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## S.735

**Antiterrorism and Effective Death Penalty Act of 1996 (Enrolled as Agreed to or Passed by Both House and Senate)**

### **` JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION, AND SPECIAL EXCLUSION'; AND**

(2) by adding at the end the following new subsection:

`(e)(1) Notwithstanding any other provision of law, and except as provided in this subsection, no court shall have jurisdiction to review any individual determination, or to entertain any other cause or claim, arising from or relating to the implementation or operation of section 235(b)(1). Regardless of the nature of the action or claim, or the party or parties bringing the action, no court shall have jurisdiction or authority to enter declaratory, injunctive, or other equitable relief not specifically authorized in this subsection nor to certify a class under Rule 23 of the Federal Rules of Civil Procedure.

`(2) Judicial review of any cause, claim, or individual determination covered under paragraph (1) shall only be available in habeas corpus proceedings, and shall be limited to determinations of--

`(A) whether the petitioner is an alien, if the petitioner makes a showing that the petitioner's claim of United States nationality is not frivolous;

`(B) whether the petitioner was ordered specially excluded under section 235(b)(1)(A); and

`(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence and is entitled to such review as is provided by the Attorney General pursuant to section 235(b)(1)(E)(i).

`(3) In any case where the court determines that an alien was not ordered specially excluded, or was not properly subject to special exclusion under the regulations adopted by the Attorney General, the court may order no relief beyond requiring that the alien receive a hearing in accordance with section 236, or a determination in accordance with section 235(c) or 273(d).

`(4) In determining whether an alien has been ordered specially excluded, the court's inquiry shall be limited to whether such an order was in fact issued and whether it relates to the petitioner.'

(b) PRECLUSION OF COLLATERAL ATTACKS- Section 235 of such Act (8 U.S.C. 1225) is amended by adding at the end the following new subsection:

`(d) In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 275 or section 276, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 236 and 242.'

(c) CLERICAL AMENDMENT- The item relating to section 106 in the table of contents of such Act is amended to read as follows:

`Sec. 106. Judicial review of orders of deportation and exclusion, and special exclusion.'

#### **Subtitle D--Criminal Alien Procedural Improvements**

### **SEC. 431. ACCESS TO CERTAIN CONFIDENTIAL IMMIGRATION AND NATURALIZATION FILES THROUGH COURT ORDER.**

(a) CONFIDENTIALITY OF INFORMATION- Section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5)) is amended--

(1) by inserting '(i)' after 'except the Attorney General'; and

(2) by inserting after 'Title 13' the following: 'and (ii) may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used--

`(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

`(II) for criminal law enforcement purposes against the alien whose application is to be disclosed.'

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS- Section 210(b) of the Immigration and Nationality Act (8 U.S.C. 1160(b)) is amended--

(1) in paragraph (5), by inserting ', except as allowed by a court order issued pursuant to paragraph (6) of this subsection' after 'consent of the alien'; and

(2) in paragraph (6), by inserting the following sentence before 'Anyone who uses': 'Notwithstanding the preceding sentence, the Attorney General may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant an order authorizing, disclosure of information contained in the application of the alien to be used for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated, or for criminal law enforcement purposes against the alien whose

application is to be disclosed or to discover information leading to the location or identity of the alien.'

#### **SEC. 432. CRIMINAL ALIEN IDENTIFICATION SYSTEM.**

Section 130002(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322) is amended to read as follows:

` (a) OPERATION AND PURPOSE- The Commissioner of Immigration and Naturalization 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 identification system. The criminal alien identification system shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.'

#### **SEC. 433. ESTABLISHING CERTAIN ALIEN SMUGGLING-RELATED CRIMES AS RICO-PREDICATE OFFENSES.**

Section 1961(1) of title 18, United States Code, is amended--

(1) by inserting `section 1028 (relating to fraud and related activity in connection with identification documents) if the act indictable under section 1028 was committed for the purpose of financial gain,' before `section 1029';

(2) by inserting `section 1542 (relating to false statement in application and use of passport) if the act indictable under section 1542 was committed for the purpose of financial gain, section 1543 (relating to forgery or false use of passport) if the act indictable under section 1543 was committed for the purpose of financial gain, section 1544 (relating to misuse of passport) if the act indictable under section 1544 was committed for the purpose of financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under section 1546 was committed for the purpose of financial gain, sections 1581-1588 (relating to peonage and slavery),' after `section 1513 (relating to retaliating against a witness, victim, or an informant),';

(3) by striking `or' before `(E)'; and

(4) by inserting before the period at the end the following: `, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain'.

#### **SEC. 434. AUTHORITY FOR ALIEN SMUGGLING INVESTIGATIONS.**

Section 2516(1) of title 18, United States Code, is amended--

(1) by striking `and' at the end of paragraph (n),

(2) by redesignating paragraph (o) as paragraph (p), and

(3) by inserting after paragraph (n) the following new paragraph:

` (o) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or'.

#### **SEC. 435. EXPANSION OF CRITERIA FOR DEPORTATION FOR CRIMES OF MORAL TURPITUDE.**

(a) IN GENERAL- Section 241(a)(2)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)(A)(i)(II)) is amended to read as follows:

` (II) is convicted of a crime for which a sentence of one year or longer may be imposed,'.

(b) EFFECTIVE DATE- The amendment made by subsection (a) shall apply to aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.

#### **SEC. 436. MISCELLANEOUS PROVISIONS.**

(a) USE OF ELECTRONIC AND TELEPHONIC MEDIA IN DEPORTATION HEARINGS- The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: `; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien'.

