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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R.

To amend the Immigration and Nationality Act to provide for extensions of detention of certain aliens ordered removed, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to provide for extensions of detention of certain aliens ordered removed, 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 “Keep Our Commu-
5 nities Safe Act of 2011”.

6 **SEC. 2. DETENTION OF DANGEROUS ALIENS.**

7 (a) IN GENERAL.—Section 241(a) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1231(a)) is amended—

1 (1) by striking out “Attorney General” each
2 place it appears, except for the first reference in
3 clause (a)(4)(B)(i), and inserting “Secretary”;

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

6 “(B) BEGINNING OF PERIOD.—The re-
7 moval period begins on the latest of the fol-
8 lowing:

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

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

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

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

24 “(C) SUSPENSION OF PERIOD.—

1 “(i) EXTENSION.—The removal period
2 shall be extended beyond a period of 90
3 days and the alien may remain in deten-
4 tion during such extended period if—

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

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

22 “(III) the Secretary transfers
23 custody of the alien pursuant to law
24 to another Federal agency or a State
25 or local government agency in connec-

1 tion with the official duties of such
2 agency.

3 “(ii) RENEWAL.—If the removal pe-
4 riod has been extended under clause (C)(i),
5 a new removal period shall be deemed to
6 have begun on the date—

7 “(I) the alien makes all reason-
8 able efforts to comply with the re-
9 moval order, or to fully cooperate with
10 the Secretary’s efforts to establish the
11 alien’s identity and carry out the re-
12 moval order;

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

15 “(III) the alien is returned to the
16 custody of the Secretary.”;

17 (4) in paragraph (3)—

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

22 (B) by striking subparagraph (D) and in-
23 serting the following:

24 “(D) to obey reasonable restrictions on the
25 alien’s conduct or activities that the Secretary

1 prescribes for the alien, in order to prevent the
2 alien from absconding, for the protection of the
3 community, or for other purposes related to the
4 enforcement of the immigration laws.”.

5 (5) in subparagraph (4)(A), by striking “para-
6 graph (2)” and inserting “subparagraph (B)”;

7 (6) by striking paragraph (6) and inserting the
8 following:

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

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

1 termination whether to release an alien after
2 the removal period in accordance with subpara-
3 graph (B). The determination shall include con-
4 sideration of any evidence submitted by the
5 alien, and may include consideration of any
6 other evidence, including any information or as-
7 sistance provided by the Secretary of State or
8 other Federal official and any other information
9 available to the Secretary of Homeland Security
10 pertaining to the ability to remove the alien.

11 “(B) AUTHORITY TO DETAIN BEYOND RE-
12 MOVAL PERIOD.—

13 “(i) IN GENERAL.—The Secretary of
14 Homeland Security, in the exercise of the
15 Secretary’s discretion, may continue to de-
16 tain an alien for 90 days beyond the re-
17 moval period (including any extension of
18 the removal period as provided in para-
19 graph (1)(C)).

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

1 “(I) until the alien is removed, if
2 the Secretary determines that there is
3 a significant likelihood that the
4 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 “(ee) that the release of the
5 alien will threaten the safety of
6 the community or any person,
7 conditions of release cannot rea-
8 sonably be expected to ensure the
9 safety of the community or any
10 person, and the alien has been
11 convicted of at least one aggra-
12 vated felony (as defined in sec-
13 tion 101(a)(43)); or

14 “(III) pending a certification
15 under subclause (II), so long as the
16 Secretary of Homeland Security has
17 initiated the administrative review
18 process not later than 30 days after
19 the expiration of the removal period
20 (including any extension of the re-
21 moval period, as provided in para-
22 graph (1)(C)).

23 “(C) RENEWAL AND DELEGATION OF CER-
24 TIFICATION.—

1 “(i) RENEWAL.—The Secretary of
2 Homeland Security may renew a certifi-
3 cation under subparagraph (B)(ii)(II)
4 every 6 months, after providing an oppor-
5 tunity for the alien to request reconsider-
6 ation of the certification and to submit
7 documents or other evidence in support of
8 that request. If the Secretary does not
9 renew a certification, the Secretary may
10 not continue to detain the alien under sub-
11 paragraph (B)(ii)(II).

