

106TH CONGRESS
2D SESSION

S. 3120

To amend the Immigration and Nationality Act to modify restrictions added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27 (legislative day, SEPTEMBER 22), 2000

Mr. KENNEDY (for himself, Mr. GRAHAM, Mr. LEAHY, Mr. KERRY, Mr. WELLSTONE, Mr. DURBIN, and Mr. FEINGOLD) 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 modify restrictions added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

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 “Immigrant Fairness Restoration Act of 2000”.

6 (b) REFERENCES IN ACT.—Except as otherwise spe-
7 cifically provided in this Act, whenever in this Act an
8 amendment or repeal is expressed as an amendment to
9 or a repeal of a provision, the reference shall be deemed

1 to be made to the Immigration and Nationality Act (8
2 U.S.C. 1101 et seq.).

3 **SEC. 2. FINDINGS.**

4 Congress makes the following findings:

5 (1) The United States has a time-honored tra-
6 dition as a Nation of immigrants and a Nation of
7 just laws. Our immigration laws no longer reflect
8 that tradition.

9 (2) Current laws punish legal residents out of
10 proportion to their crimes. Reform is needed to re-
11 store balance to our immigration system. Funda-
12 mental principles of fairness in the application of the
13 laws, due process, and judicial review must apply to
14 the foreign born and native born alike.

15 (3) Laws should not be applied retroactively.
16 Fairness and practicality dictate that changes in
17 definitions of crimes that make aliens deportable
18 should only apply to crimes committed after dates of
19 enactment. Immigration policy should not change
20 the rules in the middle of the game.

21 (4) Proportionality and discretion should be re-
22 stored to our Nation's immigration laws. We must
23 restore the discretion immigration judges previously
24 had and responsibly exercised to evaluate cases on

1 an individual basis and grant relief from deportation
2 to deserving families.

3 (5) Detention of individuals is an extraordinary
4 power that should only be used in extraordinary cir-
5 cumstances. The mandatory detention of immigrants
6 who have paid their debt to society and pose no
7 threat is anathema to the protections of the Con-
8 stitution's Due Process Clause.

9 (6) Our judicial system is one of checks and
10 balances and nowhere are these protections more im-
11 perative than in questions of deportation and incar-
12 ceration which so fundamentally restrict individual
13 liberties. Judicial review of immigration orders and
14 determinations is necessary to ensure that these
15 most weighty determinations are not made capri-
16 ciously or erroneously. Immigrants deserve their day
17 in court.

18 **SEC. 3. ELIMINATION OF RETROACTIVITY.**

19 (a) CANCELLATION OF REMOVAL.—Section 240A (8
20 U.S.C. 1229b) is amended by adding at the end the fol-
21 lowing new subsection:

22 “(f) APPLICATION OF LAW.—Notwithstanding any
23 other provision of this section, an alien who committed an
24 offense that was a ground for deportation or exclusion
25 prior to April 1, 1997, shall have the law in effect at the

1 time of the offense apply with respect to any application
2 for relief from deportation or exclusion on that ground.
3 For purposes of determining eligibility for such relief, such
4 alien shall be credited with any periods of residency in the
5 United States that the alien has accrued without regard
6 to whether or not the residency occurred after the commis-
7 sion of the offense or service of a notice to appear under
8 section 239(a).”.

9 (b) APPLICATION OF AGGRAVATED FELONY DEFINI-
10 TION.—The last sentence of section 101(a)(43) (8 U.S.C.
11 1101(a)(43)) is amended to read as follows: “The term
12 shall not apply to any offense that was not covered by
13 the term on the date on which the offense occurred.”.

14 (c) GROUNDS OF DEPORTABILITY.—Section 237 (8
15 U.S.C. 1227) is amended by adding at the end the fol-
16 lowing new subsection:

17 “(d) Notwithstanding any other provision of this sec-
18 tion, an alien is not deportable or removable by reason
19 of committing any offense that was not a ground of de-
20 portability on the date the offense occurred.”.

