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H. R. 3923

To provide standards for facilities at which aliens in the custody of the Department of Homeland Security are detained, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 3, 2017

Mr. SMITH of Washington (for himself, Ms. JAYAPAL, Mr. BLUMENAUER, Ms. JUDY CHU of California, Mr. CICILLINE, Mr. COHEN, Mr. CUMMINGS, Mr. DANNY K. DAVIS of Illinois, Mr. ELLISON, Mr. ESPAILLAT, Mr. FOSTER, Mr. GALLEG0, Mr. GUTIÉRREZ, Ms. HANABUSA, Ms. JACKSON LEE, Mr. JEFFRIES, Mr. JOHNSON of Georgia, Mr. KENNEDY, Mrs. LAWRENCE, Ms. LEE, Ms. LOFGREN, Mr. MCGOVERN, Ms. MOORE, Mr. NADLER, Ms. NORTON, Mr. PAYNE, Mr. QUIGLEY, Mr. RASKIN, Ms. ROYBAL-ALLARD, Mr. RUSH, Ms. SCHAKOWSKY, Mr. VEASEY, Ms. MAXINE WATERS of California, Mrs. WATSON COLEMAN, Mr. POLIS, Ms. DELBENE, Mr. CONYERS, Ms. BARRAGÁN, Miss RICE of New York, Mr. GOMEZ, Ms. PINGREE, Mrs. NAPOLITANO, Mr. LEWIS of Georgia, Ms. MCCOLLUM, Mr. DOGGETT, Mr. SERRANO, and Mr. GRIJALVA) 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 provide standards for facilities at which aliens in the custody of the Department of Homeland Security are detained, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Dignity for Detained
3 Immigrants Act of 2017”.

4 **SEC. 2. STANDARDS FOR DHS DETENTION FACILITIES.**

5 Not later than one year after the date of the enact-
6 ment of this Act, the Secretary of Homeland Security
7 shall, by rulemaking, establish detention standards for
8 each facility at which aliens in the custody of the Depart-
9 ment of Homeland Security are detained. Such standards
10 shall provide, at a minimum, the level of protections for
11 detainees described in the American Bar Association’s
12 Civil Immigration Detention Standards (adopted in Au-
13 gust, 2012, and as amended in August, 2014). On a bien-
14 nial basis, the Secretary shall review and update such
15 standards, as appropriate.

16 **SEC. 3. OVERSIGHT AND TRANSPARENCY FOR DHS DETEN-**
17 **TION FACILITIES.**

18 (a) PERIODIC INSPECTIONS.—

19 (1) IN GENERAL.—On a periodic basis, and not
20 less than annually, the Inspector General of the De-
21 partment of Homeland Security shall conduct an un-
22 announced inspection of each facility at which aliens
23 in the custody of the Department of Homeland Se-
24 curity are detained in order to ensure that each such
25 facility is in compliance with the standards under
26 section 2. Not later than 60 days after conducting

1 an inspection under this subsection, the Inspector
2 General shall make a report of such inspection pub-
3 licly available on the website of the Department of
4 Homeland Security, and submit such report to the
5 Secretary of Homeland Security.

6 (2) FAILURE TO COMPLY WITH STANDARDS.—

7 (A) INITIAL FAILURE.—In the case that
8 the Inspector General determines that a facility
9 has failed to comply with the standards under
10 section 2 for the first time during any 2-year
11 period, and that such noncompliance constitutes
12 a deficiency that threatens the health, safety, or
13 the due process rights of detainees, the Inspec-
14 tor General shall notify the Secretary of Home-
15 land Security of such finding, and the Secretary
16 shall—

17 (i) in the case of a facility that is not
18 owned by the Department of Homeland
19 Security, impose a fine of not less than 10
20 percent of the value of the contract with
21 the facility; and

22 (ii) in the case of a facility that is
23 owned by the Department of Homeland
24 Security—

1 (I) issue a written warning to the
2 facility not later than 30 days after
3 receiving such notification from the
4 Inspector General, which shall include
5 proposed remedial measures to be car-
6 ried out not later than 60 days after
7 the issuance of the warning; and

8 (II) not later than 60 days after
9 the issuance of the warning described
10 in subclause (I), certify to the Inspec-
11 tor General that the remedial meas-
12 ures have been carried out.

