115TH CONGRESS  
2D Session  

H. R.  

To establish a Commission tasked with establishing a humane immigration enforcement system, terminate Immigration and Customs Enforcement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES  

Mr. Pocan introduced the following bill; which was referred to the Committee on ______________________  

A BILL  

To establish a Commission tasked with establishing a humane immigration enforcement system, terminate Immigration and Customs Enforcement, and for other purposes.

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Be it enacted by the Senate and House of Representa-
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tives of the United States of America in Congress assembled,

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SECTION 1. SHORT TITLE.  

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This Act may be cited as the “Establishing a Hu-
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mane Immigration Enforcement System Act”.  

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SEC. 2. FINDINGS.  

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Congress finds the following:
(1) In 2003, under the Bush Administration, critical immigration enforcement functions were transferred away from the Department of Justice to the newly created U.S. Immigration Customs and Enforcement (ICE) under the guise of national security. At the same time, a separate agency, Customs and Border Patrol, was also established with prime responsibility for border security activities.

(2) In 2004, the Department of Justice stated, “The primary mission of ICE is to prevent acts of terrorism by targeting the people, money, and materials that support terrorist and criminal activities”.

(3) Only a fraction of ICE resources and personnel are dedicated to ICE’s original mission of tracking terrorism and transnational crime syndicates domestically and internationally, creating serious challenges for national security. The Homeland Security Investigations (HSI) division of ICE, which fights human trafficking, drug smuggling and trade fraud and is critical to national security, has been deprioritized.

(4) In June 2018, 19 ICE Homeland Security Investigations Division (HSI) employees, including a majority of special agents in charge of HSI, called on DHS Secretary Nielsen to remove HSI from ICE
to improve HSI’s ability to function effectively and to stop ICE’s reprogramming of HSI funds for Enforcement and Removal Operations. The letter also stated that HSI’s work is compromised by the reluctance among State and local law enforcement to collaborate with HSI given ICE’s civil immigration enforcement focus.

(5) ICE’s work has radically shifted from its “primary mission” of preventing acts of terrorism, as articulated by the Department of Justice in 2004, to carrying out detention and deportation activities as its core focus. Nearly 60 percent of ICE’s $7.1 billion budget goes to detention and removal operations. Such removal operations tend to focus on individuals who are being prosecuted simply for illegal entry or re-entry, have no other criminal history and pose no threat to national security. These removal operations have torn apart families and communities and disrupted businesses throughout the country.

(6) ICE contracts out billions of taxpayer dollars every year to private, for-profit prison companies that have eschewed transparency and accountability, and operate at significantly higher expense to taxpayers than lower-cost alternatives to detention. As of August 2016, nearly three-quarters of the av-
The average daily population in immigration detention were 1 held in facilities operated by private prison companies.

(7) Numerous Federal oversight bodies, including the Government Accountability Office and the DHS Office of the Inspector General, have documented a disregard for congressional oversight and substandard conditions and inhumane treatment of those in ICE detention, which contravene ICE’s own standards and Federal and international legal protections. In addition, other credible reports indicate violations of due process, and noncompliance with international and domestic legal protections. ICE detention facilities fail to meet ICE’s own standards and have no meaningful oversight.

(8) The Department of Homeland Security’s Office of Inspector General issued a December 2017 report cataloguing violations of compliance with ICE detention standards regarding conditions for detainees “that undermine the protection of detainees’ rights, their humane treatment, and the provision of a safe and healthy environment.”

(9) A June 2018 report by the DHS OIG titled, “ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or
Systemic Improvements” found that “neither the inspections nor the onsite monitoring ensure consistent compliance with detention standards, nor do they promote comprehensive deficiency corrections” and that “ICE does not adequately follow up on identified deficiencies or consistently hold facilities accountable for correcting them, which further diminishes the usefulness of inspections”.

(10) According to an independent analysis by medical experts, more than half of the “detainee death reviews” published by ICE from December 2015 to April 2017 show that inadequate medical care contributed or led to the person’s death in ICE detention.

(11) Sexual and physical abuse is rampant in ICE custody. Independent analysis of 1,224 complaints of sexual and physical abuse in ICE custody filed between 2010 and September 2017 found that over half reported an officer or private detention contractor as the perpetrator of alleged abuses and that the Office of Inspector General investigated only 30 of these complaints. Data on sexual assault in ICE detention found that LGBT people were 97 times more likely to be sexually victimized than the general population.
(12) ICE has taken measures to destroy records of immigrant abuse in its custody. In July 2017, ICE requested that the National Archives and Records Administration approve its timetable for destroying records related to sexual assaults, solitary confinement and deaths of people in its custody.

(13) ICE subjects asylum seekers to cruel and inhumane conditions. In a November 2014 report, the United Nations Committee Against Torture expressed concern over United States practices of “mandatory detention to automatically hold asylum seekers and other immigrants on arrival in prison-like detention facilities,” and reports of “substandard conditions of detention in immigration facilities and use of solitary confinement,” as well as “sexual violence by staff and other detainees”.

