

SARAH’S LAW

APRIL 5, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 661]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 661) to require U.S. Immigration and Customs Enforcement to take into custody certain aliens who have been charged in the United States with a crime that resulted in the death or serious bodily injury of another person, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	3
Hearings	9
Committee Consideration	9
Committee Votes	9
Committee Oversight Findings	12
New Budget Authority and Tax Expenditures	12
Congressional Budget Office Cost Estimate	12
Committee Estimate of Budgetary Effects	13
Duplication of Federal Programs	13
Performance Goals and Objectives	13
Advisory on Earmarks	13
Federal Mandates Statement	13
Advisory Committee Statement	14
Applicability to Legislative Branch	14
Section-by-Section Analysis	14

Changes in Existing Law Made by the Bill, as Reported	14
Dissenting Views	17

The amendment is as follows:

Strike all that follows the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as “Sarah’s Law”.

SEC. 2. MANDATORY DETENTION OF CERTAIN ALIENS CHARGED WITH A CRIME RESULTING IN DEATH OR SERIOUS BODILY INJURY.

Section 236(c) of the Immigration and Nationality Act (8 U.S.C. 1226(c)) is amended—

- (1) in paragraph (1)—
 - (A) in subparagraph (C)—
 - (i) by striking “sentence” and inserting “sentenced”; and
 - (ii) by striking “or”;
 - (B) in subparagraph (D), by striking the comma at the end and inserting “, or”; and
 - (C) by inserting after subparagraph (D) the following:
 - “(E)(i)(I) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a),
 - “(II) is deportable under section 237(a)(1)(B) as an alien whose non-immigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 221(i), or
 - “(III) is deportable under section 237(a)(1)(C)(i), and
 - “(ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any offense that resulted in the death or serious bodily injury (as defined in section 1365(h)(3) of title 18, United States Code) of another person;”
- (2) by adding at the end the following:
 - “(3) NOTIFICATION REQUIREMENT.—Upon encountering or gaining knowledge of an alien described in paragraph (1), the Secretary of Homeland Security shall—
 - “(A) obtain information from law enforcement agencies and from other available sources regarding the identity of any victims of the crimes for which such alien was charged, arrested, or convicted; and
 - “(B) provide the victim or, if the victim is deceased, a parent, guardian, spouse, or closest living relative of such victim, with information, on a timely and ongoing basis, including—
 - “(i) the alien’s full name, aliases, date of birth, and country of nationality;
 - “(ii) the alien’s immigration status and criminal history;
 - “(iii) the alien’s custody status and any changes related to the alien’s custody; and
 - “(iv) a description of any efforts by the United States Government to remove the alien from the United States.
 - “(4) DETAINER.—The Secretary of Homeland Security shall issue a detainer for an alien described in paragraph (1)(E) and, if the alien is not otherwise detained by Federal, State, or local officials, shall effectively and expeditiously take custody of the alien.”

SEC. 3. SAVINGS PROVISION.

Nothing in this Act, or the amendments made by this Act, may be construed to limit the rights of crime victims under any other provision of law, including section 3771 of title 18, United States Code.

Purpose and Summary

H.R. 661, Sarah’s Law, introduced by Rep. Randy Feenstra (R-IA), would mandate immigration detention for illegal aliens who are charged with, are arrested for, are convicted of, admit having committed, or admit committing acts that constitute the essential elements of any offense that resulted in the death or serious bodily injury of another person. H.R. 661 also would mandate that the De-

partment of Homeland Security (DHS) notify the victim or the victim's family about the alien's identity, immigration status, criminal history, custody status, and any efforts by the United States government to remove the alien from the country. The bill would require DHS to issue a detainer for such aliens and take custody of them "effectively and expeditiously."

Background and Need for the Legislation

On January 31, 2016, as 21-year-old Sarah Root drove home after a day of celebrating her college graduation, an illegal alien who was street racing while drunk slammed into Sarah's SUV.¹ Sarah passed away on February 4, 2016.² A judge later set the illegal alien's bond at \$50,000.³ The illegal alien posted bond and was released.⁴ To this day, the illegal alien responsible for Sarah's murder remains at large.⁵ This bill closes a glaring loophole in immigration law by mandating immigration detention for certain aliens, like Sarah Root's killer, who are arrested for, are charged with, or are convicted of any crime that resulted in someone's death or serious bodily injury. In doing so, H.R. 661 seeks to prevent avoidable tragedies caused by illegal aliens and ensures that dangerous criminal aliens are more quickly removed from the United States.

