

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for immigration injunction reform.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 4

To make the United States more secure by implementing unfinished recommendations of the 9/11 Commission to fight the war on terror more effectively, to improve homeland security, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CORNYN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . IMMIGRATION INJUNCTION REFORM.**

3 (a) APPROPRIATE REMEDIES FOR IMMIGRATION
4 LEGISLATION.—

5 (1) REQUIREMENTS FOR AN ORDER GRANTING
6 PROSPECTIVE RELIEF AGAINST THE GOVERN-
7 MENT.—

8 (A) IN GENERAL.—If a court determines
9 that prospective relief should be ordered against

1 the Government in any civil action pertaining to
2 the administration or enforcement of the immi-
3 gration laws of the United States, the court
4 shall—

5 (i) limit the relief to the minimum
6 necessary to correct the violation of law;

7 (ii) adopt the least intrusive means to
8 correct the violation of law;

9 (iii) minimize, to the greatest extent
10 practicable, the adverse impact on national
11 security, border security, immigration ad-
12 ministration and enforcement, and public
13 safety; and

14 (iv) provide for the expiration of the
15 relief on a specific date, which is not later
16 than the earliest date necessary for the
17 Government to remedy the violation.

18 (B) WRITTEN EXPLANATION.—The re-
19 quirements described in subparagraph (A) shall
20 be discussed and explained in writing in the
21 order granting prospective relief and must be
22 sufficiently detailed to allow review by another
23 court.

24 (C) EXPIRATION OF PRELIMINARY INJUNC-
25 TIVE RELIEF.—Preliminary injunctive relief

1 shall automatically expire on the date that is 90
2 days after the date on which such relief is en-
3 tered, unless the court—

4 (i) makes the findings required under
5 subparagraph (A) for the entry of perma-
6 nent prospective relief; and

7 (ii) makes the order final before expi-
8 ration of such 90-day period.

9 (D) REQUIREMENTS FOR ORDER DENYING
10 MOTION.—This paragraph shall apply to any
11 order denying a motion made by the Govern-
12 ment to vacate, modify, dissolve, or otherwise
13 terminate an order granting prospective relief
14 in any civil action pertaining to the administra-
15 tion or enforcement of the immigration laws of
16 the United States.

17 (2) PROCEDURE FOR MOTION AFFECTING
18 ORDER GRANTING PROSPECTIVE RELIEF AGAINST
19 THE GOVERNMENT.—

20 (A) IN GENERAL.—A court shall promptly
21 rule on a motion made by the Government to
22 vacate, modify, dissolve, or otherwise terminate
23 an order granting prospective relief in any civil
24 action pertaining to the administration or en-

1 forcement of the immigration laws of the
2 United States.

3 (B) AUTOMATIC STAYS.—

4 (i) IN GENERAL.—A motion to vacate,
5 modify, dissolve, or otherwise terminate an
6 order granting prospective relief made by
7 the Government in any civil action per-
8 taining to the administration or enforce-
9 ment of the immigration laws of the
10 United States shall automatically, and
11 without further order of the court, stay the
12 order granting prospective relief on the
13 date that is 15 days after the date on
14 which such motion is filed unless the court
15 previously has granted or denied the Gov-
16 ernment’s motion.

17 (ii) DURATION OF AUTOMATIC
18 STAY.—An automatic stay under clause (i)
19 shall continue until the court enters an
20 order granting or denying the Govern-
21 ment’s motion.

22 (iii) POSTPONEMENT.—The court, for
23 good cause, may postpone an automatic
24 stay under clause (i) for not longer than
25 15 days.

1 (iv) ORDERS BLOCKING AUTOMATIC
2 STAYS.—Any order staying, suspending,
3 delaying, or otherwise barring the effective
4 date of the automatic stay described in
5 clause (i), other than an order to postpone
6 the effective date of the automatic stay for
7 not longer than 15 days under clause (iii),
8 shall be—

9 (I) treated as an order refusing
10 to vacate, modify, dissolve, or other-
11 wise terminate an injunction; and

12 (II) immediately appealable
13 under section 1292(a)(1) of title 28,
14 United States Code.

