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104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT 104–22

CRIMINAL ALIEN DEPORTATION IMPROVEMENTS ACT OF 1995

FEBRUARY 6, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 668]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 668) to control crime by further streamlining deportation of criminal aliens, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Criminal Alien Deportation Improvements Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Additional expansion of definition of aggravated felony.
Sec. 3. Deportation procedures for certain criminal aliens who are not permanent residents.
Sec. 4. Restricting the defense to exclusion based on 7 years permanent residence for certain criminal aliens.
Sec. 5. Limitation on collateral attacks on underlying deportation order.
Sec. 6. Criminal alien identification system.
Sec. 7. Establishing certain alien smuggling-related crimes as RICO-predicate offenses.
Sec. 8. Wiretap authority for alien smuggling investigations.
Sec. 9. Expansion of criteria for deportation for crimes of moral turpitude.
Sec. 10. Payments to political subdivisions for costs of incarcerating illegal aliens.
Sec. 11. Compensation for incarceration of undocumented criminal aliens.
Sec. 12. Miscellaneous provisions.
Sec. 13. Construction of expedited deportation requirements.

SEC. 2. ADDITIONAL EXPANSION OF DEFINITION OF AGGRAVATED FELONY.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), as amended by section 222 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416), is amended—

(1) in subparagraph (J), by inserting ", or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses)," after "corrupt organizations)";

(2) in subparagraph (K)—

(A) by striking "or" at the end of clause (i),

(B) by redesignating clause (ii) as clause (iii), and

(C) by inserting after clause (i) the following new clause:

"(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage; or";

(3) by amending subparagraph (N) to read as follows:

"(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;";

(4) by amending subparagraph (O) to read as follows:

"(O) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 18 months;"

(5) in subparagraph (P), by striking "15 years" and inserting "5 years", and by striking "and" at the end;

(6) by redesignating subparagraphs (O), (P), and (Q) as subparagraphs (P), (Q), and (U), respectively;

(7) by inserting after subparagraph (N) the following new subparagraph:

"(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;"; and

(8) by inserting after subparagraph (Q), as so redesignated, the following new subparagraphs:

"(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of 5 years' imprisonment or more may be imposed;

"(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which a sentence of 5 years' imprisonment or more may be imposed;

"(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to convictions entered on or after the date of the enactment of this Act, except that the amendment made by subsection (a)(3) shall take effect as if included in the enact-

ment of section 222 of the Immigration and Nationality Technical Corrections Act of 1994.

SEC. 3. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ADMINISTRATIVE HEARINGS.—Section 242A(b) of the Immigration and Nationality Act (8 U.S.C. 1252a(b)), as added by section 130004(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), is amended—

(1) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (A) and inserting "or", and

(B) by amending subparagraph (B) to read as follows:

"(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.";

(2) in paragraph (3), by striking "30 calendar days" and inserting "14 calendar days";

(3) in paragraph (4)(B), by striking "proccedings" and inserting "proceedings";

(4) in paragraph (4)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (F) and (G), respectively; and

(B) by adding after subparagraph (C) the following new subparagraphs:

"(D) such proceedings are conducted in, or translated for the alien into, a language the alien understands;

"(E) a determination is made for the record at such proceedings that the individual who appears to respond in such a proceeding is an alien subject to such an expedited proceeding under this section and is, in fact, the alien named in the notice for such proceeding;".

(5) by adding at the end the following new paragraph:

"(5) No alien described in this section shall be eligible for any relief from deportation that the Attorney General may grant in the Attorney General's discretion.".

(b) LIMIT ON JUDICIAL REVIEW.—Subsection (d) of section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a), as added by section 130004(b) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), is amended to read as follows:

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

(c) PRESUMPTION OF DEPORTABILITY.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by inserting after subsection (b) the following new subsection:

"(c) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.

SEC. 4. RESTRICTING THE DEFENSE TO EXCLUSION BASED ON 7 YEARS PERMANENT RESIDENCE FOR CERTAIN CRIMINAL ALIENS.

The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking "has served for such felony or felonies" and all that follows through the period and inserting "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, if the time for appealing such conviction or sentence has expired and the sentence has become final.".

SEC. 5. LIMITATION ON COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.

(a) IN GENERAL.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding at the end the following new subsection:

"(c) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

"(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

"(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to criminal proceedings initiated after the date of the enactment of this Act.

SEC. 6. CRIMINAL ALIEN IDENTIFICATION SYSTEM.

Section 130002(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–312) is amended to read as follows:

"(a) OPERATION AND PURPOSE.—The Commissioner of Immigration and Naturalization shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien identification system. The criminal alien identification system shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.".

SEC. 7. ESTABLISHING CERTAIN ALIEN SMUGGLING-RELATED CRIMES AS RICO-PREDICATE OFFENSES.

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

(1) by inserting "section 1028 (relating to fraud and related activity in connection with identification documents) if the act indictable under section 1028 was committed for the purpose of financial gain," before "section 1029";

(2) by inserting "section 1542 (relating to false statement in application and use of passport) if the act indictable under section 1542 was committed for the purpose of financial gain, section 1543 (relating to forgery or false use of passport) if the act indictable under section 1543 was committed for the purpose of financial gain, section 1544 (relating to misuse of passport) if the act indictable under section 1544 was committed for the purpose of financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under section 1546 was committed for the purpose of financial gain, sections 1581–1588 (relating to peonage and slavery)," after "section 1513 (relating to retaliating against a witness, victim, or an informant),";

(3) by striking "or" before "(E)"; and

(4) by inserting before the period at the end the following: ", or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain".

SEC. 8. WIRETAP AUTHORITY FOR ALIEN SMUGGLING INVESTIGATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (n),

(2) by redesignating paragraph (o) as paragraph (p), and

(3) by inserting after paragraph (n) the following new paragraph:

"(o) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or".

