

116TH CONGRESS
1ST SESSION

H. R. 3860

To amend the Immigration and Nationality Act with respect to the detention of dangerous aliens, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2019

Mrs. LESKO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act with respect to the detention of dangerous aliens, 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. 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”;

1 (2) in paragraph (1), by amending subpara-
2 graph (B) to read as follows:

3 “(B) BEGINNING OF PERIOD.—The re-
4 moval period begins on the latest of the fol-
5 lowing:

6 “(i) The date the order of removal be-
7 comes administratively final.

8 “(ii) If the alien is not in the custody
9 of the Secretary on the date the order of
10 removal becomes administratively final, the
11 date the alien is taken into such custody.

12 “(iii) If the alien is detained or con-
13 fined (except under an immigration proc-
14 ess) on the date the order of removal be-
15 comes administratively final, the date the
16 alien is taken into the custody of the Sec-
17 retary, after the alien is released from such
18 detention or confinement.”;

19 (3) in paragraph (1), by amending subpara-
20 graph (C) to read as follows:

21 “(C) SUSPENSION OF PERIOD.—

22 “(i) EXTENSION.—The removal period
23 shall be extended beyond a period of 90
24 days and the Secretary may, in the Sec-

1 retary’s sole discretion, keep the alien in
2 detention during such extended period if—

3 “(I) the alien fails or refuses to
4 make all reasonable efforts to comply
5 with the removal order, or to fully co-
6 operate with the Secretary’s efforts to
7 establish the alien’s identity and carry
8 out the removal order, including mak-
9 ing timely application in good faith
10 for travel or other documents nec-
11 essary to the alien’s departure or con-
12 spires or acts to prevent the alien’s
13 removal that is subject to an order of
14 removal;

15 “(II) a court, the Board of Immi-
16 gration Appeals, or an immigration
17 judge orders a stay of removal of an
18 alien who is subject to an administra-
19 tively final order of removal;

20 “(III) the Secretary transfers
21 custody of the alien pursuant to law
22 to another Federal agency or a State
23 or local government agency in connec-
24 tion with the official duties of such
25 agency; or

1 “(IV) a court or the Board of
2 Immigration Appeals orders a remand
3 to an immigration judge or the Board
4 of Immigration Appeals, during the
5 time period when the case is pending
6 a decision on remand (with the re-
7 moval period beginning anew on the
8 date that the alien is ordered removed
9 on remand).

10 “(ii) RENEWAL.—If the removal pe-
11 riod has been extended under subpara-
12 graph (C)(i), a new removal period shall be
13 deemed to have begun on the date—

14 “(I) the alien makes all reason-
15 able efforts to comply with the re-
16 moval order, or to fully cooperate with
17 the Secretary’s efforts to establish the
18 alien’s identity and carry out the re-
19 moval order;

20 “(II) the stay of removal is no
21 longer in effect; or

22 “(III) the alien is returned to the
23 custody of the Secretary.

24 “(iii) MANDATORY DETENTION FOR
25 CERTAIN ALIENS.—In the case of an alien

1 described in subparagraphs (A) through
2 (D) of section 236(c)(1), the Secretary
3 shall keep that alien in detention during
4 the extended period described in clause (i).

5 “(iv) SOLE FORM OF RELIEF.—An
6 alien may seek relief from detention under
7 this subparagraph only by filing an appli-
8 cation for a writ of habeas corpus in ac-
9 cordance with chapter 153 of title 28,
10 United States Code. No alien whose period
11 of detention is extended under this sub-
12 paragraph shall have the right to seek re-
13 lease on bond.”;

14 (4) in paragraph (3)—

15 (A) by adding after “If the alien does not
16 leave or is not removed within the removal pe-
17 riod” the following: “or is not detained pursu-
18 ant to paragraph (6) of this subsection”; and

19 (B) by striking subparagraph (D) and in-
20 serting the following:

21 “(D) to obey reasonable restrictions on the
22 alien’s conduct or activities that the Secretary
23 prescribes for the alien, in order to prevent the
24 alien from absconding, for the protection of the

1 community, or for other purposes related to the
2 enforcement of the immigration laws.”;

3 (5) in paragraph (4)(A), by striking “paragraph
4 (2)” and inserting “subparagraph (B)”; and

5 (6) by striking paragraph (6) and inserting the
6 following:

7 “(6) ADDITIONAL RULES FOR DETENTION OR
8 RELEASE OF CERTAIN ALIENS.—

9 “(A) DETENTION REVIEW PROCESS FOR
10 COOPERATIVE ALIENS ESTABLISHED.—For an
11 alien who is not otherwise subject to mandatory
12 detention, who has made all reasonable efforts
13 to comply with a removal order and to cooper-
14 ate fully with the Secretary of Homeland Secu-
15 rity’s efforts to establish the alien’s identity and
16 carry out the removal order, including making
17 timely application in good faith for travel or
18 other documents necessary to the alien’s depar-
19 ture, and who has not conspired or acted to
20 prevent removal, the Secretary shall establish
21 an administrative review process to determine
22 whether the alien should be detained or released
23 on conditions. The Secretary shall make a de-
24 termination whether to release an alien after
25 the removal period in accordance with subpara-

1 graph (B). The determination shall include con-
2 sideration of any evidence submitted by the
3 alien, and may include consideration of any
4 other evidence, including any information or as-
5 sistance provided by the Secretary of State or
6 other Federal official and any other information
7 available to the Secretary of Homeland Security
8 pertaining to the ability to remove the alien.

