

113TH CONGRESS
2D SESSION

H. R. 4620

To ensure the humane treatment of persons detained pursuant to the
Immigration and Nationality Act.

IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2014

Mr. SMITH of Washington (for himself, Ms. DELBENE, Mr. DEUTCH, Mr. FOSTER, Mr. LARSEN of Washington, Mr. POLIS, Mr. QUIGLEY, and Mr. VELA) 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 ensure the humane treatment of persons detained
pursuant to the Immigration and Nationality Act.

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 “Accountability in Im-
5 migration Detention Act of 2014”.

6 **SEC. 2. MINIMUM DETENTION CENTER STANDARDS.**

7 (a) DEFINITIONS.—In this section:

1 (1) DETENTION FACILITY.—The term “deten-
2 tion facility” means a Federal, State, or local gov-
3 ernment facility, or a privately owned and operated
4 facility, that is used, in whole or in part, to hold in-
5 dividuals under the authority of the Director of U.S.
6 Immigration and Customs Enforcement or the Com-
7 missioner of U.S. Customs and Border Protection,
8 including facilities that hold such individuals under
9 a contract or agreement with the Director or the
10 Commissioner.

11 (2) SECRETARY.—The term “Secretary” means
12 the Secretary of Homeland Security.

13 (3) DETAINEES.—The term “detainee” means
14 an individual who is subject to detention under the
15 Immigration and Nationality Act.

16 (b) DETENTION REQUIREMENTS.—The Secretary
17 shall ensure that all persons detained pursuant to the Im-
18 migration and Nationality Act (8 U.S.C. 1101 et seq.) are
19 treated humanely and shall ensure that all detention facili-
20 ties comply with the following minimum requirements:

21 (1) FAIR AND HUMANE TREATMENT.—Detain-
22 ees shall not be subject to degrading or inhumane
23 treatment, such as physical abuse, sexual abuse or
24 harassment, psychological abuse, retaliatory actions,
25 arbitrary punishment, or discrimination based on

1 nationality, sexual orientation, race, gender identity,
2 or religion.

3 (2) DETENTION FACILITY STANDARDS.—Deten-
4 tion facilities shall comply fully with the national
5 standards for the detection, prevention, reduction,
6 and punishment of prison rape pursuant to section
7 8 of the Prison Rape Elimination Act of 2003 (42
8 U.S.C. 15607).

9 (3) LIMITATIONS ON SOLITARY CONFINEMENT.—
10 Detainees shall not be subject to solitary
11 confinement, shackling, or strip searches, except to
12 the extent that such techniques are necessary to en-
13 sure the security of other detainees, staff, or the
14 public and only if less coercive measures will not en-
15 sure the security of other detainees, staff, and the
16 public. Decisions to place detainees in solitary con-
17 finement shall be reported to the Field Officer Di-
18 rector at a minimum for any placement lasting at
19 least 3 days continuously or 3 days out of a 7 day
20 period, and reviewed on a weekly basis thereafter.

21 (4) INVESTIGATION OF GRIEVANCES.—Detain-
22 ees shall have the right to prompt, effective, and im-
23 partial investigations of grievances related to condi-
24 tions of detention. No detainee shall be retaliated

1 against for filing a complaint or grievance or for or-
2 ganizing peaceful demonstrations.

3 (5) ACCESS TO TELEPHONES.—Detainees shall
4 have sufficient access to telephones, and the ability
5 to contact, free of charge, legal representatives, for-
6 eign consulates, the immigration courts, the Board
7 of Immigration Appeals, Family Courts, local crimi-
8 nal courts, the UN Refugee Agency, and the Federal
9 courts. The rates charged for telephone calls shall be
10 reasonable and shall not significantly impair detain-
11 ees’ access to telephones.

12 (6) LOCATION OF FACILITIES.—All detention
13 facilities whose date of first use by the Department
14 of Homeland Security occurs after the date of the
15 enactment of this Act shall be located and within 50
16 miles of a community in which there is a dem-
17 onstrated capacity to provide free or low-cost legal
18 representation by—

19 (A) nonprofit legal aid organizations; or

20 (B) pro bono attorneys with expertise in
21 asylum or immigration law.