21 (d) GROUNDS OF INADMISSIBILITY.—Section 212 (8
22 U.S.C. 1182) is amended by adding at the end the fol-
23 lowing new subsection:

24 “(p)(1) Notwithstanding any other provision of this
25 section, an alien is not inadmissible by reason of commit-

1 ting any offense that was not a ground of inadmissibility
2 on the date the offense occurred.

3 “(2) Any alien who applied for admission to the
4 United States or adjustment of status to that of an alien
5 lawfully admitted for permanent residence prior to April
6 1, 1997, and was inadmissible under subsection (a)(6)(C),
7 shall be eligible for the relief available (including any waiv-
8 er of inadmissibility) at the time the application was
9 filed.”.

10 (e) PROSPECTIVE EFFECTIVE DATES.—

11 (1) ILLEGAL IMMIGRATION REFORM AND IMMI-
12 GRANT RESPONSIBILITY ACT.—Notwithstanding any
13 other provision of law, the Illegal Immigration Re-
14 form and Immigrant Responsibility Act of 1996, and
15 the amendments made by that Act, shall apply only
16 to persons seeking admission, or who became remov-
17 able, on or after April 1, 1997, as the case may be.

18 (2) ANTITERRORISM AND EFFECTIVE DEATH
19 PENALTY ACT OF 1996.—Notwithstanding any other
20 provision of law, title IV of the Antiterrorism and
21 Effective Death Penalty Act of 1996, and the
22 amendments made by that title, shall only apply to
23 persons seeking admission, or who become remov-
24 able, on or after April 24, 1996.

1 (f) REINSTATEMENT OF REMOVAL ORDERS.—Sec-
 2 tion 241(a)(5) (8 U.S.C. 1231(a)(5)) is repealed, and such
 3 repeal shall apply to all proceedings pending at any stage
 4 as of the date of enactment of this Act and to all cases
 5 brought on or after such date.

6 **SEC. 4. RESTORATION OF PROPORTIONALITY TO GROUNDS**
 7 **OF REMOVAL.**

8 (a) DEFINITION OF CRIMES INVOLVING MORAL TUR-
 9 PITUDE.—Section 237(a)(2)(A)(i) (8 U.S.C.
 10 1227(a)(2)(A)(i)) is amended to read as follows:

11 “(i) CRIMES OF MORAL TURPITUDE.—Any
 12 alien who is convicted of a crime involving
 13 moral turpitude (other than a purely political
 14 offense or an attempt to commit such a crime)
 15 committed within five years (or 10 years in the
 16 case of an alien provided lawful permanent resi-
 17 dence status under section 245(j)) for which the
 18 alien is confined in a prison or correctional in-
 19 stitution for more than one year, is deport-
 20 able.”.

21 (b) DEFINITION OF AGGRAVATED FELONY.—Section
 22 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

23 (1) in subparagraphs (F), (G), (J), (R), and
 24 (S), by striking “one year” each place it appears
 25 and inserting “more than five years”;

1 (2) by amending subparagraph (N) (8 U.S.C.
2 1101(a)(43)(N)) to read as follows:

3 “(N) an offense described in section 274(a)(1)
4 (relating to alien smuggling) for the purpose of com-
5 mercial advantage.”;

6 (3) in subparagraph (P)(ii) (8 U.S.C.
7 1101(a)(43)(P)(ii)), by striking “child” and insert-
8 ing “son or daughter”;

9 (4) in subparagraph (T), by striking “two
10 years” and inserting “five years”; and

11 (5) by adding at the end of section 101(a)(43)
12 the following: “No crime shall be deemed to be an
13 aggravated felony if the underlying conviction is a
14 misdemeanor or if the sentence imposed is not in ex-
15 cess of one year.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 subsection (b) shall apply to convictions entered before,
18 on, or after the date of enactment of this Act.

19 (d) CONVICTION DEFINED.—Section 101(a)(48)(A)
20 (8 U.S.C. 1101(a)(48)(A)) is amended—

21 (1) by redesignating clauses (i) and (ii) as sub-
22 clauses (I) and (II), respectively;

23 (2) by striking “(48)(A) The term” and insert-
24 ing “(48)(A)(i) Except as provided in clause (ii), the
25 term”; and

1 (3) by adding at the end the following:

2 “(ii) For purposes of determinations under this Act,
3 the term ‘conviction’ does not include any Federal, State,
4 or foreign action to expunge, dismiss, cancel, vacate, dis-
5 charge, or otherwise remove a guilty plea or other record
6 of guilt or conviction, or any Federal, State, or foreign
7 deferred adjudication, adjudication of guilt withheld, order
8 of probation without entry of judgment, or similar disposi-
9 tion.”.

