

117TH CONGRESS
1ST SESSION

H. R. 3504

To require the Secretary of Homeland Security to conduct criminal history background checks on aliens who unlawfully entered the United States prior to releasing such aliens from custody, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2021

Ms. HERRELL (for herself, Mr. GOOD of Virginia, Mr. GOSAR, Mr. WEBER of Texas, and Mr. ADERHOLT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To require the Secretary of Homeland Security to conduct criminal history background checks on aliens who unlawfully entered the United States prior to releasing such aliens from custody, 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 “Protect Americans
5 from Foreign Criminals Act of 2021”.

1 **SEC. 2. BACKGROUND CHECKS REQUIRED ON ALIENS UN-**
2 **LAWFULLY ENTERING THE UNITED STATES.**

3 (a) **IN GENERAL.**—Notwithstanding any other provi-
4 sion of law, the Secretary of Homeland Security shall de-
5 tain and may not release from custody any alien who is
6 inadmissible under section 212(a)(6)(A)(i) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1182(a)(6)(A)(i)),
8 prior to conducting a criminal history background check
9 on the alien in accordance with this section.

10 (b) **BACKGROUND CHECK REQUIREMENTS.**—The
11 Secretary of Homeland Security shall conduct a criminal
12 history background check of the alien using—

13 (1) appropriate criminal history databases in
14 the United States; and

15 (2) appropriate criminal history databases in
16 the alien’s country of origin, and each country of
17 transit.

18 (c) **RESULTS OF BACKGROUND CHECK.**—If the Sec-
19 retary determines, based on a criminal history background
20 check required to be conducted under this section, that
21 an alien—

22 (1) has been convicted of or has pending
23 charges for an aggravated felony (as such term is
24 defined in section 101(a)(43) of the Immigration
25 and Nationality Act (8 U.S.C. 1101(a)(43))) in the

1 United States, the alien's country of origin, or a
2 country of transit;

3 (2) is a member of a criminal street gang (as
4 such term is defined in section 521 of title 18,
5 United States Code); or

6 (3) is described in section 236(c)(1) of the Im-
7 migration and Nationality Act (8 U.S.C.
8 1226(c)(1)),

9 the Secretary may not release the alien from custody pend-
10 ing removal proceedings.

11 (d) FOREIGN BACKGROUND CHECK SYSTEMS.—

12 (1) IN GENERAL.—The Secretary of Homeland
13 Security, in consultation with the Secretary of State
14 and the Director of National Intelligence, shall im-
15 mediately conduct a worldwide review to determine
16 whether the Secretary of Homeland Security has the
17 ability to access the databases of criminal history
18 databases of any country to perform the background
19 checks described in subsection (b)(2).

20 (2) STANDARDS.—The review described in
21 paragraph (1) shall consider whether the databases
22 of a country are up to date, digitized, searchable,
23 and otherwise meet the standards of the Federal
24 Bureau of Investigations for criminal history data-
25 bases maintained by State and local governments.

1 (3) REPORT.—Not later than 180 days after
2 the date of enactment of this Act, the Secretary of
3 Homeland Security shall provide a report to the
4 Committees on the Judiciary of the House of Rep-
5 resentatives and the Senate, the Committee on
6 Homeland Security of the House of Representatives,
7 and the Committee on Homeland Security and Gov-
8 ernmental Affairs of the Senate, on results of the re-
9 view conducted under paragraph (1).

10 (4) FAILURE TO MEET STANDARDS.—When the
11 Secretary of Homeland Security finds that the crimi-
12 nal history databases of a country described in sub-
13 section (b)(2) are not up to date, digitized, search-
14 able, or otherwise fail to meet the standards of the
15 Federal Bureau of Investigations for criminal his-
16 tory databases maintained by State and local gov-
17 ernments, as determined applicable by the Secretary,
18 the Secretary may not release from custody an alien
19 who originated from or transited through such coun-
20 try.

21 (e) CERTIFICATION.—On an annual basis, the Sec-
22 retary of Homeland Security shall submit to the Commit-
23 tees on the Judiciary of the House of Representatives and
24 of the Senate, the Committee on Homeland Security of
25 the House of Representatives, and the Committee on

1 Homeland Security and Governmental Affairs of the Sen-
2 ate, a certification that each database described in sub-
3 section (b)(2), which the Secretary accessed or sought to
4 access pursuant to this section, met the standards de-
5 scribed in subsection (d). Prior to submission, the Inspec-
6 tor General of the Department of Homeland Security shall
7 review each certification under this subsection.

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