

111TH CONGRESS
1ST SESSION

S. 1594

To provide safeguards against faulty asylum procedures, to improve conditions of detention for detainees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. LIEBERMAN (for himself, Mr. KENNEDY, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide safeguards against faulty asylum procedures, to improve conditions of detention for detainees, 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 “Secure and Safe De-
5 tention and Asylum Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ASYLUM SEEKER.—The term “asylum seek-
9 er” means an applicant for asylum under section

1 208 of the Immigration and Nationality Act (8
2 U.S.C. 1158) or for withholding of removal under
3 section 241(b)(3) of such Act (8 U.S.C. 1231(b)(3))
4 or an alien who indicates an intention to apply for
5 relief under either such section and does not include
6 a person with respect to whom a final adjudication
7 denying an application made under either such sec-
8 tion has been entered.

9 (2) CREDIBLE FEAR OF PERSECUTION.—The
10 term “credible fear of persecution” has the meaning
11 given that term in section 235(b)(1)(B)(v) of the
12 Immigration and Nationality Act (8 U.S.C.
13 1225(b)(1)(B)(v)).

14 (3) DEPARTMENT.—The term “Department”
15 means the Department of Homeland Security.

16 (4) DETAINEE.—The term “detainee” means
17 an alien in the Department’s custody held in a de-
18 tention facility.

19 (5) DETENTION FACILITY.—The term “deten-
20 tion facility” means any Federal facility in which an
21 asylum seeker, an alien detained pending the out-
22 come of a removal proceeding, or an alien detained
23 pending the execution of a final order of removal, is
24 detained for more than 72 hours, or any other facil-
25 ity in which such detention services are provided to

1 the Federal Government by contract, and does not
2 include detention at any port of entry in the United
3 States.

4 (6) REASONABLE FEAR OF PERSECUTION OR
5 TORTURE.—The term “reasonable fear of persecu-
6 tion or torture” has the meaning described in sec-
7 tion 208.31 of title 8, Code of Federal Regulations.

8 (7) SECRETARY.—The term “Secretary” means
9 the Secretary of Homeland Security.

10 (8) STANDARD.—The term “standard” means
11 any policy, procedure, or other requirement.

12 (9) VULNERABLE POPULATIONS.—The term
13 “vulnerable populations” means classes of aliens
14 subject to the Immigration and Nationality Act (8
15 U.S.C. 1101 et seq.) who have special needs requir-
16 ing special consideration and treatment by virtue of
17 their vulnerable characteristics, including experi-
18 ences of, or risk of, abuse, mistreatment, or other
19 serious harms threatening their health or safety.
20 Vulnerable populations include the following:

21 (A) Asylum seekers.

22 (B) Refugees admitted under section 207
23 of the Immigration and Nationality Act (8
24 U.S.C. 1157) and individuals seeking such ad-
25 mission.

1 (C) Aliens whose deportation is being with-
2 held under section 243(h) of the Immigration
3 and Nationality Act (as in effect immediately
4 before the effective date of section 307 of the
5 Illegal Immigration Reform and Immigrant Re-
6 sponsibility Act of 1996 (Public Law 104–208;
7 110 Stat. 3009–612)) or section 241(b)(3) of
8 the Immigration and Nationality Act (8 U.S.C.
9 1231(b)(3)).

10 (D) Aliens granted or seeking protection
11 under article 3 of the Convention Against Tor-
12 ture and other Cruel, Inhumane, or Degrading
13 Treatment or Punishment, done at New York,
14 December 10, 1994.

15 (E) Applicants for relief and benefits
16 under the Immigration and Nationality Act
17 pursuant to the amendments made by the Traf-
18 ficking Victims Protection Act of 2000 (division
19 A of Public Law 106–386; 114 Stat. 1464), in-
20 cluding applicants for nonimmigrant status
21 under subparagraph (T) or (U) of section
22 101(a)(15) of the Immigration and Nationality
23 Act (8 U.S.C. 1101(a)(15)).

24 (F) Applicants for relief and benefits
25 under the Immigration and Nationality Act

1 pursuant to the amendments made by the Vio-
2 lence Against Women Act of 2000 (division B
3 of Public Law 106–386; 114 Stat. 1491).

4 (G) Unaccompanied alien children (as de-
5 fined in 462(g) of the Homeland Security Act
6 of 2002 (6 U.S.C. 279(g)).

7 (H) Families with children.

8 (I) Detainees with serious medical or men-
9 tal health needs.

10 **SEC. 3. PROCEDURES FOR ENSURING ACCURACY AND**
11 **VERIFIABILITY OF SWORN STATEMENTS**
12 **TAKEN PURSUANT TO EXPEDITED REMOVAL**
13 **AUTHORITY.**

14 (a) IN GENERAL.—The Secretary shall establish
15 quality assurance procedures to ensure the accuracy and
16 verifiability of signed or sworn statements taken by em-
17 ployees of the Department exercising expedited removal
18 authority under section 235(b) of the Immigration and
19 Nationality Act (8 U.S.C. 1225(b)).

