

104TH CONGRESS
1ST SESSION

H. R. 668

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13 (legislative day, JANUARY 30), 1995

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To control crime by further streamlining deportation of
criminal aliens.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Criminal Alien Deportation Improvements Act of 1995”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Additional expansion of definition of aggravated felony.
- Sec. 3. Deportation procedures for certain criminal aliens who are not permanent residents.
- Sec. 4. Restricting the defense to exclusion based on 7 years permanent residence for certain criminal aliens.
- Sec. 5. Limitation on collateral attacks on underlying deportation order.
- Sec. 6. Criminal alien identification system.
- Sec. 7. Establishing certain alien smuggling-related crimes as RICO-predicate offenses.
- Sec. 8. Wiretap authority for alien smuggling investigations.
- Sec. 9. Expansion of criteria for deportation for crimes of moral turpitude.
- Sec. 10. Payments to political subdivisions for costs of incarcerating illegal aliens.
- Sec. 11. Miscellaneous provisions.
- Sec. 12. Construction of expedited deportation requirements.
- Sec. 13. Study of prisoner transfer treaty with Mexico.
- Sec. 14. Justice Department assistance in bringing to justice aliens who flee prosecution for crimes in the United States.
- Sec. 15. Prisoner transfer treaties.
- Sec. 16. Interior repatriation program.
- Sec. 17. Deportation of nonviolent offenders prior to completion of sentence of imprisonment.

1 **SEC. 2. ADDITIONAL EXPANSION OF DEFINITION OF AG-**
 2 **GRAVATED FELONY.**

3 (a) IN GENERAL.—Section 101(a)(43) of the Immi-
 4 gration and Nationality Act (8 U.S.C. 1101(a)(43)), as
 5 amended by section 222 of the Immigration and National-
 6 ity Technical Corrections Act of 1994 (Public Law 103-
 7 416), is amended—

8 (1) in subparagraph (J), by inserting “, or an
 9 offense described in section 1084 (if it is a second
 10 or subsequent offense) or 1955 of that title (relating
 11 to gambling offenses),” after “corrupt organiza-
 12 tions)”;

13 (2) in subparagraph (K)—

1 (A) by striking “or” at the end of clause

2 (i),

3 (B) by redesignating clause (ii) as clause

4 (iii), and

5 (C) by inserting after clause (i) the follow-
6 ing new clause:

7 “(ii) is described in section 2421,
8 2422, or 2423 of title 18, United States
9 Code (relating to transportation for the
10 purpose of prostitution) for commercial ad-
11 vantage; or”;

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

14 “(N) an offense described in paragraph
15 (1)(A) or (2) of section 274(a) (relating to alien
16 smuggling) for which the term of imprisonment
17 imposed (regardless of any suspension of im-
18 prisonment) is at least 5 years;”;

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

21 “(O) an offense (i) which either is falsely
22 making, forging, counterfeiting, mutilating, or
23 altering a passport or instrument in violation of
24 section 1543 of title 18, United States Code, or
25 is described in section 1546(a) of such title (re-

1 lating to document fraud) and (ii) for which the
2 term of imprisonment imposed (regardless of
3 any suspension of such imprisonment) is at
4 least 18 months;”

5 (5) in subparagraph (P), by striking “15 years”
6 and inserting “5 years”, and by striking “and” at
7 the end;

8 (6) by redesignating subparagraphs (O), (P),
9 and (Q) as subparagraphs (P), (Q), and (U), respec-
10 tively;

11 (7) by inserting after subparagraph (N) the fol-
12 lowing new subparagraph:

13 “(O) an offense described in section 275(a)
14 or 276 committed by an alien who was pre-
15 viously deported on the basis of a conviction for
16 an offense described in another subparagraph
17 of this paragraph;” and

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

20 “(R) an offense relating to commercial
21 bribery, counterfeiting, forgery, or trafficking in
22 vehicles the identification numbers of which
23 have been altered for which a sentence of 5
24 years’ imprisonment or more may be imposed;

1 “(S) an offense relating to obstruction of
2 justice, perjury or subornation of perjury, or
3 bribery of a witness, for which a sentence of 5
4 years’ imprisonment or more may be imposed;

5 “(T) an offense relating to a failure to ap-
6 pear before a court pursuant to a court order
7 to answer to or dispose of a charge of a felony
8 for which a sentence of 2 years’ imprisonment
9 or more may be imposed; and”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 subsection (a) shall apply to convictions entered on or
12 after the date of the enactment of this Act, except that
13 the amendment made by subsection (a)(3) shall take effect
14 as if included in the enactment of section 222 of the Immi-
15 gration and Nationality Technical Corrections Act of
16 1994.

