OVERSIGHT PROJECT
IT'S YOUR GOVERNMENT

DATE: May 13, 2025
TO: U.S. Attorney for the District of New Jersey Alina Habba, Speaker Mike Johnson, Chairman Mark Green, and members of the public
FROM: Oversight Project: It's Your Government
SUBJECT: Invalid Oversight Defense to Alleged Criminal Activity in Newark, New Jersey by Members of Congress

The Democrat Members of Congress that are on camera committing potential Federal offenses during the events at the Delaney Hall Detention Center on May 9, 2025 in Newark, New Jersey are not protected by their false assertion that their "oversight duties" put them above the law.

A number of Democrat Members of Congress and their commentators have advanced the position that Section 527 of the Further Consolidated Appropriations Act, 2024, 138 Stat. 506, Pub. Law. 118-47 (the "Act"), provides an absolute right of access for Members of Congress to DHS detention facilities.[1] This view is wrong. Section 527 only applies to Congressional oversight. And the conduct in question clearly was not undertaken pursuant to Congress' oversight authority as it was neither authorized by the House, Committees, nor Chairmen. Therefore, it cannot be official oversight.

Start with the text, which provides in full:

> SEC. 527. (a) None of the funds appropriated or otherwise made available to the Department of Homeland Security by this Act may be used to prevent any of the following persons from entering, for the purpose of conducting oversight, any facility operated by or for the Department of Homeland Security used to detain or otherwise house aliens, or to make any temporary modification at any such facility that in any way alters what is observed by a visiting Member of Congress or such designated employee, compared to what would be observed in the absence of such modification:
>
> (1) A Member of Congress.
>
> (2) An employee of the United States House of Representatives or the United States Senate designated by such a Member for the purposes of this section.
>
> (b) Nothing in this section may be construed to require a Member of Congress to provide prior notice of the intent to enter a facility described in subsection (a) for the purpose of conducting oversight.

[1] *See, e.g.*, @RepMenendez, X (May 10, 2025), https://x.com/RepMenendez/status/1921236538429472805

> (c) With respect to individuals described in subsection (a)(2), the Department of Homeland Security may require that a request be made at least 24 hours in advance of an intent to enter a facility described in subsection (a).

138 Stat. at 619. There is no dispute that the Members of Congress at issue here are in fact Members of Congress. Thus, the appropriations rider applies—but only to the extent their actions were "for the purpose of conducting oversight." That is the key operative phrase—the modifier of entering. *See, e.g.*, *BedRoc. Ltd. LLC v. United States*, 541 U.S. 176, 183 (2004) (plurality op.) (court must construe broad statutory term per limiting statutory modifier).

> The phrase "conducting oversight" appears in only one other location in the Act:
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> SEC. 233. None of the funds made available in this Act may be used to prevent a United States Senator or Member of the House of Representatives from entering, for the purpose of conducting oversight, any facility in the United States used for the purpose of maintaining custody of, or otherwise housing, unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2))), provided that such Senator or Member has coordinated the oversight visit with the Office of Refugee Resettlement not less than two business days in advance to ensure that such visit would not interfere with the operations (including child welfare and child safety operations) of such facility. Again, "conducting oversight" directly links to Congressional power.

In common usage "conducting oversight" in the Congressional context refers to Congress' power of oversight. *See, e.g.*, *Comm. on Jud. v. McGahn*, 968 F.3d 755, 764 (D.C. Cir. 2020) ("The power of each House of Congress to compel witnesses to appear before it to testify and to produce documentary evidence has a pedigree predating the Founding and has long been employed in *Congress'* discharge of *its* primary constitutional responsibilities: legislating, *conducting oversight* of the federal government, and, when necessary, checking the President through the power of impeachment. (emphases added).