22 (7) PROCEDURES GOVERNING TRANSFER OF
23 DETAINEESS.—Procedures governing the transfer of a
24 detainee shall take into account—

1 (A) the detainee's access to legal rep-
2 resentatives;

3 (B) the proximity of the facility to the
4 venue of the asylum or removal proceeding;

5 (C) the detainee's proximity to scheduled
6 bond hearings; and

7 (D) the detainee's proximity to family
8 members.

9 Prior to transfer, the Secretary shall give advance
10 notice to the detainee, the attorney of the detainee,
11 and the family of the detainee.

12 (8) INTERPRETATION AND TRANSLATION CAPA-
13 BILITIES.—Detention facilities shall employ staff, in-
14 cluding medical personnel, who, to the extent prac-
15 ticable, are qualified in the languages represented in
16 the population of detainees at a detention facility,
17 and alternative interpreter and translation services
18 shall be made available. Detention facilities shall not
19 rely on detainees to translate or interpret for one
20 another.

21 (9) RECREATIONAL PROGRAMS AND ACTIVI-
22 TIES.—All detainees, including detainees in adminis-
23 trative or disciplinary segregation, shall be afforded
24 daily access to indoor and outdoor recreational pro-
25 grams and activities. All detainees shall have access

1 to religious services and reading materials necessary
2 to their religious practice.

3 (10) VULNERABLE POPULATIONS.—Procedures
4 and conditions of detention shall accommodate the
5 unique needs of asylum seekers, victims of torture
6 and trafficking, families with children, detainees
7 with special religious, cultural, or spiritual consider-
8 ations, pregnant women, nursing mothers, individ-
9 uals older than 65 years of age, and other vulnerable
10 populations.

11 (11) QUALITY OF MEDICAL CARE.—

12 (A) RIGHT TO MEDICAL CARE.—The Sec-
13 retary shall ensure that prompt and adequate
14 emergency, primary, specialty, and hospital
15 medical care is provided at no cost to detainees,
16 including dental care, eye care, mental health
17 care, individual and group counseling, and serv-
18 ices with respect to medical dietary needs.

19 (B) PROCEDURES.—The Secretary shall
20 ensure that procedures for providing medical
21 care to detainees include comprehensive intake
22 screening, effective continuity of care, prompt
23 responses to requests for medical care or treat-
24 ment, and accurate and timely distribution of
25 prescribed medication.

1 (C) MEDICAL FACILITIES.—The Secretary
2 shall ensure that medical facilities in all deten-
3 tion facilities maintain current accreditation by
4 the National Commission on Correctional
5 Health Care.

6 (D) MEDICAL RECORDS.—The Secretary
7 shall ensure that complete medical records are
8 maintained for every detainee and that the
9 records are made available upon request to the
10 detainee, the detainee’s legal representative, or
11 other authorized individuals.

12 (12) VOLUNTARY WORK.—Detainees may have
13 opportunities to work and earn money while in de-
14 tention, subject to the number of work opportunities
15 available. Detainees shall be able to volunteer for
16 work assignments but otherwise shall not be re-
17 quired to work, subject to the following:

18 (A) Available work opportunities shall be
19 provided in order to reduce idleness and im-
20 prove morale, but shall not be provided for the
21 economic benefit of the detention center. De-
22 tainees shall not be the main source of labor for
23 the essential functions required to operate de-
24 tention facilities.

1 (B) All work opportunities shall comply
2 with Occupational Safety and Health Adminis-
3 tration protections.

4 (C) The Rate of Pay for voluntary work
5 shall be reviewed by the Secretary on an annual
6 basis.

7 (D) The Secretary shall provide and make
8 publically available a report on the rate of pay,
9 job descriptions, and full time equivalents for
10 employed detainees compared to full time staff
11 in each detention facility to the Committee on
12 the Judiciary of the House, the Committee on
13 the Judiciary of the Senate, Committee on
14 Homeland Security of the House, and Com-
15 mittee on Homeland Security & Governmental
16 Affairs of the Senate.