17 **SEC. 3. DEPORTATION PROCEDURES FOR CERTAIN CRIMI-**
18 **NAL ALIENS WHO ARE NOT PERMANENT**
19 **RESIDENTS.**

20 (a) ADMINISTRATIVE HEARINGS.—Section 242A(b)
21 of the Immigration and Nationality Act (8 U.S.C.
22 1252a(b)), as added by section 130004(a) of the Violent
23 Crime Control and Law Enforcement Act of 1994 (Public
24 Law 103–322), is amended—

25 (1) in paragraph (2)—

1 (A) by striking “and” at the end of sub-
2 paragraph (A) and inserting “or”, and

3 (B) by amending subparagraph (B) to read
4 as follows:

5 “(B) had permanent resident status on a
6 conditional basis (as described in section 216)
7 at the time that proceedings under this section
8 commenced.”;

9 (2) in paragraph (3), by striking “30 calendar
10 days” and inserting “14 calendar days”;

11 (3) in paragraph (4)(B), by striking
12 “proceedings” and inserting “proceedings”;

13 (4) in paragraph (4)—

14 (A) by redesignating subparagraphs (D)
15 and (E) as subparagraphs (F) and (G), respec-
16 tively; and

17 (B) by adding after subparagraph (C) the
18 following new subparagraphs:

19 “(D) such proceedings are conducted in, or
20 translated for the alien into, a language the
21 alien understands;

22 “(E) a determination is made for the
23 record at such proceedings that the individual
24 who appears to respond in such a proceeding is
25 an alien subject to such an expedited proceed-

1 ing under this section and is, in fact, the alien
2 named in the notice for such proceeding;”.

3 (5) by adding at the end the following new
4 paragraph:

5 “(5) No alien described in this section shall be
6 eligible for any relief from deportation that the At-
7 torney General may grant in the Attorney General’s
8 discretion.”.

9 (b) LIMIT ON JUDICIAL REVIEW.—Subsection (d) of
10 section 106 of the Immigration and Nationality Act (8
11 U.S.C. 1105a), as added by section 130004(b) of the Vio-
12 lent Crime Control and Law Enforcement Act of 1994
13 (Public Law 103–322), is amended to read as follows:

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

19 (c) PRESUMPTION OF DEPORTABILITY.—Section
20 242A of the Immigration and Nationality Act (8 U.S.C.
21 1252a) is amended by inserting after subsection (b) the
22 following new subsection:

23 “(c) PRESUMPTION OF DEPORTABILITY.—An alien
24 convicted of an aggravated felony shall be conclusively pre-
25 sumed to be deportable from the United States.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to all aliens against whom deporta-
3 tion proceedings are initiated after the date of the enact-
4 ment of this Act.

5 **SEC. 4. RESTRICTING THE DEFENSE TO EXCLUSION BASED**
6 **ON 7 YEARS PERMANENT RESIDENCE FOR**
7 **CERTAIN CRIMINAL ALIENS.**

8 The last sentence of section 212(c) of the Immigra-
9 tion and Nationality Act (8 U.S.C. 1182(c)) is amended
10 by striking “has served for such felony or felonies” and
11 all that follows through the period and inserting “has been
12 sentenced for such felony or felonies to a term of imprison-
13 ment of at least 5 years, if the time for appealing such
14 conviction or sentence has expired and the sentence has
15 become final.”.

16 **SEC. 5. LIMITATION ON COLLATERAL ATTACKS ON UNDER-**
17 **LYING DEPORTATION ORDER.**

18 (a) IN GENERAL.—Section 276 of the Immigration
19 and Nationality Act (8 U.S.C. 1326) is amended by add-
20 ing at the end the following new subsection:

21 “(c) In a criminal proceeding under this section, an
22 alien may not challenge the validity of the deportation
23 order described in subsection (a)(1) or subsection (b) un-
24 less the alien demonstrates that—

1 “(1) the alien exhausted any administrative
2 remedies that may have been available to seek relief
3 against the order;

4 “(2) the deportation proceedings at which the
5 order was issued improperly deprived the alien of the
6 opportunity for judicial review; and

7 “(3) the entry of the order was fundamentally
8 unfair.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply to criminal proceedings initiated
11 after the date of the enactment of this Act.

