

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2836

To improve the admissions process at airports and other ports of entry, to strengthen criminal sanctions for alien smuggling and related criminal activities, and to enhance the investigatory authority of the Immigration and Naturalization Service.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1993

Mr. BROOKS (for himself and Mr. MAZZOLI) (both by request) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To improve the admissions process at airports and other ports of entry, to strengthen criminal sanctions for alien smuggling and related criminal activities, and to enhance the investigatory authority of the Immigration and Naturalization Service.

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 “Expedited Exclusion  
5       and Alien Smuggling Enhanced Penalties Act of 1993”.

1 **SEC. 2. RESTRICTIONS ON ADMISSIONS FRAUD.**

2 (a) EXCLUSION FOR FRAUDULENT DOCUMENTS OR  
3 FAILURE TO PRESENT DOCUMENTS.—Section  
4 212(a)(6)(C) of the Immigration and Nationality Act (8  
5 U.S.C. 1182(a)(6)(C)) is amended)—

6 (1) by striking out “(C) MISREPRESENTATION”  
7 and inserting in lieu thereof the following:

8 “(C) FRAUD, MISREPRESENTATION, AND  
9 FAILURE TO PRESENT DOCUMENTS”; and

10 (2) by adding at the end the following new  
11 clause:

12 “(iii) FRAUD, MISREPRESENTATION,  
13 AND FAILURE TO PRESENT DOCUMENTS:

14 “(I) Any alien who, in seeking  
15 entry to the United States or board-  
16 ing a common carrier for the purpose  
17 of coming to the United States pre-  
18 sents any document which, in the de-  
19 termination of the immigration offi-  
20 cer, is forged, counterfeit, altered,  
21 falsely made, stolen, or inapplicable to  
22 the person presenting the document,  
23 or otherwise contains a misrepresenta-  
24 tion of a material fact, is excludable.

25 “(II) Any alien who is required  
26 to present a document relating to the

1 alien's eligibility to enter the United  
2 States prior to boarding a common  
3 carrier for the purpose of coming to  
4 the United States and who fails to  
5 present such document to an immi-  
6 gration officer upon arrival at a port  
7 of entry into the United States is ex-  
8 cludable.”.

9 (b) PROVISION FOR ASYLUM AND OTHER DISCRE-  
10 TIONARY RELIEF.

11 (1) Section 208 of the Immigration and Nation-  
12 ality Act (8 U.S.C. 1158) is amended by adding at  
13 the end the following new subsection:

14 “(e)(1) Notwithstanding subsection (a), any alien  
15 who, in seeking entry to the United States or boarding  
16 a common carrier for the purpose of coming to the United  
17 States, presents any document which, in the determination  
18 of the immigration officer, is fraudulent, forged, stolen,  
19 or inapplicable to the person presenting the document, or  
20 otherwise contains a misrepresentation of a material fact,  
21 may not apply for or be granted asylum, unless presen-  
22 tation of the document was pursuant to direct departure  
23 from a country in which the alien has a credible fear of  
24 persecution or of return to persecution.

1       “(2) Notwithstanding subsection (a), an alien who  
2 boards a common carrier for the purpose of coming to the  
3 United States through the presentation of any document  
4 which relates or purports to relate to the alien’s eligibility  
5 to enter the United States, and who fails to present such  
6 document to an immigration officer upon arrival at a port  
7 of entry into the United States, may not apply for or be  
8 granted asylum, unless presentation of such document was  
9 pursuant to direct departure from a country in which the  
10 alien has a credible fear of persecution or of return to per-  
11 secution.

12       “(3) Notwithstanding subsection (a), an alien de-  
13 scribed in section 235(d)(3) may not apply for or be grant-  
14 ed asylum, unless the person departed directly from a  
15 country in which the alien has a credible fear of persecu-  
16 tion or of return to persecution.

17       “(4) Notwithstanding paragraphs (1), (2), and (3),  
18 the Attorney General may, in the Attorney General’s sole  
19 discretion, permit an alien described in paragraphs (1),  
20 (2), or (3) to apply for asylum.