10 (e) DEFINITION OF TERM OF IMPRISONMENT.—Sec-
11 tion 101(a)(48)(B) (8 U.S.C. 1101(a)(48)(B)) is amended
12 to read as follows:

13 “(B) Any reference to a term of imprisonment or a
14 sentence with respect to an offense is deemed to include
15 the period of incarceration or confinement ordered by a
16 court of law excluding any period of the suspension of the
17 imposition or execution of that imprisonment or sentence
18 in whole or in part.”.

19 (f) CONFORMING AMENDMENTS.—

20 (1) GROUND OF INADMISSIBILITY.—Section
21 212(a)(6)(E) (8 U.S.C. 1182(a)(6)(E)) is
22 amended—

23 (A) in clause (i), by inserting “and for
24 commercial advantage” after “knowingly”;

25 (B) by striking clause (ii); and

1 (C) by redesignating clause (iii) as clause
 2 (ii).

3 (2) GROUND OF DEPORTABILITY.—Section
 4 237(a)(1)(E) (8 U.S.C. 1227(a)(1)(E)) is
 5 amended—

6 (A) in clause (i), by inserting “and for
 7 commercial advantage” after “knowingly”;

8 (B) by striking clause (ii); and

9 (C) by redesignating clause (iii) as clause
 10 (ii).

11 **SEC. 5. RESTORATION OF DISCRETIONARY RELIEF FROM**
 12 **REMOVAL.**

13 (a) CANCELLATION OF REMOVAL.—Section 240A(a)
 14 (8 U.S.C. 1229b(a)) is amended—

15 (1) by redesignating paragraphs (1) through
 16 (3) as subparagraphs (A) through (C), respectively;
 17 and

18 (2) by amending subparagraph (C) (as so re-
 19 designated) to read as follows:

20 “(C) has not been convicted of an aggravated
 21 felony for which the sentence imposed is five years
 22 or more.”.

23 (b) REPEAL OF RULE FOR TERMINATION OF CON-
 24 TINUOUS PERIOD.—

1 (1) Section 240A(d)(1) (8 U.S.C. 1229b(d)(1))
2 (8 U.S.C. 1229b(a)) is repealed.

3 (2) Section 240A(d) (8 U.S.C. 1229b) is
4 amended—

5 (A) by redesignating paragraphs (2) and
6 (3) as paragraphs (1) and (2), respectively; and

7 (B) by inserting before the period at the
8 end of paragraph (1) (as redesignated) the fol-
9 lowing: “, unless the alien’s departure from the
10 United States was due to a temporary trip
11 abroad required by emergency or extenuating
12 circumstances outside the control of the alien”.

13 (c) WAIVER.—Section 212(h) (8 U.S.C. 1182(h)) is
14 amended by striking the third and fourth sentences.

15 (d) RESTORATION OF ELIGIBILITY FOR WITH-
16 HOLDING OF REMOVAL.—Section 241(b)(3)(B) (8 U.S.C.
17 1231(b)(3)(B)) is amended—

18 (1) by amending clause (ii) to read as follows:

19 “(ii) the alien—

20 “(I) has been convicted by final
21 judgment of a particularly serious
22 crime for which the sentence imposed
23 was an aggregate term of imprison-
24 ment of five years or more; and

1 “(II) is a danger to the United
2 States.”; and

3 (2) by striking the third sentence and inserting
4 at the end the following: “Notwithstanding this sub-
5 paragraph, an alien shall be eligible for relief under
6 subparagraph (A) if the Attorney General deter-
7 mines the alien should not be removed for urgent
8 humanitarian reasons.”.

9 (e) WAIVER FOR PARENT, SON, OR DAUGHTER.—
10 Section 212(d)(12) (8 U.S.C. 1182(d)(12)) is amended by
11 striking “or child” and inserting “, parent, son, or daugh-
12 ter”.

