

# DRAFT FEDERAL LEGISLATION

*Prepared by the Office of Governor Doug Ducey*

117<sup>TH</sup> CONGRESS  
2nd Session

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To secure the southern border of the United States by amending the Immigration and Nationality Act, the Wilderness Act, the American Rescue Plan Act and the McKinney-Vento Homeless Assistance Act.

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IN THE SENATE OF THE UNITED STATES

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## **A BILL**

To secure the southern border of the United States by amending the Immigration and Nationality Act, the Wilderness Act, the American Rescue Plan Act and the McKinney-Vento Homeless Assistance Act.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE**

This Act may be cited as the “Secure the Southern Border Act.”

### **SECTION 2. FINDINGS**

Congress finds that –

- (1) In 2021, the southern border of the United States has seen a major increase in border crossings by illegal immigrants with the United States Border Patrol ; and
- (2) according to United States Customs and Border Protection, the number of migrant encounters has increased by 2,647 percent since October; and
- (3) with record breaking migration leading to an overwhelming amount of apprehension at the southern border, law enforcement is stretched too thin to effectively combat the cartels; and

- (4) criminal organizations on both sides of the border exploit the border and are profiting off of those seeking a better life through extortion and trafficking; and
- (5) the porousness of the southern border is an open door to transnational criminal organizations that use it to traffic drugs that feed the addiction epidemic throughout our country; and
- (6) the drugs that are not intercepted are trafficked from the southern border using our interstates to get to our neighborhoods both in large cities and in small towns throughout our nation; and
- (7) the latest data from the U.S. Centers for Disease Control and Prevention finds that between May 2020 and April 2021, nearly two-thirds (64%) of the more 100,000 drug overdose deaths in the country were tied to illicitly manufactured fentanyl or its chemical cousins; and
- (8) these deaths "increased sharply in Midwestern states (33.1%), Southern (64.7%) and Western (93.9%) jurisdictions," according to a CDC report summarizing data from July 2019 through December of 2020; and
- (9) some states have seen the death rate due to opioids rise higher than the death rate of COVID; and
- (10) according to the Drug Enforcement Administration, transnational criminal organizations are harnessing social media to flood our country with fentanyl and fuel the unprecedented numbers of overdoses; and
- (11) without immediate action from Congress, the communities on our southern border will continue to struggle with the influx of migrants and criminal activity that preys on these people; and
- (12) border policy not only affects the communities on our southern border but also communities throughout our country that suffer from the stream of drugs that flow across our border and the crime associated with such activity including human smuggling; and
- (13) without immediately securing our southern border, slowing the flow of illegal immigration, and stopping the illegal activity that exploits the southern border, our country cannot tackle the issues that encourage this activity.

### **SECTION 3. PURPOSE**

The purpose of the Secure the Southern Border Act is to finally address the issues that have been created along the southern border due to an unsecure border. Border communities are overrun with migrants who have been told that our country's borders are open and that no enforcement will be taken against those that violate immigration laws. To remedy this situation, this act ensures a physical barrier along our southern border, requires asylum seekers who have traveled through another country to have sought or attempted to obtain asylum in the other country, requires asylum seekers to claim asylum only at a port of entry, and increases the number of immigration judges to process cases. It also adds additional funding for local law enforcement and humanitarian efforts and most importantly directs federal officials communicating with other countries to communicate that our country's borders are not open and immigration except through a port of entry and the legal immigration system will not be tolerated.

### **SECTION 4. RESUME BORDER WALL SYSTEM CONSTRUCTION AND VIRTUAL SURVEILLANCE**

#### (a) Border wall system construction

(1) Not later than 60 days from the enactment date, the Secretary of Homeland Security shall immediately resume all activities related to the construction of the border barrier system (also known as, and referred to in this Act as, the border wall system) along the international border between the United States and Mexico that were underway or being planned for prior to January 20, 2021.

(2) The Secretary of Homeland Security shall expend all funds appropriated or explicitly obligated for border wall system construction referred to in paragraph (1) that were appropriated or obligated, as the case may be, beginning on October 1, 2016, to carry out this Act. Any unexpended coronavirus relief funds shall be reallocated to border wall system construction.

(3) Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees an implementation plan to complete, by not later than September 30, 2024, border wall system construction referred to in paragraph (1) and funded in accordance with paragraph (2).

