

HR 1029 EH

111th CONGRESS

1st Session

**H. R. 1029****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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the `Alien Smuggling and Terrorism Prevention Act of 2009'.

**SEC. 2. FINDINGS.**

The Congress makes the following findings:

- (1) Alien smuggling by land, air and sea is a transnational crime that violates the integrity of United States borders, compromises our Nation's sovereignty, places the country at risk of terrorist activity, and contravenes the rule of law.
- (2) Aggressive enforcement activity against alien smuggling is needed to protect our borders and ensure the security of our Nation. The border security and anti-smuggling efforts of the men and women on the Nation's front line of defense are to be commended. Special recognition is due the Department of Homeland Security through the United States Border Patrol, United States Coast Guard, Customs and Border Protection, and Immigration and Customs Enforcement, and the Department of Justice through the Federal Bureau of Investigation.
- (3) The law enforcement community must be given the statutory tools necessary to address this security threat. Only through effective alien smuggling statutes can the Justice Department, through the United States Attorneys' Offices and the Domestic Security Section of the Criminal Division, prosecute these cases successfully.
- (4) Alien smuggling has a destabilizing effect on border communities. State and local law enforcement, medical personnel, social service providers, and the faith community play important roles in combating smuggling and responding to its effects.
- (5) Existing penalties for alien smuggling are insufficient to provide appropriate punishment for alien smugglers.
- (6) Existing alien smuggling laws often fail to reach the conduct of alien smugglers, transporters, recruiters, guides, and boat captains.
- (7) Existing laws concerning failure to heave to are insufficient to appropriately punish boat operators and crew who engage in the reckless transportation of aliens on the high seas and seek to evade capture.
- (8) Much of the conduct in alien smuggling rings occurs outside of the United States. Extraterritorial jurisdiction is needed to ensure that smuggling rings can be brought to justice for recruiting, sending, and facilitating the movement of those who seek to enter the United States without lawful authority.

FEEDBACK

(9) Alien smuggling can include unsafe or recklessly dangerous conditions that expose individuals to particularly high risk of injury or death.

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

The Secretary of Homeland Security shall, to the extent practicable, check against all available terrorist watchlists those persons suspected of alien smuggling and smuggled individuals who are interdicted at the land, air, and sea borders of the United States.

### **SEC. 4. STRENGTHENING PROSECUTION AND PUNISHMENT OF ALIEN SMUGGLERS.**

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

(1) by amending the subsection heading to read as follows: `Bringing In, Harboring, and Smuggling of Unlawful and Terrorist Aliens- `;

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

`(1)(A) Whoever, knowing or in reckless disregard of the fact that an individual is an alien who lacks lawful authority to come to, enter, or reside in the United States, knowingly--

`(i) brings that individual to the United States in any manner whatsoever regardless of any future official action which may be taken with respect to such individual;

`(ii) recruits, encourages, or induces that individual to come to, enter, or reside in the United States;

`(iii) transports or moves that individual in the United States, in furtherance of their unlawful presence; or

`(iv) harbors, conceals, or shields from detection the individual in any place in the United States, including any building or any means of transportation;

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

`(B) Whoever, knowing that an individual is an alien, brings that individual to the United States in any manner whatsoever at a place, other than a designated port of entry or place designated by the Secretary of Homeland Security, regardless of whether such individual has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such individual, or attempts or conspires to do so, shall be punished as provided in subparagraph (C).

`(C) Whoever commits an offense under this paragraph shall, for each individual in respect to whom such a violation occurs--

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

`(ii) if the offense involves kidnapping, an attempt to kidnap, the conduct required for aggravated sexual abuse (as defined in section 2241 of title 18, United States Code, without regard to where it takes place), or an attempt to commit such abuse, or an attempt to kill, be fined under title 18, United States Code, or imprisoned for any term of years or life, or both;

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

`(iv) if the offense results in serious bodily injury (as defined in section 1365 of title 18, United States Code) or places in jeopardy the life of any person, be fined under title 18, United States Code, or imprisoned not more than 20 years, or both;

` (v) if the offense is a violation of paragraph (1)(A)(i) and was committed for the purpose of profit, commercial advantage, or private financial gain, or if the offense was committed with the intent or reason to believe that the individual unlawfully brought into the United States will commit an offense against the United States or any State that is punishable by imprisonment for more than 1 year, be fined under title 18, United States Code, and imprisoned, in the case of a first or second violation, not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years;

