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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To amend the Immigration and Nationality Act to improve public safety through the enforcement of Federal immigration law in the interior of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. McCLINTOCK introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to improve public safety through the enforcement of Federal immigration law in the interior of the United States, and for other purposes.

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.**

4 This Act may be cited as the “Shut Down Sanctuary
5 Policies Act”.

1 **SEC. 2. STATE AND LOCAL COOPERATION WITH ENFORCE-**
2 **MENT OF IMMIGRATION LAW.**

3 (a) IN GENERAL.—Section 642 of the Illegal Immi-
4 gration Reform and Immigrant Responsibility Act of 1996
5 (8 U.S.C. 1373) is amended—

6 (1) in the header by striking “**COMMUNICA-**
7 **TION BETWEEN GOVERNMENT AGENCIES AND**
8 **THE IMMIGRATION AND NATURALIZATION**
9 **SERVICE**” and inserting “**STATE AND LOCAL**
10 **GOVERNMENT COOPERATION WITH IMMIGRA-**
11 **TION ENFORCEMENT**”;

12 (2) by striking subsection (a) and inserting the
13 following:

14 “(a) IN GENERAL.—The right of any Federal, State,
15 or local government entity, official, or other personnel to
16 comply with or enforce the immigration laws (as defined
17 in section 101(a)(17) of the Immigration and Nationality
18 Act (8 U.S.C. 1101(a)(17))), or to assist or cooperate with
19 Federal law enforcement entities, Federal law enforcement
20 officials, immigration officials, or other personnel regard-
21 ing the enforcement of such laws, shall not be prohibited
22 or in any way restricted.”;

23 (3) by striking subsection (b) and inserting the
24 following:

25 “(b) LAW ENFORCEMENT ACTIVITIES.—

1 “(1) IN GENERAL.—The right of any Federal,
2 State, or local government entity, official, or other
3 personnel to undertake law enforcement activities
4 described under paragraph (2) as they relate to in-
5 formation regarding the citizenship or immigration
6 status, lawful or unlawful, the inadmissibility or de-
7 portability, or the custody status of any individual
8 (including any information that could reasonably be
9 used to determine such status, including personal
10 identifying information) shall not be prohibited or in
11 any way restricted.

12 “(2) LAW ENFORCEMENT ACTIVITIES DE-
13 SCRIBED.—The law enforcement activities described
14 in this paragraph are the following:

15 “(A) Making inquiries to any individual to
16 obtain the information described under para-
17 graph (1) regarding such individual or any
18 other individuals.

19 “(B) Maintaining the information de-
20 scribed under paragraph (1).

21 “(C) Actions taken by a State, or local
22 government entity, official, or other personnel
23 to—

24 “(i) notify the Federal Government
25 regarding the presence of individuals who

1 are encountered by law enforcement offi-
2 cials or other personnel of a State or local
3 government; and

4 “(ii) comply with requests for such in-
5 formation from Federal law enforcement
6 entities, officials, or other personnel.”;

7 (4) in subsection (c), by striking “Immigration
8 and Naturalization Service” and inserting “Depart-
9 ment of Homeland Security”; and

10 (5) by adding at the end the following:

11 “(d) CONTRARY LAWS SUPERSEDED.—The provi-
12 sions under subsections (a) and (b) shall supersede any
13 and all State and local laws, ordinances, regulations, and
14 policies that directly or indirectly prohibit or restrict, in
15 whole or in part, the activities described in such sub-
16 sections.

17 “(e) REMOVAL.—A civil action or criminal prosecu-
18 tion that is commenced in a State court and that is
19 against or directed to a State or local government entity
20 (and an official or other personnel of the State or local
21 government entity acting in their official capacities) based
22 on their compliance with subsection (a) or (b) may be re-
23 moved by them to the district court of the United States
24 for the district and division embracing the place wherein
25 it is pending or to the district court of the United States

1 for the district and division in which the defendant was
2 served with process.

3 “(f) IMMUNITY.—A State or local government entity
4 (and an official or other personnel of the State or local
5 government entity acting in their official capacities) acting
6 in compliance with subsection (a) or (b) shall be consid-
7 ered to be acting under color of Federal authority for pur-
8 poses of determining their liability and shall be held harm-
9 less for their compliance in any suit seeking any punitive,
10 compensatory, or other monetary damages.

11 “(g) FEDERAL GOVERNMENT AS DEFENDANT.—Fol-
12 lowing removal of any civil action arising out of compli-
13 ance with subsection (a) or (b) the United States Govern-
14 ment shall be substituted as the party defendant in the
15 suit.

16 “(h) MISTREATMENT EXCEPTION.—Subsections (f)
17 and (g) shall not apply for claims the district court deter-
18 mines arose from any mistreatment of an individual by
19 a State or local government entity (or an official or other
20 personnel of the State or local government entity acting
21 in their official capacities) exercising the rights described
22 under subsection (a) or (b).

