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Immigration Legislation and Due Process: The Forgotten Issue[1]

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I am grateful for this opportunity to address some of the due process deprivations that the House and Senate are about to adopt in the pending immigration legislation. Due process is the forgotten issue in the current debate. It is forgotten, in part, because it has been subsumed within the "illegal immigration" shibboleth; in part because it is an issue for which the public typically shows little interest or support, and in part because all of us who care about this issue have failed to make it a higher priority.[2]

Yet, I fear we will live far longer with the pending legislation's denial of due process than with its threatened cuts to family or labor-based immigration or its impact on businesses or employers. When the passions of this era have cooled, as they eventually will after countless individuals have paid the price, I believe it will be far easier to persuade Congress to increase the number of immigrants admitted each year than to restore the procedural rights, the discretionary relief, and the right to judicial review that are about to be eviscerated.

In addition, the restrictions proposed in this legislation – particularly the prohibitions against federal courts exercising judicial review – have significance far beyond their immediate impact on those individuals who will be unjustly expelled and far beyond the realm of immigration law generally. These proposals constitute an attack on the historic role of the judiciary to enforce the Constitution, to give meaning to the fourteenth amendment and the Bill of Rights, and to prevent the political passions of the moment from trampling individual freedoms. As such, they also raise a fundamental question about the structure of our constitutional democracy: may Congress eliminate the role of the Judiciary by legislating away its jurisdiction?

The House and Senate bills take essentially the same three-step approach to undermine fundamental fairness and due process in our immigration laws. First, the bills dramatically reduce the discretionary defenses to which aliens are entitled and simultaneously increase the grounds for detention, the penalties for violating even the most minor immigration laws and the prohibitions against returning legally after a deportation.

Second, the bills adopt "summary exclusion" procedures for many and diminish the procedural rights for all by erecting new obstacles to the exercise of basic rights, including representation by counsel.

Third, as already noted, the bills radically restrict or completely eliminate judicial review of individual deportation orders and of INS practices, policies, and procedures.

LIMITATIONS ON RELIEF

I will not discuss in detail the many ways in which the proposed legislation reduces or eliminates discretionary relief for deportable aliens or the new penalties imposed on those who violate their status. However, let me identify just a few. For example, the House bill provides that any alien who is out of status for just twelve months in the aggregate is barred from admission for ten years (H.R. 2202, 104th Cong., 2d sess., 41–42, § 301). Both bills impose severe restrictions on eligibility for suspension of deportation. Under the House bill, suspension appears unavailable to anyone who was not inspected and admitted.[3] Both the House and the Senate impose new limits on the power of immigration judges to grant voluntary departure after exclusion or deportation proceedings have commenced (H.R. 2202 at 79, § 304 enacting § 204B(b); S. 269/1394, § 150 amending INA § 244(e)). That means aliens who assert their right to a deportation hearing must meet more restrictive criteria than those who relinquish that right. Finally, by floor amendment, the House bill imposes a permanent bar (subject to waiver) on the readmission of an alien who was deported or excluded and "had the intent to illegally enter," and the Senate bars any nonimmigrant who overstays a visa more than 60 days from receiving an

immigrant or nonimmigrant visa for three years (H.R. 2202 § 301(c)(iii) enacting § 212(a)(6)(iii); S. 269/1394 § 143(b) enacting INA § 212(p)(1)).

Those are just a few of the new restrictions proposed by the pending legislation. They do not include such provisions outside the immigration system itself as restricting access by long-time legal resident immigrants to government programs and authorizing individual states to deny public education to school children based on their immigration status, in direct contravention to *Plyler v. Doe,* 457 U.S. 202 (1982) (H.R. 2202 § 616 enacting INA § 601 (Gallegly Amendment)).

DIMINISHED PROCEDURES AND PRACTICAL IMPEDIMENTS

Summary ("Special") Exclusion

Both the Senate and House bills establish unprecedented summary or "special" exclusion procedures. Under either bill, this new process would apply 1) to any person arrested at entry who is charged with possessing fraudulent documents or arrives with no documents;[4] also, 2) applicable under the Senate bill to any alien who is alleged to have entered without inspection (EWI) unless the alien can affirmatively demonstrate that she or he has been physically present in the United States for two years (S. 269/1394 § 141 enacting § 235(e)(1)(A)); 3) to any alien interdicted in U.S. territorial waters; and 4) to all arriving aliens without regard to their documentation or manner of arrival if the Attorney General declares a vaguely-defined "extraordinary migration situation" (S. 269/1394 §141 enacting § 235(e)(1)(B),(C)).