SEC. 9. EXPANSION OF CRITERIA FOR DEPORTATION FOR CRIMES OF MORAL TURPITUDE.

(a) IN GENERAL.—Section 241(a)(2)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)(A)(i)(II)) is amended to read as follows:

"(II) is convicted of a crime for which a sentence of one year or longer may be imposed,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.

SEC. 10. PAYMENTS TO POLITICAL SUBDIVISIONS FOR COSTS OF INCARCERATING ILLEGAL ALIENS.

Amounts appropriated to carry out section 501 of the Immigration Reform and Control Act of 1986 for fiscal year 1995 shall be available to carry out section 242(j) of the Immigration and Nationality Act in that fiscal year with respect to undocumented criminal aliens incarcerated under the authority of political subdivisions of a State.

SEC. 11. COMPENSATION FOR INCARCERATION OF UNDOCUMENTED CRIMINAL ALIENS.

Section 20301(c) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) is amended by striking "2004" and inserting "1996".

SEC. 12. MISCELLANEOUS PROVISIONS.

(a) USE OF ELECTRONIC AND TELEPHONIC MEDIA IN DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien".

(b) CODIFICATION.—

(1) Section 242(i) of such Act (8 U.S.C. 1252(i)) is amended by adding at the end the following: "Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.".

(2) Section 225 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416) is amended by striking "and nothing in" and all that follows through "1252(i))".

(3) The amendments made by this subsection shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416).

SEC. 13. CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.

No amendment made by this title shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

PURPOSE AND SUMMARY

H.R. 668 makes several amendments to the Immigration and Nationality Act (the "INA") and other immigration laws to address the problem of aliens who commit serious crimes while they are in the United States and to give Federal law enforcement officials additional means with which to combat organized immigration crime. In some cases, the provisions in this bill add to or modify related provisions enacted by the Violent Crime Control and Law Enforcement Act of 1994 or the Immigration and Nationality Technical Corrections Act of 1994.

The bill would add certain crimes to the definition of "aggravated felony," crimes for which aliens can be deported from the country following their incarceration. The bill modifies the INA to make it clear that the existing expedited deportation procedures, which apply to non-resident criminal aliens, also apply to aliens admitted for permanent residence on a conditional basis. That section also prohibits the Attorney General from using the discretionary power otherwise allowed under the INA to grant relief from deportation to any non-resident alien who has been convicted of an aggravated felony.

The bill would modify that a provision of the INA that identifies which aliens may be denied entrance to the United States and which aliens may be deported from the country. Under present law, persons who are legal permanent residents and have lived in the country for seven years may assert that status as a defense to certain of the grounds for deportation, and to certain of the grounds for excluding them should they leave the country temporarily and then return. Currently, this defense is not available to those who have been convicted of an aggravated felony and served five years in prison. The bill would strengthen this exception to allow the Government to exclude these persons if they were merely sentenced to five or more years in prison for one or more aggravated felonies, regardless of the amount of time actually served.

The bill will amend the law governing cases where an alien is charged with illegally reentering the United States after having

been deported. The penalties for this crime were enhanced by the 1994 crime bill. H.R. 668 makes it clear that the alien charged with this crime may only challenge the validity of the original deportation order in limited circumstances.

H.R. 668 also modifies that part of the 1994 crime act which created an "Criminal Alien Tracking Center." The 1994 act provisions failed to state the purpose of the center. H.R. 668 specifies that purpose and changes the name to more accurately reflect its function. It also modifies current law to make it clear that the center is to be operated by the INS Commissioner.

The bill adds a number of immigration-related offenses as predicate offenses under the Racketeer Influenced Corrupt Organizations Act ("RICO"). The RICO statute is among the principal tools that Federal law enforcement officials use to combat organized crime. The amendment made by this section will extend the definition of "predicate acts" to enable them to use the statute to combat alien smuggling organizations. The bill also gives Federal law enforcement officials the authority to utilize wiretaps to investigate certain immigration-related crimes.

Finally, H.R. 668 will amend the INA to deport aliens who have been in the country for less than five years (and legal permanent resident aliens who have resided in the country for less than 10 years) and who are convicted of a felony crime involving moral turpitude. Under current law, persons convicted of crimes of moral turpitude can only be deported if they have been sentenced to, or serve, at least one year in prison.

BACKGROUND AND NEED FOR THE LEGISLATION

Several amendments to the Immigration and Nationality Act (8 U.S.C., et. seq.) (the "INA") and to other immigration-related statues were made during the 103d Congress. Most of those amendments were made either by Title XIII of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. No. 103–322), or by the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. No. 103–416). Many of these amendments enacted provisions dealing with the incarceration and deportation of criminal aliens.

The increasing public attention paid to our nation's immigration policies has brought to light the high number of aliens, both legal and illegal, who commit crimes while enjoying the benefits of this country. The significant cost that incarcerating those criminals place on our society has also come to the forefront of the national debate on this subject. In the past, many aliens who committed serious crimes were released into American society after they were released from incarceration, where they then continue to pose a threat to those around them. The government's attempts to deport those aliens committing the most serious crimes has proved to be ineffective. These concerns led the Committee, after consultation with the Department of Justice, to take steps legislatively during the 103d Congress to help ensure that aliens convicted of serious crimes are promptly removed from our society after serving their sentence. That legislation also authorized funds to help state and local governments defray a portion of the cost of incarcerating criminal aliens.

In addition to these problems, the Committee has also noted with concern the development and increase of organized alien smuggling rings. This new form of organized crime preys upon those with the most laudable intentions—the desire to make a better life in the United States. Unfortunately, the participants in these smuggling rings not only bring illegal aliens into the United States in violation of American law but charge those seeking to come to the United States sizable fees for their unlawful services. In many cases, the smuggled aliens are unable to pay the fees in full and are then coerced into involuntary servitude, prostitution, or other illegal activities in order to repay the fees for their illegal passage. In some cases, the carelessness of smugglers leads to the deaths of those they are transporting.

