

AMENDMENT NO. _____ Calendar No. _____

Purpose: To strengthen the Federal Government's ability to detain dangerous criminal aliens, including murderers, rapists, and child molesters, until they can be removed from the United States.

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 Beginning on page ____, between lines __ and __,

2 insert the following:

3 **SEC. 406. DETENTION OF DEPORTABLE ALIENS TO PRO-**

4 **TECT PUBLIC SAFETY.**

5 (a) IN GENERAL.—Section 241(a) of the Immigra-
6 tion and Nationality Act (8 U.S.C. 1231(a)) is amended—

7 (1) by striking “Attorney General” each place

8 it appears, except for the first reference in para-

1 graph (4)(B)(i), and inserting “Secretary of Home-
2 land Security”;

3 (2) in paragraph (1)—

4 (A) by amending clause (ii) of subpara-
5 graph (B) to read as follows:

6 “(ii) If a court, the Board of Immi-
7 gration Appeals, or an immigration judge
8 orders a stay of the removal of the alien,
9 the date the stay of removal is no longer
10 in effect.”;

11 (B) by adding at the end of subparagraph
12 (B), the following flush text:

13 “If, at the beginning of the removal period, as
14 determined under this subparagraph, the alien
15 is not in the custody of the Secretary of Home-
16 land Security (under the authority of this Act),
17 the Secretary shall take the alien into custody
18 for removal, and the removal period shall not
19 begin until the alien is taken into such custody.
20 If the Secretary transfers custody of the alien
21 during the removal period pursuant to law to
22 another Federal agency or a State or local gov-
23 ernment agency in connection with the official
24 duties of such agency, the removal period shall
25 be tolled, and shall begin anew on the date of

1 the alien's return to the custody of the Sec-
2 retary subject to clause (ii)."; and

3 (C) by amending subparagraph (C) to read
4 as follows:

5 “(C) SUSPENSION OF PERIOD.—The re-
6 moval period shall be extended beyond a period
7 of 90 days and the alien may remain in deten-
8 tion during such extended period if the alien
9 fails or refuses to make all reasonable efforts to
10 comply with the removal order, or to fully co-
11 operate with the Secretary's efforts to establish
12 the alien's identity and carry out the removal
13 order, including making timely application in
14 good faith for travel or other documents nec-
15 essary to the alien's departure, or conspires or
16 acts to prevent the alien's removal subject to an
17 order of removal.”;

18 (3) in paragraph (2), by adding at the end the
19 following new sentence: “If a court, the Board of
20 Immigration Appeals, or an immigration judge or-
21 ders a stay of removal of an alien who is subject to
22 an administratively final order of removal, the Sec-
23 retary of Homeland Security in the exercise of dis-
24 cretion may detain the alien during the pendency of
25 such stay of removal.”;

1 (4) in paragraph (3), by amending subpara-
2 graph (D) to read as follows:

3 “(D) to obey reasonable restrictions on the
4 alien’s conduct or activities, or to perform af-
5 firmative acts, that the Secretary of Homeland
6 Security prescribes for the alien, in order to
7 prevent the alien from absconding, for the pro-
8 tection of the community, or for other purposes
9 related to the enforcement of the immigration
10 laws.”;

11 (5) in paragraph (6), by striking “removal pe-
12 riod and, if released,” and inserting “removal period,
13 in the discretion of the Secretary of Homeland Secu-
14 rity, without any limitations other than those speci-
15 fied in this section, until the alien is removed. If an
16 alien is released, the alien”;

17 (6) by redesignating paragraph (7) as para-
18 graph (10) and inserting after paragraph (6) the fol-
19 lowing new paragraphs:

20 “(7) PAROLE.—If an alien detained pursuant to
21 paragraph (6) is an applicant for admission, the
22 Secretary of Homeland Security, in the Secretary’s
23 discretion, may parole the alien under section
24 212(d)(5) and may provide, notwithstanding section
25 212(d)(5), that the alien shall not be returned to

1 custody unless either the alien violates the conditions
2 of his parole or his removal becomes reasonably fore-
3 seeable, provided that in no circumstance shall such
4 alien be considered admitted.

5 “(8) ADDITIONAL RULES FOR DETENTION OR
6 RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN
7 ENTRY.—The following procedures apply only with
8 respect to an alien who has effected an entry into
9 the United States. These procedures do not apply to
10 any other alien detained pursuant to paragraph (6).

