

117TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To extend title 42 expulsion authority, to resume border wall system construction, to preserve the exclusive authority of immigration judges over asylum claims, and to codify the Migrant Protection Protocols.

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IN THE SENATE OF THE UNITED STATES

Mr. RISCH (for himself and Mr. PORTMAN) introduced the following bill;  
which was read twice and referred to the Committee on

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**A BILL**

To extend title 42 expulsion authority, to resume border wall system construction, to preserve the exclusive authority of immigration judges over asylum claims, and to codify the Migrant Protection Protocols.

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 “Solving the Border  
5 Crisis Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) APPROPRIATE CONGRESSIONAL COMMIT-  
2           TEES.—The term “appropriate congressional com-  
3           mittees” means—

4                   (A) the Committee on Homeland Security  
5                   and Governmental Affairs of the Senate;

6                   (B) the Committee on Appropriations of  
7                   the Senate;

8                   (C) the Committee on Homeland Security  
9                   of the House of Representatives; and

10                   (D) the Committee on Appropriations of  
11                   the House of Representatives.

12           (2) TACTICAL INFRASTRUCTURE.—The term  
13           “tactical infrastructure” includes boat ramps, access  
14           gates, checkpoints, lighting, and roads associated  
15           with a border wall system.

16           (3) TECHNOLOGY.—The term “technology” in-  
17           cludes border surveillance and detection technology,  
18           including linear ground detection systems, cameras,  
19           underground detection sensors, and autonomous sen-  
20           sor towers, associated with a border wall system.

21 **SEC. 3. TERMINATION OF SUSPENSION OF ENTRIES AND**  
22 **IMPORTS FROM DESIGNATED PLACES RE-**  
23 **LATED TO THE COVID-19 PANDEMIC.**

24           (a) IN GENERAL.—An order of suspension issued  
25           under section 362 of the Public Health Service Act (42

1 U.S.C. 265) as a result of the public health emergency  
2 relating to the Coronavirus Disease 2019 (COVID-19)  
3 pandemic declared by the Secretary of Health and Human  
4 Services on January 31, 2020 under section 319 of such  
5 Act (42 U.S.C. 247d), and any continuation of such dec-  
6 laration, shall be lifted not earlier than 60 days after the  
7 date on which the Surgeon General provides written notifi-  
8 cation to the appropriate committees of Congress that  
9 such public health emergency declaration and all such con-  
10 tinuations have been terminated.

11 (b) PROCEDURES DURING 60-DAY TERMINATION  
12 WINDOW.—

13 (1) PLAN.—Not later than 30 days after the  
14 date on which a written notification is provided pur-  
15 suant to subsection (a) with respect to an order of  
16 suspension, the Surgeon General, in consultation  
17 with the Secretary of Homeland Security and the  
18 head of any other Federal agency, State, Tribal, or  
19 local government, or nongovernmental organization  
20 that has a role in managing outcomes associated  
21 with such suspension (as determined by the Surgeon  
22 General or his or her designee), shall develop and  
23 submit to the appropriate committees of Congress a  
24 plan to address any possible influx of entries or im-

1       ports (as described in such order of suspension) re-  
2       lated to the termination of such order.

3               (2) FAILURE TO SUBMIT.—If the plan required  
4       under paragraph (1) is not submitted to the appro-  
5       priate committees of Congress before the end of the  
6       30-day period described in such paragraph—

7               (A) the Secretary of Homeland Security  
8       shall submit, not later than 7 days after the ex-  
9       piration of such 30-day period, written notifica-  
10      tion to the appropriate committees of Congress  
11      of the status of preparing such plan and the  
12      date on by such plan will be submitted in ac-  
13      cordance with paragraph (1); and

14              (B) the termination of the order of suspen-  
15      sion described in subsection (a) shall be delayed  
16      until the date that is 30 days after the date on  
17      which such plan is submitted to the appropriate  
18      committees of Congress.

