

107TH CONGRESS
1ST SESSION

H. R. 2772

To amend the Immigration and Nationality Act to modify restrictions added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

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

A BILL

To amend the Immigration and Nationality Act to modify restrictions added by 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; REFERENCES IN ACT; TABLE OF**
4 **CONTENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Immigrant Fairness Restoration Act of 2001”.

7 (b) **REFERENCES IN ACT.**—Except as otherwise spe-
8 cifically provided in this Act, whenever in this Act an
9 amendment or repeal is expressed as an amendment to
10 or a repeal of a provision, the reference shall be deemed

1 to be made to the Immigration and Nationality Act (8
2 U.S.C. 1101 et seq.).

3 (c) TABLE OF CONTENTS.—The table of contents for
4 this Act is as follows:

- Sec. 1. Short title; references in Act; table of contents.
- Sec. 2. Findings.
- Sec. 3. Elimination of retroactivity.
- Sec. 4. Restoration of proportionality to grounds of removal.
- Sec. 5. Restoration of discretionary relief from removal.
- Sec. 6. Cancellation of removal and adjustment of status for certain nonperma-
nent residents.
- Sec. 7. Judicial review of certain orders and determinations.
- Sec. 8. Detention.
- Sec. 9. Right to counsel.
- Sec. 10. Absences outside the control of the alien.
- Sec. 11. Applicants for admission.
- Sec. 12. Statutory construction.
- Sec. 13. Repeals.
- Sec. 14. Removal of aliens who are not permanent residents and who have no
relief from removal.
- Sec. 15. Repeal of ground of inadmissibility.
- Sec. 16. Reopening of certain proceedings and parole of certain previously re-
moved aliens.
- Sec. 17. Statutory construction.
- Sec. 18. Authority of the Attorney General.
- Sec. 19. Treatment of aliens who have made false claims of citizenship or who
have unlawfully voted.

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

7 (1) The United States has a time-honored tra-
8 dition as a Nation of immigrants and a Nation of
9 just laws. Our immigration laws no longer reflect
10 that tradition.

11 (2) Current laws punish legal residents out of
12 proportion to their crimes. Reform is needed to re-
13 store balance to our immigration system. Funda-
14 mental principles of fairness in the application of the

1 laws, due process, and judicial review must apply to
2 the foreign born and native born alike.

3 (3) Laws should not be applied retroactively.
4 Fairness and practicality dictate that changes in
5 definitions of crimes that make aliens deportable
6 should only apply to crimes committed after dates of
7 enactment. Immigration policy should not change
8 the rules in the middle of the game.

9 (4) Proportionality and discretion should be re-
10 stored to our Nation's immigration laws. We must
11 restore the discretion immigration judges previously
12 had and responsibly exercised to evaluate cases on
13 an individual basis and grant relief from deportation
14 to deserving families.

15 (5) Detention of individuals is an extraordinary
16 power that should only be used in extraordinary cir-
17 cumstances. The mandatory detention of immigrants
18 who have paid their debt to society and pose no
19 threat is anathema to the protections of the Con-
20 stitution's Due Process Clause.

21 (6) Our judicial system is one of checks and
22 balances and nowhere are these protections more im-
23 perative than in questions of deportation and incar-
24 ceration which so fundamentally restrict individual
25 liberties. Judicial review of immigration orders and

1 determinations is necessary to ensure that these
2 most weighty determinations are not made capri-
3 ciously or erroneously. Immigrants deserve their day
4 in court.

5 **SEC. 3. ELIMINATION OF RETROACTIVITY.**

6 (a) CANCELLATION OF REMOVAL.—Section 240A (8
7 U.S.C. 1229b) is amended by adding at the end the fol-
8 lowing new subsection:

9 “(f) APPLICATION OF LAW.—Notwithstanding any
10 other provision of this section, an alien who committed an
11 offense that was a ground for deportation or exclusion
12 prior to April 1, 1997, shall have the law in effect at the
13 time of the offense apply with respect to any application
14 for relief from deportation or exclusion on that ground.”.

15 (b) APPLICATION OF AGGRAVATED FELONY DEFINI-
16 TION.—The last sentence of section 101(a)(43) (8 U.S.C.
17 1101(a)(43)) is amended to read as follows: “The term
18 shall not apply to any offense that was not covered by
19 the term on the date on which the offense occurred.”.

