

September 27, 2023

Re: Vote “NO” on H.R. 4367, the Department of Homeland Security Appropriations Act for FY 2024, Vote “NO” on Amendments that Harm Civil Rights and Civil Liberties, Vote “YES” on Amendments that Protect Civil Rights and Civil Liberties

Dear Representative:

The American Civil Liberties Union strongly urges you to vote “NO” on H.R. 4367, the Department of Homeland Security Appropriations Act for FY 2024. The ACLU also strongly urges you to vote “NO” on a series of amendments that would undermine civil rights and civil liberties and “YES” on amendments that protect them.

The ACLU will score each of these votes even if an amendment becomes part of an en bloc amendment. The ACLU also will score the vote on final passage of the bill.

As passed out of committee, H.R. 4367 resurrects former President Trump’s failed border wall, slashes funding for various humanitarian programs and the Family Reunification Task Force, and removes important oversight for immigrant detention facilities. The ACLU strongly urges the House to reject this bill and the following amendments, and support amendments that uphold civil rights and liberties.

Unnecessary Detention and Monitoring of Immigrants

The ACLU urges you to vote “NO” on Amendment No. 33, offered by Rep. Gonzales, which would require Immigration and Customs Enforcement (ICE) to detain the maximum number of people possible at each detention facility it operates or contracts with. This amendment is fiscally irresponsible; it would force ICE to spend tens of millions in taxpayer dollars to operate at maximum detention capacity notwithstanding actual operational and planning needs. It would do nothing to make our nation safer and result in [unnecessary detention](#). Most individuals in ICE detention are locked up pending removal proceedings, which means they have not been ordered deported and in fact very well may have the legal right to remain in the United States. During the COVID-19 pandemic, ICE reduced the average daily population by [nearly 70 percent](#) from its peak level, underscoring that the vast majority of people in ICE detention did not need to be there.

The ACLU urges you to vote “YES” on Amendment No. 85, offered by Rep. Escobar, which strikes the section of the bill requiring that ICE operate at full detention capacity and requiring that every individual who is not detained be put under surveillance through a GPS monitor. Expanding GPS monitoring to ICE’s entire non-detained docket of [3.26 million people](#) would cost more than \$8.8 million dollars *a day*, compared to the \$30,000 a day that ICE [currently reports](#) spending to monitor about 11,000 people.

There is no empirical basis supporting a massive expansion of GPS monitoring. [Studies](#) show that most people show up to immigration court hearings without electronic monitoring—and those with lawyers show up the most, [96 percent](#) according to one study.

ICE’s program, which it conducts through a [multi-billion dollar contract](#) with BI Inc, a subsidiary of private prison giant Geo Group, is notorious for technical problems. People on GPS ankle monitors have endured [bleeding](#), severe pain and difficulty walking. People who wear them endure [stigma](#), a

sense of shame and being watched, which can be particularly traumatizing to asylum-seekers and torture survivors. Congress should not require ICE to massively expand this program.

The ACLU strongly urges you to vote “NO” on Amendment No. 115, offered by Representative Buchanan, which would provide funding to support a pilot program implementing the Criminal Alien Gang Removal Act. The ACLU and other organizations have [long opposed](#) the Act because it would promote racial profiling, undermine access to asylum and allow for the detention and deportation of any non-citizen, including lawful permanent residents, for being a “gang member” even if they have never been convicted of a crime.

Attacks on ICE’s Reforms to Arrest and Deportation Practices

The ACLU urges you to vote “NO” on Amendment No. 155, offered by Rep. Roy, which would prohibit DHS from using funds under the Act to enforce its “[Guidelines for Enforcement Actions in or Near Protected Areas](#).” DHS issued these guidelines in 2021 to ensure that children can go to school, people in need of care can access medical services, and people of faith can go to places of worship—without fear of being monitored, harassed or arrested by law enforcement. These guidelines are a crucial and common-sense safeguard against civil rights abuses that Congress should support.

The ACLU urges you to vote “NO” on Amendment 168, offered by Rep. Tiffany, which would prohibit funds from being used in contravention of 8 USC Section 1373. This amendment is a non-sensical attack on so-called “[sanctuary](#)” state and local governments, which have declined to spend local resources on federal immigration enforcement. Policies that limit collaboration with ICE through detainers and detention do not violate 8 US Section 1373, which prohibits government entities from enacting policies that restrict the sharing of “information regarding...citizenship or immigration status.” The Tenth Amendment of the Constitution gives state and local governments the [right to refuse](#) to help enforce federal regulatory programs and the federal government cannot commandeer state and local government resources for federal immigration enforcement.

Border Management

The ACLU strongly urges you to vote “YES” on Amendment No. 157, offered by Representatives Castro and Casar, which would prohibit use of federal funds for Operation Lone Star. From barbed wires in the Rio Grande to misuse of the state troopers, the National Guard and the criminal legal system, Operation Lone Star is a multi-pronged humanitarian and human rights disaster. Its trespass arrest program has discriminatorily targeted thousands of people for unlawful prosecution by TX for the state misdemeanor offense based on their perceived race, national origin, and immigration status. Operation Lone Star is a state attempt to take over federal border enforcement with no regard for federal standards or oversight. Neither the administration nor Congress should play any role in supporting this program.