An individual subject to summary exclusion is not entitled to any hearing or decision by an immigration judge, is not afforded any administrative appeal, and is not allowed any meaningful judicial review. Instead, the determination of admissibility is made by an INS employee based solely on the information elicited at an on-the-spot interview.[5]

Refugees

The summary exclusion procedure poses a special threat to refugees fleeing persecution. They will not be entitled to present their claim to a neutral decisionmaker in an adversary hearing or to be represented by counsel. Instead, the inspecting INS officer will make a unilateral decision as to whether the arriving alien has demonstrated a "credible fear" of persecution.[6] If the INS officer makes a negative determination, the decision is final and no further review or appeal is permitted (except by a supervisory asylum officer) (H.R. 2202 at 46–47, § 302 enacting 235(b)(1)(B)(iii); S. 269/1394 § 141(a)(b)(6)).

The credible fear standard has no legal precedence in the INA and has no international definition under the Convention Relating to the Status of Refugees or the UNHCR Handbook. Summary exclusion would simply transplant the discredited Haitian interdiction program from the high seas to the territory of the United States by implementing it at every port of entry and land border.

Entry Without Inspection. Application of the summary exclusion procedures to persons who are alleged to have entered EWI and who cannot prove that they have been continuously physically present for two years eliminates rudimentary procedural protections for an entire category of immigrants, based on an arbitrary and inherently uncertain determination. The proposal seeks to eviscerate, if not wholly eliminate, constitutional rights through the artifice of a legislative definition. It dramatically expands the definition of "excludable" alien to include those who have, indisputably, made an entry but who did so illegally. If successful, Congress might well be tempted to undertake similar efforts to "define away" constitutional rights simply by categorizing other classes of aliens as "excludable" or otherwise outside the Constitution. Indeed, the House bill provides that any person "not admitted or paroled" into the United States shall be "inadmissible" (H.R. 2202 at 40, § 301 amending and enacting INA § 212(a)(9)). This new nomenclature appears designed to relegate into a permanent "excludable" alien category all aliens who were not admitted into the United States.

However, the Constitution does not permit Congress to determine the scope of its protections through legislative sleight-of-hands. Congress cannot "deconstitutionalize" aliens by changing their statutory status (*see, e.g., Landon v. Plasencia*, 459 U.S. 21, 1982; *Kwong Hai Chew v. Colding*, 344 U.S. 590, 1953; *Rafeedie v. INS*, 880 F.2d 506, D.C. Cir., 1989).

Extraordinary Migration Situation. The Senate provision allowing the Attorney General to designate, in her unreviewable discretion, that an "extraordinary migration situation" exists creates a similar risk of limitless application. Under the Senate bill the Attorney General may proclaim an extraordinary migration situation if "the arrival or imminent arrival in the United States . . . of aliens who by their numbers or circumstances substantially exceed the capacity of the inspection and examination of such aliens" (S. 269/1394 § 141 enacting § 235(e)(1)(C)(2)).

Invocation of this authority allows the Attorney General to suspend the operation of any immigration regulations regarding the inspection and exclusion of aliens.[7] Yet, judicial review of the Attorney General's finding of an extraordinary migration situation is prohibited, and the Attorney General's determination is "committed to [her] sole and exclusive discretion. . . ." (S. 269/1394 § 142 enacting § 106(f)(2)(A)(i)).

We should not assume that declaration of an immigration emergency will be deferred to some indefinite date in the future. I have little doubt that for many proponents the conditions justifying declaration of an extraordinary migration situation already exist.

Asylum Filing Time Limits

The House bill provides that an alien may apply for asylum only if she or he files the asylum application within 180 days of arrival.[8] Refugee advocates have unanimously stressed that such time limits are wholly unrealistic for persons unfamiliar with our legal system, possibly suffering from the trauma of persecution, unable to find an attorney to advise or represent them, and afraid to present themselves voluntarily to government authorities.

