

117TH CONGRESS
1ST SESSION

H. R. 2222

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

MARCH 26, 2021

Ms. JAYAPAL (for herself and Mr. SMITH of Washington) 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Dignity for Detained
5 Immigrants Act of 2021”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that detention, even for
3 a short period of time, inflicts severe, irreparable harm
4 on children and should be avoided.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) APPROPRIATE COMMITTEES OF CON-
8 GRESS.—The term “appropriate committees of Con-
9 gress” means—

10 (A) the Committee on the Judiciary of the
11 Senate;

12 (B) the Committee on Homeland Security
13 and Governmental Affairs of the Senate;

14 (C) the Committee on the Judiciary of the
15 House of Representatives; and

16 (D) the Committee on Homeland Security
17 of the House of Representatives.

18 (2) DEPARTMENT.—The term “Department”
19 means the Department of Homeland Security.

20 (3) SECRETARY.—The term “Secretary” means
21 the Secretary of Homeland Security.

22 **SEC. 4. STANDARDS FOR DEPARTMENT OF HOMELAND SE-**
23 **CURITY DETENTION FACILITIES.**

24 (a) RULEMAKING.—Not later than 1 year after the
25 date of the enactment of this Act, the Secretary shall, by
26 regulation, establish detention standards for each facility

1 at which aliens in the custody of the Department are de-
2 tained.

3 (b) MINIMUM PROTECTION.—The standards estab-
4 lished under subsection (a) shall provide, at a minimum,
5 the level of protections for detainees described in the
6 American Bar Association’s Civil Immigration Detention
7 Standards (adopted in August 2012, and as modified in
8 August 2014).

9 (c) BIENNIAL UPDATES.—Not less frequently than
10 biennially, the Secretary shall review and update such
11 standards, as appropriate.

12 **SEC. 5. OVERSIGHT AND TRANSPARENCY.**

13 (a) PERIODIC INSPECTIONS.—

14 (1) IN GENERAL.—On a periodic basis, not less
15 frequently than annually, the Inspector General of
16 the Department (referred to in this section as the
17 “Inspector General”) shall conduct an unannounced,
18 in-person inspection of each facility at which aliens
19 in the custody of the Department are detained to en-
20 sure that each such facility is in compliance with the
21 standards established under section 4.

22 (2) REPORT.—Not later than 60 days after
23 conducting an inspection under paragraph (1), the
24 Inspector General shall—

1 (A) submit a report to the Secretary con-
2 taining the results of such inspection; and

3 (B) make the report available to the public
4 on the internet website of the Department.

5 (3) FAILURE TO COMPLY WITH STANDARDS.—

6 (A) INITIAL FAILURE.—

7 (i) IN GENERAL.—If the Inspector
8 General determines that a facility has
9 failed to comply with the standards estab-
10 lished under section 4 for the first time
11 during any 2-year period, and such non-
12 compliance constitutes a deficiency that
13 threatens the health, safety, or the due
14 process rights of detainees—

15 (I) the Inspector General shall
16 notify the Secretary of such deter-
17 mination; and

18 (II) the Secretary shall—

19 (aa) in the case of a facility
20 not owned by the Department,
21 impose a meaningful fine of not
22 less than 10 percent of the value
23 of the contract with the facility;
24 and

1 (bb) in the case of a facility
2 owned by the Department—

3 (AA) issue a written
4 warning to the facility not
5 later than 30 days after re-
6 ceiving such notification
7 from the Inspector General,
8 which shall include remedial
9 measures to be carried out
10 not later than 60 days after
11 the issuance of the warning;
12 and

13 (BB) not later than 60
14 days after the issuance of a
15 warning under subitem
16 (AA), certify to the Inspec-
17 tor General that the reme-
18 dial measures have been car-
19 ried out.

20 (ii) FOLLOW-UP INSPECTION.—Not
21 later than 180 days after the date on
22 which the Inspector General makes a noti-
23 fication under clause (i)(I), the Inspector
24 General shall conduct an in-person inspec-
25 tion of the facility to determine whether

1 the facility has achieved compliance with
2 the standards established under section 4.

3 (B) SUBSEQUENT FAILURES.—If the In-
4 spector General determines that a facility has
5 failed to comply with the standards established
6 under section 4 in 2 or more inspections under
7 paragraph (1) during any 2-year period, and
8 such noncompliance constitutes a deficiency
9 that threatens the health, safety, or the rights
10 of detainees—

11 (i) the Inspector General shall notify
12 the Secretary of such determination; and

13 (ii) the Secretary shall—

14 (I) in the case of a facility not
15 owned by the Department—

16 (aa) not later than 30 days
17 after receiving such notification,
18 transfer each detainee to a facil-
19 ity that does so comply; and

20 (bb) terminate the contract
21 with the owner or operator of the
22 facility; and

23 (II) in the case of a facility
24 owned by the Department—

1 (aa) not later than 60 days
2 after receiving such notification,
3 transfer each detainee to a facil-
4 ity that does so comply; and

5 (bb) suspend the use of such
6 facility until such time as the In-
7 spector General—

8 (AA) certifies to the
9 Secretary that the facility is
10 in compliance with such
11 standards; and

12 (BB) makes available
13 to the public on the internet
14 website of the Department
15 information relating to the
16 remedial measures taken.

