



03-R-1972

A RESOLUTION

BY COUNCILMEMBER FELICIA A. MOORE

**A RESOLUTION BY THE ATLANTA CITY COUNCIL
EXPRESSING ITS OPPOSITION TO PROPOSED
HR 2671 CLEAR LAW ENFORCEMENT FOR
CRIMINAL ALIEN REMOVAL ACT OF 2003
(CLEAR).**

WHEREAS, H.R. 2671 was introduced into the House as the Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR), and

WHEREAS, H.R. 2671 CLEAR would result in the diversion of local public safety personnel from their primary duties to enforce local laws, and

WHEREAS, H.R. 2671 CLEAR does not guarantee the authorization of \$1 billion to obtain equipment, technology and other administrative support and only requires the federal government to pay up to 50% of the cost to train state and locally elected officials to enforce federal immigration laws; in effect establishing an unfunded mandate; and

WHEREAS, enactment of this legislation would have a devastating effect on the budget of the City of Atlanta to fund the increased cost; and

WHEREAS, this legislation would hamper successful local efforts at community policing and inadvertently encourage racial profiling; and

WHEREAS, the City Council of the City of Atlanta, Georgia, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of the City of Atlanta to oppose HR 2671 Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR),

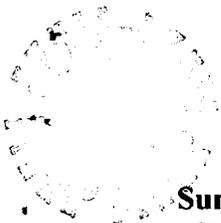
NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Atlanta, Georgia, that the City of Atlanta opposes HR 2671 Clear Law Enforcement for Criminal Alien Removal Act of 2003 (CLEAR).

A true copy,

Deputy Clerk

ADOPTED by the Council
APPROVED by the Mayor

NOV 17, 2003
NOV 24, 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 Crime 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.

House Bill Would Compel Local Police to Enforce Federal Immigration Laws
by Véronique Pluviose-Fenton

Members of the House Committee on the Judiciary may mark-up H.R. 2671, the Clear Law Enforcement for Criminal Alien Removal Act of 2003 (The CLEAR Act). The bill, authored by Rep. Norwood (R-GA), would mandate that state and local law enforcement enforce federal immigration laws or risk the reimbursement from the State Criminal Alien Assistant Program (SCAAP).

The CLEAR Act, according to Rep. Norwood, would “offer real solutions in fixing our failed immigration system,” by making it clear that nation’s 600,000 state and local law enforcement officers have the authority to enforce federal immigration laws.

The National League of Cities is opposed to the CLEAR Act because it would divert local personnel from their primary duties and constitute a cost shift onto local governments. Section 102 of the bill preempts state and local laws that bar their law enforcement officers from assuming the federal responsibility of enforcing federal immigration laws. Specifically, Section 102 requires state and local governments to pass laws authorizing their law enforcement officers to enforce federal immigration laws or risk losing reimbursement from the federal government for costs related to the incarceration of illegal immigrants.

NLC is also concerned that the CLEAR Act would impose another unfunded mandate on local government. Section 109 of the CLEAR Act would require the federal government to pay only up to 50% of the cost to train state and locally elected officials to enforce federal immigration laws. In addition, there is no guarantee that Congress will ever fully appropriate the \$1 billion Section 106 authorizes for state and local police agencies to obtain equipment, technology, and other administrative support.

“Local police have a responsibility to cooperate with the federal government to apprehend specific persons identified as having committed a crime and violated US immigration laws,” state the NLC Policy. “However, local police cannot be conscripted into federal service because the federal government has decided not to fund and staff its immigration enforcement agencies to meet demand.”

Police departments across the nation have raised concerns that efforts to force local officers to enforce federal immigration laws would damage successful community policing initiatives and inadvertently encourage racial profiling. At the Congressional hearing on “Selective Enforcement in Post 9-11 America” last June, Captain Maria Alvarenga-Watkins of the Washington, D.C. Police Department testified that, “Our government has an important responsibility to act on the very real threats of terrorism that are of concern to all of us. But I, and many others in the law enforcement community, strongly believe that deputizing police officers to be INS agents will not help in this fight against terrorism but will make our communities less safe and our country no more secure.”