23 “(i) FEDERAL FUNDING.—

24 “(1) ELIGIBILITY FOR CERTAIN GRANT PRO-
25 GRAMS.—A State or local government that is deter-

1 mined, pursuant to paragraph (4), to restrict the
2 rights described under subsection (a) or (b) or that
3 has in effect a statute, policy, or practice providing
4 that it not comply with valid Department of Home-
5 land Security detainers issued pursuant to section
6 287(d)(1) of the Immigration and Nationality Act (8
7 U.S.C. 1357(d)(1)), shall not be eligible to receive
8 for the period described in paragraph (6)—

9 “(A) any of the funds that would otherwise
10 be allocated to the State or local government
11 under section 241(i) of the Immigration and
12 Nationality Act (8 U.S.C. 1231(i)), the ‘Cops
13 on the Beat’ program under part Q of title I of
14 the Omnibus Crime Control and Safe Streets
15 Act of 1968 (34 U.S.C. 10381 et seq.), or the
16 Edward Byrne Memorial Justice Assistance
17 Grant Program under subpart 1 of part E of
18 title I of the Omnibus Crime Control and Safe
19 Streets Act of 1968 (34 U.S.C. 10151 et seq.);
20 or

21 “(B) any other grant administered by the
22 Department of Justice or the Department of
23 Homeland Security that is substantially related
24 to law enforcement, immigration, enforcement
25 of the immigration laws, or naturalization.

1 “(2) TRANSFER OF CUSTODY OF ALIENS PEND-
2 ING REMOVAL PROCEEDINGS.—The Secretary of
3 Homeland Security, at the Secretary’s sole and
4 unreviewable discretion, may decline to transfer an
5 alien in the custody of the Department of Homeland
6 Security to a State or local government determined,
7 pursuant to paragraph (4), to restrict the rights de-
8 scribed under subsection (a) or (b), or that has in
9 effect a statute, policy, or practice providing that it
10 not comply with valid Department of Homeland Se-
11 curity detainers issued pursuant to section 287(d)(1)
12 of the Immigration and Nationality Act (8 U.S.C.
13 1357(d)(1)), regardless of whether the State or local
14 government has issued a writ or warrant.

15 “(3) TRANSFER OF CUSTODY OF CERTAIN
16 ALIENS PROHIBITED.—The Secretary of Homeland
17 Security shall not transfer an alien with a final
18 order of removal, as defined in section 101(a)(47) of
19 the Immigration and Nationality Act (8 U.S.C.
20 1101(a)(47)), to a State or local government that is
21 determined, pursuant to paragraph (4), to restrict
22 the rights described under subsection (a) or (b), or
23 that has in effect a statute, policy, or practice pro-
24 viding that it not comply with valid Department of
25 Homeland Security detainers issued pursuant to sec-

1 tion 287(d)(1) of the Immigration and Nationality
2 Act (8 U.S.C. 1357(d)(1)).

3 “(4) ANNUAL DETERMINATION.—The Secretary
4 of Homeland Security, in the Secretary’s sole and
5 unreviewable discretion, shall determine for each fis-
6 cal year which States and local governments restrict
7 the rights described under subsection (a) or (b), or
8 that have in effect a statute, policy, or practice pro-
9 viding that they not comply with valid Department
10 of Homeland Security detainers issued pursuant to
11 section 287(d)(1) of the Immigration and Nation-
12 ality Act (8 U.S.C. 1357(d)(1)), and shall report
13 such determinations to the Committees on the Judi-
14 ciary of the House of Representatives and the Sen-
15 ate by March 1 of each succeeding fiscal year.

16 “(5) REPORTS.—The Secretary of Homeland
17 Security shall issue a report on the annual deter-
18 mination made under paragraph (4) at the request
19 of the Committees on the Judiciary of the House of
20 Representatives and the Senate.

21 “(6) PERIOD DESCRIBED.—Any jurisdiction
22 that is determined to restrict the rights established
23 under subsection (a) or (b) or that has in effect a
24 statute, policy, or practice providing that it not com-
25 ply with valid Department of Homeland Security de-

1 tainers issued pursuant to section 287(d)(1) of the
2 Immigration and Nationality Act (8 U.S.C.
3 1357(d)(1)) shall be ineligible to receive Federal fi-
4 nancial assistance as provided in paragraph (1)—

5 “(A) for a period of 1 year; or

6 “(B) until the Secretary of Homeland Se-
7 curity certifies that the jurisdiction has come
8 into compliance, whichever is later.

