

107TH CONGRESS  
1ST SESSION

# S. 955

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

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## IN THE SENATE OF THE UNITED STATES

MAY 24, 2001

Mr. KENNEDY (for himself, Mr. GRAHAM, Mr. LEAHY, Mr. KERRY, Mr. WELLSTONE, Mr. DODD, Mr. INOUE, Mr. DURBIN, Mr. FEINGOLD, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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; TABLE OF**  
4 **CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Immigrant Fairness Restoration Act of 2001”.

7 (b) REFERENCES IN ACT.—Except as otherwise spe-  
8 cifically provided in this Act, whenever in this Act an  
9 amendment or repeal is expressed as an amendment to

1 or a repeal of a provision, the reference shall be deemed  
 2 to be made to the Immigration and Nationality Act (8  
 3 U.S.C. 1101 et seq.).

4 (c) TABLE OF CONTENTS.—The table of contents for  
 5 this Act is as follows:

- Sec. 1. Short title; references in Act; table of contents.
- Sec. 2. Findings.
- Sec. 3. Elimination of retroactivity.
- Sec. 4. Restoration of proportionality to grounds of removal.
- Sec. 5. Restoration of discretionary relief from removal.
- Sec. 6. Cancellation of removal and adjustment of status for certain nonperma-  
 nent residents.
- Sec. 7. Judicial review of certain orders and determinations.
- Sec. 8. Detention.
- Sec. 9. Right to counsel.
- Sec. 10. Absences outside the control of the alien.
- Sec. 11. Applicants for admission.
- Sec. 12. Statutory construction.
- Sec. 13. Repeals.
- Sec. 14. Removal of aliens who are not permanent residents and who have no  
 relief from removal.
- Sec. 15. Repeal of ground of inadmissibility.
- Sec. 16. Reopening of certain proceedings and parole of certain previously re-  
 moved aliens.
- Sec. 17. Statutory construction.
- Sec. 18. Authority of the Attorney General.
- Sec. 19. Treatment of aliens who have made false claims of citizenship or who  
 have unlawfully voted.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

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

12 (2) Current laws punish legal residents out of  
 13 proportion to their crimes. Reform is needed to re-  
 14 store balance to our immigration system. Funda-

1 mental principles of fairness in the application of the  
2 laws, due process, and judicial review must apply to  
3 the foreign born and native born alike.

4 (3) Laws should not be applied retroactively.  
5 Fairness and practicality dictate that changes in  
6 definitions of crimes that make aliens deportable  
7 should only apply to crimes committed after dates of  
8 enactment. Immigration policy should not change  
9 the rules in the middle of the game.

10 (4) Proportionality and discretion should be re-  
11 stored to our Nation's immigration laws. We must  
12 restore the discretion immigration judges previously  
13 had and responsibly exercised to evaluate cases on  
14 an individual basis and grant relief from deportation  
15 to deserving families.

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

22 (6) Our judicial system is one of checks and  
23 balances and nowhere are these protections more im-  
24 perative than in questions of deportation and incar-  
25 ceration which so fundamentally restrict individual

1 liberties. Judicial review of immigration orders and  
2 determinations is necessary to ensure that these  
3 most weighty determinations are not made capri-  
4 ciously or erroneously. Immigrants deserve their day  
5 in court.

6 **SEC. 3. ELIMINATION OF RETROACTIVITY.**

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

10 “(f) APPLICATION OF LAW.—Notwithstanding any  
11 other provision of this section, an alien who committed an  
12 offense that was a ground for deportation or exclusion  
13 prior to April 1, 1997, shall have the law in effect at the  
14 time of the offense apply with respect to any application  
15 for relief from deportation or exclusion on that ground.”.

16 (b) APPLICATION OF AGGRAVATED FELONY DEFINI-  
17 TION.—The last sentence of section 101(a)(43) (8 U.S.C.  
18 1101(a)(43)) is amended to read as follows: “The term  
19 shall not apply to any offense that was not covered by  
20 the term on the date on which the offense occurred.”.

