

108TH CONGRESS  
1ST SESSION

# H. R. 3309

To amend the Immigration and Nationality Act to restore certain provisions relating to the definition of aggravated felony and other provisions as they were before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 2003

Mr. FILNER 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 restore certain provisions relating to the definition of aggravated felony and other provisions as they were before the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

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; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5 “Keeping Families Together Act of 2003”.

6       (b) TABLE OF CONTENTS.—The table of contents of  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. Restoration of definition of aggravated felony (repeal of section 321 of IIRIRA).  
 Sec. 3. Restoration of detention policy.  
 Sec. 4. Repeal of time stop provisions.  
 Sec. 5. Repeal of section 101(a)(48).  
 Sec. 6. Restoration of section 212(e).  
 Sec. 7. Restoration of judicial review provisions.  
 Sec. 8. Post-proceeding relief for affected aliens.

1 **SEC. 2. RESTORATION OF DEFINITION OF AGGRAVATED**  
 2 **FELONY (REPEAL OF SECTION 321 OF IIRIRA).**

3 (a) IN GENERAL.—Effective as if included in the en-  
 4 actment of the Illegal Immigration Reform and Immigrant  
 5 Responsibility Act of 1996 (division C of Public Law 104–  
 6 208), section 321 of such Act is repealed and the provi-  
 7 sions of law amended by such section are restored as if  
 8 such section had not been enacted.

9 (b) RESTORATION OF RIGHTS.—Any alien whose  
 10 legal permanent resident status, application for permanent  
 11 residence, or application for cancellation of removal, was  
 12 affected by the changes in the definition of “aggravated  
 13 felony” made by such section 321 may apply to the Attor-  
 14 ney General to be considered for adjustment of status or  
 15 cancellation of removal in conformance with the provisions  
 16 of section 101(a)(43) of the Immigration and Nationality  
 17 Act, as restored by subsection (a).

18 **SEC. 3. RESTORATION OF DETENTION POLICY.**

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

1 “(c) DETENTION OF CRIMINAL ALIENS.—

2 “(1) IN GENERAL.—The Attorney General shall  
3 take into custody any alien convicted of an aggra-  
4 vated felony upon release of the alien (regardless of  
5 whether or not such release is on parole, supervised  
6 release, or probation, and regardless of the possi-  
7 bility of rearrest or further confinement in respect of  
8 the same offense). Notwithstanding subsection (a) or  
9 section 241(a) but subject to paragraph (2), the At-  
10 torney General shall not release such felon from cus-  
11 tody.

12 “(2) NON-RELEASE.—The Attorney General  
13 may not release from custody any who has been con-  
14 victed of an aggravated felony, either before or after  
15 a determination of removability, unless—

16 “(A)(i) the alien was lawfully admitted, or

17 “(ii) the alien was not lawfully admitted  
18 but the alien cannot be removed because the  
19 designated country of removal will not accept  
20 the alien; and

21 “(B) the alien satisfies the Attorney Gen-  
22 eral that the alien will not pose a danger to the  
23 safety of other persons or of property and is  
24 likely to appear for any scheduled proceeding.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall be effective as if included in the Illegal  
3 Immigration Reform and Immigrant Responsibility Act of  
4 1996.

5 **SEC. 4. REPEAL OF TIME STOP PROVISIONS.**

6 (a) IN GENERAL.—Section 240A(d) of the Immigra-  
7 tion and Nationality Act (8 U.S.C. 1229b(d)) is repealed.

8 (b) EFFECTIVE DATE.—The repeal made by sub-  
9 section (a) shall be effective as if included in the enact-  
10 ment of subtitle A of title III of the Illegal Immigration  
11 Reform and Immigrant Responsibility Act of 1996.

12 **SEC. 5. REPEAL OF SECTION 101(a)(48).**

13 (a) IN GENERAL.—Paragraph (48) of section  
14 101(a)(48) of the Immigration and Nationality Act (8  
15 U.S.C. 1101(a)) is repealed.

16 (b) EFFECTIVE DATE.—The repeal made by sub-  
17 section (a) shall take effect as if included in the enactment  
18 of section 322(a) of the Illegal Immigration Reform and  
19 Immigrant Responsibility Act of 1996.

20 **SEC. 6. RESTORATION OF SECTION 212(c).**

21 (a) IN GENERAL.—Section 212 of the Immigration  
22 and Nationality Act (8 U.S.C. 1182) is amended by insert-  
23 ing after subsection (b) the following new subsection:

24 “(c) Aliens lawfully admitted for permanent residence  
25 who temporarily proceeded abroad voluntarily and not

1 under an order of deportation or removal, and who are  
2 returning to a lawful unrelinquished domicile of seven con-  
3 secutive years, may be admitted in the discretion of the  
4 Attorney General without regard to the provisions of sub-  
5 section (a) (other than paragraphs (3) and (10)(C)).  
6 Nothing contained in this subsection shall limit the au-  
7 thority of the Attorney General to exercise the discretion  
8 vested in him under section 211(b). The first sentence of  
9 this subsection shall not apply to an alien who has been  
10 convicted of one or more aggravated felonies and has  
11 served for such felony or felonies a term of imprisonment  
12 of at least 5 years.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 subsection (a) applies as of April 24, 1996, as if section  
15 440(d) of the Antiterrorism and Effective Death Penalty  
16 Act of 1996 (Public Law 104–132) and section 304(b) of  
17 Illegal Immigration Reform and Immigrant Responsibility  
18 Act of 1996 (division C of Public Law 104–208) had not  
19 been enacted.

