

103D CONGRESS
1ST SESSION

S. 1196

To amend the Immigration and Nationality Act to increase criminal penalties for persons smuggling aliens into the United States.

IN THE SENATE OF THE UNITED STATES

JULY 1 (legislative day, JUNE 30), 1993

Mr. SIMPSON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to increase criminal penalties for persons smuggling aliens into the United States.

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 “Alien Smuggling
5 Control Act of 1993”.

6 **TITLE I—CRIMINAL PENALTIES**

7 **SEC. 101. INCREASED PENALTIES FOR ALIEN SMUGGLING.**

8 Section 274(a) of the Immigration and Nationality
9 Act (8 U.S.C. 1324(a)) is amended—

10 (1) in paragraph (1)—

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

3 (B) by striking the comma at the end of
4 subparagraph (D) and all that follows through
5 the period and inserting “; or”; and

6 (C) by adding at the end the following:

7 “(E) engages in any conspiracy to commit any
8 of the preceding acts, or aids or abets the commis-
9 sion of any of the preceding acts,
10 shall be fined under title 18, United States Code, and shall
11 be imprisoned not less than 3 nor more than 10 years,
12 for each alien with respect to whom any violation of this
13 paragraph occurs.”; and

14 (2) by adding at the end the following new
15 paragraphs:

16 “(3) Any person who commits an act described in
17 paragraph (1) who willfully subjects any alien to a sub-
18 stantial risk of death or serious bodily harm shall be sub-
19 ject to a term of imprisonment of not less than 3 nor more
20 than 10 years in addition to any term of imprisonment
21 imposed under that paragraph.

22 “(4) Any person who in the perpetration of, or in the
23 attempt to perpetrate, any violation of paragraph (1),
24 causes the death of an alien shall be subject to the penalty

1 of death, or life imprisonment, subject to appropriate pro-
2 cedures under chapter 228 of title 18, United States Code.

3 “(5) Any person who hires for employment an alien—

4 “(A) knowing that such alien is an unauthor-
5 ized alien (as defined in section 274A(h)(3)), and

6 “(B) knowing that such alien has been brought
7 into the United States in violation of this subsection,
8 shall be fined under title 18, United States Code, and shall
9 be imprisoned for not less than 2 nor more than 5 years.”.

10 **SEC. 102. SMUGGLING ALIENS FOR COMMISSION OF**
11 **CRIMES.**

12 Section 274(a)(2) of the Immigration and Nationality
13 Act (8 U.S.C. 1324(a)(2)) is amended—

14 (1) in subparagraph (B)—

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

16 (ii);

17 (B) by redesignating clause (iii) as clause

18 (iv); and

19 (C) by inserting after clause (ii) the follow-
20 ing:

21 “(iii) an offense committed with the
22 intent that the alien unlawfully brought
23 into the United States will commit an of-
24 fense against the United States punishable
25 for more than 1 year, including violations

1 of or attempted violations of or aiding and
2 abetting violations of or conspiring to vio-
3 late the Controlled Substances Act (21
4 U.S.C. 802) or laws against prostitution,
5 importation of aliens for immoral purposes,
6 trafficking in firearms, money laundering,
7 gang activities, kidnapping or ransom de-
8 mands, fraudulent documents, or extortion,
9 the smuggling of known or suspected ter-
10 rorists or persons involved in organized
11 crime,”; and

12 (2) at the end thereof, by striking “be fined”
13 and all that follows through the period and inserting
14 the following: “be fined under title 18, United States
15 Code, and shall be imprisoned not less than 3 nor
16 more than 10 years.”.

17 **SEC. 103. ADDING ALIEN SMUGGLING TO RICO.**

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

20 (1) by striking “or” after “law of the United
21 States,”;

22 (2) by inserting “or” at the end of subpara-
23 graph (E); and

24 (3) by adding at the end the following:

1 “(F) any act in violation of section 274 of the
2 Immigration and Nationality Act.”.

3 **SEC. 104. EXPANDED FORFEITURE FOR SMUGGLING OR**
4 **HARBORING ILLEGAL ALIENS.**

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

7 (1) by amending paragraph (1) to read as fol-
8 lows:

9 “(b) SEIZURE AND FORFEITURE.—(1) Any property,
10 real or personal, which facilitates or is intended to facili-
11 tate, or which has been used in or is intended to be used
12 in the commission of a violation of subsection (a) or of
13 sections 274A(a)(1) or 274A(a)(2), or which constitutes
14 or is derived from or traceable to the proceeds obtained
15 directly or indirectly from a commission of a violation of
16 subsection (a), shall be subject to seizure and forfeiture,
17 except that—

18 “(A) no property, used by any person as a com-
19 mon carrier in the transaction of business as a com-
20 mon carrier shall be forfeited under the provisions of
21 this section unless it shall appear that the owner or
22 other person in charge of such property was a con-
23 senting party or privy to the illegal act;

