IN THE SENATE OF THE UNITED STATES

Ms. Warren (for herself, Mr. Booker, Mr. Markey, Mr. Van Hollen, Mr. Sanders, Mr. Blumenthal, Mr. Durbin, Mr. Merkley, Ms. Baldwin, Ms. Klobuchar, Ms. Hirono, Mr. Wyden, Mr. Casey, Ms. Cortez Masto, and Ms. Rosen) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To report data on COVID–19 immigration detention facilities and local correctional facilities that contract with U.S. Immigration and Customs Enforcement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “COVID–19 in Immigration Detention Data Transparency Act”.

SEC. 2. DEFINITIONS.

In this Act:
(1) CBP DETENTION FACILITY.—The term “CBP detention facility” means any facility used by U.S. Customs and Border Protection to detain non-citizens.

(2) CDC DIRECTOR.—The term “CDC Director” means the Director of the Centers for Disease Control and Prevention.

(3) CONTRACT DETENTION FACILITY.—The term “contract detention facility” means any facility used for the detention of noncitizens that is operated by a government agency or a private entity that has contracted with U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, or the Office of Refugee Resettlement to provide such detention services, including service processing centers, juvenile detention facilities, family residential centers, facilities holding noncitizens awaiting removal, and similar facilities operating under an intergovernmental service agreement with any of such Federal agencies, including intergovernmental agreements with the United States Marshals Service.

(5) COVID–19 DIAGNOSTIC TEST.—The term “COVID–19 diagnostic test” means a test—

(A) that is an in vitro diagnostic product (as defined in section 809.3 of title 21, Code of Federal Regulations) for the detection of SARS–CoV–2; and

(B) the administration of which—

(i) is approved, cleared, or authorized under section 510(k), 513, 515, or 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k), 360c, 360e, 360bbb–3);

(ii) the developer has requested, or intends to request, emergency use authorization under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3), unless and until the emergency use authorization request under such section 564 has been denied or the developer of such test does not submit a request under such section within a reasonable timeframe;

(iii) is developed in and authorized by a State that has notified the Secretary of Health and Human Services of its inten-
tion to review tests intended to diagnose COVID–19; or

(iv) is another test that the Secretary determines appropriate in guidance.

(6) COVID–19 EMERGENCY DATA COLLECTION PERIOD.—The term “COVID–19 emergency data collection period” means the period beginning on the date of enactment of this Act and ending on the date that is 1 year after the date on which the public health emergency declaration under section 319 of the Public Health Service Act (42 U.S.C. 247d), with respect to COVID–19, terminates.

(7) FACILITY STAFF.—The term “facility staff” includes all individuals who work in a detention facility, including any individual who regularly reports for work within the detention facility, regardless of the actual employer of such individual.

(8) ICE DETENTION FACILITY.—The term “ICE detention facility” means any facility used by U.S. Immigration and Customs Enforcement to detain noncitizens, including service processing centers.

(9) ORR CONTRACTED FACILITY OR PROGRAM.—The term “ORR contracted facility or program” means any facility or program in which unaccompanied noncitizen children are in the care and
custody of the Department of Health and Human Services.

(10) Public Health Emergency.—The term “public health emergency” means—

(A) a national emergency involving Federal primary responsibility determined to exist by the President under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191(b)) with respect to a communicable disease;

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

(C) a national public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d); or

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

SEC. 3. COVID–19 DATA COLLECTION REQUIREMENTS.

(a) Federal Detention Facilities.—The Director of U.S. Immigration and Customs Enforcement, the Commissioner of U.S. Customs and Border Protection, the Director of the Office of Refugee Resettlement, and any
senior official acting in, or performing the duties of, any such position shall, during the COVID–19 emergency data collection period—

(1) post daily updates on the public website of the applicable agency containing the information described in section 5 with respect to staff working at ICE detention facilities, CBP detention facilities, or ORR contracted facilities or programs, respectively, and noncitizens detained at such facilities or served by such programs;

(2) archive, on a weekly basis, the data described in paragraph (1) so that it remains publicly accessible and in a machine readable format; and

(3) beginning not later than the earlier of the date that is 14 days after the date on which the CDC Director publishes the guidance required under section 4(a) or 45 days after the date of the enactment of this Act, submit weekly reports to the CDC Director containing the information described in section 5.

