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Purpose and Summary

H.R. 6678, the Consequences for Social Security Fraud Act, introduced by Rep. Tom McClintock (R-CA), would create a new ground of inadmissibility and a new ground of removability for aliens convicted of, admitting to, or admitting to committing acts that constitute the essential elements of social security fraud or other identification document fraud under federal law.

Background and Need for the Legislation

Criminal aliens are increasingly stealing Americans' social security numbers (SSNs), with "1.2 million cases in which illegal aliens used [SSNs] that belonged to someone else or were fabricated in 2017 alone."¹ With record illegal alien releases under the Biden Administration, that number will no doubt soar in the years ahead. In 2019 and 2020, the Trump Administration delivered 1.6 million "no match letters," which are "notifications sent to employers informing them of employees whose SSNs don't match government records," but the Biden Administration stopped sending such notices.² H.R. 6678 protects Americans by ensuring that criminal aliens can be held to account and be inadmissible to and removable from the United States for social security and identity fraud.

Social security fraud plagues Americans and is increasingly perpetrated by illegal aliens. A 2022 investigation underscored the scope of the problem by pointing to the Social Security Administration's Earnings Suspense File, which "reflects the earnings of employees whose W-2 wage and tax statements have names and Social Security numbers that do not match official records."³ That amount expanded from \$188.9 billion in 2000 to \$1.9 trillion by 2021, with officials "historically ascrib[ing] a 'high proportion' of the file's growth to wages reported by illegal immigrants."⁴ The same investigation highlighted the implications for unsuspecting Americans:

Reports dating back over a decade show that hundreds of thousands of Americans are unknowingly "sharing" their Social Security numbers with illegal immigrants. Such victims may face tax bills for income they didn't earn or depleted benefits. Worse, some may experience the burden of bad credit histories and criminal records inaccurately attributed to them after being issued SSNs that illegal aliens had previously invented and used. The overall impact on American citizens is largely unknown because federal, state, and

¹ Mark Hemingway & Ben Weingarten, Willful Blindness: Feds Ignore Illegal Alien ID Theft Plaguing Americans as U.S. Covert Operations Fill, REALCLEARINVESTIGATIONS (June 30, 2022), https://www.realclearinvestigations.com/articles/2022/06/29/willful_blindness_feds_ignore_massive_illegal_alien_id_theft_plaguing_americans_as_us_covert_operations_fill_839815.html.

² *Id.*

³ *Id.*

⁴ *Id.*

local governments as well as financial institutions have generally failed to notify them even when fraud is suspected.⁵

In addition, “[a] 2020 GAO report on employment-related identity fraud identified more than 2.9 million Social Security numbers with ‘risk characteristics associated with SSN misuse.’”⁶

The problem is not new. A 2006 report in the *New York Times* detailed how a 3-year-old girl’s social security number had been used for “two credit cards and two auto loans, with an outstanding balance of more than \$25,000.”⁷ Likewise, more than a decade ago, Rep. Elton Gallegly, the then-Chairman of the Immigration Subcommittee, wrote in an op-ed in the *Hill*: “Fraud by illegal immigrants [is] destroying children’s lives,” including the lives of “[a] 9-year-old boy who was denied Medicaid because wages were reported on his Social Security number” and “[a] 13-year-old girl who was denied as a dependent on her family’s tax return because she supposedly made too much money.”⁸

Years later, the problem persists. In 2019, for example, the U.S. Attorney’s Office for the Southern District of Mississippi announced the prosecution of 119 illegal aliens for crimes including “misusing social security numbers of American citizens.”⁹ In June 2020, the Justice Department announced that an illegal alien from Guatemala was sentenced to three months’ imprisonment for “us[ing] another person’s Social Security number to get a job and for tax purposes.”¹⁰ In October 2023, an illegal alien, who was arrested by the U.S. Border Patrol near Hidalgo, Texas, in September 2022 and then released on Alternatives to Detention, pleaded guilty to illegal use of a social security number.¹¹

Despite the harm of social security fraud and the increasing number of illegal aliens committing it, committing social security fraud and other identification document fraud does not always mean an alien can be found to be inadmissible to or removable from the United States. In

⁵ *Id.*

⁶ *Id.*

⁷ John Leland, *Immigrants stealing U.S. Social Security numbers for jobs, not profits – Americas – International Herald Tribune*, N.Y. TIMES (Sept. 4, 2006), <https://www.nytimes.com/2006/09/04/world/americas/04iht-id.2688618.html>.

⁸ Elton Gallegly, *Fraud by illegal immigrants destroying children’s lives*, THE HILL (Apr. 26, 2012, 4:06 PM), <https://thehill.com/blogs/congress-blog/homeland-security/112663-fraud-by-illegal-immigrants-destroying-childrens-lives/>.

