

111TH CONGRESS  
1ST SESSION

# H. R. 1215

To reform immigration detention procedures, and for other purposes.

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## 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

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## 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.

13 (b) CARE AND TRANSPORTATION.—Notwithstanding  
14 any other provision of law, the Secretary of Homeland Se-  
15 curity shall ensure that all unaccompanied children who  
16 will undergo any immigration proceedings before the De-  
17 partment of Homeland Security and the Executive Office  
18 for Immigration Review are duly transported and placed  
19 in the care and legal and physical custody of the Office  
20 of Refugee Resettlement within a maximum of 24 hours  
21 of their apprehension absent narrowly defined exceptional  
22 circumstances, including a natural disaster or comparable  
23 emergency beyond the control of the Secretary of Home-  
24 land Security or the Office of Refugee Resettlement. The  
25 Secretary of Homeland Security shall ensure that female  
26 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.

11 (2) QUALITY OF MEDICAL CARE.—Detention fa-  
12 cilities shall afford a continuum of prompt, high  
13 quality medical care, including care to address med-  
14 ical needs that existed prior to detention, at no cost  
15 to detainees. Such medical care shall address all de-  
16 tainee health needs and shall include chronic care,  
17 dental care, eye care, mental health care, individual  
18 and group counseling, medical dietary needs, and  
19 other medically necessary specialized care in accord-  
20 ance with the following:

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.

(E) Detainees shall be afforded an opportunity to obtain an appeal of any decisions denying a request for medical treatment. Such an appeal or request for reconsideration shall be resolved in writing within 7 days or earlier if medically necessary by an appeals board that shall be composed of independent health care professionals in the fields relevant to the request for medical or mental health care. The written decision shall be conveyed to the on-site medical provider and the immigration detainee within 24 hours of a decision by the appeals board.

(F) Except in emergency situations where informed consent cannot reasonably be obtained, medical care and treatment shall be provided only with the informed consent of the de-

1           tinee 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.—

2 Where sexual abuse occurs, detention facilities  
3 shall ensure that—

4 (i) prompt and appropriate medical  
5 intervention is taken to minimize medical  
6 and psychological trauma;

7 (ii) a medical history is taken and a  
8 physical examination is conducted by quali-  
9 fied and culturally appropriate medical  
10 professionals to determine the extent of  
11 physical injury and whether referral to an-  
12 other medical facility is indicated;

13 (iii) prophylactic treatment, emer-  
14 gency contraception, and follow-up for sex-  
15 ually transmitted diseases are provided;

16 (iv) the case is evaluated by a quali-  
17 fied mental health professional for crisis  
18 intervention counseling and long-term fol-  
19 low-up;

20 (v) victims are separated from their  
21 abusers and are considered for release on  
22 parole or for an alternative to detention  
23 program; and

24 (vi) any and all medical and mental  
25 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-

1           imum a determination of whether the alleged  
2           sexual abuse occurred, an in-depth analysis of  
3           the relevant facts including the causes of any  
4           sexual abuse that may have occurred and  
5           whether and to what extent the alleged abuse  
6           indicates a failure of policy, a failure of train-  
7           ing, a failure of oversight, or a failure of man-  
8           agement, and a description of the actions that  
9           the facility will take to prevent the occurrence  
10          of similar incidents in the future and a plan for  
11          monitoring the implementation of those actions.  
12          The detention facility shall provide to the Sec-  
13          retary of Homeland Security periodic reports  
14          monitoring the implementation of the plan in  
15          accordance with the schedule set forth in such  
16          plan as approved by the Secretary of Homeland  
17          Security.

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 attor-  
4 ney-client relationship;

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 Immi-  
9 gration 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

1 (II) place the detainee in a loca-  
2 tion more distant from family mem-  
3 bers than the original detention loca-  
4 tion.

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

7 (i) the Secretary of Homeland Secu-  
8 rity shall provide not less than 72 hours  
9 notice to any detainee prior to transferring  
10 the detainee to another detention facility;

11 (ii) detainees shall be afforded at least  
12 one toll-free call following any transfer,  
13 and within 24 hours after the detainee's  
14 arrival at the transferee facility, the Sec-  
15 retary of Homeland Security shall notify  
16 the detainee's legal representative or if un-  
17 represented, an adult family member or  
18 other person designated by the detainee, of  
19 the transfer and the detainee's new loca-  
20 tion;

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-

1           prios of the transfer and the detainee's  
2           new address; and

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

8           (C) EXCEPTION.—The Secretary may  
9           transfer a detainee who has an existing attorney-client relationship to an alternate detention  
10          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 including 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 vulner-  
25 able populations. The independent experts shall at a

1 minimum include representatives of the American  
2 Bar Association and the United Nations High Com-  
3 missioner for Refugees. The detention advisory com-  
4 mittee shall review and revise all the guidelines  
5 found in the Secretary of Homeland Security's De-  
6 tention Operations Manual, as amended, based on  
7 identifiable deficiencies and best practices that treat  
8 aliens both safely and humanely. The detention advi-  
9 sory committee shall submit a report to the Sec-  
10 retary of Homeland Security within 12 months after  
11 the date of the enactment of this Act. For good  
12 cause, the Secretary of Homeland Security may ex-  
13 tend the time for submission of the advisory commit-  
14 tees report for an additional six months.

