



Legislative Bulletin.....August 1, 2014

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H.R. 5230 –Making supplemental appropriations for the fiscal year ending September 30, 2014, and for other purposes (Rogers, R-KY)

Order of Business: The legislation is expected to be considered on the floor, subject to a [rule](#), on Friday, August 1, 2014.

Amendments to H.R. 5230 Approved by the House Committee on Rules

Rogers (R-AL): This [amendment](#) prohibits the Secretary of Defense from allowing the placement of unauthorized aliens at a military installation in the United States if the use of the military institution would interfere with the activities of or displace members of the Armed Forces at the installation. The base text (analysis below) included a “sense of Congress” regarding the use of military installations. This amendment is binding, whereas the language in the base text was not.

Rogers (R-KY): This [amendment](#) adds an additional \$35 million to the base bill to allow states to be reimbursed for National Guard activities under State Active Duty Status deployed to the southern border. The additional funds are offset by an increased rescission of the unobligated balances for Operation and Maintenance, Defense-Wide of \$35 million. This brings total funding for National Guard activities in the bill to \$70 million. There are three types of “status” for the National Guard. Under “state status,” the Governor can deploy the National Guard but the state is responsible for paying for it. This amendment gives governors the flexibility to deploy the National Guard, the base bill did not. A Congressional Research Service report detailing the different types of status is available [here](#); relevant portions begin on page 16.

Carter (R-TX): This [amendment](#) makes changes to Section 235(a) of the William Wilberforce Victims Protection Reauthorization Act of 2008 ([P.L.110-457](#)) to allow for the speedy removal of unaccompanied alien children (UACs) from all countries if it is determined that he or she does

not have a credible fear of persecution or has not been a victim of trafficking. The amendment removes additional procedures that were created by the base bill. If the UAC claims a credible fear of persecution, then they will remain in custody until a hearing before an immigration judge that must take place within 14 days after the first screening. The base bill required an immigration judge to conduct a hearing within 7 days after the first screening. The amendment allows the Secretary of State to negotiate agreements with foreign countries, while the base bill required the Secretary of State to negotiate agreements.

*The [rule](#) provides “that the amendments printed in Part A of the Rules Committee report shall be considered as adopted” upon adoption of the rule.

Summary of Base Text (pre-amendment analysis): [H.R. 5230](#) provides \$659 million in supplemental funds (in addition to currently appropriated FY2014 funding) to address the border crisis. \$462 million of the funds are available through FY2015 (September 30, 2015). **Detailed breakdown of the appropriations below:**

- Division A-Title I provides an additional \$71 million for Salaries and Expenses for the U.S. Customs and Border Protection service to remain available until September 30, 2015.
- Division A-Title I provides an additional \$334 million for Salaries and Expenses for U.S. Immigration and Customs Enforcement to remain available until September 30, 2015.
- Division A-Title II provides an additional \$12.4 million for the Army National Guard and \$2.3 million for the Air Force National Guard Military Personnel accounts. It provides an additional \$15.8 million for the Operation and Maintenance Accounts of the Army National Guard and \$4.5 million for Operation and Maintenance account of the Air National Guard. The funds made available in this title are available through September 30, 2015.
- Division A-Title III provides an additional \$22 million for the Department of Justice for Administrative Review and Appeals to remain available through September 30, 2015.
- The legislation also provides up to \$40 million of previously appropriated funds assistance for Central American countries for repatriation and reintegration activities. The funds authorized for Central American countries may be suspended if the government of a Central American country does not make significant progress in helping to prevent the flow of people to the U.S. border.
- Division A-Title V provides an additional \$197 million for the Department of Health and Human Services Refugee and Entrant Assistant program.

To pay for these additional funds, a total of \$659 million in rescissions are made as follows: \$405 million of the unobligated balances of the “Department of Homeland Security-Federal Emergency Management Agency-Disaster Relief Fund,” \$35 million of the unobligated balances for “Operation and Maintenance, Defense-Wide,” and \$22 million of the unobligated balances available for “Department of Justice – Legal Activities – Assets Forfeiture Fund.” The bill rescinds \$197 million of the unobligated balances available to the President for bilateral economic assistance under the heading “Economic Support Fund.”

