



January 16, 2025

United States Senate  
U.S. Capitol Building  
Washington, DC 20525

### **Vote NO on S. 5, The Laken Riley Act**

Dear Senator,

On behalf of the Southern Poverty Law Center (SPLC), a nonprofit organization founded in Montgomery, Alabama, to help ensure the promise of the Civil Rights Movement became a reality for all — particularly for Black people in the South, who are all too often the victims of discriminatory policies — we have long worked to protect the rights of those most marginalized in our society, including immigrant communities. Today, we write to urge you to vote NO on S. 5 (The Laken Riley Act) unless the bill is amended to protect Dreamers and other young people, to require a conviction, and to eliminate provisions granting unfettered special standing to state attorneys general to seize control of federal immigration policy.

S. 5 is being sold as granting law enforcement new authorities to detain people who pose a threat to the public, but the bill constrains the ability of federal immigration enforcement officers to make smart law enforcement decisions that prioritize public safety. Immigration and Custom Enforcement (ICE) already has the authority to detain every individual targeted under the bill, but if enacted as drafted, the bill mandates that ICE arrest and keep in custody—without a bond hearing and without any consideration of public safety threat or flight risk— including people who have simply been arrested or charged with low-level offenses.

#### **The Laken Riley Act Exposes Dreamers and Young Children to Mandatory Detention**

As the bill is drafted, there is no minimum age at which a child can be subject to mandatory detention, leaving it to the minimum age of arrest in the states, which vary. Most states have no minimum age at which a child can be arrested, other states do have minimums —ranging from ages 7 to 13.<sup>1</sup> According to FBI statistics, over 30,000 children under the age of 10 have been arrested in the U.S. since 2013,<sup>2</sup> and 2,600 kids ranging from ages 5 to 9 have been arrested for offenses committed while at school, such as

---

<sup>1</sup> Cheryl Corley, *In some states, your 6-year-old child can be arrested. Advocates want that changed*, May 2, 2022, <https://www.npr.org/2022/05/02/1093313589/states-juvenile-minimum-age-arrested-advocates-change>

<sup>2</sup> Bill Hutchinson, *More than 30,000 children under age 10 have been arrested in the US since 2013: FBI*, October 1, 2019, <https://abcnews.go.com/US/30000-children-age-10-arrested-us-2013-fbi/story?id=65798787>



getting in fights with other kids.<sup>3</sup> If this bill is to become law, a 10-year-old who swipes a candy bar from a store, or takes their classmates phone can be taken from their family and be subjected to mandatory indefinite detention.

Supporters of the Laken Riley Act have said DACA recipients would not be subject to mandatory arrest and detention under the bill, but the bill provides no such protection and DHS regulations are clear that a grant of DACA does not preclude DHS from initiating removal proceedings. 8 C.F.R. 236.21(c)(1).

Exposing people who meet the requirements for DACA—young people who came to the United States as children—and children to mandatory arrest and detention without the possibility of bond based on a single arrest or charge of shoplifting will not make our communities safer or stronger.

### **Subjecting People to Mandatory Arrest and Indefinite Detention for a Low-Level Arrest or Charge Undermines Due Process and Invites Racial Profiling**

Law enforcement officers often make arrests in fast-paced and stressful situations, understanding there are due process checks along the way — first, with a prosecutor reviewing the case to determine if charges are warranted, and, if so, ultimately a trial to determine if the person actually committed the offense. While the vast majority of police officers are well-intentioned, they are not attorneys. This is why, after an arrest, a prosecutor will review the facts to ensure the arrest was actually based on the alleged commission of a crime. Prosecutors routinely decline to charge people post-arrest either because a crime was not actually committed or because probable cause does not exist. In the federal system in 2022 alone, prosecutors declined to prosecute 14,742 cases after an arrest either because prosecution was legally barred based on the facts or there was insufficient evidence to charge someone.<sup>4</sup> This demonstrates the frequency with which prosecutors decline to bring charges after a person is arrested.

