

112TH CONGRESS  
1ST SESSION

# H. R. 933

To reform immigration detention procedures, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2011

Ms. ROYBAL-ALLARD (for herself and Mr. POLIS) 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

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## A BILL

To reform immigration detention procedures, and for other purposes.

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

3        **SECTION 1. SHORT TITLE.**

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

6        **SEC. 2. DETENTION CONDITIONS.**

7        (a) **DETENTION REQUIREMENTS.**—All detention fa-  
8        cilities shall fully comply with the following minimum re-  
9        quirements:

1           (1) ACCESS TO TELEPHONES.—Detention facili-  
2 ties shall provide to detainees reasonable and equi-  
3 table access to working telephones, and the ability to  
4 contact, free of charge, legal representatives, foreign  
5 consulates, the immigration courts, the Board of Im-  
6 migration Appeals, and the Federal courts, in addi-  
7 tion to persons and offices contacted for the purpose  
8 of obtaining legal representation. Detention facilities  
9 shall provide to detainees access to telephones dur-  
10 ing facility working hours and on an emergency  
11 basis in accordance with the following:

12           (A) The detention facility shall provide to  
13 each detainee a copy of its rules governing tele-  
14 phone access and shall post those rules, to-  
15 gether with an explanation of how to make  
16 calls, within sight of each telephone available to  
17 detainees. These rules shall be translated into  
18 Spanish and two additional languages spoken  
19 by a substantial part of the detainee population  
20 of the detention facility. If a detention facility  
21 has determined that more than 5 percent of its  
22 population is a certain ethnicity, the document  
23 should be translated into that ethnicity’s appro-  
24 priate language. The detention facility shall also  
25 provide oral interpretation and written trans-

1           lation assistance to detainees in reading any  
2           relevant materials required to request telephone  
3           access, including oral interpretation assistance  
4           for those who are not literate in English, Span-  
5           ish, and other languages spoken by the detainee  
6           population of the facility.

7           (B) The rates charged for telephone calls  
8           shall be reasonable and equitable and shall not  
9           significantly impair detainees' access to tele-  
10          phones.

11          (C) The detention facility shall not restrict  
12          the number of calls detainees may place to their  
13          legal representatives or consular officials, or to  
14          any others for the purpose of obtaining legal  
15          representation, or limit the duration of those  
16          calls by rule or automatic cut-off, unless nec-  
17          essary for security reasons. The detention facil-  
18          ity shall have a reasonable number of working  
19          phones available to detainees, and at a min-  
20          imum one phone per each 25 users.

21          (D) The detention facility shall ensure the  
22          privacy of telephone conversations between de-  
23          tainees and legal representatives or consular of-  
24          ficials, and calls made for the purpose of ob-  
25          taining legal representation. Means to ensure

1 privacy may include the use of privacy panels,  
2 the placement of phones in housing pods, and  
3 other appropriate measures.

4 (E) Detainees' telephone calls to a court,  
5 legal representative, or consular official, or for  
6 the purpose of obtaining legal representation,  
7 shall not be monitored or recorded without a  
8 court order and without prior notification to the  
9 detainee.

10 (F) The detention facility shall take and  
11 deliver telephone messages to detainees as  
12 promptly as possible, but no less often than  
13 twice a day. Detainees shall be permitted to  
14 make confidential telephone calls promptly  
15 within 8 hours of receipt of messages left by a  
16 court, legal representative, prospective legal  
17 representative, or consular official as soon as  
18 reasonably possible after the delivery of the  
19 message.

20 (2) QUALITY OF MEDICAL CARE.—Detention fa-  
21 cilities shall afford a continuum of prompt, high-  
22 quality medical care, including care to address med-  
23 ical needs that existed prior to detention, at no cost  
24 to detainees. Such medical care shall address all de-  
25 tainee health needs and shall include chronic care,

1 dental care, eye care, mental health care, individual  
2 and group counseling, medical dietary needs, and  
3 other medically necessary specialized care in accord-  
4 ance with the following:

5 (A) All detention facilities shall maintain  
6 current accreditation by the National Commis-  
7 sion on Correctional Health Care and the Joint  
8 Commission on the Accreditation of Health  
9 Care Organizations. Detention facilities that are  
10 not accredited as of the date of the enactment  
11 of this Act will obtain such accreditation within  
12 one year, and if accreditation is not obtained by  
13 that time the Secretary of Homeland Security  
14 shall cease use of the facility. All standards,  
15 policies and practices shall at a minimum com-  
16 ply with the National Commission on Correc-  
17 tional Health Care Standards for Health Serv-  
18 ices in Jails.

19 (B) All detention facilities shall have a des-  
20 ignated on-site health authority who is a physi-  
21 cian, a health services administrator, or a  
22 health agency. Clinical decisions shall be made  
23 solely by a licensed health care provider.

