

116TH CONGRESS  
1ST SESSION

# S. 2869

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 SENATE OF THE UNITED STATES

NOVEMBER 14, 2019

Mr. INHOFE (for himself, Mr. COTTON, Mr. PERDUE, Mr. BOOZMAN, Mr. CRAMER, and Mr. CRUZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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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 2019”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

8 (1) constitutional rights should be upheld and  
9 protected;

1           (2) Congress intends to uphold the constitu-  
2           tional principle of due process; and

3           (3) due process of the law is a right afforded  
4           to every person in the United States.

5 **SEC. 3. DETENTION OF DANGEROUS ALIENS DURING RE-**  
6 **MOVAL PROCEEDINGS.**

7           Section 236 of the Immigration and Nationality Act  
8 (8 U.S.C. 1226) is amended—

9           (1) by striking “Attorney General” each place  
10          such term appears and inserting “Secretary of  
11          Homeland Security”;

12          (2) in subsection (a)—

13                (A) in the matter preceding paragraph (1),  
14                by inserting “or the Attorney General” before  
15                the em dash;

16                (B) in paragraph (1), by striking “and” at  
17                the end; and

18                (C) in paragraph (2)(B), by striking “con-  
19                ditional parole; but” and inserting “recog-  
20                nizance; and”;

21          (3) in subsection (b)—

22                (A) in the subsection heading, by striking  
23                “PAROLE” and inserting “RECOGNIZANCE”;  
24                and

1 (B) by striking “parole” and inserting “re-  
2 cognizance”;

3 (4) in subsection (c)(1), by striking the undes-  
4 ignated matter following subparagraph (D) and in-  
5 serting the following:

6 “any time after the alien is released, without regard  
7 to whether an alien is released related to any activ-  
8 ity, offense, or conviction described in this para-  
9 graph; to whether the alien is released on parole, su-  
10 pervised release, or probation; or to whether the  
11 alien may be arrested or imprisoned again for the  
12 same offense. If the activity described in this para-  
13 graph does not result in the alien being taken into  
14 custody by any person other than the Secretary,  
15 then when the alien is brought to the attention of  
16 the Secretary or when the Secretary determines it is  
17 practical to take such alien into custody, the Sec-  
18 retary shall take such alien into custody.”;

19 (5) in subsection (e), by striking “Attorney  
20 General’s” and inserting “Secretary of Homeland  
21 Security’s”; and

22 (6) by adding at the end the following:

23 “(f) LENGTH OF DETENTION.—Notwithstanding any  
24 other provision under this section, an alien may be de-  
25 tained under this section for any period, without limita-

1 tion, except as provided in subsection (h), until the alien  
2 is subject to a final order of removal. The length of deten-  
3 tion under this section shall not affect a detention under  
4 section 241.

5 “(g) ADMINISTRATIVE REVIEW.—

6 “(1) LIMITATION.—The Attorney General’s re-  
7 view of the Secretary of Homeland Security’s cus-  
8 tody determinations under subsection (a) shall be  
9 limited to whether the alien may be detained, re-  
10 leased on bond (of at least \$1,500 with security ap-  
11 proved by the Secretary), or released with no bond.  
12 Any review involving an alien described in paragraph  
13 (2)(D) shall be limited to a determination of whether  
14 the alien is properly included in such category.

15 “(2) CLASSES OF ALIENS.—The Attorney Gen-  
16 eral shall review the Secretary’s custody determina-  
17 tions for—

18 “(A) aliens in exclusion proceedings;

19 “(B) aliens described in sections 212(a)(3)  
20 and 237(a)(4);

21 “(C) aliens described in subsection (c); and

22 “(D) aliens in deportation proceedings sub-  
23 ject to section 242(a)(2) (as in effect between  
24 April 24, 1996, and April 1, 1997).

25 “(h) RELEASE ON BOND.—

1           “(1) IN GENERAL.—An alien detained under  
2 subsection (a) may seek release on bond. No bond  
3 may be granted except to an alien who establishes  
4 by clear and convincing evidence that the alien is not  
5 a flight risk or a risk to another person or the com-  
6 munity.

7           “(2) CERTAIN ALIENS INELIGIBLE.—No alien  
8 detained under subsection (c) may seek release on  
9 bond.”.