In addition to these practical impediments, we must consider this restriction in light of the very recent past when the INS systematically discriminated against many asylum applicants and arbitrarily denied their claims. For example, the INS pernicious discrimination against Salvadoran and Guatemalan refugees for reasons of U.S. foreign policy throughout the 1980s is no longer disputed (*see American Baptist Churches v. Thornburgh*, 760 FSupp. 796, N.D. Cal. 1991; *Orantes-Hernandez v. Meese*, 685 FSupp. 1488, C.D. Cal. 1988, aff'd, 919 F.2d 549, 9th Cir. 1990). Likewise, the discrimination against Haitian refugees in South Florida was revealed through litigation in the 1980's (*see Haitian Refugee Center v. Smith*, 676 F.2d 1023, 5th Cir. 1982). And, in Los Angeles, a federal court invalidated approximately 30,000 asylum interviews of all nationalities based on a showing that INS adjudicators were incompetent, biased, and hostile (*Mendez v. Thornburgh*, No. 88-04995-TJH, C.D. Cal. 1989). Under those circumstances, a refugee's delay in applying for asylum is not only understandable but appropriate.

Prohibit translation of OSC

The Senate bill amends INA § 242B(a)(3) to eliminate the current requirement that orders to show cause (OSC) commencing deportation proceedings be written in Spanish as well as English (S. 269/1394 § 146). This mean-spirited provision can only be attributed to a desire to deny individuals any realistic means of understanding the charges against them and of requesting a hearing to assert their legal rights. Countless individuals with claims to legal status, to asylum, to suspension of deportation, and to voluntary departure, as well as persons with legal defenses or claims of unlawful INS conduct, will lose their right to a hearing because they do not understand the INS charging document.

The proposal to eliminate Spanish translations of the OSC is directly contrary to a recent federal court ruling under the Due Process Clause that requires the

INS to translate into Spanish the INS document that charges individuals with violating INA § 274C (alleging civil document fraud). In that case, *Walters v. Reno*, No. C94-1204C, W.D. Wash. (March 11, 1996), the court stated that "the use of English-only forms in a context in which it is uncontestable that most respondents speak primarily or only Spanish is simply unacceptable, particularly where, as here, the consequences are grave and [the multiplicity of forms confusing]. . . . Obviously, the one-time expense incurred in . . . translating the [form] is not great."

Impeding Legal Representation

Both the Senate and House bills also contain provisions that will severely impede, or practically deny, representation by counsel in those cases where an alien manages to request a hearing. The Senate bill mandates that the statutory right of an alien to be represented by counsel, which already provides that representation is permitted only if it is "at no expense to the government,"[9] be restricted to allow representation only so long as it does not "unreasonably delay" the proceedings (S. 269/1394 § 146 amending INA § 292).

The bills also amend the current statutory rule that deportation hearings cannot be scheduled sooner than fourteen days after an aliens' arrest (*see* INA § 242B(b)(1)). The Senate bill reduces that time to three days in the case of detained aliens, and the House bill reduces the time to ten days in all other cases (S. 269/1394 § 146 amending INA § 242B(b)(1); H.R. 2202 at 61, § 304 enacting § 239(b)(1)).

The restriction on the right to counsel and the authorization for accelerated hearing schedules are particularly prejudicial because of the increasing number of INS detention centers built in remote locations. The siting of detention facilities – whether operated by the INS, the federal Bureau of Prisons, or private contractors – far from urban centers drastically reduces the pool of lawyers who can be recruited to provide *pro bono* representation. By speeding up the process and seeking to deny respondents any adjournment to obtain counsel, the legislation will relegate ever greater numbers of respondents to being unrepresented.

Yet, immigration courts and the INS itself recognize the benefit of legal representation in deportation proceedings (*see* Amicus Curiae Brief of American Civil Liberties Union Immigrants' Rights Project et al., in Support of Petitioner, *Matter of Avila-Lituma*, No. A31 168 263, BIA, filed Jan. 31, 1996). Representation protects individual rights and alleviates the burden on immigration judges to ensure that legal claims are not inadvertently waived.[10] Respondents represented by counsel understand whether to contest deportability or seek discretionary relief and are more likely to agree to depart if counsel informs them that no relief is available. The INS has praised the operation of

the private nonprofit Florence Representation Project, which provides legal counseling and representation to detainees at the INS Florence, Arizona, detention facility (GAO, 1992).

