

INHOFE AMENDMENT SA 4732

TEXT OF AMENDMENT

SA 4732. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 2578, making appropriations for the Departments of Commerce and Justice, Science, and Related Agencies for the fiscal year ending September 30, 2016, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

TITLE __—KEEP OUR COMMUNITIES SAFE ACT OF 2016

SEC. _01. SHORT TITLE.

This title may be cited as the “Keep Our Communities Safe Act of 2016”.

SEC. _02. SENSE OF CONGRESS.

It is the sense of Congress that—

- (1) Constitutional rights should be upheld and protected;
- (2) Congress intends to uphold the Constitutional principle of due process; and
- (3) due process of the law is a right afforded to everyone in the United States.

SEC. _03. DETENTION OF DANGEROUS ALIENS DURING REMOVAL PROCEEDINGS.

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

- (1) by striking “Attorney General” each place such term appears (except in the second place it appears in subsection (a)) and inserting “Secretary of Homeland Security”;
- (2) in subsection (a)—
 - (A) in the matter preceding paragraph (1), by inserting “the Secretary of Homeland Security or” before “the Attorney General—”; and
 - (B) in paragraph (2)(B), by striking “conditional parole” and inserting “recognizance”;
- (3) in subsection (b)—
 - (A) in the subsection heading, by striking “Parole” and inserting “Recognizance”; and
 - (B) by striking “parole” and inserting “recognizance”;
- (4) in subsection (c)(1), by striking the undesignated matter following subparagraph (D) and inserting the following:

“any time after the alien is released, without regard to whether an alien is released related to any activity, offense, or conviction described in this paragraph; to whether the alien is released on parole, supervised release, or probation; or to whether the alien may be arrested or imprisoned again for the same offense. If the activity described in this paragraph does not result in the alien being taken into custody by any person other than the Secretary, then when the alien is brought to the attention of the Secretary or when the Secretary determines it is practical to take such alien into custody, the Secretary shall take such alien into custody.”;

(5) in subsection (e), by striking “Attorney General’s” and inserting “Secretary of Homeland Security’s”;

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

“(f) Length of Detention.—

“(1) Notwithstanding any other provision of this section, an alien may be detained under this section for any period, without limitation, except as provided in subsection (i), until the alien is subject to a final order of removal.

“(2) The length of detention under this section shall not affect a detention under section 241.

“(g) Administrative Review.—

“(1) LIMITATION.—The Attorney General’s review of the Secretary’s custody determinations under subsection (a) shall be limited to whether the alien may be detained, released on bond (of at least \$1,500 with security approved by the Secretary), or released with no bond. Any review involving an alien described in paragraph (2)(D) shall be limited to a determination of whether the alien is properly included in such category.

“(2) CLASSES OF ALIENS.—The Attorney General shall review the Secretary’s custody determinations for the following classes of aliens:

“(A) Aliens in exclusion proceedings.

“(B) Aliens described in sections 212(a)(3) and 237(a)(4).

“(C) Aliens described in subsection (c).

“(D) Aliens in deportation proceedings subject to section 242(a)(2) (as in effect between April 24, 1996, and April 1, 1997).

“(h) Release on Bond.—

“(1) IN GENERAL.—An alien detained under subsection (a) may seek release on bond. No bond may be granted except to an alien who establishes by clear and convincing evidence that the alien is not a flight risk or a risk to another person or the community.

“(2) CERTAIN ALIENS INELIGIBLE.—No alien detained under subsection (c) may seek release on bond.”.

SEC. _04. ALIENS ORDERED REMOVED.

Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) is amended—

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

(2) in paragraph (1)—

(A) by amending subparagraphs (B) and (C) to read as follows:

“(B) BEGINNING OF PERIOD.—The removal period begins on the latest of—

“(i) the date on which the order of removal becomes administratively final;

“(ii) the date on which the alien is taken into such custody if the alien is not in the custody of the Secretary on the date on which the order of removal becomes administratively final; and

“(iii) the date on which the alien is taken into the custody of the Secretary after the alien is released from detention or confinement if the alien is detained or confined (except for an immigration process) on the date on which the order of removal becomes administratively final.

“(C) SUSPENSION OF PERIOD.—

“(i) EXTENSION.—The removal period shall be extended beyond a period of 90 days and the Secretary may, in the Secretary’s sole discretion, keep the alien in detention during such extended period, if—

“(I) the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary’s efforts to establish the alien’s identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal that is subject to an order of removal;

“(II) a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administratively final order of removal;

“(III) the Secretary transfers custody of the alien pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency; or

“(IV) a court or the Board of Immigration Appeals orders a remand to an immigration judge or the Board of Immigration Appeals, during the time period when the case is pending a decision on remand (with the removal period beginning anew on the date that the alien is ordered removed on remand).

“(ii) RENEWAL.—If the removal period has been extended under clause (i), a new removal period shall be deemed to have begun on the date on which—

“(I) the alien makes all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary’s efforts to establish the alien’s identity and carry out the removal order;

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

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

“(iii) MANDATORY DETENTION FOR CERTAIN ALIENS.—The Secretary shall keep an alien described in subparagraphs (A) through (D) of section 236(c)(1) in detention during the extended period described in clause (i).

