

HB 2946

PROTECT THE INTEGRITY OF ARKANSAS LOCAL LAW ENFORCEMENT

**Arkansas can't afford to divert State and local police
resources into federal immigration law enforcement**

We need to concentrate scarce Arkansas funds on violence and other crimes that immediately affect our communities and leave the cost of enforcement of immigration violation to the federal government

**FISCAL IMPACT ON THE STATE OF ARKANSAS AS THE
RESULT OF LOCAL LAW ENFORCEMENT OF CIVIL
IMMIGRATION LAW.**

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FISCAL IMPACT ON THE STATE OF ARKANSAS AS THE RESULT OF LOCAL LAW ENFORCEMENT OF CIVIL IMMIGRATION LAW.

HB 2946 (introduced by Representative Jay Bradford) would limit State and local law enforcement agencies from using their resources to apprehend those who only violation of the law is that they are present in the United States in violation of civil federal immigration laws. Please note that **it does not affect** the State and local police from enforcing criminal immigration violations.

There is a difference between civil and criminal immigration law and the distinction between the enforcement of the civil provisions of the INA and the enforcement of its criminal provisions. This difference is critical because state and local officials are only authorized to enforce the criminal provisions of the INA. While illegal entry is a criminal offense enforceable by state and local officials, **illegal presence** in the U.S. is a civil offense enforceable only by the INS.

Referring to the position taken by the DOJ, Office of Legal Counsel Gonzales stated that local police have the "inherent authority" to arrest "**only** [those] high-risk aliens who fit a terrorist profile" **and** who are "in violation of immigration laws." Gonzales suggested that he interpreted the OLC's conclusion to mean that state and local police have the "inherent authority" to arrest an alien when they have **both** violated immigration law and have a criminal record-one that fits a terrorist profile-on the NCIC database (This position seems to reflect Congress's intent in 8 U.S.C. § 1252c).

TABLE SUMMARY OF COSTS

Costs	Description	Amount based on 30 days of incarceration	Amount based on 60 days of incarceration	See Doc. page
Direct	Training 21 officers	254,625	254,625	4
	Cost of incarceration	4,258,800	8,517,600	4
	Cost of transporting prisoners	Not available	Not available	
	Cost of Foster parenting	1,350,000	2,025,000	5
	Community and local police education campaign	2,000,000	2,000,000	5
Indirect costs	Litigation			5
	Less safety			6
	Undermining efforts of terrorism			7
	Undermining Women against violence act			7
	Driving prices and wages up			8
Cost/ benefit	Extreme cost no benefit			8
	Total Direct Cost to Arkansas	7,863,425	12,542,600	

I. THE COST OF ENFORCING CIVIL IMMIGRATION LAWS WILL FALL ON ARKANSAS

Moneys are not available to reimburse the state for additional incarceration of undocumented aliens, enforcement or training

First, Section 241 of the INA created the SCAAP, which funds reimbursements to the states for the cost of incarceration of undocumented aliens. These funds cut from \$564 million in 2002 to \$300 million in 2004 does not allow increase funding from the federal government to house undocumented aliens in State jails.

Second, The CLEAR ACT was **defeated** in congress and this act was the vehicle from which the states would be assured federal moneys (one billion dollars of federal funding each fiscal year to local authorities) to enforce immigration law.

Third, the MOU's with the DHS **does not provide funding** for training.

Although the INS and ICE provided training and materials, both states were responsible for all costs associated with training and the carrying of these designated functions.

II. DIRECT COSTS

1. Training

If the State or Arkansas will train similarly to AL, we can extrapolate the cost of salaries (salary plus benefits), housing, meals, transportation (airfare) of about 21 police officers for about six weeks. Note that immigration laws change constantly thus the cost of raining would not be a "one shot deal," but a continuous cost to the State. Initial training for 21 officers is approximately **\$254,625.00**

2. Cost of incarceration of approximately 3,000 undocumented individuals who drive trough and live in Arkansas.

The assumption of approximately 3,000 inmates can be extremely conservative, as the opening of the Mexican Consulate in Little Rock will significantly increase the number of undocumented individuals traveling from Tennessee, Missouri, and Oklahoma who seek the service of the Mexican Government.

Moreover, the situation in Arkansas is different that most states. Immigration offenders are kept in state jails longer because of the fact that there is no immigration court in Arkansas, to expedite the process of finding whether the undocumented person have a right to benefits or is a deportable alien. The cost of housing inmates for 30 days could be as high as **\$4,258,800.00/year**

To ad to the cost of housing is the cost of transportation. Arkansas will also assume the cost of transportation from Arkansas to federal prisons. No calculations of that cost were available.

3. Immigrants have large families and the children of detainees will be subject to stay in foster homes until their parents are deported.

