

103^D CONGRESS
1ST SESSION

S. 1333

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.

IN THE SENATE OF THE UNITED STATES

JULY 30 (legislative day, JUNE 30), 1993

Mr. KENNEDY (for himself, Mr. SIMON, Mr. DECONCINI, Mrs. FEINSTEIN, Mr. D'AMATO, Mr. BYRD, Mr. GRAHAM, Mr. BREAUX, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 FAILURE
9 TO PRESENT DOCUMENTS”; and

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

12 “(iii) FRAUD, MISREPRESENTATION, AND FAIL-
13 URE TO PRESENT DOCUMENTS.—

14 “(I) Any alien who, in seeking entry to the
15 United States or boarding a common carrier for
16 the purpose of coming to the United States pre-
17 sents any document which, in the determination
18 of the immigration officer, is forged, counter-
19 feit, altered, falsely made, stolen, or inapplica-
20 ble to the person presenting the document, or
21 otherwise contains a misrepresentation of a ma-
22 terial fact, is excludable.

23 “(II) Any alien who is required to present
24 a document relating to the alien’s eligibility to
25 enter the United States prior to boarding a
26 common carrier for the purpose of coming to

1 the United States and who fails to present such
2 document to an immigration officer upon arriv-
3 al at a port of entry into the United States is
4 excludable.”.

5 (b) PROVISION FOR ASYLUM AND OTHER DISCRE-
6 TIONARY RELIEF.—

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

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

21 “(2) Notwithstanding subsection (a), an alien who
22 boards a common carrier for the purpose of coming to the
23 United States through the presentation of any document
24 which relates or purports to relate to the alien’s eligibility
25 to enter the United States, and who fails to present such

1 document to an immigration officer upon arrival at a port
2 of entry into the United States, may not apply for or be
3 granted asylum, unless presentation of such document was
4 pursuant to direct departure from a country in which the
5 alien has a credible fear of persecution or of return to per-
6 secution.

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

12 “(4) Notwithstanding paragraphs (1), (2), and (3),
13 the Attorney General may, in the Attorney General’s sole
14 discretion, permit an alien described in paragraphs (1),
15 (2), or (3) to apply for asylum.

16 “(5)(A) When an immigration officer has determined
17 that an alien has sought entry under either of the cir-
18 cumstances described in paragraphs (1) or (2) or is an
19 alien described in section 235(d)(3) and the alien has indi-
20 cated a desire to apply for asylum, the immigration officer
21 shall refer the matter to an asylum officer who shall inter-
22 view the alien to determine whether presentation of the
23 document was pursuant to direct departure from a coun-
24 try in which the alien has a credible fear of persecution
25 or of return to persecution, or in the case of an alien de-

1 scribed in section 235(d)(3), whether the alien had directly
2 departed from such a country.

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

11 “(C) The Attorney General shall provide by regula-
12 tion for the prompt review of a determination under sub-
13 paragraph (B) that an alien does not have a credible fear
14 of persecution or of return to persecution in the country
15 in which the alien was last present. Such review shall be
16 by an officer who shall possess qualifications at least
17 equivalent to those of an asylum officer, who shall be em-
18 ployed by an agency or division independent of the Service,
19 and who shall have discretion to review any aspect of the
20 initial determination. The Attorney General shall provide
21 for such special training for reviewing officers as the At-
22 torney General may deem necessary.

23 “(D) The Attorney General shall provide information
24 concerning the credible fear determination process de-
25 scribed in this paragraph to persons who may be eligible

1 for that process under the provisions of this subsection.
2 An alien who is eligible for a credible fear determination
3 pursuant to subparagraph (A) may consult with a person
4 or persons of his or her choosing prior to the credible fear
5 determination process or any review thereof, according to
6 regulations prescribed by the Attorney General. Such con-
7 sultation shall be at no expense to the Government and
8 shall not delay the process.

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

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

14 “(B) in light of such statements and country
15 conditions,

16 “(i) that the alien could establish eligibility
17 as a refugee within the meaning of section
18 101(a)(42)(A); or

19 “(ii) that the alien could be returned, with-
20 out access to a full and fair procedure for refu-
21 gee status determination, to a country with re-
22 spect to which there is a substantial likelihood
23 that he or she could establish eligibility as a
24 refugee within the meaning of section
25 101(a)(42)(A).

