

111TH CONGRESS
1ST SESSION

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.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Keeping Families Together Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 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(e).
 Sec. 7. Restoration of judicial review provisions.
 Sec. 8. Post-proceeding relief for affected aliens.

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

3 (a) IN GENERAL.—Effective as if included in the en-
 4 actment of the Illegal Immigration Reform and Immigrant
 5 Responsibility Act of 1996 (division C of Public Law 104–
 6 208), section 321 of such Act is repealed and the provi-
 7 sions of law amended by such section are restored as if
 8 such section had not been enacted.

9 (b) RESTORATION OF RIGHTS.—Any alien whose
 10 legal permanent resident status, application for permanent
 11 residence, or application for cancellation of removal, was
 12 affected by the changes in the definition of “aggravated
 13 felony” made by such section 321 may apply to the Sec-
 14 retary of Homeland Security to be considered for adjust-
 15 ment of status or cancellation of removal in conformance
 16 with the provisions of section 101(a)(43) of the Immigra-
 17 tion and Nationality Act, as restored by subsection (a).

18 **SEC. 3. RESTORATION OF DETENTION POLICY.**

19 (a) IN GENERAL.—Section 236(c) of the Immigration
 20 and Nationality Act (8 U.S.C. 1226(c)) is amended to
 21 read as follows:

1 “(c) DETENTION OF CRIMINAL ALIENS.—

2 “(1) IN GENERAL.—The Secretary of Homeland
3 Security shall take into custody any alien convicted
4 of an aggravated felony upon release of the alien (re-
5 gardless of whether or not such release is on parole,
6 supervised release, or probation, and regardless of
7 the possibility of rearrest or further confinement in
8 respect of the same offense). Notwithstanding sub-
9 section (a) or section 241(a) but subject to para-
10 graph (2), the Secretary of Homeland Security shall
11 not release such felon from custody.

12 “(2) NON-RELEASE.—The Secretary of Home-
13 land Security may not release from custody any who
14 has been convicted of an aggravated felony, either
15 before or after a determination of removability, un-
16 less—

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

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

22 “(B) the alien satisfies the Secretary of
23 Homeland Security that the alien will not pose
24 a danger to the safety of other persons or of

1 property and is likely to appear for any sched-
2 uled proceeding.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall be effective as if included in the Illegal
5 Immigration Reform and Immigrant Responsibility Act of
6 1996.

7 **SEC. 4. REPEAL OF TIME STOP PROVISIONS.**

8 (a) **IN GENERAL.**—Section 240A(d) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1229b(d)) is repealed.

10 (b) **EFFECTIVE DATE.**—The repeal made by sub-
11 section (a) shall be effective as if included in the enact-
12 ment of subtitle A of title III of the Illegal Immigration
13 Reform and Immigrant Responsibility Act of 1996.

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

15 (a) **IN GENERAL.**—Paragraph (48) of section
16 101(a)(48) of the Immigration and Nationality Act (8
17 U.S.C. 1101(a)) is repealed.

18 (b) **EFFECTIVE DATE.**—The repeal made by sub-
19 section (a) shall take effect as if included in the enactment
20 of section 322(a) of the Illegal Immigration Reform and
21 Immigrant Responsibility Act of 1996.

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

23 (a) **IN GENERAL.**—Section 212 of the Immigration
24 and Nationality Act (8 U.S.C. 1182) is amended by insert-
25 ing after subsection (b) the following new subsection:

1 “(c) Aliens lawfully admitted for permanent residence
2 who temporarily proceeded abroad voluntarily and not
3 under an order of deportation or removal, and who are
4 returning to a lawful unrelinquished domicile of seven con-
5 secutive years, may be admitted in the discretion of the
6 Secretary of Homeland Security without regard to the pro-
7 visions of subsection (a) (other than paragraphs (3) and
8 (10)(C)). Nothing contained in this subsection shall limit
9 the authority of the Secretary of Homeland Security to
10 exercise the discretion vested in him under section 211(b).
11 The first sentence of this subsection shall not apply to an
12 alien who has been convicted of one or more aggravated
13 felonies and has served for such felony or felonies a term
14 of imprisonment of at least 5 years.”.

