

113TH CONGRESS
1ST SESSION

H. R. 639

To reform immigration detention procedures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2013

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”.

6 **SEC. 2. DETENTION CONDITIONS.**

7 (a) DETENTION REQUIREMENTS.—All detention fa-
8 cilities shall fully comply with the following minimum re-
9 quirements:

1 (1) ACCESS TO TELEPHONES.—Detention facili-
2 ties shall provide to detainees reasonable and equi-
3 table access to working telephones, and the ability to
4 contact, free of charge, legal representatives, foreign
5 consulates, the immigration courts, the Board of Im-
6 migration Appeals, and the Federal courts, in addi-
7 tion to persons and offices contacted for the purpose
8 of obtaining legal representation. Detention facilities
9 shall provide to detainees access to telephones dur-
10 ing facility working hours and on an emergency
11 basis in accordance with the following:

12 (A) The detention facility shall provide to
13 each detainee a copy of its rules governing tele-
14 phone access and shall post those rules, to-
15 gether with an explanation of how to make
16 calls, within sight of each telephone available to
17 detainees. These rules shall be translated into
18 Spanish and two additional languages spoken
19 by a substantial part of the detainee population
20 of the detention facility. If a detention facility
21 has determined that more than 5 percent of its
22 population is a certain ethnicity, the document
23 should be translated into that ethnicity’s appro-
24 priate language. The detention facility shall also
25 provide oral interpretation and written trans-

1 lation assistance to detainees in reading any
2 relevant materials required to request telephone
3 access, including oral interpretation assistance
4 for those who are not literate in English, Span-
5 ish, and other languages spoken by the detainee
6 population of the facility.

7 (B) The rates charged for telephone calls
8 shall be reasonable and equitable and shall not
9 significantly impair detainees' access to tele-
10 phones.

11 (C) The detention facility shall not restrict
12 the number of calls detainees may place to their
13 legal representatives or consular officials, or to
14 any others for the purpose of obtaining legal
15 representation, or limit the duration of those
16 calls by rule or automatic cut-off, unless nec-
17 essary for security reasons. The detention facil-
18 ity shall have a reasonable number of working
19 phones available to detainees, and at a min-
20 imum one phone per each 25 users.

21 (D) The detention facility shall ensure the
22 privacy of telephone conversations between de-
23 tainees and legal representatives or consular of-
24 ficials, and calls made for the purpose of ob-
25 taining legal representation. Means to ensure

1 privacy may include the use of privacy panels,
2 the placement of phones in housing pods, and
3 other appropriate measures.

4 (E) Detainees' telephone calls to a court,
5 legal representative, or consular official, or for
6 the purpose of obtaining legal representation,
7 shall not be monitored or recorded without a
8 court order and without prior notification to the
9 detainee.

10 (F) The detention facility shall take and
11 deliver telephone messages to detainees as
12 promptly as possible, but no less often than
13 twice a day. Detainees shall be permitted to
14 make confidential telephone calls promptly
15 within 8 hours of receipt of messages left by a
16 court, legal representative, prospective legal
17 representative, or consular official as soon as
18 reasonably possible after the delivery of the
19 message.

20 (2) QUALITY OF MEDICAL CARE.—Detention fa-
21 cilities shall afford a continuum of prompt, high-
22 quality medical care, including care to address med-
23 ical needs that existed prior to detention, at no cost
24 to detainees. Such medical care shall address all de-
25 tainee health needs and shall include chronic care,

1 dental care, eye care, mental health care, individual
2 and group counseling, medical dietary needs, and
3 other medically necessary specialized care in accord-
4 ance with the following:

5 (A) All detention facilities shall maintain
6 current accreditation by the National Commis-
7 sion on Correctional Health Care and the Joint
8 Commission on the Accreditation of Health
9 Care Organizations. Detention facilities that are
10 not accredited as of the date of the enactment
11 of this Act will obtain such accreditation within
12 one year, and if accreditation is not obtained by
13 that time the Secretary of Homeland Security
14 shall cease use of the facility. All standards,
15 policies and practices shall at a minimum com-
16 ply with the National Commission on Correc-
17 tional Health Care Standards for Health Serv-
18 ices in Jails.

19 (B) All detention facilities shall have a des-
20 ignated on-site health authority who is a physi-
21 cian, a health services administrator, or a
22 health agency. Clinical decisions shall be made
23 solely by a licensed health care provider.

24 (C) Each immigration detainee shall re-
25 ceive a comprehensive medical and mental

1 health intake screening by a qualified health
2 care professional upon arrival at the facility and
3 each immigration detainee shall receive a com-
4 prehensive medical and mental health examina-
5 tion and assessment by a qualified health care
6 professional not later than 14 days after ar-
7 rival.

8 (D) Any decision to deny requested med-
9 ical care or treatment, or care or treatment rec-
10 ommended by any outside physician or spe-
11 cialist, to a detainee shall be made within 72
12 hours or earlier if medically necessary and shall
13 be accompanied by a written explanation of the
14 reasons for the denial. This decision and the
15 written explanation of the decision shall be si-
16 multaneously communicated to the detainee and
17 to the Secretary of Homeland Security.

