

112TH CONGRESS
2D SESSION

H. R. 3881

To amend the Immigration and Nationality Act to provide authority for immigration judges to terminate proceedings or appoint counsel when necessary for aliens with mental disabilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2012

Mr. STARK introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide authority for immigration judges to terminate proceedings or appoint counsel when necessary for aliens with mental disabilities, 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 “Ensuring Mental Com-
5 petence in Immigration Proceedings Act”.

1 **SEC. 2. AUTHORITY FOR IMMIGRATION JUDGES TO TERMINATE PROCEEDINGS OR APPOINT COUNSEL WHERE NECESSARY FOR ALIENS WITH MENTAL DISABILITIES.**

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5 Section 240(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1229a(b)(3)) is amended to read as follows:

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7 “(3) PRESENCE OF ALIENS.—

8 “(A) IN GENERAL.—If it is impracticable
9 by reason of an alien’s mental incompetency for
10 the alien to be present at the proceeding, the
11 Secretary of Homeland Security shall prescribe
12 safeguards to protect the rights and privileges
13 of the alien.

14 “(B) TERMINATION OF PROCEEDINGS.—
15 An immigration judge may order a competency
16 evaluation at any stage of the proceedings. The
17 immigration judge may terminate proceedings
18 against those aliens not competent to represent
19 themselves in their proceedings due to mental
20 disabilities. In determining whether to terminate
21 proceedings, the immigration judge shall
22 consider, without excluding other pertinent factors,
23 the severity of the alien’s condition and
24 prognosis, the likelihood that competence can be
25 restored within 60 days, and whether the alien
26 is represented by counsel with whom the alien

1 can meaningfully communicate in order to as-
2 sist the proceedings. Proceedings for aliens re-
3 ceiving medically necessary inpatient mental
4 health treatment for a serious mental disability
5 shall be presumed to merit termination.

6 “(C) APPOINTMENT OF COUNSEL.—If pro-
7 ceedings are not terminated for an alien who is
8 incompetent to represent himself or herself in
9 proceedings due to a mental disability, the im-
10 migration judge shall appoint counsel when the
11 alien is unrepresented. Appointment of counsel
12 shall not preclude the immigration judge from
13 subsequently terminating proceedings under
14 this section.”.

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