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 20, 2023

Ms. JAYAPAL (for herself, Mr. SMITH of Washington, Mr. AUCHINCLOSS, Ms. BALINT, Ms. BARRAGÁN, Mr. BEYER, Mr. BLUMENAUER, Ms. BONAMICI, Mr. BOWMAN, Mr. BOYDE of Pennsylvania, Ms. BROWN, Ms. BROWNLEY, Ms. BUSH, Mr. CÁRDENAS, Mr. CARSON, Mr. CARTER of Louisiana, Mr. CASAR, Mr. CASTEN, Mr. CASTRO of Texas, Mrs. CHERFILUS-MCCORMICK, Ms. CHU, Mr. CICILLINE, Ms. CLARKE of New York, Mr. CLEAVER, Mr. COHEN, Mr. CONNOLLY, Ms. CROCKETT, Mr. CROW, Mr. DAVIS of Illinois, Ms. DEAN of Pennsylvania, Mr. DESAULNIER, Mrs. DINGEL, Mr. DOGGETT, Ms. ESCOBAR, Mr. ESPLAÏLLAT, Mr. EVANS, Mrs. FOUSSHEE, Ms. LOIS FRANKEL of Florida, Mr. GALLEGO, Mr. GARAMENDI, Mr. GARCÍA of California, Mr. GARCIA of Texas, Mr. GOMEZ, Mr. GREEN of Texas, Mr. HIMES, Mr. HUFFMAN, Mr. IVES, Ms. JACKSON LEE, Ms. JACOBS, Mr. JOHNSON of Georgia, Ms. KAMILAER-DOVE, Ms. KELLY of Illinois, Mr. KIHAAN, Mr. KILMER, Mr. KRISHNAMOORTHI, Mr. LARSEN of Washington, Ms. LEE of California, Ms. LEE of Pennsylvania, Ms. LÉGER FERNANDEZ, Mr. LEVIN, Mr. LIEU, Ms. LOFgren, Ms. MATSUI, Ms. MCCOLLUM, Mr. MCGARVEY, Mr. MCCOY, Mr. MEERZ, Ms. MENG, Ms. MOORE of Wisconsin, Mr. NADLER, Mrs. NAPOLITANO, Ms. NORTON, Ms. OCASIO-CORTEZ, Ms. OMAR, Mr. PALLONE, Mr. PAYNE, Ms. PINGREE, Mr. PORTEN, Ms. PRESSLEY, Mr. QUIGLEY, Mrs. RAMÍREZ, Ms. SALINAS, Mr. SARBAES, Ms. SCANLON, Ms. SCHAUKOWSKY, Ms. SEWELL, Mr. SHERMAN, Mr. SOTO, Ms. STANSBURY, Mr. SWALWELL, Mr. TAKANO, Mr. THANEDAR, Mr. THOMPSON of Mississippi, Ms. TITUS, Ms. TLAIB, Ms. TOLKODA, Mr. TRONE, Mr. VEASEY, Ms. VELÁZQUEZ, Mrs. WATSON COLEMAN, Ms. WILLIAMS of Georgia, Ms. WILSON of Florida, and Ms. DEGETTE) 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 Representa-
tives 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”.

SEC. 2. 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.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE COMMITTEES OF CON-
GRESS.—The term “appropriate committees of Con-
gress” means—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on Homeland Security and Governmental Affairs of the Senate;

(C) the Committee on the Judiciary of the House of Representatives; and
(D) the Committee on Homeland Security of the House of Representatives.

(2) Department.—The term “Department” means the Department of Homeland Security.

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

SEC. 4. STANDARDS FOR DEPARTMENT OF HOMELAND SECURITY DETENTION FACILITIES.

(a) Rulemaking.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall, by regulation, establish detention standards for each facility at which aliens in the custody of the Department are detained.

(b) Minimum Protection.—The standards established under subsection (a) 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 modified in August 2014).

(c) Biennial Updates.—Not less frequently than biennially, the Secretary shall review and update such standards, as appropriate.

SEC. 5. OVERSIGHT AND TRANSPARENCY.