12 **SEC. 6. CRIMINAL ALIEN IDENTIFICATION SYSTEM.**

13 Section 130002(a) of the Violent Crime Control and
14 Law Enforcement Act of 1994 (Public Law 103–312) is
15 amended to read as follows:

16 “(a) OPERATION AND PURPOSE.—The Commissioner
17 of Immigration and Naturalization shall, under the au-
18 thority of section 242(a)(3)(A) of the Immigration and
19 Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a crimi-
20 nal alien identification system. The criminal alien identi-
21 fication system shall be used to assist Federal, State, and
22 local law enforcement agencies in identifying and locating
23 aliens who may be subject to deportation by reason of
24 their conviction of aggravated felonies.”.

1 **SEC. 7. ESTABLISHING CERTAIN ALIEN SMUGGLING-RELAT-**
2 **ED CRIMES AS RICO-PREDICATE OFFENSES.**

3 Section 1961(1) of title 18, United States Code, is
4 amended—

5 (1) by inserting “section 1028 (relating to
6 fraud and related activity in connection with identi-
7 fication documents) if the act indictable under sec-
8 tion 1028 was committed for the purpose of finan-
9 cial gain,” before “section 1029”;

10 (2) by inserting “section 1542 (relating to false
11 statement in application and use of passport) if the
12 act indictable under section 1542 was committed for
13 the purpose of financial gain, section 1543 (relating
14 to forgery or false use of passport) if the act indict-
15 able under section 1543 was committed for the pur-
16 pose of financial gain, section 1544 (relating to mis-
17 use of passport) if the act indictable under section
18 1544 was committed for the purpose of financial
19 gain, section 1546 (relating to fraud and misuse of
20 visas, permits, and other documents) if the act in-
21 dictable under section 1546 was committed for the
22 purpose of financial gain, sections 1581–1588 (relat-
23 ing to peonage and slavery),” after “section 1513
24 (relating to retaliating against a witness, victim, or
25 an informant),”;

26 (3) by striking “or” before “(E)”; and

1 (4) by inserting before the period at the end the
2 following: “, or (F) any act which is indictable under
3 the Immigration and Nationality Act, section 274
4 (relating to bringing in and harboring certain
5 aliens), section 277 (relating to aiding or assisting
6 certain aliens to enter the United States), or section
7 278 (relating to importation of alien for immoral
8 purpose) if the act indictable under such section of
9 such Act was committed for the purpose of financial
10 gain”.

11 **SEC. 8. WIRETAP AUTHORITY FOR ALIEN SMUGGLING IN-**
12 **VESTIGATIONS.**

13 Section 2516(1) of title 18, United States Code, is
14 amended—

15 (1) by striking “and” at the end of paragraph
16 (n),

17 (2) by redesignating paragraph (o) as para-
18 graph (p), and

19 (3) by inserting after paragraph (n) the follow-
20 ing new paragraph:

21 “(o) a felony violation of section 1028 (relating
22 to production of false identification documents), sec-
23 tion 1542 (relating to false statements in passport
24 applications), section 1546 (relating to fraud and
25 misuse of visas, permits, and other documents) of

1 this title or a violation of section 274, 277, or 278
2 of the Immigration and Nationality Act (relating to
3 the smuggling of aliens); or”.

4 **SEC. 9. EXPANSION OF CRITERIA FOR DEPORTATION FOR**
5 **CRIMES OF MORAL TURPITUDE.**

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

9 “(II) is convicted of a crime for
10 which a sentence of one year or longer
11 may be imposed,”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall apply to aliens against whom deporta-
14 tion proceedings are initiated after the date of the enact-
15 ment of this Act.

16 **SEC. 10. PAYMENTS TO POLITICAL SUBDIVISIONS FOR**
17 **COSTS OF INCARCERATING ILLEGAL ALIENS.**

18 Amounts appropriated to carry out section 501 of the
19 Immigration Reform and Control Act of 1986 for fiscal
20 year 1995 shall be available to carry out section 242(j)
21 of the Immigration and Nationality Act in that fiscal year
22 with respect to undocumented criminal aliens incarcerated
23 under the authority of political subdivisions of a State.

