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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.

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## IN THE HOUSE OF REPRESENTATIVES

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

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# 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 subparagraph (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.