

ANALYSIS

Reforms to Curb DHS, ICE, CBP Overreach

How Congress can protect Americans' rights and provide a measure of accountability.



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Government Power

This is an excerpt from an article first published by [Just Security](#) [\[link-1\]](#).

There are a few common-sense reforms that Congress could incorporate into a DHS funding bill in addition to those proposed by Jeffries and Schumer to reinstate and strengthen oversight over the department, ensure protections for core First and Fourth Amendment

rights, curb violent and unconstitutional actions by federal agents, and hold them accountable for overreach. This is not a comprehensive list, and these are not the only solutions, but they would provide a measure of accountability and protections currently missing. Congress should also take back the blank check it provided to DHS.

Reinstate and Strengthen Oversight Mechanisms and Accountability

While receiving [record funding](#) [\[link-2\]](#) for immigration enforcement, DHS has effectively gutted oversight offices. The Office for Civil Rights and Civil Liberties (CRCL), Office of the Immigration Detention Ombudsman, and the Office of the Citizenship and Immigration Services Ombudsman are no longer adequately [performing](#) [\[link-3\]](#) their oversight functions, in light of the [decimation](#) [\[link-4\]](#) of their staff. DHS has cut nearly all line employees who annually received hundreds of complaints of civil rights abuses and conditions in detention centers as well as about problems in their applications for changes of immigration status, investigated those complaints, and, in some cases, made changes on the ground in real time. Congress

should require the administration to reinstate those offices at full scale.

In addition, as the Brennan Center has previously written, Congress [should substantially strengthen](#) [\[link-5\]](#) CRCL's influence and oversight functions, including by expressly codifying its authorities, requiring annual public reporting, and expanding and funding programs to hire and retain staff with technological expertise. Congress should also explicitly condition DHS funding on compliance by the department and its components with oversight and transparency obligations.

Congress must also strengthen remedies available to members of the public for abuse by federal agents, including by passing a law giving individuals the right to sue federal officers in federal court for violations of constitutional rights.

One option would be for Congress to pass the [Bivens Act](#) [\[link-6\]](#),

which would allow individuals to recover damages for constitutional violations committed against them by federal officials, including U.S. Immigration and Customs Enforcement (ICE) and Border Patrol. The bill would close the existing gap in 42 U.S.C. § 1983, as Samantha Trepel recommends above, and provide recourse to victims whether the harm is perpetrated by a local, state, or federal official.

Prevent Data Collection on Protestors

ICE is spending [millions of dollars](#) [link-7] on tools that allow it to track and collect information about Americans exercising their constitutionally protected right to observe federal officials and protest government policies. Data collection technologies are also being used to target immigrants in service of the administration's goal of mass deportation. These tools

appear to be supercharging the administration's efforts to portray [lawful protesters](#) [link-8] and even [victims of violence](#) [link-9] at the hands of government agents as “domestic terrorists.”

There is little information publicly available about some of the most invasive technologies, such as a real-time facial recognition app that is being used to [scan](#) [link-10] people on the street without their consent and determine whether they are citizens, not always [accurately](#) [link-11]. Facial recognition capabilities are also evidently being [deployed](#) [link-12] to record information about observers and protesters – many of whom are citizens – also without their consent. In addition to their profound privacy implications, these uses violate a [policy](#) [link-13] issued by the department in 2023. As the Privacy and Civil Liberties Oversight Board

(PCLOB) has [observed](#) [\[link-14\]](#), however, the policy has been removed from the department's website, with no indication about whether it or any other policy is in effect, undermining the ability of oversight agencies, Congress, and the public to “know what is allowed and what is not.”

At a minimum, Congress should prevent both ICE and CBP from using their funding to purchase, deploy, or repurpose technologies to collect or maintain information about people engaging in First Amendment-protected activities such as observing or recording federal officers or protesting government policies; indeed, doing so should already be prohibited by the Privacy Act. Congress should also demand that the department publish easily accessible, searchable, and comprehensive information about all of the technologies it is using in support

of immigration enforcement and in its targeting of protestors.