20 (c) GROUNDS OF DEPORTABILITY.—Section 237 (8
21 U.S.C. 1227) is amended by adding at the end the fol-
22 lowing new subsection:

23 “(d) Notwithstanding any other provision of this sec-
24 tion, an alien is not deportable or removable by reason

1 of committing any offense that was not a ground of de-
2 portability on the date the offense occurred.”.

3 (d) GROUNDS OF INADMISSIBILITY.—Section 212 (8
4 U.S.C. 1182) is amended—

5 (1) by redesignating subsection (p), as added by
6 section 1505(f) of Public Law 106–386, as sub-
7 section (s); and

8 (2) by adding at the end the following new sub-
9 section:

10 “(t) Any alien who applied for admission to the
11 United States or adjustment of status to that of an alien
12 lawfully admitted for permanent residence prior to April
13 1, 1997, and was inadmissible under subsection
14 (a)(6)(C)(i), shall be eligible for the relief available (in-
15 cluding any waiver of inadmissibility) at the time the ap-
16 plication was filed.”.

17 (e) PROSPECTIVE EFFECTIVE DATES.—

18 (1) ILLEGAL IMMIGRATION REFORM AND IMMI-
19 GRANT RESPONSIBILITY ACT.—Notwithstanding any
20 other provision of law, the Illegal Immigration Re-
21 form and Immigrant Responsibility Act of 1996, and
22 the amendments made by that Act, shall apply only
23 to persons seeking admission, or who became deport-
24 able, on or after April 1, 1997, as the case may be.

1 (2) ANTITERRORISM AND EFFECTIVE DEATH
2 PENALTY ACT OF 1996.—Notwithstanding any other
3 provision of law, title IV of the Antiterrorism and
4 Effective Death Penalty Act of 1996, and the
5 amendments made by that title, shall apply only to
6 persons seeking admission, or who become deport-
7 able, on or after April 24, 1996.

8 (f) REINSTATEMENT OF REMOVAL ORDERS.—Sec-
9 tion 241(a)(5) (8 U.S.C. 1231(a)(5)) is repealed, and such
10 repeal shall apply to all proceedings pending at any stage
11 as of the date of enactment of this Act and to all cases
12 brought on or after such date.

13 **SEC. 4. RESTORATION OF PROPORTIONALITY TO GROUNDS**
14 **OF REMOVAL.**

15 (a) DEFINITION OF CRIMES INVOLVING MORAL TUR-
16 PITUDE.—Section 237(a)(2)(A)(i) (8 U.S.C.
17 1227(a)(2)(A)(i)) is amended to read as follows:

18 “(i) CRIMES OF MORAL TURPITUDE.—
19 Any alien who is convicted of a crime in-
20 volving moral turpitude (other than a pure-
21 ly political offense or an attempt to commit
22 such a crime) committed within five years
23 (or 10 years in the case of an alien pro-
24 vided lawful permanent residence status
25 under section 245(j)) for which the alien is

1 sentenced to confinement, or is confined in
2 a prison or correctional institution, for one
3 year or longer is deportable.”.

4 (b) DEFINITION OF AGGRAVATED FELONY.—Section
5 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

6 (1) by adding at the end of section 101(a)(43)
7 the following: “No crime shall be deemed to be an
8 aggravated felony if the underlying conviction is a
9 misdemeanor or if the sentence imposed is not in ex-
10 cess of one year”;

11 (2) in subparagraphs (F) and (G), by striking
12 “at least one year” each place it appears and insert-
13 ing “is at least five years”;

14 (3) in subparagraphs (J), (R), and (S), by
15 striking “one year” each place it appears and insert-
16 ing “five years”;

17 (4) by amending subparagraph (N) (8 U.S.C.
18 1101(a)(43)(N)) to read as follows:

19 “(N) an offense described in section
20 274(a)(1) (relating to alien smuggling) for the
21 purpose of commercial advantage.”;

22 (5) in subparagraph (P)(ii) (8 U.S.C.
23 1101(a)(43)(P)(ii)), by striking “child” and insert-
24 ing “son or daughter”; and

1 (6) in subparagraph (T), by striking “2 years”
2 and inserting “5 years”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 subsection (b) shall apply to convictions entered before,
5 on, or after the date of enactment of this Act.

