

110TH CONGRESS
2D SESSION

H. R. 7255

To reform immigration detention procedures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 3, 2008

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

A BILL

To reform immigration detention procedures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Immigration Oversight
5 and Fairness Act”.

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

4 (a) MANDATORY TRAINING.—The Secretary of
5 Homeland Security, in consultation with the Office of Ref-
6 ugee Resettlement of the Department of Health and
7 Human Services and independent child welfare experts,
8 shall mandate live training of all personnel who come into
9 contact with unaccompanied alien children (as defined in
10 section 462 of the Homeland Security Act of 2002 (6 U.S.
11 C. 279)) in all relevant legal authorities, policies, and pro-
12 cedures 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 Department of
24 Homeland Security or the Office of Refugee Resettlement.
25 The Secretary of Homeland Security shall ensure that fe-
26 male officers are responsible and at all times present dur-

1 ing the transfer and transport of female detainees who are
2 in the custody of the Department 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) OTHER POLICIES AND PROCEDURES.—The Sec-
13 retary shall further adopt fundamental child protection
14 policies and procedures—

15 (1) for reliable age-determinations of children
16 which exclude the use of fallible forensic testing of
17 children’s bone and teeth developed in consultation
18 with medical and child welfare experts;

19 (2) to ensure the safe and secure repatriation
20 and reintegration of unaccompanied alien children to
21 their home countries through specialized programs
22 developed in close consultation with the Secretary of
23 State, the Office of the Refugee Resettlement and
24 reputable independent child welfare experts includ-
25 ing placement of children with their families or non-

1 governmental agencies to provide food, shelter and
2 vocational training and microfinance opportunities;

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

7 (4) to ensure that unaccompanied alien children
8 (as defined in section 462 of the Homeland Security
9 Act of 2002 (6 U.S.C. 279)) are physically sepa-
10 rated from any adult who is not an immediate fam-
11 ily member and are separated by sight and sound
12 from immigration detainees and inmates with crimi-
13 nal convictions, pretrial inmates facing criminal
14 prosecution, children who have been adjudicated
15 delinquents or convicted of adult offenses or are
16 pending delinquency or criminal proceedings, and
17 those inmates exhibiting violent behavior while in de-
18 tention as is consistent with the Juvenile Justice
19 and Delinquency Prevention Act of 1974 (42 U.S.C.
20 5601 et seq.).

21 **SEC. 3. DETENTION CONDITIONS.**

22 (a) **DETENTION REQUIREMENTS.**—All detention fa-
23 cilities shall fully comply with the following minimum re-
24 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, the Federal courts, and all others
7 who are contacted for the purpose of obtaining legal
8 representation. Detention facilities shall provide to
9 detainees access to telephones during facility work-
10 ing hours and on an emergency basis in accordance
11 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 toll-
16 free calls, within sight of each telephone avail-
17 able to detainees. These rules shall be trans-
18 lated into Spanish and two additional languages
19 spoken by a substantial part of the detainee
20 population of the detention facility. If a deten-
21 tion facility has determined that more than 5
22 percent of its population is a certain ethnicity,
23 the document should be translated into that
24 ethnicity’s appropriate language. The detention
25 facility shall also provide oral interpretation and

1 written translation assistance to detainees in
2 reading any relevant materials required to re-
3 quest telephone access, including oral interpre-
4 tation assistance for those who are not literate
5 in English, Spanish, and other languages spo-
6 ken by the detainee 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 any other calls made for the pur-
25 pose of obtaining legal representation. Means to

1 ensure privacy may include the use of privacy
2 panels, the placement of phones in housing
3 pods, and 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 C.F.R.
18 549.43, as described in *Washington v. Harper*,
19 494 U.S. 210 (1990), before the detainee may
20 receive medication again under this subpara-
21 graph.

22 (H) No drugs of any kind shall be admin-
23 istered to detainees without their informed con-
24 sent for the purpose of sedation or controlling

1 the detainee's behavior during transportation or
2 removal or for the purpose of punishment.

