

**Appropriations Season is Upon Us:
Stop DHS's Pattern of Manipulating Short-Term Spending Bills for Political Gain
August 2019**

Over the last several years, the budgets for Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) have grown dramatically. Much of this growth has been achieved through DHS's manipulation of the appropriations process, in clear contravention of congressional intent. The resulting human costs are immeasurable: immigrant communities live in fear, with many mourning the separation of their families and devastation of neighborhoods.

Under this administration, ICE has massively expanded its detention and enforcement apparatus. Today (as of Aug. 3, 2019), ICE is jailing over 55,000 people each day, up from an average of about 34,000 in 2016, as a clear result of ramped up interior enforcement operations and a commitment to jail more immigrants and detain them for longer. CBP, too, has expanded through a massive surge in enforcement resources with the ranks of the Border Patrol more than doubled in the past 15 years.

This massive expansion in enforcement has been enabled by outrageous overspending and Congress's failure to hold DHS accountable to its appropriated budget.

Although the Constitution grants the power of the purse to Congress, the Department of Homeland Security (DHS) has essentially been writing its own appropriation on immigration enforcement through a combination of overspending and fear-mongering.

In fiscal year 2019 alone, DHS grew its immigration enforcement capacity above its appropriated budget as follows:

- Overspending during the short term spending bill (continuing resolution) at the beginning of the fiscal year;
- Achieving a plus-up in funding in the final omnibus negotiations in February;
- Obtaining billions in supplemental funding awarded to ICE and CBP in June; and
- The anticipated transfer and reprogramming of funds at the end of the fiscal year.

These unacceptable increases fuel DHS's anti-immigrant policies, carried out by a deportation force repeatedly shown to be corrupt and driven by hate. Now is the time for Congress to reassert its power and make different decisions in the year ahead, beginning with proactively ensuring that enforcement agencies do not overspend under an initial short term spending bill.

If Congress again comes to a standstill over how to fund DHS at the end of the fiscal year, its first and most utilized option is to pass a short term spending bill, or continuing resolution (CR), to avoid a lapse in funding. Under a CR, all accounts are supposed to operate under the same spending levels appropriated in the prior fiscal year. Over the past few years, however, ICE has brazenly over-spent during CRs, using the following two tactics:

1. Agencies can petition appropriators for an additional pot of money above what flat spending levels would provide, known as an **anomaly**. Small anomalies are intended for ordinary spending increases like higher health care costs for government employees, but should never serve as a vehicle to accommodate an administration's political agenda. We have seen political anomalies for ICE approved in the past and expect the agency will seek one again this year.
2. Agencies can also petition the Office of Management and Budget (OMB) for an increased amount of funds provided at the start of a CR period, an advance on their funding known as an **exception apportionment**. Agencies are only supposed to use this process when their spending needs differ dramatically during different seasons of the year or in truly extraordinary circumstances. OMB has previously approved an exception apportionment for ICE's detention account based on xenophobic and innaccurate claims from the agency about public safety concerns posed by releasing immigrants from detention.

DHS's manipulation of the CR process has allowed the agency to expand its system of immigration jails and its enforcement apparatus against congressional will, and then to use its inflated budget as the starting point for the next round of spending negotiations. We expect DHS will attempt to persist in its manipulation of the appropriations process this fall, with an eye toward expanding ICE detention further, growing the CBP and ICE agent corps, and further militarizing the border.

The exception apportionment and anomaly request are two of the many budget technicalities that DHS has manipulated to grow its detention and enforcement apparatus contrary to the will of Congress. Congress will be unable to reclaim funding authority and rein in DHS's overspending practices without first putting strict limits on the agency's ability to circumvent Congress by accessing additional funds during continued resolutions that later set an inflated starting point for spending negotiations.

In the event of a CR for the DHS appropriations bill in FY20, Congress must reject any anomaly for ICE and CBP and include an explicit prohibition on an exception apportionment for the ICE account.

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