

103^D CONGRESS
1ST SESSION

H. R. 1459

To amend the Immigration and Nationality Act to expand the definition of “aggravated felony”, to eliminate the administrative deportation hearing and review process for aliens convicted of aggravated felonies who are not permanent residents, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1993

Mr. McCOLLUM (for himself, Mr. MOORHEAD, Mr. SMITH of Texas, Mr. GALLEGLY, and Mrs. ROUKEMA) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to expand the definition of “aggravated felony”, to eliminate the administrative deportation hearing and review process for aliens convicted of aggravated felonies who are not permanent residents, and for other purposes.

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 “Criminal Aliens Depor-
5 tation Act of 1993”.

1 **SEC. 2. EXPANSION IN DEFINITION OF “AGGRAVATED FEL-**
2 **ONY”.**

3 (a) EXPANSION IN DEFINITION.—Section 101(a)(43)
4 of the Immigration and Nationality Act (8 U.S.C.
5 1101(a)(43)) is amended to read as follows:

6 “(43) The term ‘aggravated felony’ means—

7 “(A) murder;

8 “(B) any illicit trafficking in any con-
9 trolled substance (as defined in section 102 of
10 the Controlled Substances Act), including any
11 drug trafficking crime as defined in section
12 924(c) of title 18, United States Code;

13 “(C) any illicit trafficking in any firearms
14 or destructive devices as defined in section 921
15 of title 18, United States Code, or in explosive
16 materials as defined in section 841(c) of title
17 18, United States Code;

18 “(D) any offense described in (i) section
19 1956 of title 18, United States Code (relating
20 to laundering of monetary instruments) or (ii)
21 section 1957 of such title (relating to engaging
22 in monetary transactions in property derived
23 from specific unlawful activity) if the value of
24 the funds exceeded \$100,000;

25 “(E) any offense described in—

1 “(i) subsections (h) or (i) of section
2 842, title 18, United States Code, or sub-
3 section (d), (e), (f), (g), (h), or (i) of sec-
4 tion 844 of title 18, United States Code
5 (relating to explosive materials offenses),

6 “(ii) paragraph (1), (2), (3), (4), or
7 (5) of section 922(g), or section 922(j),
8 section 922(n), section 922(o), section
9 922(p), section 922(r), section 924(b), or
10 section 924(h) of title 18, United States
11 Code (relating to firearms offenses), or

12 “(iii) section 5861 of title 26, United
13 States Code (relating to firearms offenses);

14 “(F) any crime of violence (as defined in
15 section 16 of title 18, United States Code, not
16 including a purely political offense) for which
17 the term of imprisonment imposed (regardless
18 of any suspension of such imprisonment) is at
19 least 5 years;

20 “(G) any theft offense (including receipt of
21 stolen property) or any burglary offense, where
22 a sentence of 5 years imprisonment or more
23 may be imposed;

24 “(H) any offense described in section 875,
25 section 876, section 877, or section 1202 of

1 title 18, United States Code (relating to the de-
2 mand for or receipt of ransom);

3 “(I) any offense described in section 2251,
4 section 2251A or section 2252 of title 18, Unit-
5 ed States Code (relating to child pornography);

6 “(J) any offense described in—

7 “(i) section 1962 of title 18, United
8 States Code (relating to racketeer influ-
9 enced corrupt organizations), or

10 “(ii) section 1084 (if it is a second or
11 subsequent offense) or section 1955 of
12 such title (relating to gambling offenses),

13 where a sentence of 5 years imprisonment or
14 more may be imposed;

15 “(K) any offense relating to commercial
16 bribery, counterfeiting, forgery or trafficking in
17 vehicles whose identification numbers have been
18 altered, where a sentence of 5 years imprison-
19 ment or more may be imposed;

20 “(L) any offense—

21 “(i) relating to the owning, control-
22 ling, managing or supervising of a pros-
23 titution business,

24 “(ii) described in section 2421, section
25 2422, or section 2423 of title 18, United

1 States Code (relating to transportation for
2 the purpose of prostitution) for commercial
3 advantage, or

4 “(iii) described in sections 1581
5 through 1585, or section 1588, of title 18,
6 United States Code (relating to peonage,
7 slavery, and involuntary servitude);

8 “(M) any offense relating to perjury or
9 subornation of perjury where a sentence of 5
10 years imprisonment or more may be imposed;

