

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(June 27, 1952, ch. 477, title II, ch. 4, § 235, 66 Stat. 198; Pub. L. 101-649, title VI, § 603(a)(11), Nov. 29, 1990, 104 Stat. 5083; Pub. L. 104-132, title IV, §§ 422(a), 423(b), Apr. 24, 1996, 110 Stat. 1270, 1272; Pub. L. 104-208, div. C, title III, §§ 302(a), 308(d)(5), 371(b)(4), Sept. 30, 1996, 110 Stat. 3009-579, 3009-619, 3009-645; Pub. L. 110-229, title VII, § 702(j)(5), May 8, 2008, 122 Stat. 867.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (d)(3), (4)(A), was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

AMENDMENTS

2008—Subsec. (b)(1)(G). Pub. L. 110-229 added subpar. (G).

1996—Pub. L. 104-208, § 302(a), amended section generally, revising and restating former subsecs. (a) to (d) relating to inspection of aliens arriving in the United States, powers of immigration officers, detention of aliens for further inquiry, temporary and permanent exclusion of aliens, and collateral attacks on orders of exclusion and deportation.

Pub. L. 104-208, § 371(b)(4), substituted “an immigration judge” for “a special inquiry officer”, “immigration judge” for “special inquiry officer”, and “immigration judges” for “special inquiry officers”, wherever appearing in subsecs. (a) to (c).

Subsec. (b). Pub. L. 104-132, § 422(a), which directed the general amendment of subsec. (b) by substituting pars. (1) to (3) relating to asylum interviews and hearings, detention for further inquiry, and challenges of favorable decisions, for former subsec. (b) consisting of single par., was repealed by Pub. L. 104-208, § 308(d)(5). See Construction of 1996 Amendment note below.

Subsec. (d). Pub. L. 104-132, § 423(b), added subsec. (d) which read as follows: “In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 1325 or section 1326 of this title, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 1226 and 1252 of this title.”

1990—Subsec. (c). Pub. L. 101-649 substituted “subparagraph (A) (other than clause (ii)), (B), or (C) of section 1182(a)(3) of this title” for “paragraph (27), (28), or (29) of section 1182(a) of this title”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-229 effective on the transition program effective date described in section 1806 of Title 48, Territories and Insular Possessions, see section 705(b) of Pub. L. 110-229, set out as an Effective Date note under section 1806 of Title 48.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 302(a) of 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. 104-208, div. C, title III, § 308(d)(5), Sept. 30, 1996, 110 Stat. 3009-619, provided that the amendment made by section 308(d)(5) is effective as of Apr. 24, 1996. See Construction of 1996 Amendment note below.

Amendment by section 371(b)(4) of Pub. L. 104-208 effective Sept. 30, 1996, see section 371(d)(1) of Pub. L. 104-208, set out as a note under section 1101 of this title.

Pub. L. 104-132, title IV, § 422(c), Apr. 24, 1996, 110 Stat. 1272, which provided that the amendments made by section 422 of Pub. L. 104-132 [amending this section and former section 1227 of this title] were to take effect on the first day of the first month that began more than 180 days after Apr. 24, 1996, was repealed by Pub. L. 104-208, div. C, title III, § 308(d)(5), Sept. 30, 1996, 110 Stat. 3009-619. See Construction of 1996 Amendment note below.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 applicable to individuals entering United States on or after June 1, 1991, see section 601(e)(1) of Pub. L. 101-649, set out as a note under section 1101 of this title.

CONSTRUCTION OF 1996 AMENDMENT

Pub. L. 104-208, div. C, title III, § 308(d)(5), Sept. 30, 1996, 110 Stat. 3009-619, provided that: “Effective as of the date of the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 [Pub. L. 104-132, approved Apr. 24, 1996], section 422 of such Act [amending this section and section 1227 of this title, and enacting provisions set out as a note above] is repealed and the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] shall be applied as if such section had not been enacted.”

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.

GAO STUDY ON OPERATION OF EXPEDITED REMOVAL PROCEDURES

Pub. L. 104-208, div. C, title III, § 302(b), Sept. 30, 1996, 110 Stat. 3009-584, required the Comptroller General to conduct a study on the implementation and effectiveness of the expedited removal procedures under subsec. (b)(1) of this section and submit to Congress a report on the study no later than 18 months after Sept. 30, 1996.

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

For purposes of 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.

§ 1225a. Preinspection at foreign airports

(a) Establishment of preinspection stations

(1) NEW STATIONS.—Subject to paragraph (5), not later than October 31, 1998, the Attorney General, in consultation with the Secretary of State, shall establish and maintain preinspection stations in at least 5 of the foreign airports that are among the 10 foreign airports which the Attorney General identifies as serving as last points of departure for the greatest numbers of inadmissible alien passengers who arrive from abroad by air at ports of entry within the United States. Such preinspection stations shall be in addition to any preinspection stations established prior to September 30, 1996.

(2) REPORT.—Not later than October 31, 1998, the Attorney General shall report to the Committees on the Judiciary of the House of Representatives and of the Senate on the implementation of paragraph (1).

