

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3239
OFFERED BY Mr. Nadler

Strike all that follows after the enacting clause and
insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Humanitarian Standards for Individuals in Customs and
4 Border Protection Custody Act”.

5 (b) TABLE OF CONTENTS.—The table of contents of
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Initial health screening protocol.
- Sec. 3. Water, sanitation and hygiene.
- Sec. 4. Food and nutrition.
- Sec. 5. Shelter.
- Sec. 6. Coordination and Surge capacity.
- Sec. 7. Training.
- Sec. 8. Interfacility transfer of care.
- Sec. 9. Planning and initial implementation.
- Sec. 10. Contractor compliance.
- Sec. 11. Inspections.
- Sec. 12. GAO report.
- Sec. 13. Rule of construction.
- Sec. 14. Definitions.

7 SEC. 2. INITIAL HEALTH SCREENING PROTOCOL.

8 (a) IN GENERAL.—The Commissioner of U.S. Cus-
9 toms and Border Protection (referred to in this Act as
10 the “Commissioner”), in consultation with the Secretary
11 of Health and Human Services, the Administrator of the

1 Health Resources and Services Administration, and non-
2 governmental experts in the delivery of health care in hu-
3 manitarian crises and in the delivery of health care to chil-
4 dren, shall develop guidelines and protocols for the provi-
5 sion of health screenings and appropriate medical care for
6 individuals in the custody of U.S. Customs and Border
7 Protection (referred to in this Act as “CBP”), as required
8 under this section.

9 (b) INITIAL SCREENING AND MEDICAL ASSESS-
10 MENT.—The Commissioner shall ensure that any indi-
11 vidual who is detained in the custody of CBP (referred
12 to in this Act as a “detainee”) receives an initial in-person
13 screening by a licensed medical professional in accordance
14 with the standards described in subsection (c)—

15 (1) to assess and identify any illness, condition,
16 or age-appropriate mental or physical symptoms that
17 may have resulted from distressing or traumatic ex-
18 periences;

19 (2) to identify acute conditions and high-risk
20 vulnerabilities; and

21 (3) to ensure that appropriate healthcare is
22 provided to individuals as needed, including pedi-
23 atric, obstetric, and geriatric care.

24 (c) STANDARDIZATION OF INITIAL SCREENING AND
25 MEDICAL ASSESSMENT.—

1 (1) IN GENERAL.—The initial screening and
2 medical assessment shall include—

3 (A) an interview and the use of a stand-
4 ardized medical intake questionnaire or the
5 equivalent;

6 (B) screening of vital signs, including pulse
7 rate, body temperature, blood pressure, oxygen
8 saturation, and respiration rate;

9 (C) screening for blood glucose for known
10 or suspected diabetics;

11 (D) weight assessment of detainees under
12 12 years of age;

13 (E) a physical examination; and

14 (F) a risk-assessment and the development
15 of a plan for monitoring and care, when appro-
16 priate.

17 (2) PRESCRIPTION MEDICATION.—The medical
18 professional shall review any prescribed medication
19 that is in the detainee's possession or that was con-
20 fiscated by CBP upon arrival and determine if the
21 medication may be kept by the detainee for use dur-
22 ing detention, properly stored by CBP with appro-
23 priate access for use during detention, or maintained
24 with the detained individual's personal property. A
25 detainee may not be denied the use of necessary and

1 appropriate medication for the management of the
2 detainee's chronic illness.

3 (3) RULE OF CONSTRUCTION.—Nothing in this
4 subsection shall be construed as requiring detainees
5 to disclose their medical status or history.

6 (d) TIMING.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), the initial screening and medical assess-
9 ment described in subsections (b) and (c) shall take
10 place as soon as practicable, but not later than 12
11 hours after a detainee's arrival at a CBP facility.

12 (2) HIGH PRIORITY INDIVIDUALS.—The initial
13 screening and medical assessment described in sub-
14 sections (b) and (c) shall take place as soon as prac-
15 ticable, but not later than 6 hours after a detainee's
16 arrival at a CBP facility if the individual reasonably
17 self-identifies as having a medical condition that re-
18 quires prompt medical attention or is—

19 (A) exhibiting signs of acute or potentially
20 severe physical or mental illness, or otherwise
21 has an acute or chronic physical or mental dis-
22 ability or illness;

23 (B) pregnant;

24 (C) a child (with priority given, as appro-
25 priate, to the youngest children); or

1 (D) elderly.

