

116TH CONGRESS  
1ST SESSION

# S. 1243

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

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IN THE SENATE OF THE UNITED STATES

APRIL 30, 2019

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 2019”.

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

7 Not later than one year after the date of the enact-  
8 ment of this Act, the Secretary of Homeland Security  
9 shall, by rulemaking, establish detention standards for  
10 each facility at which aliens in the custody of the Depart-

1 ment of Homeland Security are detained. Such standards  
 2 shall provide, at a minimum, the level of protections for  
 3 detainees described in the American Bar Association’s  
 4 Civil Immigration Detention Standards (adopted in Au-  
 5 gust 2012, and as amended in August 2014). On a bien-  
 6 nial basis, the Secretary shall review and update such  
 7 standards, as appropriate.

8 **SEC. 3. OVERSIGHT AND TRANSPARENCY FOR DHS DETEN-**  
 9 **TION FACILITIES.**

10 (a) PERIODIC INSPECTIONS.—

11 (1) IN GENERAL.—On a periodic basis, and not  
 12 less than annually, the Inspector General of the De-  
 13 partment of Homeland Security shall conduct an un-  
 14 announced inspection of each facility at which aliens  
 15 in the custody of the Department of Homeland Se-  
 16 curity are detained in order to ensure that each such  
 17 facility is in compliance with the standards under  
 18 section 2. Not later than 60 days after conducting  
 19 an inspection under this subsection, the Inspector  
 20 General shall make a report of such inspection pub-  
 21 licly available on the website of the Department of  
 22 Homeland Security, and submit such report to the  
 23 Secretary of Homeland Security.

24 (2) FAILURE TO COMPLY WITH STANDARDS.—

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

11 (i) in the case of a facility that is not  
12 owned by the Department of Homeland  
13 Security, impose a meaningful fine of not  
14 less than 10 percent of the value of the  
15 contract with the facility; and

16 (ii) in the case of a facility that is  
17 owned by the Department of Homeland  
18 Security—

19 (I) issue a written warning to the  
20 facility not later than 30 days after  
21 receiving such notification from the  
22 Inspector General, which shall include  
23 remedial measures to be carried out  
24 not later than 60 days after the  
25 issuance of the warning; and

1 (II) not later than 60 days after  
2 the issuance of the warning described  
3 in subclause (I), certify to the Inspec-  
4 tor General that the remedial meas-  
5 ures have been carried out.

6 (B) SUBSEQUENT FAILURES.—In the case  
7 that the Inspector General determines that a  
8 facility has failed to comply with the standards  
9 under section 2 in two investigations under  
10 paragraph (1) during any 2-year period, and  
11 that such noncompliance constitutes a defi-  
12 ciency that threatens the health, safety, or the  
13 constitutional rights of detainees, the Inspector  
14 General shall notify the Secretary of Homeland  
15 Security of such finding, and the Secretary  
16 shall—

17 (i) in the case of a facility that is not  
18 owned by the Department of Homeland  
19 Security, not later than 30 days after re-  
20 ceiving such notification, transfer each de-  
21 tainee to a facility that does so comply,  
22 and terminate the contract with the owner  
23 of the facility; and

24 (ii) in the case of a facility that is  
25 owned by the Department of Homeland

1           Security, not later than 60 days after re-  
2           ceiving such notification, transfer each de-  
3           tainee to a facility that does so comply,  
4           and suspend the use of such facility until  
5           such time as the Inspector General cer-  
6           tifies to the Secretary that the facility is in  
7           compliance with such standards, and  
8           makes publicly available on the website of  
9           the Department of Homeland Security in-  
10          formation relating to the remedial meas-  
11          ures taken.

12          (b) NOTIFICATION OF DEATH IN CUSTODY.—Not  
13          later than 24 hours after the death of an alien in the cus-  
14          tody of the Department of Homeland Security, the Sec-  
15          retary of Homeland Security shall notify the Committees  
16          on the Judiciary of the House of Representatives and of  
17          the Senate, the Committee on Homeland Security of the  
18          House of Representatives, and the Committee on Home-  
19          land Security and Governmental Affairs of the Senate of  
20          the death of such alien.

