

HUMANITARIAN STANDARDS FOR INDIVIDUALS IN
CUSTOMS AND BORDER PROTECTION CUSTODY ACT

JULY 19, 2019.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3239]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 3239) to require U.S. Customs and Border Protection to per-
form an initial health screening on detainees, and for other pur-
poses, having considered the same, report favorably thereon with
an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Humanitarian Standards for Individuals in Customs and Border Protection Custody Act”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Initial health screening protocol.
- Sec. 3. Water, sanitation and hygiene.
- Sec. 4. Food and nutrition.
- Sec. 5. Shelter.
- Sec. 6. Coordination and Surge capacity.
- Sec. 7. Training.
- Sec. 8. Interfacility transfer of care.
- Sec. 9. Planning and initial implementation.
- Sec. 10. Contractor compliance.
- Sec. 11. Inspections.
- Sec. 12. GAO report.
- Sec. 13. Rule of construction.
- Sec. 14. Definitions.

SEC. 2. INITIAL HEALTH SCREENING PROTOCOL.

(a) **IN GENERAL.**—The Commissioner of U.S. Customs and Border Protection (referred to in this Act as the “Commissioner”), in consultation with the Secretary of Health and Human Services, the Administrator of the Health Resources and Services Administration, and nongovernmental experts in the delivery of health care in humanitarian crises and in the delivery of health care to children, shall develop guidelines and protocols for the provision of health screenings and appropriate medical care for individuals in the custody of U.S. Customs and Border Protection (referred to in this Act as “CBP”), as required under this section.

(b) **INITIAL SCREENING AND MEDICAL ASSESSMENT.**—The Commissioner shall ensure that any individual who is detained in the custody of CBP (referred to in this Act as a “detainee”) receives an initial in-person screening by a licensed medical professional in accordance with the standards described in subsection (c)—

- (1) to assess and identify any illness, condition, or age-appropriate mental or physical symptoms that may have resulted from distressing or traumatic experiences;
- (2) to identify acute conditions and high-risk vulnerabilities; and
- (3) to ensure that appropriate healthcare is provided to individuals as needed, including pediatric, obstetric, and geriatric care.

(c) **STANDARDIZATION OF INITIAL SCREENING AND MEDICAL ASSESSMENT.**—

(1) **IN GENERAL.**—The initial screening and medical assessment shall include—

- (A) an interview and the use of a standardized medical intake questionnaire or the equivalent;
- (B) screening of vital signs, including pulse rate, body temperature, blood pressure, oxygen saturation, and respiration rate;
- (C) screening for blood glucose for known or suspected diabetics;
- (D) weight assessment of detainees under 12 years of age;
- (E) a physical examination; and
- (F) a risk-assessment and the development of a plan for monitoring and care, when appropriate.

(2) **PRESCRIPTION MEDICATION.**—The medical professional shall review any prescribed medication that is in the detainee’s possession or that was confiscated by CBP upon arrival and determine if the medication may be kept by the detainee for use during detention, properly stored by CBP with appropriate access for use during detention, or maintained with the detained individual’s personal property. A detainee may not be denied the use of necessary and appropriate medication for the management of the detainee’s illness.

(3) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed as requiring detainees to disclose their medical status or history.

(d) **TIMING.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the initial screening and medical assessment described in subsections (b) and (c) shall take place as soon as practicable, but not later than 12 hours after a detainee’s arrival at a CBP facility.

(2) **HIGH PRIORITY INDIVIDUALS.**—The initial screening and medical assessment described in subsections (b) and (c) shall take place as soon as practicable, but not later than 6 hours after a detainee’s arrival at a CBP facility if the individual reasonably self-identifies as having a medical condition that requires prompt medical attention or is—

- (A) exhibiting signs of acute or potentially severe physical or mental illness, or otherwise has an acute or chronic physical or mental disability or illness;
- (B) pregnant;

(C) a child (with priority given, as appropriate, to the youngest children);

or

(D) elderly.

(e) FURTHER CARE.—

(1) IN GENERAL.—If, as a result of the initial health screening and medical assessment, the licensed medical professional conducting the screening or assessment determines that one or more of the detainee's vital sign measurements are significantly outside normal ranges in accordance with the National Emergency Services Education Standards, or if the detainee is identified as high-risk or in need of medical intervention, the detainee shall be provided, as expeditiously as possible, with an in-person or technology-facilitated medical consultation with a licensed emergency care professional.

(2) RE-EVALUATION.—

(A) IN GENERAL.—Detainees described in paragraph (1) shall be re-evaluated within 24 hours and monitored thereafter as determined by an emergency care professional (and in the care of a consultation provided to a child, with a licensed emergency care professional with a background in pediatric care).

(B) REEVALUATION PRIOR TO TRANSPORTATION.—In addition to the re-evaluations under subparagraph (A), detainees shall have all vital signs re-evaluated and be cleared as safe to travel by a medical professional prior to transportation.

(3) PSYCHOLOGICAL AND MENTAL CARE.—The Commissioner shall ensure that detainees who have experienced physical or sexual violence or who have experienced events that may cause severe trauma or toxic stress, are provided access to basic, humane, and supportive psychological assistance.

(f) INTERPRETERS.—To ensure that health screenings and medical care required under this section are carried out in the best interests of the detainee, the Commissioner shall ensure that language-appropriate interpretation services, including indigenous languages, are provided to each detainee and that each detainee is informed of the availability of interpretation services.

(g) CHAPERONES.—To ensure that health screenings and medical care required under this section are carried out in the best interests of the detainee—

(1) the Commissioner shall establish guidelines for and ensure the presence of chaperones for all detainees during medical screenings and examinations consistent with relevant guidelines in the American Medical Association Code of Medical Ethics, and recommendations of the American Academy of Pediatrics; and

(2) to the extent practicable, the physical examination of a child shall always be performed in the presence of a parent or legal guardian or in the presence of the detainee's closest present adult relative if a parent or legal guardian is unavailable.

(h) DOCUMENTATION.—The Commissioner shall ensure that the health screenings and medical care required under this section, along with any other medical evaluations and interventions for detainees, are documented in accordance with commonly accepted standards in the United States for medical record documentation. Such documentation shall be provided to any individual who received a health screening and subsequent medical treatment upon release from CBP custody.

(i) INFRASTRUCTURE AND EQUIPMENT.—The Commissioner or the Administrator of General Services shall ensure that each location to which detainees are first transported after an initial encounter with an agent or officer of CBP has the following:

(1) A private space that provides a comfortable and considerate atmosphere for the patient and that ensures the patient's dignity and right to privacy during the health screening and medical assessment and any necessary follow-up care.

(2) All necessary and appropriate medical equipment and facilities to conduct the health screenings and follow-up care required under this section, to treat trauma, to provide emergency care, including resuscitation of individuals of all ages, and to prevent the spread of communicable diseases.

(3) Basic over-the-counter medications appropriate for all age groups.

(4) Appropriate transportation to medical facilities in the case of a medical emergency, or an on-call service with the ability to arrive at the CBP facility within 30 minutes.