2 (e) FURTHER CARE.—

3 (1) IN GENERAL.—If, as a result of the initial
4 health screening and medical assessment, the li-
5 censed medical professional conducting the screening
6 or assessment determines that one or more of the
7 detainee's vital sign measurements are outside nor-
8 mal ranges in accordance with the National Emer-
9 gency Services Education Standards, or if the de-
10 tainee is identified as high-risk or in need of medical
11 intervention, the detainee shall be provided, as expe-
12 ditiously as possible, with an in-person or tech-
13 nology-facilitated medical consultation with a li-
14 censed emergency care professional.

15 (2) RE-EVALUATION.—

16 (A) IN GENERAL.—Detainees described in
17 paragraph (1) shall be re-evaluated within 24
18 hours and monitored thereafter as determined
19 by an emergency care professional; and

20 (B) REEVALUATION PRIOR TO TRANSPOR-
21 TATION.—In addition to the re-evaluations
22 under subparagraph (A), detainees shall have
23 all vital signs re-evaluated and be cleared as
24 safe to travel by a medical professional prior to
25 transportation.

1 (3) PSYCHOLOGICAL AND MENTAL CARE.—The
2 Commissioner shall ensure that detainees who have
3 experienced physical or sexual violence or who have
4 experienced events that may cause severe trauma or
5 toxic stress, are provided access to basic, humane,
6 and supportive psychological assistance.

7 (f) INTERPRETERS.—To ensure that health
8 screenings and medical care required under this section
9 are carried out in the best interests of the detainee, the
10 Commissioner shall ensure that language-appropriate in-
11 terpretation services, including indigenous languages, are
12 provided to each detainee and that each detainee is in-
13 formed of the availability of interpretation services.

14 (g) CHAPERONES.—To ensure that health screenings
15 and medical care required under this section are carried
16 out in the best interests of the detainee—

17 (1) the Commissioner shall establish guidelines
18 for and ensure the presence of chaperones for all de-
19 tainees during medical screenings and examinations
20 consistent with relevant guidelines in the American
21 Medical Association and American Association of
22 Pediatrics Code of Medical Ethics; and

23 (2) to the extent practicable, the physical exam-
24 ination of a child shall always be performed in the
25 presence of a parent or legal guardian or in the

1 presence of the detainee's closest present adult rel-
2 ative if a parent or legal guardian is unavailable.

3 (h) DOCUMENTATION.—The Commissioner shall en-
4 sure that the health screenings and medical care required
5 under this section, along with any other medical evalua-
6 tions and interventions for detainees, are documented in
7 accordance with commonly accepted standards in the
8 United States for medical record documentation. Such
9 documentation shall be provided to any individual who re-
10 ceived a health screening and subsequent medical treat-
11 ment upon release from CBP custody.

12 (i) INFRASTRUCTURE AND EQUIPMENT.—The Com-
13 missioner or the Administrator of General Services shall
14 ensure that each location to which detainees are first
15 transported after an initial encounter with an agent or of-
16 ficer of CBP has the following:

17 (1) A private space that provides a comfortable
18 and considerate atmosphere for the patient and that
19 ensures the patient's dignity and right to privacy
20 during the health screening and medical assessment
21 and any necessary follow-up care.

22 (2) All necessary and appropriate medical
23 equipment and facilities to conduct the health
24 screenings and follow-up care required under this
25 section, to treat trauma, to provide emergency care,

1 including resuscitation of individuals of all ages, and
2 to prevent the spread of communicable diseases.

3 (3) Basic over-the-counter medications appro-
4 priate for all age groups.

5 (4) Appropriate transportation to medical facili-
6 ties in the case of a medical emergency, or an on-
7 call service with the ability to arrive at the CBP fa-
8 cility within 30 minutes.

9 (j) PERSONNEL.—The Commissioner or the Adminis-
10 trator of General Services shall ensure that each location
11 to which detainees are first transported after an initial en-
12 counter has onsite at least one licensed medical profes-
13 sional to conduct health screenings. Other personnel that
14 are or may be necessary for carrying out the functions
15 described in this section, such as licensed emergency care
16 professionals, specialty physicians (including physicians
17 specializing in pediatrics, family medicine, obstetrics and
18 gynecology, geriatric medicine, internal medicine, and in-
19 fectious diseases), nurse practitioners, other nurses, physi-
20 cian assistants, licensed social workers, mental health pro-
21 fessionals, public health professionals, dietitians, inter-
22 preters, and chaperones, shall be located on site to the
23 extent practicable, or if not practicable, shall be available
24 on call.

1 (k) ETHICAL GUIDELINES.—The Commissioner shall
2 ensure that all medical assessments and procedures con-
3 ducted pursuant to this section are conducted in accord-
4 ance with ethical guidelines in the applicable medical field,
5 and respect human dignity.