When support for deputizing local police officers to enforce federal immigration laws surfaced in Spring 2002, Chief Gerry Whitman of the Denver, CO Police Department cautioned "Communication is big in inner-city neighborhoods and the underpinning of that is trust. If a victim thinks they're going to be a suspect (in an immigration violation), they're not going to call us, and that's just going to separate us even further."

Organizations such as the Americans for Tax Reform and the American Conservative Union have criticized efforts to coerce state and local governments to enforce federal immigration laws as "the nationalization of local law enforcement." They have warned that such efforts would "place an unmanageable burden on local law enforcement, have a potentially devastating effect on community policing programs, force state and local governments to pay for enforcement of laws intended to be enforced by federal law enforcement agencies, and profoundly alter the relationship between these agencies."

HR 2671 IH

108th CONGRESS
1st Session
H. R. 2671

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

IN THE HOUSE OF REPRESENTATIVES

July 9, 2003

Mr. NORWOOD (for himself, Mr. BOYD, Ms. HART, and Mr. DEAL 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 enforcement of the immigration laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Clear Law Enforcement for Criminal Alien Removal Act of 2003' or the 'CLEAR Act of 2003'.

**TITLE I--ENHANCING FEDERAL, STATE, AND LOCAL
ENFORCEMENT OF THE IMMIGRATION LAWS**

**SEC. 101. FEDERAL AFFIRMATION OF IMMIGRATION LAW
ENFORCEMENT BY STATES AND POLITICAL SUBDIVISIONS OF
STATES.**

Notwithstanding any other provision of law and reaffirming the existing general authority, law enforcement personnel of a State or a political subdivision of a State are fully authorized to investigate, apprehend, detain, or remove aliens in the United States (including the transportation of such aliens across State lines to detention centers), in the enforcement of the immigration laws of the United States.

SEC. 102. STATE AUTHORIZATION FOR ENFORCEMENT OF FEDERAL IMMIGRATION LAWS ENCOURAGED.

(a) IN GENERAL- Effective 2 years after the date of the enactment of this Act, a State (or political subdivision of a State) that fails to have in effect a statute that expressly authorizes law enforcement officers of the State, or of a political subdivision within the State, to enforce Federal immigration laws in the course of carrying out the officer's law enforcement duties shall not receive any of the funds that would otherwise be allocated to the State under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)).

(b) REALLOCATION OF FUNDS- Any funds that are not allocated due to failure to comply with this section shall be reallocated to States that comply with this section.

SEC. 103. ESTABLISHMENT OF CRIMINAL PENALTIES AND FORFEITURE FOR ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES, ENHANCEMENT OF CRIMINAL AND CIVIL PENALTIES FOR ALIENS WHO ILLEGALLY ENTER THE UNITED STATES, AND STATE AND LOCAL ENTITLEMENT TO CIVIL PENALTIES COLLECTED DUE TO STATE AND LOCAL IMMIGRATION LAW ENFORCEMENT AND APPREHENSION OF VIOLATORS.

(a) ALIENS UNLAWFULLY PRESENT- The Immigration and Nationality Act is amended by adding after section 275 the following new section:

CRIMINAL PENALTIES AND FORFEITURE FOR UNLAWFUL PRESENCE IN THE UNITED STATES

SEC. 275A. Any alien present in the United States in violation of this Act shall be fined under title 18, United States Code, imprisoned not more than one 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 18, United States Code.

(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 'one year,'

(c) INCREASE IN CIVIL PENALTIES FOR VARIOUS VIOLATIONS OF THE IMMIGRATION LAWS OF THE UNITED STATES- Section 275(b) of the Immigration and Nationality Act (8 U.S.C. 1325(b)) is amended to read as follows:

(b)(1) Any alien described in paragraph (2) shall be subject to a civil penalty of--
(A) \$500 for the first violation;
(B) \$2,500 in the case of an alien who has been once previously subject to a civil penalty under this subsection;
(C) \$5,000 in the case of an alien who has been twice previously subject to a civil penalty under this subsection; and

(D) \$10,000 in the case of an alien who has been three or more times previously subject to a civil penalty under this subsection.

(2)(A) An alien described--

(i) is apprehended while entering (or attempting to enter) the United States at a time or place other than as designated by immigration officers;

(ii) enters the United States without inspection;

(iii) fails to depart the United States within 30 days after the expiration of a nonimmigrant visa or a voluntary departure agreement and is not in other lawful status; or

(iv) fails to depart the United States within 30 days after a final order of removal and is not in other lawful status.

