

117TH CONGRESS
1ST SESSION

S. 1891

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

MAY 27, 2021

Mr. COONS (for himself, Mr. MARKEY, Mr. WHITEHOUSE, Ms. SMITH, Mrs. FEINSTEIN, Mr. BLUMENTHAL, Mr. SCHATZ, Ms. CORTEZ MASTO, Ms. BALDWIN, Mr. CASEY, Mr. BENNET, Mr. PADILLA, Ms. CANTWELL, Mr. LUJÁN, Mr. REED, Mr. CARDIN, Mr. BOOKER, Ms. DUCKWORTH, Mr. WARNER, Ms. WARREN, Mr. KAINE, Mr. VAN HOLLEN, Ms. HIRONO, Mr. LEAHY, Mr. DURBIN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. CARPER, Ms. KLOBUCHAR, Mrs. MURRAY, Ms. ROSEN, Mr. KING, Mr. MENENDEZ, Mrs. SHAHEEN, Mr. PETERS, Mr. OSSOFF, Mr. MERKLEY, Mr. SANDERS, and Mr. MURPHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

8 (1) by striking “Except as specifically provided
9 in paragraph (2) and in sections 101(a)(27),
10 201(b)(2)(A)(i), and 203, no” and inserting “No”;

11 (2) by inserting “or a nonimmigrant visa, ad-
12 mission or other entry into the United States, or the
13 approval or revocation of any immigration benefit”
14 after “immigrant visa”;

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

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

22 **SEC. 3. TRANSFER AND LIMITATIONS ON AUTHORITY TO**
23 **SUSPEND OR RESTRICT THE ENTRY OF A**
24 **CLASS OF ALIENS.**

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

1 “(f) AUTHORITY TO SUSPEND OR RESTRICT THE
2 ENTRY OF A CLASS OF ALIENS.—

3 “(1) IN GENERAL.—Subject to paragraph (2),
4 if the Secretary of State, in consultation with the
5 Secretary of Homeland Security, determines, based
6 on specific and credible facts, that the entry of any
7 aliens or any class of aliens into the United States
8 would undermine the security or public safety of the
9 United States or the preservation of human rights,
10 democratic processes or institutions, or international
11 stability, the President may temporarily—

12 “(A) suspend the entry of such aliens or
13 class of aliens as immigrants or nonimmigrants;
14 or

15 “(B) impose any restrictions on the entry
16 of such aliens that the President deems appro-
17 priate.

18 “(2) LIMITATIONS.—In carrying out paragraph
19 (1), the President, the Secretary of State, and the
20 Secretary of Homeland Security shall—

21 “(A) only issue a suspension or restriction
22 when required to address specific acts impli-
23 cating a compelling government interest in a
24 factor identified in paragraph (1);

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

4 “(C) specify the duration of the suspension
5 or restriction;

6 “(D) consider waivers to any class-based
7 restriction or suspension and apply a rebuttable
8 presumption in favor of granting family-based
9 and humanitarian waivers; and

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

11 “(3) CONGRESSIONAL NOTIFICATION.—

12 “(A) IN GENERAL.—Prior to the President
13 exercising the authority under paragraph (1),
14 the Secretary of State and the Secretary of
15 Homeland Security shall consult Congress and
16 provide Congress with specific evidence sup-
17 porting the need for the suspension or restric-
18 tion and its proposed duration.

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

1 “(i) the action taken pursuant to
2 paragraph (1) and the specified objective
3 of such action;

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

6 “(iii) the constitutional and legislative
7 authority under which such action took
8 place; and

9 “(iv) the circumstances necessitating
10 such action, including how such action
11 complies with paragraph (2), as well as
12 any intelligence informing such actions.

13 “(C) TERMINATION.—If the briefing and
14 report described in subparagraph (B) are not
15 provided to Congress during the 48 hours that
16 begin when the President exercises the author-
17 ity under paragraph (1), the suspension or re-
18 striction shall immediately terminate absent in-
19 tervening congressional action.