18 (E) Detainees shall be afforded an oppor-
19 tunity to obtain an appeal of any decisions de-
20 nying a request for medical treatment. Such an
21 appeal or request for reconsideration shall be
22 resolved in writing within 7 days or earlier if
23 medically necessary by an appeals board that
24 shall be composed of independent health care
25 professionals in the fields relevant to the re-

1 quest for medical or mental health care. The
2 written decision shall be conveyed to the on-site
3 medical provider and the immigration detainee
4 within 24 hours of a decision by the appeals
5 board.

6 (F) Except in emergency situations where
7 informed consent cannot reasonably be ob-
8 tained, medical care and treatment shall be pro-
9 vided only with the informed consent of the de-
10 tainee or a person authorized by the detainee or
11 applicable law to provide such consent.

12 (G) Involuntary psychotropic medication
13 may be used only if allowed by applicable law
14 and then only in emergency situations when a
15 physician has determined, after personally ex-
16 amining the patient, that—

17 (i) a detainee is imminently dangerous
18 to self or others due to a mental illness;
19 and

20 (ii) involuntary psychotropic medica-
21 tion is medically appropriate to treat the
22 mental illness and necessary to prevent
23 harm. If a detainee is represented by coun-
24 sel, the administration of any psychotropic
25 drug to the detainee shall be disclosed to

1 the detainee's counsel promptly and in any
2 event within a reasonable time prior to any
3 hearing in which the detainee will appear.

4 If a detainee is not represented by counsel, the
5 administration of any psychotropic drug to the
6 detainee shall, with the informed consent of the
7 detainee, be disclosed to the Immigration Court
8 prior to any hearing in which the detainee will
9 appear. Any disclosure to the court by any per-
10 son of the administration of a psychotropic
11 drug to the detainee shall be filed under seal
12 and may be disclosed to other persons only in
13 the same manner and to the same extent that
14 medical records may be disclosed. Any detainee
15 who receives medication pursuant to this sub-
16 paragraph must be afforded a hearing pursuant
17 to the procedures set forth in 28 CFR 549.43,
18 as described in *Washington v. Harper*, 494 U.S.
19 210 (1990), before the detainee may receive
20 medication again under this subparagraph.

21 (H) No drugs of any kind shall be admin-
22 istered to detainees without their informed con-
23 sent for the purpose of sedation or controlling
24 the detainee's behavior during transportation or
25 removal or for the purpose of punishment.

1 (I) All detention facilities shall maintain
2 complete medical records for every detainee,
3 which shall be made available within 72 hours
4 to any detention facility to which the detainee
5 may be transferred. Medical records shall also
6 be made available within 72 hours to a de-
7 tainee, his legal representative, or other author-
8 ized individuals upon request by the detainee.
9 Any and all medical and mental health records
10 of a detainee shall be treated as confidential, as
11 required by the Health Insurance Portability
12 and Accountability Act of 1996.

13 (J) For each fiscal year after the passage
14 of this Act, the Secretary of Homeland Security
15 shall report to the Congress on a semiannual
16 basis, and to Department of Homeland Security
17 Office of Inspector General within 48 hours of
18 any in-custody death, information regarding the
19 death of any person who is in the custody of
20 U.S. Immigration and Customs Enforcement
21 that, at a minimum, includes—

22 (i) the name, gender, national origin,
23 alien number, and age of the deceased;

1 (ii) the date on which detention in
2 U.S. Immigration and Customs Enforce-
3 ment custody commenced;

4 (iii) the date and location of death;

5 (iv) the location of last detention;

6 (v) a brief description of the cir-
7 cumstances surrounding the death;

8 (vi) the status and results of any in-
9 vestigation(s) that has been conducted into
10 the circumstances surrounding the death;

11 (vii) each location where the indi-
12 vidual was held in U.S. Immigration and
13 Customs Enforcement custody or the cus-
14 tody of an entity contracting with U.S. Im-
15 migration and Customs Enforcement and
16 the dates during which the individual was
17 held at each location; and

18 (viii) all medical records of the de-
19 ceased.

20 (K) All detainee transfers shall take into
21 consideration the detainee's health and medical
22 fitness. Continuity of care shall be preserved
23 during and after transfers, and detainees shall
24 suffer no interruption in the provision of treat-
25 ment, including prescription medication.

1 (3) SEXUAL ABUSE REGULATIONS CONCERNING
2 CARE AND CUSTODY OF DETAINEES.—

3 (A) IN GENERAL.—Detention facilities
4 shall take all necessary measures to prevent
5 sexual abuse of detainees, including sexual as-
6 saults, and shall observe the minimum stand-
7 ards under the Prison Rape Elimination Act of
8 2003 (42 U.S.C. 15601 et seq.).

