

117TH CONGRESS
2D SESSION

S. 4370

To amend the Immigration and Nationality Act to provide for extensions of detention of certain aliens ordered removed, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 2022

Mr. INHOFE (for himself, Mr. TILLIS, Mr. WICKER, Mr. CRAPO, Mr. RISCH, Mr. KENNEDY, Mr. CRUZ, Mr. GRASSLEY, Mr. HAGERTY, Ms. LUMMIS, Mr. BRAUN, Mr. CASSIDY, Mr. HAWLEY, Mr. CRAMER, Mrs. HYDE-SMITH, Mr. MARSHALL, Mr. ROUNDS, Mr. DAINES, Mr. RUBIO, and Mr. BARRASSO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 2022”.

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

7 It is the sense of Congress that—

1 (1) rights guaranteed by the United States
 2 Constitution should be upheld and protected;

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

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

7 **SEC. 3. DETENTION OF DANGEROUS ALIENS DURING RE-**
 8 **MOVAL PROCEEDINGS.**

9 Section 236 of the Immigration and Nationality Act
 10 (8 U.S.C. 1226) is amended—

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

14 (2) in subsection (a)—

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

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

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

23 (3) in subsection (b)—

1 (A) in the subsection heading, by striking
2 “PAROLE” and inserting “RECOGNIZANCE”;
3 and

4 (B) by striking “parole” and inserting “re-
5 cognizance”;

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

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

22 (5) in subsection (e), by striking “Attorney
23 General’s” and inserting “Secretary of Homeland
24 Security’s”; and

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

1 “(f) LENGTH OF DETENTION.—Notwithstanding any
 2 other provision under this section, an alien may be de-
 3 tained under this section for any period, without limita-
 4 tion, except as provided in subsection (h), until the alien
 5 is subject to a final order of removal. The length of deten-
 6 tion under this section shall not affect a detention under
 7 section 241.

8 “(g) ADMINISTRATIVE REVIEW.—

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

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

21 “(A) aliens in exclusion proceedings;

22 “(B) aliens described in sections 212(a)(3)
 23 and 237(a)(4);

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

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

4 “(h) RELEASE ON BOND.—

5 “(1) IN GENERAL.—An alien detained under
6 subsection (a) may seek release on bond. No bond
7 may be granted under this subsection unless the
8 alien establishes, by clear and convincing evidence,
9 that the alien is not a flight risk or a risk to another
10 person or the community.

11 “(2) CERTAIN ALIENS INELIGIBLE.—No alien
12 detained under subsection (c) may seek release on
13 bond under this subsection.”.

14 **SEC. 4. ALIENS ORDERED REMOVED.**

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

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

21 (2) in paragraph (1)—

22 (A) by amending subparagraphs (B) and
23 (C) to read as follows:

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

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

3 “(ii) the date on which the alien is
4 taken into such custody if the alien is not
5 in the custody of the Secretary on the date
6 on which the order of removal becomes ad-
7 ministratively final; and

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

15 “(C) SUSPENSION OF PERIOD.—

16 “(i) EXTENSION.—The removal period
17 shall be extended beyond 90 days and the
18 Secretary may, in the Secretary’s sole dis-
19 cretion, keep the alien in detention during
20 such extended period, if—

21 “(I) the alien fails or refuses to
22 make all reasonable efforts to comply
23 with the removal order, or to fully co-
24 operate with the Secretary’s efforts to
25 establish the alien’s identity and carry

1 out the removal order, including mak-
2 ing timely application in good faith
3 for travel or other documents nec-
4 essary to the alien's departure or con-
5 spires or acts to prevent the alien's
6 removal that is subject to an order of
7 removal;

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

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

19 “(IV) a court or the Board of
20 Immigration Appeals orders a remand
21 to an immigration judge or the Board
22 of Immigration Appeals, during the
23 time period when the case is pending
24 a decision on remand (with the re-
25 moval period beginning anew on the

1 date that the alien is ordered removed
2 on remand).

3 “(ii) RENEWAL.—If the removal pe-
4 riod has been extended under clause (i), a
5 new removal period shall be deemed to
6 have begun on the date on which—

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

13 “(II) the stay of removal is no
14 longer in effect; or

15 “(III) the alien is returned to the
16 custody of the Secretary.

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

23 “(iv) SOLE FORM OF RELIEF.—An
24 alien may only seek relief from detention
25 under this subparagraph by filing an appli-

1 cation for a writ of habeas corpus in ac-
 2 cordance with chapter 153 of title 28,
 3 United States Code. No alien whose period
 4 of detention is extended under this sub-
 5 paragraph shall have the right to seek re-
 6 lease on bond.”;

7 (3) in paragraph (3)—

8 (A) in the matter preceding subparagraph
 9 (A), by inserting “or is not detained pursuant
 10 to paragraph (6)” after “the removal period”;
 11 and

12 (B) by amending subparagraph (D) to
 13 read as follows:

14 “(D) to obey reasonable restrictions on the
 15 alien’s conduct or activities that the Secretary
 16 prescribes for the alien—