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

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

24 (i) the name, gender, national origin,
25 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), the Sec-
6 retary of Homeland Security shall promulgate
7 regulations requiring officials of the Depart-
8 ment of Homeland Security to give substantial
9 weight to—

10 (i) the detainee’s access to legal rep-
11 resentation;

12 (ii) the detainee’s residence prior to
13 apprehension;

14 (iii) the location of family members;

15 (iv) the stage of any legal proceeding
16 involving the detainee;

17 (v) the proximity of the transferee fa-
18 cility to the venue of such proceeding;

19 (vi) the detainee’s health and medical
20 fitness; and

21 (vii) whether the detainee has a pend-
22 ing application with United States Citizen-
23 ship and Immigration Services or the Ex-
24 ecutive Office for Immigration Review or

1 has appeared for a merits or calendar
2 hearing.

3 (B) NOTICE.—Unless exigent cir-
4 cumstances dictate an immediate transfer—

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

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

19 (iii) if removal proceedings are pend-
20 ing, the Secretary of Homeland Security
21 shall also promptly notify the Immigration
22 Court, Board of Immigration Appeals, or
23 the Circuit Court of Appeals, as appro-
24 priate of the transfer and the detainee’s
25 new address; and

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

6 (C) ATTORNEY-CLIENT RELATIONSHIPS.—
7 The Secretary may not transfer a detainee who
8 has an existing attorney-client relationship to
9 another facility if such transfer will—

10 (i) impair the existing attorney client
11 relationship; or

12 (ii) prejudice the rights of the de-
13 tainee in any legal proceeding.

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

20 (E) PROTECTING DETAINEES LEGAL
21 RIGHTS.—If the Secretary determines that a
22 transfer is necessary due to a highly unusual
23 emergency, the Secretary shall ensure that the
24 detainee's legal rights are not prejudiced and
25 the existing attorney-client relationship is not

1 impaired, including evaluating the location of
2 the detention facility based on its proximity to
3 the detainee’s counsel or nongovernmental or
4 pro bono organizations providing free or low
5 cost immigration legal services.

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

10 (5) NOTICE.—

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

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

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

5 “(2) submit to the Committees on the Judiciary
6 of the Senate and the House of Representatives an
7 annual report concerning the Department of Home-
8 land Security’s compliance with such notice require-
9 ment.”.

10 (B) APPLICABILITY OF OTHER LAW.—

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

15 (b) REGULATIONS CONCERNING CARE AND CUSTODY
16 OF DETAINEES.—

17 (1) RULEMAKING.—The Secretary of Homeland
18 Security shall promulgate new rules, or modify exist-
19 ing rules, based on the report of the detention advi-
20 sory committee established under paragraph (2), to
21 ensure detainees are treated humanely and held in
22 the least restrictive setting necessary for their safety
23 and to ensure compliance with the general minimum
24 requirements set forth in paragraph (3), standards
25 regarding classification of detainees set forth in

1 paragraph (4), and the special standards for vulner-
2 able populations set forth in paragraph (5). The
3 rules required under this subsection shall be promul-
4 gated not later than 1 year after the Secretary of
5 Homeland Security receives the report of the deten-
6 tion advisory committee established under paragraph
7 (2) or 1 year after such report is due, whichever is
8 earlier.

9 (2) DETENTION ADVISORY COMMITTEE.—The
10 Secretary of Homeland Security shall convene, and
11 receive a report from a detention advisory committee
12 comprised of experts from U.S. Immigration and
13 Customs Enforcement, U.S. Customs and Border
14 Protection, the Office of Refugee Resettlement, and
15 Division of Immigration Health Services in the De-
16 partment of Health and Human Services, and an
17 equal number of independent experts from non-
18 governmental organizations and intergovernmental
19 organizations with expertise in working on behalf of
20 aliens detained under immigration laws and vulner-
21 able populations. The independent experts shall at a
22 minimum include representatives of the American
23 Bar Association and the United Nations High Com-
24 missioner for Refugees. The detention advisory com-
25 mittee shall review and revise all the guidelines

1 found in the Secretary of Homeland Security’s De-
2 tention Operations Manual, as amended, based on
3 identifiable deficiencies and best practices that treat
4 aliens both safely and humanely. The detention advi-
5 sory committee shall submit a report to the Sec-
6 retary of Homeland Security within 12 months after
7 the date of the enactment of this Act. For good
8 cause, the Secretary of Homeland Security may ex-
9 tend the time for submission of the advisory commit-
10 tees report for an additional six months.

