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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To establish Federal policies and procedures to notify the next-of-kin or other emergency contact upon the death, serious illness, serious injury, or hospitalization of an individual in the custody of U.S. Immigration and Customs Enforcement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. TORRES of New York introduced the following bill; which was referred to the Committee on _____

A BILL

To establish Federal policies and procedures to notify the next-of-kin or other emergency contact upon the death, serious illness, serious injury, or hospitalization of an individual in the custody of U.S. Immigration and Customs Enforcement, 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 TITLE.**

4 This Act may be cited as the “Families Deserve to
5 Know Act”.

1 **SEC. 2. EMERGENCY CONTACT NOTIFICATION POLICIES**
2 **AND PROCEDURES.**

3 (a) IN GENERAL.—Not later than 180 days after the
4 date of the enactment of this Act, the Secretary of Home-
5 land Security shall implement policies and procedures for
6 U.S. Immigration and Customs Enforcement to notify the
7 next-of-kin or other emergency contact in the event of a
8 covered death, or the serious illness or serious injury of
9 an individual in custody, consistent with the requirements
10 of this section.

11 (b) EMERGENCY CONTACT INFORMATION.—The poli-
12 cies and procedures described in subsection (a) shall ad-
13 dress the collection and use of emergency contact informa-
14 tion, including the following:

15 (1) INFORMATION REQUESTED UPON TAKING
16 CUSTODY.—At the time of taking custody, U.S. Im-
17 migration and Customs Enforcement shall ask the
18 individual—

19 (A) for the name, last known address, tele-
20 phone number, and email of any person or per-
21 sons who shall be notified in the event of the
22 individual's death or serious illness or serious
23 injury, and who are authorized to receive the
24 individual's body;

25 (B) the order in which the individual pre-
26 fers such emergency contacts to be notified;

1 (C) whether the individual would like a
2 faith leader to participate in the notification
3 process and, if so, of what denomination; and

4 (D) whether the individual has in place a
5 medical proxy decision maker or medical power
6 of attorney, advance directive, or do not resusci-
7 tate order.

8 (2) MODIFICATION.—U.S. Immigration and
9 Customs Enforcement shall permit an individual in
10 custody to modify the individual's emergency contact
11 information at any time and shall affirmatively offer
12 each individual an opportunity to review and update
13 such information not less frequently than every 90
14 days.

15 (3) LANGUAGE ACCESS.—The request, form,
16 and any disclosure required under this subsection
17 shall be provided in a language the individual under-
18 stands, with interpretation services provided as nec-
19 essary.

20 (4) STANDARDIZED FORM; DISCLOSURE; CUSTO-
21 DIAL RECORD.—The policies and procedures shall
22 include—

23 (A) a standardized template form for re-
24 cording the information described in paragraph
25 (1);

1 (B) a requirement that U.S. Immigration
2 and Customs Enforcement provide the indi-
3 vidual information about the purpose and per-
4 missible uses of the information, including the
5 limitations under subsection (f); and

6 (C) a requirement that the completed form
7 be included in the individual's custodial record.

8 (c) NOTIFICATION REQUIREMENTS.—The policies
9 and procedures described in subsection (a) shall describe
10 the notification requirements in the event of a covered
11 death or the serious illness or serious injury of an indi-
12 vidual in custody, including the following:

13 (1) NOTIFICATION TIMEFRAME.—

14 (A) NOTIFICATION OF DEATH.—In the
15 event of a covered death, U.S. Immigration and
16 Customs Enforcement shall notify the individ-
17 ual's emergency contact not later than 12 hours
18 after the declaration of death or after U.S. Im-
19 migration and Customs Enforcement learns of
20 the death, whichever is earlier, and between the
21 hours of 6:00 A.M. and midnight in the local
22 time of the person notified.

