

110TH CONGRESS  
2D SESSION

# H. R. 6843

To strengthen procedures regarding detention and removal of aliens.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 2008

Mr. MAHONEY of Florida introduced the following bill; which was referred to  
the Committee on the Judiciary

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## A BILL

To strengthen procedures regarding detention and removal  
of aliens.

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 “Officer Andrew  
5 Widman Criminal Alien Enforcement Act of 2008”.

6 **SEC. 2. DETENTION AND REMOVAL OF ALIENS ORDERED**  
7 **REMOVED.**

8 (a) STRENGTHENING PROCEDURES REGARDING  
9 ALIENS ORDERED REMOVED, INCLUDING DANGEROUS  
10 ALIENS.—Section 241(a) (8 U.S.C. 1231(a)) is amend-  
11 ed—

1           (1) by striking “Attorney General” the first  
2 place it appears, except for the first reference in  
3 clause (a)(4)(B)(i), and inserting “Secretary of  
4 Homeland Security”;

5           (2) by striking “Attorney General” any other  
6 place it appears and inserting “Secretary”;

7           (3) in paragraph (1)—

8                 (A) in subparagraph (B), by amending  
9 clause (ii) to read as follows:

10           “(ii) If a court, the Board of Immigration Appeals,  
11 or an immigration judge orders a stay of the removal of  
12 the alien, the expiration date of the stay of removal.”;

13                 (B) by amending subparagraph (C) to read  
14 as follows:

15                 “(C) EXTENSION OF DETENTION FOR UN-  
16 COOPERATIVE REMOVABLE ALIENS.—The re-  
17 moval period shall be extended beyond a period  
18 of 90 days and the alien may remain in deten-  
19 tion during such extended period if the alien  
20 fails or refuses to—

21                         “(i) make all reasonable efforts to  
22 comply with the removal order; or

23                         “(ii) fully cooperate with the Sec-  
24 retary’s efforts to establish the alien’s  
25 identity and carry out the removal order,

1 including failing to make timely application  
2 in good faith for travel or other documents  
3 necessary to the alien’s departure, or con-  
4 spiring or acting to prevent the alien’s re-  
5 moval.”; and

6 (C) by adding at the end the following:

7 “(D) TOLLING OF PERIOD.—If, at the  
8 time described in subparagraph (B), the alien is  
9 not in the custody of the Secretary under the  
10 authority of this Act, the removal period shall  
11 not begin until the alien is taken into such cus-  
12 tody. If the Secretary lawfully transfers custody  
13 of the alien during the removal period to an-  
14 other Federal agency or to a State or local gov-  
15 ernment agency in connection with the official  
16 duties of such agency, the removal period shall  
17 be tolled, and shall recommence on the date on  
18 which the alien is returned to the custody of the  
19 Secretary.”;

20 (4) in paragraph (2), by adding at the end the  
21 following: “If a court, the Board of Immigration Ap-  
22 peals, or an immigration judge orders a stay of re-  
23 moval of an alien who is subject to an administrative  
24 final order of removal, the Secretary, in the exercise

1 of discretion, may detain the alien during the pend-  
2 ency of such stay of removal.”;

3 (5) in paragraph (3), by amending subpara-  
4 graph (D) to read as follows:

5 “(D) to obey reasonable restrictions on the  
6 alien’s conduct or activities, or to perform af-  
7 firmative acts, that the Secretary prescribes for  
8 the alien—

9 “(i) to prevent the alien from ab-  
10 scending;

11 “(ii) for the protection of the commu-  
12 nity; or

13 “(iii) for other purposes related to the  
14 enforcement of the immigration laws.”;

15 (6) in paragraph (6), by striking “removal pe-  
16 riod and, if released,” and inserting “removal period,  
17 in the discretion of the Secretary, without any limi-  
18 tations other than those specified in this section,  
19 until the alien is removed. If an alien is released, the  
20 alien”;

