

Congressman Cuellar's Detention Oversight/ Juvenile Protection
/Humanitarian Related Appropriations Language

FY 15 Appropriations

1. Report Language: Section 572. A new provision is included making costs of providing humanitarian relief to unaccompanied alien children and to alien adults and their minor children an eligible use for certain Homeland Security grants to Southwest border recipients for fiscal years 2013 and 2014. State and local costs to include the costs of personnel, overtime and travel related to enhancing border security are already eligible expenses under the major Homeland Security grant programs; however, costs associated with the immediate care and transportation of UAC and families that were incurred by state and local jurisdictions would otherwise not be eligible. The influx of UAC and families that came across the Southwest border overwhelmed Federal resources and put a burden on state and local jurisdictions, particularly small counties along the border. This created not only a humanitarian crisis but also a greater vulnerability to terrorism and other security risks to our Nation.

Bill Language: "SEC. 572. Notwithstanding any other provision of law, grants awarded to States along the Southwest Border of the United States under sections 2003 or 2004 of the Homeland Security Act of 2002 (6 U.S.C. 604 and 605) using funds provided under the heading "Federal Emergency Management Agency, State and Local Programs" in division F of Public Law 113 76 or division D of Public Law 113-6 may be used by recipients or sub-recipients for costs, or reimbursement of costs, related to providing humanitarian relief to unaccompanied alien children and alien adults accompanied by an alien minor where they are encountered after entering the United States, provided that such costs were incurred during the award period of performance."

FY16 Appropriations

1. "With regard to those family units who are detained, the Committee is concerned by reports that ICE has not provided appropriate food, water, and medical care to families, as well as reports about inappropriate and demeaning treatment of detainees by contract guards at such facilities. Within 15 days of enactment, and monthly thereafter, ICE is directed to update the Committee on family detention oversight activities of the ICE coordinator for family detention policy and the Office of Detention Oversight, including oversight of mechanisms for receiving and resolving complaints and responding to requests for medical care; providing all relevant and required information to detainees related to the removal process and their rights in detention; and for providing appropriate training and oversight for contract detention staff, including oversight related to staff qualifications. These updates shall also include data regarding family units in detention who are removed from the United States directly from detention; detained for longer than 30 days and longer than 60 days; issued a bond that has not been posted; and released on bond, recognizance, and parole, including data on compliance of those released with requirements for immigration court appearances. In

U.S. Congressman Henry Cuellar (TX-28)
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addition, the updates should include descriptions and data on requests for medical care and response times; the average and median lengths of stay in family detention; the average, median and range for bond amounts, and improvements made as a result of recommendations by the family detention Advisory Committee or as a result of stakeholder outreach.”

2. Reimbursement to States for costs of providing humanitarian relief to UACs

“Notwithstanding any other provision of law, grants awarded to States along the Southwest Border of the United States under sections 2003 or 2004 of the Homeland Security Act of 2002 (6 U.S.C. 604 and 605) using funds provided under the heading “Federal Emergency Management Agency, State and Local Programs” in division F of Public Law 113 76 or division D of Public Law 113–6 may be used by recipients or sub-recipients for costs, or reimbursement of costs, related to providing humanitarian relief to unaccompanied alien children and alien adults accompanied by an alien minor where they are encountered after entering the United States, provided that such costs were incurred between January 1, 2014 and December 31, 2014 or during the award period of performance.

FY17 Appropriations

1. Disposition Goals – Detained cases by 60 days and non-detained by 365 days.

Report Language: “Assuring immigration regulation helps optimize strong enforcement. —The Committee is concerned with the pace of hiring and onboarding Immigration Judges funded in fiscal years 2015 and 2016, and expects the Department to accelerate the recruitment, background investigation and placement of IJ teams to areas that have the highest workload. The Committee is alarmed that despite the increased resources provided to EOIR in fiscal years 2015 and 2016, the median days pending for a detained immigration case is 71 days and the median days pending for a non-detained case is 665 days. While the Committee understands that factors outside the control of Immigration Judges can affect case length, these median case times are unacceptable. The Committee directs EOIR to establish a goal that by the end of the fiscal year 2017 the median days pending of detained cases be no longer than 60 days, and the median length for non-detained cases be no longer than 365 days. To monitor the progress in this effort, the Committee directs EOIR to continue to provide monthly reporting on EOIR performance and IJ hiring as specified in the statement accompanying the fiscal year 2016 Omnibus Appropriation Act.”

2. Transparency in ICE Detention Centers:

Report language: “The Committee is concerned by reports of the separation of some family units after apprehension by CBP. ICE is expected to ensure that individuals being

transferred from CBP to ICE custody, in ICE custody, or under ICE supervision have opportunities to report family separation incidents and to verify the status, location, and disposition of family members. ICE should also ensure that field officers are appropriately trained on the requirements of ICE's Parental Interest Directive and on mechanisms to reunite family units. The Committee has included language under the OIG heading directing updates on its ongoing review of ICE and CBP detention facilities, including unannounced inspections. The Committee notes that ICE is working collaboratively with OCRCL to improve detention facility conditions, standards, inspections, and healthcare services; provide guidance on the use of segregation; improve disability accommodations; and ensure the safety and well-being of vulnerable populations. The Committee expects ICE to continue working with OCRCL to proactively improve detention facility conditions and oversight. Within 30 days of the date of enactment of this Act, and semiannually thereafter, ICE shall provide an update on its oversight of family detention facilities, including recommendations for improvements made by the Advisory Committee on Family Residential Centers or as a result of ICE's community liaison initiative. Within 45 days after the date of enactment of this Act, ICE shall report on its progress in implementing the 2011 Prison Based National Detention Standards (PBNDS) and requirements related to the Prison Rape Elimination Act (PREA), including a list of facilities that are not yet in compliance; a schedule for bringing facilities into compliance; and current year and estimated future year costs associated with compliance. The Committee expects ICE to refrain from entering into new contracts or IGSA's that do not require adherence to the PREA and 2011 PBNDS standards. In addition, the Committee again encourages ICE to consider collaborating with the National PREA Resource Center, which is supported by the Department of Justice, to help facilitate PREA compliance. House Report 114-215 directed ICE to brief the Committee on its policies and practices for ensuring the safety of vulnerable populations in immigration detention facilities, along with recommendations for further improvements to better protect these detainees. The Committee looks forward to receiving this overdue briefing as soon as possible."

3. Reimbursement for providing humanitarian relief to UACs

Bill language: "SEC. 311. Notwithstanding any other provision of law, grants awarded to States along the Southwest Border of the United States under sections 2003 or 2004 of the Homeland Security Act of 2002 (6 U.S.C. 604 and 605) using funds provided under the heading "Federal Emergency Management Agency, State and Local Programs" in division F of Public Law 113-76 or division D of Public Law 113-6 may be used by recipients or sub-recipients for costs, or reimbursement of costs, related to providing humanitarian relief to unaccompanied alien children and alien adults accompanied by an alien minor where they are encountered after entering the United States, provided that such costs were incurred between January 1, 2014 and December 31, 2014 or during the award period of performance."

FY18 Appropriations

1. “The Committee is concerned by reports of the separation of some family units after apprehension by CBP or prior to crossing the border. CBP should ensure that processing decisions consider family unity as a primary factor and, to the greatest extent possible, that separated family units are reunited prior to removal, release from CBP custody, or transfer to ICE or Office of Refugee Resettlement (ORR) custody.”

“The Committee is aware of concerns that CBP activities and policies may sometimes lack public transparency and may be subject to inadequate data collection and reporting. The Committee directs CBP to reiterate its commitment to a policy of “maximum disclosure, minimum delay” in releasing information to the media and public; continue to post all policies and guidelines that may be of interest to the public on the agency’s website; and continue—or expand as practicable—data collection that more effectively detects and deters abuse, strengthens accountability, and ensures effective use of limited resources.”

“Beginning within 60 days after the date of enactment of this Act, CBP shall report to the Committee on the numbers of detainees currently held by CBP for more than 48 and 72 hours, respectively. This reporting should be updated monthly and include a list of all CBP facilities used for holding detainees, including the average daily population and daily population at the time of publication.”

