To require the release of most aliens detained by U.S. Immigration and Customs Enforcement during a national emergency related to a communicable disease.

IN THE SENATE OF THE UNITED STATES

Mr. Booker (for himself, Ms. Warren, Ms. Harris, Mr. Sanders, Mrs. Gillibrand, and Ms. Hirono) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To require the release of most aliens detained by U.S. Immigration and Customs Enforcement during a national emergency related to a communicable disease.

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 TITLES.

4 This Act may be cited as the “Federal Immigrant Re-
5 lease for Safety and Security Together Act” or the
6 “FIRST Act”.

7 SEC. 2. DEFINITIONS.

8 In this Act:
(1) COVERED HEALTH CONDITION.—The term “covered health condition”, with respect to an individual, means the individual—

(A) is pregnant;

(B) has chronic lung disease or asthma;

(C) has congestive heart failure, coronary artery disease, or hypertension;

(D) has diabetes;

(E) has epilepsy;

(F) has a neurological condition that weakens the ability to cough;

(G) has human immunodeficiency virus (HIV);

(H) has chronic liver or kidney disease (including hepatitis and dialysis patients);

(I) has blood disorders (including sickle cell anemia);

(J) has inherited metabolic disorders;

(K) had a stroke;

(L) has a developmental delay;

(M) has cancer or has had cancer during the last 12 months;

(N) has a weakened immune system; or

(O) has any other condition identified by the Centers for Disease Control and Prevention
to increase the risk of serious illness from a communicable disease.

(2) COVERED INDIVIDUAL.—The term “covered individual” means an individual who—

(A) is 50 years of age or older;
(B) is 21 years of age or younger; or
(C) has a covered health condition.

(3) ENFORCEMENT ACTION.—The term “enforcement action” means an apprehension or arrest for the purpose of immigration enforcement.

(4) NATIONAL EMERGENCY RELATED TO A COMMUNICABLE DISEASE.—The term “national emergency related to a communicable disease” means—

(A) an emergency involving Federal primary responsibility determined to exist by the President under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191(b)) with respect to a communicable disease; or
(B) a national emergency declared by the President under the National Emergency Act (50 U.S.C. 1610 et seq.) with respect to a communicable disease.
(5) SENSITIVE LOCATION.—The term “sensitive location” means all physical space located within 1,000 feet of—

(A) a medical treatment or health care facility, including a hospital, an office of a health care practitioner, an accredited health clinic, an alcohol or drug treatment center, an emergent or urgent care facility, and a community health center;

(B) a location at which emergency service providers distribute food or provide shelter;

(C) an organization that provides—

(i) disaster or emergency social services and assistance;

(ii) services for individuals experiencing homelessness, including food banks and shelters; or

(iii) assistance for children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities;

(D) a public assistance office, including any Federal, State, or municipal location at which individuals may apply for or receive un-
employment compensation or report violations
of labor and employment laws;

(E) a Federal, State, or local courthouse,
including the office of the legal counsel or rep-
resentative of an individual;

(F) a domestic violence shelter, rape crisis
center, supervised visitation center, family jus-
tice center, or victim services provider;

(G) an office of the Social Security Admin-
istration;

(H) a childcare facility or a school, includ-
ing a preschool, primary school, secondary
school, post-secondary school up to and includ-
ing a college or university, and any other insti-
tution of learning such as a vocational or trade
school;

(I) a church, synagogue, mosque or any
other institution of worship, such as a building
rented for the purpose of a religious service;

(J) the site of a funeral, wedding, or any
other public religious ceremony;

(K) in the case of a jurisdiction in which
a shelter-in-place order is in effect during a
coronavirus public health emergency, any busi-
ness location considered to provide an essential
service, such as a pharmacy or a grocery store;

and

(L) any other location specified by the Secretary of Homeland Security.

**SEC. 3. RELEASE OF CERTAIN COVERED INDIVIDUALS.**

(a) **RELEASE.**—During the period beginning on the date on which a national emergency related to a communicable disease is declared, the Secretary of Homeland Security shall release from detention all covered individuals who are in the custody of U.S. Immigration and Customs Enforcement without requiring any covered individual to post a bond.

(b) **EXCEPTION.**—In carrying out subsection (a), the Secretary—

(1) may not release any individual determined, by clear and convincing evidence, to be likely to pose a specific and substantial risk of causing bodily injury or using violent force against the person of another;

(2) shall place, in the A-file of each individual described in paragraph (1), documentation of the determination described in such paragraph, including the evidence used to make such determination;

(3) not later than 180 days after the date on which the national emergency relating to a commu-
nicable disease expires, shall submit a report to Congress that documents—

(A) the demographic data (including country of origin, race, gender, age, country of origin, the status and basis of removal proceedings, and criminal history) of the individuals denied release pursuant to paragraph (1); and

(B) the justification for such denials; and

(4) may not use the results of any determination under paragraph (1) as evidence in any underlying immigration proceeding.

(e) NOTICE.—The Secretary shall provide notice to nonprofit organizations providing services to immigrants in the communities surrounding a detention facility if more than 25 individuals are released from such facility in a 24-hour period.

SEC. 4. REVIEW OF IMMIGRATION FILES.

