**7.4 Alien—Encouraging Illegal Entry**

**(8 U.S.C. § 1324(a)(1)(A)(iv))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with encouraging illegal entry by an alien in violation of Section 1324(a)(1)(A)(iv) of Title 8 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, [name of alien] was an alien;

Second, the defendant encouraged or induced [name of alien] to [come to] [enter] [reside in] the United States in violation of law; and

Third, the defendant [knew] [acted in reckless disregard of the fact] that [name of alien]’s [coming to] [entry into] [residence in] the United States would be in violation of the law.

An alien is a person who is not a natural-born or naturalized citizen of the United States. An alien enters the United States in violation of law if not duly admitted by an Immigration Officer.

For purposes of this statute, the term “encourage or induce” means the intentional encouragement of an unlawful act or the provision of assistance to a wrongdoer with the intent to further the commission of an offense.

**Comment**

*See* Comment to Instructions 7.1 (Alien—Bringing or Attempting to Bring to United States (Other than Designated Place)) and 7.2 (Alien—Illegal Transportation or Attempted Transportation).

Statutory maximum sentences under § 1324 are increased for offenses done for commercial advantage or private financial gain, or which caused serious bodily injury, placed the life of any person in jeopardy, or resulted in the death of a person. In such cases, a special jury finding is required.

The terms “encourage[]” or “induce[]” are used in their “specialized, criminal-law sense—that is, as incorporating common-law liability for solicitation and facilitation.” *United States v. Hansen*, 143 S. Ct. 1932, 1942 (2023). “[S]olicitation is the intentional encouragement of an unlawful act” and facilitation “is the provision of assistance to a wrongdoer with the intent to further an offense’s commission. *Id*. at 1940 (citations omitted). “[S]olicitation is complete as soon as the encouragement occurs” whereas liability for facilitation “requires that a wrongful act be carried out.” *Id*. For both crimes, “words may be enough.” *Id*. The terms “encourage[] or induce[]” also “carry” the “traditional *mens rea*” requirement for the crimes of solicitation and facilitation. *Id*.at 1945.

The scope of 8 U.S.C. § 1324(a)(1)(A)(iv) is not limited to conduct involving unlawful means (e.g., fraud, false documents, or fraud against the government) or conduct that provides no legitimate benefit to the alien. *United States v. Sineneng-Smith*, 982 F.3d 766, 773-74 (9th Cir. 2020), *cert. denied*, 142 S. Ct. 117 (Mem.) (2021).

*Revised August 2023*