

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To improve the cooperation between the Federal Government and State and local law enforcement agencies in the enforcement of Federal immigration laws.

**IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.**

**S. 744**

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SESSIONS

Viz:

1 At the appropriate place, insert the following:

2 **SEC. \_\_\_\_ . CLARIFICATION OF CONGRESSIONAL INTENT.**

3 (a) **SHORT TITLE.**—This section may be cited as the  
4 “Congressional Intent Clarification Act” or the “Kick  
5 Act”.

6 (b) **FEDERAL AFFIRMATION OF ASSISTANCE IN THE**  
7 **IMMIGRATION LAW ENFORCEMENT BY STATES AND PO-**  
8 **LITICAL SUBDIVISIONS OF STATES.**—Notwithstanding  
9 any other provision of law, and reaffirming the existing  
10 inherent authority of States, law enforcement personnel  
11 of a State, or of a political subdivision of a State, have

1 the inherent authority of a sovereign entity to investigate,  
2 identify, apprehend, arrest, detain, or transfer to Federal  
3 custody aliens in the United States (including the trans-  
4 portation of such aliens across State lines to detention  
5 centers), for the purposes of assisting in the enforcement  
6 of the immigration laws of the United States in the course  
7 of carrying out routine duties. This State authority has  
8 never been displaced or preempted by Congress.

9 (c) STATE AUTHORIZATION FOR ASSISTANCE IN THE  
10 ENFORCEMENT OF IMMIGRATION LAWS ENCOURAGED.—

11 (1) IN GENERAL.—A State, or a political sub-  
12 division of a State, that has in effect a statute, pol-  
13 icy, or practice that prohibits law enforcement offi-  
14 cers of the State, or of a political subdivision of the  
15 State, from assisting or cooperating with Federal  
16 immigration law enforcement in the course of car-  
17 rying out the officers' routine law enforcement du-  
18 ties shall not receive any of the funds that would  
19 otherwise be allocated to the State under section  
20 241(i) of the Immigration and Nationality Act (8  
21 U.S.C. 1231(i)).

22 (2) CONSTRUCTION.—Nothing in this sub-  
23 section shall require law enforcement officials from  
24 States, or from political subdivisions of States, to re-

1 port or arrest victims or witnesses of a criminal of-  
2 fense.

3 (3) REALLOCATION OF FUNDS.—Any funds  
4 that are not allocated to a State, or to a political  
5 subdivision of a State, due to the failure of the  
6 State, or of the political subdivision of the State, to  
7 comply with paragraph (1) shall be reallocated to  
8 States, or to political subdivisions of States, that  
9 comply with such paragraph.

10 (4) EFFECTIVE DATE.—This subsection shall  
11 take effect on the date that is 1 year after the date  
12 of the enactment of this Act.

13 (d) CLARIFICATION OF CONGRESSIONAL INTENT.—  
14 Section 287(g) (8 U.S.C. 1357(g)) is amended—

15 (1) by redesignating paragraphs (3) through  
16 (10) as paragraphs (7) through (14), respectively;

17 (2) in paragraph (2), by striking “(2)” and in-  
18 serting the following:

19 “(5) ADHERENCE TO FEDERAL LAW.—”.

20 (3) striking paragraph (1) and inserting the fol-  
21 lowing:

22 “(1) WRITTEN AGREEMENT.—

23 “(A) IN GENERAL.—Notwithstanding sec-  
24 tion 1342 of title 31, United States Code, the  
25 Attorney General shall shall enter into a written

1 agreement with a State, or any political subdivi-  
2 sion of a State, upon request of that State or  
3 political subdivision, pursuant to which an offi-  
4 cer or employee of the State or subdivision, who  
5 is determined by the Attorney General to be  
6 qualified to perform a function of an immigra-  
7 tion officer in relation to the investigation, ap-  
8 prehension or detention of aliens in the United  
9 States (including the transportation of such  
10 aliens across State lines to detention centers),  
11 may carry out such function at the expense of  
12 the State or political subdivision and to extent  
13 consistent with State and local law.

