

FY20 Spending Bill: Summary of Immigration Provisions in Bill and Report

December 2019

This document includes a summary of the key immigration-related provisions of the FY20 spending bill package covering DHS, DOJ, and HHS. This analysis does not include provisions impacting refugees or employment-based immigration. This document is not intended to be exhaustive in nature but rather to flag the most critical provisions in bill and report language. Organizations contributing to this analysis include: the National Immigrant Justice Center, Southern Border Communities Coalition, Amnesty International USA, Detention Watch Network, Freedom for Immigrants, and Service Employees International Union (SEIU).

DHS (Senate Amendment to H.R. 1158, Division D)

Top-line dollar amounts:

- *ICE*: Funded at \$8.4 billion (gross budget authority, an *increase* from \$7.9 billion in FY19)
 - Gross budget authority includes a discretionary appropriated budget of \$8,080,071,000, an increase from FY19 levels of \$7,587,712,000 (the remainder of the gross budget authority comes from fees)
 - \$8.03 billion for operations and support (about half a billion dollars higher than FY19) of which \$4.4 billion is for enforcement, detention, and removal operations
 - ICE detention (“custody operations”) remains flat from FY19, though overall funding for detention, enforcement and removal increased from \$4.3 (FY19) to \$4.4 billion
 - \$15 million for the Family Case Management Program; \$4 million for independent review of alternatives to detention, including FCMP; \$9.2 million for repair and improvements at detention facilities; \$14 million for hiring at Office of Detention Oversight to increase frequency of inspections
- *CBP*: Funded at \$17.4 billion (gross budget authority, an *increase* from \$17.3 billion in FY19)
 - Gross budget authority includes a discretionary appropriated budget of \$14,721,867,000, a slight *decrease* from FY19 levels of \$14,998,548,000 (the remainder of the gross budget authority comes from fees and emergency appropriations)
 - An additional \$1.375 billion for the border wall system along the southwest border
 - No funding for additional Border Patrol agents; \$13 million for new Border Patrol Processing Coordinator positions and \$57 million for over 800 new positions in the Office of Field Operations, including 610 additional CBP officers and Agriculture Specialists
 - \$21 million for body worn cameras; \$2 million for rescue beacons; \$173 million for “humanitarian care” and \$30 million “to address health, life, and safety issues at existing Border Patrol facilities”
- *Office of Inspector General*: \$190 million (an increase from \$168 million in FY19)

Notable provisions in bill:

- *Grants and contracts*: Requires DHS Secretary to submit a report to the Inspector General (IG) listing all grants and contracts awarded by any means other than full and open

competition during fiscal years 2019 and 2020 by October 2020, which the IG will assess and report its compliance with applicable laws and regulations to the Committees (Sec. 101)

- *Detention ombudsman*: Creates the position of an independent Ombudsman for Immigration Detention with “unfettered” access to detention facilities, who will report directly to and be appointed by the Secretary of DHS and establish a confidential complaints process, conduct unannounced visits to any facilities holding detainees in immigration custody, review violations of contract terms, and assist victims of violations of law or detention standards; funded at \$10 million with \$500,000 withheld from the Office of the Secretary for Executive Management until the Secretary appoints the Ombudsman (Sec. 106)
- *Plan for wall construction*:
 - Within 90 days of this Act, DHS Secretary must issue an expenditure plan for funds made available in CBP’s Procurement, Construction and Improvements account (account that includes border wall, border security technology and trade/travel infrastructure funding) for this Act or prior Acts; no funds may be obligated prior to submission of this plan (Sec. 208)
 - Within 30 days of this Act, the Border Patrol Chief shall provide a plan to Congress for the use of the \$1.375 billion for “construction of barrier system along the southwest border” (Sec. 209)
- *Border wall funding requirements*:
 - Same geographical restrictions that were included in the FY19 appropriations bill plus a new restriction on wall construction within historic cemeteries (Sec. 210)
 - Must be “operationally effective adaptations” that “help mitigate community or environmental impacts of barrier system construction” and include adaptations based on consultation with jurisdictions where the wall will be constructed; consultation with jurisdictions shall not exceed 90 days after notification unless an extension is agreed to by both CBP and the jurisdiction (Sec. 209)
 - Must be constructed in the highest priority locations as identified in the Border Security Improvement Plan; the Border Patrol Chief must inform Congress about any changes to the highest priority locations identified for wall construction funding within 5 days of such a change (Sec. 209)
 - Can only use “operationally effective designs” for wall deployed prior to the enactment of the FY17 Consolidated Appropriations Act, such as currently deployed steel bollard design (Sec. 209)
- *Risk-based border security plan*: Within 180 days of the act, DHS Secretary must submit an updated risk-based plan for improving border security to Congress and the Comptroller General; same content and evaluation requirements as the FY18 Consolidated Appropriations Act (Sec. 209)
- *Humanitarian needs and electronic health records*: \$173 million of the amount made available for CBP Operations and Support is for “humanitarian care” and \$30 million “to address health, life, and safety issues at existing Border Patrol facilities”; \$30 million of the amount made available for CBP PCI is for the development of an agency-wide electronic health records system; \$30 million for health records system withheld until DHS Chief

