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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R.

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

Mr. SMITH of Washington (for himself and Ms. JAYAPAL) introduced the following bill; which was referred to the Committee on

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 2017”.

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

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

10 **SEC. 3. OVERSIGHT AND TRANSPARENCY FOR DHS DETEN-**
11 **TION FACILITIES.**

12 (a) PERIODIC INSPECTIONS.—

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

1 (2) FAILURE TO COMPLY WITH STANDARDS.—

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

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

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

20 (I) issue a written warning to the
21 facility not later than 30 days after
22 receiving such notification from the
23 Inspector General, which shall include
24 proposed remedial measures to be car-

1 ried out not later than 60 days after
2 the issuance of the warning; and

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

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

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

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

14 (b) INVESTIGATIONS ON DEATH IN CUSTODY.—Not
15 later than 30 days after the death of an alien in the cus-
16 tody of the Department of Homeland Security, the Sec-
17 retary of Homeland Security shall conduct an investiga-
18 tion into that death, which shall include a root cause anal-
19 ysis that identifies any changes to policies or practices
20 that could reduce the probability of such an event in the
21 future. Not later than 60 days after such a death, the
22 Secretary shall make a report describing the results of
23 such investigation publicly available on the website of the
24 Department of Homeland Security. The root cause anal-
25 ysis described in the previous sentence shall be performed

1 in accordance with professional medical standards for in-
2 vestigating sentinel events in medical care facilities, in-
3 cluding the Sentinel Event Policy promulgated by The
4 Joint Commission.

5 (c) REPORT TO CONGRESS.—On an annual basis, the
6 Secretary of Homeland Security shall submit to the Com-
7 mittees on the Judiciary of the House of Representatives
8 and of the Senate a report on the inspections and over-
9 sight of facilities at which aliens in the custody of the De-
10 partment of Homeland Security are detained. Such report
11 shall include information relating to, for the preceding
12 year—

13 (1) each detention facility which the Inspector
14 General found was not in compliance with the stand-
15 ards under section 2 pursuant to an investigation
16 conducted under subsection (a)(1);

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

20 (3) whether the remedial actions described in
21 paragraph (2) were successful in bringing the facil-
22 ity into compliance with such standards.

23 (d) CLASSIFICATION OF DOCUMENTS FOR PURPOSES
24 OF FOIA.—The reports under subsections (a) and (b),
25 and any contract between the Department of Homeland

1 Security and a private or public entity which provides for
2 the use of a facility not owned by the Department of
3 Homeland Security to detain aliens in the custody of the
4 Department of Homeland Security are considered records
5 for purposes of section 552 of title 5, United States Code,
6 and do not qualify for the exception under subsection
7 (b)(4) of such section.

8 (e) FACILITIES MATRIX.—On the first day of each
9 month, the Secretary of Homeland Security shall ensure
10 that there is publicly available on the website of the De-
11 partment of Homeland Security, the following information
12 relating to each facility at which aliens in the custody of
13 the Department of Homeland Security may be detained:

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

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

17 (3) As of the first day of the month, the num-
18 ber of beds available in each facility, disaggregated
19 by gender.

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

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

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

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

7 (8) The average number of days that an alien
8 has been detained at the facility during the pre-
9 ceding month.

10 (f) ONLINE DETAINEE LOCATOR SYSTEM.—The Sec-
11 retary of Homeland Security shall ensure that the online
12 detainee locator system maintained by the Department of
13 Homeland Security, or any successor system, is updated
14 not later than 12 hours after an alien is taken into custody
15 or released from custody by the Department of Homeland
16 Security, transferred to, or detained in, a detention facil-
17 ity, or removed from the United States.

18 (g) INFORMATION COLLECTED AND MAINTAINED
19 FOR ALIENS IN DHS CUSTODY.—The Secretary of Home-
20 land Security shall collect and maintain, for each alien in
21 the custody of the Department of Homeland Security, the
22 following information:

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

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

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

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

7 (5) The location where the alien is detained.

8 (6) Any transfer of the alien to another deten-
9 tion facility, and the reason for such transfer.

10 (7) The status and basis of any removal pro-
11 ceedings.