Rather than erecting new and higher hurdles to legal representation, Congress should facilitate the right to counsel by dismantling existing obstacles and by providing financial grants to independent nonprofit representation projects at other detention centers. More fundamentally, the right to appointed counsel for indigent aliens in deportation proceedings ought to be recognized as a mandate of due process (*see Escobar Ruiz v. INS*, 787 F.2d 1294 n. 3, 9th Cir. 1986).

Eliminating Deportation Stays Pending Judicial Review

The Senate bill was amended in the Senate Judiciary Committee to eliminate the current provision that the filing of a petition for review in the court of appeals automatically stays an order of deportation pending judicial review (INA § 106(a)(3)). Under the Senate's modification, "[s]ervice of the petition [for review] does not stay the deportation . . . unless the court orders otherwise" (S. 269/1394 § 142 amending INA § 106(a)(3)). This approach significantly increases the likelihood that aliens will be deported before a court can consider their legal claims. It also imposes significant additional burdens on INS district offices and on the federal courts, which must consider and adjudicate the stay requests before any hearing on the merits of the underlying appeal.

Secret Evidence for Alien "Terrorists" and Numerous Provisions Limiting Judicial Review and Other Rights of "Aggravated Felons"

The numerous provisions that deny adequate procedures and judicial review to aliens accused of "terrorism" and to those convicted of crimes are not the subject of this paper. It is significant, however, that the Antiterrorism and Effective Death Penalty Act (AEDPA), which the President is about to sign, would dramatically alter the existing law governing these cases.

ELIMINATING OR RESTRICTING JUDICIAL REVIEW

Elimination of Judicial Review for Discretionary Relief

The Senate bill prohibits any court from reviewing any claim that the Attorney General's discretionary judgment violated the law or constituted an abuse of discretion when an alien is denied any of the most important forms of relief from deportation. No matter how arbitrary or abusive an administrative decision may be, the courts could not review it. The forms of relief over which review would be eliminated are "suspension of deportation," "adjustment of status," "voluntary departure," and numerous waiver provisions (S. 269/1394 § 142 enacting § 106(b)(4)(B)).

Under current law, these discretionary decisions are reviewed upon an exceedingly deferential "abuse of discretion" standard. The total elimination of judicial review achieves the indefensible result of insulating the INS from judicial oversight for egregious errors, abuses of discretion, and manifestly illegal conduct.

No Review of Summary Exclusion

Both the Senate and House bills would virtually eliminate judicial review of decisions made under the proposed summary exclusion procedure. Specifically, the bills 1) prohibit any review other than through habeas corpus actions, and 2) expressly limit such habeas actions to three questions: a) whether the individual is an alien, b) whether he or she was ordered specially excluded; and c) whether he or she is a legal permanent resident.[11] This attempts to deny courts any authority to review whether a person was properly subjected to summary exclusion in the first place, whether he or she in fact had presented fraudulent documents or no documents, whether he or she is an arriving alien, whether (under the Senate bill) he or she has been in the United States for two years, and whether he or she was correctly found excludable. In addition, no court could determine whether INS complied with its obligations under the statute and provided even the minimal process required by law. The bill allows INS officers to make life-and-death determinations without any judicial oversight.

These legislative restrictions on habeas corpus raise fundamental constitutional questions. The power of the courts to review an order of deportation, especially under the constitutional Great Writ, has never been questioned. This legislation cannot survive constitutional scrutiny under the Due Process Clause, the separation of powers principles embodied in Article III, and the right to habeas corpus in Article I.

No Systemic Class Action Challenges

Summary Exclusion. The Senate and House bills impose broad new prohibitions on systemic challenges to INS policies and practices. The bills expressly provide that no court shall have jurisdiction to review any cause of action or claim arising from or relating to the implementation of the summary exclusion provision.[12] Presumably, this is intended to deny any class-action-type challenges to the general policies or practices applicable to INS operation of the summary exclusion process or to the constitutionality of the process itself. Systemic discrimination based on nationality or race, widespread incompetence by INS officers, and formal policies improperly defining fraudulent documents, entry, or other critical threshold matters would all be completely beyond judicial review even if they were contrary to law or the Constitution.

The bills would prohibit judicial review even to challenge INS violation of its own statutory obligations and duties, such as failure to apply the "credible fear" standard to a fleeing refugee, failure to use qualified asylum officers, or failure to provide for supervisory review. None of this is permissible under the Constitution.

