H. R. 2415

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2019

Ms. JAYAPAL (for herself and Mr. SMITH of Washington) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Dignity for Detained Immigrants Act of 2019”.

SECTION 2. STANDARDS FOR DHS DETENTION FACILITIES.

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security
shall, by rulemaking, establish detention standards for each facility at which aliens in the custody of the Department of Homeland Security are detained. Such standards shall provide, at a minimum, the level of protections for detainees described in the American Bar Association’s Civil Immigration Detention Standards (adopted in August, 2012, and as amended in August, 2014). On a biennial basis, the Secretary shall review and update such standards, as appropriate.

SEC. 3. OVERSIGHT AND TRANSPARENCY FOR DHS DETENTION FACILITIES.

(a) Periodic Inspections.—

(1) In general.—On a periodic basis, and not less than annually, the Inspector General of the Department of Homeland Security shall conduct an unannounced inspection of each facility at which aliens in the custody of the Department of Homeland Security are detained in order to ensure that each such facility is in compliance with the standards under section 2. Not later than 60 days after conducting an inspection under this subsection, the Inspector General shall make a report of such inspection publicly available on the website of the Department of Homeland Security, and submit such report to the Secretary of Homeland Security.
(2) Failure to comply with standards.—

   (A) Initial failure.—In the case that the Inspector General determines that a facility has failed to comply with the standards under section 2 for the first time during any 2-year period, and that such noncompliance constitutes a deficiency that threatens the health, safety, or the due process rights of detainees, the Inspector General shall notify the Secretary of Homeland Security of such finding, and the Secretary shall—

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

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

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

(II) not later than 60 days after the issuance of the warning described in subclause (I), certify to the Inspector General that the remedial measures have been carried out.

(B) SUBSEQUENT FAILURES.—In the case that the Inspector General determines that a facility has failed to comply with the standards under section 2 in two investigations under paragraph (1) during any 2-year period, and that such noncompliance constitutes a deficiency that threatens the health, safety, or the constitutional rights of detainees, the Inspector General shall notify the Secretary of Homeland Security of such finding, and the Secretary shall—

(i) in the case of a facility that is not owned by the Department of Homeland Security, not later than 30 days after receiving such notification, transfer each detainee to a facility that does so comply, and terminate the contract with the owner of the facility; and
(ii) in the case of a facility that is owned by the Department of Homeland Security, not later than 60 days after receiving such notification, transfer each detainee to a facility that does so comply, and suspend the use of such facility until such time as the Inspector General certifies to the Secretary that the facility is in compliance with such standards, and makes publicly available on the website of the Department of Homeland Security information relating to the remedial measures taken.

(b) Notification of Death in Custody.—Not later than 24 hours after the death of an alien in the custody of the Department of Homeland Security, the Secretary of Homeland Security shall notify the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate of the death of such alien.

(e) Investigations on Death in Custody.—Not later than 30 days after the death of an alien in the custody of the Department of Homeland Security, the Sec-
retary of Homeland Security shall conduct an investiga-
tion into that death, which shall include a root cause anal-
ysis that identifies any changes to policies, practices,
training curricula, staffing, or potential system-wide er-
rors that could reduce the probability of such an event
in the future. Not later than 60 days after such a death,
the Secretary shall make a report describing the results
of such investigation publicly available on the website of
the Department of Homeland Security. The root cause
analysis described in the previous sentence must include
appropriately qualified personnel, which, at a minimum,
will consist of a medical professional qualified in any field
germane to the death, and shall be performed in accord-
ance with professional medical standards for investigating
sentinel events in medical care facilities, including the
Sentinel Event Policy promulgated by The Joint Commis-

(d) DEFINITION.—The term “death of an alien in the
custody of the Department of Homeland Security” means
any death of an alien occurring while the alien is under
the supervision of the Department of Homeland Security,
regardless of the location of the death, if the death may
have resulted from a health problem, which began, existed
during, or was exacerbated during the detention of the
alien.
(e) REPORT TO CONGRESS.—On an annual basis, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the inspections and oversight of facilities at which aliens in the custody of the Department of Homeland Security are detained. Such report shall include information relating to, for the preceding year—

(1) each detention facility which the Inspector General found was not in compliance with the standards under section 2 pursuant to an investigation conducted under subsection (a)(1);

(2) any remedial actions taken, or that the Secretary plans to take, in order to comply with such standards; and

(3) whether the remedial actions described in paragraph (2) were successful in bringing the facility into compliance with such standards.

