

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6095

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2006

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To affirm the inherent authority of State and local law enforcement to assist in the enforcement of immigration laws, to provide for effective prosecution of alien smugglers, and to reform immigration litigation procedures.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Immigration Law En-  
3 forcement Act of 2006”.

4 **TITLE I—STATE AND LOCAL LAW**  
5 **ENFORCEMENT COOPERA-**  
6 **TION IN THE ENFORCEMENT**  
7 **OF IMMIGRATION LAW ACT**

8 **SEC. 101. FEDERAL AFFIRMATION OF ASSISTANCE IN IMMI-**  
9 **GRATION LAW ENFORCEMENT BY STATES**  
10 **AND POLITICAL SUBDIVISIONS OF STATES.**

11 (a) **IN GENERAL.**—Notwithstanding any other provi-  
12 sion of law and reaffirming the existing inherent authority  
13 of States, law enforcement personnel of a State or a polit-  
14 ical subdivision of a State have the inherent authority of  
15 a sovereign entity to investigate, identify, apprehend, ar-  
16 rest, detain, or transfer to Federal custody aliens in the  
17 United States (including the transportation of such aliens  
18 across State lines to detention centers), for the purposes  
19 of assisting in the enforcement of the immigration laws  
20 of the United States in the course of carrying out routine  
21 duties. This State authority has never been displaced or  
22 preempted by Congress.

23 (b) **CONSTRUCTION.**—Nothing in this section may be  
24 construed to require law enforcement personnel of a State  
25 or political subdivision of a State to—

1 (1) report the identity of a victim of, or a wit-  
2 ness to, a criminal offense to the Secretary of Home-  
3 land Security for immigration enforcement purposes;  
4 or

5 (2) arrest such victim or witness for a violation  
6 of the immigration laws of the United States.

7 **TITLE II—ALIEN SMUGGLER**  
8 **PROSECUTION ACT**

9 **SEC. 201. EFFECTIVE PROSECUTION OF ALIEN SMUG-**  
10 **GLERS.**

11 (a) FINDINGS.—The Congress finds as follows:

12 (1) Recent experience shows that alien smug-  
13 gling is flourishing, is increasingly violent, and is  
14 highly profitable.

15 (2) Alien smuggling operations also present ter-  
16 rorist and criminal organizations with opportunities  
17 for smuggling their members into the United States  
18 practically at will.

19 (3) Alien smuggling is a lucrative business.  
20 Each year, criminal organizations that smuggle or  
21 traffic in persons are estimated to generate  
22 \$9,500,000,000 in revenue worldwide.

23 (4) Alien smuggling frequently involves dan-  
24 gerous and inhumane conditions for smuggled aliens.  
25 Migrants are frequently abused or exploited, both

1 during their journey and upon reaching the United  
2 States. Consequently, aliens smuggled into the  
3 United States are at significant risk of physical in-  
4 jury, abuse, and death.

5 (5) Notwithstanding that alien smuggling poses  
6 a risk to the United States as a whole, uniform  
7 guidelines for the prosecution of smuggling offenses  
8 are not employed by the various United States attor-  
9 neys. Understanding that border-area United States  
10 attorneys face an overwhelming workload, a lack of  
11 sufficient prosecutions by certain United States at-  
12 torneys has encouraged additional smuggling, and  
13 demoralized Border Patrol officers charged with en-  
14 forcing our anti-smuggling laws.

15 (b) SENSE OF CONGRESS.—It is the sense of the  
16 Congress that the Attorney General should adopt, not  
17 later than 3 months after the date of the enactment of  
18 this Act, uniform guidelines for the prosecution of smug-  
19 gling offenses to be followed by each United States attor-  
20 ney in the United States.

21 (c) ADDITIONAL PERSONNEL.—In each of the fiscal  
22 years 2008 through 2013, the Attorney General shall, sub-  
23 ject to the availability of appropriations, increase by not  
24 less than 20 the number of attorneys in the offices of  
25 United States attorneys employed to prosecute cases

1 under section 274 of the Immigration and Nationality Act  
2 (8 U.S.C. 1324), as compared to the previous fiscal year.

