H. R. 3137

To provide for enhanced Federal, State, and local assistance in the enforcement of the immigration laws, to amend the Immigration and Nationality Act, to authorize appropriations to carry out the State Criminal Alien Assistance Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2005

Mr. Norwood (for himself, Mr. Boyd, Mr. Hyde, Mr. Coble, Mr. Smith of Texas, Mr. Jenkins, Mr. Bachus, Mr. McIntyre, Mr. Gallee, Mr. Hostettler, Mr. Issa, Mr. Forbes, Mr. King of Iowa, Mr. Franks of Arizona, Mr. Westmoreland, Mr. Gingrey, Mr. Price of Georgia, Mr. Kingston, Mr. Deal of Georgia, Mr. Lindner, Mr. Sullivan, Mr. Garret of New Jersey, Mr. Hayworth, Mr. Royce, Mr. Bass, Ms. Hart, Mr. Duncan, Mr. Jones of North Carolina, Mr. McCaul of Texas, Mr. Gary G. Miller of California, Mr. Culberson, Mr. Simpson, Mrs. Musgrave, Mr. Burton of Indiana, Mr. Otter, Mr. Hoekstra, Mrs. Myrick, Mr. Lewis of Kentucky, Mrs. Kelly, Mr. Pitts, Mr. Ford, Mr. Keller, Mr. Weldon of Florida, Mr. Graves, and Mr. Goode) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for enhanced Federal, State, and local assistance in the enforcement of the immigration laws, to amend the Immigration and Nationality Act, to authorize appropriations to carry out the State Criminal Alien Assistance Program, and for other purposes.

Be it enacted by the Senate and House of Representa-

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tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS; STATE DEFINED; SEVERABILITY.

(a) SHORT TITLE.—This Act may be cited as the “Clear Law Enforcement for Criminal Alien Removal Act of 2005” or “CLEAR Act of 2005”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents; State defined; severability.
Sec. 2. Federal affirmation of assistance in the immigration law enforcement by States and political subdivisions of States.
Sec. 3. State authorization for assistance in the enforcement of immigration laws encouraged.
Sec. 4. Civil and criminal penalties for aliens unlawfully present in the United States.
Sec. 5. Listing of immigration violators in the national crime information center database.
Sec. 6. State and local law enforcement provision of information about apprehended illegal aliens.
Sec. 7. Financial assistance to State and local police agencies that assist in the enforcement of immigration laws.
Sec. 8. Increased Federal detention space.
Sec. 9. Federal custody of illegal aliens apprehended by State or local law enforcement.
Sec. 10. Training of State and local law enforcement personnel relating to the enforcement of immigration laws.
Sec. 11. Immunity.
Sec. 12. Institutional removal program (IRP).
Sec. 13. State criminal alien assistance program (SCAAP).

(c) STATE DEFINED.—For purposes of this Act, the term “State” has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(d) SEVERABILITY.—If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons not simi-
larly situated or to other circumstances, shall not be af-
feared by such invalidation.

SEC. 2. FEDERAL AFFIRMATION OF ASSISTANCE IN THE IM-
MIGRATION LAW ENFORCEMENT BY STATES
AND POLITICAL SUBDIVISIONS OF STATES.

Notwithstanding any other provision of law and re-
affirming the existing inherent authority of States, law en-
forcement personnel of a State or a political subdivision
of a State have the inherent authority of a sovereign entity
to investigate, identify, apprehend, arrest, detain, or
transfer to Federal custody aliens in the United States
(including the transportation of such aliens across State
lines to detention centers), for the purposes of assisting
in the enforcement of the immigration laws of the United
States in the course of carrying out routine duties. This
State authority has never been displaced or preempted by
the Congress.

SEC. 3. STATE AUTHORIZATION FOR ASSISTANCE IN THE
ENFORCEMENT OF IMMIGRATION LAWS EN-
COURAGED.

(a) IN GENERAL.—Effective 2 years after the date
of the enactment of this Act, a State (or political subdivi-
sion of a State) that has in effect a statute, policy, or
practice that prohibits law enforcement officers of the
State, or of a political subdivision within the State, from
assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers’ routine law enforcement duties shall not receive any of the funds that would otherwise be allocated to the State under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)).

(b) Construction.—Nothing in this section shall require law enforcement officials from States or political subdivisions of States to report or arrest victims or witnesses of a criminal offense.

c) Reallocation of Funds.—Any funds that are not allocated to a State or political subdivision of a State due to the failure of the State to comply with subsection (a) shall be reallocated to States that comply with such subsection.

