

TO REQUIRE THE ATTORNEY GENERAL TO ESTABLISH A PROGRAM IN LOCAL PRISONS TO IDENTIFY, PRIOR TO ARRAIGNMENT, CRIMINAL ALIENS AND ALIENS WHO ARE UNLAWFULLY PRESENT IN THE UNITED STATES, AND FOR OTHER PURPOSES

OCTOBER 23, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1493]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1493) to require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. PROGRAM OF IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRAIGNMENT.**

(a) **ESTABLISHMENT OF PROGRAM.**—Not later than 6 months after the date of the enactment of this Act, and subject to such amounts as are provided in appropriations Acts, the Attorney General shall establish and implement a program to identify, from among the individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges, those individuals who are within 1 or more of the following classes of deportable aliens:

(1) Aliens unlawfully present in the United States.

(2) Aliens described in paragraph (2) or (4) of section 237(a) of the Immigration and Nationality Act (as redesignated by section 305(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(b) **DESCRIPTION OF PROGRAM.**—The program authorized by subsection (a) shall include—

(1) the detail, to each incarceration facility selected under subsection (c), of at least one employee of the Immigration and Naturalization Service who has expertise in the identification of aliens described in subsection (a); and

(2) provision of funds sufficient to provide for—

(A) the detail of such employees to each selected facility on a full-time basis, including the portions of the day or night when the greatest number of individuals are incarcerated prior to arraignment;

(B) access for such employees to records of the Service and other Federal law enforcement agencies that are necessary to identify such aliens; and

(C) in the case of an individual identified as such an alien, pre-arraignment reporting to the court regarding the Service's intention to remove the alien from the United States.

(c) **SELECTION OF FACILITIES.**—

(1) **IN GENERAL.**—The Attorney General shall select for participation in the program each incarceration facility that satisfies the following requirements:

(A) The facility is owned by the government of a local political subdivision described in clause (i) or (ii) of subparagraph (C).

(B) Such government has submitted a request for such selection to the Attorney General.

(C) The facility is located—

(i) in a county that is determined by the Attorney General to have a high concentration of aliens described in subsection (a); or

(ii) in a city, town, or other analogous local political subdivision, that is determined by the Attorney General to have a high concentration of such aliens (but only in the case of a facility that is not located in a county).

(D) The facility incarcerates or processes individuals prior to their arraignment on criminal charges.

(2) **NUMBER OF QUALIFYING SUBDIVISIONS.**—For any fiscal year, the total number of local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses shall be the following:

(A) For fiscal year 1999, not less than 10 and not more than 25.

(B) For fiscal year 2000, not less than 25 and not more than 50.

(C) For fiscal year 2001, not more than 75.

(D) For fiscal year 2002, not more than 100.

(E) For fiscal year 2003 and subsequent fiscal years, 100, or such other number of political subdivisions as may be specified in appropriations Acts.

(3) **FACILITIES IN INTERIOR STATES.**—For any fiscal year, of the local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses, not less than 20 percent shall be in States that are not contiguous to a land border.

(4) **TREATMENT OF CERTAIN FACILITIES.**—All of the incarceration facilities within the county of Orange, California, and the county of Ventura, California, that are owned by the government of a local political subdivision, and satisfy the requirements of paragraph (1)(D), shall be selected for participation in the program.

**SEC. 2. STUDY AND REPORT.**

Not later than 1 year after the date of the enactment of this Act, the Attorney General shall complete a study, and submit a report to the Congress, concerning the

logistical and technological feasibility of implementing the program under section 1 in a greater number of locations than those selected under such section through—

(1) the assignment of a single Immigration and Naturalization Service employee to more than 1 incarceration facility; and

(2) the development of a system to permit the Attorney General to conduct off-site verification, by computer or other electronic means, of the immigration status of individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges.

#### PURPOSE AND SUMMARY

H.R. 1493 would require the Attorney General to detail Immigration and Naturalization Service employees to selected local governmental jails and prisons in order to identify, prior to arraignment, deportable criminal aliens and aliens unlawfully present in the United States.

#### BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1493 proposes a program different from INS's Institutional Hearing Program ("IHP"). In the IHP, INS employees are stationed at state and federal penal institutions to identify aliens convicted of deportable crimes so that they can be placed into deportation proceedings while incarcerated and then removed from the United States upon completion of their sentences. H.R. 1493 proposes instead that individuals be identified after arrest and before arraignment (when they are typically held at local governmental institutions). While aliens later convicted of crimes would be identified if made to serve their sentences at institutions where the IHP is operating, pre-arraignment identification will identify illegal aliens and aliens previously convicted of deportable crimes even if they are never tried for or convicted of the offenses for which they have been arrested. These aliens can then be turned over to the INS for removal from the United States. Pre-arraignment interviewing also prevents aliens from using false identification, being mistakenly labeled first-time criminal offenders, and being released on that basis.

A number of successful pilot projects forms the basis for H.R. 1493. In September 1995, the Anaheim City Council directed the police department to conduct a two-month study in which all arrestees booked at the Anaheim Detention Facility were questioned concerning their citizenship status. Over 36% of those booked were suspected of being illegal aliens.<sup>1</sup> A second study was initiated after Detention Facility staff received training from the INS. The study found (for the period from January 1 to April 4, 1996) that over 31% of individuals booked were suspected of being illegal aliens.<sup>2</sup>

A pilot project was then begun in which INS personnel were actually stationed at the Anaheim Detention Facility to conduct interviews of arrestees. Begun in late April 1996 and originally scheduled to last two months, it eventually ran through July. The INS officers interviewed a total of 1,903 inmates (through May), of whom 696—37%—were identified as foreign born and 451—24%—

<sup>1</sup>See *Memorandum* from Randall Gaston, Chief of Police, City of Anaheim, to Anaheim City Manager and City Council at 2 (Dec. 13, 1995).

<sup>2</sup>See *Memorandum* from Randall Gaston, Chief of Police, City of Anaheim, to Anaheim City Manager and City Council at 1 (April 4, 1996).

were determined to be illegal aliens.<sup>3</sup> Of the 421 of this latter group against whom INS detainers were lodged, 189 were subsequently transferred to the Orange County Jail. While these individual would have been later identified by the IHP, the 232 others would have been “released to the streets” were it not for this pilot program.<sup>4</sup> Since the arrestees were interviewed prior to their first court appearance, in most cases INS could not use criminal convictions to justify deportation. Most of the illegal alien arrestees were given voluntary departure.<sup>5</sup>

Encouraged by this successful pilot, Congress required in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996<sup>6</sup> that the INS detail employees for six months to local governmental incarceration facilities in the city of Anaheim and the county of Ventura in California. The employees were to identify, from among individuals incarcerated prior to arraignment on criminal charges, those who were aliens unlawfully present in the United States. During the operation of the pilot at the Anaheim Detention Facility, the INS placed holds on about 16% of the arrestees interviewed as being suspected illegal aliens.<sup>7</sup>

H.R. 1493 would require the Attorney General to set up a program—subject to appropriations—to identify, from among the individuals incarcerated in local governmental jails and prisons prior to arraignment on criminal charges, those individuals unlawfully present in the United States or deportable on criminal or security-related grounds. The program would include the detail to selected jails and prisons of at least one INS employee with expertise in the identification of such aliens. The program would be limited to selected jails or prisons located in, and owned by, local jurisdictions having high concentrations of aliens unlawfully present in the United States or deportable on criminal or security-related grounds. The total number of jurisdictions selected to participate in the program shall begin at from 10 to 25 in fiscal year 1999, and rise to 100 by fiscal year 2003.

#### HEARINGS

The Committee’s Subcommittee on Immigration and Claims held one day of hearings on H.R. 1493 on May 13, 1997. Testimony was received from Representative Gallegly; Paul Virtue, Acting Executive Associate Commissioner for Programs, Immigration and Naturalization Service; Richard Bryce, Undersheriff, County of Ventura, California; and Randy Gaston, Chief of Police, Anaheim, California.

#### COMMITTEE CONSIDERATION

On July 24, 1997, the Subcommittee on Immigration and Claims met in open session and ordered the bill H.R. 1493, favorably reported to the full committee, with a single amendment in the na-

<sup>3</sup>See *Memorandum* from John Brechtel, Acting Officer in Charge, to Richard Rogers, INS Los Angeles District Director, at 2 (June 18, 1996).

