

111TH CONGRESS
1ST SESSION

H. R. 2406

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

MAY 14, 2009

Mrs. BLACKBURN (for herself, Mr. BILBRAY, Mr. HELLER, Mr. ROYCE, Mr. AKIN, Mr. SIMPSON, Mr. BROWN of South Carolina, Mr. ROHRABACHER, Mr. BROUN of Georgia, Mr. MARCHANT, Mr. ROGERS of Michigan, Mr. FRANKS of Arizona, Mr. PENCE, Mr. COLE, Mr. LAMBORN, Mr. PITTS, Mr. MCCLINTOCK, Mr. FLEMING, Ms. GINNY BROWN-WAITE of Florida, and Mr. PRICE of Georgia) 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.

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; TABLE OF CONTENTS; STATE DE-**
 2 **FINED; SEVERABILITY.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Clear Law Enforcement for Criminal Alien Removal Act
 5 of 2009” or the “Charlie Norwood CLEAR Act of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
 7 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. Listing of immigration violators in the National Crime Information Center database.
- Sec. 5. State and local law enforcement provision of information about apprehended aliens.
- Sec. 6. Financial assistance to State and local police agencies that assist in the enforcement of immigration laws.
- Sec. 7. Increased Federal detention space.
- Sec. 8. Federal custody of aliens unlawfully present in the United States apprehended by State or local law enforcement.
- Sec. 9. Training of State and local law enforcement personnel relating to the enforcement of immigration laws.
- Sec. 10. Immunity.
- Sec. 11. Institutional removal program (IRP).
- Sec. 12. State criminal alien assistance program (SCAAP).
- Sec. 13. Authorization of appropriations.

8 (c) **STATE DEFINED.**—For purposes of this Act, the
 9 term “State” has the meaning given such term in section
 10 101(a)(36) of the Immigration and Nationality Act (8
 11 U.S.C. 1101(a)(36)).

12 (d) **SEVERABILITY.**—If any provision of this Act, or
 13 the application of such provision to any person or cir-
 14 cumstance, is held invalid, the remainder of this Act, and
 15 the application of such provision to other persons not simi-

1 larly situated or to other circumstances, shall not be af-
2 fected by such invalidation.

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

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

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

21 (a) IN GENERAL.—Effective two years after the date
22 of the enactment of this Act, a State, or a political subdivi-
23 sion of a State, that has in effect a statute, policy, or prac-
24 tice that prohibits law enforcement officers of the State,
25 or of a political subdivision of the State, from assisting

1 or cooperating with Federal immigration law enforcement
2 in the course of carrying out the officers' routine law en-
3 forcement duties shall not receive any of the funds that
4 would otherwise be allocated to the State under section
5 241(i) of the Immigration and Nationality Act (8 U.S.C.
6 1231(i)).

7 (b) CONSTRUCTION.—Nothing in this section shall
8 require law enforcement officials from States, or from po-
9 litical subdivisions of States, to report or arrest victims
10 or witnesses of a criminal offense.

11 (c) REALLOCATION OF FUNDS.—Any funds that are
12 not allocated to a State, or to a political subdivision of
13 a State, due to the failure of the State, or of the political
14 subdivision of the State, to comply with subsection (a)
15 shall be reallocated to States, or to political subdivisions
16 of States, that comply with such subsection.

17 **SEC. 4. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
18 **TIONAL CRIME INFORMATION CENTER DATA-**
19 **BASE.**

20 (a) PROVISION OF INFORMATION TO THE NCIC.—
21 Not later than 180 days after the date of the enactment
22 of this Act and periodically thereafter as updates may re-
23 quire, the Under Secretary for Border and Transportation
24 Security of the Department of Homeland Security shall
25 provide the National Crime Information Center of the De-

1 partment of Justice with such information as the Under
2 Secretary may possess regarding any aliens against whom
3 a final order of removal has been issued, any aliens who
4 have signed a voluntary departure agreement, any aliens
5 who have overstayed their authorized period of stay, and
6 any aliens whose visas have been revoked. The National
7 Crime Information Center shall enter such information
8 into the Immigration Violators File of the National Crime
9 Information Center database, regardless of whether—

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

12 (2) the alien concerned has already been re-
13 moved; or

14 (3) sufficient identifying information is avail-
15 able with respect to the alien concerned.