23 (B) NOTIFICATION OF SERIOUS ILLNESS
24 OR SERIOUS INJURY.—In the event of a serious
25 illness or serious injury suffered by an indi-

1 vidual in custody, U.S. Immigration and Cus-
2 toms Enforcement shall notify the individual's
3 emergency contact as soon as practicable after
4 the serious illness or serious injury occurs, and
5 in any event not later than 12 hours after the
6 individual is admitted to a hospital, undergoes
7 emergency surgery, is admitted to an intensive
8 care unit, or becomes incapacitated and unable
9 to communicate, and not later than 24 hours
10 after any other serious illness or serious injury.
11 The notification shall occur prior to any re-
12 quired medical procedure, where practical and if
13 such timeframe will not delay treatment, and in
14 any event not later than any medical discharge
15 or clearance. The time-of-day limitation in sub-
16 paragraph (A) shall not apply to a notification
17 under this subparagraph.

18 (C) CONSULAR COORDINATION.—U.S. Im-
19 migration and Customs Enforcement shall co-
20 ordinate with the appropriate consulate as re-
21 quired by any treaty or agreement, except that
22 consular coordination shall not delay any notifi-
23 cation required by this paragraph.

24 (D) COUNSEL OF RECORD.—In the event
25 of a covered death or a serious illness or serious

1 injury suffered by an individual in custody,
2 U.S. Immigration and Customs Enforcement
3 shall notify any counsel of record for the indi-
4 vidual in any pending immigration proceeding
5 or Federal court proceeding within the same
6 timeframe applicable under this paragraph.

7 (2) DEATH NOTIFICATION INFORMATION RE-
8 QUIRED.—Each notification required to be made
9 under paragraph (1) related to a covered death shall
10 include—

11 (A) all pertinent circumstances sur-
12 rounding the death, including the official time
13 of death;

14 (B) the cause of death (if determined);

15 (C) whether the death is under investiga-
16 tion and the reason for opening an investiga-
17 tion;

18 (D) the facility at which the individual was
19 held and the hospital, if any, to which the indi-
20 vidual was transported; information concerning
21 the disposition of the individual's remains and
22 property; and

23 (E) a point of contact at U.S. Immigration
24 and Customs Enforcement.

1 If the cause of death has not been determined at the
2 time of notification, U.S. Immigration and Customs
3 Enforcement shall follow up with each person noti-
4 fied not later than 24 hours after such a determina-
5 tion.

6 (3) SERIOUS ILLNESS OR SERIOUS INJURY NO-
7 TIFICATION INFORMATION REQUIRED.—Each notifi-
8 cation required to be made under paragraph (1) re-
9 lated to a serious illness or serious injury suffered
10 by an individual in custody shall include—

11 (A) the cause and nature of the event;

12 (B) whether the individual is incapacitated,
13 unconscious, or unable to speak;

14 (C) whether any medical procedures or life-
15 saving measures were or will be performed;

16 (D) the name and location of the facility
17 and provider providing treatment;

18 (E) contact information for the responsible
19 official of U.S. Immigration and Customs En-
20 forcement; and

21 (F) information regarding procedures for
22 communicating with the individual, when medi-
23 cally appropriate.

24 (4) COMPASSIONATE AND PROFESSIONAL NOTI-
25 FICATION.—Standards for providing notification in a

1 compassionate and professional manner, in a lan-
2 guage the recipient understands, including—

3 (A) a description of what information can-
4 not be included in a voicemail;

5 (B) an offer for an in-person or virtual
6 face-to-face meeting in the event a death notifi-
7 cation is provided during a live telephone con-
8 versation; and

9 (C) a requirement that notifications be
10 provided in a private setting and, when prac-
11 ticable, by a person trained in notification best
12 practices.

13 (5) NOTIFICATION OPT OUT.—Standards to en-
14 sure that notification does not occur where the indi-
15 vidual, while able to communicate, is advised of the
16 right to notification and instructs U.S. Immigration
17 and Customs Enforcement not to provide it, or re-
18 quests the opportunity to provide such notification
19 personally, in which case U.S. Immigration and Cus-
20 toms Enforcement shall provide the individual an
21 opportunity to deliver such notification within the
22 applicable time period.

