

119TH CONGRESS
2D SESSION

S. _____

To amend the Immigration and Nationality Act to provide for the inadmissibility of certain aliens seeking citizenship for children by giving birth in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. SCOTT of South Carolina introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to provide for the inadmissibility of certain aliens seeking citizenship for children by giving birth in the United States, 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. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Birth Tourism Elimination Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings; sense of Congress.

2

- Sec. 3. Inadmissibility of aliens seeking citizenship for children by giving birth in the United States.
- Sec. 4. Codification of Department of State rule clarifying eligibility for B-2 tourist visas.
- Sec. 5. Prohibition on using the Visa Waiver Program for birth tourism.
- Sec. 6. Secondary inspections.
- Sec. 7. Expedited removal for birth tourism.
- Sec. 8. Enhancement of criminal penalties for facilitating, sponsoring, organizing, or profiting from birth tourism.
- Sec. 9. Reporting requirements.

1 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Birth tourism is the practice of foreign na-
4 tionals traveling to the United States for the pri-
5 mary purpose of obtaining United States citizenship
6 for a child by giving birth in the United States.

7 (2) The Committee on Homeland Security and
8 Governmental Affairs of the Senate has deter-
9 mined—

10 (A) changes made to Department of State
11 policies in 2015 made birth tourism more acces-
12 sible and more difficult to investigate and pros-
13 ecute;

14 (B) birth tourists—

15 (i) frequently make repeat trips to the
16 United States and declare substantial
17 amounts of cash upon entry; and

18 (ii) sometimes leave unpaid medical
19 expenses that are ultimately borne by
20 United States taxpayers; and

1 (C) commercial birth tourism companies
2 have organized and promoted travel packages
3 designed to facilitate birth tourism in the
4 United States.

5 (3) The Committee on Homeland Security and
6 Governmental Affairs of the Senate has rec-
7 ommended that Congress amend the Immigration
8 and Nationality Act (8 U.S.C. 1101 et seq.) to clar-
9 ify that the Act does not authorize the issuance of
10 visas to temporary visitors for pleasure whose pri-
11 mary purpose of travel is to obtain United States
12 citizenship for a child.

13 (4) In 2020, the Department of State amended
14 its regulations to clarify that travel to the United
15 States for the primary purpose of obtaining United
16 States citizenship for a child by giving birth in the
17 United States is not a permissible basis for the
18 issuance of a B nonimmigrant visitor visa.

19 (5) The Department of State has determined
20 that the Immigration and Nationality Act's author-
21 ization for temporary visitors for pleasure does not
22 extend to individuals whose primary purpose of trav-
23 el is to obtain United States citizenship for a child
24 through birth tourism.

(6) The Department of State has continued to identify, investigate, and dismantle organized birth tourism networks operating overseas, including networks that used fraudulent documents, visa facilitators, and coached applicants to evade immigration screening.

(b) SENSE OF CONGRESS.—It is the sense of Congress that preserving the integrity of the United States immigration system and ensuring that temporary visitor programs are used only for their intended purposes are essential to maintaining public confidence in the rule of law and the value of American citizenship.

13 **SEC. 3. INADMISSIBILITY OF ALIENS SEEKING CITIZENSHIP**
14 **FOR CHILDREN BY GIVING BIRTH IN THE**
15 **UNITED STATES.**

(a) IN GENERAL.—Section 212(a)(10) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)) is amended by adding at the end the following:

19 “(F) ALIENS SEEKING CITIZENSHIP FOR
20 CHILDREN BY GIVING BIRTH IN THE UNITED
21 STATES.—

22 “(i) IN GENERAL.—Any alien seeking
23 admission to the United States as a non-
24 immigrant under section 101(a)(15)(B) for
25 the primary purpose of obtaining United

1 States citizenship for a child by giving
2 birth to such child in the United States is
3 inadmissible.

4 “(ii) RULES OF CONSTRUCTION.—
5 Nothing in this subparagraph may be con-
6 strued to render inadmissible—

7 “(I) an alien seeking legitimate
8 medical treatment relating to child-
9 birth if obtaining citizenship for the
10 child is not the primary purpose for
11 seeking admission; or

12 “(II) an alien if the child she is
13 carrying is the biological offspring of
14 a United States citizen, a United
15 States lawful permanent resident, or a
16 person who has been granted perma-
17 nent resident status in the United
18 States as a refugee or asylee.”.

