

111TH CONGRESS
1ST SESSION

H. R. 1215

To reform immigration detention procedures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2009

Ms. ROYBAL-ALLARD introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reform immigration detention procedures, 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 “Immigration Oversight
5 and Fairness Act”.

1 SEC. 2. ENHANCED PROTECTIONS FOR VULNERABLE UNAC-
2 COMPANIED ALIEN CHILDREN AND FEMALE
3 DETAINEES.

4 (a) MANDATORY TRAINING.—The Secretary of
5 Homeland Security, in consultation with the Office of Ref-
6 ugee Resettlement of the Department of Health and
7 Human Services and independent child welfare experts,
8 shall mandate live training of all personnel who come into
9 contact with unaccompanied alien children (as defined in
10 section 462 of the Homeland Security Act of 2002 (6
11 U.S.C. 279)) in all relevant legal authorities, policies, and
12 procedures pertaining to this vulnerable population.

(b) CARE AND TRANSPORTATION.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall ensure that all unaccompanied children who will undergo any immigration proceedings before the Department of Homeland Security and the Executive Office for Immigration Review are duly transported and placed in the care and legal and physical custody of the Office of Refugee Resettlement within a maximum of 24 hours of their apprehension absent narrowly defined exceptional circumstances, including a natural disaster or comparable emergency beyond the control of the Secretary of Homeland Security or the Office of Refugee Resettlement. The Secretary of Homeland Security shall ensure that female officers are responsible and at all times present during the

1 transfer and transport of female detainees who are in the
2 custody of the Secretary of Homeland Security.

3 (c) **QUALIFIED RESOURCES.**—For purposes of this
4 section, the Secretary of Homeland Security shall provide
5 adequately trained and qualified staff resources at each
6 major port of entry (as defined by the U.S. Customs and
7 Border Protection station assigned to that port having in
8 its custody over the past two fiscal years an average per
9 year of 50 or more unaccompanied alien children (as de-
10 fined in section 462 of the Homeland Security Act of 2002
11 (6 U.S.C. 279))), including U.S. Customs and Border
12 Protection agents charged primarily with the safe, swift,
13 and humane transportation of unaccompanied alien chil-
14 dren to Office of Refugee Resettlement custody and inde-
15 pendent licensed social workers dedicated to ensuring the
16 proper temporary care for the children while in Depart-
17 ment of Homeland Security custody prior to their transfer
18 to the Office of Refugee Resettlement, who will ensure
19 that each child—

20 (1) receives emergency medical care;
21 (2) receives mental health care in case of trau-
22 ma and has access to psychosocial health services;
23 (3) is provided with a pillow, linens, and suffi-
24 cient blankets to rest at a comfortable temperature,

1 a bed, and a mattress placed in an area specifically
2 designated for residential use;

3 (4) receives adequate nutrition;

4 (5) enjoys a safe and sanitary living environ-
5 ment;

6 (6) receives educational materials; and

7 (7) has access to at least three hours per day
8 of indoor and outdoor recreational programs and ac-
9 tivities.

10 (d) NOTIFICATION.—The Secretary of Homeland Se-
11 curity shall immediately notify the Office of Refugee Re-
12 settlement of an unaccompanied alien child in the custody
13 of the Department of Homeland Security to effectively and
14 efficiently coordinate the child's transfer to and placement
15 with the Office of Refugee Resettlement.

16 (e) NOTICE OF RIGHTS AND ACCESS TO COUNSEL.—
17 The Secretary of Homeland Security shall ensure that an
18 independent licensed social worker, as described in sub-
19 section (c), provides all unaccompanied alien children upon
20 apprehension with both a video orientation and oral and
21 written notice of their rights under the Immigration and
22 Nationality Act including their rights to relief from re-
23 moval and their rights to confer with counsel (as guaran-
24 teed under section 292 of such Act), family, or friends
25 while in the Department of Homeland Security's tem-

1 porary custody and relevant complaint mechanisms to re-
2 port any abuse or misconduct they may have experienced.
3 The Secretary of Homeland Security shall ensure that the
4 video orientation and written notice of rights is available
5 in English and in the five most common native languages
6 spoken by the unaccompanied children held in custody at
7 that location during the preceding fiscal year, and that
8 the oral notice of rights is available in English and in the
9 most common native language spoken by the unaccom-
10 panied children held in custody at that location during the
11 preceding fiscal year.

12 (f) CONFIDENTIALITY.—The Secretary of Health and
13 Human Services shall maintain the privacy and confiden-
14 tiality of all information gathered in the course of pro-
15 viding care, custody, placement and follow-up services to
16 unaccompanied alien children, consistent with the best in-
17 terest of the unaccompanied alien child, by not disclosing
18 such information to other government agencies or non-
19 parental third parties. The Secretary may share informa-
20 tion when authorized to do so by the child and when con-
21 sistent with the child's best interest. The Secretary may
22 provide information to a duly recognized law enforcement
23 entity, if such disclosure would prevent imminent and seri-
24 ous harm to another individual. All disclosures shall be
25 duly recorded in writing and placed in the child's files.

1 (g) OTHER POLICIES AND PROCEDURES.—The Sec-
2 retary shall further adopt fundamental child protection
3 policies and procedures—

4 (1) for reliable age-determinations of children
5 which exclude the use of fallible forensic testing of
6 children's bone and teeth developed in consultation
7 with medical and child welfare experts;

8 (2) to ensure the safe and secure repatriation
9 and reintegration of unaccompanied alien children to
10 their home countries through specialized programs
11 developed in close consultation with the Secretary of
12 State, the Office of the Refugee Resettlement and
13 reputable independent child welfare experts includ-
14 ing placement of children with their families or non-
15 governmental agencies to provide food, shelter and
16 vocational training and microfinance opportunities;

17 (3) to utilize all legal authorities to defer the
18 child's removal if the child faces a risk of life-threat-
19 ening harm upon return including due to the child's
20 mental health or medical condition; and

21 (4) to ensure that unaccompanied alien children
22 (as defined in section 462 of the Homeland Security
23 Act of 2002 (6 U.S.C. 279)) are physically sepa-
24 rated from any adult who is not an immediate fam-
25 ily member and are separated by sight and sound

1 from immigration detainees and inmates with crimi-
2 nal convictions, pretrial inmates facing criminal
3 prosecution, children who have been adjudicated
4 delinquents or convicted of adult offenses or are
5 pending delinquency or criminal proceedings, and
6 those inmates exhibiting violent behavior while in de-
7 tention as is consistent with the Juvenile Justice
8 and Delinquency Prevention Act of 1974 (42 U.S.C.
9 5601 et seq.).

