

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.

REPORT ON CRIMINAL ALIENS

Pub. L. 101-649, title V, §510, Nov. 29, 1990, 104 Stat. 5051, as amended by Pub. L. 102-232, title III, §306(a)(8), (9), Dec. 12, 1991, 105 Stat. 1751, provided that the Attorney General was to submit to appropriate Committees of Congress, by not later than Dec. 1, 1991, a report describing efforts of Immigration and Naturalization Service to identify, apprehend, detain, and remove from the United States aliens who have been convicted of crimes in the United States and including a criminal alien census and removal plan.

§ 1228. Expedited removal of aliens convicted of committing aggravated felonies

(a) Removal of criminal aliens

(1) In general

The Attorney General shall provide for the availability of special removal proceedings at certain Federal, State, and local correctional facilities for aliens convicted of any criminal offense covered in section 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title. Such proceedings shall be conducted in conformity with section 1229a of this title (except as otherwise provided in this section), and in a manner which eliminates the need for additional detention at any processing center of the Service and in a manner which assures expeditious removal following the end of the alien's incarceration for the underlying sentence. Nothing in this section 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) Implementation

With respect to an alien convicted of an aggravated felony who is taken into custody by the Attorney General pursuant to section 1226(c) of this title, the Attorney General shall, to the maximum extent practicable, detain any such felon at a facility at which other such aliens are detained. In the selection of such facility, the Attorney General shall make reasonable efforts to ensure that the alien's access to counsel and right to counsel under section 1362 of this title are not impaired.

(3) Expedited proceedings

(A) Notwithstanding any other provision of law, the Attorney General shall provide for the initiation and, to the extent possible, the completion of removal proceedings, and any administrative appeals thereof, in the case of any alien convicted of an aggravated felony before the alien's release from incarceration for the underlying aggravated felony.

(B) Nothing in this section shall be construed as requiring the Attorney General to effect the removal of any alien sentenced to ac-

tual incarceration, before release from the penitentiary or correctional institution where such alien is confined.

(4) Review

(A) The Attorney General shall review and evaluate removal proceedings conducted under this section.

(B) The Comptroller General shall monitor, review, and evaluate removal proceedings conducted under this section. Within 18 months after the effective date of this section, the Comptroller General shall submit a report to such Committees concerning the extent to which removal proceedings conducted under this section may adversely affect the ability of such aliens to contest removal effectively.

(b) Removal of aliens who are not permanent residents

(1) The Attorney General may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 1227(a)(2)(A)(iii) of this title (relating to conviction of an aggravated felony) and issue an order of removal pursuant to the procedures set forth in this subsection or section 1229a of this title.

(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; or

(B) had permanent resident status on a conditional basis (as described in section 1186a of this title) at the time that proceedings under this section commenced.

(3) The Attorney General may not execute any order described in paragraph (1) until 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 1252 of this title.

(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 proceedings, as the alien shall choose;

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

(D) a determination is made for the record that the individual upon whom the notice for the proceeding under this section is served (either in person or by mail) is, in fact, the alien named in such notice;

(E) a record is maintained for judicial review; and

(F) the final order of removal 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 removal that the Attorney General may grant in the Attorney General's discretion.

(c)¹ Presumption of deportability

An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.

(c)¹ Judicial removal**(1) Authority**

Notwithstanding any other provision of this chapter, a United States district court shall have jurisdiction to enter a judicial order of removal at the time of sentencing against an alien who is deportable, if such an order has been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.

(2) Procedure

(A) The United States Attorney shall file with the United States district court, and serve upon the defendant and the Service, prior to commencement of the trial or entry of a guilty plea a notice of intent to request judicial removal.

(B) Notwithstanding section 1252b² of this title, the United States Attorney, with the concurrence of the Commissioner, shall file at least 30 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and identifying the crime or crimes which make the defendant deportable under section 1227(a)(2)(A) of this title.

(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from removal under this chapter, the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief. The court shall either grant or deny the relief sought.

(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 1229a of this title.

(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

(iv) The court may order the alien removed if the Attorney General demonstrates that the alien is deportable under this chapter.

(3) Notice, appeal, and execution of judicial order of removal

(A)(i) A judicial order of removal or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 1252 of this title.

(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of removal is based, the expiration of the period described in section 1252(b)(1) of this title, or the final dismissal of an appeal from such conviction, the order of removal shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

(B) As soon as is practicable after entry of a judicial order of removal, the Commissioner shall provide the defendant with written notice of the order of removal, which shall designate the defendant's country of choice for removal and any alternate country pursuant to section 1253(a)² of this title.

