

115TH CONGRESS
1ST SESSION

S. 36

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

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 2017

Mr. INHOFE (for himself, Mr. GRASSLEY, Mr. CRUZ, Mr. COTTON, and Mr. BOOZMAN) 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 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 2017”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

8 (1) Constitutional rights should be upheld and
9 protected;

1 (2) Congress intends to uphold the Constitu-
2 tional principle of due process; and

3 (3) due process of the law is a right afforded
4 to everyone in the United States.

5 **SEC. 3. DETENTION OF DANGEROUS ALIENS DURING RE-**
6 **MOVAL PROCEEDINGS.**

7 Section 236 of the Immigration and Nationality Act
8 (8 U.S.C. 1226) is amended—

9 (1) by striking “Attorney General” each place
10 such term appears (except in the second place it ap-
11 pears in subsection (a)) and inserting “Secretary of
12 Homeland Security”;

13 (2) in subsection (a)—

14 (A) in the matter preceding paragraph (1),
15 by inserting “the Secretary of Homeland Secu-
16 rity or” before “the Attorney General—”; and

17 (B) in paragraph (2)(B), by striking “con-
18 ditional parole;” and inserting “recognizance;”;

19 (3) in subsection (b)—

20 (A) in the subsection heading, by striking
21 “PAROLE” and inserting “RECOGNIZANCE”;

22 and

23 (B) by striking “parole” and inserting “re-
24 cognizance”;

1 (4) in subsection (c)(1), by striking the undes-
2 ignated matter following subparagraph (D) and in-
3 serting the following:

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

17 (5) in subsection (e), by striking “Attorney
18 General’s” and inserting “Secretary of Homeland
19 Security’s”; and

20 (6) by adding at the end the following:

21 “(f) LENGTH OF DETENTION.—

22 “(1) Notwithstanding any other provision of
23 this section, an alien may be detained under this
24 section for any period, without limitation, except as

1 provided in subsection (h), until the alien is subject
2 to a final order of removal.

3 “(2) The length of detention under this section
4 shall not affect a detention under section 241.

5 “(g) ADMINISTRATIVE REVIEW.—

6 “(1) LIMITATION.—The Attorney General’s re-
7 view of the Secretary’s custody determinations under
8 subsection (a) shall be limited to whether the alien
9 may be detained, released on bond (of at least
10 \$1,500 with security approved by the Secretary), or
11 released with no bond. Any review involving an alien
12 described in paragraph (2)(D) shall be limited to a
13 determination of whether the alien is properly in-
14 cluded in such category.

15 “(2) CLASSES OF ALIENS.—The Attorney Gen-
16 eral shall review the Secretary’s custody determina-
17 tions for the following classes of aliens:

18 “(A) Aliens in exclusion proceedings.

19 “(B) Aliens described in sections 212(a)(3)
20 and 237(a)(4).

21 “(C) Aliens described in subsection (c).

22 “(D) Aliens in deportation proceedings
23 subject to section 242(a)(2) (as in effect be-
24 tween April 24, 1996, and April 1, 1997).

25 “(h) RELEASE ON BOND.—

1 “(1) IN GENERAL.—An alien detained under
2 subsection (a) may seek release on bond. No bond
3 may be granted except to an alien who establishes
4 by clear and convincing evidence that the alien is not
5 a flight risk or a risk to another person or the com-
6 munity.

7 “(2) CERTAIN ALIENS INELIGIBLE.—No alien
8 detained under subsection (c) may seek release on
9 bond.”.

