

Union Calendar No. 171

112TH CONGRESS
1ST SESSION

H. R. 1932

[Report No. 112-255]

To amend the Immigration and Nationality Act to provide for extensions of detention of certain aliens ordered removed, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2011

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 18, 2011

Additional sponsors: Mr. ROSS of Florida, Mr. ROHRABACHER, Mr. BARTLETT, Mr. ROYCE, Mr. MILLER of Florida, Mr. WESTMORELAND, Mr. SIMPSON, Mr. MARCHANT, Mr. BACHUS, Mrs. MYRICK, Mr. COFFMAN of Colorado, Mr. LANKFORD, Ms. FOXX, Mr. PLATTS, Mr. WOODALL, Mr. GARY G. MILLER of California, Mr. FORBES, Mr. MACK, Mr. MULVANEY, Mr. BROOKS, Mr. MANZULLO, Mr. HERGER, Mr. HUNTER, and Mr. BILBRAY

OCTOBER 18, 2011

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on May 23, 2011]

A BILL

To amend the Immigration and Nationality Act to provide for extensions of detention of certain aliens ordered removed, 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 “Keep Our Communities*
5 *Safe Act of 2011”.*

6 **SEC. 2. DETENTION OF DANGEROUS ALIENS.**

7 *(a) IN GENERAL.—Section 241(a) of the Immigration*
8 *and Nationality Act (8 U.S.C. 1231(a)) is amended—*

9 *(1) by striking out “Attorney General” each*
10 *place it appears, except for the first reference in sub-*
11 *section (a)(4)(B)(i), and inserting “Secretary of*
12 *Homeland Security”;*

13 *(2) in paragraph (1), by amending subpara-*
14 *graph (B) to read as follows:*

15 *“(B) BEGINNING OF PERIOD.—The removal*
16 *period begins on the latest of the following:*

17 *“(i) The date the order of removal be-*
18 *comes administratively final.*

19 *“(ii) If the alien is not in the custody*
20 *of the Secretary on the date the order of re-*
21 *moval becomes administratively final, the*
22 *date the alien is taken into such custody.*

23 *“(iii) If the alien is detained or con-*
24 *fined (except under an immigration proc-*
25 *ess) on the date the order of removal be-*

1 *comes administratively final, the date the*
2 *alien is taken into the custody of the Sec-*
3 *retary, after the alien is released from such*
4 *detention or confinement.”;*

5 *(3) in paragraph (1), by amending subpara-*
6 *graph (C) to read as follows:*

7 “(C) *SUSPENSION OF PERIOD.—*

8 “(i) *EXTENSION.—The removal period*
9 *shall be extended beyond a period of 90*
10 *days and the alien may remain in deten-*
11 *tion during such extended period if—*

12 “(I) *the alien fails or refuses to*
13 *make all reasonable efforts to comply*
14 *with the removal order, or to fully co-*
15 *operate with the Secretary’s efforts to*
16 *establish the alien’s identity and carry*
17 *out the removal order, including mak-*
18 *ing timely application in good faith*
19 *for travel or other documents necessary*
20 *to the alien’s departure or conspires or*
21 *acts to prevent the alien’s removal that*
22 *is subject to an order of removal;*

23 “(II) *a court, the Board of Immi-*
24 *gration Appeals, or an immigration*
25 *judge orders a stay of removal of an*

1 alien who is subject to an administra-
2 tively final order of removal; or

3 “(III) the Secretary transfers cus-
4 tody of the alien pursuant to law to
5 another Federal agency or a State or
6 local government agency in connection
7 with the official duties of such agency.

8 “(ii) RENEWAL.—If the removal period
9 has been extended under clause (C)(i), a
10 new removal period shall be deemed to have
11 begun on the date—

12 “(I) the alien makes all reasonable
13 efforts to comply with the removal
14 order, or to fully cooperate with the
15 Secretary’s efforts to establish the
16 alien’s identity and carry out the re-
17 moval order;

18 “(II) the stay of removal is no
19 longer in effect; or

20 “(III) the alien is returned to the
21 custody of the Secretary.”;

22 (4) in paragraph (3)—

23 (A) by adding after “If the alien does not
24 leave or is not removed within the removal pe-