16 (b) INCLUSION OF INFORMATION IN THE NCIC
17 DATABASE.—

18 (1) IN GENERAL.—Section 534(a) of title 28,
19 United States Code, is amended—

20 (A) in paragraph (3), by striking “and” at
21 the end;

22 (B) by redesignating paragraph (4) as
23 paragraph (5); and

24 (C) by inserting after paragraph (3) the
25 following new paragraph:

1 “(4) acquire, collect, classify, and preserve
2 records of violations by aliens of the immigration
3 laws of the United States, regardless of whether any
4 such alien has received notice of the violation or
5 whether sufficient identifying information is avail-
6 able with respect to any such alien and even if any
7 such alien has already been removed from the
8 United States; and”.

9 (2) EFFECTIVE DATE.—The Attorney General
10 shall ensure that the amendment made by paragraph
11 (1) is implemented by not later than 6 months after
12 the date of the enactment of this Act.

13 **SEC. 5. STATE AND LOCAL LAW ENFORCEMENT PROVISION**
14 **OF INFORMATION ABOUT APPREHENDED**
15 **ALIENS.**

16 (a) PROVISION OF INFORMATION.—In compliance
17 with section 642(a) of the Illegal Immigration Reform and
18 Immigrant Responsibility Act of 1996 (8 U.S.C. 1373)
19 and section 434 of the Personal Responsibility and Work
20 Opportunity Reconciliation Act of 1996 (8 U.S.C. 1644),
21 each State, and each political subdivision of a State, shall
22 provide the Secretary of Homeland Security in a timely
23 manner with the information specified in subsection (b)
24 with respect to each alien apprehended in the jurisdiction
25 of the State, or in the political subdivision of the State,

1 who is believed to be in violation of the immigration laws
2 of the United States.

3 (b) INFORMATION REQUIRED.—The information re-
4 ferred to in subsection (a) is as follows:

5 (1) The alien's name.

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

7 (3) A physical description of the alien.

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

11 (5) If applicable, the alien's driver's license
12 number and the State of issuance of such license.

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

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

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

23 (9) The alien's fingerprints, if available or read-
24 ily obtainable.

1 (c) ANNUAL REPORT ON REPORTING.—The Sec-
 2 retary shall maintain and annually submit to Congress a
 3 detailed report listing the States, or the political subdivi-
 4 sions of States, that have provided information under sub-
 5 section (a) in the preceding year.

6 (d) REIMBURSEMENT.—The Secretary of Homeland
 7 Security shall reimburse States, and political subdivisions
 8 of a State, for all reasonable costs, as determined by the
 9 Secretary, incurred by the State, or the political subdivi-
 10 sion of a State, as a result of providing information under
 11 subsection (a).

12 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
 13 authorized to be appropriated to the Secretary such sums
 14 as are necessary to carry out this section.

15 (f) CONSTRUCTION.—Nothing in this section shall re-
 16 quire law enforcement officials of a State, or of a political
 17 subdivision of a State, to provide the Secretary of Home-
 18 land Security with information related to a victim of a
 19 crime or witness to a criminal offense.

20 **SEC. 6. FINANCIAL ASSISTANCE TO STATE AND LOCAL PO-**
 21 **LICE AGENCIES THAT ASSIST IN THE EN-**
 22 **FORCEMENT OF IMMIGRATION LAWS.**

23 (a) GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING
 24 AND PROCESSING CERTAIN ALIENS.—From amounts
 25 made available to make grants under this section, the Sec-

1 retary of Homeland Security shall make grants to States,
2 and to political subdivisions of States, for procurement of
3 equipment, technology, facilities, and other products that
4 facilitate and are directly related to investigating, appre-
5 hending, arresting, detaining, or transporting aliens who
6 have violated the immigration law of the United States,
7 including additional administrative costs incurred under
8 this Act.