17 (b) DEATHS IN CUSTODY.—

18 (1) NOTIFICATION.—Not later than 24 hours
19 after the death of an alien in the custody of the De-
20 partment, the Secretary shall notify the appropriate
21 committees of Congress of such death.

22 (2) INVESTIGATIONS.—

23 (A) IN GENERAL.—Not later than 30 days
24 after the death of an alien in the custody of the
25 Department, the Secretary shall conduct an in-

1 investigation into such death, which shall include
2 a root cause analysis that identifies any
3 changes to policies, practices, training curricula,
4 staffing, or potential system-wide errors that
5 may reduce the probability of such an event in
6 the future.

7 (B) ROOT CAUSE ANALYSIS.—Each root
8 cause analysis required by subparagraph (A)
9 shall be carried out—

10 (i) by appropriately qualified per-
11 sonnel, including 1 or more medical profes-
12 sionals qualified in a field relevant to the
13 death; and

14 (ii) in accordance with professional
15 medical standards for investigating sentinel
16 events in medical care facilities, including
17 the Sentinel Event Policy promulgated by
18 The Joint Commission.

19 (C) PUBLIC REPORT.—Not later than 60
20 days after such a death, the Secretary shall—

21 (i) issue a full report describing the
22 results of the investigation required by
23 subparagraph (A); and

1 (ii) make the report available to the
2 public on the internet website of the De-
3 partment.

4 (D) REVIEW BY INSPECTOR GENERAL.—
5 Not later than 90 days after the death of an
6 alien in the custody of the Department, the In-
7 spector General shall conduct a review of the
8 report issued under subparagraph (C) with re-
9 spect to such death.

10 (3) DEFINITION OF DEATH OF AN ALIEN IN
11 THE CUSTODY OF THE DEPARTMENT.—The term
12 “death of an alien in the custody of the Depart-
13 ment” means the death of an alien occurring while
14 the alien is under the supervision of the Depart-
15 ment, regardless of—

16 (A) the location of the death; or

17 (B) whether the death may have resulted
18 from a health problem that existed before or
19 during, or was exacerbated by, the detention of
20 the alien.

21 (c) REPORT TO CONGRESS.—

22 (1) IN GENERAL.—Not less frequently than an-
23 nually, the Secretary shall submit to the appropriate
24 committees of Congress a report on the inspections

1 and oversight of facilities at which aliens in the cus-
2 tody of the Department are detained.

3 (2) ELEMENTS.—Each report required by para-
4 graph (1) shall include, for the preceding year—

5 (A) a list of each detention facility found
6 by the Inspector General to be in noncompli-
7 ance with the standards established under sec-
8 tion 4;

9 (B) for each such facility, a description of
10 the remedial actions taken, or planned to be
11 taken, by the Secretary so as to achieve compli-
12 ance with such standards; and

13 (C) a determination as to whether such re-
14 medial actions have succeeded in bringing the
15 facility into compliance with such standards.

16 (d) CLASSIFICATION OF DOCUMENTS FOR PURPOSES
17 OF FOIA.—The reports required by subsections (a)(2)
18 and (b)(2)(C), and any contract between the Department
19 and a private or public entity that provides for the use
20 of a facility not owned by the Department to detain aliens
21 in the custody of the Department, are considered records
22 for purposes of section 552 of title 5, United States Code,
23 and do not qualify for the exception under subsection
24 (b)(4) of such section.

25 (e) FACILITIES MATRIX.—

1 (1) IN GENERAL.—On the first day of each
2 month, the Secretary shall ensure that a publicly ac-
3 cessible internet website of the Department contains
4 the information described in paragraph (2) for each
5 facility at which aliens in the custody of the Depart-
6 ment are detained.

7 (2) ELEMENTS.—The information referred to in
8 paragraph (1) is, for each such facility, the fol-
9 lowing:

10 (A) The name and location of the facility.

11 (B) Whether the facility houses adults,
12 children, or both.

13 (C) The number of beds available in the
14 facility on the last day of the preceding month,
15 disaggregated by gender.

16 (D) The total number of aliens detained in
17 the facility on the last day of the preceding
18 month, disaggregated by gender and classifica-
19 tion as a child or as an adult.

20 (E) Whether the facility is used to detain
21 aliens for longer than 72 hours.