(f) CLASSIFICATION OF DOCUMENTS FOR PURPOSES OF FOIA.—The reports under subsections (a) and (b), and any contract between the Department of Homeland Security and a private or public entity which provides for the use of a facility not owned by the Department of Homeland Security to detain aliens in the custody of the Department of Homeland Security are considered records
for purposes of section 552 of title 5, United States Code, and do not qualify for the exception under subsection (b)(4) of such section.

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

(1) The name and location of each facility.

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

(3) As of the first day of the month, the number of beds available in each facility, disaggregated by gender.

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

(5) The average number of aliens detained in the facility for the current year, and for the preceding month, disaggregated by gender and classification as a child or as an adult.

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

(7) In the case of a facility that is not owned by the Department of Homeland Security, the na-
ture of the contract providing for the detention of
aliens at that facility.

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

(h) **Online Detainee Locator System.**—The
Secretary of Homeland Security shall ensure that the on-
line detainee locator system maintained by the Depart-
ment of Homeland Security, or any successor system, is
updated not later than 12 hours after an alien is taken
into custody or released from custody by the Department
of Homeland Security, transferred to, or detained in, a
detention facility, or removed from the United States.

(i) **Information Collected and Maintained for
Aliens in DHS Custody.**—The Secretary of Homeland
Security shall collect and maintain, for each alien in the
custody of the Department of Homeland Security, the fol-
lowing information:

(1) The gender and age of the alien.

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

(3) The country of origin of the alien.

(4) Whether the alien is considered a vulnerable
person (as such term is defined in section 236(g) of
the Immigration and Nationality Act (8 U.S.C.
1226(g)) or a primary caregiver.
(5) The provision of law under with the Secretary is authorized to detain the alien.

(6) The location where the alien is detained.

(7) Any transfer of the alien to another detention facility, and the reason for such transfer.

(8) The status and basis of any removal proceedings.

(9) The initial custody determination made by Immigration and Customs Enforcement, and any review of that determination.

(10) If applicable, the date of the alien’s release or removal, and the reason for such release or removal.

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

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

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

SEC. 4. CAUSE OF ACTION.

(a) IN GENERAL.—An individual who is detained in a facility that is required to comply with the standards described in section 2, and who is injured as a result of a violation of such standards, may file a claim in the appropriate district court of the United States.
(b) RECOVERY.—In a civil action under this section, the court may order injunctive relief and compensatory damages, and may award the prevailing party reasonable attorney fees, and costs.

SEC. 5. DHS DETENTION FACILITY CONSTRUCTION AND MAINTENANCE.

(a) RESTRICTION ON CONSTRUCTION OF DHS FACILITIES.—Not later than 180 days before initiating, or entering into a contract for, the construction of a new facility or to expand an existing facility for the detention of aliens in the custody of the Department of Homeland Security, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate a notification of the plan to construct or expand such facility, including the location, size, and capacity of such facility, the anticipated timeline and cost of constructing or expanding such facility, and the intended population to be detained at such facility, including the gender and ages of such population. The Secretary will make this information publicly available on the website of the Department of Homeland Security.
(b) PHASE-OUT OF PRIVATE DETENTION FACILITIES

AND USE OF JAILS.—

(1) SECURE DETENTION FACILITIES.—Beginning on the date of the enactment of this Act, the Secretary of Homeland Security may not enter into or extend any contract or agreement with any public or private entity which owns or operates a detention facility for use of that facility to detain aliens in the custody of the Department of Homeland Security, and shall terminate any such contract not later than the date that is 3 years after the date of the enactment of this Act. Beginning on the date that is 3 years after the date of the enactment of this Act, any facility at which aliens in the custody of the Department of Homeland Security are detained shall be owned and operated by the Department of Homeland Security.

(2) NON-SECURE DETENTION PROGRAMS.—Beginning on the date of the enactment of this Act, the Secretary of Homeland Security may not enter into or extend any contract with any public or private for-profit entity which owns or operates a program or facility that provides for non-residential detention-related activities for aliens who are subject to monitoring by the Department of Homeland Secu-
rity, and shall terminate any such contract not later than the date that is 3 years after the date of the enactment of this Act. Beginning on the date that is 3 years after the date of the enactment of this Act, any such program or facility shall be owned and operated by a nonprofit organization or by the Department of Homeland Security.

(3) Publication of Plan.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall develop, and make publicly available, a plan and timeline for the implementation of this subsection.

SEC. 6. APPEARANCE OF DETAINED ALIENS FOR OTHER LEGAL MATTERS.

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

SEC. 7. PROCEDURES FOR DETAINING ALIENS.

