



Border Security and Asylum Reform in the Emergency National Security Supplemental Appropriations Act, 2024: Bill Explainer

A bipartisan group of U.S. senators introduced the [Emergency National Security Supplemental Appropriations Act, 2024](#) on February 4, 2024. This legislative package includes significant changes that would transform border security and the [asylum process](#) in the U.S. The package was developed [in response](#) to high levels of [encounters](#) at the U.S.-Mexico border and Republican demands to [include significant border reforms](#) along with other national security spending.

The bill represents the most significant changes to immigration policy in thirty years, reimagining the asylum process and the ways border officials deal with migrants requesting humanitarian protection. The bill was mainly developed by Sens. James Lankford (R-Oklahoma), Kyrsten Sinema (I-Arizona), and Chris Murphy (D-Connecticut). President Biden [stated](#) on January 26, 2024 he would sign the legislation if passed by the House and Senate. Key immigration-related provisions of the bill would do the following:

- Establish a new asylum process at the U.S. border in which asylum officers adjudicate asylum cases within an expedited timeframe.
- Limit the use of parole for migrants who arrive to the U.S. by land.
- Increase the standard to pass an initial asylum screening to the higher “reasonable possibility” standard.
- Create an emergency expulsion authority to prevent the entry of migrants and asylum seekers when there are “extraordinary migration circumstances.”
- Provide about \$18 billion in supplemental funding for the Department of Homeland Security (DHS) and \$2.3 billion in assistance for newly arrived refugees.
- Include adjustment of status for Afghan allies, protections for most “[Documented Dreamers](#),” and an additional 250,000 immigrant visas.

The border security and asylum reform provisions in the bill are included as part of a larger national security supplemental that [provide U.S. support](#) for Ukraine (\$60.6 billion), Israel (\$14.1 billion), and Indo-Pacific operations (\$4.83 billion). The bill also provides \$10 billion for the State Department and USAID to provide humanitarian assistance in major conflict zones. This document summarizes the key border security and asylum sections within the legislative package.

Asylum Processing at the U.S. Border

The bill establishes a new asylum process at the U.S. border. This new process provides U.S. Citizenship and Immigration Services (USCIS) asylum officers with the authority to adjudicate asylum claims at the border. Referred to as ***provisional noncustodial removal proceedings***, the process would fall under a new section (Sec. 235B) within the Immigration and Nationality Act (INA). It takes the following form:

1. **Protection Determination Interview.** Migrants who arrive at the U.S. border and request protection must have a ***protection determination interview*** with a USCIS asylum officer within 90 days after being referred to *provisional noncustodial removal proceedings*. The interview can be in-person or through technology appropriate for protection determination.
 - USCIS asylum officers must conduct the *protection determination interview* to screen whether migrants qualify for: 1) asylum pursuant to [Sec. 235\(b\)\(1\)\(B\)\(v\)](#) (i.e. under the bill, this is a heightened “Credible Fear” screening); 2) [withholding of removal](#); and/or 3) protection under the [Convention Against Torture](#).
 - Asylum seekers referred to *provisional noncustodial removal proceedings* may be released from DHS custody while they wait for the *protection determination interview*, but they will be subject to the Alternatives to Detention (ATDs) program for the duration of the proceedings.
 - Positive Determination. Asylum seekers who receive a positive protection determination are immediately eligible for work authorization and are referred to a *protection merits interview*.
 - Negative Determination. Asylum seekers who receive a negative determination are ordered removed from the U.S. with limited rights to an appeal. Asylum seekers may request reconsideration before an asylum officer or *de novo* administrative review before a Protection Appellate Board (a new body created by this bill). If the Protection Appellate Board upholds a negative determination, the individual must be removed from the U.S. without additional review.
 - If DHS fails to provide a *protection determination interview* within the 90-day timeframe, the individual will be referred to a *protection merits interview*.
2. **Protection Merits Interview.** Asylum seekers who receive a positive protection determination or do not receive a screening within the original 90-day timeframe must have a ***protection merits interview*** with an asylum officer. This part of the process, referred to as ***protection merits removal proceedings***, would fall under a new section (Sec. 240D) within the INA. The proceedings must conclude within 90 days of initiation (i.e. being referred to a *protections merit interview*), but the interview cannot take place earlier than 30 days from the moment DHS notifies an asylum seeker of the upcoming interview.
 - Positive Determination. An asylum officer determines the applicant meets the criteria for a positive merits decision and approves the application for asylum, withholding of removal, or protection under the Convention Against Torture.
 - Negative Determination. An asylum officer denies the application and orders the removal of the individual from the U.S. The individual will receive a written notice of the decision. There is limited right to appeal: The individual may request reconsideration before an USCIS asylum officer within five days and, if denied again, request a review before a Protection Appellate Board within seven days. If the Protection Appellate Board upholds a negative determination, the individual must be removed from the U.S.

