

110TH CONGRESS
1ST SESSION

H. R. 2399

To amend the Immigration and Nationality Act and title 18, United States Code, to combat the crime of alien smuggling and related activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2007

Mr. HILL (for himself, Mrs. BOYDA of Kansas, Mr. DONNELLY, and Mr. MAHONEY of Florida) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act and title 18, United States Code, to combat the crime of alien smuggling and related activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alien Smuggling and
5 Terrorism Prevention Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) Alien smuggling by land, air and sea is a
2 transnational crime that violates the integrity of
3 United States borders, compromises our Nation's
4 sovereignty, places the country at risk of terrorist
5 activity, and contravenes the rule of law.

6 (2) Aggressive enforcement activity against
7 alien smuggling is needed to protect our borders and
8 ensure the security of our Nation. The border secu-
9 rity and anti-smuggling efforts of the men and
10 women on the Nation's front line of defense are to
11 be commended. Special recognition is due the De-
12 partment of Homeland Security through the United
13 States Border Patrol, United States Coast Guard,
14 Customs and Border Protection, and Immigration
15 and Customs Enforcement, and the Department of
16 Justice through the Federal Bureau of Investigation.

17 (3) The law enforcement community must be
18 given the statutory tools necessary to address this
19 security threat. Only through effective alien smug-
20 gling statutes can the Justice Department, through
21 the United States Attorneys' Offices and the Domes-
22 tic Security Section of the Criminal Division, pros-
23 ecute these cases successfully.

24 (4) Alien smuggling has a destabilizing effect
25 on border communities. State and local law enforce-

1 ment, medical personnel, social service providers,
2 and the faith community play important roles in
3 combating smuggling and responding to its effects.

4 (5) Existing penalties for alien smuggling are
5 insufficient to provide appropriate punishment for
6 alien smugglers.

7 (6) Existing alien smuggling laws often fail to
8 reach the conduct of alien smugglers, transporters,
9 recruiters, guides, and boat captains.

10 (7) Existing laws concerning failure to heave to
11 are insufficient to appropriately punish boat opera-
12 tors and crew who engage in the reckless transpor-
13 tation of aliens on the high seas and seek to evade
14 capture.

15 (8) Much of the conduct in alien smuggling
16 rings occurs outside of the United States.
17 Extraterritorial jurisdiction is needed to ensure that
18 smuggling rings can be brought to justice for re-
19 cruiting, sending, and facilitating the movement of
20 those who seek to enter the United States without
21 lawful authority.

22 (9) Alien smuggling can include unsafe or reck-
23 lessly dangerous conditions that expose individuals
24 to particularly high risk of injury or death.

1 **SEC. 3. CHECKS AGAINST TERRORIST WATCHLIST.**

2 The Department of Homeland Security shall, to the
3 extent practicable, check against all available terrorist
4 watchlists those alien smugglers and smuggled individuals
5 who are interdicted at the land, air, and sea borders of
6 the United States.

7 **SEC. 4. STRENGTHENING PROSECUTION AND PUNISHMENT**
8 **OF ALIEN SMUGGLERS.**

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

11 (1) by amending the subsection heading to read
12 as follows: “SMUGGLING OF UNLAWFUL AND TER-
13 RORIST ALIENS.—”

14 (2) by redesignating clause (iv) of paragraph
15 (1)(B) as clause (vi);

16 (3) in paragraph (1), by striking “(1)(A)” and
17 all that follows through clause (iii) of subparagraph
18 (B) and inserting the following:

19 “(1)(A) Whoever, knowing or in reckless disregard of
20 the fact that an individual is an alien who lacks lawful
21 authority to come to, enter, or reside in the United
22 States—

23 “(i) brings that individual to the United States;

24 “(ii) recruits, encourages, or induces that indi-
25 vidual to come to or enter the United States;

1 “(iii) transports or moves that individual in the
2 United States, in furtherance of their unlawful pres-
3 ence; or

4 “(iv) harbors, conceals, or shields from detec-
5 tion the individual in any place in the United States,
6 including any building or any means of transpor-
7 tation;

8 or attempts or conspires to do so, shall be punished as
9 provided in subparagraph (B).