Because the mandatory arrest and detention provisions of this bill attach based on nothing more than an arrest, it is also not hard to imagine how the bill could be weaponized against Black and Brown people. Because a criminal charge is not required for ICE to be mandated to take an individual into custody and hold them—without the opportunity for bond—until the end of removal efforts, it is essentially irrelevant whether the initial arrest was valid. This opens the door for abuse by a rogue law enforcement officer with a bias against perceived undocumented immigrants—or by an officer following the misguided direction of leadership—that could result in discriminatorily targeting Black and Brown people for arrest knowing that there is no due process check.

### **Granting State Attorneys General standing to dictate federal immigration policy will create chaos and undermine the United States’ ability to speak with one voice.**

Finally, and perhaps most alarming, granting state attorneys general standing to dictate federal immigration policy is an unprecedented move that will create chaos and undermine the United States’ ability to speak with one voice in matters related to foreign affairs. Managing immigration policy is

---

<sup>3</sup> Andrea Ball, Dian Zhang and Mary Claire Molloy, ‘*She looks like a baby*’: *Why do kids as young as 5 or 6 still get arrested at schools?*, February 10, 2022, <https://publicintegrity.org/education/criminalizing-kids/young-kids-arrested-at-schools/>

<sup>4</sup> Department of Justice, *United States Attorneys’ Annual Statistical Report Fiscal Year 2022*, <https://www.justice.gov/usao/file/1574596/dl?inline>



notoriously complex. The federal government—and the Executive charged with administering the laws—must balance competing national interests and deal with resource constraints, public-safety concerns, and the complexities of conducting foreign relations. State attorneys general must not be given the unique ability to commandeer this inherently federal authority, otherwise a single state could have an outsized influence on foreign affairs matters.

Over the past four years, the Biden administration used the statutory parole authority as a critical tool to reduce irregular migration, channeling people toward new safe, legal, and ordinary pathways and away from between-the-ports crossings.<sup>5</sup> Parole was also an important tool in bilateral and multilateral negotiations to advance U.S. interests, including through the promotion of regional migration solutions among the Western Hemisphere countries. Last year, an effort by 21 Republican Attorneys General to end the Biden administration's successful Cuban, Haitian, Nicaraguan, and Venezuelan Parole Processes was thrown out of court by a deeply conservative Texas judge because the states lacked standing. If the Laken Riley Act became law, even a single Attorney General would be able to bring a case to their favorite district court judge to enjoin a similar parole program without having to prove any real injury.

The death of Laken Riley is a profoundly tragic event that deserves our deepest empathy and reflection. Such heartbreaking incidents rightly spark outrage and a desire for change, but enacting broad public policy based on a specific incident—even one as devastating as this—can lead to rushed and overly broad legislation that ultimately fails to address the complexities of systemic issues. While it is vital to honor Laken Riley's memory by working toward safer communities, laws created in the heat of emotion often lack the nuanced analysis necessary to achieve meaningful, lasting solutions. The Laken Riley Act, as written, risks unintended consequences such as racial profiling, violations of due process, and compromised public safety—outcomes that could disproportionately harm marginalized communities, including people of color and immigrant populations. To truly honor Laken Riley's legacy, we must pursue thoughtful solutions that protect civil rights and strengthen justice.

Unless S.5 is amended to protect Dreamers and other young people, to require a conviction, and to eliminate provisions granting unfettered special standing to state attorneys general, SPLC urges you to vote NO on S.5.

If we can answer any questions or be a resource in any way, please do not hesitate to reach out to Aiden Cotter, Senior Policy Counsel for Decarceration and Decriminalization at the Southern Poverty Law Center, at [aiden.cotter@splcenter.org](mailto:aiden.cotter@splcenter.org).

---

<sup>5</sup> Center for American Progress, *The Biden Administration's Use of Immigration Parole Authority Is Both Lawful and Smart*, <https://www.americanprogress.org/article/the-biden-administrations-use-of-immigration-parole-authority-is-both-lawful-and-smart/>