10 **SEC. 4. ALIENS ORDERED REMOVED.**

11 Section 241(a) of the Immigration and Nationality
12 Act (8 U.S.C. 1231(a)) is amended—

13 (1) by striking “Attorney General” each place
14 it appears, except for the first place it appears in
15 paragraph (4)(B)(i), and inserting “Secretary of
16 Homeland Security”;

17 (2) in paragraph (1)—

18 (A) by amending subparagraphs (B) and
19 (C) to read as follows:

20 “(B) BEGINNING OF PERIOD.—The re-
21 moval period begins on the latest of—

22 “(i) the date on which the order of re-
23 moval becomes administratively final;

24 “(ii) the date on which the alien is
25 taken into such custody if the alien is not

1 in the custody of the Secretary on the date
2 on which the order of removal becomes ad-
3 ministratively final; and

4 “(iii) the date on which the alien is
5 taken into the custody of the Secretary
6 after the alien is released from detention
7 or confinement if the alien is detained or
8 confined (except for an immigration proc-
9 ess) on the date on which the order of re-
10 moval becomes administratively final.

11 “(C) SUSPENSION OF PERIOD.—

12 “(i) EXTENSION.—The removal period
13 shall be extended beyond a period of 90
14 days and the Secretary may, in the Sec-
15 retary’s sole discretion, keep the alien in
16 detention during such extended period, if—

17 “(I) the alien fails or refuses to
18 make all reasonable efforts to comply
19 with the removal order, or to fully co-
20 operate with the Secretary’s efforts to
21 establish the alien’s identity and carry
22 out the removal order, including mak-
23 ing timely application in good faith
24 for travel or other documents nec-
25 essary to the alien’s departure or con-

1 spires or acts to prevent the alien’s
2 removal that is subject to an order of
3 removal;

4 “(II) a court, the Board of Immi-
5 gration Appeals, or an immigration
6 judge orders a stay of removal of an
7 alien who is subject to an administra-
8 tively final order of removal;

9 “(III) the Secretary transfers
10 custody of the alien pursuant to law
11 to another Federal agency or a State
12 or local government agency in connec-
13 tion with the official duties of such
14 agency; or

15 “(IV) a court or the Board of
16 Immigration Appeals orders a remand
17 to an immigration judge or the Board
18 of Immigration Appeals, during the
19 time period when the case is pending
20 a decision on remand (with the re-
21 moval period beginning anew on the
22 date that the alien is ordered removed
23 on remand).

24 “(ii) RENEWAL.—If the removal pe-
25 riod has been extended under clause (i), a

1 new removal period shall be deemed to
2 have begun on the date on which—

3 “(I) the alien makes all reason-
4 able efforts to comply with the re-
5 moval order, or to fully cooperate with
6 the Secretary’s efforts to establish the
7 alien’s identity and carry out the re-
8 moval order;

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

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

13 “(iii) MANDATORY DETENTION FOR
14 CERTAIN ALIENS.—The Secretary shall
15 keep an alien described in subparagraphs
16 (A) through (D) of section 236(c)(1) in de-
17 tention during the extended period de-
18 scribed in clause (i).

19 “(iv) SOLE FORM OF RELIEF.—An
20 alien may only seek relief from detention
21 under this subparagraph by filing an appli-
22 cation for a writ of habeas corpus in ac-
23 cordance with chapter 153 of title 28,
24 United States Code. No alien whose period
25 of detention is extended under this sub-

1 paragraph shall have the right to seek re-
2 lease on bond.”;

3 (3) in paragraph (3)—

4 (A) in the matter preceding subparagraph
5 (A), by inserting “or is not detained pursuant
6 to paragraph (6)” after “the removal period”;
7 and

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

10 “(D) to obey reasonable restrictions on the
11 alien’s conduct or activities that the Secretary
12 prescribes for the alien—

13 “(i) to prevent the alien from ab-
14 scending;

15 “(ii) for the protection of the commu-
16 nity; or

17 “(iii) for other purposes related to the
18 enforcement of Federal immigration
19 laws.”;

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

22 (5) by amending paragraph (6) to read as fol-
23 lows:

24 “(6) ADDITIONAL RULES FOR DETENTION OR
25 RELEASE OF CERTAIN ALIENS.—

1 “(A) DETENTION REVIEW PROCESS FOR
2 COOPERATIVE ALIENS ESTABLISHED.—

3 “(i) IN GENERAL.—The Secretary
4 shall establish an administrative review
5 process to determine whether an alien who
6 is not otherwise subject to mandatory de-
7 tention, who has made all reasonable ef-
8 forts to comply with a removal order and
9 to cooperate fully with the Secretary of
10 Homeland Security’s efforts to establish
11 the alien’s identity and carry out the re-
12 moval order, including making timely ap-
13 plication in good faith for travel or other
14 documents necessary to the alien’s depar-
15 ture, and who has not conspired or acted
16 to prevent removal should be detained or
17 released on conditions.

18 “(ii) DETERMINATION.—The Sec-
19 retary shall make a determination whether
20 to release an alien after the removal period
21 in accordance with subparagraph (B),
22 which—

23 “(I) shall include consideration of
24 any evidence submitted by the alien;
25 and

1 “(II) may include consideration
2 of any other evidence, including—

3 “(aa) any information or as-
4 sistance provided by the Sec-
5 retary of State or other Federal
6 official; and

7 “(bb) any other information
8 available to the Secretary of
9 Homeland Security pertaining to
10 the ability to remove the alien.

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

13 “(i) IN GENERAL.—The Secretary of
14 Homeland Security may continue to detain
15 an alien for 90 days beyond the removal
16 period (including any extension of the re-
17 moval period under paragraph (1)(C)). An
18 alien whose detention is extended under
19 this subparagraph shall not have the right
20 to seek release on bond.

21 “(ii) SPECIFIC CIRCUMSTANCES.—The
22 Secretary of Homeland Security may con-
23 tinue to detain an alien beyond the 90
24 days authorized under clause (i)—

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

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

7 “(bb) would be removed in
8 the reasonably foreseeable future;
9 or

10 “(cc) would have been re-
11 moved if the alien had not—

12 “(AA) failed or refused
13 to make all reasonable ef-
14 forts to comply with the re-
15 moval order;

16 “(BB) failed or refused
17 to cooperate fully with the
18 Secretary’s efforts to estab-
19 lish the alien’s identity and
20 carry out the removal order,
21 including making timely ap-
22 plication in good faith for
23 travel or other documents
24 necessary to the alien’s de-
25 parture; or

1 “(CC) conspired or
2 acted to prevent removal;

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

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

12 “(bb) after receipt of a writ-
13 ten recommendation from the
14 Secretary of State, that release
15 of the alien is likely to have seri-
16 ous adverse foreign policy con-
17 sequences for the United States;

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

1 believe that the release of the
2 alien would threaten the national
3 security of the United States; or

4 “(dd) that the release of the
5 alien will threaten the safety of
6 the community or any person,
7 conditions of release cannot rea-
8 sonably be expected to ensure the
9 safety of the community or of
10 any person; and

11 “(AA) the alien has
12 been convicted of 1 or more
13 aggravated felonies (as de-
14 fined in section
15 101(a)(43)(A)) or of 1 or
16 more crimes identified by
17 the Secretary of Homeland
18 Security by regulation, or of
19 1 or more attempts or con-
20 spiracies to commit any such
21 aggravated felonies or such
22 identified crimes, if the ag-
23 gregate term of imprison-
24 ment for such attempts or

1 conspiracies is at least 5
2 years; or

3 “(BB) the alien has
4 committed 1 or more crimes
5 of violence (as defined in
6 section 16 of title 18,
7 United States Code, but not
8 including a purely political
9 offense) and, because of a
10 mental condition or person-
11 ality disorder and behavior
12 associated with that condi-
13 tion or disorder, the alien is
14 likely to engage in acts of vi-
15 olence in the future; or

16 “(III) pending a certification
17 under subclause (II), if the Secretary
18 of Homeland Security has initiated
19 the administrative review process not
20 later than 30 days after the expiration
21 of the removal period (including any
22 extension of the removal period under
23 paragraph (1)(C)).