10 **SEC. 3. DETENTION CONDITIONS.**

11 (a) DETENTION REQUIREMENTS.—All detention fa-
12 cilities shall fully comply with the following minimum re-
13 quirements:

14 (1) ACCESS TO TELEPHONES.—Detention facili-
15 ties shall provide to detainees reasonable and equi-
16 table access to working telephones, and the ability to
17 contact, free of charge, legal representatives, foreign
18 consulates, the immigration courts, the Board of Im-
19 migration Appeals, and the Federal courts, in addi-
20 tion to persons and offices contacted for the purpose
21 of obtaining legal representation. Detention facilities
22 shall provide to detainees access to telephones dur-
23 ing facility working hours and on an emergency
24 basis in accordance with the following:

1 (A) The detention facility shall provide to
2 each detainee a copy of its rules governing tele-
3 phone access and shall post those rules, to-
4 gether with an explanation of how to make
5 calls, within sight of each telephone available to
6 detainees. These rules shall be translated into
7 Spanish and two additional languages spoken
8 by a substantial part of the detainee population
9 of the detention facility. If a detention facility
10 has determined that more than 5 percent of its
11 population is a certain ethnicity, the document
12 should be translated into that ethnicity's appro-
13 priate language. The detention facility shall also
14 provide oral interpretation and written trans-
15 lation assistance to detainees in reading any
16 relevant materials required to request telephone
17 access, including oral interpretation assistance
18 for those who are not literate in English, Span-
19 ish, and other languages spoken by the detainee
20 population of the facility.

21 (B) The rates charged for telephone calls
22 shall be reasonable and equitable and shall not
23 significantly impair detainees' access to tele-
24 phones.

1 (C) The detention facility shall not restrict
2 the number of calls detainees may place to their
3 legal representatives or consular officials, or to
4 any others for the purpose of obtaining legal
5 representation, or limit the duration of those
6 calls by rule or automatic cut-off, unless nec-
7 essary for security reasons. The detention facil-
8 ity shall have a reasonable number of working
9 phones available to detainees, and at a min-
10 imum one phone per each 25 users.

11 (D) The detention facility shall ensure the
12 privacy of telephone conversations between de-
13 tainees and legal representatives or consular of-
14 ficials, and calls made for the purpose of ob-
15 taining legal representation. Means to ensure
16 privacy may include the use of privacy panels,
17 the placement of phones in housing pods, and
18 other appropriate measures.

19 (E) Detainees' telephone calls to a court,
20 legal representative, or consular official, or for
21 the purpose of obtaining legal representation,
22 shall not be monitored or recorded without a
23 court order and without prior notification to the
24 detainee.

1 (F) The detention facility shall take and
2 deliver telephone messages to detainees as
3 promptly as possible, but no less often than
4 twice a day. Detainees shall be permitted to
5 make confidential telephone calls promptly
6 within 8 hours of receipt of messages left by a
7 court, legal representative, prospective legal
8 representative, or consular official as soon as
9 reasonably possible after the delivery of the
10 message.

21 (A) All detention facilities shall maintain
22 current accreditation by the National Commis-
23 sion on Correctional Health Care and the Joint
24 Commission on the Accreditation of Health
25 Care Organizations. Detention facilities that are

1 not accredited as of the date of the enactment
2 of this Act will obtain such accreditation within
3 one year, and if accreditation is not obtained by
4 that time the Secretary of Homeland Security
5 shall cease use of the facility. All standards,
6 policies and practices shall at a minimum com-
7 ply with the National Commission on Correc-
8 tional Health Care Standards for Health Serv-
9 ices in Jails.

10 (B) All detention facilities shall have a des-
11 ignated on-site health authority who is a physi-
12 cian, a health services administrator, or a
13 health agency. Clinical decisions shall be made
14 solely by a licensed health care provider.

15 (C) Each immigration detainee shall re-
16 ceive a comprehensive medical and mental
17 health intake screening by a qualified health
18 care professional upon arrival at the facility and
19 each immigration detainee shall receive a com-
20 prehensive medical and mental health examina-
21 tion and assessment by a qualified health care
22 professional not later than 14 days after ar-
23 rival.

24 (D) Any decision to deny requested med-
25 ical care or treatment, or care or treatment rec-

ommended by any outside physician or specialist, to a detainee shall be made within 72 hours or earlier if medically necessary and shall be accompanied by a written explanation of the reasons for the denial. This decision and the written explanation of the decision shall be simultaneously communicated to the detainee and to the Secretary of Homeland Security.

9 (E) Detainees shall be afforded an oppor-
10 tunity to obtain an appeal of any decisions de-
11 nying a request for medical treatment. Such an
12 appeal or request for reconsideration shall be
13 resolved in writing within 7 days or earlier if
14 medically necessary by an appeals board that
15 shall be composed of independent health care
16 professionals in the fields relevant to the re-
17 quest for medical or mental health care. The
18 written decision shall be conveyed to the on-site
19 medical provider and the immigration detainee
20 within 24 hours of a decision by the appeals
21 board.

22 (F) Except in emergency situations where
23 informed consent cannot reasonably be ob-
24 tained, medical care and treatment shall be pro-
25 vided only with the informed consent of the de-

1 tainee or a person authorized by the detainee or
2 applicable law to provide such consent.