22 (F) Whether the facility is used to detain
23 aliens for longer than 7 days.

24 (G) The average number of aliens detained
25 in the facility during the current year and dur-

1 ing the preceding month, disaggregated by gen-
 2 der and classification as a child or as an adult.

3 (H) Whether the facility is in compliance
 4 with the standards established under section 4.

5 (I) In the case of a facility not owned by
 6 the Department, a description of the nature of
 7 the contract providing for the detention of
 8 aliens at the facility.

9 (J) The average, median, 25th quartile,
 10 and 50th quartile number of days that an alien
 11 has been detained at the facility during the pre-
 12 ceding month.

13 (f) ONLINE DETAINEE LOCATOR SYSTEM.—The Sec-
 14 retary shall ensure that the online detainee locator system
 15 maintained by the Department, or any successor system,
 16 is updated not later than 12 hours after an alien is—

17 (1) taken into, or released from, custody by the
 18 Department;

19 (2) transferred to, or detained in, a detention
 20 facility; or

21 (3) removed from the United States.

22 (g) INFORMATION COLLECTED AND MAINTAINED
 23 FOR ALIENS IN DHS CUSTODY.—The Secretary shall col-
 24 lect and maintain, for each alien in the custody of the De-
 25 partment, the following information:

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

2 (2) The date on which the alien was taken into
3 such custody.

4 (3) The country of nationality of the alien.

5 (4) Whether the alien is considered a vulnerable
6 person (as such term is defined in section 236(c)(5)
7 of the Immigration and Nationality Act, as amended
8 by section 9) or a primary caregiver.

9 (5) The provision of law pursuant to which the
10 Secretary is authorized to detain the alien.

11 (6) The name of the facility in which the alien
12 is detained.

13 (7) With respect to any transfer of the alien to
14 another detention facility—

15 (A) a description of the transfer of the
16 alien to the other detention facility;

17 (B) the reason for the transfer; and

18 (C) in the case of a transfer effectuated
19 despite presence of the alien's legal counsel or
20 immediate relative in the jurisdiction of the
21 original detention facility, a justification for
22 such transfer.

23 (8) The status and basis of any removal pro-
24 ceedings of which the alien is the subject.

1 (9) The initial custody determination made by
2 U.S. Immigration and Customs Enforcement, in-
3 cluding any review of such determination.

4 (10) The date of the alien's release or removal,
5 and the reason for such release or removal, as appli-
6 cable.

7 (11) Whether the alien is subject to a final
8 order of removal.

9 (12) Whether the alien was apprehended as
10 part of a family unit.

11 (13) Whether the alien was separated from a
12 family unit at the border or in the interior of the
13 United States.

14 **SEC. 6. CIVIL ACTIONS.**

15 (a) CIVIL ACTION FOR VIOLATION OF STANDARDS.—

16 (1) IN GENERAL.—An individual detained in a
17 facility required to comply with the standards estab-
18 lished under section 4 who is injured as a result of
19 a violation of such standards may file a claim in the
20 appropriate district court of the United States.

21 (2) RECOVERY.—In a civil action under this
22 subsection, the court may order injunctive relief and
23 compensatory damages, and may award the pre-
24 vailing party reasonable attorney fees, and costs.

1 **SEC. 7. DETENTION FACILITY CONSTRUCTION AND MAIN-**
2 **TENANCE.**

3 (a) RESTRICTION ON CONSTRUCTION.—

4 (1) IN GENERAL.—Not later than 180 days be-
5 fore initiating, or entering into a contract for, the
6 construction of a new facility or the expansion of an
7 existing facility for the detention of aliens in the
8 custody of the Department, the Secretary shall sub-
9 mit to the appropriate committees of Congress a no-
10 tification of the plan to construct or expand such fa-
11 cility, including—

12 (A) the location, size, and capacity of such
13 facility;

14 (B) the anticipated timeline and cost of
15 constructing or expanding such facility; and

16 (C) the intended population to be detained
17 at such facility, including the gender and ages
18 of such population.

19 (2) PUBLIC AVAILABILITY.—The Secretary
20 shall make the information described in paragraph
21 (1) available to the public on the internet website of
22 the Department.

23 (b) PHASE-OUT OF PRIVATE DETENTION FACILITIES
24 AND USE OF JAILS.—

25 (1) SECURE DETENTION FACILITIES.—

26 (A) IN GENERAL.—The Secretary—

1 (i) may not enter into or extend any
2 contract or agreement with any public or
3 private for-profit entity that owns or oper-
4 ates a detention facility for use of such fa-
5 cility to detain aliens in the custody of the
6 Department; and

7 (ii) shall terminate any contract or
8 agreement described in clause (i) not later
9 than the date that is 3 years after the date
10 of the enactment of this Act.