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

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

20 (B) USE OF FORCE AND RESTRAINTS.—
21 Detainees shall not be subjected to shackling,
22 handcuffing, solitary confinement, Tasers, elec-
23 tric shields, restraint chairs, or strip searches
24 unless and to the extent that such techniques
25 are necessary to ensure the security of other de-

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

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

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

24 (ii) Detainees shall be afforded the
25 opportunity to complain to staff of U.S.

1 Immigration and Customs Enforcement di-
2 rectly and confidentially, outside the griev-
3 ance process.

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

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

21 (v) Detention facilities shall make an
22 annual report regarding the grievances re-
23 ceived, the responses made, and the time
24 period for response, and such report shall

1 be submitted to the Secretary of Homeland
2 Security on January 31 of each year.

3 (vi) All grievances shall be inves-
4 tigated.

5 (D) LOCATION OF FACILITIES.—Detention
6 facilities shall be located, to the extent prac-
7 ticable, near sources of free or low-cost legal
8 representation provided by pro bono counsel or
9 a nongovernmental organization with expertise
10 in asylum or immigration law.

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

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

14 (F) LEGAL VISITS.—Detainees shall be en-
15 titled to private meetings with their current or
16 prospective legal representatives or their legal
17 assistants. Interpreters shall be allowed to ac-
18 company legal representatives and legal assist-
19 ants on legal visits subject to appropriate secu-
20 rity procedures. Legal visits shall be permitted
21 a minimum of 8 hours per day on regular busi-
22 ness days and 4 hours per day on weekends and
23 holidays, except that if lack of space for inter-
24 views at the detention facility, the conduct of
25 immigration hearings on site, or other factors

1 lead to excessive delay between the time the
2 legal representative is ready to visit the de-
3 tainee and the time space becomes available,
4 the Secretary of Homeland Security shall re-
5 quire such additional time for legal visits or
6 other measures as may be sufficient to avoid ex-
7 cessive delay. Excessive delay for purposes of
8 this paragraph is delay of 2 hours or more, oc-
9 ccurring more than 2 times per month over a
10 12-month period. Detention facilities shall
11 maintain a procedure allowing legal representa-
12 tives and legal assistants to call ahead to deter-
13 mine if a detainee is held at that facility, and
14 they shall take messages from legal representa-
15 tives and promptly deliver them to the detainee.
16 Messengers, including individuals who are not
17 attorneys, legal representatives, or legal assist-
18 ants, shall be permitted to deliver documents
19 for detainees to and from the facility. Detention
20 facilities shall promptly and prominently post
21 the most current official list of pro bono legal
22 organizations and their contact information in
23 detainee housing units and other appropriate
24 areas, and such lists shall be updated by the
25 Secretary of Homeland Security on a semi-an-

1 nual basis. Detention facilities may not retaliate
2 in any way, including denial or limitation of ac-
3 cess to detention facilities, for complaints or
4 public or private statements made by legal rep-
5 resentatives regarding the detention facility's
6 compliance with regulations relating to condi-
7 tions of detention.

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

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

23 (H) ACCESS TO DETENTION FACILITIES.—
24 Detention facilities shall afford access as fol-
25 lows:

1 (i) Subject to reasonable conditions to
2 protect the security of the facility, deten-
3 tion facilities shall afford access to private
4 attorneys, other legal representatives and
5 legal personnel such as paralegals and
6 Board of Immigration Appeals accredited
7 representatives; government attorneys;
8 judges and courts; embassies and con-
9 sulates; the president and vice president of
10 the United States, members of Congress
11 and their staff; officers and other per-
12 sonnel of the Department of Justice; offi-
13 cers and other personnel of the Depart-
14 ment of Homeland Security; officers and
15 other personnel of the U.S. Public Health
16 Service; administrators of grievance sys-
17 tems; state and local officials, representa-
18 tives of the news media, and representa-
19 tives of nongovernmental organizations,
20 community service organizations, and
21 intergovernmental organizations.

22 (ii) Independent nongovernmental or-
23 ganizations shall be permitted to conduct
24 site visits and meet privately with detain-

1 ees to monitor compliance with regulations
2 regarding conditions of detention.

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

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

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

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

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

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

1 comfortable indoor temperatures shall be main-
2 tained at all times.