9 (B) MEASURES WHERE ABUSE OCCURS.—
10 Where sexual abuse occurs, detention facilities
11 shall ensure that—

12 (i) prompt and appropriate medical
13 intervention is taken to minimize medical
14 and psychological trauma;

15 (ii) a medical history is taken and a
16 physical examination is conducted by quali-
17 fied and culturally appropriate medical
18 professionals to determine the extent of
19 physical injury and whether referral to an-
20 other medical facility is indicated;

21 (iii) prophylactic treatment, emer-
22 gency contraception, and follow-up for sex-
23 ually transmitted diseases are provided;

24 (iv) the case is evaluated by a quali-
25 fied mental health professional for crisis

1 intervention counseling and long-term fol-
2 low-up;

3 (v) victims are separated from their
4 abusers and are considered for release on
5 parole or for an alternative to detention
6 program; and

7 (vi) any and all medical and mental
8 health records arising out of a detainee's
9 allegation of sexual abuse shall be treated
10 as confidential, as required by the Health
11 Insurance Portability and Accountability
12 Act of 1996.

13 (C) REPORTING.—A detention facility shall
14 not subject any person to punishment or any
15 other form of retaliation for reporting incidents
16 of sexual abuse.

17 (D) INVESTIGATION.—In all cases of al-
18 leged sexual abuse, the detention facility shall
19 conduct a thorough and timely investigation
20 and shall provide to the Secretary of Homeland
21 Security a report of the circumstances and the
22 response of the detention facility. If the report
23 is not completed within 30 days after alleged
24 sexual abuse comes to the attention of the de-
25 tention facility, the detention facility shall sub-

1 mit to the Secretary of Homeland Security a
2 description of the status of the investigation
3 and an estimated date of completion 30 days
4 after the alleged sexual abuse comes to the at-
5 tention of the detention facility and every 30
6 days thereafter until the report is provided to
7 the Secretary of Homeland Security. The report
8 required by this subsection shall include at min-
9 imum a determination of whether the alleged
10 sexual abuse occurred, an in-depth analysis of
11 the relevant facts including the causes of any
12 sexual abuse that may have occurred and
13 whether and to what extent the alleged abuse
14 indicates a failure of policy, a failure of train-
15 ing, a failure of oversight, or a failure of man-
16 agement, and a description of the actions that
17 the facility will take to prevent the occurrence
18 of similar incidents in the future and a plan for
19 monitoring the implementation of those actions.
20 The detention facility shall provide to the Sec-
21 retary of Homeland Security periodic reports
22 monitoring the implementation of the plan in
23 accordance with the schedule set forth in such
24 plan as approved by the Secretary of Homeland
25 Security.

1 (4) TRANSFER OF DETAINEES.—

2 (A) PROCEDURES.—In adopting proce-
3 dures governing the transfer of individuals de-
4 tained under section 236 of the Immigration
5 and Nationality Act (8 U.S.C. 1226), and sub-
6 ject to the exception in subparagraph (D), the
7 Secretary of Homeland Security shall promul-
8 gate regulations prohibiting transfer of a de-
9 tainee if such transfer would—

10 (i) negatively affect an existing attor-
11 ney-client relationship;

12 (ii) negatively affect the detainee's
13 legal proceedings, including merits or cal-
14 endar hearings, or a pending application
15 with United States Citizenship and Immi-
16 gration Services or the Executive Office for
17 Immigration Review, by—

18 (I) limiting the detainee's access
19 to securing legal representation;

20 (II) limiting the detainee's ability
21 to prepare a legal defense to removal;
22 or

23 (III) removing the detainee from
24 the legal venue of such proceeding;

1 (iii) negatively affect the detainee's
2 health and medical fitness; or

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

5 (I) place the detainee in a loca-
6 tion more distant from the detainee's
7 residence than the original detention
8 location; or

9 (II) place the detainee in a loca-
10 tion more distant from family mem-
11 bers than the original detention loca-
12 tion.

13 (B) NOTICE.—Unless exigent cir-
14 cumstances dictate an immediate transfer—

15 (i) the Secretary of Homeland Secu-
16 rity shall provide not less than 72 hours
17 notice to any detainee prior to transferring
18 the detainee to another detention facility;

19 (ii) detainees shall be afforded at least
20 one toll-free call following any transfer,
21 and within 24 hours after the detainee's
22 arrival at the transferee facility, the Sec-
23 retary of Homeland Security shall notify
24 the detainee's legal representative or if un-
25 represented, an adult family member or

1 other person designated by the detainee, of
2 the transfer and the detainee's new loca-
3 tion;

4 (iii) if removal proceedings are pend-
5 ing, the Secretary of Homeland Security
6 shall also promptly notify the Immigration
7 Court, Board of Immigration Appeals, or
8 the Circuit Court of Appeals, as appro-
9 priate of the transfer and the detainee's
10 new address; and

11 (iv) the Secretary of Homeland Secu-
12 rity shall not transfer any detainee who
13 has already requested, and is awaiting, a
14 bond hearing or a bond redetermination
15 hearing.

16 (C) EXCEPTION.—The Secretary may
17 transfer a detainee who has an existing attor-
18 ney-client relationship to an alternate detention
19 facility if such transfer is necessitated by a
20 highly unusual emergency, such as a natural
21 disaster or comparable emergency.