(3) DATA COLLECTION.—Not later than November 1, 1997, and each subsequent November 1, the Attorney General shall compile data identifying—

(A) the foreign airports which served as last points of departure for aliens who arrived by air at United States ports of entry without valid documentation during the preceding fiscal years;

(B) the number and nationality of such aliens arriving from each such foreign airport; and

(C) the primary routes such aliens followed from their country of origin to the United States.

(4) Subject to paragraph (5), not later than January 1, 2008, the Secretary of Homeland Security, in consultation with the Secretary of State, shall establish preinspection stations in at least 25 additional foreign airports, which the Secretary of Homeland Security, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively facilitate the travel of admissible aliens and reduce the number of inadmissible aliens, especially aliens who are potential terrorists, who arrive from abroad by air at points of entry within the United States. Such preinspection stations shall be in addition to those established before September 30, 1996, or pursuant to paragraph (1).

(5) CONDITIONS.—Prior to the establishment of a preinspection station, the Attorney General, in consultation with the Secretary of State, shall ensure that—

(A) employees of the United States stationed at the preinspection station and their accompanying family members will receive appropriate protection;

(B) such employees and their families will not be subject to unreasonable risks to their welfare and safety; and

(C) the country in which the preinspection station is to be established maintains practices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees (done at Geneva, July 28, 1951), or the Protocol Relating to the Status of Refugees (done at New York, January 31, 1967), or that an alien in the country otherwise has recourse to avenues of protection from return to persecution.

(b) Establishment of carrier consultant program and immigration security initiative

The Secretary of Homeland Security shall assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which, based on the records maintained pursuant to subsection (a)(3), served as a point of departure for a significant number of arrivals at United States ports of entry without valid documentation, but where no preinspection station exists. Beginning not later than December 31, 2006, the number of

airports selected for an assignment under this subsection shall be at least 50.

(June 27, 1952, ch. 477, title II, ch. 4, §235A, as added Pub. L. 104-208, div. C, title I, §123(a), Sept. 30, 1996, 110 Stat. 3009-560; amended Pub. L. 108-458, title VII, §§7206(a), 7210(d)(1), Dec. 17, 2004, 118 Stat. 3817, 3825.)

CODIFICATION

September 30, 1996, referred to in subsec. (a)(1), was in the original “the date of the enactment of such Act”, which was translated as meaning the date of enactment of Pub. L. 104-208, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108-458, §7210(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “(4) ADDITIONAL STATIONS.—Subject to paragraph (5), not later than October 31, 2000, the Attorney General, in consultation with the Secretary of State, shall establish preinspection stations in at least 5 additional foreign airports which the Attorney General, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively reduce the number of aliens who arrive from abroad by air at points of entry within the United States who are inadmissible to the United States. Such preinspection stations shall be in addition to those established prior to September 30, 1996, or pursuant to paragraph (1).”

Subsec. (b). Pub. L. 108-458, §7206(a), inserted “and immigration security initiative” after “program” in heading, substituted “Secretary of Homeland Security” for “Attorney General” in text, and inserted at end “Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.”

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.

EXCHANGE OF TERRORIST INFORMATION AND INCREASED PREINSPECTION AT FOREIGN AIRPORTS

Pub. L. 108-458, title VII, §7210(a), (b), Dec. 17, 2004, 118 Stat. 3824, provided that:

“(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

“(1) The exchange of terrorist information with other countries, consistent with privacy requirements, along with listings of lost and stolen passports, will have immediate security benefits.

“(2) The further away from the borders of the United States that screening occurs, the more security benefits the United States will gain.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that—

“(1) the Federal Government should exchange terrorist information with trusted allies;

“(2) the Federal Government should move toward real-time verification of passports with issuing authorities;

“(3) where practicable, the Federal Government should conduct screening before a passenger departs on a flight destined for the United States;

“(4) the Federal Government should work with other countries to ensure effective inspection regimes at all airports;

“(5) the Federal Government should work with other countries to improve passport standards and provide foreign assistance to countries that need help

making the transition to the global standard for identification; and

“(6) the Department of Homeland Security, in coordination with the Department of State and other Federal agencies, should implement the initiatives called for in this subsection.”

§ 1226. Apprehension and detention of aliens

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentenced¹ to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal ac-

tivity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial review

The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

(June 27, 1952, ch. 477, title II, ch. 4, § 236, 66 Stat. 200; Pub. L. 101-649, title V, § 504(b), title VI, § 603(a)(12), Nov. 29, 1990, 104 Stat. 5050, 5083; Pub. L. 102-232, title III, § 306(a)(5), Dec. 12, 1991, 105 Stat. 1751; Pub. L. 104-208, div. C, title III, §§ 303(a), 371(b)(5), Sept. 30, 1996, 110 Stat. 3009-585, 3009-645.)

AMENDMENTS

1996—Pub. L. 104-208, § 303(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) to (e) related to proceedings to determine whether aliens detained under section 1225 of this title should be allowed to enter or should be excluded and deported.

Subsecs. (a) to (d). Pub. L. 104-208, § 371(b)(5), substituted “An immigration judge” for “A special inquiry officer”, “an immigration judge” for “a special inquiry

¹ So in original. Probably should be “sentenced”.