3 (G) Involuntary psychotropic medication
4 may be used only if allowed by applicable law
5 and then only in emergency situations when a
6 physician has determined, after personally ex-
7 amining the patient, that—

8 (i) a detainee is imminently dangerous
9 to self or others due to a mental illness;
10 and

11 (ii) involuntary psychotropic medica-
12 tion is medically appropriate to treat the
13 mental illness and necessary to prevent
14 harm. If a detainee is represented by coun-
15 sel, the administration of any psychotropic
16 drug to the detainee shall be disclosed to
17 the detainee's counsel promptly and in any
18 event within a reasonable time prior to any
19 hearing in which the detainee will appear.

20 If a detainee is not represented by counsel, the
21 administration of any psychotropic drug to the
22 detainee shall, with the informed consent of the
23 detainee, be disclosed to the Immigration Court
24 prior to any hearing in which the detainee will
25 appear. Any disclosure to the court by any per-

1 son of the administration of a psychotropic
2 drug to the detainee shall be filed under seal
3 and may be disclosed to other persons only in
4 the same manner and to the same extent that
5 medical records may be disclosed. Any detainee
6 who receives medication pursuant to this sub-
7 paragraph must be afforded a hearing pursuant
8 to the procedures set forth in 28 C.F.R.
9 549.43, as described in *Washington v. Harper*,
10 494 U.S. 210 (1990), before the detainee may
11 receive medication again under this subpara-
12 graph.

13 (H) No drugs of any kind shall be admin-
14 istered to detainees without their informed con-
15 sent for the purpose of sedation or controlling
16 the detainee's behavior during transportation or
17 removal or for the purpose of punishment.

18 (I) All detention facilities shall maintain
19 complete medical records for every detainee,
20 which shall be made available within 72 hours
21 to any detention facility to which the detainee
22 may be transferred. Medical records shall also
23 be made available within 72 hours to a de-
24 tainee, his legal representative, or other author-
25 ized individuals upon request by the detainee.

1 Any and all medical and mental health records
2 of a detainee shall be treated as confidential, as
3 required by the Health Insurance Portability
4 and Accountability Act of 1996.

5 (J) For each fiscal year after the passage
6 of this Act, the Secretary of Homeland Security
7 shall report to the Congress on a semiannual
8 basis, and to Department of Homeland Security
9 Office of Inspector General within 48 hours of
10 any in-custody death, information regarding the
11 death of any person who is in the custody of
12 U.S. Immigration and Customs Enforcement
13 that, at a minimum, includes—

- 14 (i) the name, gender, national origin,
15 alien number, and age of the deceased;
- 16 (ii) the date on which detention in
17 U.S. Immigration and Customs Enforce-
18 ment custody commenced;
- 19 (iii) the date and location of death;
- 20 (iv) the location of last detention;
- 21 (v) a brief description of the cir-
22 cumstances surrounding the death;
- 23 (vi) the status and results of any in-
24 vestigation(s) that has been conducted into
25 the circumstances surrounding the death;

1 (vii) each location where the indi-
2 vidual was held in U.S. Immigration and
3 Customs Enforcement custody or the cus-
4 tody of an entity contracting with U.S. Im-
5 migration and Customs Enforcement and
6 the dates during which the individual was
7 held at each location; and

8 (viii) all medical records of the de-
9 ceased.

10 (K) All detainee transfers shall take into
11 consideration the detainee's health and medical
12 fitness. Continuity of care shall be preserved
13 during and after transfers, and detainees shall
14 suffer no interruption in the provision of treat-
15 ment, including prescription medication.

16 (3) SEXUAL ABUSE REGULATIONS CONCERNING
17 CARE AND CUSTODY OF DETAINEES.—

18 (A) IN GENERAL.—Detention facilities
19 shall take all necessary measures to prevent
20 sexual abuse of detainees, including sexual as-
21 saults, and shall observe the minimum stand-
22 ards under the Prison Rape Elimination Act of
23 2003 (42 U.S.C. 15601 et seq.).

1 (B) MEASURES WHERE ABUSE OCCURS.—
23 Where sexual abuse occurs, detention facilities
4 shall ensure that—
56 (i) prompt and appropriate medical
7 intervention is taken to minimize medical
8 and psychological trauma;9 (ii) a medical history is taken and a
10 physical examination is conducted by qual-
11 ified and culturally appropriate medical
12 professionals to determine the extent of
13 physical injury and whether referral to an-
14 other medical facility is indicated;15 (iii) prophylactic treatment, emer-
16 gency contraception, and follow-up for sex-
17 ually transmitted diseases are provided;18 (iv) the case is evaluated by a qual-
19 ified mental health professional for crisis
20 intervention counseling and long-term fol-
21 low-up;22 (v) victims are separated from their
23 abusers and are considered for release on
24 parole or for an alternative to detention
25 program; and26 (vi) any and all medical and mental
27 health records arising out of a detainee's

1 allegation of sexual abuse shall be treated
2 as confidential, as required by the Health
3 Insurance Portability and Accountability
4 Act of 1996.

5 (C) REPORTING.—A detention facility shall
6 not subject any person to punishment or any
7 other form of retaliation for reporting incidents
8 of sexual abuse.

