Floor Amendment No. 1971 (1463) to HR 1735

SESSIONS AMENDMENT SA 1971

TEXT OF AMENDMENT

SA 1971. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 1463 proposed by Mr. MCCAIN to the bill H.R. 1735, to authorize appropriations for fiscal year 2016 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SUBTITLE __ ASYLUM REFORM AND BORDER PROTECTION

SEC. __1. SHORT TITLE.

This subtitle may be cited as the "Asylum Reform and Border Protection Act of 2015".

SEC. __2. CLARIFICATION OF INTENT REGARDING TAXPAYER-PROVIDED COUNSEL.

Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) is amended—

(1) by striking "(at no expense to the Government)"; and

(2) by adding at the end the following:

"Notwithstanding any other provision of law, in no instance shall the Government bear any expense for counsel for any person in removal proceedings or in any appeal proceedings before the Attorney General from any such removal proceedings.".

SEC. __3. SPECIAL IMMIGRANT JUVENILE VISAS.

Section 101(a)(27)(J)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)(i)) is amended by striking "and whose reunification with 1 or both of the immigrant's parents is not

viable due" and inserting "and who cannot be reunified with either of the immigrant's parents due".

SEC. __4. CREDIBLE FEAR INTERVIEWS.

Section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by striking "208." and inserting "208, and it is more probable than not that the statements made by the alien in support of the alien's claim are true.".

SEC. __5. RECORDING EXPEDITED REMOVAL AND CREDIBLE FEAR INTERVIEWS.

(a) In General.—The Secretary of Homeland Security shall establish quality assurance procedures and take steps to effectively ensure that questions by employees of the Department of Homeland Security exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) are asked in a uniform manner, and that both these questions and the answers provided in response to them are recorded in a uniform fashion.

(b) Factors Relating to Sworn Statements.—Where practicable, any sworn or signed written statement taken of an alien as part of the record of a proceeding under section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a recording of the interview which served as the basis for that sworn statement.

(c) Interpreters.—The Secretary of Homeland Security shall ensure that a competent interpreter, not affiliated with the government of the country from which the alien may claim asylum, is used when the interviewing officer does not speak a language understood by the alien and there is no other Federal, State, or local government employee available who is able to interpret effectively, accurately, and impartially.

(d) Recordings in Immigration Proceedings.—Recordings of interviews of aliens subject to expedited removal shall be included in the record of proceeding and shall be considered as evidence in any further proceedings involving the alien.

(e) No Private Right of Action.—Nothing in this section may be construed to create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. __6. PAROLE REFORM.

(a) In General.—Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) is amended to read as follows:

"(5) HUMANITARIAN AND PUBLIC INTEREST PAROLE.—

"(A) IN GENERAL.—Subject to the provisions of this paragraph and section 214(f)(2), the Secretary of Homeland Security, in the sole discretion of the Secretary of Homeland Security, may on a case-by-case basis parole an alien into the United States temporarily, under such conditions as the Secretary of Homeland Security may prescribe, only—

"(i) for an urgent humanitarian reason (as described under subparagraph (B)); or

"(ii) for a reason deemed strictly in the public interest (as described under subparagraph (C)).

"(B) HUMANITARIAN PAROLE.—The Secretary of Homeland Security may parole an alien based on an urgent humanitarian reason described in this subparagraph only if—

"(i) the alien has a medical emergency and the alien cannot obtain necessary treatment in the foreign state in which the alien is residing or the medical emergency is life-threatening and there is insufficient time for the alien to be admitted through the normal visa process;

"(ii) the alien is needed in the United States in order to donate an organ or other tissue for transplant into a close family member;

"(iii) the alien has a close family member in the United States whose death is imminent and the alien could not arrive in the United States in time to see such family member alive if the alien were to be admitted through the normal visa process;

"(iv) the alien is a lawful applicant for adjustment of status under section 245; or

"(v) the alien was lawfully granted status under section 208 or lawfully admitted under section 207.

"(C) PUBLIC INTEREST PAROLE.—The Secretary of Homeland Security may parole an alien based on a reason deemed strictly in the public interest described in this subparagraph only if the alien has assisted the United States Government in a matter, such as a criminal investigation, espionage, or other similar law enforcement activity, and either the alien's presence in the United States is required by the Government or the alien's life would be threatened if the alien were not permitted to come to the United States.

"(D) LIMITATION ON THE USE OF PAROLE AUTHORITY.—The Secretary of Homeland Security may not use the parole authority under this paragraph to permit to come to the United States aliens who have applied for and have been found to be ineligible for refugee status or any alien to whom the provisions of this paragraph do not apply.

