

DETAIN AND DEPORT ILLEGAL ALIENS WHO ASSAULT
COPS ACT

APRIL 30, 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. 7343]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 7343) to amend the Immigration and Nationality Act to pro-
vide for the detention of certain aliens who commit assault against
law enforcement officers, having considered the same, reports fa-
vorably thereon with an amendment and recommends that the bill
as amended do pass.

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The amendment is as follows:

Strike all that follows after the enacting clause:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Detain and Deport Illegal Aliens Who Assault Cops Act”.

SEC. 2. DETENTION OF CERTAIN ALIENS WHO COMMIT ASSAULT AGAINST LAW ENFORCEMENT OFFICERS.

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

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “Attorney General” and inserting “Secretary of Homeland Security”;

(B) in subparagraph (C), by striking “, or” and inserting a comma;

(C) in subparagraph (D), by adding “or” at the end; and

(D) by inserting after subparagraph (D) the following:

“(E)(i) is inadmissible under section 212(a)(6)(A) or (C) or under section 212(a)(7); 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 involving assault of a law enforcement officer,”;

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following:

“(2) CIRCUMSTANCES.—

“(A) IN GENERAL.—The circumstances referred to in paragraph (1)(E) are that the law enforcement officer was assaulted—

“(i) while he or she was engaged in the performance of his or her official duties;

“(ii) because of the performance of his or her official duties; or

“(iii) because of his or her status as a law enforcement officer.

“(B) DEFINITIONS.—For purposes of paragraph (1)(E)—

“(i) the term ‘assault’ has the meaning given that term in the jurisdiction where the acts occurred; and

“(ii) the term ‘law enforcement officer’ is a person authorized by law—

“(I) to engage in or supervise the prevention, detention, investigation, or prosecution, or the incarceration of any person for any criminal violation of law;

“(II) to apprehend, arrest, or prosecute an individual for any criminal violation of law; or

“(III) to be a firefighter or other first responder.

“(3) 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.”.

Purpose and Summary

H.R. 7343, the Detain and Deport Illegal Aliens Who Assault Cops Act, introduced by Rep. Jeff Van Drew (R-NJ), would mandate immigration detention for illegal aliens who are charged with, arrested for, convicted of, admit having committed, or admit committing acts that constitute the essential elements of any offense involving the assault of a law enforcement officer. The bill would also require the Department of Homeland Security (DHS) to issue a detainer for such aliens and take custody of them “effectively and expeditiously.”

Background and Need for the Legislation

The Biden Administration’s immigration failures have spread from the southwest border to the interior of the country, as many

new illegal alien arrivals terrorize communities and assault the law enforcement officers who protect those communities every day. On January 27, 2023, for example, “[a]s many as 14 migrants” viciously assaulted two New York City Police Department (NYPD) officers near Times Square.¹ As of February 8, 2024, “six men have been charged in the caught-on-video beating—and all but one were released from jail without bail shortly after being arrested.”² The only illegal alien initially held in jail without bail in connection with the attack was subsequently released on bail on February 15, 2024—less than three weeks after the attack.³

This bill makes crystal clear that illegal aliens who assault law enforcement officers shall be detained until they are removed from the United States. The bill also mandates that ICE make such aliens a priority for quick arrest so they cannot reoffend and continue victimizing the men and women of law enforcement.

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

In addition to the Biden Administration releasing more than four million illegal aliens into the United States in just three years,⁴ President Biden and Secretary Mayorkas have ensured that most of those aliens can remain in the country indefinitely—even after they have committed a crime.⁵ 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.⁶

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 States.⁷ 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.⁸ In September 2021, Secretary Mayorkas issued the third and final memo, entitled “Guidelines for the Enforcement of Civil Immigration Law” (“Mayorkas Memo”),

¹ Snejana Farberov, *NYPD looking for two more migrants in vicious, caught-on-camera Times Square cop-beating*, N.Y. POST (Feb. 8, 2024, 10:47 AM), <https://nypost.com/2024/02/08/metro/nypd-is-seeking-2-more-migrants-in-times-square-cop-attack>.

² *Id.*

³ Luis Casiano, *Sole migrant suspect held in Times Square attack on NYPD officers released on bail*, FOX NEWS (Feb. 15, 2024, 9:34 PM), <https://www.foxnews.com/us/sole-migrant-suspect-held-times-square-attack-nypd-officers-released-bail>.