“(iv) SOLE FORM OF RELIEF.—An alien may only seek relief from detention under this subparagraph by filing an application for a writ of habeas corpus in accordance with chapter 153 of title 28, United States Code. No alien whose period of detention is extended under this subparagraph shall have the right to seek release on bond.”;

(3) in paragraph (3)—

(A) in the matter preceding subparagraph (A), by inserting “or is not detained pursuant to paragraph (6)” after “the removal period”; and

(B) by amending subparagraph (D) to read as follows:

“(D) to obey reasonable restrictions on the alien’s conduct or activities that the Secretary prescribes for the alien—

“(i) to prevent the alien from absconding;

“(ii) for the protection of the community; or

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

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

(5) by amending paragraph (6) to read as follows:

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

“(A) DETENTION REVIEW PROCESS FOR COOPERATIVE ALIENS ESTABLISHED.—

“(i) IN GENERAL.—The Secretary shall establish an administrative review process to determine whether an alien who is not otherwise subject to mandatory detention, who has made all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary of Homeland Security’s efforts to establish the alien’s identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien’s departure, and who has not conspired or acted to prevent removal should be detained or released on conditions.

“(ii) DETERMINATION.—The Secretary shall make a determination whether to release an alien after the removal period in accordance with subparagraph (B), which—

“(I) shall include consideration of any evidence submitted by the alien; and

“(II) may include consideration of any other evidence, including—

“(aa) any information or assistance provided by the Secretary of State or other Federal official; and

“(bb) any other information available to the Secretary of Homeland Security pertaining to the ability to remove the alien.

“(B) AUTHORITY TO DETAIN BEYOND REMOVAL PERIOD.—

“(i) IN GENERAL.—The Secretary of Homeland Security may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period under paragraph (1)(C)). An alien whose detention is extended under this subparagraph shall not have the right to seek release on bond.

“(ii) SPECIFIC CIRCUMSTANCES.—The Secretary of Homeland Security may continue to detain an alien beyond the 90 days authorized under clause (i)—

“(I) until the alien is removed, if the Secretary determines that there is a significant likelihood that the alien—

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

“(bb) would be removed in the reasonably foreseeable future; or

“(cc) would have been removed if the alien had not—

“(AA) failed or refused to make all reasonable efforts to comply with the removal order;

“(BB) failed or refused to cooperate fully with the Secretary’s efforts to establish the alien’s identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien’s departure; or

“(CC) conspired or acted to prevent removal;

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

“(aa) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

“(bb) after receipt of a written recommendation from the Secretary of State, that release of the alien is likely to have serious adverse foreign policy consequences for the United States;

“(cc) based on information available to the Secretary of Homeland Security (including classified, sensitive, or national security information, and without regard to the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States; or

“(dd) that the release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or of any person; and

“(AA) the alien has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)(A)) or of 1 or more crimes identified by the Secretary of Homeland Security by regulation, or of 1 or more attempts or conspiracies to commit any such aggravated felonies or such identified crimes, if the aggregate term of imprisonment for such attempts or conspiracies is at least 5 years; or

“(BB) the alien has committed 1 or more crimes of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future; or

“(III) pending a certification under subclause (II), if the Secretary of Homeland Security has initiated the administrative review process not later than 30 days after the expiration of the removal period (including any extension of the removal period under paragraph (1)(C)).

“(iii) NO RIGHT TO BOND HEARING.—An alien whose detention is extended under this subparagraph shall not have a right to seek release on bond, including by reason of a certification under clause (ii)(II).

“(C) RENEWAL AND DELEGATION OF CERTIFICATION.—

“(i) RENEWAL.—The Secretary of Homeland Security may renew a certification under subparagraph (B)(ii)(II) every 6 months after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under subparagraph (B)(ii)(II).

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

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

“(D) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention by a Federal court, the Board of Immigration Appeals, or if an immigration judge orders a stay of removal, the Secretary of Homeland Security may impose conditions on release as provided under paragraph (3).

“(E) REDETENTION.—

“(i) IN GENERAL.—The Secretary of Homeland Security, without any limitations other than those specified in this section, may detain any alien subject to a final removal order who is released from custody if—

“(I) removal becomes likely in the reasonably foreseeable future;

“(II) the alien fails to comply with the conditions of release or to continue to satisfy the conditions described in subparagraph (A); or

“(III) upon reconsideration, the Secretary determines that the alien can be detained under subparagraph (B).

“(ii) APPLICABILITY.—This section shall apply to any alien returned to custody pursuant to this subparagraph as if the removal period terminated on the day of the redetention.

“(F) REVIEW OF DETERMINATIONS BY SECRETARY.—A determination by the Secretary under this paragraph shall not be subject to review by any other agency.”.

SEC. _05. SEVERABILITY.

If any of the provisions of this title, any amendment made by this title, or the application of any such provision to any person or circumstance, is held to be invalid for any reason, the remainder of this title, the amendments made by this title, and the application of the provisions and amendments made by this title to any other person or circumstance shall not be affected by such holding.

SEC. _06. EFFECTIVE DATES.

(a) Apprehension and Detention of Aliens.—The amendments made by section _03 shall take effect on the date of the enactment of this title. Section 236 of the Immigration and Nationality Act, as amended by section _03, shall apply to any alien in detention under the provisions of such section on or after such date of enactment.

(b) Aliens Ordered Removed.—The amendments made by section _04 shall take effect on the date of the enactment of this title. Section 241 of the Immigration and Nationality Act, as amended by section _04, shall apply to—

(1) all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this title; and

(2) acts and conditions occurring or existing before, on, or after such date of enactment.