

Protect Citizens and Residents from Unlawful Raids and Detention Act

Section by Section Summary by the American Immigration Lawyers Association

Section 1. Short Title.

Section 2. Findings.

Since 2006 DHS and partnering law enforcement agents have amplified enforcement actions at the workplace, on the street, and in the homes of individuals. As a result, thousands of citizens, residents, and immigrants have been questioned, handcuffed, and detained without adequate protections to safeguard their constitutional rights.

A large majority of children affected by these immigration-related enforcement actions are US citizens, and the youngest and most vulnerable in our society, including infants, toddlers, and preschoolers.

Mistaken identities, bureaucratic mix-ups, and discretionary attitudes further contribute to improper immigration actions taken against citizens, lawful residents and immigrants.

The U.S. should not be a place where citizens and lawful residents are unlawfully detained or mistreated by government agents, and no person in the US should be subject to government actions that overstep basic protections or constitutional rights.

Section 3. Definitions.

This section defines the terms: “Detention”, “Detention Facility”, “Immigration-Related Enforcement Activities” and “Vulnerable Populations”.

Section 4. Protection Against Unlawful Detentions of United States Citizens and Lawful Permanent Residents.

This section outlines steps DHS must undertake to ensure that citizens and legal permanent residents are protected in case they are detained on the basis of a suspected immigration violation during an immigration-related enforcement activity.

(a) Notification: Prior to questioning, ICE officers must advise individuals of the right to be represented at no expense to the Federal Government and that he or she may choose to remain silent and that any statement may be used against him or her in a subsequent proceeding. Any statement obtained by the government from an individual in violation of these requirements shall be inadmissible in the government’s case in chief in any removal proceeding.

(b) Access to Counsel: An individual who is detained during an immigration-related enforcement activity may be represented by legal counsel at anytime at no expense to the government. The bill amends INA § 236 to reflect this requirement. AT the time of detention of an individual for

an immigration violation, ICE officers shall provide the individual with a list of free or low cost legal service organizations near the location of arrest. The official shall certify on the notice to appeal that such a list was provided to the individual.

(c) Notice: Within 48 hours of detention, DHS must file the Notice to Appeal (NTA) with the immigration court closest to where the individual was apprehended (amends INA § 236 to reflect this requirement). Requires DHS to grant a custody determination hearing (for an individual held more than 48 hours) within 72 hours of detention, unless waived within 7 days by an individual who is eligible for immigration benefits or demonstrates eligibility for a defense against removal (amends INA § 236 to reflect this requirement).

(d) Issuance of Detainers: DHS officials may not issue a detainer unless the official has confirmed that the individual who is the subject of the detainer is not a United States citizen, and notes the information collected regarding the individual's alienage on the detainer. The DHS Secretary shall issue regulations requiring DHS officials to confirm an individual's alienage before issuing a detainer by confirming the individual's name, date of birth, fingerprints or other identifying information.

(e) Access to Telephones: Requires DHS officials to provide individuals with free access to a phone for a telephone call no later than 6 hours after the individual's detention.

(f) Protection of Community Institutions: Requires DHS officials to avoid apprehension of persons and tightly control investigative operations in the immediate vicinity of "community institutions" such as schools, places of worship, day care centers, funeral homes, cemeteries, victims services agencies, social service agencies, and hospitals. DHS shall include a statement that no enforcement activity took place in any of the community institutions on the notice to appear. The DHS Secretary shall issue regulations that reflect this requirement.

(g) Transfer of Detainees: Requires the DHS Secretary to issue regulations on procedures governing the transfer of detained individuals that would give substantial weight to: access to legal representation; detainees residence prior to apprehension; location of family members; stage of legal proceedings and proximity of transferee facility to proceedings venue; detainee health and fitness; whether the detainee has a pending USCIS or EOIR application; and whether the detainee has appeared for a merits calendar hearing.

DHS officers must provide detainees with at least 72 hours notice before transferring the detainee to another facility unless exigent circumstances dictate an immediate transfer. DHS may not transfer detainees who have already requested a bond hearing unless exigent circumstances dictate immediate transfer.

DHS may not transfer a detainee who has an existing attorney-client relationship to another facility if such transfer will impair the existing client-attorney relationship or the transfer would prejudice the rights of the detainee in any legal proceedings unless a highly unusual emergency such as a natural disaster dictates immediate transfer.

(h) Training: Requires the DHS Secretary to provide DHS officers and state and local officers involved in the enforcement of immigration law with DHS guidelines and periodic training on immigration law, due process protections, and humanitarian guidelines including the right to access counsel and the appropriate treatment of vulnerable populations and .

Section 5. Safeguards During Enforcement Operations.

