

113TH CONGRESS
1ST SESSION

H. R. 1901

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 9, 2013

Mr. SMITH of Texas (for himself and Mr. GOWDY) introduced the following bill; which was referred to the Committee on the Judiciary

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 Commu-
5 nities Safe Act of 2013”.

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

7 (a) IN GENERAL.—Section 241(a) of the Immigra-
8 tion 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

1 subsection (a)(4)(B)(i), and inserting “Secretary of
2 Homeland Security”;

3 (2) in paragraph (1), by amending subpara-
4 graph (B) to read as follows:

5 “(B) BEGINNING OF PERIOD.—The re-
6 moval period begins on the latest of the fol-
7 lowing:

8 “(i) The date the order of removal be-
9 comes administratively final.

10 “(ii) If the alien is not in the custody
11 of the Secretary on the date the order of
12 removal becomes administratively final, the
13 date the alien is taken into such custody.

14 “(iii) If the alien is detained or con-
15 fined (except under an immigration proc-
16 ess) on the date the order of removal be-
17 comes administratively final, the date the
18 alien is taken into the custody of the Sec-
19 retary, after the alien is released from such
20 detention or confinement.”;

21 (3) in paragraph (1), by amending subpara-
22 graph (C) to read as follows:

23 “(C) SUSPENSION OF PERIOD.—

24 “(i) EXTENSION.—The removal period
25 shall be extended beyond a period of 90

1 days and the Secretary may, in the Sec-
2 retary's sole discretion, keep the alien in
3 detention during such extended period if—

4 “(I) the alien fails or refuses to
5 make all reasonable efforts to comply
6 with the removal order, or to fully co-
7 operate with the Secretary's efforts to
8 establish the alien's identity and carry
9 out the removal order, including mak-
10 ing timely application in good faith
11 for travel or other documents nec-
12 essary to the alien's departure or con-
13 spires or acts to prevent the alien's
14 removal that is subject to an order of
15 removal;

16 “(II) a court, the Board of Immi-
17 gration Appeals, or an immigration
18 judge orders a stay of removal of an
19 alien who is subject to an administra-
20 tively final order of removal;

21 “(III) the Secretary transfers
22 custody of the alien pursuant to law
23 to another Federal agency or a State
24 or local government agency in connec-

tion with the official duties of such agency; or

“(IV) a court or the Board of Immigration Appeals orders a remand to an immigration judge or the Board of Immigration Appeals, during the time period when the case is pending a decision on remand (with the removal period beginning anew on the date that the alien is ordered removed on remand).

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

“(I) the alien makes all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary’s efforts to establish the alien’s identity and carry out the removal order;

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

“(III) the alien is returned to the custody of the Secretary.

1 “(iii) MANDATORY DETENTION FOR
2 CERTAIN ALIENS.—In the case of an alien
3 described in subparagraphs (A) through
4 (D) of section 236(c)(1), the Secretary
5 shall keep that alien in detention during
6 the extended period described in clause (i).

7 “(iv) SOLE FORM OF RELIEF.—An
8 alien may seek relief from detention under
9 this subparagraph only by filing an appli-
10 cation for a writ of habeas corpus in ac-
11 cordance with chapter 153 of title 28,
12 United States Code. No alien whose period
13 of detention is extended under this sub-
14 paragraph shall have the right to seek re-
15 lease on bond.”;

16 (4) in paragraph (3)—

17 (A) by adding after “If the alien does not
18 leave or is not removed within the removal pe-
19 riod” the following: “or is not detained pursu-
20 ant to paragraph (6) of this subsection”; and

21 (B) by striking subparagraph (D) and in-
22 serting the following:

23 “(D) to obey reasonable restrictions on the
24 alien’s conduct or activities that the Secretary
25 prescribes for the alien, in order to prevent the

1 alien from absconding, for the protection of the
2 community, or for other purposes related to the
3 enforcement of the immigration laws.”;

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

6 (6) by striking paragraph (6) and inserting the
7 following:

8 “(6) ADDITIONAL RULES FOR DETENTION OR
9 RELEASE OF CERTAIN ALIENS.—

10 “(A) DETENTION REVIEW PROCESS FOR
11 COOPERATIVE ALIENS ESTABLISHED.—For an
12 alien who is not otherwise subject to mandatory
13 detention, who has made all reasonable efforts
14 to comply with a removal order and to cooper-
15 ate fully with the Secretary of Homeland Secu-
16 rity’s efforts to establish the alien’s identity and
17 carry out the removal order, including making
18 timely application in good faith for travel or
19 other documents necessary to the alien’s depar-
20 ture, and who has not conspired or acted to
21 prevent removal, the Secretary shall establish
22 an administrative review process to determine
23 whether the alien should be detained or released
24 on conditions. The Secretary shall make a de-
25 termination whether to release an alien after

1 the removal period in accordance with subpara-
2 graph (B). The determination shall include con-
3 sideration of any evidence submitted by the
4 alien, and may include consideration of any
5 other evidence, including any information or as-
6 sistance provided by the Secretary of State or
7 other Federal official and any other information
8 available to the Secretary of Homeland Security
9 pertaining to the ability to remove the alien.

10 “(B) AUTHORITY TO DETAIN BEYOND RE-
11 MOVAL PERIOD.—

12 “(i) IN GENERAL.—The Secretary of
13 Homeland Security, in the exercise of the
14 Secretary’s sole discretion, may continue to
15 detain an alien for 90 days beyond the re-
16 moval period (including any extension of
17 the removal period as provided in para-
18 graph (1)(C)). An alien whose detention is
19 extended under this subparagraph shall
20 have no right to seek release on bond.

21 “(ii) SPECIFIC CIRCUMSTANCES.—The
22 Secretary of Homeland Security, in the ex-
23 ercise of the Secretary’s sole discretion,
24 may continue to detain an alien beyond the
25 90 days authorized in clause (i)—

1 “(I) until the alien is removed, if
2 the Secretary, in the Secretary’s sole
3 discretion, determines that there is a
4 significant likelihood that the alien—

5 “(aa) will be removed in the
6 reasonably foreseeable future; or

7 “(bb) would be removed in
8 the reasonably foreseeable future,
9 or would have been removed, but
10 for the alien’s failure or refusal
11 to make all reasonable efforts to
12 comply with the removal order,
13 or to cooperate fully with the
14 Secretary’s efforts to establish
15 the alien’s identity and carry out
16 the removal order, including
17 making timely application in
18 good faith for travel or other doc-
19 uments necessary to the alien’s
20 departure, or conspires or acts to
21 prevent removal;

22 “(II) until the alien is removed,
23 if the Secretary of Homeland Security
24 certifies in writing—

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

7 “(bb) after receipt of a writ-
8 ten recommendation from the
9 Secretary of State, that release
10 of the alien is likely to have seri-
11 ous adverse foreign policy con-
12 sequences for the United States;

13 “(cc) based on information
14 available to the Secretary of
15 Homeland Security (including
16 classified, sensitive, or national
17 security information, and without
18 regard to the grounds upon
19 which the alien was ordered re-
20 moved), that there is reason to
21 believe that the release of the
22 alien would threaten the national
23 security of the United States; or

24 “(dd) that the release of the
25 alien will threaten the safety of

1 the community or any person,
2 conditions of release cannot rea-
3 sonably be expected to ensure the
4 safety of the community or any
5 person, and either (AA) the alien
6 has been convicted of one or
7 more aggravated felonies (as de-
8 fined in section 101(a)(43)(A))
9 or of one or more crimes identi-
10 fied by the Secretary of Home-
11 land Security by regulation, or of
12 one or more attempts or conspir-
13 acies to commit any such aggra-
14 vated felonies or such identified
15 crimes, if the aggregate term of
16 imprisonment for such attempts
17 or conspiracies is at least 5
18 years; or (BB) the alien has com-
19 mitted one or more crimes of vio-
20 lence (as defined in section 16 of
21 title 18, United States Code, but
22 not including a purely political
23 offense) and, because of a mental
24 condition or personality disorder
25 and behavior associated with that

1 condition or disorder, the alien is
2 likely to engage in acts of vio-
3 lence in the future; or

4 “(III) pending a certification
5 under subclause (II), so long as the
6 Secretary of Homeland Security has
7 initiated the administrative review
8 process not later than 30 days after
9 the expiration of the removal period
10 (including any extension of the re-
11 moval period, as provided in para-
12 graph (1)(C)).