Under the bill, the **Protection Appellate Board** would conduct administrative reviews of *protection determination* and *protection merits* decisions. This new appellate board would consist of three USCIS asylum officers assigned to a panel at random. The officers must have the necessary experience adjudicating asylum claims and be from diverse geographic regions. The decision would be made and submitted independently by each member.

The bill includes several provisions relevant to this section:

- **Exemption for Unaccompanied Children.** Unaccompanied migrant children (UACs) are exempt from the *provisional noncustodial removal proceedings*. UACs will continue to be referred to the Office of Refugee Resettlement (ORR) at the Department of Health and Human Services (HHS) within 72 hours of entering CBP custody.
- **Work Authorizations.** Asylum seekers who overcome the initial hurdle of protection screenings and are released from DHS custody while in *provisional noncustodial removal proceedings* are eligible for work permits. The employment authorization would be granted for two years, on a renewable basis.
- **Migrants and Sec. 235B Eligibility.** Migrants must be referred to *provisional noncustodial removal proceedings* only if they cannot show they have been physically present in the U.S. for more than the 14-day period before encountering a border official and were encountered within 100 miles from a U.S. border.
- **Voluntary Repatriation.** The bill creates a voluntary repatriation program in which asylum seekers may select at any time during the *provisional noncustodial removal proceedings* (Sec. 235B) or *protection merits removal proceedings* (Sec. 240D) to repatriate voluntarily. Those who select this option and do not leave in a timely manner may be subject to a 10-year ban from relief in the U.S. and a civil penalty equal to the cost of the transportation to return home. The bill also provides for voluntary departure from the U.S. and a withdrawal of application for admission.
- **Appropriations Authority.** The bill establishes that Congress must fund Sec. 235B and Sec. 240D through appropriations, and that funding will not come from USCIS fees.
- **Additional Protections.** The bill includes additional protections for migrants and asylum seekers. The *protection determination interview* cannot be conducted in a facility managed by CBP or ICE. The interview must also be held at a reasonable distance from the applicant's current residence at the time of the interview. Asylum officers shall procure the assistance of an interpreter to the maximum extent practicable, whenever necessary.

Heightened Asylum Standard

This section of the bill defines key terms within the revised asylum process, heightening the standard to pass an initial screening for protection. In particular, the bill would:

- Define a *protection determination* as tantamount to an initial credible fear interview for asylum, as well as a screening for withholding of removal and protection under the Convention Against Torture (CAT).

- Define a *protection merits interview* as effectively an asylum merits interview - a full adjudication - that also screens for withholding of removal and protection under CAT.
- **Initial Screening Standard.** Raise the initial screening standard for a “credible fear of persecution” in asylum adjudications. Under current law, applicants must show a “significant possibility” that they could win asylum. This bill requires that they demonstrate the higher “reasonable possibility” standard.
- **Exceptions.** Apply exceptions to asylum - such as if an asylum seeker is deemed a danger to national security or was firmly resettled elsewhere before coming to the U.S. - during initial screenings as a reason to deny a positive “credible fear” determination. These are currently not applied at the “Credible Fear” interview.
- **Internal Relocation.** Codify an exception to asylum eligibility (“asylum bar”) for anyone who could reasonably avoid persecution by relocating elsewhere in their home country, in lieu of seeking protection in the U.S.

