

117TH CONGRESS
1ST SESSION

S. 2795

To require the Secretary of Homeland Security to use alternatives to detention for certain vulnerable immigrant populations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 21), 2021

Ms. CORTEZ MASTO (for herself, Mr. BLUMENTHAL, Mr. MARKEY, Mr. MERKLEY, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the Secretary of Homeland Security to use alternatives to detention for certain vulnerable immigrant populations, 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 “Alternatives to Deten-
5 tion Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **DEPENDENT CAREGIVER.**—The term “de-
9 pendent caregiver” means an individual who lives

1 with, and provides more than $\frac{1}{2}$ of the financial
2 support required by, a family member who is—

3 (A) younger than 18 years of age; or

4 (B) unable to engage in substantial em-
5 ployment due to a physical or mental health
6 condition or disability.

7 (2) EXECUTIVE DEPARTMENTS.—The term “ex-
8 ecutive departments” means the Federal Depart-
9 ments listed under section 101 of title 5, United
10 States Code.

11 (3) FAMILY CAREGIVER.—The term “family
12 caregiver” means an individual who lives with, and
13 provides more than $\frac{1}{2}$ of the personal care required
14 by, a family member who is—

15 (A) younger than 18 years of age; or

16 (B) unable to engage in substantial em-
17 ployment due to a physical or mental health
18 condition or disability.

19 (4) FAMILY MEMBER.—The term “family mem-
20 ber”, with respect to an individual receiving personal
21 care services or financial support, means an indi-
22 vidual who is—

23 (A) a parent or legal guardian;

24 (B) a spouse;

25 (C) a child;

1 (D) a step-family member; or

2 (E) an extended family member.

3 (5) IMMIGRATION LAWS.—The term “immigra-
4 tion laws” has the meaning given such term in sec-
5 tion 101(a)(17) of the Immigration and Nationality
6 Act (8 U.S.C. 1101(a)(17)).

7 (6) LEGAL GUARDIAN.—The term “legal guard-
8 ian” means a legal guardian, as defined under State
9 law or under the law of a foreign country.

10 (7) MEMBER OF A VULNERABLE POPU-
11 LATION.—The term “member of a vulnerable popu-
12 lation” means an individual who—

13 (A) is an asylum seeker or is otherwise
14 seeking lawful status;

15 (B) is a victim of torture or trafficking;

16 (C) has special religious, cultural, or spir-
17 itual considerations;

18 (D) is pregnant or nursing;

19 (E) is younger than 21 years of age;

20 (F) is older than 60 years of age;

21 (G) identifies as gay, lesbian, bisexual,
22 transgender, or intersex;

23 (H) is a victim or a witness of a crime;

24 (I) has a mental disorder or physical dis-
25 ability; or

(J) is experiencing severe trauma or is a survivor of torture or gender-based violence, as determined by an immigration judge or the Secretary based on information obtained—

(i) by the attorney or legal services provider of the individual during the intake process; or

(ii) through credible reporting by the individual.

(8) PARENT.—The term “parent” means a biological or adoptive parent of a child, whose parental rights have not been relinquished or terminated under State law or the law of a foreign country.

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

SEC. 3. ALTERNATIVES TO DETENTION UNDER THE IMMIGRATION LAWS.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish programs to provide alternatives to detention under the immigration laws.

(2) AVAILABILITY.—The programs required under paragraph (1) shall be available to an alien regardless of whether—

1 (A) a decision on a charge of removability
2 with respect to the alien is pending; or

3 (B) the alien is subject to an order of re-
4 moval.

5 (3) CONTINUUM OF SUPERVISION.—The pro-
6 grams required under paragraph (1) shall provide
7 for a continuum of supervision mechanisms and op-
8 tions, including community-based supervision and
9 community support.

10 (4) CONTRACTS WITH NONGOVERNMENTAL OR-
11 GANIZATIONS.—The Secretary may contract with
12 one or more nongovernmental organizations to pro-
13 vide services under this subsection and subsection
14 (b).

15 (b) RESTORATION OF THE FAMILY CASE MANAGE-
16 MENT PROGRAM.—Not later than 7 days after the date
17 of the enactment of this Act, the Secretary shall fully re-
18 store the U.S. Immigration and Customs Enforcement
19 Family Case Management Program, as constituted on
20 January 21, 2016, which shall—

21 (1) provide community supervision and commu-
22 nity support services, including case management
23 services, appearance services, and screening of aliens
24 who have been detained; and

1 (2) be carried out through a contract with a
 2 nongovernmental organization that has dem-
 3 onstrated expertise in providing such supervision
 4 and support services.

5 (c) DETERMINATION OF VULNERABLE POPULATION
 6 OR CAREGIVER STATUS REQUIRED.—

7 (1) IN GENERAL.—Subject to paragraphs (2)
 8 and (3), not later than 72 hours after taking an in-
 9 dividual into custody under the immigration laws,
 10 the Secretary, the Commissioner of U.S. Customs
 11 and Border Protection, an immigration officer, or an
 12 immigration judge shall make an individualized de-
 13 termination with respect to—

14 (A) whether the individual may participate
 15 in an alternatives to detention program, includ-
 16 ing the Family Case Management Program de-
 17 scribed in subsection (b); and

18 (B) the appropriate level of supervision for
 19 such individual.

20 (2) PRESUMPTION FOR PLACEMENT IN ALTER-
 21 NATIVES TO DETENTION PROGRAM.—

22 (A) IN GENERAL.—There shall be a pre-
 23 sumption for placement in an alternatives to de-
 24 tention program that is a community-based su-
 25 pervision program for any alien who is—

1 (i) taken into the physical custody of
2 the Department of Homeland Security;
3 and

4 (ii) a member of a vulnerable popu-
5 lation, a parent of a child who is younger
6 than 18 years of age, a dependent care-
7 giver, or a family caregiver.

