

115TH CONGRESS
2D SESSION

H. R. 6361

To establish a Commission tasked with establishing a humane immigration enforcement system, terminate Immigration and Customs Enforcement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2018

Mr. POCAN (for himself, Ms. JAYAPAL, Mr. ESPAILLAT, Mr. SERRANO, Mr. BLUMENAUER, Mr. MCGOVERN, Mr. SMITH of Washington, Ms. VELÁZQUEZ, and Ms. CLARKE of New York) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a Commission tasked with establishing a humane immigration enforcement system, terminate Immigration and Customs Enforcement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Establishing a Hu-
5 mane Immigration Enforcement System Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) In 2003, under the Bush Administration,
4 critical immigration enforcement functions were
5 transferred away from the Department of Justice to
6 the newly created U.S. Immigration Customs and
7 Enforcement (ICE) under the guise of national secu-
8 rity. At the same time, a separate agency, Customs
9 and Border Patrol, was also established with prime
10 responsibility for border security activities.

11 (2) In 2004, the Department of Justice stated,
12 “The primary mission of ICE is to prevent acts of
13 terrorism by targeting the people, money, and mate-
14 rials that support terrorist and criminal activities”.

15 (3) Only a fraction of ICE resources and per-
16 sonnel are dedicated to ICE’s original mission of
17 tracking terrorism and transnational crime syn-
18 dicates domestically and internationally, creating se-
19 rious challenges for national security. The Homeland
20 Security Investigations (HSI) division of ICE, which
21 fights human trafficking, drug smuggling and trade
22 fraud and is critical to national security, has been
23 deprioritized.

24 (4) In June 2018, 19 ICE Homeland Security
25 Investigations Division (HSI) employees, including a
26 majority of special agents in charge of HSI, called

1 on DHS Secretary Nielsen to remove HSI from ICE
2 to improve HSI's ability to function effectively and
3 to stop ICE's reprogramming of HSI funds for En-
4 forcement and Removal Operations. The letter also
5 stated that HSI's work is compromised by the reluc-
6 tance among State and local law enforcement to col-
7 laborate with HSI given ICE's civil immigration en-
8 forcement focus.

9 (5) ICE's work has radically shifted from its
10 "primary mission" of preventing acts of terrorism,
11 as articulated by the Department of Justice in 2004,
12 to carrying out detention and deportation activities
13 as its core focus. Nearly 60 percent of ICE's \$7.1
14 billion budget goes to detention and removal oper-
15 ations. Such removal operations tend to focus on in-
16 dividuals who are being prosecuted simply for illegal
17 entry or re-entry, have no other criminal history and
18 pose no threat to national security. These removal
19 operations have torn apart families and communities
20 and disrupted businesses throughout the country.

21 (6) ICE contracts out billions of taxpayer dol-
22 lars every year to private, for-profit prison compa-
23 nies that have eschewed transparency and account-
24 ability, and operate at significantly higher expense to
25 taxpayers than lower-cost alternatives to detention.

1 As of August 2016, nearly three-quarters of the av-
2 erage daily population in immigration detention were
3 held in facilities operated by private prison compa-
4 nies.

5 (7) Numerous Federal oversight bodies, includ-
6 ing the Government Accountability Office and the
7 DHS Office of the Inspector General, have docu-
8 mented a disregard for congressional oversight and
9 substandard conditions and inhumane treatment of
10 those in ICE detention, which contravene ICE's own
11 standards and Federal and international legal pro-
12 tections. In addition, other credible reports indicate
13 violations of due process, and noncompliance with
14 international and domestic legal protections. ICE de-
15 tention facilities fail to meet ICE's own standards
16 and have no meaningful oversight.

17 (8) The Department of Homeland Security's
18 Office of Inspector General issued a December 2017
19 report cataloguing violations of compliance with ICE
20 detention standards regarding conditions for detain-
21 ees "that undermine the protection of detainees'
22 rights, their humane treatment, and the provision of
23 a safe and healthy environment."