21       “(5)(A) When an immigration officer has determined  
22 that an alien has sought entry under either of the cir-  
23 cumstances described in paragraphs (1) or (2) or is an  
24 alien described in section 235(d)(3) and the alien has indi-  
25 cated a desire to apply for asylum, the immigration officer

1 shall refer the matter to an asylum officer who shall inter-  
2 view the alien to determine whether presentation of the  
3 document was pursuant to direct departure from a coun-  
4 try in which the alien has a credible fear of persecution  
5 or of return to persecution, or, in the case of an alien de-  
6 scribed in section 235(d)(3), whether the alien had directly  
7 departed from such a country.

8       “(B) If the officer determines that the alien does not  
9 have a credible fear of persecution or of return to persecu-  
10 tion in the country in which the alien was last present  
11 prior to attempting entry into the United States or arriv-  
12 ing in the United States or a port of entry under the cir-  
13 cumstances described in section 235(d)(3), the alien may  
14 be specially excluded and deported in accordance with sec-  
15 tion 235(e).

16       “(C) The Attorney General shall provide by regula-  
17 tion for the prompt review of a determination under sub-  
18 paragraph (B) that an alien does not have a credible fear  
19 of persecution or of return to persecution in the country  
20 in which the alien was last present. Such review shall be  
21 by an officer who shall possess qualifications at least  
22 equivalent to those of an asylum officer, who shall be em-  
23 ployed by an agency or division independent of the Service,  
24 and who shall have discretion to review any aspect of the  
25 initial determination. The Attorney General shall provide

1 for such special training for reviewing officers as the At-  
2 torney General may deem necessary.

3 “(D) The Attorney General shall provide information  
4 concerning the credible fear determination process de-  
5 scribed in this paragraph to persons who may be eligible  
6 for that process under the provisions of this subsection.  
7 An alien who is eligible for a credible fear determination  
8 pursuant to subparagraph (A) may consult with a person  
9 or persons of his or her choosing prior to the credible fear  
10 determination process or any review thereof, according to  
11 regulations prescribed by the Attorney General. Such con-  
12 sultation shall be at no expense to the Government and  
13 shall not delay the process.

14 “(6) As used in this section, the term ‘credible fear  
15 of persecution or of return to persecution’ means that  
16 there is a substantial likelihood—

17 “(A) that the statements made by the alien in  
18 support of his or her claim are true; and

19 “(B) in light of such statements and country  
20 conditions,

21 “(i) that the alien could establish eligibility  
22 as a refugee within the meaning of section  
23 101(a)(42)(A); or

24 “(ii) that the alien could be returned, with-  
25 out access to a full and fair procedure for refu-

1           gee status determination, to a country with re-  
2           spect to which there is a substantial likelihood  
3           that he or she could establish eligibility as a  
4           refugee within the meaning of section  
5           101(a)(42)(A).

6           “(7) As used in this subsection, the term ‘asylum offi-  
7 cer’ means a person who—

8           “(A) has had extensive professional training in  
9           country conditions, asylum law, and interview tech-  
10          niques;

11          “(B) has been employed for at least one year in  
12          a position the primary responsibility of which is the  
13          adjudication of asylum claims or who has substan-  
14          tially equivalent experience; and

15          “(C) is supervised by an officer who meets con-  
16          ditions (A) and (B) above.”.

17          (2) Section 235 of the Immigration and Nation-  
18          ality Act (8 U.S.C. 1225) is amended by adding at  
19          the end the following new subsection:

20          “(d)(1) Subject to paragraph (2), any alien who has  
21          not been admitted to the United States, and who is exclud-  
22          able under section 212(a)(6)(C)(iii), or who is an alien de-  
23          scribed in paragraph (3), is ineligible for withholding of  
24          deportation pursuant to section 243(h), and may not apply  
25          therefor or for any other relief under this Act, except that

1 an alien found to have a credible fear of persecution or  
2 of return to persecution in accordance with section 208(e)  
3 shall be taken before a special inquiry officer for exclusion  
4 proceedings in accordance with section 236 and may apply  
5 for asylum, withholding of deportation, or both in the  
6 course of such proceedings.

