

116TH CONGRESS  
2D SESSION

# S. 3645

To require the release of most aliens detained by U.S. Immigration and Customs Enforcement during a national emergency related to a communicable disease.

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## IN THE SENATE OF THE UNITED STATES

MAY 7, 2020

Mr. BOOKER (for himself, Ms. WARREN, Ms. HARRIS, Mr. SANDERS, Mrs. GILLIBRAND, Ms. HIRONO, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To require the release of most aliens detained by U.S. Immigration and Customs Enforcement during a national emergency related to a communicable disease.

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 TITLES.**

4 This Act may be cited as the “Federal Immigrant Re-  
5 lease for Safety and security Together Act” or the  
6 “FIRST Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

(1) COVERED HEALTH CONDITION.—The term “covered health condition”, with respect to an individual, means the individual—

(A) is pregnant;

(B) has chronic lung disease or asthma;

(C) has congestive heart failure, coronary artery disease, or hypertension;

(D) has diabetes;

(E) has epilepsy;

(F) has a neurological condition that weakens the ability to cough;

(G) has human immunodeficiency virus (HIV);

(H) has chronic liver or kidney disease (including hepatitis and dialysis patients);

(I) has blood disorders (including sickle cell anemia);

(J) has inherited metabolic disorders;

(K) had a stroke;

(L) has a developmental delay;

(M) has cancer or has had cancer during the last 12 months;

(N) has a weakened immune system; or

(O) has any other condition identified by the Centers for Disease Control and Prevention

1 to increase the risk of serious illness from a  
2 communicable disease.

3 (2) COVERED INDIVIDUAL.—The term “covered  
4 individual” means an individual who—

5 (A) is 50 years of age or older;

6 (B) is 21 years of age or younger; or

7 (C) has a covered health condition.

8 (3) ENFORCEMENT ACTION.—The term “en-  
9 forcement action” means an apprehension or arrest  
10 for the purpose of immigration enforcement.

11 (4) NATIONAL EMERGENCY RELATED TO A  
12 COMMUNICABLE DISEASE.—The term “national  
13 emergency related to a communicable disease”  
14 means—

15 (A) an emergency involving Federal pri-  
16 mary responsibility determined to exist by the  
17 President under section 501(b) of the Robert T.  
18 Stafford Disaster Relief and Emergency Assist-  
19 ance Act (42 U.S.C. 5191(b)) with respect to a  
20 communicable disease; or

21 (B) a national emergency declared by the  
22 President under the National Emergency Act  
23 (50 U.S.C. 1610 et seq.) with respect to a com-  
24 municable disease.

1           (5) SENSITIVE LOCATION.—The term “sensitive  
2       location” means all physical space located within  
3       1,000 feet of—

4           (A) a medical treatment or health care fa-  
5       cility, including a hospital, an office of a health  
6       care practitioner, an accredited health clinic, an  
7       alcohol or drug treatment center, an emergent  
8       or urgent care facility, and a community health  
9       center;

10          (B) a location at which emergency service  
11       providers distribute food or provide shelter;

12          (C) an organization that provides—

13           (i) disaster or emergency social serv-  
14       ices and assistance;

15           (ii) services for individuals experi-  
16       encing homelessness, including food banks  
17       and shelters; or

18           (iii) assistance for children, pregnant  
19       women, victims of crime or abuse, or indi-  
20       viduals with significant mental or physical  
21       disabilities;

22          (D) a public assistance office, including  
23       any Federal, State, or municipal location at  
24       which individuals may apply for or receive un-

1 employment compensation or report violations  
2 of labor and employment laws;

3 (E) a Federal, State, or local courthouse,  
4 including the office of the legal counsel or rep-  
5 resentative of an individual;

6 (F) a domestic violence shelter, rape crisis  
7 center, supervised visitation center, family jus-  
8 tice center, or victim services provider;

9 (G) an office of the Social Security Admin-  
10 istration;

11 (H) a childcare facility or a school, includ-  
12 ing a preschool, primary school, secondary  
13 school, post-secondary school up to and includ-  
14 ing a college or university, and any other insti-  
15 tution of learning such as a vocational or trade  
16 school;

17 (I) a church, synagogue, mosque or any  
18 other institution of worship, such as a building  
19 rented for the purpose of a religious service;

20 (J) the site of a funeral, wedding, or any  
21 other public religious ceremony;

22 (K) in the case of a jurisdiction in which  
23 a shelter-in-place order is in effect during a  
24 coronavirus public health emergency, any busi-  
25 ness location considered to provide an essential

1 service, such as a pharmacy or a grocery store;  
2 and

3 (L) any other location specified by the Sec-  
4 retary of Homeland Security.