9 (D) INVESTIGATION.—In all cases of al-
10 leged sexual abuse, the detention facility shall
11 conduct a thorough and timely investigation
12 and shall provide to the Secretary of Homeland
13 Security a report of the circumstances and the
14 response of the detention facility. If the report
15 is not completed within 30 days after alleged
16 sexual abuse comes to the attention of the de-
17 tention facility, the detention facility shall sub-
18 mit to the Secretary of Homeland Security a
19 description of the status of the investigation
20 and an estimated date of completion 30 days
21 after the alleged sexual abuse comes to the at-
22 tention of the detention facility and every 30
23 days thereafter until the report is provided to
24 the Secretary of Homeland Security. The report
25 required by this subsection shall include at min-

18 (4) TRANSFER OF DETAINEES.—

19 (A) PROCEDURES.—In adopting proce-
20 dures governing the transfer of individuals de-
21 tained under section 236 of the Immigration
22 and Nationality Act (8 U.S.C. 1226), and sub-
23 ject to the exception in subparagraph (D), the
24 Secretary of Homeland Security shall promul-

1 gate regulations prohibiting transfer of a de-
2 tainee if such transfer would—

3 (i) negatively affect an existing attorney-client relationship;

4

5 (ii) negatively affect the detainee's
6 legal proceedings, including merits or cal-
7 endar hearings, or a pending application
8 with United States Citizenship and Immig-
9 ration Services or the Executive Office for
10 Immigration Review, by—

11 (I) limiting the detainee's access
12 to securing legal representation;

13 (II) limiting the detainee's ability
14 to prepare a legal defense to removal;
15 or

16 (III) removing the detainee from
17 the legal venue of such proceeding;

18 (iii) negatively affect the detainee's
19 health and medical fitness; or

20 (iv) to the extent it does not conflict
21 with clauses (i), (ii), and (iii)—

22 (I) place the detainee in a loca-
23 tion more distant from the detainee's
24 residence than the original detention
25 location; or

(II) place the detainee in a location more distant from family members than the original detention location.

5 (B) NOTICE.—Unless exigent cir-
6 cumstances dictate an immediate transfer—

(i) the Secretary of Homeland Security shall provide not less than 72 hours notice to any detainee prior to transferring a detainee to another detention facility;

21 (iii) if removal proceedings are pend-
22 ing, the Secretary of Homeland Security
23 shall also promptly notify the Immigration
24 Court, Board of Immigration Appeals, or
25 the Circuit Court of Appeals, as appro-

3 (iv) the Secretary of Homeland Secu-
4 rity shall not transfer any detainee who
5 has already requested, and is awaiting, a
6 bond hearing or a bond redetermination
7 hearing.

8 (C) EXCEPTION.—The Secretary may
9 transfer a detainee who has an existing attorney-client
10 relationship to an alternate detention facility if such transfer is necessitated by a
11 highly unusual emergency, such as a natural
12 disaster or comparable emergency.
13

14 (D) PROTECTING DETAINEES LEGAL
15 RIGHTS.—If the Secretary determines that a
16 transfer is necessary due to a highly unusual
17 emergency, the Secretary shall ensure that the
18 detainee’s legal rights are not prejudiced and
19 the existing attorney-client relationship is not
20 impaired, including evaluating the location of
21 the detention facility based on its proximity to
22 the detainee’s counsel or nongovernmental or
23 pro bono organizations providing free or low
24 cost immigration legal services.

1 (E) RECORD.—In cases in which a de-
2 tainee is transferred, the Secretary shall make
3 a record of the reasons and circumstances ne-
4 cessitating such transfer.

5 (5) NOTICE.—

6 (A) IN GENERAL.—Section 236 of the Im-
7 migration and Nationality Act (8 U.S.C. 1226)
8 is amended by adding at the end the following:

9 “(f) NOTICE.—The Secretary of Homeland Security
10 shall file the notice to appear or other relevant charging
11 document with the immigration court and serve such no-
12 tice on every alien detained under this Act, within 48
13 hours of the detention of such alien. Any alien, held for
14 more than 48 hours shall be brought before an immigra-
15 tion judge for a custody determination within 72 hours
16 of the arrest or detention of such alien. The requirements
17 of this provision may be tolled for no more than 30 days
18 upon request from an alien who demonstrates *prima facie*
19 eligibility for affirmative relief. The Secretary of Home-
20 land Security shall—

21 “(1) document when a notice to appear is
22 served on a detainee in order to determine compli-
23 ance by the Secretary of Homeland Security with
24 the 48-hour notice requirement; and

1 “(2) submit to the Committees on the Judiciary
2 of the Senate and the House of Representatives an
3 annual report concerning the Secretary of Homeland
4 Security’s compliance with such notice require-
5 ment.”.

6 (B) APPLICABILITY OF OTHER LAW.—
7 Nothing in section 236(f) of the Immigration
8 and Nationality Act, as added by subparagraph
9 (A), shall be construed to repeal section 236A
10 of such Act (8 U.S.C. 1226a).

11 (b) REGULATIONS CONCERNING CARE AND CUSTODY
12 OF DETAINEES.—

13 (1) RULEMAKING.—The Secretary of Homeland
14 Security shall promulgate new rules, or modify exist-
15 ing rules, based on the report of the detention advi-
16 sory committee established under paragraph (2), to
17 ensure detainees are treated humanely and held in
18 the least restrictive setting necessary for their safety
19 and to ensure compliance with the general minimum
20 requirements set forth in paragraph (3), standards
21 regarding classification of detainees set forth in
22 paragraph (4), and the special standards for vulner-
23 able populations set forth in paragraph (5). Such
24 rules shall apply to all facilities in which the Sec-
25 retary of Homeland Security detains noncitizens, in-

1 cluding Service Processing Centers, Contract Deten-
2 tion Facilities, State or local government facilities
3 used by Detention and Removal Operations through
4 Intergovernmental Service Agreements, Bureau of
5 Prisons facilities, and any other temporary or per-
6 manent facility used to hold detainees. The rules re-
7 quired under this paragraph shall be promulgated
8 not later than 1 year after the Secretary of Home-
9 land Security receives the report of the detention ad-
10 visory committee established under paragraph (2),
11 or 1 year after such report is due, whichever is ear-
12 lier.