(B) In the case of an alien described in subparagraph (A)(iv) who fails to depart the United States within 30 days after a final order of removal, the alien shall be subject to civil penalties under this subsection that are 5 times the amounts set forth under paragraph (1).

(3) Civil penalties under this subsection are in addition to, and not in lieu of any criminal or other civil penalties that may be imposed.'

(d) INCREASE IN CIVIL PENALTIES FOR FAILURE TO DEPART- Section 274D(a) of the Immigration and Nationality Act (8 U.S.C. 1324d(a)) is amended by striking 'not more than'.

(e) FORFEITURE FOR FAILURE TO DEPART FOR MORE THAN ONE YEAR- Section 274D of the Immigration and Nationality Act (8 U.S.C. 1324d) is amended--

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

(b) FORFEITURE FOR LONG-TERM FAILURE TO DEPART- The assets of any alien in violation of subsection (a) for more than one year shall be subject to forfeiture under title 18, United States Code.'

(f) PAYMENT OF CIVIL PENALTIES WHEN ILLEGAL ALIENS APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT- Section 280 of the Immigration and Nationality Act (8 U.S.C. 1330) is amended by adding at the end the following:

(c) Notwithstanding any other provision of law, half of the amounts deposited in the Immigration Enforcement Account from the payment of any civil penalties or asset forfeiture collected under section 274D, 275, or 276 as a result of the apprehension of a violator by law enforcement officials of a State or a political subdivision of a State shall be paid to the appropriate law enforcement agency of a State or a political subdivision of a State responsible for the apprehension of the violator.'

(g) PERMISSION TO DEPART VOLUNTARILY- Section 240B(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1229c(a)(2)(A)) is amended by striking '120' and inserting '30'.

SEC. 104. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(a) **PROVISION OF INFORMATION TO THE NCIC-** Within 180 days after the date of the enactment of this section, the Director of 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 Commissioner may have on any person who has violated any immigration law of the United States.

(b) **INCLUSION OF INFORMATION IN THE NCIC DATABASE-** Section 534(a) of title 28, United States Code, is amended by redesignating paragraph (4) as paragraph (5) and inserting after paragraph (3) the following:

'(4) acquire, collect, classify, and preserve records of violations of the immigration laws of the United States; and'.

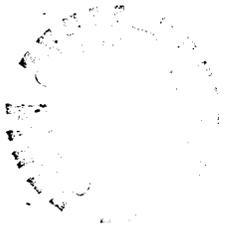
SEC. 105. STATE AND LOCAL LAW ENFORCEMENT PROVISION OF INFORMATION ABOUT APPREHENDED ILLEGAL ALIENS.

(a) **IN GENERAL-** Every state or locality must have a policy that requires the State or entity (as applicable) to provide to the Department of Justice and the Department of Homeland Security the information under subsection (b) on each alien in violation of the immigration laws of the United States apprehended in the jurisdiction. Information required by this subsection shall be provided not later than 10 days after the alien was encountered within such jurisdiction and shall be provided in such form and in such manner as the Attorney General may by regulation or guideline require. Failure to have such a policy and practice by any State or locality shall result in ineligibility for funds under section 241(i) of the Immigration and Nationality Act until such a policy is implemented.

(b) **INFORMATION REQUIRED-** The information required by subsection (a) is as follows:

- (1) The alien's name.
- (2) The alien's address or place of residence.
- (3) A physical description of the alien.
- (4) The date, time, and location of the encounter with the alien and reason for stopping, detaining, apprehending, or arresting the alien.
- (5) If applicable, the alien's driver's license number and the State of issuance of such license.
- (6) If applicable, the type of any other identification document issued to the alien, any designation number contained on the identification document, and the issuing entity for the identification document.
- (7) If applicable, the license plate number, make and model of any automobile registered to, or driven by, the alien.
- (8) A photo of the alien if available or readily obtainable.
- (9) The alien's fingerprints, if available or readily obtainable.