The Committee believes that additional legislation is needed to help federal law enforcement officials combat organized immigration crime. Additionally, the Committee believes that some of the provisions relating to criminal aliens need to be enhanced. Accordingly, the Committee has drafted H.R. 668 as an interim step towards addressing these problems. The Committee believes, however, that further consideration of the provisions of the INA, and other laws dealing with the problem of criminal aliens and organized immigration crime, is needed. Accordingly, the Committee will give further attention to these matters during the 104th Congress to determine if additional legislation is needed in this area of the law.

THE PROVISIONS OF H.R. 668

The most significant provisions of H.R. 668 are intended to accomplish one or both of two broad goals. First, the Committee has drafted provisions that will strengthen the government's ability to efficiently deport aliens who are convicted of serious crimes. Second, the Committee has added immigration crimes to those crimes that the federal government may investigate as predicate offenses under the RICO statute.

Enhanced ability to deport criminal aliens

Amendment to the definition of "aggravated felony"

One of the steps the Committee recommends to accomplish the first goal is to add several crimes to the definition of "aggravated felony." Aliens who commit aggravated felonies can be deported from the United States when they complete their incarceration. Many of the crimes added to this list are those often committed by persons involved in organized immigration crime. The crimes added to this definition include: certain gambling offenses; crimes involving transportation of person for the purpose of prostitution; alien smuggling; counterfeiting forging or trafficking in immigration and other documents; and trafficking in stolen vehicles.

In adding crimes to the list, effort was made to ensure that the overall reach of the definition would be consistent with the sentencing guidelines established by the United States Sentencing Commission. With only certain limited exceptions, the Committee attempted to ensure that all of the crimes defined as aggravated felonies carry a base offense level of at least 12. These minimums have

been selected to ensure that only the most serious crimes, or the more serious convictions of lesser crimes, render the alien deportable.

The Committee recognizes that persons fleeing persecution must sometimes use false immigration documents in order to successfully flee that persecution. Officials from the Department of Justice have assured the Committee that persons who have been persecuted or have a well-founded fear of persecution and who use fraudulent documents to escapes persecution and enter the United States are not prosecuted for the creation or use of those documents in that effort. The Committee believes this discretion in enforcing the laws prohibiting this activity is appropriate. Nothing in H.R. 668 is intended to change that practice.

In considering which crimes should be designated as aggravated felonies, the Committee has also been mindful of the provisions of section 243(h) of the INA. Under that section, a person who is deportable may prevent their deportation if they can demonstrate that their life or freedom would be threatened in the country to which they would be deported. However, this defense is not available to persons who commit aggravated felonies. In proposing the amendments to the definition of aggravated felony, the Committee continues to be concerned with the fact that deportation may result in a threat to the life or freedom of some aliens. The Committee believes, however, that the crimes defined as aggravated felonies are those that clearly demonstrate a disregard for this nation's laws. In the view of the Committee, those who choose not to abide by this nation's laws, and particularly those whose criminal activity physically harms others, have no legitimate claim to remain in the United States.

Further streamlining deportation of aliens who are not permanent aliens

Another step that the Committee believes will help accomplish this first goal is to further streamline the expedited deportation procedures that apply to criminal aliens who are not permanent residents. These procedures give the Attorney General the right to deport an alien who is not a legal permanent resident and who commits an aggravated felony, without placing that alien in the usual, more time-consuming, deportation process. The bill provides that persons who are legal permanent residents on a conditional basis (i.e., those persons recently married to American citizens or those persons who emigrate to the U.S. on employment creation visas) should be eligible for this expedited process if they are convicted of an aggravated felony during their period of conditional permanent residence.

H.R. 668 provides that any alien who is not a legal permanent resident and who is convicted of an aggravated felony should be conclusively presumed to be deportable. The bill also restricts the time period during which the alien may seek judicial review of the deportation order issued in this expedited proceeding from 30 to 14 days. Further, the bill limits a court's authority to review any petition for review or any petition for habeas corpus relief relating to the deportation order to a determination of whether the alien being held for deportation is the alien named in the deportation order

and whether the alien was convicted of an aggravated felony. During this review, the alien is not entitled to challenge his or her underlying conviction for aggravated felony. Finally, H.R. 668 eliminates the Attorney General's discretion to grant relief from deportation to these aliens.

Bringing organized crime laws to bear on immigration crimes

In order to accomplish its second goal, the Committee has added several immigration crimes to the list of predicate acts set forth in the Racketeer Influenced and Corrupt Organizations ("RICO") law applies. The RICO statute is one of the principle tools that federal law enforcement officials use to combat organized crime. Adding as RICO predicate acts crimes such as forgery and false use of passports, visas, permits, and other documents, and the alien smuggling crimes of the INA, will enable federal law enforcement officials to use the RICO law to combat alien smuggling operations. To further complement that effort, the bill provides federal law enforcement officials with the authority to use wiretaps to investigate these crimes.

HEARINGS

The Committee's Subcommittee on Crime held two days of hearings on H.R. 3, the "Taking Back Our Streets Act of 1995," on January 19 and 20, 1995. H.R. 668 incorporates virtually all of the provisions of Title VIII of H.R. 3. No testimony directly related to H.R. 668 was received during the hearings.

COMMITTEE CONSIDERATION

On January 27 and 30, 1995, the Committee met in open session and ordered reported the bill H.R. 668 with amendments by a recorded vote of 22 to 8, a quorum being present.

VOTE OF THE COMMITTEE

1. An amendment by Mr. McCollum to make a technical change in the bill. The McCollum amendment would change the name of the Criminal Alien Tracking Center to Criminal Alien Identification System. The McCollum amendment was agreed to by voice vote.