1 riod” the following: “or is not detained pursuant
2 to paragraph (6) of this subsection”; and

3 (B) by striking subparagraph (D) and in-
4 serting the following:

5 “(D) to obey reasonable restrictions on the
6 alien’s conduct or activities that the Secretary
7 prescribes for the alien, in order to prevent the
8 alien from absconding, for the protection of the
9 community, or for other purposes related to the
10 enforcement of the immigration laws.”;

11 (5) in paragraph (4)(A), by striking “paragraph
12 (2)” and inserting “subparagraph (B)”;

13 (6) by striking paragraph (6) and inserting the
14 following:

15 “(6) *ADDITIONAL RULES FOR DETENTION OR RE-*
16 *LEASE OF CERTAIN ALIENS.—*

17 “(A) *DETENTION REVIEW PROCESS FOR CO-*
18 *OPERATIVE ALIENS ESTABLISHED.—For an alien*
19 *who is not otherwise subject to mandatory deten-*
20 *tion, who has made all reasonable efforts to com-*
21 *ply with a removal order and to cooperate fully*
22 *with the Secretary of Homeland Security’s ef-*
23 *forts to establish the alien’s identity and carry*
24 *out the removal order, including making timely*
25 *application in good faith for travel or other doc-*

1 *uments necessary to the alien’s departure, and*
2 *who has not conspired or acted to prevent re-*
3 *moval, the Secretary shall establish an adminis-*
4 *trative review process to determine whether the*
5 *alien should be detained or released on condi-*
6 *tions. The Secretary shall make a determination*
7 *whether to release an alien after the removal pe-*
8 *riod in accordance with subparagraph (B). The*
9 *determination shall include consideration of any*
10 *evidence submitted by the alien, and may in-*
11 *clude consideration of any other evidence, includ-*
12 *ing any information or assistance provided by*
13 *the Secretary of State or other Federal official*
14 *and any other information available to the Sec-*
15 *retary of Homeland Security pertaining to the*
16 *ability to remove the alien.*

17 *“(B) AUTHORITY TO DETAIN BEYOND RE-*
18 *MOVAL PERIOD.—*

19 *“(i) IN GENERAL.—The Secretary of*
20 *Homeland Security, in the exercise of the*
21 *Secretary’s discretion, may continue to de-*
22 *tain an alien for 90 days beyond the re-*
23 *moval period (including any extension of*
24 *the removal period as provided in para-*
25 *graph (1)(C)).*

1 “(ii) *SPECIFIC CIRCUMSTANCES.*—*The*
2 *Secretary of Homeland Security, in the ex-*
3 *ercise of the Secretary’s discretion, may*
4 *continue to detain an alien beyond the 90*
5 *days authorized in clause (i)—*

6 “(I) *until the alien is removed, if*
7 *the Secretary determines that there is a*
8 *significant likelihood that the alien—*

9 “(aa) *will be removed in the*
10 *reasonably foreseeable future; or*

11 “(bb) *would be removed in*
12 *the reasonably foreseeable future,*
13 *or would have been removed, but*
14 *for the alien’s failure or refusal to*
15 *make all reasonable efforts to com-*
16 *ply with the removal order, or to*
17 *cooperate fully with the Sec-*
18 *retary’s efforts to establish the*
19 *alien’s identity and carry out the*
20 *removal order, including making*
21 *timely application in good faith*
22 *for travel or other documents nec-*
23 *essary to the alien’s departure, or*
24 *conspires or acts to prevent re-*
25 *moval;*

1 “(II) until the alien is removed, if
2 the Secretary of Homeland Security
3 certifies in writing—

4 “(aa) in consultation with
5 the Secretary of Health and
6 Human Services, that the alien
7 has a highly contagious disease
8 that poses a threat to public safe-
9 ty;

10 “(bb) after receipt of a writ-
11 ten recommendation from the Sec-
12 retary of State, that release of the
13 alien is likely to have serious ad-
14 verse foreign policy consequences
15 for the United States;

16 “(cc) based on information
17 available to the Secretary of
18 Homeland Security (including
19 classified, sensitive, or national
20 security information, and without
21 regard to the grounds upon which
22 the alien was ordered removed),
23 that there is reason to believe that
24 the release of the alien would