Fourth Amendment Reforms

In an [internal memo](#) [\[link-15\]](#) made public through a whistleblower report, the Acting Director of ICE instructed officers that they are permitted to enter homes to conduct immigration arrests without judicial authorization. According to the memo, officers may rely on a document DHS refers to as an “administrative warrant.” But that document isn't a judicial warrant at all; instead, it is simply a piece of paper issued by DHS itself – the same agency that serves as police and prosecutor. Allowing entry into homes without judicial oversight is not only a departure from longstanding DHS policy, but also contrary to core Fourth Amendment rights held by both citizens and noncitizens within the United States.

It has long been understood that under the Fourth Amendment law enforcement generally must [have](#) [\[link-16\]](#) a judicial [\[link-17\]](#) warrant to enter a home, absent consent or exigent circumstances. Judicial authorization is not merely a constitutional formality; it serves as an important safeguard for every household. Evaluation of the facts by a neutral magistrate helps ensure that officers do not, for example, enter the wrong homes (as immigration officers have done recently in [Portland](#) [\[link-18\]](#) and [Minnesota](#) [\[link-19\]](#)) or enter for the wrong reasons. ICE's recent pattern [\[link-20\]](#) of unlawful [\[link-21\]](#) behavior and aggressive [\[link-22\]](#) enforcement tactics makes patently clear the necessity of judicial checks on law enforcement.

Consistent with the Fourth Amendment, Congress should prohibit ICE from entering homes

using administrative warrants issued by the executive branch and require ICE to obtain a judicial warrant to enter homes in the absence of consent or exigent circumstances.

Funding Reforms

Instead of giving DHS additional funding for immigration enforcement, Congress should pull back the \$170 billion [\[link-23\]](#) it gave the agency last July on top of its fiscal year 2025 budget, swelling its account for conducting border and interior immigration enforcement. According to the Bipartisan Policy Center [\[link-24\]](#) , what Congress gave, it can take away – so long as it claws the money back before the funding expires on September 30, 2029. And of course, the longer it waits, the more taxpayer money ICE and CBP will have spent.

The sums [\[link-25\]](#) are staggering: close to half the July windfall was

for ICE, which was allocated \$75 billion, including \$45 billion to detain more immigrants. The \$75 billion was on top of the \$10 billion already appropriated to ICE for 2025, [exceeding](#) [\[link-26\]](#) the entire military budget of France. The July funding bill also added \$65 billion to CBP's \$20 billion budget for 2025, giving CBP more than double the combined funding for the entire militaries of Canada and Mexico, the United States's two closest neighbors.

According to the government's own [data](#) [\[link-27\]](#), ICE and CBP have If the extraordinary sums DHS has been handed are left in the department's account, it will give the agency the ability to replicate the scenes we have seen in Minneapolis in cities and states throughout the country, and Congress will have given up its most powerful tool for holding DHS accountable. Yet in late January, the

House [approved](#) [\[link-28\]](#) even more money for the two bodies most in the news for their abuses against both citizens and non-citizens across the United States – an additional \$10 billion for operations and support for ICE, an entity that [nearly two thirds](#) [\[link-29\]](#) of Americans say has gone too far, and another \$18 billion for CBP.

This is the proposal that is now sitting before the Senate. Instead of cutting those agencies another big check from taxpayer money, Congress should use its constitutional power over spending to pull back the funding it gave DHS in July. When DHS needs additional funding, it can request that money from Congress, giving Congress the ability to fund the agency only if it is acting within the bounds of the law and the Constitution. This is an important opportunity for Congress to flex its muscle as a co-equal branch of government.

