

The CLEAR Act: A “Clear and Present Danger” to Public Safety

In April 2002, the Justice Department attempted to corral state and local police into enforcing civil immigration laws. This proposal was met by a firestorm of opposition from state and local law enforcement, who knew that it would adversely affect their ability to gain the trust of immigrant residents, and would dismantle gains made in reducing crime since the advent of “community-based policing.” Due to the concerns of these experts, the Department backed off of its original proposal.

Despite this strong message from state and local police, Representative Charles Norwood (R-GA) introduced the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671) in July 2003. This bill legislates the legal authority of police to enforce federal civil immigration laws (currently state and local police may only enforce criminal immigration laws, except in very specific circumstances), and requires them to either do so or lose certain federal funds. The bill further “encourages” police participation by awarding them assets seized from undocumented immigrants, permitting them to seek funds from the federal government for failure to pick up undocumented immigrants, and granting them limited immunity from lawsuits. However, the bill adds significantly to the daily responsibilities of local law enforcement, and imposes stringent reporting requirements on them.

The bill goes several steps further by mandating the entry of civil immigration information into the National Crime Information Center (NCIC) database (a database of wanted persons maintained by the FBI for local law enforcement use). By inputting potentially millions of names of people with civil immigration law violations in the NCIC, this bill proposes a sweeping expansion of the scope of NCIC, and severely undermines its manageability. The bill also increases penalties for immigration status violations. Finally, the bill makes visa applicants foot the bill, diverting 33% of their processing fees to pay for local police enforcement of immigration laws.

The CLEAR Act Jeopardizes Public Safety

The CLEAR Act strikes a direct blow at the efforts of police to win the trust and confidence of the communities they serve. By turning police into immigration agents, the CLEAR act ensures that more immigrants will avoid contact with local law enforcement, putting entire communities at risk. Word will spread like wildfire among newcomers that if they—as victims, witnesses, or concerned residents—have any contact with police, they or their family members will risk deportation. They will remain silent and our streets less safe as a result. Experience shows that this fear will extend not only to contact with local police, but also to the fire department, hospitals, and the public school system. Who knows better about keeping our communities safe—Congress, or our state and local police?

The CLEAR Act Undermines Local Police Roles in Enhancing National Security

National security experts and state and local law enforcement agree that good intelligence and strong relationships are the keys to keeping our nation and streets safe. The CLEAR Act ignores the road-tested benefits of community policing in favor of a “police state” for immigrants. Newcomers who might otherwise be helpful to security investigations will be reluctant to come forward, for fear of immigration consequences. If immigrant communities are alienated rather than embraced, local law enforcement loses important allies and relationships that can lead to information they might not otherwise have access to.

The CLEAR Act Also Undermines Federal Law Enforcement Priorities

Because the CLEAR Act allows states and localities to seek funds for every undocumented immigrant they encounter and call the federal government on, the Department of Homeland Security will have to put the same amount of resources into picking up undocumented workers as suspected terrorists. Law enforcement resources at the federal level are limited, which is why the Bureau of Immigration and

Customs Enforcement prioritizes searches for criminals and terrorist suspects over garden-variety undocumented workers. The CLEAR Act forces the federal immigration system to treat all immigration violations equally. With 8.5 million undocumented workers in the United States and only a handful of foreign-born criminals and terrorists, is this the right emphasis?

The CLEAR Act Piles More onto State and Local Police Officer's Already Full Platters

The CLEAR Act requires local police to add a large and complex set of federal laws to their already long list of duties. Suddenly, local police would have to investigate businesses for hiring undocumented workers, and probe the immigration status of every person they come across who “looks foreign” or speaks with an accent. This bill would also impose significant new reporting requirements on these critically under-staffed and under-funded agencies. The responsibilities of state and local police have increased immensely after the September 11th terrorist attacks, and they simply do not have extra time on their hands to take on what is rightly a federal duty. Will Congress next mandate that local police enforce federal tax laws, or environmental laws? Federal immigration law is even more complex than the U.S. tax code, and enforcement of such should remain with the federal agents trained in these matters.

Moreover, the CLEAR Act stands to make police's primary job—investigating, solving, and preventing real crimes—even harder. A major tool used by state and local law enforcement to identify criminals is the FBI's National Crime Information Center database. The CLEAR Act expands the scope of this database significantly, loading potentially millions of names of people with technical/administrative law violations into NCIC and undermining its integrity. Everyone knows that the immigration service has a hard time managing its data. Dumping its often outdated and erroneous files into the NCIC will lead to untold numbers of unlawful arrests, and a nightmare for the state and local agencies charged with implementing this law.

The CLEAR Act Bullies and Burdens State and Local Governments

The CLEAR Act runs roughshod over our already squeezed state and local governments. Local governments are coerced into participating, even though it means burdensome new reporting and custody requirements, because failure to do so means further loss of already scarce federal dollars. Slyly, the bill attempts to soften the blow of its mandates by claiming that states and localities will be awarded monies for a portion of seized assets. But undocumented immigrants are unlikely to have the kind of assets that would make this provision lucrative, and given the bureaucracy behind federal reimbursements, states should be wary of this scheme.

The CLEAR Act also permits administrative suits to be brought against the federal government for failure to respond to local police requests for immigration enforcement assistance. This provision amounts to more headaches and new bureaucracy for local governments to negotiate, as they attempt to sue the feds with no guarantee that they will actually recoup their expenses. And even if states and localities do get judgments against the federal government, the outcome is robbing Peter to pay Paul. The CLEAR Act requires that the money come from foreign nationals' application fees to the U.S. government for visa processing, and provides for these fees to be adjusted accordingly. This plan only adds to the increased costs and hurdles economically-important visitors such as businesspeople, students, and tourists must overcome in order to enter the United States.

The CLEAR Act Is Unnecessary Law-Making

Mechanisms already exist within current law to foster cooperation between local law enforcement and federal immigration agents. In 1996, Congress passed an immigration law allowing states and localities to enter into memorandums of understanding (MOUs) with the federal government, to confer civil immigration law enforcement powers on their local officers. These MOUs encourage important safeguards, including the training of local agents in immigration law. An MOU is currently in place in

Florida, and others are being negotiated around the country. The CLEAR Act would basically gut the MOU procedure, throwing the door wide open for any local police officer in the nation to enforce civil immigration laws, with no training or safeguards in place.

It is important to note that local police already have the right and duty to enforce criminal law—this includes criminal immigration law violations and other crimes committed by foreign nationals. The CLEAR Act is simply not needed in order to confer these powers upon state and local law enforcement. State and local police are also currently authorized to notify federal immigration agents about arrests of foreign nationals for crimes they have (or are suspected of having) committed. This ability is fully consistent with the public safety role of police.

The CLEAR Act Forgets An Important Fact: You Can't Tell By Looking Who Is Legal and Who Isn't

There are nearly eleven million naturalized U.S. citizens, and more than twenty-five million native-born Americans of Latin American and Asian descent. In this free nation we are not required to carry “papers” to prove our citizenship status, and few of us do. If enacted, the CLEAR Act would encourage race- and ethnicity-based profiling. Because police are ill-equipped to determine who has violated a civil immigration law (due to the administrative nature of the violations), some will inevitably stop and question people of certain ethnic backgrounds, who speak certain languages, or who have accents in English.

Anticipating this, the bill grants civil immunity from lawsuits for officers who enforce immigration laws. This would set the U.S. civil rights movement back decades, and introduces a slippery slope in the quest to eradicate racial profiling from U.S. law enforcement.

Prepared by the National Immigration Forum, August 2003

Summary of Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR) HR 2671

§ 101: Reaffirms inherent authority to enforce immigration law

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

§ 102: Requires states and local jurisdictions to enact laws to enforce immigration law

- Requires state and local jurisdictions to enact statutes, within two years of the enactment of CLEAR, that expressly authorize law enforcement officers to enforce federal immigration laws during the course of their duties. Jurisdictions that fail to enact such statutes may not be federally reimbursed for incarcerating noncitizens and the reimbursement funds that would have gone to them must be reallocated to jurisdictions that are in compliance with the CLEAR Act.

§ 103: Criminalizes unlawful presence and greatly increases penalties for immigration violations

- Adds a new section requiring noncitizens who are unlawfully present in the United States to be fined and imprisoned for a year and to be subject to asset forfeiture.
- 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 \$2,500 for the second violation
 - \$5,000 for a third violation
 - \$10,000 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 thirty days are subject to civil penalties that are five times the amount of the new penalties described above.
- Authorizes an increase in the civil penalties for willful failure to depart under §274D from the current penalty of not more than \$500 per day by striking “not more than.”
- Requires the asset forfeiture of any noncitizen who fails to depart for longer than one year.

- Allocates half of the funds collected through the imposition of penalties and asset forfeitures to the state and local law enforcement agencies that apprehend noncitizens.
- Lowers the maximum period for which voluntary departure can be granted in removal proceedings from 120 days to 30 days.

§104: Requires insertion of immigration data into the National Criminal Information Center (NCIC)

- Authorizes the insertion of immigration data into the NCIC database and, within 180 days of enactment, requires the Department of Homeland Security (DHS) to transmit data on immigration violators to the NCIC.