23 (6) BELONGINGS AND REMAINS.—Standards
24 for handling the belongings and remains of an indi-
25 vidual whose death is a covered death, including—

1 (A) returning the belongings and remains,
2 if desired, to the emergency contact and pro-
3 viding at least 7 days for a decision as to dis-
4 position;

5 (B) assistance, in coordination with the ap-
6 propriate consulate, in the repatriation of re-
7 mains where requested by the family;

8 (C) follow-up with the emergency contact
9 regarding the outcome of any review or inves-
10 tigation not available at the time of initial noti-
11 fication; and

12 (D) documentation within the custodial
13 record of any unclaimed or rejected claim for
14 the body or property.

15 (7) DOCUMENTATION OF ATTEMPTS.—Require-
16 ments that each notification attempt be contempora-
17 neously documented and maintained within the cus-
18 todial record, including—

19 (A) the staff name and contact information
20 of each person responsible for the notification;

21 (B) the date, time, and method of each
22 successful and unsuccessful attempt;

23 (C) the name and contact information of
24 each person to whom an attempt was made;

25 (D) any acknowledgment received; and

1 (E) the reason for any failed attempt or
2 delay.

3 If a required notification cannot be completed within
4 the applicable period, U.S. Immigration and Customs
5 Enforcement shall continue diligent efforts not
6 less frequently than every 24 hours, using all reasonably
7 available sources of information, including the
8 individual's custodial record, the appropriate consulate,
9 and any counsel of record.

10 (8) ADDITIONAL PROCEDURES IN THE EVENT
11 OF SERIOUS ILLNESS OR INJURY.—Standards to ensure
12 that U.S. Immigration and Customs Enforcement—
13 ment—

14 (A) implements medical proxy, medical
15 power of attorney, advance directive, and do not
16 resuscitate orders;

17 (B) provides meaningful opportunity for
18 communication between the emergency contact
19 and the medical staff caring for the individual;

20 (C) ensures emergency contacts are given a
21 meaningful opportunity to visit a seriously ill or
22 seriously injured individual, with in-person visitation
23 when practicable and a written response
24 to any visitation request within 48 hours; and

1 (D) provides the individual's emergency
2 contact information to an outside hospital and
3 allows the hospital to follow its established by-
4 laws concerning communication with next-of-
5 kin.

6 (9) AUTOPSY NOTIFICATIONS.—Requirements
7 that, in the event an autopsy is performed following
8 a covered death, the emergency contact be informed
9 not later than 12 hours after any determination that
10 an autopsy will be performed, including the reason
11 for the autopsy and the procedures for obtaining the
12 report, and that a copy of the autopsy report and re-
13 sults be made available to the emergency contact
14 upon completion.

15 (d) WRITTEN NOTIFICATION PLAN.—The policies
16 and procedures described in subsection (a) shall require
17 the Director of U.S. Immigration and Customs Enforce-
18 ment to develop a written notification plan conforming to
19 this section, published on the website of the Department
20 of Homeland Security in English, Spanish, and the other
21 languages most commonly spoken by individuals in the
22 custody of U.S. Immigration and Customs Enforcement,
23 and made accessible to individuals in custody through in-
24 clusion in intake information, handbooks, and other mate-
25 rials distributed upon taking custody.

1 (e) DELAY EXCEPTION.—A notification required by
2 this section may be delayed only if the Secretary of Home-
3 land Security determines, in writing, that immediate noti-
4 fication would present a specific and articulable threat to
5 public safety, would materially interfere with an active
6 criminal investigation, or would place the individual at
7 substantial risk of serious harm. Any delay under this sub-
8 section shall be reviewed every 24 hours, shall be docu-
9 mented in the custodial record, and shall not exceed 72
10 hours unless personally approved in writing by the Sec-
11 retary.

12 (f) CONFIDENTIALITY.—Information collected under
13 this Act by U.S. Immigration and Customs Enforcement,
14 or any agent or contractor acting on behalf of U.S. Immi-
15 gration and Customs Enforcement, may not be disclosed
16 or used for any purpose except as provided in this Act.