3 (L) LEGAL ORIENTATION TO ENSURE EF-
4 FECTIVE IMMIGRATION PROCEEDINGS.—All
5 alien detainees shall receive the legal orientation
6 program including, for unaccompanied alien
7 children, a child-centered model from an inde-
8 pendent nongovernmental organization as im-
9 plemented by the Executive Office for Immigra-
10 tion Review in order to maximize the efficiency
11 and effectiveness of immigration proceedings
12 and to reduce detention costs.

13 (4) CLASSIFICATION.—The Secretary of Home-
14 land Security’s rules shall ensure that detainees with
15 no history of a criminal conviction are separated by
16 sight and sound from detainees and inmates with
17 criminal convictions, pretrial inmates facing criminal
18 prosecution, and those inmates exhibiting violent be-
19 havior while in detention.

20 (5) VULNERABLE POPULATIONS.—The Sec-
21 retary of Homeland Security’s rules regarding condi-
22 tions of detention for vulnerable populations shall—

23 (A) recognize the unique needs of asylum
24 seekers, victims of torture and trafficking, fami-
25 lies with children, detainees who do not speak

1 English, detainees with special religious, cul-
2 tural or spiritual considerations, and vulnerable
3 populations listed in section 4(c); and

4 (B) ensure that procedures and conditions
5 of detention are appropriate for such vulnerable
6 populations.

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

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

19 (a) IN GENERAL.—Subject to the availability of ap-
20 propriations, the Secretary of Homeland Security shall
21 fully implement and utilize secure alternatives to detention
22 programs.

23 (b) SECURE ALTERNATIVES TO DETENTION PRO-
24 GRAMS.—

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

9 (A) group presentations and individual
10 screening;

11 (B) provision of services to aliens released;
12 and

13 (C) on-going assistance, supervision, and
14 monitoring.

15 (2) VOLUNTARY PARTICIPATION.—An alien’s
16 participation in the program is voluntary and shall
17 not confer any rights or benefits to the alien under
18 the Immigration and Nationality Act (8 U.S.C. 1101
19 et seq.).

20 (3) PROGRAM DEVELOPMENT.—The program
21 shall be developed in accordance with the following
22 guidelines:

23 (A) The Secretary of Homeland Security
24 shall design the program in consultation with
25 nongovernmental organizations and academic

1 experts in both the immigration and the crimi-
2 nal justice fields.

3 (B) All aliens in the custody of the Depart-
4 ment of Homeland Security deemed eligible for
5 secure alternatives to detention programs shall
6 be released in the least restrictive setting need-
7 ed to ensure appearance at all immigration
8 interviews, appointments and hearings. The
9 programs shall utilize a continuum of methods,
10 including releasing the alien to an individual or
11 organizational sponsor, a supervised group
12 home, or a supervised, non-penal community
13 setting.

14 (C) Nongovernmental organizations and
15 state and local social service agencies that serve
16 immigrants shall be contracted to conduct
17 group and individual screening and provide
18 services to program participants.

19 (D) The Secretary of Homeland Security
20 shall ensure that each alien participates in a
21 legal presentation provided through the legal
22 orientation presentation program administered
23 by the Executive Office for Immigration Re-
24 view.

1 (c) PROTECTION OF VULNERABLE POPULATIONS.—

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

11 (1) Aliens who have serious medical or mental
12 health needs or a disability.

13 (2) Pregnant or nursing women.

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

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

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

20 (6) Children (as defined at section 101(c)(1) of
21 the Immigration and Nationality Act (8 U.S.C.
22 1101(c)(1))).

23 (7) Victims of abuse, violence, crime or traf-
24 ficking.

1 (8) Asylum seekers and torture survivors who
2 have demonstrated a credible fear of persecution or
3 a reasonable fear of torture.

4 (9) Other groups designated in regulations or
5 guidance promulgated after the date of the enact-
6 ment of this Act by the Secretary of Homeland Se-
7 curity.

