

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 83

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO IMMIGRATION; AMENDING TITLE 18, IDAHO CODE, BY THE ADDITION OF A  
2 NEW CHAPTER 90, TITLE 18, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR THE  
3 CRIME OF ILLEGAL ENTRY FROM A FOREIGN NATION, TO PROVIDE FOR THE CRIME OF  
4 ILLEGAL REENTRY BY CERTAIN ALIENS, TO PROVIDE FOR THE CRIME OF REFUSAL  
5 TO COMPLY WITH AN ORDER TO RETURN TO A FOREIGN NATION, AND TO PROHIBIT  
6 THE ABATEMENT OF PROSECUTION ON THE BASIS OF IMMIGRATION STATUS DETER-  
7 MINATION; AMENDING TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW CHAP-  
8 TER 63, TITLE 19, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING AN ORDER  
9 TO RETURN TO A FOREIGN NATION; PROVIDING SEVERABILITY; AND DECLARING AN  
10 EMERGENCY.  
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Title 18, Idaho Code, be, and the same is hereby amended  
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
15 ter 90, Title 18, Idaho Code, and to read as follows:

16 CHAPTER 90  
17 ILLEGAL ENTRY INTO THIS STATE

18 18-9001. DEFINITIONS. As used in this chapter:

19 (1) "Alien" has the meaning assigned by 8 U.S.C. 1101, as that provision  
20 existed on January 1, 2023.

21 (2) "Port of entry" means a port of entry in the United States pursuant  
22 to 19 CFR 101.

23 18-9002. ILLEGAL ENTRY FROM FOREIGN NATION. (1) A person who is an  
24 alien commits an offense if the person enters or attempts to enter this state  
25 directly from a foreign nation at any location other than a lawful port of  
26 entry or through another manner of lawful entry.

27 (2) A violation of this section shall be a misdemeanor upon a first con-  
28 viction. A second or subsequent conviction shall be a felony.

29 (3) Law enforcement officers may enforce the provisions of this section  
30 only when a person is detained or investigated for suspected commission of an  
31 independent crime under title 18, Idaho Code, excluding this chapter.

32 (4) It shall be an affirmative defense to prosecution under this sec-  
33 tion that:

34 (a) The federal government has granted the defendant:

35 (i) Lawful presence in the United States; or

36 (ii) Asylum under 8 U.S.C. 1158;

37 (b) The defendant's conduct does not constitute a violation of 8 U.S.C.  
38 1325(a);

1 (c) The defendant was not investigated for, charged with, or convicted  
2 of committing the independent crime for which the defendant was de-  
3 tained or investigated pursuant to subsection (3) of this section; or

4 (d) The defendant was approved for benefits under the federal deferred  
5 action for childhood arrivals program between June 15, 2012, and July  
6 16, 2021.

7 (5) The following federal programs do not provide an affirmative de-  
8 fense for purposes of subsection (4) (a) of this section:

9 (a) The deferred action for parents of Americans and lawful permanent  
10 residents program; and

11 (b) Any program not enacted by the United States congress that is a suc-  
12 cessor to or materially similar to the program described by subsection  
13 (4) (d) or paragraph (a) of this subsection.

14 (6) Notwithstanding any other provision of law to the contrary, a de-  
15 fendant shall not be eligible for deferred adjudication or a withheld judg-  
16 ment if the defendant is charged with or convicted of an offense pursuant to  
17 this section.

18 18-9003. ILLEGAL REENTRY BY CERTAIN ALIENS. (1) A person who is an  
19 alien commits an offense if the person enters, attempts to enter, or is at any  
20 time found in this state after the person:

21 (a) Has been denied admission to or excluded, deported, or removed from  
22 the United States; or

23 (b) Has departed from the United States while an order of exclusion, de-  
24 portation, or removal is outstanding.

25 (2) A violation of this section shall be a misdemeanor, except that the  
26 violation shall be a felony if:

27 (a) The defendant's removal was subsequent to a conviction for commis-  
28 sion of two (2) or more misdemeanors involving drugs, crimes against a  
29 person, or both;

30 (b) The defendant was excluded pursuant to 8 U.S.C. 1225(c) because the  
31 defendant was excludable under 8 U.S.C. 1182(a) (3) (B);

32 (c) The defendant was removed pursuant to the provisions of 8 U.S.C.  
33 chapter 12, subchapter V; or

34 (d) The defendant was removed pursuant to 8 U.S.C. 1231(a) (4) (B).

35 (3) For purposes of this section, "removal" includes an order issued  
36 pursuant to section 19-6301, Idaho Code, or any other agreement in which an  
37 alien stipulates to removal pursuant to a criminal proceeding pursuant to  
38 either federal or state law.

39 (4) Law enforcement officers may enforce the provisions of this section  
40 only when a person is detained or investigated for suspected commission of an  
41 independent crime under title 18, Idaho Code, excluding this chapter.

42 (5) It shall be an affirmative defense to prosecution under this sec-  
43 tion that the defendant was not investigated for, charged with, or convicted  
44 of committing the independent crime for which the defendant was detained or  
45 investigated pursuant to subsection (4) of this section.