Border Emergency Authority (“Expulsions”)

The bill would establish an emergency authority to “respond to extraordinary migration circumstances,” by allowing the executive branch to expel migrants at the U.S.-Mexico border.

- **Border Emergency Authority.** Creates an emergency authority to “summarily remove and prohibit, in whole or in part, entry into the United States” of migrants within 100 miles of the U.S. southern border, who arrived within the last 14 days.
 - This provision does not affect U.S. citizens and nationals, lawful permanent residents (LPRs), unaccompanied migrant children, noncitizens whom an immigration officer determines should be exempted, victims of severe trafficking, and others with lawful permission to enter the U.S.
 - The authority allows the DHS Secretary to summarily remove migrants and asylum seekers to their home country, unless the individual could prove they would face a reasonable possibility of persecution or torture in the country – a high standard - where they would be returned.
- **Trigger.** Establishes a process under which the DHS Secretary *may* and *must* use the emergency authority. In particular, the DHS Secretary:
 - *May* select to use the emergency authority if border officials encounter between 4,000 to 4,999 migrants on average each day for seven consecutive calendar days.
 - *Must* exercise the emergency authority if border officials encounter more than 5,000 migrants on average each day for seven consecutive calendar days.
 - *Must* exercise the emergency authority if border officials encounter more than 8,500 migrants on a single day.
 - Can suspend the emergency authority at the president’s direction for up to 45 calendar days in a year if it’s in the national interest.

- Must suspend the emergency authority within 14 days once the number of encounters reaches a lower benchmark: in particular, when the seven-day average falls below 75 percent of the total number of encounters that originally prompted the use of the authority.
- **Calculation.** To calculate activation of the emergency authority, the bill uses the sum of encounters between ports of entry at the southern land border, encounters between ports of entry at southern coastal borders, and the number of inadmissible noncitizens at a southern land port of entry who are following a pre-approved process, such as the current appointment system through the CBP One mobile app. Unaccompanied children from countries other than Mexico and Canada would not count toward the total.
- **Limitations.** The bill limits the amount of time that the emergency authority can be used to 270 calendar days in the law’s first year, 225 days during its second year, and 180 days during its third year, with descriptions of how to allot days based on those caps.
- **Ports of Entry.** Even when the emergency authority is activated, the bill requires the federal government to process at least 1,400 inadmissible individuals each day across all southwest land border ports of entry. Unaccompanied children from countries other than Mexico and Canada would not count toward the 1,400 entries.
- **Recidivism.** Bars a migrant from re-entry for a year if they have two or more summary removals in a single year.
- **Judicial Review.** Bars judicial review of removal decisions for individuals subjected to the emergency authority. Grants the United States District Court for the District of Columbia with sole and original jurisdiction to hear challenges to this section of the legislation, as well as related policy guidance and implementation decisions.
- **Sunset.** The Border Emergency Authority would sunset three years after enactment; however, Congress could subsequently decide to extend it.

Parole at the U.S. Border

The bill likely limits the use of parole for migrants who arrive to the U.S. by land, with some specific exceptions. Sen. Lankford (R-OK) [indicated](#) that the “definition of humanitarian parole is clarified” in the bill, narrowing how it is used at the border. Under this provision, the bill creates a new section (Sec. 244A) of the Immigration and Nationality Act (INA).

The bill establishes that migrants who arrive at a U.S. land border from a contiguous country (*i.e.* Mexico and Canada) must be subject to inspection for admission and, if applicable, expedited removal (INA Sec. 235) or to *provisional noncustodial removal proceedings* (Sec. 235B). The bill indicates that this section does not expand or restrict the authority to grant parole for migrants arriving at a port of entry by air or sea but does change it for those arriving by land. The change is that, by requiring migrants to be processed through Sec. 235 or Sec. 235B, DHS may not release them on parole unless they meet one of the specific exceptions in the bill.

