

Union Calendar No. 579

106TH CONGRESS
2^D SESSION

H. R. 2121

[Report No. 106-981]

To ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, or otherwise deprived of liberty, based on evidence that is kept secret from the alien.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1999

Mr. BONIOR (for himself and Mr. CAMPBELL, Mr. BARR of Georgia, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 17, 2000

Additional sponsors: Mr. RAHALL, Mr. LAHOOD, Ms. RIVERS, Mr. RODRIGUEZ, Mr. KILDEE, Mr. HOLT, Mr. SAWYER, Ms. MCKINNEY, Mr. HASTINGS of Florida, Ms. STABENOW, Ms. KILPATRICK, Mr. KENNEDY of Rhode Island, Mr. SUNUNU, Mr. KING, Mr. DINGELL, Mr. GUTIERREZ, Mr. KUCINICH, Mr. MEEKS of New York, Ms. SCHAKOWSKY, Mr. SCOTT, Ms. JACKSON-LEE of Texas, Mr. KNOLLENBERG, Mrs. MINK of Hawaii, Mr. MORAN of Virginia, Mr. BARCIA, Mr. FILNER, Mr. BECERRA, Mr. JACKSON of Illinois, Mr. COOK, Ms. NORTON, Mr. PASTOR, Mr. CLAY, Mr. BARRETT of Wisconsin, Mr. MCDERMOTT, Mr. HINCHEY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. SHAYS, Ms. PELOSI, Mr. PRICE of North Carolina, Mr. LIPINSKI, Ms. KAPTUR, Mr. LAMPSON, Mr. WATT of North Carolina, Mr. GEORGE MILLER of California, Mr. CAPUANO, Ms. WATERS, Mr. UDALL of Colorado, Mr. LUTHER, Mr. LEVIN, Mr. FARR of California, Mr. FRANK of Massachusetts, Mr. PETRI, Ms. BALDWIN, Mr. LEWIS of Georgia, Mr. DAVIS of Virginia, Mr. MEEHAN, Mr. DELAHUNT, Mr. PASCRELL, Mr. MARTINEZ, Ms. LOFGREN, Mr. DOYLE, Mr. TOWNS, Mrs. JONES of Ohio, Mrs. BONO, Mr. FORD, Mr. KLINK, Mr. CANNON, Mr. OWENS, Mr. WU, Ms. SANCHEZ, Mr. SCARBOROUGH, Mr. ENGLISH, Mr. RANGEL, Mr. BACA, Mr. COOKSEY, Mr. SANFORD, Mr. BROWN of Ohio, Mr. MOAKLEY, Mr. CUMMINGS, Mr. SMITH of Washington, Mr. BLUMENAUER, Mr. PALLONE, Ms. CARSON, Mr. MOORE, Mr. DOOLEY of California, Mr. ACKERMAN, Mr. DOOLITTLE,

Mr. TIAHRT, Mr. DEFazio, Mr. MCGOVERN, Mr. BOUCHER, Mr. RUSH, Mr. BLAGOJEVICH, Ms. WOOLSEY, Ms. LEE, Mr. PAUL, Mr. NEY, Mr. BALDACCI, Ms. VELAZQUEZ, Ms. MCCARTHY of Missouri, Mr. HORN, Mr. WHITFIELD, Mr. TOOMEY, Mr. ABERCROMBIE, Mr. SANDLIN, Mr. TURNER, Mr. SMITH of Michigan, Mr. DAVIS of Illinois, Ms. DANNER, Mr. UDALL of New Mexico, Mrs. NAPOLITANO, Mr. ALLEN, Mrs. CLAYTON, Mr. GONZALEZ, Mr. CLEMENT, Mr. HALL of Texas, Mr. STARK, Mr. NEAL of Massachusetts, Mr. MATSUI, Mr. BRADY of Pennsylvania, Mr. SERRANO, Mr. TIERNEY, Mr. HILLIARD, Mr. JEFFERSON, and Ms. ESHOO

OCTOBER 17, 2000

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 italic]

[For text of introduced bill, see copy of bill as introduced on June 10, 1999]

A BILL

To ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, or otherwise deprived of liberty, based on evidence that is kept secret from the alien.