Medical Officer providers certification of compliance with requirements described in the explanatory report regarding electronic health records (Sec. 212)

- *Transfer of funds for detention*: Transfer of funds “necessary to ensure the detention of aliens prioritized for removal” are exempted from the timing requirements of section 503(d) (Sec. 213)
- *287(g)*: ICE cannot use funds to continue a 287(g) agreement if the DHS OIG determines that the terms of the agreement governing the delegation of authority have been materially violated (Sec. 214); Requires public reporting by ICE on all 287(g) agreements, including information regarding the number of individuals placed into removal proceedings through such agreements (Sec. 217)
- *Failed detention inspections*: Continues existing requirement that DHS must discontinue contracts with two consecutive failed inspections; requires that the entity conducting the inspections giving rise to this finding be within ICE’s Office of Professional Responsibility by January 2021 (this provision should lead to all inspections being conducted within Office of Detention Oversight, or ODO, and discontinuation of the contract with Nakamoto) (Sec. 215)
- *Enforcement against sponsors of children*: DHS is prohibited from using funding to initiate enforcement or removal actions against sponsors or potential sponsors based on DHS-HHS information-sharing agreement (note this provision still includes unnecessary and harmful criminal and conduct-based exceptions) (Sec. 216)
- *Detention data*: Requires extensive public semi-monthly reporting by ICE on detention data, carrying over FY19 requirements and including new requirements specific to each facility used; \$10 million withholding until reporting requirements in Section 218 are publicly available online (Sec. 218)
- *Credible fear data*: Requires USCIS to make publicly available on a semi-monthly basis data about the number of individuals determined to have a credible or reasonable fear of return as well as the total number of individuals claiming credible/reasonable fear, and must indicate whether the individual expressing fear was detained in a family detention facility as well as the agency authority adjudicating and reviewing the claim (Sec. 403)
- *Congressional*: Prohibits DHS from preventing members of Congress or staff from making unannounced oversight visits to any DHS facility (Sec. 532)

Notable provisions in report:

(joint explanatory report [here](#), incorporating provisions of [House Report 116-80 here](#) and [Senate Report 116-125 here](#))

- *Rescue beacons*: The bill includes \$2 million for rescue beacons for CBP (p. 5)
- *Body Cameras*: The bill includes \$21 million for body worn cameras for CBP (p. 6)
- *Border Patrol Processing Coordinators*: The bill provides \$13 million for the new position of Border Patrol processing coordinators; CBP is instructed to brief appropriators on training requirements prior to the execution of funds, which “should include but not be limited to emergency medical and mental health care, migrant legal rights, TVPRA, and how to identify child abuse and neglect” (p. 6)
- *CBP custody/transfer metrics*: requires publicly available data reporting on migrants in CBP custody, including demographics (broken down by sector, field office, humanitarian care

centers, and central processing centers) and utilization rates of all facilities, which CBP must update semimonthly; note that this provision is tied to the \$5 million funding withhold on p. 472 of the bill) (p. 6)