20 (b) RECORDING OF INTERVIEWS.—Any sworn or
21 signed written statement taken of an alien as part of the
22 record of a proceeding under section 235(b)(1)(A) of the
23 Immigration and Nationality Act (8 U.S.C.
24 1225(b)(1)(A)) shall be accompanied by a recording of the

1 interview which served as the basis for that sworn state-
2 ment.

3 (c) RECORDINGS.—

4 (1) IN GENERAL.—The recording of the inter-
5 view shall also include the written statement, in its
6 entirety, being read back to the alien in a language
7 that the alien claims to understand, and the alien af-
8 firming the accuracy of the statement or making any
9 corrections thereto.

10 (2) FORMAT.—The recording shall be made in
11 video, audio, or other equally reliable format.

12 (d) EXEMPTION AUTHORITY.—

13 (1) Subsections (b) and (c) shall not apply to
14 interviews that occur at facilities exempted by the
15 Secretary pursuant to this subsection.

16 (2) The Secretary or the Secretary's designee
17 may exempt any facility based on a determination by
18 the Secretary or the Secretary's designee that com-
19 pliance with subsections (b) and (c) at that facility
20 would impair operations or impose undue burdens or
21 costs.

22 (3) The Secretary or the Secretary's designee
23 shall report annually to Congress on the facilities
24 that have been exempted pursuant to this sub-
25 section.

1 (4) The exercise of the exemption authority
2 granted by this subsection shall not give rise to a
3 private cause of action.

4 (e) INTERPRETERS.—The Secretary shall ensure that
5 a professional fluent interpreter is used when the inter-
6 viewing officer does not speak a language understood by
7 the alien and there is no other Federal, State, or local
8 government employee available who is able to interpret ef-
9 fectively, accurately, and impartially.

10 (f) RECORDINGS IN IMMIGRATION PROCEEDINGS.—
11 Recordings of interviews of aliens described in subsection
12 (b) shall be included in the record of a proceeding and
13 may be considered as evidence in any further proceedings
14 involving the alien.

15 **SEC. 4. PROCEDURES GOVERNING DETENTION DECISIONS.**

16 Section 236 of the Immigration and Nationality Act
17 (8 U.S.C. 1226) is amended—

18 (1) in subsection (a)—

19 (A) in the matter preceding paragraph

20 (1)—

21 (i) in the first sentence by striking
22 “Attorney General” and inserting “Sec-
23 retary of Homeland Security”;

24 (ii) by striking “(c)” and inserting
25 “(d)”; and

- 1 (iii) in the second sentence, by insert-
2 ing “or the Secretary” after “Attorney
3 General”;
- 4 (B) in paragraph (2)—
- 5 (i) in subparagraph (A)—
- 6 (I) by inserting “or the Sec-
7 retary” after “Attorney General”; and
- 8 (II) by striking “or” at the end;
- 9 (ii) in subparagraph (B), by striking
10 “but” at the end; and
- 11 (iii) by inserting after subparagraph
12 (B) the following:
- 13 “(C) the alien’s own recognizance; or
14 “(D) a secure alternatives program as pro-
15 vided for in this section; but”;
- 16 (2) by redesignating subsections (b), (c), (d),
17 and (e) as subsections (d), (e), (f), and (h), respec-
18 tively;
- 19 (3) by inserting after subsection (a) the fol-
20 lowing new subsections:
- 21 “(b) CUSTODY DECISIONS.—
- 22 “(1) IN GENERAL.—In the case of a decision
23 under subsection (a) or (d), the following shall
24 apply:

1 “(A) The decision shall be made in writing
2 and shall be served upon the alien. A decision
3 to continue detention without bond or parole
4 shall specify in writing the reasons for that de-
5 cision.

6 “(B) The decision shall be served upon the
7 alien within 48 hours of the alien’s detention
8 or, in the case of an alien subject to section 235
9 or 241(a)(5) who must establish a credible fear
10 of persecution or a reasonable fear of persecu-
11 tion or torture in order to proceed in immigra-
12 tion court, within 48 hours of a positive credible
13 fear of persecution or reasonable fear of perse-
14 cution or torture determination.

15 “(2) CRITERIA TO BE CONSIDERED.—The cri-
16 teria to be considered by the Attorney General and
17 the Secretary in making a custody decision shall in-
18 clude—

19 “(A) whether the alien poses a risk to pub-
20 lic safety or national security;

21 “(B) whether the alien is likely to appear
22 for immigration proceedings; and

23 “(C) any humanitarian reasons that may
24 warrant the alien’s release.

