

1 Title: To provide standards for facilities at which aliens in the custody of the Department of
2 Homeland Security are detained, and for other purposes.
3
4

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

7 SECTION 1. SHORT TITLE.

8 This Act may be cited as the “Dignity for Detained Immigrants Act of 2021”.

9 SEC. 2. SENSE OF CONGRESS.

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

12 SEC. 3. DEFINITIONS.

13 In this Act:

14 (1) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of
15 Congress” means—

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

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

18 (C) the Committee on the Judiciary of the House of Representatives; and

19 (D) the Committee on Homeland Security of the House of Representatives.

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

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

23 SEC. 4. STANDARDS FOR DEPARTMENT OF 24 HOMELAND SECURITY DETENTION FACILITIES.

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

28 (b) Minimum Protection.—The standards established under subsection (a) shall provide, at a
29 minimum, the level of protections for detainees described in the American Bar Association’s
30 Civil Immigration Detention Standards (adopted in August 2012, and as modified in August
31 2014).

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

34 SEC. 5. OVERSIGHT AND TRANSPARENCY.

35 (a) Periodic Inspections.—

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

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

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

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

11 (3) FAILURE TO COMPLY WITH STANDARDS.—

12 (A) INITIAL FAILURE.—

13 (i) IN GENERAL.—If the Inspector General determines that a facility has failed
14 to comply with the standards established under section 4 for the first time during
15 any 2-year period, and such noncompliance constitutes a deficiency that threatens
16 the health, safety, or the due process rights of detainees—

17 (I) the Inspector General shall notify the Secretary of such determination;
18 and

19 (II) the Secretary shall—

20 (aa) in the case of a facility not owned by the Department, impose a
21 meaningful fine of not less than 10 percent of the value of the contract
22 with the facility; and

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

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

28 (BB) not later than 60 days after the issuance of a warning under
29 subitem (AA), certify to the Inspector General that the remedial
30 measures have been carried out.

31 (ii) FOLLOW-UP INSPECTION.—Not later than 180 days after the date on which
32 the Inspector General makes a notification under clause (i)(I), the Inspector
33 General shall conduct an in-person inspection of the facility to determine whether
34 the facility has achieved compliance with the standards established under section
35 4.

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

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

1 (ii) the Secretary shall—

2 (I) in the case of a facility not owned by the Department—

3 (aa) not later than 30 days after receiving such notification, transfer
4 each detainee to a facility that does so comply; and

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

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

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

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

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

14 (BB) makes available to the public on the internet website of the
15 Department information relating to the remedial measures taken.

16 (b) Deaths in Custody.—

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

20 (2) INVESTIGATIONS.—

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

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

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

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

33 (C) PUBLIC REPORT.—Not later than 60 days after such a death, the Secretary shall—

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

36 (ii) make the report available to the public on the internet website of the
37 Department.

38 (D) REVIEW BY INSPECTOR GENERAL.—Not later than 90 days after the death of an

1 alien in the custody of the Department, the Inspector General shall conduct a review of
2 the report issued under subparagraph (C) with respect to such death.

3 (3) DEFINITION OF DEATH OF AN ALIEN IN THE CUSTODY OF THE DEPARTMENT.—The term
4 “death of an alien in the custody of the Department” means the death of an alien occurring
5 while the alien is under the supervision of the Department, regardless of—

6 (A) the location of the death; or

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

9 (c) Report to Congress.—

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

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

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

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

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

21 (d) Classification of Documents for Purposes of FOIA.—The reports required by subsections
22 (a)(2) and (b)(2)(C), and any contract between the Department and a private or public entity that
23 provides for the use of a facility not owned by the Department to detain aliens in the custody of
24 the Department, are considered records for purposes of section 552 of title 5, United States Code,
25 and do not qualify for the exception under subsection (b)(4) of such section.

26 (e) Facilities Matrix.—

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

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

32 (A) The name and location of the facility.

