To temporarily suspend certain immigration enforcement activities during disease-related emergencies.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To temporarily suspend certain immigration enforcement activities during disease-related emergencies.

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 “Immigration Enforce-
5 ment Moratorium Act”.

6 SEC. 2. SENSE OF CONGRESS.

7 It is the sense of Congress that—

8 (1) during the COVID–19 pandemic, many im-
9 migration enforcement activities have needlessly en-
dangered public health, including the health of enforcement officers and members of the community;

(2) continued arrests and apprehensions—

(A) prevent immigrant communities from accessing necessary services for their health and well being; and

(B) risk increasing the immigration detention population at a time when the number of people in immigration detention must urgently be reduced;

(3) Department of Homeland Security medical experts estimate that between 75 and 100 percent of the people detained in many immigration detention centers across the country may contract COVID–19 unless such centers are drastically depopulated;

(4) other in-person activities, including check-ins and removal hearings, create significant public health risks;

(5) the National Association of Immigration Judges, a union of U.S. Immigration and Customs Enforcement trial attorneys, and the American Immigration Lawyers Association have all urged the Department of Justice to cease all in-person removal proceedings, citing expert guidance that continuing
in-person removal proceedings during the pandemic is “irresponsible”;

(6) deportations risk spreading COVID–19 to neighboring countries, where the virus will devastate already limited health systems and create untold harm;

(7) the United States has already sent individuals who tested positive for COVID–19 to at least 8 countries;

(8) a consortium of United Nations migration and human rights organizations has called on all countries in the global community to halt all forced removals during the pandemic, noting that “[f]orced returns can intensify serious public health risks for everyone – migrants, public health officials, health workers, social workers, and both host and origin communities”;

(9) expulsions at the border—

(A) violate longstanding, congressionally mandated protections for asylum-seekers; and

(B) fail to protect public health;

(10) the Office of the United Nations High Commissioner for Refugees has declared that—
(A) countries cannot enact “blanket measure[s] to preclude the admission of refugees or asylum-seekers”; and

(B) any such “measures must be non-discriminatory as well as necessary, proportionate and reasonable to the aim of protecting public health”;

(11) leading public health experts have urged United States officials to withdraw the order enabling mass expulsion of asylum seekers, noting border expulsions fail to further public health and implicate serious human rights concerns;

(12) border crossing prosecutions have been suspended in several border districts because they are incompatible with public health;

(13) the Department of Homeland Security continues to refer people for prosecutions in some districts for violations of section 276 of the Immigration and Nationality Act (8 U.S.C. 1326); and

(14) people continue to be unnecessarily held in pre-trial detention facilities where COVID–19 has spread.

SEC. 3. TEMPORARY SUSPENSION OF IMMIGRATION ENFORCEMENT.

(a) DEFINITIONS.—In this section:
(1) NONCITIZEN.—The term “noncitizen” means any individual who is not a citizen or national of the United States.

(2) PUBLIC HEALTH EMERGENCY.—The term “public health emergency” means—

(A) a national 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;

(B) a national emergency declared by the President under sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1621 and 1631) with respect to a communicable disease;

(C) a national public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d); or

(D) a global pandemic declared by the World Health Organization.

(b) SUSPENDED IMMIGRATION ENFORCEMENT ACTIVITIES.—

(1) IN GENERAL.—Except as provided in subsection (d), during a public health emergency, the
Secretary of Homeland Security shall suspend all immigration enforcement-related activities in the United States, including—

(A) removals of noncitizens from the United States;

(B) arrests and apprehensions by U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection of noncitizens who are physically present in the United States;

(C) required meetings with Enforcement and Removal Operations (commonly known as “ICE check-ins”);

(D) service of Notices to Appear; and

(E) referrals for prosecution under section 275 or 276 of the Immigration and Nationality Act (8 U.S.C. 1325 and 1326).

(2) INDIVIDUALS IN DETENTION WHO HAVE RECEIVED REMOVAL ORDERS.—Notwithstanding section 241(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(2)), individuals in detention who have received removal orders shall be released on orders of supervision.