THE BIDEN ADMINISTRATION'S FAILURE TO DETAIN AND REMOVE CRIMINAL ALIENS

In addition to the Biden Administration releasing more than 4.6 million illegal aliens into the United States in just three years,⁶ President Biden and DHS Secretary Mayorkas have ensured that most of those illegal aliens can remain in the country indefinitely—even after they have committed a crime.⁷ In fact, instead of detaining criminal aliens and ensuring their quick removal from the United States, President Biden and Secretary Mayorkas have made it more difficult for ICE officers to arrest criminals.⁸

For three years, the Biden Administration has chosen to ignore the Immigration and Nationality Act (INA), which specifies the grounds for which an alien "shall . . . be removed" from the United

¹Kathy A. Bolten, *Trump uses Iowan's death as reason to strengthen immigration laws*, DES MOINES REGISTER (Apr. 16, 2016, 7:35 p.m.), <https://www.desmoinesregister.com/story/news/crime-and-courts/2016/04/16/sarah-root-eswin-mejia/82902280/>.

²*Id.*

³*Id.*

⁴*Id.*

⁵Sen. Joni Ernst, *Prioritize the safety of the public over illegal immigrants*, WASH. EXAMINER (Feb. 1, 2024, 6:00 a.m.), <https://www.washingtonexaminer.com/restoring-america/2829732/prioritize-safety-public-over-illegal-immigrants/>.

⁶See H. Comm. on the Judiciary, Rep. on The Biden Border Crisis: How the Biden Admin. Opened the Sw. Border and Abandoned Interior Immigr. Enft at App'x 1 (Oct. 9, 2023) [hereinafter Oct. Interim Staff Rep.]; U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2023*, U.S. DEP'T OF HOMELAND SEC. (last accessed Mar. 22, 2024); U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2024*, U.S. DEP'T OF HOMELAND SEC. (last accessed Mar. 22, 2024); Camilo Montoya-Galvez, *Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting*, CBS NEWS (Jan. 22, 2024), <https://www.cbsnews.com/news/immigration-parole-biden-administration-1-million-migrants/> (reporting that at least 596,600 aliens have been paroled into the United States under illegal categorical parole programs); *Latest UC Data, Total Monthly Discharges to Individual Sponsors Only*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (last accessed Mar. 22, 2024); Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (last accessed Mar. 22, 2024); U.S. Customs and Border Prot., *CBP Releases February 2024 Monthly Update*, U.S. DEP'T OF HOMELAND SEC. (Mar. 22, 2024).

⁷See Oct. Interim Staff Rep., *supra* note 6, at 11–17.

⁸See *id.* at 14–16.

States.⁹ Despite that mandate, during the first eight months of the Biden Administration, then-acting DHS Secretary David Pekoske, Acting ICE Director Tae Johnson, and DHS Secretary Mayorkas issued three memoranda that articulated different enforcement priorities for the new Administration.¹⁰ In September 2021, Secretary Mayorkas issued the third and final memo, entitled “Guidelines for the Enforcement of Civil Immigration Law” (“Mayorkas Memo”), outlining three enforcement priorities: national security, public safety, and border security.¹¹ As the Committee detailed in an October 2023 staff report:

The Mayorkas Memo begins with the assumption that “undocumented noncitizens” work hard and contribute to “our communities” and that “bipartisan groups” have “tried to pass legislation that would provide a path to citizenship or other lawful status for the approximately 11 million undocumented noncitizens” in the country.

From that premise, Secretary Mayorkas articulated a new policy that the mere fact that aliens are removable pursuant to U.S. law “should not alone be the basis of an enforcement action against them.” Under the Mayorkas Memo, for instance, “[b]efore ICE officers [could] arrest and detain aliens as a threat to public safety, they [were] now required to conduct an assessment of the individual and the totality of facts and circumstances, including various aggravating or mitigating factors.” In this assessment, ICE officers were prohibited from relying solely on the fact of an alien’s conviction, regardless of the seriousness of the underlying crime. After listing certain aggravating and mitigating factors, the Mayorkas Memo states that the listed factors were “not exhaustive” and that “the overriding question is whether the noncitizen poses a *current* threat to public safety.” The Mayorkas Memo also does not presumptively subject aliens with aggravated felony convictions to enforcement action or detention.¹²

Consequently, the Mayorkas Memo requires “a lengthier review process before an ICE officer can arrest or remove an illegal alien,” contributes to “fewer ICE arrests of criminal aliens,” and is responsible for “lower removal numbers.”¹³

The numbers speak for themselves: well over half a million criminal aliens are on ICE’s non-detained docket, meaning that aliens with criminal convictions or pending criminal charges are out on American streets and “free to reoffend.”¹⁴ Moreover, “in fiscal year 2023, ICE removed 41 percent fewer aliens with criminal convictions and criminal charges than in fiscal year 2020—and

⁹ 8 U.S.C. § 1227(a).

¹⁰ See *Texas v. United States*, 40 F.4th 205, 213–214 (5th Cir. 2022).

