

111TH CONGRESS
1ST SESSION

H. R. 3628

To create a cause of action and allow standing in Federal courts against a country that denies or unreasonably delays the repatriation of a national ordered removed from the United States to such country who later commits a crime of violence in the United States, to withhold foreign assistance from each country that denies or unreasonably delays the repatriation of nationals of such country who have been ordered removed from the United States, to prohibit the issuance of visas to nationals of such country, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2009

Mr. POE of Texas introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To create a cause of action and allow standing in Federal courts against a country that denies or unreasonably delays the repatriation of a national ordered removed from the United States to such country who later commits a crime of violence in the United States, to withhold foreign assistance from each country that denies or unreasonably delays the repatriation of nationals of such country who have been ordered removed from the United States, to prohibit the issuance of visas to nationals of such country, and for other purposes.

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. FAILURE TO REPATRIATE EXCEPTION TO IM-**
4 **MUNITY.**

5 (a) STANDING IN FEDERAL COURTS.—

6 (1) IN GENERAL.—Chapter 97 of title 28,
7 United States Code, is amended by inserting after
8 section 1605A the following:

9 **“§ 1605B. Failure to repatriate exception to the juris-**
10 **isdictional immunity of a foreign state**

11 “(a) NO IMMUNITY.—A foreign state shall not be im-
12 mune from the jurisdiction of courts of the United States
13 in any case not otherwise covered by this chapter—

14 “(1) which is brought against a foreign state
15 that denies or unreasonably delays the repatriation
16 of an alien who—

17 “(A) is a citizen, subject, national, or resi-
18 dent of such country;

19 “(B) has received a final order of removal
20 under chapter 4 of title II of the Immigration
21 and Nationality Act (8 U.S.C. 1221 et seq.);
22 and

23 “(C) commits and is convicted of a crime
24 of violence in the United States after the
25 issuance of such final order; and

1 “(2) in which money damages for personal in-
2 jury or death caused by the crime of violence re-
3 ferred to in paragraph (1)(C) are sought by the vic-
4 tim of such crime, by the legal representative of such
5 victim, or by the United States on behalf of such vic-
6 tim.

7 “(b) PRIVATE RIGHT OF ACTION.—A foreign state
8 that denies or unreasonably delays the repatriation of an
9 alien described under subsection (a)(1), and any official,
10 employee, or agent of that foreign state, who is responsible
11 for such denial or delay, while acting within the scope of
12 his or her office, employment, or agency, shall be liable
13 to the victim of the crime of violence described under sub-
14 section (a)(1)(C), to the legal representative of such vic-
15 tim, or to the United States on behalf of such victim, for
16 money damages for personal injury or death caused by
17 such crime, committed by such alien, for which the courts
18 of the United States may maintain jurisdiction under this
19 section.

20 “(c) MONEY DAMAGES.—If the United States pro-
21 ceeds with an action under this subsection and the court
22 awards money damages, such money damages shall be
23 awarded to the victim of the crime of violence described
24 under subsection (a)(1)(C).

1 “(d) ATTORNEY FEES.—In the case of any prevailing
2 plaintiff, other than the United States, under subsection
3 (b), the court may award to the prevailing plaintiff the
4 costs of the action and reasonable attorney fees.

5 “(e) LIMITATIONS.—An action may be brought or
6 maintained under this section if the action is com-
7 menced—

8 “(1) not later than 5 years after the date on
9 which the crime of violence that is the basis for the
10 action was committed if the crime of violence is not
11 punishable by death; and

12 “(2) at any time without limitation if the crime
13 of violence that is the basis for the action is punish-
14 able by death.

15 “(f) DEFINITIONS.—In this section:

16 “(1) CRIME OF VIOLENCE.—The term ‘crime of
17 violence’ means—

18 “(A) murder, rape, or the sexual abuse of
19 a minor;

20 “(B) an offense that has as an element the
21 use, attempted use, or threatened use of phys-
22 ical force against another person; or

23 “(C) any other offense that is a felony and
24 that, by its nature, involves a substantial risk

1 that physical force against another person may
2 be used in the course of committing the offense.

3 “(2) DENIES OR UNREASONABLY DELAYS.—

4 “(A) IN GENERAL.—Except as provided
5 under subparagraph (B), a country ‘denies or
6 unreasonably delays’ the acceptance of an alien
7 who is a citizen, subject, national, or resident of
8 the country if the country does not accept the
9 alien within the removal period.

