

TO AMEND SECTION 274 OF THE IMMIGRATION AND NATIONALITY ACT TO IMPOSE MANDATORY MINIMUM SENTENCES, AND INCREASE CERTAIN SENTENCES, FOR BRINGING IN AND HARBORING CERTAIN ALIENS AND TO AMEND TITLE 18, UNITED STATES CODE, TO PROVIDE ENHANCED PENALTIES FOR PERSONS COMMITTING SUCH OFFENSES WHILE ARMED

SEPTEMBER 14, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary,  
submitted the following

## R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 238]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 238) to amend section 274 of the Immigration and Nationality Act to impose mandatory minimum sentences, and increase certain sentences, for bringing in and harboring certain aliens and to amend title 18, United States Code, to provide enhanced penalties for persons committing such offenses while armed, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. MANDATORY MINIMUM SENTENCES FOR BRINGING IN AND HARBORING CERTAIN ALIENS.**

Section 274(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)) is amended—

(1) in subparagraph (B), by striking “A person” and inserting “Except as provided in subparagraphs (C) and (D), a person”; and

(2) by adding at the end the following:

“(C)(i) Except as provided in clauses (ii) and (iii), a person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

“(I) in the case of a violation of clause (i), (ii), (iii), or (iv) of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain, be fined under title 18, United States Code, imprisoned not less than 2 years nor more than 10 years, or both;

“(II) in the case of a violation of subparagraph (A)(v) in which the offense was done for the purpose of commercial advantage or financial gain, be fined under title 18, United States Code, imprisoned not less than 1 year nor more than 5 years, or both;

“(III) in the case of a violation of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain and during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18, United States Code) to, or places in jeopardy the life of, any person, be fined under title 18, United States Code, imprisoned not less than 5 years nor more than 25 years, or both; and

“(IV) in the case of a violation of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain and resulting in the death of any person, be punished by death or imprisoned for any term of years or for life (but not less than 20 years), fined under title 18, United States Code, or both.

“(ii) In the case of a violation of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain after 1 prior conviction for any other such violation of subparagraph (A) has become final, the minimum term of imprisonment shall be not less than two times the minimum term specified in clause (i).

“(iii) In the case of a violation of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain after 2 or more prior convictions for any other such violations of subparagraph (A) have become final, the minimum term of imprisonment shall be not less than five times the minimum term specified in clause (i).

“(D) In no case may any penalty for a violation of subparagraph (A) be imposed on any person based on actions taken by the person to render emergency assistance to an alien found physically present in the United States in life threatening circumstances.”.

**SEC. 2. ENHANCED PENALTIES FOR PERSONS COMMITTING OFFENSES WHILE ARMED.**

Section 924(c)(1) of title 18, United States Code, is amended—

(1) in subparagraph (A)—

(A) by inserting after “device” the following: “or any violation of section 274(a)(1)(A) of the Immigration and Nationality Act”; and

(B) by striking “or drug trafficking crime—” and inserting “, drug trafficking crime, or violation of section 274(a)(1)(A) of the Immigration and Nationality Act—”; and

(2) in subparagraph (D)(ii), by striking “or drug trafficking crime” and inserting “, drug trafficking crime, or violation of section 274(a)(1)(A) of the Immigration and Nationality Act”.

**SEC. 3. EFFECTIVE DATE.**

The amendments made by this Act shall take effect 90 days after the date of the enactment of this Act, and shall apply to offenses committed after the termination of such 90-day period.

## PURPOSE AND SUMMARY

To deter and punish alien smuggling, H.R. 238 would set mandatory minimum sentences for alien smuggling crimes committed for commercial advantage or financial gain and enhance penalties for alien smuggling committed while armed.

## BACKGROUND AND NEED FOR THE LEGISLATION

Some aliens entering the United States illegally do so on their own, while others employ the services of professional alien smugglers. Alien smuggling is a serious and rapidly growing problem, according to numerous media reports and a recent comprehensive audit done by the U.S. General Accounting Office (*Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem*, May 2000, GAO/GGD-00-103).

In recent years the strong U.S. economy and low unemployment have increased the economic incentive for aliens to immigrate illegally to the United States. Rising wages and greater job opportunities spur illegal immigration.

