

110TH CONGRESS
1ST SESSION

S. 2463

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 SENATE OF THE UNITED STATES

DECEMBER 13, 2007

Mr. BAYH (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 makes the following findings:

8 (1) Alien smuggling by land, air, and sea is a
9 transnational crime that—

1 (A) violates the integrity of United States
2 borders;

3 (B) compromises the sovereignty of the
4 United States;

5 (C) places our Nation at risk of terrorist
6 activity; and

7 (D) contravenes the rule of law.

8 (2) Aggressive enforcement activity against
9 alien smuggling is needed to protect the borders of
10 the United States and to ensure our Nation's secu-
11 rity. The border security and antismuggling efforts
12 of the men and women on the Nation's front line of
13 defense are commendable. Special recognition should
14 be given to the Border Patrol, the Coast Guard,
15 United States Customs and Border Protection,
16 United States Immigration and Customs Enforce-
17 ment, and the Federal Bureau of Investigation.

18 (3) The law enforcement community must be
19 given the statutory tools necessary to address this
20 security threat. The United States Attorneys Offices
21 and the Domestic Security Section of the Criminal
22 Division cannot prosecute these cases successfully
23 without effective alien smuggling statutes.

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 WATCH LIST.**

2 The Secretary of Homeland Security shall, to the ex-
3 tent practicable, check, against all available terrorist
4 watch lists, alien smugglers and smuggled individuals who
5 are interdicted at the land, air, and sea borders of the
6 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: “BRINGING IN, HARBORING, AND SMUG-
13 GLING OF UNLAWFUL AND TERRORIST ALIENS.—”;

14 (2) by amending paragraph (1) to read as fol-
15 lows:

16 “(1)(A) A person shall be subject to the pen-
17 alties described in subparagraph (D) if the person,
18 knowing or in reckless disregard of the fact that an
19 individual is an alien who lacks lawful authority to
20 come to, enter, or reside in the United States, know-
21 ingly—

22 “(i) brings that individual to the United
23 States, regardless of any future official action
24 which may be taken with respect to that indi-
25 vidual;

1 “(ii) recruits, encourages, or induces that
2 individual to come to, enter, or reside in the
3 United States;

4 “(iii) transports or moves that individual
5 in the United States, in furtherance of that in-
6 dividual’s unlawful presence; or

7 “(iv) harbors, conceals, or shields from de-
8 tection that individual in any place in the
9 United States, including any building or means
10 of transportation.

11 “(B) A person shall be subject to the penalties
12 described in subparagraph (D) if the person, know-
13 ing that an individual is an alien, brings that indi-
14 vidual to the United States at a place other than a
15 designated port of entry or a place designated by the
16 Secretary of Homeland Security, regardless of
17 whether such alien has received prior official author-
18 ization to come to, enter, or reside in the United
19 States and regardless of any future official action
20 which may be taken with respect to that individual.

21 “(C) A person who attempts or conspires to
22 commit any offense described subparagraph (A) or
23 (B) shall be subject to the same penalties as a per-
24 son who completes the offense.

1 “(D) A person who commits any offense de-
2 scribed in this paragraph shall, for each individual
3 in respect to whom such offense occurs—

4 “(i) be fined under title 18, United States
5 Code, imprisoned not more than 5 years, or
6 both if the offense is not described in any of
7 clauses (ii) through (vii);

8 “(ii) be fined under such title, imprisoned
9 not more than 1 year, or both, if the offense in-
10 volved the transit of the defendant’s spouse,
11 child, sibling, parent, grandparent, or niece or
12 nephew and is not described in any of clauses
13 (iii) through (vi);

14 “(iii) be fined under such title, imprisoned
15 not more than 10 years, or both if the violation
16 is described in clauses (ii), (iii), or (iv) of sub-
17 paragraph (A) or subparagraph (B) and was
18 committed for the purpose of profit, commercial
19 advantage, or private financial gain;

