

108TH CONGRESS
2D SESSION

S. 2443

To reform the judicial review process of orders of removal for purposes
of the Immigration and Nationality Act.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2004

Mr. HATCH (for himself, Mr. KYL, Mr. CORNYN, Mr. SESSIONS, and Mr.
CHAMBLISS) introduced the following bill; which was read twice and re-
ferred to the Committee on the Judiciary

A BILL

To reform the judicial review process of orders of removal
for purposes of the Immigration and Nationality Act.

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 “Fairness in Immigra-
5 tion Litigation Act”.

6 **SEC. 2. JUDICIAL REVIEW OF ORDERS OF REMOVAL.**

7 (a) IN GENERAL.—Section 242 of the Immigration
8 and Nationality Act (8 U.S.C. 1252) is amended—

9 (1) in subsection (a)—

10 (A) in paragraph (2)—

1 (i) in subparagraphs (A), (B), and
2 (C), by inserting “(statutory and nonstatu-
3 tory), including section 2241 of title 28,
4 United States Code, or any other habeas
5 corpus provision, and sections 1361 and
6 1651 of title 28, United States Code” after
7 “Notwithstanding any other provision of
8 law”; and

9 (ii) by adding at the end the fol-
10 lowing:

11 “(D) JUDICIAL REVIEW OF CERTAIN
12 LEGAL CLAIMS.—Nothing in this paragraph
13 shall be construed as precluding consideration
14 by the circuit courts of appeals of constitutional
15 claims or pure questions of law raised upon pe-
16 titions for review filed in accordance with this
17 section. Notwithstanding any other provision of
18 law (statutory and nonstatutory), including sec-
19 tion 2241 of title 28, United States Code, or,
20 except as provided in subsection (e), any other
21 habeas corpus provision, and sections 1361 and
22 1651 of title 28, United States Code, such peti-
23 tions for review shall be the sole and exclusive
24 means of raising any and all claims with respect

1 to orders of removal entered or issued under
2 any provision of this Act.”; and

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

4 “(4) CLAIMS UNDER THE UNITED NATIONS
5 CONVENTION.—Notwithstanding any other provision
6 of law (statutory and nonstatutory), including sec-
7 tion 2241 of title 28, United States Code, or any
8 other habeas corpus provision, and sections 1361
9 and 1651 of title 28, United States Code, a petition
10 for review by the circuit courts of appeals filed in ac-
11 cordance with this section is the sole and exclusive
12 means of judicial review of claims arising under the
13 United Nations Convention Against Torture and
14 Other Forms of Cruel, Inhuman, or Degrading
15 Treatment or Punishment.

16 “(5) EXCLUSIVE MEANS OF REVIEW.—The ju-
17 dicial review specified in this subsection shall be the
18 sole and exclusive means for review by any court of
19 an order of removal entered or issued under any pro-
20 vision of this Act. For purposes of this title, in every
21 provision that limits or eliminates judicial review or
22 jurisdiction to review, the terms ‘judicial review’ and
23 ‘jurisdiction to review’ include habeas corpus review
24 pursuant to section 2241 of title 28, United States
25 Code, or any other habeas corpus provision, sections

1 1361 and 1651 of title 28, United States Code, and
2 review pursuant to any other provision of law.”;

3 (2) in subsection (b)—

4 (A) in paragraph (3)(B), by inserting
5 “pursuant to subsection (f)” after “unless”;
6 and

7 (B) in paragraph (9), by adding at the end
8 the following: “Except as otherwise provided in
9 this subsection, no court shall have jurisdiction,
10 by habeas corpus under section 2241 of title
11 28, United States Code, or any other habeas
12 corpus provision, by section 1361 or 1651 of
13 title 28, United States Code, or by any other
14 provision of law (statutory or nonstatutory), to
15 hear any cause or claim subject to these con-
16 solidation provisions.”;

17 (3) in subsection (f)(2), by inserting “or stay,
18 by temporary or permanent order, including stays
19 pending judicial review,” after “no court shall en-
20 join”; and

21 (4) in subsection (g), by inserting “(statutory
22 and nonstatutory), including section 2241 of title
23 28, United States Code, or any other habeas corpus
24 provision, and sections 1361 and 1651 of title 28,

1 United States Code” after “notwithstanding any
2 other provision of law”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 subsection (a) shall take effect upon the date of enactment
5 of this Act and shall apply to cases in which the final ad-
6 ministrative removal order was issued before, on, or after
7 the date of enactment of this Act.

8 **SEC. 3. CONSOLIDATION OF APPEALS.**

9 (a) IN GENERAL.—Section 242(b)(2) of the Immi-
10 gration and Nationality Act (8 U.S.C. 1252(b)(2)), is
11 amended by striking the first sentence and inserting the
12 following: “The petition for review shall be filed with the
13 court of appeals for the Federal Circuit.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 subsection (a) shall apply to any final agency order that
16 was entered on or after the date of enactment of this Act.

