

107TH CONGRESS  
1ST SESSION

# H. R. 2113

To amend the Immigration and Nationality Act to ensure that no permanent resident alien or alien in the United States with an unexpired visa is removed or otherwise deprived of liberty, based on evidence that is kept secret from the alien.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 2001

Mr. ROHRBACHER introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to ensure that no permanent resident alien or alien in the United States with an unexpired visa is removed or otherwise deprived of liberty, based on evidence that is kept secret from the alien.

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 “Secret Evidence  
5 Against Lawful Aliens Repeal Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1           (1) No person physically present in the United  
2 States who is a lawful permanent resident alien or  
3 other alien with an unexpired visa should be de-  
4 prived of liberty based on evidence kept secret from  
5 that person, including information classified for na-  
6 tional security reasons.

7           (2) Use of secret evidence in immigration pro-  
8 ceedings against lawful aliens deprives such aliens of  
9 due process rights guaranteed under the United  
10 States Constitution and undermines our adversarial  
11 system, which relies on cross-examination as an en-  
12 gine of truth-seeking.

13 **SEC. 3. APPLICATION OF PROCEDURES USED UNDER CLAS-**  
14 **SIFIED INFORMATION PROCEDURES ACT**  
15 **(CIPA) TO IMMIGRATION PROCEEDINGS.**

16           (a) APPLICATION OF PROCEDURES USED UNDER  
17 CLASSIFIED INFORMATION PROCEDURES ACT (CIPA) TO  
18 IMMIGRATION PROCEEDINGS.—Chapter 9 of title II of the  
19 Immigration and Nationality Act (8 U.S.C. 1351 et seq.)  
20 is amended by adding at the end the following new section:  
21 “APPLICATION OF PROCEDURES USED UNDER CLASSI-  
22 FIED INFORMATION PROCEDURES ACT TO CERTAIN  
23 IMMIGRATION PROCEEDINGS  
24 “SEC. 295. (a) NOTICE OF INTENDED USE OF CLAS-  
25 SIFIED INFORMATION.—

1           “(1) IN GENERAL.—In any immigration pro-  
2           ceeding respecting an alien who is lawfully admitted  
3           for permanent residence or otherwise present in the  
4           United States with an unexpired visa in which the  
5           Attorney General seeks to use classified information,  
6           the Attorney General shall inform the alien and the  
7           presiding officer in advance. To the maximum extent  
8           practicable, if the Attorney General is initiating such  
9           proceeding, the Attorney General shall provide such  
10          notice within 15 days after initiating the proceeding.

11          “(2) LIMITATION.—The Attorney General may  
12          seek to use classified information only in an immi-  
13          gration proceeding described in paragraph (1) in  
14          which the alien is alleged to be deportable under sec-  
15          tion 237(a)(4)(B) or to oppose an application for ad-  
16          mission or an application for discretionary relief  
17          from removal and only after issuing the following  
18          certification:

19                 “(A) Substantially the same information  
20                 could not reasonably be developed from open  
21                 sources.

22                 “(B) The Attorney General has informed  
23                 the classifying agency of its intent to use the  
24                 classified information in connection with immi-  
25                 gration proceedings and has requested such

1           agency to declassify such information as is per-  
2           mitted to be declassified under the President's  
3           Executive Order on classification.

4           “(b) REFERRAL OF CLASSIFIED MATTERS TO DIS-  
5   TRICT COURT.—

6           “(1) IN GENERAL.—In the case of an immigra-  
7           tion proceeding described in subsection (a)(1) in  
8           which the Attorney General or the alien moves for  
9           a referral under this section to consider matters re-  
10          lating to classified information that may arise in  
11          connection with the proceeding, the presiding officer  
12          shall forward the petition for review to a Federal  
13          district court for the district in which the alien re-  
14          sides or the place where the immigration proceedings  
15          are pending, of the use of such information in such  
16          proceeding under subsection (c). Any evidence which  
17          is the subject of a petition shall not be considered  
18          in the immigration proceeding and shall not be ex-  
19          amined by the presiding officer, except as provided  
20          in paragraph (3).

21          “(2) SUSPENSION OF IMMIGRATION PRO-  
22          CEEDING.—In the case of an order or review pro-  
23          vided for under paragraph (1), the immigration pro-  
24          ceeding may be suspended by the presiding officer  
25          pending the disposition of such matter by the dis-

1       trict court involved (and any appeals related to such  
2       matter).