20 “(iv) be fined under such title and impris-
21 oned, in the case of a first or second violation,
22 for a term of not fewer than 3 years and not
23 more than 10 years, and for any subsequent
24 violation, for a term of not fewer than 5 years
25 and not more than 15 years, if the offense—

1 “(I) is described in subparagraph
2 (A)(i) and was committed for the purpose
3 of profit, commercial advantage, or private
4 financial gain; or

5 “(II) was committed with the intent
6 or reason to believe that the individual un-
7 lawfully brought into the United States
8 will commit an offense against the United
9 States or any State that is punishable by
10 imprisonment for more than 1 year;

11 “(v) be fined under such title, imprisoned
12 not more than 20 years, or both if the of-
13 fense—

14 “(I) results in serious bodily injury
15 (as defined in section 1365 of title 18,
16 United States Code); or

17 “(II) places in jeopardy the life of any
18 person;

19 “(vi) be fined under such title, imprisoned
20 not more than 30 years, or both if the offense
21 involved an individual who the person knew was
22 engaged in or intended to engage in terrorist
23 activity (as defined in section 212(a)(3)(B));

24 “(vii) be fined under such title, imprisoned
25 for any term of years or for life, or both if the

1 offense involves kidnaping, an attempt to kid-
2 nap, conduct required for aggravated sexual
3 abuse (as defined in section 2241 without re-
4 gard to where it takes place), an attempt to
5 commit such abuse, or an attempt to kill; and

6 “(viii) fined under such title, punished by
7 death or imprisoned for any term of years or
8 for life, or both if the offense results in the
9 death of any person.”; and

10 (3) by amending paragraph (2) to read as fol-
11 lows:

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

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

19 “(i) reported to the Coast Guard, as soon
20 as practicable—

21 “(I) the circumstances of the neces-
22 sity; and

23 “(II) if a rescue is claimed, the name,
24 description, registry number, and location
25 of the vessel engaging in the rescue; and

1 “(ii) did not bring, attempt to bring, or in
2 any manner intentionally facilitate the entry of
3 any alien into the land territory of the United
4 States without lawful authority, unless exigent
5 circumstances existed that placed the life of
6 that alien in danger, in which case the report-
7 ing requirement under clause (i) is satisfied by
8 notifying the Coast Guard as soon as prac-
9 ticable after delivering the alien to emergency
10 medical or law enforcement personnel ashore.

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

1 “(D) In this paragraph and in paragraph (1)—

2 “(i) the term ‘lawful authority’—

3 “(I) means permission, authorization,
4 or waiver that is expressly provided for in
5 the immigration laws of the United States
6 or the regulations prescribed under those
7 laws; and

8 “(II) does not include any such au-
9 thority secured by fraud or otherwise ob-
10 tained in violation of law or authority that
11 has been sought but not approved.

12 “(ii) the term ‘United States’ means the
13 several States, the District of Columbia, the
14 Commonwealth of Puerto Rico, Guam, Amer-
15 ican Samoa, the United States Virgin Islands,
16 the Commonwealth of the Northern Mariana Is-
17 lands, and every other territory and possession
18 of the United States.”.

19 **SEC. 5. MARITIME LAW ENFORCEMENT.**

20 (a) PENALTIES.—Section 2237(b) of title 18, United
21 States Code, is amended to read as follows:

22 “(b)(1) Except as provided under paragraph (2), any
23 person who intentionally violates this section shall, be
24 fined under this title, imprisoned for not more than 5
25 years, or both.

1 “(2)(A) A person described in paragraph (1) shall be
2 fined under this title, imprisoned for not more than 10
3 years, or both if the violation is committed in the course
4 of a violation of—

5 “(i) section 274 of the Immigration and Na-
6 tionality Act (alien smuggling);

7 “(ii) chapter 77 (peonage, slavery, and traf-
8 ficking in persons), section 111 (shipping), 111A
9 (interference with vessels), 113 (stolen property), or
10 117 (transportation for illegal sexual activity) of this
11 title;

12 “(iii) chapter 705 (maritime drug law enforce-
13 ment) of title 46; or

14 “(iv) title II of the Act of June 15, 1917 (40
15 Stat. 220).