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

24 “(d) Notwithstanding any other provision of this sec-  
25 tion, an alien is not deportable or removable by reason

1 of committing any offense that was not a ground of de-  
2 portability on the date the offense occurred.”.

3 (d) GROUNDS OF INADMISSIBILITY.—Section 212 (8  
4 U.S.C. 1182) is amended—

5 (1) by redesignating subsection (p), as added by  
6 section 1505(f) of Public Law 106–386, as sub-  
7 section (s); and

8 (2) by adding at the end the following new sub-  
9 section:

10 “(t) Any alien who applied for admission to the  
11 United States or adjustment of status to that of an alien  
12 lawfully admitted for permanent residence prior to April  
13 1, 1997, and was inadmissible under subsection  
14 (a)(6)(C)(i), shall be eligible for the relief available (in-  
15 cluding any waiver of inadmissibility) at the time the ap-  
16 plication was filed.”.

17 (e) PROSPECTIVE EFFECTIVE DATES.—

18 (1) ILLEGAL IMMIGRATION REFORM AND IMMI-  
19 GRANT RESPONSIBILITY ACT.—Notwithstanding any  
20 other provision of law, the Illegal Immigration Re-  
21 form and Immigrant Responsibility Act of 1996, and  
22 the amendments made by that Act, shall apply only  
23 to persons seeking admission, or who became deport-  
24 able, on or after April 1, 1997, as the case may be.

1           (2) ANTITERRORISM AND EFFECTIVE DEATH  
2           PENALTY ACT OF 1996.—Notwithstanding any other  
3           provision of law, title IV of the Antiterrorism and  
4           Effective Death Penalty Act of 1996, and the  
5           amendments made by that title, shall apply only to  
6           persons seeking admission, or who become deport-  
7           able, on or after April 24, 1996.

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

13       **SEC. 4. RESTORATION OF PROPORTIONALITY TO GROUNDS**  
14                               **OF REMOVAL.**

15          (a) DEFINITION OF CRIMES INVOLVING MORAL TUR-  
16          PITUDE.—Section     237(a)(2)(A)(i)     (8     U.S.C.  
17          1227(a)(2)(A)(i)) is amended to read as follows:

18                       “(i) CRIMES OF MORAL TURPITUDE.—Any  
19                       alien who is convicted of a crime involving  
20                       moral turpitude (other than a purely political  
21                       offense or an attempt to commit such a crime)  
22                       committed within five years (or 10 years in the  
23                       case of an alien provided lawful permanent resi-  
24                       dence status under section 245(j)) for which the  
25                       alien is sentenced to confinement, or is confined

1           in a prison or correctional institution, for one  
2           year or longer is deportable.”.

3           (b) DEFINITION OF AGGRAVATED FELONY.—Section  
4 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

5           (1) by adding at the end of section 101(a)(43)  
6           the following: “No crime shall be deemed to be an  
7           aggravated felony if the underlying conviction is a  
8           misdemeanor or if the sentence imposed is not in ex-  
9           cess of one year;

10          (2) in subparagraphs (F) and (G), by striking  
11          “at least one year” each place it appears and insert-  
12          ing “is at least five years”;

13          (3) in subparagraphs (J), (R), and (S), by  
14          striking “one year” each place it appears and insert-  
15          ing “five years”;

16          (4) by amending subparagraph (N) (8 U.S.C.  
17          1101(a)(43)(N)) to read as follows:

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

21          (5) in subparagraph (P)(ii) (8 U.S.C.  
22          1101(a)(43)(P)(ii)), by striking “child” and insert-  
23          ing “son or daughter”; and

24          (6) in subparagraph (T), by striking “2 years”  
25          and inserting “5 years”.