(j) PERSONNEL.—The Commissioner or the Administrator of General Services shall ensure that each location to which detainees are first transported after an initial encounter has onsite at least one licensed medical professional to conduct health screenings. Other personnel that are or may be necessary for carrying out the functions described in subsection (e), such as licensed emergency care professionals, specialty physicians (including physicians specializing in pediatrics, family medicine,

obstetrics and gynecology, geriatric medicine, internal medicine, and infectious diseases), nurse practitioners, other nurses, physician assistants, licensed social workers, mental health professionals, public health professionals, dietitians, interpreters, and chaperones, shall be located on site to the extent practicable, or if not practicable, shall be available on call.

(k) **ETHICAL GUIDELINES.**—The Commissioner shall ensure that all medical assessments and procedures conducted pursuant to this section are conducted in accordance with ethical guidelines in the applicable medical field, and respect human dignity.

SEC. 3. WATER, SANITATION AND HYGIENE.

The Commissioner shall ensure that detainees have access to—

- (1) not less than one gallon of drinking water per person per day, and age-appropriate fluids as needed;
- (2) a private, safe, clean, and reliable permanent or portable toilet with proper waste disposal and a hand washing station, with not less than one toilet available for every 12 male detainees, and 1 toilet for every 8 female detainees;
- (3) a clean diaper changing facility, which includes proper waste disposal, a hand washing station, and unrestricted access to diapers;
- (4) the opportunity to bathe daily in a permanent or portable shower that is private and secure; and
- (5) products for individuals of all age groups and with disabilities to maintain basic personal hygiene, including soap, a toothbrush, toothpaste, adult diapers, and feminine hygiene products, as well as receptacles for the proper storage and disposal of such products.

SEC. 4. FOOD AND NUTRITION.

The Commissioner shall ensure that detainees have access to—

- (1) three meals per day including—
 - (A) in the case of an individual age 12 or older, a diet that contains not less than 2,000 calories per day; and
 - (B) in the case of a child who is under the age of 12, a diet that contains an appropriate number of calories per day based on the child's age and weight;
- (2) accommodations for any dietary needs or restrictions; and
- (3) access to food in a manner that follows applicable food safety standards.

SEC. 5. SHELTER.

The Commissioner shall ensure that each facility at which a detainee is detained meets the following requirements:

- (1) Except as provided in paragraph (2), males and females shall be detained separately.
- (2) In the case of a minor child arriving in the United States with an adult relative or legal guardian, such child shall be detained with such relative or legal guardian unless such an arrangement poses safety or security concerns. In no case shall a minor who is detained apart from an adult relative or legal guardian as a result of such safety or security concerns be detained with other adults.
- (3) In the case of an unaccompanied minor arriving in the United States without an adult relative or legal guardian, such child shall be detained in an age-appropriate facility and shall not be detained with adults.
- (4) A detainee with a temporary or permanent disability shall be held in an accessible location and in a manner that provides for his or her safety, comfort, and security, with accommodations provided as needed.
- (5) No detainee shall be placed in a room for any period of time if the detainee's placement would exceed the maximum occupancy level as determined by the appropriate building code, fire marshal, or other authority.
- (6) Each detainee shall be provided with temperature appropriate clothing and bedding.
- (7) The facility shall be well lit and well ventilated, with the humidity and temperature kept at comfortable levels (between 68 and 74 degrees Fahrenheit).
- (8) Detainees who are in custody for more than 48 hours shall have access to the outdoors for not less than 1 hour during the daylight hours during each 24-hour period.
- (9) Detainees shall have the ability to practice their religion or not to practice a religion, as applicable.
- (10) Detainees shall have access to lighting and noise levels that are safe and conducive for sleeping throughout the night between the hours of 10 p.m. and 6 a.m.
- (11) Officers, employees, and contracted personnel of CBP shall—

(A) follow medical standards for the isolation and prevention of communicable diseases; and

(B) ensure the physical and mental safety of detainees who identify as lesbian, gay, bisexual, transgender, and intersex.

(12) The facility shall have video-monitoring to provide for the safety of the detained population and to prevent sexual abuse and physical harm of vulnerable detainees.

(13) The Commissioner shall ensure that language-appropriate “Detainee Bill of Rights”, including indigenous languages, are posted or otherwise made available in all areas where detainees are located. The “Detainee Bill of Rights” shall include all rights afforded to the detainee under this Act.

(14) Video from video-monitoring must be preserved for 90 days and the detention facility must maintain certified records that the video-monitoring is properly working at all times.

SEC. 6. COORDINATION AND SURGE CAPACITY.

The Secretary of Homeland Security shall enter into memoranda of understanding with appropriate Federal agencies, such as the Department of Health and Human Services, and applicable emergency government relief services, as well as contracts with health care, public health, social work, and transportation professionals, for purposes of addressing surge capacity and ensuring compliance with this Act.

SEC. 7. TRAINING.

The Commissioner shall ensure that CBP personnel assigned to each short-term custodial facility are professionally trained, including continuing education as the Commissioner deems appropriate, in all subjects necessary to ensure compliance with this Act, including—

- (1) humanitarian response protocols and standards;
- (2) indicators of physical and mental illness, and medical distress in children and adults;
- (3) indicators of child sexual exploitation and effective responses to missing migrant children; and
- (4) procedures to report incidents of suspected child sexual abuse and exploitation directly to the National Center for Missing and Exploited Children.

SEC. 8. INTERFACILITY TRANSFER OF CARE.

(a) **TRANSFER.**—When a detainee is discharged from a medical facility or emergency department, the Commissioner shall ensure that responsibility of care is transferred from the medical facility or emergency department to an accepting licensed health care provider of CBP.

(b) **RESPONSIBILITIES OF ACCEPTING PROVIDERS.**—Such accepting licensed health care provider shall review the medical facility or emergency department’s evaluation, diagnosis, treatment, management, and discharge care instructions to assess the safety of the discharge and transfer and to provide necessary follow-up care.

SEC. 9. PLANNING AND INITIAL IMPLEMENTATION.

(a) **PLANNING.**—Not later than 60 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress a detailed plan delineating the timeline, process, and challenges of carrying out the requirements of this Act.

(b) **IMPLEMENTATION.**—The Secretary of Homeland Security shall ensure that the requirements of this Act are implemented not later than 6 months after the date of enactment.

SEC. 10. CONTRACTOR COMPLIANCE.

The Secretary of Homeland Security shall ensure that all personnel contracted to carry out this Act do so in accordance with the requirements of this Act.

SEC. 11. INSPECTIONS.

(a) **IN GENERAL.**—The Inspector General of the Department of Homeland Security shall—

- (1) conduct unannounced inspections of ports of entry, border patrol stations, and detention facilities administered by CBP or contractors of CBP; and
- (2) submit to Congress, reports on the results of such inspections as well as other reports of the Inspector General related to custody operations.

(b) **PARTICULAR ATTENTION.**—In carrying out subsection (a), the Inspector General of the Department of Homeland Security shall pay particular attention to—

- (1) the degree of compliance by CBP with the requirements of this Act;
- (2) remedial actions taken by CBP; and
- (3) the health needs of detainees.

