

Detention-Related Appropriations Wins

FY15

1. state local governments and law enforcement are eligible for reimbursement due to funds expended to care for UACs:

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 and Report 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.

2. \$94,000,000 for Alternatives to Detention

FY16

1. Transparency in Family Detention Facilities:

Report Language: “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 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

Bill Language: SEC. 554. 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.”

3. \$125,883,000 for Alternatives to Detention (\$30 million above FY15)

4. Report on effectiveness of ATD program

“ICE is directed to provide the Committee a statistical analysis for each type of alien supervision (electronic, GPS, and family case management) and category of enrollee (single adult/head of a family unit) to determine the effectiveness of the program with regards to compliance and removal and to better understand what characteristics uniquely support removal outcomes.”

5. \$337,028,000 for Criminal Alien Program (\$15 million above FY16)

6. 55 new Immigration Judge Teams.

FY17

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.”

4. 10 Additional Immigration Judge Teams

5. \$183,275,000 for Alternatives to Detention (\$58 million above FY16)

FY18

1. 100 New Immigration Judge Teams:

Report Language: This Act includes \$504,500,000 for the Executive Office for Immigration Review (EOIR), of which \$4,000,000 is derived by transfer from fee collections. With the funding provided in the Act, EOIR shall continue ongoing programs, and hire and deploy at least 100 additional Immigration Judge (IJ) teams, with a goal of fielding 484 IJ teams nationwide by 2019.

Immigration Adjudication Performance and Reducing Case Backlog. -The Department shall accelerate its recruitment, background investigation, and placement of IJ teams, and brief the Committees not later than 30 days after enactment of this Act on its plan to deploy or reassign IJ teams to the highest priority locations. The briefing shall cover training standards for new IJ s, and continuing IJ training and education.

EOIR shall submit monthly reports detailing the status of its hiring and deployment of IJ teams in the format and level of detail provided in fiscal year 2017. The reports should include the performance and operating information at the level of detail provided in fiscal year 2017, to include median days pending for both detained and non-detained cases, and should include statistics on cases where visa overstay is a relevant factor. To the extent EOIR has adopted new performance measures related to the efficient and timely completion of cases and motions, statistics reflecting those measures should be included in the report.

2. \$187,205,000 million for Alternatives to Detention (\$4 million increase from FY17)

3. Family separation and oversight of detention facilities:

Report language: “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.” (page 23)

4. FEMA Reimbursement for UACs:

Bill Language: “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

1. Report on family reunifications:

Report language: 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.”

2. 100 new Immigration Judge teams:

Report language: “The committee recommends \$630,000,000 for the Executive Office for Immigration Review (EOIR), of which \$4,000,000 is from immigration examination fees. The recommendation is \$125,500,000 above fiscal year 2018 and \$66,593,000 above the request. The recommendation will support a total of 584 Immigration Judge teams, 100 more than funded in fiscal year 2018. Funding is also provided to annualize costs associated with the new teams funded in fiscal year 2018, provide additional law clerks to assist Immigration Judges and reduce case processing time, and upgrade information technology and facilities. The recommendation includes funding to sustain the current Legal Orientation Program and related assistance, such as the information desk pilot, at no less than current levels. The recommendation does not include any funding to establish or fund a legal representation program.

EOIR performance—For several years the Committee has been concerned with the slow pace of hiring Immigration Judges and the unacceptable amount of time it takes to resolve immigration cases. The Committee understands that the Department is working to accelerate the hiring process and is deploying additional resources to those areas with the highest workload such as the Southwest Border. Committee directs this effort to continue and that the Department coordinate with the Department of Homeland Security (DHS) to develop metrics, practices, and pilot programs to institute rapid court proceedings at holding facilities along the Southwest Border where individuals are detained at immigration violations to ensure their court appearance. The Committee notes with approval that EOIR has set new prioritization standards and court-based performance measures, as the Committees on Appropriations had directed. The Committee looks forward to seeing those efforts bear fruit in the form of more timely adjudication and reduced backlog, while ensuring due process is observed. The Committee directs EOIR to continue reporting monthly on performance and Immigration Judge hiring in the manner and level of detail as provided in fiscal year 2018. Such reports should also include information on the number of cases where visa overstay is the sole or primary factor for adjudication.

Efficiency initiatives.—The Committee understands that EOIR is considering approaches that could result in savings in time and resources, such as modifying the procedure for Immigration Judges to issue oral decisions, which currently may involve lengthy and detailed recitations of legal authorities and case analysis. Other potential approaches to streamlining operations include use of preliminary hearings or similar approaches to screening cases to address frivolous filings and reduce court time required to process them. The Committee encourages EOIR to actively explore and, if appropriate, pilot approaches that hold promise of improving the efficiency of the EOIR court system.”

3. \$213,142,000 for Alternatives to Detention (\$26 million increase from FY18)

4. Congressional oversight of detention facilities:

Bill language: “Sec. ___. None of the funds made available by this Act may be used to prevent a Member of the United States Congress from entering, for the purpose of conducting oversight, any facility in the United States used for the purposes of detaining or otherwise housing foreign national minors, or to require Members of the United States Congress to coordinate through a Congressional entity for their entry into, for the purpose of conducting oversight, any facility in the United States used for purposes of detaining or otherwise housing foreign national minors, or to make any temporary modification at any such facility that in any way alters what is observed by a visiting Member of the United States Congress, compared to what would be observed in the absence of such modification.” (Not ours)

5. Unannounced inspections of DHS detention facilities:

Report language: “the increase above the request is for increased unannounced inspections of immigration detention facilities and CBP holding processing facilities. ICE shall continue to publish the results of detention facility inspections and other reports related to custody operations activities on its public website.

As the OIG continues to conduct unannounced inspections of detention facilities, the Committee encourages the OIG to pay particular attention to the health needs of detainees.

Within 30 days of the date of enactment of this Act, the Inspector General shall report to the Committee on the implementation of and any interagency coordination associated with the previous policy of separating migrant families, the Executive Order issued on June 20, 2018 entitled “Affording Congress an Opportunity to Address Family Separation,” and efforts made to reunify families separated under the previous family separation policy.”

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.”

6. Donations for children in CBP custody:

Report language: “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 wellbeing of alien children in the custody of CBP.”

7. Frequent reporting on separated children in HHS custody:

Report language: “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.”

8. Oversight of HHS detention facility code infractions:

Facility Oversight.—The Committee expects the Office of Refugee Resettlement (ORR) to maintain strict oversight of all ORR-funded care provider facilities and to report and correct violations of Federal, State, or local codes related to standards of childcare or the wellbeing of children. The Committee directs ORR, within 90 days of the enactment of this Act, to submit a report to the Committee detailing the number and nature of facility violations, and the steps it is taking to work with grantees to address and prevent such infractions.”