SEC. 4. CIVIL AND CRIMINAL PENALTIES FOR ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES.

(a) Aliens Unlawfully Present.—
(1) In General.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by inserting after section 275 the following:

“CRIMINAL PENALTIES FOR UNLAWFUL PRESENCE IN THE UNITED STATES

“Sec. 275A. (a) In General.—In addition to any other penalty, an alien who is present in the United States
in violation of this Act shall be guilty of a felony and shall be fined under title 18, United States Code, imprisoned not less than 1 year and a day, or both.

“(b) DEFENSE.—It shall be an affirmative defense to a violation of subsection (a) that the alien overstayed the time allotted under a visa due to an exceptional and extremely unusual hardship or physical illness that prevented the alien from leaving the United States by the required date.”.

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 275 the following new item:

“Sec. 275A. Criminal penalties for unlawful presence in the United States.”.

(b) INCREASE IN CRIMINAL PENALTIES FOR ILLEGAL ENTRY.—Section 275(a) of such Act (8 U.S.C. 1325(a)) is amended by striking “6 months,” and inserting “1 year,.”.

(c) INCREASE IN CIVIL PENALTIES FOR VARIOUS VIOLATIONS OF THE IMMIGRATION LAWS OF THE UNITED STATES.—Section 275(b) of such Act (8 U.S.C. 1325(b)) is amended to read as follows:

“(b)(1) Subject to paragraph (2), any alien described in paragraph (3) shall be subject to a civil penalty of—

“(A) $500 for the first violation;
“(B) $1,000 in the case of an alien who has been once previously been subject to a civil penalty under this subsection;

“(C) $2,500 in the case of an alien who has been twice previously been subject to a civil penalty under this subsection; or

“(D) $5,000 in the case of an alien who has been three or more times previously been subject to a civil penalty under this subsection.

“(2) In the case of an alien described in paragraph (3)(D), the alien shall be subject to civil penalties under this subsection that are 5 times the amounts set forth under paragraph (1).

“(3) An alien described in this paragraph is an alien who—

“(A) is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers;

“(B) enters the United States without inspection;

“(C) fails to depart the United States within 30 days after the expiration date of a nonimmigrant visa or a voluntary departure agreement and is not in other lawful status; or
“(D) fails to depart the United States within
30 days after the date of a final order of removal
and is not in other lawful status.
“(4) Civil penalties under this subsection are in addi-
tion to, and not in lieu of, any criminal or other civil pen-
alties that may be imposed.”.
(d) Permission to Depart Voluntarily.—Section 240B of such Act (8 U.S.C. 1229c) is amended—
(1) by striking “Attorney General” and insert-
ing “Secretary of Homeland Security” each place it
appears; and
(2) in subsection (a)(2)(A), by striking “120
days” and inserting “30 days”.
SEC. 5. LISTING OF IMMIGRATION VIOLATORS IN THE NA-
TIONAL CRIME INFORMATION CENTER DATA-
BASE.
(a) Provision of Information to the NCIC.—
Not later than 180 days after the date of the enactment
of this Act, the Under Secretary for Border and Transpor-
tation Security of the Department of Homeland Security
shall provide the National Crime Information Center of
the Department of Justice with such information as the
Under Secretary may have on any and all aliens against
whom a final order of removal has been issued, any and
all aliens who have signed a voluntary departure agree-
ment, any and all aliens who have overstayed their authorized period of stay, and any and all aliens whose visas have been revoked. Such information shall be provided to the National Crime Information Center, and the National Crime Information Center shall enter such information into the Immigration Violators File of the National Crime Information Center database, regardless of whether—

(1) the alien received notice of a final order of removal;

(2) the alien has already been removed; or

(3) sufficient identifying information is available on the alien.

(b) INCLUSION OF INFORMATION IN THE NCIC DATABASE.—Section 534(a) of title 28, United States Code, is amended—

(1) in paragraph (3), by striking “and” at the end;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

“(4) acquire, collect, classify, and preserve records of violations of the immigration laws of the United States, regardless of whether the alien has received notice of the violation or whether sufficient
identifying information is available on the alien and even if the alien has already been removed; and’’.

SEC. 6. STATE AND LOCAL LAW ENFORCEMENT PROVISION OF INFORMATION ABOUT APPREHENDED ILLEGAL ALIENS.