17 (13) LEGAL ORIENTATION PROGRAMS.—The
18 Attorney General, in consultation with the Secretary,
19 shall ensure that all detained aliens in immigration
20 and asylum proceedings receive legal orientation
21 through the Legal Orientation Program adminis-
22 tered and implemented by the Executive Office for
23 Immigration Review of the Department of Justice.

24 (14) LEGAL ACCESS.—All detainees shall have
25 access to a properly equipped law library, legal ma-

1 materials and equipment to facilitate the preparation of
2 documents. All detainees shall have meaningful ac-
3 cess to law libraries, legal materials, and equipment.
4 Special consideration shall be given to detainees fac-
5 ing deadlines or time constraints.

6 (c) RULEMAKING.—

7 (1) IN GENERAL.—The Secretary shall pre-
8 scribe regulations, using the procedures for nego-
9 tiated rulemakings under subchapter III of chapter
10 5 of title 5, United States Code, to establish stand-
11 ards to ensure detainees held under the authority of
12 the Director of U.S. Immigration and Customs En-
13 forcement or the Commissioner of U.S. Customs and
14 Border Protection are treated humanely and to en-
15 sure compliance with the minimum requirements set
16 forth in subsection (b).

17 (2) REPRESENTATION OF NEGOTIATED RULE-
18 MAKING COMMITTEE.—Any negotiated rulemaking
19 committee established by the Secretary pursuant to
20 paragraph (1) shall include representatives and ex-
21 perts from—

22 (A) relevant agencies of the Department;

23 (B) the Office of Refugee Resettlement at
24 the Department of Health and Human Services;

1 (C) representatives of State and local gov-
2 ernments;

3 (D) the United States Commission on
4 International Religious Freedom;

5 (E) nongovernmental organizations with
6 expertise working on behalf of aliens in deten-
7 tion facilities, including organizations that em-
8 phasize protections for vulnerable populations;

9 (F) nongovernmental organizations with
10 expertise advocating for asylum seekers;

11 (G) labor organizations that represent em-
12 ployees who work at detention facilities;

13 (H) accrediting bodies for medical care in
14 settings comparable to detention facilities, such
15 as the National Commission on Correctional
16 Health Care, or other experts in the field of
17 providing quality medical care in such settings;
18 and

19 (I) a person appointed by—

20 (i) the majority leader of the House of
21 Representatives;

22 (ii) the minority leader of the House
23 of Representatives;

24 (iii) the majority leader of the Senate;
25 and

1 (iv) the minority leader of the Senate.

2 (3) TIME REQUIREMENT.—The procedures for
3 the negotiated rulemaking referred to in paragraph
4 (1) shall be conducted in a timely manner to ensure
5 that—

6 (A) any recommendations with respect to
7 proposed regulations are provided to the Sec-
8 retary not later than 1 year after the date of
9 enactment of this Act; and

10 (B) a final rule is promulgated not later
11 than 1 year and 6 months after the date of en-
12 actment of this Act.

13 **SEC. 3. ALTERNATIVES TO DETENTION.**

14 (a) IN GENERAL.—The Secretary shall establish na-
15 tionwide alternatives to detention programs that incor-
16 porate case management services in each field office of the
17 Department to ensure appearances at immigration pro-
18 ceedings and public safety.

19 (b) CONTRACT AUTHORITY.—The Secretary may
20 contract with nongovernmental community-based organi-
21 zations to conduct screening of detainees and operate com-
22 munity-based supervision programs. The Secretary shall
23 regularly assess the demand for alternative to detention
24 programs and make available sufficient alternative to de-
25 tention slots regardless of proximity to available detention

1 beds. Alternative programs shall offer a continuum of su-
2 pervision mechanisms and options, including community
3 support, depending on an assessment of each individual's
4 circumstances. The Secretary may contract with non-
5 governmental organizations to implement secure alter-
6 natives that maintain custody over the alien.

