

AMENDMENT TO H.R. 5611

OFFERED BY MR. DUNCAN OF SOUTH CAROLINA

At the end of the bill, add the following:

1 **SEC. 8. EXPEDITED REMOVAL OF TERRORIST ALIENS.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) Foreign nationals are permitted to enter
5 and remain in the United States at the pleasure of
6 the people of the United States. No foreign national
7 has a right to live and work in the United States ex-
8 cept as the law permits. Foreign nationals within the
9 United States who the Government has reason to be-
10 lieve are terrorists should be prevented from obtain-
11 ing firearms and explosives and should be swiftly re-
12 moved from the United States.

13 (2) Since the attacks of September 11, 2001,
14 citizens of the United States have been under relent-
15 less assault by international terrorists claiming to be
16 waging jihad against such citizens. From September
17 2001 through 2014, the United States has success-
18 fully prosecuted 580 individuals for acts or plots of
19 international terrorism or for other terrorism-related
20 charges. The vast majority of these offenses oc-

1 curred in the United States. Many of the prosecuted
2 individuals were not citizens of the United States.

3 (3) The United States maintains a “No Fly
4 List” of individuals whose suspected ties to ter-
5 rorism are sufficiently serious that the Government
6 will not allow them to fly on an aircraft within the
7 United States. There are approximately 81,000
8 names on the No Fly List, almost all of whom are
9 not United States persons. Less than 1,000 are
10 United States persons.

11 (4) The United States also maintains a “Se-
12 lectee List” of individuals who must undergo addi-
13 tional screening before boarding an aircraft. There
14 are approximately 28,000 names on this list, of
15 which fewer than 1,700 are United States persons.

16 (b) PURPOSE.—The purpose of this section is to en-
17 sure that foreign nationals on the No Fly List and the
18 Selectee List who the United States Government has rea-
19 son to believe are terrorists are expeditiously removed
20 from the United States.

21 (c) EXPEDITED REMOVAL OF TERRORIST ALIENS.—

22 (1) IN GENERAL.—Notwithstanding any other
23 law, an alien shall be eligible for expedited removal
24 under this section if the alien is appropriately in-
25 cluded on the No Fly or Selectee List.

1 (2) WAIVER AUTHORITY.—

2 (A) IN GENERAL.—The Attorney General
3 may, subject to subparagraph (B) and only on
4 an individual case-by-case basis, waive the ap-
5 plication of paragraph (1) with respect to an
6 alien if the Attorney General determines that
7 the waiver is in the national security interests
8 of the United States.

9 (B) CONCURRENCE REQUIRED.—The At-
10 torney General may grant a waiver under sub-
11 subparagraph (A) only with the unanimous concur-
12 rence of the Director of the Federal Bureau of
13 Investigation, the Director of National Intel-
14 ligence, and the Secretary of Homeland Secu-
15 rity.

16 (d) AUTHORITY AND PROCEDURE.—

17 (1) AUTHORITY.—Notwithstanding any other
18 law, the United States district court where the alien
19 described in subsection (c) resides, is apprehended,
20 or is detained shall have jurisdiction to enter a judi-
21 cial order of removal against an alien who is eligible
22 for expedited removal under subsection (c).

23 (2) PROCEDURE.—

24 (A) IN GENERAL.—The Attorney General
25 shall file with the United States district court,

1 and serve upon the alien, a petition for a judi-
2 cial order of removal. Upon service of such no-
3 tice, the Attorney General shall coordinate with
4 the Secretary of Homeland Security who shall
5 detain the alien pending a final judgment.

6 (B) FACTUAL ALLEGATIONS.—Not later
7 than 14 days after filing such petition, the At-
8 torney General shall submit a statement of fac-
9 tual allegations regarding the eligibility of the
10 alien for expedited removal.

11 (C) EVIDENTIARY HEARING.—Not later
12 than 30 days after the Attorney General files
13 the statement of factual allegations, the district
14 court shall hold an evidentiary hearing on the
15 eligibility of the alien for expedited removal, un-
16 less the parties consent to an extension of time.

