

that is legally enforceable by any party against the United States or its agencies or officers or any other person, see section 225 of Pub. L. 103-416, set out as a note under section 1101 of this title.

#### TERMINATION OF LIMITATION

Section 20301(c) of Pub. L. 103-322 provided that: “Notwithstanding section 242(j)(5) of the Immigration and Nationality Act [8 U.S.C. 1252(j)(5)], as added by subsection (a), the requirements of section 242(j) of the Immigration and Nationality Act, as added by subsection (a), shall not be subject to the availability of appropriations on and after October 1, 2004.”

#### CRIMINAL ALIEN TRACKING CENTER

Section 130002 of Pub. L. 103-322 provided that: “(a) OPERATION.—The Attorney General shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien tracking center.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

- “(1) \$3,400,000 for fiscal year 1996;
- “(2) \$3,600,000 for fiscal year 1997;
- “(3) \$3,700,000 for fiscal year 1998;
- “(4) \$3,800,000 for fiscal year 1999; and
- “(5) \$3,900,000 for fiscal year 2000.”

#### EXPANDED SPECIAL DEPORTATION PROCEEDINGS

Section 130007 of Pub. L. 103-322 provided that: “(a) IN GENERAL.—Subject to the availability of appropriations, the Attorney General may expand the program authorized by section 242A(d) [probably should be “242A(a)(3)”, which is classified to 8 U.S.C. 1252a(a)(3)] and 242(i) [8 U.S.C. 1252(i)] of the Immigration and Nationality Act to ensure that such aliens are immediately deportable upon their release from incarceration.

“(b) DETENTION AND REMOVAL OF CRIMINAL ALIENS.—Subject to the availability of appropriations, the Attorney General may—

“(1) construct or contract for the construction of 2 Immigration and Naturalization Service Processing Centers to detain criminal aliens; and

“(2) provide for the detention and removal of such aliens.

“(c) REPORT.—By September 30, 1996, and September 30, 1998 the Attorney General shall report to the Congress on the programs referred to in subsections (a) and (b). The report shall include an evaluation of the programs, an outcome-based measurement of performance, and an analysis of the cost effectiveness of the additional resources provided under this Act [see Tables for classification].

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

- “(1) \$55,000,000 for fiscal year 1995;
- “(2) \$54,000,000 for fiscal year 1996;
- “(3) \$49,000,000 for fiscal year 1997; and
- “(4) \$2,000,000 for fiscal year 1998.”

#### AUTHORITY TO ACCEPT CERTAIN ASSISTANCE

Section 130008 of Pub. L. 103-322 provided that: “(a) IN GENERAL.—Subject to subsection (b) and notwithstanding any other provision of law, the Attorney General, in the discretion of the Attorney General, may accept, hold, administer, and utilize gifts of property and services (which may not include cash assistance) from State and local governments for the purpose of assisting the Immigration and Naturalization Service in the transportation of deportable aliens who are arrested for misdemeanor or felony crimes under State or Federal law and who are either unlawfully within the United States or willing to submit to voluntary departure under safeguards. Any property acquired pursuant to this section shall be acquired in the name of the United States.

“(b) LIMITATION.—The Attorney General shall terminate or rescind the exercise of the authority under subsection (a) if the Attorney General determines that the exercise of such authority has resulted in discrimination by law enforcement officials on the basis of race, color, or national origin.”

#### CROSS REFERENCES

Conspiracy, see section 371 et seq. of Title 18, Crimes and Criminal Procedure.

Definition of the term—

Alien, see section 1101(a)(3) of this title.

Alien deported in pursuance of law, see section 1101(g) of this title.

Attorney General, see section 1101(a)(5) of this title. Immigration laws, see section 1101(a)(17) of this title.

Immigration officer, see section 1101(a)(18) of this title.

National, see section 1101(a)(21) of this title.

Passport, see section 1101(a)(30) of this title.

Special inquiry officer, see section 1101(b)(4) of this title.

United States, see section 1101(a)(38) of this title.

Habeas corpus, see section 2241 et seq. of Title 28, Judiciary and Judicial Procedure.

Judicial review of orders of deportation, see section 1105a of this title.

Peace Corps programs, deportation of foreign participants pursuant to provisions of this section, see section 2508 of Title 22, Foreign Relations and Intercourse.

Sentences, see section 3551 et seq. of Title 18, Crimes and Criminal Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105a, 1182, 1184, 1252a, 1252b, 1255a, 1282, 1330, 1357 of this title; title 18 section 4113; title 22 sections 618, 2508; title 28 section 1821; title 40 section 613.

