

*PENDING*

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for immigration injunction reform.

IN THE SENATE OF THE UNITED STATES—109th Cong., 2d Sess.

**H. R. 5441**

**AMENDMENT No. 4577**

Maki **By** Cornyn d Se-  
**To:** Amnt. No. 4556 2007,

Ref 9 and  
**Page(s)**

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Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CORNYN to the amendment (No. \_\_\_\_\_) proposed by Mrs. FEINSTEIN

Viz:

- 1 At the end of the amendment, add the following:
- 2 **SEC. 541. IMMIGRATION INJUNCTION REFORM.**
- 3 (a) **SHORT TITLE.**—This section may be cited as the
- 4 “Fairness in Immigration Litigation Act of 2006”.
- 5 (b) **APPROPRIATE REMEDIES FOR IMMIGRATION**
- 6 **LEGISLATION.**—
- 7 (1) **REQUIREMENTS FOR AN ORDER GRANTING**
- 8 **PROSPECTIVE RELIEF AGAINST THE GOVERN-**
- 9 **MENT.**—

1 (A) IN GENERAL.—If a court determines  
2 that prospective relief should be ordered against  
3 the Government in any civil action pertaining to  
4 the administration or enforcement of the immi-  
5 gration laws of the United States, the court  
6 shall—

7 (i) limit the relief to the minimum  
8 necessary to correct the violation of law;

9 (ii) adopt the least intrusive means to  
10 correct the violation of law;

11 (iii) minimize, to the greatest extent  
12 practicable, the adverse impact on national  
13 security, border security, immigration ad-  
14 ministration and enforcement, and public  
15 safety, and

16 (iv) provide for the expiration of the  
17 relief on a specific date, which is not later  
18 than the earliest date necessary for the  
19 Government to remedy the violation.

20 (B) WRITTEN EXPLANATION.—The re-  
21 quirements described in subparagraph (A) shall  
22 be discussed and explained in writing in the  
23 order granting prospective relief and must be  
24 sufficiently detailed to allow review by another  
25 court.

1 (C) EXPIRATION OF PRELIMINARY INJUNC-  
2 TIVE RELIEF.—Preliminary injunctive relief  
3 shall automatically expire on the date that is 90  
4 days after the date on which such relief is en-  
5 tered, unless the court—

6 (i) makes the findings required under  
7 subparagraph (A) for the entry of perma-  
8 nent prospective relief; and

9 (ii) makes the order final before expi-  
10 ration of such 90-day period.

11 (D) REQUIREMENTS FOR ORDER DENYING  
12 MOTION.—This paragraph shall apply to any  
13 order denying the Government's motion to va-  
14 cate, modify, dissolve or otherwise terminate an  
15 order granting prospective relief in any civil ac-  
16 tion pertaining to the administration or enforce-  
17 ment of the immigration laws of the United  
18 States.

19 (2) PROCEDURE FOR MOTION AFFECTING  
20 ORDER GRANTING PROSPECTIVE RELIEF AGAINST  
21 THE GOVERNMENT.—

22 (A) IN GENERAL.—A court shall promptly  
23 rule on the Government's motion to vacate,  
24 modify, dissolve or otherwise terminate an order  
25 granting prospective relief in any civil action

1           pertaining to the administration or enforcement  
2           of the immigration laws of the United States.

3           (B) AUTOMATIC STAYS.—

4           (i) IN GENERAL.—The Government's  
5           motion to vacate, modify, dissolve, or oth-  
6           erwise terminate an order granting pro-  
7           spective relief made in any civil action per-  
8           taining to the administration or enforce-  
9           ment of the immigration laws of the  
10          United States shall automatically, and  
11          without further order of the court, stay the  
12          order granting prospective relief on the  
13          date that is 15 days after the date on  
14          which such motion is filed unless the court  
15          previously has granted or denied the Gov-  
16          ernment's motion.

17          (ii) DURATION OF AUTOMATIC  
18          STAY.—An automatic stay under clause (i)  
19          shall continue until the court enters an  
20          order granting or denying the Govern-  
21          ment's motion.

22          (iii) POSTPONEMENT.—The court, for  
23          good cause, may postpone an automatic  
24          stay under clause (i) for not longer than  
25          15 days.

