

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 179

To amend the Immigration and Nationality Act to facilitate the apprehension, detention, and deportation of criminal aliens, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 9, 1995

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

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## A BILL

To amend the Immigration and Nationality Act to facilitate the apprehension, detention, and deportation of criminal aliens, and for other purposes.

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 “Criminal Alien Control  
5 Act of 1995”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The following is the table of contents for this Act:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—DEPORTATION OF CRIMINAL ALIENS

- Sec. 101. Equal immigration treatment to all alien felons.

- Sec. 102. Deportation procedures for certain criminal aliens.
- Sec. 103. Judicial deportation.
- Sec. 104. Uncontested deportations.
- Sec. 105. Restricting defenses to deportation for certain criminal aliens.
- Sec. 106. Extraterritorial appeals by criminal aliens.
- Sec. 107. Collateral attacks on underlying deportation order.
- Sec. 108. Restriction on asylum for criminal aliens.
- Sec. 109. Federal incarceration.
- Sec. 110. Form of deportation hearings.
- Sec. 111. Construction of expedited deportation requirements.

TITLE II—LOCAL COOPERATION WITH FEDERAL OFFICIALS AND  
PROCEDURES

- Sec. 201. Funding based on cooperation.
- Sec. 202. Production of criminal records.

TITLE III—MISCELLANEOUS

- Sec. 301. Detention of undocumented criminal aliens at military installations to be closed.
- Sec. 302. Authorizing registration of aliens on criminal probation or criminal parole.
- Sec. 303. Admissible evidence before a special inquiry officer.

1           **TITLE I—DEPORTATION OF**  
2                           **CRIMINAL ALIENS**

3   **SEC. 101. EQUAL IMMIGRATION TREATMENT TO ALL ALIEN**  
4                           **FELONS.**

5           (a) FELONIES.—(1) Sections 101(f) (8 U.S.C.  
6 1101(f)); 106(a) (8 U.S.C. 1105a(a)); 208(d) (8 U.S.C.  
7 1158(d)); 212(a)(6)(B) (8 U.S.C. 1182(a)(6)(B));  
8 236(e)(i) (8 U.S.C. 1226(e)(i)); 241(a)(2)(A) (8 U.S.C.  
9 1251(a)(2)(A)); 242 (8 U.S.C. 1252(a)); 242A(d) (8  
10 U.S.C. 1252a); 242B(c) (8 U.S.C. 1252b(c)); 243(h) (8  
11 U.S.C. 1253(h)); 244(e) (8 U.S.C. 1254(e)); and 277 (8  
12 U.S.C. 1327) are amended by striking “aggravated fel-  
13 ony”, “an aggravated felony”, and “aggravated felonies”

1 each place they appear and inserting in lieu thereof “fel-  
2 ony”, “a felony”, or “felonies”, respectively.

3 (2) Section 101(a) of the Immigration and National-  
4 ity Act (8 U.S.C. 1101(a)) is amended by adding at the  
5 end the following new paragraph:

6 “(47) The term ‘felony’ means any offense  
7 under Federal or State law that is punishable by  
8 death or imprisonment for more than 1 year.”.

9 (b) PRECLUSION OF JUDICIAL REVIEW.—Section  
10 106(c) of the Immigration and Nationality Act (8 U.S.C.  
11 1105a(c)) is amended—

12 (1) by inserting “(1)” immediately after “(c)”;  
13 and

14 (2) by adding at the end the following:

15 “(2) An order of deportation or of exclusion shall not  
16 be reviewed by any court of the United States if the  
17 grounds for such order is the commission of a felony by  
18 the alien, except that the Attorney General may defer de-  
19 portation or exclusion of the alien pending judicial review  
20 if the Attorney General determines that to do otherwise  
21 would cause hardship to the alien.”.

1 **SEC. 102. DEPORTATION PROCEDURES FOR CERTAIN**  
2 **CRIMINAL ALIENS.**

3 (a) **IN GENERAL.**—Section 242A(a) of the Immigra-  
4 tion and Nationality Act (8 U.S.C. 1252a(a)) is amend-  
5 ed—

6 (1) in paragraph (1), by inserting “permanent  
7 resident” after “correctional facilities for”;

8 (2) in paragraph (2) by striking “respect to an”  
9 and inserting “respect to a permanent resident”;  
10 and

11 (3) in paragraph 3, by inserting “permanent  
12 resident” after “in the case of any”.

