

116TH CONGRESS
1ST SESSION

S. 2221

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

JULY 23, 2019

Ms. HARRIS introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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 2019,

1 with the average daily population of detained non-
2 citizens increasing from fewer than 7,000 during fis-
3 cal year 1994 to approximately 48,000 during fiscal
4 year 2019. This population consists of increasing
5 numbers of children and women, including pregnant
6 women and asylum seekers.

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

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

1 and inhumane detainee treatment, including medical
2 negligence, in immigration detention facilities. State
3 oversight bodies, including the Office of the Attorney
4 General of California, have also noted abuses at de-
5 tention centers within their borders.

6 (4) Since 2003, more than 170 deaths have
7 been reported in immigration detention facilities, a
8 significant number of which resulted from egregious
9 violations of ICE medical care standards, which were
10 often overlooked during ICE inspections of facilities.
11 Since the inauguration of President Trump, more
12 than 24 people have died in ICE custody.

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

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

1 (7) Multiple Federal oversight bodies, including
2 the Homeland Security Advisory Council, have docu-
3 mented limited oversight and management account-
4 ability of immigration detention facilities, including
5 a lack of reasonable inspections and deficient con-
6 tracting practices.

7 (8) Some immigration detention facilities have
8 unreasonably restricted visitation and access by at-
9 torneys and community groups in violation of appli-
10 cable requirements, raising serious due process con-
11 cerns.

12 (9) The Department of Homeland Security
13 seeks to vastly expand the immigration detention
14 system despite the availability of a wide array of
15 community-based alternatives to detention that pro-
16 vide cheaper, more compassionate, rights-respecting
17 responses to migration.

18 (10) Although the Family Case Management
19 Program operated at a fraction of the cost of deten-
20 tion and resulted in nearly a 100 percent compliance
21 rate among participants, the Department of Home-
22 land Security terminated the program without pro-
23 viding any justification.

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

1 (1) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means—

4 (A) the Committee on Appropriations of
5 the Senate;

6 (B) the Committee on Homeland Security
7 and Governmental Affairs of the Senate;

8 (C) the Committee on the Judiciary of the
9 Senate;

10 (D) the Committee on Appropriations of
11 the House of Representatives;

12 (E) the Committee on Homeland Security
13 of the House of Representatives; and

14 (F) the Committee on the Judiciary of the
15 House of Representatives.

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

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

24 (i) Bureau of Prison facilities;

25 (ii) contract detention facilities;

1 (iii) intergovernmental service agree-
2 ments;

3 (iv) service processing centers;

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

8 (vi) juvenile or family detention facili-
9 ties; and

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

14 (3) IMMIGRATION DETENTION FACILITY.—The
15 term “immigration detention facility” means any
16 site at which U.S. Immigration and Customs En-
17 forcement holds noncitizens in custody for any pe-
18 riod.

19 **SEC. 4. MORATORIUM ON EXPANSION OF IMMIGRATION DE-**
20 **TENTION FACILITIES.**

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

24 (b) REPORTING.—Not later than 1 year after the
25 date of the enactment of this Act, the Secretary of Home-

1 land Security shall submit a report to the appropriate con-
2 gressional committees that contains a detailed plan on—

3 (1) how the number of immigration detention
4 beds will be decreased to 50 percent of the number
5 available during fiscal year 2018; and

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

12 (c) NOTIFICATION.—

13 (1) IN GENERAL.—If the Secretary of Home-
14 land Security determines that more immigration de-
15 tention space will be needed, the Secretary, not later
16 than 60 days before such anticipated need, shall
17 submit a written justification of such need to the
18 chair and ranking member of the appropriate con-
19 gressional committees.

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

1 (d) ENDING A CONTRACT.—If a facility is deemed
 2 less than adequate in the 2 most recent inspections, au-
 3 dits, or investigations conducted by the Office of Inspector
 4 General of the Department of Homeland Security pursu-
 5 ant to section 5(a)(1), the Department of Homeland Secu-
 6 rity may not continue to contract with such facility.

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

9 (a) INSPECTIONS; AUDITS; INVESTIGATIONS.—In ad-
 10 dition to exercising its responsibilities and duties under
 11 the Inspector General Act of 1978 (5 U.S.C. App.), the
 12 Office of the Inspector General of the Department of
 13 Homeland Security shall—

14 (1) conduct—

15 (A) unannounced periodic inspections of
 16 immigration detention facilities not less fre-
 17 quently than annually;

18 (B) audits of immigration detention facili-
 19 ties to ensure compliance with the national
 20 standards established under the Violence
 21 Against Women Reauthorization Act of 2013
 22 (Public Law 113–4) and the Standards to Pre-
 23 vent, Detect, and Respond to Sexual Abuse and
 24 Assault in Confinement Facilities (79 Fed. Reg.
 25 13099 et seq.), which were published by the De-

1 partment of Homeland Security on March 7,
2 2014; and

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

6 (i) deaths in custody;

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

10 (iii) sexual assault and harassment;

11 and

12 (iv) compliance with legal visitation
13 and access requirements;

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

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

23 (4) make publicly available the results of the in-
24 spections, audits, and investigations conducted pur-
25 suant to paragraph (1) without compromising the

1 confidentiality of individuals who submitted com-
2 plaints.

3 (b) CIVIL RIGHTS AND CIVIL LIBERTIES.—

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

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

16 (c) REPORTING REQUIREMENTS.—

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

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

1 (B) release aggregate data on its website
2 on a quarterly basis, without compromising con-
3 fidentiality, regarding—

4 (i) complaints lodged about or from
5 an immigration detention facility;

6 (ii) actions taken in response to such
7 complaints; and

8 (iii) investigation outcomes.

9 (2) OFFICE OF CIVIL RIGHTS AND CIVIL LIB-
10 ERTIES.—The Office for Civil Rights and Civil Lib-
11 erties of the Department of Homeland Security
12 shall—

13 (A) not later than 60 days after the con-
14 clusion of any investigation under subsection
15 (b), submit a report to the appropriate congres-
16 sional committees that summarizes the results
17 of the investigation; and

18 (B) release aggregate data on its website
19 on a quarterly basis, without compromising con-
20 fidentiality, regarding—

21 (i) complaints lodged about or from
22 an immigration detention facility;

23 (ii) actions taken in response to such
24 complaints; and

25 (iii) investigation outcomes.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
2 tion to amount otherwise authorized to be appropriated
3 for such purposes, there is authorized to be appropriated
4 to the Department of Homeland Security, for each of the
5 fiscal years 2020 through 2028—

6 (1) \$45,000,000 to conduct and report on the
7 inspections, audits, and investigations required
8 under subsection (a); and

9 (2) \$10,000,000 to conduct and report on the
10 investigations required under subsection (b).

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