In addition, Congress has greatly increased U.S. Immigration and Naturalization Service resources for additional Border Patrol agents, special agents, and detention and deportation officers. This enforcement buildup has made it more difficult for illegal aliens to enter the United States undetected.

Both the rising economy and more effective law enforcement have led to increased reliance by illegal aliens on professional alien smugglers. Smuggling fees have gone up, and the smugglers have become increasingly better organized and more ruthless.

Smuggled aliens often endure inhumane treatment at the hands of smugglers and employers. For example, recent media reports describe Mexican alien smugglers who abandon aliens in the desert, without food or water, to avoid apprehension. Other aliens have died or suffered serious injuries when locked by smugglers into trucks and cargo containers.

Chinese alien smugglers charge exorbitant fees—as much as \$60,000 per alien—that the aliens must pay through long periods of indentured servitude in sweatshop conditions in places like New York City's Chinatown. Smugglers often coerce indebted aliens into drug trafficking, prostitution, and other illegal activities. Aliens who fail to cooperate with smugglers suffer severe penalties.

However, under current law, individuals convicted of alien smuggling crimes often receive lenient sentences. GAO's recent report stated that convicted smugglers, including those responsible for death or serious injury, receive an average sentence of only 10 months, which may be suspended, plus an average fine of about \$140.

Lenient sentences have contributed to the upsurge in alien smuggling. Organized crime syndicates realize that the risk of punishment for smuggling aliens is far less than the risk for smuggling drugs or committing other serious crimes.

H.R. 238 would strengthen the punishment and deterrence directed against alien smuggling by establishing mandatory minimum sentences for alien smuggling crimes, increased sentences for persons who cause serious bodily injury or jeopardy to life while committing alien smuggling crimes, and increased sentences for re-

peat offenders. It would also enhance penalties for persons who use or carry firearms while committing alien smuggling crimes.

#### HEARINGS

The committee's Subcommittee on Immigration and Claims held one day of hearings on H.R. 238 on May 18, 1999. Testimony was received from Rep. Rogan, the bill's author, Mr. Bo Cooper, Acting General Counsel for the U.S. Immigration and Naturalization Service, and Captain Anthony S. Tangeman, Chief of the Office of Law Enforcement for the U.S. Coast Guard.

#### COMMITTEE CONSIDERATION

On March 8, 2000, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 238, as amended, by voice vote, a quorum being present. On July 19, 2000, the committee met in open session and ordered favorably reported the bill H.R. 238 with amendment by voice vote, a quorum being present.

Two amendments were adopted by the committee. The first, offered by Rep. Jackson Lee, provided that H.R. 238's mandatory minimum sentences shall not be imposed based on actions taken to render emergency assistance to an alien in life threatening circumstances. The second, offered by Rep. Lofgren, provided that H.R. 238's mandatory minimum sentences shall apply only to alien smuggling crimes committed for commercial advantage or financial gain.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 238, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 7, 2000.*

Hon. HENRY J. HYDE, *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 238, a bill to amend section 274 of the Immigration and Nationality Act to impose mandatory minimum sentences, and increase certain sentences, for bringing in and harboring certain aliens and to amend title 18, United States Code, to provide enhanced penalties for persons committing such offenses while armed.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.  
Ranking Democratic Member

*H.R. 238—A bill to amend section 274 of the Immigration and Nationality Act to impose mandatory minimum sentences, and increase certain sentences, for bringing in and harboring certain aliens and to amend title 18, United States Code, to provide enhanced penalties for persons committing such offenses while armed.*

SUMMARY

H.R. 238 would establish mandatory minimum prison sentences for certain crimes involving the transportation of illegal aliens into the United States. Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost \$160 million over the next five years to accommodate more prisoners in federal prisons. Enacting H.R. 238 would affect direct spending and receipts, so pay-as-you-go procedures would apply, but CBO estimates that any such effects would be less than \$500,000 annually.

H.R. 238 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The following table summarizes the estimated budgetary impact of H.R. 238. The costs of this legislation fall within budget function 750 (administration of justice).