21 (7) by redesignating paragraph (7) as para-  
22 graph (10); and

23 (8) by inserting after paragraph (6) the fol-  
24 lowing:

1           “(7) PAROLE.—If an alien detained pursuant to  
2 paragraph (6) is an applicant for admission, the  
3 Secretary of Homeland Security, in the Secretary’s  
4 discretion, may parole the alien under section  
5 212(d)(5) and may provide, notwithstanding section  
6 212(d)(5), that the alien shall not be returned to  
7 custody unless either the alien violates the conditions  
8 of the alien’s parole or the alien’s removal becomes  
9 reasonably foreseeable, provided that in no cir-  
10 cumstance shall such alien be considered admitted.

11           “(8) ADDITIONAL RULES FOR DETENTION OF  
12 ALIENS.—The following procedures shall apply to an  
13 alien detained under this section:

14           “(A) DETENTION REVIEW PROCESS FOR  
15 ALIENS WHO HAVE EFFECTED AN ENTRY AND  
16 FULLY COOPERATE WITH REMOVAL.—The Sec-  
17 retary of Homeland Security shall establish an  
18 administrative review process to determine  
19 whether an alien described in subparagraph (B)  
20 should be detained or released after the removal  
21 period in accordance with this paragraph.

22           “(B) ALIEN DESCRIBED.—An alien is de-  
23 scribed in this subparagraph if the alien—

24                   “(i) has effected an entry into the  
25 United States;

1           “(ii) has made all reasonable efforts  
2           to comply with the alien’s removal order;

3           “(iii) has cooperated fully with the  
4           Secretary’s efforts to establish the alien’s  
5           identity and to carry out the removal  
6           order, including making timely application  
7           in good faith for travel or other documents  
8           necessary for the alien’s departure; and

9           “(iv) has not conspired or acted to  
10          prevent removal.

11          “(C) EVIDENCE.—In making a determina-  
12          tion under subparagraph (A), the Secretary—

13               “(i) shall consider any evidence sub-  
14               mitted by the alien;

15               “(ii) may consider any other evidence,  
16               including—

17                       “(I) any information or assist-  
18                       ance provided by the Department of  
19                       State or other Federal agency; and

20                       “(II) any other information avail-  
21                       able to the Secretary pertaining to the  
22                       ability to remove the alien.

23          “(D) AUTHORITY TO DETAIN ALIENS FOR  
24          90 DAYS BEYOND REMOVAL PERIOD.—The Sec-  
25          retary, in the exercise of the Secretary’s discre-

1           tion and without any limitations other than  
2           those specified in this section, may detain an  
3           alien for 90 days beyond the removal period (in-  
4           cluding any extension of the removal period  
5           under paragraph (1)(C)).

6           “(E) AUTHORITY TO DETAIN DANGEROUS  
7           ALIENS FOR ADDITIONAL PERIOD.—The Sec-  
8           retary, in the exercise of the Secretary’s discre-  
9           tion and without any limitations other than  
10          those specified in this section, may detain an  
11          alien beyond the 90-day period authorized  
12          under subparagraph (D) until the alien is re-  
13          moved, if the Secretary—

14                 “(i) determines that there is a signifi-  
15                 cant likelihood that the alien will be re-  
16                 moved in the reasonably foreseeable future;  
17                 or

18                 “(ii) certifies in writing—

19                         “(I) in consultation with the Sec-  
20                         retary of Health and Human Services,  
21                         that the alien has a highly contagious  
22                         disease that poses a threat to public  
23                         safety;

24                         “(II) after receipt of a written  
25                         recommendation from the Secretary of

1 State, that the release of the alien  
2 would likely have serious adverse for-  
3 eign policy consequences for the  
4 United States;

5 “(III) based on information avail-  
6 able to the Secretary (including classi-  
7 fied, sensitive, or national security in-  
8 formation, and regardless of the  
9 grounds upon which the alien was or-  
10 dered removed), that there is reason  
11 to believe that the release of the alien  
12 would threaten the national security  
13 of the United States;