Summary of Policy Changes:

- **Equalization of Treatment for Unaccompanied Alien Children (UACs) from Mexico and Central America:** The legislation amends the William Wilberforce Victims

Protection Reauthorization Act of 2008 (“TVPRA”) ([8 U.S.C. 1225](#)) to equalize the treatment of unaccompanied alien children (UACs) from Canada, El Salvador, Guatemala, Honduras, Mexico and any other foreign countries that the Secretary of Homeland Security determines appropriate. It also amends TVPRA to provide expedited removal proceedings for UACs and prohibits UACs from being released from the custody of the United States Government until the child is repatriated. The legislation requires an immigration judge to conduct an inspection of the unaccompanied child within 7 days after the first screening under TVPRA. The immigration judge is required to issue an order regarding the immigration status of the child within 72 hours after the conclusion of the proceeding. The screening can be done in person or remotely through video or telephone conference. The legislation contains safeguards to protect mentally incompetent aliens. There are other safeguards to protect the rights of the aliens such as the right to counsel, at no cost to the Government, and the ability to review the evidence. The alien can withdraw his or her application for admission to the United States at any time and be immediately returned to his or her home country. The legislation also contains penalties, such as an order of removal from the United States, for failure of the alien to appear at proceedings. In a proceeding to determine whether the UAC is likely to be admissible to the United States or eligible for any relief from removal, the alien has the burden, by a preponderance of the evidence, to prove that he or she is likely to be granted relief from removal or likely to be admitted or are lawfully present in the U.S. If the judge determines the UAC has met the burden of proof, then the UAC will be placed in further proceedings. If the judge determines that the UAC has not met the burden of proof, he or she will be ordered to be removed unless he or she claims an intention to apply for asylum or a fear of persecution.

- **Asylum Claims:** Aliens who claim asylum will be subject to a “credible fear” interview by an asylum officer. Credible fear of persecution is defined by the Immigration and Nationality Act ([8 U.S.C. 1225\(b\)\(1\)\(B\)\(v\)](#)) as “a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.” In general, ([see Section 1158](#)), to be eligible for asylum, the applicant must establish that he/she is a refugee, the applicant must also establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant. In general terms, a refugee is someone who is outside of his or her home country because of persecution or a well-founded fear of persecution. (For a detailed definition of “refugee” see [8 U.S.C. 1101\(a\)\(42\)\(A\)](#)) If the asylum officer determines that the child has a credible fear of persecution then he or she will be held by the Secretary of the Department of Health and Human Services (HHS) pursuant to Section 235b of TVPRA” ([8 U.S.C. 1225](#)). If the officer determines that the alien does not have a credible fear of persecution then he or she shall be ordered to be removed from the U.S. The asylum officer is required to prepare a written report of the reasons for the determination.
- **Review of Asylum Claims:** This determination can be reviewed by an immigration judge subject to a process established by the Attorney General by regulation. The review process must provide an opportunity for the alien to be heard by an immigration judge (in person or through video or telephonic conference). The review must be conducted no later than 7 days after the initial determination by the asylum officer. All aliens under

review must be held by the Secretary of HHS according to TVPRA (8 U.S.C. 1232 (b)) until a final determination of their asylum application or until removal if a judge determines that the alien does not have a credible fear of persecution. The removal order is not subject to administrative appeal.

- **Timing of Removal Proceedings:** The most recent arrivals to the United States will be dealt with first under a “last in, first out” policy.
- **Due Process protections for UACs present in the U.S:** The legislation creates a system of due process for UACs who were issued a Notice to Appear by an immigration court between January 1, 2013, to the date of enactment of the Act to permit them to appear in-person, before an immigration judge, state their desire to apply for admission to the United States, and file a motion to replace a Notice to Appear issued between January 1, 2013, and the date of enactment of the Act and to apply for admission to the United States under Section 235B of the Immigration and Nationality Act (“INA”). An immigration judge, at his or her sole and unreviewable discretion, may grant the UAC’s motion to replace the Notice to Appear. If the motion to replace the Notice to Appear is approved, while the UAC remains in person, the judge who granted the motion may immediately inspect the child for admission into the U.S. and replace the Notice to Appear with a order under section 235B(e) of INA.
- **Additional Judges:** The legislation allows the Attorney General of the United States to designate up to 40 immigration judges who are dedicated to conducting humane and expedited inspection and screening for UACs. The categories of judges that can be hired include retired judges, administrative law judges, or the reassignment of current immigration judges.
- **Safeguards for Placement of UACs:** TVPRA is amended to prohibit the placement of UACs with anyone convicted of sex offenses or human trafficking and requires a criminal background check before placement.
- **Ineligibility for Asylum:** The Immigration and Nationality Act is amended to make anyone convicted of a drug offense punishable by prison term of more than one year ineligible for asylum.
- **National Guard:** The legislation allows appropriated funds to be used for the National Guard that are deployed to secure areas of the border that experience a high traffic of UACs.
- **U.S. Customs and Border Protection on Federal Lands:** The legislation prohibits actions that impede border security on federal lands. Specifically, the legislation prohibits the Secretary of Agriculture and the Secretary of the Interior from taking any actions which impede the activities of the U.S. Customs and Border Protection within 100 miles of the U.S. border with Mexico. U.S. Customs and Border Protection is granted immediate access to these lands to construct border protection infrastructure (roads, barriers, surveillance equipment). This Act does not have effect on State or private lands and does not provide authority or access to State or private lands. Legislation aiming to ensure border security on federal lands has been advocated by many RSC Members including Rep. Pearce, Rep. Goodlatte, Rep. Bishop, and Rep. Franks.
- **Sense of Congress:** The bill also contains a Sense of Congress that unauthorized aliens shall not be placed at military installation unless certain procedures are followed.