13 (f) WAIVER OF INADMISSIBILITY UNDER SECTION
14 212(i).—

15 (1) IN GENERAL.—Section 212(i) (8 U.S.C.
16 1182(i)) is amended to read as follows:

17 “(i) The Attorney General may, in the discretion of
18 the Attorney General, waive the application of subsection
19 (a)(6) (A), (B), or (C) in the case of an immigrant who
20 is the parent, spouse, son, or daughter of a United States
21 citizen or of an alien lawfully admitted for permanent resi-
22 dence if it is established to the satisfaction of the Attorney
23 General that the refusal of admission to the United States
24 of such immigrant alien would result in hardship to the

1 alien or to the citizen or lawfully resident parent, spouse,
2 son, or daughter of such an alien.”.

3 (2) CONFORMING AMENDMENT.—Section
4 212(a)(6) (8 U.S.C. 1182(a)(6)) is amended by add-
5 ing at the end the following new subparagraph:

6 “(H) For provision authorizing waiver of
7 certain subparagraphs of this paragraph, see
8 subsection (i).”.

9 **SEC. 6. JUDICIAL REVIEW OF CERTAIN ORDERS AND DE-**
10 **TERMINATIONS.**

11 (a) REPEALS.—The following provisions of the Act
12 are hereby repealed and such repeal shall apply to all cases
13 pending at any stage in any court as of the date of enact-
14 ment of this Act and to all cases brought on or after such
15 date:

16 (1) Section 242(a)(2) (8 U.S.C. 1252(a)(2)).

17 (2) Section 242(a)(3) (8 U.S.C. 1252(a)(3)).

18 (3) Section 242(b)(4) (8 U.S.C. 1252(b)(4)).

19 (4) Section 242(b)(7) (8 U.S.C. 1252(b)(7)).

20 (5) Subsections (e), (f), and (g) of section 242
21 (8 U.S.C. 1252).

22 (6) Section 240(b)(5)(D) (8 U.S.C.
23 1229a(b)(5)(D)).

24 (7) Section 240B(f) (8 U.S.C. 1229c(f)).

25 (8) Section 208(a)(3) (8 U.S.C. 1158(a)(3)).

1 (9) Section 208(b)(2)(D) (8 U.S.C.
2 1158(b)(2)(D)).

3 (10) Section 208(d)(7) (8 U.S.C. 1158(d)(7)).

4 (b) AMENDMENTS RELATING TO JUDICIAL RE-
5 VIEW.—

6 (1) IN GENERAL.—(A) Section 242(a)(1) (8
7 U.S.C. 1252(a)(1)) is amended—

8 (i) by striking “(other than an order of re-
9 moval without a hearing pursuant to section
10 235(b)(1))”; and

11 (ii) by striking “and except that the court
12 may not order the taking of additional evidence
13 under section 2347(c) of such title”.

14 (B) Section 242(b)(2) (8 U.S.C. 1252(b)(2)) is
15 amended in the first sentence by striking “judge
16 completed the proceedings” and inserting “pro-
17 ceedings were conducted in whole or in part, or in
18 the judicial circuit in which lies the residence of the
19 petitioner as defined in this Act, but not in more
20 than one judicial circuit”.

21 (C) Section 242(b)(3)(B) (8 U.S.C.
22 1252(b)(3)(B)) is amended—

23 (i) by striking “does not” and inserting
24 “shall”; and

1 (ii) by striking “, unless the court orders
2 otherwise”.

3 (D) Section 242(b)(9) (8 U.S.C. 1252(b)(9)) is
4 amended by striking “any action taken or pro-
5 ceeding brought to remove an alien from the United
6 States” and inserting “a challenge to a final admin-
7 istrative order of removal”.

8 (E) Sections 212(d)(12) (8 U.S.C.
9 1182(d)(12)), 212(h) (8 U.S.C. 1182(h)),
10 237(a)(3)(C)(ii) (8 U.S.C. 1227(a)(3)(C)(ii)), and
11 240B(e) (8 U.S.C. 1229c(e)) are amended by strik-
12 ing the last sentence of each.

