

108TH CONGRESS  
1ST SESSION

# H. R. 2585

To amend the Immigration and Nationality Act to permit certain long-term permanent resident aliens to seek cancellation of removal under such Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2003

Mr. FRANK of Massachusetts (for himself, Mr. CANNON, Mr. FILNER, and Mr. FROST) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to permit certain long-term permanent resident aliens to seek cancellation of removal under such Act, 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 “Family Reunification  
5 Act of 2003”.

1 **SEC. 2. CANCELLATION OF REMOVAL FOR LONG-TERM**2 **PERMANENT RESIDENT ALIENS.**

3 Section 240A(a) of the Immigration and Nationality

4 Act (8 U.S.C. 1229b(a)) is amended to read as follows:

5 **“(a) CANCELLATION OF REMOVAL FOR CERTAIN**6 **PERMANENT RESIDENTS.—**7 **“(1) PERMANENT RESIDENTS NOT CONVICTED**8 **OF ANY AGGRAVATED FELONY.—**The Secretary of

9 Homeland Security may cancel removal in the case

10 of an alien who is inadmissible to, or deportable

11 from, the United States, if the alien—

12 **“(A) has been an alien lawfully admitted**13 **for permanent residence for not less than 5**14 **years;**15 **“(B) resided in the United States continu-**16 **ously for 7 years after having been admitted in**17 **any status; and**18 **“(C) has not been convicted of any aggra-**19 **vated felony.**20 **“(2) PERMANENT RESIDENTS CONVICTED OF A**21 **NONVIOLENT AGGRAVATED FELONY.—**The Secretary22 **of Homeland Security may cancel removal in the**23 **case of an alien who is inadmissible to, or deportable**24 **from, the United States, if the alien—**

1               “(A) has been an alien lawfully admitted  
2               for permanent residence for not less than 5  
3               years;

4               “(B) satisfies the residence requirements  
5               of paragraph (6);

6               “(C) has never been convicted of—

7                       “(i) an act of murder, rape, or sexual  
8                       abuse of a minor;

9                       “(ii) any crime of violence (as defined  
10               in section 16 of title 18, United States  
11               Code); or

12                       “(iii) an attempt or conspiracy to  
13               commit an offense described in clause (i)  
14               or (ii);

15               “(D) has been convicted of—

16                       “(i) a single aggravated felony for  
17               which the alien was sentenced to serve a  
18               term of imprisonment of 4 years or less;

19                       “(ii) multiple aggravated felonies arising  
20               out of a single scheme of criminal misconduct  
21               for which the alien was sentenced  
22               to serve, in the aggregate, a term of im-  
23               prisonment of 4 years or less; or

24                       “(iii) 2 aggravated felonies arising out  
25               of separate schemes of criminal misconduct

1 for which the alien was sentenced to serve,  
2 in the aggregate, a term of imprisonment  
3 of 4 years or less, but for neither of which  
4 the alien was actually incarcerated;

5 “(E) was not, in the commission of the ag-  
6 grivated felony or felonies described in sub-  
7 paragraph (D)—

8 “(i) an organizer, leader, manager, or  
9 supervisor of others; or

10 “(ii) engaged in a continuing criminal  
11 enterprise (as defined in section 408(c) of  
12 the Controlled Substances Act (21 U.S.C.  
13 848(c)));

14 “(F) has never been incarcerated for any  
15 offense except—

16 “(i) the offense described in clause (i)  
17 of subparagraph (D), or another offense  
18 that was committed in the course of the  
19 same scheme of criminal misconduct; or

20 “(ii) an offense that was committed in  
21 the course of the scheme or schemes de-  
22 scribed in clause (ii) or (iii) of such sub-  
23 paragraph; and

24 “(G) has not been the subject of a timely  
25 certification described in paragraph (7) with re-

1           spect to the aggravated felony or felonies de-  
2           scribed in subparagraph (D), unless such cer-  
3           tification has been revoked pursuant to such  
4           paragraph.