19 (b) DENIAL OF ADMISSION.—Section 212(d) of the
20 Immigration and Nationality Act (8 U.S.C. 1182(d)) is
21 amended by inserting after paragraph (1) the following:

22 “(2) A consular officer or a U.S. Customs and Border
23 Protection officer may deny admission to any alien if such
24 officer has a reasonable belief that the primary purpose
25 of such alien’s travel is to obtain United States citizenship

1 for a child by giving birth to such child in the United
2 States.”.

3 (c) PROHIBITION ON GRANTING HUMANITARIAN PA-
4 ROLE TO ALIENS ENGAGING IN BIRTH TOURISM.—Sec-
5 tion 212(d)(5) of the Immigration and Nationality Act (8
6 U.S.C. 1182(d)(5)) is amended—

7 (1) by redesignating subparagraph (C) as sub-
8 paragraph (D); and

9 (2) by inserting after subparagraph (B) the fol-
10 lowing:

11 “(C)(i) Except as provided in clause (ii), the Sec-
12 retary of Homeland Security may not parole into the
13 United States an alien who is seeking to enter the United
14 States, or to remain in the United States, for the primary
15 purpose of obtaining United States citizenship for a child
16 by giving birth to such child while in the United States.

17 “(ii) Clause (i) shall not apply to any alien returning
18 pursuant to an advance parole document issued on the
19 basis of a pending application for adjustment of status
20 under section 245.”.

21 **SEC. 4. CODIFICATION OF DEPARTMENT OF STATE RULE**
22 **CLARIFYING ELIGIBILITY FOR B-2 TOURIST**
23 **VISAS.**

24 Section 212(q) of the Immigration and Nationality
25 Act (8 U.S.C. 1182(q)) is amended—

1 (1) by inserting “(1)” before “Any alien”; and

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

3 “(2)(A) For purposes of section 101(a)(15)(B), the
4 term ‘pleasure’ does not include obtaining a visa for the
5 primary purpose of obtaining United States citizenship for
6 a child by giving birth in the United States.

7 “(B) Any applicant for a nonimmigrant visa under
8 section 101(a)(15)(B) who seeks to enter the United
9 States to receive medical treatment shall be denied a visa
10 pursuant to section 214(b) if such applicant is unable to
11 establish, to the satisfaction of a consular officer, that—

12 “(i) he or she has a legitimate reason for trav-
13 eling to the United States for medical treatment;

14 “(ii) a medical practitioner or facility in the
15 United States has agreed to provide such treatment;

16 “(iii) the applicant has reasonably estimated
17 the duration of the visit and all associated costs; and

18 “(iv) he or she has the means derived from law-
19 ful sources and intent to pay for the medical treat-
20 ment and all incidental expenses, including transpor-
21 tation and living expenses, either independently or
22 with the pre-arranged assistance of others.

23 “(C)(i) Any applicant for a nonimmigrant visa under
24 section 101(a)(15)(B) who a consular officer has reason
25 to believe would give birth to a child during her stay in

1 the United States is presumed to be traveling for the pri-
2 mary purpose of obtaining United States citizenship for
3 such child.

4 “(ii) A visa applicant may rebut the presumption
5 under clause (i) by establishing, to the satisfaction of a
6 consular officer, she has a legitimate primary purpose for
7 giving birth in the United States other than obtaining
8 United States citizenship for the child.”.

9 **SEC. 5. PROHIBITION ON USING THE VISA WAIVER PRO-**
10 **GRAM FOR BIRTH TOURISM.**

11 (a) GUAM AND NORTHERN MARIANA ISLANDS VISA
12 WAIVER PROGRAM.—Section 212(l) of the Immigration
13 and Nationality Act (8 U.S.C. 1182(l)) is amended by
14 adding at the end the following:

15 “(7) NOT ENGAGING IN BIRTH TOURISM.—No
16 alien may be granted a waiver of subsection
17 (a)(7)(B)(i) for the primary purpose of obtaining
18 United States citizenship for a child by giving birth
19 to such child while in Guam or in the Common-
20 wealth of the Northern Mariana Islands.”.

21 (b) VISA WAIVER PROGRAM.—Section 217(a) of the
22 Immigration and Nationality Act (8 U.S.C. 1187(a)) is
23 amended by adding at the end the following:

24 “(13) NOT ENGAGING IN BIRTH TOURISM.—
25 The alien is not applying to enter the United States

1 through the Electronic System for Travel Authoriza-
2 tion for the primary purpose of obtaining United
3 States citizenship for a child by giving birth to such
4 child while in the United States.”.