1 **SEC. 11. MISCELLANEOUS PROVISIONS.**

2 (a) USE OF ELECTRONIC AND TELEPHONIC MEDIA
3 IN DEPORTATION HEARINGS.—The second sentence of
4 section 242(b) of the Immigration and Nationality Act (8
5 U.S.C. 1252(b)) is amended by inserting before the period
6 the following: “; except that nothing in this subsection
7 shall preclude the Attorney General from authorizing pro-
8 ceedings by electronic or telephonic media (with the con-
9 sent of the alien) or, where waived or agreed to by the
10 parties, in the absence of the alien”.

11 (b) CODIFICATION.—

12 (1) Section 242(i) of such Act (8 U.S.C.
13 1252(i)) is amended by adding at the end the follow-
14 ing: “Nothing in this subsection shall be construed
15 to create any substantive or procedural right or ben-
16 efit that is legally enforceable by any party against
17 the United States or its agencies or officers or any
18 other person.”.

19 (2) Section 225 of the Immigration and Nation-
20 ality Technical Corrections Act of 1994 (Public Law
21 103–416) is amended by striking “and nothing in”
22 and all that follows through “1252(i)”.

23 (3) The amendments made by this subsection
24 shall take effect as if included in the enactment of
25 the Immigration and Nationality Technical Correc-
26 tions Act of 1994 (Public Law 103–416).

1 **SEC. 12. CONSTRUCTION OF EXPEDITED DEPORTATION RE-**
2 **QUIREMENTS.**

3 No amendment made by this Act shall be construed
4 to create any substantive or procedural right or benefit
5 that is legally enforceable by any party against the United
6 States or its agencies or officers or any other person.

7 **SEC. 13. STUDY OF PRISONER TRANSFER TREATY WITH**
8 **MEXICO.**

9 (a) REPORT TO CONGRESS.—Not later than 180 days
10 after the date of the enactment of this Act, the Secretary
11 of State and the Attorney General shall submit to the Con-
12 gress a report that describes the use and effectiveness of
13 the Prisoner Transfer Treaty with Mexico (in this section
14 referred to as the “Treaty”) to remove from the United
15 States aliens who have been convicted of crimes in the
16 United States.

17 (b) USE OF TREATY.—The report under subsection
18 (a) shall include the following information:

19 (1) The number of aliens convicted of a crimi-
20 nal offense in the United States since November 30,
21 1977, who would have been or are eligible for trans-
22 fer pursuant to the Treaty.

23 (2) The number of aliens described in para-
24 graph (1) who have been transferred pursuant to the
25 Treaty.

1 (3) The number of aliens described in para-
2 graph (2) who have been incarcerated in full compli-
3 ance with the Treaty.

4 (4) The number of aliens who are incarcerated
5 in a penal institution in the United States who are
6 eligible for transfer pursuant to the Treaty.

7 (5) The number of aliens described in para-
8 graph (4) who are incarcerated in State and local
9 penal institutions.

10 (c) EFFECTIVENESS OF TREATY.—The report under
11 subsection (a) shall include the recommendations of the
12 Secretary of State and the Attorney General to increase
13 the effectiveness and use of, and full compliance with, the
14 Treaty. In considering the recommendations under this
15 subsection, the Secretary and the Attorney General shall
16 consult with such State and local officials in areas dis-
17 proportionately impacted by aliens convicted of criminal
18 offenses as the Secretary and the Attorney General con-
19 sider appropriate. Such recommendations shall address
20 the following areas:

21 (1) Changes in Federal laws, regulations, and
22 policies affecting the identification, prosecution, and
23 deportation of aliens who have committed a criminal
24 offense in the United States.

1 (2) Changes in State and local laws, regula-
2 tions, and policies affecting the identification, pros-
3 ecution, and deportation of aliens who have commit-
4 ted a criminal offense in the United States.

5 (3) Changes in the Treaty that may be nec-
6 essary to increase the number of aliens convicted of
7 crimes who may be transferred pursuant to the
8 Treaty.

9 (4) Methods for preventing the unlawful re-
10 entry into the United States of aliens who have been
11 convicted of criminal offenses in the United States
12 and transferred pursuant to the Treaty.

13 (5) Any recommendations of appropriate offi-
14 cials of the Mexican Government on programs to
15 achieve the goals of, and ensure full compliance
16 with, the Treaty.

17 (6) An assessment of whether the recommenda-
18 tions under this subsection require the renegotiation
19 of the Treaty.

20 (7) The additional funds required to implement
21 each recommendation under this subsection.