3               “(3) SUBMISSION OF SUMMARY.—In the case of  
4       a referral under paragraph (1)(A), after the applica-  
5       tion of subsection (c), the district court shall issue  
6       an order to the presiding officer at the proceeding  
7       indicating any unclassified summary of classified in-  
8       formation, and admissions in lieu of disclosure of  
9       classified information, that may be used and the  
10      conditions of its use at the proceeding. The pre-  
11      siding officer shall determine whether any informa-  
12      tion approved by the order may be offered at the im-  
13      migration proceeding.

14              “(c) APPLICATION OF CIPA.—

15              “(1) IN GENERAL.—Subject to the succeeding  
16      provisions of this section, in the cases described in  
17      subsection (b)(1) involving review by a Federal dis-  
18      trict court of the use of classified information in an  
19      immigration proceeding, the provisions of the Classi-  
20      fied Information Procedures Act (18 U.S.C. Appen-  
21      dix III) (in this section referred to as ‘CIPA’) shall  
22      apply to an alien who is a subject of the immigration  
23      proceeding in the same manner as it applies to a  
24      defendant in a criminal proceeding subject to CIPA.

1           “(2) GENERAL RULES OF APPLICATION.—In  
2 applying subsection (a), the following general rules  
3 apply:

4           “(A) Any reference in CIPA to—

5                   “(i) a criminal defendant or a trial (or  
6 pre-trial) proceeding is deemed to be a ref-  
7 erence to the alien who is the subject of  
8 the immigration proceeding and to the im-  
9 migration proceeding;

10                   “(ii) an indictment or information at  
11 issue is deemed to be a reference to a no-  
12 tice to appear;

13                   “(iii) a dismissal of an indictment or  
14 information is deemed a reference to termi-  
15 nation of the immigration proceeding  
16 against an alien; and

17                   “(iv) a trial court is deemed a ref-  
18 erence (in the case of an administrative  
19 immigration proceeding) to the presiding  
20 officer in such proceeding.

21           “(B) The provisions of section 2 of CIPA  
22 (other than the last sentence) shall not be ap-  
23 plied.

24           “(C) The Attorney General shall prescribe  
25 rules establishing procedures for the protection

1 against unauthorized disclosure of classified in-  
2 formation in the custody of the Federal non-ju-  
3 dicial officials in immigration proceedings. Such  
4 rules shall apply instead of the rules described  
5 in section 9 of CIPA.

6 “(D) Section 12 of CIPA shall not be ap-  
7 plied to immigration proceedings.

8 “(E) In lieu of the reports described in  
9 section 13 of CIPA, the Attorney General shall  
10 report annually and in writing to the chairmen  
11 and ranking minority members of the Commit-  
12 tees on the Judiciary of the Senate and the  
13 House of Representatives on the implementa-  
14 tion of this section. Such reports shall include  
15 the following information about each case  
16 brought under this section:

17 “(i) The alien’s country of citizenship  
18 or, if the alien was stateless, the country in  
19 which the alien last habitually resided out-  
20 side of the United States.

21 “(ii) The alien’s immigration status.

22 “(iii) Whether the Federal district  
23 court approved the summary of classified  
24 information and the deletions or admis-  
25 sions proffered by the Attorney General.

1                   “(iv) Whether the alien was ultimately  
2                   ordered removed under section  
3                   237(a)(4)(B) or was granted or denied ad-  
4                   mission.

5           “(d) DISCLOSURE OF EXCULPATORY EVIDENCE.—In  
6 any immigration proceeding under this section, the Attor-  
7 ney General shall disclose to the alien information that  
8 it would be required to disclose to a defendant in an analo-  
9 gous criminal proceeding under CIPA.

10          “(e) APPOINTMENT OF COUNSEL.—In any immigra-  
11 tion proceeding described in subsection (a)(1), any alien  
12 financially unable to obtain counsel shall be entitled to  
13 have counsel assigned to represent such alien. Counsel  
14 may be appointed as described in section 3006A of title  
15 18, United States Code.

16          “(f) CONSTRUCTION CONCERNING DECLASSIFICA-  
17 TION OF INFORMATION.—Nothing in this section shall be  
18 construed as preventing an alien who is lawfully admitted  
19 for permanent residence or otherwise present in the  
20 United States with an unexpired visa in an immigration  
21 proceeding from seeking access to classified information  
22 under section 552 of title 5, United States Code, or, in  
23 the case of information which is not disclosed based on  
24 section 552(b)(1) of such title, from initiating an action

1 to seek to declassify some or all of the information in-  
2 volved.

