

106TH CONGRESS
1ST SESSION

H. R. 2999

To permit the Attorney General to grant relief to certain permanent resident aliens of good moral character who are adversely affected by changes made in 1996 to the definition of aggravated felony under the Immigration and Nationality Act, and to amend certain provisions of such Act relating to detention of an alien pending and after a decision on whether the alien is to be removed from the United States.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 1999

Mr. McCOLLUM (for himself, Mr. DIAZ-BALART, Ms. ROS-LEHTINEN, Mr. WEXLER, Mr. BILBRAY, and Mr. OSE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To permit the Attorney General to grant relief to certain permanent resident aliens of good moral character who are adversely affected by changes made in 1996 to the definition of aggravated felony under the Immigration and Nationality Act, and to amend certain provisions of such Act relating to detention of an alien pending and after a decision on whether the alien is to be removed from the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fairness for Perma-
3 nent Residents Act of 1999”.

4 **SEC. 2. LIMITING THE DISQUALIFICATION, BASED ON COM-
5 MISSION OF CERTAIN AGGRAVATED FELO-
6 NIES, FROM CANCELLATION OF REMOVAL
7 FOR PERMANENT RESIDENTS.**

8 (a) IN GENERAL.—Section 240A(a) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1229b(a)) is amended
10 to read as follows:

11 “SEC. 240A. (a) CANCELLATION OF REMOVAL FOR
12 CERTAIN PERMANENT RESIDENTS.—

13 “(1) IN GENERAL.—The Attorney General may
14 cancel removal in the case of an alien who is inad-
15 missible or deportable from the United States if the
16 alien—

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

20 “(B) has resided in the United States con-
21 tinuously for 7 years after having been admit-
22 ted in any status; and

23 “(C) has not been convicted of any aggra-
24 vated felony.

25 “(2) LIMITING APPLICATION OF CERTAIN MODI-
26 FICATIONS TO AGGRAVATED FELONY DEFINITION.—

1 “(A) IN GENERAL.—An alien described in
2 subparagraph (B) who is otherwise qualified
3 may request the Attorney General to exercise
4 the discretion granted under paragraph (1) as
5 if the following provisions had not been enacted:

6 “(i) Paragraphs (4) through (6) of
7 section 440(e) of the Antiterrorism and
8 Effective Death Penalty Act of 1996 (110
9 Stat. 1278).

10 “(ii) Section 440(e)(8) of the
11 Antiterrorism and Effective Death Penalty
12 Act of 1996 (110 Stat. 1278), as applied
13 only with respect to the addition of sub-
14 paragraphs (R) and (T) of section
15 101(a)(43) of this Act.

16 “(iii) Paragraphs (7), (9), and (10) of
17 section 321(a) of the Illegal Immigration
18 Reform and Immigrant Responsibility Act
19 of 1996 (110 Stat. 3009–628).

20 “(iv) Section 321(a)(3) of the Illegal
21 Immigration Reform and Immigrant Re-
22 sponsibility Act of 1996 (110 Stat. 3009–
23 627), as applied only with respect to sub-
24 paragraphs (F), (G), and (P) of section
25 101(a)(43) of this Act.

1 “(v) Section 440(e)(1) of the
2 Antiterrorism and Effective Death Penalty
3 Act of 1996 (110 Stat. 1277), and section
4 321(a)(4) of the Illegal Immigration Re-
5 form and Immigrant Responsibility Act of
6 1996 (110 Stat. 3009–627), as applied
7 only to an offense described in section
8 1955 of title 18, United States Code (re-
9 lating to gambling offenses).

10 “(vi) Section 321(b) of the Illegal Im-
11 migration Reform and Immigrant Respon-
12 sibility Act of 1996 (110 Stat. 3009–628),
13 as applied only with respect to subpara-
14 graphs (F), (G), (M), (P), (Q), (R), (T),
15 and (U) of section 101(a)(43) of this Act,
16 and with respect to subparagraph (J) of
17 such section (but only to the extent sub-
18 paragraph (J) relates to an offense de-
19 scribed in section 1955 of title 18, United
20 States Code).