24 (9) A June 2018 report by the DHS OIG titled,
25 "ICE's Inspections and Monitoring of Detention Fa-

1 facilities Do Not Lead to Sustained Compliance or
2 Systemic Improvements” found that “neither the in-
3 spections nor the onsite monitoring ensure con-
4 sistent compliance with detention standards, nor do
5 they promote comprehensive deficiency corrections”
6 and that “ICE does not adequately follow up on
7 identified deficiencies or consistently hold facilities
8 accountable for correcting them, which further di-
9 minishes the usefulness of inspections”.

10 (10) According to an independent analysis by
11 medical experts, more than half of the “detainee
12 death reviews” published by ICE from December
13 2015 to April 2017 show that inadequate medical
14 care contributed or led to the person’s death in ICE
15 detention.

16 (11) Sexual and physical abuse is rampant in
17 ICE custody. Independent analysis of 1,224 com-
18 plaints of sexual and physical abuse in ICE custody
19 filed between 2010 and September 2017 found that
20 over half reported an officer or private detention
21 contractor as the perpetrator of alleged abuses and
22 that the Office of Inspector General investigated
23 only 30 of these complaints. Data on sexual assault
24 in ICE detention found that LGBT people were 97

1 times more likely to be sexually victimized than the
2 general population.

3 (12) ICE has taken measures to destroy
4 records of immigrant abuse in its custody. In July
5 2017, ICE requested that the National Archives and
6 Records Administration approve its timetable for de-
7 stroying records related to sexual assaults, solitary
8 confinement and deaths of people in its custody.

9 (13) ICE subjects asylum seekers to cruel and
10 inhumane conditions. In a November 2014 report,
11 the United Nations Committee Against Torture ex-
12 pressed concern over United States practices of
13 “mandatory detention to automatically hold asylum
14 seekers and other immigrants on arrival in prison-
15 like detention facilities”, and reports of “sub-
16 standard conditions of detention in immigration fa-
17 cilities and use of solitary confinement”, as well as
18 “sexual violence by staff and other detainees”.

19 (14) ICE has not adopted recommendations
20 made by its Advisory Committee on Family Residen-
21 tial Centers, which suggested in a 2016 report that
22 “immigration enforcement practices should opera-
23 tionalize the presumption that detention is generally
24 neither appropriate nor necessary for families—and
25 that detention or the separation of families for pur-

1 poses of immigration enforcement or management
2 are never in the best interest of children”, further
3 recommending that “the general use of family deten-
4 tion” be discontinued.

5 (15) ICE’s actions to force State and local law
6 enforcement to comply with immigration detainer re-
7 quests to hold people in custody without a warrant
8 violate the Fourth Amendment, and immigration en-
9 forcement actions at sensitive locations, including
10 courthouses, hospitals, churches and schools have
11 undermined public trust in the agency.

12 (16) A troubling pattern of ICE pursuing immi-
13 grant rights advocates working within their First
14 Amendment rights suggests the improper targeting
15 of political opponents and threatens bedrock free
16 speech and due process rights.

17 (17) The Government Accountability Office
18 (GAO) has found “a number of inconsistencies and
19 errors in ICE’s calculations for its congressional
20 budget justifications While ICE officials stat-
21 ed their budget documents undergo multiple reviews
22 to ensure accuracy, ICE was not able to provide doc-
23 umentation of such reviews.” The GAO concluded,
24 “ICE is not positioned to ensure the credibility of its
25 budget requests”.

1 (18) Any essential functions carried out by ICE
2 that do not violate fundamental due process and
3 human rights can be executed with greater trans-
4 parency, public accountability, and adherence to do-
5 mestic and international law by other Federal agen-
6 cies.

7 **SEC. 3. ESTABLISHMENT OF COMMISSION TO ADMINISTER**
8 **TRANSITION OF FUNCTIONS.**

9 (a) ESTABLISHMENT.—Within 30 days of the enact-
10 ment of this Act, Congress shall establish and convene the
11 Commission to Study and Establish a Fair and Humane
12 System of Immigration and Customs Enforcement (here-
13 inafter in this Act referred to as the “Commission”).