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 “Secret Evidence Repeal*
 5 *Act of 2000”.*

6 **SEC. 2. FINDINGS.**

7 *The Congress makes the following findings:*

8 *(1) No person physically present in the United*
 9 *States, including its outlying possessions, should be*
 10 *deprived of liberty based on evidence kept secret from*

1 *that person, including information classified for na-*
2 *tional security reasons.*

3 (2) *Removal from the United States can separate*
4 *a person from the person’s family, may expose the*
5 *person to persecution and torture, and amounts to a*
6 *severe deprivation of liberty.*

7 (3) *Use of secret evidence in immigration pro-*
8 *ceedings deprives the alien of due process rights guar-*
9 *anteed under the United States Constitution and un-*
10 *dermines our adversarial system, which relies on*
11 *cross-examination as an engine of truth-seeking.*

12 **SEC. 3. APPLICATION OF PROCEDURES USED UNDER CLAS-**
13 **SIFIED INFORMATION PROCEDURES ACT**
14 **(CIPA) TO IMMIGRATION PROCEEDINGS.**

15 (a) *APPLICATION OF PROCEDURES USED UNDER*
16 *CLASSIFIED INFORMATION PROCEDURES ACT (CIPA) TO*
17 *IMMIGRATION PROCEEDINGS.—Chapter 9 of title II of the*
18 *Immigration and Nationality Act (8 U.S.C. 1351 et seq.)*
19 *is amended by adding at the end the following new section:*

20 “*APPLICATION OF PROCEDURES USED UNDER CLASSIFIED*
21 *INFORMATION PROCEDURES ACT TO IMMIGRATION*
22 *PROCEEDINGS*

23 “*SEC. 295. (a) NOTICE OF INTENDED USE OF CLASSI-*
24 *FIED INFORMATION.—*

25 “(1) *IN GENERAL.—In any immigration pro-*
26 *ceeding in which the Attorney General seeks to use*

1 *classified information, the Attorney General shall in-*
2 *form the alien and the presiding officer in advance.*
3 *To the maximum extent practicable, if the Attorney*
4 *General is initiating such proceeding, the Attorney*
5 *General shall provide such notice within 15 days after*
6 *initiating the proceeding.*

7 “(2) *LIMITATION.—The Attorney General may*
8 *seek to use classified information only in an immi-*
9 *gration proceeding in which the alien is alleged to be*
10 *deportable under section 237(a)(4)(B) or to oppose an*
11 *application for admission or an application for dis-*
12 *cretionary relief from removal and only after issuing*
13 *the following certification:*

14 “(A) *Substantially the same information*
15 *could not reasonably be developed from open*
16 *sources.*

17 “(B) *The Attorney General has informed the*
18 *classifying agency of its intent to use the classi-*
19 *fied information in connection with immigration*
20 *proceedings and has requested such agency to de-*
21 *classify such information as is permitted to be*
22 *declassified under the President’s Executive*
23 *Order on classification.*

24 “(b) *REFERRAL OF CLASSIFIED MATTERS TO DIS-*
25 *TRICT COURT.—*

1 “(1) *IN GENERAL.*—*In the case of an immigra-*
2 *tion proceeding in which the Attorney General or the*
3 *alien moves for a referral under this section to con-*
4 *sider matters relating to classified information that*
5 *may arise in connection with the proceeding, the pre-*
6 *siding officer shall forward the petition for review to*
7 *a Federal district court for the district in which the*
8 *alien resides or the place where the immigration pro-*
9 *ceedings are pending, of the use of such information*
10 *in such proceeding under subsection (c). Any evidence*
11 *which is the subject of a petition shall not be consid-*
12 *ered in the immigration proceeding and shall not be*
13 *examined by the presiding officer, except as provided*
14 *in paragraph (3).*

15 “(2) *SUSPENSION OF IMMIGRATION PRO-*
16 *CEEDING.*—*In the case of an order or review provided*
17 *for under paragraph (1), the immigration proceeding*
18 *may be suspended by the presiding officer pending the*
19 *disposition of such matter by the district court in-*
20 *volved (and any appeals related to such matter).*

21 “(3) *SUBMISSION OF SUMMARY.*—*In the case of*
22 *a referral under paragraph (1)(A), after the applica-*
23 *tion of subsection (c), the district court shall issue an*
24 *order to the presiding officer at the proceeding indi-*
25 *cating any unclassified summary of classified infor-*