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

4 (d) CONVICTION DEFINED.—Section 101(a)(48)(A)  
5 (8 U.S.C. 1101(a)(48)(A)) is amended—

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

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

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

12 “(ii) For purposes of determinations under this Act,  
13 the term ‘conviction’ does not include any Federal, State,  
14 or foreign action to expunge, dismiss, cancel, vacate, dis-  
15 charge, or otherwise remove a guilty plea or other record  
16 of guilt or conviction, or any Federal, State, or foreign  
17 deferred adjudication, adjudication of guilt withheld, order  
18 of probation without entry of judgment, or similar disposi-  
19 tion.”.

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

23 “(B) Any reference to a term of imprisonment or a  
24 sentence with respect to an offense is deemed to include  
25 the period of incarceration or confinement ordered by a



1 court of law excluding any period of the suspension of the  
2 imposition or execution of that imprisonment or sentence  
3 in whole or in part.”.

4 (f) CONFORMING AMENDMENTS.—

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

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

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

11 (C) by redesignating clause (iii) as clause  
12 (ii).

13 (2) GROUND OF DEPORTABILITY.—Section  
14 237(a)(1)(E) (8 U.S.C. 1227(a)(1)(E)) is  
15 amended—

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

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

19 (C) by redesignating clause (iii) as clause  
20 (ii).

21 **SEC. 5. RESTORATION OF DISCRETIONARY RELIEF FROM**  
22 **REMOVAL.**

23 (a) CANCELLATION OF REMOVAL.—Section  
24 240A(a)(3) (8 U.S.C. 1229b(a)(3)) to read as follows:

1           “(3) has not been convicted of an aggravated  
2 felony for which the sentence imposed is five years  
3 or more.”.

4           (b) REPEAL OF RULE FOR TERMINATION OF CON-  
5 TINUOUS PERIOD.—

6           (1) Section 240A(d)(1) (8 U.S.C. 1229b(d)(1))  
7 (8 U.S.C. 1229b(a)) is repealed.

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

10           (A) by redesignating paragraphs (2) and  
11 (3) as paragraphs (1) and (2), respectively; and

12           (B) by inserting before the period at the  
13 end of paragraph (1) (as redesignated) the fol-  
14 lowing: “, unless the alien’s return was impeded  
15 by emergency or extenuating circumstances out-  
16 side the control of the alien”.

17           (c) WAIVER.—Section 212(h) (8 U.S.C. 1182(h)) is  
18 amended—

19           (1) in the text above paragraph (1) of the first  
20 sentence, by striking “offense of simple possession  
21 of 30 grams or less of marijuana” and inserting  
22 “controlled substance offense for which the alien was  
23 not incarcerated for a period exceeding one year”;  
24 and

25           (2) by striking the third and fourth sentences.

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

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

5 “(ii) the alien—

6 “(I) has been convicted by final  
7 judgment of a particularly serious  
8 crime for which the sentence imposed  
9 was an aggregate term of imprison-  
10 ment of five years or more; and

11 “(II) is a danger to the United  
12 States.”; and

13 (2) by striking the third sentence and inserting  
14 at the end the following: “Notwithstanding this sub-  
15 paragraph, an alien shall be eligible for relief under  
16 subparagraph (A) if the Attorney General deter-  
17 mines the alien should not be removed for urgent  
18 humanitarian reasons.”.

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

23 (f) WAIVER OF INADMISSIBILITY UNDER SECTION  
24 212(i).—

1           (1) IN GENERAL.—Section 212(i) (8 U.S.C.  
2           1182(i)) is amended to read as follows:

3           “(i) The Attorney General may, in the discretion of  
4 the Attorney General, waive the application of subsection  
5 (a)(6) (A), (B), (C), or (G) in the case of an immigrant  
6 who is the parent, spouse, son, or daughter of a United  
7 States citizen or of an alien lawfully admitted for perma-  
8 nent residence if it is established to the satisfaction of the  
9 Attorney General that the refusal of admission to the  
10 United States of such immigrant alien would result in  
11 hardship to the alien or to the citizen or lawfully resident  
12 parent, spouse, son, or daughter of such an alien.”.

