

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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July 17, 2006

The Honorable Alberto Gonzales
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Attorney General Gonzales:

The United States Constitution provides the federal government with exclusive jurisdiction over immigration. It is the federal government's responsibility to incarcerate criminal illegal aliens. Despite this clear obligation, Washington State has incarcerated criminal illegal aliens for many years at great expense to state taxpayers. I am writing to you to request the U.S. government fulfill its legal duty to reimburse Washington State taxpayers for the cost of carrying out this federal function.

Federal law requires the Attorney General to either enter into a contract with the governor of a state to compensate that state for the cost of incarcerating criminal illegal aliens or to take the criminal illegal aliens into federal custody. *See* 8 U.S.C. § 1231(i)(1).

If you elect to compensate the state for its services, federal law bases compensation on the "average cost of incarceration of a prisoner in the relevant State." 8 U.S.C. § 1231(i)(2). The Department of Justice's State Criminal Alien Assistance Program (SCAAP) does not fulfill your legal obligation, because the program grossly under-compensates Washington for the actual average costs of incarcerating criminal illegal aliens. SCAAP has failed to meet this legal obligation since its inception. Now, however, the disparity between actual average costs and reimbursement has grown to an unmanageable burden on Washington taxpayers.

Enclosed you will find an invoice detailing the difference between the actual average cost of incarceration and the nominal federal reimbursement under SCAAP for Fiscal Year 2005, as well as the reimbursement Washington is owed for FY 2006 (request pending). I am confident you will agree with me that the discrepancy in the 2005 figures is unacceptable and cannot be repeated for FY 2006.

In FY 2005, the Department of Corrections (DOC) incarcerated an average of 995 criminal illegal aliens at a cost of \$74.44 per day, for a total of \$27,033,853.72. Of this amount, SCAAP only reimbursed Washington \$1,723,823.00. This represents approximately \$4.75 per day – just 6.38 percent of the average cost of incarceration. A \$25,310,030.72 shortfall in federal reimbursement is untenable. I ask you to rectify this situation for FY 2006 and reimburse Washington the full amount owed of \$24,421,312.75.



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The DOC does not have enough prison capacity to house all Washington inmates and, as a result, must rent beds in other states. If the federal government assumed its rightful responsibility to incarcerate criminal illegal aliens, Washington would have greater capacity to incarcerate all of its offenders. It is intolerable for the federal government to use space in Washington prisons and then refuse to pay full compensation for services provided.

Pursuant to 8 U.S.C. § 1231(i)(1), I formally request that, as of August 1, 2006, you enter into a contract with Washington State for full reimbursement of the actual average cost of incarcerating criminal illegal aliens. In the alternative, you may direct the appropriate federal officials to immediately take custody of the criminal illegal aliens currently incarcerated in DOC facilities and move them to federal facilities.

It is imperative that this situation be resolved, so Washington State can budget accordingly. It is my sincere desire to reach a mutually beneficial resolution to this overwhelming financial burden on Washington taxpayers. I would be pleased to discuss this pressing matter with you personally.

Sincerely,



Christine O. Gregoire
Governor

Enclosure

cc: Washington State Congressional Delegation
Washington State Attorney General Rob McKenna

State of Washington

Invoice

Invoice Date: June 27, 2006

Description	Average Daily SCAAP Population	Per Diem Cost	Number of Days	Amount Due
FY06 State Expenditures - State Alien Assistance Program (SCAAP):				
July 2005	948	76.75	31	\$2,291,217.75
August 2005	963	76.75	31	\$2,293,597.00
September 2005	964	76.75	30	\$2,219,610.00
October 2005	976	76.75	31	\$2,322,148.00
November 2005	965	76.75	30	\$2,221,912.50
December 2005	944	76.75	31	\$2,246,012.00
January 2006	938	76.75	31	\$2,231,736.50
February 2006	938	76.75	28	\$2,015,762.00
March 2006	932	76.75	31	\$2,217,461.00
April 2006	921	76.75	30	\$2,120,602.50
May 2006	942	76.75	31	\$2,241,253.50
Total Amount Due for FY 2006 State Expenditures				\$24,421,312.75
FY05 State Expenditures - State Alien Assistance Program (SCAAP):				
July 2004	1,058	74.44	31	\$2,441,483.12
August 2004	1,035	74.44	31	\$2,388,407.40
September 2004	975	74.44	30	\$2,177,370.00
October 2004	989	74.44	31	\$2,282,255.96
November 2004	965	74.44	30	\$2,155,038.00
December 2004	965	74.44	31	\$2,226,872.60
January 2005	978	74.44	31	\$2,256,871.92
February 2005	995	74.44	28	\$2,073,898.40
March 2005	992	74.44	31	\$2,289,178.88
April 2005	1,004	74.44	30	\$2,242,132.80
May 2005	996	74.44	31	\$2,298,409.44
June 2005	986	74.44	30	\$2,201,935.20
SCAAP Reimbursement for FY2005 State Expenditures				(\$1,723,823.00)
FY05 Expenditures Not Reimbursed				\$25,310,030.72
Total Amount Due				\$49,731,343.47