*Inspection, Exclusion, and Deportation.*The House bill contains an even more sweeping provision that seeks to deny jurisdiction to any court (other than the Supreme Court) to issue an injunction against the operation of any of the provisions governing the new inspection, exclusion and deportation provisions proposed by the House bill (except by an individual alien with respect to his or her individual proceeding) (H.R. 2202 at 112, § 306 enacting § 242(g)). This is an attempt to completely prohibit class action litigation challenging systemic discrimination or illegal conduct by the INS and to immunize the INS from meaningful oversight.

The bill tries to prevent the only type of court cases that provide a meaningful remedy for INS policies, practices, and procedures that violate the law or the Constitution. In the last fifteen years, class action challenges brought an end to what is now broadly recognized as widespread INS illegalities. The major cases include: the Haitian litigation in South Florida of the 1970s and 1980s that successfully challenged systemic discrimination against Haitian nationals (*see, e.g., Haitian Refugee Center v. Smith*, 676 F.2d 1023, 5th Cir. 1982); the *American Baptist Churches* case that ended a decade of discrimination against Salvadorans and Guatemalan refugees for U.S. foreign policy reasons (*American Baptist Churches v. Thornburgh*, 760 F.Supp. 796, N.D. Cal. 1991);the *Orantes-Hernandez* case that enjoined coercive INS arrest and deportation practices aimed at Salvadorans (*Orantes-Hernandez v. Meese*, 685 F.Supp. 1488, C.D. Cal. 1988, aff'd 919. F2d 549, 9th Cir. 1990); the Haitian litigation of 1992 that challenged high-seas interdiction and ordered the release of indefinitely detained Haitian refugees at Guantanemo (*Haitian Centers Council v. Sale*, 113 S.Ct. 2549, 1993; 823 F.Supp. 1028, E.D.N.Y. 1993); and the numerous successful challenges to implementation of IRCA legalization programs (*see, e.g., Reno v. Catholic Social Services*, 125 L.Ed. 2d 38, 49, 51–52, 1993; *McNary v. Haitian Refugee Center*, 498 U.S. 479, 1991).

My questions are: What is the INS afraid of? Why do the sponsors of these bills want to give the INS *carte blanche* to engage in unauthorized or illegal actions? Who can justify refusing to let the courts review and decide the legality of INS conduct?

CONCLUSION

The provisions in the Senate and House bills that abrogate procedural protections and deny meaningful judicial review are not just an attack on the rights of immigrants or the organizations that represent them. They are

thinly-veiled attacks on the courts themselves, and their significance extends far beyond the immigration field. These proposals are an attempt to prohibit the courts from enforcing individual rights and civil liberties guaranteed by the Constitution and our laws.

The last time Congress considered such a blatant effort to deny the courts jurisdiction to hear fundamental claims concerning individual rights was during the civil rights era of the 1960s. At that time, numerous proposals were introduced to "strip" the federal courts of jurisdiction over school desegregation cases and over the authority to order busing as a remedy for segregation. In one respect the proposals we face today are even more extreme because in the desegregation cases the proponents contended that state courts should hear civil rights cases to enforce the Constitution. Under these proposals, no court would have jurisdiction to hear the claims of immigrants denied due process or a fair hearing.

The effort to strip the courts of jurisdiction to prevent them from enforcing constitutional rights is a fundamental threat to democracy and civil liberties. Barbara Jordan spoke of the "rule of law" as essential to our immigration policy. In our society, the courts are the guarantor of the rule of law and are essential to protecting individual rights, especially in times of public hostility.

Presidential-contender Patrick Buchanan called the judges who have prohibited implementation of California's Proposition 187 "little dictators in black robes" (Bennet, 1996). The supporters of these restrictions on judicial review are expressing the same sentiment; they just won't say so out loud. Republicans and Democrats alike should be raising a hue and cry against these "Buchananite" proposals. Until they do, they should look at themselves before calling someone else an extremist.

NOTES

[1]This paper has been revised slightly to take into account modifications to H.R. 2202 made upon its adoption by the House of Representatives on March 21, 1996, and to S. 269/1394 made upon its approval by the Senate Judiciary Committee on April 10, 1996. The analysis does not reflect changes that occurred after those dates through Senate floor action, by the House/Senate Conference Committee, or otherwise.