(a) Periodic Inspections.—
(1) IN GENERAL.—On a periodic basis, not less frequently than annually, the Inspector General of the Department (referred to in this section as the “Inspector General”) shall conduct an unannounced, in-person inspection of each facility at which aliens in the custody of the Department are detained to ensure that each such facility is in compliance with the standards established under section 4.

(2) REPORT.—Not later than 60 days after conducting an inspection under paragraph (1), the Inspector General shall:

(A) submit a report to the Secretary containing the results of such inspection; and

(B) make the report available to the public on the internet website of the Department.

(3) FAILURE TO COMPLY WITH STANDARDS.—

(A) INITIAL FAILURE.—

(i) IN GENERAL.—If the Inspector General determines that a facility has failed to comply with the standards established under section 4 for the first time during any 2-year period, and such non-compliance constitutes a deficiency that threatens the health, safety, or the due process rights of detainees—
(I) the Inspector General shall 
notify the Secretary of such deter-
mination; and

(II) the Secretary shall—

(aa) in the case of a facility 
not owned by the Department, 

impose a meaningful fine of not 
less than 10 percent of the value 
of the contract with the facility; 

and

(bb) in the case of a facility 
owned by the Department—

(AA) issue a written 
warning to the facility not 

later than 30 days after re-
ceiving 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

(BB) not later than 60 

days after the issuance of a 

warning under subitem
(AA), certify to the Inspector General that the remedial measures have been carried out.

(ii) **FOLLOW-UP INSPECTION.**—Not later than 180 days after the date on which the Inspector General makes a notification under clause (i)(I), the Inspector General shall conduct an in-person inspection of the facility to determine whether the facility has achieved compliance with the standards established under section 4.

(B) **SUBSEQUENT FAILURES.**—If the Inspector General determines that a facility has failed to comply with the standards established under section 4 in 2 or more inspections under paragraph (1) during any 2-year period, and such noncompliance constitutes a deficiency that threatens the health, safety, or the rights of detainees—

(i) the Inspector General shall notify the Secretary of such determination; and

(ii) the Secretary shall—

(I) in the case of a facility not owned by the Department—
(aa) not later than 30 days after receiving such notification, transfer each detainee to a facility that does so comply; and

(bb) terminate the contract with the owner or operator of the facility; and

(II) in the case of a facility owned by the Department—

(aa) not later than 60 days after receiving such notification, transfer each detainee to a facility that does so comply; and

(bb) suspend the use of such facility until such time as the Inspector General—

(AA) certifies to the Secretary that the facility is in compliance with such standards; and

(BB) makes available to the public on the internet website of the Department information relating to the remedial measures taken.
(b) DEATHS IN CUSTODY.—

(1) NOTIFICATION.—Not later than 24 hours after the death of an alien in the custody of the Department, the Secretary shall notify the appropriate committees of Congress of such death.

(2) INVESTIGATIONS.—

(A) IN GENERAL.—Not later than 30 days after the death of an alien in the custody of the Department, the Secretary shall conduct an investigation into such death, which shall include a root cause analysis that identifies any changes to policies, practices, training curricula, staffing, or potential system-wide errors that may reduce the probability of such an event in the future.

(B) ROOT CAUSE ANALYSIS.—Each root cause analysis required by subparagraph (A) shall be carried out—

(i) by appropriately qualified personnel, including 1 or more medical professionals qualified in a field relevant to the death; and

(ii) in accordance with professional medical standards for investigating sentinel events in medical care facilities, including
the Sentinel Event Policy promulgated by
The Joint Commission.

(C) Public report.—Not later than 60
days after such a death, the Secretary shall—

(i) issue a full report describing the
results of the investigation required by
subparagraph (A); and

(ii) make the report available to the
public on the internet website of the De-
partment.

(D) Review by inspector general.—
Not later than 90 days after the death of an
alien in the custody of the Department, the In-
spector General shall conduct a review of the
report issued under subparagraph (C) with re-
spect to such death.

(3) Definition of death of an alien in
the custody of the department.—The term
“death of an alien in the custody of the Depart-
ment” means the death of an alien occurring while
the alien is under the supervision of the Depart-
ment, regardless of—

(A) the location of the death; or

(B) whether the death may have resulted
from a health problem that existed before or
during, or was exacerbated by, the detention of the alien.