13 (2) DETENTION ADVISORY COMMITTEE.—The
14 Secretary of Homeland Security shall convene, and
15 receive a report from a detention advisory committee
16 comprised of experts from U.S. Immigration and
17 Customs Enforcement, U.S. Customs and Border
18 Protection, the Office of Refugee Resettlement, and
19 Division of Immigration Health Services in the De-
20 partment of Health and Human Services, and an
21 equal number of independent experts from non-
22 governmental organizations and intergovernmental
23 organizations with expertise in working on behalf of
24 aliens detained under immigration laws and vulne-
25 rable populations. The independent experts shall at a

minimum include representatives of the American Bar Association and the United Nations High Commissioner for Refugees. The detention advisory committee shall review and revise all the guidelines found in the Secretary of Homeland Security's Detention Operations Manual, as amended, based on identifiable deficiencies and best practices that treat aliens both safely and humanely. The detention advisory committee shall submit a report to the Secretary of Homeland Security within 12 months after the date of the enactment of this Act. For good cause, the Secretary of Homeland Security may extend the time for submission of the advisory committee's report for an additional six months.

1 (A) an overview of immigration detention
2 and the characteristics of the noncitizen de-
3 tainee population;

4 (B) an overview of the detention stand-
5 ards;

6 (C) specific guidance on each of the deten-
7 tion standards; and

10 (4) GENERAL MINIMUM REQUIREMENTS.—The
11 Secretary of Homeland Security's rules regarding
12 conditions of detention shall ensure that the fol-
13 lowing requirements are met:

14 (A) FAIR AND HUMANE TREATMENT.—De-
15 tainees shall not be subject to cruel, degrading
16 or inhumane treatment such as verbal or phys-
17 ical abuse or harassment, sexual abuse or har-
18 assment, or arbitrary punishment.

19 (B) USE OF FORCE AND RESTRAINTS.—
20 Detainees shall not be subjected to shackling,
21 handcuffing, solitary confinement, Tasers, elec-
22 tric shields, restraint chairs, or strip searches
23 unless and to the extent that such techniques
24 are necessary to ensure the security of other de-
25 tainees, staff, or the public and where no less

1 coercive or degrading measures are available to
2 achieve that end. These techniques shall in no
3 event be used for the purpose of humiliating de-
4 tainees either within or outside the detention
5 facility. Detention facilities shall adopt written
6 policies pertaining to the use of force and the
7 use of restraints, and shall train all staff on the
8 proper use of such devices.

9 (C) INVESTIGATION OF GRIEVANCES.—De-
10 tainees shall have the right to prompt, effective,
11 transparent, and impartial grievance proce-
12 dures. Such procedures shall include review of
13 grievances by officials of the Department of
14 Homeland Security who do not work at the
15 same detention facility where the detainee filing
16 the grievance is detained in accordance with the
17 following:

18 (i) An otherwise valid grievance shall
19 not be denied for noncompliance with a
20 procedural requirement if such noncompli-
21 ance is due to ignorance, fear, excusable
22 neglect or other reasonable cause.

23 (ii) Detainees shall be afforded the
24 opportunity to complain to staff of U.S.
25 Immigration and Customs Enforcement di-

8 (iv) Detention facilities shall orally in-
9 form detainees of the grievance procedure
10 and the procedure for complaining directly
11 to staff of U.S. Immigration and Customs
12 Enforcement and shall provide to every de-
13 tainee a copy of those procedures within 24
14 hours after admission. The detention facil-
15 ity shall provide oral interpretation and
16 written translation assistance to detainees
17 in completing any grievance or complaint
18 forms or other relevant materials required
19 to comply with grievance procedures.

20 (v) Detention facilities shall make an
21 annual report regarding the grievances re-
22 ceived, the responses made, and the time
23 period for response, and such report shall
24 be submitted to the Secretary of Homeland
25 Security on January 31 of each year.

1 (vi) All grievances shall be inves-
2 tigated.

3 (D) LOCATION OF FACILITIES.—Detention
4 facilities shall be located, to the extent prac-
5 ticable, within 50 miles of a city or municipality
6 in which there is a demonstrated capacity to
7 provide competent legal representation by non-
8 profit legal aid organizations or other pro bono
9 attorneys to detained noncitizens, including asy-
10 lum seekers and other vulnerable immigrant
11 populations. The Secretary of Homeland Secu-
12 rity shall seek to use only facilities within the
13 stated 50 mile radius by January 1, 2012.

14 (E) ACCESS TO LEGAL MATERIALS.—De-
15 tainees shall have available an on-site law li-
16 brary with sufficient space to facilitate detain-
17 ees' legal research and preparation of docu-
18 ments. The law library's holdings shall include
19 up-to-date copies of legal materials designated
20 by the Secretary of Homeland Security, includ-
21 ing immigration law materials. The law library
22 shall be provided with adequate equipment for
23 legal research and the preparation of legal doc-
24 uments. Such equipment shall include, at a
25 minimum, computers, printers, typewriters, and

1 copiers. Information regarding the availability
2 of the library, procedures for requesting its use,
3 and instruction on the use of the library and li-
4 brary equipment shall be provided to all detain-
5 ees at the time of admission into the detention
6 facility, and shall be posted in the law library
7 together with a list of the library's holdings.
8 The detention facility will make available to de-
9 tainees any assistance that may be necessary to
10 allow detainees to use the library effectively and
11 shall provide special assistance as the Secretary
12 of Homeland Security may prescribe to detain-
13 ees who are not literate in English. Library
14 services, including access to databases and
15 printing and copying, shall be provided without
16 charge to detainees.

17 (F) LEGAL VISITS.—

18 (i) IN GENERAL.—Legal visits shall
19 not be restricted absent narrowly defined
20 exceptional circumstances, including a nat-
21 ural disaster or comparable emergency be-
22 yond the control of the Secretary of Home-
23 land Security.