13           (2) CONFORMING AMENDMENT.—Section  
14           212(a)(6) (8 U.S.C. 1182(a)(6)) is amended by add-  
15           ing at the end the following new subparagraph:

16                   “(H) For provision authorizing waiver of  
17                   certain subparagraphs of this paragraph, see  
18                   subsection (i).”.

19 **SEC. 6. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**  
20                   **STATUS FOR CERTAIN NONPERMANENT RESI-**  
21                   **DENTS.**

22           (a) IN GENERAL.—Section 240A(b)(1) (8 U.S.C.  
23 1229b(b)(1)) is amended to read as follows:

24                   “(1) IN GENERAL.—The Attorney General may  
25                   cancel removal in the case of an alien who is inad-

1       missible or deportable from the United States if the  
2       alien—

3               “(A) has been physically present in the  
4       United States for a continuous period of—

5               “(i) 7 years immediately preceding the  
6       date of application in the case of an  
7       alien—

8               “(I) who is removable on any  
9       ground other than a ground specified  
10      in clause (ii)(I); and

11              “(II) whose deportation would, in  
12      the opinion of the Attorney General,  
13      result in extreme hardship to the alien  
14      or the alien’s spouse, parent, son, or  
15      daughter, who is a citizen of the  
16      United States or an alien lawfully ad-  
17      mitted for permanent residence; or

18              “(ii) 10 years immediately preceding  
19      the date of application in the case of an  
20      alien—

21              “(I) who is removable for convic-  
22      tion of an offense under section  
23      212(a)(2), 237(a)(2), or 237(a)(3);  
24      and

1           “(II) whose deportation would, in  
2           the opinion of the Attorney General,  
3           result in exceptional and extremely  
4           unusual hardship to the alien or the  
5           alien’s spouse, parent, son, or daugh-  
6           ter, who is a citizen of the United  
7           States or an alien lawfully admitted  
8           for permanent residence”; and

9           “(B) has been a person of good moral  
10          character during such period.”.

11          (b) **EFFECTIVE DATE.**—The amendment made by  
12          subsection (a) shall take effect as if included in the enact-  
13          ment of the Illegal Immigration Reform and Immigrant  
14          Responsibility Act of 1996.

15          **SEC. 7. JUDICIAL REVIEW OF CERTAIN ORDERS AND DE-**  
16          **TERMINATIONS.**

17          (a) **REPEALS.**—The following provisions of the Act  
18          are hereby repealed and such repeal shall apply to all cases  
19          pending at any stage in any court as of the date of enact-  
20          ment of this Act and to all cases brought on or after such  
21          date:

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

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

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

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

1           (5) Subsections (e), (f), and (g) of section 242  
2           (8 U.S.C. 1252).

3           (6) Section 240(b)(5)(D) (8 U.S.C.  
4           1229a(b)(5)(D)).

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

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

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

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

10          (b) AMENDMENTS RELATING TO JUDICIAL RE-  
11 VIEW.—

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

14                   (i) by striking “(other than an order of re-  
15                   removal without a hearing pursuant to section  
16                   235(b)(1))”; and

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

20           (B) Section 242(b)(2) (8 U.S.C. 1252(b)(2)) is  
21           amended in the first sentence by striking “judge  
22           completed the proceedings” and inserting “pro-  
23           ceedings were conducted in whole or in part, or in  
24           the judicial circuit in which lies the residence of the

1 petitioner as defined in this Act, but not in more  
2 than one judicial circuit”.

3 (C) Section 242(b)(3)(B) (8 U.S.C.  
4 1252(b)(3)(B)) is amended—

5 (i) by striking “does not” and inserting  
6 “shall”; and

7 (ii) by striking “, unless the court orders  
8 otherwise”.

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

14 (E) Sections 212(d)(12) (8 U.S.C.  
15 1182(d)(12)), 212(h) (8 U.S.C. 1182(h)),  
16 237(a)(3)(C)(ii) (8 U.S.C. 1227(a)(3)(C)(ii)), and  
17 240B(e) (8 U.S.C. 1229c(e)) are amended by strik-  
18 ing the last sentence of each.