10 “(B) A violator of subparagraph (A) shall, for each
11 alien in respect to whom such a violation occurs—

12 “(i) unless the offense is otherwise described in
13 another clause of this subparagraph, be fined under
14 title 18, United States Code or imprisoned not more
15 than 5 years, or both;

16 “(ii) if the offense involved the transit of the
17 defendant’s spouse, child, sibling, parent, grand-
18 parent, or niece or nephew, and the offense is not
19 described in any of clauses (iii) through (v), be fined
20 under title 18, United States Code or imprisoned not
21 more than 1 year, or both;

22 “(iii) if the offense is a violation of paragraph
23 (1)(A)(i) and was committed for the purpose of com-
24 mercial advantage or private financial gain, or if the
25 offense was committed with the intent or reason to

1 believe that the individual unlawfully brought into
2 the United States will commit an offense against the
3 United States or any State that is punishable by im-
4 prisonment for more than 1 year, be fined under
5 title 18, United States Code, and imprisoned, in the
6 case of a first or second violation, not less than 3
7 nor more than 10 years, and for any other violation,
8 not less than 5 nor more than 15 years; and

9 “(iv) if the offense results in serious bodily in-
10 jury (as defined in section 1365 of title 18, United
11 States Code) or places in jeopardy the life of any
12 person, be fined under title 18, United States Code
13 or imprisoned not more than 20 years, or both;

14 “(v) if the offense involved an individual who
15 the defendant knew was engaged in or intended to
16 engage in terrorist activity (as defined in section
17 212(a)(3)(B)), be fined under title 18, United States
18 Code or imprisoned not more than 30 years, or both;
19 and”;

20 (4) in clause (vi) of paragraph (1)(B), as so re-
21 designated by paragraph (2) of this section—

22 (A) by striking “in the case” and all that
23 follows through “(v) resulting” and inserting
24 “if the offense results”; and

1 (B) by inserting “and if the offense in-
2 volves kidnaping, an attempt to kidnap, the
3 conduct required for aggravated sexual abuse
4 (as defined in section 2241 without regard to
5 where it takes place), or an attempt to commit
6 such abuse, or an attempt to kill, be fined
7 under such title or imprisoned for any term of
8 years or life, or both” after “or both” ; and

9 (5) by striking subparagraph (C) of paragraph
10 (1) and all that follows through paragraph (2) and
11 inserting the following:

12 “(2)(A) There is extraterritorial jurisdiction over the
13 offenses described in paragraph (1).

14 “(B) In a prosecution for a violation of, or an attempt
15 or conspiracy to violate subsection (a)(1)(A)(i) that occurs
16 on the high seas, no defense based on necessity can be
17 raised unless the defendant—

18 “(i) as soon as practicable, reported to the
19 Coast Guard the circumstances of the necessity, and
20 if a rescue is claimed, the name, description, registry
21 number, and location of the vessel engaging in the
22 rescue; and

23 “(ii) did not bring, attempt to bring, or in any
24 manner intentionally facilitate the entry of any alien
25 into the land territory of the United States without

1 lawful authority, unless exigent circumstances ex-
2 isted that placed the life of a person on the vessel
3 in danger, in which case the reporting requirement
4 set forth in clause (i) of this subparagraph is satis-
5 fied by notifying the Coast Guard as soon as prac-
6 ticable after delivering the alien to emergency med-
7 ical or law enforcement personnel ashore.

8 “(C) It is a defense to a violation of, or an attempt
9 or conspiracy to violate, clause (iii) or (iv) of subsection
10 (a)(1)(A) for a religious denomination having a bona fide
11 nonprofit, religious organization in the United States, or
12 the agents or officer of such denomination or organization,
13 to encourage, invite, call, allow, or enable an alien who
14 is present in the United States to perform the vocation
15 of a minister or missionary for the denomination or orga-
16 nization in the United States as a volunteer who is not
17 compensated as an employee, notwithstanding the provi-
18 sion of room, board, travel, medical assistance, and other
19 basic living expenses, provided the minister or missionary
20 has been a member of the denomination for at least one
21 year.

22 “(D) For purposes of this paragraph and paragraph
23 (1)—

24 “(i) the term ‘United States’ means the several
25 States, the District of Columbia, the Commonwealth

1 of Puerto Rico, Guam, American Samoa, the United
2 States Virgin Islands, the Commonwealth of the
3 Northern Mariana Islands, and any other territory
4 or possession of the United States; and

5 “(ii) the term ‘lawful authority’ means permis-
6 sion, authorization, or waiver that is expressly pro-
7 vided for in the immigration laws of the United
8 States or the regulations prescribed under those
9 laws and does not include any such authority se-
10 cured by fraud or otherwise obtained in violation of
11 law or authority that has been sought but not ap-
12 proved.”.

13 **SEC. 5. MARITIME LAW ENFORCEMENT.**

14 (a) PENALTIES.—Subsection (b) of section 2237 of
15 title 18, United States Code, is amended to read as fol-
16 lows:

17 “(b)(1) Whoever intentionally violates this section
18 shall, unless the offense is described in paragraph (2), be
19 fined under this title or imprisoned for not more than 5
20 years, or both.