24 “(B) no property shall be forfeited under the
25 provisions of this section by reason of any act or

1 omission established by the owner thereof to have
2 been committed or omitted by any person other than
3 such owner while such property was unlawfully in
4 the possession of a person other than the owner in
5 violation of the criminal laws of the United States
6 or of any State; and

7 “(C) no property shall be forfeited under this
8 paragraph to the extent of an interest of any owner,
9 by reason of any act or omission established by that
10 owner to have been committed or omitted without
11 the knowledge or consent of the owner, unless such
12 action or omission was committed by an employee or
13 agent of the owner, and facilitated or was intended
14 to facilitate, or was used in or intended to be used
15 in, the commission of a violation of subsection (a) or
16 of section 274A(a)(1) or 274A(a)(2) which was com-
17 mitted by the owner or which intended to further the
18 business interests of the owner, or to confer any
19 other benefit upon the owner.”.

20 (2) in paragraph (2)—

21 (A) by striking “conveyance” both places it
22 appears and inserting in lieu thereof “prop-
23 erty”; and

24 (B) by striking “is being used in” and in-
25 serting in lieu thereof “is being used in, is fa-

1 cilitating, has facilitated, or was intended to fa-
2 cilitate”;

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

7 (4) in paragraph (4) by—

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

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

12 (C) by inserting at the end the following
13 new subparagraph:

14 “(E) transfer custody and ownership of
15 forfeited property to any Federal, State, or
16 local agency pursuant to the Tariff Act of
17 1930, as amended (19 U.S.C. 1616a(c)).”.

18 **SEC. 105. EXPANSION IN DEFINITION OF “AGGRAVATED**
19 **FELONY”.**

20 (a) EXPANSION IN DEFINITION.—Section 101(a)(43)
21 of the Immigration and Nationality Act (8 U.S.C.
22 1101(a)(43)) is amended to read as follows:

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

24 “(A) murder;

1 “(B) any illicit trafficking in any con-
2 trolled substance (as defined in section 102 of
3 the Controlled Substances Act), including any
4 drug trafficking crime as defined in section
5 924(c) of title 18, United States Code;

6 “(C) any illicit trafficking in any firearms
7 or destructive devices as defined in section 921
8 of title 18, United States Code, or in explosive
9 materials as defined in section 841(c) of title
10 18, United States Code;

11 “(D) any offense described in (i) section
12 1956 of title 18, United States Code (relating
13 to laundering of monetary instruments) or (ii)
14 section 1957 of such title (relating to engaging
15 in monetary transactions in property derived
16 from specific unlawful activity) if the value of
17 the funds exceeded \$100,000;

18 “(E) any offense described in—

19 “(i) subsections (h) or (i) of section
20 842, title 18, United States Code, or sub-
21 section (d), (e), (f), (g), (h), or (i) of sec-
22 tion 844 of title 18, United States Code
23 (relating to explosive materials offenses),

24 “(ii) paragraph (1), (2), (3), (4), or
25 (5) of section 922(g), or section 922(j),

1 section 922(n), section 922(o), section
2 922(p), section 922(r), section 924(b), or
3 section 924(h) of title 18, United States
4 Code (relating to firearms offenses), or

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

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

13 “(G) any theft offense (including receipt of
14 stolen property) or any burglary offense, where
15 a sentence of 5 years imprisonment or more
16 may be imposed;

17 “(H) any offense described in section 875,
18 section 876, section 877, or section 1202 of
19 title 18, United States Code (relating to the de-
20 mand for or receipt of ransom);

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

24 “(J) any offense described in—

1 “(i) section 1962 of title 18, United
2 States Code (relating to racketeer influ-
3 enced corrupt organizations), or

4 “(ii) section 1084 (if it is a second or
5 subsequent offense) or section 1955 of
6 such title (relating to gambling offenses),
7 where a sentence of 5 years imprisonment or
8 more may be imposed;

9 “(K) any offense relating to commercial
10 bribery, counterfeiting, forgery or trafficking in
11 vehicles whose identification numbers have been
12 altered, where a sentence of 5 years imprison-
13 ment or more may be imposed;

14 “(L) any offense—

15 “(i) relating to the owning, control-
16 ling, managing or supervising of a pros-
17 titution business,

18 “(ii) described in section 2421, section
19 2422, or section 2423 of title 18, United
20 States Code (relating to transportation for
21 the purpose of prostitution) for commercial
22 advantage, or

23 “(iii) described in sections 1581
24 through 1585, or section 1588, of title 18,

1 United States Code (relating to peonage,
2 slavery, and involuntary servitude);

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

6 “(N) any offense described in—

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

14 “(ii) section 421 of title 50, United
15 States Code (relating to protecting the
16 identity of undercover intelligence agents);

17 “(O) any offense—

18 “(i) involving fraud or deceit where
19 the loss to the victim or victims exceeded
20 \$200,000; or

21 “(ii) described in section 7201 of title
22 26, United States Code (relating to tax
23 evasion), where the tax loss to the Govern-
24 ment exceeds \$200,000;