21          (c) INVESTIGATIONS ON DEATH IN CUSTODY.—Not  
22          later than 30 days after the death of an alien in the cus-  
23          tody of the Department of Homeland Security, the Sec-  
24          retary of Homeland Security shall conduct an investiga-  
25          tion into that death, which shall include a root cause anal-

1 ysis that identifies any changes to policies, practices,  
2 training curricula, staffing, or potential system-wide er-  
3 rors that could reduce the probability of such an event  
4 in the future. Not later than 60 days after such a death,  
5 the Secretary shall make a report describing the results  
6 of such investigation publicly available on the website of  
7 the Department of Homeland Security. The root cause  
8 analysis described in the previous sentence must include  
9 appropriately qualified personnel, which, at a minimum,  
10 will consist of a medical professional qualified in any field  
11 germane to the death, and shall be performed in accord-  
12 ance with professional medical standards for investigating  
13 sentinel events in medical care facilities, including the  
14 Sentinel Event Policy promulgated by The Joint Commis-  
15 sion.

16 (d) DEFINITION.—The term “death of an alien in the  
17 custody of the Department of Homeland Security” means  
18 any death of an alien occurring while the alien is under  
19 the supervision of the Department of Homeland Security,  
20 regardless of the location of the death, if the death may  
21 have resulted from a health problem, which began, existed  
22 during, or was exacerbated during the detention of the  
23 alien.

24 (e) REPORT TO CONGRESS.—On an annual basis, the  
25 Secretary of Homeland Security shall submit to the Com-

1 mittees on the Judiciary of the House of Representatives  
2 and of the Senate a report on the inspections and over-  
3 sight of facilities at which aliens in the custody of the De-  
4 partment of Homeland Security are detained. Such report  
5 shall include information relating to, for the preceding  
6 year—

7           (1) each detention facility which the Inspector  
8       General found was not in compliance with the stand-  
9       ards under section 2 pursuant to an investigation  
10      conducted under subsection (a)(1);

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

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

17      (f) CLASSIFICATION OF DOCUMENTS FOR PURPOSES  
18      OF FOIA.—The reports under subsections (a) and (b),  
19      and any contract between the Department of Homeland  
20      Security and a private or public entity which provides for  
21      the use of a facility not owned by the Department of  
22      Homeland Security to detain aliens in the custody of the  
23      Department of Homeland Security, are considered records  
24      for purposes of section 552 of title 5, United States Code,

1 and do not qualify for the exception under subsection  
2 (b)(4) of such section.

3 (g) FACILITIES MATRIX.—On the first day of each  
4 month, the Secretary of Homeland Security shall ensure  
5 that there is publicly available on the website of the De-  
6 partment of Homeland Security the following information  
7 relating to each facility at which aliens in the custody of  
8 the Department of Homeland Security may be detained:

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

10 (2) Whether the facility houses adults, children,  
11 or both.

12 (3) As of the first day of the month, the num-  
13 ber of beds available in each facility, disaggregated  
14 by gender.

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

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

21 (6) Whether the facility is in compliance with  
22 the standards under section 2.

23 (7) In the case of a facility that is not owned  
24 by the Department of Homeland Security, the na-



1       ture of the contract providing for the detention of  
2       aliens at that facility.

3           (8) The average, median, 25th quartile, and  
4       50th quartile number of days that an alien has been  
5       detained at the facility during the preceding month.

6       (h) ONLINE DETAINEE LOCATOR SYSTEM.—The  
7       Secretary of Homeland Security shall ensure that the on-  
8       line detainee locator system maintained by the Depart-  
9       ment of Homeland Security, or any successor system, is  
10      updated not later than 12 hours after an alien is taken  
11      into custody or released from custody by the Department  
12      of Homeland Security, transferred to, or detained in, a  
13      detention facility, or removed from the United States.

14      (i) INFORMATION COLLECTED AND MAINTAINED FOR  
15      ALIENS IN DHS CUSTODY.—The Secretary of Homeland  
16      Security shall collect and maintain, for each alien in the  
17      custody of the Department of Homeland Security, the fol-  
18      lowing information:

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

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

21           (3) The country of origin of the alien.

22           (4) Whether the alien is considered a vulnerable  
23      person (as such term is defined in section 236(g) of  
24      the Immigration and Nationality Act (8 U.S.C.  
25      1226(g)) or a primary caregiver.

1           (5) The provision of law under which the Sec-  
2       retary is authorized to detain the alien.

3           (6) The location where the alien is detained.

4           (7) Any transfer of the alien to another deten-  
5       tion facility, and the reason for such transfer.

6           (8) The status and basis of any removal pro-  
7       ceedings.

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

11          (10) If applicable, the date of the alien's release  
12      or removal, and the reason for such release or re-  
13      moval.