24 (C) Each immigration detainee shall re-  
25 ceive a comprehensive medical and mental

1 health intake screening by a qualified health  
2 care professional upon arrival at the facility and  
3 each immigration detainee shall receive a com-  
4 prehensive medical and mental health examina-  
5 tion and assessment by a qualified health care  
6 professional not later than 14 days after ar-  
7 rival.

8 (D) Any decision to deny requested med-  
9 ical care or treatment, or care or treatment rec-  
10 ommended by any outside physician or spe-  
11 cialist, to a detainee shall be made within 72  
12 hours or earlier if medically necessary and shall  
13 be accompanied by a written explanation of the  
14 reasons for the denial. This decision and the  
15 written explanation of the decision shall be si-  
16 multaneously communicated to the detainee and  
17 to the Secretary of Homeland Security.

18 (E) Detainees shall be afforded an oppor-  
19 tunity to obtain an appeal of any decisions de-  
20 nying a request for medical treatment. Such an  
21 appeal or request for reconsideration shall be  
22 resolved in writing within 7 days or earlier if  
23 medically necessary by an appeals board that  
24 shall be composed of independent health care  
25 professionals in the fields relevant to the re-

1           quest for medical or mental health care. The  
2           written decision shall be conveyed to the on-site  
3           medical provider and the immigration detainee  
4           within 24 hours of a decision by the appeals  
5           board.

6           (F) Except in emergency situations where  
7           informed consent cannot reasonably be ob-  
8           tained, medical care and treatment shall be pro-  
9           vided only with the informed consent of the de-  
10          tainee or a person authorized by the detainee or  
11          applicable law to provide such consent.

12          (G) Involuntary psychotropic medication  
13          may be used only if allowed by applicable law  
14          and then only in emergency situations when a  
15          physician has determined, after personally ex-  
16          amining the patient, that—

17                  (i) a detainee is imminently dangerous  
18                  to self or others due to a mental illness;  
19                  and

20                  (ii) involuntary psychotropic medica-  
21                  tion is medically appropriate to treat the  
22                  mental illness and necessary to prevent  
23                  harm. If a detainee is represented by coun-  
24                  sel, the administration of any psychotropic  
25                  drug to the detainee shall be disclosed to

1           the detainee’s counsel promptly and in any  
2           event within a reasonable time prior to any  
3           hearing in which the detainee will appear.

4           If a detainee is not represented by counsel, the  
5           administration of any psychotropic drug to the  
6           detainee shall, with the informed consent of the  
7           detainee, be disclosed to the Immigration Court  
8           prior to any hearing in which the detainee will  
9           appear. Any disclosure to the court by any per-  
10          son of the administration of a psychotropic  
11          drug to the detainee shall be filed under seal  
12          and may be disclosed to other persons only in  
13          the same manner and to the same extent that  
14          medical records may be disclosed. Any detainee  
15          who receives medication pursuant to this sub-  
16          paragraph must be afforded a hearing pursuant  
17          to the procedures set forth in 28 CFR 549.43,  
18          as described in *Washington v. Harper*, 494 U.S.  
19          210 (1990), before the detainee may receive  
20          medication again under this subparagraph.

21                 (H) No drugs of any kind shall be admin-  
22                 istered to detainees without their informed con-  
23                 sent for the purpose of sedation or controlling  
24                 the detainee’s behavior during transportation or  
25                 removal or for the purpose of punishment.



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

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

22 (i) the name, gender, national origin,  
23 alien number, and age of the deceased;

- 1 (ii) the date on which detention in  
2 U.S. Immigration and Customs Enforce-  
3 ment custody commenced;
- 4 (iii) the date and location of death;
- 5 (iv) the location of last detention;
- 6 (v) a brief description of the cir-  
7 cumstances surrounding the death;
- 8 (vi) the status and results of any in-  
9 vestigation(s) that has been conducted into  
10 the circumstances surrounding the death;
- 11 (vii) each location where the indi-  
12 vidual was held in U.S. Immigration and  
13 Customs Enforcement custody or the cus-  
14 tody of an entity contracting with U.S. Im-  
15 migration and Customs Enforcement and  
16 the dates during which the individual was  
17 held at each location; and
- 18 (viii) all medical records of the de-  
19 ceased.
- 20 (K) All detainee transfers shall take into  
21 consideration the detainee's health and medical  
22 fitness. Continuity of care shall be preserved  
23 during and after transfers, and detainees shall  
24 suffer no interruption in the provision of treat-  
25 ment, including prescription medication.

1           (3) SEXUAL ABUSE REGULATIONS CONCERNING  
2 CARE AND CUSTODY OF DETAINEES.—

3           (A) IN GENERAL.—Detention facilities  
4 shall take all necessary measures to prevent  
5 sexual abuse of detainees, including sexual as-  
6 saults, and shall observe the minimum stand-  
7 ards under the Prison Rape Elimination Act of  
8 2003 (42 U.S.C. 15601 et seq.).