The bill aims to limit the use of parole. This includes migrants paroled into the U.S. after crossing between ports of entry and being released from CBP custody with Notices to Appear (NTAs). It also includes the current use of the [CBP One mobile application](#), a lawful alternative which allows

individuals to schedule an appointment to enter (i.e. be paroled into) the U.S. at a port of entry to seek asylum. The section includes the following provisions and impacts:

- **Exceptions.** The DHS Secretary may determine there is an exception to the requirements in this section, but it must be made on a case-by-case basis and fall under one of the following categories: 1) an exigent medical circumstance, 2) significant law enforcement or intelligence purpose, 3) urgent humanitarian reason pertaining to the individual migrant, 4) a Tribal religious ceremony or other culturally important purpose, 5) an accompanying migrant whose presence in the U.S. is necessary for a migrant who meets the criteria in categories 1 to 4, and 6) an individual returning on Advance Parole.
- **Impact on Humanitarian Parole Programs.** The bill's provisions should not impact the Biden administration's [humanitarian parole programs](#) for individuals from [Venezuela, Cuba, Haiti, and Nicaragua](#). Under these programs, qualifying nationals from these four countries are provided advanced authorization to travel and a temporary period of parole for up to two years in the U.S. for urgent humanitarian and public benefit reasons. These individuals generally enter the U.S. through airports and are thus exempt from the new restrictions applying to entries at land ports of entry.
- **Impact on CBP One.** The bill may limit DHS's ability to use CBP One to parole asylum seekers into the U.S. However, the mobile application is also [used for trade and cargo](#) and potentially could continue to be used to help schedule appointments at ports of entry once the new process, *provisional noncustodial removal proceedings* (Sec. 235B), goes into effect.

Supplemental Funding: Border Security and Refugees

The bill includes approximately \$18.3 billion in supplemental funding for DHS, a significant investment to implement the bill's new border policy and asylum process changes. The bill also includes \$2.3 billion in assistance for newly arrived refugees.

Border Security & Asylum

- **U.S. Customs and Border Protection (CBP).** Provides **\$6.766 billion** in funding for CBP. The funding includes: \$3.88 billion for operational costs to manage and enhance border security, including expanded support at ports of entry; \$723 million for additional Border Patrol agents and Office of Field Operations (OFO) officers and related overtime costs; \$424.5 million to combat illicit fentanyl and other narcotics with the acquisition of non-intrusive inspection equipment; and \$334 million for additional border security technology and air assets.
 - The bill would also provide \$1.4 billion to support sheltering and related humanitarian assistance for migrants and asylum seekers through the Shelter and Services Program at FEMA. This funding would be provided to CBP and then transferred to FEMA.
- **Immigration and Customs Enforcement (ICE).** The bill authorizes **\$7.6 billion** in supplemental funding for ICE. The funding includes: \$3.2 billion for additional immigration detention capacity; \$2.55 billion for transportation costs, including additional removal flights; \$1.29 billion to expand Alternatives to Detention (ATDs) to

allow for immediate enrollment at the U.S.-Mexico border; and \$535 million for hiring ICE and officers and other personnel.

