To provide for enhanced Federal enforcement of, and State and local assistance in the enforcement of, the immigration laws of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 30, 2005

Mr. Sessions (for himself, Mr. Craig, Mr. Inhofe, and Mr. Isakson) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for enhanced Federal enforcement of, and State and local assistance in the enforcement of, the immigration laws of 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
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Homeland Security
6 Enhancement Act of 2005”.
7
8 SEC. 2. STATE DEFINED.
9 In this Act, the term “State” has the meaning given
SEC. 3. FEDERAL AFFIRMATION OF IMMIGRATION LAW ENFORCEMENT BY STATES AND POLITICAL SUBDIVISIONS OF STATES.

Notwithstanding any other provision of law and reaffirming the existing inherent authority of States, law enforcement 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 purpose of assisting in the enforcement of the immigration laws of the United States in the normal course of carrying out the law enforcement duties of such personnel. This State authority has never been displaced or preempted by a Federal law.

SEC. 4. STATE AND LOCAL LAW ENFORCEMENT PROVISION OF INFORMATION REGARDING ALIENS.

(a) Violations of Federal Law.—A statute, policy, or practice that prohibits a law enforcement officer of a State, or of a political subdivision of a State, from enforcing Federal immigration laws or from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the law enforcement duties of the officer or from providing information to an official of the United States Government regarding the immigration status of an individual who is believed to be illegally
present in the United States is in violation of section
642(a) of the Illegal Immigration Reform and Immigrant
Responsibility Act of 1996 (8 U.S.C. 1373(a)) and section
434 of the Personal Responsibility and Work Opportunity

(b) Provision of Information Regarding Apprehended Illegals Aliens.—

(1) In general.—In compliance with section
642(a) of the Illegal Immigration Reform and Immigrant
Responsibility Act of 1996 (8 U.S.C. 1373(a))
and section 434 of the Personal Responsibility and
Work Opportunity Reconciliation Act of 1996 (8
U.S.C. 1644), States and localities should provide to
the Secretary of Homeland Security the information
listed in subsection (c) on each alien apprehended or
arrested in the jurisdiction of the State or locality
who is believed to be in violation of an immigration
law of the United States. Such information should
be provided regardless of the reason for the apprehen-
sion or arrest of the alien.

(2) Time limitation.—Not later than 10 days
after an alien described in paragraph (1) is appre-
hended, information requested to be provided under
paragraph (1) should be provided in such form and
in such manner as the Secretary of Homeland Secu-

rity may, by regulation or guideline, require.

(c) INFORMATION REQUIRED.—The information list-
ed in this subsection is as follows:

(1) The name of the alien.

(2) The address or place of residence of the

alien.

(3) A physical description of the alien.

(4) The date, time, and location of the encoun-
ter with the alien and reason for stopping, detaining,
apprehending, or arresting the alien.

(5) If applicable, the driver’s license number
issued to the alien and the State of issuance of such
license.

(6) If applicable, the type of any other identi-
fication document issued to the alien, any designa-
tion number contained on the identification docu-
ment, and the issuing entity for the identification
document.

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

dropped by, the alien.

(8) A photo of the alien, if available or readily
obtainable.
(9) The fingerprints of the alien, if available or readily obtainable, including a full set of 10 rolled fingerprints if available or readily obtainable.

(d) Reimbursement.—The Secretary of Homeland Security shall reimburse States and localities for all reasonable costs, as determined by the Secretary of Homeland Security, incurred by that State or locality as a result of providing information required by this section.

(e) Technical and Conforming Amendments.—

(1) Illegal Immigration Reform and Immigrant Responsibility Act of 1996.—

(A) Technical Amendment.—Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended—

(i) in subsections (a), (b)(1), and (c) by striking “Immigration and Naturalization Service” and inserting “Department of Homeland Security”; and

(ii) in the heading by striking “IMMIGRATION AND NATURALIZATION SERVICE” and inserting “DEPARTMENT OF HOMELAND SECURITY”.