13 (b) **DEPORTATION OF ALIENS WHO ARE NOT PER-**  
14 **MANENT RESIDENTS.**—Section 242A(b)(1) of such Act is  
15 amended by striking “Attorney General may” and insert-  
16 ing “Attorney General shall”.

17 (c) **PRESUMPTION OF DEPORTABILITY.**—Section  
18 242A of such Act (8 U.S.C. 1252a) is amended by adding  
19 at the end the following new subsection:

20 “(d) **PRESUMPTION OF DEPORTABILITY.**—An alien  
21 convicted of an aggravated felony shall be conclusively pre-  
22 sumed to be deportable from the United States.”.

23 (d) **LIMITED JUDICIAL REVIEW.**—Section 106(d) of  
24 the Immigration and Nationality Act (8 U.S.C. 1105a) is  
25 amended to read as follows:

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 (e) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to all aliens against whom deporta-  
8 tion proceedings are initiated after the date of enactment  
9 of this Act.

10 **SEC. 103. JUDICIAL DEPORTATION.**

11 (a) JUDICIAL DEPORTATION.—Section 242A of the  
12 Immigration and Nationality Act (8 U.S.C. 1252a) is  
13 amended by adding at the end the following new sub-  
14 section:

15 “(c) JUDICIAL DEPORTATION.—

16 “(1) AUTHORITY.—Notwithstanding any other  
17 provision of this Act, a United States district court  
18 or a State court shall have jurisdiction to enter a ju-  
19 dicial order of deportation at the time of sentencing  
20 against an alien whose criminal conviction causes  
21 such alien to be deportable under section  
22 241(a)(2)(A)(iii) (relating to conviction of a felony).

23 “(2) PROCEDURE.—(A) The United States At-  
24 torney or, in the case of a proceeding before a State  
25 court, the State’s attorney general, shall provide no-

1 tice of intent to request judicial deportation prompt-  
2 ly after the entry in the record of an adjudication  
3 of guilt or guilty plea. Such notice shall be provided  
4 to the court, to the alien, to the alien's counsel of  
5 record, and to the Commissioner.

6 “(B) Notwithstanding section 242B—

7 “(i) in the case of a proceeding before a  
8 United States court, the United States Attor-  
9 ney, with the concurrence of the Commissioner,  
10 or

11 “(ii) in the case of a proceeding before a  
12 State court, the State's attorney general,  
13 shall, at least 20 days before the date set for sen-  
14 tencing, file a charge containing factual allegations  
15 regarding the alienage of the defendant and satisfac-  
16 tion by the defendant of the definition of felony.

17 “(C) If the court determines that the defendant  
18 has presented substantial evidence to establish prima  
19 facie eligibility for relief from deportation under sec-  
20 tion 212(c), the court shall request the Attorney  
21 General to provide the court with a recommendation  
22 and report regarding the alien's eligibility for relief  
23 under such section. The court shall either grant or  
24 deny the relief sought.

1           “(D)(i) The alien shall have a reasonable oppor-  
2           tunity to examine the evidence against him or her,  
3           to present evidence on his or her own behalf, and to  
4           cross-examine witnesses presented by the Govern-  
5           ment.

6           “(ii) The court, for the purposes of determining  
7           whether to enter an order described in paragraph  
8           (1), shall only consider evidence that would be ad-  
9           missible in proceedings conducted pursuant to sec-  
10          tion 242(b).

11          “(3) NOTICE, APPEAL, AND EXECUTION OF JU-  
12          DICIAL ORDER OF DEPORTATION.—(A)(i) A judicial  
13          order of deportation or denial of such order may be  
14          appealed by either party to the court of appeals for  
15          the circuit in which the United States district court  
16          is located or to the appropriate State court of ap-  
17          peals, as the case may be.

18          “(ii) Except as provided in clause (iii), such ap-  
19          peal shall be considered consistent with the require-  
20          ments described in section 106.

21          “(iii) Upon execution by the defendant of a  
22          valid waiver of the right to appeal the conviction on  
23          which the order of deportation is based, the expira-  
24          tion of the period described in section 106(a)(1), or  
25          the final dismissal of an appeal from such convic-

1       tion, the order of deportation shall become final and  
2       shall be executed at the end of the prison term in  
3       accordance with the term of the order.

4               “(B) As soon as is practicable after entry of a  
5       judicial order of deportation by a United States  
6       court, the Attorney General shall provide the defend-  
7       ant with written notice of the order of deportation,  
8       which shall designate the defendant’s country of  
9       choice for deportation and any alternate country  
10      pursuant to section 243(a).