- *Medical guidance in CBP custody*: CBP is directed to issue a permanent medical directive and must brief Committees on implementation plan within 90 days of the Act; directive is to include formal mechanisms for coordinating with Chief Medical Officer to determine that conditions at the border constitute a public health crisis, which should include time in custody, holding facility capacity limits, emerging disease outbreaks (e.g., flu), and readiness of each BP/OFO facility; response plans for public health crisis conditions; and peer review for deaths in custody; note that this provision is tied to the \$5 million funding withhold on p. 472 of the bill (p. 7)
- *MPP (aka Remain in Mexico)*: DHS “shall establish goals and metrics for assessing the effectiveness of the MPP Program,” including daily data on participants; note that this provision is tied to the \$5 million funding withhold on p. 472 of the bill (p. 7)
- *Alternatives to Detention*: Secretary must provide a report to GAO on each active Alternative to Detention program within the last 5 years; GAO is to conduct a review of the ATD program and report its findings to the Committees (p. 11)
- *Sensitive Locations*: directs ICE to follow existing policy regarding enforcement actions near sensitive locations and review where “community impacts could be better balanced” with enforcement (pp. 10-11)
- *USCIS application processing*: USCIS must brief the Committees within 90 days of enactment on the number and processing times of forms processed from 2016 to 2019 for forms I-130 (relative petition), I-485 (application to adjust status), I-751 (petition to remove conditions on residence), and N-400 (naturalization application), and forms for initial and renewed employment authorization (p. 28)
- *USCIS fees*: USCIS is encouraged to continue the use of fee waivers for those who cannot afford the naturalization fee and to consider whether the current naturalization fee is a barrier to naturalization for some, and is discouraged from imposing fees on humanitarian petitions including asylum (p. 28)
- Incorporated from Senate report - *Community Oriented Policing*: CBP is directed to implement a pilot project on the use of community oriented policing teams in urban and suburban border communities and to report on the results of the pilot within 90 days of enactment (p. 32)
- Incorporated from Senate report - *Body Cameras*: CBP directed to require the use of body cameras for officers and agents in interactions with the public at “predetermined small scale areas” and finalize the department-wide policy protecting privacy to accompany implementation (p. 32)
- Incorporated from Senate report - *Checkpoints and roving enforcement*: CBP directed to collect and report to Congress data on transportation and immigration checkpoints (p. 32)
- Incorporated from Senate report - *Prolonged CBP custody*: CBP must report to the committee and make publicly available a list of facilities that CBP uses to hold individuals, average and daily populations at the time of publication, number of people held by CBP for

longer than 48 hours and longer than 72 hours, and reasons for extended custody of any individuals (p. 33)

- Incorporated from Senate report - *Metering*: Requires monthly reporting detailed data regarding the use of metering or “queue management” at all ports of entry (p. 39)
- Incorporated from Senate report - *Detention of pregnant women*: ICE is directed to conduct a weekly review of all pregnant and postpartum women who are in detention and provide semiannual reports on the total number of pregnant women in ICE custody including justifications for continued detention (pp. 54-55)
- Incorporated from Senate report - *“Mobile criminal alien teams”*: ICE is directed to continue operating such teams
- Incorporated from House report - *Deportation of those facing persecution*: Committee expresses concerns regarding the detention and deportation of members of religious minorities from Iraq and “recommends that ICE refrain from prioritizing the deportation of people who will be subject to violent persecution and death in their countries of origin” (pp. 7-8)
- Incorporated from House report - *Family separation*: Requires numerous reporting obligations regarding family separation, some public and some for appropriators; requires DHS to ensure “when appropriate and feasible” that separated families are reunited and transferred together prior to removal, release, or transfer; and requires CBP to document in the file of each separated family member the location of and specific justification for separation and the names and relationship of each separated family member (pp. 8-9)
- Incorporated from House report - *“Operation Secure Line”*: DHS is required to brief the Committee on information collection and immigration inspection policies and practices under the initiative reportedly named “Operation Secure Line” in which DHS maintains a database of journalists, immigration attorneys, and activists (p. 12)
- Incorporated from House report - *High speed pursuits*: CBP must provide briefing on CBP vehicle pursuit standards, how it differs from DOJ policy, justification for pursuits, and number of crashes, injuries and deaths of migrants during pursuits (pg. 19)
- Incorporated from House report - *Child welfare professionals*: DHS is directed to hire “or otherwise obtain” the services of child welfare professionals to “provide child welfare expertise and screening services on a full-time basis at each land POE or Border Patrol station along the southern land border,” and provide a hiring and deployment plan within 60 days of enactment (p. 20)
- Incorporated from House report - *Consumables*: CBP is directed to maintain a sufficient supply of sleeping mats, toothbrushes, toothpaste, feminine hygiene products, other personal hygiene supplies, and diapers, at all CBP holding facilities, and make them available upon request, and ensure that showers are available to people in custody longer than 48 hours (p. 20)
- Incorporated from House report - *Migrant deaths*: Within 180 days of Act, DHS required to report to appropriators on the details of the discovery of migrant remains within 100 miles of the southern land border and protocols to respond to reports of migrants in distress (pp. 20-21)

