

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

**TO H.R. 391**

**OFFERED BY Mr. Johnson of Louisiana**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Asylum Reform and  
3 Border Protection Act of 2017”.

4 **SEC. 2. CLARIFICATION OF INTENT REGARDING TAXPAYER-**  
5 **PROVIDED COUNSEL.**

6 Section 292 of the Immigration and Nationality Act  
7 (8 U.S.C. 1362) is amended—

8 (1) by striking “In any removal proceedings be-  
9 fore an immigration judge and in any appeal pro-  
10 ceedings before the Attorney General from any such  
11 removal proceedings” and inserting “In any removal  
12 proceedings before an immigration judge, or any  
13 other immigration proceedings before the Attorney  
14 General, the Secretary of Homeland Security, or any  
15 appeal of such a proceeding”.

16 (2) by striking “(at no expense to the Govern-  
17 ment)”; and

18 (3) by adding at the end the following:

1 “Notwithstanding any other provision of law, in no in-  
2 stance shall the Government bear any expense for counsel  
3 for any person in proceedings described in this section.”.

4 **SEC. 3. CREDIBLE FEAR INTERVIEWS.**

5 Section 235(b)(1)(B)(v) of the Immigration and Na-  
6 tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by  
7 striking “208.” and inserting “208, and it is more prob-  
8 able than not that the statements made by, and on behalf  
9 of, the alien in support of the alien’s claim are true.”.

10 **SEC. 4. RECORDING EXPEDITED REMOVAL AND CREDIBLE**  
11 **FEAR INTERVIEWS.**

12 (a) IN GENERAL.—The Secretary of Homeland Secu-  
13 rity shall establish quality assurance procedures and take  
14 steps to effectively ensure that questions by employees of  
15 the Department of Homeland Security exercising expe-  
16 dited removal authority under section 235(b) of the Immi-  
17 gration and Nationality Act (8 U.S.C. 1225(b)) are asked  
18 in a uniform manner, to the extent possible, and that both  
19 these questions and the answers provided in response to  
20 them are recorded in a uniform fashion.

21 (b) FACTORS RELATING TO SWORN STATEMENTS.—  
22 Where practicable, any sworn or signed written statement  
23 taken of an alien as part of the record of a proceeding  
24 under section 235(b)(1)(A) of the Immigration and Na-  
25 tionality Act (8 U.S.C. 1225(b)(1)(A)) shall be accom-

1 panied by a recording of the interview which served as the  
2 basis for that sworn statement.

3 (c) INTERPRETERS.—The Secretary shall ensure that  
4 a competent interpreter, not affiliated with the govern-  
5 ment of the country from which the alien may claim asy-  
6 lum, is used when the interviewing officer does not speak  
7 a language understood by the alien.

8 (d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—  
9 There shall be an audio or audio visual recording of inter-  
10 views of aliens subject to expedited removal. The recording  
11 shall be included in the record of proceeding and shall be  
12 considered as evidence in any further proceedings involv-  
13 ing the alien.

14 (e) NO PRIVATE RIGHT OF ACTION.—Nothing in this  
15 section shall be construed to create any right, benefit,  
16 trust, or responsibility, whether substantive or procedural,  
17 enforceable in law or equity by a party against the United  
18 States, its departments, agencies, instrumentalities, enti-  
19 ties, officers, employees, or agents, or any person, nor does  
20 this section create any right of review in any administra-  
21 tive, judicial, or other proceeding.

22 **SEC. 5. PAROLE REFORM.**

23 (a) IN GENERAL.—Paragraph (5) of section 212(d)  
24 of the Immigration and Nationality Act (8 U.S.C.  
25 1182(d)) is amended to read as follows:

1           “(5) HUMANITARIAN AND SIGNIFICANT PUBLIC  
2 INTEREST PAROLE.—

3           “(A) IN GENERAL.—Subject to the provi-  
4 sions of this paragraph and section 214(f)(2),  
5 the Secretary of Homeland Security, in the sole  
6 discretion of the Secretary of Homeland Secu-  
7 rity, may on a case-by-case basis parole an alien  
8 into the United States temporarily, under such  
9 conditions as the Secretary of Homeland Secu-  
10 rity may prescribe, only—

11           “(i) for an urgent humanitarian rea-  
12 son (as described under subparagraph  
13 (B)); or

14           “(ii) for a reason deemed strictly in  
15 the significant public interest (as described  
16 under subparagraph (C)).