⁴ See H. Comm. on the Judiciary, Rep. on The Biden Border Crisis: How the Biden Admin. Opened the Sw. Border and Abandoned Interior Immigr. Enf’t, at App’x 1 (Oct. 9, 2023) (“DHS released at least 2,148,738 illegal aliens into the United States” through March 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. (reporting that, between April 2023 and September 2023, 688,869 illegal aliens were released by with a notice to appear or paroled); U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2024*, U.S. DEP’T OF HOMELAND SEC. (reporting that in FY 2024 thus far, 581,710 illegal aliens were released by with a notice to appear or paroled); 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); Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. Dep’t of Health and Human Servs. (last accessed Feb. 8, 2024) (reporting at least 274,843 UACs released to sponsors in FY 2022 through FY 2024 thus far).

⁵ See Oct. Interim Staff Rep., *supra* note 4, at 11–17.

⁶ See *id.* at 14–16.

⁷ 8 U.S.C. § 1227(a).

⁸ See *Texas v. United States*, 40 F.4th 205, 213–214 (5th Cir. 2022).

outlining three enforcement priorities: national security, public safety, and border security.⁹ 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.¹⁰

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.”¹¹

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.”¹² Moreover, “in fiscal year 2023, ICE removed 41 percent fewer aliens with criminal convictions and criminal charges than in fiscal year 2020—and nearly 60 percent fewer than in fiscal year 2019.”¹³ 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

⁹*Id.*; see Memorandum from Alejandro N. Mayorkas, Sec’y, Dep’t of Homeland Sec., to Tae Johnson, Acting Dir., U.S. Immigration and Customs Enforcement, et al., “Guidelines for the Enforcement of Civil Immigration Law” (Sept. 30, 2021).

¹⁰Oct. Interim Staff Rep., *supra* note 4, at 14–15.

¹¹*Id.* at 15.

¹²See H. Comm. on the Judiciary, Interim Staff Rep., New Data Reveal Worsening Magnitude of the Biden Border Crisis and Lack of Interior Immigr. Enft., at 9 (Jan. 18, 2024), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-1-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf?_gl=1*um0tzz*_ga*MTEwNTc0NDU4Ni4xNjc1ODY1NjU0*_ga_1818ZEQW81*MTcwNzQxNDIxNS4xMy4xLjE3MDc0MTU2NzQuMC4wLjA.

¹³*Id.*

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 2023.¹⁴

Meanwhile, the Biden Administration has lodged significantly fewer detainees on criminal aliens than the Trump Administration. To ensure that criminal aliens are deported, ICE issues detainees on aliens who have been arrested “and who ICE has probable cause to believe are removable” from the United States.¹⁵ 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.¹⁶ Detainers not only preserve law enforcement resources but also protect Americans by ensuring that dangerous criminal aliens are not released into communities.¹⁷ 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.¹⁸ 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.¹⁹

Overall removals have similarly declined under the Biden Administration. From fiscal year 2017 through fiscal year 2019, there were 749,462 total removals.²⁰ From fiscal year 2021 through fiscal year 2023, there were 273,768 removals.²¹ 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.²² 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.²³

¹⁴*Id.* at 8–9.

¹⁵U.S. Immigr. and Customs Enft, *Detainers 101* (Sept. 27, 2022), <https://www.ice.gov/features/detainers>.

¹⁶*Id.*

¹⁷See 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.].

¹⁸*Id.*

¹⁹In 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 17, 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.].

²⁰See 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 19, at 26.

²¹2023 ICE Annual Rep., *supra* note 19, at 26.

²²2018 ICE Annual Rep., *supra* note 20, at 7; 2023 ICE Annual Rep., *supra* note 19, at 28.

²³2023 ICE Annual Rep., *supra* note 19, at 28.

CONSEQUENCES OF OPEN BORDERS AND LIMITED ENFORCEMENT

The real-life consequences of the Biden Administration's open borders and non-existent immigration enforcement are stark. For example, on January 27, 2023, "[a]s many as 14 migrants" viciously assaulted two NYPD officers near Times Square.²⁴ As of February 8, 2024, "six men have been charged in the caught-on-video beating . . ." ²⁵ All but one were released without bail shortly after arrest, and the last was released on bail two weeks after arrest.²⁶ The assault led even New York Governor Kathy Hochul to question whether the illegal aliens should be deported: "I think that's actually something that should be looked at, I mean, if someone commits a crime against a police officer in the state of New York and they're not here legally. Definitely worth checking into."²⁷

