigration
23 judge orders a stay of removal of an
24 alien who is subject to an administra-
25 tively final order of removal;

1 “(III) the Secretary transfers
2 custody of the alien pursuant to law
3 to another Federal agency or a State
4 or local government agency in connec-
5 tion with the official duties of such
6 agency; or

7 “(IV) a court or the Board of
8 Immigration Appeals orders a remand
9 to an immigration judge or the Board
10 of Immigration Appeals, during the
11 time period when the case is pending
12 a decision on remand (with the re-
13 moval period beginning anew on the
14 date that the alien is ordered removed
15 on remand).

16 “(ii) RENEWAL.—If the removal pe-
17 riod has been extended under subpara-
18 graph (C)(i), a new removal period shall be
19 deemed to have begun on the date—

20 “(I) the alien makes all reason-
21 able efforts to comply with the re-
22 moval order, or to fully cooperate with
23 the Secretary’s efforts to establish the
24 alien’s identity and carry out the re-
25 moval order;

1 “(II) the stay of removal is no
2 longer in effect; or

3 “(III) the alien is returned to the
4 custody of the Secretary.

5 “(iii) MANDATORY DETENTION FOR
6 CERTAIN ALIENS.—In the case of an alien
7 described in subparagraphs (A) through
8 (D) of section 236(c)(1), the Secretary
9 shall keep that alien in detention during
10 the extended period described in clause (i).

11 “(iv) SOLE FORM OF RELIEF.—An
12 alien may seek relief from detention under
13 this subparagraph only by filing an appli-
14 cation for a writ of habeas corpus in ac-
15 cordance with chapter 153 of title 28,
16 United States Code. No alien whose period
17 of detention is extended under this sub-
18 paragraph shall have the right to seek re-
19 lease on bond.”;

20 (4) in paragraph (3)—

21 (A) by adding after “If the alien does not
22 leave or is not removed within the removal pe-
23 riod” the following: “or is not detained pursu-
24 ant to paragraph (6) of this subsection”; and

1 (B) by striking subparagraph (D) and in-
2 serting the following:

3 “(D) to obey reasonable restrictions on the
4 alien’s conduct or activities that the Secretary
5 prescribes for the alien, in order to prevent the
6 alien from absconding, for the protection of the
7 community, or for other purposes related to the
8 enforcement of the immigration laws.”;

9 (5) in paragraph (4)(A), by striking “paragraph
10 (2)” and inserting “subparagraph (B)”; and

11 (6) by striking paragraph (6) and inserting the
12 following:

13 “(6) ADDITIONAL RULES FOR DETENTION OR
14 RELEASE OF CERTAIN ALIENS.—

15 “(A) DETENTION REVIEW PROCESS FOR
16 COOPERATIVE ALIENS ESTABLISHED.—For an
17 alien who is not otherwise subject to mandatory
18 detention, who has made all reasonable efforts
19 to comply with a removal order and to cooper-
20 ate fully with the Secretary of Homeland Secu-
21 rity’s efforts to establish the alien’s identity and
22 carry out the removal order, including making
23 timely application in good faith for travel or
24 other documents necessary to the alien’s depar-
25 ture, and who has not conspired or acted to

1 prevent removal, the Secretary shall establish
2 an administrative review process to determine
3 whether the alien should be detained or released
4 on conditions. The Secretary shall make a de-
5 termination whether to release an alien after
6 the removal period in accordance with subpara-
7 graph (B). The determination shall include con-
8 sideration of any evidence submitted by the
9 alien, and may include consideration of any
10 other evidence, including any information or as-
11 sistance provided by the Secretary of State or
12 other Federal official and any other information
13 available to the Secretary of Homeland Security
14 pertaining to the ability to remove the alien.

15 “(B) AUTHORITY TO DETAIN BEYOND RE-
16 MOVAL PERIOD.—

17 “(i) IN GENERAL.—The Secretary of
18 Homeland Security, in the exercise of the
19 Secretary’s sole discretion, may continue to
20 detain an alien for 90 days beyond the re-
21 moval period (including any extension of
22 the removal period as provided in para-
23 graph (1)(C)). An alien whose detention is
24 extended under this subparagraph shall
25 have no right to seek release on bond.