<sup>4</sup>See *id.*

<sup>5</sup>See *id.*

<sup>6</sup>Pub. L. No. 104–208, Div. C, Title III, sec. 329, 110 Stat. 3009 (1996).

<sup>7</sup>Out of 2690 arrestees interviewed from November 1, 1996, to February 28, 1997, the INS suspected 428 of being illegal aliens. See *Memoranda* from Randall Gaston to Anaheim City Manager and City Council of Dec. 3, 1996, Jan. 3, 1997, Feb. 19, 1997, and March 7, 1997.

ture of a substitute and by a voice vote, a quorum being present. On September 9, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 1493 with amendment and by a voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

Two amendments were adopted by voice vote during consideration of H.R. 1493 by the Judiciary Committee. The first, offered by Mr. Cannon, provided that 20% of those counties, cities, towns and other local political subdivisions selected for participation in the program because of having a high concentration of aliens unlawfully present or deportable on criminal or security-related grounds must be in states that are not contiguous to a land border. The second, offered by Mr. Gallegly, provided that selected incarceration facilities must be ones that incarcerate or process individuals prior to their arraignment on criminal charges.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1493, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 10, 1997.*

Hon. HENRY J. HYDE, *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1493, a bill to require the Attorney General to establish a program in local prisons to iden-

tify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

*H.R. 1493—A bill to require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes*

#### SUMMARY

H.R. 1493 would direct the Immigration and Naturalization Service (INS) to provide immigration agents to local incarceration facilities in areas with high concentrations of illegal aliens or deportable criminal aliens. The agents would identify, from among the individuals incarcerated in such facilities, those who are deportable. The bill would require INS to establish this program in 10 to 25 local facilities in fiscal year 1999, 25 to 50 in fiscal year 2000, up to 75 in fiscal year 2001, up to 100 in fiscal year 2002, and in such number of facilities as specified in appropriation acts in fiscal years thereafter. H.R.1493 would require that each selected facility be staffed by at least one agent on a full-time basis, including the portions of the day or night when the greatest number of individuals are incarcerated.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R.1493 would result in additional discretionary spending of about \$8 million in fiscal year 1999 and about \$80 million over the 1999–2002 period. By 2002, annual costs could reach \$50 million a year if the program is operating at 100 facilities. This legislation would not affect direct spending or receipts, so pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UREA) and would impose no costs on state, local, or tribal governments.

#### ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1493 is shown in the following table.

#### SPENDING SUBJECT TO APPROPRIATION

[By fiscal year in millions of dollars]

	1997	1998	1999	2000	2001	2002
INS Baseline Spending Under Current Law						
Estimated Authorization Level <sup>a</sup> .....	1,607	1,664	1,722	1,782	1,844	1,909
Estimated Outlays .....	1,511	1,520	1,697	1,763	1,824	1,888
Proposed Changes						
Estimated Authorization Level .....	0	0	9	18	24	37
Estimated Outlays .....	0	0	8	17	23	36
INS Spending Under H.R. 1493						
Estimated Authorization Level .....	1,607	1,664	1,731	1,800	1,868	1,946

## SPENDING SUBJECT TO APPROPRIATION—Continued

[By fiscal year in millions of dollars]

	1997	1998	1999	2000	2001	2002
Estimated Outlays .....	1,511	1,520	1,705	1,780	1,847	1,924

<sup>a</sup>The 1997 figure is the amount appropriated for INS salaries and expenses. The levels shown for 1998 through 2002 are CBO baseline projections, assuming increases for anticipated inflation. If the comparison were made to a baseline without discretionary inflation, the cost of the bill would be the same, but the baseline authorization level would be \$1,607 million for each year.

The costs of this legislation fall within budget function 750 (administration of justice). The local prison assistance program authorized by this bill would constitute a new activity for INS. There is no spending for that activity under current law.

## BASIS OF ESTIMATE

For the purposes of this estimate, CBO assumes that the INS would establish the program authorized by the bill in 18 facilities in fiscal year 1999, in 38 facilities in 2000, in 50 facilities in 2001, and in 75 facilities in 2002. Based on existing staff levels at other INS field offices, we estimate that each selected facility, on average, would need three immigration agents, plus two additional support employees, to meet the coverage requirements of the bill. This estimate is based on the number of foreign-born criminals incarcerated in the 100 largest local facilities in the United States and historical staffing requirements for the deportation process. Each INS employee, on average, would cost almost \$100,000 annually in the first year, including training costs, and almost about \$90,000 in subsequent years. (In nominal dollars, the cost would be slightly below \$90,000 in 2000, and would increase to cover anticipated inflation in 2001 and 2002.)

