119TH CONGRESS
2D SESSION

S. _____

To require the timely submission of a detailed incident report with respect to every death of an person while in the custody of the Department of Homeland Security.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To require the timely submission of a detailed incident report with respect to every death of an person while in the custody of the Department of Homeland Security.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Death in Detention Transparency Act''.

SEC. 2. NOTIFICATION OF DEATH OF ANY PERSON IN DEPARTMENT OF HOMELAND SECURITY CUSTODY OR RECENTLY RELEASED FROM SUCH CUSTODY.

(a) IN GENERAL.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended by adding at the end the following:

''(g) NOTIFICATION OF DEATH OF ANY PERSON IN DEPARTMENT OF HOMELAND SECURITY CUSTODY OR RECENTLY RELEASED FROM SUCH CUSTODY.—

''(1) DEFINITIONS.—In this subsection:

''(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

''(i) the Committee on the Judiciary of the Senate;

''(ii) the Committee on Homeland Security and Governmental Affairs of the Senate;

''(iii) the Committee on Foreign Relations of the Senate;

''(iv) the Committee on the Judiciary of the House of Representatives

''(v) the Committee on Homeland Security of the House of Representatives; and

"(vi) the Committee on Foreign Affairs of the House of Representatives.

"(B) COVERED PERSON.—The term 'covered person' means any person who—

"(i) died while being physically detained by, arrested by, or in the custody of, U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection;

"(ii) died while being detained at a municipal or county jail, a State prison, or any other facility that is contracted out by the Department of Homeland Security or otherwise used by the Department for the purpose of holding aliens, including any State or local contract facility, or any other detention facility or processing facility;

"(iii) died during the 30-day period immediately following such arrest, custody, or detention;

"(iv) died while being actively pursued by U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection as a result of a vehicle collision,

being struck by a vehicle, or by any other means;

''(v) died while being transported by, or in the custody of, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, or an entity operating under a contract with either such entity;

''(vi) died as a result of any use of force by U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, or an entity operating under a contract with either such entity;

''(vii) died while undergoing secondary inspection or being detained by U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection for any reason not previously specified;

''(viii) died after being admitted to a medical facility while still in the custody of U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection;

''(ix) died at a medical facility if the person was in the custody of U.S. Immigration and Customs Enforcement or U.S.

Customs and Border Protection at the time that the person was admitted or transported to such a facility; or

''(x) died while being transported from a U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection facility or from an immigration enforcement encounter to a medical facility.

''(2) NOTIFICATION.—Not later than 72 hours after the death of any covered person, the Director of U.S. Immigration and Customs Enforcement, the Commissioner of U.S. Customs and Border Protection, or the head of the facility in which such death occurred, shall notify the entities referred to in paragraph (4) of—

''(A) the name, including any known alias, of the covered person;

''(B) the circumstances surrounding the death of the covered person, including—

''(i) the time and location of the death;

''(ii) the suspected cause and manner of death, if known;

"(iii) the agencies involved in the death, if applicable;

"(iv) any known medical conditions of the covered person;

"(v) the race, ethnicity, and nationality of the covered person;

"(vi) the gender of the covered person;

"(vii) the age of the covered person;

"(viii) the identity of the detention contractor responsible for the care and custody of the covered person at the time of his or her death, if applicable;

"(ix) the identity of the healthcare services contractor responsible for the care of the covered person at the time of his or her death, if applicable;

"(x) a list of all facilities where the covered person was detained, processed, or in holding prior to his or her death, if applicable;

"(xi) whether any contractor or facility referred to in clause (ix) or (x)—

"(I) was the subject of any contract discrepancy report or corrective action plan; or

"(II) had a deficiency during the 12-month period immediately preceding the covered person's death;

"(xii) the dates of the relevant reports, plans, or deficiencies, if applicable;

"(xiii) whether a vehicle pursuit was involved in the covered person's death; and

"(xiv) whether the covered person's death involved the use of force, including the discharge of a firearm; and

"(C)(i) certification that the next of kin of the covered person has been notified of the death; or

"(ii) if the next of kin has not been notified, a description of the attempts made to notify the next of kin of the death.

"(3) DEATH INCIDENT REPORT.—Not later than 30 days after the death of any covered person, the Director, the Commissioner, or the Secretary of Homeland Security shall submit a death incident report to the entities referred to in paragraph (4) that includes—

"(A) the parental status of the covered person, including whether the covered person was pregnant at the time of death;

"(B) a detailed description of the events leading up to the death of the covered person, including—

"(i) the date, time, and location of the death;

"(ii) all law enforcement agencies involved in the arrest, transport, or detention of the covered person;

"(iii) if the death occurred at a facility operated or overseen by the Department of Homeland Security, the standards applicable to such facility at the time of death;

"(iv) whether a firearm was discharged during the events leading to the death; and

"(v) whether there is body worn camera footage of the incident, and, if so, the Federal agency with possession of such footage;

"(C) if U.S. Immigration and Customs Enforcement personnel were involved, a copy of the Health Service Corps Mortality Review indicating the cause of death or a mortality review

conducted by the contracted care provider indicating the cause of death;