21 “(2) If the offense—

22 “(A) is committed in the course of a violation
23 of section 274 of the Immigration and Nationality
24 Act (alien smuggling); chapter 77 (peonage, slavery,
25 and trafficking in persons), section 111 (shipping),

1 111A (interference with vessels), 113 (stolen prop-
2 erty), or 117 (transportation for illegal sexual activ-
3 ity) of this title; chapter 705 (maritime drug law en-
4 forcement) of title 46, or title II of the Act of June
5 15, 1917 (Chapter 30; 40 Stat. 220), the offender
6 shall be fined under this title or imprisoned for not
7 more than 10 years, or both;

8 “(B) results in serious bodily injury (as defined
9 in section 1365 of this title) or transportation under
10 inhumane conditions, the offender shall be fined
11 under this title, imprisoned not more than 15 years,
12 or both; or

13 “(C) results in death or involves kidnaping, an
14 attempt to kidnap, the conduct required for aggra-
15 vated sexual abuse (as defined in section 2241 with-
16 out regard to where it takes place), or an attempt
17 to commit such abuse, or an attempt to kill, be fined
18 under such title or imprisoned for any term of years
19 or life, or both .”.

20 (b) LIMITATION ON NECESSITY DEFENSE.—Section
21 2237(c) of title 18, United States Code, is amended—

22 (1) by inserting “(1)” after “(c)”;

23 (2) by adding at the end the following:

1 “(2) In a prosecution for a violation of this section,
2 no defense based on necessity can be raised unless the de-
3 fendant—

4 “(A) as soon as practicable upon reaching
5 shore, delivered the person with respect to which the
6 necessity arose to emergency medical or law enforce-
7 ment personnel,

8 “(B) as soon as practicable, reported to the
9 Coast Guard the circumstances of the necessity re-
10 sulting giving rise to the defense; and

11 “(C) did not bring, attempt to bring, or in any
12 manner intentionally facilitate the entry of any alien,
13 as that term is defined in section 101(a)(3) of the
14 Immigration and Nationality Act (8 U.S.C. 1101
15 (a)(3)), into the land territory of the United States
16 without lawful authority, unless exigent cir-
17 cumstances existed that placed the life of a person
18 on the vessel in danger, in which case the reporting
19 requirement of subparagraph (B) is satisfied by no-
20 tifying the Coast Guard as soon as practicable after
21 delivering that person to emergency medical or law
22 enforcement personnel ashore.”.

23 (c) DEFINITION.—Section 2237(e) of title 18, United
24 States Code, is amended—

1 (1) by striking “and” at the end of paragraph
2 (3);

3 (2) by striking the period at the end of para-
4 graph (4) and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(5) the term ‘transportation under inhumane
7 conditions’ means the transportation of persons in
8 an engine compartment, storage compartment, or
9 other confined space, transportation at an excessive
10 speed, transportation of a number of persons in ex-
11 cess of the rated capacity of the means of transpor-
12 tation, or intentionally grounding a vessel in which
13 persons are being transported.”.

14 **SEC. 6. AMENDMENT TO THE SENTENCING GUIDELINES.**

15 (a) **IN GENERAL.**—Pursuant to its authority under
16 section 994 of title 28, United States Code, and in accord-
17 ance with this section, the United States Sentencing Com-
18 mission shall review and, if appropriate, amend the sen-
19 tencing guidelines and policy statements applicable to per-
20 sons convicted of alien smuggling offenses and criminal
21 failure to heave to or obstruction of boarding.

22 (b) **CONSIDERATIONS.**—In carrying out this sub-
23 section, the Sentencing Commission, shall—

24 (1) consider providing sentencing enhancements
25 or stiffening existing enhancements for those con-

1 victed of offenses described in paragraph (1) of this
2 subsection that—

3 (A) involve a pattern of continued and fla-
4 grant violations;

5 (B) are part of an ongoing commercial or-
6 ganization or enterprise;

7 (C) involve aliens who were transported in
8 groups of 10 or more;

9 (D) involve the transportation or abandon-
10 ment of aliens in a manner that endangered
11 their lives; or

12 (E) involve the facilitation of terrorist ac-
13 tivity; and

14 (2) consider cross-references to the guidelines
15 for Criminal Sexual Abuse and Attempted Murder.

16 (c) EXPEDITED PROCEDURES.—The Commission
17 may promulgate the guidelines or amendments under this
18 subsection in accordance with the procedures set forth in
19 section 21(a) of the Sentencing Act of 1987, as though
20 the authority under that Act had not expired.

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