(4) Denial of judicial order

Denial of a request for a judicial order of removal shall not preclude the Attorney General from initiating removal proceedings pursuant to section 1229a of this title upon the same ground of deportability or upon any other ground of deportability provided under section 1227(a) of this title.

(5) Stipulated judicial order of removal

The United States Attorney, with the concurrence of the Commissioner, may, pursuant to Federal Rule of Criminal Procedure 11, enter into a plea agreement which calls for the alien, who is deportable under this chapter, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of removal from the United States as a condition of the plea agreement or as a condition of probation or supervised release, or both. The United States district court, in both felony and misdemeanor cases, and a United States magistrate judge in misdemeanor cases, may accept such a stipulation and shall have jurisdiction to enter a judicial order of removal pursuant to the terms of such stipulation.

(June 27, 1952, ch. 477, title II, ch. 4, § 238, formerly ch. 5, § 242A, as added Pub. L. 100-690, title VII, § 7347(a), Nov. 18, 1988, 102 Stat. 4471; amended Pub. L. 101-649, title V, § 506(a), Nov. 29, 1990, 104 Stat. 5050; Pub. L. 102-232, title III, § 309(b)(10), Dec. 12, 1991, 105 Stat. 1759; Pub. L. 103-322, title XIII, § 130004(a), (c), Sept. 13, 1994, 108 Stat. 2026, 2027; Pub. L. 103-416, title II, §§ 223(a), 224(a), Oct. 25, 1994, 108 Stat. 4322; Pub. L. 104-132, title IV, §§ 440(g), 442(a), (c), Apr. 24, 1996, 110 Stat. 1278-1280; renumbered ch. 4, § 238, and amended Pub. L. 104-208, div. C, title III, §§ 304(c)(1), 306(d), 308(b)(5), (c)(1), (4)(A), (e)(1)(F), (2)(D), (10), (g)(1), (2)(A), (C), (5)(A)(ii), (C), (D), (10)(H), 374(a), title VI, § 671(b)(13), (c)(5), (6), Sept. 30, 1996, 110 Stat. 3009-597, 3009-612, 3009-615, 3009-616, 3009-619, 3009-620, 3009-622, 3009-623, 3009-625, 3009-647, 3009-722, 3009-723.)

Editorial Notes**REFERENCES IN TEXT**

For effective date of this section, referred to in subsec. (a)(4)(B), see Effective Date note below.

¹ So in original. Two subsecs. (c) have been enacted.

² See References in Text note below.

This chapter, referred to in subsec. (c)(1), (2)(C), (D)(iv), (5), 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.

Section 1252b of this title, referred to in subsec. (c)(2)(B), was repealed by Pub. L. 104–208, div. C, title III, §308(b)(6), Sept. 30, 1996, 110 Stat. 3009–615.

Section 1253 of this title, referred to in subsec. (c)(3)(B), was amended generally by Pub. L. 104–208, div. C, title III, §307(a), Sept. 30, 1996, 110 Stat. 3009–612, and, as so amended, subsec. (a) no longer contains provisions relating to alternate countries. Provisions similar to those contained in former subsec. (a) of section 1253 are now contained in section 1231(b) of this title.

Federal Rule of Criminal Procedure 11, referred to in subsec. (c)(5), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section was formerly classified to section 1252a of this title prior to renumbering by Pub. L. 104–208.

PRIOR PROVISIONS

A prior section 1228, act June 27, 1952, ch. 477, title II, ch. 4, §238, 66 Stat. 202, as amended, which related to entry through or from foreign contiguous territory and adjacent islands, was renumbered section 233 of act June 27, 1952, by Pub. L. 104–208, div. C, title III, §308(b)(4), Sept. 30, 1996, 110 Stat. 3009–615, and was transferred to section 1223 of this title.

AMENDMENTS

1996—Pub. L. 104–208, §308(b)(5), substituted “removal” for “deportation” in section catchline.

Subsec. (a). Pub. L. 104–208, §308(e)(10), substituted “Removal” for “Deportation” in heading.

Subsec. (a)(1). Pub. L. 104–208, §308(g)(1), substituted “1227(a)(2)(A)(iii)” for “1251(a)(2)(A)(iii)”.

Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation” in two places.

Pub. L. 104–208, §308(c)(4)(A), inserted at end “Nothing in this section 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.”

Pub. L. 104–208, §308(c)(1)(A), substituted “section 1229a” for “section 1252”.

Pub. L. 104–132, §440(g)(1)(B), struck out “, where warranted,” after “assures expeditious deportation”.