(a) Probable Cause and Custody Determination Hearings.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—
(1) by amending subsection (a) to read as follows:

“(a) Arrest, Detention, and Release.—On a warrant issued by an immigration judge, or pursuant to section 287(a)(2), the Secretary of Homeland Security may arrest an alien, and in accordance with this section, detain the alien or release the alien on bond, subject to conditions, or recognizance, pending a decision on whether the alien is to be removed from the United States.”;

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

(3) by adding at the end the following:

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

“(c) Custody Determination.—

“(1) Initial determination.—Not later than 48 hours after taking an alien into custody under the authority provided by this section or section 235 of this Act, or those subject to a reinstated order of removal pursuant to section 241(a)(5) who have
been found to have a credible or reasonable fear of return, the Secretary of Homeland Security shall make an initial custody determination with regard to that alien, and provide that determination in writing to the alien. If the Secretary determines that the release of an alien will not reasonably ensure the appearance of the alien as required or will endanger the safety of any other person or the community, the custody determination under this paragraph will impose the least restrictive conditions, as described in paragraph (4).

“(2) Timing.—If an alien seeks to challenge the initial custody determination under paragraph (1), the alien shall be provided with the opportunity for a hearing before an immigration judge to determine whether the alien should be detained, which hearing shall occur not later than 72 hours after the initial custody determination.

“(3) Presumption of Release.—In a hearing under this subsection, there shall be a presumption that the alien should be released. The Secretary of Homeland Security shall have the duty of rebutting this presumption, which may only be shown based on clear and convincing evidence, including credible and individualized information, that the use of alter-
natives to detention will not reasonably ensure the appearance of the alien at removal proceedings, or that the alien is a threat to another person or the community. The fact that an alien has a criminal charge pending against the alien may not be the sole factor to justify the continued detention of the alien.

“(4) Least restrictive conditions required.—If an immigration judge determines pursuant to a hearing under this section that the release of an alien will not reasonably ensure the appearance of the alien as required or will endanger the safety of any other person or the community, the immigration judge shall order the least restrictive conditions, or combination of conditions, that the judge determines will reasonably ensure the appearance of the alien as required and the safety of any other person and the community, which may include release on recognizance, secured or unsecured release on bond, or participation in a program described in subsection (f). Any conditions assigned to an alien pursuant to this paragraph shall be reviewed by the immigration judge on a monthly basis.

“(5) Special rule for vulnerable persons and primary caregivers.—In the case that the alien who is the subject of a custody determina-
tion under this subsection is a vulnerable person or a primary caregiver, the alien may not be detained unless the Secretary of Homeland Security demonstrates, in addition to the requirements under paragraph (3), that it is unreasonable or not practicable to place the individual in a community-based supervision program.

“(6) DEFINITIONS.—In this subsection:

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

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

“(C) VULNERABLE PERSON.—The term ‘vulnerable person’ means an individual who—
“(i) is under 21 years of age or over 60 years of age;
“(ii) is pregnant;
“(iii) identifies as lesbian, gay, bisexual, transgender, or intersex;
“(iv) is a victim or witness of a crime;
“(v) has filed a nonfrivolous civil rights claim in Federal or State court;
“(vi) has filed, or is a material witness to, a bonafide workplace claim;
“(vii) has a serious mental or physical illness or disability;
“(viii) has been determined by an asylum officer in an interview conducted under section 235(b)(1)(B) to have a credible fear of persecution or torture;
“(ix) has limited English language proficiency and is not provided access to appropriate and meaningful language services in a timely fashion; or
“(x) has been determined by an immigration judge or the Secretary of Homeland Security to be experiencing severe trauma or to be a survivor of torture or gender-based violence, based on informa-
tion obtained during intake, from the
alien’s attorney or legal service provider, or
through credible self-reporting.

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

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

“(d) RELEASE UPON AN ORDER GRANTING RELIEF
FROM REMOVAL.—In the case of an alien with respect to
whom an immigration judge has entered an order pro-
viding for relief from removal, including an order granting
asylum, or providing for withholding, deferral, or cancella-
tion of removal, which order is pending appeal, the Sec-
retary of Homeland Security shall immediately release the
alien upon entry of the order, and may impose only rea-
sonable conditions on the alien’s release from custody.

“(e) **Prohibition on Detention of Children.**—
Notwithstanding any other provision of this Act, the Sec-
retary of Homeland Security is prohibited from detaining
anyone under the age of 18 in a facility operated or con-
tracted by U.S. Immigration and Customs Enforcement.