13 (B) SUBSEQUENT FAILURES.—In the case
14 that the Inspector General determines that a
15 facility has failed to comply with the standards
16 under section 2 in two investigations under
17 paragraph (1) during any 2-year period, and
18 that such noncompliance constitutes a defi-
19 ciency that threatens the health, safety, or the
20 due process rights of detainees, the Inspector
21 General shall notify the Secretary of Homeland
22 Security of such finding, and the Secretary
23 shall—

24 (i) in the case of a facility that is not
25 owned by the Department of Homeland

1 Security, not later than 30 days after re-
2 ceiving such notification, transfer each de-
3 tainee to a facility that does so comply,
4 and terminate the contract with the owner
5 of the facility; and

6 (ii) in the case of a facility that is
7 owned by the Department of Homeland
8 Security, not later than 60 days after re-
9 ceiving such notification, transfer each de-
10 tainee to a facility that does so comply,
11 and suspend the use of such facility until
12 such time as the Inspector General cer-
13 tifies to the Secretary that the facility is in
14 compliance with such standards, and
15 makes publicly available on the website of
16 the Department of Homeland Security in-
17 formation relating to the remedial meas-
18 ures taken.

19 (b) INVESTIGATIONS ON DEATH IN CUSTODY.—Not
20 later than 30 days after the death of an alien in the cus-
21 tody of the Department of Homeland Security, the Sec-
22 retary of Homeland Security shall conduct an investiga-
23 tion into that death, which shall include a root cause anal-
24 ysis that identifies any changes to policies or practices
25 that could reduce the probability of such an event in the

1 future. Not later than 60 days after such a death, the
2 Secretary shall make a report describing the results of
3 such investigation publicly available on the website of the
4 Department of Homeland Security. The root cause anal-
5 ysis described in the previous sentence shall be performed
6 in accordance with professional medical standards for in-
7 vestigating sentinel events in medical care facilities, in-
8 cluding the Sentinel Event Policy promulgated by The
9 Joint Commission.

10 (c) REPORT TO CONGRESS.—On an annual basis, the
11 Secretary of Homeland Security shall submit to the Com-
12 mittees on the Judiciary of the House of Representatives
13 and of the Senate a report on the inspections and over-
14 sight of facilities at which aliens in the custody of the De-
15 partment of Homeland Security are detained. Such report
16 shall include information relating to, for the preceding
17 year—

18 (1) each detention facility which the Inspector
19 General found was not in compliance with the stand-
20 ards under section 2 pursuant to an investigation
21 conducted under subsection (a)(1);

22 (2) any remedial actions taken, or that the Sec-
23 retary plans to take, in order to comply with such
24 standards; and

1 (3) whether the remedial actions described in
2 paragraph (2) were successful in bringing the facil-
3 ity into compliance with such standards.

4 (d) CLASSIFICATION OF DOCUMENTS FOR PURPOSES
5 OF FOIA.—The reports under subsections (a) and (b),
6 and any contract between the Department of Homeland
7 Security and a private or public entity which provides for
8 the use of a facility not owned by the Department of
9 Homeland Security to detain aliens in the custody of the
10 Department of Homeland Security are considered records
11 for purposes of section 552 of title 5, United States Code,
12 and do not qualify for the exception under subsection
13 (b)(4) of such section.

14 (e) FACILITIES MATRIX.—On the first day of each
15 month, the Secretary of Homeland Security shall ensure
16 that there is publicly available on the website of the De-
17 partment of Homeland Security, the following information
18 relating to each facility at which aliens in the custody of
19 the Department of Homeland Security may be detained:

20 (1) The name and location of each facility.

21 (2) Whether the facility houses adults, children,
22 or both.

23 (3) As of the first day of the month, the num-
24 ber of beds available in each facility, disaggregated
25 by gender.

1 (4) Whether the facility is used to detain aliens
2 for longer than 72 hours, or for longer than 7 days.

