

114TH CONGRESS
1ST SESSION

H. R. 2314

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

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2015

Mr. SMITH of Washington (for himself, Mr. LARSEN of Washington, Ms. DELBENE, Mr. DEUTCH, Mr. FOSTER, Mr. QUIGLEY, Mr. O'ROURKE, and Mr. MCDERMOTT) 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 2015”.

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 or to a lack of due process in
25 treatment of detainees. No detainee shall be retali-

1 ated against for filing a complaint or grievance or
2 for organizing peaceful demonstrations, including
3 hunger strikes.

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

13 (6) LOCATION OF FACILITIES.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), all detention facilities whose
16 date of first use by the Department of Home-
17 land Security occurs after the date of the enact-
18 ment of this Act shall be located and within 50
19 miles of a community in which there is a dem-
20 onstrated capacity to provide free or low-cost
21 legal representation by—

22 (i) nonprofit legal aid organizations;

23 or

24 (ii) pro bono attorneys with expertise
25 in asylum or immigration law.

1 (B) EXCEPTION.—The requirements of
2 subparagraph (A) shall not apply in the case of
3 a U.S. Customs and Border Protection station
4 or a detention facility where a detainee will be
5 present for less than 72 hours.

6 (7) PROCEDURES GOVERNING TRANSFER OF
7 DETAINEES.—Procedures governing the transfer of a
8 detainee shall take into account—

9 (A) the detainee’s access to legal rep-
10 resentatives, including the importance of con-
11 tinuity with legal counsel already provided;

12 (B) the proximity of the facility to the
13 venue of the court proceeding;

14 (C) the detainee’s proximity to scheduled
15 bond hearings; and

16 (D) the detainee’s proximity to family
17 members.

18 Prior to transfer, the Secretary shall give advance
19 notice to the detainee, the attorney of the detainee,
20 and the family of the detainee.

21 (8) INTERPRETATION AND TRANSLATION CAPA-
22 BILITIES.—Detention facilities shall employ staff, in-
23 cluding medical personnel, who, to the extent prac-
24 ticable, are qualified in the languages represented in
25 the population of detainees at a detention facility,

1 and alternative interpreter and translation services
2 shall be made available. Detention facilities shall not
3 rely on detainees to translate or interpret for one
4 another.

5 (9) RECREATIONAL PROGRAMS AND ACTIVITIES.—All detainees, including detainees in adminis-
6 trative or disciplinary segregation, shall be afforded
7 daily access to indoor and outdoor recreational pro-
8 grams and activities. All detainees shall have access
9 to religious services and reading materials necessary
10 to their religious practice.
11

12 (10) VULNERABLE POPULATIONS.—Procedures
13 and conditions of detention shall accommodate the
14 unique needs of asylum seekers, victims of torture
15 and trafficking, families with children, detainees
16 with special religious, cultural, or spiritual consider-
17 ations, pregnant women, nursing mothers, individ-
18 uals older than 65 years of age, and other vulnerable
19 populations, including individuals who are gay, les-
20 bian, bisexual, or transgendered.

21 (11) QUALITY OF MEDICAL CARE.—

22 (A) RIGHT TO MEDICAL CARE.—The Sec-
23 retary shall ensure that prompt and adequate
24 emergency, primary, specialty, and hospital
25 medical care is provided at no cost to detainees,

1 including dental care, eye care, mental health
2 care, individual and group counseling, and serv-
3 ices with respect to medical dietary needs.

4 (B) PROCEDURES.—The Secretary shall
5 ensure that procedures for providing medical
6 care to detainees include comprehensive intake
7 screening, effective continuity of care, prompt
8 responses to requests for medical care or treat-
9 ment, and accurate and timely distribution of
10 prescribed medication.

11 (C) MEDICAL FACILITIES.—The Secretary
12 shall ensure that medical facilities in all deten-
13 tion facilities maintain current accreditation by
14 the National Commission on Correctional
15 Health Care.

16 (D) MEDICAL RECORDS.—The Secretary
17 shall ensure that complete medical records are
18 maintained for every detainee and that the
19 records are made available upon request to the
20 detainee, the detainee’s legal representative, or
21 other authorized individuals.