24 (ii) PROCEDURES.—Detainees shall be
25 entitled to private meetings with their cur-

1 rent or prospective legal representatives or
2 their legal assistants. Interpreters shall be
3 allowed to accompany legal representatives
4 and legal assistants on legal visits subject
5 to appropriate security procedures. Legal
6 visits shall be permitted a minimum of 8
7 hours per day on regular business days
8 and 4 hours per day on weekends and holi-
9 days, except that if lack of space for inter-
10 views at the detention facility, the conduct
11 of immigration hearings on site, or other
12 factors lead to excessive delay between the
13 time the legal representative is ready to
14 visit the detainee and the time space be-
15 comes available, the Secretary of Home-
16 land Security shall require such additional
17 time for legal visits or other measures as
18 may be sufficient to avoid excessive delay.
19 Excessive delay for purposes of this para-
20 graph is delay of 2 hours or more, occur-
21 ring more than 2 times per month over a
22 12-month period. Detention facilities shall
23 maintain a procedure allowing legal rep-
24 resentatives and legal assistants to call
25 ahead to determine if a detainee is held at

1 that facility, and they shall take messages
2 from legal representatives and promptly
3 deliver them to the detainee. Messengers,
4 including individuals who are not attor-
5 neys, legal representatives, or legal assist-
6 ants, shall be permitted to deliver docu-
7 ments for detainees to and from the facil-
8 ity. Detention facilities shall promptly and
9 prominently post the most current official
10 list of pro bono legal organizations and
11 their contact information in detainee hous-
12 ing units and other appropriate areas, and
13 such lists shall be updated by the Sec-
14 retary of Homeland Security on a semi-an-
15 nual basis. Detention facilities may not re-
16 taliate in any way, including denial or limi-
17 tation of access to detention facilities, for
18 complaints or public or private statements
19 made by legal representatives regarding
20 the detention facility's compliance with
21 regulations relating to conditions of deten-
22 tion.

23 (G) SPECIAL CORRESPONDENCE.—Special
24 correspondence shall not be read by staff of the
25 detention facility or other personnel, contrac-

1 tors, or agents of the Secretary of Homeland
2 Security, and shall not be opened outside the
3 presence of the detainee. For this purpose, spe-
4 cial correspondence includes detainees' written
5 communications to or from private attorneys
6 and other legal representatives; government at-
7 torneys; judges and courts; embassies and con-
8 sulates; the president and vice president of the
9 United States, members of the Congress, offi-
10 cers and other personnel of the Department of
11 Justice; officers and other personnel of the De-
12 partment of Homeland Security; officers and
13 other personnel of the U.S. Public Health Serv-
14 ice; administrators of grievance systems; State
15 and local officials, representatives of the news
16 media, and representatives of nongovernmental
17 organizations and intergovernmental organiza-
18 tions working on behalf of aliens held in deten-
19 tion and vulnerable populations. Correspond-
20 ence will only be treated as special correspond-
21 ence if marked "special correspondence" or
22 "legal mail" or if the title and office of the
23 sender (for incoming correspondence) or ad-
24 dresser (for outgoing correspondence) are un-
25 ambiguously identified on the envelope, clearly

1 indicating that the correspondence is special
2 correspondence. Special correspondence shall be
3 promptly delivered and promptly posted. In
4 general, correspondence will be deemed prompt-
5 ly delivered if it is delivered to the detainee
6 within 24 hours after its receipt by the deten-
7 tion facility, and correspondence will be deemed
8 promptly posted if it is placed into the United
9 States mail the next day on which the Post Of-
10 fice is open for business after the detainee
11 places the correspondence in the location des-
12 ignated by the facility for outgoing mail.

(H) ACCESS TO DETENTION FACILITIES.—

16 (i) Subject to reasonable conditions to
17 protect the security of the facility, deten-
18 tion facilities shall afford access to private
19 attorneys, other legal representatives and
20 legal personnel such as paralegals and
21 Board of Immigration Appeals accredited
22 representatives; government attorneys;
23 judges and courts; embassies and con-
24 sulates; the president and vice president of
25 the United States, members of Congress

1 and their staff; officers and other personnel of the Department of Justice; officers and other personnel of the Department of Homeland Security; officers and other personnel of the U.S. Public Health Service; administrators of grievance systems; State and local officials, representatives of the news media, and representatives of nongovernmental organizations, community service organizations, and intergovernmental organizations.

12 (ii) Independent observers, including nongovernmental organizations, shall be permitted to conduct site visits, meet privately with detainees, test telephones and pro bono calling platforms, and take other reasonable steps to monitor compliance with regulations regarding conditions of detention. Such observers and organizations shall not be prohibited from issuing public reports on the findings of monitoring visits.

23 (iii) Detention facilities shall accommodate requests for facility tours within a reasonable time not to exceed 1 week.

1 (iv) Access of media representatives to
2 detention facilities and individual detainees
3 may be restricted only to the extent nec-
4 essary to preserve the privacy of detainees,
5 the security and good order of the facility,
6 the safety of the interviewer, national secu-
7 rity, or any other obligation imposed by
8 law or court order. Such access may not be
9 restricted based on the content of the
10 media representative's reporting, and retali-
11 ation against detainees and members of
12 the media based on the content of their
13 speech shall be prohibited.

14 (v) Detention facilities may not retali-
15 ate in any way, including denial or limita-
16 tion of access to detention facilities,
17 against any visitor for complaints, or pub-
18 lic or private statements, regarding the de-
19 tention facility's compliance with regula-
20 tions relating to conditions of detention.

21 (I) TRANSLATION CAPABILITIES.—Deten-
22 tion facilities shall employ staff that, to the ex-
23 tent practicable, is qualified in the languages
24 represented in the population of detainees at

1 each such facility and shall provide alternative
2 translation services where necessary.

3 (J) RECREATIONAL PROGRAMS AND AC-
4 TIVITIES.—Detainees shall be afforded access of
5 at least one hour per day to indoor and outdoor
6 recreational programs and activities.

7 (K) SAFE AND SANITARY LIVING ENVIRON-
8 MENT.—Detention facilities shall house no more
9 individuals than permitted by the rated bed ca-
10 pacity for the facility, where the rated bed ca-
11 pacity is defined by the original design capacity,
12 plus or minus capacity changes resulting from
13 building additions, reductions, or revisions.
14 Each detainee shall receive appropriate clothing
15 and a bed and a mattress placed in an area
16 specifically designated for residential use, rath-
17 er than an area re-tasked for residential use
18 such as common dayrooms, recreation areas, or
19 visitation rooms. Detention facilities shall be
20 maintained in a safe and sanitary condition,
21 and adequate ventilation and reasonably com-
22 fortable indoor temperatures shall be main-
23 tained at all times.