14 “(B) APPROVAL PROCESS.—No request  
15 from a State, a political subdivision of a State  
16 or a bonafide law enforcement agency of a  
17 State or political subdivision shall be denied. No  
18 capitation on the number of agreements under  
19 this subsection may be imposed. The Attorney  
20 General shall process requests for such agree-  
21 ments with all due haste, and in no case shall  
22 it take more than 90 days from the date the re-  
23 quest is made until the agreement is con-  
24 summated.

1           “(2) ENFORCEMENT MODEL.—An agreement  
2           under this subsection shall accommodate a request-  
3           ing State or political subdivision with respect to the  
4           enforcement model or combination of models, and  
5           shall accommodate a patrol model, task force model,  
6           jail model, any combination of such models, or any  
7           other reasonable model the State or political subdivi-  
8           sion determines to be best suited to the immigration  
9           enforcement needs of its jurisdiction.

10           “(3) EFFECT OF OTHER FEDERAL PRO-  
11           GRAMS.—A Federal program directed broadly at  
12           identifying criminal aliens in State or local jails or  
13           prisons—

14                   “(A) may not be substituted for agree-  
15                   ments under this subsection, including a pro-  
16                   gram establishing a jail model; and

17                   “(B) shall operate in addition to any  
18                   agreement under this subsection.

19           “(4) TERMINATION.—

20                   “(A) CAUSE REQUIRED.—An agreement  
21                   under this subsection may not be terminated  
22                   without cause.

23                   “(B) PROCESS.—(i) The Secretary of  
24                   Homeland Security shall provide a State or po-  
25                   litical subdivision written notice of intent to ter-

1           minate not later than 180 days before the date  
2           of intended termination.

3           “(ii) A notice provided under clause (i)  
4           shall fully explain the grounds for termination  
5           and provide evidence substantiating the Sec-  
6           retary’s allegations.

7           “(iii) A State or political subdivision whose  
8           agreement under this section is terminated shall  
9           have the right to—

10           “(I) a fair hearing before an adminis-  
11           trative law judge; and

12           “(II) if the administrative law judge  
13           rules against the State or political subdivi-  
14           sion, to appeal the ruling to the Federal  
15           Circuit Court of Appeals; and

16           “(III) if the Federal Circuit Court of  
17           Appeals rules against the State or political  
18           subdivision, to the United States Supreme  
19           Court.

20           “(C) CONTINUATION IN GOOD FAITH.—An  
21           agreement under this subsection shall remain in  
22           full effect during the course of any and all legal  
23           proceedings described in subparagraph (B)(iii).

24           “(D) REMEDY FOR BAD FAITH.—(i) If any  
25           officer or agency of the Federal Government is

1 less responsive, delays, or otherwise disrupts  
2 Federal cooperation, coordination, or informa-  
3 tion-sharing pursuant to an agreement under  
4 this subsection during the course of any and all  
5 legal proceedings or discloses any information  
6 regarding the termination matter in question,  
7 including details regarding process or proce-  
8 dure, the substance of the allegations, or evi-  
9 dence, derogatory, defamatory, or otherwise un-  
10 flattering information or assertions regarding  
11 any State, political subdivision, official, officer,  
12 agent, or other party of the State or political  
13 subdivision, such officer and any individuals in-  
14 volved in the scheme shall be immediately and  
15 summarily suspended without pay for the  
16 longer of—

17 “(I) 6 months; or

18 “(II) the period during which the  
19 agreement termination is under appeal.

20 “(ii) The State or political subdivision may  
21 introduce as evidence any and all evidence that  
22 the Federal government or its agent has failed  
23 to act in good faith under the agreement during  
24 this exercise of due process, or has been party  
25 to disclosure of derogatory, defamatory, or oth-

1 erwise unflattering allegations or assertions, in-  
2 cluding being an unnamed source in news re-  
3 ports or providing information related to this  
4 matter in an unauthorized manner to any third  
5 party. Such evidence shall be deemed as admis-  
6 sible and prima facie.