(B) Conforming Amendment.—Section 1(d) of the Illegal Immigration Reform and Imm-
migrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–546) is amended by striking the item related to section 642 and inserting the following:

“See. 642. Communication between government agencies and the Department of Homeland Security.”.

(2) PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.—

(A) IN GENERAL.—Section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644) is amended—

(i) by striking “Immigration and Naturalization Service” and inserting “Department of Homeland Security”; and

(ii) in the heading by striking “IMMIGRATION AND NATURALIZATION SERVICE” and inserting “DEPARTMENT OF HOMELAND SECURITY”.

(B) CONFORMING AMENDMENT.—Section 2 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105) is amended by striking the item related to section 434 and inserting the following:

“See. 434. Communication between State and local government agencies and the Department of Homeland Security.”.
(f) Authorization of Appropriations.—There is authorized to be appropriated such sums as are necessary to provide the reimbursements required by subsection (d).

SEC. 5. CIVIL AND CRIMINAL PENALTIES AND FORFEITURE FOR ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES.

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

"CRIMINAL PENALTIES FOR UNLAWFUL PRESENCE IN THE UNITED STATES

"Sec. 275A. (a) In General.—In addition to any other violation, an alien present in the United States in violation of this Act shall be guilty of a misdemeanor and shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both. The assets of any alien present in the United States in violation of this Act shall be subject to forfeiture under title 19, United States Code.

"(b) Affirmative Defense.—It shall be an affirmative defense to a violation of subsection (a) that the alien overstayed the time allotted under the alien’s 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."
(b) Increase in Criminal Penalties for Illegal Entry.—Section 275(a) of the Immigration and Nationality Act (8 U.S.C. 1325(a)) is amended by striking “6 months,” and inserting “1 year.”

SEC. 6. Listing of Immigration Violators in the National Crime Information Center Database.

(a) Provision of Information to the NCIC.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, the Under Secretary for Border and Transportation Security of the Department of Homeland Security shall provide the National Crime Information Center of the Department of Justice with such information as the Director may have related to—

(A) any alien against whom a final order of removal has been issued;

(B) any alien who is subject to a voluntary departure agreement;

(C) any alien who has remained in the United States beyond the alien’s authorized period of stay; and

(D) any alien whose visa has been revoked.

(2) Requirement to provide and use information.—The information described in para-
graph (1) shall be provided to the National Crime Information Center, and the Center shall enter the information into the Immigration Violators File of the National Crime Information Center database, regardless of whether—

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

(B) the alien has already been removed; or

(C) sufficient identifying information is available for the alien, such as a physical description of 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, sufficient identifying
information is available for the alien, or the alien
has already been removed; and”.

(c) PERMISSION TO DEPART VOLUNTARILY.—Sec-
tion 240B of the Immigration and Nationality Act (8
U.S.C. 1229c) is amended—

(1) by striking “Attorney General” each place
that term appears and inserting “Secretary of
Homeland Security”; and

(2) in subsection (a)(2)(A), by striking “120”
and inserting “30”.

SEC. 7. INCREASE OF FEDERAL DETENTION SPACE AND
THE UTILIZATION OF FACILITIES IDENTIFIED
FOR CLOSURES AS A RESULT OF THE DE-
FENSE BASE CLOSURE REALIGNMENT ACT
OF 1990.

(a) CONSTRUCTION OR ACQUISITION OF DETENTION
FACILITIES.—

(1) IN GENERAL.—The Secretary of Homeland
Security shall construct or acquire, in addition to ex-
isting facilities for the detention of aliens, 20 deten-
tion facilities in the United States that have the ca-
pacity to detain a total of not less than 10,000 indi-
viduals at any time for aliens detained pending re-
moval or a decision on removal of such alien from
the United States.
(2) Determination of Location.—The location of any detention facility built or acquired in accordance with this subsection shall be determined by the Deputy Assistant Director of the Office of Detention and Removal Operations within the Bureau of 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, to the maximum extent practical, request 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) 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”.

