

January 9, 2025

**RE: Vote NO on S. 5, the Laken Riley Act**

Dear Senator:

The American Civil Liberties Union (ACLU) strongly urges you to **vote NO on S.5**, the “Laken Riley Act”. The ACLU will score this vote. The bill is a wolf in sheep’s clothing; it exploits the tragic death of Ms. Laken Riley to expand the detention of people accused of non-violent offenses, without actually improving public safety but while encouraging discriminatory and arbitrary overdetention. Specifically, it would require the government to detain people who have not been convicted or even charged with a crime, potentially sweeping thousands of people into mandatory detention.

Enacting a law to strip long-time residents, children, DREAMers and many others of critical protections *before or without a conviction* and based on a *nonviolent* offense is an extreme weapon to hand to the incoming Trump administration. Moreover, its novel and constitutionally-suspect state standing provisions, allowing hostile state officials to sue the Attorney General and others over individual immigration decisions they dislike, will only create more dangerous, wasteful, and politicized challenges for our immigration system.

This bill will not improve public safety; to the contrary, it will waste law enforcement resources by focusing arrests and detention on people who even Immigration and Customs Enforcement (ICE) thinks are not a threat. Our local, state, and federal resources should not be spent on the mandatory, potentially multi-year detention of a mother accused of stealing diapers or a loaf of bread.

We urge you to vote NO on this misguided and damaging bill.

***Threat to Civil Liberties: Expanding Mandatory Detention***

The executive branch already has broad authority, under current immigration law, to detain any person in deportation proceedings — including immigrants targeted by this law. However, this bill would require their mandatory detention. Mandatory detention *requires* DHS to jail people—at enormous taxpayer expense—even when an immigration judge would find that they do not pose a threat to the community or flight risk.



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This bill is expansive and vague, threatening thousands with mandatory detention regardless of their individual circumstances. It would *require* detention of an individual who “admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, or shoplifting offense” in any jurisdiction where the act is committed. In other words, **a person who was not even charged with or arrested for any crime whatsoever could be subject to mandatory detention—without a hearing—and even if immigration officials did not think their detention warranted.** Individuals who committed such “acts” years ago, although they were never prosecuted, could be targeted for mandatory detention—particularly by an anti-immigrant administration intent on mass deportations.

This bill has no exceptions for children or DACA recipients. It has no exception for people whose alleged offense took place decades ago and in another country, and for which there may be a limited record. It will sweep in many residents—particularly people of color—who are arrested for low-level misdemeanors like shoplifting diapers or a candy bar and then place them in detention centers where it is difficult, if not impossible, to find legal assistance.

If passed into law, those in no-bond detention under this bill could include such cases as:

- A young woman escaped sexual abuse and sexual slavery in a foreign country. She had been accused by her employers of theft— of her own clothes and passport. This alleged offense would require her mandatory detention.
- A woman is accused of theft by an abusive partner in retaliation for leaving them—and the local authorities decline to prosecute. The woman would still be put in mandatory detention.
- An abandoned child with Special Immigrant Juvenile Status in the U.S. was arrested for eating a snack in a grocery store, which he thought was a free sample. Police arrest him for petty larceny; that child is subject to mandatory detention.
- A person who has been regularly checking in with ICE and living in the U.S. for years is asked in their routine check-in if they’ve ever been arrested before and they say yes, they were arrested decades ago for stealing a loaf of bread, when they lived in poverty in another country. ICE could immediately take them into custody and place them in mandatory detention.
- A mother and her U.S. citizen baby are stopped leaving a grocery store with a box of baby formula she hasn’t paid for. The store calls the police. Police turn her over to ICE and she is put in mandatory detention without a bond hearing and separated from her child.



- A child is interviewed for asylum alone and without a lawyer or parent. The child admits to having stolen an apple from a stand when she was hungry. She would be subject to mandatory detention under this bill.

Under current law, mandatory detention already costs billions of taxpayer dollars every year—to the enormous benefit of the private prison industry.<sup>1</sup> Mandatory detention also flies in the face of our Constitution. The Fifth Amendment protects all “persons”—including immigrants—from the deprivation of liberty without due process of law. As the Supreme Court has said, “in our society, liberty is the norm, and detention without trial is the carefully limited exception.”<sup>2</sup> Government intrusions on such liberty must be “narrowly focused” in service of a “legitimate and compelling” interest.<sup>3</sup> The government may not achieve its purpose “by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.”<sup>4</sup>

In the criminal legal system, the presumption is that everyone is eligible for release on bond and given an opportunity to argue their equities at a hearing before a neutral arbiter. When citizens are accused of crimes, our laws do not require that they be detained regardless of the actual flight risk or danger to the community they pose. Due process and fiscally-responsibly policymaking counsel the same here: Decisions about whether to detain noncitizens should be based on the facts and risks and weighed carefully by authorities—as current laws already authorize.