¹¹ *Id.*; see Memorandum from Alejandro N. Mayorkas, Sec’y, Dep’t of Homeland Sec., to Tae Johnson, Acting Dir., U.S. Immigr. and Customs Enf’t, et al., “Guidelines for the Enf’t of Civil Immigr. Law” (Sept. 30, 2021).

¹² Oct. Interim Staff Rep., *supra* note 6, at 14–15.

¹³ *Id.* at 15.

¹⁴ See H. Comm. on the Judiciary, Interim Staff Rep., New Data Reveal Worsening Magnitude of the Biden Border Crisis and Lack of Interior Immigr. Enf’t, at 9 (Jan. 18, 2024), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf> [hereinafter Jan. Interim Staff Rep.].

nearly 60 percent fewer than in fiscal year 2019.”¹⁵ The lack of interior immigration enforcement begins with far fewer arrests of criminal aliens. As the Committee outlined in a January 2024 staff report:

A comparison of administrative arrests by criminal charge or conviction category further highlights the differences in immigration enforcement between the Trump and Biden Administrations. In fiscal year 2018, the Trump Administration arrested aliens responsible for 76,585 dangerous drug offenses compared to 40,698 under the Biden Administration in fiscal year 2023. For assault offenses, the Trump Administration arrested aliens with 50,753 criminal charges and convictions in fiscal year 2018, with only 33,209 in fiscal year 2023. For sex offenses, the number of was 6,888 in 2018 but 5,746 in 2023. Across the board, in categories ranging from murder to kidnapping to weapons offenses, the Trump Administration in 2018 arrested far more criminal aliens than the Biden Administration in 2023.¹⁶

Meanwhile, the Biden Administration has lodged significantly fewer detainers on criminal aliens than the Trump Administration. To ensure that criminal aliens are deported, ICE issues detainers on aliens who have been arrested “and who ICE has probable cause to believe are removable” from the United States.¹⁷ Under a detainer, ICE “asks the other law enforcement agency to notify ICE before a removable individual is released from custody and to maintain custody of the [alien] for a brief period of time” so ICE can take custody of the alien.¹⁸ Detainers not only preserve law enforcement resources but also protect Americans by ensuring that dangerous criminal aliens are not released into communities.¹⁹ In fiscal year 2019, for example, ICE issued 165,487 detainers for aliens whose criminal histories included 56,000 assaults, 14,500 sex crimes, 5,000 robberies, 2,500 homicides, and 2,500 kidnappings.²⁰ During the first three fiscal years of the Biden Administration, ICE lodged 44 percent fewer detainers than during the first three fiscal years of the Trump Administration.²¹

Removals have similarly declined under the Biden Administration. From fiscal year 2017 through fiscal year 2019, there were 749,462 total removals.²² From fiscal year 2021 through fiscal year

¹⁵ *Id.*

¹⁶ *Id.* at 8–9.

¹⁷ U.S. Immigr. and Customs Enft, *Detainers 101* (Sept. 27, 2022), <https://www.ice.gov/features/detainers>.

¹⁸ *Id.*

¹⁹ See U.S. Immigr. and Customs Enft, *Fiscal Year 2019 Enft and Removal Operations Rep.*, U.S. DEPT OF HOMELAND SEC. at 16 (2020), <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf> [hereinafter 2019 ICE Annual Rep.].

²⁰ *Id.*

²¹ In fiscal years 2017, 2018, and 2019, ICE issued 484,990 detainers (142,356 in 2017, 177,147 in 2018, and 165,487 in 2019) compared to 270,127 in fiscal years 2021, 2022, and 2023 (with just 65,940 issued in 2021, 78,829 in 2022, and 125,358 in 2023). See 2019 ICE Annual Report, *supra* note 19, at 17; U.S. Immigr. and Customs Enft, *ICE Annual Report, Fiscal Year 2023*, U.S. DEPT OF HOMELAND SEC. at 17 (Dec. 29, 2023), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf> [hereinafter 2023 ICE Annual Rep.].

²² See U.S. Immigr. and Customs Enft, *Fiscal Year 2018 ICE Enft and Removal Operations Rep.*, U.S. DEPT OF HOMELAND SEC. at 10, <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf> [hereinafter 2018 ICE Annual Rep.]; 2023 ICE Annual Rep., *supra* note 21, at 26.