9 “(B) AUTHORITY TO DETAIN BEYOND RE-
10 MOVAL PERIOD.—

11 “(i) IN GENERAL.—The Secretary of
12 Homeland Security, in the exercise of the
13 Secretary’s sole discretion, may continue to
14 detain an alien for 90 days beyond the re-
15 moval period (including any extension of
16 the removal period as provided in para-
17 graph (1)(C)). An alien whose detention is
18 extended under this subparagraph shall
19 have no right to seek release on bond.

20 “(ii) SPECIFIC CIRCUMSTANCES.—The
21 Secretary of Homeland Security, in the ex-
22 ercise of the Secretary’s sole discretion,
23 may continue to detain an alien beyond the
24 90 days authorized in clause (i)—

1 “(I) until the alien is removed, if
2 the Secretary, in the Secretary’s sole
3 discretion, determines that there is a
4 significant likelihood that the alien—

5 “(aa) will be removed in the
6 reasonably foreseeable future; or

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

22 “(II) until the alien is removed,
23 if the Secretary of Homeland Security
24 certifies in writing—

1 “(aa) in consultation with
2 the Secretary of Health and
3 Human Services, that the alien
4 has a highly contagious disease
5 that poses a threat to public safe-
6 ty;

7 “(bb) after receipt of a writ-
8 ten recommendation from the
9 Secretary of State, that release
10 of the alien is likely to have seri-
11 ous adverse foreign policy con-
12 sequences for the United States;

13 “(cc) based on information
14 available to the Secretary of
15 Homeland Security (including
16 classified, sensitive, or national
17 security information, and without
18 regard to the grounds upon
19 which the alien was ordered re-
20 moved), that there is reason to
21 believe that the release of the
22 alien would threaten the national
23 security of the United States; or

24 “(dd) that the release of the
25 alien will threaten the safety of

1 the community or any person,
2 conditions of release cannot rea-
3 sonably be expected to ensure the
4 safety of the community or any
5 person, and either (AA) the alien
6 has been convicted of one or
7 more aggravated felonies (as de-
8 fined in section 101(a)(43)(A))
9 or of one or more crimes identi-
10 fied by the Secretary of Home-
11 land Security by regulation, or of
12 one or more attempts or conspir-
13 acies to commit any such aggra-
14 vated felonies or such identified
15 crimes, if the aggregate term of
16 imprisonment for such attempts
17 or conspiracies is at least 5
18 years; or (BB) the alien has com-
19 mitted one or more crimes of vio-
20 lence (as defined in section 16 of
21 title 18, United States Code, but
22 not including a purely political
23 offense) and, because of a mental
24 condition or personality disorder
25 and behavior associated with that

1 condition or disorder, the alien is
2 likely to engage in acts of vio-
3 lence in the future; or

4 “(III) pending a certification
5 under subclause (II), so long as the
6 Secretary of Homeland Security has
7 initiated the administrative review
8 process not later than 30 days after
9 the expiration of the removal period
10 (including any extension of the re-
11 moval period, as provided in para-
12 graph (1)(C)).

13 “(iii) NO RIGHT TO BOND HEARING.—
14 An alien whose detention is extended under
15 this subparagraph shall have no right to
16 seek release on bond, including by reason
17 of a certification under clause (ii)(II).

18 “(C) RENEWAL AND DELEGATION OF CER-
19 TIFICATION.—

20 “(i) RENEWAL.—The Secretary of
21 Homeland Security may renew a certifi-
22 cation under subparagraph (B)(ii)(II)
23 every 6 months, after providing an oppor-
24 tunity for the alien to request reconsider-
25 ation of the certification and to submit

1 documents or other evidence in support of
2 that request. If the Secretary does not
3 renew a certification, the Secretary may
4 not continue to detain the alien under sub-
5 paragraph (B)(ii)(II).

6 “(ii) DELEGATION.—Notwithstanding
7 section 103, the Secretary of Homeland
8 Security may not delegate the authority to
9 make or renew a certification described in
10 item (bb), (cc), or (dd) of subparagraph
11 (B)(ii)(II) below the level of the Director
12 of Immigration and Customs Enforcement.

13 “(iii) HEARING.—The Secretary of
14 Homeland Security may request that the
15 Attorney General or the Attorney General’s
16 designee provide for a hearing to make the
17 determination described in item (dd)(BB)
18 of subparagraph (B)(ii)(II).

19 “(D) RELEASE ON CONDITIONS.—If it is
20 determined that an alien should be released
21 from detention by a Federal court, the Board of
22 Immigration Appeals, or if an immigration
23 judge orders a stay of removal, the Secretary of
24 Homeland Security, in the exercise of the Sec-

1 retary’s discretion, may impose conditions on
2 release as provided in paragraph (3).

3 “(E) REDETENTION.—The Secretary of
4 Homeland Security, in the exercise of the Sec-
5 retary’s discretion, without any limitations
6 other than those specified in this section, may
7 again detain any alien subject to a final re-
8 moval order who is released from custody, if re-
9 moval becomes likely in the reasonably foresee-
10 able future, the alien fails to comply with the
11 conditions of release, or to continue to satisfy
12 the conditions described in subparagraph (A),
13 or if, upon reconsideration, the Secretary, in
14 the Secretary’s sole discretion, determines that
15 the alien can be detained under subparagraph
16 (B). This section shall apply to any alien re-
17 turned to custody pursuant to this subpara-
18 graph, as if the removal period terminated on
19 the day of the redetention.

20 “(F) REVIEW OF DETERMINATIONS BY
21 SECRETARY.—A determination by the Secretary
22 under this paragraph shall not be subject to re-
23 view by any other agency.”.

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