

(ii) by striking “, or both”;

(2) in subsection (b), by striking “not more than \$1000 or imprisoned for not more than one year, or both” and inserting “under title 18, United States Code, and imprisoned for not more than 5 years (or for not more than 10 years if the alien is a member of any of the classes described in paragraphs (1)(E), (2), (3), and (4) of section 237(a)).”; and

(f) **PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.**—Section 924(c) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting “, alien smuggling crime,” after “any crime of violence”;

(B) in subparagraph (A), by inserting “, alien smuggling crime,” after “such crime of violence”;

(C) in subparagraph (D)(ii), by inserting “, alien smuggling crime,” after “crime of violence”; and

(2) by adding at the end the following:

“(6) For purposes of this subsection, the term ‘alien smuggling crime’ means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, and 1328).”.

**SEC. 206. ILLEGAL ENTRY.**

(a) **IN GENERAL.**—Section 275 (8 U.S.C. 1325) is amended to read as follows:

**“SEC. 275. ILLEGAL ENTRY.**

“(a) **IN GENERAL.**—

“(1) **CRIMINAL OFFENSES.**— An alien shall be subject to the penalties set forth in paragraph (2) if the alien—

“(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

“(B) knowingly eludes examination or inspection by an immigration officer (including failing to stop at the command of such officer), or a customs or agriculture inspection at a port of entry; or

“(C) knowingly enters or crosses the border to the United States by means of a knowingly false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance, requirements of the customs laws, immigration laws, agriculture laws, or shipping laws).

“(2) **CRIMINAL PENALTIES.**—Any alien who violates any provision under paragraph (1)—

“(A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both;

“(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years, or both;

“(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

“(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

“(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

“(3) **PRIOR CONVICTIONS.**—The prior convictions described in subparagraphs (C) through

(E) of paragraph (2) are elements of the offenses described in that paragraph and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

“(A) alleged in the indictment or information; and

“(B) proven beyond a reasonable doubt at trial or admitted by the defendant.

“(4) **DURATION OF OFFENSES.**—An offense under this subsection continues until the alien is discovered within the United States by an immigration officer.

“(5) **ATTEMPT.**—Whoever attempts to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

“(b) **IMPROPER TIME OR PLACE; CIVIL PENALTIES.**—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

“(1) not less than \$50 or more than \$250 for each such entry, crossing, attempted entry, or attempted crossing; or

“(2) twice the amount specified in paragraph (1) if the alien had previously been subject to a civil penalty under this subsection.”

(b) **CLERICAL AMENDMENT.**—The table of contents is amended by striking the item relating to section 275 and inserting the following:

“Sec. 275. Illegal entry.”.

(c) **EFFECTIVE DATE.**—Subsection (a)(4) of section 275 of the Immigration and Nationality Act, as created by this Act, shall apply only to violations of subsection (a)(1) of Section 275 committed on or after the date of enactment of this Act.

**SEC. 207. ILLEGAL REENTRY.**

Section 276(8 U.S.C. 1326) is amended to read as follows:

**“SEC. 276. REENTRY OF REMOVED ALIEN.**

“(a) **REENTRY AFTER REMOVAL.**—Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion; deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 2 years, or both.

“(b) **REENTRY OF CRIMINAL OFFENDERS.**—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection—

“(1) was convicted for 3 or more misdemeanors or a felony before such removal or departure, the alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

“(2) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 30 months, the alien shall be fined under such title, imprisoned not more than 15 years, or both;

“(3) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, imprisoned not more than 20 years, or both;

“(4) was convicted for 3 felonies before such removal or departure, the alien shall be fined under such title, imprisoned not more than 20 years, or both; or

“(5) was convicted, before such removal or departure, for murder, rape, kidnapping, or a felony offense described in chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism) of such title, the alien shall be fined under such title, imprisoned not more than 20 years, or both.

“(c) **REENTRY AFTER REPEATED REMOVAL.**—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at anytime found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both.

“(d) **PROOF OF PRIOR CONVICTIONS.**—The prior convictions described in subsection (b) are elements of the crimes described in that subsection, and the penalties in that subsection shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

“(1) alleged in the indictment or information; and

“(2) proven beyond a reasonable doubt at trial or admitted by the defendant.

“(e) **AFFIRMATIVE DEFENSES.**—It shall be an affirmative defense to a violation of this section that—

“(1) prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to re-apply for admission into the United States;

“(2) with respect to an alien previously denied admission and removed, the alien—

“(A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act; and

“(B) had complied with all other laws and regulations governing the alien’s admission into the United States; or

“(3) at the time of the prior exclusion, deportation, removal, or denial of admission alleged in the violation, the alien—

“(A) was under the age of eighteen, and

“(B) had not been convicted of a crime or adjudicated a delinquent minor by a court of the United States, or a court of a state or territory, for conduct that would constitute a felony if committed by an adult.

“(f) **LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.**—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien unless the alien demonstrates by clear and convincing evidence that—

“(1) the alien exhausted all administrative remedies that may have been available to seek relief against the order;

“(2) the removal proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

“(3) the entry of the order was fundamentally unfair.

“(g) **REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.**—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall be incarcerated for the remainder of the sentence of imprisonment which was