20 **SEC. 7. RESTORATION OF JUDICIAL REVIEW PROVISIONS.**

21 (a) IN GENERAL.—Section 242 of the Immigration  
22 and Nationality Act (8 U.S.C. 1252) is amended to read  
23 as follows:

24 “JUDICIAL REVIEW OF ORDERS OF REMOVAL

25 “SEC. 242. (a) The procedure prescribed by, and all  
26 the provisions of chapter 158 of title 28, United States

1 Code, shall apply to, and shall be the sole and exclusive  
2 procedure for, the judicial review of all final orders of re-  
3 moval heretofore or hereafter made against aliens within  
4 the United States pursuant to administrative proceedings  
5 under section 240 of this Act or comparable provisions of  
6 any prior Act, except that—

7           “(1) a petition for review may be filed not later  
8 than 90 days after the date of the issuance of the  
9 final removal order, or, in the case of an alien con-  
10 victed of an aggravated felony not later than 30  
11 days after the issuance of such order;

12           “(2) the venue of any petition for review under  
13 this section shall be in the judicial circuit in which  
14 the administrative proceedings before an immigra-  
15 tion judge were conducted in whole or in part, or in  
16 the judicial circuit wherein is the residence, as de-  
17 fined in this Act, of the petitioner, but not in more  
18 than one circuit;

19           “(3) the action shall be brought against the Im-  
20 migration and Naturalization Service, as respondent.  
21 Service of the petition to review shall be made upon  
22 the Attorney General of the United States and upon  
23 the official of the Immigration and Naturalization  
24 Service in charge of the Service district in which the  
25 office of the clerk of the court is located. The service

1 of the petition for review upon such official of the  
2 Service shall stay the removal of the alien pending  
3 determination of the petition by the court, unless the  
4 court otherwise directs or unless the alien is con-  
5 victed of an aggravated felony, in which case the  
6 Service shall not stay the removal of the alien pend-  
7 ing determination of the petition of the court unless  
8 the court otherwise directs;

9 “(4) except as provided in clause (B) of para-  
10 graph (5) of this subsection, the petition shall be de-  
11 termined solely upon the administrative record upon  
12 which the removal order is based and the Attorney  
13 General’s findings of fact, if supported by reason-  
14 able, substantial, and probative evidence on the  
15 record considered as a whole, shall be conclusive;

16 “(5) whenever any petitioner, who seeks review  
17 of an order under this section, claims to be a na-  
18 tional of the United States and makes a showing  
19 that his claim is not frivolous, the court shall (A)  
20 pass upon the issues presented when it appears from  
21 the pleadings and affidavits filed by the parties that  
22 no genuine issue of material fact is presented; or (B)  
23 where a genuine issue of material fact as to the peti-  
24 tioner’s nationality is presented, transfer the pro-  
25 ceedings to a United States district court for the

1 district where the petitioner has his residence for  
2 hearing de novo of the nationality claim and deter-  
3 mination as if such proceedings were originally initi-  
4 ated in the district court under the provisions of sec-  
5 tion 2201 of title 28, United States Code. Any such  
6 petitioner shall not be entitled to have such issue de-  
7 termined under section 360(a) of this Act or other-  
8 wise;

9 “(6) whenever a petitioner seeks review of an  
10 order under this section, any review sought with re-  
11 spect to a motion to reopen or reconsider such an  
12 order shall be consolidated with the review of the  
13 order;

14 “(7) if the validity of a removal order has not  
15 been judicially determined, its validity may be chal-  
16 lenged in a criminal proceeding against the alien for  
17 violation of subsection (a) or (b) of section 243 of  
18 this Act only by separate motion for judicial review  
19 before trial. Such motion shall be determined by the  
20 court without a jury and before the trial of the gen-  
21 eral issue. Whenever a claim to United States na-  
22 tionality is made in such motion, and in the opinion  
23 of the court, a genuine issue of material fact as to  
24 the alien’s nationality is presented, the court shall  
25 accord him a hearing de novo on the nationality