1 *threaten the national security of*
2 *the United States; or*

3 *“(dd) that the release of the*
4 *alien will threaten the safety of*
5 *the community or any person,*
6 *conditions of release cannot rea-*
7 *sonably be expected to ensure the*
8 *safety of the community or any*
9 *person, and either (AA) the alien*
10 *has been convicted of one or more*
11 *aggravated felonies (as defined in*
12 *section 101(a)(43)(A)) or of one or*
13 *more crimes identified by the Sec-*
14 *retary of Homeland Security by*
15 *regulation, or of one or more at-*
16 *tempts or conspiracies to commit*
17 *any such aggravated felonies or*
18 *such identified crimes, if the ag-*
19 *gregate term of imprisonment for*
20 *such attempts or conspiracies is*
21 *at least 5 years; or (BB) the alien*
22 *has committed one or more crimes*
23 *of violence (as defined in section*
24 *16 of title 18, United States Code,*
25 *but not including a purely polit-*

1 *ical offense) and, because of a*
2 *mental condition or personality*
3 *disorder and behavior associated*
4 *with that condition or disorder,*
5 *the alien is likely to engage in*
6 *acts of violence in the future; or*

7 *“(ee) that the release of the*
8 *alien will threaten the safety of*
9 *the community or any person,*
10 *conditions of release cannot rea-*
11 *sonably be expected to ensure the*
12 *safety of the community or any*
13 *person, and the alien has been*
14 *convicted of at least one aggra-*
15 *vated felony (as defined in section*
16 *101(a)(43)); or*

17 *“(III) pending a certification*
18 *under subclause (II), so long as the*
19 *Secretary of Homeland Security has*
20 *initiated the administrative review*
21 *process not later than 30 days after the*
22 *expiration of the removal period (in-*
23 *cluding any extension of the removal*
24 *period, as provided in paragraph*
25 *(1)(C)).*

1 “(C) *RENEWAL AND DELEGATION OF CER-*
2 *TIFICATION.*—

3 “(i) *RENEWAL.*—*The Secretary of*
4 *Homeland Security may renew a certifi-*
5 *cation under subparagraph (B)(ii)(II) every*
6 *6 months, after providing an opportunity*
7 *for the alien to request reconsideration of*
8 *the certification and to submit documents or*
9 *other evidence in support of that request. If*
10 *the Secretary does not renew a certification,*
11 *the Secretary may not continue to detain*
12 *the alien under subparagraph (B)(ii)(II).*

13 “(ii) *DELEGATION.*—*Notwithstanding*
14 *section 103, the Secretary of Homeland Se-*
15 *curity may not delegate the authority to*
16 *make or renew a certification described in*
17 *item (bb), (cc), or (ee) of subparagraph*
18 *(B)(ii)(II) below the level of the Assistant*
19 *Secretary for Immigration and Customs*
20 *Enforcement.*

21 “(iii) *HEARING.*—*The Secretary of*
22 *Homeland Security may request that the*
23 *Attorney General or the Attorney General’s*
24 *designee provide for a hearing to make the*

1 *determination described in item (dd)(BB) of*
2 *subparagraph (B)(ii)(II).*

3 “(D) *RELEASE ON CONDITIONS.*—*If it is de-*
4 *termined that an alien should be released from*
5 *detention by a Federal court, the Board of Immi-*
6 *gration Appeals, or if an immigration judge or-*
7 *ders a stay of removal, the Secretary of Home-*
8 *land Security, in the exercise of the Secretary’s*
9 *discretion, may impose conditions on release as*
10 *provided in paragraph (3).*

11 “(E) *REDETENTION.*—*The Secretary of*
12 *Homeland Security, in the exercise of the Sec-*
13 *retary’s discretion, without any limitations other*
14 *than those specified in this section, may again*
15 *detain any alien subject to a final removal order*
16 *who is released from custody, if removal becomes*
17 *likely in the reasonably foreseeable future, the*
18 *alien fails to comply with the conditions of re-*
19 *lease, or to continue to satisfy the conditions de-*
20 *scribed in subparagraph (A), or if, upon recon-*
21 *sideration, the Secretary determines that the*
22 *alien can be detained under subparagraph (B).*
23 *This section shall apply to any alien returned to*
24 *custody pursuant to this subparagraph, as if the*