(c) ACCESS TO FACILITIES.—The Commissioner may not deny a Member of Congress entrance to any facility or building used, owned, or operated by CBP.

SEC. 12. GAO REPORT.

(a) IN GENERAL.—The Comptroller General of the United States shall—

(1) not later than 6 months after the date of enactment of this Act, commence a study on implementation of, and compliance with, this Act; and

(2) not later than 1 year after the date of enactment of this Act, submit a report to Congress on the results of such study.

(b) ISSUES TO BE STUDIED.—The study required by subsection (a) shall examine the management and oversight by CBP of ports of entry, border patrol stations, and other detention facilities, including the extent to which CBP and the Department of Homeland Security have effective processes in place to comply with this Act. The study shall also examine the extent to which CBP personnel, in carrying out this Act, make abusive, derisive, profane, or harassing statements or gestures, or engage in any other conduct evidencing hatred or invidious prejudice to or about one person or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability, including on social media.

SEC. 13. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to authorize CBP to detain individuals for longer than 72 hours.

SEC. 14. DEFINITIONS.

In this Act:

(1) INTERPRETATION SERVICES.—The term “interpretation services” includes translation services that are performed either in-person or through a telephone or video service.

(2) CHILD.—The term “child” has the meaning given the term in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)).

(3) U.S. CUSTOMS AND BORDER PROTECTION FACILITY.—The term “U.S. Customs and Border Protection Facility” includes—

- (A) U.S. Border Patrol stations;
- (B) ports of entry;
- (C) checkpoints;
- (D) forward operating bases;
- (E) secondary inspection areas; and
- (F) short-term custody facilities.

(4) FORWARD OPERATING BASE.—The term “forward operating base” means a permanent facility established by CBP in forward or remote locations, and designated as such by CBP.

Purpose and Summary

H.R. 3239, the “Humanitarian Standards for Individuals in Customs and Border Protection Custody Act,” requires U.S. Customs and Border Protection (CBP) to ensure that its border facilities are equipped to meet and deliver basic humanitarian standards of care for detained individuals, including families and children.

Background and Need for the Legislation

Most Border Patrol facilities and ports of entry were designed to hold adult single men, given that for years the vast majority of individuals apprehended at the Southern border were Mexican men seeking employment opportunities in the United States. Over the last few years, however, the situation at the border has changed with significant numbers of unaccompanied children and family units coming to the border and turning themselves over to CBP. This current fiscal year, apprehensions have spiked compared to recent years.

CBP officials, for example, consider CBP to be “at capacity” when 4,000 individuals are in the agency’s custody at any one time. Between May 14 and June 13, 2019, however, CBP detained more

than 14,000 people per day—and sometimes as many as 18,000.¹ Overall, from March 2019 to June 2019, almost 400,000 individuals were apprehended at the Southern border; more than double the number of apprehensions made during the same period in the previous year.²

So far this fiscal year, CBP has reported the deaths of three children and seven adults in agency custody.³ The conditions that contributed to these tragic incidents should not have come as a surprise. In a December 2018 appearance before the Senate Judiciary Committee, then-CBP Commissioner Kevin McAleenan testified that CBP’s short-term holding facilities are “incompatible” with the increasing migration of family units and unaccompanied children.”⁴

On May 30, 2019, the Department of Homeland Security’s Office of Inspector General (DHS OIG) issued the first of two “Management Alerts” on the conditions experienced by children, families, and adults in the six busiest CBP custody facilities in Texas.⁵ The May 30 Alert primarily focused on dangerous overcrowding of single adults at the Del Norte Processing Center, and documented, among other things, the following concerns:

- On May 7 and 8, some 750 and 900 individuals respectively were detained in a facility with a maximum capacity of 125.
- A cell with a maximum capacity of 12 held 76 detainees; a cell with a maximum capacity of 8 held 41 detainees; and a cell with a maximum capacity of 35 held 155 detainees.
- Border Patrol agents told DHS inspectors that some of the individuals had been held in standing-room-only conditions for days or weeks.
- With limited access to showers and clean clothing, individuals were wearing soiled clothing for days or weeks.
- Individuals were standing on toilets in the cells to make room and gain breathing space, thus limiting access to the toilets.

DHS reviewed and responded to the Alert before it was published, and formal comments were incorporated by DHS OIG. While DHS concurred with the recommendation made to alleviate

¹Dara Lind, *The Horrifying Conditions Facing Kids in Border Detention, Explained*, VOX (June 25, 2019), <https://www.vox.com/policy-and-politics/2019/6/25/18715725/children-border-detention-kids-cages-immigration>; Cedar Attanasio, Garance Burke, *Attorneys: Texas Border Facility is Neglecting Migrant Kids*, Associated Press (June 21, 2019), <https://www.apnews.com/46da2dbe04f54adbb875cfbc06bbc615>.

²Customs and Border Protection, *Southwest Border Migration FY2019*, Dep’t of Homeland Security (last modified July 10, 2019), <https://www.cbp.gov/newsroom/stats/sw-border-migration>; see also David Bier, *Decline in June Border Patrol Apprehensions Tracks Prior Years’ Patterns*, CATO Institute (July 9, 2019), <https://www.cato.org/blog/decline-june-apprehensions-track-prior-years-patterns>.

³ Email received from Megan Ilnicky, Office of Congressional Affairs, Customs and Border Protection, on July 10, 2019 (on file with Committee); see also Camilo Montoya-Galvez, *Top Border Protection Official is “Confident” in Agency’s Data on Migrant Child Deaths*, CBS NEWS (May 23, 2019), <https://www.cbsnews.com/news/migrant-child-deaths-top-customs-and-border-protection-official-is-confident-in-agency-data-on-migrant-child-deaths/>.

⁴Nick Miroff & Robert Moore, *7-year-old Migrant Girl Taken into Border Patrol Custody Dies of Dehydration, Exhaustion*, Washington Post (Dec. 13, 2018), https://www.washingtonpost.com/world/national-security/7-year-old-migrant-girl-taken-into-border-patrol-custody-dies-of-dehydration-exhaustion/2018/12/13/8909e356-ff03-11e8-862a-b6a6f3ce8199_story.html?utm_term=.8d6319c9c800.

