

119TH CONGRESS
1ST SESSION

S. _____

To transfer and limit Executive Branch authority to suspend or restrict the entry of a class of aliens.

IN THE SENATE OF THE UNITED STATES

Mr. COONS (for himself, Mr. WHITEHOUSE, Mr. KING, Mr. BLUMENTHAL, Mr. BOOKER, Mr. VAN HOLLEN, Mrs. SHAHEEN, Ms. DUCKWORTH, Mr. KAINE, Ms. CORTEZ MASTO, Mr. SCHIFF, Mr. HICKENLOOPER, Mrs. MURRAY, Mr. WYDEN, Ms. BALDWIN, Mr. SANDERS, Mr. DURBIN, Mr. PADILLA, Mr. SCHATZ, Mr. MARKEY, Ms. HIRONO, Mr. WARNER, Mr. WELCH, Mr. LUJÁN, Ms. CANTWELL, Mr. PETERS, Ms. WARREN, Ms. KLOBUCHAR, Mr. BENNET, Ms. SMITH, and Mr. KIM) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To transfer and limit Executive Branch authority to suspend or restrict the entry of a class of aliens.

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 TITLES.**

4 This Act may be cited as the “National Origin-Based
5 Antidiscrimination for Nonimmigrants Act” or the “NO
6 BAN Act”.

1 **SEC. 2. EXPANSION OF NONDISCRIMINATION PROVISION.**

2 Section 202(a)(1)(A) of the Immigration and Nation-
3 ality Act (8 U.S.C. 1152(a)(1)(A)) is amended—

4 (1) by striking “Except as specifically provided
5 in paragraph (2) and in sections 101(a)(27),
6 201(b)(2)(A)(i), and 203, no” and inserting “No”;

7 (2) by inserting “or a nonimmigrant visa, ad-
8 mission or other entry into the United States, or the
9 approval or revocation of any immigration benefit”
10 after “immigrant visa”;

11 (3) by inserting “religion,” after “sex,”; and

12 (4) by inserting before the period at the end the
13 following: “, except as specifically provided in para-
14 graph (2) and sections 101(a)(27), 201(b)(2)(A)(i),
15 and 203, if otherwise expressly required by statute,
16 or if a statutorily authorized benefit takes into con-
17 sideration such factors”.

18 **SEC. 3. TRANSFER AND LIMITATIONS ON AUTHORITY TO**
19 **SUSPEND OR RESTRICT THE ENTRY OF A**
20 **CLASS OF ALIENS.**

21 Section 212(f) of the Immigration and Nationality
22 Act (8 U.S.C. 1182(f)) is amended to read as follows:

23 “(f) **AUTHORITY TO SUSPEND OR RESTRICT THE**
24 **ENTRY OF A CLASS OF ALIENS.—**

25 “(1) **IN GENERAL.—**Subject to paragraph (2),
26 if the Secretary of State, in consultation with the

1 Secretary of Homeland Security, determines, based
2 on specific and credible facts, that the entry of any
3 aliens or class of aliens into the United States would
4 undermine the security or public safety of the
5 United States or the preservation of human rights,
6 democratic processes or institutions, or international
7 stability, the President may temporarily—

8 “(A) suspend the entry of such aliens or
9 class of aliens as immigrants or nonimmigrants;
10 or

11 “(B) impose any restrictions on the entry
12 of such aliens that the President deems appro-
13 priate.

14 “(2) LIMITATIONS.—In carrying out paragraph
15 (1), the President, the Secretary of State, and the
16 Secretary of Homeland Security shall—

17 “(A) only issue a suspension or restriction
18 when required to address specific acts impli-
19 cating a compelling government interest in a
20 factor identified under paragraph (1);

21 “(B) narrowly tailor such suspension or re-
22 striction, using the least restrictive means, to
23 achieve such compelling government interest;

24 “(C) specify the duration of such suspen-
25 sion or restriction;

1 “(D) consider waivers to any class-based
2 restriction or suspension and apply a rebuttable
3 presumption in favor of granting family-based
4 and humanitarian waivers; and

5 “(E) comply with all provisions of this Act.