(b) CODIFICATION-

(1) Section 242(i) of such Act (8 U.S.C. 1252(i)) is amended by adding at the end the following: `Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.'

(2) Section 225 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416) is amended by striking `and nothing in' and all that follows through `1252(i)'

(3) The amendments made by this subsection shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416).

#### **SEC. 437. INTERIOR REPATRIATION PROGRAM.**

Not later than 180 days after the date of enactment of this Act, the Attorney General and the Commissioner of Immigration and Naturalization shall develop and implement a program in which aliens who previously have illegally entered the United States not less than 3 times and are deported or returned to a country contiguous to the United States will be returned to locations not less than 500 kilometers from that country's border with the United States.

**SEC. 438. DEPORTATION OF NONVIOLENT OFFENDERS PRIOR TO COMPLETION OF SENTENCE OF IMPRISONMENT.**

(a) IN GENERAL- Section 242(h) of the Immigration and Nationality Act (8 U.S.C. 1252(h)) is amended to read as follows:

`(h)(1) Except as provided in paragraph (2), an alien sentenced to imprisonment may not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, supervised release, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation.

`(2) The Attorney General is authorized to deport an alien in accordance with applicable procedures under this Act prior to the completion of a sentence of imprisonment--

`(A) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense (other than alien smuggling), and (ii) such deportation of the alien is appropriate and in the best interest of the United States; or

`(B) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense (other than alien smuggling), (ii) such deportation is appropriate and in the best interest of the State, and (iii) submits a written request to the Attorney General that such alien be so deported.

`(3) Any alien deported pursuant to this subsection shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens deported under paragraph (2).'

(b) REENTRY OF ALIEN DEPORTED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT- Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding at the end the following new subsection:

`(c) Any alien deported pursuant to section 242(h)(2) who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.'

**SEC. 439. AUTHORIZING STATE AND LOCAL LAW ENFORCEMENT OFFICIALS TO ARREST AND DETAIN CERTAIN ILLEGAL ALIENS.**

(a) IN GENERAL- Notwithstanding any other provision of law, to the extent permitted by relevant State and local law, State and local law enforcement officials are authorized to arrest and detain an individual who--

(1) is an alien illegally present in the United States; and

(2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction,

but only after the State or local law enforcement officials obtain appropriate confirmation from the Immigration and Naturalization Service of the status of such individual and only for such period of time as may be required for the Service to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.

(b) COOPERATION- The Attorney General shall cooperate with the States to assure that information in the control of the Attorney General, including information in the National Crime Information Center, that would assist State and local law enforcement officials in carrying out duties under subsection (a) is made available to such officials.

**SEC. 440. CRIMINAL ALIEN REMOVAL.**

(a) JUDICIAL REVIEW- Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a(a)(10)) is amended to read as follows:

`(10) Any final order of deportation against an alien who is deportable by reason of having committed a criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i), shall not be subject to review by any court.'

(b) FINAL ORDER OF DEPORTATION DEFINED- Section 101(a) of such Act (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

`(47)(A) The term 'order of deportation' means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

`(B) The order described under subparagraph (A) shall become final upon the earlier of--

`(i) a determination by the Board of Immigration Appeals affirming such order; or

`(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.'

(c) ARREST AND CUSTODY- Section 242(a)(2) of such Act is amended--

(1) in subparagraph (A)--

(A) by striking '(2)(A) The Attorney' and inserting '(2) The Attorney';

(B) by striking 'an aggravated felony upon' and all that follows through 'of the same offense)' and inserting 'any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i), upon release of the alien from incarceration, shall deport the alien as expeditiously as possible'; and

(C) by striking 'but subject to subparagraph (B)'; and

(2) by striking subparagraph (B).

(d) CLASSES OF EXCLUDABLE ALIENS- Section 212(c) of such Act (8 U.S.C. 1182(c)) is amended--

(1) by striking `The first sentence of this' and inserting `This'; and

(2) by striking `has been convicted of one or more aggravated felonies' and all that follows through the end and inserting `is deportable by reason of having committed any criminal offense covered in section 241(a)(2) (A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are covered by section 241(a)(2)(A)(i).`.

(e) AGGRAVATED FELONY DEFINED- Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), as amended by section 222 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416), is amended--

(1) in subparagraph (J), by inserting `, or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses),` after `corrupt organizations`;

(2) in subparagraph (K)--

(A) by striking `or' at the end of clause (i),

(B) by redesignating clause (ii) as clause (iii), and

(C) by inserting after clause (i) the following new clause:

`(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage; or`;

(3) by amending subparagraph (N) to read as follows:

`(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years`;

(4) by amending subparagraph (O) to read as follows:

`(O) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 18 months`;

(5) in subparagraph (P), by striking `15 years' and inserting `5 years', and by striking `and' at the end;

(6) by redesignating subparagraphs (O), (P), and (Q) as subparagraphs (P), (Q), and (U), respectively;

(7) by inserting after subparagraph (N) the following new subparagraph:

`(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph`; and

(8) by inserting after subparagraph (Q), as so redesignated, the following new subparagraphs:

`(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of 5 years' imprisonment or more may be imposed;

`(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which a sentence of 5 years' imprisonment or more may be imposed;

`(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and`.

(f) EFFECTIVE DATE- The amendments made by subsection (e) shall apply to convictions entered on or after the date of the enactment of this Act, except that the amendment made by subsection (e)(3) shall take effect as if included in the enactment of section 222 of the Immigration and Nationality Technical Corrections Act of 1994.

(g) DEPORTATION OF CRIMINAL ALIENS- Section 242A(a) of such Act (8 U.S.C.

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