9           (B) MEASURES WHERE ABUSE OCCURS.—  
10 Where sexual abuse occurs, detention facilities  
11 shall ensure that—

12           (i) prompt and appropriate medical  
13 intervention is taken to minimize medical  
14 and psychological trauma;

15           (ii) a medical history is taken and a  
16 physical examination is conducted by quali-  
17 fied and culturally appropriate medical  
18 professionals to determine the extent of  
19 physical injury and whether referral to an-  
20 other medical facility is indicated;

21           (iii) prophylactic treatment, emer-  
22 gency contraception, and follow-up for sex-  
23 ually transmitted diseases are provided;

24           (iv) the case is evaluated by a quali-  
25 fied mental health professional for crisis

1 intervention counseling and long-term fol-  
2 low-up;

3 (v) victims are separated from their  
4 abusers and are considered for release on  
5 parole or for an alternative to detention  
6 program; and

7 (vi) any and all medical and mental  
8 health records arising out of a detainee's  
9 allegation of sexual abuse shall be treated  
10 as confidential, as required by the Health  
11 Insurance Portability and Accountability  
12 Act of 1996.

13 (C) REPORTING.—A detention facility shall  
14 not subject any person to punishment or any  
15 other form of retaliation for reporting incidents  
16 of sexual abuse.

17 (D) INVESTIGATION.—In all cases of al-  
18 leged sexual abuse, the detention facility shall  
19 conduct a thorough and timely investigation  
20 and shall provide to the Secretary of Homeland  
21 Security a report of the circumstances and the  
22 response of the detention facility. If the report  
23 is not completed within 30 days after alleged  
24 sexual abuse comes to the attention of the de-  
25 tention facility, the detention facility shall sub-

1           mit to the Secretary of Homeland Security a  
2           description of the status of the investigation  
3           and an estimated date of completion 30 days  
4           after the alleged sexual abuse comes to the at-  
5           tention of the detention facility and every 30  
6           days thereafter until the report is provided to  
7           the Secretary of Homeland Security. The report  
8           required by this subsection shall include at min-  
9           imum a determination of whether the alleged  
10          sexual abuse occurred, an in-depth analysis of  
11          the relevant facts including the causes of any  
12          sexual abuse that may have occurred and  
13          whether and to what extent the alleged abuse  
14          indicates a failure of policy, a failure of train-  
15          ing, a failure of oversight, or a failure of man-  
16          agement, and a description of the actions that  
17          the facility will take to prevent the occurrence  
18          of similar incidents in the future and a plan for  
19          monitoring the implementation of those actions.  
20          The detention facility shall provide to the Sec-  
21          retary of Homeland Security periodic reports  
22          monitoring the implementation of the plan in  
23          accordance with the schedule set forth in such  
24          plan as approved by the Secretary of Homeland  
25          Security.

1 (4) TRANSFER OF DETAINEES.—

2 (A) PROCEDURES.—In adopting proce-  
3 dures governing the transfer of individuals de-  
4 tained under section 236 of the Immigration  
5 and Nationality Act (8 U.S.C. 1226), and sub-  
6 ject to the exception in subparagraph (D), the  
7 Secretary of Homeland Security shall promul-  
8 gate regulations prohibiting transfer of a de-  
9 tainee if such transfer would—

10 (i) negatively affect an existing attor-  
11 ney-client relationship;

12 (ii) negatively affect the detainee’s  
13 legal proceedings, including merits or cal-  
14 endar hearings, or a pending application  
15 with United States Citizenship and Immi-  
16 gration Services or the Executive Office for  
17 Immigration Review, by—

18 (I) limiting the detainee’s access  
19 to securing legal representation;

20 (II) limiting the detainee’s ability  
21 to prepare a legal defense to removal;  
22 or

23 (III) removing the detainee from  
24 the legal venue of such proceeding;

1 (iii) negatively affect the detainee's  
2 health and medical fitness; or

3 (iv) to the extent it does not conflict  
4 with clauses (i), (ii), and (iii)—

5 (I) place the detainee in a loca-  
6 tion more distant from the detainee's  
7 residence than the original detention  
8 location; or

9 (II) place the detainee in a loca-  
10 tion more distant from family mem-  
11 bers than the original detention loca-  
12 tion.

13 (B) NOTICE.—Unless exigent cir-  
14 cumstances dictate an immediate transfer—

15 (i) the Secretary of Homeland Secu-  
16 rity shall provide not less than 72 hours  
17 notice to any detainee prior to transferring  
18 the detainee to another detention facility;

19 (ii) detainees shall be afforded at least  
20 one toll-free call following any transfer,  
21 and within 24 hours after the detainee's  
22 arrival at the transferee facility, the Sec-  
23 retary of Homeland Security shall notify  
24 the detainee's legal representative or if un-  
25 represented, an adult family member or

1 other person designated by the detainee, of  
2 the transfer and the detainee's new loca-  
3 tion;

4 (iii) if removal proceedings are pend-  
5 ing, the Secretary of Homeland Security  
6 shall also promptly notify the Immigration  
7 Court, Board of Immigration Appeals, or  
8 the Circuit Court of Appeals, as appro-  
9 priate of the transfer and the detainee's  
10 new address; and

11 (iv) the Secretary of Homeland Secu-  
12 rity shall not transfer any detainee who  
13 has already requested, and is awaiting, a  
14 bond hearing or a bond redetermination  
15 hearing.