3 (5) The average number of aliens detained in
4 the facility for the current year, and for the pre-
5 ceding month, disaggregated by gender and classi-
6 fication as a child or as an adult.

7 (6) Whether the facility is in compliance with
8 the standards under paragraph 2.

9 (7) In the case of a facility that is not owned
10 by the Department of Homeland Security, the na-
11 ture of the contract providing for the detention of
12 aliens at that facility.

13 (8) The average number of days that an alien
14 has been detained at the facility during the pre-
15 ceding month.

16 (f) ONLINE DETAINEE LOCATOR SYSTEM.—The Sec-
17 retary of Homeland Security shall ensure that the online
18 detainee locator system maintained by the Department of
19 Homeland Security, or any successor system, is updated
20 not later than 12 hours after an alien is taken into custody
21 or released from custody by the Department of Homeland
22 Security, transferred to, or detained in, a detention facil-
23 ity, or removed from the United States.

24 (g) INFORMATION COLLECTED AND MAINTAINED
25 FOR ALIENS IN DHS CUSTODY.—The Secretary of Home-

1 land Security shall collect and maintain, for each alien in
2 the custody of the Department of Homeland Security, the
3 following information:

4 (1) The gender and age of the alien.

5 (2) The date on which the alien was detained.

6 (3) Whether the alien is considered a vulnerable
7 person (as such term is defined in section 236(g) of
8 the Immigration and Nationality Act (8 U.S.C.
9 1226(g)) or a primary caregiver.

10 (4) The provision of law under which the Sec-
11 retary is authorized to detain the alien.

12 (5) The location where the alien is detained.

13 (6) Any transfer of the alien to another deten-
14 tion facility, and the reason for such transfer.

15 (7) The status and basis of any removal pro-
16 ceedings.

17 (8) The initial custody determination made by
18 Immigration and Customs Enforcement, and any re-
19 view of that determination.

20 (9) If applicable, the date of the alien's release
21 or removal, and the reason for such release or re-
22 moval.

23 (10) Whether the alien is subject to a final
24 order of removal.

1 **SEC. 4. CAUSE OF ACTION.**

2 (a) IN GENERAL.—An individual who is detained in
3 a facility that is required to comply with the standards
4 described in section 2, and who is injured as a result of
5 a violation of such standards, may file a claim in the ap-
6 propriate district court of the United States.

7 (b) RECOVERY.—In a civil action under this section,
8 the court may order injunctive relief and compensatory
9 damages, and may award the prevailing party reasonable
10 attorney fees, and costs.

11 **SEC. 5. DHS DETENTION FACILITY CONSTRUCTION AND**
12 **MAINTENANCE.**

13 (a) RESTRICTION ON CONSTRUCTION OF DHS FA-
14 CILITIES.—Not later than 180 days before initiating, or
15 entering into a contract for, the construction of a new fa-
16 cility or to expand an existing facility for the detention
17 of aliens in the custody of the Department of Homeland
18 Security, the Secretary of Homeland Security shall submit
19 to the Committees on the Judiciary of the House of Rep-
20 resentatives and of the Senate, the Committee on Home-
21 land Security of the House of Representatives, and the
22 Committee on Homeland Security and Governmental Af-
23 fairs of the Senate a notification of the plan to construct
24 or expand such facility, including the location, size, and
25 capacity of such facility, the anticipated timeline and cost
26 of constructing or expanding such facility, and the in-

1 tended population to be detained at such facility, including
2 the gender and ages of such population.

3 (b) PHASE-OUT OF PRIVATE DETENTION FACILITIES
4 AND USE OF JAILS.—

5 (1) SECURE DETENTION FACILITIES.—Begin-
6 ning on the date of the enactment of this Act, the
7 Secretary of Homeland Security may not enter into
8 or extend any contract with any public or private en-
9 tity which owns or operates a detention facility for
10 use of that facility to detain aliens in the custody of
11 the Department of Homeland Security, and shall
12 terminate any such contract not later than the date
13 that is 3 years after the date of the enactment of
14 this Act. Beginning on the date that is 3 years after
15 the date of the enactment of this Act, any facility
16 at which aliens in the custody of the Department of
17 Homeland Security are detained shall be owned and
18 operated by the Department of Homeland Security.