(c) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not less frequently than annually, the Secretary shall submit to the appropriate committees of Congress a report on the inspections and oversight of facilities at which aliens in the custody of the Department are detained.

(2) ELEMENTS.—Each report required by paragraph (1) shall include, for the preceding year—

(A) a list of each detention facility found by the Inspector General to be in noncompliance with the standards established under section 4;

(B) for each such facility, a description of the remedial actions taken, or planned to be taken, by the Secretary so as to achieve compliance with such standards; and

(C) a determination as to whether such remedial actions have succeeded in bringing the facility into compliance with such standards.

(d) CLASSIFICATION OF DOCUMENTS FOR PURPOSES OF FOIA.—The reports required by subsections (a)(2) and (b)(2)(C), and any contract between the Department and a private or public entity that provides for the use
of a facility not owned by the Department to detain aliens in the custody of the Department, 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.

(e) FACILITIES MATRIX.—

(1) IN GENERAL.—On the first day of each month, the Secretary shall ensure that a publicly accessible internet website of the Department contains the information described in paragraph (2) for each facility at which aliens in the custody of the Department are detained.

(2) ELEMENTS.—The information referred to in paragraph (1) is, for each such facility, the following:

(A) The name and location of the facility.

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

(C) The number of beds available in the facility on the last day of the preceding month, disaggregated by gender.

(D) The total number of aliens detained in the facility on the last day of the preceding month, disaggregated by gender and classification as a child or as an adult.
(E) Whether the facility is used to detain aliens for longer than 72 hours.

(F) Whether the facility is used to detain aliens for longer than 7 days.

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

(H) Whether the facility is in compliance with the standards established under section 4.

(I) In the case of a facility not owned by the Department, a description of the nature of the contract providing for the detention of aliens at the facility.

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

(f) ONLINE DETAINEE LOCATOR SYSTEM.—The Secretary shall ensure that the online detainee locator system maintained by the Department, or any successor system, is updated not later than 12 hours after an alien is—

(1) taken into, or released from, custody by the Department;
(2) transferred to, or detained in, a detention
facility; or
(3) removed from the United States.

(g) INFORMATION COLLECTED AND MAINTAINED
FOR ALIENS IN DHS CUSTODY.—The Secretary shall col-
lect and maintain, for each alien in the custody of the De-
partment, the following information:

(1) The gender and age of the alien.
(2) The date on which the alien was taken into
such custody.
(3) The country of nationality of the alien.
(4) Whether the alien is considered a vulnerable
person (as such term is defined in section 236(c)(5)
of the Immigration and Nationality Act, as amended
by section 9) or a primary caregiver.
(5) The provision of law pursuant to which the
Secretary is authorized to detain the alien.
(6) The name of the facility in which the alien
is detained.
(7) With respect to any transfer of the alien to
another detention facility—
(A) a description of the transfer of the
alien to the other detention facility;
(B) the reason for the transfer; and
(C) in the case of a transfer effectuated despite presence of the alien's legal counsel or immediate relative in the jurisdiction of the original detention facility, a justification for such transfer.

(8) The status and basis of any removal proceedings of which the alien is the subject.

(9) The initial custody determination made by U.S. Immigration and Customs Enforcement, including any review of such determination.

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

(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 at the border or in the interior of the United States.

SEC. 6. CIVIL ACTIONS.

(a) CIVIL ACTION FOR VIOLATION OF STANDARDS.—

(1) IN GENERAL.—An individual detained in a facility required to comply with the standards established under section 4 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.

(2) RECOVERY.—In a civil action under this
subsection, the court may order injunctive relief and
compensatory damages, and may award the pre-
vailing party reasonable attorney fees, and costs.

SEC. 7. DETENTION FACILITY CONSTRUCTION AND MAIN-
TENANCE.

(a) RESTRICTION ON CONSTRUCTION.—

(1) IN GENERAL.—Not later than 180 days be-
fore initiating, or entering into a contract for, the
construction of a new facility or the expansion of an
existing facility for the detention of aliens in the
custody of the Department, the Secretary shall sub-
mit to the appropriate committees of Congress a no-
tification of the plan to construct or expand such fa-
cility, including—

(A) the location, size, and capacity of such
facility;

(B) the anticipated timeline and cost of
constructing or expanding such facility; and

(C) the intended population to be detained
at such facility, including the gender and ages
of such population.
(2) **Public Availability.**—The Secretary shall make the information described in paragraph (1) available to the public on the internet website of the Department.

