

107<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1266

To ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, or otherwise deprived of liberty, based on evidence that is kept secret from the alien.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2001

Mr. BONIOR (for himself, Mr. BARR of Georgia, Mr. CONYERS, Mr. TOM DAVIS of Virginia, Ms. JACKSON-LEE of Texas, Mr. DINGELL, Mr. TOOMEY, Ms. MCKINNEY, Mr. HINCHEY, and Mr. TOWNS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To ensure that no alien is removed, denied a benefit under the Immigration and Nationality Act, 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 Repeal  
5       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, including its outlying possessions, should be  
3 deprived of liberty based on evidence kept secret  
4 from that person, including information classified for  
5 national security reasons.

6           (2) Removal from the United States can sepa-  
7 rate a person from the person's family, may expose  
8 the person to persecution and torture, and amounts  
9 to a severe deprivation of liberty.

10           (3) Use of secret evidence in immigration pro-  
11 ceedings deprives the alien of due process rights  
12 guaranteed under the United States Constitution  
13 and undermines our adversarial system, which relies  
14 on cross-examination as an engine of truth-seeking.

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

18           (a) APPLICATION OF PROCEDURES USED UNDER  
19 CLASSIFIED INFORMATION PROCEDURES ACT (CIPA) TO  
20 IMMIGRATION PROCEEDINGS.—Chapter 9 of title II of the  
21 Immigration and Nationality Act (8 U.S.C. 1351 et seq.)  
22 is amended by adding at the end the following new section:

1 “APPLICATION OF PROCEDURES USED UNDER CLASSI-  
2 FIED INFORMATION PROCEDURES ACT TO IMMIGRA-  
3 TION PROCEEDINGS

4 “SEC. 295. (a) NOTICE OF INTENDED USE OF CLAS-  
5 SIFIED INFORMATION.—

6 “(1) IN GENERAL.—In any immigration pro-  
7 ceeding in which the Attorney General seeks to use  
8 classified information, the Attorney General shall in-  
9 form the alien and the presiding officer in advance.  
10 To the maximum extent practicable, if the Attorney  
11 General is initiating such proceeding, the Attorney  
12 General shall provide such notice within 15 days  
13 after initiating the proceeding.

14 “(2) LIMITATION.—The Attorney General may  
15 seek to use classified information only in an immi-  
16 gration proceeding in which the alien is alleged to be  
17 deportable under section 237(a)(4)(B) or to oppose  
18 an application for admission or an application for  
19 discretionary relief from removal and only after  
20 issuing the following certification:

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

24 “(B) The Attorney General has informed  
25 the classifying agency of its intent to use the

1           classified information in connection with immi-  
2           gration proceedings and has requested such  
3           agency to declassify such information as is per-  
4           mitted to be declassified under the President's  
5           Executive Order on classification.

6           “(b) REFERRAL OF CLASSIFIED MATTERS TO DIS-  
7   TRICT COURT.—

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

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

1 pending the disposition of such matter by the dis-  
2 trict court involved (and any appeals related to such  
3 matter).

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

15 “(c) APPLICATION OF CIPA.—

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

24               “(iv) Whether the Federal district  
25               court approved the summary of classified

1 information and the deletions or admis-  
2 sions proffered by the Attorney General.

3 “(v) Whether the alien was ultimately  
4 ordered removed under section  
5 237(a)(4)(B) or was granted or denied ad-  
6 mission or the benefit for which the alien  
7 applied.

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

13 “(e) APPOINTMENT OF COUNSEL.—In any immigra-  
14 tion proceeding under this section, any alien financially  
15 unable to obtain counsel shall be entitled to have counsel  
16 assigned to represent such alien. Counsel may be ap-  
17 pointed as described in section 3006A of title 18, United  
18 States Code.

19 “(f) CONSTRUCTION CONCERNING DECLASSIFICA-  
20 TION OF INFORMATION.—Nothing in this section shall be  
21 construed as preventing an alien in an immigration pro-  
22 ceeding from seeking access to classified information  
23 under section 552 of title 5, United States Code, or, in  
24 the case of information which is not disclosed based on  
25 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 (8 U.S.C.  
18 1531–1537) is repealed.