7 “(iii) Any and all individuals, including  
8 those in private third parties, involved in a  
9 scheme described in clause (i) or (ii)—

10 “(I) shall be held in contempt of  
11 court;

12 “(II) shall be jailed for not less than  
13 180 days, and

14 “(III) shall be subject to a criminal  
15 fine.

16 “(iv) The Secretary shall be liable for any  
17 and all legal expenses in an appeal of termi-  
18 nation under this paragraph or arising as a re-  
19 sult of the bad faith or misconduct, which the  
20 State or political subdivision may incur, from  
21 the moment such bad faith or misconduct on  
22 the part of the Federal government or its agent  
23 or a third party conspirator first occurred.

24 “(v) Any wronged person or agency of a  
25 State or a political subdivision of a State shall



1 retain any and all rights and recourse to private  
2 action against the Federal Government and its  
3 agents arising from harm caused by—

4 “(I) the bad faith or misconduct of  
5 the Federal Government, its agent, or a  
6 third-party conspirator in connection with  
7 the termination of an agreement under this  
8 subsection; and

9 “(II) an illegal or criminal alien’s  
10 commission of a crime if such harm may  
11 otherwise have been avoided had the Fed-  
12 eral Government or its agent acted in good  
13 faith or good conduct.

14 “(vi) Any bad faith or misconduct on the  
15 part of the Federal Government or its agent  
16 shall result in the government having to prove  
17 in the termination proceeding—

18 “(I) by clear and convincing evidence,  
19 that the State or political subdivision acted  
20 in gross violation of the terms of the agree-  
21 ment; or

22 “(II) beyond a reasonable doubt, that  
23 the State or political subdivision violated  
24 Federal criminal law.”; and

1           (4) by inserting after paragraph (5), as redesignated,  
2           nated, the following:

3           “(6) TRAINING FLEXIBILITY.—

4           “(A) IN GENERAL.—The Secretary of  
5           Homeland Security shall make training of State  
6           and local law enforcement officers available  
7           through as many means as possible, including—

8           “(i) residential training at the Center  
9           for Domestic Preparedness and the Federal  
10          Law Enforcement Training Center;

11          “(ii) onsite training held at State or  
12          local police agencies or facilities;

13          “(iii) online training courses by computer or teleconferencing; and

14          “(iv) videotape or DVD presentations  
15          of previously held training courses.

16          “(B) DISTANCE LEARNING.—Distance  
17          learning through a secure, encrypted distributed  
18          learning system that has all its servers based in  
19          the United States, is scalable, survivable, and  
20          can have a portal in place not later than 30  
21          days after the date of the enactment of the  
22          Congressional Intent Clarification Act, shall be  
23          made available by the COPS Office of the Department  
24          of Justice and the Federal Law En-  
25

1 enforcement Training Center Distributed Learn-  
2 ing Program for State and local law enforce-  
3 ment personnel. Preference shall be given to  
4 private sector web-based immigration enforce-  
5 ment training programs for which the Federal  
6 Government has already provided support to de-  
7 velop.

8 “(C) FEDERAL PERSONNEL TRAINING.—

9 “(i) DISPLACEMENT PROHIBITED.—

10 The training of State and local law en-  
11 forcement personnel under this subsection  
12 shall not displace the training of Federal  
13 personnel.

14 “(ii) LIMITS ON DELAYS.—The train-  
15 ing of Federal personnel shall not delay—

16 “(I) the training of State and  
17 local law enforcement personnel under  
18 this subsection (except for residential  
19 training) by more than 30 days; or

20 “(II) residential training for such  
21 personnel by more than 90 days.”.

22 (e) FURTHER CLARIFICATION.—Nothing in this sec-  
23 tion or any other provision of law may be construed as  
24 making any immigration-related training a requirement  
25 for, or prerequisite to, any State or local law enforcement

- 1 officer to assist in the enforcement of Federal immigration
- 2 laws in the normal course of carrying out the normal law
- 3 enforcement duties of such officers.