15 (b) **EFFECTIVE DATE.**—The amendment made by
16 subsection (a) applies as of April 24, 1996, as if section
17 440(d) of the Antiterrorism and Effective Death Penalty
18 Act of 1996 (Public Law 104–132) and section 304(b) of
19 Illegal Immigration Reform and Immigrant Responsibility
20 Act of 1996 (division C of Public Law 104–208) had not
21 been enacted.

22 **SEC. 7. RESTORATION OF JUDICIAL REVIEW PROVISIONS.**

23 (a) **IN GENERAL.**—Section 242 of the Immigration
24 and Nationality Act (8 U.S.C. 1252) is amended to read
25 as follows:

1 “JUDICIAL REVIEW OF ORDERS OF REMOVAL

2 “SEC. 242. (a) The procedure prescribed by, and all
3 the provisions of chapter 158 of title 28, United States
4 Code, shall apply to, and shall be the sole and exclusive
5 procedure for, the judicial review of all final orders of re-
6 moval heretofore or hereafter made against aliens within
7 the United States pursuant to administrative proceedings
8 under section 240 of this Act or comparable provisions of
9 any prior Act, except that—

10 “(1) a petition for review may be filed not later
11 than 90 days after the date of the issuance of the
12 final removal order, or, in the case of an alien con-
13 victed of an aggravated felony not later than 30
14 days after the issuance of such order;

15 “(2) the venue of any petition for review under
16 this section shall be in the judicial circuit in which
17 the administrative proceedings before an immigra-
18 tion judge were conducted in whole or in part, or in
19 the judicial circuit wherein is the residence, as de-
20 fined in this Act, of the petitioner, but not in more
21 than one circuit;

22 “(3) the action shall be brought against the De-
23 partment of Homeland Security, as respondent.
24 Service of the petition to review shall be made upon
25 the Secretary of Homeland Security of the United

1 States and upon the official of the Department of
2 Homeland Security in charge of the district in which
3 the office of the clerk of the court is located. The
4 service of the petition for review upon such official
5 of the Service shall stay the removal of the alien
6 pending determination of the petition by the court,
7 unless the court otherwise directs or unless the alien
8 is convicted of an aggravated felony, in which case
9 the Service shall not stay the removal of the alien
10 pending determination of the petition of the court
11 unless the court otherwise directs;

12 “(4) except as provided in clause (B) of para-
13 graph (5) of this subsection, the petition shall be de-
14 termined solely upon the administrative record upon
15 which the removal order is based and the Secretary
16 of Homeland Security’s findings of fact, if supported
17 by reasonable, substantial, and probative evidence on
18 the record considered as a whole, shall be conclusive;

19 “(5) whenever any petitioner, who seeks review
20 of an order under this section, claims to be a na-
21 tional of the United States and makes a showing
22 that his claim is not frivolous, the court shall (A)
23 pass upon the issues presented when it appears from
24 the pleadings and affidavits filed by the parties that
25 no genuine issue of material fact is presented; or (B)

1 where a genuine issue of material fact as to the peti-
2 tioner's nationality is presented, transfer the pro-
3 ceedings to a United States district court for the
4 district where the petitioner has his residence for
5 hearing de novo of the nationality claim and deter-
6 mination as if such proceedings were originally initi-
7 ated in the district court under the provisions of sec-
8 tion 2201 of title 28, United States Code. Any such
9 petitioner shall not be entitled to have such issue de-
10 termined under section 360(a) of this Act or other-
11 wise;

12 “(6) whenever a petitioner seeks review of an
13 order under this section, any review sought with re-
14 spect to a motion to reopen or reconsider such an
15 order shall be consolidated with the review of the
16 order;

17 “(7) if the validity of a removal order has not
18 been judicially determined, its validity may be chal-
19 lenged in a criminal proceeding against the alien for
20 violation of subsection (a) or (b) of section 243 of
21 this Act only by separate motion for judicial review
22 before trial. Such motion shall be determined by the
23 court without a jury and before the trial of the gen-
24 eral issue. Whenever a claim to United States na-
25 tionality is made in such motion, and in the opinion