Pub. L. 104–132, §440(g)(1)(A), as amended by Pub. L. 104–208, §§306(d), 308(g)(10)(H), 671(c)(5), substituted “any criminal offense covered in section 1251(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title” for “aggravated felonies (as defined in section 1101(a)(43) of this title)”.

Subsec. (a)(2). Pub. L. 104–208, §308(c)(1)(B), substituted “section 1226(c)” for “section 1252(a)(2)”.

Pub. L. 104–132, §440(g)(2), which directed substitution of “any criminal offense covered in section 1251(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1251(a)(2)(A)(ii) of this title for which both predicate offenses are covered by section 1251(a)(2)(A)(i) of this title.” for “aggravated felony” and all that follows through “before any scheduled hearings.”, was repealed by Pub. L. 104–208, §671(c)(6).

Subsec. (a)(3), (4). Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation” wherever appearing.

Subsec. (b). Pub. L. 104–208, §308(e)(10), substituted “Removal” for “Deportation” in heading.

Subsec. (b)(1). Pub. L. 104–208, §308(g)(5)(C), substituted “section 1229a” for “section 1252(b)”.

Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation”.

Pub. L. 104–208, §308(c)(1)(C), substituted “section 1227(a)(2)(A)(iii)” for “section 1251(a)(2)(A)(iii)”.

Subsec. (b)(2)(A). Pub. L. 104–132, §442(a)(1)(A), substituted “or” for “and” at end.

Subsec. (b)(2)(B). Pub. L. 104–132, §442(a)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “is not eligible for any relief from deportation under this chapter.”

Subsec. (b)(3). Pub. L. 104–208, §308(g)(2)(A), substituted “section 1252” for “section 1105a”.

Pub. L. 104–132, §442(a)(2), substituted “14 calendar days” for “30 calendar days”.

Subsec. (b)(4)(B). Pub. L. 104–132, §442(a)(3), substituted “proceedings” for “proceedings”.

Subsec. (b)(4)(D). Pub. L. 104–208, §304(c)(1)(A), (B), redesignated subpar. (E) as (D) and amended it generally, and struck out former subpar. (D). Prior to amendments, subpars. (D) and (E) read as follows:

“(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.”

Pub. L. 104–132, §442(a)(4)(B), added subpar. (D). Former subpar. (D) redesignated (F).

Subsec. (b)(4)(E). Pub. L. 104–208, §304(c)(1)(C), redesignated subpar. (F) as (E). Former subpar. (E) amended generally and redesignated (D).

Pub. L. 104–132, §442(a)(4)(B), added subpar. (E). Former subpar. (E) redesignated (G).

Subsec. (b)(4)(F). Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation”.

Pub. L. 104–208, §304(c)(1)(C), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 104–132, §442(a)(4)(A), redesignated subpar. (D) as (F).

Subsec. (b)(4)(G). Pub. L. 104–208, §304(c)(1)(C), redesignated subpar. (G) as (F).

Pub. L. 104–132, §442(a)(4)(A), redesignated subpar. (E) as (G).

Subsec. (b)(5). Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation”.

Pub. L. 104–132, §442(a)(5), added par. (5).

Subsec. (c). Pub. L. 104–208, §671(b)(13), redesignated subsec. (d) relating to judicial removal as (c).

Pub. L. 104–208, §308(e)(10), substituted “removal” for “deportation” in heading.

Pub. L. 104–132, §442(c), added subsec. (c), relating to presumption of deportability.

Subsec. (c)(1). Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation”.

Subsec. (c)(2)(A). Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation”.

Subsec. (c)(2)(B). Pub. L. 104–208, §308(g)(1), substituted “section 1227(a)(2)(A)” for “section 1251(a)(2)(A)”.

Subsec. (c)(2)(C). Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation”.

Subsec. (c)(2)(D)(ii). Pub. L. 104–208, §308(g)(5)(D), substituted “section 1229a” for “section 1252(b)”.

Subsec. (c)(2)(D)(iv). Pub. L. 104–208, §308(e)(2)(D), substituted “removed” for “deported”.

Subsec. (c)(3). Pub. L. 104–208, §308(e)(10), substituted “removal” for “deportation” in heading.

Subsec. (c)(3)(A)(i). Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation”.

Subsec. (c)(3)(A)(ii). Pub. L. 104–208, §308(g)(2)(A), substituted “section 1252” for “section 1105a”.

Subsec. (c)(3)(A)(iii). Pub. L. 104–208, §308(g)(2)(C), substituted “section 1252(b)(1)” for “section 1105a(a)(1)”.

Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation” in two places.