11              “(C) As soon as is practicable after entry of a  
12      judicial order of deportation by a State court, the  
13      State court shall notify the Attorney General of the  
14      order. Upon the termination of imprisonment of the  
15      alien, the State shall remand the alien to the cus-  
16      tody of the Attorney General. The Attorney General  
17      shall effect the deportation of the alien in the man-  
18      ner prescribed in this Act with respect to final or-  
19      ders of deportation.

20              “(4) DENIAL OF JUDICIAL ORDER.—Denial of a  
21      request for a judicial order of deportation shall not  
22      preclude the Attorney General from initiating depor-  
23      tation proceedings pursuant to section 242 upon the  
24      same ground of deportability or upon any other  
25      ground of deportability provided under section

1       241(a). Any denial of a judicial order of deportation  
2       shall include a statement in writing stating the rea-  
3       sons for the denial.

4               “(5) DEFINITION.—For purposes of this sub-  
5       section, the term ‘State’ refers to any of the several  
6       States and the District of Columbia.”.

7       (b) TECHNICAL AND CONFORMING CHANGES.—The  
8       ninth sentence of section 242(b) of the Immigration and  
9       Nationality Act (8 U.S.C. 1252(b)) is amended by striking  
10      out “The” and inserting in lieu thereof “Except as pro-  
11      vided in section 242A(c), the”.

12      (c) EFFECTIVE DATE.—The amendments made by  
13      this section shall apply to all aliens whose adjudication of  
14      guilt or guilty plea is entered in the record after the date  
15      of enactment of this Act.

16      **SEC. 104. UNCONTESTED DEPORTATIONS.**

17      Section 242B of the Immigration and Nationality Act  
18      (8 U.S.C. 1252b) is amended—

19              (1) in subsection (a)(1), by adding at the end  
20      the following new subparagraph:

21                      “(G) The right of an alien deportable  
22                      under section 241(a)(2) to execute a deporta-  
23                      tion affidavit pursuant to subsection (f) in lieu  
24                      of deportation proceedings.”;



1           (2) by adding at the end the following new sen-  
2           tence: “For purposes of calculating the period of  
3           seven consecutive years under this subsection, any  
4           period of imprisonment of the alien by Federal,  
5           State, or local authorities shall be excluded but shall  
6           not be considered to have broken the continuity of  
7           the period.”.

8           (b) DEFENSES BASED ON WITHHOLDING OF DEPOR-  
9           TATION.—Section 243(h)(2) of the Immigration and Na-  
10          tionality Act (8 U.S.C. 1253(h)(2)) is amended—

11           (1) by striking “or” at the end of subparagraph  
12          (C);

13           (2) by striking the period at the end of sub-  
14          paragraph (D) and inserting “; or”; and

15           (3) by striking the final sentence and inserting  
16          the following new subparagraph:

17                   “(E) the alien has been convicted of a fel-  
18                  ony.”; and

19          **SEC. 106. EXTRATERRITORIAL APPEALS BY CRIMINAL**  
20                   **ALIENS.**

21          Section 106 of the Immigration and Nationality Act  
22          (8 U.S.C. 1105a) is amended by adding at the end the  
23          following new subsection:

24           “(e)(1) In the case of any alien found to be deport-  
25          able under section 242(a)(2), the Attorney General may

1 not defer deportation of the alien and shall, after issuance  
2 of the deportation order, take the alien into custody until  
3 the alien is deported.

4 “(2) Any court of the United States shall have juris-  
5 diction to review an order of deportation issued under  
6 paragraph (1) in any case where the petitioner for review  
7 is outside the United States. Any alien for whom an order  
8 of deportation has been vacated under this paragraph  
9 shall be issued a valid visa and admitted to the United  
10 States to the status held by the alien before deportation.”.

11 **SEC. 107. COLLATERAL ATTACKS ON UNDERLYING DEPOR-**  
12 **TATION ORDER.**

13 Section 276 of the Immigration and Nationality Act  
14 (8 U.S.C. 1326) is amended by adding at the end the fol-  
15 lowing new subsection:

16 “(c) In any criminal proceeding under this section,  
17 no alien may challenge the validity of the deportation  
18 order described in subsection (a)(1) or subsection (b).”.