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

15 (9) If applicable, the date of the alien's release
16 or removal, and the reason for such release or re-
17 moval.

18 (10) Whether the alien is subject to a final
19 order of removal.

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.

23 (b) PHASE-OUT OF PRIVATE DETENTION FACILITIES
24 AND USE OF JAILS.—

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

15 (2) NON-SECURE DETENTION PROGRAMS.—Be-
16 ginning on the date of the enactment of this Act, the
17 Secretary of Homeland Security may not enter into
18 or extend any contract with any public or private
19 for-profit entity which owns or operates a program
20 or facility that provides for non-residential deten-
21 tion-related activities for aliens who are subject to
22 monitoring by the Department of Homeland Secu-
23 rity, and shall terminate any such contract not later
24 than the date that is 3 years after the date of the
25 enactment of this Act. Beginning on the date that

1 is 3 years after the date of the enactment of this
2 Act, any such program or facility shall be owned and
3 operated by a nonprofit organization or by the De-
4 partment of Homeland Security.

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

10 **SEC. 6. APPEARANCE OF DETAINED ALIENS FOR OTHER**
11 **LEGAL MATTERS.**

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

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

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

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

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

8 (2) by striking subsection (b);

9 (3) by striking subsection (e);

10 (4) by adding at the end the following:

11 “(f) BOND DETERMINATION.—In the case that an
12 immigration judge makes a determination to release an
13 alien on bond under this section, the immigration judge
14 shall consider, for purposes of setting the amount of the
15 bond, the alien’s financial position and ability to pay the
16 bond without imposing financial hardship on the alien.

17 “(g) CUSTODY DETERMINATION.—

18 “(1) INITIAL DETERMINATION.—Not later than
19 48 hours after taking an alien into custody, the Sec-
20 retary of Homeland Security shall make an initial
21 custody determination with regard to that alien, and
22 provide that determination in writing to the alien. If
23 the Secretary determines that the release of an alien
24 will not reasonably assure the appearance of the
25 alien as required or will endanger the safety of any

1 other person or the community, the custody deter-
2 mination under this paragraph will impose the least
3 restrictive conditions, as described in paragraph (4).

4 “(2) TIMING.—If an alien seeks to challenge
5 the initial custody determination under paragraph
6 (1), the alien shall be provided with the opportunity
7 for a hearing before an immigration judge to deter-
8 mine whether the alien should be detained, which
9 hearing shall occur not later than 72 hours after the
10 initial custody determination.

11 “(3) PRESUMPTION OF RELEASE.—In a hearing
12 under this subsection, there shall be a presumption
13 that the alien should be released. The Government
14 shall have the duty of rebutting this presumption,
15 which may only be shown based on clear and con-
16 vincing evidence, including credible and individual-
17 ized information, that the use of alternatives to de-
18 tention will not reasonably assure the appearance of
19 the alien at removal proceedings, or that the alien is
20 a threat to another person or the community. The
21 fact that an alien has a criminal charge pending
22 against the alien may not be the sole factor to jus-
23 tify the continued detention of the alien.

24 “(4) LEAST RESTRICTIVE CONDITIONS RE-
25 QUIRED.—If an immigration judge determines pur-

1 suant to a hearing under this section that the re-
2 lease of an alien will not reasonably assure the ap-
3 pearance of the alien as required or will endanger
4 the safety of any other person or the community, the
5 immigration judge shall order the least restrictive
6 conditions, or combination of conditions, that the
7 judge determines will reasonably assure the appear-
8 ance of the alien as required and the safety of any
9 other person and the community, which may include
10 secured or unsecured release on bond, or participa-
11 tion in a program described in subsection (i). Any
12 conditions assigned to an alien pursuant to this
13 paragraph shall be reviewed by the immigration
14 judge on a monthly basis.

15 “(5) SPECIAL RULE FOR VULNERABLE PER-
16 SONS AND PRIMARY CAREGIVERS.—In the case that
17 the alien who is the subject of a custody determina-
18 tion under this subsection is a vulnerable person or
19 a primary caregiver, the alien may not be detained
20 unless the Government shows, in addition to the re-
21 quirements under paragraph (2), that it is unreason-
22 able or not practicable to place the individual in a
23 community-based supervision program.

