

119TH CONGRESS
2D SESSION

S. _____

To improve immigration enforcement transparency, preserve civil rights, and improve the accountability of immigration enforcement personnel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To improve immigration enforcement transparency, preserve civil rights, and improve the accountability of immigration enforcement personnel, 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 TITLES.**

4 This Act may be cited as the “Oversight, Protection,
5 and Enforcement Notification Act” and “OPEN Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this section:

8 (1) **CHOKEHOLD OR CAROTID HOLD.**—The term
9 “chokehold or carotid hold” means the application of

1 any pressure to the throat or windpipe, the use of
2 maneuvers that restrict blood or oxygen flow to the
3 brain, or carotid artery restraints that prevent or
4 hinder breathing or reduce intake of air of an indi-
5 vidual.

6 (2) CONDUCT EXCEEDING AUTHORIZED AU-
7 THORITY.—The term “conduct exceeding authorized
8 authority” means any action taken without legal au-
9 thorization, outside the scope of assigned duties, or
10 in violation of Federal law, regulation, or Depart-
11 ment of Homeland Security policy, including—

12 (A) conducting a stop, search, entry, ar-
13 rest, or detention without legal authority, a
14 valid warrant, or required supervisory approval;

15 (B) misrepresenting identity, authority, or
16 purpose to gain compliance or entry;

17 (C) conducting enforcement activity out-
18 side an assigned geographic area, mission
19 scope, or operational plan;

20 (D) using unapproved tactics, equipment,
21 or vehicles, including failure to comply with
22 identification or uniform requirements;

23 (E) acting in violation of constitutional
24 protections, civil rights laws, or court orders;
25 and

1 (F) any action involving sexual violence.

2 (3) EXCESSIVE FORCE.—The term “excessive
3 force” means the use of physical force or weapons
4 beyond what is objectively reasonable and necessary,
5 including—

6 (A) discharging or brandishing a firearm
7 at any individual or vehicle;

8 (B) using a chemical agent, a conducted
9 energy device, a baton, or an impact weapon;

10 (C) any action involving a physical take-
11 down, a chokehold, or the placement of an indi-
12 vidual on the ground;

13 (D) using restraints or force resulting in
14 bodily injury, hospitalization, or death; and

15 (E) using deadly force to incapacitate a
16 subject.

17 (4) MEMBER OF CONGRESS.—The term “Mem-
18 ber of Congress” includes any Senator, Representa-
19 tive, Delegate, or Resident Commissioner of the
20 United States Congress.

21 **SEC. 3. IMPROVING IMMIGRATION ENFORCEMENT TRANS-**
22 **PARENCY.**

23 (a) ACCESS TO IMMIGRATION DETENTION FACILI-
24 TIES.—

1 (1) IN GENERAL.—The Secretary of Homeland
2 Security shall ensure that all Members of Congress
3 are given unrestricted access, without advance no-
4 tice, to all immigration detention facilities used or
5 operated by the Department of Homeland Security,
6 including facilities operated by U.S. Immigration
7 and Customs Enforcement or U.S. Customs and
8 Border Protection, regional processing centers, field
9 offices, State-run facilities, and privately operated or
10 contracted facilities, regardless of the source of
11 funding for such facilities.

12 (2) SCOPE OF ACCESS.—Access to immigration
13 detention facilities required under paragraph (1)
14 shall include—

15 (A) access to all of the areas in such facili-
16 ties;

17 (B) the ability to speak privately with de-
18 tained individuals and facility personnel on the
19 same day as the visit and without prior author-
20 ization;

21 (C) the ability to observe conditions of con-
22 finement and compliance with applicable Fed-
23 eral law, regulations, and standards; and

24 (D) the ability of a Member of Congress,
25 a State or local elected official, or a representa-

1 tive of a local health and safety agency to be
2 accompanied by congressional staff and, at the
3 discretion of the Member, official, or represent-
4 ative, subject matter experts, including medical
5 professionals, legal experts, interpreters, and
6 other individuals who such Member, official, or
7 representative considers necessary to assist in
8 evaluating facility conditions and compliance
9 with applicable laws and standards.