9 (b) ELIGIBILITY.—To be eligible to receive a grant
10 under this section, a State, or a political subdivision of
11 a State, must have the authority to, and shall have a writ-
12 ten policy and a practice to, assist in the enforcement of
13 the immigration laws of the United States in the course
14 of carrying out the routine law enforcement duties of such
15 State or political subdivision of a State. Entities covered
16 under this section may not have any policy or practice that
17 prevents local law enforcement from inquiring about a sus-
18 pect’s immigration status.

19 (c) FUNDING.—There is authorized to be appro-
20 priated to the Secretary for grants under this section such
21 sums as may be necessary for fiscal year 2010 and each
22 subsequent fiscal year.

23 (d) GAO AUDIT.—Not later than three years after
24 the date of the enactment of this Act, the Comptroller
25 General of the United States shall conduct an audit of

1 funds distributed to States, and to political subdivisions
2 of a State, under subsection (a).

3 **SEC. 7. INCREASED FEDERAL DETENTION SPACE.**

4 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
5 FACILITIES.—

6 (1) IN GENERAL.—The Secretary of Homeland
7 Security shall construct or acquire, in addition to ex-
8 isting facilities for the detention of aliens, 20 deten-
9 tion facilities in the United States, for aliens de-
10 tained pending removal from the United States or a
11 decision regarding such removal. Each facility shall
12 have a number of beds necessary to effectuate this
13 purposes of this Act.

14 (2) DETERMINATIONS.—The location of any de-
15 tention facility built or acquired in accordance with
16 this subsection shall be determined by the Deputy
17 Assistant Director of the Detention Management Di-
18 vision of the Immigration and Customs Enforcement
19 Office of Detention and Removal within United
20 States Immigration and Customs Enforcement.

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

24 (c) TECHNICAL AND CONFORMING AMENDMENT.—
25 Section 241(g)(1) of the Immigration and Nationality Act

1 (8 U.S.C. 1231(g)(1)) is amended by striking “may ex-
2 pend” and inserting “shall expend”.

3 **SEC. 8. FEDERAL CUSTODY OF ALIENS UNLAWFULLY**
4 **PRESENT IN THE UNITED STATES APPRE-**
5 **HENDED BY STATE OR LOCAL LAW ENFORCE-**
6 **MENT.**

7 (a) STATE APPREHENSION.—

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

12 “CUSTODY OF ALIENS UNLAWFULLY PRESENT IN THE
13 UNITED STATES

14 “SEC. 240D. (a) TRANSFER OF CUSTODY BY STATE
15 AND LOCAL OFFICIALS.—If a State, or a political subdivi-
16 sion of the State, exercising authority with respect to the
17 apprehension or arrest of an alien who is unlawfully
18 present in the United States submits to the Secretary of
19 Homeland Security a request that the alien be taken into
20 Federal custody, the Secretary—

21 “(1) not later than 48 hours after the conclu-
22 sion of the State, or the political subdivision of a
23 State, charging process or dismissal process, or if no
24 State or political subdivision charging or dismissal
25 process is required, not later than 48 hours after the
26 alien is apprehended, shall take the alien into the

1 custody of the Federal Government and incarcerate
2 the alien; or

3 “(2) shall request that the relevant State or
4 local law enforcement agency temporarily incarcerate
5 or transport the alien for transfer to Federal cus-
6 tody; and

7 “(b) POLICY ON DETENTION IN STATE AND LOCAL
8 DETENTION FACILITIES.—In carrying out section
9 241(g)(1), the Attorney General or Secretary of Homeland
10 Security shall ensure that an alien arrested under this Act
11 shall be detained, pending the alien’s being taken for the
12 examination under this section, in a State or local prison,
13 jail, detention center, or other comparable facility. Not-
14 withstanding any other provision of law or regulation,
15 such facility is adequate for detention, if—