⁹ Press Release, U.S. Att’y’s Off., S.D. Miss., 119 Illegal Aliens Prosecuted For Stealing Identities of Americans, Falsifying Immigr. Documents, Fraudulently Claiming to be U.S. Citizens, Other Crimes (Nov. 7, 2019), <https://www.justice.gov/usao-sdms/pr/119-illegal-aliens-prosecuted-stealing-identities-americans-falsifying-immigration>.

¹⁰ Press Release, U.S. Att’y’s Off., N.D. Iowa, Illegal Alien Who Used a Fake Name and Another Person’s Social Security Number Sentenced to Prison (June 3, 2020), <https://www.justice.gov/usao-ndia/pr/illegal-alien-who-used-fake-name-and-another-person-s-social-security-number-sentenced>.

¹¹ Press Release, U.S. Att’y’s Off., E.D. La., Nicaraguan Woman Pleads Guilty to Illegally Using Social Security Number (Oct. 11, 2023), <https://www.justice.gov/usao-edla/pr/nicaraguan-woman-pleads-guilty-illegally-using-social-security-number>.

fact, in at least the U.S. Courts of Appeals for the Seventh Circuit,¹² the Ninth Circuit,¹³ and the Eleventh Circuit,¹⁴ and potentially the Fourth Circuit and the Tenth Circuit,¹⁵ certain social security fraud offenses do not carry immigration consequences. In an Eleventh Circuit case, for example, the court held that an alien's conviction for using another person's social security number did not prevent him from receiving certain immigration benefits and remaining in the United States.¹⁶ Even though more federal courts find that a conviction for identification document fraud under 18 U.S.C. § 1028 can make an alien removable from the country, that analysis can lead to years of litigation and involves convoluted legal analysis.¹⁷ In one case, for example, an alien was placed in removal proceedings in 2005, where he remained until at least 2013 when his case finally made its way to the U.S. Court of Appeals for the Sixth Circuit to determine whether his conviction for conspiracy to traffic in identification documents made him removable from the United States.¹⁸

H.R. 6678 changes that arduous, counterintuitive, and lengthy process by streamlining the analysis and ensuring that criminal aliens can be held to account and quickly removed from the country for victimizing Americans through social security and identification document fraud. By requiring at least an "admission" of illegal conduct, the bill conforms to the pattern of the Immigration and Nationality Act. The bill not only mimics the language of existing grounds of inadmissibility for crimes involving moral turpitude and controlled substance offenses,¹⁹ but also mirrors numerous grounds of removability that do not require a conviction, such as being present in the U.S. in violation of the law,²⁰ violating one's nonimmigrant status,²¹ committing alien smuggling,²² engaging in marriage fraud,²³ being a drug user or drug addict,²⁴ failing to notify authorities of a change in address within 10 days of a new address,²⁵ falsely claiming citizenship,²⁶ and illegally voting.²⁷ The "admission" requirement also fits within longstanding

¹² *Arias v. Lynch*, 834 F.3d 823, 827 (7th Cir. 2016) (holding that a conviction under 42 U.S.C. § 408(a)(7)(B) was not *categorically* a crime involving moral turpitude).

¹³ *Beltran-Tirado v. I.N.S.*, 213 F.3d 1179 (9th Cir. 2000) (holding that a conviction under 42 U.S.C. § 408(a)(7)(B) for using a false Social Security number was not a crime involving moral turpitude and did not make an alien inadmissible from the U.S.).

¹⁴ *Zarate v. U.S. Att'y Gen.*, 26 F.4th 1196 (11th Cir. 2022) (holding that a conviction under 42 U.S.C. § 408(a)(7)(B) was not a crime involving moral turpitude).

¹⁵ *See Zarate*, 26 F.4th at 1206 (discussing relevant cases from the Fourth and Tenth Circuits).

¹⁶ *See id.* at 1198-99, 1207-09.

¹⁷ *See, e.g., Yerebin v. Holder*, 738 F.3d 708 (6th Cir. 2013); *Lagunas-Salgado v. Holder*, 584 F.3d 707 (7th Cir. 2009).

¹⁸ *Yerebin*, 738 F.3d 708.

¹⁹ INA § 212(a)(2)(A)(i).

²⁰ INA § 237(a)(1)(B).

²¹ INA § 237(a)(1)(C).

²² INA § 237(a)(1)(E).

²³ INA § 237(a)(1)(G).

²⁴ INA § 237(a)(2)(B)(ii).

²⁵ INA § 237(a)(3)(A).

²⁶ INA § 237(a)(3)(D).

²⁷ INA § 237(a)(6).

precedent from the Board of Immigration Appeals, which for decades has required an alien’s admission of criminal conduct be “explicit, unequivocal, and unqualified.”²⁸

By allowing for an “admission” of illegal conduct to qualify for purposes of inadmissibility and removability, H.R. 6678 circumvents far-left prosecutors who may not ever prosecute criminal aliens in the first place—or who may allow them to plead down to a crime that lacks immigration consequences. In creating this new ground of inadmissibility and removability, this bill protects Americans and strengthens the immigration system.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to develop H.R. 6678: “The Consequences of Criminal Aliens on U.S. Communities,” a hearing held on July 13, 2023, before the Subcommittee on Immigration Integrity, Security, and Enforcement of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- Donald Rosenberg, Founder, Advocates for Victims of Illegal Alien Crime;
- Bradley Schoenleben, Senior Deputy District Attorney, Orange County, California, District Attorney’s Office;
- John Fabbriatore, Former Field Office Director, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and
- Ramon Batista, Police Chief, Santa Monica, California.