14          (11) Whether the alien is subject to a final  
15      order of removal.

16          (12) Whether the alien was apprehended as  
17      part of a family unit.

18          (13) Whether the alien was separated from a  
19      family unit.

20   **SEC. 4. CAUSE OF ACTION.**

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

1 (b) RECOVERY.—In a civil action under this section,  
2 the court may order injunctive relief and compensatory  
3 damages, and may award the prevailing party reasonable  
4 attorney fees, and costs.

5 **SEC. 5. DHS DETENTION FACILITY CONSTRUCTION AND**  
6 **MAINTENANCE.**

7 (a) RESTRICTION ON CONSTRUCTION OF DHS FA-  
8 CILITIES.—Not later than 180 days before initiating, or  
9 entering into a contract for, the construction of a new fa-  
10 cility or to expand an existing facility for the detention  
11 of aliens in the custody of the Department of Homeland  
12 Security, the Secretary of Homeland Security shall submit  
13 to the Committees on the Judiciary of the House of Rep-  
14 resentatives and of the Senate, the Committee on Home-  
15 land Security of the House of Representatives, and the  
16 Committee on Homeland Security and Governmental Af-  
17 fairs of the Senate a notification of the plan to construct  
18 or expand such facility, including the location, size, and  
19 capacity of such facility, the anticipated timeline and cost  
20 of constructing or expanding such facility, and the in-  
21 tended population to be detained at such facility, including  
22 the gender and ages of such population. The Secretary will  
23 make this information publicly available on the website of  
24 the Department of Homeland Security.

1 (b) PHASE-OUT OF PRIVATE DETENTION FACILITIES  
2 AND USE OF JAILS.—

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

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

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

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

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

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

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

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

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

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

10           (2) by striking subsections (b), (c), (d), and (e);

11           (3) by adding at the end the following:

12       “(b) BOND DETERMINATION.—In the case that an  
13       immigration judge makes a determination to release an  
14       alien on bond under this section, the immigration judge  
15       shall consider, for purposes of setting the amount of the  
16       bond, the alien’s financial position and ability to pay the  
17       bond without imposing financial hardship on the alien, and  
18       set bond at no amount greater than necessary to ensure  
19       the alien’s appearance for removal proceedings.

20       “(c) CUSTODY DETERMINATION.—

21           “(1) INITIAL DETERMINATION.—Not later than  
22       48 hours after taking an alien into custody under  
23       the authority provided by this section or section 235  
24       of this Act, or those subject to a reinstated order of  
25       removal pursuant to section 241(a)(5) who have

1        been found to have a credible or reasonable fear of  
2        return, the Secretary of Homeland Security shall  
3        make an initial custody determination with regard to  
4        that alien, and provide that determination in writing  
5        to the alien. If the Secretary determines that the re-  
6        lease of an alien will not reasonably ensure the ap-  
7        pearance of the alien as required or will endanger  
8        the safety of any other person or the community, the  
9        custody determination under this paragraph will im-  
10       pose the least restrictive conditions, as described in  
11       paragraph (4).

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

19            “(3) PRESUMPTION OF RELEASE.—In a hearing  
20       under this subsection, there shall be a presumption  
21       that the alien should be released. The Secretary of  
22       Homeland Security shall have the duty of rebutting  
23       this presumption, which may only be shown based on  
24       clear and convincing evidence, including credible and  
25       individualized information, that the use of alter-

1 natives to detention will not reasonably ensure the  
2 appearance of the alien at removal proceedings, or  
3 that the alien is a threat to another person or the  
4 community. The fact that an alien has a criminal  
5 charge pending against the alien may not be the sole  
6 factor to justify the continued detention of the alien.

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

23 “(5) SPECIAL RULE FOR VULNERABLE PER-  
24 SONS AND PRIMARY CAREGIVERS.—In the case that  
25 the alien who is the subject of a custody determina-



tion under this subsection is a vulnerable person or a primary caregiver, the alien may not be detained unless the Secretary of Homeland Security demonstrates, in addition to the requirements under paragraph (3), that it is unreasonable or not practicable to place the individual in a community-based supervision program.

“(6) DEFINITIONS.—In this subsection:

“(A) MATERIAL WITNESS.—The term ‘material witness’ means an individual who presents a declaration to an attorney investigating, prosecuting, or defending the workplace claim or from the presiding officer overseeing the workplace claim attesting that, to the best of the declarant’s knowledge and belief, reasonable cause exists to believe that the testimony of the individual will be relevant to the outcome of the workplace claim.

