

## Calendar No. 594

110TH CONGRESS  
2D SESSION**S. 2709**

To increase the criminal penalties for illegally reentering the United States  
and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 5, 2008

Mr. SESSIONS introduced the following bill; which was read the first time

MARCH 6, 2008

Read the second time and placed on the calendar

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**A BILL**

To increase the criminal penalties for illegally reentering  
the United States 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 “Border Crossing De-  
5 terrence Act of 2008”.

6 **SEC. 2. EXPANSION OF OPERATION STREAMLINE.**

7 (a) IN GENERAL.—Not later than December 31,  
8 2009, the Secretary of Homeland Security, in Cooperation

1 with the Attorney General, shall expand Operation  
 2 Streamline (the zero-tolerance prosecution policy for ille-  
 3 gal entry and reentry) to all 20 border sectors.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
 5 are authorized to be appropriated \$500,000,000 for each  
 6 of the fiscal years 2009 through 2018 to carry out this  
 7 section.

8 **SEC. 3. MANDATORY MINIMUM SENTENCES FOR ILLEGAL**  
 9 **ENTRY.**

10 Section 275 of the Immigration and Nationality Act  
 11 (8 U.S.C. 1325) is amended—

12 (1) by redesignating subsections (c) and (d) as  
 13 subsections (d) and (e), respectively; and

14 (2) by inserting after subsection (b) the fol-  
 15 lowing:

16 “(c) IMPROPER TIME OR PLACE; CRIMINAL PEN-  
 17 ALTIES.—Any alien who is apprehended while entering, or  
 18 attempting to enter, the United States at a time and place  
 19 other than as designated by immigration offices—

20 “(1) in the case of a first violation of subsection  
 21 (a), shall be sentenced to a term of imprisonment of  
 22 not less than 10 days and not more than 364 days;

23 “(2) in the case of a second violation of sub-  
 24 section (a), shall be sentenced to a term of imprison-

1       ment of not less than 60 days and not more than  
2       2 years; and

3               “(3) in the case of a third or subsequent viola-  
4       tion of subsection (a), shall be sentenced to a term  
5       of imprisonment of not less than 90 days and not  
6       more than 3 years.”.

7       **SEC. 4. MANDATORY MINIMUM SENTENCES FOR ILLEGAL**  
8               **REENTRY.**

9       Section 276 (8 U.S.C. 1326) is amended to read as  
10      follows:

11      **“SEC. 276. REENTRY OF REMOVED ALIEN.**

12           “(a) REENTRY AFTER REMOVAL.—Any alien who  
13      has been denied admission, excluded, deported, or re-  
14      moved, or who has departed the United States while an  
15      order of exclusion, deportation, or removal is outstanding,  
16      and subsequently enters, attempts to enter, crosses the  
17      border to, attempts to cross the border to, or is at any  
18      time found in the United States, shall be fined under title  
19      18, United States Code, and imprisoned not less than 90  
20      days and not more than 2 years.

21           “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-  
22      withstanding the penalty prescribed under subsection (a),  
23      an alien described in that subsection who was—

24               “(1) convicted for 3 or more misdemeanors or  
25      a felony before such removal or departure, shall be

1        fined under title 18, United States Code, and im-  
2        prisoned for not less than 1 year and not more than  
3        10 years;

4            “(2) convicted for a felony before such removal  
5        or departure for which the alien was sentenced to a  
6        term of imprisonment of not less than 30 months,  
7        shall be fined under such title, and imprisoned for  
8        not less than 2 years and not more than 15 years;

9            “(3) convicted for a felony before such removal  
10       or departure for which the alien was sentenced to a  
11       term of imprisonment of not less than 60 months,  
12       shall be fined under such title and imprisoned for  
13       not less than 4 years and not more than 20 years;

14           “(4) convicted for 2 or more felonies before  
15       such removal or departure, shall be fined under such  
16       title and imprisoned for not less than 4 years and  
17       for not more than 20 years; or

18           “(5) convicted, before such removal or depar-  
19       ture, for murder, rape, kidnapping, for a felony of-  
20       fense described in chapter 77 (relating to peonage  
21       and slavery) or 113B (relating to terrorism) of such  
22       title, shall be fined under such title and imprisoned  
23       for not less than 5 years and not more than 20  
24       years.

1       “(c) REENTRY AFTER REPEATED REMOVAL.—Any  
2 alien who, after having been denied admission, excluded,  
3 deported, or removed 2 or more times, enters, attempts  
4 to enter, crosses the border to, attempts to cross the bor-  
5 der to, or is at any time found in the United States, shall  
6 be fined under title 18, United States Code, and impris-  
7 oned for not less than 2 years and not more than 10 years.