1 “(P) any offense described in section
2 274(a)(1) of title 18, United States Code (relat-
3 ing to alien smuggling) for the purpose of com-
4 mercial advantage;

5 “(Q) any violation of section 1546(a) of
6 title 18, United States Code (relating to docu-
7 ment fraud), for the purpose of commercial ad-
8 vantage; or

9 “(R) any offense relating to failing to ap-
10 pear before a court pursuant to a court order
11 to answer to or dispose of a charge of a felony,
12 where a sentence of 2 years or more may be
13 imposed;

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

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

1 **SEC. 106. DEPORTATION PROCEDURES FOR CERTAIN**
2 **CRIMINAL ALIENS WHO ARE NOT PERMA-**
3 **NENT RESIDENTS.**

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

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

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

17 “(2) An alien is described in this paragraph if
18 the alien—

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

22 “(B) had permanent resident status on a
23 conditional basis (as described in section 216)
24 at the time that proceedings under this section
25 commenced.

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

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

6 “(A) any relief from deportation that the
7 Attorney General may grant in his discretion,
8 or

9 “(B) relief under section 243(h).

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

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

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

21 (2) in subsection (a)(1) and subsection (a)(3),
22 by inserting “(including an alien described in section
23 242A)” after “aggravated felony”; and

24 (3) by adding at the end the following new sub-
25 section:

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

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

9 (1) In subsection (a)—

10 (A) by striking “(a) IN GENERAL.—” and
11 inserting the following:

12 “(b) DEPORTATION OF PERMANENT RESIDENT
13 ALIENS.—

14 “(1) IN GENERAL.—”; and

15 (B) by inserting in the first sentence “per-
16 manent resident” after “correctional facilities
17 for”;

18 (2) In subsection (b)—

19 (A) by striking “(b) IMPLEMENTATION.—”
20 and inserting “(2) IMPLEMENTATION.—”; and

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

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

24 (4) In subsection (d)—

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

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

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

7 (5) In subsection (e)—

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

10 (B) by striking the second sentence; and

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

12 (6) By inserting after the section heading the
13 following new subsection:

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

17 (7) The heading of such section is amended to
18 read as follows:

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

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

1 **SEC. 107. 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. 108. 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. 109. ENHANCING PENALTIES FOR FAILING TO DE-**
2 **PART, OR REENTERING, AFTER FINAL ORDER**
3 **OF 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 four 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 (1)(E), (2), (3), or (4) of section
15 241(a).”.

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

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

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

24 (3) by adding at the end the following sentence:
25 “For the purposes of this subsection, the term ‘deporta-
26 tion’ shall include any agreement where an alien stipulates

1 to deportation during a criminal trial under either Federal
2 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. 110. MISCELLANEOUS AND TECHNICAL CHANGES.**

20 (a) FORM OF DEPORTATION HEARINGS.—The sec-
21 ond sentence of section 242(b) of the Immigration and
22 Nationality Act (8 U.S.C. 1252(b)) is amended by insert-
23 ing before the period the following: “; except that nothing
24 in this subsection shall preclude the Attorney General
25 from authorizing proceedings by electronic or telephonic

1 media (with or without the consent of the alien) or, where
 2 waived or agreed to by the parties, in the absence of the
 3 alien.”.

4 (b) CONSTRUCTION OF EXPEDITED DEPORTATION
 5 REQUIREMENTS.— No amendment made by this Act and
 6 nothing in section 242(i) of the Immigration and Nation-
 7 ality Act (8 U.S.C. 1252(i)), shall be construed to create
 8 any right or benefit, substantive or procedural, which is
 9 legally enforceable by any party against the United States,
 10 its agencies, its officers or any other person.

11 **TITLE II—PROCEDURES**

12 **SEC. 201. DEATH PENALTY PROCEDURES.**

13 (a) ADDITION OF CHAPTER TO TITLE 18, UNITED
 14 STATES CODE.—Title 18, United States Code, is amended
 15 by inserting after chapter 227 the following new chapter:

16 **“CHAPTER 228—DEATH PENALTY** 17 **PROCEDURES**

“Sec.

“3591. Sentence of death.

“3592. Factors to be considered in determining whether a sentence of death is
 justified.

“3593. Special hearing to determine whether a sentence of death is justified.

“3594. Imposition of a sentence of death.

“3595. Review of a sentence of death.

“3596. Implementation of a sentence of death.

“3597. Use of State facilities.

“3598. Appointment of counsel.

“3599. Collateral attack on judgment imposing sentence of death.

“3600. Application in Indian country.

1 **“§ 3591. Sentence of death**

2 “A defendant who has been found guilty of an offense
3 described in section 274(a)(4) of the Immigration and Na-
4 tionality Act, as determined beyond a reasonable doubt at
5 a hearing under section 3593, shall be sentenced to death
6 if, after consideration of the factors set forth in section
7 3592 in the course of a hearing held pursuant to section
8 3593, it is determined that imposition of a sentence of
9 death is justified, except that no person may be sentenced
10 to death who was less than 18 years of age at the time
11 of the offense or who is mentally retarded.