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

22 (D) PROTECTING DETAINEES LEGAL  
23 RIGHTS.—If the Secretary determines that a  
24 transfer is necessary due to a highly unusual  
25 emergency, the Secretary shall ensure that the



1 detainee’s legal rights are not prejudiced and  
2 the existing attorney-client relationship is not  
3 impaired, including evaluating the location of  
4 the detention facility based on its proximity to  
5 the detainee’s counsel or nongovernmental or  
6 pro bono organizations providing free or low  
7 cost immigration legal services.

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

12 (5) NOTICE.—

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

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

1 eligibility for affirmative relief. The Secretary of Home-  
2 land Security shall—

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

7 “(2) submit to the Committees on the Judiciary  
8 of the Senate and the House of Representatives an  
9 annual report concerning the Secretary of Homeland  
10 Security’s compliance with such notice require-  
11 ment.”.

12 (B) APPLICABILITY OF OTHER LAW.—

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

17 (b) REGULATIONS CONCERNING CARE AND CUSTODY  
18 OF DETAINEES.—

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

1 requirements set forth in paragraph (3), standards  
2 regarding classification of detainees set forth in  
3 paragraph (4), and the special standards for vulner-  
4 able populations set forth in paragraph (5). Such  
5 rules shall apply to all facilities in which the Sec-  
6 retary of Homeland Security detains noncitizens, in-  
7 cluding Service Processing Centers, Contract Deten-  
8 tion Facilities, State or local government facilities  
9 used by Detention and Removal Operations through  
10 Intergovernmental Service Agreements, Bureau of  
11 Prisons facilities, and any other temporary or per-  
12 manent facility used to hold detainees. The rules re-  
13 quired under this paragraph shall be promulgated  
14 not later than 1 year after the Secretary of Home-  
15 land Security receives the report of the detention ad-  
16 visory committee established under paragraph (2),  
17 or 1 year after such report is due, whichever is ear-  
18 lier.

19 (2) DETENTION ADVISORY COMMITTEE.—The  
20 Secretary of Homeland Security shall convene, and  
21 receive a report from a detention advisory committee  
22 comprised of experts from U.S. Immigration and  
23 Customs Enforcement, U.S. Customs and Border  
24 Protection, the Office of Refugee Resettlement, and  
25 Division of Immigration Health Services in the De-

1       partment of Health and Human Services, and an  
2       equal number of independent experts from non-  
3       governmental organizations and intergovernmental  
4       organizations with expertise in working on behalf of  
5       aliens detained under immigration laws and vulner-  
6       able populations. The independent experts shall at a  
7       minimum include representatives of the American  
8       Bar Association and the United Nations High Com-  
9       missioner for Refugees. The detention advisory com-  
10      mittee shall review and revise all the guidelines  
11      found in the Secretary of Homeland Security's De-  
12      tention Operations Manual, as amended, based on  
13      identifiable deficiencies and best practices that treat  
14      aliens both safely and humanely. The detention advi-  
15      sory committee shall submit a report to the Sec-  
16      retary of Homeland Security within 12 months after  
17      the date of the enactment of this Act. For good  
18      cause, the Secretary of Homeland Security may ex-  
19      tend the time for submission of the advisory commit-  
20      tees report for an additional six months.

21           (3) TRAINING.—The Secretary of Homeland  
22      Security shall develop and implement a training pro-  
23      tocol for all personnel in all facilities in which non-  
24      citizens are detained. The training protocol shall in-  
25      clude periodic updates to initial comprehensive train-

1 ing. The Secretary shall monitor the implementation  
2 of the protocol annually and shall ensure that all  
3 personnel who are required to be trained under the  
4 protocol have received the necessary training. The  
5 protocol shall include—

6 (A) an overview of immigration detention  
7 and the characteristics of the noncitizen de-  
8 tainee population;

9 (B) an overview of the detention stand-  
10 ards;

11 (C) specific guidance on each of the deten-  
12 tion standards; and

13 (D) a description of the Secretary's quality  
14 assurance procedures.

15 (4) GENERAL MINIMUM REQUIREMENTS.—The  
16 Secretary of Homeland Security's rules regarding  
17 conditions of detention shall ensure that the fol-  
18 lowing requirements are met:

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

24 (B) USE OF FORCE AND RESTRAINTS.—  
25 Detainees shall not be subjected to shackling,

1           handcuffing, solitary confinement, Tasers, elec-  
2           tric shields, restraint chairs, or strip searches  
3           unless and to the extent that such techniques  
4           are necessary to ensure the security of other de-  
5           tainees, staff, or the public and where no less  
6           coercive or degrading measures are available to  
7           achieve that end. These techniques shall in no  
8           event be used for the purpose of humiliating de-  
9           tainees either within or outside the detention  
10          facility. Detention facilities shall adopt written  
11          policies pertaining to the use of force and the  
12          use of restraints, and shall train all staff on the  
13          proper use of such devices.