17 **SEC. 4. ADDITIONAL REMOVAL AUTHORITIES.**

18 (a) IN GENERAL.—Section 241(b) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1231(b)) is amended—

20 (1) in paragraph (1)—

21 (A) in each of subparagraphs (A) and (B),
22 by striking the period at the end and inserting
23 “unless, in the opinion of the Secretary of
24 Homeland Security, removing the alien to such

country would be prejudicial to the United States.”; and

(B) by amending subparagraph (C) to read as follows:

“(C) ALTERNATIVE COUNTRIES.—If the alien is not removed to a country designated in subparagraph (A) or (B), the Secretary of Homeland Security shall remove the alien to—

“(i) the country of which the alien is a citizen, subject, or national, where the alien was born, or where the alien has a residence, unless the country physically prevents the alien from entering the country upon the alien’s removal there; or

“(ii) any country whose government will accept the alien into that country.”; and

(2) in paragraph (2)—

(A) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”;

(B) by amending subparagraph (D) to read as follows:

“(D) ALTERNATIVE COUNTRIES.—If the alien is not removed to a country designated

1 under subparagraph (A)(i), the Secretary of
2 Homeland Security shall remove the alien to a
3 country of which the alien is a subject, national,
4 or citizen, where the alien was born, or where
5 the alien has a residence, unless—

6 “(i) such country physically prevents
7 the alien from entering the country upon
8 the alien’s removal there; or

9 “(ii) in the opinion of the Secretary of
10 Homeland Security, removing the alien to
11 the country would be prejudicial to the
12 United States.”; and

13 (C) by amending subparagraph (E)(vii) to
14 read as follows:

15 “(vii) Any country whose government
16 will accept the alien into that country.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 subsection (a) shall take effect on the date of the enact-
19 ment of this Act and shall apply to any deportation, exclu-
20 sion, or removal on or after such date pursuant to any
21 deportation, exclusion, or removal order, regardless of
22 whether such order is administratively final before, on, or
23 after such date.

1 **SEC. 5. BURDEN OF PROOF.**

2 (a) CONDITIONS FOR GRANTING ASYLUM.—Section
3 208(b) of the Immigration and Nationality Act (8 U.S.C.
4 1158(b)) is amended—

5 (1) in paragraph (1), by striking “The Attorney
6 General” and inserting the following:

7 “(A) ELIGIBILITY.—The Secretary of
8 Homeland Security or the Attorney General”;
9 and

10 (2) by adding at the end the following:

11 “(B) BURDEN OF PROOF.—The burden of
12 proof is on the applicant to establish that the
13 applicant is a refugee within the meaning of
14 section 101(a)(42)(A). To establish that the ap-
15 plicant is a refugee within the meaning of this
16 Act, the applicant must establish that race, reli-
17 gion, nationality, membership in a particular
18 social group, or political opinion was or will be
19 the central motive for persecuting the applicant.
20 The testimony of the applicant, only if it is
21 credible, is persuasive, and refers to specific
22 facts that demonstrate that the applicant is a
23 refugee, may be sufficient to sustain such bur-
24 den without corroboration. Where the trier of
25 fact finds that it is reasonable to expect cor-
26 roborating evidence for certain alleged facts

1 pertaining to the specifics of the applicant's
2 claim, such evidence must be provided unless a
3 reasonable explanation is given as to why such
4 information is not provided. The credibility de-
5 termination of the trier of fact may be based,
6 in addition to other factors, on the demeanor,
7 candor, or responsiveness of the applicant or
8 witness, the consistency between the applicant's
9 or witness's written and oral statements, wheth-
10 er or not under oath, made at any time to any
11 officer, agent, or employee of the United States,
12 the internal consistency of each such statement,
13 the consistency of such statements with the
14 country conditions in the country from which
15 the applicant claims asylum, as presented by
16 the Department of State, and any inaccuracies
17 or falsehoods in such statements. These factors
18 may be considered individually or cumula-
19 tively.”.

20 (b) STANDARD OF REVIEW FOR ORDERS OF RE-
21 MOVAL.—Section 242(b)(4) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1252(b)(4)) is amended by adding
23 after subparagraph (D) the following flush language:

24 “No court shall reverse a determination made by an
25 adjudicator with respect to the availability of cor-

1 corroborating evidence as described in section
2 208(b)(1)(B), unless the court finds that a reason-
3 able adjudicator is compelled to conclude that such
4 corroborating evidence is unavailable.”.

5 (c) EFFECTIVE DATE.—The amendment made by
6 subsection (b) shall take effect upon the date of enactment
7 of this Act and shall apply to cases in which the final ad-
8 ministrative removal order was issued before, on, or after
9 the date of enactment of this Act.

10 **SEC. 6. EFFECTIVE DATE.**

11 This Act and the amendments made by this Act shall
12 take effect upon the date of enactment of this Act.

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