(b) **Phase-Out of Private Detention Facilities and Use of Jails.**—

(1) **Secure Detention Facilities.**—

(A) **In General.**—The Secretary—

(i) may not enter into or extend any contract or agreement with any public or private for-profit entity that owns or operates a detention facility for use of such facility to detain aliens in the custody of the Department; and

(ii) shall terminate any contract or agreement described in clause (i) not later than the date that is 3 years after the date of the enactment of this Act.

(B) **Ownership Requirement.**—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 are detained shall be owned and operated by the Department.
(2) ALTERNATIVES TO DETENTION PROGRAMS.—

(A) IN GENERAL.—The Secretary—

(i) may not enter into or extend any contract or agreement with any public or private for-profit entity for the operation of a program or the use of a facility for nonresidential, detention-related activities for aliens who are subject to monitoring by the Department; and

(ii) shall terminate any contract or agreement described in clause (i) not later than the date that is 3 years after the date of the enactment of this Act.

(B) OWNERSHIP AND OPERATION REQUIREMENT.—Beginning on the date that is 3 years after the date of the enactment of this Act, any program or facility used for the activities described in subparagraph (A)(i) shall be owned and operated by a nonprofit organization or the Department.

(3) IMPLEMENTATION PLAN.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall develop, and make publicly avail-
able, a plan and timeline for the implementation of this subsection.

SEC. 8. APPEARANCE OF DETAINED ALIENS FOR OTHER LEGAL MATTERS.

The Secretary shall establish rules to ensure that any alien detained in the custody of the Department 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 to such court proceeding.

SEC. 9. 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 to read as follows:

“APPREHENSION AND DETENTION OF ALIENS

“Sec. 236. (a) ARREST, DETENTION, AND RELEASE.—

“(1) IN GENERAL.—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) EXEMPTION FOR UNACCOMPANIED ALIEN CHILDREN.—

“(A) IN GENERAL.—This section shall not apply to unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2))).

“(B) TRANSFER OF CUSTODY.—Any unaccompanied alien child in the custody of the Secretary of Homeland Security shall be transferred to the custody of the Secretary of Health and Human Services pursuant to section 235(b)(3) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(b)(3)).

“(b) BOND DETERMINATION.—

“(1) IN GENERAL.—An immigration judge who releases an alien on bond under this section shall—

“(A) 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

“(B) set bond at an amount no greater than necessary to ensure the alien’s appearance for removal proceedings.
“(2) INABILITY TO PAY BOND.—The Secretary of Homeland Security may not continue to detain an alien solely based on the alien’s inability to pay bond.

“(c) CUSTODY DETERMINATION.—

“(1) INITIAL DETERMINATION.—

“(A) IN GENERAL.—Not later than 48 hours after taking an alien into custody pursuant to this section or section 235, or with respect to an alien subject to a reinstated order of removal pursuant to section 241(a)(5) who has 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 the alien, and provide such determination in writing to the alien.

“(B) LEAST RESTRICTIVE CONDITIONS.—

With respect to a custody determination under subparagraph (A), 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 Secretary shall impose the least restrictive conditions, as described in paragraph (4).
“(2) Timing.—

“(A) In general.—An alien who seeks to challenge the initial custody determination under paragraph (1) shall be provided with the opportunity for a hearing before an immigration judge not later than 72 hours after the initial custody determination to determine whether the alien should be detained.

“(B) Access to counsel.—On request by an alien, or the legal counsel of an alien, an immigration judge may grant a reasonable continuance of a hearing under subparagraph (A) to provide the alien or such legal counsel additional time to prepare for the hearing.

“(3) Presumption of release.—

“(A) In general.—In a hearing under this subsection, there shall be a presumption that the alien should be released.

“(B) Rebuttal.—

“(i) In general.—The Secretary of Homeland Security has 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 alternatives 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.

