

116TH CONGRESS
2D SESSION

S. _____

To temporarily suspend certain immigration enforcement activities during disease-related emergencies.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY (for himself, Mr. BLUMENTHAL, Mr. SANDERS, Ms. WARREN, and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To temporarily suspend certain immigration enforcement activities during disease-related emergencies.

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 “Immigration Enforce-
5 ment Moratorium Act”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

8 (1) during the COVID–19 pandemic, many im-
9 migration enforcement activities have needlessly en-

1 dangered public health, including the health of en-
2 forcement officers and members of the community;

3 (2) continued arrests and apprehensions—

4 (A) prevent immigrant communities from
5 accessing necessary services for their health and
6 well being; and

7 (B) risk increasing the immigration deten-
8 tion population at a time when the number of
9 people in immigration detention must urgently
10 be reduced;

11 (3) Department of Homeland Security medical
12 experts estimate that between 75 and 100 percent of
13 the people detained in many immigration detention
14 centers across the country may contract COVID-19
15 unless such centers are drastically depopulated;

16 (4) other in-person activities, including check-
17 ins and removal hearings, create significant public
18 health risks;

19 (5) the National Association of Immigration
20 Judges, a union of U.S. Immigration and Customs
21 Enforcement trial attorneys, and the American Im-
22 migration Lawyers Association have all urged the
23 Department of Justice to cease all in-person removal
24 proceedings, citing expert guidance that continuing

1 in-person removal proceedings during the pandemic
2 is “irresponsible”;

3 (6) deportations risk spreading COVID–19 to
4 neighboring countries, where the virus will devastate
5 already limited health systems and create untold
6 harm;

7 (7) the United States has already sent individ-
8 uals who tested positive for COVID–19 to at least
9 8 countries;

10 (8) a consortium of United Nations migration
11 and human rights organizations has called on all
12 countries in the global community to halt all forced
13 removals during the pandemic, noting that “[f]orced
14 returns can intensify serious public health risks for
15 everyone – migrants, public health officials, health
16 workers, social workers, and both host and origin
17 communities”;

18 (9) expulsions at the border—

19 (A) violate longstanding, congressionally
20 mandated protections for asylum-seekers; and

21 (B) fail to protect public health;

22 (10) the Office of the United Nations High
23 Commissioner for Refugees has declared that—

1 (A) countries cannot enact “blanket
2 measure[s] to preclude the admission of refu-
3 gees or asylum-seekers”; and

4 (B) any such “measures must be non-dis-
5 criminatory as well as necessary, proportionate
6 and reasonable to the aim of protecting public
7 health”;

8 (11) leading public health experts have urged
9 United States officials to withdraw the order ena-
10 bling mass expulsion of asylum seekers, noting bor-
11 der expulsions fail to further public health and im-
12 plicate serious human rights concerns;

13 (12) border crossing prosecutions have been
14 suspended in several border districts because they
15 are incompatible with public health;

16 (13) the Department of Homeland Security
17 continues to refer people for prosecutions in some
18 districts for violations of section 276 of the Immi-
19 gration and Nationality Act (8 U.S.C. 1326); and

20 (14) people continue to be unnecessarily held in
21 pre-trial detention facilities where COVID-19 has
22 spread.

23 **SEC. 3. TEMPORARY SUSPENSION OF IMMIGRATION EN-**
24 **FORCEMENT.**

25 (a) DEFINITIONS.—In this section:

1 (1) NONCITIZEN.—The term “noncitizen”
2 means any individual who is not a citizen or national
3 of the United States.

4 (2) PUBLIC HEALTH EMERGENCY.—The term
5 “public health emergency” means—

6 (A) a national emergency involving Federal
7 primary responsibility determined to exist by
8 the President under section 501(b) of the Rob-
9 ert T. Stafford Disaster Relief and Emergency
10 Assistance Act (42 U.S.C. 5191(b)) with re-
11 spect to a communicable disease;

12 (B) a national emergency declared by the
13 President under sections 201 and 301 of the
14 National Emergencies Act (50 U.S.C. 1621 and
15 1631) with respect to a communicable disease;

16 (C) a national public health emergency de-
17 clared by the Secretary of Health and Human
18 Services under section 319 of the Public Health
19 Service Act (42 U.S.C. 247d); or

20 (D) a global pandemic declared by the
21 World Health Organization.

22 (b) SUSPENDED IMMIGRATION ENFORCEMENT AC-
23 TIVITIES.—

24 (1) IN GENERAL.—Except as provided in sub-
25 section (d), during a public health emergency, the

1 Secretary of Homeland Security shall suspend all
2 immigration enforcement-related activities in the
3 United States, including—

4 (A) removals of noncitizens from the
5 United States;

6 (B) arrests and apprehensions by U.S. Im-
7 migration and Customs Enforcement or U.S.
8 Customs and Border Protection of noncitizens
9 who are physically present in the United States;

10 (C) required meetings with Enforcement
11 and Removal Operations (commonly known as
12 “ICE check-ins”);

13 (D) service of Notices to Appear; and

14 (E) referrals for prosecution under section
15 275 or 276 of the Immigration and Nationality
16 Act (8 U.S.C. 1325 and 1326).

17 (2) INDIVIDUALS IN DETENTION WHO HAVE RE-
18 CEIVED REMOVAL ORDERS.—Notwithstanding sec-
19 tion 241(a)(2) of the Immigration and Nationality
20 Act (8 U.S.C. 1231(a)(2)), individuals in detention
21 who have received removal orders shall be released
22 on orders of supervision.

