

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.

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