

AMENDMENT NO. _____ Calendar No. _____

Purpose: To prohibit the retroactive application of any offense that would result in an alien's inadmissibility or deportability, to clarify the definitions of conviction and term of imprisonment for purposes of the Immigration and Nationality Act, to prohibit the execution of an order of removal under section 1229a(b)(5) of such Act until after an immigration judge makes specific findings of fact, and to slightly modify the circumstances under which an alien is deemed inadmissible or deportable due to a criminal conviction and incarceration.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. BLUMENTHAL

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . DEFINITIONS OF CONVICTION AND TERM OF**
3 **IMPRISONMENT.**

4 (a) IN GENERAL.—Section 101(a)(48) (8 U.S.C.
5 1101(a)(48)(A)) is amended—

6 (1) by striking subparagraph (A) and inserting
7 the following:

1 “(A) The term ‘conviction’ means, with respect
2 to an alien, a formal judgment of guilt of the alien
3 entered by a court. An adjudication or judgment of
4 guilt that has been expunged, deferred, annulled, in-
5 validated, withheld, or vacated, an order of proba-
6 tion without entry of judgment, or any similar dis-
7 position shall not be considered a conviction for pur-
8 poses of this Act.”; and

9 (2) in subparagraph (B)—

10 (A) by inserting “only” after “deemed to
11 include”; and

12 (B) by striking “court of law” and all that
13 follows and inserting “court of law. Any such
14 reference shall not be deemed to include any
15 suspension of the imposition or execution of
16 that imprisonment or sentence in whole or in
17 part.”.

18 (b) EFFECTIVE DATE AND APPLICATION.—

19 (1) EFFECTIVE DATE.—The amendments made
20 by subsection (a) shall take effect on the date of the
21 enactment of this Act.

22 (2) APPLICATION.—The amendments made by
23 subsection (a) shall apply to convictions and sen-
24 tences entered before, on, or after the date of the
25 enactment of this Act.

1 **SEC. _____. RETROACTIVE APPLICATION.**

2 (a) GROUNDS OF DEPORTABILITY.—Section 237 (8
3 U.S.C. 1227) is amended by adding at the end the fol-
4 lowing

5 “(e) DATE OF OFFENSE.—Notwithstanding any
6 other provision of this section, an alien is not deportable
7 by reason of committing any offense that was not a ground
8 of deportability on the date on which the offense oc-
9 curred.”.

10 (b) GROUNDS OF INADMISSIBILITY.—Section 212 (8
11 U.S.C. 1182), as amended by sections 2312(d), 2313(b),
12 and 4211(a)(3), is further amended by adding at the end
13 the following:

14 “(y) DATE OF OFFENSE.—Notwithstanding any
15 other provision of this section, an alien is not inadmissible
16 by reason of committing any offense that was not a ground
17 of inadmissibility on the date on which the offense oc-
18 curred.”.

19 On page 585, line 5, strike “(d)” and insert the fol-
20 lowing:

21 (d) EXECUTION OF ORDER OF REMOVAL.—Section
22 240(b)(5)(C) (8 U.S.C. 1229a(b)(5)(C)) is amended to
23 read as follows:

24 “(C) EXECUTION OF ORDER.—

1 “(i) IN GENERAL.—An order of re-
2 moval under subparagraph (A) may be exe-
3 cuted only after an immigration judge
4 makes findings, by clear and convincing
5 evidence, that—

6 “(I) the alien’s failure to appear
7 was not because of exceptional cir-
8 cumstances;

9 “(II) the alien received notice in
10 accordance with paragraph (1) or (2)
11 of section 239(a);

12 “(III) the alien was not in Fed-
13 eral, State, or local custody; and

14 “(IV) failure to appear was not
15 otherwise due to circumstances be-
16 yond the alien’s control.

17 “(ii) NOTICE.—Before the immigra-
18 tion judge enters the findings set forth in
19 clause (i), the alien or the alien’s rep-
20 resentative shall be given notice and an op-
21 portunity to make oral and written submis-
22 sions regarding the applicability of sub-
23 clauses (I) through (IV) of clause (i).

24 “(iii) ORDER OF REMOVAL IN
25 ABSENTIA.—If the judge enters the find-

ings set forth in clause (i), the judge may enter an order in absentia under this paragraph.

“(iv) MOTION TO RESCIND PROCEEDINGS PERMITTED.—Findings set forth in clause (i) shall not bar the subsequent filing of a motion to rescind, including a motion filed at any time based on evidence that the alien’s failure to appear was due to a lack of notice in accordance with paragraph (1) or (2) of section 239(a).

“(v) REOPEN PROCEEDINGS REQUIRED.—If the immigration judge does not enter findings, by clear and convincing evidence, that subclauses (I) through (IV) of clause (i) have been satisfied, the judge shall reopen the proceedings.

“(vi) FINDINGS REQUIRED BEFORE REMOVAL.—No alien may be removed pursuant to the authority of an in absentia removal order described in clause (iii) before the immigration judge issues the findings set forth in clause (i).”.

(e)

1 Beginning on page 642, strike line 21 and all that
2 follows through page 643, line 10, and insert the following:

3 (a) INADMISSIBILITY.—Section 212(a)(2)(A) (8
4 U.S.C. 1182(a)(2)(A)) is amended—

5 (1) in clause (i)—

6 (A) in subclause (I), by striking “, or” at
7 the end and inserting a semicolon;

8 (B) in subclause (II), by striking the
9 comma at the end and inserting “; or”; and

10 (C) by inserting after subclause (II) the
11 following:

12 “(III) a violation of section 1541,
13 1545, and subsection (b) of section
14 1546 of title 18, United States
15 Code,”; and

16 (2) in clause (ii)—

17 (A) in the matter preceding subclause (I),
18 by striking “(I)”;

19 (B) in subclause (I), by striking “when the
20 alien was under 18 years of age, and the crime
21 was committed (and the alien released from any
22 confinement to a prison or correctional institu-
23 tion imposed for the crime)”;

24 (C) by amending subclause (II) to read as
25 follows:

1 “(II) the crime resulted in a con-
2 viction for which the alien was incar-
3 cerated for a period of 1 year or
4 less.”.

5 (b) REMOVAL.—Section 237(a) (8 U.S.C. 1227(a)) is
6 amended—

7 (1) in paragraph (2)(A), by amending clause (i)
8 to read as follows:

9 “(i) CRIMES OF MORAL TURPITUDE.—
10 Any alien who is convicted of a crime in-
11 volving moral turpitude committed within
12 5 years (or 10 years in the case of an alien
13 provided lawful permanent resident status
14 under section 245(j)) after the date of ad-
15 mission for which the alien was incarcer-
16 ated for a period exceeding 1 year, is de-
17 portable.”; and

18 (2) in paragraph (3)(B), by amending clause
19 (iii) to read as follows: