

**A SUMMARY OF THE  
Clear Law Enforcement for Alien Removal  
(CLEAR) Act of 2005 (HR 3137)**

*Prepared by the National Immigration Law Center and the National Council of La Raza*

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INTRODUCED IN HOUSE OF REPRESENTATIVES: June 30, 2005

**SECTION 1: Short title, table of contents, etc.**

**SECTION 2: Reaffirms inherent authority to enforce immigration law**

- Declares that CLEAR reaffirms state and local law enforcement officers' existing inherent authority to enforce immigration laws and to investigate, apprehend, detain, transport and remove noncitizens from the United States.

**SECTION 3: Encourages states to assist in the enforcement of immigration laws**

- Effective 2 years after the date of enactment, no federal funds allocated under 241(i) of the Immigration and Nationality Act (INA) will be given to any state or locality that has a statute, policy, or practice that prohibits law enforcement officers from cooperating with Federal immigration law enforcement.
- States that nothing in this section requires law enforcement officials to report or arrest victims or witnesses of a criminal offense.

**SECTION 4: Criminalizes unlawful presence and greatly increases penalties for immigration violations**

- Adds a new section making unlawful presence in the United States a felony and requiring noncitizens who are unlawfully present in the United States to be fined and/or imprisoned for a year and a day.
- Allows an affirmative defense for immigrants who overstay visas due to an exceptional and extremely unusual hardship or physical illness that prevented the immigrant from leaving the U.S. by the required day.
- Increases the penalties for illegal entry from 6 months imprisonment to one year.
- Increases civil penalties for illegal entry from
  - A current range of \$50 to \$250 to a new penalty of \$500 for the first violation;
  - A current range of \$100 to 500 to a new penalty of \$1,000 for the second violation;
  - \$2,500 for a third violation;
  - \$5,000 for more than three violations.
- Defines immigration violators as noncitizens who
  - Are apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers;

- Enter without inspection;
  - Fail to depart the United States within 30 days after the expiration of nonimmigrant visa or voluntary departure, and are not otherwise in lawful status; or
  - Fail to depart within 30 days of a final order of removal and are not otherwise in lawful status.
- Establishes that persons who fail to comply with a final order of removal within 30 days are subject to civil penalties that are 5 times the amount of the new penalties described above. Specifies that these civil penalties are in addition to, not in lieu of, any criminal or other civil penalties that may be imposed.
  - Lowers the maximum period for which voluntary departure can be granted in removal proceedings from 120 days to 30 days.

#### **SECTION 5: Requires insertion of immigration data into the National Criminal Information Center (NCIC)**

- Authorizes the U.S. Dept. of Homeland Security (DHS) to provide the NCIC, within 180 days of enactment, with information on any and all of the following:
  - Noncitizens against whom a final order of removal has been issued;
  - Noncitizens who have signed a voluntary departure agreement;
  - Noncitizens who have overstayed their authorized period of stay;
  - Noncitizens whose visas have been revoked.
- The NCIC shall enter such information into the Immigration Violators File of the NCIC database
  - Regardless of whether the noncitizen received notice of a final order of removal;
  - Regardless of whether the noncitizen has already been removed;
  - Regardless of sufficient identifying information about the noncitizen.
- The NCIC database statute is amended to allow NCIC to acquire, collect, classify, and preserve records of violations of U.S. immigration laws regardless of whether the noncitizen has received notice of the violation or whether sufficient identifying information is available on the person and even if the person has already been removed.

#### **SECTION 6: Imposes onerous reporting requirements on state and local jurisdictions**

- Encourages all state and local law enforcement agencies to collect the following information on all immigration violators, and to report this information to the U.S. Dept. of Justice and DHS in a timely manner:
  - Name;
  - Address or place of residence;
  - Physical description;
  - Date, time and location of agent's encounter with immigration violator and the reason for stop, detention, apprehension or arrest;
  - Driver's license number and its state of issuance, if applicable;
  - Identification number, any designation number on the document and the issuing entity, if applicable;
  - The license plate number, make and model of any automobile registered or driven by the violator, if applicable;

- A photo, if readily obtainable;
- Fingerprints, if readily obtainable.
- Requires the DHS to annually submit a report of this information to Congress.
- Requires DHS to reimburse states and localities for all reasonable costs incurred as a result of providing the above information and authorizes an appropriation of funds for this purpose.
- States that nothing in this section shall require law enforcement officials to provide DHS with information related to a victim of or witness to a crime.

#### **SECTION 7: Authorizes financial assistance to state and local police agencies that enforce immigration law**

- Authorizes \$1 billion each fiscal year to assist state and local police agencies in obtaining equipment, technology and other administrative support to assist them in investigating, arresting, detaining and transporting noncitizens held for immigration violations.
- Makes law enforcement agencies eligible for funds if they institute a policy and practice to enforce federal immigration laws in the course of carrying out routine law enforcement duties.