11 “(N) any offense described in—

12 “(i) section 793 (relating to gathering
13 or transmitting national defense informa-
14 tion), section 798 (relating to disclosure of
15 classified information), section 2153 (relat-
16 ing to sabotage) or section 2381 or section
17 2382 (relating to treason) of title 18, Unit-
18 ed States Code, or

19 “(ii) section 421 of title 50, United
20 States Code (relating to protecting the
21 identity of undercover intelligence agents);

22 “(O) any offense—

23 “(i) involving fraud or deceit where
24 the loss to the victim or victims exceeded
25 \$200,000; or

1 “(ii) described in section 7201 of title
2 26, United States Code (relating to tax
3 evasion), where the tax loss to the Govern-
4 ment exceeds \$200,000;

5 “(P) any offense described in section
6 274(a)(1) of title 18, United States Code (relat-
7 ing to alien smuggling) for the purpose of com-
8 mercial advantage;

9 “(Q) any violation of section 1546(a) of
10 title 18, United States Code (relating to docu-
11 ment fraud), for the purpose of commercial ad-
12 vantage; or

13 “(R) any offense relating to failing to ap-
14 pear before a court pursuant to a court order
15 to answer to or dispose of a charge of a felony,
16 where a sentence of 2 years or more may be im-
17 posed;

18 or any attempt or conspiracy to commit any such
19 act. Such term applies to offenses described in this
20 paragraph whether in violation of Federal or State
21 law and applies to such offenses in violation of the
22 laws of a foreign country for which the term of im-
23 prisonment was completed within the previous 15
24 years.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to all convictions entered before,
3 on, or after the date of enactment of this Act.

4 **SEC. 3. DEPORTATION PROCEDURES FOR CERTAIN CRIMI-**
5 **NAL ALIENS WHO ARE NOT PERMANENT**
6 **RESIDENTS.**

7 (a) ELIMINATION OF ADMINISTRATIVE HEARING FOR
8 CERTAIN CRIMINAL ALIENS.—Section 242A of the Immi-
9 gration and Nationality Act (8 U.S.C. 1252a) is amended
10 by adding at the end the following:

11 “(c) DEPORTATION OF ALIENS WHO ARE NOT PER-
12 MANENT RESIDENTS.—

13 “(1) Notwithstanding section 242, and subject
14 to paragraph (5), the Attorney General may issue a
15 final order of deportation against any alien described
16 in paragraph (2) whom the Attorney General deter-
17 mines to be deportable under section
18 241(a)(2)(A)(iii) (relating to conviction of an aggra-
19 vated felony).

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

22 “(A) was not lawfully admitted for perma-
23 nent residence at the time that proceedings
24 under this section commenced, or

1 “(B) had permanent resident status on a
2 conditional basis (as described in section 216)
3 at the time that proceedings under this section
4 commenced.

5 “(3) The Attorney General may delegate the
6 authority in this section to the Commissioner or to
7 any District Director of the Service.

8 “(4) No alien described in this section shall be
9 eligible for—

10 “(A) any relief from deportation that the
11 Attorney General may grant in his discretion,
12 or

13 “(B) relief under section 243(h).

14 “(5) The Attorney General may not execute any
15 order described in paragraph (1) until 14 calendar
16 days have passed from the date that such order was
17 issued, in order that the alien has an opportunity to
18 apply for judicial review under section 106.”.

19 (b) LIMITED JUDICIAL REVIEW.—Section 106 of the
20 Immigration and Nationality Act (8 U.S.C. 1105a) is
21 amended—

22 (1) in the first sentence of subsection (a), by in-
23 serting “or pursuant to section 242A” after “under
24 section 242(b)”;

1 (2) in subsection (a)(1) and subsection (a)(3),
2 by inserting “(including an alien described in section
3 242A)” after “aggravated felony”; and

4 (3) by adding at the end the following new sub-
5 section:

6 “(d) Notwithstanding subsection (c), a petition for
7 review or for habeas corpus on behalf of an alien described
8 in section 242A(c) may only challenge whether the alien
9 is in fact an alien described in such section, and no court
10 shall have jurisdiction to review any other issue.”.