19 (2) NON-SECURE DETENTION PROGRAMS.—Be-
20 ginning on the date of the enactment of this Act, the
21 Secretary of Homeland Security may not enter into
22 or extend any contract with any public or private
23 for-profit entity which owns or operates a program
24 or facility that provides for non-residential deten-
25 tion-related activities for aliens who are subject to

1 monitoring by the Department of Homeland Secu-
2 rity, and shall terminate any such contract not later
3 than the date that is 3 years after the date of the
4 enactment of this Act. Beginning on the date that
5 is 3 years after the date of the enactment of this
6 Act, any such program or facility shall be owned and
7 operated by a nonprofit organization or by the De-
8 partment of Homeland Security.

9 (3) PUBLICATION OF PLAN.—Not later than 60
10 days after the date of the enactment of this Act, the
11 Secretary shall develop, and make publicly available,
12 a plan and timeline for the implementation of this
13 subsection.

14 **SEC. 6. APPEARANCE OF DETAINED ALIENS FOR OTHER**
15 **LEGAL MATTERS.**

16 The Secretary of Homeland Security shall make rules
17 to ensure that any alien who is detained in the custody
18 of the Department of Homeland Security, who is required
19 to appear in Federal or State court (including family
20 court) for another matter, is transported by an officer or
21 employee of the Department of Homeland Security to such
22 court proceeding.

1 **SEC. 7. PROCEDURES FOR DETAINING ALIENS.**

2 (a) PROBABLE CAUSE AND CUSTODY DETERMINA-
3 TION HEARINGS.—Section 236 of the Immigration and
4 Nationality Act (8 U.S.C. 1226) is amended—

5 (1) by amending subsection (a) to read as fol-
6 lows:

7 “(a) ARREST, DETENTION, AND RELEASE.—On a
8 warrant issued by an immigration judge, or pursuant to
9 section 287(a)(2), the Secretary of Homeland Security
10 may arrest an alien, and in accordance with this section,
11 detain the alien or release the alien on bond, subject to
12 conditions, or recognizance, pending a decision on whether
13 the alien is to be removed from the United States.”;

14 (2) by striking subsection (b);

15 (3) by striking subsection (e);

16 (4) by adding at the end the following:

17 “(f) BOND DETERMINATION.—In the case that an
18 immigration judge makes a determination to release an
19 alien on bond under this section, the immigration judge
20 shall consider, for purposes of setting the amount of the
21 bond, the alien’s financial position and ability to pay the
22 bond without imposing financial hardship on the alien.

23 “(g) CUSTODY DETERMINATION.—

24 “(1) INITIAL DETERMINATION.—Not later than
25 48 hours after taking an alien into custody, the Sec-
26 retary of Homeland Security shall make an initial

1 custody determination with regard to that alien, and
2 provide that determination in writing to the alien. If
3 the Secretary determines that the release of an alien
4 will not reasonably assure the appearance of the
5 alien as required or will endanger the safety of any
6 other person or the community, the custody deter-
7 mination under this paragraph will impose the least
8 restrictive conditions, as described in paragraph (4).

9 “(2) TIMING.—If an alien seeks to challenge
10 the initial custody determination under paragraph
11 (1), the alien shall be provided with the opportunity
12 for a hearing before an immigration judge to deter-
13 mine whether the alien should be detained, which
14 hearing shall occur not later than 72 hours after the
15 initial custody determination.

16 “(3) PRESUMPTION OF RELEASE.—In a hearing
17 under this subsection, there shall be a presumption
18 that the alien should be released. The Government
19 shall have the duty of rebutting this presumption,
20 which may only be shown based on clear and con-
21 vincing evidence, including credible and individual-
22 ized information, that the use of alternatives to de-
23 tention will not reasonably assure the appearance of
24 the alien at removal proceedings, or that the alien is
25 a threat to another person or the community. The

1 fact that an alien has a criminal charge pending
2 against the alien may not be the sole factor to jus-
3 tify the continued detention of the alien.