(a) Provision of Information.—In compliance with section 642(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) and section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644), each State and each political subdivision of a State is encouraged to provide the Department of Homeland Security in a timely manner with the information listed in subsection (b) on each alien apprehended in the jurisdiction of the State or political subdivision who is believed to be in violation of the immigration laws of the United States.

(b) Information Required.—The information listed in this subsection is as follows:

(1) The alien’s name.

(2) The alien’s address or place of residence.

(3) A physical description of the alien.

(4) The date, time, and location of the encounter with the alien and reason for stopping, detaining, apprehending, or arresting the alien.
(5) If applicable, the alien’s driver’s license number and the State of issuance of such license.

(6) If applicable, the type of any other identification document issued to the alien, any designation number contained on the identification document, and the issuing entity for the identification document.

(7) If applicable, the license plate number, make, and model of any automobile registered to, or driven by, the alien.

(8) A photo of the alien, if available or readily obtainable.

(9) The alien’s fingerprints, if available or readily obtainable.

(c) Annual Report on Reporting.—The Secretary shall maintain and annually submit to Congress a detailed report listing the States or political subdivisions of States that are providing information under subsection (a).

(d) Reimbursement.—The Department of Homeland Security shall reimburse States and political subdivisions of a State for all reasonable costs, as determined by the Secretary of Homeland Security, incurred by that State or political subdivision as a result of providing information under this section.
(c) Authorization of Appropriations.—There is authorized to be appropriated such sums as are necessary to carry out this section.

(f) Construction.—Nothing in this section shall require law enforcement officials of a State or political subdivision of a State to provide the Department of Homeland Security with information related to a victim of a crime or witness to a criminal offense.

SEC. 7. FINANCIAL ASSISTANCE TO STATE AND LOCAL POLICE AGENCIES THAT ASSIST IN THE ENFORCEMENT OF IMMIGRATION LAWS.

(a) Grants for Special Equipment for Housing and Processing Illegal Aliens.—From amounts made available to make grants under this section, the Secretary of Homeland Security shall make grants to States and political subdivisions of States for procurement of equipment, technology, facilities, and other products that facilitate and are directly related to investigating, apprehending, arresting, detaining, or transporting immigration law violators, including additional administrative costs incurred under this Act.

(b) Eligibility.—To be eligible to receive a grant under this section, a State or political subdivision of a State must have the authority to, and have in effect the policy and practice to, assist in the enforcement of the
immigration laws of the United States in the course of carrying out such agency’s routine law enforcement duties.

(c) FUNDING.—There is authorized to be appropriated for grants under this section $1,000,000,000 for each fiscal year.

(d) GAO AUDIT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an audit of funds distributed to States and political subdivisions of States under subsection (a).

SEC. 8. INCREASED FEDERAL DETENTION SPACE.

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(1) IN GENERAL.—The Secretary of Homeland Security shall construct or acquire, in addition to existing facilities for the detention of aliens, 20 detention facilities in the United States, with at least 500 beds per facility, for aliens detained pending removal or a decision on removal of such alien from the United States.

(2) DETERMINATIONS.—The location of any detention facility built or acquired in accordance with this subsection shall be determined by the Deputy Assistant Director of the Detention Management Division of the Immigration and Customs Enforcement
Office of Detention and Removal within the U.S. Immigration and Customs Enforcement.

(3) USE OF INSTALLATIONS UNDER BASE CLOSURE LAWS.—In acquiring detention facilities under this subsection, the Secretary of Homeland Security shall consider the transfer of appropriate portions of military installations approved for closure or realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) for use in accordance with paragraph (1).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(c) TECHNICAL AND CONFORMING AMENDMENT.—

Section 241(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1231(g)(1)) is amended by striking “may expend” and inserting “shall expend”.

SEC. 9. FEDERAL CUSTODY OF ILLEGAL ALIENS APPREHENDED BY STATE OR LOCAL LAW ENFORCEMENT.