12 **“§ 3592. Factors to be considered in determining**
13 **whether a sentence of death is justified**

14 “(a) MITIGATING FACTORS.—In determining wheth-
15 er a sentence of death is justified for any offense, the jury,
16 or if there is no jury, the court, shall consider each of
17 the following mitigating factors and determine which, if
18 any, exist:

19 “(1) MENTAL CAPACITY.—The defendant’s
20 mental capacity to appreciate the wrongfulness of
21 his conduct or to conform his conduct to the require-
22 ments of law was significantly impaired, regardless
23 of whether the capacity was so impaired as to con-
24 stitute a defense to the charge.

25 “(2) DURESS.—The defendant was under un-
26 usual and substantial duress, regardless of whether

1 the duress was of such a degree as to constitute a
2 defense to the charge.

3 “(3) PARTICIPATION IN OFFENSE MINOR.—The
4 defendant’s participation in the offense, which was
5 committed by another, was relatively minor, regard-
6 less of whether the participation was so minor as to
7 constitute a defense to the charge.

8 “(4) NO SIGNIFICANT CRIMINAL HISTORY.—
9 The defendant did not have a significant history of
10 other criminal conduct.

11 “(5) DISTURBANCE.—The defendant committed
12 the offense under severe mental or emotional dis-
13 turbance.

14 “(6) VICTIM’S CONSENT.—The victim consented
15 to the criminal conduct that resulted in the victim’s
16 death.

17 The jury, or if there is no jury, the court, shall consider
18 whether any other aspect of the defendant’s background,
19 character or record or any other circumstance of the of-
20 fense that the defendant may proffer as a mitigating fac-
21 tor exists.

22 “(b) AGGRAVATING FACTORS FOR HOMICIDE.—In
23 determining whether a sentence of death is justified for
24 an offense described in section 3591, the jury, or if there

1 is no jury, the court, shall consider each of the following
2 aggravating factors and determine which, if any, exist:

3 “(1) INVOLVEMENT OF FIREARM OR PREVIOUS
4 CONVICTION OF VIOLENT FELONY INVOLVING FIRE-
5 ARM.—The defendant—

6 “(A) during and in relation to the commis-
7 sion of the offense or in escaping or attempting
8 to escape apprehension used or possessed a fire-
9 arm (as defined in section 921); or

10 “(B) has previously been convicted of a
11 Federal or State offense punishable by a term
12 of imprisonment of more than 1 year, involving
13 the use of attempted or threatened use of a
14 firearm (as defined in section 921), against an-
15 other person.

16 “(2) PREVIOUS CONVICTION OF OFFENSE FOR
17 WHICH A SENTENCE OF DEATH OR LIFE IMPRISON-
18 MENT WAS AUTHORIZED.—The defendant has pre-
19 viously been convicted of another Federal or State
20 offense resulting in the death of a person, for which
21 a sentence of life imprisonment or death was author-
22 ized by statute.

23 “(3) PREVIOUS CONVICTION OF OTHER SERI-
24 OUS OFFENSES.—The defendant has previously been
25 convicted of 2 or more Federal or State offenses,

1 each punishable by a term of imprisonment of more
2 than 1 year, committed on different occasions, in-
3 volving the importation, manufacture, or distribution
4 of a controlled substance (as defined in section 102
5 of the Controlled Substances Act (21 U.S.C. 802))
6 or the infliction of, or attempted infliction of, serious
7 bodily injury or death upon another person.

8 “(4) GRAVE RISK OF DEATH TO ADDITIONAL
9 PERSONS.—The defendant, in the commission of the
10 offense or in escaping or attempting to escape ap-
11 prehension, knowingly created a grave risk of death
12 to one or more persons in addition to the victim of
13 the offense.

14 “(5) HEINOUS, CRUEL OR DEPRAVED MANNER
15 OF COMMISSION.—The defendant committed the of-
16 fense in an especially heinous, cruel, or depraved
17 manner in that it involved torture or serious physical
18 abuse to the victim.

19 “(6) PROCUREMENT OF OFFENSE BY PAY-
20 MENT.—The defendant procured the commission of
21 the offense by payment, or promise of payment, of
22 anything of pecuniary value.

23 “(7) COMMISSION OF THE OFFENSE FOR PECU-
24 NIARY GAIN.—The defendant committed the offense

1 as consideration for the receipt, or in the expectation
2 of the receipt, of anything of pecuniary value.

3 “(8) SUBSTANTIAL PLANNING AND
4 PREMEDITATION.—The defendant committed the of-
5 fense after substantial planning and premeditation.

6 “(9) VULNERABILITY OF VICTIM.—The victim
7 was particularly vulnerable due to old age, youth, or
8 infirmity.