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

3 “(A) has had extensive professional training in
4 country conditions, asylum law, and interview tech-
5 niques;

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

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

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

15 “(d)(1) Subject to paragraph (2), any alien who has
16 not been admitted to the United States, and who is exclud-
17 able under section 212(a)(6)(C)(iii), or who is an alien de-
18 scribed in paragraph (3), is ineligible for withholding of
19 deportation pursuant to section 243(h), and may not apply
20 therefor or for any other relief under this Act, except that
21 an alien found to have a credible fear of persecution or
22 of return to persecution in accordance with section 208(e)
23 shall be taken before a special inquiry officer for exclusion
24 proceedings in accordance with section 236 and may apply

1 for asylum, withholding of deportation, or both in the
2 course of such proceedings.

3 “(2) An alien described in paragraph (1) who has
4 been found ineligible to apply for asylum under section
5 208(e) may be returned under the provisions of this sec-
6 tion only to a country in which he or she has no credible
7 fear of persecution or of return to persecution. If there
8 is no country to which the alien can be returned in accord-
9 ance with the provisions of this paragraph, the alien shall
10 be taken before a special inquiry officer for exclusion pro-
11 ceedings in accordance with section 236 and may apply
12 for asylum, withholding of deportation, or both in the
13 course of such proceedings.

14 “(3) Any alien who is excludable under section
15 212(a), and who has been brought or escorted under the
16 authority of the United States: (a) into the United States,
17 having been on board a vessel encountered seaward of the
18 territorial sea by officers of the United States, or (b) to
19 a port of entry, having been on board a vessel encountered
20 within the territorial sea or internal waters of the United
21 States, shall either be detained on board the vessel on
22 which such person arrived or in such facilities as are des-
23 ignated by the Attorney General or paroled in the discre-
24 tion of the Attorney General pursuant to section 212(d)(5)
25 pending accomplishment of the purpose for which the per-

1 son was brought or escorted into the United States or to
2 the port of entry: *Provided, however,* That no alien shall
3 be detained on board a public vessel of the United States
4 without the concurrence of the Secretary of the Depart-
5 ment under whose authority the vessel is operating.”.

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

8 (A) in the second sentence of paragraph
9 (1) by striking out “Deportation” and inserting
10 in lieu thereof “Subject to section 235(d)(2),
11 deportation”; and

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

15 **SEC. 3. SPECIAL PORT OF ENTRY EXCLUSION FOR ADMIS-**
16 **SIONS FRAUD.**

17 Section 235 of the Immigration and Nationality Act
18 (8 U.S.C. 1225) is amended by adding after subsection
19 (d) the following new subsection:

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

22 “(A) may appear to the examining immigration
23 officer or to the special inquiry officer during the ex-
24 amination before either of such officers to be exclud-
25 able under section 212(a)(6)(C)(iii) of the Immigra-

1 tion and Nationality Act may be ordered specially
2 excluded and deported by the Attorney General, ei-
3 ther by a special inquiry officer or otherwise.

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

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

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

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

24 (a) Section 106 of the Immigration and Nationality
25 Act (8 U.S.C. 1105a) is amended by changing the heading

1 to read “JUDICIAL REVIEW OF ORDERS OF DEPORTATION
2 AND EXCLUSION, AND SPECIAL EXCLUSION”, and by add-
3 ing at the end the following new subsection:

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

17 “(2) Judicial review of any cause, claim, or individual
18 determination covered under paragraph (d)(1) shall only
19 be available in habeas corpus proceedings, and shall be
20 limited to determinations of: (i) whether the petitioner is
21 an alien, if the petitioner makes a showing that his or her
22 claim of United States nationality is not frivolous; (ii)
23 whether the petitioner was ordered specially excluded; and
24 (iii) whether the petitioner can prove by a preponderance
25 of the evidence that he or she is an alien lawfully admitted

1 for permanent residence and is entitled to such further
2 inquiry as is prescribed by the Attorney General pursuant
3 to section 235(e)(2).

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

15 “(4) In determining whether an alien has been or-
16 dered specially excluded, the court’s inquiry shall be lim-
17 ited to whether such an order was in fact issued and
18 whether it relates to the petitioner. There shall be no re-
19 view of whether the alien is actually excludable under sec-
20 tion 212(a)(6)(C)(iii) or entitled to any relief from exclu-
21 sion.”.