''(D) whether the covered person had known legal representation at the time of death, such as an attorney or an accredited representative, as determined by the Department of Justice;

''(E) a detailed medical history of the covered person, including—

''(i) a list of chronic illnesses inflicting the covered person; and

''(ii) whether the covered person had an intellectual, physical, or other disability;

''(F) the duration of the custody of the covered person by the Department of Homeland Security, if applicable;

''(G) if the covered person submitted any grievances while detained, the number and nature of such grievances;

''(H) whether the covered person had complained verbally or in writing to any Department of Homeland Security agent about an illness, injury, or pain;

''(I) the number of medical visits requested by the covered person while in the custody of

the Department of Homeland Security, disaggregated by the visits received by the covered person and the requests denied and a justification for any such denials, and the contracting company responsible for medical services if it was not the ICE Health Service Corps;

''(J) whether a bond, parole, or other release request, including a habeas corpus petition, was received or field before the death of the covered person and the decision made with respect to each such request; and

''(K) the results of an autopsy conducted by an independent entity that has been authorized to conduct such autopsy, and the name of such entity.

''(4) RECIPIENTS.—Each notification described in paragraph (2) and each report described in paragraph (3) shall be submitted to—

''(A) the foreign consulate of the country of which the covered person is a national;

''(B) the appropriate congressional committees;

''(C) the Members of Congress representing the State and congressional district in which the death of the covered person occurred;

''(D) the Office of Inspector General and the Office for Civil Rights and Civil Liberties of the Department of Homeland Security.

''(5) PUBLIC DISSEMINATION OF DEATH INCIDENT REPORTS.—The Department of Homeland Security shall make publicly available every death incident report required under paragraph (3), which may be modified by redacting any information reasonably necessary to protect the privacy of individuals—

''(A) after—

''(i) the next of kin of the covered person has been notified; or

''(ii) reasonable efforts have been made to notify the next of kin; and

''(B) not later than—

''(i) 30 days after the death of the covered person; or

''(ii) if the Department of Homeland Security has notified and provided justification for delaying such public dissemination beyond 30 days to the appropriate congressional committees, the Office for Civil Rights and Civil Liberties, and the

Office of Inspector General, 90 days after the death of the covered person.

''(6) FAILURE TO TIMELY SUBMIT THE DEATH INCIDENT REPORT.—If the Director, the Commissioner, or the Secretary of Homeland Security is unable to complete and disseminate a death incident report with respect to a covered person in accordance with paragraphs (3) through (5), the Director, Commissioner, or Secretary shall—

''(A) submit a report not later than 30 days after the death of such covered person to the entities referred to in paragraph (4) that explains the factors preventing such compliance; and

''(B) submit the death incident report to such entities within 60 days of the initial due date.

''(7) ENFORCEMENT.—

''(A) CONTRACT REQUIREMENT.—All contracts for the detention of aliens or detention-related services for such aliens shall include a provision requiring the contracting facility or entity to adhere to the reporting requirements under this subsection with respect to the death of a covered person.

"(B) NONCOMPLIANCE.—The failure of a facility described in subparagraph (A) to adhere to the reporting requirements under this subsection with respect to the death of a covered person shall result in the termination of such facility's contract with the Department.

"(C) NOTIFICATION.—Not later than 24 hours before a death incident report is due under paragraph (3), if the required information for such report has not been shared by the facility at which the deceased had been detained, the Department of Homeland Security shall notify the facility—

"(i) of the date on which such report is due;

"(ii) of the required information needed from the facility to complete the report; and

"(iii) the consequences for failing to adhere to the reporting requirements under this subsection.

"(D) NEW DETAINEE LIMITATION.—If a facility that received a notification pursuant to subparagraph (C) fails to submit the required information needed to complete the death inci-

dent report within 7 days after receiving such notification, the facility may not receive any new detainees.

''(E) 5-YEAR SUSPENSION.—An entity that owns or operates 1 or more detention facilities and fails to comply with the reporting requirements under this subsection on more than 3 occasions at any such facility shall be ineligible to enter into a contract with the Department of Homeland Security for any detention services or other services provided in detention facilities for a 5-year period beginning on the date of the 3rd such occasion.

''(F) UNANNOUNCED INSPECTIONS.—

''(i) IN GENERAL.—Any detention facility that fails to provide a death notification to the appropriate congressional committees and the appropriate members of Congress within 24 hours of such death in accordance with paragraph (2) shall be subject to an automatic unannounced inspection of such facility by—

''(I) the Office of Inspector General of the Department of Homeland Security;

"(II) the Office for Civil Rights and Civil Liberties of the Department of Homeland Security; or

"(III) the Office of Detention Oversight of U.S. Immigration and Customs Enforcement.

"(ii) FINDINGS.—Not later than 30 days after any office listed under clause (i) conducts an inspection of a facility pursuant to such clause, such office shall submit a report to the appropriate congressional committees and the appropriate members of Congress that contains the findings discovered during such inspection.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 90 days after the date of the enactment of this Act.