

CODIFICATION

This section was enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1253. Penalties related to removal

(a) Penalty for failure to depart

(1) In general

Any alien against whom a final order of removal is outstanding by reason of being a member of any of the classes described in section 1227(a) of this title, who—

(A) willfully fails or refuses to depart from the United States within a period of 90 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court,

(B) willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure,

(C) connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, or

(D) willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to such order,

shall be fined under title 18, or imprisoned not more than four years (or 10 years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 1227(a) of this title), or both.

(2) Exception

It is not a violation of paragraph (1) to take any proper steps for the purpose of securing cancellation of or exemption from such order of removal or for the purpose of securing the alien's release from incarceration or custody.

(3) Suspension

The court may for good cause suspend the sentence of an alien under this subsection and order the alien's release under such conditions as the court may prescribe. In determining whether good cause has been shown to justify releasing the alien, the court shall take into account such factors as—

(A) the age, health, and period of detention of the alien;

(B) the effect of the alien's release upon the national security and public peace or safety;

(C) the likelihood of the alien's resuming or following a course of conduct which made or would make the alien deportable;

(D) the character of the efforts made by such alien himself and by representatives of the country or countries to which the alien's

removal is directed to expedite the alien's departure from the United States;

(E) the reason for the inability of the Government of the United States to secure passports, other travel documents, or removal facilities from the country or countries to which the alien has been ordered removed; and

(F) the eligibility of the alien for discretionary relief under the immigration laws.

(b) Willful failure to comply with terms of release under supervision

An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(c) Penalties relating to vessels and aircraft

(1) Civil penalties

(A) Failure to carry out certain orders

If the Attorney General is satisfied that a person has violated subsection (d) or (e) of section 1231 of this title, the person shall pay to the Commissioner the sum of \$2,000 for each violation.

(B) Failure to remove alien stowaways

If the Attorney General is satisfied that a person has failed to remove an alien stowaway as required under section 1231(d)(2) of this title, the person shall pay to the Commissioner the sum of \$5,000 for each alien stowaway not removed.

(C) No compromise

The Attorney General may not compromise the amount of such penalty under this paragraph.

(2) Clearing vessels and aircraft

(A) Clearance before decision on liability

A vessel or aircraft may be granted clearance before a decision on liability is made under paragraph (1) only if a bond approved by the Attorney General or an amount sufficient to pay the civil penalty is deposited with the Commissioner.

(B) Prohibition on clearance while penalty unpaid

A vessel or aircraft may not be granted clearance if a civil penalty imposed under paragraph (1) is not paid.

(d) Discontinuing granting visas to nationals of country denying or delaying accepting alien

On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under this section, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas or non-immigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.

(June 27, 1952, ch. 477, title II, ch. 5, § 243, 66 Stat. 212; Pub. L. 89-236, § 11(f), Oct. 3, 1965, 79 Stat. 918; Pub. L. 95-549, title I, § 104, Oct. 30, 1978, 92 Stat. 2066; Pub. L. 96-212, title II, § 203(e), Mar. 17, 1980, 94 Stat. 107; Pub. L. 97-116, § 18(i), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 101-649, title V, § 515(a)(2), title VI, § 603(b)(3), Nov. 29, 1990, 104 Stat. 5053, 5085; Pub. L. 104-132, title IV, § 413(a), (f), Apr. 24, 1996, 110 Stat. 1269; Pub. L. 104-208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009-612.)

AMENDMENTS

1996—Pub. L. 104-208 amended section generally. Prior to amendment, section consisted of subssecs. (a) to (h) relating to countries to which aliens were to be deported.

Subsec. (h)(2). Pub. L. 104-132, § 413(a), inserted at end “For purposes of subparagraph (D), an alien who is described in section 1251(a)(4)(B) of this title shall be considered to be an alien for whom there are reasonable grounds for regarding as a danger to the security of the United States.”

Subsec. (h)(3). Pub. L. 104-132, § 413(f), added par. (3) which read as follows: “Notwithstanding any other provision of law, paragraph (1) shall apply to any alien if the Attorney General determines, in the discretion of the Attorney General, that—

“(A) such alien’s life or freedom would be threatened, in the country to which such alien would be deported or returned, on account of race, religion, nationality, membership in a particular social group, or political opinion; and

“(B) the application of paragraph (1) to such alien is necessary to ensure compliance with the 1967 United Nations Protocol Relating to the Status of Refugees.”

1990—Subsec. (h)(1). Pub. L. 101-649, § 603(b)(3), substituted “1251(a)(4)(D)” for “1251(a)(19)”.