1 *mation, and admissions in lieu of disclosure of classi-*
2 *fied information, that may be used and the conditions*
3 *of its use at the proceeding. The presiding officer shall*
4 *determine whether any information approved by the*
5 *order may be offered at the immigration proceeding.*

6 “(c) *APPLICATION OF CIPA.*—

7 “(1) *IN GENERAL.*—*Subject to the succeeding*
8 *provisions of this section, in the cases described in*
9 *subsection (b)(1) involving review by a Federal dis-*
10 *trict court of the use of classified information in an*
11 *immigration proceeding, the provisions of the Classi-*
12 *fied Information Procedures Act (18 U.S.C. Appendix*
13 *III) (in this section referred to as ‘CIPA’) shall apply*
14 *to an alien who is a subject of the immigration pro-*
15 *ceeding in the same manner as it applies to a defend-*
16 *ant in a criminal proceeding subject to CIPA.*

17 “(2) *GENERAL RULES OF APPLICATION.*—*In ap-*
18 *plying subsection (a), the following general rules*
19 *apply:*

20 “(A) *Any reference in CIPA to—*

21 “(i) *a criminal defendant or a trial (or*
22 *pre-trial) proceeding is deemed to be a ref-*
23 *erence to the alien who is the subject of the*
24 *immigration proceeding and to the immi-*
25 *gration proceeding;*

1 “(ii) an indictment or information at
2 issue is deemed to be a reference to a notice
3 to appear;

4 “(iii) a dismissal of an indictment or
5 information is deemed a reference to termi-
6 nation of the immigration proceeding
7 against an alien; and

8 “(iv) a trial court is deemed a ref-
9 erence (in the case of an administrative im-
10 migration proceeding) to the presiding offi-
11 cer in such proceeding.

12 “(B) The provisions of section 2 of CIPA
13 (other than the last sentence) shall not be ap-
14 plied.

15 “(C) The Attorney General shall prescribe
16 rules establishing procedures for the protection
17 against unauthorized disclosure of classified in-
18 formation in the custody of the Federal non-judi-
19 cial officials in immigration proceedings. Such
20 rules shall apply instead of the rules described in
21 section 9 of CIPA.

22 “(D) Section 12 of CIPA shall not be ap-
23 plied to immigration proceedings.

24 “(E) In lieu of the reports described in sec-
25 tion 13 of CIPA, the Attorney General shall re-

1 *port annually and in writing to the chairmen*
2 *and ranking minority members of the Commit-*
3 *tees on the Judiciary of the Senate and the*
4 *House of Representatives on the implementation*
5 *of this section. Such reports shall include the fol-*
6 *lowing information about each case brought*
7 *under this section:*

8 “(i) *The alien’s country of citizenship*
9 *or, if the alien was stateless, the country in*
10 *which the alien last habitually resided out-*
11 *side of the United States.*

12 “(ii) *The alien’s immigration status.*

13 “(iii) *The immigration benefit for*
14 *which the alien applied (if any).*

15 “(iv) *Whether the Federal district court*
16 *approved the summary of classified infor-*
17 *mation and the deletions or admissions*
18 *proffered by the Attorney General.*

19 “(v) *Whether the alien was ultimately*
20 *ordered removed under section 237(a)(4)(B)*
21 *or was granted or denied admission or the*
22 *benefit for which the alien applied.*

23 “(d) *DISCLOSURE OF EXCULPATORY EVIDENCE.—In*
24 *any immigration proceeding under this section, the Attor-*
25 *ney General shall disclose to the alien information that it*

1 *would be required to disclose to a defendant in an analogous*
2 *criminal proceeding under CIPA.*

3 “(e) *CONSTRUCTION CONCERNING DECLASSIFICATION*
4 *OF INFORMATION.—Nothing in this section shall be con-*
5 *strued as preventing an alien in an immigration pro-*
6 *ceeding from seeking access to classified information under*
7 *section 552 of title 5, United States Code, or, in the case*
8 *of information which is not disclosed based on section*
9 *552(b)(1) of such title, from initiating an action to seek*
10 *to declassify some or all of the information involved.*

11 “(f) *DEFINITIONS.—For purposes of this section:*

12 “(1) *IMMIGRATION PROCEEDING.—The term ‘im-*
13 *migration proceeding’ means any administrative pro-*
14 *ceeding under this Act.*