11 (B) OWNERSHIP REQUIREMENT.—Begin-
12 ning on the date that is 3 years after the date
13 of the enactment of this Act, any facility at
14 which aliens in the custody of the Department
15 are detained shall be owned and operated by
16 the Department.

17 (2) ALTERNATIVES TO DETENTION PRO-
18 GRAMS.—

19 (A) IN GENERAL.—The Secretary—

20 (i) may not enter into or extend any
21 contract or agreement with any public or
22 private for-profit entity for the operation
23 of a program or the use of a facility for
24 nonresidential, detention-related activities

1 for aliens who are subject to monitoring by
2 the Department; and

3 (ii) shall terminate any contract or
4 agreement described in clause (i) not later
5 than the date that is 3 years after the date
6 of the enactment of this Act.

7 (B) OWNERSHIP AND OPERATION RE-
8 QUIREMENT.—Beginning on the date that is 3
9 years after the date of the enactment of this
10 Act, any program or facility used for the activi-
11 ties described in subparagraph (A)(i) shall be
12 owned and operated by a nonprofit organization
13 or the Department.

14 (3) IMPLEMENTATION PLAN.—Not later than
15 60 days after the date of the enactment of this Act,
16 the Secretary shall develop, and make publicly avail-
17 able, a plan and timeline for the implementation of
18 this subsection.

19 **SEC. 8. APPEARANCE OF DETAINED ALIENS FOR OTHER**
20 **LEGAL MATTERS.**

21 The Secretary shall establish rules to ensure that any
22 alien detained in the custody of the Department who is
23 required to appear in Federal or State court (including
24 family court) for another matter is transported by an offi-

1 cer or employee of the Department to such court pro-
 2 ceeding.

3 **SEC. 9. PROCEDURES FOR DETAINING ALIENS.**

4 (a) PROBABLE CAUSE AND CUSTODY DETERMINA-
 5 TION HEARINGS.—Section 236 of the Immigration and
 6 Nationality Act (8 U.S.C. 1226) is amended to read as
 7 follows:

8 **“SEC. 236. APPREHENSION AND DETENTION OF ALIENS.**

9 “(a) ARREST, DETENTION, AND RELEASE.—

10 “(1) IN GENERAL.—On a warrant issued by an
 11 immigration judge, or pursuant to section 287(a)(2),
 12 the Secretary of Homeland Security may arrest an
 13 alien, and in accordance with this section, detain the
 14 alien or release the alien on bond, subject to condi-
 15 tions, or recognizance, pending a decision on wheth-
 16 er the alien is to be removed from the United States.

17 “(2) EXEMPTION FOR UNACCOMPANIED ALIEN
 18 CHILDREN.—

19 “(A) IN GENERAL.—This section shall not
 20 apply to unaccompanied alien children (as de-
 21 fined in section 462(g)(2) of the Homeland Se-
 22 curity Act of 2002 (6 U.S.C. 279(g)(2)).

23 “(B) TRANSFER OF CUSTODY.—Any unac-
 24 companied alien child in the custody of the Sec-
 25 retary of Homeland Security shall be trans-

1 ferred to the custody of the Secretary of Health
2 and Human Services pursuant to section
3 235(b)(3) of the William Wilberforce Traf-
4 ficking Victims Protection Reauthorization Act
5 of 2008 (8 U.S.C. 1232(b)(3)).

6 “(b) BOND DETERMINATION.—

7 “(1) IN GENERAL.—An immigration judge who
8 releases an alien on bond under this section shall—

9 “(A) consider, for purposes of setting the
10 amount of the bond, the alien’s financial posi-
11 tion and ability to pay the bond without impos-
12 ing financial hardship on the alien; and

13 “(B) set bond at an amount no greater
14 than necessary to ensure the alien’s appearance
15 for removal proceedings.

16 “(2) INABILITY TO PAY BOND.—The Secretary
17 of Homeland Security may not continue to detain an
18 alien solely based on the alien’s inability to pay
19 bond.

20 “(c) CUSTODY DETERMINATION.—

21 “(1) INITIAL DETERMINATION.—

22 “(A) IN GENERAL.—Not later than 48
23 hours after taking an alien into custody pursu-
24 ant to this section or section 235, or with re-
25 spect to an alien subject to a reinstated order

1 of removal pursuant to section 241(a)(5) who
2 has been found to have a credible or reasonable
3 fear of return, the Secretary of Homeland Secu-
4 rity shall make an initial custody determination
5 with regard to the alien, and provide such de-
6 termination in writing to the alien.

7 “(B) LEAST RESTRICTIVE CONDITIONS.—
8 With respect to a custody determination under
9 subparagraph (A), if the Secretary determines
10 that the release of an alien will not reasonably
11 ensure the appearance of the alien as required
12 or will endanger the safety of any other person
13 or the community, the Secretary shall impose
14 the least restrictive conditions, as described in
15 paragraph (4).