20 “(D) CONGRESSIONAL COMMITTEES.—The
21 term ‘Congress’, as used in this paragraph, re-
22 fers to the Select Committee on Intelligence of
23 the Senate, the Committee on Foreign Rela-
24 tions of the Senate, the Committee on the Judi-
25 ciary of the Senate, the Committee on Home-

land Security and Governmental Affairs of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, the Committee on the Judiciary of the House of Representatives, and the Committee on Homeland Security of the House of Representatives.

“(4) PUBLICATION.—The Secretary of State and the Secretary of Homeland Security shall publicly announce and publish an unclassified version of the report described in paragraph (3)(B) in the Federal Register.

“(5) JUDICIAL REVIEW.—

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

“(B) CLASS ACTION.—Nothing in this Act may be construed to preclude an action filed pursuant to subparagraph (A) from proceeding as a class action.

1 “(6) TREATMENT OF COMMERCIAL AIRLINES.—

2 Whenever the Secretary of Homeland Security finds
3 that a commercial airline has failed to comply with
4 regulations of the Secretary of Homeland Security
5 relating to requirements of airlines for the detection
6 of fraudulent documents used by passengers trav-
7 eling to the United States (including the training of
8 personnel in such detection), the Secretary of Home-
9 land Security may suspend the entry of some or all
10 aliens transported to the United States by such air-
11 line.

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

18 **SEC. 4. VISA APPLICANTS REPORT.**

19 (a) INITIAL REPORTS.—

20 (1) IN GENERAL.—Not later than 90 days after
21 the date of the enactment of this Act, the Secretary
22 of State, in coordination with the Secretary of
23 Homeland Security and the heads of other relevant
24 Federal agencies, shall submit a report to the con-
25 gressional committees referred to in section

1 212(f)(3)(D) of the Immigration and Nationality
2 Act, as amended by section 3 of this Act, that de-
3 scribes the implementation of Presidential Proclama-
4 tions 9645, 9822, and 9983 and Executive Order
5 Nos. 13769, 13780, and 13815, during the effective
6 period of each such proclamation and order.

7 (2) PRESIDENTIAL PROCLAMATION 9645 AND
8 9983.—In addition to the content described in para-
9 graph (1), the report submitted with respect to Pres-
10 idential Proclamation 9645, issued on September 24,
11 2017, and Presidential Proclamation 9983, issued
12 on January 31, 2020, shall include, for each country
13 listed in such proclamation—

14 (A) the total number of individuals who
15 applied for a visa during the time period the
16 proclamation was in effect, disaggregated by
17 country and visa category;

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

22 (C) the total number of visa applicants de-
23 scribed in subparagraph (A) who were refused,
24 disaggregated by country and visa category,
25 and the reasons they were refused;

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

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

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

14 (G) the total number of refugees admitted,
15 disaggregated by country; and

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

21 (b) ADDITIONAL REPORTS.—Not later than 30 days
22 after the date on which the President exercises the author-
23 ity under section 212(f) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1182(f)), as amended by section 3 of
25 this Act, and every 30 days thereafter, the Secretary of

1 State, in coordination with the Secretary of Homeland Se-
2 curity and heads of other relevant Federal agencies, shall
3 submit a report to the congressional committees referred
4 to in paragraph (3)(D) of such section 212(f) that identi-
5 fies, with respect to countries affected by a suspension or
6 restriction, the information described in subparagraphs
7 (A) through (G) of subsection (a)(2) of this section and
8 the specific evidence supporting the need for the continued
9 exercise of presidential authority under such section
10 212(f), including the information described in paragraph
11 (3)(B) of such section 212(f). If the report described in
12 this subsection is not provided to such congressional com-
13 mittees in the time specified, the suspension or restriction
14 shall immediately terminate absent intervening congres-
15 sional action. A final report with such information shall
16 be prepared and submitted to such congressional commit-
17 tees not later than 30 days after the suspension or restric-
18 tion is lifted.

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