10 (3) ACCESS FOR LEGAL COUNSEL, FAITH LEAD-
11 ERS, AND FAMILY MEMBERS.—The Secretary of
12 Homeland Security shall ensure that detained indi-
13 viduals have timely and reasonable access to legal
14 counsel, faith leaders, and family members, includ-
15 ing the ability to communicate privately and in per-
16 son whenever practicable, subject only to narrowly
17 tailored limitations that are necessary to protect the
18 safety and security of the facility in which such indi-
19 viduals are detained.

20 (4) PROHIBITION ON DELAY OR DENIAL.—

21 (A) IN GENERAL.—The operator of an im-
22 migration detention facility may not delay, con-
23 dition, restrict, or deny access to such facility
24 to a Member of Congress on the basis of staff-

1 ing limitations, operational considerations, con-
2 tractual arrangements, or facility designation.

3 (B) NOTICE.—Not later than 72 hours
4 after discovering that a Member of Congress’
5 access to an immigration detention facility was
6 delayed or denied for any reason, the Director
7 of U.S. Immigration and Customs Enforcement
8 or the Commissioner of U.S. Customs and Bor-
9 der Protection shall submit a detailed report
10 identifying the reasons for such delay and de-
11 nial and describing the steps that will be taken
12 to prevent future delays or denials to—

13 (i) the Committee on Appropriations
14 of the Senate;

15 (ii) the Committee on Homeland Se-
16 curity and Governmental Affairs of the
17 Senate;

18 (iii) the Committee on the Judiciary
19 of the Senate;

20 (iv) the Committee on Appropriations
21 of the House of Representatives;

22 (v) the Committee on Homeland Secu-
23 rity of the House of Representatives;

24 (vi) the Committee on the Judiciary of
25 the House of Representatives; and

1 (vii) the Office of Inspector General of
2 the Department of Homeland Security.

3 (5) CONSEQUENCES FOR REPEATED NON-
4 COMPLIANCE.—

5 (A) IN GENERAL.—If access to an immi-
6 gration detention facility is delayed or denied to
7 2 or more Members of Congress in violation of
8 this subsection during any fiscal year, the Sec-
9 retary of Homeland Security shall ensure that
10 any officer, employee, or contractor of the De-
11 partment of Homeland Security who knowingly
12 delays, restricts, or denies access to such a fa-
13 cility in violation of this subsection is subject to
14 appropriate administrative or contractual dis-
15 ciplinary action.

16 (B) NOTIFICATION.—The Secretary shall
17 notify the committees listed in paragraph
18 (4)(B) not later than 48 hours after deter-
19 mining a violation described in subparagraph
20 (A) has occurred.

21 (6) RULE OF CONSTRUCTION.—Nothing in this
22 subsection may be construed to limit the authority
23 of Congress to impose additional requirements or re-
24 strictions through appropriations Acts or other legis-
25 lation.

1 (b) PUBLIC REPORTING REQUIREMENTS.—The Sec-
2 retary of Homeland Security shall track and publicly re-
3 port, on an aggregated basis without including personally
4 identifiable information of those involved, all allegations
5 and incidents in which immigration enforcement officers
6 or agents, during an immigration enforcement operation
7 or while an individual is detained by the Department of
8 Homeland Security—

9 (1) used excessive force to carry out their objec-
10 tive;

11 (2) engaged in conduct exceeding authorized
12 authority;

13 (3) detained a United States citizen; or

14 (4) mistakenly detained or arrested an indi-
15 vidual who should not have been detained or ar-
16 rested;

17 (5) perpetrated sexual assault, abuse, or har-
18 assment; or

19 (6) engaged in other misconduct.

20 (c) DETENTION ACCOUNTABILITY AND GRIEVANCE
21 PROCEDURES.—

22 (1) GRIEVANCE PROCESS.—The Secretary of
23 Homeland Security shall ensure that each immigra-
24 tion detention facility used or operated by the De-
25 partment of Homeland Security or its contractors

1 maintains a confidential and accessible grievance
2 process through which detained individuals may re-
3 port grievances regarding—

4 (A) the use of excessive force;

5 (B) violations of Federal law, detention
6 standards, or Department policy;

7 (C) threats, intimidation, retaliation, or
8 abuse by facility personnel; or

9 (D) sexual assault, abuse, or harassment.

10 (2) ACCESSIBILITY REQUIREMENTS.—The
11 grievance process required under paragraph (1)
12 shall—

13 (A) be available in all languages commonly
14 spoken by detained individuals;

15 (B) permit grievances to be filed orally or
16 in writing;

17 (C) allow detained individuals to submit
18 grievances without interference or retaliation;

19 and

20 (D) provide timely review and resolution of
21 such grievances.

22 (3) ACCOUNTABILITY FOR EXCESSIVE FORCE
23 OR MISCONDUCT.—If an investigation conducted by
24 the Department of Homeland Security, the Office of
25 Inspector General of the Department, the Office of

1 Professional Responsibility of the Department, U.S.
2 Immigration and Customs Enforcement, a local field
3 office, or any other authorized investigative entity
4 determines that an officer, employee, or contractor
5 used excessive force against a detained individual,
6 the head of the agency with jurisdiction over the fa-
7 cility shall ensure that such individual—

8 (A) is immediately removed from duties in-
9 volving the supervision, custody, or transport of
10 detained individuals at the facility at which the
11 incident occurred; and

12 (B) is not permitted to return to perform
13 such duties.

14 (4) SEXUAL ABUSE AND ASSAULT PREVENTION
15 AND INTERVENTION PROGRAM.—Not less frequently
16 than annually, the Secretary of Homeland Security
17 shall publish facility-specific information for each
18 immigration detention facility regarding each facili-
19 ty's compliance with U.S. Immigration and Customs
20 Enforcement's Sexual Abuse and Assault Prevention
21 and Intervention Program, including—

22 (A) the number of allegations of sexual
23 abuse or harassment reported at such facility;

24 (B) the status and outcome of investiga-
25 tions into such allegations;

1 (C) whether the facility was found compli-
2 ant with applicable standards under the Sexual
3 Abuse and Assault Prevention and Intervention
4 Program; and

5 (D) any corrective actions required and the
6 status of such actions.

7 **SEC. 4. PRESERVING CIVIL RIGHTS.**

8 (a) USE OF FORCE.—In carrying out immigration en-
9 forcement operations, immigration enforcement officers
10 and agents may not use excessive force.

11 (b) DETAINEE RIGHTS.—The Secretary of Homeland
12 Security shall ensure, after an immigration enforcement
13 officer or agent detains any individual—

14 (1) a member of such individual’s immediate
15 family, as determined by the detained individual, is
16 notified of such detention by the Department of
17 Homeland Security not later than 5 hours after the
18 commencement of such detention;

19 (2) such individual is guaranteed access to at
20 least 1 phone call within 5 hours after the com-
21 mencement of the detention;

22 (3) such individual is guaranteed reasonable ac-
23 cess to legal counsel and a faith leader not later
24 than 12 hours after the commencement of the deten-

1 tion and periodically thereafter, either in person or
2 through telephonic communication; and

3 (4) such individual is guaranteed reasonable ac-
4 commodations to facilitate the signing of any nec-
5 essary legal documentation.

6 (c) MEDICAL AND MENTAL HEALTH SERVICES.—

7 The Secretary of Homeland Security shall ensure that—

8 (1) after an immigration enforcement officer or
9 agent detains any individual, such individual is pro-
10 vided timely medical and mental health services, in-
11 cluding access to emergency care and chronic condi-
12 tion management, in accordance with the standards
13 established under the National Detention Standards
14 and the Performance-Based National Detention
15 Standards;

16 (2) any individual in detention with care pro-
17 vided by the Department of Veterans Affairs should
18 have access to health care services provided by the
19 Department of Veterans Affairs;

20 (3) if an individual described in paragraph (1)
21 is transferred to a hospital or emergency room—

22 (A) the individual's legal counsel or des-
23 igned representative is immediately notified;
24 and

1 (B) family members or a designated emer-
2 gency contact are notified of the location of
3 such hospital or emergency room as soon as
4 practicable; and

5 (4) procedures are implemented to allow family
6 members or legal representatives of such individuals
7 to drop off valid prescription medications and nec-
8 essary medical devices for use in detention facilities,
9 including CPAP machines, mobility aids, and glu-
10 cose monitors, for the individual's use after such
11 items are cleared through standard security and
12 medical review.

13 (d) TRANSPORTATION AND TRANSFERS.—

14 (1) NOTICE OF TRANSFER.—Not later than 24
15 hours after any detained individual is transferred to
16 another detention facility, the head of the facility
17 housing the individual shall notify the individual's
18 legal counsel, designated representative, and next of
19 kin, as applicable, of—

20 (A) the specific name and address of the
21 facility to which the individual has been trans-
22 ferred; and

23 (B) the direct contact information for such
24 facility, including a primary phone number and

1 a point of contact for inquiries from the family
2 and legal representative of such individual.

3 (2) JUSTIFICATION FOR TRANSFER.—

4 (A) IN GENERAL.—Before any transfer de-
5 scribed in paragraph (1), the Director of the fa-
6 cility or the field office shall provide a written
7 justification to the detained individual and such
8 individual’s legal counsel detailing the specific
9 administrative or safety reason for such trans-
10 fer, such as medical necessity, facility capacity,
11 or specialized housing requirements.

12 (B) MEDICAL TRANSFER SUMMARIES.—
13 The Director of the facility from which a de-
14 tained individual is being transferred shall pro-
15 vide a medical transfer summary with respect
16 to such individual to the receiving facility.

17 (C) OBSERVATIONS.—Officers involved in
18 the transfer of detained individuals between de-
19 tention facilities shall share with the receiving
20 facility any observations suggesting the de-
21 tained individual—

22 (i) has engaged in self-injurious be-
23 havior; or

24 (ii) has expressed a desire to harm
25 himself or herself during such transfer.

1 (D) SPECIALTY CARE.—A detained indi-
2 vidual in need of specialty care may not be
3 transferred to a detention facility that lacks the
4 resources to provide such care unless such re-
5 sources may be easily procured from a nearby
6 hospital, clinic, or doctors' office.

7 (3) BED AVAILABILITY AND FACILITY STAND-
8 ARDS.—A transfer described in paragraph (1) may
9 not occur unless the Director of both the originating
10 and receiving detention facilities attest that—

11 (A) a dedicated bed and appropriate hous-
12 ing space are available at the destination facil-
13 ity to which the individual is being transferred;
14 and

15 (B) such destination facility meets all ap-
16 plicable Federal detention standards, including
17 having the medical and mental health resources
18 to maintain the individual's continuity of care.

19 (4) ADDITIONAL DETENTION STANDARDS.—All
20 transfers of detained individuals shall comply with
21 all applicable standards established by the Secretary
22 of Transportation, including—

23 (A) minimum protections during transport,
24 including—

1 (i) the use of seatbelts or secure seat-
2 ing for all individuals during vehicle move-
3 ment;

4 (ii) prohibition on transport in over-
5 crowded conditions or standing-room con-
6 figurations; and

7 (iii) access to adequate ventilation,
8 temperature control, food, drinking water,
9 and necessary medications; and

10 (iv) for individuals who are restrained
11 or shackled—

12 (I) the application or adjustment
13 of such restraints shall allow the indi-
14 vidual the physical range of motion
15 necessary to safely drink water and
16 consume food without assistance; or

17 (II) if the security level of the re-
18 straint prevents the individual from
19 self-feeding or self-drinking, the provi-
20 sion of direct, safe assistance to en-
21 sure the individual is able to eat and
22 drink fully and comfortably;

23 (B) regular bathroom breaks, including—

1 (i) access to restroom facilities not
2 less frequently than once every 2 hours
3 during transport;

4 (ii) reasonable accommodations for
5 children, elderly individuals, pregnant
6 women, and individuals with medical condi-
7 tions; and