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

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

36 (D) The total number of aliens detained in the facility on the last day of the
37 preceding month, disaggregated by gender and classification as a child or as an adult.

38 (E) Whether the facility is used to detain aliens for longer than 72 hours.

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

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

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

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

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

11 (f) Online Detainee Locator System.—The Secretary shall ensure that the online detainee
12 locator system maintained by the Department, or any successor system, is updated not later than
13 12 hours after an alien is—

14 (1) taken into, or released from, custody by the Department;

15 (2) transferred to, or detained in, a detention facility; or

16 (3) removed from the United States.

17 (g) Information Collected and Maintained for Aliens in DHS Custody.—The Secretary shall
18 collect and maintain, for each alien in the custody of the Department, the following information:

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

20 (2) The date on which the alien was taken into such custody.

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

22 (4) Whether the alien is considered a vulnerable person (as such term is defined in section
23 236(c)(5) of the Immigration and Nationality Act, as amended by section 9) or a primary
24 caregiver.

25 (5) The provision of law pursuant to which the Secretary is authorized to detain the alien.

26 (6) The name of the facility in which the alien is detained.

27 (7) With respect to any transfer of the alien to another detention facility—

28 (A) a description of the transfer of the alien to the other detention facility;

29 (B) the reason for the transfer; and

30 (C) in the case of a transfer effectuated despite presence of the alien's legal counsel
31 or immediate relative in the jurisdiction of the original detention facility, a justification
32 for such transfer.

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

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

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

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

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

3 (13) Whether the alien was separated from a family unit at the border or in the interior of
4 the United States.

5 SEC. 6. CIVIL ACTIONS.

6 (a) Civil Action for Violation of Standards.—

7 (1) IN GENERAL.—An individual detained in a facility required to comply with the
8 standards established under section 4 who is injured as a result of a violation of such
9 standards may file a claim in the appropriate district court of the United States.

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

13 SEC. 7. DETENTION FACILITY CONSTRUCTION AND 14 MAINTENANCE.

15 (a) Restriction on Construction.—

16 (1) IN GENERAL.—Not later than 180 days before initiating, or entering into a contract for,
17 the construction of a new facility or the expansion of an existing facility for the detention of
18 aliens in the custody of the Department, the Secretary shall submit to the appropriate
19 committees of Congress a notification of the plan to construct or expand such facility,
20 including—

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

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

23 (C) the intended population to be detained at such facility, including the gender and
24 ages of such population.

25 (2) PUBLIC AVAILABILITY.—The Secretary shall make the information described in
26 paragraph (1) available to the public on the internet website of the Department.

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

28 (1) SECURE DETENTION FACILITIES.—

29 (A) IN GENERAL.—The Secretary—

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

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

35 (B) OWNERSHIP REQUIREMENT.—Beginning on the date that is 3 years after the date
36 of the enactment of this Act, any facility at which aliens in the custody of the
37 Department are detained shall be owned and operated by the Department.

1 (2) ALTERNATIVES TO DETENTION PROGRAMS.—

2 (A) IN GENERAL.—The Secretary—

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

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

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

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

16 **SEC. 8. APPEARANCE OF DETAINED ALIENS FOR**
17 **OTHER LEGAL MATTERS.**

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

22 **SEC. 9. PROCEDURES FOR DETAINING ALIENS.**

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

25 **“SEC. 236. APPREHENSION AND DETENTION OF**
26 **ALIENS.**

27 “(a) Arrest, Detention, and Release.—

28 “(1) IN GENERAL.—On a warrant issued by an immigration judge, or pursuant to section
29 287(a)(2), the Secretary of Homeland Security may arrest an alien, and in accordance with
30 this section, detain the alien or release the alien on bond, subject to conditions, or
31 recognizance, pending a decision on whether the alien is to be removed from the United
32 States.