The Arkansas Health Department has figured the average size of Hispanic families to be over four children. In the event of both parent's arrest the children (often US Citizens) would go to foster care until the parents re deported (children will be sent back with their parents). The cost to Arkansas to house sons or daughters of undocumented immigrants could be as high as **\$1,350.000.00/year**

4. Community education

The Florida Police Department was concerned about how immigrant communities would react to this program, so they went to these communities personally and through local media explained the function of the changes in police authority. Further, the Florida Police Department gives credit to the success of their program due to **“excessive amount of time spent in immigrant communities prior to its implementation.”** However, the cost of education will not be limited to educating immigrant communities. The local police departments must be educated to the scope of their jurisdiction. An extremely conservative figure of cost for a media and State Police campaign to educate immigrant communities and local police departments is **\$2,000.000.00**

III. INDIRECT COSTS

Although is difficult to allocate numbers to indirect costs, nevertheless they are important items to be considered.

1. Litigation

Civil Immigration arrests create liability for Police Departments, in addition to fostering unsafe communities, participation in immigration enforcement leaves local police departments vulnerable to the high costs of litigation. As local police may make arrests on the basis of ethnicity, without probable cause. Consequently, Arkansas will have the risk of increased litigation. The areas of litigation most commonly fall in to:

1. Officers might not have a probable cause for arresting someone for an immigration offense
2. Officers might be tempted to manufacture criminal probable cause after the fact to assert jurisdiction
3. Local police although trained, might resort to racial profiling of Hispanics and other visible minorities which might include U.S. Citizens and legal residents, and stop persons on the basis of race and not immigration status.
4. The way the laws are now there is non-uniform enforcement, which leads to confusion. While the State Police could enforce immigration laws, their enforcement would be different from the enforcement by local police.
5. Violation of equal protection clause
6. Violations of international treaties
7. The question whether Police might arrest the undocumented alien and not the criminal activities of employers who hire undocumented workers

Arkansas has history of racial profiling, thus far there been two mayor cases litigated in Arkansas, see **Lopez v. City of Rogers**, Civil Action No. 01-5061 (W.D.Ark. 2002)), and Monticello, see **Nuñez v. Sanders**, No PB-C-82-228 (E.D. ARK 19830). Part of the settlements from this two cases included agreements with police departments not to enforce civil immigration law. Undermining local police accords will further expose the State to costly litigation.

On good example of local police extending their jurisdiction, happen in Chandler, Arizona. When police conducted a city-wide immigration raid (in conjunction with INS officers) in 1997 and arrested 432 Hispanics, the Chandler police unconstitutionally stopped people based on their Hispanic appearance and use of the Spanish language; these infringements cost the city \$400,000 in settlements as many American Citizens were “swept up” in the operation. Thus, the Chandler, Arizona incident serves as a reminder to all police departments that when local police act outside of their jurisdiction.

Another recent example of police confusion happened in California. This past May in Riverside, California, local police officers demanded to see documents of all Latinos working in an avocado grove, harassing citizens, legal residents and undocumented immigrants by threatening to turn them over to the Border Patrol. The Riverside Sheriff told the press that his department policy was that his officers should not be enforcing civil immigration laws, but the officers were confused.

When state and local police think they can enforce federal civil immigration laws, racial profiling of those who “**look like**” immigrants is highly foreseeable. Local police cannot properly discern between who is an asylum seeker, who has been the victim of human trafficking and is entitled to the new T-visa. Nor can they know who is out of status because their papers were mis-processed or lost by the former INS or the new bureau, (which is notorious for the inaccuracy of its records), who has valid immigration appeal rights, and who is without documentation.

2. Immigrant/Minority Communities Would Be Less Safe.

Latinos know from tough experience that when local police enforce federal **civil** immigration laws, neighborhoods become less safe. Crime victims are further victimized by being unable to safely report the crimes against them. Witnesses of crimes committed against immigrants and citizens are afraid to come forward for fear they will be deported. Some examples of these situations are:

- Mexican national Petra Martinez was murdered along with her two-year-old son, Urel Martin, on July 19, 2003, in their home in a heavily-immigrant neighborhood in Clearwater, Florida. Local police believe that some members of the community have information, but are afraid to come forward for fear of immigration repercussions.
- “Jorge” is a sixteen-year-old boy who went to the police after escaping a kidnapping situation, in which he was held captive and tortured by a gang of boys for days. Instead of helping Jorge, the police turned him over to immigration and although he was a crime victim with no criminal record himself, he was sent to a maximum-security juvenile facility in Spokane, Washington.

State and local enforcement of immigration law causes immigrant families to fear contact with police even when they are victims of a crime. The mission of police is to prevent and solve crimes. To date, at least 58 localities in 21 states, including three state legislatures, have promulgated policies limiting the authority of their employees to enforce immigration law. All of these cities, municipalities, and states have made the argument that **a community's safety and best interests are protected** when immigrants do not have to fear that every contact with the police and other authorities will invite questions about their immigration status

3. Immigration enforcement by local police not only undermines community safety, it also harms the national interest in preventing terrorism.