17           “(B) HUMANITARIAN PAROLE.—The Sec-  
18 retary of Homeland Security may parole an  
19 alien based on an urgent humanitarian reason  
20 described in this subparagraph only if—

21           “(i) the alien has a medical emergency  
22 and the alien cannot obtain necessary  
23 treatment in the foreign state in which the  
24 alien is residing or the medical emergency  
25 is life-threatening and there is insufficient

1 time for the alien to be admitted through  
2 the normal visa process;

3 “(ii) the alien is the parent or legal  
4 guardian of an alien described in clause (i),  
5 if the alien described in clause (i) is a  
6 minor;

7 “(iii) the alien is needed in the United  
8 States in order to donate an organ or  
9 other tissue for transplant into a close  
10 family member;

11 “(iv) the alien has a close family  
12 member in the United States whose death  
13 is imminent and the alien could not arrive  
14 in the United States in time to see such  
15 family member alive if the alien were to be  
16 admitted through the normal visa process;

17 “(v) the alien is an adopted child with  
18 an urgent medical condition, who is in the  
19 legal custody of the petitioner for a final  
20 adoption-related visa, and whose medical  
21 treatment is required prior to the expected  
22 award of a final adoption-related visa;

23 “(vi) the alien is a lawful applicant  
24 for adjustment of status under section  
25 245; or

1                   “(vii) the alien was lawfully granted  
2                   status under section 208 or lawfully admit-  
3                   ted under section 207.

4                   “(C) SIGNIFICANT PUBLIC INTEREST PA-  
5                   ROLE.—The Secretary of Homeland Security  
6                   may parole an alien based on a reason deemed  
7                   strictly in the significant public interest de-  
8                   scribed in this subparagraph only if the alien  
9                   has assisted the United States Government in a  
10                  matter, such as a criminal investigation, espio-  
11                  nage, or other similar law enforcement activity,  
12                  and either the alien’s presence in the United  
13                  States is required by the Government or the  
14                  alien’s life would be threatened if the alien were  
15                  not permitted to come to the United States..

16                  “(D) LIMITATION ON THE USE OF PAROLE  
17                  AUTHORITY.—The Secretary of Homeland Se-  
18                  curity may not use the parole authority under  
19                  this paragraph to permit to come to the United  
20                  States aliens who have applied for and have  
21                  been found to be ineligible for refugee status or  
22                  any alien to whom the provisions of this para-  
23                  graph do not apply, or to circumvent immigra-  
24                  tion policy established by law to admit classes  
25                  of aliens who do not qualify for admission

1 under established legal immigration categories,  
2 or to supplement established immigration cat-  
3 egories without congressional approval.

4 “(E) PAROLE NOT AN ADMISSION.—Parole  
5 of an alien under this paragraph shall not be  
6 considered an admission of the alien into the  
7 United States. When the purposes of the parole  
8 of an alien have been served, as determined by  
9 the Secretary of Homeland Security, the alien  
10 shall immediately return or be returned to the  
11 custody from which the alien was paroled and  
12 the alien shall be considered for admission to  
13 the United States on the same basis as other  
14 similarly situated applicants for admission.

15 “(F) REPORT TO CONGRESS.—Not later  
16 than 90 days after the end of each fiscal year,  
17 the Secretary of Homeland Security shall sub-  
18 mit a report to the Committees on the Judici-  
19 ary of the House of Representatives and the  
20 Senate describing the number and categories of  
21 aliens paroled into the United States under this  
22 paragraph. Each such report shall contain in-  
23 formation and data concerning the number and  
24 categories of aliens paroled, the duration of pa-

1           role, and the current status of aliens paroled  
2           during the preceding fiscal year.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall take effect on the first day of the first  
5 month beginning more than 60 days after the date of the  
6 enactment of this Act.

7 **SEC. 6. MODIFICATIONS TO PREFERENTIAL AVAILABILITY**  
8                                   **FOR ASYLUM FOR UNACCOMPANIED ALIEN**  
9                                   **MINORS.**

10          Section 208 of the Immigration and Nationality Act  
11 (8 U.S.C. 1158) is amended in subsection (a)(2)(E), by  
12 striking “Subparagraphs (A) and” and inserting “Sub-  
13 paragraph”.