This of course makes sense. While Congress undoubtedly has a broad power of oversight inherent in its functions (*see, e.g.*, *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927)) that power necessarily inheres in the *full* House. *See* U.S. Const. Art. 1 § 1. *See United States v. Rumely*, 42–43, 47–48 (1952) (authority of Committee stems from delegation by the full House). Thus,"'[n]o committee of either the House or Senate, and no Senator and no Representative, is free on its or

his own to conduct investigations unless authorized. Thus, it must appear that Congress empowered the Committee to act, and further that at the time the witness allegedly defied its authority the Committee was acting within the power granted to it." *Gojack v. United States*, 384 U.S. 702, 716 (1966) (quotation and citation omitted); *accord Requests by Individual Members of Congress for Executive Branch Information*, 43 Op. O.L.C. 42, 43–46 (2019) ("*Individual Member Requests*"); *Authority of Individual Members of Congress to Conduct Oversight of the Executive Branch*, 41 Op. O.L.C. 76, 77–78 (2017). That is not to say that the power of individual Member is merely limited to their vote. They assuredly do have authority to request additional information and access from the Executive Branch, but that discretionary request is not oversight and deals purely in the power of comity. *See, e.g.*, *Individual Member Requests*, 43 Op. O.L.C. at 47–49.

Here, there is no delegation of any of Congress' oversight powers to random Members or Staff wishing to conduct an "inspection" of ICE detention facilities. To start, the Act itself is no such delegation. It merely restricts the expenditure of funds; it pointedly does not convey jurisdiction or authority. No Rule to the full House speaks to the matter either. Committee Rules do not address the issue either. Accordingly, it would appear that there is no general authorization for Minority Members (or staff) to engage in individualized oversight of ICE detention facilities. Thus, the language of the Act simply does not apply to inspections of ICE detention centers by random Members like that which occurred here.[2]

Of course, the Act must be interpreted so that "no clause, sentence, or word shall be superfluous, void, or insignificant" and therefore Section 527 of the Act must have *some* impact. *Duncan v. Walker*, 533 U.S. 167, 174 (2001). And it clearly does. As a general proposition, a Chairman's letter acts to discharge the House's Oversight power delegated to a Committee. *See, e.g.*, *Ashland Oil, Inc., v. FTC*, 548 F.2d 977, 980–81 (D.C. Cir. 1976) (Subcommittee Chairman's letter request an official act of oversight). Thus, a letter authorization from the Chairman requesting (or merely authorizing a Member to request) an inspection of an ICE detention facility is by operation of the Act is made in effect mandatory—the authorized Member or Staff cannot be barred from conducting the requested inspection.

Multiple Committees' jurisdiction (delegated by the House) reaches DHS detention facilities. *See* House Rule X. It would seem that this general delegation is broad enough to permit the Chairman to designate Members or Staff to inspect DHS detention facilities. Accordingly, the

[2] Of course, the Government may always exercise its discretion to provide Members of Congress or Staff with increased access to ICE detention facilities (or any other Government facility for that matter), but that would merely be said to be engaged in some official duty *not* in conducting oversight.

Act does a great deal of work by making such requests effectively mandatory. After all, the full House has never delegated its power to utilize coercive force against a person or property or to assert authority in the nature of an inspection pursuant to a bill of discovery.

Three Members of Congress claim their rights under this statute have been violated: Representatives Bonnie Watson Coleman, Robert Menendez, and LaMonica McIver. Representative Menendez sits on the House Energy and Commerce Committee, which does not have any jurisdiction over DHS detention facilities. Representative Watson Coleman sits on the House Appropriations Committee and Representative McIver sits on the House Homeland Security Committee. Those Committees do have jurisdiction over DHS detention facilities, however there is no evidence that the Chairmen of those Committees designated those members to conduct oversight of ICE detention facilities. Absent a clear delegation by the Chairman of the House Appropriations or Homeland Security Committees, Representatives Watson Coleman and McIver were not conducting "oversight" within the meaning of Section 527 of the Pub. Law 118-47.

Recommendations

1. Federal prosecution of these Members of Congress should be based on the facts and the law alone and not be hindered by the false assertion of "oversight authority" being advanced by other politicians and social media.
2. Congress has a range of disciplinary options at their disposal:
    a. Expulsion is subject to a two-thirds vote of the House of Representatives. It has been used in limited instances historically, including three times since 1980 when Members have either been convicted of a Federal crime or have had significant findings to support a conviction. Before that it was almost exclusively used for Members who supported the Confederacy.
    b. Removal from committee assignments.
    c. The lowest form of punishment is a censure resolution. Given that Members of Congress are asserting that they intend to continue such "surprise inspections" of ICE facilities and assert this false oversight authority to subvert immigration enforcement, a censure resolution would not adequately deter future similar conduct.