''(3) where practicable, the Federal Government should conduct screening before a passenger departs on a flight destined for the United States;

''(4) the Federal Government should work with other countries to ensure effective inspection regimes at all airports;

''(5) the Federal Government should work with other countries to improve passport standards and provide foreign assistance to countries that need help making the transition to the global standard for identification; and

''(6) the Department of Homeland Security, in coordination with the Department of State and other Federal agencies, should implement the initiatives called for in this subsection.''

§ 1226. Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) of this section and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an ''employment authorized'' endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a) of this section, rearrest the alien under the original warrant, and detain the alien.

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[1] to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

[1] So in original. Probably should be ''sentenced''.

(2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

(June 27, 1952, ch. 477, title II, ch. 4, § 236, 66 Stat. 200; Pub. L. 101–649, title V, § 504(b), title VI, § 603(a)(12), Nov. 29, 1990, 104 Stat. 5050, 5083; Pub. L. 102–232, title III, § 306(a)(5), Dec. 12, 1991, 105 Stat. 1751; Pub. L. 104–208, div. C, title III, §§ 303(a), 371(b)(5), Sept. 30, 1996, 110 Stat. 3009–585, 3009–645.)

AMENDMENTS

1996—Pub. L. 104–208, § 303(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) related to proceedings to determine whether aliens detained under section 1225 of this title should be allowed to enter or should be excluded and deported.

Subsecs. (a) to (d). Pub. L. 104–208, § 371(b)(5), substituted ''An immigration judge'' for ''A special inquiry officer'', ''an immigration judge'' for ''a special inquiry officer'', and ''immigration judge'' for ''special inquiry officer'', wherever appearing.

1991—Subsec. (e)(1). Pub. L. 102–232 substituted ''upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense)'' for ''upon completion of the alien's sentence for such conviction''.

1990—Subsec. (d). Pub. L. 101–649, § 603(a)(12), substituted ''has a disease, illness, or addiction which would make the alien excludable under paragraph (1) of section 1182(a) of this title'' for ''is afflicted with a disease specified in section 1182(a)(6) of this title, or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded from admission to the United States under paragraphs (1) to (4) or (5) of section 1182(a) of this title'' and struck out at end ''If an alien is excluded by a special inquiry officer because of the existence of a physical disease, defect, or disability, other than one specified in section 1182(a)(6) of this title, the alien may appeal from the excluding decision in accordance with subsection (b) of this section, and the provisions of section 1183 of this title may be invoked.''

Subsec. (e). Pub. L. 101–649, § 504(b), added subsec. (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 303(b) of subtitle A of title III of div. C of Pub. L. 104–208 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall become effective on the title III–A effective date [see section 309 of Pub. L. 104–208, set out as a note under section 1101 of this title].

''(2) NOTIFICATION REGARDING CUSTODY.—If the Attorney General, not later than 10 days after the date of the enactment of this Act [Sept. 30, 1996], notifies in writing the Committees on the Judiciary of the House of Representatives and the Senate that there is insufficient detention space and Immigration and Naturalization Service personnel available to carry out section 236(c) of the Immigration and Nationality Act [8 U.S.C. 1226(c)], as amended by subsection (a), or the amendments made by section 440(c) of Public Law 104–132 [amending section 1252 of this title], the provisions in paragraph (3) shall be in effect for a 1-year period beginning on the date of such notification, instead of such section or such amendments. [The Attorney General so notified the committees on Oct. 9, 1996.] The Attorney General may extend such 1-year period for an additional year if the Attorney General provides the same notice not later than 10 days before the end of the first 1-year period. After the end of such 1-year or 2-year periods, the provisions of such section 236(c) shall apply to individuals released after such periods.

''(3) TRANSITION PERIOD CUSTODY RULES.—

''(A) IN GENERAL.—During the period in which this paragraph is in effect pursuant to paragraph (2), the Attorney General shall take into custody any alien who—

''(i) has been convicted of an aggravated felony (as defined under section 101(a)(43) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(43)], as amended by section 321 of this division),

''(ii) is inadmissible by reason of having committed any offense covered in section 212(a)(2) of such Act [8 U.S.C. 1182(a)(2)],

''(iii) is deportable by reason of having committed any offense covered in section 241(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of such Act [former 8 U.S.C. 1251(a)(2)(A)(ii), (A)(iii), (B), (C), (D)] (before redesignation under this subtitle), or

''(iv) is inadmissible under section 212(a)(3)(B) of such Act or deportable under section 241(a)(4)(B) of such Act (before redesignation under this subtitle),

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

''(B) RELEASE.—The Attorney General may release the alien only if the alien is an alien described in subparagraph (A)(ii) or (A)(iii) and—

''(i) the alien was lawfully admitted to the United States and satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding, or

''(ii) the alien was not lawfully admitted to the United States, cannot be removed because the designated country of removal will not accept the alien, and satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.''

Amendment by section 371(b)(5) of Pub. L. 104–208 effective Sept. 30, 1996, see section 371(d)(1) of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 603(a)(12) of Pub. L. 101–649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101–649, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRAIGNMENT

Pub. L. 105–141, Dec. 5, 1997, 111 Stat. 2647, provided that:

''SECTION 1. PROGRAM OF IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRAIGNMENT.

