

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.

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## 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

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## 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

offense involves kidnaping, an attempt to kidnap, conduct required for aggravated sexual abuse (as defined in section 2241 without regard to where it takes place), an attempt to commit such abuse, or an attempt to kill; and

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

(3) by amending paragraph (2) to read as follows:

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

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

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

“(I) the circumstances of the necessity; and

“(II) if a rescue is claimed, the name, description, registry number, and location 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.

○