2023, there were 273,768 removals.²³ The significant drop in removals from the first three fiscal years of the Trump Administration to the first three fiscal years of the Biden Administration is also reflected in the number of removals of aliens from the interior of the United States. From fiscal year 2017 through fiscal year 2019, ICE removed 262,921 aliens from the interior of the U.S.²⁴ From fiscal year 2021 through fiscal year 2023, ICE removed from the U.S. interior only 104,016 aliens, a decrease of 60 percent from the first three years of the Trump Administration.²⁵ This marked decrease in removals has occurred despite the fact that illegal immigration has skyrocketed from the Trump Administration to the Biden Administration, with a 244 percent increase in southwest border encounters from fiscal years 2017, 2018, and 2019 to fiscal years 2021, 2022, and 2023.²⁶

CONSEQUENCES OF OPEN BORDERS AND LIMITED ENFORCEMENT

The real-life consequences of illegal immigration and a lack of interior immigration enforcement are stark. On January 31, 2016, 21-year-old Sarah Root from Council Bluffs, Iowa, was driving home after a day of celebrating her college graduation near Omaha, Nebraska.²⁷ On her way home, a 19-year-old illegal alien who was street racing while drunk slammed into Sarah's SUV, snapping Sarah's spine and fracturing her skull.²⁸ Within hours of Sarah's death on February 4, a judge set the illegal alien's bond at \$50,000.²⁹ The alien, Eswin G. Mejia, posted bond and was released the next day.³⁰ Mejia absconded and his whereabouts remain unknown to this day.³¹

Although Mejia was charged with "motor vehicular homicide," the Obama Administration refused to lodge a detainer against him.³² Despite a request by Omaha police to obtain an immigration detainer for Mejia, "the agency declined."³³ According to a contemporaneous news report, ICE explained that it declined the detainer "because Mejia had not been convicted of a criminal charge" and "was not . . . an 'enforcement priority.'"³⁴ At a 2016 hearing before the Committee on Oversight and Government Reform, then-ICE Director Sarah Saldana further justified the decision not to detain Mejia by saying that, "An individual from ICE looked at the specific facts and circumstances related to that matter, had—the individual had no criminal convictions, previous criminal convic-

²³ 2023 ICE Annual Rep., *supra* note 21, at 26.

²⁴ 2018 ICE Annual Rep., *supra* note 22, at 7; 2023 ICE Annual Rep., *supra* note 21, at 28.

²⁵ 2023 ICE Annual Rep., *supra* note 21, at 28.

²⁶ Compare U.S. Customs and Border Prot., Sw. Border Migration FY 2019, U.S. DEPT OF HOMELAND SEC., <https://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019> (last accessed Feb. 23, 2024), with U.S. CUSTOMS AND BORDER PROT., Sw. Land Border Encounters, U.S. DEPT OF HOMELAND SEC., <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last accessed Feb. 23, 2024).

²⁷ Kathy A. Bolten, *Trump uses Iowan's death as reason to strengthen immigration laws*, DES MOINES REGISTER (Apr. 16, 2016, 7:35 p.m.), <https://www.desmoinesregister.com/story/news/crime-and-courts/2016/04/16/sarah-root-eswin-mejia/82902280/>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ See Ernst, *supra* note 5.

³² Fred Barbash, *The story of Sarah Root, who Trump said was sacrificed 'on the altar of open borders'*, WASH. POST (July 22, 2016, 6:44 a.m.), <https://www.washingtonpost.com/news/morning-mix/wp/2016/07/22/the-story-of-sarah-root-who-trump-said-was-sacrificed-on-the-altar-of-open-borders/>.

³³ *Id.*

³⁴ *Id.*

tions, and made a determination based on his judgment that he did not need to be detained.”³⁵

Eight years after Sarah Root’s death, the Biden Administration has not learned from the Obama Administration’s failures. Illegal alien criminals continue to victimize American communities. Although not every crime that results in death or serious bodily injury involves drunk driving, many do. In Missouri in November 2023, for example, an illegal alien from Honduras was sentenced to 10 years in prison “for driving drunk at 100 mph” and killing another driver.³⁶ In Colorado in December 2023, an illegal alien from El Salvador³⁷ allegedly drove drunk and killed a 46-year-old woman and her 16-year-old son when he drove his truck up to 100 mph and ran into the victims’ vehicle, causing it to crash into a tree.³⁸ Despite having five previous DUI-related convictions, “[a] Boulder County judge sentenced [the illegal alien] to probation, community service[,] and work release” on December 8, 2023, in relation to two of those convictions, just four days before the crash that killed the mother and son.³⁹

The Biden Administration’s “enforcement priorities,” much like the Obama Administration’s policies that prevented Sarah Root’s killer from being detained in ICE custody, have resulted in far fewer arrests of drunk drivers and have repeated the Obama Administration’s mistakes. In FY 2018, ICE arrested aliens whose criminal histories included 80,730 DUI-related charges and convictions.⁴⁰ In FY 2019, ICE nearly matched that number, arresting aliens who accounted for 74,523 DUI charges and convictions.⁴¹ Because of Democrats’ lax immigration enforcement, in FY 2022, that number plummeted to 26,238—meaning that more illegal aliens with DUI-related charges and convictions are free to reoffend in American communities.⁴² In FY 2023, the number of DUI-related ICE arrests continued to be lower than during the Trump Administration, with ICE arresting aliens whose criminal histories accounted for only 43,044 DUI-related charges and convictions—barely half the FY 2018 number and more than 30,000 fewer than in FY 2019.⁴³

³⁵ *Criminal Aliens Released by the Dep’t of Homeland Sec., Hearing Before the Comm. on Oversight and Gov’t Reform*, 114th Cong. (Apr. 28, 2016) (Testimony of ICE Director Sarah Saldana), available at <https://www.govinfo.gov/content/pkg/CHRG-114hhrg23480/html/CHRG-114hhrg23480.htm>.