9 **“§ 3593. Special hearing to determine whether a sen-
10 tence of death is justified**

11 “(a) NOTICE BY THE GOVERNMENT.—Whenever the
12 Government intends to seek the death penalty for an of-
13 fense described in section 3591, the attorney for the Gov-
14 ernment, a reasonable time before the trial, or before ac-
15 ceptance by the court of a plea of guilty, or at such time
16 thereafter as the court may permit upon a showing of good
17 cause, shall sign and file with the court, and serve on the
18 defendant, a notice that the Government in the event of
19 conviction will seek the sentence of death. The notice shall
20 set forth the aggravating factor or factors enumerated in
21 section 3592, and any other aggravating factor not specifi-
22 cally enumerated in section 3592, that the Government,
23 if the defendant is convicted, will seek to prove as the basis
24 for the death penalty. The factors for which notice is pro-
25 vided under this subsection may include factors concerning

1 the effect of the offense on the victim and the victim's
2 family. The court may permit the attorney for the Govern-
3 ment to amend the notice upon a showing of good cause.

4 “(b) HEARING BEFORE A COURT OR JURY.—When
5 the attorney for the Government has filed a notice as re-
6 quired under subsection (a) and the defendant is found
7 guilty of an offense described in section 3591, the judge
8 who presided at the trial or before whom the guilty plea
9 was entered, or another judge if that judge is unavailable,
10 shall conduct a separate sentencing hearing to determine
11 the punishment to be imposed. Prior to such a hearing,
12 no presentence report shall be prepared by the United
13 States Probation Service, notwithstanding the provisions
14 of the Federal Rules of Criminal Procedure. The hearing
15 shall be conducted—

16 “(1) before the jury that determined the de-
17 fendant's guilt;

18 “(2) before a jury impaneled for the purpose of
19 the hearing if—

20 “(A) the defendant was convicted upon a
21 plea of guilty;

22 “(B) the defendant was convicted after a
23 trial before the court sitting without a jury;

24 “(C) the jury that determined the defend-
25 ant's guilt was discharged for good cause; or

1 “(D) after initial imposition of a sentence
2 under this section, reconsideration of the sen-
3 tence under the section is necessary; or

4 “(3) before the court alone, upon motion of the
5 defendant and with the approval of the attorney for
6 the Government.

7 A jury impaneled pursuant to paragraph (2) shall consist
8 of 12 members, unless, at any time before the conclusion
9 of the hearing, the parties stipulate, with the approval of
10 the court, that it shall consist of a lesser number.

11 “(c) PROOF OF MITIGATING AND AGGRAVATING FAC-
12 TORS.—At the hearing, information may be presented as
13 to—

14 “(1) any matter relating to any mitigating fac-
15 tor listed in section 3592 and any other mitigating
16 factor; and

17 “(2) any matter relating to any aggravating
18 factor listed in section 3592 for which notice has
19 been provided under subsection (a) and (if informa-
20 tion is presented relating to such a listed factor) any
21 other aggravating factor for which notice has been
22 so provided.

23 The information presented may include the trial transcript
24 and exhibits. Any other information relevant to such miti-
25 gating or aggravating factors may be presented by either

1 the Government or the defendant. The information pre-
2 sented by the Government in support of factors concerning
3 the effect of the offense on the victim and the victim's
4 family may include oral testimony, a victim impact state-
5 ment that identifies the victim of the offense and the na-
6 ture and extent of harm and loss suffered by the victim
7 and the victim's family, and other relevant information.
8 Information is admissible regardless of its admissibility
9 under the rules governing admission of evidence at crimi-
10 nal trials, except that information may be excluded if its
11 probative value is outweighed by the danger of creating
12 unfair prejudice, confusing the issues, or misleading the
13 jury. The attorney for the Government and for the defend-
14 ant shall be permitted to rebut any information received
15 at the hearing, and shall be given fair opportunity to
16 present argument as to the adequacy of the information
17 to establish the existence of any aggravating or mitigating
18 factor, and as to the appropriateness in that case of im-
19 posing a sentence of death. The attorney for the Govern-
20 ment shall open the argument. The defendant shall be per-
21 mitted to reply. The Government shall then be permitted
22 to reply in rebuttal. The burden of establishing the exist-
23 ence of an aggravating factor is on the Government, and
24 is not satisfied unless the existence of such a factor is es-
25 tablished beyond a reasonable doubt. The burden of estab-

1 lishing the existence of any mitigating factor is on the de-
2 fendant, and is not satisfied unless the existence of such
3 a factor is established by a preponderance of the evidence.