5       “(3) PERMANENT RESIDENTS CONVICTED OF  
6       AN AGGRAVATED FELONY CLASSIFIED AS A CRIME  
7       OF VIOLENCE.—The Secretary of Homeland Secu-  
8       rity may cancel removal in the case of an alien who  
9       is inadmissible to, or deportable from, the United  
10      States, if the alien—

11                   “(A) has been an alien lawfully admitted  
12                   for permanent residence for not less than 5  
13                   years;

16                   “(C) has never been convicted of—

21                   “(D) has never been convicted of any ag-  
22                   gravated felony that resulted in death or serious  
23                   bodily injury to any person other than the alien;

24 "“(E) has been convicted of—

1                     “(i) a single aggravated felony for  
2                     which the alien was sentenced to serve a  
3                     term of imprisonment of 2 years or less;

4                     “(ii) multiple aggravated felonies arising  
5                     out of a single scheme of criminal misconduct for which the alien was sentenced  
6                     to serve, in the aggregate, a term of imprisonment of 2 years or less; or

7                     “(iii) 2 aggravated felonies arising out  
8                     of separate schemes of criminal misconduct for which the alien was sentenced to serve, in the aggregate, a term of imprisonment of 2 years or less, but for neither of which  
9                     the alien was actually incarcerated;

10                    “(F) was not, in the commission of the aggravated felony or felonies described in subparagraph (E)—

11                    “(i) an organizer, leader, manager, or supervisor of others; or

12                    “(ii) engaged in a continuing criminal enterprise (as defined in section 408(c) of the Controlled Substances Act (21 U.S.C. 848(c)));

13                    “(G) has never been incarcerated for any offense except—

1                             “(i) the offense described in clause (i)  
2                             of subparagraph (E), or another offense  
3                             that was committed in the course of the  
4                             same scheme of criminal misconduct; or

5                             “(ii) an offense that was committed in  
6                             the course of the scheme or schemes de-  
7                             scribed in clause (ii) or (iii) of such sub-  
8                             paragraph; and

9                             “(H) has not been the subject of a timely  
10                            certification described in paragraph (7) with re-  
11                            spect to the aggravated felony or felonies de-  
12                            scribed in subparagraph (E), unless such cer-  
13                            tification has been revoked pursuant to such  
14                            paragraph.

15                             “(4) PERMANENT RESIDENTS ADMITTED BE-  
16                            FORE AGE 10.—The Secretary of Homeland Security  
17                            may cancel removal in the case of an alien who is  
18                            inadmissible to, or deportable from, the United  
19                            States, if the alien—

20                             “(A) has been an alien lawfully admitted  
21                            for permanent residence for not less than 5  
22                            years;

23                             “(B) resided in the United States continu-  
24                            ously for 7 years after having been admitted in

1           any status when the alien was under 10 years  
2           of age;

3           “(C) has never been convicted of—  
4               “(i) an act of murder, rape, or sexual  
5               abuse of a minor; or

6               “(ii) an attempt or conspiracy to com-  
7               mit an offense described in clause (i); and

8           “(D) has never been incarcerated for a  
9               third (or succeeding) aggravated felony, except  
10               that multiple felonies arising out of a single  
11               scheme of criminal misconduct shall be consid-  
12               ered a single felony for purposes of this sub-  
13               paragraph.

14           “(5) PERMANENT RESIDENTS ADMITTED BE-  
15               FORE AGE 16.—The Secretary of Homeland Security  
16               may cancel removal in the case of an alien who is  
17               inadmissible to, or deportable from, the United  
18               States, if the alien—

19               “(A) has been an alien lawfully admitted  
20               for permanent residence for not less than 5  
21               years;

22               “(B) resided in the United States continu-  
23               ously for 7 years—

24               “(i) before the alien committed any  
25               aggravated felony; and

1                             “(ii) after having been admitted in  
2                             any status when the alien was under 16  
3                             years of age;

4                             “(C) has never been convicted of—

5                             “(i) an act of murder, rape, or sexual  
6                             abuse of a minor; or

7                             “(ii) an attempt or conspiracy to com-  
8                             mit an offense described in clause (i); and

9                             “(D) has never been incarcerated for a  
10                             third (or succeeding) aggravated felony, except  
11                             that multiple felonies arising out of a single  
12                             scheme of criminal misconduct shall be consid-  
13                             ered a single felony for purposes of this sub-  
14                             paragraph.