1 of the court, a genuine issue of material fact as to
2 the alien's nationality is presented, the court shall
3 accord him a hearing de novo on the nationality
4 claim and determine that issue as if proceedings had
5 been initiated under the provisions of section 2201
6 of title 28, United States Code. Any such alien shall
7 not be entitled to have such issue determined under
8 section 360(a) of this Act or otherwise. If no such
9 hearing de novo as to nationality is conducted, the
10 determination shall be made solely upon the admin-
11 istrative record upon which the removal order is
12 based and the Secretary of Homeland Security's
13 findings of fact, if supported by reasonable, substan-
14 tial, and probative evidence on the record considered
15 as a whole, shall be conclusive. If the removal order
16 is held invalid, the court shall dismiss the indictment
17 and the United States shall have the right to appeal
18 to the court of appeals within 30 days. The proce-
19 dure on such appeals shall be as provided in the
20 Federal rules of criminal procedure. No petition for
21 review under this section may be filed by any alien
22 during the pendency of a criminal proceeding
23 against such alien for violation of subsection (a) or
24 (b) of section 243 of this Act;

1 “(8) nothing in this section shall be construed
2 to require the Secretary of Homeland Security to
3 defer removal of an alien after the issuance of a re-
4 moval order because of the right of judicial review
5 of the order granted by this section, or to relieve any
6 alien from compliance with subsections (a) and (b)
7 of section 243 of this Act. Nothing contained in this
8 section shall be construed to preclude the Secretary
9 of Homeland Security from detaining or continuing
10 to detain an alien or from taking the alien into cus-
11 tody pursuant to section 241 of this Act at any time
12 after the issuance of a removal order;

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

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

20 “(b) Notwithstanding the provisions of any other law,
21 any alien against whom a final order of removal has been
22 made heretofore or hereafter under the provisions of sec-
23 tion 235 of this Act or comparable provisions of any prior
24 Act may obtain judicial review of such order by habeas
25 corpus proceedings and not otherwise.

1 “(c) An order of removal shall not be reviewed by any
2 court if the alien has not exhausted the administrative
3 remedies available to the alien as of right under the immi-
4 gration laws and regulations or if the alien has departed
5 from the United States after the issuance of the order.
6 Every petition for review or for habeas corpus shall state
7 whether the validity of the order has been upheld in any
8 prior judicial proceeding, and, if so, the nature and date
9 thereof, and the court in which such proceeding took place.
10 No petition for review or for habeas corpus shall be enter-
11 tained if the validity of the order has been previously de-
12 termined in any civil or criminal proceeding, unless the
13 petition presents grounds which the court finds could not
14 have been presented in such prior proceeding, or the court
15 finds that the remedy provided by such prior proceeding
16 was inadequate or ineffective to test the validity of the
17 order.

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

22 “(A) whether the alien is in fact the alien de-
23 scribed in the order;

24 “(B) whether the alien is in fact an alien de-
25 scribed in section 238(b)(2);

1 “(C) whether the alien has been convicted of an
2 aggravated felony and such conviction has become
3 final; and

4 “(D) whether the alien was afforded the proce-
5 dures required by section 238(b)(4).

6 “(2) No court shall have jurisdiction to review any
7 issue other than an issue described in paragraph (1).”.

8 (b) **EFFECTIVE DATE.**—The amendment made by
9 subsection (a) shall take effect on the date of the enact-
10 ment of this Act and shall apply to determinations pending
11 on or after such date with respect to which—

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

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

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

18 (a) **IN GENERAL.**—Notwithstanding section
19 240(c)(6) of the Immigration and Nationality Act (8
20 U.S.C. 1229a(c)(6)) or any other limitation imposed by
21 law on motions to reopen removal proceedings, the Sec-
22 retary of Homeland Security shall establish a process
23 (whether through permitting the reopening of a removal
24 proceeding or otherwise) under which an alien—

1 (1) who is (or was) in removal proceedings be-
2 fore the date of the enactment of this Act (whether
3 or not the alien has been removed as of such date);
4 and

5 (2) whose eligibility for cancellation of removal
6 has been established by this Act;
7 may apply (or reapply) for cancellation of removal under
8 section 240A(a) of the Immigration and Nationality Act
9 (8 U.S.C. 1229b(a)) as a beneficiary of the relief provided
10 under this Act.

11 (b) PAROLE.—The Secretary of Homeland Security
12 should exercise the parole authority under section
13 212(d)(5)(A) of the Immigration and Nationality Act (8
14 U.S.C. 1182(d)(5)(A)) for the purpose of permitting
15 aliens removed from the United States to participate in
16 the process established under subsection (a).

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