13 (F) Section 279 (8 U.S.C. 1329) is amended—

14 (i) by striking “brought by the United
15 States that arise under” and inserting “arising
16 under any”; and

17 (ii) by striking the last sentence.

18 (G) Section 245A(f)(4)(A) (8 U.S.C.
19 1255a(f)(4)(A)) is amended by striking “106” and
20 inserting “242”.

21 (2) APPLICATION OF THE AMENDMENTS.—The
22 amendments made by paragraph (1) shall apply to
23 all cases pending at any stage in any court as of the
24 date of enactment.

1 (c) REPEALS OF TRANSITIONAL CHANGES IN JUDI-
2 CIAL REVIEW.—Subparagraphs (B), (E), (F), and (G) of
3 section 309(c)(4) of the Illegal Immigration Reform and
4 Immigrant Responsibility Act of 1996 (Division C of Pub-
5 lic Law 104–208) are hereby repealed, and such repeal
6 shall apply to all cases pending at any stage in any court
7 as of the date of enactment of this Act and to all cases
8 brought on or after such date.

9 (d) REPEALS OF OTHER CHANGES IN JUDICIAL RE-
10 VIEW.—(1)(A) Section 245A(f)(4) of the Immigration and
11 Nationality Act (8 U.S.C. 1255a(f)(4)) is amended by
12 striking subparagraph (C).

13 (2) The amendment made by subsection (a) shall be
14 effective as if included in the enactment of section 201
15 of the Immigration Reform and Control Act of 1986 (Pub-
16 lic Law 99–603; 100 Stat. 3394) and shall apply to all
17 cases pending at any stage in any court as of the date
18 of enactment of this Act.

19 (e) INSPECTION DETERMINATIONS.—Section
20 235(b)(1) (8 U.S.C. 1225(b)(1)) is amended by striking
21 “without further hearing or review” each of the two places
22 it appears.

23 (f) CONFORMING AMENDMENTS.—

1 (1) The section heading of section 242 (8
2 U.S.C. 1252) is amended by striking “OF ORDERS
3 OF REMOVAL”.

4 (2) The table of contents of the Act is amended
5 by striking the item relating to section 242 and in-
6 serting the following:

“Sec. 242. Judicial review.”.

7 (g) CLARIFICATION OF JUDICIAL REVIEW.—Section
8 242(b) (8 U.S.C. 1252(b)) is amended by adding at the
9 end the following new paragraphs:

10 “(10) JURISDICTION TO REVIEW OTHER THAN
11 A FINAL ADMINISTRATIVE REMOVAL ORDER.—The
12 district courts shall have jurisdiction by habeas cor-
13 pus or otherwise to review all matters not encom-
14 passed within a final administrative order of removal
15 reviewable by petition for review under this section.

16 “(11) IN-CUSTODY HABEAS CORPUS.—Any alien
17 held in custody pursuant to an order of removal may
18 obtain judicial review by habeas corpus
19 proceedings—

20 “(A) of any matter that was not required
21 to have been or could not have been brought by
22 petition for review pursuant to this section; or

23 “(B) if the remedy provided by petition for
24 review pursuant to this section was inad-
25 equate.”.

1 **SEC. 7. DETENTION.**

2 (a) **DETENTION.**—Section 236(c) (8 U.S.C. 1226(c))
3 is amended—

4 (1) in paragraph (1), by striking “Attorney
5 General shall” and inserting “Attorney General
6 may”; and

7 (2) by amending paragraph (2) to read as fol-
8 lows:

9 “(2) **RELEASE.**—The Attorney General shall re-
10 lease any alien described in paragraph (1) if the
11 alien satisfies the Attorney General that the alien
12 will not pose a danger to the safety of other persons
13 or of property and is likely to appear for any sched-
14 uled proceeding. All custody, bond, and parole deter-
15 minations shall be reviewable by an immigration
16 judge and subject to administrative appeal.”.

17 (b) **HABEAS CORPUS REVIEW OF DETENTION.**—Sec-
18 tion 236(e) (8 U.S.C. 1226(e)) is amended to read as fol-
19 lows:

20 “(e) **HABEAS CORPUS CHALLENGE TO DETENTION**
21 **DETERMINATIONS.**—Any person may challenge by a writ
22 of habeas corpus his detention by the Attorney General,
23 including any determination regarding the grant, revoca-
24 tion, denial, or condition of bond or parole.”.