Additional Information: There has been a recent surge in border crossings by Unaccompanied Alien Children (UACs) from Guatemala, Honduras, and El Salvador. The President sent a [letter](#) to Congress on June 30, 2014, in which he stated “we are eager to work with the Congress to ensure that we have the legal authorities to maximize the impact of our efforts.”

On July 8, 2014, the President requested that Congress approve \$3.7 billion in emergency supplemental funds to address the border crisis. The letter is available [here](#). The Congressional Budget Office conducted a [cost estimate](#) of the President’s request and estimated outlays of \$25 million by the end of FY 2014 (September 30, 2014). A better indication of how much of the new spending authority would be used before September 30, 2014, would be an estimate of total obligations (contracts entered, etc.) before that date. However, CBO did not, and does not routinely, provide estimates of obligations over a certain time period.

Speaker Boehner asked Rep. Kay Granger (TX-12) to Chair the House Working Group to address the border crisis. On July 23, 2014, Congresswoman Granger released the recommendations of the Working Group. The recommendations laid the foundation for the base bill and are available [here](#).

Past Border Supplementals: On August 10, 2010, the House passed an emergency border supplemental appropriations bill by voice vote, H.R. 6080, that because public law [111-230](#). The legislation appropriated \$600 million in emergency funds for border security.

Committee Action: The bill was introduced on July 29, 2014, and referred to the House Committee on Appropriations. There was no further action by the Committee on the bill.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: No Congressional Budget Office cost estimate is available.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. It authorizes supplemental funds, some of which are available through the end of FY2015, September 30, 2015.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The constitutional authority statement is unavailable.

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NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*

Amendment in the Nature of a Substitute to H.R. 5272 – To prohibit certain actions with respect to deferred action for aliens not lawfully present in the United States, and for other purposes (Blackburn, R-TN)

Order of Business: This amendment in the nature of a substitute is scheduled to be considered on Friday, August 1, 2014, subject to a [rule](#). The rule provides for consideration of H.R. 5272 after the passage of H.R. 5230.

Summary: This [amendment](#) is a “strike-all” amendment to replace the text of H.R. 5272 as introduced. It “freezes” the DACA program by prohibiting any agency or instrumentality of the Federal Government from using any Federal funds or resources after July 30, 2014, to consider or adjudicate any new or previously denied application of any alien requesting consideration of deferred action as defined by Executive memorandum on August 15, 2012. Furthermore, it prohibits the use of Federal funds to grant consideration of or to adjudicate any deferred action for childhood arrivals by any other succeeding Executive memorandum or policy authorizing a similar program. It prohibits the use of Federal funds or resources to newly authorize deferred action for any class of citizen not lawfully present in the United States or to authorize any alien to work in the United States not in lawful legal status and that was not lawfully admitted into the United States under the Immigration and Nationality Act ([8 U.S.C. 1101](#)) on the date of enactment of the Act.

Additional Information: DACA allows people who have resided in the United States continuously since June 15, 2007, arrived in the U.S. before June 15, 2012, came to the U.S. before the age of 16, and were under 31 years old as of June 15, 2012, to apply for deferred action for removal proceedings for a period of two years, during which they cannot be removed. During this time they are also eligible for work authorization. Detailed information about DACA can be found on the United States Customs and Immigration website [here](#).

DACA was created by President Obama on June 15, 2012. According to [U.S. Citizenship and Immigration Services](#), “as of April 2014, more than 560,000 individuals have received DACA.” A House Committee on the Judiciary [press release](#), citing Department of Homeland Security’s (DHS) statistics, states, “illegal migration of minors will grow from 6,500 in FY 2011 to an estimated 142,000 in 2015. As of last week, DHS has seen about 50,000 minors attempting to cross into the United States and over 40,000 family members for FY 2014. The estimated number to be apprehended in 2014 represents a 1,381% increase since 2011, while the projected number of 142,000 apprehensions in 2015 represents a 2,232% increase.” The Chief Executive Officer of Heritage Action published an article, available [here](#), that credits the large increase in illegal border crossings to DACA.

Conservatives have been concerned about the President’s excessive use of executive action from the outset regarding DACA. See an article by AEI scholar John Yoo [here](#).

Outside Groups in Support of the Amendment:

- Heritage Action has issued a “[Key Vote Alert](#)” in support of the amendment.

Committee Action on the Underlying Bill: The legislation was introduced on July 30, 2014, and referred to the House Committee on the Judiciary. There was no further action by the Committee on the bill.

Administration Position on the Underlying Bill and Amendment: There is no Statement of Administration Policy available.

Cost to Taxpayers of the Amendment: There is no Congressional Budget Office cost estimate available.

Does the Amendment Expand the Size and Scope of the Federal Government?: No.

Does the Amendment Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Amendment Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:
No.

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