### ***Novel and Expansive State Attorneys General Enforcement Authority***

Just as troubling, this bill purports to give standing to a state attorney general or “other authorized State official” to sue the U.S. Attorney General, Secretary of State, or Secretary of Homeland Security for any alleged violation of this new law and other existing law, and to receive extraordinary injunctive relief. Essentially, this purports to allow hostile state officials to sue federal officials over individual immigration decisions they disapprove

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<sup>1</sup> Eunice Rho, ACLU, “Unchecked Growth: Private Prison Corporations and Immigration Detention, Three Years Into the Biden Administration,” Aug. 7, 2023, <https://www.aclu.org/news/immigrants-rights/unchecked-growth-private-prison-corporations-and-immigration-detention-three-years-into-the-biden-administration>.

<sup>2</sup> Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004) (internal citations and quotations omitted).

<sup>3</sup> See *Foucha v. Louisiana*, 504 U.S. 71, 80–81 (1992) (affirming the “‘fundamental nature’ of the individual’s right to liberty” and invalidating a Louisiana statute that authorized civil commitment on a finding of dangerousness without any finding of mental illness) (internal citation omitted); see also *Covington v. Harris*, 419 F.2d 617, 623 (D.C. Cir. 1969) (“A statute sanctioning such a drastic curtailment of the rights of citizens must be narrowly, even grudgingly, construed in order to avoid deprivations of liberty without due process of law.”).

<sup>4</sup> *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

of—the issuance of a visa or an immigration judge or officer’s bond decision—and to make nationwide policy.

Aside from the incredible waste and chaos these lawsuits would incur, Congress cannot just declare an injury sufficient for standing under Article III of the Constitution.<sup>5</sup> And even if it were legal, these provisions are a drastic and dangerous expansion of the authority of state officials that will open the floodgates for politicized and frivolous lawsuits against the federal government for individual enforcement decisions.

These constitutionally-suspect provisions would also give anti-immigrant state officials an unprecedented and dangerous ability to try to reshape federal policies they dislike. A state official could sue the federal government to enjoin the issuance of all visas to people from countries like China, Venezuela or Lebanon.

Supreme Court precedent makes clear that immigration enforcement is “entrusted to the discretion of the Federal Government.”<sup>6</sup> While states may decline to provide state resources to support federal immigration enforcement, they cannot seek to compel the federal government to detain or deport an individual where federal authorities have determined such action is unwarranted.

Just last year in *United States v. Texas*, the Supreme Court held that courts are not the appropriate forum for resolving claims that the Executive Branch should make more immigration arrests, noting that “lawsuits alleging that the Executive Branch has made an insufficient number of arrests or brought an insufficient number of prosecutions run up against the Executive’s Article II authority to enforce federal law” and also that “courts generally lack meaningful standards for assessing the propriety of enforcement choices in this area” as the Executive “must prioritize its enforcement efforts.”<sup>7</sup>

While this bill attempts to obviate the Court’s decision on standing in that case, it nevertheless runs up against the exact same concerns the Court raised—that states *cannot and should not* use the court system to force the federal government to initiate an individual arrest or continue to detain someone deemed suitable for release given the multiple factors at issue,

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<sup>5</sup> *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (“Congress cannot erase Article III’s standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.”) (internal quotation marks omitted).

<sup>6</sup> *Arizona v. United States*, 567 U.S. 387, 409 (2012); see also *United States v. Valenzuela-Bernal*, 458 U.S. 858, 864 (1982) (“The power to regulate immigration—an attribute of sovereignty essential to the preservation of any nation—has been entrusted by the Constitution to the political branches of the Federal Government.”); *De Canas v. Bica*, 424 U.S. 351, 354 (“Power to regulate immigration is unquestionably exclusively a federal power.”).

<sup>7</sup> *United States et al v. Texas et al.*, 599 U.S. 670 (June 23, 2023).



including resources and prioritization. It is an inappropriate intrusion into the federal government's authority and a misuse of the federal court system.

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This is an unprecedented and dangerous expansion of mandatory detention to longtime residents—even when ICE or an immigration judge doesn't think detention appropriate—and will subject immigrants to years of harmful, unnecessary and extremely expensive detention. The only beneficiaries of this bill are the private prison industry but those harmed by the bill are numerous. We urge members of Congress to reject this dangerous bill that will siphon law enforcement resources at the federal, state and local levels away from investigating serious crimes—making everyone less safe—while empowering hostile state officials to try to create and enforce their own federal immigration laws and priorities.



We strongly urge a No vote on S.5. Should you have additional questions about this legislation, please contact Sarah Mehta, ACLU Senior Policy Counsel, [smehta1@aclu.org](mailto:smehta1@aclu.org).

Sincerely,

A handwritten signature in blue ink that reads "Mike Zamore". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mike Zamore  
National Director, Policy and Government Affairs