33 “(2) EXEMPTION FOR UNACCOMPANIED ALIEN CHILDREN.—

34 “(A) IN GENERAL.—This section shall not apply to unaccompanied alien children (as
35 defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C.
36 279(g)(2)).

37 “(B) TRANSFER OF CUSTODY.—Any unaccompanied alien child in the custody of the

1 Secretary of Homeland Security shall be transferred to the custody of the Secretary of
2 Health and Human Services pursuant to section 235(b)(3) of the William Wilberforce
3 Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(b)(3)).

4 “(b) Bond Determination.—

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

7 “(A) consider, for purposes of setting the amount of the bond, the alien’s financial
8 position and ability to pay the bond without imposing financial hardship on the alien;
9 and

10 “(B) set bond at an amount no greater than necessary to ensure the alien’s
11 appearance for removal proceedings.

12 “(2) INABILITY TO PAY BOND.—The Secretary of Homeland Security may not continue to
13 detain an alien solely based on the alien’s inability to pay bond.

14 “(c) Custody Determination.—

15 “(1) INITIAL DETERMINATION.—

16 “(A) IN GENERAL.—Not later than 48 hours after taking an alien into custody
17 pursuant to this section or section 235, or with respect to an alien subject to a reinstated
18 order of removal pursuant to section 241(a)(5) who has been found to have a credible
19 or reasonable fear of return, the Secretary of Homeland Security shall make an initial
20 custody determination with regard to the alien, and provide such determination in
21 writing to the alien.

22 “(B) LEAST RESTRICTIVE CONDITIONS.—With respect to a custody determination
23 under subparagraph (A), if the Secretary determines that the release of an alien will not
24 reasonably ensure the appearance of the alien as required or will endanger the safety of any
25 other person or the community, the Secretary shall impose the least restrictive conditions,
26 as described in paragraph (4).

27 “(2) TIMING.—

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

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

36 “(3) PRESUMPTION OF RELEASE.—

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

39 “(B) REBUTTAL.—

1 “(i) IN GENERAL.—The Secretary of Homeland Security has the duty of rebutting this
2 presumption, which may only be shown based on clear and convincing evidence, including
3 credible and individualized information, that the use of alternatives to detention will not
4 reasonably ensure the appearance of the alien at removal proceedings, or that the alien is a threat
5 to another person or the community.

6 “(ii) CONSIDERATION.—The Attorney General—

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

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

11 “(4) LEAST RESTRICTIVE CONDITIONS REQUIRED.—

12 “(A) IN GENERAL.—If an immigration judge determines, pursuant to a hearing under
13 this section, that the release of an alien will not reasonably ensure the appearance of the alien
14 as required or will endanger the safety of any other person or the community, the immigration
15 judge shall order the least restrictive conditions, or combination of conditions, that the judge
16 determines will reasonably ensure the appearance of the alien as required and the safety of any
17 other person and the community , which may include—

18 “(i) release on recognizance;

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

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

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

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

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

27 “(A) IN GENERAL.—In the case of an alien subject to a custody determination under
28 this subsection who is a vulnerable person or a primary caregiver, the alien may not be
29 detained unless the Secretary of Homeland Security demonstrates, in addition to the
30 requirements under paragraph (3), that it is unreasonable or not practicable to place the
31 alien in a community-based supervision program.

32 “(B) DEFINITIONS.—In this paragraph:

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

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

1 traveling with a child.

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

4 “(I) is under 21 years of age or over 60 years of age;

5 “(II) is pregnant;

6 “(III) identifies as lesbian, gay, bisexual, transgender, queer, or intersex;

7 “(IV) is a victim or witness of a crime;

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

9 “(VI) has filed, or is a material witness to, a bonafide workplace claim;

10 “(VII) has a serious mental or physical illness or disability;

11 “(VIII) has been determined by an asylum officer in an interview
12 conducted under section 235(b)(1)(B) to have a credible fear of persecution
13 or torture;

14 “(IX) has limited English language proficiency and is not provided access
15 to appropriate and meaningful language services in a timely fashion; or

16 “(X) has been determined by an immigration judge or by the Secretary of
17 Homeland Security to have experienced or to be experiencing severe trauma
18 or to be a survivor of torture or gender-based violence, based on information
19 obtained during intake, from the alien’s attorney or legal service provider, or
20 through credible self-reporting.