⁵DHS Office of Inspector General, *Management Alert—DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center*, Dep’t of Homeland Security, OIG-19-49 (May 30, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>.

overcrowding at the Del Norte Processing Center, it identified November 30, 2020 as the date on which the situation would be corrected. As a result, DHS OIG considered the recommendation open and unresolved, as “DHS’s corrective action is critical to the immediate health and safety needs of detainees, who cannot continue to be held in standing-room-only conditions for weeks until additional tents are constructed.”⁶

On July 2, 2019, DHS OIG issued a second “Management Alert” focused on the dangerous overcrowding and prolonged detention of children and adults at five CBP custody facilities in the Rio Grande Valley.⁷ This Alert documented, among other things, the following concerns:

- Border Patrol was holding about 8,000 detainees in custody at the time of the visit, with 3,400 detainees held longer than the 72 hours generally permitted under the CBP Transport, Escort, Detention, and Search (TEDS) standards.⁸ Of those 3,400 detainees, Border Patrol was holding 1,500 for more than ten days.
- Border Patrol data indicated that 826 (31 percent) of the 2,669 children at these facilities were being held longer than the 72 hours generally permitted under the TEDS standards and the Flores Agreement.⁹
- Of the 1,031 unaccompanied children held at the Centralized Processing Center in McAllen, Texas, 806 had already been processed and were awaiting transfer to HHS custody. Of those 806 children, 165 had been in custody longer than a week.
- Among more than 50 unaccompanied children younger than seven years old, some had been in custody more than two weeks while awaiting transfer.
- Although TEDS standards require CBP to make a reasonable effort to provide a shower for adults after 72 hours, most single adults had not had a shower in CBP custody, despite several being held for as long as a month.
- Most single adults were wearing the same clothes they were wearing when they arrived days, weeks, and even up to a month earlier.

DHS reviewed and responded to the Alert before it was published, and formal comments were incorporated by DHS OIG. DHS responded by citing measures taken to expand CBP’s capacity on the Southern border. DHS OIG recognized the “extraordinary challenges” facing CBP, but stated that it “remained concerned that DHS is not taking sufficient measures to address prolonged deten-

⁶*Id.* at 1.

⁷DHS Office of Inspector General, Management Alert—DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley, Dep’t of Homeland Security, OIG-19-51 (July 2, 2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf.

⁸*Id.*

⁹The *Flores Settlement Agreement* generally prohibits the detention of minors for longer than 72 hours. In the case of an influx of minors, placement should be as expeditious as possible (*Jenny Lissette Flores v. Reno*, Case No. 85-4544-RJK (C.D. CA 1997)). 8 U.S.C. § 1232(b)(3) requires DHS to meet this timeline unless there are “exceptional circumstances.” The *Flores Agreement* also requires facilities that hold minors to provide: (1) access to food and drinking water; (2) medical assistance in the event of emergencies; (3) toilets and sinks; (4) adequate temperature control and ventilation; (5) adequate supervision to protect minors from others; (6) separation from unrelated adults whenever possible; and (7) contact with family members who were arrested with the minor.

tion in CBP custody among single adults. Although an additional 500 beds in the Rio Grande Valley may reduce overcrowding among single adults, DHS must transfer single adults to ICE custody as quickly as possible; within DHS, long-term detention is ICE's responsibility."¹⁰

These reports are troubling, but unfortunately they are not isolated incidents. Members of Congress, doctors, lawyers, and journalists have also documented the disturbing conditions in other facilities in which many children are held. Observations and allegations include children being forced to wear "clothing stained with vomit"¹¹ and to share combs during a lice outbreak.¹² According to members of the American Association of Pediatricians, which met with children in CBP custody in June, "the smell of sweat, urine and feces" was the first thing that hit them when they walked in the door.¹³ In June 2019, the Associated Press (AP) detailed conditions inside a CBP facility in Clint, Texas, where an estimated 250 to 300 children, including some infants, were being held.¹⁴ According to the AP, the facility lacked adequate food, water, and sanitation, while "teen mothers and other younger kids [were] being asked to care for infants and toddlers on their own, with little or no help from any adults."¹⁵

Last week, Vice President Mike Pence visited a Border Patrol station in McAllen, Texas where individuals in CBP custody told reporters they had been there for 40 days, were hungry, and did not have ready access to water.¹⁶ Vice President Pence said he was "not surprised by what he saw" and added, "this is tough stuff."¹⁷

Hearings

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop H.R. 3239: "Dangerous Overcrowding and Prolonged Detention at CBP Facilities," held before the Subcommittee on Immigration and Citizenship on July 15, 2019. The Subcommittee heard testimony from Diana Shaw, Assistant Inspector General for Special Reviews and Evaluation, Office of Inspector General, Department of Homeland Security (DHS). The witness's testimony centered on the two Management Alerts issued by DHS OIG in May and July 2019, discussed above. The witness described in additional detail the overcrowded conditions at the inspected facilities; the prolonged detention of unaccompanied children, families, and adults documented in each re-

¹⁰See *supra* note 7 at 10.

¹¹Simon Romero, 'Don't Talk to Her': We Toured the Troubled Border Station Housing Migrant Children, *The N.Y. Times* (June 26, 2019), <https://www.nytimes.com/2019/06/26/us/migrant-children-border-clint-texas.html>.

¹²Isaac Chotiner, *Inside a Texas Building Where the Government is Holding Immigrant Children*, *The New Yorker* (June 22, 2019), <https://www.newyorker.com/news/q-and-a/inside-a-texas-building-where-the-government-is-holding-immigrant-children>.

¹³Elizabeth Cohen, *Pediatricians Share Migrant Children's Disturbing Drawings of Their Time in US Custody*, *CNN* (July 4, 2019), <https://www.cnn.com/2019/07/03/health/migrant-drawings-cbp-children/index.html>.

¹⁴*A Firsthand Report of 'Inhumane Conditions' at a Migrant Children's Detention Facility*, *PBS Newshour* (June 21, 2019), <https://www.pbs.org/newshour/show/a-firsthand-report-of-inhumane-conditions-at-a-migrant-childrens-detention-facility>.

¹⁵*Id.*

¹⁶Josh Dawsey & Colby Itkowitz, *'This is Tough Stuff': At Texas Detention Facility Pence Sees Hundreds of Migrants Crammed with No Beds*, *Wash. Post* (July 12, 2019), https://www.washingtonpost.com/politics/pence-tours-detention-facilities-at-the-border-defends-administrations-treatment-of-migrants/2019/07/12/993f54e0-a4bc-11e9-b8c8-75dae2607e60_story.html?utm_term=.e7ccf3be4208.

¹⁷*Id.*

port; and the conditions at other facilities mentioned in reports by various media outlets.¹⁸

Committee Consideration

On July 17, 2019, the Committee met in open session and ordered the bill, H.R. 3239, favorably reported with an amendment in the nature of a substitute by a rollcall vote of 18 to 13, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee’s consideration of H.R. 3239:

1. An amendment by Mr. Biggs to amend Section 5 to allow a child to be detained with an adult when the adult is a “parent” instead of an “adult relative” or “relative” was defeated by a roll call vote of 8 to 21.

¹⁸See e.g., *A Firsthand Report of ‘Inhumane Conditions’ at a Migrant Children’s Detention Facility*, PBS Newshour (June 21, 2019), <https://www.pbs.org/newshour/show/a-firsthand-report-of-inhumane-conditions-at-a-migrant-childrens-detention-facility>; Rafael Carranza, *Reports of Misconduct and Sexual Assault of Migrant Kids Surface at Yuma Border Facility*, Arizona Republic (July 9, 2019), <https://www.azcentral.com/story/news/politics/border-issues/2019/07/09/reports-abuse-migrant-kids-surface-yuma-border-facility/1689876001/>.