7       “(2) An alien described in paragraph (1) who has  
8 been found ineligible to apply for asylum under section  
9 208(e) may be returned under the provisions of this sec-  
10 tion only to a country in which he or she has no credible  
11 fear of persecution or of return to persecution. If there  
12 is no country to which the alien can be returned in accord-  
13 ance with the provisions of this paragraph, the alien shall  
14 be taken before a special inquiry officer for exclusion pro-  
15 ceedings in accordance with section 236 and may apply  
16 for asylum, withholding of deportation, or both in the  
17 course of such proceedings.

18       “(3) Any alien who is excludable under section  
19 212(a), and who has been brought or escorted under the  
20 authority of the United States: (a) into the United States,  
21 having been on board a vessel encountered seaward of the  
22 territorial sea by officers of the United States, or (b) to  
23 a port of entry, having been on board a vessel encountered  
24 within the territorial sea or internal waters of the United  
25 States, shall either be detained on board the vessel on



1 which such person arrived or in such facilities as are des-  
 2 ignated by the Attorney General or paroled in the discre-  
 3 tion of the Attorney General pursuant to section 212(d)(5)  
 4 pending accomplishment of the purpose for which the per-  
 5 son was brought or escorted into the United States or to  
 6 the port of entry: *Provided, however,* That no alien shall  
 7 be detained on board a public vessel of the United States  
 8 without the concurrence of the Secretary of the Depart-  
 9 ment under whose authority the vessel is operating.”.

10 (3) Section 237(a) of the Immigration and Na-  
 11 tionality Act (8 U.S.C. 1227(a)) is amended—

12 (A) in the second sentence of paragraph  
 13 (1) by striking out “Deportation” and inserting  
 14 in lieu thereof “Subject to section 235(d)(2),  
 15 deportation”; and

16 (B) in the first sentence of paragraph (2)  
 17 by striking out “If” and inserting in lieu there-  
 18 of “Subject to section 235(d)(2), if”.

19 **SEC. 3. SPECIAL PORT OF ENTRY EXCLUSION FOR ADMIS-**  
 20 **SIONS FRAUD.**

21 Section 235 of the Immigration and Nationality Act  
 22 (8 U.S.C. 1225) is amended by adding after subsection  
 23 (d) the following new subsection:

24 “(e)(1) Subject to paragraph (d)(2), any alien (in-  
 25 cluding an alien crewman) who—

1           “(A) may appear to the examining immigration  
2           officer or to the special inquiry officer during the ex-  
3           amination before either of such officers to be exclud-  
4           able under section 212(a)(6)(C)(iii) of the Immigra-  
5           tion and Nationality Act may be ordered specially  
6           excluded and deported by the Attorney General, ei-  
7           ther by a special inquiry officer or otherwise.

8           “(B) was brought to the United States pursu-  
9           ant to subsection (d)(3) and who may appear to an  
10          examining immigration officer to be excludable may  
11          be ordered specially excluded and deported by the  
12          Attorney General without any further inquiry, either  
13          by a special inquiry officer or otherwise.

14          “(2) Such special exclusion order is not subject to  
15          administrative appeal, except that the Attorney General  
16          shall provide by regulation for prompt review of such an  
17          order against an applicant who claims to have been law-  
18          fully admitted for permanent residence. A special exclu-  
19          sion order entered in accordance with the provisions of  
20          this subsection shall have the same effect as if the alien  
21          had been ordered excluded and deported pursuant to sec-  
22          tion 236, except that judicial review of such an order shall  
23          be available only under section 106.

1 “(3) Nothing in this subsection shall be regarded as  
2 requiring an inquiry before a special inquiry officer in the  
3 case of an alien crewman.”.

