

INA: ACT 236 - APPREHENSION AND DETENTION OF ALIENS

Sec. 236. 1/ (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 212(a)(2),

(B) is deportable by reason of having committed any offense covered in section 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D),

(C) is deportable under section 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentence 2/ to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 212(a)(3)(B) or deportable under section 237(a)(4)(B), 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, United States Code, 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 activity, 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 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 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.

FOOTNOTES FOR SECTION 236

INA: ACT 236 FN 1

FN 1 Former section 236 of INA deleted by §303 of IIRIRA. Section 303(b)(2) of IIRIRA provides the Attorney General with an optional delay of the effective date of the custody provisions of this section if the Attorney General notifies in writing the Committees on the Judiciary of the House and Senate regarding custody space and personnel deficiencies.

On October 9, 1996, the Commissioner so notified the committees. Section 303(b)(3) provides for transition for aliens regarding mandatory custody.

INA: ACT 236 FN 2

FN 2 Sic. Should read "sentenced". Typo is in § 303 of IIRIRA.

INA: ACT 236A-- MANDATORY DETENTION OF SUSPECTED TERRORISTS; HABEAS CORPUS; JUDICIAL REVIEW 1/

SEC. 236A. (a) DETENTION OF TERRORIST ALIENS-

(1) CUSTODY- The Attorney General shall take into custody any alien who is certified under paragraph (3).

(2) RELEASE- Except as provided in paragraphs (5) and (6), the Attorney General shall maintain custody of such an alien until the alien is removed from the United States. Except as provided in paragraph (6), such custody shall be maintained irrespective of any relief from removal for which the alien may be eligible, or any relief from removal granted the alien, until the Attorney General determines that the alien is no longer an alien who may be certified under paragraph (3). If the alien is finally determined not to be removable, detention pursuant to this subsection shall terminate.

(3) CERTIFICATION- The Attorney General may certify an alien under this paragraph if the Attorney General has reasonable grounds to believe that the alien--

(A) is described in section 212(a)(3)(A)(i), 212(a)(3)(A)(iii), 212(a)(3)(B), 237(a)(4)(A)(i), 237(a)(4)(A)(iii), or 237(a)(4)(B); or

(B) is engaged in any other activity that endangers the national security of the United States.

(4) NONDELEGATION- The Attorney General may delegate the authority provided under paragraph (3) only to the Deputy Attorney General. The Deputy Attorney General may not delegate such authority.

(5) COMMENCEMENT OF PROCEEDINGS- The Attorney General shall place an alien detained under paragraph (1) in removal proceedings, or shall charge the alien with a criminal offense, not later than 7 days after the commencement of such detention. If the

requirement of the preceding sentence is not satisfied, the Attorney General shall release the alien.

(6) LIMITATION ON INDEFINITE DETENTION- An alien detained solely under paragraph (1) who has not been removed under section 241(a)(1)(A), and whose removal is unlikely in the reasonably foreseeable future, may be detained for additional periods of up to six months only if the release of the alien will threaten the national security of the United States or the safety of the community or any person.

(7) REVIEW OF CERTIFICATION- The Attorney General shall review the certification made under paragraph (3) every 6 months. If the Attorney General determines, in the Attorney General's discretion, that the certification should be revoked, the alien may be released on such conditions as the Attorney General deems appropriate, unless such release is otherwise prohibited by law. The alien may request each 6 months in writing that the Attorney General reconsider the certification and may submit documents or other evidence in support of that request.

(b) HABEAS CORPUS AND JUDICIAL REVIEW-

(1) IN GENERAL- Judicial review of any action or decision relating to this section (including judicial review of the merits of a determination made under subsection (a)(3) or (a)(6)) is available exclusively in habeas corpus proceedings consistent with this subsection. Except as provided in the preceding sentence, no court shall have jurisdiction to review, by habeas corpus petition or otherwise, any such action or decision.

(2) APPLICATION-

(A) IN GENERAL- Notwithstanding any other provision of law, including section 2241(a) of title 28, United States Code, habeas corpus proceedings described in paragraph (1) may be initiated only by an application filed with--

(i) the Supreme Court;

(ii) any justice of the Supreme Court;

(iii) any circuit judge of the United States Court of Appeals for the District of Columbia Circuit; or

(iv) any district court otherwise having jurisdiction to entertain it.

(B) APPLICATION TRANSFER- Section 2241(b) of title 28, United States Code, shall apply to an application for a writ of habeas corpus described in subparagraph (A).

(3) APPEALS- Notwithstanding any other provision of law, including section 2253 of title 28, in habeas corpus proceedings described in paragraph (1) before a circuit or district judge, the final order shall be subject to review, on appeal, by the United States

Court of Appeals for the District of Columbia Circuit. There shall be no right of appeal in such proceedings to any other circuit court of appeals.

(4) RULE OF DECISION- The law applied by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit shall be regarded as the rule of decision in habeas corpus proceedings described in paragraph (1).

(c) STATUTORY CONSTRUCTION- The provisions of this section shall not be applicable to any other provision of this Act.

FOOTNOTES FOR SECTION 236A

INA: ACT 236A FN 1

FN 1 Section 236A was added by section 412(a) of the USA Patriot Act, Public Law 107-56, dated October 26, 2001. Section 412(c) of Public Law 107-56 provides the reporting requirements to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.