(c) **INCOMPLETE REPORTING-** If the Attorney General finds that a State or a political subdivision of a State engages in a pattern or practice of submission of incomplete information under subsection (b) or noncompliance under subsection



(a), the Attorney General shall notify the State or political subdivision of a State of such finding (and detail the instances and areas of deficiency). Not later than 30 days after a notification under this paragraph, the State or political subdivision of a State shall submit to the Attorney General a detailed written response to the notification (which addresses each instance and area of deficiency under the notification) and a detailed plan for correcting any deficiencies in the submission of such information.

SEC. 106. FINANCIAL ASSISTANCE TO STATE AND LOCAL POLICE AGENCIES THAT ENFORCE IMMIGRATION LAWS.

(a) **GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING AND PROCESSING ILLEGAL ALIENS-** From amounts made available to make grants under this section, the Attorney General shall make grants to local law enforcement agencies for procurement of equipment, technology, facilities, and other products that facilitate and are directly related to housing and processing illegal aliens in custody for immigration law violations, including additional administrative costs incurred under this Act.

(b) **ELIGIBILITY-** To be eligible to receive a grant under this section, the local law enforcement agency must have the authority to, and have in effect the policy and practice to, enforce Federal immigration laws in the course of carrying out such agency's law enforcement duties.

(c) **FUNDING-** There is authorized to be appropriated for grants under this section \$1,000,000,000 for each fiscal year.

SEC. 107. FEDERAL CUSTODY OF ILLEGAL ALIENS APPREHENDED BY STATE OR LOCAL LAW ENFORCEMENT.

(a) **AMENDMENT TO IMMIGRATION AND NATIONALITY ACT-** The Immigration and Nationality Act is amended by adding after section 240C the following new section:

'CUSTODY OF ILLEGAL ALIENS

' SEC. 240D.

' (a) If the chief executive officer of a State (or, if appropriate, a political subdivision of the State) exercising authority with respect to the apprehension of an illegal alien submits a request to the Attorney General or the Secretary of the Department of Homeland Security, the Attorney General or Secretary shall--

' (1) enter into a contractual arrangement which provides for compensation to the State or a political subdivision of the State, as may be appropriate, with respect to the incarceration of the illegal alien;

' (2) take the illegal alien into the custody of the Federal Government and incarcerate the alien; or

' (3) designate a Federal, State, or local prison or jail or a private contracted prison or detention facility within a region as the central facility for that region to maintain custody of the criminal or illegal aliens.'

(b) Compensation under subsection (a)(1) shall be the average cost of incarceration of a prisoner in the relevant State as determined by the chief executive officer of a State (or, as appropriate, a political subdivision of the State).

(c) For purposes of this section, the term 'illegal alien' means an alien who--

(1) entered the United States without inspection or at any time or place other than as designated by the Attorney General or the Secretary of the Department of Homeland Security;

(2) was admitted as a nonimmigrant and at the time he or she was taken into custody by the State or a political subdivision of the State has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248, or to comply with the conditions of any such status; or

(3) failed to depart the United States under a voluntary departure agreement or under a final order of removal.

(d) The Attorney General or the Secretary of the Department of Homeland Security shall ensure that undocumented aliens incarcerated in Federal facilities pursuant to this subsection are held in facilities which provide an appropriate level of security.

(e) In carrying out this section, the Attorney General or the Secretary of the Department of Homeland Security will establish a regular circuit and schedule for the prompt collection of apprehended undocumented aliens from the custody of States and political subdivisions of States to Federal custody. The Attorney General or the Secretary of the Department of Homeland Security is authorized to enter into contracts to implement this subsection.

(f) Notwithstanding any other provision of this Act or any other law, one-third of immigrant and nonimmigrant visa fees and adjustment of status fees, as designated by the Attorney General or the Secretary of the Department of Homeland Security in regulations, shall be deposited as offsetting receipts into a separate account entitled 'State and Local Immigration Law Enforcement Fee Account' in the Treasury of the United States. The Attorney General or the Secretary of the Department of Homeland Security shall set all such fees at a level that will ensure receipt of amounts sufficient to pay the full costs of carrying out the provisions of this section, the full costs of processing visas, and a significant portion of the costs

of Federal enforcement of immigration violations. Amounts deposited into the fee account shall be available, without further appropriation, to the Attorney General or the Secretary of the Department of Homeland Security to carry out the provisions of this section. All deposits into the fee account shall remain available until expended.'

