

111TH CONGRESS
1ST SESSION

H. R. 1029

IN THE SENATE OF THE UNITED STATES

APRIL 1, 2009

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

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 2009”.

4 **SEC. 2. FINDINGS.**

5 The Congress makes the following findings:

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, pros-
2 ecute 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 Secretary of Homeland Security shall, to the ex-
6 tent practicable, check against all available terrorist
7 watchlists those persons suspected of alien smuggling and
8 smuggled individuals who are interdicted at the land, air,
9 and sea borders of 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: “BRINGING IN, HARBORING, AND SMUG-
16 GLING OF UNLAWFUL AND TERRORIST ALIENS.—”;

17 (2) by amending paragraphs (1) through (2) to
18 read as follows:

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 States,
22 knowingly—

23 “(i) brings that individual to the United States
24 in any manner whatsoever regardless of any future

1 official action which may be taken with respect to
2 such individual;

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

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

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

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

15 “(B) Whoever, knowing that an individual is an alien,
16 brings that individual to the United States in any manner
17 whatsoever at a place, other than a designated port of
18 entry or place designated by the Secretary of Homeland
19 Security, regardless of whether such individual has re-
20 ceived prior official authorization to come to, enter, or re-
21 side in the United States and regardless of any future offi-
22 cial action which may be taken with respect to such indi-
23 vidual, or attempts or conspires to do so, shall be punished
24 as provided in subparagraph (C).

1 “(C) Whoever commits an offense under this para-
2 graph shall, for each individual in respect to whom such
3 a violation occurs—

4 “(i) if the offense results in the death of any
5 person, be fined under title 18, United States Code,
6 and subject to the penalty of death or imprisonment
7 for any term of years or for life;

8 “(ii) if the offense involves kidnapping, an at-
9 tempt to kidnap, the conduct required for aggra-
10 vated sexual abuse (as defined in section 2241 of
11 title 18, United States Code, without regard to
12 where it takes place), or an attempt to commit such
13 abuse, or an attempt to kill, be fined under title 18,
14 United States Code, or imprisoned for any term of
15 years or life, or both;

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

22 “(iv) if the offense results in serious bodily in-
23 jury (as defined in section 1365 of title 18, United
24 States Code) or places in jeopardy the life of any

1 person, be fined under title 18, United States Code,
2 or imprisoned not more than 20 years, or both;

3 “(v) if the offense is a violation of paragraph
4 (1)(A)(i) and was committed for the purpose of prof-
5 it, commercial advantage, or private financial gain,
6 or if the offense was committed with the intent or
7 reason to believe that the individual unlawfully
8 brought into the United States will commit an of-
9 fense against the United States or any State that is
10 punishable by imprisonment for more than 1 year,
11 be fined under title 18, United States Code, and im-
12 prisoned, in the case of a first or second violation,
13 not less than 3 nor more than 10 years, and for any
14 other violation, not less than 5 nor more than 15
15 years;

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

22 “(vii) if the offense involves the transit of the
23 defendant’s spouse, child, sibling, parent, grand-
24 parent, or niece or nephew, and the offense is not
25 described in any of clauses (i) through (vi), be fined

1 under title 18, United States Code, or imprisoned
2 not more than 1 year, or both; and

3 “(viii) in any other case, be fined under title
4 18, United States Code, or imprisoned not more
5 than 5 years, or both.

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

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

13 “(i) as soon as practicable, reported to the
14 Coast Guard the circumstances of the necessity, and
15 if a rescue is claimed, the name, description, registry
16 number, and location of the vessel engaging in the
17 rescue; and

18 “(ii) did not bring, attempt to bring, or in any
19 manner intentionally facilitate the entry of any alien
20 into the land territory of the United States without
21 lawful authority, unless exigent circumstances ex-
22 isted that placed the life of that alien in danger, in
23 which case the reporting requirement set forth in
24 clause (i) is satisfied by notifying the Coast Guard
25 as soon as practicable after delivering the alien to

1 emergency medical or law enforcement personnel
2 ashore.

3 “(C) It is not a violation of, or an attempt or con-
4 spiracy to violate, clause (iii) or (iv) of paragraph (1)(A),
5 or paragraph (1)(A)(ii) (except if a person recruits, en-
6 courages, or induces an alien to come to or enter the
7 United States), for a religious denomination having a bona
8 fide nonprofit, religious organization in the United States,
9 or the agents or officer of such denomination or organiza-
10 tion, to encourage, invite, call, allow, or enable an alien
11 who is present in the United States to perform the voca-
12 tion of a minister or missionary for the denomination or
13 organization in the United States as a volunteer who is
14 not compensated as an employee, notwithstanding the pro-
15 vision of room, board, travel, medical assistance, and other
16 basic living expenses, provided the minister or missionary
17 has been a member of the denomination for at least one
18 year.

19 “(D) For purposes of this paragraph and paragraph
20 (1)—

21 “(i) the term ‘United States’ means the several
22 States, the District of Columbia, the Commonwealth
23 of Puerto Rico, Guam, American Samoa, the United
24 States Virgin Islands, the Commonwealth of the

1 Northern Mariana Islands, and any other territory
2 or possession of the United States; and

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

11 **SEC. 5. MARITIME LAW ENFORCEMENT.**

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

15 “(b) Whoever intentionally violates this section
16 shall—

17 “(1) if the offense results in death or involves
18 kidnapping, an attempt to kidnap, the conduct re-
19 quired for aggravated sexual abuse (as defined in
20 section 2241 without regard to where it takes place),
21 or an attempt to commit such abuse, or an attempt
22 to kill, be fined under such title or imprisoned for
23 any term of years or life, or both;

24 “(2) if the offense results in serious bodily in-
25 jury (as defined in section 1365 of this title) or

1 transportation under inhumane conditions, be fined
2 under this title, imprisoned not more than 15 years,
3 or both;

4 “(3) if the offense is committed in the course
5 of a violation of section 274 of the Immigration and
6 Nationality Act (alien smuggling); chapter 77 (peon-
7 age, slavery, and trafficking in persons), section 111
8 (shipping), 111A (interference with vessels), 113
9 (stolen property), or 117 (transportation for illegal
10 sexual activity) of this title; chapter 705 (maritime
11 drug law enforcement) of title 46, or title II of the
12 Act of June 15, 1917 (Chapter 30; 40 Stat. 220),
13 be fined under this title or imprisoned for not more
14 than 10 years, or both; and

15 “(4) in any other case, be fined under this title
16 or imprisoned for not more than 5 years, or both.”.

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

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

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

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

24 “(A) as soon as practicable upon reaching
25 shore, delivered the person with respect to which the

1 necessity arose to emergency medical or law enforce-
2 ment personnel;

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

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

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

20 (1) by striking “and” at the end of paragraph
21 (3);

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

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

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

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

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

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

19 (1) consider providing sentencing enhancements
20 or stiffening existing enhancements for those con-
21 victed of offenses described in subsection (a) that—

22 (A) involve a pattern of continued and fla-
23 grant violations;

24 (B) are part of an ongoing commercial or-
25 ganization or enterprise;

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

3 (D) involve the transportation or abandon-
4 ment of aliens in a manner that endangered
5 their lives; or

6 (E) involve the facilitation of terrorist ac-
7 tivity; and

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

10 (c) EXPEDITED PROCEDURES.—The Commission
11 may promulgate the guidelines or amendments under this
12 section in accordance with the procedures set forth in sec-
13 tion 21(a) of the Sentencing Act of 1987, as though the
14 authority under that Act had not expired.

Passed the House of Representatives March 31,
2009.

Attest: LORRAINE C. MILLER,
Clerk.