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

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

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

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

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

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

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

22 **SEC. 6. ENHANCED PENALTIES FOR CERTAIN ALIEN SMUG-**
23 **GLING.**

24 (a) Section 274(a)(1) of the Immigration and Nation-
25 ality Act (8 U.S.C. 1324(a)(1)), is amended by striking

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

18 (b) Section 274(a)(2) of the Immigration and Nation-
19 ality Act (8 U.S.C. 1324(a)(2)), is amended by striking
20 out “or imprisoned not more than five years, or both” and
21 inserting in lieu thereof “or, in the case of a violation of
22 subparagraph (B)(ii), imprisoned not more than ten years,
23 or both; and, in the case of a violation of subparagraph
24 (B)(i) or (B)(iii), imprisoned not more than five years, or
25 both.”.

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

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

8 **SEC. 7. SENTENCING GUIDELINES.**

9 The United States Sentencing Commission shall
10 promptly promulgate, pursuant to 28 U.S.C. 994, amend-
11 ments to the sentencing guidelines to make appropriate
12 increases in the base offense level for offenses under sec-
13 tion 274 of the Immigration and Nationality Act to reflect
14 the increases in maximum penalties for such offenses in
15 section 6 of this Act.

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

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

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

21 “(b) SEIZURE AND FORFEITURE.—(1) The following
22 property shall be subject to seizure and forfeiture: (i) any
23 conveyance, including any vessel, vehicle, or aircraft,
24 which has been or is being used in the commission of a
25 violation of subsection (a); (ii) any property, real or per-

1 sonal, (A) which constitutes, or is derived from or trace-
2 able to the proceeds obtained directly or indirectly from
3 the commission of a violation of subsection (a), or (B)
4 which is used to facilitate, or is intended to be so used
5 in the commission of, a violation of subparagraph
6 (a)(1)(A), except that—

7 “(A) no property used by any person as a com-
8 mon carrier in the transaction of business as a com-
9 mon carrier shall be forfeited under this section, un-
10 less the owner or other person with lawful custody
11 of the property was a consenting party to or privy
12 to the violation of subsection (a) or of sections
13 274A(a)(1) or 274A(a)(2);

14 “(B) no property shall be forfeited under the
15 provisions of this section by reason of any act or
16 omission established by the owner to have been com-
17 mitted or omitted by a person other than the owner
18 while the property was unlawfully in the possession
19 of a person other than the owner in violation of the
20 criminal laws of the United States, or of any State;
21 and

22 “(C) no property shall be forfeited under the
23 provisions of this section to the extent of an interest
24 of the owner, by reason of any act or omission estab-
25 lished by the owner to have been committed or omit-

1 (a) in paragraph (c) by inserting after “weap-
2 ons),” the following: “or a felony violation of section
3 1028 (relating to production of false identification
4 documentation), section 1542 (relating to false
5 statements in passport applications), section 1546
6 (relating to fraud and misuse of visas, permits, and
7 other documents),”;

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

11 (c) by inserting after paragraph (l) the follow-
12 ing new paragraph:

13 “(m) a violation of section 274 of the Immigration
14 and Nationality Act (8 U.S.C. 1324) (relating to alien
15 smuggling), of section 277 of the Immigration and Nation-
16 ality Act (8 U.S.C. 1327) (relating to the smuggling of
17 aliens convicted of aggravated felonies or of aliens subject
18 to exclusion on grounds of national security), or of section
19 278 of the Immigration and Nationality Act (8 U.S.C.
20 1328) (relating to the smuggling of aliens for the purpose
21 of prostitution or other immoral purpose);”.

22 **SEC. 10. RACKETEERING INFLUENCED AND CORRUPT OR-**
23 **GANIZATIONS ENFORCEMENT AUTHORITY.**

24 Section 1961(1) of title 18, United States Code, is
25 amended by striking out “or” before “(E) any act” and

1 adding after “Currency and Foreign Transactions Report-
2 ing Act” the following: “, or (F) any act which is indict-
3 able under title 8, United States Code, section 1324(a)(1)
4 (dealing with prohibitions on bringing in and harboring
5 certain aliens)”.

6 **SEC. 11. INTERNATIONAL TERRORISM AWARDS.**

7 Section 524(c)(1)(B), of title 28, United States Code,
8 is amended by inserting “, or relating to international ter-
9 rorism as authorized by sections 3071 and 3072 of title
10 18” at the end thereof.

11 **SEC. 12. EFFECTIVE DATE.**

12 These amendments shall be effective upon enactment
13 or October 1, 1993, whichever occurs later, and shall apply
14 to aliens who arrive in or seek admission to the United
15 States on or after such date. Notwithstanding any other
16 provision of law, the Attorney General may issue interim
17 final regulations to implement the provisions of these
18 amendments at any time on or after their effective date,
19 which regulations may become effective upon publication
20 without prior notice or opportunity for public comment.

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