Roll Call No.

COMMITTEE ON THE JUDICIARY

House of Representatives
116th Congress

Amendment # 5 () to Amend ANS offered by Rep. Biggs

☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		/	
Zoe Lofgren (CA-19)		/	
Sheila Jackson Lee (TX-18)		/	
Steve Cohen (TN-09)		/	
Hank Johnson (GA-04)		/	
Ted Deutch (FL-02)		/	
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		/	
Eric Swalwell (CA-15)		/	
Ted Lieu (CA-33)		/	
Jamie Raskin (MD-08)		/	
Pramila Jayapal (WA-07)		/	
Val Demings (FL-10)			
Lou Correa (CA-46)			
Mary Gay Scanlon (PA-05)		/	
Sylvia Garcia (TX-29)		/	
Joseph Neguse (CO-02)		/	
Lucy McBath (GA-06)		/	
Greg Stanton (AZ-09)		/	
Madeleine Dean (PA-04)		/	
Debbie Mucarsel-Powell (FL-26)		/	
Veronica Escobar (TX-16)		/	
	AYES	NOS	PRES.
Doug Collins (GA-27)	/		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)			
Louie Gohmert (TX-01)	/		
Jim Jordan (OH-04)			
Ken Buck (CO-04)	/		
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	/		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)	/		
Andy Biggs (AZ-05)	/		
Tom McClintock (CA-04)	/		
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)			
Ben Cline (VA-06)		/	
Kelly Armstrong (ND-AL)		/	
Greg Steube (FL-17)	/		
	AYES	NOS	PRES.
TOTAL	8	21	

2. An amendment by Ms. Jackson Lee to: (1) require the preservation of video recordings from monitoring devices for 90 days and to require CBP to maintain certified records that video monitoring equipment is properly working at all times; and (2) ensure that language-appropriate “Detainee Bill of Rights” information is posted or otherwise made available in all areas where detainees are located was passed by a roll call vote of 18 to 12.

Roll Call No.

COMMITTEE ON THE JUDICIARY

House of Representatives
116th CongressAmendment # 6 () to Amend ANS offered by Rep. Jackson Lee☒ PASSED☐ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-02)			
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)			
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)			
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)		✓	
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)		✓	
Ken Buck (CO-04)		✓	
John Ratcliffe (TX-04)		✓	
Martha Roby (AL-02)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Debbie Lesko (AZ-08)		✓	
Guy Reschenthaler (PA-14)		✓	
Ben Cline (VA-06)		✓	
Kelly Armstrong (ND-AL)		✓	
Greg Steube (FL-17)		✓	
	AYES	NOS	PRES.
TOTAL	18	2	

3. An amendment by Mr. Steube to amend Section 9 to provide that the Secretary of Homeland Security ensure that this Act is implemented not later than 6 months after the date of its enactment provided Congress has appropriated an amount of funds sufficient to carry out the Act's requirements was defeated by a roll call vote of 9 to 17.

Roll Call No.

Date: 11-11-11

COMMITTEE ON THE JUDICIARY

House of Representatives

116th Congress

Amendment # 8 () to Amend ANS offered by Rep. Steube

☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)			
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-02)		✓	
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)			
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)			
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	NOS	PRES.
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)			
Louie Gohmert (TX-01)			
Jim Jordan (OH-04)	✓		
Ken Buck (CO-04)	✓		
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)			
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)			
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	9	17	

4. An amendment by Mr. Gaetz to express the sense of Congress that the provisions of the bill require additional resources and personnel for the CBP and that the House of Representatives should pass supplemental funding for the CBP to mitigate the humanitarian crisis at the Southern border and to implement this legislation quickly and effectively was defeated by a roll call vote of 9 to 17.

Roll Call No.

COMMITTEE ON THE JUDICIARY

House of Representatives

116th Congress

Amendment # 9 () to AMENDMENTS offered by Rep. Gaetz

☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		/	
Zoe Lofgren (CA-19)		/	
Sheila Jackson Lee (TX-18)		/	
Steve Cohen (TN-09)		/	
Hank Johnson (GA-04)		/	
Ted Deutch (FL-02)		/	
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)			
Eric Swalwell (CA-15)		/	
Ted Lieu (CA-33)			
Jamie Raskin (MD-08)		/	
Pramila Jayapal (WA-07)		/	
Val Demings (FL-10)			
Lou Correa (CA-46)		/	
Mary Gay Scanlon (PA-05)		/	
Sylvia Garcia (TX-29)		/	
Joseph Neguse (CO-02)		/	
Lucy McBath (GA-06)		/	
Greg Stanton (AZ-09)		/	
Madeleine Dean (PA-04)		/	
Debbie Mucarsel-Powell (FL-26)		/	
Veronica Escobar (TX-16)		/	
	AYES	NOS	PRES.
Doug Collins (GA-27)	/		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)			
Louie Gohmert (TX-01)			
Jim Jordan (OH-04)	/		
Ken Buck (CO-04)	/		
John Ratcliffe (TX-04)	/		
Martha Roby (AL-02)	/		
Matt Gaetz (FL-01)	/		
Mike Johnson (LA-04)	/		
Andy Biggs (AZ-05)	/		
Tom McClintock (CA-04)	/		
Debbie Lesko (AZ-08)	/		
Guy Reschenthaler (PA-14)	/		
Ben Cline (VA-06)	/		
Kelly Armstrong (ND-AL)			
Greg Steube (FL-17)			
	AYES	NOS	PRES.
TOTAL	9	17	

5. Motion to report H.R. 3239, as amended, was agreed to by a roll call vote of 18 to 13.

Roll Call No.

Date: 11 11 11

COMMITTEE ON THE JUDICIARY

House of Representatives
116th CongressFinal Passage on HR 3239 as Amended☒ PASSED☐ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)			
Ted Deutch (FL-02)	✓		
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)			
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)			
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)		✓	
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)			
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)		✓	
Ken Buck (CO-04)		✓	
John Ratcliffe (TX-04)		✓	
Martha Roby (AL-02)		✓	
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Debbie Lesko (AZ-08)		✓	
Guy Reschenthaler (PA-14)		✓	
Ben Cline (VA-06)		✓	
Kelly Armstrong (ND-AL)		✓	
Greg Steube (FL-17)			
	AYES	NOS	PRES.
TOTAL	18	13	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 3239 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3239 would require CBP to ensure that its border facilities are equipped to meet and deliver basic humanitarian standards of care for detained individuals, including families and children.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3239 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1(a) sets forth the short title of the bill as the “Humanitarian Standards for Individuals in Customs and Border Protection Custody Act”. Section 1(b) sets forth the table of contents for the Act.

Sec. 2. Initial Health Screening Protocol. Section 2(a) requires the Commissioner of U.S. Customs and Border Protection (CBP), in

consultation with the Secretary of Health and Human Services, the Administrator of the Health Resources and Services Administration, and nongovernmental experts in the delivery of health care in humanitarian crises and the delivery of health care to children, to develop guidelines for the provision of health screenings and medical care for individuals in CBP custody.

