

Congressman Elijah E. Cummings (D-MD)
Judiciary Committee Member Day Testimony
September 20, 2019

Chairman Nadler and Ranking Member Collins,

Everyone in our country deserves to be treated with dignity and respect, especially those seeking asylum and a better life in the United States. However, U.S. Immigration and Customs Enforcement (ICE) continues to undercut critical federal detention standards by providing waivers to immigration detention facilities.

That is why I introduced the Waiver Accountability and Transparency Act, H.R. 2489, with Congressman Jamie Raskin (D-MD).

Our legislation will stop ICE's abuse of a waiver system that allows detention facilities to circumvent federal standards. Many of these detention facilities are being run for profit and waiving these standards endangers the health and safety of tens of thousands of immigrants.

In January, the Department of Homeland Security's Office of the Inspector General released a report detailing the excessive use of waivers and lack of accountability for contract facilities. The report found that "ICE has no formal policies and procedures to govern the waiver process, has allowed officials without clear authority to grant waivers, and does not ensure key stakeholders have access to approved waivers."

Detention standards are critical to preventing sexual assault; ensuring proper medical treatment, including for pregnant women; allowing access to legal services; and making sure conditions are safe at immigration detention facilities around the country.

According to the report, 96 percent of the waiver requests that the Inspector General analyzed were approved. ICE even signed off on a waiver to allow the for-profit contractor CoreCivic to use CS gas, a chemical agent 10 times more toxic than pepper spray at the Otay Mesa Detention Center in California.

Additionally, the Otero County Processing Center in New Mexico was given a waiver by ICE allowing them to commingle low-custody and high-custody detainees. Detention standards prohibit commingling detainees with serious criminal histories with those who are non-violent or have only committed immigration-related infractions.

The Waiver Accountability and Transparency Act reforms ICE's waiver process through increased transparency, accountability, and oversight. The bill requires that waiver request and decision documents be posted online and shared with Congress within three days. ICE's leadership would also need to be accountable for waivers and sign off on the granting and renewal of waivers. A corrective action plan would have to be in place in the most serious cases,

such as those impacting due process, medical care, safety, security, and rights, before a waiver could be granted. The legislation would also make it easier to impose financial penalties on contractors running detention facilities and it would implement new disclosures of financial penalties.

I am proud that over 40 of my House colleagues have cosponsored this legislation.

The bill also has the support of organizations such as Amnesty International USA, The Southern Poverty Law Center, National Immigrant Justice Center, Detention Watch Network, Project On Government Oversight, National Immigration Law Center, UnidosUS, U.S. Committee for Refugees and Immigrants, America's Voice, DHS Watch, and CASA, among others.

We must do better. I hope the Judiciary Committee will join me in supporting the Waiver Accountability and Transparency Act so that immigrants in detention are treated with dignity and respect.