The hearing addressed liberal jurisdictions’ harboring of criminal aliens and the Biden Administration’s lax policies that allow criminal aliens to remain in the United States indefinitely.

Committee Consideration

On January 18, 2024, the Committee met in open session and ordered the bill, H.R. 6678, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 15-11, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee’s consideration of H.R. 6678:

²⁸ See *Matter of J-*, 2 I. & N. Dec. 285 (BIA 1945); see also *Pazcoguin v. Radcliffe*, 292 F.3d 1209 (9th Cir. 2002); *Guridi v. Lynch*, 606 F. App’x 348 (2015); *Woods v. Holder*, 732 F. App’x 719 (9th Cir. 2010); *Matter of P-*, 4 I. & N. Dec. 252 (BIA 1951). Moreover, during removal proceedings, the Department of Homeland Security “has the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable.” INA § 240(c)(3).

1. Vote on Amendment #1 to the H.R. 6678 ANS, offered by Ms. Jayapal of Washington—failed 10 ayes to 14 nays.
2. Vote on favorably reporting H.R. 6678, as amended—passed 15 ayes to 11 nays.

COMMITTEE ON THE JUDICIARY

Date:

1/18/24

118th CONGRESS

25-19

ROLL CALL

Vote on:

(1) Jayapal Amndt to HR 6678 ANS

Roll Call #:

10

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. BUCK (CO)				MS. JACKSON LEE (TX)			
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. BIGGS (AZ)		✓		MR. JOHNSON (GA)	✓		
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)	✓		
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)				MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)				MS. SCANLON (PA)			
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. ARMSTRONG (ND)				MS. ESCOBAR (TX)	✓		
MR. GOODEN (TX)				MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)		✓		MS. BUSH (MO)			
MR. NEHLS (TX)		✓		MR. IVEY (MD)	✓		
MR. MOORE (AL)		✓		MS. BALINT (VT)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)							
MR. MORAN (TX)		✓					
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals:

Ayes:

10

Nays:

14

Present:

X

Passed:

Failed:

COMMITTEE ON THE JUDICIARY

Date:

1/18/29

118th CONGRESS

25-19

ROLL CALL

Vote on:

Final Passage of HR 6678, as amended

Roll Call #:

11

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)			
MR. BUCK (CO)				MS. JACKSON LEE (TX)		✓	
MR. GAETZ (FL)	✓			MR. COHEN (TN)			
MR. BIGGS (AZ)	✓			MR. JOHNSON (GA)		✓	
MR. McCLINTOCK (CA)	✓			MR. SCHIFF (CA)		✓	
MR. TIFFANY (WI)	✓			MR. SWALWELL (CA)			
MR. MASSIE (KY)				MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)		✓	
MR. BISHOP (NC)				MR. CORREA (CA)		✓	
MS. SPARTZ (IN)				MS. SCANLON (PA)			
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)	✓			MS. McBATH (GA)		✓	
MR. CLINE (VA)	✓			MS. DEAN (PA)			
MR. ARMSTRONG (ND)				MS. ESCOBAR (TX)		✓	
MR. GOODEN (TX)				MS. ROSS (NC)		✓	
MR. VAN DREW (NJ)	✓			MS. BUSH (MO)			
MR. NEHLS (TX)	✓			MR. IVEY (MD)		✓	
MR. MOORE (AL)	✓			MS. BALINT (VT)		✓	
MR. KILEY (CA)	✓						
MS. HAGEMAN (WY)							
MR. MORAN (TX)	✓						
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)	✓						

Roll Call Totals:

Ayes:

15

Nays:

11

Present:

Passed:

X

Failed:

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 6678 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 6678

creates a new ground of inadmissibility and a new ground of removability for aliens convicted of, admitting to, or admitting to committing acts that constitute the essential elements of social security fraud or other identification document fraud under federal law.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 6678 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House Rule XXI.

Federal Mandates Statement

An estimate of federal mandates prepared by the Director of the Congressional Budget office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104-1).

Section-by-Section Analysis

Sec. 1. Short Title: The “Consequences for Social Security Fraud Act.”

Sec. 2. Inadmissibility and Deportability Related to Social Security or Identification Document Fraud: This section creates a ground of inadmissibility and a ground of removability for aliens who have been convicted of, admit to, or admit to committing acts that constitute the essential elements of social security fraud or other identification document fraud.

Changes in Existing Law Made by the Bill, as Reported

[INSERT “C” – PREPARED BY LEG. COUNSEL]

Minority Views

[INSERT “D” – MINORITY VIEWS]