16 “(2) TIMING.—

17 “(A) IN GENERAL.—An alien who seeks to
18 challenge the initial custody determination
19 under paragraph (1) shall be provided with the
20 opportunity for a hearing before an immigra-
21 tion judge not later than 72 hours after the ini-
22 tial custody determination to determine whether
23 the alien should be detained.

24 “(B) ACCESS TO COUNSEL.—On request
25 by an alien, or the legal counsel of an alien, an

1 immigration judge may grant a reasonable con-
2 tinuance of a hearing under subparagraph (A)
3 to provide the alien or such legal counsel addi-
4 tional time to prepare for the hearing.

5 “(3) PRESUMPTION OF RELEASE.—

6 “(A) IN GENERAL.—In a hearing under
7 this subsection, there shall be a presumption
8 that the alien should be released.

9 “(B) REBUTTAL.—

10 “(i) IN GENERAL.—The Secretary of
11 Homeland Security has the duty of rebut-
12 ting this presumption, which may only be
13 shown based on clear and convincing evi-
14 dence, including credible and individualized
15 information, that the use of alternatives to
16 detention will not reasonably ensure the
17 appearance of the alien at removal pro-
18 ceedings, or that the alien is a threat to
19 another person or the community.

20 “(ii) CONSIDERATION.—The Attorney
21 General—

22 “(I) shall consider the totality of
23 each case; and

24 “(II) may not rely on an alien’s
25 criminal conviction, arrest, pending

1 criminal charge, or combination there-
2 of as the sole factor to justify the con-
3 tinued detention of the alien.

4 “(4) LEAST RESTRICTIVE CONDITIONS RE-
5 QUIRED.—

6 “(A) IN GENERAL.—If an immigration
7 judge determines, pursuant to a hearing under
8 this section, that the release of an alien will not
9 reasonably ensure the appearance of the alien
10 as required or will endanger the safety of any
11 other person or the community, the immigra-
12 tion judge shall order the least restrictive condi-
13 tions, or combination of conditions, that the
14 judge determines will reasonably ensure the ap-
15 pearance of the alien as required and the safety
16 of any other person and the community, which
17 may include—

18 “(i) release on recognizance;

19 “(ii) secured or unsecured release on
20 bond; or

21 “(iii) participation in a program de-
22 scribed in subsection (f).

23 “(B) MONTHLY REVIEW.—Not less fre-
24 quently than monthly, the immigration judge

1 shall review any condition assigned to an alien
2 pursuant to subparagraph (A).

3 “(C) MODIFICATION OF CONDITIONS OF
4 SUPERVISION.—An immigration judge may
5 modify or rescind conditions of supervision im-
6 posed on an alien by the Secretary of Homeland
7 Security.

8 “(5) SPECIAL RULE FOR VULNERABLE PER-
9 SONS AND PRIMARY CAREGIVERS.—

10 “(A) IN GENERAL.—In the case of an alien
11 subject to a custody determination under this
12 subsection who is a vulnerable person or a pri-
13 mary caregiver, the alien may not be detained
14 unless the Secretary of Homeland Security
15 demonstrates, in addition to the requirements
16 under paragraph (3), that it is unreasonable or
17 not practicable to place the alien in a commu-
18 nity-based supervision program.

19 “(B) DEFINITIONS.—In this paragraph:

20 “(i) MATERIAL WITNESS.—The term
21 ‘material witness’ means an individual who
22 presents a declaration to an attorney inves-
23 tigating, prosecuting, or defending the
24 workplace claim or from the presiding offi-
25 cer overseeing the workplace claim attest-

1 ing that, to the best of the declarant's
2 knowledge and belief, reasonable cause ex-
3 ists to believe that the testimony of the in-
4 dividual will be relevant to the outcome of
5 the workplace claim.

6 “(ii) PRIMARY CAREGIVER.—The term
7 ‘primary caregiver’ means an individual
8 who is established to be a caregiver, par-
9 ent, or close relative caring for or traveling
10 with a child.

11 “(iii) VULNERABLE PERSON.—The
12 term ‘vulnerable person’ means an indi-
13 vidual who—

14 “(I) is under 21 years of age or
15 over 60 years of age;

16 “(II) is pregnant;

17 “(III) identifies as lesbian, gay,
18 bisexual, transgender, queer, or
19 intersex;

20 “(IV) is a victim or witness of a
21 crime;

22 “(V) has filed a nonfrivolous civil
23 rights claim in Federal or State court;

1 “(VI) has filed, or is a material
2 witness to, a bonafide workplace
3 claim;

4 “(VII) has a serious mental or
5 physical illness or disability;

6 “(VIII) has been determined by
7 an asylum officer in an interview con-
8 ducted under section 235(b)(1)(B) to
9 have a credible fear of persecution or
10 torture;

11 “(IX) has limited English lan-
12 guage proficiency and is not provided
13 access to appropriate and meaningful
14 language services in a timely fashion;
15 or

16 “(X) has been determined by an
17 immigration judge or by the Secretary
18 of Homeland Security to have experi-
19 enced or to be experiencing severe
20 trauma or to be a survivor of torture
21 or gender-based violence, based on in-
22 formation obtained during intake,
23 from the alien’s attorney or legal serv-
24 ice provider, or through credible self-
25 reporting.