#### (b) Physical barriers

Not later than 30 days after the date of enactment of this Act, the Secretary of Homeland Security shall determine those areas along the southern border where the lack of a physical barrier is resulting in the need for additional manpower and enforcement on the border to prevent migration through any point except a point of entry. In such areas, the Secretary of Homeland Security shall take immediate action to erect physical barriers until the border barrier system has been completed.

(c) Virtual barriers

(1) Not later than February 1, 2022, the Secretary of Homeland Security, in carrying out subsection (a), shall work with local law enforcement along the southern border to deploy the most practical and effective technology available along the United States border for achieving situational awareness and operational control of the border.

(2) In this subparagraph, the term technology includes border surveillance and detection technology, including—

(A) radar surveillance systems;

(B) Vehicle and Dismount Exploitation Radars (VADER);

(C) 3-dimensional, seismic acoustic detection and ranging border tunneling detection technology;

(D) sensors;

(E) unmanned cameras;

(F) man-portable and mobile vehicle-mounted unmanned aerial vehicles; and

(G) any other devices, tools, or systems found to be more effective or advanced than those specified in subparagraphs (A) through (F).

(c) Not later than 30 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees an implementation plan, including quarterly benchmarks and cost estimates, for satisfying all requirements of border wall system construction referred to in subsection A and B, including tactical infrastructure, technology, and other elements as identified by the Department of Homeland Security prior to January 20, 2021, through the

expenditure of funds appropriated or explicitly obligated, as the case may be, for use beginning on October 1, 2016, as well as any future funds appropriated by Congress.

(d) U.S. Customs and Border Protection access to wilderness areas.

Section 4(d) of the Wilderness Act (16 U.S.C. 1133) is amended by adding the following:

(1) U.S. Customs and Border Protection access

(A) Permissible activities

Notwithstanding any other provision of this Act, the Commissioner of U.S. Customs and Border Protection may conduct the following activities within a wilderness area for the purpose of securing the international land borders of the United States:

(i) Access structures, installations, and roads.

(ii) Execute search and rescue operations.

(iii) Use motor vehicles, motorboats, and motorized equipment.

(iv) Conduct patrols on foot and on horseback.

(v) Notwithstanding any other law or regulation relating specifically to use of aircraft in a wilderness area or in the airspace above a wilderness area, use aircraft, including approach, landing, and takeoff.

(vi) Deploy tactical infrastructure and technology.

(vii) Construct and maintain roads and physical barriers.

(B) Protection of wilderness character

Any activity conducted by the Commissioner of U.S. Customs and Border Protection under this section shall be carried out in a manner that, to the greatest extent possible, protects the wilderness character of the area.

(e) Definitions

In this Act:

The term appropriate congressional committees means the Committee on Homeland Security, the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives and the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary and the Committee on Appropriations of the Senate.

**SEC. 5. ASYLUM ELIGIBILITY FOR CERTAIN ALIENS LAWFULLY ADMITTED TO THE UNITED STATES.**

Section 208(a) of the Immigration and Nationality Act (8 U.S.C. 1158(a)) is amended—

(1) in paragraph (1), by striking “is physically present” and all that follows through “United States waters)” and inserting “has been lawfully admitted to the United States”; and

(2) in paragraph (2), by amending subparagraph (A) to read as follows:

“(A) SAFE THIRD COUNTRY.—Paragraph (1) shall not apply to an alien if the Attorney General or the Secretary of Homeland Security determines that—

“(i) during the 180 days immediately preceding the admission of the alien to the United States, the alien was physically present in a country other than the country of the alien’s nationality or, in the case of an alien having no nationality, the country of the alien’s last habitual residence in which the alien’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the alien demonstrates, by clear and convincing evidence, that—

“(I) the alien applied for asylum or equivalent temporary protection in such country and was denied asylum or equivalent temporary protection; or

“(II) the conditions in the country of the alien’s nationality have significantly changed for the worse since the alien was physically present in a country described in clause (i); or

“(ii) a bilateral or multilateral agreement exists to provide for removal of an alien, to a country identified in clause (i).

(3) Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

“Except as provided in clause (ii), paragraph (1) shall not apply to any alien who, on or after the date of the enactment of this subparagraph, enters, attempts to enter, or arrives in the United States through any other point along the United States border except a port of entry.”

## **SECTION 6. INCREASE THE NUMBER OF IMMIGRATION JUDGES AND IMMIGRATION ATTORNEYS PROCESSING IMMIGRATION CASES.**

### **(a) Immigration judges**

The Attorney General shall increase—

- (1) the number of immigration judges by not fewer than an additional 100 judges, as compared to the number of immigration judges as of the date of the enactment of this Act; and
- (2) the corresponding number of support staff, as necessary.