2. “ICE is directed to continue to provide performance reports to the Committee on the ATD program, as described in House Report 114-668”
3. “SEC. 305. Notwithstanding any other provision of law, grants awarded to States along the Southwest Border of the United States under sections 2003 or 2004 of the Homeland Security Act of 2002 (6 U.S.C. 604 and 605) using funds provided under the heading “Federal Emergency Management Agency—Federal Assistance” for grants under paragraph (1) in this Act, or under the heading “Federal Emergency Management Agency—State and Local Programs” in Public Law 114–4, division F of Public Law 113–76, or division D of Public Law 113–6 may be used by recipients or sub-recipients for costs, or reimbursement of costs, related to providing humanitarian relief to unaccompanied alien children and alien adults accompanied by an alien minor where they are encountered after entering the United States, provided that such costs were incurred between January 1, 2014, and December 31, 2014, or during the award period of performance.”

FY19 Appropriations Committee

4. "The Department is directed to provide a report to the Committee, not later than 30 days after the date of enactment of this Act, on its policies related to the separation of minor children from their parents or legal guardians while in DHS custody. The report should discuss policies in effect both prior and subsequent to the implementation of Executive Order 13841, and shall include a description of any guidance to field personnel on implementation of such policies; a description of the process for reuniting families that are separated as a result of the prosecution of an adult family member; data on the number of separations during fiscal year 2018 as a result of the prosecution of a parent or legal guardian due to medical necessity, in the interest of the immediate safety of the child, or due to fraudulent family relationship or guardianship claims; a description of how DHS determines the validity of family relationship or guardianship claims; and an assessment of how that process could be improved, including the feasibility of using rapid-DNA testing with appropriate privacy protections."

"DHS is directed to ensure, when appropriate and feasible, that separated family units are reunited and transferred together prior to removal, release from CBP custody, or transfer to Ice custody. ICE is expected to ensure that individuals being transferred from CBP to ICE custody, in ICE custody, or under ICE supervision have opportunities to report family separations and to verify the status, location, and disposition of family members, and to regularly communicate with one another by phone or video conference."

"Recent developments in contactless fingerprinting enable rapid capture of fingerprints that can be shared interoperably with legacy fingerprinting systems. The Committee directs the Department to provide, within 60 days of the date of enactment of this Act, a briefing on the cost and feasibility of using a contactless fingerprint technology as part of the exit tracking system, including a comparison of those costs to other options for gathering the same type of biometric information."

"ICE shall continue to report and/or make public the following, as detailed in House Report 115-239, and shall follow the previously directed timeframes unless otherwise specified: --Semi-annual update on UACs who age out while in ORR custody. --Secure Communities report. --Requirements related to detention facility inspections; death in custody reporting, with subsequent reporting to be released within 90 days of the initial report unless additional time is required for redacting personally identifiable information; access to facilities; detainee locator information; changes to the current detention facility category and inspection framework; and compliance with the 2011 Performance Based National Detention Standards (PBNDS 2011) and Prison Rape Elimination act requirements."

5. "The Committee directs ICE's Office of Detention Oversight to conduct unannounced inspections of all ICE family residential centers at least twice per year, with the results of each inspection promptly published on ICE's website. The Committee directs the

Department to make any form required to be signed by a detained person to be written in both English and Spanish.”