1 “(iv) WORKPLACE CLAIM.—The term
2 ‘workplace claim’ means any written or
3 oral claim, charge, complaint, or grievance
4 filed with, communicated to, or submitted
5 to the employer, a Federal, State, or local
6 agency or court, or an employee represent-
7 ative related to the violation of applicable
8 Federal, State, and local labor laws, in-
9 cluding laws concerning wages and hours,
10 labor relations, family and medical leave,
11 occupational health and safety, civil rights,
12 or nondiscrimination.

13 “(6) SUBSEQUENT DETERMINATIONS.—An
14 alien detained under this section shall be provided
15 with a de novo custody determination hearing under
16 this subsection—

17 “(A) not later than 30 days after the date
18 of the enactment of this Act;

19 “(B) every 60 days; and

20 “(C) upon showing of a change in cir-
21 cumstances or good cause for such a hearing.

22 “(d) RELEASE UPON AN ORDER GRANTING RELIEF
23 FROM REMOVAL.—The Secretary of Homeland Security—

24 “(1) shall immediately release an alien with re-
25 spect to whom an immigration judge has entered an

1 order providing relief from removal (including an
2 order granting asylum or withholding, deferral, or
3 cancellation of removal) or an order terminating re-
4 moval proceedings, which order is pending appeal,
5 upon entry of the order; and

6 “(2) may impose only reasonable conditions on
7 the alien’s release from custody.

8 “(e) PROHIBITION ON DETENTION OF CHILDREN.—
9 Notwithstanding any other provision of this Act, the Sec-
10 retary of Homeland Security may not detain in a facility
11 operated or contracted by U.S. Immigration and Customs
12 Enforcement any individual who is under the age of 18
13 years.

14 “(f) COMMUNITY-BASED CASE MANAGEMENT PRO-
15 GRAM.—

16 “(1) IN GENERAL.—The Secretary of Homeland
17 Security shall establish, outside of the purview of
18 U.S. Immigration and Customs Enforcement, a com-
19 munity-based case management program that—

20 “(A) provides alternatives to detaining
21 aliens;

22 “(B) offers a continuum of community-
23 based support options and services, including—

24 “(i) case management; and

25 “(ii) access to—

1 “(I) social services;

2 “(II) medical and mental health
3 services;

4 “(III) housing;

5 “(IV) transportation; and

6 “(V) legal services; and

7 “(C) provides services in the appropriate
8 language.

9 “(2) PROHIBITION ON ELECTRONIC SURVEIL-
10 LANCE.—The program under paragraph (1) may not
11 include, as an alternative to detention, the provision
12 of ankle monitors or other forms of electronic sur-
13 veillance.

14 “(3) Within 180 days, the Secretary shall un-
15 dertake a study to examine best practices of govern-
16 ment-funded case management and related services,
17 including exploring the possibility of funding case
18 management services out of the Department.

19 “(4) CONTRACTS.—

20 “(A) IN GENERAL.—The Secretary may
21 enter into 1 or more contracts to operate the
22 case management program described in para-
23 graph (1).

24 “(B) PRIORITIZATION.—In entering into a
25 contract under subparagraph (A), the Secretary

1 shall give priority to direct contracts with quali-
2 fied nongovernmental community-based organi-
3 zations that have experience providing services
4 to immigrant, refugee, and asylum-seeking pop-
5 ulations.

6 “(5) INDIVIDUALIZED DETERMINATION RE-
7 QUIRED.—

8 “(A) IN GENERAL.—In determining wheth-
9 er to order an alien to participate in a program
10 under this subsection, the Secretary or the im-
11 migration judge, as appropriate, shall make an
12 individualized determination to determine the
13 appropriate level of supervision for the alien.

14 “(B) EXEMPTION.—Participation in a pro-
15 gram under this subsection may not be ordered
16 for an alien for whom it is determined that re-
17 lease on reasonable bond or recognizance will
18 reasonably ensure the appearance of the alien
19 as required and the safety of any other person
20 and the community.

21 “(6) PROHIBITION ON FEES FOR ALTER-
22 NATIVES TO DETENTION.—An alien who is required
23 to participate in a specific alternatives to detention
24 program or service may not be charged a fee for
25 such participation.