(c) Authorization of Appropriations.—There are authorized to be appropriated such sums as necessary to carry out this section.
SEC. 8. FEDERAL CUSTODY OF ILLEGAL ALIENS APPREHENDED BY STATE OR LOCAL LAW ENFORCEMENT.

(a) In General.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by adding after section 240C the following:

"TRANSFER OF ILLEGAL ALIENS FROM STATE TO FEDERAL CUSTODY

"Sec. 240D. (a) In General.—If the head of a law enforcement entity of 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 72 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 72 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 detain
or transport the illegal alien to a location 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 criminal
or illegal aliens to the Department of Homeland Se-
curity.”.

“(b) Reimbursement.—

“(1) In general.—The Department of Home-
land Security shall reimburse a State or a political
subdivision of a State for all reasonable expenses, as
determined by the Secretary of Homeland Security,
incurred by the State or political subdivision in the
detention and transportation of a criminal or illegal
alien as described in subparagraphs (A) and (B) of
subsection (a)(1).

“(2) Cost computation.—Compensation pro-
vided for costs incurred under subparagraphs (A)
and (B) of subsection (a)(1) shall be—

“(A) the product of—

“(i) the average cost of incarceration
of a prisoner in the relevant State, as de-
etermined by the chief executive officer of a
State (or, as appropriate, a political sub-
division of the State); multiplied by

“(ii) the number of days that the alien
was in the custody of the State or political
subdivision; added to

“(B) the cost of transporting the criminal
or illegal alien from the point of apprehension
or arrest to the location of detention, and if the
location of detention and of custody transfer
are different, to the custody transfer point.

“(c) REQUIREMENT FOR APPROPRIATE SECURITY.—
The Secretary of Homeland Security shall ensure that ille-
gal aliens incarcerated in Federal facilities pursuant to
this subsection are held in facilities which provide an ap-
propriate level of security.

“(d) REQUIREMENT FOR SCHEDULE.—

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

“(2) AUTHORITY FOR CONTRACTS.—The Sec-
retary of Homeland Security may enter into con-
tracts with appropriate State and local law enforce-
ment and detention officials to implement this sub-
section.

“(e) ILEGAL ALIEN Defined.—For purposes of
this section, the term ‘illegal alien’ means an alien who—

“(1) entered the United States without inspec-
tion or at any time or place other than that des-
ignated 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.”.

(b) Authorization of Appropriations for the
Detention and Transportation to Federal Cus-
tody 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 the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) for fiscal year 2006 and each subsequent fiscal year.

SEC. 9. IMMIGRATION LAW ENFORCEMENT TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL.

(a) Training Manual and Pocket Guide.—

(1) Establishment.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall establish—

(A) 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

(B) 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.

(2) AVAILABILITY.—The training manual and pocket guide established in accordance with paragraph (1) shall be made available to all State and local law enforcement personnel.

(3) APPLICABILITY.—Nothing in this subsection shall be construed to require State or local law enforcement personnel to carry the training manual or pocket guide established in accordance with paragraph (1) with them while on duty.

(4) COSTS.—The Secretary of Homeland Security shall be responsible for any and all costs incurred in establishing the training manual and pocket guide under this subsection.

(b) TRAINING FLEXIBILITY.—

(1) IN GENERAL.—The Secretary 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 of the Department of Homeland Security, onsite training held at State or local police agencies or facilities, on-line training courses by computer, teleconferencing, and
videotape, or the digital video display (DVD) of a training course or courses.

(2) **ON-LINE TRAINING.**—The head of the Distributed Learning Program of the Federal Law Enforcement Training Center shall make training available for State and local law enforcement personnel via the Internet through a secure, encrypted distributed learning system that has all its servers based in the United States, is sealable, survivable, and is capable of having a portal in place within 30 days.

(3) **FEDERAL PERSONNEL TRAINING.**—The training of State and local law enforcement personnel under this section shall not displace the training of Federal personnel.

