

109TH CONGRESS
2^D SESSION

H. R. 5610

To prevent sex offenders from using immigration laws to bring innocent, unsuspecting victims into the United States.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2006

Ms. JACKSON-LEE of Texas (for herself, Mr. CLEAVER, Mr. DAVIS of Illinois, Ms. CORRINE BROWN of Florida, Ms. KILPATRICK of Michigan, Ms. WATSON, Ms. MILLENDER-McDONALD, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. ENGEL, Mr. CUMMINGS, Mr. CUELLAR, Mr. LEWIS of Georgia, and Mr. SCOTT of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prevent sex offenders from using immigration laws to bring innocent, unsuspecting victims into the United States.

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. SHORT TITLE.**

4 This Act may be cited as the “Foreign Anti-Sex Of-
5 fender Protection Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) Immigration law allows citizens and aliens
2 lawfully admitted for permanent residence to bring
3 foreign family members to the United States on the
4 basis of immediate relative status or a preference
5 classification.

6 (2) Immediate relative status and preference
7 classifications are obtained by filing petitions with
8 the Secretary of Homeland Security.

9 (3) For national security purposes, the Sec-
10 retary of Homeland Security conducts background
11 checks on the beneficiaries of such petitions and,
12 since September 11, 2001, on the petitioners as well.

13 (4) The Government Accountability Office
14 (GAO) has determined that, in fiscal year 2005, at
15 least 398 of the petitioners who filed family-based
16 visa petitions were on the National Sex Offender
17 Registry maintained by the Federal Bureau of In-
18 vestigations.

19 (5) GAO was only able to ascertain the nature
20 of the sex offense for 194 of the 398 petitioners.

21 (6) GAO was able to ascertain, however, that
22 119 of the convictions were for sex assault, 35 for
23 child fondling, 9 for strong arm rape, 9 for carnal
24 abuse combined with a sexual assault, 7 were for
25 statutory rape, 4 for crimes against persons, 3 for

1 indecent exposure, 2 for kidnapping, 2 for obscene
2 material possession, 1 for exploitation of a minor
3 with photographs, 1 for incest with a minor, 1 for
4 sodomizing a boy, and 1 for restricting movement.

5 (7) At least 14 of the 398 petitioners were clas-
6 sified as “sexual predators”, which means a deter-
7 mination had been made that they are likely to com-
8 mit additional sex offenses.

9 (8) At least 45 of the petitioners were convicted
10 of sex offenses against children.

11 (9) The Immigration and Nationality Act does
12 not provide the Secretary of Homeland Security with
13 authorization to deny family-based petitions on the
14 basis of a petitioner’s conviction for a sex offense,
15 even when the conviction record indicates that a
16 spouse or a child beneficiary may be in grave dan-
17 ger.

18 **SEC. 3. DISCRETIONARY AUTHORITY TO DENY FAMILY-**
19 **SPONSORED CLASSIFICATION PETITION BY**
20 **PETITIONER LISTED ON NATIONAL SEX OF-**
21 **FENDER REGISTRY.**

22 Section 204 of the Immigration and Nationality Act
23 (8 U.S.C. 1154) is amended by adding at the end the fol-
24 lowing:

1 “(1) AUTHORITY TO DENY FAMILY-BASED PETITION
2 BY PETITIONER LISTED ON NATIONAL SEX OFFENDER
3 REGISTRY.—

4 “(1) IN GENERAL.—The Secretary Homeland
5 Security may, in the discretion of the Secretary,
6 deny a petition under subsection (a) for classifica-
7 tion of a spouse or child if—

8 “(A) the Secretary has confirmed that the
9 petitioner is on the national sex offender reg-
10 istry maintained by the Federal Bureau of In-
11 vestigation for a conviction that individually
12 (disregarding any aggregation due to any other
13 conviction) resulted in incarceration for more
14 than 1 year;

15 “(B) the petitioner has been given at least
16 90 days to establish that the petitioner is not
17 the person named on the registry or that the
18 conviction did not result in incarceration for
19 more than 1 year and has failed to establish
20 such fact; and

21 “(C) the Secretary finds that granting the
22 petition would put a primary or derivative
23 spouse or child beneficiary in grave danger of
24 being sexually abused.

1 “(2) DETERMINING DANGER.—In making the
2 determination under paragraph (1)(C), the Secretary
3 shall use the following principles:

4 “(A) NATURE OF THE RELATIONSHIP.—In
5 evaluating a petitioner who has filed a petition
6 for a spouse, consideration should be given to
7 indications of how well the petitioner and the
8 spouse know each other. Petitions filed on the
9 basis of marriages between men and women
10 who have had little direct, personal contact with
11 each other should be viewed with suspicion. In
12 cases where the petitioner and the spouse have
13 had little direct, personal contact with each
14 other, evidence should be submitted to establish
15 that they have gotten to know each other in
16 some other way.