11 (c) TECHNICAL AND CONFORMING CHANGES.—Sec-
12 tion 242A of the Immigration and Nationality Act (8
13 U.S.C. 1252a) is amended as follows:

14 (1) In subsection (a)—

15 (A) by striking “(a) IN GENERAL.—” and
16 inserting “(b) DEPORTATION OF PERMANENT
17 RESIDENT ALIENS.—(1) IN GENERAL.—”; and

18 (B) by inserting in the first sentence “per-
19 manent resident” after “correctional facilities
20 for”;

21 (2) In subsection (b)—

22 (A) by striking “(b) IMPLEMENTATION.—”
23 and inserting “(2) IMPLEMENTATION.—”; and

24 (B) by striking “respect to an” and insert-
25 ing “respect to a permanent resident”;

1 (3) By striking out subsection (c);

2 (4) In subsection (d)—

3 (A) by striking “(d) EXPEDITED PRO-
4 CEEDINGS.—(1)” and inserting “(3) EXPE-
5 DITED PROCEEDINGS.—(A)”;

6 (B) by inserting “permanent resident”
7 after “in the case of any”; and

8 (C) by striking “(2)” and inserting “(B)”;

9 (5) In subsection (e)—

10 (A) by striking “(e) REVIEW.—(1)” and
11 inserting “(4) REVIEW.—(A)”;

12 (B) by striking the second sentence; and

13 (C) by striking “(2)” and inserting “(B)”.

14 (6) By inserting after the section heading the
15 following new subsection:

16 “(a) PRESUMPTION OF DEPORTABILITY.—An alien
17 convicted of an aggravated felony shall be conclusively pre-
18 sumed to be deportable from the United States.”.

19 (7) The heading of such section is amended to
20 read as follows:

“EXPEDITED DEPORTATION OF ALIENS CONVICTED OF
COMMITTING AGGRAVATED FELONIES”.

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to all aliens against whom deporta-
23 tion proceedings are initiated after the date of enactment
24 of this Act.

1 **SEC. 4. JUDICIAL DEPORTATION.**

2 (a) JUDICIAL DEPORTATION.—Section 242A of the
3 Immigration and Nationality Act (8 U.S.C. 1252a) is
4 amended by inserting at the end the following new sub-
5 section:

6 “(d) JUDICIAL DEPORTATION.—

7 “(1) AUTHORITY.—Notwithstanding any other
8 provision of this Act, a United States district court
9 shall have jurisdiction to enter a judicial order of de-
10 portation at the time of sentencing against an alien
11 whose criminal conviction causes such alien to be de-
12 portable under section 241(a)(2)(A)(iii) (relating to
13 conviction of an aggravated felony), if such an order
14 has been requested prior to sentencing by the United
15 States Attorney with the concurrence of the Com-
16 missioner.

17 “(2) PROCEDURE.—

18 “(A) The United States Attorney shall pro-
19 vide notice of intent to request judicial deporta-
20 tion promptly after the entry in the record of
21 an adjudication of guilt or guilty plea. Such no-
22 tice shall be provided to the court, to the alien,
23 and to the alien’s counsel of record.

24 “(B) Notwithstanding section 242B, the
25 United States Attorney, with the concurrence of
26 the Commissioner, shall file at least 20 days

1 prior to the date set for sentencing a charge
2 containing factual allegations regarding the
3 alienage of the defendant and satisfaction by
4 the defendant of the definition of aggravated
5 felony.

6 “(C) If the court determines that the de-
7 fendant has presented substantial evidence to
8 establish prima facie eligibility for relief from
9 deportation under section 212(c), the Commis-
10 sioner shall provide the court with a rec-
11 ommendation and report regarding the alien’s
12 eligibility for relief under such section. The
13 court shall either grant or deny the relief
14 sought.

15 “(D)(i) The alien shall have a reasonable
16 opportunity to examine the evidence against
17 him or her, to present evidence on his or her
18 own behalf, and to cross-examine witnesses pre-
19 sented by the Government.

20 “(ii) The court, for the purposes of deter-
21 mining whether to enter an order described in
22 paragraph (1), shall only consider evidence that
23 would be admissible in proceedings conducted
24 pursuant to section 242(b).

1 “(iii) Nothing in this subsection shall limit
2 the information a court of the United States
3 may receive or consider for the purposes of im-
4 posing an appropriate sentence.

5 “(iv) The court may order the alien de-
6 ported if the Attorney General demonstrates by
7 clear and convincing evidence that the alien is
8 deportable under this Act.

9 “(3) NOTICE, APPEAL, AND EXECUTION OF JU-
10 DICIAL ORDER OF DEPORTATION.—

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

15 “(ii) Except as provided in clause (iii),
16 such appeal shall be considered consistent with
17 the requirements described in section 106.

