ACLU

Draft last updated Oct 22, 2026

Bipartisan American Affordability and Jobs Act, As Written, Would Accelerate ICE's Expansion of Deadly, Dangerous Detention

The Bipartisan American Affordability and Jobs Act is slated for a vote soon after the midterm elections. As written, this bill would hamper, if not altogether thwart, critical work by the ACLU and our partners to halt ICE's dangerous expansion of immigrant detention. It would have the unintended impact of accelerating ICE detention expansion.

This could not be more urgent: As deaths in detention and reports of serious medical neglect and abuse mount, ICE is continuing its detention site expansion. The ACLU and our partners view NEPA as a critical litigation tool in halting ICE detention expansion—and preventing the deaths and abuse that would follow. Courts around the country have found that ICE failed to comply with it in approving new detention sites and blocked or slowed new facilities as a result. Yet, this bill as written would effectively take this tool away from the ACLU and our partners. We urge congressional offices to draft and support amendments to ensure ICE detention facilities remain subject to meaningful oversight and legal accountability measures like NEPA review. ACLU staff are available to support drafting such amendments.

How the Bill Accelerates Detention Expansion

Central to the expansion agenda is the "ICE Detention Reengineering Initiative," a $38 *billion* plan to buy warehouses across the country and quickly convert them into mass detention centers. NEPA has been one of the most effective tools for stopping these reckless, inhumane efforts to detain people in facilities not meant for human inhabitants.

- In early 2026, ICE spent $1 billion purchasing 11 mega-warehouses (most not zoned or built for people to reside in) to convert into massive detention sites, without any of the environmental review that NEPA requires.
- The lack of environmental review provided the essential basis for states and communities across the country to challenge ICE's plans, resulting in NEPA lawsuits filed by the states of Arizona, Maryland, Michigan, and New Jersey; and cities in Texas, Georgia, and Utah.
- In April, the state of Maryland won a preliminary injunction blocking ICE from proceeding with construction because of the lack of compliance with NEPA. As a direct result of that victory and others in similar lawsuits, ICE's plans in Maryland and other states quickly unraveled and stalled.
- ICE has since put most of the warehouses up for sale and has paused actions to open on the remaining warehouses as it struggles to meet the environmental review requirements it previously ignored.

ACLU

Draft last updated Oct 22, 2026

How BAAJA Would Shield ICE Detention Projects from Accountability

The Bipartisan American Affordability and Jobs Act of 2026 (BAAJA), as written, would significantly reduce the scope of NEPA and all but eliminate judicial review. In the future, ICE could proceed with massive, irreversible projects like this warehouse detention expansion project with little oversight and no meaningful legal recourse.

- The bill narrows the definition of a "major federal action" to preclude NEPA review from applying to a vast array of projects, including grants and other forms of financial assistance (Section 1102, page 17). Going forward, the federal government may argue that providing financial assistance to a state to construct a detention facility, such as was proposed with the Alligator Alcatraz facility in Florida, would not trigger NEPA.
- The bill eliminates the ability of courts to vacate faulty decisions or order injunctions under NEPA—no matter how egregious the agency's failure (Section 1110, pages 69/70). As a result, no court could block a proposed detention center for failing to conduct the required review.
- The bill also restricts district courts from considering many NEPA violations, instead moving judicial review of those claims to the courts of appeals, which would have to decide claims without the usual development of a record in the district court (Section 1110, pages 68/69).

BAAJA could also prevent future administrations from undoing or revising approvals for those detention centers and other facilities that the Trump administration does approve.

- The bill prevents the federal government from taking any action to "revoke, rescind, terminate, suspend, amend, or alter a Federal authorization or permit" once approved. While this provision may be intended to apply to energy projects, the definition of "Federal authorization or permit" could be read to cover approvals for almost any project, making it extremely difficult for a future administration to undo or even amend detention center approvals (Section 1401, page 158/159).
- The bill also prohibits an agency from taking any action that would "interfere with or prevent the construction or operation at full capacity of a project" outside of a few narrow circumstances (Section 1401, page 159). Again, while this language may be intended to be applied in the energy context, it is in no way limited to that context, raising significant concerns about what requiring the perpetual operation of detention centers "at full capacity" would mean for immigrant communities across the nation.

Combined with the $170 billion allocated in the One Big Beautiful Bill Act for DHS operations, BAAJA's provisions to dramatically weaken NEPA requirements for detention facilities, prevent meaningful judicial review, and lock in projects approved by this administration could cement

the Trump administration's anti-immigrant projects for years to come. The irony is glaring. At a time when families across the country are struggling to afford groceries, housing, and other basic necessities, a bill sold as making America more affordable would hand ICE a faster, cheaper path to building out a detention system that has already wasted billions of taxpayer dollars. The same system that holds up to 70,000 people daily, has detained more than 500 U.S. citizens, and is marked by widespread abuse and more than 60 deaths in custody since this administration took office. If passed as written, BAAJA would strip communities of one of the few tools that has worked to hold this system accountable, and the harm would be felt for decades.