4 “(4) LEAST RESTRICTIVE CONDITIONS RE-
5 QUIRED.—If an immigration judge determines pur-
6 suant to a hearing under this section that the re-
7 lease of an alien will not reasonably assure the ap-
8 pearance of the alien as required or will endanger
9 the safety of any other person or the community, the
10 immigration judge shall order the least restrictive
11 conditions, or combination of conditions, that the
12 judge determines will reasonably assure the appear-
13 ance of the alien as required and the safety of any
14 other person and the community, which may include
15 secured or unsecured release on bond, or participa-
16 tion in a program described in subsection (i). Any
17 conditions assigned to an alien pursuant to this
18 paragraph shall be reviewed by the immigration
19 judge on a monthly basis.

20 “(5) SPECIAL RULE FOR VULNERABLE PER-
21 SONS AND PRIMARY CAREGIVERS.—In the case that
22 the alien who is the subject of a custody determina-
23 tion under this subsection is a vulnerable person or
24 a primary caregiver, the alien may not be detained
25 unless the Government shows, in addition to the re-

1 requirements under paragraph (2), that it is unreason-
2 able or not practicable to place the individual in a
3 community-based supervision program.

4 “(6) DEFINITION.—In this subsection, the term
5 ‘vulnerable person’ means an individual who—

6 “(A) is under 21 years of age or over 60
7 years of age;

8 “(B) is pregnant;

9 “(C) identifies as lesbian, gay, bisexual,
10 transgender, or intersex;

11 “(D) is victim or witness of a crime;

12 “(E) has filed a nonfrivolous civil rights
13 claim in Federal or State court;

14 “(F) has a serious mental or physical ill-
15 ness or disability;

16 “(G) has been determined by an asylum of-
17 ficer in an interview conducted under section
18 235(b)(1)(B) to have a credible fear of persecu-
19 tion; or

20 “(H) has been determined by an immigra-
21 tion judge or the Secretary of Homeland Secu-
22 rity to be experiencing severe trauma or to be
23 a survivor of torture or gender-based violence,
24 based on information obtained during intake,

1 from the alien’s attorney or legal service pro-
2 vider, or through credible self-reporting.

3 “(7) SUBSEQUENT DETERMINATIONS.—An
4 alien who is detained under this section shall be pro-
5 vided with a de novo custody determination hearing
6 under this subsection every 60 days, as well as upon
7 showing of a change in circumstances or good cause
8 for such a repeat hearing.

9 “(h) RELEASE UPON AN ORDER GRANTING RELIEF
10 FROM REMOVAL.—In the case of an alien with respect to
11 whom an immigration judge has entered an order pro-
12 viding for relief from removal, including an order granting
13 asylum, or providing for withholding, deferral, or cancella-
14 tion of removal, which order is pending appeal, the Sec-
15 retary of Homeland Security shall immediately release the
16 alien upon entry of the order, and may impose only rea-
17 sonable conditions on the alien’s release from custody.

18 “(i) ALTERNATIVES TO DETENTION.—

19 “(1) IN GENERAL.—The Secretary of Homeland
20 Security shall establish programs that provide alter-
21 natives to detaining aliens, which shall offer a con-
22 tinuum of supervision mechanisms and options, in-
23 cluding community-based supervision programs and
24 community support. The Secretary may contract
25 with nongovernmental community-based organiza-

1 tions to provide programs, which may include case
2 management services, appearance assistance serv-
3 ices, and screenings of aliens who have been de-
4 tained.

5 “(2) INDIVIDUALIZED DETERMINATION RE-
6 QUIRED.—In determining whether to order an alien
7 to participate in a program under this subsection,
8 the Secretary, or the immigration judge, as appro-
9 priate shall make an individualized determination to
10 determine the appropriate level of supervision for the
11 alien. Participation in a program under this sub-
12 section may not be ordered for an alien for whom it
13 is determined that release on reasonable bond or re-
14 cognizance will reasonably assure the appearance of
15 the alien as required and the safety of any other
16 person and the community.”; and

17 (5) by striking “Attorney General” each place
18 such term appears and inserting “Secretary of
19 Homeland Security”.