21 “(B) ALIEN DESCRIBED.—An alien de-
22 scribed in this subparagraph is an alien who—

23 “(i) was convicted of one aggravated
24 felony that is not a serious violent felony

1 (as defined in section 3559(c)(2)(F) of
2 title 18, United States Code);

3 “(ii) as a direct result of such convic-
4 tion, is the subject of a removal
5 proceeding—

6 “(I) the commencement of which
7 would not have been authorized but
8 for the enactment of one or more of
9 the provisions described in clauses (i)
10 through (vi) of subparagraph (A); or

11 “(II) with respect to which the
12 alien would have satisfied the require-
13 ments for the application of discretion
14 granted to the Attorney General
15 under paragraph (1) but for the en-
16 actment of one or more of such provi-
17 sions;

18 “(iii) has never been convicted of any
19 felony other than the felony described in
20 clause (i); and

21 “(iv) disregarding such felony, has
22 been a person of good moral character dur-
23 ing all periods of residence in the United
24 States.

1 “(C) NO DANGER TO PERSONS OR PROP-
2 PERTY.—In the case of an alien convicted of an
3 aggravated felony involving violence, the Attor-
4 ney General may exercise the discretion de-
5 scribed in subparagraph (A) only after making
6 a written determination that the action poses
7 no danger to the safety of persons or property.
8 The duty of the Attorney General under this
9 subparagraph may not be delegated to any offi-
10 cer or employee of the Department of Justice
11 other than an Assistant Attorney General, a
12 Deputy Attorney General, an Associate Attor-
13 ney General, or any other attorney assigned to
14 the Office of the Attorney General or an office
15 of an Assistant Attorney General, a Deputy At-
16 torney General, or an Associate Attorney Gen-
17 eral.

18 “(D) APPLICATIONS.—An alien may file
19 only one application for relief under this para-
20 graph. Such application shall be filed not later
21 than 60 days after the commencement of the
22 removal proceeding described in subparagraph
23 (B)(ii).”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall take effect on the date of the enact-

1 ment of this Act and shall apply to convictions entered
2 on or after such date.

3 **SEC. 3. DISCRETION TO GRANT RELIEF TO CERTAIN OTHER**
4 **PERMANENT RESIDENTS.**

5 (a) ESTABLISHMENT OF PROCESS.—Notwith-
6 standing section 240(c)(6) of the Immigration and Na-
7 tionality Act (8 U.S.C. 1229a(c)(6)) or any other limita-
8 tion imposed by law on motions to reopen proceedings
9 under such Act, the Attorney General shall establish a
10 process (whether through permitting the reopening of a
11 proceeding described in subsection (b)(2) or otherwise)
12 under which an alien described in subsection (b) who is
13 otherwise qualified may request the Attorney General to
14 exercise the discretion granted under the authorities de-
15 scribed in subsection (c) as if the following provisions had
16 not been enacted:

17 (1) Paragraphs (4) through (6) of section
18 440(e) of the Antiterrorism and Effective Death
19 Penalty Act of 1996 (110 Stat. 1278).

20 (2) Section 440(e)(8) of the Antiterrorism and
21 Effective Death Penalty Act of 1996 (110 Stat.
22 1278), as applied only with respect to the addition
23 of subparagraphs (R) and (T) of section 101(a)(43)
24 of the Immigration and Nationality Act (8 U.S.C.
25 1101(a)(43)).

1 (3) Paragraphs (7), (9), and (10) of section
2 321(a) of the Illegal Immigration Reform and Immigrant
3 Responsibility Act of 1996 (110 Stat. 3009–
4 628).

5 (4) Section 321(a)(3) of the Illegal Immigration
6 Reform and Immigrant Responsibility Act of 1996
7 (110 Stat. 3009–627), as applied only with respect
8 to subparagraphs (F), (G), and (P) of section
9 101(a)(43) of the Immigration and Nationality Act.