“(B) PRIMARY CAREGIVER.—The term ‘primary caregiver’ means a person who is established to be a caregiver, parent, or close relative caring for or traveling with a child.

“(C) VULNERABLE PERSON.—The term ‘vulnerable person’ means an individual who—

1 “(i) is under 21 years of age or over  
2 60 years of age;

3 “(ii) is pregnant;

4 “(iii) identifies as lesbian, gay, bisexual,  
5 ual, transgender, or intersex;

6 “(iv) is a victim or witness of a crime;

7 “(v) has filed a nonfrivolous civil  
8 rights claim in Federal or State court;

9 “(vi) has filed, or is a material wit-  
10 ness to, a bonafide workplace claim;

11 “(vii) has a serious mental or physical  
12 illness or disability;

13 “(viii) has been determined by an asy-  
14 lum officer in an interview conducted  
15 under section 235(b)(1)(B) to have a cred-  
16 ible fear of persecution or torture;

17 “(ix) has limited English language  
18 proficiency and is not provided access to  
19 appropriate and meaningful language serv-  
20 ices in a timely fashion; or

21 “(x) has been determined by an immi-  
22 gration judge or the Secretary of Home-  
23 land Security to be experiencing severe  
24 trauma or to be a survivor of torture or  
25 gender-based violence, based on informa-

1           tion obtained during intake, from the  
2           alien’s attorney or legal service provider, or  
3           through credible self-reporting.

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

15          “(7) SUBSEQUENT DETERMINATIONS.—An  
16          alien who is detained under this section shall be pro-  
17          vided with a de novo custody determination hearing  
18          under this subsection every 60 days, as well as upon  
19          showing of a change in circumstances or good cause  
20          for such a hearing.

21          “(d) RELEASE UPON AN ORDER GRANTING RELIEF  
22 FROM REMOVAL.—In the case of an alien with respect to  
23 whom an immigration judge has entered an order pro-  
24 viding for relief from removal, including an order granting  
25 asylum, or providing for withholding, deferral, or cancella-

tion of removal, which order is pending appeal, the Secretary of Homeland Security shall immediately release the alien upon entry of the order, and may impose only reasonable conditions on the alien’s release from custody.

“(e) PROHIBITION ON DETENTION OF CHILDREN.— Notwithstanding any other provision of this Act, the Secretary of Homeland Security is prohibited from detaining anyone under the age of 18 in a facility operated or contracted by U.S. Immigration and Customs Enforcement.

“(f) ALTERNATIVES TO DETENTION.—

“(1) IN GENERAL.—The Secretary of Homeland Security shall establish programs that provide alternatives to detaining aliens, which shall offer a continuum of supervision mechanisms and options, including community-based supervision programs and community support. The Secretary may contract with nongovernmental community-based organizations to provide programs, which may include case management services, appearance assistance services, and screenings of aliens who have been detained.

“(2) INDIVIDUALIZED DETERMINATION REQUIRED.—In determining whether to order an alien to participate in a program under this subsection, the Secretary, or the immigration judge, as appro-

1        priate shall make an individualized determination to  
2        determine the appropriate level of supervision for the  
3        alien. Participation in a program under this sub-  
4        section may not be ordered for an alien for whom it  
5        is determined that release on reasonable bond or re-  
6        cognizance will reasonably ensure the appearance of  
7        the alien as required and the safety of any other  
8        person and the community.

9            “(3) PROHIBITION ON FEES FOR MONITORING  
10        DEVICES.—In a case in which an alien is required to  
11        wear an ankle monitor or other homing device as an  
12        alternative to detention, the alien may not be  
13        charged any fee associated with such monitor or de-  
14        vice that exceeds the cost of maintaining and oper-  
15        ating such monitor or device.”; and

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

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

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

7 (c) MANDATORY DETENTION REPEALED.—

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

10 (A) in section 235(b)—

11 (i) in paragraph (1)(B)—

12 (I) in clause (ii), by striking “de-  
 13 tained” and inserting “referred”; and

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

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

18 (B) by striking section 236A;

19 (C) in section 238(a)(2), by striking “pur-  
 20 suant to section 236(c),”; and

21 (D) in section 506(a)(2)—

22 (i) by amending the heading to read  
 23 as follows: “RELEASE HEARING FOR  
 24 ALIENS DETAINED”; and

25 (ii) in subparagraph (A)—

1 (I) in the matter preceding clause  
 2 (i), by striking “lawfully admitted for  
 3 permanent residence”;  
 4 (II) by striking clause (i); and  
 5 (III) by redesignating clauses (ii)  
 6 and (iii) as clauses (i) and (ii), respec-  
 7 tively.