5 **SEC. 3. RELEASE OF CERTAIN COVERED INDIVIDUALS.**

6 (a) RELEASE.—During the period beginning on the  
7 date on which a national emergency related to a commu-  
8 nicable disease is declared, the Secretary of Homeland Se-  
9 curity shall release from detention all covered individuals  
10 who are in the custody of U.S. Immigration and Customs  
11 Enforcement without requiring any covered individual to  
12 post a bond.

13 (b) EXCEPTION.—In carrying out subsection (a), the  
14 Secretary—

15 (1) may not release any individual determined,  
16 by clear and convincing evidence, to be likely to pose  
17 a specific and substantial risk of causing bodily in-  
18 jury or using violent force against the person of an-  
19 other;

20 (2) shall place, in the A-file of each individual  
21 described in paragraph (1), documentation of the de-  
22 termination described in such paragraph, including  
23 the evidence used to make such determination;

24 (3) not later than 180 days after the date on  
25 which the national emergency relating to a commu-

1        nicable disease expires, shall submit a report to Con-  
2        gress that documents—

3                (A) the demographic data (including coun-  
4                try of origin, race, gender, age, the status and  
5                basis of removal proceedings, and criminal his-  
6                tory) of the individuals denied release pursuant  
7                to paragraph (1); and

8                (B) the justification for such denials; and

9                (4) may not use the results of any determina-  
10              tion under paragraph (1) as evidence in any under-  
11              lying immigration proceeding.

12        (c) NOTICE.—The Secretary shall provide notice to  
13        nonprofit organizations providing services to immigrants  
14        in the communities surrounding a detention facility if  
15        more than 25 individuals are released from such facility  
16        in a 24-hour period.

17        **SEC. 4. REVIEW OF IMMIGRATION FILES.**

18        (a) MANDATORY REVIEW.—

19                (1) IN GENERAL.—Notwithstanding any other  
20                provision of law that mandates detention, the Sec-  
21                retary of Homeland Security shall determine wheth-  
22                er each individual in detention who is not a covered  
23                individual will remain in detention for the duration  
24                of a national emergency.

1           (2) PROCESS.—Not later than 7 days after the  
2       declaration of a national emergency related to a  
3       communicable disease, the Secretary shall establish  
4       a process for reviewing the immigration files of all  
5       individuals in detention who are not covered individ-  
6       uals, and apply a presumption that aliens should be  
7       released based upon the need to significantly reduce  
8       the detention population due to the risk of spread of  
9       a communicable disease in congregate setting.

10       (b) EXCEPTIONS.—

11           (1) IN GENERAL.—In carrying out subsection  
12       (a), the Secretary—

13                (A) may only rebut the presumption of re-  
14       lease based on a credible and individualized de-  
15       termination by clear and convincing evidence  
16       that—

17                   (i) the use of alternatives to detention,  
18       including release on recognizance or parole,  
19       will not reasonably ensure the appearance  
20       of the individual at removal proceedings; or

21                   (ii) the individual is likely to pose a  
22       specific and substantial risk of causing  
23       bodily injury or using violent force against  
24       the person of another;



(B) may not release an individual with a final order of removal entered against him or her, after all appeals have been exhausted if the removal of such alien is reasonably foreseeable; and

(C) may not use the results of any determination under this section as evidence in any underlying immigration proceeding.

(2) PENDING CRIMINAL CHARGE OR PAST CONVICTIONS.—For purposes of paragraph (1)(A), the Secretary may not justify the continued detention of an individual solely based on the fact that the individual—

(A) has a criminal charge pending against him or her; or

(B) was convicted of a crime more than 5 years previously.

(3) REASONABLY FORESEEABLE DEFINED.—

(A) IN GENERAL.—For purposes of paragraph (1)(C), the removal of an alien is reasonably foreseeable if the Government—

(i) has already obtained travel documents for the alien; or

(ii) can demonstrate, by clear and convincing evidence, that such travel docu-

1           ments will likely be obtained within 10  
2           days.

3           (B) EXCEPTION.—For purposes of para-  
4           graph (1)(C), the removal of an alien is not rea-  
5           sonably foreseeable if such removal is not likely  
6           during the period of the national emergency re-  
7           lated to a communicable disease due to—

8                       (i) the unavailability of transportation  
9                       options to the country of removal; or

10                      (ii) the refusal of the country of re-  
11                      moval to accept the repatriation of the  
12                      alien during such period.