22 (D) PROTECTING DETAINEES LEGAL
23 RIGHTS.—If the Secretary determines that a
24 transfer is necessary due to a highly unusual
25 emergency, the Secretary shall ensure that the

1 detainee's legal rights are not prejudiced and
2 the existing attorney-client relationship is not
3 impaired, including evaluating the location of
4 the detention facility based on its proximity to
5 the detainee's counsel or nongovernmental or
6 pro bono organizations providing free or low
7 cost immigration legal services.

8 (E) RECORD.—In cases in which a de-
9 tainee is transferred, the Secretary shall make
10 a record of the reasons and circumstances ne-
11 cessitating such transfer.

12 (5) NOTICE.—

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

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

1 eligibility for affirmative relief. The Secretary of Home-
 2 land Security shall—

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

7 “(2) submit to the Committees on the Judiciary
 8 of the Senate and the House of Representatives an
 9 annual report concerning the Secretary of Homeland
 10 Security’s compliance with such notice require-
 11 ment.”.

12 (B) APPLICABILITY OF OTHER LAW.—

13 Nothing in section 236(f) of the Immigration
 14 and Nationality Act, as added by subparagraph
 15 (A), shall be construed to repeal section 236A
 16 of such Act (8 U.S.C. 1226a).

17 (b) REGULATIONS CONCERNING CARE AND CUSTODY
 18 OF DETAINEES.—

19 (1) RULEMAKING.—The Secretary of Homeland
 20 Security shall promulgate new rules, or modify exist-
 21 ing rules, based on the report of the detention advi-
 22 sory committee established under paragraph (2), to
 23 ensure detainees are treated humanely and held in
 24 the least restrictive setting necessary for their safety
 25 and to ensure compliance with the general minimum

1 requirements set forth in paragraph (3), standards
2 regarding classification of detainees set forth in
3 paragraph (4), and the special standards for vulner-
4 able populations set forth in paragraph (5). Such
5 rules shall apply to all facilities in which the Sec-
6 retary of Homeland Security detains noncitizens, in-
7 cluding Service Processing Centers, Contract Deten-
8 tion Facilities, State or local government facilities
9 used by Detention and Removal Operations through
10 Intergovernmental Service Agreements, Bureau of
11 Prisons facilities, and any other temporary or per-
12 manent facility used to hold detainees. The rules re-
13 quired under this paragraph shall be promulgated
14 not later than 1 year after the Secretary of Home-
15 land Security receives the report of the detention ad-
16 visory committee established under paragraph (2),
17 or 1 year after such report is due, whichever is ear-
18 lier.

19 (2) DETENTION ADVISORY COMMITTEE.—The
20 Secretary of Homeland Security shall convene, and
21 receive a report from a detention advisory committee
22 comprised of experts from U.S. Immigration and
23 Customs Enforcement, U.S. Customs and Border
24 Protection, the Office of Refugee Resettlement, and
25 Division of Immigration Health Services in the De-

1 partment of Health and Human Services, and an
2 equal number of independent experts from non-
3 governmental organizations and intergovernmental
4 organizations with expertise in working on behalf of
5 aliens detained under immigration laws and vulner-
6 able populations. The independent experts shall at a
7 minimum include representatives of the American
8 Bar Association and the United Nations High Com-
9 missioner for Refugees. The detention advisory com-
10 mittee shall review and revise all the guidelines
11 found in the Secretary of Homeland Security's De-
12 tention Operations Manual, as amended, based on
13 identifiable deficiencies and best practices that treat
14 aliens both safely and humanely. The detention advi-
15 sory committee shall submit a report to the Sec-
16 retary of Homeland Security within 12 months after
17 the date of the enactment of this Act. For good
18 cause, the Secretary of Homeland Security may ex-
19 tend the time for submission of the advisory commit-
20 tees report for an additional six months.

21 (3) TRAINING.—The Secretary of Homeland
22 Security shall develop and implement a training pro-
23 tocol for all personnel in all facilities in which non-
24 citizens are detained. The training protocol shall in-
25 clude periodic updates to initial comprehensive train-

1 ing. The Secretary shall monitor the implementation
2 of the protocol annually and shall ensure that all
3 personnel who are required to be trained under the
4 protocol have received the necessary training. The
5 protocol shall include—

6 (A) an overview of immigration detention
7 and the characteristics of the noncitizen de-
8 tainee population;

9 (B) an overview of the detention stand-
10 ards;

11 (C) specific guidance on each of the deten-
12 tion standards; and

13 (D) a description of the Secretary's quality
14 assurance procedures.

15 (4) GENERAL MINIMUM REQUIREMENTS.—The
16 Secretary of Homeland Security's rules regarding
17 conditions of detention shall ensure that the fol-
18 lowing requirements are met:

19 (A) FAIR AND HUMANE TREATMENT.—De-
20 tainees shall not be subject to cruel, degrading
21 or inhumane treatment such as verbal or phys-
22 ical abuse or harassment, sexual abuse or har-
23 assment, or arbitrary punishment.