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

` (vii) if the offense involves the transit of the defendant's spouse, child, sibling, parent, grandparent, or niece or nephew, and the offense is not described in any of clauses (i) through (vi), be fined under title 18, United States Code, or imprisoned not more than 1 year, or both; and

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

` (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, subsection (a)(1)(A)(i), (a)(1)(A)(ii), or (a)(1)(B), that occurs on the high seas, no defense based on necessity can be raised unless the defendant--

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

` (ii) did not bring, attempt to bring, or in any manner intentionally facilitate the entry of any alien into the land territory of the United States without lawful authority, unless exigent circumstances existed that placed the life of that alien in danger, in which case the reporting requirement set forth in clause (i) is satisfied by notifying the Coast Guard as soon as practicable after delivering the alien to emergency medical or law enforcement personnel ashore.

` (C) It is not a violation of, or an attempt or conspiracy to violate, clause (iii) or (iv) of paragraph (1)(A), or paragraph (1)(A)(ii) (except if a person recruits, encourages, or induces an alien to come to or enter the United States), for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officer of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

` (D) For purposes of this paragraph and paragraph (1)--

` (i) the term `United States' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States; and

` (ii) the term `lawful authority' means permission, authorization, or waiver that is expressly provided for in the immigration laws of the United States or the regulations prescribed under those laws and does not include any such authority secured by fraud or otherwise obtained in violation of law or authority that has been sought but not approved.'

## **SEC. 5. MARITIME LAW ENFORCEMENT.**

(a) Penalties- Subsection (b) of section 2237 of title 18, United States Code, is amended to read as follows:

`(b) Whoever intentionally violates this section shall--

`(1) if the offense results in death or involves kidnapping, an attempt to kidnap, the conduct required for aggravated sexual abuse (as defined in section 2241 without regard to where it takes place), or an attempt to commit such abuse, or an attempt to kill, be fined under such title or imprisoned for any term of years or life, or both;

`(2) if the offense results in serious bodily injury (as defined in section 1365 of this title) or transportation under inhumane conditions, be fined under this title, imprisoned not more than 15 years, or both;

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

`(4) in any other case, be fined under this title or imprisoned for not more than 5 years, or both.'

(b) Limitation on Necessity Defense- Section 2237(c) of title 18, United States Code, is amended--

(1) by inserting `(1)' after `(c)';

(2) by adding at the end the following:

`(2) In a prosecution for a violation of this section, no defense based on necessity can be raised unless the defendant--

`(A) as soon as practicable upon reaching shore, delivered the person with respect to which the necessity arose to emergency medical or law enforcement personnel;

`(B) as soon as practicable, reported to the Coast Guard the circumstances of the necessity resulting giving rise to the defense; and

`(C) did not bring, attempt to bring, or in any manner intentionally facilitate the entry of any alien, as that term is defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(3)), into the land territory of the United States without lawful authority, unless exigent circumstances existed that placed the life of that alien in danger, in which case the reporting requirement of subparagraph (B) is satisfied by notifying the Coast Guard as soon as practicable after delivering that person to emergency medical or law enforcement personnel ashore.'

(c) Definition- Section 2237(e) of title 18, United States Code, is amended--

(1) by striking `and' at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting `; and'; and

(3) by adding at the end the following:

`(5) the term `transportation under inhumane conditions' means the transportation of persons in an engine compartment, storage compartment, or other confined space, transportation at an excessive speed, transportation of a number of persons in excess of the rated capacity of the means of transportation, or intentionally grounding a vessel in which persons are being transported.'

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

(a) In General- Pursuant to its authority under section 994 of title 28, United States Code, and in

accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of alien smuggling offenses and criminal failure to heave to or obstruction of boarding.

(b) Considerations- In carrying out this section, the Sentencing Commission, shall--

(1) consider providing sentencing enhancements or stiffening existing enhancements for those convicted of offenses described in subsection (a) that--

(A) involve a pattern of continued and flagrant violations;

(B) are part of an ongoing commercial organization or enterprise;

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

(D) involve the transportation or abandonment of aliens in a manner that endangered their lives;  
or

(E) involve the facilitation of terrorist activity; and

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

(c) Expedited Procedures- The Commission may promulgate the guidelines or amendments under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

Passed the House of Representatives March 31, 2009.

Attest:

Clerk.

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