''(a) ESTABLISHMENT OF PROGRAM.—Not later than 6 months after the date of the enactment of this Act [Dec. 5, 1997], and subject to such amounts as are provided in appropriations Acts, the Attorney General shall establish and implement a program to identify, from among the individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges, those individuals who are within 1 or more of the following classes of deportable aliens:

''(1) Aliens unlawfully present in the United States.

''(2) Aliens described in paragraph (2) or (4) of section 237(a) of the Immigration and Nationality Act [8 U.S.C. 1227(a)(2), (4)] (as redesignated by section 305(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

''(b) DESCRIPTION OF PROGRAM.—The program authorized by subsection (a) shall include—

''(1) the detail, to each incarceration facility selected under subsection (c), of at least one employee of the Immigration and Naturalization Service who has expertise in the identification of aliens described in subsection (a); and

''(2) provision of funds sufficient to provide for—

''(A) the detail of such employees to each selected facility on a full-time basis, including the portions of the day or night when the greatest number of individuals are incarcerated prior to arraignment;

''(B) access for such employees to records of the Service and other Federal law enforcement agencies that are necessary to identify such aliens; and

''(C) in the case of an individual identified as such an alien, pre-arraignment reporting to the court regarding the Service's intention to remove the alien from the United States.

''(c) SELECTION OF FACILITIES.—

''(1) IN GENERAL.—The Attorney General shall select for participation in the program each incarceration facility that satisfies the following requirements:

''(A) The facility is owned by the government of a local political subdivision described in clause (i) or (ii) of subparagraph (C).

''(B) Such government has submitted a request for such selection to the Attorney General.

''(C) The facility is located—

''(i) in a county that is determined by the Attorney General to have a high concentration of aliens described in subsection (a); or

''(ii) in a city, town, or other analogous local political subdivision, that is determined by the Attorney General to have a high concentration of such aliens (but only in the case of a facility that is not located in a county).

''(D) The facility incarcerates or processes individuals prior to their arraignment on criminal charges.

''(2) NUMBER OF QUALIFYING SUBDIVISIONS.—For any fiscal year, the total number of local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses shall be the following:

''(A) For fiscal year 1999, not less than 10 and not more than 25.

''(B) For fiscal year 2000, not less than 25 and not more than 50.

''(C) For fiscal year 2001, not more than 75.

''(D) For fiscal year 2002, not more than 100.

''(E) For fiscal year 2003 and subsequent fiscal years, 100, or such other number of political subdivisions as may be specified in appropriations Acts.

''(3) FACILITIES IN INTERIOR STATES.—For any fiscal year, of the local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses, not less than 20 percent shall be in States that are not contiguous to a land border.

''(4) TREATMENT OF CERTAIN FACILITIES.—All of the incarceration facilities within the county of Orange, California, and the county of Ventura, California, that are owned by the government of a local political subdivision, and satisfy the requirements of paragraph (1)(D), shall be selected for participation in the program.

''SEC. 2. STUDY AND REPORT.

''Not later than 1 year after the date of the enactment of this Act [Dec. 5, 1997], the Attorney General shall complete a study, and submit a report to the Congress, concerning the logistical and technological feasibility of implementing the program under section 1 in a greater number of locations than those selected under such section through—

''(1) the assignment of a single Immigration and Naturalization Service employee to more than 1 incarceration facility; and

''(2) the development of a system to permit the Attorney General to conduct off-site verification, by computer or other electronic means, of the immigration status of individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges.''

CRIMINAL ALIEN TRACKING CENTER

Section 130002 of Pub. L. 103–322, as amended by Pub. L. 104–132, title IV, § 432, Apr. 24, 1996, 110 Stat. 1273; Pub. L. 104–208, div. C, title III, §§ 308(g)(5)(B), 326, 327, Sept. 30, 1996, 110 Stat. 3009–623, 3009–630, provided that:

''(a) OPERATION AND PURPOSE.—The Commissioner of Immigration and Naturalization shall, under the authority of section 236(d) of the Immigration and Nationality Act [8 U.S.C. 1226(d)] 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 removal by reason of their conviction of aggravated felonies, subject to prosecution under section 275 of such Act [8 U.S.C. 1325], not lawfully present in the United States, or otherwise removable. Such system shall include providing for recording of fingerprint records of aliens who have been previously arrested and removed into appropriate automated fingerprint identification systems.

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

''(1) $3,400,000 for fiscal year 1996; and

''(2) $5,000,000 for each of fiscal years 1997 through 2001.''

§ 1226a. Mandatory detention of suspected terrorists; habeas corpus; judicial review

(a) Detention of terrorist aliens

(1) Custody

The Attorney General shall take into custody any alien who is certified under paragraph (3).

(2) Release

Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3). If the alien is finally determined not to be removable, detention pursuant to this subsection shall terminate.

(3) Certification

The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien—

(A) is described in section 1182(a)(3)(A)(i), 1182(a)(3)(A)(iii), 1182(a)(3)(B), 1227(a)(4)(A)(i), 1227(a)(4)(A)(iii), or 1227(a)(4)(B) of this title; or

(B) is engaged in any other activity that endangers the national security of the United States.

(4) Nondelegation

The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

(5) Commencement of proceedings

The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the requirement of the preceding sentence is not