The federal government depends on local police as the first defense against terrorism; however, asking them to exhaust their resources investigating an immigrant's status, rather than his criminal conduct, police departments risk overlooking potential terrorism threats.

In the wake of the events of September 11, Attorney General Ashcroft announced the expansion of the so-called "**responsible cooperator**" program. It allows the government to offer S-visas to individuals who cooperate in terrorist investigations. S-visa come with the opportunity to stay in the United States for a period of time, in exchange for their assistance in the investigation and prosecution of alleged terrorists. The efforts of these programs will be nullified if local police enforces civil immigration as immigrant communities will be reluctant to come forward and report crimes and threats.

Last, the use of state and local law enforcement officers in the enforcement of federal immigration law will undermine the provisions for immigrant victims in the **Violence Against Women Act of 1994**. Battered immigrant women and children often face special problems when they try to escape abuse. The isolation that battered immigrants already experience due to language difficulties or cultural differences is often turned to cruel advantage by their abusers, who feed them misinformation about the legal system and their rights. If they call the police, these victims fear that they or their children will be turned over to the Department of Homeland Security (DHS) and deported. Abusers of immigrant victims are increasingly reporting their victims to the DHS to avoid criminal prosecution or in retaliation for the victim contacting law enforcement.

IV. EXTERNALITIES

1. Hidden cost of accountability

The New York Supreme Court expressed concerns of accountability in a recently decided case. Local officers who are enforcing the immigration laws would withstand the worst of public disapproval, while the federal officials who created the laws would be insulated as the arrest came from local police. **Moreover, local authorities would be required to absorb the cost of immigration enforcement, while federal official will claim the credit cost free.**

2. The Mexican Consulate

The state of Arkansas have been supportive and encouraged the creation of the Mexican Consulate. This Consulate is believed to promote economic development in Arkansas as it will bring people to the State who will “spend” dollars benefiting local merchants. The Little Rock Consulate will service Mexicans in neighboring States, OK, LA, MO and TN (there are 300,000 Mexicans in Memphis alone). These visitors, (**many undocumented**) will travel the highways to receive services from their country. The new traffic alone will increase the number of undocumented Mexicans and possible arrests, increasing the above projected cost of detention and incarceration.

Further, in August of 2003, the Mexican Government protested the arrest of a Mexican family while they were walking to the Mexican Consulate in San Diego. If local authorities decided to enforce civil immigration laws to people seeking the assistance of their government, or close to this political sensitive areas, Arkansas will suffer **political or legal consequences**.

3. Creating a false sense of security

While the individuals targeted have violated immigration laws and disobeyed court orders, **most of them are not likely engaged in other criminal, let alone terrorist, activities**. Even though the arrest and deportation of these absconders are praised as successful law enforcement activities that decrease the threat to public safety, it is not clear to what extent this is the case. As the 1993 World Trade Center and the Oklahoma City bombings indicated, however, U.S. citizenship--or that of other Western, democratic nations--does not magically protect against extremist thoughts and actions. The only individuals currently under indictment for activities connected to September 11 or Al Qaeda are citizens of France, Great Britain, and the United States and they **all have current valid status** under INS. The current efforts at deporting "dangerous classes" of residents are, therefore, misleading and may create a false impression of security.

V. COST BENEFIT ANALYSIS

A cost-benefit analysis counsels that incapacitation is only cost-effective if the net benefit of removing the offender from Arkansas is greater than the net loss. If the offender has contributed to society, his/her deportation is not cost effective.

The potential cost to the state of Arkansas, does not make sense when the economy of Arkansas will suffer. Immigrants contribute to fill jobs in labor scarce regions, and they fill the types of jobs Americans often shun. Meatpacking, poultry, and agriculture draw thousands of immigrants to Arkansas. By having workers when they are needed, Arkansas farmers, hotels, construction, and restaurant business **keep wage and price reasonable**. Consequently, the cost of removal of someone who is contributing to the economy of Arkansas will cost the State not only the money spent on training officers and detention, but in revenues for employers, taxes paid and the rise in price of consumer goods.

Finally and more importantly, careful review of the facts and the law shows that the crimes mentioned by supporters of the State Police powers of immigration enforcement **could have been solved through existing laws**. Arkansas should be spending their moneys on identifying how existing funds should be used to ensure protection against the real criminals. At the same, immigrant communities must also have safe access to police protection, including the ability to report crimes if public safety and national security are truly a priority

VI. SOURCES

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8 U.S.C.A. § 1357

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Police Opposition to Local Enforcement of Immigration Law. Web site Boise Patriots, list all the police departments who oppose local enforcement of immigration laws.

Arkansas Department of Corrections

Arkansas Department of Health and Human Services