10 “(B) ALIEN THAT MAY NOT BE RE-
11 MOVED.—For purposes of subparagraph (A), a
12 country does not deny or unreasonably delay
13 the acceptance of an alien who is a citizen, sub-
14 ject, national, or resident of the country if such
15 alien may not be removed pursuant to section
16 241 of the Immigration and Nationality Act (8
17 U.S.C. 1231).

18 “(3) REMOVAL PERIOD.—The term ‘removal
19 period’ has the meaning given such term in section
20 241(a)(1) of the Immigration and Nationality Act (8
21 U.S.C. 1231(a)(1)).”.

22 (2) AMENDMENT TO CHAPTER ANALYSIS.—The
23 table of sections at the beginning of chapter 97 of
24 title 28, United States Code, is amended by insert-

1 ing after the item relating to section 1605A the fol-
 2 lowing:

“1605B. Failure to repatriate exception to jurisdictional immunity of a foreign
 state.”.

3 (b) CONFORMING AMENDMENT.—Section 1607(a) of
 4 title 28, United States Code, is amended by striking “or
 5 1605A” and inserting“, 1605A, or 1605B”.

6 **SEC. 2. PROHIBITION ON FOREIGN ASSISTANCE TO A**
 7 **COUNTRY THAT DENIES OR UNREASONABLY**
 8 **DELAYS THE REPATRIATION OF A NATIONAL**
 9 **WHO HAS BEEN ORDERED REMOVED FROM**
 10 **THE UNITED STATES.**

11 Chapter 1 of part I of the Foreign Assistance Act
 12 of 1961 (22 U.S.C. 2151 et seq.) is amended by adding
 13 at the end the following:

14 **“SEC. 137. PROHIBITION ON ASSISTANCE TO A COUNTRY**
 15 **THAT DENIES OR UNREASONABLY DELAYS**
 16 **THE REPATRIATION OF A NATIONAL WHO**
 17 **HAS BEEN ORDERED REMOVED FROM THE**
 18 **UNITED STATES.**

19 “(a) IN GENERAL.—Except as otherwise provided
 20 under this section, no assistance may be provided under
 21 this Act to a foreign country that denies or unreasonably
 22 delays the acceptance of an alien who—

23 “(1) is physically present in the United States;

1 “(2) is a citizen, subject, national, or resident
2 of such country; and

3 “(3) has received a final order of removal under
4 chapter 4 of title II of the Immigration and Nation-
5 ality Act (8 U.S.C. 1221 et seq.).

6 “(b) QUARTERLY REPORTS.—Except as otherwise
7 provided under this section, not later than 90 days after
8 the date of enactment of this section, and every 3 months
9 thereafter, the Secretary of Homeland Security shall sub-
10 mit a report to the Congress that—

11 “(1) lists all the countries that deny or unrea-
12 sonably delay the acceptance of an alien described
13 under subsection (a); and

14 “(2) includes the total number of aliens de-
15 scribed under subsection (a), organized by—

16 “(A) name;

17 “(B) country;

18 “(C) detention status; and

19 “(D) criminal status.

20 “(c) COMPLIANCE WITH REPATRIATION.—If the Sec-
21 retary of Homeland Security determines that a country
22 listed in the quarterly report under subsection (b) has ac-
23 cepted each alien listed with respect to that country under
24 subsection (b)(2), the country shall be removed from the
25 list in the next quarterly report submitted under sub-

1 section (b) and shall not be subject to the sanctions de-
2 scribed under subsection (a) or under section 241(b)(4)
3 of the Immigration and Nationality Act (8 U.S.C.
4 1231(b)(4)), unless subsection (b) of this section applies
5 to such country with respect to another alien.

6 “(d) EMERGENCY AND HUMANITARIAN EXCEP-
7 TIONS.—The prohibition under subsection (a) shall not
8 apply if the President determines and certifies to the Con-
9 gress that there is an emergency circumstance or a hu-
10 manitarian reason to provide assistance otherwise subject
11 to the prohibition. The authority of the President to make
12 determinations under this subsection may not be dele-
13 gated.

14 “(e) DEFINITIONS.—In this section:

15 “(1) DENIES OR UNREASONABLY DELAYS.—

16 “(A) IN GENERAL.—Except as provided
17 under subparagraph (B), a country ‘denies or
18 unreasonably delays’ the acceptance of an alien
19 who is a citizen, subject, national, or resident of
20 the country if the country does not accept the
21 alien within the removal period.

22 “(B) ALIEN THAT MAY NOT BE RE-
23 MOVED.—For purposes of subparagraph (A), a
24 country does not deny or unreasonably delay
25 the acceptance of an alien who is a citizen, sub-

1 ject, national, or resident of the country if such
 2 alien may not be removed pursuant to section
 3 241 of the Immigration and Nationality Act (8
 4 U.S.C. 1231).