6 **SEC. 3. WATER, SANITATION AND HYGIENE.**

7 The Commissioner shall ensure that detainees have
8 access to—

9 (1) not less than one gallon of drinking water
10 per day, and age-appropriate fluids as needed;

11 (2) a private, safe, clean, and reliable perma-
12 nent or portable toilet with proper waste disposal
13 and a hand washing station, with not less than one
14 toilet available for every 12 male detainees, and 1
15 toilet for every 8 female detainees;

16 (3) a clean diaper changing facility, which in-
17 cludes proper waste disposal, a hand washing sta-
18 tion, and unrestricted access to diapers;

19 (4) the opportunity to bathe daily in a perma-
20 nent or portable shower that is private and secure;
21 and

22 (5) products for individuals of all age groups
23 and with disabilities to maintain basic personal hy-
24 giene, including soap, a toothbrush, toothpaste,
25 adult diapers, and feminine hygiene products, as well

1 as receptacles for the proper storage and disposal of
2 such products.

3 **SEC. 4. FOOD AND NUTRITION.**

4 The Commissioner shall ensure that detainees have
5 access to—

6 (1) three meals per day including—

7 (A) in the case of an individual age 12 or
8 older, a diet that contains not less than 2,000
9 calories per day; and

10 (B) in the case of a child who is under the
11 age of 12, a diet that contains an appropriate
12 number of calories per day based on the child's
13 age and weight;

14 (2) accommodations for any dietary needs or
15 restrictions; and

16 (3) access to food in a manner that follows ap-
17 plicable food safety standards.

18 **SEC. 5. SHELTER.**

19 The Commissioner shall ensure that each facility at
20 which a detainee is detained meets the following require-
21 ments:

22 (1) Except as provided in paragraph (2), males
23 and females shall be detained separately.

24 (2) In the case of a minor child arriving in the
25 United States with an adult relative or legal guard-

1 ian, such child shall be detained with such relative
2 or legal guardian unless such an arrangement poses
3 safety or security concerns. In no case shall a minor
4 who is detained apart from an adult relative or legal
5 guardian as a result of such safety or security con-
6 cerns be detained with other adults.

7 (3) In the case of an unaccompanied minor ar-
8 riving in the United States without an adult relative
9 or legal guardian, such child shall be detained in an
10 age-appropriate facility and shall not be detained
11 with adults.

12 (4) A detainee with a temporary or permanent
13 disability shall be held in a manner that provides for
14 his or her safety, comfort, and security.

15 (5) No detainee shall be placed in a room for
16 any period of time if the detainee's placement would
17 exceed the maximum occupancy level as determined
18 by the appropriate building code, fire marshall, or
19 other authority.

20 (6) Each detainee shall be provided with tem-
21 perature appropriate clothing and bedding.

22 (7) The facility shall be well lit and well venti-
23 lated, with the humidity and temperature kept at
24 comfortable levels (between 68 and 74 degrees Fahr-
25 enheit).

1 (8) Detainees who are in custody for more than
2 48 hours shall have access to the outdoors for not
3 less than 1 hour during the daylight hours during
4 each 24-hour period.

5 (9) Detainees shall have the ability to practice
6 their religion or not to practice a religion, as appli-
7 cable.

8 (10) Detainees shall have access to lighting and
9 noise levels that are safe and conducive for sleeping
10 throughout the night between the hours of 10 p.m.
11 and 6 a.m.

12 (11) Officers, employees, and contracted per-
13 sonnel of CBP shall—

14 (A) follow medical standards for the isola-
15 tion and prevention of communicable diseases;
16 and

17 (B) ensure the physical and mental safety
18 of lesbian, gay, bisexual, transgender, and
19 intersex detainees.

20 (12) The facility shall have video-monitoring to
21 provide for the safety of the detained population and
22 to prevent sexual abuse and physical harm of vulner-
23 able detainees.

1 **SEC. 6. COORDINATION AND SURGE CAPACITY.**

2 The Secretary of Homeland Security shall enter into
3 memoranda of understanding with appropriate Federal
4 agencies, such as the Department of Health and Human
5 Services, and applicable emergency government relief serv-
6 ices, as well as contracts with health care, public health,
7 social work, and transportation professionals, for purposes
8 of addressing surge capacity and ensuring compliance with
9 this Act.