7 (1) Information regarding the amount of slots
8 available in each area shall be made public.

9 (c) INDIVIDUALIZED DETERMINATIONS.—In deter-
10 mining whether to use alternatives to detention programs,
11 the Secretary shall make an individualized determination,
12 and for each individual placed in an alternatives to deten-
13 tion program, shall review the level of supervision on a
14 monthly basis. Alternatives to detention programs shall
15 not be used when release on bond or recognizance is deter-
16 mined to be a sufficient measure to ensure appearances
17 at immigration proceedings and public safety.

18 (d) CUSTODY.—The Secretary may use alternatives
19 to detention programs to maintain custody over any alien
20 detained under the Immigration and Nationality Act, ex-
21 cept for aliens detained under section 236A of such Act
22 (8 U.S.C. 1226a). If an individual is not eligible for re-
23 lease from custody or detention, the Secretary shall con-
24 sider the alien for placement in alternative programs that

1 maintain custody over the alien, including the use of elec-
2 tronic ankle devices.

3 (e) VULNERABLE POPULATIONS (ACCESS TO ALTER-
4 NATIVES).—In determining whether to place a detainee in
5 an alternatives to detention program, the Secretary shall
6 consider whether the detainee is a member of a vulnerable
7 population (as identified in section 2(b)(10)). Notwith-
8 standing section 236 of the Immigration and Nationality
9 Act, a member of a vulnerable population whose needs
10 cannot be adequately met by a detention facility may not
11 be held in a detention facility except in the case of what
12 the Secretary determines to be exceptional circumstances.

13 **SEC. 4. DETENTION CAPACITY.**

14 (a) IN GENERAL.—Notwithstanding any other provi-
15 sion of law, the number of detention beds maintained shall
16 be determined by the Secretary of Homeland Security and
17 shall be based solely on detention needs.

18 (b) SENSE OF CONGRESS.—It is the sense of Con-
19 gress that appropriations Acts shall not mandate mainte-
20 nance of a minimum number of detention beds.

21 **SEC. 5. OVERSIGHT OF DETENTION FACILITIES.**

22 (a) DEFINITIONS.—In this section:

23 (1) APPLICABLE STANDARDS.—The term “ap-
24 plicable standards” means the most recent version of
25 detention standards and detention-related policies

1 issued by the Secretary or the Director of U.S. Im-
2 migration and Customs Enforcement, or the Com-
3 missioner of U.S. Customs and Border Protection in
4 compliance with section 2.

5 (2) DETENTION FACILITY.—The term “deten-
6 tion facility” means a Federal, State, or local gov-
7 ernment facility, or a privately owned and operated
8 facility, that is used, in whole or in part, to hold in-
9 dividuals under the authority of the Director of U.S.
10 Immigration and Customs Enforcement, including
11 facilities that hold such individuals under a contract
12 or agreement with the Director.

13 (b) OVERSIGHT REQUIREMENTS.—

14 (1) ANNUAL INSPECTION.—All detention facili-
15 ties shall be inspected by the Secretary on an annual
16 basis and an independent (third party) auditor, on
17 a biannual basis, for compliance with applicable de-
18 tention standards issued by the Secretary and other
19 applicable regulations in compliance with section 2.

20 (2) ROUTINE OVERSIGHT.—In addition to an-
21 nual inspections, the Secretary shall conduct routine
22 oversight of detention facilities, including unan-
23 nounced inspections.

24 (3) AVAILABILITY OF RECORDS.—All detention
25 facility contracts, memoranda of agreement, finan-

1 cial records, evaluations, audits, and reviews shall be
2 considered records for purposes of section 552(f)(2)
3 of title 5, United States Code.

4 (4) CONSULTATION.—The Secretary shall seek
5 input on an annual basis from nongovernmental or-
6 ganizations regarding their independent opinion of
7 specific facilities. The Secretary shall provide a re-
8 port on the opinions gathered and the response of
9 the Secretary to any concerns expressed in those
10 consultations to the Committee on the Judiciary of
11 the House of Representatives, the Committee on the
12 Judiciary of the Senate, the Committee on Home-
13 land Security of the House of Representatives, and
14 the Committee on Homeland Security and Govern-
15 mental Affairs of the Senate.