11 “(A) ESTABLISHMENT OF A DETENTION
12 REVIEW PROCESS FOR ALIENS WHO FULLY CO-
13 OPERATE WITH REMOVAL.—For an alien who
14 has made all reasonable efforts to comply with
15 a removal order and to cooperate fully with the
16 Secretary of Homeland Security’s efforts to es-
17 tablish the alien’s identity and carry out the re-
18 moval order, including making timely applica-
19 tion in good faith for travel or other documents
20 necessary to the alien’s departure, and has not
21 conspired or acted to prevent removal, the Sec-
22 retary of Homeland Security shall establish an
23 administrative review process to determine
24 whether the alien should be detained or released
25 on conditions. The Secretary shall make a de-

1 termination whether to release an alien after
2 the removal period in accordance with para-
3 graph (1)(B). The determination shall include
4 consideration of any evidence submitted by the
5 alien, and may include consideration of any
6 other evidence, including any information or as-
7 sistance provided by the Department of State
8 or other Federal agency and any other informa-
9 tion available to the Secretary pertaining to the
10 ability to remove the alien.

11 “(B) AUTHORITY TO DETAIN BEYOND THE
12 REMOVAL PERIOD.—

13 “(i) IN GENERAL.—The Secretary of
14 Homeland Security, in the exercise of dis-
15 cretion, without any limitations other than
16 those specified in this section, may con-
17 tinue to detain an alien for 90 days beyond
18 the removal period (including any exten-
19 sion of the removal period as provided in
20 subsection (a)(1)(C)).

21 “(ii) LENGTH OF DETENTION.—The
22 Secretary, in the exercise of discretion,
23 without any limitations other than those
24 specified in this section, may continue to

1 detain an alien beyond the 90 days, as au-
2 thorized in clause (i)—

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

7 “(aa) will be removed in the
8 reasonably foreseeable future; or

9 “(bb) would be removed in
10 the reasonably foreseeable future,
11 or would have been removed, but
12 for the alien’s failure or refusal
13 to make all reasonable efforts to
14 comply with the removal order,
15 or to cooperate fully with the
16 Secretary’s efforts to establish
17 the alien’s identity and carry out
18 the removal order, including
19 making timely application in
20 good faith for travel or other doc-
21 uments necessary to the alien’s
22 departure, or conspiracies or acts
23 to prevent removal;

24 “(II) until the alien is removed,
25 if the Secretary certifies in writing—

1 “(aa) in consultation with
2 the Secretary of Health and
3 Human Services, that the alien
4 has a highly contagious disease
5 that poses a threat to public safe-
6 ty;

7 “(bb) after receipt of a writ-
8 ten recommendation from the
9 Secretary of State, that release
10 of the alien is likely to have seri-
11 ous adverse foreign policy con-
12 sequences for the United States;

13 “(cc) based on information
14 available to the Secretary of
15 Homeland Security (including
16 classified, sensitive, or national
17 security information, and without
18 regard to the grounds upon
19 which the alien was ordered re-
20 moved), that there is reason to
21 believe that the release of the
22 alien would threaten the national
23 security of the United States; or

24 “(dd) that the release of the
25 alien will threaten the safety of

1 the community or any person,
2 conditions of release cannot rea-
3 sonably be expected to ensure the
4 safety of the community or any
5 person, and either—

6 “(AA) the alien has
7 been convicted of one or
8 more aggravated felonies as
9 defined in section
10 101(a)(43)(A), one or more
11 crimes identified by the Sec-
12 retary of Homeland Security
13 by regulation, or one or
14 more attempts or conspir-
15 acies to commit any such
16 aggravated felonies or such
17 identified crimes, provided
18 that the aggregate term of
19 imprisonment for such at-
20 tempts or conspiracies is at
21 least 5 years; or

22 “(BB) the alien has
23 committed one or more
24 crimes of violence (as de-
25 fined in section 16 of title

1 18, United States Code, but
2 not including a purely polit-
3 ical offense) and, because of
4 a mental condition or per-
5 sonality disorder and behav-
6 ior associated with that con-
7 dition or disorder, the alien
8 is likely to engage in acts of
9 violence in the future; or

10 “(ee) that the release of the
11 alien will threaten the safety of
12 the community or any person,
13 conditions of release cannot rea-
14 sonably be expected to ensure the
15 safety of the community or any
16 person, and the alien has been
17 convicted of at least one aggra-
18 vated felony as defined in section
19 101(a)(43); and

20 “(III) pending a determination
21 under subclause (II), so long as the
22 Secretary has initiated the adminis-
23 trative review process not later than
24 30 days after the expiration of the re-
25 moval period (including any extension

1 of the removal period as provided in
2 subsection (a)(1)(C)).

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

5 “(i) RENEWAL.—The Secretary of
6 Homeland Security may renew a certifi-
7 cation under subparagraph (B)(ii)(II)
8 every 6 months without limitation, after
9 providing an opportunity for the alien to
10 request reconsideration of the certification
11 and to submit documents or other evidence
12 in support of that request. If the Secretary
13 does not renew a certification, the Sec-
14 retary may not continue to detain the alien
15 under subparagraph (B)(ii)(II).