9 “(7) REALLOCATION.—Any funds that are not
10 allocated to a State or to a local government due to
11 the State or local government restricting the rights
12 described under subsection (a) or (b), or that has in
13 effect a statute, policy, or practice providing that it
14 not comply with valid Department of Homeland Se-
15 curity detainers issued pursuant to section 287(d)(1)
16 of the Immigration and Nationality Act (8 U.S.C.
17 1357(d)(1)), shall be reallocated to States or local
18 governments that comply with each such sub-
19 section.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on the date of the enactment
22 of this Act, except that subsection (i) of section 642 of
23 the Illegal Immigration Reform and Immigrant Responsi-
24 bility Act of 1996 (8 U.S.C. 1373), as added by this sec-

1 tion, shall apply only to prohibited acts committed on or
2 after the date of the enactment of this Act.

3 **SEC. 3. CLARIFYING THE AUTHORITY OF ICE DETAINERS.**

4 Section 287(d) of the Immigration and Nationality
5 Act (8 U.S.C. 1357(d)) is amended to read as follows:

6 “(d) **DETAINDER OF INADMISSIBLE OR DEPORTABLE**
7 **ALIENS.—**

8 “(1) **IN GENERAL.—**In the case of an individual
9 who is arrested by any Federal, State, or local law
10 enforcement official or other personnel for the al-
11 leged violation of any criminal or motor vehicle law,
12 the Secretary of Homeland Security shall issue a de-
13 tainer regarding the individual to any Federal,
14 State, or local law enforcement entity, official, or
15 other personnel if the Secretary has probable cause
16 to believe that the individual is an inadmissible or
17 deportable alien.

18 “(2) **PROBABLE CAUSE.—**Probable cause is es-
19 tablished if any of the following criteria is met:

20 “(A) The individual who is the subject of
21 the detainer matches, pursuant to biometric
22 confirmation or other Federal database records,
23 the identity of an alien who the Secretary has
24 reasonable grounds to believe to be inadmissible
25 or deportable.

1 “(B) The individual who is the subject of
2 the detainer is the subject of ongoing removal
3 proceedings, including matters in which a
4 charging document has been served.

5 “(C) The individual who is the subject of
6 the detainer has previously been ordered re-
7 moved from the United States and such an
8 order is administratively final.

9 “(D) The individual who is the subject of
10 the detainer has made voluntary statements to
11 an immigration officer or there is other reliable
12 evidence that affirmatively indicates that the in-
13 dividual is an inadmissible or deportable alien.

14 “(E) The Secretary otherwise has reason-
15 able grounds to believe that the individual who
16 is the subject of the detainer is an inadmissible
17 or deportable alien.

18 “(3) TRANSFER OF CUSTODY.—If the Federal,
19 State, or local law enforcement entity, official, or
20 other personnel to whom a detainer is issued com-
21 plies with the detainer and detains for purposes of
22 transfer of custody to the Department of Homeland
23 Security the individual who is the subject of the de-
24 tainer, the Department may take custody of the in-
25 dividual within 48 hours (excluding weekends and

1 holidays), but in no instance more than 96 hours,
2 following the date that the individual is otherwise to
3 be released from the custody of the relevant Federal,
4 State, or local law enforcement entity.

5 “(4) REMOVAL.—A civil action or criminal
6 prosecution that is commenced in a State court and
7 that is against or directed to a State or local govern-
8 ment entity (and an official or other personnel of the
9 State or local government entity acting in their offi-
10 cial capacities), and a nongovernmental entity (and
11 its personnel) contracted by the State or local gov-
12 ernment for the purpose of providing detention, act-
13 ing in compliance with a Department of Homeland
14 Security detainer issued pursuant to this section
15 that temporarily holds an alien in their custody pur-
16 suant to the terms of a detainer so that the alien
17 may be taken into the custody of the Department of
18 Homeland Security may be removed by them to the
19 district court of the United States for the district
20 and division embracing the place wherein it is pend-
21 ing or to the district court of the United States for
22 the district and division in which the defendant was
23 served with process.

24 “(5) IMMUNITY.—A State or local government
25 entity (and an official or other personnel of the

1 State or local government entity acting in their offi-
2 cial capacities), and a nongovernmental entity (and
3 its personnel) contracted by the State or local gov-
4 ernment for the purpose of providing detention, act-
5 ing in compliance with a Department of Homeland
6 Security detainer issued pursuant to this section
7 that temporarily holds an alien in their custody pur-
8 suant to the terms of a detainer so that the alien
9 may be taken into the custody of the Department of
10 Homeland Security, shall be considered to be acting
11 under color of Federal authority for purposes of de-
12 termining their liability and shall be held harmless
13 for their compliance with the detainer in any suit
14 seeking any punitive, compensatory, or other mone-
15 tary damages.