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

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

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

31 “(B) every 60 days; and

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

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

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

1 “(2) may impose only reasonable conditions on the alien’s release from custody.

2 “(e) Prohibition on Detention of Children.—Notwithstanding any other provision of this Act,
3 the Secretary of Homeland Security may not detain in a facility operated or contracted by U.S.
4 Immigration and Customs Enforcement any individual who is under the age of 18 years.

5 “(f) Community-based Case Management Program.—

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

9 “(A) provides alternatives to detaining aliens;

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

12 “(i) case management; and

13 “(ii) access to—

14 “(I) social services;

15 “(II) medical and mental health services;

16 “(III) housing;

17 “(IV) transportation; and

18 “(V) legal services; and

19 “(C) provides services in the appropriate language.

20 “(2) PROHIBITION ON ELECTRONIC SURVEILLANCE.—The program under paragraph (1)
21 may not include, as an alternative to detention, the provision of ankle monitors or other
22 forms of electronic surveillance.

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

26 “(3) CONTRACTS.—

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

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

33 “(4) INDIVIDUALIZED DETERMINATION REQUIRED.—

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

1 “(B) EXEMPTION.—Participation in a program under this subsection may not be
2 ordered for an alien for whom it is determined that release on reasonable bond or
3 recognizance will reasonably ensure the appearance of the alien as required and the safety
4 of any other person and the community..

5 “(5) PROHIBITION ON FEES FOR ALTERNATIVES TO DETENTION.—An alien who is required
6 to participate in a specific alternatives to detention program or service may not be charged a
7 fee for such participation.

8 “(6) CASE MANAGEMENT REVIEW.—Not later than 180 days after the date of the
9 enactment of Dignity for Detained Immigrants Act of 2021, the Secretary shall conduct a
10 review of—

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

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

14 (b) Probable Cause Hearing.—Section 287(a) of the Immigration and Nationality Act (8
15 U.S.C. 1357(a)(2)) is amended by striking the subsection designation and all the follows through
16 “United States;” in paragraph (2) and inserting the following:

17 “(a) In General.—Any officer or employee of the Department of Homeland Security
18 authorized under regulations prescribed by the Secretary of Homeland Security shall have power
19 without warrant—

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

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

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

29 “(i) the alien is in the United States in violation of any such law or regulation;
30 and

31 “(ii) is likely to escape before a warrant can be obtained for the arrest of the
32 alien;

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

36 “(C) not later than 48 hours after being taken into custody, the alien is provided with
37 a hearing before an immigration judge to determine whether there was probable cause
38 for such arrest, including probable cause to believe that the alien would have
39 knowingly and willfully failed to appear as required under subparagraph (B) if the
40 alien had not been arrested, which burden to establish probable cause shall be on the
41 Department of Homeland Security;”.

1 (c) Mandatory Detention Repealed.—

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

4 (A) in section 235(b) (8 U.S.C. 1225(b))—

5 (i) in paragraph (1)(B)—

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

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

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

9 (B) by striking section 236A (8 U.S.C. 1226);

10 (C) in section 238(a)(2) (8 U.S.C. 1228(a)(2)), by striking “pursuant to section
11 236(c),”; and

12 (D) in section 506(a)(2) (8 U.S.C. 1536(a)(2))—

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

15 (ii) in subparagraph (A)—

16 (I) by amending the heading to read as follows: “IN GENERAL”;

17 (II) in the matter preceding clause (i), by striking “lawfully admitted for
18 permanent residence”;

19 (III) by striking clause (i); and

20 (IV) by redesignating clauses (ii) and (iii) as clauses (i) and (ii),
21 respectively.