14 “(IV) that—

15 “(aa) the release of the alien  
16 would threaten the safety of the  
17 community or any person, and  
18 conditions of release cannot rea-  
19 sonably be expected to ensure the  
20 safety of the community or any  
21 person; and

22 “(bb) the alien—

23 “(AA) has been con-  
24 victed of 1 or more aggra-  
25 vated felonies (as defined in

1 section 101(a)(43)(A)), or of  
2 1 or more attempts or con-  
3 spiracies to commit any such  
4 aggravated felonies for an  
5 aggregate term of imprison-  
6 ment of at least 5 years; or  
7 “(BB) has committed a  
8 crime of violence (as defined  
9 in section 16 of title 18,  
10 United States Code, but not  
11 including a purely political  
12 offense) and, because of a  
13 mental condition or person-  
14 ality disorder and behavior  
15 associated with that condi-  
16 tion or disorder, is likely to  
17 engage in acts of violence in  
18 the future; or  
19 “(V) that—  
20 “(aa) the release of the alien  
21 would threaten the safety of the  
22 community or any person, not-  
23 withstanding conditions of release  
24 designed to ensure the safety of

1 the community or any person;  
2 and

3 “(bb) the alien has been  
4 convicted of 1 or more aggra-  
5 vated felonies (as defined in sec-  
6 tion 101(a)(43)) for which the  
7 alien was sentenced to an aggre-  
8 gate term of imprisonment of not  
9 less than 1 year.

10 “(F) ATTORNEY GENERAL REVIEW.—If  
11 the Secretary authorizes an extension of deten-  
12 tion under subparagraph (E), the alien may  
13 seek review of that determination before the At-  
14 torney General. If the Attorney General con-  
15 cludes that the alien should be released, then  
16 the Secretary shall release the alien pursuant to  
17 subparagraph (I). The Attorney General, in  
18 consultation with the Secretary, shall promul-  
19 gate regulations governing review under this  
20 paragraph.

21 “(G) ADMINISTRATIVE REVIEW PROC-  
22 ESS.—The Secretary, without any limitations  
23 other than those specified in this section, may  
24 detain an alien pending a determination under  
25 subparagraph (E)(ii), if the Secretary has initi-

1 ated the administrative review process identified  
2 in subparagraph (A) not later than 30 days  
3 after the expiration of the removal period (in-  
4 cluding any extension of the removal period  
5 under paragraph (1)(C)).

6 “(H) RENEWAL AND DELEGATION OF CER-  
7 TIFICATION.—

8 “(i) RENEWAL.—The Secretary may  
9 renew a certification under subparagraph  
10 (E)(ii) every 6 months, without limitation,  
11 after providing the alien with an oppor-  
12 tunity to request reconsideration of the  
13 certification and to submit documents or  
14 other evidence in support of that request.  
15 If the Secretary does not renew such cer-  
16 tification, the Secretary shall release the  
17 alien, pursuant to subparagraph (I). If the  
18 Secretary authorizes an extension of deten-  
19 tion under paragraph (E), the alien may  
20 seek review of that determination before  
21 the Attorney General. If the Attorney Gen-  
22 eral concludes that the alien should be re-  
23 leased, then the Secretary shall release the  
24 alien pursuant to subparagraph (I).

1           “(ii) DELEGATION.—Notwithstanding  
2           any other provision of law, the Secretary  
3           may not delegate the authority to make or  
4           renew a certification described in subclause  
5           (II), (III), or (V) of subparagraph (E)(ii)  
6           below the level of the Assistant Secretary  
7           for Immigration and Customs Enforce-  
8           ment.

9           “(iii) HEARING.—The Secretary may  
10          request that the Attorney General, or a  
11          designee of the Attorney General, provide  
12          for a hearing to make the determination  
13          described           in           subparagraph  
14          (E)(ii)(IV)(bb)(BB).

