

109TH CONGRESS
2^D SESSION

H. R. 6089

To restore the Secretary of Homeland Security's authority to detain dangerous aliens, to affirm the inherent authority of State and local law enforcement to assist in the enforcement of immigration laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2006

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

A BILL

To restore the Secretary of Homeland Security's authority to detain dangerous aliens, to affirm the inherent authority of State and local law enforcement to assist in the enforcement of immigration laws, 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 "Illegal Immigrant De-
5 terrence and Public Safety Act of 2006".

1 **TITLE I—DANGEROUS ALIEN**
2 **DETENTION ACT OF 2006**

3 **SEC. 101. DETENTION OF DANGEROUS ALIENS.**

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

6 (1) by striking “Attorney General” each place
7 it appears, except for the first reference in para-
8 graph (4)(B)(i), and inserting “Secretary of Home-
9 land Security”;

10 (2) in paragraph (1), by adding at the end of
11 subparagraph (B) the following:

12 “If, at that time, the alien is not in the custody
13 of the Secretary of Homeland Security (under
14 the authority of this Act), the Secretary shall
15 take the alien into custody for removal, and the
16 removal period shall not begin until the alien is
17 taken into such custody. If the Secretary trans-
18 fers custody of the alien during the removal pe-
19 riod pursuant to law to another Federal agency
20 or a State or local government agency in con-
21 nection with the official duties of such agency,
22 the removal period shall be tolled, and shall
23 begin anew on the date of the alien’s return to
24 the custody of the Secretary, subject to clause
25 (ii).”;

1 (3) by amending clause (ii) of paragraph (1)(B)
2 to read as follows:

3 “(ii) If a court, the Board of Immi-
4 gration Appeals, or an immigration judge
5 orders a stay of the removal of the alien,
6 the date the stay of removal is no longer
7 in effect.”;

8 (4) by amending paragraph (1)(C) to read as
9 follows:

10 “(C) SUSPENSION OF PERIOD.—The re-
11 moval period shall be extended beyond a period
12 of 90 days and the alien may remain in deten-
13 tion during such extended period if the alien
14 fails or refuses to make all reasonable efforts to
15 comply with the removal order, or to fully co-
16 operate with the Secretary of Homeland Secu-
17 rity’s efforts to establish the alien’s identity and
18 carry out the removal order, including making
19 timely application in good faith for travel or
20 other documents necessary to the alien’s depar-
21 ture, or conspires or acts to prevent the alien’s
22 removal subject to an order of removal.”;

23 (5) in paragraph (2), by adding at the end the
24 following: “If a court, the Board of Immigration Ap-
25 peals, or an immigration judge orders a stay of re-

1 removal of an alien who is subject to an administra-
2 tively final order of removal, the Secretary, in the
3 exercise of the Secretary’s discretion, may detain the
4 alien during the pendency of such stay of removal.”;

5 (6) by amending paragraph (3)(D) to read as
6 follows:

7 “(D) to obey reasonable restrictions on the
8 alien’s conduct or activities, or perform affirma-
9 tive acts, that the Secretary of Homeland Secu-
10 rity prescribes for the alien, in order to prevent
11 the alien from absconding, or for the protection
12 of the community, or for other purposes related
13 to the enforcement of the immigration laws.”;

14 (7) in paragraph (6), by striking “removal pe-
15 riod and, if released,” and inserting “removal period,
16 in the discretion of the Secretary of Homeland Secu-
17 rity, without any limitations other than those speci-
18 fied in this section, until the alien is removed. If an
19 alien is released, the alien”; and

20 (8) by redesignating paragraph (7) as para-
21 graph (10) and inserting after paragraph (6) the fol-
22 lowing:

23 “(7) PAROLE.—If an alien detained pursuant to
24 paragraph (6) is an applicant for admission, the
25 Secretary of Homeland Security, in the Secretary’s

1 discretion, may parole the alien under section
2 212(d)(5) and may provide, notwithstanding such
3 section, that the alien shall not be returned to cus-
4 tody unless either the alien violates the conditions of
5 the alien’s parole or the alien’s removal becomes rea-
6 sonably foreseeable, but in no circumstance shall
7 such alien be considered admitted.