1 “(3) CUSTODY REDETERMINATION.—An alien
2 subject to this section may at any time after being
3 served with the Secretary’s decision under subsection
4 (a) or (d) request a redetermination of that decision
5 by an immigration judge. All decisions by the Sec-
6 retary to detain an alien without bond or parole
7 shall be subject to redetermination by an immigra-
8 tion judge within 2 weeks from the time the alien
9 was served with the decision, except that the alien
10 may waive the requirement that the redetermination
11 occur within 2 weeks. The alien may request another
12 redetermination upon a showing of a material
13 change in circumstances since the last redetermina-
14 tion hearing. The Secretary shall advise the alien at
15 the time the alien is served with the Secretary’s de-
16 cision under subsection (a) or (d) of the opportunity
17 for requesting a redetermination under this para-
18 graph.

19 “(c) EXCEPTION FOR MANDATORY CUSTODY AND
20 MANDATORY DETENTION.—Subsections (b)(2) and (b)(3)
21 shall not apply to any alien who is subject to mandatory
22 detention under sections 235(b)(1)(B)(iii)(IV) or
23 241(a)(2) or to mandatory custody under sections 236(e)
24 or 236A.”;

25 (4) in subsection (d), as redesignated—

1 (A) by striking “Attorney General at any
2 time may” and inserting “Secretary may at any
3 time, based on changed circumstances,”; and

4 (B) by striking “or parole” and inserting
5 “, parole, or decision to release an alien,”;

6 (5) in subsection (e), as redesignated—

7 (A) in paragraph (1), by striking “Attor-
8 ney General” and inserting “Secretary”; and

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

11 “(2) RELEASE.—

12 “(A) IN GENERAL.—The Secretary may re-
13 lease an alien described in paragraph (1) only
14 if—

15 “(i) the alien satisfies the Secretary
16 that the alien will not pose a danger to the
17 safety of persons or property and is likely
18 to appear for any scheduled proceeding;
19 and

20 “(ii)(I) the Secretary decides pursuant
21 to section 3521 of title 18, United States
22 Code, that release of the alien from cus-
23 tody is necessary to provide protection to a
24 witness, a potential witness, a person co-
25 operating with an investigation into major

1 criminal activity, or an immediate family
2 member or close associate of a witness, po-
3 tential witness, or person cooperating with
4 such an investigation; or

5 “(II) the Secretary decides that the
6 release is necessary for humanitarian rea-
7 sons.

8 “(B) PROCEDURE.—A decision relating to
9 such release shall take place in accordance with
10 a procedure that considers the severity of the
11 offense committed by the alien.”;

12 (6) in subsection (f), as redesignated—

13 (A) in paragraph (1)—

14 (i) in the matter preceding subpara-
15 graph (A), by striking “Attorney General”
16 and inserting “Secretary”; and

17 (ii) in subparagraphs (A) and (B), by
18 striking “Service” and inserting “Depart-
19 ment of Homeland Security”; and

20 (B) in paragraph (3), by striking “Service”
21 and inserting “Secretary of Homeland Secu-
22 rity”;

23 (7) by inserting after subsection (f), as redesign-
24 ated, the following new subsection:

25 “(g) ADMINISTRATIVE REVIEW.—

1 “(1) IN GENERAL.—If an immigration judge’s
2 custody decision has been stayed by the action of an
3 officer or employee of the Department of Homeland
4 Security pending an appeal of that decision, the stay
5 shall expire in 30 days, unless the Board of Immi-
6 gration Appeals before the expiration of the 30 days,
7 and upon motion, enters an order continuing the
8 stay.

9 “(2) EFFECT OF CONTINUING STAY.—If the
10 Board of Immigration Appeals enters an order con-
11 tinuing the stay described in paragraph (1), the
12 Board of Immigration Appeals shall adjudicate the
13 bond appeal not later than 90 days after the date
14 the custody decision was first stayed, and the stay
15 shall expire if the Board has not acted before the ex-
16 piration of the 90 days.”; and

17 (8) in subsection (h), as redesignated—

18 (A) by striking “Attorney General’s” and
19 inserting “Secretary of Homeland Security’s”;
20 and

21 (B) by striking “Attorney General” and in-
22 sserting “Secretary”.

23 **SEC. 5. LEGAL ORIENTATION PROGRAM.**

24 (a) IN GENERAL.—The Attorney General, in con-
25 sultation with the Secretary, shall ensure that all detained

1 aliens in immigration and asylum proceedings receive legal
2 orientation through the Legal Orientation Program ad-
3 ministered and implemented by the Executive Office for
4 Immigration Review of the Department of Justice.

5 (b) EXPANSION OF LEGAL ASSISTANCE.—The Sec-
6 retary shall ensure the expansion through the United
7 States Citizenship and Immigration Services of public-pri-
8 vate partnerships that facilitate pro bono counseling and
9 legal assistance for asylum seekers awaiting a credible fear
10 of persecution interview, as a continuation of existing pro-
11 grams, such as the pilot program developed in Arlington,
12 Virginia, by the United States Citizenship and Immigra-
13 tion Services.