14 **SEC. 7. SAFE THIRD COUNTRY.**

15          Section 208(a)(2)(A) of the Immigration and Nation-  
16 ality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

17           (1) by striking “Attorney General” each place  
18 it appears and inserting “Secretary of Homeland Se-  
19 curity”; and

20           (2) by striking “removed, pursuant to a bilat-  
21 eral or multilateral agreement, to” and inserting  
22 “removed to”.

23 **SEC. 8. WITHHOLDING OF REMOVAL.**

24          Section 241(b)(3) of the Immigration and Nationality  
25 Act (8 U.S.C. 1231(b)(3)) is amended—

1 (1) by adding at the end of subparagraph (A)  
2 the following:

3 “The burden of proof shall be on the alien to  
4 establish that the alien’s life or freedom would  
5 be threatened in that country, and that race,  
6 religion, nationality, membership in a particular  
7 social group, or political opinion would be at  
8 least one central reason for such threat.”; and

9 (2) in subparagraph (C), by striking “In deter-  
10 mining whether an alien has demonstrated that the  
11 alien’s life or freedom would be threatened for a rea-  
12 son described in subparagraph (A),” and inserting  
13 “For purposes of this paragraph,”.

14 **SEC. 9. FIRM RESETTLEMENT.**

15 Section 208(b)(2)(A)(vi) of the Immigration and Na-  
16 tionality Act (8 U.S.C. 1158(b)(2)(A)(vi)) is amended by  
17 striking “States.” and inserting “States, which shall be  
18 considered demonstrated by evidence that the alien can  
19 live in such country (in any legal status) without fear of  
20 persecution.”.

21 **SEC. 10. RENUNCIATION OF ASYLUM STATUS PURSUANT TO**  
22 **RETURN TO HOME COUNTRY.**

23 (a) IN GENERAL.—Section 208(c) of the Immigration  
24 and Nationality Act (8 U.S.C. 1158(c)) is amended by  
25 adding at the end the following new paragraph:

1           “(3) RENUNCIATION OF STATUS PURSUANT TO  
2           RETURN TO HOME COUNTRY.—

3                   “(A) IN GENERAL.—Except as provided in  
4           subparagraphs (B) and (C), any alien who is  
5           granted asylum status under this Act, who, ab-  
6           sent changed country conditions, subsequently  
7           returns to the country of such alien’s nation-  
8           ality or, in the case of an alien having no na-  
9           tionality, returns to any country in which such  
10          alien last habitually resided, and who applied  
11          for such status because of persecution or a well-  
12          founded fear of persecution in that country on  
13          account of race, religion, nationality, member-  
14          ship in a particular social group, or political  
15          opinion, shall have his or her status terminated.

16                   “(B) WAIVER.—The Secretary has discre-  
17          tion to waive subparagraph (A) if it is estab-  
18          lished to the satisfaction of the Secretary that  
19          the alien had a compelling reason for the re-  
20          turn. The waiver may be sought prior to depar-  
21          ture from the United States or upon return.

22                   “(C) EXCEPTION FOR CERTAIN ALIENS  
23          FROM CUBA.—Subparagraph (A) shall not  
24          apply to an alien who is eligible for adjustment  
25          to that of an alien lawfully admitted for perma-

1           nent residence pursuant to the Cuban Adjust-  
2           ment Act of 1966 (Public Law 89–732).”.

3           (b) CONFORMING AMENDMENT.—Section 208(c)(3)  
4 of the Immigration and Nationality Act (8 U.S.C.  
5 1158(c)(3)) is amended by inserting after “paragraph  
6 (2)” the following: “or (4)”.

7 **SEC. 11. ASYLUM CASES FOR HOME SCHOOLERS.**

8           (a) IN GENERAL.—Section 101(a)(42) of the Immi-  
9 gration and Nationality Act (8 U.S.C. 1101(a)(42)) is  
10 amended by adding at the end the following: “For pur-  
11 poses of determinations under this Act, a person who has  
12 been persecuted for failure or refusal to comply with any  
13 law or regulation that prevents the exercise of the indi-  
14 vidual right of that person to direct the upbringing and  
15 education of a child of that person (including any law or  
16 regulation preventing homeschooling), or for other resist-  
17 ance to such a law or regulation, shall be deemed to have  
18 been persecuted on account of membership in a particular  
19 social group, and a person who has a well founded fear  
20 that he or she will be subject to persecution for such fail-  
21 ure, refusal, or resistance shall be deemed to have a well  
22 founded fear of persecution on account of membership in  
23 a particular social group.”.