8       “(d) PROOF OF PRIOR CONVICTIONS.—The prior  
9 convictions described in subsection (b) are elements of the  
10 crimes described in that subsection, and the penalties in  
11 that subsection shall apply only in cases in which the con-  
12 viction or convictions that form the basis for the additional  
13 penalty are—

14               “(1) alleged in the indictment or information;  
15       and

16               “(2) proven beyond a reasonable doubt at trial  
17       or admitted by the defendant.

18       “(e) AFFIRMATIVE DEFENSES.—It shall be an af-  
19 firmative defense to a violation of this section that—

20               “(1) the alien had sought and received, before  
21       the alleged violation, the express consent of the Sec-  
22       retary of Homeland Security to reapply for admis-  
23       sion into the United States;

24               “(2) with respect to an alien previously denied  
25       admission and removed, the alien—

1           “(A) was not required to obtain such ad-  
 2           vance consent under the Immigration and Na-  
 3           tionality Act or under any prior Act; and

4           “(B) had complied with all other laws and  
 5           regulations governing the alien’s admission into  
 6           the United States; or

7           “(3) at the time of the prior exclusion, deporta-  
 8           tion, removal, or denial of admission alleged in the  
 9           violation, the alien—

10           “(A) was younger than 18 years of age;  
 11           and

12           “(B) had not been convicted of a crime or  
 13           adjudicated a delinquent minor by a court of  
 14           the United States, or a court of a State or ter-  
 15           ritory, for conduct that would constitute a fel-  
 16           ony if committed by an adult.

17           “(f) LIMITATION ON COLLATERAL ATTACK ON UN-  
 18           DERLYING REMOVAL ORDER.—In a criminal proceeding  
 19           under this section, an alien may not challenge the validity  
 20           of any prior removal order concerning the alien unless the  
 21           alien demonstrates by clear and convincing evidence  
 22           that—

23           “(1) the alien exhausted all administrative rem-  
 24           edies that may have been available to seek relief  
 25           against the order;

1           “(2) the removal proceedings at which the order  
2           was issued improperly deprived the alien of the op-  
3           portunity for judicial review; and

4           “(3) the entry of the order was fundamentally  
5           unfair.

6           “(g) REENTRY OF ALIEN REMOVED BEFORE COM-  
7           PLETING TERM OF IMPRISONMENT.—Any alien removed  
8           pursuant to section 241(a)(4) who enters, attempts to  
9           enter, crosses the border to, attempts to cross the border  
10          to, or is at any time found in, the United States shall  
11          be—

12           “(1) incarcerated for the remainder of the term  
13           of imprisonment, which was pending at the time of  
14           deportation without any reduction for parole or su-  
15           pervised release unless the alien affirmatively dem-  
16           onstrates that the Secretary of Homeland Security  
17           has expressly consented to the alien’s reentry; and

18           “(2) subject to such other penalties relating to  
19           the reentry of removed aliens as may be available  
20           under this section or any other provision of law.

21           “(h) LIMITATION.—An individual who provides an  
22           alien with emergency humanitarian assistance, including  
23           emergency medical care and food, or transports the alien  
24           to a location where such assistance can be rendered with-  
25           out compensation or the expectation of compensation may

1 not be prosecuted for aiding and abetting a violation of  
 2 this section based on the provision of such humanitarian  
 3 services .

4 “(i) DEFINITIONS.—In this section:

5 “(1) FELONY.—The term ‘felony’ means any  
 6 criminal offense punishable by a term of imprison-  
 7 ment of more than 1 year under the laws of the  
 8 United States, of any State, or of a foreign govern-  
 9 ment.

10 “(2) MISDEMEANOR.—The term ‘misdemeanor’  
 11 means any criminal offense punishable by a max-  
 12 imum term of imprisonment of not more than 1 year  
 13 under the applicable laws of the United States, of  
 14 any State, or of a foreign government.

15 “(3) REMOVAL.—The term ‘removal’ includes  
 16 any denial of admission, exclusion, deportation, or  
 17 removal, or any agreement by which an alien stipu-  
 18 lates or agrees to exclusion, deportation, or removal.

19 “(4) STATE.—The term ‘State’ means any of  
 20 the several States of the United States, the District  
 21 of Columbia, and any commonwealth, territory, or  
 22 possession of the United States.”.



1 **SEC. 5. MANDATORY MINIMUM SENTENCES FOR DESTROY-**  
2 **ING BORDER BARRIERS OR INFRASTRUC-**  
3 **TURE.**

4 Section 1361 of title 18, United States Code, is  
5 amended—

6 (1) by striking “Whoever” and inserting the fol-  
7 lowing:

8 “(a) IN GENERAL.—Whoever”; and

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

10 “(b) DESTRUCTION OF BORDER BARRIERS OR IN-  
11 FRASTRUCTURE.—Any alien who damages or destroys  
12 fencing or infrastructure, such as cameras, sensors, and  
13 vehicle barriers, that has been installed along the inter-  
14 national border of the United States by the United States  
15 Government shall be fined under this title and imprisoned  
16 for not less than 5 years.”.

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