

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5541

To reform immigration litigation procedures.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 2006

Mr. BONILLA (for himself, Mr. SMITH of Texas, Mr. BURGESS, Mr. CARTER, Mr. CONAWAY, Mr. GOHMERT, Ms. GRANGER, Mr. HENSARLING, Mr. SAM JOHNSON of Texas, Mr. MARCHANT, Mr. McCAUL of Texas, Mr. SESSIONS, Mr. THORNBERRY, Mr. NEUGEBAUER, Mr. CULBERSON, Mr. POE, Mr. BARTON of Texas, Mr. HALL, Mr. BRADY of Texas, Mr. PAUL, and Mr. DOOLITTLE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To reform immigration litigation procedures.

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 “Fairness in Immigra-  
5 tion Litigation Act of 2006”.

6 **SEC. 2. APPROPRIATE REMEDIES FOR IMMIGRATION LITI-**  
7 **GATION.**

8 (a) **LIMITATION ON CIVIL ACTIONS.**—No court may  
9 certify an action as a class action under Rule 23 of the

1 Federal Rules of Civil Procedure in any civil action filed  
2 after the date of the enactment of this Act pertaining to  
3 the administration or enforcement of the immigration laws  
4 of the United States.

5 (b) REQUIREMENTS FOR RELIEF.—

6 (1) PROSPECTIVE RELIEF.—

7 (A) IN GENERAL.—In the case that a court  
8 determines that prospective relief should be or-  
9 dered against the Government in a civil action  
10 with respect to the administration or enforce-  
11 ment of the immigration laws of the United  
12 States, the court may order such relief only if  
13 the following requirements are met:

14 (i) The court limits the relief to the  
15 minimum necessary to correct the viola-  
16 tion.

17 (ii) The relief is the least intrusive  
18 means necessary to correct the violation.

19 (iii) The court minimizes, to the  
20 greatest practical extent, any adverse im-  
21 pact on national security, border security,  
22 immigration administration and enforce-  
23 ment, and public safety caused by the re-  
24 lief.

1 (iv) The court provides for the expira-  
2 tion of the relief on a specific date which  
3 allows for the minimum practical time  
4 needed to remedy the violation.

5 (B) WRITTEN EXPLANATION REQUIRED  
6 WITH COURT ORDER.—Each court order grant-  
7 ing prospective relief shall include in writing an  
8 explanation of how the relief meets each re-  
9 quirement under subparagraph (A). Such expla-  
10 nation must be sufficiently detailed to allow re-  
11 view by another court.

12 (2) DURATION OF PRELIMINARY INJUNCTIVE  
13 RELIEF.—In the case of prospective relief that is  
14 preliminary injunctive relief, such preliminary in-  
15 junctive relief shall automatically expire on the date  
16 that is 90 days after its entry, unless the court de-  
17 termines that the relief meets all legal requirements,  
18 including those under paragraph (1)(A), for the  
19 entry of prospective relief and makes the order for  
20 the prospective relief involved final before expiration  
21 of the 90-day period.

22 (c) PROCEDURE FOR MOTIONS AFFECTING PRO-  
23 SPECTIVE RELIEF AGAINST THE GOVERNMENT.—

24 (1) IN GENERAL.—A court shall promptly rule  
25 on any motion by the Government to vacate, modify,

1 dissolve, or otherwise terminate an order granting  
2 prospective relief in a civil action with respect to the  
3 administration or enforcement of the immigration  
4 laws of the United States.

5 (2) AUTOMATIC STAYS.—

6 (A) IN GENERAL.—A motion described in  
7 paragraph (1), with respect to an order grant-  
8 ing prospective relief in a civil action described  
9 in such paragraph shall automatically, and  
10 without further order of the court, stay the  
11 order granting prospective relief during the pe-  
12 riod beginning on the date that is 15 days after  
13 the date on which such motion is filed and end-  
14 ing on the date on which the court enters a  
15 final order granting or denying the motion.

16 (B) RULE OF CONSTRUCTION.—A motion  
17 described in paragraph (1) shall not operate as  
18 a stay under subparagraph (A) if the court in-  
19 volved enters a final order ruling on the motion  
20 before the first day of the period described in  
21 subparagraph (A).

22 (C) TREATMENT OF MOTIONS PENDING  
23 FOR NOT MORE THAN 45 DAYS ON DATE OF EN-  
24 ACTMENT.—For purposes of this subsection, a  
25 motion described in paragraph (1) that was

1 filed during the 45-day period before the date  
2 of the enactment of this Act and for which the  
3 court has not, as of such date of enactment, en-  
4 tered a final order ruling on the motion shall be  
5 treated as if the motion had been filed on such  
6 date of enactment.

7 (D) TREATMENT OF MOTIONS PENDING  
8 FOR MORE THAN 45 DAYS ON DATE OF ENACT-  
9 MENT.—For purposes of this subsection, a mo-  
10 tion described in paragraph (1) that was filed  
11 more than 45 days before the date of the enact-  
12 ment of this Act and for which, as of the date  
13 that is 10 days after such date of enactment,  
14 the court involved has not entered a final order  
15 granting or denying the motion, shall operate as  
16 an automatic stay of the prospective relief,  
17 without further order of the court. An auto-  
18 matic stay under this subparagraph shall be ef-  
19 fective beginning on such date that is 10 days  
20 after the date of enactment and ending on the  
21 date on which the court involved enters a final  
22 order granting or denying the motion. The ef-  
23 fective date of an automatic stay under this  
24 subparagraph may not be postponed under  
25 paragraph (3).