"(E) PAROLE NOT AN ADMISSION.—Parole of an alien under this paragraph shall not be considered an admission of the alien into the United States. When the purposes of the parole of an alien have been served, as determined by the Secretary of Homeland Security, the alien shall immediately return or be returned to the custody from which the alien was paroled and the alien shall be considered for admission to the United States on the same basis as other similarly situated applicants for admission.

"(F) REPORT TO CONGRESS.—Not later than 90 days after the end of each fiscal year, the Secretary of Homeland Security shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate describing the number and categories of aliens paroled

into the United States under this paragraph. Each such report shall contain information and data concerning the number and categories of aliens paroled, the duration of parole, and the current status of aliens paroled during the preceding fiscal year.”.

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. __7. REPORT TO CONGRESS ON PAROLE PROCEDURES AND STANDARDIZATION OF PAROLE PROCEDURES.

(a) In General.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Attorney General and the Secretary of Homeland Security shall jointly conduct a review, and submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives regarding the effectiveness of parole and custody determination procedures applicable to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts. The report shall include the following:

(1) An analysis of the rate at which release from detention (including release on parole) is granted to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts throughout the United States, and any disparity that exists between locations or geographical areas, including explanation of the reasons for this disparity and what actions are being taken to have consistent and uniform application of the standards for granting parole.

(2) An analysis of the effect of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary on the alien’s pursuit of their asylum claim before an immigration court.

(3) An analysis of the effectiveness of the procedures and policies applied with respect to parole and custody determinations both by the Attorney General and the Secretary in securing the alien’s presence at the immigration court proceedings.

(b) Recommendations.—The report submitted under subsection (a) should include—

(1) recommendations with respect to whether the existing parole and custody determination procedures applicable to aliens who have established a credible fear of persecution and are awaiting a final determination regarding their asylum claim by the immigration courts—

(A) respect the interests of aliens; and

(B) ensure the presence of the aliens at the immigration court proceedings; and

(2) an assessment on corresponding failure to appear rates, in absentia orders, and absconders.

SEC. __8. UNACCOMPANIED ALIEN CHILD DEFINED.

Section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)) is amended to read as follows:

"(2) the term 'unaccompanied alien child'—

"(A) means an alien who—

"(i) has no lawful immigration status in the United States;

"(ii) has not attained 18 years of age; and

"(iii) with respect to whom—

"(I) there is no parent or legal guardian in the United States;

"(II) no parent or legal guardian in the United States is available to provide care and physical custody; or

"(III) no sibling over 18 years of age, aunt, uncle, grandparent, or cousin over 18 years of age is available to provide care and physical custody; except that

"(B) such term shall cease to include an alien if at any time a parent, legal guardian, sibling over 18 years of age, aunt, uncle, grandparent, or cousin over 18 years of age of the alien is found in the United States and is available to provide care and physical custody (and the Secretary of Homeland Security and the Secretary of Health and Human Services shall revoke accordingly any prior designation of the alien under this paragraph).".

SEC. __9. MODIFICATIONS TO PREFERENTIAL AVAILABILITY FOR ASYLUM FOR UNACCOMPANIED ALIEN MINORS.

Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended—

(1) by striking subsection (a)(2)(E); and

(2) by striking subsection (b)(3)(C).

SEC. __10. NOTIFICATION AND TRANSFER OF CUSTODY REGARDING UNACCOMPANIED ALIEN MINORS.

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

(1) in paragraph (2), by striking "48 hours" and inserting "7 days"; and

(2) in paragraph (3), by striking "72 hours" and inserting "30 days".

SEC. __11. INFORMATION SHARING BETWEEN DEPARTMENT OF HEALTH AND HUMAN SERVICES AND DEPARTMENT OF HOMELAND SECURITY.

Section 235(b) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(b)) is amended by adding at the end the following:

"(5) INFORMATION SHARING.—The Secretary of Health and Human Services shall share with the Secretary of Homeland Security any information requested on a child who has been determined to be an unaccompanied alien child and who is or has been in the custody of the Secretary of Health and Human Services, including the location of the child and any person to whom custody of the child has been transferred, for any legitimate law enforcement objective, including enforcement of the immigration laws.".

SEC. __12. SAFE THIRD COUNTRY.

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

(1) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(2) by striking “removed, pursuant to a bilateral or multilateral agreement, to” and inserting “removed to”.

