

117TH CONGRESS  
1ST SESSION

# H. R. 506

To provide for the effective use of immigration detainers to enhance public safety.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2021

Mr. BISHOP of North Carolina (for himself, Mr. BUDD, Mr. HUDSON, Mrs. HINSON, Mr. GAETZ, Mr. DUNCAN, Mr. GOOD of Virginia, Mr. CAWTHORN, Mr. CARTER of Georgia, Ms. HERRELL, Mr. GOODEN of Texas, Mr. BABIN, and Mr. MCCLINTOCK) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide for the effective use of immigration detainers to enhance public safety.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Immigration Detainer Enforcement Act of 2021”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Sense of Congress.
- Sec. 3. Purpose.

Sec. 4. Immigration detainer authorities of the Department of Homeland Security.

Sec. 5. Effective coordination with State, tribal, and local law enforcement agencies.

Sec. 6. Compensating States for detaining criminal aliens.

Sec. 7. Priority for distributing Federal funding and property to State and local law enforcement.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

3 (1) the removal of criminal aliens promotes  
4 public safety, national security, border security, and  
5 the integrity of the immigration system;

6 (2) detainers have proven to be a useful law en-  
7 forcement tool that serve to expedite and improve  
8 the efficiency of the removal process by enabling the  
9 Department of Homeland Security to assume cus-  
10 tody in a timely manner of aliens in the custody of  
11 Federal, State, tribal, or local law enforcement agen-  
12 cies; and

13 (3) several States and localities have limited  
14 their cooperation with immigration detainers issued  
15 by the Department of Homeland Security and lim-  
16 ited the Department of Homeland Security's access  
17 to information regarding the release of criminal  
18 aliens in their custody, which has resulted in the re-  
19 lease of dangerous criminal aliens into local commu-  
20 nities.

21 **SEC. 3. PURPOSE.**

22 The purposes of this Act are—

1           (1) to limit recidivist criminal activity through  
2 the removal of criminal aliens released from Federal,  
3 State, tribal, or local custody;

4           (2) to facilitate cooperation between Federal,  
5 State, tribal, and local law enforcement agencies  
6 with regard to immigration enforcement and infor-  
7 mation sharing; and

8           (3) to limit the burden on Federal, State, tribal,  
9 and local law enforcement agencies that cooperate  
10 with the Department of Homeland Security in its  
11 prioritized immigration enforcement.

12 **SEC. 4. IMMIGRATION DETAINER AUTHORITIES OF THE DE-**  
13 **PARTMENT OF HOMELAND SECURITY.**

14       Section 287 of the Immigration and Nationality Act  
15 (8 U.S.C. 1357) is amended—

16           (1) in subsection (a)(2), by striking “and is  
17 likely to escape before a warrant can be obtained for  
18 his arrest”; and

19           (2) by amending subsection (d) to read as fol-  
20 lows:

21       “(d) **DETAINER OF CRIMINAL ALIENS.**—

22           “(1) **IN GENERAL.**—If an individual is arrested  
23 by a Federal, State, tribal, or local law enforcement  
24 official for a violation of any criminal law, the Sec-  
25 retary of Homeland Security (or his or her designee)

1       may issue a detainer to the arresting agency if there  
2       is reason to believe the individual is an alien who  
3       may be removable from the United States. Notwith-  
4       standing any other provision of law, no court shall  
5       have jurisdiction to review the discretionary decision  
6       or action by the Secretary of Homeland Security (or  
7       his or her designee) to issue a detainer under this  
8       paragraph.

9               “(2) TRANSFER OF CUSTODY.—Upon the  
10       issuance of a detainer by the Secretary of Homeland  
11       Security (or his or her designee) with respect to an  
12       alien described in paragraph (1), the arresting Fed-  
13       eral, State, tribal, or local law enforcement agency  
14       is authorized to maintain custody of the alien for a  
15       period not to exceed 48 hours in order to transfer  
16       custody of the alien to the Department of Homeland  
17       Security.

18               “(3) INDEMNIFICATION.—

19               “(A) IN GENERAL.—Under such regula-  
20       tions as the Secretary of Homeland Security  
21       shall prescribe, the Secretary (or his or her des-  
22       ignee) may enter into agreements with State,  
23       tribal, and local law enforcement agencies to in-  
24       demnify such agencies against claims (including  
25       reasonable expenses of litigation or settlement)

1 by third parties for wrongful detention resulting  
2 from detainers issued without reason to believe  
3 that the individual is an alien who may be re-  
4 movable from the United States.

5 “(B) LIMITATION.—Indemnification under  
6 subparagraph (A) does not extend to claims re-  
7 lating to the negligence or willful misconduct of  
8 a Federal, State, tribal, or local law enforce-  
9 ment agency or the conditions of detention in  
10 the facility used by such agency to detain the  
11 individual subject to the detainer.