15          “(I) CONDITIONS ON RELEASE.—If it is  
16          determined that an alien should be released  
17          from detention, the Secretary may, in the Sec-  
18          retary’s discretion, impose conditions on release  
19          in accordance with the regulations prescribed  
20          pursuant to paragraph (3).

21          “(J) REDETENTION OF CERTAIN  
22          ALIENS.—The Secretary, without any limita-  
23          tions other than those specified in this section,  
24          may detain any alien subject to a final removal

1 order who has previously been released from  
2 custody if—

3 “(i) the alien fails to comply with the  
4 conditions of release;

5 “(ii) the alien fails to continue to sat-  
6 isfy the conditions described in subpara-  
7 graph (B); or

8 “(iii) upon reconsideration, the Sec-  
9 retary determines that the alien can be de-  
10 tained under subparagraph (E).

11 “(K) APPLICABILITY.—This paragraph  
12 and paragraphs (6) and (7) shall apply to any  
13 alien returned to custody under subparagraph  
14 (I) as if the removal period terminated on the  
15 day of the redetention.

16 “(L) DETENTION REVIEW PROCESS FOR  
17 ALIENS WHO HAVE EFFECTED AN ENTRY AND  
18 FAIL TO COOPERATE WITH REMOVAL.—The  
19 Secretary shall detain an alien until the alien  
20 makes all reasonable efforts to comply with a  
21 removal order and to cooperate fully with the  
22 Secretary’s efforts, if the alien—

23 “(i) has effected an entry into the  
24 United States; and

1           “(ii)(I) and the alien faces a signifi-  
2           cant likelihood that the alien will be re-  
3           moved in the reasonably foreseeable future,  
4           or would have been removed if the alien  
5           had not—

6                         “(aa) failed or refused to  
7                         make all reasonable efforts to  
8                         comply with a removal order;

9                         “(bb) failed or refused to  
10                        fully cooperate with the Sec-  
11                        retary’s efforts to establish the  
12                        alien’s identity and carry out the  
13                        removal order, including the fail-  
14                        ure to make timely application in  
15                        good faith for travel or other doc-  
16                        uments necessary to the alien’s  
17                        departure; or

18                        “(cc) conspired or acted to  
19                        prevent removal; or

20                        “(II) the Secretary makes a certifi-  
21                        cation as specified in subparagraph (E), or  
22                        the renewal of a certification specified in  
23                        subparagraph (H).

24                        “(M) DETENTION REVIEW PROCESS FOR  
25                        ALIENS WHO HAVE NOT EFFECTED AN

1 ENTRY.—Except as otherwise provided in this  
2 subparagraph, the Secretary shall follow the  
3 guidelines established in section 241.4 of title 8,  
4 Code of Federal Regulations, when detaining  
5 aliens who have not effected an entry. The Sec-  
6 retary may decide to apply the review process  
7 outlined in this paragraph.

8 “(9) JUDICIAL REVIEW.—Judicial review of any  
9 action or decision made pursuant to paragraph (6),  
10 (7), or (8) shall be available exclusively in a habeas  
11 corpus proceeding brought in a United States dis-  
12 trict court and only if the alien has exhausted all ad-  
13 ministrative remedies (statutory and nonstatutory)  
14 available to the alien as of right.”.

15 (b) EFFECTIVE DATE.—The amendments made by  
16 subsection (a)—

17 (1) shall take effect on the date of the enact-  
18 ment of this Act; and

19 (2) shall apply to—

20 (A) any alien subject to a final administra-  
21 tive removal, deportation, or exclusion order  
22 that was issued before, on, or after the date of  
23 the enactment of this Act, unless (a) that order  
24 was issued and the alien was subsequently re-  
25 leased or paroled before the enactment of this

1 Act and (b) the alien has complied with and re-  
2 mains in compliance with the terms and condi-  
3 tions of that release or parole; and

4 (B) any Act or condition occurring or ex-  
5 isting before, on, or after the date of the enact-  
6 ment of this Act.

○