SEC. __13. ADDITIONAL IMMIGRATION JUDGES AND ICE PROSECUTORS.

(a) Executive Office for Immigration Review.—Subject to the availability of appropriations, in each of fiscal years 2015 through 2017, the Attorney General shall increase by not less than 50 the number of positions for full-time immigration judges within the Executive Office for Immigration Review above the number of such positions for which funds were allotted for fiscal year 2014.

(b) Immigration and Customs Enforcement Office of the Principal Legal Advisor.—Subject to the availability of appropriations, in each of the fiscal years 2015 through 2017, the Secretary of Homeland Security shall increase by not less than 60 the number of positions for full-time trial attorneys within the Immigration and Customs Enforcement Office of the Principal Legal Advisor above the number of such positions for which funds were allotted for fiscal year 2014.

SEC. __14. MINORS IN DEPARTMENT OF HEALTH AND HUMAN SERVICES CUSTODY.

Section 235(c)(2)(A) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(c)(2)(A)) is amended by striking the last two sentences.

SEC. __15. FOREIGN ASSISTANCE FOR REPATRIATION.

(a) Suspension of Foreign Assistance.—The Secretary of State shall immediately suspend all foreign assistance, including under United States Agency for International Development programs, the Central American Regional Security Initiative, or the International Narcotic Control Law Enforcement program, to any large sending country that—

(1) refuses to negotiate an agreement under section 235(a)(2) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(a)(2)); or

(2) refuses to accept from the United States repatriated unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))) who are nationals or residents of the sending country.

(b) Use of Foreign Assistance for Repatriation.—The Secretary of State shall provide any additional foreign assistance from the United States that such Secretary determines is needed to

implement an agreement under section 235(a)(2) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(a)(2)) or safely to repatriate or reintegrate nationals or residents of a large sending country without increasing the total quantity of foreign assistance to such country. Such country may use any earlier foreign assistance for the purpose of repatriation or implementation of any agreement under such section 235(a)(2).

(c) Definition of Large Sending Program.—In this section, the term "large sending country" means—

(1) any country which was the country of nationality or last habitual residence for 1,000 or more unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))) who entered the United States in a single fiscal year in any of the prior 3 fiscal years; and

(2) any other country which the Secretary of Homeland Security deems appropriate.

(d) Effective Date.—This section shall take effect on the date of the enactment of this Act and shall apply with respect to any unaccompanied alien child (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))) apprehended on or after such date.

SEC. __16. REPORTS.

(a) In General.—Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the Secretary of State and the Secretary of Health and Human Services, with assistance from the Secretary of Homeland Security, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to improve repatriation programs for unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))). Such reports shall include the following:

(1) The average time that such a child is detained after apprehension until removal.

(2) The number of such children detained improperly beyond the required time periods under paragraphs (2) and (3) of section 235(b) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(b)).

(3) A statement of the funds used to effectuate the repatriation of such children, including any funds that were reallocated from foreign assistance accounts as of the date of the enactment of this Act.

(b) Effective Date.—This section shall take effect on the date of the enactment of this Act and shall apply with respect to any unaccompanied alien child (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))) apprehended on or after such date.

SEC. __17. WITHHOLDING OF REMOVAL.

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

(1) by adding at the end of subparagraph (A) the following:

"The burden of proof shall be on the alien to establish that the alien's life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for such threat.";"; and

(2) in subparagraph (C), by striking "In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A)," and inserting "For purposes of this paragraph,".

(b) Effective Date.—The amendments made by subsection (a) shall take effect as if enacted on May 11, 2005, and shall apply to applications for withholding of removal made on or after such date.

SEC. __18. GROSS VIOLATIONS OF HUMAN RIGHTS.

(a) Inadmissibility of Certain Aliens.—Section 212(a)(3)(E)(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)(iii)) is amended to read as follows:

"(iii) COMMISSION OF ACTS OF TORTURE, EXTRAJUDICIAL KILLINGS, WAR CRIMES, OR WIDESPREAD OR SYSTEMATIC ATTACKS ON CIVILIANS.—Any alien who planned, ordered, assisted, aided and abetted, committed, or otherwise participated in, including through command responsibility and without regard to motivation or intent, the commission of—

"(I) any act of torture (as defined in section 2340 of title 18, United States Code);

"(II) any extrajudicial killing (as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note)) under color of law of any foreign nation;

"(III) a war crime (as defined in section 2441 of title 18, United States Code); or

"(IV) a widespread or systematic attack directed against a civilian population, with knowledge of the attack, murder, extermination, enslavement, forcible transfer of population, arbitrary detention, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

"(V) persecution on political racial, national, ethnic, cultural, religious, or gender grounds;

"(VI) enforced disappearance of persons; or

"(VII) other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury,

is in admissible.".

