

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 83, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

1 AN ACT
2 RELATING TO IMMIGRATION; AMENDING TITLE 18, IDAHO CODE, BY THE ADDITION OF A
3 NEW CHAPTER 90, TITLE 18, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING
4 THE IMMIGRATION COOPERATION AND ENFORCEMENT ACT; PROVIDING SEVERABIL-
5 ITY; AND DECLARING AN EMERGENCY.

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

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

10 CHAPTER 90
11 IMMIGRATION COOPERATION AND ENFORCEMENT ACT

12 18-9001. SHORT TITLE. This chapter shall be known and may be cited as
13 the "Immigration Cooperation and Enforcement Act."

14 18-9002. DEFINITIONS. As used in this chapter:

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

17 (2) "Custodial authority" means the director of the department of cor-
18 rection, county sheriffs, city chiefs of police, and any of their subordi-
19 nates with the power to confine or detain a person under color of law.

20 (3) "Dangerous crime" means any felony crime as described in Idaho Code
21 or in similar state or federal code, any offense for which an extended term of
22 imprisonment may be imposed pursuant to section 19-2520B, Idaho Code, or any
23 offense requiring sex offender registration as set forth in section 18-8304,
24 Idaho Code.

25 (4) "Dangerous illegal alien" means an illegal alien who has previously
26 been convicted or found guilty, by judgment or withheld judgment, of a dan-
27 gerous crime in this state or in any other state or nation.

28 (5) "DHS" means the United States department of homeland security and
29 its subordinate agencies and divisions.

30 (6) "Illegal alien" means a person eighteen (18) years of age or older
31 who is verified by the federal government to be present in the United States
32 in violation of the federal immigration and nationality act, 8 U.S.C., and
33 federal rules promulgated in accordance therewith.

34 (7) "Immigration detainer" means a notice or other documentation is-
35 sued by United States immigration and customs enforcement requesting that a
36 custodial authority or law enforcement official maintain temporary custody
37 of an illegal alien, including a DHS form I-247 document or a similar succes-
38 sor form.

39 (8) "Law enforcement official" means all state, county, and local law
40 enforcement officers, prosecuting attorneys, and city attorneys.

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

3 18-9003. ILLEGAL ENTRY FROM FOREIGN NATION. (1) A person who is an
4 alien commits an offense if the person enters or attempts to enter this state
5 at any location other than a lawful port of entry or through another manner
6 of lawful entry.

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

9 (3) Law enforcement officers may enforce the provisions of this section
10 only when a person is detained or investigated for suspected commission of
11 an independent crime under title 18, Idaho Code, excluding this chapter, or
12 under chapter 27, title 37, Idaho Code.

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

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

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

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

18 (b) The defendant's conduct does not constitute a violation of 8 U.S.C.
19 1325(a);

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

23 (d) The defendant was approved for benefits under the federal deferred
24 action for childhood arrivals program between June 15, 2012, and July
25 16, 2021.

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

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

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

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

37 18-9004. ILLEGAL REENTRY BY CERTAIN ALIENS. (1) A person who is an
38 alien commits an offense if the person enters, attempts to enter, or is at any
39 time found in this state after the person:

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

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

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

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

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

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

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

6 (3) For purposes of this section, "removal" includes any agreement in
7 which an alien stipulates to removal pursuant to a criminal proceeding pur-
8 suant to either federal or state law.

9 (4) Law enforcement officers may enforce the provisions of this section
10 only when a person is detained or investigated for suspected commission of
11 an independent crime under title 18, Idaho Code, excluding this chapter, or
12 under chapter 27, title 37, Idaho Code.

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

17 (6) Notwithstanding any other provision of law to the contrary, a def-
18 endant shall not be eligible for deferred adjudication or withheld judgment
19 if the defendant is charged with or convicted of an offense pursuant to this
20 section.

21 18-9005. COOPERATION WITH FEDERAL AUTHORITIES. (1) To the extent au-
22 thorized by federal law, law enforcement officials shall be authorized to
23 send, receive, and maintain information relating to the immigration status
24 of illegal aliens for public safety purposes. Except as provided by fed-
25 eral law, law enforcement officials shall not be prohibited from receiving
26 or maintaining information relating to the immigration status of any illegal
27 alien or sending or exchanging such information with other federal, state,
28 or local law enforcement agencies for official public safety purposes.

29 (2) Law enforcement officials shall not be prohibited from entering
30 into memorandums of understanding, agreements, and memorandums of agreement
31 with the United States department of justice, DHS, or any other federal law
32 enforcement agency for the purpose of enforcing federal immigration laws,
33 including section 287(g) of the federal illegal immigration reform and
34 immigrant responsibility act of 1996, P.L. 104-208, or a similar federal
35 program.

36 (3) Except as provided by federal law, no law enforcement official
37 shall be prohibited from utilizing available federal resources, including
38 databases, equipment, grant funds, training, or participation in incentive
39 programs, for any public safety purpose related to the enforcement of fed-
40 eral immigration laws as against illegal aliens.

41 (4) Where a custodial authority has custody of a person in a correc-
42 tional facility, state rehabilitation center, penitentiary, prison, county
43 jail, or city jail, and the person is subject to an immigration detainer or
44 other federal warrant, the custodial authority shall comply with, honor, and
45 fulfill any reasonable request made in the immigration detainer or warrant
46 as long as any term of state-ordered confinement has been satisfied and it
47 does not impose undue burden, risk, or expense on the custodial authority or
48 law enforcement officials and shall inform the person identified in the im-

1 migration detainer or warrant that the person is being held pursuant to such
2 immigration detainer or warrant.