8 (iii) mandatory reasonable accom-
9 modations for individuals with physical,
10 sensory, intellectual, or mental health dis-
11 abilities, including the provision of vehicles
12 and communication assistance in full com-
13 pliance with the Americans with Disabil-
14 ities Act of 1990 (42 U.S.C. 12101 et
15 seq.); and

16 (C) safety protocols, including—

17 (i) medical screening before transport
18 to identify health risks, disabilities, or spe-
19 cial needs;

20 (ii) continuous monitoring of individ-
21 uals during transport by trained personnel;

22 (iii) prohibiting the use of restraint
23 methods that impede breathing, circula-
24 tion, or safe seating during transport;

1 (iv) maintaining written transport
2 logs documenting the duration, conditions,
3 stops, and personnel involved;

4 (v) operating audio or video recording
5 equipment, where available, for the dura-
6 tion of transport; and

7 (vi) protecting mobility and medical
8 devices by ensuring such items are trans-
9 ported with the individual and are not sep-
10 arated or damaged during the transfer
11 process;

12 (5) DOCUMENTATION AND REPORTING.—Not
13 later than 24 hours after each incident involving a
14 violation by a transporting officer or agent of any
15 standard described in paragraph (4), such incident
16 shall be—

17 (A) documented by the supervisor of such
18 officer or agent, which documentation shall in-
19 clude—

20 (i) the nature of the violation;

21 (ii) the duration of the transport dur-
22 ing which such violation occurred;

23 (iii) the individuals affected by such
24 violation;

1 (iv) any corrective actions taken to
2 prevent future violations; and

3 (v) any disciplinary or remedial meas-
4 ures imposed on the violator; and

5 (B) reported to—

6 (i) the Office for Civil Rights and
7 Civil Liberties of the Department of
8 Homeland Security;

9 (ii) the Office of Inspector General of
10 the Department of Homeland Security;
11 and

12 (iii) the appropriate congressional
13 committees.

14 (e) OFFICE FOR CIVIL RIGHTS AND CIVIL LIB-
15 ERITIES.—The Secretary of Homeland Security shall—

16 (1) reconstitute the Office for Civil Rights and
17 Civil Liberties of the Department of Homeland Se-
18 curity; and

19 (2) ensure such Office has an independent re-
20 porting structure, including direct reporting author-
21 ity to the Secretary of Homeland Security, for pur-
22 poses of investigating, reviewing, and reporting on
23 civil rights and civil liberties violations related to im-
24 migration enforcement or detention.

1 **SEC. 5. LIMITATIONS ON CONVERSIONS OF EXISTING**
2 **BUILDINGS INTO IMMIGRANT DETENTION**
3 **CENTERS.**

4 (a) IN GENERAL.—U.S. Immigration and Customs
5 Enforcement or U.S. Customs and Border Protection may
6 not acquire and repurpose any warehouse, State-run facil-
7 ity, or correctional facility as a detention center for indi-
8 viduals who are awaiting removal proceedings or are in
9 Federal custody absent full compliance with the require-
10 ments set forth in subsection (b).

11 (b) REQUIREMENTS FOR CONVERSION OF EXISTING
12 FACILITIES.—

13 (1) COMPLIANCE AND FINANCIAL ACCOUNT-
14 ABILITY.—

15 (A) IN GENERAL.—The new immigrant de-
16 tention center shall be operated in full compli-
17 ance with all applicable Federal detention and
18 safety standards.

19 (B) CONTRACTUAL PENALTIES.—The Sec-
20 retary of Homeland Security shall ensure all
21 contracts for the operation of immigration de-
22 tention centers include enforceable financial
23 clawbacks and liquidated damages provisions to
24 be triggered by a persistent or systemic failure
25 to adhere to all applicable Federal detention
26 and safety standards.

1 (2) GUARANTEED ACCESS.—All individuals
2 housed at any immigration detention center shall be
3 guaranteed regular access to legal counsel, faith
4 leaders, and family members, either in person or
5 through telephonic communication, in accordance
6 with paragraphs (2) and (3) of section 3(a).