4 **SEC. 4. JUDICIAL REVIEW.**

5 (a) Section 106 of the Immigration and Nationality  
6 Act (8 U.S.C. 1105a) is amended by changing the heading  
7 to read “JUDICIAL REVIEW OF ORDERS OF DEPORTATION  
8 AND EXCLUSION, AND SPECIAL EXCLUSION”, and by add-  
9 ing at the end the following new subsection:

10 “(d)(1) Notwithstanding any other provision of law,  
11 and except as provided in this subsection, no court shall  
12 have jurisdiction to review any individual determination,  
13 or to entertain any other cause or claim, arising from or  
14 relating to the implementation or operation of the special  
15 exclusion provisions contained in sections 208(e),  
16 212(a)(6)(C)(iii), 235(d), and 235(e). Regardless of the  
17 nature of the action or claim, or the party or parties bring-  
18 ing the action, no court shall have jurisdiction or authority  
19 to enter declaratory, injunctive, or other equitable relief  
20 not specifically authorized in this subsection, nor to certify  
21 a class under Rule 23 of the Federal Rules of Civil Proce-  
22 dure.

23 “(2) Judicial review of any cause, claim, or individual  
24 determination covered under paragraph (d)(1) shall only  
25 be available in habeas corpus proceedings, and shall be

1 limited to determinations of: (i) whether the petitioner is  
2 an alien, if the petitioner makes a showing that his or her  
3 claim of United States nationality is not frivolous; (ii)  
4 whether the petitioner was ordered specially excluded; and  
5 (iii) whether the petitioner can prove by a preponderance  
6 of the evidence that he or she is an alien lawfully admitted  
7 for permanent residence and is entitled to such further  
8 inquiry as is prescribed by the Attorney General pursuant  
9 to section 235(e)(2).

10 “(3) In any case where the court determines that an  
11 alien was not ordered specially excluded, or was not prop-  
12 erly subject to special exclusion under the regulations  
13 adopted by the Attorney General, the court may order no  
14 relief beyond requiring that the alien receive a hearing in  
15 accordance with section 236, or a determination in accord-  
16 ance with section 235(c) or 273(d). Any alien excludable  
17 under section 212(a)(6)(C)(iii) who receives a hearing  
18 under section 236, whether by order of court or otherwise,  
19 may thereafter obtain judicial review of any resulting final  
20 order of exclusion pursuant to subsection (b).

21 “(4) In determining whether an alien has been or-  
22 dered specially excluded, the court’s inquiry shall be lim-  
23 ited to whether such an order was in fact issued and  
24 whether it relates to the petitioner. There shall be no re-  
25 view of whether the alien is actually excludable under

1 section 212(a)(6)(C)(iii) or entitled to any relief from  
2 exclusion.”.

3 (b) Section 235 of the Immigration and Nationality  
4 Act (8 U.S.C. 1225) is amended by adding after sub-  
5 section (e) the following new subsection:

6 “(f) In any action brought for the assessment of pen-  
7 alties for improper entry or re-entry of an alien under sec-  
8 tions 275 and 276 of the Immigration and Nationality  
9 Act, no court shall have jurisdiction to hear claims collat-  
10 erally attacking the validity of orders of exclusion, special  
11 exclusion, or deportation entered under sections 235, 236,  
12 and 242 of the Immigration and Nationality Act.”.

13 **SEC. 5. IMMIGRATION INSPECTION FEE INCREASE.**

14 (a) Section 286(d) of the Immigration and National-  
15 ity Act (8 U.S.C. 1356) is amended—

16 (1) by striking out “\$5” and inserting in lieu  
17 thereof “\$6”; and

18 (2) by adding at the end of the subsection  
19 “*Provided*, That this subsection shall not apply to  
20 the inspection at designated ports of entry of pas-  
21 sengers arriving by international ferries or vessels on  
22 the Great Lakes and connecting waterways, when  
23 operating on regular schedules.”.

1 (b) Section 286(e) of the Immigration and National-  
2 ity Act (8 U.S.C. 1356) is amended by striking out para-  
3 graph (1) and “(2)”.