(a) STATE APPREHENSION.—

(1) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is
amended by inserting after section 240C the following:

“CUSTODY OF ILLEGAL ALIENS

“SEC. 240D. (a) TRANSFER OF CUSTODY BY STATE AND LOCAL OFFICIALS.—If a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the apprehension or arrest of an illegal alien submits a request to the Secretary of Homeland Security that the alien be taken into Federal custody, the Secretary of Homeland Security—

“(1) shall—

“(A) not later than 48 hours after the conclusion of the State charging process or dismissal process, or if no State charging or dismissal process is required, not later than 48 hours after the illegal alien is apprehended, take the illegal alien into the custody of the Federal Government and incarcerate the alien; or

“(B) request that the relevant State or local law enforcement agency temporarily incarcerate or transport the illegal alien for transfer to Federal custody; and

“(2) shall designate at least one Federal, State, or local prison or jail or a private contracted prison or detention facility within each State as the central
facility for that State to transfer custody of the
criminal or illegal aliens to the Department of
Homeland Security.

“(b) Policy on Detention in State and Local
Detention Facilities.—In carrying out section
241(g)(1), the Attorney General or Secretary of Homeland
Security shall ensure that an alien arrested under this Act
shall be detained, pending the alien’s being taken for the
examination under this section, in a State or local prison,
[jail, detention center, or other comparable facility. Not-
withstanding any other provision of law or regulation,
such facility is adequate for detention, if—

“(1) such a facility is the most suitably located
Federal, State, or local facility available for such
purpose under the circumstances;

“(2) an appropriate arrangement for such use
of the facility can be made; and

“(3) such facility satisfies the standards for the
housing, care, and security of persons held in cus-
tody of a United States marshal.

“(c) Reimbursement.—The Secretary of Homeland
Security shall reimburse States and political subdivisions
of States for all reasonable expenses, as determined by the
Secretary, incurred by the State or political subdivision
in the incarceration and transportation of an illegal alien
as described in subparagraphs (A) and (B) of subsection (a)(1). Compensation provided for costs incurred under such subparagraphs shall be the average cost of incarceration of a prisoner in the relevant State, as determined by the chief executive officer of a State (or, as appropriate, a political subdivision of the State) plus the cost of transporting the criminal or illegal alien from the point of apprehension, to the place of detention, and to the custody transfer point if the place of detention and place of custody are different.

“(d) SECURE FACILITIES.—The Secretary of Homeland Security shall ensure that illegal aliens incarcerated in Federal facilities pursuant to this Act are held in facilities that provide an appropriate level of security.

“(e) TRANSFER.—

“(1) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transfer of apprehended illegal aliens from the custody of States and political subdivisions of States to Federal custody.

“(2) CONTRACTS.—The Secretary of Homeland Security may enter into contracts, including appropriate private contracts, to implement this subsection.
“(f) DEFINITION.—For purposes of this section, the term ‘illegal alien’ means an alien who—

“(1) entered the United States without inspection or at any time, manner or place other than that designated by the Secretary of Homeland Security;

“(2) was admitted as a nonimmigrant and who, at the time the alien was taken into custody by the State or a political subdivision of the State, had failed to—

“(A) maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248; or

“(B) comply with the conditions of any such status;

“(3) was admitted as an immigrant and has subsequently failed to comply with the requirements of that status; or

“(4) failed to depart the United States under a voluntary departure agreement or under a final order of removal.

“(g) AUTHORIZATION OF APPROPRIATIONS FOR THE DETENTION AND TRANSPORTATION TO FEDERAL CUSTODY OF ALIENS NOT LAWFULLY PRESENT.—There is authorized to be appropriated $500,000,000 for the detention and removal of aliens not lawfully present in the
United States under this Act for fiscal year 2006 and each subsequent fiscal year.”.

(2) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 240C the following new item:

“Sec. 240D. Custody of illegal aliens.”.

(b) GAO AUDIT.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an audit of compensation to States and political subdivisions of States for the incarceration of illegal aliens under section 240D(a) of the Immigration and Nationality Act (as inserted by subsection (a)(1)).

SEC. 10. TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.

(a) ESTABLISHMENT OF TRAINING MANUAL AND POCKET GUIDE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish—

(1) a training manual for law enforcement personnel of a State or political subdivision of a State to train such personnel in the investigation, identification, apprehension, arrest, detention, and transfer to Federal custody of aliens in the United States (including the transportation of such aliens across
State lines to detention centers and the identification of fraudulent documents); and

(2) an immigration enforcement pocket guide for law enforcement personnel of a State or political subdivision of a State to provide a quick reference for such personnel in the course of duty.

(b) Availability.—The training manual and pocket guide established in accordance with subsection (a) shall be made available to all State and local law enforcement personnel.