16 “(B) A person described in paragraph (1) shall be
17 fined under this title, imprisoned not more than 15 years,
18 or both if the violation results in serious bodily injury (as
19 defined in section 1365) or transportation under inhu-
20 mane conditions.

21 “(C) A person described in paragraph (1) shall be
22 fined under this title, imprisoned for any term of years
23 or for life, or both if the violation—

24 “(i) results in death; or

1 “(ii) involves kidnaping, an attempt to kidnap,
2 the conduct required for aggravated sexual abuse (as
3 defined in section 2241 without regard to where it
4 takes place), an attempt to commit such abuse, or
5 an attempt to kill.”.

6 (b) LIMITATION ON NECESSITY DEFENSE.—Section
7 2237(c) of title 18, United States Code, is amended—

8 (1) by inserting “(1)” after “(c)”;

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

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

13 “(A) as soon as practicable upon reaching
14 shore, delivered the person with respect to which the
15 necessity arose to emergency medical or law enforce-
16 ment personnel;

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

20 “(C) did not bring, attempt to bring, or in in-
21 tentionally facilitate the entry of any alien (as de-
22 fined in section 101(a)(3) of the Immigration and
23 Nationality Act (8 U.S.C. 1101(a)(3))) into the land
24 territory of the United States without lawful author-
25 ity, unless exigent circumstances existed that placed

1 the life of that alien in danger, in which case the re-
2 porting requirement under subparagraph (B) is sat-
3 isfied by notifying the Coast Guard as soon as prac-
4 ticable after delivering that person to emergency
5 medical or law enforcement personnel ashore.”.

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

8 (1) by redesignating paragraphs (3) and (4) as
9 paragraphs (4) and (5), respectively; and

10 (2) by inserting after paragraph (2) the fol-
11 lowing:

12 “(3) the term ‘transportation under inhumane
13 conditions’ means—

14 “(A) transportation of persons in an en-
15 gine compartment, storage compartment, or
16 other confined space;

17 “(B) transportation at an excessive speed;

18 “(C) transportation of a number of per-
19 sons in excess of the rated capacity of the
20 means of transportation; or

21 “(D) intentionally grounding a vessel in
22 which persons are being transported.”.

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

24 (a) IN GENERAL.—Pursuant to its authority under
25 section 994 of title 28, United States Code, and in accord-

1 ance with this section, the United States Sentencing Com-
2 mission shall review and, if appropriate, amend the sen-
3 tencing guidelines and policy statements applicable to per-
4 sons convicted of alien smuggling offenses and criminal
5 failure to heave to or obstruction of boarding.

6 (b) CONSIDERATIONS.—In carrying out this section,
7 the Sentencing Commission, shall—

8 (1) consider providing sentencing enhancements
9 or stiffening existing enhancements for those con-
10 victed of offenses described in paragraph (1) that—

11 (A) involve a pattern of continued and fla-
12 grant violations;

13 (B) are part of an ongoing commercial or-
14 ganization or enterprise;

15 (C) involve aliens who were transported in
16 groups of 10 or more;

17 (D) involve the transportation or abandon-
18 ment of aliens in a manner that endangered
19 their lives; or

20 (E) involve the facilitation of terrorist ac-
21 tivity; and

22 (2) consider cross-references to the guidelines
23 for criminal sexual abuse and attempted murder.

24 (c) EXPEDITED PROCEDURES.—The Commission
25 may promulgate the guidelines or amendments under this

1 section in accordance with the procedures set forth in sec-
2 tion 21(a) of the Sentencing Act of 1987, as though the
3 authority under that Act had not expired.

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