23 (c) BORDER PROCESSING.—

24 (1) IN GENERAL.—Notwithstanding section 217
25 of the Immigration and Nationality Act (8 U.S.C.

1 1187) or any other provision of law, any noncitizen
2 applying for admission at a port of entry on or after
3 the date on which the public health emergency went
4 into effect who is deemed inadmissible or who is ap-
5 prehended by U.S. Customs and Border Protection
6 within 14 days after crossing the international bor-
7 der into the United States without authorization on
8 or after the date on which the public health emer-
9 gency went into effect, shall, if he or she presents
10 a claim to relief under the immigration laws and is
11 not otherwise subject to the exception described in
12 subsection (d), be paroled into the United States
13 pursuant to section 212(d)(5)(A) of the Immigration
14 and Nationality Act (8 U.S.C. 1182(d)(5)(A)).

15 (2) REMOVAL PROCEEDINGS.—If the Depart-
16 ment of Homeland Security initiates removal pro-
17 ceedings against a noncitizen described in paragraph
18 (1), such proceedings shall take place in accordance
19 with section 240 (8 U.S.C. 1229a).

20 (d) EXCEPTION.—

21 (1) IN GENERAL.—Subsection (b) and the pa-
22 role provision under subsection (c) shall not apply if
23 the Federal official authorized to carry out an immi-
24 gration enforcement activity described in either such
25 subsection has clear and convincing evidence, based

1 on credible and individualized information, that the
2 noncitizen is a threat to another person or the com-
3 munity.

4 (2) **PRIOR CONVICTION.**—A prior conviction or
5 pending criminal charge against the noncitizen de-
6 scribed in paragraph (1) may not be the sole factor
7 to justify carrying out an otherwise prohibited immi-
8 gration enforcement activity described in subsection
9 (b) or granting parole pursuant to subsection (c).

10 (3) **JUDICIAL REVIEW.**—A noncitizen described
11 in paragraph (1) is entitled to immediate de novo re-
12 view of the Federal official’s determination in—

13 (A) the United States District Court for
14 the District of Columbia; or

15 (B) any Federal district court satisfying
16 the venue requirements described in section
17 1391 of title 28, United States Code.

18 (e) **UNLAWFUL PRESENCE.**—During the public
19 health emergency, the accrual of unlawful presence under
20 subparagraphs (B)(i)(I) and (C)(i)(I) of section 212(a)(9)
21 of the Immigration and Nationality Act (8 U.S.C.
22 1182(a)(9)) shall be suspended for any noncitizen who re-
23 sided in the United States on or before the date on which
24 the public health emergency went into effect.

1 (f) IMMIGRATION COURT PROCEEDINGS.—During
2 the period beginning on the date on which a public health
3 emergency is in effect in any State of territory of the
4 United States and ending on the date that is 30 days after
5 the date on which the public health emergency is termi-
6 nated, the Attorney General shall—

7 (1) suspend all in-person immigration court
8 proceedings;

9 (2) establish a procedure for conducting custody
10 determination hearings for detained individuals to
11 appear telephonically or by video teleconference,
12 which shall permit—

13 (A) attorneys and representatives to ap-
14 pear telephonically or by video teleconference;
15 and

16 (B) supporting documents to be faxed,
17 emailed, or otherwise electronically transmitted
18 to the appropriate court clerk;

19 (3) suspend all immigration court proceedings
20 not described in paragraph (2), except that cases in-
21 volving individuals who are detained may proceed if
22 the respondent and his or her counsel or representa-
23 tive requests in writing that the immigration court
24 proceedings move forward telephonically or by video
25 teleconference;

1 (4) issue a blanket extraordinary circumstances
2 exception for 1 year asylum filing deadlines; and

3 (5) toll any deadline imposed by statute, regula-
4 tion, local rule, standing order, or policy guidance
5 requiring the appearance or other action by the re-
6 spondent unless the respondent or the respondent's
7 counsel or legal representative submits a written re-
8 quest to the contrary.

9 (g) LIMITATION ON USE OF FEDERAL FUNDS FOR
10 RELIANCE ON ULTRA-VIRES AUTHORITY.—Federal funds
11 may not be used by the Department of Homeland Security
12 to expel, pursuant to section 362 or 365 of the Public
13 Health Service Act (42 U.S.C. 265 and 268), any noncit-
14 izen who—

15 (1) is present in the United States;

16 (2) entered or is entering the United States at
17 a port of entry; or

18 (3) crossed or is crossing the United States bor-
19 der between ports of entry.

20 (h) DURATION.—

21 (1) IN GENERAL.—Subsections (b), (c), (e), and
22 (f) shall remain in effect throughout the duration of
23 a public health emergency and for at least 30 days
24 after the public health emergency is no longer in ef-
25 fect.

1 (2) REMOVALS.—If an emergency referred to in
2 subsection (a)(2)(D) is declared, removals shall fur-
3 ther remain suspended to a receiving country until
4 the Secretary of Homeland Security and the Sec-
5 retary of State each certify in writing to Congress
6 that the country—

7 (A) has demonstrated evidence of dimin-
8 ishing cases and risk of community trans-
9 mission; and

10 (B) has public health infrastructure that is
11 able to adequately handle the return of its na-
12 tionals.

13 (i) SAVINGS PROVISION.—Nothing in this section
14 may be construed to alter the William Wilberforce Traf-
15 ficking Victims Protection Reauthorization Act of 2008
16 (Public Law 110–457).