17 “(i) to prevent the alien from ab-
 18 sconding;

19 “(ii) for the protection of the commu-
 20 nity; or

21 “(iii) for other purposes related to the
 22 enforcement of Federal immigration
 23 laws.”;

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

1 (5) by amending paragraph (6) to read as fol-
2 lows:

3 “(6) ADDITIONAL RULES FOR DETENTION OR
4 RELEASE OF CERTAIN ALIENS.—

5 “(A) DETENTION REVIEW PROCESS FOR
6 COOPERATIVE ALIENS ESTABLISHED.—

7 “(i) IN GENERAL.—The Secretary of
8 Homeland Security shall establish an ad-
9 ministrative review process to determine
10 whether an alien who is not otherwise sub-
11 ject to mandatory detention, who has made
12 all reasonable efforts to comply with a re-
13 moval order and to cooperate fully with the
14 Secretary’s efforts to establish the alien’s
15 identity and carry out the removal order,
16 including making timely application in
17 good faith for travel or other documents
18 necessary to the alien’s departure, and who
19 has not conspired or acted to prevent re-
20 moval should be detained or released on
21 conditions.

22 “(ii) DETERMINATION.—The Sec-
23 retary of Homeland Security shall make a
24 determination whether to release an alien

1 after the removal period in accordance with
2 subparagraph (B), which—

3 “(I) shall include consideration of
4 any evidence submitted by the alien;
5 and

6 “(II) may include consideration
7 of any other evidence, including—

8 “(aa) any information or as-
9 sistance provided by the Sec-
10 retary of State or other Federal
11 official; and

12 “(bb) any other information
13 available to the Secretary of
14 Homeland Security pertaining to
15 the ability to remove the alien.

16 “(B) AUTHORITY TO DETAIN BEYOND RE-
17 MOVAL PERIOD.—

18 “(i) IN GENERAL.—The Secretary of
19 Homeland Security may continue to detain
20 an alien for 90 days beyond the removal
21 period (including any extension of the re-
22 moval period under paragraph (1)(C)). An
23 alien whose detention is extended under
24 this subparagraph shall not have the right
25 to seek release on bond.

1 “(ii) SPECIFIC CIRCUMSTANCES.—The
2 Secretary of Homeland Security may con-
3 tinue to detain an alien beyond the 90
4 days authorized under clause (i)—

5 “(I) until the alien is removed, if
6 the Secretary determines that there is
7 a significant likelihood that the
8 alien—

9 “(aa) will be removed in the
10 reasonably foreseeable future;

11 “(bb) would be removed in
12 the reasonably foreseeable future;
13 or

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

16 “(AA) failed or refused
17 to make all reasonable ef-
18 forts to comply with the re-
19 moval order;

20 “(BB) failed or refused
21 to cooperate fully with the
22 Secretary’s efforts to estab-
23 lish the alien’s identity and
24 carry out the removal order,
25 including making timely ap-

1 plication in good faith for
2 travel or other documents
3 necessary to the alien’s de-
4 parture; or

5 “(CC) conspired or
6 acted to prevent removal;

7 “(II) until the alien is removed,
8 if the Secretary of Homeland Security
9 certifies in writing—

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

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

22 “(cc) based on information
23 available to the Secretary of
24 Homeland Security (including
25 classified, sensitive, or national

1 security information, and without
2 regard to the grounds upon
3 which the alien was ordered re-
4 moved), that there is reason to
5 believe that the release of the
6 alien would threaten the national
7 security of the United States; or

8 “(dd) that the release of the
9 alien will threaten the safety of
10 the community or any person,
11 conditions of release cannot rea-
12 sonably be expected to ensure the
13 safety of the community or of
14 any person;

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

1 identified crimes, if the ag-
2 gregate term of imprison-
3 ment for such attempts or
4 conspiracies is at least 5
5 years; or

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

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

1 extension of the removal period under
2 paragraph (1)(C)).

3 “(iii) NO RIGHT TO BOND HEARING.—

4 An alien whose detention is extended under
5 this subparagraph shall not have a right to
6 seek release on bond, including by reason
7 of a certification under clause (ii)(II).

8 “(C) RENEWAL AND DELEGATION OF CER-
9 TIFICATION.—

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

21 “(ii) DELEGATION.—Notwithstanding
22 section 103, the Secretary of Homeland
23 Security may not delegate the authority to
24 make or renew a certification described in
25 item (bb), (cc), or (dd) of subparagraph

1 (B)(ii)(II) below the level of the Assistant
2 Secretary for Immigration and Customs
3 Enforcement.

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

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

17 “(E) REDETENTION.—

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

24 “(I) removal becomes likely in
25 the reasonably foreseeable future;

1 “(II) the alien fails to comply
 2 with the conditions of release or to
 3 continue to satisfy the conditions de-
 4 scribed in subparagraph (A); or

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

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

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

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

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

21 (1) by striking “by its nature, involves” and in-
 22 serting “based on the facts of the offense, involved”;
 23 and

24 (2) by striking “may be used” and inserting
 25 “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.