Illegal aliens continue to assault law enforcement officers across the country. In March 2023, for instance, an illegal alien violently assaulted a U.S. Border Patrol agent as the agent attempted to take the alien into custody, injuring the agent's face and arms.²⁸ Similarly, in November 2022, the FBI arrested two illegal aliens for pushing, dragging, and punching a U.S. Border Patrol agent.²⁹

In 2020, an illegal alien stabbed a New York City Police Department (NYPD) officer in the neck, took the officer's gun, and then shot at other officers.³⁰ In 2019, a jury found an illegal alien guilty of assaulting an Immigration and Customs Enforcement (ICE) Deportation Officer.³¹ In September 2023, an illegal alien "slammed into an NYPD squad car and three other vehicles" and then "bit off a piece of a police sergeant's finger while in a holding cell."³² In 2020, an illegal alien shot and killed a Houston police sergeant.³³ And, in 2021, illegal aliens on repatriation flights on multiple occasions attacked ICE agents and pilots, biting and physically assaulting them.³⁴ Joe Gamaldi, national vice president of

²⁴ Snezana Farberov, *NYPD looking for two more migrants in vicious, caught-on-camera Times Square cop-beating*, N.Y. POST (Feb. 8, 2024, 10:47 AM), <https://nypost.com/2024/02/08/metro/nypd-is-seeking-2-more-migrants-in-times-square-cop-attack/>.

²⁵ *Id.*

²⁶ *Id.*; Casiano, *supra* note 3.

²⁷ Janelle Griffith, *N.Y. Gov. Hochul says reported migrants who attacked NYPD officers in Times Square should be deported*, NBC NEWS (Feb. 1, 2024, 6:02 PM), <https://www.nbcnews.com/news/us-news/ny-gov-hochul-says-reported-migrants-attacked-nypd-officers-square-dep-rcna136800>.

²⁸ Anders Hagstrom, *Female border patrol agent violently assaulted by illegal immigrant*, FOX NEWS (Mar. 5, 2023, 1:22 PM), <https://www.foxnews.com/us/female-border-patrol-agent-violently-assaulted-illegal-immigrant>.

²⁹ Danielle Wallace, *FBI arrests 2 Venezuelan illegal immigrants for assault on Border Patrol agent in Texas*, FOX NEWS (Nov. 9, 2022, 9:26 AM), <https://www.foxnews.com/us/fbi-arrests-2-venezuelan-illegal-immigrants-assault-border-patrol-agent-texas>.

³⁰ Lawrence Richard, *Illegal immigrant who stabbed, shot NYPD officers sentenced to 30 years in prison, deportation*, FOX NEWS (Sept. 22, 2022, 3:33 AM), <https://www.foxnews.com/us/illegal-immigrant-stabbed-shot-nypd-officers-sentenced-30-years-prison-deportation>.

³¹ *Illegal alien convicted of assaulting officer in Mississippi*, WTOK TV (Oct. 24, 2019, 1:23 PM), <https://www.wtok.com/content/news/Illegal-alien-convicted-of-assaulting-officer-in-Mississippi-563789991.html>.

³² Michael Ruiz, *Illegal immigrant bites off police sergeant's finger after DUI bust: sources*, FOX NEWS (Sept. 25, 2023, 10:03 AM), <https://www.foxnews.com/us/illegal-immigrant-bites-off-police-sergeants-finger-after-dui-bust-sources>.

³³ Arelis R. Hernandez & Nick Miroff, *Suspect in killing of Houston police sergeant is in United States illegally, ICE says*, WASH. POST (Oct. 21, 2020, 4:43 PM), https://www.washingtonpost.com/national/houston-police-killing-immigrant-ice/2020/10/21/436ead4c-13a4-11eb-82af-864652063d61_story.html.

³⁴ Emily Crane, *Haitian migrants assault ICE officials, pilots on deportation flights*, N.Y. POST (Sept. 23, 2021), <https://nypost.com/2021/09/23/haitian-migrants-attack-ice-officials-on-deportation-flights/>.

the Fraternal Order of Police, partially attributed the rise in violence to “an open border” and a “culture of lawlessness.”³⁵

The Detain and Deport Illegal Aliens Who Assault Cops Act requires ICE to lodge detainers against illegal aliens who assault law enforcement officers and mandates that such aliens be detained in ICE custody. 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.”³⁶ By mandating the detention of illegal aliens who assault law enforcement officers, the bill creates safer streets for all Americans and allows 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. 7343: “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 Fabbriatore, 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 6, 2024, the Committee met in open session and order the bill, H.R. 7343, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 14 to 9, a quorum being present.