24 (B) USE OF FORCE AND RESTRAINTS.—
25 Detainees shall not be subjected to shackling,

1 handcuffing, solitary confinement, Tasers, elec-
2 tric shields, restraint chairs, or strip searches
3 unless and to the extent that such techniques
4 are necessary to ensure the security of other de-
5 tainees, staff, or the public and where no less
6 coercive or degrading measures are available to
7 achieve that end. These techniques shall in no
8 event be used for the purpose of humiliating de-
9 tainees either within or outside the detention
10 facility. Detention facilities shall adopt written
11 policies pertaining to the use of force and the
12 use of restraints, and shall train all staff on the
13 proper use of such devices.

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

23 (i) An otherwise valid grievance shall
24 not be denied for noncompliance with a
25 procedural requirement if such noncompli-

1 ance is due to ignorance, fear, excusable
2 neglect or other reasonable cause.

3 (ii) Detainees shall be afforded the
4 opportunity to complain to staff of U.S.
5 Immigration and Customs Enforcement di-
6 rectly and confidentially, outside the griev-
7 ance process.

8 (iii) Detainees shall not be subject to
9 retaliation for making use of the grievance
10 procedure or procedure for complaining di-
11 rectly to staff of U.S. Immigration and
12 Customs Enforcement.

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

1 (v) Detention facilities shall make an
2 annual report regarding the grievances re-
3 ceived, the responses made, and the time
4 period for response, and such report shall
5 be submitted to the Secretary of Homeland
6 Security on January 31 of each year.

7 (vi) All grievances shall be inves-
8 tigated.

9 (D) LOCATION OF FACILITIES.—Detention
10 facilities shall be located, to the extent prac-
11 ticable, within 50 miles of a city or municipality
12 in which there is a demonstrated capacity to
13 provide competent legal representation by non-
14 profit legal aid organizations or other pro bono
15 attorneys to detained noncitizens, including asy-
16 lum seekers and other vulnerable immigrant
17 populations. The Secretary of Homeland Secu-
18 rity shall seek to use only facilities within the
19 stated 50-mile radius by January 1, 2014.

20 (E) ACCESS TO LEGAL MATERIALS.—De-
21 tainees shall have available an on-site law li-
22 brary with sufficient space to facilitate detain-
23 ees' legal research and preparation of docu-
24 ments. The law library's holdings shall include
25 up-to-date copies of legal materials designated

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

23 (F) LEGAL VISITS.—

24 (i) IN GENERAL.—Legal visits shall
25 not be restricted absent narrowly defined

1 exceptional circumstances, including a nat-
2 ural disaster or comparable emergency be-
3 yond the control of the Secretary of Home-
4 land Security.

5 (ii) PROCEDURES.—Detainees shall be
6 entitled to private meetings with their cur-
7 rent or prospective legal representatives or
8 their legal assistants. Interpreters shall be
9 allowed to accompany legal representatives
10 and legal assistants on legal visits subject
11 to appropriate security procedures. Legal
12 visits shall be permitted a minimum of 8
13 hours per day on regular business days
14 and 4 hours per day on weekends and holi-
15 days, except that if lack of space for inter-
16 views at the detention facility, the conduct
17 of immigration hearings on site, or other
18 factors lead to excessive delay between the
19 time the legal representative is ready to
20 visit the detainee and the time space be-
21 comes available, the Secretary of Home-
22 land Security shall require such additional
23 time for legal visits or other measures as
24 may be sufficient to avoid excessive delay.
25 Excessive delay for purposes of this para-

graph is delay of 2 hours or more, occurring more than 2 times per month over a 12-month period. Detention facilities shall maintain a procedure allowing legal representatives and legal assistants to call ahead to determine if a detainee is held at that facility, and they shall take messages from legal representatives and promptly deliver them to the detainee. Messengers, including individuals who are not attorneys, legal representatives, or legal assistants, shall be permitted to deliver documents for detainees to and from the facility. Detention facilities shall promptly and prominently post the most current official list of pro bono legal organizations and their contact information in detainee housing units and other appropriate areas, and such lists shall be updated by the Secretary of Homeland Security on a semi-annual basis. Detention facilities may not retaliate in any way, including denial or limitation of access to detention facilities, for complaints or public or private statements made by legal representatives regarding

1 the detention facility's compliance with
2 regulations relating to conditions of deten-
3 tion.

4 (G) SPECIAL CORRESPONDENCE.—Special
5 correspondence shall not be read by staff of the
6 detention facility or other personnel, contrac-
7 tors, or agents of the Secretary of Homeland
8 Security, and shall not be opened outside the
9 presence of the detainee. For this purpose, spe-
10 cial correspondence includes detainees' written
11 communications to or from private attorneys
12 and other legal representatives; government at-
13 torneys; judges and courts; embassies and con-
14 sulates; the president and vice president of the
15 United States, members of the Congress, offi-
16 cers and other personnel of the Department of
17 Justice; officers and other personnel of the De-
18 partment of Homeland Security; officers and
19 other personnel of the U.S. Public Health Serv-
20 ice; administrators of grievance systems; State
21 and local officials, representatives of the news
22 media, and representatives of nongovernmental
23 organizations and intergovernmental organiza-
24 tions working on behalf of aliens held in deten-
25 tion and vulnerable populations. Correspond-