2. An amendment by Mr. Moorhead to ensure that funds appropriated for FY 1995 for the purpose of reimbursing states and local governments for the costs of incarcerating criminal aliens are available to local governments. The Moorhead amendment was agreed to by voice vote.

3. Mr. Berman offered an amendment to modify the authorization under current law enabling the federal government to reimburse states and local governments for the cost of incarcerating criminal aliens. The Berman amendment would provide that this authorization not be subject to the availability of appropriations on or after October 1, 1996. The Berman amendment was adopted by a 20–14 rollcall vote.

AYES	NAYS
Mr. Moorhead	Mr. Hyde
Mr. McCollum	Mr. Sensenbrenner
Mr. Gallegly	Mr. Coble
Mr. Canady	Mr. Smith (TX)
Mr. Inglis	Mr. Schiff
Mr. Bono	Mr. Goodlatte
Mr. Flanagan	Mr. Buyer
Mr. Conyers	Mr. Hoke
Mrs. Schroeder	Mr. Heinman
Mr. Frank	Mr. Bryant (TN)
Mr. Schumer	Mr. Chabot
Mr. Berman	Mr. Barr
Mr. Bryant (TX)	Mr. Boucher
Mr. Nadler	Mr. Reed
Mr. Scott	
Mr. Watt	
Mr. Becerra	
Mr. Serrano	
Ms. Lofgren	

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4. An amendment by Mr. Schiff to make eligible for deportation certain aliens who commit crimes involving moral turpitude and who are sentenced to a term of incarceration of one year or more. The Schiff amendment was agreed to by voice vote.

5. Ms. Lofgren offered an amendment to require that expedited deportation proceedings for aliens who are not legal permanent residents and who commit aggravated felonies be conducted in the alien's own language and that a finding be made for the record as to the identity of the alien in the proceedings. The Lofgren amendment was adopted by a voice vote.

6. An amendment by Mr. Becerra to exempt aliens who are legal permanent residents on a condition basis from being subject to the expedited deportation procedures applicable to aliens how commit aggravated felonies. The Becerra amendment was defeated by an 8–24 rollcall vote.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Bryant (TX)	Mr. Moorhead
Mr. Nadler	Mr. Sensenbrenner
Mr. Scott	Mr. McCollum
Mr. Watt	Mr. Gekas
Mr. Becerra	Mr. Coble
Mr. Serrano	Mr. Schiff
Ms. Jackson-Lee	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heinman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr

Mrs. Schroeder
Mr. Frank
Mr. Schumer
Mr. Boucher
Mr. Reed
Ms. Lofgren

7. An amendment by Mr. Becerra to require that aliens who consent to deportation hearings conducted by electronic and telephonic media be given "informed consent" and "reasonable" notice. The Becarra amendment was defeated by an 8–24 rollcall vote.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Nadler	Mr. Moorhead
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. McCollum
Mr. Becerra	Mr. Gekas
Mr. Serrano	Mr. Coble
Mr. Lofgren	Mr. Schiff
Ms. Jackson-Lee	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Hoke
	Mr. Bono
	Mr. Heinman
	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mrs. Schroeder
	Mr. Frank
	Mr. Schumer
	Mr. Boucher
	Mr. Bryant (TX)
	Ms. Reed

8. Final Passage. Mr. Hyde moved to report H.R. 668 favorably to the whole House. The resolution was adopted by a rollcall vote of 22–8.

AYES	NAYS
Mr. Hyde	Mr. Sensenbrenner
Mr. Moorhead	Mr. Goodlatte
Mr. McCollum	Mr. Conyers
Mr. Gekas	Mr. Nadler
Mr. Coble	Mr. Scott
Mr. Smith (TX)	Mr. Watt
Mr. Canady	Mr. Becerra
Mr. Inglis	Mr. Serrano
Mr. Buyer	
Mr. Hoke	
Mr. Bono	
Mr. Heineman	

Mr. Bryant (TN)
Mr. Chabot
Mr. Flanagan
Mr. Barr
Mrs. Schroeder
Mr. Schumer
Mr. Boucher
Mr. Reed
Mr. Lofgren
Mr. Jackson Lee

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Pursuant to Clause 2(l)(3)(B) of House rule XI, the Committee reports that the bill H.R. 668 provides for additional direct spending of approximately $2.645 billion through fiscal year 2000. This amount is approximately $1.275 billion in excess of that allocated by the Violent Crime Control and Law Enforcement Act of 1994 (P.L. No. 103–322) for the same period of time. The federal government would be required to pay this additional amount to state and local governments pursuant to section 20301 of that act.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth , with respect to the bill, H.R. 668, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE
Washington, DC, February 6, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed and is providing this revised cost estimate for H.R. 668, the Criminal Alien Deportation Improvements Act of 1995, as ordered reported by the House Committee on the Judiciary on January 31, 1995. This estimate supersedes the one CBO provided on February

3, 1995, which was based on draft language provided to us. Based on corrected bill language provided by committee staff, CBO estimates that enactment of the bill would result in costs to the federal government of about $640 million in fiscal year 1997, and gradually increasing amounts for each subsequent year, with equivalent savings to state and local governments. There would be no budgetary impact for fiscal year 1996, as the provisions relating to new spending would not take effect until October 1, 1996.

These costs would be considered direct spending. Because enacting H.R. 668 would affect direct spending, pay-as-you-go procedures would apply to the bill. The following table summarizes the estimated costs of this bill.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
Estimated budget authority	.....	640	655	670	689
Estimated outlays	.....	640	655	670	680

H.R. 668 contains provisions intended to make it easier for the United States to deport criminal aliens. These provisions would not add to federal costs and might result in some savings to the deportation process. Any such savings would come from appropriated funds and probably would not be significant.