6 (d) CONVICTION DEFINED.—Section 101(a)(48)(A)
7 (8 U.S.C. 1101(a)(48)(A)) is amended—

8 (1) by redesignating clauses (i) and (ii) as sub-
9 clauses (I) and (II), respectively;

10 (2) by striking “(48)(A) The term” and insert-
11 ing “(48)(A)(i) Except as provided in clause (ii), the
12 term”; and

13 (3) by adding at the end the following:

14 “(ii) For purposes of determinations
15 under this Act, the term ‘conviction’ does
16 not include any Federal, State, or foreign
17 action to expunge, dismiss, cancel, vacate,
18 discharge, or otherwise remove a guilty
19 plea or other record of guilt or conviction,
20 or any Federal, State, or foreign deferred
21 adjudication, adjudication of guilt with-
22 held, order of probation without entry of
23 judgment, or similar disposition.”.

1 (e) DEFINITION OF TERM OF IMPRISONMENT.—Sec-
2 tion 101(a)(48)(B) (8 U.S.C. 1101(a)(48)(B)) is amended
3 to read as follows:

4 “(B) Any reference to a term of imprison-
5 ment or a sentence with respect to an offense
6 is deemed to include the period of incarceration
7 or confinement ordered by a court of law ex-
8 cluding any period of the suspension of the im-
9 position or execution of that imprisonment or
10 sentence in whole or in part.”.

11 (f) CONFORMING AMENDMENTS.—

12 (1) GROUND OF INADMISSIBILITY.—Section
13 212(a)(6)(E) (8 U.S.C. 1182(a)(6)(E)) is
14 amended—

15 (A) in clause (i), by inserting “and for
16 commercial advantage” after “knowingly”;

17 (B) by striking clause (ii); and

18 (C) by redesignating clause (iii) as clause
19 (ii).

20 (2) GROUND OF DEPORTABILITY.—Section
21 237(a)(1)(E) (8 U.S.C. 1227(a)(1)(E)) is
22 amended—

23 (A) in clause (i), by inserting “and for
24 commercial advantage” after “knowingly”;

25 (B) by striking clause (ii); and

1 (C) by redesignating clause (iii) as clause
2 (ii).

3 **SEC. 5. RESTORATION OF DISCRETIONARY RELIEF FROM**
4 **REMOVAL.**

5 (a) CANCELLATION OF REMOVAL.—Section
6 240A(a)(3) (8 U.S.C. 1229b(a)(3)) is amended to read as
7 follows:

8 “(3) has not been convicted of an aggravated
9 felony for which the sentence imposed is five years
10 or more.”.

11 (b) REPEAL OF RULE FOR TERMINATION OF CON-
12 TINUOUS PERIOD.—

13 (1) Section 240A(d)(1) (8 U.S.C. 1229b(d)(1))
14 (8 U.S.C. 1229b(a)) is repealed.

15 (2) Section 240A(d) (8 U.S.C. 1229b) is
16 amended—

17 (A) by redesignating paragraphs (2) and
18 (3) as paragraphs (1) and (2), respectively; and

19 (B) by inserting before the period at the
20 end of paragraph (1) (as redesignated) the fol-
21 lowing: “, unless the alien’s return was impeded
22 by emergency or extenuating circumstances out-
23 side the control of the alien”.

24 (c) WAIVER.—Section 212(h) (8 U.S.C. 1182(h)) is
25 amended—

1 (1) in the text above paragraph (1) of the first
2 sentence, by striking “offense of simple possession of
3 30 grams or less of marijuana” and inserting “con-
4 trolled substance offense for which the alien was not
5 incarcerated for a period exceeding one year”; and

6 (2) by striking the third and fourth sentences.

7 (d) RESTORATION OF ELIGIBILITY FOR WITH-
8 HOLDING OF REMOVAL.—Section 241(b)(3)(B) (8 U.S.C.
9 1231(b)(3)(B)) is amended—

10 (1) by amending clause (ii) to read as follows:

11 “(ii) the alien—

12 “(I) has been convicted by final
13 judgment of a particularly serious
14 crime for which the sentence imposed
15 was an aggregate term of imprison-
16 ment of five years or more; and

17 “(II) is a danger to the United
18 States.”; and

19 (2) by striking the third sentence and inserting
20 at the end the following: “Notwithstanding this sub-
21 paragraph, an alien shall be eligible for relief under
22 subparagraph (A) if the Attorney General deter-
23 mines the alien should not be removed for urgent
24 humanitarian reasons.”.

1 (e) WAIVER FOR PARENT, SON, OR DAUGHTER.—
2 Section 212(d)(12) (8 U.S.C. 1182(d)(12)) is amended by
3 striking “or child” and inserting “, parent, son, or daugh-
4 ter”.