15 “(2) *PRESIDING OFFICER.—The term ‘presiding*
16 *officer’ means, with respect to an immigration pro-*
17 *ceeding, the administrative or judicial official who is*
18 *presiding over the immigration proceeding.”.*

19 “(b) *CONFORMING AMENDMENT.—Title V of the Immi-*
20 *gration and Nationality Act (8 U.S.C. 1531–1537) is re-*
21 *pealed.*

22 “(c) *CLERICAL AMENDMENTS.—The table of contents for*
23 *the Immigration and Nationality Act (8 U.S.C. 1101 et*
24 *seq.) is amended—*

1 (1) *by inserting after the item relating to section*
2 *294 the following new item:*

 “*Sec. 295. Application of procedures used under Classified Information Procedures Act to immigration proceedings.*”; and

3 (2) *by striking the title heading, and the items,*
4 *relating to title V.*

5 **SEC. 4. REPEAL OF USE OF SECRET EVIDENCE IN OTHER**
6 **IMMIGRATION PROCEEDINGS.**

7 (a) *ALIEN’S RIGHTS IN PROCEEDINGS.*—Section
8 *240(b)(4)(B) of the Immigration and Nationality Act (8*
9 *U.S.C. 1229a(b)(4)(B)) is amended to read as follows:*

10 “*(B) subject to section 295, the alien shall*
11 *have a reasonable opportunity to examine all of*
12 *the evidence against the alien, to present evi-*
13 *dence on the alien’s own behalf, and to cross-ex-*
14 *amine all witnesses presented by the Govern-*
15 *ment, and*”.

16 (b) *BURDEN ON ALIEN.*—Section 240(c)(2) of such Act
17 *(8 U.S.C. 1229a(c)(2)) is amended by striking the last sen-*
18 *tence and inserting the following:*

19 “*In meeting the burden of proof under subparagraph*
20 *(B), subject to section 295, the alien shall have access*
21 *to the alien’s visa or other entry document, if any,*
22 *and any other records and documents pertaining the*
23 *alien’s admission or presence in the United States.*”.

1 **SEC. 5. REPEAL OF USE OF SECRET EVIDENCE IN BOND**
2 **PROCEEDINGS.**

3 *Section 236 of the Immigration and Nationality Act*
4 *(8 U.S.C. 1226) is amended by adding at the end the fol-*
5 *lowing:*

6 “(f) *ALIENS’ RIGHTS IN BOND PROCEEDINGS.*—Sub-
7 *ject to section 295, in proceedings under this section—*

8 “(1) *the alien shall have the privilege of being*
9 *represented, at no expense to the Government, by*
10 *counsel of the alien’s choosing who is authorized to*
11 *practice in such proceedings;*

12 “(2) *the alien shall have a reasonable oppor-*
13 *tunity to examine all of the evidence against the*
14 *alien, to present evidence on the alien’s own behalf,*
15 *and to cross-examine all witnesses presented by the*
16 *Government; and*

17 “(3) *a complete record shall be kept of all testi-*
18 *mony and evidence produced at the proceeding.”*

19 **SEC. 6. REPEAL OF USE OF SECRET EVIDENCE AGAINST**
20 **LAWFUL PERMANENT RESIDENTS, ASYLUM**
21 **SEEKERS, AND ALIENS PAROLED INTO THE**
22 **UNITED STATES.**

23 *Section 235(c)(1) of the Immigration and Nationality*
24 *Act (8 U.S.C. 1225(c)(1)) is amended to read as follows:*

25 “(1) *REMOVAL WITHOUT FURTHER HEARING.*—

1 “(A) *IN GENERAL.*—*Except in the case of*
2 *an alien described in subparagraph (B), if an*
3 *immigration officer or an immigration judge*
4 *suspects that an arriving alien may be inadmis-*
5 *sible under subparagraph (A) (other than clause*
6 *(ii)), (B), or (C) of section 212(a)(3), the officer*
7 *or judge shall—*

8 “(i) *order the alien removed, subject to*
9 *review under paragraph (2);*

10 “(ii) *report the order of removal to the*
11 *Attorney General; and*

12 “(iii) *not conduct any further inquiry*
13 *or hearing until ordered by the Attorney*
14 *General.*

15 “(B) *EXCEPTED ALIENS DESCRIBED.*—*An*
16 *alien described in this subparagraph is an alien*
17 *who—*

18 “(i) *is a lawful permanent resident;*

19 “(ii) *was granted advance parole;*

20 “(iii) *was paroled into the United*
21 *States under section 212(d)(5); or*

22 “(iv) *is seeking asylum.*”.