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

20 (i) by striking “brought by the United  
21 States that arise under” and inserting “arising  
22 under any”; and

23 (ii) by striking the last sentence.



1           (G) Section 245A(f)(4)(A) (8 U.S.C.  
2           1255a(f)(4)(A)) is amended by striking “106” and  
3           inserting “242”.

4           (2) APPLICATION OF THE AMENDMENTS.—The  
5           amendments made by paragraph (1) shall apply to  
6           all cases pending at any stage in any court as of the  
7           date of enactment.

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

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

20          (2) The amendment made by paragraph (1) shall be  
21          effective as if included in the enactment of section 201  
22          of the Immigration Reform and Control Act of 1986 (Pub-  
23          lic Law 99–603; 100 Stat. 3394) and shall apply to all  
24          cases pending at any stage in any court as of the date  
25          of enactment of this Act.

1 (e) INSPECTION DETERMINATIONS.—Section  
2 235(b)(1) (8 U.S.C. 1225(b)(1)) is amended in subpara-  
3 graphs (A)(i) and (B)(iii) by striking “without further  
4 hearing or review” each place it appears.

5 (f) CONFORMING AMENDMENTS.—

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

9 (2) The table of contents of the Act is amended  
10 by striking the item relating to section 242 and in-  
11 sserting the following:

“Sec. 242. Judicial review.”.

12 (g) CLARIFICATION OF JUDICIAL REVIEW.—Section  
13 242(b) (8 U.S.C. 1252(b)) is amended by adding at the  
14 end the following new paragraphs:

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

21 “(11) IN-CUSTODY HABEAS CORPUS.—Any alien  
22 held in custody pursuant to an order of removal may  
23 obtain judicial review by habeas corpus  
24 proceedings—

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

4           “(B) if the remedy provided by petition for  
5           review pursuant to this section was inad-  
6           equate.”.

7 **SEC. 8. DETENTION.**

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

10           (1) in paragraph (1), by striking “Attorney  
11           General shall” and inserting “Attorney General  
12           may”; and

13           (2) by amending paragraph (2) to read as fol-  
14           lows:

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

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

1       “(e) HABEAS CORPUS CHALLENGE TO DETENTION  
2 DETERMINATIONS.—Any person may challenge by a writ  
3 of habeas corpus his detention by the Attorney General,  
4 including any determination regarding the grant, revoca-  
5 tion, denial, or condition of bond or parole.”.

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

9           (1) by redesignating paragraph (6) as para-  
10 graph (6)(A);

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

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

18           “(B) Upon conclusion of the removal period  
19 and every 90 days thereafter, the Attorney General  
20 shall review whether continued detention of the alien  
21 is authorized under subsection (a).

22           “(C) Determinations under this subparagraph  
23 shall be subject to de novo review by an immigration  
24 judge and administrative appeal. In such review, it  
25 shall be the Attorney General’s burden to prove that

1 continued detention is authorized under subsection  
2 (a).”.

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

5 “(j) LIMITATION.—Notwithstanding any other provi-  
6 sion of this section, including subsection (a)(2), the Attor-  
7 ney General may not detain an alien who is able to dem-  
8 onstrate to the Attorney General that—

9 “(1) the alien is not a risk to the community  
10 and is likely to comply with the order of removal;  
11 and

12 “(2) removal of the alien cannot be effectuated  
13 within the period specified in subsection (a)(6)(A).

14 The determination by the Attorney General shall be sub-  
15 ject to de novo review by an immigration judge and admin-  
16 istrative appeal.”.

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

22 **SEC. 9. RIGHT TO COUNSEL.**

23 Section 292 (8 U.S.C. 1362) is amended to read as  
24 follows:

1       “SEC. 292. In any bond, custody, detention, or re-  
 2       moval proceedings before the Attorney General and in any  
 3       appeal proceedings before the Attorney General from any  
 4       such proceedings, the person concerned shall have the  
 5       privilege of being represented by such counsel, authorized  
 6       to practice in such proceedings, as he shall choose. With  
 7       consent of their clients, counsel may enter appearances  
 8       limited to bond, custody, or other specific proceedings.”.