³⁶ Steve Pokin, *Undocumented driver gets 10 years for being drunk and racing down Glenstone at 100 mph, killing a man*, SPRINGFIELD DAILY CITIZEN (Nov. 18, 2023), <https://sgfcitizen.org/government/crime/undocumented-driver-gets-10-years-for-being-drunk-and-racing-down-glenstone-at-100-mph-killing-a-man/>.

³⁷ Jennie Taer, *EXCLUSIVE: Illegal Immigrant Deported Four Times Charged With Killing Colorado Mother, Son In DUI Crash*, DAILY CALLER (Jan. 8, 2024, 1:42 p.m.), <https://dailycaller.com/2024/01/08/illegal-immigrant-deported-four-times-charged-killing-colorado-mother-son-dui-crash/>.

³⁸ Janet Oravetz, *Man arrested in crash that killed mom, son had multiple prior DUI offenses*, 9NEWS (Dec. 21, 2023, 9:44 a.m.), <https://www.9news.com/article/news/crime/man-charged-broomfield-double-fatal-crash/73-f1f67f6e-18ae-4610-b66d-80183d1d2a56>.

³⁹ Shaun Boyd, *Colorado man charged in DUI crash that killed Broomfield mother and son sentenced in 2 other DUI cases 4 days earlier*, CBS NEWS (Dec. 22, 2023, 7:55 p.m.), <https://www.cbsnews.com/colorado/news/colorado-man-charged-dui-crash-killed-broomfield-mother-son-sentenced-2-other-dui-cases-4-days-earlier/>.

⁴⁰ See 2018 ICE Annual Report, *supra* note 22, at 4.

⁴¹ 2019 ICE Annual Report, *supra* note 19, at 14.

⁴² U.S. Immigr. and Customs Enf’t, *ICE Annual Report, Fiscal Year 2022*, U.S. DEP’T OF HOMELAND SEC. at 8 (Dec. 30, 2022), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf>.

⁴³ Compare 2023 ICE Annual Report, *supra* note 21, at 14, with 2018 ICE Annual Report, *supra* note 22, at 4, and 2019 ICE Annual Report, *supra* note 19, at 14.

Despite these statistics and examples, Democrats have downplayed drunk driving by illegal aliens. For instance, at a Committee business meeting in September 2021, Democrats voted down a series of Republican amendments that would have made certain aliens ineligible for lawful permanent residence if they had one, two, or even 10 or more DUI convictions.⁴⁴ During that markup, Rep. Jerry Nadler, then-chairman of the Committee, excused criminal aliens' drunk driving convictions, stating, "[W]hether someone has 2, or 6, or 10, or 20 convictions of DUI 30 years ago, someone can change."⁴⁵ He added, "You may have any number of convictions for DUI because you are a drunk, because you are an alcoholic, but you also may cease to be an alcoholic."⁴⁶ In January 2020, then-presidential candidate Joe Biden asserted that ICE should not arrest aliens with drunk driving convictions because, "[y]ou only arrest for the purpose of dealing with a felony that's committed, and I don't count drunk driving as a felony."⁴⁷ In fact, candidate Biden called for ICE officers to be fired if they arrested aliens without felony convictions, which could include those with DUIs.⁴⁸ On February 1, 2024, 150 House Democrats voted against legislation that would allow for the deportation of criminal aliens who commit DUIs.⁴⁹

Sarah's Law, introduced by Rep. Feenstra (R-IA), is another step toward taking seriously all illegal alien crimes that result in death or serious bodily injury of another person. In addition to mandating immigration detention for aliens who commit crimes that result in death or serious bodily injury, Sarah's Law requires ICE to lodge detainers against those aliens to ensure that ICE takes custody of them "effectively and expeditiously" if the aliens are not otherwise detained by state or local authorities. The bill conforms to existing law that mandates detention even in certain cases in which an alien never has been convicted of a crime. For example, as the Supreme Court emphasized in 2019, aliens can be subject to mandatory immigration detention if they are "representatives of a terrorist group," are aliens "whom the Government has reasonable grounds to believe are likely to engage in terrorist activities," are certain aliens "for whom immunity from criminal jurisdiction was exercised," or are "the spouse or child of an alien who recently engaged in terrorist activity."⁵⁰ By mandating the detention of aliens whose acts result in the death or serious bodily injury of another person, H.R. 661 creates safer streets for every American and al-

⁴⁴ See Amendments #8, #9, and #10 (offered by Rep. Mike Johnson) to the Amendment in the Nature of a Substitute to Comm. Print 117-2, Markup of Legislative Proposals to Comply with the Reconciliation Directive Included in Section 2002 of the Concurrent Resolution on the Budget for Fiscal Year 2022 (S. Con. Res. 14), H. Comm. on the Judiciary, 117th Cong. (Sept. 13, 2021), available at <https://www.congress.gov/event/117th-congress/house-event/114040>.