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

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

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

24 “(c) REIMBURSEMENT.—The Secretary of Homeland
25 Security shall reimburse States, and political subdivisions

1 of a State, for all reasonable expenses, as determined by
2 the Secretary, incurred by the State, or political subdivi-
3 sion, as a result of the incarceration and transportation
4 of an alien who is unlawfully present in the United States
5 as described in subparagraphs (A) and (B) of subsection
6 (a)(1). Compensation provided for costs incurred under
7 such subparagraphs shall be the average cost of incarcer-
8 ation of a prisoner in the relevant State, as determined
9 by the chief executive officer of a State, or of a political
10 subdivision of a State, plus the cost of transporting the
11 alien from the point of apprehension to the place of deten-
12 tion, and to the custody transfer point if the place of de-
13 tention and place of custody are different.

14 “(d) SECURE FACILITIES.—The Secretary of Home-
15 land Security shall ensure that aliens incarcerated in Fed-
16 eral facilities pursuant to this Act are held in facilities
17 that provide an appropriate level of security.

18 “(e) TRANSFER.—

19 “(1) IN GENERAL.—In carrying out this sec-
20 tion, the Secretary of Homeland Security shall es-
21 tablish a regular circuit and schedule for the prompt
22 transfer of apprehended aliens from the custody of
23 States, and political subdivisions of a State, to Fed-
24 eral custody.

1 “(2) CONTRACTS.—The Secretary may enter
2 into contracts, including appropriate private con-
3 tracts, to implement this subsection.

4 “(f) DEFINITION.—For purposes of this section, the
5 term ‘alien who is unlawfully present in the United States’
6 means an alien who—

7 “(1) entered the United States without inspec-
8 tion or at any time, manner or place other than that
9 designated by the Secretary of Homeland Security;

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

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

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

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

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

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

“Sec. 240D. Custody of aliens unlawfully present in the United States.”.

4 (b) GAO AUDIT.—Not later than three years after
5 the date of the enactment of this Act, the Comptroller
6 General of the United States shall conduct an audit of
7 compensation to States, and to political subdivisions of a
8 State, for the incarceration of aliens unlawfully present
9 in the United States under section 240D(a) of the Immi-
10 gration and Nationality Act (as added by subsection
11 (a)(1)).

12 **SEC. 9. TRAINING OF STATE AND LOCAL LAW ENFORCE-**
13 **MENT PERSONNEL RELATING TO THE EN-**
14 **FORCEMENT OF IMMIGRATION LAWS.**

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

19 (1) a training manual for law enforcement per-
20 sonnel of a State, or of a political subdivision of a
21 State, to train such personnel in the investigation,
22 identification, apprehension, arrest, detention, and
23 transfer to Federal custody of aliens unlawfully
24 present in the United States (including the transpor-
25 tation of such aliens across State lines to detention

1 centers and the identification of fraudulent docu-
2 ments); and

3 (2) an immigration enforcement pocket guide
4 for law enforcement personnel of a State, or of a po-
5 litical subdivision of a State, to provide a quick ref-
6 erence for such personnel in the course of duty.

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

11 (c) APPLICABILITY.—Nothing in this section shall be
12 construed to require State or local law enforcement per-
13 sonnel to carry the training manual or pocket guide with
14 them while on duty.

15 (d) COSTS.—The Secretary of Homeland Security
16 shall be responsible for any costs incurred in establishing
17 the training manual and pocket guide.

18 (e) TRAINING FLEXIBILITY.—

19 (1) IN GENERAL.—The Secretary of Homeland
20 Security shall make training of State and local law
21 enforcement officers available through as many
22 means as possible, including through residential
23 training at the Center for Domestic Preparedness,
24 onsite training held at State or local police agencies
25 or facilities, online training courses by computer,

1 teleconferencing, and videotape, or the digital video
2 display (DVD) of a training course or courses. E-
3 learning through a secure, encrypted distributed
4 learning system that has all its servers based in the
5 United States, is scalable, survivable, and can have
6 a portal in place not later than 30 days after the
7 date of the enactment of this Act, shall be made
8 available by the Federal Law Enforcement Training
9 Center Distributed Learning Program for State and
10 local law enforcement personnel.