13 “(iii) NO RIGHT TO BOND HEARING.—
14 An alien whose detention is extended under
15 this subparagraph shall have no right to
16 seek release on bond, including by reason
17 of a certification under clause (ii)(II).

18 “(C) RENEWAL AND DELEGATION OF CER-
19 TIFICATION.—

20 “(i) RENEWAL.—The Secretary of
21 Homeland Security may renew a certifi-
22 cation under subparagraph (B)(ii)(II)
23 every 6 months, after providing an oppor-
24 tunity for the alien to request reconsider-
25 ation of the certification and to submit

1 documents or other evidence in support of
2 that request. If the Secretary does not
3 renew a certification, the Secretary may
4 not continue to detain the alien under sub-
5 paragraph (B)(ii)(II).

6 “(ii) DELEGATION.—Notwithstanding
7 section 103, the Secretary of Homeland
8 Security may not delegate the authority to
9 make or renew a certification described in
10 item (bb), (cc), or (dd) of subparagraph
11 (B)(ii)(II) below the level of the Assistant
12 Secretary for Immigration and Customs
13 Enforcement.

14 “(iii) HEARING.—The Secretary of
15 Homeland Security may request that the
16 Attorney General or the Attorney General’s
17 designee provide for a hearing to make the
18 determination described in item (dd)(BB)
19 of subparagraph (B)(ii)(II).

20 “(D) RELEASE ON CONDITIONS.—If it is
21 determined that an alien should be released
22 from detention by a Federal court, the Board of
23 Immigration Appeals, or if an immigration
24 judge orders a stay of removal, the Secretary of
25 Homeland Security, in the exercise of the Sec-

1 retary's discretion, may impose conditions on
2 release as provided in paragraph (3).

3 “(E) REDETENTION.—The Secretary of
4 Homeland Security, in the exercise of the Sec-
5 retary's discretion, without any limitations
6 other than those specified in this section, may
7 again detain any alien subject to a final re-
8 moval order who is released from custody, if re-
9 moval becomes likely in the reasonably foresee-
10 able future, the alien fails to comply with the
11 conditions of release, or to continue to satisfy
12 the conditions described in subparagraph (A),
13 or if, upon reconsideration, the Secretary, in
14 the Secretary's sole discretion, determines that
15 the alien can be detained under subparagraph
16 (B). This section shall apply to any alien re-
17 turned to custody pursuant to this subpara-
18 graph, as if the removal period terminated on
19 the day of the redetention.

20 “(F) REVIEW OF DETERMINATIONS BY
21 SECRETARY.—A determination by the Secretary
22 under this paragraph shall not be subject to re-
23 view by any other agency.”.

24 (b) DETENTION OF ALIENS DURING REMOVAL PRO-
25 CEEDINGS.—

1 (1) CLERICAL AMENDMENT.—(A) Section 236
2 of the Immigration and Nationality Act (8 U.S.C.
3 1226) is amended by striking “Attorney General”
4 each place it appears (except in the second place
5 that term appears in section 236(a)) and inserting
6 “Secretary of Homeland Security”.

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

11 (C) Section 236(e) of the Immigration and Na-
12 tionality Act (8 U.S.C. 1226(e)) is amended by
13 striking “Attorney General’s” and inserting “Sec-
14 retary of Homeland Security’s”.

15 (2) LENGTH OF DETENTION.—Section 236 of
16 the Immigration and Nationality Act (8 U.S.C.
17 1226) is amended by adding at the end the following
18 subsection:

19 “(f) LENGTH OF DETENTION.—

20 “(1) Notwithstanding any other provision of
21 this section, an alien may be detained under this
22 section for any period, without limitation, except as
23 provided in subsection (h), until the alien is subject
24 to a final order of removal.

1 “(2) The length of detention under this section
2 shall not affect detention under section 241 of this
3 Act.”.

