



August 1, 2014

RE: Oppose the modified H.R. 5230, making Supplemental Appropriations for FY 2014

Dear Representative,

On behalf of the American Civil Liberties Union, please find copied below our vote recommendation opposing H.R. 5230 as modified by proposed amendments from Representatives John Carter (TX), Hal Rogers (KY), and Mike Rogers (AL). A recorded vote on this bill is anticipated on the House floor today.

Please don't hesitate to contact Joanne Lin (202/675-2317; jlin@aclu.org) or Georgeanne Usova (202/675-2338; gusova@aclu.org) with any questions.

Regards,

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ACLU Recommends a NO Vote on the modified H.R. 5230

This bill would provide \$694 million in supplemental funds for the remainder of FY 2014, with the stated purpose of addressing the humanitarian crisis at the Southwest border. However, the modified H.R. 5230 provides little funding to ensure that vulnerable unaccompanied children are properly cared for, or that children and families are provided with meaningful due process. Rather, it directs funding toward unnecessary detention and border militarization, while making sweeping and harmful policy changes.

The American Civil Liberties Union recommends a NO vote on the modified H.R. 5230 for the following reasons:

- **The bill would severely limit important due process protections for Central American children in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).** According to the United Nations High Commissioner for Refugees, 58 percent of children fleeing to the United States from Honduras, Guatemala, El Salvador, and Mexico may have valid claims to asylum or other legal protection, meaning that they could face serious harm or death if returned to their home countries. The TVPRA helps to ensure that children from Central America—who may be victims of human trafficking, sexual violence, or other persecution—have a meaningful opportunity to present their protection claims before an immigration judge. The modified H.R. 5230 would drastically weaken these critical due process protections by subjecting Central American children to the same inadequate screening process that has failed Mexican children, according to the UNHCR and others, often returning them to the hands of their traffickers, and require their detention throughout their immigration proceedings.
- **The bill would greatly expand family detention, a practice long recognized as inhumane and detrimental to children.** The modified H.R. 5230 would fund the rapid expansion of family detention with the \$262 million it dedicates to Immigration and Customs Enforcement (ICE) Custody Operations. In 2009, ICE stopped detaining families at the T. Don Hutto facility in Texas following years of advocacy and litigation challenging deplorable conditions—evidence that the administration recognized that locking up families with children is inhumane, wasteful, and unnecessary. But in recent months this trend has been reversed, with a hastily-opened facility in Artesia, New Mexico, already operating and another slated to open soon in Karnes County, Texas. Expanding family detention puts the U.S. at odds with broader international trends. In May, the U.N. Secretary-General said that he was “especially concerned about the administrative detention of migrants, including very young children.”¹

Child welfare and medical experts who have visited the Artesia facility are already reporting that children held there have lost weight, are displaying signs of depression, and are not receiving adequate medical care. Human rights experts have observed a systematic denial of due process for Artesia families, the vast majority of whom have no access to legal services

¹ *In Stockholm, Ban calls for optimizing benefits of 'journey of hope' for migrants, society as a whole*, UN News Centre (May 14, 2014), <http://www.un.org/apps/news/story.asp?NewsID=47786#.U9eIPFbAjZq>

and are largely cut off from communication with the outside world. Families are already being deported without any meaningful opportunity to navigate the asylum process.

Expanding the cruel and inhumane practice of family detention, as the modified H.R. 5230 would do, is wasteful and unnecessary. The Senate estimates that family detention costs an average of \$266 per person per day. Humane, effective, and far less costly alternatives to detention – widely used in the pre-trial criminal justice context² – start at just pennies per day, and include a spectrum of supervision options ranging from community-based alternatives, to bond, to ankle monitors. They have proven very effective in ensuring compliance with immigration court proceedings—the sole purpose of immigration detention— with those on alternatives to detention appearing in court 99 percent of the time and complying with removal 84 percent of the time.³

- **The bill fails to adequately resource overburdened immigration courts.** While the modified H.R. 5230 would provide \$12.9 million in funding to the Department of Justice (DOJ) to hire additional immigration judges, this fails to come anywhere close to what is needed to address longstanding challenges in the immigration court system. Chronic underfunding of the DOJ Executive Office for Immigration Review (EOIR), coupled with a steady increase in DHS ICE and DHS Customs and Border Protection (CBP) enforcement budgets, have created a massive bottleneck in immigration courts. There is a current backlog of over 375,000 cases that forces people to wait years for immigration court hearings. Adding a small number of immigration judges on a temporary basis would barely make a dent.

In addition, the modified H.R. 5230 would provide no funding for legal services for children, which are necessary both to improve efficiency in overburdened immigration courts and to ensure that children receive full and fair adjudication of their cases. Traumatized children cannot reasonably be expected to mount complex claims for legal relief—against trained government attorneys—without counsel. Further, when children are represented by attorneys, judges are able to conduct proceedings and resolve cases faster,⁴ and children are more likely to appear for their court dates⁵ and more likely to obey court orders.

- **The bill would sweep aside environmental and land use laws to permit Border Patrol agents free rein to enter federal lands within 100 miles of the border.** Border authorities' abuses within this "Constitution-Free" zone are widespread and well-documented.⁶ The

2 Julie Myers Wood and Steve J. Martin, Smart alternatives to immigrant detention, *The Washington Times* (Mar. 28, 2013), available at <http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/>.

3 Hearing before the H. Comm. on the Judiciary, 113th Cong. (May 22, 2013), <http://judiciary.house.gov/cache/files/3498f4a0-82f4-4902-a73b-da2d54055f44/113-30-81174.pdf> (Statement of Julie Myers Wood, former ICE Assistant Secretary).

4 Letter from Dana Marks, National Association of Immigration Judges, to Members of Congress, March 22, 2013 (on file with the ACLU).

5 Mark Noferi, *Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court* (Jul. 15, 2014), <http://immigrationimpact.com/2014/07/18/taking-attendance-new-data-finds-majority-of-children-appear-in-immigration-court/#sthash.AI9ZUFVt.dpuf> (citing Transactional Records Access Clearinghouse data showing that 95.4 percent of children represented by lawyers have not been designated in absentia).

6 See, e.g., *Border Communities Under Siege: Border Patrol Agents Ride Roughshod Over Civil Rights*, ACLU, <https://www.aclu.org/border-communities-under-siege-border-patrol-agents-ride-roughshod-over-civil-rights> (last visited July 30, 2014).

scope of CBP operations should be reduced to focus on the actual border, not expanded further into the interior. Moreover, additional border enforcement resources are the wrong response to a refugee crisis: Instead, Congress should direct funds toward improving oversight and accountability for CBP, the nation's largest law enforcement agency.

- **The bill would spend \$70 million to expand National Guard involvement in border enforcement unnecessarily.** As H. Steven Blum, Chief of the National Guard Bureau from 2003 to 2009, said: “Merely sending the Guard to the border is not a panacea for the myriad complex problems of the current situation.” This is not a border security crisis: the arriving child and family refugees pose no threats. These children and families are, in fact, turning themselves in to Border Patrol agents. National Guard deployment is inappropriate in these circumstances and only furthers the already-excessive militarization of border communities.

For more information, please contact Joanne Lin (202/675-2317; jlin@aclu.org) or Georgeanne Usova (202/675-2338; gusova@aclu.org).