1 ence will only be treated as special correspond-
2 ence if marked “special correspondence” or
3 “legal mail” or if the title and office of the
4 sender (for incoming correspondence) or ad-
5 dressee (for outgoing correspondence) are un-
6 ambiguously identified on the envelope, clearly
7 indicating that the correspondence is special
8 correspondence. Special correspondence shall be
9 promptly delivered and promptly posted. In
10 general, correspondence will be deemed prompt-
11 ly delivered if it is delivered to the detainee
12 within 24 hours after its receipt by the deten-
13 tion facility, and correspondence will be deemed
14 promptly posted if it is placed into the United
15 States mail the next day on which the Post Of-
16 fice is open for business after the detainee
17 places the correspondence in the location des-
18 ignated by the facility for outgoing mail.

19 (H) ACCESS TO DETENTION FACILITIES.—

20 Detention facilities shall afford access as fol-
21 lows:

22 (i) Subject to reasonable conditions to
23 protect the security of the facility, deten-
24 tion facilities shall afford access to private
25 attorneys, other legal representatives and

1 legal personnel such as paralegals and
2 Board of Immigration Appeals accredited
3 representatives; government attorneys;
4 judges and courts; embassies and con-
5 sulates; the president and vice president of
6 the United States, members of Congress
7 and their staff; officers and other per-
8 sonnel of the Department of Justice; offi-
9 cers and other personnel of the Depart-
10 ment of Homeland Security; officers and
11 other personnel of the U.S. Public Health
12 Service; administrators of grievance sys-
13 tems; State and local officials, representa-
14 tives of the news media, and representa-
15 tives of nongovernmental organizations,
16 community service organizations, and
17 intergovernmental organizations.

18 (ii) Independent observers, including
19 nongovernmental organizations, shall be
20 permitted to conduct site visits, meet pri-
21 vately with detainees, test telephones and
22 pro bono calling platforms, and take other
23 reasonable steps to monitor compliance
24 with regulations regarding conditions of
25 detention. Such observers and organiza-

1 tions shall not be prohibited from issuing
2 public reports on the findings of moni-
3 toring visits.

4 (iii) Detention facilities shall accom-
5 modate requests for facility tours within a
6 reasonable time not to exceed 1 week.

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

20 (v) Detention facilities may not retali-
21 ate in any way, including denial or limita-
22 tion of access to detention facilities,
23 against any visitor for complaints, or pub-
24 lic or private statements, regarding the de-

1 tention facility's compliance with regula-
2 tions relating to conditions of detention.

3 (I) TRANSLATION CAPABILITIES.—Deten-
4 tion facilities shall employ staff that, to the ex-
5 tent practicable, is qualified in the languages
6 represented in the population of detainees at
7 each such facility and shall provide alternative
8 translation services where necessary.

9 (J) RECREATIONAL PROGRAMS AND AC-
10 TIVITIES.—Detainees shall be afforded access of
11 at least one hour per day to indoor and outdoor
12 recreational programs and activities.

13 (K) SAFE AND SANITARY LIVING ENVIRON-
14 MENT.—Detention facilities shall house no more
15 individuals than permitted by the rated bed ca-
16 pacity for the facility, where the rated bed ca-
17 pacity is defined by the original design capacity,
18 plus or minus capacity changes resulting from
19 building additions, reductions, or revisions.
20 Each detainee shall receive appropriate clothing
21 and a bed and a mattress placed in an area
22 specifically designated for residential use, rath-
23 er than an area re-tasked for residential use
24 such as common dayrooms, recreation areas, or
25 visitation rooms. Detention facilities shall be

1 maintained in a safe and sanitary condition,
2 and adequate ventilation and reasonably com-
3 fortable indoor temperatures shall be main-
4 tained at all times.

5 (L) LEGAL ORIENTATION TO ENSURE EF-
6 FECTIVE IMMIGRATION PROCEEDINGS.—

7 (i) IN GENERAL.—The Attorney Gen-
8 eral, in consultation with the Secretary of
9 Homeland Security, shall ensure that all
10 detained aliens, including unaccompanied
11 minors, in immigration proceedings receive
12 legal orientation from an independent non-
13 governmental organization through a pro-
14 gram administered and implemented by
15 the Executive Office for Immigration Re-
16 view of the Department of Justice.

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

1 (5) CLASSIFICATION.—The Secretary of Home-
2 land Security’s rules shall ensure that detainees with
3 no history of a criminal conviction are separated by
4 sight and sound from detainees and inmates with
5 criminal convictions, pretrial inmates facing criminal
6 prosecution, and those inmates exhibiting violent be-
7 havior while in detention.

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

11 (A) recognize the unique needs of asylum
12 seekers, victims of torture and trafficking, fami-
13 lies with children, detainees who do not speak
14 English, detainees with special religious, cul-
15 tural or spiritual considerations, and vulnerable
16 populations listed in section 3(c); and

17 (B) ensure that procedures and conditions
18 of detention are appropriate for such vulnerable
19 populations.