3 **TITLE III—ENDING CATCH AND**  
4 **RELEASE ACT OF 2006**

5 **SEC. 301. APPROPRIATE REMEDIES FOR IMMIGRATION**  
6 **LITIGATION.**

7 (a) REQUIREMENTS FOR AN ORDER GRANTING PRO-  
8 SPECTIVE RELIEF AGAINST THE GOVERNMENT.—

9 (1) IN GENERAL.—If a court determines that  
10 prospective relief should be ordered against the Gov-  
11 ernment in any civil action pertaining to the admin-  
12 istration or enforcement of the immigration laws of  
13 the United States, the court shall—

14 (A) limit the relief to the minimum nec-  
15 essary to correct the violation of law;

16 (B) adopt the least intrusive means to cor-  
17 rect the violation of law;

18 (C) minimize, to the greatest extent prac-  
19 ticable, the adverse impact on national security,  
20 border security, immigration administration and  
21 enforcement, and public safety; and

22 (D) provide for the expiration of the relief  
23 on a specific date, which is not later than the  
24 earliest date necessary for the Government to  
25 remedy the violation.

1           (2) WRITTEN EXPLANATION.—The require-  
2           ments described in paragraph (1) shall be discussed  
3           and explained in writing in the order granting pro-  
4           spective relief and must be sufficiently detailed to  
5           allow review by another court.

6           (3) EXPIRATION OF PRELIMINARY INJUNCTIVE  
7           RELIEF.—Preliminary injunctive relief shall auto-  
8           matically expire on the date that is 90 days after the  
9           date on which such relief is entered, unless the  
10          court—

11                   (A) makes the findings required under  
12                   paragraph (1) for the entry of permanent pro-  
13                   spective relief; and

14                   (B) makes the order final before expiration  
15                   of such 90-day period.

16          (4) REQUIREMENTS FOR ORDER DENYING MO-  
17          TION.—This subsection shall apply to any order de-  
18          nying the Government’s motion to vacate, modify,  
19          dissolve or otherwise terminate an order granting  
20          prospective relief in any civil action pertaining to the  
21          administration or enforcement of the immigration  
22          laws of the United States.

23          (b) PROCEDURE FOR MOTION AFFECTING ORDER  
24          GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERN-  
25          MENT.—

1           (1) IN GENERAL.—A court shall promptly rule  
2           on the Government’s motion to vacate, modify, dis-  
3           solve or otherwise terminate an order granting pro-  
4           spective relief in any civil action pertaining to the  
5           administration or enforcement of the immigration  
6           laws of the United States.

7           (2) AUTOMATIC STAYS.—

8           (A) IN GENERAL.—The Government’s mo-  
9           tion to vacate, modify, dissolve, or otherwise  
10          terminate an order granting prospective relief  
11          made in any civil action pertaining to the ad-  
12          ministration or enforcement of the immigration  
13          laws of the United States shall automatically,  
14          and without further order of the court, stay the  
15          order granting prospective relief on the date  
16          that is 15 days after the date on which such  
17          motion is filed unless the court previously has  
18          granted or denied the Government’s motion.

19          (B) DURATION OF AUTOMATIC STAY.—An  
20          automatic stay under subparagraph (A) shall  
21          continue until the court enters an order grant-  
22          ing or denying the Government’s motion.

23          (C) POSTPONEMENT.—The court, for good  
24          cause, may postpone an automatic stay under  
25          subparagraph (A) for not longer than 15 days.

1           (D) ORDERS BLOCKING AUTOMATIC  
2 STAYS.—Any order staying, suspending, delay-  
3 ing, or otherwise barring the effective date of  
4 the automatic stay described in subparagraph  
5 (A), other than an order to postpone the effec-  
6 tive date of the automatic stay for not longer  
7 than 15 days under subparagraph (C), shall  
8 be—

9           (i) treated as an order refusing to va-  
10 cate, modify, dissolve or otherwise termi-  
11 nate an injunction; and

12           (ii) immediately appealable under sec-  
13 tion 1292(a)(1) of title 28, United States  
14 Code.

