

Summary of the Clear Law Enforcement for Criminal Alien Removal Act of 2003

Lutheran Immigration and Refugee Service

On July 9, 2003, Representative Charles Norwood (R-Georgia) introduced H.R.2671, "CLEAR ACT of 2003" (hereinafter "CLEAR") in the House of Representatives, along with Reps. Allen Boyd (D-FL), Melissa Hart (R-PA), and Nathan Deal (R-GA). The bill has been referred to the House Committee on the Judiciary.

Declares that State and Local Law Enforcement Have Pre-Existing Authority to Enforce Immigration Laws

CLEAR declares the authority of state and local law enforcement personnel to enforce Federal immigration laws. Specifically, CLEAR permits state and local law enforcement to "investigate, apprehend, detain, or remove aliens in the United States (including the transportation of such aliens across State lines to detention centers)." (Section 101)

Penalizes States and Localities Whose Police Refuse to Enforce Federal Immigration Laws While

CLEAR does not directly force states and their localities to enforce immigration laws, it provides that federal funding to states and localities under INA § 241(i) will discontinue if they fail to implement statutes explicitly authorizing their law enforcement to enforce immigration laws within two years after the bill is enacted. (Section 102) States and localities will also be ineligible for federal funding under INA § 241(i) if they do not implement policies that require them to give certain background information about apprehended illegal aliens to the Department of Justice and Department of Homeland Security (hereinafter "DHS.") (Section 105)

CLEAR provides states and localities with additional financial incentives to participate in the enforcement of Federal immigration laws, including the receipt of half the amount of civil penalties or asset forfeitures resulting from state or local law enforcement's apprehension of illegal aliens (Section 103(f)), federal grants to procure equipment, technology, facilities, and to cover other administrative costs (Section 106), and compensation for the costs of incarcerating illegal aliens. (Section 107)

Criminalizes Unlawful Presence and Greatly Expands Penalties for Immigration Violations

CLEAR would require noncitizens who are unlawfully present in the United States to be fined and imprisoned for a year and to be subject to asset forfeiture. CLEAR increases the criminal penalties of illegal entry by expanding imprisonment from six months to one year. CLEAR also increases the civil penalties for illegal entry. (Section 103(c) & (d)) CLEAR also reduces the amount of time granted to depart the U.S. under an order of voluntary departure from 120 days to 30 days. (Section 103(g))

Requires Insertion of Every Immigration Violator into the National Crime Information Center

CLEAR requires DHS to provide the National Crime Information Center of the Department of Justice with information on any individual who has violated Federal immigration law. (Section 104) This means potentially millions of names of people with civil or administrative immigration violations will be added to the NCIC. Moreover, CLEAR changes the original intent and purpose of the NCIC away from finding criminals to finding civil law violators.

Requires State and Local Law Enforcement to Collect and Report Information about Immigration Violators to Federal Agencies

Under CLEAR, state and local enforcement have ten days to report background information on "illegal aliens" they apprehend to the Department of Justice and DHS, and must adequately explain any failure

to do so. (Section 105) “Illegal alien” is defined as any person who entered the U.S. without inspection, who has failed to maintain nonimmigrant status, or who has failed to depart the U.S. after receiving voluntary departure or a final order of removal. (Section 107(a) & (c)). After an illegal alien has been apprehended by state or local law enforcement, the Attorney General or the DHS Secretary may enter contractual arrangements with states or localities to compensate them for the continued incarceration of illegal aliens. (Section 107)

This compensation will be funded by 1/3 of the proceeds from immigrant and non-immigrant visa fees and adjustment of status fees, and the Attorney General is authorized to increase these fees to the amount necessary to offset compensation to states. (Section 107(f)) Instead of leaving the alien in state custody, the Attorney General or DHS Secretary may also choose to take the illegal aliens into federal custody, or designate a federal, state, local prison or jail, or private contracted prison as a central facility where criminal or illegal aliens can be detained. (Section 107) The state or local facilities must satisfy the same standards for housing, care, and security of persons held in custody as the U.S. marshal. (Section 111) The Attorney General or DHS Secretary are required establish a circuit and schedule for the “prompt collection” of apprehended aliens from the states or localities. (Section 107(e))

Requires Development of Training Materials for States and Localities in Immigration Law, But Doesn’t Require Training

CLEAR also requires the Attorney General or DHS Secretary to develop a training manual to teach state and local law enforcement about how to enforce Federal immigration law. (Section 109(a)) The Attorney General or DHS Secretary are required to make training as available as possible and they are permitted to do so through a variety of means, including online computer courses, teleconferencing, or DVD presentations. (Section 109(c))

CLEAR allows the federal government to charge states and localities a fee for such training. (Section 109(b)(1)) CLEAR also clarifies that lack of immigration training is not prerequisite to state or local law enforcement carrying out immigration laws in the normal course of their law enforcement duties. (Section 109(d))

Immunity for State and Local Law Enforcement

CLEAR also provides state and local law enforcement with certain remedies and protections. CLEAR provides states and localities with a process by which to bring suits against the federal government for failure to comply with CLEAR. (Section 108) State and local enforcement personnel are also immune from personal liability (as long as the officer is acting within the scope of his or her duties) and state and local law enforcement agencies are immune from suit for civil damages under federal, state, and local laws (unless the law enforcement officer violates the criminal law in enforcing the immigration law). (Section 110)

Expands the Institutional Removal Program

CLEAR extends the institutional removal program to all states and increases the appropriations for the program. CLEAR also amends certain appropriations related to the state criminal alien assistance program (SCAAP) and to the detention and removal of noncitizens who are unlawfully present under the INA. (Section 112 and Section 113)