1 **SEC. 14. JUSTICE DEPARTMENT ASSISTANCE IN BRINGING**
2 **TO JUSTICE ALIENS WHO FLEE PROSECU-**
3 **TION FOR CRIMES IN THE UNITED STATES.**

4 (a) ASSISTANCE TO STATES.—The Attorney General,
5 in cooperation with the Commissioner of Immigration and
6 Naturalization and the Secretary of State, shall designate
7 an office within the Department of Justice to provide tech-
8 nical and prosecutorial assistance to States and political
9 subdivisions of States in efforts to bring to justice aliens
10 who flee prosecution for crimes in the United States.

11 (b) REPORT TO CONGRESS.—Not later than one year
12 after the date of the enactment of this Act, the Attorney
13 General shall compile and submit to the Congress a report
14 which assesses the nature and extent of the problem of
15 bringing to justice aliens who flee prosecution for crimes
16 in the United States.

17 **SEC. 15. PRISONER TRANSFER TREATIES.**

18 (a) NEGOTIATION.—Congress advises the President
19 to begin to negotiate and renegotiate, not later than 90
20 days after the date of the enactment of this Act, bilateral
21 prisoner transfer treaties. The focus of such negotiations
22 shall be to expedite the transfer of aliens unlawfully in
23 the United States who are incarcerated in United States
24 prisons, to ensure that a transferred prisoner serves the
25 balance of the sentence imposed by the United States

1 courts, and to eliminate any requirement of prisoner con-
2 sent to such a transfer.

3 (b) CERTIFICATION.—The President shall submit to
4 the Congress, annually, a certification as to whether each
5 prisoner transfer treaty in force is effective in returning
6 aliens unlawfully in the United States who have committed
7 offenses for which they are incarcerated in the United
8 States to their country of nationality for further incarcer-
9 ation.

10 **SEC. 16. INTERIOR REPATRIATION PROGRAM.**

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

20 **SEC. 17. DEPORTATION OF NONVIOLENT OFFENDERS**
21 **PRIOR TO COMPLETION OF SENTENCE OF IM-**
22 **PRISONMENT.**

23 (a) IN GENERAL.—Section 242(h) of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1252(h)) is amended
25 to read as follows:

1 “(h)(1) Except as provided in paragraph (2), an alien
2 sentenced to imprisonment may not be deported until such
3 imprisonment has been terminated by the release of the
4 alien from confinement. Parole, supervised release, proba-
5 tion, or possibility of rearrest or further confinement in
6 respect of the same offense shall not be a ground for defer-
7 ral of deportation.

8 “(2) The Attorney General is authorized to deport an
9 alien in accordance with applicable procedures under this
10 Act prior to the completion of a sentence of imprison-
11 ment—

12 “(A) in the case of an alien in the custody of
13 the Attorney General, if the Attorney General deter-
14 mines that (i) the alien is confined pursuant to a
15 final conviction for a nonviolent offense (other than
16 alien smuggling), and (ii) such deportation of the
17 alien is appropriate and in the best interest of the
18 United States; or

19 “(B) in the case of an alien in the custody of
20 a State (or a political subdivision of a State), if the
21 chief State official exercising authority with respect
22 to the incarceration of the alien determines that (i)
23 the alien is confined pursuant to a final conviction
24 for a nonviolent offense (other than alien smug-
25 gling), (ii) such deportation is appropriate and in

1 the best interest of the State, and (iii) submits a
2 written request to the Attorney General that such
3 alien be so deported.

4 “(3) Any alien deported pursuant to this subsection
5 shall be notified of the penalties under the laws of the
6 United States relating to the reentry of deported aliens,
7 particularly the expanded penalties for aliens deported
8 under paragraph (2).”.

9 (b) REENTRY OF ALIEN DEPORTED PRIOR TO COM-
10 PLETION OF TERM OF IMPRISONMENT.—Section 276 of
11 the Immigration and Nationality Act (8 U.S.C. 1326)
12 amended by adding at the end the following new sub-
13 section:

14 “(c) Any alien deported pursuant to section
15 242(h)(2) who enters, attempts to enter, or is at any time
16 found in, the United States (unless the Attorney General
17 has expressly consented to such alien’s reentry) shall be
18 incarcerated for the remainder of the sentence of impris-
19 onment which was pending at the time of deportation
20 without any reduction for parole or supervised release.
21 Such alien shall be subject to such other penalties relating

1 to the reentry of deported aliens as may be available under
2 this section or any other provision of law.''.

Passed the House of Representatives February 10,
1995.

Attest:

ROBIN H. CARLE,

Clerk.

HR 668 RFS—2