To safeguard citizens, residents, legal immigrants, and their families, this section outlines humanitarian guidelines for immigration-related enforcement activities that target more than 50 individuals

(a) Provision of Social Services: Requires DHS to screen all detained individuals to determine if they are citizens, residents or lawfully present aliens. If an individual claims to be a citizen or lawfully present, DHS shall investigate the claim and consider these individuals for release.

Requires DHS to notify state and local child welfare authorities 24 hours before beginning an immigration enforcement activity that will impact more than 50 people, provide those authorities with confidential access to detainees to screen for humanitarian concerns and deliver mental health services, and allow them the discretion to seek assistance from non-governmental organizations if necessary.

Requires DHS to ensure that qualified medical personnel are permitted to conduct medical screenings and identify and report any medical issues that might necessitate humanitarian release or emergency assistance.

Before transferring any individual detained by the Department outside the district where the arrest took place, the Department shall determine whether an individual is a member of a vulnerable population and if the individual should be released.

Provide and advertise a toll free number for family members affected by the enforcement activity which provides information on their detained family members in English and the majority language of the detainees.

Requires DHS to determine if a detainee is the primary caretaker of a child in the US and should be released. DHS officers may not interrogate children or question individuals in the presence of children. DHS may not question, arrest or detain children without the presence or consent of a parent, legal counsel or legal guardian.

One independent certified interpreter who is fluent in Spanish or any language other than English spoken by more than 5 percent of the target population must be available for every five individuals targeted by the operation.

Nonprofit legal service providers may offer free legal services to individuals subject to an immigration-related enforcement activity at the time of arrest or detention of the individual.

Section 6. Conduct in Enforcement Actions.

This section outlines measures to ensure that prior to any enforcement activity ICE determines whether any labor dispute has been registered against the employer, and if so that they take appropriate steps to coordinate any open investigation with the Department of Labor. It requires ICE to ensure that any labor violations discovered during a worksite investigation are reported to the appropriate government labor or employment rights agency and that detained workers are not removed from the country until after that agency has had the opportunity to determine whether legal proceedings against the violating employer are appropriate.

INA Section 274A(e) is amended to add a new subsection regarding coordination with the U.S. Department of Labor or other relevant agencies. The provision states that when an enforcement action is undertaken by the Department of Homeland Security and the Department receives information that there is a labor dispute in progress, or that information was provided to the Department of Homeland Security to retaliate against employees for exercising their employment rights, the Department shall ensure that any aliens who are arrested or detained and are necessary for the prosecution of any labor or employment law violations are not removed from the country without notifying the appropriate law enforcement agency that has jurisdiction over the violations and providing the agency with the opportunity to interview such aliens. The Department shall ensure that no aliens entitled to a stay of removal under this section are removed. Any arrangements for aliens to be held or interviewed shall be made in consultation with the relevant labor and employment law enforcement agencies.

An alien against whom removal proceedings have been initiated pursuant to chapter 4 of Title III of the Immigration and Nationality Act, who has filed a workplace claim or who is a material witness in any pending or anticipated proceeding involving a workplace claim, shall be entitled to a stay of removal and to an employment authorized endorsement unless the Department establishes by a preponderance of the evidence in proceedings before the immigration judge presiding over that alien's removal hearing that: 1) the Department initiated the alien's removal proceeding for wholly independent reasons and not in any respect based on, or as a result of, any information provided to or obtained by the Department from the alien's employer, from any outside source, including any anonymous source, or as a result of the filing or prosecution of the workplace claim; and 2) the workplace claim was filed in a bad faith with the intent to delay or avoid the alien's removal.

Any stay of removal or work authorization issued pursuant to this section shall remain valid and in effect at least during the pendency of the proceedings concerning such workplace claim. The Secretary of Homeland Security shall extend such relief for a period of not longer than 3 additional years upon determining that such relief would enable the alien asserting the workplace claim to be made whole; the deterrent goals of any statute underlying the workplace claim would thereby be served; or such extension would otherwise further the interests of justice.

Section 7. Basic Protections for Vulnerable Populations.

This section outlines measures DHS should take to identify and protect vulnerable populations.

(a) Protection of Vulnerable Populations: DHS must screen each detainee within 72 hours of the commencement of an immigration-related enforcement activity to determine if the individual belongs to a vulnerable population group.

Vulnerable populations include individuals who: have serious medical or mental health needs, are pregnant or nursing, are detained with their children, are under 18 or over 65 years of age, are the victims of abuse or human trafficking, asylum seekers, torture survivors, individuals who have non-frivolous claims to U.S. citizenship and individuals who are eligible for relief under the Immigration and Nationality Act.

(b) Options Regarding Detention Decisions for Vulnerable Populations: Not later than 72 hours after an individual is detained under this section, the individual shall be released from DHS custody and shall not be subject to electronic monitoring if the Department demonstrates that the individual is not subject to mandatory detention; does not pose a flight risk, a risk to others or a risk to the national security of the U.S.; and is a member of a vulnerable population.

