WASHINGTON
LEGISLATIVE OFFICE

September 6, 2018

The Honorable Paul D. Ryan
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: The ACLU Says Vote NO on H.R. 6691 Community Safety and Security Act of 2018

AMERICAN CIVIL LIBERTIES UNION
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Dear Speaker Ryan and Minority Leader Pelosi,

On behalf of the American Civil Liberties Union (ACLU), we write to urge you to vote NO on H.R. 6691, the Community Safety and Security Act of 2018. H.R. 6691 is overbroad and expands the definition of a "crime of violence" to include a number of offenses that have no element of violence which will further fuel mass incarceration for low level offenses. **The ACLU will include your vote on The Community Safety and Security Act in our voting scorecard for the 115th Congress.**

For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. With more than 2 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C. for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

The Community Safety and Security Act is a flawed attempt to address the unconstitutionally vague definition of a crime of violence after the Supreme Court's decision in *Dimaya v. Sessions*.[1] To the contrary, the bill does not fix the vagueness issue, but actually renders the statute even less clear and concise than the unconstitutional language that the Supreme Court struck down.

H.R. 6691 will exacerbate mass incarceration by expanding the definition of "crime of violence"

While H.R. 6691 amends only one definition, it has far reaching impact. The definition of "crime of violence" in 18 U.S.C § 16 is referenced throughout

[1] *Dimaya v. Sessions,* 138 S.Ct. 1204 (2018).

U.S. Code in various contexts including in immigration law. Amending the definition of a "crime of violence" would expand the impact of a number of federal sentencing provisions as well as impact pretrial detention decisions. It would allow for severe, costly, and punitive sentences to apply to low level crimes, and could prevent people accused of misdemeanors from being released pretrial. This hastily drafted legislation would have wide, costly, and harmful consequences.

Vagueness has not been solved

While attempting to address the vague language found unconstitutional in *Dimaya,* this bill creates even more statutory uncertainty in its wake. In the *Dimaya* decision, sub-section (b) of Section 16 was declared unconstitutionally vague in the immigration context due to the arbitrary and unpredictable decisions that were sure to result from its wording.[2] H.R. 6691 however, creates new, imprecise definitions of crimes, adding confusing and ambiguous language to the statute.

Perhaps most concerning is this bill's inclusion of conduct and offenses unrelated to actual violence in a definition for a "crime of violence." For example, the definitions of fleeing, coercion, burglary, and carjacking in H.R. 6691 would include within their list of qualifying conduct for a "crime of violence" acts without threats to or actual bodily harm. The definition of coercion for example, includes coercion by fraud, carrying no risk of actual bodily harm, threatened bodily harm, or fear of bodily harm to the victim. By not connecting behavior that is actually violent to the meaning of a "crime of violence" the legislation diminishes the meaning of violence and opens the door for people convicted of low level, nonviolent offenses to face the same severe sentences as those convicted of more serious offenses.

Legal services providers who filed an amicus brief in the *Dimaya* case described the different application of subsection (b) of Sec. 16 across federal circuits, using the example of residential trespass which was considered a "crime of violence" by the Tenth Circuit Court of Appeals but not by the Seventh Circuit.[3] This bill does little to resolve the inconsistent way courts applied the "crime of violence" based on subsection (b) because it too includes vague definitions of offenses and creates definitions for the same crimes that differ from those currently in the criminal code.

For instance, this legislation offers new and alternative meanings to carjacking, fleeing, coercion, and extortion among others without amending the respective criminal code to make them consistent. The definition of carjacking in the bill expands the language to include acts without intent to cause death or serious bodily harm as well as acts that are considered merely unauthorized use of a vehicle. The most confusing and ill-advised expansion in the bill is "fleeing" as a "crime of violence" offering one definition of the offense as simply failing to comply with an officer's signal to pull over.[4] On top of being somewhat confusing and vague, these new definitions could include routine traffic stops and joyriding. This bill is so broad as to include acts considered nonviolent while creating a numerous conflicting definitions of the same conduct.

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[2] *Dimaya v. Sessions,* 138 S.Ct. 1204, 1216 (2018).

[3] Brief of the National Immigration Project of the National Lawyers Guild, Immigrant Defense Project, American Immigration Lawyers Association, and National Immigrant Justice Center as Amici Curiae in Support of Respondent, *Dimaya*, 138 S.Ct.1204(2016).

[4] The bill's language on "fleeing": "knowingly operating a motor vehicle and, following a law enforcement officer's signal to bring the motor vehicle to a stop…(a)failing or refusing to comply"

Instead of attempting to expand the definition of crime of violence to the point of rendering the word "violent" meaningless, a more thoughtful approach would be to adopt the U.S. Sentencing Commission Guidelines list of "crimes of violence" in §4B1.2 that hold true to the meaning of "violent" while solving the vagueness issue found in *Dimaya*. §4B1.2 offers a definition of "crime of violence" as "a murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive materials defined in 18 U.S.C. § 841(c)."[5]

H.R. 6691 is duplicative and excessively punitive when applied to cases of deportations

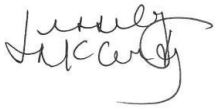
The term "crime of violence" is included in one of the harshest provisions of our immigration laws—triggering mandatory detention and leading to deportation with little to no due process. By expanding the existing "crime of violence" definition, H.R. 6691 would lead to generally non-violent offenses—such as communication of threats or simple assault (which could include minor offenses such as spitting on another person)—triggering no-bond detention and deportation. Currently, immigrants who have had contact with the criminal justice system are often subject to harsh and overbroad immigration penalties. Residents who have lived here for decades, including lawful permanent residents, can face deportation for minor offenses like shoplifting or using a false bus pass. Given there is already an exhaustive list of crimes that are addressed by current immigration laws, this bill is unnecessary, duplicative, and excessively harsh. At a time when resources are limited and the public is concerned with over-criminalization, this bill would expand the way in which our laws criminalize immigrants and communities of color.

Conclusion

H.R. 6691 would impose a sweeping and unwise expansion of what are known as "crimes of violence" that would have significant and wide-ranging impacts on immigrant communities and communities of color and further burden our failing criminal justice system.

For these reasons, the ACLU urges you to vote "No" on H.R. 6691 the Community Safety and Security Act of 2018. If you have any additional questions, please feel free to contact Jesselyn McCurdy, Deputy Director at jmccurdy@aclu.org or (202) 675-2307.

Sincerely,



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[5] U.S. SENTENCING GUIDELINES MANUAL §4b1.2 (U.S. SENTENCING COMM'N 2016).