³⁵ Ashley Carnahan, *2022 saw disturbing increase in law enforcement fatalities: ‘A culture of lawlessness has gripped the country’*, Fox News (Jan. 15, 2023, 8:30 PM), <https://www.foxnews.com/media/2022-saw-disturbing-increase-law-enforcement-fatalities-culture-lawlessness-gripped-country>.

³⁶ *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.

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. 7343:

1. Vote on Amendment #1 to H.R. 7343 ANS offered by Ms. Jayapal—failed 8 ayes to 12 nays.
2. Vote on favorably reporting H.R. 7343, as amended—passed 14 ayes to 9 nays.

COMMITTEE ON THE JUDICIARY

118th CONGRESS

25-19

ROLL CALL

Date: 3/6/21

Vote on: Jayapal Amendment (#1) to HR 7343 AMS

Roll Call #: 4

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: 8

Nays: 12

Present: X

Passed: _____

Failed: _____

COMMITTEE ON THE JUDICIARY

118th CONGRESS

25-19

ROLL CALL

Date: 3/6/29

Vote on: Final Passage of HR 7343, as amended

Roll Call #: 5

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. 7343 from the Director of the Congressional Budget Office:

H.R. 7343, Detain and Deport Illegal Aliens Who Assault Cops Act			
As ordered reported by the House Committee on the Judiciary on March 6, 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. 7343 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 assaulting a law enforcement officer. Under the bill, a law enforcement officer is any person authorized to investigate, detain, arrest, or prosecute other people in relation to a criminal offense, or a firefighter or other first responder.

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. 7343 may increase the number of aliens in ICE detention who have been charged or convicted of assaulting a law enforcement officer. 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. 7343 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 Jeremy Crimm (for Immigration and Customs Enforcement) and David Rafferty (for immigration). 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. 7343 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. 7343 would mandate immigration detention for illegal aliens who are charged with, arrested for, convicted of, admit having committed, or admit committing acts that constitute the essential elements of any offense involving the assault of a law enforcement officer.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 7343 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. The “Detain and Deport Illegal Aliens Who Assault Cops Act.”

Section 2. Detention of Certain Aliens Who Commit Assaults Against Law Enforcement Officers. This section mandates ICE immigration detention for illegal aliens who are charged with, arrested for, convicted of, admit having committed, or admit committing acts that constitute the essential elements of any offense involving the assault of a law enforcement officer. The section also requires DHS to issue a detainer for such aliens and take custody of them “effectively and expeditiously.”

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** *Secretary of Homeland Security* 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 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) *is inadmissible under section 212(a)(6)(A) or (C) or under section 212(a)(7); 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 involving assault of a law enforcement officer,*
- 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) CIRCUMSTANCES.—

(A) IN GENERAL.—*The circumstances referred to in paragraph (1)(E) are that the law enforcement officer was assaulted—*

- (i) *while he or she was engaged in the performance of his or her official duties;*
- (ii) *because of the performance of his or her official duties; or*
- (iii) *because of his or her status as a law enforcement officer.*

(B) DEFINITIONS.—*For purposes of paragraph (1)(E)—*

- (i) *the term “assault” has the meaning given that term in the jurisdiction where the acts occurred; and*
- (ii) *the term “law enforcement officer” is a person authorized by law—*

(I) to engage in or supervise the prevention, detention, investigation, or prosecution, or the incarceration of any person for any criminal violation of law;

(II) to apprehend, arrest, or prosecute an individual for any criminal violation of law; or

(III) to be a firefighter or other first responder.

(3) *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.*

[(2)] (4) *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.

(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

This bill is overbroad and extraordinarily punitive. It would not solve the problems it purports to fix and would actually result in less justice, not more.

Under this bill, any immigrant who is present in the United States without admission or parole, and who is charged with or even merely arrested for assaulting a law enforcement officer, would automatically become subject to mandatory detention by the Department of Homeland Security (DHS). Assaults on law enforcement officers are serious crimes, but this bill paints with far too broad a brush, and risks placing people who have never committed a crime in mandatory detention.