Subsec. (c)(3)(B). Pub. L. 104–208, §308(e)(1)(F), substituted “removal” for “deportation” wherever appearing.

Subsec. (c)(4). Pub. L. 104–208, §308(g)(5)(A)(ii), substituted “section 1229a” for “section 1252”.

Pub. L. 104-208, §308(g)(1), substituted “section 1227(a)” for “section 1251(a)”.

Pub. L. 104-208, §308(e)(1)(F), substituted “removal” for “deportation” in two places.

Subsec. (c)(5). Pub. L. 104-208, §308(e)(10), substituted “removal” for “deportation” in heading.

Pub. L. 104-208, §308(e)(1)(F), substituted “removal” for “deportation” in two places.

Subsec. (d). Pub. L. 104-208, §671(b)(13), redesignated subsec. (d) relating to judicial removal as (c).

Subsec. (d)(1). Pub. L. 104-208, §374(a)(1), substituted “who is deportable” for “whose criminal conviction causes such alien to be deportable under section 1251(a)(2)(A) of this title”.

Subsec. (d)(4). Pub. L. 104-208, §374(a)(2), struck out “without a decision on the merits” after “Denial”.

Subsec. (d)(5). Pub. L. 104-208, §374(a)(3), added par. (5).

1994—Pub. L. 103-322, §130004(c)(1), struck out “procedures for” after “Expedited” in section catchline.

Subsec. (a)(1). Pub. L. 103-322, §130004(c)(2), substituted subsec. heading for one which read “In general”, redesignated existing subsec. (a) as par. (1) of subsec. (a), and inserted heading.

Subsec. (a)(2). Pub. L. 103-322, §130004(c)(3), redesignated subsec. (b) as par. (2) of subsec. (a).

Subsec. (a)(3). Pub. L. 103-322, §130004(c)(5), redesignated subsec. (d) as par. (3) of subsec. (a), and redesignated pars. (1) and (2) of former subsec. (d) as subpars. (A) and (B), respectively, of subsec. (a)(3).

Subsec. (a)(4). Pub. L. 103-322, §130004(c)(6), redesignated subsec. (e) as par. (4) of subsec. (a), redesignated par. (1) of former subsec. (e) as subpar. (A) of subsec. (a)(4) and struck out at end “Within 12 months after the effective date of this section, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate concerning the effectiveness of such deportation proceedings in facilitating the deportation of aliens convicted of aggravated felonies.”, and redesignated par. (2) of former subsec. (e) as subpar. (B) of subsec. (a)(4).

Subsec. (b). Pub. L. 103-322, §130004(a), added subsec. (b). Former subsec. (b) redesignated par. (2) of subsec. (a).

Subsec. (b)(4)(D), (E). Pub. L. 103-416, §223(a), struck out “the determination of deportability is supported by clear, convincing, and unequivocal evidence and” before “a record is” in subpar. (D) and substituted “adjudicated” for “entered” in subpar. (E).

Subsec. (c). Pub. L. 103-322, §130004(c)(4), struck out heading and text of subsec. (c). Prior to amendment, text read as follows: “An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.”

Subsec. (d). Pub. L. 103-416, §224(a), added subsec. (d). Pub. L. 103-322, §130004(c)(5), redesignated subsec. (d) as par. (3) of subsec. (a).

Subsec. (e). Pub. L. 103-322, §130004(c)(6), redesignated subsec. (e) as par. (4) of subsec. (a).

1991—Subsec. (a). Pub. L. 102-232 inserted closing parenthesis before period at end of first sentence.

1990—Subsec. (d)(2). Pub. L. 101-649 struck out before period at end “, unless the chief prosecutor or the judge in whose jurisdiction conviction occurred submits a written request to the Attorney General that such alien be so deported”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENTS

Pub. L. 104-208, div. C, title III, §304(c)(2), Sept. 30, 1996, 110 Stat. 3009-597, provided that: “The amendments made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 442(a) of Public Law 104-132.”

Amendment by section 308(b)(5), (c)(1), (4)(A), (e)(1)(F), (2)(D), (10), (g)(1), (2)(A), (C), (5)(A)(ii), (C), (D), (10)(H) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month be-

ginning 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, §306(d), Sept. 30, 1996, 110 Stat. 3009-612, provided that the amendment made by section 306(d) is effective as if included in the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132.

Pub. L. 104-208, div. C, title III, §374(c), Sept. 30, 1996, 110 Stat. 3009-648, provided that: “The amendment made by subsection (a)(2) [amending this section] shall be effective as if included in the enactment of section 224(a) of the Immigration and Nationality Technical Corrections Act of 1994 [Pub. L. 103-416].”