6. “The Department shall only separate a child from a parent if the parent has a criminal history, a communicable disease, or is determined to be unfit or a danger to the child.”
7. “The Committee encourages the Department to utilize its authority to accept donations from the private sector, nongovernmental organizations, and other groups independent of the federal government, including medical goods and services, school supplies, toys, clothing, and any other items intended to promote the well-being of alien children in the custody of CBP.”
8. “Sec. 232. The Department of Health and Human Services may accept donations from the private sector, nongovernmental organizations, and other groups independent of the Federal Government for the care of unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)) in the care of the Office of Refugee Resettlement of the Administration for Children and Families, including medical goods and services, school supplies, toys, clothing, and any other items intended to promote the wellbeing of such children.”
9. “Not later than 30 days after the last day of each calendar quarter (beginning with the first calendar quarter beginning on or after the date of the enactment of this Act), the Secretary shall submit to Congress a report on, with respect to children who were separated from their parents or legal guardians by the Department of Homeland Security and subsequently classified as unaccompanied alien children and transferred to the custody of the HHS’ Office of Refugee Resettlement—
 - 1) The number of children so separated;
 - 2) The length of any such separation;
 - 3) The status of any efforts undertaken by the Secretary to reunify such children with a parent or legal guardian; and
 - 4) The number of any such reunifications.”
10. “Sec. _____. The Secretary shall submit to the Congress a plan to promptly facilitate the reunification not all children separated from their parents or family units and placed in the custody of the Office of Refugee Resettlement: Provided, That the funds made available in this title under the heading ‘Office of the Secretary—General Departmental Management’ shall be reduced by \$100,000 for each day after August 1, 2018. That such reunification plan has not been submitted to the Congress and such funds shall be rescinded in the amount of each such reduction: Provided further, That no portion of the reduction required by the preceding proviso shall be taken from any of the specific line items listed below the “General Departmental Management, Federal Funds” line in the table at the end of the committee report accompanying this Act.”

11. SEC. _____. Not later than 30 days after the date of the enactment of this Act, the secretary of Health and Human Services shall submit to the Committee on Appropriations of both Houses of Congress a report that details the following:
- (1) What guidance, if any the Office of Refugee Resettlement of the administration for Children and Families provides to the shelters and staff of such Office of Refugee Resettlement regarding the unique medical and mental health needs of children who have been separated from their parents.
 - (2) What resources, if any, the Department of Health and Human Services provides to children who have been separated from their parents to address the mental health and trauma such children have experienced and may continue to experience.
 - (3) How the Department of Health and Human Services ensures that children who have been separated from their parent have timely access to treatment from qualified health professionals.
 - (4) The Average period of time that children separated from their parents stay in the care of the Office of Refugee Resettlement of the Administration for Children and Families.”
12. “Sec.—Beginning with April 2018, the Secretary shall submit to Congress a monthly report on, with respect to children who were separated from their parents or legal guardians by the Department of Homeland Security and subsequently classified as unaccompanied alien children and transferred to the custody of the HHS’ Office of Refugee Resettlement—
- (1) The number and ages of children so separated at or between ports of entry;
 - (2) The length of any separation;
 - (3) The status of any efforts undertaken by the Secretary to reunify such children with a parent or legal guardian; and the number of any reunification, and whether the reunified families were places in family detention.”

“The Committee directs that in cases of separation, within 24 hours, parents, legal guardians, or other relatives shall be informed of the whereabouts of their children and children shall be informed of the whereabouts of their parents, legal guardians, or other relatives, except in cases of suspected abuse or trafficking.”

“The Committee directs the Secretary of HHS to work in collaboration with the Secretary of DHS to submit a report to the Committees on Appropriations of the House of Representatives and of the Senate within 60 days of this bill’s enactment detailing actions it has taken and will take and policies it has implemented and will implement to facilitate: 1) the ability of separated children to make contact and maintain communication with their separated parents, relatives, legal guardians, or primary caregivers (for tender-age and non-verbal children, this should include methods to facilitate in-person visits and video chats); 2) the ability of family members residing abroad to utilize the hotline to receive information on the status and location of

separated children; and 3) the coordinated reunification and post-release support of separated child and adult family member, when it is the best interest of the child.”

13. “SEC. 230. To the extent practicable, and so long as it is appropriate and in the best interest of the child, in cases where the Office of Refugee Resettlement of the Department of Health and Human Services is responsible for the care of siblings who are unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279 (g)(2))), the Director of the Office shall place siblings-
- (1) In the same facility; or
 - (2) With the same sponsor.