9       **SEC. 10. ABSENCES OUTSIDE THE CONTROL OF THE ALIEN.**

10       Section 101(a)(13)(C) (8 U.S.C. 1101(a)(13)(C)) is  
 11       amended—

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

13                       “(ii) has been absent from the United  
 14                       States for a continuous period in excess of  
 15                       one year unless the alien’s return was im-  
 16                       peded by emergency or extenuating cir-  
 17                       cumstances outside the control of the  
 18                       alien,”;

19               (2) by inserting “or” at the end of clause (iii);

20               (3) by striking clauses (iv) and (v); and

21               (4) by redesignating clause (vi) as clause (iv).

22       **SEC. 11. APPLICANTS FOR ADMISSION.**

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

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

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

4           (b) SCREENINGS.—Section 235(b)(1)(A) (8 U.S.C.  
5 1225(b)(1)(A)) is amended by striking clause (iii).

6 **SEC. 12. STATUTORY CONSTRUCTION.**

7           Nothing in this Act may be construed to make any  
8 alien ineligible for any relief from removal or other benefit  
9 under this Act to which he or she was eligible before enact-  
10 ment of this Act.

11 **SEC. 13. REPEALS.**

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

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

21 **SEC. 14. REMOVAL OF ALIENS WHO ARE NOT PERMANENT**  
22 **RESIDENTS AND WHO HAVE NO RELIEF FROM**  
23 **REMOVAL.**

24           (a) ELIGIBILITY FOR RELIEF FROM REMOVAL.—  
25 Section 238(b)(5) (8 U.S.C. 1228(b)(5)) is repealed, and

1 such repeal shall apply to all proceedings pending at any  
2 stage as of the date of enactment of this Act and to all  
3 cases brought on or after such date.

4 (b) REQUIREMENTS FOR DETERMINATIONS OF DE-  
5 PORTABILITY AND ORDERS OF REMOVAL.—Section  
6 238(b)(2) (8 U.S.C. 1228(b)(2)) is amended—

7 (1) by striking “or” at the end of subparagraph  
8 (A);

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

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

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

15 **SEC. 15. REPEAL OF GROUND OF INADMISSIBILITY.**

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

18 **SEC. 16. REOPENING OF CERTAIN PROCEEDINGS AND PA-  
19 ROLE OF CERTAIN PREVIOUSLY REMOVED  
20 ALIENS.**

21 (a) IN GENERAL.—The Attorney General shall estab-  
22 lish a process by which an alien described in subsection  
23 (b) may apply for reopening a proceeding so as to seek  
24 relief from exclusion, deportation, or removal under sec-  
25 tion 212(c), as such section was in effect prior to the en-



1 actment of the Antiterrorism and Effective Death Penalty  
2 Act, or section 240A, as amended by this Act.

3 (b) ALIEN DESCRIBED.—An alien referred to in sub-  
4 section (a) is an alien who received a final order of exclu-  
5 sion, deportation, or removal, or a decision on a petition  
6 for review or petition for habeas corpus on or after the  
7 effective date of the Antiterrorism and Effective Death  
8 Penalty Act and who would have been eligible for relief  
9 from exclusion, deportation, or removal under the amend-  
10 ments made by this Act.

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

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

22 **SEC. 17. STATUTORY CONSTRUCTION.**

23 In the case of an alien who is eligible for relief under  
24 section 212(c) of the Immigration and Nationality Act (as  
25 in effect before the enactment of section 440(d) of the

1 Antiterrorism and Effective Death Penalty Act of 1996)  
 2 (Public Law 104–132; 110 Stat. 1277), nothing in this  
 3 Act shall be construed to modify such eligibility.