22 (2) CONFORMING AMENDMENTS.—

23 (A) The table of sections for the Immigration and Nationality Act (8 U.S.C. 1101 et
24 seq.) is amended by striking the item relating to section 236A.

25 (B) Section 241(c)(3)(A)(ii) of the Immigration and Nationality Act (8 U.S.C.
26 1231(c)(3)(A)(ii)) is amended—

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

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

29 (E) by striking subclause (III).

30 (d) Aliens Ordered Removed.—

31 (1) IN GENERAL.—Section 241(a) of the Immigration and Nationality Act (8 U.S.C.
32 1231(a)) is amended—

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

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

1 “(2) INITIAL CUSTODY REDETERMINATION HEARING.—

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

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

8 “(i) the alien’s removal is not reasonably foreseeable

9 “(ii) the alien does not pose a risk to the safety of any individual or to the
10 community.”;”;

11 (C) in paragraph (3)—

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

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

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

19 “(6) SUBSEQUENT CUSTODY REDETERMINATION HEARINGS.—

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

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

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

27 “(ii) the alien poses a risk to the safety of an individual or the community, which may
28 only be established based on credible and individualized information and may not be
29 established based only the fact that the alien has been charged with or is suspected of a
30 crime.” (C) PERIOD OF DETENTION.—

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

33 “(ii) SUBSEQUENT REDETERMINATION HEARING.—The Secretary of Homeland
34 Security may seek subsequent redetermination hearings under this paragraph in
35 order to continue detaining an alien beyond each such 60-day period.”; and

36 (E) by striking paragraph (7).

37 (2) TECHNICAL AND CONFORMING AMENDMENTS.—The Immigration and Nationality Act
38 (8 U.S.C. 1101 et seq.) is amended—

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

- 1 (i) in subsection (a)(1)—
2 (I) by moving the paragraph 2 ems to the right;
3 (II) by amending the paragraph heading to read as follows: “IN GENERAL”;
4 and
5 (III) in the first sentence—
6 (aa) by striking “section 241(a)(2)(A)(iii)” and inserting “section
7 237(a)(2)(A)(iii)”;
8 (bb) by striking “section 241(a)(2)(A)(ii)” and inserting “section
9 237(a)(2)(A)(ii)” and
10 (cc) by striking “section 241(a)(2)(A)(i)” and inserting
11 “237(a)(2)(A)(i)”;
12 (ii) in the second subsection (c)—
13 (I) in paragraph (2)(B), by striking “section 241(a)(2)(A)” and inserting
14 “section 237(a)(2)(A)” and
15 (II) in paragraph (4), by striking “section 241(a)” and inserting “section
16 237(a)” and
17 (iii) by redesignating the second subsection (c) as subsection (d);
18 (B) in section 276(b)(4) (8 U.S.C. 1326(b)(4)), by striking “section 241(a)(4)(B)”
19 and inserting “section 237(a)(4)(B)” and
20 (C) in section 501(1) (8 U.S.C. 1531(1)), by striking “section 241(a)(4)(B)” and
21 inserting “section 237(a)(4)(B)”.

22 SEC. 10. PROHIBITION ON SOLITARY CONFINEMENT.

23 (a) In General.—An individual in the custody of the Department may not be placed in solitary
24 confinement.

25 (b) Definition of Solitary Confinement.—In this section, the term “solitary confinement”
26 means—

27 (1) in the case of an individual who is older than 21 years of age, the state of being
28 confined to the individual’s cell, alone or with a cellmate, for more than 22 hours during a
29 24-hour period, with very limited out-of-cell time and severely restricted activity,
30 movement, and social interaction whether pursuant to disciplinary, administrative, or
31 classification action; and

32 (2) in the case of an individual who is 21 years of age or younger, involuntary
33 confinement alone in a cell, room, or other area for a period greater than 3 hours.
34