H.R. 100, the Citizens and Legal Immigrants Act

Summary of the Legislation

This legislation clarifies for the courts and aliens the proper forum for immigration cases, while preserving the ability of all aliens to obtain review of constitutional issues and pure questions of law in the Circuit Court of Appeals. The reforms implemented by this legislation will ensure that criminal aliens do not have a jurisdictional advantage over non-criminal aliens, and will restore the fundamental purpose of the Immigration and Nationality Act (INA) that aliens who are harmful to our communities and national security be promptly removed. This legislation also will slow the growth of the immigration docket by foreclosing multiple, successive removal challenges by aliens.

Background & Need for the Legislation

From 1961 to 1997, the INA provided (in former section 106) that the Circuit Courts of Appeals held sole and exclusive review authority for challenges to removal orders. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA, Pub. L. 104-208) and the Anti-Terrorism and Effective Death Penalty Act (Pub. L. 104-132) which were intended, in part, to expedite the removal of criminal and terrorist aliens from the United States. This legislation repealed former section 106 and enacted new, more comprehensive provisions limiting judicial review of final orders of removal in section 242 of the INA.

In 2001, however, the Supreme Court concluded that the amendments made by IIRIRA left open the possible review of certain removal orders by habeas corpus petition in the district courts. INS v. St. Cyr, 533 U.S. 289 (2001). The St. Cyr decision led to confusion in the courts regarding jurisdiction over immigration cases, with different positions taken by the various circuit courts. In some jurisdictions, courts have afforded criminal aliens a greater opportunity for judicial review than non-criminal aliens. In addition, this degree of review is greater than that afforded to U.S. citizens.

The St. Cyr decision has led to a substantial increase in the number of habeas corpus petitions by aliens seeking district court review instead of, or in addition to, the judicial review specified by the INA. Immigration cases are now the single fastest growing segment of the federal courts' docket, and more than 15,000 new cases are brought by aliens each year. Indeed, more than 43% of the Ninth Circuit Court of

Appeals cases now involve immigration review, and every federal court is experiencing the pressure of immigration litigation.

Key Provisions of the Legislation

This legislation amends section 242 of the Immigration and Nationality Act (INA), 8 U.S.C. 1252, to clarify the availability of judicial review for final orders of removal of aliens who do not have permission to stay in the United States. This bill restores the Circuit Courts of Appeals as the sole and exclusive forum in which to challenge removal orders and the denial of relief from removal.

This legislation is substantially similar to reforms introduced in the 108th Congress as part of the "Fairness in Immigration Litigation Act", S. 2443 (Sen. Hatch), and H.R. 4406 (Rep. Sensenbrenner), and in section 3010 of the "9/11 Recommendations Implementation Act", H.R. 10/S. 2845, which passed by the House of Representatives on October 15, 2004.