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

23                         (i) An otherwise valid grievance shall  
24                         not be denied for noncompliance with a  
25                         procedural requirement if such noncompli-

1           ance is due to ignorance, fear, excusable  
2           neglect or other reasonable cause.

3           (ii) Detainees shall be afforded the  
4           opportunity to complain to staff of U.S.  
5           Immigration and Customs Enforcement di-  
6           rectly and confidentially, outside the griev-  
7           ance process.

8           (iii) Detainees shall not be subject to  
9           retaliation for making use of the grievance  
10          procedure or procedure for complaining di-  
11          rectly to staff of U.S. Immigration and  
12          Customs Enforcement.

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

1 (v) Detention facilities shall make an  
2 annual report regarding the grievances re-  
3 ceived, the responses made, and the time  
4 period for response, and such report shall  
5 be submitted to the Secretary of Homeland  
6 Security on January 31 of each year.

7 (vi) All grievances shall be inves-  
8 tigated.

9 (D) LOCATION OF FACILITIES.—Detention  
10 facilities shall be located, to the extent prac-  
11 ticable, within 50 miles of a city or municipality  
12 in which there is a demonstrated capacity to  
13 provide competent legal representation by non-  
14 profit legal aid organizations or other pro bono  
15 attorneys to detained noncitizens, including asy-  
16 lum seekers and other vulnerable immigrant  
17 populations. The Secretary of Homeland Secu-  
18 rity shall seek to use only facilities within the  
19 stated 50 mile radius by January 1, 2012.

20 (E) ACCESS TO LEGAL MATERIALS.—De-  
21 tainees shall have available an on-site law li-  
22 brary with sufficient space to facilitate detain-  
23 ees' legal research and preparation of docu-  
24 ments. The law library's holdings shall include  
25 up-to-date copies of legal materials designated



1 by the Secretary of Homeland Security, includ-  
2 ing immigration law materials. The law library  
3 shall be provided with adequate equipment for  
4 legal research and the preparation of legal doc-  
5 uments. Such equipment shall include, at a  
6 minimum, computers, printers, typewriters, and  
7 copiers. Information regarding the availability  
8 of the library, procedures for requesting its use,  
9 and instruction on the use of the library and li-  
10 brary equipment shall be provided to all detain-  
11 ees at the time of admission into the detention  
12 facility, and shall be posted in the law library  
13 together with a list of the library's holdings.  
14 The detention facility will make available to de-  
15 tainees any assistance that may be necessary to  
16 allow detainees to use the library effectively and  
17 shall provide special assistance as the Secretary  
18 of Homeland Security may prescribe to detain-  
19 ees who are not literate in English. Library  
20 services, including access to databases and  
21 printing and copying, shall be provided without  
22 charge to detainees.

23 (F) LEGAL VISITS.—

24 (i) IN GENERAL.—Legal visits shall  
25 not be restricted absent narrowly defined

1 exceptional circumstances, including a nat-  
2 ural disaster or comparable emergency be-  
3 yond the control of the Secretary of Home-  
4 land Security.

5 (ii) PROCEDURES.—Detainees shall be  
6 entitled to private meetings with their cur-  
7 rent or prospective legal representatives or  
8 their legal assistants. Interpreters shall be  
9 allowed to accompany legal representatives  
10 and legal assistants on legal visits subject  
11 to appropriate security procedures. Legal  
12 visits shall be permitted a minimum of 8  
13 hours per day on regular business days  
14 and 4 hours per day on weekends and holi-  
15 days, except that if lack of space for inter-  
16 views at the detention facility, the conduct  
17 of immigration hearings on site, or other  
18 factors lead to excessive delay between the  
19 time the legal representative is ready to  
20 visit the detainee and the time space be-  
21 comes available, the Secretary of Home-  
22 land Security shall require such additional  
23 time for legal visits or other measures as  
24 may be sufficient to avoid excessive delay.  
25 Excessive delay for purposes of this para-

1 graph is delay of 2 hours or more, occur-  
2 ring more than 2 times per month over a  
3 12-month period. Detention facilities shall  
4 maintain a procedure allowing legal rep-  
5 resentatives and legal assistants to call  
6 ahead to determine if a detainee is held at  
7 that facility, and they shall take messages  
8 from legal representatives and promptly  
9 deliver them to the detainee. Messengers,  
10 including individuals who are not attor-  
11 neys, legal representatives, or legal assist-  
12 ants, shall be permitted to deliver docu-  
13 ments for detainees to and from the facil-  
14 ity. Detention facilities shall promptly and  
15 prominently post the most current official  
16 list of pro bono legal organizations and  
17 their contact information in detainee hous-  
18 ing units and other appropriate areas, and  
19 such lists shall be updated by the Sec-  
20 retary of Homeland Security on a semi-an-  
21 nual basis. Detention facilities may not re-  
22 taliate in any way, including denial or limi-  
23 tation of access to detention facilities, for  
24 complaints or public or private statements  
25 made by legal representatives regarding

1           the detention facility's compliance with  
2           regulations relating to conditions of deten-  
3           tion.