8 (2) CONFORMING AMENDMENTS.—Section  
 9 241(c)(3)(A)(ii) of the Immigration and Nationality  
 10 Act (8 U.S.C. 1231(c)(3)(A)(ii)) is amended—

11 (A) in subclause (I), by striking the  
 12 comma at the end and inserting “; or”;

13 (B) in subclause (II), by striking “, or”  
 14 and inserting a period; and

15 (C) by striking subclause (III).

16 (d) ALIENS ORDERED REMOVED.—

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

20 (A) in paragraph (1), by striking “90  
 21 days” each place it appears and inserting “60  
 22 days”;

23 (B) by amending paragraph (2) to read as  
 24 follows:

1           “(2) INITIAL CUSTODY REDETERMINATION  
2 HEARING.—

3           “(A) IN GENERAL.—Not later than 72  
4 hours after the entry of a final administrative  
5 order of removal, the alien ordered removed  
6 shall be provided with a custody redetermina-  
7 tion hearing before an immigration judge.

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

16           (C) in paragraph (3)—

17           (i) in the heading, by striking “90-  
18 DAY” and inserting “60-DAY”; and

19           (ii) in the matter preceding subpara-  
20 graph (A), by striking “the alien, pending  
21 removal, shall be subject to supervision  
22 under” and inserting the following: “except  
23 as provided in paragraph (6), any alien  
24 who has been detained during the removal  
25 period shall be released from custody,



1 pending removal, subject to individualized  
2 supervision requirements in accordance  
3 with”;

4 (D) by amending paragraph (6) to read as  
5 follows:

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

8 “(A) IN GENERAL.—The Secretary of  
9 Homeland Security may request a subsequent  
10 redetermination hearing before an immigration  
11 judge seeking continued detention for an alien  
12 ordered to be detained pursuant to paragraph  
13 (2) who has not been removed within the re-  
14 moval period.

15 “(B) STANDARD.—An alien may only be  
16 detained after the removal period upon a show-  
17 ing by the Secretary of Homeland Security  
18 that—

19 “(i) the alien’s removal is reasonably  
20 foreseeable; or

21 “(ii) the alien poses a risk to the safe-  
22 ty of an individual or the community,  
23 which may only be established based on  
24 credible and individualized information and  
25 may not be established based only the fact

1           that the alien has been charged with or is  
2           suspected of a crime.

3           “(C) PERIOD OF DETENTION.—An alien  
4           may not be detained pursuant to an order  
5           under this paragraph for longer than a 60-day  
6           period. The Secretary of Homeland Security  
7           may seek subsequent redetermination hearings  
8           under this paragraph in order to continue de-  
9           taining an alien beyond each such 60-day pe-  
10          riod.”; and

11          (E) by striking paragraph (7).

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

15               (A) in section 238 (8 U.S.C. 1228)—

16                   (i) in subsection (a)(1), in the first  
17                   sentence—

18                               (I) by striking “section  
19                               241(a)(2)(A)(iii)” and inserting “sec-  
20                               tion 237(a)(2)(A)(iii)”;

21                               (II) by striking “section  
22                               241(a)(2)(A)(ii)” and inserting “sec-  
23                               tion 237(a)(2)(A)(ii)”;

1                   (III)    by   striking   “section  
 2                   241(a)(2)(A)(i)”    and   inserting  
 3                   “237(a)(2)(A)(i)”; and  
 4                   (ii) in the second subsection (c)—  
 5                   (I) in paragraph (2)(B), by strik-  
 6                   ing “section 241(a)(2)(A)” and insert-  
 7                   ing “section 237(a)(2)(A)”; and  
 8                   (II) in paragraph (4), by striking  
 9                   “section 241(a)” and inserting “sec-  
 10                  tion 237(a)”;  
 11                  (B) in section 276(b)(4) (8 U.S.C.  
 12                  1326(b)(4)), by striking “section 241(a)(4)(B)”  
 13                  and inserting “section 237(a)(4)(B)”; and  
 14                  (C) in section 501(1) (8 U.S.C. 1531(1)),  
 15                  by striking “section 241(a)(4)(B)” and insert-  
 16                  ing “section 237(a)(4)(B)”.

17 **SEC. 8. SENSE OF CONGRESS.**

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

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