10 (5) Section 440(e)(1) of the Antiterrorism and
11 Effective Death Penalty Act of 1996 (110 Stat.
12 1277), and section 321(a)(4) of the Illegal Immigra-
13 tion Reform and Immigrant Responsibility Act of
14 1996 (110 Stat. 3009–627), as applied only to an
15 offense described in section 1955 of title 18, United
16 States Code (relating to gambling offenses).

17 (6) Section 321(b) of the Illegal Immigration
18 Reform and Immigrant Responsibility Act of 1996
19 (110 Stat. 3009–628), as applied only with respect
20 to subparagraphs (F), (G), (M), (P), (Q), (R), (T),
21 and (U) of section 101(a)(43) of the Immigration
22 and Nationality Act, and with respect to subpara-
23 graph (J) of such section (but only to the extent
24 subparagraph (J) relates to an offense described in
25 section 1955 of title 18, United States Code).

1 (b) ALIEN DESCRIBED.—An alien described in this
2 subsection is an alien who—

3 (1) was convicted before the date of the enact-
4 ment of this Act of one aggravated felony (as de-
5 fined in section 101(a)(43) of the Immigration and
6 Nationality Act (8 U.S.C. 1101(a)(43))) that is not
7 a serious violent felony (as defined in section
8 3559(e)(2)(F) of title 18, United States Code);

9 (2) as a direct result of such conviction, is the
10 subject of a proceeding—

11 (A) the commencement of which would not
12 have been authorized but for the enactment of
13 one or more of the provisions described in para-
14 graphs (1) through (6) of subsection (a); or

15 (B) with respect to which the alien would
16 have satisfied the requirements for the applica-
17 tion of discretion granted to the Attorney Gen-
18 eral under one or more of the authorities de-
19 scribed in subsection (c) but for the enactment
20 of one or more of such provisions;

21 (3) is lawfully admitted for permanent residence
22 (as defined in section 101(a)(20) of the Immigration
23 and Nationality Act (8 U.S.C. 1101(a)(20)));

24 (4) has never been convicted of any felony other
25 than the felony described in paragraph (1); and

1 (5) disregarding such felony, has been a person
2 of good moral character (as defined in section 101(f)
3 of the Immigration and Nationality Act (8 U.S.C.
4 1101(f)) during all periods of residence in the
5 United States.

6 (c) AUTHORITIES.—The provisions referred to in this
7 subsection are the following:

8 (1) Section 240A(a) of the Immigration and
9 Nationality Act (8 U.S.C. 1229b(a)).

10 (2) Section 212(c) of the Immigration and Na-
11 tionality Act (as in effect on March 31, 1997).

12 (3) Section 244(a) of the Immigration and Na-
13 tionality Act (as in effect on March 31, 1997).

14 (d) NO DANGER TO PERSONS OR PROPERTY.—In the
15 case of an alien convicted of an aggravated felony involv-
16 ing violence, the Attorney General may exercise the discre-
17 tion described in subsection (a) only after making a writ-
18 ten determination that the action poses no danger to the
19 safety of persons or property. The duty of the Attorney
20 General under this subsection may not be delegated to any
21 officer or employee of the Department of Justice other
22 than an Assistant Attorney General, a Deputy Attorney
23 General, an Associate Attorney General, or any other at-
24 torney assigned to the Office of the Attorney General or

1 an office of an Assistant Attorney General, a Deputy At-
2 torney General, or an Associate Attorney General.

3 (e) APPLICATIONS.—The process established under
4 subsection (a)—

5 (1) shall permit an alien to file only one appli-
6 cation pursuant to this section; and

7 (2) in the case of a proceeding described in sub-
8 section (b)(2) that is commenced after the date of
9 the enactment of this Act, shall require that such
10 application be filed not later than 60 days after such
11 commencement.