14 **SEC. 6. CONDITIONS OF DETENTION.**

15 (a) IN GENERAL.—The Secretary shall ensure that
16 all detention facilities comply with the following minimum
17 requirements:

18 (1) FAIR AND HUMANE TREATMENT.—Detain-
19 ees shall not be subject to degrading or inhumane
20 treatment, such as physical abuse, sexual abuse or
21 harassment, or arbitrary punishment.

22 (2) LIMITATIONS ON SOLITARY CONFINEMENT.—Detainees shall not be subject to solitary
23 confinement, shackling, or strip searches, except to
24 the extent that such techniques are necessary to en-
25

1 sure the security of other detainees, staff, or the
2 public and only if less coercive measures will not en-
3 sure the security of other detainees, staff, and the
4 public. Decisions to place detainees in solitary con-
5 finement shall be reviewed regularly.

6 (3) INVESTIGATION OF GRIEVANCES.—Detain-
7 ees shall have the right to prompt, effective, and im-
8 partial investigations of grievances.

9 (4) ACCESS TO TELEPHONES.—Detainees shall
10 have sufficient access to telephones, and the ability
11 to contact, free of charge, legal representatives, for-
12 eign consulates, the immigration courts, the Board
13 of Immigration Appeals, and the Federal courts
14 through confidential toll-free numbers.

15 (5) LOCATION OF FACILITIES.—Detention fa-
16 cilities shall be located, to the extent practicable,
17 near sources of free or low-cost legal representation
18 with expertise in asylum or immigration law.

19 (6) PROCEDURES GOVERNING TRANSFERS OF
20 DETAINEES.—Procedures governing the transfer of a
21 detainee shall take into account—

22 (A) the detainee’s access to legal rep-
23 resentatives; and

24 (B) the proximity of the facility to the
25 venue of the asylum or removal proceeding.

1 (7) INTERPRETATION AND TRANSLATION CAPA-
2 BILITIES.—Detention facilities shall employ staff
3 that, to the extent practicable, are qualified in the
4 languages represented in the population of detainees
5 at a detention facility, and alternative interpreter
6 and translation services shall be provided when nec-
7 essary.

8 (8) RECREATIONAL PROGRAMS AND ACTIVI-
9 TIES.—Detainees shall be afforded daily access to
10 indoor and outdoor recreational programs and activi-
11 ties.

12 (9) NONCRIMINAL DETAINEES.—Procedures
13 and conditions of detention shall be appropriate for
14 detainees with no criminal convictions or history of
15 violent behavior, and those detainees shall not be de-
16 tained with persons who have been convicted of felo-
17 nies or criminal offenses involving violence or per-
18 sons with a history of violent behavior.

19 (10) VULNERABLE POPULATIONS.—Procedures
20 and conditions of detention shall accommodate the
21 unique needs of asylum seekers, victims of torture
22 and trafficking, families with children, detainees who
23 do not speak English, detainees with special reli-
24 gious, cultural, or spiritual considerations, and other
25 vulnerable populations.

1 (b) RULEMAKING.—

2 (1) IN GENERAL.—The Secretary shall pre-
3 scribe regulations, using the procedures for nego-
4 tiated rulemakings under subchapter III of chapter
5 5 of title 5, United States Code, to establish stand-
6 ards to ensure detainees are treated humanely and
7 to ensure compliance with the minimum require-
8 ments set forth in subsection (a).

9 (2) REPRESENTATION ON NEGOTIATED RULE-
10 MAKING COMMITTEE.—Any negotiated rulemaking
11 committee established by the Secretary pursuant to
12 paragraph (1) shall include representatives and ex-
13 perts from—

14 (A) relevant agencies of the Department;

15 (B) the Office of Refugee Resettlement at
16 the Department of Health and Human Services;

17 (C) representatives of State and local gov-
18 ernments that have entered into intergovern-
19 mental service agreements with the Department
20 to detain aliens;

21 (D) the United States Commission on
22 International Religious Freedom;

23 (E) nongovernmental organizations with
24 expertise working on behalf of aliens in deten-

1 tion facilities, including organizations that em-
2 phasize protections for vulnerable populations;

3 (F) nongovernmental organizations with
4 expertise advocating for asylum seekers;

5 (G) organizations that represent employees
6 who work at detention facilities;

7 (H) accrediting bodies for medical care in
8 settings comparable to detention facilities, such
9 as the National Commission on Correctional
10 Health Care, or other experts in the field of
11 providing quality medical care in such settings;
12 and

13 (I) other interested parties.