(b) CONTRACT DETENTION FACILITIES.—

(1) IN GENERAL.—Beginning not later than the earlier of the date that is 14 days after the date on which the CDC Director publishes the guidance required under section 4(a) or 45 days after the date
of the enactment of this Act, the head of each con-
tract detention facility shall—

(A) submit weekly reports to the Federal
agency with which the facility is under contract
and the public health authority of the State in
which the facility is located containing the data
described in section 5 with respect to staff
working at such facility and noncitizens de-
tained at such facility;

(B) post weekly updates containing the
data described in subparagraph (A) on the pub-
lic website of the facility, if the facility has a
public website, in a machine readable format,
and archive prior updates so that they remain
publicly accessible; and

(C) submit weekly reports containing the
data referred to in subparagraph (A) to—

(i) the Immigration Detention Om-
budsman designated pursuant to section
405 of the Homeland Security Act of 2002
(6 U.S.C. 205); and

(ii) the Office for Civil Rights and
Civil Liberties of the Department of
Homeland Security.
(2) Submission of information to the CDC.—Not later than 24 hours after a Federal agency receives the data described in paragraph (1), the head of such agency shall—

(A) submit such data to the CDC Director; and

(B) post such data to the public website of the agency, which shall be archived weekly and shall remain publically accessible in a machine readable format.

c) Use of existing Appropriations.—

(1) Department of health and human services.—The Department of Health and Human Services such use amounts otherwise appropriated for the Office of Refugee Resettlement to carry out its responsibilities under this section.

(2) U.S. immigration and customs enforcement.—U.S. Immigration and Customs Enforcement shall use amounts otherwise appropriated to the Custody Operations Account to carry out its responsibilities under this section.

(3) U.S. customs and border protection.—U.S. Customs and Border Protection shall use amounts otherwise appropriated to the Procure-
ment, Construction, and Improvements Account to carry out its responsibilities under this section.

SEC. 4. CDC REPORTS.

(a) GUIDANCE.—Not later than 30 days after the date of enactment of this Act, the CDC Director shall issue guidance for immigration detention facilities regarding—

(1) the categories of data required to be reported under this Act; and

(2) how the CDC Director will determine whether a Federal or State agency is in compliance with the requirements under this Act.

(b) PUBLICATION ON WEBSITE.—

(1) IN GENERAL.—Not later than 7 days after data is reported to the Centers for Disease Control and Prevention pursuant to section 3, the CDC Director shall make such data available to the public on the website of the Centers for Disease Control and Prevention, including all data reported by U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and the Office of Refugee Resettlement.

(2) WEEKLY ARCHIVAL.—The data referred to in paragraph (1) shall be archived weekly and shall
remain publicly accessible in a machine readable format.

(c) Reports to Congress.—Not later than 60 days after the date of the enactment of this Act, and monthly thereafter during the COVID–19 emergency data collection period, the CDC Director shall submit a report to Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on the Judiciary of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on the Judiciary of the House of Representatives that—

(1) summarizes the information submitted by U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the Office of Refugee Resettlement, and State public health authorities pursuant to section 3; and

(2) analyzes the trends and patterns of the disease outbreak and the care provided in immigration detention facilities and contracted facilities.

SEC. 5. COVID–19 DATA.

(a) In General.—The data described in this section is the following data with respect to each ICE, CBP, ORR, and contract detention facility:

(1) Testing Numbers.—Data related to COVID–19 diagnostic testing by such facilities, in-
including cumulative and new (since the previous weekly report) counts of—

(A) the number of detained noncitizens tested for COVID–19, including the dates on which such tests were administered, disaggregated by—

(i) first-time COVID–19 diagnostic tests and retests; and

(ii) symptomatic and asymptomatic;

(B) the number of detained noncitizens who have requested COVID–19 testing, including the number of such requests that were denied and the reasons for such denials;

(C) the number of facility staff tested for COVID–19, disaggregated by first-time COVID–19 diagnostic tests and retests; and

(D) the COVID–19 diagnostic test developer and test name for each COVID–19 diagnostic test conducted.

(2) Test results.—Data related to COVID–19 diagnostic testing outcomes, including cumulative and new (since the previous weekly report) counts of—
(A) the number of confirmed active cases of COVID–19 among detained noncitizens, disaggregated by—

(i) first-time COVID–19 diagnostic tests and retests; and

(ii) the COVID–19 diagnostic test developer and test name for each COVID–19 diagnostic test used to confirm each active case;

(B) the number of confirmed negative cases of COVID–19 among detained noncitizens, disaggregated—

(i) by first-time COVID–19 diagnostic tests and retests; and

(ii) the COVID–19 diagnostic test developer and test name for each COVID–19 diagnostic test used to confirm each negative case;

(C) the number of confirmed active cases of COVID–19 among detention facility staff, disaggregated by—

(i) first-time COVID–19 diagnostic tests and retests; and

(ii) the COVID–19 diagnostic test developer and test name for each COVID–19
diagnostic test used to confirm each active case;

(D) the number of confirmed negative cases of COVID–19 among detention facility staff, disaggregated by—

(i) first-time COVID–19 diagnostic tests and retests; and

(ii) the COVID–19 diagnostic test developer and test name for each COVID–19 diagnostic test used to confirm each negative case;

(E) the number of COVID–19 diagnostic tests pending results, disaggregated by detained noncitizens and detention facility staff;

(F) the average time between testing a detained person for COVID–19 and receiving the results of the COVID–19 diagnostic test; and

(G) the average time between testing a detention facility employee for COVID–19 and receiving the results of the COVID–19 diagnostic test.