Subsec. (h)(2). Pub. L. 101-649, § 515(a)(2), inserted sentence at end relating to aliens who have been convicted of aggravated felonies.

1981—Subsec. (a). Pub. L. 97-116 inserted a comma after “subject” in fourth sentence.

1980—Subsec. (h). Pub. L. 96-212 substituted provisions relating to deportation or return of an alien where the Attorney General determines that the return would threaten the life or freedom of the alien on account of race, religion, nationality, membership in a particular social group, or political opinion, for provisions relating to withholding of deportation for any necessary period of time where the Attorney General decides the alien would be subject to persecution on account of race, religion, or political opinion.

1978—Subsec. (h). Pub. L. 95-549 inserted “(other than an alien described in section 1251(a) of this title)” before “within the United States”.

1965—Subsec. (h). Pub. L. 89-236 substituted “persecution on account of race, religion, or political opinion” for “physical persecution”.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Pub. L. 104-132, title IV, § 413(g), Apr. 24, 1996, 110 Stat. 1269, provided that: “The amendments made by this section [amending this section and sections 1254, 1255, and 1259 of this title] shall take effect on the date of the enactment of this Act [Apr. 24, 1996] and shall apply to applications filed before, on, or after such date if final action has not been taken on them before such date.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 515(a)(2) of Pub. L. 101-649 applicable to convictions entered before, on, or after Nov.

29, 1990, and to applications for withholding of deportation made on or after such date, see section 515(b)(2) of Pub. L. 101-649, as amended, set out as a note under section 1158 of this title.

Amendment by section 603(b)(3) of Pub. L. 101-649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101-649, set out as a note under section 1227 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-212 effective Mar. 17, 1980, and applicable to fiscal years beginning with the fiscal year beginning Oct. 1, 1979, see section 204 of Pub. L. 96-212, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date of amendment by Pub. L. 89-236, see section 20 of Pub. L. 89-236, set out as a note under section 1151 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

REFERENCES TO ORDER OF REMOVAL DEEMED TO INCLUDE ORDER OF EXCLUSION AND DEPORTATION

For purposes of carrying out this chapter, any reference in law to an order of removal is deemed to include a reference to an order of exclusion and deportation or an order of deportation, see section 309(d)(2) of Pub. L. 104-208, set out in an Effective Date of 1996 Amendments note under section 1101 of this title.

SENSE OF CONGRESS RESPECTING TREATMENT OF CUBAN POLITICAL PRISONERS

Pub. L. 99-603, title III, § 315(c), Nov. 6, 1986, 100 Stat. 3440, as amended by Pub. L. 104-208, div. C, title III, § 308(g)(7)(C)(i), Sept. 30, 1996, 110 Stat. 3009-623, provided that: “It is the sense of the Congress that the Secretary of State should provide for the issuance of visas to nationals of Cuba who are or were imprisoned in Cuba for political activities without regard to section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)).”

§ 1254. Repealed. Pub. L. 104-208, div. C, title III, § 308(b)(7), Sept. 30, 1996, 110 Stat. 3009-615

Section, acts June 27, 1952, ch. 477, title II, ch. 5, § 244, 66 Stat. 214; Oct. 24, 1962, Pub. L. 87-885, § 4, 76 Stat. 1247; Oct. 3, 1965, Pub. L. 89-236, § 12, 79 Stat. 918; Oct. 20, 1976, Pub. L. 94-571, § 7(f), 90 Stat. 2706; Oct. 30, 1978, Pub. L. 95-549, title I, § 105, 92 Stat. 2066; Mar. 17, 1980, Pub. L. 96-212, title II, § 203(d), 94 Stat. 107; Dec. 29, 1981, Pub. L. 97-116, §§ 9, 18(h)(2), (j), 95 Stat. 1616, 1620; Nov. 6, 1986, Pub. L. 99-603, title III, § 315(b), 100 Stat. 3439; Oct. 24, 1988, Pub. L. 100-525, § 2(q)(1), 102 Stat. 2613; Nov. 18, 1988, Pub. L. 100-690, title VII, § 7343(b), 102 Stat. 4470; Nov. 29, 1990, Pub. L. 101-649, title I, § 162(e)(2), title VI, § 603(b)(3), (4), 104 Stat. 5011, 5085; Dec. 12, 1991, Pub. L. 102-232, title III, § 307(m)(1), 105 Stat. 1757; Sept. 13, 1994, Pub. L. 103-322, title IV, § 40703, 108 Stat. 1955; Apr. 24, 1996, Pub. L. 104-132, title IV, § 413(b), (c), 110 Stat. 1269, related to suspension of deportation. See sections 1229b and 1229c of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective, with certain transitional provisions, on the first day of the first month beginning more than