- The bill includes a trigger in which \$350 million of the Shelter and Services Program (see CBP appropriations above) cannot be used until ICE confirms it can detain 46,500 individuals on an average day, and the number of Enforcement and Removal Operations (ERO) officers is 200 above the current level. The number of CBP officers must also be 200 above the current level and the number of USCIS asylum officers must be 800 above the current level for the funding to be released.
- **U.S. Citizenship and Immigration Services (USCIS).** Provides **\$3.995 billion** in discretionary funding for USCIS to meet costs associated with the agency's new operational requirements. Unlike [most current USCIS funding](#), this funding is to be appropriated by Congress and not dependent on the USCIS Immigration Fee Examination Account (IFEA). The funding would support 4,338 USCIS asylum officers and other personnel and associated costs (\$3.383 billion) and the creation of a new asylum appeals board process (\$148 million).
- **Additional Immigration Judges.** The bill provides **\$440 million** for the Department of Justice (DOJ) to hire additional immigration judge teams to increase the capacity of the immigration courts.
- **Economic Support Fund.** For the State Department, **\$415 million** to remain available until 2026 to help reduce migration flows in the Western Hemisphere. This includes supporting partner country efforts to improve the integration of migrants and enhancing partner capacity to receive migrants removed from the U.S.
- **Legal Counsel for Unaccompanied Children.** The bill appropriates **\$350 million** for the U.S. Department of Health and Human Services (HHS) to provide legal counsel for unaccompanied children ages 13 and younger who are in immigration removal proceedings. Currently, legal counsel is not guaranteed in immigration court proceedings, including for children.

Refugee Assistance

- **Refugee and Entrant Assistance.** The bill provides \$2.334 billion for the "Refugee and Entrant Assistance" program as part of the national security supplemental. This program [funds](#) "a broad range of social services to newly arrived refugees, both through states and direct service grants."
 - This provision also reauthorizes benefits for Ukrainian nationals which expired on September 30, 2023. The benefits would be extended to September 30, 2024.

Access to Due Process

The bill directs DHS to provide asylum seekers with key information about the *protection determination* process, including their rights and obligations. It also prevents any *protection determination interviews* from taking place less than 72 hours after the individual received information about the process, unless the individual waived the waiting period. More significantly, the bill would ensure access to counsel for many unaccompanied migrant children and other vulnerable migrants.

- **Access to Counsel for Unaccompanied Children.** As noted above, the bill requires that HHS ensure that unaccompanied children 13 years old and younger who are in removal proceedings have legal representation. It also directs HHS to ensure to the greatest extent practicable that all unaccompanied children have counsel.
- **Access to Counsel for Certain Vulnerable Individuals.** Codifies the legal authority for immigration judges to appoint counsel or an accredited representative if an individual in removal proceedings is “incompetent.”

Additional Border Security Provisions

- **FEND Off Fentanyl Act.** This bill includes a version of Sen. Tim Scott’s (R-South Carolina) [FEND Off Fentanyl Act](#). As part of this section, the bill establishes that it will be the policy of the U.S. to apply economic and other financial sanctions to “those who engage in international trafficking of fentanyl, fentanyl precursors, or other related opioids.” It sets out the requirements for implementing sanctions and penalties for violations. The provision also includes anti-money laundering provisions.
 - The bill also provides \$25 million for programs to counter the flow of fentanyl, fentanyl precursors, and other synthetic drugs into the U.S.
- **Hiring Authorities.** Provides USCIS and ICE with direct hiring authority for certain positions, including USCIS asylum officers. The authority sunsets five years after the bill’s enactment.
- **CBP Polygraph Waiver.** Permits CBP to waive the polygraph test requirement for CBP officer and agent positions for candidates with a background in the military and law enforcement at the federal, state, and local levels. There are protections in this provision, including requiring candidates to have completed a polygraphs test or background security check in the past. This provision would fast-track hiring for CBP personnel, but there are concerns it could compromise the agency’s hiring standards.

Fulfilling Promises to Afghan Allies

The bill would adjust the status of Afghan nationals who were admitted or paroled into the U.S. after July 30, 2021 following completion of a vetting process. This section is similar, but not identical, to the [Afghan Adjustment Act of 2023](#).

