

115TH CONGRESS
2D SESSION

S. 2849

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

IN THE SENATE OF THE UNITED STATES

MAY 15, 2018

Ms. HARRIS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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:

8 (1) Despite a significant decrease in border ap-
9 prehensions, the Federal immigrant detention sys-
10 tem expanded dramatically between 1994 and 2018,

1 with the average daily population of detained non-
2 citizens increasing from fewer than 7,000 during fis-
3 cal year 1994 to 39,322 during fiscal year 2018.
4 This population consisted of increasing numbers of
5 children and women, including pregnant women.

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

20 (3) Multiple Federal oversight bodies, including
21 the Department of Homeland Security’s Office of
22 Inspector General, ICE’s Advisory Committee on
23 Family Residential Centers, and the Government Ac-
24 countability Office, have documented poor conditions

1 and inhumane detainee treatment, including medical
2 negligence, in immigration detention facilities.

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

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

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

20 (7) Multiple Federal oversight bodies, including
21 the Homeland Security Advisory Council, have docu-
22 mented limited oversight and management account-
23 ability of immigration detention facilities, including
24 a lack of reasonable inspections and deficient con-
25 tracting practices.

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

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

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

15 (A) had proved far less expensive than de-
 16 tention; and

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

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

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

24 (A) the Committee on Appropriations of
 25 the Senate;

1 (B) the Committee on Homeland Security
2 and Governmental Affairs of the Senate;

3 (C) the Committee on the Judiciary of the
4 Senate;

5 (D) the Committee on Appropriations of
6 the House of Representatives;

7 (E) the Committee on Homeland Security
8 of the House of Representatives; and

9 (F) the Committee on the Judiciary of the
10 House of Representatives.

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

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

19 (i) Bureau of Prison facilities;

20 (ii) contract detention facilities;

21 (iii) intergovernmental service agree-
22 ments;

23 (iv) service processing centers;

24 (v) United States Marshals Service
25 intergovernmental agreements on which

1 U.S. Immigration and Customs Enforce-
 2 ment is an authorized user; and

3 (vi) juvenile or family detention facili-
 4 ties; and

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

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

14 **SEC. 4. MORATORIUM ON EXPANSION OF IMMIGRATION DE-**
 15 **TENTION FACILITIES.**

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

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

23 (1) how the number of immigration detention
 24 beds will be decreased to 50 percent of the number

1 available as of the date of the enactment of this Act;
2 and

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

9 (c) NOTIFICATION.—

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

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

22 (d) ENDING A CONTRACT.—If a facility is deemed
23 less than adequate in the 2 most recent inspections, au-
24 dits, or investigations conducted by the Office of Inspector
25 General of the Department of Homeland Security pursu-

1 ant to section 5(a)(1), the Department of Homeland Secu-
2 rity shall not continue to contract with such facility.

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

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

10 (1) conduct—

11 (A) unannounced annual inspections of im-
12 migration detention facilities;

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

22 (C) investigations focused on health, safe-
23 ty, and due process concerns at immigration de-
24 tention facilities, including—

25 (i) deaths in custody;

1 (ii) detainee access to medical and
 2 mental health care, including pregnant
 3 women and other vulnerable populations;

4 (iii) sexual assault and harassment;
 5 and

6 (iv) compliance with legal visitation
 7 and access requirements;

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

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

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

22 (b) CIVIL RIGHTS AND CIVIL LIBERTIES.—

23 (1) IN GENERAL.—The Office for Civil Rights
 24 and Civil Liberties of the Department of Homeland
 25 Security shall conduct investigations of civil rights

1 and civil liberties complaints in immigration deten-
2 tion facilities in accordance with section 8I(f) of the
3 Inspector General Act of 1978 (5 U.S.C. App.).

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

10 (c) REPORTING REQUIREMENTS.—

11 (1) OFFICE OF INSPECTOR GENERAL.—The In-
12 spector General of the Department of Homeland Se-
13 curity shall—

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

19 (B) release aggregate data on complaints
20 lodged about or from an immigration detention
21 facility, actions taken in response to such com-
22 plaints, and investigation outcomes on its
23 website on a quarterly basis, without compro-
24 mising confidentiality.

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

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

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

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

19 (1) \$45,000,000 to conduct and report on the
20 inspections, audits, and investigations required
21 under subsection (a); and

22 (2) \$10,000,000 to conduct and report on the
23 investigations required under subsection (b).

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