10 **SEC. 7. TRAINING.**

11 The Commissioner shall ensure that CBP personnel
12 assigned to each short-term custodial facility are profes-
13 sionally trained, including continuing education as the
14 Commissioner deems appropriate, in all subjects necessary
15 to ensure compliance with this Act, including—

16 (1) humanitarian response protocols and stand-
17 ards;

18 (2) indicators of physical and mental illness,
19 and medical distress in children and adults;

20 (3) indicators of child sexual exploitation and
21 effective responses to missing migrant children; and

22 (4) procedures to report incidents of suspected
23 child sexual abuse and exploitation directly to the
24 National Center for Missing and Exploited Children.

1 **SEC. 8. INTERFACILITY TRANSFER OF CARE.**

2 (a) TRANSFER.—When a detainee is discharged from
3 a medical facility or emergency department, the Commis-
4 sioner shall ensure that responsibility of care is trans-
5 ferred from the medical facility or emergency department
6 to an accepting licensed health care provider of CBP.

7 (b) RESPONSIBILITIES OF ACCEPTING PROVIDERS.—

8 Such accepting licensed health care provider shall review
9 the medical facility or emergency department's evaluation,
10 diagnosis, treatment, management, and discharge care in-
11 structions to assess the safety of the discharge and trans-
12 fer and to provide necessary follow-up care.

13 **SEC. 9. PLANNING AND INITIAL IMPLEMENTATION.**

14 (a) PLANNING.—Not later than 60 days after the
15 date of enactment of this Act, the Secretary of Homeland
16 Security shall submit to Congress a detailed plan delin-
17 eating the timeline, process, and challenges of carrying out
18 the requirements of this Act.

19 (b) IMPLEMENTATION.—The Secretary of Homeland
20 Security shall ensure that the requirements of this Act are
21 implemented not later than 6 months after the date of
22 enactment.

23 **SEC. 10. CONTRACTOR COMPLIANCE.**

24 The Secretary of Homeland Security shall ensure
25 that all personnel contracted to carry out this Act do so
26 in accordance with the requirements of this Act.

1 **SEC. 11. INSPECTIONS.**

2 (a) IN GENERAL.—The Inspector General of the De-
3 partment of Homeland Security shall—

4 (1) conduct unannounced inspections of ports of
5 entry, border patrol stations, and detention facilities
6 administered by CBP or contractors of CBP; and

7 (2) submit to Congress, reports on the results
8 of such inspections as well as other reports of the
9 Inspector General related to custody operations.

10 (b) PARTICULAR ATTENTION.—In carrying out sub-
11 section (a), the Inspector General of the Department of
12 Homeland Security shall pay particular attention to—

13 (1) the degree of compliance by CBP with the
14 requirements of this Act;

15 (2) remedial actions taken by CBP; and

16 (3) the health needs of detainees.

17 (c) ACCESS TO FACILITIES.—The Commissioner may
18 not deny a Member of Congress entrance to any facility
19 or building used, owned, or operated by CBP.

20 **SEC. 12. GAO REPORT.**

21 (a) IN GENERAL.—The Comptroller General of the
22 United States shall—

23 (1) not later than 6 months after the date of
24 enactment of this Act, commence a study on imple-
25 mentation of, and compliance with, this Act; and

1 (2) not later than 1 year after the date of en-
2 actment of this Act, submit a report to Congress on
3 the results of such study.

4 (b) ISSUES TO BE STUDIED.—The study required by
5 subsection (a) shall examine the management and over-
6 sight by CBP of ports of entry, border patrol stations, and
7 other detention facilities, including the extent to which
8 CBP and the Department of Homeland Security have ef-
9 fective processes in place to comply with this Act.

10 **SEC. 13. RULE OF CONSTRUCTION.**

11 Nothing in this Act shall be construed to authorize
12 CBP to detain individuals for longer than 72 hours.

13 **SEC. 14. DEFINITIONS.**

14 In this Act:

15 (1) INTERPRETATION SERVICES.—The term
16 “interpretation services” includes translation serv-
17 ices that are performed either in-person or through
18 a telephone or video service.

19 (2) CHILD.—The term “child” has the meaning
20 given the term in section 101(b)(1) of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1101(b)(1)).

22 (3) U.S. CUSTOMS AND BORDER PROTECTION
23 FACILITY.—The term “U.S. Customs and Border
24 Protection Facility” includes—

25 (A) U.S. Border Patrol stations;

- 1 (B) ports of entry;
- 2 (C) checkpoints;
- 3 (D) forward operating bases;
- 4 (E) secondary inspection areas; and
- 5 (F) short-term custody facilities.

6 (4) FORWARD OPERATING BASE.—The term
7 “forward operating base” means a permanent facil-
8 ity established by CBP in forward or remote loca-
9 tions, and designated as such by CBP.