7 (3) INDEPENDENT INSPECTIONS AND
8 TIMELINE.—

9 (A) IN GENERAL.—Each immigration de-
10 tention center shall be subject to a rigorous in-
11 spection schedule.

12 (B) PRE-OPERATIONAL AUDIT.—An inde-
13 pendent inspection of each new immigration de-
14 tention facility shall be completed and published
15 not later than 30 days before any contract is
16 executed for the operation of such facility.

17 (C) RECURRING ACCESS.—State Attorneys
18 General, the Office for Civil Rights and Civil
19 Liberties of the Department of Homeland Secu-
20 rity, and a court-appointed independent monitor
21 shall have unrestricted, unannounced access to
22 each immigration detention facility at any time.

23 (D) REPORTING.—Not later than 14 days
24 after conducting an inspection of an immigra-
25 tion detention facility, the Secretary of Home-

1 land Security shall submit a report containing
2 the results of such inspection to—

3 (i) the appropriate congressional com-
4 mittees; and

5 (ii) the Governor of the State in which
6 such facility is located.

7 (4) COMMENCEMENT OF OPERATIONS.—A new
8 immigration detention center may not commence op-
9 erations without full transparency and oversight in
10 accordance with this subsection.

11 (5) NOTICE; BRIEFINGS.—The Secretary of
12 Homeland Security shall provide advance written no-
13 tice and ongoing coordination to the Governor, State
14 attorney general, and appropriate local government
15 officials in the jurisdiction in which any new immi-
16 gration detention center is located, including—

17 (A) notice of the intent to establish, ex-
18 pand, or materially modify operations at the fa-
19 cility; and

20 (B) regular briefings regarding population
21 levels, medical capacity, emergency protocols,
22 and public safety impacts.

23 (6) INTERGOVERNMENTAL CONSULTATION.—

24 (A) IN GENERAL.—The Secretary of
25 Homeland Security shall establish procedures

1 for consulting with appropriate State and local
2 government officials regarding any new immi-
3 gration detention center’s impact on local infra-
4 structure.

5 (B) CERTIFICATION REQUIREMENT.—The
6 Secretary shall certify that each new immigra-
7 tion detention center adheres to all applicable
8 State health and safety standards unless such
9 standards directly conflict with the execution of
10 Federal immigration law.

11 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion may be construed to waive the supremacy of Federal
13 law.

14 **SEC. 6. WARRANT REQUIREMENTS.**

15 (a) JUDICIAL WARRANTS.—Notwithstanding any
16 other provision of law, including the Immigration and Na-
17 tionality Act (8 U.S.C. 1101 et seq.) and any regulation
18 or policy issued by the Department of Homeland Security,
19 an officer or agent of U.S. Immigration and Customs En-
20 forcement or U.S. Customs and Border Protection may
21 not arrest or detain an individual without a judicially en-
22 forceable warrant issued by a magistrate judge or a judge
23 appointed under article III of the Constitution of the
24 United States who has been duly confirmed by the Senate.

25 (b) ADMINISTRATIVE WARRANTS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), an administrative warrant, including a
3 warrant of arrest or removal issued by an officer or
4 employee of the Department of Homeland Security,
5 may not—

6 (A) authorize entry into a private residence
7 or dwelling; or

8 (B) be used to justify forced entry, coer-
9 cive entry, or entry without consent.

10 (2) EXCEPTIONS.—The restrictions set forth in
11 paragraph (1) shall not apply with respect to an in-
12 dividual who is determined to be a flight risk or a
13 danger to the public.

14 (c) REMEDIES FOR VIOLATIONS.—If an immigration
15 enforcement action is conducted in violation of this sec-
16 tion—

17 (1) any information obtained as a result of such
18 action shall be prohibited from being entered into
19 the record or received into evidence in a removal
20 proceeding for purposes of establishing alienage or
21 chargeability; and

22 (2) the noncitizen who is the subject of such re-
23 moval proceedings may file a motion to enforce the
24 prohibition described in paragraph (1), including
25 through a motion to terminate such proceedings.