8 “(8) ADDITIONAL RULES FOR DETENTION OR
9 RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN
10 ENTRY.—The following procedures apply only with
11 respect to an alien who has effected an entry into
12 the United States. These procedures do not apply to
13 any other alien detained pursuant to paragraph (6):

14 “(A) ESTABLISHMENT OF A DETENTION
15 REVIEW PROCESS FOR ALIENS WHO FULLY CO-
16 OPERATE WITH REMOVAL.—For an alien who
17 has made all reasonable efforts to comply with
18 a removal order and to cooperate fully with the
19 Secretary of Homeland Security’s efforts to es-
20 tablish the alien’s identity and carry out the re-
21 moval order, including making timely applica-
22 tion in good faith for travel or other documents
23 necessary to the alien’s departure, and has not
24 conspired or acted to prevent removal, the Sec-
25 retary shall establish an administrative review

1 process to determine whether the alien should
2 be detained or released on conditions. The Sec-
3 retary shall make a determination whether to
4 release an alien after the removal period in ac-
5 cordance with subparagraph (B). The deter-
6 mination shall include consideration of any evi-
7 dence submitted by the alien, and may include
8 consideration of any other evidence, including
9 any information or assistance provided by the
10 Secretary of State or other Federal official and
11 any other information available to the Secretary
12 of Homeland Security pertaining to the ability
13 to remove the alien.

14 “(B) AUTHORITY TO DETAIN BEYOND THE
15 REMOVAL PERIOD.—

16 “(i) IN GENERAL.—The Secretary of
17 Homeland Security, in the exercise of the
18 Secretary’s discretion, without any limita-
19 tions other than those specified in this sec-
20 tion, may continue to detain an alien for
21 90 days beyond the removal period (includ-
22 ing any extension of the removal period as
23 provided in paragraph (1)(C)).

24 “(ii) SPECIFIC CIRCUMSTANCES.—The
25 Secretary of Homeland Security, in the ex-

1 ercise of the Secretary’s discretion, without
2 any limitations other than those specified
3 in this section, may continue to detain an
4 alien beyond the 90 days authorized in
5 clause (i)—

6 “(I) until the alien is removed, if
7 the Secretary determines that there is
8 a significant likelihood that the
9 alien—

10 “(aa) will be removed in the
11 reasonably foreseeable future; or

12 “(bb) would be removed in
13 the reasonably foreseeable future,
14 or would have been removed, but
15 for the alien’s failure or refusal
16 to make all reasonable efforts to
17 comply with the removal order,
18 or to cooperate fully with the
19 Secretary’s efforts to establish
20 the aliens’ identity and carry out
21 the removal order, including
22 making timely application in
23 good faith for travel or other doc-
24 uments necessary to the alien’s

1 departure, or conspiracies or acts
2 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 any
10 person, and either (AA) the alien
11 has been convicted of one or
12 more aggravated felonies (as de-
13 fined in section 101(a)(43)(A))
14 or of one or more crimes identi-
15 fied by the Secretary of Home-
16 land Security by regulation, or of
17 one or more attempts or conspir-
18 acies to commit any such aggra-
19 vated felonies or such identified
20 crimes, if the aggregate term of
21 imprisonment for such attempts
22 or conspiracies is at least 5
23 years; or (BB) the alien has com-
24 mitted one or more crimes of vio-
25 lence (as defined in section 16 of

1 title 18, United States Code, but
2 not including a purely political
3 offense) and, because of a mental
4 condition or personality disorder
5 and behavior associated with that
6 condition or disorder, the alien is
7 likely to engage in acts of vio-
8 lence in the future; or