24 (L) LEGAL ORIENTATION TO ENSURE EF-
25 FECTIVE IMMIGRATION PROCEEDINGS.—

1 (i) IN GENERAL.—The Attorney General
2 shall ensure that all
3 detained aliens, including unaccompanied
4 minors, in immigration proceedings receive
5 legal orientation from an independent non-
6 governmental organization through a pro-
7 gram administered and implemented by
8 the Executive Office for Immigration Re-
9 view of the Department of Justice.

4 (A) recognize the unique needs of asylum
5 seekers, victims of torture and trafficking, fami-
6 lies with children, detainees who do not speak
7 English, detainees with special religious, cul-
8 tural or spiritual considerations, and vulnerable
9 populations listed in section 4(c); and

10 (B) ensure that procedures and conditions
11 of detention are appropriate for such vulnerable
12 populations.

1 **SEC. 4. SECURE ALTERNATIVES TO DETENTION.**

2 (a) IN GENERAL.—Subject to the availability of ap-
3 propriations, the Secretary of Homeland Security shall
4 fully implement and utilize secure alternatives to detention
5 programs.

6 (b) SECURE ALTERNATIVES TO DETENTION PRO-
7 GRAMS.—

8 (1) NATURE OF THE PROGRAM.—For purposes
9 of this section, the programs referred to in sub-
10 section (a) are programs under which eligible aliens
11 are released under supervision, assistance and moni-
12 toring that ensure they appear at all immigration
13 interviews, appointments, and hearings. The ele-
14 ments of the secure alternatives to detention pro-
15 grams are—

16 (A) group presentations and individual
17 screening;

18 (B) provision of services to aliens released;
19 and

20 (C) on-going assistance, supervision, and
21 monitoring.

22 (2) VOLUNTARY PARTICIPATION.—An alien's
23 participation in the program is voluntary and shall
24 not confer any rights or benefits to the alien under
25 the Immigration and Nationality Act (8 U.S.C. 1101
26 et seq.).

9 (B) All aliens in the custody of the Sec-
10 retary of Homeland Security deemed eligible for
11 secure alternatives to detention programs shall
12 be released in the least restrictive setting need-
13 ed to ensure appearance at all immigration
14 interviews, appointments and hearings. The
15 programs shall utilize a continuum of methods,
16 including releasing the alien to an individual or
17 organizational sponsor, a supervised group
18 home, or a supervised, non-penal community
19 setting.

20 (C) Nongovernmental organizations and
21 State and local social service agencies that serve
22 immigrants shall be contracted to conduct
23 group and individual screening and provide
24 services to program participants.

7 (c) PROTECTION OF VULNERABLE POPULATIONS.—

8 Within 72 hours of detaining an alien, the Secretary of
9 Homeland Security shall screen the alien to determine if
10 he or she falls into the following designated groups. Any
11 alien described in the following designated groups who
12 meets the criteria set forth under section 236(b) of the
13 Immigration and Nationality Act, as amended by this Act,
14 shall be released on parole, a reasonable bond, or the
15 alien's own recognizance subject to the requirements of
16 such section 236(b):

17 (1) Aliens who have serious medical or mental
18 health needs or a disability.

19 (2) Pregnant or nursing women.

20 (3) Aliens who are being detained with one or
21 more of their children.

22 (4) Aliens who provide financial, physical, and
23 other direct support to their minor children, parents,
24 or other dependents.

25 (5) Aliens who are over the age of 65.

4 (7) Victims of abuse, violence, crime or traf-
5 ficking.

6 (8) Asylum seekers and torture survivors who
7 have demonstrated a credible fear of persecution or
8 a reasonable fear of torture.

13 (10) Individuals who have a nonfrivolous claim
14 to United States citizenship or aliens who are eligi-
15 ble for relief under a provision of the Immigration
16 and Nationality Act.

17 (d) OPTIONS REGARDING DETENTION DECISIONS
18 FOR VULNERABLE POPULATIONS AND PLACEMENT IN AL-
19 TERNATIVES TO DETENTION.—Section 236 of the Immi-
20 gration and Nationality Act (8 U.S.C. 1226) is amend-
21 ed—

22 (1) in subsection (a)—

23 (A) in the matter preceding paragraph (1),
24 by striking “(c)” and inserting “(d)”;

25 (B) in paragraph (2)—

1 (i) in subparagraph (A), by striking
2 “or” at the end;

3 (ii) in subparagraph (B), by striking
4 “but” at the end; and

5 (iii) by inserting after subparagraph
6 (B) the following:

8 (C) by redesignating paragraph (3) as
9 paragraph (4); and

10 (D) by inserting after paragraph (2) the
11 following:

12 “(3) may enroll the alien in a secure alter-
13 natives to detention program; but”;

14 (2) by redesignating subsections (b), (c), (d),
15 and (e) as subsections (e), (f), (g), and (h) respec-
16 tively:

17 (3) by inserting after subsection (a) the fol-
18 lowing:

19 "(b) CUSTODY DECISIONS FOR VULNERABLE POPU-
20 LATIONS —

21 “(1) IN GENERAL.—Not later than 72 hours
22 after an alien’s detention unless the 72 hour require-
23 ment is waived in writing by the alien, an alien who
24 is a member of a vulnerable population (as defined
25 by subsection (c)) shall be released from the Sec-

1 retary of Homeland Security's custody and shall not
2 be subject to electronic monitoring unless the Sec-
3 retary of Homeland Security demonstrates that the
4 alien—

5 “(A) is subject to mandatory detention
6 under section 235(b)(1)(B)(iii)(IV), 236(e) or
7 236A; or

8 “(B) poses a flight risk or a risk to others
9 or national security.