5 (f) WAIVER OF INADMISSIBILITY UNDER SECTION
6 212(i).—

7 (1) IN GENERAL.—Section 212(i) (8 U.S.C.
8 1182(i)) is amended to read as follows:

9 “(i) The Attorney General may, in the
10 discretion of the Attorney General, waive
11 the application of subsection (a)(6) (A),
12 (B), (C), or (G) in the case of an immi-
13 grant who is the parent, spouse, son, or
14 daughter of a United States citizen or of
15 an alien lawfully admitted for permanent
16 residence if it is established to the satisfac-
17 tion of the Attorney General that the re-
18 fusals of admission to the United States of
19 such immigrant alien would result in hard-
20 ship to the alien or to the citizen or law-
21 fully resident parent, spouse, son, or
22 daughter of such an alien.”.

23 (2) CONFORMING AMENDMENT.—Section
24 212(a)(6) (8 U.S.C. 1182(a)(6)) is amended by add-
25 ing at the end the following new subparagraph:

1 “(H) For provision authorizing waiver of
2 certain subparagraphs of this paragraph, see
3 subsection (i).”.

4 **SEC. 6. CANCELLATION OF REMOVAL AND ADJUSTMENT OF**
5 **STATUS FOR CERTAIN NONPERMANENT RESI-**
6 **DENTS.**

7 (a) IN GENERAL.—Section 240A(b)(1) (8 U.S.C.
8 1229b(b)(1)) is amended to read as follows:

9 “(1) IN GENERAL.—The Attorney General may
10 cancel removal in the case of an alien who is inad-
11 missible or deportable from the United States if the
12 alien—

13 “(A) has been physically present in the
14 United States for a continuous period of—

15 “(i) 7 years immediately preceding the
16 date of application in the case of an
17 alien—

18 “(I) who is removable on any
19 ground other than a ground specified
20 in clause (ii)(I); and

21 “(II) whose deportation would, in
22 the opinion of the Attorney General,
23 result in extreme hardship to the alien
24 or the alien’s spouse, parent, son, or
25 daughter, who is a citizen of the

1 United States or an alien lawfully ad-
2 mitted for permanent residence; or

3 “(ii) 10 years immediately preceding
4 the date of application in the case of an
5 alien—

6 “(I) who is removable for convic-
7 tion of an offense under section
8 212(a)(2), 237(a)(2), or 237(a)(3);
9 and

10 “(II) whose deportation would, in
11 the opinion of the attorney General,
12 result in exceptional and extremely
13 unusual hardship to the alien or the
14 alien’s spouse, parent, son, or daugh-
15 ter, who is a citizen of the United
16 States or an alien lawfully admitted
17 for permanent residence”; and

18 “(B) has been a person of good moral
19 character during such period.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect as if included in the enact-
22 ment of the Illegal Immigration Reform and Immigrant
23 Responsibility Act of 1996.

1 **SEC. 7. JUDICIAL REVIEW OF CERTAIN ORDERS AND DE-**
2 **TERMINATIONS.**

3 (a) REPEALS.—The following provisions of the Act
4 are hereby repealed and such repeal shall apply to all cases
5 pending at any stage in any court as of the date of enact-
6 ment of this Act and to all cases brought on or after such
7 date:

8 (1) Section 242(a)(2) (8 U.S.C. 1252(a)(2)).

9 (2) Section 242(a)(3) (8 U.S.C. 1252(a)(3)).

10 (3) Section 242(b)(4) (8 U.S.C. 1252(b)(4)).

11 (4) Section 242(b)(7) (8 U.S.C. 1252(b)(7)).

12 (5) Subsections (e), (f), and (g) of section 242
13 (8 U.S.C. 1252).

14 (6) Section 240(b)(5)(D) (8 U.S.C.
15 1229a(b)(5)(D)).

16 (7) Section 240B(f) (8 U.S.C. 1229c(f)).

17 (8) Section 208(a)(3) (8 U.S.C. 1158(a)(3)).

18 (9) Section 208(b)(2)(D) (8 U.S.C.
19 1158(b)(2)(D)).

20 (10) Section 208(d)(7) (8 U.S.C. 1158(d)(7)).

