

116TH CONGRESS
1ST SESSION

H. R. 2489

To impose requirements on the grant of a waiver with respect to an immigration detention facility, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2019

Mr. CUMMINGS (for himself and Mr. RASKIN) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To impose requirements on the grant of a waiver with respect to an immigration detention facility, 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 TITLE.**

4 This Act may be cited as the “Waiver Accountability
5 and Transparency Act”.

6 **SEC. 2. REQUIREMENTS ON WAIVERS APPLICABLE TO IM-**
7 **MIGRATION DETENTION FACILITIES.**

8 (a) DEFINITION.—In this section, the term “immi-
9 gration detention facility” means a place of detention for
10 aliens detained pending removal, or a decision on removal,

1 under the immigration laws (as defined in section
2 101(a)(17) of the Immigration and Nationality Act (8
3 U.S.C. 1101(a)(17))) that is owned or operated by a pri-
4 vate entity or a Federal, State, Tribal, or local govern-
5 ment, whether or not such facility also is a place of deten-
6 tion for other detainees.

7 (b) REQUIREMENTS.—The following requirements
8 shall apply to a grant of a waiver of a detention standard
9 applicable to the detention facility:

10 (1) The waiver request, justification for the
11 waiver request, the assessment, final decision,
12 whether the waiver was granted or denied, and ra-
13 tionale for the decision by U.S. Immigration and
14 Customs Enforcement, shall be posted on the
15 website of the Department of Homeland Security for
16 the public to view within 3 business days of being
17 submitted to U.S. Immigration and Customs En-
18 forcement or to an immigration detention facility by
19 U.S. Immigration and Customs Enforcement.

20 (2) The waiver request shall be graded from 1
21 to 3 based on the level of seriousness (3 being the
22 most serious) by the Director (or acting Director) of
23 U.S. Immigration and Customs Enforcement. Level
24 3 shall include issues impacting due process, medical
25 care, safety, security, and rights.

1 (3) If the waiver is graded to be a 3 and is
2 granted, the Director (or acting Director) of U.S.
3 Immigration and Customs Enforcement shall sign
4 off on a corrective action plan. All parties to the
5 contract or agreement must also sign off on the cor-
6 rective action plan. The corrective action plan shall
7 include a timeline and a corrective action plan with
8 the goal of eliminating the waiver and being compli-
9 ant with existing standards.

10 (4) The waiver may be approved by the Direc-
11 tor (or acting Director) of U.S. Immigration and
12 Customs Enforcement for a specified period of time
13 not to exceed 90 days.

14 (5) The Director (or acting Director) shall no-
15 tify the Congress of, and post online, any approved
16 request within 3 business days.

17 (6) The waiver may be reapproved every 90
18 days. Any approval must be posted online and sub-
19 mitted to Congress within 3 business days.

20 (7) After 1 year, any reapproval shall be ap-
21 proved by the Secretary, the Chief Financial Officer
22 of U.S. Immigration and Customs Enforcement, and
23 the Director (or acting Director) of U.S. Immigra-
24 tion and Customs Enforcement, who shall publish
25 jointly justification for the approval.

1 (c) QUALITY ASSURANCE SURVEILLANCE PLAN.—
2 The Director of U.S. Immigration and Customs Enforce-
3 ment shall include a quality assurance surveillance plan
4 in all new immigration detention facility contracts and
5 agreements. The Director shall submit a report to the
6 Congress not later than 120 days after the date of the
7 enactment of this Act on plans to include quality assur-
8 ance surveillance plans in existing contacts and agree-
9 ments.

10 (d) REPORTS ON FINANCIAL PENALTIES.—

11 (1) PENALTIES IMPOSED.—Not later than 30
12 days after the date of the enactment of this Act, and
13 every 30 days thereafter, the Director of U.S. Immi-
14 gration and Customs Enforcement shall report to
15 Congress and publicly post online any financial pen-
16 alties imposed on an immigration detention facility,
17 including temporary withholding of payment under a
18 contract.

19 (2) PENALTIES NOT IMPOSED.—Not later than
20 2 years after the date of the enactment of this Act,
21 and every 2 years thereafter, the Secretary of Home-
22 land Security shall report to Congress and publicly
23 post online a report analyzing a sample of cases with
24 respect to which the Secretary identified a failure to

1 meet a detention standard applicable to the deten-
2 tion facility, but declined to impose a penalty.

3 (e) GAO STUDY.—Not later than 2 years after the
4 date of the enactment of this Act, and every 2 years there-
5 after, the Comptroller General of the United States shall
6 conduct a study on the waiver process under subsection
7 (b) and ability of the Secretary of Homeland Security to
8 hold contractors accountable through contracting, includ-
9 ing financial penalties and quality assurance surveillance
10 plans.

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