4 **SEC. 6. ENHANCED PENALTIES FOR CERTAIN ALIEN SMUG-**  
5 **GLING.**

6 (a) Section 274(a)(1) of the Immigration and Nation-  
7 ality Act (8 U.S.C. 1324(a)(1)) is amended by striking  
8 out “shall be fined in accordance with title 18, or impris-  
9 oned not more than five years, or both, for each alien in  
10 respect to whom any violation of this paragraph occurs”  
11 and inserting in lieu thereof “shall, for each alien in re-  
12 spect to whom any violation of this paragraph occurs, be  
13 fined in accordance with title 18 or (i) in the case of a  
14 violation of subparagraph (A), imprisoned for not more  
15 than ten years, or both, and (ii) in the case of a violation  
16 of subparagraphs (B), (C), or (D), imprisoned for not  
17 more than five years, or both: *Provided*, That if during  
18 and in relation to the offense the person causes serious  
19 bodily injury (as defined in section 1365 of title 18) to,  
20 or places in jeopardy the life of, any alien, such person  
21 shall be fined in accordance with title 18, or imprisoned  
22 not more than twenty years, or both, and if the death of  
23 any alien results, shall be imprisoned for any term of years  
24 up to life.”.

1 (b) Section 274(a)(2) of the Immigration and Nation-  
2 ality Act (8 U.S.C. 1324(a)(2)) is amended by striking  
3 out “or imprisoned not more than five years, or both” and  
4 inserting in lieu thereof “or, in the case of a violation of  
5 subparagraph (B)(ii), imprisoned not more than ten years,  
6 or both; and, in the case of a violation of subparagraph  
7 (B)(i) or (B)(iii), imprisoned not more than five years, or  
8 both.”.

9 (c) Section 1324 of title 8 of the United States Code  
10 is amended by adding at the end the following new sub-  
11 section:

12 “(d) CONSPIRACY.—Whoever conspires to commit  
13 any offense defined in this section shall be subject to the  
14 same penalties as those prescribed for the offense the com-  
15 mission of which was the object of the conspiracy.”.

16 **SEC. 7. SENTENCING GUIDELINES.**

17 The United States Sentencing Commission shall  
18 promptly promulgate, pursuant to 28 United States Code  
19 994, amendments to the sentencing guidelines to make ap-  
20 propriate increases in the base offense level for offenses  
21 under section 274 of the Immigration and Nationality Act  
22 to reflect the increases in maximum penalties for such of-  
23 fenses in section 6 of this Act.

1 **SEC. 8. EXPANSION OF FORFEITURE PROVISIONS.**

2 Section 274(b) of the Immigration and Nationality  
3 Act of 1952, as amended (8 U.S.C. 1324(b)) is amend-  
4 ed—

5 (a) by amending paragraph (1) to read:

6 “(b) SEIZURE AND FORFEITURE.—(1) The following  
7 property shall be subject to seizure and forfeiture: (i) any  
8 conveyance, including any vessel, vehicle, or aircraft,  
9 which has been or is being used in the commission of a  
10 violation of subsection (a); (ii) any property, real or per-  
11 sonal, (A) which constitutes, or is derived from or trace-  
12 able to the proceeds obtained directly or indirectly from  
13 the commission of a violation of subsection (a), or (B)  
14 which is used to facilitate, or is intended to be so used  
15 in the commission of, a violation of subparagraph  
16 (a)(1)(A), except that—

17 “(A) no property used by any person as a com-  
18 mon carrier in the transaction of business as a com-  
19 mon carrier shall be forfeited under this section, un-  
20 less the owner or other person with lawful custody  
21 of the property was a consenting party to or privy  
22 to the violation of subsection (a) or of sections  
23 274A(a)(1) or 274A(a)(2);

24 “(B) no property shall be forfeited under the  
25 provisions of this section by reason of any act or  
26 omission established by the owner to have been com-



