

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2399

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IN THE SENATE OF THE UNITED STATES

MAY 23, 2007

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) Alien smuggling by land, air and sea is a  
7 transnational crime that violates the integrity of  
8 United States borders, compromises our Nation’s  
9 sovereignty, places the country at risk of terrorist  
10 activity, and contravenes the rule of law.

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

22 (3) The law enforcement community must be  
23 given the statutory tools necessary to address this  
24 security threat. Only through effective alien smug-  
25 gling statutes can the Justice Department, through  
26 the United States Attorneys’ Offices and the Domes-

1       tic Security Section of the Criminal Division, prosec-  
2       cute these cases successfully.

3           (4) Alien smuggling has a destabilizing effect  
4       on border communities. State and local law enforce-  
5       ment, medical personnel, social service providers,  
6       and the faith community play important roles in  
7       combating smuggling and responding to its effects.

8           (5) Existing penalties for alien smuggling are  
9       insufficient to provide appropriate punishment for  
10      alien smugglers.

11          (6) Existing alien smuggling laws often fail to  
12      reach the conduct of alien smugglers, transporters,  
13      recruiters, guides, and boat captains.

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

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

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

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

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

10 **SEC. 4. STRENGTHENING PROSECUTION AND PUNISHMENT**  
11 **OF ALIEN SMUGGLERS.**

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

14           (1) by amending the subsection heading to read  
15 as follows: “SMUGGLING OF UNLAWFUL AND TER-  
16 RORIST ALIENS.—”;

17           (2) by redesignating clause (iv) of paragraph  
18 (1)(B) as clause (vii);

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

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

1           “(i) brings that individual to the United States  
2           in any manner whatsoever regardless of any future  
3           official action which may be taken with respect to  
4           such alien;

5           “(ii) recruits, encourages, or induces that indi-  
6           vidual to come to, enter, or reside in the United  
7           States;

8           “(iii) transports or moves that individual in the  
9           United States, in furtherance of their unlawful pres-  
10          ence; or

11          “(iv) harbors, conceals, or shields from detec-  
12          tion the individual in any place in the United States,  
13          including any building or any means of transpor-  
14          tation;

15 or attempts or conspires to do so, shall be punished as  
16 provided in subparagraph (C).

17          “(B) Whoever, knowing that an individual is an alien,  
18 brings that individual to the United States in any manner  
19 whatsoever at a place other than a designated port of  
20 entry or place other than as designated by the Secretary  
21 of Homeland Security, regardless of whether such alien  
22 has received prior official authorization to come to, enter,  
23 or reside in the United States and regardless of any future  
24 official action which may be taken with respect to such

1 alien, or attempts or conspires to do so, shall be punished  
2 as provided in subparagraph (C).

3 “(C) A violator of this paragraph shall, for each alien  
4 in respect to whom such a violation occurs—

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

9 “(ii) if the offense involved the transit of the  
10 defendant’s spouse, child, sibling, parent, grand-  
11 parent, or niece or nephew, and the offense is not  
12 described in any of clauses (iii) through (vii), be  
13 fined under title 18, United States Code or impris-  
14 oned not more than 1 year, or both;

15 “(iii) if the offense is a violation of paragraphs  
16 (1)(A)(ii), (iii), or (iv), or paragraph (1)(B), and  
17 was committed for the purpose of profit, commercial  
18 advantage, or private financial gain, be fined under  
19 title 18, United States Code or imprisoned not more  
20 than 10 years, or both;

21 “(iv) if the offense is a violation of paragraph  
22 (1)(A)(i) and was committed for the purpose of prof-  
23 it, commercial advantage, or private financial gain,  
24 or if the offense was committed with the intent or  
25 reason to believe that the individual unlawfully

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

9 “(v) 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 “(vi) 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 the clause (vii) so redesignated by para-  
21 graph (2) of this subsection (which now becomes  
22 clause (vii) of the new subparagraph (C))—

