

116TH CONGRESS
1ST SESSION

S. 1243

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

IN THE SENATE OF THE UNITED STATES

APRIL 30, 2019

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

10 (a) PERIODIC INSPECTIONS.—

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

24 (2) FAILURE TO COMPLY WITH STANDARDS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **SEC. 4. CAUSE OF ACTION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(c) CUSTODY DETERMINATION.—

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

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

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

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

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

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

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

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

“(6) DEFINITIONS.—In this subsection:

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

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

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

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

3 “(ii) is pregnant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(f) ALTERNATIVES TO DETENTION.—

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

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

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

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

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

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

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

7 (c) MANDATORY DETENTION REPEALED.—

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

10 (A) in section 235(b)—

11 (i) in paragraph (1)(B)—

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

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

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

18 (B) by striking section 236A;

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

21 (D) in section 506(a)(2)—

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

25 (ii) in subparagraph (A)—

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

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

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

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

15 (C) by striking subclause (III).

16 (d) ALIENS ORDERED REMOVED.—

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

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

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

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

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

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

16 (C) in paragraph (3)—

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

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

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

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

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

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

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

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

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

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

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

11 (E) by striking paragraph (7).

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

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

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

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

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

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

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

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

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