14 (3) TIME REQUIREMENT.—The procedures for
15 the negotiated rulemaking referred to in paragraph
16 (1) shall be conducted in a timely manner to ensure
17 that—

18 (A) any recommendations with respect to
19 proposed regulations are provided to the Sec-
20 retary not later than 6 months after the date
21 of enactment of this Act; and

22 (B) a final rule is promulgated not later
23 than 1 year after the date of enactment of this
24 Act.

25 (c) ENFORCING REGULATIONS AND STANDARDS.—

1 (1) IN GENERAL.—The Secretary shall ensure
2 that all detention facilities comply with the require-
3 ments and regulations promulgated pursuant to this
4 Act, and any other applicable requirements.

5 (2) CONTRACTS FOR ADMINISTRATION OF FA-
6 CILITIES.—The Secretary shall ensure that any con-
7 tract that the Department enters into for the admin-
8 istration of a detention facility includes provisions
9 that—

10 (A) require the contractor to comply with
11 the requirements and regulations promulgated
12 pursuant to this Act, and any other applicable
13 requirements; and

14 (B) permit the Secretary to impose fines or
15 penalties for noncompliance with those require-
16 ments and regulations.

17 (3) INTERGOVERNMENTAL SERVICE AGREE-
18 MENT FACILITIES.—The Secretary shall ensure that
19 any intergovernmental service agreement that the
20 Department enters into with a State or local govern-
21 ment to detain an alien includes provisions that—

22 (A) require the State or local government
23 to comply with the requirements and regula-
24 tions promulgated pursuant to this Act, and
25 any other applicable requirements; and

1 (B) permit the Secretary to impose fines or
2 penalties for noncompliance with those require-
3 ments or regulations.

4 (4) BUREAU OF PRISONS FACILITIES.—The At-
5 torney General, in coordination with the Secretary,
6 shall ensure that aliens that are detained pursuant
7 to an agreement between the Department and the
8 Department of Justice in facilities operated by the
9 Bureau of Prisons pending proceedings or awaiting
10 deportation under provisions of the Immigration and
11 Nationality Act, are detained in compliance with the
12 requirements of, and regulations promulgated pursu-
13 ant to, this Act, and any other applicable require-
14 ments.

15 (d) QUALITY OF MEDICAL CARE.—

16 (1) IN GENERAL.—The Secretary shall ensure
17 that prompt and adequate emergency, primary, spe-
18 cialty, and hospital medical care is provided at no
19 cost to detainees, including dental care, eye care,
20 mental health care, individual and group counseling,
21 and services with respect to medical dietary needs.

22 (2) PROCEDURES.—The Secretary shall ensure
23 that procedures for providing medical care to detain-
24 ees include comprehensive intake screening, effective
25 continuity of care, prompt responses to requests for

1 medical care or treatment, and accurate and timely
2 distribution of prescribed medication.

3 (3) MEDICAL FACILITIES.—The Secretary shall
4 ensure that medical facilities in all detention facili-
5 ties maintain current accreditation by the National
6 Commission on Correctional Health Care.

7 (4) MEDICAL RECORDS.—The Secretary shall
8 ensure that complete medical records are maintained
9 for every detainee and that the records are made
10 available upon request to the detainee, the detainee’s
11 legal representative, or other authorized individuals.

12 (e) TRAINING OF PERSONNEL.—

13 (1) IN GENERAL.—The Secretary shall ensure
14 that personnel in detention facilities are given spe-
15 cialized training to better understand and work with
16 the population of detainees held at the facilities
17 where such personnel work. The training should ad-
18 dress the unique needs of asylum seekers, victims of
19 torture or other trauma, and other vulnerable popu-
20 lations.

21 (2) SPECIALIZED TRAINING.—The training re-
22 quired by this subsection shall be designed to better
23 enable personnel to work with detainees from dif-
24 ferent countries and detainees who cannot speak
25 English. The training shall emphasize that many de-

1 tainees have no criminal records and are being held
2 for civil violations.

3 **SEC. 7. OFFICE OF DETENTION OVERSIGHT.**

4 (a) ESTABLISHMENT OF THE OFFICE.—

5 (1) IN GENERAL.—There is established within
6 the Department an Office of Detention Oversight (in
7 this section referred to as the “Office”).

8 (2) HEAD OF THE OFFICE.—The head of the
9 Office shall be an Administrator who shall be ap-
10 pointed by, and shall report to, the Secretary.

11 (3) SCHEDULE.—The Office shall be estab-
12 lished and the Administrator of the Office appointed
13 not later than 180 days after the date of the enact-
14 ment of this Act.

15 (b) RESPONSIBILITIES OF THE OFFICE.—

16 (1) INSPECTIONS OF DETENTION CENTERS.—

17 The Administrator of the Office shall—

18 (A) undertake frequent and unannounced
19 inspections of all detention facilities;

20 (B) develop a procedure for any detainee
21 or the detainee’s representative to file a written
22 complaint directly with the Office; and

23 (C) report to the Secretary and to the As-
24 sistant Secretary of Homeland Security for
25 U.S. Immigration and Customs Enforcement all

1 findings regarding a detention facility's non-
2 compliance with detention standards and any
3 applicable laws.