3 18-9006. TRAFFICKING A DANGEROUS ILLEGAL ALIEN. (1) The crime of traf-
4 ficking a dangerous illegal alien is committed when a person knowingly and
5 willfully transports into this state a dangerous illegal alien that the per-
6 son knows, or reasonably should know, is a dangerous illegal alien.

7 (2) A person commits a separate offense for each individual transported
8 into this state in violation of the provisions of this section.

9 (3) Whoever commits the crime of trafficking a dangerous illegal alien
10 shall be guilty of a felony and imprisoned for not less than one (1) year
11 and not more than two (2) years, fined not more than ten thousand dollars
12 (\$10,000), or both.

13 (4) The provisions of this section shall not apply if the defendant is
14 a necessary witness to or victim of a crime of domestic violence, rape, sex-
15 ual exploitation, sexual assault, murder, manslaughter, assault, battery,
16 human trafficking, kidnapping, false imprisonment, involuntary servitude,
17 fraud in foreign labor contracting, blackmail, extortion, or witness tam-
18 pering where the referenced crime occurred during the defendant's act of
19 transporting the dangerous illegal alien.

20 18-9007. SENTENCING ENHANCEMENT. Any person eighteen (18) years of
21 age or older who is found guilty of or pleads guilty to any dangerous crime
22 shall be sentenced to a mandatory minimum term of confinement to the custody
23 of the state board of correction for a period of not less than five (5) years
24 if it is found by the trier of fact that previous to the commission of such
25 dangerous crime the defendant has been deported or is under order of removal
26 or deportation pursuant to federal authority.

27 18-9008. DETERMINATION OF ALIENAGE UPON CONFINEMENT. (1) Following an
28 arrest for a criminal offense, the custodial authority shall determine as
29 part of the booking process if the person may be a foreign national. If it is
30 determined that the person is a foreign national, then the custodial author-
31 ity shall notify DHS of the identity of the person so confined and the place
32 of confinement. Such notification shall be provided within forty-eight (48)
33 hours of the person being placed in confinement.

34 (2) A person's status as a foreign national shall be considered suspect
35 if the person cannot provide:

36 (a) A valid Idaho driver's license;

37 (b) A valid Idaho identification card;

38 (c) A valid United States passport;

39 (d) Any valid driver's license or identification card issued by a state
40 or district or territory of the United States, provided the issuing
41 authority limits issuance of the foregoing to persons who demonstrate
42 lawful presence in the United States;

43 (e) Any valid identification card issued by the United States, includ-
44 ing those issued by the department of defense, provided the issuing
45 authority limits issuance of the foregoing to persons who demonstrate
46 lawful presence in the United States; or

1 (f) Any other information sufficiently reliable to demonstrate the
2 identity of the confined person and the person's lawful presence in the
3 United States.

4 18-9009. CONDITIONS OF RELEASE OF ILLEGAL ALIEN FROM CONFINEMENT. Following entry of a judgment of conviction for a criminal offense,
5 no person eighteen (18) years of age or older that is known to be an illegal
6 alien shall be released from confinement in any correctional facility, state
7 rehabilitation center, penitentiary, prison, county jail, or city jail un-
8 til the determinate sentence has been completed, and thereafter may only be
9 released prior to the person's completion of his indeterminate sentence if
10 the alien is being released into the custody of law enforcement officials
11 from another state or the federal government for further criminal proceed-
12 ings or if the custodial authority first obtains written confirmation from
13 DHS that DHS will take custody of the person upon release and deport the
14 person from the United States. An illegal alien shall not be eligible to par-
15 ticipate in alternate sentencing programs such as work release, inmate labor
16 detail, a scheduled sentence program, or similar programs.
17

18 18-9010. AUTHORITY TO TRANSPORT ILLEGAL ALIENS. A law enforcement of-
19 ficial of the custodial authority shall be authorized to securely transport
20 such illegal alien to a federal facility in this state or to any other tempo-
21 rary point of detention when complying with a valid immigration detainer or a
22 federal arrest warrant or pursuant to release arranged with DHS pursuant to
23 section 18-9009, Idaho Code.

24 18-9011. IMMUNITY. A law enforcement official or custodial authority
25 acting in good faith to carry out duties or activities allowed by this chap-
26 ter shall have immunity from damages or liability from such actions.

27 18-9012. ABATEMENT OF PROSECUTION ON BASIS OF IMMIGRATION STATUS DE-
28 TERMINATION PROHIBITED. A court may not abate the prosecution of an offense
29 pursuant to this chapter on the basis that a federal determination regarding
30 the immigration status of the defendant is pending or will be initiated.

31 18-9013. INTERPRETATION. (1) The provisions of this chapter relating
32 to immigration terminology and definitions shall be construed to have the
33 same meanings as provided under federal immigration law, unless otherwise
34 defined in this chapter.

35 (2) The provisions of this chapter shall be construed and implemented
36 in a manner consistent with federal laws and regulations and interpretive
37 case law governing immigration and civil rights.

38 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
39 to be severable and if any provision of this act or the application of such
40 provision to any person or circumstance is declared invalid for any reason,
41 such declaration shall not affect the validity of the remaining portions of
42 this act.

1 SECTION 3. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after its
3 passage and approval.