



## Immigration Policy Update<sup>1</sup>

### Federal Spending Bill and Immigration

May 3, 2017

On May 1, 2017, news broke that negotiators in Congress had reached an agreement on the funding bill to keep the federal government open for the remainder of the year (the "[Consolidated Appropriations Act, 2017](#)"). The bill appropriates \$42.4 billion for the Department of Homeland Security (DHS) for fiscal year (FY) 2017, an increase of \$1.45 billion over FY 2016 spending levels. It does not provide funding for construction of the border wall requested by the President, though it does provide an increase of \$772 million for Customs and Border Protection (CBP) over FY 2016 funding, including funds for the replacement of existing barriers and other border security programs. Interior immigration enforcement will receive a total of \$3.71 billion for the fiscal year, including an increase of \$390 million for immigration detention compared to the funding levels in the prior year. Additionally, the bill may provide some limited relief to the H-2B cap, as it allows DHS and the Department of Labor (DOL) to increase the H-2B cap under certain circumstances.<sup>2</sup>

#### Border Enforcement

The bill does not include funding for construction of the border wall requested by the President. AILA urged Congress to reject the wall on the Southern border as an unnecessary and wasteful expenditure that could cost [American taxpayers as much as \\$70 billion](#). The bill also does not provide any money to hire additional CBP agents. The \$772 million increase for CBP funding includes:

- *Replacement of Existing Barriers*: \$341 million to replace [approximately 40 miles of existing barriers](#) using "previously deployed and operationally effective designs," including conversion of 20 miles of vehicle barriers to pedestrian barriers.
- *Technology and Road Maintenance*: An increase of \$77.4 million for new road construction, and \$78.8 million for border technology over FY 2016 funding.
- *Human Resources Infrastructure*: While the bill does not provide more money to hire additional CBP agents, it does include \$65 million to facilitate the hiring and retention of previously authorized border agents through human resource improvements and relocation costs to remote areas.

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<sup>2</sup> This document is an overview of the major provisions relating to immigration, and is not meant to be a comprehensive summary. For more information, see <https://rules.house.gov/bill/115/hr-244>.

## Interior Enforcement

The bill provides an increase of \$390 million for immigration detention, for a total of \$2.71 billion for FY 2017. Much of the additional detention funding pays for the high rates of detention in the first half of the fiscal year, after border apprehensions increased to record levels in the summer and fall of 2016. However, from October 2016 through March 2017, monthly border apprehension rates have dropped by 75% and are now at the [lowest point](#) in at least six years. Yet, ICE will receive funding that could permit it to detain more individuals than in prior years, on an ongoing basis.

With such low border apprehension rates, high detention levels cannot be justified. The increased funding will enable Immigration and Customs Enforcement (ICE) to arrest and detain far more people in the interior, many of whom have family or other strong ties to the United States and no criminal background. It will also be used to detain individuals who have already shown that they have a credible asylum claim. While the Administration justifies the additional funding as necessary to combat gangs and criminal aliens, in fact, during the first two months of the new Administration, DHS has significantly increased [apprehensions of individuals who do not have a criminal background](#).

The bill provides \$6.43 billion for ICE for FY 2017, including \$3.71 billion for ICE Enforcement and Removal Operations (ERO), which includes:

- *Detention*: \$2.71 billion for immigration detention, an increase of \$390 million over FY 2016.
- *Alternatives to Detention*: \$183 million for alternatives to detention, an increase of \$69 million.
- *Transportation and Removal*: \$356 million to transport and remove people from the country, an increase of \$43 million.
- *No New Agents*: The bill does not provide any money to hire additional ICE agents, and modestly cuts funding for the ERO Fugitive Operations and Criminal Alien Programs (by a total of \$10 million).

## Limited H-2B Relief

AILA supports reinstating the H-2B returning worker exemption, which exempts an H-2B worker from the current fiscal year's cap if they have been issued an H-2B visa during the previous three fiscal years. While this bill does not include the returning worker exemption, it includes a [provision that could allow DHS to increase the H-2B cap](#) and thereby provide [limited relief](#) to businesses using the H-2B program.

The bill allows DHS, in consultation with DOL, to increase the H-2B cap by not more than the highest number of H-2B nonimmigrants who participated in the returning worker program in any year in which returning workers were exempt from such numerical limitation. To trigger this increase, however, the two agencies must determine there are not sufficient U.S. workers

able to fill the available positions. Although the total H-2B visa issuance number for FY2016 is unavailable for comparison, the highest number of H-2B workers admitted to the US when the H-2B returning worker exemption was in place (FY2005-7) likely refers to [the number admitted in FY2007](#), 154,895.

In addition to providing for a possible increase in the H-2B cap, the bill directs DOL to accept private wage surveys and prohibits using the appropriated funds to enforce the rule on corresponding employment found in 20 CFR 655.5 or the three-fourths guarantee rule found in 20 CFR 655.20(f). It also allows H-2B employers in the seafood industry to bring H-2B employees to the U.S. at any time during the 120-day period (permitting “staggered entry”) and changes the definition of “temporary need” from a fixed 9 month period to a period of “one year or less,” which DOL has generally capped at 10 months.

### **Immigration Judge Hiring**

The bill includes \$440 million for EOIR, which includes funding to recruit and hire no fewer than [10 new Immigration Judge \(IJ\) teams](#), in addition to hiring the IJs already funded in FY 2016 and completing modernization of systems and infrastructure improvements. The accompanying [explanatory statement](#) also calls for EOIR – through reference to the [House Report 114-605](#) - 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.” The apparent intent of this provision – whether or not it could actually be implemented given current staffing levels – is to pressure immigration judges into speeding through trials, regardless of due process concerns.

### **No Sanctuary Cities Rider**

The bill does not include a “sanctuary cities” rider that the Administration proposed. The rider [reportedly](#) would have permitted the Administration to withhold federal funding from jurisdictions that do not honor ICE immigration detainers, a significant expansion of existing federal law.

### **EB-5, Conrad 30, and Special Religious Workers**

These programs have been reauthorized through the end of fiscal year 2017.