

106TH CONGRESS
1ST SESSION

S. 1940

To amend the Immigration and Nationality Act to reaffirm the United States historic commitment to protecting refugees who are fleeing persecution or torture.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 1999

Mr. LEAHY (for himself, Mr. BROWNBACK, Mr. FEINGOLD, Mr. KENNEDY, Mr. KERRY, Mr. JEFFORDS, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to reaffirm the United States historic commitment to protecting refugees who are fleeing persecution or torture.

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; REFERENCES IN ACT.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Refugee Protection Act of 1999”.

6 (b) REFERENCES IN ACT.—Except as specifically
7 provided in this Act, whenever in this Act an amendment
8 or repeal is expressed as an amendment to or repeal of

1 a provision, the reference shall be deemed to be made to
2 that provision in the Immigration and Nationality Act.

3 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.**

4 (a) FINDINGS.—Congress makes the following find-
5 ings:

6 (1) The very foundation of the Republic was
7 laid by people who came to America to escape perse-
8 cution, including many who fled persecution on the
9 basis of their faith.

10 (2) Protecting people from persecution is a
11 cherished goal and a guiding principle of the Amer-
12 ican people.

13 (3) The United States has a history of gen-
14 erosity to persons fleeing persecution, which has
15 served as an inspiring example to other nations de-
16 veloping refugee policy, even though only a tiny frac-
17 tion of the world's oppressed actually seek refuge on
18 American shores.

19 (4) Conversely, when the United States has re-
20 stricted protection for refugees, other nations have
21 followed that lead.

22 (5) Current law fails to ensure that those who
23 arrive in the United States fleeing persecution have
24 a fair and adequate opportunity to present claims
25 for protection.

1 (b) PURPOSE.—The purpose of this Act is to reduce
 2 the likelihood that a bona fide refugee will be returned
 3 to persecution in the refugee’s country of nationality or
 4 country of last habitual residence by United States au-
 5 thorities because of expedited removal procedures or lack
 6 of due process in the United States asylum system.

7 **SEC. 3. SAFEGUARDS AGAINST ERRONEOUS EXCLUSION OF**
 8 **ASYLUM SEEKERS.**

9 (a) LIMITATION OF SUMMARY INSPECTION PROCE-
 10 DURES TO IMMIGRATION EMERGENCIES.—Section
 11 235(b)(1) (8 U.S.C. 1225(b)(1)) is amended—

12 (1) by redesignating subparagraphs (A) through
 13 (F) as subparagraphs (B) through (G), respectively;
 14 and

15 (2) by inserting after the caption for paragraph
 16 (1) the following new subparagraph:

17 “(A) EMERGENCY MIGRATION SITUA-
 18 TIONS.—

19 “(i) SCOPE OF PARAGRAPH.—The au-
 20 thority in this paragraph shall apply to
 21 those instances where the Attorney General
 22 determines that the numbers or cir-
 23 cumstances of aliens en route to or arriv-
 24 ing in the United States, by land, sea, or

air present an extraordinary migration situation.

“(ii) EXTRAORDINARY MIGRATION SITUATION DEFINED.—As used in this subparagraph, the term ‘extraordinary migration situation’ means the arrival or imminent arrival in the United States or its territorial waters of aliens who by their numbers or circumstances substantially exceed the capacity for inspection and examination of such aliens.

“(iii) DETERMINATIONS BY THE ATTORNEY GENERAL.—The determination of whether there exists an extraordinary migration situation within the meaning of this paragraph is committed to the sole and exclusive discretion of the Attorney General. Before making such determination, the Attorney General shall consider whether the source of the extraordinary migration flow is a country that meets the criteria of subparagraph (G).

“(iv) EFFECTIVE PERIOD OF DETERMINATIONS.—A determination by the Attorney General under this subparagraph

that an extraordinary migration situation exists shall be effective for a period not to exceed 90 days, unless, within such 90-day period (or extension thereof), the Attorney General determines, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, that an extraordinary migration situation continues to warrant such procedures remaining in effect for an additional 90-day period.”.