12 **SEC. 4. MODIFICATION OF CERTAIN PROVISIONS ON DE-**
13 **TENTION AND RELEASE OF ALIENS.**

14 (a) DETENTION AND RELEASE OF CRIMINAL ALIENS
15 PENDING REMOVAL DECISION.—Section 236(c) of the
16 Immigration and Nationality Act (8 U.S.C. 1226(c)) is
17 amended—

18 (1) by adding at the end the following:

19 “(3) RELEASE FROM CUSTODY.—Notwith-
20 standing paragraph (2) or any other provision of
21 this section, the Attorney General may release any
22 alien described in paragraph (1) if the Attorney
23 General determines that the alien does not pose a
24 danger to society, does not pose a flight risk, and is
25 likely to comply with any terms of supervision that

1 are imposed and any subsequent order of removal. If
2 released, the alien shall be subject to supervision
3 under regulations prescribed by the Attorney Gen-
4 eral that include the provisions specified in subpara-
5 graphs (A) through (D) of section 241(a)(3).”;

6 (2) by amending subsection (e) to read as fol-
7 lows:

8 “(e) ADMINISTRATIVE AND JUDICIAL REVIEW.—

9 “(1) ADMINISTRATIVE REVIEW.—A decision
10 under this section relating to the release of any alien
11 described in subsection (c)(1) shall be subject to re-
12 view by the United States Board of Immigration Ap-
13 peals of the Department of Justice. The preceding
14 sentence shall not be construed as limiting any ad-
15 ministrative review otherwise available under law of
16 any action or decision under this section.

17 “(2) JUDICIAL REVIEW.—The Attorney Gen-
18 eral’s discretionary judgment regarding the applica-
19 tion of this section shall not be subject to review. No
20 court may set aside any action or decision by the At-
21 torney General under this section regarding the de-
22 tention or release of any alien or the grant, revoca-
23 tion, or denial of bond or parole.”.

24 (b) DETENTION OF INADMISSIBLE OR CRIMINAL
25 ALIENS ORDERED REMOVED.—Section 241(a)(6) of the

1 Immigration and Nationality Act (8 U.S.C. 1231(a)(6))
2 is amended to read as follows:

3 “(6) INADMISSIBLE OR CRIMINAL ALIENS.—

4 “(A) IN GENERAL.—An alien ordered re-
5 moved who is inadmissible under section 212,
6 removable under section 237(a)(1)(C),
7 237(a)(2), or 237(a)(4) or who has been deter-
8 mined by the Attorney General to be a risk to
9 the community or unlikely to comply with the
10 order of removal, may be detained beyond the
11 removal period for a reasonable period of time,
12 not to exceed 3 months after the termination of
13 such period, in order to allow for ongoing nego-
14 tiations between the United States and a for-
15 eign state or states. If such an alien is released,
16 the alien shall be subject to the terms of super-
17 vision in paragraph (3). During such 3-month
18 period, the Attorney General shall release the
19 alien upon a showing that the alien does not
20 pose a danger to society, does not pose a flight
21 risk, and is likely to comply with the removal
22 order.

23 “(B) RELEASE.—Notwithstanding any
24 other provision of this section, if the Attorney
25 General determines that an alien ordered re-

1 moved who is inadmissible under section 212 or
2 removable under section 237(a)(1)(C),
3 237(a)(2), or 237(a)(4) does not pose a danger
4 to society, does not pose a flight risk, and is
5 likely to comply with the removal order, the At-
6 torney General shall release the alien after the
7 removal period. If released, the alien shall be
8 subject to the terms of supervision in paragraph
9 (3).

10 “(C) ADMINISTRATIVE REVIEW.—A deci-
11 sion under this paragraph relating to the re-
12 lease of any alien shall be subject to review by
13 the United States Board of Immigration Ap-
14 peals of the Department of Justice. The pre-
15 ceding sentence shall not be construed as lim-
16 iting any administrative review otherwise avail-
17 able under law of any action or decision under
18 this section.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall be effective as if included in the enact-
21 ment of the Illegal Immigration Reform and Immigrant
22 Responsibility Act of 1996 (Public Law 104–208; 110
23 Stat. 3009–546) and shall apply to individuals with con-

1 vitions entered before, on, or after the date of the enact-
2 ment of this Act.

○