3 “(g) EXPEDITED PROCEEDINGS.—To the extent  
4 practicable and in the interests of justice, proceedings  
5 under this section shall be conducted on an expedited  
6 basis.

7 “(h) DEFINITIONS.—For purposes of this section:

8 “(1) IMMIGRATION PROCEEDING.—The term  
9 ‘immigration proceeding’ means any administrative  
10 proceeding under this Act.

11 “(2) PRESIDING OFFICER.—The term ‘pre-  
12 siding officer’ means, with respect to an immigration  
13 proceeding, the administrative or judicial official who  
14 is presiding over the immigration proceeding.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) ALIEN TERRORIST REMOVAL.—Title V of  
17 the Immigration and Nationality Act is amended by  
18 adding at the end the following new section:

19 **“SEC. 508. LIMITATION ON APPLICATION OF TITLE.**

20 “This title shall not apply to any alien who is lawfully  
21 admitted for permanent residence or who is otherwise  
22 present in the United States with an unexpired visa.”.

23 (2) ALIENS’ RIGHTS IN PROCEEDINGS.—Section  
24 240(b)(4)(B) of the Immigration and Nationality

1 Act (8 U.S.C. 1229a(b)(4)(B)) is amended by in-  
 2 serting “(subject to section 295)” after “but”.

3 (3) BURDEN ON ALIEN.—The last sentence of  
 4 section 240(c)(2) of such Act (8 U.S.C. 1229a(c)(2))  
 5 is amended by inserting “and for which disclosure is  
 6 not provided under section 295” after “not consid-  
 7 ered by the Attorney General to be confidential”

8 (c) CLERICAL AMENDMENTS.—The table of contents  
 9 for the Immigration and Nationality Act (8 U.S.C. 1101  
 10 et seq.) is amended—

11 (1) by inserting after the item relating to sec-  
 12 tion 294 the following new item:

“Sec. 295. Application of procedures used under Classified Information Proce-  
 dures Act to certain immigration proceedings.”; and

13 (2) by adding after the item relating to section  
 14 507 the following new item:

“Sec. 508. Limitation on application of title.”.

15 **SEC. 4. REPEAL OF USE OF SECRET EVIDENCE IN BOND**  
 16 **PROCEEDINGS AND JUDICIAL REVIEW OF**  
 17 **BOND DETERMINATIONS.**

18 (a) ALIENS’ RIGHTS IN BOND PROCEEDINGS.—Sec-  
 19 tion 236 of the Immigration and Nationality Act (8 U.S.C.  
 20 1226) is amended by adding at the end the following:

21 “(f) ALIENS’ RIGHTS IN BOND PROCEEDINGS.—Sub-  
 22 ject to section 295, in proceedings under this section in  
 23 the case of an alien who is lawfully admitted for perma-

1 nent residence or otherwise present in the United States  
2 with an unexpired visa—

3 “(1) the alien shall have the privilege of being  
4 represented, at no expense to the Government, by  
5 counsel of the alien’s choosing who is authorized to  
6 practice in such proceedings;

7 “(2) the alien shall have a reasonable oppor-  
8 tunity to examine the evidence against the alien, to  
9 present evidence on the alien’s own behalf, and to  
10 cross-examine all witnesses presented by the Govern-  
11 ment; and

12 “(3) a complete record shall be kept of all testi-  
13 mony and evidence produced at the proceeding.”.

14 (b) JUDICIAL REVIEW.—Section 236(e) of the Immi-  
15 gration and Nationality Act (8 U.S.C. 1226(e)) is  
16 amended—

17 (1) in the first sentence, by inserting “to an  
18 alien who is not a lawful permanent resident or who  
19 otherwise has an unexpired visa” after “application  
20 of this section”;

21 (2) in the second sentence, by inserting “who is  
22 not a lawful permanent resident or who otherwise  
23 has an unexpired visa” after “of any alien”; and

24 (3) by adding at the end the following: “Not-  
25 withstanding any other provision of law, any alien

1 who is a lawful permanent resident or who otherwise  
2 has an unexpired visa and against whom an order  
3 concerning detention, release on bond or parole  
4 pending or subsequent to an order of deportability,  
5 excludability, or removability shall be entitled to ju-  
6 dicial review thereof in habeas corpus proceedings to  
7 determine whether the Attorney General is acting in  
8 violation of the laws or Constitution of the United  
9 States, or is not proceeding with such reasonable  
10 dispatch as may be warranted by the particular facts  
11 and circumstances of the case.”.