19 (2) ALIENS’ RIGHTS IN PROCEEDINGS.—Section  
20 240(b)(4)(B) of the Immigration and Nationality  
21 Act (8 U.S.C. 1229a(b)(4)(B)) is amended to read  
22 as follows:

23 “(B) subject to section 295, the alien shall  
24 have a reasonable opportunity to examine the  
25 evidence against the alien, to present evidence



1 **SEC. 4. REPEAL OF USE OF SECRET EVIDENCE IN BOND**  
2 **PROCEEDINGS AND JUDICIAL REVIEW OF**  
3 **BOND DETERMINATIONS.**

4 (a) **ALIENS' RIGHTS IN BOND PROCEEDINGS.**—Sec-  
5 tion 236 of the Immigration and Nationality Act (8 U.S.C.  
6 1226) is amended by adding at the end the following:

7 “(f) **ALIENS' RIGHTS IN BOND PROCEEDINGS.**—Sub-  
8 ject to section 295, in proceedings under this section—

9 “(1) the alien shall have the privilege of being  
10 represented, at no expense to the Government, by  
11 counsel of the alien's choosing who is authorized to  
12 practice in such proceedings;

13 “(2) the alien shall have a reasonable oppor-  
14 tunity to examine the evidence against the alien, to  
15 present evidence on the alien's own behalf, and to  
16 cross-examine all witnesses presented by the Govern-  
17 ment; and

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

20 (b) **JUDICIAL REVIEW.**—Section 236(e) of the Immi-  
21 gration and Nationality Act (8 U.S.C. 1226(e)) is amend-  
22 ed to read as follows:

23 “(e) **JUDICIAL REVIEW.**—Notwithstanding any other  
24 provision of law, any alien against whom an order con-  
25 cerning detention, release on bond or parole pending or  
26 subsequent to an order of deportability, excludability, or

1 removability shall be entitled to judicial review thereof in  
2 habeas corpus proceedings to determine whether the At-  
3 torney General is acting in violation of the laws or Con-  
4 stitution of the United States, or is not proceeding with  
5 such reasonable dispatch as may be warranted by the par-  
6 ticular facts and circumstances of the case.”.

7 **SEC. 5. REPEAL OF USE OF SECRET EVIDENCE AGAINST**  
8 **LAWFUL PERMANENT RESIDENTS, ASYLUM**  
9 **SEEKERS, AND ALIENS PAROLED INTO THE**  
10 **UNITED STATES.**

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

13 “(1) REMOVAL WITHOUT FURTHER HEARING.—

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

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

23 “(ii) report the order of removal to  
24 the Attorney General; and

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

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

7                   “(i) is a lawful permanent resident;

8                   “(ii) was granted advance parole;

9                   “(iii) was paroled into the United  
10           States under section 212(d)(5); or

11                   “(iv) is seeking asylum.”.

12 **SEC. 6. TRANSITION.**

13           (a) APPLICATION TO DETAINEES.—Not more than  
14 30 days after the effective date of this Act, the Attorney  
15 General shall, with respect to any alien then detained or  
16 whose liberty is otherwise restricted by the Attorney Gen-  
17 eral, on the basis in whole or in part of information sub-  
18 mitted by the Government ex parte and in camera to an  
19 immigration judge, to the Board of Immigration Appeals  
20 or to any court—

21                   (1) provide such alien a copy or transcript of  
22           such information, and provide the alien with a rede-  
23           termination of bond (or a reconsideration of the  
24           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) APPLICATION TO ALIENS SEEKING IMMIGRATION  
19        BENEFITS.—Not more than 30 days after the effective  
20        date of this Act, the Attorney General shall, with respect  
21        to any alien physically present in the United States whose  
22        application for an immigration benefit is or was opposed  
23        by the Government on the basis in whole or in part of  
24        information submitted by the Government ex parte and

1 in camera to an immigration judge, to the Board of Immi-  
2 gration Appeals, or to any court—

3 (1) provide such alien a copy or transcript of  
4 such information and a reasonable opportunity to re-  
5 spond to such information, and grant or deny the  
6 application or reopen the proceedings and afford the  
7 alien de novo reconsideration of the application, as  
8 the case may be, based solely on evidence in the pub-  
9 lic record;

10 (2) withdraw from the record of any pro-  
11 ceedings involving such alien any and all evidence,  
12 testimony, or other information submitted by the  
13 Government ex parte and in camera to the immigra-  
14 tion judge, the Board of Immigration Appeals, or to  
15 any court, as the case may be, and grant or deny  
16 the application or reopen the proceedings and afford  
17 the alien de novo reconsideration of the application,  
18 as the case may be, based solely on evidence in the  
19 public record;

20 (3) initiate proceedings under section 295, if  
21 applicable; or

22 (4) grant the application.

23 (c) TERMINATION OF PROCEEDINGS.—In the case of  
24 an alien in immigration proceedings as of the effective

1 date of this Act conducted under title V of the Immigra-  
2 tion and Nationality Act—

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

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

11 **SEC. 7. REGULATIONS.**

12 The Attorney General shall promulgate regulations,  
13 including regulations governing applications for asylum,  
14 withholding of deportation or removal, adjustment of sta-  
15 tus, naturalization, temporary protected status, and relief  
16 from deportation, exclusion, or removal to implement this  
17 Act not more than 90 days after the effective date of this  
18 Act.

19 **SEC. 8. EFFECTIVE DATE.**

20 The amendments made by this Act shall take effect  
21 on the date of the enactment of this Act and shall apply  
22 to all aliens without regard to the date of arrival, admis-  
23 sion, entry, or parole into the United States.

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