(14) ICE has not adopted recommendations made by its Advisory Committee on Family Residential Centers, which suggested in a 2016 report that “immigration enforcement practices should operationalize the presumption that detention is generally neither appropriate nor necessary for families – and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children,” fur-
ther recommending that “the general use of family detention” be discontinued.

(15) ICE’s actions to force State and local law enforcement to comply with immigration detainer requests to hold people in custody without a warrant violate the Fourth Amendment, and immigration enforcement actions at sensitive locations, including courthouses, hospitals, churches and schools have undermined public trust in the agency.

(16) A troubling pattern of ICE pursuing immigrant rights advocates working within their First Amendment rights suggests the improper targeting of political opponents and threatens bedrock free speech and due process rights.

(17) The Government Accountability Office (GAO) has found “a number of inconsistencies and errors in ICE’s calculations for its congressional budget justifications. . . While ICE officials stated their budget documents undergo multiple reviews to ensure accuracy, ICE was not able to provide documentation of such reviews.” The GAO concluded, “ICE is not positioned to ensure the credibility of its budget requests”.

(18) Any essential functions carried out by ICE that do not violate fundamental due process and
human rights can be executed with greater transparency, public accountability, and adherence to domestic and international law by other Federal agencies.

SEC. 3. ESTABLISHMENT OF COMMISSION TO ADMINISTER TRANSITION OF FUNCTIONS.

(a) Establishment.—Within 30 days of the enactment of this Act, Congress shall establish and convene the Commission to Study and Establish a Fair and Humane System of Immigration and Customs Enforcement (hereinafter in this Act referred to as the “Commission”).

(b) Duties.—The Commission shall perform the following duties:

(1) Identify all essential functions of ICE that uphold the Constitution and maintain high human rights standards pursuant to the Protocol Relating to the Status of Refugees of 1967 and the International Covenant on Civil and Political Rights and identify the appropriate Federal agencies that shall be tasked with executing activities such as combating financial crimes, cybercrimes, trade fraud, human trafficking and drug smuggling, as well as a plan to transition any such duties.

(2) Determine the most effective means of ensuring that all immigration enforcement functions
transferred to other Federal agencies maintain strict compliance to the Constitution, Federal laws, the Protocol Relating to the Status of Refugees of 1967 and the International Covenant on Civil and Political Rights, including article 7’s prohibition of torture and cruel, inhuman or degrading treatment or punishment.

(3) Prior to presenting any recommendation for an existing Federal agency to adopt an immigration-enforcement function deemed essential pursuant to paragraph (1), the Commission shall evaluate and approve the agency’s suitability for that function based on such agency’s track record of transparency and compliance with its own directives and policies, as well as Federal laws, statutes, and treaty obligations outlined in paragraph (2);

(4) Identify appropriate means of ensuring that total Federal employment is not reduced with the abolition of ICE, prioritizing the hiring of personnel to address the legal, health, and social-service needs of detained individuals, those seeking asylum, and those determined to be most vulnerable within the Federal immigration system.

(5) Provide recommendations for ensuring that all immigration enforcement carried out by Federal
agencies administer asylum requests in a prompt and timely manner, and in full compliance with all relevant Federal statutes and international laws, such as the Protocol Relating to the Status of Refugees of 1967 and the Convention Against Torture.

(6) The Commission will work with the Department of Homeland Security’s Office of Inspector General to document failures to comply with congressional oversight requirements, violations of constitutional protections and Federal laws, failures to comply with agency policies and directives, violations of human rights, and any other longstanding patterns of medical neglect, solitary confinement, wrongful death, and other abuses for which ICE is wholly or partially responsible, and recommend appropriate ways to prevent future violations and educate the American public of the Commission’s findings.

(c) REPORT TO CONGRESS.—The Commission shall submit a written report of its findings and recommendations to the Congress no later than 180 days after the date of the first meeting of the Commission held.

(d) CONGRESSIONAL CONSIDERATION OF COMMISSION’S REPORT.—The Congress shall consider the Commission’s findings and recommendations in legislating the
transfer of essential immigration-enforcement functions to existing Federal agencies prior to the termination of ICE.

SEC. 4. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 17 members, who shall be appointed and convene within 30 days after the date of enactment of this Act, as follows:

(1) Two members shall be appointed by the Speaker of the House of Representatives.

(2) Two members shall be appointed by the House Minority Leader.

(3) Two members shall be appointed by the Senate Majority Leader.

(4) Two members shall be appointed by the Senate Minority Leader.

(5) Nine members shall be selected from the major civil society and immigrants’ rights organizations and individuals directly impacted by ICE practices.

(b) QUALIFICATIONS.—All members of the Commission shall be persons who are especially qualified to serve on the Commission by virtue of their education, training, activism or experience, particularly in the field of human rights, international law, and constitutional protections.
SEC. 5. TERMINATION OF THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT.

On the date no later than 1 year after the enactment of this Act, the U.S. Immigration and Customs Enforcement shall terminate.