[2]The Supreme Court has drawn a sharp distinction between the substantive and procedural rights of noncitizens. It has further distinguished between aliens who are outside the United States, those who are at the border as "excludable" aliens, and those who have made an entry into the country and qualify as "deportable" aliens. The relevance of the plenary power doctrine is at its nadir when deportable aliens challenge the procedures governing their deportation, and it is at its apex when aliens outside the country challenge a substantive basis for denying their admission. In between is a vast area in which immigration status, ties to the United States, physical location, and the particular right at issue affect the degree of protection afforded by the Constitution. These comments address proposals in the legislation that either abridge individuals' opportunity for a full and fair hearing on their claims to remain in the United States or restrict judicial review of the government's action in the immigration arena.

[3]H.R. 2202 at 73, § 304 enacting § 240A(b)(1). The House also imposes a numerical limit on the number of suspension applications that may be granted each year (H.R. 2202 at 75, § 304 enacting § 240A(b)(3)). The Senate bill requires aliens who entered without inspection (EWI) to show "exceptional and extremely unusual hardship" and ten years physical presence in the United States in order to qualify for suspension (S. 1665 § 302).

[4]H.R. 2202 at 45, § 302; S. 269/1394 § 141. The House bill provides that § 302 applies to any arriving alien deemed inadmissible under existing INA § 212(a)(6)(C), (a)(7). *See* H.R. 2202 at 45, § 302 enacting § 235(b)(1)(A); S. 269/1394 § 141 enacting § 235(e)(1)(A)–(C). Section 235(e)(1)(A)(ii) would apply summary exclusion to aliens excludable under new § 212(a)(6)(C)(iii), which amends INA § 212(a)(6)(C) to render excludable any alien who seeks to enter without documents or presents false or fraudulent documents. *See* S. 269/1394 § 132.

[5]*See* S. 269/1394 § 141 enacting § 235(e)(1), (6), (7); H.R. 2202 at 45-46, 48, § 302 enacting § 235(b)(1)(A)(i), (C); H.R. 2202 at 102, 110, § 306 enacting § 242(a)(2), 242(f).

[6]S. 269/1394 § 141 enacting § 235(e)(5); H.R. 2202 at 46, § 302 enacting § 235(b)(1)(B)(ii). The House bill requires that "asylum officers" conduct the credible fear determination (§ 302 enacting § 235(b)(1)(B)(i)) and requires that they receive "professional training in country conditions, asylum law and interview techniques" (§ 302 enacting § 235(b)(1)(E)(i)). H.R. 2202 at 46, 49, § 302. As noted below, these requirements and definitions are unenforceable.

[7]S. 269/1394 § 141 enacting §§ 235(e)(1)(C)(3)(A), 235(e)(1)(C)(4). The Attorney General is authorized to invoke the provisions of the extraordinary migration situation for a 90-day period and for an additional 90-day period after consultation with the Judiciary Committees of the House and Senate.

[8]H.R. 2202 § 511, at 285, § 526 enacting § 208(f)(1)(A)(i). The bill allows a later filing "only if the alien demonstrates by clear and convincing evidence changed circumstances in the alien's country of nationality . . . "; H.R. 2202 § 511, at 285–286 enacting § 208(f)(1)(A)(ii).

[9]The right to representation by counsel (INA § 292) does not provide for appointed counsel for indigent respondents. The INA provides that "the person [in deportation or exclusion proceedings] shall have the privilege of being represented (at no expense to the Government) by such counsel . . . as he shall choose." The statute, therefore, protects the right to counsel for aliens who can afford to retain private counsel or who are able to find *pro bono* representation.

[10]A study of immigration litigation in the federal courts found that the courts sustained more than 40% of the affirmative challenges to agency actions based on statutory or constitutional rights and that aliens prevailed in approximately 28% of the cases seeking judicial review of final orders of deportation or exclusion (Schuck and Wang, 1992)

[11]H.R. 2202 at 110, § 306 enacting § 242(f)(3); S. 269/1394 § 142 enacting § 106(f)(3). The Senate bill also restricts decisions related to § 208(e), § 212(a)(6)(iii), and § 235(d) to habeas review.

[12]S. 269/1394 § 142 enacting § 106(f)(2)(B); H.R. 2202 at 110, § 304 enacting § 242(f)(2). *See also* H.R. 2202 at 102, § 306 enacting § 242(a)(2).

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