

AMENDMENT NO. _____ Calendar No. _____

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

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 1348

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KERRY

Viz:

1 At the appropriate place in title II, insert the following:
2

3 **SEC. 2 . ARREST AND DETENTION OF ALIENS UNLAW-**
4 **FULLY PRESENT.**

5 (a) ARREST PROCEDURES.—Any immigration en-
6 forcement operation by the Department for alleged viola-
7 tions under the Immigration and Nationality Act (8
8 U.S.C. 1101 et seq.), which is reasonably calculated to ap-
9 prehend, or results in the apprehension of, at least 50

1 aliens, shall be carried out according to the following pro-
2 cedures:

3 (1) STATE NOTIFICATION.—The Department
4 shall provide State officials with sufficient advance
5 notice of the enforcement operation to allow State
6 law enforcement officials to notify the appropriate
7 State social service agencies (referred to in this sec-
8 tion as “SSA”) of—

9 (A) the specific area of the State that will
10 be affected;

11 (B) the languages spoken by employees at
12 the target worksite; and

13 (C) any special needs of the employees.

14 (2) NGO NOTIFICATION.—The Department and
15 the applicable SSA shall determine how appropriate
16 nongovernmental organizations will be notified on
17 the day of the enforcement action. At the discretion
18 of the SSA, representatives of the nongovernmental
19 organization who speak the native language of the
20 aliens detained in the enforcement action may be
21 permitted to participate with SSA officials in inter-
22 viewing such aliens.

23 (3) DETERMINATION OF RISK TO RELATIVES.—
24 The Department shall provide the applicable SSA
25 with unfettered and confidential access to aliens de-

1 tained in the enforcement action to assist in the
2 screening and interviews of aliens to determine
3 whether the detainee, the detainee’s children, or
4 other vulnerable people, including elderly and dis-
5 abled individuals, have been placed at risk as a re-
6 sult of the detainee’s arrest.

7 (4) MEDICAL SCREENING.—After SSA officials
8 have met with the alien detainees, qualified medical
9 personnel from the Division of Immigration Health
10 Services of the Department of Health and Human
11 Services shall—

12 (A) conduct medical screenings of the alien
13 detainees; and

14 (B) identify and report any medical issues
15 that might necessitate humanitarian release or
16 additional care.

17 (5) CONSIDERATION OF RECOMMENDATIONS.—
18 The Department shall immediately consider rec-
19 ommendations made by the applicable SSA and the
20 Division of Immigration Health Services about alien
21 detainees who should be released on humanitarian
22 grounds, including alien detainees who—

23 (A) have a medical condition that requires
24 special attention;

25 (B) are pregnant women;

1 (C) are nursing mothers;

2 (D) are the sole caretakers of their minor
3 children or elderly relatives;

4 (E) function as the primary contact be-
5 tween the family and those outside the home
6 due to language barriers;

7 (F) are needed to support their spouses in
8 caring for sick or special needs children;

9 (G) have spouses who are ill or otherwise
10 unable to be sole caretaker; or

11 (H) are younger than 18 years of age.

12 (6) PUBLICITY.—The Department shall provide,
13 and advertise in the mainstream and foreign lan-
14 guage media, a toll-free number through which fam-
15 ily members of alien detainees may report such rela-
16 tionships to operators who speak English and the
17 majority language of the target population of the en-
18 forcement operation and will convey such informa-
19 tion to the Department and the applicable SSA.

20 (b) DETENTION PROCEDURES.—

21 (1) IN GENERAL.—In order to maximize full
22 and fair visitation by children, immediate family
23 members, and counsel, an alien should be detained,
24 to the extent space is available, in facilities within
25 the physical jurisdiction or catchment area of the

1 local field office of United States Immigration and
2 Customs Enforcement.

3 (2) RELEASE.—

4 (A) IN GENERAL.—Not later than 72
5 hours of an alien's apprehension, the alien shall
6 be released from Department custody, in ac-
7 cordance with subparagraph (B), if the alien—

8 (i) is not subject to mandatory deten-
9 tion under section 235(1)(B)(iii)(IV),
10 236(c), or 236A of the Immigration and
11 Nationality Act (8 U.S.C.
12 1225(1)(B)(iii)(IV), 1226(c), and 1226a);

13 (ii) does not pose an immediate flight
14 risk; and

15 (iii) meets any of the criteria set forth
16 in subsection (a)(5).

17 (B) TYPE OF RELEASE.—An alien shall be
18 released under this paragraph—

19 (i) on the alien's own recognizance;

20 (ii) by posting a minimum bond under
21 section 236(a) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1226(a));

23 (iii) on parole in accordance with sec-
24 tion 212(d)(5)(A) of such Act (8 U.S.C.
25 1182(d)(5)(A)); or

1 (iv) through the Intensive Supervision
2 Appearance Program or another com-
3 parable alternative to detention program.

4 (c) LEGAL ORIENTATION PRESENTATIONS.—Any
5 alien arrested in an immigration enforcement operation
6 that is reasonably calculated to apprehend, or results in
7 the apprehension of, at least 50 aliens shall have access
8 to legal orientation presentations provided by independent,
9 nongovernmental agencies through the Legal Orientation
10 Program administered by the Executive Office for Immi-
11 gration Review.

12 (d) REGULATIONS CONCERNING THE TREATMENT OF
13 ALIENS IN A VULNERABLE POPULATION IN THE UNITED
14 STATES.—Not later than 6 months after the date of the
15 enactment of this Act, the Secretary shall promulgate reg-
16 ulations to implement this section, in accordance with the
17 notice and comment requirements under subchapter II of
18 chapter 5 of title 5, United States Code (commonly re-
19 ferred to as the Administrative Procedure Act).

20 (e) REPORT TO CONGRESS.—The Secretary shall
21 submit an annual report that describes all the actions
22 taken by the Department to implement this section to—
23 (1) the Committee on the Judiciary of the Sen-
24 ate;

1 (2) the Committee on the Judiciary of the
2 House of Representatives;

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

5 (4) the Committee on Homeland Security of the
6 House of Representatives.

7 (f) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated such sums as are nec-
9 essary to carry out this section.