

## ANALYSIS

# Congress Must Reform DHS

ICE is only part of the problem.



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Government Power

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You may not have noticed, but we are currently under a partial government shutdown.

In an effort to use whatever shards of power they hold to rein in Immigration and Customs Enforcement (ICE), Democrats in Congress have refused to fund the

Department of Homeland Security (DHS) unless the Trump administration agrees to changes in how the immigration agency operates, including a ban on masks, body camera requirements, a use-of-force code, and others.

These demands are sensible. Despite several killings, terror-stricken cities, and mass displays of citizen alarm, the masked federal forces using military tactics and

weapons remain largely unchecked and unaccountable.

My colleagues at the Brennan Center have written quite a lot about the issues at the heart of this funding fight.

To start, ICE is hardly focusing on those whom the president has called the “worst of the worst.” A

[new expert analysis](#) [\[link-2\]](#)

confirms that arrests of immigrants with criminal convictions, particularly for violent crimes, have flatlined. This is despite a flood of new funding for the agency and a more than doubling of the workforce, including more than 13,000 federal law enforcement agents who have been diverted from criminal investigations to immigration enforcement. Why? Because immigration agents are scrambling to meet quotas, sweeping up thousands of people with no criminal record — often people who have lived here for

years, worked, started businesses, and paid taxes.

As the analysis explains, recent ICE operations have likely made our country less safe. Law enforcement officers from across the federal government have been pulled from their jobs combating drug smuggling, human trafficking, and child exploitation and diverted to immigration enforcement. That includes nearly one-fifth of all FBI agents, half of all Drug Enforcement Agency agents, and two-thirds of Bureau of Alcohol, Tobacco, Firearms and Explosives agents. Plainly, the cop is off the beat.

Lawmakers are right to demand concrete changes to begin to curb the abuse by immigration enforcement forces. In the long term, deeper [reforms](#) [\[link-3\]](#) could provide more oversight and accountability.

Congress should pass a proposal known as the Bivens Act, which

would let individuals sue for damages when a federal agent violates their constitutional rights, as they can do when a state or local agent violates those rights. (It has this somewhat confusing name because it would write into statute the approach of a Supreme Court decision from 1971, *Bivens v. Six Unknown Named Agents*.)

Lawmakers should also continue to make clear that under the Fourth Amendment, ICE [cannot enter homes](#) [\[link-4\]](#) without a judicial warrant. Congress should also bar ICE from using federal funds to collect data on and surveil peaceful protesters.

Most importantly, Congress should pull back the \$170 billion it gave to DHS for immigration enforcement last July, which gives the department the ability to replicate the surge in Minneapolis elsewhere. That way, Congress can use its control of the purse strings to make sure immigration enforcement is

done within the bounds of the Constitution, the law, and our country's values.

In some senses, the problem is wider than ICE or Customs and Border Protection, as rogue as those forces sometimes seem to be. It requires looking at DHS in its entirety.

DHS was cobbled together in a hurry, after the terrorist attacks on September 11, 2001. Fragmented communications among different anti-terrorism agencies had drawn blame. So President George W. Bush proposed and Congress created a new mega-agency, pulling together nearly two dozen unrelated offices from across the government. Even then, DHS appeared more a rhetorical talking point than an effective fix. It has been prone to mission creep and abuses of power. It has often been criticized for targeting minorities and communities of color. *The New York Times*, reporting on Bush's

launch of the proposal to create the cabinet agency, described it as aiming to “protect against attacks against the United States.” The original anti-terrorism focus has long ago faded into the past, but the gargantuan agency lumbers on.

Today, of course, DHS is led by Kristi Noem, who has claimed astonishing authority. Noem gutted the offices that conduct internal oversight, including the Office for Civil Rights and Civil Liberties. She has undermined due process and called dissent acts of “domestic terrorism.” Last weekend, she claimed DHS has authority over elections, specifically aiming to have the “right people voting, electing the right leaders.”

What can be done?

We know that in the rhythm of reform throughout history, reform follows scandal — but not always. As the dust begins to settle (for now) in Minneapolis, now is the

time to begin thinking about bold reform.

To start, Democrats in Congress must hold their ground. Barring any change, ICE will certainly reemerge with a renewed sense of immunity and relentlessness elsewhere.

More broadly, lawmakers must also think about how DHS operates as a whole and whether in its current state it is remotely fulfilling its original purpose. By many accounts, it is not, and it hasn’t for years. In [2022](#) [\[link-5\]](#) and [2023](#) [\[link-6\]](#), the Brennan Center released reports calling for heightened safeguards, meaningful transparency, and more robust oversight. Those proposals are needed even more urgently today.

DHS is immensely powerful, and only gaining in power. So, too, must be our response.

This week we mourn civil rights leader Jesse Jackson. He said

something that can brace us for our duty. “Both tears and sweat are salty, but they render a different

result. Tears will get you sympathy; sweat will get you change.”

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## MORE ON

Government Targeting of Minority Communities [\[link-7\]](#)

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## Links

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**link-2:** new expert analysis <https://www.brennancenter.org/our-work/research-reports/despite-budget-surge-ice-fails-make-country-safer>

**link-3:** reforms <https://www.brennancenter.org/our-work/analysis-opinion/reforms-curb-dhs-ice-cbp-overreach>

**link-4:** cannot enter homes <https://www.brennancenter.org/our-work/analysis-opinion/dhs-warrantless-home-entry-memos-fourth-amendment-problem>

**link-5:** 2022 <https://www.brennancenter.org/our-work/research-reports/course-correction-homeland-security>

**link-6:** 2023 <https://www.brennancenter.org/our-work/policy-solutions/holding-homeland-security-accountable>

**link-7:** Government Targeting of Minority Communities <https://www.brennancenter.org/topics/government-power/government-targeting-minority-communities>