4 (3) DETENTION OF CRIMINAL ALIENS.—Section
5 236(c)(1) of the Immigration and Nationality Act (8
6 U.S.C. 1226(c)(1)) is amended, in the matter fol-
7 lowing subparagraph (D) to read as follows:

8 “any time after the alien is released, without regard
9 to whether an alien is released related to any activ-
10 ity, offense, or conviction described in this para-
11 graph; to whether the alien is released on parole, su-
12 pervised release, or probation; or to whether the
13 alien may be arrested or imprisoned again for the
14 same offense. If the activity described in this para-
15 graph does not result in the alien being taken into
16 custody by any person other than the Secretary,
17 then when the alien is brought to the attention of
18 the Secretary or when the Secretary determines it is
19 practical to take such alien into custody, the Sec-
20 retary shall take such alien into custody.”.

21 (4) ADMINISTRATIVE REVIEW.—Section 236 of
22 the Immigration and Nationality Act (8 U.S.C.
23 1226) is amended by adding at the end the following
24 subsection:

25 “(g) ADMINISTRATIVE REVIEW.—

1 “(1) The Attorney General’s review of the Sec-
2 retary’s custody determinations under section 236(a)
3 shall be limited to whether the alien may be de-
4 tained, released on bond (of at least \$1,500 with se-
5 curity approved by the Secretary), or released with
6 no bond.

7 “(2) The Attorney General’s review of the Sec-
8 retary’s custody determinations for the following
9 classes of aliens:

10 “(A) Aliens in exclusion proceedings.

11 “(B) Aliens described in sections 212(a)(3)
12 and 237(a)(4).

13 “(C) Aliens described in section 236(c).

14 “(D) Aliens in deportation proceedings
15 subject to section 242(a)(2) of the Act (as in
16 effect prior to April 1, 1997, and as amended
17 by section 440(c) of Public Law 104–132); is
18 limited to a determination of whether the alien
19 is properly included in such category.

20 “(h) RELEASE ON BOND.—

21 “(1) IN GENERAL.—An alien detained under
22 subsection (a) may seek release on bond. No bond
23 may be granted except to an alien who establishes
24 by clear and convincing evidence that the alien is not

1 a flight risk or a risk to another person or the com-
2 munity.

3 “(2) CERTAIN ALIENS INELIGIBLE.—No alien
4 detained under subsection (c) may seek release on
5 bond.”.

6 (5) CLERICAL AMENDMENTS.—(A) Section
7 236(a)(2)(B) of the Immigration and Nationality
8 Act (8 U.S.C. 1226(a)(2)(B)) is amended by strik-
9 ing out “conditional parole” and inserting in lieu
10 thereof “recognizance”.

11 (B) Section 236(b) of the Immigration and Na-
12 tionality Act (8 U.S.C. 1226(b)) is amended by
13 striking “parole” and inserting “recognizance”.

14 (c) SEVERABILITY.—If any of the provisions of this
15 Act or any amendment by this Act, or the application of
16 any such provision to any person or circumstance, is held
17 to be invalid for any reason, the remainder of this Act
18 and of amendments made by this Act, and the application
19 of the provisions and of the amendments made by this Act
20 to any other person or circumstance shall not be affected
21 by such holding.

22 (d) EFFECTIVE DATES.—

23 (1) The amendments made by subsection (a)
24 shall take effect upon the date of enactment of this
25 Act, and section 241 of the Immigration and Na-

1 tionality Act, as so amended, shall in addition apply
2 to—

3 (A) all aliens subject to a final administra-
4 tive removal, deportation, or exclusion order
5 that was issued before, on, or after the date of
6 enactment of this Act; and

7 (B) acts and conditions occurring or exist-
8 ing before, on, or after the date of enactment
9 of this Act.

10 (2) The amendments made by subsection (b)
11 shall take effect upon the date of enactment of this
12 Act, and section 236 of the Immigration and Na-
13 tionality Act, as so amended, shall in addition apply
14 to any alien in detention under provisions of such
15 section on or after the date of enactment of this Act.

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

17 It is the sense of the Congress that—

18 (1) this Act should ensure that Constitutional
19 rights are upheld and protected; and

20 (2) it is the intention of the Congress to uphold
21 the Constitutional principles of due process and that
22 due process of the law is a right afforded to every-
23 one in the United States.

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