24           (b) NUMERICAL LIMITATION.—Section 207(a) of the  
25 Immigration and Nationality Act (8 U.S.C. 1157(a)) is

1 amended by adding at the end the following new para-  
2 graph:

3 “(5) For any fiscal year, not more than 500  
4 aliens may be admitted under this section, or grant-  
5 ed asylum under section 208, pursuant to a deter-  
6 mination under section 101(a)(42) that the alien is  
7 described in the final sentence of section  
8 101(a)(42).”.

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendment made by  
11 subsection (a) shall take effect on the date of the en-  
12 actment of this Act and shall apply to failure or re-  
13 fusal to comply with a law or regulation, or other re-  
14 sistance to a law or regulation, occurring before, on,  
15 or after such date.

16 (2) NUMERICAL LIMITATION.—The amendment  
17 made by subsection (b) shall take effect beginning  
18 on the first day of the first fiscal year beginning  
19 after the date of the enactment of this Act.

20 **SEC. 12. NOTICE CONCERNING FRIVOLOUS ASYLUM APPLI-**  
21 **CATIONS.**

22 (a) IN GENERAL.—Section 208(d)(4) of the Immi-  
23 gration and Nationality Act (8 U.S.C. 1158(d)(4)) is  
24 amended—

1 (1) in the matter preceding subparagraph (A),  
2 by inserting “the Secretary of Homeland Security  
3 or” before “the Attorney General”;

4 (2) in subparagraph (A), by striking “and of  
5 the consequences, under paragraph (6), of knowingly  
6 filing a frivolous application for asylum”;

7 (3) in subparagraph (B), by striking the period  
8 and inserting “; and”;

9 (4) by adding at the end the following:

10 “(C) ensure that a written warning ap-  
11 pears on the asylum application advising the  
12 alien of the consequences of filing a frivolous  
13 application.”; and

14 (5) by inserting after subparagraph (C) the fol-  
15 lowing:

16 “The written warning referred to in subparagraph  
17 (C) shall serve as notice to the alien of the con-  
18 sequences of filing a frivolous application.”.

19 (b) CONFORMING AMENDMENT.—Section 208(d)(6)  
20 of the Immigration and Nationality Act (8 U.S.C.  
21 1158(d)(6)) is amended by striking “paragraph (4)(A)”  
22 and inserting “paragraph (4)(C)”.

1 **SEC. 13. TERMINATION OF ASYLUM STATUS IN REMOVAL**  
2 **PROCEEDINGS.**

3 Section 208(c) of the Immigration and Nationality  
4 Act (8 U.S.C. 1158(c)), as amended by this Act, is further  
5 is amended—

6 (1) in paragraph (2)—

7 (A) in the matter preceding subparagraph  
8 (A), by inserting “the Secretary of Homeland  
9 Security or” before “the Attorney General”;  
10 and

11 (B) in subparagraph (C), by striking “,  
12 pursuant to a bilateral or multilateral agree-  
13 ment,”

14 (2) by adding at the end the following:

15 “(5) TIMING FOR CONSIDERATION OF TERMI-  
16 NATION OF ASYLUM STATUS IN REMOVAL PRO-  
17 CEEDINGS.—If an alien’s asylum status is subject to  
18 termination under paragraph (2) or (4), the immi-  
19 gration judge shall first determine whether the con-  
20 ditions specified under that paragraph have been  
21 met, and if so, terminate the alien’s asylum status  
22 before considering whether the alien is eligible for  
23 adjustment of status under section 209.”.

1 **SEC. 14. LIMITATION ON ELIGIBILITY FOR ASYLUM BASED**  
2 **ON GENERALIZED VIOLENCE.**

3 Section 208(b)(2)(B) of the Immigration and Nation-  
4 ality Act (8 U.S.C. 1158(b)(2)(B)) is amended by adding  
5 at the end the following:

6 “(iii) **LIMITATION ON ELIGIBILITY**  
7 **BASED ON GENERALIZED VIOLENCE.**—An  
8 alien is not eligible for asylum under this  
9 section, or withholding of removal under  
10 section 241, based on any of the following  
11 circumstances:

12 “(I) Being, or having been, a  
13 member of a criminal gang.

14 “(II) Participating, or having  
15 participated, in the activities of a  
16 criminal gang.

17 “(III) Having been recruited  
18 into, or having a fear of being re-  
19 cruited into, membership of, or the ac-  
20 tivities of, a criminal gang.

