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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R. _____

To amend the Anti-Border Corruption Act of 2010 to authorize certain polygraph waiver authority, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. McSALLY introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Anti-Border Corruption Act of 2010 to authorize certain polygraph waiver authority, 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.**

4 This Act may be cited as the “Anti-Border Corrup-
5 tion Reauthorization Act of 2017”.

1 **SEC. 2. HIRING FLEXIBILITY.**

2 Section 3 of the Anti-Border Corruption Act of 2010
3 (Public Law 111–376; 6 U.S.C. 221) is amended by strik-
4 ing subsection (b) and inserting the following:

5 “(b) **WAIVER AUTHORITY.**—The Commissioner of
6 U.S. Customs and Border Protection may waive the appli-
7 cation of subsection (a)(1) in the following circumstances:

8 “(1) In the case of a current, full-time law en-
9 forcement officer employed by a State or local law
10 enforcement agency, if such officer—

11 “(A) has served as a law enforcement offi-
12 cer for not fewer than three years with no
13 break in service;

14 “(B) is authorized by law to engage in or
15 supervise the prevention, detection, investiga-
16 tion, or prosecution of, or the incarceration of
17 any person for, any violation of law, and has
18 statutory powers for arrest or apprehension;

19 “(C) is not currently under investigation,
20 has not been found to have engaged in criminal
21 activity or serious misconduct, has not resigned
22 from a law enforcement officer position under
23 investigation or in lieu of termination, and has
24 not been dismissed from a law enforcement offi-
25 cer position; and

1 “(D) has, within the past ten years, suc-
2 cessfully completed a polygraph examination as
3 a condition of employment with such officer’s
4 current law enforcement agency.

5 “(2) In the case of a current, full-time law en-
6 forcement officer employed by a Federal law enforce-
7 ment agency, if such officer—

8 “(A) has served as a law enforcement offi-
9 cer for not fewer than three years with no
10 break in service;

11 “(B) has authority to make arrests, con-
12 duct investigations, conduct searches, make sei-
13 zures, carry firearms, and serve orders, war-
14 rants, and other processes;

15 “(C) is not currently under investigation,
16 has not been found to have engaged in criminal
17 activity or serious misconduct, has not resigned
18 from a law enforcement officer position under
19 investigation or in lieu of termination, and has
20 not been dismissed from a law enforcement offi-
21 cer position; and

22 “(D) holds a current Tier 4 background
23 investigation or current Tier 5 background in-
24 vestigation.

1 “(3) In the case of an individual who is a mem-
2 ber of the Armed Forces (or a reserve component
3 thereof) or a veteran, if such individual—

4 “(A) has served in the Armed Forces for
5 not fewer than three years;

6 “(B) holds, or has held within the past five
7 years, a Secret, Top Secret, or Top Secret /
8 Sensitive Compartmented Information clear-
9 ance;

10 “(C) holds, or has undergone within the
11 past five years, a current Tier 4 background in-
12 vestigation or current Tier 5 background inves-
13 tigation;

14 “(D) received, or is eligible to receive, an
15 honorable discharge from service in the Armed
16 Forces and has not engaged in criminal activity
17 or committed a serious military or civil offense
18 under the Uniform Code of Military Justice;
19 and

20 “(E) was not granted any waivers to ob-
21 tain the clearance referred to subparagraph
22 (B).

23 “(c) TERMINATION OF WAIVER AUTHORITY.—The
24 authority to issue a waiver under subsection (b) shall ter-
25 minate on the date that is five years after the date of the

1 enactment of the Anti-Border Corruption Reauthorization
2 Act of 2017.”.

3 **SEC. 3. SUPPLEMENTAL COMMISSIONER AUTHORITY AND**
4 **DEFINITIONS.**

5 (a) SUPPLEMENTAL COMMISSIONER AUTHORITY.—
6 Section 4 of the Anti-Border Corruption Act of 2010
7 (Public Law 111–376) is amended to read as follows:

8 **“SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.**

9 “(a) NON-EXEMPTION.—An individual who receives a
10 waiver under subsection (b) of section 3 is not exempt
11 from other hiring requirements relating to suitability for
12 employment and eligibility to hold a national security des-
13 igned position, as determined by the Commissioner of
14 U.S. Customs and Border Protection.

15 “(b) BACKGROUND INVESTIGATIONS.—Any indi-
16 vidual who receives a waiver under subsection (b) of sec-
17 tion 3 who holds a current Tier 4 background investiga-
18 tion shall be subject to a Tier 5 background investigation.

19 “(c) ADMINISTRATION OF POLYGRAPH EXAMINA-
20 TION.—The Commissioner of U.S. Customs and Border
21 Protection is authorized to administer a polygraph exam-
22 ination to an applicant or employee who is eligible for or
23 receives a waiver under subsection (b) of section 3 if infor-
24 mation is discovered prior to the completion of a back-
25 ground investigation that results in a determination that

1 a polygraph examination is necessary to make a final de-
2 termination regarding suitability for employment or con-
3 tinued employment, as the case may be.”.

4 (b) DEFINITIONS.—The Anti-Border Corruption Act
5 of 2010 is amended by adding at the end the following
6 new section:

7 **“SEC. 5. DEFINITIONS.**

8 “In this Act:

9 “(1) LAW ENFORCEMENT OFFICER.—The term
10 ‘law enforcement officer’ has the meaning given such
11 term in sections 8331(20) and 8401(17) of title 5,
12 United States Code.

13 “(2) VETERAN.—The term ‘veteran’ has the
14 meaning given such term in section 101(2) of title
15 38, United States Code.

16 “(3) SERIOUS MILITARY OR CIVIL OFFENSE.—
17 The term ‘serious military or civil offense’ means an
18 offense for which—

19 “(A) a member of the Armed Forces may
20 be discharged or separated from service in the
21 Armed Forces; and

22 “(B) a punitive discharge is, or would be,
23 authorized for the same or a closely related of-
24 fense under the Manual for Court-Martial, as

1 pursuant to Army Regulation 635-200 chapter
2 14-12.

3 “(4) TIER 4; TIER 5.—The terms ‘Tier 4’ and
4 ‘Tier 5’ with respect to background investigations
5 have the meaning given such terms under the 2012
6 Federal Investigative Standards.”.