§105: Imposes onerous reporting requirements on state and local jurisdictions

- Requires all state and local law enforcement agencies to collect the following information on all immigration violators, and to report this information to the Justice Dept. and Homeland Security Dept. within 10 days of encountering the violator:
 - 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
- Establishes a procedure for identifying and notifying state and local entities that fail to comply with reporting requirements. If the attorney general finds that a state or local jurisdiction fails to comply with the reporting requirements or engages in a pattern or practice of incomplete reporting, the attorney general must notify the jurisdiction and detail its deficiencies. A jurisdiction must respond to the attorney general, address each deficiency and provide plan for correcting them.

§106: Authorizes financial assistance to state and local police agencies that enforce immigration law

- Authorizes a billion dollars each fiscal year to assist state and local police agencies in obtaining equipment, technology and other administrative support to assist them in housing and processing noncitizens held for immigration violations. Law enforcement agencies are eligible for funds if they institute a policy and practice to enforce federal immigration laws.

§107: Assigns custody obligations to federal, state and local enforcement agencies

- Adds a new section requiring DHS and DOJ, when requested, to enter into contract agreements with state and local entities concerning the incarceration of “illegal aliens.” Under such contracts, the AG or DHS secretary must take noncitizens into federal custody or designate a federal, state or local facility to hold them.
- Defines “illegal alien” for purposes of this section as persons who
 - Entered the United States without inspection or at any time or place other than as designated by the attorney general or secretary;
 - Was admitted as a nonimmigrant and, at the time s/he was taken into custody by state or local law enforcement officers, failed to maintain such status or to comply with conditions of that status or
 - Failed to depart the United States under a final order of removal or voluntary departure.
- Requires the attorney general or secretary to ensure that noncitizens are incarcerated in facilities that provide an appropriate level of security, and to ensure the prompt apprehension of noncitizens who are held by state or local entities.
- Requires that one-third of the fees collected for immigrant and nonimmigrant visas and adjustment of status be deposited as offsetting receipts into a separate account entitled, “State and Local Immigration Law Enforcement Fee Account” in the U.S. Treasury, earmarked for state and local law enforcement.
- Allows the attorney general or secretary to increase the fees for applications for immigration benefits in order to carry out immigration enforcement.
- Within three years of enactment, requires a GAO audit of compensation to states and local entities for the incarceration of noncitizens under section INA 240D(a).

§108: Establishes claims by states and localities against the federal government and authorizes increase in adjudication fees to pay fines levied against federal government

- Allows states and local entities to file claims against federal agencies for failing to cooperate with them to enforce immigration laws.
- Establishes administrative law judges within the Justice Dept. to adjudicate claims by state and local entities against the federal government and subjects these adjudications to the Administration Procedure Act. Such claims may be appealed only to the attorney general or the secretary and would not be subject to judicial review.
- Upon the determination of a valid claim, allows judges to fine federal agencies \$1,000 for each instance of nonenforcement, upon determination of a valid claim. If the judge finds that the agency has engaged in a pattern or practice of non-enforcement or noncompliance with a state or local law enforcement agency, the agency must be fined \$10,000.
- Permits amounts deposited into the Immigration Examination Fee Account under INA section 286(m) to be made available to the attorney general or secretary of DHS for the payment of fines levied against a federal agency under this section.
- Requires fines levied against a federal agency to be paid to the state or local claimant no later than 90 days after the entry of final judgment.

- Authorizes the attorney general or the secretary to increase the amount of any of the adjudication fees under INA section 286(m) in order to ensure that funds sufficient to pay the fines are available.

§109: Requires training of state and local law enforcement

- Within 180 days of enactment, requires the attorney general or the secretary to establish a training manual 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.
- Allows the attorney general to charge a fee for training but the fee may not be more than half the costs of actual training.
- Warns that training of state and local officers should not displace or adversely affect training of federal personnel.
- Requires the DOJ 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, on-line training courses by computer, teleconferencing, videotape or DVD.
- Clarifies that training may not be deemed a prerequisite for enforcement of immigration laws.

§110: 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.

§111: Requires detention facilities for immigration violators pending examination and decision on removal

- Requires that noncitizens arrested for immigration violations be detained, pending examination. Such detention must take place in a state or local prison, jail, detention center or other comparable facility. Detention facilities are deemed adequate if
 - o The facility is suitably located;
 - o An arrangement for use of the facility can be made and
 - o The facility satisfies the standards for housing, care and security of persons held in custody of a United States Marshal

§112: Requires states and local entities to participate in the Institutional Removal program (IRP)

- Mandates that the DOJ and DHS continue to operate the Institutional Removal Program (IRP) that 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, expeditiously and systematically identify criminal noncitizens in its prison and jail populations and promptly convey such information to Federal IRP authorities.

§113: Authorizes appropriations

- Authorizes one billion dollars for fiscal years for state criminal alien assistance program (SCAAP) under INA 245(i)(5).
- Authorizes five hundred million for the detention and removal of noncitizens who are unlawfully present under the INA.

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