11 (2) FEDERAL PERSONNEL TRAINING.—The
12 training of State and local law enforcement per-
13 sonnel under this section shall not displace the train-
14 ing of Federal personnel.

15 (3) CLARIFICATION.—Nothing in this Act or
16 any other provision of law shall be construed as
17 making any immigration-related training a require-
18 ment for, or prerequisite to, any State or local law
19 enforcement officer to assist in the enforcement of
20 Federal immigration laws in the normal course of
21 carrying out the normal law enforcement duties of
22 such officers.

23 In carrying out this section, priority funding shall be given
24 for existing web-based immigration enforcement training
25 systems.

1 **SEC. 10. IMMUNITY.**

2 (a) **PERSONAL IMMUNITY.**—Notwithstanding any
3 other provision of law, a law enforcement officer of a State
4 or local law enforcement agency who is acting within the
5 scope of the officer’s official duties shall be immune, to
6 the same extent as a Federal law enforcement officer,
7 from personal liability arising out of the performance of
8 any duty described in this Act.

9 (b) **AGENCY IMMUNITY.**—Notwithstanding any other
10 provision of law, a State or local law enforcement agency
11 shall be immune from any claim for money damages based
12 on Federal, State, or local civil rights law for an incident
13 arising out of the enforcement of any immigration law,
14 except to the extent a law enforcement officer of such
15 agency committed a violation of Federal, State, or local
16 criminal law in the course of enforcing such immigration
17 law.

18 **SEC. 11. INSTITUTIONAL REMOVAL PROGRAM (IRP).**

19 (a) **CONTINUATION AND EXPANSION.**—

20 (1) **IN GENERAL.**—The Secretary of Homeland
21 Security shall continue to operate and implement the
22 program known as the Institutional Removal Pro-
23 gram (IRP) which—

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

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

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

5 (2) EXPANSION.—The Institutional Removal
6 Program shall be extended to all States. Any State
7 that receives Federal funds for the incarceration of
8 criminal aliens shall—

9 (A) cooperate with officials of the Institu-
10 tional Removal Program;

11 (B) expeditiously and systematically iden-
12 tify criminal aliens in its prison and jail popu-
13 lations; and

14 (C) promptly convey such information to
15 officials of such Program as a condition of re-
16 ceiving such funds.

17 (b) AUTHORIZATION FOR DETENTION AFTER COM-
18 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
19 enforcement officers of a State, or of a political subdivision
20 of a State, are authorized to—

21 (1) hold a criminal alien for a period of up to
22 14 days after the alien has completed the alien's
23 State prison sentence in order to effectuate the
24 transfer of the alien to Federal custody when the

1 alien is removable or not lawfully present in the
2 United States; or

3 (2) issue a detainer that would allow aliens who
4 have served a State prison sentence to be detained
5 by the State prison until personnel from United
6 States Immigration and Customs Enforcement can
7 take the alien into custody.

8 (c) TECHNOLOGY USAGE.—Technology such as video
9 conferencing shall be used to the maximum extent prac-
10 ticable in order to make the Institutional Removal Pro-
11 gram available in remote locations. Mobile access to Fed-
12 eral databases of aliens, such as IDENT, and live scan
13 technology shall be used to the maximum extent prac-
14 ticable in order to make these resources available to State
15 and local law enforcement agencies in remote locations.

16 **SEC. 12. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM**
17 **(SCAAP).**

18 Section 241(i)(5) of the Immigration and Nationality
19 Act (8 U.S.C.1231(i)) is amended to read as follows:

20 “(5) There are authorized to be appropriated to
21 carry out this subsection such sums as may be nec-
22 essary for fiscal year 2010 and each subsequent fis-
23 cal year.”.

1 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Sec-
3 retary for fiscal year 2010 and each subsequent fiscal year
4 such sums as may be necessary to carry out this Act.