⁴⁵ Markup of Legislative Proposals to Comply with the Reconciliation Directive Included in Section 2002 of the Concurrent Resolution on the Budget for Fiscal Year 2022 (S. Con. Res. 14), H. Comm. on the Judiciary, 117th Cong. (statement of Rep. Jerrold Nadler).

⁴⁶ *Id.*

⁴⁷ Tobias Hoonhout, *Biden Says Only Felons Should Be Deported And He Doesn't 'Count Drunk Driving as a Felony'*, NATIONAL REVIEW (Jan. 21, 2020, 12:46 p.m.), <https://www.nationalreview.com/news/biden-says-only-felons-should-be-deported-and-he-doesnt-count-drunk-driving-as-a-felony/>.

⁴⁸ *Id.*

⁴⁹ See Protect Our Communities from DUIs Act, H.R. 6976, 118th Cong. (2024).

⁵⁰ *Nielsen v. Preap*, 139 S. Ct. 954, 970 (2019) (internal quotation marks omitted). In a concurrence, Justice Thomas, with whom Justice Gorsuch joined, wrote, "I continue to believe that no court has jurisdiction to decide questions concerning the detention of aliens before final orders of removal have been entered." See *id.* at 973.

lows for such criminal aliens to be more quickly removed from the United States.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to develop H.R. 661: “The Consequences of Criminal Aliens on U.S. Communities,” a hearing held on July 13, 2023, before the Subcommittee on Immigration Integrity, Security, and Enforcement of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- Donald Rosenberg, Founder, Advocates for Victims of Illegal Alien Crime;
- Bradley Schoenleben, Senior Deputy District Attorney, Orange County, California, District Attorney’s Office;
- John Fabbricatore, Former Field Office Director, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and
- Ramon Batista, Police Chief, Santa Monica, California.

The hearing addressed liberal jurisdictions’ harboring of criminal aliens and the Biden Administration’s lax policies that allow criminal aliens to remain in the United States indefinitely.

Committee Consideration

On March 21, 2024, the Committee met in open session and order the bill, H.R. 661, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 14 to 9, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee’s consideration of H.R. 661:

1. Vote on Amendment #1 to H.R. 661 ANS offered by Ms. Jayapal—failed 7 ayes to 11 nays.
2. Vote on favorably reporting H.R. 661, as amended—passed 14 ayes to 9 nays.

COMMITTEE ON THE JUDICIARY

118th CONGRESS

25-19

ROLL CALL

Date: 3/21/24

Vote on: Jayapal Amendment (H) to HR 661 AHS

Roll Call #: 14

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>				MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)			
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. BIGGS (AZ)		✓		MR. JOHNSON (GA)			
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)			
MR. TIFFANY (WI)				MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)			
MS. SPARTZ (IN)				MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)			
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. ARMSTRONG (ND)				MS. ESCOBAR (TX)	✓		
MR. GOODEN (TX)				MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)		✓		MS. BUSH (MO)			
MR. NEHLS (TX)				MR. IVEY (MD)			
MR. MOORE (AL)				MS. BALINT (VT)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)		✓					

Roll Call Totals:

Ayes:

7

Nays:

11

Present:

Failed: X

Passed: _____

COMMITTEE ON THE JUDICIARY

118th CONGRESS

25-19

ROLL CALL

Date: 3/21/29

Vote on: Final Passage of HR 661, as amended

Roll Call #: 15

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>		✓	
MR. ISSA (CA)				MS. LOFGREN (CA)		✓	
MR. BUCK (CO)				MS. JACKSON LEE (TX)		✓	
MR. GAETZ (FL)	✓			MR. COHEN (TN)			
MR. BIGGS (AZ)	✓			MR. JOHNSON (GA)		✓	
MR. McCLINTOCK (CA)	✓			MR. SCHIFF (CA)			
MR. TIFFANY (WI)				MR. SWALWELL (CA)			
MR. MASSIE (KY)	✓			MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)		✓	
MR. BISHOP (NC)				MR. CORREA (CA)			
MS. SPARTZ (IN)				MS. SCANLON (PA)		✓	
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)			
MR. BENTZ (OR)	✓			MS. McBATH (GA)			
MR. CLINE (VA)	✓			MS. DEAN (PA)			
MR. ARMSTRONG (ND)				MS. ESCOBAR (TX)		✓	
MR. GOODEN (TX)	✓			MS. ROSS (NC)		✓	
MR. VAN DREW (NJ)	✓			MS. BUSH (MO)			
MR. NEHLS (TX)				MR. IVEY (MD)			
MR. MOORE (AL)	✓			MS. BALINT (VT)		✓	
MR. KILEY (CA)	✓						
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)	✓						