(3) CASE OUTCOMES.—COVID–19 case outcomes, including cumulative and new (since the previous report) counts of—
(A) the number of detained noncitizens hospitalized for a case of COVID–19, including the locations of the hospitals at which the noncitizens are receiving treatment;

(B) the number of detained noncitizens who have recovered from COVID–19;

(C) the number of detained noncitizens currently in quarantine and the number of detained noncitizens in medical isolation for infection with or exposure to COVID–19;

(D) the number of detained noncitizens who have completed quarantine and the number of detained noncitizens who have been released from medical isolation;

(E) the number of detained noncitizens identified as having 1 or more COVID–19 risk factors;

(F) the number of noncitizens who have been released from detention because of 1 or more COVID–19 risk factors, disaggregated by their applicable risk factor;

(G) the number of detained noncitizens with active COVID–19 cases in the previous weekly report who are not included in the present report, disaggregated by the specific
reason for such exclusion, including release, negative COVID–19 test, transfer, and absence of COVID–19 symptoms;

(H) the number of detained noncitizens who have died from COVID–19;

(I) the number of detained noncitizens who died after testing positive for COVID–19, but the official cause of death was not COVID–19;

(J) the number of detention facility staff hospitalized for a case of COVID–19;

(K) the number of detention facility staff who have recovered from COVID–19; and

(L) the number of detention facility staff who have died from a case of COVID–19.

(4) General Medical Attention.—The number of detained noncitizens who have requested general medical attention, including the number of such requests that were denied and the reasons for such denials.

(5) Daily Population.—Average daily population of detained noncitizens for the week preceding the COVID–19 emergency data collection period and for all weeks during such period.

(6) Transferred Noncitizens.—Data related to the COVID–19 testing, results, and case
outcomes (at the time of release) of noncitizens who
were transferred between detention facilities during
the reporting period, including—
(A) the number of all individuals who were
transferred, including—
(i) the dates on which such transfers
occurred;
(ii) the number of such noncitizens
who were tested and received a result be-
fore their transfer; and
(iii) the number of such noncitizens
who were not tested or did not receive a
result before their transfer;
(B) the purposes of such transfers;
(C) the dates on which COVID–19 testing
occurred during the transfer process;
(D) the number of transferees who tested
positive at any point during the transfer proc-
есс; and
(E) the number of positive COVID–19
cases in the transferring facility and in the ar-
riving facility at the time of each such transfer.

(7) RELEASED NONCITIZENS.—Data related to
the COVID–19 testing, results, and case outcomes
(at the time of release) of noncitizens who were re-
leased from detention, and juvenile noncitizens who were released from the custody of the Department of Health and Human Services, during the reporting period, disaggregated by the type of release, and including—

(A) individuals released to alternatives to detention programs as a result of the COVID–19 public health emergency; and

(B) any recent positive COVID–19 tests and referrals to external medical care.

(8) REMOVED NONCITIZENS.—Data related to the COVID–19 testing, results, and case outcomes (at the time of removal or expulsion) of noncitizens who were deported from an ICE, CBP, ORR, or contract detention facility during the reporting period, including—

(A) any recent positive COVID–19 tests and referrals to external medical care;

(B) the number of noncitizens removed or expelled from the United States;

(C) the number of such noncitizens who were tested and received a result before their removal or expulsion; and
(D) the number of such noncitizens who
were not tested or did not receive a result be-
fore their removal or expulsion.

(b) DISAGGREGATION OF DATA.—

(1) IN GENERAL.—The data described in sub-
section (a) shall be disaggregated by sex, sexual ori-
entation, gender identity, age, race, ethnicity, dis-
ability, last known place of residence, location at
which the individual is being detained, nationality,
and statutory authority for detention.

(2) EXCLUSION OF INDIVIDUALS INCARCER-
ATED FOR NONIMMIGRATION REASONS AT CONTRACT
DETENTION FACILITIES.—Data regarding individ-
uals incarcerated at contract detention facilities for
nonimmigration reasons shall be excluded from the
data described in subsection (a).