15 (3) TRAINING.—The Secretary of Homeland  
16 Security shall develop and implement a training pro-  
17 tocol for all personnel in all facilities in which non-  
18 citizens are detained. The training protocol shall in-  
19 clude periodic updates to initial comprehensive train-  
20 ing. The Secretary shall monitor the implementation  
21 of the protocol annually and shall ensure that all  
22 personnel who are required to be trained under the  
23 protocol have received the necessary training. The  
24 protocol shall include—

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

8 (D) a description of the Secretary's quality  
9 assurance procedures.

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-

1 rectly and confidentially, outside the grievance process.  
2

3 (iii) Detainees shall not be subject to  
4 retaliation for making use of the grievance  
5 procedure or procedure for complaining di-  
6 rectly to staff of U.S. Immigration and  
7 Customs Enforcement.

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          dressee (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.

13                   (H) ACCESS TO DETENTION FACILITIES.—

14          Detention facilities shall afford access as fol-  
15          lows:

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 per-  
2 sonnel of the Department of Justice; offi-  
3 cers and other personnel of the Depart-  
4 ment of Homeland Security; officers and  
5 other personnel of the U.S. Public Health  
6 Service; administrators of grievance sys-  
7 tems; State and local officials, representa-  
8 tives of the news media, and representa-  
9 tives of nongovernmental organizations,  
10 community service organizations, and  
11 intergovernmental organizations.

12 (ii) Independent observers, including  
13 nongovernmental organizations, shall be  
14 permitted to conduct site visits, meet pri-  
15 vately with detainees, test telephones and  
16 pro bono calling platforms, and take other  
17 reasonable steps to monitor compliance  
18 with regulations regarding conditions of  
19 detention. Such observers and organiza-  
20 tions shall not be prohibited from issuing  
21 public reports on the findings of moni-  
22 toring visits.

23 (iii) Detention facilities shall accom-  
24 modate requests for facility tours within a  
25 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 retal-  
11 iation 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 Gen-  
2 eral, in consultation with the Secretary of  
3 Homeland Security, shall ensure that all  
4 detained aliens, including unaccompanied  
5 minors, in immigration proceedings receive  
6 legal orientation from an independent non-  
7 governmental organization through a pro-  
8 gram administered and implemented by  
9 the Executive Office for Immigration Re-  
10 view of the Department of Justice.

11 (ii) CONTENT OF PROGRAM.—The  
12 legal orientation program developed pursu-  
13 ant to this subparagraph shall be based on  
14 the Legal Orientation Program carried out  
15 by the Executive Office for Immigration  
16 Review on the date of the enactment of  
17 this Act. Presentations for minors shall  
18 utilize a child-centered model.

19 (5) CLASSIFICATION.—The Secretary of Home-  
20 land Security's rules shall ensure that detainees with  
21 no history of a criminal conviction are separated by  
22 sight and sound from detainees and inmates with  
23 criminal convictions, pretrial inmates facing criminal  
24 prosecution, and those inmates exhibiting violent be-  
25 havior while in detention.

1           (6) VULNERABLE POPULATIONS.—The Sec-  
2       retary of Homeland Security’s rules regarding condi-  
3       tions of detention for vulnerable populations shall—

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.

13          (7) STAFFING.—For purposes of this subsection  
14       and protecting vulnerable populations, the Secretary  
15       of Homeland Security shall appoint at least three  
16       members to the Directorate of Policy at the GS–15  
17       level with substantial academic credentials and ex-  
18       pertise in working directly with vulnerable popu-  
19       lations including children, families and victims of  
20       trafficking, trauma, and torture who shall be respon-  
21       sible for setting, implementing, and overseeing policy  
22       and regulatory developments concerning vulnerable  
23       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.).

1           (3) PROGRAM DEVELOPMENT.—The program  
2 shall be developed in accordance with the following  
3 guidelines:

4           (A) The Secretary of Homeland Security  
5 shall design the program in consultation with  
6 nongovernmental organizations and academic  
7 experts in both the immigration and the criminal justice fields.

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

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

1           (D) The Secretary of Homeland Security  
2           shall ensure that each alien participates in a  
3           legal presentation provided through the legal  
4           orientation presentation program administered  
5           by the Executive Office for Immigration Re-  
6           view.

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.

1           (6) Children (as defined at section 101(c)(1) of  
2       the Immigration and Nationality Act (8 U.S.C.  
3       1101(c)(1))).

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.

9           (9) Other groups designated in regulations or  
10      guidance promulgated after the date of the enact-  
11      ment of this Act by the Secretary of Homeland Se-  
12      curity.

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:  
7 “(C) the alien’s own recognizance; and”;
- 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(c) 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 (c), 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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