

110TH CONGRESS  
1ST SESSION

# H. R. 4022

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.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 2007

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

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## 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 2007”.

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(c).  
 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 6 208), section 321 of such Act is repealed and the provi-  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).

○