15                             “(6) RESIDENCE REQUIREMENTS FOR CERTAIN  
16                             ALIENS.—In the case of an alien seeking relief under  
17                             paragraph (2) or (3), the residence requirements de-  
18                             scribed in this paragraph are as follows:

19                             “(A) If the alien has been convicted of any  
20                             aggravated felony committed after the date of  
21                             the enactment of the Family Reunification Act  
22                             of 2003, the alien is required to have resided in  
23                             the United States—

24                             “(i) continuously for 7 years after  
25                             having been admitted in any status and

1                   prior to the commission of such aggravated  
2                   felony; or

3                   “(ii) continuously for 10 years after  
4                   having been admitted in any status, except  
5                   that, if the alien is incarcerated with re-  
6                   spect to such aggravated felony, the period  
7                   beginning on the date on which such ag-  
8                   gravated felony was committed and ending  
9                   on the last day of such term of incarcera-  
10                  tion shall be excluded in determining con-  
11                  tinuous residence under this clause.

12                  “(B) If the alien has not been convicted of  
13                  an aggravated felony committed after the date  
14                  of the enactment of the Family Reunification  
15                  Act of 2003, but has otherwise been incarcera-  
16                  ted for any aggravated felony, the alien is re-  
17                  quired to have resided in the United States—

18                  “(i) continuously for 7 years after  
19                  having been admitted in any status and  
20                  prior to the commencement of such term of  
21                  incarceration; or

22                  “(ii) continuously for 10 years after  
23                  having been admitted in any status, except  
24                  that any term of incarceration for any ag-  
25                  gravated felony shall be excluded in deter-

1 mining continuous residence under this  
2 clause.

3                     “(C) If the alien is not described in sub-  
4                     paragraph (A) or (B), the alien is required to  
5                     have resided in the United States continuously  
6                     for 7 years after having been admitted in any  
7                     status.

8                   “(7) CERTIFICATIONS.—

9                         “(A) IN GENERAL.—In the case of an alien  
10                         seeking relief under paragraph (2) or (3), not  
11                         later than 2 weeks after the alien files an appli-  
12                         cation for such relief, the Secretary of Home-  
13                         land Security may notify each agency that pros-  
14                         ecuted an aggravated felony referred to in para-  
15                         graph (2)(D) or (3)(E), as the case may be.

16                           “(B) CONTENTS.—The notification shall  
17                           inform the agency that it has an opportunity—

1 of criminal misconduct as such felony or  
2 felonies; and

15                   “(D) REVOCATION OF CERTIFICATION.—

20                             “(F) CONSTRUCTION.—This paragraph,  
21 and paragraphs (2) and (3), shall not be con-  
22 strued to require the Secretary of Homeland  
23 Security to notify any agency under subpara-  
24 graph (A). If the Secretary of Homeland Secu-  
25 rity fails to send, or fails timely to send, the no-

4                     “(8) CLARIFICATION WITH RESPECT TO CER-  
5                     TAIN REFERENCES.—Any reference in this sub-  
6                     section to a term of imprisonment or a sentence with  
7                     respect to an offense is deemed to include the period  
8                     of incarceration or confinement ordered by a court  
9                     of law, regardless of any suspension of the imposi-  
10                    tion or execution of that imprisonment or sentence  
11                    in whole or in part. However, a period of probation  
12                    is not a term of imprisonment or a sentence for pur-  
13                    poses of this subsection.

14       “(9) LIMITATION ON DELEGATION.—Cancellation  
15       of removal under paragraph (2), (3), (4), or (5)  
16       may be granted only by the Secretary of Homeland  
17       Security or Deputy Secretary of Homeland Security.  
18       No delegation of such authority to any other official  
19       may be made.”.

20 SEC. 3. CHANGE IN CONDITIONS FOR TERMINATION OF PE-  
21 RIOD OF CONTINUOUS RESIDENCE OR CON-  
22 TINUOUS PHYSICAL PRESENCE.