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

24 “(iii) HEARING.—The Secretary of
25 Homeland Security may request that the

1 Attorney General or his designee provide
2 for a hearing to make the determination
3 described in clause (dd)(BB) of subpara-
4 graph (B)(ii)(II).

5 “(D) RELEASE ON CONDITIONS.—If it is
6 determined that an alien should be released
7 from detention, the Secretary of Homeland Se-
8 curity, in the exercise of discretion, may impose
9 conditions on release as provided in paragraph
10 (3).

11 “(E) REDETENTION.—The Secretary of
12 Homeland Security, in the exercise of discre-
13 tion, without any limitations other than those
14 specified in this section, may again detain any
15 alien subject to a final removal order who is re-
16 leased from custody if the alien fails to comply
17 with the conditions of release or to continue to
18 satisfy the conditions described in subparagraph
19 (A), or if, upon reconsideration, the Secretary
20 determines that the alien can be detained under
21 subparagraph (B). Paragraphs (6) through (8)
22 shall apply to any alien returned to custody
23 pursuant to this subparagraph, as if the re-
24 moval period terminated on the day of the re-
25 detention.

1 “(F) CERTAIN ALIENS WHO EFFECTED
2 ENTRY.—If an alien has effected an entry but
3 has neither been lawfully admitted nor phys-
4 ically present in the United States continuously
5 for the 2-year period immediately prior to the
6 commencement of removal proceedings under
7 this Act or deportation proceedings against the
8 alien, the Secretary of Homeland Security in
9 the exercise of discretion may decide not to
10 apply paragraph (8) and detain the alien with-
11 out any limitations except those which the Sec-
12 retary shall adopt by regulation.

13 “(9) JUDICIAL REVIEW.—Without regard to the
14 place of confinement, judicial review of any action or
15 decision pursuant to paragraph (6), (7), or (8) shall
16 be available exclusively in habeas corpus proceedings
17 instituted in the United States District Court for the
18 District of Columbia, and only if the alien has ex-
19 hausted all administrative remedies (statutory and
20 regulatory) available to the alien as of right.”.

21 (b) DETENTION OF ALIENS DURING REMOVAL PRO-
22 CEEDINGS.—

23 (1) IN GENERAL.—Section 235 of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1225) is amend-

1 ed by adding at the end the following new sub-
2 sections:

3 “(e) LENGTH OF DETENTION.—

4 “(1) IN GENERAL.—An alien may be detained
5 under this section, without limitation, until the alien
6 is subject to an administratively final order of re-
7 moval.

8 “(2) EFFECT ON DETENTION UNDER SECTION
9 241.—The length of detention under this section
10 shall not affect the validity of any detention under
11 section 241.

12 “(f) JUDICIAL REVIEW.—Without regard to the place
13 of confinement, judicial review of any action or decision
14 made pursuant to subsection (e) shall be available exclu-
15 sively in a habeas corpus proceeding instituted in the
16 United States District Court for the District of Columbia
17 and only if the alien has exhausted all administrative rem-
18 edies (statutory and nonstatutory) available to the alien
19 as of right.”.

20 (2) CONFORMING AMENDMENTS.—Section 236
21 of the Immigration and Nationality Act (8 U.S.C.
22 1226) is amended—

23 (A) by inserting at the end of subsection
24 (e) the following: “Without regard to the place
25 of confinement, judicial review of any action or

1 decision made pursuant to section 235(f) shall
2 be available exclusively in a habeas corpus pro-
3 ceeding instituted in the United States District
4 Court for the District of Columbia, and only if
5 the alien has exhausted all administrative rem-
6 edies (statutory and nonstatutory) available to
7 the alien as of right.”; and

8 (B) by adding at the end the following new
9 subsection:

10 “(f) LENGTH OF DETENTION.—

11 “(1) IN GENERAL.—An alien may be detained
12 under this section, without limitation, until the alien
13 is subject to an administratively final order of re-
14 moval.

15 “(2) EFFECT ON DETENTION UNDER SECTION
16 241.—The length of detention under this section
17 shall not affect the validity of any detention under
18 section 241.”.

19 (c) SEVERABILITY.—If any of the provisions of this
20 Act or any amendment by this Act, or the application of
21 any such provision to any person or circumstance, is held
22 to be invalid for any reason, the remainder of this Act
23 and of amendments made by this Act, and the application
24 of the provisions and of the amendments made by this Act

1 to any other person or circumstance shall not be affected
2 by such holding.