“(ii) CONSIDERATION.—The Attorney General—

“(I) shall consider the totality of each case; and

“(II) may not rely on an alien’s criminal conviction, arrest, pending criminal charge, or combination thereof as the sole factor to justify the continued detention of the alien.

“(4) LEAST RESTRICTIVE CONDITIONS REQUIRED.—

“(A) IN GENERAL.—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—

“(i) release on recognizance;

“(ii) secured or unsecured release on bond; or

“(iii) participation in a program described in subsection (f).

“(B) MONTHLY REVIEW.—Not less frequently than monthly, the immigration judge shall review any condition assigned to an alien pursuant to subparagraph (A).

“(C) MODIFICATION OF CONDITIONS OF SUPERVISION.—An immigration judge may modify or rescind conditions of supervision imposed on an alien by the Secretary of Homeland Security.

“(5) SPECIAL RULE FOR VULNERABLE PERSONS AND PRIMARY CAREGIVERS.—

“(A) IN GENERAL.—In the case of an alien subject to a custody determination under this subsection who 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 alien in a community-based supervision program.

“(B) DEFINITIONS.—In this paragraph:

“(i) 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.

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

“(iii) 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, queer, 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 by the Secretary of Homeland Security to have experi-
enced or to be experiencing severe
trauma or to be a survivor of torture
or gender-based violence, based on in-
formation obtained during intake,
from the alien’s attorney or legal serv-
vice provider, or through credible self-
reporting.

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

“(6) SUBSEQUENT DETERMINATIONS.—An
alien detained under this section shall be provided
with a de novo custody determination hearing under
this subsection—

“(A) not later than 30 days after the date
of the enactment of this Act;
“(B) every 60 days; and

“(C) upon showing of a change in circumstances or good cause for such a hearing.

“(d) Release Upon an Order Granting Relief From Removal.—The Secretary of Homeland Security—

“(1) shall immediately release an alien with respect to whom an immigration judge has entered an order providing relief from removal (including an order granting asylum or withholding, deferral, or cancellation of removal) or an order terminating removal proceedings, which order is pending appeal, upon entry of the order; and

“(2) 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 may not detain in a facility operated or contracted by U.S. Immigration and Customs Enforcement any individual who is under the age of 18 years.

“(f) Community-Based Case Management Program.—

“(1) In General.—The Secretary of Homeland Security shall establish, outside of the purview of
U.S. Immigration and Customs Enforcement, a community-based case management program that—

“(A) provides alternatives to detaining aliens;

“(B) offers a continuum of community-based support options and services, including—

“(i) case management; and

“(ii) access to—

“(I) social services;

“(II) medical and mental health services;

“(III) housing;

“(IV) transportation; and

“(V) legal services; and

“(C) provides services in the appropriate language.

“(2) Prohibition on electronic surveillance.—The program under paragraph (1) may not include, as an alternative to detention, the provision of ankle monitors or other forms of electronic surveillance.

“(3) Within 180 days, the Secretary shall undertake a study to examine best practices of government-funded case management and related services,
including exploring the possibility of funding case management services out of the Department.

“(4) CONTRACTS.—

“(A) IN GENERAL.—The Secretary may enter into 1 or more contracts to operate the case management program described in paragraph (1).

“(B) PRIORITIZATION.—In entering into a contract under subparagraph (A), the Secretary shall give priority to direct contracts with qualified nongovernmental community-based organizations that have experience providing services to immigrant, refugee, and asylum-seeking populations.

“(5) INDIVIDUALIZED DETERMINATION REQUIRED.—

“(A) IN GENERAL.—In determining whether to order an alien to participate in a program under this subsection, the Secretary or the immigration judge, as appropriate, shall make an individualized determination to determine the appropriate level of supervision for the alien.

“(B) EXEMPTION.—Participation in a program under this subsection may not be ordered for an alien for whom it is determined that re-
lease 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.

“(6) Prohibition on fees for alternatives to detention.—An alien who is required to participate in a specific alternatives to detention program or service may not be charged a fee for such participation.

“(7) Case management review.—Not later than 180 days after the date of the enactment of the Dignity for Detained Immigrants Act, the Secretary shall conduct a review of—

“(A) best practices in federally funded case management programs; and

“(B) the feasibility of transferring alternatives to detention case management programs out of the purview of the Department of Homeland Security.”.