12 “(C) ADDITIONAL CONDITIONS.—Each in-  
13 demnification agreement entered into pursuant  
14 to subparagraph (A) shall—

15 “(i) require the State, tribal, or local  
16 law enforcement agency to notify the  
17 United States Government of any suit or  
18 claim against such agency for wrongful de-  
19 tention;

20 “(ii) authorize the United States Gov-  
21 ernment, at its elections, to control or as-  
22 sist in the defense of such suit or claim;  
23 and

24 “(iii) limit the amount of indemnifica-  
25 tion to a sum certified by the Secretary (or

1 his or her designee) that is just and rea-  
2 sonable.”.

3 **SEC. 5. EFFECTIVE COORDINATION WITH STATE, TRIBAL,**  
4 **AND LOCAL LAW ENFORCEMENT AGENCIES.**

5 (a) IN GENERAL.—Section 642 of the Illegal Immi-  
6 gration Reform and Immigrant Responsibility Act of 1996  
7 (8 U.S.C. 1373) is amended to read as follows:

8 **“SEC. 642. COMMUNICATION AND COOPERATION BETWEEN**  
9 **GOVERNMENT AGENCIES AND THE DEPART-**  
10 **MENT OF HOMELAND SECURITY.**

11 “(a) IN GENERAL.—Notwithstanding any other pro-  
12 vision of Federal, State, tribal, or local law, a Federal,  
13 State, tribal, or local government entity or official may  
14 not prohibit, or restrict in any way, any government entity  
15 or official from sending to, or receiving from, the Depart-  
16 ment of Homeland Security information regarding the citi-  
17 zenship or immigration status (lawful or unlawful) of any  
18 individual.

19 “(b) ADDITIONAL AUTHORITY OF GOVERNMENT EN-  
20 TITIES.—Notwithstanding any other provision of Federal,  
21 State, tribal, or local law, no person or agency may pro-  
22 hibit, or restrict in any way, a Federal, State, tribal, or  
23 local government entity from—

24 “(1) sending information regarding the citizen-  
25 ship or immigration status (lawful or unlawful) of

1 any individual to, or requesting or receiving such in-  
2 formation from, the Department of Homeland Secu-  
3 rity;

4 “(2) exchanging citizenship or immigration sta-  
5 tus information described in paragraph (1) with any  
6 other Federal, State, tribal, or local government en-  
7 tity;

8 “(3) providing the Department of Homeland  
9 Security with access to information in Federal,  
10 State, tribal, or local government databases regard-  
11 ing individuals with respect to whom a detainer has  
12 been issued, including when such individuals will be  
13 released from criminal custody; and

14 “(4) maintaining custody of an individual pur-  
15 suant to section 287(d)(2) of the Immigration and  
16 Nationality Act (8 U.S.C. 1357(d)(2)).

17 “(c) OBLIGATION TO RESPOND TO INQUIRIES.—The  
18 Secretary of Homeland Security shall respond to an in-  
19 quiry by a Federal, State, tribal, or local government  
20 agency that seeks to verify or ascertain the citizenship or  
21 immigration status of any individual within the jurisdic-  
22 tion of the agency for any purpose authorized by law, by  
23 providing the requested verification or status informa-  
24 tion.”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
 2 for the Illegal Immigration Reform and Immigrant Re-  
 3 sponsibility Act of 1996 (division C of Public Law 104–  
 4 208; 8 U.S.C. 1101 note) is amended by amending the  
 5 item relating to 642 to read as follows:

“Sec. 642. Communication and cooperation between government agencies and  
 the Department of Homeland Security.”.

6 **SEC. 6. COMPENSATING STATES FOR DETAINING CRIMINAL**  
 7 **ALIENS.**

8 Section 241 of the Immigration and Nationality Act  
 9 (8 U.S.C. 1231(i)) is amended to read as follows:

10 “(i) INCARCERATION OR DETENTION.—

11 “(1) DEFINED TERM.—In this subsection, the  
 12 term ‘undocumented criminal alien’ means an alien  
 13 who—

14 “(A) has been convicted of a felony or of  
 15 2 or more misdemeanors; and

16 “(B)(i) entered the United States without  
 17 inspection or at any time or place other than as  
 18 designated by the Secretary of Homeland Secu-  
 19 rity;

20 “(ii) was the subject of exclusion, deporta-  
 21 tion, or removal proceedings at the time the  
 22 alien was taken into custody by the State or a  
 23 political subdivision of the State; or



1           “(iii)(I) was admitted as a nonimmigrant;  
2           and

3           “(II) at the time the alien was taken into  
4           custody by the State or a political subdivision  
5           of the State—

6                   “(aa) failed to maintain the non-  
7                   immigrant status in which the alien was  
8                   admitted or to which it was changed under  
9                   section 248; or

10                   “(bb) failed to comply with the condi-  
11                   tions of any such status.

12           “(2) IN GENERAL.—If the governor of a State  
13           (or, if appropriate, the chief executive officer of a  
14           political subdivision of the State), exercising author-  
15           ity with respect to the incarceration or detention of  
16           an undocumented criminal alien, submits a written  
17           request to the Attorney General, the Attorney Gen-  
18           eral may—

19                   “(A) enter into a contractual arrangement  
20                   providing for compensation to the State or a  
21                   political subdivision of the State, as may be ap-  
22                   propriate, with respect to the incarceration or  
23                   detention of the undocumented criminal alien;  
24                   or

1           “(B) take the undocumented criminal alien  
2           into the custody of the Federal Government and  
3           incarcerate or detain the alien.

4           “(3) DETENTION SECURITY.—In carrying out  
5           paragraph (2), the Attorney General shall—

6           “(A) give priority to the Federal incarcer-  
7           ation of undocumented criminal aliens who have  
8           committed aggravated felonies; and

9           “(B) ensure that undocumented criminal  
10          aliens incarcerated or detained in Federal facili-  
11          ties pursuant to this subsection are held in fa-  
12          cilities that provide a level of security appro-  
13          priate to the crimes for which they were  
14          charged or convicted.

15          “(4) AMOUNT OF COMPENSATION.—

16          “(A) IN GENERAL.—Compensation pro-  
17          vided for each day an undocumented criminal  
18          alien is detained by a State or a political sub-  
19          division of a State pursuant to a contract under  
20          paragraph (2)(A) shall be equal to the average  
21          daily cost of incarceration or detention of a  
22          prisoner in the relevant State, as determined by  
23          the Attorney General.

24          “(B) CERTIFICATION REQUIREMENT.—

1                   “(i) IN GENERAL.—The Secretary of  
2 Homeland Security shall—

3                   “(I) promulgate regulations es-  
4 tablishing detainer compliance cri-  
5 teria; and

6                   “(II) periodically submit a certifi-  
7 cation to the Attorney General that  
8 identifies which States and political  
9 subdivisions of a State have not com-  
10 plied with detainer requests received  
11 from the Department of Homeland  
12 Security.

13                   “(ii) FUNDING LIMITATION.—Funds  
14 may only be provided to States and polit-  
15 ical subdivisions of States under this sub-  
16 section that—

17                   “(I) are not identified in a cer-  
18 tification described in clause (i)(II);  
19 and

20                   “(II) are cooperating with the  
21 Secretary with respect to each de-  
22 tainer lodged against an individual in  
23 the custody of the State or political  
24 subdivision of the State in accordance  
25 with section 287(d) and the regula-

1                   tions promulgated pursuant to clause  
2                   (i)(I).

3                   “(C) EFFECT OF NONCOMPLIANCE.—Any  
4                   State or political subdivision of a State that  
5                   fails to substantially comply with detainers  
6                   issued by the Department of Homeland Secu-  
7                   rity shall be ineligible for any funding under  
8                   this subsection during the fiscal year in which  
9                   such failure occurs.

10                  “(5) AUTHORIZATION OF APPROPRIATIONS.—

11                  “(A) IN GENERAL.—There are authorized  
12                  to be appropriated to carry out this sub-  
13                  section—

14                         “(i) \$750,000,000 for fiscal year  
15                         2020;

16                         “(ii) \$850,000,000 for fiscal year  
17                         2021; and

18                         “(iii) \$950,000,000 for each of the  
19                         fiscal years 2022 through 2026.

20                  “(B) LIMITATION.—Amounts appropriated  
21                  pursuant to subparagraph (A) that are distrib-  
22                  uted to a State or a political subdivision of a  
23                  State may only be used for correctional pur-  
24                  poses.”.

1 **SEC. 7. PRIORITY FOR DISTRIBUTING FEDERAL FUNDING**  
2 **AND PROPERTY TO STATE AND LOCAL LAW**  
3 **ENFORCEMENT.**

4 (a) ANNUAL CERTIFICATION.—The Secretary of  
5 Homeland Security shall annually submit a written certifi-  
6 cation to the Attorney General that identifies the States  
7 and units of local government that are not complying with  
8 detainers issued pursuant to section 287(d) of the Immi-  
9 gration and Nationality Act (8 U.S.C. 1357(d)).

10 (b) PRIORITY FOR COMPLIANT JURISDICTIONS.—The  
11 Attorney General shall give priority to the jurisdictions  
12 that are not listed in the certification described in sub-  
13 section (a) when selecting recipients of—

14 (1) funding from the Edward Byrne Memorial  
15 Justice Assistance Grant Program authorized under  
16 title I of the Omnibus Crime Control and Safe  
17 Streets Act of 1968 (34 U.S.C. 10151 et seq.);

18 (2) excess Federal equipment purchased pursu-  
19 ant to section 281 of title 10, United States Code  
20 (commonly referred to as the 1122 Program); and

21 (3) excess Federal property transferred pursu-  
22 ant to section 2576a of title 10, United States Code  
23 (commonly referred to as the 1033 Program).

○