MORE ON

Executive Power [\[link-30\]](#)

Links

link-1: Just Security <https://www.justsecurity.org/130972/expert-survey-dhs-cbp-ice-reforms/>

link-2: record funding <https://www.brennancenter.org/our-work/analysis-opinion/big-budget-act-creates-deportation-industrial-complex>

link-3: performing <https://www.npr.org/2025/03/21/nx-s1-5336738/homeland-security-rif-cuts-dhs>

link-4: decimation <https://www.theguardian.com/us-news/2025/nov/30/us-watchdog-human-rights-department-homeland-security>

link-5: should substantially strengthen <https://www.brennancenter.org/our-work/policy-solutions/holding-homeland-security-accountable>

link-6: Bivens Act <https://www.congress.gov/bill/119th-congress/house-bill/6091/text>

link-7: millions of dollars <https://www.brennancenter.org/our-work/research-reports/ice-wants-go-after-dissenters-well-immigrants>

link-8: lawful protesters <https://www.brennancenter.org/our-work/research-reports/trumps-orders-targeting-antifascism-aim-criminalize-opposition>

link-9: victims of violence <https://www.brennancenter.org/our-work/analysis-opinion/labeling-renee-good-domestic-terrorist-distorts-law>

link-10: scan <https://www.theguardian.com/technology/2026/jan/27/ice-facial-recognition-minnesota>

link-11: accurately <https://www.404media.co/ices-facial-recognition-app-misidentified-a-woman-twice/>

link-12: deployed <https://www.nytimes.com/2026/01/30/technology/tech-ice-facial-recognition-palantir.html>

link-13: policy <https://www.biometricupdate.com/wp-content/uploads/2026/01/Directive-026-11.pdf?inline=1>

link-14: observed [https://documents.pclob.gov/prod/Documents/OversightReport/90964138-44eb-483d-990e-057ce4c31db7/Use%20of%20FRT%20by%20TSA,%20PCLOB%20Report%20\(5-12-25\),%20Completed%20508,%20May%2019,%202025.pdf?inline=1](https://documents.pclob.gov/prod/Documents/OversightReport/90964138-44eb-483d-990e-057ce4c31db7/Use%20of%20FRT%20by%20TSA,%20PCLOB%20Report%20(5-12-25),%20Completed%20508,%20May%2019,%202025.pdf?inline=1)

link-15: internal memo <https://www.documentcloud.org/documents/26499371-dhs-ice-memo-1-21-26/>

link-16: must have <https://supreme.justia.com/cases/federal/us/445/573/>

link-17: judicial <https://supreme.justia.com/cases/federal/us/403/443/>

link-18: Portland <https://www.cbsnews.com/news/ice-portland-raid-wrong-home-marcos-charles/>

link-19: Minnesota <https://www.nytimes.com/2026/01/20/us/chongly-scott-thao-ice-arrest.html>

link-20: pattern <https://theintercept.com/2025/07/07/ice-raids-la-violence-video-bystanders/>

link-21: unlawful <https://www.nytimes.com/2026/01/18/us/minneapolis-federal-agents-misconduct-protesters.html>

link-22: aggressive <https://www.cnn.com/interactive/2026/01/09/us/dhs-immigration-crackdown-ice-arrests-protests-vis/index.html>

link-23: \$170 billion <https://www.brennancenter.org/our-work/analysis-opinion/big-budget-act-creates-deportation-industrial-complex>

link-24: Bipartisan Policy Center <https://bipartisanpolicy.org/explainer/rescissions-101/>

link-25: sums <https://www.npr.org/2026/01/21/nx-s1-5674887/ice-budget-funding-congress-trump>

link-26: exceeding https://www.lemonde.fr/en/economy/article/2025/03/11/military-spending-a-stimulant-for-growth-and-inflation_6739021_19.html

link-27: data <https://www.usaspending.gov/agency/department-of-homeland-security?fy=2026>

link-28: approved <https://www.congress.gov/119/bills/hr7147/BILLS-119hr7147ih.pdf?inline=1>

link-29: nearly two thirds <https://www.pbs.org/newshour/politics/poll-nearly-two-thirds-of-americans-say-ice-has-gone-too-far-in-immigration-crackdown>

link-30: Executive Power <https://www.brennancenter.org/topics/government-power/executive-power>