24 “(6) DEFINITION.—In this subsection, the term
25 ‘vulnerable person’ means an individual who—

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

3 “(B) is pregnant;

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

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

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

9 “(F) has a serious mental or physical ill-
10 ness or disability;

11 “(G) has been determined by an asylum of-
12 ficer in an interview conducted under section
13 235(b)(1)(B) to have a credible fear of persecu-
14 tion; or

15 “(H) has been determined by an immigra-
16 tion judge or the Secretary of Homeland Secu-
17 rity to be experiencing severe trauma or to be
18 a survivor of torture or gender-based violence,
19 based on information obtained during intake,
20 from the alien’s attorney or legal service pro-
21 vider, or through credible self-reporting.

22 “(7) SUBSEQUENT DETERMINATIONS.—An
23 alien who is detained under this section shall be pro-
24 vided with a de novo custody determination hearing
25 under this subsection every 60 days, as well as upon

1 showing of a change in circumstances or good cause
2 for such a repeat hearing.

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

12 “(i) ALTERNATIVES TO DETENTION.—

13 “(1) IN GENERAL.—The Secretary of Homeland
14 Security shall establish programs that provide alter-
15 natives to detaining aliens, which shall offer a con-
16 tinuum of supervision mechanisms and options, in-
17 cluding community-based supervision programs and
18 community support. The Secretary may contract
19 with nongovernmental community-based organiza-
20 tions to provide programs, which may include case
21 management services, appearance assistance serv-
22 ices, and screenings of aliens who have been de-
23 tained.

24 “(2) INDIVIDUALIZED DETERMINATION RE-
25 QUIRED.—In determining whether to order an alien

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

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

14 (b) PROBABLE CAUSE HEARING.—Section 287(a)(2)
15 of the Immigration and Nationality Act (8 U.S.C.
16 1357(a)(2)) is amended by striking “but the alien arrested
17 shall be taken without unnecessary delay for examination
18 before an officer of the Service having authority to exam-
19 ine aliens as to their right to enter or remain in the United
20 States” and inserting “but the alien arrested shall be pro-
21 vided with a hearing before an immigration judge not later
22 than 48 hours after being taken into custody to determine
23 whether there is probable cause to believe that the alien
24 does not have the right to enter or remain in the United

1 States, which burden to establish probable cause shall be
2 on the Government”.

3 (c) MANDATORY DETENTION REPEALED.—The Im-
4 migration and Nationality Act (8 U.S.C. 1101 et seq.) is
5 amended—

6 (1) by striking section 235(b)(1)(B)(iii)(IV);

7 (2) by striking section 236(c);

8 (3) by striking section 236A;

9 (4) in section 238(a)(2), by striking “pursuant
10 to section 236(c)”;

11 (5) in section 506(a)(2)—

12 (A) by amending the heading to read as
13 follows: “RELEASE HEARING FOR ALIENS DE-
14 TAINED”; and

15 (B) in subclause (A)—

16 (i) in the matter preceding clause (i),
17 by striking “lawfully admitted for perma-
18 nent residence”; and

19 (ii) by striking clause (i).

20 (d) ALIENS ORDERED REMOVED.—Section 241(a) of
21 the Immigration and Nationality Act (8 U.S.C. 1231(a))
22 is amended—

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

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

3 “(2) INITIAL CUSTODY REDETERMINATION
4 HEARING.—

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

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

18 (3) in paragraph (3)—

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

21 (B) in the matter preceding subparagraph
22 (A), by striking “the alien, pending removal,
23 shall be subject to supervision under” the fol-
24 lowing: “except as provided in paragraph (7),
25 any alien who has been detained during the re-

1 removal period shall be released from custody,
2 pending removal, subject to individualized su-
3 pervision requirements in accordance with”;

4 (4) by striking paragraph (6); and

5 (5) by amending paragraph (7) to read as fol-
6 lows:

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

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

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

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

20 “(ii) the alien poses a risk to the safe-
21 ty of an individual or the community,
22 which may only be established based on
23 credible and individualized information
24 that establishes objective risk factors, 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 Government may seek subsequent
7 redetermination hearings under this paragraph
8 in order to continue detaining an alien beyond
9 each such 60-day period.”.