21 (b) AMENDMENTS RELATING TO JUDICIAL RE-
22 VIEW.—

23 (1) IN GENERAL.—(A) Section 242(a)(1) (8
24 U.S.C. 1252(a)(1)) is amended—

1 (i) by striking “(other than an order of re-
2 moval without a hearing pursuant to section
3 235(b)(1))”; and

4 (ii) by striking “and except that the court
5 may not order the taking of additional evidence
6 under section 2347(c) of such title”.

7 (B) Section 242(b)(2) (8 U.S.C. 1252(b)(2)) is
8 amended in the first sentence by striking “judge
9 completed the proceedings” and inserting “pro-
10 ceedings were conducted in whole or in part, or in
11 the judicial circuit in which lies the residence of the
12 petitioner as defined in this Act, but not in more
13 than one judicial circuit”.

14 (C) Section 242(b)(3)(B) (8 U.S.C.
15 1252(b)(3)(B)) is amended—

16 (i) by striking “does not” and inserting
17 “shall”; and

18 (ii) by striking “, unless the court orders
19 otherwise”.

20 (D) Section 242(b)(9) (8 U.S.C. 1252(b)(9)) is
21 amended by striking “any action taken or pro-
22 ceeding brought to remove an alien from the United
23 States” and inserting “a challenge to a final admin-
24 istrative order of removal”.

1 (E) Sections 212(d)(12) (8 U.S.C.
2 1182(d)(12)), 212(h) (8 U.S.C. 1182(h)),
3 237(a)(3)(C)(ii) (8 U.S.C. 1227(a)(3)(C)(ii)), and
4 240B(e) (8 U.S.C. 1229c(e)) are amended by strik-
5 ing the last sentence of each.

6 (F) Section 279 (8 U.S.C. 1329) is amended—

7 (i) by striking “brought by the United
8 States that arise under” and inserting “arising
9 under any”; and

10 (ii) by striking the last sentence.

11 (G) Section 245A(f)(4)(A) (8 U.S.C.
12 1255a(f)(4)(A)) is amended by striking “106” and
13 inserting “242”.

14 (2) APPLICATION OF THE AMENDMENT.—The
15 amendments made by paragraph (1) shall apply to
16 all cases pending at any stage in any court as of the
17 date of enactment.

18 (c) REPEALS OF TRANSITIONAL CHANGES IN JUDI-
19 CIAL REVIEW.—Subparagraphs (B), (E), (F), and (G) of
20 section 309(c)(4) of the Illegal Immigration Reform and
21 Immigrant Responsibility Act of 1996 (division C of Pub-
22 lic Law 104–208) are hereby repealed, and such repeal
23 shall apply to all cases pending at any stage in any courts
24 as of the date of enactment of this Act and to all cases
25 brought on or after such date.

1 (d) REPEALS OF OTHER CHANGES IN JUDICIAL RE-
2 VIEW.—(1) Section 245A(f)(4) of the Immigration and
3 Nationality Act (8 U.S.C. 1255a(f)(4)) is amended by
4 striking subparagraph (C).

5 (2) The amendment made by paragraph (1) shall be
6 effective as if included in the enactment of section 201
7 of the Immigration Reform and Control Act of 1986 (Pub-
8 lic Law 99–603; 100 Stat. 3394) and shall apply to all
9 cases pending at any stage in any court as of the date
10 of enactment of this Act.

11 (e) INSPECTION DETERMINATIONS.—Section
12 235(b)(1)(8) (8 U.S.C. 1225(b)(1)) is amended in sub-
13 paragraphs (A)(i) and (B)(iii) by striking “without further
14 hearing or review” each place it appears.

15 (f) CONFORMING AMENDMENTS.—

16 (1) The section heading of section 242 (8
17 U.S.C. 1252) is amended by striking “**OF OR-**
18 **DERS OF REMOVAL**”.

19 (2) The table of contents of the Act is amended
20 by striking the item relating to section 242 and in-
21 sserting the following:

“Sec. 242. Judicial review.”.

22 (g) CLARIFICATION OF JUDICIAL REVIEW.—Section
23 242(b) (8 U.S.C. 1252(b)) is amended by adding at the
24 end the following new paragraphs:

1 “(10) JURISDICTION TO REVIEW OTHER THAN
2 A FINAL ADMINISTRATIVE REMOVAL ORDER.—The
3 district courts shall have jurisdiction by habeas cor-
4 pus or otherwise to review all matters not encom-
5 passed within a final administrative order of removal
6 reviewable by petition for review under this section.