4 “(d) RETURN OF SPECIAL FINDINGS.—The jury, or
5 if there is no jury, the court, shall consider all the informa-
6 tion received during the hearing. It shall return special
7 findings identifying any aggravating factor or factors set
8 forth in section 3592 found to exist and any other aggra-
9 vating factor for which notice has been provided under
10 subsection (a) found to exist. A finding with respect to
11 a mitigating factor may be made by one or more members
12 of the jury, and any member of the jury who finds the
13 existence of a mitigating factor may consider such factor
14 established for purposes of this section regardless of the
15 number of jurors who concur that the factor has been es-
16 tablished. A finding with respect to any aggravating factor
17 must be unanimous. If no aggravating factor set forth in
18 section 3592 is found to exist, the court shall impose a
19 sentence other than death authorized by law.

20 “(e) RETURN OF A FINDING CONCERNING A SEN-
21 TENCE OF DEATH.—If, in the case of an offense described
22 in section 3591, an aggravating factor required to be con-
23 sidered under section 3592(b) is found to exist, the jury,
24 or if there is no jury, the court, shall then consider wheth-
25 er the aggravating factor or factors found to exist under

1 subsection (d) outweigh any mitigating factor or factors.
2 The jury, or if there is no jury, the court shall recommend
3 a sentence of death if it unanimously finds at least one
4 aggravating factor and no mitigating factor or if it finds
5 one or more aggravating factors which outweigh any miti-
6 gating factors. In any other case, it shall not recommend
7 a sentence of death. The jury shall be instructed that it
8 must avoid any influence of sympathy, sentiment, passion,
9 prejudice, or other arbitrary factors in its decision, and
10 should make such a recommendation as the information
11 warrants.

12 “(f) SPECIAL PRECAUTION TO ASSURE AGAINST
13 DISCRIMINATION.—In a hearing held before a jury, the
14 court, prior to the return of a finding under subsection
15 (e), shall instruct the jury that, in considering whether
16 a sentence of death is justified, it shall not be influenced
17 by prejudice or bias relating to the race, color, religion,
18 national origin, or sex of the defendant or of any victim
19 and that the jury is not to recommend a sentence of death
20 unless it has concluded that it would recommend a sen-
21 tence of death for the crime in question no matter what
22 the race, color, religion, national origin, or sex of the de-
23 fendant or of any victim may be. The jury, upon return
24 of a finding under subsection (e), shall also return to the
25 court a certificate, signed by each juror, that prejudice or

1 bias relating to the race, color, religion, national origin,
2 or sex of the defendant or any victim was not involved
3 in reaching his or her individual decision and that the indi-
4 vidual juror would have made the same recommendation
5 regarding a sentence for the crime in question no matter
6 what the race, color, religion, national origin, or sex of
7 the defendant or any victim may be.

8 **“§ 3594. Imposition of a sentence of death**

9 “Upon the recommendation under section 3593(e)
10 that a sentence of death be imposed, the court shall sen-
11 tence the defendant to death. Otherwise the court shall
12 impose a sentence, other than death, authorized by law.
13 Notwithstanding any other provision of law, if the maxi-
14 mum term of imprisonment for the offense is life imprison-
15 ment, the court may impose a sentence of life imprison-
16 ment without the possibility of release.

17 **“§ 3595. Review of a sentence of death**

18 “(a) APPEAL.—In a case in which a sentence of death
19 is imposed, the sentence shall be subject to review by the
20 court of appeals upon appeal by the defendant. Notice of
21 appeal of the sentence must be filed within the time speci-
22 fied for the filing of a notice of appeal of the judgment
23 of conviction. An appeal of the sentence under this section
24 may be consolidated with an appeal of the judgment of
25 conviction and shall have priority over all other cases.

1 “(b) REVIEW.—The court of appeals shall review the
2 entire record in the case, including—

3 “(1) the evidence submitted during the trial;

4 “(2) the information submitted during the sen-
5 tencing hearing;

6 “(3) the procedures employed in the sentencing
7 hearing; and

8 “(4) the special findings returned under section
9 3593(d).

10 “(c) DECISION AND DISPOSITION.—

11 “(1) AFFIRMANCE.—If the court of appeals de-
12 termines that—

13 “(A) the sentence of death was not im-
14 posed under the influence of passion, prejudice,
15 or any other arbitrary factor;

16 “(B) the evidence and information support
17 the special findings of the existence of an ag-
18 gravating factor or factors; and

19 “(C) the proceedings did not involve any
20 other prejudicial error requiring reversal of the
21 sentence that was properly preserved for and
22 raised on appeal,
23 it shall affirm the sentence.

24 “(2) REMAND.—In a case in which the sentence
25 is not affirmed under paragraph (1), the court of

1 appeals shall remand the case for reconsideration
2 under section 3593 or for imposition of another au-
3 thorized sentence as appropriate, except that the
4 court shall not reverse a sentence of death on the
5 ground that an aggravating factor was invalid or
6 was not supported by the evidence and information
7 if at least one aggravating factor required to be con-
8 sidered under section 3592 remains which was found
9 to exist and the court, on the basis of the evidence
10 submitted at trial and the information submitted at
11 the sentencing hearing, finds no mitigating factor or
12 finds that the remaining aggravating factor or fac-
13 tors which were found to exist outweigh any mitigat-
14 ing factors.

