

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

# S. 270

To provide special procedures for the removal of alien terrorists.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 10), 1995

Mr. SMITH (for himself, Mr. SIMPSON, Mr. D'AMATO, Mr. COCHRAN, Mr. REID, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide special procedures for the removal of alien terrorists.

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 Terrorist Re-  
5 moval Act of 1995”.

6 **SEC. 2. REMOVAL OF ALIEN TERRORISTS.**

7 The Immigration and Nationality Act (8 U.S.C. 1101  
8 et seq.) is amended by inserting the following new section:

1           “REMOVAL OF ALIEN TERRORISTS

2           “SEC. 242C. (a) DEFINITIONS.—As used in this sec-  
3 tion—

4           “(1) the term ‘alien terrorist’ means any alien  
5 described in section 241(a)(4)(B);

6           “(2) the term ‘classified information’ has the  
7 same meaning as defined in section 1(a) of the Clas-  
8 sified Information Procedures Act (18 U.S.C. App.  
9 IV);

10           “(3) the term ‘national security’ has the same  
11 meaning as defined in section 1(b) of the Classified  
12 Information Procedures Act (18 U.S.C. App. IV);

13           “(4) the term ‘special court’ means the court  
14 described in subsection (c) of this section; and

15           “(5) the term ‘special removal hearing’ means  
16 the hearing described in subsection (e) of this sec-  
17 tion.

18           “(b) APPLICATION FOR USE OF PROCEDURES.—The  
19 provisions of this section shall apply whenever the Attor-  
20 ney General certifies under seal to the special court that—

21           “(1) the Attorney General or Deputy Attorney  
22 General has approved of the proceeding under this  
23 section;

24           “(2) an alien terrorist is physically present in  
25 the United States; and

1           “(3) removal of such alien terrorist by deporta-  
2           tion proceedings described in sections 242, 242A, or  
3           242B would pose a risk to the national security of  
4           the United States because such proceedings would  
5           disclose classified information.

6           “(c) SPECIAL COURT.—

7           “(1) The Chief Justice of the United States  
8           shall publicly designate up to seven judges from up  
9           to seven United States judicial districts to hear and  
10          decide cases arising under this section, in a manner  
11          consistent with the designation of judges described  
12          in section 103(a) of the Foreign Intelligence Surveil-  
13          lance Act (50 U.S.C. 1803(a)).

14          “(2) The Chief Justice may, in the Chief Jus-  
15          tice’s discretion, designate the same judges under  
16          this section as are designated pursuant to 50 U.S.C.  
17          1803(a).

18          “(d) INVOCATION OF SPECIAL COURT PROCE-  
19          DURE.—

20          “(1) When the Attorney General makes the ap-  
21          plication described in subsection (b), a single judge  
22          of the special court shall consider the application in  
23          camera and ex parte.

1           “(2) The judge shall invoke the procedures of  
2 subsection (e), if the judge determines that there is  
3 probable cause to believe that—

4                   “(A) the alien who is the subject of the ap-  
5 plication has been correctly identified;

6                   “(B) a deportation proceeding described in  
7 sections 242, 242A, or 242B would pose a risk  
8 to the national security of the United States be-  
9 cause such proceedings would disclose classified  
10 information; and

11                   “(C) the threat posed by the alien’s phys-  
12 ical presence is immediate and involves the risk  
13 of death or serious bodily harm.

14           “(e) SPECIAL REMOVAL HEARING.—

15                   “(1) Except as provided in paragraph (4), the  
16 special removal hearing authorized by a showing of  
17 probable cause described in subsection (d)(2) shall  
18 be open to the public.

19                   “(2) The alien shall have a right to be present  
20 at such hearing and to be represented by counsel.  
21 Any alien financially unable to obtain counsel shall  
22 be entitled to have counsel assigned to represent  
23 such alien. Counsel may be appointed as described  
24 in section 3006A of title 18, United States Code.

1           “(3) The alien shall have a right to introduce  
2 evidence on his own behalf, and except as provided  
3 in paragraph (4), shall have a right to cross-examine  
4 any witness or request that the judge issue a sub-  
5 poena for the presence of a named witness.

6           “(4) The judge shall authorize the introduction  
7 in camera and ex parte of any item of evidence for  
8 which the judge determines that public disclosure  
9 would pose a risk to the national security of the  
10 United States because it would disclose classified in-  
11 formation.

12           “(5) With respect to any evidence described in  
13 paragraph (4), the judge shall cause to be delivered  
14 to the alien either—

15           “(A)(i) the substitution for such evidence  
16 of a statement admitting relevant facts that the  
17 specific evidence would tend to prove, or (ii) the  
18 substitution for such evidence of a summary of  
19 the specific evidence; or

20           “(B) if disclosure of even the substituted  
21 evidence described in subparagraph (A) would  
22 create a substantial risk of death or serious  
23 bodily harm to any person, a statement inform-  
24 ing the alien that no such summary is possible.

25           “(6) If the judge determines—

1           “(A) that the substituted evidence de-  
2           scribed in paragraph (5)(A) will provide the  
3           alien with substantially the same ability to  
4           make his defense as would disclosure of the spe-  
5           cific evidence, or

6           “(B) that disclosure of even the sub-  
7           stituted evidence described in paragraph (5)(A)  
8           would create a substantial risk of death or seri-  
9           ous bodily harm to any person, then the deter-  
10          mination of deportation (described in subsection  
11          (f)) may be made pursuant to this section.

12          “(f) DETERMINATION OF DEPORTATION.—

13           “(1) If the determination in subsection  
14           (e)(6)(A) has been made, the judge shall, consider-  
15           ing the evidence on the record as a whole, require  
16           that the alien be deported if the Attorney General  
17           proves, by clear and convincing evidence, that the  
18           alien is subject to deportation because he is an alien  
19           as described in section 241(a)(4)(B).

20           “(2) If the determination in subsection  
21           (e)(6)(B) has been made, the judge shall, consider-  
22           ing the evidence received (in camera and otherwise),  
23           require that the alien be deported if the Attorney  
24           General proves, by clear, convincing, and unequivocal  
25           evidence, that the alien is subject to deportation

1 because he is an alien as described in section  
2 241(a)(4)(B).

3 “(g) APPEALS.—

4 “(1) The alien may appeal a determination  
5 under subsection (f) to the court of appeals for the  
6 Federal Circuit, by filing a notice of appeal with  
7 such court within twenty days of the determination  
8 under such subsection.

9 “(2) The Attorney General may appeal a deter-  
10 mination under subsection (d), (e), or (f) to the  
11 court of appeals for the Federal Circuit, by filing a  
12 notice of appeal with such court within twenty days  
13 of the determination under any one of such sub-  
14 sections.

15 “(3) When requested by the Attorney General,  
16 the entire record of the proceeding under this sec-  
17 tion shall be transmitted to the court of appeals  
18 under seal. The court of appeals shall consider such  
19 appeal in camera and ex parte.”.

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