16 “(6) FEDERAL GOVERNMENT AS DEFEND-
17 ANT.—Following removal of any civil action arising
18 out of the compliance with a Department of Home-
19 land Security detainer by a State or local govern-
20 ment (and the officials and personnel of the State or
21 local government acting in their official capacities),
22 or a nongovernmental entity (and its personnel) con-
23 tracted by the State or local government for the pur-
24 pose of providing detention, the United States Gov-
25 ernment shall be substituted as the party defendant

1 in the suit in regard to the detention resulting from
2 compliance with the detainer.

3 “(7) MISTREATMENT EXCEPTION.—Paragraphs
4 (5) and (6) shall not apply for claims the district
5 court determines arose from any mistreatment of an
6 individual by a State or a local government (and the
7 officials and personnel of the State or local govern-
8 ment acting in their official capacities), or a non-
9 governmental entity (and its personnel) contracted
10 by the State or local government for the purpose of
11 providing detention.

12 “(8) CONTRARY LAWS SUPERSEDED.—The pro-
13 visions under this section shall supersede any and all
14 State and local laws, ordinances, regulations, and
15 policies that directly or indirectly prohibit or restrict,
16 in whole or in part, the activities described in such
17 section.

18 “(9) PRIVATE RIGHT OF ACTION.—

19 “(A) CAUSE OF ACTION.—Any individual,
20 or a spouse, parent, or child of that individual
21 (if the individual is deceased), who is the victim
22 of a murder, rape, any felony (as such terms
23 are defined by the prosecuting jurisdiction), or
24 any aggravated felony (as defined in section
25 101(a)(43) of the Immigration and Nationality

1 Act (8 U.S.C. 1101(a)(43)), for which an alien
2 has been convicted may bring an action against
3 a State or local government (or public official
4 acting in an official capacity) in the appropriate
5 Federal court if the State or local government,
6 except as provided in subparagraphs (B) and
7 (D)—

8 “(i) released the alien from custody
9 prior to the commission of such crime as
10 a consequence of the State or local govern-
11 ment declining to honor a detainer issued
12 pursuant to paragraph (1);

13 “(ii) has in effect a statute, policy, or
14 practice not in compliance with section 642
15 of the Illegal Immigration Reform and Im-
16 migrant Responsibility Act of 1996 (8
17 U.S.C. 1373) and as a consequence of its
18 statute, policy, or practice, released the
19 alien from custody prior to the commission
20 of such crime; or

21 “(iii) has in effect a statute, policy, or
22 practice requiring a subordinate local gov-
23 ernment to decline to honor any or all de-
24 tainers issued pursuant to paragraph (1)
25 and as a consequence of its statute, policy

1 or practice, the subordinate local govern-
2 ment declined to honor a detainer issued
3 pursuant to such section and released the
4 alien from custody prior to the commission
5 of such crime.

6 “(B) EXCEPTION.—Subparagraph (A)
7 shall not apply to any individual who committed
8 an offense described in such subparagraph.

9 “(C) LIMITATION ON BRINGING ACTION.—
10 An action may not be brought under this para-
11 graph later than the date that is 10 years fol-
12 lowing the commission of the crime, or death of
13 a person as a result of such crime, whichever
14 occurs later.

15 “(D) PROPER DEFENDANT.—If a subordi-
16 nate local government—

17 “(i) declines to honor a detainer
18 issued pursuant to paragraph (1) as a con-
19 sequence of a prohibition imposed on that
20 subordinate local government by a State or
21 another local government with jurisdiction
22 over the subordinate local government that
23 prohibits the subordinate local government
24 from honoring the detainer or fully com-
25 plying with section 642 of the Illegal Im-

1 migration Reform and Immigrant Respon-
2 sibility Act of 1996 (8 U.S.C. 1373); and
3 “(ii) as a consequence of the statute
4 or other legal requirement of the State or
5 local government, the subdivision released
6 the alien referred to in subparagraph (A)
7 from custody prior to the commission of
8 the crime referred to in that paragraph,
9 the State or other local government that im-
10 posed the prohibition shall be the proper de-
11 fendant in a cause of action under this sub-
12 section, and no such cause of action may be
13 maintained against the local government that
14 declined to honor the detainer.

15 “(E) ATTORNEY’S FEES AND OTHER
16 COSTS.—In any action or proceeding under this
17 paragraph, the court shall award a prevailing
18 plaintiff a reasonable attorney’s fee and a rea-
19 sonable expert fee as part of the costs.”.

20 **SEC. 4. CONSTRUCTION; SEVERABILITY.**

21 Any provision of this Act, or an amendment made
22 by this Act, held to be invalid or unenforceable by its
23 terms, or as applied to any person or circumstance, shall
24 be construed so as to give it the maximum effect permitted
25 by law, unless such holding is that the provision of law

1 is invalid or unenforceable, in which event such provision
2 shall be deemed severable from this Act and shall not af-
3 fect the remainder of this Act, or the application of such
4 provision to other persons not similarly situated or to
5 other, dissimilar circumstances.