

FOR THE RELIEF OF LARRY ERROL PIETERSE

JULY 24, 1998.—Committed to the Committee of the Whole House and ordered to
be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 379]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 379) for the relief of Larry Errol Pieterse, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

This private bill would waive the provisions of the I.N.A. that could cause Mr. Pieterse's deportation based on the offense pardoned by the Governor.

BACKGROUND AND NEED FOR THE LEGISLATION

After a seven-year relationship, Larry Pieterse and his first wife Eva were married in 1981. Mr. Pieterse entered the United States in November 1981 as a P2-1 (2d preference: spouse of alien resident), and has resided here ever since.

In 1983, the marriage began to fall apart. Mrs. Pieterse asked Mr. Pieterse to move out. Once he moved out, his wife began to stalk him—at one point slashing the tires of a woman he was seeing. Mr. Pieterse informed his first wife that he wanted a divorce. She asked to come over to talk, at which time she planted cocaine in his home and a call was made to the police. He was arrested and charged with drug possession. During the trial the first wife's diary was presented to the court in which she admitted to buying and planting the drugs in retaliation for Mr. Pieterse's desire to divorce her.

After being assured by the Immigration and Naturalization Service that deportation would not result from a misdemeanor conviction, because of financial concerns associated with further court proceedings, Mr. Pieterse accepted the plea negotiation arranged by his attorney with the State Attorney. In accordance with that plea negotiation, Mr. Pieterse entered a plea to the misdemeanor charge of possession of drug paraphernalia and adjudication of guilt and imposition of sentence was withheld. However, after Mr. Pieterse's plea was entered a provision was enacted which allows for deportation based on a conviction for a *past* or present drug *offense* (formerly Section 241(a)(11), now Section 237(a)(2)(B)(i) of the Immigration and Nationality Act). The new provision made Mr. Pieterse deportable.

In 1991, after thorough investigation of the case by Parole Board investigators, the State of Florida granted Mr. Pieterse a full pardon. However, because Section 241(a)(11) is a Federal statute, a state pardon does not prevent a drug conviction from being utilized for deportation purposes.

Pursuant to the recommendation of the I.N.S. agent working this case and I.N.S. Headquarters personnel, the Committee informed the sponsor of the bill that Interim Decision 3250 decided that a state drug conviction is not a deportable offense *if* it is established that had the alien been prosecuted under federal law, the alien would have been eligible for federal first offender treatment under the provisions of 18 U.S.C. 3607(a). Because Mr. Pieterse's case fell into those newly established guidelines, before the Subcommittee could consider a private bill for Mr. Pieterse, that administrative remedy needed to be exhausted.

Mr. Pieterse filed a motion to reopen his deportation proceeding based on this new interim decision. However, due to a new regulation restricting the time period for filing a motion to reopen, it has been denied as untimely. Commissioner Meissner has refused to assist with waiving the untimeliness issue. The I.N.S. has indicated that a private bill is Mr. Pieterse's only remedy and indicated they would not object to enactment of a private bill.

The Subcommittee has consulted with the parole investigator for the Governor of Florida and the I.N.S. agent in charge of this case, as well as received the confidential case analysis of the Florida Pa-

role and Probation Commission's Office of Executive Clemency. Investigations by all three sources were exhaustive. All found that the ex-wife clearly planted the drugs, and that Mr. Pieterse was guilty of no crime whatsoever.

Mr. Pieterse remarried in 1990. Since that time, he has been the sole provider for his wife, Theresa and has assisted in the financial care of her four children from a previous marriage. Theresa, an American citizen, does not work and is chronically ill. The Pietereses have incurred over \$50,000 in legal fees attempting to rectify this situation. Mr. Pieterse's has unfairly suffered as a result of a series of incidents and resulting circumstances beyond his control, and a private bill is the only way to remedy this problem.

HEARINGS

The Committee's Subcommittee on Immigration and Claims held no hearings on H.R. 379.

COMMITTEE CONSIDERATION

On June 11, 1998, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R.379 without amendment by voice vote, a quorum being present.

On July 16, 1998, the Committee on the Judiciary met in open session and ordered reported favorably the bill H.R. 379 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 379, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 20, 1998.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 379, a bill for the relief of Larry Errol Pieterse.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

cc: Hon. John Conyers, Jr.,
 Ranking Minority Member

H.R. 379—A bill for the relief of Larry Errol Pieterse

H.R. 379 would grant permanent residence and relief from deportation to Larry Errol Pieterse. CBO estimates that enacting this legislation would have no significant impact on the federal budget. H.R. 379 would not affect direct spending or receipts, so pay-as-you-go procedures would not apply.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226-2860. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article 1, Section 1, Clause 8 of the Constitution.

AGENCY VIEWS

The comments of the Immigration and Naturalization Service on H.R. 379 are as follows:

U.S. DEPARTMENT OF JUSTICE,
 IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC., July 22, 1997.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This refers to H.R. 379 for the relief of Larry Errol Pieterse, who was also the beneficiary of H.R. 765 in the 104th Congress.

The bill would provide the beneficiary relief from deportation as a result of his conviction on April 25, 1984 in Duval County, Florida for possession of drug paraphernalia. The bill also provides for restoration of status of the beneficiary to a lawful permanent resident of the United States, and for a waiver of excludability, should the beneficiary depart the United States and seek to reenter as a

returning resident and that his conviction may not be used as a determination that the beneficiary has exhibited bad moral character.

A recent investigation has been conducted and it has been determined that there are no substantive changes in the beneficiary's situation since the last report. Mr. Pieterse is employed as a piping designer in Atlanta, Georgia. His salary is \$80,000 per year. His wife is unemployed. The beneficiary and his spouse and two of her children reside in their residence in Lithonia, Georgia and they are renting their former residence in Lawrenceville, Georgia.

Absent enactment of the bill, the beneficiary is subject to enforcement of the outstanding order of deportation which has been entered in his case by the Executive Office for Immigration Review.

Sincerely,

ALLEN ERENBAUM,
Acting Director,
Congressional Relations.

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