4 (2) INVESTIGATIONS.—The Administrator of
5 the Office shall—

6 (A) initiate investigations, as appropriate,
7 into allegations of systemic problems at deten-
8 tion facilities, incidents that constitute viola-
9 tions of detention standards or applicable laws,
10 or other matters related to mistreatment of de-
11 tainees;

12 (B) report to the Secretary and the Assist-
13 ant Secretary of Homeland Security for U.S.
14 Immigration and Customs Enforcement the re-
15 sults of all investigations; and

16 (C) refer matters, where appropriate, for
17 further action to—

18 (i) the Department of Justice;

19 (ii) the Office of the Inspector Gen-
20 eral of the Department;

21 (iii) the Office of Civil Rights and
22 Civil Liberties of the Department; or

23 (iv) any other relevant office or agen-
24 cy.

25 (3) REPORT TO CONGRESS.—

1 (A) IN GENERAL.—The Administrator of
2 the Office shall submit to the Secretary, the
3 Committee on the Judiciary and the Committee
4 on Homeland Security and Governmental Af-
5 fairs of the Senate, and the Committee on the
6 Judiciary and the Committee on Homeland Se-
7 curity of the House of Representatives an an-
8 nual report on the Administrator’s findings on
9 detention conditions and the results of the in-
10 vestigations carried out by the Administrator.

11 (B) CONTENTS OF REPORT.—Each report
12 required by subparagraph (A) shall include—

13 (i) a description of the actions to rem-
14 edy findings of noncompliance or other
15 problems that are taken by the Secretary
16 or the Assistant Secretary of Homeland
17 Security for U.S. Immigration and Cus-
18 toms Enforcement, and each detention fa-
19 cility found to be in noncompliance; and

20 (ii) information regarding whether
21 such actions were successful and resulted
22 in compliance with detention standards.

23 (4) REVIEW OF COMPLAINTS BY DETAINEES.—
24 The Administrator of the Office shall establish pro-
25 cedures to receive and review complaints of viola-

1 tions of the detention standards promulgated by the
2 Secretary. The procedures shall protect the anonym-
3 ity of the claimant, including detainees, employees,
4 or others, from retaliation.

5 (c) COOPERATION WITH OTHER OFFICES AND
6 AGENCIES.—Whenever appropriate, the Administrator of
7 the Office shall cooperate and coordinate its activities
8 with—

9 (1) the Office of the Inspector General of the
10 Department;

11 (2) the Office of Civil Rights and Civil Liberties
12 of the Department;

13 (3) the Privacy Officer of the Department;

14 (4) the Civil Rights Division of the Department
15 of Justice; or

16 (5) any other relevant office or agency.

17 (d) DEATHS OF DETAINEES.—The Secretary shall
18 ensure that—

19 (1) all deaths of detainees and other aliens in
20 the Department's custody, or other deaths related to
21 operations or actions of employees of U.S. Immigra-
22 tion and Customs Enforcement or U.S. Customs and
23 Border Protection, are reported on a timely basis
24 to—

1 (A) the Office of Detention Oversight, if
2 the death occurred in a detention facility;

3 (B) the Office of the Inspector General of
4 the Department;

5 (C) the legal representative of the deceased
6 alien, if the Department is on notice that a rep-
7 resentative has been retained on the alien's be-
8 half;

9 (D) the immediate family of the deceased
10 alien, if the Department has contact informa-
11 tion for an immediate family member;

12 (E) relevant State and local government
13 officials, including the coroner and the local law
14 enforcement agency with jurisdiction in the lo-
15 cation where the death occurred;

16 (F) the Committee on the Judiciary and
17 the Committee on Homeland Security and Gov-
18 ernmental Affairs of the Senate; and

19 (G) the Committee on the Judiciary and
20 the Committee on Homeland Security of the
21 House of Representatives;

22 (2) a thorough investigation is conducted into
23 each death by—

24 (A) the Office of Detention Oversight;

1 (B) the Office of the Inspector General of
2 the Department; or

3 (C) another appropriate office with inves-
4 tigative authority in the Department or other
5 Federal agency; and

6 (3) a report describing the results of the inves-
7 tigation into each death is provided to—

8 (A) the Secretary;

9 (B) the Committee on the Judiciary and
10 the Committee on Homeland Security and Gov-
11 ernmental Affairs of the Senate; and

12 (C) the Committee on the Judiciary and
13 the Committee on Homeland Security of the
14 House of Representatives.

15 **SEC. 8. SECURE ALTERNATIVES PROGRAM.**

16 (a) ESTABLISHMENT OF PROGRAM.—The Secretary
17 shall establish a secure alternatives program under which
18 an alien who has been detained may be released under en-
19 hanced supervision to prevent the alien from absconding
20 and to ensure that the alien makes appearances related
21 to such detention.