19 **SEC. 108. RESTRICTION ON ASYLUM FOR CRIMINAL ALIENS.**

20 (a) IN GENERAL.—Section 208 of the Immigration  
21 and Nationality Act (8 U.S.C. 1158) is amended by add-  
22 ing at the end the following new subsections:

23 “(f) Notwithstanding subsection (a), an alien may  
24 only be granted asylum under this section if the alien  
25 claims asylum within 15 days of the alien’s entry into the

1 United States, unless the alien establishes by clear and  
2 convincing evidence that since the date of entry into the  
3 United States circumstances have changed in the alien's  
4 country of nationality (or, in the case of a person having  
5 no nationality, the country in which such alien last habit-  
6 ually resided) such that, if the alien returned to the coun-  
7 try, it is more likely than not that the alien would be ar-  
8 rested or incarcerated or the alien's life would be threat-  
9 ened in such country on account of race, religion, national-  
10 ity, membership in a particular social group, or political  
11 opinion.

12       “(g) An alien is not eligible for asylum under this  
13 section if the Attorney General determines that—

14               “(1) the alien ordered, incited, assisted, or oth-  
15 erwise participated in the persecution of any person  
16 on account of race, religion, nationality, membership  
17 in a particular social group, or political opinion;

18               “(2) the alien, having been convicted by a final  
19 judgment of a particularly serious crime, constitutes  
20 a danger to the community of the United States;

21               “(3) there are serious reasons for believing that  
22 the alien has committed a serious nonpolitical crime  
23 outside the United States prior to the arrival of the  
24 alien in the United States;

1           “(4) there are reasonable grounds for regarding  
2           the alien as a danger to the security of the United  
3           States; or

4           “(5) a country willing to accept the alien has  
5           been identified (other than the country described in  
6           subsection (f)) to which the alien can be deported or  
7           returned and the alien does not establish that it is  
8           more likely than not that the alien would be arrested  
9           or incarcerated or the alien’s life would be threat-  
10          ened in such country on account of race, religion,  
11          nationality, membership in a particular social group,  
12          or political opinion.

13 For purposes of paragraph (2), an alien who has been con-  
14 victed of a felony shall be considered to have committed  
15 a particularly serious crime. The Attorney General shall  
16 prescribe regulations that specify additional crimes that  
17 will be considered to be a crime described in paragraph  
18 (2) or (3).”.

19          (b) CONFORMING AMENDMENT.—Section 208(a) of  
20 such Act (8 U.S.C. 1158(a)) is amended by inserting “,  
21 except as provided in subsection (g),” after “asylum,  
22 and”.

1 **SEC. 109. FEDERAL INCARCERATION.**

2 Section 242(j)(1)(B) of the Immigration and Nation-  
3 ality Act (8 U.S.C. 1252(j)) is amended by inserting “for  
4 a determinate term of imprisonment” after “the alien”.

5 **SEC. 110. FORM OF DEPORTATION HEARINGS.**

6 Section 242(b) of the Immigration and Nationality  
7 Act (8 U.S.C. 1252(b)) is amended by inserting after the  
8 second sentence the following new sentence: “Nothing in  
9 the preceding sentence precludes the Attorney General  
10 from authorizing proceedings by electronic or telephonic  
11 media (with or without the consent of the alien) or, where  
12 waived or agreed to by the parties, in the absence of the  
13 alien.”.

14 **SEC. 111. CONSTRUCTION OF EXPEDITED DEPORTATION**  
15 **REQUIREMENTS.**

16 No amendment made by this Act may be construed  
17 to create any substantive or procedural right or benefit  
18 that is legally enforceable by any party against the United  
19 States, its agencies or officers, or against any other per-  
20 son.

21 **TITLE II—LOCAL COOPERATION**  
22 **WITH FEDERAL OFFICIALS**  
23 **AND PROCEDURES**

24 **SEC. 201. FUNDING BASED ON COOPERATION.**

25 (a) STATE AND LOCAL COOPERATION.—Notwith-  
26 standing any law, ordinance, or regulation of any State

1 or subdivision thereof to the contrary, officials of any  
2 State or local government or agency, upon the request of  
3 any duly authorized official of the Immigration and Natu-  
4 ralization Service, shall provide information regarding the  
5 identification, location, arrest, prosecution, detention, and  
6 deportation of an alien or aliens who are not lawfully  
7 present in the United States.