4 **SEC. 18. AUTHORITY OF THE ATTORNEY GENERAL.**

5 Notwithstanding any other provision of law, nothing  
 6 in this Act shall be construed to diminish the authority  
 7 of the Attorney General to exercise discretion in appro-  
 8 priate cases involving urgent humanitarian reasons, a sig-  
 9 nificant public benefit (including ensuring family unity),  
 10 or other sufficiently compelling reasons.

11 **SEC. 19. TREATMENT OF ALIENS WHO HAVE MADE FALSE**  
 12 **CLAIMS OF CITIZENSHIP OR WHO HAVE UN-**  
 13 **LAWFULLY VOTED.**

14 (a) KNOWLEDGE REQUIREMENT.—

15 (1) MISREPRESENTATIONS.—Sections  
 16 212(a)(6)(C)(ii)(I) (8 U.S.C. 1182(a)(6)(C)(ii)(I))  
 17 and 237(a)(3)(D)(i) (8 U.S.C. 1227(a)(3)(D)(i)) are  
 18 amended—

19 (A) by inserting “knowingly” after “alien  
 20 who” each place it appears; and

21 (B) by inserting “knowingly” after “has”  
 22 each place it appears.

23 (2) UNLAWFUL VOTERS.—Sections  
 24 212(a)(10)(D)(i) (8 U.S.C. 1182(a)(10)(D)(i)) and  
 25 237(a)(6)(A) (8 U.S.C. 1227(a)(6)(A)) are amended

1 by striking “has voted” each place it appears and in-  
2 serting “has knowingly voted”.

3 (b) WAIVERS.—

4 (1) ADMISSIBILITY OF ALIEN UNLAWFUL VOT-  
5 ERS.—Section 212(a)(10)(D) (8 U.S.C.  
6 1182(a)(10)(D)) is amended by adding at the end  
7 the following:

8 “(iii) WAIVER.—The Attorney General  
9 may, in the discretion of the Attorney Gen-  
10 eral, waive the application of clause (i) in  
11 the case of an immigrant who is the par-  
12 ent, spouse, son, or daughter of a United  
13 States citizen or of an alien lawfully admit-  
14 ted for permanent residence if it is estab-  
15 lished to the satisfaction of the Attorney  
16 General that the refusal of admission to  
17 the United States of such immigrant alien  
18 would result in hardship to the alien or to  
19 the citizen or lawfully resident parent,  
20 spouse, son, or daughter of such an  
21 alien.”.

22 (2) DEPORTABILITY OF ALIENS FALSELY  
23 CLAIMING CITIZENSHIP.—Section 237(a)(3)(D) of  
24 the Immigration and Nationality Act (8 U.S.C.

1 1227(a)(3)(D)) is amended by adding at the end the  
2 following:

3 “(iii) WAIVER.—The Attorney General  
4 may, in the discretion of the Attorney Gen-  
5 eral, waive the application of clause (i) in  
6 the case of an immigrant who is the par-  
7 ent, spouse, son, or daughter of a United  
8 States citizen or of an alien lawfully admit-  
9 ted for permanent residence if it is estab-  
10 lished to the satisfaction of the Attorney  
11 General that the removal from the United  
12 States of such immigrant alien would re-  
13 sult in hardship to the alien or to the cit-  
14 izen or lawfully resident parent, spouse,  
15 son, or daughter of such an alien.”.

16 (3) DEPORTABILITY OF ALIEN UNLAWFUL VOT-  
17 ERS.—Section 237(a)(6) of the Immigration and  
18 Nationality Act (8 U.S.C. 1227(a)(6)) is amended  
19 by adding at the end the following:

20 “(C) WAIVER.—The Attorney General  
21 may, in the discretion of the Attorney General,  
22 waive the application of subparagraph (A) in  
23 the case of an immigrant who is the parent,  
24 spouse, son, or daughter of a United States cit-  
25 izen or of an alien lawfully admitted for perma-

1           nent residence if it is established to the satis-  
2           faction of the Attorney General that the re-  
3           moval from the United States of such immi-  
4           grant alien would result in hardship to the alien  
5           or to the citizen or lawfully resident parent,  
6           spouse, son, or daughter of such an alien.”.

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