17 (g) VOLUNTARY COLLECTION.—Nothing in this Act
18 shall be construed to require an individual in custody to
19 provide emergency contact information. U.S. Immigration
20 and Customs Enforcement may not attempt to coerce or
21 persuade the individual to provide such information, and
22 may not impose any penalty, fine, or fee on the individual
23 for declining to provide such information or for providing
24 information later determined to be inaccurate.

1 (h) INADMISSIBILITY.—No information disclosed or
2 used in violation of this Act may be admitted into any
3 State, Federal, or other court, or into any immigration
4 proceeding, as evidence or for any other purpose, except
5 in the case of information that has been discovered
6 through independent means.

7 **SEC. 3. APPLICABILITY.**

8 (a) COVERED DEATHS.—The requirements of this
9 Act apply with respect to every covered death, including
10 a death occurring during or at the conclusion of a serious
11 illness or serious injury suffered by an individual in cus-
12 tody and a death occurring within 30 days after an indi-
13 vidual is released from custody, notwithstanding any re-
14 lease from custody effected during a medical emergency
15 or episode of medical treatment and notwithstanding any
16 policy, directive, or guidance of the Department of Home-
17 land Security.

18 (b) CONTRACT AND INTERGOVERNMENTAL FACILI-
19 TIES.—

20 (1) IN GENERAL.—This Act applies with re-
21 spect to every covered facility without regard to the
22 ownership or operation of the facility.

23 (2) CONTRACT TERMS.—Not later than 180
24 days after the date of the enactment of this Act, the
25 Secretary of Homeland Security shall ensure that

1 every contract, subcontract, and intergovernmental
2 service agreement for the operation of a covered fa-
3 cility requires compliance with this Act as a material
4 term, requires immediate reporting to U.S. Immigra-
5 tion and Customs Enforcement of any death or a se-
6 rious illness or serious injury suffered by an indi-
7 vidual in custody, and provides that failure to com-
8 ply—

9 (A) shall result in the civil penalties de-
10 scribed in paragraph (3); and

11 (B) in the case of 2 or more such failures
12 at the same covered facility during any 12-
13 month period, shall result in termination of the
14 contract, subcontract, or agreement, and debar-
15 ment of the contractor from any contract or
16 agreement for the operation of a covered facility
17 for a period of 3 years.

18 (3) CIVIL PENALTY.—

19 (A) IN GENERAL.—A contractor (including
20 any subcontractor thereof) that violates this
21 Act, shall be subject to a civil penalty in the
22 amount of \$100,000 for each day a notification
23 required by this Act remains unmade.

1 (B) NO WAIVER.—The Secretary may not
2 waive, reduce, or reimburse a contractor for any
3 penalty under this paragraph.

4 (C) FAMILY NOTIFICATION FUND.—There
5 is established in the general fund of the Treas-
6 ury an account to be known as the “Family No-
7 tification Fund”. Amounts collected as fines
8 under this paragraph shall be deposited into the
9 fund and shall remain available until expended
10 to pay awards of damages under section 6 that
11 are imposed against the United States. Such
12 amounts may not be retained or used by the
13 Department of Homeland Security.

14 **SEC. 4. REPORTING AND REVIEW.**

15 (a) CONGRESSIONAL NOTIFICATION.—Not later than
16 24 hours after a covered death, the Secretary of Homeland
17 Security shall notify the appropriate committees of Con-
18 gress of the death.

19 (b) PUBLIC NOTIFICATION.—Not later than 2 busi-
20 ness days after a covered death, the Secretary shall pub-
21 lish on a publicly available website of the Department of
22 Homeland Security a release identifying the facility in-
23 volved and the known circumstances of the death.

24 (c) DEATH REPORT.—Not later than 90 days after
25 a covered death, the Secretary shall complete and publish

1 a report on the death, including a description of the med-
2 ical care provided, a timeline of the events preceding the
3 death, and the results of any review conducted under sub-
4 section (d).

