

114TH CONGRESS
2D SESSION

H. R. 6097

To amend section 236 of the Immigration and Nationality Act to modify the conditions on the detention of aliens, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2016

Mr. SERRANO (for himself, Mr. GUTIÉRREZ, Ms. VELÁZQUEZ, Ms. LOFGREN, Mr. CONYERS, Mr. GALLEGO, Mr. TED LIEU of California, Mrs. LAWRENCE, Ms. NORTON, Mr. MCGOVERN, Mr. O’ROURKE, Mr. SMITH of Washington, Mr. VARGAS, Mr. GRIJALVA, Ms. CLARKE of New York, Ms. ROYBAL-ALLARD, Ms. JACKSON LEE, Mrs. TORRES, Mr. PIERLUISI, Mr. HONDA, Mr. ELLISON, Mr. MCNERNEY, Mr. HASTINGS, Mrs. NAPOLITANO, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. CARSON of Indiana, Mr. CROWLEY, Ms. LEE, Mr. RANGEL, Ms. EDWARDS, and Mr. KENNEDY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 236 of the Immigration and Nationality Act to modify the conditions on the detention of 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. SHORT TITLE.**

4 This Act may be cited as the “Immigration Courts
5 Bail Reform Act”.

1 **SEC. 2. CONDITIONS ON DETENTION OF ALIENS.**

2 Section 236 of the Immigration and Nationality Act
3 (8 U.S.C. 1226) is amended—

4 (1) in subsection (a)(2), by amending subpara-
5 graph (A) to read as follows:

6 “(A) bond containing conditions prescribed
7 by the Secretary of Homeland Security; or”;

8 (2) in subsection (c), by adding at the end the
9 following:

10 “(3) REVIEW OF INITIAL CUSTODY DETERMINA-
11 TION.—An immigration judge may review the initial cus-
12 tody determination under this subsection to the extent
13 permitted under subsection (f).”; and

14 (3) by adding at the end the following:

15 “(f) PROCEDURES FOR CUSTODY HEARINGS.—For
16 any alien taken into custody under any provision of this
17 Act, with the exception of children being transferred to,
18 or in, the custody of the Office of Refugee Resettlement
19 of the Department of Health and Human Services, the
20 following rules shall apply:

21 “(1) The Secretary of Homeland Security shall,
22 without unnecessary delay and not later than 72
23 hours after the alien is taken into custody, file the
24 Notice to Appear or other relevant charging docu-
25 ment with the immigration court having jurisdiction

1 over the location where the alien was apprehended,
2 and serve such notice on the alien.

3 “(2) The Secretary shall immediately determine
4 whether the alien shall remain in custody or be re-
5 leased and, without unnecessary delay and not later
6 than 72 hours after the alien was taken into cus-
7 tody, serve upon the alien the custody decision speci-
8 fying the reasons for continued custody and the
9 amount of bond, if any. Except for aliens who the
10 Secretary has determined are subject to subsection
11 (c) or certified under section 236A, the Secretary
12 may continue to detain the alien only if the Sec-
13 retary determines by clear and convincing evidence
14 that no conditions reasonably will assure the appear-
15 ance of the alien as required and the safety of any
16 other person and the community.

17 “(3) The Attorney General shall ensure the
18 alien has the opportunity to appear before an immi-
19 gration judge for a custody redetermination hearing
20 promptly after personal service of the Secretary’s
21 custody decision. The immigration judge may, on the
22 Secretary’s motion and upon a showing of good
23 cause, postpone a custody redetermination hearing
24 for not more than 72 hours after personal service of
25 the custody decision, except that in no case shall the

1 hearing occur more than 6 days (including weekends
2 and holidays) after the alien was taken into custody.

3 “(4) The immigration judge shall advise the
4 alien of the right to postpone the custody redeter-
5 mination hearing and shall, on the oral or written
6 request of the individual, postpone the custody de-
7 termination hearing for a period of not more than
8 14 days.

9 “(5) Except for aliens who the immigration
10 judge has determined are subject to subsection (c)
11 or certified under section 236A, the immigration
12 judge shall review the custody determination de novo
13 and may continue to detain the alien only if the Sec-
14 retary demonstrates by clear and convincing evi-
15 dence that no conditions reasonably will assure the
16 appearance of the alien as required and the safety
17 of any other person and the community.

18 “(6)(A) In making a custody determination,
19 both the Secretary and the immigration judge shall
20 order the release of the alien on personal recog-
21 nizance, or upon execution of an unsecured appear-
22 ance bond in an amount specified by the court, un-
23 less the Secretary or the immigration judge deter-
24 mines that such release will not reasonably assure
25 the appearance of the alien as required or will en-

1 danger the safety of any other person or the commu-
2 nity.

3 “(B) If the Secretary or immigration judge de-
4 termines that release under subparagraph (A) will
5 not reasonably assure the appearance of the alien as
6 required or will endanger the safety of any other
7 person or the community, the Secretary or the immi-
8 gration judge shall order the release of the alien sub-
9 ject to the least restrictive further condition, or com-
10 bination of conditions, that the Secretary or immi-
11 gration judge determines will reasonably assure the
12 appearance of the alien as required and the safety
13 of any other person and the community. Such condi-
14 tions may include those specified under section
15 3142(c)(1)(B) of title 18, United States Code.

16 “(C) In determining whether to impose a bond
17 as a condition of release, the Secretary or immigra-
18 tion judge shall consider the alien’s financial ability
19 to pay a bond and whether alternative conditions of
20 supervision, alone or in combination with a lower
21 bond amount, deposit bond, or property bond, will
22 reasonably assure the appearance of the alien as re-
23 quired and the safety of any other person and the
24 community. The Secretary or immigration judge

1 may not impose a financial condition that results in
2 the detention of the alien.

3 “(D) For aliens who the immigration judge has
4 determined are subject to subsection (c), the immi-
5 gration judge may review the custody determination,
6 and consider alternatives to detention which main-
7 tain custody over the alien, if the immigration judge
8 agrees the alien is not a danger to the community.

9 “(7) In the case of any alien remaining in cus-
10 tody after a custody determination, the Attorney
11 General shall provide de novo custody redetermina-
12 tion hearings pursuant to paragraph (6) before an
13 immigration judge every 90 days as long as the alien
14 remains in custody. An alien may also obtain a de
15 novo custody redetermination hearing at any time
16 upon a showing of good cause. Good cause includes
17 a showing that the alien has been unable to post the
18 bond amount after having made good faith efforts to
19 do so.

20 “(8) The Secretary shall inform the alien of his
21 or her rights under this paragraph at the time the
22 alien is first taken into custody.”

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