By fiscal year, in millions of dollars

	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Spending for Prison Construction and Operations Under Current Law						
Estimated Authorization Level <sup>1</sup>	3,669	3,809	3,926	4,046	4,168	4,292
Estimated Outlays	3,463	3,677	3,822	3,973	4,110	4,246
Proposed Changes						
Prison Operations						
Estimated Authorization Level	0	1	8	14	17	20
Estimated Outlays	0	1	8	14	17	20
Prison Construction						
Estimated Authorization Level	0	0	100	0	0	0
Estimated Outlays	0	0	10	40	45	5
Total						
Estimated Authorization Level	0	1	108	14	17	20
Estimated Outlays	0	1	18	54	62	25
Spending for Prison Construction and Operations Under H.R. 238						
Estimated Authorization Level <sup>1</sup>	3,669	3,810	4,034	4,060	4,185	4,314
Estimated Outlays	3,463	3,678	3,840	4,027	4,172	4,271

<sup>1</sup> The 2000 level is the amount appropriated for that year. The estimated authorization levels for 2001 through 2005 reflect CBO baseline estimates, assuming adjustments for inflation. Without such adjustments, the current-law amounts would remain at about \$3.7 billion a year, and the bill's effects on prison operations would be about \$7 million lower over this period.

#### BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2001, and that the necessary funds for prison operating costs will be appropriated at or near the beginning of each fiscal year.

#### *Spending Subject to Appropriation*

*Prison Operations Costs.* According to the U.S. Sentencing Commission, the bill's provisions would increase the average prison sentence for the relevant offenses from 12 months to 34 months. The commission estimates that the longer sentences required by H.R. 238 would increase the prison population by about 1,900 prisoners a year by fiscal year 2005. In 2000, the annual cost to detain a federal prisoner is about \$9,000. CBO estimates that the cost to support additional prisoners under this bill would be about \$60 million over the 2001–2005 period.

*Prison Construction Costs.* It is likely that an additional federal prison would be needed to house the number of prisoners detained in federal facilities that would be added by this bill. Based on information from the Bureau of Prisons, CBO estimates that construction of a new prison for this purpose would begin in 2002 and total costs would be about \$100 million over the 2002–2005 period, subject to the availability of appropriated funds, for a facility with a capacity of 1,150 prisoners.

#### *Direct Spending and Revenues*

Because those prosecuted and convicted under H.R. 238 could be subject to greater criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines

are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional receipts and direct spending as a result of enacting this bill would not be significant.

#### PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Pay-as-you-go procedures would apply to H.R. 238, but CBO estimates that any changes in direct spending or receipts would be less than \$500,000 for each year.

#### INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect state, local, or tribal governments.

#### ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226–2860)  
Impact on State, Local, and Tribal Governments: Shelley Finlayson (225–3220)  
Impact on the Private Sector: Patrice Gordon (226–2940)

#### ESTIMATE APPROVED BY:

Peter H. Fontaine  
Deputy Assistant Director for Budget Analysis

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8, clause 4 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*Sec. 1. Mandatory Minimum Sentences for Bringing In and Harboring Certain Aliens.* Section 1 provides that smuggling an illegal alien into the United States, transporting or harboring an illegal alien within the United States, or inducing an alien to enter the United States illegally, when done for the purpose of commercial advantage or financial gain, shall be subject to a minimum sentence of 2 years. Conspiracy to commit, or aiding or abetting the commission of, any of the preceding crimes shall be subject to a minimum sentence of 1 year.

The minimum sentence shall be 5 years for any of the preceding crimes that cause serious bodily injury or jeopardize the life of a person, and the maximum sentence for such a crime shall be increased from 20 to 25 years. The minimum sentence shall be 20 years for any of the preceding crimes that result in the death of a person.

Upon a second conviction for any of the preceding crimes the minimum sentence is doubled, and upon a third or subsequent conviction the minimum sentence is quintupled.

*Sec. 2. Enhanced Penalties for Persons Committing Offenses while Armed.* Section 2 adds alien smuggling to the list of Federal

criminal offenses that receive increased sentences if a firearm is involved. (The list currently includes all crimes of violence and drug trafficking crimes, see 18 U.S.C. §924(c).) Committing an alien smuggling crime with a firearm would add 5 years to the sentence, 7 years if the firearm is brandished, or 10 years if the firearm is discharged or is a particularly dangerous weapon.