### § 1252a. Expedited deportation of aliens convicted of committing aggravated felonies

#### (a) Deportation of criminal aliens

##### (1) in general

The Attorney General shall provide for the availability of special deportation proceedings at certain Federal, State, and local correctional facilities for aliens convicted of aggravated felonies (as defined in section 1101(a)(43) of this title). Such proceedings shall be conducted in conformity with section 1252 of this title (except as otherwise provided in this section), and in a manner which eliminates the need for additional detention at any processing center of the Service and in a manner which assures expeditious deportation, where warranted, following the end of the alien's incarceration for the underlying sentence.

##### (2) Implementation

With respect to an alien convicted of an aggravated felony who is taken into custody by the Attorney General pursuant to section 1252(a)(2) of this title, the Attorney General shall, to the maximum extent practicable, detain any such felon at a facility at which other such aliens are detained. In the selection of such facility, the Attorney General shall make reasonable efforts to ensure that the alien's access to counsel and right to counsel under section 1362 of this title are not impaired.

##### (3) Expedited proceedings

(A) Notwithstanding any other provision of law, the Attorney General shall provide for

the initiation and, to the extent possible, the completion of deportation proceedings, and any administrative appeals thereof, in the case of any alien convicted of an aggravated felony before the alien's release from incarceration for the underlying aggravated felony.

(B) Nothing in this section shall be construed as requiring the Attorney General to effect the deportation of any alien sentenced to actual incarceration, before release from the penitentiary or correctional institution where such alien is confined.

**(4) Review**

(A) The Attorney General shall review and evaluate deportation proceedings conducted under this section.

(B) The Comptroller General shall monitor, review, and evaluate deportation proceedings conducted under this section. Within 18 months after the effective date of this section, the Comptroller General shall submit a report to such Committees concerning the extent to which deportation proceedings conducted under this section may adversely affect the ability of such aliens to contest deportation effectively.

**(b) Deportation of aliens who are not permanent residents**

(1) The Attorney General may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 1251(a)(2)(A)(iii) of this title (relating to conviction of an aggravated felony) and issue an order of deportation pursuant to the procedures set forth in this subsection or section 1252(b) of this title.

(2) An alien is described in this paragraph if the alien—

(A) was not lawfully admitted for permanent residence at the time at which proceedings under this section commenced; and

(B) is not eligible for any relief from deportation under this chapter.

(3) The Attorney General may not execute any order described in paragraph (1) until 30 calendar days have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 1105a of this title.

(4) Proceedings before the Attorney General under this subsection shall be in accordance with such regulations as the Attorney General shall prescribe. The Attorney General shall provide that—

(A) the alien is given reasonable notice of the charges and of the opportunity described in subparagraph (C);

(B) the alien shall have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose;

(C) the alien has a reasonable opportunity to inspect the evidence and rebut the charges;

(D) a record is maintained for judicial review; and

(E) the final order of deportation is not adjudicated by the same person who issues the charges.

**(c) Repealed. Pub. L. 103-322, title XIII, § 130004(c)(4), Sept. 13, 1994, 108 Stat. 2028**

**(d) Judicial deportation**

**(1) Authority**

Notwithstanding any other provision of this chapter, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 1251(a)(2)(A) of this title, if such an order has been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.

**(2) Procedure**

(A) The United States Attorney shall file with the United States district court, and serve upon the defendant and the Service, prior to commencement of the trial or entry of a guilty plea a notice of intent to request judicial deportation.

(B) Notwithstanding section 1252b of this title, the United States Attorney, with the concurrence of the Commissioner, shall file at least 30 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and identifying the crime or crimes which make the defendant deportable under section 1251(a)(2)(A) of this title.

(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from deportation under this chapter, the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief. The court shall either grant or deny the relief sought.

(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 1252(b) of this title.

(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

(iv) The court may order the alien deported if the Attorney General demonstrates that the alien is deportable under this chapter.

**(3) Notice, appeal, and execution of judicial order of deportation**

(A)(i) A judicial order of deportation or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 1105a of this title.

(iii) Upon execution by the defendant of a valid waiver of the right to appeal the convic-

tion on which the order of deportation is based, the expiration of the period described in section 1105a(a)(1) of this title, or the final dismissal of an appeal from such conviction, the order of deportation shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

(B) As soon as is practicable after entry of a judicial order of deportation, the Commissioner shall provide the defendant with written notice of the order of deportation, which shall designate the defendant's country of choice for deportation and any alternate country pursuant to section 1253(a) of this title.