22 (b) PROGRAM REQUIREMENTS.—

23 (1) NATIONWIDE IMPLEMENTATION.—The Sec-
24 retary shall facilitate the development of the secure
25 alternatives program on a nationwide basis.

1 (2) UTILIZATION OF ALTERNATIVES.—The se-
2 cure alternatives program shall utilize a continuum
3 of alternatives based on the alien’s need for super-
4 vision, which may include placement of the alien
5 with an individual or organizational sponsor, or in a
6 supervised group home.

7 (3) ELEMENTS OF PROGRAM.—The elements of
8 a secure alternatives program shall include—

9 (A) individualized case management by an
10 assigned case supervisor; and

11 (B) referral to community-based providers
12 of legal and social services.

13 (4) RESTRICTIVE ELECTRONIC MONITORING.—
14 Restrictive electronic monitoring devices, such as
15 ankle bracelets, may be used only when there is a
16 demonstrated need for such enhanced monitoring,
17 and any decision to require such a device shall be re-
18 viewed periodically.

19 (5) ALIENS ELIGIBLE FOR SECURE ALTER-
20 NATIVES PROGRAM.—

21 (A) IN GENERAL.—Aliens who would oth-
22 erwise be subject to detention based on a con-
23 sideration of the release criteria in section
24 236(b)(2) of the Immigration and Nationality
25 Act, as amended by section 4, or who are re-

1 leased pursuant to section 236(e)(2) of such
2 Act, as so amended, shall be considered for the
3 secure alternatives program.

4 (B) DESIGN OF PROGRAMS.—Secure alter-
5 natives programs shall be designed to ensure
6 sufficient supervision of the population de-
7 scribed in subparagraph (A).

8 (6) CONTRACTS.—The Secretary shall enter
9 into contracts with qualified nongovernmental enti-
10 ties to implement the secure alternatives program.

11 (7) OTHER CONSIDERATIONS.—In designing
12 such program, the Secretary shall—

13 (A) consult with relevant experts; and

14 (B) consider programs that have proven
15 successful in the past, including the Appearance
16 Assistance Program developed by the Vera In-
17 stitute and the Intensive Supervision Appear-
18 ance Program.

19 **SEC. 9. LESS RESTRICTIVE DETENTION FACILITIES.**

20 (a) CONSTRUCTION.—The Secretary shall facilitate
21 the construction or use of secure but less restrictive deten-
22 tion facilities.

23 (b) CRITERIA.—In implementing the requirements of
24 paragraph (1), the Secretary shall—

1 (1) consider the design, operation, and condi-
2 tions of existing secure but less restrictive detention
3 facilities;

4 (2) construct or use detention facilities where—

5 (A) movement within and between indoor
6 and outdoor areas of the facility is subject to
7 minimal restrictions;

8 (B) detainees have ready access to social,
9 psychological, and medical services;

10 (C) detainees with special needs, including
11 those who have experienced trauma or torture,
12 have ready access to services and treatment ad-
13 dressing their needs;

14 (D) detainees are not placed in handcuffs,
15 shackles, or solitary confinement within the fa-
16 cility;

17 (E) facility staff are specially trained to
18 address the needs of vulnerable populations;

19 (F) detainees have ready access to pro-
20 grams and recreation, including a full range of
21 varied daily activities and classes; and

22 (G) detainees are permitted contact visits
23 with legal representatives and family members.

24 (c) PLACEMENT IN LESS RESTRICTIVE FACILI-
25 TIES.—In deciding whether to place a detainee in a secure

1 but less restrictive detention facility, the Secretary shall
2 consider whether the detainee is—

3 (1) a member of a vulnerable population; or

4 (2) a nonviolent, noncriminal detainee.

5 (d) FACILITIES FOR FAMILIES WITH CHILDREN.—

6 The following requirements shall apply with respect to
7 families with children:

8 (1) Families with minor children shall not be
9 held in detention facilities except when justified by
10 exceptional circumstances, when required by law, or
11 when necessary to expedite prompt removal pursuant
12 to section 235(b)(1)(B)(iii).

13 (2) In cases where release or a secure alter-
14 natives program is not an option, the Secretary shall
15 ensure that—

16 (A) special detention facilities are designed
17 to house parents with their minor children, tak-
18 ing into account the particular needs and
19 vulnerabilities of minor children;

20 (B) procedures and conditions of detention
21 are appropriate for families with minor chil-
22 dren;

23 (C) entities with demonstrated experience
24 and expertise in child welfare participate in the

1 management of facilities housing families with
2 their minor children; and

3 (D) individualized reviews of each family’s
4 well being and the need for continued detention
5 are conducted monthly.