(b) REFORM OF SUMMARY INSPECTION PROCEDURES

TO DECREASE THE LIKELIHOOD OF ERROR.—Section 235(b)(1)(B) (as redesignated by subsection (a)) is amended to read as follows:

“(B) SCREENING.—

“(i) IN GENERAL.—If an immigration officer determines that an alien (other than an alien described in subparagraph (G)) who is arriving in the United States is inadmissible under section 212(a)(6)(C) or 212(a)(7) because the alien has no documents or has documents that are invalid on their face, the officer shall permit the alien to withdraw the application for ad-

mission under subsection (a)(4), or order the alien removed from the United States, unless the alien indicates an intention to apply for asylum under section 208 or a fear of returning to his country of nationality or country of last habitual residence. Prior to withdrawal of an application for admission or issuance of a removal order, the alien shall be informed in writing and in a language the alien understands of the consequences of withdrawal or issuance of a removal order, the availability of review of a removal order, and that the alien shall have access to counsel in connection with such review, as provided by clause (iii).

“(ii) CLAIMS FOR ASYLUM.—If an immigration officer determines that an alien (other than an alien described in subparagraph (G)) arriving in the United States is inadmissible under clause (i) and the alien indicates an intention to apply for asylum under section 208 or a fear of returning to his country of nationality or country of last habitual residence, the officer shall refer

1 the alien for an interview by an asylum of-
2 ficer under subparagraph (C).

3 “(iii) REVIEW OF REMOVAL OR-
4 DERS.—

5 “(I) IN GENERAL.—The Attorney
6 General shall provide by regulation for
7 de novo review by an immigration
8 judge of an order issued under clause
9 (i) unless the alien waives such re-
10 view.

11 “(II) PROCEDURES.—The review
12 shall include an opportunity for the
13 alien to be heard and questioned by
14 the immigration judge in person and
15 to be represented at the review by a
16 person or persons of the alien’s choos-
17 ing at no expense to the Government.
18 The alien shall be advised of these
19 procedures and provided the list of
20 persons prepared under section
21 239(b)(2). Review shall be concluded
22 as expeditiously as possible.

23 “(III) DETERMINATIONS OF IN-
24 ADMISSIBILITY.—If the immigration
25 judge determines that the alien is in-

1 admissible under section 212(a)(6)(C)
2 or 212(a)(7) because the alien has no
3 documents or has documents that are
4 invalid on their face, the immigration
5 judge shall permit the alien to with-
6 draw the application for admission
7 under subsection (a)(4), or order the
8 alien removed from the United States,
9 unless the alien indicates an intention
10 to apply for asylum under section 208
11 or a fear of returning to his country
12 of nationality or country of last habit-
13 ual residence.

14 “(IV) REFERRAL TO ASYLUM OF-
15 FICERS.—If the alien indicates an in-
16 tention to apply for asylum under sec-
17 tion 208 or a fear of returning to his
18 country of nationality or country of
19 last habitual residence, the immigra-
20 tion judge shall refer the alien for an
21 interview by an asylum officer under
22 subparagraph (B).

23 “(V) OTHER DETERMINA-
24 TIONS.—If the immigration judge de-
25 termines that the alien is not inadmis-

1 sible under section 212(a)(6)(C) or
 2 212(a)(7), the immigration judge shall
 3 order the alien admitted or shall refer
 4 the alien for a removal hearing under
 5 section 240.”.

6 (c) EXCEPTIONS TO SUMMARY INSPECTION PROCE-
 7 DURES FOR ALIENS FLEEING COUNTRIES WITH POOR
 8 HUMAN RIGHTS RECORDS.—Section 235(b)(1)(G) (as re-
 9 designated by subsection (a)) is amended to read as fol-
 10 lows:

11 “(G) EXCEPTIONS.—Subparagraph (B)
 12 shall not apply to an alien if—

13 “(i) the alien has fled from a country
 14 with respect to which the Attorney Gen-
 15 eral, in consultation with the Assistant
 16 Secretary of State for Democracy, Human
 17 Rights and Labor, has determined that the
 18 government (or a group within the country
 19 that the government is unable or unwilling
 20 to control)—