23       Section 240A(d)(1) of the Immigration and Nation-  
24 ality Act (8 U.S.C. 1229b(d)(1)) is amended to read as  
25 follows:

## 1           “(1) TERMINATION OF CONTINUOUS PERIOD.—

2           For purposes of this section, any period of continuous  
3           residence or continuous physical presence in  
4           the United States shall be deemed to end, except in  
5           the case of an alien who applies for cancellation of  
6           removal under subsection (b)(2), when the alien is  
7           served a notice to appear under section 239(a).”.

8   **SEC. 4. PERMITTING CERTAIN PERMANENT RESIDENT**9           **ALIENS TO RETURN WITHOUT SEEKING AD-**10           **MISSION.**

11           Section 101(a)(13)(C) of the Immigration and Na-  
12           tionality Act (8 U.S.C. 1101(a)(13)(C)) is amended—

13           (1) by striking the comma at the end of each  
14           of clauses (i), (ii), (iii), and (iv) and inserting a  
15           semicolon at the end of each such clause;

16           (2) by amending clause (v) to read as follows:  
17           “(v) has committed outside the United States  
18           an offense identified in section 212(a)(2), unless,  
19           since such offense, the alien has been granted relief  
20           under section 212(h) or 240A(a), or under section  
21           212(c) (before its repeal by section 304(b) of the Il-  
22           legal Immigration Reform and Immigrant Responsi-  
23           bility Act of 1996 (110 Stat. 3009–597));”;

24           (3) by redesignating clause (vi) as clause (vii);  
25           and

1 (4) by inserting after clause (v) the following:  
2 “(vi) has committed in the United States an of-  
3 fense identified in section 212(a)(2), and has been  
4 absent from the United States for a continuous pe-  
5 riod in excess of 30 days since committing such of-  
6 fense (or, if the absence after the 30th day was be-  
7 yond the alien’s control, for a continuous period in  
8 excess of 60 days), unless, since such offense, the  
9 alien has been granted relief under section 212(h) or  
10 240A(a), or under section 212(c) (before its repeal  
11 by section 304(b) of the Illegal Immigration Reform  
12 and Immigrant Responsibility Act of 1996 (110  
13 Stat. 3009–597)); or”.

**14 SEC. 5. RELEASE OF NONDANGEROUS ALIENS.**

15 (a) IN GENERAL.—Section 236(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(2)) is amended to read as follows:

18                   “(2) RELEASE.—

19                             “(A) IN GENERAL.—The Secretary of  
20                             Homeland Security may release an alien de-  
21                             scribed in paragraph (1) only in accordance  
22                             with subparagraph (B) or (C). A decision relat-  
23                             ing to release under this paragraph shall take  
24                             place in accordance with a procedure that con-

1 siders the severity of any offense committed by  
2 the alien.

3 “(B) PROTECTION FOR WITNESSES, PO-  
4 TENTIAL WITNESSES, AND PERSONS COOPER-  
5 ATING WITH CRIMINAL INVESTIGATIONS.—The  
6 Secretary of Homeland Security may release an  
7 alien described in paragraph (1) if—

8 “(i) the Secretary of Homeland Secu-  
9 rity decides pursuant to section 3521 of  
10 title 18, United States Code, that release  
11 of the alien from custody is necessary to  
12 provide protection to a witness, a potential  
13 witness, a person cooperating with an in-  
14 vestigation into major criminal activity, or  
15 an immediate family member or close asso-  
16 ciate of a witness, potential witness, or  
17 person cooperating with such an investiga-  
18 tion; and

19 “(ii) the alien satisfies the Secretary  
20 of Homeland Security that the alien will  
21 not pose a danger to the national security  
22 of the United States or the safety of per-  
23 sons or property and is likely to appear for  
24 any scheduled proceeding.

1                   “(C) PERMANENT RESIDENT ALIENS ELI-  
2                   GIBLE FOR CANCELLATION OF REMOVAL.—The  
3                   Secretary of Homeland Security may release an  
4                   alien described in paragraph (1) if the alien  
5                   demonstrates, by a preponderance of the evi-  
6                   dence, that the alien—

7                   “(i) has prima facie evidence suffi-  
8                   cient to establish that the alien is eligible  
9                   for cancellation of removal under section  
10                   240A(a); and  
11                   “(ii) will not pose a danger to the na-  
12                   tional security of the United States or the  
13                   safety of persons or property and is likely  
14                   to appear for any scheduled proceeding.”.