*Sec. 3. Effective Date.* Section 3 provides that the amendments made by H.R. 238 shall take effect 90 days after its enactment and shall apply to offenses committed after the termination of such 90-day period.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### SECTION 274 OF THE IMMIGRATION AND NATIONALITY ACT

#### BRINGING IN AND HARBORING CERTAIN ALIENS

SEC. 274. (a) CRIMINAL PENALTIES.—(1)(A) \* \* \*

\* \* \* \* \*

(B) **[A person]** *Except as provided in subparagraphs (C) and (D), a person* who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) \* \* \*

\* \* \* \* \*

(C)(i) *Except as provided in clauses (ii) and (iii), a person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—*

(I) *in the case of a violation of clause (i), (ii), (iii), or (iv) of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain, be fined under title 18, United States Code, imprisoned not less than 2 years nor more than 10 years, or both;*

(II) *in the case of a violation of subparagraph (A)(v) in which the offense was done for the purpose of commercial advantage or financial gain, be fined under title 18, United States Code, imprisoned not less than 1 year nor more than 5 years, or both;*

(III) *in the case of a violation of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain and during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18, United States Code) to, or places in jeopardy the life of, any person, be fined under title 18, United States Code, imprisoned not less than 5 years nor more than 25 years, or both; and*



(IV) *in the case of a violation of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain and resulting in the death of any person, be punished by death or imprisoned for any term of years or for life (but not less than 20 years), fined under title 18, United States Code, or both.*

(ii) *In the case of a violation of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain after 1 prior conviction for any other such violation of subparagraph (A) has become final, the minimum term of imprisonment shall be not less than two times the minimum term specified in clause (i).*

(iii) *In the case of a violation of subparagraph (A) in which the offense was done for the purpose of commercial advantage or financial gain after 2 or more prior convictions for any other such violations of subparagraph (A) have become final, the minimum term of imprisonment shall be not less than five times the minimum term specified in clause (i).*

(D) *In no case may any penalty for a violation of subparagraph (A) be imposed on any person based on actions taken by the person to render emergency assistance to an alien found physically present in the United States in life threatening circumstances.*

\* \* \* \* \*

## SECTION 924 OF TITLE 18, UNITED STATES CODE

### § 924. Penalties

(a) \* \* \*

\* \* \* \* \*

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) *or any violation of section 274(a)(1)(A) of the Immigration and Nationality Act* for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence **or drug trafficking crime**, *drug trafficking crime, or violation of section 274(a)(1)(A) of the Immigration and Nationality Act—*

(i) \* \* \*

\* \* \* \* \*

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence **or drug trafficking crime**, *drug trafficking crime, or violation of section*

*274(a)(1)(A) of the Immigration and Nationality Act* during  
which the firearm was used, carried, or possessed.

\* \* \* \* \*

## DISSENTING VIEWS

We dissent from the underlying bill because experience and numerous studies have shown that mandatory minimum sentences<sup>1</sup> create unfairness and require judicial and correctional expenditures that are disproportionate to any deterrent or rehabilitative effect they might have. Studies have also highlighted the very high costs of the unnecessary incarceration resulting from mandatory minimums.

In fact, scientific study has found no empirical evidence linking mandatory minimum sentences to reductions in crime. Instead, we know that they distort the sentencing process, discriminate against minorities in their application and waste money. In a study report entitled "*Mandatory Minimum Drug Sentences: Throwing Away the Key or the Tax Payers Money?*," the Rand Commission concluded that mandatory minimum sentences were less effective than either discretionary sentencing or drug treatment in reducing drug related crime, and far more costly than either. And in a March 17, 2000 letter to Judiciary Committee Chairman Hyde, the Judicial Conference of the U.S. reiterated its opposition to mandatory minimum sentencing schemes for the 12th time, noting that they "severely distort and damage the Federal sentencing system, . . . undermine the Sentencing Guideline regimen" established by Congress to promote fairness and proportionality, and "destroy honesty in sentencing by encouraging charge and fact plea bargains."<sup>2</sup>

Many conservatives have joined us in recognizing the policy problems caused by mandatory minimums. Thus, for example, after realizing the damage and ineffectiveness of mandatory minimums at reducing crime, Democrats and Republicans, in a bi-partisan effort repealed Federal mandatory minimum sentencing in 1970. Speaking in support of the bill, then-congressman George Bush noted that, "[c]ontrary to what one might imagine, [the bill repealing

