March 6, 2024

RE: Vote NO on H.R. 7511, the Laken Riley Act

Dear Representative:

The American Civil Liberties Union (ACLU) strongly urges you to **vote NO on H.R. 7511**, the "Laken Riley Act", introduced by Rep. Collins. 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 propagated by elected officials who are more focused on wielding immigration as a political weapon than addressing real public safety needs. 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. It would also give state officials effective veto power over federal immigration enforcement decisions, empowering them to sue over federal decisions regarding the release of people from immigration detention. Arming states to sue the federal government when they disapprove of how it handles individual decisions about a person's detention or release is a massive waste of judicial resources that will invite increasingly political lawsuits–burdening an already clogged immigration system, as well as our federal courts.

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.

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

Xenophobic Scapegoating & Willful Mis-statements of Current Immigration Policy

The bill is a dangerous and extreme extension of xenophobic attacks by state officials like Texas Governor Greg Abbott who scapegoat noncitizens for political ends.

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The findings section of this bill falsely alleges that President Biden and his administration have embraced an "open borders policy" that resulted in the tragic death of Laken Riley. It further expresses a "sense of Congress" that the administration should adopt harmful and extreme immigration policies including by reinstating the Remain in Mexico policy to prevent future crimes.

This section is a politicized and willful misstatement of the Administration's policies to date. Customs and Border Protection has continued to encounter, arrest, and deport people arriving at the southern border even as unauthorized crossings have declined; indeed between May and November 2023, the Department of Homeland Security (DHS) removed or returned over 400,000 individuals, primarily at the southwest border. According to DHS, "These numbers "nearly [equal] the number removed and returned in all of fiscal year 2019 and exceeds the annual totals for each year 2015 – 2018," and "daily removals and enforcement returns per day are nearly double what they were compared to the pre-pandemic average (2014-2019)."[1] The rhetoric of "open borders", which some in Congress have embraced to justify the impeachment of DHS Secretary Alejandro Mayorkas and introduce draconian and xenophobic bills, is not grounded in fact.

Threat to Civil Liberties: Expanding Mandatory Detention

Mandatory immigration detention laws require 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.

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.

Mandatory detention 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,

[1] Department of Homeland Security, "CBP releases November 2023 monthly update", (Dec. 2023), *available at* https://www.cbp.gov/newsroom/national-media-release/cbp-releases-november-2023-monthly-update#:~:text=In%20November%202023%2C%20CBP%20processed,air%2C%20truck%2C%20and%20rail.

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]

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–and it is only xenophobia that would justify a different rule for noncitizens.

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 constitution.[5] 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

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[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).

[5] *Spokeo, Inc. v. Robin*s, 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.").

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 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.

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Ultimately, this legislation is an extension of the politicized attacks on the current Homeland Security Secretary and the extremist actions of Governor Greg Abbott and others that demonize migrants and assert a hyperbolic "invasion" rhetoric to advance a dehumanizing, anti-immigrant agenda. We urge members of Congress to reject this dangerous political ploy.

We strongly urge a No vote on H.R. 7511. Should you have additional questions about this legislation, please contact Naureen Shah, Deputy Director of Government Affairs, nshah@aclu.org, on mandatory detention and Sarah Mehta, Senior Policy Counsel, smehta1@aclu.org on border related issues.

Sincerely,

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

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