23 (A) by striking “in the case” and all that  
24 follows through “(v) resulting” and inserting  
25 “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 existing subparagraph (C) of  
10          paragraph (1) (without affecting the new subpara-  
11          graph (C) added by the amendments made by this  
12          Act) and all that follows through paragraph (2) and  
13          inserting the following:

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

16          “(B) In a prosecution for a violation of, or an attempt  
17          or conspiracy to violate subsection (a)(1)(A)(i),  
18          (a)(1)(A)(ii), or (a)(1)(B), that occurs on the high seas,  
19          no defense based on necessity can be raised unless the de-  
20          fendant—

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

1           “(ii) did not bring, attempt to bring, or in any  
2           manner intentionally facilitate the entry of any alien  
3           into the land territory of the United States without  
4           lawful authority, unless exigent circumstances ex-  
5           isted that placed the life of that alien in danger, in  
6           which case the reporting requirement set forth in  
7           clause (i) of this subparagraph is satisfied by noti-  
8           fying the Coast Guard as soon as practicable after  
9           delivering the alien to emergency medical or law en-  
10          forcement personnel ashore.

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

1 “(D) For purposes of this paragraph and paragraph  
2 (1)—

3 “(i) the term ‘United States’ means the several  
4 States, the District of Columbia, the Commonwealth  
5 of Puerto Rico, Guam, American Samoa, the United  
6 States Virgin Islands, the Commonwealth of the  
7 Northern Mariana Islands, and any other territory  
8 or possession of the United States; and

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

17 **SEC. 5. MARITIME LAW ENFORCEMENT.**

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

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

25 “(2) If the offense—

1           “(A) is committed in the course of a violation  
2 of section 274 of the Immigration and Nationality  
3 Act (alien smuggling); chapter 77 (peonage, slavery,  
4 and trafficking in persons), section 111 (shipping),  
5 111A (interference with vessels), 113 (stolen prop-  
6 erty), or 117 (transportation for illegal sexual activ-  
7 ity) of this title; chapter 705 (maritime drug law en-  
8 forcement) of title 46, or title II of the Act of June  
9 15, 1917 (Chapter 30; 40 Stat. 220), the offender  
10 shall be fined under this title or imprisoned for not  
11 more than 10 years, or both;

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

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

24           (b) LIMITATION ON NECESSITY DEFENSE.—Section  
25 2237(c) of title 18, United States Code, is amended—

1 (1) by inserting “(1)” after “(c)”;

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

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

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

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

13 “(C) did not bring, attempt to bring, or in any  
14 manner intentionally facilitate the entry of any alien,  
15 as that term is defined in section 101(a)(3) of the  
16 Immigration and Nationality Act (8 U.S.C. 1101  
17 (a)(3)), into the land territory of the United States  
18 without lawful authority, unless exigent cir-  
19 cumstances existed that placed the life of that alien  
20 in danger, in which case the reporting requirement  
21 of subparagraph (B) is satisfied by notifying the  
22 Coast Guard as soon as practicable after delivering  
23 that person to emergency medical or law enforce-  
24 ment personnel ashore.”.

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

3 (1) by striking “and” at the end of paragraph  
4 (3);

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

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

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

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

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

24 (b) CONSIDERATIONS.—In carrying out this sub-  
25 section, the Sentencing Commission, shall—

1           (1) consider providing sentencing enhancements  
2 or stiffening existing enhancements for those con-  
3 victed of offenses described in paragraph (1) of this  
4 subsection that—

5                   (A) involve a pattern of continued and fla-  
6 grant violations;

7                   (B) are part of an ongoing commercial or-  
8 ganization or enterprise;

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

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

14                   (E) involve the facilitation of terrorist ac-  
15 tivity; and

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

18       (c) EXPEDITED PROCEDURES.—The Commission  
19 may promulgate the guidelines or amendments under this  
20 subsection in accordance with the procedures set forth in

1 section 21(a) of the Sentencing Act of 1987, as though  
2 the authority under that Act had not expired.

Passed the House of Representatives May 22, 2007.

Attest:                   LORRAINE C. MILLER,  
*Clerk.*