Section 2(b) states that each individual in CBP custody shall receive an in-person screening by a licensed medical professional to assess and identify any illness, condition, or trauma-related symptoms, including the identification of acute conditions and high-risk vulnerabilities, and ensure that appropriate care is provided.

Section 2(c) describes the screening process, which must include: an interview and intake questionnaire; screening of vital signs; screening of blood glucose, for known or suspected diabetics; weight assessment of detainees under 12 years of age; a physical exam; and a risk assessment and the development of a plan for monitoring and care, as appropriate. The medical professional must review any prescribed medications in the possession of the detainee to determine if the medication may be kept by the detainee, stored by CBP for use as prescribed, or maintained with the detainee's property. Detainees may not be denied the use of necessary and appropriate medication to manage an illness.

Section 2(d) states that, in general, detainees are to receive a health screening within 12 hours of arrival at a CBP facility. The following high-priority populations are to receive a health screening within six hours of arrival: detainees who reasonably self-identify as having a medical condition that requires prompt attention; detainees exhibiting signs of acute or potentially severe physical or mental illness, or who otherwise have an acute or chronic physical or mental illness or disability; pregnant women; children; and elderly detainees.

Section 2(e) states that if the initial health screening reveals vital sign measurements significantly outside of normal ranges, or if the detainee is identified as high-risk or in need of medical intervention, the detainee shall be provided with an in-person or technology-facilitated medical consultation with a licensed emergency care professional. The detainee will be re-evaluated within 24 hours and monitored thereafter as determined by an emergency care professional. Detainees must be cleared to travel before they can be transported. Detainees who have experienced physical or sexual violence or who have experienced events that may cause severe trauma or toxic stress shall be provided access to basic psychological assistance.

Section 2(f) requires CBP to provide detainees with interpretation services during the screening and follow-up procedures, and inform detainees that such services are available.

Section 2(g) requires CBP to have chaperones available during medical screenings and examinations in accordance with American Medical Association guidelines.

Section 2(h) requires CBP to document health screenings and any medical care provided, and to provide such documents to an individual who receives a health screening and subsequent medical treatment upon their release from CBP custody.

Section 2(i) requires each CBP facility where detainees are first transported to have: a private space to conduct health screenings

and follow-up care; all necessary equipment to conduct the health screening and follow-up care, to treat trauma, provide emergency care, and prevent the spread of communicable diseases; basic over-the-counter medications for all ages; and transportation to a medical facility in the case of a medical emergency, or an on-call service with the ability to arrive at the CBP facility within 30 minutes.

Section 2(j) requires each CBP facility where detainees are first transported to have at least one licensed medical professional to conduct health screenings on site. Other personnel who are or may be necessary for carrying out the functions described in this section such as licensed emergency care professionals, specialty physicians, interpreters, and chaperones—shall be located on site to the extent practicable, or if not practicable, shall be available on call.

Section 2(k) requires all medical assessments and procedures to be conducted in accordance with ethical guidelines in the applicable medical field and with respect for human dignity.

Sec. 3. Water, Sanitation, and Hygiene. Section 3 requires CBP to ensure that detainees have access to: at least one gallon of drinking water per person per day; a private, safe, clean, and reliable toilet with proper waste disposal and a hand washing station (one toilet per every 12 male detainees; one toilet per every eight female detainees); a clean diaper changing facility; the opportunity to bathe daily in a private and secure shower; products to maintain basic personal hygiene including but not limited to soap, toothbrush, toothpaste, feminine products, and diapers.

Sec. 4. Food and Nutrition. Section 4 requires CBP to provide detainees with access to three meals a day, with accommodations for dietary needs or restrictions (at least 2,000 calories a day for adults and an age- and weight-appropriate number of calories for children under the age of 12).

Sec. 5. Shelter. Section 5 requires CBP to ensure that each facility at which an individual is detained meets the following requirements: (1) males and females shall be detained separately; (2) minor children who arrive with an adult relative or legal guardian shall be detained with the relative or guardian, unless there are safety or security concerns; (3) children who arrive without an adult relative or legal guardian (or who are separated from an adult relative or guardian because of safety or security concerns) shall not be detained with adults; (4) detainees with a temporary or permanent disability shall be held in an accessible location and in a manner that provides safety, comfort, and security, with accommodations provided as needed; (5) detainees may not be placed in a room for any period of time if placement would exceed the room's maximum occupancy level; (6) detainees shall be provided temperature-appropriate clothing and bedding; (7) facilities must be well-lit and ventilated and kept at comfortable temperature levels; (8) detainees who are held more than 48 hours must have outdoor access during daylight hours for 1 hour per day; (9) detainees shall have the ability to practice their religion; (10) detainees shall have access to lighting and noise levels that are safe and conducive for sleeping throughout the night; (11) CBP shall follow medical standards to isolate and prevent communicable diseases and ensure the safety of individuals who identify as lesbian, gay, bisexual, transgender, or intersex; and (12) facilities shall have video-moni-

toring to provide for the safety of detainees and to prevent sexual abuse and physical harm of vulnerable detainees.

Recordings from video monitoring devices shall be preserved for 90 days, and facilities must maintain certified records that video monitoring equipment is properly working at all times. CBP must also ensure that language-appropriate Detainee Bill of Rights information is posted or otherwise made available to detainees.

Sec. 6. Coordination and Surge Capacity. Section 6 requires CBP to enter into memoranda of understanding with appropriate federal agencies and applicable emergency government relief services—as well as contracts with health care, public health, social work, and transportation professionals—to address surge capacity and ensure compliance with the Act.

Sec. 7. Training. Section 7 requires the training of CBP personnel on humanitarian response protocols and standards; indicators of physical and mental illness, and medical distress in children and adults; indicators of child sexual exploitation and effective responses to missing migrant children; and procedures to report incidents of suspected child sexual abuse and exploitation.

Sec. 8. Interfacility Transfer of Care. Section 8 requires CBP to ensure that responsibility of care is transferred from a medical facility or emergency department to a CBP licensed health care provider. The accepting healthcare provider shall review all relevant records from the prior facility to assess the safety of the discharge and transfer, and to provide necessary follow-up care.

Sec. 9. Implementation Plan. Section 9 requires the Secretary of Homeland Security to submit a plan to Congress 60 days after the date of enactment, delineating the timeline, process, and challenges of carrying out these requirements, and to implement the Act's requirements not later than 6 months after the date of enactment.

Sec. 10. Contractor Compliance. Section 10 requires the Secretary of Homeland Security to ensure that contract personnel carry out the Act's requirements.

Sec. 11. Inspections. Section 11 requires the DHS Office of Inspector General to conduct unannounced inspections of CBP ports of entry, border patrol stations, and other detention facilities administered by CBP or CBP contractors and to submit the results and other reports related to custody operations to Congress. No Member of Congress may be denied access to a facility owned or operated by CBP.