(a) MANDATORY REVIEW.—

(1) IN GENERAL.—Notwithstanding any other provision of law that mandates detention, the Secretary of Homeland Security shall determine whether each individual in detention who is not a covered individual will remain in detention for the duration of a national emergency.
(2) PROCESS.—Not later than 7 days after the declaration of a national emergency related to a communicable disease, the Secretary shall establish a process for reviewing the immigration files of all individuals in detention who are not covered individuals, and apply a presumption that aliens should be released based upon the need to significantly reduce the detention population due to the risk of spread of a communicable disease in congregate setting.

(b) EXCEPTIONS.—

(1) IN GENERAL.—In carrying out subsection (a), the Secretary—

(A) may only rebut the presumption of release based on a credible and individualized determination by clear and convincing evidence that—

(i) the use of alternatives to detention, including release on recognizance or parole, will not reasonably ensure the appearance of the individual at removal proceedings; or

(ii) the individual is likely to pose a specific and substantial risk of causing bodily injury or using violent force against the person of another;
(B) may not release an individual with a final order of removal entered against him or her, after all appeals have been exhausted if the removal of such alien is reasonably foreseeable; and

(C) may not use the results of any determination under this section as evidence in any underlying immigration proceeding.

(2) Pending Criminal Charge or Past Convictions.—For purposes of paragraph (1)(A), the Secretary may not justify the continued detention of an individual solely based on the fact that the individual—

(A) has a criminal charge pending against him or her; or

(B) was convicted of a crime more than 5 years previously.

(3) Reasonably foreseeable defined.—

(A) In general.—For purposes of paragraph (1)(C), the removal of an alien is reasonably foreseeable if the Government—

(i) has already obtained travel documents for the alien; or

(ii) can demonstrate, by clear and convincing evidence, that such travel docu-
ments will likely be obtained within 10 days.

(B) EXCEPTION.—For purposes of paragraph (1)(C), the removal of an alien is not reasonably foreseeable if such removal is not likely during the period of the national emergency related to a communicable disease due to—

(i) the unavailability of transportation options to the country of removal; or

(ii) the refusal of the country of removal to accept the repatriation of the alien during such period.

(c) REPORT.—Not later than 180 days after the expiration of the national emergency related to a communicable disease, the Secretary of Homeland Security shall submit a report to Congress that documents—

(1) the demographic data, including country of origin, race, gender, age, country of origin, the status and basis of removal proceedings, and criminal history, of the individuals denied release pursuant to subsection (a); and

(2) the justification for such denials.

SEC. 5. LIMITATION ON INTERIOR ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (c), beginning on the date on which a national emergency
related to a communicable disease is declared and ending
on the date that such national emergency expires, U.S.
Immigration and Customs Enforcement shall take meas-
ures to prevent the spread of the communicable viral dis-
ease by suspending—

(1) the requirement that individuals under su-
ervision or enrolled in Enforcement and Removal
Operations’ Intensive Supervision Appearance Pro-
gram report in-person;

(2) enforcement in sensitive locations without a
valid judicial warrant; and

(3) enforcement actions.

(b) SUSPENSION OF COLLATERAL ARRESTS.—Except
as provided in subsection (c), if an individual, who is only
in violation of civil immigration law, is encountered by
U.S. Immigration and Customs Enforcement, the indi-
vidual may be issued charging documents, but may not
be taken into custody or placed in detention.

(c) EXCEPTION.—The suspensions under subsections
(a)(1), (a)(3), and (b) shall not apply to individuals who
are determined, by clear and convincing evidence, to be
likely to pose a specific and substantial risk of causing
bodily injury or using violent force against another person.
SEC. 6. ACCESS TO TELEPHONIC AND VIDEO COMMUNICATION AND HYGIENE PRODUCTS.

During the period beginning on the date on which a national emergency related to a communicable disease is declared and ending on the date that is 60 days after the expiration of such national emergency, the Secretary shall ensure that—

(1) all persons in the custody of U.S. Immigration and Customs Enforcement—

(A) have access to telephonic or video communication at no cost to the detained individual;

(B) have access to free, unmonitored phone calls, at any time, to contact attorneys or legal service providers in a sufficiently private space to protect confidentiality;

(C) are permitted to receive legal correspondence by fax or email rather than postal mail; and

(D) are provided sufficient soap, hand sanitizer, and other hygiene products; and

(2) nonprofit organizations providing legal orientation programming or know-your-rights programming to immigrants are permitted broad and flexible access—
(A) to provide group presentations by video-conference; and

(B) to schedule and receive free calls or televideo conferences from individuals in custody for individual orientations.

SEC. 7. EXPIRATION OF NATIONAL EMERGENCY RELATED TO A COMMUNICABLE DISEASE.

(a) In General.—Any individual who has been granted release from immigration detention under this Act may not be redetained solely as a result of the expiration of the national emergency related to a communicable disease.

(b) Grounds for Redetention.—Upon the expiration of the national emergency related to a communicable disease, the Secretary of Homeland Security may not redetain a covered individual who was released from detention pursuant to section 3 unless the Secretary, in consultation with the Director of U.S. Immigration and Customs Enforcement, determines, by clear and convincing evidence, including credible and individualized information, that—

(1) the use of alternatives to detention, including release on recognizance or parole, will not reasonably ensure the appearance of the covered individual at removal proceedings; or
(2) the covered individual is a threat to another person or the community.

(c) PENDING CRIMINAL CHARGE OR PAST CONVICTIONS.—For purposes of subsection (b), the Secretary may not justify the redetention of a covered individual solely based on the fact that the individual—

(1) has a criminal charge pending against him or her; or

(2) was convicted of a crime more than 5 years previously.