20 (b) PROBABLE CAUSE HEARING.—Section 287(a)(2)
21 of the Immigration and Nationality Act (8 U.S.C.
22 1357(a)(2)) is amended by striking “but the alien arrested
23 shall be taken without unnecessary delay for examination
24 before an officer of the Service having authority to exam-
25 ine aliens as to their right to enter or remain in the United

1 States” and inserting “but the alien arrested shall be pro-
2 vided with a hearing before an immigration judge not later
3 than 48 hours after being taken into custody to determine
4 whether there is probable cause to believe that the alien
5 does not have the right to enter or remain in the United
6 States, which burden to establish probable cause shall be
7 on the Government”.

8 (c) MANDATORY DETENTION REPEALED.—The Im-
9 migration and Nationality Act (8 U.S.C. 1101 et seq.) is
10 amended—

11 (1) by striking section 235(b)(1)(B)(iii)(IV);

12 (2) by striking section 236(c);

13 (3) by striking section 236A;

14 (4) in section 238(a)(2), by striking “pursuant
15 to section 236(c)”;

16 (5) in section 506(a)(2)—

17 (A) by amending the heading to read as
18 follows: “RELEASE HEARING FOR ALIENS DE-
19 TAINED”; and

20 (B) in subclause (A)—

21 (i) in the matter preceding clause (i),
22 by striking “lawfully admitted for perma-
23 nent residence”; and

24 (ii) by striking clause (i).

1 (d) ALIENS ORDERED REMOVED.—Section 241(a) of
2 the Immigration and Nationality Act (8 U.S.C. 1231(a))
3 is amended—

4 (1) in paragraph (1), by striking “90 days”
5 each place it appears and inserting “60 days”;

6 (2) by amending paragraph (2) to read as fol-
7 lows:

8 “(2) INITIAL CUSTODY REDETERMINATION
9 HEARING.—

10 “(A) IN GENERAL.—Not later than 72
11 hours after the entry of a final administrative
12 order of removal, the alien ordered removed
13 shall be provided with a custody redetermina-
14 tion hearing before an immigration judge.

15 “(B) PRESUMPTION OF DETENTION.—For
16 purposes of the hearing under subparagraph
17 (A), the alien shall be detained during the re-
18 moval period unless the alien can show by clear
19 and convincing evidence that the alien’s removal
20 is not reasonably foreseeable and that the alien
21 does not pose a risk to the safety of any indi-
22 vidual or to the community.”;

23 (3) in paragraph (3)—

24 (A) in the heading, by striking “90-DAY”
25 and inserting “60-DAY”; and

1 (B) in the matter preceding subparagraph
2 (A), by striking “the alien, pending removal,
3 shall be subject to supervision under” the fol-
4 lowing: “except as provided in paragraph (7),
5 any alien who has been detained during the re-
6 moval period shall be released from custody,
7 pending removal, subject to individualized su-
8 pervision requirements in accordance with”;
9 (4) by striking paragraph (6); and
10 (5) by amending paragraph (7) to read as fol-
11 lows:

12 “(7) SUBSEQUENT CUSTODY REDETERMINA-
13 TION HEARINGS.—

14 “(A) IN GENERAL.—The Government may
15 request a subsequent redetermination hearing
16 before an immigration judge seeking continued
17 detention for an alien ordered to be detained
18 pursuant to paragraph (2) who has not been re-
19 moved within the removal period.

20 “(B) STANDARD.—An alien may only be
21 detained after the removal period upon a show-
22 ing by the Government that—

23 “(i) the alien’s removal is reasonably
24 foreseeable; or

1 “(ii) the alien poses a risk to the safe-
2 ty of an individual or the community,
3 which may only be established based on
4 credible and individualized information
5 that establishes objective risk factors, and
6 may not be established based only the fact
7 that the alien has been charged with or is
8 suspected of a crime.

9 “(C) PERIOD OF DETENTION.—An alien
10 may not be detained pursuant to an order
11 under this paragraph for longer than a 60-day
12 period. The Government may seek subsequent
13 redetermination hearings under this paragraph
14 in order to continue detaining an alien beyond
15 each such 60-day period.”.

○