Sec. 12. GAO Report. Section 12 requires the Government Accountability Office to commence a study no later than six months after the date of enactment on the management and oversight of ports of entry, border patrol stations, and other CBP detention facilities, as well as the extent to which CBP personnel engage in abusive, profane, or harassing conduct, or other conduct evidencing hatred or prejudice in carrying out the Act, including on social media platforms, and report to Congress within 1 year on the results of the study.

Sec. 13. Rule of Construction. Section 13 states that nothing in this Act may be construed to authorize CBP to detain individuals for longer than 72 hours.

Sec. 14. Definitions. Section 14 defines the following terms: interpretation services; child; and U.S. Customs and Border Protection facility.

Committee Correspondence

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

MIKE ROGERS, ALABAMA
RANKING MEMBER



One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

July 18, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

I write to you regarding H.R. 3239, the "Humanitarian Standards for Individuals in Customs and Border Protection Custody Act."

H.R. 3239 contains provisions that fall within the jurisdiction of the Committee on Homeland Security. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I will not seek a sequential referral of the bill. However, agreeing to waive consideration of this bill should not be construed as the Committee on Homeland Security waiving, altering, or otherwise affecting its jurisdiction over subject matters contained in the bill which fall within its Rule X jurisdiction.

Further, I request your support for the appointment of Homeland Security conferees during any House-Senate conference convened on this or similar legislation. I also ask that a copy of this letter and your response be included in the legislative report on H.R. 3239 and in the *Congressional Record* during floor consideration of this bill.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,


Bennie G. Thompson
Chairman

cc: The Honorable Nancy Pelosi, Speaker
The Honorable Michael Rogers, Ranking Member
The Honorable Tom Wickham, Parliamentarian

JERROLD NADLER, New York
CHAIRMAN

DOUG COLLINS, Georgia
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

July 18, 2019

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
H2-176 Ford House Office Building
Washington, DC 20515

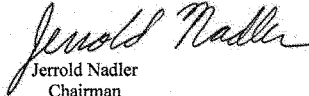
Dear Mr. Chairman:

Thank you for your letter regarding H.R. 3239, the "Humanitarian Standards for Individuals in Customs and Border Protection Custody Act." The House Committee on the Judiciary recognizes that the Committee on Homeland Security has a jurisdictional interest in H.R. 3239, and I appreciate your effort to allow this bill to be considered on the House floor.

I concur with you that forgoing action on the bill does not in any way prejudice the Committee on Homeland Security with respect to its jurisdictional prerogatives on this bill or similar legislation in the future, and I would support your efforts to seek appointment of an appropriate number of conferees to any House – Senate conference involving this legislation.

I will include our letters on H.R. 3239 in the *Congressional Record* during floor consideration of this bill. I look forward to working with you on this legislation and other matters of great importance to this nation.

Sincerely,



Jerrold Nadler
Chairman

c: The Honorable Douglas Collins, Ranking Member
The Honorable Thomas J. Wickham, Jr., Parliamentarian

Dissenting Views

H.R. 3239¹ would impose burdensome—and in many cases impossible—standards of care onto hundreds of U.S. Customs and Border Protection (“CBP”) facilities across the country. As the men and women of CBP confront the realities of an unprecedented crisis, H.R. 3239 would require the provision of extensive medical screenings and follow-up health care at any CBP facility where individuals are detained or transported after their initial encounter with CBP. It would also impose certain standards with respect to facilities, nutrition, and sanitation. The requirements of this bill are onerous, applicable to hundreds of diverse facilities in both urban and remote regions, and would be impossible to implement within the 6 month time-frame required by the bill.

Under H.R. 3239, all aliens entering CBP custody would receive an extensive medical assessment²—essentially a full physical—which must take place in “a private space that provides a comfortable and considerate atmosphere for the patient . . .”³ The assessment must include “an interview and the use of a standardized medical intake questionnaire or the equivalent,” “screening of vital signs, including pulse rate, body temperature, blood pressure, oxygen saturation, and respiration rate,” “screening for blood glucose for known or suspected diabetics,” “weight assessment of detainees under 12 years of age,” “a physical examination,” and “a risk-assessment and the development of a plan for monitoring and care, when appropriate.”⁴ In addition to providing interpreters, CBP must also ensure “chaperones” are present during these screenings.⁵ CBP medical personnel must document these physicals and provide those medical records to detainees upon release or transfer from custody.⁶ These screenings must occur within 12 hours of a detainee’s arrival at a CBP facility, but not later than 6 hours in the case of a “high priority individual.”⁷

In addition to the licensed medical professionals necessary to conduct the initial health screenings, who must be located on site, the bill states the following personnel “*shall be located on site to the extent practicable*” at each CBP facility: “licensed emergency care professionals, specialty physicians (including physicians specializing in pediatrics, family medicine, obstetrics and gynecology, geriatric medicine, internal medicine, and infectious diseases), nurse practitioners, other nurses, physician assistants, licensed social workers, mental health professionals, public health professionals, dietitians, interpreters, and chaperones . . .”⁸ CBP is also required to ensure access to “psychological assistance” for individuals “who have experienced events that may cause severe trauma or toxic stress . . .”⁹ Moreover, CBP facilities are required to have, on location, “[a]ll necessary and appropriate medical equipment and facilities to conduct the health screenings and follow-up care

¹ Amendment in the Nature of a Substitute to H.R. 3239, as amended by the Lofgren Manager’s Amendment, 116th Cong. (Humanitarian Standards for Individuals in Customs and Border Protection Custody Act).

² *Id.* at § 2(c).

³ *Id.* at § 2(i)(1).

⁴ *Id.* at § 2(c)(1).

⁵ *Id.* at §§ 2(f) and (g).

⁶ *Id.* at § 2(h).

⁷ *Id.* at § 2(d).

⁸ *Id.* at § 2(j).

⁹ *Id.* at § 2(e)(3).

required under [Section 2 of the bill], to treat trauma, to provide emergency care, including resuscitation of individuals of all ages, and to prevent the spread of communicable diseases.”¹⁰ CBP is also required to have “[a]ppropriate transportation to medical facilities in the case of a medical emergency, or an on-call service with the ability to arrive at the CBP facility within 30 minutes.”¹¹ CBP would also be required to transport individuals for follow-up care if they are discharged from another medical facility.¹²

During the markup, Republicans pointed out at least some Veterans Affairs hospitals do not have specialty physicians located on site, and referrals can take weeks. Thus H.R. 3239 will ensure better care for some illegal aliens than our military veterans receive.

H.R. 3239 imposes facilities requirements that would limit CBP’s ability to respond to a surge or influx of migrants. The bill states, “No detainee shall be placed in a room for any period of time if the detainee’s placement would exceed the maximum occupancy level”¹³ but also limits the ability to use temporary outdoor facilities by requiring “The facility shall be well lit and well ventilated, with the humidity and temperature kept at comfortable levels (between 68 and 74 degrees Fahrenheit).”¹⁴ This would prevent CBP from being able to use shading structures or other temporary outdoor facilities to house migrants in times of influx.

