



**National Political
Advocacy Department**
915 15th Street, NW, 6th Floor
Washington, DC 20005-2112
aclu.org

Deirdre Schifeling
Chief Political &
Advocacy Officer

Anthony D. Romero
Executive Director

Deborah N. Archer
President

January 6, 2025

RE: Vote NO on H.R. 29, the Laken Riley Act

Dear Representative:

The American Civil Liberties Union (ACLU) strongly urges you to **vote NO on H.R. 29**, the “Laken Riley Act”. The ACLU will score this vote. The bill exploits the tragic death of Ms. Laken Riley to escalate a consistently xenophobic and false narrative about immigrants. It is also a serious threat to civil liberties that would inflict damage on an already taxed immigration system, invite racial profiling of longtime residents, and violate bedrock constitutional principles.

In summary, this bill 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 at enormous taxpayer expense and diverting law enforcement resources. Voting to strip long-time residents of critical protections because of an arrest or criminal charge—even before or without a conviction—is a slippery slope. We urge you to oppose this bill, which will not improve public safety but will accelerate the vilification of non-citizens, including long-time residents.

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 anyone convicted of a crime. However, this bill expands mandatory immigration detention laws. 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.

As we noted the last time this legislation was introduced and voted on, 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 disagreed.** 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.

Under current law, mandatory detention already costs billions of taxpayer dollars every year—to the enormous benefit of the private prison industry.¹ 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.”² Government intrusions on such liberty must be “narrowly focused” in service of a “legitimate and compelling” interest.³ The government may not achieve its purpose “by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.”⁴

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 common sense, 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.

Putting Longtime Residents at Risk

The death of Ms. Laken Riley is an unimaginable tragedy, but this bill will not make our communities safer. Instead, the bill stokes a xenophobic narrative that may spur local law enforcement and the public to engage in more racial profiling. This may lead to unlawful arrests of individuals on the pretext of suspected theft or shoplifting—resulting in longtime U.S. residents and the parents of U.S. citizen children being put into mandatory detention.

There is no statute of limitations for this bill, which risks putting people into mandatory detention for decades-old charges. At a moment when President Trump is seeking tens of billions of dollars for immigration detention and

¹ 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>.

² *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (internal citations and quotations omitted).

³ 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.”).

⁴ *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).



mass deportations, adding further categories of people who can be swept up in these extreme enforcement actions and placed in mandatory detention is dangerous.

The bill will also divert law enforcement resources at the federal, state and local levels away from investigating serious crimes—making everyone less safe.

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 Secretary of Homeland Security for an alleged violation of this new law. But Congress cannot just declare an injury sufficient for standing under Article III of the Constitution⁵ And even if it were legal, these provisions are a drastic and dangerous expansion of the authority of a state official that will open the floodgates for politicized and frivolous lawsuits against the federal government for individual enforcement decisions.

Supreme Court precedent makes clear that immigration enforcement is “entrusted to the discretion of the Federal Government.”⁶ 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.”⁷

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 prosecution given the

⁵ *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).

⁶ *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.”).

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

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

Xenophobic Scapegoating

The bill is a dangerous and extreme extension of xenophobic attacks by officials who scapegoat noncitizens for political ends. Last year we saw the danger Haitian families faced in Springfield, Ohio, after the incoming Vice President and other politicians made false, racist, and inflammatory allegations about Haitian residents' alleged conduct. Springfield authorities reported receiving more than a dozen bomb threats⁸, and state troopers were reportedly deployed to Ohio schools to address security concerns.

Congress should indeed act to protect public safety; but this bill does nothing to make our communities safer. Instead, it embodies and amplifies the rhetoric of "migrant crime" that contributes to risks of harassment and hate-based violence against people of color and immigrant communities.

It is a slippery slope to start with the mandatory, prolonged detention of our longtime residents who have been accused of, though perhaps not even charged with, criminal offenses—sometimes decades-old charges. We urge members of Congress to reject this dangerous bill that would not make our communities safer and, indeed, could help fuel indiscriminate enforcement actions that could tear apart families and communities.

We strongly urge a No vote on H.R. 29. Should you have additional questions about this legislation, please contact Sarah Mehta, ACLU Senior Policy Counsel, smehta1@aclu.org.

Sincerely,



Mike Zamore
National Director, Policy and Government Affairs

⁸ National Public Radio, "Bomb threats followed Trump's false claims about Springfield. Some Haitians may leave," Sept. 19, 2024, <https://www.npr.org/2024/09/19/nx-s1-5114047/springfield-ohio-haitian-migrants-trump-safety-concerns>.

