

115TH CONGRESS
2D SESSION

H. R. 5820

To prohibit the expansion of immigration detention facilities, to improve the oversight of such facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2018

Ms. JAYAPAL introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit the expansion of immigration detention facilities, to improve the oversight of such facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLES.**

4 This Act may be cited as the “Detention Oversight,
5 Not Expansion Act” or the “DONE Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Despite a significant decrease in border ap-
2 prehensions, the Federal immigrant detention sys-
3 tem expanded dramatically between 1994 and 2018,
4 with the average daily population of detained non-
5 citizens increasing from fewer than 7,000 during fis-
6 cal year 1994 to 39,322 during fiscal year 2018.
7 This population consisted of increasing numbers of
8 children and women, including pregnant women.

9 (2) U.S. Immigration and Customs Enforce-
10 ment (referred to in this section as “ICE”) inspec-
11 tions of detention facilities are performed by field of-
12 fices, facility staff, or divisions within ICE head-
13 quarters and are not conducted by independent third
14 parties. Since the inspectors are not independent,
15 they often misrepresent conditions inside the facili-
16 ties and rarely impose consequences for violations.
17 For example, an outside review of 8 facilities con-
18 cluded that although ICE identified violations of
19 medical standards as contributing factors to deaths
20 in detention, routine ICE detention facility inspec-
21 tions before and even after the deaths failed to ac-
22 knowledge (and even dismissed) those violations.

23 (3) Multiple Federal oversight bodies, including
24 the Department of Homeland Security’s Office of
25 Inspector General, ICE’s Advisory Committee on

1 Family Residential Centers, and the Government Ac-
2 countability Office, have documented poor conditions
3 and inhumane detainee treatment, including medical
4 negligence, in immigration detention facilities.

5 (4) Since 2003, more than 170 deaths have
6 been reported in immigration detention facilities, a
7 significant number of which resulted from egregious
8 violations of ICE medical care standards, which were
9 often overlooked during ICE inspections of facilities.

10 (5) The Department of Homeland Security Of-
11 fice for Civil Rights and Civil Liberties and the Of-
12 fice of Inspector General have received formal com-
13 plaints and numerous allegations of inadequate med-
14 ical care for pregnant women who are in custody in
15 such facilities.

16 (6) Responses by the Department of Homeland
17 Security to Freedom of Information Act requests
18 suggest that fewer than 3 percent of the claims of
19 sexual and physical abuse of detainees in such facili-
20 ties have been investigated by the Office of Inspector
21 General.

22 (7) Multiple Federal oversight bodies, including
23 the Homeland Security Advisory Council, have docu-
24 mented limited oversight and management account-
25 ability of immigration detention facilities, including

1 a lack of reasonable inspections and deficient con-
2 tracting practices.

3 (8) Legal service providers allege that some im-
4 migration detention facilities have unreasonably re-
5 stricted legal visitation and access in violation of ap-
6 plicable requirements, raising serious due process
7 concerns.

8 (9) The Department of Homeland Security
9 seeks to vastly expand the immigration detention
10 system despite the availability of a wide array of
11 community-based alternatives to detention that pro-
12 vide a cheaper, more compassionate, rights respect-
13 ing response to migration.

14 (10) In June 2017, the Department of Home-
15 land Security terminated the Family Case Manage-
16 ment Program, an alternative to detention that—

17 (A) had proved far less expensive than de-
18 tention; and

19 (B) resulted in close to a 100 percent com-
20 pliance rate by participants.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) APPROPRIATE CONGRESSIONAL COMMIT-
24 TEES.—The term “appropriate congressional com-
25 mittees” means—

1 (A) the Committee on Appropriations of
2 the Senate;

3 (B) the Committee on Homeland Security
4 and Governmental Affairs of the Senate;

5 (C) the Committee on the Judiciary of the
6 Senate;

7 (D) the Committee on Appropriations of
8 the House of Representatives;

9 (E) the Committee on Homeland Security
10 of the House of Representatives; and

11 (F) the Committee on the Judiciary of the
12 House of Representatives.

13 (2) EXPANSION.—The term “expansion”—

14 (A) means the acquisition of any new con-
15 tract, contract addendum, modification, or rider
16 that would increase current immigration deten-
17 tion bed usage or activate existing unused im-
18 migration detention bed capacity for existing or
19 new contracts at any immigration detention fa-
20 cility, including—

21 (i) Bureau of Prison facilities;

22 (ii) contract detention facilities;

23 (iii) intergovernmental service agree-
24 ments;

25 (iv) service processing centers;

1 (v) United States Marshals Service
2 intergovernmental agreements on which
3 U.S. Immigration and Customs Enforce-
4 ment is an authorized user; and

5 (vi) juvenile or family detention facili-
6 ties; and

7 (B) does not include improvements or ren-
8 ovations unrelated to the increase of current
9 immigration bed usage or activation of unused
10 immigration bed capacity.

11 (3) IMMIGRATION DETENTION FACILITY.—The
12 term “immigration detention facility” means any
13 site at which U.S. Customs and Border Protection
14 or U.S. Immigration and Customs Enforcement
15 holds noncitizens in custody for any period.

16 **SEC. 4. MORATORIUM ON EXPANSION OF IMMIGRATION DE-**
17 **TENTION FACILITIES.**

18 (a) IN GENERAL.—The Secretary of Homeland Secu-
19 rity may not use any Federal funds for the construction
20 or expansion of immigration detention facilities.