Based on the above assumptions, we estimate that enacting H.R. 1493 would result in additional discretionary spending of about \$80 million over the fiscal years 1999 through 2002. Costs could vary widely, however, depending on the total number of facilities selected for the program—which could range from 25 to 100—and the number of agents assigned to each facility. Depending on how many facilities receive INS staff in each year, and the extent of such staffing increases, implementing the bill could cost between \$40 million and \$200 million over the 1999–2002 period.

## PAY-AS-YOU-GO CONSIDERATIONS:

None.

## INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1493 contains no new intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Mark Grabowicz (226–2860).

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 4 of the Constitution.

## SECTION-BY-SECTION ANALYSIS

SECTION 1. PROGRAM OF IDENTIFICATION OF CERTAIN DEPORTABLE  
ALIENS AWAITING ARRAIGNMENT

Subsection (a) provides that within 6 months of enactment, and subject to appropriations, the Attorney General shall implement a program to identify certain individuals from among those who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges. The individuals to be identified are those aliens not lawfully present in the United States and/or those aliens who are deportable pursuant to section 237(a)(2) of the Immigration and Nationality Act as a consequence of having been convicted of certain criminal offenses or deportable pursuant to section 237(a)(4) of the INA on security or related grounds.

Subsection (b) provides that the program shall include the detail to each facility selected pursuant to subsection (c) of at least one employee of the Immigration and Naturalization Service who has expertise in the identification of aliens described in subsection (a). The program shall also include provision of funds sufficient to provide for (1) the detail of such employees to each selected facility on a full-time basis, including the portions of the day or night when the greatest number of individuals are incarcerated prior to arraignment, (2) access for such employees to records of the INS and other federal law enforcement agencies that are necessary to identify aliens described in subsection (a), and (3) in the case of an individual identified as an alien described in subsection (a), pre-arraignment reporting to the court regarding the INS's intention to remove the alien from the United States.

Subsection (c) provides that the Attorney General shall select for participation in the program incarceration facilities that meet certain requirements. A facility must ordinarily be located in, and owned by the government of, a county that is determined by the Attorney General to have a high concentration of aliens described in subsection (a). If a facility is not located in a county, it must be located in, and owned by the government of, a city, town, or other analogous local political subdivision that is determined by the Attorney General to have a high concentration of aliens described in subsection (a). The facility must incarcerate or process individuals prior to their arraignment on criminal charges. Finally, the owner of the facility must have submitted a request for selection to the Attorney General.

Subsection (c) also provides that the number of counties, cities, towns and other analogous local political subdivisions requesting selection by the Attorney General and found by the Attorney General to have a high concentration of aliens described in subsection (a) must be between 10 and 25 in fiscal year 1999, between 25 and 50 in fiscal year 2000, not more than 75 in fiscal year 2001, and not more than 100 in fiscal year 2002. In subsequent years, the

number shall be 100 or such other number as may be specified in appropriations Acts. In any fiscal year, not less than 20% of such counties, cities, towns and other local analogous political subdivisions must be in states that are not contiguous to a land border. All of the incarceration facilities located within (and owned by) Orange and Ventura counties in California that incarcerate or process individuals prior to their arraignment on criminal charges must be selected for participation in the program.

#### SECTION 2. STUDY AND REPORT

Not later than one year after enactment, the Attorney General shall complete (and submit to Congress) a study concerning the logistical and technological feasibility of implementing the program in a greater number of locations through the assignment of a single INS employee to more than one incarceration facility and the development of a system to permit the Attorney General to conduct off-site verification, by computer or other electronic means, of the immigration status of individuals incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges.

#### AGENCY VIEWS

The Administration has not provided a statement of its views regarding H.R. 1493. Paul Virtue, Acting Executive Associate Commission for Programs, INS, did testify in opposition to the bill before the Immigration and Claims Subcommittee on May 13, 1997.