17 “(B) NATURE OF THE SEX OFFENSE.—
18 Consideration should be given to when each of-
19 fense occurred for which the petitioner was in-
20 carcerated for more than a year, how serious it
21 was, the sentence that was imposed, how long
22 the petitioner was incarcerated, the age of the
23 petitioner when it was committed, and the char-
24 acteristics of the victim.

1 “(C) REHABILITATION.—Evidence of reha-
2 bilitation should be evaluated with respect to
3 whether it diminishes the risk of sexual abuse
4 to the primary or derivative spouse or child
5 beneficiaries.

6 “(D) PREVIOUS VISA PETITIONS.—The
7 records for any previous petitions shall be ex-
8 amined to determine whether they provide or
9 might lead to evidence that is pertinent to de-
10 termining whether granting the petition would
11 put a primary or derivative spouse or child ben-
12 eficiary in grave danger of being sexually
13 abused.

14 “(3) REBUTTAL.—If the Secretary intends to
15 deny a petition under paragraph (1), the Secretary
16 shall provide the petitioner with a notice that states
17 the reasons for the intended denial and provides the
18 petitioner with at least 90 days to submit rebuttal
19 evidence. Rebuttal should focus primarily on the fac-
20 tors that led the Secretary to believe that granting
21 the petition would put a primary or derivative
22 spouse or child beneficiary in grave danger of being
23 sexually abused.

24 “(4) POST-DENIAL REMEDIES.—

1 “(A) APPEAL.—All final denials under
2 paragraph (1) may be appealed to the Board of
3 Immigration Appeals.

4 “(B) NEW PETITION.—The petitioner may
5 file a new petition whenever the petitioner has
6 additional evidence that the petitioner believes
7 might be sufficient to warrant granting the new
8 petition.

9 “(5) DISCLOSURE BY THE SECRETARY OF
10 HOMELAND SECURITY TO BENEFICIARIES.—In all
11 cases in which it has been confirmed that the name
12 of a petitioner under subsection (a) is listed on the
13 national sex offender registry maintained by the
14 Federal Bureau of Investigation, and regardless of
15 whether the Secretary may exercise discretion under
16 paragraph (1), the Secretary shall give the petitioner
17 at least 90 days to establish that the petitioner is
18 not the person named on the registry. If the peti-
19 tioner fails to establish that the petitioner is not the
20 person named on the registry within the time allot-
21 ted, the Secretary shall provide the beneficiaries with
22 a written copy of the information on the registry
23 that is available to the public before making a deci-
24 sion on the petition. The beneficiary shall be in-

1 formed that the registry information is based on
2 available records and may not be complete.

3 “(6) DISCLOSURE TO DEPARTMENT OF
4 STATE.—In all cases in which it has been confirmed
5 that the name of a petitioner under subsection (a)
6 is listed on the national sex offender registry main-
7 tained by the Federal Bureau of Investigation, and
8 regardless of whether the Secretary may exercise
9 discretion under paragraph (1), the Secretary shall
10 provide the Secretary of State with—

11 “(A) a separate document with information
12 about the record on the national sex offender
13 registry that is available to the public;

14 “(B) any additional information it has that
15 raises concern that a primary or derivative
16 spouse or child beneficiary may be subject to
17 sexual abuse, including information from the
18 registry that is not available to the public; and

19 “(C) information about any previous peti-
20 tions under subsection (a) filed by the peti-
21 tioner.

22 “(7) DISCLOSURE BY CONSULAR OFFICER TO
23 BENEFICIARIES.—When a petition under subsection
24 (a) is granted, if the petition is filed by a petitioner
25 who has failed to make the demonstration of mis-

1 identification described in paragraph (5), the con-
2 sular officer shall conduct an interview with the pri-
3 mary or derivative spouse or child beneficiary of the
4 petition before issuing a visa to the beneficiary. At
5 least part of the interview must be held without the
6 presence of the petitioner. During the private part of
7 the interview, the beneficiary will be given a written
8 copy of the information about the petitioner from
9 the registry that is available to the public. This doc-
10 ument must be written in the beneficiary's primary
11 language. The consular officer is required to advise
12 the beneficiary that approval of the visa petition
13 does not mean that there are no reasons to be con-
14 cerned about his or her safety.

15 “(8) ADDITIONAL RESPONSIBILITIES OF CON-
16 SULAR OFFICER.—The consular officer may return
17 files to the Secretary of Homeland Security for fur-
18 ther consideration in cases where the consular offi-
19 cer is concerned that granting the visa might put a
20 primary or derivative spouse or child beneficiary in
21 grave danger of being sexually abused. When return-
22 ing a file under the previous sentence, the consular
23 officer may add any additional information or obser-
24 vations the officer has that might have a bearing on
25 whether the visa should be granted, including the re-

1 sults of any field examination that has been con-
2 ducted.”.