16 (5) ACCESS.—Facilities shall permit representa-
17 tives of the news media and nongovernmental orga-
18 nizations to have access to nonclassified and non-
19 confidential information about their operation; given
20 appropriate notice, to tour facilities; and with per-
21 mission from the detainees, to interview individual
22 detainees.

23 (c) COMPLIANCE MECHANISMS.—

24 (1) AGREEMENTS.—

1 (A) NEW AGREEMENTS.—Compliance with
2 applicable standards and rules of the Secretary,
3 and meaningful financial penalties for failure to
4 comply, shall be a material term in any new
5 contract, memorandum of agreement, or any re-
6 negotiation, modification, or renewal of an ex-
7 isting contract or agreement, including fee ne-
8 gotiations, executed with detention facilities.

9 (B) EXISTING AGREEMENTS.—Not later
10 than 180 days after the promulgation of the
11 rule, the Secretary shall secure a modification
12 incorporating these terms for any existing con-
13 tracts or agreements that will not be renegoti-
14 ated, renewed, or otherwise modified.

15 (C) CANCELLATION OF AGREEMENTS.—
16 Unless the Secretary provides a reasonable ex-
17 tension to a specific detention facility that is
18 negotiating in good faith, contracts or agree-
19 ments with detention facilities that are not
20 modified within 180 days of the promulgation
21 of the rule, will be cancelled.

22 (D) PROVISION OF INFORMATION.—In
23 making modifications under this paragraph, the
24 Secretary shall require that detention facilities
25 provide to the Secretary all contracts, memo-

1 randa of agreement, evaluations, and reviews
2 regarding the facility not later than 180 days
3 after any modification. The Secretary shall
4 make these materials publicly available.

5 (2) FINANCIAL PENALTIES.—

6 (A) REQUIREMENT TO IMPOSE.—Subject
7 to subsection (b), the Secretary shall impose
8 meaningful financial penalties upon facilities
9 that fail to comply with applicable detention
10 standards issued by the Secretary and other ap-
11 plicable regulations.

12 (B) TIMING OF IMPOSITION.—Financial
13 penalties imposed under subparagraph (A) shall
14 be imposed 120 days after a facility fails to
15 achieve an adequate or the equivalent median
16 score in any performance evaluation.

17 (C) WAIVER.—The requirements of sub-
18 paragraph (A) may be waived if the facility cor-
19 rects the noted deficiencies and receives an ade-
20 quate score in not more than 90 days.

21 (D) MULTIPLE OFFENDERS.—In cases of
22 persistent and substantial noncompliance, in-
23 cluding scoring less than adequate or the equiv-
24 alent median score in 2 consecutive inspections,
25 the Secretary shall terminate contracts or

1 agreements for the operation and use of such
2 facilities within 60 days, or in the case of facili-
3 ties operated by the Secretary, such facilities
4 shall be closed within 90 days.

5 (d) REPORTING REQUIREMENTS.—

6 (1) OBJECTIVES.—Not later than June 30 of
7 each year, the Secretary shall prepare and submit to
8 the Committee on the Judiciary of the Senate and
9 the Committee on the Judiciary of the House of
10 Representatives a report on inspection and oversight
11 activities of detention facilities.

12 (2) CONTENTS.—Each report submitted under
13 paragraph (1) shall include—

14 (A) a description of each detention facility
15 found to be in noncompliance with applicable
16 detention standards issued by the Department
17 and other applicable regulations;

18 (B) a description of the actions taken by
19 the Department to remedy any findings of non-
20 compliance or other identified problems, includ-
21 ing financial penalties, contract or agreement
22 termination, or facility closure; and

23 (C) information regarding whether the ac-
24 tions described in subparagraph (B) resulted in

- 1 compliance with applicable detention standards
- 2 and regulations.

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