5 “(2) REMOVAL PERIOD.—The term ‘removal
 6 period’ has the meaning given such term in section
 7 241(a)(1) of the Immigration and Nationality Act (8
 8 U.S.C. 1231(a)(1)).”.

9 **SEC. 3. DISCONTINUING GRANTING VISAS TO NATIONALS**
 10 **OF COUNTRY DENYING OR DELAYING AC-**
 11 **CEPTING ALIENS.**

12 (a) AMENDMENT.—Section 243 of the Immigration
 13 and Nationality Act (8 U.S.C. 1253) is amended by strik-
 14 ing subsection (d).

15 (b) DISCONTINUING GRANTING VISAS TO NATIONALS
 16 OF COUNTRY DENYING OR DELAYING ACCEPTING
 17 ALIEN.—Section 241(b) of the Immigration and Nation-
 18 ality Act (8 U.S.C. 1231(b)) is amended by adding at the
 19 end the following:

20 “(4) DISCONTINUING GRANTING VISAS AND DE-
 21 NYING ADMISSION TO NATIONALS OF COUNTRY DE-
 22 NYING OR DELAYING ACCEPTING ALIENS.—

23 “(A) DISCONTINUING GRANTING VISAS.—
 24 Except as provided under subparagraph (C), if
 25 a country is listed in the most recent quarterly

1 report submitted by the Secretary of Homeland
2 Security to Congress under section 137(b) of
3 the Foreign Assistance Act of 1961, the Sec-
4 retary of State may not issue a visa to a citizen,
5 subject, national, or resident of such country
6 until—

7 “(i) the Secretary of Homeland Secu-
8 rity notifies the Secretary of State that the
9 country is not subject to the sanction
10 under section 137(a) of that Act; or

11 “(ii) each alien listed in the report
12 with respect to such country has otherwise
13 been removed from the United States.

14 “(B) DENYING ADMISSION TO NATIONALS
15 AND FOREIGN GOVERNMENT OFFICIALS.—Ex-
16 cept as provided under subparagraph (C), if a
17 country is listed in the most recent quarterly
18 report submitted by the Secretary of Homeland
19 Security to Congress under section 137(b) of
20 the Foreign Assistance Act of 1961, the Sec-
21 retary of Homeland Security, in consultation
22 with the Secretary of State—

23 “(i) shall deny admission to any cit-
24 izen, subject, national, or resident of that

1 country who has received any immigrant or
2 nonimmigrant visa; and

3 “(ii) shall deny admission to any cit-
4 izen, subject, national, or resident of that
5 country who has received a nonimmigrant
6 visa pursuant to subparagraph (A) or (G)
7 of section 101(a)(15).

8 “(C) EXCEPTION.—Subparagraphs (A)
9 and (B) do not apply if the Secretary of State
10 determines that the life or freedom of the visa
11 applicant or individual seeking admission would
12 be threatened in the country listed under sec-
13 tion 137(b) of the Foreign Assistance Act of
14 1961.

15 “(D) EFFECT OF UNAUTHORIZED
16 ISSUANCE.—Any visa issued in violation of this
17 paragraph shall be null and void.”.

18 **SEC. 4. NOTICE TO STATE AND LOCAL LAW ENFORCEMENT.**

19 (a) NOTICE.—

20 (1) IN GENERAL.—As soon as practicable, the
21 Secretary of Homeland Security shall notify the
22 chief law enforcement officer of the State and of the
23 local jurisdiction in which any alien described in
24 paragraph (2) has been detained by the United
25 States is released.

1 (2) ALIEN DESCRIBED.—An alien is described
2 in this paragraph if the alien—

3 (A) is listed in the most recent quarterly
4 report submitted by the Secretary of Homeland
5 Security to Congress under section 137(b) of
6 the Foreign Assistance Act of 1961; or

7 (B) has received a final order of removal
8 under chapter 4 of title II of the Immigration
9 and Nationality Act (8 U.S.C. 1221 et seq.)
10 and has not been removed from the United
11 States.

12 (b) INFORMATION CONTAINED IN NOTICE.—The no-
13 tice under subsection (a) shall include the following infor-
14 mation, if available, about each alien:

15 (1) Name.

16 (2) Location where the alien is released.

17 (3) Date of release.

18 (4) Country of nationality.

19 (5) Detention status.

20 (6) Criminal history, including probation and
21 parole information.

○