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

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

19                   (H) ACCESS TO DETENTION FACILITIES.—

20          Detention facilities shall afford access as fol-  
21          lows:

22                   (i) Subject to reasonable conditions to  
23                   protect the security of the facility, deten-  
24                   tion facilities shall afford access to private  
25                   attorneys, other legal representatives and

1 legal personnel such as paralegals and  
2 Board of Immigration Appeals accredited  
3 representatives; government attorneys;  
4 judges and courts; embassies and con-  
5 sulates; the president and vice president of  
6 the United States, members of Congress  
7 and their staff; officers and other per-  
8 sonnel of the Department of Justice; offi-  
9 cers and other personnel of the Depart-  
10 ment of Homeland Security; officers and  
11 other personnel of the U.S. Public Health  
12 Service; administrators of grievance sys-  
13 tems; State and local officials, representa-  
14 tives of the news media, and representa-  
15 tives of nongovernmental organizations,  
16 community service organizations, and  
17 intergovernmental organizations.

18 (ii) Independent observers, including  
19 nongovernmental organizations, shall be  
20 permitted to conduct site visits, meet pri-  
21 vately with detainees, test telephones and  
22 pro bono calling platforms, and take other  
23 reasonable steps to monitor compliance  
24 with regulations regarding conditions of  
25 detention. Such observers and organiza-

1            tions shall not be prohibited from issuing  
2            public reports on the findings of moni-  
3            toring visits.

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

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

20           (v) Detention facilities may not retali-  
21           ate in any way, including denial or limita-  
22           tion of access to detention facilities,  
23           against any visitor for complaints, or pub-  
24           lic or private statements, regarding the de-

1                   tention facility’s compliance with regula-  
2                   tions relating to conditions of detention.

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

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

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



1 maintained in a safe and sanitary condition,  
2 and adequate ventilation and reasonably com-  
3 fortable indoor temperatures shall be main-  
4 tained at all times.

5 (L) LEGAL ORIENTATION TO ENSURE EF-  
6 FECTIVE IMMIGRATION PROCEEDINGS.—

7 (i) IN GENERAL.—The Attorney Gen-  
8 eral, in consultation with the Secretary of  
9 Homeland Security, shall ensure that all  
10 detained aliens, including unaccompanied  
11 minors, in immigration proceedings receive  
12 legal orientation from an independent non-  
13 governmental organization through a pro-  
14 gram administered and implemented by  
15 the Executive Office for Immigration Re-  
16 view of the Department of Justice.

17 (ii) CONTENT OF PROGRAM.—The  
18 legal orientation program developed pursu-  
19 ant to this subparagraph shall be based on  
20 the Legal Orientation Program carried out  
21 by the Executive Office for Immigration  
22 Review on the date of the enactment of  
23 this Act. Presentations for minors shall  
24 utilize a child-centered model.

1           (5) CLASSIFICATION.—The Secretary of Home-  
2           land Security’s rules shall ensure that detainees with  
3           no history of a criminal conviction are separated by  
4           sight and sound from detainees and inmates with  
5           criminal convictions, pretrial inmates facing criminal  
6           prosecution, and those inmates exhibiting violent be-  
7           havior while in detention.

8           (6) VULNERABLE POPULATIONS.—The Sec-  
9           retary of Homeland Security’s rules regarding condi-  
10          tions of detention for vulnerable populations shall—

11                 (A) recognize the unique needs of asylum  
12                 seekers, victims of torture and trafficking, fami-  
13                 lies with children, detainees who do not speak  
14                 English, detainees with special religious, cul-  
15                 tural or spiritual considerations, and vulnerable  
16                 populations listed in section 3(c); and

17                 (B) ensure that procedures and conditions  
18                 of detention are appropriate for such vulnerable  
19                 populations.

20          (7) STAFFING.—For purposes of this subsection  
21          and protecting vulnerable populations, the Secretary  
22          of Homeland Security shall appoint at least three  
23          members to the Directorate of Policy at the GS–15  
24          level with substantial academic credentials and ex-  
25          pertise in working directly with vulnerable popu-

1       lations including children, families and victims of  
2       trafficking, trauma, and torture who shall be respon-  
3       sible for setting, implementing, and overseeing policy  
4       and regulatory developments concerning vulnerable  
5       populations.