The ACLU strongly urges you to vote “NO” on Amendment No. 36, offered by Representative Gonzales, which would increase funding for Operation Stonegarden, a federal grant program for state, local and tribal law enforcement agencies’ to “support [joint efforts](#) to secure the United States’ borders.” ACLU opposes Stonegarden and related programs because they blur the lines between local law enforcement and border and immigration enforcement operations, making people in need of law enforcement protection afraid to seek it, and deterring witnesses to serious crimes from reporting them to law enforcement—undermining public safety for all. Entangling local law enforcement agencies in

immigration and border enforcement may also lead them to discriminate against people who "look" and "sound" foreign, resulting in racial profiling and other civil rights violations.

Attacks on the People Seeking Asylum and the Asylum System

The ACLU strongly urges you to vote “NO” on Amendment No. 153, offered by Representative Roy, which would prohibit DHS from using funds under the Act to terminate the Migrant Protection Protocols, more commonly referred to as “Remain in Mexico” MPP was a cruel and unlawful policy and humanitarian disaster that President Biden correctly opposed and that DHS correctly decided to end.

The ACLU urges you to vote “YES” on Amendment 188, which would prohibit any funding to be used to implement “Remain-in-Texas” policies. According to news reports citing sources within the Biden Administration, DHS is considering creating a new program aimed at requiring people to remain in Texas or other border areas while their asylum cases proceed through the legal system. This is a misguided proposal, modeled after a failed Reagan-era initiative, that would fuel political divisions and keep people away from family and community support in their destination locations.

Attacks on DHS Internal Oversight

The ACLU urges you to vote “NO” on Amendment No. 64, which would prohibit funding of the DHS Office for Civil Rights and Civil Liberties (CRCL). This office provides an important oversight and accountability function within DHS. The third largest Cabinet department, DHS is a [sprawling agency that has drawn concern](#) from across the political spectrum for its civil liberties violations and chronic dysfunction. DHS oversees more than [62,000](#) federal law enforcement officers, by far the largest of any single federal agency. It is essential that Congress continue to fund CRCL’s functions as a DHS’ institutional watchdog and oversight mechanism.

Attacks on Democracy

The ACLU strongly urges you to vote “NO” on Amendment No. 52, offered by Representative Ogles. This amendment would prohibit funding for the implementation of Executive Order 14019 on Promoting Access to Voting, which is vital to removing barriers to voting and strengthening our democracy.

Violation of the Constitutional Prohibition Against Congress Enacting a Bill of Attainder

The ACLU strongly urges you to vote “NO” on Amendments 39 (Tenney), 39 (Biggs), 40 (Biggs), 41 (Biggs), 42 (Biggs), 43 (Biggs), 44 (Biggs), 47 (Boebert), 48 (Boebert), 49 (Boebert), 50 (Boebert), 55 (Greene), 65 (Norman), 66 (Norman), 67 (Norman), 68 (Norman), 69 (Norman), which would each unconstitutionally reduce to \$1 or to \$0 the salary of a named, specific employee of the Department of Homeland Security. Each of these amendments would violate the constitutional prohibition against a bill of attainder, as they each identify a specific person that Congress would penalize by reducing that individual’s salary to \$1 or to \$0.

The prohibition against a bill of attainder is so fundamental to the Constitution’s principle of separation of powers and protection of due process that the drafters of the Constitution wrote it into the body of the Constitution itself. Article I of the Constitution provides that “[n]o bill of attainder or ex post facto law shall be passed” by the Congress. U.S. Const. Art. I, § 9, cl. 3. In interpreting the Bill of Attainder Clause, the Supreme Court has held that “legislative acts, no matter what their form, that

apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution.” United States v. Lovett, 328 U.S. 303, 315 (1946).

In Lovett—which is almost exactly on-point as the complainants in Lovett were federal employees whose salaries were specifically targeted for termination by an appropriations bill passed by Congress—the Court specifically found that an appropriations provision cutting off funding can be a bill of attainder because cutting off funds is “no less galling or effective than if [the punishment] had been done by an Act which designated the conduct as criminal.” *Id.* at 316. The same analysis would apply to all of these amendments to the DHS appropriations bill before the House this week. A classic test for a bill of attainder is, if someone can take pen and paper and write down the name of each and every person harmed by enactment of punitive legislation, then it is a bill of attainder. Each of these five amendments fails this test. Every member of Congress has an obligation to uphold the Constitution by refraining from passing unconstitutional legislation.

For these reasons, the ACLU strongly urges you to vote “NO” on final passage of H.R. 4367, after voting “NO” on each amendment that harms civil rights and civil liberties and “YES” on each amendment that upholds Constitutional rights described in this letter. Please do not hesitate to contact us with any questions.

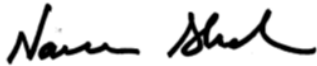
Sincerely,



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