Amendment by section 671(b)(13) of Pub. L. 104-208 effective as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, see section 671(b)(14) of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by section 671(c)(5), (6) of Pub. L. 104-208 effective as if included in the enactment of subtitle A of title IV of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, see section 671(c)(7) of Pub. L. 104-208, set out as a note under section 1189 of this title.

Pub. L. 104-132, title IV, §442(d), Apr. 24, 1996, 110 Stat. 1280, provided that: “The amendments made by this section [amending this section and section 1105a of this title] shall become effective no later than 60 days after the publication by the Attorney General of implementing regulations that shall be published on or before January 1, 1997.”

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 224(a) of Pub. L. 103-416 applicable to all aliens whose adjudication of guilt or guilty plea is entered in the record after Oct. 25, 1994, see section 224(c) of Pub. L. 103-416, set out as a note under section 1252 of this title.

Pub. L. 103-322, title XIII, §130004(d), Sept. 13, 1994, 108 Stat. 2028, provided that: “The amendments made by this section [amending this section and section 1105a of this title] shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act [Sept. 13, 1994].”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-649, title V, §506(b), Nov. 29, 1990, 104 Stat. 5050, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].”

EFFECTIVE DATE

Pub. L. 100-690, title VII, §7347(c), Nov. 18, 1988, 102 Stat. 4472, provided that: “The amendments made by subsections (a) and (b) [enacting this section and amending section 1105a of this title] shall apply in the case of any alien convicted of an aggravated felony on or after the date of the enactment of this Act [Nov. 18, 1988].”

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.

EXPANDED SPECIAL REMOVAL PROCEEDINGS

Pub. L. 103-322, title XIII, §130007, Sept. 13, 1994, 108 Stat. 2029, as amended by Pub. L. 104-208, div. C, title

III, §308(g)(5)(F), (10)(F), title VI, §671(a)(6), Sept. 30, 1996, 110 Stat. 3009-623, 3009-625, 3009-721, provided that:

“(a) IN GENERAL.—Subject to the availability of appropriations, the Attorney General may expand the program authorized by section[s] 238(a)(3) and 239(d) of the Immigration and Nationality Act [8 U.S.C. 1228(a)(3), 1229(d)] to ensure that such aliens are immediately deportable upon their release from incarceration.

“(b) DETENTION AND REMOVAL OF CRIMINAL ALIENS.—Subject to the availability of appropriations, the Attorney General may—

“(1) construct or contract for the construction of 2 Immigration and Naturalization Service Processing Centers to detain criminal aliens; and

“(2) provide for the detention and removal of such aliens.

“(c) REPORT.—By September 30, 1996, and September 30, 1998 the Attorney General shall report to the Congress on the programs referred to in subsections (a) and (b). The report shall include an evaluation of the programs, an outcome-based measurement of performance, and an analysis of the cost effectiveness of the additional resources provided under this Act [see Tables for classification].

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

“(1) \$55,000,000 for fiscal year 1995;

“(2) \$54,000,000 for fiscal year 1996;

“(3) \$49,000,000 for fiscal year 1997; and

“(4) \$2,000,000 for fiscal year 1998.”

§ 1229. Initiation of removal proceedings

(a) Notice to appear

(1) In general

In removal proceedings under section 1229a of this title, written notice (in this section referred to as a “notice to appear”) shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 1229a of this title.

(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien’s address or telephone number.

(iii) The consequences under section 1229a(b)(5) of this title of failure to provide address and telephone information pursuant to this subparagraph.

(G)(i) The time and place at which the proceedings will be held.

(ii) The consequences under section 1229a(b)(5) of this title of the failure, except

under exceptional circumstances, to appear at such proceedings.

(2) Notice of change in time or place of proceedings

(A) In general

In removal proceedings under section 1229a of this title, in the case of any change or postponement in the time and place of such proceedings, subject to subparagraph (B) a written notice shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any) specifying—

(i) the new time or place of the proceedings, and

(ii) the consequences under section 1229a(b)(5) of this title of failing, except under exceptional circumstances, to attend such proceedings.

(B) Exception

In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under paragraph (1)(F).

(3) Central address files

The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

(b) Securing of counsel

(1) In general

In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 1229a of this title, the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.

(2) Current lists of counsel

The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 1229a of this title. Such lists shall be provided under subsection (a)(1)(E) and otherwise made generally available.

(3) Rule of construction

Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 1229a of this title if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

(c) Service by mail

Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F).

(d) Prompt initiation of removal

(1) In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General shall begin any removal pro-