



February 15, 2018

Re: Vote **NO** on Amendment 1959 (SECURE and SUCCEED Act)

Dear Senator:

The American Civil Liberties Union (ACLU), on behalf of our more than two million members and supporters, strongly urges you to **vote NO Amendment 1959, the “SECURE and SUCCEED Act” (Act)**, offered by Senator Chuck Grassley. We understand that the Senate may vote on this amendment today.

Each day that Congress delays acting on the Dream Act, approximately [122 Dreamers lose their DACA protection](#). This administration has not slowed down its relentless pace of dragnet detention and deportation of immigrants—including Dreamers. We know of multiple DACA recipients who have been [detained and even deported](#). Just this month, a DACA recipient—whose protections expired due to an error—was [arrested and detained by ICE](#).

To our millions of members and supporters, it is unconscionable that Congress continues to fail in its responsibility to protect Dreamers—and instead plays politics with their lives. **The Act is a sweeping mass deportation bill that uses Dreamers to enact a radical and divisive set of unpopular provisions that are even more extreme and costly than the controversial White House proposal.** We have several serious constitutional and policy concerns, outlined below.

### **I. The Act Recklessly Throws \$25 billion at the Border**

The amendment proposes a \$25 billion trust fund to ramp up border enforcement—including additional Border Patrol agents—and does not mention critical oversight and accountability pieces that are necessary pieces of any successful border plan. It seemingly allows the president to bypass the regular appropriations process and spend money without requisite oversight from Congress. The proposal also suggests it will compel border states and localities to engage in federal immigration enforcement through participation in Operation Stonegarden.. This Act further militarizes and dehumanizes our border communities.

### **II. The Act Expands the Deportation Machinery, Chips Away at Constitutional and Human Rights, and Isolates Immigrants from their Communities**

The proposal simply repackages the controversial and draconian White House immigration framework. It would significantly ramp up interior enforcement and deportations. It includes new and unnecessary mandatory minimum penalties for immigration offenses, adds even more grounds to deport people for minor infractions

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and without due process, and would expand the detention of vulnerable people, including pregnant women, children, and those applying for asylum.

The Act would also undermine the Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), which sets forth important limits on the government’s ability to indefinitely detain immigrants and upholds fundamental liberty protections in our Constitution. The Act also expands mandatory detention for every individual arriving at the U.S. border, including asylum seekers—leading to skyrocketing detention costs, which already costs U.S. taxpayers \$2 billion each year.

The Act also chips away at fundamental due process protections and our international treaty obligations. First, it would allow DHS to bypass the immigration courts—via expedited removal—to deport people who overstay their visas. It also proposes to remove protections and limit due process for unaccompanied children and other asylum seekers fleeing violence and harm, and make it more difficult for them to find protection in the United States. [Expedited removal](#) is a fast-track deportation procedure that has led to the widespread violations of constitutional and human rights by allowing a DHS official to summarily deport immigrants without a hearing before an immigration judge or appellate review. Expedited removal and similar truncated removal proceedings have led to the unlawful deportations of U.S. citizens, unaccompanied children seeking protection, and asylum seekers. Finally, the Act would

Finally, the proposal would use taxpayer dollars to harass, detain, and marginalize immigrant communities through abusive enforcement practices. The Act calls for an increase of no less than 8,500 ICE agents. ICE agents are already making arrests at [courthouses](#), in hospitals, and outside of schools. These tactics [silence survivors of domestic violence](#), deter immigrants from seeking necessary [healthcare](#), and [discourage children from attending school](#). [Law enforcement](#) officials nationwide have spoken out against the federal immigration “crackdown” and its interference with real public safety issues.

### **III. The Act Encourages Racial Profiling and Funnels Immigrants into the Criminal Justice System**

The Act encourages racial profiling and mass incarceration. First, it creates new mandatory minimums for illegal reentry (8 U.S.C. 1326), already the second-most prosecuted federal crime in the United States, which will balloon the federal prison system at significant cost to taxpayers. At a time when the nation is embracing bipartisan criminal justice reform and an end to mass incarceration, this proposal moves in the opposite direction.

The Act also expands grounds of inadmissibility and removability, triggering deportation for relatively minor offenses, such as shoplifting, using a false bus pass, and simple drug possession. These often sweep up long-time lawful residents—who have served their time for offenses decades earlier and successfully rehabilitated. Because so many criminal justice laws often disproportionately impact families and communities of color, expanding the grounds of inadmissibility and removability would simply exacerbate those consequences.

Finally, it is replete with vague and overbroad language and definitions that serve as cover for discriminatory and unjustified targeting of Muslim, Arab, Middle Eastern, and South Asian communities, as well as immigrants broadly. It seeks to broaden definitions of “terrorist activity” and “terrorist organization” to encompass any purported “threat to the national security”—the kind of loose, undefined designation that for decades has been used to target and discriminate against these communities, particularly under the current administration, which has enacted overtly discriminatory measures such as the Muslim ban and extreme vetting initiatives.

### **IV. The Act Would Target Certain Communities for Surveillance and Deportation, Based on Race, Ethnicity, and Political Views**

The legislation would also broaden a domestic terrorism framework that, for decades, has served as a pretext for surveilling and investigating those with contrary or controversial views, including leaders of the civil rights movement. It would also stigmatize entire communities as suspect—in particular Muslim, Arab, Middle Eastern,

and South Asian communities. Most recently, this framework has been used to target what the government labels “Black Identity Extremists” and those who engage in civil disobedience. Additionally, this bill seeks to create a mechanism for “continuous” vetting of visitors and immigrants after they enter the United States—potentially sweeping and indefinite surveillance that would raise serious constitutional concerns. These measures would do little to protect our national security but would provide the government with additional means to target and surveil vulnerable populations.

Finally, this bill includes other deeply problematic provisions, many of which also raise constitutional concerns, including: social media vetting of people from “high risk countries” which provides no parameters or limiting definitions and risks a negative impact on those living in the United States, including U.S. citizens who will be swept up in these searches; prohibiting individuals from naturalizing based on vague and overbroad language such as “national security information”; and, permitting the government to denaturalize individuals within the first 15 years of their naturalization based even on mere “opposition” to the government through, for example, civil disobedience.

## V. Conclusion

The SECURE and SUCCEED Act goes far beyond the White House immigration framework. It includes the Trump administration’s mass deportation and border wish list, but couples it with deeply troubling surveillance and profiling of entire communities. The Act creates a legislative framework to target vulnerable populations at the expense of the Constitution and the values upon which this country was founded.

The ACLU urges the Senate **to vote NO on Amendment 1959, the SECURE and SUCCEED Act**. For more information, please contact ACLU Federal Immigration Policy Counsel, Madhu Grewal (202-675-2303; [mgrewal@aclu.org](mailto:mgrewal@aclu.org)).

Sincerely,



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