21 (b) REPORTING.—Not later than 1 year after the
22 date of the enactment of this Act, the Secretary of Home-
23 land Security shall submit a report to Congress that con-
24 tains a detailed plan on—

1 (1) how the number of immigration detention
2 beds will be decreased to 50 percent of the number
3 available as of the date of the enactment of this Act;
4 and

5 (2) how to implement community-based alter-
6 natives to detention, as a substitute for detention in
7 a facility, which is developed in consultation with
8 stakeholders, including nonprofit legal service pro-
9 viders, nonprofit shelter providers, and detention vis-
10 itation programs.

11 (c) NOTIFICATION.—

12 (1) IN GENERAL.—If the Secretary of Home-
13 land Security determines that more immigration de-
14 tention space will be needed, the Secretary, not later
15 than 60 days before such need, shall submit a writ-
16 ten justification of such need to the Chair and
17 Ranking Member of the appropriate congressional
18 committees.

19 (2) SAVINGS PROVISION.—Nothing in this sub-
20 section may be construed to authorize the use of
21 Federal funds to expand immigration detention fa-
22 cilities without explicit statutory authorization after
23 the date of the enactment of this Act.

24 (d) ENDING A CONTRACT.—If a facility is deemed
25 less than adequate in the 2 most recent inspections, au-

1 dits, or investigations conducted by the Office of Inspector
2 General of the Department of Homeland Security pursu-
3 ant to section 5(a)(1), the Department of Homeland Secu-
4 rity shall not continue to contract with such facility.

5 **SEC. 5. INCREASED OVERSIGHT OF IMMIGRATION DETEN-**
6 **TION FACILITIES.**

7 (a) INSPECTIONS; AUDITS; INVESTIGATIONS.—In ad-
8 dition to exercising its responsibilities and duties estab-
9 lished by the Inspector General Act of 1978 (5 U.S.C.
10 App.), the Office of the Inspector General of the Depart-
11 ment of Homeland Security shall—

12 (1) conduct—

13 (A) unannounced annual inspections of im-
14 migration detention facilities;

15 (B) audits of immigration detention facili-
16 ties to ensure compliance with the national
17 standards established pursuant to the Violence
18 Against Women Reauthorization Act of 2013
19 (Public Law 113–4 and the Standards to Pre-
20 vent, Detect, and Respond to Sexual Abuse and
21 Assault in Confinement Facilities (79 Fed. Reg.
22 13099 et seq.; published by the Department of
23 Homeland Security on March 7, 2014); and

1 (C) investigations focused on health, safe-
2 ty, and due process concerns at immigration de-
3 tention facilities, including—

4 (i) deaths in custody;

5 (ii) detainee access to medical and
6 mental health care, including pregnant
7 women and other vulnerable populations;

8 (iii) sexual assault and harassment;

9 and

10 (iv) compliance with legal visitation
11 and access requirements;

12 (2) measure inspections, audits, and investiga-
13 tions conducted pursuant to paragraph (1) against
14 the American Bar Association’s Civil Detention
15 Standards, in addition to the U.S. Immigration and
16 Customs Enforcement standards to which each facil-
17 ity is held;

18 (3) deliver a conclusion on adequacy at the con-
19 clusion of each inspection, audit, and investigation
20 conducted pursuant to paragraph (1); and

21 (4) make publicly available the results of the in-
22 spections, audits, and investigations conducted pur-
23 suant to paragraph (1) without compromising the
24 confidentiality of individuals who submitted com-
25 plaints.

1 (b) CIVIL RIGHTS AND CIVIL LIBERTIES.—

2 (1) IN GENERAL.—The Office for Civil Rights
3 and Civil Liberties of the Department of Homeland
4 Security shall conduct investigations of civil rights
5 and civil liberties complaints in immigration deten-
6 tion facilities in accordance with section 8I(f) of the
7 Inspector General Act of 1978 (5 U.S.C. App.).

8 (2) INFORMATION REQUESTS.—Each compo-
9 nent agency of the Department of Homeland Secu-
10 rity shall comply with all document and information
11 requests from the Office for Civil Rights and Civil
12 Liberties to facilitate investigations under this sec-
13 tion.

14 (c) REPORTING REQUIREMENTS.—

15 (1) OFFICE OF INSPECTOR GENERAL.—The In-
16 spector General of the Department of Homeland Se-
17 curity shall—

18 (A) not later than 60 days after any in-
19 spection, audit, or investigation, submit a re-
20 port to the appropriate congressional commit-
21 tees that summarizes the results pursuant to
22 subsection (a); and

23 (B) release aggregate data on complaints
24 lodged about or from an immigration detention
25 facility, actions taken in response to such com-

1 complaints, and investigation outcomes on its
2 website on a quarterly basis, without compro-
3 mising confidentiality.

4 (2) OFFICE OF CIVIL RIGHTS AND CIVIL LIB-
5 ERTIES.—The Officer for Civil Rights and Civil Lib-
6 erties shall—

7 (A) not later than 60 days after the con-
8 clusion of any investigation under subsection
9 (b), submit a report to Congress that summa-
10 rizes the results of the investigation; and

11 (B) release aggregate data on complaints
12 lodged about or from an immigration detention
13 facility, actions taken in response to such com-
14 plaints, and investigation outcomes on its
15 website on a quarterly basis, without compro-
16 mising confidentiality.

17 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
18 tion to amount otherwise authorized to be appropriated
19 for such purposes, there is authorized to be appropriated
20 to the Department of Homeland Security, for each of the
21 fiscal years 2019 through 2027—

22 (1) \$45,000,000 to conduct and report on the
23 inspections, audits, and investigations required
24 under subsection (a); and

- 1 (2) \$10,000,000 to conduct and report on the
- 2 investigations required under subsection (b).

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