(b) GAO AUDIT- Not later than 3 years after the date of the enactment of this Act, the General Accounting Office shall conduct an audit of compensation to States and political subdivisions of States for the incarceration of illegal aliens under section 240D(a) of the Immigration and Nationality Act (as amended by subsection (a)).

SEC. 108. ESTABLISHMENT OF PROCESS FOR CLAIMS BY STATES AND LOCALITIES AGAINST THE FEDERAL GOVERNMENT FOR FAILURE TO FACILITATE THE COOPERATION OF STATES AND LOCALITIES IN THE ENFORCEMENT OF THE IMMIGRATION LAWS OF THE UNITED STATES.

(a) CLAIMS BY STATES AND LOCALITIES AGAINST THE FEDERAL GOVERNMENT FOR FAILURE TO COOPERATE IN THE ENFORCEMENT OF THE IMMIGRATION LAWS-

(1) **IN GENERAL-** A State or a political subdivision of a State adversely affected may file a claim against any Federal agency for failure to cooperate with a State or a political subdivision of a State to enforce or comply in a reasonable manner with certain enforcement provisions of the immigration laws of the United States relating to the identification, apprehension, arrest, detention, and removal of aliens who are in violation of the immigration laws.

(2) **ADJUDICATION OF CLAIMS-** Claims under this section shall be filed only with the administrative law judge established under subsection (b). Claims under this section shall be adjudicated only by such judge. The validity and appropriateness of the decision of the judge may be appealed only to the Attorney General or the Secretary of the Department of Homeland Security and shall not be subject to judicial review.

(3) **ADMINISTRATIVE PROCEDURE ACT-** Except as otherwise provided, the Administrative Procedure Act shall apply to the adjudication of claims under this section.

(4) FINES-

(A) The appropriate Federal agency shall be fined \$1,000 for each instance of nonenforcement determined to be valid in a decision by the judge on a claim.

(B) In addition to fines under subparagraph (A), if in a decision on any claim the judge determines that a Federal agency has entered into a pattern or practice of nonenforcement of, or noncompliance with a State or local law enforcement agency's enforcement of, the immigration laws, that Federal Agency shall be fined \$10,000.

(5) PAYMENT OF FINES-

(A) Notwithstanding any other provision of law, only amounts deposited into the Immigration Examination Fee Account (under section 286(m) of the Immigration and Nationality Act) shall be available to the Attorney General or the Secretary of the Department of Homeland Security for the payment of fines levied against a Federal agency under this section.

(B) Fines levied against a Federal agency pursuant to this section shall be paid to the State or political subdivision of the State that brought the claim for noncooperation not later than 90 days after the entry of a final judgment.

(C) The Attorney General or the Secretary of the Department of Homeland Security is authorized to increase the amount of any of



the adjudication fees designated by the Attorney General or the Secretary of the Department of Homeland Security under section 286(m) of the Immigration and Nationality Act in order to ensure that funds sufficient for the payment of fines pursuant to this section are available. Notwithstanding any other provision of law, amounts in the Immigration Examination Fee Account shall be available without further appropriation or fiscal year limitation.

(b) **ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE FOR FEDERAL, STATE, AND LOCAL IMMIGRATION LAW ENFORCEMENT COOPERATION-** There is established within the Department of Justice the position of Administrative Law Judge for Federal, State, and Local Immigration Law Enforcement Cooperation (hereafter in this section referred to as the 'judge').

SEC. 109. TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.

(a) **ESTABLISHMENT OF TRAINING MANUAL-** Not later than 180 days after the date of the enactment of this Act, the Attorney General or the Secretary of the Department of Homeland Security shall establish a training

manual for law enforcement personnel of a State or a political subdivision of a State that has in effect a statute under section 102 or a policy under section 105 to train such personnel in the investigation, identification, apprehension, arrest, detention, and removal of aliens in the United States (including the transportation of such aliens across State lines to detention centers and identification of fraudulent documents).

(b) **ADMINISTRATION-**

- (1) The Attorney General or Secretary may charge a fee for training under subsection (a) which is not more than half the actual costs of such training.
- (2) The training of State and local law enforcement personnel under this section shall not displace or otherwise adversely affect the training of Federal personnel.