#### **SECTION 8: Increases federal detention space**

- Authorizes DHS to construct or acquire 20 additional detention facilities in the U.S. with at least 500 beds per facility for noncitizens detained pending removal or a decision on removal from the U.S.
- States that DHS shall consider using portions of closed military installations for this purpose.
- Authorizes appropriations for this section.

#### **SECTION 9: Federal custody of “illegal aliens” apprehended by state or local law enforcement**

- Requires DHS to either (1) take into federal custody any “illegal alien” who was apprehended or arrested by a state or locality no later than 48 hours after the person is apprehended or 48 hours after the conclusion of the state charging or dismissal process, or (2) request that the relevant state or local law enforcement agency temporarily incarcerate or transport the person for transfer to federal custody.
- Requires DHS to designate in each state at least one federal, state, or local prison or jail or private prison or detention facility as the central transfer facility for that state.
- Requires the U.S. attorney general or DHS secretary to ensure that any noncitizen arrested under this act be detained in a state or local prison, jail, detention center, or comparable facility. Such facility is adequate for detention if it is the most suitably located federal, state, or local facility available, if an appropriate arrangement for the use of the facility can be made, and if such facility satisfies the standards for housing, care, and security of persons held in custody of a U.S. marshal.

- Requires DHS to reimburse states and localities for all reasonable expenses incurred for the incarceration and transportation of “illegal aliens” and establishes a formula for reimbursement.
- Requires the DHS secretary to ensure that noncitizens are incarcerated in facilities that provide an appropriate level of security.
- Requires DHS to establish a regular circuit and schedule for prompt transfer of apprehended “illegal aliens” from the custody of states and localities to federal custody. DHS may enter into contracts, including private contracts, to implement this subsection.
- Defines “illegal alien” for purposes of this section as a noncitizen who
  - Entered the United States without inspection or at any time or place other than as designated by the attorney general or DHS secretary;
  - Was admitted as a nonimmigrant and, at the time s/he was taken into custody by state or local law enforcement officers, had failed to maintain such status or to comply with conditions of that status;
  - Was admitted as an immigrant and subsequently failed to comply with the status’s requirements; or
  - Failed to depart the United States under a final order of removal or voluntary departure agreement.
- Authorizes \$500,000,000 for detention and transportation to federal custody of noncitizens not lawfully present.
- Within three years of enactment, requires a Government Accountability Office audit of compensation to states and local entities for the incarceration of noncitizens under section INA 240D(a).

#### **SECTION 10: Training for state and local law enforcement**

- Within 180 days of enactment, requires the DHS secretary to establish a training manual and quick-reference pocket guide for state and local law enforcement agencies to enforce immigration law. Such training must include information on transporting noncitizens across state lines and identifying fraudulent documents.
- Provides that the training manual and pocket guide must be made available to all state and local law enforcement personnel, and clarifies that they are not required to carry the training manual or pocket guide while on duty.
- Requires the U.S. Dept of Justice or DHS to provide the training through as many means as possible, including residential training at federal facilities, on-site training at state or local police agencies, online training courses by computer, teleconferencing, videotape or DVD.
- Warns that training of state and local officers should not displace training of federal personnel.
- Clarifies that training may not be deemed a prerequisite for enforcement of immigration laws.
- Limits training provided under INA sec. 287(g) to 14 days or 80 hours, whichever is longer.

**SECTION 11: Provides broad immunity to law enforcement personnel and agencies**

- Renders federal state and local law enforcement agents immune from personal liability for enforcement of immigration law committed while on official duty; state or local law enforcement agents would also be immune from claims of money damages based on any incident arising out of enforcement of any immigration law, except for any violation of criminal law.

**SECTION 12: Requires states and local entities to participate in the Institutional Removal Program (IRP)**

- Mandates that DHS continue to operate the IRP, which identifies removable noncitizens in federal and state correctional facilities, ensures that they are not released into the community, and removes them from the United States after the completion of their sentences.
- Mandates that the IRP be extended to all states.
- Requires states that receive federal funds for the incarceration of criminal noncitizens to cooperate with the IRP and, as a condition for receiving such funds, to expeditiously and systematically identify criminal noncitizens in their prison and jail populations and promptly convey such information to federal IRP authorities.
- Authorizes state and local law enforcement officers to hold an undocumented noncitizen for up to 14 days after completion of the state prison sentence in order to transfer the person to federal custody or to issue a detainer that allows a noncitizen who has served a state prison sentence to be detained by the state until personnel from U.S. Immigration and Customs Enforcement take the noncitizen into custody.
- Encourages the use of technology such as video conferencing, mobile access to federal databases, and live scan technology to make the IRP available in remote locations.
- Authorizes appropriations for the implementation of the IRP in the amount of \$100 million for FY2007, \$115 million for FY2008, \$130 million for FY2009, \$145 million for FY2010, and \$160 million for FY2011.

**SECTION 13: Authorizes appropriations for the State Criminal Alien Assistance Program (SCAAP)**

- Authorizes \$1 billion per fiscal year for SCAAP under INA sec. 245(i)(5).

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