3 **SEC. 4. REMOVAL OF CONDITIONAL PERMANENT RESIDENT**
4 **STATUS.**

5 (a) IDENTIFY AND PROVIDE ASSISTANCE FOR
6 SPOUSES AND CHILDREN WHO ARE SUBJECT TO SEXUAL
7 ABUSE OR RELATED TYPES OF HARM.—Section
8 216(d)(3) of the Immigration and Nationality Act (8
9 U.S.C. 1186a(d)(3)) is amended—

10 (1) by inserting before “The interview” the fol-
11 lowing:

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (B), the interview”; and

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

15 “(B) PETITIONER LISTED ON NATIONAL
16 SEX OFFENDER REGISTRY.—In all cases where
17 the Secretary of Homeland Security has con-
18 firmed that a petitioning spouse is listed on the
19 national sex offender registry maintained by the
20 Federal Bureau of Investigation, an interview
21 with the alien spouse, and any alien sons or
22 daughters, shall be required prior to removal of
23 the conditional status, and at least part of the
24 interview shall be held without the presence of
25 the petitioning spouse. During the private por-

1 tion of the interview, questions will be asked to
2 determine whether an investigation should be
3 conducted regarding the welfare of the alien
4 spouse, or any alien son or daughter. If it is de-
5 termined that any alien spouse, son, or daugh-
6 ter is being abused or harmed by the peti-
7 tioning spouse, the victim shall be offered what-
8 ever assistance is appropriate, including infor-
9 mation on ways to remain in the United State
10 that do not depend on continuing the qualifying
11 marriage.”.

12 (b) **HARDSHIP WAIVER IN CASES WHERE THE ALIEN**
13 **SPOUSE OR CHILD IS SUBJECT TO SEXUAL ABUSE.**—Sec-
14 tion 216(c)(4) of the Immigration and Nationality Act (8
15 U.S.C. 1186a(c)(4)) is amended—

16 (1) in subparagraph (B), by striking “or” at
17 the end

18 (2) in subparagraph (C), by striking the period
19 at the end and inserting “, or”; and

20 (3) by inserting after subparagraph (C) the fol-
21 lowing:

22 “(D) the qualifying marriage was entered
23 into in good faith by the alien spouse and dur-
24 ing the marriage the alien spouse, or a son or
25 daughter of the spouse, was sexually abused

1 and the alien was not at fault in failing to meet
2 the requirements of paragraph (1).”.

3 **SEC. 5. SPECIAL TASK FORCE TO IDENTIFY PEOPLE NAMED**
4 **ON THE NATIONAL SEX OFFENDER REGISTRY**
5 **WHO HAVE FILED FAMILY-BASED CLASSI-**
6 **FICATION PETITIONS.**

7 (a) IN GENERAL.—The Secretary of Homeland Secu-
8 rity shall establish a task force, to be known as the “Task
9 Force to Rescue Immigrant Victims of American Sex Of-
10 fenders”. The task force shall consist of officials from
11 Federal, State, and local law enforcement agencies with
12 experience in domestic violence, sex crimes, immigration
13 law, trafficking in humans, organized crime, or any other
14 area of experience which may be useful in completing the
15 duties described in subsection (b).

16 (b) DUTIES.—The duties of the task force shall be
17 the following:

18 (1) Working back in time from the date of the
19 establishment of the task force, identifying individ-
20 uals on the Federal Bureau of Investigation’s sex of-
21 fender registry who have filed family-based petitions
22 under section 204(a) of the Immigration and Na-
23 tionality Act. When a confirmed match has been
24 made with the sex offender registry, the task force

1 should ascertain whether the petitioner filed previous
2 petitions.

3 (2) Maintaining the information about the peti-
4 tioners in a comprehensive database.

5 (3) Prioritizing the information according to
6 the likelihood that primary or derivative spouse or
7 child beneficiaries are in danger of sexual abuse.

8 (4) Developing a system for investigating the
9 cases in which beneficiaries may be at risk and pro-
10 viding them with information on how to seek assist-
11 ance if they are abused.

12 (5) Except for information on the registry that
13 is available to the public, protecting the information
14 produced by its investigations in accordance with the
15 privacy rights of everyone involved in the investiga-
16 tion.

17 (6) Taking whatever other actions as are rea-
18 sonable and appropriate when investigations lead to
19 information about sexual abuse or other criminal ac-
20 tivities, including notifying State and local police de-
21 partments, government offices, public organizations
22 that provide assistance to victims of sexual abuse,
23 and religious organizations.

24 (c) REPORT TO CONGRESS.—Not later than 270 days
25 after the date of the enactment of this Act, the Secretary

1 shall submit to the Congress a report on the findings and
2 recommendations of the task force. The report shall in-
3 clude the following:

4 (1) An analysis of the information obtained in
5 searching visa petition and national sex offender reg-
6 istry records.

7 (2) The results of any investigations conducted
8 by the task force.

9 (3) Recommendations on administrative and
10 legislative actions that would assist in identifying
11 and protecting immigrant victims of sexual abuse or
12 related harm.

13 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated such sums
15 as may be necessary to carry out the provisions of this
16 Act. Amounts appropriated under this section shall remain
17 available until expended.

18 **SEC. 7. REGULATIONS.**

19 Regulations implementing this Act shall be promul-
20 gated in final form not later than 180 days after the date
21 of the enactment of this Act.

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