(b) Nonapplicability of Confidentiality Requirement With Respect to Visa Records.—The President may make public, without regard to the requirements under section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)), with respect to confidentiality of records pertaining to the issuance or refusal of visas or permits to enter the United States, the names of aliens deemed inadmissible on the basis of section 212(a)(3)(E)(iii) of the Immigration and Nationality Act, as amended by subsection (a).

SEC. __19. FIRM RESETTLEMENT.

Section 208(b)(2)(A)(vi) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(vi)) is amended by striking "States." and inserting "States, which shall be considered demonstrated by evidence that the alien can live in such country (in any legal status) without fear of persecution.".

SEC. __20. TERMINATION OF ASYLUM STATUS PURSUANT TO RETURN TO HOME COUNTRY.

(a) Termination of Status.—Except as provided in subsections (b) and (c), any alien who is granted asylum or refugee status under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), who, without a compelling reason as determined by the Secretary, subsequently returns to the country of such alien's nationality or, in the case of an alien having no nationality, returns to any country in which such alien last habitually resided, and who applied for such status because of persecution or a well-founded fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, shall have his or her status terminated.

(b) Waiver.—The Secretary has discretion to waive subsection (a) if it is established to the satisfaction of the Secretary that the alien had a compelling reason for the return. The waiver may be sought prior to departure from the United States or upon return.

(c) Exception for Certain Aliens From Cuba.—Subsection (a) shall not apply to an alien who is eligible for adjustment to that of an alien lawfully admitted for permanent residence pursuant to the Cuban Adjustment Act of 1966 (Public Law 89-732).

SEC. __21. ASYLUM CASES FOR HOME SCHOOLERS.

(a) In General.—Section 101(a)(42) (8 U.S.C. 1101(a)(42)) is amended by adding at the end the following: "For purposes of determinations under this Act, a person who has been persecuted for failure or refusal to comply with any law or regulation that prevents the exercise of the individual right of that person to direct the upbringing and education of a child of that person

(including any law or regulation preventing homeschooling), or for other resistance to such a law or regulation, shall be deemed to have been persecuted on account of membership in a particular social group, and a person who has a well founded fear that he or she will be subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of membership in a particular social group.".

(b) Numerical Limitation.—Section 207(a) of the Immigration and Nationality Act (8 U.S.C. 1157(a)) is amended by adding at the end the following:

"(5) For any fiscal year, not more than 500 aliens may be admitted under this section, or granted asylum under section 208, pursuant to a determination under section 101(a)(42) that the alien is described in the final sentence of section 101(a)(42) (as added by section 21 of the Asylum Reform and Border Protection Act of 2015).".

(c) Effective Dates.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to failure or refusal to comply with a law or regulation, or other resistance to a law or regulation, occurring before, on, or after such date.

(2) NUMERICAL LIMITATION.—The amendment made by subsection (b) shall take effect beginning on the first day of the first fiscal year beginning after the date of the enactment of this Act.

SEC. __22. NOTICE CONCERNING FRIVOLOUS ASYLUM APPLICATIONS:.

(a) In General.—Section 208(d)(4) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(4)) is amended—

(1) in the matter preceding subparagraph (A), by inserting "the Secretary of Homeland Security or" before "the Attorney General";

(2) in subparagraph (A), by striking “and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum”;

(3) in subparagraph (B), by striking the period and inserting “; and”;

(4) by adding at the end the following:

“(C) ensure that a written warning appears on the asylum application advising the alien of the consequences of filing a frivolous application.”; and

(5) by inserting after subparagraph (C) the following:

“The written warning referred to in subparagraph (C) shall serve as notice to the alien of the consequences of filing a frivolous application.”.

(b) Conforming Amendment.—Section 208(d)(6) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(6)) is amended by striking “paragraph (4)(A)” and inserting “paragraph (4)(C)”.

SEC. __23. TERMINATION OF ASYLUM STATUS.

Section 208(c) of the Immigration and Nationality Act (8 U.S.C. 1158(c)) is amended by adding at the end the following:

“(4) If an alien’s asylum status is subject to termination under paragraph (2), the immigration judge shall first determine whether the conditions specified under paragraph (2) have been met, and if so, terminate the alien’s asylum status before considering whether the alien is eligible for adjustment of status under section 209.”.