1 (c) DETENTION OF ALIENS NOT SUBJECT TO IMME-
2 DIATE REMOVAL.—Section 241(a) (8 U.S.C. 1231(a)) is
3 amended—

4 (1) by redesignating paragraph (6) as para-
5 graph (6)(A);

6 (2) in paragraph (6)(A) (as redesignated), by
7 inserting “for a reasonable period of time, not to ex-
8 ceed 9 months following the removal period, to allow
9 for ongoing negotiations to effect such removal”
10 after “removal period”; and

11 (3) by adding at the end of paragraph (6)(A)
12 (as redesignated) the following:

13 “(B) Upon conclusion of the removal period
14 and every 90 days thereafter, the Attorney General
15 shall review whether continued detention of the alien
16 is authorized under subsection (a).

17 “(C) Determinations under this subparagraph
18 shall be subject to de nova review by an immigration
19 judge and administrative appeal. In such review, it
20 shall be the Attorney General’s burden to prove that
21 continued detention is authorized under subsection
22 (a).”.

23 (d) LIMITATION.—Section 241 (8 U.S.C. 1231) is
24 amended by adding at the end the following:

1 “(j) Notwithstanding any other provision of this sec-
2 tion, including subsection (a)(2), the Attorney General
3 may not detain an alien who is able to demonstrate to
4 the Attorney General that—

5 “(1) the alien is not a risk to the community
6 and is likely to comply with the order of removal;
7 and

8 “(2) removal of the alien cannot be effectuated
9 within the period specified in section 241(a)(6)(A).
10 The determination by the Attorney General shall be sub-
11 ject to de nova review by an immigration judge and admin-
12 istrative appeal.”.

13 (e) ORDERS OF SUPERVISION.—Section 241(a)(3) (8
14 U.S.C. 1231(a)(3)) is amended by adding at the end the
15 following new sentence: “Such determinations and orders
16 of supervision shall be subject to de nova review by an
17 immigration judge and administrative appeal.”.

18 **SEC. 8. RIGHT TO COUNSEL.**

19 Section 292 (8 U.S.C. 1362) is amended to read as
20 follows: “In any bond, custody, detention, or removal pro-
21 ceedings before the Attorney General and in any appeal
22 proceedings before the Attorney General from any such
23 proceedings, the person concerned shall have the privilege
24 of being represented by such counsel, authorized to prac-
25 tice in such proceedings, as he shall choose. With consent

1 of their clients, counsel may enter appearances limited to
2 bond, custody, or other specific proceedings.”.

3 **SEC. 9. ABSENCES OUTSIDE THE CONTROL OF THE ALIEN.**

4 Section 101(a)(13)(C) (8 U.S.C. 1101(a)(13)(C)) is
5 amended—

6 (1) by amending clause (ii) to read as follows:

7 “(ii) has been absent from the United
8 States for a continuous period in excess of
9 one year unless the alien’s return was im-
10 peded by emergency or extenuating cir-
11 cumstances outside the control of the
12 alien,”; and

13 (2) by striking clauses (iv) and (v).

14 **SEC. 10. APPLICANTS FOR ADMISSION.**

15 (a) INSPECTIONS GENERALLY.—Section 235(a) (8
16 U.S.C. 1225(a)) is amended—

17 (1) by striking paragraph (1); and

18 (2) by redesignating paragraphs (2), (3), (4),
19 and (5) as paragraphs (1), (2), (3), and (4), respec-
20 tively.

21 (b) SCREENINGS.—Section 235(b)(1)(A) (8 U.S.C.
22 1225(b)(1)(A)) is amended by striking clause (iii).

23 **SEC. 11. STATUTORY CONSTRUCTION.**

24 Nothing in this Act may be construed to make any
25 alien ineligible for any relief from removal or other benefit

1 under this Act to which he or she was eligible before enact-
2 ment of this Act.