**(4) Denial of judicial order**

Denial without a decision on the merits of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 1252 of this title upon the same ground of deportability or upon any other ground of deportability provided under section 1251(a) of this title.

(June 27, 1952, ch. 477, title II, ch. 5, §242A, as added Nov. 18, 1988, Pub. L. 100-690, title VII, §7347(a), 102 Stat. 4471; amended Nov. 29, 1990, Pub. L. 101-649, title V, §506(a), 104 Stat. 5050; Dec. 12, 1991, Pub. L. 102-232, title III, §309(b)(10), 105 Stat. 1759; Sept. 13, 1994, Pub. L. 103-322, title XIII, §130004(a), (c), 108 Stat. 2026, 2027; Oct. 25, 1994, Pub. L. 103-416, title II, §§223(a), 224(a), 108 Stat. 4322.)

AMENDMENTS

1994—Pub. L. 103-322, §130004(c)(1), struck out “procedures for” after “Expedited” in section catchline.

Subsec. (a)(1). Pub. L. 103-322, §130004(c)(2), substituted subsec. heading for one which read “In general”, redesignated existing subsec. (a) as par. (1) of subsec. (a), and inserted heading.

Subsec. (a)(2). Pub. L. 103-322, §130004(c)(3), redesignated subsec. (b) as par. (2) of subsec. (a).

Subsec. (a)(3). Pub. L. 103-322, §130004(c)(5), redesignated subsec. (d) as par. (3) of subsec. (a), and redesignated pars. (1) and (2) of former subsec. (d) as subpars. (A) and (B), respectively, of subsec. (a)(3).

Subsec. (a)(4). Pub. L. 103-322, §130004(c)(6), redesignated subsec. (e) as par. (4) of subsec. (a), redesignated par. (1) of former subsec. (e) as subpar. (A) of subsec. (a)(4) and struck out at end “Within 12 months after the effective date of this section, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate concerning the effectiveness of such deportation proceedings in facilitating the deportation of aliens convicted of aggravated felonies.”, and redesignated par. (2) of former subsec. (e) as subpar. (B) of subsec. (a)(4).

Subsec. (b). Pub. L. 103-322, §130004(a), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsec. (b)(4)(D), (E). Pub. L. 103-416, §223(a), struck out “the determination of deportability is supported by clear, convincing, and unequivocal evidence and” before “a record is” in subpar. (D) and substituted “adjudicated” for “entered” in subpar. (E).

Subsec. (c). Pub. L. 103-322, §130004(c)(4), struck out heading and text of subsec. (c). Prior to amendment, text read as follows: “An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.”

Subsec. (d). Pub. L. 103-416, §224(a), added subsec. (d).

Pub. L. 103-322, §130004(c)(5), redesignated subsec. (d) as par. (3) of subsec. (a).

Subsec. (e). Pub. L. 103-322, §130004(c)(6), redesignated subsec. (e) as par. (4) of subsec. (a).

1991—Subsec. (a). Pub. L. 102-232 inserted closing parenthesis before period at end of first sentence.

1990—Subsec. (d)(2). Pub. L. 101-649 struck out before period at end “, unless the chief prosecutor or the judge in whose jurisdiction conviction occurred submits a written request to the Attorney General that such alien be so deported”.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 224(a) of Pub. L. 103-416 applicable to all aliens whose adjudication of guilt or guilty plea is entered in the record after Oct. 25, 1994, see section 224(c) of Pub. L. 103-416, set out as a note under section 1252 of this title.

Amendment by Pub. L. 103-322 applicable to all aliens against whom deportation proceedings are initiated after Sept. 13, 1994, see section 130004(d) of Pub. L. 103-322, set out as a note under section 1105a of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 506(b) of Pub. L. 101-649 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].”

EFFECTIVE DATE

Section 7347(c) of Pub. L. 100-690 provided that: “The amendments made by subsections (a) and (b) [enacting this section and amending section 1105a of this title] shall apply in the case of any alien convicted of an aggravated felony on or after the date of the enactment of this Act [Nov. 18, 1988].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1105a of this title.

**§ 1252b. Deportation procedures**

**(a) Notices**

**(1) Order to show cause**

In deportation proceedings under section 1252 of this title, written notice (in this section referred to as an “order to show cause”) shall be given in person to the alien (or, if personal service is not practicable, such notice shall be given by certified mail to the alien or to the alien's counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided a list of counsel prepared under subsection (b)(2) of this section.

(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 1252 of this title.

(ii) The requirement that the alien must provide the Attorney General immediately