- Incorporated from House report - *Release of families*: Committee encourages CBP to work with local nonprofits and governments on the timing and location of the release of migrants (p. 22)
- Incorporated from House report - *Operation Streamline*: DHS must brief the Committee on the status of implementing the recommendations in the 2015 OIG report on Operation Streamline (p. 39)
- Incorporated from House report - *Age-outs*: Directs ICE to provide semi-annual updates to Committee on the number of unaccompanied children who turn 18 in ORR custody and are subsequently detained by ICE, along with detailed rationale for placement and a description of the Juvenile Coordinator's methodology for determining placement in least restrictive setting (p. 32)
- Incorporated from House report - *Remote detention*: ICE should not enter into, expand, or renew a contract for detention for a facility that is more than 100 miles from: a level IV or lower designated trauma center or a legal aid resource listed on the EOIR list of pro bono providers (p. 32)
- Incorporated from House report - *Reports*: ICE must make publicly available reports on: Secure Communities; detention facility inspections; deaths in custody; compliance with PREA and 2011 Performance Based National Detention Standards (p. 34)
- Incorporated from House report - *Parental interests*: ICE must ensure that field personnel are appropriately trained on all agency policies and procedures involving detained parents and legal guardians (p. 36)
- Incorporated from House report - *Phone access*: ICE is directed to brief the Committee on the status of providing individuals in detention phone access as outlined in the *Lyon v. ICE* Settlement Agreement (p. 36)
- Incorporated from House report - *PREA compliance*: ICE is to brief the Committee within 60 days on schedule for achieving 100% compliance with PREA requirements (p. 36)
- Incorporated from House report - *Risk classification*: ICE is instructed to reevaluate of the Risk Classification Assessment and brief the Committee on its findings within 180 days (p. 37)
- Incorporated from House report - *Detention of transgender people*: ICE is directed to limit the detention of transgender individuals to facilities with a formal contract modification pursuant to ICE's 2015 memo on the care of transgender individuals (p. 37)
- Incorporated from House report - *Detention and removal of U visa applicants*: ICE is to provide a report within 90 days on the number of individuals deported with a pending U visa application or when U visa application had been denied (p. 37)

Commerce, Science, Justice (Senate Amendment to H.R. 1158, Division B)

Top-line dollar amounts:

- Executive Office for Immigration Review (EOIR) funded at \$673 million, an increase from \$563 million in FY19 (although note that EOIR received an additional \$65 million in FY19 from the supplemental spending bill)

- Bill requires continuation of the Legal Orientation Program, which is funded at \$18 million, an increase from \$11.4 million in FY19 (although note that LOP received an additional \$10 million in FY19 from the supplemental spending bill); report specifies that \$3 million of the \$18 million is for the Immigration Court Helpdesk program
- Massive increase in funding for the U.S. Marshals Service Federal Prisoner Detention account, from \$1.553 billion in FY19 to \$1.867 billion (note that this account received an additional \$155 million in FY19 from the supplemental spending bill)

Notable provisions in report:

(joint explanatory report [here](#), incorporating provisions of [House Report 116-101 here](#))

- *Program continuation*: “Within the funding provided, EOIR shall continue all ongoing programs” (p. 31)
- *Docket prioritization*: Directs EOIR to continue prioritizing the detained docket (p. 31)
- *Backlog and judge hiring*: EOIR required to continue submitting monthly performance and operating reports detailing the backlog of cases and the hiring of new immigration judges (p. 31)
- *Video Tele-Conferencing (VTC)*: EOIR required to report on use of video-teleconferencing including quarterly info on number and type of hearings conducted by VTC, with goal of determining whether VTC “has an outcome determinative impact” (p. 32)
- *LOP continuation*: EOIR directed to continue all LOP services and activities without interruption, “including during any review of the program” (p. 32)
- Incorporated from House report - *Language access*: EOIR must provide a plan within 90 days to ensure appropriate language access for all respondents including indigenous language speakers (p. 47)

