

HR 938 IH

111th CONGRESS

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H. R. 938

To amend the Immigration and Nationality Act to restore certain provisions relating to the definition of aggravated felony and other provisions as they were before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

IN THE HOUSE OF REPRESENTATIVES**February 10, 2009**

Mr. FILNER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to restore certain provisions relating to the definition of aggravated felony and other provisions as they were before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Keeping Families Together Act of 2009'.

(b) Table of Contents- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Restoration of definition of aggravated felony (repeal of section 321 of IIRIRA).

Sec. 3. Restoration of detention policy.

Sec. 4. Repeal of time stop provisions.

Sec. 5. Repeal of section 101(a)(48).

Sec. 6. Restoration of section 212(c).

Sec. 7. Restoration of judicial review provisions.

Sec. 8. Post-proceeding relief for affected aliens.

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FEEDBACK

SEC. 2. RESTORATION OF DEFINITION OF AGGRAVATED FELONY (REPEAL OF SECTION 321 OF IIRIRA).

(a) In General- Effective as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208), section 321 of such Act is repealed and the provisions of law amended by such section are restored as if such section had not been enacted.

(b) Restoration of Rights- Any alien whose legal permanent resident status, application for permanent residence, or application for cancellation of removal, was affected by the changes in the definition of 'aggravated felony' made by such section 321 may apply to the Secretary of Homeland Security to be

considered for adjustment of status or cancellation of removal in conformance with the provisions of section 101(a)(43) of the Immigration and Nationality Act, as restored by subsection (a).

SEC. 3. RESTORATION OF DETENTION POLICY.

(a) In General- Section 236(c) of the Immigration and Nationality Act (8 U.S.C. 1226(c)) is amended to read as follows:

(c) Detention of Criminal Aliens-

(1) IN GENERAL- The Secretary of Homeland Security shall take into custody any alien convicted of an aggravated felony upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense). Notwithstanding subsection (a) or section 241(a) but subject to paragraph (2), the Secretary of Homeland Security shall not release such felon from custody.

(2) NON-RELEASE- The Secretary of Homeland Security may not release from custody any who has been convicted of an aggravated felony, either before or after a determination of removability, unless--

(A)(i) the alien was lawfully admitted, or

(ii) the alien was not lawfully admitted but the alien cannot be removed because the designated country of removal will not accept the alien; and

(B) the alien satisfies the Secretary of Homeland Security that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.'

(b) Effective Date- The amendment made by subsection (a) shall be effective as if included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

SEC. 4. REPEAL OF TIME STOP PROVISIONS.

(a) In General- Section 240A(d) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)) is repealed.

(b) Effective Date- The repeal made by subsection (a) shall be effective as if included in the enactment of subtitle A of title III of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

SEC. 5. REPEAL OF SECTION 101(A)(48).

(a) In General- Paragraph (48) of section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is repealed.

(b) Effective Date- The repeal made by subsection (a) shall take effect as if included in the enactment of section 322(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

SEC. 6. RESTORATION OF SECTION 212(C).

(a) In General- Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting after subsection (b) the following new subsection:

(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation or removal, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Secretary of Homeland Security without regard to the provisions of subsection (a) (other than paragraphs (3) and (10)(C)). Nothing contained in this subsection shall limit the authority of the Secretary of Homeland Security to exercise the discretion vested in him under section 211(b). The first sentence of this subsection shall not apply to an alien who has been convicted of one or more aggravated felonies and has served for such felony or felonies a term of imprisonment of at least 5 years.'

(b) Effective Date- The amendment made by subsection (a) applies as of April 24, 1996, as if section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) and section 304(b) of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208) had not been enacted.

SEC. 7. RESTORATION OF JUDICIAL REVIEW PROVISIONS.

(a) In General- Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended to read as follows:

JUDICIAL REVIEW OF ORDERS OF REMOVAL

Sec. 242. (a) The procedure prescribed by, and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of removal heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 240 of this Act or comparable provisions of any prior Act, except that--

(1) a petition for review may be filed not later than 90 days after the date of the issuance of the final removal order, or, in the case of an alien convicted of an aggravated felony not later than 30 days after the issuance of such order;

(2) the venue of any petition for review under this section shall be in the judicial circuit in which the administrative proceedings before an immigration judge were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this Act, of the petitioner, but not in more than one circuit;

(3) the action shall be brought against the Department of Homeland Security, as respondent. Service of the petition to review shall be made upon the Secretary of Homeland Security of the United States and upon the official of the Department of Homeland Security in charge of the district in which the office of the clerk of the court is located. The service of the petition for review upon such official of the Service shall stay the removal of the alien pending determination of the petition by the court, unless the court otherwise directs or unless the alien is convicted of an aggravated felony, in which case the Service shall not stay the removal of the alien pending determination of the petition of the court unless the court otherwise directs;

(4) except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the removal order is based and the Secretary of Homeland Security's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive;