24 “(iii) NO RIGHT TO BOND HEARING.—
25 An alien whose detention is extended under

1 this subparagraph shall not have a right to
2 seek release on bond, including by reason
3 of a certification under clause (ii)(II).

4 “(C) RENEWAL AND DELEGATION OF CER-
5 TIFICATION.—

6 “(i) RENEWAL.—The Secretary of
7 Homeland Security may renew a certifi-
8 cation under subparagraph (B)(ii)(II)
9 every 6 months after providing an oppor-
10 tunity for the alien to request reconsider-
11 ation of the certification and to submit
12 documents or other evidence in support of
13 that request. If the Secretary does not
14 renew a certification, the Secretary may
15 not continue to detain the alien under sub-
16 paragraph (B)(ii)(II).

17 “(ii) DELEGATION.—Notwithstanding
18 section 103, the Secretary of Homeland
19 Security may not delegate the authority to
20 make or renew a certification described in
21 item (bb), (cc), or (dd) of subparagraph
22 (B)(ii)(II) below the level of the Assistant
23 Secretary for Immigration and Customs
24 Enforcement.

1 “(iii) HEARING.—The Secretary of
2 Homeland Security may request that the
3 Attorney General or the Attorney General’s
4 designee provide for a hearing to make the
5 determination described in subparagraph
6 (B)(ii)(II)(dd)(BB).

7 “(D) RELEASE ON CONDITIONS.—If it is
8 determined that an alien should be released
9 from detention by a Federal court, the Board of
10 Immigration Appeals, or if an immigration
11 judge orders a stay of removal, the Secretary of
12 Homeland Security may impose conditions on
13 release as provided under paragraph (3).

14 “(E) REDETENTION.—

15 “(i) IN GENERAL.—The Secretary of
16 Homeland Security, without any limita-
17 tions other than those specified in this sec-
18 tion, may detain any alien subject to a
19 final removal order who is released from
20 custody if—

21 “(I) removal becomes likely in
22 the reasonably foreseeable future;

23 “(II) the alien fails to comply
24 with the conditions of release or to

1 continue to satisfy the conditions de-
2 scribed in subparagraph (A); or

3 “(III) upon reconsideration, the
4 Secretary determines that the alien
5 can be detained under subparagraph
6 (B).

7 “(ii) APPLICABILITY.—This section
8 shall apply to any alien returned to cus-
9 tody pursuant to this subparagraph as if
10 the removal period terminated on the day
11 of the redetention.

12 “(F) REVIEW OF DETERMINATIONS BY
13 SECRETARY.—A determination by the Secretary
14 under this paragraph shall not be subject to re-
15 view by any other agency.”.

16 **SEC. 5. SEVERABILITY.**

17 If any of the provisions of this Act, any amendment
18 made by this Act, or the application of any such provision
19 to any person or circumstance, is held to be invalid for
20 any reason, the remainder of this Act, the amendments
21 made by this Act, and the application of the provisions
22 and amendments made by this Act to any other person
23 or circumstance shall not be affected by such holding.

1 **SEC. 6. EFFECTIVE DATES.**

2 (a) APPREHENSION AND DETENTION OF ALIENS.—

3 The amendments made by section 3 shall take effect on
4 the date of the enactment of this Act. Section 236 of the
5 Immigration and Nationality Act, as amended by section
6 3, shall apply to any alien in detention under the provi-
7 sions of such section on or after such date of enactment.

8 (b) ALIENS ORDERED REMOVED.—The amendments
9 made by section 4 shall take effect on the date of the en-
10 actment of this Act. Section 241 of the Immigration and
11 Nationality Act, as amended by section 4, shall apply to—

12 (1) all aliens subject to a final administrative
13 removal, deportation, or exclusion order that was
14 issued before, on, or after the date of the enactment
15 of this Act; and

16 (2) acts and conditions occurring or existing be-
17 fore, on, or after such date of enactment.

○