



Analysis of the Immigration and Asylum Policy Changes in the Senate Supplemental Funding Package– Summary of H.R. 815

1. Expulsion Requirement under the “Border Emergency Authority”

This bill would mandate an expulsion system when there is an average of 5,000 people arriving at the southern border per day over a seven-day period, including at ports of entry, or if there are 8,500 arrivals on a single day. The Department of Homeland Security would also have discretion to invoke this expulsion power at an average of 4,000 arrivals over a seven-day period. When the expulsion regime is in effect, asylum is ***not an available protection*** for people who arrive between ports of entry. They will instead be barred from asylum and will have to meet the “manifestation of fear” test (also known as the “shout test”) for a chance at lesser relief; individuals who do meet the “shout test” and are screened for protection can only get the much more limited protections of withholding of removal and under the Convention against Torture.

The “shout test”, developed for use by the Coast Guard for interceptions at sea and previously used under Title 42, requires a person seeking safety to affirmatively raise their fear of return to get any type of screening for protection. [Previous experience](#) has demonstrated that this test makes it extremely difficult for people with strong protection claims, including [vulnerable children](#) and families who would otherwise qualify for asylum, to even be screened for a claim. And like with Title 42, this expulsion scheme will likely result in an increase in human rights violations including human trafficking on the Mexico side of the border.

2. Eviscerating Asylum

In addition to closing the door to asylum when the expulsion rule is in effect, this bill dramatically changes the asylum screening test applied in expedited removal proceedings to a “reasonable possibility” standard. In practice, this new and more demanding “reasonable possibility” standard will mean that far fewer people will have the chance to even apply for asylum—including individuals who would actually qualify for asylum. The bill also creates a new statutory bar to asylum for people for whom the government claims there are “reasonable grounds” to believe could relocate to other parts of their home countries—despite [evidence](#) that people are often unable to safely do so and through no fault of their own. The Biden Administration has already tried subjecting some people to a higher screening standard, which has resulted in a drop in the number of people passing their screening interviews but has not decreased the number of people attempting to find protection in the United States.

3. Eliminating Judicial Review and Undercutting the Asylum Process

A massive departure from current immigration law, this bill would permit DHS to place asylum seekers who arrive at the border into a new process that completely cuts off any review of asylum denials from a judge or court. Under the new rushed asylum process (“protection determination”), the entire asylum process is conducted by asylum officers and allows only a rushed agency appeal: the review must be requested within just 5 days for a merits decision and then a final appeal within 7 days of that reconsideration decision. Individuals who lose at the initial screening have 5 days to seek a reconsideration. These short timeframes make it nearly impossible to actually give a complex issue implicating life or death due consideration, and are particularly punishing in the absence of legal assistance, time to prepare evidence, and time to rest for people arriving after an often traumatic and dangerous journey. And critically, this fast-tracked and error-prone process does **not permit any court review** of the denial of protection claims. Judicial review is an essential due

process protection, ensuring that vulnerable people making protection claims often with no legal assistance and in a complex legal framework, and after often very cursory asylum hearings, have some independent review of their case. Courts have [repeatedly and routinely](#) found that USCIS officers wrongly denied people protection, so removing court review will send people with strong claims back to the dangers they fled. This bill also explicitly *removes* due process protections for access to counsel, virtually guaranteeing that the vast majority of asylum seekers will have to proceed without legal support.

4. Expanded Detention and Surveillance

This supplemental package also includes \$3.2 billion dollars for immigrant detention and an additional \$210 million for U.S. Marshals detention costs, to go to a reported [50,000 detention beds](#). This is a historic high—more than President Trump’s detention budget at any point during that administration— and expanding detention at this scale will lead to more abuses in custody—including sexual assault, solitary confinement, and medical neglect, as the government’s [own experts](#) have documented. This expansion is particularly nonsensical at a time when ICE is detaining an unprecedented 39,000 people. Notably, \$350 million of the federal funding available for the Shelter and Services Program is conditioned on DHS certifying that ICE has the ability to detain 46,500 people in addition to other metrics.

This bill massively expands suspicionless surveillance through mandatory monitoring of those going through the asylum process. The bill authorizes an additional \$1.29 billion dollars —three times the current budget—for these programs, which include intensive and continuous GPS surveillance tools like ankle-monitors and other applications that already subject individuals and [families](#) to 24-hour surveillance without individualized assessment. Normalizing and expanding these tools is dangerous and completely unnecessary. [Studies](#) show that notifying individuals of upcoming court appearances through various means, including phone calls, recorded messages, mail, text messages, and emails is highly effective at ensuring people appear in legal proceedings. The main beneficiary of this expansion will be for-profit prison companies that provide both detention beds and monitoring technology.

5. President Trump’s Border Wall

Section 205 of the bill requires the remaining funds allocated by President Trump for a border wall to be used for the same purpose—the construction of a southern border wall. President Trump’s border wall was previously held illegal by federal courts and catastrophically harmed natural resources and communities in the U.S.-Mexico border region. The wall proved to be an expensive but ineffective tool for border management but caused [significant harm](#) to the border region, destroying ecosystems and cutting through a federal wildlife preserve and Tribal lands.

This bill doesn’t include some of the damaging proposals reported at other stages of the negotiations—including nationwide expedited removal and complete elimination of all humanitarian parole programs. But it is a monumental and devastating rewrite of the asylum system that will leave many people without a chance to request protection and will take away the critical protection of court review, while re-investing in a border wall, massive immigration detention and surveillance, and other disastrous and failed deterrence measures.