First and foremost, under current immigration law, serious assaults on law enforcement officers are considered Crimes Involving Moral Turpitude (CIMT), and an admission to, or conviction of, such a crime renders someone inadmissible and subject to mandatory detention under current law.¹

Because the bill is so broadly drafted, people who pose no real danger to law enforcement could be subject to mandatory detention. The bill does not include any requirement that the assault actually cause harm or provide any fail-safes for someone who is arrested and then never charged, or who is charged and is later exonerated. Without any limitations, this could lead to absurd results, in which an individual with Temporary Protected Status (TPS) or Deferred Action for Childhood Arrivals (DACA) is subject to mandatory immigration detention even if they did not commit a crime.

For example, in February, a group of Venezuelan migrants allegedly assaulted some police officers in Times Square in New York City.² A large number of Venezuelan men were arrested in connection to this crime. One individual was photographed making a lewd gesture to news cameras as he left his arraignment, an episode that received much attention in the right-wing media.³ However, on March 1, charges against that specific individual were dropped.⁴ He was not even at the scene of the incident, so he was wrongfully arrested and charged.⁵ This is a perfect example as to why this bill does not work—if it was in effect, this individual, despite his innocence, would have been subject to mandatory immigration detention.

Moreover, it is impossible to detain everyone covered in the “mandatory detention categories” within the Immigration and Nationality Act (INA). Congress has never appropriated, and no administration has ever requested, sufficient resources to detain all noncitizens who fall under the “mandatory detention” categories. Even former President Trump never tried to detain all migrants for the duration of their proceedings—his Fiscal Year (FY) 2021 appropriations request was for just 60,000 detention beds.⁶ The cost of

¹ INA § 212(a)(2)(A)(i); See, e.g. *Matter of Ortega-Lopez*, 26 I&N Dec. 99, 100 (BIA 2013).

² Lisa Rozner & Jesse Zanger, *Police body camera video released in Times Square assault on officers as 7 suspects are indicted*, CBS NEWS (Feb. 9, 2024), <https://www.cbsnews.com/newyork/news/nyc-mayor-adams-da-alvin-bragg-discuss-times-square-officers-assaulted/>.

³ Jake Offenhartz, *Man charged with attacking police in Times Square, vilified in Trump ad, was misidentified, DA says*, AP (Mar. 1, 2024) <https://apnews.com/article/migrants-times-square-brawl-exoneration-alvin-bragg-c83e34b603e57d367e3e12b9ad28752a>.

⁴ *Id.*

⁵ *Id.*

⁶ *A Budget for America's Future*, OFFICE OF MANAGEMENT AND BUDGET (Feb. 10, 2020), https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/02/budget_fy21.pdf.

detaining all migrants would be astronomical—in 2015, the conservative American Action Forum estimated that detaining every undocumented migrant in the country would cost approximately \$35.7 billion.⁷ In contrast, President Trump requested \$3.1 billion for detention space in FY 2021.⁸ DHS's data shows over 500,000 releases at the US-Mexico border under the Trump administration and over 1.1 million total people who crossed during the four years of that administration were eventually released from custody.⁹

Requiring the detention of DACA and TPS recipients who may not have even committed a crime is not a smart use of our limited immigration enforcement resources. Unfortunately, by requiring only that an individual be arrested or charged with assaulting a law enforcement officer before subjecting them to mandatory detention, this bill would force innocent people into immigration detention.

To rectify this, at markup, Representative Jayapal (D-WA) offered an amendment to strike the provision that would subject an individual to mandatory detention 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 assaulting a law enforcement officer prior to becoming 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. They likewise did not address the due process problems the bill contains, and instead lauded its overly punitive approach.

Democrats want to keep Americans safe. But passing extraordinarily broad bills with far-ranging consequences will not make Americans safer. Local judges and prosecutors are far better equipped to determine if an individual poses a risk to the community and ought to remain in custody following an arrest. Congress should not be substituting our judgement for theirs, nor should we be using the civil immigration detention system as a substitute for the criminal system.

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

JERROLD NADLER,
Ranking Member.



⁷ Ben Gitis & Laura Collins, *The Budgetary and Economic Costs of Addressing Unauthorized Immigration: Alternative Strategies*, AM. ACTION FORUM (Mar. 6, 2015) <https://www.americanactionforum.org/research/the-budgetary-and-economic-costs-of-addressing-unauthorized-immigration-alt/>.

⁸ OFFICE OF MANAGEMENT AND BUDGET, *supra* note 6.

⁹ Office of Immigration Statistics, *2021 Enforcement Lifecycle Report Appendix Tables*, DEP'T OF HOMELAND SECURITY (Nov. 2021), <https://www.dhs.gov/immigration-statistics/special-reports/enforcement-lifecycle>.