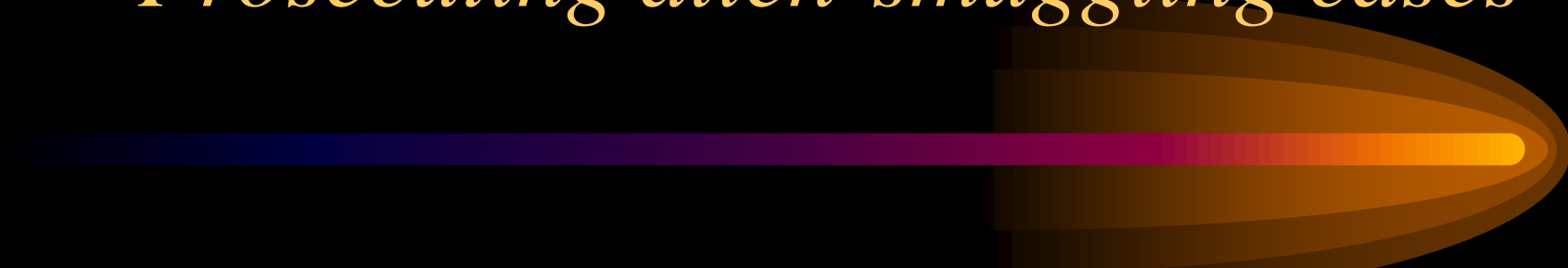


# *Prosecuting alien-smuggling cases*



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# *Overview*



- The problem
- Statutes
- Penalties
- Numbers

## *The problem...*

- Between January 2001 and November 2005, Border Patrol agents have caught and sent home more than 4.5 million illegal aliens, including more than 350,000 with criminal records

# *The problem...*



# *The problem...*



# *The problem...*



## *The problem...*

- May 9, 2006: 52 aliens found in sealed, abandoned trailer in Laredo
- May 18, 2006: 68 aliens found in trailer at I-35 checkpoint in Laredo
- May 24, 2006: 60 aliens found in sealed, refrigerated trailer at Freer checkpoint

# *The problem...*





# *The problem...*



# *The problem...*



## *Statutory help – three ways*

- 8 U.S.C. 1324
  - bring illegal aliens to the US
  - transporting illegal aliens within the US
  - harboring illegal aliens within the US
- 8 U.S.C. 1324a
  - employment of illegal aliens
- 8 U.S.C. 1324c
  - document fraud

## 8 U.S.C. 1324

- Section 1324(a)(1)(A)(i)
- Any person who,
  - knowing that a person is an alien,
  - brings or attempts to bring that person to the United States
  - in any manner whatsoever
  - at a place other than a designated port of entry
  - regardless of whether the alien has received prior permission to come to the US

## *8 U.S.C. 1324*

- Section 1324(a)(1)(A)(ii)
- Any person who –
  - knowing or in reckless disregard of the fact that an alien has come to, entered, or remained in the United States in violation of law,
  - transports or moves (or attempts to do so) within the United States
  - in furtherance of such violation of law

## 8 U.S.C. 1324

- Section 1324(a)(1)(A)(iii)
- Any person who –
  - 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 do so) such alien in any place, including any building or means of transportation

## 8 U.S.C. 1324

- Section 1324(a)(1)(A)(iv)
- Any person who –
  - 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 in will be in violation of law

## *8 U.S.C. 1324*

- Section 1324(a)(1)(A)(v)
- Any person who –
  - engages in any conspiracy to commit any of the preceding acts, or
  - aids or abets the commission of any of the preceding acts



# *Enforcement*

- Checkpoints
- Roving patrols
- Ongoing investigations



## *Typical cases*

- Transporting
  - vehicles with multiple aliens
  - taking more than six aliens is commonplace
    - in trunk of car
    - in bed of pickup
    - in back of tractor-trailer
  - guiding through brush, around BP checkpoints
- Harboring: “safe” houses