9 “(ee) that the release of the
10 alien will threaten the safety of
11 the community or any person,
12 conditions of release cannot rea-
13 sonably be expected to ensure the
14 safety of the community or any
15 person, and the alien has been
16 convicted of at least one aggra-
17 vated felony (as defined in sec-
18 tion 101(a)(43)); or

19 “(III) pending a determination
20 under subclause (II), so long as the
21 Secretary of Homeland Security has
22 initiated the administrative review
23 process not later than 30 days after
24 the expiration of the removal period
25 (including any extension of the re-

1 moval period, as provided in sub-
2 section (a)(1)(C)).

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

5 “(i) RENEWAL.—The Secretary of
6 Homeland Security may renew a certifi-
7 cation under subparagraph (B)(ii)(II)
8 every 6 months without limitation, after
9 providing an opportunity for the alien to
10 request reconsideration of the certification
11 and to submit documents or other evidence
12 in support of that request. If the Secretary
13 does not renew a certification, the Sec-
14 retary may not continue to detain the alien
15 under subparagraph (B)(ii)(II).

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

24 “(iii) HEARING.—The Secretary of
25 Homeland Security may request that the

1 Attorney General or the Attorney General's
2 designee provide for a hearing to make the
3 determination described in item (dd)(BB)
4 of subparagraph (B)(ii)(II).

5 “(D) RELEASE ON CONDITIONS.—If it is
6 determined that an alien should be released
7 from detention, the Secretary of Homeland Se-
8 curity, in the exercise of the Secretary's discre-
9 tion, may impose conditions on release as pro-
10 vided in paragraph (3).

11 “(E) REDETENTION.—The Secretary of
12 Homeland Security, in the exercise of the Sec-
13 retary's discretion, without any limitations
14 other than those specified in this section, may
15 again detain any alien subject to a final re-
16 moval order who is released from custody if the
17 alien fails to comply with the conditions of re-
18 lease, or to continue to satisfy the conditions
19 described in subparagraph (A), or if, upon re-
20 consideration, the Secretary determines that the
21 alien can be detained under subparagraph (B).
22 Paragraphs (6) through (8) shall apply to any
23 alien returned to custody pursuant to this sub-
24 paragraph, as if the removal period terminated
25 on the day of the redetention.

1 “(F) CERTAIN ALIENS WHO EFFECTED
2 ENTRY.—If an alien has effected an entry, but
3 has neither been lawfully admitted nor has been
4 physically present in the United States continu-
5 ously for the 2-year period immediately prior to
6 the commencement of removal proceedings
7 under this Act or deportation proceedings
8 against the alien, the Secretary of Homeland
9 Security, in the exercise of the Secretary’s dis-
10 cretion, may decide not to apply paragraph (8)
11 and detain the alien without any limitations ex-
12 cept those which the Secretary shall adopt by
13 regulation.

14 “(9) JUDICIAL REVIEW.—Without regard to the
15 place of confinement, judicial review of any action or
16 decision pursuant to paragraphs (6), (7), or (8) shall
17 be available exclusively in habeas corpus proceedings
18 instituted in the United States District Court for the
19 District of Columbia, and only if the alien has ex-
20 hausted all administrative remedies (statutory and
21 regulatory) available to the alien as of right.”.

1 **SEC. 102. DETENTION OF ALIENS DURING REMOVAL PRO-**
2 **CEEDINGS.**

3 (a) **DETENTION AUTHORITY.**—Section 235 of the
4 Immigration and Nationality Act (8 U.S.C. 1225) is
5 amended by adding at the end the following:

6 “(e) **LENGTH OF DETENTION.**—

7 “(1) **IN GENERAL.**—With regard to length of
8 detention, an alien may be detained under this sec-
9 tion, without limitation, until the alien is subject to
10 an administratively final order of removal.