22 (12) VOLUNTARY WORK.—Detainees may have
23 opportunities to work and earn money while in de-
24 tention, subject to the number of work opportunities
25 available. Detainees shall be able to volunteer for

1 work assignments but otherwise shall not be re-
2 quired to work, subject to the following:

3 (A) Available work opportunities shall be
4 provided in order to reduce idleness and im-
5 prove morale, but shall not be provided for the
6 economic benefit of the detention center. De-
7 tainees shall not be the main source of labor for
8 the essential functions required to operate de-
9 tention facilities.

10 (B) All work opportunities shall comply
11 with Occupational Safety and Health Adminis-
12 tration protections.

13 (C) The Rate of Pay for voluntary work
14 shall be reviewed by the Secretary on an annual
15 basis.

16 (D) The Secretary shall provide and make
17 publically available an annual report on the rate
18 of pay, job descriptions, and full time equiva-
19 lents for employed detainees compared to full
20 time staff in each detention facility to the Com-
21 mittee on the Judiciary of the House, the Com-
22 mittee on the Judiciary of the Senate, Com-
23 mittee on Homeland Security of the House, and
24 Committee on Homeland Security & Govern-
25 mental Affairs of the Senate.

1 (13) LEGAL ORIENTATION PROGRAMS.—The
2 Attorney General, in consultation with the Secretary,
3 shall ensure that all detained aliens in immigration
4 and asylum proceedings receive legal orientation
5 through the Legal Orientation Program adminis-
6 tered and implemented by the Executive Office for
7 Immigration Review of the Department of Justice.

8 (14) LEGAL ACCESS.—All detainees shall have
9 access to a properly equipped law library, legal ma-
10 terials and equipment to facilitate the preparation of
11 documents. All detainees shall have meaningful ac-
12 cess to law libraries, legal materials, and equipment.
13 Special consideration shall be give to detainees fac-
14 ing deadlines or time constraints.

15 (15) FOOD QUALITY.—Detainees shall be pro-
16 vided food that is nutritionally adequate, and pro-
17 vided in conditions that do not endanger the health
18 and well-being of detainees.

19 (c) RULEMAKING.—

20 (1) IN GENERAL.—The Secretary shall pre-
21 scribe regulations, using the procedures for nego-
22 tiated rulemakings under subchapter III of chapter
23 5 of title 5, United States Code, to establish stand-
24 ards to ensure detainees held under the authority of
25 the Director of U.S. Immigration and Customs En-

1 enforcement or the Commissioner of U.S. Customs and
2 Border Protection are treated humanely and to en-
3 sure compliance with the minimum requirements set
4 forth in subsection (b).

5 (2) REPRESENTATION OF NEGOTIATED RULE-
6 MAKING COMMITTEE.—Any negotiated rulemaking
7 committee established by the Secretary pursuant to
8 paragraph (1) shall include representatives and ex-
9 perts from—

10 (A) relevant agencies of the Department;

11 (B) the Office of Refugee Resettlement at
12 the Department of Health and Human Services;

13 (C) representatives of State and local gov-
14 ernments;

15 (D) the United States Commission on
16 International Religious Freedom;

17 (E) nongovernmental organizations with
18 expertise working on behalf of aliens in deten-
19 tion facilities, including organizations that em-
20 phasize protections for vulnerable populations;

21 (F) nongovernmental organizations with
22 expertise advocating for asylum seekers;

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

1 (H) accrediting bodies for medical care in
2 settings comparable to detention facilities, such
3 as the National Commission on Correctional
4 Health Care, or other experts in the field of
5 providing quality medical care in such settings;
6 and

7 (I) a person appointed by—

8 (i) the majority leader of the House of
9 Representatives;

10 (ii) the minority leader of the House
11 of Representatives;

12 (iii) the majority leader of the Senate;

13 and

14 (iv) the minority leader of the Senate.