Roll Call Totals: Ayes: 14 Nays: 9 Present: _____
 Passed: X Failed: _____

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act of 1974* has been timely submitted prior to filing of the report and is included in the report. Such a cost estimate is included in this report.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the enclosed cost estimate for H.R. 661 from the Director of the Congressional Budget Office:

H.R. 661, Sarah’s Law			
As ordered reported by the House Committee on the Judiciary on March 21, 2024			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	*	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

H.R. 661 would require Immigration and Customs Enforcement (ICE) to detain any alien (non-U.S. national) who is present in the United States without being lawfully admitted and has been charged with or convicted of an offense that resulted in the death or serious bodily injury of another person.

CBO estimates that enacting the bill could increase the number of aliens in government custody, which would reduce their receipt of federal benefits. Any change in that number would depend on many factors, including the availability of detention space, coordination with state and local governments, and decisions made by the executive branch. CBO estimates that any resulting decreases in direct spending resulting from a reduction in the receipt of federal benefits would be insignificant.

Implementing H.R. 661 may increase the number of aliens in ICE detention who have been charged or convicted of causing the death or serious bodily injury of another person. However, given the current availability of detention space, CBO expects that any increase would be largely offset by a reduction in the number of other people in government custody. Therefore, CBO estimates that H.R. 661 would not significantly change the total number of aliens detained by ICE. As a result, CBO estimates that the additional administrative and personnel costs to modify its operations to comply with the bill's requirements would cost ICE less than \$500,000 over the 2024–2029 period. That spending would be subject to the availability of appropriated funds.

The CBO staff contacts for this estimate are David Rafferty (for immigration) and Jeremy Crimm (for Immigration and Customs Enforcement). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 661 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 661 would mandate immigration detention for illegal aliens who are charged with, are arrested for, are convicted of, admit having committed, or admit committing acts that constitute the essential elements of any offense that resulted in the death or serious bodily injury of another person. H.R. 661 also would mandate that the Department of Homeland Security (DHS) notify the victim or the victim's family about the alien's identity, immigration status, criminal history, custody status, and any efforts by the United States government to remove the alien from the country.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 661 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

Federal Mandates Statement

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the *Federal Advisory Committee Act* were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

Section-by-Section Analysis

Section 1. Short Title. “Sarah’s Law.”

Section 2. Mandatory Detention of Certain Aliens Charged with a Crime Resulting in Death or Serious Bodily Injury. This section mandates ICE immigration detention for certain aliens who are charged with, are arrested for, are convicted of, admit having committed, or admit committing acts that constitute the essential elements of any crime that resulted in the death or serious bodily injury of another person. The section also requires DHS to issue a detainer for such aliens and take custody of them “effectively and expeditiously,” and to provide certain information about the alien and efforts to remove the alien to the victim or victim’s family.

Section 3. Savings Provision. This section clarifies that nothing in the bill may be construed to limit victims’ rights under any other provision of law.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * *

TITLE II—IMMIGRATION

* * * * *

CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * *

APPREHENSION AND DETENTION OF ALIENS

SEC. 236. (a) ARREST, DETENTION, AND RELEASE.—On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) REVOCATION OF BOND OR PAROLE.—The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

(c) DETENTION OF CRIMINAL ALIENS.—

(1) CUSTODY.—The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 212(a)(2),

(B) is deportable by reason of having committed any offense covered in section 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D),

(C) is deportable under section 237(a)(2)(A)(i) on the basis of an offense for which the alien has been **[sentence]** *sentenced* to a term of imprisonment of at least 1 year, **[or]**

(D) is inadmissible under section 212(a)(3)(B) or deportable under section 237(a)(4)(B) **[,]**, or

(E)(i)(I) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 212(a),

(II) is deportable under section 237(a)(1)(B) as an alien whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 221(i), or

(III) is deportable under section 237(a)(1)(C)(i), and

(ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any offense that resulted in the death or serious bodily injury (as defined in section 1365(h)(3) of title 18, United States Code) of another person,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) RELEASE.—The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18, United States Code, that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and

is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

(3) *NOTIFICATION REQUIREMENT.*—Upon encountering or gaining knowledge of an alien described in paragraph (1), the Secretary of Homeland Security shall—

(A) obtain information from law enforcement agencies and from other available sources regarding the identity of any victims of the crimes for which such alien was charged, arrested, or convicted; and

(B) provide the victim or, if the victim is deceased, a parent, guardian, spouse, or closest living relative of such victim, with information, on a timely and ongoing basis, including—

(i) the alien's full name, aliases, date of birth, and country of nationality;

(ii) the alien's immigration status and criminal history;

(iii) the alien's custody status and any changes related to the alien's custody; and

(iv) a description of any efforts by the United States Government to remove the alien from the United States.