6       **SEC. 3. SECURE ALTERNATIVES TO DETENTION.**

7       (a) IN GENERAL.—Subject to the availability of ap-  
8       propriations, the Secretary of Homeland Security shall  
9       fully implement and utilize secure alternatives to detention  
10      programs.

11      (b) SECURE ALTERNATIVES TO DETENTION PRO-  
12      GRAMS.—

13           (1) NATURE OF THE PROGRAM.—For purposes  
14      of this section, the programs referred to in sub-  
15      section (a) are programs under which eligible aliens  
16      are released under supervision, assistance and moni-  
17      toring that ensure they appear at all immigration  
18      interviews, appointments, and hearings. The ele-  
19      ments of the secure alternatives to detention pro-  
20      grams are—

21           (A) group presentations and individual  
22           screening;

23           (B) provision of services to aliens released;

24           and

1           (C) on-going assistance, supervision, and  
2           monitoring.

3           (2) VOLUNTARY PARTICIPATION.—An alien’s  
4           participation in the program is voluntary and shall  
5           not confer any rights or benefits to the alien under  
6           the Immigration and Nationality Act (8 U.S.C. 1101  
7           et seq.).

8           (3) PROGRAM DEVELOPMENT.—The program  
9           shall be developed in accordance with the following  
10          guidelines:

11           (A) The Secretary of Homeland Security  
12           shall design the program in consultation with  
13           nongovernmental organizations and academic  
14           experts in both the immigration and the crimi-  
15           nal justice fields.

16           (B) All aliens in the custody of the Sec-  
17           retary of Homeland Security deemed eligible for  
18           secure alternatives to detention programs shall  
19           be released in the least restrictive setting need-  
20           ed to ensure appearance at all immigration  
21           interviews, appointments and hearings. The  
22           programs shall utilize a continuum of methods,  
23           including releasing the alien to an individual or  
24           organizational sponsor, a supervised group

1 home, or a supervised, non-penal community  
2 setting.

3 (C) Nongovernmental organizations and  
4 State and local social service agencies that serve  
5 immigrants shall be contracted to conduct  
6 group and individual screening and provide  
7 services to program participants.

8 (D) The Secretary of Homeland Security  
9 shall ensure that each alien participates in a  
10 legal presentation provided through the legal  
11 orientation presentation program administered  
12 by the Executive Office for Immigration Re-  
13 view.

14 (e) PROTECTION OF VULNERABLE POPULATIONS.—  
15 Within 72 hours of detaining an alien, the Secretary of  
16 Homeland Security shall screen the alien to determine if  
17 he or she falls into the following designated groups. Any  
18 alien described in the following designated groups who  
19 meets the criteria set forth under section 236(b) of the  
20 Immigration and Nationality Act, as amended by this Act,  
21 shall be released on parole, a reasonable bond, or the  
22 alien's own recognizance subject to the requirements of  
23 such section 236(b):

24 (1) Aliens who have serious medical or mental  
25 health needs or a disability.

1           (2) Pregnant or nursing women.

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

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

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

8           (6) Children (as defined at section 101(c)(1) of  
9 the Immigration and Nationality Act (8 U.S.C.  
10 1101(c)(1))).

11          (7) Victims of abuse, violence, crime or traf-  
12 ficking.

13          (8) Asylum seekers and torture survivors who  
14 have demonstrated a credible fear of persecution or  
15 a reasonable fear of torture.

16          (9) Other groups designated in regulations or  
17 guidance promulgated after the date of the enact-  
18 ment of this Act by the Secretary of Homeland Se-  
19 curity.

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

24          (d) OPTIONS REGARDING DETENTION DECISIONS  
25 FOR VULNERABLE POPULATIONS AND PLACEMENT IN AL-

1 ALTERNATIVES TO DETENTION.—Section 236 of the Immi-  
2 gration and Nationality Act (8 U.S.C. 1226) is amend-  
3 ed—

4 (1) in subsection (a)—

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

7 (B) in paragraph (2)—

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

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

12 (iii) by inserting after subparagraph  
13 (B) the following:

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

15 (C) by redesignating paragraph (3) as  
16 paragraph (4); and

17 (D) by inserting after paragraph (2) the  
18 following:

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

21 (2) by redesignating subsections (b), (c), (d),  
22 and (e) as subsections (e), (f), (g), and (h) respec-  
23 tively;

24 (3) by inserting after subsection (a) the fol-  
25 lowing:

1       “(b) CUSTODY DECISIONS FOR VULNERABLE POPU-  
2 LATIONS.—

3           “(1) IN GENERAL.—Not later than 72 hours  
4 after an alien’s detention unless the 72 hour require-  
5 ment is waived in writing by the alien, an alien who  
6 is a member of a vulnerable population (as defined  
7 by subsection (c)) shall be released from the Sec-  
8 retary of Homeland Security’s custody and shall not  
9 be subject to electronic monitoring unless the Sec-  
10 retary of Homeland Security demonstrates that the  
11 alien—

12           “(A) is subject to mandatory detention  
13 under section 235(b)(1)(B)(iii)(IV), 236(c) or  
14 236A; or

15           “(B) poses a flight risk or a risk to others  
16 or national security.