- **Legal Pathway to Status.** Under this section, the legal pathway for Afghan evacuees begins with conditional status, with an opportunity to move into permanent legal status and eventual citizenship. The conditional status will remain in effect for four years based on the date the individual was paroled in (*i.e.* admitted) to the U.S. or on July 1, 2027. At that point, the government has no more than 180 days to remove the conditional status. The expiration date of an individual’s parole will not apply to someone under consideration for conditional status.
- **Robust Vetting.** The vetting of qualifying Afghan evacuees must be equivalent to that utilized for refugee admissions.

- **Mechanism.** Rather than expand those who would qualify for [Special Immigrant Visa](#) (SIV) status (as found in the Afghan Adjustment Act), this section would make eligible many, if not all, the same groups through the [United States Refugee Admissions Program](#).

This section provides for periodic non-adversarial meetings with Afghan evacuee to evaluate their conditional permanent status. The meetings are to be conducted by the Office of Refugee Resettlement (ORR) at HHS no later than 180 days after the Afghan evacuee has been granted conditional status and periodically thereafter. The conditional basis of the status may be removed, unless DHS determines, on a case-by-case basis, that the Afghan evacuee is subject to a specified ground of inadmissibility. Afghan evacuees are to be provided information and support through the application process for HHS benefits they might be eligible for.

There are also provisions to improve the efficiency and oversight of both the refugee program and the SIV program. An additional 2,500 SIVs will be made available for five years totaling 10,000 additional SIVs.

Legal Immigration to the U.S.

Additional 250,000 Immigrant Visas

The bill authorizes an additional 250,000 immigrant visas over the next five fiscal years (FYs 2025 to 2029). The 50,000 visas per year would be divided between the family-based (32,000/fiscal year) and employment-based (18,000/fiscal year) visa categories. These additional visas will be made available each year and any unused visas can be carried over into the next year.

Documented Dreamers

The U.S. is home to over 200,000 “[Documented Dreamers](#)” who grew up in the country as children of long-term visa holders, but “aged out” of the temporary legal status derived through their parents’ visas after turning 21 years old. This bill would protect a significant portion of Documented Dreamers: those who are or were dependent children of H-1B visa holders.

To be eligible, applicants must have spent at least eight years as a dependent on H-4 status prior to turning 21. The bill would prevent aging-out of the system by locking in a Documented Dreamer’s age, if they are or were a dependent child of an H-1B visa holder, to the date an initial H-1B petition was filed on behalf of the child’s parent, as opposed to the date the green card becomes available and is issued. Documented Dreamers would continue to maintain legal status and have access to employment authorization until their parents are able to adjust status.

The bill would not protect all Documented Dreamers, as it does not offer continued status to dependent children of parents who held L-1, E-1, E-2, and other temporary work visas. The bill also does not appear to account - in its eight-year requirement under H-4 status - for cases in which dependent children changed status to other visas, including an F-1 student visa, to maintain legal status in the U.S.

Employment Authorization for Certain Individuals

Under the bill, the spouses, fiancés, and children of U.S. citizens or specialty workers (H-1B visa holders) legally admitted to the U.S. will have access to work authorization upon admission and throughout the period of the authorized admission.

Military Naturalizations

The bill combines [two military naturalization statutes](#) (the INA 328 and the wartime INA 329) into one, providing greater processing clarity and expanding eligibility for military naturalization to a larger group of service members. INA 328 would be eliminated in this bill and INA 329 modified slightly such that it can be used at all times.

USCIS has struggled differentiating between the two statutes and this integration would help clarify the naturalization process. It would also make more service members eligible to naturalize, as they would no longer be dependent on the president to issue an executive order establishing a designated period of hostilities. Service members from Palau, Micronesia and the Republic of the Marshall Islands would also be able to naturalize even if they sign an enlistment contract in their home country.

Temporary Family Visits

This section establishes a new nonimmigrant visa subcategory titled “Family Purpose Visas,” permitting a family member to visit for a social, occasional, major life, or religious event, or for any other purpose. Applicants must meet certain conditions, such as DHS approval, U.S citizen or lawful permanent resident declaration of financial support, short-term medical insurance policy, and declaration of intent to depart.