15 “(3) STATEMENT OF REASONS.—The court of
16 appeals shall state in writing the reasons for its dis-
17 position of an appeal of a sentence of death under
18 this section.

19 **“§ 3596. Implementation of a sentence of death**

20 “(a) IN GENERAL.—A person who has been sen-
21 tenced to death pursuant to this chapter shall be commit-
22 ted to the custody of the Attorney General until exhaus-
23 tion of the procedures for appeal of the judgment of con-
24 viction and for review of the sentence. When the sentence
25 is to be implemented, the Attorney General shall release

1 the person sentenced to death to the custody of a United
2 States Marshal, who shall supervise implementation of the
3 sentence in the manner prescribed by the law of the State
4 in which the sentence is imposed. If the law of such State
5 does not provide for implementation of a sentence of
6 death, the court shall designate another State, the law of
7 which does so provide, and the sentence shall be imple-
8 mented in the manner prescribed by such law.

9 “(b) SPECIAL BARS TO EXECUTION.—A sentence of
10 death shall not be carried out upon a person who lacks
11 the mental capacity to understand the death penalty and
12 why it was imposed on that person, or upon a woman while
13 she is pregnant.

14 “(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—
15 No employee of any State department of corrections, the
16 Federal Bureau of Prisons, or the United States Marshals
17 Service, and no employee providing services to that depart-
18 ment, bureau, or service under contract shall be required,
19 as a condition of that employment or contractual obliga-
20 tion, to be in attendance at or to participate in any execu-
21 tion carried out under this section if such participation
22 is contrary to the moral or religious convictions of the em-
23 ployee. For purposes of this subsection, the term ‘partici-
24 pate in any execution’ includes personal preparation of the
25 condemned individual and the apparatus used for the exe-

1 cution, and supervision of the activities of other personnel
2 in carrying out such activities.

3 **“§ 3597. Use of State facilities**

4 “A United States Marshal charged with supervising
5 the implementation of a sentence of death may use appro-
6 priate State or local facilities for the purpose, may use
7 the services of an appropriate State or local official or of
8 a person such an official employs for the purpose, and
9 shall pay the costs thereof in an amount approved by the
10 Attorney General.

11 **“§ 3598. Appointment of counsel**

12 “(a) REPRESENTATION OF INDIGENT DEFEND-
13 ANTS.—This section shall govern the appointment of coun-
14 sel for any defendant against whom a sentence of death
15 is sought, or on whom a sentence of death has been im-
16 posed, for an offense against the United States, where the
17 defendant is or becomes financially unable to obtain ade-
18 quate representation. Such a defendant shall be entitled
19 to appointment of counsel from the commencement of trial
20 proceedings until one of the conditions specified in section
21 3599(b) has occurred. This section shall not affect the ap-
22 pointment of counsel and the provision of ancillary legal
23 services under section 408(q) (4), (5), (6), (7), (8), (9),
24 and (10) of the Controlled Substances Act (21 U.S.C. 848
25 (q) (4), (5), (6), (7), (8), (9), and (10)).

1 “(b) REPRESENTATION BEFORE FINALITY OF JUDG-
2 MENT.—A defendant within the scope of this section shall
3 have counsel appointed for trial representation as provided
4 in section 3005. At least 1 counsel so appointed shall con-
5 tinue to represent the defendant until the conclusion of
6 direct review of the judgment, unless replaced by the court
7 with other qualified counsel.

8 “(c) REPRESENTATION AFTER FINALITY OF JUDG-
9 MENT.—When a judgment imposing a sentence of death
10 has become final through affirmance by the Supreme
11 Court on direct review, denial of certiorari by the Supreme
12 Court on direct review, or expiration of the time for seek-
13 ing direct review in the court of appeals or the Supreme
14 Court, the Government shall promptly notify the district
15 court that imposed the sentence. Within 10 days after re-
16 ceipt of such notice, the district court shall proceed to
17 make a determination whether the defendant is eligible
18 under this section for appointment of counsel for subse-
19 quent proceedings. On the basis of the determination, the
20 court shall issue an order—

21 “(1) appointing 1 or more counsel to represent
22 the defendant upon a finding that the defendant is
23 financially unable to obtain adequate representation
24 and wishes to have counsel appointed or is unable

1 competently to decide whether to accept or reject ap-
2 pointment of counsel;

3 “(2) finding, after a hearing if necessary, that
4 the defendant rejected appointment of counsel and
5 made the decision with an understanding of its legal
6 consequences; or

7 “(3) denying the appointment of counsel upon
8 a finding that the defendant is financially able to ob-
9 tain adequate representation.

10 Counsel appointed pursuant to this subsection shall be dif-
11 ferent from the counsel who represented the defendant at
12 trial and on direct review unless the defendant and counsel
13 request a continuation or renewal of the earlier represen-
14 tation.