8 (B) EXCEPTION.—The presumption de-
9 scribed in subparagraph (A) shall not apply if
10 the Secretary, the Commissioner of U.S. Cus-
11 toms and Border Protection, an immigration of-
12 ficer, or an immigration judge specifically deter-
13 mines that the alien is a threat to himself or
14 herself or to the public.

15 (3) EXCEPTIONS.—Alternatives to detention
16 programs shall not be available to any individual—

17 (A) who is detained pursuant to section
18 236A of the Immigration and Nationality Act
19 (8 U.S.C. 1226a); or

20 (B) for whom release on bond or recog-
21 nizance is determined to be a sufficient measure
22 to ensure appearances at immigration pro-
23 ceedings and public safety.

24 (d) COORDINATOR OF ALTERNATIVES TO DETEN-
25 TION.—

1 (1) IN GENERAL.—Not later than 30 days after
2 the date of the enactment of this Act, the Secretary
3 shall—

4 (A) establish within the Department of
5 Homeland Security the position of Coordinator
6 of Alternatives to Detention (referred to in this
7 subsection as the “Coordinator”), who shall re-
8 port directly to the Secretary; and

9 (B) appoint the Coordinator.

10 (2) RESOURCES.—The Secretary shall make
11 available to the Coordinator such personnel, funds,
12 and other resources as may be appropriate to enable
13 the Coordinator to carry out the mission described
14 in paragraph (3)(A).

15 (3) MISSION AND DUTIES.—

16 (A) MISSION.—The mission of the Coordi-
17 nator shall be to coordinate, in collaboration
18 with the executive departments, the use of al-
19 ternatives to detention programs.

20 (B) DUTIES OF COORDINATOR.—

21 (i) IN GENERAL.—The Coordinator
22 shall—

23 (I) serve as the primary point of
24 contact within the executive branch
25 for Congress, State and local govern-

1 ments, the private sector, and commu-
2 nity leaders with respect to the alter-
3 natives to detention programs; and

4 (II) in coordination with the ex-
5 ecutive departments, with respect to
6 Congress, State and local govern-
7 ments, the private sector, and commu-
8 nity leaders, manage information flow
9 about, requests for actions relating to,
10 and discussions on, such programs.

11 (ii) REPORTS REQUIRED.—

12 (I) MONTHLY REPORTS.—Not
13 later than 30 days after the date on
14 which the Coordinator is appointed,
15 and every 30 days thereafter, the Co-
16 ordinator shall submit a report to
17 Congress that includes, for the report-
18 ing period—

19 (aa) the number of individ-
20 uals detained under the immigra-
21 tion laws—

22 (AA) pending a decision
23 on whether the individual is
24 to be removed; and

1 (BB) after the issuance
2 of a removal order;

3 (bb) an assessment whether
4 any individual described in item
5 (aa) is subject to the special rule
6 under subsection (c)(2)(B); and

7 (cc) the number of individ-
8 uals participating in an alter-
9 natives to detention program es-
10 tablished under subsection (a),
11 disaggregated by the level of su-
12 pervision of such individuals.

13 (II) ANNUAL REPORTS.—Not
14 later than 1 year after the date on
15 which the Coordinator is appointed,
16 and annually thereafter, the Coordi-
17 nator shall submit a report to Con-
18 gress that includes—

19 (aa) guidance and require-
20 ments for referral and placement
21 decisions in alternatives to deten-
22 tion programs;

23 (bb) information on enroll-
24 ment in alternatives to detention

1 programs, disaggregated by field
2 office;

3 (cc) information on the
4 length of enrollment in alter-
5 natives to detention programs,
6 disaggregated by type of alter-
7 native to detention program; and

8 (dd) information on the pop-
9 ulation enrolled in alternatives to
10 detention programs,
11 disaggregated by type of alter-
12 native to detention program and
13 point of apprehension.

14 (C) DUTIES OF EXECUTIVE DEPART-
15 MENTS.—The heads of the executive depart-
16 ments shall—

17 (i) respond promptly to any request
18 by the Coordinator;

19 (ii) consistent with applicable law,
20 provide such information as the Coordi-
21 nator considers necessary to carry out the
22 mission of the Coordinator; and

23 (iii) otherwise cooperate with the Co-
24 ordinator to the maximum extent prac-

1 ticable to facilitate the performance of the
2 mission described in subparagraph (A).

3 (e) GAO STUDY AND REPORT.—The Comptroller
4 General of the United States shall—

5 (1) conduct a study on the use and effectiveness
6 of the alternatives to detention programs established
7 pursuant to subsection (a); and

8 (2) not later than 2 years after the date of the
9 enactment of this Act, submit a report to Congress
10 that contains the results of the study conducted pur-
11 suant to paragraph (1).

12 **SEC. 4. SAVINGS PROVISIONS.**

13 (a) FEDERAL LAW.—Nothing in this Act may be con-
14 strued to supersede or modify—

15 (1) the William Wilberforce Trafficking Victims
16 Protection Reauthorization Act of 2008 (8 U.S.C.
17 1232 et seq.);

18 (2) the Stipulated Settlement Agreement filed
19 in the United States District Court for the Central
20 District of California on January 17, 1997 (CV 85–
21 4544–RJK) (commonly known as the “Flores Settle-
22 ment Agreement”);

23 (3) the Homeland Security Act of 2002 (6
24 U.S.C. 101 et seq.); or

1 (4) any applicable Federal child welfare law, in-
2 cluding the Adoption and Safe Families Act of 1997
3 (Public Law 105–89).

4 (b) STATE LAW.—Nothing in this Act may be con-
5 strued to supersede or modify any applicable State child
6 welfare law.