19 **SEC. 4. RESUMPTION OF BORDER WALL SYSTEM CON-**  
20 **STRUCTION.**

21       (a) BORDER WALL SYSTEM CONSTRUCTION.—

22               (1) IN GENERAL.—

23               (A) IMMEDIATELY RESUME BORDER WALL  
24      SYSTEM CONSTRUCTION.—Not later than 24  
25      hours after the date of the enactment of this

1 Act, the Secretary of Homeland Security shall  
2 resume all activities related to the construction  
3 of the border wall system along the inter-  
4 national border between the United States and  
5 Mexico that were underway or being planned  
6 for before January 20, 2021.

7 (B) NO CANCELLATIONS.—The Secretary  
8 of Homeland Security may not cancel any con-  
9 tract for activities related to border wall system  
10 construction described in paragraph (1) that  
11 was entered into on or before January 20,  
12 2021.

13 (C) USE OF FUNDS.—The Secretary of  
14 Homeland Security shall expend all funds ap-  
15 propriated or explicitly obligated for border wall  
16 system construction described in paragraph (1)  
17 that were appropriated or obligated, as the case  
18 may be, on or after October 1, 2016.

19 (D) IMPLEMENTATION PLAN.—Not later  
20 than 30 days after the date of enactment of  
21 this Act, the Secretary of Homeland Security  
22 shall submit an implementation plan to the ap-  
23 propriate congressional committees for the com-  
24 pletion, by not later than September 30, 2024,  
25 of the border wall system construction described

1           in paragraph (1) and funded in accordance with  
2           subparagraph (C).

3           (2) PLAN TO COMPLETE TACTICAL INFRA-  
4           STRUCTURE AND TECHNOLOGY ELEMENTS OF BOR-  
5           DER WALL SYSTEM.—Not later than 90 days after  
6           the date of the enactment of this Act, the Secretary  
7           of Homeland Security shall submit an implementa-  
8           tion plan to the appropriate congressional commit-  
9           tees that includes quarterly benchmarks and cost es-  
10          timates for satisfying all of the requirements of the  
11          border wall system construction described in para-  
12          graph (1)(A), including tactical infrastructure, tech-  
13          nology, and other elements identified by the Depart-  
14          ment of Homeland Security before January 20,  
15          2021, through the expenditure of funds appropriated  
16          or explicitly obligated, as the case may be, for use  
17          beginning on October 1, 2016, and any additional  
18          funds appropriated by Congress for such purpose.

19          (3) UPHOLD NEGOTIATED AGREEMENTS.—The  
20          Secretary of Homeland Security shall ensure that all  
21          agreements relating to current and future border  
22          wall system construction that were executed in writ-  
23          ing between the Department of Homeland Security  
24          and private citizens, State, Tribal, and local govern-  
25          ments, and other stakeholders are honored by the

1 Department in accordance with the terms of such  
2 agreements.

3 (b) DNA COLLECTION CONSISTENT WITH FEDERAL  
4 LAW.—Not later than 14 days after the date of the enact-  
5 ment of this Act, the Secretary of Homeland Security shall  
6 ensure and certify to the Committee on Homeland Secu-  
7 rity and Governmental Affairs of the Senate and the Com-  
8 mittee on Homeland Security of the House of Representa-  
9 tives that U.S. Customs and Border Protection is fully  
10 compliant with the DNA Fingerprint Act of 2005 (title  
11 X of Public Law 109–162) at all border facilities that  
12 process adults (including as part of a family unit) in the  
13 custody of U.S. Customs and Border Protection.