7 “(11) IN-CUSTODY HABEAS CORPUS.—Any alien
8 held in custody pursuant to an order of removal may
9 obtain judicial review by habeas corpus
10 proceedings—

11 “(A) of any matter that was not required
12 to have been or could not have been brought by
13 petition for review pursuant to this section; or

14 “(B) if the remedy provided by petition for
15 review pursuant to this section was inad-
16 equate.”.

17 **SEC. 8. DETENTION.**

18 (a) DETENTION.—Section 236(c) (8 U.S.C. 1226(c))
19 is amended—

20 (1) in paragraph (1), by striking “Attorney
21 General shall” and inserting “Attorney General
22 may”, and

23 (2) by amending paragraph (2) to read as fol-
24 lows:

1 “(2) RELEASE.—The Attorney General shall re-
2 lease any alien described in paragraph (1) if the
3 alien satisfies the Attorney General that the alien
4 will not pose a danger to the safety of other persons
5 or of property and is likely to appear for any sched-
6 uled proceeding. All custody, bond, and parole deter-
7 minations shall be reviewable by any immigration
8 judge and subject to administrative appeal.”.

9 (b) HABEAS CORPUS REVIEW OF DETENTION.—Sec-
10 tion 236(e) (8 U.S.C. 1226(e)) is amended to read as fol-
11 lows:

12 “(e) HABEAS CORPUS CHALLENGE TO DETENTION
13 DETERMINATIONS.—Any person may challenge by a writ
14 of habeas corpus has detention by the Attorney General,
15 including any determination regarding the grant, revoca-
16 tion, denial, or condition of bond or parole.”.

17 (c) DETENTION OF ALIENS NOT SUBJECT TO IMME-
18 DIATE REMOVAL.—Section 241(a) (8 U.S.C. 1231(a)) is
19 amended—

20 (1) by redesignating paragraph (6) as para-
21 graph (6)(A);

22 (2) in paragraph (6)(A) (as redesignated), by
23 inserting “for a reasonable period of time, not to ex-
24 ceed 9 months following the removal period, to allow

1 for ongoing negotiations to affect such removal”
2 after “removal period”; and

3 (3) by adding at the end of paragraph (6)(A)
4 (as redesignated) the following:

5 “(B) Upon conclusion of the removal pe-
6 riod and every 90 days thereafter, the Attorney
7 General shall review whether continued deten-
8 tion of the alien is authorized under subsection
9 (a).

10 “(C) Determinations under this subpara-
11 graph shall be subject to de novo review by an
12 immigration judge and administrative appeal.
13 In such review, it shall be the Attorney Gen-
14 eral’s burden to prove that continued detention
15 is authorized under subsection (a).”.

16 (d) LIMITATION.—Section 241 (8 U.S.C. 1231) is
17 amended by adding at the end the following:

18 “(j) LIMITATION.—Notwithstanding any other provi-
19 sion of this section, including subsection (a)(2), the Attor-
20 ney General may not detain an alien who is able to dem-
21 onstrate to the Attorney General that—

22 “(1) the alien is not a risk to the community
23 and is likely to comply with the order of removal;
24 and

1 “(2) removal of the alien cannot be effectuated
2 within the period specified in subsection (a)(6)(A).

3 The determination by the Attorney General shall be sub-
4 ject to de novo review by an immigration judge and admin-
5 istrative appeal.”.

6 (e) ORDERS OF SUPERVISION.—Section 241(a)(3) (8
7 U.S.C. 1231(a)(3)) is amended by adding at the end the
8 following new sentence: “Such determinations and orders
9 of supervision shall be subject to de novo review by an
10 immigration judge and administrative appeal.”.

11 **SEC. 9. RIGHT TO COUNSEL.**

12 Section 292 (8 U.S.C. 1362) is amended to read as
13 follows:

14 “SEC. 292. In any bond, custody, detention, or re-
15 moval proceedings before the Attorney General and in any
16 appeal proceedings before the Attorney General from any
17 such proceedings, the person concerned shall have the
18 privilege of being represented by such counsel, authorized
19 to practice in such proceedings, as he shall choose. With
20 consent of their clients, counsel may enter appearances
21 limited to bond, custody, or other specific proceedings.”