(e) BORDER PROCESSING.—

(1) IN GENERAL.—Notwithstanding section 217 of the Immigration and Nationality Act (8 U.S.C.
1187) or any other provision of law, any noncitizen applying for admission at a port of entry on or after the date on which the public health emergency went into effect who is deemed inadmissible or who is apprehended by U.S. Customs and Border Protection within 14 days after crossing the international border into the United States without authorization on or after the date on which the public health emergency went into effect, shall, if he or she presents a claim to relief under the immigration laws and is not otherwise subject to the exception described in subsection (d), be paroled into the United States pursuant to section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)).

(2) REMOVAL PROCEEDINGS.—If the Department of Homeland Security initiates removal proceedings against a noncitizen described in paragraph (1), such proceedings shall take place in accordance with section 240 (8 U.S.C. 1229a).

(d) EXCEPTION.—

(1) IN GENERAL.—Subsection (b) and the parole provision under subsection (c) shall not apply if the Federal official authorized to carry out an immigration enforcement activity described in either such subsection has clear and convincing evidence, based
on credible and individualized information, that the noncitizen is a threat to another person or the community.

(2) PRIOR CONVICTION.—A prior conviction or pending criminal charge against the noncitizen described in paragraph (1) may not be the sole factor to justify carrying out an otherwise prohibited immigration enforcement activity described in subsection (b) or granting parole pursuant to subsection (c).

(3) JUDICIAL REVIEW.—A noncitizen described in paragraph (1) is entitled to immediate de novo review of the Federal official’s determination in—

(A) the United States District Court for the District of Columbia; or

(B) any Federal district court satisfying the venue requirements described in section 1391 of title 28, United States Code.

(e) UNLAWFUL PRESENCE.—During the public health emergency, the accrual of unlawful presence under subparagraphs (B)(i)(I) and (C)(i)(I) of section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)) shall be suspended for any noncitizen who resided in the United States on or before the date on which the public health emergency went into effect.
(f) Immigration Court Proceedings.—During the period beginning on the date on which a public health emergency is in effect in any State of territory of the United States and ending on the date that is 30 days after the date on which the public health emergency is terminated, the Attorney General shall—

(1) suspend all in-person immigration court proceedings;

(2) establish a procedure for conducting custody determination hearings for detained individuals to appear telephonically or by video teleconference, which shall permit—

(A) attorneys and representatives to appear telephonically or by video teleconference; and

(B) supporting documents to be faxed, emailed, or otherwise electronically transmitted to the appropriate court clerk;

(3) suspend all immigration court proceedings not described in paragraph (2), except that cases involving individuals who are detained may proceed if the respondent and his or her counsel or representative requests in writing that the immigration court proceedings move forward telephonically or by video teleconference;
(4) issue a blanket extraordinary circumstances exception for 1 year asylum filing deadlines; and
(5) toll any deadline imposed by statute, regulation, local rule, standing order, or policy guidance requiring the appearance or other action by the respondent unless the respondent or the respondent’s counsel or legal representative submits a written request to the contrary.

(g) LIMITATION ON USE OF FEDERAL FUNDS FOR RELIANCE ON ULTRA-VIRES AUTHORITY.—Federal funds may not be used by the Department of Homeland Security to expel, pursuant to section 362 or 365 of the Public Health Service Act (42 U.S.C. 265 and 268), any noncitizen who—

(1) is present in the United States;
(2) entered or is entering the United States at a port of entry; or
(3) crossed or is crossing the United States border between ports of entry.

(h) DURATION.—

(1) IN GENERAL.—Subsections (b), (c), (e), and (f) shall remain in effect throughout the duration of a public health emergency and for at least 30 days after the public health emergency is no longer in effect.
(2) REMOVALS.—If an emergency referred to in subsection (a)(2)(D) is declared, removals shall further remain suspended to a receiving country until the Secretary of Homeland Security and the Secretary of State each certify in writing to Congress that the country—

(A) has demonstrated evidence of diminishing cases and risk of community transmission; and

(B) has public health infrastructure that is able to adequately handle the return of its nationals.

(i) SAVINGS PROVISION.—Nothing in this section may be construed to alter the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110–457).