

1800 feet north of the Mexican border. They saw a large

that he was in the country illegally, because the group was

there than here that the motorist's next stop was jail, because he was weaving all over the road and too impaired to perform

5 See United States v. Nieblas

(Defining reasonable man in these circumstances as a "reasonable inno-

protected from police tactics designed to overcome a suspect's will.²⁰ There is not much risk of the harms Miranda

of these sections, and then has the parenthetical "relating to alien smuggling."³¹

Appellant argues, correctly, that we use a "categorical" analysis, which is to say, we look at the statute, not the con-

27 See United States v. Estrada-Torres, 179 F.3d 776 (9th Cir. 1999).

28 See 8 U.S.C. § 1324.

29 See 8 U.S.C. § 1324(a)(1)(A)(i) which applies criminal penalties to any person who:

[K]nowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien.

30 See 8 U.S.C. § 1324(a)(1)(A)(ii) which applies criminal penalties to those who:

[K]nowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.

31 See 8 U.S.C. § 1101(a)(43)(N) which includes as an aggravated felony "an offense described in paragraph (1)(A) or (2) of [8 U.S.C. § 1324(a)] (relating to alien smuggling)"

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duct that was the basis for conviction.³² He then argues that

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ing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law." Thus all the aliens who can be the predicate of a "transporting" offense under subsection (ii) are known to the offender not to be entitled to be here. That means that, except perhaps for some who came in legally but overstayed their visas, a subsection (ii) transporter knows that his conduct "relates" to alien smuggling. And that is just what the aggravated felony parenthetical says, "relating" to smuggling.

Moreover, in other subsections, Congress used a perfectly clear approach to articulate a limiting rather than a disjunctive parenthetical. For example, in subsection J, there is a disjunctive parenthetical using the same "relating to" form as the subsection N parenthetical at issue in this case, followed by a limiting parenthetical, "if it is a second or subsequent offense."³³ Subsection J can only be read as using the "relat-

³² See **United States v. Bustamante Lomas**, 30 F.3d 1191, 1193 (9th Cir. 1994).

pects in the field prior to arrest, where the setting is for all