5 (d) REVIEW.—The Secretary shall ensure that each
6 covered death is reviewed by the Office of Professional Re-
7 sponsibility of U.S. Immigration and Customs Enforce-
8 ment or an equivalent office, with the results provided to
9 the Office for Civil Rights and Civil Liberties and the In-
10 spector General of the Department of Homeland Security.

11 (e) SEMIANNUAL REPORT.—Not later than 1 year
12 after the date of the enactment of this Act, and semiannu-
13 ally thereafter, the Secretary shall submit to the appro-
14 priate committees of Congress a report identifying, for the
15 preceding 180-day period—

16 (1) each covered death, and the time elapsed
17 between the death and the completed notification of
18 the emergency contact;

19 (2) each notification required under section 2
20 that was not completed within the applicable period,
21 with an explanation, and each delay invoked under
22 section 2(e);

23 (3) each release from custody granted, by field
24 office, while an individual was hospitalized, being
25 transported for emergency medical care, or experi-

1 encing a medical emergency, and whether the indi-
2 vidual is known to have died following release; and

3 (4) the number of complaints received under
4 section 5(b) and corrective actions taken.

5 (f) RECORDS.—Records created under this Act shall
6 be retained for not less than 10 years and may not be
7 destroyed while any litigation, investigation, or congres-
8 sional inquiry concerning the death or event is pending.

9 **SEC. 5. OVERSIGHT.**

10 (a) INSPECTOR GENERAL.—Not later than 1 year
11 after the date of the enactment of this Act, and biennially
12 thereafter, the Inspector General of the Department of
13 Homeland Security shall audit compliance with this Act
14 and publish the results and any recommendations for cor-
15 rective action.

16 (b) COMPLAINTS.—The Officer for Civil Rights and
17 Civil Liberties of the Department of Homeland Security
18 shall establish a mechanism by which a family member,
19 emergency contact, or representative of an individual in
20 custody may submit a complaint concerning compliance
21 with this Act, and shall report annually to the appropriate
22 committees of Congress on complaints received and their
23 resolution.

1 **SEC. 6. CIVIL ACTION.**

2 (a) IN GENERAL.—Any individual in custody ag-
3 grieved by a violation of this Act, or the emergency con-
4 tact, next-of-kin, or personal representative of the estate
5 of such an individual, may bring a civil action for any vio-
6 lation of this Act in an appropriate district court of the
7 United States against the United States, any contractor,
8 subcontractor, or operator of a covered facility, or any offi-
9 cer or employee thereof acting in an official capacity.

10 (b) RELIEF.—In an action under this section, the
11 court shall award to a prevailing plaintiff—

12 (1) actual damages or statutory damages of not
13 less than \$100,000 for each violation, whichever is
14 greater;

15 (2) in the case of a willful violation, punitive
16 damages against any defendant other than the
17 United States;

18 (3) declaratory and injunctive relief, as appro-
19 priate; and

20 (4) reasonable attorney's fees and litigation
21 costs.

22 (c) SEPARATE VIOLATIONS.—For purposes of this
23 section and section 3(b), each day a notification required
24 by this Act remains unmade constitutes a separate viola-
25 tion.

1 (d) WAIVER OF SOVEREIGN IMMUNITY.—The United
2 States shall not be immune from suit under this section,
3 and sovereign immunity shall not be a defense to any ac-
4 tion brought under this section.

5 (e) RELATIONSHIP TO OTHER REMEDIES.—The rem-
6 edies under this section are in addition to, and not in lieu
7 of, the civil penalty under section 3(b) and any other rem-
8 edy available under Federal or State law, and may not
9 be conditioned on the exhaustion of any administrative
10 remedy. An award under this section shall not reduce, sat-
11 isfy, or bar the civil penalty under section 3(b), and pay-
12 ment of that penalty shall not bar an action under this
13 section.