20 (7) STAFFING.—For purposes of this subsection
21 and protecting vulnerable populations, the Secretary
22 of Homeland Security shall appoint at least three
23 members to the Directorate of Policy at the GS–15
24 level with substantial academic credentials and ex-
25 pertise in working directly with vulnerable popu-

1 lations including children, families and victims of
2 trafficking, trauma, and torture who shall be respon-
3 sible for setting, implementing, and overseeing policy
4 and regulatory developments concerning vulnerable
5 populations.

6 **SEC. 3. SECURE ALTERNATIVES TO DETENTION.**

7 (a) IN GENERAL.—Subject to the availability of ap-
8 propriations, the Secretary of Homeland Security shall
9 fully implement and utilize secure alternatives to detention
10 programs.

11 (b) SECURE ALTERNATIVES TO DETENTION PRO-
12 GRAMS.—

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

21 (A) group presentations and individual
22 screening;

23 (B) provision of services to aliens released;

24 and

1 (C) on-going assistance, supervision, and
2 monitoring.

3 (2) VOLUNTARY PARTICIPATION.—An alien’s
4 participation in the program is voluntary and shall
5 not confer any rights or benefits to the alien under
6 the Immigration and Nationality Act (8 U.S.C. 1101
7 et seq.).

8 (3) PROGRAM DEVELOPMENT.—The program
9 shall be developed in accordance with the following
10 guidelines:

11 (A) The Secretary of Homeland Security
12 shall design the program in consultation with
13 nongovernmental organizations and academic
14 experts in both the immigration and the criminal
15 justice fields.

16 (B) All aliens in the custody of the Secretary
17 of Homeland Security deemed eligible for
18 secure alternatives to detention programs shall
19 be released in the least restrictive setting needed
20 to ensure appearance at all immigration
21 interviews, appointments and hearings. The
22 programs shall utilize a continuum of methods,
23 including releasing the alien to an individual or
24 organizational sponsor, a supervised group

1 home, or a supervised, non-penal community
2 setting.

3 (C) Nongovernmental organizations and
4 State and local social service agencies that serve
5 immigrants shall be contracted to conduct
6 group and individual screening and provide
7 services to program participants.

8 (D) The Secretary of Homeland Security
9 shall ensure that each alien participates in a
10 legal presentation provided through the legal
11 orientation presentation program administered
12 by the Executive Office for Immigration Re-
13 view.

14 (c) PROTECTION OF VULNERABLE POPULATIONS.—
15 Within 72 hours of detaining an alien, the Secretary of
16 Homeland Security shall screen the alien to determine if
17 he or she falls into the following designated groups. Any
18 alien described in the following designated groups who
19 meets the criteria set forth under section 236(b) of the
20 Immigration and Nationality Act, as amended by this Act,
21 shall be released on parole, a reasonable bond, or the
22 alien's own recognizance subject to the requirements of
23 such section 236(b):

24 (1) Aliens who have serious medical or mental
25 health needs or a disability.

1 (2) Pregnant or nursing women.

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

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

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

8 (6) Children (as defined at section 101(c)(1) of
9 the Immigration and Nationality Act (8 U.S.C.
10 1101(c)(1))).

11 (7) Victims of abuse, violence, crime or traf-
12 ficking.

13 (8) Asylum seekers and torture survivors who
14 have demonstrated a credible fear of persecution or
15 a reasonable fear of torture.

16 (9) Other groups designated in regulations or
17 guidance promulgated after the date of the enact-
18 ment of this Act by the Secretary of Homeland Se-
19 curity.

20 (10) Individuals who have a nonfrivolous claim
21 to United States citizenship or aliens who are eligi-
22 ble for relief under a provision of the Immigration
23 and Nationality Act.

24 (d) OPTIONS REGARDING DETENTION DECISIONS
25 FOR VULNERABLE POPULATIONS AND PLACEMENT IN AL-

1 TERNATIVES TO DETENTION.—Section 236 of the Immi-
 2 gration and Nationality Act (8 U.S.C. 1226) is amend-
 3 ed—

4 (1) in subsection (a)—

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

7 (B) in paragraph (2)—

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

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

12 (iii) by inserting after subparagraph
 13 (B) the following:

14 “(C) the alien’s own recognizance; and”;

15 (C) by redesignating paragraph (3) as
 16 paragraph (4); and

17 (D) by inserting after paragraph (2) the
 18 following:

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

21 (2) by redesignating subsections (b), (c), (d),
 22 and (e) as subsections (e), (f), (g), and (h) respec-
 23 tively;

24 (3) by inserting after subsection (a) the fol-
 25 lowing:

1 “(b) CUSTODY DECISIONS FOR VULNERABLE POPU-
2 LATIONS.—

3 “(1) IN GENERAL.—Not later than 72 hours
4 after an alien’s detention unless the 72-hour require-
5 ment is waived in writing by the alien, an alien who
6 is a member of a vulnerable population (as defined
7 by subsection (c)) shall be released from the Sec-
8 retary of Homeland Security’s custody and shall not
9 be subject to electronic monitoring unless the Sec-
10 retary of Homeland Security demonstrates that the
11 alien—

12 “(A) is subject to mandatory detention
13 under section 235(b)(1)(B)(iii)(IV), 236(c) or
14 236A; or

15 “(B) poses a flight risk or a risk to others
16 or national security.