15 (3) TIME REQUIREMENT.—The procedures for
16 the negotiated rulemaking referred to in paragraph
17 (1) shall be conducted in a timely manner to ensure
18 that—

19 (A) any recommendations with respect to
20 proposed regulations are provided to the Sec-
21 retary not later than 1 year after the date of
22 enactment of this Act; and

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

1 **SEC. 3. ALTERNATIVES TO DETENTION.**

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

7 (b) CONTRACT AUTHORITY.—The Secretary may
8 contract with nongovernmental community-based organi-
9 zations to conduct screening of detainees and operate com-
10 munity-based supervision programs. The Secretary shall
11 regularly assess the demand for alternative to detention
12 programs and make available sufficient alternative to de-
13 tention slots regardless of proximity to available detention
14 beds. Alternative programs shall offer a continuum of su-
15 pervision mechanisms and options, including community
16 support, depending on an assessment of each individual’s
17 circumstances. The Secretary may contract with non-
18 governmental organizations to implement secure alter-
19 natives that maintain custody over the alien.

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

22 (c) INDIVIDUALIZED DETERMINATIONS.—In deter-
23 mining whether to use alternatives to detention programs,
24 the Secretary shall make an individualized determination,
25 and for each individual placed in an alternatives to deten-
26 tion programs, shall review the level of supervision on a

1 monthly basis. Alternatives to detention programs shall
2 not be used when release on bond or recognizance is deter-
3 mined to be a sufficient measure to ensure appearances
4 at immigration proceedings and public safety.

5 (d) CUSTODY.—The Secretary may use alternatives
6 to detention programs to maintain custody over any alien
7 detained under the Immigration and Nationality Act, ex-
8 cept for aliens detained under section 236A of such Act
9 (8 U.S.C. 1226a). If an individual is not eligible for re-
10 lease from custody or detention, the Secretary shall con-
11 sider the alien for placement in alternative programs that
12 maintain custody over the alien, including the use of elec-
13 tronic ankle devices.

14 (e) VULNERABLE POPULATIONS (ACCESS TO ALTER-
15 NATIVES).—In determining whether to place a detainee in
16 an alternatives to detention program, the Secretary shall
17 consider whether the detainee is a member of a vulnerable
18 population (as identified in section 2(b)(10)). Notwith-
19 standing section 236 of the Immigration and Nationality
20 Act, a member of a vulnerable population whose needs
21 cannot be adequately met by a detention facility may not
22 be held in a detention facility except in the case of what
23 the Secretary determines to be exceptional circumstances.

1 **SEC. 4. DETENTION CAPACITY.**

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

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

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

10 (a) DEFINITIONS.—In this section:

11 (1) APPLICABLE STANDARDS.—The term “ap-
12 plicable standards” means the most recent version of
13 detention standards and detention-related policies
14 issued by the Secretary or the Director of U.S. Im-
15 migration and Customs Enforcement, or the Com-
16 missioner of U.S. Customs and Border Protection in
17 compliance with section 2.

18 (2) DETENTION FACILITY.—The term “deten-
19 tion facility” means a Federal, State, or local gov-
20 ernment facility, or a privately owned and operated
21 facility, that is used, in whole or in part, to hold in-
22 dividuals under the authority of the Director of U.S.
23 Immigration and Customs Enforcement or the Com-
24 missioner of U.S. Customs and Border Protection,
25 including facilities that hold such individuals under
26 a contract or agreement with the Director.

1 (b) OVERSIGHT REQUIREMENTS.—

2 (1) ANNUAL INSPECTION.—All detention facili-
3 ties shall be inspected by the Secretary on an annual
4 basis and an independent (third party) auditor, on
5 a biannual basis, for compliance with applicable de-
6 tention standards issued by the Secretary and other
7 applicable regulations in compliance with section 2.

8 (2) ROUTINE OVERSIGHT.—In addition to an-
9 nual inspections, the Secretary shall conduct routine
10 oversight of detention facilities, including unan-
11 nounced inspections.

12 (3) AVAILABILITY OF RECORDS.—All detention
13 facility contracts, memoranda of agreement, finan-
14 cial records, evaluations, audits, and reviews shall be
15 considered records for purposes of section 552(f)(2)
16 of title 5, United States Code.