22 **SEC. 10. ABSENCES OUTSIDE THE CONTROL OF THE ALIEN.**

23 Section 101(a)(13)(C) (8 U.S.C. 1101(a)(13)(C)) is
24 amended—

25 (1) by amending clause (ii) to read as follows:

1 “(ii) has been absent from the United
2 States for a continuous period in excess of
3 one year unless the alien’s return was im-
4 peded by emergency or extenuating cir-
5 cumstances outside the control of the
6 alien,”;

7 (2) by inserting “or” at the end of clause (iii);

8 (3) by striking clauses (iv) and (v); and

9 (4) by redesignating clause (vi) as clause (iv).

10 **SEC. 11. APPLICANTS FOR ADMISSION.**

11 (a) INSPECTIONS GENERALLY.—Section 235(a) (8
12 U.S.C. 1225(a)) is amended—

13 (1) by striking paragraph (1); and

14 (2) by redesignating paragraphs (2), (3), (4),
15 and (5) as paragraphs (1), (2), (3), and (4), respec-
16 tively.

17 (b) SCREENINGS.—Section 235(b)(1)(A) (8 U.S.C.
18 1225(b)(1)(A)) is amended by striking clause (iii).

19 **SEC. 12. STATUTORY CONSTRUCTION.**

20 Nothing in this Act may be construed to make any
21 alien ineligible for any relief from removal or other benefit
22 under this Act to which he or she was eligible before enact-
23 ment of this Act.

1 **SEC. 13. REPEALS.**

2 (a) CHALLENGES TO DEPORTATION ORDERS.—Sec-
3 tion 276(d) (8 U.S.C. 1326(d)) is repealed and such repeal
4 shall apply to all cases pending at any stage in any court
5 as of the date of enactment of this Act and to all cases
6 brought on or after such date.

7 (b) COLLATERAL ATTACKS.—Section 235(b)(1)(D) is
8 repealed, and such repeal shall apply to all cases brought
9 on or after such date.

10 **SEC. 14. REMOVAL OF ALIENS WHO ARE NOT PERMANENT**
11 **RESIDENTS AND WHO HAVE NO RELIEF FROM**
12 **REMOVAL.**

13 (a) ELIGIBILITY FOR RELIEF FROM REMOVAL.—
14 Section 238(b)(5) (8 U.S.C. 1228(b)(5)) is repealed, and
15 such repeal shall apply to all proceeding spending at any
16 stage as of the date of enactment of this Act and to all
17 cases brought on or after such date.

18 (b) REQUIREMENTS FOR DETERMINATIONS OF DE-
19 PORTABILITY AND ORDERS OF REMOVAL.—Section
20 238(b)(2) (8 U.S.C. 1228(b)(2)) is amended—

21 (1) by striking “or” at the end of subparagraph
22 (A);

23 (2) by striking the period at the end of sub-
24 paragraph (B) and inserting “; or”; and

25 (3) by adding at the end the following new sub-
26 paragraph:

1 “(C) is not eligible for any relief from re-
2 moval.”.

3 **SEC. 15. REPEAL OF GROUND OF INADMISSIBILITY.**

4 Section 212(a)(9)(B) (8 U.S.C. 1182(a)(9)(B)) is re-
5 pealed.

6 **SEC. 16. REOPENING OF CERTAIN PROCEEDINGS AND PA-**
7 **ROLE OF CERTAIN PREVIOUSLY REMOVED**
8 **ALIENS.**

9 (a) IN GENERAL.—The Attorney General shall estab-
10 lish a process by which an alien described in subsection
11 (b) may apply for reopening a proceeding so as to seek
12 relief from exclusion, deportation, or removal under sec-
13 tion 212(c), as such section was in effect prior to the en-
14 actment of the Antiterrorism and Effective Death Penalty
15 Act, or section 240A, as amended by this Act.

16 (b) ALIEN DESCRIBED.—An alien referred to in sub-
17 section (a) is an alien who received a final order of exclu-
18 sion, deportation, or removal, or a decision on a petition
19 for review or petition for habeas corpus on or after the
20 effective date of the Antiterrorism and Effective Death
21 Penalty Act and who would have been eligible for relief
22 from exclusion, deportation, or removal under the amend-
23 ments made by this Act.

24 (c) PAROLE.—The Attorney General may exercise the
25 parole authority under section 212(d)(5)(a) of the Immi-

1 gration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for
2 the purpose of permitting aliens excluded, deported, or re-
3 moved from the United States to participate in the process
4 established under subsection (a), if the alien establishes
5 prima facie eligibility for the relief.

6 (d) JUDICIAL REVIEW.—A judgment regarding the
7 granting or denial of relief under this section shall be sub-
8 ject to judicial review in accordance with the appropriate
9 section of the Immigration and Nationality Act.