An individual shall be released under this section on the individual's own recognizance, by posting a minimum bond, or on parole in accordance with INA 212(d)(5)(A).

Any decision under this paragraph shall be made in writing specify the reasons for such decision and shall be served upon the individual in the language spoken by the individual not later than 72 hours after the commencement of the alien's detention or not later than 72 hours after a positive credible fear or reasonable fear of torture determination.

Any alien detained under this section may request a redetermination of the decision by an immigration judge. All custody decisions by the Secretary shall be subject to redetermination by an immigration judge.

Section 8. Detention Safeguards for Citizens, Nationals, Residents and Immigrants.

This section outlines secure alternative custody programs that DHS must establish to ensure that citizens, legal residents and immigrants are not unlawfully detained. These programs should use a continuum of methods to ensure individuals attend all immigration court proceedings, and should be used for individuals who would otherwise be subject to detention. This section also requires the codification of standards governing the treatment of detainees in DHS custody.

(a) Alternative Custody Programs: If an individual belongs to a vulnerable population group as defined by this statute but does not meet the requirements for parole, release or bond, DHS shall consider the individual for placement in a secure alternative custody program. The Secretary shall determine on an individual basis whether the individual described in this paragraph should be subject to less restrictive forms of custodial detention including electronic monitoring and ankle bracelets.

Requires DHS to shall create community-based alternative to detention programs that will contract with non-governmental organizations (NGOs) to screen detainees, provide noncustodial

appearance assistance services or operate group homes or other forms of community-based alternatives.

The Attorney General shall contract with NGOs to conduct legal orientation services.

(b) Detention Advisory Committee: Requires the DHS Secretary to establish a Detention Advisory Committee to review and revise the guidelines in the Detention Operations Manual based on identifiable deficiencies in the manual and safe and humane detention practices. The committee shall be composed of U.S. government experts and NGO experts on working with detainees, immigrants and vulnerable populations.

The Detention Advisory Committee must issue a report to the DHS Secretary on the results of the review within a year of enactment. DHS must promulgate new regulations governing the humane treatment of detainees based on the committee report within a year of receiving such report.

Section 9. Report on Protections for United States Citizens, Nationals, and Lawful Permanent Residents for Unlawful Detention.

This section requires the DHS Secretary to submit annual reports to congress describing the impact of worksite operations and fugitive operations on United States citizens, lawful permanent residents and other lawfully present individuals.

The report should include: the number of individuals detained during immigration-related enforcement operations; the treatment of detainees and vulnerable populations by ICE officials; DHS compliance with the protocol for humanitarian screening; analysis of the costs of worksite raids; and recommendations for improving worksite and fugitive operations. Authorizes necessary appropriations.

Section 10. Immigration and Customs Enforcement Ombudsman.

This section proposes the creation of the position “Immigration and Customs Enforcement Ombudsman” and outlines the duties and responsibilities of the position.

(a) In General: Amends the Homeland Security Act of 2002 by adding a section creating the position of “Immigration and Customs Enforcement Ombudsman.” The Ombudsman shall report directly to the Assistant Secretary for Immigration and Customs Enforcement.

(b) Functions: Functions of the Ombudsman include: conducting regular and unannounced inspections of detention facilities to determine compliance with relevant policies, procedures, standards, laws and regulations and reporting all findings to the DHS Secretary and Assistant Secretary.

Functions also include: developing procedures for detainees to submit confidential written complaints directly to the Ombudsman; investigating and resolving all complaints related to decisions, recommendations, acts or omissions made by the Assistant Secretary or CBP

Commissioner in the course of custody and detention operations; initiating investigations into allegations of systemic problems at detention facilities; conducting any reviews or audits relating to detention; referring matters where appropriate to the relevant office or agency; and proposing changes in ICE policies or practices to improve treatment of individuals encountered in immigration-related enforcement operations.

Functions also include: establishing a public advisory group composed of government and non-governmental experts on detention and vulnerable populations to provide private sector input into the priorities of the Ombudsman, reviewing current ICE practices, and recommending personnel action based on any finding of noncompliance to be considered by the Assistant Secretary.

(c) Annual Report: Requires the Ombudsman to submit a yearly report to both the House and Senate Committees on the Judiciary on the objectives of the Office of the Ombudsman.

The report must include: a full and substantive analysis of the objectives of the office and statistical information regarding such objectives.

The report must also include: a description of each detention facility found to be in non-compliance with DHS detention standards or other applicable regulations; a description of actions taken by DHS to remedy findings on non-compliance and information regarding whether those actions were successful and resulted in compliance; and a summary of the most pervasive and serious problems encountered by individuals affected by DHS enforcement operations.

Section 11. Rulemaking.

The DHS Secretary shall promulgate regulations to implement this Act and amendments within one year of enactment.

For more information, please contact Kerri Sherlock Talbot at ktalbot@aila.org.