1 *removal period terminated on the day of the re-*
2 *detention.”; and*

3 *(7) by inserting after paragraph (7) the fol-*
4 *lowing:*

5 “(8) *JUDICIAL REVIEW.*—*Without regard to the*
6 *place of confinement, judicial review of any action or*
7 *decision pursuant to this section shall be available ex-*
8 *clusively in habeas corpus proceedings instituted in*
9 *the United States District Court for the District of*
10 *Columbia, and only if the alien has exhausted all ad-*
11 *ministrative remedies (statutory and regulatory)*
12 *available to the alien as of right.”.*

13 *(b) DETENTION OF ALIENS DURING REMOVAL PRO-*
14 *CEEDINGS.—*

15 *(1) CLERICAL AMENDMENT.—(A) Sections 235*
16 *and 236 of the Immigration and Nationality Act (8*
17 *U.S.C. 1225 and 1226) are amended by striking “At-*
18 *torney General” each place it appears (except in the*
19 *second place that term appears in section 236(a)) and*
20 *inserting “Secretary of Homeland Security”.*

21 *(B) Section 236(a) of the Immigration and Na-*
22 *tionality Act (8 U.S.C. 1226(a)) is amended by in-*
23 *serting “the Secretary of Homeland Security or” be-*
24 *fore “the Attorney General—”.*

1 (C) *Section 236(e) of the Immigration and Na-*
2 *tionality Act (8 U.S.C. 1226(e)) is amended by strik-*
3 *ing “Attorney General’s” and inserting “Secretary of*
4 *Homeland Security’s”.*

5 (2) *LENGTH OF DETENTION OF CERTAIN ALIENS;*
6 *VENUE FOR CERTAIN ACTIONS.—Section 235 of the*
7 *Immigration and Nationality Act (8 U.S.C. 1225) is*
8 *amended by adding at the end the following:*

9 “(e) *LENGTH OF DETENTION.—*

10 *“(1) Notwithstanding any other provision of this*
11 *section, an alien may be detained under this section,*
12 *without limitation, until the alien is subject to an*
13 *final order of removal.*

14 *“(2) The length of detention under this section*
15 *shall not affect any detention under section 241.*

16 “(f) *JUDICIAL REVIEW.—Without regard to the place*
17 *of confinement, judicial review of any action or decision*
18 *made pursuant to subsection (e) shall be available exclu-*
19 *sively in a habeas corpus proceeding instituted in the*
20 *United States District Court for the District of Columbia*
21 *and only if the alien has exhausted all administrative rem-*
22 *edies (statutory and nonstatutory) available to the alien as*
23 *of right.”.*

24 (3) *VENUE FOR CERTAIN ACTIONS SEEKING JUDI-*
25 *CIAL REVIEW OF LENGTH OF DETENTION.—Section*

1 236(e) of the Immigration and Nationality Act (8
2 U.S.C. 1226(e)) is amended by adding the following
3 at the end: “Without regard to the place of confine-
4 ment, judicial review of any action or decision made
5 pursuant to subsection (f) shall be available exclu-
6 sively in a habeas corpus proceeding instituted in the
7 United States District Court for the District of Co-
8 lumbia and only if the alien has exhausted all admin-
9 istrative remedies (statutory and nonstatutory) avail-
10 able to the alien as of right.”.

11 (4) *LENGTH OF DETENTION.*—Section 236 of the
12 Immigration and Nationality Act (8 U.S.C. 1226) is
13 amended by adding at the end the following sub-
14 section:

15 “(f) *LENGTH OF DETENTION.*—

16 “(1) Notwithstanding any other provision of this
17 section, an alien may be detained under this section
18 for any period, without limitation, until the alien is
19 subject to a final order of removal.

20 “(2) The length of detention under this section
21 shall not affect detention under section 241 of this
22 Act.”.