(4) *DETAINER.*—The Secretary of Homeland Security shall issue a detainer for an alien described in paragraph (1)(E) and, if the alien is not otherwise detained by Federal, State, or local officials, shall effectively and expeditiously take custody of the alien.

(d) *IDENTIFICATION OF CRIMINAL ALIENS.*—(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) JUDICIAL REVIEW.—The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

* * * * *

Dissenting Views

H.R. 661 is an overly broad bill that would result in extremely harsh and unintended consequences. It does nothing to solve any problems with the immigration system and represents yet another attempt by the Republican Majority to target and scapegoat migrants.

This bill arises from a tragic case. In 2016, Sarah Root was killed by Eswin G. Mejia, a drunk driver, who had been in the country unlawfully since 2013. Mr. Mejia was charged with motor vehicular homicide and the judge chose to set bail. After a relative posted bail, Mr. Mejia was released, but he did not show up for his mandatory drug testing and he remains at large today. As a result, Ms. Root’s alleged killer has not been brought to justice.

Unfortunately, this bill will not solve the problem the Majority says it will. If H.R. 661 had been in place at the time of Ms. Root’s death, ICE would have issued a detainer after her alleged killer was charged with a crime, and if resources allowed, would have taken custody of him and then swiftly removed him from the country due to his previous infractions. He would never have been transferred back to local custody to face justice the way the Root family desires. State and local prosecutors have consistently raised concerns about ICE taking individuals into custody before criminal proceedings are completed, which frustrates prosecutors, judges, and victim’s families. This legislation would only exacerbate the problem.

In addition to not actually solving the issue at hand, this bill is overly broad and would result in extremely harsh and unintended consequences. Under this bill, any immigrant who is present in the United States without admission or parole, or whose nonimmigrant visa was revoked, would be subject to mandatory detention if they were charged or even merely arrested for an offense that resulted in the death or serious bodily injury of another person. While at first glance, this may seem reasonable, there are some very serious flaws with this approach.

First, this bill would result in immigrants—even some currently in a lawful status and who have been in the country for a long time—being subjected to mandatory detention. There are far too many examples of wrongful arrests or charges due to mistaken identity or the use of flawed facial recognition technology. For example, Scottsdale Arizona recently had to settle a lawsuit for \$200,000 with a woman who was wrongfully arrested for a hit and run. If this woman was a DACA recipient or had Temporary Protected Status (TPS), under this bill, she would be subject to mandatory detention, even though she is in a lawful status and was wrongfully arrested.

Moreover, under the Immigration and Nationality Act, a noncitizen who is convicted of, or who admits to committing, a Crime Involving Moral Turpitude, or a “CIMT,” is already subject to mandatory detention. Offenses involving the intent to cause or threaten bodily harm and recklessness involving a conscious disregard of a known risk of death or bodily injury are currently considered CIMTs. As a result, people who are convicted of, or who admit committing, an act that results in serious injury or death are *already* subject to mandatory detention under our laws. But this bill goes way beyond that and mandates detention even for noncitizens who are simply charged with or arrested for an offense that resulted in the death or serious bodily injury of another person, regardless of the actual circumstances at hand.

Subjecting a wide range of people, including DACA and TPS recipients, to mandatory detention is not a sensible policy choice and not a good use of our limited enforcement resources. Congress has never appropriated, and no administration has ever requested, sufficient resources to detain all noncitizens who fall under the “mandatory detention” categories.

At markup, Representative Jayapal (D-WA) offered an amendment to strike the provision that would subject an individual to mandatory detention solely based on an arrest or charge. The amendment would have brought the bill more in line with current law by requiring that an individual be convicted of, or admit to, committing an offense that resulted in the death or serious bodily injury of another person to be subject to mandatory detention.

Republicans defeated the amendment on a party line vote. The Majority did not provide any substantive arguments in response to the amendment, nor did they address the issue of wrongful arrest and the harsh unintended consequences that could result from such an arrest. The Majority also failed to recognize that immigration detention is not supposed to be a backstop for the criminal system. Immigration detention is a civil, non-punitive function.

This bill is a broad expansion of current law. It is also unnecessary. Noncitizens who admit to, or who are convicted of, serious offenses that resulted in the death or serious bodily injury of another person are already subject to mandatory detention under the Immigration and Nationality Act. People are often wrongfully arrested or are arrested and never convicted for a crime. Indiscriminately subjecting such people to mandatory detention would result in a gross miscarriage of justice.

For all of these reasons, I dissent, and I urge all of my colleagues to oppose this legislation.

JERROLD NADLER,
Ranking Member.