10 “(2) RELEASE.—An alien shall be released
11 under this subsection—

12 “(A) on the alien's own recognizance;
13 “(B) by posting a reasonable bond under
14 subsection (a); or

15 “(C) on parole in accordance with section
16 212(d)(5)(A).

17 “(c) PARTICIPATION IN ALTERNATIVES TO DETEN-
18 TION.—An alien who is denied release on recognizance, pa-
19 role, or bond, or is unable to pay the bond shall be selected
20 for participation in a secure alternatives to detention pro-
21 gram unless the Secretary of Homeland Security dem-
22 onstrates by substantial evidence that the alien—

23 “(1) is subject to mandatory detention under
24 section 235(b)(1)(B)(iii)(IV) or 236A; or

1 “(2) is a flight risk or the alien’s participation
2 in the program would create a risk to others or na-
3 tional security.

4 “(d) DECISIONS UNDER THIS SECTION.—In the case
5 of a decision under subsection (a), (b), or (c), the following
6 shall apply:

7 “(1) The decision shall be made in writing and
8 shall be served upon the individual in the language
9 spoken by the alien. A decision to continue detention
10 without bond or parole shall specify in writing the
11 reasons for that decision.

12 “(2) The decision shall be served upon the alien
13 within 72 hours of the individual’s detention or, in
14 the case of an individual subject to section 235, 238,
15 or 241(a)(5) within 72 hours of a positive credible
16 or reasonable fear determination.

17 “(3) An alien subject to this section, including
18 all aliens who are entitled to a removal hearing
19 under section 240, may at any time after being
20 served with the Secretary of Homeland Security’s
21 decision under subsections (a), (b), or (c) request a
22 redetermination of that decision by an immigration
23 judge.

24 “(4) All custody decisions by the Secretary of
25 Homeland Security shall be subject to redetermina-

1 tion by an immigration judge. Nothing in this sub-
2 section shall be construed to prevent an individual
3 from requesting a bond redetermination.

4 “(5) The Attorney General or an immigration
5 judge, at any time, may redetermine an alien’s clas-
6 sification under subsection (e), the bond of someone
7 released, or the custody status of someone placed in
8 an alternatives to detention program. Nothing in
9 this subsection would preclude a person from being
10 released on bond after initially participating in an
11 alternatives to detention program.”; and

12 (4) in subsection (f), as redesignated, in para-
13 graph (2), by inserting “or for humanitarian rea-
14 sons,” after “such an investigation.”.

15 (e) **ELIGIBILITY AND OPERATIONS.**—Nothing in this
16 section shall be construed to modify the care and custody
17 of unaccompanied alien children (as defined in section
18 462(g)(2) of the Homeland Security Act (6 U.S.C.
19 279(g)(2))) who shall be considered to be in the care and
20 exclusive legal and physical custody of the Secretary of
21 Health and Human Services. Such children shall be sub-
22 ject to removal proceedings under section 240 of the Im-
23 migration and Nationality Act (8 U.S.C. 1229a), with the
24 exception of children from contiguous countries eligible for

1 administrative voluntary departure, and shall not be per-
2 mitted to participate in the program.

3 (f) LESS RESTRICTIVE CUSTODIAL DETENTION.—If
4 an alien is determined not to meet the requirements for
5 release on recognizance, bond or parole, or subsequently
6 does not meet the requirements for secure alternatives to
7 detention programs, the alien shall be considered for
8 placement in less restrictive forms of custody:

9 (1) Less restrictive forms of custodial detention
10 include electronic monitoring such as the use of
11 ankle bracelets that monitor an individual's move-
12 ment and the use of similar electronic devices.

13 (2) An individualized determination shall be
14 made in each alien's case about the use of electronic
15 monitoring.

16 (3) Aliens who would otherwise be subject to
17 detention including under section 236 of such Act (8
18 U.S.C. 1226) may be placed in electronic monitoring
19 or other less restrictive forms of custody.

20 (4) Subject to the availability of appropriations,
21 facilities shall be developed and used that offer the
22 least restrictive secure setting for aliens in custody.

23 **SEC. 5. PROGRAM OVERSIGHT AND REVIEW.**

24 (a) RELATIONSHIPS OF APPLICATION TO CERTAIN
25 ORDERS.—An alien who is present in the United States

1 and has been ordered excluded, deported, removed, or or-
2 dered to depart voluntarily from the United States under
3 any provision of the Immigration and Nationality Act—

4 (1) notwithstanding such order, may be selected
5 for a secure alternatives to detention program; and
6 (2) shall not be required to file a separate mo-
7 tion to reopen, reconsider, or vacate the exclusion,
8 deportation, removal, or voluntary departure order.

9 (b) IMPLEMENTING REGULATIONS.—Not later than
10 180 days after the date of the enactment of this Act, the
11 Secretary of Homeland Security shall promulgate regula-
12 tions to implement the secure alternatives to detention
13 programs.

14 (c) REPORTING REQUIREMENTS.—Not later than
15 365 days after the date of the enactment of this Act and
16 annually thereafter, the Secretary of Homeland Security
17 shall submit to the Committee on Homeland Security of
18 the House of Representatives, the Committee on the Judi-
19 ciary of the House of Representatives, the Committee on
20 Homeland Security and Governmental Affairs of the Sen-
21 ate, and the Committee on the Judiciary of the Senate
22 a report that details all policies, regulations, and actions
23 taken to comply with the provisions in this Act and the
24 amendments made by this Act, including efforts to in-
25 crease the use of the secure alternatives to detention pro-

1 grams, and a description of efforts taken to ensure that
2 all aliens in expedited removal proceedings are residing
3 under conditions that are safe, secure, and healthy.

4 (d) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary of
6 Homeland Security such sums as may be necessary to
7 carry out this Act and the amendments made by this Act.
8 Amounts appropriated pursuant to this subsection shall
9 remain available until expended.

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