(5) whenever any petitioner, who seeks review of an order under this section, claims to be a national of the United States and makes a showing that his claim is not frivolous, the court shall (A) pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or (B) where a genuine issue of material fact as to the petitioner's nationality is presented, transfer the proceedings to a United States district court for the district where the petitioner has his residence for hearing de novo of the nationality claim and determination as if such proceedings were originally initiated in the district court under the provisions of section 2201 of title 28, United States Code. Any such petitioner shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise;

(6) whenever a petitioner seeks review of an order under this section, any review sought with respect to a motion to reopen or reconsider such an order shall be consolidated with the review of the order;

(7) if the validity of a removal order has not been judicially determined, its validity may be challenged in a criminal proceeding against the alien for violation of subsection (a) or (b) of section 243 of this Act only by separate motion for judicial review before trial. Such motion shall be determined by the court without a jury and before the trial of the general issue. Whenever a claim to United States nationality

is made in such motion, and in the opinion of the court, a genuine issue of material fact as to the alien's nationality is presented, the court shall accord him a hearing de novo on the nationality claim and determine that issue as if proceedings had been initiated under the provisions of section 2201 of title 28, United States Code. Any such alien shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise. If no such hearing de novo as to nationality is conducted, the determination shall be made solely upon the administrative record upon which the removal order is based and the Secretary of Homeland Security's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive. If the removal order is held invalid, the court shall dismiss the indictment and the United States shall have the right to appeal to the court of appeals within 30 days. The procedure on such appeals shall be as provided in the Federal rules of criminal procedure. No petition for review under this section may be filed by any alien during the pendency of a criminal proceeding against such alien for violation of subsection (a) or (b) of section 243 of this Act;

`(8) nothing in this section shall be construed to require the Secretary of Homeland Security to defer removal of an alien after the issuance of a removal order because of the right of judicial review of the order granted by this section, or to relieve any alien from compliance with subsections (a) and (b) of section 243 of this Act. Nothing contained in this section shall be construed to preclude the Secretary of Homeland Security from detaining or continuing to detain an alien or from taking the alien into custody pursuant to section 241 of this Act at any time after the issuance of a removal order;

`(9) it shall not be necessary to print the record or any part thereof, or the briefs, and the court shall review the proceedings on a typewritten record and on typewritten briefs; and

`(10) any alien held in custody pursuant to an order of removal may obtain judicial review thereof by habeas corpus proceedings.

`(b) Notwithstanding the provisions of any other law, any alien against whom a final order of removal has been made heretofore or hereafter under the provisions of section 235 of this Act or comparable provisions of any prior Act may obtain judicial review of such order by habeas corpus proceedings and not otherwise.

`(c) An order of removal shall not be reviewed by any court if the alien has not exhausted the administrative remedies available to the alien as of right under the immigration laws and regulations or if the alien has departed from the United States after the issuance of the order. Every petition for review or for habeas corpus shall state whether the validity of the order has been upheld in any prior judicial proceeding, and, if so, the nature and date thereof, and the court in which such proceeding took place. No petition for review or for habeas corpus shall be entertained if the validity of the order has been previously determined in any civil or criminal proceeding, unless the petition presents grounds which the court finds could not have been presented in such prior proceeding, or the court finds that the remedy provided by such prior proceeding was inadequate or ineffective to test the validity of the order.

`(d)(1) A petition for review or for habeas corpus on behalf of an alien against whom a final order of removal has been issued pursuant to section 238(b) may challenge only--

`(A) whether the alien is in fact the alien described in the order;

`(B) whether the alien is in fact an alien described in section 238(b)(2);

`(C) whether the alien has been convicted of an aggravated felony and such conviction has become final; and

`(D) whether the alien was afforded the procedures required by section 238(b)(4).

`(2) No court shall have jurisdiction to review any issue other than an issue described in paragraph (1).'

(b) Effective Date- The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to determinations pending on or after such date with respect to which--

(1) a final administrative decision has been/not been rendered as of such date; or

(2) such a decision has been rendered but the period for seeking judicial review of the decision has not expired.

SEC. 8. POST-PROCEEDING RELIEF FOR AFFECTED ALIENS.

(a) In General- Notwithstanding section 240(c)(6) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(6)) or any other limitation imposed by law on motions to reopen removal proceedings, the Secretary of Homeland Security shall establish a process (whether through permitting the reopening of a removal proceeding or otherwise) under which an alien--

(1) who is (or was) in removal proceedings before the date of the enactment of this Act (whether or not the alien has been removed as of such date); and

(2) whose eligibility for cancellation of removal has been established by this Act;

may apply (or reapply) for cancellation of removal under section 240A(a) of the Immigration and Nationality Act (8 U.S.C. 1229b(a)) as a beneficiary of the relief provided under this Act.

(b) Parole- The Secretary of Homeland Security should exercise the parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for the purpose of permitting aliens removed from the United States to participate in the process established under subsection (a).

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