In addition, the bill would require the federal government to compensate state and local governments for their costs to incarcerate undocumented criminal aliens. The cost for compensating state and local governments depends on the number of undocumented criminal aliens that are in state and local custody, which is somewhat uncertain because the immigrant status of criminal aliens is often unknown. Nevertheless, in a 1994 study, the Urban Institute and the Immigration and Naturalization Service estimated that there were about 21,000 undocumented criminal aliens in state prisons in seven large states (Arizona, California, Florida, Illinois, New Jersey, New York, and Texas. The study also estimated that 86 percent of all undocumented aliens in the United States reside in those states. Based on these figures, CBO estimates that the total U.S. population of undocumented criminal aliens in state custody is about 25,000. In addition, there appear to be roughly 5,000 such prisoners in local jails, mostly in California. Thus, CBO estimates that there are about 30,000 undocumented criminal aliens are in state and local custody.

Under the provisions of H.R. 668, the Attorney General would determine the average cost of incarceration in each state. Based on information from the Bureau of Prisons, CBO estimates that the average cost to incarcerate a federal prisoner would be just over $22,000 in fiscal year 1997, which is the first year in which the bill's reimbursement provision would take effect. According to the Urban Institute study, five of seven states examined had annual incarceration costs lower than the federal governments cost. Therefore, CBO believes that reimbursable costs would be about $21,500 per prisoner in 1997, and would grow at 2 to 3 per year.

CBO estimates that if H.R. 668 is enacted, the federal government would make payments of about $640 million in fiscal year 1997 (30,000 prisoners times $21,500 per prisoner per year). These

costs would be considered direct spending. The Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) authorized appropriations of about $300 million per year for each of fiscal years 1997 through 2000 to reimburse state and local governments for alien incarceration costs. Thus, the increase in direct spending could be accompanied by a decrease in spending from appropriated amounts, assuming appropriations would have been enacted in 1997–2000.

CBO's previous estimate, provided on February 3, 1995, included an estimate of costs for fiscal year 1996 because the previous draft of the bill language showed the reimbursement provision taking effect on October 1, 1995. This revised estimate provides the same estimate of costs for fiscal years 1997–2000 as our previous letter.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, *Director*)

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 668 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. This section states the short title of the bill as the "Criminal Alien Deportation Act of 1995."

Section 2. Additional Expansion of the Definition of Aggravated Felony. This section would add certain crimes to the definition of "aggravated felony." Aliens convicted of aggravated felonies can be deported from the country after serving their sentence for the crime. Additionally, aliens convicted of these offenses and who are not legal permanent residents can be placed into expedited deportation proceedings. Finally, aliens convicted of aggravated felonies are not entitled to raise certain defenses to deportation that would otherwise be available to them.

Section 2 adds to the definition of aggravated felony crimes involving the transportation of persons for the purposes of prostitution; serious bribery, counterfeiting or forgery offenses; serious offenses involving trafficking in stolen vehicles; perjury and subornation of perjury; and an offense relating to the failure to appear to answer for a criminal charge for which a sentence of two or more years may be imposed. The bill also modifies the existing definition of aggravated felony to include convicting of an offense involving the failure to appear to serve a sentence to include any such crime if the underlying crime was one for which a sentence of five or more years may have been imposed. Under present law, this offense is an aggravated felony only if the underlying crime is punishable by incarceration of 15 years of more.

Section 3. Deportation Procedures for Certain Criminal Aliens Who Are Not Permanent Residents. The bill would amend section 242A of the INA which establishes expedited deportation proce-

dures for aliens who are not permanent residents and who are convicted of aggravated felonies. Presently those procedures apply only to criminal aliens who are not legal permanent residents. Under H.R. 668, these procedures will also apply to aliens admitted for legal permanent residence on a conditional basis.

The bill also amends this section of the INA to provide that the deportation proceedings will be conducted in, and translated into, a language that the alien understands. The bill also requires that a determination be made for the record that the person appearing at the hearing is the alien named in the notice of the proceeding. The provision requiring translation of the proceedings is intended to apply only to the oral deportation proceedings and not to any written materials introduced during the proceedings or related to them.

Additionally, the bill amends section 242A of the INA to prohibit the Attorney General from using the discretionary power otherwise provided under the INA to grant relief from deportation to any non-resident alien convicted of committing an aggravated felony. It also creates a conclusive presumption of deportability for any alien convicted of an aggravated felony.

Further, the bill reduces the period of time that the Attorney General must wait to enforce an order of deportation from 30 calendar days to 14 calendar days. During the 14-day period, the alien may file a petition for review of the deportation order or a petition for habeas corpus relief from the deportation order. H.R. 668 amends section 106 of the INA to provide that aliens who file any such petitions for review or for habeas corpus relief may only challenge the order on the grounds that the alien held for deportation is not the person named in the order or was not convicted of an aggravated felony. No other issue is reviewable, including whether the alien actually is guilty of the underlying aggravated felony.

Section 4. Restricting The Defense to Exclusion Based on Seven Years Permanent Residence for Certain Criminal Aliens. This section of the bill would modify that portion of the INA that specifies which aliens may be denied entrance to United States and which aliens may be deported from the country. Under present law, aliens who are legal permanent residents and have lived in the country for seven years may assert that status as a defense to deportation or exclusion in certain circumstances. Currently, if that alien has been convicted of an aggravated felony and served five years in prison, however, the government may deport them or exclude them from the country notwithstanding their seven years of residence. Section 4 strengthens this exception to allow the government to deport or exclude these persons if they were sentenced to five or more years in prison for one or more aggravated felonies, regardless of the actual time served in prison. This change is made so that the government may start the deportation process when the alien begins to serve their sentence. For all practical purposes under the present law, the government must wait until the alien has served five years in prison before bringing deportation proceedings against them. In some cases this limitation results in the alien being released from prison before the deportation proceeding is concluded. H.R. 668 would remove this limitation on the government's ability

to deport incarcerated aliens who have committed aggravated felonies.