6 (e) DISCRETIONARY WAIVER AUTHORITY FOR FAMI-
7 LIES WITH CHILDREN.—Section 235(b)(1)(B)(iii) of the
8 Immigration and Nationality Act (8 U.S.C.
9 1225(b)(1)(B)(iii)) is amended—

10 (1) in subclause (IV), by striking “Any alien”
11 and inserting “Except as provided in subclause (V),
12 any alien”; and

13 (2) by adding at the end the following:

14 “(V) DISCRETIONARY WAIVER
15 AUTHORITY FOR FAMILIES WITH
16 CHILDREN.—The Secretary of Home-
17 land Security may decide for humani-
18 tarian reasons not to detain families
19 with minor children who are otherwise
20 subject to mandatory detention under
21 subclause (IV).”.

22 (f) REGULATIONS.—The Secretary shall prescribe
23 such regulations as are necessary to implement this sec-
24 tion.

1 **SEC. 10. STUDY ON THE EFFECT OF EXPEDITED REMOVAL**
2 **PROVISIONS, PRACTICES, AND PROCEDURES**
3 **ON ASYLUM CLAIMS.**

4 (a) STUDY.—

5 (1) IN GENERAL.—The United States Commis-
6 sion on International Religious Freedom (in this sec-
7 tion referred to as the “Commission”) is authorized
8 to conduct a study to determine whether immigra-
9 tion officers described in paragraph (2) are engaging
10 in conduct described in paragraph (3).

11 (2) IMMIGRATION OFFICERS DESCRIBED.—An
12 immigration officer described in this paragraph is an
13 immigration officer performing duties under section
14 235(b) of the Immigration and Nationality Act (8
15 U.S.C. 1225(b)) with respect to aliens who are ap-
16 prehended after entering the United States and who
17 may be eligible to apply for asylum under such sec-
18 tion or section 208 of such Act (8 U.S.C. 1158).

19 (3) CONDUCT DESCRIBED.—Conduct described
20 in this paragraph is the following:

21 (A) Improperly encouraging an alien re-
22 ferred to in paragraph (2) to withdraw or re-
23 tract claims for asylum.

24 (B) Incorrectly failing to refer such an
25 alien for an interview by an asylum officer for
26 a determination of whether the alien has a cred-

1 ible fear of persecution (within the meaning of
2 section 235(b)(1)(B)(v) of the Immigration and
3 Nationality Act (8 U.S.C. 1225(b)(1)(B)(v))).

4 (C) Incorrectly removing such an alien to
5 a country where the alien may be persecuted.

6 (D) Detaining such an alien improperly or
7 in inappropriate conditions.

8 (b) REPORT.—Not later than 24 months after the
9 date on which the Commission initiates the study con-
10 ducted under subsection (a), the Commission shall submit
11 a report containing the results of the study to—

12 (1) the Committee on Homeland Security and
13 Governmental Affairs, the Committee on the Judici-
14 ary, and the Committee on Foreign Relations of the
15 Senate; and

16 (2) the Committee on Homeland Security, the
17 Committee on the Judiciary, and the Committee on
18 Foreign Affairs of the House of Representatives.

19 (c) STAFF.—

20 (1) FROM OTHER AGENCIES.—At the request of
21 the Commission, the Secretary, the Attorney Gen-
22 eral, and the Comptroller General of the United
23 States shall authorize staff designated by the Com-
24 mission who are recognized for their expertise and
25 knowledge of refugee and asylum issues to assist the

1 Commission in conducting the study under sub-
2 section (a).

3 (2) HIRING OF STAFF.—The Commission may
4 hire additional staff and consultants to conduct the
5 study under subsection (a).

6 (3) ACCESS TO PROCEEDINGS.—

7 (A) IN GENERAL.—Except as provided in
8 subparagraph (B), the Secretary and the Attor-
9 ney General shall permit staff designated under
10 paragraph (1) or hired under paragraph (2) to
11 have unrestricted access to all stages of all pro-
12 ceedings conducted under section 235(b) of the
13 Immigration and Nationality Act (8 U.S.C.
14 1225(b)).

15 (B) EXCEPTIONS.—The Secretary and the
16 Attorney General shall not permit unrestricted
17 access pursuant to subparagraph (A) in any
18 case in which—

19 (i) an alien that is subject to a pro-
20 ceeding conducted under section 235(b) of
21 the Immigration and Nationality Act ob-
22 jects to such access; or

23 (ii) the Secretary or Attorney General
24 determines that the security of a particular

1 proceeding would be threatened by such
2 access.

3 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE**
4 **DATE.**

5 (a) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated such sums as are nec-
7 essary to carry out this Act.

8 (b) EFFECTIVE DATE.—Except as specifically pro-
9 vided in sections 6 and 7, this Act and the amendments
10 made by this Act shall take effect on the date that is 180
11 days after the date of the enactment of this Act.

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