15 (c) SETTLEMENTS.—

16           (1) CONSENT DECREES.—In any civil action  
17 pertaining to the administration or enforcement of  
18 the immigration laws of the United States, the court  
19 may not enter, approve, or continue a consent decree  
20 that does not comply with subsection (a).

21           (2) PRIVATE SETTLEMENT AGREEMENTS.—  
22 Nothing in this section shall preclude parties from  
23 entering into a private settlement agreement that  
24 does not comply with subsection (a) if the terms of  
25 that agreement are not subject to court enforcement

1 other than reinstatement of the civil proceedings  
2 that the agreement settled.

3 (d) EXPEDITED PROCEEDINGS.—It shall be the duty  
4 of every court to advance on the docket and to expedite  
5 the disposition of any civil action or motion considered  
6 under this section.

7 (e) DEFINITIONS.—In this section:

8 (1) CONSENT DECREE.—The term “consent de-  
9 cree”—

10 (A) means any relief entered by the court  
11 that is based in whole or in part on the consent  
12 or acquiescence of the parties; and

13 (B) does not include private settlements.

14 (2) GOOD CAUSE.—The term “good cause”  
15 does not include discovery or congestion of the  
16 court’s calendar.

17 (3) GOVERNMENT.—The term “Government”  
18 means the United States, any Federal department or  
19 agency, or any Federal agent or official acting with-  
20 in the scope of official duties.

21 (4) PERMANENT RELIEF.—The term “perma-  
22 nent relief” means relief issued in connection with a  
23 final decision of a court.

24 (5) PRIVATE SETTLEMENT AGREEMENT.—The  
25 term “private settlement agreement” means an

1 agreement entered into among the parties that is not  
2 subject to judicial enforcement other than the rein-  
3 statement of the civil action that the agreement set-  
4 tled.

5 (6) PROSPECTIVE RELIEF.—The term “pro-  
6 spective relief” means temporary, preliminary, or  
7 permanent relief other than compensatory monetary  
8 damages.

9 **SEC. 302. EFFECTIVE DATE.**

10 (a) IN GENERAL.—This title shall apply with respect  
11 to all orders granting prospective relief in any civil action  
12 pertaining to the administration or enforcement of the im-  
13 migration laws of the United States, whether such relief  
14 was ordered before, on, or after the date of the enactment  
15 of this Act.

16 (b) PENDING MOTIONS.—Every motion to vacate,  
17 modify, dissolve or otherwise terminate an order granting  
18 prospective relief in any such action, which motion is  
19 pending on the date of the enactment of this Act, shall  
20 be treated as if it had been filed on such date of enact-  
21 ment.

22 (c) AUTOMATIC STAY FOR PENDING MOTIONS.—

23 (1) IN GENERAL.—An automatic stay with re-  
24 spect to the prospective relief that is the subject of  
25 a motion described in subsection (b) shall take effect

1 without further order of the court on the date which  
2 is 10 days after the date of the enactment of this  
3 Act if the motion—

4 (A) was pending for 45 days as of the date  
5 of the enactment of this Act; and

6 (B) is still pending on the date which is 10  
7 days after such date of enactment.

8 (2) DURATION OF AUTOMATIC STAY.—An auto-  
9 matic stay that takes effect under paragraph (1)  
10 shall continue until the court enters an order grant-  
11 ing or denying the Government’s motion under sec-  
12 tion 301(b). There shall be no further postponement  
13 of the automatic stay with respect to any such pend-  
14 ing motion under section 301(b)(2). Any order, stay-  
15 ing, suspending, delaying or otherwise barring the  
16 effective date of this automatic stay with respect to  
17 pending motions described in subsection (b) shall be  
18 an order blocking an automatic stay subject to im-  
19 mediate appeal under section 301(b)(2)(D).

Passed the House of Representatives September 21,  
2006.

Attest:

KAREN L. HAAS,

*Clerk.*