18 “(iii) Upon execution by the defendant of
19 a valid waiver of the right to appeal the convic-
20 tion on which the order of deportation is based,
21 the expiration of the period described in section
22 106(a)(1), or the final dismissal of an appeal
23 from such conviction, the order of deportation
24 shall become final and shall be executed at the

1 end of the prison term in accordance with the
2 terms of the order.

3 “(B) As soon as is practicable after entry
4 of a judicial order of deportation, the Commis-
5 sioner shall provide the defendant with written
6 notice of the order or deportation, which shall
7 designate the defendant’s country of choice for
8 deportation and any alternate country pursuant
9 to section 243(a).

10 “(4) DENIAL OF JUDICIAL ORDER.—Denial of a
11 request for a judicial order of deportation shall not
12 preclude the Attorney General from initiating depor-
13 tation proceedings pursuant to section 242 upon the
14 same ground of deportability or upon any other
15 ground of deportability provided under section
16 241(a).”.

17 (b) TECHNICAL AND CONFORMING CHANGES.—The
18 ninth sentence of section 242(b) of the Immigration and
19 Nationality Act (8 U.S.C. 1252(b)) is amended by striking
20 out “The” and inserting in lieu thereof, “Except as pro-
21 vided in section 242A(d), the”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to all aliens whose adjudication of
24 guilt or guilty plea is entered in the record after the date
25 of enactment of this Act.

1 **SEC. 5. RESTRICTING DEFENSES TO DEPORTATION FOR**
2 **CERTAIN CRIMINAL ALIENS.**

3 (a) DEFENSES BASED ON SEVEN YEARS OF PERMA-
4 NENT RESIDENCE.—The last sentence of section 212(c)
5 of the Immigration and Nationality Act (8 U.S.C.
6 1182(c)) is amended by striking out “has served for such
7 felony or felonies” and all that follows through the period
8 and inserting in lieu thereof “has been sentenced for such
9 felony or felonies to a term of imprisonment of at least
10 5 years, provided that the time for appealing such convic-
11 tion or sentence has expired and the sentence has become
12 final.”.

13 (b) DEFENSES BASED ON WITHHOLDING OF DEPOR-
14 TATION.—Section 243(h)(2) of the Immigration and Na-
15 tionality Act (8 U.S.C. 1253(h)(2)) is amended by—

16 (1) striking out the final sentence and inserting
17 in lieu thereof the following new subparagraph:

18 “(E) the alien has been convicted of an ag-
19 gravated felony.”; and

20 (2) striking out the “or” at the end of subpara-
21 graph (C) and inserting “or” at the end of subpara-
22 graph (D).

1 **SEC. 6. ENHANCING PENALTIES FOR FAILING TO DEPART,**
2 **OR REENTERING, AFTER FINAL ORDER OF**
3 **DEPORTATION.**

4 (a) FAILURE TO DEPART.—Section 242(e) of the Im-
5 migration and Nationality Act (8 U.S.C. 1252(e)) is
6 amended—

7 (1) by striking out “paragraph (2), (3), or 4
8 of” the first time it appears, and

9 (2) by striking out “shall be imprisoned not
10 more than ten years” and inserting in lieu thereof,
11 “shall be imprisoned not more than two years, or
12 shall be imprisoned not more than ten years if the
13 alien is a member of any of the classes described in
14 paragraph (2), (3), or (4) of section 241(a).”.

15 (b) REENTRY.—Section 276(b) of the Immigration
16 and Nationality Act (8 U.S.C. 1326(b)) is amended—

17 (1) in paragraph (1), by (A) inserting after
18 “commission of” the following: “three or more mis-
19 demeanors or”, and (B) striking out “5” and insert-
20 ing in lieu thereof “10”,

21 (2) in paragraph (2), by striking out “15” and
22 inserting in lieu thereof “20”, and

23 (3) by adding at the end the following sentence:
24 “For the purposes of this subsection, the term ‘depor-
25 tation’ shall include any agreement where an alien stipu-

1 late to deportation during a criminal trial under either
2 Federal or State law.”.