FY19 Conference Committee

14. The agreement includes \$563,407,000 for the Executive Office for Immigration Review (EOIR), of which \$4,000,000 is derived by transfer from fee collection. Within the funding provided, \$11,400,000 is provided for the Legal Orientation Program (LOP). Senate report language regarding LOP and technology improvements is adopted. In fiscal year 2018, Congress provided funding for 484 Immigration Judge (IJ) teams. Despite Departmental actions to accelerate the recruitment and hiring of immigration judges, only 395 IJ teams were on-board at the end of fiscal year 2018. The agreement provides funding for 534 IJ teams, including associated space and technology requirements.
15. “The conferees include increases above the request of \$28,000,000 to increase the number of participants in Alternatives to Detention (ATD) programs to 100,000, up from 82,000 assumed in the request; \$40,000,000 for additional ICE staffing dedicated to the management of ATD immigration cases, particularly those of asylum applicants; and \$30,500,000 for the Family Case Management Program (FCMP), which can help improve compliance with immigration court obligations by helping families' access community based support for basic housing, healthcare, legal, and educational needs. Within 90 days of the date of enactment of this Act, ICE shall brief the Committees on a plan for a program within the FCMP managed by non-profit organizations that have experience in connecting families with community-based services.”
16. An administrative provision in the bill requires ICE to provide weekly reports to the Committees and to the public on the average daily population, average length of stay, and total year-to-date book-ins of single adults and of members of family units detained in ICE custody, delineated by arresting agency; the daily counts of single adults and family units in detention custody; the number of individuals in detention custody with positive fear determinations and the average and median post-determination length of stay for such individuals; and the total number of enrollees in Alternatives to Detention, including the Family Case Management Program, along with the average length of participation.

FY19 Emergency Supplemental

1. "For an additional amount for "Federal Assistance", \$60,000,000, to remain available until September 30, 2020, for the emergency food and shelter program under Title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.) for the purposes of providing assistance to aliens released from the custody of the Department of Homeland Security: Provided, That notwithstanding Sections 315 and 316(b) of such Act, funds made available under this section shall be disbursed by the Emergency Food and Shelter Program National Board not later than 30 days after the date on which such funds becomes available: Provided further, That the Emergency Food and Shelter Program National Board shall distribute such funds only to jurisdictions or local recipient organizations serving communities that have experienced a significant influx of such aliens: Provided further, That such funds may be used to reimburse such jurisdictions or local recipient organizations for costs incurred in providing services to such aliens on or after January 1, 2019: Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985."

FY20

1. "\$10,000,000 for 200 Border Patrol Operational Support Positions" (entry level administrative positions to perform duties related to short-term detention care, transportation, processing and escort of detainees in USBP custody, during the administrative process).
2. "ICE is directed to continue ensuring access to "know your rights" presentations, as described in House Report 116-9."
3. "Reporting Requirements. - CBP shall continue to follow the directives in the explanatory statement accompanying Public Law 116- 6 related to the following, including the previously directed timeframes unless otherwise specified: (1) CBP-wide capability gaps; (2) Border Patrol Workforce Staffing Model; (3) Combined table of CBP interdictions of currency and major categories of drugs; (4) The. number of detainees held by CBP for more than 48 and 72 hours, respectively; (5) Allegations related to employee corruption; (6) Use of force abuses; (7) Checkpoint, transportation check, and roving patrol stop operations; (8) Border Patrol and AMO aviation working group; (9) Search and rescue efforts for fiscal year 2019; (10) Deaths in custody and not in custody; (11) POE infrastructure capital investment projects, not later than 180 days after the date of enactment of this Act; and (12) Staffing gains and losses."
4. "Migrant Care. -- The explanatory statement accompanying Public Law 116-6 directed CBP to brief the Committees on progress in establishing permanent plans, standards, and protocols to protect the health, safety, and wellbeing of migrants in its custody. he

Committee looks forward to receiving that briefing, which is now overdue. In addition, CBP shall continue to update the Committee quarterly on progress made in finalizing and implementing such plans, protocols, and standards, which should be in compliance with the relevant recommendations in the Policy Statement of the American Academy of Pediatrics entitled, "Detention of Immigrant Children".