## *Maximum penalties*

- For transporting, harboring, inducing or aiding/abetting: 5 years
- For transporting, harboring or inducing for purposes of commercial advantage or private financial gain: 10 years
- For “bringing to” or conspiracy: 10 years

## *Maximum penalties, cont.*

- For any offense that results in serious bodily injury or places anyone's life in jeopardy:  
20 years
- For any offense that results in death of any person: death

## *Additional penalties – new*

- For defendants who bring aliens into the United States, sentence can be increased by up to 10 additional years if –
  - offense was part of an ongoing commercial enterprise
  - aliens were transported in groups of 10 or more, and
  - aliens either
    - were transported in a manner that endangered their lives, or
    - presented a life-threatening health risk to people in the US

# *Forfeiture provision*

- Section 1324(b)(1) authorizes:
  - seizure of vessels, vehicles, aircraft used in the commission of a violation of that section
  - can also forfeit proceeds of the violation
  - can also forfeit any property traceable to the conveyance or the proceeds

# *Hostage-taking*

- 18 U.S.C. 1203
- Any person who seizes or detains, or threatens to kill another person
- in order to compel a third person or governmental organization
- to do or abstain from doing any act
- as an explicit or implicit condition for the release of the person detained

# *Hostage-taking*

- Maximum punishment: life
- If the death of any person results: death



# *From smuggling to ...*

- Human trafficking
  - Threshold questions:
    - alien held in service of another?
      - labor
      - commercial sex acts
    - service obtained or maintained through force, threats, psychological manipulation, or confiscation of documents?
- Forced labor: 18 U.S.C. 1589
- Sex trafficking: 18 U.S.C. 1591
- Document servitude: 18 U.S.C. 1592

# *Prosecution issues*

- Material witnesses
  - Aliens are typically arrested by immigration authorities once they're detected
  - Can be held on material witness warrants – typically \$5000 bond
  - Depositions – 8 U.S.C. 1324(d)
  - Work program

# *Common trial issues*

- Knowledge
  - “I didn’t know they were in my truck.”
  - “I didn’t know they were here illegally. I was just giving them a ride.”
- Or, to avoid finding of commercial advantage:
  - “I do know them. I wasn’t being paid to take them anywhere.”

# *Sentencing issues*

- Transporting, harboring, etc.: U.S.S.G. 2L1.1
- Enhancements based on:
  - number of aliens involved
  - defendant's prior felony immigration convictions
  - discharge of a firearm
  - possession of a dangerous weapon
  - brandishing or use of a dangerous weapon
  - reckless endangerment
  - death or serious bodily injury

# *Reckless endangerment*



# *Sentencing issues*

- Upward departure from guidelines may be warranted if
  - defendant knew smuggled alien intended to engage in subversive activity, drug trafficking or other serious criminal behavior
  - substantially more than 100 aliens involved

# *Sentencing issues*

- Hostage-taking: U.S.S.G. 2A4.1
- Enhancements for:
  - ransom demands
  - injury to victim
  - use of dangerous weapon
  - sexual exploitation
  - minor victim places in care of another who had no right to care for him, in exchange for money

## *What we're doing*

- Alien-smuggling cases filed nationwide:
  - FY 95: 678
  - FY 04: 2506
  - FY 05: 2728
- This represents 4% of all prosecutions, compared to 1.5% of all prosecutions in FY 95



## *What we're doing*

- Alien-smuggling cases in this district:
  - FY 04: 632
  - FY 05: 795
  - FY 06: 1,090
  - FY 07: 1,230
  - Immigration prosecutions in this district:
    - FY 06: 3,532
    - FY 07: 4,081

## *What we're doing*

- District as a whole filed 6,262 cases in FY 05
  - about 73% were immigration-related
- By comparison:
  - Western District of Texas: 5420 cases
  - District of Arizona: 4050
  - All districts in the 1<sup>st</sup>, 3<sup>rd</sup> and 7<sup>th</sup> Circuits: 6770
- District as a whole filed X,XXX cases in FY 07

*Questions?*



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