(c) **CLARIFICATION.**—Nothing in this Act or any other provision of law shall be construed as making any immigration-related training a requirement for, or prerequisite to, any State or local law enforcement officer exercising the inherent authority of the officer to investigate, identify, apprehend, arrest, detain, or transfer to Federal custody illegal aliens during the normal course of carrying out the law enforcement duties of the officer.

(d) **TRAINING LIMITATION.**—Section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) is amended—
(1) by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”; 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. 10. IMMUNITY.

(a) PERSONAL IMMUNITY.—Notwithstanding any other provision of law, a law enforcement officer of a State, or of a political subdivision of a State, shall be immune, to the same extent as a Federal law enforcement officer, from personal liability arising out of the enforcement of any immigration law. The immunity provided in this subsection shall only apply to an officer of a State, or of a political subdivision of a State, who is acting within the scope of such officer’s official duties.

(b) AGENCY IMMUNITY.—Notwithstanding any other provision of law, a law enforcement agency of a State, or of a political subdivision of a State, 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 that the law enforcement officer of that agency, whose action the claim involves, committed a violation of Federal,
State, or local criminal law in the course of enforcing such immigration law.

SEC. 11. PLACES OF DETENTION FOR ALIENS DETAINED PENDING EXAMINATION OR DECISION ON REMOVAL.

(a) In General.—Section 241(g) of the Immigration and Nationality Act (8 U.S.C. 1231(g)) is amended by adding at the end the following:

“(3) Policy on detention in state and local detention facilities.—In carrying out paragraph (1), the Secretary of Homeland Security shall ensure that an alien arrested under section 287(a) is detained, pending the alien being taken for the examination described in that section, in a State or local prison, jail, detention center, or other comparable facility, if—

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

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

“(C) such facility satisfies the standards for the housing, care, and security of persons held in custody of a United States marshal.”.
(b) Detention Facility Suitability.—Notwithstanding any other provision of law, a facility described in section 241(g)(3)(C) of the Immigration and Nationality Act, as added by subsection (a), is adequate for detention of persons being held for immigration related violations.

(e) Technical and Conforming Amendment.—Section 241 of the Immigration and Nationality Act (8 U.S.C. 1231) is amended by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”.

SEC. 12. INSTITUTIONAL REMOVAL PROGRAM.

(a) Continuation.—

(1) In general.—The Department of Homeland Security shall continue to operate and implement the program known on the date of the enactment of this Act as the Institutional Removal Program 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 Federal officials who carry out the Institutional Removal Program;
(B) expeditiously and systematically identify criminal aliens in its prison and jail populations; and
(C) promptly convey such information to the Federal officials who carry out the Institutional Removal Program as a condition for receiving such funds.

(b) AUTHORIZATION FOR DETENTION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.—Law 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 Bureau
of Immigration and Customs Enforcement can take
the alien into custody.

(c) TECHNOLOGY USAGE.—Technology such as
videoconferencing shall be used to the maximum extent
possible in order to make the Institutional Removal Pro-
gram available in remote locations. Mobile access to Fed-
eral databases of aliens, such as the IDENT database
maintained by the Secretary of Homeland Security, 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 loca-
tions.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is
authorized to be appropriated to carry out the Institu-
tional Removal Program—

(1) $40,000,000 for fiscal year 2007;
(2) $50,000,000 for fiscal year 2008;
(3) $60,000,000 for fiscal year 2009;
(4) $70,000,000 for fiscal year 2010;
(5) $80,000,000 for fiscal year 2011; and
(6) $80,000,000 for each fiscal year after fiscal
year 2011.
SEC. 13. CONSTRUCTION.

Nothing in this Act may be construed to require law enforcement personnel of a State or political subdivision of a State to—

(1) report the identity of a victim of, or a witness to, a criminal offense to the Secretary of Homeland Security for immigration enforcement purposes;

(2) arrest such victim or witness for a violation of the immigration laws of the United States; or

(3) enforce the immigration laws of the United States.

SEC. 14. SEVERABILITY.

If any provision of this Act, including any amendment made by 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 similarly situated or to other circumstances, shall not be affected by such invalidation.

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