1 “(7) CASE MANAGEMENT REVIEW.—Not later
2 than 180 days after the date of the enactment of
3 Dignity for Detained Immigrants Act of 2021, the
4 Secretary shall conduct a review of—

5 “(A) best practices in federally funded case
6 management programs; and

7 “(B) the feasibility of transferring alter-
8 natives to detention case management programs
9 out of the purview of the Department of Home-
10 land Security.”.

11 (b) PROBABLE CAUSE HEARING.—Section 287(a) of
12 the Immigration and Nationality Act (8 U.S.C.
13 1357(a)(2)) is amended by striking the subsection des-
14 ignation and all the follows through “United States;” in
15 paragraph (2) and inserting the following:

16 “(a) IN GENERAL.—Any officer or employee of the
17 Department of Homeland Security authorized under regu-
18 lations prescribed by the Secretary of Homeland Security
19 shall have power without warrant—

20 “(1) to interrogate any alien or person believed
21 to be an alien as to the person’s right to be or to
22 remain in the United States, provided that such in-
23 terrogation is not based on the person’s race, eth-
24 nicity, national origin, religion, sexual orientation,

1 color, spoken language, or English language pro-
2 ficiency; and

3 “(2) to arrest any alien who, in the presence or
4 view of the officer or employee, is entering or at-
5 tempting to enter the United States in violation of
6 any law or regulation made pursuant to law regu-
7 lating the admission, exclusion, expulsion, or re-
8 moval of aliens, or to arrest any alien in the United
9 States, if—

10 “(A) the officer or employee has probable
11 cause to believe that—

12 “(i) the alien is in the United States
13 in violation of any such law or regulation;
14 and

15 “(ii) is likely to escape before a war-
16 rant can be obtained for the arrest of the
17 alien;

18 “(B) the officer or employee has reason to
19 believe that the alien would knowingly and will-
20 fully fail to appear in immigration court in re-
21 sponse to a properly served notice to appear;
22 and

23 “(C) not later than 48 hours after being
24 taken into custody, the alien is provided with a
25 hearing before an immigration judge to deter-

mine whether there was probable cause for such arrest, including probable cause to believe that the alien would have knowingly and willfully failed to appear as required under subparagraph (B) if the alien had not been arrested, which burden to establish probable cause shall be on the Department of Homeland Security;”.

(c) MANDATORY DETENTION REPEALED.—

(1) IN GENERAL.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) in section 235(b) (8 U.S.C. 1225(b))—

(i) in paragraph (1)(B)—

(I) in clause (ii), by striking “detained” and inserting “referred”; and

(II) in clause (iii), by striking subclause (IV); and

(ii) in paragraph (2)(A), by striking “detained” and inserting “referred”;

(B) by striking section 236A (8 U.S.C. 1226);

(C) in section 238(a)(2) (8 U.S.C. 1228(a)(2)), by striking “pursuant to section 236(c),”; and

(D) in section 506(a)(2) (8 U.S.C. 1536(a)(2))—

1 (i) by amending the heading to read
 2 as follows: “RELEASE HEARING FOR
 3 ALIENS DETAINED”; and

4 (ii) in subparagraph (A)—

5 (I) by amending the heading to
 6 read as follows: “IN GENERAL”;

7 (II) in the matter preceding
 8 clause (i), by striking “lawfully admit-
 9 ted for permanent residence”;

10 (III) by striking clause (i); and

11 (IV) by redesignating clauses (ii)
 12 and (iii) as clauses (i) and (ii), respec-
 13 tively.

14 (2) CONFORMING AMENDMENTS.—

15 (A) The table of sections for the Immigra-
 16 tion and Nationality Act (8 U.S.C. 1101 et
 17 seq.) is amended by striking the item relating
 18 to section 236A.

19 (B) Section 241(c)(3)(A)(ii) of the Immi-
 20 gration and Nationality Act (8 U.S.C.
 21 1231(c)(3)(A)(ii)) is amended—

22 (C) in subclause (I), by striking the comma
 23 at the end and inserting “; or”;

24 (D) in subclause (II), by striking “, or”
 25 and inserting a period; and

1 (E) by striking subclause (III).