17 “(2) RELEASE.—An alien shall be released
18 under this subsection—

19 “(A) on the alien’s own recognizance;

20 “(B) by posting a reasonable bond under
21 subsection (a); or

22 “(C) on parole in accordance with section
23 212(d)(5)(A).

24 “(c) PARTICIPATION IN ALTERNATIVES TO DETEN-
25 TION.—An alien who is denied release on recognizance, pa-

1 role, or bond, or is unable to pay the bond shall be selected
2 for participation in a secure alternatives to detention pro-
3 gram unless the Secretary of Homeland Security dem-
4 onstrates by substantial evidence that the alien—

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

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

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

13 “(1) The decision shall be made in writing and
14 shall be served upon the individual in the language
15 spoken by the alien. A decision to continue detention
16 without bond or parole shall specify in writing the
17 reasons for that decision.

18 “(2) The decision shall be served upon the alien
19 within 72 hours of the individual’s detention or, in
20 the case of an individual subject to section 235, 238,
21 or 241(a)(5) within 72 hours of a positive credible
22 or reasonable fear determination.

23 “(3) An alien subject to this section, including
24 all aliens who are entitled to a removal hearing
25 under section 240, may at any time after being

1 served with the Secretary of Homeland Security's
2 decision under subsections (a), (b), or (c) request a
3 redetermination of that decision by an immigration
4 judge.

5 “(4) All custody decisions by the Secretary of
6 Homeland Security shall be subject to redetermina-
7 tion by an immigration judge. Nothing in this sub-
8 section shall be construed to prevent an individual
9 from requesting a bond redetermination.

10 “(5) The Attorney General or an immigration
11 judge, at any time, may redetermine an alien's clas-
12 sification under subsection (c), the bond of someone
13 released, or the custody status of someone placed in
14 an alternatives to detention program. Nothing in
15 this subsection would preclude a person from being
16 released on bond after initially participating in an
17 alternatives to detention program.”; and

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

21 (e) ELIGIBILITY AND OPERATIONS.—Nothing in this
22 section shall be construed to modify the care and custody
23 of unaccompanied alien children (as defined in section
24 462(g)(2) of the Homeland Security Act (6 U.S.C.
25 279(g)(2))) who shall be considered to be in the care and

1 exclusive legal and physical custody of the Secretary of
2 Health and Human Services. Such children shall be sub-
3 ject to removal proceedings under section 240 of the Im-
4 migration and Nationality Act (8 U.S.C. 1229a), with the
5 exception of children from contiguous countries eligible for
6 administrative voluntary departure, and shall not be per-
7 mitted to participate in the program.

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

14 (1) Less restrictive forms of custodial detention
15 include electronic monitoring such as the use of
16 ankle bracelets that monitor an individual's move-
17 ment and the use of similar electronic devices.

18 (2) An individualized determination shall be
19 made in each alien's case about the use of electronic
20 monitoring.

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

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

4 **SEC. 4. PROGRAM OVERSIGHT AND REVIEW.**

5 (a) RELATIONSHIPS OF APPLICATION TO CERTAIN
6 ORDERS.—An alien who is present in the United States
7 and has been ordered excluded, deported, removed, or or-
8 dered to depart voluntarily from the United States under
9 any provision of the Immigration and Nationality Act—

10 (1) notwithstanding such order, may be selected
11 for a secure alternatives to detention program; and

12 (2) shall not be required to file a separate mo-
13 tion to reopen, reconsider, or vacate the exclusion,
14 deportation, removal, or voluntary departure order.

15 (b) IMPLEMENTING REGULATIONS.—Not later than
16 180 days after the date of the enactment of this Act, the
17 Secretary of Homeland Security shall promulgate regula-
18 tions to implement the secure alternatives to detention
19 programs.

20 (c) REPORTING REQUIREMENTS.—Not later than
21 365 days after the date of the enactment of this Act and
22 annually thereafter, the Secretary of Homeland Security
23 shall submit to the Committee on Homeland Security of
24 the House of Representatives, the Committee on the Judi-
25 ciary of the House of Representatives, the Committee on

1 Homeland Security and Governmental Affairs of the Sen-
2 ate, and the Committee on the Judiciary of the Senate
3 a report that details all policies, regulations, and actions
4 taken to comply with the provisions in this Act and the
5 amendments made by this Act, including efforts to in-
6 crease the use of the secure alternatives to detention pro-
7 grams, and a description of efforts taken to ensure that
8 all aliens in expedited removal proceedings are residing
9 under conditions that are safe, secure, and healthy.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the Secretary of
12 Homeland Security such sums as may be necessary to
13 carry out this Act and the amendments made by this Act.
14 Amounts appropriated pursuant to this subsection shall
15 remain available until expended.

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