

109TH CONGRESS
2^D SESSION

H. R. 6091

To secure the borders of the United States, and to ensure the removal
of deportable criminal aliens.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2006

Mr. SENSENBRENNER introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To secure the borders of the United States, and to ensure
the removal of deportable criminal aliens.

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 Security En-
5 hancement Act of 2006”.

6 **TITLE I—ALIEN SMUGGLER**
7 **PROSECUTION ACT**

8 **SEC. 101. EFFECTIVE PROSECUTION OF ALIEN SMUG-**
9 **GLERS.**

10 (a) FINDINGS.—The Congress finds as follows:

1 (1) Recent experience shows that alien smug-
2 gling is flourishing, is increasingly violent, and is
3 highly profitable.

4 (2) Alien smuggling operations also present ter-
5 rorist and criminal organizations with opportunities
6 for smuggling their members into the United States
7 practically at will.

8 (3) Alien smuggling is a lucrative business.
9 Each year, criminal organizations that smuggle or
10 traffic in persons are estimated to generate
11 \$9,500,000,000 in revenue worldwide.

12 (4) Alien smuggling frequently involves dan-
13 gerous and inhumane conditions for smuggled aliens.
14 Migrants are frequently abused or exploited, both
15 during their journey and upon reaching the United
16 States. Consequently, aliens smuggled into the
17 United States are at significant risk of physical in-
18 jury, abuse, and death.

19 (5) Notwithstanding that alien smuggling poses
20 a risk to the United States as a whole, uniform
21 guidelines for the prosecution of smuggling offenses
22 are not employed by the various United States attor-
23 neys. Understanding that border-area United States
24 attorneys face an overwhelming workload, a lack of
25 sufficient prosecutions by certain United States at-

1 torneys has encouraged additional smuggling, and
2 demoralized Border Patrol officers charged with en-
3 forcing our anti-smuggling laws.

4 (b) SENSE OF CONGRESS.—It is the sense of the
5 Congress that the Attorney General should adopt, not
6 later than 3 months after the date of the enactment of
7 this Act, uniform guidelines for the prosecution of smug-
8 gling offenses to be followed by each United States attor-
9 ney in the United States.

10 (c) ADDITIONAL PERSONNEL.—In each of the fiscal
11 years 2008 through 2013, the Attorney General shall, sub-
12 ject to the availability of appropriations, increase by not
13 less than 20 the number of attorneys in the offices of
14 United States attorneys employed to prosecute cases
15 under section 274 of the Immigration and Nationality Act
16 (8 U.S.C. 1324), as compared to the previous fiscal year.

17 **TITLE II—CRIMINAL ALIEN**
18 **REMOVAL ACT**

19 **SEC. 201. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE**
20 **ON CRIMINAL GROUNDS.**

21 (a) IN GENERAL.—Section 238(b) of the Immigra-
22 tion and Nationality Act (8 U.S.C. 1228(b)) is amended—
23 (1) in paragraph (1)—

1 (A) by striking “Attorney General” and in-
2 serting “Secretary of Homeland Security in the
3 exercise of discretion”; and

4 (B) by striking “set forth in this sub-
5 section or” and inserting “set forth in this sub-
6 section, in lieu of removal proceedings under”;

7 (2) in paragraph (3), by striking “paragraph
8 (1) until 14 calendar days” and inserting “para-
9 graph (1) or (3) until 7 calendar days”;

10 (3) by striking “Attorney General” each place
11 it appears in paragraphs (3) and (4) and inserting
12 “Secretary of Homeland Security”;

13 (4) in paragraph (5)—

14 (A) by striking “described in this section”
15 and inserting “described in paragraph (1) or
16 (2)”; and

17 (B) by striking “the Attorney General may
18 grant in the Attorney General’s discretion” and
19 inserting “the Secretary of Homeland Security
20 or the Attorney General may grant, in the dis-
21 cretion of the Secretary or Attorney General, in
22 any proceeding”;

23 (5) by redesignating paragraphs (3), (4), and
24 (5) as paragraphs (4), (5), and (6), respectively; and

1 (6) by inserting after paragraph (2) the fol-
2 lowing new paragraph:

3 “(3) The Secretary of Homeland Security in
4 the exercise of discretion may determine inadmis-
5 sibility under section 212(a)(2) (relating to criminal
6 offenses) and issue an order of removal pursuant to
7 the procedures set forth in this subsection, in lieu of
8 removal proceedings under section 240, with respect
9 to an alien who—

10 “(A) has not been admitted or paroled;

11 “(B) has not been found to have a credible
12 fear of persecution pursuant to the procedures
13 set forth in section 235(b)(1)(B); and

14 “(C) is not eligible for a waiver of inadmis-
15 sibility or relief from removal.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall take effect on the date of the enact-
18 ment of this Act but shall not apply to aliens who are
19 in removal proceedings under section 240 of the Immigra-
20 tion and Nationality Act as of such date.

1 **TITLE III—BORDER TUNNEL**
2 **PREVENTION ACT OF 2006**

3 **SEC. 301. CONSTRUCTION OF BORDER TUNNEL OR PAS-**
4 **SAGE.**

5 (a) IN GENERAL.—Chapter 27 of title 18, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

8 **“§ 554. Border tunnels and passages**

9 “(a) Any person who knowingly constructs or fi-
10 nances the construction of a tunnel or subterranean pas-
11 sage that crosses the international border between the
12 United States and another country, other than a lawfully
13 authorized tunnel or passage known to the Secretary of
14 Homeland Security and subject to inspection by the Bu-
15 reau of Immigration and Customs Enforcement, shall be
16 imprisoned for not more than 20 years.

17 “(b) Any person who recklessly permits the construc-
18 tion or use of a tunnel or passage described in subsection
19 (a) on land that the person owns or controls shall be im-
20 prisoned for not more than 10 years.

21 “(c) Any person who uses a tunnel or passage de-
22 scribed in subsection (a) to unlawfully smuggle an alien,
23 goods (in violation of section 545), controlled substances,
24 weapons of mass destruction (including biological weap-
25 ons), or a member of a terrorist organization (as defined

1 in section 212(a)(3)(B)(vi) of the Immigration and Na-
2 tionality Act (8 U.S.C. 1182(a)(3)(B)(vi)) shall be sub-
3 ject to twice the penalty that would have otherwise been
4 imposed had the unlawful activity not made use of such
5 a tunnel or passage.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for chapter 27 of title 18, United States Code, is amended
8 by adding at the end the following:

“Sec. 554. Border tunnels and passages.”.

9 (c) CRIMINAL FORFEITURE.—Section 982(a)(6) of
10 title 18, United States Code, is amended by inserting
11 “554,” before “1425,”.

12 **SEC. 302. DIRECTIVE TO THE UNITED STATES SENTENCING**
13 **COMMISSION.**

14 (a) IN GENERAL.—Pursuant to its authority under
15 section 994 of title 28, United States Code, and in accord-
16 ance with this section, the United States Sentencing Com-
17 mission shall promulgate or amend sentencing guidelines
18 to provide for increased penalties for persons convicted of
19 offenses described in section 554 of title 18, United States
20 Code, as added by section 301.

21 (b) REQUIREMENTS.—In carrying out this section,
22 the United States Sentencing Commission shall—

23 (1) ensure that the sentencing guidelines, policy
24 statements, and official commentary reflect the seri-
25 ous nature of the offenses described in section 554

1 of title 18, United States Code, and the need for ag-
2 gressive and appropriate law enforcement action to
3 prevent such offenses;

4 (2) provide adequate base offense levels for of-
5 fenses under such section;

6 (3) account for any aggravating or mitigating
7 circumstances that might justify exceptions, includ-
8 ing—

9 (A) the use of a tunnel or passage de-
10 scribed in subsection (a) of such section to fa-
11 cilitate other felonies; and

12 (B) the circumstances for which the sen-
13 tencing guidelines currently provide applicable
14 sentencing enhancements;

15 (4) ensure reasonable consistency with other
16 relevant directives, other sentencing guidelines, and
17 statutes;

18 (5) make any necessary and conforming
19 changes to the sentencing guidelines and policy
20 statements; and

21 (6) ensure that the sentencing guidelines ade-
22 quately meet the purposes of sentencing set forth in
23 section 3553(a)(2) of title 18, United States Code.

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