

112TH CONGRESS
1ST SESSION

S. 1949

To provide for safe and humane policies and procedures pertaining to the arrest, detention, and processing of aliens in immigration enforcement operations.

IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2011

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for safe and humane policies and procedures pertaining to the arrest, detention, and processing of aliens in immigration enforcement operations.

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 “Families First Immi-
5 gration Enforcement Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) DEPARTMENT.—The term “Department”
9 means the Department of Homeland Security.

1 (2) SECRETARY.—The term “Secretary” means
2 the Secretary of Homeland Security.

3 (3) SSA.—The term “SSA” means appropriate
4 State social service agencies.

5 **SEC. 3. ARREST PROCEDURES.**

6 (a) IN GENERAL.—Any immigration workplace en-
7 forcement operation by the Department for alleged viola-
8 tions of the Immigration and Nationality Act (8 U.S.C.
9 1101 et seq.), which is reasonably calculated to apprehend,
10 or results in the apprehension of, at least 50 aliens, shall
11 be carried out in accordance with the procedures described
12 in this section.

13 (b) STATE NOTIFICATION.—The Department shall
14 provide State officials with sufficient advance notice of all
15 immigration workplace enforcement operations to allow
16 State law enforcement officials to notify SSA of—

17 (1) the specific area of the State that will be af-
18 fected;

19 (2) the languages spoken by employees at the
20 target worksite; and

21 (3) any special needs of the employees.

22 (c) NONGOVERNMENTAL ORGANIZATION NOTIFICA-
23 TION.—

24 (1) IN GENERAL.—The Department and SSA
25 shall determine how appropriate nongovernmental

1 organizations will be notified on the day of the en-
2 forcement action.

3 (2) PARTICIPATION.—At the discretion of SSA,
4 representatives of a nongovernmental organization
5 who speak the native language of the aliens detained
6 in the enforcement action may be permitted to par-
7 ticipate with SSA officials in interviewing such
8 aliens.

9 (d) DETERMINATION OF RISK TO RELATIVES.—The
10 Department shall provide SSA with unfettered and con-
11 fidential access to aliens detained in the enforcement ac-
12 tion to assist in the screening and interviews of aliens to
13 determine whether the detainee, the detainee's children,
14 or other vulnerable people, including elderly and disabled
15 individuals, have been placed at risk as a result of the
16 detainee's arrest.

17 (e) MEDICAL SCREENING.—After SSA officials have
18 met with the alien detainees, qualified medical personnel
19 from the Division of Immigration Health Services of the
20 Department of Health and Human Services shall—

21 (1) conduct medical screenings of the alien de-
22 tainees; and

23 (2) identify and report any medical issues that
24 might necessitate humanitarian release or additional
25 care.

1 (f) CONSIDERATION OF RECOMMENDATIONS.—The
2 Department shall immediately consider recommendations
3 made by SSA and the Division of Immigration Health
4 Services about alien detainees who should be released on
5 humanitarian grounds, including alien detainees who—

6 (1) have a medical condition that requires spe-
7 cial attention;

8 (2) are pregnant women;

9 (3) are nursing mothers;

10 (4) are the sole caretakers of their minor chil-
11 dren or elderly relatives;

12 (5) function as the primary contact between the
13 family and those outside the home due to language
14 barriers;

15 (6) are needed to support their spouses in car-
16 ing for sick or special needs children;

17 (7) have spouses who are ill or otherwise unable
18 to be sole caretaker; or

19 (8) are younger than 18 years of age.

20 (g) PUBLICITY.—The Department shall provide, and
21 advertise in the mainstream and foreign language media,
22 a toll-free number through which family members of alien
23 detainees may report such relationships to operators
24 who—

1 (1) speak English and the majority language of
2 the target population of the enforcement operation;
3 and

4 (2) will convey such information to the Depart-
5 ment and SSA.

6 **SEC. 4. DETENTION PROCEDURES.**

7 (a) IN GENERAL.—In order to maximize full and fair
8 visitation by children, immediate family members, and
9 counsel, an alien should be detained, to the extent space
10 is available, in facilities within the physical jurisdiction or
11 catchment area of the local field office of United States
12 Immigration and Customs Enforcement.

13 (b) RELEASE.—

14 (1) IN GENERAL.—Not later than 72 hours
15 after an alien’s apprehension in an immigration
16 workplace enforcement operation, the alien shall be
17 released from Department custody, in accordance
18 with paragraph (2), if the alien—

19 (A) is not subject to mandatory detention
20 under section 235(1)(B)(iii)(IV), 236(c), or
21 236A of the Immigration and Nationality Act
22 (8 U.S.C. 1225(1)(B)(iii)(IV), 1226(c), and
23 1226a);

24 (B) does not pose an immediate flight risk;
25 and

1 (C) meets any of the criteria set forth in
2 section 3(f).

3 (2) TYPE OF RELEASE.—An alien shall be re-
4 leased under this subsection—

5 (A) on the alien’s own recognizance;

6 (B) by posting a minimum bond under sec-
7 tion 236(a) of the Immigration and Nationality
8 Act (8 U.S.C. 1226(a));

9 (C) on parole in accordance with section
10 212(d)(5)(A) of such Act (8 U.S.C.
11 1182(d)(5)(A)); or

12 (D) through the Intensive Supervision Ap-
13 pearance Program or another comparable alter-
14 native to detention program.

15 **SEC. 5. LEGAL ORIENTATION PRESENTATIONS.**

16 Any alien arrested in an immigration enforcement op-
17 eration that is reasonably calculated to apprehend, or re-
18 sults in the apprehension of, at least 50 aliens shall have
19 access to legal orientation presentations provided by inde-
20 pendent, nongovernmental agencies through the Legal
21 Orientation Program administered by the Executive Office
22 for Immigration Review.

1 **SEC. 6. REGULATIONS CONCERNING THE TREATMENT OF**
2 **ALIENS IN A VULNERABLE POPULATION IN**
3 **THE UNITED STATES.**

4 Not later than 6 months after the date of the enact-
5 ment of this Act, the Secretary shall promulgate regula-
6 tions to implement this Act, in accordance with the notice
7 and comment requirements under subchapter II of chapter
8 5 of title 5, United States Code (commonly referred to
9 as the Administrative Procedure Act).

10 **SEC. 7. REPORT TO CONGRESS.**

11 The Secretary shall submit an annual report that de-
12 scribes all the actions taken by the Department to imple-
13 ment this Act to—

14 (1) the Committee on the Judiciary of the Sen-
15 ate;

16 (2) the Committee on the Judiciary of the
17 House of Representatives;

18 (3) the Committee on Homeland Security and
19 Governmental Affairs of the Senate; and

20 (4) the Committee on Homeland Security of the
21 House of Representatives.

22 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

23 There are authorized to be appropriated such sums
24 as may be necessary to carry out this Act.

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