Section 5. Limitation on collateral Attacks on Underlying Deportation Orders. Section 5 applies to cases in which an alien is charged with re-entering, or attempting to re-enter, the U.S. after having been deported. The penalties for illegal reentering were enhanced by the Violent Crime Control and Law Enforcement Act of 1994. This section amends the INA to provide that the alien charged with this crime may only challenge the validity of the original deportation order if the alien can show that he or she has exhausted all administrative remedies, that the deportation order improperly deprived the aliens of the opportunity for judicial review, and that the deportation order was fundamentally unfair.

Section 6. Criminal Alien Identification System. Section 6 modifies that part of the Violent Crime Control and Law Enforcement Act of 1994 which created a "Criminal Alien Tracking Center" but failed to identify any specific purpose for the center. This section specifies that the center is to be used to assist Federal, state, and local law enforcement agencies in identifying and locating aliens who may be deportable because they have committed aggravated felonies. It also modifies the 1994 act to provide that the center is to be operated by the INS Commissioner. Present law places the center's operation in the hands of the Attorney General. Finally, section 6 changes the name of the center of "Criminal Alien Identification System" in order to more accurately described the purpose of the system.

Section 7. Establishing Certain Alien Smuggling-Related Crimes as RICO Predicate Acts. This section adds certain immigration-related offenses to the list of crimes to which the RICO statute applies. The offenses added as RICO predicate act are offenses involving fraud, false use, or forgery of passports, identification documents, or visas; offenses relating to peonage and slavery; offenses relating to retaliation against a witness, victim, or an information; and offense relating to assisting illegal aliens to enter the country.

Section 8. Wiretap Authority for Alien Smuggling Investigations. Section 8 amends the federal wiretapping laws to allow federal prosecutors to seek wiretap authorization to assist them in investigating certain alien smuggling crimes. The Committee has become aware that prosecutors have been hampered in investigating these types of crimes by the lack of statutory authority giving them authority to obtain wiretaps to carry out these investigations. H.R. 668 will remedy this problem. The offenses for which wiretap authority is granted under the bill include fraud and misuses of passports, visas, permits, and other immigration documents, and crimes involving alien smuggling.

Section 9. Expansion of the Criteria for Deportation For Crimes of Moral Turpitude. This section amends the INA to provide that aliens who have been in the country for less than five years (or legal permanent resident aliens who have resided in the country for less than 10 years) and who are convicted of a felony crime involving moral turpitude can be deported, regardless of the sentence actually imposed or served. Under current law, aliens who commit crimes of moral turpitude can only be deported if they are actually sentenced to or serve at least one year in prison.

Section 10. Payments to Political Subdivisions for Costs of Incarcerating Illegal Aliens. This section of the bill makes a technical change to ensure that units of local government are eligible for funds authorized in the Violent Crime Control and Law Enforcements Act of 1994 to reimburse states and units of local governments for the cost of incarcerating convicted criminal aliens. An appropriations bill appropriating funds for this purpose was passed by the House before the 1994 crime bill became law. The appropriations bill made reference to section 501 of the Immigration Reform and Control Act of 1986, which authorizes reimbursement to state governments. As a result, local governments were not eligible for these funds even though the crime bill, enacted later, clearly demonstrates the intent of Congress that both state and local governments be eligible for these funds. H.R. 668 amends the 1986 act so that the funds appropriated for FY 1995 are available to both state and local governments for this cost.

Section 11. Compensation for Incarceration of Undocumented Aliens.. This section amends the provisions of the Violent Crime Control and Law Enforcement Act of 1994 that authorizes the appropriation of $1.8 billion over six years to reimburse state and local governments for the cost of incarcerating criminal aliens. This provision made these funds subject to the availability of appropriations until September 30, 2204, after which the federal government would be obligated to reimburse states in full for these costs. Section 11 of H.R. 668 would amend the 1994 crime act to obligate the federal government to reimburse states in full for these costs on and after October 1, 1996.

Section 12. Miscellaneous Provisions. Subsection (b) of this section amends the INA to enable the Attorney General to conduct deportation proceedings by electronic or telephonic media with the consent of the alien. This section also contains provisions concerning the interpretation of certain sections of the INA and the effective date of the amendments made by H.R. 668 to sections 242(i) and 225 of the INA.

AGENCY VIEWS

The Committee received a letter from the U.S. Department of Justice providing Administration views on H.R. 3, the "Taking Back Our Streets Act of 1995." This letter addressed the pertinent issues presented in H.R. 668 as follows:

VIII. STREAMLINING DEPORTATION OF CRIMINAL ALIENS

> Various provisions relating to criminal aliens were enacted by the Violent Crime Control and Law Enforcement Act of 1994 and by the Immigration and Nationality Technical Corrections Act of 1994 (INTCA). However, the enactments do not include all of the provisions relating to criminal aliens that were included in title L of the version of H.R. 3355 passed by the Senate in 1993. This title of H.R. 3 is designed to restore a number of provisions that were in the 1993 Senate-passed bill but were not included in the enacted legislation. We generally support the reforms pro-

posed in this title, with some qualifications discussed below.

INTCA broadened the definition of "aggravated felony" for purposes of the immigration laws. Section 801 of H.R. 3 adds several additional offenses to the expanded definition, which were in the 1993 Senate-passed bill version, including interstate transportation of persons for purposes of prostitution or other sex crimes; commercial bribery, counterfeiting, forgery, or trafficking in vehicles with altered identification numbers punishable by five or more years of imprisonment; perjury punishable by five or more years of imprisonment; and failure to appear before a court in relation to a felony charge punishable by two or more years of imprisonment.

We favor this strengthening of our immigration laws with respect to these dangerous felons. We note, however, that some limited adjustment of the revised definition may be necessary to assure consistency with treaty obligations and would be pleased to work with Congress in refining this proposal. In addition, we believe that the provision should be augmented to include additional offenses relating to travel documents, and that a few technical changes to simplify its implementation—such as providing a single effective date for its application—should be adopted.