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

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

1 “(D) RELEASE ON CONDITIONS.—If it is
2 determined that an alien should be released
3 from detention by a Federal court, the Board of
4 Immigration Appeals, or if an immigration
5 judge orders a stay of removal, the Secretary of
6 Homeland Security, in the exercise of the Sec-
7 retary’s discretion, may impose conditions on
8 release as provided in paragraph (3).

9 “(E) REDETENTION.—The Secretary of
10 Homeland Security, in the exercise of the Sec-
11 retary’s discretion, without any limitations
12 other than those specified in this section, may
13 again detain any alien subject to a final re-
14 moval order who is released from custody, if re-
15 moval becomes likely in the reasonably foresee-
16 able future, the alien fails to comply with the
17 conditions of release, or to continue to satisfy
18 the conditions described in subparagraph (A),
19 or if, upon reconsideration, the Secretary deter-
20 mines that the alien can be detained under sub-
21 paragraph (B). This section shall apply to any
22 alien returned to custody pursuant to this sub-
23 paragraph, as if the removal period terminated
24 on the day of the redetention.”; and

1 (7) by inserting after paragraph (7) the fol-
2 lowing:

3 “(8) JUDICIAL REVIEW.—Without regard to the
4 place of confinement, judicial review of any action or
5 decision pursuant to this section shall be available
6 exclusively in habeas corpus proceedings instituted
7 in the United States District Court for the District
8 of Columbia, and only if the alien has exhausted all
9 administrative remedies (statutory and regulatory)
10 available to the alien as of right.”.

11 (b) DETENTION OF ALIENS DURING REMOVAL PRO-
12 CEEDINGS.—

13 (1) CLERICAL AMENDMENT.—Sections 235 and
14 236 of the Immigration and Nationality Act (8
15 U.S.C. 1225 and 1226) are amended by striking
16 “Attorney General” each place it appears and insert-
17 ing “Secretary” except that section 236(a) is
18 amended by inserting “the Secretary or” before “the
19 Attorney General” the second place that term ap-
20 pears;

21 (2) LENGTH OF DETENTION OF CERTAIN
22 ALIENS; VENUE FOR CERTAIN ACTIONS.—Section
23 235 of the Immigration and Nationality Act (8
24 U.S.C. 1225) is amended by adding at the end the
25 following:

1 “(e) LENGTH OF DETENTION.—

2 “(1) Notwithstanding any other provision of
3 this section, an alien may be detained under this
4 section, without limitation, until the alien is subject
5 to an final order of removal.

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

8 “(f) JUDICIAL REVIEW.—Without regard to the place
9 of confinement, judicial review of any action or decision
10 made pursuant to subsection (e) shall be available exclu-
11 sively in a habeas corpus proceeding instituted in the
12 United States District Court for the District of Columbia
13 and only if the alien has exhausted all administrative rem-
14 edies (statutory and nonstatutory) available to the alien
15 as of right.”.

16 (3) VENUE FOR CERTAIN ACTIONS SEEKING JU-
17 DICIAL REVIEW OF LENGTH OF DETENTION.—Sec-
18 tion 236(e) of the Immigration and Nationality Act
19 (8 U.S.C. 1226(e)) is amended by adding the fol-
20 lowing at the end: “Without regard to the place of
21 confinement, judicial review of any action or decision
22 made pursuant to subsection (f) shall be available
23 exclusively in a habeas corpus proceeding instituted
24 in the United States District Court for the District
25 of Columbia and only if the alien has exhausted all

1 administrative remedies (statutory and nonstatu-
2 tory) available to the alien as of right.”.

3 (4) LENGTH OF DETENTION.—Section 236 of
4 the Immigration and Nationality Act (8 U.S.C.
5 1226) is amended by adding the following sub-
6 section:

7 “(f) LENGTH OF DETENTION.—

8 “(1) Notwithstanding any other provision of
9 this section, an alien may be detained under this
10 section for any period, without limitation, until the
11 alien is subject to a final order of removal.