“(f) **Alternatives to Detention.**—

“(1) **In General.**—The Secretary of Homeland
Security shall establish programs that provide alter-
atives to detaining aliens, which shall offer a con-
tinuum of supervision mechanisms and options, in-
cluding community-based supervision programs and
community support. The Secretary may contract
with nongovernmental community-based organiza-
tions to provide programs, which may include case
management services, appearance assistance serv-
dices, and screenings of aliens who have been de-
tained.

“(2) **Individualized Determination Re-
quired.**—In determining whether to order an alien
to participate in a program under this subsection,
the Secretary, or the immigration judge, as appro-
priate shall make an individualized determination to determine the appropriate level of supervision for the alien. Participation in a program under this subsection may not be ordered for an alien for whom it is determined that release on reasonable bond or recognizance will reasonably ensure the appearance of the alien as required and the safety of any other person and the community.

“(3) Prohibition on fees for monitoring devices.—In a case in which an alien is required to wear an ankle monitor or other homing device as an alternative to detention, the alien may not be charged any fee associated with such monitor or device that exceeds the cost of maintaining and operating such monitor or device.”; and

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

(b) Probable Cause Hearing.—Section 287(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(2)) is amended by striking “but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States” and inserting “but the alien arrested shall be pro-
vided with a hearing before an immigration judge not later than 48 hours after being taken into custody to determine whether there is probable cause to believe that the alien does not have the right to enter or remain in the United States, which burden to establish probable cause shall be on the Secretary of Homeland Security”.

(c) **MANDATORY DETENTION REPEALED.**—

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

(A) in section 235(b)—

(i) in paragraph (1)(B)—

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

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

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

(B) by striking section 236A;

(C) in section 238(a)(2), by striking “pursuant to section 236(c),”; and

(D) in section 506(a)(2)—

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

(ii) in subparagraph (A)—
(I) in the matter preceding clause (i), by striking “lawfully admitted for permanent residence”;

(II) by striking clause (i); and

(III) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

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

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

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

(C) by striking subclause (III).

(d) ALIENS ORDERED REMOVED.—

(1) IN GENERAL.—Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) is amended—

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

(B) by amending paragraph (2) to read as follows:
“(2) Initial Custody Redetermination Hearing.—

“(A) In general.—Not later than 72 hours after the entry of a final administrative order of removal, the alien ordered removed shall be provided with a custody redetermination hearing before an immigration judge.

“(B) Presumption of detention.—For purposes of the hearing under subparagraph (A), the alien shall be detained during the removal period unless the alien can show by clear and convincing evidence that the alien’s removal is not reasonably foreseeable or that the alien does not pose a risk to the safety of any individual or to the community.”;

(C) in paragraph (3)—

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

(ii) in the matter preceding subparagraph (A), by striking “the alien, pending removal, shall be subject to supervision under” and inserting the following: “except as provided in paragraph (6), any alien who has been detained during the removal period shall be released from custody,
pending removal, subject to individualized supervision requirements in accordance with’’;

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

“(6) SUBSEQUENT CUSTODY REDETERMINATION HEARINGS.—

“(A) IN GENERAL.—The Secretary of Homeland Security may request a subsequent redetermination hearing before an immigration judge seeking continued detention for an alien ordered to be detained pursuant to paragraph (2) who has not been removed within the removal period.

“(B) STANDARD.—An alien may only be detained after the removal period upon a showing by the Secretary of Homeland Security that—

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

“(ii) the alien poses a risk to the safety of an individual or the community, which may only be established based on credible and individualized information and may not be established based only the fact
that the alien has been charged with or is suspected of a crime.

“(C) Period of detention.—An alien may not be detained pursuant to an order under this paragraph for longer than a 60-day period. The Secretary of Homeland Security may seek subsequent redetermination hearings under this paragraph in order to continue detaining an alien beyond each such 60-day period.”; and

(E) by striking paragraph (7).

(2) Technical and Conforming Amendments.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

(A) in section 238 (8 U.S.C. 1228)—

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


and
(III) by striking “section 241(a)(2)(A)(i)” and inserting “section 237(a)(2)(A)(i)” and
(ii) in the second subsection (c)—
   (I) in paragraph (2)(B), by striking “section 241(a)(2)(A)” and inserting “section 237(a)(2)(A)”;
   (II) in paragraph (4), by striking “section 241(a)” and inserting “section 237(a)”;
   (B) in section 276(b)(4) (8 U.S.C. 1326(b)(4)), by striking “section 241(a)(4)(B)” and inserting “section 237(a)(4)(B)”;
   (C) in section 501(1) (8 U.S.C. 1531(1)), by striking “section 241(a)(4)(B)” and inserting “section 237(a)(4)(B)”.

SEC. 8. SENSE OF CONGRESS.

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