8 (b) REPORT.—Not later than 6 months after the date  
9 of enactment of this Act, the Attorney General and the  
10 Commissioner of Immigration and Naturalization shall  
11 jointly report to the Congress and the President on the  
12 extent to which State and local governments are not co-  
13 operating with the Immigration and Naturalization Serv-  
14 ice. This report shall identify any State or local govern-  
15 ments that have adopted laws, policies, or practices of  
16 noncooperation with the Immigration and Naturalization  
17 Service, the specific nature of those laws, policies or prac-  
18 tices, and their impact on the enforcement of the immigra-  
19 tion laws.

20 (c) FUNDING BASED ON COOPERATION.—No State  
21 or local government or agency which has been identified  
22 in the Attorney General’s report required by subsection  
23 (b), which has a policy or practice of refusing to cooperate  
24 with the Immigration and Naturalization Service regard-  
25 ing the identification, location, arrest, prosecution, deten-

1 tion, or deportation of aliens who are not lawfully present  
2 in the United States, shall be eligible for any Federal  
3 funds from appropriations made pursuant to a provision  
4 of the Violent Crime Control and Law Enforcement Act  
5 of 1994 or of an amendment made by authorizing appro-  
6 priations, as long as such policy or practice remains in  
7 effect.

8 **SEC. 202. PRODUCTION OF CRIMINAL RECORDS.**

9 Section 503(a)(11) of the Omnibus Crime Control  
10 and Safe Streets Act of 1968 (42 U.S.C. 3753(a)) is  
11 amended by inserting “or any political subdivision there-  
12 of” after “State” the second, third, and fourth occurrence  
13 thereof.

14 **TITLE III—MISCELLANEOUS**

15 **SEC. 301. DETENTION OF UNDOCUMENTED CRIMINAL**  
16 **ALIENS AT MILITARY INSTALLATIONS TO BE**  
17 **CLOSED.**

18 (a) IN GENERAL.—(1) Notwithstanding any other  
19 provision of law, the Secretary of Defense shall make  
20 available to the Attorney General for the purpose referred  
21 to in paragraph (2) any military installation of the De-  
22 partment of Defense that—

23 (A) is approved for closure under a base closure  
24 law; and

1 (B) is jointly determined by the Secretary and  
2 the Attorney General to be an appropriate facility  
3 for the detention of undocumented aliens.

4 (2) The Attorney General shall use facilities made  
5 available to the Attorney General under this paragraph for  
6 the detention of undocumented criminal aliens.

7 (b) DEFINITIONS.—In this section:

8 (1) The term “approved for closure under a  
9 base closure law”, in the case of a military installa-  
10 tion, means any installation whose closure under a  
11 base closure law is recommended by the President  
12 and not disapproved by Congress in accordance with  
13 the provisions of such law.

14 (2) The term “base closure law” means the fol-  
15 lowing:

16 (A) The Defense Base Closure and Re-  
17 alignment Act of 1990 (part A of title XXIX of  
18 Public Law 102–510; 10 U.S.C. 2687 note).

19 (B) Title II of the Defense Authorization  
20 Amendments and Base Closure and Realign-  
21 ment Act (Public Law 100–526; 10 U.S.C.  
22 2687 note).

23 (3) The term “undocumented criminal alien”  
24 means an alien who—

1 (A) has been convicted of a felony and sen-  
2 tenced to a term of imprisonment, and

3 (B)(i) entered the United States without  
4 inspection or at any time or place other than as  
5 designated by the Attorney General, or

6 (ii) was the subject of exclusion or deporta-  
7 tion proceedings at the time he or she was  
8 taken into custody by the State.

9 **SEC. 302. AUTHORIZING REGISTRATION OF ALIENS ON**  
10 **CRIMINAL PROBATION OR CRIMINAL PA-**  
11 **ROLE.**

12 Section 263(a) of the Immigration and Nationality  
13 Act (8 U.S.C. 1303(a)) is amended by striking “and (5)”  
14 and inserting “(5) aliens who are or have been on criminal  
15 probation or criminal parole within the United States, and  
16 (6)”.

17 **SEC. 303. ADMISSIBLE EVIDENCE BEFORE A SPECIAL IN-**  
18 **QUIRY OFFICER.**

19 In any proceeding under the Immigration and Na-  
20 tionality Act before a special inquiry officer, such docu-  
21 ments and records as are described in section 3.41 of title  
22 8, Code of Federal Regulations, as in effect on the date  
23 of enactment of this Act, may be admissible as evidence  
24 of a criminal conviction.

○