6 “(3) CONGRESSIONAL NOTIFICATION.—

7 “(A) IN GENERAL.—Before the President
8 may exercise the authority under paragraph
9 (1), the Secretary of State and the Secretary of
10 Homeland Security shall consult with Congress
11 and provide Congress with specific evidence
12 supporting the need for the proposed suspen-
13 sion or restriction and its proposed duration.

14 “(B) BRIEFING AND REPORT.—Not later
15 than 48 hours after the President exercises the
16 authority under paragraph (1), the Secretary of
17 State and the Secretary of Homeland Security
18 shall provide a briefing and submit a written re-
19 port to Congress that describes—

20 “(i) the action taken pursuant to
21 paragraph (1) and the specified objective
22 of such action;

23 “(ii) the estimated number of individ-
24 uals who will be impacted by such action;

1 “(iii) the constitutional and legislative
2 authority under which such action took
3 place; and

4 “(iv) the circumstances necessitating
5 such action, including how such action
6 complies with paragraph (2) and any intel-
7 ligence informing such actions.

8 “(C) TERMINATION.—If the briefing and
9 report described in subparagraph (B) are not
10 provided to Congress during the 48 hour period
11 beginning when the President exercises the au-
12 thority under paragraph (1), the suspension or
13 restriction shall immediately terminate absent
14 intervening congressional action.

15 “(D) DEFINED TERM.—In this paragraph,
16 the term ‘Congress’ means—

17 “(i) the Select Committee on Intel-
18 ligence of the Senate;

19 “(ii) the Committee on Foreign Rela-
20 tions of the Senate;

21 “(iii) the Committee on the Judiciary
22 of the Senate;

23 “(iv) the Committee on Homeland Se-
24 curity and Governmental Affairs of the
25 Senate;

1 “(v) the Permanent Select Committee
2 on Intelligence of the House of Represent-
3 atives;

4 “(vi) the Committee on Foreign Af-
5 fairs of the House of Representatives;

6 “(vii) the Committee on the Judiciary
7 of the House of Representatives; and

8 “(viii) the Committee on Homeland
9 Security of the House of Representatives.

10 “(4) PUBLICATION.—The Secretary of State
11 and the Secretary of Homeland Security shall pub-
12 licly announce and publish an unclassified version of
13 the report described in paragraph (3)(B) in the Fed-
14 eral Register.

15 “(5) JUDICIAL REVIEW.—

16 “(A) IN GENERAL.—Notwithstanding any
17 other provision of law, an individual or entity
18 who is present in the United States and has
19 been harmed by a violation of this subsection
20 may file an action in an appropriate district
21 court of the United States to seek declaratory
22 or injunctive relief.

23 “(B) CLASS ACTION.—Nothing in this Act
24 may be construed to preclude an action filed

1 pursuant to subparagraph (A) from proceeding
2 as a class action.

3 “(6) TREATMENT OF COMMERCIAL AIRLINES.—

4 Whenever the Secretary of Homeland Security deter-
5 mines that a commercial airline has failed to comply
6 with regulations of the Secretary of Homeland Secu-
7 rity relating to requirements of airlines for the de-
8 tection of fraudulent documents used by passengers
9 traveling to the United States (including the train-
10 ing of personnel in such detection), the Secretary of
11 Homeland Security may suspend the entry of some
12 or all aliens transported to the United States by
13 such airline.

14 “(7) RULE OF CONSTRUCTION.—Nothing in
15 this subsection may be construed as authorizing the
16 President, the Secretary of State, or the Secretary
17 of Homeland Security to act in a manner incon-
18 sistent with the policy decisions expressed in the im-
19 migration laws.”.