13       (c) REPORT.—Not later than 180 days after the expi-  
14       ration of the national emergency related to a commu-  
15       nicable disease, the Secretary of Homeland Security shall  
16       submit a report to Congress that documents—

17               (1) the demographic data (including country of  
18       origin, race, gender, age, the status and basis of re-  
19       moval proceedings, and criminal history) of the indi-  
20       viduals denied release pursuant to subsection (a);  
21       and

22               (2) the justification for such denials.

23       **SEC. 5. LIMITATION ON INTERIOR ENFORCEMENT.**

24       (a) IN GENERAL.—Except as provided in subsection  
25       (c), beginning on the date on which a national emergency

1 related to a communicable disease is declared and ending  
2 on the date that such national emergency expires, U.S.  
3 Immigration and Customs Enforcement shall take meas-  
4 ures to prevent the spread of the communicable viral dis-  
5 ease by suspending—

6 (1) the requirement that individuals under su-  
7 pervision or enrolled in Enforcement and Removal  
8 Operations’ Intensive Supervision Appearance Pro-  
9 gram report in-person;

10 (2) enforcement in sensitive locations without a  
11 valid judicial warrant; and

12 (3) enforcement actions.

13 (b) SUSPENSION OF COLLATERAL ARRESTS.—Except  
14 as provided in subsection (c), if an individual, who is only  
15 in violation of civil immigration law, is encountered by  
16 U.S. Immigration and Customs Enforcement, the indi-  
17 vidual may be issued charging documents, but may not  
18 be taken into custody or placed in detention.

19 (c) EXCEPTION.—The suspensions under subsections  
20 (a)(1), (a)(3), and (b) shall not apply to individuals who  
21 are determined, by clear and convincing evidence, to be  
22 likely to pose a specific and substantial risk of causing  
23 bodily injury or using violent force against another person.

1 **SEC. 6. ACCESS TO TELEPHONIC AND VIDEO COMMUNICA-**  
2 **TION AND HYGIENE PRODUCTS.**

3 During the period beginning on the date on which  
4 a national emergency related to a communicable disease  
5 is declared and ending on the date that is 60 days after  
6 the expiration of such national emergency, the Secretary  
7 shall ensure that—

8 (1) all persons in the custody of U.S. Immigra-  
9 tion and Customs Enforcement—

10 (A) have access to telephonic or video com-  
11 munication at no cost to the detained indi-  
12 vidual;

13 (B) have access to free, unmonitored phone  
14 calls, at any time, to contact attorneys or legal  
15 service providers in a sufficiently private space  
16 to protect confidentiality;

17 (C) are permitted to receive legal cor-  
18 respondence by fax or email rather than postal  
19 mail; and

20 (D) are provided sufficient soap, hand san-  
21 itizer, and other hygiene products; and

22 (2) nonprofit organizations providing legal ori-  
23 entation programming or know-your-rights program-  
24 ming to immigrants are permitted broad and flexible  
25 access—

1 (A) to provide group presentations by  
2 video-conference; and

3 (B) to schedule and receive free calls or  
4 televideo conferences from individuals in cus-  
5 tody for individual orientations.

6 **SEC. 7. EXPIRATION OF NATIONAL EMERGENCY RELATED**  
7 **TO A COMMUNICABLE DISEASE.**

8 (a) IN GENERAL.—Any individual who has been  
9 granted release from immigration detention under this Act  
10 may not be redetained solely as a result of the expiration  
11 of the national emergency related to a communicable dis-  
12 ease.

13 (b) GROUNDS FOR REDETENTION.—Upon the expira-  
14 tion of the national emergency related to a communicable  
15 disease, the Secretary of Homeland Security may not re-  
16 detain a covered individual who was released from deten-  
17 tion pursuant to section 3 unless the Secretary, in con-  
18 sultation with the Director of U.S. Immigration and Cus-  
19 toms Enforcement, determines, by clear and convincing  
20 evidence, including credible and individualized informa-  
21 tion, that—

22 (1) the use of alternatives to detention, includ-  
23 ing release on recognizance or parole, will not rea-  
24 sonably ensure the appearance of the covered indi-  
25 vidual at removal proceedings; or

1           (2) the covered individual is a threat to another  
2       person or the community.

3       (c) PENDING CRIMINAL CHARGE OR PAST CONVIC-  
4       TIONS.—For purposes of subsection (b), the Secretary  
5       may not justify the redetention of a covered individual  
6       solely based on the fact that the individual—

7           (1) has a criminal charge pending against him  
8       or her; or

9           (2) was convicted of a crime more than 5 years  
10      previously.

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