1 “(ii) SPECIFIC CIRCUMSTANCES.—The
2 Secretary of Homeland Security, in the ex-
3 ercise of the Secretary’s sole discretion,
4 may continue to detain an alien beyond the
5 90 days authorized in clause (i)—

6 “(I) until the alien is removed, if
7 the Secretary, in the Secretary’s sole
8 discretion, determines that there is a
9 significant likelihood that the alien—

10 “(aa) will be removed in the
11 reasonably foreseeable future; or

12 “(bb) would be removed in
13 the reasonably foreseeable future,
14 or would have been removed, but
15 for the alien’s failure or refusal
16 to make all reasonable efforts to
17 comply with the removal order,
18 or to cooperate fully with the
19 Secretary’s efforts to establish
20 the alien’s identity and carry out
21 the removal order, including
22 making timely application in
23 good faith for travel or other doc-
24 uments necessary to the alien’s

1 departure, or conspires or acts to
2 prevent removal;

3 “(II) until the alien is removed,
4 if the Secretary of Homeland Security
5 certifies in writing—

6 “(aa) in consultation with
7 the Secretary of Health and
8 Human Services, that the alien
9 has a highly contagious disease
10 that poses a threat to public safe-
11 ty;

12 “(bb) after receipt of a writ-
13 ten recommendation from the
14 Secretary of State, that release
15 of the alien is likely to have seri-
16 ous adverse foreign policy con-
17 sequences for the United States;

18 “(cc) based on information
19 available to the Secretary of
20 Homeland Security (including
21 classified, sensitive, or national
22 security information, and without
23 regard to the grounds upon
24 which the alien was ordered re-
25 moved), that there is reason to

1 believe that the release of the
2 alien would threaten the national
3 security of the United States; or

4 “(dd) that the release of the
5 alien will threaten the safety of
6 the community or any person,
7 conditions of release cannot rea-
8 sonably be expected to ensure the
9 safety of the community or any
10 person, and either (AA) the alien
11 has been convicted of one or
12 more aggravated felonies (as de-
13 fined in section 101(a)(43)(A))
14 or of one or more crimes identi-
15 fied by the Secretary of Home-
16 land Security by regulation, or of
17 one or more attempts or conspir-
18 acies to commit any such aggra-
19 vated felonies or such identified
20 crimes, if the aggregate term of
21 imprisonment for such attempts
22 or conspiracies is at least 5
23 years; or (BB) the alien has com-
24 mitted one or more crimes of vio-
25 lence (as defined in section 16 of

1 title 18, United States Code, but
2 not including a purely political
3 offense) and, because of a mental
4 condition or personality disorder
5 and behavior associated with that
6 condition or disorder, the alien is
7 likely to engage in acts of vio-
8 lence in the future; or

9 “(III) pending a certification
10 under subclause (II), so long as the
11 Secretary of Homeland Security has
12 initiated the administrative review
13 process not later than 30 days after
14 the expiration of the removal period
15 (including any extension of the re-
16 moval period, as provided in para-
17 graph (1)(C)).

18 “(iii) NO RIGHT TO BOND HEARING.—
19 An alien whose detention is extended under
20 this subparagraph shall have no right to
21 seek release on bond, including by reason
22 of a certification under clause (ii)(II).

23 “(C) RENEWAL AND DELEGATION OF CER-
24 TIFICATION.—

1 “(i) RENEWAL.—The Secretary of
2 Homeland Security may renew a certifi-
3 cation under subparagraph (B)(ii)(II)
4 every 6 months, after providing an oppor-
5 tunity for the alien to request reconsider-
6 ation of the certification and to submit
7 documents or other evidence in support of
8 that request. If the Secretary does not
9 renew a certification, the Secretary may
10 not continue to detain the alien under sub-
11 paragraph (B)(ii)(II).

12 “(ii) DELEGATION.—Notwithstanding
13 section 103, the Secretary of Homeland
14 Security may not delegate the authority to
15 make or renew a certification described in
16 item (bb), (cc), or (dd) of subparagraph
17 (B)(ii)(II) below the level of the Director
18 of Immigration and Customs Enforcement.

19 “(iii) HEARING.—The Secretary of
20 Homeland Security may request that the
21 Attorney General or the Attorney General’s
22 designee provide for a hearing to make the
23 determination described in item (dd)(BB)
24 of subparagraph (B)(ii)(II).

1 “(D) RELEASE ON CONDITIONS.—If it is
2 determined that an alien should be released
3 from detention by a Federal court, the Board of
4 Immigration Appeals, or if an immigration
5 judge orders a stay of removal, the Secretary of
6 Homeland Security, in the exercise of the Sec-
7 retary’s discretion, may impose conditions on
8 release as provided in paragraph (3).

9 “(E) REDETENTION.—The Secretary of
10 Homeland Security, in the exercise of the Sec-
11 retary’s discretion, without any limitations
12 other than those specified in this section, may
13 again detain any alien subject to a final re-
14 moval order who is released from custody, if re-
15 moval becomes likely in the reasonably foresee-
16 able future, the alien fails to comply with the
17 conditions of release, or to continue to satisfy
18 the conditions described in subparagraph (A),
19 or if, upon reconsideration, the Secretary, in
20 the Secretary’s sole discretion, determines that
21 the alien can be detained under subparagraph
22 (B). This section shall apply to any alien re-
23 turned to custody pursuant to this subpara-
24 graph, as if the removal period terminated on
25 the day of the redetention.

1 “(F) REVIEW OF DETERMINATIONS BY
2 SECRETARY.—A determination by the Secretary
3 under this paragraph shall not be subject to re-
4 view by any other agency.”.

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