46 (6) Notwithstanding any other provision of law to the contrary, a de-  
47 fendant shall not be eligible for deferred adjudication or withheld judgment  
48 if the defendant is charged with or convicted of an offense pursuant to this  
49 section.

1 18-9004. REFUSAL TO COMPLY WITH AN ORDER TO RETURN TO FOREIGN NA-  
2 TION. (1) A person who is an alien commits an offense if:

- 3 (a) The person has been charged with or convicted of an offense pursuant  
4 to this chapter;  
5 (b) A magistrate or judge, as applicable, has issued an order pursuant  
6 to section 19-6301, Idaho Code, for the person to return to the foreign  
7 nation from which the person entered or attempted to enter; and  
8 (c) The person refuses to comply with the order.  
9 (2) A violation of this section shall be a felony.

10 18-9005. ABATEMENT OF PROSECUTION ON BASIS OF IMMIGRATION STATUS DE-  
11 TERMINATION PROHIBITED. A court may not abate the prosecution of an offense  
12 pursuant to this chapter on the basis that a federal determination regarding  
13 the immigration status of the defendant is pending or will be initiated.

14 SECTION 2. That Title 19, Idaho Code, be, and the same is hereby amended  
15 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
16 ter 63, Title 19, Idaho Code, and to read as follows:

17 CHAPTER 63  
18 ORDER TO RETURN TO FOREIGN NATION

19 19-6301. ORDER TO RETURN TO FOREIGN NATION. (1) A magistrate during a  
20 person's appearance pursuant to section 19-514 or 19-615, Idaho Code, may,  
21 after making a determination that probable cause exists for arrest for an of-  
22 fense pursuant to section 18-9002 or 18-9003, Idaho Code, order the person  
23 released from custody and issue a written order in accordance with subsec-  
24 tion (3) of this section.

25 (2) The judge in a person's case at any time after the person's appear-  
26 ance before a magistrate pursuant to section 19-514 or 19-615, Idaho Code,  
27 may, in lieu of continuing the prosecution of or entering an adjudication re-  
28 garding an offense pursuant to section 18-9002 or 18-9003, Idaho Code, dis-  
29 miss the charge pending against the person and issue a written order in ac-  
30 cordance with subsection (3) of this section.

31 (3) A written order authorized by subsection (1) or (2) of this section  
32 must discharge the person and require the person to return to the foreign na-  
33 tion from which the person entered or attempted to enter and may be issued  
34 only if:

- 35 (a) The person agrees to the order;  
36 (b) The person has not previously been convicted of an offense under  
37 chapter 90, title 18, Idaho Code, or previously obtained a discharge un-  
38 der an order described by subsection (1) or (2) of this section;  
39 (c) The person is not charged with another offense that is punishable as  
40 a felony; and  
41 (d) Before the issuance of the order, the arresting law enforcement  
42 agency:  
43 (i) Collects all available identifying information of the per-  
44 son, which must include taking fingerprints from the person and  
45 using other applicable photographic and biometric measures to  
46 identify the person; and  
47 (ii) Cross-references the collected information with:

- 1                   1. All relevant local, state, and federal criminal  
2                   databases; and  
3                   2. Federal lists or classifications used to identify a per-  
4                   son as a threat or potential threat to national security.
- 5           (4) Upon a person's conviction of an offense under chapter 90, title 18,  
6 Idaho Code, the judge shall enter in the judgment in the case an order requir-  
7 ing the person to return to the foreign nation from which the person entered  
8 or attempted to enter. An order issued pursuant to this subsection takes ef-  
9 fect upon completion of the term of confinement or imprisonment imposed by  
10 the judgment.
- 11           (5) An order issued pursuant to this section shall include:  
12           (a) The manner of transportation of the person to a port of entry, as  
13           defined in section 18-9001, Idaho Code; and  
14           (b) The law enforcement officer or state agency responsible for moni-  
15           toring compliance with the order.
- 16           (6) An order issued pursuant to this section shall be filed:  
17           (a) With the county clerk of the county in which the person was ar-  
18           rested, for an order described in subsection (1) of this section; or  
19           (b) With the clerk of the court exercising jurisdiction in the case, for  
20           an order described in subsection (2) or (4) of this section.
- 21           (7) Not later than the seventh day after the date an order is issued pur-  
22           suant to this section, the law enforcement officer or state agency required  
23           to monitor compliance with the order shall report the issuance of the order  
24           to the Idaho state police for inclusion in the Idaho criminal history data-  
25           base.

26           SECTION 3. SEVERABILITY. The provisions of this act are hereby declared  
27           to be severable and if any provision of this act or the application of such  
28           provision to any person or circumstance is declared invalid for any reason,  
29           such declaration shall not affect the validity of the remaining portions of  
30           this act.

31           SECTION 4. An emergency existing therefor, which emergency is hereby  
32           declared to exist, this act shall be in full force and effect on and after its  
33           passage and approval.