### **(b) Immigration and Customs Enforcement attorneys**

The Director of U.S. Immigration and Customs Enforcement shall increase the number of attorneys and staff employed by U.S. Immigration and Customs Enforcement by the number that is consistent with the workload staffing model to support the increase in immigration judges.

### **(c) Authorization of appropriations**

There are authorized to be appropriated such sums as may be necessary for—

(1) the hiring of immigration judges, support staff, and U.S. Immigration and Customs Enforcement attorneys under this section; and

(2) the lease, purchase, or construction of facilities or equipment (including video teleconferencing equipment and equipment for electronic filing of immigration cases), and the transfer of federally owned temporary housing units to serve as facilities, for—

(A) the increased number of immigration judges, attorneys, and support staff under this section; and

(B) conducting immigration court proceedings in close proximity to the locations at which aliens are apprehended and detained.

## **SECTION 7. INCREASE FUNDING FOR LOCAL LAW ENFORCEMENT**

### **(a) Coronavirus relief funds for border security - In general**

Amounts made available by the American Rescue Plan Act of 2021 (Public Law 117–2) for the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund may also be made available to eligible law enforcement agencies for the purposes described in subsection (b) and do not expire until September 30, 2024.

#### **(1) Purposes**

The purposes in this subsection include the following:

(A) Equipment, including maintenance and sustainment costs for enhanced border law enforcement activities.

(B) Personnel, including overtime and backfill for law enforcement personnel or non-law enforcement personnel who support enhanced border law enforcement activities.

(C) Allowable and approved personnel costs, including salaries, fringe benefits, overtime and backfill for dedicated intelligence analysts supporting Operation Stonegarden operations in support of enhanced border law enforcement activities.

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(D) Any activity permitted for Operation Stonegarden under—(A) the Department of Homeland Security’s most recent Homeland Security Grant Program Notice of Funding Opportunity; or

(E) the Federal Emergency Management Agency’s Preparedness Grants Manual.

(F) Per diem detention costs and jail costs associated with border crimes.

(G) Any other appropriate activity, as determined by the Secretary.

(b) Eligible law enforcement agencies defined

The term eligible law enforcement agencies means a law enforcement agency that is—

(1) located in—

(A) a State bordering Canada or Mexico; or

(B) a State or territory with an international maritime border; and

(2) is involved in an active, ongoing, U.S. Customs and Border Protection operation coordinated through a sector office.

## **SECTION 8. INCREASE FUNDING FOR HUMANITARIAN EFFORTS**

(a) Authorization of appropriations

There is authorized to be appropriated for the emergency food and shelter program under title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.), for use only under subsection (b) of this section, \$30,000,000 for each of fiscal years 2021, 2022, and 2023.

(b) Use

(1) Eligible costs

Amounts made available under subsection (a) may be used only to reimburse costs related to providing humanitarian relief to aliens, including the cost of emergency preparedness activities.

(2) Disbursement deadline

Notwithstanding sections 315 and 316(b) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11345, 11346(b)), the Emergency Food and Shelter Program National Board shall begin disbursing the amounts made available under subsection (a) of this section not later than 60 days after the date on which the amounts become available.

(3) Distribution

Of the amounts made available for a fiscal year under subsection (a), the Emergency Food and Shelter Program National Board shall distribute—

(A)\$25,000,000 to jurisdictions or local recipient organizations serving communities in the States of Arizona, California, New Mexico, and Texas; and

(B)\$5,000,000 to jurisdictions or local recipient organizations serving communities in States not located along the international border between the United States and Mexico.

(4) Eligible period

Amounts made available under subsection (a) may be used to reimburse jurisdictions or local recipient organizations described in paragraph (3) of this subsection only for costs incurred on or after October 1, 2020.

**SECTION 9. OFFICIAL COMMUNICATION REGARDING STATUS OF BORDER POLICY AND IMMIGRATION**

Notwithstanding any other provision of law, every federal agency or representative that communicates with another country or its representatives, either explicitly or implicitly shall make clear that borders to the United States are not open for immigration except through a port of entry and that immigration to the United States by any means other than through a port of entry may result in prosecution for immigration violations, removal, deportation or a denial of an application for asylum.

**SECTION 10. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act and the amendments made by this Act.

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