17 (4) CONSULTATION.—The Secretary shall seek
18 input on an annual basis from nongovernmental or-
19 ganizations regarding their independent opinion of
20 specific facilities. The Secretary shall provide a re-
21 port on the opinions gathered and the response of
22 the Secretary to any concerns expressed in those
23 consultations to the Committee on the Judiciary of
24 the House of Representatives, the Committee on the
25 Judiciary of the Senate, the Committee on Home-

1 land Security of the House of Representatives, and
2 the Committee on Homeland Security and Govern-
3 mental Affairs of the Senate.

4 (5) ACCESS.—Facilities shall permit representa-
5 tives of the news media and nongovernmental orga-
6 nizations to have access to nonclassified and non-
7 confidential information about their operation; given
8 appropriate notice, to tour facilities; and with per-
9 mission from the detainees, to interview individual
10 detainees.

11 (c) COMPLIANCE MECHANISMS.—

12 (1) AGREEMENTS.—

13 (A) NEW AGREEMENTS.—Compliance with
14 applicable standards and rules of the Secretary,
15 and meaningful financial penalties for failure to
16 comply, shall be a material term in any new
17 contract, memorandum of agreement, or any re-
18 negotiation, modification, or renewal of an ex-
19 isting contract or agreement, including fee ne-
20 gotiations, executed with detention facilities.

21 (B) EXISTING AGREEMENTS.—Not later
22 than 180 days after the promulgation of the
23 rule, the Secretary shall secure a modification
24 incorporating these terms for any existing con-

1 tracts or agreements that will not be renegoti-
2 ated, renewed, or otherwise modified.

3 (C) CANCELLATION OF AGREEMENTS.—

4 Unless the Secretary provides a reasonable ex-
5 tension to a specific detention facility that is
6 negotiating in good faith, contracts or agree-
7 ments with detention facilities that are not
8 modified within 180 days of the promulgation
9 of the rule, will be cancelled.

10 (D) PROVISION OF INFORMATION.—In
11 making modifications under this paragraph, the
12 Secretary shall require that detention facilities
13 provide to the Secretary all contracts, memo-
14 randa of agreement, evaluations, and reviews
15 regarding the facility not later than 180 days
16 after any modification. The Secretary shall
17 make these materials publicly available.

18 (2) FINANCIAL PENALTIES.—

19 (A) REQUIREMENT TO IMPOSE.—Subject
20 to subsection (b), the Secretary shall impose
21 meaningful financial penalties upon facilities
22 that fail to comply with applicable detention
23 standards issued by the Secretary and other ap-
24 plicable regulations.

1 (B) TIMING OF IMPOSITION.—Financial
2 penalties imposed under subparagraph (A) shall
3 be imposed 120 days after a facility fails to
4 achieve an adequate or the equivalent median
5 score in any performance evaluation.

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

10 (D) MULTIPLE OFFENDERS.—In cases of
11 persistent and substantial noncompliance, in-
12 cluding scoring less than adequate or the equiv-
13 alent median score in 2 consecutive inspections,
14 the Secretary shall terminate contracts or
15 agreements for the operation and use of such
16 facilities within 60 days, or in the case of facili-
17 ties operated by the Secretary, such facilities
18 shall be closed within 90 days.

19 (d) REPORTING REQUIREMENTS.—

20 (1) OBJECTIVES.—Not later than June 30 of
21 each year, the Secretary shall prepare and submit to
22 the Committee on the Judiciary of the Senate and
23 the Committee on the Judiciary of the House of
24 Representatives a report on inspection and oversight
25 activities of detention facilities.

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

3 (A) a description of each detention facility
4 found to be in noncompliance with applicable
5 detention standards issued by the Department
6 and other applicable regulations;

7 (B) a description of the actions taken by
8 the Department to remedy any findings of non-
9 compliance or other identified problems, includ-
10 ing financial penalties, contract or agreement
11 termination, or facility closure; and

12 (C) information regarding whether the ac-
13 tions described in subparagraph (B) resulted in
14 compliance with applicable detention standards
15 and regulations.

○