3 (d) EFFECTIVE DATES.—

4 (1) AMENDMENTS MADE BY SUBSECTION (A).—

5 The amendments made by subsection (a) shall take
6 effect on the date of the enactment of this Act, and
7 section 241 of the Immigration and Nationality Act,
8 as amended, shall apply to—

9 (A) all aliens subject to a final administra-
10 tive removal, deportation, or exclusion order
11 that was issued before, on, or after the date of
12 the enactment of this Act; and

13 (B) acts and conditions occurring or exist-
14 ing before, on, or after the date of the enact-
15 ment of this Act.

16 (2) AMENDMENTS MADE BY SUBSECTION (B).—

17 The amendments made by subsection (b) shall take
18 effect upon the date of the enactment of this Act,
19 and sections 235 and 236 of the Immigration and
20 Nationality Act, as amended, shall apply to any alien
21 in detention under provisions of such sections on or
22 after the date of the enactment of this Act.

1 **SEC. 407. CRIMINAL DETENTION OF ALIENS TO PROTECT**
2 **PUBLIC SAFETY.**

3 (a) IN GENERAL.—Section 3142(e) of title 18,
4 United States Code, is amended to read as follows:

5 “(e) DETENTION.—If, after a hearing pursuant to
6 the provisions of subsection (f), the judicial officer finds
7 that no condition or combination of conditions will reason-
8 ably assure the appearance of the person as required and
9 the safety of any other person and the community, such
10 judicial officer shall order the detention of the person be-
11 fore trial.

12 “(1) PRESUMPTION ARISING FROM OFFENSES
13 DESCRIBED IN SUBSECTION (F)(1).—In a case de-
14 scribed in subsection (f)(1) of this section, a rebut-
15 table presumption arises that no condition or com-
16 bination of conditions will reasonably assure the
17 safety of any other person and the community if
18 such judicial officer finds that—

19 “(A) the person has been convicted of a
20 Federal offense that is described in subsection
21 (f)(1), or of a State or local offense that would
22 have been an offense described in subsection
23 (f)(1) if a circumstance giving rise to Federal
24 jurisdiction had existed;

25 “(B) the offense described in subparagraph
26 (A) was committed while the person was on re-

1 lease pending trial for a Federal, State, or local
2 offense; and

3 “(C) a period of not more than 5 years has
4 elapsed since the date of conviction or the re-
5 lease of the person from imprisonment, for the
6 offense described in subparagraph (A), which-
7 ever is later.

8 “(2) PRESUMPTION ARISING FROM OTHER OF-
9 FENSES INVOLVING ILLEGAL SUBSTANCES, FIRE-
10 ARMS, VIOLENCE, OR MINORS.—Subject to rebuttal
11 by the person, it shall be presumed that no condition
12 or combination of conditions will reasonably assure
13 the appearance of the person as required and the
14 safety of the community if the judicial officer finds
15 that there is probable cause to believe that the per-
16 son committed an offense for which a maximum
17 term of imprisonment of 10 years or more is pre-
18 scribed in the Controlled Substances Act (21 U.S.C.
19 801 et seq.), the Controlled Substances Import and
20 Export Act (21 U.S.C. 951 et seq.), or chapter 705
21 of title 46, an offense under section 924(c), 956(a),
22 or 2332b of this title, or an offense listed in section
23 2332b(g)(5)(B) of this title for which a maximum
24 term of imprisonment of 10 years or more is pre-
25 scribed, or an offense involving a minor victim under

1 section 1201, 1591, 2241, 2242, 2244(a)(1), 2245,
2 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3),
3 2252A(a)(1), 2252A(a)(2), 2252A(a)(3),
4 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of
5 this title.

6 “(3) PRESUMPTION ARISING FROM OFFENSES
7 RELATING TO IMMIGRATION LAW.—Subject to rebut-
8 tal by the person, it shall be presumed that no con-
9 dition or combination of conditions will reasonably
10 assure the appearance of the person as required if
11 the judicial officer finds that there is probable cause
12 to believe that the person is an alien and that the
13 person—

14 “(A) has no lawful immigration status in
15 the United States;

16 “(B) is the subject of a final order of re-
17 moval; or

18 “(C) has committed a felony offense under
19 section 842(i)(5), 911, 922(g)(5), 1015, 1028,
20 1028A, 1425, or 1426 of this title, or any sec-
21 tion of chapters 75 and 77 of this title, or sec-
22 tion 243, 274, 275, 276, 277, or 278 of the Im-
23 migration and Nationality Act (8 U.S.C. 1253,
24 1324, 1325, 1326, 1327, and 1328).”.

1 (b) IMMIGRATION STATUS AS FACTOR IN DETER-
2 MINING CONDITIONS OF RELEASE.—Section 3142(g)(3)
3 of title 18, United States Code, is amended—

4 (1) in subparagraph (A), by striking “and” at
5 the end; and

6 (2) by adding at the end the following new sub-
7 paragraph:

8 “(C) the person’s immigration status;
9 and”.