14 **SEC. 5. CONGRESSIONAL RESOLUTION OF DISAPPROVAL**  
15 **REGARDING TERMINATION OF THE EXCLU-**  
16 **SIVE AUTHORITY OF IMMIGRATION JUDGES**  
17 **OVER ASYLUM CLAIMS.**

18 (a) IN GENERAL.—Congress disapproves the pro-  
19 posed rule submitted by the Executive Office for Immigra-  
20 tion Review and U.S. Citizenship and Immigration Serv-  
21 ices, relating to “Procedures for Credible Fear Screening  
22 and Consideration of Asylum, Withholding of Removal,  
23 and CAT Protection Claims by Asylum Officers” (87 Fed.  
24 Reg. 18078) and such rule shall have no force or effect.

1 (b) JURISDICTION OF IMMIGRATION COURTS.—Sec-  
2 tion 235 of the Immigration and Nationality Act (8 U.S.C.  
3 1225) is amended by adding at the end the following

4 “(e) JURISDICTION OF IMMIGRATION COURTS.—Im-  
5 migration judges shall have—

6 “(1) exclusive jurisdiction over asylum applica-  
7 tions filed by an alien who has been served a Form  
8 I-221 (Order to Show Cause); a Form I-122 (Notice  
9 to Applicant for Admission Detained for a Hearing  
10 before an Immigration Judge); or Form I-862 (No-  
11 tice to Appear) after the charging document has  
12 been filed with the Immigration Court; and

13 “(2) the authority to review reasonable fear de-  
14 terminations and credible fear determinations that  
15 have been referred to the Immigration Court.”.

16 **SEC. 6. TREATMENT OF ALIENS ARRIVING FROM CONTIG-**  
17 **UOUS TERRITORY.**

18 Section 235(b)(2)(C) of the Immigration and Nation-  
19 ality Act (8 U.S.C. 1225(b)(2)(C)) is amended by striking  
20 “may return” and all that follows and inserting the fol-  
21 lowing: “shall—”

22 “(i) return the alien to such territory,  
23 or to a safe third country (as described in  
24 section 208), pending a proceeding under  
25 section 240; or



1                   “(ii) detain the alien for further con-  
2                   sideration of an application for asylum,  
3                   which shall include a determination of  
4                   credible fear of persecution.”.

5 **SEC. 7. MINIMUM STAFFING LEVELS.**

6           (a) OFFICE OF ENFORCEMENT AND REMOVAL OPER-  
7 ATIONS.—The Secretary of Homeland Security shall en-  
8 sure that there are always not fewer than 10,000 full-time  
9 equivalent employees in the Office of Enforcement and Re-  
10 moval Operations of U.S. Immigration and Customs En-  
11 forcement.

12           (b) U.S. BORDER PATROL.—The Secretary of Home-  
13 land Security shall ensure that the authorized personnel  
14 level for United States Border Patrol agents beginning on  
15 the date of the enactment of this Act is not fewer than  
16 25,000 agents, excluding Border Patrol Reserve Agents  
17 and Border Patrol Processing Coordinators.

18 **SEC. 8. MANDATORY DETENTION FUNDING.**

19           Section 386(a) of the Illegal Immigration Reform and  
20 Immigrant Responsibility Act of 1996 (8 U.S.C. 1368(a))  
21 is amended to read as follows:

22           “(a) INCREASE IN DETENTION FACILITIES.—

23                   “(1) IN GENERAL.—The Secretary of Homeland  
24           Security shall ensure that sufficient detention facili-  
25           ties are available for U.S. Immigration and Customs

1 Enforcement to comply with the mandatory deten-  
2 tion requirements under section 235 of the Immigra-  
3 tion and Nationality Act (8 U.S.C. 1225)

4 “(2) FUNDING.—In addition to any amounts  
5 otherwise appropriated for such purpose, the Sec-  
6 retary of Homeland Security may use any manda-  
7 tory fees collected by the Department of Homeland  
8 Security for expenses incurred by the Secretary to  
9 inspect, detain, transport, and provide medical care  
10 and any other needed goods or services to aliens who  
11 have been detained pursuant to section 235 of the  
12 Immigration and Nationality Act (8 U.S.C. 1225).”.