1           (3) POSTPONEMENT OF AUTOMATIC STAYS.—

2           The court may, for good cause, enter an order to  
3           postpone the effective date of an automatic stay  
4           under paragraph (2). No effective date of an auto-  
5           matic stay under paragraph (2) may be postponed  
6           for more than 15 days.

7           (4) AUTOMATIC STAYS DURING REMANDS FROM  
8           HIGHER COURTS.—Whenever a higher court orders  
9           that a decision on a motion subject to this section  
10          shall be remanded to a lower court, the order grant-  
11          ing prospective relief that is the subject of the mo-  
12          tion shall be automatically stayed until the district  
13          court enters an order granting or denying the mo-  
14          tion. The effective date of an automatic stay under  
15          this subparagraph may not be postponed under  
16          paragraph (3).

17          (5) ORDERS BLOCKING AUTOMATIC STAYS.—

18          Any order staying, suspending, delaying, or other-  
19          wise barring the effective date of an automatic stay  
20          under this subsection, other than an order to post-  
21          pone the effective date under paragraph (3), shall be  
22          treated as an order refusing to vacate, modify, dis-  
23          solve, or otherwise terminate an injunction and im-  
24          mediately shall be appealable pursuant to section  
25          1292(a)(1) of title 28, United States Code.

1           (6) REQUIREMENTS FOR ORDER DENYING MO-  
2           TION.—Subsection (b) shall apply to an order en-  
3           tered by a court to deny a motion described in para-  
4           graph (1) in the same manner that such subsection  
5           applies to a grant of prospective relief under such  
6           subsection.

7           (d) RULES FOR PROSPECTIVE RELIEF AFFECTING  
8           EXPEDITED REMOVAL.—

9           (1) IN GENERAL.—Notwithstanding any other  
10          provision of law (statutory or nonstatutory), includ-  
11          ing section 2241 of Title 28, United States Code, or  
12          any other habeas provision, and sections 1361 and  
13          1651 of such title, no court has jurisdiction to grant  
14          or continue an order or part of an order granting  
15          prospective relief if the order or part of the order  
16          interferes with, affects, or impacts any determina-  
17          tion pursuant to, or the implementation of, section  
18          235(b)(1) of the Immigration and Nationality Act (8  
19          U.S.C. 1225(b)(1)).

20          (2) DETERMINATION OF CONTINUING JURISDIC-  
21          TION.—Upon the Government’s filing of a motion to  
22          vacate, modify, dissolve, or otherwise terminate an  
23          order granting prospective relief in a civil action de-  
24          scribed in subsection (b)(1)(A), the court involved  
25          shall promptly determine whether it continues to

1 have jurisdiction and shall promptly vacate any  
2 order or part of an order granting prospective relief  
3 that is not within the jurisdiction of the court.

4 (3) SAFE HARBOR FOR CONTINUING PROSPECTIVE  
5 RELIEF TO REMEDY VIOLATION OF CONSTITUTIONAL RIGHTS.—Paragraphs (1) and (2) shall not  
6 apply to an order granting prospective relief in a  
7 civil action described in subsection (b)(1)(A) to the  
8 extent that the order was entered before the date of  
9 the enactment of this Act and the prospective relief  
10 is necessary to remedy the violation of a right guaranteed by the Constitution of the United States.

11 (e) SETTLEMENTS.—

12 (1) CONSENT DECREES.—In any civil action  
13 with respect to the administration or enforcement of  
14 the immigration laws of the United States, the court  
15 involved shall not enter, approve, or continue a consent  
16 decree unless the decree complies with the requirements  
17 under clauses (i) through (iv) of subparagraph (A) of  
18 subsection (b)(1) and includes the written explanation  
19 required under subparagraph (B) of such subsection.

20 (2) PRIVATE SETTLEMENT AGREEMENTS.—  
21 Nothing in this subsection shall preclude parties  
22 from entering into a private settlement agreement  
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1 that does not comply with the requirements under  
2 clauses (i) through (iv) of subparagraph (A) of sub-  
3 section (b)(1) or that does not include the written  
4 explanation required under subparagraph (B) of  
5 such subsection.

6 (f) EXPEDITED PROCEEDINGS.—Each court shall  
7 take measures to advance on the docket and to expedite  
8 the disposition of any civil action described in subsection  
9 (b)(1)(A) or motion described in subsection (c) or (d).

10 (g) DEFINITIONS.—For purposes of this section:

11 (1) CONSENT DECREE.—The term “consent de-  
12 cree” means any relief entered by a court that is  
13 based in whole or in part on the consent or acquies-  
14 cence of the parties involved but does not include  
15 private settlements.

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

19 (3) GOVERNMENT.—The term “Government”  
20 means the United States, any Federal department or  
21 agency, or any Federal agent or official acting with-  
22 in the scope of official duties.

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

1           (5) PRIVATE SETTLEMENT AGREEMENT.—The  
2 term “private settlement agreement” means an  
3 agreement entered into among the parties involved  
4 that is not subject to judicial enforcement other than  
5 the reinstatement of the civil proceedings that the  
6 agreement settled.

7           (6) PROSPECTIVE RELIEF.—The term “pro-  
8 spective relief” means temporary, preliminary, or  
9 permanent relief other than compensatory monetary  
10 damages.

11 **SEC. 3. SEVERABILITY.**

12       If any provision of this Act or the application of such  
13 provision to any person or circumstance is found to be un-  
14 constitutional, the remainder of this Act and the applica-  
15 tion of the provisions of such remainder of this Act to any  
16 person or circumstance shall not be affected by such find-  
17 ing.

18 **SEC. 4. EFFECTIVE DATE.**

19       Except as otherwise provided under section 2(a), the  
20 provisions of this Act shall apply to all orders granting  
21 prospective relief entered by a court before, on, or after  
22 the date of the enactment of this Act.

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