21 “(I) engages in torture or other
 22 cruel, inhuman, or degrading treat-
 23 ment or punishment;

1 “(II) engages in prolonged arbitrary
 2 detention without charges or
 3 trial;

4 “(III) engages in abduction,
 5 forced disappearance, or clandestine
 6 detention;

7 “(IV) engages in systematic per-
 8 secution; or

9 “(V) where an ongoing armed
 10 conflict or other extraordinary condi-
 11 tions would pose a serious threat to
 12 the alien’s safety;

13 “(ii) the alien is a native or citizen of
 14 a country in the Western Hemisphere with
 15 whose government the United States does
 16 not have full diplomatic relations and who
 17 arrives by aircraft at a port of entry; or

18 “(iii) the alien is a child unaccom-
 19 panied by a parent or guardian.”.

20 (d) REFORM OF CREDIBLE FEAR REVIEW PROCE-
 21 DURES TO DECREASE THE LIKELIHOOD OF ERROR.—
 22 Section 235(b)(1)(C)(iii) (as redesignated by subsection
 23 (a)) is amended—

24 (1) in the caption of clause (iii), by striking

25 “WITHOUT FURTHER REVIEW”;

1 (2) in subclause (I), by striking “without fur-
2 ther hearing or review”; and

3 (3) by amending subparagraph (III) to read as
4 follows:

5 “(III) REVIEW OF DETERMINA-
6 TIONS.—The Attorney General shall
7 provide by regulation for prompt re-
8 view by an immigration judge of a de-
9 termination under subclause (I) that
10 the alien does not have a credible fear
11 of persecution. Such review shall in-
12 clude an opportunity for the alien to
13 be heard and questioned by the immi-
14 gration judge in person and to be rep-
15 resented at the review at no expense
16 to the Government. Review shall be
17 concluded as expeditiously as possible,
18 to the maximum extent practicable
19 within 7 days after the date of deter-
20 mination under subclause (I).”.

21 (e) REFORM OF CREDIBLE FEAR STANDARD TO DE-
22 CREASE THE LIKELIHOOD OF ERROR.—Section
23 235(b)(1)(C)(v) (as redesignated by subsection (a)) is
24 amended to read as follows:

1 “(v) CREDIBLE FEAR OF PERSECU-
 2 TION DEFINED.—For purposes of this
 3 paragraph, the term ‘credible fear of perse-
 4 cution’ means that, taking into account the
 5 credibility of the statements made by the
 6 alien in support of the alien’s claim and
 7 such other facts in support of the alien’s
 8 claim as are known to the officer, the
 9 alien’s claim of eligibility for asylum under
 10 section 208 is not clearly fraudulent and is
 11 related to the criteria for granting asy-
 12 lum.”.

13 (f) CLARIFICATION OF ATTORNEY GENERAL’S DIS-
 14 CRETION TO DETAIN ASYLUM SEEKERS.—Section
 15 235(b)(1)(B) (as redesignated by subsection (a)) is
 16 amended—

17 (1) in clause (ii), by striking “shall” and insert-
 18 ing “may, in the Attorney General’s discretion,”;
 19 and

20 (2) in clause (iii)(IV), by striking “shall” and
 21 inserting “may, in the Attorney General’s discre-
 22 tion,”.

23 (g) ENHANCED AVAILABILITY OF JUDICIAL REVIEW
 24 AS A SAFEGUARD AGAINST ERRONEOUS EXCLUSION OF

1 ASYLUM SEEKERS.—Section 242 (8 U.S.C. 1252) is
2 amended—

3 (1) in subsection (a), by striking the parenthet-
4 ical in paragraph (1);

5 (2) in subsection (a)(2)—

6 (A) by striking subparagraph (A); and

7 (B) by redesignating subparagraphs (B)
8 and (C) as subparagraphs (A) and (B), respec-
9 tively;

10 (3) in subsection (b)—

11 (A) by striking “manifestly” in paragraph
12 (4)(D); and

13 (B) by striking “and” in paragraph (4)(D)
14 and inserting “or”; and

15 (4) by striking subsection (e).

16 (h) CONFORMING AMENDMENTS.—

17 (1) CONDUCT OF INTERVIEWS BY ASYLUM OF-
18 FICERS.—Section 235(b)(1)(C)(i) (as so redesign-
19 nated) is amended by striking “subparagraph
20 (A)(ii)” and inserting “subparagraph (B) (ii) or
21 (iii)”.

22 (2) LIMITATIONS ON ADMINISTRATIVE RE-
23 VIEW.—Section 235(b)(1)(D) (as so redesignated) is
24 amended—

1 (A) by striking “subparagraph
2 (B)(iii)(III)” and inserting “subparagraph
3 (C)(iii)(III)”;

4 (B) by striking “subparagraph (A)(i) or
5 (B)(iii)(I)” and inserting “subparagraph
6 (B)(iii) or (C)(iii)(I)”;

7 (C) by striking “subparagraph (A)(i)” and
8 inserting “subparagraph (B)(iii)”.

9 (3) APPLICATION TO STOWAWAYS.—Section
10 235(a)(2) (8 U.S.C. 1225(a)(2)) is amended—

11 (A) by inserting before the period at the
12 end of the first sentence the following: “, except
13 that the alien shall be informed of the avail-
14 ability of review of the order under subsection
15 (b)(1)(C)(iii);

16 (B) in the second sentence, by striking
17 “persecution” and inserting “returning to his
18 country of nationality or country of last habit-
19 ual residence”; and

20 (C) by striking “subsection (b)(1)(B)”
21 each place it appears and inserting “subsection
22 (b)(1)(C)”.

23 (4) HEADING CORRECTION.—The heading of
24 subclause IV of section 235(b)(1)(C)(iii), as redesign-
25 nated by section 3(a)(1) of this Act, is amended by

1 striking “MANDATORY DETENTION” and inserting
 2 “DETENTION”.

3 **SEC. 4. ADDITIONAL REFORMS TO ENSURE A FAIR AND**
 4 **ADEQUATE OPPORTUNITY FOR REFUGEES TO**
 5 **PRESENT CLAIMS FOR PROTECTION.**

6 (a) “GOOD CAUSE” EXCEPTION TO THE TIME LIM-
 7 TATION FOR APPLYING FOR ASYLUM.—Section
 8 208(a)(2)(B) (8 U.S.C. 1158(a)(2)(B)) is amended by in-
 9 serting before the period at the end the following: “or the
 10 alien demonstrates, by a preponderance of the evidence,
 11 good cause for filing after the expiration of the period
 12 specified in this subparagraph.”.

13 (b) ALLOWING REAPPLICATION WHERE JUSTIFIED
 14 BY GOOD CAUSE OR THE INTEREST OF JUSTICE.—Sec-
 15 tion 208(a)(2) (8 U.S.C. 1158(a)(2)) is amended—

16 (1) in subparagraph (C), by inserting before the
 17 period at the end the following: “unless the alien
 18 demonstrates good cause for filing another applica-
 19 tion for asylum”; and

20 (2) in subparagraph (D), by inserting before
 21 the period at the end the following: “or of other cir-
 22 cumstances in which consideration of the claim
 23 would clearly be in the interest of justice”.

1 (c) CLARIFICATION REGARDING FRIVOLOUS APPLI-
2 CATIONS FOR ASYLUM.—Section 208(d)(6) (8 U.S.C.
3 1158(d)(6)) is amended—

4 (1) by adding at the end the following: “An ap-
5 plication for asylum is frivolous if the application as
6 a whole is clearly fraudulent or is made with knowl-
7 edge that the application as a whole is not related
8 to the criteria for granting refugee status.”;

9 (2) by striking “permanently”;

10 (3) by inserting “for five years” after “chap-
11 ter”; and

12 (4) by inserting “, except withholding of re-
13 moval,” after “benefits”.

14 **SEC. 5. EFFECTIVE DATE.**

15 This Act, and the amendments made by this Act,
16 shall take effect 30 days after the date of enactment of
17 this Act.

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