14 **SEC. 7. RULES OF CONSTRUCTION; SEVERABILITY.**

15 (a) RULES OF CONSTRUCTION.—Nothing in this Act
16 may be construed—

17 (1) to create any legal or financial obligation on
18 the part of any person designated as a next-of-kin
19 or other emergency contact;

20 (2) to confer any immigration status, benefit, or
21 relief on any person;

22 (3) to discourage, limit, or condition the release
23 of any individual from custody, including release for
24 medical or humanitarian reasons;

1 (4) to alter existing medical privacy protections
2 under Federal law, or to limit any rights otherwise
3 available to individuals in custody under any other
4 provision of law;

5 (5) to displace any requirement of the Death in
6 Custody Reporting Act of 2013 (34 U.S.C. 60105);
7 or

8 (6) to authorize the detention of any individual.

9 (b) NO ADDITIONAL FUNDS.—No additional funds
10 are authorized to be appropriated to carry out this Act.
11 This Act shall be carried out using amounts otherwise
12 made available to the Department of Homeland Security.

13 (c) SEVERABILITY.—If any provision of this Act or
14 its application is held invalid, the remainder of this Act
15 and its application to other persons and circumstances
16 shall not be affected.

17 **SEC. 8. DEFINITIONS.**

18 In this Act:

19 (1) APPROPRIATE COMMITTEES OF CON-
20 GRESS.—The term “appropriate committees of Con-
21 gress” means the Committee on the Judiciary and
22 the Committee on Homeland Security of the House
23 of Representatives and the Committee on the Judici-
24 ary and the Committee on Homeland Security and
25 Governmental Affairs of the Senate.

1 (2) COVERED DEATH.—The term “covered
2 death” means the death of any individual that oc-
3 curs—

4 (A) while the individual is in custody of
5 U.S. Immigration and Customs Enforcement;
6 or

7 (B) within 30 days after the individual’s
8 release from the custody of U.S. Immigration
9 and Customs Enforcement, when U.S. Immi-
10 gration and Customs Enforcement knows or
11 reasonably should know of the death.

12 (3) COVERED FACILITY.—The term “covered
13 facility” means any facility at which individuals are
14 detained by or on behalf of U.S. Immigration and
15 Customs Enforcement, including a Service Proc-
16 essing Center, a contract detention facility, a facility
17 operated pursuant to an intergovernmental service
18 agreement, a Federal facility, and any other facility
19 operated by or under contract or agreement with the
20 Department of Homeland Security for the detention
21 of individuals in the custody of U.S. Immigration
22 and Customs Enforcement.

23 (4) CUSTODIAL RECORD.—The term “custodial
24 record” means the central file of an individual in
25 custody, including the individual’s detention file.

1 (5) IN CUSTODY.—The term “in custody”
2 means, with respect to an individual, that the indi-
3 vidual is—

4 (A) detained at a covered facility;

5 (B) being transported by or on behalf of
6 U.S. Immigration and Customs Enforcement;
7 or

8 (C) receiving medical treatment at a hos-
9 pital or other medical facility to which the indi-
10 vidual was transported from a covered facility
11 or from the custody of U.S. Immigration and
12 Customs Enforcement, through the conclusion
13 of the episode of treatment, notwithstanding
14 any release from custody effected during such
15 treatment.

16 (6) SERIOUS ILLNESS OR SERIOUS INJURY.—
17 The term “serious illness or serious injury” means
18 a medical event, episode, condition, or injury with
19 respect to which, at minimum—

20 (A) without immediate treatment, death is
21 imminent;

22 (B) admission to a hospital is required;

23 (C) emergency surgery is required;

24 (D) admission to an intensive care unit oc-
25 curs;

1 (E) the individual suffers cardiac arrest,
2 stroke, respiratory failure, or serious trauma;

3 (F) the individual is unconscious or inca-
4 pacitated such that the individual is incapable
5 of providing consent for medical treatment or of
6 communicating;

7 (G) the individual has been diagnosed with
8 a terminal illness; or

9 (H) a licensed physician determines the
10 condition presents a substantial risk of death or
11 permanent impairment.

12 (7) TAKING CUSTODY.—The term “taking cus-
13 tody” means the point at which U.S. Immigration
14 and Customs Enforcement takes custody or control
15 of an individual, including during or prior to booking
16 or intake screening, in transfer from another institu-
17 tion or agency, or as a holdover.