10 **SEC. 4. ALIENS ORDERED REMOVED.**

11           Section 241(a) of the Immigration and Nationality  
12 Act (8 U.S.C. 1231(a)) is amended—

13           (1) by striking “Attorney General” each place  
14 such term appears (except for the first place it ap-  
15 pears in paragraph (4)(B)(i)) and inserting “Sec-  
16 retary of Homeland Security”;

17           (2) in paragraph (1)—

18           (A) by amending subparagraphs (B) and  
19 (C) to read as follows:

20           “(B) BEGINNING OF PERIOD.—The re-  
21 moval period begins on the latest of—

22           “(i) the date on which the order of re-  
23 moval becomes administratively final;

24           “(ii) the date on which the alien is  
25 taken into such custody if the alien is not

1 in the custody of the Secretary on the date  
2 on which the order of removal becomes ad-  
3 ministratively final; and

4 “(iii) the date on which the alien is  
5 taken into the custody of the Secretary  
6 after the alien is released from detention  
7 or confinement if the alien is detained or  
8 confined (except for an immigration proc-  
9 ess) on the date on which the order of re-  
10 moval becomes administratively final.

11 “(C) SUSPENSION OF PERIOD.—

12 “(i) EXTENSION.—The removal period  
13 shall be extended beyond a period of 90  
14 days and the Secretary may, in the Sec-  
15 retary’s sole discretion, keep the alien in  
16 detention during such extended period, if—

17 “(I) the alien fails or refuses to  
18 make all reasonable efforts to comply  
19 with the removal order, or to fully co-  
20 operate with the Secretary’s efforts to  
21 establish the alien’s identity and carry  
22 out the removal order, including mak-  
23 ing timely application in good faith  
24 for travel or other documents nec-  
25 essary to the alien’s departure or con-

1 spires or acts to prevent the alien’s  
2 removal that is subject to an order of  
3 removal;

4 “(II) a court, the Board of Immi-  
5 gration Appeals, or an immigration  
6 judge orders a stay of removal of an  
7 alien who is subject to an administra-  
8 tively final order of removal;

9 “(III) the Secretary transfers  
10 custody of the alien pursuant to law  
11 to another Federal agency or a State  
12 or local government agency in connec-  
13 tion with the official duties of such  
14 agency; or

15 “(IV) a court or the Board of  
16 Immigration Appeals orders a remand  
17 to an immigration judge or the Board  
18 of Immigration Appeals, during the  
19 time period when the case is pending  
20 a decision on remand (with the re-  
21 moval period beginning anew on the  
22 date that the alien is ordered removed  
23 on remand).

24 “(ii) RENEWAL.—If the removal pe-  
25 riod has been extended under clause (i), a

1 new removal period shall be deemed to  
2 have begun on the date on which—

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

9 “(II) the stay of removal is no  
10 longer in effect; or

11 “(III) the alien is returned to the  
12 custody of the Secretary.

13 “(iii) MANDATORY DETENTION FOR  
14 CERTAIN ALIENS.—The Secretary shall  
15 keep an alien described in subparagraphs  
16 (A) through (D) of section 236(c)(1) in de-  
17 tention during the extended period de-  
18 scribed in clause (i).

19 “(iv) SOLE FORM OF RELIEF.—An  
20 alien may only seek relief from detention  
21 under this subparagraph by filing an appli-  
22 cation for a writ of habeas corpus in ac-  
23 cordance with chapter 153 of title 28,  
24 United States Code. No alien whose period  
25 of detention is extended under this sub-



1 paragraph shall have the right to seek re-  
2 lease on bond.”;

3 (3) in paragraph (3)—

4 (A) in the matter preceding subparagraph  
5 (A), by inserting “or is not detained pursuant  
6 to paragraph (6)” after “the removal period”;  
7 and

8 (B) by amending subparagraph (D) to  
9 read as follows:

10 “(D) to obey reasonable restrictions on the  
11 alien’s conduct or activities that the Secretary  
12 prescribes for the alien—

13 “(i) to prevent the alien from ab-  
14 scending;

15 “(ii) for the protection of the commu-  
16 nity; or

17 “(iii) for other purposes related to the  
18 enforcement of Federal immigration  
19 laws.”;

20 (4) in paragraph (4)(A), by striking “paragraph  
21 (2)” and inserting “subparagraph (B)”; and

22 (5) by amending paragraph (6) to read as fol-  
23 lows:

24 “(6) ADDITIONAL RULES FOR DETENTION OR  
25 RELEASE OF CERTAIN ALIENS.—

1                   “(A) DETENTION REVIEW PROCESS FOR  
2 COOPERATIVE ALIENS ESTABLISHED.—

3                   “(i) IN GENERAL.—The Secretary  
4 shall establish an administrative review  
5 process to determine whether an alien who  
6 is not otherwise subject to mandatory de-  
7 tention, who has made all reasonable ef-  
8 forts to comply with a removal order and  
9 to cooperate fully with the Secretary of  
10 Homeland Security’s efforts to establish  
11 the alien’s identity and carry out the re-  
12 moval order, including making timely ap-  
13 plication in good faith for travel or other  
14 documents necessary to the alien’s depar-  
15 ture, and who has not conspired or acted  
16 to prevent removal should be detained or  
17 released on conditions.

18                   “(ii) DETERMINATION.—The Sec-  
19 retary shall make a determination whether  
20 to release an alien after the removal period  
21 in accordance with subparagraph (B),  
22 which—

23                   “(I) shall include consideration of  
24 any evidence submitted by the alien;  
25 and

1 “(II) may include consideration  
2 of any other evidence, including—

3 “(aa) any information or as-  
4 sistance provided by the Sec-  
5 retary of State or other Federal  
6 official; and

7 “(bb) any other information  
8 available to the Secretary of  
9 Homeland Security pertaining to  
10 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 may continue to detain  
15 an alien for 90 days beyond the removal  
16 period (including any extension of the re-  
17 moval period under paragraph (1)(C)). An  
18 alien whose detention is extended under  
19 this subparagraph shall not have the right  
20 to seek release on bond.

21 “(ii) SPECIFIC CIRCUMSTANCES.—The  
22 Secretary of Homeland Security may con-  
23 tinue to detain an alien beyond the 90  
24 days authorized under 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;

7           “(bb) would be removed in  
8 the reasonably foreseeable future;  
9 or

10          “(cc) would have been re-  
11 moved if the alien had not—

12          “(AA) failed or refused  
13 to make all reasonable ef-  
14 forts to comply with the re-  
15 moval order;

16          “(BB) failed or refused  
17 to cooperate fully with the  
18 Secretary’s efforts to estab-  
19 lish the alien’s identity and  
20 carry out the removal order,  
21 including making timely ap-  
22 plication in good faith for  
23 travel or other documents  
24 necessary to the alien’s de-  
25 parture; or

1                   “(CC) conspired or  
2                   acted to prevent removal;

3                   “(II) until the alien is removed,  
4 if the Secretary of Homeland Security  
5 certifies in writing—

6                   “(aa) in consultation with  
7                   the Secretary of Health and  
8                   Human Services, that the alien  
9                   has a highly contagious disease  
10                  that poses a threat to public safe-  
11                  ty;

12                  “(bb) after receipt of a writ-  
13                  ten recommendation from the  
14                  Secretary of State, that release  
15                  of the alien is likely to have seri-  
16                  ous adverse foreign policy con-  
17                  sequences for the United States;

18                  “(cc) based on information  
19                  available to the Secretary of  
20                  Homeland Security (including  
21                  classified, sensitive, or national  
22                  security information, and without  
23                  regard to the grounds upon  
24                  which the alien was ordered re-  
25                  moved), that there is reason to

1 believe that the release of the  
2 alien would threaten the national  
3 security of the United States; or

4 “(dd) 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 of  
10 any person; and

11 “(AA) the alien has  
12 been convicted of 1 or more  
13 aggravated felonies (as de-  
14 fined in section  
15 101(a)(43)(A)) or of 1 or  
16 more crimes identified by  
17 the Secretary of Homeland  
18 Security by regulation, or of  
19 1 or more attempts or con-  
20 spiracies to commit any such  
21 aggravated felonies or such  
22 identified crimes, if the ag-  
23 gregate term of imprison-  
24 ment for such attempts or

1                   conspiracies is at least 5  
2                   years; or

3                   “(BB) the alien has  
4                   committed 1 or more crimes  
5                   of violence (as defined in  
6                   section 16 of title 18,  
7                   United States Code, but not  
8                   including a purely political  
9                   offense) and, because of a  
10                  mental condition or person-  
11                  ality disorder and behavior  
12                  associated with that condi-  
13                  tion or disorder, the alien is  
14                  likely to engage in acts of vi-  
15                  olence in the future; or

16                  “(III) pending a certification  
17                  under subclause (II), if the Secretary  
18                  of Homeland Security has initiated  
19                  the administrative review process not  
20                  later than 30 days after the expiration  
21                  of the removal period (including any  
22                  extension of the removal period under  
23                  paragraph (1)(C)).