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<sup>1</sup>H.R. 238 requires a mandatory 1-year minimum sentence for transporting or harboring smuggled aliens within the U.S., inducing aliens to come to the U.S. illegally, or aiding and abetting alien smuggling crimes. A 2-year mandatory minimum sentence is required for illegally bringing aliens into the U.S., domestic transport or harboring or inducement of smuggled aliens for commercial advantage or financial gain, or engaging in an alien smuggling conspiracy. For alien smuggling crimes causing serious bodily injuries or placing lives in jeopardy, a minimum 5-year sentence is required, and the maximum is raised from 20 to 25 years. For alien smuggling crimes resulting in death, a minimum 20-year sentence is required. H.R. 238 also provides that the mandatory minimums would be doubled for an individual's second alien smuggling conviction and quintupled for a third or subsequent conviction.

<sup>2</sup>Both the Judicial Center in its study report entitled "*The General Effects of Mandatory Minimum Prison Terms: A longitudinal Study of Federal Sentences Imposed*," and the United States Sentencing Commission in its study report entitled "*Mandatory Minimum Penalties in the Federal Criminal Justice System*," found that minorities were substantially more likely than whites under comparable circumstances to receive mandatory minimum sentences. The Sentencing Commission study also reflected that mandatory minimum sentences increased disparity in sentencing of like offenders because they were not applied in 40% of the cases and, at the same time, increased costs as a result of the rate of trials rising from 13% of defendants to 19% of defendants, with no evidence that mandatory minimum sentencing had anymore crime reduction impact than discretionary sentences.

Federal mandatory minimums] will result in better justice and more appropriate sentences . . .”<sup>3</sup>

Similarly, Chief Justice Rehnquist, who is not known to be lenient on crime, has observed that:

“Mandatory minimums are perhaps a good example of the law of unintended consequences. There is a respectable body of opinion which believes that these mandatory minimums impose unduly harsh punishment for first-time offenders’, particularly for ‘mules’ who played only a minor role in a drug distribution scheme. Be that as it may, the mandatory minimums have also led to an inordinate increase in the Federal prison population and will require huge expenditures to build new prison space . . .”

“Mandatory minimums . . . are frequently the result of floor amendments to demonstrate emphatically that legislators want to ‘get tough on crime.’ Just as frequently they do not involve any careful consideration of the effect they might have on the sentencing guidelines as a whole . . .”<sup>4</sup>

The proliferation of harsh mandatory sentencing policies has also inhibited the ability of courts to sentence offenders in a way that permits a more “problem-solving” approach to crime, as is being demonstrated in the community policing and drug court movements today. By eliminating any consideration of the factors contributing to crime or to a range of responses, as H.R. 238 does, such sentencing policies fail to provide justice for either victims or offenders.

In light of these concerns, a less draconian approach than H.R. 238 would be to increase sentences under the sentencing guidelines or enact a legislative directive to the U.S. Sentencing Commission to revise their existing sentencing guidelines to increase sentences for alien smuggling offenses. This would at least permit consideration of aggravating and mitigating circumstances. Unfortunately, an amendment along these lines offered by Rep. Scott (D-VA) was rejected by the Majority.

Whatever the political benefits of mandatory minimums, as a substantive matter it is clear that mandatory minimum sentences are ineffectual. They simply do not do what they purport to do—deter criminal behavior by guaranteeing that a particular penalty will be imposed for a particular crime. Instead they impose unfair and harsh results and unnecessarily increase prison costs.

JOHN CONYERS, JR.  
ROBERT C. SCOTT.  
WILLIAM D. DELAHUNT.  
TAMMY BALDWIN.



<sup>3</sup>David Kopel, Cato Institute, “Prison Blues: How America’s Foolish Sentencing Policies Endanger Public Safety,” *Policy Analysis*, No. 208 May 1994, p.12.

<sup>4</sup>David Kopel, Cato Institute, “Prison Blues: How America’s Foolish Sentencing Policies Endanger Public Safety,” *Policy Analysis*, No. 208 May 1994, p.19. (quoting William H. Rehnquist, “Luncheon Address,” in U.S. Sentencing Commission, *Drugs and Violence*, pp. 286–87.).