Section 802, following provisions that were included in the 1993 Senate-passed bill, makes some amendments to strengthen provisions for expedited deportation of certain non-permanent resident aliens that were enacted by the 1994 Crime Act. The substantive changes include: (1) extending the authority to conditionally permanent resident aliens, (2) allowing the alien to be removed from the United States 14 days (rather than 30) after the issuance of the order, and (3) narrowing judicial review to the question whether the person is in fact a non-permanent resident or conditionally permanent resident alien who has been convicted of an aggravated felony (where current law also permits review of conformity to required procedures). The reference in the amendment to the judicial review provisions to "section 242A(c)" should be to "section 242A(b)." We generally support this section, but do not believe that conditionally permanent resident aliens should be covered.

Section 803, which we support, eliminates § 212(c) relief under the Immigration and Nationality Act for aliens sentenced to at least five years for an aggravated felony, and effectively provides that asylum may be denied on the basis of conviction of an aggravated felony.

Section 804, which we support, limits collateral attacks on deportation orders in prosecutions for unlawful reentry following deportation.

Section 805 adds more detailed language relating to the operation and function of the criminal alien tracking center. The changes from current law are providing that INS is to operate the center in cooperation with the Director of the FBI and the heads of other agencies, and that the

function of the center is to assist in identifying and locating aliens who may be subject to deportation by reason of conviction of aggravated felonies. The function of the center might be defined more broadly to include assistance in identifying and locating all types of deportable criminal aliens.

Section 806(a) effectively gives specific statutory authority to the Attorney General to conduct deportation hearings by electronic or telephonic media "with the consent of the alien." The proviso "with the consent of the alien" should be deleted with regard to electronic media, since this proviso could potentially halt numerous ongoing electronic hearings where the alien objects, and could invite challenges to orders already entered.

Sections 806(b), which we support, primarily enacts protective language to foreclose an interpretation of existing provisions authorizing expedited deportation procedures as creating legally enforceable rights in criminal aliens to expedited proceedings. Section 807 enacts similar language for the amendments proposed in this title of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

* * * * * * *

(43) The term "aggravated felony" means—

(A) murder;

* * * * * * *

(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), *or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses),* for which a sentence of 5 years' imprisonment or more may be imposed;

(K) an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business; [or]

(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for

the purpose of prostitution) for commercial advantage; or

[(ii)] *(iii)* is described in section 1581, 1582, 1583, 1584, 1585, or 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

* * * * * * *

[(N) an offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

[(O) an offense described in section 1546(a) of title 18, United States Code (relating to document fraud) which constitutes trafficking in the documents described in such section for which the term of imprisonment imposed (regardless of any suspicion of such imprisonment) is at least 5 years;]

(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;

(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 18 months;

[(P)] *(Q)* an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of [15 years] *5 years* or more; [and]

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of 5 years' imprisonment or more may be imposed;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which a sentence of 5 years' imprisonment or more may be imposed;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

[(Q)] *(U)* an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for

which the term of imprisonment was completed within the previous 15 years.

* * * * * * *

JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION

SEC. 106. (a) * * *

* * * * * * *

[(d)(1) A petition for review or for habeas corpus on behalf of an alien against whom a final order of deportation has been issued pursuant to section 242A(b) may challenge only—

[(A) whether the alien is in fact the alien described in the order;

[(B) whether the alien is in fact an alien described in section 242A(b)(2);

[(C) whether the alien has been convicted of an aggravated felony and such conviction has become final; and

[(D) whether the alien was afforded the procedures required by section 242A(b)(4).

[(2) No court shall have jurisdiction to review any issue other than an issue described in paragraph (1).]

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

* * * * * * *

TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) * * *

* * * * * * *

(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) (other than paragraphs (3) and (9)(C)). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 211(b). The first sentence of this subsection shall not apply to an alien who has been convicted of one or more aggravated felonies and [has served for such felony or felonies a term of imprisonment of at least 5 years.] *has been sentenced for such felony or felonies*

to a term of imprisonment of at least 5 years, if the time for appealing such conviction or sentence has expired and the sentence has become final.

* * * * * * *

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. (a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in the United States shall, upon the order of the Attorney General, be deported if the alien is within one or more of the following classes of deportable aliens:

(1) * * *

(2) CRIMINAL OFFENSES.—

(A) GENERAL CRIMES.—

(i) CRIMES OF MORAL TURPITUDE.—Any alien who—

(I) * * *

[(II) either is sentenced to confinement or is confined therefor in a prison or correctional institution for one year or longer,]

(II) is convicted of a crime for which a sentence of one year or longer may be imposed,

is deportable.

* * * * * * *

APPREHENSION AND DEPORTATION OF ALIENS

SEC. 242. (a) * * *

(b) A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and as authorized by the Attorney General, shall make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before a special inquiry officer, at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the Attorney General shall prescribe necessary and proper safeguards for the rights and privileges of such alien*; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien*. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the special inquiry officer may proceed to a determination in like manner as if the alien were present. In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation that an additional immigration officer shall be assigned to present the evidence on behalf of the United States and in such case such additional immigration officer

shall have authority to present evidence, and to interrogate, examine and cross-examine the alien or other witnesses in the proceedings. Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this Act, as the Attorney General shall prescribe. Such regulations shall include requirements that are consistent with section 242B and that provide that—

(1) * * *

* * * * * * *

(i) In the case of an alien who is convicted of an offense which makes the alien subject to deportation, the Attorney General shall begin any deportation proceeding as expeditiously as possible after the date of the conviction. *Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.*

* * * * * * *

SEC. 242A. (a) * * *

(b) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

(1) * * *

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

(A) was not lawfully admitted for permanent residence at the time at which proceedings under this section commenced; [and] *or*

[(B) is not eligible for any relief from deportation under this Act.]