Health and Human Services (Senate Amendment to H.R. 1865, Division A)

Top-line dollar amounts:

- \$1.908 for the refugee entrant assistance account, a slight increase from \$1.905 in FY19
- Mandates \$160 million for legal services, child advocates & post-release services for unaccompanied children, an increase from FY19 levels

Notable provisions in bill:

- *Donations to ORR shelters*: DHHS may accept in-kind donations - such as medical goods & services, school supplies, clothing, toys, etc for children in the care of the Office of Refugee Resettlement (Sec. 230)
- *DHS/ORR information-sharing agreement*: With limited exceptions, no funds may be used to reverse the policy changes made by ORR that have mitigated some of the harms caused by the 2018 DHS / HHS information-sharing agreement (context, including a description of the three policy changes referenced in text, [here](#)) (Sec. 231)
- *Influx facilities*: Requires that non-state-licensed facilities for unaccompanied children be used only in the case of an “influx” or “emergency”; in such cases, requires compliance with

the conditions-related requirements of the *Flores* settlement; major exception to *Flores* requirements allows the Secretary to grant up to 4 consecutive waivers of 60 days each (Sec. 232); requires HHS to notify appropriators at least 15 days prior to operationalizing any unlicensed facilities, along with analysis showing that without this facility the likely outcome is that children will remain in DHS custody for longer than 72 hours (Sec. 233)

- *Congressional visits*: None of the funds can prevent any member of Congress from entering a facility in order to conduct oversight, as long as two days' notice is given (Sec. 234)
- *Separated children*: The Secretary must give the Committees *and make publicly available online* a report within 14 days of the bill becoming law on the number of children separated by DHS from a parent or legal guardian, designated as unaccompanied, and transferred to ORR custody, including the documented cause of separation as reported by DHS (Sec. 235)

Notable provisions in report:

(joint explanatory report [here](#), incorporating provisions of [House Report 116-62 here](#))

- *Oversight of facilities*: ORR is “expected to maintain strict oversight” of all facilities funded by the agency and report any violations (with steps on how they will address/correct the violation) within 60 days of the bill becoming law (p. 108)
- *Cultural competence*: ORR is encouraged to provide culturally competent in-person education and translation services to children in custody (p. 108)
- *Prolonged detention*: ORR is required to brief appropriators within 120 days on kids who’ve been under their care and custody for prolonged periods of time; HHS is directed to continue working “on efforts to reduce time in care and to consider additional policy changes” so kids may be released to sponsors faster (p. 109)
- *Mental health services*: The Committees encourage ORR to continue its partnership with the National Child Traumatic Stress Network and to apprise the Committees of additional resources needed to support children and families in need of mental health services (p. 109)
- *New models of care delivery*: Committee urges ORR to include in its 2021 budget justification information about “plans being considered for new models of care delivery,” and to prioritize community engagement when exploring the feasibility of such models (p. 110)
- *FOIA*: ORR is expected to maintain records and respond to all FOIA requests consistent with federal law for all children in care regardless of whether children are held in federal facilities or in non-federal facilities privately managed (p. 110)
- *Increase in funding for legal services, child advocates, and post-release services*: ORR is directed to continue to expand these services “beyond currently estimated levels, including for children released in high-release communities” to eliminate the waitlist of children qualifying for TVPRA-mandated services; shelters are encouraged to provide space for legal service providers to meet with children (pp. 110-111)
- *Siblings*: ORR must, if able, place siblings in the same facility or the same sponsor (p. 111)
- *“Sponsorship Suitability Determination Process”*: HSS staff must ensure that staff at facilities are providing potential sponsors with clear guidance about info sharing agreement between ICE, CBP, and ORR (p. 111)
- *Tender-age children*: ORR must include in its 2021 budget justification information on any efforts to “ensure developmentally appropriate care for tender age children” (p. 111)

- Incorporated from House Report - *Age-outs*: Committee expresses concern about reports regarding approximately two-thirds of unaccompanied children aging out of ORR care on their 18th birthdays in ICE custody, and directs ORR “to develop a tangible post-18 plan for every 17-year-old unaccompanied child in ORR care at least two weeks in advance of his or her 18th birthday,” including at minimum an appropriate non-secure placement and necessary social support services (p. 147)