12 “(2) The length of detention under this section
13 shall not affect detention under section 241 of this
14 Act.”.

15 (5) DETENTION OF CRIMINAL ALIENS.—Section
16 236(c)(1) of the Immigration and Nationality Act (8
17 U.S.C. 1226(c)(1)) is amended, in the matter fol-
18 lowing subparagraph (D) to read as follows:

19 “any time after the alien is released, without regard
20 to whether an alien is released related to any activ-
21 ity, offense, or conviction described in this para-
22 graph; to whether the alien is released on parole, su-
23 pervised release, or probation; or to whether the
24 alien may be arrested or imprisoned again for the
25 same offense. If the activity described in this para-

1 graph does not result in the alien being taken into
2 custody by any person other than the Secretary,
3 then when the alien is brought to the attention of
4 the Secretary or when the Secretary determines it is
5 practical to take such alien into custody, the Sec-
6 retary shall take such alien into custody.”.

7 (6) ADMINISTRATIVE REVIEW.—Section 236 of
8 the Immigration and Nationality Act (8 U.S.C.
9 1226) is amended by adding the following sub-
10 section:

11 “(g) ADMINISTRATIVE REVIEW.—

12 “(1) The Attorney General’s review of the Sec-
13 retary’s custody determinations under section 236(a)
14 shall be limited to whether the alien may be de-
15 tained, released on bond (of at least \$1,500 with se-
16 curity approved by the Secretary), or released with
17 no bond.

18 “(2) The Attorney General’s review of the Sec-
19 retary’s custody determinations for the following
20 classes of aliens:

21 “(A) Aliens in exclusion proceedings.

22 “(B) Arriving aliens in removal pro-
23 ceedings, including aliens paroled after arrival
24 pursuant to section 212(d)(5).

1 “(C) Aliens described in sections 212(a)(3)
2 and 237(a)(4).

3 “(D) Aliens described in section 236(c).

4 “(E) Aliens in deportation proceedings
5 subject to section 242(a)(2) of the Act (as in
6 effect prior to April 1, 1997, and as amended
7 by section 440(c) of Public Law 104–132); is
8 limited to a determination of whether the alien
9 is properly included in such category.”.

10 (7) CLERICAL AMENDMENTS.—

11 (A) Sections 235 and 236 of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1225 and
13 1226) are amended by striking out “Attorney
14 General” each place it appears and inserting
15 “Secretary”.

16 (B) Sections 236(a)(2)(B) and 236(b) of
17 the Immigration and Nationality Act (8 U.S.C.
18 1226(a)(2)(B) and 1226(b)) are amended by
19 striking out “conditional parole” and inserting
20 in lieu thereof “recognizance”.

21 (c) SEVERABILITY.—If any of the provisions of this
22 Act or any amendment by this Act, or the application of
23 any such provision to any person or circumstance, is held
24 to be invalid for any reason, the remainder of this Act
25 and of amendments made by this Act, and the application

1 of the provisions and of the amendments made by this Act
2 to any other person or circumstance shall not be affected
3 by such holding.

4 (d) EFFECTIVE DATES.—

5 (1) The amendments made by subsection (a)
6 shall take effect upon the date of enactment of this
7 Act, and section 241 of the Immigration and Na-
8 tionality Act, as so amended, shall in addition apply
9 to—

10 (A) all aliens subject to a final administra-
11 tive removal, deportation, or exclusion order
12 that was issued before, on, or after the date of
13 enactment of this Act; and

14 (B) acts and conditions occurring or exist-
15 ing before, on, or after the date of enactment
16 of this Act.

17 (2) The amendments made by subsection (b)
18 shall take effect upon the date of enactment of this
19 Act, and sections 235 and 236 of the Immigration
20 and Nationality Act, as so amended, shall in addi-
21 tion apply to any alien in detention under provisions
22 of such sections on or after the date of enactment
23 of this Act.