11 “(2) **CONSTRUCTION.**—The length of detention
12 under this section shall not affect the validity of any
13 detention under section 241.

14 “(f) **JUDICIAL REVIEW.**—Without regard to the place
15 of confinement, judicial review of any action or decision
16 made pursuant to subsection (e) shall be available exclu-
17 sively in a habeas corpus proceeding instituted in the
18 United States District Court for the District of Columbia
19 and only if the alien has exhausted all administrative rem-
20 edies (statutory and nonstatutory) available to the alien
21 as of right.”.

22 (b) **JUDICIAL REVIEW.**—Section 236(e) of such Act
23 (8 U.S.C. 1226(e)) is amended by adding at the end the
24 following: “Without regard to the place of confinement,
25 judicial review of any action or decision made pursuant
26 to subsection (f) shall be available exclusively in a habeas

1 corpus proceeding instituted in the United States District
2 Court for the District of Columbia and only if the alien
3 has exhausted all administrative remedies (statutory and
4 nonstatutory) available to the alien as of right.”.

5 (c) LENGTH OF DETENTION.—Section 236 of such
6 Act (8 U.S.C. 1226) is amended by adding at the end the
7 following:

8 “(f) LENGTH OF DETENTION.—

9 “(1) IN GENERAL.—With regard to length of
10 detention, an alien may be detained under this sec-
11 tion, without limitation, until the alien is subject to
12 an administratively final order of removal.

13 “(2) CONSTRUCTION.—The length of detention
14 under this section shall not affect the validity of any
15 detention under section 241 of this Act.”.

16 **SEC. 103. SEVERABILITY.**

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

1 **SEC. 104. EFFECTIVE DATES.**

2 (a) SECTION 101.—The amendments made by section
3 101 shall take effect on the date of the enactment of this
4 Act, and section 241 of the Immigration and Nationality
5 Act, as amended, shall apply to—

6 (1) all aliens subject to a final administrative
7 removal, deportation, or exclusion order that was
8 issued before, on, or after the date of the enactment
9 of this Act; and

10 (2) acts and conditions occurring or existing be-
11 fore, on, or after the date of the enactment of this
12 Act.

13 (b) SECTION 102.—The amendments made by sec-
14 tion 102 shall take effect upon the date of the enactment
15 of this Act, and sections 235 and 236 of the Immigration
16 and Nationality Act, as amended, shall apply to any alien
17 in detention under provisions of such sections on or after
18 the date of the enactment of this Act.

1 **TITLE II—STATE AND LOCAL**
2 **LAW ENFORCEMENT CO-**
3 **OPERATION IN THE EN-**
4 **FORCEMENT OF IMMIGRA-**
5 **TION LAW ACT**

6 **SEC. 201. FEDERAL AFFIRMATION OF ASSISTANCE IN IMMI-**
7 **GRATION LAW ENFORCEMENT BY STATES**
8 **AND POLITICAL SUBDIVISIONS OF STATES.**

9 (a) IN GENERAL.—Notwithstanding any other provi-
10 sion of law and reaffirming the existing inherent authority
11 of States, law enforcement personnel of a State or a polit-
12 ical subdivision of a State have the inherent authority of
13 a sovereign entity to investigate, identify, apprehend, ar-
14 rest, detain, or transfer to Federal custody aliens in the
15 United States (including the transportation of such aliens
16 across State lines to detention centers), for the purposes
17 of assisting in the enforcement of the immigration laws
18 of the United States in the course of carrying out routine
19 duties. This State authority has never been displaced or
20 preempted by Congress.

21 (b) CONSTRUCTION.—Nothing in this section may be
22 construed to require law enforcement personnel of a State
23 or political subdivision of a State to—

24 (1) report the identity of a victim of, or a wit-
25 ness to, a criminal offense to the Secretary of Home-

1 land Security for immigration enforcement purposes;

2 or

3 (2) arrest such victim or witness for a violation

4 of the immigration laws of the United States.

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