1       mitted or omitted by a person other than the owner  
2       while the property was unlawfully in the possession  
3       of a person other than the owner in violation of the  
4       criminal laws of the United States, or of any State;  
5       and

6               “(C) no property shall be forfeited under the  
7       provisions of this section to the extent of an interest  
8       of the owner, by reason of any act or omission estab-  
9       lished by the owner to have been committed or omit-  
10      ted without the knowledge, consent, or willful blind-  
11      ness of the owner unless the act or omission was  
12      committed or omitted by an employee or agent of  
13      the owner or other person with lawful custody of the  
14      property, with the intent of furthering the business  
15      interests of, or to confer any other benefit upon, the  
16      owner or other person with lawful custody of the  
17      property.”;

18      (b) in paragraph (2)—

19              (1) by striking out “conveyance” both places it  
20      appears and inserting in lieu thereof “property”;  
21      and

22              (2) by striking out “is being used in” and in-  
23      serting in lieu thereof “is being used in, is facilitat-  
24      ing, has facilitated, is facilitating or was intended to  
25      facilitate”; and

1 (c) in paragraphs (4) and (5) by striking out “a con-  
2 veyance” and “conveyance” each place the phrase or word  
3 appears and inserting in lieu thereof “property”.

4 **SEC. 9. WIRETAP AUTHORITY FOR ALIEN SMUGGLING IN-**  
5 **VESTIGATIONS.**

6 Section 2516(1) of title 18, United State Code, is  
7 amended—

8 (a) in paragraph (c) by inserting after “weap-  
9 ons),” the following: “or a felony violation of section  
10 1028 (relating to production of false identification  
11 documentation), section 1542 (relating to false  
12 statements in passport applications), section 1546  
13 (relating to fraud and misuse of visas, permits, and  
14 other documents),”;

15 (b) by striking out “or” after paragraph (l) and  
16 redesignating paragraphs (m), (n), and (o) as para-  
17 graphs (n), (o), and (p), respectively; and

18 (c) by inserting after paragraph (l) the follow-  
19 ing new paragraph:

20 “(m) a violation of section 274 of the Immigration  
21 and Nationality Act (8 U.S.C. 1324) (relating to alien  
22 smuggling), of section 277 of the Immigration and Nation-  
23 ality Act (8 U.S.C. 1327) (relating to the smuggling of  
24 aliens convicted of aggravated felonies or of aliens subject  
25 to exclusion on grounds of national security), or of section

1 278 of the Immigration and Nationality Act (8 U.S.C.  
2 1328) (relating to smuggling of aliens for the purpose of  
3 prostitution or other immoral purpose);”.

4 **SEC. 10. RACKETEERING INFLUENCED AND CORRUPT OR-**  
5 **GANIZATIONS ENFORCEMENT AUTHORITY.**

6 Section 1961(1) of title 18, United States Code, is  
7 amended by striking out “or” before “(E) any act” and  
8 adding after “Currency and Foreign Transactions Report-  
9 ing Act” the following: “, or (F) any act which is indict-  
10 able under title 8, United States Code, section 1324(a)(1)  
11 (dealing with prohibitions on bringing in and harboring  
12 certain aliens)”.

13 **SEC. 11. INTERNATIONAL TERRORISM AWARDS.**

14 Section 524(c)(1)(B) of title 28, United States Code,  
15 is amended by inserting “, or relating to international ter-  
16 rorism as authorized by sections 3071 and 3072 of title  
17 18” at the end thereof.

18 **SEC. 12. EFFECTIVE DATE.**

19 These amendments shall be effective upon enactment  
20 or October 1, 1993, whichever occurs later, and shall apply  
21 to aliens who arrive in or seek admission to the United  
22 States on or after such date. Notwithstanding any other  
23 provision of law, the Attorney General may issue interim  
24 final regulations to implement the provisions of these  
25 amendments at any time on or after their effective date,

- 1 which regulations may become effective upon publication
- 2 without prior notice or opportunity for public comment.

○

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