5 **SEC. 6. SECONDARY INSPECTIONS.**

6 Section 235(a)(3) of the Immigration and Nationality
7 Act (8 U.S.C. 1225(a)(3)) is amended by adding at the
8 end the following: “An immigration officer who has reason
9 to believe an arriving alien may be inadmissible under sec-
10 tion 212(a)(10)(F) shall refer such alien for secondary in-
11 spection in accordance with procedures prescribed by the
12 Secretary of Homeland Security.”.

13 **SEC. 7. EXPEDITED REMOVAL FOR BIRTH TOURISM.**

14 Section 235(b)(1) of the Immigration and Nationality
15 Act (8 U.S.C. 1225(b)(1) is amended—

16 (1) in subparagraph (A)(i), by striking “section
17 212(a)(6)(C) or 212(a)(7)” and inserting “para-
18 graph (6)(C), (7), or (10)(F) of section 212(a)”;

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

20 “(H) REMOVAL DESTINATION FOR BIRTH
21 TOURISTS.—An alien who is inadmissible under
22 section 212(a)(10)(F) may be removed to the
23 country from which the alien traveled to the
24 United States unless such alien voluntarily
25 withdraws his or her application for admission

1 and returns to his or country of citizenship or
2 last habitual residence. This subparagraph does
3 not apply to any alien woman who gives birth
4 in the United States if such birth is incidental
5 to her lawful admission to the United States.”.

6 **SEC. 8. ENHANCEMENT OF CRIMINAL PENALTIES FOR FA-**
7 **CILITATING, SPONSORING, ORGANIZING, OR**
8 **PROFITING FROM BIRTH TOURISM.**

9 Section 1425 of title 18, United States Code, is
10 amended—

11 (1) in subsection (a), by striking “or” at the
12 end;

13 (2) in subsection (b), by striking the em dash
14 and inserting “; or”;

15 (3) by inserting after subsection (b) the fol-
16 lowing:

17 “(c) Whoever, while acting independently or on behalf
18 of an entity, including foreign entity of concern (as defined
19 in section 9901(8) of the William M. (Mac) Thornberry
20 National Defense Authorization Act for Fiscal Year 2021
21 (15 U.S.C. 4651(8))), knowingly facilitates, sponsors, or-
22 ganizes, advertises, profits from, or aids and abets birth
23 tourism (as described in section 2(a)(1) of the Birth Tour-
24 ism Elimination Act,”; and

1 (4) in the undesignated matter following sub-
2 section (c), as added by paragraph (3), by inserting
3 “an offense described in subsection (c) or” after “15
4 years (in the case of”.

5 **SEC. 9. REPORTING REQUIREMENTS.**

6 The Secretary of Homeland Security, in consultation
7 with the Secretary of State, shall submit a semiannual re-
8 port to the Committee on the Judiciary of the Senate,
9 Committee on Homeland Security and Governmental Af-
10 fairs of the Senate, the Committee on Foreign Relations
11 of the Senate, the Committee on the Judiciary of the
12 House of Representatives, and the Committee on Home-
13 land Security of the House of Representatives, and the
14 Committee on Foreign Affairs of the House of Representa-
15 tives that identifies, with respect to the previous month—

16 (1) the number of B-2 nonimmigrant visa re-
17 quests that were denied due to the prohibitions set
18 forth in subsections (a)(10) or (q)(2) of section 212
19 of the Immigration and Nationality Act, as added by
20 this Act;

21 (2) the number of aliens who were denied hu-
22 manitarian parole due to the prohibition set forth in
23 section 212(d)(5)(C) of the Immigration and Na-
24 tionality Act, as added by section 3(c);

1 (3) the number of aliens who were denied entry
2 into the United States due to the prohibition set
3 forth in section 217(a)(13) of the Immigration and
4 Nationality Act, as added by section 5;

5 (4) the number of investigations that were initi-
6 ated to identify aliens seeking to enter the United
7 States for birth tourism purposes;

8 (5) the number of prosecutions that were initi-
9 ated against individuals engaged in birth tourism;
10 and

11 (6) the number of aliens who were removed
12 from the United States for violating the prohibition
13 against birth tourism.