3 (c) COLLATERAL ATTACKS ON UNDERLYING DEPOR-
4 TATION ORDER.—Section 276 of the Immigration and Na-
5 tionality Act (8 U.S.C. 1326) is amended by inserting
6 after subsection (b) the following new subsection:

7 “(c) In any criminal proceeding under this section,
8 no alien may challenge the validity of the deportation
9 order described in subsection (a)(1) or subsection (b) un-
10 less the alien demonstrates—

11 “(1) that the alien exhausted the administrative
12 remedies (if any) that may have been available to
13 seek relief against such order,

14 “(2) that the deportation proceedings at which
15 such order was issued improperly deprived the alien
16 of the opportunity for judicial review, and

17 “(3) that the entry of such order was fun-
18 damentally unfair.”.

19 **SEC. 7. EXPANDED FORFEITURE FOR SMUGGLING OR HAR-**
20 **BORING ILLEGAL ALIENS.**

21 Subsection 274(b) of the Immigration and National-
22 ity Act (8 U.S.C. 1324(b)) is amended—

23 (1) by amending paragraph (1) to read as fol-
24 lows:

1 “(b) SEIZURE AND FORFEITURE.—(1) Any property,
2 real or personal, which facilitates or is intended to facili-
3 tate, or which has been used in or is intended to be used
4 in the commission of a violation of subsection (a) or of
5 sections 274A(a)(1) or 274A(a)(2), or which constitutes
6 or is derived from or traceable to the proceeds obtained
7 directly or indirectly from a commission of a violation of
8 subsection (a), shall be subject to seizure and forfeiture,
9 except that—

10 “(A) no property, used by any person as a com-
11 mon carrier in the transaction of business as a com-
12 mon carrier shall be forfeited under the provisions of
13 this section unless it shall appear that the owner or
14 other person in charge of such property was a con-
15 senting party or privy to the illegal act;

16 “(B) no property shall be forfeited under the
17 provisions of this section by reason of any act or
18 omission established by the owner thereof to have
19 been committed or omitted by any person other than
20 such owner while such property was unlawfully in
21 the possession of a person other than the owner in
22 violation of the criminal laws of the United States
23 or of any State; and

24 “(C) no property shall be forfeited under this
25 paragraph to the extent of an interest of any owner,

1 by reason of any act or omission established by that
2 owner to have been committed or omitted without
3 the knowledge or consent of the owner, unless such
4 action or omission was committed by an employee or
5 agent of the owner, and facilitated or was intended
6 to facilitate, or was used in or intended to be used
7 in, the commission of a violation of subsection (a) or
8 of section 274A(a)(1) or 274A(a)(2) which was com-
9 mitted by the owner or which intended to further the
10 business interests of the owner, or to confer any
11 other benefit upon the owner.”.

12 (2) in paragraph (2)—

13 (A) by striking “conveyance” both places it
14 appears and inserting in lieu thereof “prop-
15 erty”; and

16 (B) by striking “is being used in” and in-
17 serting in lieu thereof “is being used in, is fa-
18 cilitating, has facilitated, or was intended to fa-
19 cilitate”;

20 (3) in paragraphs (4) and (5) by striking “a
21 conveyance” and “conveyance” each place such
22 phrase or word appears and inserting in lieu thereof
23 “property”; and

24 (4) in paragraph (4) by—

1 (A) striking “or” at the end of subpara-
2 graph (C),

3 (B) by striking the period at the end of
4 subparagraph (D) and inserting “; or”, and

5 (C) by inserting at the end the following
6 new subparagraph:

7 “(E) transfer custody and ownership of
8 forfeited property to any Federal, State, or
9 local agency pursuant to the Tariff Act of
10 1930, as amended (19 U.S.C. 1616a(c)).”.

11 **SEC. 8. MISCELLANEOUS AND TECHNICAL CHANGES.**

12 (a) FORM OF DEPORTATION HEARINGS.—The sec-
13 ond sentence of section 242(b) of the Immigration and
14 Nationality Act (8 U.S.C. 1252(b)) is amended by insert-
15 ing before the period the following: “; except that nothing
16 in this subsection shall preclude the Attorney General
17 from authorizing proceedings by electronic or telephonic
18 media (with or without the consent of the alien) or, where
19 waived or agreed to by the parties, in the absence of the
20 alien.”.

21 (b) CONSTRUCTION OF EXPEDITED DEPORTATION
22 REQUIREMENTS.— No amendment made by this Act and
23 nothing in section 242(i) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1252(i)), shall be construed to create
25 any right or benefit, substantive or procedural, which is

- 1 legally enforceable by any party against the United States,
- 2 its agencies, its officers or any other person.

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