(c) DETENTION PERIOD.—The data described in sub-
section (a) with respect to detained noncitizens who are
infected with COVID–19 shall include, to the extent prac-
ticable, the period of their detention.

SEC. 6. PRIVACY PROTECTIONS.

(a) IN GENERAL.—Any data collected, stored, re-
ceived, or published under this Act—
(1) shall be collected, stored, received, or published in a manner that protects the privacy of individuals whose information is included in such data;

(2) shall be de-identified or anonymized in a manner that protects the identity of all individuals whose information is included in such data;

(3) shall comply with privacy protections provided under the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note); and

(4) shall be limited in use for the purpose of public health and be protected from all other internal use by any entity that collects, stores, or receives the data, including use of such data in determinations of eligibility (or continued eligibility) in health plans, and from any other inappropriate uses.

(b) Restriction on Use of COVID–19 Status in Immigration Proceedings.—The Government may not use an noncitizen’s positive COVID–19 test, an noncitizen’s treatment for COVID–19 symptoms, or the state of the COVID–19 pandemic in the noncitizen’s country of origin as evidence against the noncitizen in any immigration proceeding, including—
(1) a proceeding to determine if the noncitizen is a public charge; and

(2) proceedings involving asylum, withholding of removal, and protection under the Convention against Torture and Other Cruel, Inhuman or Degrad ing Treatment or Punishment, done at New York December 10, 1984.

SEC. 7. COVID–19 SAFETY PROTOCOLS AND PRACTICES.

(a) In General.—Not later than 30 days after the date of the enactment of this Act, the Director of U.S. Immigration and Customs Enforcement, the Commissioner of U.S. Customs and Border Protection, the Director of the Office of Refugee Resettlement, and any senior official acting in, or performing the duties of, any such position shall submit a report to the congressional committees referred to in section 4(c) that identifies, for each detention facility under the jurisdiction of the applicable agency head, including contract detention facilities, the protocols and practices for protecting detainees from exposure to the novel coronavirus (SARS–CoV–2), including—

(1) the health standards at the facility, including—

(A) the standards for transfer to hospital or other specialized care;
(B) the procedure for the detained person
to request and obtain a COVID–19 test and as-
sociated results; and

(C) detainee access to information about
the facility’s COVID–19 plans and protocols;

(2) the medical care provided to detainees, in-
cluding—

(A) the specific efforts to cohort smaller
groups of detained people;

(B) the specific efforts to provide humane
medical isolation to symptomatic people, and
separately, people who have tested positive for
COVID–19; and

(C) the standards for clinical monitoring of
symptomatic and COVID–19 positive detained
persons; and

(3) the sanitation practices at the facility, in-
cluding the frequency and amount of detainees’ ac-
cess to soap and masks.

(b) Notification of Outbreak or Exposure.—
Each detention facility shall create, share, and enforce a
process for notifying anyone who has recently entered or
visited such facility of any COVID–19 outbreak or expo-
sure at such facility.
SEC. 8. ACCESS TO LEGAL COUNSEL.

Not later than 30 days after the date of the enactment of this Act, and monthly thereafter, the Director of U.S. Immigration and Customs Enforcement, the Commissioner of U.S. Customs and Border Protection, the Director of the Office of Refugee Resettlement, the head of each contract detention facility, and any senior official acting in, or performing the duties of, any such position shall submit a report to the congressional committees referred to in section 4(c) that identifies, for each detention facility for which he or she is responsible—

(1) the efforts made to ensure that each noncitizen detained in such facility has access to legal counsel;

(2) if any detained noncitizen does not have access to legal counsel, the changes being made to ensure universal access to legal counsel;

(3) the number of telephones are available to detainees;

(4) the number of detainees who have used the free telephone call minutes available to them;

(5) the number of detainees who have access to video conference technology with their lawyers and the number of detainees have used video conference technology to communicate with their lawyers;
(6) the number of computers or internet-enabled portable electronic devices available to detainees; and

(7) the process for notifying the public when the facility is locked down because of an outbreak, including the accommodations made during such lockdowns to provide detainees with increased access to telephones or videoconferencing.

SEC. 9. RIGHT OF DETAINED NONCITIZENS TO ACCESS TEST RESULTS.

The Director of U.S. Immigration and Customs Enforcement, the Commissioner of U.S. Customs and Border Protection, the Director of the Office of Refugee Resettlement, the head of each contract detention facility, and any senior official acting in, or performing the duties of, any such position shall ensure that each detained noncitizen receives the results of, and any medical records related to, any COVID–19 diagnostic test administered to the noncitizen, in the noncitizen’s preferred language, and in a private and confidential manner, not later than 24 hours after such results become available.