15 (3) SETTLEMENTS.—

16 (A) CONSENT DECREES.—In any civil ac-
17 tion pertaining to the administration or enforce-
18 ment of the immigration laws of the United
19 States, the court may not enter, approve, or
20 continue a consent decree that does not comply
21 with the requirements of paragraph (1).

22 (B) PRIVATE SETTLEMENT AGREE-
23 MENTS.—Nothing in this subsection shall pre-
24 clude parties from entering into a private settle-

1 ment agreement that does not comply with
2 paragraph (1).

3 (4) EXPEDITED PROCEEDINGS.—It shall be the
4 duty of every court to advance on the docket and to
5 expedite the disposition of any civil action or motion
6 considered under this subsection.

7 (5) DEFINITIONS.—In this subsection:

8 (A) CONSENT DECREE.—The term “con-
9 sent decree”—

10 (i) means any relief entered by the
11 court that is based in whole or in part on
12 the consent or acquiescence of the parties;
13 and

14 (ii) does not include private settle-
15 ments.

16 (B) GOOD CAUSE.—The term “good
17 cause” does not include discovery or congestion
18 of the court’s calendar.

19 (C) GOVERNMENT.—The term “Govern-
20 ment” means the United States, any Federal
21 department or agency, or any Federal agent or
22 official acting within the scope of official duties.

23 (D) PERMANENT RELIEF.—The term “per-
24 manent relief” means relief issued in connection
25 with a final decision of a court.

1 (E) PRIVATE SETTLEMENT AGREEMENT.—

2 The term “private settlement agreement”
3 means an agreement entered into by the parties
4 that is not subject to judicial enforcement other
5 than the reinstatement of the civil action that
6 the agreement settled.

7 (F) PROSPECTIVE RELIEF.—The term
8 “prospective relief” means temporary, prelimi-
9 nary, or permanent relief other than compen-
10 satory monetary damages.

11 (b) EFFECTIVE DATE.—

12 (1) IN GENERAL.—This section shall apply with
13 respect to all orders granting prospective relief in
14 any civil action pertaining to the administration or
15 enforcement of the immigration laws of the United
16 States, whether such relief was ordered before, on,
17 or after the date of the enactment of this Act.

18 (2) PENDING MOTIONS.—Every motion to va-
19 cate, modify, dissolve, or otherwise terminate an
20 order granting prospective relief in any such action,
21 which motion is pending on the date of the enact-
22 ment of this Act, shall be treated as if it had been
23 filed on such date of enactment.

24 (3) AUTOMATIC STAY FOR PENDING MO-
25 TIONS.—

1 (A) IN GENERAL.—An automatic stay with
2 respect to the prospective relief that is the sub-
3 ject of a motion described in paragraph (2)
4 shall take effect without further order of the
5 court on the date that is 10 days after the date
6 of the enactment of this Act if the motion—

7 (i) was pending for 45 days as of the
8 date of the enactment of this Act; and

9 (ii) is still pending on the date which
10 is 10 days after such date of enactment.

11 (B) DURATION OF AUTOMATIC STAY.—An
12 automatic stay that takes effect under subpara-
13 graph (A) shall continue until the court enters
14 an order granting or denying a motion made by
15 the Government under subsection (a)(2). There
16 shall be no further postponement of the auto-
17 matic stay with respect to any such pending
18 motion under subsection (a)(2)(B). Any order,
19 staying, suspending, delaying, or otherwise bar-
20 ring the effective date of this automatic stay
21 with respect to pending motions described in
22 paragraph (2) shall be an order blocking an
23 automatic stay subject to immediate appeal
24 under subsection (a)(2)(B)(iv).