2 (d) ALIENS ORDERED REMOVED.—

3 (1) IN GENERAL.—Section 241(a) of the Immi-
4 gration and Nationality Act (8 U.S.C. 1231(a)) is
5 amended—

6 (A) in paragraph (1), by striking “90
7 days” each place it appears and inserting “60
8 days”;

9 (B) by amending paragraph (2) to read as
10 follows:

11 “(2) INITIAL CUSTODY REDETERMINATION
12 HEARING.—

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

18 “(B) PRESUMPTION OF DETENTION.—For
19 purposes of the hearing under subparagraph
20 (A), the alien shall be detained during the re-
21 moval period unless the alien demonstrates by
22 the preponderance of the evidence that—

23 “(i) the alien’s removal is not reason-
24 ably foreseeable; and

1 “(ii) the alien does not pose a risk to
2 the safety of any individual or to the com-
3 munity.”;

4 (C) in paragraph (3)—

5 (i) in the paragraph heading, by strik-
6 ing “90-DAY” and inserting “60-DAY”; and

7 (ii) in the matter preceding subpara-
8 graph (A), by striking “the alien, pending
9 removal, shall be subject to supervision
10 under” and inserting the following: “except
11 as provided in paragraph (6), any alien
12 who has been detained during the removal
13 period shall be released from custody,
14 pending removal, subject to individualized
15 supervision requirements in accordance
16 with”;

17 (D) by amending paragraph (6) to read as
18 follows:

19 “(6) SUBSEQUENT CUSTODY REDETERMINA-
20 TION HEARINGS.—

21 “(A) IN GENERAL.—The Secretary of
22 Homeland Security may request a subsequent
23 redetermination hearing before an immigration
24 judge seeking continued detention for an alien
25 ordered to be detained pursuant to paragraph

1 (2) who has not been removed within the re-
2 moval period.

3 “(B) STANDARD.—An alien may only be
4 detained after the removal period upon a show-
5 ing by the Secretary of Homeland Security
6 that—

7 “(i) the alien’s removal is reasonably
8 foreseeable; or

9 “(ii) the alien poses a risk to the safe-
10 ty of an individual or the community,
11 which may only be established based on
12 credible and individualized information and
13 may not be established based only on the
14 fact that the alien has been charged with
15 or is suspected of a crime.

16 “(C) PERIOD OF DETENTION.—

17 “(i) IN GENERAL.—An alien may not
18 be detained pursuant to an order under
19 this paragraph for longer than a 60-day
20 period.

21 “(ii) SUBSEQUENT REDETERMINA-
22 TION HEARING.—The Secretary of Home-
23 land Security may seek subsequent redeter-
24 mination hearings under this paragraph in

1 order to continue detaining an alien be-
 2 yond each such 60-day period.”; and

3 (E) by striking paragraph (7).

4 (2) TECHNICAL AND CONFORMING AMEND-
 5 MENTS.—The Immigration and Nationality Act (8
 6 U.S.C. 1101 et seq.) is amended—

7 (A) in section 238 (8 U.S.C. 1228)—

8 (i) in subsection (a)(1)—

9 (I) by moving the paragraph 2
 10 ems to the right;

11 (II) by amending the paragraph
 12 heading to read as follows: “IN GEN-
 13 ERAL”; and

14 (III) in the first sentence—

15 (aa) by striking “section
 16 241(a)(2)(A)(iii)” and inserting
 17 “section 237(a)(2)(A)(iii);

18 (bb) by striking “section
 19 241(a)(2)(A)(ii)” and inserting
 20 “section 237(a)(2)(A)(ii); and

21 (cc) by striking “section
 22 241(a)(2)(A)(i)” and inserting
 23 “237(a)(2)(A)(i);

24 (ii) in the second subsection (c)—

1 (I) in paragraph (2)(B), by strik-
 2 ing “section 241(a)(2)(A)” and insert-
 3 ing “section 237(a)(2)(A)”;

4 (II) in paragraph (4), by striking
 5 “section 241(a)” and inserting “sec-
 6 tion 237(a)”;

7 (iii) by redesignating the second sub-
 8 section (c) as subsection (d);

9 (B) in section 276(b)(4) (8 U.S.C.
 10 1326(b)(4)), by striking “section 241(a)(4)(B)”
 11 and inserting “section 237(a)(4)(B)”;

12 (C) in section 501(1) (8 U.S.C. 1531(1)),
 13 by striking “section 241(a)(4)(B)” and insert-
 14 ing “section 237(a)(4)(B)”.

15 **SEC. 10. PROHIBITION ON SOLITARY CONFINEMENT.**

16 (a) IN GENERAL.—An individual in the custody of
 17 the Department may not be placed in solitary confine-
 18 ment.

19 (b) DEFINITION OF SOLITARY CONFINEMENT.—In
 20 this section, the term “solitary confinement” means—

21 (1) in the case of an individual who is older
 22 than 21 years of age, the state of being confined to
 23 the individual’s cell, alone or with a cellmate, for
 24 more than 22 hours during a 24-hour period, with
 25 very limited out-of-cell time and severely restricted

1 activity, movement, and social interaction whether
2 pursuant to disciplinary, administrative, or classi-
3 fication action; and

4 (2) in the case of an individual who is 21 years
5 of age or younger, involuntary confinement alone in
6 a cell, room, or other area for a period greater than
7 3 hours.

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