3 **SEC. 12. REPEALS.**

4 (a) **CHALLENGES TO DEPORTATION ORDERS.**—Sec-
5 tion 276(d) (8 U.S.C. 1326(d)) is repealed and such repeal
6 shall apply to all cases pending at any stage in any court
7 as of the date of enactment of this Act and to all cases
8 brought on or after such date.

9 (b) **COLLATERAL ATTACKS.**—Section 235(b)(1)(D) is
10 repealed, and such repeal shall apply to all cases pending
11 at any stage in any court as of the date of enactment of
12 this Act and to all cases brought on or after such date.

13 **SEC. 13. REMOVAL OF ALIENS WHO ARE NOT PERMANENT**
14 **RESIDENTS AND WHO HAVE NO RELIEF FROM**
15 **REMOVAL.**

16 (a) **ELIGIBILITY FOR RELIEF FROM REMOVAL.**—
17 Section 238(b)(5) (8 U.S.C. 1228(b)(5)) is repealed, and
18 such repeal shall apply to all proceedings pending at any
19 stage as of the date of enactment of this Act and to all
20 cases brought on or after such date.

21 (b) **REQUIREMENTS FOR DETERMINATIONS OF DE-**
22 **PORTABILITY AND ORDERS OF REMOVAL.**—Section
23 238(b)(2) (8 U.S.C. 1228(b)(2)) is amended—

24 (1) by striking “or” at the end of subparagraph
25 (A);

1 (2) by striking the period at the end of sub-
2 paragraph (B) and inserting “; or”; and

3 (3) by adding at the end the following new sub-
4 paragraph:

5 “(C) is not eligible for any relief from re-
6 moval.”.

7 **SEC. 14. REPEAL OF GROUND OF INADMISSIBILITY.**

8 Section 212(a)(9)(B) (8 U.S.C. 1182(a)(9)(B)) is re-
9 pealed.

10 **SEC. 15. REOPENING OF CERTAIN PROCEEDINGS AND PA-**

11 **ROLE OF CERTAIN PREVIOUSLY REMOVED**

12 **ALIENS.**

13 (a) **IN GENERAL.**—The Attorney General shall estab-
14 lish a process by which an alien described in subsection
15 (b) may apply for reopening a proceeding so as to seek
16 relief from exclusion, deportation, or removal under sec-
17 tion 212(c), as such section was in effect prior to the en-
18 actment of the Antiterrorism and Effective Death Penalty
19 Act, or section 240A, as amended by this Act.

20 (b) **ALIEN DESCRIBED.**—An alien referred to in sub-
21 section (a) is an alien who received a final order of exclu-
22 sion, deportation, or removal, or a decision on a petition
23 for review or petition for habeas corpus on or after the
24 effective date of the Antiterrorism and Effective Death
25 Penalty Act and who would have been eligible for relief

1 from exclusion, deportation, or removal under the amend-
2 ments made by this Act.

3 (c) PAROLE.—The Attorney General may exercise the
4 parole authority under section 212(d)(5)(A) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for
6 the purpose of permitting aliens excluded, deported, or re-
7 moved from the United States to participate in the process
8 established under subsection (a), if the alien establishes
9 prima facie eligibility for the relief.

10 (d) JUDICIAL REVIEW.—A judgment regarding the
11 granting or denial of relief under this section shall be sub-
12 ject to judicial review in accordance with the appropriate
13 section of the Immigration and Nationality Act.

14 **SEC. 16. STATUTORY CONSTRUCTION.**

15 In the case of an alien who is eligible for relief under
16 section 212(c) of the Immigration and Nationality Act (as
17 in effect before the enactment of section 440(d) of the
18 Antiterrorism and Effective Death Penalty Act of 1996)
19 (Public Law 104–132; 110 Stat. 1277), nothing in this
20 Act shall be construed to modify such eligibility.

21 **SEC. 17. AUTHORITY OF THE ATTORNEY GENERAL.**

22 Notwithstanding any other provision of law, nothing
23 in this Act shall be construed to diminish the authority
24 of the Attorney General to exercise discretion in appro-
25 priate cases involving urgent humanitarian reasons, a sig-

- 1 nificant public benefit (including ensuring family unity),
- 2 or other sufficiently compelling reasons.

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