10 **SEC. 17. STATUTORY CONSTRUCTION.**

11 In the case of an alien who is eligible for relief under
12 section 212(c) of the Immigration and Nationality Act (as
13 in effect before the enactment of section 440(d) of the
14 Antiterrorism and Effective Death Penalty Act of 1996)
15 (Public Law 104–132; 110 Stat. 1277), nothing in this
16 Act shall be construed to modify such eligibility.

17 **SEC. 18. AUTHORITY OF THE ATTORNEY GENERAL.**

18 Notwithstanding any other provision of law, nothing
19 in this Act shall be construed to diminish the authority
20 of the Attorney General to exercise discretion in appro-
21 priate cases involving urgent humanitarian reasons, a sig-
22 nificant public benefit (including ensuring family unity),
23 or other sufficiently compelling reasons.

1 **SEC. 19. TREATMENT OF ALIENS WHO HAVE MADE FALSE**
2 **CLAIMS OF CITIZENSHIP OR WHO HAVE UN-**
3 **LAWFULLY VOTED.**

4 (a) **KNOWLEDGE REQUIREMENT.**—

5 (1) **MISREPRESENTATIONS.**—Sections
6 212(a)(6)(C)(ii)(I) (8 U.S.C. 1182(a)(6)(C)(ii)(I))
7 and 237(a)(3)(D)(i) (8 U.S.C. 1227(a)(3)(D)(i)) are
8 amended—

9 (A) by inserting “knowingly” after “alien
10 who” each place it appears; and

11 (B) by inserting “knowingly” after “has”
12 each place it appears.

13 (2) **UNLAWFUL VOTERS.**—Sections
14 212(a)(10)(D)(i) (8 U.S.C. 1182(a)(10)(D)(i)) and
15 237(a)(6)(A) (8 U.S.C. 1227(a)(6)(A)) are amended
16 by striking “has voted” each place it appears and in-
17 serting “has knowingly voted”.

18 (b) **WAIVERS.**—

19 (1) **ADMISSIBILITY OF ALIEN UNLAWFUL VOT-**
20 **ERS.**—Section 212(a)(10)(D) (8 U.S.C.
21 1182(a)(10)(D)) is amended by adding at the end
22 the following:

23 “(iii) **WAIVER.**—The Attorney General
24 may, in the discretion of the Attorney Gen-
25 eral, waive the application of clause (i) in
26 the case of an immigrant who is the par-

1 ent, spouse, son or daughter of a United
2 States citizen or of an alien lawfully admit-
3 ted for permanent residence if it is estab-
4 lished to the satisfaction of the Attorney
5 General that the refusal of admission to
6 the United States of such immigrant alien
7 would result in hardship to the alien or to
8 the citizen or lawfully resident parent,
9 spouse, son, or daughter of such an
10 alien.”.

11 (2) DEPORTABILITY OF ALIENS FALSELY
12 CLAIMING CITIZENSHIP.—Section 237(a)(3)(D) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1227(a)(3)(D)) is amended by adding at the end the
15 following:

16 “(iii) WAIVER.—The Attorney General
17 may, in the discretion of the Attorney Gen-
18 eral, waive the application of clause (i) in
19 the case of an immigrant who is the par-
20 ent, spouse, son, or daughter of a United
21 States citizen or of an alien lawfully admit-
22 ted for permanent residence if it is estab-
23 lished to the satisfaction of the Attorney
24 General that the removal from the United
25 States of such immigrant alien would re-

1 sult in hardship to the alien or to the cit-
2 izen or lawfully resident parent, spouse,
3 son, or daughter of such an alien.”.

4 (3) DEPORTABILITY OF ALIEN UNLAWFUL VOT-
5 ERS.—Section 237(a)(6) of the Immigration and
6 Nationality Act (8 U.S.C. 1227(a)(6)) is amended
7 by adding at the end the following:

8 “(C) WAIVER.—The Attorney General
9 may, in the discretion of the Attorney General,
10 waive the application of subparagraph (A) in
11 the case of an immigrant who is the parent,
12 spouse, son, or daughter of a United States cit-
13 izen or of an alien lawfully admitted for perma-
14 nent residence if it is established to the satis-
15 faction of the Attorney General that the re-
16 moval from the United States of such immi-
17 grant alien would result in hardship to the alien
18 or to the citizen or lawfully resident parent,
19 spouse, son, or daughter of such an alien.”.

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