23 (5) *DETENTION OF CRIMINAL ALIENS.*—Section
24 236(c)(1) of the Immigration and Nationality Act (8

1 *U.S.C. 1226(c)(1)) is amended, in the matter fol-*
2 *lowing subparagraph (D) to read as follows:*

3 *“any time after the alien is released, without regard*
4 *to whether an alien is released related to any activity,*
5 *offense, or conviction described in this paragraph; to*
6 *whether the alien is released on parole, supervised re-*
7 *lease, or probation; or to whether the alien may be ar-*
8 *rested or imprisoned again for the same offense. If the*
9 *activity described in this paragraph does not result in*
10 *the alien being taken into custody by any person*
11 *other than the Secretary, then when the alien is*
12 *brought to the attention of the Secretary or when the*
13 *Secretary determines it is practical to take such alien*
14 *into custody, the Secretary shall take such alien into*
15 *custody.”.*

16 (6) *ADMINISTRATIVE REVIEW.*—*Section 236 of*
17 *the Immigration and Nationality Act (8 U.S.C. 1226)*
18 *is amended by adding at the end the following sub-*
19 *section:*

20 *“(g) ADMINISTRATIVE REVIEW.—*

21 *“(1) The Attorney General’s review of the Sec-*
22 *retary’s custody determinations under section 236(a)*
23 *shall be limited to whether the alien may be detained,*
24 *released on bond (of at least \$1,500 with security ap-*
25 *proved by the Secretary), or released with no bond.*

1 “(2) *The Attorney General’s review of the Sec-*
2 *retary’s custody determinations for the following*
3 *classes of aliens:*

4 “(A) *Aliens in exclusion proceedings.*

5 “(B) *Arriving aliens in removal pro-*
6 *ceedings, including aliens paroled after arrival*
7 *pursuant to section 212(d)(5).*

8 “(C) *Aliens described in sections 212(a)(3)*
9 *and 237(a)(4).*

10 “(D) *Aliens described in section 236(c).*

11 “(E) *Aliens in deportation proceedings sub-*
12 *ject to section 242(a)(2) of the Act (as in effect*
13 *prior to April 1, 1997, and as amended by sec-*
14 *tion 440(c) of Public Law 104–132); is limited*
15 *to a determination of whether the alien is prop-*
16 *erly included in such category.”.*

17 (7) *CLERICAL AMENDMENTS.—(A) Section*
18 *236(a)(2)(B) of the Immigration and Nationality Act*
19 *(8 U.S.C. 1226(a)(2)(B)) is amended by striking out*
20 *“conditional parole” and inserting in lieu thereof “re-*
21 *cognizance”.*

22 (B) *Section 236(b) of the Immigration and Na-*
23 *tionality Act (8 U.S.C. 1226(b)) is amended by strik-*
24 *ing “parole” and inserting “recognizance”.*

1 (c) *SEVERABILITY.*—*If any of the provisions of this Act*
2 *or any amendment by this Act, or the application of any*
3 *such provision to any person or circumstance, is held to*
4 *be invalid for any reason, the remainder of this Act and*
5 *of amendments made by this Act, and the application of*
6 *the provisions and of the amendments made by this Act to*
7 *any other person or circumstance shall not be affected by*
8 *such holding.*

9 (d) *EFFECTIVE DATES.*—

10 (1) *The amendments made by subsection (a)*
11 *shall take effect upon the date of enactment of this*
12 *Act, and section 241 of the Immigration and Nation-*
13 *ality Act, as so amended, shall in addition apply*
14 *to—*

15 (A) *all aliens subject to a final administra-*
16 *tive removal, deportation, or exclusion order that*
17 *was issued before, on, or after the date of enact-*
18 *ment of this Act; and*

19 (B) *acts and conditions occurring or exist-*
20 *ing before, on, or after the date of enactment of*
21 *this Act.*

22 (2) *The amendments made by subsection (b)*
23 *shall take effect upon the date of enactment of this*
24 *Act, and sections 235 and 236 of the Immigration*
25 *and Nationality Act, as so amended, shall in addition*

1 *apply to any alien in detention under provisions of*
2 *such sections on or after the date of enactment of this*
3 *Act.*

4 **SEC. 3. SENSE OF THE CONGRESS.**

5 *It is the sense of the Congress that—*

6 *(1) this Act should ensure that Constitutional*
7 *rights are upheld and protected; and*

8 *(2) it is the intention of the Congress to uphold*
9 *the Constitutional principles of due process and that*
10 *due process of the law is a right afforded to everyone*
11 *in the United States.*

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