24                  “(iii) NO RIGHT TO BOND HEARING.—  
25                  An alien whose detention is extended under

1 this subparagraph shall not have a right to  
2 seek release on bond, including by reason  
3 of a certification under clause (ii)(II).

4 “(C) RENEWAL AND DELEGATION OF CER-  
5 TIFICATION.—

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

17 “(ii) DELEGATION.—Notwithstanding  
18 section 103, the Secretary of Homeland  
19 Security may not delegate the authority to  
20 make or renew a certification described in  
21 item (bb), (cc), or (dd) of subparagraph  
22 (B)(ii)(II) below the level of the Assistant  
23 Secretary for Immigration and Customs  
24 Enforcement.



1           “(iii) HEARING.—The Secretary of  
2           Homeland Security may request that the  
3           Attorney General or the Attorney General’s  
4           designee provide for a hearing to make the  
5           determination described in subparagraph  
6           (B)(ii)(II)(dd)(BB).

7           “(D) RELEASE ON CONDITIONS.—If it is  
8           determined that an alien should be released  
9           from detention by a Federal court, the Board of  
10          Immigration Appeals, or if an immigration  
11          judge orders a stay of removal, the Secretary of  
12          Homeland Security may impose conditions on  
13          release as provided under paragraph (3).

14          “(E) REDETENTION.—

15               “(i) IN GENERAL.—The Secretary of  
16               Homeland Security, without any limita-  
17               tions other than those specified in this sec-  
18               tion, may detain any alien subject to a  
19               final removal order who is released from  
20               custody if—

21                       “(I) removal becomes likely in  
22                       the reasonably foreseeable future;

23                       “(II) the alien fails to comply  
24                       with the conditions of release or to

1 continue to satisfy the conditions de-  
2 scribed in subparagraph (A); or

3 “(III) upon reconsideration, the  
4 Secretary determines that the alien  
5 can be detained under subparagraph  
6 (B).

7 “(ii) APPLICABILITY.—This section  
8 shall apply to any alien returned to cus-  
9 tody pursuant to this subparagraph as if  
10 the removal period terminated on the day  
11 of the redetention.

12 “(F) REVIEW OF DETERMINATIONS BY  
13 SECRETARY.—A determination by the Secretary  
14 under this paragraph shall not be subject to re-  
15 view by any other agency.”.

16 **SEC. 5. CRIME OF VIOLENCE DEFINED.**

17 Section 16(b) of title 18, United States Code, is  
18 amended—

19 (1) by striking “by its nature, involves” and in-  
20 sserting “based on the facts of the offense, involved”;  
21 and

22 (2) by striking “may be used” and inserting  
23 “may have been used”.

1 **SEC. 6. SEVERABILITY.**

2 If any of the provisions of this Act, any amendment  
 3 made by this Act, or the application of any such provision  
 4 to any person or circumstance, is held to be invalid for  
 5 any reason, the remainder of this Act, the amendments  
 6 made by this Act, and the application of the provisions  
 7 and amendments made by this Act to any other person  
 8 or circumstance shall not be affected by such holding.

9 **SEC. 7. EFFECTIVE DATES.**

10 (a) APPREHENSION AND DETENTION OF ALIENS.—

11 The amendments made by section 3 shall take effect on  
 12 the date of the enactment of this Act. Section 236 of the  
 13 Immigration and Nationality Act, as amended by section  
 14 3, shall apply to any alien in detention under the provi-  
 15 sions of such section on or after such date of enactment.

16 (b) ALIENS ORDERED REMOVED.—The amendments  
 17 made by section 4 shall take effect on the date of the en-  
 18 actment of this Act. Section 241 of the Immigration and  
 19 Nationality Act, as amended by section 4, shall apply to—

20 (1) all aliens subject to a final administrative  
 21 removal, deportation, or exclusion order that was  
 22 issued before, on, or after the date of the enactment  
 23 of this Act; and

24 (2) acts and conditions occurring or existing be-  
 25 fore, on, or after such date of enactment.