(b) Probable Cause Hearing.—Section 287(a) of the Immigration and Nationality Act (8 U.S.C. 1357(a)(2)) is amended by striking the subsection designation and all that follows through “United States;” in paragraph (2) and inserting the following:
“(a) IN GENERAL.—Any officer or employee of the Department of Homeland Security authorized under regulations prescribed by the Secretary of Homeland Security shall have power without warrant—

“(1) to interrogate any alien or person believed to be an alien as to the person’s right to be or to remain in the United States, provided that such interrogation is not based on the person’s race, ethnicity, national origin, religion, sexual orientation, color, spoken language, or English language proficiency; and

“(2) to arrest any alien who, in the presence or view of the officer or employee, is entering or attempting to enter the United States in violation of any law or regulation made pursuant to law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if—

“(A) the officer or employee has probable cause to believe that—

“(i) the alien is in the United States in violation of any such law or regulation; and
“(ii) is likely to escape before a warrant can be obtained for the arrest of the alien;

“(B) the officer or employee has reason to believe that the alien would knowingly and willfully fail to appear in immigration court in response to a properly served notice to appear; and

“(C) not later than 48 hours after being taken into custody, the alien is provided with a hearing before an immigration judge to determine whether there was probable cause for such arrest, including probable cause to believe that the alien would have knowingly and willfully failed to appear as required under subparagraph (B) if the alien had not been arrested, which burden to establish probable cause shall be on the Department 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) (8 U.S.C. 1225(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 (8 U.S.C. 1226);
(C) in section 238(a)(2) (8 U.S.C. 1228(a)(2)), by striking “pursuant to section 236(c),”; and
(D) in section 506(a)(2) (8 U.S.C. 1536(a)(2))—
(i) by amending the heading to read as follows: “RELEASE HEARING FOR ALIENS DETAINED”; and
(ii) in subparagraph (A)—
(I) by amending the heading to read as follows: “IN GENERAL”;
(II) in the matter preceding clause (i), by striking “lawfully admitted for permanent residence”;
(III) by striking clause (i); and
(IV) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.
(2) CONFORMING AMENDMENTS.—
(A) The table of sections for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking the item relating to section 236A.

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

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

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

   (iii) 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 redetermi-
nation hearing before an immigration judge.

“(B) PRESUMPTION OF DETENTION.—For
purposes of the hearing under subparagraph
(A), the alien shall be detained during the re-
moval period unless the alien demonstrates by
the preponderance of the evidence that—

“(i) the alien’s removal is not reason-
ably foreseeable; and

“(ii) the alien does not pose a risk to
the safety of any individual or to the com-
munity.”;

(C) in paragraph (3)—

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

(ii) in the matter preceding subpara-
graph (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.—

“(i) In general.—An alien may not
be detained pursuant to an order under
this paragraph for longer than a 60-day
period.

“(ii) Subsequent redetermination
hearing.—The Secretary of Homeland
Security may seek subsequent redeter-
mination hearings under this paragraph in
order to continue detaining an alien be-
yond each such 60-day period.”; and

(E) by striking paragraph (7).

(2) Technical and conforming amend-
ments.—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)—

(I) by moving the paragraph 2
cems to the right;

(II) by amending the paragraph
heading to read as follows: “In gen-
eral”; and

(III) in the first sentence—


(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)”;

(iii) by redesignating the second subsection (c) as subsection (d);

(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)”.

•HR 2760 IH
SEC. 10. PROHIBITION ON SOLITARY CONFINEMENT.

(a) IN GENERAL.—An individual in the custody of the Department may not be placed in solitary confinement.

(b) DEFINITION OF SOLITARY CONFINEMENT.—In this section, the term “solitary confinement” means—

(1) in the case of an individual who is older than 21 years of age, the state of being confined to the individual’s cell, alone or with a cellmate, for more than 22 hours during a 24-hour period, with very limited out-of-cell time and severely restricted activity, movement, and social interaction whether pursuant to disciplinary, administrative, or classification action; and

(2) in the case of an individual who is 21 years of age or younger, involuntary confinement alone in a cell, room, or other area for a period greater than 3 hours.