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

12 (d) OPTIONS REGARDING DETENTION DECISIONS
13 FOR VULNERABLE POPULATIONS AND PLACEMENT IN AL-
14 TERNATIVES TO DETENTION.—Section 236 of the Immi-
15 gration and Nationality Act (8 U.S.C. 1226) is amend-
16 ed—

17 (1) in subsection (a)—

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

20 (B) in paragraph (2)—

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

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

1 (iii) by inserting after subparagraph

2 (B) the following:

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

4 (C) by redesignating paragraph (3) as
5 paragraph (4); and

6 (D) by inserting after paragraph (2) the
7 following:

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

10 (2) by redesignating subsections (b), (c), (d),
11 and (e) as subsections (e), (f), (g), and (h) respec-
12 tively;

13 (3) by inserting after subsection (a) the fol-
14 lowing:

15 “(b) CUSTODY DECISIONS FOR VULNERABLE POPU-
16 LATIONS.—

17 “(1) IN GENERAL.—Not later than 72 hours
18 after an alien’s detention unless the 72 hour require-
19 ment is waived in writing by the alien, an alien who
20 is a member of a vulnerable population (as defined
21 by subsection (c)) shall be released from the Depart-
22 ment of Homeland Security’s custody and shall not
23 be subject to electronic monitoring unless the De-
24 partment of Homeland Security demonstrates that
25 the alien—

1 “(A) is subject to mandatory detention
2 under section 235(b)(1)(B)(iii)(IV), 236(c) or
3 236A; or

4 “(B) poses a flight risk or a risk to others
5 or national security.

6 “(2) RELEASE.—An alien shall be released
7 under this subsection—

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

9 “(B) by posting a reasonable bond under
10 subsection (a); or

11 “(C) on parole in accordance with section
12 212(d)(5)(A).

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

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

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

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

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

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

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

21 “(4) All custody decisions by the Secretary of
22 Homeland Security shall be subject to redetermina-
23 tion by an immigration judge. Nothing in this sub-
24 section shall be construed to prevent an individual
25 from requesting a bond redetermination.

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

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

12 (e) ELIGIBILITY AND OPERATIONS.—Nothing in this
13 section shall be construed to modify the care and custody
14 of unaccompanied alien children (as defined in section
15 462(g)(2) of the Homeland Security Act (6 U.S.C.
16 279(g)(2))) who shall be considered to be in the care and
17 exclusive legal and physical custody of the Department of
18 Health and Human Services. Such children shall be sub-
19 ject to removal proceedings under section 240 of the Im-
20 migration and Nationality Act (8 U.S.C. 1229a), with the
21 exception of children from contiguous countries eligible for
22 administrative voluntary departure, and shall not be per-
23 mitted to participate in the program.

24 (f) LESS RESTRICTIVE CUSTODIAL DETENTION.—If
25 an alien is determined not to meet the requirements for

1 release on recognizance, bond or parole, or subsequently
2 does not meet the requirements for secure alternatives to
3 detention programs, the alien shall be considered for
4 placement in less restrictive forms of custody:

5 (1) Less restrictive forms of custodial detention
6 include electronic monitoring such as the use of
7 ankle bracelets that monitor an individual's move-
8 ment and the use of similar electronic devices.

9 (2) An individualized determination shall be
10 made in each alien's case about the use of electronic
11 monitoring.

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

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

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

20 (a) **RELATIONSHIPS OF APPLICATION TO CERTAIN**
21 **ORDERS.**—An alien who is present in the United States
22 and has been ordered excluded, deported, removed, or or-
23 dered to depart voluntarily from the United States under
24 any provision of the Immigration and Nationality Act—

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

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

6 (b) IMPLEMENTING REGULATIONS.—Not later than
7 180 days after the date of the enactment of this Act, the
8 Secretary of Homeland Security shall promulgate regula-
9 tions to implement the secure alternatives to detention
10 programs.

11 (c) REPORTING REQUIREMENTS.—Not later than
12 365 days after the date of the enactment of this Act and
13 annually thereafter, the Secretary of Homeland Security
14 shall submit to the Committee on Homeland Security of
15 the House of Representatives, the Committee on the Judi-
16 ciary of the House of Representatives, the Committee on
17 Homeland Security and Governmental Affairs of the Sen-
18 ate, and the Committee on the Judiciary of the Senate
19 a report that details all policies, regulations, and actions
20 taken to comply with the provisions in this Act and the
21 amendments made by this Act, including efforts to in-
22 crease the use of the secure alternatives to detention pro-
23 grams, and a description of efforts taken to ensure that
24 all aliens in expedited removal proceedings are residing
25 under conditions that are safe, secure, and healthy.

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

○