1 (iv) ORDERS BLOCKING AUTOMATIC  
2 STAYS.—Any order staying, suspending,  
3 delaying, or otherwise barring the effective  
4 date of the automatic stay described in  
5 clause (i), other than an order to postpone  
6 the effective date of the automatic stay for  
7 not longer than 15 days under clause (iii),  
8 shall be—

9 (I) treated as an order refusing  
10 to vacate, modify, dissolve or other-  
11 wise terminate an injunction; and

12 (II) immediately appealable  
13 under section 1292(a)(1) of title 28,  
14 United States Code.

15 (3) SETTLEMENTS.—

16 (A) CONSENT DECREES.—In any civil ac-  
17 tion pertaining to the administration or enforce-  
18 ment of the immigration laws of the United  
19 States, the court may not enter, approve, or  
20 continue a consent decree that does not comply  
21 with paragraph (1).

22 (B) PRIVATE SETTLEMENT AGREE-  
23 MENTS.—Nothing in this subsection shall pre-  
24 clude parties from entering into a private settle-  
25 ment agreement that does not comply with

1 paragraph (1) if the terms of that agreement  
2 are not subject to court enforcement other than  
3 reinstatement of the civil proceedings that the  
4 agreement settled.

5 (4) EXPEDITED PROCEEDINGS.—It shall be the  
6 duty of every court to advance on the docket and to  
7 expedite the disposition of any civil action or motion  
8 considered under this subsection.

9 (5) DEFINITIONS.—In this subsection:

10 (A) CONSENT DECREE.—The term “con-  
11 sent decree”—

12 (i) means any relief entered by the  
13 court that is based in whole or in part on  
14 the consent or acquiescence of the parties;  
15 and

16 (ii) does not include private settle-  
17 ments.

18 (B) GOOD CAUSE.—The term “good  
19 cause” does not include discovery or congestion  
20 of the court’s calendar.

21 (C) GOVERNMENT.—The term “Govern-  
22 ment” means the United States, any Federal  
23 department or agency, or any Federal agent or  
24 official acting within the scope of official duties.

1 (D) PERMANENT RELIEF.—The term “per-  
2 manent relief” means relief issued in connection  
3 with a final decision of a court.

4 (E) PRIVATE SETTLEMENT AGREEMENT.—  
5 The term “private settlement agreement”  
6 means an agreement entered into among the  
7 parties that is not subject to judicial enforce-  
8 ment other than the reinstatement of the civil  
9 action that the agreement settled.

10 (F) PROSPECTIVE RELIEF.—The term  
11 “prospective relief” means temporary, prelimi-  
12 nary, or permanent relief other than compen-  
13 satory monetary damages.

14 (c) EFFECTIVE DATE.—

15 (1) IN GENERAL.—This section shall apply with  
16 respect to all orders granting prospective relief in  
17 any civil action pertaining to the administration or  
18 enforcement of the immigration laws of the United  
19 States, whether such relief was ordered before, on,  
20 or after the date of the enactment of this Act.

21 (2) PENDING MOTIONS.—Every motion to va-  
22 cate, modify, dissolve or otherwise terminate an  
23 order granting prospective relief in any such action,  
24 which motion is pending on the date of the enact-

1       ment of this Act, shall be treated as if it had been  
2       filed on such date of enactment.

3           (3) AUTOMATIC STAY FOR PENDING MO-  
4       TIONS.—

5           (A) IN GENERAL.—An automatic stay with  
6       respect to the prospective relief that is the sub-  
7       ject of a motion described in paragraph (2)  
8       shall take effect without further order of the  
9       court on the date which is 10 days after the  
10      date of the enactment of this Act if the mo-  
11      tion—

12           (i) was pending for 45 days as of the  
13      date of the enactment of this Act; and

14           (ii) is still pending on the date which  
15      is 10 days after such date of enactment.

16           (B) DURATION OF AUTOMATIC STAY.—An  
17      automatic stay that takes effect under subpara-  
18      graph (A) shall continue until the court enters  
19      an order granting or denying the Government's  
20      motion under subsection (b)(2). There shall be  
21      no further postponement of the automatic stay  
22      with respect to any such pending motion under  
23      subsection (b)(2)(B). Any order, staying, sus-  
24      pending, delaying or otherwise barring the ef-  
25      fective date of this automatic stay with respect

1           to pending motions described in paragraph (2)  
2           shall be an order blocking an automatic stay  
3           subject to immediate appeal under subsection  
4           (b)(2)(B)(iv).