15                   (b) APPLICATION TO ALIENS DETAINED ON EFFEC-  
16                   TIVE DATE.—In the case of an alien detained under sec-  
17                   tion 241(a)(2) of the Immigration and Nationality Act (8  
18                   U.S.C. 1231(a)(2)) on the date of the enactment of this  
19                   Act, if the alien has prima facie evidence sufficient to es-  
20                   tablish that the alien is eligible for cancellation of removal  
21                   under section 240A(a) of such Act (8 U.S.C. 1229b(a)),  
22                   as amended by section 2 of this Act (and subject to the  
23                   other amendments made by this Act), the alien may seek  
24                   release from detention under section 236(c)(2)(C) of such  
25                   Act (8 U.S.C. 1226(c)(2)(C)), as added by this section.

1 **SEC. 6. CLARIFICATION OF EFFECT OF VACATION OF CON-**2 **VICTION.**

3 Section 101(a)(48) of the Immigration and Nation-  
4 ality Act (8 U.S.C. 1101(a)(48)) is amended by adding  
5 at the end the following:

6 “(C) Any conviction entered by a court that otherwise  
7 would be considered a conviction under this paragraph  
8 shall continue to be so considered notwithstanding a vaca-  
9 tion of that conviction, unless the conviction is vacated—

10 “(i) on the merits; or

11 “(ii) on grounds relating to a violation of a  
12 statutory or constitutional right in the underlying  
13 criminal proceeding.”.

14 **SEC. 7. EFFECTIVE DATE; SPECIAL APPLICABILITY RULE.**

15 (a) IN GENERAL.—The amendments made by this  
16 Act shall take effect on the date of the enactment of this  
17 Act and shall apply to aliens who—

18 (1) are in removal proceedings under the Immi-  
19 gration and Nationality Act (8 U.S.C. 1101 et seq.)  
20 on or after such date;

21 (2) were in such proceedings before such date,  
22 were ineligible for cancellation of removal under sec-  
23 tion 240A(a) of such Act (8 U.S.C. 1229b(a)) before  
24 such date, but would have been eligible for cancella-  
25 tion of removal under such section if the amend-

1       ments made by this Act had been in effect during  
2       the entire pendency of such proceedings; or

3               (3) were in exclusion or deportation proceedings  
4       under such Act before such date, and were ineligible  
5       for relief under section 212(c) of such Act (as in ef-  
6       fect on March 31, 1997, before its repeal by section  
7       304(b) of the Illegal Immigration Reform and Immi-  
8       grant Responsibility Act of 1996 (110 Stat. 3009–  
9       597)) by reason of the amendments made by section  
10       440(d) of the Antiterrorism and Effective Death  
11       Penalty Act of 1996 (Public Law 104–132; 110  
12       Stat. 1277).

13       (b) SPECIAL APPLICABILITY RULE.—

14               (1) IN GENERAL.—Notwithstanding any other  
15       provision of law, aliens described in subsection (a)(3)  
16       shall be considered to be, or to have been, in removal  
17       proceedings under the Immigration and Nationality  
18       Act (8 U.S.C. 1101 et seq.) to the extent necessary  
19       to permit them to apply, and be considered eligible,  
20       for cancellation of removal under section 240A(a) of  
21       such Act (8 U.S.C. 1229b(a)), as amended by this  
22       Act.

23               (2) RELIEF.—If the Secretary of Homeland Se-  
24       curity determines that an alien described in sub-  
25       section (a)(3) should be provided relief pursuant to

1 this Act, the Secretary of Homeland Security shall  
2 take such steps as may be necessary to terminate  
3 any proceedings to exclude or deport the alien that  
4 may be pending, and shall grant or restore to the  
5 alien the status of an alien lawfully admitted to the  
6 United States for permanent residence.