12 **SEC. 5. REPEAL OF USE OF SECRET EVIDENCE AGAINST**  
13 **LAWFUL ALIENS.**

14 Section 235(c)(1) of the Immigration and Nationality  
15 Act (8 U.S.C. 1225(c)(1)) is amended to read as follows:

16 “(1) REMOVAL WITHOUT FURTHER HEARING.—

17 “(A) IN GENERAL.—Except in the case of  
18 an alien described in subparagraph (B), if an  
19 immigration officer or an immigration judge  
20 suspects that an arriving alien may be inadmis-  
21 sible under subparagraph (A) (other than  
22 clause (ii)), (B), or (C) of section 212(a)(3), the  
23 officer or judge shall—

24 “(i) order the alien removed, subject  
25 to review under paragraph (2);

1                   “(ii) report the order of removal to  
2                   the Attorney General; and

3                   “(iii) not conduct any further inquiry  
4                   or hearing until ordered by the Attorney  
5                   General.

6                   “(B) EXCEPTED ALIENS DESCRIBED.—An  
7                   alien described in this subparagraph is an alien  
8                   who—

9                   “(i) is a lawful permanent resident; or

10                   “(ii) has an unexpired visa.”.

11 **SEC. 6. TRANSITION.**

12           (a) APPLICATION TO DETAINEES.—Not more than  
13 30 days after the effective date of this Act, the Attorney  
14 General shall, with respect to any alien who is lawfully  
15 admitted for permanent residence or otherwise present in  
16 the United States with an unexpired visa then detained  
17 or whose liberty is otherwise restricted by the Attorney  
18 General, on the basis in whole or in part of information  
19 submitted by the Government ex parte and in camera to  
20 an immigration judge, to the Board of Immigration Ap-  
21 peals or to any court—

22                   (1) provide such alien a copy or transcript of  
23                   such information, and provide the alien with a rede-  
24                   termination of bond (or a reconsideration of the  
25                   terms of custody, as the case may be) based on evi-

1        dence disclosed to the alien and the alien's response  
2        to such evidence;

3            (2) withdraw from the record of any pro-  
4        ceedings involving such alien any and all evidence,  
5        testimony, or other information submitted by the  
6        Government ex parte and in camera to the immigra-  
7        tion judge, the Board of Immigration Appeals, or to  
8        any court, as the case may be, and—

9            (A) release such alien if such alien is de-  
10        tained; and

11            (B) cease all restrictions on the liberty of  
12        such alien if such restrictions exist,  
13        unless detention is warranted solely on the basis of  
14        evidence disclosed to the alien;

15            (3) initiate proceedings under section 295, if  
16        applicable; or

17            (4) release such alien.

18        (b) TERMINATION OF PROCEEDINGS.—In the case of  
19        an alien who is lawfully admitted for permanent residence  
20        or otherwise in the United States with an unexpired visa  
21        and who is in immigration proceedings as of the effective  
22        date of this Act conducted under title V of the Immigra-  
23        tion and Nationality Act—

1           (1) such proceedings are terminated as of the  
2           effective date of this Act without prejudice to the  
3           Attorney General or the alien; and

4           (2) the Attorney General may, in his or her dis-  
5           cretion, commence de novo removal proceedings  
6           within 10 days thereafter under section 240 of the  
7           Immigration and Nationality Act (8 U.S.C. 1229a)  
8           and proceedings under section 295, if applicable.

9   **SEC. 7. REGULATIONS.**

10          The Attorney General shall promulgate regulations,  
11          including regulations governing applications for with-  
12          holding of deportation or removal and relief from deporta-  
13          tion, exclusion, or removal to implement this Act not more  
14          than 90 days after the effective date of this Act.

15   **SEC. 8. EFFECTIVE DATE.**

16          The amendments made by this Act shall take effect  
17          on the date of the enactment of this Act and shall apply  
18          to all aliens who are lawful permanent residents or who  
19          otherwise have an unexpired visa without regard to the  
20          date of arrival, admission, or entry into the United States.

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