23 **SEC. 7. TRANSITION.**

24 (a) *APPLICATION TO DETAINEES.*—*Not more than 30*
25 *days after the effective date of this Act, the Attorney General*

1 *shall, with respect to any alien then detained or whose lib-*
2 *erty is otherwise restricted by the Attorney General, on the*
3 *basis in whole or in part of information submitted by the*
4 *Government ex parte and in camera to an immigration*
5 *judge, to the Board of Immigration Appeals or to any*
6 *court—*

7 (1) *provide such alien a copy or transcript of*
8 *such information, and provide the alien with a rede-*
9 *termination of bond (or a reconsideration of the terms*
10 *of custody, as the case may be) based on evidence dis-*
11 *closed to the alien and the alien's response to such*
12 *evidence;*

13 (2) *withdraw from the record of any proceedings*
14 *involving such alien any and all evidence, testimony,*
15 *or other information submitted by the Government ex*
16 *parte and in camera to the immigration judge, the*
17 *Board of Immigration Appeals, or to any court, as*
18 *the case may be, and—*

19 (A) *release such alien if such alien is de-*
20 *tained; and*

21 (B) *cease all restrictions on the liberty of*
22 *such alien if such restrictions exist,*
23 *unless detention is warranted solely on the basis of*
24 *evidence disclosed to the alien; or*

25 (3) *release such alien.*

1 (b) *APPLICATION TO ALIENS SEEKING IMMIGRATION*
2 *BENEFITS.*—*Not more than 30 days after the effective date*
3 *of this Act, the Attorney General shall, with respect to any*
4 *alien physically present in the United States whose applica-*
5 *tion for an immigration benefit is or was opposed by the*
6 *Government on the basis in whole or in part of information*
7 *submitted by the Government ex parte and in camera to*
8 *an immigration judge, to the Board of Immigration Ap-*
9 *peals, or to any court—*

10 (1) *provide such alien a copy or transcript of*
11 *such information and a reasonable opportunity to re-*
12 *spond to such information, and grant or deny the ap-*
13 *plication or reopen the proceedings and afford the*
14 *alien de novo reconsideration of the application, as*
15 *the case may be, based solely on evidence in the public*
16 *record;*

17 (2) *withdraw from the record of any proceedings*
18 *involving such alien any and all evidence, testimony,*
19 *or other information submitted by the Government ex*
20 *parte and in camera to the immigration judge, the*
21 *Board of Immigration Appeals, or to any court, as*
22 *the case may be, and grant or deny the application*
23 *or reopen the proceedings and afford the alien de novo*
24 *reconsideration of the application, as the case may be,*
25 *based solely on evidence in the public record; or*

1 (3) *grant the application.*

2 (c) *TERMINATION OF PROCEEDINGS.—In the case of an*
3 *alien in immigration proceedings as of the effective date*
4 *of this Act conducted under title V of the Immigration and*
5 *Nationality Act—*

6 (1) *such proceedings are terminated as of the ef-*
7 *fective date of this Act without prejudice to the Attor-*
8 *ney General or the alien; and*

9 (2) *the Attorney General may, in his or her dis-*
10 *cretion, commence de novo removal proceedings with-*
11 *in 10 days thereafter under section 240 of the Immi-*
12 *gration and Nationality Act (8 U.S.C. 1229a).*

13 **SEC. 8. REGULATIONS.**

14 *The Attorney General shall promulgate regulations, in-*
15 *cluding regulations governing applications for asylum,*
16 *withholding of deportation or removal, adjustment of status,*
17 *naturalization, temporary protected status, and relief from*
18 *deportation, exclusion, or removal to implement this Act not*
19 *more than 90 days after the effective date of this Act.*

20 **SEC. 9. EFFECTIVE DATE.**

21 *The amendments made by this Act shall take effect on*
22 *the date of the enactment of this Act and shall apply to*
23 *all aliens without regard to the date of arrival, admission,*
24 *entry, or parole into the United States.*

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