

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-416, title II, §209(b), Oct. 25, 1994, 108 Stat. 4312, as amended by Pub. L. 104-208, div. C, title VI, §671(b)(8), Sept. 30, 1996, 110 Stat. 3009-722, provided that: "The amendments made by this section [amending this section] shall apply with respect to aliens brought to the United States more than 60 days after the date of enactment of this Act [Oct. 25, 1994]."

Amendment by section 219(p) of Pub. L. 103-416 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 219(dd) of Pub. L. 103-416, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 543(a)(10) of Pub. L. 101-649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub. L. 101-649, set out as a note under section 1221 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.

§ 1324. Bringing in and harboring certain aliens**(a) Criminal penalties**

(1)(A) Any person who—

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v)(I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,

shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under title 18, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under title 18, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18) to, or places in jeopardy the life of, any person, be fined under title 18, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.

(C) It is not a violation of clauses¹ (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs—

(A) be fined in accordance with title 18 or imprisoned not more than one year, or both; or

(B) in the case of—

(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined under title 18 and shall be imprisoned, in the case of a first or second violation of

¹ So in original. Probably should be "clause".

subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

(3)(A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18 or imprisoned for not more than 5 years, or both.

(B) An alien described in this subparagraph is an alien who—

(i) is an unauthorized alien (as defined in section 1324a(h)(3) of this title), and

(ii) has been brought into the United States in violation of this subsection.

(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

(A) the offense was part of an ongoing commercial organization or enterprise;

(B) aliens were transported in groups of 10 or more; and

(C)(i) aliens were transported in a manner that endangered their lives; or

(ii) the aliens presented a life-threatening health risk to people in the United States.

(b) Seizure and forfeiture

(1) In general

Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

(2) Applicable procedures

Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18 relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

(3) Prima facie evidence in determinations of violations

In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

(A) Records of any judicial or administrative proceeding in which that alien's status was an issue and in which it was determined that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(B) Official records of the Service or of the Department of State showing that the alien

had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(C) Testimony, by an immigration officer having personal knowledge of the facts concerning that alien's status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.

(c) Authority to arrest

No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(d) Admissibility of videotaped witness testimony

Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination and the deposition otherwise complies with the Federal Rules of Evidence.

(e) Outreach program

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.

(June 27, 1952, ch. 477, title II, ch. 8, § 274, 66 Stat. 228; Pub. L. 95-582, § 2, Nov. 2, 1978, 92 Stat. 2479; Pub. L. 97-116, § 12, Dec. 29, 1981, 95 Stat. 1617; Pub. L. 99-603, title I, § 112, Nov. 6, 1986, 100 Stat. 3381; Pub. L. 100-525, § 2(d), Oct. 24, 1988, 102 Stat. 2610; Pub. L. 103-322, title VI, § 60024, Sept. 13, 1994, 108 Stat. 1981; Pub. L. 104-208, div. C, title II, §§ 203(a)-(d), 219, title VI, § 671(a)(1), Sept. 30, 1996, 110 Stat. 3009-565, 3009-566, 3009-574, 3009-720; Pub. L. 106-185, § 18(a), Apr. 25, 2000, 114 Stat. 222; Pub. L. 108-458, title V, § 5401, Dec. 17, 2004, 118 Stat. 3737; Pub. L. 109-97, title VII, § 796, Nov. 10, 2005, 119 Stat. 2165.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (a)(1)(C). Pub. L. 109-97 added subpar. (C).

2004—Subsec. (a)(4). Pub. L. 108-458, § 5401(a), added par. (4).

Subsec. (e). Pub. L. 108-458, § 5401(b), added subsec. (e).

2000—Subsec. (b). Pub. L. 106-185 inserted heading and amended text of subsec. (b) generally, substituting present provisions for provisions relating to conveyances subject to seizure and forfeiture, exceptions, offi-

cers and authorized persons, disposition of forfeited conveyances, and suits and actions.

1996—Subsec. (a)(1). Pub. L. 104-208, § 671(a)(1), made technical amendment to directory language of Pub. L. 103-322, § 60024(1)(F). See 1994 Amendment note below.

Subsec. (a)(1)(A)(v). Pub. L. 104-208, § 203(b)(1), which directed the amendment of subsec. (a)(1)(A) by adding cl. (v) at end, was executed by adding cl. (v) after cl. (iv), to reflect the probable intent of Congress.

Subsec. (a)(1)(B)(i). Pub. L. 104-208, § 203(a), (b)(2)(A), inserted “or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain” after “subparagraph (A)(i)”.

Subsec. (a)(1)(B)(ii). Pub. L. 104-208, § 203(b)(2)(B), substituted “(iv), or (v)(II)” for “(iv)”.

Subsec. (a)(1)(B)(iii), (iv). Pub. L. 104-208, § 203(b)(2)(C), (D), substituted “(iv), or (v)” for “(iv)”.

Subsec. (a)(2). Pub. L. 104-208, § 203(d), substituted “for each alien in respect to whom a violation of this paragraph occurs” for “for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved” in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 104-208, § 203(b)(3), in concluding provisions, substituted “be fined under title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.” for “be fined in accordance with title 18 or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(iii), imprisoned not more than 5 years, or both..”