7 **SEC. 8. MOTIONS TO REOPEN.**

8 (a) IN GENERAL.—Not later than 1 year after the  
9 effective date of the final regulations issued under section  
10 9(b) of this Act, and in accordance with such regulations,  
11 an alien described in subsection (b) may file a motion to  
12 reopen removal, deportation, or exclusion proceedings in  
13 order to apply for cancellation of removal under section  
14 240A(a) of the Immigration and Nationality Act (8 U.S.C.  
15 1229b(a)) pursuant to the amendments made by this Act.

16 (b) ALIENS DESCRIBED.—An alien is described in  
17 this subsection if the alien—

18 (1) is described in subsection (a) of section 7;

19 and

20 (2) is otherwise unable to apply, or reapply, for  
21 cancellation of removal under section 240A(a) of the  
22 Immigration and Nationality Act (8 U.S.C.  
23 1229b(a)) by reason of the procedural posture of the  
24 exclusion, deportation, or removal proceedings that

1 are, or were, pending against the alien (including the  
2 fact that such proceedings are finally concluded).

3 (c) EVIDENCE.—A motion filed under subsection (a)  
4 shall describe or set forth prima facie evidence sufficient  
5 to establish that the alien is eligible for cancellation of re-  
6 moval under section 240A(a) of the Immigration and Na-  
7 tionality Act (8 U.S.C. 1229b(a)), as amended by this Act.

8 (d) NO REENTRY OR READMISSION TO FILE OR  
9 PROSECUTE MOTION.—No alien may be admitted or oth-  
10 erwise authorized to enter the United States solely to file  
11 or prosecute a motion to reopen under this section or oth-  
12 erwise to apply for relief under this Act or the amend-  
13 ments made by this Act, except as the Secretary of Home-  
14 land Security may provide pursuant to the sole and  
15 unreviewable discretion of the Secretary of Homeland Se-  
16 curity. Hearings held pursuant to this Act and the amend-  
17 ments made by this Act may be held in the United States  
18 or abroad, with the alien appearing in person or by video  
19 phone or similar device.

20 (e) DISCRETION.—The grant or denial of any motion  
21 to reopen filed under this section shall be in the sole and  
22 unreviewable discretion of the Secretary of Homeland Se-  
23 curity.

24 (f) NO JUDICIAL REVIEW.—No court shall have ju-  
25 risdiction to review any decision of the Secretary of Home-

1 land Security denying a motion to reopen under this sec-  
2 tion.

3 **SEC. 9. RULES.**

4 (a) ISSUANCE OF ADVANCE NOTICE OF PROPOSED  
5 RULEMAKING.—The Secretary of Homeland Security shall  
6 issue an advance notice of proposed rulemaking pertaining  
7 to this Act, and the amendments made by this Act, not  
8 later than 60 days after the date of the enactment of this  
9 Act.

10 (b) ISSUANCE OF FINAL REGULATIONS.—The Sec-  
11 retary of Homeland Security shall issue the final regula-  
12 tions to carry out this Act not later than 90 days after  
13 the date of the enactment of this Act, specifying an effec-  
14 tive date that is not more than 15 days after the date  
15 of publication of such final regulations.

16 **SEC. 10. SUNSET.**

17 This Act, and the amendments made by this Act,  
18 shall cease to have effect on December 31, 2006, or 3  
19 years after the date on which final regulations to carry  
20 out this Act are issued, whichever occurs later.

21 **SEC. 11. ANNUAL REPORT.**

22 The Secretary of Homeland Security annually shall  
23 submit to the Committee on the Judiciary of the United  
24 States House of Representatives and the Committee on  
25 the Judiciary of the Senate a report with respect to this

1 Act and the amendments made by this Act. The report  
2 shall contain information on—  
3 (1) the number of aliens who applied for can-  
4 cellation of removal, release from detention, or any  
5 other immigration benefit, based on this Act or the  
6 amendments made by this Act;  
7 (2) the crimes committed by the aliens de-  
8 scribed in paragraph (1);  
9 (3) the number of applications described in  
10 paragraph (1) that were granted; and  
11 (4) any other subject the Secretary of Home-  
12 land Security considers relevant.

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