(c) **TRAINING FLEXIBILITY-** The Department of Justice or the Department of Homeland Security shall make such training of State and local law enforcement officers available through as many means as possible, including but not limited to residential training at a Federal facility, on-site training held at a State or local police agency or facility, online training courses by computer, teleconferencing, and videotape or DVD of a training course or courses.

(d) **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 to enforce Federal immigration laws in the normal course of carrying out their law enforcement duties.

SEC. 110. IMMUNITY.

(a) **PERSONAL IMMUNITY**- Notwithstanding any other provision of law, a law enforcement officer of a Federal, State, or local law enforcement agency shall be immune from personal liability arising out of the enforcement of any immigration law if the officer is acting within the scope of his or her official duties.

(b) **AGENCY IMMUNITY**- Notwithstanding any other provision of law, a State or local law enforcement agency 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 a law enforcement officer of that agency committed a violation of Federal, State, or local criminal law in the course of enforcing such immigration law.

SEC. 111. PLACES OF DETENTION FOR ALIENS ARRESTED PENDING EXAMINATION AND DECISION ON REMOVAL.

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 Attorney General or Secretary of the Department of Homeland Security shall ensure that an alien arrested under this Act shall be detained, pending the alien's being taken for the examination described in such section, in a State or local prison, jail, detention center, or other comparable facility notwithstanding any other provision of law or regulation, such facility is adequate for detention, 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.'

SEC. 112. INSTITUTIONAL REMOVAL PROGRAM.

(a) **CONTINUATION AND EXPANSION**- The Department of Justice and the Department of Homeland Security shall continue to operate and implement the program known as the Institutional Removal Program (IRP) which identifies removable criminal aliens in Federal and State correctional facilities, ensures such aliens are not released into the community, and removes such aliens from the United States after the completion of their sentences. The Institutional Removal Program shall be extended to all States. Any State that receives Federal funds for the incarceration of criminal aliens shall cooperate with Federal Institutional Removal Program officials, expeditiously and systematically identify criminal aliens in its prison and jail populations, and promptly convey such information to Federal IRP authorities as a condition for receiving such funds.

(b) **AUTHORIZATION OF APPROPRIATIONS**- There is authorized to be appropriated to carry out the Institutional Removal Program \$10,000,000 for the fiscal year 2004, \$20,000,000 for the fiscal year 2005, \$30,000,000 for the fiscal

year 2006, \$40,000,000 for the fiscal year 2007, \$50,000,000 for the fiscal year 2008, \$60,000,000 for the fiscal year 2009, \$70,000,000 for the fiscal year 2010, and \$80,000,000 for the fiscal year 2011.

(c) **TECHNOLOGY USAGE-** Technology such as videoconferencing shall be used to the maximum extent possible in order to make IRP available in remote locations. Mobile access to Federal databases of aliens, such as IDENT, 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 locations.

SEC. 113. AUTHORIZATIONS OF APPROPRIATIONS.

(a) State Criminal Alien Assistance Program (SCAAP)- Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) is amended by inserting before the period at the end `and \$1,000,000,000 for each of the subsequent fiscal years'.

(b) **AUTHORIZATION OF APPROPRIATIONS FOR THE DETENTION AND REMOVAL OF ALIENS NOT LAWFULLY PRESENT-** There are authorized to be appropriated for each fiscal year \$500,000,000 for the detention and removal of aliens not lawfully present in the United States under the Immigration and Nationality Act.

(c) **IN GENERAL-** There are authorized to be appropriated such sums as may be necessary to carry out all of title I.

END

03-R-1972

(Do Not Write Above This Line)

A RESOLUTION

BY: COUNCILMEMBER ESTELIA A. MORGAN

A RESOLUTION BY THE ATLANTA CITY COUNCIL EXPRESSING ITS OPPOSITION TO PROPOSED HR 2671 CLEAR LAW ENFORCEMENT FOR CRIMINAL ALIEN REMOVAL ACT OF 2003 (CLEAR).

ADOPTED BY

NOV 17 2003

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 11/3/03

Referred To: Public Safety

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

Committee

Date

Chair

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Consent
- V Vote
- RC Vote

CERTIFIED

CERTIFIED
NOV 17 2003

Estelia A. Morgan
COUNCIL CLERK

CERTIFIED
NOV 17 2003

Estelia A. Morgan
MUNICIPAL CLERK

APPROVED

NOV 24 2003
Quilley Strickland
MAYOR