1 claim and determine that issue as if proceedings had  
2 been initiated under the provisions of section 2201  
3 of title 28, United States Code. Any such alien shall  
4 not be entitled to have such issue determined under  
5 section 360(a) of this Act or otherwise. If no such  
6 hearing de novo as to nationality is conducted, the  
7 determination shall be made solely upon the admin-  
8 istrative record upon which the removal order is  
9 based and the Attorney General's findings of fact,  
10 if supported by reasonable, substantial, and pro-  
11 bative evidence on the record considered as a whole,  
12 shall be conclusive. If the removal order is held in-  
13 valid, the court shall dismiss the indictment and the  
14 United States shall have the right to appeal to the  
15 court of appeals within 30 days. The procedure on  
16 such appeals shall be as provided in the Federal  
17 rules of criminal procedure. No petition for review  
18 under this section may be filed by any alien during  
19 the pendency of a criminal proceeding against such  
20 alien for violation of subsection (a) or (b) of section  
21 243 of this Act;

22 “(8) nothing in this section shall be construed  
23 to require the Attorney General to defer removal of  
24 an alien after the issuance of a removal order be-  
25 cause of the right of judicial review of the order

1 granted by this section, or to relieve any alien from  
2 compliance with subsections (a) and (b) of section  
3 243 of this Act. Nothing contained in this section  
4 shall be construed to preclude the Attorney General  
5 from detaining or continuing to detain an alien or  
6 from taking the alien into custody pursuant to sec-  
7 tion 241 of this Act at any time after the issuance  
8 of a removal order;

9 “(9) it shall not be necessary to print the  
10 record or any part thereof, or the briefs, and the  
11 court shall review the proceedings on a typewritten  
12 record and on typewritten briefs; and

13 “(10) any alien held in custody pursuant to an  
14 order of removal may obtain judicial review thereof  
15 by habeas corpus proceedings.

16 “(b) Notwithstanding the provisions of any other law,  
17 any alien against whom a final order of removal has been  
18 made heretofore or hereafter under the provisions of sec-  
19 tion 235 of this Act or comparable provisions of any prior  
20 Act may obtain judicial review of such order by habeas  
21 corpus proceedings and not otherwise.

22 “(c) An order of removal shall not be reviewed by any  
23 court if the alien has not exhausted the administrative  
24 remedies available to the alien as of right under the immi-  
25 gration laws and regulations or if the alien has departed

1 from the United States after the issuance of the order.  
2 Every petition for review or for habeas corpus shall state  
3 whether the validity of the order has been upheld in any  
4 prior judicial proceeding, and, if so, the nature and date  
5 thereof, and the court in which such proceeding took place.  
6 No petition for review or for habeas corpus shall be enter-  
7 tained if the validity of the order has been previously de-  
8 termined in any civil or criminal proceeding, unless the  
9 petition presents grounds which the court finds could not  
10 have been presented in such prior proceeding, or the court  
11 finds that the remedy provided by such prior proceeding  
12 was inadequate or ineffective to test the validity of the  
13 order.

14       “(d)(1) A petition for review or for habeas corpus on  
15 behalf of an alien against whom a final order of removal  
16 has been issued pursuant to section 238(b) may challenge  
17 only—

18               “(A) whether the alien is in fact the alien de-  
19 scribed in the order;

20               “(B) whether the alien is in fact an alien de-  
21 scribed in section 238(b)(2);

22               “(C) whether the alien has been convicted of an  
23 aggravated felony and such conviction has become  
24 final; and

1           “(D) whether the alien was afforded the proce-  
2           dures required by section 238(b)(4).

3           “(2) No court shall have jurisdiction to review any  
4           issue other than an issue described in paragraph (1).”.

5           (b) EFFECTIVE DATE.—The amendment made by  
6           subsection (a) shall take effect on the date of the enact-  
7           ment of this Act and shall apply to determinations pending  
8           on or after such date with respect to which—

9           (1) a final administrative decision has been/not  
10          been rendered as of such date; or

11          (2) such a decision has been rendered but the  
12          period for seeking judicial review of the decision has  
13          not expired.

14 **SEC. 8. POST-PROCEEDING RELIEF FOR AFFECTED ALIENS.**

15          (a) IN GENERAL.—Notwithstanding section  
16          240(c)(6) of the Immigration and Nationality Act (8  
17          U.S.C. 1229a(c)(6)) or any other limitation imposed by  
18          law on motions to reopen removal proceedings, the Attor-  
19          ney General shall establish a process (whether through  
20          permitting the reopening of a removal proceeding or other-  
21          wise) under which an alien—

22          (1) who is (or was) in removal proceedings be-  
23          fore the date of the enactment of this Act (whether  
24          or not the alien has been removed as of such date);  
25          and

1           (2) whose eligibility for cancellation of removal  
2           has been established by this Act;  
3           may apply (or reapply) for cancellation of removal under  
4           section 240A(a) of the Immigration and Nationality Act  
5           (8 U.S.C. 1229b(a)) as a beneficiary of the relief provided  
6           under this Act.

7           (b) PAROLE.—The Attorney General should exercise  
8           the parole authority under section 212(d)(5)(A) of the Im-  
9           migration and Nationality Act (8 U.S.C. 1182(d)(5)(A))  
10          for the purpose of permitting aliens removed from the  
11          United States to participate in the process established  
12          under subsection (a).

○