

118TH CONGRESS
1ST SESSION

S. 374

To prohibit the intentional hindering of immigration, border, and customs controls, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Ms. ERNST (for herself and Mr. LANKFORD) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit the intentional hindering of immigration, border,
and customs controls, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transnational Crimi-
5 nal Organization Illicit Spotter Prevention and Elim-
6 nation Act”.

7 **SEC. 2. UNLAWFULLY HINDERING IMMIGRATION, BORDER,**
8 **AND CUSTOMS CONTROLS.**

9 (a) ENHANCED PENALTIES.—

1 (1) IN GENERAL.—Chapter 9 of title II of the
2 Immigration and Nationality Act (8 U.S.C. 1351 et
3 seq.) is amended by adding at the end the following:

4 **“SEC. 295. UNLAWFULLY HINDERING IMMIGRATION, BOR-**
5 **DER, AND CUSTOMS CONTROLS.**

6 “(a) ILLICIT SPOTTING.—Any person who knowingly
7 transmits, by any means, to another person the location,
8 movement, or activities of any Federal, State, local, or
9 tribal law enforcement agency with the intent to further
10 a Federal crime relating to United States immigration,
11 customs, controlled substances, agriculture, monetary in-
12 struments, or other border controls shall be fined under
13 title 18, United States Code, imprisoned not more than
14 10 years, or both.

15 “(b) DESTRUCTION OF UNITED STATES BORDER
16 CONTROLS.—Any person who knowingly and without law-
17 ful authorization destroys, alters, or damages any fence,
18 barrier, sensor, camera, or other physical or electronic de-
19 vice deployed by the Federal Government to control the
20 border or a port of entry or otherwise seeks to construct,
21 excavate, or make any structure intended to defeat, cir-
22 cumvent, or evade any such fence, barrier, sensor camera,
23 or other physical or electronic device deployed by the Fed-
24 eral Government to control the border or a port of entry—

1 “(1) shall be fined under title 18, United States
2 Code, imprisoned not more than 10 years, or both;
3 or

4 “(2) if, at the time of the offense, the person
5 uses or carries a firearm or who, in furtherance of
6 any such crime, possesses a firearm, shall be fined
7 under such title 18, imprisoned not more than 20
8 years, or both.

9 “(c) CONSPIRACY AND ATTEMPT.—Any person who
10 attempts or conspires to violate subsection (a) or (b) shall
11 be punished in the same manner as a person who com-
12 pletes a violation of such subsection.”.

13 (2) CLERICAL AMENDMENT.—The table of con-
14 tents in the first section of the Immigration and Na-
15 tionality Act (8 U.S.C. 1101 et seq.) is amended by
16 inserting after the item relating to section 294 the
17 following:

“Sec. 295. Unlawfully hindering immigration, border, and customs controls.”.

18 (b) PROHIBITING CARRYING OR USE OF A FIREARM
19 DURING AND IN RELATION TO AN ALIEN SMUGGLING
20 CRIME.—Section 924(c) of title 18, United States Code,
21 is amended—

22 (1) in paragraph (1)—

23 (A) in subparagraph (A), by inserting “,
24 alien smuggling crime,” after “crime of vio-
25 lence” each place that term appears; and

1 (B) in subparagraph (D)(ii), by inserting
2 “, alien smuggling crime,” after “crime of vio-
3 lence”;

4 (2) by striking paragraphs (2) through (4);

5 (3) by redesignating paragraph (5) as para-
6 graph (2); and

7 (4) by adding at the end the following:

8 “(3) In this subsection—

9 “(A) the term ‘alien smuggling crime’ means
10 any felony punishable under section 274(a), 277, or
11 278 of the Immigration and Nationality Act (8
12 U.S.C. 1324(a), 1327, and 1328);

13 “(B) the term ‘brandish’ means, with respect to
14 a firearm, to display all or part of the firearm, or
15 otherwise make the presence of the firearm known
16 to another person, in order to intimidate that per-
17 son, regardless of whether the firearm is directly
18 visible to such person;

19 “(C) the term ‘crime of violence’ means an of-
20 fense that—

21 “(i) is a felony; and

22 “(ii)(I) has, as an element, the use, at-
23 tempted use, or threatened use of physical force
24 against the person or property of another; or

1 “(II) by its nature, involves a substantial
2 risk that physical force against the person or
3 property of another may be used in the course
4 of committing the offense.

5 “(D) the term ‘drug trafficking crime’ means
6 any felony punishable under the Controlled Sub-
7 stances Act (21 U.S.C. 801 et seq.), the Controlled
8 Substances Import and Export Act (21 U.S.C. 951
9 et seq.), or chapter 705 of title 46.”.

10 (c) CONFORMING AMENDMENTS.—

11 (1) BANKRUPTCY CODE.—Section 707(c)(1)(B)
12 of title 11, United States Code, is amended by strik-
13 ing “section 924(c)(2)” and inserting “section
14 924(c)(3)(D)”.

15 (2) CRIMINAL CODE.—Title 18, United States
16 Code, is amended—

17 (A) in section 844(o)—

18 (i) by striking “section 924(c)(3)”
19 and inserting “section 924(c)(3)(C)”; and

20 (ii) by striking “section 924(c)(2)”
21 and inserting “section 924(c)(3)(D)”;
22 (B) in section 1028(b)(3)(B), by striking

23 “section 924(c)(3)” and inserting “section
24 924(c)(3)(C)”; and

25 (C) in section 4042(b)(3)—

1 (i) in subparagraph (A), by striking
2 “section 924(c)(2)” and inserting “section
3 924(c)(3)(D)”; and

4 (ii) in subparagraph (B), by striking
5 “section 924(c)(3)” and inserting “section
6 924(c)(3)(C)”.

7 (3) PRISONS.—Section 3(1) of the Interstate
8 Transportation of Dangerous Criminals Act of 2000
9 (34 U.S.C. 60102(1)) is amended by striking “sec-
10 tion 924(c)(3)” and inserting “section
11 924(c)(3)(C)”.

12 (d) STATUTE OF LIMITATIONS.—Section 3298 of title
13 18, United States Code, is amended—

14 (1) by inserting “or 295” after “274(a)”; and

15 (2) by inserting “(8 U.S.C. 1324(a) and
16 1363b)” after “Immigration and Nationality Act”.

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