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

(3) The Attorney General may not execute any order described in paragraph (1) until [30 calendar days] *14 calendar days* have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 106.

(4) Proceedings before the Attorney General under this subsection shall be in accordance with such regulations as the Attorney General shall prescribe. The Attorney General shall provide that—

(A) the alien is given reasonable notice of the charges and of the opportunity described in subparagraph (C);

(B) the alien shall have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such [proccedings] *proceedings*, as the alien shall choose;

(C) the alien has a reasonable opportunity to inspect the evidence and rebut the charges;

(D) such proceedings are conducted in, or translated for the alien into, a language the alien understands;

(E) a determination is made for the record at such proceedings that the individual who appears to respond in such a proceeding is an alien subject to such an expedited proceeding under this section and is, in fact, the alien named in the notice for such proceeding;

[(D)] *(F)* a record is maintained for judicial review; and

[(E)] *(G)* the final order of deportation is not adjudicated by the same person who issues the charges.

(5) No alien described in this section shall be eligible for any relief from deportation that the Attorney General may grant in the Attorney General's discretion.

(c) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.

* * * * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

* * * * * * *

REENTRY OF DEPORTED ALIEN

SEC. 276. (a) * * *

* * * * * * *

(c) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

(3) the entry of the order was fundamentally unfair.

* * * * * * *

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

* * * * * * *

TITLE II—PRISONS

* * * * * * *

Subtitle C—Alien Incarceration

SEC. 20301. INCARCERATION OF UNDOCUMENTED CRIMINAL ALIENS.

(a) * * *

* * * * * * *

(c) TERMINATION OF LIMITATION.—Notwithstanding section 242(j)(5) of the Immigration and Nationality Act, as added by subsection (a), the requirements of section 242(j) of the Immigration and Nationality Act, as added by subsection (a), shall not be subject to the availability of appropriations on and after October 1, [2004] *1996*.

* * * * * * *

TITLE XIII—CRIMINAL ALIENS AND IMMIGRATION ENFORCEMENT

* * * * * * *

SEC. 130002. CRIMINAL ALIEN TRACKING CENTER.

[(a) OPERATION.—The Attorney General shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien tracking center.]

(a) OPERATION AND PURPOSE.—The Commissioner of Immigration and Naturalization shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien identification system. The criminal alien identification system shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.

* * * * * * *

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

* * * * * * *

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under

section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), *section 1028 (relating to fraud and related activity in connection with identification documents) if the act indictable under section 1028 was committed for the purpose of financial gain,* section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), *section 1542 (relating to false statement in application and use of passport) if the act indictable under section 1542 was committed for the purpose of financial gain, section 1543 (relating to forgery or false use of passport) if the act indictable under section 1543 was committed for the purpose of financial gain, section 1544 (relating to misuse of passport) if the act indictable under section 1544 was committed for the purpose of financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under section 1546 was committed for the purpose of financial gain, sections 1581–1588 (relating to peonage and slavery),* section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251–2252 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of that title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the

United States, [or] (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, *or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain.*

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CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

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§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * *

* * * * * * *

(n) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms); [and]

(o) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or

[(o)] *(p)* any conspiracy to commit any offense described in any subparagraph of this paragraph.

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SECTION 225 OF THE IMMIGRATION AND NATIONALITY TECHNICAL CORRECTIONS ACT OF 1994

SEC. 225. CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.

No amendment made by this Act [and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i))] shall be

construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

ADDITIONAL VIEWS

The Criminal Alien Deportation Improvements Act of 1995, H.R. 668, is generally an excellent bill. However, we strongly object to one particular provision (Section 11) which was added as an amendment to H.R. 668 during the Judiciary Committee mark-up.

Section 11 requires that the federal government begin reimbursing states for the cost of incarcerating illegal criminal aliens as an entitlement program in fiscal year 1996, rather than in fiscal year 2004, as mandated by the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103–322).

Last year's crime bill authorized such sums as may be necessary to carry out this requirement—up to $1.8 billion of which could come out of the Violent Crime Reduction Trust Fund. However, the money was to be subject to annual appropriations until fiscal year 2004 when it would be provided as an entitlement program. By not making the funding an entitlement program until fiscal year 2004—a date outside the scope of the current five-year budget resolution—the authors of the provision ensured that the bill would not violate the Budget Act.

By accelerating the effective date of the entitlement program from fiscal year 2004 to fiscal year 1996, the amendment adopted during mark-up subjects the bill to the allocations provided in the fiscal year 1995 budget resolution (H.Con.Res. 218). But H.Con.Res. 218 provided no new entitlement or budget authority for the Judiciary Committee to authorize this program. To our knowledge, the Judiciary Committee does not have sufficient existing budget authority or entitlement authority for the program, which would subject H.R. 668 to a point of order on the House floor. (Under section 302(f) of the Budget Act, a committee is prohibited from considering legislation that would exceed its budget authority or entitlement authority allocation.)

The Congressional Budget Office concludes that H.R. 668 will affect direct spending and that pay-as-you-go procedures will apply. CBO further estimates that Section 11 will result in outlays of $630 million in fiscal year 1996 and $3.3 billion over five years. P.L. 103–322, however, authorized only approximately $300 million in each of fiscal years 1996–2000.

Simply put, Section 11 exceeds the Judiciary Committee's allocated levels and subjects the entire bill to a budget point of order.

For this reason, we oppose the provision and we will oppose any rule that waives the budget point of order.

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JAMES SENSENBRENNER.
BOB GOODLATTE.
HOWARD COBLE.
LAMAR SMITH.
STEVE SCHIFF.
STEVE BUYER.
FRED HEINEMAN.
ED BRYANT.
STEVE CHABOT.

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