17           “(2) RELEASE.—An alien shall be released  
18 under this subsection—

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

20           “(B) by posting a reasonable bond under  
21 subsection (a); or

22           “(C) on parole in accordance with section  
23 212(d)(5)(A).

24       “(c) PARTICIPATION IN ALTERNATIVES TO DETEN-  
25 TION.—An alien who is denied release on recognizance, pa-



1 role, or bond, or is unable to pay the bond shall be selected  
2 for participation in a secure alternatives to detention pro-  
3 gram unless the Secretary of Homeland Security dem-  
4 onstrates by substantial evidence that the alien—

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

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

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

13 “(1) The decision shall be made in writing and  
14 shall be served upon the individual in the language  
15 spoken by the alien. A decision to continue detention  
16 without bond or parole shall specify in writing the  
17 reasons for that decision.

18 “(2) The decision shall be served upon the alien  
19 within 72 hours of the individual’s detention or, in  
20 the case of an individual subject to section 235, 238,  
21 or 241(a)(5) within 72 hours of a positive credible  
22 or reasonable fear determination.

23 “(3) An alien subject to this section, including  
24 all aliens who are entitled to a removal hearing  
25 under section 240, may at any time after being

1 served with the Secretary of Homeland Security’s  
2 decision under subsections (a), (b), or (c) request a  
3 redetermination of that decision by an immigration  
4 judge.

5 “(4) All custody decisions by the Secretary of  
6 Homeland Security shall be subject to redetermina-  
7 tion by an immigration judge. Nothing in this sub-  
8 section shall be construed to prevent an individual  
9 from requesting a bond redetermination.

10 “(5) The Attorney General or an immigration  
11 judge, at any time, may redetermine an alien’s clas-  
12 sification under subsection (c), the bond of someone  
13 released, or the custody status of someone placed in  
14 an alternatives to detention program. Nothing in  
15 this subsection would preclude a person from being  
16 released on bond after initially participating in an  
17 alternatives to detention program.”; and

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

21 (e) ELIGIBILITY AND OPERATIONS.—Nothing in this  
22 section shall be construed to modify the care and custody  
23 of unaccompanied alien children (as defined in section  
24 462(g)(2) of the Homeland Security Act (6 U.S.C.  
25 279(g)(2))) who shall be considered to be in the care and

1 exclusive legal and physical custody of the Secretary of  
2 Health and Human Services. Such children shall be sub-  
3 ject to removal proceedings under section 240 of the Im-  
4 migration and Nationality Act (8 U.S.C. 1229a), with the  
5 exception of children from contiguous countries eligible for  
6 administrative voluntary departure, and shall not be per-  
7 mitted to participate in the program.

8 (f) LESS RESTRICTIVE CUSTODIAL DETENTION.—If  
9 an alien is determined not to meet the requirements for  
10 release on recognizance, bond or parole, or subsequently  
11 does not meet the requirements for secure alternatives to  
12 detention programs, the alien shall be considered for  
13 placement in less restrictive forms of custody:

14 (1) Less restrictive forms of custodial detention  
15 include electronic monitoring such as the use of  
16 ankle bracelets that monitor an individual's move-  
17 ment and the use of similar electronic devices.

18 (2) An individualized determination shall be  
19 made in each alien's case about the use of electronic  
20 monitoring.

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

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

4 **SEC. 4. PROGRAM OVERSIGHT AND REVIEW.**

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

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

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

15           (b) **IMPLEMENTING REGULATIONS.**—Not later than  
16 180 days after the date of the enactment of this Act, the  
17 Secretary of Homeland Security shall promulgate regula-  
18 tions to implement the secure alternatives to detention  
19 programs.

20           (c) **REPORTING REQUIREMENTS.**—Not later than  
21 365 days after the date of the enactment of this Act and  
22 annually thereafter, the Secretary of Homeland Security  
23 shall submit to the Committee on Homeland Security of  
24 the House of Representatives, the Committee on the Judi-  
25 ciary of the House of Representatives, the Committee on

1 Homeland Security and Governmental Affairs of the Sen-  
2 ate, and the Committee on the Judiciary of the Senate  
3 a report that details all policies, regulations, and actions  
4 taken to comply with the provisions in this Act and the  
5 amendments made by this Act, including efforts to in-  
6 crease the use of the secure alternatives to detention pro-  
7 grams, and a description of efforts taken to ensure that  
8 all aliens in expedited removal proceedings are residing  
9 under conditions that are safe, secure, and healthy.

10 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
11 are authorized to be appropriated to the Secretary of  
12 Homeland Security such sums as may be necessary to  
13 carry out this Act and the amendments made by this Act.  
14 Amounts appropriated pursuant to this subsection shall  
15 remain available until expended.

○