17 (D) RIGHTS IN HEARING.—

18 (i) NOTICE.—The alien shall be given
19 notice of the time and place at which the
20 hearing will be held.

21 (ii) RIGHT TO COUNSEL.—The alien
22 shall have a right to be present at such
23 hearing and to be represented (at no ex-
24 pense to the Government) by such counsel,

1 authorized to practice in such proceedings,
2 as the alien shall choose.

3 (iii) INTRODUCTION OF EVIDENCE.—

4 The alien shall have a reasonable oppor-
5 tunity to introduce evidence on the alien's
6 own behalf.

7 (iv) EXAMINATION OF EVIDENCE.—

8 The alien shall have a reasonable oppor-
9 tunity to examine the evidence against the
10 alien and to cross-examine any witness.

11 (E) ADMISSIBILITY OF EVIDENCE.—For

12 purposes of determining whether to enter an
13 order described in paragraph (1), the district
14 court shall only consider evidence that would be
15 admissible in proceedings conducted pursuant
16 to section 240 of the Immigration and Nation-
17 ality Act (8 U.S.C. 1229a).

18 (F) CLASSIFIED EVIDENCE.—The pro-

19 ceedings under this subsection shall be subject
20 to the Classified Information Procedures Act
21 (18 U.S.C. App.).

22 (G) ARGUMENTS.—Following the receipt of

23 evidence, the Attorney General and the alien
24 shall be given fair opportunity to present argu-
25 ment as to whether the evidence is sufficient to

1 justify the removal of the alien. The Attorney
2 General shall open the argument. The alien
3 shall be permitted to reply. The Attorney Gen-
4 eral shall then be permitted to reply in rebuttal.
5 All briefing shall be complete no later than 30
6 days after the date of the hearing.

7 (H) NO RIGHT TO ANCILLARY RELIEF.—
8 At no time shall the district court consider or
9 provide for relief from removal based on—

10 (i) asylum under section 208 of the
11 Immigration and Nationality Act (8 U.S.C.
12 1158);

13 (ii) withholding of removal under sec-
14 tion 241(b)(3) of the Immigration and Na-
15 tionality Act (8 U.S.C. 1231(b)(3));

16 (iii) cancellation of removal under sec-
17 tion 240A of the Immigration and Nation-
18 ality Act (8 U.S.C. 1229b);

19 (iv) voluntary departure under section
20 240B of the Immigration and Nationality
21 Act (8 U.S.C. 1229c);

22 (v) adjustment of status under section
23 245 of the Immigration and Nationality
24 Act (8 U.S.C. 1255); or

1 (vi) registry under section 249 of the
2 Immigration and Nationality Act (8 U.S.C.
3 1259).

4 (I) DETERMINATION OF REMOVAL.—After
5 considering all of the evidence in the record as
6 a whole, if the district court finds that the At-
7 torney General has demonstrated a reasonable
8 basis to believe, based on specific and
9 articulable information and credible evidence,
10 that the alien is eligible for expedited removal
11 under subsection (c), the district court shall
12 order the alien removed and detained pending
13 removal from the United States. The district
14 court shall issue its order not later than 10
15 days after all briefing is complete.

16 (J) WRITTEN ORDER.—In support of such
17 order, the district court shall prepare an opin-
18 ion containing findings of fact and conclusions
19 of law. If the order is denied, the district court
20 shall prepare a written statement of the reasons
21 for the denial.

22 (K) RIGHT TO APPEAL.—A judicial order
23 of removal or denial of such order may be ap-
24 pealed by either party to the court of appeals
25 for the circuit in which the district court is lo-

1 cated. The alien shall be detained pending any
2 appeal, unless the district court denied the peti-
3 tion for a judicial order of removal, in which
4 case the alien may be detained only if the court
5 of appeals finds that the alien poses a credible
6 threat of committing, attempting to commit, or
7 conspiring to commit an act of domestic or
8 international terrorism.