14 (b) DUTIES.—The Commission shall perform the fol-
15 lowing duties:

16 (1) Identify all essential functions of ICE that
17 uphold the Constitution and maintain high human
18 rights standards pursuant to the Protocol Relating
19 to the Status of Refugees of 1967 and the Inter-
20 national Covenant on Civil and Political Rights and
21 identify the appropriate Federal agencies that shall
22 be tasked with executing activities such as combat-
23 ting financial crimes, cybercrimes, trade fraud,
24 human trafficking and drug smuggling, as well as a
25 plan to transition any such duties.

1 (2) Determine the most effective means of en-
2 suring that all immigration enforcement functions
3 transferred to other Federal agencies maintain strict
4 compliance to the Constitution, Federal laws, the
5 Protocol Relating to the Status of Refugees of 1967
6 and the International Covenant on Civil and Polit-
7 ical Rights, including article 7's prohibition of tor-
8 ture and cruel, inhuman or degrading treatment or
9 punishment.

10 (3) Prior to presenting any recommendation for
11 an existing Federal agency to adopt an immigration-
12 enforcement function deemed essential pursuant to
13 paragraph (1), the Commission shall evaluate and
14 approve the agency's suitability for that function
15 based on such agency's track record of transparency
16 and compliance with its own directives and policies,
17 as well as Federal laws, statutes, and treaty obliga-
18 tions outlined in paragraph (2);

19 (4) Identify appropriate means of ensuring that
20 total Federal employment is not reduced with the
21 abolition of ICE, prioritizing the hiring of personnel
22 to address the legal, health, and social-service needs
23 of detained individuals, those seeking asylum, and
24 those determined to be most vulnerable within the
25 Federal immigration system.

1 (5) Provide recommendations for ensuring that
2 all immigration enforcement carried out by Federal
3 agencies administer asylum requests in a prompt
4 and timely manner, and in full compliance with all
5 relevant Federal statutes and international laws,
6 such as the Protocol Relating to the Status of Refu-
7 gees of 1967 and the Convention Against Torture.

8 (6) The Commission will work with the Depart-
9 ment of Homeland Security's Office of Inspector
10 General to document failures to comply with con-
11 gressional oversight requirements, violations of con-
12 stitutional protections and Federal laws, failures to
13 comply with agency policies and directives, violations
14 of human rights, and any other longstanding pat-
15 terns of medical neglect, solitary confinement,
16 wrongful death, and other abuses for which ICE is
17 wholly or partially responsible, and recommend ap-
18 propriate ways to prevent future violations and edu-
19 cate the American public of the Commission's find-
20 ings.

21 (c) REPORT TO CONGRESS.—The Commission shall
22 submit a written report of its findings and recommenda-
23 tions to the Congress no later than 180 days after the
24 date of the first meeting of the Commission held.

1 (d) CONGRESSIONAL CONSIDERATION OF COMMIS-
2 SION'S REPORT.—The Congress shall consider the Com-
3 mission's findings and recommendations in legislating the
4 transfer of essential immigration-enforcement functions to
5 existing Federal agencies prior to the termination of ICE.

6 **SEC. 4. MEMBERSHIP.**

7 (a) NUMBER AND APPOINTMENT.—The Commission
8 shall be composed of 17 members, who shall be appointed
9 and convene within 30 days after the date of enactment
10 of this Act, as follows:

11 (1) Two members shall be appointed by the
12 Speaker of the House of Representatives.

13 (2) Two members shall be appointed by the
14 House Minority Leader.

15 (3) Two members shall be appointed by the
16 Senate Majority Leader.

17 (4) Two members shall be appointed by the
18 Senate Minority Leader.

19 (5) Nine members shall be selected from the
20 major civil society and immigrants' rights organiza-
21 tions and individuals directly impacted by ICE prac-
22 tices.

23 (b) QUALIFICATIONS.—All members of the Commis-
24 sion shall be persons who are especially qualified to serve
25 on the Commission by virtue of their education, training,

1 activism or experience, particularly in the field of human
2 rights, international law, and constitutional protections.

3 **SEC. 5. TERMINATION OF THE U.S. IMMIGRATION AND CUS-**
4 **TOMS ENFORCEMENT.**

5 On the date no later than 1 year after the enactment
6 of this Act, the U.S. Immigration and Customs Enforce-
7 ment shall terminate.

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