The bill would also require “private” toilets “with not less than one toilet available for every 12 male detainees, and 1 toilet for every 8 female detainees”,¹⁵ diaper changing stations,¹⁶ “the opportunity to bathe daily in a permanent or portable shower that is *private* and secure,”¹⁷ (emphasis added), and access to certain personal hygiene products.¹⁸ H.R. 3239 also requires CBP to install video-monitoring at all covered facilities, but also requires that CBP provide “lighting and noise levels that are safe and conducive for sleeping” between certain hours.¹⁹ This will require CBP to retrofit facilities with infrared cameras so the facilities can be monitored in low-light levels at night. An amendment accepted by the Democrats at markup will require CBP to post a written “language-appropriate ‘Detainee Bill of Rights,’ including indigenous languages” in all areas where detainees are located which “shall include all rights afforded to the detainee under this bill.”²⁰

Under H.R. 3239, *all* CBP facilities where individuals are taken upon apprehension²¹ would have to comply with the requirements imposed by the bill, including U.S. Border Patrol Stations, ports of entry (including land, sea, and airports), checkpoints, forward operating bases, and secondary inspection areas.²² H.R. 3239 is a one-size-fits-all approach that won’t work. These facilities would have

¹⁰ *Id.* at § 2(i)(2).

¹¹ *Id.* at § 2(i)(4).

¹² *Id.* at § 8.

¹³ *Id.* at § 5(5).

¹⁴ *Id.* at § 5(7).

¹⁵ *Id.* at § 3(2).

¹⁶ *Id.* at § 3(3).

¹⁷ *Id.* at § 3(4).

¹⁸ *Id.* at § 3(5).

¹⁹ *Id.* at § 5(10) and 5(12).

²⁰ Amendment to H.R. 3239 offered by Ms. Jackson Lee of Texas.

²¹ Amendment in the Nature of a Substitute to H.R. 3239, as amended by the Lofgren Manager’s Amendment, 116th Cong. (Humanitarian Standards for Individuals in Customs and Border Protection Custody Act) at § 2(i).

²² *Id.* at § 14(3) (“U.S. Customs and Border Protection Facility” defined).

to have medical staff on hand to conduct initial medical screenings regardless of the number of staff or apprehensions. It is important to note not all CBP facilities are Border Patrol stations or are in urban areas with ready access to medical specialties or emergency services. In fact, many are in remote areas of not just southern border states, but also states such as Alaska, where placement of such personnel would be unfeasible and a waste of funding in times of low border crossing numbers. CBP “facilities” as defined in the bill would include remote checkpoints, very busy international airports, and small port structures that are big enough only to fit a few people.

Very small ports in very remote areas that process only a few individuals per day would have to comply the same way that a port in an urban area would have to comply. CBP already has a difficult time competing with the private sector for their current staff or contracted medical professionals, and this bill would expand those requirements even in geographically remote areas.

It is also important to note CBP may be limited in its ability to unilaterally make required facilities changes. For example, the Government Services Administration (“GSA”) would have to approve changes to certain CBP facilities. When such facilities are collocated at airports or seaports, the port owner’s approval would also be required to approve such changes—which would take significant time.

The cost of compliance with all of H.R. 3239’s requirements is unclear but will be immense, requiring updates to hundreds of CBP facilities, requisition of personnel and equipment, and training²³ for all CBP personnel at covered facilities. This bill would add to the unmet facility needs for CBP (currently around \$3 billion), as CBP would be required to rescope or build on to hundreds of facilities. Also unclear is how it will be paid for as the bill contains no authorization for appropriations. Republicans offered an amendment at markup to require the DHS Secretary to report on the costs of implementation to Congress, and to delay implementation beyond six months²⁴ if Congress has not appropriated sufficient funds to carry out the requirements of the bill. No Democrats voted for the amendment.

H.R. 3239 would also make the border crisis worse by changing a longstanding practice that family units consist of parents/legal guardians and their minor children. Instead, CBP will now be required to consider any “adult relative” of a minor child to be part of a family unit, and the child must be detained with the adult relative “unless such an arrangement poses safety or security concerns.”²⁵ “Adult relative” is undefined. Democrats at the markup claimed it would apply only in the case of a sibling or grandparent, but that’s not what the bill text actually says. Presumably an “adult relative” would include aunts and uncles, or even third cousins twice removed. The *Flores* Settlement Agreement already incentivizes bringing a child to the border to guarantee release into the U.S. interior. H.R. 3239 will expand beyond parents and legal guardians the adults who can now utilize this loophole, allowing distant relatives—or human traffickers posing as distant rel-

²³ *Id.* at § 7.

²⁴ *Id.* at § 9(b).

²⁵ *Id.* at § 5(2).

atives—to use children to gain access to the United States. This requirement will also add to DHS’s responsibility to verify a true family relationship to ensure children are not being trafficked, even though distant family relationships will be harder to verify than those of a parent or legal guardian. Republicans offered an amendment at markup to ensure children were kept together with their parents or legal guardians, and prevent widening this loophole. No Democrats voted for the amendment.

There is a crisis on our southern border caused by an unprecedented influx of individuals. U.S. Border Patrol apprehended 94,897 individuals in June, 132,880 in May, 99,290 in April, and 92,835 in March.²⁶ Whereas prior influxes were primarily comprised of single adult males, the overwhelming majority of current apprehensions consist of family units and unaccompanied alien children. This influx has strained current infrastructure and overwhelmed the men and women of law enforcement who must respond to this crisis. Yet Democrats at the markup claimed the overcrowded conditions at CBP facilities are the result of the administration’s incompetence or deliberate failure to plan for “seasonal” migration flows, and argued the requirements imposed by H.R. 3239 are necessary to prevent the U.S. Government from committing “torture” of children in custody. There is nothing “seasonal” about the current unprecedented influx of migrants overwhelming the system and straining current infrastructure, and the “torture” claim is profoundly irresponsible, disrespectful, and untrue. As Democrats continue to deny the existence of a border crisis and accuse the Trump Administration of committing torture, it is unsurprising that H.R. 3239 is aimed at ameliorating the symptoms of the crisis instead of the root causes.

Given that Democrats are content to blame the Trump Administration for a problem House Democrats refuse to fix, it is unsurprising H.R. 3239 does nothing to address the influx of migrants. H.R. 3239 does not address deficiencies in current U.S. law that act as a pull factor for families and unaccompanied children. It does not reform the asylum system to ensure legitimate claims for protection are quickly adjudicated, while frivolous claims are quickly denied. It does not solve the problems of economic insecurity, corruption, and criminal activity in migrants’ home countries that act as push factors. Instead, it will simply impose unreasonable requirements on CBP, turning their facilities into free hospitals for illegal aliens, while limiting their ability to respond to future influxes—which the bill ensures will undoubtedly occur.

I urge my colleagues to reject this bill.

Sincerely,

DOUG COLLINS,
Ranking Member.



²⁶ Southwest Border Migration FY 2019, U.S. Customs and Border Protection, U.S. Border Patrol Southwest Border Apprehensions FY 2019. Available at <https://www.cbp.gov/newsroom/stats/sw-border-migration>.