20 **SEC. 4. VISA APPLICANTS REPORT.**

21 (a) INITIAL REPORTS.—

22 (1) IN GENERAL.—Not later than 90 days after
23 the date of the enactment of this Act, the Secretary
24 of State, in coordination with the Secretary of
25 Homeland Security and the heads of other relevant

1 Federal agencies, shall submit a report to the con-
2 gressional committees referred to in section
3 212(f)(3)(D) of the Immigration and Nationality
4 Act, as amended by section 3, that describes the im-
5 plementation of Presidential Proclamations 9645,
6 9822, and 9983 and Executive Order Nos. 13769,
7 13780, and 13815, during the effective period of
8 each such proclamation and order.

9 (2) PRESIDENTIAL PROCLAMATIONS 9645 AND
10 9983.—In addition to the content described in para-
11 graph (1), the report submitted with respect to Pres-
12 idential Proclamation 9645, issued on September 24,
13 2017, and Presidential Proclamation 9983, issued
14 on January 31, 2020, shall include, for each country
15 listed in such proclamation—

16 (A) the total number of individuals who
17 applied for a visa during the period the procla-
18 mation was in effect, disaggregated by country
19 and visa category;

20 (B) the total number of visa applicants de-
21 scribed in subparagraph (A) who were ap-
22 proved, disaggregated by country and visa cat-
23 egory;

24 (C) the total number of visa applicants de-
25 scribed in subparagraph (A) whose applications

1 were denied, disaggregated by country and visa
2 category, and the reasons for such denials;

3 (D) the total number of visa applicants de-
4 scribed in subparagraph (A) whose applications
5 remain pending, disaggregated by country and
6 visa category;

7 (E) the total number of visa applicants de-
8 scribed in subparagraph (A) who were granted
9 a waiver, disaggregated by country and visa
10 category;

11 (F) the total number of visa applicants de-
12 scribed in subparagraph (A) who were denied a
13 waiver, disaggregated by country and visa cat-
14 egory, and the reasons such waiver requests
15 were denied;

16 (G) the total number of refugees admitted,
17 disaggregated by country; and

18 (H) the complete reports that were sub-
19 mitted to the President every 180 days in ac-
20 cordance with section 4 of Presidential Procla-
21 mation 9645 in its original form, and as
22 amended by Presidential Proclamation 9983.

23 (b) ADDITIONAL REPORTS.—

24 (1) IN GENERAL.—Not later than 30 days after
25 the date on which the President exercises the au-

1 thority under section 212(f) of the Immigration and
2 Nationality Act (8 U.S.C. 1182(f)), as amended by
3 section 3, and every 30 days thereafter, the Sec-
4 retary of State, in coordination with the Secretary of
5 Homeland Security and heads of other relevant Fed-
6 eral agencies, shall submit a report to the congres-
7 sional committees referred to in paragraph (3)(D) of
8 such section 212(f) that identifies, with respect to
9 countries affected by a suspension or restriction—

10 (A) the information described in subpara-
11 graphs (A) through (G) of subsection (a)(2);
12 and

13 (B) the specific evidence supporting the
14 need for the continued exercise of presidential
15 authority under such section 212(f), including
16 the information described in paragraph (3)(B)
17 of such section 212(f).

18 (2) FAILURE TO SUBMIT TIMELY REPORT.—If
19 the Secretary of State fails to provide any report re-
20 quired under paragraph (1) to the appropriate con-
21 gressional committees by the specified deadline, the
22 suspension or restriction of any aliens or class of
23 aliens pursuant to such section 212(f) shall imme-
24 diately terminate absent intervening congressional
25 action.

1 (3) FINAL REPORT.—Not later than 30 days
2 after the termination of a suspension or restriction
3 of any aliens or class of aliens pursuant to such sec-
4 tion 212(f), the Secretary of State, in coordination
5 with the Secretary of Homeland Security and the
6 heads of other relevant Federal agencies, shall pre-
7 pare and submit a final report to the congressional
8 committees referred to in paragraph (3)(D) of such
9 section containing the information and evidence de-
10 scribed in subparagraphs (A) and (B) of paragraph
11 (1).

12 (c) FORM; AVAILABILITY.—The reports required
13 under subsections (a) and (b) shall be made publicly avail-
14 able online in unclassified form.