Subsec. (a)(2)(B)(i). Pub. L. 104-208, § 203(c), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “a second or subsequent offense.”

Subsec. (a)(3). Pub. L. 104-208, § 203(b)(4), added par. (3).

Subsec. (d). Pub. L. 104-208, § 219, added subsec. (d).

1994—Subsec. (a)(1). Pub. L. 103-322, § 60024(1)(F), as amended by Pub. L. 104-208, § 671(a)(1), substituted “shall be punished as provided in subparagraph (B)” for “shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both, for each alien in respect to whom any violation of this paragraph occurs” in concluding provisions.

Pub. L. 103-322, § 60024(1)(A)–(E), (G), designated existing provisions of par. (1) as subpar. (A) of par. (1), redesignated subpars. (A) to (D) of former par. (1) as cls. (i) to (iv), respectively, of subpar. (A), and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 103-322, § 60024(2), in concluding provisions, substituted “or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(iii), imprisoned not more than 5 years, or both.” for “or imprisoned not more than five years, or both”.

1988—Subsec. (a)(1). Pub. L. 100-525, § 2(d)(1), in closing provisions substituted “or imprisoned” for “imprisoned” and “this paragraph” for “this subsection”.

Subsec. (b)(4)(C), (5). Pub. L. 100-525, § 2(d)(2), amended Pub. L. 99-603, § 112(b)(5), (8). See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99-603, § 112(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Any person, including the owner, operator, pilot, master, commanding officer, agent, or consignee of any means of transportation who—

“(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

“(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto,

transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

“(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

“(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of— any alien, including an alien crewman, not duly admitted to enter or reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding \$2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however,* That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.”

Subsec. (b)(1). Pub. L. 99-603, § 112(b)(1), (2), substituted “has been or is being used” for “is used” and “seized and subject to” for “subject to seizure and” in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 99-603, § 112(b)(3), inserted “or is being” after “has been”.

Subsec. (b)(3). Pub. L. 99-603, § 112(b)(4), substituted “property” for “conveyances”.

Subsec. (b)(4)(C). Pub. L. 99-603, § 112(b)(5), as amended by Pub. L. 100-525, § 2(d)(2)(A), inserted “, or the Maritime Administration if appropriate under section 484(i) of title 40,”.

Subsec. (b)(4)(D). Pub. L. 99-603, § 112(b)(6), added subpar. (D).

Subsec. (b)(5). Pub. L. 99-603, § 112(b)(7)–(9), as amended by Pub. L. 100-525, § 2(d)(2)(B), substituted “, except that” for “: *Provided, That*” in provisions preceding subpar. (A), substituted “had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law” for “was not lawfully entitled to enter, or reside within, the United States” wherever appearing, inserted “or of the Department of State” in subpar. (B), and substituted “had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law” for “was not entitled to enter, or reside within, the United States” in subpar. (C).

1981—Subsec. (b). Pub. L. 97-116 strengthened the seizure and forfeiture authority by striking out the “innocent owner” exemption and merely requiring the Government to show probable cause that the conveyance seized has been used to illegally transport aliens, which when demonstrated, shifts the burden of proof to the owner or claimant to show by a preponderance of the evidence that the conveyance was not illegally used, by relieving the Government of the obligation to pay any administrative and incidental costs incurred by a successful claimant provided probable cause for the original seizure was demonstrated, and by striking out the requirement that the Government satisfy any valid lien or third party interest in the conveyance without expense to the interest holder by providing the lienholders interest be satisfied only after costs associated with the seizure have been deducted.

1978—Subsecs. (b), (c). Pub. L. 95-582 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-185, § 21, Apr. 25, 2000, 114 Stat. 225, provided that: “Except as provided in section 14(c) [set out as an Effective Date note under section 2466 of title 28, Judiciary and Judicial Procedure], this Act [see Short Title of 2000 Amendment note set out under section 981

of Title 18, Crimes and Criminal Procedure] and the amendments made by this Act shall apply to any forfeiture proceeding commenced on or after the date that is 120 days after the date of the enactment of this Act [Apr. 25, 2000].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. C, title II, §203(f), Sept. 30, 1996, 110 Stat. 3009-567, provided that: “This section [amending this section and enacting provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act [Sept. 30, 1996].”

Amendment by section 671(a)(1) of Pub. L. 104-208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, see section 671(a)(7) of Pub. L. 104-208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99-603, see section 2(s) of Pub. L. 100-525, set out as a note under section 1101 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.

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.

§ 1324a. Unlawful employment of aliens

(a) Making employment of unauthorized aliens unlawful

(1) In general

It is unlawful for a person or other entity—

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

(B)(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b).

(2) Continuing employment

It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense

A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has estab-

lished an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract

For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of State employment agency documentation

For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

(6) Treatment of documentation for certain employees

(A) In general

For purposes of this section, if—

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) with respect to the employment of the individual,

the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(B) Period

The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) Liability

(i) In general

If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) and the individual is an alien