(c) Applicability.—Nothing in this section shall be construed to require State or local law enforcement personnel to carry the training manual or pocket guide established under subsection (a)(2) with them while on duty.

(d) Costs.—The Department of Homeland Security shall be responsible for any and all costs incurred in establishing the training manual and pocket guide under subsection (a).

(e) Training Flexibility.—

(1) In general.—The Department of Homeland Security shall make training of State and local law enforcement officers available through as many means as possible, including residential training at the Center for Domestic Preparedness, onsite training held at State or local police agencies or facilities,
online training courses by computer, teleconfer-
encing, and videotape, or the digital video display
(DVD) of a training course or courses. E-learning
through a secure, encrypted distributed learning sys-
tem that has all its servers based in the United
States, is sealable, survivable, and can have a portal
in place within 30 days, shall be made available by
the Federal Law Enforcement Training Center Dis-
tributed Learning Program for State and local law
enforcement personnel.

(2) Federal Personnel Training.—The
training of State and local law enforcement per-
sonnel under this section shall not displace the train-
ing of Federal personnel.

(3) Clarification.—Nothing in this Act or
any other provision of law shall be construed as
making any immigration-related training a require-
ment for, or prerequisite to, any State or local law
enforcement officer to assist in the enforcement of
Federal immigration laws in the normal course of
carrying out their normal law enforcement duties.

(f) Training Limitation.—Section 287(g) of the
Immigration and Nationality Act (8 U.S.C. 1357(g)) is
amended—
(1) by striking “Attorney General” and inserting “Secretary of Homeland Security” each place it appears; and

(2) in paragraph (2), by adding at the end the following: “Such training shall not exceed 14 days or 80 hours, whichever is longer.”.

SEC. 11. IMMUNITY.

(a) Personal Immunity.—Notwithstanding any other provision of law, a law enforcement officer of a State or local law enforcement agency who is acting within the scope of the officer’s official duties shall be immune, to the same extent as a Federal law enforcement officer, from personal liability arising out of the performance of any duty described in this Act.

(b) Agency Immunity.—Notwithstanding any other provision of law, a State or local law enforcement agency shall be immune from any claim for money damages based on Federal, State, or local civil rights law for an incident arising out of the enforcement of any immigration law, except to the extent a law enforcement officer of that agency committed a violation of Federal, State, or local criminal law in the course of enforcing such immigration law.

SEC. 12. INSTITUTIONAL REMOVAL PROGRAM (IRP).

(a) Continuation and Expansion.—
(1) IN GENERAL.—The Department of Homeland Security shall continue to operate and implement the program known as the Institutional Removal Program (IRP) which—

(A) identifies removable criminal aliens in Federal and State correctional facilities;

(B) ensures such aliens are not released into the community; and

(C) removes such aliens from the United States after the completion of their sentences.

(2) EXPANSION.—The institutional removal program shall be extended to all States. Any State that receives Federal funds for the incarceration of criminal aliens shall—

(A) cooperate with officials of the institutional removal program;

(B) expeditiously and systematically identify criminal aliens in its prison and jail populations; and

(C) promptly convey such information to officials of such program as a condition for receiving such funds.

(b) AUTHORIZATION FOR DETENTION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
HR 3137 IH

enforcement officers of a State or political subdivision of a State have the authority to—

(1) hold an illegal alien for a period of up to 14 days after the alien has completed the alien’s State prison sentence in order to effectuate the transfer of the alien to Federal custody when the alien is removable or not lawfully present in the United States; or

(2) issue a detainer that would allow aliens who have served a State prison sentence to be detained by the State prison until personnel from the U.S. Immigration and Customs Enforcement can take the alien into custody.

(e) TECHNOLOGY USAGE.—Technology such as video conferencing shall be used to the maximum extent possible in order to make the Institutional Removal Program (IRP) available in remote locations. Mobile access to Federal databases of aliens, such as IDENT, and live scan technology shall be used to the maximum extent practicable in order to make these resources available to State and local law enforcement agencies in remote locations.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the institutional removal program—

(1) $100,000,000 for fiscal year 2007;
(2) $115,000,000 for fiscal year 2008;
(3) $130,000,000 for fiscal year 2009;
(4) $145,000,000 for fiscal year 2010; and
(5) $160,000,000 for fiscal year 2011.

SEC. 13. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM
(SCAAAP).
Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) is amended by inserting before the period at the end the following: “and $1,000,000,000 for each subsequent fiscal year”.

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