21 “(IV) Having been, or having a  
22 fear of being, the victim of a crime  
23 committed by a member of a criminal  
24 gang, or otherwise having been, or  
25 having a fear of being, the victim of  
26 a crime in the alien’s home country,

1 unless the main motivating factor for  
2 the commission of the crime, or the  
3 fear of being the victim of a crime, is  
4 related to the alien's race, religion,  
5 national origin, or political opinion.”.

6 **SEC. 15. MEMBERSHIP IN A PARTICULAR SOCIAL GROUP**  
7 **DEFINED.**

8 Section 101(a) of the Immigration and Nationality  
9 Act (8 U.S.C. 1101(a)) is amended by adding at the end  
10 the following:

11 “(53) The term ‘membership in a particular so-  
12 cial group’ means membership in a group that is—

13 “(A) composed of members who share a  
14 common immutable characteristic;

15 “(B) defined with particularity; and

16 “(C) socially distinct within the society in  
17 question.”.

18 **SEC. 16. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.**

19 (a) **ASYLUM CREDIBILITY DETERMINATIONS.**—Sec-  
20 tion 208(b)(1)(B)(iii) of the Immigration and Nationality  
21 Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting  
22 after “all relevant factors” the following: “, including  
23 statements made to, and investigative reports prepared by,  
24 immigration authorities and other government officials”.

1 (b) RELIEF FOR REMOVAL CREDIBILITY DETER-  
2 MINATIONS.—Section 240(c)(4)(C) of the Immigration  
3 and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended  
4 by inserting after “all relevant factors” the following: “,  
5 including statements made to, and investigative reports  
6 prepared by, immigration authorities and other govern-  
7 ment officials”.

8 **SEC. 17. CLARIFICATION FOR CONDUCT OF ROGUE OFFI-**  
9 **CIALS.**

10 (a) ASYLUM APPLICATIONS.—Section 208(b)(2)(B)  
11 of the Immigration and Nationality Act (8 U.S.C.  
12 1158(b)(2)(B)), as amended by this Act, is further amend-  
13 ed by adding at the end the following:

14 “(iv) ROGUE GOVERNMENT OFFI-  
15 CIALS.—The burden of proof under para-  
16 graph (1)(B) may not be established based  
17 on the conduct of rogue government offi-  
18 cials acting outside the scope of their offi-  
19 cial capacity.”.

20 (b) COUNTRIES TO WHICH AN ALIEN MAY BE RE-  
21 MOVED.—Section 241(b)(3) of the Immigration and Na-  
22 tionality Act (8 U.S.C. 1231(b)(3)) is amended by adding  
23 at the end the following:

24 “(C) SPECIAL RULE.—The burden of proof  
25 for relief under this paragraph may not be es-

1           tablished based on the conduct of rogue govern-  
2           ment officials acting outside the scope of their  
3           official capacity.”.

4 **SEC. 18. TECHNICAL AMENDMENTS.**

5           Section 208 of the Immigration and Nationality Act  
6 (8 U.S.C. 1158) is amended—

7           (1) in subsection (a)—

8                   (A) in paragraph (2)(D), by inserting  
9                   “Secretary of Homeland Security or the” before  
10                   “Attorney General”; and

11                   (B) in paragraph (3), by inserting “Sec-  
12                   retary of Homeland Security or the” before  
13                   “Attorney General”;

14           (2) in subsection (b)(2), by inserting “Secretary  
15           of Homeland Security or the” before “Attorney Gen-  
16           eral” each place such term appears;

17           (3) in subsection (c)—

18                   (A) in paragraph (1), by striking “Attor-  
19                   ney General” each place such term appears and  
20                   inserting “Secretary of Homeland Security”;  
21                   and

22                   (B) in paragraph (3), by inserting “Sec-  
23                   retary of Homeland Security or the” before  
24                   “Attorney General”; and

25           (4) in subsection (d)—

1 (A) in paragraph (1), by inserting “Sec-  
2 retary of Homeland Security or the” before  
3 “Attorney General” each place such term ap-  
4 pears;

5 (B) in paragraph (2), by striking “Attor-  
6 ney General” and inserting “Secretary of  
7 Homeland Security”; and

8 (C) in paragraph (5)—

9 (i) in subparagraph (A), by striking  
10 “Attorney General” and inserting “Sec-  
11 retary of Homeland Security”; and

12 (ii) in subparagraph (B), by inserting  
13 “Secretary of Homeland Security or the”  
14 before “Attorney General”.