15 “(d) STANDARDS FOR COMPETENCE OF COUNSEL.—
16 In relation to a defendant who is entitled to appointment
17 of counsel under this section, at least 1 counsel appointed
18 for trial representation must have been admitted to the
19 bar for at least 5 years and have at least 3 years of experi-
20 ence in the trial of felony cases in the federal district
21 courts. If new counsel is appointed after judgment, at
22 least 1 counsel so appointed must have been admitted to
23 the bar for at least 5 years and have at least 3 years of
24 experience in the litigation of felony cases in the Federal
25 courts of appeals or the Supreme Court. The court, for

1 good cause, may appoint counsel who does not meet the
2 standards prescribed in the 2 preceding sentences, but
3 whose background, knowledge, or experience would other-
4 wise enable him or her to properly represent the defend-
5 ant, with due consideration of the seriousness of the pen-
6 alty and the nature of the litigation.

7 “(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—
8 Except as otherwise provided in this section, section
9 3006A shall apply to appointments under this section.

10 “(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—
11 The ineffectiveness or incompetence of counsel during pro-
12 ceedings on a motion under section 2255 of title 28 in
13 a capital case shall not be a ground for relief from the
14 judgment or sentence in any proceeding. This limitation
15 shall not preclude the appointment of different counsel at
16 any stage of the proceedings.

17 **“§ 3599. Collateral attack on judgment imposing sen-
18 tence of death**

19 “(a) TIME FOR MAKING SECTION 2255 MOTION.—
20 In a case in which a sentence of death has been imposed,
21 and the judgment has become final as described in section
22 3598(c), a motion in the case under section 2255 of title
23 28 shall be filed within 90 days of the issuance of the
24 order relating to appointment of counsel under section
25 3598(c). The court in which the motion is filed, for good

1 cause shown, may extend the time for filing for a period
2 not exceeding 60 days. A motion described in this section
3 shall have priority over all noncapital matters in the dis-
4 trict court, and in the court of appeals on review of the
5 district court's decision.

6 “(b) STAY OF EXECUTION.—The execution of a sen-
7 tence of death shall be stayed in the course of direct review
8 of the judgment and during the litigation of an initial mo-
9 tion in the case under section 2255 of title 28. The stay
10 shall run continuously following imposition of the sen-
11 tence, and shall expire if—

12 “(1) the defendant fails to file a motion under
13 section 2255 of title 28 within the time specified in
14 subsection (a), or fails to make a timely application
15 for court of appeals review following the denial of
16 such a motion by a district court;

17 “(2) upon completion of district court and court
18 of appeals review under section 2255 of title 28, the
19 motion under that section is denied and—

20 “(A) the time for filing a petition for cer-
21 tiorari has expired and no petition has been
22 filed;

23 “(B) a timely petition for certiorari was
24 filed and the Supreme Court denied the peti-
25 tion; or

1 “(C) a timely petition for certiorari was
2 filed and upon consideration of the case, the
3 Supreme Court disposed of it in a manner that
4 left the capital sentence undisturbed; or

5 “(3) before a district court, in the presence of
6 counsel and after having been advised of the con-
7 sequences of the decision to do so, the defendant
8 waives the right to file a motion under section 2255
9 of title 28.

10 “(c) FINALITY OF DECISION ON REVIEW.—If one of
11 the conditions specified in subsection (b) has occurred, no
12 court thereafter shall have the authority to enter a stay
13 of execution or grant relief in the case unless—

14 “(1) the basis for the stay and request for relief
15 is a claim not presented in earlier proceedings;

16 “(2) the failure to raise the claim was—

17 “(A) the result of governmental action in
18 violation of the Constitution or laws of the
19 United States;

20 “(B) the result of the Supreme Court rec-
21 ognition of a new Federal right that is retro-
22 actively applicable; or

23 “(C) based on a factual predicate that
24 could not have been discovered through the ex-

1 exercise of reasonable diligence in time to present
2 the claim in earlier proceedings; and

3 “(3) the facts underlying the claim would be
4 sufficient, if proven, to undermine the court’s con-
5 fidence in the determination of guilt on the offense
6 or offenses for which the death penalty was imposed.

7 **“§ 3600. Application in Indian country**

8 “Notwithstanding sections 1152 and 1153, no person
9 subject to the criminal jurisdiction of an Indian tribal gov-
10 ernment shall be subject to a capital sentence under this
11 chapter for any offense the Federal jurisdiction for which
12 is predicated solely on Indian country as defined in section
13 1151 and which has occurred within the boundaries of
14 such Indian country, unless the governing body of the
15 tribe has made an election that this chapter have effect
16 over land and persons subject to its criminal jurisdiction.”.

17 (b) TECHNICAL AMENDMENT.—The part analysis for
18 part II of title 18, United States Code, is amended by
19 adding after the item relating to chapter 227 the following
20 new item:

“228. Death penalty procedures 3591.”.



S 1196 IS—2

S 1196 IS—3

S 1196 IS—4